

By: Representative Reeves

To: Ways and Means

HOUSE BILL NO. 1420

1 AN ACT TO AMEND SECTION 17-1-23, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE LOCAL GOVERNING AUTHORITIES TO REQUIRE A DEVELOPER
3 AGREEMENT UNDER WHICH THE DEVELOPER OF A NEW SUBDIVISION AGREES TO
4 IMPOSE A DEVELOPMENT FEE ON THE PROPERTY BEING DEVELOPED ON BEHALF
5 OF THE LOCAL SCHOOL DISTRICT; TO BRING FORWARD SECTION 37-7-485,
6 MC'72, WHICH IS THE SCHOOL PROPERTY DEVELOPMENT ACT OF 2005, AND
7 SECTION 37-7-487, MC'72, WHICH AUTHORIZES SCHOOL DISTRICTS TO
8 PLEDGE REVENUES GENERATED FROM PROPERTY IN THE SCHOOL DISTRICT FOR
9 THE REPAYMENT OF DEBT, FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR
10 RELATED PURPOSES.

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

12 **SECTION 1.** Section 17-1-23, Mississippi Code of 1972, is
13 amended as follows:

14 17-1-23. (1) When new subdivisions are laid out, the
15 governing authority of each municipality or county may, before
16 allowing dedication, impose such terms as may be deemed necessary
17 to make the provisions of Sections 17-1-1 through 17-1-27,
18 inclusive, effective, and such governing authorities may receive
19 easements in the land affected whereby such sections may be made
20 effective. The governing authority of each municipality or county
21 also may require a developer agreement with the local school
22 district, as authorized under Section 37-7-487(4), to enhance the
23 educational facilities and services provided within the
24 subdivision and school district.

25 (2) The board of supervisors of any county may order that no
26 plat of a subdivision shall be recorded until it has been approved
27 by the board of supervisors, and the board of supervisors shall
28 have power to require the installation of utilities and laying out
29 of streets in subdivisions or to accept performance bonds in lieu
30 thereof; the board of supervisors of any county bordering on the
31 State of Tennessee having a population of more than sixty-seven

32 thousand nine hundred (67,900) but less than seventy thousand
33 (70,000) according to the 1990 federal census and having a land
34 area of more than four hundred seventy (470) square miles but less
35 than five hundred (500) square miles may also, in lieu thereof,
36 require the deposit of monies with the county which shall be
37 placed in a special interest-bearing account in the county
38 treasury, and such board of supervisors at the appropriate time
39 shall spend monies from such account solely for the purpose of
40 constructing or improving the roads and other infrastructure
41 within the subdivision with respect to which the deposit or
42 deposits were made.

43 (3) The governing authorities of a municipality may provide
44 that any person desiring to subdivide a tract of land within the
45 corporate limits shall submit a map and plat of such subdivision,
46 and a correct abstract of title of the land platted, to said
47 governing authorities, to be approved by them before the same
48 shall be filed for record in the land records of the county; and
49 where the municipality has adopted an ordinance so providing, no
50 such map or plat of any such subdivision shall be recorded by the
51 chancery clerk unless same has been approved by said governing
52 authorities. In all cases where a map or plat of the subdivision
53 is submitted to the governing authorities of a municipality, and
54 is by them approved, all streets, roads, alleys and other public
55 ways set forth and shown on said map or plat shall be thereby
56 dedicated to the public use, and shall not be used otherwise
57 unless and until said map or plat is vacated in the manner
58 provided by law, notwithstanding that said streets, roads, alleys
59 or other public ways have not been actually opened for the use of
60 the public.

61 (4) If the owner of any land which shall have been laid off,
62 mapped or platted as a city, town or village, or addition thereto,
63 or subdivision thereof, or other platted area, whether inside or
64 outside a municipality, desires to alter or vacate such map or

65 plat, or any part thereof, he may petition the board of
66 supervisors of the county or the governing authorities of the
67 municipality for relief in the premises, setting forth the
68 particular circumstances of the case and giving an accurate
69 description of the property, the map or plat of which is to be
70 vacated or altered and the names of the persons to be adversely
71 affected thereby or directly interested therein. However, before
72 taking such action, the parties named shall be made aware of the
73 action and must agree in writing to the vacation or alteration.
74 Failure to gain approval from the parties named shall prohibit the
75 board of supervisors or governing authorities from altering or
76 vacating the map or plat, or any part thereof. Any alterations of
77 a plat or map must be recorded in the appropriate location and a
78 note shall be placed on the original plat denoting the altered or
79 revised plat. No land shall be subdivided nor shall the map or
80 plat of any land be altered or vacated in violation of any duly
81 recorded covenant running with the land.

82 (5) Subdivision regulation under this section shall not
83 conflict with Article VII of the Chickasaw Trail Economic
84 Development Compact described in Section 57-36-1.

