

By: Representative Denny

To: Apportionment and  
Elections

## HOUSE BILL NO. 917

1 AN ACT TO ESTABLISH A PROCEDURE BY WHICH ANY ELECTED PUBLIC  
2 OFFICIAL MAY BE REMOVED IN AN ELECTION HELD FOR THAT PURPOSE; TO  
3 PROVIDE THAT A HEARING SHALL BE HELD BY A REMOVAL COUNCIL TO  
4 DETERMINE IF THERE IS JUST CAUSE FOR THE REMOVAL OF THE ELECTED  
5 OFFICIAL AFTER A PETITION CONTAINING THE REQUISITE NUMBER OF  
6 SIGNATURES HAS BEEN FILED REQUESTING THE REMOVAL OF THE OFFICIAL;  
7 TO PROVIDE THAT IF AN OFFICIAL IS REMOVED, A SPECIAL ELECTION  
8 SHALL BE CALLED TO FILL THE VACANCY CREATED BY THE REMOVAL; TO  
9 PROVIDE THAT THE SECRETARY OF STATE OR REGISTRAR SHALL CERTIFY THE  
10 NAMES OF QUALIFIED ELECTORS SIGNED ON A PETITION FOR THE REMOVAL  
11 OF AN ELECTED OFFICIAL; TO AMEND SECTIONS 25-5-3, 25-5-7, 25-5-9,  
12 25-5-13, 25-5-15, 25-5-17, 25-5-19, 25-5-21, 25-5-23, 25-5-25,  
13 25-5-27, 25-5-33 AND 25-5-37, MISSISSIPPI CODE OF 1972, TO CONFORM  
14 TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

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

18 25-5-3. The Governor is hereby empowered, in accordance with  
19 the provisions of Section 139 of the Mississippi Constitution of  
20 1890, through the procedure and under the regulations prescribed  
21 in Sections 25-5-3 through 25-5-37 and for the reasons and causes  
22 set forth, to remove any elective statewide, state-district,  
23 county or municipal officer in this state; and every elective  
24 officer of the state or any state-district, county or municipality  
25 in this state may be removed from office by the Governor or  
26 Lieutenant Governor, if the Governor is the officer to be removed,  
27 at any time when done in compliance with the regulations  
28 hereinafter set forth.

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

31 25-5-7. Before the Governor shall consider the removal from  
32 a statewide, state-district, county or municipal office of any

33 elective statewide, state-district county or municipal officer,  
34 there shall be first filed with him a petition signed by not less  
35 than fifty-one percent (51%) of the qualified electors of the  
36 state, state-district, county or municipality, as the case may  
37 be, demanding the removal of the officer. The petition shall  
38 contain a general statement, in not more than two hundred (200)  
39 words, of the ground or grounds on which the removal is demanded,  
40 which statement shall be for the information of the officer  
41 involved, for the information of the council hereinafter provided,  
42 and for the information of the qualified electors of the state,  
43 state-district, county or municipality, as the case may be.

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

48 Upon the request of any qualified elector, it shall be the  
49 duty of the Attorney General in the case of a statewide or  
50 state-district office, the county and district prosecuting  
51 attorney in the case of a county office, or, the municipal  
52 prosecuting attorney, in the case of a municipal office, to advise  
53 the person as to the provisions of Sections 25-5-3 through 25-5-37  
54 and how to comply with the same.

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

57 25-5-9. The removal petitions shall be in substantially the  
58 following forms:

59 (a) REMOVAL PETITION

60 (For Statewide and State-District Officers)

61 (WARNING.--It is a misdemeanor, punishable by fine and  
62 imprisonment, for any person to sign any removal petition with any  
63 name other than his own, or knowingly to sign his name more than  
64 once to the petition, or knowingly to sign the petition when he is  
65 not a qualified elector.)

