

By: Representative Watson

To: Apportionment and
Elections

HOUSE BILL NO. 1270

1 AN ACT TO AMEND SECTION 23-15-801, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE DEFINITION OF INDEPENDENT EXPENDITURE; TO AMEND
3 SECTION 23-15-807, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
4 SECRETARY OF STATE TO AUDIT BOOKS AND RECORDS OF POLITICAL
5 COMMITTEES TO DETERMINE IF VIOLATIONS HAVE OCCURRED; TO AMEND
6 SECTION 23-15-813, MISSISSIPPI CODE OF 1972, TO REVISE PENALTIES;
7 AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 23-15-801, Mississippi Code of 1972, is
10 amended as follows:

11 23-15-801. (a) "Election" shall mean a general, special,
12 primary or runoff election.

13 (b) "Candidate" shall mean an individual who seeks
14 nomination for election, or election, to any elective office other
15 than a federal elective office and for purposes of this article,
16 an individual shall be deemed to seek nomination for election, or
17 election:

18 (i) If such individual has received contributions
19 aggregating in excess of Two Hundred Dollars (\$200.00) or has made
20 expenditures aggregating in excess of Two Hundred Dollars
21 (\$200.00) or for a candidate for the Legislature or any statewide
22 or state district office, by the qualifying deadlines specified in
23 Sections 23-15-299 and 23-15-977, whichever occurs first; or

24 (ii) If such individual has given his or her consent to
25 another person to receive contributions or make expenditures on
26 behalf of such individual and if such person has received such
27 contributions aggregating in excess of Two Hundred Dollars
28 (\$200.00) during a calendar year, or has made such expenditures



29 aggregating in excess of Two Hundred Dollars (\$200.00) during a
30 calendar year.

31 (c) "Political committee" shall mean any committee, party,
32 club, association, political action committee, campaign committee
33 or other groups of persons or affiliated organizations which
34 receives contributions aggregating in excess of Two Hundred
35 Dollars (\$200.00) during a calendar year or which makes
36 expenditures aggregating in excess of Two Hundred Dollars
37 (\$200.00) during a calendar year for the purpose of influencing or
38 attempting to influence the action of voters for or against the
39 nomination for election, or election, of one or more candidates,
40 or balloted measures and shall, in addition, include each
41 political party registered with the Secretary of State.

42 (d) "Affiliated organization" shall mean any organization
43 which is not a political committee, but which directly or
44 indirectly establishes, administers or financially supports a
45 political committee.

46 (e) (i) "Contribution" shall include any gift,
47 subscription, loan, advance or deposit of money or anything of
48 value made by any person or political committee for the purpose of
49 influencing any election for elective office or balloted measure;

50 (ii) "Contribution" shall not include the value of
51 services provided without compensation by any individual who
52 volunteers on behalf of a candidate or political committee; or the
53 cost of any food or beverage for use in any candidate's campaign
54 or for use by or on behalf of any political committee of a
55 political party;

56 (iii) "Contribution to a political party" includes any
57 gift, subscription, loan, advance or deposit of money or anything
58 of value made by any person, political committee, or other
59 organization to a political party and to any committee,
60 subcommittee, campaign committee, political committee and other



61 groups of persons and affiliated organizations of the political
62 party;

63 (iv) "Contribution to a political party" shall not
64 include the value of services provided without compensation by any
65 individual who volunteers on behalf of a political party or a
66 candidate of a political party.

67 (f) (i) "Expenditure" shall include any purchase, payment,
68 distribution, loan, advance, deposit, gift of money or anything of
69 value, made by any person or political committee for the purpose
70 of influencing any balloted measure or election for elective
71 office; and a written contract, promise, or agreement to make an
72 expenditure;

73 (ii) "Expenditure" shall not include any news story,
74 commentary or editorial distributed through the facilities of any
75 broadcasting station, newspaper, magazine, or other periodical
76 publication, unless such facilities are owned or controlled by any
77 political party, political committee, or candidate; or nonpartisan
78 activity designed to encourage individuals to vote or to register
79 to vote;

80 (iii) "Expenditure by a political party" includes 1.
81 any purchase, payment, distribution, loan, advance, deposit, gift
82 of money or anything of value, made by any political party and by
83 any contractor, subcontractor, agent, and consultant to the
84 political party; and 2. a written contract, promise, or agreement
85 to make such an expenditure.

