

By: Hewes

To: Universities and
Colleges;
Appropriations

SENATE BILL NO. 2298

1 AN ACT TO CREATE THE MISSISSIPPI AFFORDABLE COLLEGE SAVINGS
2 (MACS) PROGRAM; TO RECONSTITUTE THE MISSISSIPPI PREPAID AFFORDABLE
3 COLLEGE TUITION (MPACT) PROGRAM BOARD OF DIRECTORS AS THE "BOARD
4 OF DIRECTORS OF THE COLLEGE SAVINGS PLANS OF MISSISSIPPI" AND TO
5 AUTHORIZE THAT BOARD TO MANAGE BOTH THE MPACT AND MACS PROGRAMS;
6 TO ESTABLISH A COLLEGE SAVINGS PLAN FOR QUALIFIED HIGHER
7 EDUCATIONAL EXPENSES; TO PROVIDE FOR AND DEFINE SAVINGS TRUST
8 AGREEMENTS; TO AMEND SECTIONS 37-155-5 AND 37-155-7, MISSISSIPPI
9 CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

11 SECTION 1. **Title.** This act shall be known and may be cited
12 as the "Mississippi Affordable College Savings Program,"
13 hereinafter referred to as the MACS Program.

14 SECTION 2. **Declaration of Policy.** The Legislature hereby
15 finds and declares as follows:

16 (a) Education costs at institutions of higher education
17 are difficult for many to afford and difficult to predict. As a
18 result, the ability of individuals and families to plan for future
19 educational expenses has been adversely affected.

20 (b) It is in the best interest of the citizens of this
21 state to foster higher education in order to provide well-educated
22 citizens.

23 (c) It is in the best interest of the citizens of this
24 state to encourage state residents to enroll in institutions of
25 higher education.

26 (d) Providing a mechanism to help assure the higher
27 education of the citizens of this state is necessary and desirable
28 for the public health, safety and welfare.

29 (e) The purposes of this act are to:

(i) Provide wide and affordable access to the public institutions of higher education for the residents of this state.

(ii) Encourage attendance at institutions of higher education and help individuals plan for educational expenses.

(iii) Provide a program of savings trust agreements to apply distributions toward qualified higher education expenses at eligible educational institutions, as defined in Section 529 of the Internal Revenue Code, as amended, or other applicable federal law.

(iv) Provide for the creation of a trust fund, as an agency and instrumentality of the State of Mississippi, to assist qualified students in financing costs of attending institutions of higher education.

(v) Encourage timely financial planning for higher education by the creation of savings trust accounts.

(vi) To provide a choice of programs to persons who determine that the overall educational needs of their families are best suited to a prepaid tuition contract under the MPACT Program, a savings trust agreement under this act, or both.

(vii) To provide a savings program for those who wish to save to meet postsecondary educational needs beyond the traditional baccalaureate curriculum.

SECTION 3. Definitions. The following terms have the meanings ascribed to them in this section, unless the context clearly indicates otherwise:

(a) **MACS Trust Fund.** The special fund in the State of Mississippi Treasury Department designated as the "Mississippi Affordable College Savings Trust Fund" (hereinafter referred to as the "MACS trust fund") and administered by the State of Mississippi Treasury Department.

(b) **Account Owner.** A person, corporation, trust,

63 charitable organization or other such entity who contributes money
64 to a savings trust account under the MACS Program established
65 pursuant to this act on behalf of a beneficiary and who is listed
66 as the owner of the savings trust account.

67 (c) **Beneficiary.** A beneficiary of a savings trust
68 agreement shall meet the requirements of Section 529 of the
69 Internal Revenue Code of 1986, as amended, or other applicable
70 federal law, as well as any regulations established by the board.

71 (d) **Institution of Higher Education.** Any public
72 institution of higher education or public community or junior
73 college located in Mississippi.

74 (e) **Tuition.** The quarter, semester or term charges and
75 all required fees imposed by an institution of higher education as
76 a condition of enrollment by all students.

77 (f) **Board.** The Board of Directors of the College
78 Savings Plans of Mississippi as provided in Section 37-155-7 and
79 this act.

80 (g) **Legislature.** The Legislature of the State of
81 Mississippi.

