

House Bill 1063

AN ACT TO AMEND SECTIONS 39-13-3, 39-13-5, 39-13-7 AND 39-13-9, MISSISSIPPI CODE OF 1972, TO REVISE PORTIONS OF THE MISSISSIPPI LOCAL GOVERNMENT HISTORIC PRESERVATION LAW; TO PROVIDE THAT THE GOVERNING AUTHORITIES OF EACH MUNICIPALITY AND COUNTY MAY ENACT ORDINANCES ESTABLISHING LOCAL HISTORIC DISTRICTS, HISTORIC LANDMARKS AND LANDMARK SITES; TO PROVIDE DEFINITIONS; TO AUTHORIZE THE GOVERNING BODY OF ANY COUNTY OR MUNICIPALITY TO ESTABLISH A HISTORIC PRESERVATION COMMISSION TO PRESERVE, PROMOTE AND DEVELOP THE HISTORICAL RESOURCES WITHIN ITS JURISDICTION; TO PROVIDE FOR THE ISSUANCE OF A CERTIFICATE OF APPROPRIATENESS FOR CERTAIN CONSTRUCTION, ALTERATION, DEMOLITION OR RELOCATION OF LANDMARK PROPERTY; TO PROVIDE PENALTIES FOR VIOLATIONS; AND FOR RELATED PURPOSES.

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

SECTION 1. The governing authorities of each municipality and county may stabilize the economy of the areas within the boundary of such municipality or county through the continued use, preservation and revitalization of key historic and architectural resources. It is recognized that the protection and enhancement of such attractions help to attract tourists and visitors, and that the further development of local heritage tourism programs supports and stimulates local business and industry. This act permits governing authorities to strengthen civic pride and ensure cultural stability through neighborhood conservation and historic preservation activities. This act establishes a review process for the preservation and appropriate redevelopment of the key historic and architectural resources of a governing authority and creates procedures which ensure adequate public notice before the creation of local historic preservation commissions or the designation of local historic districts, landmarks and landmark sites.

SECTION 2. The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

- (a) "Alteration" means any change in the exterior appearance or materials of a landmark or a structure within a historic district or on a landmark site.
- (b) "Certificate of appropriateness" means an official signed and dated governmental document issued by either a local historic preservation commission or a governing authority to permit specific work in a historic district or at a landmark site or landmark which has been reviewed and approved.

(c) "Construction" means work which is neither alteration nor demolition. Essentially, it is the erection of a new structure which did not previously exist, even if such a structure is partially joined to an existing structure.

(d) "Demolition" means the intentional removal of a structure within a local historic district or on a landmark site or which has been designated as a landmark.

(e) "Demolition by neglect" means substantial deterioration of a historic structure that results from improper maintenance or a lack of maintenance.

(f) "Design review guidelines," if adopted by a local historic preservation commission, shall be in a written form designed to inform local property owners about historical architectural styles prevalent in a community and to recommend preferred treatments and discourage treatments that would compromise the architectural integrity of structures in a historic district or on a landmark site or individually designated as landmarks.

(g) "Historic landmark" means a structure of exceptional individual significance and typically is a structure which could not be included within a local historic district.

(h) "Historic preservation commission" means a municipal or county body established to advise a local government on matters relating to historic preservation, including the designation of historic districts, landmarks and landmark sites, and which may be empowered to review applications for permits for alteration, construction, demolition, relocation or subdivision for structures in historic districts or on landmark sites or designated as landmarks.

(i) "Historic district" means a group of two (2) or more tax parcels and their structures, and may be an entire neighborhood of structures linked by historical association or historical development. It is not necessary that all structures within a historic district share the same primary architectural style or be from the same primary historical period. A historic district may also include both commercial and residential structures, and may include structures covered by two (2) or more zoning classifications. A historic district may include both contributing and noncontributing structures.

(j) "Landmark site" means a location where a primary architectural or historical resource formerly stood or a significant historic event took place or an important archeological resource remains.

(k) "Period of greatest historic significance for a landmark" means the time period during which the landmark had been essentially completed but not yet altered. It is also the period during which the style of architecture of the landmark was commonplace or typical. If a landmark also achieved historical importance in part because of designed landscape features, the period of greatest historic significance includes the time period during which such landscape features were maintained.

(l) "Relocation" means the moving of a structure to a new location on its tax parcel or the relocation of such a structure to a new tax parcel.

