

By: Senator(s) Ross, Kirby

To: Finance

SENATE BILL NO. 3040

1 AN ACT RELATING TO THE METROPOLITAN AREA WATER SUPPLY ACT; TO
 2 AMEND SECTIONS 51-9-189 THROUGH 51-9-205, 51-9-213 AND 51-9-221,
 3 MISSISSIPPI CODE OF 1972, TO REVISE DEFINITIONS, TO CLARIFY THE
 4 POWERS OF THE PEARL RIVER VALLEY WATER SUPPLY DISTRICT RELATING TO
 5 THIS ACT, TO PROVIDE FOR PUBLIC AGENCY PAYMENTS FOR WATER SUPPLIES
 6 FROM THE WATERWORKS, TO PROVIDE FOR AGENCY RATE ADJUSTMENTS, TO
 7 CLARIFY PROVISIONS OF AGENCY CONTRACTS WITH THE DISTRICT, TO
 8 CLARIFY THE PLEDGE OF REVENUES FOR THE ISSUANCE OF BONDS OF THE
 9 DISTRICT, TO CLARIFY THE POWER OF THE DISTRICT TO MAKE CERTAIN
 10 COVENANTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS, TO
 11 AUTHORIZE THE DISTRICT TO REVISE RATES TO FULFILL THE TERMS OF
 12 COVENANTS; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** Section 51-9-189, Mississippi Code of 1972, is
 15 amended as follows:

16 51-9-189. This act is for the purpose of authorizing the
 17 Pearl River Valley Water Supply District to acquire, construct,
 18 maintain and operate * * * water treatment plants and regional
 19 water distribution systems to ensure an adequate and sanitary
 20 water supply for the Jackson metropolitan area. This act may be
 21 cited as the "Metropolitan Area Water Supply Act."

22 **SECTION 2.** Section 51-9-191, Mississippi Code of 1972, is
 23 amended as follows:

24 51-9-191. Words and phrases used in this article shall have
 25 meanings as follows:

26 (a) "Act" means the Metropolitan Area Water Supply Act
 27 (this article) as originally enacted or hereafter amended.

28 (b) "Board of directors" means the board of directors
 29 of the district.

30 (c) "Bonds" means revenue bonds, interim notes (having
 31 a maturity of three (3) years or less) and other certificates of
 32 indebtedness of the district issued under this act.

33 (d) "District" means the Pearl River Valley Water Supply
34 District.

35 (e) "Person" means and includes the State of
36 Mississippi, any city, town, county, political subdivision or
37 public agency of the state or of the United States of America, and
38 any corporation, individual, partnership, association, firm, trust
39 estate or any other entity whatsoever.

40 (f) "Public agency" means any city, town, public agency
41 or political subdivision of the state authorized by law to supply
42 water to persons within the geographical boundaries of such city,
43 town, public agency or political subdivision.

44 (g) "Water supply system" means pipelines, conduits,
45 pumping stations and all other structures, devices and appliances
46 appurtenant thereto, including land and right-of-way thereto, for
47 use in transporting water to * * * a point of ultimate use * * *.

48 (h) "Waterworks" means * * * all works, plants or other
49 facilities, including open channels, necessary for the purpose of
50 collecting, storing, treating and transporting water to persons or
51 public agencies * * * for municipal, commercial, domestic,
52 industrial, agricultural or manufacturing purposes.

53 **SECTION 3.** Section 51-9-193, Mississippi Code of 1972, is
54 amended as follows:

55 51-9-193. The district, through its board of directors, in
56 addition to any and all powers now or hereafter granted to it, is
57 hereby empowered:

58 (a) To acquire, construct, operate and maintain a
59 waterworks and water supply systems in furtherance of the purposes
60 of this act on land now owned or hereafter acquired by it for said
61 purpose and to construct or otherwise acquire all waterworks or
62 other facilities deemed necessary or useful for the treatment and
63 processing of water available or to be available to it and the
64 transportation and supplying of such water to public agencies, the
65 district or persons * * * for municipal, commercial, domestic,

66 industrial, agricultural and manufacturing purposes. The district
67 shall be the exclusive provider of potable water to residents of
68 lands owned by the district within its project area. The district
69 may extend water service outside its project area; however, no
70 such extension shall be made to areas already occupied and served
71 by a public agency or private provider rendering the same service
72 so long as such public agency or private provider desires to
73 continue to serve the same area.

