

By: Hewes, Burton

To: Universities and
Colleges

SENATE BILL NO. 2918
(As Passed the Senate)

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

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

7 SECTION 1. Section 37-155-9, Mississippi Code of 1972, is
8 amended as follows:[RDD1]

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

16 (a) To adopt and amend bylaws;

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

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

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

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

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

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

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

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

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42 payments may be withdrawn or refunded from the trust fund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

49 (j) To ensure applicability to private and out-of-state
50 tuitions:

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

55 (ii) If the beneficiary of a plan described by
56 Section 6(a)(b)(c) enrolls in any in-state or out-of-state
57 regionally accredited private four- or two-year college or an
58 out-of-state regionally accredited, state-supported, nonprofit
59 four- or two-year college or university, the board shall pay to
60 the institution an amount up to but not greater than the tuition

61 and required fees that the board would have paid had the
62 beneficiary enrolled in an institution of higher education covered
63 by the plan selected in the prepaid tuition contract. The
64 beneficiary is responsible for paying a private institution or an
65 out-of-state public institution the amount by which the tuition
66 and required fees of the institution exceed the tuition and
67 required fees paid by the board;

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

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

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

73 (n) To sue and be sued;

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

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

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

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

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

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

91 (u) To administer the fund in a manner that is
92 sufficiently actuarially sound to meet the obligations of the
93 program. The board shall annually evaluate or cause to be

94 evaluated the actuarial soundness of the fund. If the board
95 perceives a need for additional assets in order to preserve
96 actuarial soundness, the board may adjust the terms of subsequent
97 advance payment contracts to ensure such soundness;

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

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

122 (ii) State of Mississippi highway bonds;

123 (iii) Funds may be deposited in federally insured
124 institutions domiciled in the State of Mississippi or a custodial
125 bank which appears on the State of Mississippi Treasury
126 Department's approved depository list and/or safekeeper list;

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

135 (v) Bonds of the Tennessee Valley Authority;

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

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

160 the investment companies and investment trusts in which funds may
161 be invested. * * *

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

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

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

178 (B) The stock of such corporation shall:

179 1. Be listed on a national stock
180 exchange, or

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

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

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

191 (E) The shares of any one (1) corporation
192 owned by the system shall not exceed five percent (5%) of that

193 corporation's outstanding stock;

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

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

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

222 (xiii) Pooled or commingled real estate funds or
223 real estate securities managed by a corporate trustee or by a
224 Securities and Exchange Commission registered investment advisory
225 firm retained as an investment manager by the board of directors.

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

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

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

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

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

256 (aa) All interest derived from investments and any
257 gains from the sale or exchange of investments shall be credited
258 by the board to the account of the system;

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

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

285 (dd) To solicit proposals for the marketing of the
286 Mississippi Prepaid Affordable College Tuition Program. The
287 entity designated pursuant to this paragraph shall serve as a
288 centralized marketing agent for the program and shall solely be
289 responsible for the marketing of the program. Any materials
290 produced for the purpose of marketing the programs shall be
291 submitted to the board for review. No such materials shall be

292 made available to the public before the materials are approved by
293 the board. Any educational institution may distribute marketing
294 materials produced for the program; however, all such materials
295 shall have been approved by the board prior to distribution.

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

298 (ee) To establish other policies, procedures and
299 criteria necessary to implement and administer the provisions of
300 this act.

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

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