

By: Senator(s) Dawkins

To: Elections

SENATE BILL NO. 2441

1 AN ACT TO ESTABLISH A PROCEDURE BY WHICH ANY ELECTED PUBLIC
 2 OFFICIAL MAY BE REMOVED IN AN ELECTION HELD FOR THAT PURPOSE; TO
 3 PROVIDE THAT A HEARING SHALL BE HELD BY A REMOVAL COUNCIL TO
 4 DETERMINE IF THERE IS JUST CAUSE FOR THE REMOVAL OF THE ELECTED
 5 OFFICIAL AFTER A PETITION CONTAINING THE REQUISITE NUMBER OF
 6 SIGNATURES HAS BEEN FILED REQUESTING THE REMOVAL OF THE OFFICIAL;
 7 TO PROVIDE THAT IF AN OFFICIAL IS REMOVED, A SPECIAL ELECTION
 8 SHALL BE CALLED TO FILL THE VACANCY CREATED BY THE REMOVAL; TO
 9 PROVIDE THAT THE SECRETARY OF STATE OR REGISTRAR SHALL CERTIFY THE
 10 NAMES OF QUALIFIED ELECTORS SIGNED ON A PETITION FOR THE REMOVAL
 11 OF AN ELECTED OFFICIAL; TO AMEND SECTIONS 25-5-3, 25-5-7, 25-5-9,
 12 25-5-13, 25-5-15, 25-5-17, 25-5-19, 25-5-21, 25-5-23, 25-5-25,
 13 25-5-27, 25-5-33 AND 25-5-37, MISSISSIPPI CODE OF 1972, TO CONFORM
 14 TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

16 **SECTION 1.** Section 25-5-3, Mississippi Code of 1972, is
 17 amended as follows:

18 25-5-3. The Governor is hereby empowered, in accordance with
 19 the provisions of Section 139 of the Mississippi Constitution of
 20 1890, through the procedure and under the regulations prescribed
 21 in Sections 25-5-3 through 25-5-37 and for the reasons and causes
 22 set forth, to remove any elective statewide, state-district,
 23 county or municipal officer in this state; and every elective
 24 officer of the state or any state-district, county or municipality
 25 in this state may be removed from office by the Governor or
 26 Lieutenant Governor, if the Governor is the officer to be removed,
 27 at any time when done in compliance with the regulations
 28 hereinafter set forth.

29 **SECTION 2.** Section 25-5-7, Mississippi Code of 1972, is
 30 amended as follows:

31 25-5-7. Before the Governor shall consider the removal from
 32 a statewide, state-district, county or municipal office of any
 33 elective statewide, state-district, county or municipal officer,

34 there shall be first filed with him a petition signed by not less
35 than fifty-one percent (51%) of the qualified electors of the
36 state, state-district, county or municipality, as the case may be,
37 demanding the removal of the officer. The petition shall contain
38 a general statement, in not more than two hundred (200) words, of
39 the ground or grounds on which the removal is demanded, which
40 statement shall be for the information of the officer involved,
41 for the information of the council hereinafter provided, and for
42 the information of the qualified electors of the state,
43 state-district, county or municipality, as the case may be.

44 All removal petitions with reference to only supervisors,
45 justice court judges and constables also must be signed by at
46 least fifty-one percent (51%) of the qualified electors of the
47 beat or district from which they were originally elected.

48 Upon the request of any qualified elector, it shall be the
49 duty of the Attorney General, in the case of a statewide or
50 state-district office, the county and district prosecuting
51 attorney, in the case of a county office, or, the municipal
52 prosecuting attorney, in the case of a municipal office, to advise
53 the person as to the provisions of Sections 25-5-3 through 25-5-37
54 and how to comply with the same.

