HOUSE BILL NO. 603

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2003

By: Representatives Smith (39th), Chism

To: Conservation and Water Resources

AN ACT TO AMEND SECTIONS 17-17-5, 17-17-317, 19-3-101, 19-5-17 AND 21-19-1, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A COUNTY, MUNICIPALITY, REGIONAL SOLID WASTE MANAGEMENT AUTHORITY OR COUNTY COOPERATIVE SERVICE DISTRICT THAT PROVIDES ITS OWN GARBAGE, RUBBISH OR SOLID WASTE COLLECTION OR DISPOSAL SERVICES AND DOES NOT CONTRACT WITH A PRIVATE COMPANY OR BUSINESS TO PERFORM THOSE SERVICES MAY MAKE THE SERVICE AVAILABLE ONLY FOR COLLECTION OR DISPOSAL OF RESIDENTIAL GENERATORS OF GARBAGE, RUBBISH AND SOLID WASTE AND MAY NOT PROVIDE THESE SERVICES FOR INDUSTRIAL OR COMMERCIAL GENERATORS OF GARBAGE, RUBBISH OR SOLID WASTE EXCEPT WHERE THERE IS NOT AVAILABLE A PRIVATE COMPANY OR BUSINESS TO PROVIDE SUCH SERVICES FOR INDUSTRIAL OR COMMERCIAL GENERATORS; TO PROVIDE THAT WHERE THERE IS NOT AVAILABLE A PRIVATE COMPANY OR BUSINESS TO PROVIDE GARBAGE, RUBBISH OR SOLID WASTE COLLECTION OR DISPOSAL SERVICES FOR INDUSTRIAL OR COMMERCIAL GENERATORS, THE COUNTY, MUNICIPALITY, AUTHORITY OR DISTRICT SHALL COLLECT AND DISPOSE OF RESIDENTIAL GARBAGE, RUBBISH AND SOLID WASTE SEPARATE AND APART FROM INDUSTRIAL OR COMMERCIAL GARBAGE, RUBBISH AND SOLID WASTE AND SHALL NOT MIX OR COMBINE RESIDENTIAL GARBAGE, RUBBISH AND SOLID WASTE WITH INDUSTRIAL OR COMMERCIAL GARBAGE, RUBBISH AND SOLID WASTE; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 17-17-5, Mississippi Code of 1972, is amended as follows:

17-17-5. (1) After December 31, 1992, the board of supervisors and/or municipal governing body shall provide for the collection and disposal of garbage and the disposal of rubbish. The board of supervisors and/or municipal governing body may provide such collection or disposal services by contract with private or other controlling agencies, and the service may include house-to-house service or the placement of regularly serviced and controlled bulk refuse receptacles within reasonable distance from the farthest affected household, and the wastes disposed of in a manner acceptable to the department and within the meaning of this chapter. The board of supervisors and/or municipal governing body shall have the power to and are hereby authorized to enter into

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contracts related in any manner to the collection and
transportation of solid wastes for a term of up to six (6) years
and to enter into contracts related in any manner to the
generation and sale of energy generated from solid waste, and
contracts for treatment, processing, distribution, recycling,
elimination or disposal of solid wastes for a term of up to thirty
(30) years. The municipal governing body of any municipality is
authorized to regulate the disposal of garbage and rubbish in
sanitary landfills, as provided in Section 21-19-1.

(2) If a county or municipality provides its own garbage,
rubbish or solid waste collection or disposal service and does not
contract with a private company or business to perform this
service, the county or municipality may make this service
available only for collection or disposal of residential
generators of garbage, rubbish and solid waste and may not provide
the service for industrial or commercial generators of garbage,
rubbish or solid waste except in a county or municipality where
there is not available a private company or business to provide
garbage, rubbish or solid waste collection or disposal services
for industrial or commercial generators. In a county or
municipality where there is not available a private company or
business to provide garbage, rubbish or solid waste collection or
disposal services for industrial or commercial generators, the
county or municipality shall collect and dispose of residential
garbage, rubbish and solid waste separate and apart from
industrial or commercial garbage, rubbish and solid waste and
shall not mix or combine residential garbage, rubbish and solid
waste with industrial or commercial garbage, rubbish and solid
waste.

(3) In the event an unincorporated area which is annexed by
a municipality is being provided collection and disposal of
garbage and rubbish under contract with private or other
controlling agencies, the municipality shall annex the area
subject to the contract for the remainder of the term of the contract, but not to exceed five (5) years.

