

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

A Bill

HOUSE BILL 1144

5 By: Representative Ormond
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE NOTICE PROCEDURES IN
10 IRRIGATION, DRAINAGE, AND WATERSHED IMPROVEMENT
11 DISTRICT STATUTES; AND FOR OTHER PURPOSES.
12

Subtitle

13 AN ACT TO AMEND THE NOTICE PROCEDURES IN
14 IRRIGATION, DRAINAGE, AND WATERSHED
15 IMPROVEMENT DISTRICT STATUTES.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code § 14-117-202 is amended to read as follows:
22 14-117-202. Petition for establishment - Engineer and survey - Bond.

23 (a) It shall be the duty of the court to enter upon its record an
24 order appointing an engineer to be selected by the petitioners when a
25 majority in number of the owners, exclusive of the owners of real property in
26 incorporated towns or cities, of the lands or the owners of a majority in
27 value of the lands, exclusive of the owners of real property in incorporated
28 towns or cities, as shown by the last assessment of real property within a
29 proposed district shall:

30 (1) Petition the ~~chancery~~ or circuit court to establish a
31 district to embrace their property:

32 (A) Describing generally the region which it is intended
33 shall be included within the district.

34 (B) Setting forth:

35 (i) The proposed name of the district;

36 (ii) The purpose or purposes of the district;



1 (iii) The general nature of the work to be done;
 2 (iv) The necessity of the work;
 3 (v) The feasibility of the work; ~~and~~
 4 (vi) The estimated cost of the project, as then
 5 estimated by those filing the petition from information they have at the
 6 time, with reasonable detail and definiteness in order that the court may
 7 understand the purpose, utility, feasibility, and need or necessity for the
 8 project; and

9 (vii) The estimated yearly assessment of each
 10 property owner and the estimated length of time each property owner will pay
 11 an assessment; and

12 (2) File a good bond to pay for the expenses of survey of the
 13 proposed district, in case the district is not formed.

14 (b) The engineer selected by the petitioners shall be a suitable
 15 person, and if not, an engineer shall be named who is satisfactory to the
 16 court.

17 (c) The engineer shall give bond in a sum not less than one thousand
 18 dollars (\$1,000) to be fixed by the court for the faithful discharge of his
 19 duties. He shall be liable upon such bonds for negligence or incompetency
 20 causing loss to the district.

21 (d)(1) The engineer shall forthwith proceed to make a survey and
 22 ascertain the limits of the region which would be benefited by the proposed
 23 improvements.

24 (2)(A) The petitioners shall cause an appraisal to be performed
 25 on the real property to be included in the proposed district.

26 (B) The appraised value of the real property shall provide
 27 the basis for the determination of the value of benefits by the proposed
 28 improvement.

29 (e) The engineer shall file with the ~~chancery~~ or circuit clerk a
 30 report showing the territory which will be benefited by the proposed
 31 improvements, giving a general idea of its character and expense, and making
 32 suggestions as to the proposed improvements and their location as he may deem
 33 advisable.

34 (f) The territory need not consist of contiguous parcels of land.

35 (g) All expenses incident to the survey and the cost of ~~publication~~
 36 notice shall be paid by the county or counties in the ratio and proportion of

1 benefits assessed to lands in the respective counties as the work progressed
 2 upon proper showing; but all expenses incurred by the county or counties in
 3 the creation of any district shall, upon the creation of the district, be
 4 reimbursed to the county or counties out of the proceeds of the first
 5 revenues collected by the district.

6
 7 SECTION 2. Arkansas Code § 14-117-204 is amended to read as follows:
 8 14-117-204. Notice and hearing.

9 (a) The ~~chancery or~~ circuit clerk shall give notice by ~~publication for~~
 10 ~~two (2) weeks in some newspaper published and having a general circulation~~
 11 registered mail, return receipt requested, to all persons in the county
 12 ~~calling upon all persons~~ owning property within the proposed district to
 13 appear before the court on some day to be fixed by the court to show cause in
 14 favor of or against the establishment of the district. If the court deems it
 15 to the best interest of the owners of real property within the proposed
 16 district that the district shall become a district under the terms of this
 17 chapter, it shall make an order upon its records establishing the property as
 18 a district subject to all the terms and provisions of this chapter.

