

By: Senator(s) Gollott

To: Municipalities;
Elections

SENATE BILL NO. 2846

1 AN ACT TO AMEND SECTIONS 25-5-3, 25-5-7, 25-5-9, 25-5-13,
2 25-5-15, 25-5-17, 25-5-19, 25-5-21, 25-5-23, 25-5-25, 25-5-27 AND
3 25-5-33, MISSISSIPPI CODE OF 1972, TO INCLUDE MUNICIPAL ELECTED
4 OFFICIALS IN THE LAWS WHICH PRESCRIBE THE PROCEDURES FOR THE
5 REMOVAL OF COUNTY ELECTED OFFICIALS BY PETITION ELECTION; AND FOR
6 RELATED PURPOSES.

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

8 **SECTION 1.** Section 25-5-3, Mississippi Code of 1972, is
9 amended as follows:

10 25-5-3. The Governor is hereby empowered, in accordance with
11 the provisions of Section 139 of the Mississippi Constitution of
12 1890, through the procedure and under the regulations prescribed
13 in Sections 25-5-3 through 25-5-37 and for the reasons and causes
14 set forth, to remove any elective county or municipal officer in
15 this state; and every elective officer of any county in this state
16 may be removed from office by the Governor at any time when done
17 in compliance with the regulations hereinafter set forth.

18 **SECTION 2.** Section 25-5-7, Mississippi Code of 1972, is
19 amended as follows:

20 25-5-7. Before the Governor shall consider the removal from
21 * * * office * * * any elective county or municipal officer,
22 there shall be first filed with him a petition signed by not less
23 than thirty percent (30%) of the qualified electors of the county
24 or municipality, as the case may be, demanding the removal of the
25 officer. The petition shall contain a general statement, in not
26 more than two hundred (200) words, of the ground or grounds on
27 which the removal is demanded, which statement shall be for the
28 information of the officer involved, for the information of the



29 council * * *, and for the information of the qualified electors
30 of the county or municipality, as the case may be.

31 All removal petitions with reference to only supervisors,
32 justice court judges, constables and aldermen must be signed by at
33 least fifty-one percent (51%) of the qualified electors of
34 the * * * district from which the officer was * * * elected.

35 Upon the request of any qualified elector, it shall be the
36 duty of the county and district prosecuting attorney to advise
37 such person as to the provisions of Sections 25-5-3 through
38 25-5-37 and how to comply with the same.

39 **SECTION 3.** Section 25-5-9, Mississippi Code of 1972, is
40 amended as follows:

41 25-5-9. The removal petitions shall be in substantially the
42 following forms:

43 (a) **REMOVAL PETITION**

44 (WARNING. It is a misdemeanor, punishable by fine and
45 imprisonment, for any person to sign any removal petition with any
46 name other than his own, or knowingly to sign his name more than
47 once to the petition, or knowingly to sign the petition when he is
48 not a qualified elector.)

49 Date: _____

50 TO THE GOVERNOR OF THE STATE OF MISSISSIPPI:

51 We, the undersigned qualified electors of _____ County,
52 State of Mississippi, respectfully demand that _____, holding
53 the office of _____ in the county, be removed from office by
54 the Governor for the following reasons, to wit: (Setting out the
55 reasons for removal in not more than two hundred words); that a
56 special election, after lawful notice, be called to permit the
57 qualified electors of the county to vote on the question of
58 whether or not the * * * officer shall be removed;

59 That we each for himself say that: I am a qualified elector
60 of the county, and my voting precinct is correctly written after
61 my name, and that it was stated to me before the signing of the



62 petition that after signing the same I would not be permitted to
63 remove my name from the petition.

64	<u>NAME</u>	<u>VOTING PRECINCT</u>
65	1. _____	_____
66	2. _____	_____
67	3. _____	_____

68 (b) **REMOVAL PETITION**

69 (WARNING.--It is a misdemeanor, punishable by fine and
70 imprisonment, for any person to sign any removal petition with any
71 name other than his own, or knowingly to sign his name more than
72 once to such petition, or knowingly to sign the petition when he
73 is not a qualified elector.)

74 Date: _____

75 TO THE GOVERNOR OF THE STATE OF MISSISSIPPI:

76 We, the undersigned qualified electors of the municipality of
77 _____ , _____ County, State of Mississippi, respectfully
78 demand that _____ , holding the office of _____ in the
79 municipality, be removed from office by the Governor for the
80 following reasons, to wit: (Setting out the reasons for removal
81 in not more than two hundred (200) words); that a special
82 election, after lawful notice, be called to permit the qualified
83 electors of the municipality to vote on the question of whether or
84 not the officer shall be removed;

85 That we each for himself say that: I am a qualified elector
86 of the municipality, and my voting precinct is correctly written
87 after my name, and that it was stated to me before the signing of
88 the petition that after signing the same I would not be permitted
89 to remove my name from the petition.