82 (h) **Payor.** Any person, corporation, trust, charitable
83 organization or other such entity who contributes money or makes a
84 payment to either a savings trust account established pursuant to
85 this act or a prepaid tuition account established under Section
86 37-155-1 et seq. on behalf of a beneficiary.

87 (i) **Savings Trust Account.** An account established by
88 an account owner pursuant to this act on behalf of a beneficiary
89 in order to apply distributions from the account toward qualified
90 higher education expenses at eligible educational institutions, as
91 defined in Section 529 of the Internal Revenue Code of 1986, as
92 amended, or other applicable federal law.

93 (j) **Savings Trust Agreement.** The agreement entered
94 into between the board and the account owner establishing a
95 savings trust account.

(k) **Qualified Higher Education Expense.** Any higher education expense as defined in Section 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

SECTION 4. Board of Directors.

(a) The board of directors of the MACS Program shall consist of the existing Board of Directors of the Mississippi Prepaid Affordable College Tuition Program, as defined under Section 37-155-1 et seq.

(b) The MPACT Board shall be renamed the College Savings Plans of Mississippi Board of Directors, and shall have responsibility over both the MPACT Program and the MACS Program.

SECTION 5. Powers of the Board of Directors.

In addition to the powers granted by any other provisions of this act, the board of directors shall have the powers necessary or convenient to carry out the purposes and provisions of this act, the purposes and objectives of the trust fund, and the powers delegated by any other law of the state or any executive order thereof, including, but not limited to, the following express powers:

(a) To adopt and amend bylaws;

(b) To adopt such rules and regulations as are necessary to implement the provisions of this act, subject to applicable federal laws and regulations, including rules regarding transfers of funds between accounts established under prepaid tuition contracts and savings trust agreements;

(c) To execute contracts and other necessary instruments;

(d) To impose reasonable requirements for residency for beneficiaries or account owners at the time of purchase of the savings trust agreement;

(e) To impose reasonable limits on the number of contract participants in the trust fund at any given period of time;

129 (f) To contract for necessary goods and services, to
130 employ necessary personnel, and to engage the services of
131 consultants for administrative and technical assistance in
132 carrying out the responsibilities of the trust funds;

133 (g) To solicit and accept gifts, including bequests or
134 other testamentary gifts made by will, trust or other disposition,
135 grants, loans and other aids from any personal source or to
136 participate in any other way in any federal, state or local
137 governmental programs in carrying out the purposes of this act;

138 (h) To define the terms and conditions under which
139 payments may be withdrawn or refunded from the trust fund and
140 impose reasonable charges for such withdrawal or refund;

141 (i) To impose reasonable time limits on the use of
142 savings trust account distributions provided by the program;

143 (j) To regulate the receipt of contributions or
144 payments to the trust fund;

145 (k) To adopt an official seal and rules;

146 (l) To sue and be sued;

147 (m) To establish agreements or other transactions with
148 federal, state and local agencies, including state universities
149 and community colleges;

150 (n) To appear in its own behalf before boards,
151 commissions or other governmental agencies;

152 (o) To segregate contributions and payments in the fund
153 into various accounts and funds;

154 (p) To require and collect administrative fees and
155 charges in connection with any transaction and to impose
156 reasonable penalties for withdrawal of funds for nonqualified
157 higher educational expenses or for entering into a savings trust
158 agreement on a fraudulent basis;

159 (q) To procure insurance against any loss in connection
160 with the property, assets and activities of the fund or the board;

161 (r) To require the account owners of savings trust

162 agreements or purchasers of MPACT contracts pursuant to Section
163 37-155-1 et seq. verify, under oath, any requests for contract
164 conversions, substitutions, transfers, cancellations, refund
165 requests or contract changes of any nature;

166 (s) To solicit proposals and to contract for the
167 marketing of the MACS Program, provided that (i) any materials
168 produced by a marketing contractor for the purpose of marketing
169 the program must be approved by the board prior to being made
170 available to the public; and (ii) neither the state nor the board
171 shall be liable for misrepresentation of the program by a
172 marketing contractor;

173 (t) To delegate responsibility for administration of
174 the comprehensive investment plan to a contractor or consultant
175 (or contractors or consultants) the board determines to be
176 qualified;

