

By: Senator(s) Minor

To: Public Utilities

SENATE BILL NO. 2833
(As Sent to Governor)

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
3 PRESENTLY SERVED BY A RURAL WATER ASSOCIATION; TO AMEND SECTION
4 19-5-153, MISSISSIPPI CODE OF 1972, TO REQUIRE A PETITION FROM THE
5 BOARD OF DIRECTORS OF A RURAL WATER ASSOCIATION TO THE BOARD OF
6 SUPERVISORS TO CREATE THE WATER DISTRICT, AND TO PROVIDE FOR
7 NOTICE OF THE BOARD OF DIRECTOR'S CONSIDERATION OF THE RESOLUTION;
8 TO AMEND SECTION 19-5-165, MISSISSIPPI CODE OF 1972, TO REQUIRE
9 THE TRANSFER OF ASSETS AND LIABILITIES OF THE RURAL WATER
10 ASSOCIATION TO THE NEWLY CREATED WATER DISTRICT; TO AMEND SECTION
11 19-5-167, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE ELECTION OF
12 A BOARD OF COMMISSIONERS OF A WATER DISTRICT CREATED FROM A RURAL
13 WATER ASSOCIATION; TO AMEND SECTIONS 19-5-169 AND 19-5-171,
14 MISSISSIPPI CODE OF 1972, TO MAKE TECHNICAL AND CONFORMING
15 AMENDMENTS; TO AMEND SECTION 19-5-189, MISSISSIPPI CODE OF 1972,
16 TO PROHIBIT THE BOARD OF SUPERVISORS FROM LEVYING A SPECIAL TAX ON
17 REAL PROPERTY IN WATER DISTRICTS CREATED FROM A RURAL WATER
18 ASSOCIATION; AND FOR RELATED PURPOSES. BE IT ENACTED BY THE
19 LEGISLATURE OF THE STATE OF MISSISSIPPI:

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

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

36 (2) Any contiguous area situated within any county of the
37 state, not situated within the corporate boundaries of an existing
38 municipality and being served by a nonprofit, nonshare corporation
39 chartered under the Mississippi Nonprofit Corporation Act for the
40 purpose of owning and operating rural waterworks, may become
41 incorporated as a water district in the manner set forth in
42 Section 19-5-153(3). If the nonprofit, nonshare corporation's
43 certificated area lies in more than one (1) county, the procedure
44 in Section 19-5-164 shall be used.

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

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

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

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

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

99 (4) With respect to the incorporation and operation of a
100 fire protection district pursuant to Sections 19-5-151 through
101 19-5-207, the word "owners" shall include any lessees of real

102 property of a water supply district the term of whose original
103 lease is not less than sixty (60) years and shall also include
104 sublessees if the original lease of which they are subletting is
105 not less than sixty (60) years.

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

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

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

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

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

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

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

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

197 (a) Upon creation of the district, the board of
198 directors of the former nonprofit, nonshare corporation shall
199 serve as the board of commissioners of the newly created water
200 district for a period not to exceed sixty (60) days. The initial

201 commissioners shall be subject to the requirements of Section
202 19-5-171, except the requirement for executing a bond. If an
203 initial commissioner fails to meet a requirement of Section
204 19-5-171 as provided in this section, the board of supervisors
205 shall appoint a member to fill that vacancy on the board of
206 commissioners.

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

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

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

233 19-5-169. The board of commissioners shall organize by

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

249 Each * * * board of commissioners shall adopt an official
250 seal with which to attest the official acts and records of the
251 board and district.

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

254 19-5-171. (1) Every resident citizen of the county in which
255 is located any district created under Sections 19-5-151 through
256 19-5-207, of good reputation, being the owner of land or the
257 conductor of a business situated within the district and being
258 over twenty-five (25) years of age and of sound mind and judgment,
259 shall be eligible to hold the office of commissioner.

260 (2) Except as provided in Section 19-5-164(3), each person
261 appointed or elected as a commissioner, before entering upon the
262 discharge of the duties of the person's office, shall be required
263 to execute a bond payable to the State of Mississippi in the penal
264 sum of ten thousand dollars (\$10,000.00) conditioned that the
265 person will faithfully discharge the duties of the office.

266 Each * * * bond shall be approved by the clerk of the board of

267 supervisors and filed with the clerk.