SECTION 2. Section 17-17-317, Mississippi Code of 1972, is amended as follows:

17-17-317. (1) From and after the creation of an authority it shall be a public corporation participating under its corporate name and shall, in that name, be a body politic and corporate with all the rights and powers necessary or convenient to carry out the purposes of Sections 17-17-301 through 17-17-349, including, but not limited to the following:

(a) To sue and be sued in its own name;

(b) To adopt an official seal and alter the same at pleasure;

(c) To maintain an office or offices at such place or places within the management area as it may determine;

(d) To acquire, construct, improve, or modify, to operate or cause to be operated and maintained, either as owner of all or of any part in common with others, a project or projects within the counties or municipalities in the district and, to pay all or part of the cost of any such project or projects from the proceeds of bonds of the authority or from any contribution or loans by persons, firms, public agencies or corporations or from any other contribution or user fees, all of which the authority is authorized to receive, accept, and use and to pay all cost of operation and maintenance as may be determined as necessary for preparation of any project;

(e) To acquire, in its own name, by purchase on such terms and conditions and in such manner as it may deem proper, by condemnation in accordance with all laws applicable to the condemnation of property for public use, or by gift, grant, lease, or otherwise, real property or easements therein, franchises and personal property necessary or convenient for its corporate purposes. These purposes shall include, but are not limited to,
the constructing or acquiring of a project; the improving,
extending, reconstructing, renovating, or remodeling of any
existing project or part thereof; or the demolition to make room
for such project or any part thereof and to insure the same
against any and all risks as such insurance may, from time to
time, be available. The authority may also use such property and
rent or lease the same to or from others including public agencies
or make contracts for the use thereof or sell, lease, exchange,
transfer, assign, pledge, mortgage or grant a security interest
for any such property, provided that the powers to acquire, use,
and dispose of property as set forth in this paragraph shall
include the power to acquire, use, and dispose of any interest in
such property, whether divided or undivided. Title to any such
property of the authority, however, shall be held by the authority
exclusively for the benefit of the public;

(f) To make, enforce, amend and repeal bylaws and rules
and regulations for the management of its business and affairs and
for the use, maintenance and operation of any of its project
facilities and any other of its properties;

(g) To fix, charge, collect, maintain, and revise
rates, fees and other charges for any services rendered by it to
any person or public agency;

(h) To make contracts and leases with any person or
public agency and to execute all instruments necessary or
convenient for construction, operation, and maintenance of
projects and leases of projects; and including the closure,
post-closure maintenance and any required corrective action
involving a project provided that all private persons, firms, and
corporations, this state, and all units of local government,
departments, instrumentalities, or agencies of the state or of
local government are authorized to enter into contracts, leases or
agreements with the authority, upon such terms and for such
purposes as they deem advisable; and, without limiting the

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generality of the above, authority is specifically granted to
municipalities and counties and to the authority to enter into
contracts, lease agreements, or other undertaking relative to the
furnishing of project activities and facilities or either of them
by the authority to such municipalities and counties and by such
municipalities and counties to the authority for a term not
exceeding thirty (30) years;

(i) To borrow money and to issue bonds for any of its
purposes, except bonds may not be issued for operating costs, to
provide for and secure the payment thereof, and to provide for the
rights of the holders thereof;

(j) To invest any monies of the authority, including
proceeds from the sale of any bonds subject to any agreements with
bondholders, on such terms and in such manner as the authority
deems proper;

(k) To exercise any one or more of the powers, rights,
and privileges conferred by Sections 17-17-301 through 17-17-349
either alone or jointly or in common with one or more other public
or private parties. In any such exercise of such powers, rights,
and privileges jointly or in common with others for the
construction, operation, and maintenance of facilities, the
authority may own an undivided interest in such facilities with
any other party with which it may jointly or in common exercise
the rights and privileges conferred by Sections 17-17-301 through
17-17-349 and may enter into an agreement or agreements with
respect to any such facility with the other party or parties
participating therein. An agreement may contain such terms,
conditions, and provisions, consistent with this section, as the
parties thereto shall deem to be in their best interest,
including, but not limited to, provisions for the construction,
operation, and maintenance of such facility by any one or more
party of the parties to such agreement. The party or parties
shall be designated in or pursuant to such agreement as agent or
agents on behalf of itself and one or more of the other parties thereto, or by such other means as may be determined by the parties thereto, and including provisions for a method or methods of determining and allocating, among or between the parties, costs of construction, operation, maintenance, renewals, replacements, improvements, and disposal related to such facility. In carrying out its functions and activities as such agent with respect to construction, operation, and maintenance of such a facility, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participating parties. The agent shall act for the benefit of the public. The authority shall not delegate its right of eminent domain or power of condemnation. Pursuant to any such agreement, the authority may delegate its powers and duties related to the construction, operation, and maintenance of such facility to the party acting as agent and all actions taken by such agent in accordance with the agreement may be binding upon the authority without further action or approval of the authority;

