

By: Representative Scott

To: Apportionment and  
Elections

## HOUSE BILL NO. 321

1 AN ACT TO AMEND SECTION 23-15-365, MISSISSIPPI CODE OF 1972,  
2 TO REMOVE THE BLANK SPACE FOR A WRITE-IN CANDIDATE AND PROVIDE  
3 THAT A SUPPLEMENTARY BALLOT SHALL BE PRINTED AND USED IN THE EVENT  
4 A CANDIDATE DIES, RESIGNS, WITHDRAWS OR IS REMOVED AFTER THE  
5 BALLOTS HAVE BEEN PRINTED BUT BEFORE AN ELECTION; TO AMEND  
6 SECTIONS 23-15-333, 23-15-523 AND 23-15-551, MISSISSIPPI CODE OF  
7 1972, TO CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR RELATED  
8 PURPOSES.

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

10 **SECTION 1.** Section 23-15-365, Mississippi Code of 1972, is  
11 amended as follows:

12 23-15-365. (1) \* \* \* In primary, general and special  
13 elections, \* \* \* in the event of the death, resignation,  
14 withdrawal or removal of any candidate whose name was printed on  
15 the official ballot, a supplementary ballot shall be printed for  
16 that race and the name of the candidate duly substituted in the  
17 place of such candidate who is qualified to hold the office \* \* \*  
18 shall be printed on the supplementary ballot with the name of the  
19 other candidates in that particular race. The supplementary  
20 ballot shall only contain the race in which a candidate has been  
21 substituted for another candidate after the ballots were printed.



Supplementary ballots shall be formatted and printed in the same manner that regular election day ballots are printed, and shall be provided to voters in the same way regular ballots are provided to voters. Any voter who votes absentee before the supplementary ballot has been printed shall be notified that a supplementary ballot exists and shall be given the option to return to the circuit clerk's office to vote the supplementary ballot or have the supplementary ballot mailed to him or her. Only those voters who are qualified to vote absentee by mail shall be mailed a supplementary ballot.

\* \* \*

(2) The provisions of subsection (1) of this section shall not apply to elections conducted under the Nonpartisan Judicial Election Act.

**SECTION 2.** Section 23-15-333, Mississippi Code of 1972, is amended as follows:

23-15-333. (1) The county executive committee shall have printed all necessary ballots, for use in primary elections. The county executive committee shall have printed all necessary absentee ballots forty-five (45) days before the election as required by law. The ballots shall contain the names of all the candidates to be voted for at the election \* \* \*. In the event of the death of any candidate whose name shall have been printed on the ballot, a supplementary ballot shall be printed and the name of the candidate duly substituted in the place of the deceased



47 candidate \* \* \* as well as the other candidates in the race shall  
48 be printed on the supplementary ballot. Except as otherwise  
49 provided in subsection (2) of this section, the order in which the  
50 titles to the various offices shall be printed, and the size,  
51 print and quality of the paper of the ballot is left to the  
52 discretion of the county executive committee. Provided, however,  
53 that in all cases the arrangement of the names of the candidates  
54 for each office shall be alphabetical. No ballot shall be used  
55 except those so printed.

56 (2) The titles for the various offices shall be listed in  
57 the following order:

58 (a) Candidates, electors or delegates for the following  
59 national offices:

60 (i) President of the United States of America;

61 (ii) United States Senator or United States  
62 Representative;

63 (b) Candidates for the following statewide offices:  
64 Governor, Lieutenant Governor, Secretary of State, Attorney  
65 General, State Treasurer, Auditor of Public Accounts, Commissioner  
66 of Agriculture and Commerce, Commissioner of Insurance;

67 (c) Candidates for the following state district  
68 offices: Mississippi Transportation Commissioner, Public Service  
69 Commissioner, District Attorney;

70 (d) Candidates for the following legislative offices:  
71 Senator and House of Representatives;



72 (e) Candidates for countywide office;

73 (f) Candidates for county district office.

