

By: Senator(s) Burton

To: Universities and
Colleges; Appropriations

SENATE BILL NO. 2004
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 37-155-5, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT NO PURCHASER OF A MISSISSIPPI PREPAID AFFORDABLE
3 COLLEGE TUITION PROGRAM (MPACT) CONTRACT MAY REQUEST OR ACCEPT A
4 FEE ON BEHALF OF A NONRESIDENT BENEFICIARY; TO AMEND SECTION
5 37-155-7, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT APPOINTMENTS
6 TO THE MISSISSIPPI PREPAID AFFORDABLE COLLEGE TUITION PROGRAM
7 (MPACT) BOARD OF DIRECTORS SHALL SERVE UNTIL A SUCCESSOR IS CHOSEN
8 AND QUALIFIES, TO PROVIDE THAT EX OFFICIO MEMBERS OF THE BOARD OF
9 DIRECTORS MAY DESIGNATE ALTERNATE MEMBERS TO ATTEND MEETINGS, AND
10 TO CLARIFY WHAT CONSTITUTES A QUORUM OF THE BOARD TO CONDUCT
11 BUSINESS; TO AMEND SECTION 37-155-9, MISSISSIPPI CODE OF 1972, TO
12 AUTHORIZE THE BOARD TO ESTABLISH RULES REGARDING THE PURCHASE OF
13 CONTRACTS FOR NONRESIDENT BENEFICIARIES AND TO AUTHORIZE THE
14 PROGRAM TO PAY FOR GRADUATE SCHOOL TUITION BASED ON A WEIGHTED
15 AVERAGE TUITION RATE; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** Section 37-155-5, Mississippi Code of 1972, is
18 amended as follows:

19 37-155-5. As used in this article, the following terms have
20 the meanings ascribed to them in this section, unless the context
21 clearly indicates otherwise:

22 (a) **Prepaid Tuition Contract.** A contract entered into
23 between the Board of Directors of the College Savings Plans of
24 Mississippi Trust Funds and a purchaser pursuant to this article.

25 (b) **Trust fund.** There is created a special fund in the
26 State of Mississippi Treasury Department to be designated as the
27 "Mississippi Prepaid Affordable College Tuition Trust Fund"
28 (hereinafter referred to as the trust fund or fund) and to be
29 administered by the State of Mississippi Treasury Department. The
30 fund shall consist of state appropriations, monies acquired from
31 other governmental or private sources, and money remitted in
32 accordance with prepaid tuition contracts. In the event that
33 dividends, interest and gains exceed the amount necessary for



34 program administration and disbursements, the board may designate
35 a percentage of the fund to serve as a contingency fund.

36 (c) **Purchaser.** A person, corporation, trust,
37 charitable organization or other such entity that makes or is
38 obligated to make advance payments in accordance with a prepaid
39 tuition contract entered into pursuant to this article. However,
40 no purchaser may request or accept any form of compensation, fee,
41 commission, service charge or any other form of payment or
42 remuneration for entering into a contract for the benefit of a
43 nonresident beneficiary.

44 (d) **Beneficiary.** (i) The beneficiary of a prepaid
45 tuition contract must be eighteen (18) years of age or younger at
46 the time the purchaser enters into the contract and must be: (A)
47 a resident of this state at the time the purchaser enters into the
48 contract; or (B) a nonresident if the purchaser is a resident of
49 this state at the time that the contract is entered into.

50 (ii) The board may require a reasonable period of
51 residence in this state for a beneficiary or the purchaser.

52 (iii) A beneficiary is considered a resident for
53 purposes of tuition regardless of the beneficiary's residence on
54 the date of enrollment. However, for contracts entered into after
55 July 1, 2003, this provision only applies to nonresident
56 beneficiaries if (A) the original purchaser was the parent,
57 grandparent or legal guardian of the beneficiary; or (B) the
58 beneficiary was a resident of Mississippi at the time the contract
59 was purchased.

