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Secretary of State

2016 Legislative Update

New Laws Impacting
the
Mississippi Secretary of State's Office

2016

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BUDGET

SB 2916: Secretary of State's Budget*

SB 2916 provides funding to the Secretary of State's Office for the 2017 Fiscal Year. Effective 7/1/16. Signed 5/6/16.

SB 2362: Budget Transparency and Simplification Act; all special fund agencies funded through General Fund, etc.

This bill is the "Mississippi Budget and Transparency and Simplification Act of 2016."

From and after July 1, 2016, no state agency shall charge another state agency fees, assessments, rent, audit fee, personnel fees or other charges for services or resources received. The provisions of this section shall not apply to (a) grants, contracts, pass-through funds, project fees or other charges for services between state agencies and the Board of Trustees of State Institutions of Higher Learning, any public university, the Mississippi Community College Board, any public community or junior college, and the State Department of Education, nor (b) charges for services between the Board of Trustees of State Institutions of Higher Learning, any public university, the Mississippi Community College Board, any public community or junior college, and the State Department of Education. The Board of Trustees of State Institutions of Higher Learning, any public university, the Mississippi Community College Board, any public community or junior college, and the Department of Education shall retain the authority to charge and be charged for expenditures that they deemed nonrecurring in nature by the State Fiscal Officer.

From and after July 1, 2016, the expenses of the following enumerated state agencies shall be defrayed by appropriation of the Legislature from the State General Fund: the State Fire Marshall, the State Fire Academy, the Office of the Secretary of State, the Mississippi Public Service Commission, the Department of Information Technology Services, the State Personnel Board, the Mississippi Department of Insurance, the Mississippi Law Enforcement Officers' Minimum Standards Board; the Mississippi Tort Claims Board; the Mississippi Gaming Commission; the Mississippi Oil and Gas Board; the Mississippi Department of Revenue - License Tag; the Office of the State Public Defender; the Mississippi Workers' Compensation Commission; the Office of Attorney General; and the Mississippi Department of Finance and Administration. Beginning July 1, 2016, any fees, assessments or other revenue charges for the support of the above-named state agencies shall be deposited into the State General Fund, and any special fund or depository established within the State Treasury for the deposit of such fees, assessments or revenues shall be abolished and the balance transferred to the State General Fund. Expenses heretofore drawn from such special funds or other depositories shall be drawn from the agencies General Fund Account.

Beginning with the fiscal year ending June 30, 2016, the amount to be appropriated annually from the State General Fund for the support of each of the above-named state agencies shall not exceed the amount appropriated for such purpose in the preceding fiscal year, plus any increases in or additional fees, assessments or other charges authorized by act of the Legislature

3 *Indicates the bill was a legislative priority of the Secretary of State's Office.

for the succeeding fiscal year. The provisions of this section shall not apply to any trust fund account maintained by any of the above-named agencies. The provisions of this section shall not prohibit any of the above-named agencies from maintaining clearing accounts in approved depositories. The provisions of this section shall not apply to any trust fund maintained by the Public Employees' Retirement System and protected under Section 272A of the Mississippi Constitution of 1890. Effective 7/1/16. Signed 5/6/16.

HB 878: Budget Process; bring forward sections relating to various aspects

This bill provides for transfers of funds and addresses other fiscal matters as follows:

- Directs the State Fiscal Officer to transfer to the Capital Expense Fund during the fiscal year 2016 a total of \$50,000,000.00 from certain special funds of the Secretary of State, Public Service Commission, Public Utilities Staff, Department of Information Technology Services, State Personnel Board, Department of Insurance, Department of Finance and Administration, Gaming Commission, Oil and Gas Board and Workers' Compensation Commission.
- Directs the State Fiscal Officer to transfer to the Capital Expense Fund during the fiscal year 2017 a total of \$28,895,576.00 from certain special funds of the Unclaimed Property Fund, Board of Nursing, Medical Licensure Board, Department of Corrections, Board of Dental Examiners and Land Surveyors, Motor Vehicle Commission, Budget Contingency Fund and Hurricane Disaster Reserve Fund.
- Revises the percentage limitation on legislative appropriations from the State General Fund for fiscal year 2017 from 98% of the general fund revenue estimate for that fiscal year to 100% of the general fund revenue estimate.
- Revises the distribution of the unencumbered ending cash balance in the State General Fund at the end of fiscal year 2016 to have the distribution made only to the Municipal Revolving Fund and the Capital Expense Fund.
- Suspends the requirement for appropriations to the Local System Bridge Replacement and Rehabilitation Program during the 2016 Legislative Session.
- Extends to July 1, 2017, the date of the repealer on the Health Care Trust Fund. Effective. 7/1/16. Signed 5/9/16.

BUSINESS SERVICES, CHARITIES, REGULATION & ENFORCEMENT, SECURITIES

SB 2200: Securities Registration; provide for notice filings for federal covered securities created by the JOBS Act*

SB 2200 amends Section 75-71-302 to provide for notice filings of new types of federal covered securities created by the federal JOBS Act. The bill also conforms Sections 75-71-310 to allow the fee currently charged for notice filings of certain federal covered securities to also be charged for these new federally covered securities. Effective 7/1/16. Signed 4/4/16.

4 *Indicates the bill was a legislative priority of the Secretary of State's Office.

HB 1138: Electric Power Association Law; provide additional provisions applicable to generation and transmission cooperatives

HB 1138 creates Section 77-5-256 to provide additional provisions applicable to generation and transmission cooperatives under the Electric Power Association Law, to provide for the amendment of the cooperative's certificate of incorporation, to provide for the board of directors and its membership, and to provide for the general powers of the cooperative.

