

By: Senator(s) Robertson

To: Public Health and  
Welfare; Finance

SENATE BILL NO. 2270

1 AN ACT TO AUTHORIZE THE CREATION OF PUBLIC WATER AUTHORITIES;  
2 TO PROVIDE FOR THE MANAGEMENT THEREOF; TO IDENTIFY THE POWERS  
3 THEREOF; TO SET FORTH THOSE PROCEDURES BY WHICH PUBLIC WATER  
4 AUTHORITIES MAY ISSUE BONDS; AND FOR RELATED PURPOSES.

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

6 **SECTION 1. Legislative intent.** It is the intent of the  
7 Legislature to provide a means, in addition to the incorporation  
8 of districts authorized in Sections 19-5-151 through 19-5-207, by  
9 which not-for-profit corporations involved in the sale,  
10 transmission and distribution of potable water to members of the  
11 public and others may convert their entity status from that of a  
12 body corporate to that of a body politic, thereby allowing such  
13 entities the opportunity to access the tax-exempt capital markets  
14 and thereby assuring the State of Mississippi and the customers of  
15 such entities of the lowest water rates possible.

16 **SECTION 2. Definitions.** As used in this act, unless the  
17 context otherwise requires:

18 (a) "Board" means the board of directors of the water  
19 authority;

20 (b) "Bond" means any bond, promissory note, lease  
21 purchase agreement or other evidence of indebtedness of any nature  
22 along with all debt securing instruments of every nature related  
23 thereto;

24 (c) "Commission" means the Mississippi Soil and Water  
25 Conservation Commission or its successors;

26 (d) "Indenture" means a mortgage, an indenture of  
27 mortgage, deed of trust, trust agreement, loan agreement, security



28 agreement, or trust indenture executed by the water authority as  
29 security for any bonds;

30 (e) "Project" means any raw or potable water intake,  
31 treatment, distribution, transmission, storage, pumping, well  
32 site, well field or other facility, or any combination of the  
33 foregoing, which has as its purpose the providing of raw or  
34 potable water to members of the public and commercial, industrial  
35 or other users along with any and all other appurtenances,  
36 equipment, betterments or improvements related thereto. The above  
37 projects may include any lands, or interest therein, deemed by the  
38 board to be desirable in connection therewith, and necessary  
39 equipment for the proper functioning and operation of the  
40 buildings or facilities involved;

41 (f) "Qualified corporation" means any not-for-profit  
42 corporation which provides, distributes, transmits, treats, pumps  
43 or stores raw or potable water to or for the benefit of members of  
44 the general public and commercial industrial and other users;

45 (g) "United States" means the United States of America  
46 or any of its agencies or instrumentalities;

47 (h) "State" means the State of Mississippi; and

48 (i) "Water authority" means that body politic and  
49 governmental entity organized pursuant to the provisions of this  
50 act.

51 **SECTION 3. Construction.** This act shall be liberally  
52 construed in conformity with its intent. All acts and activities  
53 of the water authority performed pursuant to the authority of this  
54 act are legislatively determined and declared to be essential  
55 governmental functions.

56 **SECTION 4. Authority generally.** There is conferred upon a  
57 water authority, the authority to take such action and to do, or  
58 cause to be done, such things as shall be necessary or desirable  
59 to accomplish and implement the purposes and intent of this act  
60 according to the import of this act.



61           **SECTION 5. Authority and procedure to incorporate.** Whenever  
62 a qualified corporation desires to convert into and become  
63 reconstituted and reincorporated as a water authority under and  
64 pursuant to this act, the qualified corporation shall present to  
65 and file with the commission:

66           (a) Its resolution duly adopted by the board of  
67 directors of the qualified corporation which evidences the desire  
68 of the qualified corporation to convert into and become  
69 reconstituted and reincorporated as a water authority and which  
70 shall additionally certify that the qualified corporation:

71                   (i) Was initially formed as a not-for-profit  
72 corporation;

73                   (ii) Does not have the ability to directly access  
74 the tax-exempt capital markets other than through a conduit  
75 issuer; and

76                   (iii) Desires to realize interest rate savings as  
77 a result of its conversion and reconstitution as a water authority  
78 pursuant to this act;

79           (b) Its application for reconstitution and certificate  
80 of incorporation which shall state and include the following  
81 information:

