

By: Senator(s) Dawkins

To: Judiciary, Division B

SENATE BILL NO. 3024

1 AN ACT TO AMEND SECTION 25-41-5, MISSISSIPPI CODE OF 1972, TO  
 2 PROHIBIT PROXY VOTING AND SECRET BALLOTS; TO AMEND SECTION  
 3 25-41-7, MISSISSIPPI CODE OF 1972, TO REQUIRE CLARITY IN THE  
 4 STATEMENT OF NECESSITY FOR AN EXECUTIVE SESSION; TO AMEND SECTION  
 5 25-41-11, MISSISSIPPI CODE OF 1972, TO REVISE THE REQUIREMENTS  
 6 CONCERNING THE MINUTES OF A PUBLIC BODY; TO AMEND SECTION  
 7 25-41-15, MISSISSIPPI CODE OF 1972, TO EXPAND THE RELIEF AVAILABLE  
 8 TO A PLAINTIFF IN COURT; TO AMEND SECTION 25-61-7, MISSISSIPPI  
 9 CODE OF 1972, TO CLARIFY THE FEES THAT A PUBLIC BODY MAY CHARGE  
 10 THOSE UTILIZING THE PUBLIC RECORDS ACT TO OBTAIN COPIES OF PUBLIC  
 11 RECORDS OF THE BODY; TO AMEND SECTION 25-61-15, MISSISSIPPI CODE  
 12 OF 1972, TO REVISE THE PENALTY FOR WILLFUL DENIAL OF ACCESS TO  
 13 PUBLIC RECORDS; TO AMEND SECTION 25-4-25, MISSISSIPPI CODE OF  
 14 1972, TO REQUIRE COUNTY AGENCY HEADS TO FILE AN ANNUAL FINANCIAL  
 15 STATEMENT OF ECONOMIC INTEREST; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** Section 25-41-5, Mississippi Code of 1972, is  
 18 amended as follows:

19 25-41-5. (1) All official meetings of any public body,  
 20 unless otherwise provided in this chapter or in the Constitutions  
 21 of the United States of America or the State of Mississippi, are  
 22 declared to be public meetings and shall be open to the public at  
 23 all times unless declared an executive session as provided in  
 24 Section 25-41-7.

25 (2) A public body may conduct any meeting, other than an  
 26 executive session called pursuant to Section 25-41-7, wherein  
 27 public business is discussed or transacted, through teleconference  
 28 or video means. If a quorum of the public body is physically  
 29 assembled at one (1) location for the purpose of conducting a  
 30 meeting, additional members of the public body may participate in  
 31 the meeting through teleconference or video means provided their  
 32 participation is available to the general public.

33           (3) (a) Notice of any meetings held pursuant to subsection  
34 (2) of this section shall be provided at least thirty (30) days in  
35 advance of the date scheduled for the meeting. The notice shall  
36 include the date, time, place and purpose for the meeting and  
37 shall identify the locations for the meeting. All locations for  
38 the meeting shall be made accessible to the public. All persons  
39 attending the meeting at any of the meeting locations shall be  
40 afforded the same opportunity to address the public body as  
41 persons attending the primary or central location. Any  
42 interruption in the teleconference or video broadcast of the  
43 meeting shall result in the suspension of action at the meeting  
44 until repairs are made and public access restored.

45           (b) Thirty-day notice shall not be required for  
46 teleconference or video meetings continued to address an emergency  
47 as provided in subsection (5) of this section or to conclude the  
48 agenda of a teleconference or video meeting of the public body for  
49 which the proper notice has been given, when the date, time, place  
50 and purpose of the continued meeting are set during the meeting  
51 prior to adjournment.

52           (4) An agenda and materials that will be distributed to  
53 members of the public body and that have been made available to  
54 the staff of the public body in sufficient time for duplication  
55 and forwarding to all locations where public access will be  
56 provided shall be made available to the public at the time of the  
57 meeting. Minutes of all meetings held by teleconference or video  
58 means shall be recorded as required by Section 25-41-11. Votes  
59 taken during any meeting conducted through teleconference or video  
60 means shall be recorded by name in roll-call fashion and included  
61 in the minutes. In addition, the public body shall make an audio  
62 recording of the meeting, if a teleconference medium is used, or  
63 an audio/visual recording, if the meeting is held by video means.  
64 The recording shall be preserved by the public body for a period

65 of three (3) years following the date of the meeting and shall be  
66 available to the public.

67 (5) A public body may meet by teleconference or video means  
68 as often as needed if an emergency exists and the public body is  
69 unable to meet in regular session. Public bodies conducting  
70 emergency meetings through teleconference or video means shall  
71 comply with the provisions of subsection (4) of this section  
72 requiring minutes, recordation and preservation of the audio or  
73 audio/visual recording of the meeting. The nature of the  
74 emergency shall be stated in the minutes.

75 (6) A public body is prohibited from utilizing any manner of  
76 proxy voting procedure, secret balloting or any other means to  
77 circumvent the intent of this chapter.

