SENATE BILL NO. 2708

AN ACT TO ESTABLISH A PROCEDURE BY WHICH ELECTED JUDGES MAY BE RECALLED IN ELECTIONS HELD FOR THAT PURPOSE; TO PROVIDE THAT A RECALL ELECTION SHALL BE HELD AFTER A PETITION REQUESTING THE ELECTION WHICH CONTAINS THE REQUISITE NUMBER OF SIGNATURES HAS BEEN FILED; TO PROVIDE THAT IF A JUDGE IS RECALLED IN AN ELECTION, A SPECIAL ELECTION SHALL BE CALLED TO FILL THE VACANCY CREATED BY THE RECALL; AND FOR RELATED PURPOSES.

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

SECTION 1. This act shall be known and may be cited as the "Judges Recall Act."

SECTION 2. As used in this act, the term:

(a) "Election superintendent" means:

(i) In the case of a justice of the Supreme Court, judge of the Court of Appeals, circuit judge or chancellor, the Secretary of State; and

(ii) In the case of a county court judge, family court judge or justice court judge, the county board of election commissioners.

(b) "Elector" means any person who possesses all of the qualifications for voting prescribed now or after the effective date of Senate Bill No. _____, 2002 Regular Session, by the laws of this state, and who has registered in accordance with Article 3 of the Mississippi Election Code.

(c) "Electoral district" means the area in which the electors reside who are qualified to vote for any of the candidates running for judicial office.

(d) "Official sponsors" or "sponsors" means the electors who file an application for a recall petition who are registered and eligible to vote in the recall election and who
SECTION 3. (1) Every judge who holds an elected office, either by election or by appointment, is subject to recall from office by electors who are registered and qualified to vote in the recall election and who reside in the electoral district from which candidates are elected to that office.

(2) The number of electors necessary to petition the recall of a judge shall be calculated as follows: Fifty Percent (50%) plus one (1) of the number of votes cast in the most recent election in which the judge was elected to the term the petition seeks to vacate.

(3) A recall petition may not demand the recall of more than one (1) public official.

SECTION 4. (1) An application for a recall petition may not be filed during the first one hundred eighty (180) days or during the last one hundred eighty (180) days of the term of office of any judge subject to recall.

(2) The application shall include:

(a) The name and office of the person sought to be recalled;

(b) The printed names and signatures of the official sponsors, the date signed, residence addresses, and the name of the county of residence; and

(c) The designation of one (1) of the sponsors as the petition chairman who shall represent the sponsors on all matters pertaining to the recall application and petition.

The official application forms shall be printed by the Office of the Secretary of State in substantially the form prescribed in this subsection, and distributed to election superintendents.

(3) The number of official sponsors necessary to file an application for a recall petition must be equal in number to the smaller of either one hundred (100) or more electors or at least...
ten percent (10%) of the number of electors who voted at the last preceding general election for any of the candidates running for the office held by the judge sought to be recalled.

(4) Sponsors of a recall petition, before having the petition circulated, shall submit the application for the petition to the election superintendent and request official recall petition forms.

(5) At any time before the date the election superintendent receives the application for a recall petition, an elector who has signed the application as an official sponsor may request withdrawal of his signature from the application by executing and filing an affidavit signed and sworn to before a notary public which affirms the elector's intention to withdraw his signature from the application. The official affidavit of signature withdrawal shall be printed by the Office of Secretary of State and distributed to election superintendents. The form of the affidavit shall be substantially as prescribed in Section 7 of Senate Bill No. _____, 2002 Regular Session.

(6) On receipt of the application, the election superintendent shall determine the sufficiency of the application and determine if the signers are qualified electors eligible to sign the application. The election superintendent or his designee is granted unrestricted authority to examine the registration records maintained by the registrar of electors for the purpose of making the determination. If the election superintendent finds that any signer is not a qualified elector eligible to sign the application, the signature shall not be counted in determining whether the application contains a sufficient number of signatures as required by law. The election superintendent shall certify the sufficiency or insufficiency of the application for a recall petition within five (5) days after receiving the application, excluding Saturdays, Sundays and legal holidays.
(7) An application for a recall petition shall not be amended, supplemented, or returned after it has been accepted by the election superintendent for verification.

(8) Upon certifying the sufficiency of the application, the election superintendent immediately shall officially file the application, issue official recall petition forms, assign a number to the recall petition, which number shall appear on the face of each petition form, and issue that number to the sponsors. A record of each application, including the date of its receipt and the number assigned and issued to the sponsors, shall be maintained by the election superintendent.

(9) The election superintendent shall notify immediately in writing the judge named for recall in the application that a recall petition has been officially issued for circulation.

