

By: Representatives Denny, Beckett,  
Ellington, Formby, Mayhall, Moore, Snowden,  
Wells-Smith

To: Appropriations

## HOUSE BILL NO. 1226

1 AN ACT TO AMEND SECTION 43-13-407, MISSISSIPPI CODE OF 1972,  
2 TO DIRECT THE BOARD OF DIRECTORS OF THE HEALTH CARE TRUST FUND AND  
3 EXPENDABLE FUND AND THE DIVISION OF MEDICAID TO EMPLOY PRIVATE  
4 COUNSEL AS NECESSARY TO PETITION THE MISSISSIPPI SUPREME COURT OR  
5 PROPER TRIAL COURT TO ORDER THE TRANSFER OF CERTAIN TOBACCO  
6 SETTLEMENT MONIES FROM THE ACCOUNT OF THE PARTNERSHIP FOR A  
7 HEALTHY MISSISSIPPI, INC., TO THE HEALTH CARE EXPENDABLE FUND, AND  
8 TO ORDER THAT ALL FUTURE ANNUAL DIVERSIONS OF TOBACCO SETTLEMENT  
9 MONIES INTO THAT ACCOUNT BE PAID INTO THE HEALTH CARE EXPENDABLE  
10 FUND; TO AMEND SECTION 43-13-405, MISSISSIPPI CODE OF 1972, TO  
11 PROVIDE THAT ALL TOBACCO SETTLEMENT INSTALLMENT PAYMENTS SHALL BE  
12 DEPOSITED INTO THE HEALTH CARE TRUST FUND EXCEPT AS OTHERWISE  
13 PROVIDED BY STATUTE; TO AMEND SECTIONS 27-103-103, 27-104-13 AND  
14 31-17-123, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT COURT-ORDERED  
15 PAYMENTS TO ANY STATE AGENCY SHALL BE CONSIDERED "STATE-SOURCE  
16 SPECIAL FUNDS" AND SUBJECT TO BUDGETING AND LEGISLATIVE  
17 APPROPRIATION; AND FOR RELATED PURPOSES.

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

19 **SECTION 1.** Section 43-13-407, Mississippi Code of 1972, is  
20 amended as follows:

21 43-13-407. (1) In accordance with the purposes of this  
22 article, there is established in the State Treasury the Health  
23 Care Expendable Fund, into which shall be transferred from the  
24 Health Care Trust Fund the following sums:

25 (a) In fiscal year 2005, Two Hundred Sixteen Million  
26 Dollars (\$216,000,000.00);

27 (b) In fiscal year 2006, One Hundred Eighty-six Million  
28 Dollars (\$186,000,000.00);

29 (c) In fiscal year 2007, One Hundred Forty-six Million  
30 Dollars (\$146,000,000.00);

31 (d) In fiscal year 2008, One Hundred Six Million  
32 Dollars (\$106,000,000.00);

33 (e) In fiscal year 2009, Sixty-six Million Dollars  
34 (\$66,000,000.00);

35           (f) In fiscal year 2010 and each fiscal year  
36 thereafter, a sum equal to the average annual amount of the  
37 dividends, interest and other income, including increases in value  
38 of the principal, earned on the funds in the Health Care Trust  
39 Fund during the preceding four (4) fiscal years.

40           (2) In any fiscal year in which interest, dividends and  
41 other income from the investment of the funds in the Health Care  
42 Trust Fund are not sufficient to fund the full amount of the  
43 annual transfer into the Health Care Expendable Fund as required  
44 in subsection (1)(f) of this section, the State Treasurer shall  
45 transfer from tobacco settlement installment payments an amount  
46 that is sufficient to fully fund the amount of the annual  
47 transfer.

48           (3) (a) On March 6, 2002, the State Treasurer shall  
49 transfer the sum of Eighty-seven Million Dollars (\$87,000,000.00)  
50 from the Health Care Trust Fund into the Health Care Expendable  
51 Fund. In addition, at the time the State of Mississippi receives  
52 the tobacco settlement installment payments for each of the  
53 calendar years 2002 and 2003, the State Treasurer shall deposit  
54 the full amount of each of those installment payments into the  
55 Health Care Expendable Fund.

56           (b) If during any fiscal year after March 6, 2002, the  
57 general fund revenues received by the state exceed the general  
58 fund revenues received during the previous fiscal year by more  
59 than five percent (5%), the Legislature shall repay to the Health  
60 Care Trust Fund one-third (1/3) of the amount of the general fund  
61 revenues that exceed the five percent (5%) growth in general fund  
62 revenues. The repayment required by this paragraph shall continue  
63 in each fiscal year in which there is more than five percent (5%)  
64 growth in general fund revenues, until the full amount of the  
65 funds that were transferred and deposited into the Health Care  
66 Expendable Fund under the provisions of paragraph (a) of this  
67 subsection have been repaid to the Health Care Trust Fund.

