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Chapter No. 305
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OP 1/07

# *HOUSE BILL NO. 1134*

Originated in House _____ Clerk

HOUSE BILL NO. 1134

AN ACT TO CREATE THE MISSISSIPPI PUBLIC UTILITY RATE MITIGATION AND REDUCTION ACT; TO DEFINE CERTAIN TERMS AS USED IN THE ACT; TO PROVIDE A MECHANISM WHEREBY THE PUBLIC SERVICE COMMISSION SHALL ENTER A FINANCING ORDER AUTHORIZING THE ISSUANCE OF RATE REDUCTION BONDS, THE PROCEEDS OF WHICH ARE USED TO RECOVER, FINANCE OR REFINANCE GENERATION FACILITY COSTS AND FINANCING COSTS FOR CERTAIN NEWLY CONSTRUCTED BASE LOAD ELECTRIC GENERATING FACILITIES THAT USE COAL GASIFICATION OR CLEAN COAL TECHNOLOGY; TO PROVIDE FOR THE IMPLEMENTATION OR ADJUSTMENT OF A RATE REDUCTION BOND CHARGE; TO PROVIDE THAT THE RATE REDUCTION BONDS SHALL NOT CONSTITUTE A DEBT OR A PLEDGE OF THE FAITH AND CREDIT OR TAXING POWER OF THE STATE OF MISSISSIPPI; AND FOR RELATED PURPOSES.

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

**SECTION 1.** This act shall be known and may be cited as the "Mississippi Public Utility Rate Mitigation and Reduction Act."

**SECTION 2.** The Legislature finds, determines and declares the following to be in the public interest and the policy of the State of Mississippi:

(1) It is the policy of the State of Mississippi to regulate the business of electric public utilities in such a manner that allows the recovery of prudently incurred costs.

(2) Consistent with the policy of the State of Mississippi to seek out and implement measures designed to provide the lowest reasonable electric public utility rates, public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities, as compared to traditional utility ratemaking options available to the Public Service Commission, and ensures the continued financial strength of Mississippi electric public utilities.

(3) Public utility securitization financing arrangements provides lower customer rates for newly constructed base load electric generating facilities and ensures the continued financial strength of Mississippi electric public utilities.

(4) The reduction of customer rate impacts for base load electric generating facilities through securitization is in the public interest.

**SECTION 3.** The following shall be codified as Section 77-3-111, Mississippi Code of 1972 :

77-3-111. As used in Sections 77-3-111 through 77-3-127:

(a) "Assignee" means any person or legal entity to which an interest in security property is sold, assigned, transferred or conveyed (other than as security) and any successor to or subsequent assignee of such a person or legal entity.

(b) "Bondholder" means any holder or owner of a rate reduction bond.

(c) "Commission" means the Mississippi Public Service Commission.

(d) "Financing costs" means:

(i) Any payment made on or before issuance of rate reduction bonds and any amount required to fund any reserves or other accounts established pursuant to the terms of any financing order, indenture or other financing documents pertaining to rate reduction bonds;

(ii) Principal, interest and acquisition, defeasance or redemption premiums and all other amounts that are payable on rate reduction bonds;

(iii) Any amount required to be paid under any financing document;

(iv) Any amount required to fund or replenish any reserves or other accounts established pursuant to the terms of any financing order, indenture, financing document or other financing document pertaining to rate reduction bonds;

(v) Any taxes, fees, franchise, transfer, profits, license, excise, severance, customs, duties, assessments or other charges imposed by any governmental or taxing authority on the rate reduction bond charge revenue whether paid, payable or accrued;

(vi) Any other cost related to issuing, supporting, repaying, servicing, retiring, refinancing or refunding rate reduction bonds and all other required amounts

payable in connection therewith, including, but not limited to, servicing fees and expenses, accounting and auditing fees and expenses, legal fees and expenses, consulting fees and expenses, security registration fees, trustee fees and expenses, insurance premiums, administrative fees, placement and underwriting fees, rating agency fees, stock exchange listing fees, compliance fees, costs to create or amend financing documents, and costs to obtain waivers, consents or approvals;

(vii) Any costs and expenses associated with the creation, operation, management and winding up of any special purpose entity created by the electric public utility in connection with the issuance of rate reduction bonds; and

(viii) Any other costs deemed appropriate by the commission.

