

Senate Amendments to House Bill No. 320

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

12 **SECTION 1.** Section 19-5-105, Mississippi Code of 1972, is
13 amended as follows:
14 19-5-105. (1) To determine whether property or a parcel of
15 land located within a county is in such a state of uncleanliness
16 as to be a menace to the public health, safety and welfare of the
17 community, the board of supervisors of any county is authorized
18 and empowered to conduct a hearing on its own motion, or upon the
19 receipt of a petition requesting the board of supervisors to act
20 signed by a majority of the residents eighteen (18) years of age
21 or older, residing upon any street or alley, within reasonable
22 proximity of any property alleged to be in need of cleaning, or
23 within seven hundred fifty (750) feet of the precise location of
24 the alleged menace situated on any parcel of land which is located
25 in a populated area or in a housing subdivision and alleged to be
26 in need of cleaning.

27 Notice shall be provided to the property owner by:

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

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

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

49 If at such hearing the board of supervisors shall in its
50 resolution adjudicate such parcel of land in its then condition to
51 be a menace to the public health and safety of the community, the
52 board of supervisors may, if the owner not do so himself, proceed
53 to have the land cleaned by cutting weeds, filling cisterns, and

54 removing rubbish, dilapidated fences, outside toilets, dilapidated
55 buildings and other debris, and draining cesspools and standing
56 water. Thereafter, the board of supervisors may at its next
57 regular meeting by resolution adjudicate the actual cost of
58 cleaning the land and may also impose a penalty not to exceed One
59 Thousand Five Hundred Dollars (\$1,500.00) or fifty percent (50%)
60 of the actual cost, whichever is more. The cost and any penalty
61 shall become an assessment against the property. The "cost
62 assessed against the property" means either the cost to the county
63 of using its own employees to do the work or the cost to the
64 county of any contract executed by the county to have the work
65 done, and administrative costs and legal costs of the county.

66 A county may reenter the property or parcel of land to
67 maintain cleanliness without further notice of hearing no more
68 than six (6) times in any twelve-month period with respect to
69 removing dilapidated buildings, dilapidated fences and outside
70 toilets, and no more than twelve (12) times in any
71 twenty-four-month period with respect to cutting grass and weeds
72 and removing rubbish, personal property and other debris on the
73 land. The expense of cleaning the property shall not exceed an
74 aggregate amount of Twenty Thousand Dollars (\$20,000.00) per year,
75 or the fair market value of the property subsequent to cleaning,
76 whichever is less. The board of supervisors may assess the same
77 penalty each time the property or land is cleaned as otherwise
78 provided in this section.

79 The penalty provided herein shall not be assessed against the
80 State of Mississippi upon request for reimbursement under Section
81 29-1-145, nor shall a county clean a parcel owned by the State of
82 Mississippi without first giving notice.

83 The assessment authorized by this section shall be a lien
84 against the property and may be enrolled in the office of the
85 circuit clerk of the county as other judgments are enrolled, and
86 the tax collector of the county shall, upon order of the board of
87 supervisors, proceed to sell the land to satisfy the lien as now
88 provided by law for the sale of lands for delinquent taxes.
89 Furthermore, the property owner whose land has been sold pursuant
90 to this section shall have the same right of redemption as now
91 provided by law for the sale of lands for delinquent taxes. All
92 decisions rendered under the provisions of this section may be
93 appealed in the same manner as other appeals from county boards.

94 (2) If private property or a parcel of land located within a
95 county is a perpetual care cemetery subject to Section 41-43-1 et
96 seq., a county may proceed pursuant to the same provisions of this
97 chapter used to determine whether a property is a public health
98 menace to instead determine if the perpetual care cemetery and all
99 structures thereon are not being properly maintained and have
100 become detrimental to the public health and welfare. A perpetual
101 care cemetery that is "not being properly maintained and has
102 become detrimental to the public health and welfare" means a
103 perpetual care cemetery that shows signs of neglect, including,
104 without limitation, the unchecked growth of vegetation, repeated

105 and unchecked acts of vandalism, unusable entrances and exits,
106 excess rubbish or debris, or the disintegration of grave markers
107 or boundaries. Upon notice and opportunity to be heard as
108 provided in this chapter, the county may adjudicate the property
109 or parcel of land in its then condition to be not properly
110 maintained and, if the owner does not do so himself, may proceed
111 to clean the land as set forth in this chapter. When performing
112 maintenance pursuant to this subsection, the penalties provided
113 above shall not be assessed against owners of perpetual care
114 cemeteries.

