

By: Minor

To: County Affairs;  
FinanceSENATE BILL NO. 2720  
(As Passed the Senate)

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 CERTAIN SUBSTANTIAL  
14 MODIFICATIONS OF THE MASTER PLAN SHALL BE SUBJECT TO, AND SHALL  
15 NOT TAKE EFFECT UNTIL, APPROVAL BY THE BOARD OF SUPERVISORS; TO  
16 PROVIDE THAT IN CASES IN WHICH THE ORDINANCES OF THE COUNTY  
17 CONFLICT WITH THE DEVELOPMENT AGREEMENT, THE DEVELOPMENT AGREEMENT  
18 SHALL PREVAIL IN CERTAIN INSTANCES; TO DEFINE THE TERM "MASTER  
19 PLANNED COMMUNITY"; TO AMEND SECTION 65-4-5, MISSISSIPPI CODE OF  
20 1972, TO REVISE THE DEFINITION OF THE TERM "MASTER PLANNED  
21 COMMUNITY" FOR PURPOSES OF THE ECONOMIC DEVELOPMENT HIGHWAY ACT;  
22 TO AMEND SECTION 19-5-9, MISSISSIPPI CODE OF 1972, IN CONFORMITY  
23 THERETO; AND FOR RELATED PURPOSES.

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

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

37 the master planned community being subject to the county  
38 ordinances and regulations pertaining to buildings, subdivisions,  
39 zoning, the county's comprehensive plan, and any other county  
40 ordinances and regulations pertaining thereto. Prior to entering  
41 into any such development agreement, the board of supervisors  
42 shall review the master plan for the master planned community and  
43 find that the provisions of the master plan providing for  
44 regulations, restrictions, covenants and limitations pertaining to  
45 building, subdivisions, zoning and comprehensive planning shall be  
46 comparable to, or greater than, similar provisions in the  
47 ordinances and regulations of the county. The term of such a  
48 development agreement may be not more than thirty (30) years or  
49 the number of years allowed in the county's subdivision ordinance  
50 for terms of subdivision covenants, whichever is greater. The  
51 development agreement shall have attached to it a boundary survey  
52 made by a registered land surveyor, and upon approval of the  
53 development agreement by the board of supervisors, the boundary  
54 survey shall be recorded in the land records of the chancery clerk  
55 of the county. The recorded boundary survey shall serve as the  
56 description of the property within the master planned community  
57 which shall not be subject to the county's zoning map, and the  
58 county's zoning may shall simply recognize the territory described  
59 in such boundary survey as a "master planned community." Whenever  
60 there may be a conflict between the county ordinances and  
61 regulations pertaining to buildings, subdivisions, zoning, the  
62 county's comprehensive plan, and any other county ordinances and  
63 regulations pertaining thereto, and the provisions of such a  
64 development agreement, including the provisions of the master plan  
65 providing for regulations, restrictions, covenants, and  
66 limitations pertaining to buildings, subdivisions, zoning and  
67 comprehensive planning, the provisions of the development  
68 agreement shall prevail if the provisions of the development  
69 agreement are comparable to or greater than similar provisions of  
70 the county ordinances and regulations in effect at the time of the  
71 approval of the development agreement.

72 (2) As used in this section, the term "master planned  
73 community" means a development by one or more developers of real

74 estate consisting of residential, commercial, educational, health  
75 care, open space and recreational components that is developed  
76 pursuant to a long range, multi-phase master plan providing  
77 comprehensive land use planning and staged implementation and  
78 development and the master plan must include the following minimum  
79 provisions:

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

84 (i) Dwelling units within a certified retirement  
85 community certified by the Mississippi Department of Economic and  
86 Community Development; or

87 (ii) Dwelling units where at least one (1)  
88 occupant:

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

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

92 C. Declares himself to be retired.

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

99 (i) Internal community self-governance by the  
100 owners of the property;

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

106 (iii) The establishment of assessments and lien

107 rights to fund amenities, services and maintenance of common  
108 areas.

109 (c) The real estate described in the master plan must  
110 be within the territorial boundaries of one or more public utility  
111 districts established by the county for the provision of water and  
112 sewer facilities and water and sewer services.

113 (3) The master plan for a master planned community shall be  
114 subject to modification from time to time by the original owner or  
115 owners of the real estate described in the initial master plan,  
116 its affiliates, successors or assigns, to meet changing economic  
117 and market conditions; provided, however, any such modifications  
118 in the master plan which materially change the regulations,  
119 restrictions, covenants and limitations pertaining to buildings,  
120 subdivisions and land use regulations approved in the development  
121 agreement, or which significantly change the overall plan concept,  
122 shall be subject to, and shall not take effect until, approved by  
123 the board of supervisors of the county.