Additionally, in order to clarify the extent to which a generation and transmission cooperative is subject to regulation by the Public Service Commission, the bill declares a G&T cooperative is only subject to the provision of Sections 77-3-11, 77-3-13, 77-3-14, 77-3-23, 77-3-25 and 77-3-27, and any rules promulgated by the commission necessary to carry out its responsibilities under those specific code sections. Effective 7/1/16. Signed 4/18/16.

HB 1139: Electric Power Associations; revise regulatory laws

HB 1139 revises various regulatory laws regarding electric power associations. More specifically, it does the following:

- Amends Section 77-5-203 to revise the definition of certain terms as used in the Electric Power Association Law;
- Amends Section 77-5-207 to provide the period of duration of a corporation formed under this article may be perpetual;
- Amends Section 77-5-209 to clarify the name of a corporation shall include either the words "electric power association" or "electric cooperative";
- Amends Section 77-5-211 to clarify the procedure for filing a certificate of incorporation with the Secretary of State;
- Amends Section 77-5-215 to revise the procedure for a corporation to amend its certificate of incorporation;
- Amends Section 77-5-217 to revise the procedure whereby two or more corporations may enter into an agreement for consolidation. (Requires approval of at least 2/3 of both boards of directors and ratification by at least 60% of each association's members voting. An application for consolidation must be filed and approved by the PSC);
- Amends Section 77-5-219 to revise the procedure for dissolution of a corporation;
- Amends Section 77-5-221 to clarify the provision providing for the annual election of a board of directors;
- Amends Section 77-5-223 to revise the powers of the board of directors;
- Amends Section 77-5-225 to delete certain language regarding rates to nonmembers;
- Amends Section 77-5-231 to revise the specific powers a corporation formed under this article;
- Amends Section 77-5-233 to provide a corporation shall continue to have the power to acquire, construct, own, invest in, operate, maintain and/or improve generating and/or transmission assets;

- Amends Section 77-5-235 to provide all rates of a corporation formed under this article shall be established by the corporation's board and shall not be regulated by the Mississippi Public Service Commission. However, a corporation shall be subject to commission regulations which limit disconnections of service during freeze warnings or excessive heat warnings issued by the National Weather Service, limit disconnections of service in life-threatening situations certified by a medical doctor, or establish initial deposit requirements for certified victims of domestic violence. Nothing herein shall be construed to impair the PSC's jurisdiction and authority, if any, to require corporations to establish, offer or participate in energy efficiency or net metering programs, but in no event shall the commission set or establish the level of expenditures, compensation or credits associated with a corporation's energy efficiency, net metering or other programs. Also, Section 77-5-235 is amended to provide a corporation may only deny an attaching entity access to its owned or controlled poles on a nondiscriminatory basis if there is insufficient capacity or for reason of safety and reliability and if the attaching entity will not resolve the issue;
- Amends Section 77-5-239 to authorize a corporation to incur obligation and liabilities, borrow money, issue notes, bond, certificates of indebtedness or other obligations, and to enter into contracts of guaranty;
- Amends Section 77-5-241 to provide any note, bond or other indebtedness issued by a corporation may bear such interest rate or rates as may be determined by the board of directors;
- Amends Section 77-243 to provide for the security for obligations of a corporation;
- Amends Section 77-5-247 to provide monies of a corporation shall be deposited or invested in one or more banks, trust companies, financial institutions or such other public or private entities as may be approved by the board of directors;
- Amends Section 77-5-249 to provide a corporation and its property shall be taxed and assessed in accordance with the laws of the State of Mississippi;
- Amends Section 77-5-253 to require each corporation to submit financial and compliance audits to the Public Service Commission and Public Utilities Staff;
- Amends Section 77-5-255 to require each corporation to submit financial and compliance audits to the Public Service Commission and the Public Utilities Staff;
- Creates Section 77-5-257 to declare that the Public Service Commission and political subdivision of the State shall not have jurisdiction over those portions or aspects of a corporations' operations, facilities, services or rates regulated by the Tennessee Valley Authority;
- Creates Section 77-5-259 to limit the time by which an action may be commenced for collection or reimbursement arising from a billing error by a corporation. No collection, reimbursement, or other relief may be awarded for any underbilling or overbilling occurring more than six years prior to the commencement of the action or regulatory proceeding. Effective. 7/1/16. Signed 4/7/16.

SB 2447: Charitable Organizations; revise due date for registration renewal*

Current state law requires a charitable organization to renew its registration filings with the Secretary of State's Office annually on the date of the original filing. Under this bill the annual renewal is required to be filed on the 15th day of the 5th month following the close of the organization's taxable year. This will allow charitable organizations to more easily maintain and update filings in concert with requirements by other state and federal agencies.

The bill also allows the Secretary of State to promulgate rules to provide for extensions of the filing due date and to impose an administrative penalty for failure to comply. Effective 7/1/16. Signed 4/4/16.

SB 2483: Articles of Incorporation; revise*

Section 79-4-2.02 contains provisions related to information a corporation must set forth in its articles of incorporation, as well as information which may be set forth in its bylaws. This bill permits a corporation to set forth in its articles of incorporation or bylaws a provision designating venue for derivative proceedings, or other internal corporate claims, in the appropriate court of the county where the corporation's principal office is located. The legislation will:

- Allow a Mississippi corporation to adopt a forum selection provision, potentially protecting itself and its shareholders from multiple lawsuits in multiple jurisdictions on the same or similar matters;
- Provide a convenient location to both shareholders and the corporation in lawsuits involving Mississippi corporations, as well as promote consistent, efficient, and cost-effective results related to interpretation of Mississippi law;
- Reduce the risk of Mississippi law being misapplied by a court in another jurisdiction not accustomed to ruling on such law, and reduce the risk of potentially inconsistent outcomes that may result from two or more similar claims being heard in different courts. Effective 7/1/16. Signed 4/18/16.

