MISSISSIPPI LEGISLATURE REGULAR SESSION 1999

By: Representatives Miller, Robertson, Jennings, McBride, Woods

To: Local and Private Legislation; Ways and Means

HOUSE BILL NO. 1735
(As Passed the House)

AN ACT TO AUTHORIZE THE COUNTY OF DESOTO TO CREATE A DESOTO COUNTY REGIONAL UTILITY AUTHORITY; TO AUTHORIZE OTHER MUNICIPALITIES, PUBLIC AGENCIES AND POLITICAL SUBDIVISIONS TO BECOME MEMBERS THEREOF; TO AUTHORIZE THE AUTHORITY TO ACQUIRE, CONSTRUCT, MAINTAIN AND OPERATE SEWAGE TREATMENT SYSTEMS, WATER TREATMENT SYSTEMS, WASTEWATER TREATMENT SYSTEMS, AND GROUNDWATER TREATMENT SYSTEMS; TO AUTHORIZE PUBLIC AGENCIES TO CONTRACT WITH THE AUTHORITY AND TO INCLUDE PAYMENTS TO BE MADE UNDER SUCH CONTRACTS AS AN OPERATING EXPENSE OF SUCH PUBLIC AGENCIES' TREATMENT SYSTEMS; TO OBLIGATE GENERAL FUNDS AND SPECIAL ASSESSMENTS IN SUPPORT OF SAID PAYMENTS; TO AUTHORIZE THE AUTHORITY TO ISSUE BONDS AND TO PLEDGE REVENUES DERIVED FROM SAID CONTRACTS IN SUPPORT THEREOF; TO ENTER INTO SUCH AGREEMENTS, CONTRACTS AND FINANCIAL ARRANGEMENTS AS MAY BE NECESSARY TO CARRY OUT SUCH DUTIES; AND FOR RELATED PURPOSES.

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

SECTION 1. The purpose of this act is to authorize a cooperative effort by any contiguous area situated within DeSoto County, including the areas situated within the corporate boundaries of any existing municipality and other eligible municipalities, public agencies and political subdivisions, for the acquisition, construction and operation of user funded sewerage systems, sewage treatment systems, and water, wastewater and wastewater treatment systems, in order to prevent and control the pollution of the waters in this state by the creation of a DeSoto County Regional Utility Authority. This act may be cited as the "DeSoto County Regional Utility Authority Act."

SECTION 2. Words and phrases used in this act shall have meanings as follows:

(a) "Authority" means the DeSoto County Regional Utility Authority created under this act to serve the metropolitan area or a designated portion thereof, as set forth in the

resolution creating or expanding the authority.

(b) "Board of directors" means the Board of Directors of the DeSoto County Regional Utility Authority.

(c) "Bonds" means revenue bonds and interim notes having a maturity of three (3) years or less, and other certificates of indebtedness of the district issued under the provisions of this act.

(d) "Groundwater" means that water occurring beneath the surface of the ground.

(e) "Groundwater system" means a system for the drainage, conservation, development, utilization, impoundment, diversion, flowage, distribution and disposal of groundwater.

(f) "Horn Lake Creek Basin Interceptor Sewer District" means the entity created by Chapter 627, Local and Private Laws of 1971, as amended by Chapter 952, Local and Private Laws of 1980, as amended by Chapter 880, Local and Private Laws of 1990, as amended by Chapter 910, Local and Private Laws of 1992.

(g) "Member agency" means the unincorporated contiguous area of DeSoto County and any public agency which elects to become a constituent member of the authority upon its organization, and which is admitted to the authority by affirmative vote of the board of directors of such authority, and pursuant to the resolution creating the authority in accordance with the provisions of Section 3 of this act.

(h) "Metropolitan area" means all of the area or territory lying within DeSoto County, Mississippi, as more accurately described in Section 19-1-33, and any such additional area to be served by the authority, whether or not such area be contiguous; provided, however, that the metropolitan area shall not include any area located within the corporate limits of a municipality which is not a member agency, nor shall it include the Horn Lake Creek Basin Interceptor Sewer District, should it elect not to be a member agency of the authority.

(i) "Metropolitan area plan" means a comprehensive plan for sewerage systems and sewage treatment systems, wastewater and wastewater treatment systems within the metropolitan area, consistent with standards established pursuant to applicable

federal and state law.

(j) "Municipality" means any incorporated city, town, or village of the State of Mississippi, whether operating under general law or under special charter, lying wholly or partly within the metropolitan area.

(k) "Person" means the State of Mississippi, a municipality, any public agency or any other city, town, village or political subdivision or governmental agency of the State of Mississippi or of the United States of America, or any private utility, individual, copartnership, association, firm, trust, estate or any other entity whatsoever. For the purposes of this act, the term "person" shall also include the Horn Lake Creek Basin Interceptor Sewer District.

(l) "Public agency" means any county, municipality, or persons, as are defined herein, lying wholly or partially within the metropolitan area, any state board or commission owning or operating properties within a metropolitan area, a district created pursuant to Sections 51-9-101 through 51-9-163 or Sections 19-5-151 through 19-5-257, or any other political subdivision of the State of Mississippi lying wholly or partially within a metropolitan area and having the power to own and operate waterworks, water supply systems, sewerage systems, treatment facilities, sewage treatment systems, or other facilities or systems for the collection, transportation, treatment and treatment of water, sewerage and wastewater.

(m) "Sewage treatment system" means a system for collecting, transferring, treating and disposing of waste, including, but not limited to, sewerage systems and treatment facilities, as these terms are defined in this act.

(n) "Sewerage system" means pipelines or conduits, canals, pumping stations and force mains, and all other structures, devices, facilities and appliances appurtenant thereto, used for collecting or conducting waste to an ultimate

point for treatment.

(o) "Treatment facilities" means any plant, treatment field, lagoon, pumping station, constructing drainage ditch or surface water intercepting ditch, canal, incinerator, area devoted to sanitary landfills or other works not specifically mentioned herein, installed for the purpose of treating, neutralizing, stabilizing or disposing of waste or facilities to provide cooling water to collect, control and dispose of waste heat.

