HOUSE BILL NO. 434

AN ACT TO AUTHORIZE MUNICIPALITIES TO CREATE DRAINAGE
DISTRICTS; TO REQUIRE A REFERENDUM ON THE QUESTION OF CREATING A
MUNICIPAL DRAINAGE DISTRICT BEFORE SUCH A DISTRICT MAY BE CREATED;
TO PROVIDE THAT THE GOVERNING AUTHORITIES OF A MUNICIPALITY
CREATING SUCH A DRAINAGE DISTRICT SHALL MANAGE THE DRAINAGE
DISTRICT; TO PROVIDE THE POWERS AND DUTIES OF SUCH DRAINAGE
DISTRICTS; TO AUTHORIZE MUNICIPAL DRAINAGE DISTRICTS TO LEVY
ASSESSMENTS ON PROPERTY IN A DISTRICT; TO REQUIRE A PETITION
ELECTION ON THE ISSUE OF WHETHER OR NOT A MUNICIPAL DRAINAGE
DISTRICT MAY LEVY ANY TAX OR ASSESSMENT ON PROPERTY; AND FOR
RELATED PURPOSES.

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

SECTION 1. Each drainage district created under this act
shall be a body corporate, shall have authority to sue in its own
corporate name and be sued therein, may contract and be contracted
with, may plead and be impleaded, and where organized or operating
under the provisions of this act in its name may do and perform
any and all things necessary and authorized by this act. All such
acts may be done by the governing authorities in the name of the
district.

SECTION 2. (1) The terms "benefits" and "betterments," as
used in this act are interchangeable and shall be construed as
synonymous. The terms "ditches" and "drains" shall be construed
to also include levees and closed drains, such as tiling, as well
as open ditches.

(2) For the purposes of this act, the following terms shall
have the meanings ascribed in this section unless the context
clearly requires otherwise:

(a) "Drainage district" or "district" means a municipal
drainage district created under this act.
(b) "Governing authorities" means the governing authorities of any municipality creating or proposing to create a municipal drainage district under this act.

c) "Municipality" means any municipality creating or proposing to create a municipal drainage district under this act.

SECTION 3. A municipality may create a drainage district under this act for storm water management purposes conducive to public health in the manner provided in this act, and when created, shall consist of a system of artificial main drains, lateral drains or ditches, natural drains and water courses, or levees. To the end that the purposes of the creation of such districts according to this system may be attained, they shall have and are given full power and authority to construct or to cause to be constructed artificial main drains and ditches, lateral drains and ditches, and tile drains over the lands of others or over or on lands which may be acquired by such district, and to alter, deepen, or improve any and all natural drains and water courses as it may be necessary to alter, deepen, or improve so that a complete system of such drains may exist in the district. Such districts may also, in addition to the construction of such drains, construct or erect over the land of others, or over the lands to be acquired by the drainage district for that purpose, such levees as may be necessary to protect or reclaim any lands from overflow from any source.

SECTION 4. All drainage districts created under this act shall severally exercise their respective powers and be managed by the governing authorities of the municipality in which the district is organized.

SECTION 5. Whenever the governing authorities of a municipality desire to create a drainage district for the construction of drains or ditches across the lands of others for storm water management purposes, or to maintain and keep in repair any such drains and ditches constructed, or to establish in such
district a combined system of drainage or protection from wash or overflow, and to construct and maintain the same by special assessment upon the property benefited thereby, the governing authorities shall adopt a resolution declaring its desire so to do, setting forth the proposed name of the drainage district, the necessity for the drainage district, the description of the lands to be included in the drainage district and the date on which the drainage district is to be created. The governing authorities shall file such resolution with the clerk of the municipality.

