

By: Representative Ellis

To: Public Utilities

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 997

1 AN ACT TO AMEND SECTION 77-3-13, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THAT MUNICIPAL UTILITIES ARE NOT REQUIRED TO OBTAIN A
3 CERTIFICATE OF CONVENIENCE AND NECESSITY FOR OPERATING WITHIN ONE
4 MILE OF THE CORPORATE LIMITS AND THAT MUNICIPAL UTILITIES MAY NOT
5 OPERATE IN AREAS CERTIFICATED TO ANOTHER UTILITY, AND TO CLARIFY
6 THE PROCEDURE FOR THE ACQUISITION OF CERTAIN UTILITY PROPERTY
7 WITHIN MUNICIPALLY ANNEXED AREAS; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 77-3-13, Mississippi Code of 1972, is
10 amended as follows:

11 77-3-13. (1) The commission shall issue a certificate of
12 convenience and necessity to any person engaged in the
13 construction or operation of such equipment or facility as is
14 mentioned in subsection (1) of Section 77-3-11 on March 29, 1956,
15 for the construction or operation then being conducted, without
16 requiring proof that public convenience and necessity will be
17 served by such construction or operation, and without further
18 proceedings, if application for such certificate is made to the
19 commission within six (6) months after March 29, 1956. Any
20 utility covered by this chapter which has heretofore been under
21 the jurisdiction of the commission shall, upon application within
22 six (6) months of March 29, 1956, be issued a certificate
23 authorizing it to conduct operations and make extensions within
24 any area covered by its service area map or maps on file with the
25 commission on March 29, 1956.

26 (2) The commission shall issue a certificate of convenience
27 and necessity to any person engaged in the construction or
28 operation of a sewage disposal service as mentioned in subsection
29 (2) of Section 77-3-11 on August 9, 1968, for the construction or



30 operation then being conducted, without requiring proof that
31 public convenience and necessity will be served by such
32 construction or operation, and without further proceedings, if
33 application for such certificate is made to the commission within
34 six (6) months after August 9, 1968. Pending the filing of such
35 application and the issuance of a certificate, the continuance of
36 such construction or operation shall be lawful.

37 Except as otherwise specifically provided by subsection (2)
38 of Section 77-3-11 or by this subsection, that portion of the
39 business of a public utility dealing with the operation of a
40 sewage disposal service as provided by subsection (2) of Section
41 77-3-11 shall be subject to provisions of this chapter, in like
42 manner and with like effect as if such business had been included
43 within the definition of a "public utility" in the original
44 enactment of this chapter.

45 (3) In all other cases, the commission shall set the matter
46 for hearing, and shall give reasonable notice of the hearing
47 thereon to all interested persons, as in its judgment may be
48 necessary under its rules and regulations, involving the financial
49 ability and good faith of the applicant, the necessity for
50 additional services and such other matters as the commission deems
51 relevant. The commission may issue a certificate of public
52 convenience and necessity, or refuse to issue the same or issue it
53 for the establishment or construction of a portion only of the
54 contemplated plant, route, line or system, or extension thereof,
55 or for the partial exercise only of such right or privilege, and
56 may attach to the exercise of the rights granted by the
57 certificate such reasonable terms and conditions as to time or
58 otherwise as, in its judgment, the public convenience, necessity
59 and protection may require, and may forfeit such certificate after
60 issuance for noncompliance with its terms, or provide therein for
61 an ipso facto forfeiture of the same for failure to exercise the
62 rights granted within the time fixed by the certificate. * * *



63 However, nothing in this section shall be construed as requiring
64 such certificate for a municipally owned plant, project or
65 development, route, line or system or extension thereof in areas
66 within one (1) mile of the corporate boundaries which are not
67 certificated to another utility, and nothing in this chapter or
68 other provision of law shall be construed as allowing a
69 municipally owned plant, project or development, route, line or
70 system or extension thereof in areas certificated to another
71 utility. * * * No certificate shall be required for extensions or
72 additions within the corporate limits of a municipality being
73 served by the holder of a certificate of convenience and
74 necessity.

75 (4) The commission shall, prior to issuing a certificate of
76 public convenience and necessity to a public utility for any new
77 construction, extension or addition to its property, ascertain
78 that all labor, materials, property or services to be rendered for
79 any proposed project will be supplied at reasonable prices. The
80 commission shall, after issuance of a certificate for facilities
81 estimated to cost Five Million Dollars (\$5,000,000.00) or more or
82 estimated to cost an amount equal to one percent (1%) of the rate
83 base allowed by the commission in the utility's last rate case,
84 whichever is greater, assign the public utilities staff to monitor
85 such projects, to inspect periodically construction in progress,
86 and to report to the commission any variances or deviations as
87 found, if any, and to file progress reports thereon with the
88 commission. Such public utility shall file a similar report with
89 the commission at such times and in such form as the commission
90 shall require, including any substantial changes in plans and
91 specifications, cost allocations, construction schedule and funds
92 available to complete the project.

93 (5) The commission may issue a temporary certificate in
94 cases of emergency, to assure maintenance of adequate service or
95 to serve particular customers, without notice or hearing, pending



96 the determination of an application for a certificate, and may by
97 regulation exempt from the requirements of Sections 77-3-11
98 through 77-3-21: (a) temporary acts or operations for which the
99 issuance of a certificate will not be required in the public
100 interest; and (b) extensions or additions of service facilities
101 outside of municipalities under such general rules as will promote
102 the prompt availability of such service to prospective users, and
103 at the same time prevent unnecessary and uneconomic duplication of
104 such facilities as between two (2) or more persons.

105 (6) Prior to the acquisition pursuant to Section 77-3-17,
106 or other provisions of law, by any public agency, authority,
107 district, state or other agency, institution or political
108 subdivision thereof, of any certificate of public convenience and
109 necessity or portion thereof, service areas or portion thereof, or
110 operating rights or portion thereof, issued or granted by the
111 commission pursuant to the provisions of this section * * * and/or
112 the facilities or other properties and equipment of the utility
113 providing service therein of any regulated utility, as defined in
114 Section 77-3-3(d) (i), (ii) and (iii), the commission shall first
115 determine if such service area, certificate of public convenience
116 and necessity, or operating right, or portions thereof, should be
117 cancelled as provided in Section 77-3-21.

118 (7) Before the acquisition pursuant to any negotiated
119 purchase agreement entered into before 1987, by any public agency,
120 authority, district, state or other agency, institution or
121 political subdivision thereof, of any certificate of public
122 convenience and necessity or portion thereof, service areas or
123 portion thereof, or operating rights or portion thereof, issued or
124 granted by the commission pursuant to this section and/or the
125 facilities or other properties and equipment of the utility
126 providing service therein of any regulated utility defined in
127 Section 77-3-3(d) (i), the commission first shall determine that
128 such service area, certificate of public convenience and



129 necessity, or operating right, or portions thereof, shall be
130 cancelled as provided in Section 77-3-21.

131 (8) Notwithstanding any provision of this section to the
132 contrary, the certificate as applied for may be granted without a
133 hearing in uncontested cases; however, the commission may hear any
134 uncontested case if it determines that the public interest will be
135 served thereby.

136 **SECTION 2.** This act shall take effect and be in force from
137 and after its passage.

