

By: Representative Holland

To: Apportionment and
Elections

HOUSE BILL NO. 663

1 AN ACT TO AMEND SECTIONS 25-5-3, 25-5-7, 25-5-9, 25-5-13,
2 25-5-15, 25-5-17, 25-5-19, 25-5-21, 25-5-23, 25-5-25, 25-5-27 AND
3 25-5-33, MISSISSIPPI CODE OF 1972, TO INCLUDE MUNICIPAL ELECTED
4 OFFICIALS IN THE LAWS WHICH PRESCRIBE THE PROCEDURES FOR THE
5 REMOVAL OF COUNTY ELECTED OFFICIALS BY PETITION ELECTION; AND FOR
6 RELATED PURPOSES.

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

8 SECTION 1. Section 25-5-3, Mississippi Code of 1972, is
9 amended as follows:

10 25-5-3. The Governor is hereby empowered, in accordance with
11 the provisions of Section 139 of the Mississippi Constitution of
12 1890, through the procedure and under the regulations prescribed
13 in Sections 25-5-3 through 25-5-37 and for the reasons and causes
14 set forth, to remove any elective county or municipal officer in
15 this state; and every elective officer of any county or
16 municipality in this state may be removed from office by the
17 Governor at any time when done in compliance with the regulations
18 hereinafter set forth.

19 SECTION 2. Section 25-5-7, Mississippi Code of 1972, is
20 amended as follows:

21 25-5-7. Before the Governor shall consider the removal from
22 a county or municipal, as the case may be, office of any elective
23 county or municipal, as the case may be, officer, there shall be
24 first filed with him a petition signed by not less than thirty
25 percent (30%) of the qualified electors of the county or
26 municipality, as the case may be, demanding the removal of the
27 officer. The petition shall contain a general statement, in not
28 more than two hundred (200) words, of the ground or grounds on

29 which the removal is demanded, which statement shall be for the
30 information of the officer involved, for the information of the
31 council hereinafter provided, and for the information of the
32 qualified electors of the county or municipality, as the case may
33 be.

34 All removal petitions with reference to only supervisors,
35 justice court judges and constables must be signed by at least
36 fifty-one percent (51%) of the qualified electors of the beat or
37 district from which they were originally elected.

38 Upon the request of any qualified elector, it shall be the
39 duty of the county and district prosecuting attorney to advise
40 such person as to the provisions of Sections 25-5-3 through
41 25-5-37 and how to comply with the same.

42 SECTION 3. Section 25-5-9, Mississippi Code of 1972, is
43 amended as follows:

44 25-5-9. The removal petitions shall be in substantially the
45 following forms:

46 (a) **REMOVAL PETITION**

47 (WARNING.--It is a misdemeanor, punishable by fine and
48 imprisonment, for any person to sign any removal petition with any
49 name other than his own, or knowingly to sign his name more than
50 once to the petition, or knowingly to sign the petition when he is
51 not a qualified elector.)

52 Date: _____

53 TO THE GOVERNOR OF THE STATE OF MISSISSIPPI:

54 We, the undersigned qualified electors of _____ County,
55 State of Mississippi, respectfully demand that _____, holding
56 the office of _____ in said county, be removed from office by
57 the Governor for the following reasons, to wit: (Setting out the
58 reasons for removal in not more than two hundred (200) words);
59 that a special election, after lawful notice, be called to permit
60 the qualified electors of the county to vote on the question of
61 whether or not the * * * officer shall be removed;

62 That we each for himself say that: I am a qualified elector
63 of the county, and my voting precinct is correctly written after
64 my name, and that it was stated to me before the signing of the
65 petition that after signing the same I would not be permitted to

66 remove my name from the petition.

67	<u>NAME</u>	<u>VOTING PRECINCT</u>
68	1. _____	_____
69	2. _____	_____
70	3. _____	_____

71 (b) REMOVAL PETITION

72 (WARNING.--It is a misdemeanor, punishable by fine and
73 imprisonment, for any person to sign any removal petition with any
74 name other than his own, or knowingly to sign his name more than
75 once to such petition, or knowingly to sign the petition when he
76 is not a qualified elector.)

77 Date: _____

78 TO THE GOVERNOR OF THE STATE OF MISSISSIPPI:

79 We, the undersigned qualified electors of the municipality of
80 _____ County, State of Mississippi, respectfully
81 demand that _____, holding the office of _____ in the
82 municipality, be removed from office by the Governor for the
83 following reasons, to wit: (Setting out the reasons for removal
84 in not more than two hundred (200) words); that a special
85 election, after lawful notice, be called to permit the qualified
86 electors of the municipality to vote on the question of whether or
87 not the officer shall be removed;

88 That we each for himself say that: I am a qualified elector
89 of the municipality, and my voting precinct is correctly written
90 after my name, and that it was stated to me before the signing of
91 the petition that after signing the same I would not be permitted
92 to remove my name from the petition.

