

By: Representatives Turner, Ladner

To: Accountability,
Efficiency, Transparency;
Conservation and Water
Resources

HOUSE BILL NO. 538
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 51-15-118, MISSISSIPPI CODE OF 1972,
2 AS AMENDED BY SENATE BILL NO. 2526, 2023 REGULAR SESSION, TO
3 PROVIDE THAT FOR ANY PARTICIPATING COUNTY IN THE PAT HARRISON
4 WATERWAY DISTRICT THAT IS WITHDRAWING FROM THE DISTRICT, SUCH
5 WITHDRAWAL SHALL NOT BECOME EFFECTIVE UNTIL THE CLOSE OF THE
6 FISCAL YEAR IN WHICH THE COUNTY HAS SATISFIED CERTAIN OBLIGATIONS
7 WITH THE DISTRICT; TO AMEND SECTION 51-15-119, MISSISSIPPI CODE OF
8 1972, AS AMENDED BY SENATE BILL NO. 2526, 2023 REGULAR SESSION, TO
9 REQUIRE THE BOARD OF DIRECTORS OF THE DISTRICT TO PROVIDE TO THE
10 CHAIRMEN OF THE HOUSE AND SENATE APPROPRIATIONS COMMITTEES CERTAIN
11 ANNUAL PLANS CONCERNING THE DISTRICT; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** Section 51-15-118, Mississippi Code of 1972, as
14 amended by Senate Bill No. 2526, 2023 Regular Session, is amended
15 as follows:

16 51-15-118. The board of supervisors of any county that is
17 included in the Pat Harrison Waterway District, or the governing
18 authorities of any municipality not located in a member county but
19 that joined the district by petition, may elect to withdraw such
20 county or municipality from the district. The withdrawing county
21 or municipality shall be responsible for paying its portion of any
22 district bonds, contractual obligations, and any other



indebtedness and liabilities of the district that are outstanding on the date of such county's or municipality's withdrawal from the district. The withdrawing county's or municipality's portion of such liabilities, obligations and indebtedness shall be determined through an independent audit conducted by a certified public accountant. The board of supervisors of the withdrawing county, or the governing authorities of the withdrawing municipality, shall provide the sum that is required by this section either by appropriation from any available funds of the county or by levy. Such board of supervisors or municipal governing authorities may borrow funds as needed to satisfy the withdrawing county's or municipality's portion of the liabilities, obligations and indebtedness of the district as required herein. No withdrawal shall become effective until the close of the fiscal year in which the county has satisfied its obligations under this section.

SECTION 2. Section 51-15-119, Mississippi Code of 1972, as amended by Senate Bill No. 2526, 2023 Regular Session, is amended as follows:

51-15-119. (1) The Pat Harrison Waterway District through its board of directors is hereby empowered:

(a) To develop in conjunction with the United States Army Corps of Engineers, United States Secretary of Agriculture, or with the head of any other federal or state agency as may be involved, plans for public works of improvement to make navigable or for the prevention of flood water damage, or the conservation,



development, recreation, utilization and disposal of water, including the impoundment, diversion, flowage and distribution of waters for beneficial use as defined in Article 1 of this chapter, and in connection with the Oktibbeha River Basin project as authorized under Public Law 874, 87th Congress, October 23, 1962, and substantially in accordance with the recommendation of the Chief of Engineers in House Document 549 of the 87th Congress.

(b) To impound overflow water and the surface water of any streams in the Pat Harrison Waterway District or its tributaries within the project area, within or without the district, at the place or places and in the amount as may be approved by the Office of Land and Water Resources of the State of Mississippi, by the construction of a dam or dams, reservoir or reservoirs, work or works, plants and any other necessary or useful related facilities contemplated and described as a part of the project within and without the district, to control, store, and preserve these waters, and to use, distribute, and sell them, to construct or otherwise acquire within the project area all works, plants or other facilities necessary or useful to the project for processing the water and transporting it to cities and other facilities necessary or useful to the project for the purpose of processing the water and transporting it to cities and other facilities for domestic, municipal, commercial, industrial, agricultural and manufacturing purposes, and is hereby given the



power to control open channels for water delivery purposes and water transportation.

