

By: Representative Owen

To: Apportionment and  
Elections

## HOUSE BILL NO. 1309

1 AN ACT TO AMEND SECTIONS 23-15-639, 23-15-645, 23-15-591,  
2 23-15-581, 23-15-517 AND 23-15-595, MISSISSIPPI CODE OF 1972, TO  
3 PROVIDE THAT THE PROCESSING AND COUNTING OF ABSENTEE BALLOTS SHALL  
4 BEGIN ON THE MONDAY BEFORE THE ELECTION BUT THE ABSENTEE BALLOTS  
5 SHALL BE ANNOUNCED SIMULTANEOUSLY WITH ALL OTHER VOTES CAST ON  
6 ELECTION DAY; TO PROVIDE THAT THE COUNTING AND TALLYING OF BALLOTS  
7 MUST BE FINISHED ON ELECTION NIGHT; TO PROVIDE THAT NO BALLOT BOX  
8 SHALL BE SEALED UNTIL ALL THE VOTES FOR THAT PRECINCT HAVE BEEN  
9 COUNTED AND REPORTED TO THE TABULATION CENTER; TO BRING FORWARD  
10 SECTIONS 23-15-651 AND 23-15-523, MISSISSIPPI CODE OF 1972, FOR  
11 THE PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 23-15-639, Mississippi Code of 1972, is  
14 amended as follows:

15 23-15-639. (1) The examination and counting of all absentee  
16 ballots shall be conducted as follows:

17 (a) At the opening of the regular balloting and \* \* \*  
18 on the Monday before an election day, the resolution board  
19 established under Section 23-15-523 and trained in the process of  
20 canvassing absentee ballots shall first take the envelopes  
21 containing the absentee ballots of such electors from the secure  
22 location at the registrar's office, and the name, address and



precinct inscribed on each envelope shall be announced by the resolution board.

(b) (i) For absentee ballots that were received by mail, the signature on the application shall then be compared with the signature in the box on the back of the envelope. A portion of the elector's signature extending outside of the box shall not be grounds for rejecting that elector's ballot. If it corresponds and the affidavit, if one is required, is sufficient and the resolution board finds that the applicant is a registered and qualified voter or otherwise qualified to vote, the envelope shall then be opened and the ballot removed from the envelope, without its being unfolded, or permitted to be unfolded or examined.

(ii) For absentee ballots that were cast in person in the registrar's office, the resolution board shall confirm that the voter completed the application on the front of the envelope and signed the elector's certificate in the box on the back of the envelope. If it is signed and the resolution board finds that the applicant is a registered and qualified voter or otherwise qualified to vote, the envelope shall be opened and the absentee ballot removed from the envelope, without its being unfolded, or permitted to be unfolded or examined.

(c) Having observed and found the ballot to be regular as far as can be observed from its official endorsement, the resolution board shall deposit it in the ballot box with the other ballots before counting any ballots and enter the voter's name in



the receipt book provided for that purpose. All absentee ballots received prior to 7:00 p.m. the day before the election shall be counted in the registrar's office by the resolution board \* \* \* on the Monday before an election day and then added to the votes cast in each precinct. All absentee ballots received after 7:00 p.m. the day before the election but not later than the fifth business day after the election shall be processed by the resolution board.

(2) The resolution board shall also take such action as may be prescribed by the Secretary of State to ensure compliance with the identification requirements of Section 23-15-563.

(3) The resolution board shall process the absentee ballots using the procedure provided in subsection (1) of this section.

**SECTION 2.** Section 23-15-645, Mississippi Code of 1972, is amended as follows:

23-15-645. (1) Absentee ballots cast in the registrar's office and received by mail that are deposited into a sealed ballot box \* \* \* may be processed and tallied on the Monday before the election day but \* \* \* shall be announced simultaneously with all other votes cast on election day.

(2) After the votes have been counted, the officials shall preserve all applications, envelopes and the list of absent voters along with the mailed paper and paper ballots and other election materials and return the same to the registrar.

(3) Notwithstanding any other provision of law to the contrary, for federal and presidential general, special or primary



elections, packages of protested, void and wholly blank ballots, voted ballots, open packages of unused ballots, sealed packages of unused ballots, and all absentee and military ballots and ballot envelopes, if any, shall be preserved for twenty-two (22) months after the date of any such general, special or primary election. For all other statewide, county or municipal elections, sealed packages of unused ballots, packages of protested, void and wholly blank ballots, open packages of unused ballots and all absentee and military ballots and ballot envelopes shall be retained for four (4) months, and may then be destroyed, provided a certificate articulating the election district identifying data and numbers of such ballots is filed with the balance of ballots described in this section, for the balance of the twenty-two-month retention period.

