

By: Representative Guice

To: Judiciary A

HOUSE BILL NO. 365

1 AN ACT TO AMEND SECTIONS 11-27-7, 11-27-19 AND 11-27-83,  
2 MISSISSIPPI CODE OF 1972, TO PROVIDE A METHOD OF COMPENSATION IN  
3 EMINENT DOMAIN PROCEEDINGS WHEN THE ONLY MATTER IN DISPUTE IS THE  
4 VALUE OF THE PROPERTY; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 11-27-7, Mississippi Code of 1972, is  
7 amended as follows:

8 11-27-7. The complaint shall be filed with the circuit clerk  
9 and shall be assigned a number and placed on the docket as other  
10 pleadings in circuit court or county court. The plaintiff shall  
11 also file a lis pendens notice in the office of the chancery clerk  
12 immediately after filing the complaint. The circuit clerk, or the  
13 plaintiff by his attorney, shall forthwith present such complaint  
14 to the circuit judge or county judge, as the case may be, who  
15 shall by written order directed to the circuit clerk fix the time  
16 and place for the hearing of the matter, in termtime or vacation,  
17 and the time of hearing shall be fixed on a date to allow  
18 sufficient time for each defendant named to be served with process  
19 as is otherwise provided by the Mississippi Rules of Civil  
20 Procedure, for not less than thirty (30) days prior to the  
21 hearing. If a defendant, or other party in interest, shall not be  
22 served for the specified time prior to the date fixed, the hearing  
23 shall be continued to a day certain to allow the thirty-day period  
24 specified. Not less than twenty (20) days prior to the date fixed  
25 for such hearing, the plaintiff shall file with the circuit clerk  
26 and serve upon the defendants, or their respective attorneys, a  
27 statement showing: (1) the fair market value of the property to  
28 be condemned, determined as of the date of the filing of the



29 complaint; (2) the damages, if any, to the remainder if less than  
30 the whole is taken, giving a total compensation and damages to be  
31 due as determined by the plaintiff. Not less than ten (10) days  
32 prior to the date fixed for such hearing, each of the defendants  
33 shall file with the circuit clerk and serve upon the plaintiff, or  
34 his attorney, a statement showing: (1) the fair market value of  
35 the property to be condemned, determined as of the date of the  
36 filing of the complaint; (2) the damages, if any, to the remainder  
37 if less than the whole is taken, giving a total compensation and  
38 damages to be due as determined by the defendants. In each such  
39 instance, both the plaintiff and the defendant shall set out in  
40 such statement the asserted highest and best use of the property  
41 and shall itemize the elements of damage, if any, to the remainder  
42 if less than the whole is taken. The statements required by this  
43 section shall constitute the pleadings of the parties with respect  
44 to the issue of value, and shall be treated as pleadings are  
45 treated in civil actions in the circuit court. The judge, for  
46 good cause shown, may increase or decrease the time for pleading  
47 by the plaintiff or by the defendant.

48 If the only disagreement is the value of the property to be  
49 condemned, then each party to the proceeding shall select an  
50 appraiser and the court shall appoint three (3) neutral appraisers  
51 to appraise the property. The court shall reject the lowest and  
52 highest appraisals and shall average the remaining three (3)  
53 appraisals. That amount shall be doubled and the party whose  
54 property is condemned shall be compensated in such doubled amount.

55 **SECTION 2.** Section 11-27-19, Mississippi Code of 1972, is  
56 amended as follows:

57 11-27-19. Evidence may be introduced by either party, and  
58 the jury may, in the sound discretion of the judge, go to the  
59 premises, under the charge of the court as to conduct,  
60 conversation and actions as may be proper in the premises.  
61 Evidence of fair market value shall be established as of the date



62 of the filing of the complaint. Any judgment finally entered in  
63 payment for property to be taken shall provide legal interest on  
64 the award of the jury from the date of the filing of the complaint  
65 until payment is actually made; provided, however, that interest  
66 need not be paid on any funds deposited by the plaintiff and  
67 withdrawn by the defendants prior to judgment. At the conclusion  
68 of the trial, the court shall instruct the jury in accordance with  
69 the Mississippi Rules of Civil Procedure.

70 If the only disagreement is the value of the property to be  
71 condemned, then each party to the proceeding shall select an  
72 appraiser and the court shall appoint three (3) neutral appraisers  
73 to appraise the property. The court shall reject the lowest and  
74 highest appraisals and shall average the remaining three (3)  
75 appraisals. That amount shall be doubled and the party whose  
76 property is condemned shall be compensated in such doubled amount.

77 **SECTION 3.** Section 11-27-83, Mississippi Code of 1972, is  
78 amended as follows:

79 11-27-83. If a plaintiff eligible to claim the right of  
80 immediate possession under the provisions of Sections 11-27-81  
81 through 11-27-89 shall desire immediate possession of the property  
82 sought to be condemned, other than property devoted to a public  
83 use, the plaintiff shall so state in the complaint to condemn  
84 property filed with the circuit clerk pursuant to Sections 11-27-1  
85 through 11-27-49, Mississippi Code of 1972, and shall therein make  
86 and substantiate the following declaration concerning the  
87 governmental project for which the property is being condemned:

88 That the plaintiff shall suffer irreparable harm and delay by  
89 exercising the right to condemn said property through eminent  
90 domain proceedings pursuant to Sections 11-27-1 through 11-27-49,  
91 as opposed to claiming the right of immediate possession of said  
92 property pursuant to Sections 11-27-81 through 11-27-89.

93 The court, or the judge thereof in vacation, as soon as  
94 practicable after being satisfied that service of process has been



95 obtained, shall appoint a disinterested, knowledgeable person  
96 qualified to make an appraisal of the property described in the  
97 complaint to act as appraiser. The appraiser, after viewing the  
98 property, shall return to the clerk of court within ten (10) days  
99 after his appointment, his report in triplicate, under oath, which  
100 report shall state: (1) the fair market value of the property to  
101 be condemned, determined as of the date of the filing of the  
102 complaint; (2) the damages, if any, to the remainder if less than  
103 the whole is taken, giving a total compensation and damages to be  
104 due as determined by the appraiser; and (3) his opinion as to the  
105 highest and best use of the property, and a narrative of the facts  
106 pertaining to his appraisal.

107 If the only disagreement is the value of the property to be  
108 condemned, then each party to the proceeding shall select an  
109 appraiser and the court shall appoint three (3) neutral appraisers  
110 to appraise the property. The court shall reject the lowest and  
111 highest appraisals and shall average the remaining three (3)  
112 appraisals. That amount shall be doubled and the party whose  
113 property is condemned shall be compensated in such doubled amount.

114 **SECTION 4.** This act shall take effect and be in force from  
115 and after July 1, 2004.