74 (b) To acquire by condemnation or otherwise any and all
75 property of any kind, real, personal, or mixed, or any interest
76 therein, necessary or convenient to the exercise of the purposes
77 of and the powers granted by this act. Any property acquired by
78 condemnation shall be acquired according to the procedure
79 otherwise provided by law for the condemnation of property by
80 public agencies. For the purposes of this act, the right of
81 eminent domain shall be superior and dominant to the right of
82 eminent domain of railroad, telephone, telegraph, gas, power and
83 other companies or corporations.

84 The amount and character of interest in land, other property,
85 and easements thus to be acquired shall be determined by the board
86 of directors, and their determination shall be conclusive and
87 shall not be subject to attack in the absence of manifold abuse of
88 discretion or fraud on the part of such board in making such
89 determination. However:

90 (i) In acquiring lands, either by negotiation or
91 condemnation, the district shall not acquire minerals or
92 royalties; provided that sand and gravel shall not be considered
93 as minerals within the meaning of this section; and

94 (ii) No person or persons owning the drilling
95 rights or the right to share in production shall be prevented from
96 exploring, developing or producing oil or gas with necessary
97 rights-of-way for ingress and egress, pipelines and other means of
98 transporting interests on any land or interest therein of the

99 district held or used for the purposes of this act; but any such
100 activities shall be under such reasonable regulations by the board
101 of directors as will adequately protect the waterworks and water
102 supply system of the district contemplated by this act.

103 (c) To require the necessary relocation or rerouting of
104 roads and highways, railroad, telephone and telegraph lines and
105 properties, electric power lines, gas pipelines and related
106 facilities, or to require the anchoring or other protection of any
107 of these, provided due compensation is first paid to the owners
108 thereof or agreement is had with such owners regarding the payment
109 of the cost of such relocation, and to acquire easements or
110 rights-of-way for such relocation or rerouting and to convey the
111 same to the owners of the property being relocated or rerouted in
112 connection with the purposes of this act.

113 (d) To acquire by purchase any existing waterworks or
114 water supply systems and related facilities providing services
115 which the district is authorized to provide, and any lands,
116 rights, easements, franchises and other property, real and
117 personal, necessary to the completion and operation of such system
118 upon such terms and conditions as may be agreed upon, and if
119 necessary as part of the purchase price to assume the payment of
120 outstanding notes, bonds or other obligations upon such system.
121 For purposes of acquiring existing waterworks or water supply
122 systems, the term "waterworks" and "water supply systems" shall
123 include wastewater facilities operated in connection with such
124 waterworks or water supply systems, including, without limitation,
125 pipelines or conduits, pumping stations, force mains, treatment
126 plants, lagoons or any other structure, device, appurtenance or
127 facility, whether operated individually or in any combination,
128 used for collecting, treating and/or disposing of wastewater, by
129 either surface or underground methods, and all easements,
130 rights-of-way and appurtenances.

131 (e) To enter into contracts with any person in
132 furtherance of any of the purposes authorized by this act upon
133 such consideration as the board of directors and such person may
134 agree. Any such contract may extend over any period of time,
135 notwithstanding any provision or rule of law to the contrary, may
136 be upon such terms as the parties thereto shall agree, and may
137 provide that it shall continue in effect beyond the life of the
138 waterworks or water supply systems or any part thereof or the term
139 of the bonds sold with respect to such facilities or improvements
140 thereto, refunding bonds issued in lieu of such bonds and all
141 other obligations specified therein * * *. Any such contract
142 shall be binding upon the parties thereto according to its terms.

