

By: Representative Weathersby

To: Public Utilities

HOUSE BILL NO. 1312

1 AN ACT TO AMEND SECTION 19-5-151, MISSISSIPPI CODE OF 1972,,
2 TO AUTHORIZE THE CREATION OF A WATER DISTRICT FROM AN AREA SERVED
3 BY A RURAL WATER ASSOCIATION; TO AMEND SECTION 19-5-153,
4 MISSISSIPPI CODE OF 1972, TO REQUIRE A PETITION FROM THE BOARD OF
5 DIRECTORS OF A RURAL WATER ASSOCIATION TO THE BOARD OF SUPERVISORS
6 TO CREATE A WATER DISTRICT AND TO PROVIDE FOR NOTICE OF THE BOARD
7 OF DIRECTORS' CONSIDERATION OF THE RESOLUTION; TO AMEND SECTION
8 19-5-165, MISSISSIPPI CODE OF 1972, TO REQUIRE THE TRANSFER OF
9 ASSETS AND LIABILITIES OF THE RURAL WATER ASSOCIATION TO THE NEWLY
10 CREATED WATER DISTRICT; TO AMEND SECTION 19-5-167, MISSISSIPPI
11 CODE OF 1972, TO PROVIDE FOR THE ELECTION OF A BOARD OF
12 COMMISSIONERS OF A WATER DISTRICT CREATED FROM A RURAL WATER
13 ASSOCIATION; TO AMEND SECTIONS 19-5-169 AND 19-5-171, MISSISSIPPI
14 CODE OF 1972, TO MAKE TECHNICAL AND CONFORMING AMENDMENTS; AND FOR
15 RELATED PURPOSES.

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

17 SECTION 1. Section 19-5-151, Mississippi Code of 1972, is
18 amended as follows:

19 19-5-151. (1) Any contiguous area situated within any
20 county of the state, and not being situated within the corporate
21 boundaries of any existing municipality, and having no adequate
22 water system, sewer system, garbage and waste collection and
23 disposal system, or fire protection facilities serving such area,
24 may become incorporated as a water district, as a sewer district,
25 as a garbage and waste collection and disposal district, as a fire
26 protection district, as a combined water and sewer district, as a
27 combined water and garbage and waste collection and disposal
28 district, as a combined water and fire protection district, or as
29 a combined water, sewer, garbage and waste collection and disposal
30 and fire protection district, in the manner set forth in the
31 following sections.

32 (2) Any contiguous area situated within any county of the

33 state, not situated within the corporate boundaries of an existing
34 municipality and being served by a nonprofit, nonshare corporation
35 chartered under the Mississippi Nonprofit Corporation Act for the
36 purpose of owning and operating rural waterworks may become
37 incorporated as a water district in the manner set forth in the
38 following sections. If the nonprofit, nonshare corporation's
39 certificated area lies in more than one (1) county, the procedure
40 in Section 19-5-164 shall be used.

41 SECTION 2. Section 19-5-153, Mississippi Code of 1972, is
42 amended as follows:

43 19-5-153. (1) A petition for the incorporation of * * * a
44 district may be submitted to the board of supervisors of a county,
45 signed by not less than twenty-five (25) owners of real property
46 residing within the boundaries of the proposed district. The
47 petition shall include: (a) a statement of the necessity for the
48 service or services to be supplied by the proposed district; (b)
49 the proposed corporate name for the district; (c) the proposed
50 boundaries of the district; (d) an estimate of the cost of the
51 acquisition or construction of any facilities to be operated by
52 the district, which estimate, however, shall not serve as a
53 limitation upon the financing of improvements or extensions to the
54 facilities; (e) a statement of whether or not the board of
55 supervisors of the county shall exercise the authority to levy the
56 tax outlined in Section 19-5-189, Mississippi Code of 1972; and
57 (f) a statement of whether or not the board of supervisors of the
58 county shall exercise the authority to make assessments as
59 outlined in Section 19-5-191, Mississippi Code of 1972. The
60 petition shall be signed in person by the petitioners, with their
61 respective residence addresses. The petition shall be accompanied
62 by a sworn statement of the person or persons circulating the
63 petition, who shall state under oath that the person or persons
64 witnessed the signature of each petitioner, that each signature is
65 the signature of the person it purports to be, and that, to the

66 best of the person's or persons' knowledge, each petitioner was at
67 the time of signing an owner of real property within and a
68 resident of the proposed district. No individual tract of land
69 containing one hundred sixty (160) acres or more shall be included
70 in any such district unless the owner or owners of said tract is a
71 signer under oath of the petition for the incorporation of such
72 district.

73 (2) The board of supervisors of a county, in its discretion,
74 may initiate the incorporation of a district under * * * Sections
75 19-5-151 through 19-5-207 by resolution of the board and
76 presentation of a petition signed by at least twenty-five (25)
77 property owners of the area to be incorporated if at least forty
78 (40) property owners reside within the district. * * * However,
79 no individual tract of land containing one hundred sixty (160)
80 acres or more shall be included in any such district unless the
81 owner or owners of the tract gives * * * written consent for the
82 inclusion of the lands in such district.

