



**DELBERT HOSEMANN**  
*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.

West's Annotated Mississippi Code [Currentness](#)  
Title 51. Waters, Water Resources, Water Districts, Drainage, and Flood Control  
→ [Chapter 41](#). Public Water Authorities  
→ **§ 51-41-1. Legislative intent**

It is the intent of the Legislature to provide a means, in addition to the incorporation of districts authorized in [Sections 19-5-151](#) through [19-5-207](#), by which not-for-profit corporations or associations involved in the sale, transmission and distribution of potable water to members of the public and others may convert their entity status from that of a body corporate to that of a body politic, thereby allowing those entities the opportunity to access the tax-exempt capital markets and thereby assuring the State of Mississippi and the customers of those entities of adequate supplies of water at the lowest water rates possible.

### **§ 51-41-3. Definitions**

As used in this chapter, unless the context otherwise requires:

- (a) "Board" means the board of directors of the water authority;
- (b) "Bond" means any bond, promissory note, lease purchase agreement or other evidence of indebtedness of any nature along with all debt securing instruments of every nature related thereto;
- (c) "Indenture" means a mortgage, an indenture of mortgage, deed of trust, trust agreement, loan agreement, security agreement or trust indenture executed by the water authority as security for any bonds;
- (d) "Project" means any raw or potable water or wastewater intake, treatment, distribution, transmission, storage, pumping, well site, well field or other facility or system, or any combination of the foregoing, that has as its purpose the providing of raw or potable water to members of the public and commercial, industrial or other users or the treatment of wastewater, along with any and all other appurtenances, equipment, betterments or improvements related thereto. The above projects may include any lands, or interest in any lands, deemed by the board to be desirable in connection with the projects, and necessary equipment for the proper functioning and operation of the buildings or facilities involved;
- (e) "Qualified corporation" means any not-for-profit corporation or association that provides, distributes, transmits, treats, pumps or stores raw or potable water to or for the benefit of members of the general public and commercial, industrial and other users;
- (f) "United States" means the United States of America or any of its agencies or instrumentalities;
- (g) "State" means the State of Mississippi; and
- (h) "Water authority" means that body politic and governmental entity organized under the provisions of this chapter.

### **§ 51-41-5. Construction**

This chapter shall be liberally construed in conformity with its intent. All acts and activities of the water authority performed under the authority of this act are legislatively determined and declared to be essential governmental functions.

#### § 51-41-7. Authority generally

There is conferred upon a water authority, the authority to take such action and to do, or cause to be done, such things as are necessary or desirable to accomplish and implement the purposes and intent of this chapter according to the import of this chapter.

#### § 51-41-9. Authority and procedure to incorporate

(1) Whenever a qualified corporation desires to convert into and become reconstituted and reincorporated as a water authority under this chapter, the qualified corporation shall present to and file with the Secretary of State:

(a) Its resolution duly adopted by the board of directors of the qualified corporation that evidences the desire of the qualified corporation to convert into and become reconstituted and reincorporated as a water authority and that also certifies that the qualified corporation:

(i) Was initially formed as a not-for-profit corporation or association; and

(ii) Desires to operate as a public body authorized under the laws of Mississippi as a result of its conversion and reconstitution as a water authority under this chapter;

(b) Its application for reconstitution and certificate of incorporation, which shall state and include the following information:

(i) The name of the water authority, which shall be “The \_\_\_\_\_ Public Water Authority of the State of Mississippi,” or some other name of similar import, it being understood that the water authority may adopt a fictitious operational name upon written request to and approval by the Secretary of State;

(ii) The location of the water authority's principal office, and the number of directors of the water authority, which shall be subject to change and modification as provided in the water authority's bylaws;

(iii) The names and addresses of the initial board of directors of the water authority;

(iv) The name and address of the agent for service of process of the water authority; and

(v) Any other matters that the initial board of directors of the water authority may deem necessary and appropriate;

(c) A copy of the water authority's bylaws along with any other information that the initial board of directors of the water authority may deem necessary and appropriate;

(d) A statement and certification from the Secretary of State that the proposed name of the water authority is not identical with that of any other water authority in the state, or so nearly similar thereto as to lead to confusion and uncertainty; and

(e) A reasonable filing and review fee that the Secretary of State may designate and determine from time to time, which shall not be in excess of the filing fee charged in connection with the receipt and filing of a corporation's articles of incorporation.