143 (f) To fix, charge, collect, maintain and revise rates,
144 fees and other charges for the services rendered and water
145 supplied to any user of the waterworks or water supply systems
146 operated or maintained by the district, whether or not such
147 systems are owned by the district, and to contract with any public
148 agency for water supplies from the waterworks or water supply
149 systems owned or operated by the district, which rates, fees,
150 contracts and other charges shall not be subject to review or
151 regulation by the Mississippi Public Service Commission.

152 (g) To make and enforce, and from time to time amend
153 and repeal, bylaws and rules and regulations for the management of
154 its business and affairs and for the acquisition, construction,
155 use, maintenance and operation of any of the waterworks or water
156 supply systems under its management and control and any other of
157 its properties.

158 **SECTION 4.** Section 51-9-195, Mississippi Code of 1972, is
159 amended as follows:

160 51-9-195. Payments by any public agency for water supplies
161 from the waterworks or water supply systems owned or operated by
162 the district shall be made from the gross receipts or revenues of
163 the public agency's waterworks, water supply systems, or of its

164 combined waterworks, water supply, sewerage and sewage disposal
165 systems, or other combined utility systems as may be prescribed in
166 the contract between the public agency and the district, its
167 successors or assigns, or as otherwise authorized by law. Such
168 payments shall constitute an operating expense of the system or
169 systems whose revenues are thus to be applied. No provision of
170 this act shall be construed to prohibit any public agency,
171 otherwise permitted by law to issue bonds, from issuing bonds in
172 the manner provided by law for the acquisition, construction,
173 renovation, repair or development of waterworks or * * * water
174 supply systems or any part thereof owned or operated by such
175 public agency.

176 **SECTION 5.** Section 51-9-197, Mississippi Code of 1972, is
177 amended as follows:

178 51-9-197. Whenever a public agency shall have executed a
179 contract pursuant to this act and the payments thereunder are to
180 be made either wholly or partly from the revenues of the public
181 agency's waterworks, water supply systems, sewerage system or
182 sewage disposal system or a combination of any of its utility
183 systems, the duty is hereby imposed on the public agency to
184 establish and maintain and from time to time to adjust the rates
185 charged by the public agency for the services of such system or
186 systems, such that the revenues therefrom, together with any taxes
187 levied in support thereof, will be sufficient at all times to pay:
188 (a) the expense of operating and maintaining such system or
189 systems, including all of the public agency's obligations to the
190 district, its successors or assigns under such contract; and (b)
191 all of the public agency's obligations under and in connection
192 with revenue bonds theretofore issued, or which may be issued
193 thereafter and secured by the revenues of such system or systems.
194 Any such contract may require the use of consulting engineers and
195 financial experts to advise the public agency whether and when
196 such rates are to be adjusted.

197 **SECTION 6.** Section 51-9-201, Mississippi Code of 1972, is
198 amended as follows:

199 51-9-201. (1) Any public agency may, pursuant to a duly
200 adopted resolution of the governing authority of such public
201 agency, enter into contracts with the district for the district to
202 acquire, construct, lease, improve, extend, operate or maintain a
203 waterworks or water supply system or any part thereof or interest
204 therein for the furnishing of water to the public agency; such
205 contracts shall obligate the public agency to make payments to the
206 district or to a trustee in amounts which shall be sufficient to
207 enable the district to defray the expenses of acquiring,
208 administering, operating and maintaining its waterworks and water
209 supply systems, to pay interest and principal (whether at maturity
210 or upon sinking fund redemption) on bonds of the district issued
211 pursuant to this act and to fund reserves for debt service, for
212 operation and maintenance and for renewals and replacements, and
213 to fulfill requirements of any rate covenant with respect to debt
214 service coverage contained in any resolution, trust indenture or
215 other security agreement relating to the bonds of the district
216 issued pursuant to this act. Any public agency shall have the
217 power to enter into such contracts with the district as in the
218 discretion of the governing authorities thereof would be in the
219 best interest of such public agency. Such contracts may include a
220 pledge of the full faith and credit of such public agency for
221 payment of such amounts due under such contracts. Any such
222 contract may provide for the sale or lease to or use of by the
223 district of the waterworks, the water supply systems or any part
224 thereof of the public agency; may provide that the district shall
225 operate the waterworks, water supply systems or any part thereof
226 of the public agency; may provide that any public agency shall
227 have the right to continued use and/or priority use of the
228 waterworks, water supply systems or any part thereof of the
229 district and the water supply made available thereby during the

