

By: Representative Cummings

To: Public Property

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 ten (10) consecutive years at any time since
18 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 thirty (30) days
56 to obtain from a state licensed appraiser an appraisal of the fair
57 market value of the property. If the petitioner is dissatisfied
58 with the appraisal, he may obtain his own appraisal from some
59 other state licensed appraiser and, if there is a difference in
60 the two (2) appraisals of less than twenty percent (20%), the
61 property shall be sold to the petitioner at a price equal to the

62 average of the two (2) appraisals. If the difference in the
63 appraisals is twenty percent (20%) or greater, then the fair
64 market value of the property shall be determined by a court of
65 competent jurisdiction.

66 (5) When the market value of the property has been decided,
67 the governmental entity has ninety (90) days to execute all
68 documents required to convey the property to the petitioner at the
69 price established. Any such conveyance may be made by quitclaim
70 deed of the governing authorities of the governmental entity.

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

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

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

88 (2) (a) Before any lease, deed or conveyance is executed,
89 the board shall publish at least once each week for three (3)
90 consecutive weeks, in a public newspaper of the county in which
91 the land is located, or if no newspaper be published in said
92 county then in a newspaper having general circulation therein, the
93 intention to lease or sell, as the case may be, the county-owned
94 land and to accept sealed competitive bids for the leasing or

95 sale. The board shall thereafter accept bids for the lease or
96 sale and shall award the lease to the highest bidder in the manner
97 provided by law.

98 (b) The board of supervisors of any county may contract
99 for the professional services of a Mississippi-licensed real
100 estate broker to assist in the marketing and sale or lease of the
101 property for a reasonable commission, consistent with or lower
102 than the market rate, for services rendered to be paid from the
103 sale or lease proceeds.

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

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

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

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

130 21-17-1. (1) Every municipality of this state shall be a
131 municipal corporation and shall have power to sue and be sued; to
132 purchase and hold real estate, either within or without the
133 corporate limits, for all proper municipal purposes, including
134 parks, cemeteries, hospitals, schoolhouses, houses of correction,
135 waterworks, electric lights, sewers and other proper municipal
136 purposes; to purchase and hold personal property for all proper
137 municipal purposes; to acquire equipment and machinery by
138 lease-purchase agreement and to pay interest thereon, if
139 contracted, when needed for proper municipal purposes; to sell and
140 convey any real and personal property owned by it, and make such
141 order respecting the same as may be deemed conducive to the best
142 interest of the municipality, and exercise jurisdiction over the
143 same.

144 (2) (a) In case any of the real property belonging to a
145 municipality shall cease to be used for municipal purposes, the
146 governing authority of the municipality may sell, convey or lease
147 the same on such terms as the municipal authority may elect. In
148 case of a sale on a credit, the municipality shall charge
149 appropriate interest as contracted and shall have a lien on the
150 same for the purchase money, as against all persons, until paid
151 and may enforce the lien as in such cases provided by law. The
152 deed of conveyance in such cases shall be executed in the name of
153 the municipality by the governing authority of the municipality
154 pursuant to an order entered on the minutes. In any sale or
155 conveyance of real property, the municipality shall retain all
156 mineral rights that it owns, together with the right of ingress
157 and egress to remove same. Except as otherwise provided in this
158 section, before any such lease, deed or conveyance is executed,
159 the governing authority of the municipality shall publish at least
160 once each week for three (3) consecutive weeks, in a public

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

185 (b) In any case in which a municipality proposes to
186 sell, convey or lease real property under the provisions of this
187 subsection (2) without advertising for and accepting competitive
188 bids, the governing authority may sell, convey or lease the
189 property as follows:

190 (i) Consideration for the purchase, conveyance or
191 lease of the property shall be not less than the average of the
192 fair market price for such property as determined by three (3)
193 professional property appraisers selected by the municipality and

194 approved by the purchaser or lessee. Appraisal fees shall be
195 shared equally by the municipality and the purchaser or lessee; or

196 (ii) The governing authority of a municipality may
197 contract for the professional services of a Mississippi licensed
198 real estate broker to assist the municipality in the marketing and
199 sale or lease of the property, and may provide the broker
200 reasonable compensation for services rendered to be paid from the
201 sale or lease proceeds. The reasonable compensation shall not
202 exceed the usual and customary compensation for similar services
203 within the municipality.

