

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
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4

As Engrossed: H1/20/05 H2/11/05 H3/7/05

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

14 AN ACT TO AMEND THE NOTICE PROCEDURES IN
15 IRRIGATION, DRAINAGE, AND WATERSHED
16 IMPROVEMENT DISTRICT STATUTES.
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

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

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

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

18 (d) The engineer shall forthwith proceed to make a survey and
19 ascertain the limits of the region which would be benefited by the proposed
20 improvements.

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

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

27 (g) All expenses incident to the survey and the cost of ~~publication~~
28 notice shall be paid by the county or counties in the ratio and proportion of
29 benefits assessed to lands in the respective counties as the work progressed
30 upon proper showing; but all expenses incurred by the county or counties in
31 the creation of any district shall, upon the creation of the district, be
32 reimbursed to the county or counties out of the proceeds of the first
33 revenues collected by the district.

34
35 SECTION 2. Arkansas Code § 14-117-204 is amended to read as follows:
36 14-117-204. Notice and hearing.

1 (a) The ~~chancery or circuit clerk~~ petitioners shall give notice by
2 ~~publication for two (2) weeks in some newspaper published and having a~~
3 ~~general circulation~~ certified mail to all entities responsible for payment of
4 taxes on property in the county calling upon all persons owning property
5 *within the proposed* district to appear before the court on some day to be
6 fixed by the court to show cause in favor of or against the establishment of
7 the district. If the court deems it to the best interest of the owners of
8 real property within the proposed district that the district shall become a
9 district under the terms of this chapter, it shall make an order upon its
10 records establishing the property as a district subject to all the terms and
11 provisions of this chapter.

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

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

23
24 SECTION 3. Arkansas Code § 14-117-205 is amended to read as follows:
25 14-117-205. Land in more than one county.

26 (a) If land in more than one (1) county is embraced in the proposed
27 district, the petition shall be addressed to the ~~chancery or~~ circuit court in
28 which the largest portion of the lands lie. All proceedings shall be had in
29 that court, and the court shall apportion all costs incurred in the creation
30 of the district between the county or counties in proportion to the benefits
31 assessed to lands in each such county.

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

35 (c) In the event district lands are in more than one (1) county, all
36 notices shall be ~~published in newspapers published and having a bona fide~~

1 ~~circulation in each such~~ mailed via certified mail to all entities
2 responsible for payment of taxes on property in each county in which the
3 district will embrace land.

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

7
8 SECTION 4. Arkansas Code § 14-117-208 is amended to read as follows:
9 14-117-208. Changing district boundaries.

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

15 (2) Any owner of lands within the boundaries of a district may
16 also petition the court to change the boundaries of the district to exclude
17 such lands.

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

20 (c) The ~~clerk~~ petitioners shall give notice by ~~publication for two (2)~~
21 ~~weeks in some newspaper published and having a general circulation~~ certified
22 mail to all entities responsible for payment of taxes on property in the
23 county or counties within the district, calling upon all persons owning
24 ~~property within the district~~ and, in the case of a proposed inclusion of
25 lands, all ~~persons owning property~~ entities responsible for payment of taxes
26 on property within the area proposed to be included to appear before the
27 court on some day to be fixed by the court to show cause in favor of or
28 against the inclusion or exclusion of lands of petitioners.

29 (d) If the court deems it to be to the best interest of the district
30 that the lands be included or excluded from the district, it shall make an
31 appropriate order upon its records changing the boundaries of the district.

32 (e) If the court finds that lands should be included in the district,
33 the court shall make a finding and order as to an equitable amount to be paid
34 by the petitioner or petitioners in lieu of the amount the petitioners or
35 their grantors would have been required to pay to the district as assessments
36 had the lands been included in the district at the time the district was

1 originally formed. These amounts shall be divided into installments as the
2 court may determine and shall be added to and be collected with any
3 assessments subsequently levied against the assessment of benefits and shall
4 be a part of the assessment of benefits.

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

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

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

17 (i) All costs of the proceedings shall be assessed against the
18 petitioners.

19 (j) Appeals from judgments of the court made pursuant to this section
20 shall be taken by an aggrieved party in accordance with the provisions of §
21 14-117-207.

22
23 SECTION 5. Arkansas Code § 14-117-209 is amended to read as follows:

24 14-117-209. Assessment of lands outside district - Boundary extension.

25 (a) If the board, upon petition of a majority in number as provided in
26 §§ 14-117-202 and 14-117-204 - 14-117-206 for the establishment of districts,
27 finds that other lands not embraced within the boundaries of the district
28 will be affected by the proposed improvement, it shall assess the estimated
29 benefits and damages to the lands and shall specially report to the ~~chancery~~
30 ~~or~~ circuit court the assessment which it has made on the lands beyond the
31 boundaries of the district as already established.

32 (b) It shall then be the duty of the ~~court~~ board to give notice by
33 ~~publication for two (2) weeks in a newspaper or newspapers published~~
34 certified mail to all entities responsible for payment of taxes on property
35 in the county or counties where the lands lie, describing the additional
36 lands which have been assessed. The owners of real property so assessed shall

1 be allowed thirty (30) days after the ~~last publication of the~~ date of the
2 notice to file with the clerk their protest against being included within the
3 district.

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

12
13 SECTION 6. Arkansas Code § 14-117-401 is amended to read as follows:
14 14-117-401. Plans - Construction areas.

