

By: Representative Simpson (By Request)

To: Conservation and
Water Resources

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 794

1 AN ACT TO AMEND SECTION 51-29-39, MISSISSIPPI CODE OF 1972,
2 TO INCREASE FROM TWO TO FIVE THE NUMBER OF DAYS THAT MUST ELAPSE
3 AFTER SERVICE OF A SUMMONS BEFORE A DEFAULT JUDGMENT MAY BE
4 ENTERED, IN THOSE SITUATIONS WHERE COMMISSIONERS OF A DRAINAGE
5 DISTRICT APPRAISE THE VALUE OF LAND TAKEN FOR DISTRICT
6 IMPROVEMENTS AND PAY COMPENSATION THEREFOR; AND FOR RELATED
7 PURPOSES.

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

9 SECTION 1. Section 51-29-39, Mississippi Code of 1972, is
10 amended as follows:

11 51-29-39. In lieu of the method provided in Sections
12 51-29-29 through 51-29-35 for acquiring land and making
13 compensation for damages, the drainage commissioners may adopt the
14 following method for acquiring lands and making compensation for
15 damages, to wit:

16 The commissioners may, at any time after the organization of
17 the district, appraise the value of any land taken or to be taken
18 for the purposes of the proposed improvement, according to the
19 plans of the district on file, and the damages resulting to the
20 owners from such taking; provided that the board may specify, in
21 case of any property, the particular purpose for which and the
22 extent to which easement is desired, and the assessment of
23 property in such case shall represent only the damages resulting
24 from the use so specified. They may make a complete appraisalment
25 of all such lands, taken or to be taken, at one time, or at any
26 time make appraisalments as it becomes necessary or desirable.

27 When the commissioners shall have made their appraisalment of lands
28 taken, they shall certify to the same and file it with the clerk

29 of the chancery court of the county in which the land lies. The
30 court, or chancellor in vacation, shall enter an order designating
31 the date, time, and place for the hearing of objections to such
32 appraisement, either at a regular term of the court or in
33 vacation; and the clerk shall issue a summons directed to the
34 sheriff of the county or counties of the state in which any
35 landowner or other person interested may reside, commanding him to
36 summon such owner or owners or interested persons to be and appear
37 at the time and place named. If the owner of any land sought to
38 be taken be an infant or person of unsound mind, the summons may
39 be on his guardian; and the guardian in such cases is authorized,
40 subject to the approval of the chancellor in termtime or vacation,
41 to sell and convey such property and dedicate it thus to the
42 public use, or he may agree upon the damages and thereby bind the
43 ward. If there be no guardian in such case, the chancellor in
44 vacation may, on application of anyone in interest, appoint a
45 guardian ad litem to represent such infant or person of unsound
46 mind, whose acts and doings in the premises shall be valid and
47 binding on the ward. The chancellor may require a bond of such
48 guardian ad litem. The clerk of the court shall notify the
49 guardian ad litem of his appointment and the amount of bond
50 required, if any, by certified mail sent to the post office
51 address of said guardian. If the owner of such land be a
52 nonresident of the state or cannot be found, or if the owner be
53 unknown, and this shall apply to any person interested, upon
54 affidavit to that fact being made by the commissioners or by their
55 agent or attorney, service of the summons may be had on any of his
56 agents in charge of the land; or publication shall be made in the
57 manner provided by law for publication for nonresident and unknown
58 parties in chancery suits. If the land belongs to a deceased
59 person whose estate is being administered, the summons may be
60 served upon the executor or administrator, who shall, for all
61 purposes of this chapter, be authorized to act for the owner, and
62 he shall be responsible on his bond accordingly. Such notice,
63 when published, need only state that the hearing will be for the
64 purpose of confirming the report of the commissioners as to the
65 appraisement of land taken for the use of the district, it shall

66 contain the names of the owners or persons interested in such land
67 and their post office address, if known, and if unknown, that fact
68 shall be so stated, and it shall further contain a list of the
69 land, described by section numbers, belonging to such nonresident
70 owners and through which the ditches of the district are to run,
71 or which such lands are to be taken for the uses of the district.

72 If any owner is not satisfied with the amount allowed by the
73 commissioners for lands taken by reason of the construction of
74 such proposed system according to the plans of said district, he
75 shall file with the clerk of the court written objections thereto,
76 in specific terms, prior to the time designated for said hearing.

77 If on the hearing by the court or chancellor in vacation no
78 written objections are filed, a decree confirming the appraisement
79 shall be rendered, and upon payment of said amount to the chancery
80 clerk, the commissioners of the district may enter upon and take
81 possession of the said property and appropriate it to the public
82 use of said district; and the title of said property shall
83 thereupon vest in said district. The clerk shall receipt upon the
84 decree for the money paid, and said decree with the receipt
85 thereon shall be recorded.

86 If written objections are filed prior to the time set for the
87 hearing, the court or chancellor in vacation shall proceed to hear
88 the objections filed, trying the cause or causes without the
89 intervention of a jury.

90 No judgment by default shall be entered against an owner or
91 person interested residing in this state unless it appear that he
92 has been duly served with summons at least five (5) days before
93 the return day, and no judgment by default shall be rendered
94 against any nonresident or unknown person or persons interested
95 unless proper publication has been made. In computing the number
96 of days before the return day, intermediate Saturdays, Sundays and
97 legal holidays shall be excluded.

98 SECTION 2. This act shall take effect and be in force from
99 and after its passage.