

By: Fredericks, Barnett (116th)

To: Ways and Means

HOUSE BILL NO. 1099

1 AN ACT TO AUTHORIZE THE BOARD OF SUPERVISORS OF ANY COUNTY TO
2 ENTER INTO DEVELOPMENT AGREEMENTS WITH THE DEVELOPERS OF MASTER
3 PLANNED COMMUNITIES IN ORDER TO AUTHORIZE MASTER PLANNED
4 COMMUNITIES, THROUGH A COMMUNITY SELF-GOVERNING ENTITY, TO
5 ADMINISTER, MANAGE AND ENFORCE THE LAND USE RESTRICTIONS AND
6 COVENANTS, ZONING REGULATIONS, BUILDING CODES AND REGULATIONS, AND
7 ANY OTHER LIMITATIONS AND RESTRICTIONS ON LAND AND BUILDINGS
8 PROVIDED FOR IN THE MASTER PLAN FOR SUCH COMMUNITY; TO PROVIDE
9 THAT SUCH ENFORCEMENT SHALL BE IN LIEU OF THE REAL ESTATE AND
10 PROPERTY OWNERS WITHIN THE MASTER PLANNED COMMUNITY BEING SUBJECT
11 TO COUNTY ORDINANCES AND REGULATIONS PERTAINING TO BUILDINGS,
12 SUBDIVISIONS, ZONING, THE COUNTY'S COMPREHENSIVE PLAN AND SIMILAR
13 ORDINANCES OF THE COUNTY; TO PROVIDE THAT THE LIMITATIONS AND
14 RESTRICTIONS PROVIDED FOR IN THE MASTER PLAN MUST BE COMPARABLE TO
15 OR GREATER THAN THE SIMILAR REGULATIONS OR LIMITATIONS OF THE
16 COUNTY; TO PROVIDE THAT IN CASES IN WHICH THE ORDINANCES OF THE
17 COUNTY CONFLICT WITH THE DEVELOPMENT AGREEMENT, THE DEVELOPMENT
18 AGREEMENT SHALL PREVAIL; TO DEFINE THE TERM "MASTER PLANNED
19 COMMUNITY"; TO AMEND SECTION 65-4-5, MISSISSIPPI CODE OF 1972, TO
20 REVISE THE DEFINITION OF THE TERM "HIGH ECONOMIC BENEFIT PROJECT"
21 AND TO DEFINE THE TERM "MASTER PLANNED COMMUNITY" FOR PURPOSES OF
22 THE ECONOMIC DEVELOPMENT HIGHWAY ACT; TO AMEND SECTION 19-5-9,
23 MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PROVISIONS OF THIS
24 ACT; AND FOR RELATED PURPOSES.

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

26 SECTION 1. (1) The board of supervisors of any county is
27 authorized to enter into one or more development agreements with
28 the developer or developers of a master planned community in order
29 to authorize, in addition to any other matters to which the board
30 of supervisors may lawfully obligate the county, the master
31 planned community, through a community self-governing entity
32 created by the owners of the property, to administer, manage, and
33 enforce the land use restrictions and covenants, zoning
34 regulations, subdivision regulations, building codes and
35 regulations, and any other limitations and restrictions on land
36 and buildings provided in the master plan for the master planned
37 community, in lieu of the real estate and property owners within

38 the master planned community being subject to the county
39 ordinances and regulations pertaining to buildings, subdivisions,
40 zoning, the county's comprehensive plan, and any other county
41 ordinances and regulations pertaining thereto. Prior to entering
42 into any such development agreement, the board of supervisors
43 shall review the master plan for the master planned community and
44 find that the provisions of the master plan providing for
45 regulations, restrictions, covenants and limitations pertaining to
46 buildings, subdivisions, zoning and comprehensive planning shall
47 be comparable to, or greater than, similar provisions in the
48 ordinances and regulations of the county. The term of such a
49 development agreement may be perpetual. The development agreement
50 shall have attached to it a boundary survey made by a registered
51 land surveyor, and upon approval of the development agreement by
52 the board of supervisors, the boundary survey shall be recorded in
53 the land records of the chancery clerk of the county. The
54 recorded boundary survey shall serve as the description of the
55 property within the master planned community which shall not be
56 subject to the county's zoning map, and the county's zoning map
57 shall simply recognize the territory described in such boundary
58 survey as a "master planned community." Whenever there may be a
59 conflict between the county ordinances and regulations pertaining
60 to buildings, subdivisions, zoning, the county's comprehensive
61 plan, and any other county ordinances and regulations pertaining
62 thereto, and the provisions of such a development agreement,
63 including the provisions of the master plan providing for
64 regulations, restrictions, covenants, and limitations pertaining
65 to buildings, subdivisions, zoning and comprehensive planning, the
66 provisions of the development agreement and the master plan of the
67 master planned community shall prevail.

