

By: Representative Smith (39th)

To: Judiciary A

HOUSE BILL NO. 939

1 AN ACT TO AMEND SECTIONS 43-33-7 AND 43-33-115, MISSISSIPPI
 2 CODE OF 1972, TO PROVIDE THAT AT LEAST ONE MEMBER OF A MUNICIPAL,
 3 COUNTY OR REGIONAL PUBLIC HOUSING AUTHORITY MUST BE A PERSON WHO
 4 IS DIRECTLY ASSISTED BY THE AUTHORITY; TO AMEND SECTION 25-4-105,
 5 MISSISSIPPI CODE OF 1972, TO PROVIDE AN EXCEPTION FROM THE
 6 PROHIBITION AGAINST PUBLIC SERVANTS HAVING AN INTEREST IN CERTAIN
 7 CONTRACTS FOR A PERSON WHO IS DIRECTLY ASSISTED BY A MUNICIPAL,
 8 COUNTY OR REGIONAL PUBLIC HOUSING AUTHORITY WHENEVER MEMBERSHIP ON
 9 SUCH AUTHORITY IS REQUIRED BY FEDERAL LAW; AND FOR RELATED
 10 PURPOSES.

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

12 **SECTION 1.** Section 43-33-7, Mississippi Code of 1972, is
 13 amended as follows:

14 43-33-7. When the governing body of a city adopts a
 15 resolution as provided in Section 43-33-5, such governing body
 16 shall forthwith appoint five (5) persons as commissioners of the
 17 authority created for said city. When the governing body of a
 18 county adopts a resolution as provided in Section 43-33-5, said
 19 governing body shall appoint five (5) commissioners for said board
 20 created for said county. The commissioners who are first
 21 appointed shall be designated to serve for terms of one (1), two
 22 (2), three (3), four (4) and five (5) years, respectively, from
 23 the date of their appointment, and thereafter when a vacancy shall
 24 occur either by the expiration of term of office or otherwise, the
 25 vacancy shall be filled by the governing body of the city or
 26 county, as the case may be, either to fill an unexpired term where
 27 a commissioner shall die or resign or shall become disqualified
 28 during his term, or for a full term of five (5) years where the
 29 term of a commissioner expires. No commissioner of an authority
 30 may be an officer or employee of the city or county for which the
 31 authority is created. However, at least one (1) commissioner must



32 be a person who is directly assisted by the authority. A
33 commissioner shall hold office until his successor has been
34 appointed and has qualified. A certificate of the appointment or
35 reappointment of any commissioner shall be filed with the clerk of
36 the city or county as the case may be and such certificate shall
37 be conclusive evidence of the due and proper appointment of such
38 commissioner. A commissioner shall receive compensation for his
39 services in the manner and amount authorized in Section 25-3-69
40 for up to fifteen (15) days during the fiscal year of the
41 authority, and he shall also be entitled to necessary expenses,
42 including traveling expenses, incurred in the discharge of his
43 duties.

44 The powers of each authority shall be vested in the
45 commissioners thereof in office from time to time. Three (3)
46 commissioners shall constitute a quorum of the authority for the
47 purpose of conducting its business and exercising its powers and
48 for all other purposes. Action may be taken by the authority upon
49 a vote of a majority of the commissioners present, unless in any
50 case the bylaws of the authority shall require a larger number.
51 The board of commissioners shall elect which member shall be
52 chairman and thereafter fill any vacancy by like election. An
53 authority shall select from among its commissioners a
54 vice-chairman, and it may employ a secretary (who shall be
55 executive director), technical experts and such other officers,
56 agents and employees, permanent and temporary, as it may require,
57 and shall determine their qualifications, duties and compensation.
58 For such legal services as it may require, an authority may call
59 upon the chief law officer of the city or the county or may employ
60 its own counsel and legal staff. An authority may delegate to one
61 or more of its agents or employees such powers or duties as it may
62 deem proper.

