

MISSISSIPPI LEGISLATURE
 2018 Regular Session
 To: Municipalities; Accountability, Efficiency, Transparency
 By: Senator(s) Burton

Senate Bill 2607

(As Passed the Senate)

AN ACT TO AMEND SECTION 21-19-11, MISSISSIPPI CODE OF 1972, WHICH SETS FORTH THE LAW ON CLEANING PROPERTY DETERMINED TO BE A MENACE TO PUBLIC HEALTH, SAFETY AND WELFARE; TO PROVIDE THAT SUCH PROPERTY OR PARCELS OF LAND THAT ARE LESS THAN ONE ACRE AND ARE LOCATED IN MUNICIPALITIES WITH A POPULATION OF OVER 25,000 MAY BE ADJUDICATED AS PROPERTY IN NEED OF CLEANING USING AN EXPEDITED PROCESS; TO PROVIDE THAT THE ACTUAL COST OF SUCH CLEANING SHALL NOT EXCEED \$250.00; TO AMEND SECTION 21-15-41, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT NO PERSON SHALL SERVE IN AN INTERIM OR HOLD-OVER CAPACITY FOR LONGER THAN 90 DAYS; TO AMEND SECTIONS 21-3-5 AND 21-8-23, MISSISSIPPI CODE OF 1972, TO AUTHORIZE MUNICIPAL OFFICERS AND EMPLOYEES TO SERVE IN A HOLD-OVER CAPACITY UNTIL THE APPOINTMENT AND QUALIFICATION OF THEIR SUCCESSORS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 21-19-11, Mississippi Code of 1972, is amended as follows:

21-19-11. (1) To determine whether property or parcel of land located within a municipality is in such a state of uncleanliness as to be a menace to the public health, safety and welfare of the community, a governing authority of any municipality shall conduct a hearing, on its own motion, or upon the receipt of a petition signed by a majority of the residents residing within four hundred (400) feet of any property or parcel of land alleged to be in need of the cleaning. Notice shall be provided to the property owner by:

(a) United States mail two (2) weeks before the date of the hearing mailed to the address of the subject property and to the address where the ad valorem tax notice for such property

is sent by the office charged with collecting ad valorem tax;
and

(b) Posting notice for at least two (2) weeks before the date of a hearing on the property or parcel of land alleged to be in need of cleaning and at city hall or another place in the municipality where such notices are posted.

Any notice required by this section shall include language that informs the property owner that an adjudication at the hearing that the property or parcel of land is in need of cleaning will authorize the municipality to reenter the property or parcel of land for a period of one (1) year after final adjudication without any further hearing if notice is posted on the property or parcel of land and at city hall or another place in the municipality where such notices are generally posted at least seven (7) days before the property or parcel of land is reentered for cleaning. A copy of the required notice mailed and posted as required by this section shall be recorded in the minutes of the governing authority in conjunction with the hearing required by this section.

If, at such hearing, the governing authority shall adjudicate the property or parcel of land in its then condition to be a menace to the public health, safety and welfare of the community, the governing authority, if the owner does not do so himself, shall proceed to clean the land, by the use of municipal employees or by contract, by cutting grass and weeds; filling cisterns; removing rubbish, abandoned or dilapidated fences, outside toilets, abandoned or dilapidated buildings,

slabs, personal property, which removal of personal property shall not be subject to the provisions of Section 21-39-21, and other debris; and draining cesspools and standing water therefrom. The governing authority may by resolution adjudicate the actual cost of cleaning the property and may also impose a penalty not to exceed One Thousand Five Hundred Dollars (\$1,500.00) or fifty percent (50%) of the actual cost, whichever is more. The cost and any penalty may become a civil debt against the property owner, and/or, at the option of the governing authority, an assessment against the property. The "cost assessed against the property" means either the cost to the municipality of using its own employees to do the work or the cost to the municipality of any contract executed by the municipality to have the work done, and administrative costs and legal costs of the municipality. For subsequent cleaning within the one-year period after the date of the hearing at which the property or parcel of land was adjudicated in need of cleaning, upon seven (7) days' notice posted both on the property or parcel of land adjudicated in need of cleaning and at city hall or another place in the municipality where such notices are generally posted, and consistent with the municipality's adjudication as authorized in this subsection (1), a municipality may reenter the property or parcel of land to maintain cleanliness without further notice or hearing no more than six (6) times in any twelve-month period with respect to removing abandoned or dilapidated buildings, slabs, dilapidated fences and outside toilets, and no more than twelve (12) times

