

## **2013 Legislative Update**

### **New Laws Impacting Secretary of State**

July 10, 2013

*If you have any questions about the revisions, the effect of the revisions of the legislation, or any legislation affecting the Mississippi Secretary of State's Office, please do not hesitate to contact Nathan Upchurch, Special Assistant to the Secretary of State, at (601)-421-9056 or [Nathan.Upchurch@sos.ms.gov](mailto:Nathan.Upchurch@sos.ms.gov).*

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*\*Indicate a bill that was a legislative priority of the Mississippi Secretary of State’s Office*

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## **ALL DIVISIONS**

### **[SB 2070: 24-Hour Meeting Notice on DFA Website](#)**

SB 2070 requires notice of any regular meeting held by a state agency, other than a legislative committee, to be submitted to DFA at least 24 hours before the meeting in order to be posted on DFA's searchable website. The requirements do not apply to institutions of higher learning, community and junior colleges, counties or municipalities. Effective 7/1/13. Signed 3/20/13.

## **ADMINISTRATIVE**

### **[SB 2073: Location of Local Officer Factor in "Best" Value Determination](#)**

SB 2073 amends the Public Purchasing Law to authorize certified purchasing offices to consider the location of a bidder's local office and inventory when determining the best value of a bid. Effective 7/1/13. Signed 3/20/13.

### **[HB 502: State Agency Purchasing Official Certification Requirement](#)**

HB 502 addresses public purchasing, by requiring state agency purchasing offices to have all purchasing officials certified. The legislation revises the definition of "certified purchasing office" for the purposes of the public purchasing laws to mean a state agency purchasing office in which 100% of the purchasing officials hold a certification from the State of Mississippi's Basic or Advance Purchasing Certification Program.

The Office of Purchasing, Travel and Fleet Management shall adopt regulations governing the Mississippi Purchasing Certification Program, which shall be required of all purchasing officials at state agencies. Those regulations shall require state agency purchasing offices desiring to be classified as certified purchasing offices to have 100% participation and completion by purchasing officials in the Mississippi Purchasing Certification Program. To recover its costs to administer the Mississippi Purchasing Certification Program, the Office of Purchasing, Travel and Fleet Management shall set a fee in an amount necessary to recover such costs, which shall be assessed to the participating state agencies. Effective 7/1/13. Signed 3/18/13.

### **[HB 480: Required Monthly Update of Website](#)**

HB 480 requires state agencies and officials to regularly update information on their websites to ensure that it is current. Each statewide elected official and each state agency that provides information to the public about the agency or office on a website on the Internet shall review and update the information on the website on a regular basis, no less frequently than once a month, to ensure that the information appearing on the website is current and that outdated information has been removed or placed in a separate section of archived information. Effective 7/1/13. Signed 3/18/13.

### **[HB 1243: Required Legislative Update Posted on Website Homepage](#)**

HB 1243 requires state agencies and departments to provide a legislative update section on their websites. Within 60 days after the end of each regular legislative session, each state agency or department shall include on its Internet website a separate section that provides a legislative update on any legislation enacted during that session that revises the powers and duties of the agency or department. A link to the legislative update section shall be included on the home page of the website, and the update section shall contain a summary of the revisions made to the powers and duties of the agency or department. In addition, the website shall include a contact section or link so that members of the public may comment on or ask questions about the revisions. The legislative update section shall remain on their website until January 1st of the following year. Effective 7/1/13. Signed 3/25/13.

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## **HB 85: Online Publication Option for UCC Article 9\***

HB 85 amends Section 7-3-57 to allow the Secretary of State to publish Chapter 9 of the Uniform Commercial Code either in printed form or on the Secretary of State's website. Effective 7/1/13. Signed 3/18/13.

## **BUDGET**

### **SB 2901: Secretary of State Budget\***

SB 2901 provides funding to the Secretary of State's Office for the 2014 Fiscal Year. Effective 7/1/13. Signed 4/23/13.

### **HB 901: Transfer Bill**

HB 901 includes the transfer of \$226,000 from the Secretary of State's Fund 3111 to the Budget Contingency Fund. Effective 7/1/13. Signed 4/23/13.

## **ELECTIONS**

### **SB 2238: Elections Commissioner Per Diem**

Current law limits the number of days per year that a commissioner of election may receive per diem in the performance of their duties based on the population of their county. The annual limitations apply to the days for which per diem is authorized by this bill.

SB 2238 authorizes commissioners of election to receive a per diem in the amount of \$150.00, to be paid from the county general fund, for the performance of their duties on the day of any general or special election. Signed 3/20/13.

### **SB 2239: Mileage Reimbursement for Elections Commissioner**

Current law provides that the manager or other person who carries to the place of voting, away from the courthouse, the official ballots, ballot boxes, pollbooks and other necessities, shall be paid \$10.00 for each voting precinct. The manager or other person who acts as returning officer is paid \$10.00 for each voting precinct for that service.