74 The order in which the titles for the various offices are  
75 listed within each of the categories listed in paragraphs (e) and  
76 (f) are left to the discretion of the county executive committee.  
77 Candidates' names shall be listed alphabetically under each office  
78 by the candidate's last name.

79 (3) If after the deadline to qualify as a candidate for an  
80 office, only one (1) person has duly qualified to be a candidate  
81 for the office in the primary election, the name of that person  
82 shall be placed on the ballot; provided, however, that if not more  
83 than one (1) person has duly qualified to be a candidate for each  
84 office on the primary election ballot, the election for all  
85 offices on the ballot shall be dispensed with and the appropriate  
86 executive committee shall declare each candidate as the party  
87 nominee if the candidate meets all the qualifications to hold the  
88 office.

89 (4) (a) If it is eligible under Section 23-15-266, the  
90 county executive committee may enter into a written agreement with  
91 the circuit clerk or the county election commission authorizing  
92 the circuit clerk or the county election commission to perform any  
93 of the duties required of the county executive committee pursuant  
94 to this section. Any agreement entered into pursuant to this  
95 subsection shall be signed by the chair of the county executive  
96 committee and the circuit clerk or the chair of the county



election commission, as appropriate. The county executive committee shall notify the state executive committee and the Secretary of State of the existence of such agreement.

(b) If it is eligible under Section 23-15-266, the municipal executive committee may enter into a written agreement with the municipal clerk or the municipal election commission authorizing the municipal clerk or the municipal election commission to perform any of the duties required of the municipal executive committee pursuant to this section. Any agreement entered into pursuant to this subsection shall be signed by the chair of the municipal executive committee and the municipal clerk or the chair of the municipal election commission, as appropriate. The municipal executive committee shall notify the state executive committee and the Secretary of State of the existence of such agreement.

**SECTION 3.** Section 23-15-523, Mississippi Code of 1972, is amended as follows:

23-15-523. (1) All proceedings at the counting center shall be under the direction of the election commissioners or officials in charge of the election, and shall be conducted under the observations of the public, but no persons except those authorized for the purpose shall touch any ballot. All persons who are engaged in processing and counting of the ballots shall take the oath provided in Section 268, Mississippi Constitution of 1890.



121           (2) The election commissioners or the officials in charge of  
122 the election shall appoint qualified electors who have received  
123 the training required by subsection (11) of this section to serve  
124 as members of the "resolution board." An odd number of not less  
125 than three (3) members shall be appointed to the resolution board.  
126 The members of the board shall take the oath provided in Section  
127 268, Mississippi Constitution of 1890. All ballots that have been  
128 rejected by the OMR equipment and that are damaged or defective,  
129 blank or overvoted will be reviewed by the board. Election  
130 commissioners, candidates who are on the ballot and the spouse,  
131 parents, siblings or children of such a candidate shall not be  
132 appointed to the resolution board. In general and special  
133 elections, members of the party executive committees shall not be  
134 appointed to the resolution board unless members of all of the  
135 party executive committees who have a candidate on the ballot are  
136 appointed to the resolution board.

137           (3) (a) If any ballot is damaged or defective so that it  
138 cannot be properly counted by the OMR equipment, the ballot will  
139 be deposited in an envelope provided for that purpose marked  
140 "RESOLUTION BOARD." All such ballots shall be carefully handled  
141 so as to avoid altering, removing or adding any mark on the  
142 ballot.

143           (b) The election commissioners or the officials in  
144 charge of the election shall have the members of the resolution



board ascertain the intent of the voter, if possible, and, if so, manually count any damaged or defective ballots.

(c) The resolution board shall prepare a duplicate to the damaged or defective ballot in the following manner:

(i) The resolution board shall prepare a duplicate to the original damaged or defective ballot marked identically to the original.

