

By: Representatives Lamar, Deweese

To: Judiciary A

HOUSE BILL NO. 48

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, provided that each plat of real
22 property shall only be entitled to one (1) vote without regard to
23 the number of individuals who possess an ownership interest in
24 such property, establish or amend covenants, conditions, and



25 restrictions, including those that run with the land, as provided
26 in this section.

27 (2) (a) Property owners in such a residential subdivision
28 that has existing covenants, conditions, and restrictions, who
29 seek to establish additional covenants, conditions, and
30 restrictions, or amend the existing, covenants, conditions, and
31 restrictions under subsection (1) of this section, shall file a
32 petition with the chancery court of the county where the existing
33 covenants, conditions, and restrictions were initially filed.

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

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



49 Such notice shall be given by publication in a newspaper
50 published or having a general circulation in the county where the
51 subdivision is located once each week for three (3) consecutive
52 weeks, and by posting a copy of such notice at all entrances to
53 the subdivision from a public road, as denoted on the official
54 plat of the subdivision.

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

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

72 **SECTION 2.** (1) Except as otherwise provided in this
73 section, property owners, acting through a majority vote, in a



74 residential subdivision that has been platted in accordance with
75 Section 17-1-23, and that is governed by a homeowners association,
76 may establish and amend covenants, conditions, and restrictions,
77 including those that run with the land, as provided in this
78 section, and further provided that each plat of real property
79 shall only be entitled to one (1) vote in any such election to
80 establish or amend covenants, conditions and restrictions of the
81 subdivision without regard to the number of individuals who
82 possess an ownership interest in such property.

83 (2) If the governing documents for the homeowners'
84 association of such a residential subdivision provide a process
85 for establishing and amending existing covenants, conditions, and
86 restrictions, property owners in the residential subdivision who
87 seek to exercise the authority granted under subsection (1) of
88 this section shall comply with the applicable provisions in such
89 governing documents.

90 (3) (a) If the governing documents for the homeowners'
91 association of such a residential subdivision do not provide a
92 process for establishing and amending covenants, conditions, and
93 restrictions, property owners in a residential subdivision that
94 has existing covenants, conditions, and restrictions, who seek to
95 establish additional covenants, conditions, and restrictions, or
96 amend the existing covenants, conditions, and restrictions under
97 subsection (1) of this section, shall file a petition with the



98 chancery court of the county where the existing covenants,
99 conditions, and restrictions were initially filed.

100 (b) If the governing documents for the homeowners'
101 association of such a residential subdivision do not provide a
102 process for establishing and amending covenants, conditions, and
103 restrictions, property owners in a residential subdivision where
104 no covenants, conditions, and restrictions exist, who seek to
105 establish covenants, conditions, and restrictions under subsection
106 (1) of this section, shall file a petition with the chancery court
107 of the county where the subdivision is located.

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

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



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

128 (3) At the time fixed, the chancellor shall proceed to hear
129 all evidence offered in support of the petition, together with all
130 objections, if any, that may be presented touching or bearing upon
131 the relief requested. If the chancellor finds from the evidence
132 that the proposed petition, in whole or in part, is well taken
133 then he or she shall enter a decree accordingly, which shall be
134 filed with the chancery clerk and shall be denoted by him or her
135 in the official plat book of the county for the subdivision at
136 issue and in such other places where matters relating to
137 covenants, conditions, and restrictions for subdivisions are
138 filed.

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

141 17-1-23. (1) When new subdivisions are laid out, the
142 governing authority of each municipality or county may, before
143 allowing dedication, impose such terms as may be deemed necessary
144 to make the provisions of Sections 17-1-1 through 17-1-27,
145 inclusive, effective, and such governing authorities may receive



146 easements in the land affected whereby such sections may be made
147 effective.

148 (2) The board of supervisors of any county may order that no
149 plat of a subdivision shall be recorded until it has been approved
150 by the board of supervisors, and the board of supervisors shall
151 have power to require the installation of utilities and laying out
152 of streets in subdivisions or to accept performance bonds in lieu
153 thereof; the board of supervisors of any county bordering on the
154 State of Tennessee having a population of more than sixty-seven
155 thousand nine hundred (67,900) but less than seventy thousand
156 (70,000) according to the 1990 federal census and having a land
157 area of more than four hundred seventy (470) square miles but less
158 than five hundred (500) square miles may also, in lieu thereof,
159 require the deposit of monies with the county which shall be
160 placed in a special interest-bearing account in the county
161 treasury, and such board of supervisors at the appropriate time
162 shall spend monies from such account solely for the purpose of
163 constructing or improving the roads and other infrastructure
164 within the subdivision with respect to which the deposit or
165 deposits were made.

