

By: Representative Warren

To: Ways and Means

## HOUSE BILL NO. 533

1 AN ACT TO AMEND SECTION 31-25-28, MISSISSIPPI CODE OF 1972,  
2 TO EXTEND THE DATE OF THE REPEALER ON THE PROVISION THAT  
3 AUTHORIZES THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO BORROW FROM  
4 THE MISSISSIPPI DEVELOPMENT BANK; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 31-25-28, Mississippi Code of 1972, is  
7 amended as follows:

8 31-25-28. (1) Local governmental units may borrow money or  
9 receive grants from the bank for any of the purposes set forth in  
10 this section or Section 31-25-20(g) and pay to the bank such fees  
11 and charges for services as the bank may prescribe. Whenever any  
12 such loan is made to a local governmental unit, such local  
13 governmental unit may use available revenues for the repayment of  
14 the principal of, premium, if any, and interest on such loan, and  
15 pledge such available revenues or monies for the repayment of the  
16 principal of, premium, if any, and interest on such loan. It is  
17 the intention of the Legislature that any such pledge of revenues  
18 or other monies shall be valid and binding from the date the  
19 pledge is made; that such revenues or other monies so pledged and  
20 thereafter received by the local governmental unit shall  
21 immediately be subject to the lien of such pledge without any  
22 physical delivery thereof or further act, and that the lien of any  
23 such pledge shall be valid and binding as against all parties  
24 having claims of any kind in tort, contract or otherwise against  
25 the local governmental unit irrespective of whether such parties  
26 have notice thereof; and neither the resolutions, contracts or any  
27 other instrument by which a pledge is created need be recorded.

28           (2) Local governmental units may contract with the bank with  
29 respect to any such loan and such contract shall contain such  
30 terms and conditions as may be prescribed by the bank.

31           (3) Local governmental units may in connection with any such  
32 loan enter into any covenants and agreements with respect to such  
33 local governmental unit's operations, revenues, assets, monies,  
34 funds or property, or such loan, as may be prescribed by the bank.

35           (4) Upon the making of any such loan by the bank to any  
36 local governmental unit, such local governmental unit shall be  
37 held and be deemed to have agreed that if such governmental unit  
38 fails to pay the principal of, premium, if any, and interest on  
39 any such loan as when due and payable, such governmental unit  
40 shall have waived any and all defenses to such nonpayment, and the  
41 bank, upon such nonpayment, shall thereupon avail itself of all  
42 remedies, rights and provisions of law applicable in such  
43 circumstance, including without limitation, any remedies or rights  
44 theretofore agreed to by the local governmental unit, and that  
45 such loan shall for all of the purposes of this section, be held  
46 and be deemed to have become due and payable and to be unpaid.  
47 The bank may carry out the provisions of this section and exercise  
48 all of the rights and remedies and provisions of law provided or  
49 referred to in this section and of all other applicable laws of  
50 the state.

51           (5) Any local governmental unit that borrows from the bank  
52 under this section may agree in writing with the bank that, as  
53 provided in this subsection, the State Tax Commission or any state  
54 agency, department or commission created pursuant to state law  
55 shall (a) withhold all or any part (as agreed by the local  
56 governmental unit) of any monies that such local governmental unit  
57 is entitled to receive from time to time pursuant to any law and  
58 that is in the possession of the State Tax Commission or any state  
59 agency, department or commission created pursuant to state law and  
60 (b) pay the same over to the bank to satisfy any delinquent

61 payments on any such loan made to such local governmental unit  
62 under the provisions of this section and any other delinquent  
63 payments due and owing the bank by such local governmental unit,  
64 all as the same shall occur. If the bank files a copy of such  
65 written agreement, together with a statement of delinquency, with  
66 the State Tax Commission or any state agency, department or  
67 commission created pursuant to state law, then the State Tax  
68 Commission or any state agency, department or commission created  
69 pursuant to state law shall immediately make the withholdings  
70 provided in such agreement from the amounts due the local  
71 governmental unit and shall continue to pay the same over to the  
72 bank until all such delinquencies are satisfied.

73 (6) Before authorizing any loan for any of the purposes  
74 enumerated in Section 31-25-20(e), the governing authority of the  
75 local governmental unit shall adopt a resolution declaring its  
76 intention so to do, stating the amount of the loan proposed to be  
77 authorized and the purpose for which the loan is to be authorized,  
78 and the date upon which the loan will be authorized. Such  
79 resolution shall be published once a week for at least three (3)  
80 consecutive weeks in at least one (1) newspaper published in such  
81 local governmental unit. The first publication of such resolution  
82 shall be made not less than twenty-one (21) days before the date  
83 fixed in such resolution for the authorization of the loan and the  
84 last publication shall be made not more than seven (7) days before  
85 such date. If no newspaper is published in such local  
86 governmental unit, then such notice shall be given by publishing  
87 the resolution for the required time in some newspaper having a  
88 general circulation in such local governmental unit and, in  
89 addition, by posting a copy of such resolution for at least  
90 twenty-one (21) days next preceding the date fixed therein at  
91 three (3) public places in such local governmental unit. If  
92 fifteen percent (15%) of the qualified electors of the local  
93 governmental unit or fifteen hundred (1500), whichever is the