(m) "Structure" means a man-made object and typically will be visible because of portions which exist above grade. Structures built during the historic period, 1700 forward, may in some instances not be visible above grade if they are cellars, cisterns, icehouses or similar objects which by their nature are intended to be built into the ground. A structure includes both interior components and visible exterior surfaces, as well as attached elements such as signs and related features such as walks, walls, fences and other nearby secondary structures or landmark features.

(n) "Subdistricts" means discrete areas within a larger historic district within which separate design guidelines are appropriate and that may be created to recognize different zoning classifications or historic development patterns which have caused adjacent historic areas to develop at different times.

(o) "Subdivision" includes any change in the boundaries of a single tax parcel, whether the change results in expansion or reduction or a boundary relocation.

(p) "Substantial deterioration" means structural degradation of such a nature that water penetration into a historic structure can no longer be prevented, or structural degradation that causes stress or strain on structural members when supports collapse or warp, evidence of which includes defective roofing materials, broken window coverings and visible interior decay.

(q) "Survey of resources" means the documentation, by historical research or a photographic record, of structures of historical interest within a specified area or jurisdiction or of existing structures within a proposed historic district.

(r) "Unauthorized demolition" means the deliberate demolition of a historic structure without prior review and approval by a local historic preservation commission or a governing authority to which such a commission has made a recommendation.

(s) "Unreasonable economic hardship" means the definition under constitutional standards used to determine whether a "taking" exists.

SECTION 3. Section 39-13-3, Mississippi Code of 1972, is amended as follows:

39-13-3. The governing authority of each municipality and county, either independently or jointly with the governing authority of an adjacent municipality or county, or both, is hereby empowered, in its discretion, to enact ordinances providing for the creation of one or more local historic preservation commissions to advise on the establishment and location of potential historic districts and the designation of potential historic landmarks and landmark sites within the jurisdictional area of the governing authority. The governing authorities of each municipality and county, either independently or jointly with the governing authorities of an adjacent municipality, may enact ordinances for the establishment of such local historic districts, historic landmarks and landmark sites within the jurisdictional area of the governing authorities as these authorities shall choose to designate. Each such ordinance shall be adopted after investigation of the historical, architectural, archaeological and cultural significance of the buildings, structures, features, sites and surroundings of such districts, landmarks or landmark sites and after having held public hearing thereon. Notice of such public hearing, specifying the boundaries of any proposed historic * * * district and the location of proposed historic landmarks and landmark sites shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in such municipality or county. The first publication of such resolution shall be made not less than twenty-one (21) days prior to the date fixed in such resolution for the public hearing and the last publication shall be made not more than seven (7) days prior to such date. If no newspaper be published in such municipality or county, then such notice shall be given by publishing the resolution for the required time in some newspaper having a general circulation in such municipality or county.

An ordinance to establish a local historic preservation commission may precede an ordinance to designate one or more local historic districts and one or more landmarks or landmark sites. Whenever governing authorities enact such an ordinance creating a historic preservation commission before an ordinance or ordinances designating one or more local historic districts and one or more landmarks or landmark sites, the local

historic preservation commission shall review such potential local historic districts or potential landmarks or landmark sites and make a recommendation to the governing authorities before such designation.

SECTION 4. Section 39-13-5, Mississippi Code of 1972, is amended as follows:

39-13-5. Before it may designate one or more historic districts, or simultaneously with such designation, the governing body of any county or municipality, individually or jointly, shall establish a historic preservation commission to preserve, promote and develop the historical resources of such county or municipality in accordance with the provisions of this chapter.

The historic preservation commission shall have the following powers:

(a) The commission shall conduct or cause to be conducted a continuing study and survey of resources within the county or municipality or combination thereof.

(b) The commission shall recommend to the county or municipality or combination thereof the adoption of ordinances designating historic districts, landmarks and landmark sites.

(c) The commission may recommend that the county or municipality or combination thereof recognize subdistricts within any historic district in order that the commission may adopt specific guidelines for the regulation of properties within such a subdistrict.

(d) The commission shall review applications proposing construction, alteration, demolition or relocation of any resource or subdivision of tax parcels designated as landmarks or landmark sites contained within a historic district. The document granting such an application shall be known as a certificate of appropriateness. No commission may deny a certificate of appropriateness for demolition if denial of such a certificate would cause unreasonable economic hardship to an owner.