SB 2649: Secretary of State; process for appeal of any penalties imposed*

This bill amends:

- Section 41-43-7 and 75-63-69 to provide a process for appeal of any penalties imposed by the Secretary of State for violations of the provisions of law regulating the placement and sale of cemeteries;
- Section 97-17-71.1 to provide a process for appeal of penalties imposed by the Secretary of State for violation of the provisions of law regulating scrap metal; and
- Section 79-11-509 to provide a process for appeal of penalties imposed by the Secretary of State for violation of the provisions of law regulating charitable corporations. Effective 7/1/16. Signed 4/20/16.

ELECTIONS

SB 2438: Local School Superintendents; all appointed after January 1, 2019

This bill provides for the appointment of all superintendents of schools from and after January 1, 2019. Effective 7/1/16. Signed 4/4/16.

SB 2167: Qualifying Fees; require independent candidates to pay and increase for party candidates

This bill amends Section 23-15-297 to increase the qualifying fee for party and special election candidates and to require independent candidates to pay a qualifying fee. The qualifying fees to run for public office have been increased as follows:

- For Governor, from \$300.00 to \$1,000.00;
- For Lieutenant Governor, Attorney General, Secretary of State, State Treasurer, State Auditor, Commission of Insurance, Commission of Agriculture and Commerce, State Highway Commissioner and State Public Service Commissioner from \$200.00 to \$500.00;
- For District Attorney, from \$100.00 to \$250.00;
- For State Senator and State Representative, from \$15.00 to \$250.00;
- For Sheriff, Chancery Clerk, Circuit Clerk, Tax Assessor, Tax Collector, County Attorney, County Superintendent of Education and Board of Supervisors, from \$15.00 to \$100.00;
- For County Surveyor, County Coroner, Justice Court Judge and Constable, from \$10.00 to \$100.00;
- For United State Senator, from \$300.00 to \$1,000.00; and
- For United State Representative, from \$200.00 to \$500.00.

This bill also adds qualifying fees and general election assessments to run for the Office of President of the United States. The amendments to Section 23-15-1093 add a qualifying fee in the amount of \$2,500.00 for candidates who want to appear on the presidential preference primary ballot. Party candidates will pay the fee to the state executive committee of the appropriate political party. Independent candidates will pay the fee to the Secretary of State. The bill amends 23-15-359 to add an assessment in the amount of \$2,500.00 to appear on the general election ballot for the Office of President of the United States. All candidates must pay the general election assessment to the Secretary of State.

Finally, the bill amends Section 23-15-299 and 23-15-359 by requiring any qualifying fees or petitions previously submitted to the State Board of Election Commissioners to now be submitted to the Secretary of State. The Secretary of State will deposit the qualifying fees into the Election Support Fund. Effective 7/1/16. Signed 4/6/16.

SB 2684: Election Commissioners; authorize to receive mileage reimbursement

This bill amends Section 23-15-153 to allow election commissioners to be paid the mileage reimbursement rate allowable to federal employees for the use of a privately owned vehicle while on official travel on Election Day. The mileage reimbursement would be in addition to any per diem to any per diem authorized by this section. Effective 7/1/16. Signed 4/6/16.

HB 130: Municipal Clerks in Code Charter Municipalities; require to be appointed instead of elected

This bill amends Section 21-3-3 to revise what officers are elected in a municipality which operates under the code charter form of government. Specifically, from and after July 1, 2017, the city or town clerk of a code charter municipality shall no longer be elected, but the clerk shall be appointed by the governing authorities of such municipality. Effective 7/1/17. Signed 5/16/16.

HB 137: Municipal Election Managers; revise discretionary salary and compensation for attending training sessions

This bill amends Section 23-15-229 to increase the maximum amount of additional compensation municipal governing authorities of a municipality may, in their discretion, pay to clerks and managers in the polling places from \$25.00 to \$50.00.

The bill also amends Section 23-15-239 to authorize a governing authority of a municipality to compensate poll managers who attend a training session conducted to instruct such poll managers as to their duties in the proper administration of the election and the operation of the polling place. Effective 7/1/16. Signed 4/4/16.

HB 809: Online Voter Registration; authorize under authority of Secretary of State*

This bill requires the Secretary of State, with the support of the Department of Public Safety, to establish a secure Internet website to permit registered electors to change their name, address or other information set forth in the electors' existing voter registration record. The secure website will provide verification that:

- The elector has a current and valid Mississippi driver's license or photo identification card issued by the Mississippi Department of Public Safety and the number for driver's license or photo identification card provided by the applicant matches the number for the elector's driver's license or photo identification card on file with the Mississippi Department of Public Safety;
- The name and date of birth provided by the voter matches the name and date of birth that is on file with the Mississippi Department of Public Safety; and
- The information provided by the elector matches the information on file with the Mississippi Department of Public Safety.

The bill amends Section 23-15-13 to provide if an elector requests to change his or her address on the secure website established by the Secretary of State and the changed address will place the

elector in a precinct of a county or municipality that differs from the elector's voting precinct in his or her current registration records, the request will be treated in the same manner as a written request to transfer the elector's registration as now provided by law. Effective 7/1/16. Signed 4/14/16.

