

By: Representatives Capps, Henderson

To: Conservation and Water Resources; Ways and Means

HOUSE BILL NO. 1338
(As Passed the House)

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 19-9-1, 19-5-91 AND 51-3-39, MISSISSIPPI CODE OF
12 1972, IN CONFORMITY THERETO; TO AMEND SECTION 11-27-81,
13 MISSISSIPPI CODE OF 1972, TO ALLOW COUNTY BOARDS OF SUPERVISORS TO
14 EXERCISE THE RIGHT TO IMMEDIATE POSSESSION FOR PROPERTY OR
15 RIGHTS-OF-WAY LOCATED WITHIN THE COUNTY FOR CERTAIN PROJECTS AND
16 TO ALLOW WATER ASSOCIATIONS TO HAVE THE RIGHT OF IMMEDIATE
17 POSSESSION WHEN ACQUIRING EASEMENTS OR RIGHTS-OF-WAY; TO PROVIDE
18 THAT NOTHING IN THIS ACT SHALL BE CONSTRUED TO REQUIRE THE PRIOR
19 APPROVAL OF A LEVEE BOARD FOR REPAIR OR CONSTRUCTION OF FLOOD
20 CONTROL STRUCTURES IN AREAS THAT ARE NOT LOCATED IN A LEVEE
21 DISTRICT AREA; AND FOR RELATED PURPOSES.

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

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

36 (a) Construction of a dam or low-water control
37 structure on such lake or body of water at such location as the
38 county may deem most advantageous whether within or without the
39 boundaries of the county or whether within or without the
40 boundaries of the State of Mississippi, in whole or in part.

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

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

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

64 (a) Coordinating activities and assistance of federal,
65 state and local agencies and landowners for the purpose of
66 carrying out and implementing necessary planning, permitting and
67 funding requirements for construction and operation of such
68 projects.

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

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

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

85 (e) Operation, maintenance, repair, replacement and
86 rehabilitation of project features following the completion of
87 such construction.

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

90 11-27-81. The right of immediate possession pursuant to
91 Sections 11-27-81 through 11-27-89, Mississippi Code of 1972, may
92 be exercised only:

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

95 (b) By any county or municipality for the purpose of
96 acquiring rights-of-way to connect existing roads and streets to
97 highways constructed or to be constructed by the State Highway
98 Commission;

99 (c) By any county or municipality for the purpose of
100 acquiring rights-of-way for widening existing roads and streets of
101 such county or municipality; provided, however, that said

102 rights-of-way shall not displace a property owner from his
103 dwelling or place of business;

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

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

113 (f) By any county, municipality or water association
114 for the purpose of acquiring easements or rights-of-way for water,
115 sewer, drainage and other public utility purposes; provided,
116 however, that (i) such acquisition shall not displace a property
117 owner from his dwelling or place of business; and (ii) a water or
118 utility association may refuse or disconnect existing service if a
119 property owner refuses to grant the easement or right-of-way;

120 (g) By any county authorized to exercise the power of
121 eminent domain under Section 19-7-41 for the purpose of acquiring
122 land for construction of a federal correctional facility or other
123 federal penal institution; * * *

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

128 (i) By the boards of supervisors of any county of this
129 state for the purpose of constructing dams or low-water control
130 structures on lakes or bodies of water under the provisions of
131 Section 1 of this act; or

132 (j) By the board of supervisors of any county of this
133 state for the purpose of acquiring land, property and/or
134 rights-of-way for any project the board of supervisors, by a duly

135 adopted resolution, determines to be related to a project as
136 defined in Section 57-75-5(f)(iv). The board of supervisors of a
137 county may not exercise the right to immediate possession under
138 this item (h) after July 1, 2003.

