MISSISSIPPI LEGISLATURE REGULAR SESSION 2016

By: Senator(s) Horhn To: Finance

SENATE BILL NO. 2621

AN ACT TO AUTHORIZE MUNICIPALITIES TO CREATE SPECIAL LOCAL IMPROVEMENT ASSESSMENT DISTRICTS; TO AUTHORIZE THE LEVY OF AN ASSESSMENT OF UP TO SIX MILLS ON TAXABLE REAL PROPERTY LOCATED WITHIN SUCH ASSESSMENT DISTRICTS; TO PROVIDE FOR THE DUTIES AND POWERS OF SUCH ASSESSMENT DISTRICTS; TO REQUIRE THE DISSOLUTION OF SUCH ASSESSMENT DISTRICTS UNDER CERTAIN CIRCUMSTANCES; TO SPECIFY THE USE FOR THE PROCEEDS OF THE SPECIAL ASSESSMENT; TO ALLOW SUCH DISTRICTS TO LEVY LESS THAN THE MAXIMUM ALLOWABLE ASSESSMENT LEVY; TO AUTHORIZE THE ISSUANCE OF BONDS BY A MUNICIPALITY THAT HAS CREATED A SPECIAL LOCAL IMPROVEMENT ASSESSMENT DISTRICT UNDER THIS ACT; TO PROVIDE THAT BONDS ISSUED BY A MUNICIPALITY UNDER THIS ACT SHALL BE PAYABLE OUT OF THE PROCEEDS OF THE SPECIAL ASSESSMENT AUTHORIZED UNDER THIS ACT; TO AUTHORIZE THE DELEGATION OF CERTAIN AUTHORITY UNDER THIS ACT; TO PROVIDE THAT BONDS ISSUED UNDER THIS ACT SHALL BE LEGAL INVESTMENTS; TO PROVIDE THAT BONDS ISSUED BY A MUNICIPALITY UNDER THIS ACT SHALL BE EXCLUDED FROM THE MUNICIPALITY'S DEBT LIMITATION; TO AMEND SECTION 21-33-303, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. For the purposes of Sections 1 through 13 of this act, the following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Homeowners Association" means a homeowners association duly organized as a nonprofit organization with tax

exempt status under Section 501(c)(3) of the Internal Revenue Code.

(b) "Issuing authority" means any municipality or any urban renewal agency or redevelopment authority within such municipality having authority to issue bonds pursuant to Sections 1 through 13 of this act.

(c) "Local improvements" means (i) any improvements constructed within a special local improvement assessment district or services established under Sections 1 through 13 of this act to improve the appearance or functioning of property located within the district including, but not limited to, parks and related facilities, sidewalks, streets, street curbing, street medians, planting areas, walls, lighting equipment, fountains and flagpoles; (ii) trees, shrubs, flowers and other vegetation; (iii) security enhancements including, but not limited to, cameras, radios, monitors and related equipment; (iv) private patrol services; (v) the acquisition, rehabilitation and sale of property in a special local improvement assessment district; and (vi) any expenditures made in conjunction with the improvements set forth above such as the removal and relocation of utility service or purchase and removal of signs.

(d) "Municipality" means any municipality incorporated under the laws of the state.

(e) "Special local improvement assessment district" means a district established pursuant to Section 2 of this act and

may be comprised of either residential or nonresidential real property. Nonresidential real property located within or immediately adjacent to a special local improvement assessment district comprised of residential real property may be included within such special local improvement assessment district by a request submitted in writing by the owner of such nonresidential property to the governing authorities of the municipality. Residential real estate property located within or immediately adjacent to a special local improvement assessment district comprised of nonresidential real property may be included within such special local improvement assessment district by a request submitted in writing by the owner of such residential property to the governing authorities of the municipality.

(f) "State" means the State of Mississippi.

