

Chapter No. 436
13/SS01/R888SG
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3/25/13

4:12 pm

SENATE BILL NO. 2674

Originated in Senate *Liz Welch* Secretary

SENATE BILL NO. 2674

AN ACT TO AMEND SECTION 51-35-307, MISSISSIPPI CODE OF 1972, TO MAKE TECHNICAL REVISIONS TO THE URBAN FLOOD CONTROL LAW PROVIDING FOR THE ESTABLISHMENT OF THE RANKIN-HINDS PEARL RIVER FLOOD AND DRAINAGE CONTROL DISTRICT; TO AMEND SECTION 51-35-315, MISSISSIPPI CODE OF 1972, TO REQUIRE PURCHASES PURSUANT TO STATE PURCHASING LAWS; TO CLARIFY STATUS AS A POLITICAL SUBDIVISION; TO DELETE SAND AND GRAVEL AS MINERALS; TO AMEND SECTION 51-35-317, MISSISSIPPI CODE OF 1972, TO DELETE THE REQUIREMENT THAT DIRECTORS RESIDE OR BE A PROPERTY OWNER IN THE DISTRICT; TO AMEND SECTION 51-35-319, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT CONSTRUCTION CONTRACTS BE LET PURSUANT TO STATE PURCHASING AND BID LAWS; TO AMEND SECTION 51-35-325, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT BONDS ISSUED SHALL BE REVENUE BONDS AND PROVIDE FOR A REFERENDUM ON THE ISSUANCE OF REVENUE BONDS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 51-35-307, Mississippi Code of 1972, is amended as follows:

51-35-307. Any municipality which may be, in whole or in part, a part of a proposed flood and drainage control district organized under the terms of this article, and when authorized by a resolution of a majority of its governing authorities, may petition the chancery court of the county in which the proposed district is located, or the chancery court of either county in

which lands to be included in the proposed district are located if the lands to be included in the proposed district are located in two or more counties, to organize and establish a flood and drainage control district and shall set forth in the petition:

(a) The proposed name of the district and the areas to be included in the district, * * * the areas to be that area directly or indirectly benefited by or protected from overflow or flood waters by the contemplated flood or drainage control improvements and any area which is necessary to be included in the district to carry out the purposes of this article. Any municipality or any part thereof, or any county or any part thereof, which is subject to overflow or flood from waters of any river or its tributaries, or which benefits from improvements, may be included in the district.

(b) The fact that a preliminary report or study to determine the engineering feasibility of constructing flood or drainage control improvements along any river or its tributaries has been made by a competent engineer or engineering firm, or any other competent institution or agency, and that such study or report shows that the construction of such facilities is feasible for flood and drainage control or for any of the other purposes or services contemplated by the legislative declaration of public policy in this article.

(c) The necessity and desirability for the construction of such facilities.

(d) A general description of the purposes of the contemplated works, a general description of the plan including the lands to be protected by said flood or drainage control improvements or otherwise affected thereby, and maps or plats showing the general location of any flood and drainage control improvements and related facilities. The word "project" when used herein shall mean the general plan and purposes of the flood and drainage control improvements and associated development, as set out in this petition to the chancery court, and the words "project area" shall mean the physical location of any levees, channels, drains, or related facilities * * * and associated development, and those areas which * * * are necessary to be included in the district to carry out the purposes of this article, and the area of the district as shown on the plats filed with the chancery court. The words "related facilities" as used in this article shall mean any facilities which are correlated with or used in connection with the project.

The petition shall be filed with as many copies as there are parties defendant. A copy of the preliminary report or study shall be attached to the original petition as an exhibit.

It shall not be necessary that any landowners in the counties to be included in said proposed district be named in the petition or made parties defendant. The chancellor of the chancery court in which said petition shall be filed shall have jurisdiction of the entire flood control district and project area for the

purposes of this article. Such jurisdiction may be exercised by the chancellor in * * * termtime or in vacation, as provided in this article.

In the event any part of the proposed flood and drainage control district lies outside the limits of the municipality filing the petition, the county or counties in which lie said lands outside said municipality shall be made a defendant to the petition by service on the clerk of the board of supervisors; however, should said county or counties join in said petition pursuant to a resolution of a majority of the members of the board of supervisors thereof, it shall not be necessary to make said county or counties a defendant to said petition.

