

By: Representatives Reynolds, Scott (80th)

To: Apportionment and  
ElectionsHOUSE BILL NO. 833  
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 23-15-523, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE FOR THE COMPOSITION OF THE RESOLUTION BOARD IN COUNTIES  
3 THAT UTILIZE OPTICAL MARK READING SYSTEMS IN CONDUCTING ELECTIONS;  
4 TO PROVIDE FOR AN ALTERNATE METHOD OF COUNTING DAMAGED OR  
5 DEFECTIVE BALLOTS IN SUCH COUNTIES; TO ESTABLISH STANDARDS BY  
6 WHICH OPTICAL MARK READING EQUIPMENT BALLOTS ON WHICH THE VOTER  
7 HAS FAILED TO MARK IN ACCORDANCE WITH THE BALLOT INSTRUCTIONS  
8 SHALL BE EXAMINED BY THE RESOLUTION BOARD TO DETERMINE THE INTENT  
9 OF THE VOTER; TO ESTABLISH STANDARDS BY WHICH OPTICAL MARK READING  
10 EQUIPMENT BALLOTS WHICH CONTAIN OVERVOTES, ARE DAMAGED OR  
11 DEFECTIVE OR CANNOT BE COUNTED BY THE OPTICAL MARK TABULATING  
12 EQUIPMENT FOR ANY REASON, ARE COUNTED; TO PROVIDE WHEN OPTICAL  
13 MARK READING BALLOTS MAY BE MANUALLY COUNTED BY THE RESOLUTION  
14 BOARD; TO AMEND SECTION 23-15-461, MISSISSIPPI CODE OF 1972, TO  
15 DEFINE THE TERM "CHAD" WITH REGARD TO ELECTRONIC VOTING SYSTEM  
16 BALLOTS; TO AMEND SECTION 23-15-483, MISSISSIPPI CODE OF 1972, TO  
17 PROVIDE FOR THE APPOINTMENT OF A RESOLUTION BOARD TO REVIEW  
18 DAMAGED OR DEFECTIVE ELECTRONIC VOTING SYSTEM BALLOTS; TO PROVIDE  
19 THE MANNER IN WHICH SUCH BALLOTS MAY BE COUNTED; TO ESTABLISH  
20 STANDARDS FOR DETERMINING VOTER INTENT FOR SUCH BALLOTS; TO  
21 ESTABLISH STANDARDS BY WHICH ELECTRONIC VOTING SYSTEM BALLOTS  
22 WHICH CONTAIN OVERVOTES ARE COUNTED; TO PROVIDE WHEN ELECTRONIC  
23 VOTING SYSTEM BALLOTS MAY BE COUNTED MANUALLY; AND FOR RELATED  
24 PURPOSES.

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

26 **SECTION 1.** Section 23-15-523, Mississippi Code of 1972, is  
27 amended as follows:

28 23-15-523. (1) All proceedings at the counting center shall  
29 be under the direction of the commissioners of elections or  
30 officials in charge of the election, and shall be conducted under  
31 the observations of the public, but no persons except those  
32 authorized for the purpose shall touch any ballot. All persons  
33 who are engaged in processing and counting of the ballots shall be  
34 deputized in writing and take oath that they will faithfully  
35 perform their assigned duties.

36 (2) The commissioners of elections or the officials in  
37 charge of the election shall appoint \* \* \* qualified electors to  
38 serve as judges on the "resolution board." An odd number of not



39 less than three (3) members shall be appointed to the resolution  
40 board. The members of the board shall take the oath provided in  
41 Section 268, Mississippi Constitution of 1890. All ballots that  
42 have been rejected by the OMR tabulating equipment and that are  
43 damaged or defective, blank or overvoted will be reviewed by said  
44 board.

45 (3) (a) If any ballot is damaged or defective so that it  
46 cannot be properly counted by the OMR tabulating equipment, the  
47 ballot will be deposited in an envelope provided for that purpose  
48 marked "RESOLUTION BOARD." All such ballots shall be carefully  
49 handled so as to avoid altering, removing or adding any mark on  
50 the ballot.

51 (b) The commissioners of \* \* \* election or the  
52 officials in charge of the election shall have the judges on the  
53 resolution board manually count any damaged or defective ballots,  
54 who shall determine the intent of the voter and record the vote  
55 consistent with this determination.

