

By: Representatives Green, Warren

To: Judiciary A

HOUSE BILL NO. 81  
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 51-1-4, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT A CERTAIN LAKE SHALL BE PRESUMED TO BE A PUBLIC  
3 WATERWAY, REGARDLESS OF THE MEAN ANNUAL FLOW OF WATER INTO OR  
4 THROUGH THE LAKE UNTIL A COURT OF COMPETENT JURISDICTION  
5 DETERMINES OTHERWISE; AND FOR 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) The right of the public to use public waterways does not  
42 include the use of motorized vehicles in the beds of a public  
43 waterway without the written permission of the landowner. Any  
44 person who uses a motorized vehicle in the bed of a public  
45 waterway without the written permission of the landowner may be  
46 punished as provided in Section 97-17-93.

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

58       (6) The provisions of this section limiting the liability of  
59 owners of property along public waterways and persons using such  
60 property with permission of the owners shall not be construed to  
61 limit any rights of claimants for damages under federal statutes



62 or acts applying to navigable streams or waterways or any other  
63 civil causes of action subject to admiralty or maritime  
64 jurisdiction, nor shall those provisions be construed to limit the  
65 rights of any parties involved in litigation founded upon the  
66 commercial or business usage of any navigable streams or  
67 waterways.

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

70 (8) Any lake hydrologically connected to a natural flowing  
71 stream and listed as a public waterway under subsection (1) on  
72 July 1, 2000, and subsequently removed from that list before July  
73 1, 2001, by the Commission on Environmental Quality because the  
74 lake did not meet the requirements of subsection (1), shall be  
75 presumed to be a public waterway until a court of competent  
76 jurisdiction determines otherwise. Nothing in this subsection  
77 shall be construed to determine the property rights in the bed or  
78 banks of the lake, the right of ingress or egress across private  
79 property to the lake, or mineral interests.

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