(10) The official recall petition forms shall be printed by the Office of Secretary of State and distributed to election superintendents. The form of the petition shall be as provided in Section 5 of this act.

SECTION 5. (1) The form of the recall petition shall be substantially as follows:

"RECALL PETITION

__________________________
(Official Application No.)

__________________________
(County or city)

To (Name of election superintendent)______________________________

(Address)_________________________________________________________

(City, state, zip code)___________________________________________

We, the electors registered and eligible to vote in the recall election herein petitioned for, demand the recall of ______________________________(Name and office).

Name (Signature)______________________________
(2) The following statement shall be written or printed on each petition and each signer must read, or be read, the following statement:

"If (insert appropriate number) electors sign this petition, there will be an election at which sixty percent (60%) of the electors voting in the election will determine whether the above-named official will be removed from office."

SECTION 6. (1) All signers of a single recall petition shall be electors who are registered and eligible to vote in the recall election and who reside in the electoral district of the judge sought to be recalled. When a petition for the recall of a judge is circulated in more than one (1) county, each sheet of the petition shall bear the name of the county in which it is circulated, and only electors of the designated county may sign the sheet.

(2) Every elector signing a recall petition shall do so in the presence of the person circulating the petition, who is to execute the affidavit of verification on the reverse side of the petition form. At the time of signing, the elector shall sign his name, and the elector or the person circulating the petition shall print the name of the elector below the elector's signature and shall print or write in the appropriate spaces following the signature the elector's residence address, giving the number and street or route and city, the name of the county, and the date on which the elector signed the petition.

(3) If an elector is incapable of signing his own name, he may specifically request the circulator of the petition to sign
and print his name and complete the information required on the
petition sheet to accompany the signature. However, the
circulator shall sign his name beside the printed name of the
elector.

(4) The person before whom the electors signed the recall
petition shall verify, in an affidavit subscribed and sworn to by
him before a notary public, that each of the names on the petition
form was signed in his presence on the date indicated and that in
his belief each signer was an elector of the electoral district of
the official sought to be recalled.

(5) The affidavit printed on the reverse side of each recall
petition form shall be in the following form:

"AFFIDAVIT OF CIRCULATOR

State of Mississippi
County of _________

Under the penalty of a misdemeanor, punishable by a fine not
to exceed One Thousand Dollars ($1,000.00) or by imprisonment not
to exceed twelve (12) months, or both, I state that I am an
elector registered and eligible to vote in the recall election
herein petitioned for and that each petitioner signed or caused to
be signed the foregoing petition in my presence on the date
indicated; and I believe that each signer's name and residence
address are correctly stated, and that each signer is an elector
of the electoral district in which the recall election will be
conducted, and that each signer has read, or was read, the
required statement which is set out on each petition.

(Signature of affiant)________________________

(Residence address) __________________________

(Number and street or route) _________________

(City)_______________________________________

Subscribed and sworn to before me this the _____ day of

__________, 2____.

Notary Public ______________________________

S. B. No. 2708
SS06/R1258
02/SS06/R1258
PAGE 6
My commission expires on the _____ day of ______, 2___.

(6) An elector may change the way his signature and residence address appear on a recall petition at any time before the filing of the petition for verification by striking through his name and initialing the strike-through and re-signing the petition with his printed name corrected accordingly.

SECTION 7. (1) At any time before the date an application for recall petition or a recall petition is filed for verification, an elector who has signed the application or the recall petition form may request withdrawal of his signature from the application or recall petition by executing and filing an affidavit, in the form prescribed by this section, with the election superintendent. Any signature so withdrawn shall not be counted in determining the sufficiency of the application or recall petition. The affidavit shall:

(a) Be signed and sworn to before a notary public;

(b) State the elector's residence address, giving the number and street or route and city, the name of the county of residence, and, in the case of a recall petition, the number of the petition which he signed; and

(c) Affirm the elector's intention to withdraw his signature from the application or recall petition.

(2) The affidavit shall be substantially in the following form:

"AFFIDAVIT OF SIGNATURE WITHDRAWAL
State of Mississippi
County of _________
I, ________________, (Name as it appears on the application or recall petition) first being duly sworn, state that I am an elector of the _____ electoral district in which the recall election will be conducted.
That my residence address is (number, street or route)________
_____________________________ (city) ___________________________.

That I signed or caused to be signed the application or the petition for the recall of ________ (name and office of person sought to be recalled) and, in the case of an affidavit for withdrawal of a signature on a recall petition, that the recall petition has been assigned number ________________________.

That it is my intention by the signing and filing of this affidavit to withdraw my signature therefrom.

Signature of elector_______________________

Subscribed and sworn to before me this the ______ day of __________, 2____.

