

By: Representatives McGee, Foster, Stamps,
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To: Municipalities

HOUSE BILL NO. 537

1 AN ACT TO AUTHORIZE THE GOVERNING AUTHORITY OF ANY
2 MUNICIPALITY TO WAIVE LIENS, UNDER CERTAIN CIRCUMSTANCES, THAT ARE
3 IMPOSED ON REAL PROPERTY FOR COSTS AND/OR PENALTIES ASSOCIATED
4 WITH A MUNICIPALITY'S CLEANING OF REAL PROPERTY THAT HAS BEEN
5 DEEMED A MENACE; TO PROVIDE THAT AN APPLICATION FOR THE WAIVER BE
6 SUBMITTED FOR CONSIDERATION OF SUCH WAIVER; TO PROHIBIT THE
7 PROPERTY OWNER WHO CAUSED THE PROPERTY TO BE DEEMED A MENACE BY
8 THE MUNICIPALITY FROM SUBMITTING SUCH APPLICATION; TO AMEND
9 SECTION 21-19-11, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE
10 PRECEDING SECTIONS; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** As used in this act unless the context otherwise
13 requires:

14 (a) "Amnesty" or "waiver" means the forgiveness of an
15 assessment against a property or individual(s) of the costs and
16 related penalties associated with the cleanup incurred by or paid
17 by the municipality to clear code violations. Approvals for such
18 amnesty or waiver shall specify dollar amounts or are otherwise
19 assumed to be in full. Amnesty or waiver referenced in this
20 section applies to those costs and penalties applicable set out in
21 Section 21-19-11 and in no way relieves costs, fines or other
22 orders imposed by any court.



23 (b) "Governing authority" means the governing authority
24 of a municipality.

25 (c) "Municipality" means any incorporated city, town or
26 village within the state.

27 **SECTION 2.** The governing authority of any municipality is
28 authorized with the conditions enumerated in this act to consider
29 and award, when it deems appropriate, the full or partial waiver
30 of assessments against properties or individuals as a result of
31 the municipality having acted to clear code violations.

32 **SECTION 3.** Whereas, the purpose of the governing authority
33 in exercising the authority under this act, is to foster
34 development and reuse of properties formerly found to be a menace
35 by the municipality by virtue of any number of code violations or
36 blight conditions, the following circumstances must exist to
37 consider such waiver or amnesty:

38 (a) The governing authority must have adopted a
39 resolution and entered on its minutes a finding that (i)
40 collection of the assessment and related penalties through the
41 ordinary process of law has been and will likely be ineffectual
42 and therefore is a doubtful claim; and (ii) it will be more
43 beneficial to the municipality for the new owner of the property
44 to have the property free of any liens of the municipality, which
45 will make it easier for the owner to develop, reuse or redevelop
46 the property.



47 (b) Such waiver or amnesty shall not unduly benefit the
48 owner(s) responsible for the property's past code violation
49 condition. Application shall be made by a new owner or a
50 prospective new owner.

51 (c) The property for which such waiver or amnesty is
52 requested are those where the municipality, by its own labor or
53 its contractors, have acted to clear violations by any legal
54 process available to it and where there are costs and/or penalties
55 associated with the property and/or its owner(s) and where the
56 work performed was no less than one year prior to the application
57 for amnesty.

58 (d) Costs and/or penalties may be considered for
59 waiver/amnesty regardless of whether or not the associated costs
60 have been assessed by the tax collector to be collected along with
61 the standard taxes for the property. Costs and/or penalties may
62 also be considered for waiver/amnesty if they have been sold for
63 taxes but have not yet been redeemed. Costs/penalties already
64 paid or sold at tax sale and already redeemed shall not be
65 eligible for waiver/amnesty.

66 **SECTION 4.** The municipality shall require application for
67 consideration of lien waiver/amnesty to include the following:

68 (a) An owner or prospective owner must make application
69 to the municipality for such amnesty, but in no case may the owner
70 responsible for the past code enforcement action or anyone in any
71 way affiliated with such owner be eligible to apply.



