

By: Minor, Little

To: Finance

SENATE BILL NO. 2868
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 31-25-5, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF THE TERM "LOCAL GOVERNMENTAL ENTITY"
3 UNDER THE MISSISSIPPI DEVELOPMENT BANK ACT TO INCLUDE THE STATE OR
4 ANY AGENCY THEREOF, INSTITUTIONS OF HIGHER LEARNING AND EDUCATION
5 BUILDING CORPORATIONS ESTABLISHED FOR INSTITUTIONS OF HIGHER
6 LEARNING; TO AMEND SECTION 31-25-27, MISSISSIPPI CODE OF 1972, TO
7 PROVIDE THAT SECURITIES ISSUED FOR LOCAL GOVERNMENTAL UNITS UNDER
8 THE PROVISIONS OF THE MISSISSIPPI DEVELOPMENT BANK ACT SHALL
9 INCLUDE TERMS AND CONDITIONS WHICH MEET THE PROVISION OF THE STATE
10 LAW AUTHORIZING THE ISSUANCE OF SUCH SECURITIES AND/OR SUCH TERMS
11 AND CONDITIONS CONSISTENT WITH THE REQUIREMENTS FOR ISSUANCE OF
12 MISSISSIPPI DEVELOPMENT BANK BONDS; TO AMEND SECTION 31-25-31,
13 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT LOCAL GOVERNMENTAL UNITS
14 SHALL NOT BE PROHIBITED FROM ASSUMING OBLIGATIONS IN ACCORDANCE
15 WITH AND SUBJECT TO THE LIMITATIONS OF THE MISSISSIPPI DEVELOPMENT
16 BANK ACT, OR FROM ISSUING AND SELLING ANY SECURITY TO THE
17 MISSISSIPPI DEVELOPMENT BANK IN ACCORDANCE WITH SUCH ACT; AND FOR
18 RELATED PURPOSES.

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

20 SECTION 1. Section 31-25-5, Mississippi Code of 1972, is
21 amended as follows:[WAN1]

22 31-25-5. As used in this act, the following words and terms
23 have the following meanings, unless a different meaning clearly
24 appears from the context:

25 (a) "Act" means this Mississippi Development Bank Act.

26 (b) "Bank" means the Mississippi Development Bank
27 created by this act.

28 (c) "Board" means the Board of Directors of the
29 Mississippi Business Finance Corporation.

30 (d) "Bondholder" or "holder" or any similar term when
31 used with reference to a bond of the bank means any person who
32 shall be the bearer of any outstanding bond of the bank registered
33 to bearer or not registered, or the registered owner of any
34 outstanding bond of the bank which shall at the time be registered

35 other than to bearer.

36 (e) "Bonds" means bonds, notes or other evidences of
37 indebtedness of the bank issued pursuant to this act.

38 (f) "County" shall mean a county of this state.

39 (g) "Fully marketable form" means a duly and validly
40 issued security accompanied by an approving legal opinion of a
41 bond counsel of recognized standing in the field of bond law whose
42 opinions are generally accepted by purchasers of municipal bonds,
43 provided that the security so executed need not be printed or
44 lithographed nor be in more than one (1) denomination.

45 (h) "Local governmental unit" means (i) any county,
46 municipality, utility district, regional solid waste authority,
47 county cooperative service district or political subdivision of
48 the State of Mississippi, (ii) the State of Mississippi or any
49 agency thereof, (iii) the institutions of higher learning of the
50 State of Mississippi, (iv) any education building corporation
51 established for institutions of higher learning, or (v) any other
52 governmental unit created under state law.

53 (i) "Municipality" means any municipality of the state,
54 whether operating under the code charter, the commission form of
55 government, a special charter or any other form of government.

56 (j) "Security" means a bond, note or other evidence of
57 indebtedness issued by a local governmental unit pursuant to the
58 provisions of this act.

59 (k) "Revenues" means all fees, charges, monies,
60 profits, payments of principal of or interest on securities and
61 other investments, gifts, grants, contributions, appropriations
62 and all other income derived by the bank under this act.

63 (l) "State" means the State of Mississippi.

64 SECTION 2. Section 31-25-27, Mississippi Code of 1972, is
65 amended as follows:[WAN2]

66 31-25-27. (1) Each local governmental unit is hereby
67 authorized and empowered to contract with the bank with respect to
68 the bank's purchase of such local governmental unit's securities
69 and such contract shall contain such terms and conditions as may
70 be prescribed by the bank. Each local governmental unit is
71 authorized and empowered to pay to the bank such fees and charges

72 for services as the bank may prescribe.

