

By: Representative Cummings

To: Public Property

HOUSE BILL NO. 190
(As Passed the House)

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 CHILDREN IF THE PROPERTY IS NOT USED OR PLANNED FOR USE
5 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 a child of any such person, may petition the
24 governmental entity that acquired the property to force sell of
25 the property, or any portion thereof, to the petitioner or
26 petitioners provided that the property was acquired by the
27 governmental entity not more than forty (40) years before the
28 filing of the petition. The petition must clearly describe the
29 property, document the original condemnation, identify the owner

30 from whom the property was taken and all of the owner's children
31 at law and allege nonuse of the property for a public purpose as
32 provided in paragraphs (a), (b) and (c) of this subsection.

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

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

45 (4) If the governmental entity responds in its findings
46 nonuse of the property for a public purpose, then the original
47 owner or his children have not more than one (1) year to provide
48 the governmental entity with all documentation necessary to prove
49 original ownership and to prove that the petitioner is the
50 original owner or a child of the original owner, along with proof
51 that all persons authorized to file the petition have been
52 notified of the petition and have joined in the petition, have no
53 objection to the petition or have failed to respond within ninety
54 (90) days after having been notified. Notice to all persons
55 authorized to file the petition who have not joined in the
56 petition shall be given in the same manner and in accordance with
57 the same procedure as service of process in civil cases. Upon
58 receipt of such documentation, the governmental entity has ninety
59 (90) days to execute all documents required to convey the property
60 to the petitioner at the price originally paid for the property
61 together with the fair market value of any improvements thereon,
62 less such amount, if any, as the person or persons from whom the

63 property was condemned, or the children of any such person, shows
64 by good and sufficient documentation to be the amount of income
65 and transaction taxes, if any, actually paid in connection
66 therewith. Any such conveyance may be made by quitclaim deed of
67 the governing authorities of the governmental entity.

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

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

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

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

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

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

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

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

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

127 21-17-1. (1) Every municipality of this state shall be a
128 municipal corporation and shall have power to sue and be sued; to
129 purchase and hold real estate, either within or without the
130 corporate limits, for all proper municipal purposes, including
131 parks, cemeteries, hospitals, schoolhouses, houses of correction,
132 waterworks, electric lights, sewers and other proper municipal
133 purposes; to purchase and hold personal property for all proper
134 municipal purposes; to acquire equipment and machinery by
135 lease-purchase agreement and to pay interest thereon, if
136 contracted, when needed for proper municipal purposes; to sell and
137 convey any real and personal property owned by it, and make such
138 order respecting the same as may be deemed conducive to the best
139 interest of the municipality, and exercise jurisdiction over the
140 same.

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

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

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

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

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

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

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

223 (b) The governing authority may donate such lands to a
224 bona fide not-for-profit corporation (such as Habitat for
225 Humanity) which is primarily engaged in the construction of

226 housing for persons who otherwise can afford to live only in
227 substandard housing. In any such deed or conveyance, the
228 municipality shall retain all mineral rights that it owns,
229 together with the right of ingress and egress to remove same;

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

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

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

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

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

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

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

287 (7) The governing authority of any municipality may contract
288 with a private attorney or private collection agent or agency to
289 collect any type of delinquent payment owed to the municipality,
290 including, but not limited to, past due fees and fines. Any such
291 contract debt may provide for payment contingent upon successful

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

325 from the collection fee, but not from the delinquent payment.
326 There shall be due to the municipality from any person whose
327 delinquent payment is collected under a contract executed as
328 provided in this subsection an amount, in addition to the
329 delinquent payment, of not to exceed twenty-five percent (25%) of
330 the delinquent payment for collections made within this state, and
331 not to exceed fifty percent (50%) of the delinquent payment for
332 collections made outside of this state.

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

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

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

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

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

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

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

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

388 The governing authority of a municipality, county,
389 supervisors district, municipal airport authority, regional
390 airport authority or other governmental subdivision shall not be

391 authorized to sell, convey, lease or otherwise dispose of real
392 property under this section if the property was originally
393 acquired by the governmental subdivision under condemnation or
394 eminent domain proceedings and proceedings for disposition of the
395 property are pending under Section 1 of House Bill No. 190, 2006
396 Regular Session.

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