115 (a) Any county performing maintenance or repair
116 pursuant to this subsection may make application to the Secretary
117 of State for an order directing the trustee of the perpetual care
118 cemetery trust fund to release from accrued interest of the trust
119 an amount sufficient to reimburse only actual cleanup costs
120 incurred. The penalty provided above shall not be assessed
121 against perpetual care cemeteries. The application to the
122 Secretary of State shall include a statement by the county that
123 the requirements of this section have been met.

124 (b) If the Secretary of State is satisfied that the
125 notice and hearing requirements have been met and that the
126 application for an order directing the trustee to release accrued
127 interest does not threaten the ability of the trust to provide for
128 the care and maintenance of the cemetery, then the Secretary of
129 State may order the trustee to release accrued interest sufficient
130 to reimburse the county for actual costs of cleanup performed.

131 **SECTION 2.** Section 21-19-11, Mississippi Code of 1972, is
132 amended as follows:

133 21-19-11. (1) To determine whether property or parcel of
134 land located within a municipality is in such a state of
135 uncleanliness as to be a menace to the public health, safety and
136 welfare of the community, a governing authority of any
137 municipality shall conduct a hearing, on its own motion, or upon
138 the receipt of a petition signed by a majority of the residents
139 residing within four hundred (400) feet of any property or parcel
140 of land alleged to be in need of the cleaning. Notice shall be
141 provided to the property owner by:

142 (a) United States mail two (2) weeks before the date of
143 the hearing mailed to the address of the subject property, except
144 where the land or structure(s) is apparently vacant, and to the
145 address where the ad valorem tax notice for such property is sent
146 by the office charged with collecting ad valorem tax; and

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

151 Any notice required by this section shall include language
152 that informs the property owner that an adjudication at the
153 hearing that the property or parcel of land is in need of cleaning
154 will authorize the municipality to reenter the property or parcel
155 of land for a period of two (2) years after final adjudication
156 without any further hearing if notice is posted on the property or

157 parcel of land and at city hall or another place in the
158 municipality where such notices are generally posted at least
159 seven (7) days before the property or parcel of land is reentered
160 for cleaning. A copy of the required notice mailed and posted as
161 required by this section shall be recorded in the minutes of the
162 governing authority in conjunction with the hearing required by
163 this section.

164 If, at such hearing, the governing authority shall adjudicate
165 the property or parcel of land in its then condition to be a
166 menace to the public health, safety and welfare of the community,
167 the governing authority, if the owner does not do so himself,
168 shall proceed to clean the land, by the use of municipal employees
169 or by contract, by cutting grass and weeds; filling cisterns;
170 removing rubbish, abandoned or dilapidated fences, outside
171 toilets, abandoned or dilapidated buildings, slabs, personal
172 property, which removal of personal property shall not be subject
173 to the provisions of Section 21-39-21, and other debris; and
174 draining cesspools and standing water therefrom. The governing
175 authority may by resolution adjudicate the actual cost of cleaning
176 the property and may also impose a penalty not to exceed One
177 Thousand Five Hundred Dollars (\$1,500.00) or fifty percent (50%)
178 of the actual cost, whichever is more. The cost and any penalty
179 may become a civil debt against the property owner, and/or, at the
180 option of the governing authority, an assessment against the
181 property. The "cost assessed against the property" means either
182 the cost to the municipality of using its own employees to do the

183 work or the cost to the municipality of any contract executed by
184 the municipality to have the work done, and administrative costs
185 and legal costs of the municipality. For subsequent cleaning
186 within the one-year period after the date of the hearing at which
187 the property or parcel of land was adjudicated in need of
188 cleaning, upon seven (7) days' notice posted both on the property
189 or parcel of land adjudicated in need of cleaning and at city hall
190 or another place in the municipality where such notices are
191 generally posted, and consistent with the municipality's
192 adjudication as authorized in this subsection (1), a municipality
193 may reenter the property or parcel of land to maintain cleanliness
194 without further notice or hearing no more than six (6) times in
195 any twelve-month period with respect to removing abandoned or
196 dilapidated buildings, slabs, dilapidated fences and outside
197 toilets, and no more than twelve (12) times in any
198 twenty-four-month period with respect to cutting grass and weeds
199 and removing rubbish, personal property and other debris on the
200 land, and the expense of cleaning of the property, except as
201 otherwise provided in this section for removal of hazardous
202 substances, shall not exceed an aggregate amount of Twenty
203 Thousand Dollars (\$20,000.00) per year, or the fair market value
204 of the property subsequent to cleaning, whichever is more. The
205 aggregate cost of removing hazardous substances will be the actual
206 cost of such removal to the municipality and shall not be subject
207 to the Twenty Thousand Dollars (\$20,000.00) limitation provided in
208 this subsection. The governing authority may assess the same

