MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Banks

To: Apportionment and Elections

HOUSE BILL NO. 407

AN ACT TO AMEND SECTIONS 23-15-507 AND 23-15-531.1, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY OPTICAL MARK READING EQUIPMENT OR DIRECT RECORDING ELECTRONIC VOTING EQUIPMENT PURCHASED OR ACQUIRED AFTER JULY 1, 2021, MUST ALLOW THE VOTER TO SCAN HIS OR HER ACTUAL BALLOT INTO THE MACHINE; TO BRING FORWARD SECTIONS 23-15-531, 23-15-531.2, 23-15-531.3, 23-15-531.4, 23-15-531.5, 23-15-531.6, 23-15-531.9, 23-15-531.10 AND 23-15-531.12, MISSISSIPPI CODE OF 1972, WHICH AUTHORIZE THE USE OF DIRECT RECORDING ELECTRONIC VOTING EQUIPMENT, FOR THE PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 23-15-507, Mississippi Code of 1972, is amended as follows:

23-15-507. From and after July 1, 2021, no OMR equipment shall be acquired *** * *** in accordance with this chapter unless it shall:

(a) Permit eligible voters to vote at any election for all persons for whom they are lawfully entitled to vote; to vote for as many persons for an office as they are lawfully entitled to vote; to vote for or against any ballot initiative, measure or other local issue upon which they are lawfully entitled to vote;

(b) *** * *** Be capable of rejecting choices marked on the ballot if the number of choices exceeds the number that the voter is entitled to vote for the office or on the measure;

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

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

(e) Permit each voter to vote for candidates only in the primary in which he or she is qualified to vote;

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

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

(h) Be provided with means for sealing the ballots after the close of the polls;

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

(j) Provide the voter with a set of instructions that will be displayed in such a way that a voter may readily learn the method of voting * * *; and

(k) Permit the voter to scan his or her actual voted ballot into the machine.

SECTION 2. Section 23-15-531.1, Mississippi Code of 1972, is amended as follows:

23-15-531.1. (1) The board of supervisors of each county and the governing authorities of each municipality are hereby authorized and empowered, in their discretion, to purchase or rent DRE units that meets the requirements of subsection (2) of this section and may use such system in all or a part of the precincts within its boundaries. The provisions of this chapter shall be controlling with respect to elections in which a DRE unit is used, and shall be liberally construed so as to carry out the purpose of this chapter. The provisions of the election law relating to the conduct of elections with paper ballots, insofar as they are applicable, shall apply.

(2) From and after July 1, 2021, no DRE unit shall be acquired * * * in accordance with this chapter unless it shall:

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

(b) Provide the voter with the opportunity, in a private and independent manner, to change the ballot or correct

any error before the ballot is cast and counted, including, but not limited to, the opportunity to correct the error through the issuance of a replacement ballot if the voter is otherwise unable to change the ballot or correct any error;

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

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

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

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

(d) Produce a permanent paper record with a manual audit capability;

(e) Have the capability to print the ballots cast by electors;

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

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

(h) Have a residual vote rate in counting ballots attributable to the voting system and not to voter error that complies with error rate standards established under the voting system standards issued by the Federal Election Commission in effect as of October 29, 2002 * * *; and

(i) Permit the voter to scan his or her actual voted ballot into the machine.

SECTION 3. Section 23-15-531, Mississippi Code of 1972, is brought forward as follows:

23-15-531. "Direct recording electronic voting equipment (DRE unit)" means a computer driven unit for casting and counting votes on which an elector touches a video screen or a button adjacent to a video screen to cast his or her vote.

SECTION 4. Section 23-15-531.2, Mississippi Code of 1972, is brought forward as follows:

23-15-531.2. DRE units shall be arranged in the polling place in such a manner as to:

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

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

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

SECTION 5. Section 23-15-531.3, Mississippi Code of 1972, is brought forward as follows:

23-15-531.3. (1) The ballots for DRE units shall be of such size and arrangement as will suit the construction of the DRE screen and shall be in plain, clear type that is easily readable by persons with normal vision.

(2) (a) If the DRE unit has the capacity for color display, the names of all candidates in a particular race shall be displayed in the same color, font and size, and the political party or affiliation of candidates may be displayed in a color different from that used to display the names of the candidates, but all political parties or affiliations shall be displayed in the same color. All political party names shall be displayed in the same size and font.

(b) All ballot questions, local options, referenda and constitutional amendments shall be displayed in the same color.

SECTION 6. Section 23-15-531.4, Mississippi Code of 1972, is brought forward as follows:

23-15-531.4. (1) The circuit clerk shall be the custodian of the DRE units acquired by the county and shall be charged with the proper storage, maintenance and repair of the county's DRE units.

(2) The municipal clerk shall be the custodian of the DRE unit acquired by the municipality, and shall be charged with the proper storage, maintenance and repair of the DRE unit.

(3) The custodian shall provide compensation for the safe storage and care of the DRE units and related equipment if the same are stored and secured by a person or entity other than the circuit or municipal clerk.

SECTION 7. Section 23-15-531.5, Mississippi Code of 1972, is brought forward as follows:

23-15-531.5. (1) The arrangement of offices, names of candidates and ballot questions upon the DRE ballots shall conform as nearly as practicable to the arrangement of offices, names of candidates and ballot questions on paper ballots.

(2) The officials in charge of the election of each county or municipality shall cause the creation of the database for each DRE unit that is to be used in any precinct within the county or municipality.

