

By: Senator(s) Williamson

To: Public Property;
Appropriations

SENATE BILL NO. 2815

1 AN ACT TO AMEND SECTIONS 39-13-3, 39-13-5, 39-13-7 AND
2 39-13-9, MISSISSIPPI CODE OF 1972, TO REVISE PORTIONS OF THE
3 MISSISSIPPI LOCAL GOVERNMENT HISTORIC PRESERVATION LAW; TO PROVIDE
4 THAT THE GOVERNING AUTHORITIES OF EACH MUNICIPALITY AND COUNTY MAY
5 ENACT ORDINANCES ESTABLISHING LOCAL HISTORIC PRESERVATION
6 DISTRICTS, HISTORIC LANDMARKS AND LANDMARK SITES; TO PROVIDE
7 DEFINITIONS; TO REQUIRE THE GOVERNING BODY OF ANY COUNTY OR
8 MUNICIPALITY TO ESTABLISH A HISTORIC PRESERVATION COMMISSION TO
9 PRESERVE, PROMOTE AND DEVELOP THE HISTORICAL RESOURCES WITHIN ITS
10 JURISDICTION; TO PROVIDE FOR THE ISSUANCE OF A CERTIFICATE OF
11 APPROPRIATENESS FOR CERTAIN CONSTRUCTION, ALTERATION, DEMOLITION
12 OR RELOCATION OF LANDMARK PROPERTY; TO PROVIDE PENALTIES FOR
13 VIOLATIONS; AND FOR RELATED PURPOSES.

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

15 SECTION 1. The governing authorities of each municipality
16 and county may stabilize the economy of the areas within the
17 boundary of such municipality or county through the continued use,
18 preservation and revitalization of key historic and architectural
19 resources. It is recognized that the protection and enhancement
20 of such attractions help to attract tourists and visitors, and
21 that the further development of local heritage tourism programs
22 supports and stimulates local business and industry. This act
23 permits governing authorities to strengthen civic pride and ensure
24 cultural stability through neighborhood conservation and historic
25 preservation activities. This act establishes a review process
26 for the preservation and appropriate redevelopment of the key
27 historic and architectural resources of a governing authority and
28 creates procedures which ensure adequate public notice before the
29 creation of local historic preservation commissions or the
30 designation of local historic districts, landmarks and landmark
31 sites.

32 SECTION 2. The following words and phrases shall have the
33 meanings ascribed herein unless the context clearly indicates
34 otherwise:

35 (a) "Alteration" means any change in the exterior
36 appearance or materials of a landmark or a structure within a
37 historic district or on a landmark site.

38 (b) "Certificate of appropriateness" means an official
39 signed and dated governmental document issued by either a local
40 historic preservation commission or a governing authority to
41 permit specific work in a historic district or at a landmark site
42 or landmark which has been reviewed and approved.

43 (c) "Construction" means work which is neither
44 alteration nor demolition. Essentially, it is the erection of a
45 new structure which did not previously exist, even if such a
46 structure is partially joined to an existing structure.

47 (d) "Demolition" means the intentional removal of a
48 structure within a local historic district or on a landmark site
49 or which has been designated as a landmark.

50 (e) "Demolition by neglect" means substantial
51 deterioration of a historic structure that results from improper
52 maintenance or a lack of maintenance.

53 (f) "Design review guidelines," if adopted by a local
54 historic preservation commission, shall be a written form designed
55 to inform local property owners about historical architectural
56 styles prevalent in a community and to recommend preferred
57 treatments and discourage treatments that would compromise the
58 architectural integrity of structures in a historic district or on
59 a landmark site or individually designated as landmarks.

60 (g) "Historic landmark" means a structure of
61 exceptional individual significance and typically is a structure
62 which could not be included within a local historic district.

63 (h) "Historic preservation commission" means a
64 municipal or county body established to advise a local government

65 on matters relating to historic preservation, including the
66 designation of historic districts, landmarks and landmark sites,
67 and which may be empowered to review applications for permits for
68 alteration, construction, demolition, relocation or subdivision
69 for structures in historic districts or on landmark sites or
70 designated as landmarks.