55 **SECTION 3.** Section 25-5-9, Mississippi Code of 1972, is
56 amended as follows:

57 25-5-9. The removal petitions shall be in substantially the
58 following forms:

59 (a) REMOVAL PETITION

60 (For Statewide and State-District Officers)

61 (WARNING.--It is a misdemeanor, punishable by fine and
62 imprisonment, for any person to sign any removal petition with any
63 name other than his own, or knowingly to sign his name more than
64 once to the petition, or knowingly to sign the petition when he is
65 not a qualified elector.)

66 Date: _____

67 TO THE GOVERNOR OF THE STATE OF MISSISSIPPI:

68 We, the undersigned qualified electors of the State of
69 Mississippi or state-district _____, State of Mississippi,
70 respectfully demand that _____, holding the office of _____
71 in the state or state-district, be removed from office by the
72 Governor (or if the Governor is being removed, the Lieutenant
73 Governor) for the following reasons, to wit: (Setting out the
74 reasons for removal in not more than two hundred words); that a
75 special election, after lawful notice, be called to permit the
76 qualified electors of the state or state-district to vote on the
77 question of whether or not the officer shall be removed;

78 That we each for himself say that: I am a qualified elector
79 of the state or state-district, and my voting precinct is
80 correctly written after my name, and that it was stated to me
81 before the signing of the petition that after signing the same I
82 would not be permitted to remove my name from the petition.

<u>NAME</u>	<u>VOTING PRECINCT</u>
84 1. _____	_____
85 2. _____	_____
86 3. _____	_____

87 (b) REMOVAL PETITION

88 (For County Officers)

89 (WARNING.--It is a misdemeanor, punishable by fine and
90 imprisonment, for any person to sign any removal petition with any
91 name other than his own, or knowingly to sign his name more than
92 once to the petition, or knowingly to sign the petition when he is
93 not a qualified elector.)

94 Date: _____

95 TO THE GOVERNOR OF THE STATE OF MISSISSIPPI:

96 We, the undersigned qualified electors of _____ County,
97 State of Mississippi, respectfully demand that _____, holding
98 the office of _____ in the county, be removed from office by
99 the Governor for the following reasons, to wit: (Setting out the

100 reasons for removal in not more than two hundred words); that a
101 special election, after lawful notice, be called to permit the
102 qualified electors of the county to vote on the question of
103 whether or not the * * * officer shall be removed;

104 That we each for himself say that: I am a qualified elector
105 of the county, and my voting precinct is correctly written after
106 my name, and that it was stated to me before the signing of the
107 petition that after signing the same I would not be permitted to
108 remove my name from the petition.

109	NAME	VOTING PRECINCT
110	1. _____	_____
111	2. _____	_____
112	3. _____	_____

113 (c) REMOVAL PETITION

114 (For Municipal Officers)

115 (WARNING.--It is a misdemeanor, punishable by fine and
116 imprisonment, for any person to sign any removal petition with any
117 name other than his own, or knowingly to sign his name more than
118 once to the petition, or knowingly to sign the petition when he is
119 not a qualified elector.)

120 Date: _____

121 TO THE GOVERNOR OF THE STATE OF MISSISSIPPI:

122 We, the undersigned qualified electors of the City of
123 _____, _____ County, State of Mississippi, respectfully
124 demand that _____, holding the office of _____ in the
125 municipality, be removed from office by the Governor for the
126 following reasons, to wit: (Setting out the reasons for removal
127 in not more than two hundred words); that a special election,
128 after lawful notice, be called to permit the qualified electors of
129 the municipality to vote on the question of whether or not the
130 officer shall be removed;

131 That we each for himself say that: I am a qualified elector
132 of the municipality, and my voting precinct is correctly written

133 after my name, and that it was stated to me before the signing of
134 the petition that after signing the same I would not be permitted
135 to remove my name from the petition.