19 (b) Any owner of real property within the territory of the proposed
 20 district may petition the court to exclude his property.

21 (c) If the court finds that the real property would not be benefited
 22 by the improvements of the proposed district, the court, in its order, shall
 23 exclude the real property of the petitioner or petitioners from the district.
 24 However, lands shall be excluded for irrigation purposes by the order of the
 25 court upon a showing that the land is supplied by adequate irrigation from
 26 surface sources or other sources existing at time of order creating the
 27 district and, provided further, that lands so excluded shall be subordinate
 28 to all lands within the irrigation district should water from the irrigation
 29 works be desired at a later date.

30
 31 SECTION 3. Arkansas Code § 14-117-205 is amended to read as follows:
 32 14-117-205. Land in more than one county.

33 (a) If land in more than one (1) county is embraced in the proposed
 34 district, the petition shall be addressed to the ~~chancery or~~ circuit court in
 35 which the largest portion of the lands lie. All proceedings shall be had in
 36 that court, and the court shall apportion all costs incurred in the creation

1 of the district between the county or counties in proportion to the benefits
 2 assessed to lands in each such county.

3 (b) Such expenses as are incurred prior to the time when the
 4 assessment is made shall be apportioned between the counties in the
 5 proportion which the court shall deem to be just and equitable.

6 (c) In the event district lands are in more than one (1) county, all
 7 notices shall be ~~published in newspapers published and having a bona fide~~
 8 ~~circulation in each such~~ mailed via registered mail, return receipt
 9 requested, to all persons owning property in each county in which the
 10 district will embrace land.

11 (d) All of the districts shall be appropriately identified by the
 12 court, that is, they shall be numbered consecutively or shall receive names
 13 selected by the court.

14
 15 SECTION 4. Arkansas Code § 14-117-208 is amended to read as follows:
 16 14-117-208. Changing district boundaries.

17 (a)(1) The holder or holders of title representing in assessed value
 18 one-half (1/2) or more of any body of lands benefited or capable of being
 19 benefited by the works of a district may petition the ~~chancery or~~ circuit
 20 court which established the district to change the boundaries of the district
 21 to include that body of lands.

22 (2) Any owner of lands within the boundaries of a district may
 23 also petition the court to change the boundaries of the district to exclude
 24 such lands.

25 (b) The petition shall describe the boundaries of the parcel or tract
 26 of land owned by the petitioner or petitioners.

27 (c) The clerk shall give notice by ~~publication for two (2) weeks in~~
 28 ~~some newspaper published and having a general circulation~~ registered mail,
 29 return receipt requested, to all persons in the county or counties owning
 30 property within the district, ~~calling upon all persons owning property within~~
 31 ~~the district~~ and, in the case of a proposed inclusion of lands, all persons
 32 owning property within the area proposed to be included to appear before the
 33 court on some day to be fixed by the court to show cause in favor of or
 34 against the inclusion or exclusion of lands of petitioners.

35 (d) If the court deems it to be to the best interest of the district
 36 that the lands be included or excluded from the district, it shall make an

1 appropriate order upon its records changing the boundaries of the district.

2 (e) If the court finds that lands should be included in the district,
 3 the court shall make a finding and order as to an equitable amount to be paid
 4 by the petitioner or petitioners in lieu of the amount the petitioners or
 5 their grantors would have been required to pay to the district as assessments
 6 had the lands been included in the district at the time the district was
 7 originally formed. These amounts shall be divided into installments as the
 8 court may determine and shall be added to and be collected with any
 9 assessments subsequently levied against the assessment of benefits and shall
 10 be a part of the assessment of benefits.

11 (f) If the court finds that lands should be excluded from the
 12 district, the court shall make a finding and order as to the amount, if any,
 13 which shall be refunded by the district to any and all persons who have paid
 14 any assessment or assessments to the district.

15 (g) In making this determination, the court shall consider whether the
 16 parties have realized benefits from the organization and operation of the
 17 district, and the value of those benefits as determined by the court shall be
 18 deducted from the assessments paid in by the parties.

19 (h) No land excluded from the district shall be released from any
 20 obligation to pay any valid outstanding indebtedness of the district at the
 21 time of filing the petition for exclusion unless the holders of the
 22 indebtedness shall assent to the release of the lands from such obligation.

23 (i) All costs of the proceedings shall be assessed against the
 24 petitioners.

