

## A WATER MANAGEMENT SYSTEM FOR MISSISSIPPI

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The following analyses of House Bill Nos. 762 and 149 are provided for legislation currently under consideration by the Mississippi Legislature. If the proposed legislation is adopted without substantial change, Mississippi will have a true management system for water resources.

The new regulatory system is set out in House Bill No. 762, which substantially amends the present surface water permit system. The prior appropriation doctrine is eliminated and a true permit system is created. Ground water is included in the coverage of the act so that this resource can be managed, and conjunctive use is encouraged.

House Bill No. 149 creates a new type of water management district to resolve some of the problems posed by present law. The introduction below discusses the reasons for creation of such a district.

The new permit system is actually not a radical departure from current law. Many of the present provisions are retained in substantially the same form. The elimination of prior appropriation, although a radical change at first glance, reflects the necessity for a more flexible method of allocation. The inclusion of ground water in the statute will allow regulatory authorities to encourage both conjunctive use and greater utilization of surface water resources. However, the new system essentially is patterned on many other systems throughout the country.

Existing rights are preserved, but provision is made for the termination of stale uses. Permits must be renewed every ten years, allowing regulatory agencies to re-evaluate water uses. A state water management plan is mandated, and the Commission on Natural Resources is authorized to promulgate regulations based on the plan for management of the state's water.

### HOUSE BILL NO. 762

#### Section 1 - amends 15-3-1 (Policy statement)

New language states that it is legislative policy to encourage the conjunctive use of surface and ground water and the integration of these resources in use, storage, allocation and management.

The existing second paragraph of 51-3-1 is amended to include ground water in the coverage of the statute, and to strike appropriation and substitute regulation. The doctrine of prior appropriation - "first in time, first in right" - is eliminated in favor of a regulatory system based on permits to give flexibility in the management of water. The language of the last sentence has been changed slightly and the word "manage" inserted along with "utilize" and "protect", to emphasize stress on management of water resources.

Under new section 51-3-5, previously existing surface and ground water rights are protected. All water will be regulated under the new permit system, and ground water use can be regulated to avoid further problems or, at least, to alleviate problems in areas where ground water supplies are threatened. (The existing capacity use ground

water statutes were not repealed; this will likely come at a later date.)

The first paragraph of 51-3-1 is retained. It states that it is public policy that water is used for beneficial purposes to the fullest extent possible and that waste be prevented.

#### Section 2 - amends 51-3-3 (definitions)

There is a new definition of "person"; it does not change the old definition significantly and essentially adds political subdivisions such as municipalities and counties.

The determination of what is a beneficial use is delegated to the Commission on Natural Resources, rather than leaving such a determination to the courts as the former statute essentially did. The words 'and subject to his dominion and control' were removed to clarify that a beneficial use does not mean use of water not specifically permitted although it may be under the physical control of the permittee.

The term "appropriator" was replaced with "permittee", a change necessitated by the change from an appropriation to a permit system of regulation. The words "or his successor" were added to make clear that a purchaser of the land can continue the same use of water without have to apply for a new permit.

The term "appropriation" is changed to "permitted use", again reflecting the elimination of the appropriation doctrine. Subparagraph (1) remains unchanged while subparagraphs (2) and (3) are eliminated. These two provisions deal with previous users of surface water, that is, those who were using surface water when the present statute was passed in 1956. Those users, as well as existing surface and ground water users, are protected under new section 51-3-5. This is reflected in new subparagraph (2).

The word "average" was eliminated from the term "established average minimum flow." "Board" is changed to "commission", since the responsibility of determining such flows should be with the Commission. (The term "board" in the present statute refers to the defunct State Board of Water Commissioners; the new term "board" refers to the state Permit Board which will be the authority actually issuing permits.)

The definition of minimum flows was changed to a recognized engineering standard which does not require actual measurements for a long period of time, but the use of statistical methods to predict the minimum flow. Hence, the term "average" was deleted since minimum flows will no longer be an average of a number of measurements. Such a definition is more accurate, and eliminates the need for additional personnel to make the measurements necessary to calculate "average" flows.

