

By: Senator(s) Burton

To: Elections

SENATE BILL NO. 2829
(As Passed the Senate)

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 BALLOTS 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 COMPUTED 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; TO AMEND SECTION 23-15-169.3, MISSISSIPPI CODE OF 1972,
27 TO CLARIFY THE ELIGIBILITY FOR FEDERAL FUNDS ACCEPTED BY THE
28 SECRETARY OF STATE FOR HELP AMERICA VOTE ACT COMPLIANCE EFFORTS OF
29 COUNTIES THAT PURCHASE CERTAIN VOTING SYSTEMS; TO AMEND SECTION
30 5-8-7, MISSISSIPPI CODER OF 1972, TO PROVIDE THAT PERSONS ENGAGED
31 IN THE SALE OF PRODUCTS OR SERVICES SHALL NOT BE INCLUDED WITHIN
32 THE DEFINITION OF "LOBBYIST" OR "LOBBYIST'S CLIENT"; TO REPEAL
33 SECTION 18, CHAPTER 305, LAWS OF 2004, WHICH PROVIDES FOR A TASK
34 FORCE TO STUDY VOTING SYSTEMS THAT COMPLY WITH THE HELP AMERICA
35 VOTE ACT OF 2002 AND THEIR SUITABILITY FOR USE IN ELECTIONS IN
36 MISSISSIPPI; AND FOR RELATED PURPOSES.

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

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

39 (a) "DRE" means direct recording electronic voting
40 equipment.

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

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

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

49 (b) Provide the voter with the opportunity, in a
50 private and independent manner, to change the ballot or correct
51 any error before the ballot is cast and counted, including, but
52 not limited to, the opportunity to correct the error through the
53 issuance of a replacement ballot if the voter is otherwise unable
54 to change the ballot or correct any error;

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

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

59 (ii) Notify the voter before his vote is cast and
60 counted of the effect of casting multiple votes for such an
61 office; and

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

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

67 (e) Have the capability to print the ballots cast by
68 electors to be utilized in the event of a recount conducted with
69 respect to the election in which the DRE is used;

70 (f) Be accessible for individuals with disabilities,
71 including, but not limited to, nonvisual accessibility for the
72 blind and visually impaired, in a manner that provides the same
73 opportunity for access and participation, including privacy and
74 independence, as for other voters. This requirement may be
75 satisfied through the use of at least one (1) DRE unit or other
76 voting unit equipped for individuals with disabilities at each
77 polling place;

78 (g) Provide alternative language accessibility pursuant
79 to the requirements of the Voting Rights Act of 1965; and

80 (h) Have a residual vote rate in counting ballots
81 attributable to the voting system and not to voter error that
82 complies with error rate standards established under the voting
83 system standards issued by the Federal Election Commission which
84 were in effect as of October 29, 2002.

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

87 (a) Ensure the privacy of the elector while voting on
88 such units;

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

91 (c) Permit the public and lawful poll watchers to
92 observe the voting without affecting the privacy of the electors
93 as they vote.

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

98 (2) (a) If the equipment has the capacity for color
99 display, the names of all candidates in a particular race shall be
100 displayed in the same color, font and size, and the political
101 party or affiliation of candidates may be displayed in a color
102 different from that used to display the names of the candidates,
103 but all political party or affiliations shall be displayed in the
104 same color. All political party names shall be displayed in the
105 same size and font.

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

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

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

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

115 (c) Examine each unit before it is sent to a polling
116 place;

117 (d) Verify that each registering mechanism is set at
118 zero; and

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

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

123 (3) The officials in charge of the election shall be
124 responsible for the preparation of the units to be used in the
125 county or municipality at the primaries and other elections in the
126 county or municipality.

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

133 (b) On or before the third day preceding any runoff
134 election, the officials in charge of the election shall test a
135 number of DRE units at random to ascertain that the units will
136 correctly count the votes cast for all offices. If the total
137 number of DRE units in the county is thirty (30) units or less,
138 all of the units shall be tested. If the total number of DRE
139 units in the county is more than thirty (30) but not more than one
140 hundred (100), then at least one-half (1/2) of the units shall be
141 tested at random. If there are more than one hundred (100) DRE
142 units in the county, the officials in charge of the election shall

143 test at least fifteen percent (15%) of the units at random. In no
144 event shall the officials in charge of the election test less than
145 one (1) DRE unit per precinct. All memory cards to be used in the
146 runoff shall be tested. Public notice of the time and place of
147 the test shall be made at least five (5) days prior thereto.
148 Representatives of candidates, political parties, news media and
149 the public shall be permitted to observe such tests.