(l) To apply, contract for, accept, receive and administer gifts, grants, appropriations, and donations of money, materials, and property of any kind, including loans and grants from the United States, the state, a unit of local government, or any agency, department, authority, or instrumentality of any of the foregoing, upon such terms and conditions as the United States, the state, a unit of local government, or such agency, department, authority, or instrumentality shall impose; to administer trusts; and to sell, lease, transfer, convey, appropriate and pledge any and all of its property and assets;

(m) To do any and all things necessary or proper for the accomplishment of the objectives of this section and to exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the
Constitution and laws of the state, including the power to employ professional and administrative staff and personnel and to retain legal, engineering, fiscal, accounting and other professional services; the power to purchase all kinds of insurance, including without limitations, insurance against tort liability and against risks of damage to property; and the power to act as self-insurer with respect to any loss or liability. The obligations of the authority other than revenue bonds shall be payable from the general funds of the authority and shall not be a charge against any special fund allocated to the payment of revenue bonds;

(n) To borrow money and issue its bonds from time to time and to use the proceeds to pay all or part of the capital costs of any project, or for closure, corrective action or post-closure maintenance of such project or for refunding any such bonds of the authority; and otherwise to carry out the purposes of this section and to pay all other capital costs but not operating costs of the authority incident to, or necessary and appropriate to, such purposes, including the providing of funds to be paid into any fund to secure such bonds and notes and to provide for the rights of the holder thereof;

(o) To assume or continue any contractual or other business relationships entered into by the municipalities or counties who are members of the authority, including the rights to receive and acquire transferred rights under option to purchase agreements and permit application;

(p) To enter on any lands, waters, or premises for the purpose of making surveys, borings, soundings and examinations for the purposes of the authority;

(q) To do and perform any acts and things authorized by Sections 17-17-301 through 17-17-349 under, through or by means of its officers, agents and employees, or by contracts with any person;
(r) To enter into any and all contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient or desirable for the purposes of the authority, or to carry out any power expressly granted in Sections 17-17-301 through 17-17-349 including, without limiting the generality of the foregoing, contracts with public agencies, and such public agencies are hereby also empowered to enter into such contracts with the authority, which may include provisions for exclusive dealing, fee payment requirements, territorial division, and other conduct or arrangements which may have an anticompetitive effect;

(s) To enter into contracts with any municipality or county which is a member of the authority for the closure or post-closure maintenance of a municipal solid waste management facility owned and operated by such county or municipality; and

(t) To exercise the power of eminent domain for the particular purpose of the acquisition of property designated by plan to sufficiently accommodate the location of facilities, and such requirements related directly thereto pursuant to Chapter 27, Title 11, Mississippi Code of 1972.

(2) A regional solid waste management authority may establish, operate and make available a garbage, rubbish or solid waste collection or disposal service for counties and municipalities that are members of the authority only for collection or disposal of residential generators of garbage, rubbish and solid waste and may not provide this service for industrial or commercial generators of garbage, rubbish or solid waste except in a county or municipality that is a member of the authority where there is not available a private company or business to provide garbage, rubbish or solid waste collection or disposal services for industrial or commercial generators. In a county or municipality that is a member of a regional solid waste management authority where there is not available a private
company or business to provide garbage, rubbish or solid waste collection or disposal services for industrial or commercial generators, the authority shall collect and dispose of residential garbage, rubbish and solid waste separate and apart from industrial or commercial garbage, rubbish and solid waste and shall not mix or combine residential garbage, rubbish and solid waste with industrial or commercial garbage, rubbish and solid waste.

SECTION 3. Section 19-3-101, Mississippi Code of 1972, is amended as follows:

19-3-101. (1) The board of supervisors of any county in this state may, by order duly entered on its minutes, join with any other county or counties in this state to establish a county cooperative service district for the purpose of instituting planning and mutual cooperation among counties to improve the delivery of services to, and the provision of benefits for, all citizens of participating counties by the joint financing, construction and administration of governmental services and facilities.