268 (3) Each commissioner shall take and subscribe to an oath of
269 office prescribed in section 268, Mississippi Constitution of
270 1890, before the clerk of the board of supervisors that the person
271 will faithfully discharge the duties of the office of
272 commissioner, which oath shall also be filed with the clerk
273 and * * * preserved with the official bond.

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

284 SECTION 7. Section 19-5-189, Mississippi Code of 1972, is
285 amended as follows:

286 19-5-189. (1) (a) Except as otherwise provided in
287 subsection (2) of this section for levies for fire protection
288 purposes and subsection (3) of this section for certain districts
289 providing water service, the board of supervisors of the county in
290 which any such district exists may, according to the terms of the
291 resolution, levy a special tax, not to exceed four (4) mills
292 annually, on all of the taxable real property in such district,
293 the avails of which shall be paid over to the board of
294 commissioners of the district to be used either for the operation,
295 support and maintenance of the district or for the retirement of
296 any bonds issued by the district, or for both.

297 (b) The proceeds derived from two (2) mills of the levy
298 authorized herein shall be included in the ten percent (10%)
299 increase limitation under Section 27-39-321, and the proceeds

300 derived from any additional millage levied under this subsection
301 in excess of two (2) mills shall be excluded from such limitation
302 for the first year of such additional levy and shall be included
303 within such limitation in any year thereafter.

304 (2) (a) In respect to fire protection purposes, the board
305 of supervisors of the county in which any such district exists on
306 July 1, 1987, may levy a special tax annually, not to exceed the
307 tax levied for such purposes for the 1987 fiscal year on all of
308 the taxable real property in such district, the avails of which
309 shall be paid over to the board of commissioners of the district
310 to be used either for the operation, support and maintenance of
311 the fire protection district or for the retirement of any bonds
312 issued by the district for fire protection purposes, or for both.
313 Any such district for which no taxes have been levied for the 1987
314 fiscal year may be treated as having been created after July 1,
315 1987, for the purposes of this subsection.

316 (b) In respect to fire protection purposes, the board
317 of supervisors of the county in which any such district is created
318 after July 1, 1987, may, according to the terms of the resolution
319 of intent to incorporate the district, levy a special tax not to
320 exceed two (2) mills annually on all of the taxable real property
321 in such district, the avails of which shall be paid over to the
322 board of commissioners of the district to be used either for the
323 operation, support and maintenance of the fire protection district
324 or for the retirement of any bonds issued by the district for fire
325 protection purposes, or for both; however, if the district is
326 created pursuant to a mandatory election called by the board of
327 supervisors, in lieu of a petitioned election under Section
328 19-5-157, the board of supervisors may levy a special tax annually
329 not to exceed an amount to be determined by the board of
330 supervisors and stated in the notice of such election. The
331 mandatory election authorized herein shall be conducted in
332 accordance with paragraph (c) of this subsection. The special tax

333 may be increased if such increase is authorized by the electorate
334 pursuant to an election conducted in accordance with paragraph (c)
335 of this subsection.

336 (c) The tax levy under this subsection may be increased
337 only when the board of supervisors has determined the need for
338 additional revenues, adopts a resolution declaring its intention
339 so to do and has held an election on the question of raising the
340 tax levy prescribed in this subsection. The notice calling for an
341 election shall state the purposes for which the additional
342 revenues shall be used and the amount of the tax levy to be
343 imposed for such purposes. The tax levy may be increased only if
344 the proposed increase is approved by a majority of those voting
345 within the district. Subject to specific provisions of this
346 paragraph to the contrary, the publication of notice and manner of
347 holding the election within the district shall be as prescribed by
348 law for the holding of elections for the issuance of bonds by the
349 board of supervisors. The election shall be held only within the
350 district.

