

By: Representatives Capps, Henderson

To: Conservation and Water Resources; Ways and Means

HOUSE BILL NO. 1338
(As Sent to Governor)

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; TO
16 PROVIDE THAT NOTHING IN THIS ACT SHALL BE CONSTRUED TO REQUIRE THE
17 PRIOR APPROVAL OF A LEVEE BOARD FOR REPAIR OR CONSTRUCTION OF
18 FLOOD CONTROL STRUCTURES IN AREAS THAT ARE NOT LOCATED IN A LEVEE
19 DISTRICT AREA; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

88 11-27-81. The right of immediate possession pursuant to
89 Sections 11-27-81 through 11-27-89, Mississippi Code of 1972, may
90 be exercised only:

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

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

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

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

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

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

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

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

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

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

128 (j) By the board of supervisors of any county of this
129 state for the purpose of acquiring land, property and/or
130 rights-of-way for any project the board of supervisors, by a duly
131 adopted resolution, determines to be related to a project as
132 defined in Section 57-75-5(f)(iv). The board of supervisors of a

133 county may not exercise the right to immediate possession under
134 this item (j) after July 1, 2003.

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

137 19-9-1. The board of supervisors of any county is authorized
138 to issue negotiable bonds of the county to raise money for the
139 following purposes:

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

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

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

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

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

164 (f) Erecting, repairing, equipping, remodeling or
165 enlarging or assisting or cooperating with another county or other

166 counties in erecting, repairing, equipping, remodeling, or
167 enlarging buildings, and related facilities for an agricultural
168 high school, or agricultural high school-junior college, including
169 gymnasiums, auditoriums, lunchrooms, vocational training
170 buildings, libraries, teachers' homes, school barns, garages for
171 transportation vehicles, and purchasing land therefor;

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

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

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

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

195 (k) Establishing rubbish and garbage disposal systems
196 in accordance with the provisions of Sections 19-5-17 through
197 19-5-27;

198 (1) Defraying the expenses of projects of the county
199 cooperative service district in which it is a participating
200 county, regardless of whether the project is located in the county
201 issuing such bonds;

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

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

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

214

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

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

219 19-5-91. The board of supervisors of any county through any
220 part of which any river or other stream may run, or any part of
221 which any river or other stream may touch or border, on which the
222 United States of America has authorized navigation projects,
223 including channel clearing, channel improvement, cut-offs, levees,
224 dams, or other navigation projects, is hereby authorized and
225 empowered, for that part of such river or stream running through
226 any part of said county or bordering or touching said county, as
227 aforesaid, to give satisfactory assurances to the United States of
228 America, or any agency thereof, including the Secretary of
229 Defense, that it will:

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

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

235 (c) Maintain and operate all of the works after
236 completion in accordance with regulations prescribed pursuant to
237 the terms of any federal law relating to navigation or to
238 navigable streams.

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

256 Any such board of supervisors also is authorized to enter
257 into any contracts or agreements with the United States, or any
258 agency or department thereof, to sponsor a project for the
259 environmental restoration of a lake or body of water as described
260 in, and in accordance with the provisions of Section 1 of this
261 act.

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

264 51-3-39. (1) Any person proposing to construct, enlarge,
265 repair or alter a dam or reservoir in this state except as
266 provided elsewhere in this section, before proceeding with the
267 construction thereof, must obtain written authorization from the
268 board. Applications shall be made on forms provided by the board,
269 and detailed plans shall be required when deemed necessary by the
270 board in order to determine whether the proposed construction will
271 provide adequate safety for downstream lives and property, and
272 will not adversely affect downstream water rights or plans for the
273 proper utilization of the water resources of the state. Provided
274 further, that:

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

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

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

292 (2) The board may request other agencies, or contract with
293 consultants, to recommend land treatment or facilities necessary
294 to prevent pollution of the waters of this state, or to protect

295 the safety and general welfare of the people, and in the board's
296 discretion, may require that these recommendations be followed
297 before authorization to construct or modify the dam is issued, or
298 order the removal of the dam after it has been constructed or
299 request the commission to order the removal of the dam after it
300 has been constructed or modified when such recommendations are not
301 followed.

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

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

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

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

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

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

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