

By: Representative Robinson (63rd)

To: Apportionment and
Elections

HOUSE BILL NO. 1444

1 AN ACT TO AUTHORIZE THE USE OF DIRECT RECORDING ELECTRONIC
2 VOTING EQUIPMENT (DRE) TO CAST BALLOTS AND RECORD VOTES AT
3 ELECTIONS IN THIS STATE; TO SPECIFY THE MINIMUM REQUIREMENTS THAT
4 SUCH SYSTEMS MUST MEET TO BE USED IN ELECTIONS IN THIS STATE; TO
5 PROVIDE THE MANNER IN WHICH DRE'S MUST BE ARRANGED AT THE POLLING
6 PLACE; TO PROVIDE FOR THE FORM OF THE DRE BALLOT; TO PROVIDE THE
7 DUTIES OF THE OFFICIALS IN CHARGE OF THE ELECTION IN REGARD TO THE
8 USE OF DRE'S; TO PROVIDE THAT THE CIRCUIT CLERK SHALL BE THE
9 CUSTODIAN OF DRE UNITS; TO PROVIDE FOR THE TESTING OF DRE UNITS
10 PRIOR TO THE ELECTION; TO PROVIDE FOR THE ARRANGEMENT OF OFFICES,
11 NAMES OF CANDIDATES AND QUESTIONS ON DRE BALLOTS; TO PROVIDE FOR A
12 WRITE-IN BALLOT FOR USE IN ELECTIONS CONDUCTED WITH DRE'S; TO
13 REQUIRE DEMONSTRATIONS OF THE USE OF DRE'S; TO PROVIDE FOR THE
14 STORAGE OF DRE UNITS WHEN THEY ARE NOT IN USE; TO PROVIDE THE
15 MANNER IN WHICH AN ELECTOR VOTES ON A DRE UNIT; TO PROVIDE FOR THE
16 VOIDING OF BALLOTS IN CERTAIN INSTANCES WHEN THE ELECTOR DOES NOT
17 COMPLETE THE VOTING PROCESS; TO PROVIDE THE MANNER IN WHICH VOTES
18 ARE COUNTED AND THE RESULTS DETERMINED IN ELECTIONS CONDUCTED WITH
19 DRE'S; TO PROVIDE FOR THE MANNER IN WHICH CHALLENGED BALLOT ARE
20 HANDLED IN ELECTIONS CONDUCTED WITH DRE'S; TO MAKE IT A FELONY TO
21 TAMPER WITH OR DAMAGE A DRE UNIT OR TABULATING COMPUTER OR DEVICE
22 BEING USED IN CONNECTION WITH ANY ELECTION OR TO PREVENT THE
23 CORRECT OPERATION OF ANY DRE; TO PROVIDE FOR THE USE OF IRREGULAR
24 PAPER BALLOTS IF DRE UNITS BECOME INOPERABLE AT AN ELECTION; TO
25 AMEND SECTION 23-15-391, MISSISSIPPI CODE OF 1972, IN CONFORMITY
26 THERETO; AND FOR RELATED PURPOSES.

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

28 **SECTION 1.** As used in this act:

29 (a) "DRE" means direct recording electronic voting
30 equipment.

31 (b) "Direct recording electronic voting equipment"
32 means a computer driven unit for casting and counting votes on
33 which an elector touches a video screen or a button adjacent to a
34 video screen to cast his or her vote.

35 **SECTION 2.** Each DRE unit shall:

36 (a) Permit the voter to verify, in a private and
37 independent manner, the votes selected by the voter on the ballot
38 before the ballot is cast and counted;

39 (b) Provide the voter with the opportunity, in a
40 private and independent manner, to change the ballot or correct
41 any error before the ballot is cast and counted, including, but
42 not limited to, the opportunity to correct the error through the
43 issuance of a replacement ballot if the voter is otherwise unable
44 to change the ballot or correct any error;

45 (c) If the voter selects votes for more candidates for
46 a single office than are eligible for election:

47 (i) Notify the voter that he has selected more
48 candidates for that office than are eligible for election;

49 (ii) Notify the voter before his vote is cast and
50 counted of the effect of casting multiple votes for such an
51 office; and

52 (iii) Provide the voter with the opportunity to
53 correct the ballot before the ballot is cast and counted.

