

*****Adopted*****

AMENDMENT No. 1 PROPOSED TO

Senate Bill NO. 2918

By Representative(s) Committee

8 **Amend by striking all after the enacting clause and inserting**
9 **in lieu thereof the following:**

10

11 SECTION 1. Section 37-155-9, Mississippi Code of 1972, is
12 amended as follows:

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

20 (a) To adopt and amend bylaws;

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

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

27 (d) To execute contracts and other necessary
28 instruments;

29 (e) To impose reasonable requirements for residency for
30 beneficiaries at the time of purchase of the contract;

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

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

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

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47 payments may be withdrawn or refunded from the trust fund,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

54 (j) To ensure applicability to private and out-of-state
55 tuitions:

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

60 (ii) If the beneficiary of a plan described by
61 Section 37-155-11 enrolls in any in-state or out-of-state
62 regionally accredited private four- or two-year college or an
63 out-of-state regionally accredited, state-supported, nonprofit
64 four- or two-year college or university, the board shall pay to
65 the institution an amount up to, but not greater than, the tuition

66and required fees that the board would have paid had the
67beneficiary enrolled in an institution of higher education covered
68by the plan selected in the prepaid tuition contract. The
69beneficiary is responsible for paying a private institution or an
70out-of-state public institution the amount by which the tuition
71and required fees of the institution exceed the tuition and
72required fees paid by the board;

73 (k) To impose reasonable time limits on the use of the
74tuition benefits provided by the program;

75 (l) To provide for the receipt of contributions to the
76trust fund in lump sums or installment payments;

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

78 (n) To sue and be sued;

79 (o) To establish agreements or other transactions with
80federal, state and local agencies, including state universities
81and community colleges;

82 (p) To appear in its own behalf before boards,
83commissions or other governmental agencies;

84 (q) To segregate contributions and payments to the fund
85into various accounts and funds;

86 (r) To require and collect administrative fees and
87charges in connection with any transaction and impose reasonable
88penalties, including default, for delinquent payments or for
89entering into an advance payment contract on a fraudulent basis;

90 (s) To procure insurance against any loss in connection
91with the property, assets and activities of the fund or the board;

92 (t) To require that purchasers of advance payment
93contracts verify, under oath, any requests for contract
94conversions, substitutions, transfers, cancellations, refund
95requests or contract changes of any nature;

96 (u) To administer the fund in a manner that is
97sufficiently actuarially sound to meet the obligations of the
98program. The board shall annually evaluate or cause to be
99evaluated the actuarial soundness of the fund. If the board
100perceives a need for additional assets in order to preserve

101actuarial soundness, the board may adjust the terms of subsequent
102advance payment contracts to ensure such soundness;

103 (v) To establish a comprehensive investment plan for
104the purposes of this section. The comprehensive investment plan
105shall specify the investment policies to be utilized by the board
106in its administration of the fund. The board may authorize
107investments in:

108 (i) Bonds, notes, certificates and other valid
109general obligations of the State of Mississippi, or of any county,
110or of any city, or of any supervisors district of any county of
111the State of Mississippi, or of any school district bonds of the
112State of Mississippi; notes or certificates of indebtedness issued
113by the Veterans' Home Purchase Board of Mississippi, provided such
114notes or certificates of indebtedness are secured by the pledge of
115collateral equal to two hundred percent (200%) of the amount of
116the loan, which collateral is also guaranteed at least for fifty
117percent (50%) of the face value by the United States government,
118and provided that not more than five percent (5%) of the total
119investment holdings of the system shall be in Veterans' Home
120Purchase Board notes or certificates at any time; real estate
121mortgage loans one hundred percent (100%) insured by the Federal
122Housing Administration on single family homes located in the State
123of Mississippi, where monthly collections and all servicing
124matters are handled by Federal Housing Administration approved
125mortgagees authorized to make such loans in the State of
126Mississippi;

127 (ii) State of Mississippi highway bonds;

128 (iii) Funds may be deposited in federally insured
129institutions domiciled in the State of Mississippi or a custodial
130bank which appears on the State of Mississippi Treasury
131Department's approved depository list and/or safekeeper list;

132 (iv) Corporate bonds of investment grade as rated
133by Standard & Poor's or by Moody's Investment Service, with bonds
134rated BAA/BBB not to exceed five percent (5%) of the book value of
135the total fixed income investments; or corporate short-term

136 obligations of corporations or of wholly owned subsidiaries of
137 corporations, whose short-term obligations are rated A-3 or better
138 by Standard and Poor's or rated P-3 or better by Moody's
139 Investment Service;

140 (v) Bonds of the Tennessee Valley Authority;

