

By: Representative Warren

To: Education

HOUSE BILL NO. 363

1 AN ACT TO AMEND SECTION 29-3-45, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE LOCAL SCHOOL BOARDS TO CONTRACT WITH PRIVATE FORESTERS
3 OR THE STATE FORESTRY COMMISSION FOR THE MANAGEMENT OF SIXTEENTH
4 SECTION FOREST LANDS; TO AMEND SECTIONS 29-3-47, 29-3-49, 29-3-54,
5 29-3-85 AND 29-3-87, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO
6 THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 29-3-45, Mississippi Code of 1972, is
9 amended as follows:

10 29-3-45. (1) (a) The school board * * * shall, by order
11 placed upon its minutes, enter into an agreement with the State
12 Forestry Commission or a private, registered forester licensed
13 under the Foresters Registration Law of 1977 for the general
14 supervision and management of all lands classified as forest
15 lands, as * * * provided for in this chapter, and of all timber or
16 other forest products under the control of the board on sixteenth
17 section lands, and lieu lands which have not been so
18 classified * * *. When such agreement has been entered into, no
19 timber or other forest products shall be sold from any of the
20 sixteenth section lands or lieu lands except such as have been
21 marked for cutting by the State Forestry Commission's employees or
22 the registered forester, and the * * * Forestry Commission or its
23 designated employee or the registered forester shall fix the
24 minimum total cash price or minimum price per unit, one thousand
25 (1,000) feet or other measure, at which the marked timber or other
26 forest products shall be sold. The sales may be made for a lump
27 sum or upon a unit price as in the opinion of the board may be
28 calculated to bring the greatest return. Sales shall be made upon
29 such other terms and conditions as to manner of cutting, damages



30 for cutting of unmarked trees, damages to trees not cut and other
31 pertinent matters as the school board * * * shall approve.

32 (b) The State Forestry Commission or the registered
33 forester with whom the school board has contracted shall have the
34 sole authority and control in prescribing the forestry management
35 practices and scheduling of all cutting and harvesting of timber
36 or other forest products when such timber stands or other forest
37 products are determined by the State Forestry Commission or
38 private forester to be economically ready for cutting and
39 harvesting * * *.

40 (c) Should a school board disagree with the Forestry
41 Commission or registered forester concerning the time of cutting
42 and harvesting, the board may make an appeal to the Forestry
43 Commission at a regular monthly scheduled meeting of the
44 commission. If the school board is not satisfied after the appeal
45 to the commission, the board may then appeal to the Secretary of
46 State who will make the final decision as to the time for cutting
47 and harvesting. In the event the local school board is divested
48 of its management authority under subsection (2) of this section,
49 the Secretary of State, after due consultation with the Forestry
50 Commission or private forester, shall retain the right to make
51 final decisions concerning the management and sale of timber and
52 other forest products.

53 (d) It is * * * the duty of the State Forestry
54 Commission or the registered forester with whom a school board has
55 contracted, from time to time, to mark timber which should be cut
56 from the lands, to determine what planting, deadening or other
57 forestry improvements should be made, giving due consideration to
58 food and habitat for wildlife, and to report to the appropriate
59 school board * * *. The State Forestry Commission or private
60 forester and the school board * * * shall supervise the cutting of
61 any timber or harvesting of other forest products sold from the
62 lands * * * and shall have authority to require any timber-cutting



63 operations on the lands to cease until proper adjustment is made,
64 whenever it shall appear that timber is being cut in violation of
65 the terms of the sale. In the event that it is desired to lease
66 any of such lands or standing timber for turpentine purposes, such
67 lease shall only cover such trees as the State Forestry Commission
68 or private forester shall designate, and the commission, through
69 its employees, or private forester shall approve the number of
70 faces, method of chipping and boxing of such timber, and shall fix
71 a minimum total cash price or minimum price per unit.