93	<u>NAME</u>	<u>VOTING PRECINCT</u>
94	1. _____	_____
95	2. _____	_____
96	3. _____	_____

97 SECTION 4. Section 25-5-13, Mississippi Code of 1972, is
98 amended as follows:

99 25-5-13. Each and every petition, or separately circulated
100 section thereof, containing signatures shall be verified on the
101 last page thereof in substantially the following forms:

102 (a) STATE OF MISSISSIPPI

103 County of _____

104 I, _____, a qualified elector of the county do now state
105 under oath that every person who signed the foregoing petition
106 signed his or her name thereto in my presence, and that before the
107 signing of the petition the signator was told that after signing
108 the same his or her name could not be removed from the petition;
109 that I believe that each has stated his or her name and precinct
110 correctly, and that so far as I know each signer is a qualified
111 elector of this county, and I further certify that the date
112 appearing on the foregoing petition is the correct date on which
113 the first signature was affixed to the petition or any section
114 thereof.

115 (Signature) _____

116 Sworn to and subscribed before me, this _____ day of
117 _____, 19____.

118 _____
119 _____

120 (b) STATE OF MISSISSIPPI

121 County of _____

122 Municipality of _____

123 I, _____, a qualified elector of the municipality do now
124 state under oath that every person who signed the foregoing
125 petition signed his or her name thereto in my presence, and that
126 before the signing of the petition the signator was told that
127 after signing the same his or her name could not be removed from
128 the petition; that I believe that each has stated his or her name
129 and precinct correctly, and that so far as I know each signer is a
130 qualified elector of this municipality, and I further certify that
131 the date appearing on the foregoing petition is the correct date

132 on which the first signature was affixed to the petition or any
133 section thereof.

134 (Signature) _____

135 Sworn to and subscribed before me, this _____ day of
136 _____, 19____.

137 _____

138 _____

139 SECTION 5. Section 25-5-15, Mississippi Code of 1972, is
140 amended as follows:

141 25-5-15. (1) Before the submission of the county petitions
142 to the Governor to be filed by him, all sections of the same shall
143 be consolidated and delivered to the county registrar of the
144 county in which the petition has been circulated. No signatures
145 shall be thereafter added. The county registrar shall compare the
146 signatures of the persons appearing on the petition with the names
147 of the qualified electors appearing on the pollbooks of the
148 county, and shall attach to the petition, or to each section of
149 the petition if the same has been circulated in sections, the
150 following certificate:

151 STATE OF MISSISSIPPI

152 County of _____

153 I, _____, county registrar in and for the county and
154 state aforesaid, do hereby certify that I have compared the
155 signatures on the preceding sheets of the removal petition
156 attached hereto, and to the best of my knowledge and belief
157 the * * * petition (or section of petition) contains the
158 signatures of _____ qualified electors of the county (or
159 beat, as case may be), and I have drawn a line in red ink through
160 the names of those signators who appear by the records in my
161 office not to be qualified electors, or who have died. I further
162 certify that as of the date of the petitions there were _____
163 qualified electors in this county (or beat, as the case may be).

164 Given under my hand and seal of office, this the ____ day of

165 _____, 19____.

166 _____

167 County Registrar

168 (2) Before the submission of the municipal petitions to the
169 Governor to be filed by him, all sections of the same shall be
170 consolidated and delivered to the municipal registrar of the
171 municipality in which the petition has been circulated. No
172 signatures shall be thereafter added. The municipal registrar
173 shall compare the signatures of the persons appearing on the
174 petition with the names of the qualified electors appearing on the
175 pollbooks of the municipality, and shall attach to the petition,
176 or to each section of the petition if the same has been circulated
177 in sections, the following certificate:

178 STATE OF MISSISSIPPI

179 County of _____

180 Municipality of _____

181 I, _____, municipal registrar in and for the
182 municipality, county and state aforesaid, do hereby certify that I
183 have compared the signatures on the preceding sheets of the
184 removal petition attached hereto, and to the best of my knowledge
185 and belief the petition (or section of petition) contains the
186 signatures of _____ qualified electors of the municipality
187 (or beat, as case may be), and I have drawn a line in red ink
188 through the names of those signators who appear by the records in
189 my office not to be qualified electors, or who have died. I
190 further certify that as of the date of the petitions there were
191 _____ qualified electors in this municipality (or beat, as
192 the case may be).

