

By: Representative Cummings

To: Public Property

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 190

1 AN ACT TO ESTABLISH A PROCEDURE FOR THE SALE OF
2 GOVERNMENT-OWNED REAL PROPERTY ACQUIRED THROUGH CONDEMNATION OR
3 EMINENT DOMAIN PROCEEDINGS TO THE ORIGINAL OWNER OR THE ORIGINAL
4 OWNER'S HEIRS AT LAW IF THE PROPERTY IS NOT USED OR PLANNED FOR
5 USE FOR A PUBLIC PURPOSE; TO AMEND SECTIONS 19-7-3, 21-17-1 AND
6 57-7-1, MISSISSIPPI CODE OF 1972, IN CONFORMITY WITH THE
7 PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** (1) If any agency, department, commission,
10 board, bureau, institution or other instrumentality of the state,
11 or any county, any municipality or any political subdivision or
12 instrumentality thereof owns any real property that was acquired
13 through condemnation or eminent domain proceedings and such
14 property:

15 (a) Is not being used for a public purpose,

16 (b) Has not been used for a public purpose during a
17 period of at least fifteen (15) consecutive years at any time
18 since its acquisition by the governmental entity, and

19 (c) There are no definitive plans by the governmental
20 entity for use of the property for a public purpose in the
21 immediate future,

22 then the person or persons who owned the property at the time it
23 was condemned, or an heir at law of any such person, may petition
24 the governmental entity that acquired the property to force sell
25 of the property, or any portion thereof, to the petitioner or
26 petitioners. The petition must clearly describe the property,
27 document the original condemnation, identify the owner from whom
28 the property was taken and all of the owner's heirs at law and

29 allege nonuse of the property for a public purpose as provided in
30 paragraphs (a), (b) and (c) of this subsection.

31 (2) Within ninety (90) days after receiving the petition,
32 the governmental entity must respond to the petition by making a
33 written finding and entering upon its official minutes a statement
34 indicating use or nonuse of the property for a public purpose as
35 provided in paragraphs (a), (b) and (c) of subsection (1) of this
36 section.

37 (3) If the governmental entity fails to respond timely or
38 alleges in its findings use of the property for a public purpose,
39 then the petitioner or petitioners may institute legal proceedings
40 for the purpose of compelling the governmental entity to respond
41 or for the purpose of taking exception to the findings of the
42 governmental entity.

43 (4) If the governmental entity responds in its findings
44 nonuse of the property for a public purpose, then the original
45 owner or his heirs at law have not more than three (3) years to
46 provide the governmental entity with all documentation necessary
47 to prove original ownership and to prove that the petitioner is
48 the original owner or an heir at law of the original owner, along
49 with proof that all heirs at law of the original owner have been
50 notified of the petition and have joined in the petition, have no
51 objection to the petition or have failed to respond within ninety
52 (90) days after having been notified. Notice to an heir at law
53 shall be given in the same manner and in accordance with the same
54 procedure as service of process in civil cases. Upon receipt of
55 such documentation, the governmental entity has ninety (90) days
56 to execute all documents required to convey the property to the
57 petitioner at the price originally paid for the property together
58 with the fair market value of any improvements thereon, less such
59 amount, if any, as the person or persons from whom the property
60 was condemned, or the heirs at law of any such person, shows by
61 good and sufficient documentation to be the amount of income and

62 transaction taxes, if any, actually paid in connection therewith.
63 Any such conveyance may be made by quitclaim deed of the governing
64 authorities of the governmental entity.

65 (6) This section shall not be applicable to property that a
66 governmental entity has conveyed or otherwise disposed of before
67 July 1, 2006.

68 **SECTION 2.** Section 19-7-3, Mississippi Code of 1972, is
69 amended as follows:

70 19-7-3. (1) In case any of the real estate belonging to the
71 county shall cease to be used for county purposes, the board of
72 supervisors may sell, convey or lease the same on such terms as
73 the board may elect and may, in addition, exchange the same for
74 real estate belonging to any other political subdivision located
75 within the county. In case of a sale on a credit, the county
76 shall have a lien on the same for the purchase money, as against
77 all persons, until paid and may enforce the lien as in such cases
78 provided by law. The deed of conveyance in such cases shall be
79 executed in the name of the county by the president of the board
80 of supervisors, pursuant to an order of the board entered on its
81 minutes.

