

By: Senator(s) Dawkins

To: Judiciary, Division B

SENATE BILL NO. 2444

1 AN ACT TO AMEND SECTION 25-41-5, MISSISSIPPI CODE OF 1972, TO
 2 PROHIBIT PROXY VOTING AND SECRET BALLOTS; TO AMEND SECTION
 3 25-41-7, MISSISSIPPI CODE OF 1972, TO REQUIRE CLARITY IN THE
 4 STATEMENT OF NECESSITY FOR AN EXECUTIVE SESSION; TO AMEND SECTION
 5 25-41-11, MISSISSIPPI CODE OF 1972, TO REVISE THE REQUIREMENTS
 6 CONCERNING THE MINUTES OF A PUBLIC BODY; TO AMEND SECTION
 7 25-41-15, MISSISSIPPI CODE OF 1972, TO EXPAND THE RELIEF AVAILABLE
 8 TO A PLAINTIFF IN COURT; TO AMEND SECTION 25-61-7, MISSISSIPPI
 9 CODE OF 1972, TO CLARIFY THE FEES THAT A PUBLIC BODY MAY CHARGE
 10 THOSE UTILIZING THE PUBLIC RECORDS ACT TO OBTAIN COPIES OF PUBLIC
 11 RECORDS OF THE BODY; TO AMEND SECTION 25-61-15, MISSISSIPPI CODE
 12 OF 1972, TO REVISE THE PENALTY FOR WILLFUL DENIAL OF ACCESS TO
 13 PUBLIC RECORDS; TO AMEND SECTION 25-4-25, MISSISSIPPI CODE OF
 14 1972, TO REQUIRE COUNTY AGENCY HEADS TO FILE AN ANNUAL FINANCIAL
 15 STATEMENT OF ECONOMIC INTEREST; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** Section 25-41-5, Mississippi Code of 1972, is
 18 amended as follows:

19 25-41-5. (1) All official meetings of any public body,
 20 unless otherwise provided in this chapter or in the Constitutions
 21 of the United States of America or the State of Mississippi, are
 22 declared to be public meetings and shall be open to the public at
 23 all times unless declared an executive session as provided in
 24 Section 25-41-7.

25 (2) A public body may conduct any meeting, other than an
 26 executive session called pursuant to Section 25-41-7, wherein
 27 public business is discussed or transacted, through teleconference
 28 or video means. If a quorum of the public body is physically
 29 assembled at one (1) location for the purpose of conducting a
 30 meeting, additional members of the public body may participate in
 31 the meeting through teleconference or video means provided their
 32 participation is available to the general public.

33 (3) (a) Notice of any meetings held pursuant to subsection
34 (2) of this section shall be provided at least thirty (30) days in
35 advance of the date scheduled for the meeting. The notice shall
36 include the date, time, place and purpose for the meeting and
37 shall identify the locations for the meeting. All locations for
38 the meeting shall be made accessible to the public. All persons
39 attending the meeting at any of the meeting locations shall be
40 afforded the same opportunity to address the public body as
41 persons attending the primary or central location. Any
42 interruption in the teleconference or video broadcast of the
43 meeting shall result in the suspension of action at the meeting
44 until repairs are made and public access restored.

45 (b) Thirty-day notice shall not be required for
46 teleconference or video meetings continued to address an emergency
47 as provided in subsection (5) of this section or to conclude the
48 agenda of a teleconference or video meeting of the public body for
49 which the proper notice has been given, when the date, time, place
50 and purpose of the continued meeting are set during the meeting
51 prior to adjournment.

52 (4) An agenda and materials that will be distributed to
53 members of the public body and that have been made available to
54 the staff of the public body in sufficient time for duplication
55 and forwarding to all locations where public access will be
56 provided shall be made available to the public at the time of the
57 meeting. Minutes of all meetings held by teleconference or video
58 means shall be recorded as required by Section 25-41-11. Votes
59 taken during any meeting conducted through teleconference or video
60 means shall be recorded by name in roll-call fashion and included
61 in the minutes. In addition, the public body shall make an audio
62 recording of the meeting, if a teleconference medium is used, or
63 an audio/visual recording, if the meeting is held by video means.
64 The recording shall be preserved by the public body for a period

65 of three (3) years following the date of the meeting and shall be
66 available to the public.

67 (5) A public body may meet by teleconference or video means
68 as often as needed if an emergency exists and the public body is
69 unable to meet in regular session. Public bodies conducting
70 emergency meetings through teleconference or video means shall
71 comply with the provisions of subsection (4) of this section
72 requiring minutes, recordation and preservation of the audio or
73 audio/visual recording of the meeting. The nature of the
74 emergency shall be stated in the minutes.

75 (6) A public body is prohibited from utilizing any manner of
76 proxy voting procedure, secret balloting or any other means to
77 circumvent the intent of this chapter.

