

By: Representatives Capps, Henderson

To: Conservation and Water Resources; Ways and Means

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1338

1 AN ACT TO AUTHORIZE ANY COUNTY TO CONSTRUCT A DAM OR  
2 LOW-WATER CONTROL STRUCTURE ON LAKES OR BODIES OF WATER LOCATED  
3 PARTIALLY WITHIN AND PARTIALLY WITHOUT THE BOUNDARIES OF THE  
4 COUNTY; TO PROVIDE THAT SUCH A COUNTY MAY ISSUE GENERAL OBLIGATION  
5 BONDS IN AN AMOUNT NOT TO EXCEED \$250,000.00; TO AUTHORIZE SUCH A  
6 COUNTY TO CONTRACT WITH THE UNITED STATES OR ANY AGENCY OR  
7 DEPARTMENT THEREOF TO SPONSOR A PROJECT FOR THE ENVIRONMENTAL  
8 RESTORATION OF SUCH A LAKE OR BODY OF WATER; TO ACQUIRE, THROUGH  
9 PURCHASE OR EMINENT DOMAIN PROCEDURES, CERTAIN LANDS, EASEMENTS  
10 AND RIGHTS-OF-WAY ASSOCIATED WITH A JOINT COUNTY/FEDERAL PROJECT;  
11 TO AMEND SECTIONS 11-27-81, 19-9-1, 19-5-91 AND 51-3-39,  
12 MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO PROVIDE THAT  
13 NOTHING IN THIS ACT SHALL BE CONSTRUED TO REQUIRE THE PRIOR  
14 APPROVAL OF A LEVEE BOARD FOR REPAIR OR CONSTRUCTION OF FLOOD  
15 CONTROL STRUCTURES IN AREAS THAT ARE NOT LOCATED IN A LEVEE  
16 DISTRICT AREA; AND FOR RELATED PURPOSES.

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

18 SECTION 1. (1) Any county in the State of Mississippi is  
19 authorized to construct a dam or low-water control structure on  
20 any lake or natural body of water with an outlet or evidence of  
21 the flow or occurrence of water, including a lake or body of water  
22 located partially within the county and partially without the  
23 county or partially in another state adjacent or contiguous to the  
24 State of Mississippi. The county is authorized to use available  
25 funds from any source, including county ad valorem taxes, any  
26 available monies in the general fund of the county, funds from the  
27 issuance of bonds, donations, gifts or through interagency  
28 agreements or interlocal cooperation for such funding, for the  
29 purpose of carrying out and accomplishing the following functions  
30 and activities:

31 (a) Construction of a dam or low-water control  
32 structure on such lake or body of water at such location as the  
33 county may deem most advantageous whether within or without the



34 boundaries of the county or whether within or without the  
35 boundaries of the State of Mississippi, in whole or in part.

36 (b) Requesting and obtaining necessary assistance and  
37 input from, and coordinating the activities of, any state or  
38 federal agency or landowners for the purposes of carrying out and  
39 implementing necessary planning, permitting and funding  
40 requirements as well as all necessary and proper actions and  
41 agreements required of the county for the construction of such a  
42 dam or low-water control structure.

43 (c) Issuance of general obligation bonds in an amount  
44 not to exceed the aggregate principal amount of Two Hundred Fifty  
45 Thousand Dollars (\$250,000.00) and management of the proceeds from  
46 such bond issue in accordance with the terms and provisions of  
47 Sections 19-9-1 through 19-9-31, and subject to the power and  
48 authority conferred upon boards of supervisors for the borrowing  
49 of money and for the pledging of the full faith and credit of the  
50 county.

51 (2) Any county in the State of Mississippi is authorized to  
52 make application to and contract with the United States or any  
53 agency or department thereof to sponsor a project or projects for  
54 the environmental restoration of such a lake or body of water,  
55 including participation as a local sponsor with the United States  
56 Army Corps of Engineers in evaluating and constructing water  
57 resources projects designed to enhance and restore water quality  
58 and habitat value in such lake or body of water, including:

59 (a) Coordinating activities and assistance of federal,  
60 state and local agencies and landowners for the purpose of  
61 carrying out and implementing necessary planning, permitting and  
62 funding requirements for construction and operation of such  
63 projects.