(e) The commission shall use as a basis for its decisions on applications for certificates of appropriateness the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings as well as any more specific design review guidelines adopted by the commission or the governing authority of the county or municipality or combination thereof.

(f) The commission, at the discretion of the governing authority, may grant or deny the certificates of appropriateness in whole or in part and may grant certificates of appropriateness contingent upon the acceptance by the applicant of specified conditions.

(g) The commission shall not consider interior arrangements of buildings and structures except that it may when requested by the Department of Archives and History to advise the department on questions relating to the interiors of publicly owned historic buildings. Interior arrangements not to be considered by the commission shall include floor plans, architectural details and finishes, but the commission may consider interior structural elements visible through doors or windows if they become deteriorated because of demolition by neglect. Such interior structural elements may include walls, floors and ceilings, as well as other supporting elements of a composite structure.

(h) The commission may, by local ordinance, review proposed governmental actions affecting governmentally owned structures included within local historic districts, located on landmark sites or designated as landmarks.

(i) The commission, subject to the consent of and requirements of the county or municipality or combination thereof, may apply for, receive, hold and spend funds from

private and public sources in addition to appropriations made by the county or municipality or combination thereof for the purpose of carrying out the duties of the commission.

(j) The commission, subject to the consent of and the requirements of the county or municipality or combination thereof, may employ such staff or contract with technical experts or other persons as may be required for the performance of its duties and may obtain the equipment, supplies and other materials necessary for its effective operation.

(k) The commission, solely in the performance of its official duties and only at reasonable times, may enter upon private land for the examination or survey thereof. No member, employee or agent of the commission shall enter any private dwelling or structure without the express consent of the owner of record or occupant thereof.

(l) A municipality, by ordinance, may specify that color changes are outside the jurisdiction of the commission.

Such commission shall consist of not fewer than five (5) nor more than nine (9) residents of the county or municipality, or combination thereof, establishing the commission who shall be appointed by the governing authority with due regard to proper representation in such fields as history, architecture, urban planning, archaeology and law. All members of the commission shall serve at the will and pleasure of the governing authority appointing them and shall serve staggered terms. The precise method of appointment, and general terms of appointment, shall be specified in a local ordinance. If a documented good faith effort has been made unsuccessfully by the governing authority to locate residents of the county or municipality to serve on the commission, the governing authority may appoint individuals who own property within the boundary of the county or municipality, or both, or are in the service of an employer located within the boundary of the county or municipality, or both. The commission annually shall elect from its membership a chairman and a vice chairman and may employ such qualified staff personnel and counsel as it deems necessary. The commission shall retain as evidence of its discussions and decisions a complete set of minutes and may additionally create tape recordings or transcripts of its meetings. In addition, the commission shall retain copies of all applications filed with it including supporting documentation that may be added during open public meetings to supplement an original application or comment thereon. The commission shall advise the governing authority as to the designation of historic * * * districts and the designation of historic landmarks and landmark sites. If any governing authority, in its discretion, chooses to divide the duties and responsibilities of the commission into no more than two (2) commissions or boards, each commission or board shall be established as directed in this section.

SECTION 5. Section 39-13-7, Mississippi Code of 1972, is amended as follows:

39-13-7. No historic * * * district or districts shall be designated until the Mississippi Department of Archives and History has been notified by certified letter by the governing authority of a municipality or county and invited to make recommendations concerning the proposed district boundaries. The Mississippi Department of Archives and History may comment by letter, telephone, e-mail or in person through designated staff. The boundary of a historic district or landmark or landmark site may follow the formal legal description of a tax parcel or parcels or, because of historical justification or topographical conditions, may deviate from such formal legal descriptions. When a boundary deviates from formal legal descriptions, there must be written justification for such a deviation in any local designating ordinance.

When a municipality or county has already created by ordinance a local historic preservation commission, that commission shall jointly notify both the governing authority of the municipality or county and the Mississippi Department of Archives and History that a historic district is being proposed and recommended and shall provide to the Mississippi Department of Archives and History the dates of the next two (2) public meetings of the governing authority at which action on the designation of such a district might be taken so that the Mississippi Department of Archives and History may comment in a timely manner. Failure of the Mississippi Department of Archives and History to comment by the date of the second such meeting shall relieve the municipality or county of any responsibility for awaiting and responding to such analysis, and the body may at any time thereafter take any necessary action to create the proposed historic district.

