

By: Representative Guice

To: Banks and Banking

HOUSE BILL NO. 775

1 AN ACT TO AMEND SECTION 81-3-13, MISSISSIPPI CODE OF 1972, TO
2 ALLOW BANKING BOARD TO CONDUCT EMERGENCY MEETINGS BY TELEPHONE OR
3 ELECTRONIC TRANSMISSION IF IT IS DETERMINED BY THE COMMISSIONER
4 THAT AN EMERGENCY EXISTS REQUIRING EXPEDITION OF THE PROCEDURE FOR
5 GRANTING A CERTIFICATE OF INCORPORATION; TO AMEND SECTION 25-41-3,
6 MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

8 SECTION 1. Section 81-3-13, Mississippi Code of 1972, is
9 amended as follows:

10 81-3-13. (1) Before any bank may be organized and formed,
11 the prospective incorporators shall give notice to the
12 Commissioner of Banking and Consumer Finance of their desire to
13 engage in banking and apply for a certificate of authority to
14 incorporate, and shall at the time file with the commissioner a
15 copy of the proposed articles of incorporation, duly sworn to by
16 one (1) of the prospective incorporators. The commissioner shall
17 promptly give consideration to the application and make an
18 examination of the proposed articles of incorporation to determine
19 if they meet all requirements of law. The commissioner shall then
20 make an investigation of the number of parent banks, branch banks,
21 branch offices and branch facilities, and location thereof then
22 serving the area in which the proposed new bank is to be located,
23 the ratio of capital funds to total deposits therein, the record
24 of earnings and condition of existing banks and what effect, if
25 any, a new unit bank would have on them, the number of previous
26 bank failures in the area and their liquidation record and banking
27 history generally in the area, the population of the area wherein
28 the proposed bank will be located and relation to number of banks
29 operating therein, reasonable prospects of growth of the area and



30 its financial resources and whether the same are static,
31 progressive or retrogressive, expectation of profitable operation
32 of the proposed new bank, and the morals and business character of
33 the prospective incorporators and such further investigation to
34 determine whether the public necessity requires that the proposed
35 new bank should be chartered and permitted to operate.

36 When the commissioner has completed the examination and made
37 his investigation, he shall record his findings in writing and
38 shall draw up his recommendations to the State Board of Banking
39 Review, established in Section 81-3-12. At the request of the
40 chairman, he shall thereupon, in writing, call a meeting of the
41 board to give consideration to his findings and recommendations,
42 such call to be issued at least ten (10) days in advance of the
43 meeting. Such meetings shall be held within one hundred twenty
44 (120) days from the date on which the prospective incorporators
45 gave notice to the commissioner of their desire to engage in
46 banking, applied for a certificate of authority to incorporate,
47 and filed with the commissioner a copy of the proposed articles of
48 incorporation. The commissioner shall at the same time give
49 notice of the meeting of the board to the prospective
50 incorporators of the proposed new bank and to any and all other
51 interested persons and shall extend to them an invitation to be
52 heard in writing or in person by the board.

53 The board, at its meeting, shall consider the findings and
54 recommendations of the commissioner and shall hear such oral
55 testimony as he may wish to give, and shall also receive
56 information and hear testimony from the prospective organizers of
57 the proposed bank and from any and all other interested persons
58 bearing upon the public necessity for the organization and
59 operation of the new bank.

60 After considering the record submitted to it by the
61 commissioner and his oral testimony and considering such other
62 information and evidence, either written or oral, which has come



63 before it, the board shall decide if it has before it sufficient
64 information and evidence upon which it can dispose of the
65 application to form the new bank. If it is determined that
66 evidence and information is not sufficient, then the board shall
67 order the commissioner to secure such additional information and
68 evidence as it may prescribe or shall request from the prospective
69 incorporators and from other interested persons. The board shall
70 thereupon set a date for a future meeting to be held before the
71 expiration of the aforementioned one hundred twenty (120) day time
72 limit and shall give to the prospective incorporators and other
73 interested persons notice of such meeting, and shall recess the
74 meeting then being held until such future date. The board shall
75 have and is hereby vested with the power to compel attendance of
76 witnesses just as is the commissioner or examiner as provided for
77 in Section 81-1-85, and all testimony given before said board
78 shall be taken down and transcribed by a stenographer in the
79 manner prescribed in Section 81-1-87.