66

67 Date: \_\_\_\_\_

68 TO THE GOVERNOR OF THE STATE OF MISSISSIPPI:

69 We, the undersigned qualified electors of the State of

70 Mississippi or state-district \_\_\_\_\_, State of Mississippi,  
71 respectfully demand that \_\_\_\_\_, holding the office of \_\_\_\_\_ in the  
72 state or state-district, be removed from office by the Governor  
73 (or if the Governor is being removed, the Lieutenant Governor) for  
74 the following reasons, to wit: (Setting out the reasons for  
75 removal in not more than two hundred words); that a special  
76 election, after lawful notice, be called to permit the qualified  
77 electors of the state or state-district to vote on the question of  
78 whether or not the officer shall be removed;

79 That we each for himself say that: I am a qualified elector  
80 of the state or state-district, and my voting precinct is  
81 correctly written after my name, and that it was stated to me  
82 before the signing of the petition that after signing the same I  
83 would not be permitted to remove my name from the petition.

84	<u>NAME</u>	<u>VOTING PRECINCT</u>
85	<u>1. _____</u>	
86	<u>2. _____</u>	
87	<u>3. _____</u>	

88 (b) REMOVAL PETITION  
89 (For County Officers)

90 (WARNING.--It is a misdemeanor, punishable by fine and  
91 imprisonment, for any person to sign any removal petition with any  
92 name other than his own, or knowingly to sign his name more than  
93 once to the petition, or knowingly to sign the petition when he is  
94 not a qualified elector.)

95 Date: \_\_\_\_\_

96 TO THE GOVERNOR OF THE STATE OF MISSISSIPPI:

97 We, the undersigned qualified electors of \_\_\_\_\_ County, State  
98 of Mississippi, respectfully demand that \_\_\_\_\_, holding the office  
99 of \_\_\_\_\_ in the county, be removed from office by the Governor for  
100 the following reasons, to wit: (Setting out the reasons for  
101 removal in not more than two hundred words); that a special  
102 election, after lawful notice, be called to permit the qualified

103 electors of the county to vote on the question of whether or not  
104 the \* \* \* officer shall be removed;

105 That we each for himself say that: I am a qualified elector  
106 of the county, and my voting precinct is correctly written after  
107 my name, and that it was stated to me before the signing of the  
108 petition that after signing the same I would not be permitted to  
109 remove my name from the petition.

	NAME	VOTING PRECINCT
111	1. _____	_____
112	2. _____	_____
113	3. _____	_____

114 (c) REMOVAL PETITION  
115 (For Municipal Officers)

116 (WARNING.--It is a misdemeanor, punishable by fine and  
117 imprisonment, for any person to sign any removal petition with any  
118 name other than his own, or knowingly to sign his name more than  
119 once to the petition, or knowingly to sign the petition when he is  
120 not a qualified elector.)

121  
122 Date: \_\_\_\_\_

123 TO THE GOVERNOR OF THE STATE OF MISSISSIPPI:

124 We, the undersigned qualified electors of the City of \_\_\_\_\_,  
125 \_\_\_\_\_ County, State of Mississippi, respectfully demand that \_\_\_\_\_,  
126 holding the office of \_\_\_\_\_ in the municipality, be removed from  
127 office by the Governor for the following reasons, to wit:  
128 (Setting out the reasons for removal in not more than two hundred  
129 words); that a special election, after lawful notice, be called to  
130 permit the qualified electors of the municipality to vote on the  
131 question of whether or not the officer shall be removed;

132 That we each for himself say that: I am a qualified elector  
133 of the municipality, and my voting precinct is correctly written  
134 after my name, and that it was stated to me before the signing of  
135 the petition that after signing the same I would not be permitted

136 to remove my name from the petition.