When a municipality or county has not previously created by ordinance a local historic preservation commission and the governing authority proposes to create such a commission, the governing authority must give the Mississippi Department of Archives and History an opportunity to comment on the proposed provisions for such an ordinance, unless such ordinance is substantially identical to any model local historic preservation ordinance which has been recommended and promulgated by the Mississippi Department of Archives and History. Whenever the Mississippi Department of Archives and History is invited to comment on the terms of a proposed local historic preservation ordinance, failure of the department to comment within forty-five (45) days after a written request for comments has been received shall relieve the governing authority of any responsibility to wait further for such comments.

SECTION 6. Section 39-13-9, Mississippi Code of 1972, is amended as follows:

39-13-9. The governing authority of any county or municipality, individually or jointly, is authorized to make appropriations to a historic preservation commission, in any amount that it may determine necessary for the expenses of the operation of such commission. A governing authority may apply to participate in the Certified Local Government Program of the National Park Service, which is administered in Mississippi by the Department of Archives and History and may on behalf of a local historic preservation commission apply for funding from the Department of Archives and History to supplement funds available from the governing authority itself. Said governing authorities shall not be empowered to acquire by eminent domain any historic preservation properties unless such properties are needed for governmental purposes other than historic preservation.

SECTION 7. A governing authority may provide by local ordinance the procedures to be followed to designate historic districts, landmarks and landmark sites. Such an ordinance may provide that a governing authority may designate such properties upon the recommendation of a local historic preservation commission.

A potential historic district or landmark or landmark site may be proposed for designation by either a majority of the members of a local historic preservation commission or an owner of a potential landmark or landmark site or an organization which has as one of its central purposes the promotion of historic preservation objectives. If in private ownership, a landmark site must include significant surviving landscape features to qualify for designation unless its primary significance is archeological, and new construction after review and approval, shall be built to fit into such landscape features rather than replace them or shall be designed to avoid insofar as possible an archeological resource rather than replace it. If in public ownership, a local historic preservation commission shall discourage new construction on a site of great significance to the entire community unless the new construction can be located on a portion of the site which will permit a continuing understanding of its historical

character and will avoid damage to surviving landscape features or an archeological resource.

Once a nomination has been filed with an existing historic preservation commission or the governing authority of a municipality or county proposing to create such a commission and designate one or more local properties, a decision on whether to proceed with the designation must be made within six (6) months.

When a historic preservation commission already exists within a community, a majority of the commission's members must vote in favor of any proposed designation in order for the file supporting the designation to be sent forward to the local governing authority for its consideration. No file purporting to justify a proposed designation may be forwarded to a governing authority unless the commission's recommendation includes a map that clearly delineates boundaries for the proposed designation, a verbal description and justification of the proposed boundaries and a written statement of significance for the historic district or landmark or landmark site proposed for designation. Unless justification is contained in a designating ordinance, the boundary for any historic landmark shall include an entire tax parcel and may include adjoining tax parcels that were historically linked to the primary parcel during the period of greatest historic significance for the landmark structure.

The local governing authority must conduct at least one public hearing on the proposed designation and notice of the public hearing must be published weekly for at least three (3) consecutive weeks in a local newspaper authorized to publish legal notices.

The local governing authority must take action on the proposed designation within sixty (60) days of the public hearing, either to adopt a designating ordinance or to reject the proposed designation.

As quickly as would be reasonably possible, a local historic preservation commission must notify other municipal agencies and any appropriate county or state agencies of the designation of a historic district, landmark or landmark site. The commission must maintain in its official files an updated list and map of local designations and provide copies of such a map to other governmental agencies within one (1) week of the preparation of a new version of the map.

SECTION 8. A local historic preservation commission, if so empowered by a local ordinance or a local government acting upon the advice of a local historic preservation commission, may approve an application and issue a certificate of appropriateness if it finds that a proposed construction, alteration, demolition, subdivision or relocation is consistent with the design review guidelines established by the commission, would be compatible with the character of a historic district or landmark or landmark site and does not compromise the historic and architectural integrity of the historic district, landmark or landmark site. A governing authority may require that a property owner post a bond to guarantee satisfactory completion of a relocation project. Any local historic preservation ordinance shall specify whether partial demolition shall be considered an alteration or demolition, as it may not be both.