The change in subsection (j) is essentially the same as that in subsection (i), deleting 'average' from the term "established average minimum lake levels."

"Board" is defined as the state Permit Board, as created in section 49-17-28, replacing the defunct State Board of Water Commissioners.

A change in subsection (1) replaced the definition of state water engineer, a position which no longer exists, with the definition of Commission, i.e. the Commission on Natural Resources.

A new definition was added: "mining of aquifer" meaning withdrawal of ground water in a manner in excess of that determined by the Commission.

The following definitions were unchanged. Surface water is that on the surface of the ground; ground water is that below the surface. Domestic use is the use of water for ordinary household purposes, water for livestock, poultry and domestic animals, and irrigation of home gardens and lawns. Municipal use is use by a municipality for the life, safety, health, comfort and business pursuits of the inhabitants, excluding irrigation of crops. Watercourse is a natural body of water with definite evidence of flow or occurrence of water, except lakes with no outlet and surrounded by land owned by one person.

### Section 3 - amends 51-3-5

This is an entirely new section, replacing the one excluding coverage of ground water. This section provides for permits for use of water, protection of the rights of existing surface and ground water users and for the filing of a notice of claim to preserve those rights.

This is a very important section of the new law. In addition to providing that the rights of all previous water users are protected, it requires that such users file a notice of claim within three years of the effective date of the act to effectively preserve those rights. If such a notice is not filed, these rights are conclusively presumed to have been abandoned. For surface water users, the three year period corresponds to former law terminating surface water rights for three years of nonuse. The same period is used for ground water uses to achieve consistency and to satisfy constitutional requirements.

A detailed notice provision is set out in subsection (5), requiring written notice to all persons whose names and mailing addresses are available. Publication is required so that all other persons will receive notice of the new law. Persons whose uses are exempt under 51-3-7 are not affected since they do not have to obtain a permit.

The requirement of filing a notice of claim will serve two purposes: (1) to identify present significant users of water and (2) to terminate stale water rights.

This section states that all water users are still subject to the state's police power, i.e. regulation of water use for the benefit of the health and public welfare of citizens of the state. This provision statutorily enacts existing common law regulatory authority to control surface and ground water even though the user is not required to obtain a permit.

### Section 4 - amends 51-3-7

New subsection (1) provides an exemption from the permit requirement for all domestic users, all wells with a casing diameter of less than six inches and surface water from impoundments not located on continuous, free-flowing watercourses. Former subsection (1) dealt with an entirely different subject - the right of surface water users prior to the passage of the present law, a subject covered in proposed section 51-3-5.

New subsection (2) is actually former subsection (3); it replaces former subsection (2) which covered dams on drainage areas of fifty acres or less. Former subsection (2) was in conflict with the dam safety provisions of 51-3-39 and was therefore deleted. New subsection (2) provides that the Commission can permit stream waters only in excess of the established minimum flow. An exception is provided for municipal users and uses where the water is returned to the stream and the minimum flow is maintained. If the return point is downstream, but other property owners are not affected or if the public interest is sufficient, industrial uses below minimum flows can be permitted. There were no changes from the previous language.

Subsection (3) is former 51-3-7(4), and deals with permitting water from lakes. No use can be permitted below minimum levels except for municipal users or, after a hearing is held, for uses which do not adversely affect the proper utilization of water resources of the state. If proper utilization of the water resources of the state require it, a lake level above minimum level can be established by the Commission. Again, there is no substantial change in language, just a renumbering of the subsection.

Subsection (4) is former 51-3-7(5) and other than being designated as subsection (4), there was no change in language. This subsection provides that no water use can be authorized which would impair pollution control standards based on minimum stream flows.

Section 51-3-7(5) is former subsection (6), with only a change in the term "appropriation" to "use", reflecting the elimination of the prior appropriation doctrine. This subsection prohibits water uses which would impair the navigability of any navigable watercourse.

Subsection 51-3-7(6) is new. It prohibits the mining of an aquifer unless the board is satisfied that such a use is essential to the safety of human life and property or unless a person demonstrates a plan to acquire water from another source, that he is pursuing such a plan and has the financial capability to follow through on his plan. This provision is intended to allow a use of water otherwise prohibited, so that development is not impeded and to encourage conjunctive use of water. Such ground water uses would almost always have to be replaced with surface water, which is the only solution to ground water mining that does not require restricted use of water.

