

By: Representative Brown

To: Conservation and Water Resources

HOUSE BILL NO. 1228

1 AN ACT TO AMEND SECTION 51-39-25, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE STORM WATER MANAGEMENT DISTRICTS TO ASSESS A CERTAIN
3 AMOUNT OF USER FEES; TO AMEND SECTION 51-39-43, MISSISSIPPI CODE
4 OF 1972, TO CONFORM TO THE PRECEDING SECTION; AND FOR RELATED
5 PURPOSES.

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

7 **SECTION 1.** Section 51-39-25, Mississippi Code of 1972, is
8 amended as follows:

9 51-39-25. The district shall have all the rights and powers
10 necessary or convenient to carry out the purposes of this chapter,
11 including, but not limited to, the following:

12 (a) To sue and be sued in its own name;

13 (b) To adopt an official seal and alter the seal at its
14 pleasure;

15 (c) To maintain an office or offices at any place or
16 places within the geographic boundaries of its members as it may
17 determine;

18 (d) To establish a graduated storm water user fee that
19 may be assessed and collected for each user of the storm water
20 facilities provided by the district. The fee shall not exceed Two
21 Dollars (\$2.00) per residential lot with an impervious area equal
22 to or less than one thousand (1,000) square feet. The fee shall
23 not exceed Three Dollars (\$3.00) per residential lot with an
24 impervious area more than one thousand (1,000) square feet, but
25 equal to or less than three thousand (3,000) square feet. The fee
26 shall not exceed Three Dollars (\$3.00) multiplied by the actual
27 impervious area divided by three thousand (3,000) square feet for
28 residential lots with an impervious area more than three thousand

29 (3,000) square feet and for industrial and commercial lots. This
30 fee shall only apply to those districts that are in counties or
31 municipalities that are covered by the federal National Pollution
32 Discharge Elimination System Phase II Storm Water Regulation. The
33 graduated storm water user fee shall be based on actual or
34 estimated use of the storm water facility of the district and each
35 user or user class shall only be required to pay its proportionate
36 share of the construction, administration, operating, and
37 maintenance costs, along with the principle and interest or debt
38 service of bonds for storm water facilities based on the actual or
39 estimated proportionate contribution to the total storm water
40 runoff from all users or user classes. The fee shall be based on
41 the area of impervious coverage on each property within the
42 district or may be based on the amount of pollutants discharged
43 from each property, or any combination. The fee shall be an
44 appropriate and equitable allocation based on actual or estimated
45 use of the district's storm water facilities.

46 The fee shall include credits which may conditionally reduce
47 the amount of a storm water user fee or other fees, rates,
48 charges, fines and penalties to an individual property based on
49 the following: the provision and continuing presence of an
50 effectively maintained and operating on-site storm water system or
51 facility; or the continuing provision of a service or activity
52 that reduces the storm water utility's cost of providing storm
53 water management services; or the direct discharge of runoff to a
54 receiving water system that is not operated, maintained, improved
55 and regulated by the district. Fees, rates or other charges
56 established by the district shall be advertised in a newspaper of
57 general circulation in the area served by the district at least
58 thirty (30) days in advance of the meeting at which the district
59 shall consider the fee, rate or other charges. In addition, the
60 district shall provide notice of any fees, rates or other charges
61 to the units of local government within the district boundaries.

62 The following shall be exempted from payment of user fees
63 authorized by the district:

64 (i) Users whose storm water runoff is not
65 discharged into or through the storm water facilities of the
66 district;

67 (ii) Any entity that possesses a valid individual
68 storm water National Pollution Discharge Elimination System
69 (NPDES) permit;

70 (iii) Any entity that has coverage under a general
71 storm water National Pollution Discharge Elimination System
72 (NPDES) permit; and

73 (iv) Any Class II real property, as defined in
74 Section 112 of the Mississippi Constitution of 1890, that is
75 classified as agriculture or forest land;

76 (e) To acquire, construct, improve, or modify, to
77 operate or cause to be operated and maintained, either as owner of
78 all or of any part in common with others, a storm water management
79 system within the counties or municipalities in the district. The
80 district may pay all or part of the cost of any storm water
81 management system from any contribution by persons, firms, public
82 agencies or corporations. The district may receive, accept and
83 use all funds, public or private, and pay all cost of development,
84 implementation and maintenance as may be determined as necessary
85 for any project;

86 (f) To acquire, in its own name, by purchase on any
87 terms and conditions and in any manner as it may deem proper,
88 except by eminent domain, property for public use, or by gift,
89 grant, lease or otherwise, real property or easements therein,
90 franchises and personal property necessary or convenient for its
91 corporate purposes. These purposes shall include, but are not
92 limited to, the constructing or acquiring of a storm water
93 management system; the improving, extending, reconstructing,
94 renovating or remodeling of any existing storm water management

95 system or part thereof; or the demolition to make room for any
96 project or any part thereof. The district may insure the storm
97 water management system against all risks as any insurance may,
98 from time to time, be available. The district may also use any
99 property and rent or lease any property to or from others,
100 including public agencies, or make contracts for the use of the
101 property. The district may sell, lease, exchange, transfer,
102 assign, pledge, mortgage or grant a security interest for any
103 property. The powers to acquire, use and dispose of property as
104 set forth in this paragraph shall include the power to acquire,
105 use and dispose of any interest in that property, whether divided
106 or undivided. Title to any property of the district shall be held
107 by the district exclusively for the benefit of the public;

