

By: Senator(s) Dawkins

To: Elections

SENATE BILL NO. 2678

1 AN ACT TO ESTABLISH A PROCEDURE BY WHICH ANY ELECTED PUBLIC  
 2 OFFICIAL MAY BE REMOVED IN AN ELECTION HELD FOR THAT PURPOSE; TO  
 3 PROVIDE THAT A HEARING SHALL BE HELD BY A REMOVAL COUNCIL TO  
 4 DETERMINE IF THERE IS JUST CAUSE FOR THE REMOVAL OF THE ELECTED  
 5 OFFICIAL AFTER A PETITION CONTAINING THE REQUISITE NUMBER OF  
 6 SIGNATURES HAS BEEN FILED REQUESTING THE REMOVAL OF THE OFFICIAL;  
 7 TO PROVIDE THAT IF AN OFFICIAL IS REMOVED, A SPECIAL ELECTION  
 8 SHALL BE CALLED TO FILL THE VACANCY CREATED BY THE REMOVAL; TO  
 9 PROVIDE THAT THE SECRETARY OF STATE OR REGISTRAR SHALL CERTIFY THE  
 10 NAMES OF QUALIFIED ELECTORS SIGNED ON A PETITION FOR THE REMOVAL  
 11 OF AN ELECTED OFFICIAL; TO AMEND SECTIONS 25-5-3, 25-5-7, 25-5-9,  
 12 25-5-13, 25-5-15, 25-5-17, 25-5-19, 25-5-21, 25-5-23, 25-5-25,  
 13 25-5-27, 25-5-33 AND 25-5-37, MISSISSIPPI CODE OF 1972, TO CONFORM  
 14 TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

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

18 25-5-3. The Governor is hereby empowered, in accordance with  
 19 the provisions of Section 139 of the Mississippi Constitution of  
 20 1890, through the procedure and under the regulations prescribed  
 21 in Sections 25-5-3 through 25-5-37 and for the reasons and causes  
 22 set forth, to remove any elective statewide, state-district,  
 23 county or municipal officer in this state; and every elective  
 24 officer of the state or any state-district, county or municipality  
 25 in this state may be removed from office by the Governor or  
 26 Lieutenant Governor, if the Governor is the officer to be removed,  
 27 at any time when done in compliance with the regulations  
 28 hereinafter set forth.

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

31 25-5-7. Before the Governor shall consider the removal from  
 32 a statewide, state-district, county or municipal office of any  
 33 elective statewide, state-district, county or municipal officer,

34 there shall be first filed with him a petition signed by not less  
35 than fifty-one percent (51%) of the qualified electors of the  
36 state, state-district, county or municipality, as the case may be,  
37 demanding the removal of the officer. The petition shall contain  
38 a general statement, in not more than two hundred (200) words, of  
39 the ground or grounds on which the removal is demanded, which  
40 statement shall be for the information of the officer involved,  
41 for the information of the council hereinafter provided, and for  
42 the information of the qualified electors of the state,  
43 state-district, county or municipality, as the case may be.

44 All removal petitions with reference to only supervisors,  
45 justice court judges and constables also must be signed by at  
46 least fifty-one percent (51%) of the qualified electors of the  
47 beat or district from which they were originally elected.

48 Upon the request of any qualified elector, it shall be the  
49 duty of the Attorney General, in the case of a statewide or  
50 state-district office, the county and district prosecuting  
51 attorney, in the case of a county office, or, the municipal  
52 prosecuting attorney, in the case of a municipal office, to advise  
53 the person as to the provisions of Sections 25-5-3 through 25-5-37  
54 and how to comply with the same.

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

57 25-5-9. The removal petitions shall be in substantially the  
58 following forms:

59 (a) REMOVAL PETITION

60 (For Statewide and State-District Officers)

61 (WARNING.--It is a misdemeanor, punishable by fine and  
62 imprisonment, for any person to sign any removal petition with any  
63 name other than his own, or knowingly to sign his name more than  
64 once to the petition, or knowingly to sign the petition when he is  
65 not a qualified elector.)