in any twenty-four-month period with respect to cutting grass and weeds and removing rubbish, personal property and other debris on the land, and the expense of cleaning of the property, except as otherwise provided in this section for removal of hazardous substances, shall not exceed an aggregate amount of Twenty Thousand Dollars (\$20,000.00) per year, or the fair market value of the property subsequent to cleaning, whichever is more. The aggregate cost of removing hazardous substances will be the actual cost of such removal to the municipality and shall not be subject to the Twenty Thousand Dollar (\$20,000.00) limitation provided in this subsection. The governing authority may assess the same penalty for each time the property or land is cleaned as otherwise provided in this section. The penalty provided herein shall not be assessed against the State of Mississippi upon request for reimbursement under Section 29-1-145, nor shall a municipality clean a parcel owned by the State of Mississippi without first giving notice.

(2) When the fee or cost to clean property or a parcel of land that is one (1) acre or less does not exceed Two Hundred Fifty Dollars (\$250.00), excluding administrative costs, and the property or parcel is located within a municipality having a population over twenty-five thousand (25,000), the governing authority of the municipality may authorize one or more of its employees to determine whether the property or parcel of land is in such a state of uncleanliness as to be a menace to the public health, safety and welfare of the community and the determination made by the authorized municipal employee shall be

set forth and recorded in the minutes of the governing authority. Notice of this determination shall be provided to the property owner by:

(a) United States mail seven (7) days before the date of cleaning of the property or parcel of land mailed to the address of the subject property and to the address where the ad valorem tax notice for such property is sent by the office charged with collecting ad valorem tax; and

(b) Posting notice for at least seven (7) days before the cleaning of the property or parcel of land and at city hall or another place in the municipality where such notices are posted.

Any notice required by this subsection shall include language that informs the property owner that the appropriate municipal official has determined that the property or parcel of land is a menace to the public health, safety and welfare of the community and in need of cleaning and the municipality is authorized to enter the property for cleaning and that the municipality is further authorized to reenter the property or parcel of land for a period of one (1) year after this cleaning without any further hearing or action if notice is posted on the property or parcel of land and at city hall or another place in the municipality where such notices are generally posted at least seven (7) days before the property or parcel of land is reentered for cleaning. A copy of the required notice mailed and posted as required by this subsection shall be recorded in the minutes of the governing authority in conjunction with the

determination made by the municipal employee in this subsection (2).

If an authorized municipal employee determines that the condition of property or parcel of land is a menace to the public health, safety and welfare of the community, the governing authority, if the owner does not do so himself, shall proceed to clean the land, by the use of municipal employees or by contract, by cutting grass and weeds; filling cisterns; removing rubbish, abandoned or dilapidated fences, outside toilets, abandoned or dilapidated buildings, slabs, personal property, which removal of personal property shall not be subject to the provisions of Section 21-39-21, and other debris; and draining cesspools and standing water therefrom. The governing authority shall by resolution adjudicate the actual cost of cleaning the property under this provision, provided the same does not exceed Two Hundred Fifty Dollars (\$250.00). The cost may become a civil debt against the property owner, and/or, at the option of the governing authority, an assessment against the property. The "cost assessed against the property" means either the cost to the municipality of using its own employees to do the work or the cost to the municipality of any contract executed by the municipality to have the work done, and additionally may include administrative costs of the municipality not to exceed Fifty Dollars (\$50.00). For subsequent cleaning within the one-year period set forth in this subsection (2), upon seven (7) days' notice posted both on the property or parcel of land adjudicated in need of cleaning and