SECTION 2. (1) (a) The governing authority of a municipality is authorized to establish one or more special local improvement assessment districts and to levy and collect an annual special assessment not to exceed six (6) mills against only that taxable real property that is included within each such district, provided that such a special assessment shall not be levied or collected unless the governing authority (i) shall have adopted a resolution designating an area a special local improvement assessment district and specifying the maximum millage to be levied on taxable real property in the district under this section, and (ii) has received a petition in favor of the levy of

such assessment signed by the owners of at least sixty percent (60%) of the taxable real property in the proposed district. For purposes of this subsection, "owners" means those persons possessing a majority of the ownership interest in a piece of taxable real property.

(b) Such special assessment shall be excluded from the limitations imposed under Section 27-39-321. Before adopting such resolution, the governing authority shall hold a public hearing with respect thereto after public notice by publication at least twice, once a week for two (2) consecutive weeks in a newspaper of general circulation in the municipality, with the first publication being not less than fourteen (14) calendar days before the date specified for such hearing, such notice to include the date, time and place of such hearing, the proposed boundaries of such special local improvement assessment district and the maximum special assessment to be levied on property in such district under this section.

(c) The boundaries of the special local improvement assessment district shall not be modified and special assessments shall not be levied in excess of the maximum set forth in such resolution, unless:

(i) The governing authority shall have amended such resolution to reflect such modifications in the boundaries and assessment;

(ii) The governing authority has received a

petition in favor of the levy of the special assessment signed by owners of at least seventy percent (70%) of the taxable real property within the modified boundaries of the district; and

(iii) A public hearing is held as provided in subsection (2) of this section. Any special local improvement assessment district established under Sections 1 through 13 of this act may include any real property located within the corporate boundaries of the municipality.

(2) (a) As an alternative to the procedure provided in subsection (1) of this section, a special local improvement assessment district may be created under this subsection (2) if the boundaries of the proposed special local improvement assessment district are within the boundaries of the homeowners' association representing that area. Upon delivery of a petition to the clerk of the municipality in which the proposed district is located, signed by the owners of at least sixty percent (60%) of the taxable real property in the homeowners' association representing the area in the proposed district, the municipality shall begin efforts to establish the district. Within fifteen (15) days after receipt of such a petition, the clerk of the municipality shall mail ballots to all of the property owners in the proposed special local improvement assessment district providing for a referendum on the issue of creating the district. The ballot shall clearly state the issue to be decided and shall indicate the date by which the ballot must be returned to the

clerk of the municipality, which date may not be later than thirty (30) days after the date the clerk mailed the ballots. The governing authorities of the municipality shall adopt a resolution creating the special local improvement assessment district if on or before the last day fixed for the return of ballots, the owners of at least sixty percent (60%) of the taxable real property in the proposed special local improvement assessment district vote in favor of creating the district. The resolution shall contain a description of the boundaries of the district and shall specify the maximum millage rate to be levied upon taxable real property in the district for the municipality's fiscal year.

(b) The homeowners' association representing the property owners in the special local improvement assessment district shall submit a plan to the municipality specifying the local improvements proposed for the district during the municipality's upcoming fiscal year and the total amount proposed to be expended for the improvements. The governing authorities of the municipality may levy a special assessment not to exceed six (6) mills upon all taxable real property in the district to provide funds for the local improvements.

(c) The procedures required in this subsection (2) for the establishment of a district shall be used for the modification of the boundaries of a district.

SECTION 3. (1) (a) Upon the adoption of a resolution

establishing a special local improvement assessment district as set forth under Section 2(1) of this act, the governing authority of a municipality shall be authorized to exercise the following powers within any special local improvement assessment district:

(i) To provide for the planning and design of local improvements and the coordination of landscape design on different parcels of property, including the preparation of working drawings for the construction, acquisition and installation of local improvements;

(ii) To purchase, acquire, install and construct local improvements;

(iii) To purchase and acquire easements, air rights, scenic rights-of-way and other interests in land on which local improvements can be placed and which are necessary or desirable in connection with any local improvements;

(iv) To provide for the management of local improvements, including, but not limited to, providing maintenance and services within the district; and

(v) To contract with a nonprofit local association duly incorporated under the laws of the State of Mississippi to undertake all or a portion of the activities within the special local improvement assessment district.

(b) A special local improvement assessment district created under Section 2(1) of this act shall be dissolved by resolution of the governing authority of the municipality if all

activities for which such district was established have been completed and no debts incurred in connection with such activities are outstanding.

