

By: Representative Denny

To: Judiciary A

HOUSE BILL NO. 1112

1 AN ACT TO CREATE THE UNIFORM PRUDENT INVESTOR ACT; TO ENACT
2 THE PRUDENT INVESTOR RULE; TO SPECIFY THE STANDARD OF CARE; TO
3 ENCOURAGE DIVERSIFICATION IN INVESTMENTS; TO PRESCRIBE TRUSTEE
4 DUTIES; TO PROHIBIT UNREASONABLE INVESTMENT COSTS; TO SPECIFY
5 STANDARDS FOR COMPLIANCE; TO PRESCRIBE WHEN DELEGATION IS
6 APPROPRIATE; TO AMEND SECTIONS 25-11-121, 25-11-145, 37-155-115,
7 91-9-9, 91-9-103 AND 91-9-107, MISSISSIPPI CODE OF 1972, IN
8 CONFORMITY; AND FOR RELATED PURPOSES.

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

10 **SECTION 1. Prudent investor rule.** (a) Except as otherwise
11 provided in subsection (b), a trustee who invests and manages
12 trust assets owes a duty to the beneficiaries of the trust to
13 comply with the prudent investor rule set forth in this act.

14 (b) The prudent investor rule, a default rule, may be
15 expanded, restricted, eliminated, or otherwise altered by the
16 provisions of a trust. A trustee is not liable to a beneficiary
17 to the extent that the trustee acted in reasonable reliance on the
18 provisions of the trust.

19 **SECTION 2. Standard of care; portfolio strategy; risk and
20 return.** (a) A trustee shall invest and manage trust assets as a
21 prudent investor would, by considering the purposes, terms,
22 distribution requirements, and other circumstances of the trust.
23 In satisfying this standard, the trustee shall exercise reasonable
24 care, skill, and caution.

25 (b) A trustee's investment and management decisions
26 respecting individual assets must be evaluated not in isolation
27 but in the context of the trust portfolio as a whole and as a part
28 of an overall investment strategy having risk and return
29 objectives reasonably suited to the trust.

30 (c) Among circumstances that a trustee shall consider in
31 investing and managing trust assets are such of the following as
32 are relevant to the trust or its beneficiaries:

33 (1) General economic conditions;

34 (2) The possible effect of inflation or deflation;

35 (3) The expected tax consequences of investment
36 decisions or strategies;

37 (4) The role that each investment or course of action
38 plays within the overall trust portfolio, which may include
39 financial assets, interests in closely held enterprises, tangible
40 and intangible personal property, and real property;

41 (5) The expected total return from income and the
42 appreciation of capital;

43 (6) Other resources of the beneficiaries;

44 (7) Needs for liquidity, regularity of income, and
45 preservation or appreciation of capital; and

46 (8) An asset's special relationship or special value,
47 if any, to the purposes of the trust or to one or more of the
48 beneficiaries.

49 (d) A trustee shall make a reasonable effort to verify facts
50 relevant to the investment and management of trust assets.

51 (e) A trustee may invest in any kind of property or type of
52 investment consistent with the standards of this act.

53 (f) A trustee who has special skills or expertise, or is
54 named trustee in reliance upon the trustee's representation that
55 the trustee has special skills or expertise, has a duty to use
56 those special skills or expertise.

57 **SECTION 3. Diversification.** A trustee shall diversify the
58 investments of the trust unless the trustee reasonably determines
59 that, because of special circumstances, the purposes of the trust
60 are better served without diversifying.

61 **SECTION 4. Duties at inception of trusteeship.** Within a
62 reasonable time after accepting a trusteeship or receiving trust

63 assets, a trustee shall review the trust assets and make and
64 implement decisions concerning the retention and disposition of
65 assets, in order to bring the trust portfolio into compliance with
66 the purposes, terms, distribution requirements, and other
67 circumstances of the trust, and with the requirements of this act.

68 **SECTION 5. Loyalty.** A trustee shall invest and manage the
69 trust assets solely in the interest of the beneficiaries.

70 **SECTION 6. Impartiality.** If a trust has two (2) or more
71 beneficiaries, the trustee shall act impartially in investing and
72 managing the trust assets, taking into account any differing
73 interests of the beneficiaries.

74 **SECTION 7. Investment costs.** In investing and managing
75 trust assets, a trustee may only incur costs that are appropriate
76 and reasonable in relation to the assets, the purposes of the
77 trust, and the skills of the trustee.

78 **SECTION 8. Reviewing compliance.** Compliance with the
79 prudent investor rule is determined in light of the facts and
80 circumstances existing at the time of a trustee's decision or
81 action and not by hindsight.