86 (g) The term "identification" shall mean:

87 (i) In the case of any individual, the name, the
88 mailing address, and the occupation of such individual, as well as
89 the name of his or her employer; and

90 (ii) In the case of any other person, the full name and
91 address of such person.

92 (h) The term "political party" shall mean an association,
93 committee or organization which nominates a candidate for election



94 to any elective office whose name appears on the election ballot
95 as the candidate of such association, committee or organization.

96 (i) The term "person" shall mean any individual, family,
97 firm, corporation, partnership, association or other legal entity.

98 (j) The term "independent expenditure" shall mean an
99 expenditure by a person expressly advocating the election or
100 defeat of a clearly identified candidate which is made without
101 cooperation or consultation with any candidate or any authorized
102 committee or agent of such candidate, and which is not made in
103 concert with or at the request or suggestion of any candidate or
104 any authorized committee or agent of such candidate or an
105 expenditure made by a person for the purpose of supporting or
106 opposing a candidate for judicial office including the
107 publication, advertisement or release of information, or payment
108 therefor, containing favorable or unfavorable information about a
109 judicial candidate.

110 (k) The term "clearly identified" shall mean that:

111 (i) The name of the candidate involved appears; or

112 (ii) A photograph or drawing of the candidate appears;

113 or

114 (iii) The identity of the candidate is apparent by
115 unambiguous reference.

116 **SECTION 2.** Section 23-15-807, Mississippi Code of 1972, is
117 amended as follows:

118 23-15-807. (a) Each candidate or political committee shall
119 file reports of contributions and disbursements in accordance with
120 the provisions of this section. All candidates or political
121 committees required to report may terminate its obligation to
122 report only upon submitting a final report that it will no longer
123 receive any contributions or make any disbursement and that such
124 candidate or committee has no outstanding debts or obligations.
125 The candidate, treasurer or chief executive officer shall sign
126 each such report.



127 (b) Candidates who are seeking election, or nomination for
128 election, and political committees that make expenditures for the
129 purpose of influencing or attempting to influence the action of
130 voters for or against the nomination for election, or election, of
131 one or more candidates or balloted measures at such election,
132 shall file the following reports:

133 (i) In any calendar year during which there is a
134 regularly scheduled election, a preelection report, which shall be
135 filed no later than the seventh day before any election in which
136 such candidate or political committee has accepted contributions
137 or made expenditures and which shall be complete as of the tenth
138 day before such election;

139 (ii) In 1987 and every fourth year thereafter, periodic
140 reports, which shall be filed no later than the tenth day after
141 April 30, May 31, June 30, September 30 and December 31, and which
142 shall be complete as of the last day of each period; and

143 (iii) In any calendar years except 1987 and except
144 every fourth year thereafter, a report covering the calendar year
145 which shall be filed no later than January 31 of the following
146 calendar year.

147 (c) All candidates for judicial office as defined in Section
148 23-15-975, or their political committees, shall file in the year
149 in which they are to be elected, periodic reports which shall be
150 filed no later than the tenth day after April 30, May 31, June 30,
151 September 30 and December 31.

152 (d) Contents of reports. Each report under this article
153 shall disclose:

154 (i) For the reporting period and the calendar year, the
155 total amount of all contributions and the total amount of all
156 expenditures of the candidate or reporting committee which shall
157 include those required to be identified pursuant to item (ii) of
158 this paragraph as well as the total of all other contributions and



159 expenditures during the calendar year. Such reports shall be
160 cumulative during the calendar year to which they relate;

161 (ii) The identification of:

162 1. Each person or political committee who makes a
163 contribution to the reporting candidate or political committee
164 during the reporting period, whose contribution or contributions
165 within the calendar year have an aggregate amount or value in
166 excess of Two Hundred Dollars (\$200.00) together with the date and
167 amount of any such contribution;

168 2. Each person or organization, candidate or
169 political committee who receives an expenditure, payment or other
170 transfer from the reporting candidate, political committee or its
171 agent, employee, designee, contractor, consultant or other person
172 or persons acting in its behalf during the reporting period when
173 the expenditure, payment or other transfer to such person,
174 organization, candidate or political committee within the calendar
175 year have an aggregate value or amount in excess of Two Hundred
176 Dollars (\$200.00) together with the date and amount of such
177 expenditure.

