

By: Representatives Rushing, Sykes, Dixon

To: Municipalities

HOUSE BILL NO. 1114  
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 21-19-11, MISSISSIPPI CODE OF 1972,  
2 WHICH SETS FORTH THE LAW ON CLEANING PROPERTY DETERMINED TO BE A  
3 MENACE TO PUBLIC HEALTH, SAFETY AND WELFARE; TO PROVIDE THAT SUCH  
4 PROPERTY OR PARCELS OF LAND THAT ARE LESS THAN ONE ACRE AND ARE  
5 LOCATED IN MUNICIPALITIES WITH A POPULATION OF OVER 25,000 MAY BE  
6 ADJUDICATED AS PROPERTY IN NEED OF CLEANING USING AN EXPEDITED  
7 PROCESS; TO PROVIDE THAT THE ACTUAL COST OF SUCH CLEANING SHALL  
8 NOT EXCEED \$250.00; TO AMEND SECTION 21-15-41, MISSISSIPPI CODE OF  
9 1972, TO PROVIDE THAT NO PERSON SHALL SERVE IN AN INTERIM OR  
10 HOLD-OVER CAPACITY FOR LONGER THAN 90 DAYS; TO AMEND SECTIONS  
11 21-3-5 AND 21-8-23, MISSISSIPPI CODE OF 1972, TO AUTHORIZE  
12 MUNICIPAL OFFICERS AND EMPLOYEES TO SERVE IN A HOLD-OVER CAPACITY  
13 UNTIL THE APPOINTMENT AND QUALIFICATION OF THEIR SUCCESSORS; AND  
14 FOR RELATED PURPOSES.

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

16 **SECTION 1.** Section 21-19-11, Mississippi Code of 1972, is  
17 amended as follows:

18 21-19-11. (1) To determine whether property or parcel of  
19 land located within a municipality is in such a state of  
20 uncleanliness as to be a menace to the public health, safety and  
21 welfare of the community, a governing authority of any  
22 municipality shall conduct a hearing, on its own motion, or upon  
23 the receipt of a petition signed by a majority of the residents  
24 residing within four hundred (400) feet of any property or parcel



25 of land alleged to be in need of the cleaning. Notice shall be  
26 provided to the property owner by:

27 (a) United States mail two (2) weeks before the date of  
28 the hearing mailed to the address of the subject property and to  
29 the address where the ad valorem tax notice for such property is  
30 sent by the office charged with collecting ad valorem tax; and

31 (b) Posting notice for at least two (2) weeks before  
32 the date of a hearing on the property or parcel of land alleged to  
33 be in need of cleaning and at city hall or another place in the  
34 municipality where such notices are posted.

35 Any notice required by this section shall include language  
36 that informs the property owner that an adjudication at the  
37 hearing that the property or parcel of land is in need of cleaning  
38 will authorize the municipality to reenter the property or parcel  
39 of land for a period of one (1) year after final adjudication  
40 without any further hearing if notice is posted on the property or  
41 parcel of land and at city hall or another place in the  
42 municipality where such notices are generally posted at least  
43 seven (7) days before the property or parcel of land is reentered  
44 for cleaning. A copy of the required notice mailed and posted as  
45 required by this section shall be recorded in the minutes of the  
46 governing authority in conjunction with the hearing required by  
47 this section.

48 If, at such hearing, the governing authority shall adjudicate  
49 the property or parcel of land in its then condition to be a



50 menace to the public health, safety and welfare of the community,  
51 the governing authority, if the owner does not do so himself,  
52 shall proceed to clean the land, by the use of municipal employees  
53 or by contract, by cutting grass and weeds; filling cisterns;  
54 removing rubbish, abandoned or dilapidated fences, outside  
55 toilets, abandoned or dilapidated buildings, slabs, personal  
56 property, which removal of personal property shall not be subject  
57 to the provisions of Section 21-39-21, and other debris; and  
58 draining cesspools and standing water therefrom. The governing  
59 authority may by resolution adjudicate the actual cost of cleaning  
60 the property and may also impose a penalty not to exceed One  
61 Thousand Five Hundred Dollars (\$1,500.00) or fifty percent (50%)  
62 of the actual cost, whichever is more. The cost and any penalty  
63 may become a civil debt against the property owner, and/or, at the  
64 option of the governing authority, an assessment against the  
65 property. The "cost assessed against the property" means either  
66 the cost to the municipality of using its own employees to do the  
67 work or the cost to the municipality of any contract executed by  
68 the municipality to have the work done, and administrative costs  
69 and legal costs of the municipality. For subsequent cleaning  
70 within the one-year period after the date of the hearing at which  
71 the property or parcel of land was adjudicated in need of  
72 cleaning, upon seven (7) days' notice posted both on the property  
73 or parcel of land adjudicated in need of cleaning and at city hall  
74 or another place in the municipality where such notices are