(2) (a) Upon the adoption of a resolution establishing a special local improvement assessment district as set forth under Section 2(2) of this act, the homeowners' association representing the property area in the district shall be authorized to exercise the following powers within the special local improvement assessment district:

(i) To provide for the planning and design of local improvements and the coordination of landscape design on different parcels of property, including the preparation of working drawings for the construction, acquisition and installation of local improvements;

(ii) To purchase, acquire, install and construct local improvements;

(iii) To purchase and acquire easements, air rights, scenic rights-of-way and other interests in land on which local improvements can be placed and which are necessary or desirable in connection with any local improvements;

(iv) To provide for the management of local improvements, including, but not limited to, providing maintenance and services within the district; and

(v) To contract with a nonprofit local association duly incorporated under the laws of the State of Mississippi to

undertake all or a portion of the activities within the district.

(b) A special local improvement assessment district established under Section 2(2) of this act that has satisfied all indebtedness incurred in connection with activities of the district may be dissolved by following the petition and ballot procedures provided for the establishment of the district in Section 2(2) of this act.

SECTION 4. (1) The proceeds of any special assessment levied on real property located within a special local improvement taxing district under Section 2(1) of this act may be used to pay costs including administrative costs of and relating to exercising the powers set forth in Section 3(1) of this act. Nothing stated herein shall prevent the use of such special assessment for the purpose of planning and design of local improvements for any property located within a district and the coordination of landscape design on different parcels of property.

(2) (a) The proceeds of any special assessment levied on real property located within a special local improvement assessment district under Section 2(2) of this act may be used to pay costs including administrative costs of and relating to exercising the powers set forth in Section 3(2) of this act. The municipality shall hold the proceeds of the special assessment until disbursing the proceeds to the homeowners' association representing the area in a district created under Section 2(2) of this act. A homeowners' association shall keep the proceeds of

such assessment separate and apart from other funds of the association. Accounting for receipts and expenditures of proceeds from the assessment shall be made separately and apart from the accounting of receipts and expenditures of the homeowners' association for other funds of the district. The homeowners' association shall have its books and records audited annually by an independent certified public accountant and shall file a written report of the audit with the clerk of the municipality. The clerk of the municipality shall make the report of the audit available for public review. A special local improvement assessment district shall operate on the same fiscal year as the municipality.

(b) Nothing in this subsection (2) shall prevent the use of such special assessment for the purpose of planning and design of local improvements for any property located within a district and the coordination of landscape design on different parcels of property.

SECTION 5. (1) (a) The governing authority of a municipality exercising the authority to levy a special assessment as set forth in Section 2(1) of this act shall levy such assessment at the maximum rate specified in the resolution provided for in Section 2(1) of this act against all property in such special local improvement assessment district unless a lesser rate will provide revenues sufficient to pay debt service on all bonds payable from such assessment and to pay costs of exercising

the powers authorized pursuant to Section 3(1) of this act, and if a municipality has delegated to an urban renewal agency or redevelopment authority any of its authority under this act, the governing authority of such urban renewal agency or redevelopment authority shall have certified to the municipality that a lesser assessment rate will be sufficient to make such payments, in which event the governing authority of the municipality shall levy such assessment at such lesser rate.

(b) The governing authority may also enter into agreements for the benefit of holders of bonds issued by an urban renewal agency or redevelopment authority of the municipality pursuant to Section 6 of this act including, without limitation, agreements limiting or restricting issuance of bonds by the municipality which would be payable from such special assessment, to the extent that such governing authorities shall determine that such agreements are necessary or desirable in connection with the issuance of bonds by an urban renewal agency or redevelopment authority pursuant to Section 6 of this act.

(2) The governing authority of a municipality exercising the authority to levy a special assessment as set forth in Section 2(2) of this act shall levy such assessment at the maximum rate specified in the resolution provided for in Section 2(2) of this act against all taxable property in such special local improvement assessment district unless a lesser rate will provide revenues

sufficient to pay the costs of improvements included in the plan submitted to the municipality under Section 2(2)(b) of this act.