### Section 5 - amends 51-3-9

New section 51-3-9 deals with duration and renewal of permits and modification or termination of permits. Former section 51-3-9 provided that a water appropriation was a property right and could not be declared forfeited except by a court. However, under former law the Commission could modify or terminate any appropriation for good cause. This reflected the regulatory power of the state over all property, while reiterating the rule that forfeitures are looked upon with disfavor.

Subsection (1) provides that permits are to be issued for ten years. The right to the use of water automatically terminates on the tenth anniversary unless a renewal application is pending. However, the permittee is protected by a provision requiring six months written notice. Subsection (4) requires that all previous water users who preserved their rights must also file for renewal every ten years. Both these provisions will keep records of water use up-to-date and terminate stale water rights. The decennial refiling requirement in subsection (4) is actually more lenient than the current provision providing for termination of rights after three years nonuse. Permits will be reissued unless continued use is contrary to the public interest.

Subsection (2) allows the board to grant public utilities or publicly regulated utilities a permit of a sufficient duration to amortize investment in water facilities.

Subsection (3) authorizes the board to modify or terminate a permit for good cause, tracking former language. The new statute requires a hearing, a protection not explicitly set out in former law.

### Section 6 - repeals 51-3-11

This section of the act repealed former section 51-3-11 which provided for termination of a permit for three years consecutive nonuse. The language in revised section 51-3-9 providing for termination at the expiration of a permit, i.e. ten years, was thought to be a better procedure and to be one which did not encourage water use just to avoid automatic termination. A user might not need to use the water, but would do so just to avoid losing his right. A provision that a

person could file for relief from such a termination was thought to be ineffective and time-consuming.

**Section 7** - amends 51-3-13

New section 51-3-13 is essentially the same as former law, with changes made to reflect the inclusion of ground water and the elimination of prior appropriation.

This section provides that the board shall approve all applications which propose using water for beneficial purposes, which are not inconsistent with standards set by the Commission and which do not prejudice the public interest. The principle of beneficial use is thus preserved.

**Section 8** - amends 51-3-15

This is new language reflecting the location of permitting authority in the State Permit Board. The former section provided that the Commission would exercise this authority, replacing the old Board of Water Commissioners. The Commission will have certain regulatory and enforcement duties as set out in various portions of the act, but permits will be issued by the Permit Board. The Permit Board is created under section 49-17-28 and was composed formerly of the Chief of the Bureau of Environmental Health of the State Board of Health; the Director of the Bureau of Fisheries and Wildlife of the Department of Wildlife Conservation; the Chief of the Division of State Land and Water Resources of the Bureau of Land and Water Resources of the Department of Natural Resources; the Supervisor of the State Oil and Gas Board; and the Director of the Bureau of Marine Resources. Section 30 adds the Director of the Bureau of Geology of the Department of Natural Resources, the Commissioner of Agriculture and Commerce, an engineer and a water well contractor as members of the Permit Board.

Subsection (2) gives to the Board the power to grant or deny permits, including temporary or emergency permits. Persons denied permits are given the right to a hearing before the board upon request. The board may modify or terminate permits upon sixty days written notice. The board is also authorized to place such conditions upon permits as necessary to effectuate the purposes of the act, and to impose sanctions for the failure to adhere to permit conditions. The Board may seek help and information from water management districts by giving them authority to investigate and make recommendations on permits.

**Section 9** - amends 51-3-16

New subsections 51-3-16 (i)-(j) were added to former law, and authorize the Bureau of Land and Water Resources to provide technical assistance and information to the Permit Board, to receive, file and review permit applications and notices of claims and to serve as a repository for other information.

This section concerns technical assistance and information to water districts and other water authorities and other duties performed by the Bureau. Language relating to these duties was unchanged.

**Section 10** - amends 51-3-18

Subsection 51-3-18 (m) is a new subsection adding water management districts not already enumerated to the list set out in the former section. This section authorizes all water management districts to receive assistance from the Bureau of Land and Water Resources.