HB 866: Election Crimes; revise penalties for*

This bill amends Section 97-123-1 to expand the penalty for influencing voting or election activities to include a fine of not more than \$3,000.00.

The bill amends Section 97-13-3 to increase the fine for offering or giving a reward to a canvasser to procure votes from \$500.00 to \$1,000.00.

The bill amends Section 97-13-5 to increase the penalty for a poll manager who proceeds to an election without locking and securing the ballot box, or who opens and reads or consents to any other person opening and reading any ballot given to the poll manager to be deposited in the box at the election, before it is put into the box. The penalty is increased from six months imprisonment, or a fine not to exceed \$300.00, to one year imprisonment, or a fine not to exceed \$1,000.00.

The bill amends Section 97-13-7 to increase the penalty for a poll manager who disposes of or deposits the ballot box before the votes are counted or gives access to the ballot box to any other person. The penalty is increased from imprisonment not to exceed three months, or a fine not to exceed \$300.00 to imprisonment not to exceed one year, or a fine not to exceed \$3,000.00.

The bill amends Section 97-13-9 to increase the penalty for a poll manager who knowingly makes or consents to any false entry on the list of persons voting, or permits a ballot not given by a voter to be put in the ballot box, or takes out or permits to be taken out of the ballot box any ballot, or destroys or changes any ballot given by the elector, to include the option of a fine of \$5,000.00.

The bill amends Section 97-13-13 to increase the penalty for a person who removes ballots from the voting place before the polls close. The penalty is increased to imprisonment not to exceed one year, or a fine not to exceed \$1,000.00 or both.

The bill amends Section 97-13-19 to revise the penalty for corrupt conduct, voting fraud or voting neglect by an election official. The penalty is revised from imprisonment in the penitentiary for a term not exceeding two years to imprisonment in the county jail not to exceed one year, or a fine not to exceed \$3,000.00, or both.

The bill amends Section 97-13-21 to increase the penalty for any person who unlawfully disturbs an election at the polling place, circuit clerk's office, or where the ballots are located. The penalty is increased from imprisonment not to exceed six months, or a fine

not to exceed \$500.00 to imprisonment not to exceed one year, or a fine not to exceed \$1,000.00, or both.

The bill amends Section 97-13-23 to revise the penalty for a manager or returning officer who fails or refuses to return the votes cast in an election, as required by law. The penalty is revised from imprisonment in the State Penitentiary not to exceed five years to imprisonment not to exceed two years, or a fine not to exceed \$3,000.00, or both. The penalty is revised to also provide the alternative of imprisonment in a county jail not to exceed one year, or a fine not to exceed \$1,000.00, or both.

The bill amends Section 97-13-25 to revise the penalty for any person who knowingly procures his or her registration or any person's registration as a qualified elector when that person is not entitled to be a qualified elector, or is registered under a false name, or is registered in an election precinct other than the one in which he or she resides. The penalty is revised from imprisonment not to exceed ten years to imprisonment not to exceed five years, or a fine not to exceed \$5,000.00, or both.

The bill amends Section 97-13-27 to increase the penalty for any registrar who intentionally refuses or neglects to register a voter entitled to registration or registers a voter not entitled to registration. The penalty is increased to imprisonment in the State Penitentiary not to exceed two years, or a fine not to exceed \$3,000.00, or both. The penalty is revised to also provide the alternative of imprisonment in a county jail not to exceed one year, or a fine not to exceed \$1,000.00, or both.

The bill amends Section 97-13-29 to revise the penalty for any military officer or other persons who order, bring, or keep any troops of armed men at any place within a mile of the place where any election is held, unless it be for the purpose of quelling a riot or insurrection, in the manner provided by law, or for the purpose of defense in time of war, to imprisonment in the county jail not to exceed one year, or a fine not to exceed \$1,000.00, or both.

The bill amends Section 97-13-31 to increase the penalty for any election officer or other person, except as authorized by law, who aids or assists, or influences, a voter in preparing a ballot, or attempts to do so, from a fine of not less than \$10.00 nor more than \$200.00 to imprisonment in the county jail not to exceed one year, or a fine not to exceed \$1,000.00, or both.

The bill amends Section 97-13-33 to increase the penalty for a poll manager's failure to honestly consider the voter's qualification, or permitting an unqualified person to vote, or refusing the vote of a qualified person. The penalty is increased from imprisonment not to exceed three months or a fine not to exceed \$200.00 to imprisonment not to exceed one year and a fine not to exceed \$3,000.00.

The bill amends Section 97-13-35 to increase the penalty for voting by any person who is unqualified to vote, who votes at more than one place, or who votes for both parties in the same primary to imprisonment in the county jail not to exceed one year, or a fine not to exceed \$1,000.00, or both. Additionally, any person who votes in the second primary election of one party when he or she voted in the first primary election of another party preceding the same election will be punished by imprisonment in the county jail not to exceed six months, or by a fine not to exceed \$500.00, or both.

The bill amends Section 97-13-36 to increase the penalty for any person who votes in more than one place with the intent of having more than one vote counted to imprisonment in the State Penitentiary not to exceed five years, or a fine not to exceed \$5,000.00, or both, or imprisonment in a county jail not to exceed one year, or a fine not to exceed \$1,000.00, or both.

The bill amends Section 97-13-37 to increase the penalty for any person who procures votes or attempts to procure votes through intimidation, boycotting, violence, or lawsuit. The penalty is increased from imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$1,000.00, or both, to imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$3,000.00, or both.

