

By: Denny

To: Apportionment and
Elections

HOUSE BILL NO. 458

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 NAME VOTING PRECINCT
85 1. _____
86 2. _____

87 3. _____

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.

| | <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 20__.

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 20__.

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 20__.

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

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

STATE OF MISSISSIPPI

State-District _____

County of _____ (Municipality of _____)

I, _____, * * * Secretary of State or registrar in and for the county or municipality aforesaid, do hereby certify that I have compared the signatures on the preceding sheets of the removal petition attached hereto, and to the best of my knowledge and belief the * * * petition (or section of petition) contains the signatures of _____ qualified electors of the state, state-district, county or municipality, as the case may be, and I have drawn a line in red ink through the names of those signators 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 _____, 20__.

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 (54) 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,
316 which * * * notice shall be served upon the officer at least
317 twenty (20) days before the date when his appearance is required.
318 The place of hearing shall be the county courthouse of the county
319 in which 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.