

By: Representative Moore

To: Conservation and Water Resources

HOUSE BILL NO. 386

1 AN ACT TO AMEND SECTION 51-3-39, MISSISSIPPI CODE OF 1972, TO
2 EXEMPT DAMS THAT WERE CONSTRUCTED BEFORE JANUARY 1, 1960, FROM THE
3 PERMIT AND INSPECTION REQUIREMENTS OF THE PERMIT BOARD AND
4 COMMISSION ON ENVIRONMENTAL QUALITY; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 51-3-39, Mississippi Code of 1972, is
7 amended as follows:

8 51-3-39. (1) Any person proposing to construct, enlarge,
9 repair or alter a dam or reservoir in this state except as
10 provided elsewhere in this section, before proceeding with the
11 construction thereof, must obtain written authorization from the
12 board. Applications shall be made on forms provided by the board,
13 and detailed plans shall be required when deemed necessary by the
14 board in order to determine whether the proposed construction will
15 provide adequate safety for downstream lives and property, and
16 will not adversely affect downstream water rights or plans for the
17 proper utilization of the water resources of the state. Provided
18 further, that:

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

27 (b) Any person who seeks to build and maintain a dam on
28 any watercourse lying in whole or in part within a levee district

29 duly constituted under the laws of this state shall first obtain
30 permission from the levee board of such levee district.

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

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

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

62 (4) No dam or reservoir, regardless of whether or not
63 written construction authorization therefor is required under this
64 section, may be constructed in such a manner as to impair the
65 common law or other lawful rights of water users below or plans
66 for the proper utilization of the water resources of the state.
67 The board is authorized to prescribe such minimum flow releases
68 from any dam or reservoir as may be found necessary to protect
69 downstream users or otherwise prudently manage available surface
70 water.

71 (5) When the board or commission finds a dam or reservoir
72 constructed or modified in violation of this chapter or that the
73 owner of a dam or reservoir has allowed the structure to
74 deteriorate and remain in an unsafe condition after having been
75 ordered to make the necessary repairs, then the commission may
76 cause the structure to be removed and/or the board may revoke or
77 modify any other authorization pertaining thereto.

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

81 (7) The provisions of this section shall apply also to a
82 county board of supervisors when constructing dams or low-water
83 control structures on lakes or bodies of water in accordance with
84 the provisions of Section 19-5-92.

85 (8) The provisions of this section shall not apply to dams
86 constructed on or before January 1, 1960.

87 **SECTION 2.** This act shall take effect and be in force from
88 and after July 1, 2007.