94 lesser, file a written protest against the authorization of such  
95 loan on or before the date specified in such resolution, then an  
96 election on the question of the authorization of such loan shall  
97 be called and held as otherwise provided for in connection with  
98 the issuance of general obligation indebtedness of such local  
99 governmental unit. Notice of such election shall be given as  
100 otherwise required in connection with the issuance of general  
101 obligation indebtedness of such local governmental unit. If  
102 three-fifths (3/5) of the qualified electors voting in the  
103 election vote in favor of authorizing the loan, then the governing  
104 authority of the local governmental unit shall proceed with the  
105 loan; however, if less than three-fifths (3/5) of the qualified  
106 electors voting in the election vote in favor of authorizing the  
107 loan, then the loan shall not be incurred. If no protest be  
108 filed, then such loan may be entered into by the local  
109 governmental unit without an election on the question of the  
110 authorization of such loan, at any time within a period of two (2)  
111 years after the date specified in the resolution. However, the  
112 governing authority of any local governmental unit in its  
113 discretion may nevertheless call an election on such question, in  
114 which event it shall not be necessary to publish the resolution  
115 declaring its intention to authorize such loan as provided in this  
116 subsection.

117 (7) (a) The Department of Environmental Quality may borrow  
118 money from the bank for any purpose as otherwise authorized by  
119 this act or for the purpose of funding loan programs (including  
120 revolving loan programs) for such local governmental unit, or  
121 both. The Department of Environmental Quality may contract with  
122 the bank with respect to any loan from the bank to fund such loan  
123 programs and such loan from the bank may include any terms and  
124 conditions as provided for in this section. If the Department of  
125 Environmental Quality borrows funds pursuant to this subsection

126 (7), then such local governmental unit shall certify the following  
127 to the bank prior to making the loan from the bank:

128 (i) The revolving loan program or other program to  
129 be funded through the issuance of the bonds;

130 (ii) Available revenues which such local  
131 governmental unit intends to use to repay the loan; and

132 (iii) That such local governmental unit does not  
133 intend to request an additional appropriation from the Legislature  
134 to pay debt service on the loan from the bank or for such  
135 security.

136 (b) If such local governmental unit meets the  
137 requirements of paragraph (a) of this subsection (7), then such  
138 local governmental unit shall not be required to meet the  
139 requirements of Section 31-25-27(14). Notwithstanding any other  
140 provision of law, including any limitations or restrictions under  
141 Section 49-17-81 et seq., such local governmental unit may  
142 designate or pledge any funds, revenues or any other amounts  
143 received under its loan programs designated under paragraph (a)(i)  
144 of this subsection (7) to repay a loan from the bank under this  
145 subsection (7). Funds, revenues or any other amounts received  
146 under a loan program as provided under this subsection (7)  
147 specifically include, but are not limited to, any principal and/or  
148 interest loan repayments from any participant under the program,  
149 any investment earnings, or other amounts held by the Department  
150 of Environmental Quality in connection with the applicable loan  
151 program. Any loan program of the Department of Environmental  
152 Quality otherwise authorized by law shall be deemed to be a public  
153 purpose for purposes of this act which the bank may loan funds  
154 under the provisions of this act.

155 (c) In connection with a loan under this subsection  
156 (7), the bank may administer and manage loan programs as provided  
157 in the contracts with the bank to loan funds thereunder.

158           (d) The maximum amount that the Department of  
159 Environmental Quality may borrow under this subsection (7) shall  
160 not exceed Thirty-five Million Dollars (\$35,000,000.00) in the  
161 aggregate.

162           (e) This subsection (7) shall stand repealed on July 1,  
163 2008.

164           (8) In connection with any refunding of the Ten Million Five  
165 Hundred Seventy Thousand Dollars (\$10,570,000.00), State of  
166 Mississippi, Department of Rehabilitation Services, Certificates  
167 of Participation (State of Mississippi, Department of  
168 Rehabilitation Services Project) dated August 1, 1993, the bank  
169 may issue its bonds to provide for such refunding and the  
170 Department of Rehabilitation Services may borrow money from the  
171 bank for the purpose of providing for the refunding of such  
172 Certificates of Participation. The Department of Rehabilitation  
173 Services may contract with the bank with respect to any loan from  
174 the bank under this subsection (8), to provide for the refunding  
175 of such Certificates of Participation and such loan from the bank  
176 may include any terms and conditions as provided for in this  
177 section. In connection with the refunding of the Certificates of  
178 Participation pursuant to this subsection (8), such refunding  
179 shall result in an overall net present value savings to maturity  
180 of not less than two percent (2%) of the Certificates of  
181 Participation being refunded. In connection with any loan under  
182 this subsection (8), the Department of Rehabilitation Services  
183 shall not be required to meet the requirements of Section  
184 31-25-27(14).

185           (9) This section shall be deemed to provide an additional,  
186 alternative and complete method for the doing of the things  
187 authorized by this section and shall be deemed and construed to be  
188 supplemental to any power conferred by other laws on local  
189 governmental units and not in derogation of any such powers. Any  
190 loan made pursuant to the provisions of this section shall not

191 constitute an indebtedness of the local governmental unit within  
192 the meaning of any constitutional or statutory limitation or  
193 restriction. In connection with a loan under this chapter, a  
194 local governmental unit shall not be required to comply with the  
195 provisions of any other law except as provided in this section.

196       **SECTION 2.** This act shall take effect and be in force from  
197 and after July 1, 2006.