

By: Senator(s) Robertson, Minor, Stogner,
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To: Public Utilities

SENATE BILL NO. 3038

1 AN ACT TO AMEND SECTION 77-3-13, MISSISSIPPI CODE OF 1972, TO
2 CLARIFY THAT MUNICIPALLY-OWNED OR OPERATED UTILITIES ARE
3 PROHIBITED FROM SERVING AREAS THAT ARE CERTIFICATED BY THE PUBLIC
4 SERVICE COMMISSION TO ANOTHER UTILITY; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 77-3-13, Mississippi Code of 1972, is
7 amended as follows:

8 77-3-13. (1) The commission shall issue a certificate of
9 convenience and necessity to any person engaged in the
10 construction or operation of such equipment or facility as is
11 mentioned in subsection (1) of Section 77-3-11 on March 29, 1956,
12 for the construction or operation then being conducted, without
13 requiring proof that public convenience and necessity will be
14 served by such construction or operation, and without further
15 proceedings, if application for such certificate shall have been
16 made to the commission within six (6) months after said date. Any
17 utility covered by this chapter which has heretofore been under
18 the jurisdiction of the commission shall, upon application within
19 six (6) months of said date, be issued a certificate authorizing
20 it to conduct operations and make extensions within any area
21 covered by its service area map or maps on file with the
22 commission on said date.

23 (2) The commission shall issue a certificate of convenience
24 and necessity to any person engaged in the construction or
25 operation of a sewage disposal service as mentioned in subsection
26 (2) of Section 77-3-11 on August 9, 1968, for the construction or
27 operation then being conducted, without requiring proof that
28 public convenience and necessity will be served by such



29 construction or operation, and without further proceedings, if
30 application for such certificate shall have been made to the
31 commission within six (6) months after said date. Pending the
32 filing of such application and the issuance of a certificate, the
33 continuance of such construction or operation shall be lawful.

34 Except as otherwise specifically provided by subsection (2)
35 of Section 77-3-11 or by this subsection, that portion of the
36 business of a public utility dealing with the operation of a
37 sewage disposal service as provided by subsection (2) of Section
38 77-3-11 shall be subject to provisions of this chapter, in like
39 manner and with like effect as if such business had been included
40 within the definition of a "public utility" in the original
41 enactment of this chapter.

42 (3) In all other cases, the commission shall set the matter
43 for hearing, and shall give reasonable notice of the hearing
44 thereon to all interested persons as in its judgment may be
45 necessary under its rules and regulations, involving the financial
46 ability and good faith of the applicant, the necessity for
47 additional services and such other matters as the commission deems
48 relevant. The commission may issue a certificate of public
49 convenience and necessity, or refuse to issue the same or issue it
50 for the establishment or construction of a portion only of the
51 contemplated plant, route, line or system, or extension thereof,
52 or for the partial exercise only of such right or privilege, and
53 may attach to the exercise of the rights granted by said
54 certificate such reasonable terms and conditions as to time or
55 otherwise as in its judgment the public convenience, necessity and
56 protection may require, and may forfeit such certificate after
57 issuance for noncompliance with its terms, or provide therein for
58 an ipso facto forfeiture of the same for failure to exercise the
59 rights granted within the time fixed by the certificate.

60 Provided, however, nothing in this section shall be construed as
61 requiring such certificate for a municipally owned plant, project



62 or development, route, line or system or extension thereof in
63 areas within one (1) mile of corporate boundaries not certificated
64 to another utility. Provided further, however, nothing in this
65 chapter or other provisions of law shall be construed as allowing
66 a municipally-owned or operated plant, project or development,
67 route, line or system or extension thereof in areas certificated
68 to another utility. Provided, further, no certificate shall be
69 required for extensions or additions within the corporate limits
70 of a municipality being served by the holder of a certificate of
71 convenience and necessity.

72 (4) The commission shall, prior to issuing a certificate of
73 public convenience and necessity to a public utility for any new
74 construction, extension or addition to its property, ascertain
75 that all labor, materials, property or services to be rendered for
76 any proposed project will be supplied at reasonable prices. The
77 commission shall, after issuance of a certificate for facilities
78 estimated to cost Five Million Dollars (\$5,000,000.00) or more or
79 estimated to cost an amount equal to one percent (1%) of the rate
80 base allowed by the commission in the utility's last rate case,
81 whichever is greater, assign the public utilities staff to monitor
82 such projects, to inspect periodically construction in progress,
83 and to report to the commission any variances or deviations as
84 found, if any, and to file progress reports thereon with the
85 commission. Such public utility shall file a similar report with
86 the commission at such times and in such form as the commission
87 shall require, including any substantial changes in plans and
88 specifications, cost allocations, construction schedule and funds
89 available to complete the project.

90 (5) The commission may issue a temporary certificate in
91 cases of emergency to assure maintenance of adequate service or to
92 serve particular customers, without notice or hearing, pending the
93 determination of an application for a certificate, and may by
94 regulation exempt from the requirements of Sections 77-3-11



95 through 77-3-21: (a) temporary acts or operations for which the
96 issuance of a certificate will not be required in the public
97 interest; and (b) extensions or additions of service facilities
98 outside of municipalities under such general rules as will promote
99 the prompt availability of such service to prospective users, and
100 at the same time prevent unnecessary and uneconomic duplication of
101 such facilities as between two (2) or more persons.

102 (6) Prior to the acquisition pursuant to Section 77-3-17,
103 Mississippi Code of 1972, or other provisions of law, by any
104 public agency, authority, district, state or other agency,
105 institution or political subdivision thereof, of any certificate
106 of public convenience and necessity or portion thereof, service
107 areas or portion thereof, or operating rights or portion thereof,
108 issued or granted by the commission pursuant to the provisions of
109 this Section 77-3-13 and/or the facilities or other properties and
110 equipment of the utility providing service therein; of any
111 regulated utility as defined in Section 77-3-3(d)(i), (ii) and
112 (iii), Mississippi Code of 1972, the commission shall first
113 determine if such service area, certificate of public convenience
114 and necessity, or operating right, or portions thereof, should be
115 canceled as provided in Section 77-3-21, Mississippi Code of 1972.

116 (7) Notwithstanding any provision of this section to the
117 contrary, the certificate as applied for may be granted without a
118 hearing in uncontested cases; however, the commission may hear any
119 uncontested case if it determines that the public interest will be
120 served thereby.

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