	<u>NAME</u>	<u>VOTING PRECINCT</u>
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137	1. _____	_____
138	2. _____	_____
139	3. _____	_____

140 **SECTION 4.** Section 25-5-13, Mississippi Code of 1972, is
141 amended as follows:

142 25-5-13. Each and every petition, or separately circulated
143 section thereof, containing signatures shall be verified on the
144 last page thereof in substantially one of the following forms:

145 (a) STATE OF MISSISSIPPI
146 STATE-DISTRICT _____

147 I, _____, a qualified elector of the state or
148 state-district, do now state under oath that every person who
149 signed the foregoing petition signed his or her name thereto in my
150 presence, and that before the signing of the petition the signator
151 was told that after signing the same his or her name could not be
152 removed from the petition; that I believe that each has stated his
153 or her name and district correctly, and that so far as I know each
154 signer is a qualified elector of the state or state-district, and
155 I further certify that the date appearing on the foregoing
156 petition is the correct date on which the first signature was
157 affixed to the petition or any section thereof.

158 (Signature) _____

159 Sworn to and subscribed before me, this _____ day of _____,
160 20__.

161 _____
162 _____

163 (b) STATE OF MISSISSIPPI
164 COUNTY OF _____

165 I, _____, a qualified elector of the county do now
166 state under oath that every person who signed the foregoing
167 petition signed his or her name thereto in my presence, and that
168 before the signing of the petition the signator was told that
169 after signing the same his or her name could not be removed from
170 the petition; that I believe that each has stated his or her name
171 and precinct correctly, and that so far as I know each signer is a
172 qualified elector of this county, and I further certify that the
173 date appearing on the foregoing petition is the correct date on
174 which the first signature was affixed to the petition or any
175 section thereof.

176 (Signature) _____

177 Sworn to and subscribed before me, this _____ day of _____,
178 20__.

179 _____
180 _____

181 (c) STATE OF MISSISSIPPI

182 CITY OF _____

183 COUNTY OF _____

184 I, _____, a qualified elector of the municipality do
185 now state under oath that every person who signed the foregoing
186 petition signed his or her name thereto in my presence, and that
187 before the signing of the petition the signator was told that
188 after signing the same his or her name could not be removed from
189 the petition; that I believe that each has stated his or her name
190 and precinct correctly, and that so far as I know each signer is a
191 qualified elector of this municipality, and I further certify that
192 the date appearing on the foregoing petition is the correct date
193 on which the first signature was affixed to the petition or any
194 section thereof.

195 (Signature) _____

196 Sworn to and subscribed before me, this _____ day of _____,
197 20__.

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SECTION 5. Section 25-5-15, Mississippi Code of 1972, is amended as follows:

25-5-15. Before the submission of the petitions to the Governor or Lieutenant Governor, if the Governor is the officer to be removed, to be filed by him, all sections of the same shall be consolidated and delivered to the Secretary of State, in the case of a statewide or state-district officer, registrar of the county or municipality, as the case may be, in which the petition has been circulated. No signatures shall be thereafter added. The Secretary of State or registrar shall compare the signatures of the persons appearing on the petition with the names of the qualified electors appearing on the poll books of the county or municipality, and shall attach to the petition, or to each section of the petition if the same has been circulated in sections, the following certificate:

STATE OF MISSISSIPPI
STATE-DISTRICT
COUNTY OF _____
MUNICIPALITY OF _____

I, _____, Secretary of State or registrar in and for the county or municipality aforesaid, do hereby certify that I have compared the signatures on the preceding sheets of the removal petition attached hereto, and to the best of my knowledge and belief the * * * petition (or section of petition) contains the signatures of _____ qualified electors of the state, state-district, the county or municipality, as the case may be, and I have drawn a line in red ink through the names of those signators who appear by the records in my office not to be qualified electors, or who have died. I further certify that as of the date of the petitions there were _____ qualified electors

230 in this state, state-district, county or municipality, as the case
231 may be.