(2) Two (2) or more qualified corporations may jointly convert into and become reconstituted and reincorporated as one (1) water authority under the same procedure as specified for one (1) qualified corporation under this act.

#### **§ 51-41-11. Existence of water authority**

The application for reconstitution and certificate of incorporation shall be signed and acknowledged by a majority of the board of directors of the qualified corporation. When the application for reconstitution and certificate of incorporation and other required documents have been so filed with and accepted by the Secretary of State, as evidenced by the issuance by the Secretary of State of its certificate of existence in a form that the Secretary of State may deem appropriate, the water authority referred to in the application shall come into existence and shall constitute a body corporate and politic in perpetuity with power of perpetual succession and a political subdivision of the state under the name set forth in the application, and the water authority shall be vested with the rights and powers granted in this act and any other applicable laws. At the same time, the qualified corporation shall cease to exist and all assets and liabilities of every nature, including without limitation, all real property, personal property, certificate of public necessity and convenience, contractual obligations, lending obligations outstanding, rights afforded borrowers of federal and state funds and other tangible and intangible assets and liabilities of every nature shall, without need for further action or approval by any third party, be vested in and shall accrue to the benefit of the water authority. The water authority shall then send notice of transfer of said certificate to the Mississippi Public Service Commission.

#### **§ 51-41-13. Board of directors**

(1) The water authority shall have a board of directors composed of the number of directors provided in the application for reconstitution and certificate of incorporation, which shall not be fewer than five (5) directors. All powers of the water authority shall be exercised by the board or under its authorization.

(2) The directors shall be elected and determined, and shall serve in accordance with those procedures that the water authority may specify in its bylaws; provided, however, that each water or sewer user served by the water authority shall be entitled to vote on the election of directors of the water authority. The water authority's bylaws shall contain provisions and procedures for the election and appointment of its directors that are identical in nature to those same provisions and procedures as contained in the qualified corporation's bylaws, unless otherwise amended by the water authority or required by state law. A water authority shall promptly file a copy of any amendments to its bylaws with the Secretary of State. A water authority also may promulgate rules and regulations, not inconsistent with state law, containing provisions and procedures for the election and appointment of its directors.

(3) Each director shall take and subscribe to the oath of office prescribed in [Section 268, Mississippi Constitution of 1890](#), that he will faithfully discharge the duties of the office of director, which oath shall be maintained on file by the water authority. Before entering upon the discharge of the duties of his office, each director shall be required to execute a bond payable to the State of Mississippi in the penal sum of Ten Thousand Dollars (\$10,000.00), conditioned that he will faithfully discharge the duties of his office.

(4) A majority of the members of the board shall constitute a quorum for the transaction of business. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the powers and duties of the water authority. A director shall continue in office until the director's successor is properly elected and accepts office.

(5) The members of the board and the officers of the water authority shall serve without compensation, except that they may be reimbursed for actual expenses incurred in and about the performance of their duties.

(6) All meetings and records of the water authority shall be subject to the Mississippi Open Meetings Act and the Mississippi Public Records Act.

(7) All proceedings of the board shall be reduced to writing by the secretary of the water authority and appropriately recorded and maintained in a well bound book.

#### **§ 51-41-15. Officers**

The officers of the water authority shall consist of a chairman, vice chairman, a secretary, a treasurer, and such other officers as the board deems necessary to accomplish the purposes for which the water authority was organized. All officers of the water authority shall be persons who receive water service from the water authority. The offices of secretary and treasurer may, but need not, be held by the same person. The treasurer or secretary-treasurer shall be required to execute a bond payable to the water authority, in a sum and with such security as fixed and approved by the board. All officers of the water authority shall be elected by the board and shall serve for those terms of office as specified in the bylaws.

