

By: Representative Yates

To: Public Utilities

HOUSE BILL NO. 697

1 AN ACT TO AMEND SECTION 77-3-1, MISSISSIPPI CODE OF 1972, TO  
 2 PROVIDE THAT THE PUBLIC SERVICE COMMISSION SHALL NOT REGULATE ANY  
 3 ELIGIBLE HOMEOWNERS ASSOCIATION THAT IS DISTRIBUTING WATER TO THE  
 4 RESIDENTS OF ITS HOMEOWNERS ASSOCIATION REGARDLESS IF AN  
 5 ASSOCIATION IS LOCATED IN AN AREA THAT IS SUBJECT TO A CERTIFICATE  
 6 OF PUBLIC CONVENIENCE AND NECESSITY THAT IS HELD BY AN ELIGIBLE  
 7 MUNICIPALITY; TO AMEND SECTION 77-3-3, MISSISSIPPI CODE OF 1972,  
 8 TO DEFINE THE TERMS "ELIGIBLE MUNICIPALITY" AND "ELIGIBLE  
 9 HOMEOWNERS ASSOCIATION"; TO CREATE NEW SECTION 77-3-99,  
 10 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IF AN ELIGIBLE HOME  
 11 OWNERS ASSOCIATION DECIDES TO PROVIDE WATER SERVICE TO ITS  
 12 RESIDENTS, THEN AN ELIGIBLE MUNICIPALITY MUST SELL AND CONVEY  
 13 WATER ASSETS TO THE ASSOCIATION SO THAT WATER CAN BE SUPPLIED TO  
 14 SUCH RESIDENTS; TO BRING FORWARD SECTION 41-26-8, MISSISSIPPI CODE  
 15 OF 1972, WHICH PERTAINS TO THE OPERATION OF A PUBLIC WATER SYSTEM;  
 16 AND FOR RELATED PURPOSES.

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

18 **SECTION 1.** Section 77-3-1, Mississippi Code of 1972, is  
 19 amended as follows:

20 77-3-1. (1) Except as otherwise provided in Section 77-3-6,  
 21 any public utility as defined in paragraph (d) of Section 77-3-3,  
 22 owned or operated by a municipality shall not be subject to the  
 23 provisions of this article, except as to extension of utilities  
 24 greater than one (1) mile outside corporate boundaries after March  
 25 29, 1956.



26       (2) The provisions of this chapter shall not apply to the  
27 distribution of water by an eligible homeowners association only  
28 to its residents, irrespective of the subdivision's location  
29 inside of an area subject to a Certificate of Public Convenience  
30 and Necessity held by an eligible municipality. Additionally, the  
31 provisions of this chapter shall not apply to any entity supplying  
32 water to an eligible homeowner's association for purposes of  
33 supplying water only to its residents. These provisions shall not  
34 apply whether an eligible homeowners association elects to provide  
35 water to its residents on a full-time basis or opts for an  
36 emergency connection a private water source for use only when  
37 water from an eligible municipality is unavailable, unreliable or  
38 unsafe.

39       **SECTION 2.** Section 77-3-3, Mississippi Code of 1972, is  
40 amended as follows:

41       77-3-3. As used in this chapter:

42           (a) The term "corporation" includes a private or public  
43 corporation, a municipality, an association, a joint-stock  
44 association or a business trust.

45           (b) The term "person" includes a natural person, a  
46 partnership of two (2) or more persons having a joint or common  
47 interest, a cooperative, nonprofit, limited dividend or mutual  
48 association, a corporation, or any other legal entity.

49           (c) The term "municipality" includes any incorporated  
50 city, town or village.



51 (d) The term "public utility" includes persons and  
52 corporations, or their lessees, trustees and receivers now or  
53 hereafter owning or operating in this state equipment or  
54 facilities for:

55 (i) The generation, manufacture, transmission or  
56 distribution of electricity to or for the public for compensation;

57 (ii) The transmission, sale, sale for resale, or  
58 distribution of natural, artificial, or mixed natural and  
59 artificial gas to the public for compensation by means of  
60 transportation, transmission, or distribution facilities and  
61 equipment located within this state; however, the term shall not  
62 include the production and gathering of natural gas, the sale of  
63 natural gas in or within the vicinity of the field where produced,  
64 or the distribution or sale of liquefied petroleum gas or the sale  
65 to the ultimate consumer of natural gas for use as a motor vehicle  
66 fuel;

