

By: Senator(s) Ross, Kirby

To: Finance

SENATE BILL NO. 3040
(As Passed the Senate)

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27 (this article) as originally enacted or hereafter amended.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.

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

77 The amount and character of interest in land, other property,
78 and easements thus to be acquired shall be determined by the board
79 of directors, and their determination shall be conclusive and
80 shall not be subject to attack in the absence of manifold abuse of
81 discretion or fraud on the part of such board in making such
82 determination. However:

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

87 (ii) No person or persons owning the drilling
88 rights or the right to share in production shall be prevented from
89 exploring, developing or producing oil or gas with necessary
90 rights-of-way for ingress and egress, pipelines and other means of
91 transporting interests on any land or interest therein of the
92 district held or used for the purposes of this act; but any such
93 activities shall be under such reasonable regulations by the board
94 of directors as will adequately protect the waterworks and water
95 supply system of the district contemplated by this act.

96 (c) To require the necessary relocation or rerouting of
97 roads and highways, railroad, telephone and telegraph lines and

98 properties, electric power lines, gas pipelines and related
99 facilities, or to require the anchoring or other protection of any
100 of these, provided due compensation is first paid to the owners
101 thereof or agreement is had with such owners regarding the payment
102 of the cost of such relocation, and to acquire easements or
103 rights-of-way for such relocation or rerouting and to convey the
104 same to the owners of the property being relocated or rerouted in
105 connection with the purposes of this act.

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

124 (e) To enter into contracts with any person in
125 furtherance of any of the purposes authorized by this act upon
126 such consideration as the board of directors and such person may
127 agree. Any such contract may extend over any period of time,
128 notwithstanding any provision or rule of law to the contrary, may
129 be upon such terms as the parties thereto shall agree, and may
130 provide that it shall continue in effect beyond the life of the

131 waterworks or water supply systems or any part thereof or the term
132 of the bonds sold with respect to such facilities or improvements
133 thereto, refunding bonds issued in lieu of such bonds and all
134 other obligations specified therein * * *. Any such contract
135 shall be binding upon the parties thereto according to its terms.

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

145 (g) To make and enforce, and from time to time amend
146 and repeal, bylaws and rules and regulations for the management of
147 its business and affairs and for the acquisition, construction,
148 use, maintenance and operation of any of the waterworks or water
149 supply systems under its management and control and any other of
150 its properties.

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

153 51-9-195. Payments by any public agency for water supplies
154 from the waterworks or water supply systems owned or operated by
155 the district shall be made from the gross receipts or revenues of
156 the public agency's waterworks, water supply systems, or of its
157 combined waterworks, water supply, sewerage and sewage disposal
158 systems, or other combined utility systems as may be prescribed in
159 the contract between the public agency and the district, its
160 successors or assigns, or as otherwise authorized by law. Such
161 payments shall constitute an operating expense of the system or
162 systems whose revenues are thus to be applied. No provision of
163 this act shall be construed to prohibit any public agency,

164 otherwise permitted by law to issue bonds, from issuing bonds in
165 the manner provided by law for the acquisition, construction,
166 renovation, repair or development of waterworks or * * * water
167 supply systems or any part thereof owned or operated by such
168 public agency.

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

171 51-9-197. Whenever a public agency shall have executed a
172 contract pursuant to this act and the payments thereunder are to
173 be made either wholly or partly from the revenues of the public
174 agency's waterworks, water supply systems, sewerage system or
175 sewage disposal system or a combination of any of its utility
176 systems, the duty is hereby imposed on the public agency to
177 establish and maintain and from time to time to adjust the rates
178 charged by the public agency for the services of such system or
179 systems, such that the revenues therefrom, together with any taxes
180 levied in support thereof, will be sufficient at all times to pay:
181 (a) the expense of operating and maintaining such system or
182 systems, including all of the public agency's obligations to the
183 district, its successors or assigns under such contract; and (b)
184 all of the public agency's obligations under and in connection
185 with revenue bonds theretofore issued, or which may be issued
186 thereafter and secured by the revenues of such system or systems.
187 Any such contract may require the use of consulting engineers and
188 financial experts to advise the public agency whether and when
189 such rates are to be adjusted.

