HOUSE BILL NO. 1029
(As Sent to Governor)

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

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

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

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

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

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

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

(d) "Project area" means the physical location of any levees, channels, drains, or related facilities, the area which is...
necessary to be included in the district, and the area of the
district as shown on the maps or plats provided under Section
51-11-55.
(e) "Related facilities" mean any facilities which are
correlated with or used in connection with the project.

SECTION 2. Section 51-11-57, Mississippi Code of 1972, is
amended as follows:
51-11-57. (1) All powers of a flood control district shall
be exercised by a board of directors, to be composed of the
following:
(a) If the flood control district is comprised of lands
lying partly in a municipality and partly outside the limits of a
municipality but wholly in one (1) county, the governing authority
of the municipality shall appoint two (2) directors, the board of
supervisors of the county in which the municipality lies shall
appoint two (2) directors and the board of directors of the Pearl
River Basin Development District shall appoint one (1) director.
(b) If the flood control district is comprised of lands
lying, in whole or in part, in one or more municipalities which
are in existence at the time of the creation of that district, and
in one or more counties and not falling within the description of
(a) of this subsection, the governing authority of each
municipality shall appoint two (2) directors, the board of
supervisors of each county in which part of the lands of the flood
control district lie shall appoint two (2) directors and the board
of directors of the Pearl River Basin Development District shall
appoint one (1) director. If new municipalities are incorporated
within the flood control district after the organization of that
district, the governing authority of each new municipality shall
appoint two (2) directors of the flood control district.

Each director appointed under this section, except the
director appointed by the board of directors of the Pearl River
Basin Development District, shall be either a resident or property
owner in the district for which the director is appointed.

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

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

(4) The board of directors shall elect annually from its
number a president and a vice president of the flood control
district and any other officers deemed necessary. The president
shall be the chief executive officer of the flood control district
and the presiding officer of the board, and shall have the same
right to vote as any other director. The vice president shall
perform all the duties and exercise all powers conferred by this
article upon the president when the president is absent or fails
or declines to act, except the president's right to vote. The
board also shall appoint a secretary and a treasurer who may or
may not be members of the board, and it may combine these offices.
The treasurer shall give bond in the sum of not less than Fifty
Thousand Dollars ($50,000.00), as set by the board of directors,
and each director shall give bond in the sum of not less than Ten
Thousand Dollars ($10,000.00). The premiums on the bonds shall be
an expense of the district. The condition of each bond shall be
that the treasurer or director will faithfully perform all duties
of office and account for all money which shall come into the
treasurer's or director's custody.
(5) The initial terms of the members of the board of directors of the flood control district shall be: one-third (1/3) of the members shall serve for one (1) year, one-third (1/3) of the members shall serve for two (2) years, and one-third (1/3) of the members shall serve for three (3) years. At the initial meeting of the board of directors, the members shall determine by lot which of their members shall serve for only one (1), two (2), and three (3) years. After the initial term, each member shall hold office for a term of six (6) years or until a successor is appointed and qualified.

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

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

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

(b) Cooperate with the United States of America in the construction of flood and drainage control improvements, for the protection of property, controlling floods, reclaiming overflow lands, and preventing overflows in this state; and for the purpose of operating and maintaining dams, reservoirs, channels, levees, pumps, and other flood control works and improvements which may be
constructed by the United States of America or any department or agency of the United States of America.

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

(d) Construct, acquire, and develop all facilities within the project area in accordance with the approved plan deemed necessary or useful.
(e) Prevent or aid in the prevention of damage to person or property from the waters of any river or any of its tributaries.

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

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

The amount and character of interest in land, other property, and easements to be acquired shall be determined by the board of directors. Their determination shall be conclusive and shall not be subject to attack in the absence of manifold abuse of discretion or fraud on the part of the board in making that determination. However,
(i) In acquiring lands, either by negotiation or condemnation, the district shall not acquire minerals or royalties within the project area, sand, dirt and gravel not being considered as minerals within the meaning of this section, provided, the district shall pay to the property owner fair market commercial value for any sand, dirt or gravel acquired, regardless of whether the property owner has been commercially selling any sand, dirt or gravel before the date of acquisition; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51-11-67. The elections shall be held, as practicable, in the same manner as elections are held in county bond elections. In conducting the elections, the flood control district shall be divided into election precincts in accordance with existing election precincts created under Section 23-15-281. There shall be one (1) voting place in each election precinct. The election
commissioners shall furnish at each voting place a list of the qualified electors residing in the flood control district who are also qualified electors in the election district. In the election, all qualified electors residing in the flood control district may vote. The ballots used at the election shall have printed on the ballot a brief statement of the amount and purpose of the proposed bond issue and the words "FOR THE BOND ISSUE" and "AGAINST THE BOND ISSUE." Each voter shall vote by placing a cross (X) opposite the voter's choice on the proposition.

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

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

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

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

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

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