

By: Minor

To: County Affairs;
Finance

SENATE BILL NO. 2720

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 LIMITATION 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 "MASTER PLANNED COMMUNITY" FOR
21 PURPOSES OF THE ECONOMIC DEVELOPMENT HIGHWAY ACT; AND FOR RELATED
22 PURPOSES.

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

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

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

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

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

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

81 (ii) Dwelling units where at least one (1)
82 occupant:

83 A. Is sixty-two (62) years of age; or

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

86 C. Declares himself to be retired.

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

93 (i) Internal community self-governance by the
94 owners of the property;

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

100 (iii) The establishment of assessments and lien
101 rights to fund amenities, services and maintenance of common
102 areas.

103 (c) The real estate described in the master plan must
104 be within the territorial boundaries of one or more public utility
105 districts established by the county for the provision of, at
106 least, water and sewer facilities and services.

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

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

119 (5) As used in this subsection, the term "dwelling unit"
120 means single-family residences, apartments or other units within a
121 multi-family residence, or a room or apartment in a nursing home
122 or congregate-care facility.

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

125 65-4-5. (1) The following words when used in this chapter
126 shall have the meanings herein ascribed unless the context
127 otherwise clearly requires:

128 (a) "Board" means the Mississippi Department of
129 Economic and Community Development;

130 (b) "Department" means the Mississippi Department of
131 Transportation;

132 (c) "High economic benefit project" means (i) any new
133 investment by a private company with capital investments in land,
134 buildings, depreciable fixed assets and improvements of at least
135 Fifty Million Dollars (\$50,000,000.00); (ii) any new investment of
136 at least Twenty Million Dollars (\$20,000,000.00) by a private
137 company having capital investments in this state in land,
138 buildings, depreciable fixed assets and improvements of at least
139 One Billion Dollars (\$1,000,000,000.00) in the aggregate; (iii)

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

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

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

169 (f) "Master planned community" means a development by
170 one or more developers of real estate consisting of residential,
171 commercial, educational, health care, open space and recreational
172 components that is developed pursuant to a long range, multi-phase

173 master plan providing comprehensive land use planning and staged
174 implementation and development and the master plan must include
175 the following minimum provisions:

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

180 A. Dwelling units within a certified
181 retirement community certified by the Mississippi Department of
182 Economic and Community Development; or

183 B. Dwelling units where at least one (1)
184 occupant:

185 1. Is sixty-two (62) years of age; or

186 2. Receives pension income reported on
187 his most recent federal income tax return filed prior to
188 occupancy; or

189 3. Declares himself to be retired.

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

197 A. Internal community self-governance by the
198 owners of the property;

199 B. The establishment of one or more legal
200 persons endowed with the powers, rights and duties to administer,
201 manage, own and maintain common areas, establish community
202 activities and enforce the land use restrictions on the common
203 areas and private property; and

204 C. The establishment of assessments and lien
205 rights to fund amenities, services and maintenance of common

206 areas.

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

211 The master plan for a master planned community shall be
212 subject to modification from time to time by the original owner or
213 owners of the real estate described in the initial master plan,
214 its affiliates, successors or assigns, to meet changing economic
215 and market conditions.

216 Once a dwelling unit has met the criteria provided for in
217 item (i)B of this paragraph, such dwelling unit shall thereafter
218 be included in the fifty percent (50%) requirement provided for in
219 item (i) of this paragraph notwithstanding the fact that
220 subsequent thereto the dwelling unit is occupied by persons who do
221 not meet the criteria provided for in item (i)B of this paragraph.

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

226 (2) The Mississippi Department of Transportation is hereby
227 authorized to purchase rights-of-way and construct and maintain
228 roads and highways authorized to be constructed pursuant to this
229 chapter.

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

232 19-5-9. The construction codes published by a nationally
233 recognized code group which sets minimum standards and has the
234 proper provisions to maintain up-to-date amendments are hereby
235 adopted as minimum standard guides for building, plumbing,
236 electrical, gas, sanitary, and other related codes in Mississippi.

237 Any county within the State of Mississippi, in the discretion of
238 the board of supervisors, may adopt building codes, plumbing

239 codes, electrical codes, sanitary codes, or other related codes
240 dealing with general public health, safety or welfare, or a
241 combination of the same, within but not exceeding the provisions
242 of the construction codes published by nationally recognized code
243 groups, by order or resolution in the manner herein prescribed,
244 but said codes so adopted shall apply only to the unincorporated
245 areas of the county. However, such codes shall not apply to the
246 erection, maintenance, repair or extension of farm buildings or
247 farm structures, except as may be required under the terms of the
248 "Flood Disaster Protection Act of 1973" and shall apply to a
249 master planned community as defined in Section 1 of Senate Bill
250 No. 2720, 2000 Regular Session, only to the extent allowed in
251 Section 1 of Senate Bill No. 2720, 2000 Regular Session. The
252 provisions of this section shall not be construed to authorize the
253 adoption of any code which applies to the installation, repair or
254 maintenance of electric wires, pipelines, apparatus, equipment or
255 devices by or for a utility rendering public utility services,
256 required by it to be utilized in the rendition of its duly
257 authorized service to the public. Before any such code shall be
258 adopted, it shall be either printed or typewritten and shall be
259 presented in pamphlet form to the board of supervisors at a
260 regular meeting. The order or resolution adopting such code shall
261 not set out said code in full, but shall merely identify the same.
262 The vote or passage of the order or resolution shall be the same
263 as on any other order or resolution. After its adoption, such
264 code or codes shall be certified to by the president and clerk of
265 the board of supervisors and shall be filed as a permanent record
266 in the office of the clerk who shall not be required to transcribe
267 and record the same in the minute book as other orders and
268 resolutions.

269 All provisions of this section shall apply to amendments and
270 revisions of the codes mentioned herein. The provisions hereof
271 shall be in addition and supplemental to any existing laws

272 authorizing the adoption, amendment or revision of county orders,
273 resolutions or codes.

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

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

305 election vote against said code or codes, then, in such event,
306 said code or codes shall be void and of no force and effect, and
307 no other code or codes dealing with such subject shall be adopted
308 under the provisions of this section until at least two (2) years
309 thereafter.

310 After any such code shall take effect the board of
311 supervisors is authorized to employ such directors and other
312 personnel as the board, in its discretion, deems necessary and to
313 expend general county funds or any other funds available to the
314 board to fulfill the purposes of this section.

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

329 The authority herein granted is cumulative and supplemental
330 to any other authority granted by law.

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