82                   (i) The name of the water authority, which shall  
83 be "The \_\_\_\_\_ Public Water Authority of the State of  
84 Mississippi," or some other name of similar import, it being  
85 understood that the water authority may adopt a fictitious  
86 operational name upon written request to and approval by the  
87 commission;

88                   (ii) The location of the water authority's  
89 principal office, and the number of directors of the water  
90 authority, which shall be subject to change and modification as  
91 provided in the water authority's bylaws;

92                   (iii) The names and addresses of the initial board  
93 of directors of the qualified corporation;



94 (iv) The name and address of the agent for service  
95 of process of the qualified corporation;

96 (v) Any other matters that the initial board of  
97 directors of the qualified corporation may deem necessary and  
98 appropriate; and

99 (vi) Any other matters that the commission may  
100 designate and require;

101 (c) A copy of the qualified corporation's bylaws along  
102 with any other information which the initial board of directors of  
103 the qualified corporation may deem necessary and appropriate;

104 (d) A statement and certification from the Secretary of  
105 State that the proposed name of the water authority is not  
106 identical with that of any other water authority in the state, or  
107 so nearly similar thereto as to lead to confusion and uncertainty;

108 (e) That filing and review fee that the commission may  
109 designate and determine from time to time; and

110 (f) Any other information and documents which the  
111 commission may designate and require.

112 **SECTION 6. Execution and recording.** The application for  
113 reconstitution and certificate of incorporation shall be signed  
114 and acknowledged by a majority of the board of directors of the  
115 qualified corporation. When the application for reconstitution  
116 and certificate of incorporation and other required documents have  
117 been so filed with and accepted by the commission as evidenced by  
118 the issuance by the commission of its certificate of existence in  
119 that form that the commission may deem appropriate, the water  
120 authority referred to therein shall come into existence and shall  
121 constitute a body corporate and politic, and a political  
122 subdivision of the state under the name set forth in the  
123 certificate of incorporation, whereupon the water authority shall  
124 be vested with the rights and powers granted in this act, and  
125 contemporaneously therewith, the qualified corporation shall cease  
126 to exist and all assets and liabilities of every nature, including



127 without limitation, all real property, personal property,  
128 contractual obligations, lending obligations outstanding, rights  
129 afforded borrowers of federal and state funds and other tangible  
130 and intangible assets and liabilities of every nature shall,  
131 without need for further action or approval by any third party, be  
132 vested in and shall accrue to the benefit of the water authority.  
133 All meetings and records of the water authority shall be subject  
134 to the Mississippi Open Meetings Act and the Mississippi Public  
135 Records Act. A copy of the water authority's application for  
136 reconstitution and certificate of incorporation shall additionally  
137 be filed in the Office of the Secretary of State after its  
138 receipt, acceptance and approval by the commission. The Secretary  
139 of State may require the payment of that reasonable filing and  
140 receipt fee not in excess of the filing fee charged by the  
141 Secretary of State in connection with the receipt and filing of a  
142 corporation's articles of incorporation. Filing with the  
143 Secretary of State of a copy of the application for reconstitution  
144 and certificate of incorporation as accepted and approved by the  
145 commission shall serve to terminate and dissolve the previous  
146 corporate existence of the qualified corporation.

147       **SECTION 7. Board of directors.** (1) The water authority  
148 shall have a board of directors composed of the number of  
149 directors provided in the certificate of incorporation. All  
150 powers of the water authority shall be exercised by the board or  
151 pursuant to its authorization.

152       (2) The directors shall be elected and determined, and shall  
153 serve in accordance with those procedures that the water authority  
154 may specify in its bylaws. The water authority's bylaws shall  
155 contain provisions and procedures for the election and appointment  
156 of its directors that are identical in nature to those same  
157 provisions and procedures as contained in the qualified  
158 corporation's bylaws unless approval to modify and amend such  
159 procedures is expressly granted in writing by the commission.



160 (3) A majority of the members of the board shall constitute  
161 a quorum for the transaction of business. No vacancy in the  
162 membership of the board shall impair the right of a quorum to  
163 exercise all the powers and duties of the water authority. A  
164 director shall continue in office until the director's successor  
165 is properly elected and accepts office.

166 (4) The members of the board and the officers of the water  
167 authority shall serve without compensation except that they may be  
168 reimbursed for actual expenses incurred in and about the  
169 performance of their duties.