124 (4) Once a dwelling unit has met the criteria provided for  
125 in paragraph (a)(ii) of this section, such dwelling unit shall  
126 thereafter be included in the fifty percent (50%) requirement  
127 provided for in paragraph (a) of this section, notwithstanding the  
128 fact that subsequent thereto the dwelling unit is occupied by  
129 persons who do not meet the criteria provided for in paragraph  
130 (a)(ii) of this section.

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

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

137 65-4-5. (1) The following words when used in this chapter  
138 shall have the meanings herein ascribed unless the context  
139 otherwise clearly requires:

140           (a) "Board" means the Mississippi Department of  
141 Economic and Community Development;

142           (b) "Department" means the Mississippi Department of  
143 Transportation;

144           (c) "High economic benefit project" means (i) any new  
145 investment by a private company with capital investments in land,  
146 buildings, depreciable fixed assets and improvements of at least  
147 Fifty Million Dollars (\$50,000,000.00); (ii) any new investment of  
148 at least Twenty Million Dollars (\$20,000,000.00) by a private  
149 company having capital investments in this state in land,  
150 buildings, depreciable fixed assets and improvements of at least  
151 One Billion Dollars (\$1,000,000,000.00) in the aggregate; (iii)  
152 public investment of at least One Hundred Million Dollars  
153 (\$100,000,000.00) to take place over a specified period of time  
154 and in accordance with a master plan duly adopted by the  
155 controlling political subdivision; (iv) any new investments in  
156 land, buildings, depreciable fixed assets and improvements by two  
157 (2) private companies upon land that is adjacent whenever the new  
158 investments of both companies is at least Sixty Million Dollars  
159 (\$60,000,000.00) in the aggregate, and such new investments by  
160 both private companies provide for the employment of at least five  
161 hundred (500) employees in the aggregate; (v) any project which  
162 would benefit from the construction of any highway bypass which  
163 would aid in economic development and would provide an alternate  
164 route to avoid an existing route which underpasses a railroad and  
165 which would aid in existing or proposed industry; or (vi) any  
166 master planned community \* \* \*;

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

170           (e) "Private company" means (i) any agricultural,  
171 aquacultural, maricultural, processing, distribution, warehousing,  
172 manufacturing or research and development enterprise; (ii) any air

173 transportation and maintenance facility, regional shopping mall,  
174 hospital, large hotel, resort or movie industry studio; (iii) the  
175 federal government with respect to any specific project which  
176 meets the criteria established in paragraph (c) (i) of this  
177 subsection; (iv) any existing or proposed industry in regard to a  
178 project described in paragraph (c) (v) of this subsection; or (v)  
179 a developer with respect to any specific project which meets the  
180 criteria established in paragraph (c) (vi) of this subsection.

181 (f) "Master planned community" means a development by  
182 one or more developers of real estate consisting of residential,  
183 commercial, educational, health care, open space and recreational  
184 components that is developed pursuant to a long range, multi-phase  
185 master plan providing comprehensive land use planning and staged  
186 implementation and development and the master plan must include  
187 the following minimum provisions:

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

192 A. Dwelling units within a certified  
193 retirement community certified by the Mississippi Department of  
194 Economic and Community Development; or

195 B. Dwelling units where at least one (1)  
196 occupant:

197 1. Is sixty-two (62) years of age; or  
198 2. Receives pension income reported on  
199 his most recent federal income tax return filed prior to  
200 occupancy; or

201 3. Declares himself to be retired.

202 (ii) The real estate described in the master plan  
203 must be subjected to a set of land use restrictions imposed by  
204 deed restriction or restrictive covenants recorded by the  
205 developer in the land records of the chancery clerk of the county

206 as land is developed and sold in phases to users. Such  
207 restrictions shall include design guidelines and standards that  
208 provide for:

209 A. Internal community self-governance by the  
210 owners of the property;

211 B. The establishment of one or more legal  
212 persons endowed with the powers, rights and duties to administer,  
213 manage, own and maintain common areas, establish community  
214 activities and enforce the land use restrictions on the common  
215 areas and private property; and

216 C. The establishment of assessments and lien  
217 rights to fund amenities, services and maintenance of common  
218 areas.

219 (iii) The real estate described in the master plan  
220 must be within the territorial boundaries of one or more public  
221 utility districts established by the county for the provision of  
222 water and sewer facilities and water and sewer services.

223 The master plan for a master planned community shall be  
224 subject to modification from time to time by the original owner or  
225 owners of the real estate described in the initial master plan,  
226 its affiliates, successors or assigns, to meet changing economic  
227 and market conditions.