**Section 11** - repeals 51-3-20

Section 51-3-20 provided for creation of a waterway, river basin and watershed authorities council and the development of a statewide

water plan. It had never been implemented and the water management plan is provided for in new section 51-3-21.

**Section 12** - repeals present 51-3-21, new language substituted

This is new language and set out guidelines for formulation of a state water management plan. Leadership in the formulation of the plan is given to the Commission, and water districts and federal, state and local agencies are directed to cooperate in preparing the plan.

Former section 51-3-21 provided that the board (i.e. Commission) shall cooperate with persons or agencies in regulating and conserving the use of water. The former language was repealed and more comprehensive language is substituted.

The guidelines for the plan are extensive, to insure that all types of uses and management tools are considered. The act provides for the holding of public meetings to insure maximum public involvement in formulation of the plan.

**Section 13** - amends 51-3-23

New language replaces the former provision for a water inventory. The new section seeks to accomplish the same objective, providing that the Commission may require permittees to file such reports as deemed necessary or appropriate for proper water management. Any persons using more than 20,000 gallons of water per day may be required to file reports, even though such uses may be exempt from permit requirements. This latter provision was made optional since it is unnecessary and burdensome to the Commission to require reports of all such users.

**Section 14** - amends 51-3-25

Former 51-3-25 provided for administrative determination of claims to water use prior to the passage of the present law. This purpose is fulfilled by proposed section 51-3-5 requiring such users to preserve their rights by filing notices of claims and is also retained in this section in subsection (a).

The new language of proposed 51-3-25 gives the Commission power to promulgate and enforce regulations for use of surface and ground water, including the administrative determination of prior claims as presently provided. New regulations authorized include timing of withdrawals, well depth and spacing and pumping rates.

**Section 15** - repeals 51-3-27

This section required the defunct Board of Water Commissioners to divide the state into water districts. Since this has been largely accomplished by specific statutory provisions and is no longer necessary, the section was repealed.

**Section 16** - amends 51-3-29

The amendments to this section are primarily to remove references to appropriation and substitute language pertaining to permits and to include ground water in the statute's coverage. This section sets out what is to be considered as unpermitted water, that is, what water is available for use through permits. Unpermitted water includes all water not permitted prior to the effective date of the act, all previously permitted surface water for which a notice of claim has not been filed, all ground water not used for a beneficial purpose prior to the effective date of the act and all water which returns to a natural watercourse or waterbody, whether surface or underground.

**Section 17** - amends 51-3-31

The former section provided that a person applying for a surface



water permit shall file an application. This requirement is retained, removing references to "appropriate" and "surface." The application fee is raised from \$3.00 to \$10.00. The long list of information which was required for the application is eliminated as unnecessary since most of it is obviously essential and a "catch-all" clause was included. The new section simply requires the filing of any information deemed necessary by the board.

All fees will still go into the state general fund.

#### **Section 18 - amends 51-3-33**

The changes in subsection (1) again reflect the elimination of the prior appropriation doctrine, changing the word "appropriation" to "use" and deleting a reference to priority.

In subsection (2) "appropriation" is changed to "use"; "taken" to "made"; and "pump locations" added in (2)(b). A reference to priority was omitted since it is inapplicable to the permit system in the new law.

The act retains language pertaining to procedures for receiving and filing applications and reviewing the sufficiency of information in applications and attachments and exhibits to applications.

#### **Section 19 - amends 51-3-35**

Amendments eliminate references to diversion of water and replace them with references to use of water, reflecting the coverage of ground water by the new law. The words "or withdrawal" are added after diversion, again reflecting the inclusion of ground water in the permit system. Language concerning the perfecting of an appropriation was deleted. A permit will be ten years, eliminating the necessity for specifying a time in which a use actually must be commenced.

The new section remains essentially the same as the former one. It requires the board to notify an applicant of action on his application, provides for hearings on applications if requested and authorizes injunctions against uses which are not approved. An application can be approved for less than the full amount requested if approval of the full amount would interfere with a vested right or the public interest. All of these provisions were in former law.