#### **§ 51-41-17. Powers generally**

The water authority shall have the following powers, acting either individually or jointly with other water authorities or public entities, together with all powers incidental thereto or necessary to the discharge thereof:

- (a) To have succession in its designated name;
- (b) To sue and be sued and to prosecute and defend suits in any court having jurisdiction of the subject matter and of the parties;
- (c) To make use of a seal and to alter it at pleasure;
- (d) To adopt and alter bylaws for the regulations and conduct of its affairs and business;
- (e) To acquire, whether by purchase, gift, lease, devise, or otherwise, property of every description which the board may deem necessary to the acquisition, construction, equipment, improvement, enlargement, operation, administration or maintenance of a project, and to hold title thereto;
- (f) To construct, enlarge, equip, improve, maintain, consolidate, administer and operate one or more projects;
- (g) To borrow money, including interim construction financing, for any of its purposes;
- (h) To sell and issue its bonds;
- (i) To sell and issue refunding bonds;
- (j) To secure any of its bonds by pledge and indenture as provided in this act;
- (k) To appoint, employ and compensate such general managers, executive directors, agents, architects, engineers,

attorneys, accountants and other persons and employees as the business of the water authority may require;

(l) To provide for such insurance as the board may deem advisable;

(m) To invest in obligations that are direct or guaranteed obligations of the United States of America, or other securities in which public funds may be invested by any other political subdivision under the laws of this state, any of its funds that the board may determine are not presently needed for its operational purposes;

(n) To contract, lease and make lease agreements respecting its properties or any part thereof;

(o) To exercise the power of eminent domain in accordance with the procedures prescribed by Title 11, Chapter 27, Mississippi Code of 1972;

(p) To sell, convey or otherwise dispose of any of its properties or projects; and

(q) To exercise and hold the authority and power granted to water supply systems and sewer systems under [Sections 19-5-173](#), [19-5-175](#), [19-5-177](#) and [19-5-203](#).

#### **§ 51-41-19. Tax exemption of projects**

Each project, all the water authority's interest therein, and all income from the project, is determined and declared by the Legislature to be public property used exclusively for a public purpose and shall be exempt from ad valorem taxation by all taxing authorities.

#### **§ 51-41-21. Issuance of bonds**

(1) The water authority is authorized at any time, and from time to time, to issue its bonds for the purpose of acquiring, constructing, improving, enlarging, completing and equipping one or more projects.

(2) Before the water authority's proposed issuance of bonds, the water authority shall publish one (1) time in a newspaper of general circulation in the affected county or counties, notice of the proposed issuance of bonds, the approximate principal amount of bonds contemplated to be sold, a general description of the project contemplated to be constructed with bond proceeds and the date of a public meeting at which members of the public may obtain further information regarding the sale of the bonds and the development of the project. The notice shall be published at least ten (10) days before the date of the hearing. The water authority chairman, or his or her designee, shall be responsible for conducting the hearing and shall require all public comments that might pertain to the proposed issuance of bonds by the water authority. Upon compliance with the provisions of this section, no other notice, hearing or approval by any other entity or governmental unit shall be required as a condition to the issuance by the water authority of its contemplated bonds.

(3) The principal of, and the interest, if any, on any bonds shall be payable out of the revenues derived from the projects with respect to which the bonds are issued, or from any other source available to the water authority.

(4) None of the bonds of the water authority shall ever constitute an obligation or debt of the state, the municipality or county in which the water authority operates, the Secretary of State, or any officer or director of the water authority, or a charge against the credit or taxing powers of the state.

