

By: Representative Warren

To: Judiciary B

HOUSE BILL NO. 539  
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 25-60-1, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE RETENTION AND DESTRUCTION OF LOCAL GOVERNMENT RECORDS  
3 AND COUNTY PARTICIPATION THEREIN BY THE LOCAL GOVERNMENT RECORDS  
4 COMMITTEE, AND TO DELETE THE SUNSET PROVISION THEREIN; TO AMEND  
5 SECTIONS 25-60-3, 25-60-5, AND 39-5-9, MISSISSIPPI CODE OF 1972,  
6 TO DELETE THE SUNSET PROVISIONS THEREIN; TO AMEND SECTIONS  
7 9-5-171, 19-15-1 AND 19-15-3, MISSISSIPPI CODE OF 1972, TO PROVIDE  
8 THAT RECORDS RETENTION, DUPLICATION AND DESTRUCTION STANDARDS  
9 SHALL APPLY TO ALL COUNTIES REGARDLESS OF ELECTION; AND FOR  
10 RELATED PURPOSES.

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

12 **SECTION 1.** Section 25-60-1, Mississippi Code of 1972, is  
13 amended as follows:

14 25-60-1. There is hereby created the Local Government  
15 Records Committee. The committee shall be composed of the  
16 following members: the Attorney General, or his designee; the  
17 Secretary of State, or his designee; the State Auditor of Public  
18 Accounts, or his designee; the Chairman of the State Tax  
19 Commission, or his designee; the Director of the State Department  
20 of Archives and History, or his designee; a representative from  
21 each of the following organizations, to be designated by the head  
22 of each organization for a term of two (2) years with a limit of  
23 not more than two (2) terms: the Family Research Association of  
24 Mississippi, Inc., the Mississippi Association of Supervisors, The  
25 Mississippi Bar, the Mississippi Chancery Clerks' Association, the  
26 Mississippi Circuit Clerks' Association, the Mississippi City  
27 Clerks' Association, the Mississippi Historical Society, the  
28 Mississippi Municipal Association, the Mississippi Sheriffs'  
29 Association, the Mississippi Superintendents of Education  
30 Association, the Mississippi Tax Assessors' Association and the  
31 Mississippi Tax Collectors' Association; and one (1) resident of

32 this state appointed by the Governor for a term of two (2) years  
33 with a limit of not more than two (2) terms. The Director of the  
34 Department of Archives and History shall be chairman of the  
35 committee. Members of the committee shall receive per diem as  
36 provided in Section 25-3-69, and shall be reimbursed for necessary  
37 expenses and travel as provided in Section 25-3-41.

38 It is the duty of the committee to review, approve,  
39 disapprove, amend or modify records control schedules submitted by  
40 the Local Government Records Office, municipalities, municipal  
41 courts and \* \* \* counties for the disposition of records based on  
42 administrative, legal, fiscal or historical value. When the  
43 Mississippi Supreme Court designates the Department of Archives  
44 and History as the records management agency for courts, it is the  
45 duty of the committee to review, approve, disapprove, amend or  
46 modify records control schedules submitted by justice, county,  
47 circuit and chancery courts \* \* \*. Such records control  
48 schedules, once approved, shall be authoritative and directive,  
49 and shall have the force and effect of law.

50 It is the duty of municipalities and \* \* \* counties to  
51 cooperate with the committee in complying with the provisions of  
52 this section. \* \* \*

53 \* \* \*

54 The committee is authorized to promulgate any rules and  
55 regulations necessary to implement the authority granted to it in  
56 this section.

57 \* \* \*

58 **SECTION 2.** Section 25-60-3, Mississippi Code of 1972, is  
59 amended as follows:

60 25-60-3. Counties and municipalities are hereby authorized  
61 to establish regional records centers for the storage,  
62 preservation and use of permanently valuable county and municipal  
63 records and of inactive county and municipal records which are  
64 required to be retained for a prescribed period of time but which

65 are not needed to be kept in the creating office. Such regional  
66 records centers may be jointly established and maintained pursuant  
67 to agreements executed under the Interlocal Cooperation Act of  
68 1974. Any center established under this section must either be  
69 certified by the Department of Archives and History as provided  
70 for historical or archival groups or public libraries in Section  
71 25-29-25(2), or be administered by the Department of Archives and  
72 History pursuant to a contract between the department and the  
73 local government which established the center.

