

By: Representative Barbour

To: Conservation and Water Resources

HOUSE BILL NO. 854

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

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

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

7 51-3-39. (1) Any person proposing to construct, enlarge,
8 repair or alter a dam or reservoir in this state except as
9 provided elsewhere in this section, before proceeding with the
10 construction thereof, must obtain written authorization from the
11 board. Applications shall be made on forms provided by the board,
12 and detailed plans shall be required when deemed necessary by the
13 board in order to determine whether the proposed construction will
14 provide adequate safety for downstream lives and property, and
15 will not adversely affect downstream water rights or plans for the
16 proper utilization of the water resources of the state. Provided
17 further, that:

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

26 (b) Any person who seeks to build and maintain a dam on
27 any watercourse lying in whole or in part within a levee district



28 duly constituted under the laws of this state shall first obtain
29 permission from the levee board of such levee district.

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

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

45 (3) The board and commission shall be authorized to make
46 inspections of dams and reservoirs, regardless of whether or not
47 written construction authorization therefor was required under
48 this section, for the purpose of determining their safety, and
49 shall require owners to perform at their expense such work as may
50 be necessary for maintenance and operation which will safeguard
51 life and property. Provided, however, a dam or reservoir may be
52 exempt from inspections when the commission determines that the
53 location, size or condition is such that lives and property will
54 not be endangered. In carrying out the provisions of this
55 section, the board and commission are authorized to expend
56 available state funds, to receive funds from federal agencies, to
57 contract with consultants and/or other agencies, and the
58 commission may issue orders to owners of dams or reservoirs found
59 to be unsafe requiring them to take the prescribed remedial action
60 to safeguard downstream lives and property.



61 (4) No dam or reservoir, regardless of whether or not
62 written construction authorization therefor is required under this
63 section, may be constructed in such a manner as to impair the
64 common law or other lawful rights of water users below or plans
65 for the proper utilization of the water resources of the state.
66 The board is authorized to prescribe such minimum flow releases
67 from any dam or reservoir as may be found necessary to protect
68 downstream users or otherwise prudently manage available surface
69 water.

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

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

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

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