193 Given under my hand and seal of office, this the _____ day of
194 _____, 19____.

195 _____

196 Municipal Registrar

197 SECTION 6. Section 25-5-17, Mississippi Code of 1972, is

198 amended as follows:

199 25-5-17. The certificate by the county or municipal
200 registrar, as the case may be, shall be prima facie evidence of
201 the facts stated therein and of the qualification of the electors
202 whose signatures are thus certified. The Governor shall consider
203 and count only those signatures on such petition as shall be * * *
204 certified by the registrar; provided, however, that any officer
205 sought to be removed or any citizen of the county or municipality,
206 as the case may be, shall have the privilege of submitting
207 evidence in writing, under oath, to the Governor as to the
208 question of whether or not any signator to the petition was in
209 fact a qualified elector at the time of the signing of the
210 petition, or has since died. The decision of the Governor as to
211 whether or not any particular person was or was not a qualified
212 elector at the time of the signing of the petition, or whether or
213 not any particular person has since died, shall be final and shall
214 not be subject to review. The status of the signator as to
215 whether or not he or she was a qualified elector at the time of
216 signing the petition shall be determined as of the date of the
217 petition and not by any other date.

218 SECTION 7. Section 25-5-19, Mississippi Code of 1972, is
219 amended as follows:

220 25-5-19. The county or municipal registrar, as the case may
221 be, shall not retain in his possession any such petition or any
222 section thereof for a longer period than two (2) days for the
223 first two hundred (200) signatures thereon and one (1) additional
224 day for each two hundred (200) additional signatures or fraction
225 thereof, and the time consumed in the examination of the petitions
226 shall not be counted in determining the time between the signing
227 and the filing of the petitions. At the expiration of the
228 examination, the registrar shall forthwith file the same with the
229 Governor, with his certificate attached, and shall obtain a
230 written receipt for the same. The forms herein are not mandatory,

231 but directory, and if substantially followed in any petition it
232 shall be sufficient, disregarding clerical and technical errors.
233 If the registrar be unable to examine the petition, he shall * * *
234 certify the fact to the county or municipal election
235 commissioners, as the case may be, who shall in the same manner
236 and time perform all the functions herein required of the
237 registrar. In the event the county or municipal registrar is the
238 officer whose removal is sought by the petition, then the petition
239 shall be delivered to one of the county or municipal election
240 commissioners, as the case may be, in which the petition has been
241 circulated, and the county or municipal election commissioners, as
242 the case may be, shall in the same manner and within the same time
243 perform all functions herein required of the registrar. A fee of
244 Five Cents (5¢) per signature shall be allowed for the aforesaid
245 examination of the petitions, to be paid out of the general funds
246 of the county or municipality, as the case may be, upon due proof
247 of said examination. Any registrar or any board of county or
248 municipal election commissioners, as the case may be, or member
249 thereof who wilfully fails or refuses to perform the duty or
250 duties herein required of him or them shall be subject to a civil
251 penalty of One Thousand Dollars (\$1,000.00), to be recovered in
252 the chancery court of the county by suit which may be filed by any
253 qualified elector who signed the petition or any section thereof.

254 SECTION 8. Section 25-5-21, Mississippi Code of 1972, is
255 amended as follows:

256 25-5-21. When the petitions * * * have been filed with the
257 Governor, within ten (10) days of the filing thereof the Governor
258 shall cause true copies thereof (photostatic copies being
259 sufficient) to be personally delivered by some officer of the
260 county or municipality, as the case may be, designated in writing
261 by the Governor, to the officer sought to be removed, and shall in
262 like manner and form cause to be personally served on the officer
263 a notice to appear, if he desires, at a time to be fixed by the

264 Governor to show cause, if any he can, why the question of his
265 removal should not be submitted to a vote of the qualified
266 electors as hereinafter provided, which the notice shall be served
267 upon the officer at least twenty (20) days before the date when
268 his appearance is required. The place of hearing shall be the
269 county courthouse of the county in which the officer resides.