(ii) The resolution board shall mark the first original they examine as "Original #1" and the duplicate of this original as "Duplicate #1." Later originals and duplicates shall be likewise marked and numbered consecutively so the duplicate of each original can be identified. Duplicate ballots shall be stamped in a different manner from the original ballots so that they may be easily distinguished from the originals.

(iii) The duplicate ballots prepared pursuant to this paragraph shall be counted by the OMR equipment.

(4) The resolution board shall examine ballots that have been rejected by the OMR equipment for appearing to be "blank" to verify if they are blank or were marked with a "nondetectable" marking device. If it is determined that the ballot was marked with a nondetectable device, the resolution board shall prepare a duplicate to the original blank ballot in the same manner and in accordance with the same process provided in subsection (3)(c).

(5) All ballots that are rejected by the OMR equipment and that contain overvotes shall be inspected by the resolution board.



Regarding those rejected ballots upon which an overvote appears, if the voter intent cannot be determined by the resolution board, the officials in charge of the election may use the OMR equipment in determining the vote in the races that are unaffected by the overvote. All other ballots that are overvoted shall be counted manually following the provisions of this section at the direction of the officials in charge of the election. The return printed by the OMR equipment to which have been added the manually tallied ballots, which shall be duly certified by the officials in charge of the election, shall constitute the official return of each voting precinct. Unofficial and incomplete returns may be released during the count. Upon the completion of the counting, the official returns shall be open to the public.

(6) When the resolution board reviews any OMR ballot in which the voter has failed to fill in the arrow, oval, circle or square for a candidate or a ballot measure, the resolution board shall, if the intent of the voter can be ascertained, count the vote if:

(a) The voter marks the ballot with a "cross" (X) or "checkmark" (✓) and the lines that form the mark intersect within or on the line of the arrow, oval, circle or square by the ballot measure or the name of the candidate.

(b) The voter blackens the arrow, oval, circle or square adjacent to the ballot measure or the name of the candidate





194 in pencil or ink and the blackened portion extends beyond the  
195 boundaries of the arrow, oval, circle or square.

196 (c) The voter marks the ballot with a "cross" (X) or  
197 "checkmark" (✓) and the lines that form the mark intersect  
198 adjacent to the ballot measure or the name of the candidate.

199 (d) The voter underlines the ballot measure or the name  
200 of a candidate.

201 (e) The voter draws a line from the arrow, oval, circle  
202 or square to a ballot measure or the name of a candidate.

203 (f) The voter draws a circle or oval around the ballot  
204 measure or the name of the candidate.

205 (g) The voter draws a circle or oval around the arrow,  
206 oval, circle or square adjacent to the ballot measure or the name  
207 of the candidate.

208 (7) The resolution board, when inspecting an OMR ballot that  
209 contains or appears to contain one or more overvotes, appears to  
210 be damaged or defective, or is rejected by the OMR equipment for  
211 any reason or cannot be counted by the OMR equipment, shall make  
212 its determination in accordance with the following:

213 (a) When an elector casts more votes for any office or  
214 measure than he or she is entitled to cast at an election, all the  
215 elector's votes for that office or measure are invalid and the  
216 elector is deemed to have voted for none of them. If an elector  
217 casts less votes for any office or measure than he or she is



entitled to cast at an election, all votes cast by the elector shall be counted but no vote shall be counted more than once.

(b) If an elector casts more than one (1) vote for the same candidate for the same office, the first vote is valid and the remaining votes for that candidate are invalid.

\* \* \*

( \* \* \* c) For any ballot measure in which the words "for" or "against" are printed on a ballot, if the voter shall write the word "for" or the word "against" instead of or in addition to marking the ballot in accordance with the ballot instruction in the space adjacent to the preprinted words "for" or "against," the resolution board shall, in reviewing such ballot, count the vote in accordance with the voter's handwritten preference, unless the voter marks the ballot in the space adjacent to the preprinted words "for" or "against" contrary to the handwritten preference, in which case no vote shall be recorded for such ballot in regard to the ballot measure.