82 **SECTION 9. Delegation of investment and management**
83 **functions.** (a) A trustee may delegate investment and management
84 functions that a prudent trustee of comparable skills could
85 properly delegate under the circumstances. The trustee shall
86 exercise reasonable care, skill, and caution in:

- 87 (1) Selecting an agent;
- 88 (2) Establishing the scope and terms of the delegation,
89 consistent with the purposes and terms of the trust; and
- 90 (3) Periodically reviewing the agent's actions in order
91 to monitor the agent's performance and compliance with the terms
92 of the delegation.

93 (b) The investment agent shall comply with the scope and
94 terms of the delegation and shall exercise the delegated function
95 with reasonable care, skill and caution and shall be liable to the

96 trust for failure to do so. An investment agent who represents
97 that he has special investment skills shall exercise those skills.

98 (c) A trustee who complies with the requirements of
99 subsection (a) is not liable to the beneficiaries or to the trust
100 for the decisions or actions of the agent to whom the function was
101 delegated.

102 (d) By accepting the delegation of a trust function from the
103 trustee of a trust that is subject to the law of this state, an
104 agent submits to the jurisdiction of the courts of this state.

105 (e) A cofiduciary may delegate investment and management
106 functions to another cofiduciary if the delegating cofiduciary
107 reasonably believes that the other cofiduciary has greater
108 investment skills than the delegating cofiduciary with respect to
109 those functions. The delegating cofiduciary shall not be
110 responsible for the investment decisions or actions of the other
111 cofiduciary to which the investment functions are delegated if the
112 delegating cofiduciary exercises reasonable care, skill and
113 caution in establishing the scope and specific terms of the
114 delegation and in reviewing periodically the other cofiduciary's
115 actions in order to monitor the cofiduciary's performance and
116 compliance with the scope and specific terms of the delegation.

117 (f) Investment in a mutual fund is not a delegation of
118 investment function, and neither the mutual fund nor its advisor
119 is an investment agent.

120 **SECTION 10. Language invoking standard of act.** The
121 following terms or comparable language in the provisions of a
122 trust, unless otherwise limited or modified, authorizes any
123 investment or strategy permitted under this act: "Investments
124 permissible by law for investment of trust funds," "legal
125 investments," "authorized investments," "using the judgment and
126 care under the circumstances then prevailing that persons of
127 prudence, discretion, and intelligence exercise in the management
128 of their own affairs, not in regard to speculation but in regard

129 to the permanent disposition of their funds, considering the
130 probable income as well as the probable safety of their capital,"
131 "prudent man rule," "prudent trustee rule," "prudent person rule,"
132 and "prudent investor rule."

133 **SECTION 11. Application to existing trusts.** This act
134 applies to trusts existing on and created after its effective
135 date. As applied to trusts existing on its effective date, this
136 act governs only decisions or actions occurring after that date.

137 **SECTION 12. Uniformity of application and construction.**
138 This act shall be applied and construed to effectuate its general
139 purpose to make uniform the law with respect to the subject of
140 this act among the states enacting it.

141 **SECTION 13. Short title.** Sections 1 through 14 of this act
142 may be cited as the "Mississippi Uniform Prudent Investor Act."

143 **SECTION 14. Severability.** If any provision of this act or
144 its application to any person or circumstance is held invalid, the
145 invalidity does not affect other provisions or applications of
146 this act which can be given effect without the invalid provision
147 or application, and to this end the provisions of this act are
148 severable.

149 **SECTION 15.** Section 25-11-121, Mississippi Code of 1972, is
150 amended as follows:

151 25-11-121. (1) The board shall, from time to time,
152 determine the current requirements for benefit payments and
153 administrative expense which shall be maintained as a cash working
154 balance, except that such cash working balance shall not exceed at
155 any time an amount necessary to meet the current obligations of
156 the system for a period of ninety (90) days. Any amounts in
157 excess of such cash working balance shall be invested, as follows,
158 at such periodic intervals as the board may determine; however,
159 all purchases shall be made from competitive offerings except
160 short-term obligations referred to in Section 25-11-121(d):