In the event any part of said proposed flood and drainage control district lies within any municipality other than said municipality petitioning for the creation of said district, said municipality or municipalities not joining in said petition shall be made a defendant to said petition by service of process on the clerk of said municipality; however, should said municipality join in said petition pursuant to a resolution of a majority of the governing authorities thereof, it shall not be necessary to make said municipality a defendant to said petition.

SECTION 2. Section 51-35-315, Mississippi Code of 1972, is amended as follows:

51-35-315. The said district through its board of directors is hereby empowered:

(a) To impound, divert, change, alter, or otherwise control overflow water and the surface water of any river or its tributaries within the project area within or without such district at such place or places and in such amount * * * by the diversion of rivers or their tributaries, by the construction of a dam or dams, a levee or levees, a channel or channels, reservoir or reservoirs, works, pumps, plants, and any other necessary or useful related facilities contemplated or described as a part of the project within or without the district. The district is also empowered to construct or otherwise acquire within the project area all works, plants, or other facilities necessary or useful to the project for the purpose of carrying out the provisions of this article.

(b) To cooperate with the United States of America in the construction of flood and drainage control improvements, for the protection of property, controlling floods, reclaiming overflow lands, and preventing overflows in this state; and for the purpose of operating and maintaining dams, reservoirs, channels, levees, pumps, and other flood control works and improvements which may be constructed by the United States of America or any department or agency thereof.

(c) When said project, or any part thereof, is to be constructed by the United States of America or any agency or department thereof, to furnish, without cost to the United States of America, all lands, easements, and rights_of_way necessary for

the construction of the project or any part thereof; to hold and save the United States free from damages due to said construction; to make, without cost to the United States, any changes, alterations, or relocation of any public utilities, roads, highways, bridges, buildings, or local betterment made necessary by the work; to provide assurances to the United States of America that encroachment on the levees, improved channels, and pond areas will not be permitted; to maintain and operate the improvements after completion thereof in accordance with regulations prescribed by the United States of America or any agency or department thereof; to contribute in cash to the United States of America, or any agency or department thereof, such sums of money as shall be required by the United States of America, or any agency or department thereof, as a condition for the construction of any improvements by the United States or any agency or department thereof; and generally, without being limited by any of the above, to carry out and faithfully perform any obligations cast upon the district as a condition to the construction of any flood control work, project, or improvements by the United States of America, or any agency or department thereof, and to give assurances to the United States of America that the district will so do.

(d) To construct, acquire, and develop all facilities within the project area deemed necessary or useful with respect thereto.

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

(f) To acquire by purchase, lease, gift, or in any other manner (otherwise than by condemnation) and to maintain, use, and operate any and 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.

(g) To acquire by condemnation any and 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 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 railroads, telephone, or telegraph companies. For the purposes of carrying out this article, the right of eminent domain of such 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 highways, or other public property in the

project area, and the acquisition, or relocation, of the above-mentioned utility property in the project area.

The amount and character of interest in land, other property, and easements thus to be acquired shall be determined by the board of directors; and their determination shall be conclusive and shall not be subject to attack in the absence of manifold abuse of discretion or fraud on the part of such board in making such determination. However,

1. In acquiring lands, either by negotiation or condemnation, the district shall not acquire minerals or royalties within the project area, sand and gravel not being considered as minerals within the meaning of this section; and

2. No person or persons owning the mining rights, drilling rights, or the right to share in production shall be prevented from exploring, developing, or producing * * * oil * * * or gas with necessary rights-of-way for ingress, egress, * * * pipelines, and other means of transporting such products by reason of the inclusion of such lands or mineral interests within the project area, whether below or above the * * * waterline, but any such activities shall be under such reasonable regulations and limitations by the board of directors as will adequately protect and reduce the impacts to the project; and

3. In drilling and developing, such persons are hereby vested with a special right to have such mineral interest integrated and their lands developed in such drilling unit or

units as the State Oil and Gas Board shall establish after due consideration of the rights of all of the owners to be included in the drilling unit.

(h) To require the necessary relocation of bridges, roads, and highways, railroad, telephone, and telegraph lines and properties, electric power lines, gas * * * 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 such owners regarding the payment of the cost of such relocation. It is further provided that the district is hereby authorized to acquire easements or rights-of-way in or outside of the project area for the relocation of such road, highway, railroad, telephone, and telegraph lines and properties, electrical power lines, gas * * * pipelines and mains and facilities, and to convey the same to the owners thereof in connection with such relocation as a part of the construction of the project.