78 **SECTION 2.** Section 25-41-7, Mississippi Code of 1972, is
79 amended as follows:

80 25-41-7. (1) Any public body may enter into executive
81 session for the transaction of public business; provided, however,
82 all meetings of any such public body shall commence as an open
83 meeting, and an affirmative vote of three-fifths (3/5) of all
84 members present shall be required to declare an executive session.

85 (2) The procedure to be followed by any public body in
86 declaring an executive session shall be as follows: Any member
87 shall have the right to request by motion a closed determination
88 upon the issue of whether or not to declare an executive session.
89 Such motion, by majority vote, shall require the meeting to be
90 closed for a preliminary determination of the necessity for
91 executive session. No other business shall be transacted until
92 the discussion of the nature of the matter requiring executive
93 session has been completed and a vote, as required in subsection
94 (1) hereof, has been taken on the issue.

95 (3) An executive session shall be limited to matters allowed
96 to be exempted from open meetings by subsection (4) of this
97 section. The reason for holding such an executive session shall

98 be stated in an open meeting; * * * the reason so stated shall be
99 recorded in the minutes of the meeting and must be of sufficient
100 clarity and specificity to inform those present that there is in
101 reality a specific, discrete matter or area which the public body
102 has determined should be discussed in executive session. Nothing
103 in this section shall be construed to require that any meeting be
104 closed to the public, nor shall any executive session be used to
105 circumvent or to defeat the purposes of this chapter.

106 (4) A public body may hold an executive session pursuant to
107 this section for one or more of the following reasons:

108 (a) Transaction of business and discussion of personnel
109 matters relating to the job performance, character, professional
110 competence, or physical or mental health of a person holding a
111 specific position.

112 (b) Strategy sessions or negotiations with respect to
113 prospective litigation, litigation or issuance of an appealable
114 order when an open meeting would have a detrimental effect on the
115 litigating position of the public body.

116 (c) Transaction of business and discussion regarding
117 the report, development or course of action regarding security
118 personnel, plans or devices.

119 (d) Investigative proceedings by any public body
120 regarding allegations of misconduct or violation of law.

121 (e) Any body of the Legislature which is meeting on
122 matters within the jurisdiction of such body.

123 (f) Cases of extraordinary emergency which would pose
124 immediate or irrevocable harm or damage to persons and/or property
125 within the jurisdiction of such public body.

126 (g) Transaction of business and discussion regarding
127 the prospective purchase, sale or leasing of lands.

128 (h) Discussions between a school board and individual
129 students who attend a school within the jurisdiction of such

130 school board or the parents or teachers of such students regarding
131 problems of such students or their parents or teachers.

132 (i) Transaction of business and discussion concerning
133 the preparation of tests for admission to practice in recognized
134 professions.

135 (j) Transaction of business and discussions or
136 negotiations regarding the location, relocation or expansion of a
137 business or an industry.

138 (k) Transaction of business and discussions regarding
139 employment or job performance of a person in a specific position
140 or termination of an employee holding a specific position. The
141 exemption provided by this paragraph includes the right to enter
142 into executive session concerning a line item in a budget which
143 might affect the termination of an employee or employees. All
144 other budget items shall be considered in open meetings and final
145 budgetary adoption shall not be taken in executive session.

146 (5) The total vote on the question of entering into an
147 executive session shall be recorded and spread upon the minutes of
148 such public body.

149 (6) Any such vote whereby an executive session is declared
150 shall be applicable only to that particular meeting on that
151 particular day.

152 **SECTION 3.** Section 25-41-11, Mississippi Code of 1972, is
153 amended as follows:

154 25-41-11. (1) Minutes shall be kept of all meetings of a
155 public body, whether in open or executive session, showing the
156 members present and absent; the date, time and place of the
157 meeting; an accurate recording of any final actions taken at such
158 meeting; and a record, by individual member, of any votes taken;
159 and any other information that the public body requests be
160 included or reflected in the minutes. A copy of any document,
161 letter, manual or other extrinsic evidence approved by a public
162 body shall be incorporated into its minutes or a copy shall be

163 included in the minutes. The minutes shall be recorded within a
164 reasonable time not to exceed thirty (30) days after recess or
165 adjournment, shall be entered into the official Minute Book within
166 twenty-four (24) hours after signing, and shall be open to public
167 inspection during regular business hours. A draft copy of the
168 minutes shall be available for public inspection not less than
169 five (5) days after adjournment or recess of the public body and
170 remain available until the official, approved and signed minutes
171 are available. The Legislature encourages all public bodies to
172 maintain minutes on the Internet for public inspection.

173 (2) Minutes of a meeting conducted by teleconference or
174 video means shall comply with the requirements of Section 25-41-5.

