

By: Representatives Chaney, Johnson,
Middleton

To: Municipalities

HOUSE BILL NO. 699

1 AN ACT TO AMEND SECTIONS 21-31-23 AND 21-31-71, MISSISSIPPI
2 CODE OF 1972, TO CHANGE FROM THREE TO TEN THE NUMBER OF DAYS
3 WITHIN WHICH THE REGULAR APPOINTING AUTHORITY MUST CONFIRM THE
4 SUSPENSION OF A CIVIL SERVICE EMPLOYEE; AND FOR RELATED PURPOSES.

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

6 SECTION 1. Section 21-31-23, Mississippi Code of 1972, is
7 amended as follows:

8 21-31-23. No person in the classified civil service who
9 shall have been permanently appointed or inducted into civil
10 service under the provisions of Sections 21-31-1 to 21-31-27,
11 except for such persons as may be employed to fill a vacancy
12 caused by the absence of a fireman or policeman while in service
13 as a member of the Armed Forces of the United States, shall be
14 removed, suspended, demoted or discharged, or any combination
15 thereof, except for cause, and only upon the written accusation of
16 the appointing power or any citizen or taxpayer, a written
17 statement of which accusation, in general terms, shall be served
18 upon the accused, and a duplicate filed with the commission. The
19 chiefs of the fire and/or police department may suspend a member
20 pending the confirmation of the suspension by the regular
21 appointing power, which shall be within ten (10) days.

22 In the absence of extraordinary circumstances or situations,
23 before any such employee may be removed or discharged, he shall be
24 given written notice of the intended termination, which notice
25 shall state the reasons for termination and inform the employee
26 that he has the right to respond in writing to the reasons given
27 for termination within a reasonable time and respond orally before

28 the official charged with the responsibility of making the
29 termination decision. Such official may, in his discretion,
30 provide for a pretermination hearing and examination of witnesses,
31 and if a hearing is to be held, the notice to the employee shall
32 also set the time and place of such hearing. A duplicate of such
33 notice shall be filed with the commission. After the employee has
34 responded or has failed to respond within a reasonable time, the
35 official charged with the responsibility of making the termination
36 decision shall determine the appropriate disciplinary action, and
37 shall notify the employee of his decision in writing at the
38 earliest practicable date.

39 Where there are extraordinary circumstances or situations
40 which require the immediate discharge or removal of an employee,
41 such employee may be terminated without a pretermination hearing
42 as required by this section, but such employee shall be given
43 written notice of the specific reasons for termination within
44 twenty-four (24) hours after the termination, and shall be given
45 an opportunity for a hearing similar to the pretermination hearing
46 provided in this section within twenty (20) days after the date of
47 termination. For the purposes of this section, extraordinary
48 situations or circumstances include, but are not limited to,
49 circumstances where retention of the employee would result in
50 damage to municipal property, would be detrimental to the interest
51 of municipal government or would result in injury to the employee,
52 to a fellow employee or to the general public.

53 Any person so removed, suspended, demoted, discharged or
54 combination thereof may, within ten (10) days from the time of
55 such disciplinary action, file with the commission a written
56 demand for an investigation, whereupon the commission shall
57 conduct such investigation. The investigation shall be confined
58 to the determination of the question of whether such disciplinary
59 action was or was not made for political or religious reasons and
60 was or was not made in good faith for cause. After such
61 investigation the commission may, if in its estimation the
62 evidence is conclusive, affirm the disciplinary action, or if it
63 shall find that the disciplinary action was made for political or
64 religious reasons, or was not made in good faith for cause, shall

65 order the immediate reinstatement or reemployment of such person
66 in the office, place, position, or employment from which such
67 person was removed, suspended, demoted, discharged or combination
68 thereof, which reinstatement shall, if the commission so provides
69 in its discretion, be retroactive, and entitle such person to pay
70 or compensation from the time of such disciplinary action. The
71 commission upon such investigation may, in lieu of affirming the
72 disciplinary action, modify the order of removal, suspension,
73 demotion, discharge or combination thereof by directing a
74 suspension, without pay, for a given period and subsequent
75 restoration of duty, or by directing a demotion in classification,
76 grade or pay, or by any combination thereof. The findings of the
77 commission shall be certified in writing to the appointing power,
78 and shall be forthwith enforced by such officer.