80 If the board, or a majority thereof, shall determine that it
81 has before it sufficient evidence and information upon which to
82 base a decision, then it shall render a written opinion and
83 decision in the matter within sixty (60) days after the conclusion
84 of the final board hearing. If its decision is favorable, then
85 the board shall order the commissioner to give to such prospective
86 incorporators a certificate under his hand and official seal of
87 the Department of Banking and Consumer Finance authorizing the
88 prospective incorporators to proceed to incorporate and organize
89 as is provided in Section 81-3-7.

90 When a certificate of incorporation is sought in order to
91 effect the acquisition of an insolvent bank sold pursuant to the
92 provisions of Chapter 9, Title 81, Mississippi Code of 1972, any
93 constraints of time imposed by this subsection shall not apply if
94 the commissioner determines that an emergency exists which
95 requires expedition of the procedure for granting a certificate in



96 order to protect the interests of the public and the interests of
97 depositors and creditors of the insolvent bank. Such an emergency
98 meeting of the Board may be held by any telephonic or electronic
99 transmission and shall not be held subject to the provisions of
100 the Mississippi Open Meetings Law.

101 (2) Appeal from unfavorable decision of State Board of
102 Banking review. If the decision of the board, or a majority
103 thereof, is unfavorable to the organization of the proposed new
104 bank, it shall render a written opinion and decision giving its
105 reason for rejection within sixty (60) days after the conclusion
106 of the final board hearing in the matter, and the commissioner
107 shall so advise the prospective incorporators, giving them a copy
108 of the written decision and opinion of the board. If the
109 prospective incorporators be aggrieved at the unfavorable decision
110 of the board in denying a certificate authorizing them to proceed
111 with the incorporation of the proposed new bank and the
112 organization thereof, they shall have the right of appeal to the
113 chancery court of the county in which the proposed bank shall be
114 located, which appeal shall be taken and perfected within sixty
115 (60) days from the date of the denial of such certificate. The
116 denial of said certificate by the board shall be construed as a
117 judicial finding and appealable as such. All such appeals shall
118 be taken, perfected, heard and determined either in termtime or
119 vacation, and such appeals shall be heard and disposed of promptly
120 by the court. Appeals from the board shall be taken and perfected
121 by the filing of a bond in the sum of Two Hundred Fifty Dollars
122 (\$250.00), with two (2) sureties, or with a surety company
123 qualified to do business in Mississippi as surety, conditioned to
124 pay the costs of the appeal, the bond to be approved by the clerk
125 of the chancery court, and such bond shall be payable to the state
126 and may be enforced in its name as other judicial bonds filed in
127 the chancery court, and judgment may be entered upon such bonds
128 and process and execution shall issue upon such judgments as



129 provided by law in other cases. Appeals may be taken from the
130 chancery court to the Supreme Court in the manner now provided by
131 law. Upon approval of the bond by the clerk of the chancery court
132 the clerk shall give notice to the commissioner of the appeal from
133 the decision of the board, and it thereupon shall be the duty of
134 the commissioner to promptly transmit to the clerk of the chancery
135 court in which the appeal is pending the original or a certified
136 copy of the application, proposed charter of incorporation, and
137 his findings or decision thereon together with the opinion and
138 decision of the board, including a transcript of pleadings and
139 testimony, both oral and documentary, which shall be docketed by
140 the clerk and shall be tried by the court. In perfecting such
141 appeals, the provisions of law respecting notice to reporters and
142 allowance of bills of exception, now or hereafter in force
143 respecting appeals from the chancery court to the Supreme Court
144 shall be applicable thereto. If the prospective incorporators of
145 the proposed new bank shall prevail, a decree shall be entered
146 requiring the issuance by the commissioner of the certificate
147 authorizing applicants to incorporate and organize in the same
148 manner as if the application therefor had been approved by the
149 board, and the costs therein incurred shall be paid by the
150 commissioner out of the maintenance fund of the Department of
151 Banking and Consumer Finance. If, however, the action of the
152 board be affirmed by the court, a decree shall be entered to that
153 effect taxing costs of the proceedings to the applicants. The
154 commissioner or the applicants shall have the right of appeal from
155 the decision of the chancery court. During the time the cause is
156 pending in the office of the commissioner or before the board or
157 the court, the commissioner shall not issue a certificate to a
158 subsequent applicant to incorporate and organize a new bank or
159 authorize any bank then existing to establish a branch bank, or
160 branch office within the area wherein the proposed new bank is to
161 be domiciled, and neither shall he consent to the removal of the



162 domicile of an existing bank from another place into the area
163 where the proposed new bank will be domiciled. A cause shall not
164 be considered as pending in the office of the commissioner or
165 before the board if the prospective incorporators or their
166 representative have only given notice to the commissioner of their
167 desire to engage in banking and apply for a certificate of
168 authority to incorporate, but have not filed with the commissioner
169 a copy of the proposed articles of incorporation and other
170 documents required by statute or administrative regulation.