68 (2) As used in this section, the term "master planned
69 community" means a development by one or more developers of real
70 estate consisting of residential, commercial, educational, health
71 care, open space and recreational components that is developed
72 pursuant to a long range, multi-phase master plan providing
73 comprehensive land use planning and staged implementation and
74 development and the master plan must include the following minimum

75 provisions:

76 (a) The real estate described in the master plan must
77 consist of at least three thousand five hundred (3,500) acres of
78 which not less than fifty percent (50%) of the total dwelling
79 units planned for such acreage must be:

80 (i) Dwelling units within a certified retirement
81 community certified by the Mississippi Department of Economic and
82 Community Development; or

83 (ii) Dwelling units where at least one (1)
84 occupant:

85 A. Is at least sixty-two (62) years of age;

86 or

87 B. Receives pension income reported on his
88 most recent federal income tax return filed prior to occupancy; or

89 C. Declares himself to be retired.

90 (b) The real estate described in the master plan must
91 be subjected to a set of land use restrictions imposed by deed
92 restriction or restrictive covenants recorded by the developer in
93 the land records of the chancery clerk of the county as land is
94 developed and sold in phases to users. Such restrictions shall
95 include design guidelines and standards that provide for:

96 (i) Internal community self-governance by the
97 owners of the property;

98 (ii) The establishment of one or more legal
99 persons endowed with the powers, rights and duties to administer,
100 manage, own and maintain common areas, establish community
101 activities and enforce the land use restrictions on the common
102 areas and private property; and

103 (iii) The establishment of assessments and lien
104 rights to fund amenities, services and maintenance of common
105 areas.

106 (c) The real estate described in the master plan must
107 be within the territorial boundaries of one (1) or more public

108 utility districts established by the county for the provision of,
109 at least, water and sewer facilities and services.

110 (3) The master plan for a master planned community shall be
111 subject to modification from time to time by the original owner or
112 owners of the real estate described in the initial master plan,
113 its affiliates, successors or assigns, to meet changing economic
114 and market conditions.

115 (4) Once a dwelling unit has met the criteria provided for
116 in paragraph (a)(ii) of subsection (2) of this section, such
117 dwelling unit shall thereafter be included in the fifty percent
118 (50%) requirement provided for in paragraph (a) of subsection (2)
119 of this section, notwithstanding the fact that subsequent thereto
120 the dwelling unit is occupied by persons who do not meet the
121 criteria provided for in paragraph (a)(ii) of subsection (2) of
122 this section.

123 (5) As used in this section, the term "dwelling unit" means
124 single-family residences, apartments or other units within a
125 multi-family residence, or a room or apartment in a nursing home
126 or congregate-care facility.

127 SECTION 2. Section 65-4-5, Mississippi Code of 1972, is
128 amended as follows:[CR1]

129 65-4-5. (1) The following words when used in this chapter
130 shall have the meanings herein ascribed unless the context
131 otherwise clearly requires:

132 (a) "Board" means the Mississippi Department of
133 Economic and Community Development;

134 (b) "Department" means the Mississippi Department of
135 Transportation;

136 (c) "High economic benefit project" means (i) any new
137 investment by a private company with capital investments in land,
138 buildings, depreciable fixed assets and improvements of at least
139 Fifty Million Dollars (\$50,000,000.00); (ii) any new investment of
140 at least Twenty Million Dollars (\$20,000,000.00) by a private

141 company having capital investments in this state in land,
142 buildings, depreciable fixed assets and improvements of at least
143 One Billion Dollars (\$1,000,000,000.00) in the aggregate; (iii)
144 public investment of at least One Hundred Million Dollars
145 (\$100,000,000.00) to take place over a specified period of time
146 and in accordance with a master plan duly adopted by the
147 controlling political subdivision; (iv) any new investments in
148 land, buildings, depreciable fixed assets and improvements by two
149 (2) private companies upon land that is adjacent whenever the new
150 investments of both companies is at least Sixty Million Dollars
151 (\$60,000,000.00) in the aggregate, and such new investments by
152 both private companies provide for the employment of at least five
153 hundred (500) employees in the aggregate; (v) any project which
154 would benefit from the construction of any highway bypass which
155 would aid in economic development and would provide an alternate
156 route to avoid an existing route which underpasses a railroad and
157 which would aid in existing or proposed industry; or (vi) any
158 master planned community * * *;