#### **Section 20 - repeals 51-3-37**

This section repeals the former provision for issuance of a license once construction of surface water facilities were completed. This provision is unnecessary since a permit is issued for ten years and no set time period for construction of facilities will be put in a permit.

#### **Section 21 - amends 51-3-39**

This is the Dam Safety Act and this section contains all provisions relating to dam safety. Changes were made to remove a reference to watercourse since surface water is not the only type of water covered by the act and to change "chapter" to "section" to clarify that all dams are subject to the provisions of this section for purposes of dam safety only.

Subsection 51-3-39(1)(a) is new. The new provision provides an exemption for any dam less than eight feet in height, regardless of storage volume; any dam of less than twenty-five acre feet of storage volume, regardless of height; or any dam which does not impound a watercourse with a continuous flow.

Subsection 51-3-39(1)(b) is former subsection (1)(a) with a minor change in language of a grammatical nature. It requires levee district approval for dams within a levee district.

Subsection 51-3-39(1)(c) is former subsection (1)(b). New language eliminates a reference to appropriation and clarifies that someone must get a permit to use water (if applicable) whether or not construction authorization is required under this section. Some dams may be exempt, but the use of water would require obtaining a permit and vice versa.

In subsection 51-3-9(3) new language is inserted to clarify that all dams are subject to safety inspection, whether or not their construction must be approved under this section. Reservoirs are also included in this coverage. The Commission may issue orders requiring remedial action by dam owners to safeguard downstream lives and property.

Subsection 51-3-9(4) is new and is intended to insure that new dams or reservoirs do not impair rights of users below the dam or the proper utilization of the water resources of the state. The board can require the release of such water as is necessary to fulfill such purposes.

New subsection 51-3-39(5) is present subsection (4). This provision deals with previously approved dams which have not been safely maintained. The board can order repairs and, if such repairs are not made or are inadequately made, the Commission can have the structure removed or revoke any previous authorization. "Reservoir" is added to this subsection to clarify that such structures are covered.

Former subsections (2) and (5) are retained without change, except that (5) is redesignated as (6). Subsection (2) provides for pollution control in dam construction. New subsection (6) provides that the Dam Safety Act does not create any liability for damages against the state or its employees.

#### **Section 22 - repeals 51-3-40**

Section 51-3-40 provided that the dam safety law did not apply to dams constructed on private property by the owner for farm, agricultural or private recreational use if the dam was not built on a watercourse with a continuous flow. This provision was repealed because it was too broad and exempted too many dams which should be subject to pre-construction approval. New subsection (1)(a) is inserted in 51-3-39 to take care of the small dams originally intended to be exempted by this statute.

#### **Section 23 - amends 51-3-41**

The amendment is intended to clarify that the Commission cannot enter into interstate water compacts because they must be approved by both Congress and the Legislature. Therefore, the Commission is authorized to **negotiate and recommend** such compacts to the Legislature.

#### **Section 24 - amends 51-3-43**

This section authorizes the Board, Commission or its agent to enter private or public lands to gather information relating to water resources or uses. There was no substantial change in the former provision. The changes are primarily housekeeping - adding the Permit Board to the statute; changing "county or state" to "public" lands; and adding language relating to information concerning all types of water, not just surface water.

#### **Section 25 - amends 51-3-45**

The former section dealt with approval of changes in diversions of surface water or the use of such water. The proposed changes add the words "or withdrawal" so that ground water is included. The references to appropriation are deleted and "permit" inserted.

This section also requires that the board approve such changes and provides a penalty for violation of this section, a provision in former law.

#### **Section 26 - amends 51-3-47**

This section requires that the clerk of a court making a water adjudication send a copy of the decree to the Board and Commission. The words "and commission" are inserted to provide that the Permit Board and the Commission both get the notice provided for therein.

**Section 27** - amends 51-3-49

This section deals with appeals from actions of the Permit Board and the Commission. The procedure for appeals as provided in the present statute is changed to that set out in sections 49-17-29 and 49-17-41. All of the safeguards and requirements in former law are covered in these sections and this avoids confusion when water law issues are at stake, since these sections are presently applicable to the board and Commission in water pollution permit applications.