71 (i) "Historic preservation district" means a group of
72 two (2) or more tax parcels and their structures, and may be an
73 entire neighborhood of structures linked by historical association
74 or historical development. It is not necessary that all
75 structures within a historic preservation district share the same
76 primary architectural style or be from the same primary historical
77 period. A historic district may also include both commercial and
78 residential structures, and may include structures covered by two
79 (2) or more zoning classifications. A historic preservation
80 district may include both contributing and noncontributing
81 structures.

82 (j) "Landmark site" means a location where a primary
83 architectural or historical resource formerly stood or a
84 significant historic event took place or an important
85 archeological resource remains.

86 (k) "Period of greatest historic significance for a
87 landmark" means the time period during which the landmark had been
88 essentially completed but not yet altered. It is also the period
89 during which the style of architecture of the landmark was
90 commonplace or typical. If a landmark also achieved historical
91 importance in part because of designed landscape features, the
92 period of greatest historic significance includes the time period
93 during which such landscape features were maintained.

94 (l) "Relocation" means the moving of a structure to a
95 new location on its tax parcel or the relocation of such a
96 structure to a new tax parcel.

97 (m) "Structure" means a man-made object and typically
98 will be visible because of portions which exist above grade.
99 Structures built during the historic period, 1700 forward, may in
100 some instances not be visible above grade if they are cellars,
101 cisterns, icehouses or similar objects which by their nature are
102 intended to be built into the ground. A structure includes both
103 interior components and visible exterior surfaces, as well as
104 attached elements such as signs and related features such as
105 walks, walls, fences and other nearby secondary structures or
106 landmark features.

107 (n) "Subdistricts" means discrete areas within a larger
108 historic district within which separate design guidelines are
109 appropriate and that may be created to recognize different zoning
110 classifications or historic development patterns which have caused
111 adjacent historic areas to develop at different time.

112 (o) "Subdivision" includes any change in the boundaries
113 of a single tax parcel, whether the change results in expansion or
114 reduction or a boundary relocation.

115 (p) "Substantial deterioration" means structural
116 degradation of such a nature that water penetration into a
117 historic structure can no longer be prevented, or structural
118 degradation that causes stress or strain on structural members
119 when supports collapse or warp, evidence of which includes
120 defective roofing materials, broken window coverings and visible
121 interior decay.

122 (q) "Survey of resources" means the documentation, by
123 historical research or a photographic record, of structures of
124 historical interest within a specified area or jurisdiction or of
125 existing structures within a proposed historic district.

126 (r) "Unauthorized demolition" means the deliberate
127 demolition of a historic structure without prior review and
128 approval by a local historic preservation commission or a

129 governing authority to which such a commission has made a
130 recommendation.

131 (s) "Unreasonable economic hardship" means the
132 definition under constitutional standards used to determine
133 whether a "taking" exists.

134 SECTION 3. Section 39-13-3, Mississippi Code of 1972, is
135 amended as follows:

136 39-13-3. The governing authority of each municipality and
137 county, either independently or jointly with the governing
138 authority of an adjacent municipality or county, or both, is
139 hereby empowered, in its discretion, to enact ordinances providing
140 for the creation of one or more local historic preservation
141 commissions to advise on the establishment and location of
142 potential historic districts and the designation of potential
143 historic landmarks and landmark sites within the jurisdictional
144 area of the governing authorities. The governing authorities of
145 each municipality and county, either independently or jointly with
146 the governing authorities of an adjacent municipality, may enact
147 ordinances for the establishment of such local historic
148 preservation districts, historic landmarks and landmark sites
149 within the jurisdictional area of the governing authorities as
150 these authorities shall choose to designate. Each such ordinance
151 shall be adopted after investigation of the historical,
152 architectural, archaeological and cultural significance of the
153 buildings, structures, features, sites and surroundings of such
154 districts, landmarks or landmark sites and after having held
155 public hearing thereon. Notice of such public hearing, specifying
156 the boundaries of any proposed historic * * * district and the
157 location of proposed historic landmarks and landmark sites shall
158 be published once a week for at least three (3) consecutive weeks
159 in at least one (1) newspaper published in such municipality or
160 county. The first publication of such resolution shall be made
161 not less than twenty-one (21) days prior to the date fixed in such

162 resolution for the public hearing and the last publication shall
163 be made not more than seven (7) days prior to such date. If no
164 newspaper be published in such municipality or county, then such
165 notice shall be given by publishing the resolution for the
166 required time in some newspaper having a general circulation in
167 such municipality or county.

