

By: Representative Ellington

To: Conservation and Water Resources; Ways and Means

HOUSE BILL NO. 1029  
(As Sent to Governor)

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 not being  
196 considered as minerals within the meaning of this section,  
197 provided, the district shall pay to the property owner fair market  
198 commercial value for any sand, dirt or gravel acquired, regardless  
199 of whether the property owner has been commercially selling any  
200 sand, dirt or gravel before the date of acquisition; and

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

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

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

226 and telegraph lines and properties, electrical power lines, gas  
227 pipe lines and mains and facilities, and convey the easements or  
228 rights-of-way to the owners in connection with the relocation as a  
229 part of the construction of the project.

230 (i) Overflow and inundate any public lands and public  
231 property, including sixteenth section lands and in lieu lands,  
232 within the project area.

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

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

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

240 (m) Adopt bylaws for the management and regulation of  
241 its affairs.

242 (n) Employ engineers, attorneys, fiscal agents,  
243 advisors, and all necessary agents and employees to properly  
244 finance, construct, operate, and maintain the project and the  
245 facilities of the district and carry out Sections 51-11-53 through  
246 51-11-85, and pay reasonable compensation for those services.

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

250 (p) Conduct or cause to be conducted surveys and  
251 engineering investigations relating to the project, or related  
252 projects, for the information of the district to facilitate the  
253 accomplishment of the purposes for which it is created.

254 (q) Apply for and accept grants from the United States  
255 of America, or any corporation or agency created or designated by  
256 the United States of America, and ratify and accept applications  
257 made by voluntary associations to those agencies for grants to



258 construct, maintain, or operate any project or projects which may  
259 be undertaken or contemplated by the district.

260 (r) Perform any other acts or things necessary or  
261 convenient to the exercising of the powers, rights, privileges, or  
262 functions conferred upon it by Sections 51-11-53 through 51-11-85  
263 or any other law.

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

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

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

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

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

285 51-11-67. The elections shall be held, as practicable, in  
286 the same manner as elections are held in county bond elections. In  
287 conducting the elections, the flood control district shall be  
288 divided into election precincts in accordance with existing  
289 election precincts created under Section 23-15-281. There shall  
290 be one (1) voting place in each election precinct. The election

291 commissioners shall furnish at each voting place a list of the  
292 qualified electors residing in the flood control district who are  
293 also qualified electors in the election district. In the  
294 election, all qualified electors residing in the flood control  
295 district may vote. The ballots used at the election shall have  
296 printed on the ballot a brief statement of the amount and purpose  
297 of the proposed bond issue and the words "FOR THE BOND ISSUE" and  
298 "AGAINST THE BOND ISSUE." Each voter shall vote by placing a  
299 cross (X) opposite the voter's choice on the proposition.

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

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

324 board of directors of the flood control district shall levy a tax  
325 sufficient to pay the bonds and the interest on the bonds as the  
326 bonds and interest become due, to pay for the annual expense of  
327 operation of the district, and to provide funds for carrying out  
328 Sections 51-11-53 through 51-11-85.

329       SECTION 6. (1) From and after July 1, 2001, the board of  
330 supervisors of any county that is included in the Pearl River  
331 Basin Development District may elect to withdraw such county from  
332 the district by notifying the district in writing of its intention  
333 on or before March 15 of the fiscal year of the district preceding  
334 the effective year of withdrawal from the district. The  
335 withdrawing county shall be responsible for paying its portion of  
336 any district bonds, contractual obligations, and any other  
337 indebtedness and liabilities of the district that are outstanding  
338 on the date of such county's withdrawal from the district, as well  
339 as the withdrawing county's portion of budgeted expenditures of  
340 the current fiscal year of the district. The withdrawing county's  
341 portion of such liabilities, obligations and indebtedness shall be  
342 determined through an independent audit conducted by a certified  
343 public accountant selected by the district. The board of  
344 supervisors of the withdrawing county shall provide the sum that  
345 is required by this section either by appropriation from any  
346 available funds of the county or by levy. Such board of  
347 supervisors may borrow funds as needed to satisfy the withdrawing  
348 county's portion of the liabilities, obligations and indebtedness  
349 of the district as required herein.

350       (2) Upon withdrawal of any such county, the district, in its  
351 sole discretion, may elect to continue to own and provide for the  
352 operation of any facility located in such withdrawing county, or  
353 it may elect to cease operation of the facility or sell the  
354 facility as provided for in this chapter.

355       SECTION 7. The Attorney General of the State of Mississippi  
356 shall submit Section 4 of this act, immediately upon approval by

357 the Governor, or upon approval by the Legislature subsequent to a  
358 veto, to the Attorney General of the United States or to the  
359 United States District Court for the District of Columbia in  
360 accordance with the provisions of the Voting Rights Act of 1965,  
361 as amended and extended.

362 SECTION 8. This act, except Section 4, shall take effect and  
363 be in force from and after its passage. Section 4 of this act  
364 shall take effect and be in force from and after the date it is  
365 effectuated under Section 5 of the Voting Rights Act of 1965, as  
366 amended and extended.