(e) "Financing document" or "financing documents" means any bond, insurance policy, letter of credit, reserve account, surety bond, swap agreement, hedging arrangement, liquidity or credit support arrangement, trust indenture, security agreement, pledge agreement, financing agreement, transfer or assignment document, or other document or financial arrangement entered into in connection with the issuance of rate reduction bonds.

(f) "Financing party" shall include any and all of the following:

(i) Any trustee, collateral agent, or other person acting on behalf or for the benefit of any bondholder under any financing document; or

(ii) Any party to a financing document, the rights and obligations of which relate to or depend upon the existence of security property, the enforcement and priority of a security interest in security property, the timely collection and payment of rate reduction bond charge revenues, or a combination of any of the foregoing.

(g) "Financing statement" shall have the same meaning as that provided in Article 9 of the Uniform Commercial Code, as same may be amended from time to time.

(h) "Issuing entity" means any person or legal entity, including, but not limited to, any corporation, limited liability company, partnership, limited partnership, public authority or trust, that issues rate reduction bonds pursuant to a financing order issued pursuant to this article.

(i) "Non-bypassable" means, with respect to rate reduction bond charges, that, so long as rate reduction bonds are outstanding and the related financing costs have not been recovered in full, such charges cannot be avoided by any retail customer of the electric public utility, including special contract customers, or any other person located within the electric public utility's certificated area that is directly or indirectly connected to electric facilities of the electric public

utility or its successors or assignees and receiving retail electric service pursuant to a commission approved rate, even if such retail customer or other person elects to purchase electricity from an alternative electricity supplier following a fundamental change in regulation of electric public utilities in this state.

(j) "Qualifying facility" shall mean a generating facility as the term is defined in Section 77-3-103:

(i) That uses coal gasification or clean coal technology with a coal fuel stock derived, in whole or in part, from the State of Mississippi; and

(ii) That is placed into commercial operation on or before December 31, 2020.

(k) "Qualifying facility cost" means any cost incurred or expected to be incurred by an electric public utility related to a qualifying facility, including, but not limited to, pre-construction costs, construction costs, capitalized cost relating to a regulatory asset, any amounts accrued as allowance for funds used during construction and construction work in progress.

(l) "Rate reduction bonds" or "bonds" means those debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership or other evidences of indebtedness or ownership that are issued by an issuing entity under a financing order, the proceeds of which are used directly

or indirectly to recover, finance or refinance generation facility costs and financing costs, and that are secured by or payable from security property and which shall have a maturity date of no more than twenty (20) years after the date of issuance.

(m) "Rate reduction bond charge" means the nonbypassable tariff, rate, charge, formula or mechanism established in a financing order to fully recover financing costs, which is to be imposed on, and as a part of, all retail customer bills, including special contract customer bills, and collected by an electric public utility or its successors or assignees, or a collection agent, separate and apart from the base rates of the electric public utility.

(n) "Rate reduction bond charge revenue" means any and all revenues, receipts, collections, claims, rights to payments, payments, monies or other proceeds arising from the security property and collected by an electric public utility or other collection agent that is attributable to a rate reduction bond charge.

(o) "Secured party" means a financing party to which an electric public utility, issuing entity or their respective successors or assignees mortgages, negotiates, hypothecates, grants, pledges, or creates a security interest or lien on all or any portion of the rights in or to the security property.

(p) "Security property" means all rights and interests of an electric public utility established upon the issuance of a financing order under this article, including, but not limited to:

(i) The right to bill and to obtain periodic true-up adjustments to the rate reduction bond charge as provided in the financing order and this article;

(ii) The right to receive rate reduction bond charge revenue, as periodically adjusted, imposed, billed, collected and transferred; and

(iii) All revenues, receipts, collections, claims, rights to payments, payments, money or other proceeds arising from the rights and interests described in subparagraphs (i) and (ii) of this subsection, regardless of whether such collections, claims, rights to payment, payments, money or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenues, receipts, collections, rights to payment, payments, money or other proceeds of an electric public utility or collection agent.

