

REPORT OF CONFERENCE COMMITTEE

MADAM PRESIDENT AND MR. SPEAKER:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

S. B. No. 2270: Public water authorities; authorize creation.

We, therefore, respectfully submit the following report and recommendation:

1. That the House recede from its Amendment No. 1.
2. That the Senate and House adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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 or associations involved in the
10 sale, transmission and distribution of potable water to members of
11 the public and others may convert their entity status from that of
12 a body corporate to that of a body politic, thereby allowing those
13 entities the opportunity to access the tax-exempt capital markets
14 and thereby assuring the State of Mississippi and the customers of
15 those entities of adequate supplies of water at the lowest water
16 rates possible.

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

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

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

25 (c) "Indenture" means a mortgage, an indenture of
26 mortgage, deed of trust, trust agreement, loan agreement, security
27 agreement or trust indenture executed by the water authority as

28 security for any bonds;

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

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

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

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

49 (h) "Water authority" means that body politic and
50 governmental entity organized under the provisions of this 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 under the authority of this act
54 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 are necessary or desirable to
59 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.** (1)
62 Whenever a qualified corporation desires to convert into and
63 become reconstituted and reincorporated as a water authority under

64 this act, the qualified corporation shall present to and file with
65 the Secretary of State:

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

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

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

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

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

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

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

91 (iv) The name and address of the agent for service
92 of process of the water authority; and

93 (v) Any other matters that the initial board of
94 directors of the water authority may deem necessary and
95 appropriate;

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

99 (d) A statement and certification from the Secretary of

100 State that the proposed name of the water authority is not
101 identical with that of any other water authority in the state, or
102 so nearly similar thereto as to lead to confusion and uncertainty;
103 and

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

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

113 **SECTION 6. Existence of water authority.** The application
114 for reconstitution and certificate of incorporation shall be
115 signed and acknowledged by a majority of the board of directors of
116 the qualified corporation. When the application for
117 reconstitution and certificate of incorporation and other required
118 documents have been so filed with and accepted by the Secretary of
119 State, as evidenced by the issuance by the Secretary of State of
120 its certificate of existence in a form that the Secretary of State
121 may deem appropriate, the water authority referred to in the
122 application shall come into existence and shall constitute a body
123 corporate and politic in perpetuity with power of perpetual
124 succession and a political subdivision of the state under the name
125 set forth in the application, and the water authority shall be
126 vested with the rights and powers granted in this act and any
127 other applicable laws. At the same time, the qualified
128 corporation shall cease to exist and all assets and liabilities of
129 every nature, including without limitation, all real property,
130 personal property, certificate of public necessity and
131 convenience, contractual obligations, lending obligations
132 outstanding, rights afforded borrowers of federal and state funds
133 and other tangible and intangible assets and liabilities of every
134 nature shall, without need for further action or approval by any
135 third party, be vested in and shall accrue to the benefit of the

136 water authority. The water authority shall then send notice of
137 transfer of said certificate to the Mississippi Public Service
138 Commission.

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

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

160 (3) Each director shall take and subscribe to the oath of
161 office prescribed in Section 268, Mississippi Constitution of
162 1890, that he will faithfully discharge the duties of the office
163 of director, which oath shall be maintained on file by the water
164 authority. Before entering upon the discharge of the duties of
165 his office, each director shall be required to execute a bond
166 payable to the State of Mississippi in the penal sum of Ten
167 Thousand Dollars (\$10,000.00), conditioned that he will faithfully
168 discharge the duties of his office.

169 (4) A majority of the members of the board shall constitute
170 a quorum for the transaction of business. No vacancy in the
171 membership of the board shall impair the right of a quorum to

172 exercise all the powers and duties of the water authority. A
173 director shall continue in office until the director's successor
174 is properly elected and accepts office.

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

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

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

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

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

- 201 (a) To have succession in its designated name;
- 202 (b) To sue and be sued and to prosecute and defend
203 suits in any court having jurisdiction of the subject matter and
204 of the parties;
- 205 (c) To make use of a seal and to alter it at pleasure;
- 206 (d) To adopt and alter bylaws for the regulations and
207 conduct of its affairs and business;

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

213 (f) To construct, enlarge, equip, improve, maintain,
214 consolidate, administer and operate one or more projects;

215 (g) To borrow money, including interim construction
216 financing, for any of its purposes;

217 (h) To sell and issue its bonds;

218 (i) To sell and issue refunding bonds;

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

221 (k) To appoint, employ and compensate such general
222 managers, executive directors, agents, architects, engineers,
223 attorneys, accountants and other persons and employees as the
224 business of the water authority may require;

225 (l) To provide for such insurance as the board may deem
226 advisable;

227 (m) To invest in obligations that are direct or
228 guaranteed obligations of the United States of America, or other
229 securities in which public funds may be invested by any other
230 political subdivision under the laws of this state, any of its
231 funds that the board may determine are not presently needed for
232 its operational purposes;

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

235 (o) To exercise the power of eminent domain in
236 accordance with the procedures prescribed by Title 11, Chapter 27,
237 Mississippi Code of 1972;

238 (p) To sell, convey or otherwise dispose of any of its
239 properties or projects; and

240 (q) To exercise and hold the authority and power
241 granted to water supply systems and sewer systems under Sections
242 19-5-173, 19-5-175, 19-5-177 and 19-5-203.