175 (3) Minutes of legislative committee meetings shall consist
176 of a written record of attendance and final actions taken at such
177 meetings.

178 **SECTION 4.** Section 25-41-15, Mississippi Code of 1972, is
179 amended as follows:

180 25-41-15. The chancery courts of this state shall have the
181 authority to enforce the provisions of this chapter upon
182 application of any citizen of the state, and shall have the
183 authority to issue injunctions, writs of mandamus, a declaratory
184 judgment, judgment rendering the action of the public body void,
185 judgment awarding civil penalties, or any combination of these, to
186 accomplish that purpose. If the court finds that a public body
187 has willfully and knowingly violated the provisions of this
188 chapter, the court may impose a civil penalty upon each member of
189 the public body who participated in the violation in a sum not to
190 exceed One Hundred Dollars (\$100.00) per violation, plus all
191 reasonable expenses incurred by the person or persons in bringing
192 suit to enforce this chapter; the total amount awarded as
193 recompense for attorney's fees shall not exceed Ten Thousand
194 Dollars (\$10,000.00). Any noncompliance with the requirements of
195 this chapter may additionally be punished as contempt of court.

196 **SECTION 5.** Section 25-61-7, Mississippi Code of 1972, is
197 amended as follows:

198 25-61-7. (1) Except as provided in subsection (2) of this
199 section, each public body may establish and collect fees
200 reasonably calculated to reimburse it for, and in no case to
201 exceed, the actual cost of searching, reviewing and/or duplicating
202 and, if applicable, mailing copies of public records. Such fees
203 shall be collected by the public body in advance of complying with
204 the request.

205 (2) A public body may establish a standard fee scale to
206 reimburse it for the costs of creating, acquiring and maintaining
207 a geographic information system or multipurpose cadastre as
208 authorized and defined under Section 25-61-1 et seq., or any other
209 electronically accessible data. Such fees must be reasonably
210 related to the cost of creating, acquiring and maintaining the
211 geographic information system, multipurpose cadastre or other
212 electronically accessible data, for the data or information
213 contained therein or taken therefrom and for any records, papers,
214 accounts, maps, photographs, films, cards, tapes, recordings or
215 other materials, data or information relating thereto, whether in
216 printed, digital or other format. In determining the fees or
217 charges under this subsection, the public body may consider the
218 type of information requested, the purpose or purposes for which
219 the information has been requested and the commercial value of the
220 information. The fees shall be limited to the actual costs over
221 and above the public body's administrative budget to include cost
222 of overtime wages, hiring additional personnel and additional
223 materials and services, with the charge for labor by the public
224 body's employees being limited to the lowest hourly pay scale in
225 the administrative department. Charges for shipping, postage,
226 copying or duplication of requested records shall be not more than
227 the actual costs. An itemized bill shall be given to the person
228 requesting public records at the time of delivery of the records.

229 **SECTION 6.** Section 25-61-15, Mississippi Code of 1972, is
230 amended as follows:

231 25-61-15. Any person who shall willfully and knowingly deny
232 to any person access to any public record which is not exempt from
233 the provisions of this chapter shall be liable civilly in a sum
234 not to exceed One Thousand Dollars (\$1,000.00), plus all
235 reasonable expenses incurred by such person bringing the lawsuit.

236 **SECTION 7.** Section 25-4-25, Mississippi Code of 1972, is
237 amended as follows:

238 25-4-25. Each of the following individuals shall file a
239 statement of economic interest with the commission in accordance
240 with the provisions of this chapter:

241 (a) Persons elected by popular vote, excluding United
242 States Senators and United States Representatives, to any office,
243 whether it be legislative, executive or judicial, and whether it
244 be statewide, district, county, municipal or any other political
245 subdivision, with the exception of members of boards of levee
246 commissioners and election commissioners;

247 (b) Members of local school boards that administer
248 public funds, regardless of whether such members are elected or
249 appointed;

250 (c) Persons who are candidates for public office or who
251 are appointed to fill a vacancy in an office who, if elected,
252 would be required to file under paragraph (a) of this section;

253 (d) Executive directors or heads of state agencies, by
254 whatever name they are designated, who are paid in part or in
255 whole, directly or indirectly, from funds appropriated or
256 authorized to be expended by the Legislature, executive directors
257 or heads of county agencies, by whatever name they are designated,
258 and the presidents and trustees of all state-supported colleges,
259 universities and junior colleges;

260 (e) Members of any state board, commission or agency,
261 including the Mississippi Ethics Commission, charged with the

262 administration or expenditure of public funds, with the exception
263 of advisory boards or commissions; provided, however, in order to
264 fulfill the legislative purposes of this chapter, the commission
265 may require, upon a majority vote, the filing of a statement of
266 economic interest by members of an advisory board or commission.

267 **SECTION 8.** This act shall take effect and be in force from
268 and after July 1, 2005.