To: Finance

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2003
By: Senator(s) Minor

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2710

AN ACT TO AMEND SECTION 31-25-19, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE MISSISSIPPI DEVELOPMENT BANK TO RECEIVE AND ACCEPT LOAN GUARANTEES; TO ALLOW THE MISSISSIPPI DEVELOPMENT BANK TO LOAN MONEY TO A LOCAL GOVERNMENTAL UNIT UNDER ANY LOAN GUARANTY PROGRAM OF ANY DEPARTMENT OR AGENCY OF THE UNITED STATES, INCLUDING THE UNITED STATES DEPARTMENT OF AGRICULTURE RURAL UTILITY SERVICES WATER AND WASTE DISPOSAL GUARANTEED LOAN PROGRAM AND COMMUNITY PROGRAMS GUARANTEED LOAN PROGRAM OR ANY SUCH SUCCESSOR GUARANTY PROGRAM; TO PROVIDE ADDITIONAL AUTHORITY TO THE MISSISSIPPI DEVELOPMENT BANK; TO AMEND SECTION 31-25-21, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE MISSISSIPPI DEVELOPMENT BANK TO ISSUE BONDS TO FUND LOANS UNDER ANY LOAN GUARANTY PROGRAM; TO AMEND SECTION 31-25-27, MISSISSIPPI CODE OF 1972, TO AUTHORIZE LOCAL GOVERNMENTAL UNIT TO BORROW MONEY FROM THE MISSISSIPPI DEVELOPMENT BANK UNDER ANY LOAN GUARANTY PROGRAM OF ANY DEPARTMENT OR AGENCY OF THE UNITED STATES, INCLUDING THE UNITED STATES DEPARTMENT OF AGRICULTURE RURAL UTILITY SERVICES WATER AND WASTE DISPOSAL GUARANTEED LOAN PROGRAM AND COMMUNITY PROGRAMS GUARANTEED LOAN PROGRAM OR ANY SUCH SUCCESSOR GUARANTY PROGRAM; TO AMEND SECTION 31-25-51, MISSISSIPPI CODE OF 1972, TO REVISE THE POWERS OF THE MISSISSIPPI DEVELOPMENT BANK; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 31-25-19, Mississippi Code of 1972, is amended as follows:

31-25-19. (1) In addition to the other powers granted to the bank under this act, the bank shall have the power:

(a) To sue and be sued in its own name;
(b) To have an official seal and to alter the same at pleasure;
(c) To maintain an office at such place or places within this state as it may designate, by lease without the approval of any other state agency or department;
(d) To adopt and, from time to time, to amend and repeal bylaws and rules and regulations, not inconsistent with this act, to carry into effect the powers and purposes of the bank.
and governing the conduct of its affairs and business and the use
of its services and facilities;

(e) To make, enter into and enforce all contracts or
agreements necessary, convenient or desirable for the purposes of
the bank or pertaining to any loan to a local governmental unit
made by the purchase of municipal securities or to the performance
of its duties and execution or carrying out of any of its other
powers under this act;

(f) To acquire, hold, use and dispose of its income,
revenues, funds and monies;

(g) To the extent that it will facilitate the conduct
of its operations and thereby further the purposes of this act, to
acquire real or other personal property, or any interest therein,
on either a temporary or long-term basis in the name of the bank
by gift, purchase, transfer, foreclosure, lease or otherwise,
including rights or easements, hold, sell, assign, lease, encumber
mortgage or otherwise dispose of any real or other personal
property, or any interest therein or mortgage interest owned by it
or under its control, custody or in its possession and release or
relinquish any right, title, claim, lien, interest, easement or
demand however acquired, including any equity or right of
redemption in property foreclosed by it and to do any of the
foregoing by public or private sale; and, to the same extent, to
lease or rent any lands, buildings, structures, facilities or
equipment from private parties;

(h) To enter into agreements or other transactions with
and accept the cooperation of the United States or any agency
thereof or of the state or any agency or governmental subdivision
thereof (including any local governmental unit whether or not such
local governmental unit is selling or has sold its bonds to the
bank) in furtherance of the purposes of this act and the corporate
purposes of the bank, and to do any and all things necessary in
order to avail itself of such cooperation;
(i) To receive and accept grants, aid or contributions, including loan guarantees, from any source of money, materials, property, labor, supplies, services, program or other things of value, to be held, used and applied to carry out the purposes of this act subject to such conditions upon which such grants and contributions, including loan guarantees, may be made, including, but not limited to, gifts or grants, including loan guarantees, from any department or agency of the United States or of this state or of any governmental subdivision of this state (including any local governmental unit whether or not such local governmental unit is selling or has sold its bonds to the bank) for any purpose consistent with this act, and to do any and all things necessary, useful, desirable or convenient in connection with the procurement acceptance or disposition of such gifts or grants, including loan guarantees;