56 (c) As an alternative to the procedure provided for in  
57 paragraph (b) of this subsection, the resolution board may be  
58 instructed by the officials in charge of the election to prepare a  
59 duplicate to the damaged or defective ballot in the following  
60 manner:

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

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



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

73           (4) Ballots that have been rejected by the OMR tabulating  
74 equipment for appearing to be "blank" shall be examined to verify  
75 if they are blank or were marked with a "nondetectable" marking  
76 device. If it is determined that the ballot was marked with a  
77 nondetectable device, the resolution board may mark over the  
78 voter's mark with a detectable marking device.

79           (5) All ballots that are rejected by the OMR tabulating  
80 equipment and which contain overvotes shall be inspected by the  
81 resolution board. Regarding those ballots upon which an overvote  
82 appears and voter intent cannot be determined by inspection of the  
83 resolution board, the officials in charge of the election may use  
84 the OMR tabulating equipment in determining the vote in the races  
85 which are unaffected by the overvote. All other ballots which are  
86 overvoted shall be counted manually following the provisions of  
87 this section at the direction of the officials in charge of the  
88 election. If for any reason it becomes impracticable to count all  
89 or a part of the ballots with the OMR tabulating equipment, the  
90 officials in charge may direct that they be counted manually, and  
91 voter intent shall be determined by following \* \* \* the provisions  
92 of this section. The return printed by the OMR tabulating  
93 equipment to which have been added the manually tallied ballots,  
94 which shall be duly certified by the officials in charge of the  
95 election, shall constitute the official return of each voting  
96 precinct. Unofficial and incomplete returns may be released  
97 during the count. Upon the completion of the counting, the  
98 official returns shall be open to the public.

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



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

108           (b) The voter blackens the arrow, oval, circle or  
109 square adjacent to the ballot measure or the name of the candidate  
110 in pencil or ink and the blackened portion extends beyond the  
111 boundaries of the arrow, oval, circle or square.

112           (c) The voter marks the ballot with a "cross" (x) or  
113 "checkmark" (✓) and the lines that form the mark intersect  
114 adjacent to the ballot measure or the name of the candidate.

115           (d) The voter underlines the ballot measure or the name  
116 of a candidate.

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

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

121           (g) The voter draws a circle or oval around the arrow,  
122 oval, circle or square adjacent to the ballot measure or the name  
123 of the candidate.

124           (7) The resolution board, when inspecting an OMR ballot  
125 which contains or appears to contain one or more overvotes,  
126 appears to be damaged or defective, or is rejected by the OMR  
127 tabulating equipment for any reason or cannot be counted by the  
128 OMR tabulating equipment, shall make its determination in  
129 accordance with the following:

130           (a) When an elector casts more votes for any office or  
131 measure than he or she is entitled to cast at an election, all the  
132 elector's votes for that office or measure are invalid and the  
133 elector is deemed to have voted for none of them except as  
134 provided in paragraph (b) of this subsection. If an elector casts  
135 less votes for any office or measure than he or she is entitled to



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

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

141 (c) No write-in vote for a candidate whose name is  
142 printed on the ballot shall be regarded as defective due to  
143 misspelling a candidate's name, or by abbreviation, addition or  
144 omission or use of a wrong initial in the name, as long as the  
145 intent of the voter can be ascertained.

146 (d) In any case where a voter writes in the name of a  
147 candidate for President of the United States whose name is printed  
148 on the general election ballot, the failure by the voter to write  
149 in the name of a candidate for the Office of Vice President of the  
150 United States on the general election ballot does not invalidate  
151 the elector's vote for the slate of electors for any candidate  
152 whose name is written in for the Office of President of the United  
153 States.

154 (e) For any ballot measure in which the words "for" or  
155 "against" are printed on a ballot, if the voter shall write the  
156 word "for" or the word "against" instead of or in addition to  
157 marking the ballot in accordance with the ballot instruction in  
158 the space adjacent to the pre-printed words "for" or "against,"  
159 the resolution board shall, in reviewing such ballot, count the  
160 vote in accordance with the voter's handwritten preference, unless  
161 the voter marks the ballot in the space adjacent to the  
162 pre-printed words "for" or "against" contrary to the handwritten  
163 preference, in which case no vote shall be recorded for such  
164 ballot in regard to the ballot measure.