178 (iii) The total amount of cash on hand of each
179 reporting candidate and reporting political committee;

180 (iv) In addition to the contents of reports specified
181 in items (i), (ii) and (iii) of this paragraph, each political
182 party shall disclose:

183 1. Each person or political committee who makes a
184 contribution to a political party during the reporting period and
185 whose contribution or contributions to a political party within
186 the calendar year have an aggregate amount or value in excess of
187 Two Hundred Dollars (\$200.00), together with the date and amount
188 of the contribution;

189 2. Each person or organization who receives an
190 expenditure by a political party or expenditures by a political
191 party during the reporting period when the expenditure or



192 expenditures to the person or organization within the calendar
193 year have an aggregate value or amount in excess of Two Hundred
194 Dollars (\$200.00), together with the date and amount of the
195 expenditure.

196 (e) The appropriate office specified in Section 23-15-805
197 must be in actual receipt of the reports specified in this article
198 by 5:00 p.m. on the dates specified in paragraph (b) of this
199 section. If the date specified in paragraph (b) of this section
200 shall fall on a weekend or legal holiday then the report shall be
201 due in the appropriate office at 5:00 p.m. on the first working
202 day before the date specified in paragraph (b) of this section.
203 The reporting candidate or reporting political committee shall
204 ensure that the reports are delivered to the appropriate office by
205 the filing deadline. The Secretary of State may approve specific
206 means of electronic transmission of completed campaign finance
207 disclosure reports, which may include, but not be limited to,
208 transmission by electronic facsimile (FAX) devices.

209 (f) (i) If any contribution of more than Two Hundred
210 Dollars (\$200.00) is received by a candidate or candidate's
211 political committee after the tenth day, but more than forty-eight
212 (48) hours before 12:01 a.m. of the day of the election, the
213 candidate or political committee shall notify the appropriate
214 office designated in Section 23-15-805, within forty-eight (48)
215 hours of receipt of the contribution. The notification shall
216 include:

- 217 1. The name of the receiving candidate;
- 218 2. The name of the receiving candidate's political
219 committee, if any;
- 220 3. The office sought by the candidate;
- 221 4. The identification of the contributor;
- 222 5. The date of receipt;
- 223 6. The amount of the contribution;



224 7. If the contribution is in-kind, a description
225 of the in-kind contribution; and

226 8. The signature of the candidate or the treasurer
227 or director of the candidate's political committee.

228 (ii) The notification shall be in writing, and may be
229 transmitted by overnight mail, courier service, or other reliable
230 means, including electronic facsimile (FAX), but the candidate or
231 candidate's committee shall ensure that the notification shall in
232 fact be received in the appropriate office designated in Section
233 23-15-805 within forty-eight (48) hours of the contribution.

234 (g) The Secretary of State is authorized, upon
235 reasonable notice and probable cause that a violation of this
236 section has occurred, to audit the books and records of a
237 political committee and to subpoena the appropriate records to
238 determine if a violation of this section has occurred.

239 **SECTION 3.** Section 23-15-813, Mississippi Code of 1972, is
240 amended as follows:

241 23-15-813. (a) In addition to any other penalty permitted
242 by law, the Secretary of State shall require any candidate or
243 political committee, as identified in Section 23-15-805(a), and
244 any other political committee registered with the Secretary of
245 State, who fails to file a campaign finance disclosure report as
246 required under Sections 23-15-801 through 23-15-813, or Sections
247 23-17-47 through 23-17-53, or who shall file a report which fails
248 to substantially comply with the requirements of Sections
249 23-15-801 through 23-15-813, or Sections 23-17-47 through
250 23-17-53, to be assessed a civil penalty as follows:

251 (i) Within five (5) calendar days after any deadline
252 for filing a report pursuant to Sections 23-15-801 through
253 23-15-813, or Sections 23-17-47 through 23-17-53, the Secretary of
254 State shall compile a list of those candidates and political
255 committees who have failed to file a report. The Secretary of
256 State shall provide each candidate or political committee, who has



257 failed to file a report, notice of the failure by first-class
258 mail.