177 (u) To make all necessary and appropriate arrangements
178 with colleges and universities or other entities in order to
179 fulfill its obligations under savings trust agreements;

180 (v) To establish other policies, procedures and
181 criteria necessary to implement and administer the provisions of
182 this act;

183 (w) To exercise any other powers set forth in Sections
184 37-155-7 and 37-155-9; and

185 (x) To authorize the State of Mississippi Treasury
186 Department and/or the State Treasurer to carry out any or all of
187 the powers and duties enumerated above for efficient and effective
188 administration of the program and trust fund.

189 SECTION 6. Description of Savings Trust Agreements.

190 (1) The board shall make savings trust agreements available
191 to the public, under which account owners or other payors may make
192 contributions on behalf of qualified beneficiaries. Such
193 contributions and investment earnings thereof may be used for any
194 qualified higher educational expenses of a designated beneficiary.

There is no guarantee by the state that such contributions, together with the investment return on such contributions, if any, will be adequate to pay for qualified education expenses in full.

(2) Each savings trust agreement made pursuant to this act shall include the following terms and provisions:

(a) The maximum and minimum contribution allowed on behalf of each beneficiary for the payment of qualified higher education expenses at eligible institutions, both as defined in Section 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law;

(b) Provisions for withdrawals, refunds, transfers and any penalties;

(c) The name, address and date of birth of the beneficiary on whose behalf the savings trust account is opened;

(d) Terms and conditions for a substitution of the beneficiary originally named;

(e) Terms and conditions for termination of the account, including any refunds, withdrawals or transfers, and applicable penalties, and the name of the person or persons entitled to terminate the account;

(f) The time period during which the beneficiary must use benefits from the savings trust account;

(g) All other rights and obligations of the account owner and the MACS trust fund; and

(h) Any other terms and conditions which the board deems necessary or appropriate, including those necessary to conform the savings trust account with the requirements of Section 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law or regulations.

SECTION 7. Mississippi Affordable College Savings Trust Fund.

(1) There is hereby created a Mississippi Affordable College Savings Trust Fund (hereinafter referred to as the "MACS trust

fund") to be administered by the State of Mississippi Treasury Department until and unless the Legislature shall determine otherwise. The MACS trust fund shall consist of state appropriations, monies acquired from other governmental or private sources, and money remitted in accordance with savings trust agreements. If dividends, interest and gains exceed the amount necessary for program administration and disbursements, the board may designate a percentage of the fund to serve as a contingency fund.

(2) There is hereby created a separate account with the State of Mississippi Treasury Department to be known as the "Mississippi Affordable College Savings Administrative Account" for the purposes of implementing and maintaining savings trust accounts pursuant to this act.

(3) The official location of the trust fund shall be the State of Mississippi Treasury Department, and the facilities of the State of Mississippi Treasury Department shall be used and employed in the administration of the fund, including, but without limitations thereto, the keeping of records, the management of bank accounts and other investments, the transfer of funds and the safekeeping of securities evidencing investments.

(4) Payments received by the board on behalf of beneficiaries from account owners, other payors, or from any other source, public or private, shall be placed in the trust fund, and the fund may be divided into separate accounts as may be determined by the board.

(5) The trust fund, through the Treasurer, is hereby specifically authorized to receive and deposit into the trust fund any gift of any nature, real or personal property, made by an individual by testamentary disposition, including, without limitation, any specific gift or bequeath made by will, trust or other disposition.

(6) The account owner retains ownership of all amounts on

261 deposit in his or her account with the program up to the date of
262 distribution on behalf of a designated beneficiary. Earnings
263 derived from investment of the contributions shall be considered
264 to be held in trust in the same manner as contributions, except as
265 applied for purposes of the designated beneficiary and for
266 purposes of maintaining and administering the program as provided
267 in this act.

268 (7) The trust fund shall constitute a fund of an agency of
269 the state, and its property and income shall be exempt from all
270 taxation by the state and by all of its political subdivisions.

271 (8) The assets of the MACS trust fund shall be preserved,
272 invested and expended solely pursuant to and for the purposes of
273 this act and shall not be loaned or otherwise transferred or used
274 by the State of Mississippi for any other purpose.