72 (e) No sale of any timber, turpentine or other forest
73 products lease shall be made until notice of same has been
74 published once a week for three (3) consecutive weeks in at least
75 one (1) newspaper published in such county. The first publication
76 of such notice shall be made not less than twenty-one (21) days
77 prior to the date fixed for the sale, and the last publication
78 shall be made not more than seven (7) days prior to such date. If
79 no newspaper is published in such county, then such notice shall
80 be given by publishing the same for the required time in some
81 newspaper having a general circulation in such county and, in
82 addition thereto, by posting a copy of such notice for at least
83 twenty-one (21) days next preceding such sale at three (3) public
84 places in such county.

85 (f) * * * However, in the case of damage by fire,
86 windstorm or other natural causes which would require immediate
87 sale of the timber, because the time involved for advertisement as
88 prescribed in paragraph (e) would allow decay, rot or destruction
89 substantially decreasing the purchase price to be received had not
90 such delay occurred, the advertisement provisions of this section
91 shall not apply. The school board * * *, with a written
92 recommendation from a designated employee of the State Forestry
93 Commission or the registered forester with whom the school board
94 has contracted filed in the minutes of the school board * * *,
95 shall determine when immediate sale of the timber is required.



96 When the school board * * * shall find an immediate sale necessary
97 for the causes stated in this paragraph, it shall, in its
98 discretion, set the time for receipt of bids on the purchase of
99 the timber, but shall show due diligence in notifying competitive
100 bidders so that a true competitive bid shall be received.

101 (2) (a) In the event that any member of a local school
102 board * * * may have a personal interest, either direct or
103 indirect, in the decisions regarding the management or sale of
104 timber or other forest products or in a contract for the sale of
105 timber or other forest products from sixteenth section school
106 lands under the jurisdiction and control of that board, then the
107 school board * * * shall automatically be divested of all
108 authority and power to manage and sell timber or other forest
109 products on sixteenth section lands under its control and
110 jurisdiction. The divestiture shall extend for the period of
111 service, and for one (1) year thereafter, of the board member
112 having a direct or indirect personal interest in the sale or
113 decision to sell timber or other forest products.

114 (b) During the time in which any local school
115 board * * * may be divested of authority and power to manage and
116 sell timber and other forest products, such authority and power
117 shall be vested in the Secretary of State, as supervisory trustee
118 of sixteenth section lands. Upon the appointment or election of a
119 member of a local school board * * * who may have such an interest
120 in decisions and contracts regarding the management and sale of
121 timber or other forest products, the school board * * * shall
122 immediately notify the Secretary of State in writing. Likewise,
123 the board shall give written notification to the Secretary of
124 State within thirty (30) days prior to the expiration of any such
125 divestiture period. Any contractor with a local school
126 board * * * or the Secretary of State shall be entitled to rely on
127 representations by such board or the Secretary of State as to who
128 has authority to enter contracts for the management or sale of



129 timber or other forest products, and reliance on such
130 representations shall not be grounds for voiding any contract.

131 (c) The laws providing for the management and sale of
132 timber and other forest products by local school boards * * *
133 shall apply to the management and sale of timber and other forest
134 products by the Secretary of State. The Mississippi Forestry
135 Commission shall provide the Secretary of State with advice and
136 services in the same manner as provided to local school
137 boards * * *.

138 (d) The Secretary of State shall be paid all monies
139 derived from the sale of timber or other forest products and shall
140 promptly forward the same to the superintendent of education for
141 such school district with instructions for the proper settlement,
142 deposit and investment of those monies. Such local school board
143 shall reimburse the Secretary of State for all direct costs
144 relating to the management and sale of timber or other forest
145 products, and in the case of a sale of timber or other forest
146 products, the Secretary of State may deduct such direct cost from
147 the proceeds of sale. The Secretary of State shall furnish an
148 itemized listing of all direct cost charged to the local school
149 district.

