HOUSE BILL NO. 745

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

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

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

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

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

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

(d) It is the duty of the State Forestry
Commission or the registered forester with whom a school board has
contracted, from time to time, to mark timber which should be cut
from the lands, to determine what planting, deadening or other
forestry improvements should be made, giving due consideration to
food and habitat for wildlife, and to report to the appropriate
school board. The State Forestry Commission or private
forester and the school board shall supervise the cutting of
any timber or harvesting of other forest products sold from the
lands and shall have authority to require any timber-cutting
operations on the lands to cease until proper adjustment is made,
whenever it appears that timber is being cut in violation of the terms of the sale. If it is desired to lease any of such lands or standing timber for turpentine purposes, such lease shall only cover such trees as the State Forestry Commission or private forester designates, and the commission, through its employees, or private forester shall approve the number of faces, method of chipping and boxing of such timber, and shall fix a minimum total cash price or minimum price per unit.

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

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

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

(2) (a) If any member of a local school board may have a personal interest, either direct or indirect, in the decisions regarding the management or sale of timber or other forest products or in a contract for the sale of timber or other forest products from sixteenth section school lands under the jurisdiction and control of that board, then the school board shall automatically be divested of all authority and power to manage and sell timber or other forest products on sixteenth section lands under its control and jurisdiction. The divestiture shall extend for the period of service, and for one year thereafter, of the board member having a direct or indirect personal interest in the sale or decision to sell timber or other forest products.

(b) During the time in which any local school board may be divested of authority and power to manage and sell timber and other forest products, such authority and power shall be vested in the Secretary of State, as supervisory trustee of sixteenth section lands. Upon the appointment or election of a member of a local school board who may have such an appointment or election of a member of a local board of education who may have such an interest in decisions and contracts regarding the management and sale of timber or other forest products, the school board shall immediately notify the Secretary of State in writing. Likewise, the board shall give written notification to the Secretary of State within thirty (30) days prior to the expiration of any such divestiture period. Any contractor with a local school board or the Secretary of State shall be entitled to rely on representations by such board or the Secretary.
of State as to who has authority to enter contracts for the
management or sale of timber or other forest products, and
reliance on such representations shall not be grounds for voiding
any contract.

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

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

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

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

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

In each school district having need of tree planting and timber stand improvement, the school board may place additional amounts in the forestry escrow fund to reimburse the State Forestry Commission or private forester for actual expenses incurred in performing this work. Such additional amounts may be made available from forest products sales receipts, funds borrowed from the sixteenth section principal fund as is provided for in Section 29-3-113, or any other funds available to the school board, excluding adequate education program funds.

Expenditures from the forestry escrow fund for tree planting, timber stand improvement, and other forestry work will be limited to payment for work recommended by the Forestry Commission or private forester and agreed to by the school board.

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

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

29-3-49. It shall be the duty of the State Forestry Commission, in the manner provided in Section 29-3-45, to enter into agreements for timber improvement purposes with the
school board * * * upon the request of the board. The contract shall provide for the carrying out of a long-term program of timber improvement, including any or all of the following: The deadening of undesirable hardwoods; the planting of trees; the cutting and maintaining of fire lanes; and the establishment of marked boundaries on all lands classified as forest lands in the agreements, which must provide for the reimbursement of all current costs incurred by the State Forestry Commission and the carrying out of the duties required by such agreements. In the alternative, the school board, in its discretion, may have the option to contract with a private contractor * * * to perform this work * * *. Payment of the reimbursements required under this section to the * * * Forestry Commission, or of compensation due under any such contract with private contractors, shall be made upon presentation of itemized bills therefor by the commission or * * * private contractors, as the case may be, and may be made out of any sixteenth section funds to the credit of, or accruing to, any school district in which such work shall be done, or out of any other funds available to such district, excluding adequate education program funds.

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

29-3-54. Any leaseholder of sixteenth section land, or land granted in lieu thereof, shall be authorized to post such land against trespassers; however, such posting shall not prohibit the inspection of the lands by individuals responsible for the management or supervision of the lands acting in their official capacity. If hunting or fishing rights have been leased on lands classified as forest land, the holder of such rights and the State Forestry Commission or the registered forester with whom the school board has contracted for timber management services, as the case may be, shall be authorized to post such land against trespassers.
SECTION 5. Section 29-3-85, Mississippi Code of 1972, is amended as follows:

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

SECTION 6. Section 29-3-87, Mississippi Code of 1972, is amended as follows:
Notwithstanding the provisions of this or any other statute, the several school boards, in their discretion and by resolution spread upon the minutes, may set aside, reserve and dedicate any available sixteenth section lands or lands in lieu thereof for use by such school district as a site for school buildings, which such dedication and reservation shall be for such length of time, not exceeding fifty (50) years, and upon such terms and conditions as the school board * * *, in its discretion, shall deem proper. Any such reservation or dedication of sixteenth section lands shall automatically cease and terminate if, at anytime, the land involved shall cease to be used for the purpose for which the dedication or reservation is made. The reservation or dedication shall cover the surface of the lands only and shall not prevent the school board * * * from leasing those lands for oil, gas, and mineral exploration and development in a manner otherwise provided by law.

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

The setting aside, reservation and dedication of any such sixteenth section lands or lands granted in lieu thereof by a school board * * * to the Department of Wildlife, Fisheries and Parks for the purpose of locating a state park thereon may be for a length of time not exceeding ninety-nine (99) years.
No sixteenth section or lieu land which is subject to an existing lease shall be set aside, dedicated and reserved as a school building site or for public park or recreational purposes under the provisions of this section unless the school district involved shall acquire the unexpired leasehold interest from the leaseholder, or unless such lease and leasehold interest shall be surrendered and relinquished by the leaseholder.

SECTION 7. This act shall take effect and be in force from and after July 1, 2003.