To: Judiciary A

MISSISSIPPI LEGISLATURE REGULAR SESSION 2003

By: Representatives Green, Warren

HOUSE BILL NO. 81
(As Sent to Governor)

AN ACT TO AMEND SECTION 51-1-4, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A CERTAIN LAKE SHALL BE PRESUMED TO BE A PUBLIC WATERWAY, REGARDLESS OF THE MEAN ANNUAL FLOW OF WATER INTO OR THROUGH THE LAKE UNTIL A COURT OF COMPETENT JURISDICTION DETERMINES OTHERWISE; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 51-1-4, Mississippi Code of 1972, is amended as follows:

51-1-4. (1) Such portions of all natural flowing streams in this state having a mean annual flow of not less than one hundred (100) cubic feet per second, as determined and designated on appropriate maps by the Mississippi Department of Environmental Quality, shall be public waterways of the state on which the citizens of this state and other states shall have the right of free transport in the stream and its bed and the right to fish and engage in water sports. Such persons exercising the rights granted by this section shall do so at their own risk, and such persons shall not be entitled to recover any damages against any owner of property along such public waterways or anyone using such property with permission of the owner for any injury to or death of persons or damage to property arising out of the exercise of rights granted, by this section other than those damages which may be recovered for intentional or malicious torts or for gross or willful negligence against the owner of property, or anyone using such property with permission of the owner.

(2) Nothing contained in this section shall authorize anyone utilizing such public waterways, under the authority granted by this section, to trespass upon adjacent lands or, to
launch or land any commercial or pleasure craft along or from the
shore of such waterways except at places established by public or
private entities for such purposes.

(3) Nothing contained in this section shall authorize
any person utilizing those public waterways, under the authority
granted by this section, to disturb the banks or beds of such
waterways or the discharge of any object or substance into such
waters or upon or across any lands adjacent thereto or to hunt or
fish or go on or across any adjacent lands under floodwaters
beyond the natural banks of the bed of the public waterway.
Floodwater which has overflowed the banks of a public waterway is
not a part of the public waterway.

(4) The right of the public to use public waterways does not
include the use of motorized vehicles in the beds of a public
waterway without the written permission of the landowner. Any
person who uses a motorized vehicle in the bed of a public
waterway without the written permission of the landowner may be
punished as provided in Section 97-17-93.

(5) Nothing contained in this section shall be
construed to prohibit the construction of dams and reservoirs by
the State of Mississippi or any of its agencies or political
subdivisions, or riparian owners, in the manner now or hereafter
authorized by law, or in any way to affect the rights of riparian
landowners along such waterways except as specifically provided
hereinabove or to amend or repeal any law relating to pollution or
water conservation, or to affect in any manner the title to the
banks and beds of any such stream or the title to any minerals
thereunder, or to restrict the mining or extraction of such
minerals or the right of ingress and egress thereto.

(6) The provisions of this section limiting the liability of
owners of property along public waterways and persons using such
property with permission of the owners shall not be construed to
limit any rights of claimants for damages under federal statutes
or acts applying to navigable streams or waterways or any other civil causes of action subject to admiralty or maritime jurisdiction, nor shall those provisions be construed to limit the rights of any parties involved in litigation founded upon the commercial or business usage of any navigable streams or waterways.

(7) This section shall apply only to natural flowing streams.

(8) Any lake hydrologically connected to a natural flowing stream and listed as a public waterway under subsection (1) on July 1, 2000, and subsequently removed from that list before July 1, 2001, by the Commission on Environmental Quality because the lake did not meet the requirements of subsection (1), shall be presumed to be a public waterway until a court of competent jurisdiction determines otherwise. Nothing in this subsection shall be construed to determine the property rights in the bed or banks of the lake, the right of ingress or egress across private property to the lake, or mineral interests.

SECTION 2. This act shall take effect and be in force from and after July 1, 2003.