

By: Representative Ellington

To: Conservation and Water Resources; Ways and Means

HOUSE BILL NO. 1029
(As Passed the House)

1 AN ACT TO AMEND SECTION 51-11-53, MISSISSIPPI CODE OF 1972,
2 TO DEFINE NECESSARY IMPROVEMENTS, PROPERTY OR FACILITIES; TO AMEND
3 SECTION 51-11-57, MISSISSIPPI CODE OF 1972, TO CHANGE THE DURATION
4 OF THE TERMS OF THE BOARD OF DIRECTORS OF THE FLOOD CONTROL
5 DISTRICTS; TO AMEND SECTION 51-11-59, MISSISSIPPI CODE OF 1972, TO
6 PROVIDE THAT SAND, DIRT AND GRAVEL SHALL NOT BE CONSIDERED
7 MINERALS WHEN THE FLOOD CONTROL DISTRICT ACQUIRES LAND BY
8 NEGOTIATION OR CONDEMNATION; TO AMEND SECTION 51-11-67,
9 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ELECTIONS BE HELD IN
10 VOTING PRECINCTS AND TO REMOVE THE REQUIREMENT THAT VOTING PLACES
11 BE PROVIDED WITHIN THE FLOOD CONTROL DISTRICTS AND THE ELECTION
12 DISTRICTS; TO AMEND SECTION 51-11-73, MISSISSIPPI CODE OF 1972, TO
13 PROVIDE FOR AN ALTERNATIVE MEANS OF LEVY AGAINST LAND OR PROPERTY
14 IN THE FLOOD CONTROL DISTRICT; TO PROVIDE THE PROCEDURES THAT
15 SHALL BE USED BY ANY COUNTY SEEKING TO WITHDRAW FROM THE PEARL
16 RIVER BASIN DEVELOPMENT AUTHORITY; AND FOR RELATED PURPOSES.

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

18 SECTION 1. Section 51-11-53, Mississippi Code of 1972, is
19 amended as follows:

20 51-11-53. For purposes of Sections 51-11-53 through
21 51-11-85, the following words shall have the meanings ascribed in
22 this section, unless the context clearly indicates otherwise:

23 (a) "District" means any flood control district created
24 under Sections 51-11-53 through 51-11-85.

25 (b) "Necessary improvements, property or facilities"
26 mean any improvement, property or facility for a project which is
27 required by the project plan or which may increase the financial
28 or economic viability of a project.

29 (c) "Project" means a general plan for and purposes of
30 the flood and drainage control improvements.

31 (d) "Project area" means the physical location of any
32 levees, channels, drains, or related facilities, the area which is

33 necessary to be included in the district, and the area of the
34 district as shown on the maps or plats provided under Section
35 51-11-55.

36 (e) "Related facilities" mean any facilities which are
37 correlated with or used in connection with the project.

38 SECTION 2. Section 51-11-57, Mississippi Code of 1972, is
39 amended as follows:

40 51-11-57. (1) All powers of a flood control district shall
41 be exercised by a board of directors, to be composed of the
42 following:

43 (a) If the flood control district is comprised of lands
44 lying partly in a municipality and partly outside the limits of a
45 municipality but wholly in one (1) county, the governing authority
46 of the municipality shall appoint two (2) directors, the board of
47 supervisors of the county in which the municipality lies shall
48 appoint two (2) directors and the board of directors of the Pearl
49 River Basin Development District shall appoint one (1) director.

50 (b) If the flood control district is comprised of lands
51 lying, in whole or in part, in one or more municipalities which
52 are in existence at the time of the creation of that district, and
53 in one or more counties and not falling within the description of
54 (a) of this subsection, the governing authority of each
55 municipality shall appoint two (2) directors, the board of
56 supervisors of each county in which part of the lands of the flood
57 control district lie shall appoint two (2) directors and the board
58 of directors of the Pearl River Basin Development District shall
59 appoint one (1) director. If new municipalities are incorporated
60 within the flood control district after the organization of that
61 district, the governing authority of each new municipality shall
62 appoint two (2) directors of the flood control district.

63 Each director appointed under this section, except the
64 director appointed by the board of directors of the Pearl River

65 Basin Development District, shall be either a resident or property
66 owner in the district for which the director is appointed.

67 (2) Each director shall take and subscribe to the oath of
68 office required by Section 268 of the Constitution of the State of
69 Mississippi, before a chancery clerk, that the director will
70 faithfully discharge the duties of the office. The oath shall be
71 filed with the chancery clerk.

72 (3) Each director shall receive a per diem as provided under
73 Section 25-3-69 for attending each meeting of the board and for
74 each day actually spent in attending to the necessary business of
75 the flood control district and shall receive reimbursement for
76 actual expenses, including travel expenses, as provided in Section
77 25-3-41 upon express authorization of the board.