168 An ordinance to establish a local historic preservation
169 commission may precede an ordinance to designate one or more local
170 historic districts and one or more landmarks or landmark sites.
171 Whenever governing authorities enact such an ordinance creating a
172 historic preservation commission before an ordinance or ordinances
173 designating one or more local historic districts and one or more
174 landmarks or landmark sites, the local historic preservation
175 commission shall review such potential local historic districts or
176 potential landmarks or landmark sites and make a recommendation to
177 the governing authorities before such designation.

178 SECTION 4. Section 39-13-5, Mississippi Code of 1972, is
179 amended as follows:

180 39-13-5. Before it may designate one or more historic
181 districts, or simultaneously with such designation, the governing
182 body of any county or municipality, individually or jointly, shall
183 establish a historic preservation commission to preserve, promote
184 and develop the historical resources of such county or
185 municipality in accordance with the provisions of this chapter.
186 The historic preservation commission shall have the following
187 powers:

188 (a) The commission shall conduct or cause to be
189 conducted a continuing study and survey of resources within the
190 county or municipality or combination thereof.

191 (b) The commission shall recommend to the county or
192 municipality or combination thereof the adoption of ordinances
193 designating preservation districts, landmarks and landmark sites.

194 (c) The commission may recommend that the county or
195 municipality or combination thereof recognize subdistricts within
196 any preservation district in order that the commission may adopt
197 specific guidelines for the regulation of properties within such a
198 subdistrict.

199 (d) The commission shall review applications proposing
200 construction, alteration, demolition or relocation of any
201 resource. The document granting such an application shall be
202 known as a certificate of appropriateness. No commission may deny
203 a certificate of appropriateness for demolition if denial of such
204 a certificate would cause unreasonable economic hardship to an
205 owner.

206 (e) The commission shall use as a basis for its
207 decisions on applications for certificates of appropriateness the
208 Secretary of the Interior's Standards for Rehabilitation and
209 Guidelines for Rehabilitating Historic Buildings as well as any
210 more specific design review guidelines adopted by the commission
211 or the governing authority of the county or municipality or
212 combination thereof.

213 (f) The commission, at the discretion of the governing
214 authority, may grant or deny the certificates of appropriateness
215 and may grant certificates of appropriateness contingent upon the
216 acceptance by the applicant of specified conditions.

217 (g) The commission shall not consider interior
218 arrangements of buildings and structures except that it may when
219 requested by the Department of Archives and History to advise the
220 department on questions relating to the interiors of publicly
221 owned historic buildings. Interior arrangements not to be
222 considered by the commission shall include floor plans,
223 architectural details and finishes, but the commission may
224 consider interior structural elements visible through doors or
225 windows if they become deteriorated because of demolition by
226 neglect. Such interior structural elements may include walls,

227 floors and ceilings, as well as other supporting elements of a
228 composite structure.

229 (h) The commission may, by local ordinance, review
230 proposed governmental actions affecting governmentally owned
231 structures included within local historic districts, located on
232 landmark sites or designated as landmarks.

233 (i) The commission, subject to the consent of and
234 requirements of the county or municipality or combination thereof,
235 may apply for, receive, hold and spend funds from private and
236 public sources in addition to appropriations made by the county or
237 municipality or combination thereof for the purpose for carrying
238 out the duties of the commission.

239 (j) The commission, subject to the consent of the
240 requirements of the county or municipality or combination thereof,
241 may employ such staff or contract with technical experts or other
242 persons as may be required for the performance of its duties and
243 may obtain the equipment, supplies and other materials necessary
244 for its effective operation.

245 (k) The commission, solely in the performance of its
246 official duties and only at reasonable times, may enter upon
247 private land for the examination or survey thereof. No member,
248 employee or agent of the commission shall enter any private
249 dwelling or structure without the express consent of the owner of
250 record or occupant thereof.

251 (l) A municipality, by ordinance, may specify that
252 color changes are outside the jurisdiction of the commission.

