

By: Representative Hines

To: Municipalities

## HOUSE BILL NO. 1451

1 AN ACT TO PROVIDE THAT THE MAYOR OF ANY FORM OF MUNICIPAL  
2 GOVERNMENT IS AUTHORIZED TO APPOINT ALL MUNICIPAL DEPARTMENT HEADS  
3 AND MUNICIPAL EMPLOYEES AND THAT SUCH APPOINTEES SHALL SERVE AT  
4 THE DISCRETION OF THE MAYOR; TO PROVIDE THAT SUCH APPOINTMENTS ARE  
5 NOT SUBJECT TO THE VETO POWER OF ANY COUNCIL OR BOARD OF ALDERMAN;  
6 TO AMEND SECTIONS 21-3-3, 21-3-5, 21-3-15, 21-5-7, 21-5-9,  
7 21-5-11, 21-7-11, 21-7-13, 21-7-15, 21-8-17, 21-8-23, 21-8-25 AND  
8 21-9-37, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR  
9 RELATED PURPOSES.

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

11 **SECTION 1.** Section 21-3-3, Mississippi Code of 1972, is  
12 amended as follows:

13 21-3-3. The elective officers of all municipalities  
14 operating under a code charter shall be the mayor, the aldermen,  
15 municipal judge, the marshal or chief of police, the tax  
16 collector, the tax assessor, and the city or town clerk. However,  
17 the governing authorities of the municipality shall have the  
18 power, by ordinance, to combine the office of clerk or marshal  
19 with the office of tax collector and/or tax assessor. Such  
20 governing authorities shall have the further power to provide that  
21 all or any of such officers, except those of mayor and aldermen,  
22 shall be appointive, in which case the marshal or chief of police,  
23 the tax collector, the tax assessor, and the city or town clerk,  
24 or such of such officers as may be made appointive, shall be  
25 appointed by the mayor. Any action taken by the governing  
26 authorities to make any of such offices appointive shall be by  
27 ordinance of such municipality, and no such ordinance shall be  
28 adopted within ninety (90) days prior to any regular general  
29 election for the election of municipal officers. No such  
30 ordinance shall become effective during the term of office of any

31 officer whose office shall be affected thereby. If any such  
32 office is made appointive, the person appointed thereto shall hold  
33 office at the pleasure of the mayor and may be discharged by such  
34 mayor at any time, either with or without cause, and it shall be  
35 discretionary with the governing authorities whether or not to  
36 require such person appointed thereto to reside within the  
37 corporate limits of the municipality in order to hold such office.

38 **SECTION 2.** Section 21-3-5, Mississippi Code of 1972, is  
39 amended as follows:

40 21-3-5. From and after the expiration of the terms of office  
41 of present municipal officers, the mayor \* \* \* of all  
42 municipalities operating under this chapter shall have the power  
43 and authority to appoint a street commissioner, and such other  
44 officers and employees as may be necessary; however the board of  
45 alderman and the mayor shall prescribe the duties and fix the  
46 compensation of all such officers and employees appointed by the  
47 mayor. All officers and employees so appointed shall hold office  
48 at the pleasure of the mayor and may be discharged by such mayor  
49 at any time, either with or without cause. The mayor of  
50 municipalities shall have the power and authority, in their  
51 discretion, to appoint the same person to any two (2) or more of  
52 the appointive offices, and in a municipality having a population  
53 of less than fifteen thousand (15,000), according to the latest  
54 available federal census, a member of the board of aldermen may be  
55 appointed to the office of street commissioner. In municipalities  
56 not having depositories, the clerk shall serve as ex officio  
57 treasurer. The municipal governing authorities shall require all  
58 officers and employees handling or having the custody of any  
59 public funds of such city to give bond, with sufficient surety, to  
60 be payable, conditioned and approved as provided by law, in an  
61 amount to be determined by the governing authority (which shall be  
62 not less than Ten Thousand Dollars (\$10,000.00)), the premium on  
63 same to be paid from the municipal treasury. The terms of office

64 or employment of all officers and employees so appointed shall  
65 expire at the expiration of the term of office of the mayor making  
66 the appointment, unless such officers or employees shall have been  
67 sooner discharged as herein provided.