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

192 51-9-201. (1) Any public agency may, pursuant to a duly
193 adopted resolution of the governing authority of such public
194 agency, enter into contracts with the district for the district to
195 acquire, construct, lease, improve, extend, operate or maintain a
196 waterworks or water supply system or any part thereof or interest

197 therein for the furnishing of water to the public agency; such
198 contracts shall obligate the public agency to make payments to the
199 district or to a trustee in amounts which shall be sufficient to
200 enable the district to defray the expenses of acquiring,
201 administering, operating and maintaining its waterworks and water
202 supply systems, to pay interest and principal (whether at maturity
203 or upon sinking fund redemption) on bonds of the district issued
204 pursuant to this act and to fund reserves for debt service, for
205 operation and maintenance and for renewals and replacements, and
206 to fulfill requirements of any rate covenant with respect to debt
207 service coverage contained in any resolution, trust indenture or
208 other security agreement relating to the bonds of the district
209 issued pursuant to this act. Any public agency shall have the
210 power to enter into such contracts with the district as in the
211 discretion of the governing authorities thereof would be in the
212 best interest of such public agency. Such contracts may include a
213 pledge of the full faith and credit of such public agency for
214 payment of such amounts due under such contracts. Any such
215 contract may provide for the sale or lease to or use of by the
216 district of the waterworks, the water supply systems or any part
217 thereof of the public agency; may provide that the district shall
218 operate the waterworks, water supply systems or any part thereof
219 of the public agency; may provide that any public agency shall
220 have the right to continued use and/or priority use of the
221 waterworks, water supply systems or any part thereof of the
222 district and the water supply made available thereby during the
223 useful life thereof upon payment of reasonable charges therefor;
224 may contain provisions to assure equitable treatment of persons or
225 public agencies who contract with the district pursuant to this
226 act; and may contain such other provisions and requirements as the
227 parties thereto may determine to be appropriate or necessary.
228 Such contracts may extend over any period of time, notwithstanding
229 any provision of law to the contrary, and may extend beyond the

230 life of the waterworks or water supply systems or any part thereof
231 or the term of the bonds sold with respect to such facilities or
232 improvements thereto.

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

244 (3) Contracts referred to in this section may also provide
245 for payments in the form of contributions to defray the cost of
246 any purpose set forth in the contracts and as advances for the
247 waterworks or water supply systems or any part thereof subject to
248 repayment by the district. A public agency may make such
249 contributions or advances from its general fund or surplus fund or
250 from any monies legally available therefor.

251 (4) Payments made or to be made to the district by a public
252 agency or other person pursuant to a contract for the waterworks
253 or water supply systems or any part thereof and the use of the
254 water made available thereby shall be determined by the method
255 specified in such contract and shall not be subject to approval or
256 review by the Mississippi Public Service Commission.

257 (5) Subject to the terms of a contract or contracts referred
258 to in this act, the district is hereby authorized to do and
259 perform any and all acts or things necessary, convenient or
260 desirable to carry out the purposes of such contracts, including
261 the fixing, charging, collecting, maintaining and revising of
262 rates, fees and other charges for the services rendered and water

263 supplied to any user of the waterworks or water supply systems
264 operated or maintained by the district, whether or not such
265 systems are owned by the district.

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

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

284 51-9-205. (1) The district shall have the power and is
285 hereby authorized, from time to time, to issue bonds without
286 notice and without an election on the question of the issuance
287 thereof in such principal amounts as the district may determine to
288 be necessary to provide sufficient funds for achieving the
289 purposes of this act, including, without limiting the generality
290 of the foregoing, to defray the cost of the acquisition,
291 construction, improvement or extension of the waterworks or water
292 supply systems or any part thereof, whether or not such facilities
293 are owned by the district, the payment of interest on bonds of the
294 district issued pursuant to this act, establishment of reserves to
295 secure such bonds and payment of the interest thereon, expenses

296 incident to the issuance of such bonds and to the implementation
297 of the district's waterworks, water supply systems and all other
298 expenditures of the district incident to or necessary or
299 convenient to carry out the purposes of this act. The bonds
300 authorized by this act shall never constitute nor give rise to a
301 pecuniary liability of the district, or a charge against its
302 general credit or taxing powers and shall not constitute general
303 obligations of the state.