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

(j) To construct, extend, improve, maintain, and reconstruct, to cause to be constructed, extended, improved, maintained, and reconstructed, and to use and operate any and all facilities of any kind within the project area necessary or

convenient to the project and to the exercise of such powers, rights, privileges, and functions.

(k) To sue and to be sued in its corporate name and shall be considered a political subdivision pursuant to Section 11-46-1.

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

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

(n) To employ engineers, attorneys, fiscal agents, advisors, and all necessary agents and employees to properly finance, construct, operate, and maintain the project and the plants and facilities of the district and carry out the provisions of this article, and to pay reasonable compensation for such services.

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

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

(q) To apply for and accept grants from the United States of America, or from any corporation or agency created or designated by the United States of America, and to ratify and accept applications heretofore or hereafter made by voluntary

associations to such agencies for grants to construct, maintain, or operate any project or projects which hereafter may be undertaken or contemplated by said district.

(r) To do any and all other acts or things necessary or convenient to the exercising of the powers, rights, privileges, or functions conferred upon it by this article or any other act of law.

(s) To make such contracts in the issuance of bonds as may be necessary to insure the marketability thereof.

(t) To operate and maintain within the project area, with the consent of the governing body of any city, town or county located within the district, any works, plants, or facilities of any such city, town, or county 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 dispose of any 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) To make such changes in location of levees, channels, drains, or related facilities, or other changes, alterations, or modifications in the plan filed with the petition

creating the district, which may be necessary for the accomplishment of the general purposes of the district.

(w) In the event the board of directors of the district determines that it would meet a public necessity and would be conducive to the public welfare to vary, alter, enlarge, diminish, or otherwise change the areas included in the district for the purpose of carrying out any of the purposes contemplated by this article, the board of directors of the district may at any time file a petition in the chancery court of the county having jurisdiction of the district, setting forth the reasons for said change in said area, and the chancery court or the chancellor in vacation shall have the power and jurisdiction to vary, alter, enlarge, diminish, or otherwise change said area included in the district under the procedure set forth in Sections 51-35-309 through 51-35-313. However, such action by the chancery court or the chancellor in vacation shall not affect or impair any financial obligations of said district as they existed prior to such action, nor shall any liens or rights of any bondholders upon the lands included in the district be impaired by such action.

(x) All equipment, supplies, heavy equipment, contracts on lease-purchase agreements, and office supplies * * * shall be purchased pursuant to state purchasing law.

SECTION 3. Section 51-35-317, Mississippi Code of 1972, is amended as follows:

51-35-317. All powers of the district shall be exercised by a board of directors, to be composed of the following:

(a) In the event the proposed flood and drainage control district lies wholly within the limits of one (1) municipality, the governing authorities of said municipality shall appoint three (3) directors and the board of supervisors of the county in which said municipality lies shall appoint two (2) directors.

(b) In the event the proposed flood and drainage control district is comprised of lands lying partly in a municipality and partly outside the limits of a municipality but wholly in one (1) county, the governing authorities of said municipality shall appoint three (3) directors and the board of supervisors of the county in which said municipality lies shall appoint two (2) directors. However, should the assessed valuation of land and property and improvements in said district outside the municipality, according to the last preceding tax assessment roll for county and state taxes, exceed said assessment for the land and property and improvements of the district lying within the municipality, the board of supervisors of the county in which said district lies shall appoint three (3) directors and said municipality shall appoint two (2) directors.

(c) In the event the proposed flood and drainage control district is comprised of lands lying, in whole or in part, in one or more municipalities which are in existence at the time

of the creation of such district, and in one or more counties and not falling within the description of (a) or (b) above, each such municipality shall appoint one (1) director and the board of supervisors of each county in which part of the lands of the proposed district lie shall appoint one (1) director. In the event there are one or more new municipalities incorporated within the district after the organization of such district, each such municipality shall be given a director of the district. However, in the event that selection of directors in said manner results in an even number of directors, the Governor of the State of Mississippi shall appoint one (1) additional director who is a member of the State Fair Commission so that there shall be an odd number of directors. * * *

(d) Each director shall take and subscribe to the oath of office required by Section 268 of the Constitution of the State of Mississippi, before a chancery clerk, that he will faithfully discharge the duties of the office, which oath shall be filed with the said clerk and by him preserved.

(e) Each director shall receive a fee not to exceed such amount as set forth in Section 25-3-69 for attending each meeting of the board and for each day actually spent in attending to the necessary business of the district and shall receive reimbursement for actual expenses thus incurred upon express authorization of the board.