78 **SECTION 2.** Section 25-41-7, Mississippi Code of 1972, is  
79 amended as follows:

80 25-41-7. (1) Any public body may enter into executive  
81 session for the transaction of public business; provided, however,  
82 all meetings of any such public body shall commence as an open  
83 meeting, and an affirmative vote of three-fifths (3/5) of all  
84 members present shall be required to declare an executive session.

85 (2) The procedure to be followed by any public body in  
86 declaring an executive session shall be as follows: Any member  
87 shall have the right to request by motion a closed determination  
88 upon the issue of whether or not to declare an executive session.  
89 Such motion, by majority vote, shall require the meeting to be  
90 closed for a preliminary determination of the necessity for  
91 executive session. No other business shall be transacted until  
92 the discussion of the nature of the matter requiring executive  
93 session has been completed and a vote, as required in subsection  
94 (1) hereof, has been taken on the issue.

95 (3) An executive session shall be limited to matters allowed  
96 to be exempted from open meetings by subsection (4) of this  
97 section. The reason for holding such an executive session shall

98 be stated in an open meeting; \* \* \* the reason so stated shall be  
99 recorded in the minutes of the meeting and must be of sufficient  
100 clarity and specificity to inform those present that there is in  
101 reality a specific, discrete matter or area which the public body  
102 has determined should be discussed in executive session. Nothing  
103 in this section shall be construed to require that any meeting be  
104 closed to the public, nor shall any executive session be used to  
105 circumvent or to defeat the purposes of this chapter.

106 (4) A public body may hold an executive session pursuant to  
107 this section for one or more of the following reasons:

108 (a) Transaction of business and discussion of personnel  
109 matters relating to the job performance, character, professional  
110 competence, or physical or mental health of a person holding a  
111 specific position.

112 (b) Strategy sessions or negotiations with respect to  
113 prospective litigation, litigation or issuance of an appealable  
114 order when an open meeting would have a detrimental effect on the  
115 litigating position of the public body.

116 (c) Transaction of business and discussion regarding  
117 the report, development or course of action regarding security  
118 personnel, plans or devices.

119 (d) Investigative proceedings by any public body  
120 regarding allegations of misconduct or violation of law.

121 (e) Any body of the Legislature which is meeting on  
122 matters within the jurisdiction of such body.

123 (f) Cases of extraordinary emergency which would pose  
124 immediate or irrevocable harm or damage to persons and/or property  
125 within the jurisdiction of such public body.

126 (g) Transaction of business and discussion regarding  
127 the prospective purchase, sale or leasing of lands.

128 (h) Discussions between a school board and individual  
129 students who attend a school within the jurisdiction of such

130 school board or the parents or teachers of such students regarding  
131 problems of such students or their parents or teachers.

132 (i) Transaction of business and discussion concerning  
133 the preparation of tests for admission to practice in recognized  
134 professions.

135 (j) Transaction of business and discussions or  
136 negotiations regarding the location, relocation or expansion of a  
137 business or an industry.

138 (k) Transaction of business and discussions regarding  
139 employment or job performance of a person in a specific position  
140 or termination of an employee holding a specific position. The  
141 exemption provided by this paragraph includes the right to enter  
142 into executive session concerning a line item in a budget which  
143 might affect the termination of an employee or employees. All  
144 other budget items shall be considered in open meetings and final  
145 budgetary adoption shall not be taken in executive session.

146 (5) The total vote on the question of entering into an  
147 executive session shall be recorded and spread upon the minutes of  
148 such public body.

149 (6) Any such vote whereby an executive session is declared  
150 shall be applicable only to that particular meeting on that  
151 particular day.

152 **SECTION 3.** Section 25-41-11, Mississippi Code of 1972, is  
153 amended as follows:

154 25-41-11. (1) Minutes shall be kept of all meetings of a  
155 public body, whether in open or executive session, showing the  
156 members present and absent; the date, time and place of the  
157 meeting; an accurate recording of any final actions taken at such  
158 meeting; and a record, by individual member, of any votes taken;  
159 and any other information that the public body requests be  
160 included or reflected in the minutes. A copy of any document,  
161 letter, manual or other extrinsic evidence approved by a public  
162 body shall be incorporated into its minutes or a copy shall be

163 included in the minutes. The minutes shall be recorded within a  
164 reasonable time not to exceed thirty (30) days after recess or  
165 adjournment, shall be entered into the official Minute Book within  
166 twenty-four (24) hours after signing, and shall be open to public  
167 inspection during regular business hours. A draft copy of the  
168 minutes shall be available for public inspection not less than  
169 five (5) days after adjournment or recess of the public body and  
170 remain available until the official, approved and signed minutes.  
171 are available. The Legislature encourages all public bodies to  
172 maintain minutes on the internet for public inspection.

173 (2) Minutes of a meeting conducted by teleconference or  
174 video means shall comply with the requirements of Section 25-41-5.