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

314 (3) Bonds of the district issued pursuant to this act shall
315 be authorized by a resolution or resolutions of the district.
316 Such bonds shall bear such date or dates, mature at such time or
317 times, bear interest at such rate or rates, be in such
318 denomination or denominations, be in such form, carry such
319 conversion privileges, have such rank or priority, be executed in
320 such manner and by such officers, be payable from such sources in
321 such medium of payment at such place or places within or without
322 the state, provided that one (1) such place shall be within the
323 state, be subject to such terms of redemption prior to maturity,
324 all as may be provided by resolution or resolutions of the
325 district; however, such bonds shall not bear a greater overall
326 interest rate to maturity than that allowed in Section 75-17-103,
327 Mississippi Code of 1972.

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

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

345 (6) Neither the directors of the district nor any person
346 executing the bonds shall be personally liable on the bonds or be
347 subject to any personal liability or accountability by reason of
348 the issuance thereof.

349 (7) Whenever any bonds shall have been signed by the
350 officer(s) designated by the resolution of the district to sign
351 the bonds who were in office at the time of such signing but who
352 may have ceased to be such officer(s) prior to the sale and
353 delivery of such bonds, or who may not have been in office on the
354 date such bonds may bear, the manual or facsimile signatures of
355 such officer(s) upon such bonds shall nevertheless be valid and
356 sufficient for all purposes and have the same effect as if the
357 person so officially executing such bonds had remained in office
358 until the delivery of the same to the purchaser or had been in
359 office on the date such bonds may bear.

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

362 51-9-213. The district shall have power in connection with
363 the issuance of its bonds to:

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

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

368 (c) Covenant to charge rates, fees and charges
369 sufficient to meet operating and maintenance expenses,
370 acquisition, renewals and replacements, principal and debt service
371 on bonds, creation and maintenance of any reserves required by a
372 bond resolution, trust indenture or other security instrument and
373 to provide for any margins or coverages over and above debt
374 service on the bonds deemed desirable for the marketability of the
375 bonds.

376 (d) Covenant and prescribe as to events of default and
377 terms and conditions upon which any or all of its bonds shall
378 become or may be declared due before maturity, as to the terms and
379 conditions upon which such declaration and its consequences may be
380 waived and as to the consequences of default and the remedies of
381 the registered owners of the bonds.

382 (e) Covenant as to the mortgage or pledge of or the
383 grant of a security interest in any real or personal property and
384 all or any part of the revenues from any water treatment,
385 waterworks or water supply systems or any part thereof or any
386 revenue-producing contract or contracts made by the district with
387 any person to secure the payment of bonds, subject to such
388 agreements with the registered owners of bonds as may then exist.

389 (f) Covenant as to the custody, collection, securing,
390 investment and payment of any revenues, assets, monies, funds or
391 property with respect to which the district may have any rights or
392 interest.

393 (g) Covenant as to the purposes to which the proceeds
394 from the sale of any bonds then or thereafter to be issued may be
395 applied, and the pledge of such proceeds to secure the payment of
396 the bonds.

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

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

402 (j) Covenant as to the procedure by which the terms of
403 any contract with or for the benefit of the registered owners of
404 bonds may be amended or abrogated, the amount of bonds the
405 registered owners of which must consent thereto and the manner in
406 which such consent may be given.

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

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

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

416 (n) Make all other covenants and to do any and all such
417 acts and things as may be necessary or convenient or desirable in
418 order to secure its bonds, or in the absolute discretion of the
419 district tend to make the bonds more marketable, notwithstanding
420 that such covenants, acts or things may not be enumerated herein;
421 it being the intention hereof to give the district power to do all
422 things in the issuance of bonds and in the provisions for security
423 thereof which are not inconsistent with the Constitution of the
424 state.

425 (o) Execute all instruments necessary or convenient in
426 the exercise of the powers herein granted or in the performance of
427 covenants or duties, which may contain such covenants and
428 provisions as any purchaser of the bonds of the district may
429 reasonably require.

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

432 51-9-221. The state hereby covenants with the registered
433 owners of any bonds of the district that so long as the bonds are
434 outstanding and unpaid the state will not limit or alter the
435 rights and powers of the district under this act to conduct the
436 activities referred to herein in any way pertinent to the
437 interests of the bondholders including, without limitation, the
438 district's right to charge, collect and revise rates, fees and
439 charges and to fulfill the terms of any covenants made with the
440 registered owners of the bonds, or in any other way impair the
441 rights and remedies of the registered owners of the bonds, unless
442 provision for full payment of such bonds, by escrow or otherwise,
443 has been made pursuant to the terms of the bonds or the
444 resolution, trust indenture or security instrument securing the
445 bonds.

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