74 \* \* \*

75 **SECTION 3.** Section 25-60-5, Mississippi Code of 1972, is  
76 amended as follows:

77 25-60-5. (1) Except as provided in subsection (2) of this  
78 section, any county or municipal official or employee who accepts  
79 documents for filing as public records shall, in addition to any  
80 other fee provided elsewhere by law, collect a fee of One Dollar  
81 (\$1.00) for each document so filed. In municipalities and \* \* \*  
82 counties that collect Three Hundred Dollars (\$300.00) or more per  
83 month from the filing fee, the official or employee collecting the  
84 fee shall, on or before the last day of each month, deposit the  
85 avails of Fifty Cents (50¢) of the fee into the general fund of  
86 the county or municipality, as appropriate, and remit the  
87 remainder to the State Treasurer who shall deposit it to the  
88 credit of a statewide local government records management fund  
89 which is hereby created in the State Treasury. In municipalities  
90 and \* \* \* counties that collect less than Three Hundred Dollars  
91 (\$300.00) per month from the filing fee, the avails of Fifty Cents  
92 (50¢) of the fee shall be remitted to the State Treasurer on a  
93 quarterly basis for deposit as provided in the previous sentence.  
94 Any monies remaining in the fund at the end of a fiscal year shall  
95 not lapse into the General Fund of the State Treasury. Counties  
96 and municipalities shall expend monies derived from the fee  
97 hereinabove imposed solely to support proper management of their

98 official records in accordance with records management standards  
99 established by the Department of Archives and History. Monies in  
100 the Local Government Records Management Fund shall be expended by  
101 the Department of Archives and History, pursuant to legislative  
102 appropriation, to support the Local Government Records Office of  
103 the department and to support a local records management grant  
104 program as funds permit.

105 (2) The fee provided in subsection (1) of this section shall  
106 not be collected in any county until the board of supervisors, by  
107 resolution spread upon its minutes, determines that it will  
108 collect the fee.

109 (3) Each municipality and participating county may collect  
110 the filing fee provided for in this section on filings in any  
111 court subject to their respective jurisdiction.

112 \* \* \*

113 **SECTION 4.** Section 39-5-9, Mississippi Code of 1972, is  
114 amended as follows:

115 39-5-9. A Local Government Records Office is established  
116 within the Department of Archives and History. The office shall  
117 begin operation when sufficient funds therefor have accumulated in  
118 the Local Government Records Management Fund established in  
119 Section 25-60-5. The office shall have the following powers and  
120 duties as well as any others which are prescribed by law elsewhere  
121 or assigned to the office by the director of the department:

122 (a) Provide and \* \* \* coordinate education and training  
123 for counties and municipalities on records management issues.

124 (b) Establish records management standards to guide  
125 counties and municipalities, such standards to include, but not be  
126 limited to, guidelines for microfilm production and storage,  
127 electronic records security and migration, records preservation,  
128 imaging and records storage.

129 (c) Prepare records control schedules for adoption or  
130 amendment by the Local Government Records Committee established in

131 Section 25-60-1. In the preparation of the schedules and  
132 amendments thereto, the office shall seek input from interested  
133 citizens and organizations.

134 (d) Establish standards for records storage areas of  
135 local governmental bodies, such standards to include, but not be  
136 limited to, guidelines for the selection of an off-site storage  
137 facility for records of enduring \* \* \* or archival value.

138 \* \* \*

139 **SECTION 5.** Section 9-5-171, Mississippi Code of 1972, is  
140 amended as follows:

141 \* \* \*

142 9-5-171. (1) The chancery clerk of each of the counties of  
143 the State of Mississippi, with the approval of the board of  
144 supervisors of such county, after an inventory has been made and  
145 checked by the board and an order spread on its minutes listing  
146 the reference, is authorized to dispose of records pursuant to a  
147 records control schedule approved by the Local Government Records  
148 Committee as provided in Section 25-60-1.

149 (2) No records which are in the process of being audited by  
150 the State Department of Audit or which are the basis of litigation  
151 shall be destroyed until at least twelve (12) months after final  
152 completion of the audits and litigation.

153 (3) Records may be filed and retained by electronic means as  
154 provided in Sections 9-1-51 through 9-1-57, whether the record is  
155 to be destroyed or not; provided, however, that destruction of  
156 \* \* \* records shall be carried out in accordance with Sections  
157 25-59-21 and 25-59-27.

158 **SECTION 6.** Section 19-15-1, Mississippi Code of 1972, is  
159 amended as follows:

160 \* \* \*

161 19-15-1. The Legislature declares that records containing  
162 information essential to the operation of government and to the  
163 protection of the rights and interests of persons should be

164 protected against the destructive effect of all forms of disaster  
165 whether fire, flood, storm, earthquake, explosion or other  
166 disaster, and whether such occurrence is caused by an act of  
167 nature or man, including an enemy of the United States. It is,  
168 therefore, necessary to adopt special provisions for the  
169 preservation of essential records of counties, and this section  
170 shall be liberally construed to effect its purposes. However, it  
171 is the express intention of this section that the provisions  
172 herein contained are not mandatory but are permissive only and  
173 shall authorize preservation of records as herein contemplated  
174 within the discretion of the governing authorities of the counties  
175 of the state and in accordance with a records control schedule  
176 approved by the Local Government Records Committee as provided in  
177 Section 25-60-1.

