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To: Municipalities

HOUSE BILL NO. 1105

1 AN ACT TO AMEND SECTIONS 21-39-15, 21-39-17 AND 31-7-57,
2 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A MEMBER OF THE
3 GOVERNING AUTHORITY OF A MUNICIPALITY WILL NOT BE PERSONALLY
4 LIABLE FOR APPROVING A CLAIM WITHOUT KNOWLEDGE THAT THE CLAIM WAS
5 FOR AN UNAUTHORIZED EXPENDITURE OF MUNICIPAL FUNDS, IF THE MEMBER
6 PREVIOUSLY VOTED AGAINST THE APPROPRIATION FROM WHICH THE CLAIM
7 WAS PAID OR WAS ABSENT AT THE TIME OF THE VOTE ON THAT
8 APPROPRIATION; AND FOR RELATED PURPOSES.

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

10 SECTION 1. Section 21-39-15, Mississippi Code of 1972, is
11 amended as follows:[HS1]

12 21-39-15. (1) If any member of the governing authority of a
13 municipality shall knowingly vote for the payment of any claim not
14 authorized by law, he shall be subject to indictment and, upon
15 conviction, be fined by a sum not exceeding double the amount of
16 such unlawful claim or appropriation, or by imprisonment in the
17 county jail for not more than three (3) months, or by both such
18 fine and imprisonment.

19 (2) Any member of the governing authority of a municipality
20 who voted to approve a claim for expenditure of funds of a
21 particular appropriation from the municipal budget under the
22 provisions of Section 21-39-9, without knowledge that the claim
23 was for an unauthorized expenditure of municipal funds, shall not
24 be personally or individually liable for the amount of the claim
25 or the appropriation if he previously voted against that
26 particular appropriation and had his vote recorded in the official
27 minutes of the governing authority at the time of the vote, or was
28 absent at the time of the vote on that appropriation.

29 SECTION 2. Section 21-39-17, Mississippi Code of 1972, is

30 amended as follows:[HS2]

31 21-39-17. (1) All expenditures of money from the treasury
32 of any municipality for any purpose whatsoever shall be in
33 pursuance of the allowance of a claim as hereinbefore specified in
34 Section 21-39-9, or in pursuance of a specific appropriation made
35 by order, which such appropriation shall be specific as to each
36 separate expenditure insofar as may be practical. If the mayor,
37 clerk, or any other person shall wilfully or feloniously issue,
38 sign or attest any warrant for the expenditure of money from the
39 municipal treasury when such expenditure is not authorized by an
40 order entered on the minutes of such municipality, then such
41 person shall be guilty of a misdemeanor and, upon conviction,
42 shall be punished by a fine of not more than Five Hundred Dollars
43 (\$500.00), or by imprisonment in the county jail for not more than
44 six (6) months, or by both such fine and imprisonment, in the
45 discretion of the court. In addition such person shall, upon
46 conviction, automatically be removed from his office.

47 (2) Any member of the governing authority of a municipality
48 who voted to approve a claim for expenditure of funds of a
49 particular appropriation from the municipal budget under the
50 provisions of Section 21-39-9, without knowledge that the claim
51 was for an unauthorized expenditure of municipal funds, shall not
52 be personally or individually liable for the amount of the claim
53 or the appropriation if he previously voted against that
54 particular appropriation and had his vote recorded in the official
55 minutes of the governing authority at the time of the vote, or was
56 absent at the time of the vote on that appropriation.

57 SECTION 3. Section 31-7-57, Mississippi Code of 1972, is
58 amended as follows:

59 31-7-57. (1) Any elected or appointed public officer of an
60 agency or a governing authority, or the executive head, any
61 employee or agent of an agency or governing authority, who
62 appropriates or authorizes the expenditure of any money to an

63 object not authorized by law, shall be liable personally for up to
64 the full amount of the appropriation or expenditure as will fully
65 and completely compensate and repay such public funds for any
66 actual loss caused by such appropriation or expenditure, to be
67 recovered by suit in the name of the governmental entity involved,
68 or in the name of any person who is a taxpayer suing for the use
69 of the governmental entity involved, and such taxpayer shall be
70 liable for costs in such case. In the case of a governing board
71 of an agency or governing authority, only the individual members
72 of the governing board who voted for the appropriation or
73 authorization for expenditure shall be liable under this
74 subsection.