159 (d) "Political subdivision" means one or more counties
160 or incorporated municipalities in the state, or a state-owned port
161 located in a county bordering on the Gulf of Mexico;

162 (e) "Private company" means (i) any agricultural,
163 aquacultural, maricultural, processing, distribution, warehousing,
164 manufacturing or research and development enterprise; (ii) any air
165 transportation and maintenance facility, regional shopping mall,
166 hospital, large hotel, resort or movie industry studio; (iii) the
167 federal government with respect to any specific project which
168 meets the criteria established in paragraph (c) (i) of this
169 subsection; (iv) any existing or proposed industry in regard to a
170 project described in paragraph (c) (v) of this subsection; or (v)
171 a developer with respect to any specific project which meets the
172 criteria established in paragraph (c) (vi) of this subsection.

173 (f) "Master planned community" means a development by

174 one or more developers of real estate consisting of residential,
175 commercial, educational, health care, open space and recreational
176 components that is developed pursuant to a long range, multi-phase
177 master plan providing comprehensive land use planning and staged
178 implementation and development and the master plan must include
179 the following minimum provisions:

180 (i) The real estate described in the master plan
181 must consist of at least three thousand five hundred (3,500) acres
182 of which not less than fifty percent (50%) of the total dwelling
183 units planned for such acreage must be:

184 A. Dwelling units within a certified
185 retirement community certified by the Mississippi Department of
186 Economic and Community Development; or

187 B. Dwelling units where at least one (1)
188 occupant:

189 1. Is at least sixty-two (62) years of
190 age; or

191 2. Receives pension income reported on
192 his most recent federal income tax return filed prior to
193 occupancy; or

194 3. Declares himself to be retired.

195 (ii) The real estate described in the master plan
196 must be subjected to a set of land use restrictions imposed by
197 deed restriction or restrictive covenants recorded by the
198 developer in the land records of the chancery clerk of the county
199 as land is developed and sold in phases to users. Such
200 restrictions shall include design guidelines and standards that
201 provide for:

202 A. Internal community self-governance by the
203 owners of the property;

204 B. The establishment of one or more legal
205 persons endowed with the powers, rights and duties to administer,
206 manage, own and maintain common areas, establish community

207 activities and enforce the land use restrictions on the common
208 areas and private property; and

209 C. The establishment of assessments and lien
210 rights to fund amenities, services and maintenance of common
211 areas.

212 (iii) The real estate described in the master plan
213 must be within the territorial boundaries of one (1) or more
214 public utility districts established by the county for the
215 provision of, at least, water and sewer facilities and services.

216 The master plan for a master planned community shall be
217 subject to modification from time to time by the original owner or
218 owners of the real estate described in the initial master plan,
219 its affiliates, successors or assigns, to meet changing economic
220 and market conditions.

221 Once a dwelling unit has met the criteria provided for in
222 item (i)B of this paragraph (f), such dwelling unit shall
223 thereafter be included in the fifty percent (50%) requirement
224 provided for in item (i) of this paragraph (f) notwithstanding the
225 fact that subsequent thereto the dwelling unit is occupied by
226 persons who do not meet the criteria provided for in item (i)B of
227 this paragraph (f).

228 As used in this paragraph (f) the term "dwelling unit" means
229 single-family residences, apartments or other units within a
230 multi-family residence, or a room or apartment in a nursing home
231 or congregate-care facility.

232 (2) The Mississippi Department of Transportation is hereby
233 authorized to purchase rights-of-way and construct and maintain
234 roads and highways authorized to be constructed pursuant to this
235 chapter.

236 SECTION 3. Section 19-5-9, Mississippi Code of 1972, is
237 amended as follows:[CR2]

238 19-5-9. The construction codes published by a nationally
239 recognized code group which sets minimum standards and has the

240 proper provisions to maintain up-to-date amendments are hereby
241 adopted as minimum standard guides for building, plumbing,
242 electrical, gas, sanitary, and other related codes in Mississippi.

