

By: Representative Ellington

To: Conservation and Water Resources; Ways and Means

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1029

1 AN ACT TO AMEND SECTION 51-11-53, MISSISSIPPI CODE OF 1972,
2 TO DEFINE NECESSARY IMPROVEMENTS, PROPERTY OR FACILITIES; TO AMEND
3 SECTION 51-11-57, MISSISSIPPI CODE OF 1972, TO CHANGE THE DURATION
4 OF THE TERMS OF THE BOARD OF DIRECTORS OF THE FLOOD CONTROL
5 DISTRICTS; TO AMEND SECTION 51-11-59, MISSISSIPPI CODE OF 1972, TO
6 PROVIDE THAT SAND, DIRT AND GRAVEL SHALL NOT BE CONSIDERED
7 MINERALS WHEN THE FLOOD CONTROL DISTRICT ACQUIRES LAND BY
8 NEGOTIATION OR CONDEMNATION; TO AMEND SECTION 51-11-67,
9 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ELECTIONS BE HELD IN
10 VOTING PRECINCTS AND TO REMOVE THE REQUIREMENT THAT VOTING PLACES
11 BE PROVIDED WITHIN THE FLOOD CONTROL DISTRICTS AND THE ELECTION
12 DISTRICTS; TO AMEND SECTION 51-11-73, MISSISSIPPI CODE OF 1972, TO
13 PROVIDE FOR AN ALTERNATIVE MEANS OF LEVY AGAINST LAND OR PROPERTY
14 IN THE FLOOD CONTROL DISTRICT; AND FOR RELATED PURPOSES.

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

16 SECTION 1. Section 51-11-53, Mississippi Code of 1972, is
17 amended as follows:

18 51-11-53. For purposes of Sections 51-11-53 through
19 51-11-85, the following words shall have the meanings ascribed in
20 this section, unless the context clearly indicates otherwise:

21 (a) "District" means any flood control district created
22 under Sections 51-11-53 through 51-11-85.

23 (b) "Necessary improvements, property or facilities"
24 mean any improvement, property or facility for a project which is
25 required by the project plan or which may increase the financial
26 or economic viability of a project.

27 (c) "Project" means a general plan for and purposes of
28 the flood and drainage control improvements.

29 (d) "Project area" means the physical location of any
30 levees, channels, drains, or related facilities, the area which is
31 necessary to be included in the district, and the area of the
32 district as shown on the maps or plats provided under Section
33 51-11-55.



34 (e) "Related facilities" mean any facilities which are
35 correlated with or used in connection with the project.

36 SECTION 2. Section 51-11-57, Mississippi Code of 1972, is
37 amended as follows:

38 51-11-57. (1) All powers of a flood control district shall
39 be exercised by a board of directors, to be composed of the
40 following:

41 (a) If the flood control district is comprised of lands
42 lying partly in a municipality and partly outside the limits of a
43 municipality but wholly in one (1) county, the governing authority
44 of the municipality shall appoint two (2) directors, the board of
45 supervisors of the county in which the municipality lies shall
46 appoint two (2) directors and the board of directors of the Pearl
47 River Basin Development District shall appoint one (1) director.

48 (b) If the flood control district is comprised of lands
49 lying, in whole or in part, in one or more municipalities which
50 are in existence at the time of the creation of that district, and
51 in one or more counties and not falling within the description of
52 (a) of this subsection, the governing authority of each
53 municipality shall appoint two (2) directors, the board of
54 supervisors of each county in which part of the lands of the flood
55 control district lie shall appoint two (2) directors and the board
56 of directors of the Pearl River Basin Development District shall
57 appoint one (1) director. If new municipalities are incorporated
58 within the flood control district after the organization of that
59 district, the governing authority of each new municipality shall
60 appoint two (2) directors of the flood control district.

61 Each director appointed under this section, except the
62 director appointed by the board of directors of the Pearl River
63 Basin Development District, shall be either a resident or property
64 owner in the district for which the director is appointed.

65 (2) Each director shall take and subscribe to the oath of
66 office required by Section 268 of the Constitution of the State of



67 Mississippi, before a chancery clerk, that the director will
68 faithfully discharge the duties of the office. The oath shall be
69 filed with the chancery clerk.

70 (3) Each director shall receive a per diem as provided under
71 Section 25-3-69 for attending each meeting of the board and for
72 each day actually spent in attending to the necessary business of
73 the flood control district and shall receive reimbursement for
74 actual expenses, including travel expenses, as provided in Section
75 25-3-41 upon express authorization of the board.

