

By: Minor, Little

To: Finance

SENATE BILL NO. 2868  
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 31-25-5, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE DEFINITION OF THE TERM "LOCAL GOVERNMENTAL UNIT" UNDER  
3 THE MISSISSIPPI DEVELOPMENT BANK ACT TO INCLUDE THE STATE OR ANY  
4 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 REQUIRE CERTAIN LOCAL  
13 GOVERNMENTAL UNITS TO MAKE CERTAIN CERTIFICATIONS TO THE  
14 MISSISSIPPI DEVELOPMENT BANK PRIOR TO THE ISSUANCE OF BONDS; TO  
15 AMEND SECTION 31-25-31, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT  
16 LOCAL GOVERNMENTAL UNITS SHALL NOT BE PROHIBITED FROM ASSUMING  
17 OBLIGATIONS IN ACCORDANCE WITH AND SUBJECT TO THE LIMITATIONS OF  
18 THE MISSISSIPPI DEVELOPMENT BANK ACT, OR FROM ISSUING AND SELLING  
19 ANY SECURITY TO THE MISSISSIPPI DEVELOPMENT BANK IN ACCORDANCE  
20 WITH SUCH ACT; AND FOR RELATED PURPOSES.

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

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

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

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

28 (b) "Bank" means the Mississippi Development Bank  
29 created by this act.

30 (c) "Board" means the Board of Directors of the  
31 Mississippi Business Finance Corporation.

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

36 outstanding bond of the bank which shall at the time be registered  
37 other than to bearer.

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

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

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

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

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

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

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

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

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

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

73 authorized and empowered to pay to the bank such fees and charges  
74 for services as the bank may prescribe.

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

104 (3) Each local governmental unit is hereby authorized to  
105 issue securities to the bank to raise money for any purpose or

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

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

139 part of a system or combined system, then all or any portion of  
140 the revenues of such system or combined system may be pledged to  
141 secure repayment of such securities as determined by the bank.

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

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

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

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

172           (d) Shall be issued for the purposes set forth in this  
173 act and shall include terms and conditions which meet the state  
174 law authorizing the issuance of such local governmental unit debt  
175 and/or such terms and conditions consistent with the requirements  
176 for issuance of Mississippi Development Bank Bonds under Section  
177 31-25-37.

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

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

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

204           (9) Securities issued under this act may be validated in the

205 manner and with the force and effect provided in Section 31-13-1  
206 et seq.

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

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

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

238 herein provided or referred to.

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

262 (14) (a) If the state or any agency thereof, the  
263 institutions of higher learning of the state or any education  
264 building corporation established for institutions of higher  
265 learning, borrows funds from the bank under Section 31-25-28 or  
266 sells its securities to the bank pursuant to this act, then such  
267 local governmental unit shall certify the following to the bank  
268 prior to the issuance of bonds:

269 (i) The legal authority for such local  
270 governmental unit to borrow funds; and



271           (ii) That such local governmental unit does not  
272 intend to request an additional appropriation from the Legislature  
273 to pay debt service on the loan or for such security.

274           (b) If the state or any agency thereof, the  
275 institutions of higher learning of the state or any education  
276 building corporation established for institutions of higher  
277 learning, does not make the certification required under paragraph  
278 (a)(ii) of this subsection, then such local governmental unit  
279 shall not borrow funds from the bank under Section 31-25-28 or  
280 sell its securities to the bank pursuant to this act unless an  
281 appropriation by the Legislature authorizes the payment of debt  
282 service for the first year of the loan or for such security.

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

285           31-25-31. (1) Except as otherwise provided in subsection  
286 (2) of this section, bonds issued by the bank under this chapter  
287 shall be general obligations of the bank or, if the resolution of  
288 the board authorizing their issuance shall so provide, shall be  
289 special obligations thereof payable solely from payments of  
290 principal, interest and redemption payments on the municipal  
291 securities being purchased with their proceeds or from such  
292 payments on any or all municipal securities held or to be held by  
293 the bank or from other funds available to the bank as provided in  
294 such resolution or by any provision of law. Bonds issued by the  
295 bank shall not constitute or become an indebtedness, or a debt or  
296 liability of the state or of any local governmental unit nor shall  
297 any such entity other than the bank (in the case of its general  
298 obligations) be liable thereon, nor shall bonds or any powers  
299 granted herein to the state or agency thereof or local  
300 governmental unit constitute the giving, pledging or loaning of  
301 the faith and credit of the state or such agency thereof or of  
302 such local governmental unit. The issuance of bonds hereunder  
303 shall not directly, indirectly or contingently obligate the state

304 to levy or collect any form of taxes or assessments therefor or to  
305 create any indebtedness payable out of taxes or assessments or  
306 make any appropriation for their payment nor to pledge the taxing  
307 power of the state and such levy or pledge is prohibited; however,  
308 notwithstanding the foregoing, nothing in this section shall be  
309 construed to prohibit any local governmental unit (including the  
310 state or any agency thereof) from assuming obligations in  
311 accordance with and subject to the limitations of this act or from  
312 issuing and selling municipal securities to the bank in accordance  
313 herewith. Nothing in this act shall be construed to authorize the  
314 bank to create a debt of the state within the meaning of the  
315 constitution or statutes of the state or authorize the bank to  
316 levy or collect taxes or assessments and bonds issued by the bank  
317 pursuant to the provisions of this act are payable and shall state  
318 plainly on their face that they are payable solely as general  
319 obligations of the bank, or solely from the funds pledged for  
320 their payment in accordance with the resolution authorizing their  
321 issuance or in any trust indenture or mortgage or deed of trust  
322 executed as security therefor, as the case may be, and are not a  
323 debt or liability of the state. The state shall not in any event  
324 be liable for the payment of the principal or interest on any  
325 bonds of the bank or for the performance of any pledge, mortgage,  
326 obligations or agreement of any kind whatsoever which may be  
327 undertaken by the bank. No breach of any such pledge, mortgage,  
328 obligation or agreement shall impose any pecuniary liability upon  
329 the state or any charge upon its general credit or against its  
330 taxing power. Nothing in this subsection shall be construed to  
331 prohibit any local governmental unit (including the state or any  
332 agency thereof) from assuming obligations in accordance with and  
333 subject to the limitations of this act or from issuing and selling  
334 any security to the bank in accordance with this act.

335 (2) Bonds issued by the bank under Section 31-25-21(k) for  
336 the purposes provided in Section 31-25-20(g) shall be general

337 obligations of the State of Mississippi, and for the payment  
338 thereof the full faith and credit of the State of Mississippi is  
339 irrevocably pledged. If the funds appropriated by the Legislature  
340 are insufficient to pay the principal of and the interest on such  
341 bonds as they become due, then the deficiency shall be paid by the  
342 State Treasurer from any funds in the State Treasury not otherwise  
343 appropriated. All such bonds shall contain recitals on their  
344 faces substantially covering the provisions of this subsection  
345 (2).

346 SECTION 4. This act shall take effect and be in force from  
347 and after its passage.