**Section 28** - amends 51-3-51

New language replaces the former section on hearing procedures. The existing procedures for hearings before the Board (49-17-29) and the Commission (49-17-31 through 49-17-41) are substituted. Again, consistency is achieved.

**Section 29** - amends 51-3-55

New language replaces the former provision on penalties for violation of the act, such as submitting false information on applications or not complying with permit conditions.

Subsection (1) provides that the Commission shall use its enforcement powers when the Board determines that its sanctions are not sufficient to achieve compliance. A member or employee of the Commission also may make a request for enforcement action.

Subsection (2) provides for a misdemeanor conviction for violations, punishable by a maximum \$100.00 fine.

Subsection (3) provides a civil penalty in the maximum amount of \$25,000. A hearing is required. Both the criminal and civil penalties can be imposed.

Subsection (4) provides for an appeal to the Chancery Court from imposition of the civil penalty.

Subsection (5) provides for enforcement powers in addition to or in lieu of the civil penalty set out above, such as injunctive relief.

Subsection (6) states that hearings are conducted under existing Commission requirements.

**Section 30** - amends 49-17-28

New language adds to the powers of the Permit Board the authority to issue the permits required under the new water law.

This section was also amended to add as members of the Board the state Geologist, the Commissioner of Agriculture and Commerce, a retired professional engineer knowledgeable in water well engineering and a retired water well contractor. The latter two are appointed by the Governor for terms concurrent with his.

**Section 31** - amends 51-5-3

New language is added to the requirements for obtaining a water well contractor's license. Three years' experience is required and the applicant must also present to the examining committee three affidavits from licensed drillers showing that he has the necessary qualifications and experience. Former requirements only provided that an applicant be twenty-one years old, of good moral character, have knowledge of the law and regulations and possess the necessary equipment. No technical expertise was required and the amendments are intended to fill this gap. The former requirements are retained.

**Section 32** - effective date

The act goes into effect immediately on passage to prevent new or increased ground water uses so that such uses would qualify as a previously existing right under new section 51-3-5.

**HOUSE BILL NO. 149****Introduction**

House Bill No. 149 authorizes the creation of a new type of water management district. It differs from presently authorized master and county water management districts in several respects. The method of creation is different because a petition to Chancery Court is not required. To create a joint water management district, the governing bodies of the local governmental units desiring to form a district pass identical resolutions agreeing to form a district. If the creation is not defeated by an election on the issue, the district is formed. This puts formation of the district in the hands of several groups of elected officials, rather than in one elected official.

A county water district can form only within the county's borders. A master water district can encompass land in several counties, but to enlarge the new area must go through the complex procedure for the formation of the original district. The procedure provided for the joint water districts is much simpler - the governing body of the new area adopts the original resolution and holds a hearing. No petition to Chancery Court is required.

The theory behind the resolution procedure is taken from the Interlocal Cooperation of Governmental Units Act, which allows local governments to contract with each other to provide certain services. This act has been suggested by McArthur and Brammer (1983) as a means of providing localized solutions to water supply problems. However, it is not a very detailed act and does not fill in many details which bonding authorities like. Moreover, it leaves these details up to agreement among the governmental units. This might lead to lack of authority when needed if the local units are not sufficiently empowered by other law. It means that the district's future may depend on several different bond or tax levy elections each time capital or other financing is required. The joint water district bill combines all the features of this act with the basic provisions of present law for county water management districts.

The joint water management district act authorizes the creation of a district within existing districts as long as the joint water district does not propose to provide services already provided by the existing district. This allows a local solution which other members of an existing district may not want to pay for since they might not perceive a project as helpful to their area.

**Analysis**

**Section 1:** This provision is the authority for the creation of the district. It allows two or more local governmental units, i.e. counties and municipalities, to form a joint water management district. If a district or part of the district is in an existing water district, the applicable governing body must request the existing district to perform the service proposed to be provided by the new district. The existing district has ninety days to respond affirmatively to the request or the answer is presumed to be negative. The district may then proceed in normal fashion. A district may be created even though the proposed service is already being provided by one or more of the local governmental units.