(5) As the water authority determines, bonds of the water authority may:

- (a) Be issued at any time and from time to time;
  - (b) Be in such form and denominations;
  - (c) Have such date or dates;
  - (d) Mature at such time or times and in such amount or amounts, provided that no bonds may mature more than forty (40) years after the date of issuance;
  - (e) Bear interest, if applicable, payable at such times and such rate or rates as may be established by the board;
  - (f) Be payable at such place or places within or without the State of Mississippi;
  - (g) Be subject to such terms of redemption in advance of maturity at such prices, including such premiums; and
  - (h) Contain such other terms and provisions as may be appropriate or necessary in the discretion of the water authority.
- (6) Bonds of the water authority may be sold at either public or private sale in such manner, and from time to time, as may be determined by the board to be most advantageous. The water authority may pay all expenses, premiums and commissions that the board may deem necessary or advantageous in connection with the authorization, sale and issuance of its bonds.
- (7) All bonds shall contain a recital that they are issued under the provisions of this act, which recital shall be conclusive that they have been duly authorized under the provisions of this act.
- (8) All bonds issued under the provisions of this act shall be and are declared to be negotiable instruments within the meaning of the negotiable instruments law of the state and shall be in registered form.
- (9) All bonds issued by a water authority may be validated upon the direction of the board under [Sections 31-13-1 through 31-13-11](#). The validation hearing shall be held in the county in which the principal office of the water authority is located.

**§ 51-41-23. Execution of bonds**

Bonds shall be executed by the manual or facsimile signature of the chairman of the water authority and by manual or facsimile signature of the secretary of the water authority. In case any of the officers whose signatures appear on the bonds cease to be that officer before the delivery of the bonds, their signatures shall nevertheless be valid and sufficient for all purposes. The bonds shall be sealed with the seal of the water authority.

**§ 51-41-25. Security for bonds**

- (1) The principal of, and interest, if any, on the bonds, may be secured by a pledge of the revenues of the water authority of that project financed by the water authority through its issuance of bonds, or from any other source that the water authority may deem necessary and appropriate, and may be secured by the creation of a mortgage and security interest encumbering the real property of the water authority, or security interest in all personal property and revenues of the water authority as set forth in the indenture.
- (2) The trustee under any indenture may be a trust company or bank having trust powers, whether located within or

without the state.

(3) The indenture may contain any agreements and provisions customarily contained in instruments securing evidences of indebtedness including, without limiting, the generality of the foregoing provisions respecting the nature and extent of the security; the collection, segregation and application of the revenues generated from the operation of any project covered by the indenture; covenants to always operate the project as a revenue-producing undertaking and to charge and collect, including the obligation to increase from time to time, sufficient revenue to maintain income at required levels; the maintenance and insurance of the project; the creation and maintenance of reserve and other special funds; and the rights and remedies available in the event of default to the holders of the bonds or the trustees under the indenture, all as the board shall deem advisable and as shall not be in conflict with the provisions of this act.

(4) If there is any default by the water authority in payment of the principal of, or the interest, if any, on the bonds or in any of the agreements on the part of the water authority that may properly be included in any indenture securing the bonds, the bondholders or the trustee under any indenture, as authorized in the indenture, may either in law or in equity, by suit, action, mandamus, or other proceeding, enforce payment of the principal or interest, if any, and compel performance of all duties of the board and officers of the water authority, and shall be entitled as a matter of right and regardless of the sufficiency of any such security to the appointment of a receiver in equity with all the powers of that receiver for the operation and maintenance of the project covered by the indenture and the collection, segregation, and applications of income and revenues from the project.

(5) The indenture may contain provisions regarding the rights and remedies of any trustee under the indenture and the holders of the bonds and the coupons and restricting the individual rights of action of the holders of the bonds and coupons.

(6) There is created a statutory lien in the nature of a mortgage lien upon any project, system or systems acquired or constructed with proceeds of bonds issued by a water authority under this act, including all extensions and improvements thereof or combinations thereof subsequently made, the lien shall be in favor of the holder or holders of any bonds issued under this act, and all that property shall remain subject to the statutory lien until the payment in full of the principal of and interest, if any, on the bonds. Any holder of the bonds or any of the coupons representing interest on the bonds may, either at law or in equity, by suit, action, mandamus or other proceedings, in any court of competent jurisdiction, protect and enforce the statutory lien and compel the performance of all duties required by this act, including the making and collection of sufficient rates for the service or services, the proper accounting thereof, and the performance of any duties required by covenants with the holders of any bonds issued under this act.