83 (3) The board of directors of a nonprofit, nonshare rural
84 waterworks corporation may petition the board of supervisors of a
85 county in which the corporation's certificated area lies to become
86 a water district under Sections 19-5-151 through 19-5-207. The
87 board of directors shall adopt a resolution at a special meeting
88 of the board. The meeting shall be open to any subscriber
89 provided water service by the corporation. The board shall mail a
90 notice of the meeting to each subscriber provided water service.
91 The resolution shall provide that information required of the
92 petition under subsection (1) of this section. The resolution
93 shall be adopted by a three-fifths (3/5) majority vote of the
94 board of directors.

95 (4) With respect to the incorporation and operation of a
96 fire protection district pursuant to Sections 19-5-151 through
97 19-5-207, the word "owners" shall include any lessees of real
98 property of a water supply district the term of whose original

99 lease is not less than sixty (60) years and shall also include
100 sublessees if the original lease of which they are subletting is
101 not less than sixty (60) years.

102 SECTION 3. Section 19-5-165, Mississippi Code of 1972, is
103 amended as follows:

104 19-5-165. (1) Beginning on the date of the adoption of the
105 resolution creating any * * * district, the district shall be a
106 public corporation in perpetuity under its corporate name and
107 shall, in that name, be a body politic and corporate with power of
108 perpetual succession.

109 (2) If the creation of the district is initiated in
110 accordance with Section 19-5-153(3), all assets and liabilities of
111 the nonprofit, nonshare corporation shall become the assets and
112 liabilities of the newly organized district without any further
113 meetings, voting, notice to creditors or actions by members of the
114 board beginning on the date of adoption of the resolution of the
115 board of supervisors creating the district.

116 SECTION 4. Section 19-5-167, Mississippi Code of 1972, is
117 amended as follows:

118 19-5-167. (1) Except as otherwise provided in this section,
119 the powers of each * * * district shall be vested in and exercised
120 by a board of commissioners consisting of five (5) members to be
121 appointed by the board of supervisors. Upon their initial
122 appointment, one (1) of the commissioners shall be appointed for a
123 term of one (1) year; one (1) for a term of two (2) years; one (1)
124 for a term of three (3) years; one (1) for a term of four (4)
125 years; and one (1) for a term of five (5) years; thereafter, each
126 commissioner shall be appointed and shall hold office for a term
127 of five (5) years. Any vacancy occurring on * * * a board of
128 commissioners shall be filled by the board of supervisors at any
129 regular meeting of the board of supervisors, and the board of
130 supervisors shall have the authority to fill all unexpired terms
131 of any commissioner or commissioners. Notwithstanding the

132 appointive authority herein granted to the board of supervisors,
133 its legal and actual responsibilities, authority and function,
134 subsequent to the creation of any * * * district, shall be
135 specifically limited to the appointive function and
136 responsibilities outlined in Sections 19-5-179, 19-5-189 and
137 19-5-191. The operation, management, abolition or dissolution of
138 such district, and all other matters in connection therewith,
139 shall be vested solely and only in the board of commissioners to
140 the specific exclusion of the board of supervisors, and the
141 abolition, dissolution or termination of any * * * district shall
142 be accomplished only by unanimous resolution of the board of
143 commissioners. The board of commissioners of a fire protection
144 district created under Sections 19-5-151 et seq., by unanimous
145 resolution, may dissolve such district and, under Sections
146 19-5-215 et seq., may create a fire protection grading district
147 consisting of the same boundaries as the previously existing fire
148 protection district. Petition and election requirements of
149 Sections 19-5-217 through 19-5-227 shall not apply where the board
150 of commissioners dissolves a fire protection district and creates
151 a fire protection grading district under this section. Except as
152 otherwise provided in this act, such board of commissioners shall
153 have no power, jurisdiction or authority to abolish, dissolve or
154 terminate any * * * district while the district has any
155 outstanding indebtedness of any kind or character, unless such
156 dissolution or termination is accomplished under the provisions of
157 Section 19-5-207. If a fire protection district is dissolved in
158 accordance with this subsection, the board of supervisors may
159 continue to levy the same millage as was being levied within the
160 boundaries of the fire protection district before its dissolution
161 provided that a fire protection grading district is created, in
162 accordance with Sections 19-5-215 et seq., with identical
163 boundaries as the previously existing fire protection district.

164 (2) The board of supervisors of the incorporating county,

165 may upon receipt of a unanimous resolution from two (2) or more
166 boards of commissioners of duly created fire protection districts,
167 may consolidate such districts for administrative purposes. Upon
168 receipt of unanimous resolutions requesting consolidation, the
169 board of supervisors shall conduct a public hearing to determine
170 the public's interest. Following such a hearing, the board may
171 create a consolidated commission consisting of the participating
172 districts for administrative purposes. Such districts then shall
173 dissolve their respective boards of commissioners, transferring
174 all records to the consolidated board of commissioners. A
175 consolidated board of commissioners consisting of not less than
176 five (5) members shall be appointed with equal representation from
177 each participating district. Any commissioners appointed to a
178 consolidated fire protection district commission must comply with
179 eligibility requirements as authorized in Section 19-5-171. In
180 the event that a consolidated fire protection district commission
181 consists of an even number of members, the chairman elected as
182 authorized by Section 19-5-169 shall vote only in the event of a
183 tie. General powers and duties of commissioners and commissions
184 and other related matters as defined in Sections 19-5-151 through
185 19-5-207 shall apply to the entire area contained in the
186 consolidating fire protection districts as described in the
187 resolutions incorporating the fire protection districts as well as
188 to subsequent annexations.

