

By: Representatives Hobgood-Wilkes, Owen

To: Judiciary A

HOUSE BILL NO. 934

1 AN ACT TO CREATE NEW SECTION 11-27-8, MISSISSIPPI CODE OF
2 1972, TO REQUIRE COMMERCIAL BUSINESS OWNERS TO BE COMPENSATED FOR
3 LOSS OF GOODWILL IN EMINENT DOMAIN CASES; TO AMEND SECTIONS
4 11-27-7, 11-27-19, 11-27-83 AND 11-27-89, MISSISSIPPI CODE OF
5 1972, TO REQUIRE PLEADINGS AND EVIDENCE PRESENTED TO THE COURT IN
6 EMINENT DOMAIN PROCEEDINGS TO INCLUDE THE VALUE OF GOODWILL TO BE
7 LOST BY AN OWNER OF A BUSINESS CONDUCTED UPON THE SUBJECT PROPERTY
8 OR THE VALUE OF ANY COMMERCIAL FARMING OPERATION, INCLUDING LOSS
9 OF PROJECTED INCOME, CONDUCTED UPON THE PROPERTY; AND FOR RELATED
10 PURPOSES.

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

12 **SECTION 1.** The following shall be codified as Section
13 11-27-8, Mississippi Code of 1972:

14 11-27-8. (1) The owner of a commercial business conducted
15 upon the property taken, or upon the remainder if less than the
16 whole is taken, must be compensated for loss of business goodwill
17 if the owner proves all of the following:

18 (a) The loss is caused by the taking of the property or
19 the injury to the remainder if less than the whole is taken.

20 (b) The loss cannot reasonably be prevented by a
21 relocation of the business or by taking steps and adopting



22 procedures that a reasonably prudent person would take and adopt
23 in preserving goodwill.

24 (c) Compensation for the loss of business goodwill will
25 not be duplicated in the compensation otherwise awarded for the
26 property to the owner of the property.

27 (2) For the purposes of this section, "business goodwill"
28 consists of the benefits that accrue to a commercial business as a
29 result of its location, reputation for dependability, skill or
30 quality, and any other circumstances resulting in probable
31 retention of old or acquisition of new patronage.

32 (3) If the owner of the commercial business conducted upon
33 the property taken, or upon the remainder if less than the whole
34 is taken, is a tenant, compensation for lost goodwill to the
35 business presumably belongs to the business owner.

36 (4) The owner of a commercial business who claims
37 compensation under this section shall make available to the court,
38 and the court, upon terms and conditions that will preserve their
39 confidentiality, shall make available to the plaintiff, the state
40 tax returns of the business for audit for confidential use solely
41 for the purpose of aiding in the determination of the amount of
42 compensation under this section. This subsection may not be
43 construed as affecting any right a party otherwise may have to
44 discovery or to require the production of documents, papers, books
45 and accounts.



46 **SECTION 2.** Section 11-27-7, Mississippi Code of 1972, is
47 amended as follows:

48 11-27-7. The complaint shall be filed with the circuit clerk
49 and shall be assigned a number and placed on the docket as other
50 pleadings in circuit court or county court. The plaintiff shall
51 also file a lis pendens notice in the office of the chancery clerk
52 immediately after filing the complaint. The circuit clerk, or the
53 plaintiff by his attorney, shall forthwith present such complaint
54 to the circuit judge or county judge, as the case may be, who
55 shall by written order directed to the circuit clerk fix the time
56 and place for the hearing of the matter, in termtime or vacation,
57 and the time of hearing shall be fixed on a date to allow
58 sufficient time for each defendant named to be served with process
59 as is otherwise provided by the Mississippi Rules of Civil
60 Procedure, for not less than thirty (30) days prior to the
61 hearing. If a defendant, or other party in interest, shall not be
62 served for the specified time prior to the date fixed, the hearing
63 shall be continued to a day certain to allow the thirty-day period
64 specified. Not less than twenty (20) days prior to the date fixed
65 for such hearing, the plaintiff shall file with the circuit clerk
66 and serve upon the defendants, or their respective attorneys, a
67 statement showing the plaintiff's determination of: (1) the fair
68 market value of the property to be condemned, determined as of the
69 date of the filing of the complaint; (2) the damages, if any, to
70 the remainder if less than the whole is taken, giving a total