66 Date: \_\_\_\_\_

67 TO THE GOVERNOR OF THE STATE OF MISSISSIPPI:

68 We, the undersigned qualified electors of the State of  
69 Mississippi or state-district \_\_\_\_\_, State of Mississippi,  
70 respectfully demand that \_\_\_\_\_, holding the office of \_\_\_\_\_  
71 in the state or state-district, be removed from office by the  
72 Governor (or if the Governor is being removed, the Lieutenant  
73 Governor) for the following reasons, to wit: (Setting out the  
74 reasons for removal in not more than two hundred words); that a  
75 special election, after lawful notice, be called to permit the  
76 qualified electors of the state or state-district to vote on the  
77 question of whether or not the officer shall be removed;

78 That we each for himself say that: I am a qualified elector  
79 of the state or state-district, and my voting precinct is  
80 correctly written after my name, and that it was stated to me  
81 before the signing of the petition that after signing the same I  
82 would not be permitted to remove my name from the petition.

83	<u>NAME</u>	<u>VOTING PRECINCT</u>
84	1. _____	_____
85	2. _____	_____
86	3. _____	_____

87 (b) REMOVAL PETITION

88 (For County Officers)

89 (WARNING.--It is a misdemeanor, punishable by fine and  
90 imprisonment, for any person to sign any removal petition with any  
91 name other than his own, or knowingly to sign his name more than  
92 once to the petition, or knowingly to sign the petition when he is  
93 not a qualified elector.)

94 Date: \_\_\_\_\_

95 TO THE GOVERNOR OF THE STATE OF MISSISSIPPI:

96 We, the undersigned qualified electors of \_\_\_\_\_ County,  
97 State of Mississippi, respectfully demand that \_\_\_\_\_, holding  
98 the office of \_\_\_\_\_ in the county, be removed from office by  
99 the Governor for the following reasons, to wit: (Setting out the

100 reasons for removal in not more than two hundred words); that a  
101 special election, after lawful notice, be called to permit the  
102 qualified electors of the county to vote on the question of  
103 whether or not the \* \* \* officer shall be removed;

104 That we each for himself say that: I am a qualified elector  
105 of the county, and my voting precinct is correctly written after  
106 my name, and that it was stated to me before the signing of the  
107 petition that after signing the same I would not be permitted to  
108 remove my name from the petition.

109	NAME	VOTING PRECINCT
110	1. _____	_____
111	2. _____	_____
112	3. _____	_____

113 (c) REMOVAL PETITION

114 (For Municipal Officers)

115 (WARNING.--It is a misdemeanor, punishable by fine and  
116 imprisonment, for any person to sign any removal petition with any  
117 name other than his own, or knowingly to sign his name more than  
118 once to the petition, or knowingly to sign the petition when he is  
119 not a qualified elector.)

120 Date: \_\_\_\_\_

121 TO THE GOVERNOR OF THE STATE OF MISSISSIPPI:

122 We, the undersigned qualified electors of the City of  
123 \_\_\_\_\_, \_\_\_\_\_ County, State of Mississippi, respectfully  
124 demand that \_\_\_\_\_, holding the office of \_\_\_\_\_ in the  
125 municipality, be removed from office by the Governor for the  
126 following reasons, to wit: (Setting out the reasons for removal  
127 in not more than two hundred words); that a special election,  
128 after lawful notice, be called to permit the qualified electors of  
129 the municipality to vote on the question of whether or not the  
130 officer shall be removed;

131 That we each for himself say that: I am a qualified elector  
132 of the municipality, and my voting precinct is correctly written

133 after my name, and that it was stated to me before the signing of  
134 the petition that after signing the same I would not be permitted  
135 to remove my name from the petition.

