MISSISSIPPI LEGISLATURE REGULAR SESSION 2007

By: Senator(s) Michel

To: County Affairs; Finance

SENATE BILL NO. 2990

AN ACT TO AMEND SECTIONS 19-31-5, 19-31-7 AND 19-31-47, MISSISSIPPI CODE OF 1972, TO ALLOW CONTIGUOUS COUNTIES TO FORM A PUBLIC IMPROVEMENT DISTRICT; TO AMEND SECTION 19-31-23, MISSISSIPPI CODE OF 1972, TO PLACE CERTAIN CONDITIONS ON THE INCURRING OF DEBT BY A DISTRICT; TO AMEND SECTION 19-31-33, MISSISSIPPI CODE OF 1972, TO REVISE THE TERM OF PAYMENTS OF DISTRICT ASSESSMENTS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 19-31-5, Mississippi Code of 1972, is amended as follows:

19-31-5. As used in this chapter the following terms shall have the meanings ascribed to them in this section unless the context clearly requires otherwise:

(a) "Assessable improvements" means any public improvements and community facilities that the district is empowered to provide in accordance with this chapter.

(b) "Assessment bonds" means special obligations of the district that are payable solely from proceeds of the special assessments levied for an assessable project.

(c) "Board" or "board of directors" means the governing board of the district or, if such board has been abolished the board, body or commission succeeding to the principal functions thereof or to whom the powers given to the board by this chapter have been given by law.

(d) "Bond" includes certificate, and the provisions that are applicable to bonds are equally applicable to certificates. The term "bond" includes any assessment bond, refunding bond, revenue bond and other such obligation in the nature of a bond as is provided for in this chapter.

(e) "Public improvement district" or "district" means a special district that is created pursuant to this chapter and limited to the performance of those specialized functions authorized by this chapter, the boundaries of which are contained wholly within a single county or two (2) or more contiguous counties; the governing head of which is a body created, organized and constituted and authorized to function specifically as prescribed in this chapter for the delivery of public improvement services; and the formation powers, governing body, operation, duration accountability, requirements for disclosure and termination of which are as required by general law.

(f) "Cost," when used with reference to any project, includes but is not limited to:

(i) The expenses of determining the feasibility or practicability of acquisition, construction or reconstruction.

(ii) The cost of surveys, estimates, plans and specifications.

(iii) The cost of improvements.

(iv) Engineering, fiscal and legal expenses and charges.

(v) The cost of all labor, materials, machinery and equipment.

(vi) The cost of all lands, rights, servitudes and franchises acquired.

(vii) Financing charges.

(viii) The creation of initial reserve and debt service funds.

(ix) Working capital.

(x) Interest charges incurred or estimated to be incurred on money borrowed before and during construction and acquisition and for such reasonable period of time after completion of construction or acquisition as the board may determine.

(xi) The cost of issuance of bonds pursuant to this chapter, including advertisements and printing.

(xii) The cost of any election held pursuant to this chapter and all other expenses of issuance of bonds.

(xiii) The discount, if any, on the sale or exchange of bonds.

(xiv) Administrative expenses.

(xv) Such other expenses as may be necessary or incidental to the acquisition, construction or reconstruction of any project or to the financing thereof, or to the development of any lands within the district.

(g) "District manager" means the manager of the district.

(h) "District roads" means highways, streets, roads, alleys, sidewalks, landscaping, storm drains, bridges and thoroughfares of all kinds and descriptions.

(i) "Landowner" means the owner of land, including real property as it appears in the official records of the county, including a trustee, a private corporation or other entity, and an owner of a condominium unit.

(j) "Project" means any development, improvement, property, utility, facility, works, enterprise or service undertaken after the passage of this chapter or established under the provisions of this chapter.

(k) "Revenue bonds" means obligations of the district that are payable from revenues derived from sources other than ad valorem taxes on real or personal property and that do not pledge the property, credit or general tax revenue of the district.

(l) "Sewer system" means any plant, system, facility or property, and additions, extensions and improvements thereto, useful or necessary in connection with the collection, treatment or disposal of sewage.

(m) "Water management and control facilities" means any lakes, canals, ditches, reservoirs, dams, levees, floodways, pumping stations or any other works, structures or facilities for the conservation, control, development, utilization and disposal of water, and any purposes incidental thereto.

(n) "Water system" means any plant system, facility or property, and additions, extensions, and improvements thereto, useful or necessary in connection with the development of sources, treatment or purification and distribution of water.

SECTION 2. Section 19-31-7, Mississippi Code of 1972, is amended as follows:

19-31-7. (1) The method for the establishment of a public improvement district shall be pursuant to an ordinance adopted by the governing body of <u>each</u> county in which the land is located granting a petition for the establishment of a public improvement district. The petition for the establishment of a public improvement district shall be filed by the petitioner with the governing body of the county <u>or counties</u>. The petition shall contain:

(a) A description of the boundaries of the district;

(b) The written consent to the establishment of the district by all landowners in the district;

(c) A designation of five (5) persons to be the initial members of the board of directors, who shall serve in that office until replaced by elected members as provided in this chapter;

(d) The proposed name of the district;

(e) A map of the proposed district showing existing infrastructure, if any; and

(f) Based upon available data, the proposed timetable for construction of the district services and the estimated cost of constructing the proposed services.