137	<u>NAME</u>	<u>VOTING PRECINCT</u>
138	1. _____	
139	2. _____	
140	3. _____	

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

143 25-5-13. Each and every petition, or separately circulated  
144 section thereof, containing signatures shall be verified on the  
145 last page thereof in substantially one of the following forms:

146 (a) STATE OF MISSISSIPPI  
147 State-District \_\_\_\_\_

148 I, \_\_\_\_\_, a qualified elector of the state or state-district  
149 do now state under oath that every person who signed the foregoing  
150 petition signed his or her name thereto in my presence, and that  
151 before the signing of the petition the signator was told that  
152 after signing the same his or her name could not be removed from  
153 the petition; that I believe that each has stated his or her name  
154 and district correctly, and that so far as I know each signer is a  
155 qualified elector of the state or state-district, and I further  
156 certify that the date appearing on the foregoing petition is the  
157 correct date on which the first signature was affixed to the  
158 petition or any section thereof.

159 (Signature) \_\_\_\_\_

160 Sworn to and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_,  
161 19\_\_\_\_.

162 \_\_\_\_\_  
163 \_\_\_\_\_

164 (b) STATE OF MISSISSIPPI  
165 County of \_\_\_\_\_

166 I, \_\_\_\_\_, a qualified elector of the county do now state under  
167 oath that every person who signed the foregoing petition signed  
168 his or her name thereto in my presence, and that before the

169 signing of the petition the signator was told that after signing  
170 the same his or her name could not be removed from the petition;  
171 that I believe that each has stated his or her name and precinct  
172 correctly, and that so far as I know each signer is a qualified  
173 elector of this county, and I further certify that the date  
174 appearing on the foregoing petition is the correct date on which  
175 the first signature was affixed to the petition or any section  
176 thereof.

177 (Signature) \_\_\_\_\_

178 Sworn to and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_,  
179 19\_\_.

180 \_\_\_\_\_

181 \_\_\_\_\_

182 (c) STATE OF MISSISSIPPI

183 City of \_\_\_\_\_, County of \_\_\_\_\_

184 I, \_\_\_\_\_, a qualified elector of the municipality do now state  
185 under oath that every person who signed the foregoing petition  
186 signed his or her name thereto in my presence, and that before the  
187 signing of the petition the signator was told that after signing  
188 the same his or her name could not be removed from the petition;  
189 that I believe that each has stated his or her name and precinct  
190 correctly, and that so far as I know each signer is a qualified  
191 elector of this municipality, and I further certify that the date  
192 appearing on the foregoing petition is the correct date on which  
193 the first signature was affixed to the petition or any section  
194 thereof.

195 (Signature) \_\_\_\_\_

196 Sworn to and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_,  
197 19\_\_.

198 \_\_\_\_\_

199 \_\_\_\_\_

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

202 25-5-15. Before the submission of the petitions to the  
203 Governor or Lieutenant Governor, if the Governor is the officer to  
204 be removed, to be filed by him, all sections of the same shall be  
205 consolidated and delivered to the \* \* \* Secretary of State in the  
206 case of a statewide or state-district officer, registrar of the  
207 county or municipality, as the case may be, in which the petition  
208 has been circulated. No signatures shall be thereafter added.  
209 The Secretary of State or \* \* \* registrar shall compare the  
210 signatures of the persons appearing on the petition with the names  
211 of the qualified electors appearing on the poll books of the  
212 county or municipality, and shall attach to said petition, or to  
213 each section of the petition if the same has been circulated in  
214 sections, the following certificate:

215 STATE OF MISSISSIPPI

216 State-District \_\_\_\_\_

217 County of \_\_\_\_ (Municipality of \_\_\_\_\_)

218 I, \_\_\_\_\_, \* \* \* Secretary of State or registrar in and for the  
219 county or municipality aforesaid, do hereby certify that I have  
220 compared the signatures on the preceding sheets of the removal  
221 petition attached hereto, and to the best of my knowledge and  
222 belief the \* \* \* petition (or section of petition) contains the  
223 signatures of \_\_\_\_ qualified electors of the state,  
224 state-district, county or municipality, as the case may be, and I  
225 have drawn a line in red ink through the names of those signators  
226 who appear by the records in my office not to be qualified  
227 electors, or who have died. I further certify that as of the date  
228 of the petitions there were \_\_\_\_ qualified electors in this state,  
229 state-district, county or municipality, as the case may be.