79 All investigations made by the commission pursuant to the
80 provisions of this section shall be by public hearing, after
81 reasonable written notice to the accused of the time and place of
82 such hearing, at which hearing the accused shall be afforded an
83 opportunity of appearing in person and by counsel, and presenting
84 his defense. The findings of the commission shall be conclusive
85 and binding unless either the accused or the municipality shall,
86 within thirty (30) days from the date of the entry of such
87 judgment or order on the minutes of the commission and
88 notification to the accused and the municipality, appeal to the
89 circuit court of the county within which the municipality is
90 located. Any appeal of the judgment or order of the commission
91 shall not act as a supersedeas of such judgment or order, but the
92 judgment or order shall remain in effect pending a final
93 determination of the matter on appeal. Such appeal shall be taken
94 by serving the commission and the appellee, within thirty (30)
95 days after the entry of such judgment or order, a written notice
96 of appeal, stating the grounds thereof, and demanding that a
97 certified transcript of the record and of all papers on file in

the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within thirty (30) days after the filing of such notice, make, certify and file such transcript with such court. The said circuit court shall thereupon proceed to hear and determine such appeal. However, such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion, suspension or combination thereof made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds.

SECTION 2. Section 21-31-71, Mississippi Code of 1972, is amended as follows:

21-31-71. No person in the classified civil service who shall have been permanently appointed or inducted into civil service under the provisions of Sections 21-31-51 to 21-31-75 shall be removed, suspended, demoted or discharged, or any combination thereof, except for cause, and only upon the written accusation of the appointing power or any citizen or taxpayer, a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. The mayor may suspend a member pending the confirmation of the suspension by the regular appointing power, which shall be within ten (10) days.

In the absence of extraordinary circumstances or situations, before any such employee may be removed or discharged, he shall be given written notice of the intended termination, which notice shall state the reasons for termination and inform the employee that he has the right to respond in writing to the reasons given for termination within a reasonable time and respond orally before the official charged with the responsibility of making the termination decision. Such official may, in his discretion, provide for a pretermination hearing and examination of witnesses,

131 and if a hearing is to be held, the notice to the employee shall
132 also set the time and place of such hearing. A duplicate of such
133 notice shall be filed with the commission. After the employee has
134 responded or has failed to respond within a reasonable time, the
135 official charged with the responsibility of making the termination
136 decision shall determine the appropriate disciplinary action, and
137 shall notify the employee of his decision in writing at the
138 earliest practicable date.

139 Where there are extraordinary circumstances or situations
140 which require the immediate discharge or removal of an employee,
141 such employee may be terminated without a pretermination hearing
142 as required by this section, but such employee shall be given
143 written notice of the specific reasons for termination within
144 twenty-four (24) hours after the termination, and shall be given
145 an opportunity for a hearing similar to the pretermination hearing
146 provided in this section within twenty (20) days after the date of
147 termination. For the purposes of this section, extraordinary
148 situations or circumstances include, but are not limited to,
149 circumstances where retention of the employee would result in
150 damage to municipal property, would be detrimental to the interest
151 of municipal government or would result in injury to the employee,
152 to a fellow employee or to the general public.

153 Any person so removed, suspended, demoted, discharged or
154 combination thereof may, within ten (10) days from the time of
155 such disciplinary action, file with the commission a written
156 demand for an investigation, whereupon the commission shall
157 conduct such investigation. The investigation shall be confined
158 to the determination of the question of whether such disciplinary
159 action was or was not made for political or religious reasons and
160 was or was not made in good faith for cause. After such
161 investigation the commission may, if in its estimation the
162 evidence is conclusive, affirm the disciplinary action, or if it
163 shall find that the disciplinary action was made for political or

religious reasons, or was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office, place, position or employment from which such person was removed, suspended, demoted, discharged or combination thereof, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such disciplinary action. The commission upon such investigation may, in lieu of affirming the disciplinary action, modify the order of removal, suspension, demotion, discharge or combination thereof by directing a suspension, without pay, for a given period and subsequent restoration of duty, or by directing a demotion in classification, grade or pay, or by any combination thereof. The findings of the commission shall be certified in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to the provisions of this section shall be by public hearing, after reasonable written notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his defense. The findings of the commission shall be conclusive and binding unless either the accused or the municipality shall, within thirty (30) days from the date of the entry of such judgment or order on the minutes of the commission and notification to the accused and the municipality, appeal to the circuit court of the county within which the municipality is located. Any appeal of the judgment or order of the commission shall not act as a supersedeas of such judgment or order, but the judgment or order shall remain in effect pending a final determination of the matter on appeal. Such appeal shall be taken by serving the commission and the appellee, within thirty (30) days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a

197 certified transcript of the record and of all papers on file in
198 the office of the commission affecting or relating to such
199 judgment or order, be filed by the commission with such court. The
200 commission shall, within thirty (30) days after the filing of such
201 notice, make, certify and file such transcript with such court.
202 The said circuit court shall thereupon proceed to hear and
203 determine such appeal. However, such hearing shall be confined to
204 the determination of whether the judgment or order of removal,
205 discharge, demotion, suspension or combination thereof made by the
206 commission, was or was not made in good faith for cause, and no
207 appeal to such court shall be taken except upon such ground or
208 grounds.

209 SECTION 3. This act shall take effect and be in force from
210 and after July 1, 1999.