

By: Representative Denny

To: Appropriations

## HOUSE BILL NO. 66

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 AND 27-104-13,  
14 MISSISSIPPI CODE OF 1972, TO CLARIFY THAT COURT-ORDERED PAYMENTS  
15 TO ANY STATE AGENCY SHALL BE CONSIDERED "STATE-SOURCE SPECIAL  
16 FUNDS" AND SUBJECT TO BUDGETING AND LEGISLATIVE APPROPRIATION; AND  
17 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, Four Hundred Fifty-six Million  
26 Dollars (\$456,000,000.00);

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) The total sum of Two Hundred Forty Million Dollars  
69   (\$240,000,000.00) plus interest at the rate of five percent (5%)  
70   per annum shall be transferred into the Health Care Trust Fund  
71   from the State General Fund during fiscal years 2007 through 2013  
72   to repay the trust fund for Two Hundred Forty Million Dollars  
73   (\$240,000,000.00) of the total sum that is transferred from the  
74   trust fund to the Health Care Expendable Fund during fiscal year  
75   2005 under subsection (1)(a) of this section. The repayment shall  
76   be made according to the following schedule: During each of  
77   fiscal years 2007 through 2012, the State Fiscal Officer shall  
78   transfer from the General Fund to the Health Care Trust Fund the  
79   sum of Thirty-eight Million Dollars (\$38,000,000.00), and during  
80   fiscal year 2013 the State Fiscal Officer shall transfer from the  
81   State General Fund to the Health Care Trust Fund a sum in the  
82   amount certified by the State Treasurer as necessary to fully  
83   repay the balance of the Two Hundred Forty Million Dollars  
84   (\$240,000,000.00) plus interest at the rate of five percent (5%)  
85   per annum.

86           (5) All income from the investment of the funds in the  
87   Health Care Expendable Fund shall be credited to the account of  
88   the Health Care Expendable Fund. Any funds in the Health Care  
89   Expendable Fund at the end of a fiscal year shall not lapse into  
90   the State General Fund.

91           (6) The funds in the Health Care Expendable Fund shall be  
92   available for expenditure under specific appropriation by the  
93   Legislature beginning in fiscal year 2000, and shall be expended  
94   exclusively for health care purposes.

95           (7) The provisions of subsection (1) of this section may not  
96   be changed in any manner except upon amendment to that subsection  
97   by a bill enacted by the Legislature with a vote of not less than  
98   three-fifths (3/5) of the members of each house present and  
99   voting.

100       (8) The Board of Directors for the Health Care Trust Fund  
101 and the Health Care Expendable Fund shall employ private counsel  
102 as necessary to file any petition, writ or other civil action with  
103 the Mississippi Supreme Court under its original jurisdiction or a  
104 trial court of proper jurisdiction, that is necessary to (a) set  
105 aside the order of the Chancery Court of Jackson County,  
106 Mississippi, in the case of In Re Mike Moore, Attorney General, Ex  
107 Rel. State of Mississippi Tobacco Litigation, Cause No. 94-1429,  
108 that directed tobacco litigation payments to the Partnership for a  
109 Healthy Mississippi, Inc., and (b) immediately transfer not less  
110 than Forty Million Dollars (\$40,000,000.00) of the tobacco  
111 settlement monies from the account of the Partnership for a  
112 Healthy Mississippi, Inc., to the Health Care Expendable Fund, and  
113 (c) order that all future annual diversions of tobacco settlement  
114 monies into that account shall likewise be paid into the Health  
115 Care Expendable Fund. The Division of Medicaid, Office of the  
116 Governor, may employ private counsel as necessary to join as a  
117 party to that petition or action. If the Attorney General  
118 intervenes in objection to the transfer of those funds as  
119 contemplated by this subsection, the Board of Directors for the  
120 Health Care Trust Fund and Expendable Fund shall employ private  
121 counsel as necessary to proceed against any person or persons who  
122 may have violated their fiduciary duty to the trust fund by  
123 advocating the court order directing the annual diversion of  
124 tobacco settlement monies to the Partnership for a Healthy  
125 Mississippi, Inc.

126       (9) Subsections (1), (2), (5) and (6) of this section shall  
127 stand repealed on July 1, 2009.