60 (e) **Institution of higher education.** Any public
61 institution of higher learning or public community or junior
62 college located in Mississippi.

63 (f) **Tuition.** The quarter, semester or term charges and
64 all required fees imposed by an institution of higher education as
65 a condition of enrollment by all students.



66 (g) **Board or board of directors.** The Board of
67 Directors of the College Savings Plans of Mississippi Trust Funds
68 as provided in Section 37-155-7.

69 (h) **Legislature.** The Legislature of Mississippi.

70 **SECTION 2.** Section 37-155-7, Mississippi Code of 1972, is
71 amended as follows:

72 37-155-7. (1) The board of directors shall consist of
73 thirteen (13) members as follows:

74 (a) Nine (9) voting members as follows: the State
75 Treasurer; the Commissioner of Higher Education, or his designee;
76 the Executive Director of the Community and Junior College Board,
77 or his designee; the Department of Finance and Administration
78 Executive Director, or his designee; and one (1) member from each
79 congressional district to be appointed by the Governor with the
80 advice and consent of the Senate. One (1) member shall be
81 appointed for an initial term of one (1) year; one (1) member
82 shall be appointed for an initial term of two (2) years; one (1)
83 member for an initial term of three (3) years; one (1) member for
84 an initial term of four (4) years; and one (1) member for an
85 initial term of five (5) years. On the expiration of any of the
86 terms of office, the Governor shall appoint successors by and with
87 the advice and consent of the Senate for terms of five (5) years
88 in each case. Ex officio members of the board may be represented
89 at official meetings by their deputy, or other designee, and such
90 designees shall have full voting privileges and shall be included
91 in the determination of a quorum for conducting board business.

92 (b) Two (2) nonvoting, advisory members of the board
93 shall be appointed by each of the following officers: the
94 Lieutenant Governor and the Speaker of the House of
95 Representatives.

96 (2) Successors to the appointed members shall serve for the
97 length of the term for each appointing official and shall be
98 eligible for reappointment, and shall serve until a successor is



99 appointed and qualified. Any person appointed to fill a vacancy
100 on the board shall be appointed in a like manner and shall serve
101 for only the unexpired term.

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

105 (4) Members of the board of directors shall serve without
106 compensation, but shall be reimbursed for each day's official
107 duties of the board at the same per diem as established by Section
108 25-3-69 and actual travel and lodging expenses as established by
109 Section 25-3-41.

110 (5) The board of directors shall annually elect one (1)
111 member to serve as chairman of the board and one (1) member to
112 serve as vice chairman. The vice chairman shall act as chairman
113 in the absence of or upon the disability of the chairman or in the
114 event of a vacancy of the office of chairman.

115 (6) A majority of the currently serving members of the board
116 shall constitute a quorum for the purposes of conducting business
117 and exercising its official powers and duties. Any action taken
118 by the board shall be upon the vote of a majority of the members
119 present.

120 **SECTION 3.** Section 37-155-9, Mississippi Code of 1972, is
121 amended as follows:

122 37-155-9. In addition to the powers granted by any other
123 provision of this article, the board of directors shall have the
124 powers necessary or convenient to carry out the purposes and
125 provisions of this article, the purposes and objectives of the
126 trust fund and the powers delegated by any other law of the state
127 or any executive order thereof, including, but not limited to, the
128 following express powers:

- 129 (a) To adopt and amend bylaws;
- 130 (b) To adopt such rules and regulations as are
131 necessary to implement the provisions of this article;



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

136 (d) To execute contracts and other necessary
137 instruments;

138 (e) To impose reasonable requirements for residency for
139 beneficiaries at the time of purchase of the contract and to
140 establish rules to govern purchase of contracts for beneficiaries
141 who are nonresidents at the time the purchaser enters into the
142 prepaid tuition contract;

143 (f) To impose reasonable limits on the number of
144 contract participants in the trust fund at any given period of
145 time;

146 (g) To contract for necessary goods and services, to
147 employ necessary personnel, and to engage the services of
148 consultants for administrative and technical assistance in
149 carrying out the responsibilities of the trust fund;