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

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

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

233 (c) In the event the governing authority does not wish
234 to donate title to such lands to the bona fide not-for-profit
235 civic or eleemosynary corporation, but wishes to retain title to
236 the lands, the governing authority may lease the lands to a bona
237 fide not-for-profit corporation described in paragraph (a) or (b)
238 for less than fair market value;

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

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

248 (5) Every municipality shall also be authorized and
249 empowered to loan to private persons or entities, whether
250 organized for profit or nonprofit, funds received from the United
251 States Department of Housing and Urban Development (HUD) under an
252 urban development action grant or a community development block
253 grant under the Housing and Community Development Act of 1974
254 (Public Law 93-383), as amended, and to charge interest thereon if
255 contracted, provided that no such loan shall include any funds
256 from any revenues other than the funds from the United States
257 Department of Housing and Urban Development; to make all contracts
258 and do all other acts in relation to the property and affairs of

259 the municipality necessary to the exercise of its governmental,
260 corporate and administrative powers; and to exercise such other or
261 further powers as are otherwise conferred by law.

262 (6) (a) The governing authority of any municipality may
263 establish an employer-assisted housing program to provide funds to
264 eligible employees to be used toward the purchase of a home. This
265 assistance may be applied toward the down payment, closing costs
266 or any other fees or costs associated with the purchase of a home.
267 The housing assistance may be in the form of a grant, forgivable
268 loan or repayable loan. The governing authority of a municipality
269 may contract with one or more public or private entities to
270 provide assistance in implementing and administering the program
271 and shall adopt rules and regulations regarding the eligibility of
272 a municipality for the program and for the implementation and
273 administration of the program. However, no general funds of a
274 municipality may be used for a grant or loan under the program.

275 (b) Participation in the program established under this
276 subsection (6) shall be available to any eligible municipal
277 employee as determined by the governing authority of the
278 municipality. Any person who receives financial assistance under
279 the program must purchase a house and reside within certain
280 geographic boundaries as determined by the governing authority of
281 the municipality.

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

290 (7) The governing authority of any municipality may contract
291 with a private attorney or private collection agent or agency to

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

325 collection of delinquent payments, the municipality may utilize
326 credit cards or electronic fund transfers. The municipality may
327 pay any service fees for the use of such methods of collection
328 from the collection fee, but not from the delinquent payment.
329 There shall be due to the municipality from any person whose
330 delinquent payment is collected under a contract executed as
331 provided in this subsection an amount, in addition to the
332 delinquent payment, of not to exceed twenty-five percent (25%) of
333 the delinquent payment for collections made within this state, and
334 not to exceed fifty percent (50%) of the delinquent payment for
335 collections made outside of this state.

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

342 (9) The governing authority of any municipality may, in its
343 discretion, donate personal property or funds to the public school
344 district or districts located in the municipality for the
345 promotion of educational programs of the district or districts
346 within the municipality.

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

354 (11) The governing authority of any municipality that owns
355 and operates a gas distribution system, as defined in Section
356 21-27-11(b), and the governing authority of any public natural gas
357 district are authorized to contract for the purchase of the supply

358 of natural gas for a term of up to ten (10) years with any public
359 nonprofit corporation which is organized under the laws of this
360 state or any other state.

361 (12) The powers conferred by this section shall be in
362 addition and supplemental to the powers conferred by any other
363 law, and nothing contained in this section shall be construed to
364 prohibit, or to prescribe conditions concerning, any practice or
365 practices authorized under any other law.

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

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

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

391 The governing authority of a municipality, county,
392 supervisors district, municipal airport authority, regional
393 airport authority or other governmental subdivision shall not be
394 authorized to sell, convey, lease or otherwise dispose of real
395 property under this section if the property was originally
396 acquired by the governmental subdivision under condemnation or
397 eminent domain proceedings and proceedings for disposition of the
398 property are pending under Section 1 of House Bill No. 190, 2006
399 Regular Session.

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