MISSISSIPPI LEGISLATURE REGULAR SESSION 2001

By: Representative Smith (39th)

To: Local and Private Legislation; Ways and Means

HOUSE BILL NO. 1658

AN ACT TO AMEND CHAPTER 838, LOCAL AND PRIVATE LAWS OF 1991, AS AMENDED BY CHAPTER 971, LOCAL AND PRIVATE LAWS OF 2000, TO REVISE THE QUALIFICATIONS FOR APPOINTMENT TO THE BOARD OF COMMISSIONERS OF THE SOUTHGATE SEWER DISTRICT IN LOWNDES COUNTY; AND FOR RELATED PURPOSES.

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

SECTION 1. Chapter 838, Local and Private Laws of 1991, as amended by Chapter 971, Local and Private Laws of 2000, is amended as follows:

Section 1. The Southgate Sewer District is hereby created and is composed of the following described area:

Beginning at the point where the West boundary of the Southeast Quarter (SE 1/4) of Section 31, Township 16 South, Range 18 West, intersects the South boundary of the Columbus Air Force Base and run thence South 6 feet to the center point of Section 6, Township 17 South, Range 18 West; run thence East to the Southeast Corner of the Northeast Quarter (NE 1/4) of said Section 6; thence run South along the West boundary of Sections 5, 8 and 17, Township 17 South, Range 18 West to the Southwest Corner of said Section 17; thence run East to the Southeast Corner of said Section 17; thence run North along the East boundary of Section 17 and Section 8, Township 17 South, Range 18 West, to the Southwest Corner of the North Half of Section 9, Township 17 South, Range 18 West; thence run East along the South boundary of the North half of Section 9 to the Southeast Corner of said North Half; thence run North along the

East boundary of Section 9 and Section 4, Township 17 South, Range 18 West, to the intersection with the South boundary of the Columbus Air Force Base at or near the Northeast Corner of said Section 4; thence run Westward along the South boundary of the Columbus Air Force Base to the Point of Beginning.

Section 2. The Southgate Sewer District shall be and is declared to be a valid political subdivision of the State of Mississippi, with the power to sue and be sued and to contract and be contracted with.

Upon the passage of this act and the appointment of the initial board of commissioners, the board shall cause a notice or declaration of commencement to run, within thirty (30) days, at least two (2) times, within a newspaper having general circulation in the district and county mentioned herein.

Section 3. It is declared that the object and purpose of creating the district is to provide sewer service to the residents of the aforesaid area and to provide ways and means to carry out and accomplish such purpose, thereby benefiting and making more valuable the lands in the district and preserving and promoting the health, safety and convenience of the residents in the district. In order to carry out and render effective the object and the purpose of this act, the courts of this state shall construe this act as an exercise by the Legislature of all the power appertaining to it that is necessary for the benefit of the health, safety and convenience of the residents of the district. All the terms and provisions of this act are to be liberally construed to effectuate the purposes herein set forth and all powers required to accomplish the purposes of this act are granted and conferred, including the power to employ engineers and attorneys at such reasonable compensation as the board of commissioners shall determine.

Section 4. From and after the effective date of this act, the powers of the Southgate Sewer District shall be vested in and exercised by a board of commissioners consisting of five (5) members to be appointed by the Board of Supervisors of Lowndes County, Mississippi. Upon their initial appointment, one (1) of the commissioners shall be appointed for a term of four (4) years and one (1) shall be for a term of three (3) years and one (1) for a term of two (2) years and two (2) shall be appointed for the term of one (1) year; thereafter, each commissioner shall be appointed and shall hold office for a term of five (5) years. Any vacancy occurring on the board of commissioners shall be filled by the board of supervisors at a regular meeting of the board. The board of supervisors shall have the authority to fill an unexpired term of any commissioner or commissioners. Each commissioner shall qualify for office by taking the oath required by Section 268 of the Constitution of Mississippi, and by the filing with the chancery clerk of the county a surety bond payable to the State of Mississippi in the penal sum of Ten Thousand Dollars ($10,000.00), to be approved by the chancery clerk and conditioned to provide for the favorable performance of his duties as commissioner. The bond premium shall be paid out of the revenues of the district.