SECTION 6. Upon the resolution provided for in Section 5 of this act, being filed in the office of the clerk of the municipality, such resolution shall be published once each week for at least three (3) consecutive weeks in at least one (1) newspaper published in such municipality. The first publication of such notice shall be made not less than twenty-one (21) days before the date fixed in the resolution, and the last publication shall be made not more than seven (7) days before such date. If no newspaper is published in the municipality, then such notice shall be given by publishing the resolution for the required time in some newspaper having a general circulation in the municipality. If, within the time of giving notice, twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of the municipality shall file a written petition against the creation of the drainage district, then an election on the question of the creation of the drainage district shall be called. At the election, all qualified electors of the municipality may vote, and the ballots used in such election shall have printed thereon a brief statement setting forth the proposed name of the drainage district, the necessity for the drainage district, and the description of the lands to be included in the drainage district, and the words "FOR THE CREATION OF (NAME OF DRAINAGE DISTRICT)" and "AGAINST THE CREATION (NAME OF DRAINAGE DISTRICT)," and the voters shall vote by placing a cross (X) or
check (√) opposite their choice on the proposition. When the
results of the election shall have been canvassed by the election
commissioners of the municipality and certified, the drainage
district may be created if at least three-fifths (3/5) of the
qualified electors who voted in the election voted in favor of
creation of the drainage district. If at least three-fifths (3/5)
of the qualified electors who voted in the election voted in favor
of creation of the drainage district, the governing authorities
may create the drainage district by duly adopting and entering on
their minutes a resolution to that effect.

SECTION 7. The governing authorities shall meet and go upon
and examine lands in the drainage district and the lands over
which the work is proposed to be constructed, and determine:
first, the starting point, route, and termini of the proposed
work, the location and size of the main ditch to be constructed in
the drainage district, which in their opinion will successfully
drain such lands, and whether the drainage of the lands in the
proposed drainage district is possible or not, provided that any
ditch already constructed in the proposed drainage district may be
used as a "main," or part of a main ditch, if found expedient and
sufficient for the purposes of the district; second, the probable
cost of same, including expenses and court costs; third, what land
will be injured or damaged by the proposed work and the probable
aggregate amount of damages such lands will sustain by reason of
the laying out and construction of such ditch or ditches. In the
examination of the district and determination of the questions for
the governing authorities to determine, the governing authorities
are authorized to employ an engineer to go with them upon the
lands of the district and examine the lands, make a map and
profile thereof, and an estimate of the size and depth of the
ditch or ditches required for main outlets for the drains of the
lands, and the probable cost, and a profile thereof.
SECTION 8. Upon a resolution being duly adopted and entered on the minutes of the governing authorities creating drainage districts under this act, such drainage district are declared by law to be created as drainage districts, by the name mentioned in the resolution and are declared to be a body politic and corporate by the name mentioned in the resolution, with the right to have perpetual succession and to adopt and use a corporate seal. The governing authorities and their successors in office shall, from the entry of such resolution, constitute the corporate authorities of the district and shall exercise the functions conferred upon them by this act.

SECTION 9. If a district is created, all moneys that have been advanced or expended in good faith in the organization of any district, necessary for the preliminary work in organization, such as surveys, attorneys' fees, and incidentals thereto, may be repaid by the governing authorities. The governing authorities are authorized to issue certificates of the district to raise funds to have all necessary surveys made and to pay all necessary expenses and costs incurred in the preliminary work prior to the creation of the district, which certificates shall bear interest at the rate of six percent (6%) from their dates, but no certificate shall be made payable for a longer period than two (2) years from its date. These certificates shall be paid as soon as sufficient funds come into the hands of the governing authorities to pay same.

SECTION 10. The governing authorities also shall proceed to procure the right-of-way for the main ditch or ditches of the district, as well as the right-of-way for any laterals, drains or levees that may be decided upon, by agreements with the landowners over or through whose lands the same is to be constructed. They shall take releases of rights-of-way for the construction of such ditch or ditches from the landowners and file same with the chancery clerk of the county in which the municipality is located,
who shall record them. If the governing authorities are not able
to agree with any landowner as to the amount of damages such owner
should receive for the right-of-way over which such ditch or other
improvements or work shall be constructed, the governing
authorities shall appraise the lands needed for such purposes and
proceed as directed in Section 11 of this act.

SECTION 11. When the governing authorities have made their
appraisement of the land taken or to be taken, they shall certify
the same and file it with the clerk of the municipality. The
clerk shall thereupon set down and fix a time for the hearing of
objections to such appraisement.

