

By: Representatives Lamar, Deweese

To: Judiciary A

COMMITTEE SUBSTITUTE
FOR
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 THAT IS
9 SIGNED BY A MAJORITY OF THE PROPERTY OWNERS TO ESTABLISH AND/OR
10 AMEND COVENANTS, CONDITIONS AND RESTRICTIONS, IF NECESSARY; TO
11 REQUIRE NOTICE OF THE HEARING ON SUCH PETITION TO BE PROVIDED
12 THROUGH PUBLICATION; TO PROVIDE THAT IF THE CHANCELLOR FINDS THAT
13 THE PETITION IS WELL TAKEN THEN HE OR SHE SHALL ENTER A DECREE
14 ACCORDINGLY, WHICH SHALL BE FILED WITH THE CHANCERY CLERK; TO
15 BRING FORWARD SECTIONS 17-1-23, 19-5-10, 21-19-63 AND 89-1-69,
16 MISSISSIPPI CODE OF 1972, FOR PURPOSES OF POSSIBLE AMENDMENT; AND
17 FOR RELATED PURPOSES.

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

19 **SECTION 1.** (1) Property owners in a residential subdivision
20 that has been platted in accordance with Section 17-1-23, and that
21 is not governed by a homeowners association may, acting through a
22 majority vote of such owners, provided that each plat of real
23 property shall only be entitled to one (1) vote without regard to
24 the number of individuals who possess an ownership interest in
25 such property, establish or amend covenants, conditions, and



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

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

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

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



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

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

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

73 **SECTION 2.** (1) Property owners in a residential subdivision
74 that has been platted in accordance with Section 17-1-23, and that



75 is governed by a homeowners association, may establish and amend
76 covenants, conditions, and restrictions, including those that run
77 with the land, as provided in this section, and further provided
78 that each plat of real property shall only be entitled to one (1)
79 vote in any such election to establish or amend covenants,
80 conditions and restrictions of the subdivision without regard to
81 the number of individuals who possess an ownership interest in
82 such property, in accordance with subsections (2) through (5) of
83 this Section 2.

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

91 (b) Such governing documents, as provided in paragraph
92 (a) of this subsection (2), must be unexpired in order to be valid
93 and enforceable for the purposes of this act, and any covenants,
94 conditions, or restrictions established or amended, pursuant to
95 governing documents that are expired, shall be void and
96 unenforceable.

97 (3) (a) If the governing documents for the homeowners'
98 association of such a residential subdivision do not provide a
99 process for establishing and amending covenants, conditions, and



100 restrictions, property owners in a residential subdivision that
101 has existing covenants, conditions, and restrictions, who seek to
102 establish additional covenants, conditions, and restrictions, or
103 amend the existing covenants, conditions, and restrictions under
104 subsection (1) of this section, shall file a petition with the
105 chancery court of the county where the existing covenants,
106 conditions, and restrictions were initially filed. Such petition
107 shall be signed by a majority of the property owners in the
108 residential subdivision.

109 (b) If the governing documents for the homeowners'
110 association of such a residential subdivision do not provide a
111 process for establishing and amending covenants, conditions, and
112 restrictions, property owners in a residential subdivision where
113 no covenants, conditions, and restrictions exist, who seek to
114 establish covenants, conditions, and restrictions under subsection
115 (1) of this section, shall file a petition with the chancery court
116 of the county where the subdivision is located. Such petition
117 shall be signed by a majority of the property owners in the
118 residential subdivision.

119 (4) After filing such petition to amend and/or establish
120 covenants, conditions and restrictions, the chancellor shall set a
121 day, either in term time or in vacation, for the hearing of the
122 petition, and notice shall be given to all persons interested in,
123 affected by, or having objections to the petition, that the
124 hearing on the petition will be held on the day fixed by the



125 chancellor and that all such persons will have the right to appear
126 and enter their objections, if any, to the proposed petition.

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

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

139 (5) At the time fixed, the chancellor shall proceed to hear
140 all evidence offered in support of the petition, together with all
141 objections, if any, that may be presented touching or bearing upon
142 the relief requested. If the chancellor finds from the evidence
143 that the proposed petition, in whole or in part, is well taken
144 then he or she shall enter a decree accordingly, which shall be
145 filed with the chancery clerk and shall be denoted by him or her
146 in the official plat book of the county for the subdivision at
147 issue and in such other places where matters relating to
148 covenants, conditions, and restrictions for subdivisions are
149 filed.



150 (6) The provisions of Section 2 of this act shall not apply
151 to any municipality in which Yacht Club Drive passes over
152 Interstate 10.