230 Given under my hand and seal of office, this the \_\_\_\_ day of  
231 \_\_\_\_\_, 19\_\_.

232 \_\_\_\_\_  
233 Secretary of State, County  
234 or Municipal Registrar

235 SECTION 6. Section 25-5-17, Mississippi Code of 1972, is  
236 amended as follows:

237 25-5-17. The certificate by the Secretary of State, county  
238 or municipal registrar shall be prima facie evidence of the facts  
239 stated therein and of the qualification of the electors whose  
240 signatures are thus certified. The Governor or the Lieutenant  
241 Governor, if the Governor is the officer to be removed, shall  
242 consider and count only those signatures on the petition as shall  
243 be so certified by the Secretary of State or registrar; \* \* \*  
244 however, \* \* \* any officer sought to be removed or any citizen of  
245 the state, state-district, county or municipality shall have the  
246 privilege of submitting evidence in writing, under oath, to the  
247 Governor as to the question of whether or not any signator to the  
248 petition was in fact a qualified elector at the time of the  
249 signing of the petition, or has since died. The decision of the  
250 Governor or the Lieutenant Governor, if the Governor is the  
251 officer to be removed, as to whether or not any particular person  
252 was or was not a qualified elector at the time of the signing of  
253 the petition, or whether or not any particular person has since  
254 died, shall be final and shall not be subject to review. The  
255 status of the signator as to whether or not he or she was a  
256 qualified elector at the time of signing the petition shall be  
257 determined as of the date of the petition and not by any other  
258 date.

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

261 25-5-19. The Secretary of State or the county or municipal  
262 registrar shall not retain in his possession any \* \* \* petition or  
263 any section thereof for a longer period than two (2) days for the  
264 first two hundred (200) signatures thereon and one (1) additional  
265 day for each two hundred (200) additional signatures or fraction  
266 thereof, and the time consumed in the examination of the petitions  
267 shall not be counted in determining the time between the signing

268 and the filing of the petitions. At the expiration of the  
269 examination, the registrar shall forthwith file the same with the  
270 Governor or the Lieutenant Governor, if the Governor is the  
271 officer to be removed, with his certificate attached, and shall  
272 obtain a written receipt for the same. The forms herein are not  
273 mandatory, but directory, and if substantially followed in any  
274 petition it shall be sufficient, disregarding clerical and  
275 technical errors. If the Secretary of State or the registrar be  
276 unable to examine the petition, he shall so certify the fact to  
277 the state, county or municipal election commissioners, who shall  
278 in the same manner and time perform all the functions herein  
279 required of the Secretary of State or the registrar. In the event  
280 the Secretary of State or the county or municipal registrar is the  
281 officer whose removal is sought by the petition, then the petition  
282 shall be delivered to one of the state election commissioners or  
283 one of the county or municipal election commissioners of the  
284 county or municipality in which the petition has been circulated,  
285 and the \* \* \* commissioners \* \* \* shall in the same manner and  
286 within the same time perform all functions herein required of the  
287 registrar. A fee of Five Cents (5¢) per signature shall be  
288 allowed for the \* \* \* examination of the petitions, to be paid out  
289 of the general funds of the state, county or municipality upon due  
290 proof of the examination. The Secretary of State or any registrar  
291 or any board of state, county or municipal election commissioners  
292 or member thereof who wilfully fails or refuses to perform the  
293 duty or duties herein required of him or them shall be subject to  
294 a civil penalty of One Thousand Dollars (\$1,000.00), to be  
295 recovered in the chancery court of the First Judicial district of  
296 Hinds County or in the chancery court of the county by suit which  
297 may be filed by any qualified elector who signed the petition or  
298 any section thereof.