**SECTION 3.** Section 23-15-591, Mississippi Code of 1972, is amended as follows:

23-15-591. When the votes have been completely and correctly counted and tallied by the poll managers they shall publicly proclaim the result of the election at their box and shall certify in duplicate a statement of the result, the certificate to be signed by the poll managers, one (1) of the certificates to be enclosed in the ballot box, and the other to be delivered to and to be kept by one (1) of the poll managers and to be inspected at any time by any voter who so requests. When the count of the votes and the tally of the votes have been completed on the night



98 of the election, the poll managers shall lock and seal the ballot  
99 box, having first placed therein all ballots voted, all spoiled  
100 ballots and all unused ballots. There shall also be enclosed one  
101 (1) of the duplicate receipts given by the poll manager who  
102 received the blank ballots received for that box; and the total  
103 ballots voted, and the spoiled ballots, and the unused ballots  
104 must correspond in total with the duplicate receipt or else the  
105 failure thereof must be perfectly accounted for by a written  
106 statement, under oath of the poll managers, which statement must  
107 be enclosed in the ballot box. There shall also be enclosed in  
108 the box the tally list, the receipt book containing the signed  
109 names of the voters who voted; and the number of ballots voted  
110 must correspond with the number of names signed in the receipt  
111 book.

112       **SECTION 4.** Section 23-15-581, Mississippi Code of 1972, is  
113 amended as follows:

114       23-15-581. When the last qualified voter, who was standing  
115 in line at the polling place at 7:00 p.m., has cast his or her  
116 ballot, or 7:00 p.m., whichever is later, the poll managers shall  
117 proclaim that the polls are closed and publicly break the seal and  
118 open the ballot box to immediately proceed to count the ballots,  
119 at the same time reading aloud the names of the persons voted for,  
120 which shall be taken down. During the holding of the election and  
121 the counting of the ballots, the whole proceedings shall be in  
122 fair and full view of the voting public, candidates or their duly



authorized representatives and other authorized poll watchers,  
without unnecessary interference, delay or encroachment upon the  
good order of the duties and proceedings of the poll managers and  
other officers of the election. There shall be no unnecessary  
delay and no adjournment except as provided by law; however, no  
ballot box shall be sealed until all the votes for that precinct  
have been counted and reported to the tabulation center.

**SECTION 5.** Section 23-15-651, Mississippi Code of 1972, is  
brought forward as follows:

23-15-651. The results of the vote by absentee balloting  
shall be announced simultaneously with the vote cast on election  
day; provided that absentee ballots received after 7:00 p.m. the  
day before the election shall be kept in a secured and sealed  
ballot box, and shall be announced after the five-business-day  
period for receiving absentee ballots.

**SECTION 6.** Section 23-15-517, Mississippi Code of 1972, is  
amended as follows:

23-15-517. At least one (1) hour before the opening of the  
polls, the officials in charge of the election shall arrive at the  
polling place and set up the voting booths so that they will be in  
clear view of the poll managers; the poll managers shall examine  
the ballots to verify that they have the correct ballots for their  
precinct and check the supplies, records and forms, and post the  
sample ballots and instructions to the voters. They shall also  
inspect the ballot boxes to ensure they contain only voted



absentee ballots in their envelopes with the required applications, and then seal the box for voting.

Each voter shall receive written and/or verbal instructions by the poll managers instructing the voter how to properly vote the paper ballot before the voter enters the voting booth. If any voter needs additional instructions after entering the voting booth, two (2) poll managers may, if necessary, enter the booth and give him or her such additional instructions. If any voter spoils a ballot the voter may obtain others, one (1) at a time, not exceeding three (3) in all, upon returning each spoiled ballot. The word "SPOILED" shall be written across the face of the ballot and it shall be deposited into the sealed ballot box. When the polls close once the last ballot has been cast or at 7:00 p.m., whichever is later, the poll managers shall break the seal on the ballot box to process the absentee ballots. All ballots shall be processed on the night of the election and reported to the tabulation center before the ballot box is sealed and returned to the officials in charge of the election. Ballots marked as spoiled shall be bundled together and placed in an envelope designated for spoiled ballots. Once the polls have officially closed, the envelope that contains the spoiled ballots and the unused ballots shall be placed in the ballot box or other container provided for that purpose which shall be sealed and returned to the officials in charge of the election.