54 (d) Produce a permanent paper record with a manual
55 audit capacity which shall be available for any recount conducted
56 with respect to the election in which the DRE unit is used;

57 (e) Be accessible for individuals with disabilities,
58 including, but not limited to, nonvisual accessibility for the
59 blind and visually impaired, in a manner that provides the same
60 opportunity for access and participation, including privacy and
61 independence, as for other voters. This requirement may be
62 satisfied through the use of at least one (1) DRE unit or other
63 voting unit equipped for individuals with disabilities at each
64 polling place;

65 (f) Provide alternative language accessibility pursuant
66 to the requirements of the Voting Rights Act of 1965; and

67 (g) Have a residual vote rate in counting ballots
68 attributable to the voting system and not to voter error that
69 complies with error rate standards established under the voting
70 system standards issued by the Federal Election Commission which
71 were in effect as of October 29, 2002.

72 **SECTION 3.** DRE's shall be arranged in the polling place in
73 such a manner as to:

74 (a) Ensure the privacy of the elector while voting on
75 such units;

76 (b) Allow monitoring of the units by the poll managers
77 while the polls are open; and

78 (c) Permit the public and lawful poll watchers to
79 observe the voting without affecting the privacy of the electors
80 as they vote.

81 **SECTION 4.** (1) The ballots for DRE's shall be of such size
82 and arrangement as will suit the construction of the DRE screen
83 and shall be in plain, clear type that is easily readable by
84 persons with normal vision.

85 (2) (a) If the equipment has the capacity for color
86 display, the names of all candidates in a particular race shall be
87 displayed in the same color, font and size, and the political
88 party or affiliation of candidates may be displayed in a color
89 different from that used to display the names of the candidates,
90 but all political party or affiliations shall be displayed in the
91 same color. All political party names shall be displayed in the
92 same size and font.

93 (b) All ballot questions and constitutional amendments
94 shall be displayed in the same color.

95 **SECTION 5.** (1) The officials in charge of the election of
96 each county or municipality shall:

97 (a) Cause the proper ballot design and style to be
98 programmed for each DRE unit which is to be used in any precinct
99 within the county or municipality;

100 (b) Cause each DRE unit to be placed in proper order
101 for voting;

102 (c) Examine each unit before it is sent to a polling
103 place;

104 (d) Verify that each registering mechanism is set at
105 zero; and

106 (e) Properly secure each unit so that the counting
107 machinery cannot be operated until later authorized.

108 (2) The circuit clerk shall be the custodian of the DRE units
109 acquired by the county.

110 (3) The officials in charge of the election shall be
111 responsible for the preparation of the units to be used in the
112 county or municipality at the primaries and other elections in the
113 county or municipality.

114 (4) (a) On or before the third day preceding any election,
115 except runoff elections, the officials in charge of the election
116 shall have each DRE unit tested to ascertain that it will
117 correctly count the votes cast for all offices and on all
118 questions in a manner that the Secretary of State may prescribe by
119 rule or regulation.

120 (b) On or before the third day preceding any runoff
121 election, the officials in charge of the election shall test a
122 number of DRE units at random to ascertain that the units will
123 correctly count the votes cast for all offices. If the total
124 number of DRE units in the county is thirty (30) units or less,
125 all of the units shall be tested. If the total number of DRE
126 units in the county is more than thirty (30) but not more than one
127 hundred (100), then at least one-half (1/2) of the units shall be
128 tested at random. If there are more than one hundred (100) DRE
129 units in the county, the officials in charge of the election shall
130 test at least fifteen percent (15%) of the units at random. In no
131 event shall the officials in charge of the election test less than
132 one (1) DRE unit per precinct. All memory cards to be used in the
133 runoff shall be tested. Public notice of the time and place of
134 the test shall be made at least five (5) days prior thereto.
135 Representatives of candidates, political parties, news media and
136 the public shall be permitted to observe such tests.

137 (5) In every primary or general election, the officials in
138 charge of the election shall furnish, at the expense of the county
139 or municipality, all ballots, forms of certificates and other
140 papers and supplies required under this act which are not
141 furnished by the Secretary of State, all of which shall be in the
142 form and according to any specifications prescribed from time to
143 time by the Secretary of State.

144 **SECTION 6.** (1) The arrangement of offices, names of
145 candidates and questions upon the DRE ballots shall conform as
146 nearly as practicable to the arrangement of offices, names of
147 candidates and questions on paper ballots.

148 (2) A separate write-in ballot, which may be in the form of
149 a paper ballot, card or envelope in which the voter places his
150 ballot card after voting, shall be provided if required to permit
151 voters to write in the title of the office and the name of the a
152 person not on the printed ballot for whom he wishes to vote. The
153 design of the write-in ballot shall permit the officials in charge
154 of the election and poll workers when obtaining the vote count
155 from such systems to determine readily whether an elector has cast
156 any write-in vote not authorized by law.