(p) "Treatment systems" means the collective or individual systems for collecting, transferring, treating and disposing of sewage, water, wastewater, and groundwater, or its particular individual substance, and including all treatment facilities, pipelines, conduits, pumping stations and all other structures, devices and appliances appurtenant thereto, including land and right-of-way thereto.

(q) "Wastewater" means water being disposed of by any person and which is contaminated with waste or sewage, including industrial, municipal, recreational and any other wastewater that may cause impairment of the quality of the waters in the state.

(r) "Water supply system" means pipelines, conduits, pumping stations and all other structures, devices and appliances appurtenant thereto, including land and right-of-way thereto, for use for transporting water to a point of ultimate use.

(s) "Waterworks" means all works, plants or other facilities necessary for the purpose of collecting, storing, treating and transporting water for domestic, municipal, commercial, industrial, agricultural and manufacturing purposes, including open channels.

SECTION 3. (1) The formation of the DeSoto County Regional Utility Authority, hereinafter referred to as the authority, shall be conducted in accordance with the provisions of this section. The DeSoto County Board of Supervisors is authorized to file a petition with the Chancery Court of DeSoto County, for approval of

the formation of the DeSoto County Regional Utility Authority, which may be joined in by any municipality or public agency lying wholly or partly within the metropolitan area, for the organization of the authority in this state. When organized in accordance with the provisions of this act, the authority shall be a political subdivision of the State of Mississippi and shall have the powers granted to the authority under this act.

(2) (a) Before the DeSoto County Board of Supervisors files its petition with the chancery court, one of the following must occur:

(i) A petition for the organization of a DeSoto County Regional Utility Authority must be presented to the DeSoto County Board of Supervisors, signed by not less than twenty-five (25) owners of real property residing within the boundaries of the proposed district; or

(ii) A resolution of the DeSoto County Board of Supervisors must be brought forth upon motion of the board.

(b) The petition or resolution shall include the following:

(i) A statement of the necessity for the service or services to be supplied by the proposed district;

(ii) The proposed corporate name for the district;

(iii) The proposed boundaries of the district;

(iv) An estimate of the cost of the acquisition or construction of the facilities to be operated by the district with disclosure that the estimate shall not serve as a limitation upon the financing of the creation, operation, improving upon or extending of the authority;

(v) A statement of whether the DeSoto County Board of Supervisors intends to levy a tax in support of the authority; and

(vi) A statement of whether the DeSoto County Board of Supervisors intends to make assessments in support of the

authority.

(3) Any petition for formation shall be signed in person by the petitioners, shall set forth their respective addresses, and shall be accompanied by a sworn statement that each signature is the signature of the person it purports to be and that each person so signing was at the time of signing an owner of real property within DeSoto County.

(4) The board of supervisors may initiate the petition process to incorporate the authority by adopting a resolution of the board of supervisors to have the appropriate petition prepared and presented to the public for signature as set forth above.

(5) A properly signed petition shall be filed with the DeSoto County Board of Supervisors. Upon the filing of the petition with the DeSoto County Board of Supervisors, or upon the approval of the DeSoto County Board of Supervisors of the appropriate resolution, the DeSoto County Board of Supervisors shall fix a time and place for a public hearing upon the question of the public convenience and necessity of the incorporation of the proposed authority. The hearing shall not be more than thirty (30) days after the filing of the petition. The date of the hearing, the place at which it shall be held, the proposed boundaries of said district, and the purpose of the hearing, shall be set forth in a notice to be signed by the clerk of the DeSoto County Board of Supervisors to be published in a newspaper having general circulation for a period of once a week for at least three (3) consecutive weeks before the date set forth for the hearing. The first such publication shall be made not less than twenty-one (21) days before the date of such hearing and the last publication shall be made not more than seven (7) days before the date of such hearing.

(6) Upon the public hearing, should the DeSoto County Board of Supervisors determine that the public convenience and necessity require the creation of the district, and that the creation of the

district is economically sound and desirable, the DeSoto County Board of Supervisors shall adopt a resolution making the aforesaid findings and declaring its intention to create the authority on a date to be specified and designating the name of the proposed district and its territorial limits. The resolution shall further state the authority of the authority to levy taxes and make assessments.

(7) A certified copy of the resolution as adopted by the DeSoto County Board of Supervisors shall be published in a newspaper having a general circulation within such proposed district once a week for at least three (3) consecutive weeks before the date specified in such resolution as the date upon which such DeSoto County Board of Supervisors intends to create the authority. The first such publication shall be made not less than twenty-one (21) days before the date specified, and the last such publication shall be made not more than seven (7) days before such date.

(8) If twenty percent (20%) or one thousand five hundred (1,500), whichever is less, of the qualified electors of the proposed district file a written petition with the DeSoto County Board of Supervisors on or before the date specified for the creation of the authority, protesting against the creation of such district, the DeSoto County Board of Supervisors shall call an election on the question of the creation of such district. Such election shall be held and conducted by the election commissioners of the county as nearly as practicable in accordance with the general laws governing elections, the election commissioners shall determine which of the qualified electors of such county who reside within the proposed metropolitan area plan shall be entitled to vote in such election. Notice of the election setting forth the time, place or places, and purpose of such election shall be published by the clerk of the DeSoto County Board of Supervisors, within the time periods and in the manner provided in

Section 3(5) of this act for the publication of the resolution of intent. The ballots to be prepared and used at the election shall be in substantially the following form:

FOR CREATION OF DESOTO COUNTY REGIONAL UTILITY AUTHORITY DISTRICT ( )

AGAINST CREATION OF DESOTO COUNTY REGIONAL UTILITY AUTHORITY DISTRICT ( )

Each voter shall vote by placing a cross mark (x) opposite his choice.

If three-fifths (3/5) of those voting in the election for the creation of the authority vote in favor of the creation of the authority, the DeSoto County Board of Supervisors shall adopt a resolution creating the district as described in the resolution of intent.