172           **SECTION 7.** Section 23-15-595, Mississippi Code of 1972, is  
173 amended as follows:

174           23-15-595. The box containing the ballots and other records  
175 required by this chapter shall, immediately after the ballots have  
176 been counted, be delivered by one (1) of the poll managers to the  
177 clerk of the circuit court of the county and the clerk shall, in  
178 the presence of the poll manager making delivery of the box, place  
179 upon the lock of such box a tamper-evident seal. The seals shall  
180 be numbered consecutively to the number of ballot boxes used in  
181 the election in the county, and the clerk shall keep in a place  
182 separate from such boxes a record of the number of the seal of  
183 each separate box in the county. The board of supervisors of the  
184 county shall pay the cost of providing the seals. Upon demand of  
185 the chair of the county executive committee in the case of primary  
186 elections, or the county election commissioner in the case of  
187 other elections, the boxes and their contents shall be delivered  
188 to the county executive committee, or the county election  
189 commission, as appropriate, and after such committee or  
190 commission, as appropriate, has finished the work of tabulating  
191 returns and counting ballots as required by law on the night of  
192 the election, the committee or commission, as appropriate, shall  
193 return all papers and ballots to the box of the precinct where the  
194 election was held, and it shall make redelivery of the boxes and  
195 their contents to the circuit clerk who shall reseal the boxes.  
196 Upon every occasion the boxes shall be reopened and each resealing





shall be done as provided in this chapter. The tabulating of all returns and the counting of all ballots must be finished on the night of the election and reported to the tabulating center.

**SECTION 8.** Section 23-15-523, Mississippi Code of 1972, is brought forward 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.

(2) The election commissioners or the officials in charge of the election shall appoint qualified electors who have received the training required by subsection (1) of this section to serve as members of the "resolution board." An odd number of not less than three (3) members shall be appointed to the resolution board. The members of the board shall take the oath provided in Section 268, Mississippi Constitution of 1890. All ballots that have been rejected by the OMR equipment and that are damaged or defective, blank or overvoted will be reviewed by the board. Election commissioners, candidates who are on the ballot and the spouse, parents, siblings or children of such a candidate shall not be appointed to the resolution board. In general and special elections, members of the party executive committees shall not be



222 appointed to the resolution board unless members of all of the  
223 party executive committees who have a candidate on the ballot are  
224 appointed to the resolution board.

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

231       (b) The election commissioners or the officials in  
232 charge of the election shall have the members of the resolution  
233 board ascertain the intent of the voter, if possible, and, if so,  
234 manually count any damaged or defective ballots.

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

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

240               (ii) The resolution board shall mark the first  
241 original they examine as "Original #1" and the duplicate of this  
242 original as "Duplicate #1." Later originals and duplicates shall  
243 be likewise marked and numbered consecutively so the duplicate of  
244 each original can be identified. Duplicate ballots shall be  
245 stamped in a different manner from the original ballots so that  
246 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.



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

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

280 (b) The voter blackens the arrow, oval, circle or  
281 square adjacent to the ballot measure or the name of the candidate  
282 in pencil or ink and the blackened portion extends beyond the  
283 boundaries of the arrow, oval, circle or square.

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

287 (d) The voter underlines the ballot measure or the name  
288 of a candidate.

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

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

293 (g) The voter draws a circle or oval around the arrow,  
294 oval, circle or square adjacent to the ballot measure or the name  
295 of the candidate.



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

301           (a) When an elector casts more votes for any office or  
302 measure than he or she is entitled to cast at an election, all the  
303 elector's votes for that office or measure are invalid and the  
304 elector is deemed to have voted for none of them. If an elector  
305 casts less votes for any office or measure than he or she is  
306 entitled to cast at an election, all votes cast by the elector  
307 shall be counted but no vote shall be counted more than once.

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

311           (c) No write-in vote for a candidate whose name is  
312 printed on the ballot shall be regarded as invalid due to  
313 misspelling a candidate's name, or by abbreviation, addition or  
314 omission or use of a wrong initial in the name, as long as the  
315 intent of the voter can be ascertained.

316           (d) In any case where a voter writes in the name of a  
317 candidate for President of the United States whose name is printed  
318 on the general election ballot, the failure by the voter to write  
319 in the name of a candidate for the Office of Vice President of the  
320 United States on the general election ballot does not invalidate



the elector's vote for the slate of electors for any candidate whose name is written in for the Office of President of the United States.

(e) 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.

(f) 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.



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

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

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

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

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

363 (11) The executive committee of each county or municipality,  
364 in the case of a primary election, or the election commissioners  
365 of each county or municipality, in the case of all other  
366 elections, in conjunction with the circuit or municipal clerk  
367 respectively, shall sponsor and conduct, a training session for up  
368 to two (2) hours, not less than five (5) days before each  
369 election, to instruct those qualified electors who are appointed  
370 to serve as members of the resolution board as to their specific



371 duties in the election. No member appointed to serve on the  
372 resolution board shall serve in any election unless he or she has  
373 received such instruction once during the twelve (12) months  
374 immediately preceding the date upon which the election is held.  
375 Online training courses developed by the Secretary of State,  
376 though not sponsored or conducted by the executive committee or  
377 the election commissioners, may be used to meet the requirements  
378 of this subsection (11).

379       **SECTION 9.** This act shall take effect and be in force from  
380 and after July 1, 2025.