82 (2) (a) Before any lease, deed or conveyance is executed,
83 the board shall publish at least once each week for three (3)
84 consecutive weeks, in a public newspaper of the county in which
85 the land is located, or if no newspaper be published in said
86 county then in a newspaper having general circulation therein, the
87 intention to lease or sell, as the case may be, the county-owned
88 land and to accept sealed competitive bids for the leasing or
89 sale. The board shall thereafter accept bids for the lease or
90 sale and shall award the lease to the highest bidder in the manner
91 provided by law.

92 (b) The board of supervisors of any county may contract
93 for the professional services of a Mississippi-licensed real
94 estate broker to assist in the marketing and sale or lease of the

95 property for a reasonable commission, consistent with or lower
96 than the market rate, for services rendered to be paid from the
97 sale or lease proceeds.

98 (3) Whenever the board of supervisors shall find and
99 determine, by resolution duly and lawfully adopted and spread upon
100 its minutes (a) that any county-owned property is no longer needed
101 for county or related purposes and is not to be used in the
102 operation of the county, (b) that the sale of the property in the
103 manner otherwise provided by law is not necessary or desirable for
104 the financial welfare of the county, and (c) that the use of the
105 county property for the purpose for which it is to be sold,
106 conveyed or leased will promote and foster the development and
107 improvement of the community in which it is located and the civic,
108 social, educational, cultural, moral, economic or industrial
109 welfare thereof, the board of supervisors of such county shall be
110 authorized and empowered, in its discretion, to sell, convey,
111 lease, or otherwise dispose of same for any of the purposes set
112 forth herein.

113 (4) Nothing contained in this section shall be construed to
114 prohibit, restrict or to prescribe conditions with regard to the
115 authority granted under Section 17-25-3 or Section 57-75-37.

116 (5) A board of supervisors shall not be authorized to sell,
117 convey, lease or otherwise dispose of real property under this
118 section if the property was originally acquired by the county
119 under condemnation or eminent domain proceedings and proceedings
120 for disposition of the property are pending under Section 1 of
121 House Bill No. 190, 2006 Regular Session.

122 **SECTION 3.** Section 21-17-1, Mississippi Code of 1972, is
123 amended as follows:

124 21-17-1. (1) Every municipality of this state shall be a
125 municipal corporation and shall have power to sue and be sued; to
126 purchase and hold real estate, either within or without the
127 corporate limits, for all proper municipal purposes, including

128 parks, cemeteries, hospitals, schoolhouses, houses of correction,
129 waterworks, electric lights, sewers and other proper municipal
130 purposes; to purchase and hold personal property for all proper
131 municipal purposes; to acquire equipment and machinery by
132 lease-purchase agreement and to pay interest thereon, if
133 contracted, when needed for proper municipal purposes; to sell and
134 convey any real and personal property owned by it, and make such
135 order respecting the same as may be deemed conducive to the best
136 interest of the municipality, and exercise jurisdiction over the
137 same.

138 (2) (a) In case any of the real property belonging to a
139 municipality shall cease to be used for municipal purposes, the
140 governing authority of the municipality may sell, convey or lease
141 the same on such terms as the municipal authority may elect. In
142 case of a sale on a credit, the municipality shall charge
143 appropriate interest as contracted and shall have a lien on the
144 same for the purchase money, as against all persons, until paid
145 and may enforce the lien as in such cases provided by law. The
146 deed of conveyance in such cases shall be executed in the name of
147 the municipality by the governing authority of the municipality
148 pursuant to an order entered on the minutes. In any sale or
149 conveyance of real property, the municipality shall retain all
150 mineral rights that it owns, together with the right of ingress
151 and egress to remove same. Except as otherwise provided in this
152 section, before any such lease, deed or conveyance is executed,
153 the governing authority of the municipality shall publish at least
154 once each week for three (3) consecutive weeks, in a public
155 newspaper of the municipality in which the real property is
156 located, or if no newspaper be published as such, then in a
157 newspaper having general circulation therein, the intention to
158 lease or sell, as the case may be, the municipally owned real
159 property and to accept sealed competitive bids for the leasing or
160 sale. The governing authority of the municipality shall

