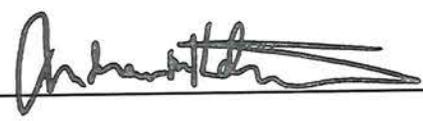


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Chapter No. 476
12/HR40/R1345SG
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HOUSE BILL NO. 993

Originated in House  Clerk

HOUSE BILL NO. 993

AN ACT TO AMEND SECTIONS 23-15-927, 23-15-929, 23-15-931, 23-15-937, 23-15-939 AND 23-15-961, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ELECTION CONTESTS INVOLVING DECISIONS OF EXECUTIVE COMMITTEES SHALL BE HEARD ONLY BY CIRCUIT COURT JUDGES; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 23-15-927, Mississippi Code of 1972, is amended as follows:

23-15-927. When and after any contest has been filed with the county executive committee, or complaint with the State Executive Committee, and the * * * executive committee having jurisdiction fails to promptly meet or, having met, fails or unreasonably delays to fully act upon the contest or complaint or fails to give with reasonable promptness the full relief required by the facts and the law, the contestant shall have the right forthwith to file in the circuit court of the county in which the irregularities are charged to have occurred, or, if more than one (1) county is involved, then in one (1) of the counties, a sworn copy of his * * * protest or complaint, together with a sworn petition, setting forth with particularity how the executive committee has wrongfully failed to act or to fully and promptly investigate or has wrongfully denied the relief prayed by the contest, with a prayer for a judicial review thereof. A petition for judicial review must be filed within ten (10) days after any contest or complaint has been filed with an executive committee. The petition for a judicial review shall not be filed unless it bears the certificate of two (2) practicing attorneys stating that they * * * have each fully made an independent investigation into

the matters of fact and of law upon which the protest and petition are based, and that after the investigation they * * * believe that the * * * protest and petition should be sustained and that the relief * * * prayed in the protest and petitions should be granted; the two (2) attorneys may not be practicing in the same law firm. The petitioner shall give a cost bond in the sum of Three Hundred Dollars (\$300.00), with two (2) or more sufficient sureties conditioned to pay all costs in case his petition be dismissed, and an additional bond may be required, by the judge * * *, if necessary, at any subsequent stage of the proceedings. The filing of the petition for judicial review in the manner set forth in this section shall automatically supersede and suspend the operation and effect of the order, ruling or judgment of the executive committee appealed from. In no event shall a prayer for relief be filed in any court other than the appropriate circuit court as authorized in this section.

SECTION 2. Section 23-15-929, Mississippi Code of 1972, is amended as follows:

23-15-929. Upon the filing of the petition * * * and bond as provided for in Section 23-15-927, the circuit clerk shall immediately, by registered letter or by telegraph or telephone, or personally, notify the Chief Justice of the Supreme Court, or, in his absence, or disability, some other judge of the Supreme Court, who shall forthwith designate and notify a circuit judge or a retired judge on senior status * * * of a district other than that which embraces the county or any of the counties, involved in the contest or complaint, to proceed to the county in which the contest or complaint has been filed * * * to hear and determine the contest or complaint, and it shall be the official duty of the * * * trial judge * * * to proceed to the discharge of the designated duty at the earliest possible date to be fixed by the judge * * * and of which the contestant and contestee shall have reasonable notice, to be served in such reasonable manner as the

judge * * * may direct, in response to which notice the contestee shall promptly file his answer, and also his cross-complaint if * * * he has one to prefer.