76 (4) The board of directors shall elect annually from its
77 number a president and a vice president of the flood control
78 district and any other officers deemed necessary. The president
79 shall be the chief executive officer of the flood control district
80 and the presiding officer of the board, and shall have the same
81 right to vote as any other director. The vice president shall
82 perform all the duties and exercise all powers conferred by this
83 article upon the president when the president is absent or fails
84 or declines to act, except the president's right to vote. The
85 board also shall appoint a secretary and a treasurer who may or
86 may not be members of the board, and it may combine these offices.
87 The treasurer shall give bond in the sum of not less than Fifty
88 Thousand Dollars (\$50,000.00), as set by the board of directors,
89 and each director shall give bond in the sum of not less than Ten
90 Thousand Dollars (\$10,000.00). The premiums on the bonds shall be
91 an expense of the district. The condition of each bond shall be
92 that the treasurer or director will faithfully perform all duties
93 of office and account for all money which shall come into the
94 treasurer's or director's custody.

95 (5) The initial terms of the members of the board of
96 directors of the flood control district shall be: one-third (1/3)
97 of the members shall serve for one (1) year, one-third (1/3) of
98 the members shall serve for two (2) years, and one-third (1/3) of
99 the members shall serve for three (3) years. At the initial



100 meeting of the board of directors, the members shall determine by
101 lot which of their members shall serve for only one (1), two (2),
102 and three (3) years. After the initial term, each member shall
103 hold office for a term of six (6) years or until a successor is
104 appointed and qualified.

105 SECTION 3. Section 51-11-59, Mississippi Code of 1972, is
106 amended as follows:

107 51-11-59. Each flood control district, through its board of
108 directors, may:

109 (a) Impound, divert, change, alter, or otherwise
110 control overflow water and the surface water of any river or its
111 tributaries within the project area within its district in
112 accordance with the approved plan at any place or places and in
113 any amount as approved by Permit Board, by the diversion of rivers
114 or their tributaries, by the construction of a dam or dams, a
115 levee or levees, a channel or channels, reservoir or reservoirs,
116 works, pumps, plants, and any other necessary or useful related
117 facilities contemplated or described as a part of the project
118 within the district. The district also may construct or otherwise
119 acquire within the project area all works, plants, or other
120 facilities necessary or useful to the project for carrying out
121 Sections 51-11-53 through 51-11-85.

122 (b) Cooperate with the United States of America in the
123 construction of flood and drainage control improvements, for the
124 protection of property, controlling floods, reclaiming overflow
125 lands, and preventing overflows in this state; and for the purpose
126 of operating and maintaining dams, reservoirs, channels, levees,
127 pumps, and other flood control works and improvements which may be
128 constructed by the United States of America or any department or
129 agency of the United States of America.

130 (c) Furnish, without cost to the United States of
131 America, all lands, easements, and rights-of-way necessary for the
132 construction of the project or any part thereof, if the project or



133 any part of the project is to be constructed by the United States
134 of America or any agency or department of the United States of
135 America; hold and save the United States free from damages due to
136 the construction; make, without cost to the United States, any
137 changes, alterations, or relocation of any public utilities,
138 roads, highways, bridges, buildings, or local betterment made
139 necessary by the work; provide assurances to the United States of
140 America that encroachment on the levees, improved channels, and
141 pond areas will not be permitted; maintain and operate the
142 improvements after completion thereof in accordance with
143 regulations prescribed by the United States of America or any
144 agency or department of the United States of America; contribute
145 in cash to the United States of America, or any agency or
146 department of the United States of America, any sums of money as
147 shall be required by the United States of America, or any agency
148 or department of the United States of America, as a condition for
149 the construction of any improvements by the United States or any
150 agency or department; and generally, without being limited by any
151 of the above, carry out and faithfully perform any obligations
152 required of the district as a condition to the construction of any
153 flood control work, project, or improvements by the United States
154 of America, or any agency or department, and to give assurances to
155 the United States of America that the district will so do.

156 (d) Construct, acquire, and develop all facilities
157 within the project area in accordance with the approved plan
158 deemed necessary or useful.

159 (e) Prevent or aid in the prevention of damage to
160 person or property from the waters of any river or any of its
161 tributaries.

