

By: Representative Ellington

To: Conservation and Water Resources; Ways and Means

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