259 (ii) Beginning with the tenth calendar day after which
260 any report shall be due, the Secretary of State shall assess the
261 delinquent candidate and political committee a civil penalty of up
262 to Ten Thousand Dollars (\$10,000.00) for each day or part of any
263 day until a valid report is delivered to the Secretary of State,
264 up to a maximum of ten (10) days. However, in the discretion of
265 the Secretary of State, the assessing of the fine may be waived in
266 whole or in part if the Secretary of State determines that
267 unforeseeable mitigating circumstances, such as the health of the
268 candidate, interfered with timely filing of a report. Failure of
269 a candidate or political committee to receive notice of failure to
270 file a report from the Secretary of State is not an unforeseeable
271 mitigating circumstance, and failure to receive the notice shall
272 not result in removal or reduction of any assessed civil penalty.

273 (iii) Filing of the required report and payment of the
274 fine within ten (10) calendar days of notice by the Secretary of
275 State that a required statement has not been filed, constitutes
276 compliance with Sections 23-15-801 through 23-15-813, or Sections
277 23-17-47 through 23-17-53.

278 (iv) Payment of the fine without filing the required
279 report does not in any way excuse or exempt any person required to
280 file from the filing requirements of Sections 23-15-801 through
281 23-15-813, and Sections 23-17-47 through 23-17-53.

282 (v) If any candidate or political committee is assessed
283 a civil penalty, and the penalty is not subsequently waived by the
284 Secretary of State, the candidate or political committee shall pay
285 the fine to the Secretary of State within ninety (90) days of the
286 date of the assessment of the fine. If, after one hundred twenty
287 (120) days of the assessment of the fine the payment for the
288 entire amount of the assessed fine has not been received by the
289 Secretary of State, the Secretary of State shall notify the



290 Attorney General of the delinquency, and the Attorney General
291 shall file, where necessary, a suit to compel payment of the civil
292 penalty.

293 (b) (i) Upon the sworn application, made within sixty (60)
294 calendar days of the date upon which the required report is due,
295 of a candidate or political committee against whom a civil penalty
296 has been assessed pursuant to paragraph (a), the Secretary of
297 State shall forward the application to the State Board of Election
298 Commissioners. The State Board of Election Commissioners shall
299 appoint one or more hearing officers who shall be former
300 chancellors, circuit court judges, judges of the Court of Appeals
301 or justices of the Supreme Court, and who shall conduct hearings
302 held pursuant to this article. The hearing officer shall fix a
303 time and place for a hearing and shall cause a written notice
304 specifying the civil penalties that have been assessed against the
305 candidate or political committee and notice of the time and place
306 of the hearing to be served upon the candidate or political
307 committee at least twenty (20) calendar days before the hearing
308 date. The notice may be served by mailing a copy thereof by
309 certified mail, postage prepaid, to the last known business
310 address of the candidate or political committee.

311 (ii) The hearing officer may issue subpoenas for the
312 attendance of witnesses and the production of books and papers at
313 the hearing. Process issued by the hearing officer shall extend
314 to all parts of the state and shall be served by any person
315 designated by the hearing officer for the service.

316 (iii) The candidate or political committee has the
317 right to appear either personally, by counsel or both, to produce
318 witnesses or evidence in his behalf, to cross-examine witnesses
319 and to have subpoenas issued by the hearing officer.