(j) To procure insurance against any loss in connection with its property and other assets in such amounts and from insurers as it deems desirable, and to obtain from any department or agency of the United States of America or nongovernmental insurer any insurance or guaranty, to the extent now or hereafter available, as to, or of or for the payment or repayment of interest, principal or redemption price, if any, or all or any part thereof, on any bonds issued by the bank, or on any municipal securities of local governmental units purchased or held by the bank pursuant to this act; and notwithstanding any other provisions of this act to the contrary, to enter into any agreement or contract whatsoever with respect to any such insurance or guaranty, except to the extent that the same would in any way impair or interfere with the ability of the bank to perform and fulfill the terms of any agreement made with the holders of the bonds of the bank;

(k) To employ administrative and clerical staff, managing agents, architects, engineers, attorneys, accountants,
and financial advisors and experts and such other advisors, consultants, agents and employees as may be necessary in its judgment and to fix their compensation, and to perform its powers or functions through its officers, agents and employees or by contracts with any firm, person or corporation;

(l) To the extent permitted under its contract with the holders of bonds of the bank, to consent to any modification of the rate of interest, time and payment of any installment of principal or interest, security or any other term of such bond, contract or agreement of any kind to which the bank is a party;

(m) To purchase, hold or dispose of any of its bonds;

(n) Notwithstanding any law to the contrary, **to invest any funds or monies of the bank or proceeds of any securities or certificates of participation in such manner as shall be deemed by the bank to be prudent except as otherwise permitted or provided by this act;**

(o) To conduct examinations and hearings and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter material for its information and necessary to carry out this act;

(p) To loan money to local governmental units by the purchase of municipal securities, subject to the provisions of this act;

(q) To borrow money for any of its corporate purposes and to issue bonds therefor, subject to the provisions of this act; **to**

(r) To exercise any and all of the powers granted to the bank by any other section of this act and to do any act necessary or convenient to the exercise of the powers herein granted or reasonably implied therefrom;

(s) To loan money to any local governmental unit under any loan guaranty program of any department or agency of the United States, including the United States Department of **
Agriculture Rural Utility Services Water and Waste Disposal

Guaranteed Loan Program and Community Programs Guaranteed Loan Program or any such successor guaranty programs; and

(t) Notwithstanding any law to the contrary, to contract with any local governmental unit for the exercise by the bank of any and all of the bank's powers as set out in this act, with respect to proceeds of such local governmental unit's securities or certificates of participation issued by such local governmental unit pursuant to any state law authorizing the issuance of local governmental unit debt.

(2) Paragraphs (s) and (t) of subsection (1) of this section shall be deemed to provide all necessary authority for the doing of the things authorized thereby and shall be liberally construed to accomplish the purposes and the authorizations therein stated.

SECTION 2. Section 31-25-21, Mississippi Code of 1972, is amended as follows:

31-25-21. The bank is hereby granted, has and may exercise the power to borrow money and issue its bonds in such principal amounts as it shall deem necessary to provide funds to accomplish a public purpose or purposes of the state provided for under this chapter, including:

(a) The making of loans to local governmental units by the purchase of municipal securities thereof;

(b) The payment, funding, refunding of the principal of, or interest or redemption premiums on, any bonds issued by it whether the bonds have or have not become due or subject to redemption in accordance with their terms;

(c) The establishment or increase of such debt service reserves and capitalized interest accounts to pay bonds or interest thereon as the bank shall consider necessary or advisable in the marketing of such bonds;
(d) The payment of consultant and legal fees and such other costs of issuance and expenses necessary or incidental to such bond issue;

(e) The deposit of funds into reserve funds established by the bank;

(f) The establishment or increase of reserves to pay all other costs and expenses of the bank incident to and necessary or convenient to carrying out its corporate purposes and powers;

(g) The deposit of funds into the Water Pollution Control Revolving Fund and the Water Pollution Control Emergency Loan Fund created pursuant to Sections 49-17-81 through 49-17-89;

(h) The issuance of up to Fifty Million Dollars ($50,000,000.00) in revenue bonds for regional solid waste authorities and county cooperative service districts;

(i) The advance purchase of energy for any municipality that operates a gas producing, generating, transmission or distribution system, or an electric generating, transmission or distribution system under Sections 21-27-11 through 21-27-71;

(j) The issuance of revenue bonds to fund or assist in funding retirement systems established pursuant to Sections 21-29-1 through 21-29-55 and Sections 21-29-101 through 21-29-151.

