

By: Senator(s) Dawkins

To: Judiciary, Division B

SENATE BILL NO. 2373

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. A quorum of the
 33 Board of Trustees of State Institutions of Higher Learning as

34 prescribed in Section 37-101-9 and the State Board for Community
35 and Junior Colleges as prescribed in Sections 37-4-3 and 37-4-4
36 may be at different locations for the purpose of conducting a
37 meeting through teleconference or video means provided their
38 participation is available to the general public.

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

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

58 (4) An agenda and materials that will be distributed to
59 members of the public body and that have been made available to
60 the staff of the public body in sufficient time for duplication
61 and forwarding to all locations where public access will be
62 provided shall be made available to the public at the time of the
63 meeting. Minutes of all meetings held by teleconference or video
64 means shall be recorded as required by Section 25-41-11. Votes
65 taken during any meeting conducted through teleconference or video
66 means shall be recorded by name in roll-call fashion and included

67 in the minutes. In addition, the public body shall make an audio
68 recording of the meeting, if a teleconference medium is used, or
69 an audio/visual recording, if the meeting is held by video means.
70 The recording shall be preserved by the public body for a period
71 of three (3) years following the date of the meeting and shall be
72 available to the public.

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

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

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

86 25-41-7. (1) Any public body may enter into executive
87 session for the transaction of public business; provided, however,
88 all meetings of any such public body shall commence as an open
89 meeting, and an affirmative vote of three-fifths (3/5) of all
90 members present shall be required to declare an executive session.

91 (2) The procedure to be followed by any public body in
92 declaring an executive session shall be as follows: Any member
93 shall have the right to request by motion a closed determination
94 upon the issue of whether or not to declare an executive session.
95 Such motion, by majority vote, shall require the meeting to be
96 closed for a preliminary determination of the necessity for
97 executive session. No other business shall be transacted until
98 the discussion of the nature of the matter requiring executive

99 session has been completed and a vote, as required in subsection
100 (1) hereof, has been taken on the issue.

101 (3) An executive session shall be limited to matters allowed
102 to be exempted from open meetings by subsection (4) of this
103 section. The reason for holding such an executive session shall
104 be stated in an open meeting; * * * the reason so stated shall be
105 recorded in the minutes of the meeting and must be of sufficient
106 clarity and specificity to inform those present that there is in
107 reality a specific, discrete matter or area which the public body
108 has determined should be discussed in executive session. Nothing
109 in this section shall be construed to require that any meeting be
110 closed to the public, nor shall any executive session be used to
111 circumvent or to defeat the purposes of this chapter.

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

114 (a) Transaction of business and discussion of personnel
115 matters relating to the job performance, character, professional
116 competence, or physical or mental health of a person holding a
117 specific position.

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

122 (c) Transaction of business and discussion regarding
123 the report, development or course of action regarding security
124 personnel, plans or devices.

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

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

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

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

134 (h) Discussions between a school board and individual
135 students who attend a school within the jurisdiction of such
136 school board or the parents or teachers of such students regarding
137 problems of such students or their parents or teachers.

138 (i) Transaction of business and discussion concerning
139 the preparation of tests for admission to practice in recognized
140 professions.

141 (j) Transaction of business and discussions or
142 negotiations regarding the location, relocation or expansion of a
143 business or an industry.

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

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

155 (6) Any such vote whereby an executive session is declared
156 shall be applicable only to that particular meeting on that
157 particular day.

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

160 25-41-11. (1) Minutes shall be kept of all meetings of a
161 public body, whether in open or executive session, showing the
162 members present and absent; the date, time and place of the
163 meeting; an accurate recording of any final actions taken at such
164 meeting; and a record, by individual member, of any votes taken;

165 and any other information that the public body requests be
166 included or reflected in the minutes. A copy of any document,
167 letter, manual or other extrinsic evidence approved by a public
168 body shall be incorporated into its minutes or a copy shall be
169 included in the minutes. The minutes shall be recorded within a
170 reasonable time not to exceed thirty (30) days after recess or
171 adjournment, shall be entered into the official Minute Book within
172 twenty-four (24) hours after signing, and shall be open to public
173 inspection during regular business hours. A draft copy of the
174 minutes shall be available for public inspection not less than
175 five (5) days after adjournment or recess of the public body and
176 remain available until the official, approved and signed minutes
177 are available. The Legislature encourages all public bodies to
178 maintain minutes on the Internet for public inspection.