170 (5) All proceedings of the board shall be reduced to writing  
171 by the secretary of the water authority and appropriately recorded  
172 and maintained in a well-bound book.

173 **SECTION 8. Officers.** The officers of the water authority  
174 shall consist of a chairman, vice chairman, a secretary, a  
175 treasurer, and such other officers as the board shall deem  
176 necessary to accomplish the purposes for which the water authority  
177 was organized. All officers of the water authority shall be  
178 persons who receive water service from the water authority. The  
179 offices of secretary and treasurer may, but need not, be held by  
180 the same person. All officers of the water authority shall be  
181 elected by the board and shall serve for those terms of office as  
182 specified in the bylaws.

183 **SECTION 9. Powers generally.** The water authority shall have  
184 the following powers, together with all powers incidental thereto  
185 or necessary to the discharge thereof:

- 186 (a) To have succession in its designated name;
- 187 (b) To sue and be sued and to prosecute and defend  
188 suits in any court having jurisdiction of the subject matter and  
189 of the parties;
- 190 (c) To make use of a seal and to alter it at pleasure;
- 191 (d) To adopt and alter bylaws for the regulations and  
192 conduct of its affairs and business;



193           (e) To acquire, whether by purchase, gift, lease,  
194 devise, or otherwise, property of every description which the  
195 board may deem necessary to the acquisition, construction,  
196 equipment, improvement, enlargement, operation, administration, or  
197 maintenance of a project, and to hold title thereto;

198           (f) To construct, enlarge, equip, improve, maintain,  
199 administer and operate one or more projects;

200           (g) To borrow money for any of its purposes;

201           (h) To sell and issue its interest-bearing bonds;

202           (i) To sell and issue refunding bonds;

203           (j) To secure any of its bonds by pledge and indenture  
204 as provided in this act;

205           (k) To appoint, employ, and compensate such general  
206 managers, executive directors, agents, architects, engineers,  
207 attorneys, accountants and other persons and employees as the  
208 business of the water authority may require;

209           (l) To provide for such insurance as the board may deem  
210 advisable;

211           (m) To invest in obligations that are direct or  
212 guaranteed obligations of the United States of America, or other  
213 securities in which public funds may be invested under the laws of  
214 this state, any of its funds that the board may determine are not  
215 presently needed for its operational purposes;

216           (n) To contract, lease and make lease agreements  
217 respecting its properties or any part thereof;

218           (o) To exercise the power of eminent domain in  
219 accordance with the procedures prescribed by Title 11, Chapter 27,  
220 Mississippi Code of 1972; and

221           (p) To sell, convey or otherwise dispose of any of its  
222 properties that may have become obsolete or worn out, or that may  
223 no longer be needed or useful in connection with, or in the  
224 operation of any project.



225           **SECTION 10.**   **Tax exemption of projects.**   Each project, and  
226 all income therefrom, is determined and declared by the  
227 Legislature to be public property used exclusively for a public  
228 purpose and shall be exempt from ad valorem taxation by all taxing  
229 authorities.

230           **SECTION 11.**   **Issuance of bonds.**   (1)   The water authority is  
231 authorized at any time, and from time to time, to issue its  
232 interest-bearing bonds for the purpose of acquiring, constructing,  
233 improving, enlarging, completing and equipping one or more  
234 projects.

235           (2)   Prior to the water authority's proposed issuance of  
236 bonds, the water authority shall publish one (1) time in a  
237 newspaper of general circulation in the affected county or  
238 counties, notice of the proposed issuance of bonds, the  
239 approximate principal amount of bonds contemplated to be sold, a  
240 general description of the project contemplated to be constructed  
241 with bond proceeds and the date of a public meeting at which  
242 members of the public may obtain further information regarding the  
243 sale of the bonds and the development of the project.   Notice  
244 hereunder shall be published at least ten (10) days prior to the  
245 date of the hearing hereunder.   The water authority chairman or  
246 his or her designee shall be responsible for conducting the  
247 hearing and shall require all public comments which might pertain  
248 to the proposed issuance of bonds by the water authority.   Upon  
249 compliance with the provisions hereof, no other notice, hearing or  
250 approval by any other entity or governmental unit shall be  
251 required as a condition to the issuance by the water authority of  
252 its contemplated bonds.