275 **SECTION 8. Savings Trust Agreements; Tax Exclusions and**
276 **Deductions.**

277 (1) Any interest, dividends or gains accruing on the
278 payments made pursuant to a savings trust agreement under the
279 terms of this act shall be excluded from the gross income of any
280 such account owner, payor or beneficiary for purposes of the
281 Mississippi Income Tax Law. The payor may deduct from taxable
282 income the amount of any payments made under a savings trust
283 agreement in the tax year.

284 (2) Any gifts made to the MACS trust fund under Section 5(g)
285 shall be deductible from the Mississippi taxable income of the
286 donor in the tax year.

287 **SECTION 9. Investment Authority.**

288 (1) The board has authority to establish a comprehensive
289 investment plan for the purposes of this act, to invest any funds
290 of the trust fund in any instrument, obligation, security or
291 property that constitutes legal investments for public funds in
292 the state, and to name and use depositories for its investments
293 and holdings. The comprehensive investment plan shall specify the

investment policies to be utilized by the board in its administration of the funds. The board may authorize investments in any investment vehicle authorized for the MPACT Program under Section 37-155-9. However, the restrictions in Section 37-155-9 as to percentages of the total fund that may be invested in any category of authorized investment shall not apply to the MACS trust fund.

(2) All investments shall be acquired by the board at prices not exceeding the prevailing market values for such securities.

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

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

(5) Except as otherwise provided herein, no trustee and no employee of the board shall have any direct or indirect interest in the income, gains or profits of any investment made by the board, nor shall any such person receive any pay or emolument for his services in connection with any investment made by the board.

No trustee or employee of the board shall become an endorser or surety, or in any manner an obligor for money loaned by or borrowed from the system.

(6) Under the authority granted in Section 5(t), the board may establish criteria for investment managers, mutual funds or other such entities to act as contractors or consultants to the

board. The board may contract, either directly or through such contractors or consultants, to provide such services as may be a part of the comprehensive investment plan or as may be deemed necessary or proper by the board, including, but not limited to, providing consolidated billing, individual and collective record keeping and accounting, and asset purchase, control and safekeeping.

SECTION 10. Statement and Reports.

(1) The board shall furnish without charge to each account owner an annual statement of:

(a) The amount contributed by the account owner under the savings trust agreement;

(b) The annual earnings and accumulated earnings on the savings trust account; and

(c) Any other terms and conditions which the board deems by rule is necessary or appropriate, including those necessary to conform the savings trust account with the requirement of Section 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law or regulations.

(2) The board shall furnish an additional statement complying with subsection (1)(a) to an account owner or beneficiary on written request. The board may charge a reasonable fee for each statement furnished under this subsection.

(3) The board shall prepare or cause to be prepared an annual report setting forth in appropriate detail an accounting of the funds and a description of the financial condition of the program at the close of each fiscal year. Such report shall be submitted to the Governor, Lieutenant Governor, the President of the Senate, the Speaker of the House of Representatives, and members of the Board of Trustees of State Institutions of Higher Learning, the Junior College Board and the State Board of Education. In addition, the board shall make the report available to account owners of savings trust agreements. The accounts of

the fund shall be subject to annual audits by the State Auditor,
or his designee.

SECTION 11. No Promise or Guarantee of Admission.

This act is not a promise or guarantee that the beneficiary
will be:

(a) Admitted to any institution of higher education;

(b) Admitted to a particular institution of higher
education after admission;

(c) Allowed to continue enrollment at an institution of
higher education; or

(d) Graduated from an institution of higher education.

SECTION 12. No Promise or Guarantee of Returns.

Nothing in this act or in any savings trust agreement entered
into pursuant to this act shall be construed as a promise or
guarantee by the state or any agency or instrumentality thereof
that either qualified higher education expenses in general or any
specific qualified higher education expense shall be covered in
full by contributions or earnings on any savings trust account.
Savings trust accounts and agreements entered into pursuant to
this act are not guaranteed by the full faith and credit of the
State of Mississippi.

SECTION 13. Severability.

The provisions of this act are severable. If any part of
this act is declared invalid or unconstitutional, such declaration
shall not affect the part which remains.