75 generally posted, and consistent with the municipality's  
76 adjudication as authorized in this subsection (1), a municipality  
77 may reenter the property or parcel of land to maintain cleanliness  
78 without further notice or hearing no more than six (6) times in  
79 any twelve-month period with respect to removing abandoned or  
80 dilapidated buildings, slabs, dilapidated fences and outside  
81 toilets, and no more than twelve (12) times in any  
82 twenty-four-month period with respect to cutting grass and weeds  
83 and removing rubbish, personal property and other debris on the  
84 land, and the expense of cleaning of the property, except as  
85 otherwise provided in this section for removal of hazardous  
86 substances, shall not exceed an aggregate amount of Twenty  
87 Thousand Dollars (\$20,000.00) per year, or the fair market value  
88 of the property subsequent to cleaning, whichever is more. The  
89 aggregate cost of removing hazardous substances will be the actual  
90 cost of such removal to the municipality and shall not be subject  
91 to the Twenty Thousand Dollar (\$20,000.00) limitation provided in  
92 this subsection. The governing authority may assess the same  
93 penalty for each time the property or land is cleaned as otherwise  
94 provided in this section. The penalty provided herein shall not  
95 be assessed against the State of Mississippi upon request for  
96 reimbursement under Section 29-1-145, nor shall a municipality  
97 clean a parcel owned by the State of Mississippi without first  
98 giving notice.



99           (2) When the fee or cost to clean property or a parcel of  
100 land that is one (1) acre or less does not exceed Two Hundred  
101 Fifty Dollars (\$250.00), excluding administrative costs, and the  
102 property or parcel is located within a municipality having a  
103 population over twenty-five thousand (25,000), the governing  
104 authority of the municipality may authorize one or more of its  
105 employees to determine whether the property or parcel of land is  
106 in such a state of uncleanliness as to be a menace to the public  
107 health, safety and welfare of the community and the determination  
108 made by the authorized municipal employee shall be set forth and  
109 recorded in the minutes of the governing authority. Notice of  
110 this determination shall be provided to the property owner by:

111           (a) United States mail seven (7) days before the date  
112 of cleaning of the property or parcel of land mailed to the  
113 address of the subject property and to the address where the ad  
114 valorem tax notice for such property is sent by the office charged  
115 with collecting ad valorem tax; and

116           (b) Posting notice for at least seven (7) days before  
117 the cleaning of the property or parcel of land and at city hall or  
118 another place in the municipality where such notices are posted.

119           Any notice required by this subsection shall include language  
120 that informs the property owner that the appropriate municipal  
121 official has determined that the property or parcel of land is a  
122 menace to the public health, safety and welfare of the community  
123 and in need of cleaning and the municipality is authorized to



124 enter the property for cleaning and that the municipality is  
125 further authorized to reenter the property or parcel of land for a  
126 period of one (1) year after this cleaning without any further  
127 hearing or action if notice is posted on the property or parcel of  
128 land and at city hall or another place in the municipality where  
129 such notices are generally posted at least seven (7) days before  
130 the property or parcel of land is reentered for cleaning. A copy  
131 of the required notice mailed and posted as required by this  
132 subsection shall be recorded in the minutes of the governing  
133 authority in conjunction with the determination made by the  
134 municipal employee in this subsection (2).

135 If an authorized municipal employee determines that the  
136 condition of property or parcel of land is a menace to the public  
137 health, safety and welfare of the community, the governing  
138 authority, if the owner does not do so himself, shall proceed to  
139 clean the land, by the use of municipal employees or by contract,  
140 by cutting grass and weeds; filling cisterns; removing rubbish,  
141 abandoned or dilapidated fences, outside toilets, abandoned or  
142 dilapidated buildings, slabs, personal property, which removal of  
143 personal property shall not be subject to the provisions of  
144 Section 21-39-21, and other debris; and draining cesspools and  
145 standing water therefrom. The governing authority shall by  
146 resolution adjudicate the actual cost of cleaning the property  
147 under this provision, provided the same does not exceed Two  
148 Hundred Fifty Dollars (\$250.00). The cost may become a civil debt



