

By: Representatives Ellington, Mitchell

To: County Affairs

HOUSE BILL NO. 1649

1 AN ACT TO REVISE THE PROCESS BY WHICH NONPROFIT, NONSHARE  
 2 WATER ASSOCIATIONS MAY CONVERT TO PUBLIC WATER DISTRICTS; TO  
 3 CREATE NEW SECTION 19-5-166, MISSISSIPPI CODE OF 1972, TO  
 4 PRESCRIBE THE PROCESS BY WHICH THE BOARD OF DIRECTORS OF A  
 5 NONPROFIT WATER ASSOCIATION MAY CONVERT THE ASSOCIATION INTO A  
 6 WATER DISTRICT WITHOUT THE NECESSITY OF A PUBLIC HEARING AND  
 7 PUBLICATION CONCERNING THE CONVERSION; TO AMEND SECTION 19-5-151,  
 8 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND SECTION  
 9 19-5-153, MISSISSIPPI CODE OF 1972, TO DELETE THE REQUIREMENT THAT  
 10 THE BOARD OF DIRECTORS OF THE NONPROFIT WATER ASSOCIATION MUST  
 11 PETITION THE BOARD OF SUPERVISORS IN ORDER TO BECOME A WATER  
 12 DISTRICT; TO AMEND SECTIONS 19-5-165 AND 19-5-167, MISSISSIPPI  
 13 CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; TO  
 14 AMEND SECTION 19-5-189, MISSISSIPPI CODE OF 1972, TO DELETE THE  
 15 PROHIBITION AGAINST BOARDS OF SUPERVISORS LEVYING AN AD VALOREM  
 16 TAX ON BEHALF OF NEWLY CONVERTED WATER DISTRICTS; AND FOR RELATED  
 17 PURPOSES.

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

19 **SECTION 1.** The following shall be codified as Section  
 20 19-5-166, Mississippi Code of 1972:

21 19-5-166. (1) If the board of directors of a nonprofit,  
 22 nonshare rural waterworks corporation desires to convert into and  
 23 become reconstituted and reincorporated as a water district under  
 24 this section, the board of directors shall file the following with  
 25 the board of supervisors of the county or counties in which the  
 26 area served by the corporation is situated:

27 (a) A resolution duly adopted by the board of directors  
 28 of the nonprofit, nonshare corporation which evidences the desire  
 29 of the corporation to convert into and become reconstituted and  
 30 reincorporated as a water district and which certifies that the  
 31 corporation:

32 (i) Was formed initially as a nonprofit, nonshare  
 33 corporation;



34 (ii) Does not have the ability to directly access  
35 the tax exempt capital markets other than through a conduit  
36 issuer; and

37 (iii) Desires to realize interest rate savings as  
38 a result of its conversion and reconstitution as a water district  
39 under this section;

40 (b) An application for reconstitution and certificate  
41 of incorporation that states and includes the following  
42 information:

43 (i) The proposed name of the water district;

44 (ii) The location of the water district's  
45 principal office and the number of directors of the water  
46 district, which shall be subject to change and modification as  
47 provided in the water district's bylaws;

48 (iii) The names and addresses of the initial board  
49 of directors of the nonprofit, nonshare corporation;

50 (iv) The name and address of the agent for service  
51 of process of the nonprofit, nonshare corporation; and

52 (v) Any other matters that the initial board of  
53 directors of the nonprofit, nonshare corporation deems necessary  
54 and appropriate;

55 (c) A copy of the nonprofit, nonshare corporation's  
56 bylaws along with any other information which the initial board of  
57 directors of the nonprofit, nonshare corporation deems necessary  
58 and appropriate; and

59 (d) A statement and certification from the Secretary of  
60 State that the proposed name of the water district is not  
61 identical with or so similar to the name of any other water  
62 district in the state as to lead to confusion and uncertainty.

63 (2) The application for reconstitution and certificate of  
64 incorporation must be signed and acknowledged by a majority of the  
65 board of directors of the nonprofit, nonshare corporation.



