

By: Representative Lamar

To: Judiciary A

HOUSE BILL NO. 1155

1 AN ACT TO AUTHORIZE PROPERTY OWNERS IN A RESIDENTIAL
 2 SUBDIVISION THAT IS NOT GOVERNED BY A HOMEOWNERS ASSOCIATION TO
 3 ESTABLISH OR AMEND COVENANTS, CONDITIONS, AND RESTRICTIONS,
 4 INCLUDING THOSE THAT RUN WITH THE LAND; TO AUTHORIZE PROPERTY
 5 OWNERS IN A RESIDENTIAL SUBDIVISION THAT IS GOVERNED BY A
 6 HOMEOWNERS ASSOCIATION, TO ESTABLISH AND AMEND COVENANTS,
 7 CONDITIONS, AND RESTRICTIONS, INCLUDING THOSE THAT RUN WITH THE
 8 LAND; TO REQUIRE SUCH PROPERTY OWNERS TO FILE A PETITION TO
 9 ESTABLISH AND/OR AMEND COVENANTS, CONDITIONS AND RESTRICTIONS, IF
 10 NECESSARY; TO REQUIRE NOTICE OF THE HEARING ON SUCH PETITION TO BE
 11 PROVIDED THROUGH PUBLICATION; TO PROVIDE THAT IF THE CHANCELLOR
 12 FINDS THAT THE PETITION IS WELL TAKEN THEN HE OR SHE SHALL ENTER A
 13 DECREE ACCORDINGLY, WHICH SHALL BE FILED WITH THE CHANCERY CLERK;
 14 TO BRING FORWARD SECTIONS 17-1-23, 19-5-10, 21-19-63 AND 89-1-69,
 15 MISSISSIPPI CODE OF 1972, FOR PURPOSES OF POSSIBLE AMENDMENT; AND
 16 FOR RELATED PURPOSES.

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

18 **SECTION 1.** (1) Property owners in a residential subdivision
 19 that has been platted in accordance with Section 17-1-23, and that
 20 is not governed by a homeowners association may, acting through a
 21 majority vote of such owners, establish or amend covenants,
 22 conditions, and restrictions, including those that run with the
 23 land, as provided in this section.

24 (2) (a) Property owners in such a residential subdivision
 25 that has existing covenants, conditions, and restrictions, who



26 seek to establish additional covenants, conditions, and
27 restrictions, or amend the existing, covenants, conditions, and
28 restrictions under subsection (1) of this section, shall file a
29 petition with the chancery court of the county where the existing
30 covenants, conditions, and restrictions were initially filed.

31 (b) In such a residential subdivision where no
32 covenants, conditions, and restrictions exist, property owners in
33 such a residential subdivision who seek to establish covenants,
34 conditions, and restrictions under subsection (1) of this section,
35 shall file a petition with the chancery court of the county where
36 the subdivision is located.

37 (3) After filing such petition to amend and/or establish
38 covenants, conditions, and restrictions, the chancellor shall set
39 a day, either in term time or in vacation, for the hearing of the
40 petition, and notice shall be given to all persons interested in,
41 affected by, or having objections to the petition, indicating that
42 the hearing on the petition will be held on the day fixed by the
43 chancellor, and that all such persons will have the right to
44 appear and enter their objections, if any, to the proposed
45 petition.

46 Such notice shall be given by publication in a newspaper
47 published or having a general circulation in the county where the
48 subdivision is located once each week for three (3) consecutive
49 weeks, and by posting a copy of such notice at all entrances to



50 the subdivision from a public road, as denoted on the official
51 plat of the subdivision.

52 The first publication of such notice and the posted notice
53 shall be made at least thirty (30) days prior to the day fixed for
54 the hearing of the petition, and such notice shall describe the
55 subdivision by name as the same appears on the official plat filed
56 in the land records of the county and the plat book or cabinet and
57 page where filed.