(2) Any power, authority or responsibility which may be lawfully exercised by a county, except for the imposition of taxes and except as otherwise provided in subsection (3) of this section, may be exercised jointly by participating counties through the board of commissioners of a county cooperative service district, hereinafter in Sections 19-3-101 through 19-3-115, referred to as the "district," unless in a resolution of a board of supervisors creating the district the exercise of a particular power is specifically excluded. The district shall have authority to prepare or have prepared a water resources study or other environmental studies; however, any action by the district which will have an impact upon groundwater resources shall only be implemented consistent with an official statewide water management plan.
plan or with the approval of the Commission on Environmental Quality.

(3) If a county cooperative service district establishes a garbage, rubbish or solid waste collection or disposal service, the district may make the service available only for collection or disposal of residential generators of garbage, rubbish and solid waste and may not provide the service for industrial or commercial generators of garbage, rubbish or solid waste except in a county within the service district where there is not available a private company or business to provide garbage, rubbish or solid waste collection or disposal services for industrial or commercial generators. In a county within a cooperative service district where there is not available a private company or business to provide garbage, rubbish or solid waste collection or disposal services for industrial or commercial generators, the district shall collect and dispose of residential garbage, rubbish and solid waste separate and apart from industrial or commercial garbage, rubbish and solid waste and shall not mix or combine residential garbage, rubbish and solid waste with industrial or commercial garbage, rubbish and solid waste.

SECTION 4. Section 19-5-17, Mississippi Code of 1972, is amended as follows:

19-5-17. After December 31, 1992, the board of supervisors of any county in the state shall provide for the collection and disposal of garbage and the disposal of rubbish, and for that purpose is required to establish, operate and maintain a garbage and/or rubbish disposal system or systems; to acquire property, real or personal, by contract, gift or purchase, necessary or proper for the maintenance and operation of such system; to make all necessary rules and regulations for the collection and disposal of garbage and/or rubbish and, if it so desires, to establish, maintain and collect rates, fees and charges for collecting and disposing of such garbage and/or rubbish; and, in
its discretion, to enter into contracts, in the manner required by
law, with individuals, associations or corporations for the
establishment, operation and maintenance of a garbage and rubbish
disposal system or systems, and/or to enter into contracts on such
terms as the board of supervisors thinks proper with any
municipality, other county or region, enabling the county to use
jointly with such municipality, other county or region any
collection system, authorized rubbish landfill or permitted
sanitary landfill operated by the municipality, other county or
region. The board of supervisors shall designate by order the
area to be served by the system. All persons in the county
generating garbage shall utilize a garbage collection and disposal
system. However, this provision shall not prohibit any person
from managing solid waste generated by such person in any
municipal solid waste management facility owned by the generator.

If a county provides its own garbage, rubbish or solid waste
collection or disposal service and does not contract with a
private company or business to perform this service, the county
may make the service available only for collection or disposal of
residential generators of garbage, rubbish and solid waste and may
not provide the service for industrial or commercial generators of
garbage, rubbish or solid waste unless there is not available in
the county a private company or business to provide garbage,
rubbish or solid waste collection or disposal services for
industrial or commercial generators. In a county where there is
not available a private company or business to provide garbage,
rubbish or solid waste collection or disposal services for
industrial or commercial generators, the county shall collect and
dispose of residential garbage, rubbish and solid waste separate
and apart from industrial or commercial garbage, rubbish and solid
waste and shall not mix or combine residential garbage, rubbish
and solid waste with industrial or commercial garbage, rubbish and
solid waste.
As a necessary incident to such county's power and authority to establish, maintain and collect such rates, fees and charges for collecting and disposing of such garbage and/or rubbish, and as a necessary incident to such county's power and authority to establish, operate and maintain a garbage and/or rubbish disposal system or systems, the board of supervisors of such county shall have the authority to initiate a civil action to recover any delinquent fees and charges for collecting and disposing of such garbage and/or rubbish, and all administrative and legal costs associated with collecting such fees and charges, in the event any person, firm or corporation, including any municipal corporation, shall fail or refuse to pay such fees and charges for collecting and disposing of garbage and/or rubbish; provided that such board of supervisors may initiate such a civil action to recover such delinquent fees and charges whether or not such county has previously entered into a contract with such individual, firm or corporation, including a municipal corporation, relating to the establishment, operation and maintenance of such garbage and/or rubbish disposal system or systems; provided, further, that in a civil action to recover such delinquent fees and charges for collecting and disposing of such garbage and/or rubbish, and all administrative and legal costs associated with collecting such fees and charges, the county shall in all respects be a proper party to such suit as plaintiff and shall have the power to sue for and recover such unpaid fees and charges and all administrative and legal costs associated with collecting such fees and charges, from any person, firm or corporation, including a municipal corporation, as may fail, refuse or default in the payment of such fees and charges.