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

155 17-1-23. (1) When new subdivisions are laid out, the
156 governing authority of each municipality or county may, before
157 allowing dedication, impose such terms as may be deemed necessary
158 to make the provisions of Sections 17-1-1 through 17-1-27,
159 inclusive, effective, and such governing authorities may receive
160 easements in the land affected whereby such sections may be made
161 effective.

162 (2) The board of supervisors of any county may order that no
163 plat of a subdivision shall be recorded until it has been approved
164 by the board of supervisors, and the board of supervisors shall
165 have power to require the installation of utilities and laying out
166 of streets in subdivisions or to accept performance bonds in lieu
167 thereof; the board of supervisors of any county bordering on the
168 State of Tennessee having a population of more than sixty-seven
169 thousand nine hundred (67,900) but less than seventy thousand
170 (70,000) according to the 1990 federal census and having a land
171 area of more than four hundred seventy (470) square miles but less
172 than five hundred (500) square miles may also, in lieu thereof,
173 require the deposit of monies with the county which shall be
174 placed in a special interest-bearing account in the county



175 treasury, and such board of supervisors at the appropriate time
176 shall spend monies from such account solely for the purpose of
177 constructing or improving the roads and other infrastructure
178 within the subdivision with respect to which the deposit or
179 deposits were made.

180 (3) The governing authorities of a municipality may provide
181 that any person desiring to subdivide a tract of land within the
182 corporate limits shall submit a map and plat of such subdivision,
183 and a correct abstract of title of the land platted, to said
184 governing authorities, to be approved by them before the same
185 shall be filed for record in the land records of the county; and
186 where the municipality has adopted an ordinance so providing, no
187 such map or plat of any such subdivision shall be recorded by the
188 chancery clerk unless same has been approved by said governing
189 authorities. In all cases where a map or plat of the subdivision
190 is submitted to the governing authorities of a municipality, and
191 is by them approved, all streets, roads, alleys and other public
192 ways set forth and shown on said map or plat shall be thereby
193 dedicated to the public use, and shall not be used otherwise
194 unless and until said map or plat is vacated in the manner
195 provided by law, notwithstanding that said streets, roads, alleys
196 or other public ways have not been actually opened for the use of
197 the public. If any easement dedicated pursuant to the provisions
198 of this section for a street, road, alley or other public purpose
199 is determined to be not needed for the public purpose, the



200 easement may be declared abandoned, and ownership of the fee
201 underlying the easement shall revert, regardless of the date of
202 dedication, to the adjoining property owner or owners at the time
203 of abandonment. Ownership of such easement shall extend to the
204 centerline of said abandoned street, road or public way. Such
205 abandonment and reversion shall not affect any private easements
206 which might exist.

207 (4) If the owner of any land which shall have been laid off,
208 mapped or platted as a city, town or village, or addition thereto,
209 or subdivision thereof, or other platted area, whether inside or
210 outside a municipality, desires to alter or vacate such map or
211 plat, or any part thereof, he may petition the board of
212 supervisors of the county or the governing authorities of the
213 municipality for relief in the premises, setting forth the
214 particular circumstances of the case and giving an accurate
215 description of the property, the map or plat of which is to be
216 vacated or altered and the names of the persons to be adversely
217 affected thereby or directly interested therein. However, before
218 taking such action, the parties named shall be made aware of the
219 action and must agree in writing to the vacation or alteration.
220 Failure to gain approval from the parties named shall prohibit the
221 board of supervisors or governing authorities from altering or
222 vacating the map or plat, or any part thereof. Any alterations of
223 a plat or map must be recorded in the appropriate location and a
224 note shall be placed on the original plat denoting the altered or



225 revised plat. No land shall be subdivided nor shall the map or
226 plat of any land be altered or vacated in violation of any duly
227 recorded covenant running with the land. Any municipality which
228 shall approve such a vacation or alteration pursuant to this
229 section shall be exempt from the sale of surplus real property
230 provisions as set forth in Section 21-17-1.

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

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

236 19-5-10. (1) The board of supervisors of any county is
237 authorized to enter into one or more development agreements with
238 the developer or developers of a master planned community in order
239 to authorize, in addition to any other matters to which the board
240 of supervisors may lawfully obligate the county, the master
241 planned community, through a community self-governing entity
242 created by the owners of the property, to administer, manage and
243 enforce the land use restrictions and covenants, land use
244 regulations, subdivision regulations, building codes and
245 regulations, and any other limitations and restrictions on land
246 and buildings provided in the master plan for the master planned
247 community, in lieu of the real estate and property owners within
248 the master planned community being subject to the county
249 ordinances and regulations pertaining to buildings, subdivisions,



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



275 development agreement, including the provisions of the master plan
276 providing for regulations, restrictions, covenants and limitations
277 pertaining to buildings, subdivisions, zoning and comprehensive
278 planning, the provisions of the development agreement shall
279 prevail if the provisions of the development agreement are
280 comparable to or greater than similar provisions of county
281 ordinances and regulations.

