

Public Finance Laws Study Group

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Secretary of State

Enacted Legislation from Business Law Reform Study Groups

2011

Amendments to Nonprofit Corporation Act – Senate Bill 2444 (effective January 1, 2012). The amendments add a definition of a “nonprofit corporation” consistent with common law and with definitions of nonprofit corporations in other states. Consequently, the definition of “distribution” clarifies payments to officers, directors and members for reasonable compensation for services provided are permitted. The amendments permit an automatic liability shield from personal liability (with exceptions for criminal law violations, receipt of un-entitled financial benefit, etc.) for directors of charitable nonprofit corporations (referred to below as “charitable nonprofits”). Likewise, an optional liability shield for nonprofit corporations which are not charitable nonprofits can be included in their articles of incorporation. Last, the amendments implement electronic technology concepts in communications among nonprofit corporations, their members and in membership meetings.

Extension of Expiration of Corporate Charters – Senate Bill 2408 (effective July 1, 2011). Before the Model Business Corporation Act and Model Nonprofit Corporation Act were adopted in Mississippi in 1988, state law in effect from 1892 to 1911 limited the duration of corporations formed in Mississippi to fifty (50) years. In 1950, the charter extension statute extended the duration of corporations formed under prior law from fifty (50) years to ninety-nine (99) years. The Secretary of State’s Office took no action to dissolve the extended charter corporations which still appear in the Agency’s database as active corporations. The amendment automatically changed the duration of the extended charter corporations to perpetual, with no filing required, so long as they continue to stay in business for thirty (30) days after March 14, 2011, the date the amendment took effect.

2010

Limited Liability Companies – House Bill 683 (effective January 1, 2011). The Limited Liability Companies Study Group recommended the adoption of a comprehensive revised act, based in part on Delaware’s LLC Act. This act requires LLCs to file annual reports and pay an annual fee, similar to the reports and fees corporations pay. The only difference from the bill

recommended by the study group was the amount of annual report fees to be paid by LLCs (which will be no fee for domestic LLCs and \$250 for foreign LLCs).

Trade Names – Senate Bill 2003 (effective July 1, 2010) creates a system for the registration of trade names (also called fictitious names, assumed names, or DBAs). A trade name is a fictitious or assumed name other than an individual's or business entity's legal name that one business uses to distinguish itself from another. Most states have adopted laws governing the registration and use of trade names, as these laws generally impose little burden on businesses while protecting the public from unscrupulous parties. The Act, as adopted, was identical to the version recommended by the Secretary of State's Trade Names Study Group.

2009

Corporations – Senate Bill 3060 and House Bill 1515 (effective July 1, 2009) amends the business corporation and nonprofit corporation laws. The corporate reinstatement laws have been revised to make it much easier and quicker for administratively dissolved corporations to become reinstated. Senate Bill 3060 also gives our office the authority to adopt rules to reduce the cost of online corporate filings and to provide for expedited filing services for corporations. Currently the only filing accepted online is the corporate annual reports; however, we expect to be adding other filings that can be made online.

Securities – House Bill 781 (effective January 1, 2010) enacts the Uniform Securities Act of 2002 in Mississippi to replace our existing, outdated securities act and will bring Mississippi into uniformity with federal law and the most current securities laws in other states. Like the changes to the charities laws, this act will enhance the enforcement powers for our office to investigate and enforce the law against dishonest companies and salespeople. It will also ease regulatory burdens on multi-state companies that sell securities in Mississippi.

Charities and Nonprofits – House Bill 680 (effective July 1, 2009) makes several significant changes to Mississippi's charitable solicitation laws. The new provisions ease regulatory burdens on charities but also strengthen our ability to enforce the law against dishonest charities. These changes include increasing the annual revenue threshold for charity registration with our office from \$4,000 a year to \$25,000 a year. This law also expands our office's enforcement authority by allowing us to subpoena witnesses and documents during investigations and to bring actions in Chancery Court to stop illegal activities, collect fines, and remove charitable corporate status.