SECTION 14. Section 37-155-5, Mississippi Code of 1972, is
amended as follows:[RDD1]

37-155-5. The following terms have the meanings ascribed to
them in this section, unless the context clearly indicates
otherwise:

(a) **Prepaid Tuition Contract.** A contract entered into
between the Mississippi Prepaid Affordable College Tuition Program
Board and a purchaser pursuant to this chapter.

(b) **Trust Fund.** There is created a special fund in the State of Mississippi Treasury Department to be designated as the "Mississippi Prepaid Affordable College Tuition Trust Fund" (hereinafter referred to as the trust fund or fund) and to be administered by the State of Mississippi Treasury Department. The fund shall consist of state appropriations, monies acquired from other governmental or private sources, and money remitted in accordance with prepaid tuition contracts. In the event that dividends, interest and gains exceed the amount necessary for program administration and disbursements, the board may designate a percentage of the fund to serve as a contingency fund.

(c) **Purchaser.** A person, corporation, trust, charitable organization or other such entity that makes or is obligated to make advance payments in accordance with a prepaid tuition contract entered into pursuant to this chapter.

(d) **Beneficiary.** (i) The beneficiary of a prepaid tuition contract must be eighteen (18) years of age or younger at the time the purchaser enters into the contract and must be: (A) a resident of this state at the time the purchaser enters into the contract; or (B) a nonresident if the purchaser is a resident of this state at the time that the contract is entered into.

(ii) The board may require a reasonable period of residence in this state for a beneficiary or the purchaser.

(iii) A beneficiary is considered a resident for purposes of tuition regardless of the beneficiary's residence on the date of enrollment.

(e) **Institution of Higher Education.** Any public institution of higher learning or public community or junior college located in Mississippi.

(f) **Tuition.** The quarter, semester or term charges and all required fees imposed by an institution of higher education as a condition of enrollment by all students.

(g) **Board.** The Board of Directors of the College

Savings Plans of Mississippi as provided in Section 37-155-7.

(h) **Legislature.** The Legislature of Mississippi.

SECTION 15. Section 37-155-7, Mississippi Code of 1972, is amended as follows:[RDD2]

37-155-7. (1) From and after July 1, 2000, the board of directors created herein shall be reconstituted as the Board of Directors of the College Savings Plans of Mississippi. The board of directors shall consist of thirteen (13) members as follows:

(a) Nine (9) voting members as follows: the State Treasurer; the Commissioner of Higher Education; the Executive Director of the Community and Junior College Board; Department of Finance and Administration Executive Director; and one (1) member from each congressional district to be appointed by the Governor with the advice and consent of the Senate. One (1) member shall be appointed for an initial term of one (1) year; one (1) member shall be appointed for an initial term of two (2) years; one (1) member for an initial term of three (3) years; one (1) member for an initial term of four (4) years; and one (1) member for an initial term of five (5) years. On the expiration of any of the terms of office, the Governor shall appoint successors by and with the advice and consent of the Senate for terms of five (5) years in each case.

(b) Two (2) nonvoting, advisory members of the board shall be appointed by each of the following officers: the Lieutenant Governor and the Speaker of the House of Representatives. Successors to the appointed members shall serve for the length of the term for each appointing official and shall be eligible for reappointment, and shall serve until a successor is appointed. Any person appointed to fill a vacancy on the board shall be appointed in a like manner and shall serve for only the unexpired term.

(2) Each member appointed shall possess knowledge, skill and experience in business or financial matters commensurate with the

459 duties and responsibilities of the trust fund.

460 (3) Members of the board of directors shall serve without
461 compensation, but shall be reimbursed for each day's official
462 duties of the board at the same per diem as established by Section
463 25-36-69 and actual travel and lodging expenses as established by
464 Section 25-3-41.

465 (4) The board of directors shall annually elect one (1)
466 member to serve as chairman of the board and one (1) member to
467 serve as vice chairman. The vice chairman shall act as chairman
468 in the absence of or upon the disability of the chairman or in the
469 event of a vacancy of the office of chairman.

470 SECTION 16. This act shall take effect and be in force from
471 and after July 1, 2000.