243 Any county within the State of Mississippi, in the discretion of
244 the board of supervisors, may adopt building codes, plumbing
245 codes, electrical codes, sanitary codes, or other related codes
246 dealing with general public health, safety or welfare, or a
247 combination of the same, within but not exceeding the provisions
248 of the construction codes published by nationally recognized code
249 groups, by order or resolution in the manner herein prescribed,
250 but said codes so adopted shall apply only to the unincorporated
251 areas of the county. However, such codes shall not apply to the
252 erection, maintenance, repair or extension of farm buildings or
253 farm structures, except as may be required under the terms of the
254 "Flood Disaster Protection Act of 1973" and shall apply to a
255 master planned community as defined in Section 1 of House Bill
256 No. _____, 2000 Regular Session, only to the extent allowed in
257 Section 1 of House Bill No. _____, 2000 Regular Session. The
258 provisions of this section shall not be construed to authorize the
259 adoption of any code which applies to the installation, repair or
260 maintenance of electric wires, pipelines, apparatus, equipment or
261 devices by or for a utility rendering public utility services,
262 required by it to be utilized in the rendition of its duly
263 authorized service to the public. Before any such code shall be
264 adopted, it shall be either printed or typewritten and shall be
265 presented in pamphlet form to the board of supervisors at a
266 regular meeting. The order or resolution adopting such code shall
267 not set out said code in full, but shall merely identify the same.

268 The vote or passage of the order or resolution shall be the same
269 as on any other order or resolution. After its adoption, such
270 code or codes shall be certified to by the president and clerk of
271 the board of supervisors and shall be filed as a permanent record
272 in the office of the clerk who shall not be required to transcribe

273 and record the same in the minute book as other orders and
274 resolutions.

275 All provisions of this section shall apply to amendments and
276 revisions of the codes mentioned herein. The provisions hereof
277 shall be in addition and supplemental to any existing laws
278 authorizing the adoption, amendment or revision of county orders,
279 resolutions or codes.

280 Any code adopted under the provisions of this section shall
281 not be in operation or force until sixty (60) days have elapsed
282 from the adoption of same; however, any code adopted for the
283 immediate preservation of the public health, safety and general
284 welfare may be effective from and after its adoption by a
285 unanimous vote of the members of the board. Within five (5) days
286 after the adoption or passage of an order or resolution adopting
287 such code or codes the clerk of the board of supervisors shall
288 publish in a legal newspaper published in said county the full
289 text of said order or resolution adopting and approving said code,
290 and said publication shall be inserted at least three (3) times,
291 and shall be completed within thirty (30) days after the passage
292 of said order or resolution.

293 Any person or persons objecting to such code or codes may
294 object in writing to the provisions of said code or codes within
295 sixty (60) days after the passage of the order or resolution
296 approving same, and if the board of supervisors adjudicates that
297 ten percent (10%) or more of the qualified electors residing in
298 the affected unincorporated areas of the county have objected in
299 writing to said code or codes, then in such event said code shall
300 be inoperative and not in effect unless adopted for the immediate
301 preservation of the public health, safety and general welfare
302 until approved by a special election called by the board of
303 supervisors as other special elections are called and conducted by
304 the election commissioners of said county as other special
305 elections are conducted, said special election to be participated

306 in by all the qualified electors of said county residing in the
307 unincorporated areas of the county. If the voters approve said
308 code or codes in said special election it shall be in force and in
309 operation thereafter until amended or modified as herein provided.

310 If the majority of the qualified electors voting in said special
311 election vote against said code or codes, then, in such event,
312 said code or codes shall be void and of no force and effect, and
313 no other code or codes dealing with such subject shall be adopted
314 under the provisions of this section until at least two (2) years
315 thereafter.

316 After any such code shall take effect the board of
317 supervisors is authorized to employ such directors and other
318 personnel as the board, in its discretion, deems necessary and to
319 expend general county funds or any other funds available to the
320 board to fulfill the purposes of this section.

321 For the purpose of promoting health, safety, morals or the
322 general welfare of the community, the governing authority of any
323 municipality, and, with respect to the unincorporated part of any
324 county, the governing authority of any county, in its discretion,
325 are empowered to regulate the height, number of stories and size
326 of building and other structures, the percentage of lot that may
327 be occupied, the size of the yards, courts and other open spaces,
328 the density or population, and the location and use of buildings,
329 structures and land for trade, industry, residence or other
330 purposes, but no permits shall be required except as may be
331 required under the terms of the "Flood Disaster Protection Act of
332 1973" for the erection, maintenance, repair or extension of farm
333 buildings or farm structures outside the corporate limits of
334 municipalities.

335 The authority herein granted is cumulative and supplemental
336 to any other authority granted by law.

337 SECTION 4. This act shall take effect and be in force from
338 and after its passage.