253 Such commission shall consist of not fewer than five (5) nor
254 more than nine (9) residents of the county or municipality
255 establishing the commission who shall be appointed by the
256 governing authority with due regard to proper representation in
257 such fields as history, architecture, urban planning, archaeology
258 and law. All members of the commission shall serve at the will
259 and pleasure of the governing authority appointing them and shall

260 serve staggered terms. The precise method of appointment, and
261 general terms of appointment, shall be specified in a local
262 ordinance. If a documented good faith effort has been made
263 unsuccessfully by the governing authority to locate residents of
264 the county or municipality to serve on the commission, the
265 governing authority may appoint individuals who own property
266 within the boundary of the county or municipality or are in the
267 service of an employer located within the boundary of the county
268 or municipality. The commission annually shall elect from its
269 membership a chairman and a vice chairman and may employ such
270 qualified staff personnel and counsel as it deems necessary. The
271 commission shall retain as evidence of its discussions and
272 decisions a complete set of minutes and may additionally create
273 tape recordings or transcripts of its meetings. In addition, the
274 commission shall retain copies of all applications filed with it
275 including supporting documentation that may be added during open
276 public meetings to supplement an original application or comment
277 thereon. The commission shall advise the governing authority as
278 to the designation of historic * * * districts and the designation
279 of historic landmarks and landmark sites. If any governing
280 authority, in its discretion, chooses to divide the duties and
281 responsibilities of the commission into no more than two (2)
282 commissioners or boards, each commission or board shall be
283 established as directed in this section.

284 SECTION 5. Section 39-13-7, Mississippi Code of 1972, is
285 amended as follows:

286 39-13-7. No historic preservation district or districts
287 shall be designated until the Mississippi Department of Archives
288 and History has been notified by certified letter by the governing
289 authority of a municipality or county and invited to make
290 recommendations concerning the proposed district boundaries. The
291 Mississippi Department of Archives and History may comment by
292 letter, telephone, e-mail or in person through designated staff.

293 The boundary of a historic district or landmark or landmark site
294 may follow the formal legal description of a tax parcel or parcels
295 or, because of historical justification or topographical
296 conditions, may deviate from such formal legal descriptions. When
297 a boundary deviates from formal legal descriptions, there must be
298 written justification for such a deviation in any local
299 designating ordinance.

300 When a municipality or county has already created by
301 ordinance a local historic preservation commission, that
302 commission shall jointly notify both the governing authority of
303 the municipality or county and the Mississippi Department of
304 Archives and History that a historic district is being proposed
305 and recommended and shall provide to the Mississippi Department of
306 Archives and History the dates of the next two (2) public meetings
307 of the governing authority at which action on the designation of
308 such a district might be taken so that the Mississippi Department
309 of Archives and History may comment in a timely manner. Failure
310 of the Mississippi Department of Archives and History to comment
311 by the date of the second such meeting shall relieve the
312 municipality or county of any responsibility for awaiting and
313 responding to such analysis, and the body may at any time
314 thereafter take any necessary action to create the proposed
315 historic district.

316 When a municipality or county has not previously created by
317 ordinance a local historic preservation commission and the
318 governing authority proposes to create such a commission, the
319 governing authority must give the Mississippi Department of
320 Archives and History an opportunity to comment on the proposed
321 provisions for such an ordinance, unless such ordinance is
322 substantially identical to any model local historic preservation
323 ordinance which has been recommended and promulgated by the
324 Mississippi Department of Archives and History. Whenever the
325 Mississippi Department of Archives and History is invited to

326 comment on the terms of a proposed local historic preservation
327 ordinance, failure of the department to comment within forty-five
328 (45) days after a written request for comments has been received
329 shall relieve the governing authority of any responsibility to
330 wait further for such comments.

331 SECTION 6. Section 39-13-9, Mississippi Code of 1972, is
332 amended as follows:

333 39-13-9. The governing authority of any county or
334 municipality, individually or jointly, is authorized to make
335 appropriations to a historic preservation commission, in any
336 amount that it may determine necessary for the expenses of the
337 operation of such commission. A governing authority may apply to
338 participate in the Certified Local Government Program of the
339 National Park Service, which is administered in Mississippi by the
340 Department of Archives and History and may on behalf of a local
341 historic preservation commission apply for funding from the
342 Department of Archives and History to supplement funds available
343 from the governing authority itself. Said governing authorities
344 shall not be empowered to acquire by eminent domain any historic
345 preservation properties unless such properties are needed for
346 governmental purposes other than historic preservation.