58 (3) At the time fixed, the chancellor shall proceed to hear
59 all evidence offered in support of the petition, together with all
60 objections, if any, that may be presented touching or bearing upon
61 the relief requested. If the chancellor finds from the evidence
62 that the proposed petition, in whole or in part, is well taken
63 then he or she shall enter a decree accordingly, which shall be
64 filed with the chancery clerk, and shall be denoted by him or her
65 in the official plat book of the county for the subdivision at
66 issue and in such other places where matters relating to
67 covenants, conditions, and restrictions for subdivisions are
68 filed.

69 **SECTION 2.** (1) Except as otherwise provided in this
70 section, property owners, acting through a majority vote, in a
71 residential subdivision that has been platted in accordance with
72 Section 17-1-23, and that is governed by a homeowners association,
73 may establish and amend covenants, conditions, and restrictions,



74 including those that run with the land, as provided in this
75 section.

76 (2) If the governing documents for the homeowners'
77 association of such a residential subdivision provide a process
78 for establishing and amending existing covenants, conditions, and
79 restrictions, property owners in the residential subdivision who
80 seek to exercise the authority granted under subsection (1) of
81 this section shall comply with the applicable provisions in such
82 governing documents.

83 (3) (a) If the governing documents for the homeowners'
84 association of such a residential subdivision do not provide a
85 process for establishing and amending covenants, conditions, and
86 restrictions, property owners in a residential subdivision that
87 has existing covenants, conditions, and restrictions, who seek to
88 establish additional covenants, conditions, and restrictions, or
89 amend the existing covenants, conditions, and restrictions under
90 subsection (1) of this section, shall file a petition with the
91 chancery court of the county where the existing covenants,
92 conditions, and restrictions were initially filed.

93 (b) If the governing documents for the homeowners'
94 association of such a residential subdivision do not provide a
95 process for establishing and amending covenants, conditions, and
96 restrictions, property owners in a residential subdivision where
97 no covenants, conditions, and restrictions exist, who seek to
98 establish covenants, conditions, and restrictions under subsection



99 (1) of this section, shall file a petition with the chancery court
100 of the county where the subdivision is located.

101 (4) After filing such petition to amend and/or establish
102 covenants, conditions and restrictions, the chancellor shall set a
103 day, either in term time or in vacation, for the hearing of the
104 petition, and notice shall be given to all persons interested in,
105 affected by, or having objections to the petition, that the
106 hearing on the petition will be held on the day fixed by the
107 chancellor and that all such persons will have the right to appear
108 and enter their objections, if any, to the proposed petition.

109 The notice shall be given by publication in a newspaper
110 published or having a general circulation in the county where the
111 subdivision is located once each week for three (3) consecutive
112 weeks, and by posting a copy of such notice at all entrances to
113 the subdivision from a public road as denoted on the official plat
114 of the subdivision.

115 The first publication of such notice and the posted notice
116 shall be made at least thirty (30) days prior to the day fixed for
117 the hearing of the petition, and such notice shall describe the
118 subdivision by name as the same appears on the official plat filed
119 in the land records of the county and the plat book or cabinet and
120 page where filed.

121 (3) At the time fixed, the chancellor shall proceed to hear
122 all evidence offered in support of the petition, together with all
123 objections, if any, that may be presented touching or bearing upon



124 the relief requested. If the chancellor finds from the evidence
125 that the proposed petition, in whole or in part, is well taken
126 then he or she shall enter a decree accordingly, which shall be
127 filed with the chancery clerk and shall be denoted by him or her
128 in the official plat book of the county for the subdivision at
129 issue and in such other places where matters relating to
130 covenants, conditions, and restrictions for subdivisions are
131 filed.

132 **SECTION 3.** Section 17-1-23, Mississippi Code of 1972, is
133 brought forward as follows:

134 17-1-23. (1) When new subdivisions are laid out, the
135 governing authority of each municipality or county may, before
136 allowing dedication, impose such terms as may be deemed necessary
137 to make the provisions of Sections 17-1-1 through 17-1-27,
138 inclusive, effective, and such governing authorities may receive
139 easements in the land affected whereby such sections may be made
140 effective.