253           (3)   The principal of, and the interest on, any bonds may be  
254 payable out of the revenues derived from the projects with respect  
255 to which the bonds are issued, or from any other source available  
256 to the water authority.





257 (4) None of the bonds of the water authority shall ever  
258 constitute an obligation or debt of the state, the city or county  
259 in which the water authority operates, the commission, or any  
260 officer or director of the water authority, or a charge against  
261 the credit or taxing powers of the state.

262 (5) As the water authority shall determine, bonds of the  
263 water authority may;

264 (a) Be issued at any time and from time to time;

265 (b) Be in such form and denominations;

266 (c) Have such date or dates;

267 (d) Mature at such time or times and in such amount or  
268 amounts, provided that no bonds may mature more than forty (40)  
269 years after the date of issuance;

270 (e) Bear interest payable at such times and such rate  
271 or rates as may be established by the board;

272 (f) Be payable at such place or places within or  
273 without the State of Mississippi;

274 (g) Be subject to such terms of redemption in advance  
275 of maturity at such prices, including such premiums; and

276 (h) Contain such other terms and provisions as may be  
277 appropriate or necessary.

278 (6) Bonds of the water authority may be sold at either  
279 public or private sale in such manner, and from time to time, as  
280 may be determined by the board to be most advantageous. The water  
281 authority may pay all expenses, premiums, and commissions that the  
282 board may deem necessary or advantageous in connection with the  
283 authorization, sale, and issuance of its bonds.

284 (7) All bonds shall contain a recital that they are issued  
285 pursuant to the provisions of this act, which recital shall be  
286 conclusive that they have been duly authorized pursuant to the  
287 provisions of this act.

288 (8) All bonds issued under the provisions of this act shall  
289 be and are declared to be negotiable instruments within the



290 meaning of the negotiable instruments law of the state and shall  
291 be in registered form.

292       **SECTION 12. Execution of bonds.** Bonds shall be executed by  
293 the manual or facsimile signature of the chairman of the water  
294 authority and by manual or facsimile signature of the secretary of  
295 the water authority. In case any of the officers whose signatures  
296 appear on the bonds shall cease to be such officer before the  
297 delivery of the bonds, their signatures shall nevertheless be  
298 valid and sufficient for all purposes. The bonds shall be sealed  
299 with the seal of the water authority.

300       **SECTION 13. Security for bonds.** (1) The principal of, and  
301 interest on the bonds, may be secured by a pledge of the revenues  
302 of the water authority of that project financed by the water  
303 authority through its issuance of bonds, or from any other source  
304 that the water authority may deem necessary and appropriate, and  
305 may be secured by the creation of a mortgage and security interest  
306 encumbering the real property of the water authority, or security  
307 interest in all personal property and revenues of the water  
308 authority as set forth in the indenture.

309       (2) The trustee under any indenture may be a trust company  
310 or bank having trust powers, whether located within or without the  
311 state.

312       (3) The indenture may contain any agreements and provisions  
313 customarily contained in instruments securing evidences of  
314 indebtedness including, without limiting, the generality of the  
315 foregoing provisions respecting the nature and extent of the  
316 security; the collection, segregation and application of the  
317 revenues generated from the operation of any project covered by  
318 the indenture; covenants to always operate the project as a  
319 revenue-producing undertaking and to charge and collect, including  
320 the obligation to increase from time to time, sufficient revenue  
321 to maintain income at required levels; the maintenance and  
322 insurance of the project; the creation and maintenance of reserve



323 and other special funds; and the rights and remedies available in  
324 the event of default to the holders of the bonds or the trustees  
325 under the indenture, all as the board shall deem advisable and as  
326 shall not be in conflict with the provisions of this act.

327 (4) If there is any default by the water authority in  
328 payment of the principal of, or the interest on the bonds or in  
329 any of the agreements on the part of the water authority that may  
330 properly be included in any indenture securing the bonds, the  
331 bondholders or the trustee under any indenture, as authorized in  
332 such indenture, may either in law or in equity, by suit, action,  
333 mandamus, or other proceeding, enforce payment of the principal or  
334 interest and compel performance of all duties of the board and  
335 officers of the water authority, and shall be entitled as a matter  
336 of right and regardless of the sufficiency of any such security to  
337 the appointment of a receiver in equity with all the powers of  
338 such receiver for the operation and maintenance of the project  
339 covered by such indenture and the collection, segregation, and  
340 applications of income and revenues therefrom.