64 (b) Authorization to enter into project cooperation  
65 agreements with the United States Department of Army and to serve  
66 as nonfederal sponsors for such projects.



67 (c) Authorization to expend county funds, apply for,  
68 accept as a gift or receive through interagency agreement or  
69 interlocal cooperation, technical assistance, in-kind assistance,  
70 and acquisition of real estate or leasehold interest as may be  
71 necessary and appropriate for such project.

72 (d) Authorization to acquire in the name of the county  
73 through direct purchase or eminent domain procedures and to make  
74 available to the United States Department of Army all lands,  
75 easements, and rights-of-way required for the construction,  
76 implementation, operation and maintenance of such project,  
77 including but not limited to, those required for utility  
78 relocations, borrow materials and dredged or excavated material  
79 disposal.

80 (e) Operation, maintenance, repair, replacement and  
81 rehabilitation of project features following the completion of  
82 such construction.

83 SECTION 2. Section 11-27-81, Mississippi Code of 1972, is  
84 amended as follows:

85 11-27-81. The right of immediate possession pursuant to  
86 Sections 11-27-81 through 11-27-89, Mississippi Code of 1972, may  
87 be exercised only:

88 (a) By the State Highway Commission for the acquisition  
89 of highway rights-of-way only;

90 (b) By any county or municipality for the purpose of  
91 acquiring rights-of-way to connect existing roads and streets to  
92 highways constructed or to be constructed by the State Highway  
93 Commission;

94 (c) By any county or municipality for the purpose of  
95 acquiring rights-of-way for widening existing roads and streets of  
96 such county or municipality; provided, however, that said  
97 rights-of-way shall not displace a property owner from his  
98 dwelling or place of business;



99 (d) By the boards of supervisors of any county of this  
100 state for the acquisition of highway or road rights-of-way in  
101 connection with a state-aid project designated and approved in  
102 accordance with Sections 65-9-1 through 65-9-31, Mississippi Code  
103 of 1972;

104 (e) By the Mississippi Wayport Authority for the  
105 purposes of acquiring land and easements for the Southeastern  
106 United States Wayport Project as authorized by Sections 61-4-1  
107 through 61-4-13, Mississippi Code of 1972;

108 (f) By any county or municipality for the purpose of  
109 acquiring rights-of-way for water, sewer, drainage and other  
110 public utility purposes; provided, however, that such acquisition  
111 shall not displace a property owner from his dwelling or place of  
112 business;

113 (g) By any county authorized to exercise the power of  
114 eminent domain under Section 19-7-41 for the purpose of acquiring  
115 land for construction of a federal correctional facility or other  
116 federal penal institution; \* \* \*

117 (h) By the Mississippi Major Economic Impact Authority  
118 for the purpose of acquiring land, property and rights-of-way for  
119 a project as defined in Section 57-75-5(f)(iv)1 or any facility  
120 related to the project as provided in Section 57-75-11(e)(ii); or

121 (i) By the boards of supervisors of any county of this  
122 state for the purpose of constructing dams or low-water control  
123 structures on lakes or bodies of water under the provisions of  
124 Section 1 of this act.

125 SECTION 3. Section 19-9-1, Mississippi Code of 1972, is  
126 amended as follows:

127 19-9-1. The board of supervisors of any county is authorized  
128 to issue negotiable bonds of the county to raise money for the  
129 following purposes:

130 (a) Purchasing or erecting, equipping, repairing,  
131 reconstructing, remodeling and enlarging county buildings,



132 courthouses, office buildings, jails, hospitals, nurses' homes,  
133 health centers, clinics, and related facilities, and the purchase  
134 of land therefor;

135 (b) Erecting, equipping, repairing, reconstructing,  
136 remodeling, or acquiring county homes for indigents, and  
137 purchasing land therefor;

