

By: Gadd

To: Universities and
Colleges

HOUSE BILL NO. 1264

1 AN ACT TO AMEND SECTION 37-155-9, MISSISSIPPI CODE OF 1972,
2 TO EXPAND THE AUTHORITY OF THE BOARD OF DIRECTORS OF THE
3 MISSISSIPPI PREPAID AFFORDABLE COLLEGE TUITION (MPACT) PROGRAM
4 TRUST FUND TO INVEST FUNDS IN INSTITUTIONAL INVESTMENT TRUSTS AND
5 INSTITUTIONAL CLASS SHARES OF INVESTMENT COMPANIES; AND FOR
6 RELATED PURPOSES.

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

8 SECTION 1. Section 37-155-9, Mississippi Code of 1972, is
9 amended as follows:[HS1]

10 37-155-9. In addition to the powers granted by any other
11 provision of this chapter, the board of directors shall have the
12 powers necessary or convenient to carry out the purposes and
13 provisions of this chapter, the purposes and objectives of the
14 trust fund and the powers delegated by any other law of the state
15 or any executive order thereof, including, but not limited to, the
16 following express powers:

17 (a) To adopt and amend bylaws;

18 (b) To adopt such rules and regulations as are
19 necessary to implement the provisions of this chapter;

20 (c) To invest any funds of the trust fund in any
21 instrument, obligation, security or property that constitutes
22 legal investments for public funds in the state and to name and
23 use depositories for its investments and holdings;

24 (d) To execute contracts and other necessary
25 instruments;

26 (e) To impose reasonable requirements for residency for
27 beneficiaries at the time or purchase of the contract;

28 (f) To impose reasonable limits on the number of

29 contract participants in the trust fund at any given period of
30 time;

31 (g) To contract for necessary goods and services, to
32 employ necessary personnel, and to engage the services of
33 consultants for administrative and technical assistance in
34 carrying out the responsibilities of the trust fund;

35 (h) To solicit and accept gifts, including
36 bequeathments or other testamentary gifts made by will, trust or
37 other disposition, grants, loans and other aids from any personal
38 source or to participate in any other way in any federal, state or
39 local governmental programs in carrying out the purposes of this
40 chapter. Any gifts made to the board under this subsection * * *
41 shall be deductible from taxable income of the state in the tax
42 year;

43 (i) To define the terms and conditions under which
44 payments may be withdrawn or refunded from the trust fund,
45 including, but not limited to, the amount paid in and an
46 additional amount in the nature of interest at a rate that
47 corresponds, at a minimum, to the prevailing interest rates for
48 savings accounts provided by banks and savings and loan
49 associations and impose reasonable charges for such withdrawal or
50 refund;

51 (j) To ensure applicability to private and out-of-state
52 tuitions:

53 (i) Under the program, a state purchaser may enter
54 into a prepaid tuition contract with the board under which the
55 purchaser agrees to attend a public institution of higher
56 education in Mississippi;

57 (ii) If the beneficiary of a plan described by
58 Section 37-155-11 enrolls in any in-state or out-of-state
59 regionally accredited private four- or two-year college or an
60 out-of-state regionally accredited, state-supported, nonprofit
61 four- or two-year college or university, the board shall pay to

62 the institution an amount up to, but not greater than, the tuition
63 and required fees that the board would have paid had the
64 beneficiary enrolled in an institution of higher education covered
65 by the plan selected in the prepaid tuition contract. The
66 beneficiary is responsible for paying a private institution or an
67 out-of-state public institution the amount by which the tuition
68 and required fees of the institution exceed the tuition and
69 required fees paid by the board;

70 (k) To impose reasonable time limits on the use of the
71 tuition benefits provided by the program;

72 (l) To provide for the receipt of contributions to the
73 trust fund in lump sums or installment payments;

74 (m) To adopt an official seal and rules;

75 (n) To sue and be sued;

76 (o) To establish agreements or other transactions with
77 federal, state and local agencies, including state universities
78 and community colleges;

79 (p) To appear in its own behalf before boards,
80 commissions or other governmental agencies;

81 (q) To segregate contributions and payments to the fund
82 into various accounts and funds;

83 (r) To require and collect administrative fees and
84 charges in connection with any transaction and impose reasonable
85 penalties, including default, for delinquent payments or for
86 entering into an advance payment contract on a fraudulent basis;

87 (s) To procure insurance against any loss in connection
88 with the property, assets and activities of the fund or the board;

89 (t) To require that purchasers of advance payment
90 contracts verify, under oath, any requests for contract
91 conversions, substitutions, transfers, cancellations, refund
92 requests or contract changes of any nature;

93 (u) To administer the fund in a manner that is
94 sufficiently actuarially sound to meet the obligations of the

95 program. The board shall annually evaluate or cause to be
96 evaluated the actuarial soundness of the fund. If the board
97 perceives a need for additional assets in order to preserve
98 actuarial soundness, the board may adjust the terms of subsequent
99 advance payment contracts to ensure such soundness;

100 (v) To establish a comprehensive investment plan for
101 the purposes of this section. The comprehensive investment plan
102 shall specify the investment policies to be utilized by the board
103 in its administration of the fund. The board may authorize
104 investments in:

105 (i) Bonds, notes, certificates and other valid
106 general obligations of the State of Mississippi, or of any county,
107 or of any city, or of any supervisors district of any county of
108 the State of Mississippi, or of any school district bonds of the
109 State of Mississippi; notes or certificates of indebtedness issued
110 by the Veterans' Home Purchase Board of Mississippi, provided such
111 notes or certificates of indebtedness are secured by the pledge of
112 collateral equal to two hundred percent (200%) of the amount of
113 the loan, which collateral is also guaranteed at least for fifty
114 percent (50%) of the face value by the United States government,
115 and provided that not more than five percent (5%) of the total
116 investment holdings of the system shall be in Veterans' Home
117 Purchase Board notes or certificates at any time; real estate
118 mortgage loans one hundred percent (100%) insured by the Federal
119 Housing Administration on single family homes located in the State
120 of Mississippi, where monthly collections and all servicing
121 matters are handled by Federal Housing Administration approved
122 mortgagees authorized to make such loans in the State of
123 Mississippi;

124 (ii) State of Mississippi highway bonds;

125 (iii) Funds may be deposited in federally insured
126 institutions domiciled in the State of Mississippi or a custodial
127 bank which appears on the State of Mississippi Treasury

128 Department's approved depository list and/or safekeeper list;

129 (iv) Corporate bonds of investment grade as rated
130 by Standard & Poor's or by Moody's Investment Service, with bonds
131 rated BAA/BBB not to exceed five percent (5%) of the book value of
132 the total fixed income investments; or corporate short-term
133 obligations of corporations or of wholly owned subsidiaries of
134 corporations, whose short-term obligations are rated A-3 or better
135 by Standard and Poor's or rated P-3 or better by Moody's
136 Investment Service;

137 (v) Bonds of the Tennessee Valley Authority;

138 (vi) Bonds, notes, certificates and other valid
139 obligations of the United States, and other valid obligations of
140 any federal instrumentality that issues securities under authority
141 of an act of Congress and are exempt from registration with the
142 Securities and Exchange Commission;

143 (vii) Bonds, notes, debentures and other
144 securities issued by any federal instrumentality and fully
145 guaranteed by the United States. Direct obligations issued by the
146 United States of America shall be deemed to include securities of,
147 or other interests in, any open-end or closed-end management type
148 investment company or investment trust registered under the
149 provisions of 15 USCS Section 80(a)-1 et seq., provided that the
150 portfolio of such investment company or investment trust is
151 limited to direct obligations issued by the United States of
152 America, United States government agencies, United States
153 government instrumentalities or United States government sponsored
154 enterprises, and to repurchase agreements fully collateralized by
155 direct obligations of the United States of America, United States
156 government agencies, United States government instrumentalities or
157 United States government sponsored enterprises, and the investment
158 company or investment trust takes delivery of such collateral for
159 the repurchase agreement, either directly or through an authorized
160 custodian. The State Treasurer and the Executive Director of the

161 Department of Finance and Administration shall review and approve
162 the investment companies and investment trusts in which funds may
163 be invested * * *;

164 (viii) Interest-bearing bonds or notes which are
165 general obligations of any other state in the United States or of
166 any city or county therein, provided such city or county had a
167 population as shown by the federal census next preceding such
168 investment of not less than twenty-five thousand (25,000)
169 inhabitants and provided that such state, city or county has not
170 defaulted for a period longer than thirty (30) days in the payment
171 of principal or interest on any of its general obligation
172 indebtedness during a period of ten (10) calendar years
173 immediately preceding such investment;

174 (ix) Shares of stocks, common and/or preferred, of
175 corporations created by or existing under the laws of the United
176 States or any state, district or territory thereof; provided:

177 (A) The maximum investments in stocks shall
178 not exceed fifty percent (50%) of the book value of the total
179 investment fund of the system;

180 (B) The stock of such corporation shall:

181 1. Be listed on a national stock
182 exchange, or

183 2. Be traded in the over-the-counter
184 market, provided price quotations for such over-the-counter stocks
185 are quoted by the National Association of Securities Dealers
186 Automated Quotation System (NASDAQ);

187 (C) The outstanding shares of such
188 corporation shall have a total market value of not less than Fifty
189 Million Dollars (\$50,000,000.00);

190 (D) The amount of investment in any one (1)
191 corporation shall not exceed three percent (3%) of the book value
192 of the assets of the system; and

193 (E) The shares of any one (1) corporation

194 owned by the system shall not exceed five percent (5%) of that
195 corporation's outstanding stock;

196 (x) Bonds rated Single A or better, stocks and
197 convertible securities of established non-United States companies,
198 which companies are listed on only primary national stock
199 exchanges of foreign nations; and in foreign government securities
200 rated Single A or better by a recognized rating agency; provided
201 that the total book value of investments under this paragraph
202 shall at no time exceed twenty percent (20%) of the total book
203 value of all investments of the system. The board may take
204 requisite action to effectuate or hedge such transactions through
205 foreign banks, including the purchase and sale, transfer, exchange
206 or otherwise disposal of, and generally deal in foreign exchange
207 through the use of foreign currency, interbank forward contracts,
208 futures contracts, options contracts, swaps and other related
209 derivative instruments, notwithstanding any other provisions of
210 this chapter to the contrary;