68 **SECTION 3.** Section 21-3-15, Mississippi Code of 1972, is  
69 amended as follows:

70 21-3-15. (1) The mayor shall preside at all meetings of the  
71 board of aldermen, and in case there shall be an equal division,  
72 he shall give the deciding vote. He shall have the superintending  
73 control of all the officers and affairs of the municipality, and  
74 shall take care that the laws and ordinances are executed.

75 (2) Ordinances adopted by the board of aldermen shall be  
76 submitted to the mayor. The mayor shall, within ten (10) days  
77 after receiving any ordinance, either approve the ordinance by  
78 affixing his signature thereto, or return it to the board of  
79 aldermen by delivering it to the municipal clerk together with a  
80 written statement setting forth his objections thereto or to any  
81 item or part thereof. No ordinance or any item or part thereof  
82 shall take effect without the mayor's approval, unless the mayor  
83 fails to return an ordinance to the board of aldermen prior to the  
84 next meeting of the board, but no later than fifteen (15) days  
85 after it has been presented to him, or unless the board of  
86 aldermen, upon reconsideration thereof on or after the third day  
87 following its return by the mayor, shall, by a vote of two-thirds  
88 (2/3) of the members of the board, resolve to override the mayor's  
89 veto.

90 (3) The term "ordinance" as used in this section shall be  
91 deemed to include ordinances, resolutions and orders.

92 (4) The mayor is authorized to appoint all municipal  
93 department heads and municipal employees who shall serve at the  
94 discretion of the mayor. The appointments of the mayor are not  
95 subject to the board of alderman's veto power, approval or  
96 consent.

97           **SECTION 4.** Section 21-5-7, Mississippi Code of 1972, is  
98 amended as follows:

99           21-5-7. The mayor shall be president of the council and  
100 preside at all meetings thereof, but he shall not have any power  
101 to veto any measure passed by the council. The mayor is  
102 authorized to appoint all municipal department heads and municipal  
103 employees who shall serve at the discretion of the mayor. The  
104 appointments of the mayor are not subject to the council's veto  
105 power, approval or consent. He shall have general supervision of  
106 all the affairs and departments of the city government and shall,  
107 from time to time, as occasion may demand, report in writing to  
108 the council any matters requiring its action. The council shall  
109 elect one (1) of its members vice president of the council, who,  
110 in case of a vacancy in the office of mayor, or in the absence or  
111 inability of the mayor, shall perform the duties of the mayor.

112           **SECTION 5.** Section 21-5-9, Mississippi Code of 1972, is  
113 amended as follows:

114           21-5-9. Except as limited by law, the council shall have,  
115 exercise, and perform all executive, legislative and judicial  
116 powers, duties and obligations bestowed upon governing authorities  
117 of municipalities by this title or by any other general law with  
118 regard to municipalities, except in cases of conflict between such  
119 laws and this chapter, in which case this chapter shall control.  
120 The council shall also have the power, from time to time, to  
121 create, \* \* \* to increase or decrease the emoluments of all  
122 offices and employments other than those created in this chapter;  
123 to make all needful rules and regulations for the government of  
124 the officers and employees of such city and to enforce a strict  
125 observance thereof, and to change the same when deemed  
126 necessary; \* \* \* to issue and sell the bonds or other obligations  
127 of such city in the amounts and in the manner provided by law; and  
128 generally to enact and enforce all ordinances and resolutions, and

129 to make and perform all contracts for and on behalf of such city,  
130 as may be authorized by law or by the charter of such city.

131 The council shall also require all officers and employees  
132 handling or having the custody of any of the public funds of such  
133 city to give bond, with sufficient surety, to be payable,  
134 conditioned and approved as provided by law, in an amount to be  
135 determined by the council (which shall not be less than Ten  
136 Thousand Dollars (\$10,000.00)), the premiums on which bonds shall  
137 be paid by the city.