SECTION 12. If at the hearing by the governing authorities,
no written objections are filed, the governing authorities may
adopt an order confirming the appraisement. Upon payment of such
amount to the clerk of the municipality for the entitled party,
the district may enter upon and take possession of the property
and appropriate it to the use of the district, and the title to
the easement thereof and thereover shall vest in the district.
The clerk shall receipt upon such order for the money paid, and
such decree with the receipt of the clerk shall be recorded in the
records of deeds of the county in which the municipality is
located. If written objections are filed on or before the time
set for the hearing, the governing authorities shall proceed to
hear the objections filed.

The governing authorities may, at such hearing, hear all
objections in entirety or in severality, may adopt an order
confirming the entire report of the governing authorities, or may
adopt any number of orders confirming the report as to any land
taken. At the hearing, the governing authorities may make
alterations in the appraisement as may be deemed just and
equitable, by raising or lowering any appraisement; and payment of
such amount fixed by order of the governing authorities shall be
made to the clerk of the municipality as provided in this section.
The clerk shall receipt for same on the order, and the order with receipt thereon shall be recorded.

SECTION 13. It shall be the duty of the governing authorities to make a levy each year on the lands lying in the municipality in accordance with such assessments and levies sufficient to meet bond obligations of any district issued by authority of law.

SECTION 14. If the governing authorities have underestimated the amount or the cost of work necessary for any district, they may order such additional work done or such additional costs paid and may reassess the properties of the district.

SECTION 15. If the drainage district shall issue bonds for any part of the money levied for the purpose of the district as authorized in this act, such bonds may be sold on the market to the best advantage but shall not be sold for less than par value, unless a sale below par be approved by the governing authorities. The whole amount realized from the sale of such bonds shall be deposited in the treasury of the district.

SECTION 16. After the creation of any drainage district under this act, and after the confirmation of the assessment as provided in this act, and after laying out a system of main drains for the drainage district, the governing authorities shall advertise for bids for the construction of ditches by publishing a notice for three (3) weeks in some newspaper in the municipality, stating the time and place they will receive bids for the construction of such work. The time fixed for receiving and opening the bids shall not be less than twenty-two (22) days from the time of the first publication. The notice shall specify the kind and nature of the work to be done, the amount thereof as estimated by the engineer, and in what manner payment will be made. The governing authorities shall meet at the time and place designated in the notice and open the bids, and the contracts shall be let to the lowest responsible bidder. The governing
authorities shall have the right to reject any and all bids if they deem that the bids are too high, and may adjourn such letting to a future time and continue the advertisement until that time.

The governing authorities shall take and file a certificate of publication of the notice with the clerk of the municipality. Upon the acceptance of any bid for the construction of any work, they shall require the bidder to enter into contract with them for the faithful performance of the work according to the plans, specifications, profile, and estimates of the engineer, and require the contractor to enter into bonds for the faithful performance of such work within the time and in the manner specified in such contract.