178 The board of supervisors of any county is hereby authorized  
179 and empowered in its discretion to preserve essential records, or  
180 any portion thereof, of the county deemed by the board of  
181 supervisors to be an essential record necessary to the operation  
182 of government in an emergency created by disaster or containing  
183 information necessary to protect the rights and interests of  
184 persons or to establish and affirm the powers and duties of  
185 governments in the resumption of operations after the destruction  
186 or damage of the original records.

187 The board of supervisors of any \* \* \* county is authorized  
188 and empowered in its discretion to make and enter into contracts  
189 and agreements with any person, firm or corporation to make and  
190 prepare \* \* \* copies or duplicates of records, and, subject to the  
191 standards established by the Department of Archives and History,  
192 to provide for and enter into contracts concerning the safekeeping  
193 and preservation of \* \* \* copies or duplicates at points of  
194 storage at a location approved by the Local Government Records  
195 Committee.

196           In the event that the original record or records shall have  
197 been destroyed, the copy or reproduction shall be deemed to be an  
198 original record for all purposes and shall be treated as an  
199 original record in all courts or administrative agencies for the  
200 purpose of its admissibility in evidence. An enlargement or  
201 facsimile of a reproduction is likewise admissible in evidence if  
202 the original reproduction is in existence and available for  
203 inspection under direction of court.

204           The board of supervisors of any such county is authorized and  
205 empowered, in its discretion, to appropriate and expend monies out  
206 of the available funds of the county for the purposes of this  
207 section.

208           **SECTION 7.** Section 19-15-3, Mississippi Code of 1972, is  
209 amended as follows:

210           \* \* \*

211           19-15-3. Whenever any county records, documents, files or  
212 papers whatsoever are required by law to be preserved and  
213 retained, or which are necessary or desirable to be preserved or  
214 retained, the board of supervisors of the county shall have the  
215 power and authority, in its discretion, to destroy or dispose of  
216 any \* \* \* records, documents, files or papers after having  
217 reproductions made thereof as hereinafter provided and in  
218 accordance with a records control schedule approved by the Local  
219 Government Records Committee as provided in Section 25-60-1.

220           Whenever the board of supervisors of any \* \* \* county shall  
221 desire to destroy or dispose of any \* \* \* records, documents,  
222 files or papers, the board shall first cause the same to be  
223 reproduced under standards established by the Department of  
224 Archives and History using microfilm, microfiche, data processing,  
225 computers, magnetic tape, optical discs or other medium. If the  
226 county where \* \* \* records and the like are to be destroyed or  
227 disposed of does not have or own the necessary equipment to  
228 reproduce same, the board of supervisors shall be authorized and

229 empowered to enter into a contract for the reproduction thereof,  
230 which contract may be for a period of not more than twelve (12)  
231 months from the date thereof. The contract shall be awarded to  
232 the lowest and best bidder after the board of supervisors shall  
233 have advertised its intentions of awarding such contract by  
234 publication of a notice thereof once each week for at least three  
235 (3) consecutive weeks in some newspaper published or having a  
236 general circulation in such county.

237 After \* \* \* reproduction of the records and the like shall  
238 have been made, the board of supervisors shall have the power and  
239 authority to destroy and dispose of the originals thereof after  
240 spreading upon its minutes certification that the reproductions  
241 are true and correct copies and disposal is in accordance with a  
242 records control schedule approved by the Local Government Records  
243 Committee as provided in Section 25-60-1; the reproductions shall  
244 thereafter be preserved, retained and stored by the board of  
245 supervisors as a record of the county, and provision shall be made  
246 for preserving, examining and using them. Any \* \* \* reproductions  
247 or copy of any original record or other documents shall be deemed  
248 to be the original record for all purposes and shall be admissible  
249 as evidence in all courts or administrative agencies. A  
250 facsimile, exemplification or certified copy thereof shall, for  
251 all purposes set forth herein, be deemed to be a transcript,  
252 exemplification or certified copy of the original record.

253 The board of supervisors of any county is hereby authorized  
254 to pay all expenses incurred in reproducing \* \* \* records and the  
255 like and in making provision for the preservation, retention and  
256 storage of the reproductions from the general fund of the county.

257 When any of the records and the like of which reproductions  
258 are made under the provisions of this section are declared by law  
259 or are by their nature confidential and privileged records, then  
260 the reproduction thereof shall likewise be deemed to be



261 confidential and privileged to the same extent as the original  
262 records and the like.

263         Nothing herein shall be construed to require the keeping and  
264 preservation of any records and documents which are not required  
265 by law or a records control schedule to be kept and preserved, or  
266 which it is not desirable or necessary to keep and preserve, and  
267 in all cases where records and the like are authorized by law to  
268 be destroyed or disposed of, they may be disposed of as authorized  
269 by a records control schedule approved by the Local Government  
270 Records Committee as provided in Section 25-60-1.

271         **SECTION 8.** This act shall take effect and be in force from  
272 and after July 1, 2006.