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

141 19-9-1. The board of supervisors of any county is authorized
142 to issue negotiable bonds of the county to raise money for the
143 following purposes:

144 (a) Purchasing or erecting, equipping, repairing,
145 reconstructing, remodeling and enlarging county buildings,
146 courthouses, office buildings, jails, hospitals, nurses' homes,
147 health centers, clinics, and related facilities, and the purchase
148 of land therefor;

149 (b) Erecting, equipping, repairing, reconstructing,
150 remodeling, or acquiring county homes for indigents, and
151 purchasing land therefor;

152 (c) Purchasing or constructing, repairing, improving
153 and equipping buildings for public libraries and for purchasing
154 land, equipment and books therefor, whether the title to same be
155 vested in the county issuing such bonds or in some subdivision of
156 the state government other than the county, or jointly in such
157 county and other such subdivision;

158 (d) Establishing county farms for convicts, purchasing
159 land therefor, and erecting, remodeling, and equipping necessary
160 buildings therefor;

161 (e) Constructing, reconstructing, and repairing roads,
162 highways and bridges, and acquiring the necessary land, including
163 land for road-building materials, acquiring rights-of-way
164 therefor; and the purchase of heavy construction equipment and
165 accessories thereto reasonably required to construct, repair and
166 renovate roads, highways and bridges and approaches thereto within
167 the county;

168 (f) Erecting, repairing, equipping, remodeling or
169 enlarging or assisting or cooperating with another county or other
170 counties in erecting, repairing, equipping, remodeling, or
171 enlarging buildings, and related facilities for an agricultural
172 high school, or agricultural high school-junior college, including
173 gymnasiums, auditoriums, lunchrooms, vocational training
174 buildings, libraries, teachers' homes, school barns, garages for
175 transportation vehicles, and purchasing land therefor;

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

178 (h) Constructing, reconstructing or repairing boat
179 landing ramps and wharves fronting on the Mississippi Sound or the
180 Gulf of Mexico and on the banks or shores of the inland waters,
181 levees, bays and bayous of any county bordering on the Gulf of
182 Mexico or fronting on the Mississippi Sound, having two (2)
183 municipalities located therein, each with a population in excess
184 of twenty thousand (20,000) in accordance with the then last
185 preceding federal census;

186 (i) Assisting the Board of Trustees of State
187 Institutions of Higher Learning, the Office of General Services or
188 any other state agency in acquiring a site for constructing
189 suitable buildings and runways and equipping an airport for any
190 state university or other state-supported four-year college now or
191 hereafter in existence in such county;

192 (j) Aiding and cooperating in the planning,
193 undertaking, construction or operation of airports and air
194 navigation facilities, including lending or donating money,
195 pursuant to the provisions of the airport authorities law, being
196 Sections 61-3-1 through Section 61-3-83, Mississippi Code of 1972,
197 regardless of whether such airports or air navigation facilities
198 are located in the county or counties issuing such bonds;

199 (k) Establishing rubbish and garbage disposal systems
200 in accordance with the provisions of Sections 19-5-17 through
201 19-5-27;

202 (l) Defraying the expenses of projects of the county
203 cooperative service district in which it is a participating
204 county, regardless of whether the project is located in the county
205 issuing such bonds;

206 (m) Purchasing machinery and equipment which have an
207 expected useful life in excess of ten (10) years. The life of
208 such bonds shall not exceed the expected useful life of such
209 machinery and equipment. Machinery and equipment shall not
210 include any motor vehicle weighing less than twelve thousand
211 (12,000) pounds;

212 (n) Purchasing fire fighting equipment and apparatus,
213 and providing housing for the same and purchasing land necessary
214 therefor;

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

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

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

223 19-5-91. The board of supervisors of any county through any
224 part of which any river or other stream may run, or any part of
225 which any river or other stream may touch or border, on which the
226 United States of America has authorized navigation projects,
227 including channel clearing, channel improvement, cut-offs, levees,
228 dams, or other navigation projects, is hereby authorized and
229 empowered, for that part of such river or stream running through
230 any part of said county or bordering or touching said county, as
231 aforesaid, to give satisfactory assurances to the United States of

232 America, or any agency thereof, including the Secretary of
233 Defense, that it will:

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

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

239 (c) Maintain and operate all of the works after
240 completion in accordance with regulations prescribed pursuant to
241 the terms of any federal law relating to navigation or to
242 navigable streams.