The bill amends Section 97-13-39 to revise the penalty for any person who intimidates an elector to prevent the elector from voting. The penalty is revised to imprisonment in the county jail not to exceed one year, or by a fine not to exceed \$3,000.00, or both. Additionally, if any person uses the voter identification requirements to prevent an elector from voting, that person will be punished by imprisonment in the State Penitentiary not to exceed five years, or by a fine not to exceed \$5,000.00, or both.

The bill recodifies Section 23-15-117 as Section 97-13-41 and repeals Section 23-15-117. Additionally, the penalty for any person who knowingly makes a false entry in the Statewide Election Management System or any poll book, is increased to imprisonment not to exceed ten years.

The bill recodifies Section 23-15-531.13 as Section 97-13-43 and repeals Section 23-15-531.13. Additionally, the three year minimum sentence for any person who willfully tampers with or damages any voting machine or tabulating computer device is removed, and the penalty for such tampering or damage is expanded to include the option of punishment by a fine of \$5,000.00.

The bill recodifies Section 23-15-555 as Section 97-13-45 and repeals Section 23-15-555. Effective 1/1/17. Signed 4/18/16.

HB 1747: Fire Protection Districts; revise the manner to increase special taxes in support of

Under current law, fire districts may be formed by a county as follows:

- By a petition for the incorporation of the district submitted to the board of supervisors signed by a least 25 owners of property in the proposed district.
- The board of supervisors may initiate the incorporation of the district by resolution of the board and presentation of a petition of at least 25 property owners in the proposed district.

Public hearings are required to be held and if after the hearing the board of supervisors make certain findings the board must adopt a resolution declaring its intention to form the district. The resolution must then be published and if 20% or 150 of the qualified electors in the district file a petition protesting against the formation of the district, an election must be held. If no petition or 3/5 of those voting at an election vote in favor of the formation of the district, the board of supervisors must adopt a resolution creating the district.

In districts created after July 1, 1987, the board of supervisors may levy a 2 mill ad valorem tax on the property in the fire protection district to support the district; however, if the district is created pursuant to a mandatory election called by the board of supervisors in lieu of a petitioned election the board of supervisors may levy a special tax annually not to exceed an amount to be determined by the board of supervisors and stated in the notice of such election. There is no provision in current law authorizing the creation of a fire protection district “pursuant to a mandatory election.” Because of this flaw in the law, the Attorney General has issued opinions stating the maximum millage that may be levied in fire protection districts created after July 1, 2017, is 2 mils. In some counties the millage rate has been raised above 2 mills by following the procedure in the law for districts created after July 1, 1987, by a “mandatory election.”

This bill authorizes the increases of the millage rate in excess of 2 mills in fire protection districts created after July 1, 1987, regardless of how they were created. Under current law, the tax levy can be raised for district formed by a “mandatory election” only after an election is held in the district. This bill requires an election only if 20% of the qualified electors in the district file a petition protesting against the tax increase.

The bill contains a provision which ratifies, approves and confirms increases in tax levies made for fire protection districts prior to the passage of the bill. Effective on passage. Signed 5/5/16.

SB 2603: Municipalities; may have three aldermen if population is 500 or less

Current law authorizes municipalities with a population of less than 10,000 to have five aldermen. Municipalities with a population of 10,000 or more may have seven aldermen. This bill makes an exception for municipalities with a population of 500 or less. These municipalities may have three aldermen. The reduction in the number of aldermen from five to three must be approved by a majority of the qualified electors of the municipality in a special election held for this purpose. Effective 7/1/16. Signed 4/6/16.

PUBLIC LANDS

SB 2398: Sixteenth Section Lieu Lands; authorize exchange for timber development

This bill authorizes the exchange of multiple parcels of forested sixteenth section lieu land for significant timber management, research and development. Effective on passage. Signed 4/6/16.

SB 2111: State-Forfeited Tax Lands; authorize certification to Secretary of State electronically, allow sale by online auction*

This bill authorizes the Secretary of State to provide the forms of certifying land struck off to the state for taxes to the chancery clerk in an electronic format. The chancery clerk may certify the list of all lands struck off to the state by completing and submitting the form with the chancery clerk's electronic signature to the Secretary of State. A signed electronic record of the list submitted to the chancery clerk to the Secretary of State will be sufficient to vest good title in the State of Mississippi to those lands listed in the record.

Section 29-1-37 is amended to authorize the Secretary of State to sell state tax-forfeited tax land by online auction and to adopt procedures and rules for these auctions.

The amendments to Section 29-1-75 extend the repeal date to July 1, 2019, on the restrictions that apply to the purchase of tax-forfeited lands by corporations and nonresident aliens. Effective 7/1/16. Signed 4/13/16.

HB 1: Economic Development; provide incentives for certain economic development projects (First Extraordinary Session)

This bill authorizes the conveyance of mineral interests on sixteenth section land for a tire or other rubber or automotive manufacturing plant project. Effective on passage. Signed 2/8/16.

MISCELLANEOUS

SB 2081: Open Meetings Act; technical correction

SB 2081 amends Section 25-41-3 under the Open Meetings Act to conform to another code section definition of the term "meeting" when conducted through the use of video or teleconference devices. Effective 1/1/16. Signed 4/18/16.