at city hall or another place in the municipality where such notices are generally posted, and consistent with the municipal official's determination as authorized in this subsection (2), a municipality may reenter the property or parcel of land to maintain cleanliness without further notice or hearing under this subsection (2) no more than six (6) times in any twelve-month period with respect to removing abandoned or dilapidated buildings, slabs, dilapidated fences and outside toilets, and no more than twelve (12) times in any twenty-four-month period with respect to cutting grass and weeds and removing rubbish, personal property and other debris on the land, and the expense of cleaning of the property shall not exceed an aggregate amount of One Thousand Dollars (\$1,000.00) per year under this subsection (2). The governing authority may assess the same penalty for each time the property or land is cleaned as otherwise provided in this subsection (2). The penalty provided herein shall not be assessed against the State of Mississippi upon request for reimbursement under Section 29-1-145, nor shall a municipality clean a parcel owned by the State of Mississippi without first giving notice. A determination made by an appropriate municipal employee under this subsection (2) that the state or condition of property or a parcel of land is a menace to the public health, safety and welfare of the community shall not subsequently be used to replace a hearing if subsection (1) of this section is later utilized by a municipality when the prerequisites of this subsection (2) are not satisfied.

(* * *3) If the governing authority declares, by resolution, that the cost and any penalty shall be collected as a civil debt, the governing authority may authorize the institution of a suit on open account against the owner of the property in a court of competent jurisdiction in the manner provided by law for the cost and any penalty, plus court costs, reasonable attorney's fees and interest from the date that the property was cleaned.

(* * *4) (a) If the governing authority declares that the cost and any penalty shall be collected as an assessment against the property, then the assessment above provided for shall be a lien against the property and may be enrolled in the office of the circuit clerk of the county as other judgments are enrolled, and the tax collector of the municipality shall, upon order of the board of governing authorities, proceed to sell the land to satisfy the lien as now provided by law for the sale of lands for delinquent municipal taxes. The lien against the property shall be an encumbrance upon the property and shall follow title of the property.

(b) (i) All assessments levied under the provisions of this section shall be included with municipal ad valorem taxes and payment shall be enforced in the same manner in which payment is enforced for municipal ad valorem taxes, and all statutes regulating the collection of other taxes in a municipality shall apply to the enforcement and collection of the assessments levied under the provisions of this section,

including utilization of the procedures authorized under Sections 17-13-9(2) and 27-41-2.

(ii) All assessments levied under the provisions of this section shall become delinquent at the same time municipal ad valorem taxes become delinquent. Delinquencies shall be collected in the same manner and at the same time delinquent ad valorem taxes are collected and shall bear the same penalties as those provided for delinquent taxes. If the property is sold for the nonpayment of an assessment under this section, it shall be sold in the manner that property is sold for the nonpayment of delinquent ad valorem taxes. If the property is sold for delinquent ad valorem taxes, the assessment under this section shall be added to the delinquent tax and collected at the same time and in the same manner.

(* * *5) All decisions rendered under the provisions of this section may be appealed in the same manner as other appeals from municipal boards or courts are taken. However, an appeal from a decision of a municipal officer or official shall be made to the governing authority and such appeal shall be in writing, state the basis for the appeal and be filed with the city clerk no later than seven (7) days from the latest date of notice required under this section.

(* * *6) Nothing contained under this section shall prevent any municipality from enacting criminal penalties for failure to maintain property so as not to constitute a menace to public health, safety and welfare.

SECTION 2. Section 21-15-41, Mississippi Code of 1972, is amended as follows:

21-15-41. (1) No person shall serve in an interim or hold-over capacity for longer than * * * ninety (90) days in a position that is required by law to be filled by appointment of the governing body of a municipality, or by mayoral appointment with the advice and consent of the council or aldermen. If such position is not filled within * * * ninety (90) days after the expiration of the position's term, or within * * * ninety (90) days after the date of appointment if an interim appointment, the hold-over service or interim appointment shall terminate and no municipal funds may thereafter be expended to compensate the person serving in the position. Further, any action or vote taken by such person after the * * * ninety-day period shall be invalid and without effect. If a council or board of aldermen rejects, or otherwise fails to confirm, an individual submitted by the mayor for appointment, the mayor may not resubmit or reappoint the same individual for that position during the remainder of the mayor's current term in office.