(9) Upon adopting a resolution creating the authority, the DeSoto County Board of Supervisors shall transmit to the DeSoto County Chancery Court Clerk the resolution of the DeSoto County Board of Supervisors approving the creation of the authority, a copy of all affidavits verifying the publication of all required notices, the minutes of any hearings before the DeSoto County Board of Supervisors regarding the formation of the authority, and the results of any elections held under Section 3(8) of this act. The DeSoto County Chancery Court Clerk shall then file the documents, enter them on the docket of the DeSoto County Chancery Court and promptly notify the DeSoto County Chancellor in writing that the papers are on file and the cause has been docketed. The chancellor shall then notify the chancery court clerk to set the matter for hearing at some future date, not less than ten (10) days thereafter, and the clerk shall give not less than five (5) days' notice by making at least one (1) publication in some paper published in DeSoto County, addressed to the taxpayers and qualified electors of the proposed metropolitan area plan and all other persons interested. The notice shall state the date, place

and time of such hearing; state that a petition has been filed to organize the DeSoto County Regional Utility Authority under the provisions of this act, describe the proposed metropolitan area, and command that any interested persons appear before the DeSoto County Chancery Court or the chancellor in vacation on the date and hour of the hearing to show cause, if any they can, why the proposed authority should not be organized and established as set forth in the resolution of the DeSoto County Board of Supervisors.

If on the day set for hearing there is no written objection filed to the formation authority, a decree approving the validity of the formation of the authority shall be entered by the chancellor, and if the chancellor be not present, the clerk shall forward him the decree as prepared by the DeSoto County Board of Supervisors board attorney for his signature, and shall enter the decree upon his minutes in vacation. If no written objection has been filed as to the formation of the authority then the validation decree shall be final and forever conclusive from its date, and no appeal whatever shall lie therefrom.

If at the time of hearing, any taxpayers, qualified electors of the proposed metropolitan area plan or other persons interested appear and file, or have filed written objection to the formation of the authority, then the chancellor, or the DeSoto County Chancery Court Clerk if the chancellor be not present, shall set the case over for another day convenient to the chancellor, not less than ten (10) days thereafter, and shall notify the DeSoto County Board of Supervisors board attorney to appear and attend the hearing. At the hearing, the chancellor may hear additional competent, relevant and material evidence as the chancellor, in his discretion, deems necessary, pursuant to the applicable rules to such evidence in the chancery court, so as to inquire into the validity of the formation of the authority, and enter a decree in accordance with his findings.

(10) When so organized, the authority shall have the power

to sue and be sued, provided that the authority shall not be liable and shall be immune from suit at law or in the equity on account of any wrongful or tortious act or omission, including libel, slander or defamation, by it, or any such act or omission by any employee of the authority, subject to and in accordance with the provisions of Sections 11-46-1 through 11-46-19.

(11) Upon proper petition to the Chancery Court of DeSoto County, by the board of directors of the authority, the metropolitan area of the authority may be expanded or enlarged at any time by decree of the Chancery Court of DeSoto County, if after timely publication of notice and a hearing held before the chancellor, in the manner provided in this section, the chancellor shall render a decree finding that the public necessity requires such expansion.

SECTION 4. All powers of the authority shall be exercised by a board of directors consisting of seven (7) members, to be selected and composed as follows:

(a) The governing body of each member agency of the authority shall appoint one (1) person to serve on the board of directors of the authority, with no more than five (5) persons being appointed by said member agencies. Further, the DeSoto County Board of Supervisors shall appoint that number of persons necessary to fill the board of directors should less than five (5) be appointed by the member agencies, however, there shall be at all times a minimum of two (2) at-large members appointed by the DeSoto County Board of Supervisors.

(b) Upon their initial appointment, one (1) of the directors shall be appointed for a term of one (1) year; one (1) of the directors shall be appointed for a term of two (2) years; one (1) of the directors shall be appointed for a term of three (3) years; one (1) of the directors shall be appointed for a term of four (4) years; one (1) of the directors shall be appointed for a term of five (5) years. Additionally, of those appointees

designated as at-large appointees by the DeSoto County Board of Supervisors, one (1) of the at-large directors shall be appointed for a term of two (2) years; and one (1) of the at-large directors shall be appointed for a term of four (4) years. Any vacancy arising by the expiration of a director's term, or a vacancy created by the removal of a director for any other reason, shall be filled by appointment made by the party originally responsible for the appointment of the director vacating his or her appointment.

(c) Notwithstanding the appointive authority herein granted to the DeSoto County Board of Supervisors, its legal and actual responsibilities, authority and function, subsequent to the creation of the authority, shall be specifically limited to such appointive function and responsibilities.

(d) The operation, management, abolition, or dissolution of the authority, and all such other matters in connection therewith, shall be vested solely and only in the board of directors to the specific exclusion of the DeSoto County Board of Supervisors, and the operation, management, abolition, or dissolution of the authority shall be accomplished only by the authority of the board of directors.

(e) The board of directors of the authority shall elect annually from its number a president and vice president of the district and such other officers as, in the judgment of the board, are necessary. The president shall be the chief executive officer of the authority and the presiding officer of the board, and shall have the same right to vote as any other director. The vice president shall perform all duties and exercise all powers conferred by this act upon the president when the president is absent or fails or declines to act, except the president's right to vote. The board also shall appoint a secretary and a treasurer who may or may not be members of the board, and it may combine those offices. The treasurer shall give bond in the sum of not

less than Fifty Thousand Dollars ($50,000.00) as set by the board of directors, and each director may be required to give bond in the sum of not less than Ten Thousand Dollars ($10,000.00), with sureties qualified to do business in this state, and the premiums on said bonds shall be an expense of such authority. Each such bond shall be payable to the State of Mississippi; the condition of each such bond shall be that the treasurer or director will faithfully perform all duties of his office and account for all money or other assets which shall come into his custody as treasurer or director of the authority.

(f) The members of the board of directors of the authority shall serve without salary, but shall be entitled to receive per diem pay as provided for in Section 25-3-69. Further, they shall be reimbursed their actual travel and hotel expenses as provided in Section 25-3-41, incurred while in the performance of their duties as members of the board of directors of the authority, to be paid on an itemized statement approved by the Department of Finance and Administration. Expenses shall be paid from the available funds of the authority.

SECTION 5. (1) Except as may otherwise be provided for in this act, all business of the authority shall be transacted by vote of the board of directors.