161 thereafter accept bids for the lease or sale and shall award the
162 lease or sale to the highest bidder in the manner provided by law.
163 However, whenever the governing authority of the municipality
164 shall find and determine, by resolution duly and lawfully adopted
165 and spread upon its minutes (i) that any municipally owned real
166 property is no longer needed for municipal or related purposes and
167 is not to be used in the operation of the municipality, (ii) that
168 the sale of such property in the manner otherwise provided by law
169 is not necessary or desirable for the financial welfare of the
170 municipality, and (iii) that the use of such property for the
171 purpose for which it is to be sold, conveyed or leased will
172 promote and foster the development and improvement of the
173 community in which it is located and the civic, social,
174 educational, cultural, moral, economic or industrial welfare
175 thereof, the governing authority of the municipality shall be
176 authorized and empowered, in its discretion, to sell, convey or
177 lease same for any of the purposes set forth herein without having
178 to advertise for and accept competitive bids.

179 (b) In any case in which a municipality proposes to
180 sell, convey or lease real property under the provisions of this
181 subsection (2) without advertising for and accepting competitive
182 bids, the governing authority may sell, convey or lease the
183 property as follows:

184 (i) Consideration for the purchase, conveyance or
185 lease of the property shall be not less than the average of the
186 fair market price for such property as determined by three (3)
187 professional property appraisers selected by the municipality and
188 approved by the purchaser or lessee. Appraisal fees shall be
189 shared equally by the municipality and the purchaser or lessee; or

190 (ii) The governing authority of a municipality may
191 contract for the professional services of a Mississippi licensed
192 real estate broker to assist the municipality in the marketing and
193 sale or lease of the property, and may provide the broker

194 reasonable compensation for services rendered to be paid from the
195 sale or lease proceeds. The reasonable compensation shall not
196 exceed the usual and customary compensation for similar services
197 within the municipality.

198 (3) Whenever the governing authority of the municipality
199 shall find and determine by resolution duly and lawfully adopted
200 and spread upon the minutes that municipally owned real property
201 is not used for municipal purposes and therefore surplus as set
202 forth in subsection (2) of this section:

203 (a) The governing authority may donate such lands to a
204 bona fide not-for-profit civic or eleemosynary corporation
205 organized and existing under the laws of the State of Mississippi
206 and granted tax exempt status by the Internal Revenue Service and
207 may donate such lands and necessary funds related thereto to the
208 public school district in which the land is situated for the
209 purposes set forth herein. Any deed or conveyance executed
210 pursuant hereto shall contain a clause of reverter providing that
211 the bona fide not-for-profit corporation or public school district
212 may hold title to such lands only so long as they are continued to
213 be used for the civic, social, educational, cultural, moral,
214 economic or industrial welfare of the community, and that title
215 shall revert to the municipality in the event of the cessation of
216 such use for a period of two (2) years. In any such deed or
217 conveyance, the municipality shall retain all mineral rights that
218 it owns, together with the right of ingress and egress to remove
219 same;

220 (b) The governing authority may donate such lands to a
221 bona fide not-for-profit corporation (such as Habitat for
222 Humanity) which is primarily engaged in the construction of
223 housing for persons who otherwise can afford to live only in
224 substandard housing. In any such deed or conveyance, the
225 municipality shall retain all mineral rights that it owns,
226 together with the right of ingress and egress to remove same;

227 (c) In the event the governing authority does not wish
228 to donate title to such lands to the bona fide not-for-profit
229 civic or eleemosynary corporation, but wishes to retain title to
230 the lands, the governing authority may lease the lands to a bona
231 fide not-for-profit corporation described in paragraph (a) or (b)
232 for less than fair market value;

233 (d) Nothing contained in this subsection (3) shall be
234 construed to prohibit, restrict or to prescribe conditions with
235 regard to the authority granted under Section 17-25-3.