141 (2) The board of supervisors of any county may order that no
142 plat of a subdivision shall be recorded until it has been approved
143 by the board of supervisors, and the board of supervisors shall
144 have power to require the installation of utilities and laying out
145 of streets in subdivisions or to accept performance bonds in lieu
146 thereof; the board of supervisors of any county bordering on the
147 State of Tennessee having a population of more than sixty-seven
148 thousand nine hundred (67,900) but less than seventy thousand



149 (70,000) according to the 1990 federal census and having a land
150 area of more than four hundred seventy (470) square miles but less
151 than five hundred (500) square miles may also, in lieu thereof,
152 require the deposit of monies with the county which shall be
153 placed in a special interest-bearing account in the county
154 treasury, and such board of supervisors at the appropriate time
155 shall spend monies from such account solely for the purpose of
156 constructing or improving the roads and other infrastructure
157 within the subdivision with respect to which the deposit or
158 deposits were made.

159 (3) The governing authorities of a municipality may provide
160 that any person desiring to subdivide a tract of land within the
161 corporate limits shall submit a map and plat of such subdivision,
162 and a correct abstract of title of the land platted, to said
163 governing authorities, to be approved by them before the same
164 shall be filed for record in the land records of the county; and
165 where the municipality has adopted an ordinance so providing, no
166 such map or plat of any such subdivision shall be recorded by the
167 chancery clerk unless same has been approved by said governing
168 authorities. In all cases where a map or plat of the subdivision
169 is submitted to the governing authorities of a municipality, and
170 is by them approved, all streets, roads, alleys and other public
171 ways set forth and shown on said map or plat shall be thereby
172 dedicated to the public use, and shall not be used otherwise
173 unless and until said map or plat is vacated in the manner



174 provided by law, notwithstanding that said streets, roads, alleys
175 or other public ways have not been actually opened for the use of
176 the public. If any easement dedicated pursuant to the provisions
177 of this section for a street, road, alley or other public purpose
178 is determined to be not needed for the public purpose, the
179 easement may be declared abandoned, and ownership of the fee
180 underlying the easement shall revert, regardless of the date of
181 dedication, to the adjoining property owner or owners at the time
182 of abandonment. Ownership of such easement shall extend to the
183 centerline of said abandoned street, road or public way. Such
184 abandonment and reversion shall not affect any private easements
185 which might exist.

186 (4) If the owner of any land which shall have been laid off,
187 mapped or platted as a city, town or village, or addition thereto,
188 or subdivision thereof, or other platted area, whether inside or
189 outside a municipality, desires to alter or vacate such map or
190 plat, or any part thereof, he may petition the board of
191 supervisors of the county or the governing authorities of the
192 municipality for relief in the premises, setting forth the
193 particular circumstances of the case and giving an accurate
194 description of the property, the map or plat of which is to be
195 vacated or altered and the names of the persons to be adversely
196 affected thereby or directly interested therein. However, before
197 taking such action, the parties named shall be made aware of the
198 action and must agree in writing to the vacation or alteration.



199 Failure to gain approval from the parties named shall prohibit the
200 board of supervisors or governing authorities from altering or
201 vacating the map or plat, or any part thereof. Any alterations of
202 a plat or map must be recorded in the appropriate location and a
203 note shall be placed on the original plat denoting the altered or
204 revised plat. No land shall be subdivided nor shall the map or
205 plat of any land be altered or vacated in violation of any duly
206 recorded covenant running with the land. Any municipality which
207 shall approve such a vacation or alteration pursuant to this
208 section shall be exempt from the sale of surplus real property
209 provisions as set forth in Section 21-17-1.

