

By: Senator(s) Burton

To: Universities and
Colleges; Appropriations

SENATE BILL NO. 2004

1 AN ACT TO AMEND SECTION 37-155-7, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY THAT APPOINTMENTS TO THE MISSISSIPPI PREPAID AFFORDABLE
3 COLLEGE TUITION PROGRAM (MPACT) BOARD OF DIRECTORS SHALL SERVE
4 UNTIL A SUCCESSOR IS CHOSEN AND QUALIFIES, TO PROVIDE THAT EX
5 OFFICIO MEMBERS OF THE BOARD OF DIRECTORS MAY DESIGNATE ALTERNATE
6 MEMBERS TO ATTEND MEETINGS, AND TO CLARIFY WHAT CONSTITUTES A
7 QUORUM OF THE BOARD TO CONDUCT BUSINESS; TO AMEND SECTION
8 37-155-9, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE PROGRAM TO
9 PAY FOR GRADUATE SCHOOL TUITION BASED ON A WEIGHTED AVERAGE
10 TUITION RATE; AND FOR RELATED PURPOSES.

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

12 **SECTION 1.** Section 37-155-7, Mississippi Code of 1972, is
13 amended as follows:

14 37-155-7. (1) The board of directors shall consist of
15 thirteen (13) members as follows:

16 (a) Nine (9) voting members as follows: the State
17 Treasurer, or his designee; the Commissioner of Higher Education,
18 or his designee; the Executive Director of the Community and
19 Junior College Board, or his designee; the Department of Finance
20 and Administration Executive Director, or his designee; and one
21 (1) member from each congressional district to be appointed by the
22 Governor with the advice and consent of the Senate. One (1)
23 member shall be appointed for an initial term of one (1) year; one
24 (1) member shall be appointed for an initial term of two (2)
25 years; one (1) member for an initial term of three (3) years; one
26 (1) member for an initial term of four (4) years; and one (1)
27 member for an initial term of five (5) years. On the expiration
28 of any of the terms of office, the Governor shall appoint
29 successors by and with the advice and consent of the Senate for
30 terms of five (5) years in each case. Ex officio members of the
31 board may be represented at official meetings by their deputy, or



32 other designee, and such designees shall have full voting
33 privileges and shall be included in the determination of a quorum
34 for conducting board business.

35 (b) Two (2) nonvoting, advisory members of the board
36 shall be appointed by each of the following officers: the
37 Lieutenant Governor and the Speaker of the House of
38 Representatives.

39 (2) Successors to the appointed members shall serve for the
40 length of the term for each appointing official and shall be
41 eligible for reappointment, and shall serve until a successor is
42 appointed and qualified. Any person appointed to fill a vacancy
43 on the board shall be appointed in a like manner and shall serve
44 for only the unexpired term.

45 (3) Each member appointed shall possess knowledge, skill and
46 experience in business or financial matters commensurate with the
47 duties and responsibilities of the trust fund.

48 (4) Members of the board of directors shall serve without
49 compensation, but shall be reimbursed for each day's official
50 duties of the board at the same per diem as established by Section
51 25-3-69 and actual travel and lodging expenses as established by
52 Section 25-3-41.

53 (5) The board of directors shall annually elect one (1)
54 member to serve as chairman of the board and one (1) member to
55 serve as vice chairman. The vice chairman shall act as chairman
56 in the absence of or upon the disability of the chairman or in the
57 event of a vacancy of the office of chairman.

58 (6) A majority of the currently serving members of the board
59 shall constitute a quorum for the purposes of conducting business
60 and exercising its official powers and duties. Any action taken
61 by the board shall be upon the vote of a majority of the members
62 present.