270 SECTION 9. Section 25-5-23, Mississippi Code of 1972, is
271 amended as follows:

272 25-5-23. At the time and place designated in the notice, the
273 Governor shall cause to be convened a removal council to be
274 composed of three (3) chancery judges appointed by the Governor,
275 none of whom shall reside in the district in which the officer
276 under question resides, to hear and determine whether there is
277 substantial basis for a removal election consistently with the
278 provisions of Sections 25-5-3 through 25-5-37. The senior
279 chancellor shall serve as the presiding judge of the council. The
280 hearing herein provided may continue from day to day and be
281 recessed from time to time, as in the discretion of the council
282 may be ordered. The qualified electors of the county or
283 municipality, as the case may be, shall likewise be given notice
284 by proclamation of the Governor of the time and place of the
285 hearing. Any interested citizen or citizens may likewise appear
286 at the time and place and make such representations to the council
287 as, in the discretion of the council, may be material to the
288 issues involved. The council shall promulgate rules for the
289 hearings, which shall be in writing, but all representations shall
290 be made under oath, to be administered by some member of the
291 council. It shall not be necessary that a stenographic record be
292 kept of the representations, either for or against removal, but
293 the testimony taken shall be heard as nearly as practicable in
294 compliance with the usually applicable rules of evidence. All
295 decisions of the council on any question, preliminary or final,
296 including the question of whether just cause for an election has

297 been shown, shall be final and not subject to review.

298 The elective officer concerned shall be entitled to be
299 represented by counsel of his choice at the hearing.

300 SECTION 10. Section 25-5-25, Mississippi Code of 1972, is
301 amended as follows:

302 25-5-25. The council shall keep minutes of its final
303 judgments, and the disposition of each petition shall be recorded
304 therein. If it be the judgment of the council that sufficient
305 cause has not been shown to justify the removal of the officer,
306 then the petition shall be dismissed and no new petition shall be
307 filed or entertained for a period of one (1) year from the date of
308 the order dismissing the petition.

309 If, however, the council shall be of the opinion that
310 sufficient cause has been shown to justify the removal of the
311 officer, then notice to the qualified electors of the county or
312 municipality, as the case may be, involved shall be given, in
313 accordance with the general election laws of the State of
314 Mississippi in the matter of filling vacancies in county or
315 municipal offices, that an election shall be held in the county or
316 municipality, as the case may be, to determine the question of
317 whether or not the county or municipal official shall be removed
318 from office.

319 SECTION 11. Section 25-5-27, Mississippi Code of 1972, is
320 amended as follows:

321 25-5-27. The officer named in the removal petition shall
322 continue to perform the duties of his office until the results of
323 the special removal election shall be officially proclaimed. If,
324 however, the officer named in the petition for removal shall offer
325 his resignation before the issuance of the proclamation for the
326 holding of special removal election, it shall be accepted, shall
327 take effect on the date it is offered, and the vacancy shall be
328 filled as provided by law for the filling of any vacancy in an
329 elective county or municipal office. The officer who either

330 resigns or is removed shall not be eligible to fill the vacancy
331 caused by his removal or resignation, or serve as deputy in the
332 office from which he resigns or is removed.

333 SECTION 12. Section 25-5-33, Mississippi Code of 1972, is
334 amended as follows:

335 25-5-33. The election commissioners of the county or
336 municipality, as the case may be, or a quorum thereof, shall meet
337 at the office of the county or municipal registrar, as the case
338 may be, at 9:00 a.m. of the day following the special removal
339 election, and shall then proceed to canvass, tabulate, and certify
340 the results of the election as now provided by the general
341 election laws of the State of Mississippi. The certificate of the
342 results, showing the total votes cast for the removal of the
343 officer, the total votes cast against the removal of the officer,
344 and the total number of qualified electors in the county,
345 supervisors district or municipality in which the election was
346 held, shall be forwarded to the Governor. If a majority of all
347 qualified electors of the county, supervisors district or
348 municipality in which the election has been held * * * have not
349 voted in the election, either for or against the removal, or if a
350 majority of the qualified electors voting in the election * * *
351 oppose removal, the officer shall not be removed and shall not
352 thereafter during his term of office be subject to another removal
353 election. If a majority of all qualified electors of the county,
354 supervisors district or municipality in which the election has
355 been held have voted either for or against removal, and if a
356 majority of the qualified electors voting in the election * * *
357 vote for the removal of the officer, then the Governor shall issue
358 his proclamation declaring the office vacant, removing the
359 officer, and appointing a suitable person to fill the vacancy
360 until the same can be filled in a special election to be held not
361 more than sixty (60) days after the aforesaid proclamation of the
362 Governor. No officer shall be subject to a removal petition until

363 he shall have served at least one (1) year of his term.

364 SECTION 13. The Attorney General of the State of Mississippi
365 shall submit this act, immediately upon approval by the Governor,
366 or upon approval by the Legislature subsequent to a veto, to the
367 Attorney General of the United States or to the United States
368 District Court for the District of Columbia in accordance with the
369 provisions of the Voting Rights Act of 1965, as amended and
370 extended.

371 SECTION 14. This act shall take effect and be in force from
372 and after the date it is effectuated under Section 5 of the Voting
373 Rights Act of 1965, as amended and extended.