SENATE BILL NO. 2270
(As Sent to Governor)

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

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

SECTION 1. Legislative intent. It is the intent of the Legislature to provide a means, in addition to the incorporation of districts authorized in Sections 19-5-151 through 19-5-207, by which not-for-profit corporations or associations involved in the sale, transmission and distribution of potable water to members of the public and others may convert their entity status from that of a body corporate to that of a body politic, thereby allowing those entities the opportunity to access the tax-exempt capital markets and thereby assuring the State of Mississippi and the customers of those entities of adequate supplies of water at the lowest water rates possible.

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

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

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

(c) "Indenture" means a mortgage, an indenture of mortgage, deed of trust, trust agreement, loan agreement, security agreement or trust indenture executed by the water authority as security for any bonds;
(d) "Project" means any raw or potable water or wastewater intake, treatment, distribution, transmission, storage, pumping, well site, well field or other facility or system, or any combination of the foregoing, that has as its purpose the providing of raw or potable water to members of the public and commercial, industrial or other users or the treatment of wastewater, along with any and all other appurtenances, equipment, betterments or improvements related thereto. The above projects may include any lands, or interest in any lands, deemed by the board to be desirable in connection with the projects, and necessary equipment for the proper functioning and operation of the buildings or facilities involved;

(e) "Qualified corporation" means any not-for-profit corporation or association that provides, distributes, transmits, treats, pumps or stores raw or potable water to or for the benefit of members of the general public and commercial, industrial and other users;

(f) "United States" means the United States of America or any of its agencies or instrumentalities;

(g) "State" means the State of Mississippi; and

(h) "Water authority" means that body politic and governmental entity organized under the provisions of this act.

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

SECTION 4. Authority generally. There is conferred upon a water authority, the authority to take such action and to do, or cause to be done, such things as are necessary or desirable to accomplish and implement the purposes and intent of this act according to the import of this act.
SECTION 5. Authority and procedure to incorporate. (1)

Whenever a qualified corporation desires to convert into and become reconstituted and reincorporated as a water authority under this act, the qualified corporation shall present to and file with the Secretary of State:

(a) Its resolution duly adopted by the board of directors of the qualified corporation that evidences the desire of the qualified corporation to convert into and become reconstituted and reincorporated as a water authority and that also certifies that the qualified corporation:

(i) Was initially formed as a not-for-profit corporation or association; and

(ii) Desires to operate as a public body authorized under the laws of Mississippi as a result of its conversion and reconstitution as a water authority under this act;

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

(i) The name of the water authority, which shall be "The __________ Public Water Authority of the State of Mississippi," or some other name of similar import, it being understood that the water authority may adopt a fictitious operational name upon written request to and approval by the Secretary of State;

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

(iii) The names and addresses of the initial board of directors of the water authority;

(iv) The name and address of the agent for service of process of the water authority; and
Any other matters that the initial board of directors of the water authority may deem necessary and appropriate;

(c) A copy of the water authority's bylaws along with any other information that the initial board of directors of the water authority may deem necessary and appropriate;

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

(e) A reasonable filing and review fee that the Secretary of State may designate and determine from time to time, which shall not be in excess of the filing fee charged in connection with the receipt and filing of a corporation's articles of incorporation.

(2) Two (2) or more qualified corporations may jointly convert into and become reconstituted and reincorporated as one water authority under the same procedure as specified for one qualified corporation under this act.

SECTION 6. Existence of water authority. The application for reconstitution and certificate of incorporation shall be signed and acknowledged by a majority of the board of directors of the qualified corporation. When the application for reconstitution and certificate of incorporation and other required documents have been so filed with and accepted by the Secretary of State, as evidenced by the issuance by the Secretary of State of its certificate of existence in a form that the Secretary of State may deem appropriate, the water authority referred to in the application shall come into existence and shall constitute a body corporate and politic in perpetuity with power of perpetual succession and a political subdivision of the state under the name set forth in the application, and the water authority shall be
vested with the rights and powers granted in this act and any other applicable laws. At the same time, the qualified corporation shall cease to exist and all assets and liabilities of every nature, including without limitation, all real property, personal property, certificate of public necessity and convenience, contractual obligations, lending obligations outstanding, rights afforded borrowers of federal and state funds and other tangible and intangible assets and liabilities of every nature shall, without need for further action or approval by any third party, be vested in and shall accrue to the benefit of the water authority. The water authority shall then send notice of transfer of said certificate to the Mississippi Public Service Commission.

SECTION 7. Board of directors. (1) The water authority shall have a board of directors composed of the number of directors provided in the application for reconstitution and certificate of incorporation, which shall not be fewer than five directors. All powers of the water authority shall be exercised by the board or under its authorization.

(2) The directors shall be elected and determined, and shall serve in accordance with those procedures that the water authority may specify in its bylaws; provided, however, that each water or sewer user served by the water authority shall be entitled to vote on the election of directors of the water authority. The water authority's bylaws shall contain provisions and procedures for the election and appointment of its directors that are identical in nature to those same provisions and procedures as contained in the qualified corporation's bylaws, unless otherwise amended by the water authority or required by state law. A water authority shall promptly file a copy of any amendments to its bylaws with the Secretary of State. A water authority also may promulgate rules and regulations, not inconsistent with state law, containing
provisions and procedures for the election and appointment of its
directors.