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

213 **SECTION 4.** Section 19-5-10, Mississippi Code of 1972, is
214 brought forward as follows:

215 19-5-10. (1) The board of supervisors of any county is
216 authorized to enter into one or more development agreements with
217 the developer or developers of a master planned community in order
218 to authorize, in addition to any other matters to which the board
219 of supervisors may lawfully obligate the county, the master
220 planned community, through a community self-governing entity
221 created by the owners of the property, to administer, manage and
222 enforce the land use restrictions and covenants, land use
223 regulations, subdivision regulations, building codes and



224 regulations, and any other limitations and restrictions on land
225 and buildings provided in the master plan for the master planned
226 community, in lieu of the real estate and property owners within
227 the master planned community being subject to the county
228 ordinances and regulations pertaining to buildings, subdivisions,
229 zoning, the county's comprehensive plan, and any other county
230 ordinances and regulations pertaining thereto. Prior to entering
231 into any such development agreement, the board of supervisors
232 shall review the master plan for the master planned community and
233 find that the provisions of the master plan providing for
234 regulations, restrictions, covenants and limitations pertaining to
235 building, subdivisions, zoning and comprehensive planning shall be
236 comparable to, or greater than, similar provisions in the
237 ordinances and regulations of the county. The term of such a
238 development agreement may be not more than thirty (30) years or
239 the number of years allowed in the county's subdivision ordinance
240 for terms of subdivision covenants, whichever is greater. The
241 development agreement shall have attached to it a boundary survey
242 made by a registered land surveyor, and upon approval of the
243 development agreement by the board of supervisors, the boundary
244 survey shall be recorded in the land records of the chancery clerk
245 of the county. The recorded boundary survey shall serve as the
246 description of the property within the master planned community
247 which shall not be subject to the county's zoning map, and the
248 county's zoning map shall simply recognize the territory described



249 in such boundary survey as a "master planned community." Whenever
250 there may be a conflict between the county ordinances and
251 regulations pertaining to buildings, subdivisions, zoning, the
252 county's comprehensive plan, and any other county ordinances and
253 regulations pertaining thereto, and the provisions of such a
254 development agreement, including the provisions of the master plan
255 providing for regulations, restrictions, covenants and limitations
256 pertaining to buildings, subdivisions, zoning and comprehensive
257 planning, the provisions of the development agreement shall
258 prevail if the provisions of the development agreement are
259 comparable to or greater than similar provisions of county
260 ordinances and regulations.

261 (2) As used in this section, the term "master planned
262 community" means a development by one or more developers of real
263 estate consisting of residential, commercial, educational, health
264 care, open space and recreational components that is developed
265 pursuant to a long range, multiphase master plan providing
266 comprehensive land use planning and staged implementation and
267 development and the master plan must include the following minimum
268 provisions:

269 (a) The real estate described in the master plan must
270 consist of not less than two thousand five hundred (2,500) acres.
271 The master plan may require that not less than fifty percent (50%)
272 of the total dwelling units planned for such acreage must be:



273 (i) Dwelling units within a certified retirement
274 community certified by the Mississippi Development Authority; or

275 (ii) Dwelling units where at least one (1)
276 occupant:

277 1. Is sixty-two (62) years of age; or

278 2. Receives pension income reported on his or
279 her most recent federal income tax return filed prior to
280 occupancy; or

281 3. Declares himself to be retired.

282 (b) The real estate described in the master plan must
283 be subjected to a set of land use restrictions imposed by deed
284 restriction or restrictive covenants recorded by the developer in
285 the land records of the chancery clerk of the county as land is
286 developed and sold in phases to users. Such restrictions shall
287 include design guidelines and standards that provide for:

288 (i) Internal community self-governance by the
289 owners of the property;

290 (ii) The establishment of one or more legal
291 persons endowed with the powers, rights and duties to administer,
292 manage, own and maintain common areas, establish community
293 activities and enforce the land use restrictions on the common
294 areas and private property; and

295 (iii) The establishment of assessments and lien
296 rights to fund amenities, services and maintenance of common
297 areas.



298 (c) The real estate described in the master plan must
299 be within the territorial boundaries of one or more public utility
300 districts established by the county for the provision of water and
301 sewer facilities and water and sewer services.