157 **SECTION 7.** (1) The officials in charge of the election
158 shall ensure the delivery of the proper DRE units to the polling
159 places of the respective precincts at least one (1) hour before
160 the time for opening the polls at each election and shall cause
161 each unit to be set up in the proper manner for use in voting.

162 (2) The officials in charge of the election shall require
163 that each DRE unit be thoroughly tested, inspected and sealed
164 prior to the delivery of each DRE unit to the polling place.
165 Prior to opening the polls each day on which the units will be
166 used in an election, the manager shall break the seal on each
167 unit, turn on each unit, certify that each unit is operating
168 properly and is set to zero, and print a zero tape certifying that

169 each unit is set to zero and shall keep or record such
170 certification on each unit.

171 (3) The officials in charge of the election and poll
172 managers shall provide ample protection against molestation of and
173 injury to the DRE units, and, for that purpose, the officials in
174 charge of the election and poll managers may call upon any law
175 enforcement officer to furnish any assistance that may be
176 necessary. It shall be the duty of any law enforcement officer to
177 furnish assistance when so requested by the officials in charge of
178 the election or poll manager.

179 (4) The officials in charge of the election, in conjunction
180 with the governing authorities, shall, at least one (1) hour prior
181 to the opening of the polls:

182 (a) Provide sufficient lighting to enable electors to
183 read the ballot and which shall be suitable for the use of the
184 poll managers in examining the booth and conducting their
185 responsibilities;

186 (b) Provide directions for voting on the DRE units
187 which shall be prominently posted within each voting booth and at
188 least two (2) sample ballots for the primary or general election
189 which shall be prominently posted outside the enclosed space
190 within the polling place;

191 (c) Ensure that each DRE unit's tabulating mechanism is
192 secure throughout the day during the primary or general election;
193 and

194 (d) Provide such other materials and supplies as may be
195 necessary or required by law.

196 **SECTION 8.** The officials in charge of the election shall
197 place on public exhibition and demonstrate the use of the DRE
198 units throughout the county or municipality during the month
199 preceding each primary and general election. At least during the
200 initial year in which DRE equipment is used in a county or
201 municipality, all officials in charge of the election shall offer

202 a series of demonstrations and organized voter education
203 initiatives to educate electors in the use of such equipment in
204 voting.

205 **SECTION 9.** (1) All DRE units and related equipment shall be
206 properly stored and secured when not in use.

207 (2) The circuit clerk shall store the DRE units and related
208 equipment under his or her supervision when it is not in use at an
209 election. The circuit clerk shall provide compensation for the
210 safe storage and care of such units and related equipment if the
211 units and related equipment are stored by a person or entity other
212 than the circuit clerk.

213 **SECTION 10.** (1) A duly qualified elector shall cast his
214 vote on a DRE unit by touching the screen or pressing the
215 appropriate button on the unit for the candidate or issue of the
216 elector's choice. After pressing the appropriate button on the
217 unit or location on the screen to cast the ballot, the elector's
218 vote shall be final and shall not be subsequently altered.

219 (2) If an elector leaves the voting booth without having
220 pressed the appropriate button on the unit or location on the
221 screen to finally cast his or her ballot and cannot be located to
222 return to the booth to complete the voting process, then a poll
223 manager shall take the steps necessary to void the ballot that was
224 not completed by the elector and an appropriate record shall be
225 made of the event.

226 **SECTION 11.** (1) In elections in which DRE voting equipment
227 is used, the ballots shall be counted at the precinct under the
228 direction of the officials in charge of the election. All persons
229 who perform any duties at the precinct shall be deputized by the
230 officials in charge of the election and only persons so deputized
231 shall touch any ballot, container, paper or machine utilized in
232 the conduct of the count or be permitted to be in the immediate
233 area designed for officers deputized to conduct the count.

234 (2) All proceedings at the precincts shall be open to the
235 view of the public, but no person except one employed and
236 designated for the purpose by the officials in charge of the
237 election shall touch any ballot, any DRE unit or the tabulating
238 equipment.