67 (iii) The transmission, conveyance or reception of  
68 any message over wire, of writing, signs, signals, pictures and  
69 sounds of all kinds by or for the public, where such service is  
70 offered to the public for compensation, and the furnishing, or the  
71 furnishing and maintenance, of equipment or facilities to the  
72 public, for compensation, for use as a private communications  
73 system or part thereof; however, no person or corporation not  
74 otherwise a public utility within the meaning of this chapter  
75 shall be deemed such solely because of engaging in this state in



76 the furnishing, for private use as last aforementioned, and  
77 moreover, nothing in this chapter shall be construed to apply to  
78 television stations, radio stations, community television antenna  
79 services, video services, Voice over Internet Protocol services  
80 ("VoIP"), any wireless services, including commercial mobile  
81 services, Internet Protocol ("IP") - enabled services or broadband  
82 services; and

83 (iv) The transmission, distribution, sale or  
84 resale of water to the public for compensation, or the collection,  
85 transmission, treatment or disposal of sewage, or otherwise  
86 operating a sewage disposal service, to or for the public for  
87 compensation.

88 The term "public utility" shall not include any person not  
89 otherwise a public utility, who furnishes the services or  
90 commodity described in this paragraph only to himself, his  
91 employees or tenants as an incident of such employee service or  
92 tenancy, if such services are not sold or resold to such tenants  
93 or employees on a metered or consumption basis other than the  
94 submetering authorized under Section 77-3-97.

95 A public utility's business other than of the character  
96 defined in subparagraphs (i) through (iv) of this paragraph is not  
97 subject to the provisions of this chapter.

98 (e) The term "rate" means and includes every  
99 compensation, charge, fare, toll, customer deposit, rental and  
100 classification, or the formula or method by which such may be



101 determined, or any of them, demanded, observed, charged or  
102 collected by any public utility for any service, product or  
103 commodity described in this section, offered by it to the public,  
104 and any rules, regulations, practices or contracts relating to any  
105 such compensation, charge, fare, toll, rental or classification;  
106 however, the term "rate" shall not include charges for electrical  
107 current furnished, delivered or sold by one (1) public utility to  
108 another for resale.

109 (f) The word "commission" shall refer to the Public  
110 Service Commission of the State of Mississippi, as now existing,  
111 unless otherwise indicated.

112 (g) The term "affiliated interest" or "affiliate"  
113 includes:

114 (i) Any person or corporation owning or holding,  
115 directly or indirectly, twenty-five percent (25%) or more of the  
116 voting securities of a public utility;

117 (ii) Any person or corporation in any chain of  
118 successive ownership of twenty-five percent (25%) or more of the  
119 voting securities of a public utility;

120 (iii) Any corporation of which fifteen percent  
121 (15%) or more of the voting securities is owned or controlled,  
122 directly or indirectly, by a public utility;

123 (iv) Any corporation of which twenty-five percent  
124 (25%) or more of the voting securities is owned or controlled,  
125 directly or indirectly, by any person or corporation that owns or



126 controls, directly or indirectly, twenty-five percent (25%) or  
127 more of the voting securities of any public utility or by any  
128 person or corporation in any chain of successive ownership of  
129 twenty-five percent (25%) of such securities;

130 (v) Any person who is an officer or director of a  
131 public utility or of any corporation in any chain of successive  
132 ownership of fifteen percent (15%) or more of voting securities of  
133 a public utility; or

134 (vi) Any person or corporation that the  
135 commission, after notice and hearing, determines actually  
136 exercises any substantial influence or control over the policies  
137 and actions of a public utility, or over which a public utility  
138 exercises such control, or that is under a common control with a  
139 public utility, such control being the possession, directly or  
140 indirectly, of the power to direct or cause the discretion of the  
141 management and policies of another, whether such power is  
142 established through ownership of voting securities or by any other  
143 direct or indirect means.

144 However, the term "affiliated interest" or "affiliate" shall  
145 not include a joint agency organized pursuant to Section 77-5-701  
146 et seq., nor a member municipality thereof.

147 (h) The term "facilities" includes all the plant and  
148 equipment of a public utility, used or useful in furnishing public  
149 utility service, including all real and personal property without  
150 limitation, and any and all means and instrumentalities in any



151 manner owned, operated, leased, licensed, used, controlled,  
152 furnished or supplied for, by or in connection with its public  
153 utility business.