(q) "Uniform Commercial Code" shall have the same meaning as provided in Title 75 of the Mississippi Code of 1972.

**SECTION 4.** The following shall be codified as Section 77-3-113, Mississippi Code of 1972:

77-3-113. (1) Subject to the agreement by the affected electric public utility, the commission shall cause to be financed, consistent with the procedures set forth in this

article, all qualifying facility costs found to be prudent by the commission that are incurred over the estimate of such costs presented by the electric public utility in the certificate proceeding for the qualifying facility, up to a maximum of One Billion Dollars ($1,000,000,000.00). To accomplish the goals contained herein, the commission shall enter a financing order authorizing the issuance of rate reduction bonds by an electric public utility and to make such other findings and determinations as are provided for in this article. The commission shall utilize a competitive Requests for Proposals process to select any bond attorney or counsel and may not accept any proposal in excess of Five Hundred Thousand Dollars ($500,000.00).

(2) Upon request by the commission in accordance with the requirements of subsection (1) of this section, the electric public utility owning a qualifying facility, in whole or in part, and whose rates are subject to the jurisdiction of the commission, shall submit a petition presenting the following information:

(a) Describe the qualifying facility and related qualifying facility costs in rate base or to be included in rate base;

(b) Indicate the total amount of qualifying facility cost required to be financed by the electric public utility using proceeds from rate reduction bonds;

(c) Estimate the financing costs related to the rate reduction bonds;

(d) Describe and estimate the rate reduction bond charge necessary to recover the financing costs as they become due and the proposed period for recovery of such costs;

(e) Estimate the projected cost savings to customers based upon then current market conditions resulting from financing the qualifying facility cost with rate reduction bonds as opposed to including the amount of such cost in rate base and recovering the revenue requirements associated with such cost over the depreciable life of the qualifying facility;

(f) File with the commission direct testimony supporting the application; and

(g) Timely provide the commission or the public utilities staff, as applicable, such additional information and documentation as either may reasonably request.

**SECTION 5.** The following shall be codified as Section 77-3-115, Mississippi Code of 1972:

77-3-115. (1) Proceedings on a petition submitted pursuant to Section 77-3-113 shall be disposed of in accordance with the provisions of Section 77-3-47 and applicable commission procedural rules, except that the provisions of this Section 77-3-115, to the extent applicable, shall control.

(2) Within seven (7) days after the filing of a petition, the commission shall issue a scheduling order, which sets a hearing date and provides for a decision on the issuance of a

financing order not more than one hundred twenty (120) days after the date the petition is filed.

(3) When deemed necessary by the Executive Director of the Public Utilities Staff, the staff shall conduct an independent investigation as to the electric public utility's petition for a financing order subject to and within the time limitations prescribed in this article.

(4) Not more than one hundred twenty (120) days after the date the petition is filed, the commission shall issue a financing order or an order denying the petition.

(5) Any party to the commission proceeding may petition the commission for reconsideration of an order granting or denying a petition for the issuance of a financing order not more than seven (7) days after the date the order is issued. The commission shall rule on the petition for reconsideration not more than fourteen (14) days after the filing of such petition. A failure by the commission to act upon such petition for reconsideration within the specified time period shall be deemed a denial of the petition for reconsideration, and the order of the commission granting or denying a petition for the issuance of a financing order shall be deemed final.

(6) Any judicial review shall be as provided in Section 77-3-72; provided, however, that any person, other than the electric public utility that is the subject of the financing order, seeking to appeal a financing order issued pursuant to this

article, or any prudence determination related thereto, shall not perfect its appeal unless and until a bond of sufficient amount to protect the customer savings projected to be realized through the issuance of rate reduction bonds as determined by the commission in the financing order pursuant to Section 77-3-117(b) is filed with the commission prior to expiration of time provided under Section 77-3-72 for the filing of a notice of appeal. If an appeal of an order granting or denying a petition for the issuance of a financing order is perfected pursuant to the procedure provided above, the electric public utility shall be authorized to establish a regulatory asset for the purpose of deferring a return on the qualifying facility cost intended to be financed by the rte reduction bond proceeds equal to the utility's weighted average cost of capital until such time as there is a final financing order for which the time for all appeals has expired. A financing order shall provide that any and all deferred return of the electric public utility during the pendency of an appeal may be financed as qualifying costs pursuant to the provisions of this article.