63 **SECTION 2.** Section 37-155-9, Mississippi Code of 1972, is
64 amended as follows:



65 37-155-9. In addition to the powers granted by any other
66 provision of this article, the board of directors shall have the
67 powers necessary or convenient to carry out the purposes and
68 provisions of this article, the purposes and objectives of the
69 trust fund and the powers delegated by any other law of the state
70 or any executive order thereof, including, but not limited to, the
71 following express powers:

72 (a) To adopt and amend bylaws;

73 (b) To adopt such rules and regulations as are
74 necessary to implement the provisions of this article;

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

79 (d) To execute contracts and other necessary
80 instruments;

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

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

86 (g) To contract for necessary goods and services, to
87 employ necessary personnel, and to engage the services of
88 consultants for administrative and technical assistance in
89 carrying out the responsibilities of the trust fund;

90 (h) To solicit and accept gifts, including
91 bequeathments or other testamentary gifts made by will, trust or
92 other disposition, grants, loans and other aids from any personal
93 source or to participate in any other way in any federal, state or
94 local governmental programs in carrying out the purposes of this
95 article. Any gifts made to the board under this subsection shall
96 be deductible from taxable income of the state in the tax year;



97 (i) To define the terms and conditions under which
98 payments may be withdrawn or refunded from the trust fund,
99 including, but not limited to, the amount paid in and an
100 additional amount in the nature of interest at a rate that
101 corresponds, at a minimum, to the prevailing interest rates for
102 savings accounts provided by banks and savings and loan
103 associations and impose reasonable charges for such withdrawal or
104 refund;

105 (j) To ensure applicability to private and out-of-state
106 tuitions:

107 (i) Under the program, a state purchaser may enter
108 into a prepaid tuition contract with the board under which the
109 purchaser agrees to attend a public institution of higher
110 education in Mississippi;

111 (ii) If the beneficiary of a plan described by
112 Section 37-155-11 enrolls in any in-state or out-of-state
113 regionally accredited private four- or two-year college or an
114 out-of-state regionally accredited, state-supported, nonprofit
115 four- or two-year college or university, or any in-state or
116 out-of-state regionally accredited graduate institution, the board
117 shall pay to the institution an amount up to, but not greater
118 than, the undergraduate tuition and required fees that the board
119 would have paid had the beneficiary enrolled in an institution of
120 higher education covered by the plan selected in the prepaid
121 tuition contract. The beneficiary is responsible for paying a
122 private undergraduate or graduate institution or an out-of-state
123 public undergraduate or graduate institution the amount by which
124 the tuition and required fees of the institution exceed the
125 tuition and required fees paid by the board;

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

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



- 130 (m) To adopt an official seal and rules;
- 131 (n) To sue and be sued;
- 132 (o) To establish agreements or other transactions with
133 federal, state and local agencies, including state universities
134 and community colleges;
- 135 (p) To appear in its own behalf before boards,
136 commissions or other governmental agencies;
- 137 (q) To segregate contributions and payments to the fund
138 into various accounts and funds;
- 139 (r) To require and collect administrative fees and
140 charges in connection with any transaction and impose reasonable
141 penalties, including default, for delinquent payments or for
142 entering into an advance payment contract on a fraudulent basis;
- 143 (s) To procure insurance against any loss in connection
144 with the property, assets and activities of the fund or the board;
- 145 (t) To require that purchasers of advance payment
146 contracts verify, under oath, any requests for contract
147 conversions, substitutions, transfers, cancellations, refund
148 requests or contract changes of any nature;
- 149 (u) To administer the fund in a manner that is
150 sufficiently actuarially sound to meet the obligations of the
151 program. The board shall annually evaluate or cause to be
152 evaluated the actuarial soundness of the fund. If the board
153 perceives a need for additional assets in order to preserve
154 actuarial soundness, the board may adjust the terms of subsequent
155 advance payment contracts to ensure such soundness;
- 156 (v) To establish a comprehensive investment plan for
157 the purposes of this section. The comprehensive investment plan
158 shall specify the investment policies to be utilized by the board
159 in its administration of the fund. The board may authorize
160 investments in:
- 161 (i) Bonds, notes, certificates and other valid
162 general obligations of the State of Mississippi, or of any county,