90	<u>NAME</u>	<u>VOTING PRECINCT</u>
91	1. _____	_____
92	2. _____	_____
93	3. _____	_____



94 SECTION 4. Section 25-5-13, Mississippi Code of 1972, is
95 amended as follows:

96 25-5-13. Each and every petition, or separately circulated
97 section thereof, containing signatures shall be verified on the
98 last page thereof in substantially the following forms:

99 (a) STATE OF MISSISSIPPI

100 County of _____

101 I, _____, a qualified elector of the county do now state
102 under oath that every person who signed the foregoing petition
103 signed his or her name thereto in my presence, and that before the
104 signing of the petition the signator was told that after signing
105 the same his or her name could not be removed from the petition;
106 that I believe that each has stated his or her name and precinct
107 correctly, and that so far as I know each signer is a qualified
108 elector of this county, and I further certify that the date
109 appearing on the foregoing petition is the correct date on which
110 the first signature was affixed to the petition or any section
111 thereof.

112 (Signature) _____

113 Sworn to and subscribed before me, this _____ day of
114 _____, 2_____.

115 _____

116 _____

117 (b) STATE OF MISSISSIPPI

118 County of _____

119 Municipality of _____

120 I, _____, a qualified elector of the municipality, do
121 now state under oath that every person who signed the foregoing
122 petition signed his or her name thereto in my presence, and that
123 before the signing of the petition the signator was told that
124 after signing the same his or her name could not be removed from
125 the petition; that I believe that each has stated his or her name
126 and precinct correctly, and that so far as I know each signer is a



127 qualified elector of this municipality, and I further certify that
128 the date appearing on the foregoing petition is the correct date
129 on which the first signature was affixed to the petition or any
130 section thereof.

131 (Signature) _____

132 Sworn to and subscribed before me, this _____ day of

133 _____, 2 _____.

134 _____

135 _____

136 **SECTION 5.** Section 25-5-15, Mississippi Code of 1972, is
137 amended as follows:

138 25-5-15. (1) Before the submission of the county petitions
139 to the Governor to be filed by him, all sections of the same shall
140 be consolidated and delivered to the county registrar of the
141 county in which the petition has been circulated. No signatures
142 shall be thereafter added. The county registrar shall compare the
143 signatures of the persons appearing on the petition with the names
144 of the qualified electors appearing on the poll books of the
145 county, and shall attach to the petition, or to each section of
146 the petition if the same has been circulated in sections, the
147 following certificate:

148 STATE OF MISSISSIPPI

149 County of _____

150 I, _____, county registrar in and for the county and state
151 aforesaid, do hereby certify that I have compared the signatures
152 on the preceding sheets of the removal petition attached hereto,
153 and to the best of my knowledge and belief the * * * petition (or
154 section of petition) contains the signatures of _____ qualified
155 electors of the county (or beat, as case may be), and I have drawn
156 a line in red ink through the names of those signators who appear
157 by the records in my office not to be qualified electors, or who
158 have died. I further certify that as of the date of the petitions



159 there were _____ qualified electors in this county (or beat, as
160 the case may be).

161 Given under my hand and seal of office, this the _____ day
162 of _____, 2_____.

163 _____
164 County Registrar

165 (2) Before the submission of the municipal petitions to the
166 Governor to be filed by him, all sections of the same shall be
167 consolidated and delivered to the municipal registrar of the
168 municipality in which the petition has been circulated. No
169 signatures shall be thereafter added. The municipal registrar
170 shall compare the signatures of the persons appearing on the
171 petition with the names of the qualified electors appearing on the
172 pollbooks of the municipality, and shall attach to the petition,
173 or to each section of the petition if the same has been circulated
174 in sections, the following certificate:

175 STATE OF MISSISSIPPI

176 County of _____

177 Municipality of _____

178 I, _____, municipal registrar in and for the
179 municipality, county and state aforesaid, do hereby certify that I
180 have compared the signatures on the preceding sheets of the
181 removal petition attached hereto, and to the best of my knowledge
182 and belief the petition (or section of petition) contains the
183 signatures of _____ qualified electors of the municipality
184 (or beat, as case may be), and I have drawn a line in red ink
185 through the names of those signators who appear by the records in
186 my office not to be qualified electors, or who have died. I
187 further certify that as of the date of the petitions there were
188 _____ qualified electors in this municipality (or beat, as
189 the case may be).