150 **SECTION 2.** Section 29-3-47, Mississippi Code of 1972, is
151 amended as follows:

152 29-3-47. For its services, the State Forestry Commission or
153 the registered forester with whom the school board has contracted
154 shall be entitled to receive * * * actual expenses incurred in the
155 discharge of the duties * * * imposed in this chapter. In order
156 to provide funds with which to pay for the general supervision and
157 sale of forest products, fifteen percent (15%) of all receipts
158 from the sales of forest products shall be placed by the board in
159 a forestry escrow fund and reserved to pay for work performed by
160 the State Forestry Commission or private forester. Such payments
161 shall be equal to the actual expenses incurred by the commission



162 or private forester, as substantiated by itemized bills presented
163 to the board.

164 Money in the forestry escrow fund may be used to pay for any
165 forestry work authorized during the period of the agreement and
166 shall not be subject to lapse by reason of county budget
167 limitations.

168 In each school district having need of tree planting and
169 timber stand improvement, the school board * * * is authorized to
170 place additional amounts in the forestry escrow fund to reimburse
171 the State Forestry Commission or private forester for actual
172 expenses incurred in performing this work * * *. Such additional
173 amounts may be made available from forest products sales receipts,
174 funds borrowed from the sixteenth section principal fund as is
175 provided for in Section 29-3-113, or any other funds available to
176 the school board, * * * excluding adequate education program
177 funds. Expenditures from the forestry escrow fund for tree
178 planting, timber stand improvement, and other forestry work will
179 be limited to payment for work recommended by the Forestry
180 Commission or private forester and agreed to by the school
181 board * * *.

182 When it becomes evident that the amount of money in the
183 forestry escrow fund is in excess of the amount necessary to
184 accomplish the work needed to achieve the goals set by the school
185 board * * * and the Forestry Commission or private forester, the
186 State Forestry Commission or private forester shall advise the
187 board to release any part of such funds as will not be needed,
188 which may then be spent for any purpose authorized by law.

189 **SECTION 3.** Section 29-3-49, Mississippi Code of 1972, is
190 amended as follows:

191 29-3-49. It shall be the duty of the State Forestry
192 Commission, in the manner * * * provided in Section 29-3-45, to
193 enter into agreements for timber improvement purposes with the
194 school board * * * upon the request of the board. The contract



195 shall provide for the carrying out of a long term program of
196 timber improvement, including any or all of the following: The
197 deadening of undesirable hardwoods; the planting of trees; the
198 cutting and maintaining of fire lanes; and the establishment of
199 marked boundaries on all lands classified as forest lands in the
200 agreements, which must provide for the reimbursement of all
201 current costs incurred by the State Forestry Commission and the
202 carrying out of the duties required by such agreements. In the
203 alternative, the school board, in its discretion, may have the
204 option to contract with a private contractor * * * to perform this
205 work * * *. Payment of the reimbursements required under this
206 section to the * * * Forestry Commission, or of compensation due
207 under any such contract with private contractors, shall be made
208 upon presentation of itemized bills therefor by the commission
209 or * * * private contractors, as the case may be, and may be made
210 out of any sixteenth section funds to the credit of, or accruing
211 to, any school district in which such work shall be done, or out
212 of any other funds available to such district, excluding adequate
213 education program funds.

214 **SECTION 4.** Section 29-3-54, Mississippi Code of 1972, is
215 amended as follows:

216 29-3-54. Any leaseholder of sixteenth section land, or land
217 granted in lieu thereof, shall be authorized to post such land
218 against trespassers; however, such posting shall not prohibit the
219 inspection of the lands by individuals responsible for the
220 management or supervision of the lands acting in their official
221 capacity. In the event hunting or fishing rights have been leased
222 on lands classified as forest land, the holder of such rights and
223 the State Forestry Commission or the registered forester with whom
224 the school board has contracted for timber management services, as
225 the case may be, shall be authorized to post such land against
226 trespassers.



