

By: Senator(s) Smith

To: Elections

SENATE BILL NO. 2478

1 AN ACT TO PROVIDE THAT IF AN ELECTED PUBLIC OFFICER DECLARES
2 A CHANGE IN HIS OR HER PARTY AFFILIATION DURING THE TERM OF HIS OR
3 HER OFFICE, SUCH PUBLIC OFFICER SHALL BE REMOVED FROM OFFICE; TO
4 PROVIDE THAT SUCH REMOVAL SHALL BE INITIATED BY THE FILING OF AN
5 AFFIDAVIT WITH THE STATE BOARD OF ELECTION COMMISSIONERS; TO
6 REQUIRE THAT NOTICE OF THE AFFIDAVIT SHALL BE GIVEN TO THE ELECTED
7 PUBLIC OFFICER WITHIN 10 DAYS AFTER RECEIPT OF THE AFFIDAVIT; TO
8 REQUIRE THAT A NOTICE TO APPEAR AT A HEARING AT A TIME SET BY THE
9 STATE BOARD OF ELECTION COMMISSIONERS SHALL BE GIVEN TO THE
10 ELECTED PUBLIC OFFICER AT LEAST 20 DAYS PRIOR TO THE DATE WHEN HIS
11 APPEARANCE IS REQUIRED; TO PROVIDE THAT A COUNCIL OF THREE
12 CHANCERY COURT JUDGES SHALL BE CONVENED AT THE TIME AND PLACE
13 STATED IN THE NOTICE TO DETERMINE IF THE ALLEGATION OF A CHANGE IN
14 PARTY AFFILIATION BY THE ELECTED PUBLIC OFFICER IS FACTUAL; TO
15 PROVIDE THAT THE PUBLIC SHALL BE GIVEN NOTICE OF THE HEARING BY A
16 PROCLAMATION OF THE STATE BOARD OF ELECTION COMMISSIONERS AND THAT
17 ANY CITIZEN MAY APPEAR AND GIVE RELEVANT EVIDENCE; TO PROVIDE THAT
18 IF THE COUNCIL DETERMINES BY CLEAR AND CONVINCING EVIDENCE THAT A
19 CHANGE IN PARTY AFFILIATION HAS OCCURRED, IT SHALL PRESENT ITS
20 FINDINGS TO THE GOVERNOR WHO SHALL REMOVE THE ELECTED PUBLIC
21 OFFICER FROM OFFICE AND DECLARE A VACANCY IN OFFICE IF THE OFFICE
22 IS A LOCAL OFFICE OR APPOINT A REPLACEMENT IF THE OFFICE IS A
23 STATEWIDE OR STATE DISTRICT OFFICE; TO PROVIDE THAT IN THE EVENT
24 THE GOVERNOR IS ALLEGED TO HAVE CHANGED PARTY AFFILIATION, THE
25 LIEUTENANT GOVERNOR SHALL PERFORM THE DUTIES OF THE GOVERNOR UNDER
26 THIS ACT; TO PROVIDE THAT IF A PUBLIC OFFICER IS REMOVED ALL HIS
27 MONETARY CAMPAIGN CONTRIBUTIONS SHALL BE FORFEITED AND DEPOSITED
28 IN A SPECIAL FUND CREATED BY THIS ACT TO ASSIST IN THE DEFRAYING
29 OF ELECTIONS REQUIRED BY THIS ACT; TO PROVIDE A PROCEDURE FOR THE
30 FORFEITURE OF MONETARY CAMPAIGN CONTRIBUTIONS; AND FOR RELATED
31 PURPOSES.

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

33 **SECTION 1.** (1) As used in this act the term "elected public
34 officer" means any elected statewide, state district, county or
35 municipal officer.

36 (2) If an elected public officer declares a change in his or
37 her party affiliation during the term of his or her office and
38 prior to the qualifying deadline for such office, such public
39 officer shall be removed from office in the manner provided for in
40 this act.



41 **SECTION 2.** (1) Any qualified elector may initiate the
42 removal of an elected public officer for a declaration of a change
43 in party affiliation as provided in Section 1 of this act by
44 filing an affidavit with the State Board of Election Commissioners
45 stating the facts supporting the allegation of a change in party
46 affiliation.

47 (2) When an affidavit is filed with the State Board of
48 Election Commissioners, the board shall, within ten (10) days of
49 the filing thereof, cause true copies to be personally delivered
50 by some officer, designated in writing by the board, to the
51 elected public officer named in the affidavit, and shall in like
52 manner and form cause to be personally served on the elected
53 public officer named in the affidavit a notice to appear, if he
54 desires, at a time to be fixed by the State Board of Election
55 Commissioners to show that the allegation of a change in party
56 affiliation contained in the affidavit is false. The notice shall
57 be served upon the officer at least twenty (20) days prior to the
58 date when his appearance is required. The place of hearing shall
59 be the county courthouse of the county in which the officer
60 resides.

61 **SECTION 3.** At the time and place designated in the notice,
62 the Governor shall cause to be convened a removal council to be
63 composed of three (3) chancery judges appointed by the State Board
64 of Election Commissioners, none of whom shall reside in the
65 district in which the officer under question resides, to hear and
66 determine whether the allegation of change of party affiliation
67 contained in the affidavit is factual. The senior chancellor
68 shall serve as the presiding judge of the council. The hearing
69 herein provided may continue from day to day and be recessed from
70 time to time, as in the discretion of the council may be ordered.
71 The public shall be given notice of the hearing by proclamation of
72 the State Board of Election Commissioners of the time and place of
73 such hearing. Any interested citizen or citizens may likewise



74 appear at the hearing and make such representations to the council
75 as, in the discretion of the council, may be material to the
76 issues involved. The council shall promulgate rules for such
77 hearings, which shall be in writing, but all representations shall
78 be made under oath, to be administered by some member of the
79 council. It shall not be necessary that a stenographic record be
80 kept of the hearing, but the testimony taken shall be heard as
81 nearly as practicable in compliance with the usually applicable
82 rules of evidence. All decisions of the council on any question,
83 preliminary or final, including the question of whether just cause
84 for a removal has been shown, shall be final and not subject to
85 review.