66           (3) After the application for reconstitution and certificate  
67 of incorporation and other required documents have been filed with  
68 the board of supervisors, if the board of supervisors determines  
69 that the requirements of this section have been satisfied, the  
70 board must spread the same upon the minutes of the board of  
71 supervisors, and the water district shall come into existence.  
72 The water district shall constitute a body politic and corporate  
73 with the power of perpetual succession and a political subdivision  
74 of the state under the name set forth in the certificate of  
75 incorporation, and the water district shall be vested with the  
76 rights and powers granted all other districts in this chapter. At  
77 the same time, the nonprofit, nonshare corporation shall cease to  
78 exist. A copy of the water district's application for  
79 reconstitution and certificate of incorporation must be filed in  
80 the office of the Secretary of State after its receipt and  
81 acceptance by the board or boards of supervisors. The Secretary  
82 of State may require the payment of a reasonable filing and  
83 receipt fee not in excess of the filing fee charged by the  
84 Secretary of State in connection with the receipt and filing of a  
85 corporation's articles of incorporation. Filing with the  
86 Secretary of State of a copy of the application for reconstitution  
87 and certificate of incorporation shall serve to terminate and  
88 dissolve the previous corporate existence of the nonprofit,  
89 nonshare corporation.

90           (4) (a) The water district shall have a board of  
91 commissioners composed of the number of commissioners provided in  
92 the certificate of incorporation. The commissioners must possess  
93 those qualifications prescribed in Section 19-5-171. All powers  
94 of the water district shall be exercised by the board or pursuant  
95 to the board's authorization.

96           (b) The commissioners must be elected and shall serve  
97 in accordance with those procedures that are specified in Section  
98 19-5-171 and in the water district's bylaws. The water district's



99 bylaws must contain provisions and procedures for the election and  
100 appointment of its commissioners that are identical in nature to  
101 those same provisions and procedures as contained in the  
102 nonprofit, nonshare corporation's bylaws for the election and  
103 appointment of directors unless approval to modify and amend those  
104 procedures is expressly granted in writing by the board or boards  
105 of supervisors.

106 (c) A majority of the members of the board shall  
107 constitute a quorum for the transaction of business. No vacancy  
108 in the membership of the board shall impair the right of a quorum  
109 to exercise all the powers and duties of the water district. A  
110 commissioner shall continue in office until the commissioner's  
111 successor is properly elected and accepts office.

112 (d) The members of the board and the officers of the  
113 water district shall be compensated and reimbursed for actual  
114 expenses incurred in the performance of their duties in accordance  
115 with Section 19-5-171(4).

116 (e) All proceedings of the board shall be reduced to  
117 writing by the secretary of the water district and appropriately  
118 recorded and maintained in a well-bound book. All records of the  
119 water district shall be subject to the Mississippi Public Records  
120 Act of 1983.

121 (5) Any water district created under this section may  
122 exercise the powers specified in Sections 19-5-175 and 19-5-177,  
123 in addition to all other powers granted districts under Sections  
124 19-5-151 through 19-5-207.

125 **SECTION 2.** Section 19-5-151, Mississippi Code of 1972, is  
126 amended as follows:

127 19-5-151. (1) Any contiguous area situated within any  
128 county of the state, and not being situated within the corporate  
129 boundaries of any existing municipality, and having no adequate  
130 water system, sewer system, garbage and waste collection and  
131 disposal system, or fire protection facilities serving such area,



132 may become incorporated as a water district, as a sewer district,  
133 as a garbage and waste collection and disposal district, as a fire  
134 protection district, as a combined water and sewer district, as a  
135 combined water and garbage and waste collection and disposal  
136 district, as a combined water and fire protection district, or as  
137 a combined water, sewer, garbage and waste collection and disposal  
138 and fire protection district, in the manner set forth in the  
139 following sections.