73 (2) Each local governmental unit is hereby authorized to
74 issue securities under the provisions of this act and to sell such
75 securities to the bank to raise money for any purpose or purposes
76 set forth in Sections 21-27-23, 21-33-301, 21-33-325, 21-33-326,
77 31-27-5, 17-17-301 et seq. and any other state law authorizing the
78 issuance of local governmental unit debt, and for the purpose of
79 refunding any securities issued under the provisions of this act
80 or under the provisions of Section 21-27-11 et seq., or Section
81 21-33-301 et seq., or Section 31-27-1 et seq. Such securities may
82 be issued in accordance with Sections 21-33-301, 21-33-303,
83 21-33-307, 21-33-309, 21-33-311, 21-33-313, 21-33-325 and
84 21-33-326, or Sections 21-27-23 through 21-27-43 and Sections
85 21-27-47 through 21-27-71, or Sections 31-27-1 through 31-27-25,
86 or Sections 17-5-3 through 17-5-11, or Sections 49-17-101 through
87 49-17-123, or Sections 17-17-301 through 17-17-349 or any other
88 state law authorizing issuance of local governmental unit debt, as
89 the case may be, unless otherwise specifically provided in this
90 act; provided, however, the securities of any local governmental
91 unit may be issued with such terms and provisions as may be
92 necessary and appropriate in order to comply with the provisions
93 of any loan agreement described in Section 49-17-87. Whenever
94 securities shall be issued under this subsection, the governing
95 authority may also pledge to the payment of principal of, premium,
96 if any, and interest on such securities the revenues of any
97 project to be constructed, improved or purchased with the proceeds
98 thereof. Whenever any project is a part of a system or combined
99 system, then all or any portion of the revenues of such system or
100 combined system may be pledged to secure repayment of such
101 securities as determined by the bank.

102 (3) Each local governmental unit is hereby authorized to
103 issue securities to the bank to raise money for any purpose or
104 purposes set forth in Sections 19-9-1, 19-9-27 or 19-9-28 and for

105 the purpose of refunding any securities issued under the
106 provisions of this act or under the provisions of Section 19-9-1
107 et seq. Such securities may be issued in accordance with Sections
108 19-9-1, 19-9-3, 19-9-5, 19-9-7, 19-9-9, 19-9-11, 19-9-13, 19-9-15,
109 19-9-17, 19-9-27 and 19-9-28, or Sections 17-5-3 through 17-5-11,
110 or Sections 49-17-101 through 49-17-123, as the case may be,
111 unless otherwise specifically provided in this act; provided,
112 however, the securities of any local governmental unit may be
113 issued with such terms and provisions as may be necessary and
114 appropriate in order to comply with the provisions of any loan
115 agreement described in Section 49-17-87. Whenever securities
116 shall be issued under this subsection, the board of supervisors of
117 the county may also pledge to the payment of principal of,
118 premium, if any, and interest on such securities the revenues of
119 any project to be constructed, improved, repaired or purchased
120 with the proceeds thereof. Whenever any project is a part of a
121 system or combined system, then all or any portion of the revenues
122 of such system or combined system may be pledged to secure
123 repayment of such securities as determined by the bank.

124 (4) In addition, any local governmental unit is hereby
125 authorized to issue securities to the bank to raise money for any
126 purpose or purposes otherwise authorized by state law and for the
127 purpose of refunding any securities issued under the provisions of
128 this act or as otherwise authorized by state law including Section
129 49-17-83 et seq. Such securities may be issued in accordance with
130 any other applicable provision of state law related to the
131 issuance of securities including Section 49-17-83 et seq. Whenever
132 securities shall be issued under this subsection, the governing
133 body of such local governmental unit may also pledge to the
134 payment of principal of, premium, if any, and interest on such
135 securities the revenues of any project to be constructed, improved
136 or purchased with the proceeds thereof. Whenever any project is a
137 part of a system or combined system, then all or any portion of

138 the revenues of such system or combined system may be pledged to
139 secure repayment of such securities as determined by the bank.