166 (3) The governing authorities of a municipality may provide
167 that any person desiring to subdivide a tract of land within the
168 corporate limits shall submit a map and plat of such subdivision,
169 and a correct abstract of title of the land platted, to said
170 governing authorities, to be approved by them before the same



171 shall be filed for record in the land records of the county; and
172 where the municipality has adopted an ordinance so providing, no
173 such map or plat of any such subdivision shall be recorded by the
174 chancery clerk unless same has been approved by said governing
175 authorities. In all cases where a map or plat of the subdivision
176 is submitted to the governing authorities of a municipality, and
177 is by them approved, all streets, roads, alleys and other public
178 ways set forth and shown on said map or plat shall be thereby
179 dedicated to the public use, and shall not be used otherwise
180 unless and until said map or plat is vacated in the manner
181 provided by law, notwithstanding that said streets, roads, alleys
182 or other public ways have not been actually opened for the use of
183 the public. If any easement dedicated pursuant to the provisions
184 of this section for a street, road, alley or other public purpose
185 is determined to be not needed for the public purpose, the
186 easement may be declared abandoned, and ownership of the fee
187 underlying the easement shall revert, regardless of the date of
188 dedication, to the adjoining property owner or owners at the time
189 of abandonment. Ownership of such easement shall extend to the
190 centerline of said abandoned street, road or public way. Such
191 abandonment and reversion shall not affect any private easements
192 which might exist.

193 (4) If the owner of any land which shall have been laid off,
194 mapped or platted as a city, town or village, or addition thereto,
195 or subdivision thereof, or other platted area, whether inside or



196 outside a municipality, desires to alter or vacate such map or
197 plat, or any part thereof, he may petition the board of
198 supervisors of the county or the governing authorities of the
199 municipality for relief in the premises, setting forth the
200 particular circumstances of the case and giving an accurate
201 description of the property, the map or plat of which is to be
202 vacated or altered and the names of the persons to be adversely
203 affected thereby or directly interested therein. However, before
204 taking such action, the parties named shall be made aware of the
205 action and must agree in writing to the vacation or alteration.
206 Failure to gain approval from the parties named shall prohibit the
207 board of supervisors or governing authorities from altering or
208 vacating the map or plat, or any part thereof. Any alterations of
209 a plat or map must be recorded in the appropriate location and a
210 note shall be placed on the original plat denoting the altered or
211 revised plat. No land shall be subdivided nor shall the map or
212 plat of any land be altered or vacated in violation of any duly
213 recorded covenant running with the land. Any municipality which
214 shall approve such a vacation or alteration pursuant to this
215 section shall be exempt from the sale of surplus real property
216 provisions as set forth in Section 21-17-1.

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



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

222 19-5-10. (1) The board of supervisors of any county is
223 authorized to enter into one or more development agreements with
224 the developer or developers of a master planned community in order
225 to authorize, in addition to any other matters to which the board
226 of supervisors may lawfully obligate the county, the master
227 planned community, through a community self-governing entity
228 created by the owners of the property, to administer, manage and
229 enforce the land use restrictions and covenants, land use
230 regulations, subdivision regulations, building codes and
231 regulations, and any other limitations and restrictions on land
232 and buildings provided in the master plan for the master planned
233 community, in lieu of the real estate and property owners within
234 the master planned community being subject to the county
235 ordinances and regulations pertaining to buildings, subdivisions,
236 zoning, the county's comprehensive plan, and any other county
237 ordinances and regulations pertaining thereto. Prior to entering
238 into any such development agreement, the board of supervisors
239 shall review the master plan for the master planned community and
240 find that the provisions of the master plan providing for
241 regulations, restrictions, covenants and limitations pertaining to
242 building, subdivisions, zoning and comprehensive planning shall be
243 comparable to, or greater than, similar provisions in the
244 ordinances and regulations of the county. The term of such a



245 development agreement may be not more than thirty (30) years or
246 the number of years allowed in the county's subdivision ordinance
247 for terms of subdivision covenants, whichever is greater. The
248 development agreement shall have attached to it a boundary survey
249 made by a registered land surveyor, and upon approval of the
250 development agreement by the board of supervisors, the boundary
251 survey shall be recorded in the land records of the chancery clerk
252 of the county. The recorded boundary survey shall serve as the
253 description of the property within the master planned community
254 which shall not be subject to the county's zoning map, and the
255 county's zoning map shall simply recognize the territory described
256 in such boundary survey as a "master planned community." Whenever
257 there may be a conflict between the county ordinances and
258 regulations pertaining to buildings, subdivisions, zoning, the
259 county's comprehensive plan, and any other county ordinances and
260 regulations pertaining thereto, and the provisions of such a
261 development agreement, including the provisions of the master plan
262 providing for regulations, restrictions, covenants and limitations
263 pertaining to buildings, subdivisions, zoning and comprehensive
264 planning, the provisions of the development agreement shall
265 prevail if the provisions of the development agreement are
266 comparable to or greater than similar provisions of county
267 ordinances and regulations.

