

By: Representative Capps

To: Conservation and Water  
Resources; Ways and Means

## 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; AND FOR RELATED PURPOSES.

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

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

27 (a) Construction of a dam or low-water control  
28 structure on such lake or body of water at such location as the  
29 county may deem most advantageous whether within or without the  
30 boundaries of the county or whether within or without the  
31 boundaries of the State of Mississippi, in whole or in part.

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

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

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

55           (a) Coordinating activities and assistance of federal,  
56 state and local agencies and landowners for the purpose of  
57 carrying out and implementing necessary planning, permitting and  
58 funding requirements for construction and operation of such  
59 projects.

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

63           (c) Authorization to expend county funds, apply for,  
64 accept as a gift or receive through interagency agreement or

65 interlocal cooperation, technical assistance, in-kind assistance,  
66 and acquisition of real estate or leasehold interest as may be  
67 necessary and appropriate for such project.

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

76 (e) Operation, maintenance, repair, replacement and  
77 rehabilitation of project features following the completion of  
78 such construction.

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

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

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

86 (b) By any county or municipality for the purpose of  
87 acquiring rights-of-way to connect existing roads and streets to  
88 highways constructed or to be constructed by the State Highway  
89 Commission;

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

95 (d) By the boards of supervisors of any county of this  
96 state for the acquisition of highway or road rights-of-way in  
97 connection with a state-aid project designated and approved in

98 accordance with Sections 65-9-1 through 65-9-31, Mississippi Code  
99 of 1972;

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

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

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

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

117 (i) By the boards of supervisors of any county of this  
118 state for the purpose of constructing dams or low-water control  
119 structures on lakes or bodies of water under the provisions of  
120 Section 1 of this act.

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

123 19-9-1. The board of supervisors of any county is authorized  
124 to issue negotiable bonds of the county to raise money for the  
125 following purposes:

126 (a) Purchasing or erecting, equipping, repairing,  
127 reconstructing, remodeling and enlarging county buildings,  
128 courthouses, office buildings, jails, hospitals, nurses' homes,  
129 health centers, clinics, and related facilities, and the purchase  
130 of land therefor;

131           (b) Erecting, equipping, repairing, reconstructing,  
132 remodeling, or acquiring county homes for indigents, and  
133 purchasing land therefor;

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

140           (d) Establishing county farms for convicts, purchasing  
141 land therefor, and erecting, remodeling, and equipping necessary  
142 buildings therefor;

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

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

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

160           (h) Constructing, reconstructing or repairing boat  
161 landing ramps and wharves fronting on the Mississippi Sound or the  
162 Gulf of Mexico and on the banks or shores of the inland waters,  
163 levees, bays and bayous of any county bordering on the Gulf of

164 Mexico or fronting on the Mississippi Sound, having two (2)  
165 municipalities located therein, each with a population in excess  
166 of twenty thousand (20,000) in accordance with the then last  
167 preceding federal census;

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

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

181 (k) Establishing rubbish and garbage disposal systems  
182 in accordance with the provisions of Sections 19-5-17 through  
183 19-5-27;

184 (l) Defraying the expenses of projects of the county  
185 cooperative service district in which it is a participating  
186 county, regardless of whether the project is located in the county  
187 issuing such bonds;

188 (m) Purchasing machinery and equipment which have an  
189 expected useful life in excess of ten (10) years. The life of  
190 such bonds shall not exceed the expected useful life of such  
191 machinery and equipment. Machinery and equipment shall not  
192 include any motor vehicle weighing less than twelve thousand  
193 (12,000) pounds;

194 (n) Purchasing fire fighting equipment and apparatus,  
195 and providing housing for the same and purchasing land necessary  
196 therefor;

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

200           

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

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

205           19-5-91. The board of supervisors of any county through any  
206 part of which any river or other stream may run, or any part of  
207 which any river or other stream may touch or border, on which the  
208 United States of America has authorized navigation projects,  
209 including channel clearing, channel improvement, cut-offs, levees,  
210 dams, or other navigation projects, is hereby authorized and  
211 empowered, for that part of such river or stream running through  
212 any part of said county or bordering or touching said county, as  
213 aforesaid, to give satisfactory assurances to the United States of  
214 America, or any agency thereof, including the Secretary of  
215 Defense, that it will:

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

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

221           (c) Maintain and operate all of the works after  
222 completion in accordance with regulations prescribed pursuant to  
223 the terms of any federal law relating to navigation or to  
224 navigable streams.

225           Any such board of supervisors is also hereby authorized and  
226 empowered to accept the conveyance of any lands, easements and  
227 rights-of-way over and on behalf of any lands that may be  
228 benefited by the maintenance of such works, to accept assurances  
229 from landowners whose property is benefited by such navigation

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

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

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

250 51-3-39. (1) Any person proposing to construct, enlarge,  
251 repair or alter a dam or reservoir in this state except as  
252 provided elsewhere in this section, before proceeding with the  
253 construction thereof, must obtain written authorization from the  
254 board. Applications shall be made on forms provided by the board,  
255 and detailed plans shall be required when deemed necessary by the  
256 board in order to determine whether the proposed construction will  
257 provide adequate safety for downstream lives and property, and  
258 will not adversely affect downstream water rights or plans for the  
259 proper utilization of the water resources of the state. Provided  
260 further, that:

261 (a) Written construction authorization shall not be  
262 required for any dam or barrier to impound water which (i) is a



263 peripheral dam or barrier of eight (8) feet or less in height,  
264 measured from the point of lowest elevation of the toe of the dam  
265 or barrier, regardless of impounded storage volume, (ii) impounds  
266 twenty-five (25) acre-feet or less at maximum storage volume, or  
267 (iii) which does not impound a watercourse with a continuous flow  
268 of water.

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

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

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

288 (3) The board and commission shall be authorized to make  
289 inspections of dams and reservoirs, regardless of whether or not  
290 written construction authorization therefor was required under  
291 this section, for the purpose of determining their safety, and  
292 shall require owners to perform at their expense such work as may  
293 be necessary for maintenance and operation which will safeguard  
294 life and property. Provided, however, a dam or reservoir may be  
295 exempt from inspections when the commission determines that the

296 location, size or condition is such that lives and property will  
297 not be endangered. In carrying out the provisions of this  
298 section, the board and commission are authorized to expend  
299 available state funds, to receive funds from federal agencies, to  
300 contract with consultants and/or other agencies, and the  
301 commission may issue orders to owners of dams or reservoirs found  
302 to be unsafe requiring them to take the prescribed remedial action  
303 to safeguard downstream lives and property.

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

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

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

323 (7) The provisions of this section shall not apply to a  
324 county board of supervisors when constructing dams or low-water  
325 control structures on lakes or bodies of water in accordance with  
326 the provisions of Section 1 of this act.

327 SECTION 6. This act shall take effect and be in force from  
328 and after July 1, 2001.