320 (iv) At the hearing, the hearing officer shall
321 administer oaths as may be necessary for the proper conduct of the
322 hearing. All hearings shall be conducted by the hearing officer,



323 who shall not be bound by strict rules of procedure or by the laws
324 of evidence in the conduct of the proceedings, but the
325 determination shall be based upon sufficient evidence to sustain
326 it. The scope of review at the hearing shall be limited to making
327 a determination of whether failure to file a required report was
328 due to an unforeseeable mitigating circumstance.

329 (v) Where, in any proceeding before the hearing
330 officer, any witness fails or refuses to attend upon a subpoena
331 issued by the commission, refuses to testify, or refuses to
332 produce any books and papers the production of which is called for
333 by a subpoena, the attendance of the witness, the giving of his
334 testimony or the production of the books and papers shall be
335 enforced by any court of competent jurisdiction of this state in
336 the manner provided for the enforcement of attendance and
337 testimony of witnesses in civil cases in the courts of this state.

338 (vi) Within fifteen (15) calendar days after conclusion
339 of the hearing, the hearing officer shall reduce his or her
340 decision to writing and forward an attested true copy of the
341 decision to the last known business address of the candidate or
342 political committee by way of United States first-class, certified
343 mail, postage prepaid.

344 (c) (i) The right to appeal from the decision of the
345 hearing officer in an administrative hearing concerning the
346 assessment of civil penalties authorized pursuant to this section
347 is granted. The appeal shall be to the Circuit Court of Hinds
348 County and shall include a verbatim transcript of the testimony at
349 the hearing. The appeal shall be taken within thirty (30)
350 calendar days after notice of the decision of the commission
351 following an administrative hearing. The appeal shall be
352 perfected upon filing notice of the appeal and by the prepayment
353 of all costs, including the cost of the preparation of the record
354 of the proceedings by the hearing officer, and the filing of a
355 bond in the sum of Two Hundred Dollars (\$200.00), conditioned that



356 if the decision of the hearing officer be affirmed by the court,
357 the candidate or political committee will pay the costs of the
358 appeal and the action in court. If the decision is reversed by
359 the court, the Secretary of State will pay the costs of the appeal
360 and the action in court.

361 (ii) If there is an appeal, the appeal shall act as a
362 supersedeas. The court shall dispose of the appeal and enter its
363 decision promptly. The hearing on the appeal may be tried in
364 vacation, in the court's discretion. The scope of review of the
365 court shall be limited to a review of the record made before the
366 hearing officer to determine if the action of the hearing officer
367 is unlawful for the reason that it was 1. not supported by
368 substantial evidence, 2. arbitrary or capricious, 3. beyond the
369 power of the hearing officer to make, or 4. in violation of some
370 statutory or constitutional right of the appellant. The decision
371 of the court may be appealed to the Supreme Court in the manner
372 provided by law.

373 (d) If, after forty-five (45) calendar days of the date of
374 the administrative hearing procedure set forth in paragraph (b),
375 the candidate or political committee identified in paragraph (a)
376 of this section fails to pay the monetary civil penalty imposed by
377 the hearing officer, the Secretary of State shall notify the
378 Attorney General of the delinquency. The Attorney General shall
379 investigate the offense in accordance with the provisions of this
380 chapter, and where necessary, file suit to compel payment of the
381 unpaid civil penalty.

382 (e) If, after twenty (20) calendar days of the date upon
383 which a campaign finance disclosure report is due, a candidate or
384 political committee identified in paragraph (a) of this section
385 shall not have filed a valid report with the Secretary of State,
386 the Secretary of State shall notify the Attorney General of those
387 candidates and political committees who have not filed a valid



388 report, and the Attorney General shall thereupon prosecute the
389 delinquent candidates and political committees.

390 **SECTION 4.** The Attorney General of the State of Mississippi
391 is hereby directed to submit this act, immediately upon approval
392 by the Governor, or upon approval by the Legislature subsequent to
393 a veto, to the Attorney General of the United States or to the
394 United States District Court for the District of Columbia in
395 accordance with the provisions of the Voting Rights Act of 1965,
396 as amended and extended.

397 **SECTION 5.** This act shall take effect and be in force from
398 and after the date it is effectuated under Section 5 of the Voting
399 Rights Act of 1965, as amended and extended.