63 **SECTION 2.** Section 43-33-115, Mississippi Code of 1972, is
64 amended as follows:



65 43-33-115. The board of supervisors of each county included
66 in a regional housing authority shall appoint one (1) person as a
67 commissioner of such authority, and each such commissioner to be
68 first appointed by the board of supervisors of a county may be
69 appointed at or after the time of the adoption of the resolution
70 declaring the need for such regional housing authority or
71 declaring the need for the inclusion of such county in the area of
72 operation of such regional housing authority. When the area of
73 operation of a regional housing authority is increased to include
74 an additional county or counties as provided above, the board of
75 supervisors of each such county shall thereupon appoint one (1)
76 additional person as a commissioner of the regional housing
77 authority. The board of supervisors of each county shall appoint
78 the successor of the commissioner appointed by it. A certificate
79 of the appointment of any such commissioner shall be filed with
80 the clerk of the county, and such certificate shall be conclusive
81 evidence of the due and proper appointment of such commissioner.
82 If any county is excluded from the area of operation of a regional
83 housing authority, the office of the commissioner of such regional
84 housing authority appointed by the board of supervisors of such
85 county shall be thereupon abolished.

86 If the area of operation of a regional housing authority
87 consists at any time of an even number of counties, the
88 commissioners of the regional housing authority appointed by the
89 boards of supervisors of such counties shall appoint one (1)
90 additional commissioner whose term of office shall be as herein
91 provided for a commissioner of a regional housing authority except
92 that such term shall end at any earlier time that the area of
93 operation of the regional housing authority shall be changed to
94 consist of an odd number of counties. The commissioners of such
95 authority appointed by the boards of supervisors of such counties
96 shall likewise appoint each person to succeed such additional
97 commissioner; the term of office of such person begins during the



98 terms of office of the commissioner appointing him. A certificate
99 of the appointment of any such additional commissioner of such
100 regional housing authority shall be filed with the other records
101 of the regional housing authority and shall be conclusive evidence
102 of the due and proper appointment of such additional commissioner.

103 At least one (1) commissioner of a regional housing authority
104 must be a person who is directly assisted by the authority.

105 The commissioners of a regional housing authority shall be
106 appointed for terms of five (5) years except that all vacancies
107 shall be filled for the unexpired terms. Each commissioner shall
108 hold office until his successor has been appointed and has
109 qualified, except as otherwise provided herein.

110 The commissioners shall constitute the regional housing
111 authority, and the powers of such authority shall be vested in
112 such commissioners in office from time to time.

113 The commissioners of a regional housing authority shall elect
114 a chairman from among the commissioners and shall have power to
115 select or employ such other officers and employees as the regional
116 housing authority may require. A majority of the commissioners of
117 a regional housing authority shall constitute a quorum of such
118 authority for the purpose of conducting its business and
119 exercising its powers and for all other purposes.

120 **SECTION 3.** Section 25-4-105, Mississippi Code of 1972, is
121 amended as follows:

122 25-4-105. (1) No public servant shall use his official
123 position to obtain pecuniary benefit for himself other than that
124 compensation provided for by law, or to obtain pecuniary benefit
125 for any relative or any business with which he is associated.

126 (2) No public servant shall be interested, directly or
127 indirectly, during the term for which he shall have been chosen,
128 or within one (1) year after the expiration of such term, in any
129 contract with the state, or any district, county, city or town



130 thereof, authorized by any law passed or order made by any board
131 of which he may be or may have been a member.

132 (3) No public servant shall:

133 (a) Be a contractor, subcontractor or vendor with the
134 governmental entity of which he is a member, officer, employee or
135 agent, other than in his contract of employment, or have a
136 material financial interest in any business which is a contractor,
137 subcontractor or vendor with the governmental entity of which he
138 is a member, officer, employee or agent.

139 (b) Be a purchaser, direct or indirect, at any sale
140 made by him in his official capacity or by the governmental entity
141 of which he is an officer or employee, except in respect of the
142 sale of goods or services when provided as public utilities or
143 offered to the general public on a uniform price schedule.

144 (c) Be a purchaser, direct or indirect, of any claim,
145 certificate, warrant or other security issued by or to be paid out
146 of the treasury of the governmental entity of which he is an
147 officer or employee.

148 (d) Perform any service for any compensation during his
149 term of office or employment by which he attempts to influence a
150 decision of the authority of the governmental entity of which he
151 is a member.

152 (e) Perform any service for any compensation for any
153 person or business after termination of his office or employment
154 in relation to any case, decision, proceeding or application with
155 respect to which he was directly concerned or in which he
156 personally participated during the period of his service or
157 employment.