140 (2) Any contiguous area \* \* \* of the state, not situated  
141 within the corporate boundaries of an existing municipality and  
142 being served by a nonprofit, nonshare corporation chartered under  
143 the Mississippi Nonprofit Corporation Act for the purpose of  
144 owning and operating rural waterworks, may convert to a water  
145 district in the manner set forth in Section 19-5-166. \* \* \*

146 **SECTION 3.** Section 19-5-153, Mississippi Code of 1972, is  
147 amended as follows:

148 19-5-153. (1) A petition for the incorporation of a  
149 district may be submitted to the board of supervisors of a county,  
150 signed by not less than twenty-five (25) owners of real property  
151 residing within the boundaries of the proposed district. The  
152 petition shall include: (a) a statement of the necessity for the  
153 service or services to be supplied by the proposed district; (b)  
154 the proposed corporate name for the district; (c) the proposed  
155 boundaries of the district; (d) an estimate of the cost of the  
156 acquisition or construction of any facilities to be operated by  
157 the district, which estimate, however, shall not serve as a  
158 limitation upon the financing of improvements or extensions to the  
159 facilities; (e) a statement of whether or not the board of  
160 supervisors of the county shall exercise the authority to levy the  
161 tax outlined in Section 19-5-189; and (f) a statement of whether  
162 or not the board of supervisors of the county shall exercise the  
163 authority to make assessments as outlined in Section 19-5-191.  
164 The petition shall be signed in person by the petitioners, with



165 their respective residence addresses. The petition shall be  
166 accompanied by a sworn statement of the person or persons  
167 circulating the petition, who shall state under oath that the  
168 person or persons witnessed the signature of each petitioner, that  
169 each signature is the signature of the person it purports to be,  
170 and that, to the best of the person's or persons' knowledge, each  
171 petitioner was at the time of signing an owner of real property  
172 within and a resident of the proposed district. No individual  
173 tract of land containing one hundred sixty (160) acres or more  
174 shall be included in any such district unless the owner or owners  
175 of said tract is a signer under oath of the petition for the  
176 incorporation of such district.

177 (2) The board of supervisors of a county, in its discretion,  
178 may initiate the incorporation of a district under Sections  
179 19-5-151 through 19-5-207 by resolution of the board and  
180 presentation of a petition signed by at least twenty-five (25)  
181 property owners of the area to be incorporated if at least forty  
182 (40) property owners reside within the district. However, no  
183 individual tract of land containing one hundred sixty (160) acres  
184 or more shall be included in any such district unless the owner or  
185 owners of the tract gives written consent for the inclusion of the  
186 lands in such district.

187 \* \* \*

188 (3) With respect to the incorporation and operation of a  
189 fire protection district pursuant to Sections 19-5-151 through  
190 19-5-207, the word "owners" shall include any lessees of real  
191 property of a water supply district the term of whose original  
192 lease is not less than sixty (60) years and shall also include  
193 sublessees if the original lease of which they are subletting is  
194 not less than sixty (60) years.

195 **SECTION 4.** Section 19-5-165, Mississippi Code of 1972, is  
196 amended as follows:



197           19-5-165. (1) Beginning on the date of the adoption of the  
198 resolution creating any district, the district shall be a public  
199 corporation in perpetuity under its corporate name and shall, in  
200 that name, be a body politic and corporate with power of perpetual  
201 succession.

202           (2) If the creation of a water district is initiated in  
203 accordance with Section 19-5-166, all assets and liabilities of  
204 the nonprofit, nonshare corporation of every nature, including,  
205 but not limited to, all real property, personal property,  
206 contractual obligations, rights afforded borrowers of federal and  
207 state funds and other tangible and intangible assets and  
208 liabilities, shall become the assets and liabilities of the newly  
209 organized water district without any further meetings, voting,  
210 notice to creditors or actions by members of the board beginning  
211 on the date that the conversion to the water district becomes  
212 effective.