282 (2) As used in this section, the term "master planned
283 community" means a development by one or more developers of real
284 estate consisting of residential, commercial, educational, health
285 care, open space and recreational components that is developed
286 pursuant to a long range, multiphase master plan providing
287 comprehensive land use planning and staged implementation and
288 development and the master plan must include the following minimum
289 provisions:

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

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

296 (ii) Dwelling units where at least one (1)
297 occupant:

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



299 2. Receives pension income reported on his or
300 her most recent federal income tax return filed prior to
301 occupancy; or

302 3. Declares himself to be retired.

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

309 (i) Internal community self-governance by the
310 owners of the property;

311 (ii) The establishment of one or more legal
312 persons endowed with the powers, rights and duties to administer,
313 manage, own and maintain common areas, establish community
314 activities and enforce the land use restrictions on the common
315 areas and private property; and

316 (iii) The establishment of assessments and lien
317 rights to fund amenities, services and maintenance of common
318 areas.

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



323 (3) The master plan for a master planned community shall be
324 subject to modification from time to time by the original owner or
325 owners of the real estate described in the initial master plan,
326 its affiliates, successors or assigns to meet changing economic
327 and market conditions; provided, however, any such modifications
328 in the master plan which materially change the regulations,
329 restrictions, covenants and limitations pertaining to buildings,
330 subdivisions and land use regulations approved in the development
331 agreement, or which significantly change the overall plan concept,
332 shall be subject to, and shall not take effect until, approved by
333 the board of supervisors of the county.

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

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

340 21-19-63. The governing authorities of municipalities may
341 provide that any person desiring to subdivide a tract of land
342 within the corporate limits shall submit a map and plat of such
343 subdivision, and a correct abstract of title of the land platted,
344 to said governing authorities, to be approved by them before the
345 same shall be filed for record in the land records of the county.
346 Where the municipality has adopted an ordinance so providing, no
347 such map or plat of any such subdivision shall be recorded by the



348 chancery clerk unless same has been approved by said governing
349 authorities. In all cases where a map or plat of the subdivision
350 is submitted to the governing authorities of a municipality, and
351 is by them approved, all streets, roads, alleys and other public
352 ways set forth and shown on said map or plat shall be thereby
353 dedicated to the public use, and shall not be used otherwise
354 unless and until said map or plat is vacated in the manner
355 provided by law, notwithstanding that said streets, roads, alleys
356 or other public ways have not been actually opened for the use of
357 the public. If any easement dedicated pursuant to the provisions
358 of this section for a street, road, alley or other public purpose
359 is determined to be not needed for the public purpose, the
360 easement may be declared abandoned, and ownership of the fee
361 underlying the easement shall revert, regardless of the date of
362 dedication, to the adjoining property owner or owners at the time
363 of abandonment. Ownership of the easement shall extend to the
364 centerline of said abandoned street, road or public way. Such
365 abandonment and reversion shall not affect any private easements
366 which might exist.

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

369 89-1-69. (1) In this section, "property owners'
370 association" means an incorporated or unincorporated association
371 that:



372 (a) Is designated as the representative of the owners
373 of property in a subdivision;

374 (b) Has a membership primarily consisting of the owners
375 of the property covered by the dedicatory instrument for the
376 subdivision; and

377 (c) Manages or regulates the subdivision for the
378 benefit of the owners of property in the subdivision.

379 (2) A deed restriction or other covenant running with the
380 land applicable to the conveyance of real property that requires a
381 transferee of real property or the transferee's heirs, successors,
382 or assigns to pay a declarant or other person imposing the deed
383 restriction or covenant on the property or a third party
384 designated by a transferor of the property a fee in connection
385 with a future transfer of the property is prohibited. A deed
386 restriction or other covenant running with the land that violates
387 this section or a lien purporting to encumber the land to secure a
388 right under a deed restriction or other covenant running with the
389 land that violates this section is void and unenforceable. For
390 purposes of this section, a conveyance of real property includes a
391 conveyance or other transfer of an interest or estate in real
392 property.

393 (3) This section does not apply to a deed restriction or
394 other covenant running with the land that requires a fee
395 associated with the conveyance of property in a subdivision that
396 is payable to:



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

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

408 (c) A governmental entity.

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