(3) Each director shall take and subscribe to the oath of
office prescribed in Section 268, Mississippi Constitution of
1890, that he will faithfully discharge the duties of the office
of director, which oath shall be maintained on file by the water
authority. Before entering upon the discharge of the duties of
his office, each director shall be required to execute a bond
payable to the State of Mississippi in the penal sum of Ten
Thousand Dollars ($10,000.00), conditioned that he will faithfully
discharge the duties of his office.

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

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

(6) All meetings and records of the water authority shall be
subject to the Mississippi Open Meetings Act and the Mississippi
Public Records Act.

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

SECTION 8. Officers. The officers of the water authority
shall consist of a chairman, vice chairman, a secretary, a
treasurer, and such other officers as the board deems necessary to
accomplish the purposes for which the water authority was
organized. All officers of the water authority shall be persons
who receive water service from the water authority. The offices
of secretary and treasurer may, but need not, be held by the same
person. The treasurer or secretary-treasurer shall be required to
execute a bond payable to the water authority, in a sum and with
such security as fixed and approved by the board. All officers of
the water authority shall be elected by the board and shall serve
for those terms of office as specified in the bylaws.

SECTION 9. Powers generally. The water authority shall have
the following powers, acting either individually or jointly with
other water authorities or public entities, together with all
powers incidental thereto or necessary to the discharge thereof:

(a) To have succession in its designated name;
(b) To sue and be sued and to prosecute and defend
suits in any court having jurisdiction of the subject matter and
of the parties;
(c) To make use of a seal and to alter it at pleasure;
(d) To adopt and alter bylaws for the regulations and
conduct of its affairs and business;
(e) To acquire, whether by purchase, gift, lease,
device, or otherwise, property of every description which the
board may deem necessary to the acquisition, construction,
equipment, improvement, enlargement, operation, administration or
maintenance of a project, and to hold title thereto;
(f) To construct, enlarge, equip, improve, maintain,
consolidate, administer and operate one or more projects;
(g) To borrow money, including interim construction
financing, for any of its purposes;
(h) To sell and issue its bonds;
(i) To sell and issue refunding bonds;
(j) To secure any of its bonds by pledge and indenture
as provided in this act;
(k) To appoint, employ and compensate such general
managers, executive directors, agents, architects, engineers,
attorneys, accountants and other persons and employees as the
business of the water authority may require;
  (l) To provide for such insurance as the board may deem
advisable;
  (m) To invest in obligations that are direct or
guaranteed obligations of the United States of America, or other
securities in which public funds may be invested by any other
political subdivision under the laws of this state, any of its
funds that the board may determine are not presently needed for
its operational purposes;
  (n) To contract, lease and make lease agreements
respecting its properties or any part thereof;
  (o) To exercise the power of eminent domain in
accordance with the procedures prescribed by Title 11, Chapter 27,
Mississippi Code of 1972;
  (p) To sell, convey or otherwise dispose of any of its
properties or projects; and
  (q) To exercise and hold the authority and power
granted to water supply systems and sewer systems under Sections
19-5-173, 19-5-175, 19-5-177 and 19-5-203.

SECTION 10. Tax exemption of projects. Each project, all
the water authority's interest therein, and all income from the
project, is determined and declared by the Legislature to be
public property used exclusively for a public purpose and shall be
exempt from ad valorem taxation by all taxing authorities.

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

(2) Before the water authority’s proposed issuance of bonds,
the water authority shall publish one (1) time in a newspaper of
general circulation in the affected county or counties, notice of
the proposed issuance of bonds, the approximate principal amount
of bonds contemplated to be sold, a general description of the
project contemplated to be constructed with bond proceeds and the
date of a public meeting at which members of the public may obtain
further information regarding the sale of the bonds and the
development of the project. The notice shall be published at
least ten (10) days before the date of the hearing. The water
authority chairman, or his or her designee, shall be responsible
for conducting the hearing and shall require all public comments
that might pertain to the proposed issuance of bonds by the water
authority. Upon compliance with the provisions of this section,
no other notice, hearing or approval by any other entity or
governmental unit shall be required as a condition to the issuance
by the water authority of its contemplated bonds.

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

(4) None of the bonds of the water authority shall ever
constitute an obligation or debt of the state, the municipality or
county in which the water authority operates, the Secretary of
State, or any officer or director of the water authority, or a
charge against the credit or taxing powers of the state.

(5) As the water authority determines, bonds of the water
authority may:

(a) Be issued at any time and from time to time;
(b) Be in such form and denominations;
(c) Have such date or dates;
(d) Mature at such time or times and in such amount or
amounts, provided that no bonds may mature more than forty (40)
years after the date of issuance;
(e) Bear interest, if applicable, payable at such times
and such rate or rates as may be established by the board;
(f) Be payable at such place or places within or without the State of Mississippi;

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

(h) Contain such other terms and provisions as may be appropriate or necessary in the discretion of the water authority.