154 (i) The term "cost of service" includes operating  
155 expenses, taxes, depreciation, net revenue and operating revenue  
156 requirement at a claimed rate of return from public utility  
157 operations.

158 (j) The term "lead-lag study" includes an analysis to  
159 determine the amount of capital which investors in a public  
160 utility, the rates of which are subject to regulation under the  
161 provisions of this chapter, must provide to meet the day-to-day  
162 operating costs of the public utility prior to the time such costs  
163 are recovered from customers, and the measurement of (i) the lag  
164 in collecting from the customer the cost of providing service, and  
165 (ii) the lag in paying the cost of providing service by the public  
166 utility.

167 (k) The term "broadband services" means any service  
168 that consists of or includes a high-speed access capability to  
169 transmit at a rate that is not less than two hundred (200)  
170 kilobits per second either in the upstream or downstream direction  
171 and either:

172 (i) Is used to provide access to the internet, or

173 (ii) Provides computer processing, information

174 storage, information content or protocol conversion, including any



175 service applications or information service provided over such  
176 high-speed access service.

177 (l) The term "video services" means video programming  
178 services without regard to delivery technology, including Internet  
179 Protocol technology ("Internet Protocol television or IPTV") and  
180 video programming provided as a part of a service that enables  
181 users to access content, information, email or other services  
182 offered over the public internet. The term "video programming"  
183 means any programming as defined in 47 USCS Section 522(20).

184 (m) The term "Voice over Internet Protocol services" or  
185 "VoIP services" means any service that: (i) enables real-time,  
186 two-way voice communications that originate from or terminate to  
187 the user's location in Internet Protocol or any successor  
188 protocol; (ii) uses a broadband connection from the user's  
189 location; and (iii) permits users generally to receive calls that  
190 originate on the Public Switched Telephone Network and to  
191 terminate calls to the Public Switched Telephone Network.

192 (n) The term "commercial mobile services" means any  
193 services as defined in 47 USCS Section 332(d).

194 (o) The term "Internet Protocol-enabled services" or  
195 "IP-enabled services" means any service, capability,  
196 functionality, or application provided using Internet Protocol, or  
197 any successor protocol, that enables an end user to send or  
198 receive a communication in Internet Protocol format, or any  
199 successor format, regardless of whether the communications is





200 voice, data or video. Nothing contained in this paragraph shall  
201 apply to retail services that are tariffed by the commission.

202 (p) "Broadband service provider" means an entity that  
203 provides broadband services to others on a wholesale basis or to  
204 end-use customers on a retail basis.

205 (q) "Broadband operator" means a broadband service  
206 provider that uses the electric delivery system of any public  
207 utility of the type as defined in paragraph (d)(i) of this section  
208 with the public utility's consent to provide broadband services.

209 (r) "Electric delivery system" means the poles, lines,  
210 fiber, cables, broadband system, materials, equipment, easements  
211 and other facilities or properties used by any public utility of  
212 the type as defined in paragraph (d)(i) of this section to deliver  
213 or facilitate the delivery, sale or use of electric energy.

214 (s) "Eligible municipality" means any municipality with  
215 a population of greater than one hundred thousand (100,000), that  
216 has been the subject of litigation by the United States  
217 Environmental Protection Agency for violations of the Safe  
218 Drinking Water Act, 42 U.S.C.

219 (t) "Eligible homeowners association" means any  
220 homeowners association created and governed by restrictive  
221 covenants located in part or in whole within an eligible  
222 municipality.

223 **SECTION 3.** The following shall be codified as Section  
224 77-3-99, Mississippi Code of 1972:



225           77-3-99. (1) In the event an eligible homeowners  
226 association elects to provide water service to its residents, the  
227 eligible municipality shall sell and convey any water assets to  
228 the homeowners association that the association deems necessary  
229 for it to supply its residents with water. These assets shall  
230 include, without limitation, main water lines, service lines to  
231 residential buildings, meters, and any other assets located within  
232 the subdivision that are owned by the municipality and used for  
233 the purpose of delivering water, which the homeowners association  
234 has determined are necessary or useful to provide its residents  
235 with water. The homeowners association shall pay the municipality  
236 fair market value for such assets, which value shall be determined  
237 by an independent appraisal conducted by an appraiser of the  
238 eligible homeowners association's choosing. At such time as the  
239 eligible homeowners association closes on the municipal water  
240 assets, it shall obtain as a function of law an easement in  
241 municipal roads and rights-of-way through or under which these  
242 assets reside, and on municipal roads adjacent to these roads,  
243 which will allow the homeowners association to repair, replace or  
244 improve these assets as needed at its cost, including repairing  
245 any damage to municipal roads that result from these repairs or  
246 replacements.

