

By: Senator(s) Dearing

To: Appropriations

SENATE BILL NO. 2170

1 AN ACT TO AMEND SECTION 43-13-409, MISSISSIPPI CODE OF 1972,  
2 TO AUTHORIZE THE BOARD OF DIRECTORS OF THE HEALTH CARE TRUST FUND  
3 TO HIRE INDEPENDENT COUNSEL TO RECOVER ANY FUNDS DIVERTED OR  
4 DIRECTED AWAY FROM THE TRUST; TO FURTHER AUTHORIZE THE TRUST TO  
5 BRING ANY OTHER CIVIL ACTION NECESSARY AGAINST ANY PERSON OR  
6 PERSONS WHO CAUSED OR PARTICIPATED IN DIRECTING OR DIVERTING FUNDS  
7 FROM THE TRUST; AND FOR RELATED PURPOSES.

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

9 SECTION 1. Section 43-13-409, Mississippi Code of 1972, is  
10 amended as follows:

11 43-13-409. (1) There is established a board of directors to  
12 invest the funds in the Health Care Trust Fund and the Health Care  
13 Expendable Fund. The board of directors shall consist of thirteen  
14 (13) members as follows:

15 (a) Seven (7) voting members as follows: the State  
16 Treasurer, or his designee, the Executive Director of the  
17 Department of Finance and Administration, or his designee, and one  
18 (1) member from each congressional district to be appointed by the  
19 Governor with the advice and consent of the Senate. Of the  
20 members appointed by the Governor, one (1) member shall be  
21 appointed for an initial term that expires on March 1, 2000; one  
22 (1) member shall be appointed for an initial term that expires on  
23 March 1, 2001; one (1) member shall be appointed for an initial  
24 term that expires on March 1, 2002; one (1) member shall be  
25 appointed for an initial term that expires on March 1, 2003; and  
26 one (1) member shall be appointed for an initial term that expires  
27 on March 1, 2004. Upon the expiration of any of the initial terms  
28 of office, the Governor shall appoint successors by and with the  
29 advice and consent of the Senate for terms of five (5) years from

30 the expiration date of the previous term. Any member appointed by  
31 the Governor shall be eligible for reappointment. Each member  
32 appointed by the Governor shall possess knowledge, skill and  
33 experience in business or financial matters commensurate with the  
34 duties and responsibilities of the board of directors in  
35 administering the Health Care Trust Fund and the Health Care  
36 Expendable Fund.

37 (b) Two (2) nonvoting, advisory members of the Senate  
38 shall be appointed by the Lieutenant Governor, and one (1)  
39 nonvoting, advisory representative of the health care community  
40 shall be appointed by the Lieutenant Governor, who shall serve for  
41 the length of the term of the appointing official and shall be  
42 eligible for reappointment.

43 (c) Two (2) nonvoting, advisory members of the House of  
44 Representatives shall be appointed by the Speaker of the House,  
45 and one (1) nonvoting, advisory representative of the health care  
46 community shall be appointed by the Speaker of the House, who  
47 shall serve for the length of the term of the appointing official  
48 and shall be eligible for reappointment.

49 (d) Any person appointed to fill a vacancy on the board  
50 of directors shall be appointed in the same manner as for a  
51 regular appointment and shall serve for the remainder of the  
52 unexpired term only.

53 (2) Nonlegislative members of the board of directors shall  
54 serve without compensation, but shall be reimbursed for each day's  
55 official duties of the board at the same per diem as established  
56 by Section 25-3-69, and actual travel and lodging expenses as  
57 established by Section 25-3-41. Legislative members of the board  
58 of directors shall receive the same per diem and expense  
59 reimbursement as for attending committee meetings when the  
60 Legislature is not in regular session.

61 (3) The State Treasurer shall be the chairman of the board  
62 of directors. The board of directors shall annually elect one (1)

63 member to serve as vice chairman of the board. The vice chairman  
64 shall act as chairman in the absence of or upon the disability of  
65 the chairman or if there is a vacancy in the office of chairman.

66 (4) All expenses of the board of directors in carrying out  
67 its duties and responsibilities under this article, including the  
68 payment of per diem and expenses of the nonlegislative members of  
69 the board, shall be paid from funds appropriated to the State  
70 Treasurer's office for that purpose.

71 (5) The board of directors shall invest the funds in the  
72 Health Care Trust Fund and the Health Care Expendable Fund in any  
73 of the investments authorized for the Mississippi Prepaid  
74 Affordable College Tuition Program under Section 37-155-9, and  
75 those investments shall be subject to the limitations prescribed  
76 by Section 37-155-9.

77 (6) In furtherance of the powers granted under subsection  
78 (5) of this section, the board of directors shall have such powers  
79 as necessary or convenient to carry out the purposes and  
80 provisions of this article, including, but not limited to, the  
81 following express powers:

82 (a) To contract for necessary goods and services, to  
83 employ necessary personnel, and to engage the services of  
84 consultants for administrative and technical assistance in  
85 carrying out its duties and responsibilities in administering the  
86 Health Care Trust Fund and the Health Care Expendable Fund;

87 (b) To administer the Health Care Trust Fund and the  
88 Health Care Expendable Fund in a manner that is sufficiently  
89 actuarially sound to meet the obligations of this article and to  
90 establish a comprehensive investment plan for the purposes of this  
91 article, which shall specify the investment policies to be  
92 utilized by the board of directors in administering the funds;

93 (c) Subject to the terms, conditions, limitations and  
94 restrictions specified in Section 37-155-9, the board of directors  
95 shall have power to sell, assign, transfer and dispose of any of

96 the securities and investments of the Health Care Trust Fund and  
97 the Health Care Expendable Fund, provided that any such sale,  
98 assignment or transfer has the majority approval of the entire  
99 board; and

100 (d) To annually prepare or cause to be prepared a  
101 report setting forth in appropriate detail an accounting of the  
102 Health Care Trust Fund and the Health Care Expendable Fund and a  
103 description of the financial condition of the funds at the close  
104 of each fiscal year, including any recommendations for legislation  
105 regarding the investment authority of the board of directors over  
106 the funds. The report shall be submitted to the Governor and the  
107 Legislative Budget Office on or before September 1 of each fiscal  
108 year.

109 (e) Shall, from funds appropriated by the Legislature,  
110 hire independent counsel to bring any suit necessary to recover  
111 for the trust any funds that have been diverted or otherwise  
112 directed to persons, entities, or accounts other than the trust to  
113 bring any civil action the board deems appropriate against any  
114 person who caused or participated in any action which resulted in  
115 the directing or diverting of trust funds to a person, entity, or  
116 account other than the trust. The board shall have the exclusive  
117 authority to hire such counsel without approval or oversight from  
118 any other person or officer.

119 **SECTION 2.** This act shall take effect and be in force from  
120 and after July 1, 2004.