161 (a) Bonds, notes, certificates and other valid general
162 obligations of the State of Mississippi, or of any county, or of
163 any city, or of any supervisors district of any county of the
164 State of Mississippi, or of any school district bonds of the State
165 of Mississippi; notes or certificates of indebtedness issued by
166 the Veterans' Home Purchase Board of Mississippi, provided such
167 notes or certificates of indebtedness are secured by the pledge of
168 collateral equal to two hundred percent (200%) of the amount of
169 the loan, which collateral is also guaranteed at least for fifty
170 percent (50%) of the face value by the United States government,
171 and provided that not more than five percent (5%) of the total
172 investment holdings of the system shall be in Veterans' Home
173 Purchase Board notes or certificates at any time; real estate
174 mortgage loans one hundred percent (100%) insured by the Federal
175 Housing Administration on single family homes located in the State
176 of Mississippi, where monthly collections and all servicing
177 matters are handled by Federal Housing Administration approved
178 mortgagees authorized to make such loans in the State of
179 Mississippi;

180 (b) State of Mississippi highway bonds;

181 (c) Funds may be deposited in any institution insured
182 by the Federal Deposit Insurance Corporation that maintains a
183 facility that takes deposits in the State of Mississippi or a
184 custodial bank;

185 (d) Corporate bonds and taxable municipal bonds of
186 investment grade as rated by Standard and Poor's or by Moody's
187 Investment Service; or corporate short-term obligations of
188 corporations or of wholly-owned subsidiaries of corporations,
189 whose short-term obligations are rated A-3 or better by Standard
190 and Poor's or rated P-3 or better by Moody's Investment Service;

191 (e) Bonds of the Tennessee Valley Authority;

192 (f) Bonds, notes, certificates and other valid
193 obligations of the United States, and other valid obligations of

194 any federal instrumentality that issues securities under authority
195 of an act of Congress and are exempt from registration with the
196 Securities and Exchange Commission;

197 (g) Bonds, notes, debentures and other securities
198 issued by any federal instrumentality and fully guaranteed by the
199 United States;

200 (h) Interest-bearing bonds or notes which are general
201 obligations of any other state in the United States or of any city
202 or county therein, provided such city or county had a population
203 as shown by the federal census next preceding such investment of
204 not less than twenty-five thousand (25,000) inhabitants and
205 provided that such state, city or county has not defaulted for a
206 period longer than thirty (30) days in the payment of principal or
207 interest on any of its general obligation indebtedness during a
208 period of ten (10) calendar years immediately preceding such
209 investment;

210 (i) Shares of stocks, common and/or preferred, of
211 corporations created by or existing under the laws of the United
212 States or any state, district or territory thereof; provided

213 (i) The maximum investments in stocks shall not
214 exceed fifty percent (50%) of the book value of the total
215 investment fund of the system;

216 (ii) The stock of such corporation shall:

217 A. Be listed on a national stock exchange; or

218 B. Be traded in the over-the-counter market,

219 provided price quotations for such over-the-counter stocks are
220 quoted by the National Association of Securities Dealers Automated
221 Quotation System (NASDAQ);

222 (iii) The outstanding shares of such corporation
223 shall have a total market value of not less than Fifty Million
224 Dollars (\$50,000,000.00);

225 (iv) The amount of investment in any one (1)
226 corporation shall not exceed three percent (3%) of the book value
227 of the assets of the system; and

228 (v) The shares of any one (1) corporation owned by
229 the system shall not exceed five percent (5%) of that
230 corporation's outstanding stock;

231 (j) Bonds rated Single A or better, stocks and
232 convertible securities of established non-United States companies,
233 which companies are listed on only primary national stock
234 exchanges of foreign nations; and in foreign government securities
235 rated Single A or better by a recognized rating agency; provided
236 that the total book value of investments under this paragraph
237 shall at no time exceed thirty percent (30%) of the total book
238 value of all investments of the system. The board may take
239 requisite action to effectuate or hedge such transactions through
240 foreign banks, including the purchase and sale, transfer,
241 exchange, or otherwise disposal of, and generally deal in foreign
242 exchange through the use of foreign currency, interbank forward
243 contracts, futures contracts, options contracts, swaps and other
244 related derivative instruments, notwithstanding any other
245 provisions of this article to the contrary;

246 (k) Covered call and put options on securities traded
247 on one or more of the regulated exchanges;

248 (l) Pooled or commingled funds managed by a corporate
249 trustee or by a Securities and Exchange Commission registered
250 investment advisory firm retained as an investment manager by the
251 board of trustees, and shares of investment companies and unit
252 investment trusts registered under the Investment Company Act of
253 1940, where such pooled or commingled funds or shares are
254 comprised of common or preferred stocks, bonds, money market
255 instruments or other investments authorized under this section.
256 Such investment in commingled funds or shares shall be held in
257 trust; provided that the total book value of investments under

258 this paragraph shall at no time exceed five percent (5%) of the
259 total book value of all investments of the system. Any investment
260 manager approved by the board of trustees shall invest such
261 commingled funds or shares as a fiduciary;