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

301           25-5-21. When the petitions shall have been filed with the  
302 Governor or the Lieutenant Governor, if the Governor is the  
303 officer to be removed, within ten (10) days of the filing thereof  
304 the Governor or the Lieutenant Governor, if the Governor is the  
305 officer to be removed, shall cause true copies thereof  
306 (photostatic copies being sufficient) to be personally delivered  
307 by some officer of the state, county or municipality, designated  
308 in writing by the Governor or the Lieutenant Governor, if the  
309 Governor is the officer to be removed, to the officer sought to be  
310 removed, and shall in like manner and form cause to be personally  
311 served on the officer a notice to appear, if he desires, at a time  
312 to be fixed by the Governor or the Lieutenant Governor, if the  
313 Governor is the officer to be removed, to show cause, if any he  
314 can, why the question of his removal should not be submitted to a  
315 vote of the qualified electors as hereinafter provided, which  
316 \* \* \* notice shall be served upon the officer at least twenty (20)  
317 days before the date when his appearance is required. The place  
318 of hearing shall be the county courthouse of the county in which  
319 the officer resides.

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

322           25-5-23. At the time and place designated in the notice, the  
323 Governor or the Lieutenant Governor, if the Governor is the  
324 officer to be removed, shall cause to be convened a removal  
325 council to be composed of three (3) chancery judges appointed by  
326 the Governor or the Lieutenant Governor, if the Governor is the  
327 officer to be removed, none of whom shall reside in the district  
328 in which the officer under question resides, to hear and determine  
329 whether there is substantial basis for a removal election  
330 consistently with the provisions of Sections 25-5-3 through  
331 25-5-37. The senior chancellor shall serve as the presiding judge  
332 of the council. The hearing herein provided may continue from day  
333 to day and be recessed from time to time, as in the discretion of

334 the council may be ordered. The qualified electors of the state,  
335 state-district, county or municipality shall likewise be given  
336 notice by proclamation of the Governor or the Lieutenant Governor,  
337 if the Governor is the officer to be removed, of the time and  
338 place of the hearing. Any interested citizen or citizens may  
339 likewise appear at the time and place listed and make \* \* \*  
340 representations to the council as, in the discretion of the  
341 council, may be material to the issues involved. The council shall  
342 promulgate rules for the hearings, which shall be in writing, but  
343 all representations shall be made under oath, to be administered  
344 by some member of the council. It shall not be necessary that a  
345 stenographic record be kept of the representations, either for or  
346 against removal, but the testimony taken shall be heard as nearly  
347 as practicable in compliance with the usually applicable rules of  
348 evidence. All decisions of the council on any question,  
349 preliminary or final, including the question of whether just cause  
350 for an election has been shown, shall be final and not subject to  
351 review.

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

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

356 25-5-25. The council shall keep minutes of its final  
357 judgments, and the disposition of each petition shall be recorded  
358 therein. If it be the judgment of the council that sufficient  
359 cause has not been shown to justify the removal of the officer,  
360 then the petition shall be dismissed and no new petition shall be  
361 filed or entertained for a period of one (1) year from the date of  
362 the order dismissing the petition.

363 If, however, the council shall be of the opinion that  
364 sufficient cause has been shown to justify the removal of the  
365 officer, then notice to the qualified electors of the state or  
366 state-district, county or municipality involved shall be given, in

367 accordance with the general election laws of the State of  
368 Mississippi in the matter of filling vacancies in state,  
369 state-district, county or municipal offices, that an election  
370 shall be held in the county or municipality to determine the  
371 question of whether or not the state, state-district, county or  
372 municipal official shall be removed from office.

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

375 25-5-27. The officer named in the removal petition shall  
376 continue to perform the duties of his office until the results of  
377 the special removal election shall be officially proclaimed. If,  
378 however, the officer named in the petition for removal shall offer  
379 his resignation before the issuance of the proclamation for the  
380 holding of a special removal election, it shall be accepted, shall  
381 take effect on the date it is offered, and the vacancy shall be  
382 filled as provided by law for the filling of any vacancy in an  
383 elective state, state-district, county or municipal office. The  
384 officer who either resigns or is removed shall not be eligible to  
385 fill the vacancy caused by his removal or resignation, or serve as  
386 deputy in the office from which he resigns or is removed.