(f) The board of directors shall annually elect from its number a president and a vice president of the district and such other officers as in the judgment of the board are necessary. The president shall be the chief executive officer of the district and the presiding officer of the board, and shall have the same right to vote as any other director. The vice president shall perform all the duties and exercise all powers conferred by this article upon the president when the president is absent or fails or declines to act, except the president's right to vote. The board shall also appoint a secretary and a treasurer who may or may not be members of the board, and it may combine these offices. The treasurer shall give bond in the sum of not less than Fifty Thousand Dollars (\$50,000.00), as set by the board of directors, and each director shall give bond in the sum of not less than Ten Thousand Dollars (\$10,000.00), and the premiums on said bonds shall be an expense of the district. The condition of each such bond shall be that the treasurer or director will faithfully perform all duties of the office and account for all money which shall come into his custody as treasurer or director of the district.

(g) In the event a county or municipality entitled to appoint a director or directors to the district shall not do so within twenty (20) days from the date of the order of the chancery court creating the district, the chancery court or the chancellor

in vacation shall forthwith exercise the right of said county or municipality in appointing a director or directors.

(h) Each director shall hold office for a period of four (4) years from the date of his appointment. However, in order to insure continuity of experience among the members of the board of directors in any district created after the effective date of this act, one (1) member of the initial board of directors shall hold office for only one (1) year, one (1) member shall hold office for only two (2) years, and one (1) member shall hold office for only three (3) years, and, at the initial meeting of the board of directors, they shall determine by lot which of their members shall serve for only one (1), two (2), * * * or three (3) years.

(i) No person shall be disqualified from serving as a member of the board of directors by virtue of his having previously served as a director, by virtue of his holding any other office, political or otherwise, or by virtue of his not residing in or owning lands in said district.

SECTION 4. Section 51-35-319, Mississippi Code of 1972, is amended as follows:

51-35-319. All construction contracts of the district, which shall be let solely by the district * * * shall comply with state purchasing and bid laws and the board of directors of the district shall award the contract * * * pursuant to state purchasing and bid laws. The contractor will comply with the terms imposed by

such board and enter into bond with sufficient sureties, to be approved by the board, in such penalty as shall be fixed by such board, but in no case to be less than the contract price, conditioned for the prompt, proper, and efficient performance of the contract.

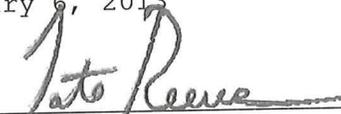
SECTION 5. Section 51-35-325, Mississippi Code of 1972, is amended as follows:

51-35-325. * * * Before issuing any revenue bonds hereunder, the board of directors of the district shall adopt a resolution declaring its intention to so issue, stating the amount of bonds proposed to be issued, the purpose for which the bonds are to be issued, and the date upon which the governing body proposes to direct the issuance of such bonds. Such resolution shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in the district. The first publication of such resolution shall be made not less than twenty-one (21) days prior to the date fixed in such 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 no newspaper is published in such district, then such notice shall be given by publishing the resolution for the required time in some newspaper having a general circulation in the district, and, in addition, by posting a copy of such resolution for at least twenty-one (21) days next preceding the date fixed therein at three (3) public places in the district. If twenty percent (20%)

or fifteen hundred (1500), whichever is less, of the qualified electors living or owning property in 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 as herein provided. If no such protest be filed, then such bonds may be issued without an election at any time within a period of two (2) years after the date specified in the above-mentioned resolution. However, the board of directors of the district, in its discretion, may nevertheless call an election on the question of the issuance of the bonds, in which event it shall not be necessary to publish the resolution declaring its intention to issue bonds as herein provided.

SECTION 6. This act shall take effect and be in force from and after July 1, 2013.

PASSED BY THE SENATE
February 6, 2013



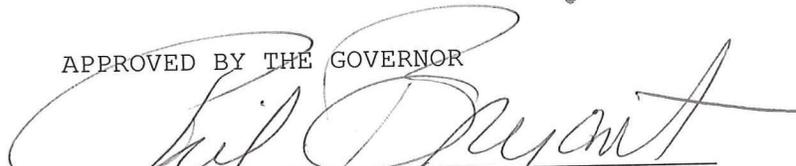
PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 1, 2013



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

3/25/13
4:12 pm
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