MISSISSIPPI LEGISLATURE
REGULAR SESSION 2000
By: Minor, Little
To: Finance

SENATE BILL NO. 2868
(As Sent to Governor)

AN ACT TO AMEND SECTION 31-25-5, MISSISSIPPI CODE OF 1972, TO REVISE THE DEFINITION OF THE TERM "LOCAL GOVERNMENTAL UNIT" UNDER THE MISSISSIPPI DEVELOPMENT BANK ACT TO INCLUDE THE STATE OR ANY AGENCY THEREOF, INSTITUTIONS OF HIGHER LEARNING AND EDUCATION BUILDING CORPORATIONS ESTABLISHED FOR INSTITUTIONS OF HIGHER LEARNING; TO AMEND SECTION 31-25-27, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT SECURITIES ISSUED FOR LOCAL GOVERNMENTAL UNITS UNDER THE PROVISIONS OF THE MISSISSIPPI DEVELOPMENT BANK ACT SHALL INCLUDE TERMS AND CONDITIONS WHICH MEET THE PROVISION OF THE STATE LAW AUTHORIZING THE ISSUANCE OF SUCH SECURITIES AND/OR SUCH TERMS AND CONDITIONS CONSISTENT WITH THE REQUIREMENTS FOR ISSUANCE OF MISSISSIPPI DEVELOPMENT BANK BONDS; TO REQUIRE CERTAIN LOCAL GOVERNMENTAL UNITS TO MAKE CERTAIN CERTIFICATIONS TO THE MISSISSIPPI DEVELOPMENT BANK PRIOR TO THE ISSUANCE OF BONDS; TO AMEND SECTION 31-25-31, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT LOCAL GOVERNMENTAL UNITS SHALL NOT BE PROHIBITED FROM ASSUMING OBLIGATIONS IN ACCORDANCE WITH AND SUBJECT TO THE LIMITATIONS OF THE MISSISSIPPI DEVELOPMENT BANK ACT, OR FROM ISSUING AND SELLING ANY SECURITY TO THE MISSISSIPPI DEVELOPMENT BANK IN ACCORDANCE WITH SUCH ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 31-25-5, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 2. Section 31-25-27, Mississippi Code of 1972, is amended as follows:

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

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

(3) Each local governmental unit is hereby authorized to
issue securities to the bank to raise money for any purpose or
purposes set forth in Sections 19-9-1, 19-9-27 or 19-9-28 and for
the purpose of refunding any securities issued under the
provisions of this act or under the provisions of Section 19-9-1
et seq. Such securities may be issued in accordance with Sections
19-9-17, 19-9-27 and 19-9-28, or Sections 17-5-3 through 17-5-11,
or Sections 49-17-101 through 49-17-123, as the case may be,
unless otherwise specifically provided in this act; provided,
however, the securities of any local governmental unit may be
issued with such terms and provisions as may be necessary and
appropriate in order to comply with the provisions of any loan
agreement described in Section 49-17-87. Whenever securities
shall be issued under this subsection, the board of supervisors of
the county may also pledge to the payment of principal of,
premium, if any, and interest on such securities the revenues of
any project to be constructed, improved, repaired or purchased
with the proceeds thereof. Whenever any project is a part of a
system or combined system, then all or any portion of the revenues
of such system or combined system may be pledged to secure
repayment of such securities as determined by the bank.

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

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

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

(b) Shall be secured as provided by Chapter 27, Title
21, Mississippi Code of 1972; Chapter 33, Title 21, Mississippi
Code of 1972; or Chapter 9, Title 19, Mississippi Code of 1972, or
other provisions of state law, and as provided in this act; and it
is the intention of the Legislature that any pledge of earnings,
revenues or other monies made by the local governmental unit shall
be valid and binding from the time the pledge is made; that the
earnings, revenues or other monies so pledged and thereafter
received by the local governmental unit shall immediately be
subject to the lien of such pledge without any physical delivery
thereof or further act, and that 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 local governmental
unit irrespective of whether such parties have notice thereof; and
neither the resolution nor any other instrument by which a pledge
is created need be recorded;

(c) Neither the officers or members of the governing
body of the local governmental unit 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.
(d) Shall be issued for the purposes set forth in this act and shall include terms and conditions which meet the state law authorizing the issuance of such local governmental unit debt and/or such terms and conditions consistent with the requirements for issuance of Mississippi Development Bank Bonds under Section 31-25-37.