SECTION 5. Section 21-19-1, Mississippi Code of 1972, is amended as follows:

21-19-1. (1) The municipal governing authorities of any municipality shall have the power to make regulations to secure
the general health of the municipality; to prevent, remove, and
abate nuisances; to regulate or prohibit the construction of privy
vaults and cesspools, and to regulate or suppress those already
constructed; to compel and regulate the connection of all property
with sewers and drains; to suppress hog pens, slaughterhouses and
stockyards, or to regulate the same and prescribe and enforce
regulations for cleaning and keeping the same in order; to
regulate and prescribe and enforce regulations for the cleaning
and keeping in order of warehouses, stables, alleys, yards,
private ways, outhouses, and other places where offensive matter
is kept or permitted to accumulate; and to compel and regulate the
removal of garbage and filth beyond the corporate limits. The
municipal governing authorities are further authorized to adopt
and enforce regulations governing the disposal of garbage and
rubbish in sanitary landfills owned or leased by the municipality,
whether located within or outside of the corporate limits of the
municipality, to the extent that such regulations are not in
conflict with or prohibited by regulations of the Commission on
Environmental Quality adopted under Section 17-17-27.

(2) After December 31, 1992, the governing body of any
municipality in the state shall provide for the collection and
disposal of garbage and the disposal of rubbish, and for that
purpose the governing body shall have the power to:

(a) Establish, operate and maintain a garbage and/or
rubbish collection and disposal system or systems;
(b) Acquire property, real or personal, by contract,
gift or purchase, necessary or proper for the maintenance and
operation of such system;
(c) Make all necessary rules and regulations for the
collection and disposal of garbage and/or rubbish not in conflict
with or prohibited by rules and regulations of the Commission on
Environmental Quality adopted under Section 17-17-27 and, if it so
desires, establish, maintain and collect rates, fees and charges
for collecting and disposing of such garbage and/or rubbish; and

(d) In its discretion, enter into contracts, in the
manner required by law, with individuals, associations or
corporations for the establishment, operation and maintenance of a
garbage or rubbish disposal system or systems, and/or enter into
contracts on such terms as the municipal governing body thinks
proper with any other municipality, county or region enabling the
municipality to use jointly with such other municipality, county
or region any authorized rubbish landfill or permitted sanitary
landfill operated by the other municipality, other county or
region.

As a necessary incident to such municipal governing
authority's power and authority to establish, maintain and collect
such rates, fees and charges for collecting and disposing of such
garbage and/or rubbish, and as a necessary incident to such
municipal governing authority's power and authority to establish,
operate and maintain a garbage and/or rubbish disposal system or
systems, the municipal governing authority of such municipality
shall have the authority to initiate a civil action to recover any
delinquent fees and charges for collecting and disposing of such
rubbish, and all administrative and legal costs associated with
collecting such fees and charges, in the event any person, firm or
corporation, including any municipal corporation, shall fail or
refuse to pay such fees and charges for collecting and disposing
of garbage and/or rubbish; provided that such municipal governing
authority may initiate such a civil action to recover such
delinquent fees and charges whether or not such municipality has
previously entered into a contract with such individual, firm or
corporation, relating to the establishment, operation and
maintenance of such garbage and/or rubbish disposal system or
systems; provided further, that in a civil action to recover such
delinquent fees and charges for collecting and disposing of such
garbage and/or rubbish, and all administrative and legal costs associated with collecting such fees and charges, the municipality shall in all respects be a proper party to such suit as plaintiff and shall have the power to sue for and recover such unpaid fees and charges, and all administrative and legal costs associated with collecting such fees and charges from any person, firm or corporation, as may fail, refuse or default in the payment of such fees and charges.

If a municipality provides its own garbage, rubbish or solid waste collection or disposal service and does not contract with a private company or business to perform this service, the municipality may make the service available only for collection or disposal of residential generators of garbage, rubbish and solid waste and may not provide the service for industrial or commercial generators of garbage, rubbish or solid waste unless there is not available in the municipality a private company or business to provide garbage, rubbish or solid waste collection or disposal services for industrial or commercial generators. In a municipality where there is not available a private company or business to provide garbage, rubbish or solid waste collection or disposal service for industrial or commercial generators, the municipality shall collect and dispose of residential garbage, rubbish and solid waste separate and apart from industrial or commercial garbage, rubbish and solid waste and shall not mix or combine residential garbage, rubbish and solid waste with industrial or commercial garbage, rubbish and solid waste.

SECTION 6. This act shall take effect and be in force from and after July 1, 2003.