

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 *As Engrossed: H1/20/05 H2/11/05 H3/7/05 H3/28/05*

2 85th General Assembly

A Bill

3 Regular Session, 2005

HOUSE BILL 1144

4

5 By: Representative Ormond

6

7

8

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

13

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

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

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

25
26 SECTION 3. Arkansas Code § 14-117-205 is amended to read as follows:

27 14-117-205. Land in more than one county.

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

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

1 (c) In the event district lands are in more than one (1) county, all
2 notices shall be published in newspapers published and having a bona fide
3 circulation in each such county in which the district will embrace land. The
4 petitioners shall mail the notice by first-class mail to all entities
5 responsible for payment of taxes on property within the proposed district.
6 If the letter is returned, the petitioners shall make an effort to locate the
7 addressee.

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

11
12 SECTION 4. Arkansas Code § 14-117-208 is amended to read as follows:
13 14-117-208. Changing district boundaries.

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

19 (2) Any owner of lands within the boundaries of a district may
20 also petition the court to change the boundaries of the district to exclude
21 such lands.

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

24 (c) The clerk shall give notice by publication for two (2) weeks in
25 some newspaper published and having a general circulation in the county or
26 counties within the district, and, in the case of a proposed inclusion of
27 lands, all persons owning property within the area proposed to be included to
28 appear before the court on some day to be fixed by the court to show cause in
29 favor of or against the inclusion or exclusion of lands of petitioners. The
30 petitioners shall mail the notice by first-class mail to all entities
31 responsible for payment of taxes on property within the district and the
32 proposed district. If a letter is returned, the petitioners shall make an
33 effort to locate the addressee.

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

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

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

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

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

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

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

27
28 SECTION 5. Arkansas Code § 14-117-209 is amended to read as follows:

29 14-117-209. Assessment of lands outside district - Boundary extension.

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

1 (b) *It shall then be the duty of the court to give notice by*
2 *publication for two (2) weeks in a newspaper or newspapers published in the*
3 *county or counties where the lands lie, describing the additional lands which*
4 *have been assessed. The owners of real property so assessed shall be allowed*
5 *thirty (30) days after the last publication of the notice to file with the*
6 *clerk their protest against being included within the district. The board*
7 *shall mail the notice by first-class mail to all entities responsible for*
8 *payment of taxes on property within the district. If a letter is returned,*
9 *the board shall make an effort to locate the addressee.*

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

18
19 SECTION 6. Arkansas Code § 14-117-401 is amended to read as follows:
20 14-117-401. Plans - Construction areas.

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

34 (b)(1) If, in the preparation of the final work plan, it is determined
35 by the board that the location and character of the works of improvement are
36 so varied that it would be impracticable to let contracts on all of them in

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

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

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

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

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

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

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

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

35

36 SECTION 7. Arkansas Code § 14-117-402 is amended to read as follows:

1 14-117-402. Contracts between district and United States.

2 (a) The board is authorized to:

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

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

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

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

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

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

35 (E) The contract or assurance may provide that the
36 district shall save and hold harmless the United States from any liability or

1 damages due to or arising out of the construction, operation, and maintenance
2 of any of the works.

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

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

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

20 (2) ~~The chancery or~~ circuit clerk shall thereupon give notice by
21 publication for two (2) weeks in some newspaper published and having a
22 general circulation in the county or counties within the district, to appear
23 before the court upon some date not less than thirty (30) days nor more than
24 ninety (90) days from the date of the last publication, to be fixed by the
25 court, to show cause in favor of or against the issuance of bonds or other
26 evidence of indebtedness. The board shall mail the notice by first-class
27 mail to all entities responsible for payment of taxes on property within the
28 district. If a letter is returned, the board shall make an effort to locate
29 the addressee.

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

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

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

6
7 SECTION 8. Arkansas Code § 14-117-405 is amended to read as follows:
8 14-117-405. Notice and hearing on assessment - Appeal.

9 (a) *Upon the filing of the assessment, the clerk shall give notice of*
10 *that fact by publication for two (2) weeks in some weekly newspaper issued in*
11 *each of the counties in which the lands of the district may lie. The board*
12 *shall mail the notice by first-class mail to all entities responsible for*
13 *payment of taxes on property within the district. If a letter is returned,*
14 *the board shall make an effort to locate the addressee.*

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

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

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

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

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

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

33
34 SECTION 9. Arkansas Code § 14-117-407 is amended to read as follows:
35 14-117-407. Alteration of plans.

36 *The board may at any time alter the plans for improvement, but before*

1 constructing the work according to the changed plans, the changed plans shall
2 be filed with the circuit ~~or chancery~~ clerk and notice of the filing shall be
3 given by publication for one (1) insertion in some newspaper issued and
4 having a bona fide circulation in each of the counties in which there are
5 lands within the district. The board shall mail the notice by first-class
6 mail to all entities responsible for payment of taxes on property within the
7 district. If a letter is returned, the board shall make an effort to locate
8 the addressee.

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

10 14-117-409. Additional work or improvements - Reassessment - Appeals.

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

15 (b) The clerk shall give notice by publication for two (2) weeks in
16 some newspaper or newspapers published and having a general circulation in
17 the county or counties within the district, calling upon all persons owning
18 property within the district to appear before the court on some date not less
19 than thirty (30) days nor more than ninety (90) days from the last
20 publication, to be fixed by the court, to show cause in favor of or against
21 the proposal. The board shall mail the notice by first-class mail to all
22 entities responsible for payment of taxes on property within the district.
23 If a letter is returned, the board shall make an effort to locate the
24 addressee.

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

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

36 (e) From the action of the court any party aggrieved, including the

1 commissioners of the district, may take an appeal, but the appeal must be
2 taken and perfected within thirty (30) days.

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

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

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

/s/ Ormond