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

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

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

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

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

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

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

(13) Any local governmental unit which borrows from the bank is hereby authorized and empowered to agree in writing with the bank that, as provided in this subsection, the State Tax Commission or any state agency, department or commission created pursuant to state law shall (a) withhold all or any part (as agreed by the local governmental unit) of any monies which such local governmental unit is entitled to receive from time to time pursuant to any law and which is in the possession of the State Tax Commission, or any state agency, department or commission created pursuant to state law and (b) pay the same over to the bank to satisfy any delinquent payments on any securities issued by such local governmental unit under the provisions of this act and any other delinquent payments due and owing the bank by such local governmental unit, all as the same shall occur. In the event the bank shall file a copy of such written agreement, together with a statement of delinquency, with the State Tax Commission, or any state agency, department or commission created pursuant to state law then the State Tax Commission or any state agency, department or commission created pursuant to state law shall immediately make the withholdings provided in such agreement from the amounts due the local governmental unit and shall continue to pay the same over to the bank until all such delinquencies are satisfied.

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

(i) The legal authority for such local governmental unit to borrow funds; and
(ii) That such local governmental unit does not intend to request an additional appropriation from the Legislature to pay debt service on the loan or for such security.

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

SECTION 3. Section 31-25-31, Mississippi Code of 1972, is amended as follows:

31-25-31. (1) Except as otherwise provided in subsection (2) of this section, bonds issued by the bank under this chapter shall be general obligations of the bank or, if the resolution of the board authorizing their issuance shall so provide, shall be special obligations thereof payable solely from payments of principal, interest and redemption payments on the municipal securities being purchased with their proceeds or from such payments on any or all municipal securities held or to be held by the bank or from other funds available to the bank as provided in such resolution or by any provision of law. Bonds issued by the bank shall not constitute or become an indebtedness, or a debt or liability of the state or of any local governmental unit nor shall any such entity other than the bank (in the case of its general obligations) be liable thereon, nor shall bonds or any powers granted herein to the state or agency thereof or local governmental unit constitute the giving, pledging or loaning of the faith and credit of the state or such agency thereof or of such local governmental unit. The issuance of bonds hereunder shall not directly, indirectly or contingently obligate the state
to levy or collect any form of taxes or assessments therefor or to create any indebtedness payable out of taxes or assessments or make any appropriation for their payment nor to pledge the taxing power of the state and such levy or pledge is prohibited; however, notwithstanding the foregoing, nothing in this section shall be construed to prohibit any local governmental unit (including the state or any agency thereof) from assuming obligations in accordance with and subject to the limitations of this act or from issuing and selling municipal securities to the bank in accordance herewith. Nothing in this act shall be construed to authorize the bank to create a debt of the state within the meaning of the constitution or statutes of the state or authorize the bank to levy or collect taxes or assessments and bonds issued by the bank pursuant to the provisions of this act are payable and shall state plainly on their face that they are payable solely as general obligations of the bank, or solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or in any trust indenture or mortgage or deed of trust executed as security therefor, as the case may be, and are not a debt or liability of the state. The state shall not in any event be liable for the payment of the principal or interest on any bonds of the bank or for the performance of any pledge, mortgage, obligations or agreement of any kind whatsoever which may be undertaken by the bank. No breach of any such pledge, mortgage, obligation or agreement shall impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing power. Nothing in this subsection shall be construed to prohibit any local governmental unit (including the state or any agency thereof) from assuming obligations in accordance with and subject to the limitations of this act or from issuing and selling any security to the bank in accordance with this act.

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

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