

By: Representatives Evans, Straughter

To: Judiciary A

HOUSE BILL NO. 702

1 AN ACT TO AMEND SECTIONS 11-27-7 AND 11-27-19, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE THAT PARTIES DEFENDING EMINENT DOMAIN
3 PROCEEDINGS SHALL RECOVER COSTS ASSOCIATED WITH PROVING PROPERTY
4 VALUE; TO AMEND SECTION 11-27-37, MISSISSIPPI CODE OF 1972, IN
5 CONFORMITY; AND FOR RELATED PURPOSES.

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

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

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

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

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

52 11-27-19. Evidence may be introduced by either party, and
53 the jury may, in the sound discretion of the judge, go to the
54 premises, under the charge of the court as to conduct,
55 conversation and actions as may be proper in the premises.
56 Evidence of fair market value shall be established as of the date
57 of the filing of the complaint. Any judgment finally entered in
58 payment for property to be taken shall provide legal interest on
59 the award of the jury from the date of the filing of the complaint
60 until payment is actually made; provided, however, that interest
61 need not be paid on any funds deposited by the plaintiff and

62 withdrawn by the defendants prior to judgment. Judgment shall
63 also compensate all costs incurred by a defendant in the eminent
64 domain proceedings to establish the value of the property
65 regardless of whether the defendant prevails in the proceedings.

66 At the conclusion of the trial, the court shall instruct the jury
67 in accordance with the Mississippi Rules of Civil Procedure.

68 **SECTION 3.** Section 11-27-37, Mississippi Code of 1972, is
69 amended as follows:

70 11-27-37. In case the plaintiff shall fail to pay the
71 damages and costs awarded to the defendant within ninety (90) days
72 from the date of the rendering of the final judgment, if such
73 judgment is not appealed from, or in case the suit shall be
74 dismissed by the plaintiff except pursuant to settlement, or the
75 judgment be that the plaintiff is not entitled to a judgment
76 condemning property, the defendant shall recover of the plaintiff
77 in an action brought therefor all reasonable expenses, including
78 attorneys' fees, incurred by him in defending the suit.

79 **SECTION 4.** This act shall take effect and be in force from
80 and after July 1, 2005.