Whenever a local historic preservation commission shall deny or recommend denial of a certificate of appropriateness, the commission must state the reasons for such denial in writing. Thereafter, an applicant may resubmit a new application at any time, except that an applicant must wait six (6) months whenever an application for a certificate of appropriateness is denied for a landmark property of statewide or national significance and notice of any second or subsequent application must be sent to the Mississippi Department of Archives and History as well as to the local historic preservation commission.

A governing authority may require that denial of a certificate of appropriateness shall be binding upon a local building inspector or the agency responsible for issuing building permits and shall prevent the issuance of other building permits for the same parcel until a certificate of appropriateness is approved. A certificate of appropriateness may be required for work which does not require a building permit. A certificate of appropriateness may be evidenced by either a written and dated letter to an owner or applicant or such a letter accompanied by a signed and dated stamp on the face of any and all architectural or project drawings prepared for a project. A governing authority may provide by ordinance that a certificate of appropriateness shall expire at the end of a specified time period if work has not begun.

SECTION 9. The governing authority of any county or municipality, individually or jointly, may enact local legislation governing "demolition by neglect," defined as improper maintenance or lack of maintenance of any property in a historic district, or any historic landmark or landmark site, which results in substantial deterioration of such a property and threatens its continued stability and preservation. The governing authority of any county or municipality, individually or jointly, is further authorized, in its discretion, to fine any property owner who has been found to own a property that has been determined to be threatened by demolition by neglect as defined herein. Such property owner, from the date such property is found to be in demolition by neglect by the governing authority until such repairs are made to remove the danger to the property, shall be in violation of the provisions of this section.

In addition to the powers specified in Section 21-19-11(1), a governing authority, if the Historic Preservation Division of the Department of Archives and History concurs, may make repairs necessary to correct demolition by neglect, and the cost of such repairs shall become a lien against the property in accordance with Section 21-19-11(3).

If a property in a historic district or a historic landmark or landmark site is demolished without review and approval by a local historic preservation commission, the governing authority may require that the owner rebuild on the site using as much of the original building material as possible, but in general following the same form. A governing authority may specify by ordinance that unauthorized demolition of a portion of a structure shall not serve as justification for a demolition permit whenever it can be shown that restoration or rehabilitation would still be feasible.

Whenever a structure or structures is demolished without review and approval by a local historic preservation commission, the governing authority may require that no permit be issued for any structure or structures proposed for the same parcel which would require a footprint larger than the footprint of the demolished structure or structures.

If a historic landmark or landmark site of statewide or national significance is demolished without review and approval by a local historic preservation commission, the governing authority may require that no permit for any construction on the parcel from which the landmark or landmark site has been removed may be issued for a period of up to twenty-four (24) months.

SECTION 10. Any person who violates any of the provisions of this act shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than Ten Dollars (\$10.00) nor more than Five Hundred Dollars (\$500.00).

Each day that a violation continues to exist shall constitute a separate offense.

SECTION 11. If a property owner in a historic district, or the owner of a historic landmark or landmark site, is denied a certificate of appropriateness, the property owner may appeal such decision either to the governing authority of the city or county or

combination thereof or may, if such venue has been made available at the discretion of the governing authority, appeal directly to the chancery court. Any such appeal shall be reviewed upon the record established before the local historic preservation commission. Any local property owner or organization aggrieved or damaged by such a decision may appeal in the same manner.

SECTION 12. Nothing in this act shall require the dissolution of any local historic preservation commission created in Mississippi before the effective date of this act. Any local historic preservation commission created by ordinance before the effective date of this act shall continue in existence and continue to have all of the purposes, powers and authority set out in the ordinance creating such commission. Any such previously created commission may be given the powers set forth in this act if a governing authority reenacts a local ordinance in conformity with this act.

No designation of a historic district or landmark or landmark site shall be invalidated because the designation was made under a valid ordinance before the effective date of this act.

SECTION 13. Sections 1, 2, 7, 8, 9, 10, 11 and 12 of this act shall be codified in Chapter 13, Title 39, Mississippi Code of 1972.

SECTION 14. This act shall take effect and be in force from and after July 1, 2001.

Passed State Senate
March 6, 2001

Passed House of Representatives
January 31, 2001

APPROVED BY THE GOVERNOR

GOVERNOR