140 (5) Securities issued by a local governmental unit under the
141 provisions of this act:

142 (a) May be sold only to the bank at private sale and
143 may be sold at such price or prices, in such manner and at such
144 times as may be agreed to by the bank and the local governmental
145 unit, and the governing body of the local governmental unit may
146 pay all expenses, premiums, fees and commissions which it may deem
147 necessary and advantageous in connection with the issuance and
148 sale thereof;

149 (b) Shall be secured as provided by Chapter 27, Title
150 21, Mississippi Code of 1972; Chapter 33, Title 21, Mississippi
151 Code of 1972; or Chapter 9, Title 19, Mississippi Code of 1972, or
152 other provisions of state law, and as provided in this act; and it
153 is the intention of the Legislature that any pledge of earnings,
154 revenues or other monies made by the local governmental unit shall
155 be valid and binding from the time the pledge is made; that the
156 earnings, revenues or other monies so pledged and thereafter
157 received by the local governmental unit shall immediately be
158 subject to the lien of such pledge without any physical delivery
159 thereof or further act, and that the lien of any such pledge shall
160 be valid and binding as against all parties having claims of any
161 kind in tort, contract or otherwise against the local governmental
162 unit irrespective of whether such parties have notice thereof; and
163 neither the resolution nor any other instrument by which a pledge
164 is created need be recorded;

165 (c) Neither the officers or members of the governing
166 body of the local governmental unit nor any person executing the
167 bonds shall be personally liable on the bonds or be subject to any
168 personal liability or accountability by reason of the issuance
169 thereof.

170 (d) Shall be issued for the purposes set forth in this

171 act and shall include terms and conditions which meet the state
172 law authorizing the issuance of such local governmental unit debt
173 and/or such terms and conditions consistent with the requirements
174 for issuance of Mississippi Development Bank Bonds under Section
175 31-25-37.

176 (6) Each local governmental unit issuing securities under
177 the provisions of this act is hereby authorized and empowered in
178 connection with the issuance of such securities to enter into any
179 covenants, agreements as to defaults and agreements as to remedies
180 of the bank for defaults with respect to such local governmental
181 unit's operation, revenues, assets, monies, funds or property as
182 may be prescribed by the bank.

183 (7) The proceeds of securities shall be deposited in one or
184 more special funds established by resolution of the local
185 governmental unit issuing the same and shall be applied to the
186 following: (a) the purpose for which the securities were issued;
187 (b) the payment of all costs of issuance of the securities; (c)
188 the payments of any fees and charges established by the bank; (d)
189 the payment of interest on the securities for a period of time not
190 greater than the period of time estimated to be required to
191 complete the purpose for which the securities were issued; all to
192 the extent provided by resolution of the governing body of the
193 local governmental unit and approved by the bank. Such special
194 fund shall be held by commercial banks qualified to act as
195 depositories therefor.

196 (8) In the event the bank determines to issue bonds and in
197 connection therewith to exercise the powers provided in subsection
198 (7) of Section 31-25-37, and if the requirements of subsection
199 (2), (3) or (4) as the case may be, of this section have been
200 satisfied, a local governmental unit is authorized to issue its
201 securities as provided in this section.

202 (9) Securities issued under this act may be validated in the
203 manner and with the force and effect provided in Section 31-13-1

204 et seq.

205 (10) This act shall be deemed to provide an additional,
206 alternative and complete method for the doing of the things
207 authorized hereby and shall be deemed and construed to be
208 supplemental to any power conferred by other laws on local
209 governmental units and not in derogation of any such powers.

210 (11) Any person who attempts to or obtains financial aid for
211 a local governmental unit hereunder or who attempts to or sells
212 securities of a governmental unit to the bank by false or
213 misleading information or who shall by fraud attempt to obtain
214 monies from the bank or its approval for the payment of monies or
215 shall fraudulently attempt to or does prevent the collection of
216 any monies due to the bank shall, upon conviction, be guilty of a
217 felony for each offense.

218 (12) Upon the sale and issuance of any securities to the
219 bank by any governmental unit, such governmental unit shall be
220 held and be deemed to have agreed that in the event of the failure
221 of such governmental unit to pay the interest on or the principal
222 of any of such securities owned or held by the bank as and when
223 due and payable, such governmental unit shall have waived any and
224 all defenses to such nonpayment, and the bank upon such nonpayment
225 shall thereupon constitute a holder or owner of such securities as
226 being in default, and the bank may then and thereupon avail itself
227 of all remedies, rights and provisions of law applicable in such
228 circumstance, including without limitation any remedies or rights
229 theretofore agreed to by the local governmental unit, and that all
230 of the securities of the issue of securities of such governmental
231 unit as to which there has been such nonpayment, shall for all of
232 the purposes of this section be held and be deemed to have become
233 due and payable and to be unpaid. The bank is hereby authorized
234 and empowered to carry out the provisions of this section and to
235 exercise all of the rights and remedies and provisions of law
236 herein provided or referred to.

