

By: Representative Scott

To: Apportionment and
Elections

HOUSE BILL NO. 874

1 AN ACT TO REQUIRE THAT All VOTING SYSTEMS USED IN ANY
2 ELECTION IN THIS STATE SHALL PRODUCE A PERMANENT PAPER RECORD OR
3 PAPER AUDIT TRAIL WHICH SHALL BE AVAILABLE FOR ANY RECOUNT
4 CONDUCTED WITH RESPECT TO THE ELECTION; TO AMEND SECTIONS
5 23-15-169.3 AND 23-15-507, MISSISSIPPI CODE OF 1972, TO CONFORM TO
6 THE PRECEDING SECTION; TO BRING FORWARD SECTIONS 23-15-531.1 AND
7 23-15-531.11, MISSISSIPPI CODE OF 1972, THAT REGULATE USE OF
8 DIRECT RECORDING ELECTRONIC VOTING EQUIPMENT FOR PURPOSES OF
9 AMENDMENT; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** All voting systems used in any election in the
12 state shall produce a permanent paper record or paper audit trail
13 which shall be available for any recount conducted with respect to
14 the election. The phrase "voting systems" means any computer,
15 device or equipment used by an elector to vote or assists an
16 elector in casting a vote during an election.

17 **SECTION 2.** Section 23-15-169.3, Mississippi Code of 1972, is
18 amended as follows:

19 23-15-169.3. (1) The Secretary of State shall have the
20 authority to accept federal funds authorized under the Help
21 America Vote Act of 2002 and to meet all the requirements of the
22 Help America Vote Act of 2002 in order to expend the funds.

23 (2) Counties that purchase or have purchased since January
24 1, 2001, voting systems that comply with the requirements of the
25 Help America Vote Act of 2002 shall be eligible for federal funds
26 accepted by the Secretary of State for Help America Vote Act of
27 2002 compliance efforts. The only restriction that the Secretary
28 of State may place on the expenditure of federal funds for the
29 purchase of voting systems is that the systems comply with the

30 criteria and rules established in the Help America Vote Act of
31 2002 for voting systems.

32 (3) Counties may purchase voting systems under the Help
33 America Vote Act of 2002 (HAVA) if:

34 (a) The system selected is HAVA compliant as determined
35 by the rules promulgated to effectuate the Help America Vote Act
36 of 2002 in this state; and

37 (b) The County Board of Supervisors spreads upon its
38 minutes a certification of the following:

39 (i) The county determined it is in its best
40 interest to opt out of any statewide bulk purchase to be
41 effectuated by the Secretary of State pursuant to his duties under
42 HAVA;

43 (ii) The voting system selected by the county
44 meets all of the foregoing requirements under HAVA;

45 (iii) The county understands and accepts any and
46 all liability for said system; * * *

47 (iv) The county is solely responsible for the
48 purchase of said system; and

49 (v) The voting systems selected by the county
50 produces a permanent paper record or paper audit trail that is
51 used in all elections.

52 Upon meeting the foregoing requirements, a county shall be
53 reimbursed for its costs for said system from the HAVA funds for
54 this purpose; however, the county shall be limited in its
55 reimbursement to an amount to be determined by the Secretary of
56 State based upon an objective formula implemented for the
57 statewide, bulk purchase of said voting systems. Any costs over
58 and above the set formula described herein shall be the sole
59 responsibility of the county.

60 (c) In addition to other information required by
61 paragraph (b) of this subsection, any county that purchases voting

62 systems after the effective date of this act shall spread upon its
63 minutes certification of the following:

64 (i) All voting systems within the county are the
65 same, except those machines that are handicap accessible as
66 required by HAVA; and

67 (ii) The voting systems have a device or mechanism
68 that allows any votes cast to be verified by paper audit trail and
69 that such device or mechanism is being used in all elections.

70 (4) (a) Any county that uses any voting system that does
71 not produce a permanent paper record or paper audit trail of all
72 votes cast in an election shall be fined by the Secretary of State
73 in an amount equal to Twenty Thousand Dollars (\$20,000.00) for
74 each machine used without the requirements provided in this
75 section. The Secretary of State shall assess the fine required by
76 this section within ten (10) working days of use of such machine
77 by the county.