**Section 2:** The district may form for the purpose of providing any water management function not being provided by an existing district, including water supply, conservation and development. An amendment added in conference negotiations prohibits a district from being formed to build a dam on numerous rivers of the state. This



originally covered the Pearl River, to prevent a Shoccoe dam from being built.

**Section 3:** Creation is initiated by joint, identical resolutions passed by each governmental unit. The resolution must set out geographic boundaries, the district's functions, a statement of necessity for formation, the proposed corporate name of such district and other information necessary to inform the public of the district's purpose and the obligations of each governmental unit.

**Section 4:** A public hearing is required in the same manner as provided for the creation of a county water district, i.e. published notice.

**Section 5:** Each governmental unit must find that the public convenience and necessity require the formation of the district and that it will be economically sound and feasible.

**Section 6:** Such finding, accompanied by the initial resolution, shall be published. If the lesser of twenty percent or 1,500 of the electors of a governmental unit file a written petition, an election will be held.

**Section 7:** Three-fifths of those voting in the election must approve the formation of the district. In that case, or if there is no election, the governing bodies finally adopt the resolution.

**Section 8:** All costs of the publication, public hearing and the election are paid by the applicable governing body.

**Section 9:** An appeal from the findings and adjudication of a governing body is made to the circuit court. An appeal must be taken within thirty days of final adoption of the creating resolution.

**Section 10:** A district is a public corporation in perpetuity and a body politic.

**Section 11:** District powers are exercised by a board of commissioners. There is a minimum number of five and there shall be at least one from each county in the district. The resolution creating the district shall provide for either appointment or election of commissioners. Terms shall not exceed five years, but may be staggered by shorter initial terms if so provided in the resolution.

The duties and responsibilities of the governing bodies forming the districts are limited. Other than the selection of commissioners, the local governments have only certain responsibilities as set out in sections 1, 3-8, 16-18, 22, 23, and 29 of the act. Sections 1 and 3-8 deal with the duties and authority of the local governments in creating the district. Section 16 is the section setting out the general powers of the district, but subsection 16(h) provides that governing bodies may consent to the use of their rights-of-way by the district. Section 17 is the grant of eminent domain to the district, but local governments can limit the use of it in the creating resolution. Section 18 authorizes the district to issue revenue and special improvement bonds and section 23 requires that the governing bodies make the special assessment needed to pay the latter. Section 22 provides for a special, two-mill tax to be assessed by local governmental units for the administrative operation of the district. Section 30 provides for consistent standards for district facilities near municipalities, although the municipality may waive compliance with its standards.

As is obvious, most of these duties are slight, and the local governing bodies will have little to do with the operation of a joint water district. The tax levy and special assessments are the most important and they will be provided for in the creating resolution.

Dissolution of a district can be accomplished only by the district, and then only if there is no outstanding debt. A local governmental unit can withdraw only under certain conditions:

- (a) The district has no outstanding indebtedness of any kind or character;

- (b) Withdrawal would not impair the district's water management plan or objectives;
- (c) The withdrawing entity is not receiving benefits from the water management operations and activities of the district; and
- (d) Withdrawal is approved by a three-fifths (3/5) vote of the board of commissioners.

**Section 12:** This section provides for the election of a chairman and a vice-chairman from the membership of the board. It provides the usual duties for both. A secretary-treasurer is elected, although it is not required that a member of the board fill this position. Terms of officers are one year.

**Section 13:** Any landowner or business person over twenty-one, of good reputation and sound mind and judgement, is eligible to hold the office of commissioner. The bond for a commissioner is \$10,000. If a commissioner moves from the governmental unit which he represents, his office is automatically vacant.

Compensation and expenses are paid on the same basis as that allowed for state boards and commissions.

Meetings shall be held on a monthly basis, and special meetings may be called by the chairman or a majority of the board.

**Section 14:** The district can adopt rules and regulations to effectuate the purposes of the creation of the district, so long as they do not conflict with those promulgated by applicable state agencies.

**Section 15:** Districts shall possess the powers set out in the creating resolution, provided that such are not in conflict with state law. In addition, this section enumerates specific authority to acquire property and facilities for water-related activities, to operate these facilities and to contract for the supply of water and other services. It is the sole authority within the district for the performance of such services. The district is granted general authority to do anything necessary, proper and convenient for the fulfillment of the purposes of its creation.