163 or of any city, or of any supervisors district of any county of
164 the State of Mississippi, or of any school district bonds of the
165 State of Mississippi; notes or certificates of indebtedness issued
166 by the Veterans' Home Purchase Board of Mississippi, provided such
167 notes or certificates of indebtedness are secured by the pledge of
168 collateral equal to two hundred percent (200%) of the amount of
169 the loan, which collateral is also guaranteed at least for fifty
170 percent (50%) of the face value by the United States government,
171 and provided that not more than five percent (5%) of the total
172 investment holdings of the system shall be in Veterans' Home
173 Purchase Board notes or certificates at any time; real estate
174 mortgage loans one hundred percent (100%) insured by the Federal
175 Housing Administration on single family homes located in the State
176 of Mississippi, where monthly collections and all servicing
177 matters are handled by Federal Housing Administration approved
178 mortgagees authorized to make such loans in the State of
179 Mississippi;

180 (ii) State of Mississippi highway bonds;

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

185 (iv) Corporate bonds of investment grade as rated
186 by Standard & Poor's or by Moody's Investment Service, with bonds
187 rated BAA/BBB not to exceed five percent (5%) of the book value of
188 the total fixed income investments; or corporate short-term
189 obligations of corporations or of wholly owned subsidiaries of
190 corporations, whose short-term obligations are rated A-3 or better
191 by Standard and Poor's or rated P-3 or better by Moody's
192 Investment Service;

193 (v) Bonds of the Tennessee Valley Authority;

194 (vi) Bonds, notes, certificates and other valid
195 obligations of the United States, and other valid obligations of



196 any federal instrumentality that issues securities under authority
197 of an act of Congress and are exempt from registration with the
198 Securities and Exchange Commission;

199 (vii) Bonds, notes, debentures and other
200 securities issued by any federal instrumentality and fully
201 guaranteed by the United States. Direct obligations issued by the
202 United States of America shall be deemed to include securities of,
203 or other interests in, any open-end or closed-end management type
204 investment company or investment trust registered under the
205 provisions of 15 USCS Section 80(a)-1 et seq., provided that the
206 portfolio of such investment company or investment trust is
207 limited to direct obligations issued by the United States of
208 America, United States government agencies, United States
209 government instrumentalities or United States government sponsored
210 enterprises, and to repurchase agreements fully collateralized by
211 direct obligations of the United States of America, United States
212 government agencies, United States government instrumentalities or
213 United States government sponsored enterprises, and the investment
214 company or investment trust takes delivery of such collateral for
215 the repurchase agreement, either directly or through an authorized
216 custodian. The State Treasurer and the Executive Director of the
217 Department of Finance and Administration shall review and approve
218 the investment companies and investment trusts in which funds may
219 be invested;

220 (viii) Interest-bearing bonds or notes which are
221 general obligations of any other state in the United States or of
222 any city or county therein, provided such city or county had a
223 population as shown by the federal census next preceding such
224 investment of not less than twenty-five thousand (25,000)
225 inhabitants and provided that such state, city or county has not
226 defaulted for a period longer than thirty (30) days in the payment
227 of principal or interest on any of its general obligation



228 indebtedness during a period of ten (10) calendar years
229 immediately preceding such investment;

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

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

236 (B) The stock of such corporation shall:

237 1. Be listed on a national stock
238 exchange; or

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

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

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

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

252 (x) Bonds rated Single A or better, stocks and
253 convertible securities of established non-United States companies,
254 which companies are listed on only primary national stock
255 exchanges of foreign nations; and in foreign government securities
256 rated Single A or better by a recognized rating agency; provided
257 that the total book value of investments under this paragraph
258 shall at no time exceed twenty percent (20%) of the total book
259 value of all investments of the system. The board may take
260 requisite action to effectuate or hedge such transactions through



261 foreign banks, including the purchase and sale, transfer, exchange
262 or otherwise disposal of, and generally deal in foreign exchange
263 through the use of foreign currency, interbank forward contracts,
264 futures contracts, options contracts, swaps and other related
265 derivative instruments, notwithstanding any other provisions of
266 this article to the contrary;