85 **SECTION 2.** Section 37-7-485, Mississippi Code of 1972, is
86 brought forward as follows:

87 37-7-485. (1) This section shall be referred to as the
88 "School Property Development Act of 2005." It is the intent of
89 the Legislature that this section shall provide school boards with
90 an alternative optional method of disposal of surplus school
91 property that may generate greater returns to the district than a
92 public disposal sale, or to promote or stimulate economic
93 development within the school district or to promote, stabilize or
94 enhance property and tax values within the school district.

95 (2) The school board of any school district shall be
96 authorized and empowered, in its discretion, to sell, convey or
97 exchange a partial interest, undivided interest or any other

98 interest in real property (other than sixteenth section public
99 school trust land), in whole or in part, for a nonoperational
100 interest in any proposed development of the property, including
101 ownership of shares of a domestic corporation or a membership
102 interest in a limited liability company or a limited partnership
103 interest, any of which is organized for the operation of any
104 project, development or activity that, in the discretion of the
105 school board, will have the potential for fostering economic
106 development activities, increasing property values, increasing
107 student development or enhancing public safety. The school board
108 may contract with any other governmental entity, university or
109 community college, corporation, person or other legal entity for
110 the development, design, construction, financing, ownership or
111 operation of any project, development or activity and may issue
112 notes, leases, bonds or other written obligations to finance such
113 activities. The school board may pledge any revenues or taxes it
114 is to receive from such sale, conveyance or exchange, including
115 any shares of a corporation or membership interest in a limited
116 liability company or limited partnership interest under this
117 subsection or under Sections 37-7-471 through 37-7-483, to secure
118 the repayment of any notes, leases (excluding leases of sixteenth
119 section public school trust land), bonds or other written
120 obligations of the district issued under any provision of state
121 law. Any such pledge of revenues or other monies shall be valid
122 and binding from the date the pledge is made; such revenues or
123 other monies so pledged and thereafter received by the school
124 district shall immediately be subject to the lien of such pledge
125 without any physical delivery thereof or further act, and the lien
126 of any such pledge shall be valid and binding as against all
127 parties having claims of any kind in tort, contract or otherwise
128 against the school district irrespective of whether such parties
129 have notice thereof. Neither the resolutions, contracts or any
130 other instrument by which a pledge is created need be recorded.

131 Any debt secured in whole or in part by a pledge of such revenues
132 or other monies shall not be subject to or included in any debt
133 limitation imposed on the issuance of such debt. This subsection
134 (2) shall not be construed to apply to sixteenth section public
135 school trust land.

136 (3) The school board shall use sound business practices when
137 executing exchanges as provided in this section. The school board
138 may utilize the services of the Mississippi Development Authority,
139 the local planning and development district or the Board of
140 Trustees of State Institutions of Higher Learning when executing
141 exchanges as provided in this section. The local school board
142 shall require, in any project exceeding Two Hundred Thousand
143 Dollars (\$200,000.00) that the party with whom the school board is
144 contracting shall provide the following information, at a minimum:

145 (a) A two-year business plan (which shall include pro
146 forma balance sheets, income statements and monthly cash flow
147 statements);

148 (b) Financial statements and tax returns for the three
149 (3) years immediately prior to the date the contract is formed;

150 (c) Credit reports on all persons or entities with a
151 twenty percent (20%) or greater interest in the entity;

152 (d) Data supporting the expertise of the entity's
153 principals;

154 (e) A cost benefit analysis of the project performed by
155 the Mississippi Development Authority, a state institution of
156 higher learning or other entity selected by the local school
157 board; and

158 (f) Any other information required by the local school
159 board.

160 This subsection (3) shall not be construed to apply to
161 sixteenth section public school trust land.

162 (4) The local school board shall make public record any
163 final and signed contract created under this section.

164 (5) No person involved in any economic development project
165 entered into by a school board under the provisions of this
166 section shall be related by consanguinity or affinity within the
167 third degree to any member of the school board or the
168 superintendent or any assistant superintendent of the school
169 district, nor shall any such person have an interest in any
170 business or have an economic relationship with any member of the
171 school board or the superintendent or any assistant superintendent
172 of the school district.

173 (6) No person, or any agent, subsidiary or parent
174 corporation or firm owned in whole or in part by the person shall
175 be eligible to bid or otherwise participate in the construction,
176 contracting, or subcontracting on any project or part thereof for
177 which the person has been hired to perform construction program
178 management services. Any contract for public construction that
179 violates this provision shall be void and against the public
180 policy of the state. For purposes of this subsection, the term
181 "construction program management services" means a set of
182 management and technical services rendered by a person or firm to
183 a public sector building owner during the predesign, design,
184 construction, or post-construction phases of new construction,
185 demolition, alteration, repair, or renovation projects. These
186 services include any one or more of the following: project
187 planning, budgeting, scheduling, coordination, design management,
188 construction administration, or facility occupancy actions, but
189 shall not include any component of the actual construction work.
190 The term does not include the services performed by the general
191 contractor who is engaged to perform the construction work, or
192 services customarily performed by licensed architects or
193 registered engineers.