(c) To acquire and develop any other available water necessary or useful to the project and to construct, acquire, and develop all facilities within the project area deemed necessary or useful with respect thereto.

(d) To forest and reforest and to aid in the foresting and reforesting of the project area, and to prevent and aid in the prevention of soil erosion and flood within the area; to control, store and preserve within the boundaries of the project area the waters of any streams in the area, for irrigation of lands and for prevention of water pollution.

(e) To acquire by condemnation all property of any kind, real, personal or mixed, or any interest therein, within or without the boundaries of the district, necessary for the project and the exercise of the powers, rights, privileges and functions conferred upon the district by this article, according to the procedure provided by law for the condemnation of lands or other property taken for rights-of-way or other purposes by railroad, telephone or telegraph companies and according to the provisions of Section 29-1-1. For the purposes of this article the right of eminent domain of the district shall be superior and dominant to the right of eminent domain of railroad, telegraph, telephone, gas, power and other companies or corporations and shall be sufficient to enable the acquisition of county roads, state



97 highways or other public property in the project area, and the
98 acquisition or relocation of this property in the project area.
99 The cost of right-of-way purchases, rerouting and elevating all
100 other county-maintained roads affected by construction shall be
101 borne by the water management district, and new construction shall
102 be of equal quality as in roads existing as of June 1, 1962. The
103 county in which such work is done may assist in these costs if the
104 board of supervisors desires.

105 The amount and character of interest in land, other property
106 and easements to be acquired shall be determined by the board of
107 directors, and their determination shall be conclusive and shall
108 not be subject to attack in the absence of manifold abuse of
109 discretion or fraud on the part of such board in making this
110 determination. However:

111 (i) In acquiring lands, either by negotiation or
112 condemnation, the district shall not acquire minerals or royalties
113 within the project area; sand and gravel shall not be considered
114 as minerals within the meaning of this section; and

115 (ii) No person or persons owning the drilling
116 rights or the right to share in production shall be prevented from
117 exploring, developing or producing oil or gas with necessary
118 rights-of-way for ingress and egress, pipelines and other means of
119 transporting these products by reason of the inclusion of the
120 lands or mineral interests within the project area, whether below
121 or above the waterline, but any activities shall be under



reasonable regulations by the board of directors that will adequately protect the project; and

(iii) In drilling and developing, these persons are hereby vested with a right to have mineral interests integrated and their lands developed in the drilling unit or units that the State Oil and Gas Board shall establish after due consideration of the rights of all owners to be included in the drilling unit.

Moreover, when any site or plot of land is to be rented, leased or sold to any person, firm or corporation for the purpose of operating recreational facilities thereon for profit, the board shall, by resolution, specify the terms and conditions of the sale, rental or lease, and shall advertise for public bids thereon. When these bids are received, they shall be publicly opened by the board, and the board shall thereupon determine the highest and best bid submitted and shall immediately notify the former owner of the site or plot of the amount, terms and conditions of the highest and best bid. The former owner of the site or plot shall have the exclusive right at his option, for a period of thirty (30) days after written notice is received by the land owner of the determination of the highest and best bid by the board, to rent, lease or purchase the site or plot of land by meeting the highest and best bid and by complying with all terms and conditions of renting, leasing or sale as specified by the board. However, the board shall not in any event rent, lease or



sell to any former owner more land than was taken from the former owner for the construction of the project, or one-quarter (1/4) mile of shore line, whichever is lesser. If this option is not exercised by the former owner within a period of thirty (30) days, the board shall accept the highest and best bid submitted.

Any bona fide, resident householder actually living or maintaining a residence on land taken by the district by condemnation shall have the right to repurchase his former land from the board of directors for a price not exceeding the price paid for his land, plus any permanent improvements and plus the cost of condemnation.