150 (h) To solicit and accept gifts, including
151 bequeathments or other testamentary gifts made by will, trust or
152 other disposition, grants, loans and other aids from any personal
153 source or to participate in any other way in any federal, state or
154 local governmental programs in carrying out the purposes of this
155 article. Any gifts made to the board under this subsection shall
156 be deductible from taxable income of the state in the tax year;

157 (i) To define the terms and conditions under which
158 payments may be withdrawn or refunded from the trust fund,
159 including, but not limited to, the amount paid in and an
160 additional amount in the nature of interest at a rate that
161 corresponds, at a minimum, to the prevailing interest rates for
162 savings accounts provided by banks and savings and loan
163 associations and impose reasonable charges for such withdrawal or
164 refund;



165 (j) To ensure applicability to private and out-of-state
166 tuitions:

167 (i) Under the program, a state purchaser may enter
168 into a prepaid tuition contract with the board under which the
169 purchaser agrees to attend a public institution of higher
170 education in Mississippi;

171 (ii) If the beneficiary of a plan described by
172 Section 37-155-11 enrolls in any in-state or out-of-state
173 regionally accredited private four- or two-year college or an
174 out-of-state regionally accredited, state-supported, nonprofit
175 four- or two-year college or university, or any in-state or
176 out-of-state regionally accredited graduate institution, the board
177 shall pay to the institution an amount up to, but not greater
178 than, the undergraduate tuition and required fees that the board
179 would have paid had the beneficiary enrolled in an institution of
180 higher education covered by the plan selected in the prepaid
181 tuition contract. The beneficiary is responsible for paying a
182 private undergraduate or graduate institution or an out-of-state
183 public undergraduate or graduate institution the amount by which
184 the tuition and required fees of the institution exceed the
185 tuition and required fees paid by the board;

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

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

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

191 (n) To sue and be sued;

192 (o) To establish agreements or other transactions with
193 federal, state and local agencies, including state universities
194 and community colleges;

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



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

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

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

205 (t) To require that purchasers of advance payment
206 contracts verify, under oath, any requests for contract
207 conversions, substitutions, transfers, cancellations, refund
208 requests or contract changes of any nature;

209 (u) To administer the fund in a manner that is
210 sufficiently actuarially sound to meet the obligations of the
211 program. The board shall annually evaluate or cause to be
212 evaluated the actuarial soundness of the fund. If the board
213 perceives a need for additional assets in order to preserve
214 actuarial soundness, the board may adjust the terms of subsequent
215 advance payment contracts to ensure such soundness;

216 (v) To establish a comprehensive investment plan for
217 the purposes of this section. The comprehensive investment plan
218 shall specify the investment policies to be utilized by the board
219 in its administration of the fund. The board may authorize
220 investments in:

221 (i) Bonds, notes, certificates and other valid
222 general obligations of the State of Mississippi, or of any county,
223 or of any city, or of any supervisors district of any county of
224 the State of Mississippi, or of any school district bonds of the
225 State of Mississippi; notes or certificates of indebtedness issued
226 by the Veterans' Home Purchase Board of Mississippi, provided such
227 notes or certificates of indebtedness are secured by the pledge of
228 collateral equal to two hundred percent (200%) of the amount of
229 the loan, which collateral is also guaranteed at least for fifty



230 percent (50%) of the face value by the United States government,
231 and provided that not more than five percent (5%) of the total
232 investment holdings of the system shall be in Veterans' Home
233 Purchase Board notes or certificates at any time; real estate
234 mortgage loans one hundred percent (100%) insured by the Federal
235 Housing Administration on single family homes located in the State
236 of Mississippi, where monthly collections and all servicing
237 matters are handled by Federal Housing Administration approved
238 mortgagees authorized to make such loans in the State of
239 Mississippi;

240 (ii) State of Mississippi highway bonds;

