

By: Senator(s) McCaughn

To: Judiciary, Division A

SENATE BILL NO. 2481

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.

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, 2025.