138 (c) Purchasing or constructing, repairing, improving  
139 and equipping buildings for public libraries and for purchasing  
140 land, equipment and books therefor, whether the title to same be  
141 vested in the county issuing such bonds or in some subdivision of  
142 the state government other than the county, or jointly in such  
143 county and other such subdivision;

144 (d) Establishing county farms for convicts, purchasing  
145 land therefor, and erecting, remodeling, and equipping necessary  
146 buildings therefor;

147 (e) Constructing, reconstructing, and repairing roads,  
148 highways and bridges, and acquiring the necessary land, including  
149 land for road-building materials, acquiring rights-of-way  
150 therefor; and the purchase of heavy construction equipment and  
151 accessories thereto reasonably required to construct, repair and  
152 renovate roads, highways and bridges and approaches thereto within  
153 the county;

154 (f) Erecting, repairing, equipping, remodeling or  
155 enlarging or assisting or cooperating with another county or other  
156 counties in erecting, repairing, equipping, remodeling, or  
157 enlarging buildings, and related facilities for an agricultural  
158 high school, or agricultural high school-junior college, including  
159 gymnasiums, auditoriums, lunchrooms, vocational training  
160 buildings, libraries, teachers' homes, school barns, garages for  
161 transportation vehicles, and purchasing land therefor;

162 (g) Purchasing or renting voting machines and any other  
163 election equipment to be used in elections held within the county;



164           (h) Constructing, reconstructing or repairing boat  
165 landing ramps and wharves fronting on the Mississippi Sound or the  
166 Gulf of Mexico and on the banks or shores of the inland waters,  
167 levees, bays and bayous of any county bordering on the Gulf of  
168 Mexico or fronting on the Mississippi Sound, having two (2)  
169 municipalities located therein, each with a population in excess  
170 of twenty thousand (20,000) in accordance with the then last  
171 preceding federal census;

172           (i) Assisting the Board of Trustees of State  
173 Institutions of Higher Learning, the Office of General Services or  
174 any other state agency in acquiring a site for constructing  
175 suitable buildings and runways and equipping an airport for any  
176 state university or other state-supported four-year college now or  
177 hereafter in existence in such county;

178           (j) Aiding and cooperating in the planning,  
179 undertaking, construction or operation of airports and air  
180 navigation facilities, including lending or donating money,  
181 pursuant to the provisions of the airport authorities law, being  
182 Sections 61-3-1 through Section 61-3-83, Mississippi Code of 1972,  
183 regardless of whether such airports or air navigation facilities  
184 are located in the county or counties issuing such bonds;

185           (k) Establishing rubbish and garbage disposal systems  
186 in accordance with the provisions of Sections 19-5-17 through  
187 19-5-27;

188           (l) Defraying the expenses of projects of the county  
189 cooperative service district in which it is a participating  
190 county, regardless of whether the project is located in the county  
191 issuing such bonds;

192           (m) Purchasing machinery and equipment which have an  
193 expected useful life in excess of ten (10) years. The life of  
194 such bonds shall not exceed the expected useful life of such  
195 machinery and equipment. Machinery and equipment shall not



196 include any motor vehicle weighing less than twelve thousand  
197 (12,000) pounds;

198 (n) Purchasing fire fighting equipment and apparatus,  
199 and providing housing for the same and purchasing land necessary  
200 therefor;

201 (o) A project for which a certificate of public  
202 convenience and necessity has been obtained by the county pursuant  
203 to the Regional Economic Development Act;

204 (p) Constructing dams or low-water control structures  
205 on lake or bodies of water under the provisions of Section 1 of  
206 this act.