(2) Except as provided in Section 4 and Section 10, all business of the authority shall be transacted by a simple majority affirmative vote of the total membership of the board of directors and by a concurrent vote of the directors representing the simple majority of the total flowage usage of the treatment systems of the authority during the preceding fiscal year. The quorum for any meeting of the board of directors shall be a simple majority of the total membership of the board of directors and the presence of directors representing a simple majority of the proportional use of the treatment systems of the authority during the fiscal year.

SECTION 6. (1) The authority is authorized and empowered to acquire water and sewer trunk lines; to acquire, construct, improve, enlarge, extend, repair, operate and maintain one or more of its systems used for the collection, transportation, treatment and treatment of water, sewerage and wastewater; and to make contracts with any person in furtherance thereof; and to make contracts with any person, under the terms of which the authority, within its designated metropolitan area, will collect, transport, treat or dispose of water, sewerage and wastewater for such person. The authority also may enter into contracts with any person to design and construct any water, sewerage or wastewater, treatment systems, or any other of its treatment facilities or systems and thereafter to purchase, lease or sell, by installments over such terms as may be deemed desirable, reasonable and necessary, or otherwise, any such system or systems. The authority is authorized to enter into operating agreements with any person, for such terms and upon such conditions as may be deemed desirable, for the operation of any water, sewerage or wastewater, treatment systems, or other of its treatment facilities or systems; and the authority may lease to or from any person, for such term and upon such conditions as may be deemed desirable, any water, sewerage or wastewater, collection, transportation, treatment, or its other treatment facilities or systems. Any such contract may contain provisions requiring any public agency or other person to regulate the quality and strength of materials to be handled by the respective treatment system or systems and also may provide that the authority shall have the right to use any streets, alleys and public ways and places within the jurisdiction of a public agency or other person during the term of the contract.

(2) The authority shall have the duty and responsibility to exercise general supervision over the design, construction, operation and maintenance of water, sewerage or wastewater

treatment systems; to adopt rules governing the design, construction or installation, operation and maintenance of water, sewerage or wastewater treatment systems; to adopt rules establishing performance standards for water, sewerage or wastewater treatment systems and rules concerning the operation and maintenance of the same. Such rules and regulations may include the implementation of a standard application form for the installation, operation and maintenance of such treatment systems; application review; approval or denial procedures for any proposed system; inspection, monitoring, and reporting guidelines; and enforcement procedures.

(3) No owner, lessee or developer shall construct or place a residence, building, facility or development which may require the installation of a water, sewerage or wastewater treatment system, without having first submitted a notice of intent to the authority. Upon receipt of the notice of intent, the board of directors shall provide the party giving notice with complete information regarding the rules, regulations and guidelines for the design, construction, installation, operation and maintenance of water, sewerage and wastewater treatment systems. No water, sewerage or wastewater treatment systems shall be installed without proof of the submission of the notice of intent required by this section and the approval of the same by the board of directors.

(4) Within ten (10) working days following the receipt of a notice of intent and plot plan, as applicable, by an owner, lessee or developer, of any lot or tract of land, the board of directors shall make recommendations to the owner, lessor or developer as to the type or types of systems suitable for installation and compatible with the existing treatment systems of the authority. Approval by the board of directors of any system is required by the installation, operation or maintenance of any system, and no person shall design, construct or install a system that does not

comply with this act; however, the board of directors may grant variances from the requirements of this act as deemed necessary and appropriate. Any person responsible for the design, construction or installation of a system shall sign and file with the authority an affidavit that the system complies with this act.

(5) Nothing in this act shall preclude a professional engineer from providing services for the design, construction or installation of any water, sewerage and wastewater treatment systems. However, any such engineer shall notify the authority in writing of those services provided and shall stamp the appropriate documentation with that professional's seal certifying the approval of the board of directors of the design, construction and installation.

(6) Any system of any municipality, public agency or other persons which becomes connected with, or tied into, the treatment systems of the authority, shall become the property of the authority and shall be subject to its control and the terms of this act. The possession and ownership of any system connecting with, or tying into, the systems of the authority, shall transfer to the authority, without the necessity of eminent domain action, or other action. Each municipality, public agency or other person is deemed to have waived the necessity of any eminent domain action upon the connecting with, or tying into, of its systems with the systems of the authority.

SECTION 7. The authority, through its board of directors, in addition to any and all powers now or hereafter granted to it, is hereby empowered:

(a) To develop and maintain long-range planning for collection and treatment systems of water, sewerage, wastewater and groundwater from within the metropolitan area and for pollution abatement.

(b) Any municipality, public agency or other person being a member agency, or being connected with, or tied into, the

treatment systems of the collection, transportation and treatment may agree to use its respective eminent domain powers for the benefit of the authority to acquire such property, easements, rights-of-way and other property interests as may be required and requested by the board of directors.

The amount and character of interest in land, other property, and easements thus to be acquired shall be determined by the board of directors, and their determination shall be conclusive and shall not be subject to attack in the absence of manifold abuse of discretion or fraud on the part of such board in making such determination. However:

(i) In acquiring lands, either by negotiation or eminent domain through action of a member agency, the authority shall not acquire mineral rights or royalties, provided that sand and gravel shall not be considered as minerals within the meaning of this section;

(ii) No person or persons owning the drilling rights or the right to share in production shall be prevented from exploring, developing or producing oil or gas with necessary rights-of-way for ingress and egress, pipelines and other means of transporting such interests on any land or interest thereon of the authority held or used for the purposes of this act, but any such activities shall be subject to and secondary to such reasonable regulations by the board of directors as will adequately protect the systems of the authority contemplated by this act; and

(iii) In acquiring lands, either by negotiation or eminent domain through action of a member agency, the authority shall acquire only any interest or rights in such facilities, components and systems which are part of the regional plan implemented by the authority.

(c) To acquire the necessary relocation or rerouting of roads and highways, railroad, telephone and telegraph lines and properties, electric power lines, gas pipelines and related

facilities, or to require the anchoring or other protection of any of these, provided fair compensation is first paid to the owners thereof or agreement is had with such owners regarding the payment of the cost of such relocation, and to acquire easements or rights-of-way for such relocation or rerouting and to convey the same to the owners of the property being relocated or rerouted in connection with the purpose of this act.