SECTION 8. Section 23-15-531.6, Mississippi Code of 1972, is brought forward as follows:

23-15-531.6. (1) For each primary or general election, the officials in charge of the election shall use at least seventy-five percent (75%) of all DRE units available to the county or municipality, as the case may be. For all other elections in which the officials in charge of the election choose to use DRE units, at least one-third (1/3) of all DRE units

available to the county or municipality, as the case may be, shall be used in such elections.

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

(3) (a) On or before the second day before any election, the officials in charge of the conduct of the election shall cause each DRE unit to be tested for logic and accuracy to ascertain that the units will correctly count the votes cast for all offices and on all questions, in a manner the Secretary of State may further prescribe by rule or regulation.

(b) Public notice of the time and place of the test shall be made at least five (5) days before the date of the test. Candidates, representatives of candidates, political parties, news media and the public shall be permitted to observe the testing of the DRE units.

(4) The officials in charge of the conduct of the election shall test all memory cards and encoders to be used in any election.

(5) The officials in charge of the election shall require that each DRE unit be inspected and sealed before the delivery of each DRE unit to the polling place. Before opening the polls each day on which the DRE units will be used in an election, the poll

manager shall break the seal on each unit, turn on each unit, certify that each unit is operating properly and is set to zero, and print a zero tape certifying that each unit is set to zero and shall keep or record such certification on each unit.

(6) The officials in charge of the election, election commissioners and poll managers shall provide ample protection against molestation of and injury to the DRE units, and, for that purpose, the officials in charge of the election, election commissioners and poll managers may call upon any law enforcement officer to furnish any assistance that may be necessary. It shall be the duty of any law enforcement officer to furnish assistance when so requested by the officials in charge of the election, election commissioner or poll manager.

(7) The officials in charge of the election, in conjunction with the governing authorities, shall, at least one (1) hour before opening the polls:

(a) Provide sufficient lighting to enable electors to read the ballot and to enable poll managers to examine the booth and conduct their responsibilities;

(b) Provide directions for voting on the DRE units that shall be prominently posted within each voting booth and provide at least one (1) sample ballot for each primary or general election shall be prominently posted outside the enclosed space within the polling place;

(c) Ensure that each DRE unit and its tabulating mechanism is secure throughout the day; and

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

SECTION 9. Section 23-15-531.9, Mississippi Code of 1972, is brought forward as follows:

23-15-531.9. (1) A duly qualified elector shall cast his or her vote on a DRE unit by touching the screen or pressing the appropriate button on the DRE unit for the candidate or ballot measure of the elector's choice. After pressing the appropriate button on the DRE unit or location on the screen to cast the ballot, the elector's vote shall be final and shall not be subsequently altered.

(2) If an elector leaves the voting booth without having pressed the appropriate button on the DRE unit or location on the screen to finally cast his or her ballot and cannot be located to return to the booth to complete the voting process, then a poll manager shall take the steps necessary to void the ballot that was not completed by the elector and an appropriate record shall be made of the event, or the DRE unit shall be allowed to time-out, thereby voiding the ballot.

SECTION 10. Section 23-15-531.10, Mississippi Code of 1972, is brought forward as follows:

23-15-531.10. (1) In elections in which DRE units are used, the ballots shall be counted at the precinct under the direction

of the officials in charge of the election. All persons who perform any duties at the precinct shall take the oath provided in Section 268, Mississippi Constitution of 1890 and only those persons shall touch any ballot, container, paper or machine used in the conduct of the count or be permitted in the immediate area where the ballots are counted.

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

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

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

(b) The poll manager shall extract the memory card, if applicable, from each DRE unit.

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

(i) The number of valid ballots;

(ii) The number of spoiled ballots;

(iii) The number of affidavit ballots;

(iv) The number of accepted and rejected absentee ballots;

(v) The number of challenged and rejected ballots; and

(vi) The number of unused paper ballots.

(b) The poll manager shall cause to be placed in the ballot box or supply container, should the supply container be capable of being sealed and secured, one (1) copy of the recap form, affidavit ballots, absentee ballots, spoiled ballots, challenged and rejected ballots and any unused paper ballots.

(5) The poll manager shall collect and retain the zero tape and the results tape for each DRE unit and place the tapes with the memory card, if any, for each unit and enclose all such items for all of the DRE units used in the precinct in the memory card transport bag which shall be sealed and initialed by the poll manager so that it cannot be opened without breaking the seal. The memory card transport bag shall be placed in the ballot box.

(6) The receiving and returning poll manager shall then deliver the sealed ballot box to the tabulating center for the county or municipality or to such other place designated by the officials in charge of the election and shall receive a receipt therefor. The copies of the recap forms, unused ballots, records

and other materials shall be returned to the designated location and retained as provided by law.

(7) Upon receipt of the sealed ballot box and memory card transport bag that contains the zero tapes, results tapes and memory cards, the officials in charge of the election shall break the seal of the memory card transport bag and remove its contents. The officials in charge of the election shall then download the results stored on the memory card from each DRE unit into the election management system located at the central tabulation point of the county in order to obtain election results for certification.

SECTION 11. Section 23-15-531.12, Mississippi Code of 1972, is brought forward as follows:

23-15-531.12. If for any reason any DRE unit shall become inoperable, the poll managers, or the officials in charge of the election, shall direct voters to an operating DRE unit or to cast emergency paper ballots. Such paper ballots shall be administered in accordance with the laws concerning paper ballots.

SECTION 12. This act shall take effect and be in force from and after July 1, 2021.