SECTION 3. Section 23-15-931, Mississippi Code of 1972, is amended as follows:

23-15-931. When the day for the hearing has been set, the circuit clerk shall issue subpoenas for witnesses as in other litigated cases, and he shall also issue a summons to each of the five (5) election commissioners of the county, unless they waive summons, requiring them to attend the hearing, throughout which * * * the * * * commissioners shall sit with the judge * * * as advisors or assistants in the trial and determination of the facts, and as assistants in counts, calculations and inspections, and in seeing to it that ballots, papers, documents, books and the like are diligently secured against misplacement, alteration, concealment or loss both in the sessions and during recesses or adjournments. The judge * * * is, however, the controlling judge both of the facts and the law, and has all the power in every respect of a circuit judge in termtime. The tribunal shall be attended by the sheriff, and clerk, each with sufficient deputies, and by a court reporter. The special tribunal so constituted shall fully hear the contest or complaint de novo, and the original contestant before the party executive committee shall have the burden of proof and the burden of going forward with the evidence in the hearing before the special tribunal. The special tribunal, after the contest or complaint has been fully heard anew, shall make a finding dictated to the reporter covering all controverted material issues of fact, together with any dissents of any commissioner, and thereupon, the trial judge shall enter the judgment which the county executive committee should have entered, of which the election commissioners shall take judicial notice, or if the matter be one within the jurisdiction of the State Executive Committee, the judgment shall be certified and

promptly forwarded to the Secretary of the State Executive Committee, and, in the absence of an appeal, it shall be the duty of the State Executive Committee forthwith to reassemble and revise any decision theretofore made by it so as to conform to the judicial judgment; * * * that when the contest is upon a complaint filed with the State Executive Committee and the petition to the court avers that the wrong or irregularity is one which occurred wholly within the proceedings of the state committee, the petition to the court shall be filed in the Circuit * * * Court of Hinds County and, after notice served, shall be promptly heard by the circuit judge * * * of that county, without the attendance of commissioners.

SECTION 4. Section 23-15-937, Mississippi Code of 1972, is amended as follows:

23-15-937. If more than one (1) county is involved in a contest or complaint, the judge * * * shall have the authority to transfer the hearing to a more convenient county within the district, if the contest or complaint involves a district office, or within the state if the contest or complaint involves a state office; or the judge * * * may proceed to any county or counties in which the facts complained of are charged to have transpired, and there hear the evidence and make a finding of facts relating to that county and any convenient neighboring county or counties, but, in any event, if possible with due diligence to do so, the hearing must be completed and final judgment rendered in time to permit the printing and distribution of the official ballots at the election for which the contested nomination is made. When any judge * * * lawfully designated to hear a contest or complaint * * * shall not promptly and diligently proceed with the hearing and final determination of the contest or complaint, he shall be guilty of a high misdemeanor in office unless excused by actual illness, or by an equivalent excuse. When no final decision has been made by the time the official ballots are

required to be printed, the name of the nominee declared by the party executive committee shall be printed on the official ballots as the party nominee, but the contest or complaint shall not thereby be dismissed but the cause shall nevertheless proceed to final judgment and if the * * * judgment is in favor of the contestant, the election of the contestee shall thereby be vacated and the Governor, or the Lieutenant Governor, in case the Governor is a party to the contest, shall call a special election for the office or offices involved. If the contestee has already entered upon the term he shall vacate the office upon the qualification of the person elected at the special election, and may be removed by quo warranto if he fail so to do.

SECTION 5. Section 23-15-939, Mississippi Code of 1972, is amended as follows:

23-15-939. The reasonable traveling expenses of the judge * * * shall be paid by order of the board of supervisors of the county or counties in which a contest or complaint * * * is heard, upon an itemized certificate thereof by the judge * * *. The election commissioners shall be compensated for their services rendered under this section as is provided in Section 23-15-227.

SECTION 6. Section 23-15-961, Mississippi Code of 1972, is amended as follows:

23-15-961. (1) Any person desiring to contest the qualifications of another person as a candidate for nomination in a political party primary election shall file a petition specifically setting forth the grounds of the challenge within ten (10) days after the qualifying deadline for the office in question. The petition shall be filed with the executive committee with whom the candidate in question qualified.