(d) To enter into contracts with any person or any public agency, including, but not limited to, contracts authorized by Section 8 of this act, in furtherance of any of the purposes authorized by this act upon such consideration as the board of directors and such person may agree. Any such contract may extend over any period of time, notwithstanding any provision or rule of law to the contrary; may be upon such terms as the parties thereto shall agree; and may provide that it shall continue in effect until bonds specified therein, refunding bonds issued in lieu of such bonds, and all other obligations specified therein are paid or terminated. Any such contract shall be binding upon the parties thereto according to its terms.

(e) To make and enforce, and from time to time amend and repeal, bylaws and rules and regulations for the management of its business and affairs and for the construction, use, maintenance and operation of any of the systems under its management and control and any other of its properties.

(f) To employ staff and other personnel, including attorneys, engineers and consultants as may be necessary to the functioning of the authority. The board of directors, in its discretion, may employ a general manager having the authority to employ and fire employees of the authority.

(g) To apply for, accept and utilize grants and other funds from any source for any purpose necessary in support of the purpose of this act.

(h) To establish and maintain rates and charges for the

use of the services of such of the systems and facilities within the control of the authority, and within the metropolitan area, and from time to time to adjust such rates, to the end that the revenues therefrom will be sufficient at all times to pay the expenses of operating and maintaining such of its works, facilities and treatment systems and all of the municipality's obligations under any contract or bond resolution with respect thereto.

(i) To adopt rules and regulations necessary to carry out the implementation of the metropolitan area plan and to assure the payment of each participating person or public agency of its proportionate share of the costs for use of any of the systems and facilities of the authority.

(j) To refuse to receive waste from any public agency or subdivision thereof not currently using any system and which may be acquired or within the control of the authority, or any other person that does not comply with the provisions of the metropolitan area plan applicable to the particular area within which such public agency or subdivision thereof or any other person is located.

(k) To accept industrial wastewater from within the boundaries of the authority for treatment and to require the pretreatment of same when, in the opinion of the authority, such pretreatment is necessary.

(l) To adopt all necessary and reasonable rules and regulations to carry out and effectuate any waste treatment systems or treatment system control plan of the authority as adopted for the metropolitan area, as contractually authorized.

(m) So long as any indebtedness on the systems of the authority remains outstanding, to require by contract with a public agency, or other person, that all water, sewerage and wastewater within the metropolitan area be disposed of through the appropriate treatment system which comprise a part of the

metropolitan area plan, to the extent that the same may be available, but no public agency shall be precluded from constructing, operating and maintaining its own such system after the current indebtedness owing on the system as of the effective date of this act is paid in full.

(n) The authority shall not control or operate as part of its authority the local retail wastewater and sewerage services and shall not provide or be responsible for direct servicing of said services to any residences, businesses and individuals.

SECTION 8. (1) Any public agency, pursuant to a duly adopted resolution of the governing authority of such public agency, may enter into contracts with the authority under the terms of which the authority, within its designated metropolitan area, will manage, operate, and contract for usage of its treatment systems and treatment facilities, or other services, for such person or public agency. Any public agency may also enter into contracts with the authority for the authority to purchase or sell, by installments over such terms as may be deemed desirable, or otherwise, to any person any treatment systems. Any public agency is authorized to enter into operating agreements with the authority, for such terms and upon such conditions as may be deemed desirable, for the operation of any of its treatment systems of any person by the authority or by any person contracting with the authority to operate such treatment systems; and any public agency may lease to or from the authority, for such term and upon such conditions as may be deemed desirable, any of its treatment systems. Any such contract may contain provisions requiring any public agency or other person to regulate the quality and strength of the material to be handled by the water, wastewater, or sewage systems and may also provide that the authority shall have the right to use any streets, alleys and public ways and places within the jurisdiction of a public agency or other person during the term of the contract. Such contracts

may obligate the public agency to make payments to the authority or to a trustee in amounts which shall be sufficient to enable the authority to defray the expenses of administering, operating and maintaining its respective systems, to pay interest and principal (whether at maturity upon redemption or otherwise) on bonds of the authority, issued under this act and to fund reserves for debt service, for operation and maintenance and for renewals and replacements, and to fulfill the requirements of any rate covenant with respect to debt service coverage contained in any resolution, trust indenture or other security agreement relating to the bonds of the authority issued under this act. Any public agency shall have the power to enter into such contracts with the authority as in the discretion of the governing authorities of the agency would be in the best interest of the agency. Such contracts may include a pledge of the full faith and credit of such public agency and/or the avails of any special assessments made by such public agency against property receiving benefits, as now or hereafter is provided by law. Any such contract may provide for the sale, or lease to, or use of by the authority, of the systems or any part thereof, of the public agency; and may provide that the authority shall operate its systems or any part thereof of the public agency; and may provide that any public agency shall have the right to continued use and/or priority use of the systems or any part thereof during the useful life thereof upon payment of reasonable charges therefor; and may contain provisions to assure equitable treatment of persons or public agencies who contract with the authority under this act; and may contain such other provisions and requirements as the parties thereto may determine to be appropriate or necessary. Such contracts may extend over any period of time, notwithstanding any provisions of law to the contrary, and may extend beyond the life of the respective systems or any part thereof or the term of the bonds sold with respect to such facilities or improvements thereto.

(2) The obligations of a public agency arising under the terms of any contract referred to in this act, whether or not payable solely from a pledge of revenues, shall not be included within the indebtedness limitations of the public agency for purposes of any constitutional or statutory limitation or provision. To the extent provided in such contract and to the extent such obligations of the public agency are payable wholly or in part from the revenues and other monies derived by the public agency from the operation of its treatment systems or of its combined treatment systems, waterworks and water supply systems or any part thereof, such obligations shall be treated as expenses of operating such systems.

(3) Contracts referred to in this section may also provide for payments in the form of contributions to defray the cost of any purpose set forth in the contracts and as advances for the respective systems or any part thereof subject to repayment by the authority. A public agency may make such contributions or advances from its general fund or surplus fund or from special assessments or from any monies legally available therefor.

(4) Payments made, or to be made, to the authority by a public agency or other person under a contract for any of its treatment systems, or any part thereof, shall not be subject to approval or review by the Mississippi Public Service Commission.