(7) The filing of a petition by an electric public utility, the issuance of a financing order, the issuance of rate reduction bonds and the implementation or adjustment of a rate reduction bond charge under this article shall not constitute a change in rates pursuant to Section 77-3-37 or 77-3-39.

**SECTION 6.** The following shall be codified as Section 77-3-117, Mississippi Code of 1972:

77-3-117. (1) In a financing order issued on behalf of an electric public utility, the commission shall:

(a) Specify the maximum amount of qualifying facility cost to be financed through the issuance of rate reduction bonds.

(b) Determine that the financing method proposed pursuant to this article is reasonably expected to result in lower overall costs to customers associated with the qualifying facility compared to including the qualifying facility cost amount specified in paragraph (a) of this subsection (1) in rate base and recovering the revenue requirements over the depreciable life of the qualifying facility.

(c) Provide that, until the rate reduction bonds are paid in full and all related financing costs are fully recovered, the imposition and collection of the rate reduction bond charge shall be nonbypassable as such term is defined in this article.

(d) Establish and employ a formula-based true-up mechanism for making expeditious periodic adjustments in the rate reduction bond charge that customers are required to pay under the financing order and for making any adjustments to the rate reduction bond charge that are necessary to correct for any overcollection or undercollection of the rate reduction bond charge or to otherwise ensure the timely payment of financing costs.

(e) Specify the security property to be created in favor of the electric public utility upon the issuance of a financing order to secure prompt payment of the rate reduction bonds and all associated financing costs.

(f) Specify, to the extent reasonably practicable, the terms and conditions of the rate reduction bonds, including, but not limited to, repayment schedules, expected interest rates and financing costs; provided, however, the commission shall afford the issuing entity flexibility in establishing the terms and conditions for the rate reduction bonds to accommodate changes in market conditions, including, but not limited to, repayment schedules, interest rates, financing costs, collateral requirements, required debt service and other reserves, and the ability of the issuing entity, at its option, to effect a series of issuances of rate reduction bonds and correlated assignments, sales, pledges or other transfers of security property.

(g) Provide that the rate reduction bond charge be allocated to the customer rate classes or rate schedules in the same manner that each such class or rate schedule is allocated its portion of the revenue requirements associated with the qualifying facility included in the electric public utilities rate base and rates.

(h) Provide that upon the issuance of rate reduction bonds, the electric public utility shall institute the resulting initial rate reduction bond charge in accordance with the

financing order and such initial rate reduction bond charge shall be final and effective upon the issuance of such rate reduction bonds without further action of the commission.

(i) Include any other conditions that the commission considers appropriate and that are not otherwise inconsistent with this article.

(j) Unless otherwise specified in the financing order, any rate reduction bond charge revenue remaining after all financing costs have been paid in full shall be credited to the retail customers of the electric public utility in a manner to be determined by the commission.

(2) Following issuance of a financing order, the electric public utility may establish a special purpose entity for the purpose of acting as the issuing entity and such issuing entity may issue rate reduction bonds as provided in the financing order. The electric public utility retains sole discretion to establish a special purpose entity and cause it to issue rate reduction bonds. An issuing entity established by an electric public utility pursuant to this article shall not constitute a public utility pursuant to Section 77-3-3.

(3) If an electric public utility subject to a financing order creates a special purpose entity for the purpose of acting as the issuing entity, rate reduction bonds shall not be considered a debt of the electric public utility for regulatory or ratemaking purposes; but, the electric public utility shall have

only a duty to collect and remit to the issuing entity all rate reduction bond charge revenue with respect to the rate reduction bonds. Similarly, the special purpose entity or any other assignee of security property shall have no ownership interest in the qualifying facility or any related facilities, property and assets of the electric public utility whether fully or partially financed with proceeds from rate reduction bonds.

