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Chapter No. 364
13/HR40/R1498
JP / EW

HOUSE BILL NO. 394

Originated in House _____ Clerk

HOUSE BILL NO. 394

AN ACT TO AMEND SECTION 17-25-25, MISSISSIPPI CODE OF 1972, TO AUTHORIZE MUNICIPALITIES AND COUNTIES TO SELL OR DISPOSE OF ANY SURPLUS PERSONAL OR REAL PROPERTY AT A PUBLIC AUCTION THAT SHALL BE CONDUCTED BY AN AUCTIONEER OR AUCTION COMPANY THAT IS APPROVED BY THE STATE DEPARTMENT OF AUDIT WHO MEET STANDARDS ESTABLISHED BY THE STATE DEPARTMENT OF AUDIT AND ARE HIRED BY THE GOVERNING AUTHORITY OF A COUNTY OR MUNICIPALITY; TO AMEND SECTIONS 19-7-5 AND 21-17-1, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTION; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 17-25-25, Mississippi Code of 1972, is amended as follows:

17-25-25. (1) **General.** The governing authority of a county or municipality may sell or dispose of any personal property <u>or real property</u> belonging to the governing authority when the property has ceased to be used for public purposes or when, in the authority's judgment, a sale thereof would promote the best interest of the governing authority. <u>For purposes of this section, the term "personal property," includes, but is not limited to, equipment, vehicles, fixtures, furniture, firearms and commodities.</u>

(2) **Public sale.** At least ten (10) days before bid opening, the governing authority shall advertise its acceptance of bids by posting notices at three (3) public places located in the county or municipality that the governing authority serves. One (1) of the three (3) notices shall be posted at the governing authority's main office. The governing authority may designate the manner by which the bids will be received, including, but not limited to, bids sealed in an envelope, bids made electronically or bids made by any other method that promotes open competition. The proceeds of the sale shall be placed in a properly approved depository to the credit of the proper fund.

(3) **Private sale.** Where the personal property does not exceed One Thousand Dollars ($1,000.00) in value, the governing authority, by a unanimous approval of its members, may sell or dispose of the property at a private sale. The proceeds of the sale shall be placed in a properly approved depository to the credit of the proper fund.

(4) **Public auction.** The governing authority of a county or municipality may sell or dispose of any surplus personal or real property at a public auction that shall be conducted by an auctioneer or auction company that meets the standards established by the State Department of Audit and is hired by the governing authority of a county or municipality.

(* * *5) If the governing authority finds that the fair market value of the personal property or real property is zero and

this finding is entered on the minutes of the authority, then the governing authority may dispose of * * * such property in the manner it deems appropriate and in its best interest, but no official or employee of the governing authority shall derive any personal economic benefit from such disposal.

(* * *6) If the * * * property may be of use or benefit to any federal agency or authority, another governing authority or state agency of the State of Mississippi, or a state agency or governing authority of another state, it may be disposed of in accordance with Section 31-7-13(m)(vi).

(* * *7) Nothing contained in this section shall be construed to prohibit, restrict or to prescribe conditions with regard to the authority granted under Section 17-25-3.

SECTION 2. Section 19-7-5, Mississippi Code of 1972, is amended as follows:

19-7-5. The board of supervisors shall have the power to sell and dispose of any personal property and real property belonging to the county or any subdivision thereof according to the uniform personal property and real property disposal requirements for local governments in Section 17-25-25. For purposes of this section, the term "personal property," includes, but is not limited to, equipment, vehicles, fixtures, furniture, firearms and commodities.

Nothing contained in this section shall be construed to prohibit, restrict or to prescribe conditions with regard to the authority granted under Section 17-25-3.

SECTION 3. Section 21-17-1, Mississippi Code of 1972, is amended as follows:

21-17-1. (1) Every municipality of this state shall be a municipal corporation and shall have power to sue and be sued; to purchase and hold real estate, either within or without the corporate limits, for all proper municipal purposes, including parks, cemeteries, hospitals, schoolhouses, houses of correction, waterworks, electric lights, sewers and other proper municipal purposes; to purchase and hold personal property for all proper municipal purposes; to sell or dispose of personal property <u>or real property</u> owned by it consistent with Section 17-25-25; to acquire equipment and machinery by lease-purchase agreement and to pay interest thereon, if contracted, when needed for proper municipal purposes; and to sell and convey any real property owned by it, and make such order respecting the same as may be deemed conducive to the best interest of the municipality, and exercise jurisdiction over the same.