SB 2239 provides that if a person who performs the above duties utilizes a privately owned motor vehicle to perform them, he or she shall receive, for each mile actually and necessarily traveled in excess of 10 miles, the mileage reimbursement rate allowable to federal employees for the use of a privately owned vehicle while on official travel. Signed 3/18/13.

### **SB 2308: Election Commissioner Qualifications**

Current law provides that a commissioner of election may be a candidate for any other office at any election held or to be held during the four-year term for which he or she has been elected to the office of commissioner of election if the commissioner of election resigns before January 1 of the year in which he or she intends to seek the office, except in the case of a special election, in which case the commissioner of election must resign within 10 days after the notice of the special election.

SB 2308 bill provides that a commissioner of election may be a candidate for any other office during his four-year term provided that he or she has resigned from the office of election commissioner before he or she qualifies for the office which he or she desires to seek. Signed 3/27/13.

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### **SB 2311: Per Diem for County Commissioners Performing Executive Committee Duties**

Under current law county commissioners of election may perform the duties of an executive committee with regard to the conduct of a primary election under a written agreement entered into with an executive committee. Also under current law, a county commissioner of election may be compensated based on the population of the county in which the election commission is located.

SB 2311 authorizes county commissioners of election who conduct a primary election under such a written agreement to receive per diem in the amount of \$84.00 for conducting the election. The bill also provides that the days that county commissioners of election are employed in the conduct of a primary election are treated the same as days county commissioners of election are employed in the conduct of other elections. Signed 3/25/13.

### **HB 275: Elections Crime Disqualifying Offense from County or Municipal Executive Committee**

HB 275 prohibits any person who has been convicted of a criminal violation of the Mississippi Election Code, has been convicted of an election crime contained in Chapter 13, Title 97, Mississippi Code of 1972, has been removed from public office pursuant to Section 25-5-1, or who has resigned from office as part of a plea agreement, from serving on any temporary municipal executive committee, municipal executive committee, temporary county executive committee, county executive committee or state executive committee.

The bill also requires each county executive committee chairman to publish a copy of the call for a meeting in some newspaper that is published at least once per week in the municipality affected for 3 weeks preceding the date set for the mass convention, or if there is no newspaper published in the municipality, then in some newspaper having general circulation in the municipality and by posting notices continuously in 3 public places in the municipality. Signed 3/20/13.

### **HB 533: Election Contest; Provide Procedure for Candidates for Office of Election Commissioner and Municipal Offices\***

HB 533 amends Section 23-15-963 to provide a procedure by which the qualifications of a candidate for either County Election Commissioner or Municipal Office may be contested prior to the general election. Signed 3/20/13.

### **HB 649: Notice Requirement During Election Contest\***

HB 649 clarifies the procedure that is necessary after a candidate files a petition for an election contest for any election within the county. The bill provides that when such a petition is filed, the circuit clerk must immediately notify, by registered letter, telegraph, telephone, or personally, the Chief Justice of the Supreme Court or in his absence, or disability, some other justice of the Supreme Court, who designates and notifies a circuit judge or chancellor 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. The circuit clerk must also serve a copy of the petition upon the contestee, which shall serve as notice to the contestee.

The Supreme Court is required to compile a list of judges throughout the state to hear such disputes before an election. It is the official duty of the designated circuit judge or chancellor to proceed to discharge the duty of hearing the contest at the earliest possible date. The date of the contest is fixed by the judge or chancellor, and the judge or chancellor must provide reasonable notice to the contestant and the contestee of the date and time fixed for the contest. When the contestee is served, he or she must promptly file his answer, and cross-complaint, if the contestee has a cross-complaint. Signed 3/21/13.

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**HB 975 / SB 2779: Districts under Conservatorship; Provide for Special Election in Certain Districts to Fill Vacancies on School Boards**

These bills amend Sections 37-17-13, 37-5-19 and 37-7-207 to provide the Governor the authority to set a date for a special election for the purpose of electing members to the board of trustees for any school district that has been placed under conservatorship where there are no remaining members of the board at the time of the reorganization or reconstitution of the school district. The special election shall be conducted by the county election commission. Signed 3/11/13.

**BUSINESS INCENTIVES**

**HB 826: SMART Business Act\***

HB 826 creates the Strengthening Mississippi Academic Research Through Business Act.

The bill authorizes a rebate to an investor equal to 25% of the investor's qualified research costs. An investor incurring research costs may not claim a rebate greater than \$1,000,000.00 in any fiscal year. The total amount of rebates issued under the Strengthening Mississippi Academic Research Through Business Act in any fiscal year may not exceed \$5,000,000.00.