347 SECTION 7. A governing authority may provide by local
348 ordinance the procedures to be followed to designate historic
349 districts, landmarks and landmark sites. Such an ordinance may
350 provide that a governing authority may designate such properties
351 upon the recommendation of a local historic preservation
352 commission.

353 A potential historic district or landmark or landmark site
354 may be proposed for designation by either a majority of the
355 members of a local historic preservation commission or an owner of
356 a potential landmark or landmark site or an organization which has
357 as one of its central purposes the promotion of historic
358 preservation objectives. If in private ownership, a landmark site

359 must include significant surviving landscape features to qualify
360 for designation unless its primary significance is archeological,
361 and new construction after review and approval, shall be built to
362 fit into such landscape features rather than replace them or shall
363 be designed to avoid insofar as possible an archeological resource
364 rather than replace it. If in public ownership, a local historic
365 preservation commission shall discourage new construction on a
366 site of great significance to the entire community unless the new
367 construction can be located on a portion of the site which will
368 permit a continuing understanding of its historical character and
369 will avoid damage to surviving landscape features or an
370 archeological resource.

371 Once a nomination has been filed with an existing historic
372 preservation commission or the governing authority of a
373 municipality or county proposing to create such a commission and
374 designate one or more local properties, a decision on whether to
375 proceed with the designation must be made within six (6) months.

376 When a historic preservation commission already exists within
377 a community, a majority of the commission's members must vote in
378 favor of any proposed designation in order for the file supporting
379 the designation to be sent forward to the local governing
380 authority for its consideration. No file purporting to justify a
381 proposed designation may be forwarded to a governing authority
382 unless the commission's recommendation includes a map that clearly
383 delineates boundaries for the proposed designation, a verbal
384 description and justification of the proposed boundaries and a
385 written statement of significance for the historic district or
386 landmark or landmark site proposed for designation. Unless
387 justification is contained in a designating ordinance, the
388 boundary for any historic landmark shall include an entire tax
389 parcel and may include adjoining tax parcels that were
390 historically linked to the primary parcel during the period of
391 greatest historic significance for the landmark structure.

392 The local governing authority must conduct at least one
393 public hearing on the proposed designation and notice of the
394 public hearing must be published weekly for at least three (3)
395 consecutive weeks in a local newspaper authorized to publish legal
396 notices.

397 The local governing authority must take action on the
398 proposed designation within sixty (60) days of the public hearing,
399 either to adopt a designating ordinance or to reject the proposed
400 designation.

401 As quickly as would be reasonably possible, a local historic
402 preservation commission must notify other municipal agencies and
403 any appropriate county or state agencies of the designation of a
404 historic district, landmark or landmark site. The commission must
405 maintain in its official files an updated list and map of local
406 designations and provide copies of such a map to other
407 governmental agencies within one (1) week of the preparation of a
408 new version of the map.

409 SECTION 8. A local historic preservation commission, if so
410 empowered by a local ordinance or a local government acting upon
411 the advice of a local historic preservation commission, may
412 approve an application and issue a certificate of appropriateness
413 if it finds that a proposed construction, alteration, demolition
414 or relocation is consistent with the design review guidelines
415 established by the commission, would be compatible with the
416 character of a historic district or landmark or landmark site and
417 does not compromise the historic and architectural integrity of
418 the historic district, landmark or landmark site. A governing
419 authority may require that a property owner post a bond to
420 guarantee satisfactory completion of a relocation project. Any
421 local historic preservation ordinance shall specify whether
422 partial demolition shall be considered an alteration or
423 demolition, as it may not be both.

424 Whenever a local historic preservation commission shall deny
425 or recommend denial of a certificate of appropriateness, the
426 commission must state the reasons for such denial in writing.
427 Thereafter, an applicant may resubmit a new application at any
428 time, except that an applicant must wait six (6) months whenever
429 an application for a certificate of appropriateness is denied for
430 a landmark property of statewide or national significance and
431 notice of any second or subsequent application must be sent to the
432 Mississippi Department of Archives and History as well as to the
433 local historic preservation commission.