(2) (a) In case any of the real property belonging to a municipality shall cease to be used for municipal purposes, the governing authority of the municipality may sell, convey or lease the same on such terms as the municipal authority may elect. In case of a sale on a credit, the municipality shall charge

appropriate interest as contracted and shall have a lien on the same for the purchase money, as against all persons, until paid and may enforce the lien as in such cases provided by law. The deed of conveyance in such cases shall be executed in the name of the municipality by the governing authority of the municipality pursuant to an order entered on the minutes. In any sale or conveyance of real property, the municipality shall retain all mineral rights that it owns, together with the right of ingress and egress to remove same. Except as otherwise provided in this section, before any such lease, deed or conveyance is executed, the governing authority of the municipality shall publish at least once each week for three (3) consecutive weeks, in a public newspaper of the municipality in which the real property is located, or if no newspaper be published as such, then in a newspaper having general circulation therein, the intention to lease or sell, as the case may be, the municipally owned real property and to accept sealed competitive bids for the leasing or sale. The governing authority of the municipality shall thereafter accept bids for the lease or sale and shall award the lease or sale to the highest bidder in the manner provided by law. However, whenever the governing authority of the municipality shall find and determine, by resolution duly and lawfully adopted and spread upon its minutes (i) that any municipally owned real property is no longer needed for municipal or related purposes and is not to be used in the operation of the municipality, (ii) that

the sale of such property in the manner otherwise provided by law is not necessary or desirable for the financial welfare of the municipality, and (iii) that the use of such property for the purpose for which it is to be sold, conveyed or leased will promote and foster the development and improvement of the community in which it is located and the civic, social, educational, cultural, moral, economic or industrial welfare thereof, the governing authority of the municipality shall be authorized and empowered, in its discretion, to sell, convey or lease same for any of the purposes set forth herein without having to advertise for and accept competitive bids.

(b) In any case in which a municipality proposes to sell, convey or lease real property under the provisions of this subsection (2) without advertising for and accepting competitive bids, the governing authority may sell, convey or lease the property as follows:

(i) Consideration for the purchase, conveyance or lease of the property shall be not less than the average of the fair market price for such property as determined by at least two (2) professional property appraisers selected by the municipality and approved by the purchaser or lessee. Appraisal fees shall be shared equally by the municipality and the purchaser or lessee;

(ii) The governing authority of a municipality may contract for the professional services of a Mississippi licensed real estate broker to assist the municipality in the marketing and

sale or lease of the property, and may provide the broker reasonable compensation for services rendered to be paid from the sale or lease proceeds. The reasonable compensation shall not exceed the usual and customary compensation for similar services within the municipality; or

(iii) The governing authority of a municipality may lease property of less than one thousand five hundred (1,500) square feet to any person or legal entity by having two (2) appraisals establish the fair market value of the lease, and on such other terms and conditions as the parties may agree, such lease being lawfully adopted and spread upon its official minutes.

(3) Whenever the governing authority of the municipality shall find and determine by resolution duly and lawfully adopted and spread upon the minutes that municipally owned real property is not used for municipal purposes and therefore surplus as set forth in subsection (2) of this section:

(a) (i) Except as otherwise provided in subparagraph (ii) of this paragraph (a), the governing authority may donate such lands to a bona fide not-for-profit civic or eleemosynary corporation organized and existing under the laws of the State of Mississippi and granted tax-exempt status by the Internal Revenue Service and may donate such lands and necessary funds related thereto to the public school district in which the land is situated for the purposes set forth herein. Any deed or conveyance executed pursuant hereto shall contain a clause of

reverter providing that the bona fide not-for-profit corporation or public school district may hold title to such lands only so long as they are continued to be used for the civic, social, educational, cultural, moral, economic or industrial welfare of the community, and that title shall revert to the municipality in the event of the cessation of such use for a period of two (2) years. In any such deed or conveyance, the municipality shall retain all mineral rights that it owns, together with the right of ingress and egress to remove same;

(ii) If the governing authority of a municipality with a total population of greater than forty thousand (40,000) but not more than forty-two thousand five hundred (42,500) according to the 2010 federal decennial census, donates real property, to a bona fide not-for-profit civic or eleemosynary corporation and such civic or eleemosynary corporation commits Two Million Dollars ($2,000,000.00) to renovate or make capital improvements to the property by an agreement between a certain state institution of higher learning and the civic or eleemosynary corporation, then the clause of reverter required by this paragraph shall provide that title of such real property shall revert (i) to the bona fide not-for-profit civic or eleemosynary corporation, if a certain state institution of higher learning ceases to use the property for the purposes required by this paragraph (a) for donated lands or (ii) to the municipality, if a certain state institution of higher learning ceases to use the

property for the purposes required by this paragraph (a) and the not-for-profit civic or eleemosynary corporation or its successor ceases to exist.