171 If the decision of the board, or a majority thereof, is
172 favorable to the organization of the proposed bank, it shall in
173 like manner as above render a written opinion and decision within
174 sixty (60) days after the conclusion of the final board hearing on
175 the matter, and an appeal in the manner herein set forth shall be
176 available to any interested organizations, person or persons who
177 have participated in the proceedings and feel aggrieved by the
178 decision of the board.

179 (3) Certificate to begin business. When a bank has been
180 incorporated and the capital stock thereof has been paid in full,
181 the incorporators shall notify the commissioner of such fact,
182 whereupon the commissioner himself or through an examiner shall
183 make a special examination of the proposed new bank and, finding
184 the capital stock to have been paid in full, he shall under his
185 hand and seal of the Department of Banking and Consumer Finance
186 issue to the bank a certificate authorizing it to commence
187 business, and when such business has been commenced the bank shall
188 notify the commissioner to that effect. Upon completion of such
189 special examination, the bank shall pay to the Department of
190 Banking and Consumer Finance as an assessment an amount sufficient
191 to reimburse for the actual costs and expenses incurred during
192 such special examination. The commissioner or examiner shall give
193 a receipt therefor in duplicate, and the assessment shall be
194 turned over by the Department of Banking and Consumer Finance to



195 the State Treasurer for credit to the maintenance fund of the
196 Department of Banking and Consumer Finance. The proposed new bank
197 shall not transact any business except as is necessarily
198 preliminary to its incorporation and organization until it has
199 been authorized by the commissioner to begin business. However,
200 in the event the board shall reject any application for a
201 certificate of convenience and necessity, all costs incurred by
202 this board in making a survey or holding a hearing on such
203 application shall be borne by the petitioners.

204 (4) Expiration of certificate to incorporate and organize a
205 bank. Notwithstanding the foregoing and any other provision of
206 law to the contrary, if a bank has not been established and is not
207 in operation within two (2) years from the date of the certificate
208 to incorporate and organize such bank or within two (2) years from
209 the date upon which any appellate litigation with respect to such
210 certificate has been concluded, the certificate shall expire.
211 Provided, however, the State Board of Banking Review may extend
212 for good cause shown said two-year period a maximum number of two
213 (2) times for periods not exceeding six (6) months each. This
214 provision shall in no way affect certificates issued prior to the
215 effective date of this section.

216 SECTION 2. Section 25-41-3, Mississippi Code of 1972, is
217 amended as follows:

218 25-41-3. For purposes of this chapter, the following words
219 shall have the meaning ascribed herein, to wit:

220 (a) "Public body" means: (i) any executive or
221 administrative board, commission, authority, council, department,
222 agency, bureau or any other policymaking entity, or committee
223 thereof, of the State of Mississippi, or any political subdivision
224 or municipal corporation of the state, whether such entity be
225 created by statute or executive order, which is supported wholly
226 or in part by public funds or expends public funds, and (ii) any
227 standing, interim or special committee of the Mississippi



228 Legislature. There shall be exempted from the provisions of this
229 chapter the judiciary, including all jury deliberations, public
230 and private hospital staffs, public and private hospital boards
231 and committees thereof, law enforcement officials, the military,
232 the State Probation and Parole Board, the Workers' Compensation
233 Commission, legislative subcommittees and legislative conference
234 committees, the arbitration council established in Section 69-3-19
235 and license revocation, suspension and disciplinary proceedings
236 held by the Mississippi State Board of Dental Examiners, and
237 emergency meetings of the State Board of Banking Review held by
238 telephonic or electronic transmission as provided under Section
239 81-3-13.

240 (b) "Meeting" means an assemblage of members of a
241 public body at which official acts may be taken upon a matter over
242 which the public body has supervision, control, jurisdiction or
243 advisory power.

244 SECTION 3. This act shall take effect and be in force from
245 and after July 1, 2001.