302 (3) The master plan for a master planned community shall be
303 subject to modification from time to time by the original owner or
304 owners of the real estate described in the initial master plan,
305 its affiliates, successors or assigns to meet changing economic
306 and market conditions; provided, however, any such modifications
307 in the master plan which materially change the regulations,
308 restrictions, covenants and limitations pertaining to buildings,
309 subdivisions and land use regulations approved in the development
310 agreement, or which significantly change the overall plan concept,
311 shall be subject to, and shall not take effect until, approved by
312 the board of supervisors of the county.

313 (4) As used in this section, the term "dwelling unit" means
314 single-family residences, apartments or other units within a
315 multifamily residence, or a room or apartment in a nursing home or
316 congregate-care facility.

317 **SECTION 5.** Section 21-19-63, Mississippi Code of 1972, is
318 brought forward as follows:

319 21-19-63. The governing authorities of municipalities may
320 provide that any person desiring to subdivide a tract of land
321 within the corporate limits shall submit a map and plat of such
322 subdivision, and a correct abstract of title of the land platted,



323 to said governing authorities, to be approved by them before the
324 same shall be filed for record in the land records of the county.
325 Where the municipality has adopted an ordinance so providing, no
326 such map or plat of any such subdivision shall be recorded by the
327 chancery clerk unless same has been approved by said governing
328 authorities. In all cases where a map or plat of the subdivision
329 is submitted to the governing authorities of a municipality, and
330 is by them approved, all streets, roads, alleys and other public
331 ways set forth and shown on said map or plat shall be thereby
332 dedicated to the public use, and shall not be used otherwise
333 unless and until said map or plat is vacated in the manner
334 provided by law, notwithstanding that said streets, roads, alleys
335 or other public ways have not been actually opened for the use of
336 the public. If any easement dedicated pursuant to the provisions
337 of this section for a street, road, alley or other public purpose
338 is determined to be not needed for the public purpose, the
339 easement may be declared abandoned, and ownership of the fee
340 underlying the easement shall revert, regardless of the date of
341 dedication, to the adjoining property owner or owners at the time
342 of abandonment. Ownership of the easement shall extend to the
343 centerline of said abandoned street, road or public way. Such
344 abandonment and reversion shall not affect any private easements
345 which might exist.

346 **SECTION 6.** Section 89-1-69, Mississippi Code of 1972, is
347 brought forward as follows:



348 89-1-69. (1) In this section, "property owners'
349 association" means an incorporated or unincorporated association
350 that:

351 (a) Is designated as the representative of the owners
352 of property in a subdivision;

353 (b) Has a membership primarily consisting of the owners
354 of the property covered by the dedicatory instrument for the
355 subdivision; and

356 (c) Manages or regulates the subdivision for the
357 benefit of the owners of property in the subdivision.

358 (2) A deed restriction or other covenant running with the
359 land applicable to the conveyance of real property that requires a
360 transferee of real property or the transferee's heirs, successors,
361 or assigns to pay a declarant or other person imposing the deed
362 restriction or covenant on the property or a third party
363 designated by a transferor of the property a fee in connection
364 with a future transfer of the property is prohibited. A deed
365 restriction or other covenant running with the land that violates
366 this section or a lien purporting to encumber the land to secure a
367 right under a deed restriction or other covenant running with the
368 land that violates this section is void and unenforceable. For
369 purposes of this section, a conveyance of real property includes a
370 conveyance or other transfer of an interest or estate in real
371 property.



372 (3) This section does not apply to a deed restriction or
373 other covenant running with the land that requires a fee
374 associated with the conveyance of property in a subdivision that
375 is payable to:

376 (a) A property owners' association that manages or
377 regulates the subdivision or the association's managing agent if
378 the subdivision contains more than one (1) platted lot and the
379 right to collect a fee in connection with a future transfer of the
380 property is evidenced by a deed restriction or covenant running
381 with the land filed in the public land records;

382 (b) An entity organized under Section 501(c)(3),
383 Internal Revenue Code of 1986 if the entity has a right to collect
384 a fee in connection with a future transfer of the property
385 evidenced by a deed restriction or covenant running with the land
386 filed in the public land records; or

387 (c) A governmental entity.

388 **SECTION 7.** This act shall take effect and be in force from
389 and after July 1, 2023.