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

269 (xii) Institutional investment trusts managed by a
270 corporate trustee or by a Securities and Exchange Commission
271 registered investment advisory firm retained as an investment
272 manager by the board of directors, and institutional class shares
273 of investment companies and unit investment trusts registered
274 under the Investment Company Act of 1940 where such funds or
275 shares are comprised of common or preferred stocks, bonds, money
276 market instruments or other investments authorized under this
277 section. Any investment manager or managers approved by the board
278 of directors shall invest such funds or shares as a fiduciary;

279 (xiii) Pooled or commingled real estate funds or
280 real estate securities managed by a corporate trustee or by a
281 Securities and Exchange Commission registered investment advisory
282 firm retained as an investment manager by the board of directors.
283 Such investment in commingled funds or shares shall be held in
284 trust; provided that the total book value of investments under
285 this paragraph shall at no time exceed five percent (5%) of the
286 total book value of all investments of the system. Any investment
287 manager approved by the board of directors shall invest such
288 commingled funds or shares as a fiduciary;

289 (w) All investments shall be acquired by the board at
290 prices not exceeding the prevailing market values for such
291 securities;

292 (x) Any limitations herein set forth shall be
293 applicable only at the time of purchase and shall not require the



294 liquidation of any investment at any time. All investments shall
295 be clearly marked to indicate ownership by the system and to the
296 extent possible shall be registered in the name of the system;

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

305 (z) Except as otherwise provided herein, no trustee and
306 no employee of the board shall have any direct or indirect
307 interest in the income, gains or profits of any investment made by
308 the board, nor shall any such person receive any pay or emolument
309 for his services in connection with any investment made by the
310 board. No trustee or employee of the board shall become an
311 endorser or surety, or in any manner an obligor for money loaned
312 by or borrowed from the system;

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

316 (bb) To delegate responsibility for administration of
317 the comprehensive investment plan to a consultant the board
318 determines to be qualified. Such consultant shall be compensated
319 by the board. Directly or through such consultant, the board may
320 contract to provide such services as may be a part of the
321 comprehensive investment plan or as may be deemed necessary or
322 proper by the board or such consultant, including, but not limited
323 to, providing consolidated billing, individual and collective
324 record keeping and accounting, and asset purchase, control and
325 safekeeping;



326 (cc) To annually prepare or cause to be prepared a
327 report setting forth in appropriate detail an accounting of the
328 fund and a description of the financial condition of the program
329 at the close of each fiscal year. Such report shall be submitted
330 to the Governor, the Lieutenant Governor, the President of the
331 Senate, the Speaker of the House of Representatives, and members
332 of the Board of Trustees of State Institutions of Higher Learning,
333 the State Board for Community and Junior Colleges and the State
334 Board of Education on or before March 31 each year. In addition,
335 the board shall make the report available to purchasers of advance
336 payment contracts. The board shall provide to the Board of
337 Trustees of State Institutions of Higher Learning and the State
338 Board for Community and Junior Colleges by March 31 each year
339 complete advance payment contract sales information including
340 projected postsecondary enrollments of beneficiaries. The
341 accounts of the fund shall be subject to annual audits by the
342 State Auditor or his designee;

343 (dd) To solicit proposals for the marketing of the
344 Mississippi Prepaid Affordable College Tuition Program. The
345 entity designated pursuant to this paragraph shall serve as a
346 centralized marketing agent for the program and shall solely be
347 responsible for the marketing of the program. Any materials
348 produced for the purpose of marketing the programs shall be
349 submitted to the board for review. No such materials shall be
350 made available to the public before the materials are approved by
351 the board. Any educational institution may distribute marketing
352 materials produced for the program; however, all such materials
353 shall have been approved by the board prior to distribution.
354 Neither the state nor the board shall be liable for
355 misrepresentation of the program by a marketing agent; and

356 (ee) To establish other policies, procedures and
357 criteria necessary to implement and administer the provisions of
358 this article.



359 For efficient and effective administration of the program and
360 trust fund, the board may authorize the State of Mississippi
361 Treasury Department and/or the State Treasurer to carry out any or
362 all of the powers and duties enumerated above.

363 **SECTION 3.** This act shall take effect and be in force from
364 and after July 1, 2003.

