

By: Representative Simpson (By Request)

To: Conservation and  
Water ResourcesHOUSE BILL NO. 794  
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 51-29-39, MISSISSIPPI CODE OF 1972,  
2 TO INCREASE THE NUMBER OF DAYS THAT MUST ELAPSE AFTER SERVICE OF A  
3 SUMMONS BEFORE A DEFAULT JUDGMENT MAY BE ENTERED, IN THOSE  
4 SITUATIONS WHERE COMMISSIONERS OF A DRAINAGE DISTRICT APPRAISE THE  
5 VALUE OF LAND TAKEN FOR DISTRICT IMPROVEMENTS AND PAY COMPENSATION  
6 THEREFOR; TO AMEND SECTION 21-19-13, MISSISSIPPI CODE OF 1972, TO  
7 GRANT ADDITIONAL MUNICIPALITIES THE AUTHORITY TO CLEAR DRAINAGE  
8 DITCHES ON PUBLIC OR PRIVATE PROPERTY; TO IMPOSE RESTRICTIONS  
9 UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 51-35-305,  
10 MISSISSIPPI CODE OF 1972, TO GRANT ADDITIONAL MUNICIPALITIES THE  
11 AUTHORITY TO ORGANIZE FLOOD AND DRAINAGE CONTROL DISTRICTS; AND  
12 FOR RELATED PURPOSES.

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

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

16 51-29-39. In lieu of the method provided in Sections  
17 51-29-29 through 51-29-35 for acquiring land and making  
18 compensation for damages, the drainage commissioners may adopt the  
19 following method for acquiring lands and making compensation for  
20 damages, to wit:

21 The commissioners may, at any time after the organization of  
22 the district, appraise the value of any land taken or to be taken  
23 for the purposes of the proposed improvement, according to the  
24 plans of the district on file, and the damages resulting to the  
25 owners from such taking \* \* \*. The board may specify, in case of  
26 any property, the particular purpose for which and the extent to  
27 which easement is desired, and the assessment of property in such  
28 case shall represent only the damages resulting from the use so  
29 specified. They may make a complete appraisal of all such  
30 lands, taken or to be taken, at one time, or at any time make  
31 appraisements as it becomes necessary or desirable. When the  
32 commissioners \* \* \* have made their appraisal of lands taken,

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

71 The notice shall contain the names of the owners or persons  
72 interested in such land and their post office address, if known,  
73 and if unknown, that fact shall be so stated, and \* \* \*  
74 shall \* \* \* contain a list of the land, described by section  
75 numbers, belonging to such nonresident owners \* \* \* through which  
76 the ditches of the district are to run, or which such lands are to  
77 be taken for the uses of the district.

78 If any owner is not satisfied with the amount allowed by the  
79 commissioners for lands taken by reason of the construction of  
80 such proposed system according to the plans of the district, he  
81 shall file with the clerk of the court written objections \* \* \*,  
82 in specific terms, prior to the time designated for the hearing.

83 If \* \* \* no written objections are filed, a decree confirming  
84 the appraisement shall be rendered, and upon payment of the amount  
85 to the chancery clerk, the commissioners of the district may enter  
86 upon and take possession of the \* \* \* property and appropriate it  
87 to the public use of the district and the title of the property  
88 shall thereupon vest in the district. The clerk shall receipt  
89 upon the decree for the money paid, and the decree with the  
90 receipt thereon shall be recorded.

91 If written objections are filed prior to the time set for the  
92 hearing, the court or chancellor in vacation shall proceed to hear  
93 the objections filed, trying the cause or causes without the  
94 intervention of a jury.

95 No judgment by default shall be entered against an owner or  
96 person interested residing in this state unless it appears that he  
97 has been duly served with summons at least thirty (30) days before  
98 the return day, and no judgment by default shall be rendered  
99 against any nonresident or unknown person or persons interested  
100 unless proper publication has been made.

101 SECTION 2. Section 21-19-13, Mississippi Code of 1972, is  
102 amended as follows:

103 21-19-13. (1) The governing authorities of municipalities  
104 shall have the power to establish, alter and change the channels  
105 of streams or other water courses, and to bridge the same,  
106 whenever so to do will promote the health, comfort and convenience  
107 of the inhabitants of such municipality. \* \* \*

108 (2) The governing authorities of any municipality with a

109 population of ten thousand (10,000) or more according to the most  
110 recent federal census shall also have the power and authority to  
111 incur costs and pay necessary expenses in providing labor,  
112 materials and supplies to clean or clear drainage ditches, creeks  
113 or channels, whether on public or private property, and to incur  
114 costs and pay necessary expenses in providing labor, materials and  
115 supplies in order to prevent erosion where such erosion has been  
116 caused or will be caused by such drainage ditches, creeks or  
117 channels. This paragraph shall not impose any obligation or duty  
118 upon the municipality and shall not create any additional rights  
119 for the benefit of any owner of public or private property.

120 (3) No additional taxes shall be imposed for the works  
121 authorized under subsections (1) and (2) of this section until the  
122 governing authorities shall adopt a resolution declaring its  
123 intention to levy the taxes and establishing the amount of the tax  
124 levies and the date on which the taxes initially will be levied  
125 and collected. This date shall be the first day of a month but  
126 not earlier than the first day of the second month from the date  
127 of adoption of the resolution. Notice of the proposed tax levies  
128 shall be published once each week for at least three (3) weeks in  
129 a newspaper having a general circulation in the municipality. The  
130 first publication of the notice shall be made not less than  
131 twenty-one (21) days before the date fixed in the resolution on  
132 which the governing authorities propose to levy the taxes, and the  
133 last publication of the notice shall be made not more than seven  
134 (7) days before that date. If, within the time of giving notice,  
135 fifteen percent (15%) or two thousand five hundred (2,500),  
136 whichever is less, of the qualified electors of the municipality  
137 file a written petition against the levy of the taxes, then the  
138 taxes shall not be levied unless authorized by a majority of the  
139 qualified electors of the municipality voting at an election to be  
140 called and held for that purpose.

141 (4) This section shall stand repealed on July 1, 2001.

142 SECTION 3. Section 51-35-305, Mississippi Code of 1972, is

143 amended as follows:

144           51-35-305. (1) Flood and drainage control districts may now  
145 or hereafter be organized in this state under the provisions of  
146 this article, in the manner hereinafter provided, whenever any  
147 part of such district lies wholly or partially in or adjacent to  
148 any part of a municipality having a population of ten thousand  
149 (10,000) or more inhabitants at the time of the filing of the  
150 petition to create such district. For the purposes of determining  
151 population of any municipality, the last completed census prior to  
152 the filing of such petition shall be presumed to be the population  
153 of such municipality at the time of the filing of such petition.  
154 Each flood and drainage control district shall be an agency of the  
155 state and a body politic and corporate, and may be composed of one  
156 or more entire municipalities or a part or parts thereof, one or  
157 more entire counties or a part or parts thereof, or any  
158 combination of counties and municipalities or a part or parts  
159 thereof.

160           (2) This section shall stand repealed on July 1, 2001.

161           SECTION 4. The Attorney General of the State of Mississippi  
162 is hereby directed to submit this act, immediately upon approval  
163 by the Governor, or upon approval by the Legislature subsequent to  
164 a veto, to the Attorney General of the United States or to the  
165 United States District Court for the District of Columbia in  
166 accordance with the provisions of the Voting Rights Act of 1965,  
167 as amended and extended.

168           SECTION 5. This act shall take effect and be in force from  
169 and after the date it is effectuated under Section 5 of the Voting  
170 Rights Act of 1965, as amended and extended.