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

130       43-13-405. (1) In accordance with the purposes of this  
131 article, there is established in the State Treasury the Health  
132 Care Trust Fund, into which shall be deposited Two Hundred Eighty

133 Million Dollars (\$280,000,000.00) of the funds received by the  
134 State of Mississippi as a result of the tobacco settlement as of  
135 the end of fiscal year 1999, and all tobacco settlement  
136 installment payments made in subsequent years \* \* \*, except as  
137 otherwise provided in Section 43-13-407(2), (3) and (8). All  
138 income from the investment of the funds in the Health Care Trust  
139 Fund shall be credited to the account of the Health Care Trust  
140 Fund. The funds in the Health Care Trust Fund at the end of a  
141 fiscal year shall not lapse into the State General Fund.

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

147 (a) The federal Centers for Medicare and Medicaid  
148 Services, or other agency of the federal government, is successful  
149 in recouping tobacco settlement funds from the State of  
150 Mississippi;

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

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

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

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

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

161 27-103-103. (1) For the purpose of Sections 27-103-101  
162 through 27-103-139 and 27-104-1 through 27-104-27, the term "state  
163 general fund agency" or "general fund agency" shall mean any  
164 agency, department, institution, board or commission of the State  
165 of Mississippi which is supported in whole or in part by

166 appropriations from the General Fund; but such term shall not  
167 include the Legislature.

168 (2) For the purposes of Sections 27-103-101 through  
169 27-103-139 and 27-104-1 through 27-104-27, the term "state special  
170 fund agency" or "special fund agency" shall mean any agency,  
171 department, institution, board or commission of the State of  
172 Mississippi which receives no appropriation from the General Fund,  
173 but which is supported entirely from special fund sources, by  
174 appropriation, or otherwise, but such term shall not include the  
175 State Highway Department; nor shall such term include the  
176 Mississippi Industries for the Blind.

177 (3) For the purposes of Sections 27-103-101 through  
178 27-103-139 and 27-104-1 through 27-104-27, the term "state agency"  
179 shall mean any general fund agency or special fund agency as  
180 defined in this section, or the State Highway Department, or the  
181 Division of State Aid Road Construction of the State Highway  
182 Department as is evident from the context wherein it is used.

183 (4) For the purposes of Sections 27-103-101 through  
184 27-103-139 and 27-104-1 through 27-104-27, the term "special  
185 funds" shall mean all revenues and/or income other than  
186 appropriations from the State General Fund which are received,  
187 collected by, or available for the support of or expenditure by  
188 any state general fund agency or special fund agency or the State  
189 Highway Department or the Division of State Aid Road Construction  
190 of the State Highway Department, whether such funds be derived  
191 from taxes or fees collected by or for such general fund agency or  
192 special fund agency or the State Highway Department or the  
193 Division of State Aid Road Construction of the State Highway  
194 Department, as the case may be, or from any other types of revenue  
195 from any other source.

196 (5) For the purposes of Sections 27-103-101 through  
197 27-103-139 and 27-104-1 through 27-104-27, the term "special  
198 funds" shall include revolving funds and all funds received from

199 the United States government by any state general fund agency or  
200 special fund agency, but shall not include any revolving fund  
201 established prior to July 1, 1984, for the purpose of paying or  
202 retiring any indebtedness as is authorized by statute.

203 (6) For the purposes of Sections 27-103-101 through  
204 27-103-139 and 27-104-1 through 27-104-27, the term "special  
205 funds" shall include any court-ordered settlement payments or  
206 other payments received by any state general fund agency or  
207 special fund agency as the result of litigation.

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

210 27-104-13. (1) The State Fiscal Officer may disapprove or  
211 reduce and revise the estimates of general funds and state-source  
212 special funds for any general fund or special fund agency and for  
213 the "administration and other expenses" budget of the Mississippi  
214 Department of Transportation, in an amount not to exceed five  
215 percent (5%), if at any time he finds that funds will not be  
216 available within the period for which the budget is drawn, or if  
217 at any time he finds that the requested expenditures, or any part  
218 thereof, are not authorized by law, and that action shall be  
219 reported to the Legislative Budget Office.

220 The State Fiscal Officer may, upon his determination of need  
221 based upon a finding that funds will not be available within the  
222 period for which the budget is drawn, transfer funds as provided  
223 in Section 27-103-203, from the Working Cash-Stabilization Reserve  
224 Fund to the General Fund to supplement the general fund revenue.