	<u>NAME</u>	<u>VOTING PRECINCT</u>
136		
137	1. _____	_____
138	2. _____	_____
139	3. _____	_____

140 **SECTION 4.** Section 25-5-13, Mississippi Code of 1972, is  
141 amended as follows:

142 25-5-13. Each and every petition, or separately circulated  
143 section thereof, containing signatures shall be verified on the  
144 last page thereof in substantially one of the following forms:

145 (a) STATE OF MISSISSIPPI

146 State-District \_\_\_\_\_

147 I, \_\_\_\_\_, a qualified elector of the state or  
148 state-district, do now state under oath that every person who  
149 signed the foregoing petition signed his or her name thereto in my  
150 presence, and that before the signing of the petition the signator  
151 was told that after signing the same his or her name could not be  
152 removed from the petition; that I believe that each has stated his  
153 or her name and district correctly, and that so far as I know each  
154 signer is a qualified elector of the state or state-district, and  
155 I further certify that the date appearing on the foregoing  
156 petition is the correct date on which the first signature was  
157 affixed to the petition or any section thereof.

158 (Signature) \_\_\_\_\_

159 Sworn to and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_,  
160 20\_\_.

161 \_\_\_\_\_  
162 \_\_\_\_\_

163 (b) STATE OF MISSISSIPPI

164 County of \_\_\_\_\_

165 I, \_\_\_\_\_, a qualified elector of the county do now  
166 state under oath that every person who signed the foregoing  
167 petition signed his or her name thereto in my presence, and that  
168 before the signing of the petition the signator was told that  
169 after signing the same his or her name could not be removed from  
170 the petition; that I believe that each has stated his or her name  
171 and precinct correctly, and that so far as I know each signer is a  
172 qualified elector of this county, and I further certify that the  
173 date appearing on the foregoing petition is the correct date on  
174 which the first signature was affixed to the petition or any  
175 section thereof.

176 (Signature) \_\_\_\_\_

177 Sworn to and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_,  
178 20\_\_.

179 \_\_\_\_\_  
180 \_\_\_\_\_

181 (c) STATE OF MISSISSIPPI

182 City of \_\_\_\_\_, County of \_\_\_\_\_

183 I, \_\_\_\_\_, a qualified elector of the municipality do  
184 now state under oath that every person who signed the foregoing  
185 petition signed his or her name thereto in my presence, and that  
186 before the signing of the petition the signator was told that  
187 after signing the same his or her name could not be removed from  
188 the petition; that I believe that each has stated his or her name  
189 and precinct correctly, and that so far as I know each signer is a  
190 qualified elector of this municipality, and I further certify that  
191 the date appearing on the foregoing petition is the correct date  
192 on which the first signature was affixed to the petition or any  
193 section thereof.

194 (Signature) \_\_\_\_\_

195 Sworn to and subscribed before me, this \_\_\_\_\_ day of \_\_\_\_\_,  
196 20\_\_.

197 \_\_\_\_\_

198

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

201           25-5-15. Before the submission of the petitions to the  
202 Governor or Lieutenant Governor, if the Governor is the officer to  
203 be removed, to be filed by him, all sections of the same shall be  
204 consolidated and delivered to the Secretary of State, in the case  
205 of a statewide or state-district officer, \* \* \* registrar of the  
206 county or municipality, as the case may be, in which the petition  
207 has been circulated. No signatures shall be thereafter added.  
208 The Secretary of State or \* \* \* registrar shall compare the  
209 signatures of the persons appearing on the petition with the names  
210 of the qualified electors appearing on the poll books of the  
211 county or municipality, and shall attach to said petition, or to  
212 each section of the petition if the same has been circulated in  
213 sections, the following certificate:

214           STATE OF MISSISSIPPI

215           State-District \_\_\_\_\_

216           County of \_\_\_\_\_ (Municipality of \_\_\_\_\_)

217           I, \_\_\_\_\_, Secretary of State or \* \* \* registrar in and  
218 for the county or municipality aforesaid, do hereby certify that I  
219 have compared the signatures on the preceding sheets of the  
220 removal petition attached hereto, and to the best of my knowledge  
221 and belief the \* \* \* petition (or section of petition) contains  
222 the signatures of \_\_\_\_ qualified electors of the state,  
223 state-district, the county or municipality, as the case may be,  
224 and I have drawn a line in red ink through the names of those  
225 signators who appear by the records in my office not to be  
226 qualified electors, or who have died. I further certify that as  
227 of the date of the petitions there were \_\_\_\_\_ qualified electors  
228 in this state, state-district, county or municipality, as the case  
229 may be.