25 (j) Appeals from judgments of the court made pursuant to this section
 26 shall be taken by an aggrieved party in accordance with the provisions of §
 27 14-117-207.

28
 29 SECTION 5. Arkansas Code § 14-117-209 is amended to read as follows:
 30 14-117-209. Assessment of lands outside district - Boundary extension.

31 (a) If the board, upon petition of a majority in number as provided in
 32 §§ 14-117-202 and 14-117-204 - 14-117-206 for the establishment of districts,
 33 finds that other lands not embraced within the boundaries of the district
 34 will be affected by the proposed improvement, it shall assess the estimated
 35 benefits and damages to the lands based on the appraised value and shall
 36 specially report to the ~~chancery or~~ circuit court the assessment which it has

1 made on the lands beyond the boundaries of the district as already
 2 established.

3 (b) It shall then be the duty of the court to give notice by
 4 ~~publication for two (2) weeks in a newspaper or newspapers published~~
 5 registered mail, return receipt requested, to all persons owning property in
 6 the county or counties where the lands lie, describing the additional lands
 7 which have been assessed. The owners of real property so assessed shall be
 8 allowed thirty (30) days after the ~~last publication of the~~ date of the notice
 9 to file with the clerk their protest against being included within the
 10 district.

11 (c) The court shall at its next session investigate the question
 12 whether the lands beyond the boundaries of the district so assessed by the
 13 board will in fact be benefited or damaged by the making of the improvement.
 14 From its finding in that regard and its order based thereon, either the
 15 property owners affected by the assessment or the board may within thirty
 16 (30) days file an appeal to the Supreme Court. If the finding and order is in
 17 favor of the inclusion of the lands, the limits of the district shall by
 18 order of the court be extended so as to embrace the lands.

19

20 SECTION 6. Arkansas Code § 14-117-401 is amended to read as follows:
 21 14-117-401. Plans - Construction areas.

22 (a) Plans prepared by "local organizations," as defined by the
 23 Watershed Protection and Flood Prevention Act, with assistance from the
 24 United States Department of Agriculture, Soil Conservation Service, and plans
 25 prepared by the Department of the Army, Chief of Engineers, or any other
 26 federal or state agency may be adopted by the board of directors and when so
 27 adopted shall become the plan of improvement of the district and may be used
 28 in lieu of the engineer's survey and other requirements pertaining thereto
 29 mentioned in § 14-117-202, or as a supplement to the preliminary survey and
 30 report filed under the provisions of § 14-117-203. As soon as the board has
 31 adopted its plan for improvement of the district and has ascertained the cost
 32 thereof, it shall file the plan with the ~~chancery or~~ circuit clerk. The plans
 33 shall be accompanied by a map showing the location of the proposed
 34 improvements.

35 (b)(1) If, in the preparation of the final work plan, it is determined
 36 by the board that the location and character of the works of improvement are

1 so varied that it would be impracticable to let contracts on all of them in
2 the same year, or if federal funds would not be available for all of them in
3 the same year, the final work plan may be segregated or divided into one (1)
4 or more units of construction constituting any work or group of works
5 proposed in the final work plan which can be constructed and operated as a
6 feasible unit alone and which can also be operated economically in
7 conjunction with the other proposed works in the plan.

8 (2) The final work plan shall indicate the area included in each
9 unit of construction and establish each such area as a separate construction
10 area, set forth the percentage or portion of the total project costs
11 allocated to each construction area, and delineate the lands in each
12 construction area which, on the basis of ~~preliminary estimates~~ appraisals,
13 will derive some benefit from the works of improvement to be installed
14 therein.

15 (3) Each construction area shall be appropriately identified by
16 name and number, such as "Construction Area No.".

17 (4) The determination of the board that the works of improvement
18 proposed in the final work plan, even though divided into units of
19 construction, do not lack unity or singleness of purpose and that the works
20 in each unit of construction confer some benefit on the lands therein shall
21 be final and conclusive.

22 (c)(1) The board of commissioners shall have the authority to let
23 contracts for carrying out the works of improvement on a construction area
24 basis, to borrow money and issue notes or bonds, and to assess benefits and
25 damages on a construction area basis.

26 (2) A separate assessment book shall be prepared and maintained
27 for each construction area.