211 (xi) Covered call and put options on securities
212 traded on one or more of the regulated exchanges;

213 (xii) Institutional investment trusts managed by a
214 corporate trustee or by a Securities and Exchange Commission
215 registered investment advisory firm retained as an investment
216 manager by the board of directors, and institutional class shares
217 of investment companies and unit investment trusts registered
218 under the Investment Company Act of 1940 where such * * * funds or
219 shares are comprised of common or preferred stocks, bonds, money
220 market instruments or other investments authorized under this
221 section. * * * Any investment manager or managers approved by
222 the board of directors shall invest such * * * funds or shares as
223 a fiduciary;

224 (xiii) Pooled or commingled real estate funds or
225 real estate securities managed by a corporate trustee or by a
226 Securities and Exchange Commission registered investment advisory

227 firm retained as an investment manager by the board of directors.

228 Such investment in commingled funds or shares shall be held in
229 trust; provided that the total book value of investments under
230 this paragraph shall at no time exceed five percent (5%) of the
231 total book value of all investments of the system. Any investment
232 manager approved by the board of directors shall invest such
233 commingled funds or shares as a fiduciary * * *;

234 (w) All investments shall be acquired by the board at
235 prices not exceeding the prevailing market values for such
236 securities;

237 (x) Any limitations herein set forth shall be
238 applicable only at the time of purchase and shall not require the
239 liquidation of any investment at any time. All investments shall
240 be clearly marked to indicate ownership by the system and to the
241 extent possible shall be registered in the name of the system;

242 (y) Subject to the above terms, conditions, limitations
243 and restrictions, the board shall have power to sell, assign,
244 transfer and dispose of any of the securities and investments of
245 the system, provided that the sale, assignment or transfer has the
246 majority approval of the entire board. The board may employ or
247 contract with investment managers, evaluation services or other
248 such services as determined by the board to be necessary for the
249 effective and efficient operation of the system;

250 (z) Except as otherwise provided herein, no trustee and
251 no employee of the board shall have any direct or indirect
252 interest in the income, gains or profits of any investment made by
253 the board, nor shall any such person receive any pay or emolument
254 for his services in connection with any investment made by the
255 board. No trustee or employee of the board shall become an
256 endorser or surety, or in any manner an obligor for money loaned
257 by or borrowed from the system;

258 (aa) All interest derived from investments and any
259 gains from the sale or exchange of investments shall be credited

260 by the board to the account of the system;

261 (bb) To delegate responsibility for administration of
262 the comprehensive investment plan to a consultant the board
263 determines to be qualified. Such consultant shall be compensated
264 by the board. Directly or through such consultant, the board may
265 contract to provide such services as may be a part of the
266 comprehensive investment plan or as may be deemed necessary or
267 proper by the board or such consultant, including, but not limited
268 to, providing consolidated billing, individual and collective
269 record keeping and accounting, and asset purchase, control and
270 safekeeping;

271 (cc) To annually prepare or cause to be prepared a
272 report setting forth in appropriate detail an accounting of the
273 fund and a description of the financial condition of the program
274 at the close of each fiscal year. Such report shall be submitted
275 to the Governor, the Lieutenant Governor, the President of the
276 Senate, the Speaker of the House of Representatives, and members
277 of the Board of Trustees of State Institutions of Higher Learning,
278 the State Board for Community and Junior Colleges Board and the
279 State Board of Education on or before March 31 each year. In
280 addition, the board shall make the report available to purchasers
281 of advance payment contracts. The board shall provide to the
282 Board of Trustees of State Institutions of Higher Learning and the
283 State Board for Community and Junior Colleges by March 31 each
284 year complete advance payment contract sales information including
285 projected postsecondary enrollments of beneficiaries. The
286 accounts of the fund shall be subject to annual audits by the
287 State Auditor or his designee;

288 (dd) To solicit proposals for the marketing of the
289 Mississippi Prepaid Affordable College Tuition Program. The
290 entity designated pursuant to this paragraph shall serve as a
291 centralized marketing agent for the program and shall solely be
292 responsible for the marketing of the program. Any materials

293 produced for the purpose of marketing the programs shall be
294 submitted to the board for review. No such materials shall be
295 made available to the public before the materials are approved by
296 the board. Any educational institution may distribute marketing
297 materials produced for the program; however, all such materials
298 shall have been approved by the board prior to distribution.

299 Neither the state nor the board shall be liable for
300 misrepresentation of the program by a marketing agent; and

301 (ee) To establish other policies, procedures and
302 criteria necessary to implement and administer the provisions of
303 this chapter.

304 For efficient and effective administration of the program and
305 trust fund, the board may authorize the State of Mississippi
306 Treasury Department and/or the State Treasurer to carry out any or
307 all of the powers and duties enumerated above.

308 SECTION 2. This act shall take effect and be in force from
309 and after July 1, 2000.