The board of commissioners shall organize by electing one (1) of its members as chairman and another as vice chairman and another as secretary-treasurer. It shall be the duty of the chairman to preside at all meetings of the board and to act as the chief executive officer of the board of the district. The vice chairman shall act in the absence or disability of the chairman. The board also shall elect and fix the compensation of a secretary-treasurer who may or may not be a member of the board. It shall be the duty of the secretary-treasurer to keep a record of all proceedings of the board and to safely keep all funds of the district. The proceedings and records of the board shall be available for inspection as other public records. The

secretary-treasurer shall be required to execute a bond, payable to the district, in a sum and with such surety as shall be fixed and approved by the board of commissioners. The terms of all officers of the board shall be for one (1) year from and after the date of election and shall run until their respective successors are appointed and qualified. Each board of commissioners shall adopt an official seal with which to attest the official acts and records of the board and district.

Any qualified elector who is a resident of, or owns real property in, or is a user of services provided by, the district shall be eligible to hold the office of commissioner. The commissioners shall receive reasonable compensation and other related benefits for their services and shall be reimbursed for any expenses necessarily incurred in the discharge of their official duties. Compensation and other benefits shall not be paid to the commissioners until sufficient funding is available to meet all current financial obligations.

Section 5. Any district created pursuant to the provisions of this act, acting by and through the board of commissioners of the district, its governing authority, shall have the following powers:

(a) To sue and be sued;

(b) To acquire by purchase, gift, devise or lease and to hold and dispose of real and personal property of every kind;

(c) To make and enter into contracts, conveyances, mortgages, deeds of trust, bonds or leases;

(d) To incur debts, to borrow money, to issue negotiable bonds, and to provide for the rights of the holders thereof;

(e) To fix, maintain, collect and revise rates and charges for the services rendered by or through the facilities of such district;

(f) To pledge all or any part of its revenues to the payment of its obligations;

(g) To make such covenants in connection with the issuance of bonds or to secure the payment of bonds that a private business corporation can make under the general laws of the state;

(h) To use any right-of-way, easement or other similar property right, including right of eminent domain as provided by Section 11-27-81 et seq., Mississippi Code of 1972, necessary or convenient in connection with the acquisition, improvement, operation or maintenance of the facilities of the district, held by the state or any political subdivision thereof, provided that the regulations set by law or established by the governing body for the use of the property are followed;

(i) To enter into contracts and agreements with and accept grants from any agency of the United States of America, State of Mississippi or any municipality relating to the construction, operation, maintenance and replacement of any sewer collection system or treatment facilities;

(j) To have the power to issue new revenue bonds to finance the construction and other related purposes of the system. The amount of the revenue bonds authorized to be issued shall not exceed an aggregate amount of Two Million Dollars ($2,000,000.00). Except as otherwise provided in this act, all powers with respect to wastewater treatment facilities granted to municipalities of the state by Sections 21-27-11 through 21-27-69 and Section 19-5-151 et seq., Mississippi Code of 1972, including the issuance of revenue bonds, are conferred upon and may be exercised with the district by the board.

Section 6. The commission shall have full power and authority to issue all bonds of the district, but before issuing any bonds, the commission shall adopt a resolution declaring its intention so to do, stating the amount of the bonds proposed to be issued, and the date upon which the commission proposes to direct

the issuance of the bonds. The resolution shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper qualified under the provisions of Section 13-3-31, Mississippi Code of 1972, in the county in which the district lies and having a general circulation in the district which lies in the county. The first publication of the resolution shall be made not less than twenty-one (21) days prior to the date fixed in the resolution for the issuance of the bonds, and the last publication shall be made not more than seven (7) days prior to such date. If ten percent (10%) of the users of the district shall file a written protest against the issuance of such bonds on or before the date specified in such resolution, then an election on the question of the issuance of such bonds shall be called and held in the manner to be provided by the commission by rules and regulations promulgated prior to the adoption of the resolution declaring the commission's intention to issue the bonds.

Section 7. There shall be and there is created a statutory lien in the nature of a mortgage lien upon any system or systems acquired or constructed in accordance with this act, including all extensions and improvements thereof or combinations thereof subsequently made. The statutory lien shall be in favor of the holder or holders of any bonds issued pursuant to this act and all such property shall remain subject to the statutory lien until the payment in full of the principal of and interest on the bonds. Any holder of the bonds or any of the coupons representing interest thereon may either at law or in equity, by suit, action, mandamus or other proceedings, in any court of competent jurisdiction, protect and enforce such statutory lien and compel performance of all duties required by this act, including the making and collection of sufficient rates for the service or services, the proper accounting thereof, and the performance of any duties required by covenants with the holders of any bonds issued in accordance with this act.