(2) Within ten (10) days of receipt of the petition described in subsection (1) of this section, the appropriate executive committee shall meet and rule upon the petition. At least two (2) days before the hearing to consider the petition,

the appropriate executive committee shall give notice to both the petitioner and the contested candidate of the time and place of the hearing on the petition. Each party shall be given an opportunity to be heard at that meeting and present evidence in support of his position.

(3) If the appropriate executive committee fails to rule upon the petition within the time required in subsection (2) of this section, that inaction shall be interpreted as a denial of the request for relief contained in the petition.

(4) Any party aggrieved by the action or inaction of the appropriate executive committee may file a petition for judicial review to the circuit court of the county in which the executive committee whose decision is being reviewed sits. The petition must be filed no later than fifteen (15) days after the date the petition was originally filed with the appropriate executive committee. The person filing for judicial review shall give a cost bond in the sum of Three Hundred Dollars (\$300.00) with two (2) or more sufficient sureties conditioned to pay all costs in case his petition be dismissed, and an additional bond may be required, by the court, if necessary, at any subsequent stage of the proceedings.

(5) Upon the filing of the petition and bond, the circuit clerk shall immediately, by registered letter or by telegraph or by telephone, or personally, notify the Chief Justice of the Supreme Court, or in his absence, or disability, some other judge of the Supreme Court, who shall forthwith designate and notify * * * a circuit judge or retired judge on senior status * * * of a district other than that which embraces the district, subdistrict, county or any of the counties, involved in the contest or complaint, to proceed to the county in which the contest or complaint has been filed to hear and determine the contest or complaint. It shall be the official duty of the trial judge * * * to proceed to the discharge of the designated duty at

the earliest possible date to be fixed by the judge * * * and of which the contestant and contestee shall have reasonable notice. The contestant and contestee are to be served in a reasonable manner as the judge * * * may direct, in response to which notice the contestee shall promptly file his answer, and also his cross-complaint if he has a cross-complaint. The hearing before the trial court shall be de novo. The matter shall be tried to the trial judge, without a jury. After hearing the evidence, the trial judge shall determine whether the candidate whose qualifications have been challenged is legally qualified to have his name placed upon the ballot in question. The trial judge may, upon disqualification of any such candidate, order that such candidate shall bear the court costs of the proceedings.

(6) Within three (3) days after judgment is rendered by the circuit court, the contestant or contestee, or both, may file an appeal in the Supreme Court upon giving a cost bond in the sum of Three Hundred Dollars (\$300.00), together with a bill of exceptions which shall state the point or points of law at issue with a sufficient synopsis of the facts to fully disclose the bearing and relevancy of such points of law. The bill of exceptions shall be signed by the trial judge, or in case of his absence, refusal or disability, by two (2) disinterested attorneys, as is provided by law in other cases of bills of exception. The filing of such appeals shall automatically suspend the decision of the circuit court and the appropriate executive committee is entitled to proceed based upon their decision unless and until the Supreme Court, in its discretion, stays further proceedings in the matter. The appeal shall be immediately docketed in the Supreme Court and referred to the court en banc upon briefs without oral argument unless the court shall call for oral argument, and shall be decided at the earliest possible date, as a preference case over all others. The Supreme Court shall

have the authority to grant such relief as is appropriate under the circumstances.

(7) The procedure set forth in this section shall be the sole and only manner in which the qualifications of a candidate seeking public office as a party nominee may be challenged prior to the time of his nomination or election. After a party nominee has been elected to public office, the election may be challenged as otherwise provided by law. After a party nominee assumes an elective office, his qualifications to hold that office may be contested as otherwise provided by law.

SECTION 7. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

SECTION 8. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

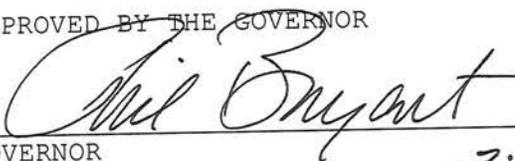
PASSED BY THE HOUSE OF REPRESENTATIVES
March 13, 2012


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
April 5, 2012


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

3:29 pm