138 **SECTION 6.** Section 21-5-11, Mississippi Code of 1972, is  
139 amended as follows:

140 21-5-11. The executive and administrative powers and duties  
141 in such cities shall be distributed into and among as many  
142 departments as there shall be members of the council, to be  
143 defined and designated by ordinance. The mayor shall, by  
144 ordinance, determine the powers and duties to be exercised and  
145 performed by each department, and shall assign the various  
146 officers and employees of the city to the appropriate department.  
147 The mayor shall prescribe the powers and duties of such officers  
148 and employees and make all such rules and regulations as may be  
149 necessary or proper for the efficient and economical conduct of  
150 the business of the city. The mayor shall \* \* \* designate one (1)  
151 person for each department to be superintendent of each department  
152 of the municipal government, and shall define his powers and  
153 duties as such superintendent. \* \* \*

154 The council may, by ordinance, provide that the commissioners  
155 be designated by Post No. 1 and Post No. 2, and by ordinance  
156 define the duties which shall be performed by the commissioners  
157 elected to each post.

158 In the event a city with the population in excess of one  
159 hundred thousand (100,000) inhabitants or more according to the  
160 last decennial census and being governed by the commission form of  
161 government shall elect pursuant to Section 21-5-3, Mississippi

162 Code of 1972, to have additional councilmen, the council may, by  
163 ordinance, provide that the councilmen or commissioners be  
164 designated by post numbers, said posts to be numbered  
165 consecutively from one (1) upward, and by ordinance define the  
166 duties which shall be performed by the commissioners elected to  
167 each post.

168 **SECTION 7.** Section 21-7-11, Mississippi Code of 1972, is  
169 amended as follows:

170 21-7-11. The full and complete executive and legislative  
171 powers of the municipality as vested by law, or inherent, shall be  
172 vested in such council, unless otherwise provided by law. The  
173 council, however, may delegate such of its administrative  
174 functions as it deems proper and necessary to such officials so  
175 elected by it as provided in Section 21-7-15, and in addition may  
176 delegate administrative powers and functions to such other person  
177 or persons as may be selected by said council in order to carry  
178 out its functions, whether municipal or proprietary, which would  
179 permit the efficient administration of its municipal  
180 affairs. \* \* \* The council shall also require all officers and  
181 employees handling or having the custody of any public funds of  
182 such city to give bond, with sufficient surety, to be payable,  
183 conditioned and approved as provided by law, in an amount to be  
184 determined by the council (which shall not be less than Ten  
185 Thousand Dollars (\$10,000.00)). Any and all such persons so  
186 selected shall be accountable to the council and shall make  
187 report, or reports, to the council so often as is required of them  
188 respectively, and may be removed at any time for cause after first  
189 having been given an opportunity for a hearing on the reasons for  
190 removal. No member of the council shall be eligible for selection  
191 to any such office or position.

192 **SECTION 8.** Section 21-7-13, Mississippi Code of 1972, is  
193 amended as follows:

194           21-7-13. The powers and duties heretofore conferred upon the  
195 mayor of municipalities by law are hereby conferred upon and  
196 charged to the council. The mayor, or in his absence the vice  
197 mayor, shall (a) as chairman preside at all meetings of the  
198 council, and shall have veto power, in writing, giving his reasons  
199 therefor, of any measure passed by the council, although a measure  
200 vetoed may be adopted notwithstanding, if two-thirds (2/3) of the  
201 council vote therefor; (b) appoint all municipal department heads  
202 and municipal employees who shall serve at the discretion of the  
203 mayor, without having such appointments subject to the council's  
204 veto power, approval or consent; (c) represent the municipality in  
205 all functions political, social or economic, but he shall in no  
206 wise bind the municipality, other than as he may be specifically  
207 authorized or delegated to do by the council, as reflected by its  
208 orders, resolutions or ordinances; (d) execute for and on behalf  
209 of the council, all documents or instruments of writing, of  
210 whatever kind and character, under the seal of the municipality,  
211 when necessary or required; and (e) act for the municipality as  
212 directed by the council, in any manner and for any purpose which  
213 by any statute or law, because of its particular wording or  
214 meaning, provides for individual action of the mayor rather than  
215 body action of the council, wherein and whereby such right of  
216 action could not be properly or consistently exercised by the  
217 latter, all to the end that any such municipality coming under the  
218 provisions of this chapter shall not be denied any of the rights  
219 and privileges which any such municipality would enjoy except for  
220 the provisions of this chapter. The council shall fix the amount  
221 of compensation of the mayor and vice mayor, for their additional  
222 duties as such, which compensation shall be in addition to their  
223 compensation as councilmen.