SECTION 17. The governing authorities may, after the creation of the district, do any and all acts that may be necessary in and about the surveying, laying out, constructing, repairing, altering, enlarging, cleaning, protecting, and maintaining any drain or ditch or other work. They and their successors shall have charge of such ditch or other work in perpetuity, and shall annually see that the same is cleaned out and all obstructions, brush, willow, or other growth removed, so that such ditches or other work shall be kept thoroughly cleaned and in good repair so as to perfectly drain the lands in the district. For those purposes, the governing authorities may borrow money in anticipation of the collection of already levied taxes at an overall maximum interest rate to maturity not greater than that allowed in Section 75-17-105. The governing authorities may issue in evidence thereof tax anticipation warrants, which warrants shall be paid solely and only out of the first funds collected from taxes levied before the borrowing of the funds and issuance of the warrants. The governing authorities may make additional assessments from time to time, as necessity may require, to pay for the expense of maintaining, cleaning out and keeping in repair the ditches of the district and meeting the
legal obligations of such district. The additional assessment for maintaining, cleaning out and keeping in repair the ditches of the district and meeting the legal obligations of such district shall be made by the governing authorities as provided in this section. On or before the first Monday in September of each year the governing authorities shall assess on each tract of land or other property in the district, such an amount as is necessary to pay the expense of maintaining, cleaning out and keeping in repair the ditches of the district and meeting the legal obligations of the district, and it shall become and be the duty of the governing authorities to levy a tax in accordance with such assessment sufficient to meet such expense of maintaining, cleaning out and keeping in repair the ditches of the district. As soon as the tax levy is made, the clerk of the municipality, at the expense of the district, shall prepare an assessment record of the district, which may contain any number of columns, in which may be inscribed the tax levied each year. He shall place the amount of the levy for the year, and the record shall be certified by the governing authorities, attested by the seal of the district, and filed with the tax collector of the municipality, or such other taxing district which the municipality may be a part of. The clerk of the municipality shall make a copy of the assessment record for the municipality. Any person aggrieved at the action of the governing authorities in levying the tax provided under this section shall have the right to appeal to the circuit court as provided in Section 27-35-119. All taxes assessed and levied under this act shall be collected at the same time and in the same manner as ad valorem taxes, and the same penalties shall accrue for the nonpayment thereof as for nonpayment of ad valorem taxes. 

SECTION 18. If any damages shall be allowed to any landowner for the construction of ditches across his lands, actual damages shall be allowed. Such damages shall be paid in cash by giving to
the party entitled an order for the amount thereof on the district
treasurer, who shall pay the same on presentation.

SECTION 19. At the end of the fiscal year after the creation
of the drainage district and annually, the governing authorities
shall make a report showing the amount of money levied for main
district purposes, the amount of orders issued, the purposes for
which issued, to whom payable, the amount of money on hand, and
the amounts levied and expended for each and every subdistrict or
lateral drain laid out and established by them. If at any time it
appears that there are not sufficient funds to pay for any work
done or contemplated, the governing authorities may make a levy
for the amount required to finish paying for the work already done
or to perform the contemplated work. Any person aggrieved at the
action of the governing authorities shall have the right to appeal
to the circuit court as provided in Section 27-35-119.

SECTION 20. The governing authorities shall have the right
and authority to go upon any and all of the lands lying within the
district for the purpose of examining such lands and making plans,
surveys, profiles and estimates of the kind, character and cost of
the proposed system of drains, and may go upon such lands at any
time for the purpose of removing obstructions, cleaning out and
keeping in repair the ditches. No landowner shall have any power
or authority to prevent, hinder or delay the governing authorities
in the discharge of their lawful duties in their behalf. If such
landowner or any other person shall undertake to interfere with,
hinder, obstruct or delay the governing authorities in the
discharge of their duties, the governing authorities may file
their complaint in the chancery court or before the chancellor in
vacation. The court or chancellor shall cite the party to appear
and show cause, if any he has, why he should not be fined for the
hindrance or obstruction, and the court or chancellor may fine the
party not more than Twenty-five Dollars ($25.00) per day for every
day's hindrance caused by him to the governing authorities for
contempt of the chancery court.

SECTION 21. In laying out such proposed work and drains and
ditches, the governing authorities shall have the right to take
and use any ditches previously constructed in any part of the
district by any landowner owning the same. If any such ditches
existing prior to the creation of such district shall be of any
value to the district, the governing authorities shall have the
power to allow the landowner reasonable compensation for the value
thereof, which shall be put down on the assessment roll as a
credit for ditches already constructed.

SECTION 22. After the creation of any drainage district
under this act, if any other or different drainage district lying
adjacent to or above such drainage district, or any district not
heretofore organized shall be organized and drain the water from
their ditches into the ditches or drains of the lower drainage
district from the lands lying above or adjacent and draining into
such drainage district so organized, the governing authorities
shall ask, demand and receive from the upper district or adjacent
district just compensation for an outlet for the waters of the
upper or adjacent district. If the governing authorities of the
two (2) districts cannot agree upon the amount to be paid by the
district, then the same shall be submitted by petition to the
chancery court or chancellor in vacation having jurisdiction of
the lower district. Such court or chancellor shall hear the
petition on proper notice and shall apportion the cost or amount
to be paid, if any, by the upper or adjacent district. This
section shall apply to all natural drains which may have been
heretofore or which shall hereafter be improved, cleaned out,
dredged and used as a drainage canal or main outlet for any
drainage district.