209 penalty for each time the property or land is cleaned as otherwise
210 provided in this section. The penalty provided herein shall not
211 be assessed against the State of Mississippi upon request for
212 reimbursement under Section 29-1-145, nor shall a municipality
213 clean a parcel owned by the State of Mississippi without first
214 giving notice. Upon written authority from the Secretary of
215 State's office, for state-owned properties, a municipality may
216 forgo the notification process that is prescribed in this
217 subsection and proceed to clean the properties and assess costs as
218 prescribed in this subsection, except that penalties shall not be
219 assessed against the State of Mississippi.

220 (2) When the fee or cost to clean property or a parcel of
221 land that is one (1) acre or less does not exceed Two Hundred
222 Fifty Dollars (\$250.00), excluding administrative costs, and the
223 property or parcel is located within a municipality having a
224 population over one thousand five hundred (1,500), the governing
225 authority of the municipality may authorize one or more of its
226 employees to determine whether the property or parcel of land is
227 in such a state of uncleanliness as to be a menace to the public
228 health, safety and welfare of the community and the determination
229 made by the authorized municipal employee shall be set forth and
230 recorded in the minutes of the governing authority. Notice of
231 this determination shall be provided to the property owner by:

232 (a) United States mail seven (7) days before the date
233 of cleaning of the property or parcel of land mailed to the
234 address of the subject property, except where the land or

235 structure(s) is apparently vacant, and to the address where the ad
236 valorem tax notice for such property is sent by the office charged
237 with collecting ad valorem tax; and

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

241 Any notice required by this subsection shall include language
242 that informs the property owner that the appropriate municipal
243 official has determined that the property or parcel of land is a
244 menace to the public health, safety and welfare of the community
245 and in need of cleaning and the municipality is authorized to
246 enter the property for cleaning and that the municipality is
247 further authorized to reenter the property or parcel of land for a
248 period of two (2) years after this cleaning without any further
249 hearing or action if notice is posted on the property or parcel of
250 land and at city hall or another place in the municipality where
251 such notices are generally posted at least seven (7) days before
252 the property or parcel of land is reentered for cleaning. A copy
253 of the required notice mailed and posted as required by this
254 subsection shall be recorded in the minutes of the governing
255 authority in conjunction with the determination made by the
256 municipal employee in this subsection (2).

257 If an authorized municipal employee determines that the
258 condition of property or parcel of land is a menace to the public
259 health, safety and welfare of the community, the governing
260 authority, if the owner does not do so himself, shall proceed to

261 clean the land, by the use of municipal employees or by contract,
262 by cutting grass and weeds; filling cisterns; removing rubbish,
263 abandoned or dilapidated fences, outside toilets, abandoned or
264 dilapidated buildings, slabs, personal property, which removal of
265 personal property shall not be subject to the provisions of
266 Section 21-39-21, and other debris; and draining cesspools and
267 standing water therefrom. The governing authority shall by
268 resolution adjudicate the actual cost of cleaning the property
269 under this provision, provided the same does not exceed Two
270 Hundred Fifty Dollars (\$250.00) and may also impose a penalty not
271 to exceed One Hundred Dollars (\$100.00) or one hundred percent
272 (100%) of the actual cost of cleaning the property, whichever is
273 more. The cost and any penalty imposed may become a civil debt
274 against the property owner, and/or, at the option of the governing
275 authority, an assessment against the property. The "cost assessed
276 against the property" means either the cost to the municipality of
277 using its own employees to do the work or the cost to the
278 municipality of any contract executed by the municipality to have
279 the work done, and additionally may include administrative costs
280 of the municipality not to exceed Fifty Dollars (\$50.00). For
281 subsequent cleaning within the one-year period set forth in this
282 subsection (2), upon seven (7) days' notice posted both on the
283 property or parcel of land adjudicated in need of cleaning and at
284 city hall or another place in the municipality where such notices
285 are generally posted, and consistent with the municipal official's
286 determination as authorized in this subsection (2), a municipality