268 (2) As used in this section, the term "master planned
269 community" means a development by one or more developers of real



270 estate consisting of residential, commercial, educational, health
271 care, open space and recreational components that is developed
272 pursuant to a long range, multiphase master plan providing
273 comprehensive land use planning and staged implementation and
274 development and the master plan must include the following minimum
275 provisions:

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

280 (i) Dwelling units within a certified retirement
281 community certified by the Mississippi Development Authority; or
282 (ii) Dwelling units where at least one (1)
283 occupant:

- 284 1. Is sixty-two (62) years of age; or
285 2. Receives pension income reported on his or
286 her most recent federal income tax return filed prior to
287 occupancy; or
288 3. Declares himself to be retired.

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



295 (i) Internal community self-governance by the
296 owners of the property;

297 (ii) The establishment of one or more legal
298 persons endowed with the powers, rights and duties to administer,
299 manage, own and maintain common areas, establish community
300 activities and enforce the land use restrictions on the common
301 areas and private property; and

302 (iii) The establishment of assessments and lien
303 rights to fund amenities, services and maintenance of common
304 areas.

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

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



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

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

326 21-19-63. The governing authorities of municipalities may
327 provide that any person desiring to subdivide a tract of land
328 within the corporate limits shall submit a map and plat of such
329 subdivision, and a correct abstract of title of the land platted,
330 to said governing authorities, to be approved by them before the
331 same shall be filed for record in the land records of the county.
332 Where the municipality has adopted an ordinance so providing, no
333 such map or plat of any such subdivision shall be recorded by the
334 chancery clerk unless same has been approved by said governing
335 authorities. In all cases where a map or plat of the subdivision
336 is submitted to the governing authorities of a municipality, and
337 is by them approved, all streets, roads, alleys and other public
338 ways set forth and shown on said map or plat shall be thereby
339 dedicated to the public use, and shall not be used otherwise
340 unless and until said map or plat is vacated in the manner
341 provided by law, notwithstanding that said streets, roads, alleys
342 or other public ways have not been actually opened for the use of
343 the public. If any easement dedicated pursuant to the provisions
344 of this section for a street, road, alley or other public purpose



345 is determined to be not needed for the public purpose, the
346 easement may be declared abandoned, and ownership of the fee
347 underlying the easement shall revert, regardless of the date of
348 dedication, to the adjoining property owner or owners at the time
349 of abandonment. Ownership of the easement shall extend to the
350 centerline of said abandoned street, road or public way. Such
351 abandonment and reversion shall not affect any private easements
352 which might exist.

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

355 89-1-69. (1) In this section, "property owners'
356 association" means an incorporated or unincorporated association
357 that:

358 (a) Is designated as the representative of the owners
359 of property in a subdivision;

360 (b) Has a membership primarily consisting of the owners
361 of the property covered by the dedicatory instrument for the
362 subdivision; and

363 (c) Manages or regulates the subdivision for the
364 benefit of the owners of property in the subdivision.

365 (2) A deed restriction or other covenant running with the
366 land applicable to the conveyance of real property that requires a
367 transferee of real property or the transferee's heirs, successors,
368 or assigns to pay a declarant or other person imposing the deed
369 restriction or covenant on the property or a third party



370 designated by a transferor of the property a fee in connection
371 with a future transfer of the property is prohibited. A deed
372 restriction or other covenant running with the land that violates
373 this section or a lien purporting to encumber the land to secure a
374 right under a deed restriction or other covenant running with the
375 land that violates this section is void and unenforceable. For
376 purposes of this section, a conveyance of real property includes a
377 conveyance or other transfer of an interest or estate in real
378 property.

379 (3) This section does not apply to a deed restriction or
380 other covenant running with the land that requires a fee
381 associated with the conveyance of property in a subdivision that
382 is payable to:

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

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

394 (c) A governmental entity.



395 **SECTION 7.** This act shall take effect and be in force from
396 and after July 1, 2024.