(2) It is the intent of the Legislature that the provisions of this section shall apply * * * to all appointees serving in a hold-over or interim capacity on the effective date of this act * * *. For such appointees, the * * * limitation period * * * for serving in a hold-over or interim capacity shall be no longer than ninety (90) days from July 1, 2018.

(3) Any registered voter who resides in the municipality may file all objections to any matters relating to an alleged

violation of this section in the chancery court of the county where the municipality is located. The chancery court is authorized to adjudicate and determine relief as may be proper. The court shall award reasonable attorney's fees and costs to the prevailing party.

SECTION 3. Section 21-3-5, Mississippi Code of 1972, is amended as follows:

21-3-5. From and after the expiration of the terms of office of present municipal officers, the mayor and board of aldermen of all municipalities operating under this chapter shall have the power and authority to appoint a street commissioner, and such other officers and employees as may be necessary, and to prescribe the duties and fix the compensation of all such officers and employees. All officers and employees so appointed shall hold office at the pleasure of the governing authorities and may be discharged by such governing authorities at any time, either with or without cause. The governing authorities of municipalities shall have the power and authority, in their discretion, to appoint the same person to any two (2) or more of the appointive offices, and in a municipality having a population of less than fifteen thousand (15,000), according to the latest available federal census, a member of the board of aldermen may be appointed to the office of street commissioner. In municipalities not having depositories, the clerk shall serve as ex officio treasurer. The municipal governing authorities shall require all officers and employees handling or having the custody of any public funds

of such city to give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in an amount to be determined by the governing authority (which shall be not less than Fifty Thousand Dollars (\$50,000.00)), the premium on same to be paid from the municipal treasury. The terms of office or employment of all officers and employees so appointed shall expire at the expiration of the term of office of the governing authorities making the appointment, unless such officers or employees shall have been sooner discharged as herein provided. All officers and employees so appointed are authorized to serve until the appointment and qualification of their successors not exceeding the limitation period provided in Section 21-15-41.

SECTION 4. Section 21-8-23, Mississippi Code of 1972, is amended as follows:

21-8-23. (1) The municipality may have a department of administration and such other departments as the council may establish by ordinance. All of the administrative functions, powers and duties of the municipality shall be allocated and assigned among and within such departments.

(2) Each department shall be headed by a director, who shall be appointed by the mayor and confirmed by an affirmative vote of a majority of the council present and voting at any such meeting. Each director shall serve during the term of office of the mayor appointing him and until the appointment and qualification of the director's successor not exceeding the limitation period provided in Section 21-15-41.

(3) The mayor may, in his discretion, remove the director of any department. Directors of departments shall be excluded from the coverage of any ordinance or general law providing for a civil service system in the municipality; provided, however, all individuals serving as heads of departments at the time of the municipality's adoption of the mayor-council form as described in this chapter shall continue to be covered by the provisions of the civil service system in effect at the time the mayor-council form is adopted.

(4) Directors of departments shall appoint subordinate officers and employees within their respective departments and may, with approval of the mayor, remove such officers and employees subject to the provisions of any ordinance establishing a civil service system where that system is effective in the municipality, or other general law; provided, however, that the council may provide by ordinance for the appointment and removal of specific boards or commissions by the mayor.

(5) Whenever the city council is authorized by any provision of general law to appoint the members of any board, authority or commission, such power of appointment shall be deemed to vest in the mayor with the confirmation of an affirmative vote of a majority of the council present and voting at any meeting.

(6) The council shall also require all officers and employees handling or having the custody of any of the public funds of such municipality to give bond, with sufficient surety,

to be payable, conditioned and approved as provided by law, in an amount to be determined by the council (which shall not be less than Fifty Thousand Dollars (\$50,000.00)), the premium on which bonds shall be paid by the city.

SECTION 5. This act shall take effect and be in force from and after July 1, 2018.