230 useful life thereof upon payment of reasonable charges therefor;
231 may contain provisions to assure equitable treatment of persons or
232 public agencies who contract with the district pursuant to this
233 act; and may contain such other provisions and requirements as the
234 parties thereto may determine to be appropriate or necessary.
235 Such contracts may extend over any period of time, notwithstanding
236 any provision of law to the contrary, and may extend beyond the
237 life of the waterworks or water supply systems or any part thereof
238 or the term of the bonds sold with respect to such facilities or
239 improvements thereto.

240 (2) The obligations of a public agency arising under the
241 terms of any contract referred to in this act, whether or not
242 payable solely from a pledge of revenues, shall not be included
243 within the indebtedness limitations of the public agency for
244 purposes of any constitutional or statutory limitation or
245 provision. To the extent provided in such contract and to the
246 extent such obligations of the public agency are payable solely
247 from the revenues and other monies derived by the public agency
248 from the operation of its waterworks, water supply systems or
249 combined utility systems or any part thereof, such obligations
250 shall be treated as expenses of operating such systems.

251 (3) Contracts referred to in this section may also provide
252 for payments in the form of contributions to defray the cost of
253 any purpose set forth in the contracts and as advances for the
254 waterworks or water supply systems or any part thereof subject to
255 repayment by the district. A public agency may make such
256 contributions or advances from its general fund or surplus fund or
257 from any monies legally available therefor.

258 (4) Payments made or to be made to the district by a public
259 agency or other person pursuant to a contract for the waterworks
260 or water supply systems or any part thereof and the use of the
261 water made available thereby shall be determined by the method

262 specified in such contract and shall not be subject to approval or
263 review by the Mississippi Public Service Commission.

264 (5) Subject to the terms of a contract or contracts referred
265 to in this act, the district is hereby authorized to do and
266 perform any and all acts or things necessary, convenient or
267 desirable to carry out the purposes of such contracts, including
268 the fixing, charging, collecting, maintaining and revising of
269 rates, fees and other charges for the services rendered and water
270 supplied to any user of the waterworks or water supply systems
271 operated or maintained by the district, whether or not such
272 systems are owned by the district.

273 (6) The district shall plan any construction or acquisition
274 of any such waterworks or water supply systems, shall enter into
275 such contracts and shall arrange such financing as to assure that
276 the district shall receive * * * revenues from the operation of
277 the waterworks and water supply systems or any part thereof
278 sufficient to defray all direct and indirect costs, whether
279 administrative, operational or otherwise, of administering,
280 operating and maintaining such waterworks and water supply
281 systems, to pay interest and principal (whether at maturity or
282 upon sinking fund redemption) on bonds of the district issued
283 pursuant to this act and to fund reserves for debt service, for
284 operation and maintenance and for renewals and replacements, and
285 to fulfill requirements of any rate covenant with respect to debt
286 service coverage contained in any resolution, trust indenture or
287 other security agreement relating to the bonds of the district
288 issued pursuant to this act. * * *

289 **SECTION 7.** Section 51-9-205, Mississippi Code of 1972, is
290 amended as follows:

291 51-9-205. (1) The district shall have the power and is
292 hereby authorized, from time to time, to issue bonds without
293 notice and without an election on the question of the issuance
294 thereof in such principal amounts as the district may determine to