236 (4) The governing authority shall not be authorized to sell,
237 convey, lease or otherwise dispose of real property under this
238 section if the property was originally acquired by the
239 municipality under condemnation or eminent domain proceedings and
240 proceedings for disposition of the property are pending under
241 Section 1 of House Bill No. 190, 2006 Regular Session.

242 (5) Every municipality shall also be authorized and
243 empowered to loan to private persons or entities, whether
244 organized for profit or nonprofit, funds received from the United
245 States Department of Housing and Urban Development (HUD) under an
246 urban development action grant or a community development block
247 grant under the Housing and Community Development Act of 1974
248 (Public Law 93-383), as amended, and to charge interest thereon if
249 contracted, provided that no such loan shall include any funds
250 from any revenues other than the funds from the United States
251 Department of Housing and Urban Development; to make all contracts
252 and do all other acts in relation to the property and affairs of
253 the municipality necessary to the exercise of its governmental,
254 corporate and administrative powers; and to exercise such other or
255 further powers as are otherwise conferred by law.

256 (6) (a) The governing authority of any municipality may
257 establish an employer-assisted housing program to provide funds to
258 eligible employees to be used toward the purchase of a home. This
259 assistance may be applied toward the down payment, closing costs

260 or any other fees or costs associated with the purchase of a home.
261 The housing assistance may be in the form of a grant, forgivable
262 loan or repayable loan. The governing authority of a municipality
263 may contract with one or more public or private entities to
264 provide assistance in implementing and administering the program
265 and shall adopt rules and regulations regarding the eligibility of
266 a municipality for the program and for the implementation and
267 administration of the program. However, no general funds of a
268 municipality may be used for a grant or loan under the program.

269 (b) Participation in the program established under this
270 subsection (6) shall be available to any eligible municipal
271 employee as determined by the governing authority of the
272 municipality. Any person who receives financial assistance under
273 the program must purchase a house and reside within certain
274 geographic boundaries as determined by the governing authority of
275 the municipality.

276 (c) If the assistance authorized under this subsection
277 (6) is structured as a forgivable loan, the participating employee
278 must remain as an employee of the municipality for an agreed upon
279 period of time, as determined by the rules and regulations adopted
280 by the governing authority of the municipality, in order to have
281 the loan forgiven. The forgiveness structure, amount of
282 assistance and repayment terms shall be determined by the
283 governing authority of the municipality.

284 (7) The governing authority of any municipality may contract
285 with a private attorney or private collection agent or agency to
286 collect any type of delinquent payment owed to the municipality,
287 including, but not limited to, past due fees and fines. Any such
288 contract debt may provide for payment contingent upon successful
289 collection efforts or payment based upon a percentage of the
290 delinquent amount collected; however, the entire amount of all
291 delinquent payments collected shall be remitted to the
292 municipality and shall not be reduced by any collection costs or

293 fees. Any private attorney or private collection agent or agency
294 contracting with the municipality under the provisions of this
295 subsection shall give bond or other surety payable to the
296 municipality in such amount as the governing authority of the
297 municipality deems sufficient. Any private attorney with whom the
298 municipality contracts under the provisions of this subsection
299 must be a member in good standing of The Mississippi Bar. Any
300 private collection agent or agency with whom the municipality
301 contracts under the provisions of this subsection must meet all
302 licensing requirements for doing business in the State of
303 Mississippi. Neither the municipality nor any officer or employee
304 of the municipality shall be liable, civilly or criminally, for
305 any wrongful or unlawful act or omission of any person or business
306 with whom the municipality has contracted under the provisions of
307 this subsection. The Mississippi Department of Audit shall
308 establish rules and regulations for use by municipalities in
309 contracting with persons or businesses under the provisions of
310 this subsection. If a municipality uses its own employees to
311 collect any type of delinquent payment owed to the municipality,
312 then from and after July 1, 2000, the municipality may charge an
313 additional fee for collection of the delinquent payment provided
314 the payment has been delinquent for ninety (90) days. The
315 collection fee may not exceed fifteen percent (15%) of the
316 delinquent payment if the collection is made within this state and
317 may not exceed twenty-five percent (25%) of the delinquent payment
318 if the collection is made outside this state. In conducting
319 collection of delinquent payments, the municipality may utilize
320 credit cards or electronic fund transfers. The municipality may
321 pay any service fees for the use of such methods of collection
322 from the collection fee, but not from the delinquent payment.
323 There shall be due to the municipality from any person whose
324 delinquent payment is collected under a contract executed as
325 provided in this subsection an amount, in addition to the