213           **SECTION 5.** Section 19-5-167, Mississippi Code of 1972, is  
214 amended as follows:

215           19-5-167. (1) Except as otherwise provided in \* \* \* Section  
216 19-5-166(4), the powers of each district shall be vested in and  
217 exercised by a board of commissioners consisting of five (5)  
218 members to be appointed by the board of supervisors. Upon their  
219 initial appointment, one (1) of the commissioners shall be  
220 appointed for a term of one (1) year; one (1) for a term of two  
221 (2) years; one (1) for a term of three (3) years; one (1) for a  
222 term of four (4) years; and one (1) for a term of five (5) years;  
223 thereafter, each commissioner shall be appointed and shall hold  
224 office for a term of five (5) years. Any vacancy occurring on a  
225 board of commissioners shall be filled by the board of supervisors  
226 at any regular meeting of the board of supervisors, and the board  
227 of supervisors shall have the authority to fill all unexpired  
228 terms of any commissioner or commissioners. Notwithstanding the  
229 appointive authority herein granted to the board of supervisors,

230 its legal and actual responsibilities, authority and function,  
231 subsequent to the creation of any district, shall be specifically  
232 limited to the appointive function and responsibilities outlined  
233 in Sections 19-5-179, 19-5-189 and 19-5-191. The operation,  
234 management, abolition or dissolution of such district, and all  
235 other matters in connection therewith, shall be vested solely and  
236 only in the board of commissioners to the specific exclusion of  
237 the board of supervisors, and the abolition, dissolution or  
238 termination of any district shall be accomplished only by  
239 unanimous resolution of the board of commissioners. The board of  
240 commissioners of a fire protection district created under Sections  
241 19-5-151 et seq., by unanimous resolution, may dissolve such  
242 district and, under Sections 19-5-215 et seq., may create a fire  
243 protection grading district consisting of the same boundaries as  
244 the previously existing fire protection district. Petition and  
245 election requirements of Sections 19-5-217 through 19-5-227 shall  
246 not apply where the board of commissioners dissolves a fire  
247 protection district and creates a fire protection grading district  
248 under this section. Except as otherwise provided in Sections  
249 19-5-151 through 19-5-207, such board of commissioners shall have  
250 no power, jurisdiction or authority to abolish, dissolve or  
251 terminate any district while the district has any outstanding  
252 indebtedness of any kind or character, unless such dissolution or  
253 termination is accomplished under the provisions of Section  
254 19-5-207. If a fire protection district is dissolved in  
255 accordance with this subsection, the board of supervisors may  
256 continue to levy the same millage as was being levied within the  
257 boundaries of the fire protection district before its dissolution  
258 provided that a fire protection grading district is created, in  
259 accordance with Sections 19-5-215 et seq., with identical  
260 boundaries as the previously existing fire protection district.

261 (2) The board of supervisors of the incorporating county,  
262 may upon receipt of a unanimous resolution from two (2) or more





263 boards of commissioners of duly created fire protection districts,  
264 may consolidate such districts for administrative purposes. Upon  
265 receipt of unanimous resolutions requesting consolidation, the  
266 board of supervisors shall conduct a public hearing to determine  
267 the public's interest. Following such a hearing, the board may  
268 create a consolidated commission consisting of the participating  
269 districts for administrative purposes. Such districts then shall  
270 dissolve their respective boards of commissioners, transferring  
271 all records to the consolidated board of commissioners. A  
272 consolidated board of commissioners consisting of not less than  
273 five (5) members shall be appointed with equal representation from  
274 each participating district. Any commissioners appointed to a  
275 consolidated fire protection district commission must comply with  
276 eligibility requirements as authorized in Section 19-5-171. In  
277 the event that a consolidated fire protection district commission  
278 consists of an even number of members, the chairman elected as  
279 authorized by Section 19-5-169 shall vote only in the event of a  
280 tie. General powers and duties of commissioners and commissions  
281 and other related matters as defined in Sections 19-5-151 through  
282 19-5-207 shall apply to the entire area contained in the  
283 consolidating fire protection districts as described in the  
284 resolutions incorporating the fire protection districts as well as  
285 to subsequent annexations.