287 may reenter the property or parcel of land to maintain cleanliness
288 without further notice or hearing under this subsection (2) no
289 more than six (6) times in any twelve-month period with respect to
290 removing abandoned or dilapidated buildings, slabs, dilapidated
291 fences and outside toilets, and no more than twelve (12) times in
292 any twenty-four-month period with respect to cutting grass and
293 weeds and removing rubbish, personal property and other debris on
294 the land, and the expense of cleaning of the property shall not
295 exceed an aggregate amount of One Thousand Dollars (\$1,000.00) per
296 year under this subsection (2). The governing authority may
297 assess the same actual costs, administrative costs and penalty for
298 each time the property or land is cleaned as otherwise provided in
299 this subsection (2). The penalty provided herein shall not be
300 assessed against the State of Mississippi upon request for
301 reimbursement under Section 29-1-145, nor shall a municipality
302 clean a parcel owned by the State of Mississippi without first
303 giving notice. Upon written authority from the Secretary of
304 State's office, for state-owned properties, a municipality may
305 forgo the notification process that is prescribed in this
306 subsection and proceed to clean the properties and assess costs as
307 prescribed in this subsection, except that penalties shall not be
308 assessed against the State of Mississippi. A determination made
309 by an appropriate municipal employee under this subsection (2)
310 that the state or condition of property or a parcel of land is a
311 menace to the public health, safety and welfare of the community
312 shall not subsequently be used to replace a hearing if subsection

313 (1) of this section is later utilized by a municipality when the
314 prerequisites of this subsection (2) are not satisfied.

315 (3) If the governing authority declares, by resolution, that
316 the cost and any penalty shall be collected as a civil debt, the
317 governing authority may authorize the institution of a suit on
318 open account against the owner of the property in a court of
319 competent jurisdiction in the manner provided by law for the cost
320 and any penalty, plus court costs, reasonable attorney's fees and
321 interest from the date that the property was cleaned.

322 (4) (a) If the governing authority declares that the cost
323 and any penalty shall be collected as an assessment against the
324 property, then the assessment above provided for shall be a lien
325 against the property and may be enrolled in the office of the
326 chancery clerk of the county as other liens and encumbrances are
327 enrolled, and the tax collector of the municipality shall, upon
328 order of the board of governing authorities, proceed to sell the
329 land to satisfy the lien as now provided by law for the sale of
330 lands for delinquent municipal taxes. The lien against the
331 property shall be an encumbrance upon the property and shall
332 follow title of the property.

333 (b) (i) All assessments levied under the provisions of
334 this section shall be included with municipal ad valorem taxes and
335 payment shall be enforced in the same manner in which payment is
336 enforced for municipal ad valorem taxes, and all statutes
337 regulating the collection of other taxes in a municipality shall
338 apply to the enforcement and collection of the assessments levied

339 under the provisions of this section, including utilization of the
340 procedures authorized under Sections 17-13-9(2) and 27-41-2.

341 (ii) All assessments levied under the provisions
342 of this section shall become delinquent at the same time municipal
343 ad valorem taxes become delinquent. Delinquencies shall be
344 collected in the same manner and at the same time delinquent ad
345 valorem taxes are collected and shall bear the same penalties as
346 those provided for delinquent taxes. If the property is sold for
347 the nonpayment of an assessment under this section, it shall be
348 sold in the manner that property is sold for the nonpayment of
349 delinquent ad valorem taxes. If the property is sold for
350 delinquent ad valorem taxes, the assessment under this section
351 shall be added to the delinquent tax and collected at the same
352 time and in the same manner.

353 (5) All decisions rendered under the provisions of this
354 section may be appealed in the same manner as other appeals from
355 municipal boards or courts are taken. However, an appeal from a
356 decision of a municipal officer or official shall be made to the
357 governing authority and such appeal shall be in writing, state the
358 basis for the appeal and be filed with the city clerk no later
359 than seven (7) days from the latest date of notice required under
360 this section.

361 (6) Nothing contained under this section shall prevent any
362 municipality from enacting criminal penalties for failure to
363 maintain property so as not to constitute a menace to public
364 health, safety and welfare.