108 (g) To adopt, modify, repeal and promulgate rules and
109 regulations implementing or effectuating the powers and duties of
110 the district under any statute within the district's jurisdiction,
111 and where otherwise not prohibited by federal or state law, to
112 make exceptions to and grant variances and exemptions from, and to
113 enforce those rules and regulations. Those rules and regulations
114 may include, but shall not be limited to, rules and regulations
115 for (i) the management of the district's business and affairs;
116 (ii) the use, operation, maintenance or implementation of the
117 district's storm water management system or any portion of that
118 system, facility or any other property owned or operated by the
119 district; and (iii) specifications and standards relating to the
120 planning, design or construction of the storm water management
121 system or any facility owned or operated by the district;

122 (h) To enter into contracts or leases with any person
123 or public agency and to execute all instruments necessary or
124 convenient for construction, operation and maintenance of the
125 storm water management system and leases of projects. Without
126 limiting the generality of the above, authority is specifically
127 granted to units of local government and to the district to enter

128 into contracts, lease agreements or other undertaking relative to
129 the furnishing of storm water management system services or
130 facilities or both by the district to a unit of local government
131 and by a unit of local government to the district;

132 (i) To exercise any powers, rights or privileges
133 conferred by this chapter either alone or jointly or in common
134 with any other public or private parties. In any exercise of any
135 powers, rights and privileges jointly or in common with others for
136 the construction, operation and maintenance of facilities, the
137 district may own an undivided interest in any facilities with any
138 other party with which it may jointly or in common exercise the
139 rights and privileges conferred by this chapter and may enter into
140 any agreement with respect to any facility with any other party
141 participating in those facilities. An agreement may contain any
142 terms, conditions and provisions, consistent with this section, as
143 the parties to the agreement shall deem to be in their best
144 interest including, but not limited to, provisions for the
145 planning, design, construction, operation, implementation and
146 maintenance of any facility by any party to an agreement. Any
147 party or parties shall be designated in or under any agreement as
148 agent or agents on behalf of itself and one or more of the other
149 parties to the agreement, or by any other means as may be
150 determined by the parties. The agreement shall include a method
151 or methods of determining and allocating, among the parties, costs
152 of planning, design, construction, operation, maintenance,
153 renewals, replacements, improvements and disposal related to any
154 facility. In carrying out its functions and activities as an
155 agent with respect to planning, design, construction, operation
156 and maintenance of any facility, the agent shall be governed by
157 the laws and regulations applicable to that agent as a separate
158 legal entity and not by any laws or regulations which may be
159 applicable to any of the other participating parties. The agent
160 shall act for the benefit of the public. In any agreement, the

161 district may delegate its powers and duties related to the
162 planning, design, construction, operation and maintenance of any
163 facility to the party acting as agent and all actions taken by
164 that agent in accordance with the agreement may be binding upon
165 the district without further action or approval of the district;

166 (j) To apply, contract for, accept, receive and
167 administer gifts, grants, appropriations and donations of money,
168 materials and property of any kind, including loans and grants
169 from the United States, the state, a unit of local government, or
170 any agency, department, authority or instrumentality of any of the
171 foregoing, upon any terms and conditions as the United States, the
172 state, a unit of local government, or any agency, department,
173 authority or instrumentality shall impose. The district may
174 administer trusts. The district may sell, lease, transfer,
175 convey, appropriate and pledge any and all of its property and
176 assets;

177 (k) To employ professional and administrative staff and
178 personnel and to retain legal, engineering, fiscal, accounting and
179 other professional services;

180 (l) To assume or continue any contractual or other
181 business relationships entered into by the municipalities or
182 counties who are members of the district, including the rights to
183 receive and acquire transferred rights under option to purchase
184 agreements;

185 (m) To enter on public or private lands, waters or
186 premises for the purpose of making surveys, borings or soundings,
187 or conducting tests, examinations or inspections for the purposes
188 of the district, subject to responsibility for any damage done to
189 property entered;

190 (n) To do and perform any acts and things authorized by
191 this chapter under, through or by means of its officers, agents
192 and employees, or by contracts with any person; and

193 (o) To do and perform any and all acts or things
194 necessary, convenient or desirable for the purposes of the
195 district, or to carry out any power expressly granted in this
196 chapter.

197 **SECTION 2.** Section 51-39-43, Mississippi Code of 1972, is
198 amended as follows:

199 51-39-43. This chapter, without reference to any other
200 statute, shall be deemed to be full and complete authority for the
201 creation of a district. No proceedings shall be required for the
202 creation of a district other than those provided for and required
203 in this chapter. All the necessary powers to be exercised by the
204 governing body of a county or municipality and by the board of
205 commissioners of any district, in order to carry out this chapter,
206 are hereby conferred.

207 The powers conferred by this chapter are in addition and
208 supplemental to other powers conferred by law.

209 **SECTION 3.** This act shall take effect and be in force from
210 and after July 1, 2007.