68 (4) All income from the investment of the funds in the  
69 Health Care Expendable Fund shall be credited to the account of  
70 the Health Care Expendable Fund. Any funds in the Health Care  
71 Expendable Fund at the end of a fiscal year shall not lapse into  
72 the State General Fund.

73 (5) The funds in the Health Care Expendable Fund shall be  
74 available for expenditure under specific appropriation by the  
75 Legislature beginning in fiscal year 2000, and shall be expended  
76 exclusively for health care purposes.

77 (6) The provisions of subsection (1) of this section may not  
78 be changed in any manner except upon amendment to that subsection  
79 by a bill enacted by the Legislature with a vote of not less than  
80 three-fifths (3/5) of the members of each house present and  
81 voting.

82 (7) The Board of Directors for the Health Care Trust Fund  
83 and the Health Care Expendable Fund shall employ private counsel  
84 as necessary to file any petition, writ or other civil action with  
85 the Mississippi Supreme Court under its original jurisdiction or a  
86 trial court of proper jurisdiction, that is necessary to (a) set  
87 aside the order of the Chancery Court of Jackson County,  
88 Mississippi, in the case of In Re Mike Moore, Attorney General, Ex  
89 Rel. State of Mississippi Tobacco Litigation, Cause No. 94-1429,  
90 that directed tobacco litigation payments to the Partnership for a  
91 Healthy Mississippi, Inc., and (b) immediately transfer not less  
92 than Forty Million Dollars (\$40,000,000.00) of the tobacco  
93 settlement monies from the account of the Partnership for a  
94 Healthy Mississippi, Inc., to the Health Care Expendable Fund, and  
95 (c) order that all future annual diversions of tobacco settlement  
96 monies into that account shall likewise be paid into the Health  
97 Care Expendable Fund. The Division of Medicaid, Office of the  
98 Governor, may employ private counsel as necessary to join as a  
99 party to that petition or action. If the Attorney General  
100 intervenes in objection to the transfer of those funds as

101 contemplated by this subsection, the Board of Directors for the  
102 Health Care Trust Fund and Expendable Fund shall employ private  
103 counsel as necessary to proceed against any person or persons who  
104 may have violated their fiduciary duty to the trust fund by  
105 advocating the court order directing the annual diversion of  
106 tobacco settlement monies to the Partnership for a Healthy  
107 Mississippi, Inc.

108 (8) Subsections (1), (2), (4) and (5) of this section shall  
109 stand repealed on July 1, 2009.

110 **SECTION 2.** Section 43-13-405, Mississippi Code of 1972, is  
111 amended as follows:

112 43-13-405. (1) In accordance with the purposes of this  
113 article, there is established in the State Treasury the Health  
114 Care Trust Fund, into which shall be deposited Two Hundred Eighty  
115 Million Dollars (\$280,000,000.00) of the funds received by the  
116 State of Mississippi as a result of the tobacco settlement as of  
117 the end of fiscal year 1999, and all tobacco settlement  
118 installment payments made in subsequent years \* \* \*, except as  
119 otherwise provided in Section 43-13-407(2), (3) and (7). All  
120 income from the investment of the funds in the Health Care Trust  
121 Fund shall be credited to the account of the Health Care Trust  
122 Fund. The funds in the Health Care Trust Fund at the end of a  
123 fiscal year shall not lapse into the State General Fund.

124 (2) The Health Care Trust Fund shall remain inviolate and  
125 shall never be expended, except as provided in this article. The  
126 Legislature shall appropriate from the Health Care Trust Fund such  
127 sums as are necessary to recoup any funds lost as a result of any  
128 of the following actions:

129 (a) The federal Centers for Medicare and Medicaid  
130 Services, or other agency of the federal government, is successful  
131 in recouping tobacco settlement funds from the State of  
132 Mississippi;

133           (b) The federal share of funds for the support of the  
134 Mississippi Medicaid Program is reduced directly or indirectly as  
135 a result of the tobacco settlement;

136           (c) Federal funding for any other program is reduced as  
137 a result of the tobacco settlement; or

138           (d) Tobacco cessation programs are mandated by the  
139 federal government or court order.

140           (3) This section shall stand repealed on July 1, 2006.