149 against the property owner, and/or, at the option of the governing  
150 authority, an assessment against the property. The "cost assessed  
151 against the property" means either the cost to the municipality of  
152 using its own employees to do the work or the cost to the  
153 municipality of any contract executed by the municipality to have  
154 the work done, and additionally may include administrative costs  
155 of the municipality not to exceed Fifty Dollars (\$50.00). For  
156 subsequent cleaning within the one-year period set forth in this  
157 subsection (2), upon seven (7) days' notice posted both on the  
158 property or parcel of land adjudicated in need of cleaning and at  
159 city hall or another place in the municipality where such notices  
160 are generally posted, and consistent with the municipal official's  
161 determination as authorized in this subsection (2), a municipality  
162 may reenter the property or parcel of land to maintain cleanliness  
163 without further notice or hearing under this subsection (2) no  
164 more than six (6) times in any twelve-month period with respect to  
165 removing abandoned or dilapidated buildings, slabs, dilapidated  
166 fences and outside toilets, and no more than twelve (12) times in  
167 any twenty-four-month period with respect to cutting grass and  
168 weeds and removing rubbish, personal property and other debris on  
169 the land, and the expense of cleaning of the property shall not  
170 exceed an aggregate amount of One Thousand Dollars (\$1,000.00) per  
171 year under this subsection (2). The governing authority may  
172 assess the same penalty for each time the property or land is  
173 cleaned as otherwise provided in this subsection (2). The penalty



174 provided herein shall not be assessed against the State of  
175 Mississippi upon request for reimbursement under Section 29-1-145,  
176 nor shall a municipality clean a parcel owned by the State of  
177 Mississippi without first giving notice. A determination made by  
178 an appropriate municipal employee under this subsection (2) that  
179 the state or condition of property or a parcel of land is a menace  
180 to the public health, safety and welfare of the community shall  
181 not subsequently be used to replace a hearing if subsection (1) of  
182 this section is later utilized by a municipality when the  
183 prerequisites of this subsection (2) are not satisfied.

184 ( \* \* \*3) If the governing authority declares, by  
185 resolution, that the cost and any penalty shall be collected as a  
186 civil debt, the governing authority may authorize the institution  
187 of a suit on open account against the owner of the property in a  
188 court of competent jurisdiction in the manner provided by law for  
189 the cost and any penalty, plus court costs, reasonable attorney's  
190 fees and interest from the date that the property was cleaned.

191 ( \* \* \*4) (a) If the governing authority declares that the  
192 cost and any penalty shall be collected as an assessment against  
193 the property, then the assessment above provided for shall be a  
194 lien against the property and may be enrolled in the office of the  
195 circuit clerk of the county as other judgments are enrolled, and  
196 the tax collector of the municipality shall, upon order of the  
197 board of governing authorities, proceed to sell the land to  
198 satisfy the lien as now provided by law for the sale of lands for





199 delinquent municipal taxes. The lien against the property shall  
200 be an encumbrance upon the property and shall follow title of the  
201 property.

202 (b) (i) All assessments levied under the provisions of  
203 this section shall be included with municipal ad valorem taxes and  
204 payment shall be enforced in the same manner in which payment is  
205 enforced for municipal ad valorem taxes, and all statutes  
206 regulating the collection of other taxes in a municipality shall  
207 apply to the enforcement and collection of the assessments levied  
208 under the provisions of this section, including utilization of the  
209 procedures authorized under Sections 17-13-9(2) and 27-41-2.

210 (ii) All assessments levied under the provisions  
211 of this section shall become delinquent at the same time municipal  
212 ad valorem taxes become delinquent. Delinquencies shall be  
213 collected in the same manner and at the same time delinquent ad  
214 valorem taxes are collected and shall bear the same penalties as  
215 those provided for delinquent taxes. If the property is sold for  
216 the nonpayment of an assessment under this section, it shall be  
217 sold in the manner that property is sold for the nonpayment of  
218 delinquent ad valorem taxes. If the property is sold for  
219 delinquent ad valorem taxes, the assessment under this section  
220 shall be added to the delinquent tax and collected at the same  
221 time and in the same manner.

222 ( \* \* \*5) All decisions rendered under the provisions of  
223 this section may be appealed in the same manner as other appeals



224 from municipal boards or courts are taken. However, an appeal  
225 from a decision of a municipal officer or official shall be made  
226 to the governing authority and such appeal shall be in writing,  
227 state the basis for the appeal and be filed with the city clerk no  
228 later than seven (7) days from the latest date of notice required  
229 under this section.

230 ( \* \* \*6) Nothing contained under this section shall prevent  
231 any municipality from enacting criminal penalties for failure to  
232 maintain property so as not to constitute a menace to public  
233 health, safety and welfare.