78 (4) The board of directors shall elect annually from its
79 number a president and a vice president of the flood control
80 district and any other officers deemed necessary. The president
81 shall be the chief executive officer of the flood control district
82 and the presiding officer of the board, and shall have the same
83 right to vote as any other director. The vice president shall
84 perform all the duties and exercise all powers conferred by this
85 article upon the president when the president is absent or fails
86 or declines to act, except the president's right to vote. The
87 board also shall appoint a secretary and a treasurer who may or
88 may not be members of the board, and it may combine these offices.
89 The treasurer shall give bond in the sum of not less than Fifty
90 Thousand Dollars (\$50,000.00), as set by the board of directors,
91 and each director shall give bond in the sum of not less than Ten
92 Thousand Dollars (\$10,000.00). The premiums on the bonds shall be
93 an expense of the district. The condition of each bond shall be
94 that the treasurer or director will faithfully perform all duties
95 of office and account for all money which shall come into the
96 treasurer's or director's custody.

97 (5) The initial terms of the members of the board of
98 directors of the flood control district shall be: one-third (1/3)
99 of the members shall serve for one (1) year, one-third (1/3) of
100 the members shall serve for two (2) years, and one-third (1/3) of
101 the members shall serve for three (3) years. At the initial
102 meeting of the board of directors, the members shall determine by
103 lot which of their members shall serve for only one (1), two (2),
104 and three (3) years. After the initial term, each member shall
105 hold office for a term of six (6) years or until a successor is
106 appointed and qualified.

107 SECTION 3. Section 51-11-59, Mississippi Code of 1972, is
108 amended as follows:

109 51-11-59. Each flood control district, through its board of
110 directors, may:

111 (a) Impound, divert, change, alter, or otherwise
112 control overflow water and the surface water of any river or its
113 tributaries within the project area within its district in
114 accordance with the approved plan at any place or places and in
115 any amount as approved by Permit Board, by the diversion of rivers
116 or their tributaries, by the construction of a dam or dams, a
117 levee or levees, a channel or channels, reservoir or reservoirs,
118 works, pumps, plants, and any other necessary or useful related
119 facilities contemplated or described as a part of the project
120 within the district. The district also may construct or otherwise
121 acquire within the project area all works, plants, or other
122 facilities necessary or useful to the project for carrying out
123 Sections 51-11-53 through 51-11-85.

124 (b) Cooperate with the United States of America in the
125 construction of flood and drainage control improvements, for the
126 protection of property, controlling floods, reclaiming overflow
127 lands, and preventing overflows in this state; and for the purpose
128 of operating and maintaining dams, reservoirs, channels, levees,
129 pumps, and other flood control works and improvements which may be

130 constructed by the United States of America or any department or
131 agency of the United States of America.

132 (c) Furnish, without cost to the United States of
133 America, all lands, easements, and rights-of-way necessary for the
134 construction of the project or any part thereof, if the project or
135 any part of the project is to be constructed by the United States
136 of America or any agency or department of the United States of
137 America; hold and save the United States free from damages due to
138 the construction; make, without cost to the United States, any
139 changes, alterations, or relocation of any public utilities,
140 roads, highways, bridges, buildings, or local betterment made
141 necessary by the work; provide assurances to the United States of
142 America that encroachment on the levees, improved channels, and
143 pond areas will not be permitted; maintain and operate the
144 improvements after completion thereof in accordance with
145 regulations prescribed by the United States of America or any
146 agency or department of the United States of America; contribute
147 in cash to the United States of America, or any agency or
148 department of the United States of America, any sums of money as
149 shall be required by the United States of America, or any agency
150 or department of the United States of America, as a condition for
151 the construction of any improvements by the United States or any
152 agency or department; and generally, without being limited by any
153 of the above, carry out and faithfully perform any obligations
154 required of the district as a condition to the construction of any
155 flood control work, project, or improvements by the United States
156 of America, or any agency or department, and to give assurances to
157 the United States of America that the district will so do.

158 (d) Construct, acquire, and develop all facilities
159 within the project area in accordance with the approved plan
160 deemed necessary or useful.

161 (e) Prevent or aid in the prevention of damage to
162 person or property from the waters of any river or any of its
163 tributaries.

164 (f) Acquire by purchase, lease, gift, or in any other
165 manner (otherwise than by condemnation) and to maintain, use, and
166 operate any and all property of any kind, real, personal, or
167 mixed, or any interest in property within the project area within
168 the district, necessary for the project and convenient to the
169 exercise of the powers, rights, privileges, and functions
170 conferred upon the district by Sections 51-11-53 through 51-11-85.