If any default is made in the payment of the principal of or interest, if any, on the bonds, any court having jurisdiction of the action may appoint a receiver to administer the water authority and the project, system or systems, with power to charge and collect rates sufficient to provide for the payment of all bonds and obligations outstanding against project, system or systems, and for payment of operating expenses, and to apply the income and revenues thereof in conformity with the provisions of this act and any covenants with bondholders.

#### **§ 51-41-27. Bonds--tax exemption**

The principal of and interest, if any, on bonds issued under the authority of this act shall be exempt from all state, county and municipal taxes. This exemption shall include income, inheritance and estate taxes.

#### **§ 51-41-29. Proceeds from issuance of bonds**

(1) The proceeds derived from all of the bonds, other than refunding bonds, may be used only to pay the costs of acquiring, constructing, improving, enlarging and equipping the project with respect to which they were issued, as

may be specified in the proceedings in which the bonds are authorized to be issued and all costs incidental thereto, including without limitation:

- (a) The costs of any land forming a part of the project and all easements that may pertain to or be associated with any project;
  - (b) The costs of the labor, materials and supplies used in any construction, improvement and enlargement, including architect's and engineer's fees and the cost of preparing contract documents and advertising for bids along with all other reasonable and necessary project cost;
  - (c) The purchase price of and the cost of installing equipment for the project;
  - (d) Legal, fiscal, accounting and recording fees and expenses incurred in connection with the authorization, sale and issuance of the bonds issued in connection with the project;
  - (e) Interest, if any, on bonds for a reasonable period before, during and after the time required for completion of the project;
  - (f) The amount necessary to fund a debt service reserve in an amount deemed appropriate by the water authority;
  - (g) Cost associated with the obtaining of default insurance ratings and other credit enhancements of every nature; and
  - (h) Other operational expenses, reserves and other accounts of every nature.
- (2) If any of the proceeds derived from the issuance of bonds remains undisbursed after completion of the project and the making of all such expenditures, the balance shall be used for the redemption of bonds of the same issue.

**§ 51-41-31. Refunding bonds**

- (1) The water authority may at any time, and from time to time, issue refunding bonds for the purpose of refunding the principal of and interest, if any, on any bonds of the water authority previously issued under this act and then outstanding, whether or not the principal and interest have matured at the time of the refunding under this act, and for the payment of any expenses incurred in connection with the refunding and any premium necessary to be paid in order to redeem or retire the bonds to be refunded.
- (2) The proceeds derived from the sale of any refunding bonds shall be used only for the purposes for which the refunding bonds were authorized to be issued.
- (3) Any such refunding may be effected either by sale of the refunding bonds and the application of the proceeds thereof by immediate application or by escrow deposit, with the right to invest monies in the escrow deposit until needed for the redemption or by exchange of the refunding bonds for the bonds or interest coupons to be refunded thereby. However, the holders of any bonds so to be refunded shall not be compelled without their consent to surrender their bonds for payment or exchange before the date on which they may be paid or redeemed by the water authority under their respective provisions.
- (4) Any refunding bonds of the water authority shall be payable solely from the revenues out of which the bonds to be refunded were payable or from those other sources or other revenues that might be identified in the indenture.

(5) All provisions of this act pertaining to bonds of the water authority that are not inconsistent with the provisions of this section shall, to the extent applicable, also apply to refunding bonds issued by the water authority.

**§ 51-41-33. Act is full authority**

This chapter shall be deemed to be full and complete authority for the creation of water authorities and the issuance of bonds as set forth in this act. No proceedings shall be required for the creation of water authorities or the issuance of bonds other than those provided for and required in this act. The board of directors of a water authority shall have all the powers necessary in order to carry out the provisions of this act.

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