Before any revenue bonds may be issued for this purpose the municipality whose retirement system is being funded by such bonds shall have an actuary perform a study through the Public Employees' Retirement System to determine the amount of revenue bonds that should be issued to make such retirement system actuarially sound;

(k) To issue general obligation bonds of the State of Mississippi for the purposes provided in Section 31-25-20(g), as such section existed on April 3, 1996. The authority to issue such general obligation bonds of the State of Mississippi shall be repealed from and after the date that the bonds have been issued in their entirety;
(l) The issuance of bonds to fund loans made by the bank to any local governmental unit under any loan guaranty program of any department or agency of the United States, including the United States Department of Agriculture Rural Utility Services Water and Waste Disposal Guaranteed Loan Program and Community Programs Guaranteed Loan Program or any such successor guaranty programs.

(m) Any other lawful, corporate purpose.

SECTION 3. Section 31-25-27, Mississippi Code of 1972, is amended as follows:

31-25-27. (1) Each local governmental unit is hereby authorized and empowered to contract with the bank with respect to the bank's purchase of such local governmental unit's securities and such contract shall contain such terms and conditions as may be prescribed by the bank. Each local governmental unit is authorized and empowered to pay to the bank such fees and charges for services as the bank may prescribe.

(2) Each local governmental unit is hereby authorized to issue securities under the provisions of this act and to sell such securities to the bank to raise money for any purpose or purposes set forth in Sections 21-27-23, 21-33-301, 21-33-325, 21-33-326, 31-27-5, 17-17-301 et seq. and any other state law authorizing the issuance of local governmental unit debt, and for the purpose of refunding any securities issued under the provisions of this act or under the provisions of Section 21-27-11 et seq., or Section 21-33-301 et seq., or Section 31-27-1 et seq. Such securities may be issued in accordance with Sections 21-33-301, 21-33-303, 21-33-307, 21-33-309, 21-33-311, 21-33-313, 21-33-325 and 21-33-326, or Sections 21-27-23 through 21-27-43 and Sections 21-27-47 through 21-27-71, or Sections 31-27-1 through 31-27-25, or Sections 17-5-3 through 17-5-11, or Sections 49-17-101 through 49-17-123, or Sections 17-17-301 through 17-17-349 or any other state law authorizing issuance of local governmental unit debt, as
the case may be, unless otherwise specifically provided in this act; provided, however, the securities of any local governmental unit may be issued with such terms and provisions as may be necessary and appropriate in order to comply with the provisions of any loan agreement described in Section 49-17-87. Whenever securities shall be issued under this subsection, the governing authority may also pledge to the payment of principal of, premium, if any, and interest on such securities the revenues of any project to be constructed, improved or purchased with the proceeds thereof. Whenever any project is a part of a system or combined system, then all or any portion of the revenues of such system or combined system may be pledged to secure repayment of such securities as determined by the bank.

(3) Each local governmental unit is hereby authorized to issue securities to the bank to raise money for any purpose or purposes set forth in Sections 19-9-1, 19-9-27 or 19-9-28 and for the purpose of refunding any securities issued under the provisions of this act or under the provisions of Section 19-9-1 et seq. Such securities may be issued in accordance with Sections 19-9-1, 19-9-3, 19-9-5, 19-9-7, 19-9-9, 19-9-11, 19-9-13, 19-9-15, 19-9-17, 19-9-27 and 19-9-28, or Sections 17-5-3 through 17-5-11, or Sections 49-17-101 through 49-17-123, as the case may be, unless otherwise specifically provided in this act; provided, however, the securities of any local governmental unit may be issued with such terms and provisions as may be necessary and appropriate in order to comply with the provisions of any loan agreement described in Section 49-17-87. Whenever securities shall be issued under this subsection, the board of supervisors of the county may also pledge to the payment of principal of, premium, if any, and interest on such securities the revenues of any project to be constructed, improved, repaired or purchased with the proceeds thereof. Whenever any project is a part of a system or combined system, then all or any portion of the revenues
of such system or combined system may be pledged to secure repayment of such securities as determined by the bank.