72 (b) Application must include plans for redevelopment,
73 reuse, alternative use, or improved maintenance of the property,
74 and the governing authority shall use the assurances of the
75 developer as the basis for negotiating any terms and conditions it
76 deems appropriate.

77 (c) Application for amnesty requires that the new or
78 prospective owner supply one recent appraisal of the property from
79 a reputable real estate appraiser or the county tax assessor's
80 appraised value, or if vacant land, an appraisal, the tax
81 assessor's appraised value, or a competitive sales analysis by a
82 reputable real estate professional, identifying its post-cleaning
83 condition. The applicant must also provide a copy of the contract
84 or closing documents for purchase revealing that the purchase
85 price does not exceed the appraised or analyzed value.

86 **SECTION 5.** The governing authority of a municipality shall
87 be the decision-making body determining what developments warrant
88 lien waiver/amnesty and conditions to apply.

89 (a) Amnesty may be denied or may be granted in full or
90 in part by the governing authority and its consideration of all
91 factors, but in no case shall any such lien be waived or reduced
92 until such time that the governing authority has acted to confirm
93 that its conditions have been met.

94 (b) For properties where demolition is a part of the
95 agreed upon plan, demolition must occur within twelve (12) months
96 of approval. For reuse or redevelopment of structures, all



97 conditions must be satisfied within eighteen (18) months of
98 approval. For agreements where demolition is the only proposed
99 action or where improved maintenance of a vacant parcel is the
100 only proposed action, the property must be sufficiently maintained
101 for no less than twelve (12) months prior to finding that all
102 conditions of amnesty have been satisfied. For good cause shown,
103 the municipality may allow an additional six (6) to twelve (12)
104 months to satisfy conditions.

105 (c) Approvals for lien waivers/amnesty shall be
106 approved on conditional basis only, and releases therefor shall
107 not be approved or filed until the governing authority of the
108 municipality has formally acknowledged that the conditions of the
109 lien waiver/amnesty agreement have been met.

110 (d) Upon approval of a conditional waiver/amnesty where
111 the cost has already been posted to the tax rolls, the
112 municipality will coordinate with the tax collector to withdraw
113 and hold in abeyance that assessment until such time that the
114 conditions of the governing authority have been satisfied.

115 (e) If the owner has not satisfied the conditions
116 within the time period established and the municipality has not
117 extended the period allowed, the owner must pay the principal
118 amount of the municipality's lien plus interest at the rate of
119 eight percent (8%) per annum.

120 (f) If the owner desires to sell or dispose of the real
121 property prior to satisfying the conditions, the owner must first



122 obtain the municipality's approval. If the municipality approves
123 the sale or disposal of the real estate prior to satisfying the
124 conditions, the owner shall pay the principal amount of the lien
125 on or before the closing date of the sale unless a subsequent
126 purchaser of the blighted real property has applied for and been
127 granted conditional lien amnesty.

128 (g) If an owner sells or disposes of the real property
129 prior to satisfying the conditions without the municipality's
130 approval, then the owner shall be liable to the municipality for
131 the principal amount of the lien plus interest at the rate of
132 eight percent (8%), and a penalty of One Thousand Five Hundred
133 Dollars (\$1,500.00) will also be assessed against the owner.

134 **SECTION 6.** Section 21-19-11, Mississippi Code of 1972, is
135 amended as follows:

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

145 (a) United States mail two (2) weeks before the date of
146 the hearing mailed to the address of the subject property, except



147 where the land or structure(s) is apparently vacant, and to the
148 address where the ad valorem tax notice for such property is sent
149 by the office charged with collecting ad valorem tax; and

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

154 Any notice required by this section shall include language
155 that informs the property owner that an adjudication at the
156 hearing that the property or parcel of land is in need of cleaning
157 will authorize the municipality to reenter the property or parcel
158 of land for a period of two (2) years after final adjudication
159 without any further hearing if notice is posted on the property or
160 parcel of land and at city hall or another place in the
161 municipality where such notices are generally posted at least
162 seven (7) days before the property or parcel of land is reentered
163 for cleaning. A copy of the required notice mailed and posted as
164 required by this section shall be recorded in the minutes of the
165 governing authority in conjunction with the hearing required by
166 this section.