(5) Subject to the terms of a contract or contracts referred to in this act, the authority is hereby authorized to do and perform any and all acts or things necessary, convenient or desirable to carry out the purposes of such contracts, including the fixing, charging, collecting, maintaining and revising of rates, fees and other charges for the services rendered to any user of any of the systems operated or maintained by the authority, whether or not such systems are owned by the authority.

(6) No provision of this act shall be construed to prohibit any public agency, otherwise permitted by law to issue bonds, from

issuing bonds in the manner provided by law for the construction, renovation, repair or development of any of the authority's treatment systems, or any part thereof, owned or operated by such public agency.

SECTION 9. Whenever a public agency shall have executed a contract under this act and the payments thereunder are to be made either wholly or partly from the revenues of the public agency's treatment systems, or any part thereof, or a combination of such systems, the duty is hereby imposed on the public agency to establish and maintain and from time to time to adjust the rates charged by the public agency for the services of such treatment systems, so that the revenues therefrom together with any taxes and special assessments levied in support thereof will be sufficient at all times to pay: (a) the expense of operating and maintaining such treatment systems including all of the public agency's obligations to the authority, its successors or assigns under such contract; and (b) all of the public agency's obligations under and in connection with revenue bonds theretofore issued, or which may be issued thereafter and secured by the revenues of such treatment systems. Any such contract may require the use of consulting engineers and financial experts to advise the public agency whether and when such rates are to be adjusted.

SECTION 10. (1) The DeSoto County Regional Utility Authority shall have the power and is hereby authorized, from time to time, to borrow money and to issue revenue bonds in such principal amounts, up to a maximum amount of Forty Million Dollars ($40,000,000.00), as the DeSoto County Regional Utility Authority may determine to be necessary to provide sufficient funds for achieving the purposes of this act, including, (a) defraying the cost of the acquisition of water and sewer trunk lines and the acquisition, construction, improvement, repair or extension of its treatment systems, or any part thereof, whether or not such facilities are owned by the authority; (b) the payment of interest

on bonds of the authority issued under this act; (c) establishing reserves to secure such bonds and payment of the interest thereon; (d) paying expenses incident to the issuance of such bonds and to the implementation of the authority's systems, and all other expenditures of the authority incident to or necessary or convenient to carry out the purposes of this act.

(2) Before issuing bonds (other than interim notes or refunding bonds as provided in Section 11 of this act) hereunder, the board of directors of the authority first shall hold a public hearing before the governing authorities of each affected public agency with due notice of the time, date and place of said hearing published in a newspaper of general circulation in each said public agency. Upon an affirmative vote of the board of directors approving the resolution of intent, the board of directors shall adopt a resolution declaring its intention to issue such bonds and stating the maximum principal amount of bonds proposed to be issued, a general generic description of the proposed improvements and the proposed location thereof and the date, time and place at which the board of directors proposes to take further action with respect to the issuance of such bonds. The board of directors then shall cause the resolution of intent to be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper having a general circulation within the geographical limits of all of the public agencies: (a) which have contracted with the authority pursuant to this act; and (b) whose contracts relate to the bonds proposed to be issued.

Each member agency which meets all of the criteria set forth in paragraphs (a) and (b) of this subsection is hereinafter referred to as an "affected member agency," and, together with other such agencies, collectively referred to as the "affected member agencies."

If no newspaper has a general circulation within the geographical limits of all of the affected member agencies, then

such resolution shall be published in as many different newspapers as may be required to provide general circulation of the publication of such resolution within the geographical limits of each affected member agency. If no newspaper has a general circulation within the geographical limits of any particular affected member agency, then notice in such affected member agency shall be made by posting a copy of such resolution for at least twenty-one (21) days next preceding the date therein at two (2) public places within the geographical limits of such member agency. The first publication of such resolution shall be made not less than twenty-one (21) days before the date fixed in such resolution to direct the issuance of the bonds and the last publication shall be made not more than seven (7) days before such date. If twenty percent (20%) of the qualified electors residing in the authority or one thousand five hundred (1,500), whichever is less, shall file a written protest against the issuance of such bonds on or before the date specified in such resolution, then an election on the question of the issuance of such bonds shall be called and held as herein provided. If no such protest be filed, then such bonds may be issued without an election on the question of the issuance thereof at any time within a period of two (2) years after the date specified in the above-mentioned resolution. Where an election is to be called, notice of such election shall be signed by the president of the board of directors, and shall be published once a week for at least three (3) consecutive weeks in the same manner as publication of the resolution. The first publication of such notice shall be made not less than twenty-one (21) days before the date fixed for such election and the last publication shall be made not more than seven (7) days before such date. The election shall be conducted by the election commissioners of the county in which the authority is located. The election shall be held, as far as is practicable, in the same manner as other county special elections are held in the county

where the authority is located. At the election, all qualified electors residing in the authority may vote, and the ballots used at such election shall have printed thereon a brief statement of the amount and purpose of the proposed bond issue and the words "FOR THE BOND ISSUE" and "AGAINST THE BOND ISSUE," and the voter shall vote by placing a cross (X) opposite his choice on the proposition. When the results of the election on the question of the issuance of such bonds shall have been canvassed by the election commissioners of the county, in which the authority is located, and certified by them to the board of directors of the authority, it shall be the duty of the board of directors of the authority to determine and adjudicate whether or not a majority of the qualified electors who voted thereon in such election voted in favor of the issuance of such bonds, and unless a majority of the qualified electors who voted thereon in such election shall have voted in favor of the issuance of such bonds, then such bonds shall not be issued. Should a majority of the qualified electors who vote thereon in such election vote in favor of the issuance of such bonds, then the board of directors may issue such bonds, either in whole or in part, within two (2) years after the date of the election or the date of the final favorable termination of any litigation affecting the issuance of such bonds.

(3) Bonds of the authority issued under this act shall be payable from and secured by a pledge of all or any part of the revenues under any contract entered into pursuant to this act and from all or any part of the revenues derived from the operation of the treatment systems, or any part thereof, and any other monies legally available therefor, as may be determined by the authority, subject only to any agreement with the purchasers of the bonds. Such bonds may be further secured by a trust indenture between the authority and a corporate trustee, which may be any trust company or bank having powers of a trust company without or within the state.