75 (2) No individual member, officer, employee or agent of any
76 agency or board of a governing authority shall let contracts or
77 purchase commodities or equipment except in the manner provided by
78 law, including the provisions of Section 25-9-120(3), Mississippi
79 Code of 1972, relating to personal and professional service
80 contracts by state agencies; nor shall any such agency or board of
81 a governing authority ratify any such contract or purchase made by
82 any individual member, officer, employee or agent thereof, or pay
83 for the same out of public funds unless such contract or purchase
84 was made in the manner provided by law; provided, however, that
85 any vendor who, in good faith, delivers commodities or printing or
86 performs any services under a contract to or for the agency or
87 governing authority, shall be entitled to recover the fair market
88 value of such commodities, printing or services, notwithstanding
89 some error or failure by the agency or governing authority to
90 follow the law, if the contract was for an object authorized by
91 law and the vendor had no control of, participation in, or actual
92 knowledge of the error or failure by the agency or governing
93 authority.

94 (3) The individual members, officers, employees or agents of
95 any agency or governing authority as defined in Section 31-7-1

96 causing any public funds to be expended, any contract made or let,
97 any payment made on any contract or any purchase made, or any
98 payment made, in any manner whatsoever, contrary to or without
99 complying with any statute of the State of Mississippi, regulating
100 or prescribing the manner in which such contracts shall be let,
101 payment on any contract made, purchase made, or any other payment
102 or expenditure made, shall be liable, individually, and upon their
103 official bond, for compensatory damages, in such sum up to the
104 full amount of such contract, purchase, expenditure or payment as
105 will fully and completely compensate and repay such public funds
106 for any actual loss caused by such unlawful expenditure.

107 (4) In addition to the foregoing provision, for any
108 violation of any statute of the State of Mississippi prescribing
109 the manner in which contracts shall be let, purchases made,
110 expenditure or payment made, any individual member, officer,
111 employee or agent of any agency or governing authority who shall
112 substantially depart from the statutory method of letting
113 contracts, making payments thereon, making purchases or expending
114 public funds shall be liable, individually and on his official
115 bond, for penal damages in such amount as may be assessed by any
116 court of competent jurisdiction, up to three (3) times the amount
117 of the contract, purchase, expenditure or payment. The person so
118 charged may offer mitigating circumstances to be considered by the
119 court in the assessment of any penal damages.

120 (5) Any sum recovered under the provisions hereof shall be
121 credited to the account from which such unlawful expenditure was
122 made.

123 (6) Except as otherwise provided in subsection (1) of this
124 section, any individual member of an agency or governing authority
125 as defined in Section 31-7-1 shall not be individually liable
126 under this section if he voted against payment for contracts let
127 or purchases made contrary to law and had his vote recorded in the
128 official minutes of the board or governing authority at the time

129 of such vote, or was absent at the time of such vote.

130 (7) Notwithstanding any provision of this section to the
131 contrary, any member of the governing authority of a municipality
132 who voted to approve a claim for expenditure of funds of a
133 particular appropriation from the municipal budget under the
134 provisions of Section 21-39-9, without knowledge that the claim
135 was for an unauthorized expenditure of municipal funds, shall not
136 be personally or individually liable for the amount of the claim
137 or the appropriation if he previously voted against that
138 particular appropriation and had his vote recorded in the official
139 minutes of the governing authority at the time of the vote, or was
140 absent at the time of the vote on that appropriation.

141 SECTION 4. This act shall take effect and be in force from
142 and after July 1, 2000.