162 (f) Acquire by purchase, lease, gift, or in any other
163 manner (otherwise than by condemnation) and to maintain, use, and
164 operate any and all property of any kind, real, personal, or
165 mixed, or any interest in property within the project area within



166 the district, necessary for the project and convenient to the
167 exercise of the powers, rights, privileges, and functions
168 conferred upon the district by Sections 51-11-53 through 51-11-85.

169 (g) Acquire by condemnation any and all property of any
170 kind, real, personal, or mixed, or any interest in property within
171 the project area within the district, necessary for the project
172 and the exercise of the powers, rights, privileges, and functions
173 conferred upon the district by Sections 51-11-53 through 51-11-85,
174 according to the procedure provided by law for the condemnation of
175 lands or other property taken for rights-of-way or other purposes
176 by railroads, telephone, or telegraph companies. For the purposes
177 of Sections 51-11-53 through 51-11-85, the right of eminent domain
178 of the flood control district shall be superior and dominant to
179 the right of eminent domain of railroad, telegraph, telephone,
180 gas, power, and other companies or corporations, and shall be
181 sufficient to enable the acquisition of county roads, state
182 highways, or other public property in the project area, and the
183 acquisition, or relocation, of the utility property in the project
184 area.

185 The amount and character of interest in land, other property,
186 and easements to be acquired shall be determined by the board of
187 directors. Their determination shall be conclusive and shall not
188 be subject to attack in the absence of manifold abuse of
189 discretion or fraud on the part of the board in making that
190 determination. However,

191 (i) In acquiring lands, either by negotiation or
192 condemnation, the district shall not acquire minerals or royalties
193 within the project area, sand, dirt and gravel are not considered
194 as minerals within the meaning of this section; and

195 (ii) No person or persons owning the mining
196 rights, drilling rights, or the right to share in production shall
197 be prevented from exploring, developing, or producing sand,
198 gravel, oil, or gas with necessary rights-of-way for ingress,



199 egress, pipe lines, and other means of transporting those products
200 by reason of the inclusion of any lands or mineral interests
201 within the project area, whether below or above the water line,
202 but any activities shall be under reasonable regulations adopted
203 by the board of directors to adequately protect the project; and

204 (iii) In drilling and developing, those persons
205 are vested with a special right to have any mineral interest
206 integrated and their lands developed in a drilling unit or units
207 as the State Oil and Gas Board shall establish after due
208 consideration of the rights of all of the owners to be included in
209 the drilling unit.

210 (h) Require the necessary relocation of bridges, roads,
211 and highways, railroad, telephone, and telegraph lines and
212 properties, electric power lines, gas pipe lines and mains and
213 facilities in the project area, or to require the anchoring or
214 other protection of any of these, provided due compensation is
215 first paid the owners of the infrastructure, utilities or
216 facilities or agreement is had with the owners regarding the
217 payment of the cost of the relocation. The district may also
218 acquire easements or rights-of-way in or outside of the project
219 area for the relocation of any road, highway, railroad, telephone,
220 and telegraph lines and properties, electrical power lines, gas
221 pipe lines and mains and facilities, and convey the easements or
222 rights-of-way to the owners in connection with the relocation as a
223 part of the construction of the project.

224 (i) Overflow and inundate any public lands and public
225 property, including sixteenth section lands and in lieu lands,
226 within the project area.

227 (j) Construct, extend, improve, maintain, and
228 reconstruct, to cause to be constructed, extended, improved,
229 maintained, and reconstructed, and use and operate any facilities
230 within the project area necessary or convenient to the project and
231 to the exercise of the powers, rights, privileges, and functions.



232 (k) Sue and be sued in its corporate name.

233 (l) Adopt, use, and alter a corporate seal.

234 (m) Adopt bylaws for the management and regulation of
235 its affairs.

236 (n) Employ engineers, attorneys, fiscal agents,
237 advisors, and all necessary agents and employees to properly
238 finance, construct, operate, and maintain the project and the
239 facilities of the district and carry out Sections 51-11-53 through
240 51-11-85, and pay reasonable compensation for those services.

241 (o) Contract and execute instruments necessary or
242 convenient to the exercise of the powers, rights, privileges, and
243 functions conferred upon it by Sections 51-11-53 through 51-11-85.

244 (p) Conduct or cause to be conducted surveys and
245 engineering investigations relating to the project, or related
246 projects, for the information of the district to facilitate the
247 accomplishment of the purposes for which it is created.