Trademarks – Senate Bill 2641 (effective July 1, 2009) makes changes to Mississippi's trademark laws to include the most current protections under federal law and make it easier for businesses that have Mississippi registered trademarks to prove claims of trademark dilution. The amendments allow businesses that have famous trademarks to enforce their trademark rights against those businesses that would damage the mark's reputation. In addition, the changes to the trademark law provide greater protections both to businesses that use competitors' trademarks in comparative advertising and to media outlets that use trademarks in news reporting.

Public Improvement Districts (PID): An Overview

2011 Public Finance Laws
Study Group



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General Definition of PID

A **PID (Public Improvement District)** is a political subdivision of the State which can be established by a city or county at the request of a developer in order to finance certain public infrastructure improvements by issuing tax-exempt special assessment bonds.

- Provides an economic development incentive through lower tax-exempt interest rates and by passing on infrastructure costs directly to property owners.
- ❖ Enabling legislation: Sections 19-31-1, et seq., of the Mississippi Code of 1972, as amended (the “Act”).



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General Definition of PID

- A PID may develop:

1. Residential developments
2. Commercial developments
3. Industrial developments

- A PID is empowered to finance:

1. Streets/Roads/Sidewalks
2. Water/Wastewater Facilities and Lines
3. Bridges and drainage Improvements
4. Water Management and Control Facilities



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General Definition of PID

- **A PID does *not* impact or affect:**
 - State and local regulations regarding development
 - Zoning regulations
 - Impact costs
 - DEQ and other state agencies' regulations/permits
- **Public and/or Private Infrastructure:** A PID may be used to finance acquisition and/or construction of other public and/or private infrastructure, such as:
 - Parks
 - Recreational facilities
 - Fire prevention facilities and equipment



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PID Process

Step 1: Developer petitions the city/county governing body in which the PID is to be located

If land within the PID is entirely within the **city**

- Then the petition should be filed with the city council/board of aldermen

If land within the PID is entirely within the **county**.

- Then the petition should be provided to the county governing body

If **part of land is within the city** and **part within the county**

- Then the petition would be filed with the county, but the city would have to approve the petition



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PID Process

- PIDs may also be formed within two or more contiguous counties assuming the formation of the district is approved in accordance with the Act by each county.
- **APID petition** must contain:
 1. Description of the boundaries of the PID
 2. Written consent of all landowners in the PID
 3. Designation of five (5) persons to be initial members of the Board of Directors
 4. Proposed name of the PID
 5. Map of proposed PID, showing existing infrastructure, if any
 6. Proposed timetable for construction of infrastructure and estimated cost



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PID Process

Step 2: Public hearing by city/county governing body

- Public hearing is required within 45 days of filing petition
- Public notice of hearing required to be published at least once a week for four (4) successive weeks immediately prior to hearing in a newspaper for general circulation.

Step 3: Once established, a PID is a political subdivision of the State and is subject to the same requirements as other political subdivisions and local governments (i.e., open meetings, public bid laws, etc.).



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PID Financing

A PID is authorized to issue taxable and/or tax-exempt *special assessment bonds* to finance qualified public infrastructure.

- Special Assessment Bonds issued directly by PID are payable solely from the levy of special assessment by the PID on benefited land within the PID boundaries and other legally available sources of the PID.



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PID Financing

Special Assessment Bonds

- Interest rates, maturity, and terms and conditions of Special Assessment Bonds will be based on the:
 - strength of the developer
 - type of development
 - specifications of the bond purchaser/underwriter



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PID Financing

Special Assessment Bonds

- **Sale of Bonds:** The Bonds may be sold as bank-qualified, tax-exempt at a substantial interest savings.
- **Contribution Agreements:** PIDs have the authority to enter into *Contribution Agreements with government entities* to provide additional security, investment of funds into the project and/or other incentives to directly benefit the project and possible lower borrowing costs.



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PID Financing

Special Assessment Bonds

- **Issuance of Bonds:** PIDs are specifically authorized to issue bonds for the acquisition of the public infrastructure following the completion of construction, thereby allowing the developer to control the construction of the infrastructure.
- **Private Construction:** PIDs may enter into a contract with the developer agreeing to acquire the infrastructure following the completion of the project, thereby allowing developers to privately construct the infrastructure without the requirements of the public bid law.



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