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

28 (b)(1) If, in the preparation of the final work plan, it is determined
29 by the board that the location and character of the works of improvement are
30 so varied that it would be impracticable to let contracts on all of them in
31 the same year, or if federal funds would not be available for all of them in
32 the same year, the final work plan may be segregated or divided into one (1)
33 or more units of construction constituting any work or group of works
34 proposed in the final work plan which can be constructed and operated as a
35 feasible unit alone and which can also be operated economically in
36 conjunction with the other proposed works in the plan.

1 (2) The final work plan shall indicate the area included in each
2 unit of construction and establish each such area as a separate construction
3 area, set forth the percentage or portion of the total project costs
4 allocated to each construction area, and delineate the lands in each
5 construction area which, on the basis of *preliminary estimates* will derive
6 some benefit from the works of improvement to be installed therein.

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

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

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

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

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

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

29
30 SECTION 7. Arkansas Code § 14-117-402 is amended to read as follows:
31 14-117-402. Contracts between district and United States.

32 (a) The board is authorized to:

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

1 maintain;

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

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

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

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

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

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

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

36 (c) Any indebtedness to the United States shall be and remain a prior

1 charge against the lands of the district. It shall be paid by sale or rental
2 of water or service under contract with the landowners of the district, by
3 the annual levy of assessments by the commissioners against the district
4 lands or by advance toll charge, all as herein provided, and the obligation
5 to the United States shall so remain prior to any subsequent obligation of
6 the district.

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

14 (2) The ~~chancery or circuit clerk~~ board shall thereupon give
15 notice by ~~publication for two (2) weeks in some newspaper published and~~
16 ~~having a general circulation~~ certified mail to all entities responsible for
17 payment of taxes on property in the county or counties within the district,
18 ~~calling upon all persons owning property within the district~~ to appear before
19 the court upon some date not less than thirty (30) days nor more than ninety
20 (90) days from the date of the ~~last publication~~ notice, to be fixed by the
21 court, to show cause in favor of or against the issuance of bonds or other
22 evidence of indebtedness.

23 (3) If upon final hearing the court deems it to be in the best
24 interest of the owners of real property within the district, the court shall
25 enter an order authorizing the issuance of bonds or other evidence of
26 indebtedness. However, if it is determined by the court that a majority in
27 number of the holders of title to the lands within the district and the
28 owners of a majority in value of the lands therein, as shown by the last
29 assessment, oppose the issuance of bonds or other evidence of indebtedness,
30 the court shall enter a decree disapproving the issuance of bonds or other
31 evidence of indebtedness.

32 (4) The order of the court shall have the force of a judgment,
33 and any aggrieved party may appeal from the order as provided in § 14-117-
34 207.

35
36 SECTION 8. Arkansas Code § 14-117-405 is amended to read as follows:

1 14-117-405. Notice and hearing on assessment - Appeal.

2 (a) Upon the filing of the assessment, the ~~clerk~~ board shall give
3 notice of that fact by ~~publication for two (2) weeks in some weekly newspaper~~
4 ~~issued~~ certified mail to all entities responsible for payment of taxes on
5 property in each of the counties in which the lands of the district may lie.

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

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

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

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

18 (f) The court shall consider the complaint and enter its finding
19 thereon, either confirming the assessment or increasing or diminishing the
20 assessment.

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

24
25 SECTION 9. Arkansas Code § 14-117-407 is amended to read as follows:

26 14-117-407. Alteration of plans.

27 The board may at any time alter the plans for improvement, but before
28 constructing the work according to the changed plans, the changed plans shall
29 be filed with the circuit ~~or chancery~~ clerk and notice of the filing shall be
30 given by ~~publication for one (1) insertion in some newspaper issued and~~
31 ~~having a bona fide circulation~~ certified mail to all entities responsible for
32 payment of taxes on property in each of the counties in which there are lands
33 within the district.

34
35 SECTION 10. Arkansas Code § 14-117-409 is amended to read as follows:

36 14-117-409. Additional work or improvements - Reassessment - Appeals.

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

5 (b) The ~~clerk~~ board shall give notice by ~~publication for two (2) weeks~~
6 ~~in some newspaper or newspapers published and having a general circulation~~
7 certified mail to all entities responsible for payment of taxes on property
8 ~~in the county or counties within the district, calling upon all persons~~
9 ~~owning property~~ within the district to appear before the court on some date
10 not less than thirty (30) days nor more than ninety (90) days from the ~~last~~
11 ~~publication~~ date of the notice, to be fixed by the court, to show cause in
12 favor of or against the proposal.

13 (c) If, upon final hearing, the court deems it to the best interest of
14 the owners of real property within the district, the court shall enter an
15 order ratifying and approving the additional work or improvements. However,
16 if it is determined by the court that a majority in number of the holders of
17 title to the lands within the district and the owners of a majority in value
18 of the lands therein, as shown by the last assessment, oppose the proposal
19 for additional work or improvement, the court shall enter a decree
20 disapproving the proposed additional work or improvements.

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

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

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

29 (g) When any such reassessment of benefits has been made and stands
30 confirmed, it shall be the assessment of benefits until another reassessment
31 has been made as provided in this chapter, and levies of the taxes on the
32 reassessed benefits shall be made and collected in the same manner as levies
33 on the original assessment of benefits and shall be a first lien on the lands
34 of the district from the time they are made.

35
36 /s/ Ormond