175 (3) Minutes of legislative committee meetings shall consist  
176 of a written record of attendance and final actions taken at such  
177 meetings.

178 **SECTION 4.** Section 25-41-15, Mississippi Code of 1972, is  
179 amended as follows:

180 25-41-15. The chancery courts of this state shall have the  
181 authority to enforce the provisions of this chapter upon  
182 application of any citizen of the state, and shall have the  
183 authority to issue injunctions, writs of mandamus, a declaratory  
184 judgment, judgment rendering the action of the public body void,  
185 judgment awarding civil penalties, or any combination of these, to  
186 accomplish that purpose. If the court finds that a public body  
187 has willfully and knowingly violated the provisions of this  
188 chapter, the court may impose a civil penalty upon each member of  
189 the public body who participated in the violation in a sum not to  
190 exceed One Hundred Dollars (\$100.00) per violation, plus all  
191 reasonable expenses incurred by the person or persons in bringing  
192 suit to enforce this chapter; the total amount awarded as  
193 recompense for attorney's fees shall not exceed Ten Thousand  
194 Dollars (\$10,000.00). Any noncompliance with the requirements of  
195 this chapter may additionally be punished as contempt of court.

196           **SECTION 5.** Section 25-61-7, Mississippi Code of 1972, is  
197 amended as follows:

198           25-61-7. (1) Except as provided in subsection (2) of this  
199 section, each public body may establish and collect fees  
200 reasonably calculated to reimburse it for, and in no case to  
201 exceed, the actual cost of searching, reviewing and/or duplicating  
202 and, if applicable, mailing copies of public records. Such fees  
203 shall be collected by the public body in advance of complying with  
204 the request.

205           (2) A public body may establish a standard fee scale to  
206 reimburse it for the costs of creating, acquiring and maintaining  
207 a geographic information system or multipurpose cadastre as  
208 authorized and defined under Section 25-61-1 et seq., or any other  
209 electronically accessible data. Such fees must be reasonably  
210 related to the cost of creating, acquiring and maintaining the  
211 geographic information system, multipurpose cadastre or other  
212 electronically accessible data, for the data or information  
213 contained therein or taken therefrom and for any records, papers,  
214 accounts, maps, photographs, films, cards, tapes, recordings or  
215 other materials, data or information relating thereto, whether in  
216 printed, digital or other format. In determining the fees or  
217 charges under this subsection, the public body may consider the  
218 type of information requested, the purpose or purposes for which  
219 the information has been requested and the commercial value of the  
220 information. The fees shall be limited to the actual costs over  
221 and above the public body's administrative budget to include cost  
222 of overtime wages, hiring additional personnel and additional  
223 materials and services, with the charge for labor by the public  
224 body's employees being limited to the lowest hourly pay scale in  
225 the administrative department. Charges for shipping, postage,  
226 copying or duplication of requested records shall be not more than  
227 the actual costs. An itemized bill shall be given to the person  
228 requesting public records at the time of delivery of the records.

229           **SECTION 6.** Section 25-61-15, Mississippi Code of 1972, is  
230 amended as follows:

231           25-61-15. Any person who shall willfully and knowingly deny  
232 to any person access to any public record which is not exempt from  
233 the provisions of this chapter shall be liable civilly in a sum  
234 not to exceed One Thousand Dollars (\$1,000.00), plus all  
235 reasonable expenses incurred by such person bringing the lawsuit.

236           **SECTION 7.** Section 25-4-25, Mississippi Code of 1972, is  
237 amended as follows:

238           25-4-25. Each of the following individuals shall file a  
239 statement of economic interest with the commission in accordance  
240 with the provisions of this chapter:

241           (a) Persons elected by popular vote, excluding United  
242 States Senators and United States Representatives, to any office,  
243 whether it be legislative, executive or judicial, and whether it  
244 be statewide, district, county, municipal or any other political  
245 subdivision, with the exception of members of boards of levee  
246 commissioners and election commissioners;

247           (b) Members of local school boards that administer  
248 public funds, regardless of whether such members are elected or  
249 appointed;

250           (c) Persons who are candidates for public office or who  
251 are appointed to fill a vacancy in an office who, if elected,  
252 would be required to file under item (a) of this section;

253           (d) Executive directors or heads of state agencies, by  
254 whatever name they are designated, who are paid in part or in  
255 whole, directly or indirectly, from funds appropriated or  
256 authorized to be expended by the Legislature, executive directors  
257 or heads of county agencies, by whatever name they are designated,  
258 and the presidents and trustees of all state-supported colleges,  
259 universities and junior colleges;

260           (e) Members of any state board, commission or agency,  
261 including the Mississippi Ethics Commission, charged with the



262 administration or expenditure of public funds, with the exception  
263 of advisory boards or commissions; provided, however, in order to  
264 fulfill the legislative purposes of this chapter, the commission  
265 may require, upon a majority vote, the filing of a statement of  
266 economic interest by members of an advisory board or commission.

267         **SECTION 8.** This act shall take effect and be in force from  
268 and after July 1, 2004.