243 Any such board of supervisors is also hereby authorized and
244 empowered to accept the conveyance of any lands, easements and
245 rights-of-way over and on behalf of any lands that may be
246 benefited by the maintenance of such works, to accept assurances
247 from landowners whose property is benefited by such navigation
248 projects, to levy, assess and collect such taxes on said area so
249 benefited as will be necessary, to save and hold the United States
250 free from all damages due to the construction of the works and to
251 exercise the right of eminent domain for the condemnation of
252 rights-of-way and easements in like manner as is exercised by
253 boards of supervisors for the condemnation of public road
254 rights-of-way, and to maintain such works in said county after
255 completion and generally to accept agreements for landowners
256 benefited by such navigation projects to save the county harmless
257 on account of said assurances given by the county as aforesaid to
258 the United States of America, or any agency thereof, including the
259 Secretary of Defense.

260 Any such board of supervisors also is authorized to enter
261 into any contracts or agreements with the United States, or any
262 agency or department thereof, to sponsor a project for the
263 environmental restoration of a lake or body of water as described

264 in, and in accordance with the provisions of Section 1 of this
265 act.

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

268 51-3-39. (1) Any person proposing to construct, enlarge,
269 repair or alter a dam or reservoir in this state except as
270 provided elsewhere in this section, before proceeding with the
271 construction thereof, must obtain written authorization from the
272 board. Applications shall be made on forms provided by the board,
273 and detailed plans shall be required when deemed necessary by the
274 board in order to determine whether the proposed construction will
275 provide adequate safety for downstream lives and property, and
276 will not adversely affect downstream water rights or plans for the
277 proper utilization of the water resources of the state. Provided
278 further, that:

279 (a) Written construction authorization shall not be
280 required for any dam or barrier to impound water which (i) is a
281 peripheral dam or barrier of eight (8) feet or less in height,
282 measured from the point of lowest elevation of the toe of the dam
283 or barrier, regardless of impounded storage volume, (ii) impounds
284 twenty-five (25) acre-feet or less at maximum storage volume, or
285 (iii) which does not impound a watercourse with a continuous flow
286 of water.

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

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

296 (2) The board may request other agencies, or contract with
297 consultants, to recommend land treatment or facilities necessary
298 to prevent pollution of the waters of this state, or to protect
299 the safety and general welfare of the people, and in the board's
300 discretion, may require that these recommendations be followed
301 before authorization to construct or modify the dam is issued, or
302 order the removal of the dam after it has been constructed or
303 request the commission to order the removal of the dam after it
304 has been constructed or modified when such recommendations are not
305 followed.

306 (3) The board and commission shall be authorized to make
307 inspections of dams and reservoirs, regardless of whether or not
308 written construction authorization therefor was required under
309 this section, for the purpose of determining their safety, and
310 shall require owners to perform at their expense such work as may
311 be necessary for maintenance and operation which will safeguard
312 life and property. Provided, however, a dam or reservoir may be
313 exempt from inspections when the commission determines that the
314 location, size or condition is such that lives and property will
315 not be endangered. In carrying out the provisions of this
316 section, the board and commission are authorized to expend
317 available state funds, to receive funds from federal agencies, to
318 contract with consultants and/or other agencies, and the
319 commission may issue orders to owners of dams or reservoirs found
320 to be unsafe requiring them to take the prescribed remedial action
321 to safeguard downstream lives and property.

322 (4) No dam or reservoir, regardless of whether or not
323 written construction authorization therefor is required under this
324 section, may be constructed in such a manner as to impair the
325 common law or other lawful rights of water users below or plans
326 for the proper utilization of the water resources of the state.
327 The board is authorized to prescribe such minimum flow releases
328 from any dam or reservoir as may be found necessary to protect

329 downstream users or otherwise prudently manage available surface
330 water.

331 (5) When the board or commission finds a dam or reservoir
332 constructed or modified in violation of this chapter or that the
333 owner of a dam or reservoir has allowed the structure to
334 deteriorate and remain in an unsafe condition after having been
335 ordered to make the necessary repairs, then the commission may
336 cause the structure to be removed and/or the board may revoke or
337 modify any other authorization pertaining thereto.

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

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

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

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