(4) A financing order shall remain in full effect and unabated notwithstanding the reorganization, bankruptcy, or other insolvency proceedings of the electric public utility or its successors or assigns. Subsequent to the issuance of rate reduction bonds authorized by a financing order, the financing order shall be irrevocable, and the commission may not:

(a) Amend, modify or terminate the financing order by any subsequent action; or

(b) Reduce, impair, postpone, terminate or otherwise adjust the rate reduction bond charge and security property approved and established in the financing order except as provided in Section 77-3-119.

(5) At the request of an electric public utility, the commission may commence a proceeding and issue a subsequent financing order that authorizes the refinancing or refunding of rate reduction bonds issued pursuant to the original financing order if the commission finds that the subsequent financing order satisfies all of the criteria specified in this article.

Effective on retirement of the rate reduction bonds and the issuance of new rate reduction bonds, the commission shall adjust the related rate reduction bond charge accordingly.

**SECTION 7.** The following shall be codified as Section 77-3-119, Mississippi Code of 1972:

77-3-119. (1) If the commission issues a financing order and rate reduction bonds are issued, the issuing entity shall, as frequently as quarterly but no less frequently than annually, file with the commission a true-up report requesting the commission to review the rate reduction bond charge established in the financing order and authorize the true-up adjustments described herein. A copy of such report shall promptly be served upon the electric public utility collecting the rate reduction bond charge. The report shall present the amount of any overcollection or undercollection of the rate reduction bond charge and shall include a schedule applying the approved true-up adjustment mechanism authorized in the financing order and the resulting amount of any true-up adjustment required to ensure the recovery of revenues sufficient to provide for the timely payment of all financing costs when due.

(2) The commission's review of the true-up report shall be limited to a determination of the existence and amount of any mathematical errors in the report concerning the application of the approved true-up adjustment mechanism. Within thirty (30) days after receiving a true-up report pursuant to this section,

the commission shall, if necessary, revise the rate reduction bond charge and notify the electric public utility of such revision, or, if no revision to the rate reduction bond charge is required, the commission shall so notify the electric public utility. A true-up report requesting to revise the rate reduction bond charge shall be deemed approved if the requested revision is neither approved nor denied by the commission within thirty (30) days after the request is submitted.

(3) Any true-up report requesting a true-up adjustment of a rate reduction bond charge shall not constitute a change in rates and shall not be subject to the requirements of Section 77-3-37 or 77-3-39.

(4) Upon the adjustment of a rate reduction bond charge pursuant to this section and notification to the electric public utility, the electric public utility shall promptly adjust the rate reduction bond charge to become effective the next practicable billing cycle.

**SECTION 8.** The following shall be codified as Section 77-3-121, Mississippi Code of 1972:

77-3-121. (1) The rate reduction bond charge is a nonbypassable charge, and in the event an electric public utility subject to a financing order, as a result of insolvency, sale, a fundamental change in regulation of electric public utilities in this State, or other reason, ceases to serve customers within all or a portion of its certificated area, the commission shall have

the obligation to ensure that the rate reduction bond charge is collected and transmitted to the issuing entity by any subsequent electric public utility providing service in such certificated area, or portion thereof, no longer being served by the electric public utility that originally petitioned for the financing order.

(2) If an electric public utility fails to remit any required payment of rate reduction bond charge revenues to an assignee, issuing entity, financing party or bondholder, as applicable, such assignee, issuing entity, financing party or bondholder shall have no legal remedy either at law or equity against the electric public utility or its assets, except as specifically provided below:

(a) A court, upon application by an assignee, issuing entity, financing party or bondholder, shall order the sequestration and payment of the rate reduction bond charge revenues for the benefit of any bondholder, assignee, financing party and/or issuing entity.

(b) The court's order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the electric public utility or any affiliate thereof.

**SECTION 9.** The following shall be codified as Section 77-3-123, Mississippi Code of 1972:

77-3-123. (1) The security property shall constitute an existing, present and legally protectable property right that

shall exist regardless of whether the rate reduction bond charges have been billed, have accrued, or have been collected, and notwithstanding any requirement that the value or amount of the property is dependent on the future provision of service to customers by the electric public utility.

(2) Security property authorized and established by a financing order shall continue to exist until the rate reduction bonds issued pursuant to such financing order are paid in full and all financing costs have been recovered in full.