194 (7) This section shall be supplemental and additional to any
195 powers conferred by other laws on school districts. However, this
196 act shall not grant any authority to a school board to issue debt

197 in any amount that is not otherwise expressly provided for by law,
198 and shall not grant any authority to impose, levy or collect any
199 tax that is not otherwise expressly provided for by law.

200 (8) If a school board exercises its option to enter into a
201 development agreement or other contract under this act or to
202 transfer any property or interest therein to a third party for
203 purposes of future development, the following conditions shall
204 apply:

205 (a) The board shall have the express authority to
206 retain a deed of trust or such other security interest in the
207 property in an amount equal at least to the value of the property
208 at the time of such transfer, less any consideration paid by the
209 developer or other parties;

210 (b) The liability of the school board and the school
211 district under any such development agreement shall be limited to
212 the value of any retained property interest in the development
213 agreement or the property that is the subject of the development
214 agreement. Neither the school board nor the district shall be
215 liable to any party nor shall it indemnify or hold harmless any
216 party for any liabilities, obligations, losses, damages,
217 penalties, settlements, claims, actions, suits, proceedings or
218 judgments of any kind and nature, costs, expenses, or attorney's
219 fees incurred by such party or parties for any act or action
220 arising out of, or in connection with any development agreement
221 entered into by the school board, other than the value of the
222 retained ownership interest in the property that was conveyed
223 under such development agreement.

224 (9) Before entering into any transaction as provided in this
225 section, the school board members shall certify that they are in
226 compliance with Section 25-4-25 regarding filings of statements of
227 economic interest with the Mississippi Ethics Commission and that
228 they will receive no direct or indirect pecuniary benefit as a

229 result of the transaction or be in violation of the provisions of
230 Section 25-4-105 regarding the improper use of official position.

231 (10) [Deleted]

232 (11) Any property developed by a school district under this
233 section shall be deemed to be for "school purposes" or for
234 "educational purposes."

235 **SECTION 3.** Section 37-7-487, Mississippi Code of 1972, is
236 brought forward as follows:

237 37-7-487. (1) Notwithstanding any other provision of law, a
238 school district may estimate the amount of revenues, as defined
239 herein, to be generated from any parcel or parcels of any type of
240 property within the school district and may irrevocably pledge
241 such revenues to the repayment of any debt or other obligation
242 which the district may issue or incur under Sections 37-59-1 et
243 seq., 37-59-101 et seq., 37-7-351 et seq., 31-7-13(e), 31-7-14,
244 37-7-471 et seq. and 37-7-485 et. seq.

245 (2) Any district that pledges revenues under the provisions
246 of this section shall annually appropriate an amount of such
247 revenues, other than the avails of any special tax otherwise
248 levied to pay debt service on bonds or notes of the district, to
249 pay the debt or other obligations for which the revenues are
250 pledged. Any debt or obligation secured by a pledge of revenues
251 under this section shall not be subject to any debt limit or
252 annual appropriation limitation imposed by any other statute. To
253 further secure the school district's pledge, the district may
254 irrevocably instruct the appropriate tax assessor or collector to
255 irrevocably transfer on behalf of the district the pledged amount
256 from any ad valorem tax collections, other than any special tax
257 levy specifically imposed to pay debt service on any bonds or
258 notes of the district, directly to a paying agent, trustee or
259 other third party responsible for paying the debt or obligation of
260 the district. Upon receipt of such written instructions, the

261 appropriate tax assessor or collector shall transfer the pledged
262 revenues as directed in writing by the school district.

263 (3) The term revenues, as used in this section, shall mean
264 revenues of all types, including ad valorem tax collections, other
265 than collections from special levies specifically levied to pay
266 debt service on any bonds or notes of the school district, lease
267 or development revenues, and any special development fees imposed
268 by a developer of property within the school district as provided
269 herein.

270 (4) Any school district may enter into an agreement with a
271 developer pursuant to which the developer agrees to impose a
272 development fee, in the amount and in the manner agreed to by the
273 district and the developer, on property being developed within the
274 district by the developer. The term of any such agreement shall
275 not exceed fifty (50) years. Upon the agreement being recorded in
276 the land records of the chancery clerk of the county in which the
277 property is located, the development fee shall become a lien on
278 the property subject to the agreement between the developer and
279 the district and shall be payable by all owners of the subject
280 property at the same time and in the same manner, and the payment
281 of such fee shall be enforced by the taxing authority in the same
282 manner as other ad valorem taxes levied on the property.

283 (5) Nothing in this section shall be construed as giving
284 school districts additional debt or to levy any additional taxes
285 other than as allowed by this section or as otherwise provided by
286 law.

287 **SECTION 4.** This act shall take effect and be in force from
288 and after July 1, 2007.