

By: Senator(s) Minor

To: Public Utilities

SENATE BILL NO. 2833

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 DIRECTOR'S 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. BE IT ENACTED BY THE LEGISLATURE OF THE STATE
16 OF MISSISSIPPI:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

256 (2) Except as provided in Section 19-5-164(3), each person
257 appointed or elected as a commissioner, before entering upon the
258 discharge of the duties of the person's office, shall be required
259 to execute a bond payable to the State of Mississippi in the penal
260 sum of ten thousand dollars (\$10,000.00) conditioned that the
261 person will faithfully discharge the duties of the office.
262 Each * * * bond shall be approved by the clerk of the board of
263 supervisors and filed with the clerk.

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

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

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

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

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