MISSISSIPPI LEGISLATURE REGULAR SESSION 2016

By: Representative Baker To: Judiciary A

HOUSE BILL NO. 708

AN ACT TO PROVIDE A METHOD TO REVIVE, REFORM, MODIFY OR CORRECT PROTECTIVE COVENANTS IN SUBDIVISIONS; TO PROVIDE FOR PROCEEDINGS IN CHANCERY COURT REGARDING SUCH PROTECTIVE COVENANTS; TO REQUIRE NOTICE TO ALL PARTIES; TO PROVIDE FOR A HEARING; TO PROVIDE AUTHORITY FOR THE CHANCERY COURT TO RULE ON SUCH PETITIONS AND CERTAIN OTHER MATTERS RELATING TO SUCH SUBDIVISIONS; TO AMEND SECTION 17-1-23, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) Whenever a subdivision that has been platted in accordance with Section 17-1-23 and in conjunction therewith protective covenants were filed with the chancery clerk of the county of filing and the protective covenants have expired or are asserted as incomplete, deficient or defective, a petition may be filed in the chancery court of the county wherein the subdivision is located to revive, reform, modify and/or correct such protective covenants.

(2) After the filing of the petition, and upon request therefor by the petitioners, the chancellor shall set a day certain, either in term time or in vacation, for the hearing of such petition and notice shall be given to all persons interested

in, affected by, or having objections to the proposed incorporation, that the hearing on the petition will be held on the day fixed by the chancellor and that all such persons will have the right to appear and enter their objections, if any, to the proposed petition. The notice shall be given by publication thereof in some newspaper published or having a general circulation in the territory proposed to be incorporated once each week for three (3) consecutive weeks, and by posting a copy of such notice at all entrances to the subdivision from a public road as denoted on the official plat of the subdivision. The first publication of such notice and the posted notice shall be made at least thirty (30) days prior to the day fixed for the hearing of said petition, and such notice shall describe the subdivision by name as the same appears on the official plat thereof filed in the land records of the county and the plat book or cabinet and page or slot where filed. However, if any subdivision which is the subject matter of the petition is located within the boundaries of an existing municipality, then such existing municipality shall be made a party defendant to such petition and shall be served with process in the manner provided by law, which process shall be served at least thirty (30) days prior to the date set for the hearing.

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

the relief requested. The chancellor shall have the power, however, to grant such reasonable continuances as justice may require. If the chancellor finds from the evidence that the proposed petition, in whole or in part, is well taken then he shall enter a decree accordingly which shall be filed with the chancery clerk and shall be denoted by him in the official plat book of the county for the subdivision at issue and in such other places where matters relating to protective covenants for subdivisions are filed.

(4) In considering the petition and the relief requested, it is within the authority of the chancellor to impose protective covenants with respect to all property within such subdivisions consistent with the current overall development characteristics of the subdivision; however, any decree in this respect shall not affect or apply to any condition existing at the time of the entry of the decree.

(5) To the extent the petition requests the creation of a homeowners' association of the subdivision where one does not already exist, the chancellor shall have the authority to create the same and to name the initial incorporators and directors thereof who shall be resident landowners within the subdivision and shall have the authority to direct the preparation and filing of articles of incorporation and by-laws for the same and to approve the same as presented. Additionally, the chancellor is authorized to make such other provisions for the administration

thereof including the authority of the association to impose assessments for the common good and maintenance of the subdivision and the common areas thereof and compliance with the protective covenants as decreed; however, with respect to assessments for the maintenance of commons areas or special assessments for specific projects benefitting the entire subdivision all such assessments shall be uniformly applied to each lot within the subdivision. With respect to assessments for noncompliance with the protective covenants, the same shall be uniformly applied insofar as the association shall prepare a list of assessments for each violation sought to be enforced. The chancellor shall also include in the decree authority for the association to seek legal or equitable relief to enforce the protective covenants of the subdivision and for the recovery of attorney's fees and costs to the prevailing party.

SECTION 2. Section 17-1-23, Mississippi Code of 1972, is amended as follows:

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

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

(3) The governing authorities of a municipality may provide that any person desiring to subdivide a tract of land within the corporate limits shall submit a map and plat of such subdivision, and a correct abstract of title of the land platted, to said governing authorities, to be approved by them before the same shall be filed for record in the land records of the county; and where the municipality has adopted an ordinance so providing, no

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

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

supervisors of the county or the governing authorities of the municipality for relief in the premises, setting forth the particular circumstances of the case and giving an accurate description of the property, the map or plat of which is to be vacated or altered and the names of the persons to be adversely affected thereby or directly interested therein. However, before taking such action, the parties named shall be made aware of the action and must agree in writing to the vacation or alteration. Failure to gain approval from the parties named shall prohibit the board of supervisors or governing authorities from altering or vacating the map or plat, or any part thereof. Any alterations of a plat or map must be recorded in the appropriate location and a note shall be placed on the original plat denoting the altered or revised plat. No land shall be subdivided nor shall the map or plat of any land be altered or vacated in violation of any duly recorded covenant running with the land. Any municipality which shall approve such a vacation or alteration pursuant to this section shall be exempt from the sale of surplus real property provisions as set forth in Section 21-17-1.

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

(6) Protective covenants may be revived, reformed, modified or corrected as provided in Section 1 of this act.

SECTION 3. This act shall take effect and be in force from and after July 1, 2016.

ST: Protective covenants; allow revival and modification after expiration.