189 (3) If the creation of the district is initiated in
190 accordance with Section 19-5-153(3), the powers of the district
191 shall be vested in and exercised by a board of commissioners
192 selected in the following manner:

193 (a) Upon creation of the district, the board of
194 directors of the former nonprofit, nonshare corporation shall
195 serve as the board of commissioners of the newly created water
196 district for a period not to exceed sixty (60) days. The initial
197 commissioners shall be subject to the requirements of Section

198 19-5-171, except the requirement for executing a bond. If an
199 initial commissioner fails to meet a requirement of Section
200 19-5-171 as provided in this section, the board of supervisors
201 shall appoint a member to fill that vacancy on the board of
202 commissioners.

203 (b) In the resolution creating a district initiated in
204 accordance with Section 19-5-153(3), the board of supervisors
205 shall create within the district five (5) posts from which
206 commissioners shall be elected. The board of supervisors shall
207 designate the positions to be elected from each post as Post 1,
208 Post 2, Post 3, Post 4 and Post 5. Post 5 shall be an at-large
209 post composed of the entire district. Within sixty (60) days
210 following creation of the district, the board of supervisors shall
211 call an election. Such election shall be held and conducted by
212 the election commissioners in accordance with the general laws
213 governing elections. The election commissioners shall determine
214 which of the qualified electors of the county reside within the
215 district and only those electors shall be entitled to vote in the
216 election. Notice of the election setting forth the time, place or
217 places and the purpose of the election shall be published by the
218 clerk of the board of supervisors in the manner provided in
219 Section 19-5-155.

220 The initial elected commissioners shall be elected to a term
221 of office expiring on December 31 of the year in which the next
222 succeeding general election for statewide officials is held.
223 After the initial term of office, commissioners shall be elected
224 to four-year terms. Vacancies shall be filled by the procedure
225 set forth in Section 23-15-839.

226 SECTION 5. Section 19-5-169, Mississippi Code of 1972, is
227 amended as follows:

228 19-5-169. The board of commissioners shall organize by
229 electing one (1) of its members as chairman and another as vice
230 chairman. It shall be the duty of the chairman to preside at all

231 meetings of the board and to act as the chief executive officer of
232 the board and of the district. The vice chairman shall act in the
233 absence or disability of the chairman. The board also shall elect
234 and fix the compensation of a secretary-treasurer who may or may
235 not be a member of the board. It shall be the duty of the
236 secretary-treasurer to keep all minutes and records of the board
237 and to safely keep all funds of the district. The
238 secretary-treasurer shall be required to execute a bond, payable
239 to the district, in a sum and with such security as shall be fixed
240 and approved by the board of commissioners. The terms of all
241 officers of the board shall be for one (1) year from and after the
242 date of election, and shall run until their respective successors
243 are appointed or elected and qualified.

244 Each * * * board of commissioners shall adopt an official
245 seal with which to attest the official acts and records of the
246 board and district.

247 SECTION 6. Section 19-5-171, Mississippi Code of 1972, is
248 amended as follows:

249 19-5-171. (1) Every resident citizen of the county in which
250 is located any district created under Sections 19-5-151 through
251 19-5-207, of good reputation, being the owner of land or the
252 conductor of a business situated within the district and being
253 over twenty-five (25) years of age and of sound mind and judgment,
254 shall be eligible to hold the office of commissioner.

255 (2) Except as provided in Section 19-5-167(3), each person
256 appointed or elected as a commissioner, before entering upon the
257 discharge of the duties of the person's office, shall be required
258 to execute a bond payable to the State of Mississippi in the penal
259 sum of Ten Thousand Dollars (\$10,000.00) conditioned that the
260 person will faithfully discharge the duties of the office.
261 Each * * * bond shall be approved by the clerk of the board of
262 supervisors and filed with the clerk.

263 (3) Each commissioner shall take and subscribe to an oath of

264 office prescribed in Section 268, Mississippi Constitution of
265 1890, before the clerk of the board of supervisors that the person
266 will faithfully discharge the duties of the office of
267 commissioner, which oath shall also be filed with the clerk
268 and * * * preserved with the official bond.

269 (4) The commissioners so appointed or elected and qualified
270 shall be compensated for their services for each meeting of the
271 board of commissioners attended, either regular or special, at a
272 rate to be fixed by the board of supervisors, not to exceed the
273 rate established in Section 25-3-69 for officers of state boards,
274 commissions and agencies, and shall be reimbursed for all expenses
275 necessarily incurred in the discharge of their official duties in
276 accordance with Section 25-3-41. However, in no one (1) calendar
277 year shall any commissioner be compensated for more than eighteen
278 (18) meetings.

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

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