

By: Representative Warren

To: Conservation and Water Resources

HOUSE BILL NO. 1098

1 AN ACT TO AMEND SECTION 51-1-4, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT THE BODY OF WATER KNOWN AS FOSTER LAKE IN WILKINSON
3 COUNTY SHALL BE CONSIDERED TO BE A PUBLIC WATERWAY, REGARDLESS OF
4 THE MEAN ANNUAL FLOW OF WATER INTO OR THROUGH THE LAKE; AND FOR
5 RELATED PURPOSES.

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

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

9 51-1-4. (1) Such portions of all natural flowing streams in
10 this state having a mean annual flow of not less than one hundred
11 (100) cubic feet per second, as determined and designated on
12 appropriate maps by the Mississippi Department of Environmental
13 Quality, shall be public waterways of the state on which the
14 citizens of this state and other states shall have the right of
15 free transport in the stream and its bed and the right to fish and
16 engage in water sports. Such persons exercising the rights * * *
17 granted by this section shall do so at their own risk, and such
18 persons shall not be entitled to recover any damages against any
19 owner of property along such public waterways or anyone using such
20 property with permission of the owner for any injury to or death
21 of persons or damage to property arising out of the exercise of
22 rights * * * granted by this section, other than those damages
23 which may be recovered for intentional or malicious torts or for
24 gross or willful negligence against the owner of property, or
25 anyone using such property with permission of the owner.

26 (2) Nothing * * * contained in this section shall authorize
27 anyone utilizing such public waterways, under the authority
28 granted by this section, to trespass upon adjacent lands or, to



29 launch or land any commercial or pleasure craft along or from the
30 shore of such waterways except at places established by public or
31 private entities for such purposes.

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

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

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



62 (6) This section shall apply only to natural flowing
63 streams.

64 (7) Notwithstanding the provisions of subsections (1) and
65 (6) of this section, the body of water known as Foster Lake in
66 Wilkinson County, which historically was an intermediary water
67 body in the Buffalo River on its westerly route to the Mississippi
68 River, but which is no longer fed by the Buffalo River because the
69 route of the Buffalo River has changed to flow northerly toward
70 the old Homochitto River, shall be considered to be a public
71 waterway for the purposes of this section, regardless of the mean
72 annual flow of water into or through the lake.

73 **SECTION 2.** This act shall take effect and be in force from
74 and after its passage.