SECTION 6. The governing authority of a municipality which has elected to exercise the authority to establish special local improvement assessment districts as provided in Section 2(1) of this act and the governing authority of any urban renewal agency or redevelopment authority to which authority under this act shall have been delegated, are authorized, in their discretion, to issue bonds for the purpose of (a) defraying any costs described in Section 3 of this act; (b) refunding outstanding bonds; (c) paying costs relating to the issuance of such bonds; and (d) establishing any reserve funds determined to be appropriate. Such bonds may be issued without an election thereon upon the adoption of a resolution by the governing authority of the issuing authority. Such bonds shall not be subject to any limitation as to amount and shall not be included in computing the statutory limitation of indebtedness of such issuing authority under any present or future law. Such bonds shall bear such date or dates, shall be of such denomination or denominations, shall bear interest at such rate or rates as shall be approved by the issuing authority, shall be payable at such place or places within or without the State of Mississippi, shall mature at such time or times and upon such terms and may be made redeemable prior to maturity with or without premium, shall bear such registration privileges and shall be in substantially such form as shall be determined by resolution of

the governing authority of such issuing authority. Any bonds issued under Sections 1 through 13 of this act may be sold at public or private sale at such price as may be determined by the governing authority. Such bonds shall be executed by the manual or facsimile signature of the official or officials of such issuing authority which have been designated by the governing authority, with the seal of the issuing authority affixed thereto or reproduced thereon. Whenever such bonds shall have been signed by the officials designated to sign the same who were in office at the time of such signing but who may have ceased to be such officials prior to the date of the sale and delivery of such bonds, or who may not have been in office on the date such bonds may bear, the signatures of such officials upon such bonds shall nevertheless be valid and sufficient for all purposes and have the same effect as if the person so officially signing such bonds had remained in office until the delivery of the same to the purchaser or had been in office on the date such bonds may bear.

SECTION 7. Bonds issued under the provisions of Sections 1 through 13 of this act shall be payable, both as to principal and interest, solely out of such special assessments levied pursuant to Section 2 of this act, and any contributions received by the issuing authority for such purpose, as shall be specified in the resolution authorizing issuance of such bonds, and the full faith and credit of the issuing authority shall not be pledged therefor, and such fact shall be recited on the face of each bond.

SECTION 8. The governing body of a municipality that has established a special local improvement assessment district under Section 2(1) of this act, by resolution or order adopted by such governing body, may delegate the other authority granted under Sections 1 through 13 of this act, including the authority to plan, construct and maintain local improvements pursuant to Section 3 of this act and the authority to issue bonds pursuant to Section 6 of this act, to the urban renewal agency or the redevelopment authority of the municipality. If such authority has been so delegated hereunder and thereafter exercised, then any assessments levied hereunder shall be paid, upon receipt by the municipality, to the entity to which such authority has been delegated.

SECTION 9. Any municipality that has formed a special local improvement assessment district under the authority of Section 2(1) of this act, any urban renewal agency or redevelopment authority which has been delegated authority under Sections 1 through 13 of this act, and any homeowners' association representing the area in a district established under Section 2(2) of this act, may accept and expend contributions from any other sources and apply such contributions to any of the purposes set forth in Sections 1 through 13 of this act.

SECTION 10. (1) A resolution issuing bonds in compliance with Sections 1 through 13 of this act may include any covenants which the governing authority deems necessary to make such bonds

secure and marketable, including, but without limitation, covenants regarding the application of the bond proceeds; the pledging, application and securing of special assessments; the creation and maintenance of reserves; covenants to levy special assessments; covenants to enforce agreements; the investment of funds; the issuance of additional bonds; the terms and conditions upon which bondholders may exercise their rights and remedies; the replacement of lost, destroyed or mutilated bonds; the definition, consequences and remedies of an event of default; and the appointment of a receiver in the event of a default.