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

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

167 (viii) Interest-bearing bonds or notes which are
168 general obligations of any other state in the United States or of
169 any city or county therein, provided such city or county had a
170 population as shown by the federal census next preceding such

171 investment of not less than twenty-five thousand (25,000)
172 inhabitants and provided that such state, city or county has not
173 defaulted for a period longer than thirty (30) days in the payment
174 of principal or interest on any of its general obligation
175 indebtedness during a period of ten (10) calendar years
176 immediately preceding such investment;

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

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

183 (B) The stock of such corporation shall:

184 1. Be listed on a national stock
185 exchange, or

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

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

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

196 (E) The shares of any one (1) corporation
197 owned by the system shall not exceed five percent (5%) of that
198 corporation's outstanding stock;

199 (x) Bonds rated Single A or better, stocks and
200 convertible securities of established non-United States companies,
201 which companies are listed on only primary national stock
202 exchanges of foreign nations; and in foreign government securities
203 rated Single A or better by a recognized rating agency; provided
204 that the total book value of investments under this paragraph
205 shall at no time exceed twenty percent (20%) of the total book

206value of all investments of the system. The board may take
207requisite action to effectuate or hedge such transactions through
208foreign banks, including the purchase and sale, transfer, exchange
209or otherwise disposal of, and generally deal in foreign exchange
210through the use of foreign currency, interbank forward contracts,
211futures contracts, options contracts, swaps and other related
212derivative instruments, notwithstanding any other provisions of
213this chapter to the contrary;

214 (xi) Covered call and put options on securities
215traded on one or more of the regulated exchanges;

216 (xii) Institutional investment trusts managed by a
217corporate trustee or by a Securities and Exchange Commission
218registered investment advisory firm retained as an investment
219manager by the board of directors, and institutional class shares
220of investment companies and unit investment trusts registered
221under the Investment Company Act of 1940 where such * * * funds or
222shares are comprised of common or preferred stocks, bonds, money
223market instruments or other investments authorized under this
224section. * * * Any investment manager or managers approved by
225the board of directors shall invest such * * * funds or shares as
226a fiduciary;

227 (xiii) Pooled or commingled real estate funds or
228real estate securities managed by a corporate trustee or by a
229Securities and Exchange Commission registered investment advisory
230firm retained as an investment manager by the board of directors.
231 Such investment in commingled funds or shares shall be held in
232trust; provided that the total book value of investments under
233this paragraph shall at no time exceed five percent (5%) of the
234total book value of all investments of the system. Any investment
235manager approved by the board of directors shall invest such
236commingled funds or shares as a fiduciary * * *;

237 (w) All investments shall be acquired by the board at
238prices not exceeding the prevailing market values for such
239securities;

240 (x) Any limitations herein set forth shall be

241 applicable only at the time of purchase and shall not require the
242 liquidation of any investment at any time. All investments shall
243 be clearly marked to indicate ownership by the system and to the
244 extent possible shall be registered in the name of the system;

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

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

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

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

274 (cc) To annually prepare or cause to be prepared a
275 report setting forth in appropriate detail an accounting of the

276 fund and a description of the financial condition of the program
277 at the close of each fiscal year. Such report shall be submitted
278 to the Governor, the Lieutenant Governor, the President of the
279 Senate, the Speaker of the House of Representatives, and members
280 of the Board of Trustees of State Institutions of Higher Learning,
281 the State Board for Community and Junior Colleges * * * and the
282 State Board of Education on or before March 31 each year. In
283 addition, the board shall make the report available to purchasers
284 of advance payment contracts. The board shall provide to the
285 Board of Trustees of State Institutions of Higher Learning and the
286 State Board for Community and Junior Colleges by March 31 each
287 year complete advance payment contract sales information including
288 projected postsecondary enrollments of beneficiaries. The
289 accounts of the fund shall be subject to annual audits by the
290 State Auditor or his designee;

291 (dd) To solicit proposals for the marketing of the
292 Mississippi Prepaid Affordable College Tuition Program. The
293 entity designated pursuant to this paragraph shall serve as a
294 centralized marketing agent for the program and shall solely be
295 responsible for the marketing of the program. Any materials
296 produced for the purpose of marketing the programs shall be
297 submitted to the board for review. No such materials shall be
298 made available to the public before the materials are approved by
299 the board. Any educational institution may distribute marketing
300 materials produced for the program; however, all such materials
301 shall have been approved by the board prior to distribution.
302 Neither the state nor the board shall be liable for
303 misrepresentation of the program by a marketing agent; and

304 (ee) To establish other policies, procedures and
305 criteria necessary to implement and administer the provisions of
306 this chapter.

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

311 SECTION 2. This act shall take effect and be in force from
312and after July 1, 2000.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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