243 **SECTION 10. Tax exemption of projects.** Each project, all

244 the water authority's interest therein, and all income from the
245 project, is determined and declared by the Legislature to be
246 public property used exclusively for a public purpose and shall be
247 exempt from ad valorem taxation by all taxing authorities.

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

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

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

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

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

- 280 (a) Be issued at any time and from time to time;
- 281 (b) Be in such form and denominations;
- 282 (c) Have such date or dates;
- 283 (d) Mature at such time or times and in such amount or
284 amounts, provided that no bonds may mature more than forty (40)
285 years after the date of issuance;
- 286 (e) Bear interest, if applicable, payable at such times
287 and such rate or rates as may be established by the board;
- 288 (f) Be payable at such place or places within or
289 without the State of Mississippi;
- 290 (g) Be subject to such terms of redemption in advance
291 of maturity at such prices, including such premiums; and
- 292 (h) Contain such other terms and provisions as may be
293 appropriate or necessary in the discretion of the water authority.

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

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

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

308 (9) All bonds issued by a water authority may be validated
309 upon the direction of the board under Sections 31-13-1 through
310 31-13-11. The validation hearing shall be held in the county in
311 which the principal office of the water authority is located.

312 **SECTION 12. Execution of bonds.** Bonds shall be executed by
313 the manual or facsimile signature of the chairman of the water
314 authority and by manual or facsimile signature of the secretary of
315 the water authority. In case any of the officers whose signatures

316 appear on the bonds cease to be that officer before the delivery
317 of the bonds, their signatures shall nevertheless be valid and
318 sufficient for all purposes. The bonds shall be sealed with the
319 seal of the water authority.

320 **SECTION 13. Security for bonds.** (1) The principal of, and
321 interest, if any, on the bonds, may be secured by a pledge of the
322 revenues of the water authority of that project financed by the
323 water authority through its issuance of bonds, or from any other
324 source that the water authority may deem necessary and
325 appropriate, and may be secured by the creation of a mortgage and
326 security interest encumbering the real property of the water
327 authority, or security interest in all personal property and
328 revenues of the water authority as set forth in the indenture.

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

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

347 (4) If there is any default by the water authority in
348 payment of the principal of, or the interest, if any, on the bonds
349 or in any of the agreements on the part of the water authority
350 that may properly be included in any indenture securing the bonds,
351 the bondholders or the trustee under any indenture, as authorized

352 in the indenture, may either in law or in equity, by suit, action,
353 mandamus, or other proceeding, enforce payment of the principal or
354 interest, if any, and compel performance of all duties of the
355 board and officers of the water authority, and shall be entitled
356 as a matter of right and regardless of the sufficiency of any such
357 security to the appointment of a receiver in equity with all the
358 powers of that receiver for the operation and maintenance of the
359 project covered by the indenture and the collection, segregation,
360 and applications of income and revenues from the project.

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

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

383 If any default is made in the payment of the principal of or
384 interest, if any, on the bonds, any court having jurisdiction of
385 the action may appoint a receiver to administer the water
386 authority and the project, system or systems, with power to charge
387 and collect rates sufficient to provide for the payment of all

388 bonds and obligations outstanding against project, system or
389 systems, and for payment of operating expenses, and to apply the
390 income and revenues thereof in conformity with the provisions of
391 this act and any covenants with bondholders.

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

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

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

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

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

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

416 (e) Interest, if any, on bonds for a reasonable period
417 before, during and after the time required for completion of the
418 project;

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

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

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

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

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

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

442 (3) Any such refunding may be effected either by sale of the
443 refunding bonds and the application of the proceeds thereof by
444 immediate application or by escrow deposit, with the right to
445 invest monies in the escrow deposit until needed for the
446 redemption or by exchange of the refunding bonds for the bonds or
447 interest coupons to be refunded thereby. However, the holders of
448 any bonds so to be refunded shall not be compelled without their
449 consent to surrender their bonds for payment or exchange before
450 the date on which they may be paid or redeemed by the water
451 authority under their respective provisions.

452 (4) Any refunding bonds of the water authority shall be
453 payable solely from the revenues out of which the bonds to be
454 refunded were payable or from those other sources or other
455 revenues that might be identified in the indenture.

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

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

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

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

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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.

CONFEREES FOR THE SENATE

X _____
Robert G. Huggins

X _____
Nolan Mettetal

X _____
Alan Nunnelee

CONFEREES FOR THE HOUSE

X _____
Bobby Moody

X _____
Jim Ellington

X _____
Thomas U. Reynolds