SENATE BILL NO. 3038

AN ACT TO AMEND SECTION 77-3-13, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT MUNICIPALLY-OWNED OR OPERATED UTILITIES ARE PROHIBITED FROM SERVING AREAS THAT ARE CERTIFICATED BY THE PUBLIC SERVICE COMMISSION TO ANOTHER UTILITY; AND FOR RELATED PURPOSES.

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

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

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

(2) The commission shall issue a certificate of convenience and necessity to any person engaged in the construction or operation of a sewage disposal service as mentioned in subsection (2) of Section 77-3-11 on August 9, 1968, for the construction or operation then being conducted, without requiring proof that public convenience and necessity will be served by such
construction or operation, and without further proceedings, if
application for such certificate shall have been made to the
commission within six (6) months after said date. Pending the
filing of such application and the issuance of a certificate, the
continuance of such construction or operation shall be lawful.

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

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

Provided, however, nothing in this section shall be construed as
requiring such certificate for a municipally owned plant, project
or development, route, line or system or extension thereof in areas within one (1) mile of corporate boundaries not certificated to another utility. Provided further, however, nothing in this chapter or other provisions of law shall be construed as allowing a municipally-owned or operated plant, project or development, route, line or system or extension thereof in areas certificated to another utility. Provided, further, no certificate shall be required for extensions or additions within the corporate limits of a municipality being served by the holder of a certificate of convenience and necessity.

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

(5) The commission may issue a temporary certificate in cases of emergency to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of Sections 77-3-11
through 77-3-21: (a) temporary acts or operations for which the issuance of a certificate will not be required in the public interest; and (b) extensions or additions of service facilities outside of municipalities under such general rules as will promote the prompt availability of such service to prospective users, and at the same time prevent unnecessary and uneconomic duplication of such facilities as between two (2) or more persons.

(6) Prior to the acquisition pursuant to Section 77-3-17, Mississippi Code of 1972, or other provisions of law, by any public agency, authority, district, state or other agency, institution or political subdivision thereof, of any certificate of public convenience and necessity or portion thereof, service areas or portion thereof, or operating rights or portion thereof, issued or granted by the commission pursuant to the provisions of this Section 77-3-13 and/or the facilities or other properties and equipment of the utility providing service therein; of any regulated utility as defined in Section 77-3-3(d)(i), (ii) and (iii), Mississippi Code of 1972, the commission shall first determine if such service area, certificate of public convenience and necessity, or operating right, or portions thereof, should be canceled as provided in Section 77-3-21, Mississippi Code of 1972.

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

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