HOUSE BILL NO. 1338  
(As Sent to Governor)

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

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

SECTION 1. (1) Any county in the State of Mississippi is authorized to construct a dam or low-water control structure on any lake or natural body of water with an outlet or evidence of the flow or occurrence of water, including a lake or body of water located partially within the county and partially without the county or partially in another state adjacent or contiguous to the State of Mississippi. The county is authorized to use available funds from any source, including county ad valorem taxes, any available monies in the general fund of the county, funds from the issuance of bonds, donations, gifts or through interagency agreements or interlocal cooperation for such funding, for the purpose of carrying out and accomplishing the following functions and activities:
(a) Construction of a dam or low-water control structure on such lake or body of water at such location as the county may deem most advantageous whether within or without the boundaries of the county or whether within or without the boundaries of the State of Mississippi, in whole or in part.

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

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

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

(a) Coordinating activities and assistance of federal, state and local agencies and landowners for the purpose of carrying out and implementing necessary planning, permitting and funding requirements for construction and operation of such projects.
(b) Authorization to enter into project cooperation agreements with the United States Department of Army and to serve as nonfederal sponsors for such projects.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) By the board of supervisors of any county of this state for the purpose of acquiring land, property and/or rights-of-way for any project the board of supervisors, by a duly adopted resolution, determines to be related to a project as defined in Section 57-75-5(f)(iv). The board of supervisors of a
county may not exercise the right to immediate possession under this item (j) after July 1, 2003.

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

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

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

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

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

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

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

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

(g) Purchasing or renting voting machines and any other
election equipment to be used in elections held within the county;
(h) Constructing, reconstructing or repairing boat
landing ramps and wharves fronting on the Mississippi Sound or the
Gulf of Mexico and on the banks or shores of the inland waters,
levees, bays and bayous of any county bordering on the Gulf of
Mexico or fronting on the Mississippi Sound, having two (2)
municipalities located therein, each with a population in excess
of twenty thousand (20,000) in accordance with the then last
preceding federal census;

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

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

(k) Establishing rubbish and garbage disposal systems
in accordance with the provisions of Sections 19-5-17 through
19-5-27;
(l) Defraying the expenses of projects of the county cooperative service district in which it is a participating county, regardless of whether the project is located in the county issuing such bonds;

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

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

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

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

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

19-5-91. The board of supervisors of any county through any part of which any river or other stream may run, or any part of which any river or other stream may touch or border, on which the United States of America has authorized navigation projects, including channel clearing, channel improvement, cut-offs, levees, dams, or other navigation projects, is hereby authorized and empowered, for that part of such river or stream running through any part of said county or bordering or touching said county, as aforesaid, to give satisfactory assurances to the United States of America, or any agency thereof, including the Secretary of Defense, that it will:
(a) Provide, without cost to the United States, all lands, easements and rights-of-way necessary for the construction of the project;
(b) Hold and save the United States free from damages due to the construction of the works; and
(c) Maintain and operate all of the works after completion in accordance with regulations prescribed pursuant to the terms of any federal law relating to navigation or to navigable streams.

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

Any such board of supervisors also is authorized to enter into any contracts or agreements with the United States, or any agency or department thereof, to sponsor a project for the environmental restoration of a lake or body of water as described in, and in accordance with the provisions of Section 1 of this act.
SECTION 5. Section 51-3-39, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

(4) No dam or reservoir, regardless of whether or not
written construction authorization therefor is required under this
section, may be constructed in such a manner as to impair the
common law or other lawful rights of water users below or plans
for the proper utilization of the water resources of the state.
The board is authorized to prescribe such minimum flow releases
from any dam or reservoir as may be found necessary to protect
downstream users or otherwise prudently manage available surface
water.
(5) When the board or commission finds a dam or reservoir constructed or modified in violation of this chapter or that the owner of a dam or reservoir has allowed the structure to deteriorate and remain in an unsafe condition after having been ordered to make the necessary repairs, then the commission may cause the structure to be removed and/or the board may revoke or modify any other authorization pertaining thereto.

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

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

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

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