171 (g) Acquire by condemnation any and all property of any
172 kind, real, personal, or mixed, or any interest in property within
173 the project area within the district, necessary for the project
174 and the exercise of the powers, rights, privileges, and functions
175 conferred upon the district by Sections 51-11-53 through 51-11-85,
176 according to the procedure provided by law for the condemnation of
177 lands or other property taken for rights-of-way or other purposes
178 by railroads, telephone, or telegraph companies. For the purposes
179 of Sections 51-11-53 through 51-11-85, the right of eminent domain
180 of the flood control district shall be superior and dominant to
181 the right of eminent domain of railroad, telegraph, telephone,
182 gas, power, and other companies or corporations, and shall be
183 sufficient to enable the acquisition of county roads, state
184 highways, or other public property in the project area, and the
185 acquisition, or relocation, of the utility property in the project
186 area.

187 The amount and character of interest in land, other property,
188 and easements to be acquired shall be determined by the board of
189 directors. Their determination shall be conclusive and shall not
190 be subject to attack in the absence of manifold abuse of
191 discretion or fraud on the part of the board in making that
192 determination. However,

193 (i) In acquiring lands, either by negotiation or
194 condemnation, the district shall not acquire minerals or royalties
195 within the project area, sand, dirt and gravel are not considered
196 as minerals within the meaning of this section; and

197 (ii) No person or persons owning the mining
198 rights, drilling rights, or the right to share in production shall
199 be prevented from exploring, developing, or producing sand,
200 gravel, oil, or gas with necessary rights-of-way for ingress,
201 egress, pipe lines, and other means of transporting those products
202 by reason of the inclusion of any lands or mineral interests
203 within the project area, whether below or above the water line,
204 but any activities shall be under reasonable regulations adopted
205 by the board of directors to adequately protect the project; and

206 (iii) In drilling and developing, those persons
207 are vested with a special right to have any mineral interest
208 integrated and their lands developed in a drilling unit or units
209 as the State Oil and Gas Board shall establish after due
210 consideration of the rights of all of the owners to be included in
211 the drilling unit.

212 (h) Require the necessary relocation of bridges, roads,
213 and highways, railroad, telephone, and telegraph lines and
214 properties, electric power lines, gas pipe lines and mains and
215 facilities in the project area, or to require the anchoring or
216 other protection of any of these, provided due compensation is
217 first paid the owners of the infrastructure, utilities or
218 facilities or agreement is had with the owners regarding the
219 payment of the cost of the relocation. The district may also
220 acquire easements or rights-of-way in or outside of the project
221 area for the relocation of any road, highway, railroad, telephone,
222 and telegraph lines and properties, electrical power lines, gas
223 pipe lines and mains and facilities, and convey the easements or
224 rights-of-way to the owners in connection with the relocation as a
225 part of the construction of the project.

226 (i) Overflow and inundate any public lands and public
227 property, including sixteenth section lands and in lieu lands,
228 within the project area.

229 (j) Construct, extend, improve, maintain, and
230 reconstruct, to cause to be constructed, extended, improved,
231 maintained, and reconstructed, and use and operate any facilities
232 within the project area necessary or convenient to the project and
233 to the exercise of the powers, rights, privileges, and functions.

234 (k) Sue and be sued in its corporate name.

235 (l) Adopt, use, and alter a corporate seal.

236 (m) Adopt bylaws for the management and regulation of
237 its affairs.

238 (n) Employ engineers, attorneys, fiscal agents,
239 advisors, and all necessary agents and employees to properly
240 finance, construct, operate, and maintain the project and the
241 facilities of the district and carry out Sections 51-11-53 through
242 51-11-85, and pay reasonable compensation for those services.

243 (o) Contract and execute instruments necessary or
244 convenient to the exercise of the powers, rights, privileges, and
245 functions conferred upon it by Sections 51-11-53 through 51-11-85.

246 (p) Conduct or cause to be conducted surveys and
247 engineering investigations relating to the project, or related
248 projects, for the information of the district to facilitate the
249 accomplishment of the purposes for which it is created.

250 (q) Apply for and accept grants from the United States
251 of America, or any corporation or agency created or designated by
252 the United States of America, and ratify and accept applications
253 made by voluntary associations to those agencies for grants to
254 construct, maintain, or operate any project or projects which may
255 be undertaken or contemplated by the district.

256 (r) Perform any other acts or things necessary or
257 convenient to the exercising of the powers, rights, privileges, or

258 functions conferred upon it by Sections 51-11-53 through 51-11-85
259 or any other law.

260 (s) Contract for the issuance of bonds as may be
261 necessary to insure the marketability of those bonds.