(b) (i) The governing authority may donate such lands to a bona fide not-for-profit corporation (such as Habitat for Humanity) which is primarily engaged in the construction of housing for persons who otherwise can afford to live only in substandard housing. In any such deed or conveyance, the municipality shall retain all mineral rights that it owns, together with the right of ingress and egress to remove same;

(ii) In the event the governing authority does not wish to donate title to such lands to the bona fide not-for-profit civic or eleemosynary corporation, but wishes to retain title to the lands, the governing authority may lease the lands to a bona fide not-for-profit corporation described in paragraph (a) or (b) for less than fair market value;

(c) The governing authority may donate any municipally owned lot measuring twenty-five (25) feet or less along the frontage line as follows: the governing authority may cause the lot to be divided in half along a line running generally perpendicular to the frontage line and may convey each one-half (1/2) of that lot to the owners of the parcels laterally adjoining the municipally owned lot. All costs associated with a conveyance under this paragraph (c) shall be paid by the person or entity to whom the conveyance is made. In any such deed or instrument of

conveyance, the municipality shall retain all mineral rights that it owns, together with the right of ingress and egress to remove same;

(d) Nothing contained in this subsection (3) shall be construed to prohibit, restrict or to prescribe conditions with regard to the authority granted under Section 17-25-3.

(4) Every municipality shall also be authorized and empowered to loan to private persons or entities, whether organized for profit or nonprofit, funds received from the United States Department of Housing and Urban Development (HUD) under an urban development action grant or a community development block grant under the Housing and Community Development Act of 1974 (Public Law 93-383), as amended, and to charge interest thereon if contracted, provided that no such loan shall include any funds from any revenues other than the funds from the United States Department of Housing and Urban Development; to make all contracts and do all other acts in relation to the property and affairs of the municipality necessary to the exercise of its governmental, corporate and administrative powers; and to exercise such other or further powers as are otherwise conferred by law.

(5) (a) The governing authority of any municipality may establish an employer-assisted housing program to provide funds to eligible employees to be used toward the purchase of a home. This assistance may be applied toward the down payment, closing costs or any other fees or costs associated with the purchase of a home.

The housing assistance may be in the form of a grant, forgivable loan or repayable loan. The governing authority of a municipality may contract with one or more public or private entities to provide assistance in implementing and administering the program and shall adopt rules and regulations regarding the eligibility of a municipality for the program and for the implementation and administration of the program. However, no general funds of a municipality may be used for a grant or loan under the program.

(b) Participation in the program established under this subsection (5) shall be available to any eligible municipal employee as determined by the governing authority of the municipality. Any person who receives financial assistance under the program must purchase a house and reside within certain geographic boundaries as determined by the governing authority of the municipality.

(c) If the assistance authorized under this subsection (5) is structured as a forgivable loan, the participating employee must remain as an employee of the municipality for an agreed upon period of time, as determined by the rules and regulations adopted by the governing authority of the municipality, in order to have the loan forgiven. The forgiveness structure, amount of assistance and repayment terms shall be determined by the governing authority of the municipality.

(6) The governing authority of any municipality may contract with a private attorney or private collection agent or agency to

collect any type of delinquent payment owed to the municipality, including, but not limited to, past-due fees, fines and other assessments, or with the district attorney of the circuit court district in which the municipality is located to collect any delinquent fees, fines and other assessments. Any such contract debt may provide for payment contingent upon successful collection efforts or payment based upon a percentage of the delinquent amount collected; however, the entire amount of all delinquent payments collected shall be remitted to the municipality and shall not be reduced by any collection costs or fees. Any private attorney or private collection agent or agency contracting with the municipality under the provisions of this subsection shall give bond or other surety payable to the municipality in such amount as the governing authority of the municipality deems sufficient. Any private attorney with whom the municipality contracts under the provisions of this subsection must be a member in good standing of The Mississippi Bar. Any private collection agent or agency with whom the municipality contracts under the provisions of this subsection must meet all licensing requirements for doing business in the State of Mississippi. Neither the municipality nor any officer or employee of the municipality shall be liable, civilly or criminally, for any wrongful or unlawful act or omission of any person or business with whom the municipality has contracted under the provisions of this subsection. The Mississippi Department of Audit shall establish rules and