An investor desiring to apply for a rebate must submit an application to the Board of Trustees of State Institutions of Higher Learning in Mississippi (IHL). Within 60 days of receiving an application, IHL will issue or refuse to issue a SMART Business certificate. If IHL issues a SMART Business certificate, the certificate must include the amount of the rebate the investor is eligible to claim. IHL must notify the Department of Revenue when a SMART Business certificate is issued.

To claim a rebate, an investor must submit a rebate allocation claim to the Department of Revenue. The rebate allocation claim must include the SMART Business certificate issued by IHL and proof of payment to the college or research corporation for qualified research conducted according to the research agreement. The Department of Revenue may request an audit from an investor submitting a rebate allocation claim, at the investor's expense, to verify the investor has satisfied the requirements of the Strengthening Mississippi Academic Research Through Business Act. The Department of Revenue will allocate rebates to investors in the order that SMART Business certificates are issued by IHL and will issue rebates from current income tax collections.

The bill requires IHL to submit an annual report to the Governor and Legislature on the implementation of the Strengthening Mississippi Academic Research Through Business Act. Effective 7/1/13. Signed 4/23/13.

For the purposes of the bill, some of the important definitions are as follows:

- "College" means the state institutions of higher learning in Mississippi which are accredited by the Southern Association of Colleges and Schools.
- "Qualified research" means the systematic investigative process that is undertaken for the purpose of discovering information. The term "qualified research" does not include research conducted outside the State of Mississippi or research to the extent funded by any grant, contract or otherwise by another person or governmental entity.
- "Qualified research costs" means costs paid or incurred by an investor to a college or research corporation for qualified research undertaken according to a research agreement.
- "Research agreement" means a written contract, grant or cooperative agreement entered into between a person and a college or research corporation for the performance of qualified research; however, all qualified research costs generating a rebate must be spent by the college or research corporation on qualified research undertaken according to a research agreement.
- "Research corporation" means any research corporation formed under Section 37-147-15 if the corporation is wholly owned by a college and all income and profits of the corporation inure to the benefit of the college.
- "SMART Business" means Strengthening Mississippi Academic Research Through Business.

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## **UNIFORM COMMERCIAL CODE**

### **SB 2609: Amendments to UCC Article 9\***

SB 2609 amends Article 9 of the Uniform Commercial Code (Chapter 9 of Title 75, Mississippi Code of 1972) to standardize and simplify procedures concerning secured transactions in personal property and to provide greater guidance regarding the name of an individual required on a UCC financing statement.

The bill conforms Mississippi's law to existing uniform law already enacted in a majority of other states to make uniform revisions to the Uniform Commercial Code. There are transition provisions to address security interests perfected before the effective date as well as security interests unperfected before the effective date. The bill also provides when an initial financing statement suffices to continue the effectiveness of a financing statement and how to amend a pre-effective-date financing statement. Provision is made as to who is entitled to file an initial financing statement or continuation statement, and to establish priority among filings.

The bill also adopts the 2012 uniform amendments to Article 4A of the Uniform Commercial Code. Section 75-4A-108 is being amended to provide that the UCC will apply to remittance transfers to the extent the transfer is not covered by the Electronic Funds Transfer Act. If there is any conflict between the provisions of the Uniform Commercial Code and the Electronic Funds Transfer Act, federal law will control. Effective 7/1/13. Signed 3/25/13.

### **HB 1008: UCC False Filings\***

HB 1008 creates Section 75-9-501.1 to authorize the Secretary of State to initiate proceedings for the refusal and termination of fraudulent or false Uniform Commercial Code security interest filings. The bill establishes the procedure for refusal and termination of the fraudulent and false filings. Section 75-9-510 deals with a record ceasing to be effective. Section 75-9-516 deals with a filing not occurring. Both sections are amended to conform. Effective 7/1/13. Signed 3/20/13.

### **SB 2385: Criminal Penalty for False Lien Statements Against Public Officials**

SB 2385 creates the new crime of offering a false instrument for recording against a law enforcement officer, public official or public employee. The purpose of the new law is to address the problem commonly referred to as "paper terrorism" which consists of liens being filed against public officials and employees by a person who knows that the lien or encumbrance contains a materially false, fictitious, or fraudulent statement or representation.

The paper attack against perceived foes, many of them judicial or law enforcement officials, by placing fraudulent liens on their property and filing bogus lawsuits, creates financial and legal problems that can take years of effort and thousands of dollars to sort out, clogging the courts in the meantime. This has been a problem on a national scale and has occurred in Mississippi.

A first offense is a misdemeanor punishable by not more than 6 months in jail and a fine not to exceed \$1,000.00. A second or subsequent offense is a felony punishable by not more than 5 years and a fine of not more than \$5,000.00. Effective 7/1/13. Signed 4/24/13.

