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Chapter No. 385

11/HR07/R1648

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HOUSE BILL NO. 1347

Originated in House Don Richardson Clerk

HOUSE BILL NO. 1347

AN ACT TO AMEND SECTION 17, CHAPTER 1, LAWS OF 1865, AS AMENDED BY SECTION 3, CHAPTER 169, LAWS OF 1884, AS AMENDED BY CHAPTER 92, LAWS OF 1904, AS AMENDED BY CHAPTER 421, LAWS OF 1950, AS AMENDED BY CHAPTER 304, LAWS OF 1952, AS AMENDED BY CHAPTER 347, LAWS OF 1991, AS AMENDED BY CHAPTER 359, LAWS OF 1997, TO PROVIDE FOR COMMISSIONERS TO ASSESS LEVEE DAMAGES FROM WARREN COUNTY; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 17, Chapter 1, Laws of 1865, as amended by Section 3, Chapter 169, Laws of 1884, as amended by Chapter 92, Laws of 1904, as amended by Chapter 421, Laws of 1950, as amended by Chapter 304, Laws of 1952, as amended by Chapter 347, Laws of 1991, as amended by Chapter 359, Laws of 1997, is amended as follows:

Section 17. Where "commissioners to assess levee damages" shall not have heretofore been appointed or qualified and as soon as practicable after the passage of this act, it shall be the duty of the circuit judges of the several districts in which the counties of Bolivar, Washington, Issaquena, Sharkey, and that part of Warren and Humphreys County in the Mississippi Levee District, are respectively situated, to appoint, in writing, and certify same to the clerk of his court in each county, three (3) disinterested, resident freeholders of said counties, or part of county, to be known as "commissioners to assess levee damages." Said commissioners shall hold their offices for the terms now provided by law, or until their successors shall have been appointed and qualified. And thereafter their terms of office shall be four (4) years and until their successors are duly appointed and qualified, to be appointed in like manner by said

circuit judges. They shall be appointed on or before the first Monday in July in every fourth year, if practicable, and at all events their appointments shall be made on or before the first Monday in October succeeding the July in which said appointments should have been made and if not then made the then incumbents shall continue to hold their said offices for the next succeeding term which said term shall commence on the second Monday in July of every fourth year. In the event of a vacancy, or vacancies, in said offices, or of removal from said counties, or part of a county, by a commissioner, or commissioners, for which he, or they, may have been appointed, a vacancy, or vacancies, in said office shall occur. It shall thereupon be the duty of said circuit judge, or judges, as soon as notified of said vacancy or vacancies, to fill the unexpired term, or terms, of said offices by appointment as aforesaid. The appointment by said judge shall be duly recorded in the minute book of this court by the circuit clerk of the proper county and he shall certify on the original appointment that it has been so recorded and that said commissioner has duly taken and subscribed the oath required by law. The record of his said appointment as aforesaid, and the taking and subscribing the oath herein required shall constitute the qualifications of office by said commissioners and authorize them severally to enter upon the discharge of the duties of the same. The oath to be taken shall be that they will make a just and true award of the compensation to be paid any landholder or holders, or other person, by reason of the appropriation of his or their property for the purpose of building, repairing or maintaining the public levee; and by reason of the appropriation of his or their property along the Yazoo River system, which Yazoo River is a tributary of the Mississippi River, and its tributaries in the Yazoo Basin in the Mississippi River Levee District, for the purpose of building, repairing or maintaining levees, drainage ditches, cut-offs, channel rectifications, and all other works and

improvements along the Yazoo River system and its tributaries, and along the Big Sunflower, the Little Sunflower and the Hushpuckena Rivers, and their tributaries, and along Bogue Phalia, Deer Creek, Steele Bayou, and their tributaries in the Yazoo Basin in said Mississippi Levee District, and along all other streams and water courses in the Yazoo Basin in said Mississippi Levee district, for all projects, works or improvements in said Mississippi Levee District heretofore or hereafter authorized by the United States in the Yazoo River Basin, and in the Yazoo Basin for flood control and major drainage in said Mississippi Levee District. Said commissioners in making up their award shall ascertain and determine the cash value of the land or material occupied or used, for the right-of-way for said levee or for other levee purposes, or for said drainage ditches, cut-offs, channel improvements, channel rectifications, or other works and improvements along all said streams and water courses, and also the damages caused to the owner's adjacent property by reason of the use of his land or other property for right-of-way for said levee or for other levee purposes, and such cash value and damages shall make up the sum of their said award. Said commissioners shall only have authority to act for the county or part of county for which they are appointed, and in said county or part of county they shall have the exclusive right to assess the award compensation and damages for land or material taken or damaged as aforesaid in the construction, maintenance, or repair of levees, or other works and improvements. Any two (2) of said commissioners may act, and if three (3) are present, then any two (2) of said three (3) may agree upon the award to be made. If two (2) of said commissioners cannot agree upon the award to be made, then it shall be their duty immediately to call in a disinterested resident freeholder of said county or part of county, and submit the point in dispute to him, and he shall decide same. Said award shall be reduced in writing and signed by at least two (2) of said commissioners and if a

