To: Banks and Banking

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2001
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.
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8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:
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10 SECTION 1. Section 81-3-13, Mississippi Code of 1972, is
11 amended as follows:
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13 81-3-13. (1) Before any bank may be organized and formed,
14 the prospective incorporators shall give notice to the
15 Commissioner of Banking and Consumer Finance of their desire to
16 engage in banking and apply for a certificate of authority to
17 incorporate, and shall at the time file with the commissioner a
18 copy of the proposed articles of incorporation, duly sworn to by
19 one (1) of the prospective incorporators. The commissioner shall
20 promptly give consideration to the application and make an
21 examination of the proposed articles of incorporation to determine
22 if they meet all requirements of law. The commissioner shall then
23 make an investigation of the number of parent banks, branch banks,
24 branch offices and branch facilities, and location thereof then
25 serving the area in which the proposed new bank is to be located,
26 the ratio of capital funds to total deposits therein, the record
27 of earnings and condition of existing banks and what effect, if
28 any, a new unit bank would have on them, the number of previous
29 bank failures in the area and their liquidation record and banking
30 history generally in the area, the population of the area wherein
31 the proposed bank will be located and relation to number of banks
32 operating therein, reasonable prospects of growth of the area and
its financial resources and whether the same are static, progressive or retrogressive, expectation of profitable operation of the proposed new bank, and the morals and business character of the prospective incorporators and such further investigation to determine whether the public necessity requires that the proposed new bank should be chartered and permitted to operate.

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

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

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

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

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

When a certificate of incorporation is sought in order to effect the acquisition of an insolvent bank sold pursuant to the provisions of Chapter 9, Title 81, Mississippi Code of 1972, any constraints of time imposed by this subsection shall not apply if the commissioner determines that an emergency exists which requires expedition of the procedure for granting a certificate in
order to protect the interests of the public and the interests of
depositors and creditors of the insolvent bank. Such an emergency
meeting of the Board may be held by any telephonic or electronic
transmission and shall not be held subject to the provisions of
the Mississippi Open Meetings Law.

(2) Appeal from unfavorable decision of State Board of
Banking review. If the decision of the board, or a majority
thereof, is unfavorable to the organization of the proposed new
bank, it shall render a written opinion and decision giving its
reason for rejection within sixty (60) days after the conclusion
of the final board hearing in the matter, and the commissioner
shall so advise the prospective incorporators, giving them a copy
of the written decision and opinion of the board. If the
prospective incorporators be aggrieved at the unfavorable decision
of the board in denying a certificate authorizing them to proceed
with the incorporation of the proposed new bank and the
organization thereof, they shall have the right of appeal to the
chancery court of the county in which the proposed bank shall be
located, which appeal shall be taken and perfected within sixty
(60) days from the date of the denial of such certificate. The
denial of said certificate by the board shall be construed as a
judicial finding and appealable as such. All such appeals shall
be taken, perfected, heard and determined either in termtime or
vacation, and such appeals shall be heard and disposed of promptly
by the court. Appeals from the board shall be taken and perfected
by the filing of a bond in the sum of Two Hundred Fifty Dollars
($250.00), with two (2) sureties, or with a surety company
qualified to do business in Mississippi as surety, conditioned to
pay the costs of the appeal, the bond to be approved by the clerk
of the chancery court, and such bond shall be payable to the state
and may be enforced in its name as other judicial bonds filed in
the chancery court, and judgment may be entered upon such bonds
and process and execution shall issue upon such judgments as
provided by law in other cases. Appeals may be taken from the chancery court to the Supreme Court in the manner now provided by law. Upon approval of the bond by the clerk of the chancery court the clerk shall give notice to the commissioner of the appeal from the decision of the board, and it thereupon shall be the duty of the commissioner to promptly transmit to the clerk of the chancery court in which the appeal is pending the original or a certified copy of the application, proposed charter of incorporation, and his findings or decision thereon together with the opinion and decision of the board, including a transcript of pleadings and testimony, both oral and documentary, which shall be docketed by the clerk and shall be tried by the court. In perfecting such appeals, the provisions of law respecting notice to reporters and allowance of bills of exception, now or hereafter in force respecting appeals from the chancery court to the Supreme Court shall be applicable thereto. If the prospective incorporators of the proposed new bank shall prevail, a decree shall be entered requiring the issuance by the commissioner of the certificate authorizing applicants to incorporate and organize in the same manner as if the application therefor had been approved by the board, and the costs therein incurred shall be paid by the commissioner out of the maintenance fund of the Department of Banking and Consumer Finance. If, however, the action of the board be affirmed by the court, a decree shall be entered to that effect taxing costs of the proceedings to the applicants. The commissioner or the applicants shall have the right of appeal from the decision of the chancery court. During the time the cause is pending in the office of the commissioner or before the board or the court, the commissioner shall not issue a certificate to a subsequent applicant to incorporate and organize a new bank or authorize any bank then existing to establish a branch bank, or branch office within the area wherein the proposed new bank is to be domiciled, and neither shall he consent to the removal of the
domicile of an existing bank from another place into the area
where the proposed new bank will be domiciled. A cause shall not
be considered as pending in the office of the commissioner or
before the board if the prospective incorporators or their
representative have only given notice to the commissioner of their
desire to engage in banking and apply for a certificate of
authority to incorporate, but have not filed with the commissioner
a copy of the proposed articles of incorporation and other
documents required by statute or administrative regulation.

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

(3) Certificate to begin business. When a bank has been
incorporated and the capital stock thereof has been paid in full,
the incorporators shall notify the commissioner of such fact,
whereupon the commissioner himself or through an examiner shall
make a special examination of the proposed new bank and, finding
the capital stock to have been paid in full, he shall under his
hand and seal of the Department of Banking and Consumer Finance
issue to the bank a certificate authorizing it to commence
business, and when such business has been commenced the bank shall
notify the commissioner to that effect. Upon completion of such
special examination, the bank shall pay to the Department of
Banking and Consumer Finance as an assessment an amount sufficient
to reimburse for the actual costs and expenses incurred during
such special examination. The commissioner or examiner shall give
a receipt therefor in duplicate, and the assessment shall be
turned over by the Department of Banking and Consumer Finance to
the State Treasurer for credit to the maintenance fund of the Department of Banking and Consumer Finance. The proposed new bank shall not transact any business except as is necessarily preliminary to its incorporation and organization until it has been authorized by the commissioner to begin business. However, in the event the board shall reject any application for a certificate of convenience and necessity, all costs incurred by this board in making a survey or holding a hearing on such application shall be borne by the petitioners.

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

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

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

(a) "Public body" means: (i) any executive or administrative board, commission, authority, council, department, agency, bureau or any other policymaking entity, or committee thereof, of the State of Mississippi, or any political subdivision or municipal corporation of the state, whether such entity be created by statute or executive order, which is supported wholly or in part by public funds or expends public funds, and (ii) any standing, interim or special committee of the Mississippi
ST: Banks; allow emergency meeting of the Banking Board to be held by telephone when dealing with certain incorporation issues.

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

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

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