(2) A public hearing on the petition shall be conducted by the governing body of <u>each</u> county <u>of the proposed district</u> within

forty-five (45) days after the petition is filed unless an extension of time is requested by the petitioners and granted by the governing body of each county. The hearing shall be held at an accessible location in each county in which the public improvement district is to be located. The petitioner shall cause a notice of the hearing to be published in a newspaper having general circulation in each county at least once a week for the four (4) successive weeks immediately prior to the hearing. Such notice shall give the time and place for the hearing, a description of the area to be included in the district, and any other relevant information which the establishing governing bodies may require. The advertisement shall be published in the official minutes of the local governing body.

(3) The governing body of each county shall consider the record of the public hearing and any other relevant factors in making its determination to grant or deny a petition for the establishment of a public improvement district.

(4) An ordinance establishing a public improvement district shall include the boundaries of the district, the names of the five (5) persons designated to be the initial members of the board of directors of the district and the name of the district.

(5) If all of the land in the area for the proposed district is within the territorial jurisdiction of a municipality, then the petition requesting establishment of a public improvement district under this chapter shall be filed by the petitioner with that particular municipality. In such event, the duties of the county with regard to the petition shall be the duties of the municipality. If any of the land area of a proposed district is within the land area of a municipality, the governing body of the county may not create the district without the approval of the municipality.

(6) The governing body of any governmental agency, county and/or * * * municipality may enter into contribution agreements with the district.

SECTION 3. Section 19-31-23, Mississippi Code of 1972, is amended as follows:

19-31-23. (1) The district may issue and sell from time to time bonds, notes, negotiable notes, tax anticipation notes, bond anticipation notes, other fund anticipation notes, renewal notes, refunding bonds, interim certificates, certificates of indebtedness, certificates of participation, debentures, warrants, commercial paper or other obligations or evidences of indebtedness to provide funds for and to fulfill and achieve its public purpose or corporate purposes, as set forth in this chapter, including, but not limited to, the payment of all or a portion of the costs of a project, to provide amounts necessary for any corporate purposes, including incidental expenses in connection with the issuance of the obligations, the payment of principal and interest on the obligations of the district, the establishment of reserves to secure such obligations, and all other purposes and expenditures of the district incident to and necessary or convenient to carry out its public functions or corporate purposes, and any credit enhancement for such obligations.

(2) Except as may otherwise be provided by the district, all obligations issued by the district shall be negotiable instruments and payable solely from the levy of any special assessment by the district or from any other sources whatsoever that may be available to the district but shall not be secured by the full faith and credit of the state or the county or municipality that created the district.

(3) Obligations shall be authorized, issued and sold by a resolution or resolutions of the district adopted as provided in this chapter. Such bonds or obligations may be of such series, bear such date or dates, mature at such time or times, bear

interest at such rate or rates, including variable, adjustable, or zero interest rates, be payable at such time or times, be in such denominations, be sold at such price or prices, at public or private negotiated sale, after advertisement as is provided for in Section 17-21-53(1), (2), be in such form, carry such registration and exchangeability privileges, be payable at such place or places, be subject to such terms of redemption and be entitled to such priorities on the income, revenue and receipts of, or available to, the district as may be provided by the district in the resolution or resolutions providing for the issuance and sale of the bonds or obligations of the district.

(4) The obligations of the district shall be signed by such directors or officers of the district by either manual or facsimile signatures as shall be determined by resolution or resolutions of the district, and shall have impressed or imprinted thereon the seal of the district or a facsimile thereof.

(5) Any obligations of the district may be validly issued, sold and delivered notwithstanding that one or more of the directors or officers of the district signing such obligations or whose facsimile signature or signatures may be on the obligations shall have ceased to be such director or officer of the district at the time such obligations shall actually have been delivered.

(6) Obligations of the district may be sold in such manner and from time to time as may be determined by the district to be most beneficial, and the district may pay all expenses, premiums, fees or commissions that it deems necessary or advantageous in connection with the issuance and sale thereof, subject to the provisions of this chapter.

(7) The district may authorize the establishment of a fund or funds for the creation of a debt service reserve, a renewal and replacement reserve or such other funds or reserves as the district may approve with respect to the financing and operation of any project and as may be authorized by any bond resolution,

trust agreement indenture of trust or similar instrument or agreement pursuant to the provisions of which the issuance of bonds or other obligations of the district may be authorized.

(8) Any cost, obligation or expense incurred for any of the purposes specified in this chapter shall be a part of the project costs and may be paid or reimbursed as such out of the proceeds of bonds or other obligations issued by the district.

(9) Neither the directors of the board nor any person executing the bonds shall be personally liable for the bonds or be subject to any personal liability by reason of the issuance thereof. No earnings or assets of the district shall accrue to the benefit of any private persons. However, the limitation of liability provided for in this subsection shall not apply to any gross negligence or criminal negligence on the part of any director or person executing the bonds.