434 A governing authority may require that denial of a
435 certificate of appropriateness shall be binding upon a local
436 building inspector or the agency responsible for issuing building
437 permits and shall prevent the issuance of other building permits
438 for the same parcel until a certificate of appropriateness is
439 approved. A certificate of appropriateness may be required for
440 work which does not require a building permit. A certificate of
441 appropriateness may be evidenced by either a written and dated
442 letter to an owner or applicant or such a letter accompanied by a
443 signed and dated stamp on the face of any and all architectural or
444 project drawings prepared for a project. A governing authority
445 may provide by ordinance that a certificate of appropriateness
446 shall expire at the end of a specified time period if work has not
447 begun.

448 SECTION 9. The governing authority of any county or
449 municipality, individually or jointly, may enact local legislation
450 governing "demolition by neglect," defined as improper maintenance
451 or lack of maintenance of any property in a historic district, or
452 any historic landmark or landmark site, which results in
453 substantial deterioration of such a property and threatens its
454 continued stability and preservation. The governing authority of
455 any county or municipality, individually or jointly, is further
456 authorized, in its discretion, to fine any property owner who has

457 been found to own a property that has been determined to be
458 threatened by demolition by neglect as defined herein. Such
459 property owner, from the date such property is found to be in
460 demolition by neglect by the governing authority until such
461 repairs are made to remove the danger to the property, shall be in
462 violation of the provisions of this section.

463 In addition to the powers specified in Section 21-19-11(1), a
464 governing authority, if the Historic Preservation Division of the
465 Department of Archives and History concurs, may make repairs
466 necessary to correct demolition by neglect, and the cost of such
467 repairs shall become a lien against the property in accordance
468 with Section 21-19-11(3).

469 If a property in a historic district or a historic landmark
470 or landmark site is demolished without review and approval by a
471 local historic preservation commission, the governing authority
472 may require that the owner rebuild on the site using as much of
473 the original building material as possible, but in general
474 following the same form. A governing authority may specify by
475 ordinance that unauthorized demolition of a portion of a structure
476 shall not serve as justification for a demolition permit whenever
477 it can be shown that restoration or rehabilitation would still be
478 feasible.

479 Whenever a structure or structures is demolished without
480 review and approval by a local historic preservation commission,
481 the governing authority may require that no permit be issued for
482 any structure or structures proposed for the same parcel which
483 would require a footprint larger than the footprint of the
484 demolished structure or structures.

485 If a historic landmark or landmark site of statewide or
486 national significance is demolished without review and approval by
487 a local historic preservation commission, the governing authority
488 may require that no permit for any construction on the parcel from

489 which the landmark or landmark site has been removed may be issued
490 for a period of up to twenty-four (24) months.

491 SECTION 10. Any person who violates any of the provisions of
492 this act shall be guilty of a misdemeanor and, upon conviction,
493 shall be fined not less than Ten Dollars (\$10.00) nor more than
494 Five Hundred Dollars (\$500.00).

495 Each day that a violation continues to exist shall constitute
496 a separate offense.

497 SECTION 11. If a property owner in a historic district, or
498 the owner of a historic landmark or landmark site, is denied a
499 certificate of appropriateness, the property owner may appeal such
500 decision either to the governing authority of the city or county
501 or combination thereof or may, if such venue has been made
502 available at the discretion of the governing authority, appeal
503 directly to the chancery court. Any such appeal shall be reviewed
504 upon the record established before the local historic preservation
505 commission. Any local property owner or organization aggrieved or
506 damaged by such a decision may appeal in the same manner.

507 SECTION 12. Nothing in this act shall require the
508 dissolution of any local historic preservation commission created
509 in Mississippi before the effective date of this act. Any local
510 historic preservation commission created by ordinance before the
511 effective date of this act shall continue in existence and
512 continue to have all of the purposes, powers and authority set out
513 in the ordinance creating such commission. Any such previously
514 created commission may be given the powers set forth in this act
515 if a governing authority reenacts a local ordinance in conformity
516 with this act.

517 No designation of a historic district or landmark or landmark
518 site shall be invalidated because the designation was made under a
519 valid ordinance before the effective date of this act.

520 SECTION 13. Sections 1, 2, 7, 8, 9, 10, 11 and 12 of this
521 act shall be codified in Chapter 13, Title 39, Mississippi Code of
522 1972.

523 SECTION 14. This act shall take effect and be in force from
524 and after July 1, 2001.