228 Once a dwelling unit has met the criteria provided for in  
229 item (i)B of this paragraph, such dwelling unit shall thereafter  
230 be included in the fifty percent (50%) requirement provided for in  
231 item (i) of this paragraph notwithstanding the fact that  
232 subsequent thereto the dwelling unit is occupied by persons who do  
233 not meet the criteria provided for in item (i)B of this paragraph.

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

238 (2) The Mississippi Department of Transportation is hereby

239 authorized to purchase rights-of-way and construct and maintain  
240 roads and highways authorized to be constructed pursuant to this  
241 chapter.

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

244 19-5-9. The construction codes published by a nationally  
245 recognized code group which sets minimum standards and has the  
246 proper provisions to maintain up-to-date amendments are hereby  
247 adopted as minimum standard guides for building, plumbing,  
248 electrical, gas, sanitary, and other related codes in Mississippi.

249 Any county within the State of Mississippi, in the discretion of  
250 the board of supervisors, may adopt building codes, plumbing  
251 codes, electrical codes, sanitary codes, or other related codes  
252 dealing with general public health, safety or welfare, or a  
253 combination of the same, within but not exceeding the provisions  
254 of the construction codes published by nationally recognized code  
255 groups, by order or resolution in the manner herein prescribed,  
256 but said codes so adopted shall apply only to the unincorporated  
257 areas of the county. However, such codes shall not apply to the  
258 erection, maintenance, repair or extension of farm buildings or  
259 farm structures, except as may be required under the terms of the  
260 "Flood Disaster Protection Act of 1973" and shall apply to a  
261 master planned community as defined in Section 1 of Senate Bill  
262 No. 2720, 2000 Regular Session, only to the extent allowed in  
263 Section 1 of Senate Bill No. 2720, 2000 Regular Session. The  
264 provisions of this section shall not be construed to authorize the  
265 adoption of any code which applies to the installation, repair or  
266 maintenance of electric wires, pipelines, apparatus, equipment or  
267 devices by or for a utility rendering public utility services,  
268 required by it to be utilized in the rendition of its duly  
269 authorized service to the public. Before any such code shall be  
270 adopted, it shall be either printed or typewritten and shall be  
271 presented in pamphlet form to the board of supervisors at a



272 regular meeting. The order or resolution adopting such code shall  
273 not set out said code in full, but shall merely identify the same.

274 The vote or passage of the order or resolution shall be the same  
275 as on any other order or resolution. After its adoption, such  
276 code or codes shall be certified to by the president and clerk of  
277 the board of supervisors and shall be filed as a permanent record  
278 in the office of the clerk who shall not be required to transcribe  
279 and record the same in the minute book as other orders and  
280 resolutions.

281 All provisions of this section shall apply to amendments and  
282 revisions of the codes mentioned herein. The provisions hereof  
283 shall be in addition and supplemental to any existing laws  
284 authorizing the adoption, amendment or revision of county orders,  
285 resolutions or codes.

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

299 Any person or persons objecting to such code or codes may  
300 object in writing to the provisions of said code or codes within  
301 sixty (60) days after the passage of the order or resolution  
302 approving same, and if the board of supervisors adjudicates that  
303 ten percent (10%) or more of the qualified electors residing in  
304 the affected unincorporated areas of the county have objected in

305 writing to said code or codes, then in such event said code shall  
306 be inoperative and not in effect unless adopted for the immediate  
307 preservation of the public health, safety and general welfare  
308 until approved by a special election called by the board of  
309 supervisors as other special elections are called and conducted by  
310 the election commissioners of said county as other special  
311 elections are conducted, said special election to be participated  
312 in by all the qualified electors of said county residing in the  
313 unincorporated areas of the county. If the voters approve said  
314 code or codes in said special election it shall be in force and in  
315 operation thereafter until amended or modified as herein provided.

316 If the majority of the qualified electors voting in said special  
317 election vote against said code or codes, then, in such event,  
318 said code or codes shall be void and of no force and effect, and  
319 no other code or codes dealing with such subject shall be adopted  
320 under the provisions of this section until at least two (2) years  
321 thereafter.

322 After any such code shall take effect the board of  
323 supervisors is authorized to employ such directors and other  
324 personnel as the board, in its discretion, deems necessary and to  
325 expend general county funds or any other funds available to the  
326 board to fulfill the purposes of this section.

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

338 1973" for the erection, maintenance, repair or extension of farm  
339 buildings or farm structures outside the corporate limits of  
340 municipalities.

341 The authority herein granted is cumulative and supplemental  
342 to any other authority granted by law.

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