351 (d) Notwithstanding any provisions of this subsection
352 to the contrary, in any county bordering on the Gulf of Mexico and
353 the State of Louisiana, the board of supervisors may levy not to
354 exceed four (4) mills annually on all the taxable real property
355 within any fire protection district, the avails of which shall be
356 paid over to the board of commissioners of the district to be used
357 either for the operation, support and maintenance of the fire
358 protection district or for the retirement of any bonds issued by
359 the district for fire protection purposes, or for both. Prior to
360 levying the tax under this paragraph, the board of supervisors
361 shall adopt a resolution declaring its intention to levy the tax.
362 The resolution shall describe the amount of the tax levy and the
363 purposes for which the proceeds of the tax will be used. The
364 board of supervisors shall have a copy of the resolution published
365 once a week for three (3) consecutive weeks in at least one (1)

366 newspaper published in the county and having a general circulation
367 therein. If no newspaper is published in the county, then notice
368 shall be given by publishing the resolution for the required time
369 in some newspaper having a general circulation in the county. A
370 copy of the resolution shall also be posted at three (3) public
371 places in the county for a period of at least twenty-one (21) days
372 during the time of its publication in a newspaper. If more than
373 twenty percent (20%) of the qualified electors of the district
374 shall file with the clerk of the board of supervisors, within
375 twenty-one (21) days after adoption of the resolution of intent to
376 levy the tax, a petition requesting an election on the question of
377 the levy of such tax, then and in that event such tax levy shall
378 not be made unless authorized by a majority of the votes cast at
379 an election to be called and held for that purpose within the
380 district. Notice of such election shall be given, the election
381 shall be held and the result thereof determined, as far as is
382 practicable, in the same manner as other elections are held in the
383 county. If an election results in favor of the tax levy or if no
384 election is required, the board of supervisors may levy such tax.
385 The board of supervisors, in its discretion, may call an election
386 on such question, in which event it shall not be necessary to
387 publish the resolution declaring its intention to have the tax
388 imposed.

389 (e) Notwithstanding any provisions of this subsection
390 to the contrary, in any county bordering on the Mississippi River
391 in which legal gaming is conducted and in which U.S. Highway 61
392 intersects with Highway 4, the board of supervisors may levy a
393 special tax not to exceed five (5) mills annually on all the
394 taxable real and personal property within any fire protection
395 district, except for utilities as defined in Section 77-3-3(d)(i)
396 and (iii), the avails of which shall be paid over to the board of
397 commissioners of the district to be used either for the operation,
398 support and maintenance of the fire protection district or for the

399 retirement of any bonds issued by the district for fire protection
400 purposes, or for both. Before levying the tax under this
401 paragraph, the board of supervisors shall adopt a resolution
402 declaring its intention to levy the tax. The resolution shall
403 describe the amount of the tax levy and the purposes for which the
404 proceeds of the tax will be used. The board of supervisors shall
405 have a copy of the resolution published once a week for three (3)
406 consecutive weeks in at least one (1) newspaper published in the
407 county and having a general circulation therein. If no newspaper
408 is published in the county, then notice shall be given by
409 publishing the resolution for the required time in some newspaper
410 having general circulation in the county. A copy of the
411 resolution shall also be posted at three (3) public places in the
412 county for a period of at least twenty-one (21) days during the
413 time of its publication in a newspaper. If more than twenty
414 percent (20%) of the qualified electors of the district shall file
415 with the clerk of the board of supervisors, within twenty-one (21)
416 days after adoption of the resolution of intent to levy the tax, a
417 petition requesting an election of the questions of the levy of
418 such tax, then and in that event such tax levy shall not be made
419 unless authorized by a majority of the votes cast at an election
420 to be called and held for that purpose within the district.
421 Notice of such election shall be given, the election shall be held
422 and the result thereof determined, as far as is practicable, in
423 the same manner as other elections are held in the county. If an
424 election results in favor of the tax levy or if no election is
425 required, the board of supervisors may levy such tax. The board
426 of supervisors, in its discretion, may call an election on such
427 question, in which event it shall not be necessary to publish the
428 resolution declaring its intention to have the tax imposed.

429 (f) Any taxes levied under this subsection shall be
430 excluded from the ten percent (10%) increase limitation under
431 Section 27-39-321.

432 (3) For any district authorized under Section 19-5-151(2),
433 the board of supervisors shall not levy the special tax authorized
434 in this section.

435 SECTION 8. The Attorney General of the State of Mississippi
436 shall submit this act, immediately upon approval by the Governor,
437 or upon approval by the Legislature subsequent to a veto, to the
438 Attorney General of the United States or to the United States
439 District Court for the District of Columbia in accordance with the
440 provisions of the Voting Rights Act of 1965, as amended and
441 extended.

442 SECTION 9. This act shall take effect and be in force from
443 and after the date it is effectuated under Section 5 of the Voting
444 Rights Act of 1965, as amended and extended.