Notary Public_____________________________
_____________________________, Mississippi

My commission expires on the _____ day of ________, 2____.

SECTION 8. A registrar of electors or any other person authorized by law to register electors and any person other than an elector of the electoral district of the judge sought to be recalled shall not circulate a recall petition. An employee of the state shall not circulate a recall petition. All signatures obtained by any unqualified person shall be void and shall not be counted in determining the sufficiency of the petition.

SECTION 9. (1) The election superintendent shall be responsible for determining the sufficiency of the recall petition within thirty (30) days after it has been submitted to him. The election superintendent or his designee is granted unrestricted authority to examine the registration records maintained by the registrar of electors for the purpose of determining if the signers are qualified electors eligible to sign the recall petition. If the election superintendent is not reasonably able to ascertain that any signature is that of a qualified elector eligible to sign the recall petition, the signature shall not be
counted in determining whether the petition contains a sufficient number of signatures as required by law.

(2) A recall petition shall not be accepted as verification for a judicial office if more than one hundred twenty (120) days have elapsed since the date the official recall petition forms were issued to the sponsors.

(3) No recall petition shall be amended, supplemented, or returned after it has been accepted by the election superintendent for verification.

(4) Within five (5) days, excluding Saturday, Sunday and legal holidays, after the election superintendent has certified the sufficiency of a petition, he shall notify the Governor or the appropriate official, who shall call the recall election as provided in Section 10 of Senate Bill No. _____, 2002 Regular Session.

(5) Upon certifying the sufficiency or insufficiency of a recall petition, the election superintendent shall notify immediately the petition chairman and the officeholder in writing of the results and officially file the petition.

SECTION 10. (1) Within ten (10) days after having received certification of the sufficiency of the recall petition by the election superintendent, a recall election shall be called as provided in this section, and shall be conducted not less than thirty (30) days nor more than forty-five (45) days after the call. However, if a primary or general election is to be held not less than thirty (30) days nor more than forty-five (45) days after the call is issued, the recall election shall be conducted on that date.

(2) A recall election shall be called:

(a) By the Governor, if for a justice of the Supreme Court, judge of the Court of Appeals, circuit judge or chancellor; or
(b) By the board of supervisors of the county, if for a county court judge or a justice court judge.

(3) Notice of the election shall be published for two (2) consecutive weeks in a newspaper of general circulation in the electoral district.

(4) It shall be the duty of the appropriate official authorized by law to conduct elections to hold and conduct the recall election and to declare and certify the results. The ballot for the recall election shall state the name and office of the person whose recall has been petitioned, and the ballot shall be in the form prescribed by law for state or county officials.

The ballot shall have written or printed thereon the following:

"( ) YES Shall (name of officeholder), (name of office) be recalled and removed from public office?"

If more than one (1) public official is subject to a recall election in the same precinct, a recall ballot may be prepared to include on a single ballot separate recall questions for each of the officials sought to be recalled.

(5) Those persons desiring to vote in favor of recall shall vote "Yes," and those persons desiring to vote against recall shall vote "No." If sixty percent (60%) of the votes cast on the question are in favor of recall, the public office in question shall become vacant immediately. Otherwise, the public official named in the recall petition shall continue in office.

(6) A special election shall be called by the appropriate state or local official to fill a vacancy created by a recall election. The special election shall be called within ten (10) days after the date of the recall election and shall be conducted at least thirty (30) days but not more than forty-five (45) days following the call. If no official is specifically designated by law, the Governor shall issue the call for a special election to fill the vacancy created by recall. Any person who has been
recalled from office under this act shall not be eligible to run for election to fill the vacancy created by recall.

SECTION 11. After a recall petition and election, no further recall petition may be filed against the same judge until at least six (6) months have elapsed from the date of the previous recall election. Any other recall petitions filed against that judge which are outstanding on the date of the recall election shall be void.

SECTION 12. The Secretary of State may promulgate any rules and regulations which are necessary to carry out this act.

(1) If the election superintendent fails to comply with this act, any elector may apply, within ten (10) days after the refusal, to the circuit court for a writ of mandamus to compel him to perform his official duties. If the court finds that the election superintendent has not complied with this act, the court shall issue an order for the election superintendent to comply. If a circuit court judge is the subject of the recall petition, then he or she shall not preside over the hearing for the writ of mandamus.

(2) An action against an election superintendent shall be filed in the circuit court of the county of the election superintendent, except that an action against the Secretary of State shall be filed in the Circuit Court of the First Judicial District of Hinds County.

SECTION 13. This act is supplementary to any other methods provided by law for removing a judge from office; and nothing in this act shall be construed as abridging or repealing those laws.

SECTION 14. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the

SECTION 15. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.