225 If the estimates of general funds and state-source special  
226 funds of all general fund and special fund agencies and of the  
227 "administration and other expenses" budget of the Mississippi  
228 Department of Transportation have been reduced by five percent  
229 (5%), additional reductions may be made, but shall consist of a  
230 uniform percentage reduction of general funds and state-source  
231 special funds to all general fund and special fund agencies and to

232 the "administration and other expenses" budget of the Mississippi  
233 Department of Transportation.

234 Any state-source special funds reduced under the provisions  
235 of this subsection (1) shall be transferred to the State General  
236 Fund upon requisitions for warrants signed by the respective  
237 agency head, and the transfer shall be made within a reasonable  
238 period to be determined by the State Fiscal Officer.

239 (2) The State Tax Commission and University Research Center,  
240 utilizing all available revenue forecast data, shall annually  
241 develop a general fund revenue estimate to be adopted by the  
242 Legislative Budget Office as of the date of sine die adjournment.

243 If, at the end of October, or at the end of any month  
244 thereafter of any fiscal year, the revenues received for the  
245 fiscal year fall below ninety-eight percent (98%) of the  
246 Legislative Budget Office general fund revenue estimate at the  
247 date of sine die adjournment, the State Fiscal Officer shall  
248 reduce allocations of general funds and state-source special funds  
249 to general fund and special fund agencies and to the  
250 "administration and other expenses" budget of the Mississippi  
251 Department of Transportation, in an amount necessary to keep  
252 expenditures within the sum of actual general fund receipts,  
253 including any transfers to the General Fund from the Working  
254 Cash-Stabilization Reserve Fund for the fiscal year.

255 The State Fiscal Officer may, upon his determination of need  
256 based on the revenue shortfall, transfer funds as provided in  
257 Section 27-103-203 from the Working Cash-Stabilization Reserve  
258 Fund to the General Fund to supplement the general fund revenue.  
259 State-source special funds in an amount equal to any reduction  
260 made under the provisions of this subsection (2) shall be  
261 transferred to the State General Fund upon requisitions for  
262 warrants signed by the respective agency head, and the transfer  
263 shall be made within a reasonable period to be determined by the  
264 State Fiscal Officer.



265 No agency's allocation shall be reduced in an amount to  
266 exceed five percent (5%); however, if the allocations of general  
267 funds and state-source special funds to all general fund and  
268 special fund agencies and to the "administration and other  
269 expenses" budget of the Mississippi Department of Transportation  
270 have been reduced by five percent (5%), any additional reductions  
271 required to be made under this subsection (2) shall consist of a  
272 uniform percentage reduction of general funds and state-source  
273 special funds to all general fund and special fund agencies and to  
274 the "administration and other expenses" budget of the Mississippi  
275 Department of Transportation. Any receipt from loans authorized  
276 by Sections 31-17-101 through 31-17-123 shall not be included as  
277 revenue receipts.

278 The State Fiscal Officer shall immediately send notice of any  
279 action taken under authority of this subsection (2) to the  
280 Legislative Budget Office.

281 (3) For the purpose of this section, the term "state-source  
282 special funds" means any special funds in any agency derived from  
283 any source, including any court-ordered settlement payments or  
284 other payments received by a state general fund agency or special  
285 fund agency as the result of litigation, but shall not include the  
286 following special funds: special funds derived from federal  
287 sources, from local or regional political subdivisions, from  
288 agricultural commodity assessments, or from donations; special  
289 funds held in a fiduciary capacity for the benefit of specific  
290 persons or classes of persons; self-generated special funds of the  
291 state institutions of higher learning or the state community or  
292 junior colleges; special funds of Mississippi Industries for the  
293 Blind, the State Port at Gulfport, Yellow Creek Inland Port, Pat  
294 Harrison Waterway District, Pearl River Basin Development  
295 District, Pearl River Valley Water Management District, Tombigbee  
296 River Valley Water Management District, Yellow Creek Watershed  
297 Authority, or Coast Coliseum Commission; special funds of the

298 Department of Wildlife, Fisheries and Parks derived from the  
299 issuance of hunting or fishing licenses; and special funds  
300 generated by agencies whose primary function includes the  
301 establishment of standards and the issuance of licenses for the  
302 practice of a profession within the State of Mississippi.

303         **SECTION 5.** This act shall take effect and be in force from  
304 and after its passage.