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

(7) All bonds shall contain a recital that they are issued under the provisions of this act, which recital shall be conclusive that they have been duly authorized under the provisions of this act.

(8) All bonds issued under the provisions of this act shall be and are declared to be negotiable instruments within the meaning of the negotiable instruments law of the state and shall be in registered form.

(9) All bonds issued by a water authority may be validated upon the direction of the board under Sections 31-13-1 through 31-13-11. The validation hearing shall be held in the county in which the principal office of the water authority is located.

SECTION 12. Execution of bonds. Bonds shall be executed by the manual or facsimile signature of the chairman of the water authority and by manual or facsimile signature of the secretary of the water authority. In case any of the officers whose signatures appear on the bonds cease to be that officer before the delivery of the bonds, their signatures shall nevertheless be valid and sufficient for all purposes. The bonds shall be sealed with the seal of the water authority.
SECTION 13. Security for bonds. (1) The principal of, and interest, if any, on the bonds, may be secured by a pledge of the revenues of the water authority of that project financed by the water authority through its issuance of bonds, or from any other source that the water authority may deem necessary and appropriate, and may be secured by the creation of a mortgage and security interest encumbering the real property of the water authority, or security interest in all personal property and revenues of the water authority as set forth in the indenture.

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

(3) The indenture may contain any agreements and provisions customarily contained in instruments securing evidences of indebtedness including, without limiting, the generality of the foregoing provisions respecting the nature and extent of the security; the collection, segregation and application of the revenues generated from the operation of any project covered by the indenture; covenants to always operate the project as a revenue-producing undertaking and to charge and collect, including the obligation to increase from time to time, sufficient revenue to maintain income at required levels; the maintenance and insurance of the project; the creation and maintenance of reserve and other special funds; and the rights and remedies available in the event of default to the holders of the bonds or the trustees under the indenture, all as the board shall deem advisable and as shall not be in conflict with the provisions of this act.

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

(5) The indenture may contain provisions regarding the
rights and remedies of any trustee under the indenture and the
holders of the bonds and the coupons and restricting the
individual rights of action of the holders of the bonds and
coupons.

(6) There is created a statutory lien in the nature of a
mortgage lien upon any project, system or systems acquired or
constructed with proceeds of bonds issued by a water authority
under this act, including all extensions and improvements thereof
or combinations thereof subsequently made, the lien shall be in
favor of the holder or holders of any bonds issued under this act,
and all that property shall remain subject to the statutory lien
until the payment in full of the principal of and interest, if
any, on the bonds. Any holder of the bonds or any of the coupons
representing interest on the bonds may, either at law or in
equity, by suit, action, mandamus or other proceedings, in any
court of competent jurisdiction, protect and enforce the statutory
lien and compel the performance of all duties required by this
act, including the making and collection of sufficient rates for
the service or services, the proper accounting thereof, and the
performance of any duties required by covenants with the holders
of any bonds issued under this act.

If any default is made in the payment of the principal of or
interest, if any, on the bonds, any court having jurisdiction of
the action may appoint a receiver to administer the water
authority and the project, system or systems, with power to charge
and collect rates sufficient to provide for the payment of all
bonds and obligations outstanding against project, system or
systems, and for payment of operating expenses, and to apply the
income and revenues thereof in conformity with the provisions of
this act and any covenants with bondholders.

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

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

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

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

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

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

(e) Interest, if any, on bonds for a reasonable period
before, during and after the time required for completion of the
project;
(f) The amount necessary to fund a debt service reserve in an amount deemed appropriate by the water authority;

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

and

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

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

SECTION 16. Refunding bonds. (1) The water authority may at any time, and from time to time, issue refunding bonds for the purpose of refunding the principal of and interest, if any, on any bonds of the water authority previously issued under this act and then outstanding, whether or not the principal and interest have matured at the time of the refunding under this act, and for the payment of any expenses incurred in connection with the refunding and any premium necessary to be paid in order to redeem or retire the bonds to be refunded.

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

(3) Any such refunding may be effected either by sale of the refunding bonds and the application of the proceeds thereof by immediate application or by escrow deposit, with the right to invest monies in the escrow deposit until needed for the redemption or by exchange of the refunding bonds for the bonds or interest coupons to be refunded thereby. However, the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange before the date on which they may be paid or redeemed by the water authority under their respective provisions.
(4) Any refunding bonds of the water authority shall be payable solely from the revenues out of which the bonds to be refunded were payable or from those other sources or other revenues that might be identified in the indenture.

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

SECTION 17. Act is full authority. This act shall be deemed to be full and complete authority for the creation of water authorities and the issuance of bonds as set forth in this act. No proceedings shall be required for the creation of water authorities or the issuance of bonds other than those provided for and required in this act. The board of directors of a water authority shall have all the powers necessary in order to carry out the provisions of this act.

SECTION 18. The Attorney General of the State of Mississippi may submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

SECTION 19. This act shall take effect and be in force from and after July 1, 2003.