(3) The security property authorized and established by a financing order and the interests of an assignee, bondholder, financing party or issuing entity in the security property are not subject to setoff, recoupment, counterclaim, surcharge, or defense by the electric public utility subject to the financing order or by any other person or entity, including as a result of the electric public utility's failure to provide past, present, or future services, or in connection with the bankruptcy, reorganization, or other insolvency proceeding of the electric public utility, any affiliate, or any other person or legal entity.

(4) All or any portion of security property created by a financing order may be sold, assigned, transferred or conveyed to an assignee for the purpose of acquiring, owning or administering the security property, issuing rate reduction bonds or a

combination of these purposes. Any sale, assignment, transfer or conveyance of security property shall be governed by this article.

(5) Any sale, assignment, transfer or conveyance of security property to an assignee shall constitute an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title and interest in, to and under the security property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. A sale, assignment, transfer or conveyance shall be effective only when all of the following have occurred:

(a) The financing order has been issued and has become final;

(b) The sale agreement, purchase agreement or other documents evidencing the sale, assignment, transfer or conveyance of the security property have been executed and delivered to the assignee; and

(c) Value has been given for the security property.

(6) The characterization of the sale, assignment, transfer or conveyance of the security property as an absolute transfer and true sale and the corresponding characterization of the property interest of the assignee, shall not be affected or impaired by, among other things, the occurrence of any of the following factors:

(a) Commingling of rate reduction bond charge revenues with other revenues of the electric public utility or any assignor;

(b) The retention by the electric public utility or assignor of (i) a partial or residual interest, including an equity interest, in the security property, whether direct or indirect, or whether subordinate or otherwise, or (ii) the right to recover costs associated with taxes, franchise fees or other fees imposed on the collection of rate reduction bond charge revenue;

(c) Any recourse that the assignee may have against the electric public utility or any assignor;

(d) Any indemnification rights, obligations or repurchase rights made or provided by the electric public utility or any assignor;

(e) The obligation of the assignor to collect and remit rate reduction bond charge revenue to or on behalf of an assignee;

(f) The regulatory or accounting treatment of the sale, assignment or transfer for tax, financial reporting or other purposes;

(g) Any application of the true-up mechanism as provided in Section 77-3-119;

(h) Granting or providing the bondholders a preferred right to the security property or credit enhancement by the

electric public utility or its affiliates with respect to the rate reduction bonds; or

(i) Any rights or interests of the electric public utility in any remaining rate reduction bond charge revenue which may vest upon full payment of the rate reduction bonds as provided for in Section 77-3-117(1)(j).

(7) Once sold, transferred, assigned or conveyed to an assignee as provided in this article, security property shall not be an asset of the electric public utility; but, the electric public utility shall have only a duty to collect and remit to the issuing entity all rate reduction bond charge revenue with respect to the rate reduction bonds.

**SECTION 10.** The following shall be codified as Section 77-3-125, Mississippi Code of 1972:

77-3-125. (1) All or any portion of the security property may be pledged or otherwise used by the issuing entity as collateral or other security to secure the payment of financing costs. Except as specifically provided in this article or in any of the financing documents, only this article and not the Uniform Commercial Code shall govern:

(a) Security property and any right, title or interest of an electric public utility, an assignee or an issuing entity, whether before or after the issuance of a financing order, in such security property;

(b) The validity, creation, attachment, grant, perfection, priority and enforcement of liens and security interests in security property to secure payment of financing costs;

(c) The validity, attachment, perfection and priority with respect to the transfer of an interest or right or the pledge or creation of a security interest in any security property.

In the event of any conflict between this article and any other law regarding the provisions of Section 77-3-125, this article shall govern to the extent of the conflict.

(2) A valid, enforceable and attached lien and security interest in security property shall be created upon the occurrence of all of the following and in no other manner:

(a) The issuance of a financing order contemplating a security interest in the security property;

(b) The execution and delivery of a security agreement by the issuing entity in connection with the issuance of rate reduction bonds which grants a security interest in the security property; and

(c) The giving of value for the rate reduction bonds.

(3) A valid, enforceable and attached security interest may be created in the security property without any physical delivery of collateral or other act, and shall be perfected against all parties upon the filing of a financing statement in the Office of the Secretary of State of Mississippi and shall thereafter be a