SECTION 23. If in the creation of any drainage district and
thereafter in the construction of ditches, drains or other
improvements, it shall be necessary to cross under or through any railroad or the right-of-way thereof, the same may be accomplished as provided in this section. Upon filing of the report of the governing authorities as to assessments, they shall make a special report showing the proposed plans, manner and character of the work as proposed in passing through the right-of-way, together with an estimate of the costs of same, including all damages that will be sustained by the railroad by virtue of the construction of the proposed work. Upon the hearing of the governing authorities' report, it shall be the duty of the railroad company to appear and show cause why the report should not be confirmed, as other interested parties are required to appear. In such showing it shall be the duty of the railroad company to file with the governing authorities, on or before the time set for the hearing, its estimate of the costs of the proposed work, including all damage that will be sustained by it by doing the proposed work. After hearing all evidence offered, the governing authorities may make such alterations to the costs and damages to the railroad. Any railroad aggrieved at the action of the governing authorities shall have the right to appeal to the circuit court as provided in Section 23-35-119. An appeal shall not prevent the governing authorities constructing the work as proposed through the railroad right-of-way, whenever in their discretion it is necessary to do such work. Before beginning the construction of the work through the right-of-way, the governing authorities shall pay to the railroad company, or the municipal clerk for it, the amount of damages determined by the district to be paid the railroad.

SECTION 24. When it shall become necessary, in the course of the construction of the work being done by the governing authorities, to pass through any railroad right-of-way in the manner and according to plans filed as provided in this act, it shall be the duty of the governing authorities to give notice in writing to such railroad company of its desire to cross such
right-of-way with its construction work on some approximate date, which shall not be less than sixty (60) days from the date of the notice. The notice shall be served upon any agent or employee of the railroad company upon whom, under the laws of the state, service of process may be had; and the governing authorities shall at the same time pay or tender to the railroad company all costs and damages as may have been determined should be paid by the drainage district to the railroad, as provided in this act. It shall thereupon be the duty of the railroad company within a reasonable time to complete the construction work across its right-of-way, according to the plans and specifications under the supervision of the engineer employed by the governing authorities, or to permit the same to be done by the governing authorities. Should the railroad company fail, neglect or refuse to do and perform in good faith such work within the time fixed by the governing authorities for the performance thereof, or to permit same to be done, it shall be liable to the drainage district and all persons for any damage it or they may sustain by reason of such failure, and the railroad company may be compelled to perform such work by mandatory injunction issued at the instance of the governing authorities. This section shall not be so construed as to prohibit the governing authorities from acquiring such right-of-way by the regular eminent domain proceeding if they so elect, or as otherwise provided in this chapter.

SECTION 25. If, in the organization of any drainage district under this act, it shall appear that any railroad company will be benefited by the construction of the proposed work, the governing authorities shall have the right to assess such railroad an amount as they may deem the railroad or railroad company benefited. Such assessment shall be made at the time of assessing the lands of the district, and such railroads shall have the right to appear and make objections as landowners in the district at the time of hearing objections to such assessments.
In determining the amount of such benefits, the governing authorities may take into consideration the improvements that might be made by the railroad of a permanent character, and the increased revenue to be gained by the improvement of the lands in the district for agriculture and sanitation, if any can be shown by the construction of such proposed work.

SECTION 26. If in the construction of ditches the same shall cross any public road, it shall be the duty of the governing authorities to cause to be removed and constructed, at the expense of the municipality, all bridges necessary to be removed or constructed, at a reasonable time, with a view to the convenience of the public and without unreasonable delay to the prosecution of such work.