234 **SECTION 2.** Section 21-15-41, Mississippi Code of 1972, is  
235 amended as follows:

236 21-15-41. (1) No person shall serve in an interim or  
237 hold-over capacity for longer than \* \* \* ninety (90) days in a  
238 position that is required by law to be filled by appointment of  
239 the governing body of a municipality, or by mayoral appointment  
240 with the advice and consent of the council or aldermen. If such  
241 position is not filled within \* \* \* ninety (90) days after the  
242 expiration of the position's term, or within \* \* \* ninety (90)  
243 days after the date of appointment if an interim appointment, the  
244 hold-over service or interim appointment shall terminate and no  
245 municipal funds may thereafter be expended to compensate the  
246 person serving in the position. Further, any action or vote taken  
247 by such person after the \* \* \* ninety-day period shall be invalid  
248 and without effect. If a council or board of aldermen rejects, or



249 otherwise fails to confirm, an individual submitted by the mayor  
250 for appointment, the mayor may not resubmit or reappoint the same  
251 individual for that position during the remainder of the mayor's  
252 current term in office.

253 (2) It is the intent of the Legislature that the provisions  
254 of this section shall apply \* \* \* to all appointees serving in a  
255 hold-over or interim capacity on the effective date of this  
256 act \* \* \*. For such appointees, the \* \* \* limitation period \* \* \*  
257 for serving in a hold-over or interim capacity shall be no longer  
258 than ninety (90) days from July 1, 2018.

259 (3) Any registered voter who resides in the municipality may  
260 file all objections to any matters relating to an alleged  
261 violation of this section in the chancery court of the county  
262 where the municipality is located. The chancery court is  
263 authorized to adjudicate and determine relief as may be proper.  
264 The court shall award reasonable attorney's fees and costs to the  
265 prevailing party.

266 **SECTION 3.** Section 21-3-5, Mississippi Code of 1972, is  
267 amended as follows:

268 21-3-5. From and after the expiration of the terms of office  
269 of present municipal officers, the mayor and board of aldermen of  
270 all municipalities operating under this chapter shall have the  
271 power and authority to appoint a street commissioner, and such  
272 other officers and employees as may be necessary, and to prescribe  
273 the duties and fix the compensation of all such officers and



274 employees. All officers and employees so appointed shall hold  
275 office at the pleasure of the governing authorities and may be  
276 discharged by such governing authorities at any time, either with  
277 or without cause. The governing authorities of municipalities  
278 shall have the power and authority, in their discretion, to  
279 appoint the same person to any two (2) or more of the appointive  
280 offices, and in a municipality having a population of less than  
281 fifteen thousand (15,000), according to the latest available  
282 federal census, a member of the board of aldermen may be appointed  
283 to the office of street commissioner. In municipalities not  
284 having depositories, the clerk shall serve as ex officio  
285 treasurer. The municipal governing authorities shall require all  
286 officers and employees handling or having the custody of any  
287 public funds of such city to give bond, with sufficient surety, to  
288 be payable, conditioned and approved as provided by law, in an  
289 amount to be determined by the governing authority (which shall be  
290 not less than Fifty Thousand Dollars (\$50,000.00)), the premium on  
291 same to be paid from the municipal treasury. The terms of office  
292 or employment of all officers and employees so appointed shall  
293 expire at the expiration of the term of office of the governing  
294 authorities making the appointment, unless such officers or  
295 employees shall have been sooner discharged as herein provided.  
296 All officers and employees so appointed are authorized to serve  
297 until the appointment and qualification of their successors not  
298 exceeding the limitation period provided in Section 21-15-41.



299           **SECTION 4.** Section 21-8-23, Mississippi Code of 1972, is  
300 amended as follows:

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

306           (2) Each department shall be headed by a director, who shall  
307 be appointed by the mayor and confirmed by an affirmative vote of  
308 a majority of the council present and voting at any such meeting.  
309 Each director shall serve during the term of office of the mayor  
310 appointing him and until the appointment and qualification of the  
311 director's successor not exceeding the limitation period provided  
312 in Section 21-15-41.

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

322           (4) Directors of departments shall appoint subordinate  
323 officers and employees within their respective departments and



324 may, with approval of the mayor, remove such officers and  
325 employees subject to the provisions of any ordinance establishing  
326 a civil service system where that system is effective in the  
327 municipality, or other general law; provided, however, that the  
328 council may provide by ordinance for the appointment and removal  
329 of specific boards or commissions by the mayor.

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

335 (6) The council shall also require all officers and  
336 employees handling or having the custody of any of the public  
337 funds of such municipality to give bond, with sufficient surety,  
338 to be payable, conditioned and approved as provided by law, in an  
339 amount to be determined by the council (which shall not be less  
340 than Fifty Thousand Dollars (\$50,000.00)), the premium on which  
341 bonds shall be paid by the city.

342 **SECTION 5.** This act shall take effect and be in force from  
343 and after July 1, 2018.