167 If, at such hearing, the governing authority shall adjudicate
168 the property or parcel of land in its then condition to be a
169 menace to the public health, safety and welfare of the community,
170 the governing authority, if the owner does not do so himself,
171 shall proceed to clean the land, by the use of municipal employees



172 or by contract, by cutting grass and weeds; filling cisterns;
173 securing abandoned or dilapidated buildings; removing rubbish,
174 abandoned or dilapidated fences, outside toilets, abandoned or
175 dilapidated buildings, slabs, personal property, which removal of
176 personal property shall not be subject to the provisions of
177 Section 21-39-21, and other debris; and draining cesspools and
178 standing water therefrom. The governing authority may by
179 resolution adjudicate the actual cost of cleaning the property and
180 may also impose a penalty not to exceed One Thousand Five Hundred
181 Dollars (\$1,500.00) or fifty percent (50%) of the actual cost,
182 whichever is more. The cost and any penalty may become a civil
183 debt against the property owner, and/or, at the option of the
184 governing authority, an assessment against the property. The
185 "cost assessed against the property" means either the cost to the
186 municipality of using its own employees to do the work or the cost
187 to the municipality of any contract executed by the municipality
188 to have the work done, and administrative costs and legal costs of
189 the municipality. For subsequent cleaning within the one-year
190 period after the date of the hearing at which the property or
191 parcel of land was adjudicated in need of cleaning, upon seven (7)
192 days' notice posted both on the property or parcel of land
193 adjudicated in need of cleaning and at city hall or another place
194 in the municipality where such notices are generally posted, and
195 consistent with the municipality's adjudication as authorized in
196 this subsection (1), a municipality may reenter the property or



197 parcel of land to maintain cleanliness without further notice or
198 hearing no more than six (6) times in any twelve-month period with
199 respect to removing or securing abandoned or dilapidated
200 buildings, slabs, dilapidated fences and outside toilets, and no
201 more than twelve (12) times in any twenty-four-month period with
202 respect to cutting grass and weeds and removing rubbish, personal
203 property and other debris on the land, and the expense of cleaning
204 of the property, except as otherwise provided in this section for
205 removal of hazardous substances, shall not exceed an aggregate
206 amount of Twenty Thousand Dollars (\$20,000.00) per year, or the
207 fair market value of the property subsequent to cleaning,
208 whichever is more. The aggregate cost of removing hazardous
209 substances will be the actual cost of such removal to the
210 municipality and shall not be subject to the cost limitations
211 provided in this subsection. The governing authority may assess
212 the same penalty for each time the property or land is cleaned as
213 otherwise provided in this section. The penalty provided herein
214 shall not be assessed against the State of Mississippi upon
215 request for reimbursement under Section 29-1-145, nor shall a
216 municipality clean a parcel owned by the State of Mississippi
217 without first giving notice. Upon written authority from the
218 Secretary of State's office, for state-owned properties, a
219 municipality may forgo the notification process that is prescribed
220 in this subsection and proceed to clean the properties and assess



221 costs as prescribed in this subsection, except that penalties
222 shall not be assessed against the State of Mississippi.