239 (3) After the polls have closed and all voting in the
240 precinct has ceased, the poll manager shall shut down the DRE
241 units and extract the election results from each unit as follows:

242 (a) The manager shall obtain the results tape from each
243 DRE unit and verify that the number of ballots cast as recorded on
244 the tape matches the public count number as displayed on the DRE
245 unit;

246 (b) If a system is established by the Secretary of
247 State, the poll manager shall first transmit the election results
248 extracted from each DRE unit in each precinct via modem to the
249 central tabulating center of the county; and

250 (c) The manager shall then extract the memory card, if
251 applicable, from each DRE unit.

252 (4) (a) Upon completion of shutting down each DRE unit and
253 extracting the election results, the manager shall cause to be
254 completed and signed a ballot recap form, in sufficient
255 counterparts, showing:

256 (i) The number of valid ballots;

257 (ii) The number of spoiled and invalid ballots;

258 (iii) The number of affidavit ballots; and

259 (iv) The number of unused affidavit ballots and
260 any other unused ballots.

261 (b) The manager shall cause to be placed in the ballot
262 supply container one (1) copy of the recap form and any unused,
263 defective, spoiled and invalid ballots, each enclosed in an
264 envelope or communication pack.

265 (5) The manager shall collect and retain the zero tape and
266 the results tape for each DRE unit and place the tapes with the

267 memory card, if any, for each unit and enclose all such items for
268 all of the DRE units used in the precinct in one (1) envelope or
269 communication pack which shall be sealed and initialed by the
270 manager so that it cannot be opened without breaking the seal.

271 (6) The returning manager shall then deliver the envelope or
272 communication pack to the tabulating center for the county or
273 municipality or to such other place designated by the officials in
274 charge of the election and shall receive a receipt therefor. The
275 copies of the recap forms, unused ballots, records and other
276 materials shall be returned to the designated location and
277 retained as provided by law.

278 (7) Upon receipt of the sealed envelope or communication
279 pack containing the zero tapes, results tapes and memory cards,
280 the officials in charge of the election shall verify the
281 signatures on the envelope or communication pack. Once verified,
282 the officials in charge of the election shall break the seal of
283 the envelope or communication pack and remove its contents. The
284 officials in charge of the election shall then download the
285 results stored on the memory card from each DRE unit into the
286 election management system located at the central tabulation point
287 of the county in order to obtain election results for
288 certification.

289 **SECTION 12.** In the case of challenged ballots cast on direct
290 recording electronic voting equipment, the ballots shall be coded
291 in such a way that the ballot of a challenged voter can be
292 separated from other valid ballots at the time of tabulation and
293 the challenged ballots shall be counted, challenged or rejected in
294 accordance with the challenged ballot law.

295 **SECTION 13.** If for any reason any direct recording
296 electronic voting equipment shall become inoperable, the poll
297 managers, or the officials in charge of the election, shall direct
298 voters to go to an operating terminal or to cast irregular
299 ballots, if necessary, which shall be paper ballots. Such paper

300 ballots shall be administered, as far as is practicable, in
301 accordance with the laws concerning ballots.

302 **SECTION 14.** Any person who willfully tampers with or damages
303 any DRE unit or tabulating computer or device to be used or being
304 used at or in connection with any primary or election or who
305 prevents or attempts to prevent the correct operation of any DRE
306 unit or tabulating computer or device shall be guilty of a felony
307 and, upon conviction, be punished by imprisonment for not less
308 than three (3) years nor more than ten (10) years.

309 **SECTION 15.** Section 23-15-391, Mississippi Code of 1972, is
310 amended as follows:

311 23-15-391. The board of supervisors of each county in the
312 State of Mississippi shall * * * utilize voting machines,
313 electronic voting systems, * * * optical mark reading equipment or
314 direct recording electronic voting equipment which shall comply
315 with the specifications provided by law. * * * The election
316 commissioners may designate * * * elections to be administered by
317 paper ballot where the election commissioners * * * determine that
318 administration of an election by paper ballot will be less
319 expensive than administration of the same election by voting
320 machines, electronic voting systems, * * * optical mark reading
321 equipment or direct recording electronic voting equipment.

322 **SECTION 16.** The Attorney General of the State of Mississippi
323 shall submit this act, immediately upon approval by the Governor,
324 or upon approval by the Legislature subsequent to a veto, to the
325 Attorney General of the United States or to the United States
326 District Court for the District of Columbia in accordance with the
327 provisions of the Voting Rights Act of 1965, as amended and
328 extended.

329 **SECTION 17.** This act shall take effect and be in force from
330 and after the date it is effectuated under Section 5 of the Voting
331 Rights Act of 1965, as amended and extended.