190 Given under my hand and seal of office, this the _____ day of
191 _____, 2_____.



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Municipal Registrar

SECTION 6. Section 25-5-17, Mississippi Code of 1972, is amended as follows:

25-5-17. The certificate by the county or municipal registrar shall be prima facie evidence of the facts stated therein and of the qualification of the electors whose signatures are thus certified. The Governor shall consider and count only those signatures on such petition as shall be * * * certified by the registrar * * *. Any officer sought to be removed or any citizen of the county shall have the privilege of submitting evidence in writing, under oath, to the Governor as to the question of whether or not any signator to the petition was in fact a qualified elector at the time of the signing of the petition, or has since died. The decision of the Governor as to whether or not any particular person was or was not a qualified elector at the time of the signing of the petition, or whether or not any particular person has since died, shall be final and shall not be subject to review. The status of the signator as to whether or not he or she was a qualified elector at the time of signing the petition shall be determined as of the date of the petition and not by any other date.

SECTION 7. Section 25-5-19, Mississippi Code of 1972, is amended as follows:

25-5-19. The county or municipal registrar shall not retain in his possession any such petition or any section thereof for a longer period than two (2) days for the first two hundred (200) signatures thereon and one (1) additional day for each two hundred (200) additional signatures or fraction thereof, and the time consumed in the examination of the petitions shall not be counted in determining the time between the signing and the filing of the petitions. At the expiration of the examination, the registrar shall forthwith file the same with the Governor, with his

225 certificate attached, and shall obtain a written receipt for the
226 same. The forms herein are not mandatory, but directory, and if
227 substantially followed in any petition it shall be sufficient,
228 disregarding clerical and technical errors. If the registrar be
229 unable to examine the petition, he shall * * * certify the fact to
230 the county or municipal election commissioners, as the case may
231 be, who shall in the same manner and time perform all the
232 functions herein required of the registrar. In the event the
233 county or municipal registrar is the officer whose removal is
234 sought by the petition, then the petition shall be delivered to
235 one of the county or municipal election commissioners of the
236 county in which the petition has been circulated, and the county
237 or municipal election commissioners * * * shall in the same manner
238 and within the same time perform all functions herein required of
239 the registrar. A fee of Five Cents (5¢) per signature shall be
240 allowed for the * * * examination of the petitions, to be paid out
241 of the general funds of the county or municipality upon due proof
242 of the examination. Any registrar or any board of county or
243 municipal election commissioners or member thereof who willfully
244 fails or refuses to perform the duty or duties herein required of
245 him * * * shall be subject to a civil penalty of One Thousand
246 Dollars (\$1,000.00), to be recovered in the chancery court of the
247 county by suit which may be filed by any qualified elector who
248 signed the petition or any section thereof.

249 **SECTION 8.** Section 25-5-21, Mississippi Code of 1972, is
250 amended as follows:

251 25-5-21. When the petitions * * * have been filed with the
252 Governor, within ten (10) days of the filing thereof the Governor
253 shall cause true copies thereof (photostatic copies being
254 sufficient) to be personally delivered by some officer of the
255 county or municipality designated in writing by the Governor, to
256 the officer sought to be removed, and shall in like manner and
257 form cause to be personally served on the officer a notice to



258 appear, if he desires, at a time to be fixed by the Governor to
259 show cause, if any he can, why the question of his removal should
260 not be submitted to a vote of the qualified electors. * * * The
261 notice shall be served upon the officer at least twenty (20) days
262 before the date when his appearance is required. The place of
263 hearing shall be the county courthouse of the county in which the
264 officer resides.