(10) The district may avail itself of the provisions of Sections 31-13-1 through 31-13-11.

(11) This chapter constitutes full and complete authority for the issuance of bonds and the exercise of the powers of the district provided herein. No procedures or proceedings, publications, notices, consents, approvals, orders, acts or things by the board or any board, officers, commission, department, agency or instrumentality of the district, other than those required by this chapter, shall be required to perform anything under this chapter, except that the issuance or sale of bonds pursuant to the provisions of this chapter shall comply with the general law requirements applicable to the issuance or sale of bonds by the district. Nothing in this chapter shall be construed to authorize the district to utilize bond proceeds to fund the ongoing operations of the district.

(12) Before incurring any debt as provided in subsection (1) of this section, the district may, but shall not be required to,

secure an agreement from one or more developers obligating such developer or developers:

(a) To effect the completion of all or any portion of a project at no cost to the district;

(b) To pay all or any portion of the real property taxes due on the project in a timely manner; and

(c) To maintain and operate all or any portion of the buildings or other facilities or improvements of the project in such a manner as to preserve property values.

No breach of any such agreement shall impose any pecuniary liability upon a district or any charge upon its general credit or against its taxing powers.

Additionally, the district may enter into an agreement with the developer under which the developer may construct all or any part of the project with private funds in advance of issuance of bonds and may be reimbursed by the district for actual costs incurred by the developer upon issuance and delivery of bonds and receipt of the proceeds, conditioned upon dedication of project by the developer to the district, a governmental agency, a county or a municipality to assure public use and access. This condition shall not apply to the privately owned portion of a project for which the Mississippi Development Authority has issued a certificate of convenience and necessity pursuant to the Regional Economic Development Act.

As used in this section, the term "developer" means any entity or natural person which enters into an agreement with a district whereby the developer agrees to construct, operate and maintain or procure the construction, operation and maintenance of a project or projects, or portions thereof, upon land within the district.

SECTION 4. Section 19-31-33, Mississippi Code of 1972, is amended as follows:

19-31-33. (1) The board shall annually determine, order and levy the annual installment of the total benefit special assessments for bonds issued and related expenses to finance district facilities and projects that are levied under this chapter. These assessments may be due and collected during each year that county taxes are due and collected, in which case such annual installment and levy shall be evidenced to and certified to the assessor by the board not later than August 31 of each year. Such assessments shall be entered by the assessor on the county tax rolls and shall be collected and enforced by the tax collector in the same manner and at the same time as county taxes, and the proceeds thereof shall be paid to the district. These benefit special assessments shall be a lien on the property against which assessed until paid and shall be collectible and enforceable in like manner as county property taxes. All statutes regulating the collection and enforcement of county property taxes shall apply to the enforcement and collection of the benefit special assessments levied under this section. The amount of the assessment for the exercise of the district’s powers under this chapter shall be determined by the board based upon a report of the district’s engineer and assessed by the board upon such lands, which may be part or all of the lands within the district benefited by the improvement, apportioned between benefited lands in proportion to the benefits received by each tract of land.

(2) To maintain and preserve the facilities and projects of the district, the board shall levy a maintenance special assessment. This assessment may be evidenced by and certified to the assessor by the board of directors not later than August 31 of each year and shall be entered by the assessor on the county tax rolls and shall be collected and enforced by the tax collector in the same manner and at the same time as county taxes, and the proceeds therefrom shall be paid to the district. These maintenance special assessments shall be a lien on the property

against which assessed until paid and shall be collectible and enforceable in like manner as county property taxes and all statutes regulating the collection and enforcement of county property taxes shall apply to the enforcement and collection of the benefit special assessments levied under this section. The amount of the maintenance special assessment for the exercise of the district's powers under this chapter shall be determined by the board based upon a report of the district's engineer and assessed by the board upon such lands, which may be all of the lands within the district benefited by the maintenance thereof, apportioned between the benefited lands in proportion to the benefits received by each tract of land.

(3) Benefit special assessments and maintenance special assessments authorized by this section shall be levied and payable in annual installments for each year for which bonds secured by the assessment are outstanding. The tax collector shall collect and enforce assessments in the same manner and at the same time as ad valorem taxes. Benefit special assessments and maintenance special assessments shall constitute a lien on the property against which assessed until paid and shall be on a parity with the lien of state, county, municipal and school board property taxes.

(4) The tax assessor and tax collector are entitled to reasonable compensation for preparing the rolls and collecting the assessments.

(5) District assessments may be made payable in no more than forty (40) yearly installments.

SECTION 5. Section 19-31-47, Mississippi Code of 1972, is amended as follows:

19-31-47. Within thirty (30) days after the effective date of the ordinance establishing a public improvement district under this chapter, the district shall cause to be recorded in the land records in each county in which it is located a "Notice of

Establishment of the _____ Public Improvement District." The notice shall include the legal description of the district and a copy of the disclosure statement specified in this chapter.

SECTION 6. This act shall take effect and be in force from and after its passage.