

*****Adopted*****

AMENDMENT No. 1 PROPOSED TO

Senate Bill NO. 2004

By Senator(s) Burton

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

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

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

97 (2) Successors to the appointed members shall serve for the
98 length of the term for each appointing official and shall be
99 eligible for reappointment, and shall serve until a successor is
100 appointed and qualified. Any person appointed to fill a vacancy
101 on the board shall be appointed in a like manner and shall serve
102 for only the unexpired term.

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

106 (4) Members of the board of directors shall serve without

107 compensation, but shall be reimbursed for each day's official
108 duties of the board at the same per diem as established by Section
109 25-3-69 and actual travel and lodging expenses as established by
110 Section 25-3-41.

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

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

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

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

130 (a) To adopt and amend bylaws;

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

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

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

139 (e) To impose reasonable requirements for residency for
140 beneficiaries at the time of purchase of the contract and to
141 establish rules to govern purchase of contracts for beneficiaries

142 who are nonresidents at the time the purchaser enters into the
143 prepaid tuition contract;

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

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

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

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

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

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

172 (ii) If the beneficiary of a plan described by
173 Section 37-155-11 enrolls in any in-state or out-of-state
174 regionally accredited private four- or two-year college or an
175 out-of-state regionally accredited, state-supported, nonprofit
176 four- or two-year college or university, or any in-state or

177 out-of-state regionally accredited graduate institution, the board
178 shall pay to the institution an amount up to, but not greater
179 than, the undergraduate tuition and required fees that the board
180 would have paid had the beneficiary enrolled in an institution of
181 higher education covered by the plan selected in the prepaid
182 tuition contract. The beneficiary is responsible for paying a
183 private undergraduate or graduate institution or an out-of-state
184 public undergraduate or graduate institution the amount by which
185 the tuition and required fees of the institution exceed the
186 tuition and required fees paid by the board;

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

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

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

192 (n) To sue and be sued;

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

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

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

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

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

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

210 (u) To administer the fund in a manner that is
211 sufficiently actuarially sound to meet the obligations of the

212 program. The board shall annually evaluate or cause to be
213 evaluated the actuarial soundness of the fund. If the board
214 perceives a need for additional assets in order to preserve
215 actuarial soundness, the board may adjust the terms of subsequent
216 advance payment contracts to ensure such soundness;

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

222 (i) Bonds, notes, certificates and other valid
223 general obligations of the State of Mississippi, or of any county,
224 or of any city, or of any supervisors district of any county of
225 the State of Mississippi, or of any school district bonds of the
226 State of Mississippi; notes or certificates of indebtedness issued
227 by the Veterans' Home Purchase Board of Mississippi, provided such
228 notes or certificates of indebtedness are secured by the pledge of
229 collateral equal to two hundred percent (200%) of the amount of
230 the loan, which collateral is also guaranteed at least for fifty
231 percent (50%) of the face value by the United States government,
232 and provided that not more than five percent (5%) of the total
233 investment holdings of the system shall be in Veterans' Home
234 Purchase Board notes or certificates at any time; real estate
235 mortgage loans one hundred percent (100%) insured by the Federal
236 Housing Administration on single family homes located in the State
237 of Mississippi, where monthly collections and all servicing
238 matters are handled by Federal Housing Administration approved
239 mortgagees authorized to make such loans in the State of
240 Mississippi;

241 (ii) State of Mississippi highway bonds;

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

246 (iv) Corporate bonds of investment grade as rated

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

254 (v) Bonds of the Tennessee Valley Authority;

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

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

281 (viii) Interest-bearing bonds or notes which are

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

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

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

297 (B) The stock of such corporation shall:

298 1. Be listed on a national stock
299 exchange; or

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

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

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

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

313 (x) Bonds rated Single A or better, stocks and
314 convertible securities of established non-United States companies,
315 which companies are listed on only primary national stock
316 exchanges of foreign nations; and in foreign government securities

317 rated Single A or better by a recognized rating agency; provided
318 that the total book value of investments under this paragraph
319 shall at no time exceed twenty percent (20%) of the total book
320 value of all investments of the system. The board may take
321 requisite action to effectuate or hedge such transactions through
322 foreign banks, including the purchase and sale, transfer, exchange
323 or otherwise disposal of, and generally deal in foreign exchange
324 through the use of foreign currency, interbank forward contracts,
325 futures contracts, options contracts, swaps and other related
326 derivative instruments, notwithstanding any other provisions of
327 this article to the contrary;

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

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

340 (xiii) Pooled or commingled real estate funds or
341 real estate securities managed by a corporate trustee or by a
342 Securities and Exchange Commission registered investment advisory
343 firm retained as an investment manager by the board of directors.

344 Such investment in commingled funds or shares shall be held in
345 trust; provided that the total book value of investments under
346 this paragraph shall at no time exceed five percent (5%) of the
347 total book value of all investments of the system. Any investment
348 manager approved by the board of directors shall invest such
349 commingled funds or shares as a fiduciary;

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

352 securities;

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

358 (y) Subject to the above terms, conditions, limitations
359 and restrictions, the board shall have power to sell, assign,
360 transfer and dispose of any of the securities and investments of
361 the system, provided that the sale, assignment or transfer has the
362 majority approval of the entire board. The board may employ or
363 contract with investment managers, evaluation services or other
364 such services as determined by the board to be necessary for the
365 effective and efficient operation of the system;

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

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

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

387 (cc) To annually prepare or cause to be prepared a
388 report setting forth in appropriate detail an accounting of the
389 fund and a description of the financial condition of the program
390 at the close of each fiscal year. Such report shall be submitted
391 to the Governor, the Lieutenant Governor, the President of the
392 Senate, the Speaker of the House of Representatives, and members
393 of the Board of Trustees of State Institutions of Higher Learning,
394 the State Board for Community and Junior Colleges and the State
395 Board of Education on or before March 31 each year. In addition,
396 the board shall make the report available to purchasers of advance
397 payment contracts. The board shall provide to the Board of
398 Trustees of State Institutions of Higher Learning and the State
399 Board for Community and Junior Colleges by March 31 each year
400 complete advance payment contract sales information including
401 projected postsecondary enrollments of beneficiaries. The
402 accounts of the fund shall be subject to annual audits by the
403 State Auditor or his designee;

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

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

420 For efficient and effective administration of the program and
421 trust fund, the board may authorize the State of Mississippi

422 Treasury Department and/or the State Treasurer to carry out any or
423 all of the powers and duties enumerated above.

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

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

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.