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

181 (3) Minutes of legislative committee meetings shall consist
182 of a written record of attendance and final actions taken at such
183 meetings.

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

186 25-41-15. The chancery courts of this state shall have the
187 authority to enforce the provisions of this chapter upon
188 application of any citizen of the state, and shall have the
189 authority to issue injunctions, writs of mandamus, a declaratory
190 judgment, judgment rendering the action of the public body void,
191 judgment awarding civil penalties, or any combination of these, to
192 accomplish that purpose. If the court finds that a public body
193 has willfully and knowingly violated the provisions of this
194 chapter, the court may impose a civil penalty upon each member of
195 the public body who participated in the violation in a sum not to
196 exceed One Hundred Dollars (\$100.00) per violation, plus all
197 reasonable expenses incurred by the person or persons in bringing

198 suit to enforce this chapter; the total amount awarded as
199 recompense for attorney's fees shall not exceed Ten Thousand
200 Dollars (\$10,000.00). Any noncompliance with the requirements of
201 this chapter may additionally be punished as contempt of court.

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

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

211 (2) A public body may establish a standard fee scale to
212 reimburse it for the costs of creating, acquiring and maintaining
213 a geographic information system or multipurpose cadastre as
214 authorized and defined under Section 25-61-1 et seq., or any other
215 electronically accessible data. Such fees must be reasonably
216 related to the cost of creating, acquiring and maintaining the
217 geographic information system, multipurpose cadastre or other
218 electronically accessible data, for the data or information
219 contained therein or taken therefrom and for any records, papers,
220 accounts, maps, photographs, films, cards, tapes, recordings or
221 other materials, data or information relating thereto, whether in
222 printed, digital or other format. In determining the fees or
223 charges under this subsection, the public body may consider the
224 type of information requested, the purpose or purposes for which
225 the information has been requested and the commercial value of the
226 information. The fees shall be limited to the actual costs over
227 and above the public body's administrative budget to include cost
228 of overtime wages, hiring additional personnel and additional
229 materials and services, with the charge for labor by the public
230 body's employees being limited to the lowest hourly pay scale in

231 the administrative department. Charges for shipping, postage,
232 copying or duplication of requested records shall be not more than
233 the actual costs. An itemized bill shall be given to the person
234 requesting public records at the time of delivery of the records.

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

237 25-61-15. Any person who shall willfully and knowingly deny
238 to any person access to any public record which is not exempt from
239 the provisions of this chapter shall be liable civilly in a sum
240 not to exceed One Thousand Dollars (\$1,000.00), plus all
241 reasonable expenses incurred by such person bringing the lawsuit.

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

244 25-4-25. Each of the following individuals shall file a
245 statement of economic interest with the commission in accordance
246 with the provisions of this chapter:

247 (a) Persons elected by popular vote, excluding United
248 States Senators and United States Representatives, to any office,
249 whether it be legislative, executive or judicial, and whether it
250 be statewide, district, county, municipal or any other political
251 subdivision, with the exception of members of boards of levee
252 commissioners and election commissioners;

253 (b) Members of local school boards that administer
254 public funds, regardless of whether such members are elected or
255 appointed;

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

259 (d) Executive directors or heads of state agencies, by
260 whatever name they are designated, who are paid in part or in
261 whole, directly or indirectly, from funds appropriated or
262 authorized to be expended by the Legislature, executive directors
263 or heads of county agencies, by whatever name they are designated,

264 and the presidents and trustees of all state-supported colleges,
265 universities and junior colleges;

266 (e) Members of any state board, commission or agency,
267 including the Mississippi Ethics Commission, charged with the
268 administration or expenditure of public funds, with the exception
269 of advisory boards or commissions; provided, however, in order to
270 fulfill the legislative purposes of this chapter, the commission
271 may require, upon a majority vote, the filing of a statement of
272 economic interest by members of an advisory board or commission.

273 **SECTION 8.** This act shall take effect and be in force from
274 and after July 1, 2007.