262 (m) Pooled or commingled real estate funds or real
263 estate securities managed by a corporate trustee or by a
264 Securities and Exchange Commission registered investment advisory
265 firm retained as an investment manager by the board of trustees.
266 Such investment in commingled funds or shares shall be held in
267 trust; provided that the total book value of investments under
268 this paragraph shall at no time exceed ten percent (10%) of the
269 total book value of all investments of the system. Any investment
270 manager approved by the board of trustees shall invest such
271 commingled funds or shares as a fiduciary. The ten percent (10%)
272 limitation in this subsection shall not be subject to the five
273 percent (5%) limitation in paragraph (l) of this subsection;

274 (n) Types of investments not specifically authorized by
275 this subsection if the investments are in the form of a limited
276 partnership, commingled fund or separate account managed by a
277 Securities and Exchange Commission registered investment advisory
278 firm retained as an investment manager by the board; provided that
279 the total book value of investments under this paragraph shall at
280 no time exceed ten percent (10%) of the total book value of all
281 investments of the system.

282 (2) All investments shall be acquired by the board at prices
283 not exceeding the prevailing market values for such securities.

284 (3) Any limitations herein set forth shall be applicable
285 only at the time of purchase and shall not require the liquidation
286 of any investment at any time. All investments shall be clearly
287 marked to indicate ownership by the system and to the extent
288 possible shall be registered in the name of the system.

289 (4) Subject to the above terms, conditions, limitations and
290 restrictions, the board shall have power to sell, assign, transfer

291 and dispose of any of the securities and investments of the
292 system, provided that said sale, assignment or transfer has the
293 majority approval of the entire board. The board may employ or
294 contract with investment managers, evaluation services or other
295 such services as determined by the board to be necessary for the
296 effective and efficient operation of the system.

297 (5) Except as otherwise provided herein, no trustee and no
298 employee of the board shall have any direct or indirect interest
299 in the income, gains or profits of any investment made by the
300 board, nor shall any such person receive any pay or emolument for
301 his services in connection with any investment made by the board.
302 No trustee or employee of the board shall become an endorser or
303 surety, or in any manner an obligor for money loaned by or
304 borrowed from the system.

305 (6) All interest derived from investments and any gains from
306 the sale or exchange of investments shall be credited by the board
307 to the account of the system.

308 (7) The board of trustees annually shall credit regular
309 interest on the mean amount for the preceding year in each of the
310 reserves maintained by the board, with the exception of the
311 expense account. This credit shall be made annually from interest
312 and other earnings on the invested assets of the system. Any
313 additional amount required to meet the regular interest on the
314 funds of the system shall be charged to the employer's
315 accumulation account, and any excess of earnings over such regular
316 interest required shall be credited to the employer's accumulation
317 account. Regular interest shall mean such per centum rate to be
318 compounded annually as shall be determined by the board of
319 trustees on the basis of the interest earnings of the system for
320 the preceding year.

321 (8) The board of trustees shall be the custodian of the
322 funds of the system. All expense vouchers and retirement
323 allowance payrolls shall be certified by the executive secretary

324 who shall furnish the board a surety bond in a company authorized
325 to do business in Mississippi in such an amount as shall be
326 required by the board, the premium to be paid by the board from
327 the expense account.

328 (9) For the purpose of meeting disbursements for retirement
329 allowances, annuities and other payments, cash may be kept
330 available, not exceeding the requirements of the system for a
331 period of ninety (90) days, on deposit in one or more banks or
332 trust companies organized under the laws of the State of
333 Mississippi or the laws of the United States, provided that the
334 sum on deposit in any one (1) bank or trust company shall not
335 exceed thirty-five percent (35%) of the paid-up capital and
336 regular surplus of such bank or trust company.

337 (10) Except as otherwise provided, the monies or properties
338 of the Public Employees' Retirement System of Mississippi
339 deposited in any bank or banks of the United States shall, where
340 possible, be safeguarded and guaranteed by the posting as security
341 by the depository of bonds, notes and other securities purchasable
342 by the system, as provided elsewhere in this section. The bonds,
343 notes and other securities offered as security shall be posted to
344 the credit of the system by the depository with the board or with
345 an unaffiliated bank or trust company domiciled within the United
346 States or the State of Mississippi acceptable to both the board
347 and to the fiscal agent bank. In the event the board and the
348 fiscal agent bank cannot reach an agreement, the bonds, notes and
349 other securities shall be deposited in a bank or trust company
350 designated by the State Commissioner of Banking and Consumer
351 Finance. Provided, however, that bonds or notes of the United
352 States government owned by the system may be deposited for
353 safekeeping in any federal reserve bank.