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

245 (iv) Corporate bonds of investment grade as rated
246 by Standard & Poor's or by Moody's Investment Service, with bonds
247 rated BAA/BBB not to exceed five percent (5%) of the book value of
248 the total fixed income investments; or corporate short-term
249 obligations of corporations or of wholly owned subsidiaries of
250 corporations, whose short-term obligations are rated A-3 or better
251 by Standard and Poor's or rated P-3 or better by Moody's
252 Investment Service;

253 (v) Bonds of the Tennessee Valley Authority;

254 (vi) Bonds, notes, certificates and other valid
255 obligations of the United States, and other valid obligations of
256 any federal instrumentality that issues securities under authority
257 of an act of Congress and are exempt from registration with the
258 Securities and Exchange Commission;

259 (vii) Bonds, notes, debentures and other
260 securities issued by any federal instrumentality and fully
261 guaranteed by the United States. Direct obligations issued by the
262 United States of America shall be deemed to include securities of,



263 or other interests in, any open-end or closed-end management type
264 investment company or investment trust registered under the
265 provisions of 15 USCS Section 80(a)-1 et seq., provided that the
266 portfolio of such investment company or investment trust is
267 limited to direct obligations issued by the United States of
268 America, United States government agencies, United States
269 government instrumentalities or United States government sponsored
270 enterprises, and to repurchase agreements fully collateralized by
271 direct obligations of the United States of America, United States
272 government agencies, United States government instrumentalities or
273 United States government sponsored enterprises, and the investment
274 company or investment trust takes delivery of such collateral for
275 the repurchase agreement, either directly or through an authorized
276 custodian. The State Treasurer and the Executive Director of the
277 Department of Finance and Administration shall review and approve
278 the investment companies and investment trusts in which funds may
279 be invested;

280 (viii) Interest-bearing bonds or notes which are
281 general obligations of any other state in the United States or of
282 any city or county therein, provided such city or county had a
283 population as shown by the federal census next preceding such
284 investment of not less than twenty-five thousand (25,000)
285 inhabitants and provided that such state, city or county has not
286 defaulted for a period longer than thirty (30) days in the payment
287 of principal or interest on any of its general obligation
288 indebtedness during a period of ten (10) calendar years
289 immediately preceding such investment;

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

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



296 (B) The stock of such corporation shall:
297 1. Be listed on a national stock
298 exchange; or
299 2. Be traded in the over-the-counter
300 market, provided price quotations for such over-the-counter stocks
301 are quoted by the National Association of Securities Dealers
302 Automated Quotation System (NASDAQ);

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

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

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

312 (x) Bonds rated Single A or better, stocks and
313 convertible securities of established non-United States companies,
314 which companies are listed on only primary national stock
315 exchanges of foreign nations; and in foreign government securities
316 rated Single A or better by a recognized rating agency; provided
317 that the total book value of investments under this paragraph
318 shall at no time exceed twenty percent (20%) of the total book
319 value of all investments of the system. The board may take
320 requisite action to effectuate or hedge such transactions through
321 foreign banks, including the purchase and sale, transfer, exchange
322 or otherwise disposal of, and generally deal in foreign exchange
323 through the use of foreign currency, interbank forward contracts,
324 futures contracts, options contracts, swaps and other related
325 derivative instruments, notwithstanding any other provisions of
326 this article to the contrary;

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



329 (xii) Institutional investment trusts managed by a
330 corporate trustee or by a Securities and Exchange Commission
331 registered investment advisory firm retained as an investment
332 manager by the board of directors, and institutional class shares
333 of investment companies and unit investment trusts registered
334 under the Investment Company Act of 1940 where such funds or
335 shares are comprised of common or preferred stocks, bonds, money
336 market instruments or other investments authorized under this
337 section. Any investment manager or managers approved by the board
338 of directors shall invest such funds or shares as a fiduciary;