232 Given under my hand and seal of office, this the _____ day
233 of _____, 20__.

234 _____
235 Secretary of State, County
236 or Municipal Registrar

237 **SECTION 6.** Section 25-5-17, Mississippi Code of 1972, is
238 amended as follows:

239 25-5-17. The certificate by the Secretary of State, county
240 or municipal registrar shall be prima facie evidence of the facts
241 stated therein and of the qualification of the electors whose
242 signatures are thus certified. The Governor or the Lieutenant
243 Governor, if the Governor is the officer to be removed, shall
244 consider and count only those signatures on the petition as shall
245 be so certified by the Secretary of State or registrar; * * *
246 however, * * * any officer sought to be removed or any citizen of
247 the state, state-district, county or municipality shall have the
248 privilege of submitting evidence in writing, under oath, to the
249 Governor or the Lieutenant Governor, if the Governor is the
250 officer to be removed, as to the question of whether or not any
251 signator to the petition was in fact a qualified elector at the
252 time of the signing of the petition, or has since died. The
253 decision of the Governor or the Lieutenant Governor, if the
254 Governor is the officer to be removed, as to whether or not any
255 particular person was or was not a qualified elector at the time
256 of the signing of the petition, or whether or not any particular
257 person has since died, shall be final and shall not be subject to
258 review. The status of the signator as to whether or not he or she
259 was a qualified elector at the time of signing the petition shall
260 be determined as of the date of the petition and not by any other
261 date.

262 **SECTION 7.** Section 25-5-19, Mississippi Code of 1972, is
263 amended as follows:

264 25-5-19. The Secretary of State or the county or municipal
265 registrar shall not retain in his possession any * * * petition or
266 any section thereof for a longer period than two (2) days for the
267 first two hundred (200) signatures thereon and one (1) additional
268 day for each two hundred (200) additional signatures or fraction
269 thereof, and the time consumed in the examination of the petitions
270 shall not be counted in determining the time between the signing
271 and the filing of the petitions. At the expiration of the
272 examination, the registrar shall forthwith file the same with the
273 Governor or the Lieutenant Governor, if the Governor is the
274 officer to be removed, with his certificate attached, and shall
275 obtain a written receipt for the same. The forms herein are not
276 mandatory, but directory, and if substantially followed in any
277 petition it shall be sufficient, disregarding clerical and
278 technical errors. If the Secretary of State or the registrar be
279 unable to examine the petition, he shall so certify the fact to
280 the state, county or municipal election commissioners, who shall
281 in the same manner and time perform all the functions herein
282 required of the Secretary of State or the registrar. In the event
283 the Secretary of State or the county or municipal registrar is the
284 officer whose removal is sought by the petition, then the petition
285 shall be delivered to one (1) of the state election commissioners
286 or one (1) of the county or municipal election commissioners of
287 the county or municipality in which the petition has been
288 circulated, and the * * * commissioners * * * shall in the same
289 manner and within the same time perform all functions herein
290 required of the registrar. A fee of Five Cents (5¢) per signature
291 shall be allowed for the * * * examination of the petitions, to be
292 paid out of the general funds of the state, county or municipality
293 upon due proof of the examination. The Secretary of State or any
294 registrar or any board of state, county or municipal election

295 commissioners or member thereof who willfully fails or refuses to
296 perform the duty or duties herein required of him or them shall be
297 subject to a civil penalty of One Thousand Dollars (\$1,000.00), to
298 be recovered in the Chancery Court of the First Judicial District
299 of Hinds County or in the chancery court of the county by suit
300 which may be filed by any qualified elector who signed the
301 petition or any section thereof.

302 **SECTION 8.** Section 25-5-21, Mississippi Code of 1972, is
303 amended as follows:

304 25-5-21. When the petitions shall have been filed with the
305 Governor or the Lieutenant Governor, if the Governor is the
306 officer to be removed, within ten (10) days of the filing thereof
307 the Governor or the Lieutenant Governor, if the Governor is the
308 officer to be removed, shall cause true copies thereof
309 (photostatic copies being sufficient) to be personally delivered
310 by some officer of the state, county or municipality, designated
311 in writing by the Governor or the Lieutenant Governor, if the
312 Governor is the officer to be removed, to the officer sought to be
313 removed, and shall in like manner and form cause to be personally
314 served on the officer a notice to appear, if he desires, at a time
315 to be fixed by the Governor or the Lieutenant Governor, if the
316 Governor is the officer to be removed, to show cause, if any he
317 can, why the question of his removal should not be submitted to a
318 vote of the qualified electors as hereinafter provided,
319 which * * * notice shall be served upon the officer at least
320 twenty (20) days before the date when his appearance is required.
321 The place of hearing shall be the county courthouse of the county
322 in which the officer resides.