341 (5) The indenture may contain provisions regarding the  
342 rights and remedies of any trustee thereunder and the holders of  
343 the bonds and the coupons and restricting the individual rights of  
344 action of the holders of the bonds and coupons.

345 **SECTION 14. Bonds - tax exemption.** The principal of and  
346 interest on bonds issued under the authority of this act shall be  
347 exempt from all state, county, and municipal taxes. This  
348 exemption shall include income, inheritance, and estate taxes.

349 **SECTION 15. Proceeds from issuance of bonds.** (1) The  
350 proceeds derived from all of the bonds, other than refunding  
351 bonds, may be used only to pay the costs of acquiring,  
352 constructing, improving, enlarging, and equipping the project with  
353 respect to which they were issued, as may be specified in the  
354 proceedings in which the bonds are authorized to be issued and all  
355 costs incidental thereto including without limitation:



356 (a) The costs of any land forming a part of the project  
357 and all easements which may pertain to or be associated with any  
358 project;

359 (b) The costs of the labor, materials, and supplies  
360 used in any construction, improvement, and enlargement, including  
361 architect's and engineer's fees and the cost of preparing contract  
362 documents and advertising for bids along with all other reasonable  
363 and necessary project cost;

364 (c) The purchase price of and the cost of installing  
365 equipment for the project;

366 (d) Legal, fiscal, accounting and recording fees and  
367 expenses incurred in connection with the authorization, sale, and  
368 issuance of the bonds issued in connection with the project;

369 (e) Interest on bonds for a reasonable period prior to,  
370 during, and after the time required for such construction  
371 equipment;

372 (f) The amount necessary to fund a debt service reserve  
373 in an amount deemed appropriate by the water authority;

374 (g) Cost associated with the obtaining of default  
375 insurance ratings and other credit enhancements of every nature;  
376 and

377 (h) Other operational expenses reserves and other  
378 accounts of every nature.

379 (2) If any of the proceeds derived from the issuance of  
380 bonds remains undisbursed after completion of the project and the  
381 making of all such expenditures, the balance shall be used for the  
382 redemption of bonds of the same issue.

383 **SECTION 16. Refunding bonds.** (1) The water authority may  
384 at any time, and from time to time, issue refunding bonds for the  
385 purpose of refunding the principal of and interest on any bonds of  
386 the water authority theretofore issued under this act and then  
387 outstanding, whether or not the principal and interest shall have  
388 matured at the time of the refunding under this act, and for the



389 payment of any expenses incurred in connection with the refunding  
390 and any premium necessary to be paid in order to redeem or retire  
391 the bonds to be refunded.

392 (2) The proceeds derived from the sale of any refunding  
393 bonds shall be used only for the purposes for which the refunding  
394 bonds were authorized to be issued.

395 (3) Any such refunding may be effected either by sale of the  
396 refunding bonds and the application of the proceeds thereof by  
397 immediate application or by escrow deposit, with the right to  
398 invest monies in the escrow deposit until needed for the  
399 redemption, or by exchange of the refunding bonds for the bonds or  
400 interest coupons to be refunded thereby. However, the holders of  
401 any bonds so to be refunded shall not be compelled without their  
402 consent to surrender their bonds for payment or exchange prior to  
403 the date on which they may be paid or redeemed by the water  
404 authority under their respective provisions.

405 (4) Any refunding bonds of the water authority shall be  
406 payable solely from the revenues out of which the bonds to be  
407 refunded were payable or from those other sources or other  
408 revenues which might be identified in the indenture.

409 (5) All provisions of this act pertaining to bonds of the  
410 water authority that are not inconsistent with the provisions of  
411 this section shall, to the extent applicable, also apply to  
412 refunding bonds issued by the water authority.

413 **SECTION 17. Dissolution.** A water authority shall be  
414 dissolved upon the expiration of its term of existence as set  
415 forth in the water authority's application for reconstitution and  
416 certificate of incorporation, if the term of existence is less  
417 than perpetual in nature. A water authority may additionally be  
418 dissolved upon application to, and the approval in writing by the  
419 commission.

420 **SECTION 18.** This act shall take effect and be in force from  
421 and after July 1, 2003.