(4) In addition, any local governmental unit is hereby authorized to issue securities to the bank to raise money for any purpose or purposes otherwise authorized by state law and for the purpose of refunding any securities issued under the provisions of this act or as otherwise authorized by state law including Section 49-17-83 et seq. Such securities may be issued in accordance with any other applicable provision of state law related to the issuance of securities including Section 49-17-83 et seq.

Whenever securities shall be issued under this subsection, the governing body of such local governmental unit may also pledge to the payment of principal of, premium, if any, and interest on such securities the revenues of any project to be constructed, improved or purchased with the proceeds thereof. Whenever any project is a part of a system or combined system, then all or any portion of the revenues of such system or combined system may be pledged to secure repayment of such securities as determined by the bank.

(5) Securities issued by a local governmental unit under the provisions of this act:

(a) May be sold only to the bank at private sale and may be sold at such price or prices, in such manner and at such times as may be agreed to by the bank and the local governmental unit, and the governing body of the local governmental unit may pay all expenses, premiums, fees and commissions which it may deem necessary and advantageous in connection with the issuance and sale thereof;

(b) Shall be secured as provided by Chapter 27, Title 21, Mississippi Code of 1972; Chapter 33, Title 21, Mississippi Code of 1972; or Chapter 9, Title 19, Mississippi Code of 1972, or other provisions of state law, and as provided in this act; and it is the intention of the Legislature that any pledge of earnings, revenues or other monies made by the local governmental unit shall
be valid and binding from the time the pledge is made; that the earnings, revenues or other monies so pledged and thereafter received by the local governmental unit shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the local governmental unit irrespective of whether such parties have notice thereof; and neither the resolution nor any other instrument by which a pledge is created need be recorded;

(c) Neither the officers or members of the governing body of the local governmental unit nor any person executing the bonds shall be personally liable on the bonds or be subject to any personal liability or accountability by reason of the issuance thereof;

(d) Shall be issued for the purposes set forth in this act and shall include terms and conditions which meet the state law authorizing the issuance of such local governmental unit debt and/or such terms and conditions consistent with the requirements for issuance of Mississippi Development Bank Bonds under Section 31-25-37.

(6) Each local governmental unit issuing securities under the provisions of this act is hereby authorized and empowered in connection with the issuance of such securities to enter into any covenants, agreements as to defaults and agreements as to remedies of the bank for defaults with respect to such local governmental unit's operation, revenues, assets, monies, funds or property as may be prescribed by the bank.

(7) The proceeds of securities shall be deposited in one or more special funds established by resolution of the local governmental unit issuing the same and shall be applied to the following: (a) the purpose for which the securities were issued; (b) the payment of all costs of issuance of the securities; (c)
the payments of any fees and charges established by the bank; (d) the payment of interest on the securities for a period of time not greater than the period of time estimated to be required to complete the purpose for which the securities were issued; all to the extent provided by resolution of the governing body of the local governmental unit and approved by the bank. Such special fund shall be held by commercial banks qualified to act as depositories therefor.

(8) In the event the bank determines to issue bonds and in connection therewith to exercise the powers provided in subsection (7) of Section 31-25-37, and if the requirements of subsection (2), (3) or (4) as the case may be, of this section have been satisfied, a local governmental unit is authorized to issue its securities as provided in this section.

(9) Securities issued under this act may be validated in the manner and with the force and effect provided in Section 31-13-1 et seq.

(10) This act shall be deemed to provide an additional, alternative and complete method for the doing of the things authorized hereby and shall be deemed and construed to be supplemental to any power conferred by other laws on local governmental units and not in derogation of any such powers.

(11) Any person who attempts to or obtains financial aid for a local governmental unit hereunder or who attempts to or sells securities of a governmental unit to the bank by false or misleading information or who shall by fraud attempt to obtain monies from the bank or its approval for the payment of monies or shall fraudulently attempt to or does prevent the collection of any monies due to the bank shall, upon conviction, be guilty of a felony for each offense.

(12) Upon the sale and issuance of any securities to the bank by any governmental unit, such governmental unit shall be held and be deemed to have agreed that in the event of the failure...
of such governmental unit to pay the interest on or the principal
of any of such securities owned or held by the bank as and when
due and payable, such governmental unit shall have waived any and
all defenses to such nonpayment, and the bank upon such nonpayment
shall thereupon constitute a holder or owner of such securities as
being in default, and the bank may then and thereupon avail itself
of all remedies, rights and provisions of law applicable in such
circumstance, including without limitation any remedies or rights
theretofore agreed to by the local governmental unit, and that all
of the securities of the issue of securities of such governmental
unit as to which there has been such nonpayment, shall for all of
the purposes of this section be held and be deemed to have become
due and payable and to be unpaid. The bank is hereby authorized
and empowered to carry out the provisions of this section and to
exercise all of the rights and remedies and provisions of law
herein provided or referred to.