323 **SECTION 9.** Section 25-5-23, Mississippi Code of 1972, is
324 amended as follows:

325 25-5-23. At the time and place designated in the notice, the
326 Governor or the Lieutenant Governor, if the Governor is the
327 officer to be removed, shall cause to be convened a removal

328 council to be composed of three (3) chancery judges appointed by
329 the Governor or the Lieutenant Governor, if the Governor is the
330 officer to be removed, none of whom shall reside in the district
331 in which the officer under question resides, to hear and determine
332 whether there is substantial basis for a removal election
333 consistently with the provisions of Sections 25-5-3 through
334 25-5-37. The senior chancellor shall serve as the presiding judge
335 of the council. The hearing herein provided may continue from day
336 to day and be recessed from time to time, as in the discretion of
337 the council may be ordered. The qualified electors of the state,
338 state-district, county or municipality shall likewise be given
339 notice by proclamation of the Governor or the Lieutenant Governor,
340 if the Governor is the officer to be removed, of the time and
341 place of the hearing. Any interested citizen or citizens may
342 likewise appear at the time and place listed and make * * *
343 representations to the council as, in the discretion of the
344 council, may be material to the issues involved. The council
345 shall promulgate rules for the hearings, which shall be in
346 writing, but all representations shall be made under oath, to be
347 administered by some member of the council. It shall not be
348 necessary that a stenographic record be kept of the
349 representations, either for or against removal, but the testimony
350 taken shall be heard as nearly as practicable in compliance with
351 the usually applicable rules of evidence. All decisions of the
352 council on any question, preliminary or final, including the
353 question of whether just cause for an election has been shown,
354 shall be final and not subject to review.

355 The elective officer concerned shall be entitled to be
356 represented by counsel of his choice at the hearing.

357 **SECTION 10.** Section 25-5-25, Mississippi Code of 1972, is
358 amended as follows:

359 25-5-25. The council shall keep minutes of its final
360 judgments, and the disposition of each petition shall be recorded

361 therein. If it be the judgment of the council that sufficient
362 cause has not been shown to justify the removal of the officer,
363 then the petition shall be dismissed and no new petition shall be
364 filed or entertained for a period of one (1) year from the date of
365 the order dismissing the petition.

366 If, however, the council shall be of the opinion that
367 sufficient cause has been shown to justify the removal of the
368 officer, then notice to the qualified electors of the state or
369 state-district, county or municipality involved shall be given, in
370 accordance with the general election laws of the State of
371 Mississippi in the matter of filling vacancies in state,
372 state-district, county or municipal offices, that an election
373 shall be held in the county or municipality to determine the
374 question of whether or not the state, state-district, county or
375 municipal official shall be removed from office.

376 **SECTION 11.** Section 25-5-27, Mississippi Code of 1972, is
377 amended as follows:

378 25-5-27. The officer named in the removal petition shall
379 continue to perform the duties of his office until the results of
380 the special removal election shall be officially proclaimed. If,
381 however, the officer named in the petition for removal shall offer
382 his resignation before the issuance of the proclamation for the
383 holding of special removal election, it shall be accepted, shall
384 take effect on the date it is offered, and the vacancy shall be
385 filled as provided by law for the filling of any vacancy in an
386 elective state, state-district, county or municipal office. The
387 officer who either resigns or is removed shall not be eligible to
388 fill the vacancy caused by his removal or resignation, or serve as
389 deputy in the office from which he resigns or is removed.