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

389 25-5-33. The election commissioners of the state,  
390 state-district, county or municipality, or a quorum thereof, shall  
391 meet at the office of the Secretary of State or the county or  
392 municipal registrar at 9:00 a.m. of the day following the special  
393 removal election, and shall then proceed to canvass, tabulate, and  
394 certify the results of the election as now provided by the general  
395 election laws of the State of Mississippi. The certificate of the  
396 results, showing the total votes cast for the removal of the  
397 officer, the total votes cast against the removal of the officer,  
398 and the total number of qualified electors in the county, \* \* \*  
399 supervisors district or municipality in which the election was

400 held, shall be forwarded to the Governor or the Lieutenant  
401 Governor, if the Governor is the officer to be removed. If a  
402 majority of all qualified electors of the county, \* \* \*  
403 supervisors district or municipality in which the election is held  
404 shall not have voted in the election, either for or against the  
405 removal, or if a majority of the qualified electors voting in the  
406 election shall oppose removal, the officer shall not be removed  
407 and shall not thereafter during his term of office be subject to  
408 another removal election. If a majority of all qualified electors  
409 of the state, state-district, county, \* \* \* supervisors district  
410 or municipality in which the election is held have voted either  
411 for or against removal, and if a majority of the qualified  
412 electors voting in the election shall vote for the removal of the  
413 officer, then the Governor shall issue his proclamation declaring  
414 the office vacant, removing the officer, and appointing a suitable  
415 person to fill the vacancy until the same can be filled in a  
416 special election to be held not more than sixty (60) days after  
417 the \* \* \* proclamation of the Governor. No officer shall be  
418 subject to a removal petition until he shall have served at least  
419 one (1) year of his term.

420 SECTION 13. Section 25-5-37, Mississippi Code of 1972, is  
421 amended as follows:

422 25-5-37. (1) Any person who signs any removal petition with  
423 any name other than his own, or who knowingly signs his name more  
424 than once to such petition, or who knowingly signs such petition  
425 when he is not a qualified elector shall be guilty of a felony  
426 and, upon conviction, may be punished as such for a term in the  
427 penitentiary not to exceed five (5) years.

428 (2) Any person who knowingly executes any affidavit required  
429 by Sections 25-5-3 through 25-3-37 knowing the same to be false,  
430 or who issues any certificate required by the same knowing it to  
431 be false, or who makes any statement of any kind required by said  
432 sections to be under oath, either in writing or orally, knowing

433 the same to be false shall be guilty of perjury and, upon  
434 conviction, may be punished by imprisonment in the State  
435 Penitentiary for a term not to exceed ten (10) years.

436 (3) It shall be a felony for any officer sought to be  
437 removed under the provisions of the aforesaid sections to attempt  
438 by force, threats, bribery, or intimidation to hinder or interfere  
439 with the free circulation or signing of any removal petition and,  
440 upon conviction thereof, he shall be punished by imprisonment in  
441 the State Penitentiary for not less than one (1) year nor more  
442 than five (5) years.

443 (4) Any person in the possession of a removal petition who  
444 either wilfully suppresses, neglects, or fails to cause same to be  
445 filed with the Secretary of State or the county or municipal  
446 registrar, as the case may be, shall be guilty of a misdemeanor  
447 and, upon conviction thereof, shall be punished by imprisonment in  
448 the county jail not to exceed six (6) months or by fine not to  
449 exceed Five Hundred Dollars (\$500.00), or by both such fine and  
450 imprisonment.

451 SECTION 14. The Attorney General of the State of Mississippi  
452 shall submit this act, immediately upon approval by the Governor,  
453 or upon approval by the Legislature subsequent to a veto, to the  
454 Attorney General of the United States or to the United States  
455 District Court for the District of Columbia in accordance with the  
456 provisions of the Voting Rights Act of 1965, as amended and  
457 extended.

458 SECTION 15. This act shall take effect and be in force from  
459 and after the date it is effectuated under Section 5 of the Voting  
460 Rights Act of 1965, as amended and extended.