295 be necessary to provide sufficient funds for achieving the
296 purposes of this act, including, without limiting the generality
297 of the foregoing, to defray the cost of the acquisition,
298 construction, improvement or extension of the waterworks or water
299 supply systems or any part thereof, whether or not such facilities
300 are owned by the district, the payment of interest on bonds of the
301 district issued pursuant to this act, establishment of reserves to
302 secure such bonds and payment of the interest thereon, expenses
303 incident to the issuance of such bonds and to the implementation
304 of the district's waterworks, water supply systems and all other
305 expenditures of the district incident to or necessary or
306 convenient to carry out the purposes of this act. The bonds
307 authorized by this act shall never constitute nor give rise to a
308 pecuniary liability of the district, or a charge against its
309 general credit or taxing powers and shall not constitute general
310 obligations of the state.

311 (2) Bonds of the district issued pursuant to this act shall
312 be payable from and secured by a pledge of all or any part of the
313 revenues under any contract entered into pursuant to this act as
314 well as from all or any part of the revenues derived from the
315 operation of the waterworks and water supply systems or any part
316 thereof, as may be determined by the district, subject only to any
317 agreement with the registered owners of the bonds. Such bonds may
318 be further secured by a trust indenture between the district and a
319 corporate trustee, which may be any trust company or bank having
320 powers of a trust company within or without the state.

321 (3) Bonds of the district issued pursuant to this act shall
322 be authorized by a resolution or resolutions of the district.
323 Such bonds shall bear such date or dates, mature at such time or
324 times, bear interest at such rate or rates, be in such
325 denomination or denominations, be in such form, carry such
326 conversion privileges, have such rank or priority, be executed in
327 such manner and by such officers, be payable from such sources in

328 such medium of payment at such place or places within or without
329 the state, provided that one (1) such place shall be within the
330 state, be subject to such terms of redemption prior to maturity,
331 all as may be provided by resolution or resolutions of the
332 district; however, such bonds shall not bear a greater overall
333 interest rate to maturity than that allowed in Section 75-17-103,
334 Mississippi Code of 1972.

335 (4) Bonds of the district issued pursuant to this act may be
336 sold at a price not less than ninety-seven percent (97%) of par
337 value plus accrued interest, at public or private sale, at such
338 times as may be determined by the district to be in the public
339 interest, and the district may pay all expenses, premiums, fees
340 and commissions which it may deem necessary and advantageous in
341 connection with the issuance and sale thereof.

342 (5) Any pledge of earnings, revenues or other monies made by
343 the district shall be valid and binding from the time the pledge
344 is made. The earnings, revenues or other monies so pledged and
345 thereafter received by the district shall immediately be subject
346 to the lien of such pledge without any physical delivery thereof
347 or further act, and the lien of any such pledge shall be valid and
348 binding as against all parties having claims of any kind in tort,
349 contract or otherwise against the district irrespective of whether
350 such parties have notice thereof. Neither the resolution nor any
351 other instrument by which a pledge is created need be recorded.

352 (6) Neither the directors of the district nor any person
353 executing the bonds shall be personally liable on the bonds or be
354 subject to any personal liability or accountability by reason of
355 the issuance thereof.

356 (7) Whenever any bonds shall have been signed by the
357 officer(s) designated by the resolution of the district to sign
358 the bonds who were in office at the time of such signing but who
359 may have ceased to be such officer(s) prior to the sale and
360 delivery of such bonds, or who may not have been in office on the

361 date such bonds may bear, the manual or facsimile signatures of
362 such officer(s) upon such bonds shall nevertheless be valid and
363 sufficient for all purposes and have the same effect as if the
364 person so officially executing such bonds had remained in office
365 until the delivery of the same to the purchaser or had been in
366 office on the date such bonds may bear.

367 **SECTION 8.** Section 51-9-213, Mississippi Code of 1972, is
368 amended as follows:

369 51-9-213. The district shall have power in connection with
370 the issuance of its bonds to:

371 (a) Covenant as to the use of any or all of its
372 property, real or personal.

373 (b) Redeem the bonds, to covenant for their redemption
374 and to provide the terms and conditions thereof.