230 Given under my hand and seal of office, this the \_\_\_\_\_ day  
231 of \_\_\_\_\_, 20\_\_.

232 \_\_\_\_\_  
233 Secretary of State, County  
234 or Municipal Registrar

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

237 25-5-17. The certificate by the Secretary of State, county  
238 or municipal registrar shall be prima facie evidence of the facts  
239 stated therein and of the qualification of the electors whose  
240 signatures are thus certified. The Governor or the Lieutenant  
241 Governor, if the Governor is the officer to be removed, shall  
242 consider and count only those signatures on the petition as shall  
243 be so certified by the Secretary of State or registrar; \* \* \*  
244 however, \* \* \* any officer sought to be removed or any citizen of  
245 the state, state-district, county or municipality shall have the  
246 privilege of submitting evidence in writing, under oath, to the  
247 Governor as to the question of whether or not any signator to the  
248 petition was in fact a qualified elector at the time of the  
249 signing of the petition, or has since died. The decision of the  
250 Governor or the Lieutenant Governor, if the Governor is the  
251 officer to be removed, as to whether or not any particular person  
252 was or was not a qualified elector at the time of the signing of  
253 the petition, or whether or not any particular person has since  
254 died, shall be final and shall not be subject to review. The  
255 status of the signator as to whether or not he or she was a  
256 qualified elector at the time of signing the petition shall be  
257 determined as of the date of the petition and not by any other  
258 date.

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

261 25-5-19. The Secretary of State or the county or municipal  
262 registrar shall not retain in his possession any \* \* \* petition or



263 any section thereof for a longer period than two (2) days for the  
264 first two hundred (200) signatures thereon and one (1) additional  
265 day for each two hundred (200) additional signatures or fraction  
266 thereof, and the time consumed in the examination of the petitions  
267 shall not be counted in determining the time between the signing  
268 and the filing of the petitions. At the expiration of the  
269 examination, the registrar shall forthwith file the same with the  
270 Governor or the Lieutenant Governor, if the Governor is the  
271 officer to be removed, with his certificate attached, and shall  
272 obtain a written receipt for the same. The forms herein are not  
273 mandatory, but directory, and if substantially followed in any  
274 petition it shall be sufficient, disregarding clerical and  
275 technical errors. If the Secretary of State or the registrar be  
276 unable to examine the petition, he shall so certify the fact to  
277 the state, county or municipal election commissioners, who shall  
278 in the same manner and time perform all the functions herein  
279 required of the Secretary of State or the registrar. In the event  
280 the Secretary of State or the county or municipal registrar is the  
281 officer whose removal is sought by the petition, then the petition  
282 shall be delivered to one (1) of the state election commissioners  
283 or one of the county or municipal election commissioners of the  
284 county or municipality in which the petition has been circulated,  
285 and the \* \* \* commissioners \* \* \* shall in the same manner and  
286 within the same time perform all functions herein required of the  
287 registrar. A fee of Five Cents (5¢) per signature shall be  
288 allowed for the \* \* \* examination of the petitions, to be paid out  
289 of the general funds of the state, county or municipality upon due  
290 proof of the examination. The Secretary of State or any registrar  
291 or any board of state, county or municipal election commissioners  
292 or member thereof who willfully fails or refuses to perform the  
293 duty or duties herein required of him or them shall be subject to  
294 a civil penalty of One Thousand Dollars (\$1,000.00), to be  
295 recovered in the Chancery Court of the First Judicial District of

296 Hinds County or in the chancery court of the county by suit which  
297 may be filed by any qualified elector who signed the petition or  
298 any section thereof.