326 delinquent payment, of not to exceed twenty-five percent (25%) of
327 the delinquent payment for collections made within this state, and
328 not to exceed fifty percent (50%) of the delinquent payment for
329 collections made outside of this state.

330 (8) In addition to such authority as is otherwise granted
331 under this section, the governing authority of any municipality
332 may expend funds necessary to maintain and repair, and to purchase
333 liability insurance, tags and decals for, any personal property
334 acquired under the Federal Excess Personal Property Program that
335 is used by the local volunteer fire department.

336 (9) The governing authority of any municipality may, in its
337 discretion, donate personal property or funds to the public school
338 district or districts located in the municipality for the
339 promotion of educational programs of the district or districts
340 within the municipality.

341 (10) In addition to the authority to expend matching funds
342 under Section 21-19-65, the governing authority of any
343 municipality, in its discretion, may expend municipal funds to
344 match any state, federal or private funding for any program
345 administered by the State of Mississippi, the United States
346 government or any nonprofit organization that is exempt under 26
347 USCS Section 501(c)(3) from paying federal income tax.

348 (11) The governing authority of any municipality that owns
349 and operates a gas distribution system, as defined in Section
350 21-27-11(b), and the governing authority of any public natural gas
351 district are authorized to contract for the purchase of the supply
352 of natural gas for a term of up to ten (10) years with any public
353 nonprofit corporation which is organized under the laws of this
354 state or any other state.

355 (12) The powers conferred by this section shall be in
356 addition and supplemental to the powers conferred by any other
357 law, and nothing contained in this section shall be construed to

358 prohibit, or to prescribe conditions concerning, any practice or
359 practices authorized under any other law.

360 **SECTION 4.** Section 57-7-1, Mississippi Code of 1972, is
361 amended as follows:

362 57-7-1. In the event that any municipality, county,
363 supervisors district, municipal airport authority, regional
364 airport authority or other governmental subdivision shall have
365 surplus airport land or other lands which are not needed for
366 airport purposes or for other governmental purposes, then such
367 property so designated and described may be set aside and improved
368 for industrial and commercial purposes and the same may thereafter
369 be operated or the same may be leased or sold upon such terms and
370 conditions as a municipality, county, municipal airport authority,
371 regional airport authority or governmental subdivision shall
372 prescribe.

373 In order to provide for the improvement of such property for
374 industrial and commercial purposes, the municipality or other
375 authority shall be authorized to provide all necessary utilities
376 therefor and to lay out, construct and/or improve and hard-surface
377 roadways, streets, driveways and access roads, railroads and spur
378 tracks, and provide for the grading, drainage, sewer, lights and
379 water, and all other necessary or proper utilities as may be
380 necessary or proper to make such land desirable or useful as a
381 site or sites for industrial and commercial enterprises. The cost
382 and expense of such improvements to said real estate shall be paid
383 for from funds made available from the lease or sale of such lands
384 to the extent such funds are available.

385 The governing authority of a municipality, county,
386 supervisors district, municipal airport authority, regional
387 airport authority or other governmental subdivision shall not be
388 authorized to sell, convey, lease or otherwise dispose of real
389 property under this section if the property was originally
390 acquired by the governmental subdivision under condemnation or

391 eminent domain proceedings and proceedings for disposition of the
392 property are pending under Section 1 of House Bill No. 190, 2006
393 Regular Session.

394 **SECTION 5.** This act shall take effect and be in force from
395 and after July 1, 2006.