86 The elected public officer concerned shall be entitled to be
87 represented by counsel of his choice at the hearing.

88 **SECTION 4.** (1) The council shall keep minutes of its final
89 judgments, and the disposition of each affidavit shall be recorded
90 therein. If it be the judgment of the council that the change in
91 party affiliation has not been proven by clear and convincing
92 evidence to have occurred, then the affidavit shall be dismissed.

93 (2) If the council shall be of the opinion that a change in
94 party affiliation has been shown by clear and convincing evidence,
95 the council shall present its findings to the Governor who shall:

96 (a) Declare a vacancy in the elective office if the
97 office is a county or municipal office; or

98 (b) Appoint a qualified person to serve in the elective
99 office if the office is a statewide or a state district office.

100 (3) If an elected public officer is removed under this act,
101 all monetary campaign contributions that are reported or required
102 to be reported under Sections 23-15-801 through 23-15-817 that are
103 in possession of the officer at the time of his removal or on the
104 qualifying deadline for the office from which he is removed if he
105 is removed after such deadline, shall be subject to forfeiture to



106 the state as provided in Section 8 of this act and shall be
107 deposited in the special fund created in Section 7 of this act.

108 **SECTION 5.** The elected public officer named in the removal
109 petition shall continue to perform the duties of his office until
110 the council issues its decision. If, however, the officer named
111 in the affidavit shall offer his resignation before the issuance
112 of the decision of the council, it shall be accepted, shall take
113 effect on the date it is offered, and the vacancy shall be filled
114 as provided by law for the filling of any vacancy in an elective
115 county office.

116 **SECTION 6.** In the event the Governor is named in the
117 affidavit filed with the State Board of Election Commissioners
118 pursuant to this act, the Lieutenant Governor shall perform the
119 duties of the Governor under this act.

120 **SECTION 7.** There is hereby created in the State Treasury a
121 special fund to be designated as the "Removal From Office Election
122 Fund" into which shall be deposited funds as required by this act.
123 Money in the fund shall not lapse and shall be utilized to assist
124 local jurisdictions in defraying the cost of elections required by
125 this act.

126 **SECTION 8.** (1) When campaign contributions are subject to
127 forfeiture under this act, proceedings under this section shall be
128 instituted promptly.

129 (2) (a) A petition for forfeiture shall be filed promptly
130 in the name of the State of Mississippi with the clerk of the
131 circuit court of the county in which the person to whom the
132 contributions were made lives. A copy of such petition shall be
133 served upon the person to whom the monetary campaign contributions
134 were made and any person in possession of the monetary campaign
135 contributions.

136 (b) If there is any reasonable cause to believe that
137 the monetary contributions are encumbered, then the state shall



138 make a good faith inquiry to identify the person to whom they are
139 encumbered.

140 (c) No proceedings instituted pursuant to this section
141 shall proceed to hearing unless the judge conducting the hearing
142 is satisfied that this section has been complied with. Any answer
143 received from an inquiry required by this section shall be
144 introduced into evidence at the hearing.

145 (3) (a) The removed officer shall file a verified answer
146 within twenty (20) days after the completion of service of
147 process. If no answer is filed, the court shall hear evidence
148 that monetary campaign contributions of the removed officer are
149 subject to forfeiture and forfeit the property to the state. If
150 an answer is filed, a time for hearing on forfeiture shall be set
151 within thirty (30) days of filing the answer or at the succeeding
152 term of court if court would not be in progress within thirty (30)
153 days after filing the answer.

154 (b) If the removed public officer has filed a verified
155 answer denying that the monetary contributions are subject to
156 forfeiture, then the burden is on the state to prove that the
157 contributions are subject to forfeiture. The burden of proof
158 placed upon the state shall be by a clear and convincing evidence.
159 However, if no answer has been filed, the petition for forfeiture
160 may be introduced into evidence and is prima facie evidence that
161 the monetary campaign contributions are subject to forfeiture.

162 (c) At the hearing any claimant of any interest in the
163 monetary campaign contributions may prove his interest.

164 (d) If it is found that the monetary campaign
165 contributions are subject to forfeiture, then the judge shall
166 forfeit the property to the state. However, if proof at the
167 hearing discloses that the value of interest of any claimant is
168 greater than or equal to the contribution, the court shall order
169 the contribution released to him. If the value of such interest
170 is less than the contribution and if the proof shows that the



171 contribution is subject to forfeiture, the court shall order the
172 property forfeited to the state.

173 (4) All contributions which are forfeited to the state shall
174 be forwarded to the State Treasurer and deposited in the special
175 fund created in Section 7 of this act; however, the forfeited
176 contributions shall first be applied to the satisfaction of all
177 interests, if any, in such contributions.

178 **SECTION 9.** The Attorney General of the State of Mississippi
179 shall submit this act, immediately upon approval by the Governor,
180 or upon approval by the Legislature subsequent to a veto, to the
181 Attorney General of the United States or to the United States
182 District Court for the District of Columbia in accordance with the
183 provisions of the Voting Rights Act of 1965, as amended and
184 extended.

185 **SECTION 10.** This act shall take effect and be in force from
186 and after the date it is effectuated under Section 5 of the Voting
187 Rights Act of 1965, as amended and extended.