165 (f) For any ballot measure in which the words "yes" or  
166 "no" are printed on a ballot, if the voter shall write the word  
167 "yes" or the word "no" instead of or in addition to marking the  
168 ballot in accordance with the ballot instructions in the space



169 adjacent to the pre-printed words "yes" or "no," the resolution  
170 board shall, in reviewing such ballot, count the vote in  
171 accordance with the voter's handwritten preference, unless the  
172 voter marks the ballot in the space adjacent to the pre-printed  
173 words "yes" or "no" contrary to the handwritten preference, in  
174 which case no vote shall be recorded for such ballot in regard to  
175 the ballot measure.

176 (8) OMR tabulating equipment shall be programmed,  
177 calibrated, adjusted and set up to reject ballot cards that appear  
178 to be damaged or defective. Any switch, lever or feature on OMR  
179 tabulating equipment that enables or permits the OMR tabulating  
180 equipment to override the rejection of damaged or defective ballot  
181 cards so that such cards will not be reviewed by the resolution  
182 board, shall not be utilized.

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

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

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

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

194 **SECTION 2.** Section 23-15-461, Mississippi Code of 1972, is  
195 amended as follows:

196 23-15-461. As used in this chapter, unless otherwise  
197 specified:

198 (a) "Automatic tabulating equipment" includes apparatus  
199 necessary to automatically examine and count votes as designated  
200 on ballots or ballot cards and tabulate the results.



201           (b) "Ballot card" means a tabulating card on which  
202 votes may be recorded by means of punching or marking.

203           (c) "Ballot labels" means the cards, papers, booklet,  
204 pages or other material, containing the names of offices and  
205 candidates and the statements of measures to be voted on, which  
206 are placed on the voting device.

207           (d) "Ballot" means a paper ballot on which votes are  
208 recorded, or alternatively may mean ballot cards and ballot  
209 labels.

210           (e) "Chad" means the part of a ballot card that is  
211 designed to be punched out by the voter.

212           (f) "Counting center" means one or more locations used  
213 for the automatic counting of ballots.

214           (g) "Electronic voting system" means a system in which  
215 votes are recorded on a paper ballot or ballot cards by means of  
216 marking or punching, and such votes are subsequently counted and  
217 tabulated by automatic tabulating equipment at one or more  
218 counting centers.

219           (h) "Voting device" means an apparatus which the voter  
220 uses to record his votes by marking or punching a hole in a paper  
221 ballot or tabulating card, which votes are subsequently counted by  
222 electronic tabulating equipment.

223           **SECTION 3.** Section 23-15-483, Mississippi Code of 1972, is  
224 amended as follows:

225           23-15-483. (1) All proceedings at the counting center shall  
226 be under the direction of the commissioners of elections or  
227 officials in charge of the election, and shall be conducted under  
228 the observation of the public, but no persons except those  
229 authorized for the purpose shall touch any ballot or ballot card  
230 or return. All persons who are engaged in processing and counting  
231 of the ballots shall be deputized in writing and take an oath that  
232 they will faithfully perform their assigned duties. Persons  
233 assigned to operate the automatic tabulating equipment shall



234 submit evidence satisfactory to the commissioners of elections or  
235 officials in charge of the elections of their \* \* \* qualifications  
236 to operate said equipment.

237 (2) The commissioners of elections or the officials in  
238 charge of the election shall appoint qualified electors of the  
239 county to serve as judges on a resolution board in the manner  
240 provided in Section 23-15-523 to review all ballots that have been  
241 rejected by the electronic voting system tabulating equipment and  
242 are damaged or defective. An odd number of members shall be  
243 appointed to the resolution board.

244 (3) (a) If any ballot is damaged or defective so that it  
245 cannot be properly counted by the automatic tabulating equipment,  
246 the ballot shall be deposited in an envelope provided for that  
247 purpose marked "RESOLUTION BOARD." All such ballots shall be  
248 carefully handled so as to avoid disturbing any chad or mark on  
249 the ballot.

250 (b) The commissioners of election or officials in  
251 charge of the election shall direct the judges or the resolution  
252 board to manually count any damaged or defective ballots, who  
253 shall determine the intent of the voter and record the vote  
254 consistent with this determination \* \* \*.