disinterested resident freeholder has been called in as provided, it shall so state, and he also shall sign said award. The award so signed shall be delivered to the treasurer of the Board of Mississippi Levee Commissioners. Upon the payment or tender of the amount of said award, it shall be lawful for the said Board of Levee Commissioners to proceed forthwith to locate and build the levee or other works and improvements, or use the property condemned. Upon payment of said award, the treasurer or said board shall cause the person to whom the payment is made to acknowledge the payment of the same on said award, and he shall then deliver the same to the chancery clerk of the county to be recorded, together with the receipt thereon. In the event that the owner or owners of said land, material or other property are unknown, or that said commissioners of damages are uncertain who they are, or there are conflicting claims to the amount of said award, or part thereof, then said levee treasurer may pay the same to the chancery clerk of the property county for such person as it may properly belong to, and take said clerk's receipt as is provided for herein for the owner, and cause the same to be recorded as before provided, and said clerk and his sureties shall be answerable on his official bond for the safekeeping of said money. If said Board of Mississippi Levee Commissioners, or its duly authorized agent in such matters, or any party interested is dissatisfied with said award, then the party feeling aggrieved may, within ten (10) days from the date of said award, and not after, appeal to the chancery court of the county in which the land or property is situated, by filing in the office of the chancery clerk of said county a written statement distinctly setting forth the matters of law or fact, or both complained of, and thereupon the clerk of said court shall issue a summons, or make publication if the opposite party is a nonresident, as in other cases of nonresidents, requiring the opposite party to appear at the next term of said chancery court, to be held not

less than five (5) days after service of said notice, or not less than three (3) weeks after said publication is first made, and answer or demur to said statement; and at the term of the court to which said summons or process of publication is returnable, the court shall cause the proper issues of law or fact to be made up, and upon such issues, and under the instructions of the court, such appeal shall be tried at that term before a jury of twelve (12) disinterested freeholders, or by consent of all parties before the chancellor, and either party may prosecute an appeal from said chancery court to the Supreme Court.

On appeal to the chancery court from the award of said commissioners, the chancellor shall appoint a competent deputy, or deputies, to summon twenty-four (24) disinterested freeholders, qualified under the law to sit on juries, to try such cases.

Each side shall have the right to challenge six (6) jurors. And in counties having two (2) judicial districts, twelve (12) freeholders shall be taken from each district, from which a jury of twelve (12) shall be selected.

The said treasurer shall furnish to any party interested demanding the same a certified copy of said award, and such certified copy shall be competent evidence in any proceeding in any court of this state. In the event of an appeal from the award of said commissioners by either party, the treasurer of said Board of Mississippi Levee Commissioners may deposit with the chancery court clerk of the county in which the property is situated the amount of said award, for the safekeeping and proper disposition of which said clerk shall be liable on his official bond or upon application of either party the chancellor may make a written order requiring such deposit to be made with some other person, and in some other place, and upon such conditions as he may prescribe to secure the safekeeping of said deposit, and upon said deposit being made, it shall be lawful for said board to proceed with the construction of said levee, or to use said material or

property in the same manner as if said award had been accepted and paid to the party entitled thereto, and no injunction shall be granted by any court to prevent said board building said levee or using said material or other property as aforesaid; nor shall it be in any way hindered or obstructed or delayed therein. And if, upon a final decision of said appeal, said board shall be required to pay only the amount, or less than the amount of said award, then the party defeated in such appeal shall pay all costs, but if it is decided that said board shall pay more than said award, then said board shall forthwith pay such excess over said amount of said award and all costs. Said board may at any time before proceeding with the work of construction, or before using any material or other property, refuse to accept said award, and locate the levee anew, or decline to use said material or other property, if in its judgment the interest of its district would be thereby subserved. The remedy hereby provided for determining the compensation and damages to be paid for the right-of-way and for the use of material and other property for the levees and for said other rights-of-way for said other works and improvements may be resorted to by either said Board of Mississippi Levee Commissioners, or any person interested and it shall be exclusive of all other remedies. When said levee board deems it necessary to take and use any right-of-way land, material or other property for levee purposes, or for other works and improvements, or when the same has already been so taken and used, or is about to be so taken and used, then said Board of Levee Commissioners, by its president, attorney or other authorized agent, or any person interested, may file a petition with the clerk of the circuit court of the county in which the property is situated, describing as nearly as may be the property taken or proposed to be taken, and asking that the commissioners herein provided for be assembled to make an award touching the same, and thereupon said clerk shall issue his warrant to the sheriff of said county, requiring him to