SECTION 27. Any person who shall wrongfully or purposely fill up, cut, injure, destroy or in any manner injure or impair the usefulness of any drain, ditch or other work constructed under drainage laws shall be guilty of a misdemeanor, may be fined in any sum not exceeding One Hundred Dollars ($100.00), and shall be liable for double the expense occasioned by repairing the same or removing such obstruction, to be recovered at the suit of the proper drainage district.

SECTION 28. The proper chancery court of the county in which a municipality is located shall have jurisdiction of all suits brought against a drainage district, by a drainage district and between drainage districts suing unless otherwise provided.

SECTION 29. The governing authorities of any municipality in which a drainage district has been created and who have sold bonds for eighty percent (80%) of the assessment on the lands in such district, and who have provided for the collection of the remaining twenty percent (20%) of the assessment on the lands in such district in cash within not less than four (4) months, are authorized to issue and sell the bonds, notes or other objects of indebtedness of the drainage district for the twenty percent
or any part thereof, which was provided to have been paid in cash and which has not yet been paid.

SECTION 30. The bonds, notes or other objects of indebtedness issued under Section 29 of this act shall bear interest not exceeding six percent (6%) per annum and shall be nontaxable.

SECTION 31. Before the sale of any such bonds, notes, or other objects of indebtedness provided for in Sections 29 and 30 of this act, the governing authorities shall publish notice to all parties interested for at least ten (10) days of their intention to issue such additional bonds. Any bonds, notes or other evidences of indebtedness issued and sold by the governing authorities shall be a lien on the lands assessed in the drainage district and shall be noncontestable.

SECTION 32. All proceedings under this act are declared to be proceedings in rem. The notices for the organization of a drainage district under this act and all subsequent notices provided for under this act shall be sufficient as notices for the purposes stated, the organization of a district, and the issuance of district bonds as provided under this act.

SECTION 33. All taxes levied under this act shall be payable at the same time ad valorem taxes are payable, and if any taxes so levied under this act are not paid at maturity, the tax collector of the municipality, or such other taxing district which the municipality may be a part of, where the land is situated shall, after having advertised such lands for sale for the same length of time and in the same manner as land delinquent for ad valorem taxes are now required to be advertised, sell the lands so delinquent for taxes thereon, together with all costs and five percent (5%) damages on the amount of taxes for which the land was sold. Such sale shall be separate and distinct from all other sales for ad valorem taxes, but shall be held at the same place...
and time where sales of lands delinquent for ad valorem taxes are held.

SECTION 34. When lands are offered for sale for unpaid drainage district taxes and no person will bid therefor the amount of taxes, damages and costs due, such lands shall be struck off to the drainage district and otherwise dealt with as lands which are sold to the state for delinquent ad valorem taxes. The governing authorities shall be authorized to pay the ad valorem taxes on lands thus acquired by it, to redeem the same from ad valorem tax sales, and to collect the money thus paid with the same damage and interest allowed individuals in similar cases under the general revenue laws of the state therein from the date of such payment, upon the redemption of lands from the drainage district sale.

SECTION 35. The lists of lands sold by the tax collector of the municipality, or such other taxing district which the municipality may be a part of, to individuals and to the drainage district shall be made as required to be made by the state and county collector for lands sold for ad valorem taxes, and shall be filed with the clerk of the chancery court within ten (10) days after the tax sale. Each list shall have the same force and effect, confer the same rights and be entitled to the same remedies for redemption and otherwise as lists made for delinquent taxes by the state and county collector for state and county lands. But such title shall be subject to a title acquired under a sale for ad valorem taxes.

SECTION 36. A list of conveyances of lands sold to drainage districts for drainage district taxes or to individuals shall be recorded in a well-bound and indexed book, which shall be kept in the office of the chancery clerk of the county in which the drainage district is located. It shall be the same book in which other tax sales to individuals are recorded, and shall have the same effect as notice.
SECTION 37. After two (2) years' time for redemption has expired, the governing authorities may take possession of land sold to the district for the district, and lease or sell any lands which it has acquired at tax sale to any person in the manner that the governing authorities think is to the best interests of the district.

SECTION 38. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

SECTION 39. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.