If any default is made in the payment of the principal of or interest on the bonds, any court having jurisdiction of the action may appoint a receiver to administer the district and the system or systems, with power to charge and collect rates sufficient to provide for the payment of all bonds and obligations outstanding against the system or systems and for the payment of operating expenses and to apply the income and revenues in conformity with the provisions of this act and any covenants with bondholders.

Section 8. No holder or holders of any bonds issued pursuant to this act shall ever have the right to compel the levy of any tax to pay the bonds or the interest thereon. Each bond shall recite in substance that the bond and interest thereon is payable solely from the revenue pledged to the payment thereof and that the bond does not constitute a debt of the district within the meaning of any statutory limitation.

Section 9. The board of commissioners of the district issuing bonds pursuant to this act shall prescribe and collect reasonable rates, fees, tolls or charges for the services, facilities and commodities of its system or systems, shall prescribe penalties for nonpayment, and shall revise the rates, fees, tolls or charges from time to time whenever necessary to insure that the system or systems shall be and always remain self-supporting. The rates, fees, tolls or charges prescribed shall always produce revenue at least sufficient (a) to provide for all expenses of operation and maintenance of the system or systems, including reserves, and (b) to pay when due all bonds and interest thereon for the payment of which the revenues are or shall have been pledged, charged or otherwise encumbered, including reserves.

Section 10. The property and revenue of the district shall be exempt from all state, county and municipal taxation. Bonds issued pursuant to this act and the income therefrom shall be exempt from all state, county and municipal taxation, except

inheritance, transfer and estate taxes, and it may be so stated on the face of the bonds.

Section 11. Any area adjacent to any district created pursuant to this act and situated within the same county as the district may be annexed to and become a part of the district by the procedure prescribed below:

(a) The board of supervisors, after due investigation, may adopt a resolution finding and determining (i) that the public convenience and necessity require extension of the district and (ii) that the extension to the district is economically sound and desirable. The resolution shall designate the contemplated territorial limits of the extended district and the municipalities and sewer districts proposed to be served.

(b) A certified copy of the resolution as so adopted shall be published in a newspaper published in the county and having a general circulation within the proposed district once a week for at least three (3) consecutive weeks prior to the date specified in the resolution as the date upon which the board intends to create the district. The first publication shall be made not less than twenty-one (21) days prior to the date specified, and the last publication shall be made not more than seven (7) days prior to the date.

(c) If twenty percent (20%) of the qualified electors of the proposed district file a written petition with the board of supervisors on or before the date specified protesting the extension of the district, the board of supervisors shall call an election on the question of the extending of the district. The election shall be held and conducted by the election commissioners of the county as nearly as may be in accordance with the general laws governing elections and the election commissioners shall determine which of the qualified electors of the county reside within the proposed district and only such qualified electors that reside within the proposed district shall be entitled to vote in

the election. Notice of the election, setting the time, place or places, and purpose of the election shall be published by the clerk of the board of supervisors. The notice shall be published for the time and in the manner provided for the publication of the resolution of intention. The ballots to be prepared for and used at the election shall be in substantially the following form:

For extension of _____ district ( )

Against extension of _____ district ( )

and voters shall vote by placing a cross mark (x) or a check mark (✔) opposite their choice.

(d) If no petition requiring an election be filed or if a majority of those voting at an election vote in favor of the creation of the district, the board of supervisors shall adopt a resolution creating the district as described in the resolution of intention.

(e) Any party having an interest in the subject matter and aggrieved or prejudiced by the findings and adjudications of the board of supervisors may appeal to the circuit court of the county in the manner provided by law for appeals from orders of the board of supervisors; provided, that the appeal shall be taken within a period of fifteen (15) days from and after the date of the adoption of the resolution extending any such district.

All costs incident to the publication of notice and all other costs incident to the hearings, election and proceedings shall be paid by the district.

Within ninety (90) days after the close of each fiscal year, the commissioners shall publish in a newspaper of general circulation in the county a sworn statement showing the financial condition of the district, the earnings for the fiscal year just ended, a statement of the sewer rates being charged and a brief statement of the method used in arriving at the rates. The statement shall also be filed with the board of supervisors creating the district.

Section 12. For the purposes of Section 77-3-1, Mississippi Code of 1972, this wastewater treatment facility shall be deemed to be a municipal sewage district not subject to the jurisdiction of the Mississippi Public Service Commission, except as provided by Section 77-3-1, Mississippi Code of 1972, and in this act.

Section 13. Any revenue bonds issued under the provisions of this act may be submitted to validation under the provisions of Sections 31-13-1 through 31-13-11, Mississippi Code of 1972.

SECTION 2. This act shall take effect and be in force from and after its passage.