150 (5) In every primary or general election, the officials in
151 charge of the election shall furnish, at the expense of the county
152 or municipality, all ballots, forms of certificates and other
153 papers and supplies required under this act which are not
154 furnished by the Secretary of State, all of which shall be in the
155 form and according to any specifications prescribed from time to
156 time by the Secretary of State.

157 **SECTION 6.** (1) The arrangement of offices, names of
158 candidates and questions upon the DRE ballots shall conform as
159 nearly as practicable to the arrangement of offices, names of
160 candidates and questions on paper ballots.

161 (2) A separate write-in ballot, which may be in the form of
162 a paper ballot, card or envelope in which the voter places his
163 ballot card after voting, shall be provided if required to permit
164 voters to write in the title of the office and the name of the
165 person not on the printed ballot for whom he wishes to vote. The
166 design of the write-in ballot shall permit the officials in charge
167 of the election and poll workers when obtaining the vote count
168 from such systems to determine readily whether an elector has cast
169 any write-in vote not authorized by law.

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

175 (2) The officials in charge of the election shall require
176 that each DRE unit be thoroughly tested, inspected and sealed
177 prior to the delivery of each DRE unit to the polling place.
178 Prior to opening the polls each day on which the units will be
179 used in an election, the manager shall break the seal on each
180 unit, turn on each unit, certify that each unit is operating
181 properly and is set to zero, and print a zero tape certifying that
182 each unit is set to zero and shall keep or record such
183 certification on each unit.

184 (3) The officials in charge of the election and poll
185 managers shall provide ample protection against molestation of and
186 injury to the DRE units, and, for that purpose, the officials in
187 charge of the election and poll managers may call upon any law
188 enforcement officer to furnish any assistance that may be
189 necessary. It shall be the duty of any law enforcement officer to
190 furnish assistance when so requested by the officials in charge of
191 the election or poll manager.

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

195 (a) Provide sufficient lighting to enable electors to
196 read the ballot and which shall be suitable for the use of the
197 poll managers in examining the booth and conducting their
198 responsibilities;

199 (b) Provide directions for voting on the DRE units
200 which shall be prominently posted within each voting booth and at
201 least two (2) sample ballots for the primary or general election
202 which shall be prominently posted outside the enclosed space
203 within the polling place;

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

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

209 **SECTION 8.** The officials in charge of the election shall
210 place on public exhibition and demonstrate the use of the DRE
211 units throughout the county or municipality during the month
212 preceding each primary and general election. At least during the
213 initial year in which DRE equipment is used in a county or
214 municipality, all officials in charge of the election shall offer
215 a series of demonstrations and organized voter education
216 initiatives to educate electors in the use of such equipment in
217 voting.

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

220 (2) The circuit clerk shall store the DRE units and related
221 equipment under his or her supervision when it is not in use at an
222 election. The circuit clerk shall provide compensation for the
223 safe storage and care of such units and related equipment if the
224 units and related equipment are stored by a person or entity other
225 than the circuit clerk.

226 **SECTION 10.** (1) A duly qualified elector shall cast his
227 vote on a DRE unit by touching the screen or pressing the
228 appropriate button on the unit for the candidate or issue of the
229 elector's choice. After pressing the appropriate button on the
230 unit or location on the screen to cast the ballot, the elector's
231 vote shall be final and shall not be subsequently altered.

232 (2) If an elector leaves the voting booth without having
233 pressed the appropriate button on the unit or location on the
234 screen to finally cast his or her ballot and cannot be located to
235 return to the booth to complete the voting process, then a poll
236 manager shall take the steps necessary to void the ballot that was
237 not completed by the elector and an appropriate record shall be
238 made of the event.

239 SECTION 11. (1) In elections in which DRE voting equipment
240 is used, the ballots shall be counted at the precinct under the
241 direction of the officials in charge of the election. All persons
242 who perform any duties at the precinct shall be deputized by the
243 officials in charge of the election and only persons so deputized
244 shall touch any ballot, container, paper or machine utilized in
245 the conduct of the count or be permitted to be in the immediate
246 area designed for officers deputized to conduct the count.