(4) Bonds of the authority issued under this act shall be authorized by a resolution or resolutions adopted by the board of directors of the authority. Such bonds shall bear such date or dates, mature at such time or times, bear interest at such rate or rates (not exceeding the maximum rate set out in Section 75-17-103), be in such denomination or denominations, be in such form, carry such conversion privileges, have such rank or priority, be executed in such manner and by such officers, be payable from such sources in such medium of payment at such place or places within or without the state, provided that one (1) such place shall be within the state, and be subject to such terms of redemption prior to maturity, all as may be provided by resolution or resolutions of the board of directors.

(5) Bonds of the authority issued under this act may be sold at such price or prices, at public or private sale, in such manner and at such times as may be determined by the authority to be in the public interest, and the authority may pay all expenses, premiums, fees and commissions which it may deem necessary and advantageous in connection with the issuance and sale thereof.

(6) Any pledge of earnings, revenues or other monies made by the authority shall be valid and binding from the time the pledge is made. The earnings, revenues or other monies so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(7) Neither the members of the board of directors nor any person executing the bonds shall be personally liable on the bonds or be subject to any personal liability or accountability by

reason of the issuance thereof.

(8) Proceeds from the sale of bonds of the authority may be invested, pending their use, in such securities as may be specified in the resolution authorizing the issuance of the bonds or the trust indenture securing them, and the earnings on such investments applied as provided in such resolution or trust indenture.

(9) Whenever any bonds shall have been signed by the officer(s) designated by the resolution of the board of directors to sign the bonds, who were in office at the time of such signing, but who may have ceased to be such officer(s) prior to the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the manual or facsimile signatures of such officer(s) upon such bonds shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially executing such bonds had remained in office until the delivery of the same to the purchaser or had been in office on the date such bonds may bear.

SECTION 11. The authority, by resolution adopted by its board of directors, may issue refunding bonds for the purpose of paying any of its bonds at or prior to maturity or upon acceleration or redemption. Refunding bonds may be issued at such time prior to the maturity or redemption of the refunded bonds as the board of directors deems to be in the public interest, without an election on the question of the issuance thereof. The refunding bonds may be issued in sufficient amounts to pay or provide the principal of the bonds being refunded, together with any redemption premium thereon, any interest accrued or to accrue to the date of payment of such bonds, the expenses of issue of the refunding bonds, the expenses of redeeming the bonds being refunded, and such reserves for debt service or other capital or current expenses from the proceeds of such refunding bonds as may be required by the resolution, trust indenture or other security

instruments. The issue of refunding bonds, the maturities and other details thereof, the security therefor, the rights of the holders and the rights, duties and obligations of the authority in respect to the same shall be governed by the provisions of this act relating to the issue of bonds other than refunding bonds insofar as the same may be applicable. Any such refunding may be effected, whether the obligations to be refunded shall have then matured or shall thereafter mature, either by the exchange of the refunding bonds for the obligations to be refunded thereby with the consent of the holders of the obligations so to be refunded, or by sale of the refunding bonds and the application of the proceeds thereof to the payment of the obligations proposed to be refunded thereby, and regardless of whether the obligations proposed to be refunded shall be payable on the same date or different dates or shall be due serially or otherwise.

SECTION 12. All bonds (other than refunding bonds, interim notes and certificates of indebtedness, which may be validated) issued pursuant to this act shall be validated as now provided by law in Sections 31-13-1 through 31-13-11, which constitute the Validation of Public Bonds Act, except that notice of such validation proceedings shall be addressed to the taxpayers of the respective member agencies (a) which have contracted with the authority under this act, and (b) whose contracts, and the payments to be made by the public agencies thereunder, constitute security for the bonds of the authority proposed to be issued. Such notice shall be published at least once in a newspaper or newspapers having a general circulation within the geographical boundaries of each of the member agencies to whose taxpayers the notice is addressed. Such validation proceedings shall be instituted in the Chancery Court of DeSoto County. The validity of the bonds so validated, and of the contracts and payments to be made by the public agencies, thereunder constituting security for the bonds, shall be forever conclusive against the authority and

the public agencies which are parties to said contracts; and the validity of said bonds and said contracts and the payments to be made thereunder shall never be called in question in any court in this state.

SECTION 13. Bonds issued under the provisions of this act shall be payable solely from the revenues or assets of the authority pledged therefor. Each bond issued under this act shall contain on the face thereof a statement to the effect that the authority shall not be obligated to pay the same nor the interest thereon except from the revenues or assets pledged therefor.

SECTION 14. The authority shall have power in connection with the issuance of its bonds to:

(a) Covenant as to the use of any or all of its property, real or personal.

(b) Redeem the bonds, to covenant for their redemption and to provide the terms and conditions thereof.

(c) Covenant to charge rates, fees and charges sufficient to meet operating and maintenance expenses, renewals and replacements, principal and debt service on bonds, creation and maintenance of any reserves required by a bond resolution, trust indenture or other security instrument and to provide for any margins or coverages over and above debt service on the bonds deemed desirable for the marketability of the bonds.

(d) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity, as to the terms and conditions upon which such declaration and its consequences may be waived and as to the consequences of default and the remedies of the registered owners of the bonds.

(e) Covenant as to the mortgage or pledge of or the grant of a security interest in any real or personal property and all or any part of the revenues from any treatment systems, or any part thereof, or any revenue-producing contract or contracts made

by the authority with any person to secure the payment of bonds, subject to such agreements with the registered owners of bonds as may then exist.

(f) Covenant as to the custody, collection, securing, investment and payment of any revenues, assets, monies, funds or property with respect to which the authority may have any rights or interest.

(g) Covenant as to the purposes to which the proceeds from the sale of any bonds then or thereafter to be issued may be applied, and the pledge of such proceeds to secure the payment of the bonds.

(h) Covenant as to the limitations on the issuance of any additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds.

(i) Covenant as to the rank or priority of any bonds with respect to any lien or security.

(j) Covenant as to the procedure by which the terms of any contract with or for the benefit of the registered owners of bonds may be amended or abrogated, the amount of bonds the registered owners of which must consent thereto, and the manner in which such consent may be given.