28 (3) The tax levied under § 14-117-413 to secure and repay notes
29 or bonds shall be limited to and be a lien only on the lands located within
30 each construction area found to be benefited by the works installed in the
31 construction area, and that fact shall be indicated on the face of the notes
32 or bonds.

33 (4) All ~~published~~ notices with respect to the assessment of
34 benefits and damages and the borrowing of money and issuance of notes or
35 bonds shall list the lands according to the construction area in which they
36 are located.

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SECTION 7. Arkansas Code § 14-117-402 is amended to read as follows:
14-117-402. Contracts between district and United States.

(a) The board is authorized to:

(1) Cooperate with the United States or any agency or instrumentality thereof, hereinafter referred to as the United States, in the development of plans for the construction, operation, and maintenance of any facilities which the district is authorized to construct, operate, and maintain;

(2) Negotiate a contract with the United States or give such assurance as may be required by the United States for the construction, operation, and maintenance of such facilities or any part thereof by the United States.

(A) The contract or assurance may provide for the payment by the district to the United States of the agreed costs thereof in the form of construction charges, operation and maintenance charges, water rental, or service charges.

(B) The construction charges may include the cost of works of improvement for irrigation, drainage, flood control, prevention of seepage of irrigated lands, prevention of erosion, floodwater, and sediment damages, and the conservation, development, utilization, and disposal of water.

(C) The contract or assurance may provide for the repayment of the various charges by the district primarily or exclusively from revenue to be derived by the district from the sale under contract between the district and its water users from the district works, with payment to be made either in the form of agricultural products or cash. However, if sufficient revenue is not available from this source or if the district was organized primarily for purposes other than irrigation, then the board shall have authority to assess benefits against the property within the district for the purpose of repaying the obligations of the district under the terms of the contract with or assurances given to the United States.

(D) The contract or assurance may provide that the district shall furnish lands, easements, and rights-of-way and that property so acquired by the district may be conveyed to the United States insofar as the property may be required for the construction, operation, and maintenance of works thereon by the United States for the benefit of the district.

1 (E) The contract or assurance may provide that the
 2 district shall save and hold harmless the United States from any liability or
 3 damages due to or arising out of the construction, operation, and maintenance
 4 of any of the works.

5 (b) Until all moneys receivable by the United States from the district
 6 under the contract or assurance shall have been fully paid, the boundaries of
 7 the district shall not be altered without the consent of the United States.

8 (c) Any indebtedness to the United States shall be and remain a prior
 9 charge against the lands of the district. It shall be paid by sale or rental
 10 of water or service under contract with the landowners of the district, by
 11 the annual levy of assessments by the commissioners against the district
 12 lands or by advance toll charge, all as herein provided, and the obligation
 13 to the United States shall so remain prior to any subsequent obligation of
 14 the district.

15 (d)(1) After the terms of the contract or assurance have been
 16 negotiated with the United States, the board shall petition the ~~chancery or~~
 17 circuit court for the approval, if necessary, of a bond issue or other
 18 evidence of indebtedness by the district for the purpose of paying for
 19 preliminary expenses and the cost of acquisition of lands, easements, and
 20 rights-of-way which may be needed in order to carry out the plan of
 21 improvement.

22 (2) The ~~chancery or~~ circuit clerk shall thereupon give notice by
 23 ~~publication for two (2) weeks in some newspaper published and having a~~
 24 ~~general circulation~~ registered mail, return receipt requested, to all persons
 25 in the county or counties owning property within the district, ~~calling upon~~
 26 ~~all persons owning property within the district~~ to appear before the court
 27 upon some date not less than thirty (30) days nor more than ninety (90) days
 28 from the date of the ~~last publication~~ notice, to be fixed by the court, to
 29 show cause in favor of or against the issuance of bonds or other evidence of
 30 indebtedness.

31 (3) If upon final hearing the court deems it to be in the best
 32 interest of the owners of real property within the district, the court shall
 33 enter an order authorizing the issuance of bonds or other evidence of
 34 indebtedness. However, if it is determined by the court that a majority in
 35 number of the holders of title to the lands within the district and the
 36 owners of a majority in value of the lands therein, as shown by the last

1 assessment, oppose the issuance of bonds or other evidence of indebtedness,
 2 the court shall enter a decree disapproving the issuance of bonds or other
 3 evidence of indebtedness.