224           **SECTION 9.** Section 21-7-15, Mississippi Code of 1972, is  
225 amended as follows:

226           21-7-15. The members of the council shall from their  
227 membership elect a vice mayor who shall have the powers and duties  
228 as prescribed by this chapter. The mayor shall appoint the  
229 following offices: (a) clerk, (b) one or more deputy clerks, (c)  
230 marshal, (d) street commissioner, (e) tax collector, (f) tax  
231 assessor, (g) treasurer, (h) police justice pro tempore, and (i)  
232 city attorney. The office of marshal, police justice pro tempore,  
233 and city attorney shall not be consolidated with any other office  
234 but such other designated offices may be consolidated in whole or  
235 in part. Such officials so elected shall be amenable to the  
236 mayor and their compensation shall be fixed by the council and  
237 each may be required to enter into such bond for the faithful  
238 discharge of their duties as the mayor deems necessary. Such  
239 selected officials may be removed by the mayor at any time for  
240 cause after first having been given an opportunity for a hearing  
241 on the reasons for removal. The duties of the clerk shall be  
242 those prescribed by Sections 21-15-17, 21-15-19, 21-23-11 and  
243 21-39-7. The duties of the deputy clerk, or clerks, shall be  
244 those vested in the clerk, as aforesaid, but who shall act in the  
245 name of the clerk. The duties of the marshal shall be those as  
246 prescribed by Section 21-21-1. The duties of the street  
247 commissioner shall be those as prescribed by Section 21-3-23. The  
248 duties of the tax collector shall be those as prescribed by  
249 Section 21-33-53. The duties of the tax assessor shall be those  
250 applicable to such office under this title. The duties of the  
251 treasurer shall be those as prescribed by Section 21-39-19. In  
252 addition to the foregoing duties the mayor may confer upon such  
253 appointed officials respectively, other than to the police justice  
254 pro tempore, additional duties as the council may prescribe.

255           The police justice shall be nominated and elected at large  
256 and he, together with the police justice pro tempore as appointed,  
257 shall meet the qualifications as prescribed by Chapter 23 of this



258 title, and shall perform such duties and have such powers as  
259 vested by this title.

260 **SECTION 10.** Section 21-8-17, Mississippi Code of 1972, is  
261 amended as follows:

262 21-8-17. (1) The mayor shall enforce the charter and  
263 ordinances of the municipality and all general laws applicable  
264 thereto. He shall annually report to the council and the public  
265 on the work of the previous year and on the condition and  
266 requirements of the municipal government and shall, from time to  
267 time, make such recommendations for action by the council as he  
268 may deem in the public interest. He shall supervise all of the  
269 departments of the municipal government and shall require each  
270 department to make an annual report and such other reports of its  
271 work as he may deem desirable.

272 (2) Ordinances adopted by the council shall be submitted to  
273 the mayor and he shall, within ten (10) days (not including  
274 Saturdays, Sundays or holidays) after receiving any ordinance,  
275 either approve the ordinance by affixing his signature thereto or  
276 return it to the council by delivering it to the clerk of the  
277 council together with a statement setting forth his objections  
278 thereto or to any item or part thereof. No ordinance or any item  
279 or part thereof shall take effect without the mayor's approval,  
280 unless the mayor fails to return an ordinance to the council prior  
281 to the next council meeting, but no later than fifteen (15) days  
282 (not including Saturdays, Sundays or holidays) after it has been  
283 presented to him or unless the council upon reconsideration  
284 thereof not later than the tenth day (not including Saturdays,  
285 Sundays or holidays) following its return by the mayor, shall, by  
286 a vote of two-thirds (2/3) of the members present and voting  
287 resolve to override the mayor's veto.