(k) Covenant as to the custody of any of its properties or investments, the safekeeping thereof, the insurance to be carried thereon, and the use and disposition of insurance proceeds.

(l) Covenant as to the vesting in a trustee or trustees, within or outside the state, of such properties, rights, powers and duties in trust as the authority may determine.

(m) Covenant as to the appointing and providing for the duties and obligations of a paying agent or paying agents or other fiduciaries within or outside the state.

(n) Make all other covenants and to do any and all such acts and things as may be necessary or convenient or desirable in

order to secure its bonds, or in the absolute discretion of the district tend to make the bonds more marketable, notwithstanding that such covenants, acts or things may not be enumerated herein; it being the intention hereof to give the authority the power to do all things in the issuance of bonds and in the provisions for security thereof which are not inconsistent with the Constitution of this state.

(o) Execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of covenants or duties, which may contain such covenants and provisions, as any purchaser of the bonds of the authority may reasonably require.

SECTION 15. For the purposes of satisfying any temporary cash flow demands and deficiencies, and to maintain a working balance for the authority, the DeSoto County Board of Supervisors, or other persons as defined in Section 2(k) of this act, subject to their lawful authority to do so, are authorized to advance, at any time, such funds which, in its discretion, are necessary, or borrow such funds by issuance of notes, for initial capital contribution and to cover start-up costs until such times as sufficient bonds, assets and revenues have been secured to satisfy the needs of the authority for its management, operation and formation. To this end, the DeSoto County Board of Supervisors, or other persons as defined in Section 2(k) of this act, subject to their lawful authority to do so, shall advance such funds, or borrow such funds by issuance of notes, under such terms and conditions as my be provided by resolution of the DeSoto County Board of Supervisors, or other persons as defined in Section 2(k) of this act, subject to their lawful authority to do so, except that each such resolution shall state:

(a) The need for the proceeds advanced or borrowed;

(b) The amount to be advanced or the amount to be borrowed;

(c) The maximum principal amount of any note issued, the interest rate or maximum interest rate to be incurred, and the maturity date of said note.

In addition, the DeSoto County Board of Supervisors, or other persons as defined in Section 2(k) of this act, subject to their lawful authority to do so, may arrange for lines of credit with any bank, firm or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on a line of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness and contain such terms and conditions as the DeSoto County Board of Supervisors, or other persons as defined in Section 2(k) of this act, subject to their lawful authority to do so, may authorize in the resolution approving the same.

The DeSoto County Board of Supervisors, or other persons as defined in Section 2(k) of this act, subject to their lawful authority to do so, may authorize the repayment of such advances, notes, lines of credit and other debt incurred under this section, along with all costs associated with the same, including, but not limited to, rating agency fees, printing costs, legal fees, bank or trust company fees, line of credit fees and other charges to be reimbursed by the authority under such terms and conditions as are reasonable and are to be provided for by resolution of the DeSoto County Board of Supervisors, or terms agreed upon with other persons as defined in Section 2(k) of this act, subject to their lawful authority to do so.

SECTION 16. The authority, in any authorizing resolution of the board of directors, trust indenture or other security instrument relating to its bonds, may provide for the appointment of a trustee who shall have such powers as are provided therein to represent the registered owners of any issue of bonds in the enforcement or protection of their rights under any such resolution, trust indenture or security instrument. The authority

also may provide in such resolution, trust indenture or other security instrument that the trustee, or in the event that the trustee so appointed shall fail or decline to so protect and enforce such registered owners' rights then such percentage of registered owners as shall be set forth in, and subject to the provisions of, such resolution, trust indenture or other security interest, may petition the court of proper jurisdiction for the appointment of a receiver of the authority's treatment systems for the revenues of which are pledged to the payment of the principal of and interest on the bonds of such registered owners. Such receiver may exercise any power as may be granted in any such resolution, trust indenture or security instrument to enter upon and take possession of, acquire, construct or reconstruct or operate and maintain such sewage such as the authority treatment systems fix, charge, collect, enforce and receive all revenues derived from such of the systems or facilities and perform the public duties and carry out the contracts and obligations of the authority in the same manner as the authority itself might do, all under the direction of such court.

SECTION 17. (1) The exercise of the powers granted by this act will be in all respects for the benefit of the people of the State of Mississippi, for their well-being and prosperity and for the improvement of their social and economic conditions, and the authority shall not be required to pay any tax or assessment on any property owned by the authority under the provisions of this act or upon the income therefrom; nor shall the authority be required to pay any recording fee or transfer tax of any kind on account of instruments recorded by it or on its behalf.

(2) Any bonds issued by the authority under the provisions of this act, and their transfer and any income derived therefrom, shall at all times be free from taxation by the state or any local unit or political subdivision or other instrumentality of the state, excepting inheritance and gift taxes.

SECTION 18. All bonds issued under the provisions of this act shall be legal investments for trustees, other fiduciaries, savings banks, trust companies and insurance companies organized under the laws of the State of Mississippi; and such bonds shall be legal securities which may be deposited with and shall be received by all public officers and bodies of the state and all municipalities and other political subdivisions thereof for the purpose of securing the deposit of public funds.

SECTION 19. The State of Mississippi hereby covenants with the registered owners of any bonds of the authority that so long as the bonds are outstanding and unpaid the State of Mississippi will not limit or alter the rights and powers of the authority under this act to conduct the activities referred to herein in any way pertinent to the interests of the bondholders, including the authority's right to charge and collect rates, fees and charges and to fulfill the terms of any covenants made with the registered owners of the bonds, or in any other way impair the rights and remedies of the registered owners of the bonds, unless provision for full payment of such bonds, by escrow or otherwise, has been made under the terms of the bonds or the resolution, trust indenture or security interest securing the bonds.

SECTION 20. The provisions of this act are cumulative to other statutes now or hereafter enacted relating to the issuance of bonds or the components which make up the authority's treatment systems and to the design, construction, acquisition or approval of facilities for such purposes, and any public agency may exercise all presently held powers in the furtherance of this act; provided that the authority may issue bonds only under the provisions of this act.

SECTION 21. The Board of Supervisors of DeSoto County shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States

District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

SECTION 22. This act shall take effect and be in force from and after the date that it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.