158 (4) Notwithstanding the provisions of subsection (3) of this
159 section, a public servant or his relative:

160 (a) May be an officer or stockholder of banks or
161 savings and loan associations or other such financial institutions
162 bidding for bonds, notes or other evidences of debt or for the



163 privilege of keeping as depositories the public funds of a
164 governmental entity thereof or the editor or employee of any
165 newspaper in which legal notices are required to be published in
166 respect to the publication of said legal notices.

167 (b) May be a contractor or vendor with any authority of
168 the governmental entity other than the authority of the
169 governmental entity of which he is a member, officer, employee or
170 agent or have a material financial interest in a business which is
171 a contractor or vendor with any authority of the governmental
172 entity other than the authority of the governmental entity of
173 which he is a member, officer, employee or agent where such
174 contract is let to the lowest and best bidder after competitive
175 bidding and three (3) or more legitimate bids are received or
176 where the goods, services or property involved are reasonably
177 available from two (2) or fewer commercial sources, provided such
178 transactions comply with the public purchases laws.

179 (c) May be a subcontractor with any authority of the
180 governmental entity other than the authority of the governmental
181 entity of which he is a member, officer, employee or agent or have
182 a material financial interest in a business which is a
183 subcontractor with any authority of the governmental entity other
184 than the authority of the governmental entity of which he is a
185 member, officer, employee or agent where the primary contract is
186 let to the lowest and best bidder after competitive bidding or
187 where such goods or services involved are reasonably available
188 from two (2) or fewer commercial sources, provided such
189 transactions comply with the public purchases laws.

190 (d) May be a contractor, subcontractor or vendor with
191 any authority of the governmental entity of which he is a member,
192 officer, employee or agent or have a material financial interest
193 in a business which is a contractor, subcontractor or vendor with
194 any authority of the governmental entity of which he is a member,
195 officer, employee or agent: (i) where such goods or services



196 involved are reasonably available from two (2) or fewer commercial
197 sources, provided such transactions comply with the public
198 purchases laws; or (ii) where the contractual relationship
199 involves the further research, development, testing, promotion or
200 merchandising of an intellectual property created by the public
201 servant.

202 (e) May purchase securities issued by the governmental
203 entity of which he is an officer or employee if such securities
204 are offered to the general public and are purchased at the same
205 price as such securities are offered to the general public.

206 (f) May have an interest less than a material financial
207 interest in a business which is a contractor, subcontractor or
208 vendor with any governmental entity.

209 (g) May contract with the Mississippi Veteran's Home
210 Purchase Board, Mississippi Housing Finance Corporation, or any
211 other state loan program, for the purpose of securing a loan;
212 however, public servants shall not receive favored treatment.

213 (h) May be employed by or receive compensation from an
214 authority of the governmental entity other than the authority of
215 the governmental entity of which the public servant is an officer
216 or employee.

217 (i) If a member of the Legislature or other public
218 servant employed on less than a full-time basis, may represent a
219 person or organization for compensation before an authority of the
220 governmental entity other than an authority of the governmental
221 entity of which he is an officer or employee.

222 (j) If a constable, may be employed and receive
223 compensation as a deputy sheriff or other employee of the county
224 for which he serves as constable.

225 (5) Notwithstanding the provisions of subsection (3) of this
226 section, a member of a municipal, county or regional public
227 housing authority may be a person who is directly assisted by the
228 authority if required under applicable federal law.



229 (6) No person may intentionally use or disclose information
230 gained in the course of or by reason of his official position or
231 employment as a public servant in any way that could result in
232 pecuniary benefit for himself, any relative, or any other person,
233 if the information has not been communicated to the public or is
234 not public information.

235 (7) Any contract made in violation of this section may be
236 declared void by the governing body of the contracting or selling
237 authority of the governmental subdivision or a court of competent
238 jurisdiction and the contractor or subcontractor shall retain or
239 receive only the reasonable value, with no increment for profit or
240 commission, of the property or the services furnished prior to the
241 date of receiving notice that the contract has been voided.

242 (8) Any person violating the provisions of this section
243 shall be punished as provided for in Sections 25-4-109 and
244 25-4-111.

245 **SECTION 4.** This act shall take effect and be in force from
246 and after its passage.