365 (7) If private property or a parcel of land located within a
366 municipality is a perpetual care cemetery subject to Section
367 41-43-1 et seq., a municipality may proceed pursuant to the same
368 provisions of this chapter used to determine whether a property is
369 a public health menace to instead determine if the perpetual care
370 cemetery and all structures thereon are not being properly
371 maintained and have become detrimental to the public health and
372 welfare. A perpetual care cemetery that is "not being properly
373 maintained and has become detrimental to the public health and
374 welfare" means a perpetual care cemetery that shows signs of
375 neglect, including, without limitation, the unchecked growth of
376 vegetation, repeated and unchecked acts of vandalism, unusable
377 entrances and exits, excess rubbish or debris, or the
378 disintegration of grave markers or boundaries. Upon notice and
379 opportunity to be heard as provided in this chapter, the
380 municipality may adjudicate the property or parcel of land in its
381 then condition to be not properly maintained and has become
382 detrimental to the public health and welfare and, if the owner
383 does not do so himself, may proceed to clean the land as set forth
384 in the provisions of this chapter. When performing maintenance
385 pursuant to this subsection, the penalties provided above shall
386 not be assessed against owners of perpetual care cemeteries.

387 (a) Any municipality performing maintenance pursuant to
388 this subsection may make application to the Secretary of State for
389 an order directing the trustee of the perpetual care cemetery
390 trust fund to release from accrued interest of the trust an amount

391 sufficient to reimburse only actual cleanup costs incurred. The
392 application to the Secretary of State shall include a statement by
393 the municipality that the requirements of this section have been
394 met.

395 (b) If the Secretary of State is satisfied that the
396 notice and hearing requirements have been met and that the
397 application for an order directing the trustee to release accrued
398 interest does not threaten the ability of the trust to provide for
399 the care and maintenance of the cemetery, the Secretary of State
400 may order the trustee to release accrued interest sufficient to
401 reimburse the municipality for actual costs of cleanup performed.

402 **SECTION 3.** Section 41-43-57, Mississippi Code of 1972, is
403 amended as follows:

404 41-43-57. (1) In exceptional circumstances only, a
405 perpetual care owner can make an application to the Secretary of
406 State for an order directing the trustee to release trust
407 principal for the extended care, maintenance or improvements to
408 the perpetual care cemetery for which interest funds are
409 insufficient. Before issuing such an order, the Secretary of
410 State shall satisfy himself that the request is for a major
411 capital expenditure that will advance the perpetual care life of
412 the cemetery without undue risk to the solvency of the perpetual
413 care trust fund. Consistent with this section, this shall be the
414 only instance in which a perpetual care trust corpus may be
415 utilized for cemetery maintenance and improvements. In the
416 consideration of the application, the Secretary of State may

417 require the production of any records deemed necessary and
418 relevant to the application of the cemetery for a major capital
419 expenditure.

420 (2) Subject to the provisions of Section 21-19-11(7) or
421 Section 19-5-105(2), any municipality or county may also make
422 application to the Secretary of State for an order directing the
423 trustee to release trust interest for reimbursement to the county
424 or municipality for actual costs of cleanup performed.

425 **SECTION 4.** This act shall take effect and be in force from
426 and after July 1, 2021.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 19-5-105, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE COUNTIES TO ASSESS PENALTIES AGAINST OWNERS OF
3 PERPETUAL CARE CEMETERIES; TO AMEND SECTION 21-19-11, MISSISSIPPI
4 CODE OF 1972, TO AUTHORIZE MUNICIPALITIES TO ASSESS PENALTIES
5 AGAINST OWNERS OF PERPETUAL CARE CEMETERIES; TO AMEND SECTION
6 41-43-57, MISSISSIPPI CODE OF 1972, TO ALLOW COUNTIES AND
7 MUNICIPALITIES TO MAKE APPLICATIONS FOR RELEASE OF ACCRUED
8 INTEREST FROM PERPETUAL CARE CEMETERY TRUST FUNDS FOR
9 REIMBURSEMENT FOR ACTUAL COSTS OF CLEANUP PERFORMED UPON PERPETUAL
10 CARE CEMETERIES; AND FOR RELATED PURPOSES.

SS36\HB320A.J

Eugene S. Clarke
Secretary of the Senate