summon said commissioners, on a day therein named, to go upon the ground where said property is and view the same, and to make their award as required by law. Such warrant shall be served on said commissioners, or such of them as can be found in the county, at least five (5) days prior to the day on which they are to assemble, and on the opposite party, if to be found in the county, at least two (2) days prior to such date or by posting notice on the land for at least two (2) days prior to the meeting of said commissioners when said party is not to be found in said county. The commissioners provided by this act shall be paid, out of the treasuries of their respective counties, a per diem as authorized by Section 25-3-69, Mississippi Code of 1972, for each day or fraction thereof spent in actual discharge of official duties, and shall be reimbursed for mileage and actual expenses incurred in the performance of their official duties at the rate authorized for county employees under Section 25-3-41, Mississippi Code of 1972, such payments to be made by the county treasurers upon the certificate of each commissioner, verified by his affidavit. For executing the process herein required, and for recording verdict, the sheriff and deputies appointed and clerk of the respective counties shall be entitled to the fees now allowed by law for summoning juries and recording deeds respectively, to be paid by the treasurer of said levee board. Said Board of Mississippi Levee Commissioners may at all times settle or compromise by agreement with the owner or owners, or if such owner or owners be minors or insane persons, or if the property belongs to an estate, then with the guardian, executor, or administrator as the case may be, all claims for compensation or damages on account of the rights-of-way or material for the construction, maintenance or repair of levees, and such guardian, executor, or administrator shall be responsible on their bond for the money or other thing received in such settlement. Said Board of Levee Commissioners is hereby authorized to enter upon, take, use and appropriate any

property in said levee district for the purpose of constructing, maintaining and repairing its said levee in accordance with the provisions of this section. The said Board of Levee Commissioners for the said Mississippi Levee District is also hereby authorized to enter upon, take, use and appropriate, any property in said levee district along the Yazoo River system, which Yazoo River is a tributary of the Mississippi River, and its tributaries in the Yazoo Basin, necessary to furnish rights-of-way for levees, drainage ditches, cut-offs, channel improvements, channel rectifications, or other works and improvements along the Yazoo River system and its tributaries, and along the Big Sunflower, the Little Sunflower, and the Hushpuckena Rivers, and their tributaries in the Yazoo Basin, and along all other streams and water courses in the Yazoo Basin in the Mississippi Levee District, as required for all projects, works, and improvements heretofore or hereafter authorized by the United States in the Yazoo River Basin and in the Yazoo Basin for flood control and major drainage in said Mississippi Levee District in accordance with the provisions of this section: Provided, that if one or more said commissioners shall be interested in any property to be condemned under this section, such interested commissioner or commissioners shall not act in regard to the condemnation of such property, and that for that occasion and that special purpose, it shall be the duty of such circuit judge or judges to appoint in the place of such commissioner or commissioners other disinterested freeholders who shall act in their stead.

The Board of Mississippi Levee Commissioners may, in its discretion, by acts spread upon its minutes, elect to acquire any or all of the lands to be condemned or acquired in fee simple and if such election is made to acquire said lands in fee simple, the damage commissioners appointed and qualified shall assess as damages the full value of the fee of said lands to be acquired or so much thereof as is to be acquired in fee. The board may also

elect to reacquire any lands presently held in easement by like resolution and if such election is made, the damage commissioners shall assess as damages the value of the remainder or reversionary interests to be acquired.

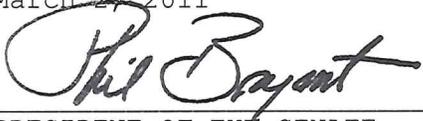
SECTION 2. This act shall take effect and be in force from and after its passage.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 9, 2011



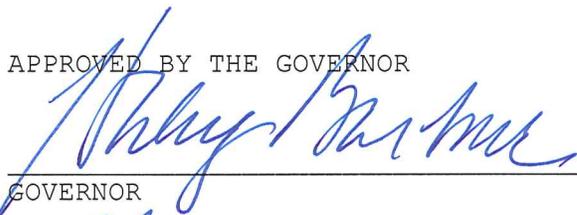
SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 2, 2011



PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR



GOVERNOR


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