237 (13) Any local governmental unit which borrows from the bank
238 is hereby authorized and empowered to agree in writing with the
239 bank that, as provided in this subsection, the State Tax
240 Commission or any state agency, department or commission created
241 pursuant to state law shall (a) withhold all or any part (as
242 agreed by the local governmental unit) of any monies which such
243 local governmental unit is entitled to receive from time to time
244 pursuant to any law and which is in the possession of the State
245 Tax Commission, or any state agency, department or commission
246 created pursuant to state law and (b) pay the same over to the
247 bank to satisfy any delinquent payments on any securities issued
248 by such local governmental unit under the provisions of this act
249 and any other delinquent payments due and owing the bank by such
250 local governmental unit, all as the same shall occur. In the
251 event the bank shall file a copy of such written agreement,
252 together with a statement of delinquency, with the State Tax
253 Commission, or any state agency, department or commission created
254 pursuant to state law then the State Tax Commission or any state
255 agency, department or commission created pursuant to state law
256 shall immediately make the withholdings provided in such agreement
257 from the amounts due the local governmental unit and shall
258 continue to pay the same over to the bank until all such
259 delinquencies are satisfied.

260 SECTION 3. Section 31-25-31, Mississippi Code of 1972, is
261 amended as follows:[WAN3]

262 31-25-31. (1) Except as otherwise provided in subsection
263 (2) of this section, bonds issued by the bank under this chapter
264 shall be general obligations of the bank or, if the resolution of
265 the board authorizing their issuance shall so provide, shall be
266 special obligations thereof payable solely from payments of
267 principal, interest and redemption payments on the municipal
268 securities being purchased with their proceeds or from such
269 payments on any or all municipal securities held or to be held by

270 the bank or from other funds available to the bank as provided in
271 such resolution or by any provision of law. Bonds issued by the
272 bank shall not constitute or become an indebtedness, or a debt or
273 liability of the state or of any local governmental unit nor shall
274 any such entity other than the bank (in the case of its general
275 obligations) be liable thereon, nor shall bonds or any powers
276 granted herein to the state or agency thereof or local
277 governmental unit constitute the giving, pledging or loaning of
278 the faith and credit of the state or such agency thereof or of
279 such local governmental unit. The issuance of bonds hereunder
280 shall not directly, indirectly or contingently obligate the state
281 to levy or collect any form of taxes or assessments therefor or to
282 create any indebtedness payable out of taxes or assessments or
283 make any appropriation for their payment nor to pledge the taxing
284 power of the state and such levy or pledge is prohibited; however,
285 notwithstanding the foregoing, nothing in this section shall be
286 construed to prohibit any local governmental unit (including the
287 state or any agency thereof) from assuming obligations in
288 accordance with and subject to the limitations of this act or from
289 issuing and selling municipal securities to the bank in accordance
290 herewith. Nothing in this act shall be construed to authorize the
291 bank to create a debt of the state within the meaning of the
292 constitution or statutes of the state or authorize the bank to
293 levy or collect taxes or assessments and bonds issued by the bank
294 pursuant to the provisions of this act are payable and shall state
295 plainly on their face that they are payable solely as general
296 obligations of the bank, or solely from the funds pledged for
297 their payment in accordance with the resolution authorizing their
298 issuance or in any trust indenture or mortgage or deed of trust
299 executed as security therefor, as the case may be, and are not a
300 debt or liability of the state. The state shall not in any event
301 be liable for the payment of the principal or interest on any
302 bonds of the bank or for the performance of any pledge, mortgage,

303 obligations or agreement of any kind whatsoever which may be
304 undertaken by the bank. No breach of any such pledge, mortgage,
305 obligation or agreement shall impose any pecuniary liability upon
306 the state or any charge upon its general credit or against its
307 taxing power. Nothing in this subsection shall be construed to
308 prohibit any local governmental unit (including the state or any
309 agency thereof) from assuming obligations in accordance with and
310 subject to the limitations of this act or from issuing and selling
311 any security to the bank in accordance with this act.

312 (2) Bonds issued by the bank under Section 31-25-21(k) for
313 the purposes provided in Section 31-25-20(g) shall be general
314 obligations of the State of Mississippi, and for the payment
315 thereof the full faith and credit of the State of Mississippi is
316 irrevocably pledged. If the funds appropriated by the Legislature
317 are insufficient to pay the principal of and the interest on such
318 bonds as they become due, then the deficiency shall be paid by the
319 State Treasurer from any funds in the State Treasury not otherwise
320 appropriated. All such bonds shall contain recitals on their
321 faces substantially covering the provisions of this subsection
322 (2).

323 SECTION 4. This act shall take effect and be in force from
324 and after July 1, 2000.