78 (b) Any county fined under the provisions of this
79 section may not receive any funds from the Secretary of State for
80 the purchase or repair of any equipment, voting systems or devices
81 until such county spreads upon its minutes a certification that
82 only the voting systems that produce a permanent paper record or
83 paper audit trail are used.

84 **SECTION 3.** Section 23-15-507, Mississippi Code of 1972, is
85 amended as follows:

86 23-15-507. No optical mark reading system shall be acquired
87 or used in accordance with this chapter unless it shall:

88 (a) Permit each voter to vote at any election for all
89 persons and no others for whom and for which they are lawfully
90 entitled to vote; to vote for as many persons for an office as
91 they are entitled to vote for; to vote for or against any
92 questions upon which they are entitled to vote;

93 (b) The OMR tabulating equipment shall be capable of
94 rejecting choices recorded on the ballot if the number of choices

95 exceeds the number which the voter is entitled to vote for the
96 office or on the measure;

97 (c) Permit each voter, at presidential elections, by
98 one (1) mark to vote for the candidates of that party for
99 President, Vice President, and their presidential electors, or to
100 vote individually for the electors of their choice when permitted
101 by law;

102 (d) Permit each voter, at other than primary elections,
103 to vote for the nominees of one or more parties and for
104 independent nominees;

105 (e) Permit each voter to vote for candidates only in
106 the primary in which they are qualified to vote;

107 (f) Permit each voter to vote for persons whose names
108 are not on the printed ballot;

109 (g) Be suitably designed for the purpose used, of
110 durable construction, and may be used safely, efficiently and
111 accurately in the conduct of elections and the counting of
112 ballots;

113 (h) Be provided with means for sealing the ballots
114 after the close of the polls and the last voter has voted;

115 (i) When properly operated, record correctly and count
116 accurately all votes cast; * * *

117 (j) Provide the voter with a set of instructions that
118 will be so displayed that a voter may readily learn the method of
119 voting; and

120 (k) Produce a permanent paper record with a manual
121 audit capacity or paper audit trail which shall be available for
122 any recount conducted with respect to the election in which this
123 optical mark reading system is used.

124 **SECTION 4.** Section 23-15-531.1, Mississippi Code of 1972, is
125 brought forward as follows:

126 23-15-531.1. Each DRE unit shall:

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

130 (b) Provide the voter with the opportunity, in a
131 private and independent manner, to change the ballot or correct
132 any error before the ballot is cast and counted, including, but
133 not limited to, the opportunity to correct the error through the
134 issuance of a replacement ballot if the voter is otherwise unable
135 to change the ballot or correct any error;

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

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

140 (ii) Notify the voter before his vote is cast and
141 counted of the effect of casting multiple votes for such an
142 office; and

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

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

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

151 (f) Be accessible for individuals with disabilities,
152 including, but not limited to, nonvisual accessibility for the
153 blind and visually impaired, in a manner that provides the same
154 opportunity for access and participation, including privacy and
155 independence, as for other voters. This requirement may be
156 satisfied through the use of at least one (1) DRE unit or other
157 voting unit equipped for individuals with disabilities at each
158 polling place;

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

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

166 **SECTION 5.** Section 23-15-531.11, Mississippi Code of 1972,
167 is brought forward as follows:

168 23-15-531.11. In the case of challenged ballots cast on
169 direct recording electronic voting equipment, the ballots shall be
170 coded in such a way that the ballot of a challenged voter can be
171 separated from other valid ballots at the time of tabulation and
172 the challenged ballots shall be counted, challenged or rejected in
173 accordance with the challenged ballot law.

174 **SECTION 6.** The Attorney General of the State of Mississippi
175 shall submit this act, immediately upon approval by the Governor,
176 or upon approval by the Legislature subsequent to a veto, to the
177 Attorney General of the United States or to the United States
178 District Court for the District of Columbia in accordance with the
179 provisions of the Voting Rights Act of 1965, as amended and
180 extended.

181 **SECTION 7.** This act shall take effect and be in force from
182 and after the date it is effectuated under Section 5 of the Voting
183 Rights Act of 1965, as amended and extended.