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

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

255 (a) The manager shall obtain the results tape from each
256 DRE unit and verify that the number of ballots cast as recorded on
257 the tape matches the public count number as displayed on the DRE
258 unit;

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

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

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

269 (i) The number of valid ballots;

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

271 (iii) The number of affidavit ballots; and

272 (iv) The number of unused affidavit ballots and
273 any other unused ballots.

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

278 (5) The manager shall collect and retain the zero tape and
279 the results tape for each DRE unit and place the tapes with the
280 memory card, if any, for each unit and enclose all such items for
281 all of the DRE units used in the precinct in one (1) envelope or
282 communication pack which shall be sealed and initialed by the
283 manager so that it cannot be opened without breaking the seal.

284 (6) The returning manager shall then deliver the envelope or
285 communication pack to the tabulating center for the county or
286 municipality or to such other place designated by the officials in
287 charge of the election and shall receive a receipt therefor. The
288 copies of the recap forms, unused ballots, records and other
289 materials shall be returned to the designated location and
290 retained as provided by law.

291 (7) Upon receipt of the sealed envelope or communication
292 pack containing the zero tapes, results tapes and memory cards,
293 the officials in charge of the election shall verify the
294 signatures on the envelope or communication pack. Once verified,
295 the officials in charge of the election shall break the seal of
296 the envelope or communication pack and remove its contents. The
297 officials in charge of the election shall then download the
298 results stored on the memory card from each DRE unit into the
299 election management system located at the central tabulation point
300 of the county in order to obtain election results for
301 certification.

302 **SECTION 12.** In the case of challenged ballots cast on direct
303 recording electronic voting equipment, the ballots shall be coded
304 in such a way that the ballot of a challenged voter can be

305 separated from other valid ballots at the time of tabulation and
306 the challenged ballots shall be counted, challenged or rejected in
307 accordance with the challenged ballot law.

308 **SECTION 13.** If for any reason any direct recording
309 electronic voting equipment shall become inoperable, the poll
310 managers, or the officials in charge of the election, shall direct
311 voters to go to an operating terminal or to cast irregular
312 ballots, if necessary, which shall be paper ballots. Such paper
313 ballots shall be administered, as far as is practicable, in
314 accordance with the laws concerning paper ballots.

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

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

324 23-15-391. The board of supervisors of each county in the
325 State of Mississippi shall * * * utilize voting machines,
326 electronic voting systems, * * * optical mark reading equipment or
327 direct recording electronic voting equipment which shall comply
328 with the specifications provided by law. * * * The election
329 commissioners may designate * * * elections to be administered by
330 paper ballot where the election commissioners * * * determine that
331 administration of an election by paper ballot will be less
332 expensive than administration of the same election by voting
333 machines, electronic voting systems, * * * optical mark reading
334 equipment or direct recording electronic voting equipment.

335 **SECTION 16.** Section 23-15-169.3, Mississippi Code of 1972,
336 is amended as follows:

337 23-15-169.3. (1) The Secretary of State shall have the
338 authority to accept federal funds authorized under the Help
339 America Vote Act of 2002 and to meet all the requirements of the
340 Help America Vote Act of 2002 in order to expend the funds.

341 (2) Counties that purchase voting systems that comply with
342 the requirements of the Help America Vote Act of 2002 including,
343 but not limited to, counties that purchase such systems prior to
344 July 12, 2004, shall be eligible for federal funds accepted by the
345 Secretary of State for Help America Vote Act of 2002 compliance
346 efforts. The only restriction that the Secretary of State may
347 place on the expenditure of federal funds for the purchase of
348 voting systems is that the systems comply with the criteria
349 established in the Help America Vote Act of 2002 for voting
350 systems.

351 **SECTION 17.** Section 5-8-7, Mississippi Code of 1972, is
352 amended as follows:

353 5-8-7. Notwithstanding any other provisions of this chapter,
354 the following person shall not be included within the definition
355 of "lobbyist" or "lobbyist's client" under this chapter, and
356 accordingly the registration and reporting provisions, including
357 the payment of related fees, of this chapter do not apply to:

358 (a) A legislative or public official acting in an
359 official capacity.