141           **SECTION 3.** Section 27-103-103, Mississippi Code of 1972, is  
142 amended as follows:

143           27-103-103. (1) For the purpose of Sections 27-103-101  
144 through 27-103-139 and 27-104-1 through 27-104-27, the term "state  
145 general fund agency" or "general fund agency" shall mean any  
146 agency, department, institution, board or commission of the State  
147 of Mississippi which is supported in whole or in part by  
148 appropriations from the General Fund; but such term shall not  
149 include the Legislature.

150           (2) For the purposes of Sections 27-103-101 through  
151 27-103-139 and 27-104-1 through 27-104-27, the term "state special  
152 fund agency" or "special fund agency" shall mean any agency,  
153 department, institution, board or commission of the State of  
154 Mississippi which receives no appropriation from the General Fund,  
155 but which is supported entirely from special fund sources, by  
156 appropriation, or otherwise, but such term shall not include the  
157 State Highway Department; nor shall such term include the  
158 Mississippi Industries for the Blind.

159           (3) For the purposes of Sections 27-103-101 through  
160 27-103-139 and 27-104-1 through 27-104-27, the term "state agency"  
161 shall mean any general fund agency or special fund agency as  
162 defined in this section, or the State Highway Department, or the  
163 Division of State Aid Road Construction of the State Highway  
164 Department as is evident from the context wherein it is used.

165           (4) For the purposes of Sections 27-103-101 through  
166 27-103-139 and 27-104-1 through 27-104-27, the term "special  
167 funds" shall mean all revenues and/or income other than  
168 appropriations from the State General Fund which are received,  
169 collected by, or available for the support of or expenditure by  
170 any state general fund agency or special fund agency or the State  
171 Highway Department or the Division of State Aid Road Construction  
172 of the State Highway Department, whether such funds be derived  
173 from taxes or fees collected by or for such general fund agency or  
174 special fund agency or the State Highway Department or the  
175 Division of State Aid Road Construction of the State Highway  
176 Department, as the case may be, or from any other types of revenue  
177 from any other source.

178           (5) For the purposes of Sections 27-103-101 through  
179 27-103-139 and 27-104-1 through 27-104-27, the term "special  
180 funds" shall include revolving funds and all funds received from  
181 the United States government by any state general fund agency or  
182 special fund agency, but shall not include any revolving fund  
183 established prior to July 1, 1984, for the purpose of paying or  
184 retiring any indebtedness as is authorized by statute.

185           (6) For the purposes of Sections 27-103-101 through  
186 27-103-139 and 27-104-1 through 27-104-27, the term "special  
187 funds" shall include any court-ordered settlement payments or  
188 other payments received by any state general fund agency or  
189 special fund agency as the result of litigation.

190           **SECTION 4.** Section 27-104-13, Mississippi Code of 1972, is  
191 amended as follows:

192           27-104-13. The State Fiscal Officer shall have the right to  
193 disapprove or reduce and revise such estimates of general funds  
194 and state-source special funds for any general fund or special  
195 fund agency, and for the "administration and other expenses"  
196 budget of the State Highway Department, in an amount not to exceed  
197 five percent (5%) if he finds that funds will not be available

198 within the period for which the budget is drawn, or if he finds  
199 that the requested expenditures, or any part thereof, are not  
200 authorized by law, and such action shall be reported to the  
201 Legislative Budget Office. The State Fiscal Officer may, upon his  
202 determination of need based upon a finding that funds will not be  
203 available within the period for which the budget is drawn,  
204 transfer funds as provided in Section 27-103-203, from the Working  
205 Cash-Stabilization Reserve Fund to the General Fund to supplement  
206 the general fund revenue. In the event that the estimates of  
207 general funds and state-source special funds of all general fund  
208 and special fund agencies, and of the "administration and other  
209 expenses" budget of the State Highway Department, have been  
210 reduced by five percent (5%), additional reductions may be made  
211 but shall consist of a uniform percentage reduction of general  
212 funds and state-source special funds to all general fund and  
213 special fund agencies, and to the "administration and other  
214 expenses" budget of the State Highway Department. Any  
215 state-source special funds reduced under the provisions of this  
216 section shall be transferred to the State General Fund upon  
217 requisitions for warrants signed by the respective agency head and  
218 said transfer shall be made within a reasonable period to be  
219 determined by the State Fiscal Officer.