286 \* \* \*

287 **SECTION 6.** Section 19-5-189, Mississippi Code of 1972, is  
288 amended as follows:

289 19-5-189. (1) (a) Except as otherwise provided in  
290 subsection (2) of this section for levies for fire protection  
291 purposes \* \* \*, the board of supervisors of the county in which  
292 any such district exists may, according to the terms of the  
293 resolution, levy a special tax, not to exceed four (4) mills  
294 annually, on all of the taxable real property in such district,  
295 the avails of which shall be paid over to the board of



296 commissioners of the district to be used either for the operation,  
297 support and maintenance of the district or for the retirement of  
298 any bonds issued by the district, or for both.

299 (b) The proceeds derived from two (2) mills of the levy  
300 authorized herein shall be included in the ten percent (10%)  
301 increase limitation under Section 27-39-321, and the proceeds  
302 derived from any additional millage levied under this subsection  
303 in excess of two (2) mills shall be excluded from such limitation  
304 for the first year of such additional levy and shall be included  
305 within such limitation in any year thereafter.

306 (2) (a) In respect to fire protection purposes, the board  
307 of supervisors of the county in which any such district exists on  
308 July 1, 1987, may levy a special tax annually, not to exceed the  
309 tax levied for such purposes for the 1987 fiscal year on all of  
310 the taxable real property in such district, the avails of which  
311 shall be paid over to the board of commissioners of the district  
312 to be used either for the operation, support and maintenance of  
313 the fire protection district or for the retirement of any bonds  
314 issued by the district for fire protection purposes, or for both.  
315 Any such district for which no taxes have been levied for the 1987  
316 fiscal year may be treated as having been created after July 1,  
317 1987, for the purposes of this subsection.

318 (b) In respect to fire protection purposes, the board  
319 of supervisors of the county in which any such district is created  
320 after July 1, 1987, may, according to the terms of the resolution  
321 of intent to incorporate the district, levy a special tax not to  
322 exceed two (2) mills annually on all of the taxable real property  
323 in such district, the avails of which shall be paid over to the  
324 board of commissioners of the district to be used either for the  
325 operation, support and maintenance of the fire protection district  
326 or for the retirement of any bonds issued by the district for fire  
327 protection purposes, or for both; however, if the district is  
328 created pursuant to a mandatory election called by the board of



329 supervisors, in lieu of a petitioned election under Section  
330 19-5-157, the board of supervisors may levy a special tax annually  
331 not to exceed an amount to be determined by the board of  
332 supervisors and stated in the notice of such election. The  
333 mandatory election authorized herein shall be conducted in  
334 accordance with paragraph (c) of this subsection. The special tax  
335 may be increased if such increase is authorized by the electorate  
336 pursuant to an election conducted in accordance with paragraph (c)  
337 of this subsection.

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

353 (d) Notwithstanding any provisions of this subsection  
354 to the contrary, in any county bordering on the Gulf of Mexico and  
355 the State of Louisiana, the board of supervisors may levy not to  
356 exceed four (4) mills annually on all the taxable real property  
357 within any fire protection district, the avails of which shall be  
358 paid over to the board of commissioners of the district to be used  
359 either for the operation, support and maintenance of the fire  
360 protection district or for the retirement of any bonds issued by  
361 the district for fire protection purposes, or for both. Prior to