255 (c) As an alternative to the procedure provided for in  
256 paragraph (b) of this subsection, the resolution board may be  
257 instructed by the officials in charge of the election to prepare a  
258 duplicate to the damaged or defective ballot in the following  
259 manner:

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

263 (ii) The resolution board shall mark the first  
264 original they examine as "Original #1" and the duplicate of this  
265 original as "Duplicate #1." Subsequent originals and duplicates  
266 shall be likewise marked and numbered consecutively so the





267 duplicate of each original can be identified. Duplicate ballots  
268 may be printed in a different color from the original ballots so  
269 that they may be easily distinguished for the originals.

270 (iii) The duplicate ballots prepared pursuant to  
271 this paragraph shall be counted by the electronic tabulating  
272 equipment.

273 (4) If the resolution board is directed to manually count  
274 damaged or defective ballots, the board shall examine each damaged  
275 or defective ballot and determine the intent of the voter. A vote  
276 on a ballot in which a hole is punched by the voter to indicate a  
277 vote shall not be counted unless:

278 (a) At least two (2) corners of the chad are detached;

279 (b) Light is visible through the hole;

280 (c) An indentation on the chad from the stylus or other  
281 object is clearly present and indicates a clearly ascertainable  
282 intent of the voter to vote; or

283 (d) The chad reflects by other means a clearly  
284 ascertainable intent of the voter to vote based on the totality of  
285 the ballot.

286 (5) All ballots that are rejected by the automatic  
287 tabulating equipment and which contain overvotes shall be  
288 inspected by the resolution board. In cases in which a ballot  
289 appearing to contain overvotes is reviewed by the resolution  
290 board, the board shall apply the following standards in  
291 determining the intent of the voter:

292 (a) When an elector casts more votes for any office or  
293 measure than the voter is entitled to cast, all the elector's  
294 votes for that office or measure are invalid and the voter shall  
295 be deemed to have voted for none of them.

296 (b) In an election for President of the United States,  
297 if the voter votes for both the candidates for president and vice  
298 president of the United States from the same party ticket or  
299 independent candidate choices, if such option is available to the



300 voter due to the design of the electronic voting system ballot,  
301 then the vote is counted as a single vote for the joint candidates  
302 for president and vice president.

303 (6) Subsections (2) and (3) of this section shall not  
304 supercede any clearly ascertainable intent of the voter.

305 (7) If for any reason it becomes impractical to count all or  
306 a part of the ballots with the automatic tabulating equipment, the  
307 officials in charge of the election may direct that the ballots be  
308 counted manually and voter intent shall be determined by following  
309 the provisions of subsections (2), (3) and (4) of this section in  
310 cases of overvoted ballots or those appearing to be blank.

311 (8) The return printed by the automatic tabulating  
312 equipment, to which have been added the \* \* \* ballots that have  
313 been manually counted and which has been duly certified by the  
314 officials in charge of the election, shall constitute the official  
315 return of each voting precinct or supervisors district.  
316 Unofficial and incomplete returns may be released during the  
317 count. Upon completion of the count, the official returns shall  
318 be open to the public. \* \* \*

319 (9) Automatic tabulating equipment shall be programmed,  
320 calibrated, adjusted and set up to reject ballot cards that appear  
321 to be damaged or defective. Any switch, lever or feature on  
322 automatic tabulating equipment that enables or permits the  
323 automatic tabulating equipment to override the rejection of  
324 damaged or defective ballot cards so that such cards will not be  
325 reviewed by the resolution board shall not be utilized.

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

328 (a) Properly before the resolution board due to being  
329 rejected by the automatic tabulating equipment because the ballots  
330 appear to be damaged or defective or are rejected by the automatic  
331 tabulating equipment for any other reason; or



332           (b) Properly before the resolution board due to a  
333 malfunction in the automatic tabulating equipment.

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

337           **SECTION 4.** The Attorney General of the State of Mississippi  
338 shall submit this act, immediately upon approval by the Governor,  
339 or upon approval by the Legislature subsequent to a veto, to the  
340 Attorney General of the United States or to the United States  
341 District Court for the District of Columbia in accordance with the  
342 provisions of the Voting Rights Act of 1965, as amended and  
343 extended.

344           **SECTION 5.** This act shall take effect and be in force from  
345 and after the date it is effectuated under Section 5 of the Voting  
346 Rights Act of 1965, as amended and extended.