262 (t) Operate and maintain within the project area, with
263 the consent of the governing body of any municipality, town or
264 county located within the district, any works, plants, or
265 facilities of that municipality, town, or county deemed necessary
266 or convenient to the accomplishment of the purposes for which the
267 district is created.

268 (u) Subject to the provisions of Sections 51-11-53
269 through 51-11-85, from time to time to lease, sell, or otherwise
270 dispose of any property of any kind, real, personal, or mixed, or
271 any interest in property within the project area or acquired
272 outside the project area as authorized in this article, for the
273 purpose of furthering the business of the district.

274 (v) Make any changes in location of levees, channels,
275 drains, or related facilities, or other changes, alterations, or
276 modifications in the plan filed with the petition creating the
277 district, which may be necessary for the accomplishment of the
278 general purposes of the district.

279 SECTION 4. Section 51-11-67, Mississippi Code of 1972, is
280 amended as follows:

281 51-11-67. The elections shall be held, as practicable, in
282 the same manner as elections are held in county bond elections. In
283 conducting the elections, the flood control district shall be
284 divided into election precincts in accordance with existing
285 election precincts created under Section 23-15-281. There shall
286 be one (1) voting place in each election precinct. The election
287 commissioners shall furnish at each voting place a list of the
288 qualified electors residing in the flood control district who are
289 also qualified electors in the election district. In the
290 election, all qualified electors residing in the flood control

291 district may vote. The ballots used at the election shall have
292 printed on the ballot a brief statement of the amount and purpose
293 of the proposed bond issue and the words "FOR THE BOND ISSUE" and
294 "AGAINST THE BOND ISSUE." Each voter shall vote by placing a
295 cross (X) opposite the voter's choice on the proposition.

296 SECTION 5. Section 51-11-73, Mississippi Code of 1972, is
297 amended as follows:

298 51-11-73. To provide funds for the payment of the principal
299 of, interest on, and other charges in connection with bonds issued
300 under Sections 51-11-53 through 51-11-85, to provide funds for the
301 annual expenses of operations of the district, and to provide
302 funds for carrying out the purposes of Sections 51-11-53 through
303 51-11-85, the district may levy annually a special tax upon all
304 the taxable property within the flood control district on or
305 before the first Monday of September of each year. The board of
306 directors of the flood control district shall certify the levy to
307 the boards of supervisors of the various counties in the district.
308 The boards of supervisors of each county shall make the levy on
309 each tract of land or other property in the flood control district
310 according to the assessed valuation of that land or property or,
311 in the discretion of the board of directors of the district,
312 according to the incremental flood protection or benefits received
313 for that land or property. The taxes shall be collected by the
314 tax collectors of the respective counties in the district, who
315 shall deposit the collected taxes in the depository selected by
316 the board of directors of the district. The tax collector shall
317 receive a sum not greater than one-fifth of one percent (1/5 of
318 1%) of the amount collected for services in making the collection,
319 and that fee shall be paid into the county general fund. The
320 board of directors of the flood control district shall levy a tax
321 sufficient to pay the bonds and the interest on the bonds as the
322 bonds and interest become due, to pay for the annual expense of

323 operation of the district, and to provide funds for carrying out
324 Sections 51-11-53 through 51-11-85.

325 SECTION 6. From and after July 1, 2001, the board of
326 supervisors of any county that is included in the Pearl River
327 Basin Development District may elect to withdraw such county from
328 the district. The withdrawing county shall be responsible for
329 paying its portion of any district bonds, contractual obligations,
330 and any other indebtedness and liabilities of the district that
331 are outstanding on the date of such county's withdrawal from the
332 district. The withdrawing county's portion of such liabilities,
333 obligations and indebtedness shall be determined through an
334 independent audit conducted by a certified public accountant. The
335 board of supervisors of the withdrawing county shall provide the
336 sum that is required by this section either by appropriation from
337 any available funds of the county or by levy. Such board of
338 supervisors may borrow funds as needed to satisfy the withdrawing
339 county's portion of the liabilities, obligations and indebtedness
340 of the district as required herein.

341 SECTION 7. The Attorney General of the State of Mississippi
342 shall submit Section 4 of this act, immediately upon approval by
343 the Governor, or upon approval by the Legislature subsequent to a
344 veto, to the Attorney General of the United States or to the
345 United States District Court for the District of Columbia in
346 accordance with the provisions of the Voting Rights Act of 1965,
347 as amended and extended.

348 SECTION 8. This act, except Section 4, shall take effect and
349 be in force from and after its passage. Section 4 of this act
350 shall take effect and be in force from and after the date it is
351 effectuated under Section 5 of the Voting Rights Act of 1965, as
352 amended and extended.