375 (c) Covenant to charge rates, fees and charges
376 sufficient to meet operating and maintenance expenses,
377 acquisition, renewals and replacements, principal and debt service
378 on bonds, creation and maintenance of any reserves required by a
379 bond resolution, trust indenture or other security instrument and
380 to provide for any margins or coverages over and above debt
381 service on the bonds deemed desirable for the marketability of the
382 bonds.

383 (d) Covenant and prescribe as to events of default and
384 terms and conditions upon which any or all of its bonds shall
385 become or may be declared due before maturity, as to the terms and
386 conditions upon which such declaration and its consequences may be
387 waived and as to the consequences of default and the remedies of
388 the registered owners of the bonds.

389 (e) Covenant as to the mortgage or pledge of or the
390 grant of a security interest in any real or personal property and
391 all or any part of the revenues from any water treatment,
392 waterworks or water supply systems or any part thereof or any
393 revenue-producing contract or contracts made by the district with

394 any person to secure the payment of bonds, subject to such
395 agreements with the registered owners of bonds as may then exist.

396 (f) Covenant as to the custody, collection, securing,
397 investment and payment of any revenues, assets, monies, funds or
398 property with respect to which the district may have any rights or
399 interest.

400 (g) Covenant as to the purposes to which the proceeds
401 from the sale of any bonds then or thereafter to be issued may be
402 applied, and the pledge of such proceeds to secure the payment of
403 the bonds.

404 (h) Covenant as to the limitations on the issuance of
405 any additional bonds, the terms upon which additional bonds may be
406 issued and secured and the refunding of outstanding bonds.

407 (i) Covenant as to the rank or priority of any bonds
408 with respect to any lien or security.

409 (j) Covenant as to the procedure by which the terms of
410 any contract with or for the benefit of the registered owners of
411 bonds may be amended or abrogated, the amount of bonds the
412 registered owners of which must consent thereto and the manner in
413 which such consent may be given.

414 (k) Covenant as to the custody of any of its properties
415 or investments, the safekeeping thereof, the insurance to be
416 carried thereon and the use and disposition of insurance proceeds.

417 (l) Covenant as to the vesting in a trustee or
418 trustees, within or outside the state, of such properties, rights,
419 powers and duties in trust as the district may determine.

420 (m) Covenant as to the appointing and providing for the
421 duties and obligations of a paying agent or paying agents or other
422 fiduciaries within or outside the state.

423 (n) Make all other covenants and to do any and all such
424 acts and things as may be necessary or convenient or desirable in
425 order to secure its bonds, or in the absolute discretion of the
426 district tend to make the bonds more marketable, notwithstanding

427 that such covenants, acts or things may not be enumerated herein;
428 it being the intention hereof to give the district power to do all
429 things in the issuance of bonds and in the provisions for security
430 thereof which are not inconsistent with the Constitution of the
431 state.

432 (o) Execute all instruments necessary or convenient in
433 the exercise of the powers herein granted or in the performance of
434 covenants or duties, which may contain such covenants and
435 provisions as any purchaser of the bonds of the district may
436 reasonably require.

437 **SECTION 9.** Section 51-9-221, Mississippi Code of 1972, is
438 amended as follows:

439 51-9-221. The state hereby covenants with the registered
440 owners of any bonds of the district that so long as the bonds are
441 outstanding and unpaid the state will not limit or alter the
442 rights and powers of the district under this act to conduct the
443 activities referred to herein in any way pertinent to the
444 interests of the bondholders including, without limitation, the
445 district's right to charge, collect and revise rates, fees and
446 charges and to fulfill the terms of any covenants made with the
447 registered owners of the bonds, or in any other way impair the
448 rights and remedies of the registered owners of the bonds, unless
449 provision for full payment of such bonds, by escrow or otherwise,
450 has been made pursuant to the terms of the bonds or the
451 resolution, trust indenture or security instrument securing the
452 bonds.

453 **SECTION 10.** This act shall take effect and be in force from
454 and after its passage.