( \* \* \* d) For any ballot measure in which the words "yes" or "no" are printed on a ballot, if the voter shall write the word "yes" or the word "no" instead of or in addition to marking the ballot in accordance with the ballot instructions in the space adjacent to the preprinted words "yes" or "no," the resolution board shall, in reviewing such ballot, count the vote in accordance with the voter's handwritten preference, unless the voter marks the ballot in the space adjacent to the preprinted



words "yes" or "no" contrary to the handwritten preference, in which case no vote shall be recorded for such ballot in regard to the ballot measure.

(8) OMR equipment shall be programmed, calibrated, adjusted and set up to reject ballots that appear to be damaged or defective. Any switch, lever or feature on OMR equipment that enables or permits the OMR equipment to override the rejection of damaged or defective ballots so that such ballots will not be reviewed by the resolution board, shall not be used.

(9) Ballots shall be manually counted by the resolution board only when the ballots are:

(a) Properly before the resolution board due to being rejected by the OMR equipment because the ballots appear to be damaged or defective or are rejected by the OMR equipment for any other reason; or

(b) Properly before the resolution board due to a malfunction in the OMR equipment.

(10) The resolution board shall make and keep a record regarding the handling and counting of all ballots inspected under this section.

(11) The executive committee of each county or municipality, in the case of a primary election, or the election commissioners of each county or municipality, in the case of all other elections, in conjunction with the circuit or municipal clerk respectively, shall sponsor and conduct, a training session for up



to two (2) hours, not less than five (5) days before each election, to instruct those qualified electors who are appointed to serve as members of the resolution board as to their specific duties in the election. No member appointed to serve on the resolution board shall serve in any election unless he or she has received such instruction once during the twelve (12) months immediately preceding the date upon which the election is held. Online training courses developed by the Secretary of State, though not sponsored or conducted by the executive committee or the election commissioners, may be used to meet the requirements of this subsection (11).

**SECTION 4.** Section 23-15-551, Mississippi Code of 1972, is amended as follows:

23-15-551. On receiving his or her ballot, the voter shall go without undue delay into one (1) of the voting compartments and shall there prepare his or her ballot by marking with ink or indelible pencil on the appropriate margin or place a cross (X) opposite the name of the candidate of his or her choice for each office \* \* \*, and likewise a cross (X) opposite the answer he or she desires to give in case of an election on a constitutional amendment, local option election, referenda or any other question or matter. As an alternative method, a voter may, at his or her option, prepare a ballot by marking with ink or indelible pencil in the appropriate margin or place a check, in the form of and similar to a "V", opposite the name of the candidate of his or her



choice for each office or by writing in the name of a candidate in the blank space provided and marking a check in the form of and similar to a "V", opposite thereto, and likewise a check, in the form of and similar to a "V", opposite the answer he or she desires to give in case of an election on a constitutional amendment, local option election, referenda or other question or matter, either of which methods of marking, whether by a cross (X) or by a check in the form of and similar to a "V", is authorized. Before leaving the voting compartment, the voter shall fold his or her ballot without displaying its markings, but so that the words "OFFICIAL BALLOT," followed by the designation of the voting precinct and the date of the election, shall be visible to the poll managers, then deposit his or her ballot directly into the ballot box. This shall be done without undue delay, and as soon as the voter has voted he or she shall promptly exit the polling place. A voter shall not be allowed to occupy a voting compartment already occupied by another voter, nor any compartment longer than ten (10) minutes, if other voters are not waiting, nor longer than five (5) minutes if other voters are waiting. A person shall not be allowed in the room in which the ballot boxes, compartments, tables and shelves are, except the officers of the election, and those appointed by them to assist therein, and those authorized by Section 23-15-577.

**SECTION 5.** This act shall take effect and be in force from and after July 1, 2025.