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

235 (a) United States mail seven (7) days before the date
236 of cleaning of the property or parcel of land mailed to the
237 address of the subject property, except where the land or
238 structure(s) is apparently vacant, and to the address where the ad
239 valorem tax notice for such property is sent by the office charged
240 with collecting ad valorem tax; and

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

244 Any notice required by this subsection shall include language
245 that informs the property owner that the appropriate municipal



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

260 If an authorized municipal employee determines that the
261 condition of property or parcel of land is a menace to the public
262 health, safety and welfare of the community, the governing
263 authority, if the owner does not do so himself, shall proceed to
264 clean the land, by the use of municipal employees or by contract,
265 by cutting grass and weeds; filling cisterns; securing abandoned
266 or dilapidated buildings; removing rubbish, abandoned or
267 dilapidated fences, outside toilets, abandoned or dilapidated
268 buildings, slabs, personal property, which removal of personal
269 property shall not be subject to the provisions of Section
270 21-39-21, and other debris; and draining cesspools and standing



271 water therefrom. The governing authority shall by resolution
272 adjudicate the actual cost of cleaning the property under this
273 provision, provided the same does not exceed Two Hundred Fifty
274 Dollars (\$250.00) and may also impose a penalty not to exceed One
275 Hundred Dollars (\$100.00) or one hundred percent (100%) of the
276 actual cost of cleaning the property, whichever is more. The cost
277 and any penalty imposed may become a civil debt against the
278 property owner, and/or, at the option of the governing authority,
279 an assessment against the property. The "cost assessed against
280 the property" means either the cost to the municipality of using
281 its own employees to do the work or the cost to the municipality
282 of any contract executed by the municipality to have the work
283 done, and additionally may include administrative costs of the
284 municipality not to exceed Fifty Dollars (\$50.00). For subsequent
285 cleaning within the one-year period set forth in this subsection
286 (2), upon seven (7) days' notice posted both on the property or
287 parcel of land adjudicated in need of cleaning and at city hall or
288 another place in the municipality where such notices are generally
289 posted, and consistent with the municipal official's determination
290 as authorized in this subsection (2), a municipality may reenter
291 the property or parcel of land to maintain cleanliness without
292 further notice or hearing under this subsection (2) no more than
293 six (6) times in any twelve-month period with respect to removing
294 or securing abandoned or dilapidated buildings, slabs, dilapidated
295 fences and outside toilets, and no more than twelve (12) times in



296 any twenty-four-month period with respect to cutting grass and
297 weeds and removing rubbish, personal property and other debris on
298 the land, and the expense of cleaning of the property shall not
299 exceed an aggregate amount of One Thousand Dollars (\$1,000.00) per
300 year under this subsection (2). The governing authority may
301 assess the same actual costs, administrative costs and penalty for
302 each time the property or land is cleaned as otherwise provided in
303 this subsection (2). The penalty provided herein shall not be
304 assessed against the State of Mississippi upon request for
305 reimbursement under Section 29-1-145, nor shall a municipality
306 clean a parcel owned by the State of Mississippi without first
307 giving notice. Upon written authority from the Secretary of
308 State's office, for state-owned properties, a municipality may
309 forgo the notification process that is prescribed in this
310 subsection and proceed to clean the properties and assess costs as
311 prescribed in this subsection, except that penalties shall not be
312 assessed against the State of Mississippi. A determination made
313 by an appropriate municipal employee under this subsection (2)
314 that the state or condition of property or a parcel of land is a
315 menace to the public health, safety and welfare of the community
316 shall not subsequently be used to replace a hearing if subsection
317 (1) of this section is later utilized by a municipality when the
318 prerequisites of this subsection (2) are not satisfied.

319 (3) If the governing authority declares, by resolution, that
320 the cost and any penalty shall be collected as a civil debt, the



321 governing authority may authorize the institution of a suit on
322 open account against the owner of the property in a court of
323 competent jurisdiction in the manner provided by law for the cost
324 and any penalty, plus court costs, reasonable attorney's fees and
325 interest from the date that the property was cleaned.

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

337 (b) (i) All assessments levied under the provisions of
338 this section shall be included with municipal ad valorem taxes and
339 payment shall be enforced in the same manner in which payment is
340 enforced for municipal ad valorem taxes, and all statutes
341 regulating the collection of other taxes in a municipality shall
342 apply to the enforcement and collection of the assessments levied
343 under the provisions of this section, including utilization of the
344 procedures authorized under Sections 17-13-9(2) and 27-41-2.