SB 2533: MS Open Records Act; revise time period for release of records containing trade secrets of confidential information

SB 2533 amends Section 25-61-9 to provide records furnished to public bodies by third parties which contain trade secrets or confidential or financial information shall not be subject to inspection, examination, copying or reproduction under the Mississippi Public Records Act until notice to third parties has been given, but the records shall be released no later than 21 days from the date the third parties are given notice by the public body unless the third parties have filed in chancery court a petition seeking a protective order on or before the expiration date of the 21-day time period. Any

14 *Indicates the bill was a legislative priority of the Secretary of State's Office.

party seeking the protective order shall give notice to the party requesting the information in accordance with the Mississippi Rules of Civil Procedure. Effective 7/1/16. Signed 4/6/16.

SB 2571: DOFA; authorize to issue request for administrative support to comply with ACA

SB 2571 amends Section 27-104-3 to authorize the Department of Finance and Administration to issue a request for administrative support in order to meet reporting requirements under Internal Revenue Code Section 6056 and to comply with the Patient Protection and Affordable Care Act of 2010. Effective 7/1/16. Signed 5/11/16.

SB 2591: State Agency Purchasing Agents; clarify who must attend purchasing certification program

SB 2591 amends Section 31-7-1 and 31-7-9 to clarify who must attend the Office of Purchasing, Travel and Fleet Management's purchasing certification program. If the purchasing agent issues purchase orders, invitations for bids, request for proposals, and receives and accepts bids, then the purchasing agent must attend the certification program. This bill only applies to purchasing agents at state agencies, not at the county or city level. Effective 7/1/16. Signed 4/4/16.

SB 2593: MS Public Records Act; clarify when competitive sealed proposals must be produced

SB 2593 amends Section 25-61-5 under the Mississippi Public Records Act to clarify when competitive sealed proposals must be produced. The bill provides competitive sealed proposals shall be produced no later than seven working days after the notice of intent to award a contract is issued to the winning proposer. Persons making a request for production after the notice of intent to award is issued shall still have a reasonable amount of time (at least seven working days after the production of the sealed proposals) to protest the procurement or intended award prior to the final execution of the contract.

Under previous law, a company or individual could request copies of bids or RFP's under review, even before the contract has been awarded. In some instances, these requests for public record could be used to unduly influence the outcome of what needs to be confidential activities while the negotiation is still in progress. Effective 7/1/16. Signed 4/6/16.

SB 2750: RFP for ACA-Compliant Health Insurance Policy for State Employees not eligible for State Health Plan; DFA to issue

SB 2750 authorizes the Department of Finance and Administration to issue a request for an ACA-compliant health insurance policy, or policies, to offer health insurance coverage to the full-time equivalent employees not otherwise eligible to participate in the State and School Employees' Health Insurance Plan. Effective 7/1/16. Signed 4/4/16.

HB 819: MS Small Business Regulatory Flexibility Act; revise certain provisions and delete repealer

HB 819 amends Section 25-43-4.103, which establishes the Small Business Regulatory Review Committee, to:

- Require one of the Governor’s four appointees to the committees be the Executive Director of Mississippi Development Authority;
- Provide two of the Lieutenant Governor’s four appointees to the committee may be members of the Senate who own small businesses;
- Provide two of the Speaker’s four appointees to the committee may be members of the House who own small businesses;
- Provide any legislative member who is appointed to the committee shall serve as an ex officio, nonvoting member;
- Provide nominees for consideration for appointment by the Governor, Lieutenant Governor and Speaker are not limited to small business owners, but may also include business association representatives and small business regulatory advisors who have legal or accounting expertise; and
- Remove the restriction that a committee member can only serve three consecutive terms, which terms are for two years.

The bill amends Section 25-43-4.104 to allow Small Business Regulatory Review Committee to file its own Economic Impact Statement with the Secretary of State if:

- An agency does not file its own economic impact statement, or
- An agency says there is no economic impact on a small business and the committee believes the proposed rule or regulation will negatively impact small business.

If the committee files its own economic impact statement, it will have a 60-day period to file comments with the agency for consideration before the rule becomes final.

Finally, the bill deletes the automatic repealer on the Mississippi Small Business Regulatory Act. Effective 7/1/16. Signed 4/11/16.

HB 1504: Architectural and Engineering Service Contracts; clarify certain review and oversight by DFA of. HB 1504: Architectural and Engineering Service Contracts; clarify certain review and oversight by DFA of

HB 1504 amends Section 27-104-7 to:

- Authorize the Public Procurement Review Board to adopt regulations governing the approval of contracts for architectural and engineering services; and
- Require agencies requesting to lease certain space to provide information relating to the lease sufficiently in advance of the time the agency needs to lease the space to allow the

Department of Finance and Administration to review and pre-approve the lease before the time for advertisement begins.

The bill amends Section 31-11-3 to:

- Clarify the authority of the Department of Finance and Administration to review and pre-approve all architectural service contracts entered into by state agencies to ensure compliance with purchasing regulations and to confirm the contracts are procured by a competitive qualification-based selection process except where such appointment is for an emergency project or for a continuation of a previous appointment for a directly related project; and
- Exempt architectural and engineering contracts for any projections of the Mississippi Department of Transportation from preapproval by the Department of Finance and Administration. Effective 7/1/16. Signed 4/11/16.