(2) All assessments or other revenues pledged to the payment of such bonds shall be subject to a lien in favor of the holders of such bonds, and all such assessments received by the issuing authority, or the municipality if such bonds shall have been issued by a redevelopment authority or an urban renewal agency shall be immediately subject to such lien without any physical delivery thereof or further act by the issuing authority, and such lien shall be effective as against all parties asserting claims against the issuing authority or municipality, whether by way of tort, contract or otherwise, whether or not such parties may have had notice of such lien. Such pledge or trust agreement creating the same need not be filed or recorded except in the official minutes of the issuing authority.

(3) The state does hereby covenant with the holders of any such bonds that it will not, while any such bonds shall be

outstanding, limit or diminish the right and power of any municipality to levy the special assessments authorized by Sections 1 through 13 of this act, or the right and power of any municipality, urban renewal agency or redevelopment authority to fulfill any covenants with or for the benefit of such bondholders.

SECTION 11. Bonds issued under the provisions of Sections 1 through 13 of this act shall be legal investments for commercial banks, savings and loan associations and insurance companies organized under the laws of this state.

SECTION 12. Sections 1 through 13 of this act, without reference to any statute not referred to herein, shall be deemed to be full and complete authority for the issuance of bonds, and shall be construed as an additional and alternative method therefor, and none of the present restrictions, requirements, conditions or limitations of law applicable to the issuance or sale of bonds, notes or other obligations by issuers in this state shall apply to the issuance and sale of bonds under Sections 1 through 13 of this act, and no proceedings shall be required for the issuance of bonds other than those provided for and required herein, and all powers necessary to be exercised in order to carry out the provisions of Sections 1 through 13 of this act are hereby conferred.

SECTION 13. The bonds authorized by Sections 1 through 13 of this act and the income therefrom shall be exempt from all taxation in the State of Mississippi.

SECTION 14. Section 21-33-303, Mississippi Code of 1972, is amended as follows:

21-33-303. No municipality shall hereafter issue bonds secured by a pledge of its full faith and credit for the purposes authorized by law in an amount which, when added to the then outstanding bonded indebtedness of such municipality, shall exceed either (a) fifteen percent (15%) of the assessed value of the taxable property within such municipality, according to the last completed assessment for taxation, or (b) ten percent (10%) of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984, whichever is greater. In computing such indebtedness, there may be deducted all bonds or other evidences of indebtedness, heretofore or hereafter issued, for school, water, sewerage systems, gas, and light and power purposes and for the construction of special improvements primarily chargeable to the property benefited, or for the purpose of paying the municipality's proportion of any betterment program, a portion of which is primarily chargeable to the property benefited. However, in no case shall any municipality contract any indebtedness which, when added to all of the outstanding general obligation indebtedness, both bonded and floating, shall exceed either (a) twenty percent (20%) of the assessed value of all taxable property within such municipality according to the last completed assessment for taxation or (b) fifteen percent (15%) of the assessment upon which taxes were levied for its fiscal year ending

September 30, 1984, whichever is greater. Nothing herein contained shall be construed to apply to contract obligations in any form heretofore or hereafter incurred by any municipality which are subject to annual appropriations therefor, or to bonds heretofore issued by any municipality for school purposes, or to contract obligations in any form heretofore or hereafter incurred by any municipality which are payable exclusively from the revenues of any municipally owned utility, or to bonds issued by any municipality under the provisions of Sections 57-1-1 through 57-1-51, or to any special assessment improvement bonds issued by any municipality under the provisions of Sections 21-41-1 through 21-41-53, or to any indebtedness incurred under Section 55-23-8, or to bonds issued by a municipality under Sections 1 through 13 of this act.

All bonds issued prior to July 1, 1990, pursuant to this chapter by any municipality for the purpose of the constructing, replacing, renovating or improving wastewater collection and treatment facilities in order to comply with an administrative order of the Mississippi Department of Natural Resources issued pursuant to the Federal Water Pollution Control Act and amendments thereto, are hereby exempt from the limitation imposed by this section if the governing body of the municipality adopts an order, resolution or ordinance to the effect that the rates paid by the users of such facilities shall be increased to the extent necessary to provide sufficient funds for the payment of the

principal of and interest on such bonds as each respectively becomes due and payable as well as the necessary expenses in connection with the operation and maintenance of such facilities.

SECTION 15. This act shall take effect and be in force from and after July 1, 2016.