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

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

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



369 (b) Nothing contained under this section shall prevent
370 any municipality from awarding, when it deems appropriate, the
371 full or partial waiver of assessments against properties or
372 individuals, as authorized under Sections 1 through 5 of this act,
373 as long as the requirements and conditions set out under Sections
374 3 through 5 of this act are satisfied.

375 (7) (a) If private property or a parcel of land located
376 within a municipality is a perpetual care cemetery subject to
377 Section 41-43-1 et seq., the governing authority of the
378 municipality may proceed pursuant to the same provisions of this
379 section used to determine whether a property is a public health
380 menace to instead determine if the perpetual care cemetery and all
381 structures on the cemetery are not being properly maintained and
382 have become detrimental to the public health and welfare. A
383 perpetual care cemetery that is "not being properly maintained and
384 has become detrimental to the public health and welfare" means a
385 perpetual care cemetery that shows signs of neglect, including,
386 without limitation, the unchecked growth of vegetation, repeated
387 and unchecked acts of vandalism, unusable entrances and exits,
388 excess rubbish or debris, or the disintegration of grave markers
389 or boundaries. Upon notice and opportunity to be heard as
390 provided in subsection (1) of this section, the governing
391 authority of the municipality may adjudicate the property or
392 parcel of land in its then condition to be not properly maintained
393 and detrimental to the public health and welfare, and if the owner



394 does not do so itself, may proceed to clean the property or parcel
395 of land as provided in subsection (1) of this section. When
396 cleaning the property or parcel of land of a perpetual care
397 cemetery pursuant to this subsection (7), the penalty or penalties
398 provided in subsection (1) of this section shall not be assessed
399 against owners of the perpetual care cemeteries.

400 (b) The governing authority of a municipality that
401 cleans the property or parcel of land of a perpetual care cemetery
402 pursuant to this subsection (7) may make application to the
403 Secretary of State for an order directing the trustee of the
404 perpetual care cemetery trust fund to release accrued interest or
405 principal of the trust fund sufficient to reimburse the
406 municipality for only the actual cleanup costs incurred by the
407 municipality. The application to the Secretary of State shall
408 include a statement by the municipality that all of the
409 requirements of this section have been met.

410 (c) If the Secretary of State is satisfied that the
411 notice and hearing requirements of this section have been met, and
412 that the application for an order directing the trustee to release
413 accrued interest of the perpetual care cemetery trust fund does
414 not threaten the ability of the trust fund to provide for the care
415 and maintenance of the cemetery, the Secretary of State may order
416 the trustee to release accrued interest of the trust fund
417 sufficient to reimburse the municipality for the actual costs of
418 cleanup performed by the municipality.



419 (d) If the Secretary of State is satisfied that the
420 notice and hearing requirements of this section have been met, but
421 makes a determination that the accrued interest of the perpetual
422 care cemetery trust fund is insufficient to reimburse the
423 municipality for the actual costs of cleanup performed by the
424 municipality, or that an order to release accrued interest would
425 threaten the ability of the trust fund to provide for the care and
426 maintenance of the cemetery, the Secretary of State may consider
427 an order directing the trustee to reimburse the municipality from
428 the principal of the trust fund. If the Secretary of State
429 determines that an order to the trustee to release principal from
430 the trust fund will not threaten the solvency of the trust fund,
431 the Secretary of State may order the trustee to release principal
432 of the trust fund in an amount sufficient to reimburse the
433 municipality for the actual costs of cleanup performed by the
434 municipality.

435 (i) The Secretary of State may not order the
436 trustee to release an amount of more than fifteen percent (15%) of
437 principal of the trust fund to reimburse the municipality for the
438 actual costs of cleanup performed by the municipality.

439 (ii) The provisions of this section may be
440 utilized no more than once in a four-year period.

441 **SECTION 7.** This act shall take effect and be in force from
442 and after July 1, 2023.