**Section 16:** This section is a list of specific powers granted to the district. These are general boilerplate items, but a brief summary is: sue or be sued; own property; contract; incur debts; fix rates for services; pledge revenues as security; to make covenants in the issuance of bonds; to use property of local governments; to accept state and federal financial assistance; to assume debt in the purchase of existing facilities; to service an area one mile outside the district; to borrow money for interim financing; to choose a central office; to adopt a district water management plan; to hire such personnel as needed; and to secure connection to or participation in the services provided by the district.

**Section 17:** The board is given such eminent domain powers on behalf of the district as are specified in the creating resolution.

**Section 18:** The district is authorized to issue revenue and special improvement bonds.

**Section 19:** These bonds may be issued without an election unless twenty percent or 1,500 of the electors in the district file a petition protesting the issue. Three-fifths approval of a bond issue is then required.

The remainder of this section sets out standard provisions for the form and issuance of bonds. The maximum interest rate is that provided by law in section 75-17-103 for revenue bonds for public projects, i.e. thirteen percent.

**Section 20:** This section also provides for standard provisions for bidding on bonds, and the sale of bonds. Revenue bonds may be refunded in the same manner as municipal revenue bonds, and bonds are subject to standard validation procedures.

**Section 21:** This section provides that a statutory lien is created on all property acquired by the issuance of bonds, said lien to be in favor of the bondholders. In event of default, a receiver may be appointed by a court of competent jurisdiction to operate the property or systems subject to the liens so that sufficient revenue may be collected to pay bonds.

**Section 22:** The governing bodies of the governmental units in the district may, if authorized in the creating resolution, levy a special two-mill tax on all taxable property in the district. The proceeds of the levy shall be used for the administrative operation of the district and for the formulation and implementation of the district's water management plan, exclusive of capital expenditures. Such levy will not apply in an area of a district which has had to relinquish its right to provide a particular service, as provided in Section 27.

**Section 23:** This section sets out procedures for governing bodies to make special assessments to pay special improvement bonds. Depending on the circumstances, the special assessment will be made on linear footage, lot or parcel, or area benefitted basis. In each case, if a sufficient number of protests are filed, the improvements and the assessment will not be made.

**Section 24:** The board is authorized to charge and collect reasonable rates for its services. The section sets out guidelines for setting rates so that operating, bond payment and expansion expenses can be met.

**Section 25:** This section exempts all property and revenue of the district from state, county and municipal taxation. District bonds are also made tax-exempt.

**Section 26:** All construction contracts must be made in accordance with the laws pertaining to such contracts entered into by counties and municipalities.

**Section 27:** An area adjacent to a district may be annexed by the same procedure as prescribed for the original creation of the district. The governing body of the area to be annexed adopts the original resolution creating the district and follows the subsequent procedures. The district pays all cost of any necessary hearings, election and proceedings.

The district has the exclusive right to provide services in the annexed territory, provided no other corporate agency is providing such services. The matter is then left to the other agency to decide if it wants to relinquish its right to provide such services. If it decides to do so, the transfer and purchase price are negotiated between the district and the other agency.

**Section 28:** This section authorizes districts to enter into cooperative agreements with the state or federal government and to obtain financial assistance from either or both.

**Section 29:** If a district is created within three miles of an existing municipality, the municipality may in its discretion require the facilities of the district to comply with the standards of the municipality for such facilities.

**Section 30:** This act is to be the full and complete authority for the creation of the district and the issuance of bonds. All powers necessary to the performance of the duties to be exercised by the local governmental units and the district are conferred.

**Section 31:** This section provides for the publication of a district financial statement within ninety days of the close of the fiscal year.

**Section 32:** The effective date of the act is from and after July 1, 1985.

## REFERENCE

McArthur, Robert, and Dana Brammer. Institutional Framework for Conjunctive Use of Surface and Ground Water in Tupelo-Lee County, Mississippi: Phase II. Water Resources Research Institute, Mississippi State, Miss., 1983.