390 **SECTION 12.** Section 25-5-33, Mississippi Code of 1972, is
391 amended as follows:

392 25-5-33. The election commissioners of the state,
393 state-district, county or municipality, or a quorum thereof, shall

394 meet at the office of the Secretary of State or the county or
395 municipal registrar at 9:00 a.m. of the day following the special
396 removal election, and shall then proceed to canvass, tabulate and
397 certify the results of the election as now provided by the general
398 election laws of the State of Mississippi. The certificate of the
399 results, showing the total votes cast for the removal of the
400 officer, the total votes cast against the removal of the officer,
401 and the total number of qualified electors in the county,
402 supervisors district or municipality in which the election was
403 held, shall be forwarded to the Governor or the Lieutenant
404 Governor, if the Governor is the officer to be removed. If a
405 majority of all qualified electors of the county, supervisors
406 district or municipality in which the election shall have been
407 held shall not have voted in the election, either for or against
408 the removal, or if a majority of the qualified electors voting in
409 the election shall oppose removal, the officer shall not be
410 removed and shall not thereafter during his term of office be
411 subject to another removal election. If a majority of all
412 qualified electors of the state, state-district, county,
413 supervisors district or municipality in which the election is held
414 have voted either for or against removal, and if a majority of the
415 qualified electors voting in the election shall vote for the
416 removal of the officer, then the Governor shall issue his
417 proclamation declaring the office vacant, removing the officer,
418 and appointing a suitable person to fill the vacancy until the
419 same can be filled in a special election to be held not more than
420 sixty (60) days after the * * * proclamation of the Governor. No
421 officer shall be subject to a removal petition until he shall have
422 served at least one (1) year of his term.

423 **SECTION 13.** Section 25-5-37, Mississippi Code of 1972, is
424 amended as follows:

425 25-5-37. (1) Any person who signs any removal petition with
426 any name other than his own, or who knowingly signs his name more

427 than once to the petition, or who knowingly signs the petition
428 when he is not a qualified elector shall be guilty of a felony
429 and, upon conviction, may be punished as such for a term in the
430 penitentiary not to exceed five (5) years.

431 (2) Any person who knowingly executes any affidavit required
432 by Sections 25-5-3 through 25-3-37 knowing the same to be false,
433 or who issues any certificate required by the same knowing it to
434 be false, or who makes any statement of any kind required by such
435 sections to be under oath, either in writing or orally, knowing
436 the same to be false shall be guilty of perjury and, upon
437 conviction, may be punished by imprisonment in the State
438 Penitentiary for a term not to exceed ten (10) years.

439 (3) It shall be a felony for any officer sought to be
440 removed under the provisions of the aforesaid sections to attempt
441 by force, threats, bribery or intimidation to hinder or interfere
442 with the free circulation or signing of any removal petition and,
443 upon conviction thereof, he shall be punished by imprisonment in
444 the State Penitentiary for not less than one (1) year nor more
445 than five (5) years.

446 (4) Any person in the possession of a removal petition who
447 either willfully suppresses, neglects or fails to cause same to be
448 filed with the Secretary of State or the county or municipal
449 registrar shall be guilty of a misdemeanor and, upon conviction
450 thereof, shall be punished by imprisonment in the county jail not
451 to exceed six (6) months or by fine not to exceed Five Hundred
452 Dollars (\$500.00), or by both such fine and imprisonment.

453 **SECTION 14.** The Attorney General of the State of Mississippi
454 shall submit this act, immediately upon approval by the Governor,
455 or upon approval by the Legislature subsequent to a veto, to the
456 Attorney General of the United States or to the United States
457 District Court for the District of Columbia in accordance with the
458 provisions of the Voting Rights Act of 1965, as amended and
459 extended.

460 **SECTION 15.** This act shall take effect and be in force from
461 and after the date it is effectuated under Section 5 of the Voting
462 Rights Act of 1965, as amended and extended.