regulations for use by municipalities in contracting with persons or businesses under the provisions of this subsection. If a municipality uses its own employees to collect any type of delinquent payment owed to the municipality, then from and after July 1, 2000, the municipality may charge an additional fee for collection of the delinquent payment provided the payment has been delinquent for ninety (90) days. The collection fee may not exceed twenty-five percent (25%) of the delinquent payment if the collection is made within this state and may not exceed fifty percent (50%) of the delinquent payment if the collection is made outside this state. In conducting collection of delinquent payments, the municipality may utilize credit cards or electronic fund transfers. The municipality may pay any service fees for the use of such methods of collection from the collection fee, but not from the delinquent payment. There shall be due to the municipality from any person whose delinquent payment is collected under a contract executed as provided in this subsection an amount, in addition to the delinquent payment, of not to exceed twenty-five percent (25%) of the delinquent payment for collections made within this state, and not to exceed fifty percent (50%) of the delinquent payment for collections made outside of this state.

(7) In addition to such authority as is otherwise granted under this section, the governing authority of any municipality may expend funds necessary to maintain and repair, and to purchase

liability insurance, tags and decals for, any personal property acquired under the Federal Excess Personal Property Program that is used by the local volunteer fire department.

(8) In addition to the authority to expend matching funds under Section 21-19-65, the governing authority of any municipality, in its discretion, may expend municipal funds to match any state, federal or private funding for any program administered by the State of Mississippi, the United States government or any nonprofit organization that is exempt under 26 USCS Section 501(c)(3) from paying federal income tax.

(9) The governing authority of any municipality that owns and operates a gas distribution system, as defined in Section 21-27-11(b), and the governing authority of any public natural gas district are authorized to contract for the purchase of the supply of natural gas for a term of up to ten (10) years with any public nonprofit corporation which is organized under the laws of this state or any other state.

(10) The governing authority of any municipality may perform and exercise any duty, responsibility or function, may enter into agreements and contracts, may provide and deliver any services or assistance, and may receive, expend and administer any grants, gifts, matching funds, loans or other monies, in accordance with and as may be authorized by any federal law, rule or regulation creating, establishing or providing for any program, activity or service. The provisions of this subsection shall not be construed

as authorizing any municipality or the governing authority of such municipality to perform any function or activity that is specifically prohibited under the laws of this state or as granting any authority in addition to or in conflict with the provisions of any federal law, rule or regulation.

(11) (a) In addition to such authority as is otherwise granted under this section, the governing authority of a municipality, in its discretion, may sell, lease, donate or otherwise convey property to any person or legal entity without public notice, without having to advertise for and accept competitive bids and without appraisal, with or without consideration, and on such terms and conditions as the parties may agree if the governing authority finds and determines, by resolution duly and lawfully adopted and spread upon its official minutes:

(i) The subject property is real property acquired by the municipality:

1. By reason of a tax sale;

2. Because the property was abandoned or blighted; or

3. In a proceeding to satisfy a municipal lien against the property;

(ii) The subject property is blighted and is located in a blighted area;

(iii) The subject property is not needed for governmental or related purposes and is not to be used in the operation of the municipality;

(iv) That the sale of the property in the manner otherwise provided by law is not necessary or desirable for the financial welfare of the municipality; and

(v) That the use of the property for the purpose for which it is to be conveyed will promote and foster the development and improvement of the community in which it is located or the civic, social, educational, cultural, moral, economic or industrial welfare thereof; the purpose for which the property is conveyed shall be stated.

(b) Any deed or instrument of conveyance executed pursuant to the authority granted under this subsection shall contain a clause of reverter providing that title to the property will revert to the municipality if the person or entity to whom the property is conveyed does not fulfill the purpose for which the property was conveyed and satisfy all conditions imposed on the conveyance within two (2) years of the date of the conveyance.

(c) In any such deed or instrument of conveyance, the municipality shall retain all mineral rights that it owns, together with the right of ingress and egress to remove same.

(12) The governing authority of any municipality may enter into agreements and contracts with any housing authority, as defined in Section 43-33-1, to provide extra police protection in

exchange for the payment of compensation or a fee to the municipality. This subsection shall stand repealed from and after July 1, 2014.

(13) The powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law, and nothing contained in this section shall be construed to prohibit, or to prescribe conditions concerning, any practice or practices authorized under any other law.

SECTION 4. This act shall take effect and be in force from and after July 1, 2013.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 7, 2013

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 7, 2013

Tate Reeves

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

3/18/13
6:00pm