360 (b) An individual who:

361 (i) Represents or purports to represent only the
362 individual;

363 (ii) Receives no compensation or anything of value
364 for lobbying; and

365 (iii) Has no pecuniary interest in the legislative
366 or executive action.

367 (c) An individual lobbying in his or her own interest,
368 his or her own business interest, who pays, or promises to pay,
369 offers to pay or causes to be paid to public officials,

370 legislative officials or public employees any thing or things of
371 value aggregating in value to less than Two Hundred Dollars
372 (\$200.00) in any calendar year.

373 (d) An individual lobbying on behalf of his or her
374 employer's business interest where such lobbying is not a primary
375 or regular function of his employment position if such individual
376 pays, promises to pay, offers to pay, or causes to be paid
377 individually or on the employer's behalf to public officials,
378 legislative officials, or public employees any thing or things of
379 value aggregating in value to less than Two Hundred Dollars
380 (\$200.00) in any calendar year.

381 (e) An individual lobbying on behalf of an association
382 of which he or she is a member, where such lobbying is not a
383 primary or regular function of his or her position in the
384 association, if such individual pays, promises to pay, offers to
385 pay, or causes to be paid individually or on the association's
386 behalf to public officials, legislative officials or public
387 employees any thing or things of value aggregating in value to
388 less than Two Hundred Dollars (\$200.00) in any calendar year.

389 (f) An individual who is a shareholder, owner or part
390 owner of a business who lobbies on behalf of such business, where
391 such individual is not an employee of the business, if such
392 individual pays, promises to pay, offers to pay, or causes to be
393 paid individually or on behalf of the business to public
394 officials, legislative officials or public employees any thing or
395 things of value aggregating in value to less than Two Hundred
396 Dollars (\$200.00) in any calendar year.

397 (g) An individual who:

398 (i) Limits lobbying solely to formal testimony
399 before a public meeting of a legislative body or an executive
400 agency, or a committee, division or department thereof; and

401 (ii) Registers the appearance in the records of
402 the public body, if such records are kept.

403 (h) An individual who is a licensed attorney
404 representing a client by:

405 (i) Drafting bills, preparing arguments thereon,
406 and advising the client or rendering opinions as to the
407 construction and effect of proposed or pending legislation, where
408 such services are usual and customary professional legal services
409 which are not otherwise connected with legislative action; or

410 (ii) Providing information, on behalf of the
411 client, to an executive or public official, a public employee, or
412 an agency, board, commission, governing authority or other body of
413 state or local government where such services are usual and
414 customary professional legal services including or related to a
415 particular nonlegislative matter, case or controversy.

416 (i) News media and employees of the news media whose
417 activity is limited solely to the publication or broadcast of
418 news, editorial comments, or paid advertisements that attempt to
419 influence legislative or executive action. For the purposes of
420 this section, "news media" shall be construed to be bona fide
421 radio and television stations, newspapers, journals or magazines,
422 or bona fide news bureaus or associations which in turn furnish
423 information solely to bona fide radio or television stations,
424 newspapers, journals or magazines.

425 (j) An individual who engages in lobbying activities
426 exclusively on behalf of a religious organization which qualifies
427 as a tax-exempt organization under the Internal Revenue Code.

428 (k) An individual who is a nonattorney professional and
429 who receives professional fees and expenses to represent clients
430 on executive agency matters, except that if anything of value
431 shall be paid or promised to be paid directly or indirectly on
432 behalf of a client for the personal use or benefit of an executive
433 or public official or public employee, then expenditures and
434 actions of the individual are reportable under this chapter, and
435 the individual must register as a lobbyist.

436 (1) A person who is engaged in the sale of products or
437 services.

438 SECTION 18. Section 18, Chapter 305, Laws of 2004, which
439 provides for a task force to study voting systems that comply with
440 the Help America Vote Act of 2002 and their suitability for use in
441 elections in Mississippi, is repealed.

442 SECTION 19. The Attorney General of the State of Mississippi
443 shall submit this act, immediately upon approval by the Governor,
444 or upon approval by the Legislature subsequent to a veto, to the
445 Attorney General of the United States or to the United States
446 District Court for the District of Columbia in accordance with the
447 provisions of the Voting Rights Act of 1965, as amended and
448 extended.

449 SECTION 20. This act shall take effect and be in force from
450 and after the date it is effectuated under Section 5 of the Voting
451 Rights Act of 1965, as amended and extended.