339 (xiii) Pooled or commingled real estate funds or
340 real estate securities managed by a corporate trustee or by a
341 Securities and Exchange Commission registered investment advisory
342 firm retained as an investment manager by the board of directors.
343 Such investment in commingled funds or shares shall be held in
344 trust; provided that the total book value of investments under
345 this paragraph shall at no time exceed five percent (5%) of the
346 total book value of all investments of the system. Any investment
347 manager approved by the board of directors shall invest such
348 commingled funds or shares as a fiduciary;

349 (w) All investments shall be acquired by the board at
350 prices not exceeding the prevailing market values for such
351 securities;

352 (x) Any limitations herein set forth shall be
353 applicable only at the time of purchase and shall not require the
354 liquidation of any investment at any time. All investments shall
355 be clearly marked to indicate ownership by the system and to the
356 extent possible shall be registered in the name of the system;

357 (y) Subject to the above terms, conditions, limitations
358 and restrictions, the board shall have power to sell, assign,
359 transfer and dispose of any of the securities and investments of
360 the system, provided that the sale, assignment or transfer has the
361 majority approval of the entire board. The board may employ or



362 contract with investment managers, evaluation services or other
363 such services as determined by the board to be necessary for the
364 effective and efficient operation of the system;

365 (z) Except as otherwise provided herein, no trustee and
366 no employee of the board shall have any direct or indirect
367 interest in the income, gains or profits of any investment made by
368 the board, nor shall any such person receive any pay or emolument
369 for his services in connection with any investment made by the
370 board. No trustee or employee of the board shall become an
371 endorser or surety, or in any manner an obligor for money loaned
372 by or borrowed from the system;

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

376 (bb) To delegate responsibility for administration of
377 the comprehensive investment plan to a consultant the board
378 determines to be qualified. Such consultant shall be compensated
379 by the board. Directly or through such consultant, the board may
380 contract to provide such services as may be a part of the
381 comprehensive investment plan or as may be deemed necessary or
382 proper by the board or such consultant, including, but not limited
383 to, providing consolidated billing, individual and collective
384 record keeping and accounting, and asset purchase, control and
385 safekeeping;

386 (cc) To annually prepare or cause to be prepared a
387 report setting forth in appropriate detail an accounting of the
388 fund and a description of the financial condition of the program
389 at the close of each fiscal year. Such report shall be submitted
390 to the Governor, the Lieutenant Governor, the President of the
391 Senate, the Speaker of the House of Representatives, and members
392 of the Board of Trustees of State Institutions of Higher Learning,
393 the State Board for Community and Junior Colleges and the State
394 Board of Education on or before March 31 each year. In addition,



395 the board shall make the report available to purchasers of advance
396 payment contracts. The board shall provide to the Board of
397 Trustees of State Institutions of Higher Learning and the State
398 Board for Community and Junior Colleges by March 31 each year
399 complete advance payment contract sales information including
400 projected postsecondary enrollments of beneficiaries. The
401 accounts of the fund shall be subject to annual audits by the
402 State Auditor or his designee;

403 (dd) To solicit proposals for the marketing of the
404 Mississippi Prepaid Affordable College Tuition Program. The
405 entity designated pursuant to this paragraph shall serve as a
406 centralized marketing agent for the program and shall solely be
407 responsible for the marketing of the program. Any materials
408 produced for the purpose of marketing the programs shall be
409 submitted to the board for review. No such materials shall be
410 made available to the public before the materials are approved by
411 the board. Any educational institution may distribute marketing
412 materials produced for the program; however, all such materials
413 shall have been approved by the board prior to distribution.
414 Neither the state nor the board shall be liable for
415 misrepresentation of the program by a marketing agent; and

416 (ee) To establish other policies, procedures and
417 criteria necessary to implement and administer the provisions of
418 this article.

419 For efficient and effective administration of the program and
420 trust fund, the board may authorize the State of Mississippi
421 Treasury Department and/or the State Treasurer to carry out any or
422 all of the powers and duties enumerated above.

423 **SECTION 4.** This act shall take effect and be in force from
424 and after July 1, 2003.

