

HOUSE BILL NO. 1315

1 AN ACT TO AMEND SECTIONS 11-27-3, 11-27-11, 11-27-13,
2 11-27-15, 11-27-17, 11-27-19, 11-27-23, 11-27-25, 11-27-27 AND
3 11-27-29, MISSISSIPPI CODE OF 1972, TO REVISE EMINENT DOMAIN
4 PROCEEDINGS; TO PROVIDE FOR THE USE OF A THREE-MEMBER COMMISSION
5 INSTEAD OF A JURY; TO PROVIDE FOR PAYMENT OF COSTS INCURRED BY THE
6 PROPERTY OWNER IF SUCH OWNER PREVAILS; TO REVISE THE APPEALS
7 PROCESS; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 11-27-3, Mississippi Code of 1972, is
10 amended as follows:

11 11-27-3. A special court of eminent domain is hereby
12 created, to consist of a judge, a three-member commission
13 appointed by the judge, all of which shall have a background in
14 real estate and one (1) of which shall be a licensed attorney, and
15 such other officers and personnel as hereinafter set out, and it
16 shall have and exercise the jurisdiction and powers hereinafter
17 enumerated. The original powers and jurisdiction shall be and is
18 hereby fixed in the county court in each county that has elected
19 to come under the provisions of Section 9-9-1, Mississippi Code of
20 1972, or that may hereafter come under the provisions of said
21 Section 9-9-1, and in every other county of this state, the
22 original powers and jurisdiction shall be and is hereby fixed in
23 the circuit court of such county, which said powers and
24 jurisdiction may be exercised in full either in termtime or
25 vacation, or both.

26 **SECTION 2.** Section 11-27-11, Mississippi Code of 1972, is
27 amended as follows:

28 11-27-11. The circuit clerk shall deliver a copy of said
29 order of the court fixing the time and place for the hearing to



30 the sheriff of the county and to the official court reporter. The
31 sheriff shall attend the court and execute all process. The court
32 reporter shall take the testimony. * * * All acts and actions of
33 the clerk and sheriff, * * * shall be filed by the clerk and made
34 a part of the record in the cause.

35 **SECTION 3.** Section 11-27-13, Mississippi Code of 1972, is
36 amended as follows:

37 11-27-13. Each different property, identified by separate
38 ownership, shall constitute a separate civil action and shall
39 require a separate trial, unless otherwise agreed by all parties
40 with the approval of the court. Trial shall be to a commission
41 which shall be selected as provided in Section 11-27-3.

42 Alternatively, trial may be to the court, as provided by the
43 Mississippi Rules of Civil Procedure.

44 **SECTION 4.** Section 11-27-15, Mississippi Code of 1972, is
45 amended as follows:

46 11-27-15. Any defendant may, not less than five (5) days
47 prior to the date fixed for the hearing of the complaint and in
48 the same court where the complaint is pending, serve and file a
49 motion to dismiss under the Mississippi Rules of Civil Procedure
50 for failure to state a claim upon which relief can be granted on
51 any of the following grounds: (1) that the plaintiff seeking to
52 exercise the right of eminent domain is not, in character, such a
53 corporation, association, district or other legal entity as is
54 entitled to the right; (2) that there is no public necessity for
55 the taking of the particular property or a part thereof which it
56 is proposed to condemn; or (3) that the contemplated use alleged
57 to be a public use is not in law a public use for which private
58 property may be taken or damaged. Any such motion, if served and
59 filed, shall be heard and decided by the judge as a preference
60 proceeding, without a commission, prior to the hearing on the
61 complaint. Any party may appeal directly to the Supreme Court
62 from an order overruling or granting any such motion to dismiss,



63 as in other cases, but if the order be to overrule the motion, the
64 appeal therefrom shall not operate as a supersedeas and the court
65 of eminent domain may nevertheless proceed with the trial on the
66 complaint. Any appeal from an order overruling or granting a
67 motion to dismiss shall be a preference action in the Supreme
68 Court and advanced on the docket as appropriate.

69 **SECTION 5.** Section 11-27-17, Mississippi Code of 1972, is
70 amended as follows:

71 11-27-17. When the commission shall be so selected, the
72 commissioners shall be sworn as follows: "I do solemnly swear or
73 affirm that as a member of this commission I will discharge my
74 duty honestly and faithfully, to the best of my ability, and that
75 I will a true verdict render according to the evidence, without
76 fear, favor, or affection, and that I will be governed by the
77 instructions of the court. So help me God."

