

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.