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

301 25-5-21. When the petitions shall have been filed with the  
302 Governor or the Lieutenant Governor, if the Governor is the  
303 officer to be removed, within ten (10) days of the filing thereof  
304 the Governor or the Lieutenant Governor, if the Governor is the  
305 officer to be removed, shall cause true copies thereof  
306 (photostatic copies being sufficient) to be personally delivered  
307 by some officer of the state, county or municipality, designated  
308 in writing by the Governor or the Lieutenant Governor, if the  
309 Governor is the officer to be removed, to the officer sought to be  
310 removed, and shall in like manner and form cause to be personally  
311 served on the officer a notice to appear, if he desires, at a time  
312 to be fixed by the Governor or the Lieutenant Governor, if the  
313 Governor is the officer to be removed, to show cause, if any he  
314 can, why the question of his removal should not be submitted to a  
315 vote of the qualified electors as hereinafter provided,  
316 which \* \* \* notice shall be served upon the officer at least  
317 twenty (20) days before the date when his appearance is required.  
318 The place of hearing shall be the county courthouse of the county  
319 in which the officer resides.

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

322 25-5-23. At the time and place designated in the notice, the  
323 Governor or the Lieutenant Governor, if the Governor is the  
324 officer to be removed, shall cause to be convened a removal  
325 council to be composed of three (3) chancery judges appointed by  
326 the Governor or the Lieutenant Governor, if the Governor is the  
327 officer to be removed, none of whom shall reside in the district  
328 in which the officer under question resides, to hear and determine

329 whether there is substantial basis for a removal election  
330 consistently with the provisions of Sections 25-5-3 through  
331 25-5-37. The senior chancellor shall serve as the presiding judge  
332 of the council. The hearing herein provided may continue from day  
333 to day and be recessed from time to time, as in the discretion of  
334 the council may be ordered. The qualified electors of the state,  
335 state-district, county or municipality shall likewise be given  
336 notice by proclamation of the Governor or the Lieutenant Governor,  
337 if the Governor is the officer to be removed, of the time and  
338 place of the hearing. Any interested citizen or citizens may  
339 likewise appear at the time and place listed and make \* \* \*  
340 representations to the council as, in the discretion of the  
341 council, may be material to the issues involved. The council  
342 shall promulgate rules for the hearings, which shall be in  
343 writing, but all representations shall be made under oath, to be  
344 administered by some member of the council. It shall not be  
345 necessary that a stenographic record be kept of the  
346 representations, either for or against removal, but the testimony  
347 taken shall be heard as nearly as practicable in compliance with  
348 the usually applicable rules of evidence. All decisions of the  
349 council on any question, preliminary or final, including the  
350 question of whether just cause for an election has been shown,  
351 shall be final and not subject to review.

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

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

356 25-5-25. The council shall keep minutes of its final  
357 judgments, and the disposition of each petition shall be recorded  
358 therein. If it be the judgment of the council that sufficient  
359 cause has not been shown to justify the removal of the officer,  
360 then the petition shall be dismissed and no new petition shall be

361 filed or entertained for a period of one (1) year from the date of  
362 the order dismissing the petition.

363 If, however, the council shall be of the opinion that  
364 sufficient cause has been shown to justify the removal of the  
365 officer, then notice to the qualified electors of the state or  
366 state-district, county or municipality involved shall be given, in  
367 accordance with the general election laws of the State of  
368 Mississippi in the matter of filling vacancies in state,  
369 state-district, county or municipal offices, that an election  
370 shall be held in the county or municipality to determine the  
371 question of whether or not the state, state-district, county or  
372 municipal official shall be removed from office.

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

375 25-5-27. The officer named in the removal petition shall  
376 continue to perform the duties of his office until the results of  
377 the special removal election shall be officially proclaimed. If,  
378 however, the officer named in the petition for removal shall offer  
379 his resignation before the issuance of the proclamation for the  
380 holding of special removal election, it shall be accepted, shall  
381 take effect on the date it is offered, and the vacancy shall be  
382 filled as provided by law for the filling of any vacancy in an  
383 elective state, state-district, county or municipal office. The  
384 officer who either resigns or is removed shall not be eligible to  
385 fill the vacancy caused by his removal or resignation, or serve as  
386 deputy in the office from which he resigns or is removed.