(f) To require the necessary relocation of roads and highways, railroad, telephone and telegraph lines and properties, electric power lines, pipelines, and mains and facilities in the project area, or to require the anchoring or other protection of any of these, provided due compensation is first paid the owners thereof or agreement is had with the owners regarding the payment of the cost of relocation. Further, the district is hereby authorized to acquire easements or rights-of-way in or outside of the project area for the relocation of roads, highways, railroad, telephone and telegraph lines and properties, electric power lines, pipelines, and mains and facilities, and to convey them to the owners thereof in connection with the relocation as a part of the construction of the project. However, the directors of the district shall not close any public access road to the project



existing prior to the construction of the reservoir unless the board of supervisors of the county in which the road is located agrees.

(g) To overflow and inundate any public lands and public property, including sixteenth section lands and in lieu lands, within the project area.

(h) To construct, extend, improve, maintain and reconstruct, to cause to be constructed, extended, improved, maintained and reconstructed, and to use and operate all facilities of any kind within the project area necessary or convenient to the project and to the exercise of powers, rights, privileges and functions.

(i) To sue and be sued in its corporate name.

(j) To adopt, use and alter a corporate seal.

(k) To make bylaws for the management and regulation of its affairs.

(l) To employ engineers, attorneys, who may or may not be a director, and all necessary agents and employees to properly finance, construct, operate and maintain the projects and the plants, and to pay reasonable compensation for these services; for all services in connection with the issuance of bonds as provided in this article, the attorney's fee shall not exceed one percent (1%) of the principal amount of these bonds. For any other services, only reasonable compensation shall be paid for those services. The board shall have the right to employ a general



197 manager or executive director, who shall, at the discretion of the
198 board, have the power to employ and discharge employees. Without
199 limiting the generality of the foregoing, it may employ fiscal
200 agents or advisors in connection with its financing program and in
201 connection with the issuance of its bonds.

202 (m) To make contracts and to execute instruments
203 necessary or convenient to the exercise of the powers, rights,
204 privileges and functions conferred upon it by this article.

205 (n) To make or cause to be made surveys and engineering
206 investigations relating to the project, or related projects, for
207 the information of the district to facilitate the accomplishment
208 of the purposes for which it is created.

209 (o) To apply for and accept grants from the United
210 States of America or from any corporation or agency created or
211 designated by the United States of America, and to ratify and
212 accept applications heretofore or hereafter made by voluntary
213 associations to these agencies for grants to construct, maintain
214 or operate any project or projects which hereafter may be
215 undertaken or contemplated by the district.

216 (p) To do all other acts or things necessary,
217 requisite, or convenient to the exercising of the powers, rights,
218 privileges or functions conferred upon it by this article or any
219 other law.

220 (q) To make such contracts in the issuance of bonds
221 that may be necessary to ensure the marketability thereof.



222 (r) To enter into contracts with municipalities,
223 corporations, districts, public agencies, political subdivisions
224 of any kind, and others for any services, facilities or
225 commodities that the project may provide. The district is also
226 authorized to contract with any municipality, corporation or
227 public agency for the rental, leasing, purchase or operation of
228 the water production, water filtration or purification, water
229 supply and distributing facilities of the municipality,
230 corporation or public agency upon consideration as the district
231 and entity may agree. Any contract may be upon any terms and for
232 any time as the parties may agree, and it may provide that it
233 shall continue in effect until bonds specified therein and
234 refunding bonds issued in lieu of these bonds and all obligations
235 are paid. Any contract with any political subdivision shall be
236 binding upon the political subdivisions according to its terms,
237 and the municipalities or other political subdivisions shall have
238 the power to enter into these contracts as in the discretion of
239 the governing authorities thereof would be to the best interest of
240 the people of the municipality or other political subdivisions.
241 These contracts may include within the discretion of the governing
242 authorities a pledge of the full faith and credit of the political
243 subdivisions for the performance thereof.