HB 899: Public Employees' Retirement System; revise certain provisions regarding the administration of the system

This bill revises various provisions of the Public Employees' Retirement System (PERS), the Mississippi Highway Safety Patrol Retirement System and the Supplemental Legislative Retirement Plan as follows:

- Upon the death of a PERS member that occurs while the member is performing certain qualified military services, will be counted for vesting purposes and, to the extent required by the Internal Revenue Code, the deceased member's survivors are entitled to any additional benefits that the system would provide if the member had resumed employment and then died.
- The PERS member in qualified military service receiving differential wage payments (within the meaning of certain provisions of the Internal Revenue Code) from an employer must be treated as employed by that employer, and the differential wage payment will be treated as compensation for purposes of applying the limits on annual additions under certain provisions of the Internal Revenue Code.
- PERS is authorized to perform on-site compliance audits of employers to determine compliance with reporting, contributions and certification requirements; imposes penalties on employers for failure of the employer to allow access, provide records or comply in any way with such an audit; authorizes the waiver of penalties under certain circumstances; and requires an employer to reimburse the system for the cost of an audit if the audit reveals an employer's failure to make certain required contributions.
- Revises certain definitions relating to the laws governing PERS as follows:
 - The definition of the term "beneficiary" is revised as follows: if a PERS member dies before retirement and the spouse and/or children are not entitled to a retirement allowance on the basis that the deceased member did not have the requisite number of years of service, the type of service to which is referred is membership service.

- The definition of the term “child” is revised to clarify a natural child of a PERS member is one that is conceived before the death of the member.
- A PERS member who is an employee of a political subdivision who was employed by the political subdivision before the subdivision became covered by PERS may make payments for and receive credit for service before such coverage in increments of not less than one month.
- Creditable service for PERS members for periods of time after July 1, 2017, will be awarded in monthly increments.
- The computation of unused leave for creditable service for PERS members who retire on or after July 1, 2017, will be calculated in monthly increments.
- Clarifies leave credit for elected officials who are PERS members is in lieu of, and not in addition to, leave earned while simultaneously employed in a nonelected position in the system.
- Clarifies a PERS member’s retirement benefit payments begin on the first day of the month after the member’s application for benefits is received by the board of trustees of the retirement system.
- PERS will make payments of retirement benefits to members of PERS, the Mississippi Highway Safety Patrol Retirement and municipal retirement systems by whatever means the board of trustees prescribes by regulation to be the most appropriate for proper and efficient payment of benefits: The board of trustees is authorized to provide for alternative means of payment if the member or beneficiary can demonstrate payment by the prescribed means will cause the member or beneficiary undue hardship.
- If a PERS member who has been approved for a disability retirement allowance does not terminate state service within 90 days after approval, the disability retirement and the application for disability retirement will be void.
- A PERS member who applies for a disability retirement allowance must provide sufficient objective medical evidence in support of the claim, and defines “objective medical evidence.”

Applications for disability retirement must be filed within one year after termination from active service and authorizes an extension of the one year period by an additional year upon proof to the satisfaction of the board of trustees that the member was incapable of applying for benefits throughout the initial period because of mental or physical impairment as certified by a medical doctors.

- If a PERS member dies before being qualified for a full, unreduced retirement allowance, the reduction factor for the annuity of the surviving spouse will be based on the number of years that would have been required for the deceased member to qualify for a full, unreduced retirement allowance.
- For dependent children of deceased members of PERS and the Mississippi Highway Safety Patrol Retirement System, the extension of the age limitation to July 1 after attaining age 23 will apply only to student children receiving a retirement allowance as of June 30, 2016.

- In order for PERS benefits for a death or disability occurring in the performance of duty to be payable, the death or disability must have been as a direct result of a physical injury sustained from an accident or a traumatic event caused by external violence or physical force occurring in the performance of duty.
- Establishes a deadline of one year from the date of the marriage of a PERS retiree to change from Option 1 to Option 2 or 4-A to provide a lifetime benefit for a new spouse.
- Members of PERS, the Mississippi Highway Safety Patrol System and the Supplemental Legislative Retirement Plan who have received a refund of their contributions and reenter state service may purchase the creditable service covered by the refund in increments of not less than one month.
- In the case of the retirement of any member of the Mississippi Highway Safety Patrol Retirement System before the age of attaining 55, the employer's annuity and prior service annuity will be reduced by an actuarially determined factor for each year of age below 55 or each year of service below 25, whichever is lesser.
- Repeals the code sections which require the board of trustees of PERS to design a plan of health insurance for all current and future retirees and provide when the plan would be implemented. Effective 7/1/16. Signed 4/11/16.

SB 2372: State Agency Leases; DFA to approve request for proposals before advertisement

Current law in Section 27-104-7 requires state agencies needing to lease office space provide specific information to the Department of Finance and Administration (DFA) related to the agency's terms and conditions for the lease. Senate Bill 2372 amends Section 27-104-7 which adds state agencies must provide this information to DFA sufficiently in advance of the need for the space. Submitting this information before advertising a request for proposal will facilitate review and preapproval by DFA's Division of Real Property Management. Effective on passage. Signed 4/5/16.

SB 2211: Trust Law; make technical corrections

This legislation has a retroactive date and addresses several revisions of the Mississippi Uniform Trust Code and the Mississippi Qualified Disposition in Trust Act enacted in 2014. Grammatical errors are corrected and minor technical amendments are made in both acts.

Mississippi Uniform Trust Code

Changes were needed to the Uniform Trust Code to clarify and coordinate the statutory provision concerning beneficiary surrogates, trust protectors and trust advisors. Section 91-8-1201 grants a nonexclusive list of powers which may be granted to a trust protector or trust advisor. Sections 91-8-105(d) and 91-8-813 provide for the ability to designate a beneficiary surrogate to receive information and reports which otherwise must be provided to the beneficiary. While it can be inferred, there is no explicit provision in Section 91-8-1201 which provides that a trust protector or trust advisor may also serve as the beneficiary surrogate. Likewise, there is not an explicit provision in Section 91-8-1201 which grants a trust protector or trust advisor the right to appoint a representative without a

material conflict of interest to represent and bind a beneficiary under Section 91-8-303(8) even though the definition of “benefited surrogate” states that the surrogate may be appointed by the trust advisor or trust protector.