362 levying the tax under this paragraph, the board of supervisors  
363 shall adopt a resolution declaring its intention to levy the tax.  
364 The resolution shall describe the amount of the tax levy and the  
365 purposes for which the proceeds of the tax will be used. The  
366 board of supervisors shall have a copy of the resolution published  
367 once a week for three (3) consecutive weeks in at least one (1)  
368 newspaper published in the county and having a general circulation  
369 therein. If no newspaper is published in the county, then notice  
370 shall be given by publishing the resolution for the required time  
371 in some newspaper having a general circulation in the county. A  
372 copy of the resolution shall also be posted at three (3) public  
373 places in the county for a period of at least twenty-one (21) days  
374 during the time of its publication in a newspaper. If more than  
375 twenty percent (20%) of the qualified electors of the district  
376 shall file with the clerk of the board of supervisors, within  
377 twenty-one (21) days after adoption of the resolution of intent to  
378 levy the tax, a petition requesting an election on the question of  
379 the levy of such tax, then and in that event such tax levy shall  
380 not be made unless authorized by a majority of the votes cast at  
381 an election to be called and held for that purpose within the  
382 district. Notice of such election shall be given, the election  
383 shall be held and the result thereof determined, as far as is  
384 practicable, in the same manner as other elections are held in the  
385 county. If an election results in favor of the tax levy or if no  
386 election is required, the board of supervisors may levy such tax.  
387 The board of supervisors, in its discretion, may call an election  
388 on such question, in which event it shall not be necessary to  
389 publish the resolution declaring its intention to have the tax  
390 imposed.

391 (e) Notwithstanding any provisions of this subsection  
392 to the contrary, in any county bordering on the Mississippi River  
393 in which legal gaming is conducted and in which U.S. Highway 61  
394 intersects with Highway 4, the board of supervisors may levy a



395 special tax not to exceed five (5) mills annually on all the  
396 taxable real and personal property within any fire protection  
397 district, except for utilities as defined in Section 77-3-3(d) (i)  
398 and (iii), the avails of which shall be paid over to the board of  
399 commissioners of the district to be used either for the operation,  
400 support and maintenance of the fire protection district or for the  
401 retirement of any bonds issued by the district for fire protection  
402 purposes, or for both. Before levying the tax under this  
403 paragraph, the board of supervisors shall adopt a resolution  
404 declaring its intention to levy the tax. The resolution shall  
405 describe the amount of the tax levy and the purposes for which the  
406 proceeds of the tax will be used. The board of supervisors shall  
407 have a copy of the resolution published once a week for three (3)  
408 consecutive weeks in at least one (1) newspaper published in the  
409 county and having a general circulation therein. If no newspaper  
410 is published in the county, then notice shall be given by  
411 publishing the resolution for the required time in some newspaper  
412 having general circulation in the county. A copy of the  
413 resolution shall also be posted at three (3) public places in the  
414 county for a period of at least twenty-one (21) days during the  
415 time of its publication in a newspaper. If more than twenty  
416 percent (20%) of the qualified electors of the district shall file  
417 with the clerk of the board of supervisors, within twenty-one (21)  
418 days after adoption of the resolution of intent to levy the tax, a  
419 petition requesting an election of the questions of the levy of  
420 such tax, then and in that event such tax levy shall not be made  
421 unless authorized by a majority of the votes cast at an election  
422 to be called and held for that purpose within the district.  
423 Notice of such election shall be given, the election shall be held  
424 and the result thereof determined, as far as is practicable, in  
425 the same manner as other elections are held in the county. If an  
426 election results in favor of the tax levy or if no election is  
427 required, the board of supervisors may levy such tax. The board



428 of supervisors, in its discretion, may call an election on such  
429 question, in which event it shall not be necessary to publish the  
430 resolution declaring its intention to have the tax imposed.

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

434 \* \* \*

435 **SECTION 7.** 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 8.** This act shall take effect and be in force from  
443 and after July 1, 2002, if it is effectuated on or before that  
444 date under Section 5 of the Voting Rights Act of 1965, as amended  
445 and extended. If it is effectuated under Section 5 of the Voting  
446 Rights Act of 1965, as amended and extended, after July 1, 2002,  
447 this act shall take effect and be in force from and after the date  
448 it is effectuated under Section 5 of the Voting Rights Act of  
449 1965, as amended and extended.

