HOUSE BILL NO. 854

AN ACT TO AMEND SECTION 51-3-39, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT BOARDS OF SUPERVISORS MAY BUILD DAMS OR OTHER LOW-WATER CONTROL STRUCTURES; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 51-3-39, Mississippi Code of 1972, is amended as follows:

51-3-39. (1) Any person proposing to construct, enlarge, repair or alter a dam or reservoir in this state except as provided elsewhere in this section, before proceeding with the construction thereof, must obtain written authorization from the board. Applications shall be made on forms provided by the board, and detailed plans shall be required when deemed necessary by the board in order to determine whether the proposed construction will provide adequate safety for downstream lives and property, and will not adversely affect downstream water rights or plans for the proper utilization of the water resources of the state. Provided further, that:

(a) Written construction authorization shall not be required for any dam or barrier to impound water which (i) is a peripheral dam or barrier of eight (8) feet or less in height, measured from the point of lowest elevation of the toe of the dam or barrier, regardless of impounded storage volume, (ii) impounds twenty-five (25) acre-feet or less at maximum storage volume, or (iii) which does not impound a watercourse with a continuous flow of water.

(b) Any person who seeks to build and maintain a dam on any watercourse lying in whole or in part within a levee district...
duly constituted under the laws of this state shall first obtain
permission from the levee board of such levee district.

(c) Any person intending to acquire the right to store
or use water from a reservoir formed by a dam on a watercourse
regardless of whether or not written construction authorization
therefor was required under this section, may do so only by making
an application for a permit as provided elsewhere in this chapter.

(2) The board may request other agencies, or contract with
consultants, to recommend land treatment or facilities necessary
to prevent pollution of the waters of this state, or to protect
the safety and general welfare of the people, and in the board's
discretion, may require that these recommendations be followed
before authorization to construct or modify the dam is issued, or
order the removal of the dam after it has been constructed or
request the commission to order the removal of the dam after it
has been constructed or modified when such recommendations are not
followed.

(3) The board and commission shall be authorized to make
inspections of dams and reservoirs, regardless of whether or not
written construction authorization therefor was required under
this section, for the purpose of determining their safety, and
shall require owners to perform at their expense such work as may
be necessary for maintenance and operation which will safeguard
life and property. Provided, however, a dam or reservoir may be
exempt from inspections when the commission determines that the
location, size or condition is such that lives and property will
not be endangered. In carrying out the provisions of this
section, the board and commission are authorized to expend
available state funds, to receive funds from federal agencies, to
contract with consultants and/or other agencies, and the
commission may issue orders to owners of dams or reservoirs found
to be unsafe requiring them to take the prescribed remedial action
to safeguard downstream lives and property.
(4) No dam or reservoir, regardless of whether or not written construction authorization therefor is required under this section, may be constructed in such a manner as to impair the common law or other lawful rights of water users below or plans for the proper utilization of the water resources of the state. The board is authorized to prescribe such minimum flow releases from any dam or reservoir as may be found necessary to protect downstream users or otherwise prudently manage available surface water.

(5) When the board or commission finds a dam or reservoir constructed or modified in violation of this chapter or that the owner of a dam or reservoir has allowed the structure to deteriorate and remain in an unsafe condition after having been ordered to make the necessary repairs, then the commission may cause the structure to be removed and/or the board may revoke or modify any other authorization pertaining thereto.

(6) The provisions of this section shall not be construed as creating any liability for damages against the state and/or against its officers, agents and employees.

(7) The provisions of this section shall be construed to authorize any county board of supervisors to construct a dam or other low-water control structure and appurtenances and to enter into project cooperation agreements with the Department of the Army. The board, after construction of a dam or other low-water control structure and appurtenances is complete, may operate, maintain, repair, replace or rehabilitate structures as necessary.

SECTION 2. This act shall take effect and be in force from and after July 1, 2001.