78 **SECTION 6.** Section 11-27-19, Mississippi Code of 1972, is
79 amended as follows:

80 11-27-19. Evidence may be introduced by either party, and
81 the commission may, in the sound discretion of the judge, go to
82 the premises, under the charge of the court as to conduct,
83 conversation and actions as may be proper in the premises.
84 Evidence of fair market value shall be established as of the date
85 of the filing of the complaint. Any judgment finally entered in
86 payment for property to be taken shall provide legal interest on
87 the award of the commission from the date of the filing of the
88 complaint until payment is actually made; provided, however, that
89 interest need not be paid on any funds deposited by the plaintiff
90 and withdrawn by the defendants prior to judgment. At the
91 conclusion of the trial, the court shall instruct the commission
92 in accordance with the Mississippi Rules of Civil Procedure.

93 **SECTION 7.** Section 11-27-23, Mississippi Code of 1972, is
94 amended as follows:



95 11-27-23. In the trial of all cases provided for herein,
96 nine (9) jurors may bring in a verdict as in other civil cases.
97 The verdict of the commission shall be in the following form: "We,
98 the commission, find that the defendant (naming him) will be
99 damaged by the acquisition of his property for the public use, in
100 the sum of _____ Dollars."

101 **SECTION 8.** Section 11-27-25, Mississippi Code of 1972, is
102 amended as follows:

103 11-27-25. Upon the return of the verdict, the court shall
104 enter a judgment as follows, viz: "In this case the claim of
105 (naming him or them) to have condemned certain lands named in the
106 complaint, to wit: (here describe the property), being the
107 property of (here name the owner), was submitted to a commission
108 composed of (here insert their names) on the _____ day of
109 _____, A. D., _____, and the commission returned a verdict fixing
110 said defendant's compensation and damages at _____ Dollars,
111 and the verdict was received and entered. Now, upon payment of
112 the said award, with legal interest from the date of the filing of
113 the complaint, ownership of the said property shall be vested in
114 plaintiff and it may be appropriated to the public use as prayed
115 for in the complaint. Let the plaintiff pay the costs, for which
116 execution may issue."

117 **SECTION 9.** Section 11-27-27, Mississippi Code of 1972, is
118 amended as follows:

119 11-27-27. Upon the return of the verdict and entry of the
120 judgment, the applicant shall pay to defendants, or to the clerk
121 if defendants absent themselves, the differences between the
122 judgment and deposits previously made, if any; shall pay the costs
123 of court, including the cost of commission service as is otherwise
124 provided by law for the court in which the case is tried. Then,
125 ownership of the property described in the petition shall be
126 vested in petitioner and it may use said property as specified in
127 the petition. If deposits previously made exceed the judgment,



128 then the clerk or defendant to whom disbursement thereof has been
129 made, as the case may be, shall pay such excess to the petitioner.
130 If the party seeking to take the property shall lose, the party
131 shall pay all expenses of the property owner incurred as a result
132 of the proceedings.

133 **SECTION 10.** Section 11-27-29, Mississippi Code of 1972, is
134 amended as follows:

135 11-27-29. (1) Every party shall have the right to appeal
136 directly to the Chancery Court from the judgment entered by the
137 commission in the special court of eminent domain, whether tried
138 in county court or circuit court, by giving notice within ten (10)
139 days from the date of the judgment or final order entered by the
140 court to the court reporter to transcribe the record as taken and
141 by prepaying all costs that may be adjudged against him; and said
142 notice to the court reporter shall be given and the costs shall be
143 paid as is otherwise required by law * * *. If the judgment be in
144 excess of the sum, if any, deposited, and the plaintiff, other
145 than the State of Mississippi or any political subdivision
146 thereof, desires an appeal, he shall deposit a sum, or a good and
147 sufficient surety bond with a surety company authorized to do
148 business in the State of Mississippi acceptable to the clerk,
149 equal to double the amount of the judgment, less the amount of the
150 deposit, if any, which shall be held exclusively to secure all
151 damages assessed against plaintiff. In any case where the deposit
152 exceeds the compensation to be paid the defendants as determined
153 by the final judgment, the excess shall be returned to the
154 plaintiff. If the appeal is by the defendant, it shall not
155 operate as a supersedeas, nor shall the right of the plaintiff to
156 enter in and upon the land and to appropriate the same to public
157 use be delayed. If the appeal be by the State of Mississippi or
158 any political subdivision thereof, no bond or prepayment of costs
159 shall be required, except the * * * filing fee as required * * *.



160 (2) The term of a special court of eminent domain shall
161 begin when the court is convened as provided by statute and shall
162 continue for ten (10) days immediately following the entry and
163 filing of a judgment or final order with the clerk of the court,
164 and thereafter the court shall have jurisdiction to dispose of any
165 post trial motions or proceedings filed within said ten (10) days.
166 The jurisdiction of a special court of eminent domain shall expire
167 upon the entry and filing with the clerk of a final judgment or
168 order disposing of any post trial motions or proceedings.

169 (3) An appeal from the chancery court shall be made to the
170 Supreme Court.

171 **SECTION 11.** This act shall take effect and be in force from
172 and after July 1, 2002.