248 (q) Apply for and accept grants from the United States
249 of America, or any corporation or agency created or designated by
250 the United States of America, and ratify and accept applications
251 made by voluntary associations to those agencies for grants to
252 construct, maintain, or operate any project or projects which may
253 be undertaken or contemplated by the district.

254 (r) Perform any other acts or things necessary or
255 convenient to the exercising of the powers, rights, privileges, or
256 functions conferred upon it by Sections 51-11-53 through 51-11-85
257 or any other law.

258 (s) Contract for the issuance of bonds as may be
259 necessary to insure the marketability of those bonds.

260 (t) Operate and maintain within the project area, with
261 the consent of the governing body of any municipality, town or
262 county located within the district, any works, plants, or
263 facilities of that municipality, town, or county deemed necessary



264 or convenient to the accomplishment of the purposes for which the
265 district is created.

266 (u) Subject to the provisions of Sections 51-11-53
267 through 51-11-85, from time to time to lease, sell, or otherwise
268 dispose of any property of any kind, real, personal, or mixed, or
269 any interest in property within the project area or acquired
270 outside the project area as authorized in this article, for the
271 purpose of furthering the business of the district.

272 (v) Make any changes in location of levees, channels,
273 drains, or related facilities, or other changes, alterations, or
274 modifications in the plan filed with the petition creating the
275 district, which may be necessary for the accomplishment of the
276 general purposes of the district.

277 SECTION 4. Section 51-11-67, Mississippi Code of 1972, is
278 amended as follows:

279 51-11-67. The elections shall be held, as practicable, in
280 the same manner as elections are held in county bond elections. In
281 conducting the elections, the flood control district shall be
282 divided into election precincts in accordance with existing
283 election precincts created under Section 23-15-281. There shall
284 be one (1) voting place in each election precinct. The election
285 commissioners shall furnish at each voting place a list of the
286 qualified electors residing in the flood control district who are
287 also qualified electors in the election district. In the
288 election, all qualified electors residing in the flood control
289 district may vote. The ballots used at the election shall have
290 printed on the ballot a brief statement of the amount and purpose
291 of the proposed bond issue and the words "FOR THE BOND ISSUE" and
292 "AGAINST THE BOND ISSUE." Each voter shall vote by placing a
293 cross (X) opposite the voter's choice on the proposition.

294 SECTION 5. Section 51-11-73, Mississippi Code of 1972, is
295 amended as follows:



296 51-11-73. To provide funds for the payment of the principal
297 of, interest on, and other charges in connection with bonds issued
298 under Sections 51-11-53 through 51-11-85, to provide funds for the
299 annual expenses of operations of the district, and to provide
300 funds for carrying out the purposes of Sections 51-11-53 through
301 51-11-85, the district may levy annually a special tax upon all
302 the taxable property within the flood control district on or
303 before the first Monday of September of each year. The board of
304 directors of the flood control district shall certify the levy to
305 the boards of supervisors of the various counties in the district.
306 The boards of supervisors of each county shall make the levy on
307 each tract of land or other property in the flood control district
308 according to the assessed valuation of that land or property or,
309 in the discretion of the board of directors of the district,
310 according to the incremental flood protection or benefits received
311 for that land or property. The taxes shall be collected by the
312 tax collectors of the respective counties in the district, who
313 shall deposit the collected taxes in the depository selected by
314 the board of directors of the district. The tax collector shall
315 receive a sum not greater than one-fifth of one percent (1/5 of
316 1%) of the amount collected for services in making the collection,
317 and that fee shall be paid into the county general fund. The
318 board of directors of the flood control district shall levy a tax
319 sufficient to pay the bonds and the interest on the bonds as the
320 bonds and interest become due, to pay for the annual expense of
321 operation of the district, and to provide funds for carrying out
322 Sections 51-11-53 through 51-11-85.

323 SECTION 6. The Attorney General of the State of Mississippi
324 shall submit Section 4 of this act, immediately upon approval by
325 the Governor, or upon approval by the Legislature subsequent to a
326 veto, to the Attorney General of the United States or to the
327 United States District Court for the District of Columbia in



328 accordance with the provisions of the Voting Rights Act of 1965,
329 as amended and extended.

330 SECTION 7. This act, except Section 4, shall take effect and
331 be in force from and after its passage. Section 4 of this act
332 shall take effect and be in force from and after the date it is
333 effectuated under Section 5 of the Voting Rights Act of 1965, as
334 amended and extended.