4 (4) The order of the court shall have the force of a judgment,
 5 and any aggrieved party may appeal from the order as provided in § 14-117-
 6 207.

7
 8 SECTION 8. Arkansas Code § 14-117-405 is amended to read as follows:
 9 14-117-405. Notice and hearing on assessment - Appeal.

10 (a) Upon the filing of the assessment, the clerk shall give notice of
 11 that fact by ~~publication for two (2) weeks in some weekly newspaper issued~~
 12 registered mail, return receipt requested, to all persons owning property in
 13 each of the counties in which the lands of the district may lie.

14 (b) The notice shall give a description of the lands assessed and
 15 shall state that the owners of the lands, if they desire, may appear before
 16 the court on a certain day, naming the day, and present complaints, if they
 17 have any, against the assessment of any lands in the district.

18 (c) The day so named shall be more than ten (10) days after the ~~last~~
 19 ~~publication of the~~ date of the notice.

20 (d) If no complaint is made as herein provided, the assessment as
 21 deposited with the clerk shall be conclusive.

22 (e) Any owner of real property within the district who perceives
 23 himself to be aggrieved by the assessment of benefits or damages or deems
 24 that the assessment of any land in the district is inadequate shall present
 25 his complaint to the court on the day named in the notice.

26 (f) The court shall consider the complaint and enter its finding
 27 thereon, either confirming the assessment or increasing or diminishing the
 28 assessment.

29 (g) Its findings shall have the force and effect of a judgment, from
 30 which an appeal may be taken within thirty (30) days, either by the property
 31 owners or by the board of the district.

32
 33 SECTION 9. Arkansas Code § 14-117-407 is amended to read as follows:
 34 14-117-407. Alteration of plans.

35 The board may at any time alter the plans for improvement, but before
 36 constructing the work according to the changed plans, the changed plans shall

1 be filed with the circuit ~~or chancery~~ clerk and notice of the filing shall be
 2 given by ~~publication for one (1) insertion in some newspaper issued and~~
 3 ~~having a bona fide circulation~~ registered mail, return receipt requested, to
 4 all persons owning property in each of the counties in which there are lands
 5 within the district.

6
 7 SECTION 10. Arkansas Code § 14-117-409 is amended to read as follows:
 8 14-117-409. Additional work or improvements - Reassessment - Appeals.

9 (a) After the work contemplated by the original plans has been
 10 completed, the board may file with the circuit ~~or chancery~~ clerk of the
 11 county where the district was first organized plans for additional work or
 12 improvements in the district.

13 (b) The clerk shall give notice by ~~publication for two (2) weeks in~~
 14 ~~some newspaper or newspapers published and having a general circulation~~
 15 registered mail, return receipt requested, to all persons in the county or
 16 counties ~~within the district, calling upon all persons~~ owning property within
 17 the district to appear before the court on some date not less than thirty
 18 (30) days nor more than ninety (90) days from the ~~last publication~~ date of
 19 the notice, to be fixed by the court, to show cause in favor of or against
 20 the proposal.

21 (c) If, upon final hearing, the court deems it to the best interest of
 22 the owners of real property within the district, the court shall enter an
 23 order ratifying and approving the additional work or improvements. However,
 24 if it is determined by the court that a majority in number of the holders of
 25 title to the lands within the district and the owners of a majority in value
 26 of the lands therein, as shown by the last assessment, oppose the proposal
 27 for additional work or improvement, the court shall enter a decree
 28 disapproving the proposed additional work or improvements.

29 (d) If the proposal is approved by the order of the court, the board
 30 may proceed with the assessment of benefits in accordance with the provisions
 31 of this chapter.

32 (e) From the action of the court any party aggrieved, including the
 33 commissioners of the district, may take an appeal, but the appeal must be
 34 taken and perfected within thirty (30) days.

35 (f) The proceedings in the ~~chancery or~~ circuit court shall be deemed
 36 matters of public interest and heard at the earliest possible moment.

1 (g) When any such reassessment of benefits has been made and stands
2 confirmed, it shall be the assessment of benefits until another reassessment
3 has been made as provided in this chapter, and levies of the taxes on the
4 reassessed benefits shall be made and collected in the same manner as levies
5 on the original assessment of benefits and shall be a first lien on the lands
6 of the district from the time they are made.

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