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

389 25-5-33. The election commissioners of the state,  
390 state-district, county or municipality, or a quorum thereof, shall  
391 meet at the office of the Secretary of State or the county or  
392 municipal registrar at 9:00 a.m. of the day following the special  
393 removal election, and shall then proceed to canvass, tabulate and

394 certify the results of the election as now provided by the general  
395 election laws of the State of Mississippi. The certificate of the  
396 results, showing the total votes cast for the removal of the  
397 officer, the total votes cast against the removal of the officer,  
398 and the total number of qualified electors in the county,  
399 supervisors district or municipality in which the election was  
400 held, shall be forwarded to the Governor or the Lieutenant  
401 Governor, if the Governor is the officer to be removed. If a  
402 majority of all qualified electors of the county, supervisors  
403 district or municipality in which the election shall have been  
404 held shall not have voted in the election, either for or against  
405 the removal, or if a majority of the qualified electors voting in  
406 the election shall oppose removal, the officer shall not be  
407 removed and shall not thereafter during his term of office be  
408 subject to another removal election. If a majority of all  
409 qualified electors of the state, state-district, county,  
410 supervisors district or municipality in which the election is held  
411 have voted either for or against removal, and if a majority of the  
412 qualified electors voting in the election shall vote for the  
413 removal of the officer, then the Governor shall issue his  
414 proclamation declaring the office vacant, removing the officer,  
415 and appointing a suitable person to fill the vacancy until the  
416 same can be filled in a special election to be held not more than  
417 sixty (60) days after the \* \* \* proclamation of the Governor. No  
418 officer shall be subject to a removal petition until he shall have  
419 served at least one (1) year of his term.

420 **SECTION 13.** Section 25-5-37, Mississippi Code of 1972, is  
421 amended as follows:

422 25-5-37. (1) Any person who signs any removal petition with  
423 any name other than his own, or who knowingly signs his name more  
424 than once to the petition, or who knowingly signs the petition  
425 when he is not a qualified elector shall be guilty of a felony

426 and, upon conviction, may be punished as such for a term in the  
427 penitentiary not to exceed five (5) years.

428 (2) Any person who knowingly executes any affidavit required  
429 by Sections 25-5-3 through 25-3-37 knowing the same to be false,  
430 or who issues any certificate required by the same knowing it to  
431 be false, or who makes any statement of any kind required by such  
432 sections to be under oath, either in writing or orally, knowing  
433 the same to be false shall be guilty of perjury and, upon  
434 conviction, may be punished by imprisonment in the State  
435 Penitentiary for a term not to exceed ten (10) years.

436 (3) It shall be a felony for any officer sought to be  
437 removed under the provisions of the aforesaid sections to attempt  
438 by force, threats, bribery, or intimidation to hinder or interfere  
439 with the free circulation or signing of any removal petition and,  
440 upon conviction thereof, he shall be punished by imprisonment in  
441 the State Penitentiary for not less than one (1) year nor more  
442 than five (5) years.

443 (4) Any person in the possession of a removal petition who  
444 either willfully suppresses, neglects, or fails to cause same to  
445 be filed with the Secretary of State or the county or municipal  
446 registrar shall be guilty of a misdemeanor and, upon conviction  
447 thereof, shall be punished by imprisonment in the county jail not  
448 to exceed six (6) months or by fine not to exceed Five Hundred  
449 Dollars (\$500.00), or by both such fine and imprisonment.

450 **SECTION 14.** The Attorney General of the State of Mississippi  
451 shall submit this act, immediately upon approval by the Governor,  
452 or upon approval by the Legislature subsequent to a veto, to the  
453 Attorney General of the United States or to the United States  
454 District Court for the District of Columbia in accordance with the  
455 provisions of the Voting Rights Act of 1965, as amended and  
456 extended.

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