265 **SECTION 9.** Section 25-5-23, Mississippi Code of 1972, is
266 amended as follows:

267 25-5-23. At the time and place designated in the notice, the
268 Governor shall convene a removal council to be composed of three
269 chancery judges appointed by the Governor, none of whom shall
270 reside in the district in which the officer under question
271 resides, to hear and determine whether there is substantial basis
272 for a removal election consistently with the provisions of
273 Sections 25-5-3 through 25-5-37. The senior chancellor shall
274 serve as the presiding judge of the council. The hearing * * *
275 may continue from day to day and be recessed from time to time, as
276 in the discretion of the council may be ordered. The qualified
277 electors of the county or municipality shall * * * be given notice
278 by proclamation of the Governor of the time and place of the
279 hearing. Any interested citizen or citizens may * * * appear at
280 the time and place and make such representations to the council
281 as, in the discretion of the council, may be material to the
282 issues involved. The council shall promulgate rules for the
283 hearings, which shall be in writing, but all representations shall
284 be made under oath, to be administered by some member of the
285 council. It shall not be necessary that a stenographic record be
286 kept of the representations, either for or against removal, but
287 the testimony taken shall be heard as nearly as practicable in
288 compliance with the usually applicable rules of evidence. All
289 decisions of the council on any question, preliminary or final,



290 including the question of whether just cause for an election has
291 been shown, shall be final and not subject to review.

292 The elective officer concerned shall be entitled to be
293 represented by counsel of his choice at the hearing.

294 **SECTION 10.** Section 25-5-25, Mississippi Code of 1972, is
295 amended as follows:

296 25-5-25. The council shall keep minutes of its final
297 judgments, and the disposition of each petition shall be
298 recorded * * *. If it be the judgment of the council that
299 sufficient cause has not been shown to justify the removal of the
300 officer, then the petition shall be dismissed and no new petition
301 shall be filed or entertained for a period of one year from the
302 date of the order dismissing the petition.

303 If, however, the council shall be of the opinion that
304 sufficient cause has been shown to justify the removal of the
305 officer, then notice to the qualified electors of the county or
306 municipality involved shall be given, in accordance with the
307 general election laws of the State of Mississippi in the matter of
308 filling vacancies in county or municipal offices, that an election
309 shall be held in the county or municipality to determine the
310 question of whether or not the county or municipal official shall
311 be removed from office.

312 **SECTION 11.** Section 25-5-27, Mississippi Code of 1972, is
313 amended as follows:

314 25-5-27. The officer named in the removal petition shall
315 continue to perform the duties of his office until the results of
316 the special removal election shall be officially proclaimed. If,
317 however, the officer named in the petition for removal shall offer
318 his resignation before the issuance of the proclamation for the
319 holding of special removal election, it shall be accepted, shall
320 take effect on the date it is offered, and the vacancy shall be
321 filled as provided by law for the filling of any vacancy in an
322 elective county or municipal office. The officer who either



323 resigns or is removed shall not be eligible to fill the vacancy
324 caused by his removal or resignation, or serve as deputy in the
325 office from which he resigns or is removed.

326 **SECTION 12.** Section 25-5-33, Mississippi Code of 1972, is
327 amended as follows:

328 25-5-33. The election commissioners of the county or
329 municipality, as the case may be, or a quorum thereof, shall meet
330 at the office of the county or municipal registrar at 9:00 a.m. of
331 the day following the special removal election, and shall then
332 proceed to canvass, tabulate and certify the results of the
333 election as now provided by the general election laws of the State
334 of Mississippi. The certificate of the results, showing the total
335 votes cast for the removal of the officer, the total votes cast
336 against the removal of the officer, and the total number of
337 qualified electors in the county, municipality or district in
338 which the election was held, shall be forwarded to the Governor.
339 If a majority of all qualified electors of the county,
340 municipality or district in which the election has been held * * *
341 have not voted in the election, either for or against the removal,
342 or if a majority of the qualified electors voting in the
343 election * * * oppose removal, the officer shall not be removed
344 and shall not thereafter during his term of office be subject to
345 another removal election. If a majority of all qualified electors
346 of the county, municipality or district in which the
347 election * * * has been held have voted either for or against
348 removal, and if a majority of the qualified electors voting in the
349 election * * * vote for the removal of the officer, then the
350 Governor shall issue his proclamation declaring the office vacant,
351 removing the officer, and appointing a suitable person to fill the
352 vacancy until the same can be filled in a special election to be
353 held not more than sixty (60) days after the * * * proclamation of
354 the Governor. No officer shall be subject to a removal petition
355 until he shall have served at least one (1) year of his term.



356 **SECTION 13.** The Attorney General of the State of Mississippi
357 shall submit this act, immediately upon approval by the Governor,
358 or upon approval by the Legislature subsequent to a veto, to the
359 Attorney General of the United States or to the United States
360 District Court for the District of Columbia in accordance with the
361 provisions of the Voting Rights Act of 1965, as amended and
362 extended.

363 **SECTION 14.** This act shall take effect and be in force from
364 and after the date it is effectuated under Section 5 of the Voting
365 Rights Act of 1965, as amended and extended.