(13) Any local governmental unit which borrows from the bank
is hereby authorized and empowered to agree in writing with the
bank that, as provided in this subsection, the State Tax
Commission or any state agency, department or commission created
pursuant to state law shall (a) withhold all or any part (as
agreed by the local governmental unit) of any monies which such
local governmental unit is entitled to receive from time to time
pursuant to any law and which is in the possession of the State
Tax Commission, or any state agency, department or commission
created pursuant to state law and (b) pay the same over to the
bank to satisfy any delinquent payments on any securities issued
by such local governmental unit under the provisions of this act
and any other delinquent payments due and owing the bank by such
local governmental unit, all as the same shall occur. In the
event the bank shall file a copy of such written agreement,

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pursuant to state law then the State Tax Commission or any state
agency, department or commission created pursuant to state law
shall immediately make the withholdings provided in such agreement
from the amounts due the local governmental unit and shall
continue to pay the same over to the bank until all such
delinquencies are satisfied.

(14) (a) If the state or any agency thereof, the
institutions of higher learning of the state or any education
building corporation established for institutions of higher
learning, borrows funds from the bank under Section 31-25-28 or
sells its securities to the bank pursuant to this act, then such
local governmental unit shall certify the following to the bank
prior to the issuance of bonds:

(i) The legal authority for such local
governmental unit to borrow funds; and

(ii) That such local governmental unit does not
intend to request an additional appropriation from the Legislature
to pay debt service on the loan or for such security.

(b) If the state or any agency thereof, the
institutions of higher learning of the state or any education
building corporation established for institutions of higher
learning, does not make the certification required under paragraph
(a)(ii) of this subsection, then such local governmental unit
shall not borrow funds from the bank under Section 31-25-28 or
sell its securities to the bank pursuant to this act unless an
appropriation by the Legislature authorizes the payment of debt
service for the first year of the loan or for such security.

(15) Any local governmental unit may borrow money from the
bank loaned under any loan guaranty program of any department or
agency of the United States, including the United States
Department of Agriculture Rural Utility Services Water and Waste
Disposal Guaranteed Loan Program and Community Programs Guaranteed
Loan Program or any such successor guaranty programs.
(16) Notwithstanding any law to the contrary, each local governmental unit is authorized and empowered to contract with the bank for the exercise by the bank of any and all of the bank's powers as set out in this act with respect to the proceeds of such local governmental unit's securities or certificates of participation issued by such local governmental unit pursuant to any state law authorizing the issuance of local governmental unit debt.

(17) Subsections (15) and (16) of this section shall be deemed to provide all necessary authority for the doing of the things authorized thereby and shall be liberally construed to accomplish the purposes and authorizations therein stated.

SECTION 4. Section 31-25-51, Mississippi Code of 1972, is amended as follows:

31-25-51. (1) The bonds of the bank shall be legal investments in which all public officers and public bodies of this state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest funds, including capital, in their control or belonging to them. The notes and bonds are also hereby made securities which may properly and legally be deposited with and received by all public officers and bodies of the state or any agency or political subdivisions of the state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized by law.

(2) Notwithstanding the provisions of any law to the contrary, to invest money of the bank, including
proceeds from the sale of any bonds, notes, any securities or certificates of participation:

(a) In obligations of any municipality or the state or the United States of America;

(b) In obligations the principal and interest of which are guaranteed by the state or the United States of America;

(c) In obligations of any corporation wholly owned by the United States of America;

(d) In obligations of any corporation sponsored by the United States of America which is, or may become, eligible as collateral for advances to member banks as determined by the Board of Governors of the Federal Reserve System;

(e) In obligations of insurance firms or other corporations whose investments are rated "AA" or better by recognized rating companies;

(f) In certificates of deposit or time deposits of qualified depositories of the state as approved by the State Depository Commission, secured in such manner, if any, as the corporation shall determine;

(g) In contracts for the purchase and sale of obligations of the type specified in items (a) through (e) above;

(h) In repurchase agreements secured by obligations specified in items (a) through (e) above; and

(i) In money market funds, the assets of which are required to be invested in obligations specified in items (a) through (f) above.

SECTION 5. This act shall take effect and be in force from and after its passage.