207 SECTION 4. Section 19-5-91, Mississippi Code of 1972, is  
208 amended as follows:

209 19-5-91. The board of supervisors of any county through any  
210 part of which any river or other stream may run, or any part of  
211 which any river or other stream may touch or border, on which the  
212 United States of America has authorized navigation projects,  
213 including channel clearing, channel improvement, cut-offs, levees,  
214 dams, or other navigation projects, is hereby authorized and  
215 empowered, for that part of such river or stream running through  
216 any part of said county or bordering or touching said county, as  
217 aforesaid, to give satisfactory assurances to the United States of  
218 America, or any agency thereof, including the Secretary of  
219 Defense, that it will:

220 (a) Provide, without cost to the United States, all  
221 lands, easements and rights-of-way necessary for the construction  
222 of the project;

223 (b) Hold and save the United States free from damages  
224 due to the construction of the works; and

225 (c) Maintain and operate all of the works after  
226 completion in accordance with regulations prescribed pursuant to  
227 the terms of any federal law relating to navigation or to  
228 navigable streams.



229 Any such board of supervisors is also hereby authorized and  
230 empowered to accept the conveyance of any lands, easements and  
231 rights-of-way over and on behalf of any lands that may be  
232 benefited by the maintenance of such works, to accept assurances  
233 from landowners whose property is benefited by such navigation  
234 projects, to levy, assess and collect such taxes on said area so  
235 benefited as will be necessary, to save and hold the United States  
236 free from all damages due to the construction of the works and to  
237 exercise the right of eminent domain for the condemnation of  
238 rights-of-way and easements in like manner as is exercised by  
239 boards of supervisors for the condemnation of public road  
240 rights-of-way, and to maintain such works in said county after  
241 completion and generally to accept agreements for landowners  
242 benefited by such navigation projects to save the county harmless  
243 on account of said assurances given by the county as aforesaid to  
244 the United States of America, or any agency thereof, including the  
245 Secretary of Defense.

246 Any such board of supervisors also is authorized to enter  
247 into any contracts or agreements with the United States, or any  
248 agency or department thereof, to sponsor a project for the  
249 environmental restoration of a lake or body of water as described  
250 in, and in accordance with the provisions of Section 1 of this  
251 act.

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

254 51-3-39. (1) Any person proposing to construct, enlarge,  
255 repair or alter a dam or reservoir in this state except as  
256 provided elsewhere in this section, before proceeding with the  
257 construction thereof, must obtain written authorization from the  
258 board. Applications shall be made on forms provided by the board,  
259 and detailed plans shall be required when deemed necessary by the  
260 board in order to determine whether the proposed construction will  
261 provide adequate safety for downstream lives and property, and





262 will not adversely affect downstream water rights or plans for the  
263 proper utilization of the water resources of the state. Provided  
264 further, that:

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

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

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

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

292           (3) The board and commission shall be authorized to make  
293 inspections of dams and reservoirs, regardless of whether or not  
294 written construction authorization therefor was required under



295 this section, for the purpose of determining their safety, and  
296 shall require owners to perform at their expense such work as may  
297 be necessary for maintenance and operation which will safeguard  
298 life and property. Provided, however, a dam or reservoir may be  
299 exempt from inspections when the commission determines that the  
300 location, size or condition is such that lives and property will  
301 not be endangered. In carrying out the provisions of this  
302 section, the board and commission are authorized to expend  
303 available state funds, to receive funds from federal agencies, to  
304 contract with consultants and/or other agencies, and the  
305 commission may issue orders to owners of dams or reservoirs found  
306 to be unsafe requiring them to take the prescribed remedial action  
307 to safeguard downstream lives and property.

308 (4) No dam or reservoir, regardless of whether or not  
309 written construction authorization therefor is required under this  
310 section, may be constructed in such a manner as to impair the  
311 common law or other lawful rights of water users below or plans  
312 for the proper utilization of the water resources of the state.  
313 The board is authorized to prescribe such minimum flow releases  
314 from any dam or reservoir as may be found necessary to protect  
315 downstream users or otherwise prudently manage available surface  
316 water.

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

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



327       (7) The provisions of this section shall apply also to a  
328 county board of supervisors when constructing dams or low-water  
329 control structures on lakes or bodies of water in accordance with  
330 the provisions of Section 1 of this act.

331       SECTION 6. Nothing in this act shall be construed to require  
332 the prior approval of a levee board for the repair or construction  
333 of flood control structures in areas that are not located in a  
334 levee district area.

335       SECTION 7. This act shall take effect and be in force from  
336 and after its passage.