244 (s) To fix and collect charges and rates for any
245 services, facilities or commodities furnished by it in connection



with the project, and to impose penalties for failure to pay these charges and rates when due.

(t) To operate and maintain within the project area, with the consent of the governing body of any city or town located within the district, any works, plants or facilities of any city deemed necessary or convenient to the accomplishment of the purposes for which the district is created.

(u) Subject to the provisions of this article, from time to time to lease, sell or otherwise lawfully dispose of property of any kind, real, personal or mixed, or any interest therein within the project area or acquired outside the project area as authorized in this article, for the purpose of furthering the business of the district.

(v) When, in the opinion of the board of directors as shown by resolution duly passed, it shall not be necessary to the carrying on of the business of the district that the district own any lands acquired, the board shall advertise the lands for sale to the highest and best bidder for cash, and shall receive and publicly open the bids thereon. The board shall, by resolution, determine the highest and best bid submitted for the land and shall thereupon notify the former owner, his/her heirs or devisees, by registered mail of the land to be sold and the highest and best bid received therefor, and the former owner, or his/her heirs or devisees, shall have the exclusive right at



his/her or their option for a period of thirty (30) days in which to meet such highest and best bid and to purchase such property.

(w) To prevent or aid in the prevention of damage to person or property from the waters of the Pascagoula River or any of its tributaries.

(x) To acquire by purchase, lease, gift or in any other manner (otherwise than by condemnation) and to maintain, use and operate all property of any kind, real, personal or mixed, or any interest therein within the project area, within or without the boundaries of the district, necessary for the project and convenient to the exercise of the powers, rights, privileges and functions conferred upon the district by this article.

(y) In the purchase of or in the entering into of all lease purchase agreements for supplies, equipment, heavy equipment and the like, the directors shall in all instances comply with the provisions of law pertaining to public purchases by public bids on these supplies and equipment.

(z) To designate employees as peace officers with the power to make arrests for violations of regulations of the district. The officers are authorized to carry weapons and to enforce the laws of the state within the confines of district parks and property. Any employee so designated is required to obtain and maintain certification pursuant to Section 45-6-1 et seq.



294 (aa) To contract with persons, who are certified
295 according to the minimum standards established by the Board on Law
296 Enforcement Officer Standards and Training under Section 45-6-1 et
297 seq., to serve as peace officers with the power to make arrests
298 for violations of regulations of the district. Such officers are
299 authorized to carry weapons and to enforce the laws of the state
300 within the confines of district parks and property. All persons
301 with which the district has contracted under this paragraph (aa)
302 shall be independent contractors and shall not be considered as
303 employees under Chapter 46 * * *, Title 11, Mississippi Code of
304 1972.

305 (bb) To: (i) receive and expend funds that are made
306 available to it under the provisions of the federal American
307 Recovery and Reinvestment Act of 2009 (ARRA), and/or from any
308 other source, to construct a lake and related structures and
309 facilities in George County, Mississippi, if the funds received by
310 the district may be used for that purpose; (ii) obtain any
311 information and research regarding construction of the lake and
312 related structures and facilities from the Department of Wildlife,
313 Fisheries and Parks; and (iii) to receive and expend any funds
314 made available to the district from the Department of Wildlife,
315 Fisheries and Parks for the construction of the lake and related
316 structures and facilities.

317 (2) The board of directors shall annually prepare a
318 five-year plan containing a prioritized list detailing the



319 purposes, goals and projected costs of projects which it intends
320 to implement or is in the process of implementing and shall file
321 such plans with the clerk of the board of supervisors of each
322 member county, * * * with the clerk of each member municipality,
323 and with the Chairmen of the House and Senate Appropriations
324 Committees on or before July 15 of each year.

325 (3) The board of directors shall, after completion of the
326 annual audit of the district and upon receipt of the written
327 report thereon, file a copy of such audit with the clerk of the
328 board of supervisors of each member county, and with the clerk of
329 each member municipality.

330 **SECTION 3.** This act shall take effect and be in force from
331 and after July 1, 2023.