247           (2) The provisions of this chapter continue to apply to  
248 sewer services and the eligible municipality shall continue to  
249 furnish sewage disposal services to the residents of the eligible



250 homeowners association on the same terms at which they are offered  
251 to other residents of the municipality.

252 (3) If an eligible homeowners association elects to provide  
253 water to its residents, the eligible municipality shall continue  
254 to provide water service to the residents of this subdivision  
255 until such time as the homeowners association notifies the  
256 municipality in writing that is prepared to begin providing water  
257 service to the subdivision's residents.

258 (4) Nothing in this chapter shall be construed to diminish  
259 or eliminate the eligible municipality's continued obligation to  
260 provide emergency fire suppression services to a subdivision the  
261 eligible homeowners association of which has elected to provide  
262 its residents with water.

263 **SECTION 4.** Section 41-26-8, Mississippi Code of 1972, is  
264 brought forward as follows:

265 41-26-8. (1) The director shall exercise general  
266 supervision over the construction and operation of public water  
267 systems throughout the state. The general supervision shall  
268 include all of the features of construction and operation of  
269 public water systems which do or may affect the sanitary quality  
270 or the quantity of the water supply.

271 (2) (a) No person shall construct or change any community  
272 public water system or nontransient, noncommunity public water  
273 system until the plans for that construction or change have been  
274 submitted to and approved by the director. Plans for the



275 construction or change must be prepared by a professional engineer  
276 registered in this state.

277 (b) In addition, each applicant for a new community  
278 public water system or nontransient, noncommunity public water  
279 system shall submit an operation and maintenance plan for review  
280 and approval by the director. The plan must be approved before  
281 beginning construction.

282 (c) In granting any approval under this section, the  
283 director may specify any modifications, conditions or limitations  
284 as may be required for the protection of the public health and  
285 welfare.

286 (d) The director may also review the source of the  
287 water and the quantity of water to be withdrawn.

288 (e) Records of construction, including plans and  
289 descriptions of existing portions of a public water system, shall  
290 be made available to the department upon request.

291 (f) Each applicant for a new community public water  
292 system or nontransient, noncommunity public water system shall  
293 submit financial and managerial information as required by the  
294 public utilities staff. Following review of that information, the  
295 executive director of the public utilities staff shall certify in  
296 writing to the director the financial and managerial viability of  
297 the system if the executive director determines the system is  
298 viable. The director shall not approve the construction until  
299 that certification is received.



300 (g) The director shall not approve any plans for  
301 changes to an existing community public water system or  
302 nontransient, noncommunity public water system, if the director  
303 determines the changes would threaten the viability of the system  
304 or if the changes may overload the operational capabilities of the  
305 system.

306 (h) Those public water systems determined by the  
307 director to be appropriately providing corrosion control treatment  
308 shall effectively operate and maintain the system's water  
309 treatment facilities in order to continuously provide the optimum  
310 pH of the treated water or optimum dosage of corrosion inhibitor.

311 (3) Each semipublic water system shall notify the department  
312 of its location, a responsible party and the number of connections  
313 served. The department shall, to the extent practicable, take  
314 appropriate actions to ensure that records on semipublic water  
315 systems are up-to-date. The board may require water well drillers  
316 to provide information on wells drilled for use by semipublic  
317 water systems. The department shall at least annually collect a  
318 sample from each semipublic water system and shall analyze that  
319 sample at no cost to the semipublic water system for  
320 microbiological contaminants and any other contaminants deemed  
321 appropriate by the department. If the department finds levels of  
322 contaminants exceeding the Mississippi Primary Drinking Water  
323 Standards, the department shall notify the responsible party and  
324 shall provide technical assistance to the system to correct the



325 problem. No semipublic water system shall be subject to the  
326 penalty provided under Section 41-26-31.

327           **SECTION 5.** This act shall take effect and be in force from  
328 and after July 1, 2023.