227 **SECTION 5.** Section 29-3-85, Mississippi Code of 1972, is
228 amended as follows:

229 29-3-85. In all surface leases of sixteenth section land
230 made by the school board * * *, whether such leases are original
231 leases or extensions of existing leases, title to all timber,
232 minerals, oil, and gas on such lands shall be reserved, together
233 with the right of ingress and egress to remove same, whether such
234 provisions be included in the terms of any such lease or not; and
235 no timber shall be cut and used by the lessees except for fuel and
236 necessary repairs and improvements on the leased premises. The
237 school board * * *, notwithstanding the fact that such land may
238 have been leased for other purposes, shall have the right, from
239 time to time, to sell all merchantable timber on such lands in the
240 manner * * * provided in this chapter. * * * In any surface
241 lease, the school board * * * shall reserve the right to grant or
242 sell rights-of-way across any of the land for a road, highway,
243 railroad, or any public utility line, provided only that the
244 leaseholder be paid a reasonable rental for the unexpired term of
245 his lease by the grantee of such right-of-way. If any surface
246 lessee of any such sixteenth section land shall commit, cause to
247 be committed, or permit the commission of any act of waste on any
248 sixteenth section lands under lease to such lessee, then such
249 lease shall thereupon, as to such lessee, cease and terminate and
250 shall thenceforth be null and void; and the school board * * *
251 shall have the right to institute an action in any court of
252 competent jurisdiction to secure the cancellation of same of
253 record, to recover damages for such waste, and to maintain an
254 action in ejectment to recover possession of the same. To this
255 end, the school board * * * is * * * authorized and empowered to
256 employ competent counsel to institute and maintain any such action
257 or actions on behalf of the board.

258 **SECTION 6.** Section 29-3-87, Mississippi Code of 1972, is
259 amended as follows:



260 29-3-87. Notwithstanding the provisions of this or any other
261 statute, the several school boards * * * are * * * authorized and
262 empowered, in their discretion and by resolution spread upon the
263 minutes, to set aside, reserve, and dedicate any available
264 sixteenth section lands or lands in lieu thereof for use by such
265 school district as a site for school buildings, which such
266 dedication and reservation shall be for such length of time, not
267 exceeding fifty (50) years, and upon such terms and conditions as
268 the school board * * *, in its discretion, shall deem proper. Any
269 such reservation or dedication of sixteenth section lands shall
270 automatically cease and terminate if, at any time, the land
271 involved shall cease to be used for the purpose for which the
272 dedication or reservation is made. The reservation or dedication
273 shall cover the surface of the lands only and shall not prevent
274 the school board * * * from leasing those lands for oil, gas, and
275 mineral exploration and development in a manner otherwise provided
276 by law.

277 In the same manner and subject to the same provisions * * *
278 set forth in this section, the school board * * * having a timber
279 management and marketing agreement with the State Forestry
280 Commission or National Forest Service may set aside, reserve and
281 dedicate any available sixteenth section lands or lands granted in
282 lieu thereof, which has been classified as forest land under the
283 provisions of this chapter, to be utilized for public parks and
284 recreation areas. The board of supervisors or the governing
285 authorities of any municipality wherein such lands or any portion
286 thereof lie may expend any funds otherwise available for park or
287 recreational areas in the construction and maintenance of
288 improvements to be located thereon.

289 The setting aside, reservation and dedication of any such
290 sixteenth section lands or lands granted in lieu thereof by a
291 school board * * * to the Department of Wildlife, Fisheries and



292 Parks for the purpose of locating a state park thereon may be for
293 a length of time not exceeding ninety-nine (99) years.

294 No sixteenth section or lieu land which is subject to an
295 existing lease shall be set aside, dedicated, and reserved as a
296 school building site or for public park or recreational purposes
297 under the provisions of this section unless the school district
298 involved shall acquire the unexpired leasehold interest from the
299 leaseholder, or unless such lease and leasehold interest shall be
300 surrendered and relinquished by the leaseholder.

301 **SECTION 7.** This act shall take effect and be in force from
302 and after July 1, 2002.