In order to clarify any uncertainty resulting from the use of different titles for these positions in the Uniform Trust Code, it is important to explicitly state that a settlor may nominate the same person to fill the role of trust protector, trust advisor, beneficiary surrogate and a Section 91-8-303(8) representative. Similarly, it is important to clarify that the settlor may grant the trust protector or trust advisor the power to designate a representative under Section 91-8-303(8) to represent and bind a beneficiary.

Upon enactment of the Mississippi Uniform Trust Code, former Section 91-9-1 through 91-9-9 were repealed. Section 91-8-407(b) was added to the Uniform Trust Code as a substitute for and an improvement to Section 91-9-1. The Uniform Trust Code did not contain language similar to Section 91-9-2 regarding transfers made in the name of the trust rather than to the trustees. To avoid doubt that a transfer in the name of the trust is legally sufficient, language has been added to Section 91-8-401(a) and Section 91-8-407(c).

While it can be inferred from the language of Section 91-8-407(b)(1) that a will filed and admitted to probate constitutes constructive notice of the existence of the trust established in accordance with the provisions of the will, a sentence was added to clarify substantial compliance with the contents of the memorandum of trust would be sufficient to constitute constructive notice of the trust.

Section 91-8-703 (i) is revised to clarify trust advisors and trust protectors, as well as trustees, have a duty to keep other fiduciaries informed about their role in the administration of the trust to the extent reasonably necessary for the fiduciary to perform his or her duties.

Section 91-8-814(a)(2) is revised to properly state the trustee shall consider the spouse’s resources when making discretionary distribution when the “settlor” is still living, not when the “settlor’s spouse” is still living.

Before the 2014 enactment of the Mississippi Uniform Trust Code, Mississippi had a statute which addressed the same subject matter as Section 918-1012. Section 91-9-115 provided a third person, without actual knowledge that the trustee is exceeding his powers or improperly exercising them, is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers he purports to exercise. In upholding the statute, the Mississippi Supreme Court, in Collier v. Trustmark National Bank, 678 So. 2d 693 (Miss. 1996), held “constructive knowledge or notice” is insufficient to hold the bank liable. The Uniform Trust Code does not use “actual knowledge”, and it was not the intent of the Uniform Trust Code Study Committee to change Mississippi law in this regard. Therefore, subsections (a) and (d) of Section 91-8-1012 are revised to reflect the third person is protected unless the person has actual knowledge the trustee is exceeding these powers or improperly exercising them.

Mississippi Qualified Disposition in Trust Act

The definition of “investment advisor” under Section 91-9-703(e) is amended to correctly reflect the role of the investment advisor. The investment advisor should consent or disapprove a trustees, not the transferors, actual or proposed investment decisions, and the investment advisors should not be involved in distribution decisions.

Section 91-9-707(2)(B) provides a creditor may not bring an action with respect to property which is the subject of a qualified disposition unless the creditor proves by clear and convincing evidence that the settlor’s transfer of the property was made with the intent to defraud a specific creditor. This rule should apply whether or not the claim by the creditor arose before or after the qualified disposition to the trust, and Section 91-9-707(a), as enacted in 2014, implies this rule only applies to cases where the creditor’s claim arose after the qualified disposition. Section 91-9-707(a) is revised to correctly reflect the law as provided under Section 91-9-707(2)(B).

Family Trust Preservation Act

The Mississippi Qualified Disposition in Trust Act amended the Family Trust Preservation Act of 1998 by amending Sections 91-9-503, 91-9-505 and 91-9-507 and repealing Sections 91-9-509. Instead of repealing Section 91-9-509 in its entirety, which provides a provision restraining the voluntary or involuntary transfer of the settlor’s interest is invalid against transferees or creditor of the settlor in a self-settled trust, the provisions of the Mississippi Qualified Disposition in Act should instead have been referenced as an exception to Section 91-5-509 (1). Instead of repealing Section 91-9-505 (2) in its entirety, which provides that a self-settled trust providing that the trustee shall pay income or principal or both of the trust for the education or support of the beneficiary or gives the trustee discretion to determine the amount of income or principal or both of the trust to be paid to or for the benefit of the settlor, a transferee or creditor of the settlor may reach the maximum amount of the trust that the trustee could pay to or for the benefit of the settlor under the trust instrument, not exceeding the amount of the settlor’s proportionate contribution to the trust, the provision of the Mississippi Qualified Disposition in Act should instead have been referenced as an exception to Section 91-5-509 (2).

Sections 91-9-503, 91-9-505 and 91-9-507 are revised to read as they did before the Qualified Disposition in Trust Act was passed. The exception for Section 91-9-509 in these three sections is added back into the statutes. Section 91-9-509 is reinstated and amended to provide for an exception relating to the Mississippi Qualified Disposition in Trust Act (Sections 91-9-701 through 91-9-723). Effective 7/1/16. Signed 4/7/16.

CONTACT

If you have any comments or questions about the revisions or the effect of the revisions in the legislation, please contact Nathan Upchurch at nathan.upchurch@sos.ms.gov or (601)359-2975 or Preston Goff at preston.goff@sos.ms.gov or (601)359-1621.