71 compensation and damages to be due * * *; (3) if a commercial
72 business is operated upon the property to be condemned, the value
73 of business goodwill to be lost by the condemnation, as required
74 under Section 11-27-8; and (4) if a commercial farming operation
75 is conducted upon the property to be condemned, an appraisal of
76 the farming operation and a projection of income to be lost due to
77 the property being condemned, documented by copies of state tax
78 returns submitted with the appraisal. Not less than ten (10) days
79 prior to the date fixed for such hearing, each of the defendants
80 shall file with the circuit clerk and serve upon the plaintiff, or
81 his attorney, a statement showing the defendant's determination
82 of: (1) the fair market value of the property to be condemned,
83 determined as of the date of the filing of the complaint; (2) the
84 damages, if any, to the remainder if less than the whole is taken,
85 giving a total compensation and damages to be due * * *; (3) if a
86 commercial business is operated upon the property to be condemned,
87 the value of business goodwill to be lost by the condemnation, as
88 required under Section 11-27-8; and (4) if a commercial farming
89 operation is conducted upon the property to be condemned, an
90 appraisal of the farming operation and a projection of income to
91 be lost due to the property being condemned. In each such
92 instance, both the plaintiff and the defendant shall set out in
93 such statement the asserted highest and best use of the property
94 and shall itemize the elements of damage, if any, to the remainder
95 if less than the whole is taken. The statements required by this



96 section shall constitute the pleadings of the parties with respect
97 to the issue of value of the property itself and of business
98 goodwill, if a commercial business is conducted upon the property,
99 and shall be treated as pleadings are treated in civil actions in
100 the circuit court. The judge, for good cause shown, may increase
101 or decrease the time for pleading by the plaintiff or by the
102 defendant.

103 **SECTION 3.** Section 11-27-19, Mississippi Code of 1972, is
104 amended as follows:

105 11-27-19. Evidence may be introduced by either party, and
106 the jury may, in the sound discretion of the judge, go to the
107 premises, under the charge of the court as to conduct,
108 conversation and actions as may be proper in the premises.
109 Evidence of fair market value of the property, the value of
110 business goodwill, if a commercial business is conducted upon the
111 property, and the value and projected loss of income of any
112 commercial farming operation conducted upon the property shall be
113 established as of the date of the filing of the complaint. Any
114 judgment finally entered in payment for property to be taken and
115 for business goodwill, if any, and for projected loss of income
116 from any commercial farming operation conducted upon the property
117 shall provide legal interest on the award of the jury from the
118 date of the filing of the complaint until payment is actually
119 made; * * * however, * * * interest need not be paid on any funds
120 deposited by the plaintiff and withdrawn by the defendants prior



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

SECTION 4. Section 11-27-83, Mississippi Code of 1972, is amended as follows:

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

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

The court, or the judge thereof in vacation, as soon as practicable after being satisfied that service of process has been obtained, shall appoint a disinterested, knowledgeable person qualified to make an appraisal of the property described in the complaint to act as appraiser. The appraiser, after viewing the property, shall return to the clerk of court within ten (10) days



after his appointment, his report in triplicate, under oath, which report shall state: (1) the fair market value of the property to be condemned, determined as of the date of the filing of the complaint; (2) the damages, if any, to the remainder if less than the whole is taken, giving a total compensation and damages to be due as determined by the appraiser; * * * (3) if a commercial business is operated upon the property to be condemned or upon the remainder if less than the whole is taken, the value of business goodwill to be lost by the condemnation, as required under Section 11-27-8, determined as of the date of the filing of the complaint; (4) if a commercial farming operation is conducted upon the property to be condemned, the value of the farming operation and a projection of income to be lost due to the condemnation, determined as of the date of the filing of the complaint; and (5) his opinion as to the highest and best use of the property * * * and a narrative of the facts pertaining to his appraisal.

SECTION 5. Section 11-27-89, Mississippi Code of 1972, is amended as follows:

11-27-89. The appraiser shall receive as compensation for his services such sum, plus expenses, as the court allows, which shall be taxed as cost in the proceedings. The sum allowed shall be based upon the degree of difficulty and the time required to perform the appraisal, but may not exceed One Thousand Dollars (\$1,000.00) unless, in the opinion of the court, special circumstances warrant a greater sum. An order granting a sum



greater than One Thousand Dollars (\$1,000.00) must describe in detail the special circumstances that warrant payment of a greater sum.

The making of a deposit by the plaintiff or the withdrawal of * * * the deposit by the defendant or defendants shall not prejudice the right of any party to a trial by jury in the special court of eminent domain to determine: the fair market value of the property to be condemned and the damages, if any, to the remainder if less than the whole is taken * * *; the value of business goodwill to be lost by the condemnation if a commercial business is upon the property to be condemned or upon the remainder if less than the whole is taken; or the value of the farming operation and a projection of income to be lost due to the property being condemned if a commercial farming operation is conducted upon the property, as provided in Sections 11-27-1 through 11-27-49 * * *.

SECTION 6. This act shall take effect and be in force from and after July 1, 2021.

