

By: Flaggs, Masterson

To: Municipalities

HOUSE BILL NO. 791

1 AN ACT TO AMEND SECTION 21-31-23, MISSISSIPPI CODE OF 1972,
2 TO EXTEND THE AMOUNT OF TIME REQUIRED TO CONFIRM THE SUSPENSION OF
3 A MUNICIPAL CIVIL SERVANT; AND FOR RELATED PURPOSES.

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

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

7 21-31-23. No person in the classified civil service who
8 shall have been permanently appointed or inducted into civil
9 service under the provisions of Sections 21-31-1 to 21-31-27,
10 except for such persons as may be employed to fill a vacancy
11 caused by the absence of a fireman or policeman while in service
12 as a member of the Armed Forces of the United States, shall be
13 removed, suspended, demoted or discharged, or any combination
14 thereof, except for cause, and only upon the written accusation of
15 the appointing power or any citizen or taxpayer, a written
16 statement of which accusation, in general terms, shall be served
17 upon the accused, and a duplicate filed with the commission. The
18 chiefs of the fire and/or police department may suspend a member
19 pending the confirmation of the suspension by the regular
20 appointing power, which shall be within ten (10) days.

21 In the absence of extraordinary circumstances or situations,

22 before any such employee may be removed or discharged, he shall be
23 given written notice of the intended termination, which notice
24 shall state the reasons for termination and inform the employee
25 that he has the right to respond in writing to the reasons given
26 for termination within a reasonable time and respond orally before
27 the official charged with the responsibility of making the
28 termination decision. Such official may, in his discretion,
29 provide for a pretermination hearing and examination of witnesses,
30 and if a hearing is to be held, the notice to the employee shall
31 also set the time and place of such hearing. A duplicate of such
32 notice shall be filed with the commission. After the employee has
33 responded or has failed to respond within a reasonable time, the
34 official charged with the responsibility of making the termination
35 decision shall determine the appropriate disciplinary action, and
36 shall notify the employee of his decision in writing at the
37 earliest practicable date.

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

52 Any person so removed, suspended, demoted, discharged or

53 combination thereof may, within ten (10) days from the time of
54 such disciplinary action, file with the commission a written
55 demand for an investigation, whereupon the commission shall
56 conduct such investigation. The investigation shall be confined
57 to the determination of the question of whether such disciplinary
58 action was or was not made for political or religious reasons and
59 was or was not made in good faith for cause. After such
60 investigation the commission may, if in its estimation the
61 evidence is conclusive, affirm the disciplinary action, or if it
62 shall find that the disciplinary action was made for political or
63 religious reasons, or was not made in good faith for cause, shall
64 order the immediate reinstatement or reemployment of such person
65 in the office, place, position, or employment from which such
66 person was removed, suspended, demoted, discharged or combination
67 thereof, which reinstatement shall, if the commission so provides
68 in its discretion, be retroactive, and entitle such person to pay
69 or compensation from the time of such disciplinary action. The
70 commission upon such investigation may, in lieu of affirming the
71 disciplinary action, modify the order of removal, suspension,
72 demotion, discharge or combination thereof by directing a
73 suspension, without pay, for a given period and subsequent
74 restoration of duty, or by directing a demotion in classification,
75 grade or pay, or by any combination thereof. The findings of the
76 commission shall be certified in writing to the appointing power,
77 and shall be forthwith enforced by such officer.

78 All investigations made by the commission pursuant to the
79 provisions of this section shall be by public hearing, after
80 reasonable written notice to the accused of the time and place of

81 such hearing, at which hearing the accused shall be afforded an
82 opportunity of appearing in person and by counsel, and presenting
83 his defense. The findings of the commission shall be conclusive
84 and binding unless either the accused or the municipality shall,
85 within thirty (30) days from the date of the entry of such
86 judgment or order on the minutes of the commission and
87 notification to the accused and the municipality, appeal to the
88 circuit court of the county within which the municipality is
89 located. Any appeal of the judgment or order of the commission
90 shall not act as a supersedeas of such judgment or order, but the
91 judgment or order shall remain in effect pending a final
92 determination of the matter on appeal. Such appeal shall be taken
93 by serving the commission and the appellee, within thirty (30)
94 days after the entry of such judgment or order, a written notice
95 of appeal, stating the grounds thereof, and demanding that a
96 certified transcript of the record and of all papers on file in
97 the office of the commission affecting or relating to such
98 judgment or order, be filed by the commission with such court.
99 The commission shall, within thirty (30) days after the filing of
100 such notice, make, certify and file such transcript with such
101 court. The said circuit court shall thereupon proceed to hear and
102 determine such appeal. However, such hearing shall be confined to
103 the determination of whether the judgment or order of removal,
104 discharge, demotion, suspension or combination thereof made by the
105 commission, was or was not made in good faith for cause, and no
106 appeal to such court shall be taken except upon such ground or
107 grounds.

108 SECTION 2. This act shall take effect and be in force from

109 and after July 1, 2000.