## **BUSINESS ENTITY ACTS**

### **SB 2684: Technical Amendments to Business Entity Acts\***

The current model business corporation act found at Title 79, Chapter 4, Mississippi Code of 1972, was enacted in 1987 to be effective on January 1, 1988. The previous corporation chapter, Title 79, Chapter 3, was repealed at that time, however, several references in other parts of the code were never amended to refer to the correct code section

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in the 1988 act. SB 2684 corrects that oversight. Sections 27-13-5, 27-13-7, 27-13-17, 79-7-1 and 79-11-57 are amended to conform, and Section 79-17-41, which provided for changing the corporate form of a cooperative association, is repealed. Effective 7/1/13. Signed 3/20/13.

## **LANDS**

### **HB 1072: Extension of State Boundaries**

HB 1072 provides that the limits and boundaries of the territorial waters of the State of Mississippi shall consist of all territory included within the boundaries described in the act of Congress of March 1, 1817, together with all territory ceded to the State of Mississippi by later acts of Congress or by compacts or agreements with other states, as such territory and boundaries may have been or may be modified by the United States Supreme Court which extends 3 miles of Cat Island, Ship Island, Horn Island and Petit Bois Island offshore to 3 Marine Leagues. Effective 7/1/13. Signed 3/20/13.

### **SB 2446: Consultation with Secretary of State to Convey Warren County Property**

SB 2446 authorizes the Department of Finance and Administration, after consulting with the Secretary of State, to donate real property located in Warren County, Mississippi, to the National Park Service. Effective on passage. Signed 3/7/13.

### **SB 2700: Cat Island\***

During the 2002 Regular Session, general obligation bonds in the amount of \$10,000,000.00 were authorized to be issued for the purpose of paying the costs of acquisition, reclamation and preservation of Deer Island. The bonds were issued and placed in the Deer Island Acquisition, Reclamation and Preservation Fund. The law that establishes the fund provides that if money in the special fund is not used within 5 years after the date the proceeds of the bonds are deposited into the fund, the Secretary of State must provide an accounting of the unused money to the State Bond Commission and the money will be used to pay the debt service on the bonds.

SB 2700 provides that the accounting can be made by the Secretary of State either as provided in current law or 5 years after the effective date of this bill.

The bill also allows money in the fund to be utilized for the acquisition, reclamation and preservation of Cat Island. Effective on passage. Signed 4/3/13.

### **HB 132: State property; ratify conveyance of property in Marion County by DHS in 2011**

HB 132 conveys certain real properties in the state to various entities.

Section 1 of the bill approves the May 3, 2011, conveyance of 4 tracts of property containing in the aggregate, 370 acres, more or less, by the Mississippi Department of Human Services to the Marion County Economic Development District.

Section 2 of the bill amends Section 1, Chapter 553, Laws of 2012, to authorize the Department of Finance and Administration, acting on behalf of the Mississippi Department of Human Services and the State of Mississippi, to convey and transfer approximately 160 acres of real property and any improvements thereon, located at Columbia Training School to the Board of Supervisors of Marion County, Mississippi.

Section 3 of the bill stipulates that the property conveyed to the entities in Marion County shall be transferred without any assumption of liability or financial responsibility by the State of Mississippi for any known or unknown

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environmental defects contained thereon, and the receiving entities indemnify the state therefrom. The entities are authorized to harvest and sell any timber located on those parcels of real property transferred under those sections and shall use the revenue generated from such sale or sales to fund the costs associated with removal and containment of any environmental defects located thereon, with any additional revenue remaining unexpended for such purposes to be deposited in the county's general fund.

Section 4 of the bill authorizes the Town of Oakland, Mississippi, to donate certain real property, transferred to the Town of Oakland by the Office of the Secretary of State through an intergovernmental transfer of tax-forfeited lands as provided for under Section 29-1-1, to a certain individual who expended monies for the improvement and renovation of the dwelling situated on the property as a condition of the full payment of the indebtedness owed on the property by that individual, without further consideration. Effective on passage. Signed 4/23/13.

## **MISCELLANEOUS**

### **[SB 2244: Sales Tax; exempt sales of tangible personal property made to raise funds for schools](#)**

SB 2244 exempts from sales taxation the following:

- Sales by producers of honey bees or other products of an apiary when the products are sold in the original state or condition of preparation for sale before they are subjected to any other process within a class of business or sold by a producer through an established store.
- The gross proceeds of sales of tangible personal property made for the sole purpose of raising funds for a school or an organization affiliated with a school. The bill defines a "school" as any public or private school that teaches courses of instruction to students in any grade from Kindergarten through Grade 12.
- Sales of durable medical equipment and home medical supplies when ordered or prescribed by a licensed physician for medical purposes of a patient, and when payment for the equipment or supplies is made, in part or in whole, on behalf of or for the benefit of an insured as a covered benefit under an insurance policy, contract or plan. "Durable medical equipment" means equipment, including repair and replacement parts for the equipment.

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