288 (3) The mayor may attend meetings of the council and may  
289 take part in discussions of the council but shall have no vote

290 except in the case of a tie on the question of filling a vacancy  
291 in the council, in which case he may cast the deciding vote.

292 (4) The mayor is authorized to appoint all municipal  
293 department heads and municipal employees who shall serve at the  
294 discretion of the mayor. The appointments of the mayor are not  
295 subject to the council's veto power, approval or consent.

296 **SECTION 11.** Section 21-8-23, Mississippi Code of 1972, is  
297 amended as follows:

298 21-8-23. (1) The municipality may have a department of  
299 administration and such other departments as the council may  
300 establish by ordinance. All of the administrative functions,  
301 powers and duties of the municipality shall be allocated and  
302 assigned among and within such departments.

303 (2) Each department shall be headed by a director, who shall  
304 be appointed by the mayor \* \* \*. Each director shall serve during  
305 the term of office of the mayor appointing him, and until the  
306 appointment and qualification of his successor.

307 (3) The mayor may, in his discretion, remove the director of  
308 any department. Directors of departments shall be excluded from  
309 the coverage of any ordinance or general law providing for a civil  
310 service system in the municipality; provided, however, all  
311 individuals serving as heads of departments at the time of the  
312 municipality's adoption of the mayor-council form as described in  
313 this chapter shall continue to be covered by the provisions of the  
314 civil service system in effect at the time the mayor-council form  
315 is adopted.

316 (4) Directors of departments shall appoint subordinate  
317 officers and employees within their respective departments and  
318 may, with approval of the mayor, remove such officers and  
319 employees subject to the provisions of any ordinance establishing  
320 a civil service system where that system is effective in the  
321 municipality, or other general law; provided, however, that the

322 council may provide by ordinance for the appointment and removal  
323 of specific boards or commissions by the mayor.

324 (5) Whenever the city council is authorized by any provision  
325 of general law to appoint the members of any board, authority or  
326 commission, such power of appointment shall be deemed to vest in  
327 the mayor with the confirmation of an affirmative vote of a  
328 majority of the council present and voting at any meeting.

329 (6) The council shall also require all officers and  
330 employees handling or having the custody of any of the public  
331 funds of such municipality to give bond, with sufficient surety,  
332 to be payable, conditioned and approved as provided by law, in an  
333 amount to be determined by the council (which shall not be less  
334 than Ten Thousand Dollars (\$10,000.00), the premium on which bonds  
335 shall be paid by the city.

336 **SECTION 12.** Section 21-8-25, Mississippi Code of 1972, is  
337 amended as follows:

338 21-8-25. The council of any municipality adopting the  
339 mayor-council form of government may, within its discretion, adopt  
340 an ordinance providing that the mayor shall appoint \* \* \* a chief  
341 administrative officer to coordinate and direct the operations of  
342 the various departments and functions of municipal government;  
343 such chief administrative officer shall serve at the pleasure of  
344 the mayor and shall possess such qualifications and experience as  
345 shall be set out in the aforesaid ordinance. The \* \* \* chief  
346 administrative officer shall be answerable solely to the mayor in  
347 the performance of his functions and shall be subject to dismissal  
348 at the pleasure of the mayor and shall be excluded from the  
349 coverage of any ordinance or general law providing for a civil  
350 service system in the municipality.

351 **SECTION 13.** Section 21-9-37, Mississippi Code of 1972, is  
352 amended as follows:

353 21-9-37. The mayor shall be the titular head of the city for  
354 all ceremonial purposes and for all processes of law. He shall be

355 the president of the council and shall have a voice and vote in  
356 its proceedings \* \* \*. The mayor is authorized to appoint all  
357 municipal department heads and municipal employees who shall serve  
358 at the discretion of the mayor. The appointments of the mayor are  
359 not subject to the council's veto power, approval or consent. In  
360 case of his absence or disability, the council may appoint another  
361 of its members to fulfill his duties temporarily.

362       **SECTION 14.** This act shall take effect and be in force from  
363 and after July 1, 2004.