

*****Adopted***
AMENDMENT No. 1 PROPOSED TO**

Senate Bill NO. 2270

By Representative(s) Committee

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, contractual obligations, lending obligations

131 outstanding, rights afforded borrowers of federal and state funds
132 and other tangible and intangible assets and liabilities of every
133 nature shall, without need for further action or approval by any
134 third party, be vested in and shall accrue to the benefit of the
135 water authority.

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

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

157 (3) Each director shall take and subscribe to the oath of
158 office prescribed in Section 268, Mississippi Constitution of
159 1890, that he will faithfully discharge the duties of the office
160 of director, which oath shall be maintained on file by the water
161 authority. Before entering upon the discharge of the duties of
162 his office, each director shall be required to execute a bond
163 payable to the State of Mississippi in the penal sum of Ten
164 Thousand Dollars (\$10,000.00), conditioned that he will faithfully
165 discharge the duties of his office.

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

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

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

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

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

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

- 198 (a) To have succession in its designated name;
199 (b) To sue and be sued and to prosecute and defend
200 suits in any court having jurisdiction of the subject matter and

201 of the parties;

202 (c) To make use of a seal and to alter it at pleasure;

203 (d) To adopt and alter bylaws for the regulations and
204 conduct of its affairs and business;

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

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

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

214 (h) To sell and issue its bonds;

215 (i) To sell and issue refunding bonds;

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

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

222 (l) To provide for such insurance as the board may deem
223 advisable;

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

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

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

235 (p) To sell, convey or otherwise dispose of any of its

236 properties or projects; and

237 (q) To exercise and hold the authority and power
238 granted to water supply systems and sewer systems under Sections
239 19-5-173, 19-5-175, 19-5-177 and 19-5-203.

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

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

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

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

270 (4) None of the bonds of the water authority shall ever

271 constitute an obligation or debt of the state, the municipality or
272 county in which the water authority operates, the Secretary of
273 State, or any officer or director of the water authority, or a
274 charge against the credit or taxing powers of the state.

275 (5) As the water authority determines, bonds of the water
276 authority may;

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

278 (b) Be in such form and denominations;

279 (c) Have such date or dates;

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

283 (e) Bear interest, if applicable, payable at such times
284 and such rate or rates as may be established by the board;

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

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

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

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

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

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

305 (9) All bonds issued by a water authority may be validated

306 upon the direction of the board under Sections 31-13-1 through
307 31-13-11. The validation hearing shall be held in the county in
308 which the principal office of the water authority is located.

309 **SECTION 12. Execution of bonds.** Bonds shall be executed by
310 the manual or facsimile signature of the chairman of the water
311 authority and by manual or facsimile signature of the secretary of
312 the water authority. In case any of the officers whose signatures
313 appear on the bonds cease to be that officer before the delivery
314 of the bonds, their signatures shall nevertheless be valid and
315 sufficient for all purposes. The bonds shall be sealed with the
316 seal of the water authority.

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

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

329 (3) The indenture may contain any agreements and provisions
330 customarily contained in instruments securing evidences of
331 indebtedness including, without limiting, the generality of the
332 foregoing provisions respecting the nature and extent of the
333 security; the collection, segregation and application of the
334 revenues generated from the operation of any project covered by
335 the indenture; covenants to always operate the project as a
336 revenue-producing undertaking and to charge and collect, including
337 the obligation to increase from time to time, sufficient revenue
338 to maintain income at required levels; the maintenance and
339 insurance of the project; the creation and maintenance of reserve
340 and other special funds; and the rights and remedies available in

341 the event of default to the holders of the bonds or the trustees
342 under the indenture, all as the board shall deem advisable and as
343 shall not be in conflict with the provisions of this act.

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

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

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

376 act, including the making and collection of sufficient rates for
377 the service or services, the proper accounting thereof, and the
378 performance of any duties required by covenants with the holders
379 of any bonds issued under this act.

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

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

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

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

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

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

410 (d) Legal, fiscal, accounting and recording fees and

411 expenses incurred in connection with the authorization, sale, and
412 issuance of the bonds issued in connection with the project;

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

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

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

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

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

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

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

439 (3) Any such refunding may be effected either by sale of the
440 refunding bonds and the application of the proceeds thereof by
441 immediate application or by escrow deposit, with the right to
442 invest monies in the escrow deposit until needed for the
443 redemption, or by exchange of the refunding bonds for the bonds or
444 interest coupons to be refunded thereby. However, the holders of
445 any bonds so to be refunded shall not be compelled without their

446 consent to surrender their bonds for payment or exchange before
447 the date on which they may be paid or redeemed by the water
448 authority under their respective provisions.

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

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

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

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

472 **SECTION 19.** This act shall take effect and be in force from
473 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.