220 For the purpose of this section, "state-source special funds"  
221 shall be construed to mean any special funds in any agency derived  
222 from any source, including any court-ordered settlement payments  
223 or other payments received by a state general fund agency or  
224 special fund agency as the result of litigation, but shall not  
225 include the following special funds: special funds derived from  
226 federal sources, from local or regional political subdivisions, or  
227 from donations; special funds held in a fiduciary capacity for the  
228 benefit of specific persons or classes of persons; self-generated  
229 special funds of the state institutions of higher learning or the  
230 state junior colleges; special funds of Mississippi Industries for

231 the Blind, the State Port at Gulfport, Yellow Creek Inland Port,  
232 Pat Harrison Waterway District, Pearl River Basin Development  
233 District, Pearl River Valley Water Management District, Tombigbee  
234 River Valley Water Management District, Yellow Creek Watershed  
235 Authority, or Coast Coliseum Commission; special funds of the  
236 Department of Wildlife, Fisheries and Parks derived from the  
237 issuance of hunting or fishing licenses; and special funds  
238 generated by agencies whose primary function includes the  
239 establishment of standards and the issuance of licenses for the  
240 practice of a profession within the State of Mississippi.

241 **SECTION 5.** Section 31-17-123, Mississippi Code of 1972, is  
242 amended as follows:

243 31-17-123. The intent of the Legislature is to authorize  
244 borrowing funds under the provisions of Sections 31-17-101 through  
245 31-17-123 to offset any temporary cash flow deficiencies and  
246 should not be construed to authorize the borrowing of any funds in  
247 an amount which cannot be repaid during the fiscal year in which  
248 such funds are borrowed. The State Tax Commission and University  
249 Research Center, utilizing all available revenue forecast data,  
250 shall annually develop a general fund revenue estimate to be  
251 adopted by the Legislative Budget Office as of the date of sine  
252 die adjournment. If, at the end of October, or at the end of any  
253 month thereafter of any fiscal year, the revenues received for the  
254 fiscal year shall fall below ninety-eight percent (98%) of the  
255 Legislative Budget Office general fund revenue estimate at the  
256 date of sine die adjournment, the State Fiscal Officer shall  
257 reduce allocations of general funds and state-source special funds  
258 to general fund and special fund agencies and to the  
259 "administration and other expenses" budget of the State Highway  
260 Department in an amount necessary to keep expenditures within the  
261 sum of actual general fund receipts including any transfers to the  
262 General Fund from the Working Cash-Stabilization Reserve Fund for  
263 the fiscal year. The State Fiscal Officer may, upon his



264 determination of need based on the revenue shortfall, transfer  
265 funds as provided in Section 27-103-203, from the Working  
266 Cash-Stabilization Reserve Fund to the General Fund to supplement  
267 the general fund revenue. State-source special funds in an amount  
268 equal to any reduction made under the provisions of this section  
269 shall be transferred to the State General Fund upon requisitions  
270 for warrants signed by the respective agency head and such  
271 transfer shall be made within a reasonable period to be determined  
272 by the State Fiscal Officer. No agency's allocation shall be  
273 reduced in an amount to exceed five percent (5%); however, in the  
274 event that the allocations of general funds and state-source  
275 special funds to all general fund and special fund agencies and to  
276 the "administration and other expenses" budget of the State  
277 Highway Department have been reduced by five percent (5%), any  
278 additional reductions required to be made hereunder shall consist  
279 of a uniform percentage reduction of general funds and  
280 state-source special funds to all general fund and special fund  
281 agencies, and to the "administration and other expenses" budget of  
282 the State Highway Department. Any receipt from loans authorized  
283 by Sections 31-17-101 through 31-17-123 shall not be included as  
284 revenue receipts. The State Fiscal Officer shall immediately send  
285 notice of any action taken under authority of this section to the  
286 Legislative Budget Office.

287 For the purpose of this section, "state-source special funds"  
288 shall be construed to mean any special funds in any agency derived  
289 from any source, including any court-ordered settlement payments  
290 or other payments received by a state general fund agency or  
291 special fund agency as the result of litigation, but shall not  
292 include the following special funds: special funds derived from  
293 federal sources, from local or regional political subdivisions, or  
294 from donations; special funds held in a fiduciary capacity for the  
295 benefit of specific persons or classes of persons; self-generated  
296 special funds of the state institutions of higher learning or the

297 state junior colleges; special funds of Mississippi Industries for  
298 the Blind, the State Port at Gulfport, Yellow Creek Inland Port,  
299 Pat Harrison Waterway District, Pearl River Basin Development  
300 District, Pearl River Valley Water Management District, Tombigbee  
301 River Valley Water Management District, Yellow Creek Watershed  
302 Authority, or Coast Coliseum Commission; special funds of the  
303 Department of Wildlife, Fisheries and Parks derived from the  
304 issuance of hunting or fishing licenses; and special funds  
305 generated by agencies whose primary function includes the  
306 establishment of standards and the issuance of licenses for the  
307 practice of a profession within the State of Mississippi.

308       **SECTION 6.** This act shall take effect and be in force from  
309 and after its passage.