354 (11) The board of trustees shall determine the degree of
355 collateralization necessary for both foreign and domestic demand
356 deposit accounts in addition to that which is guaranteed by the

357 Federal Deposit Insurance Corporation or such other federal
358 insurance program as may be in effect.

359 (12) The board, the executive secretary and employees shall
360 discharge their duties with respect to the investments of the
361 system solely for the interest of the system with the care, skill,
362 prudence and diligence under the circumstances then prevailing
363 that a prudent investor acting in a like capacity and familiar
364 with such matters would use in the conduct of an enterprise of a
365 like character and with like aims, including diversifying the
366 investments of the system so as to minimize the risk of large
367 losses, unless under the circumstances it is clearly prudent not
368 to do so.

369 **SECTION 16.** Section 25-11-145, Mississippi Code of 1972, is
370 amended as follows:

371 * * *

372 25-11-145. (1) This provision of this section shall become
373 effective from and after July 1 of the year in which Section
374 25-11-143 becomes effective as provided in subsection (1) of
375 Section 25-11-143.

376 (2) In managing the funds received for the insurance program
377 established in Section 25-11-143, the board from time to time
378 shall determine the current requirements for payments and
379 administrative expense that will be maintained as a cash working
380 balance, except that the cash working balance shall not exceed at
381 any time an amount necessary to meet the current obligations of
382 the fund for a period of ninety (90) days. Any amounts in excess
383 of the cash working balance shall be invested, as follows, at such
384 periodic intervals as the board may determine:

385 (a) Funds may be deposited in federally insured
386 institutions;

387 (b) Corporate and taxable municipal bonds of investment
388 grade as rated by Standard and Poor's or by Moody's Investment
389 Service, with bonds rated BAA/BBB not to exceed five percent (5%)

390 of the book value of the total fixed income investments, or
391 corporate short-term obligations of corporations or of
392 wholly owned subsidiaries of corporations, whose short-term
393 obligations are rated A-3 or better by Standard and Poor's or
394 rated P-3 or better by Moody's Investment Service;

395 (c) Bonds of the Tennessee Valley Authority; bonds,
396 notes, certificates and other valid obligations of the United
397 States, and other valid obligations of any federal instrumentality
398 that issues securities under authority of an act of Congress and
399 are exempt from registration with the Securities and Exchange
400 Commission; bonds, notes, debentures and other securities issued
401 by any federal instrumentality and fully guaranteed by the United
402 States;

403 (d) Interest-bearing bonds or notes that are general
404 obligations of any other state in the United States or of any city
405 or county in that state, provided that the state, city or county
406 has not defaulted for a period longer than thirty (30) days in the
407 payment of principal or interest on any of its general obligation
408 indebtedness during a period of ten (10) calendar years
409 immediately preceding the investment;

410 (e) Shares of stocks, common and/or preferred, of
411 corporations created by, or existing under, the laws of the United
412 States or any state, district or territory thereof, provided that:

413 (i) The maximum investments in stocks shall not
414 exceed fifty percent (50%) of the book value of the total
415 investment fund;

416 (ii) The stock of such corporation shall be listed
417 on a national stock exchange, or be traded in the over-the-counter
418 market;

419 (iii) The outstanding shares of the corporation
420 shall have a total market value of not less than Fifty Million
421 Dollars (\$50,000,000.00);

422 (iv) The amount of investment in any one (1)
423 corporation shall not exceed three percent (3%) of the book value
424 of the total investment fund; and

425 (v) The shares of any one (1) corporation owned by
426 the fund shall not exceed five percent (5%) of that corporation's
427 outstanding stock;

428 (f) Bonds rated Single A or better, stocks and
429 convertible securities of established non-United States companies,
430 and in foreign government securities rated Single A or better by a
431 recognized rating agency, provided that the total book value of
432 investments under this paragraph at no time shall exceed thirty
433 percent (30%) of the total book value of the total investment
434 fund. The board may take requisite action to effectuate or hedge
435 those transactions through foreign or domestic banks, including
436 the purchase and sale, transfer, exchange, or otherwise disposal
437 of, and generally deal in foreign exchange through the use of
438 foreign currency, interbank forward contracts, futures contracts,
439 options contracts, swaps and other related derivative instruments;

440 (g) Covered call and put options on securities traded
441 on one or more of the regulated exchanges;

442 (h) Pooled or commingled funds managed by a corporate
443 trustee or by a Securities and Exchange Commission registered
444 investment advisory firm retained as an investment manager by the
445 board of trustees, and shares of investment companies and unit
446 investment trusts registered under the Investment Company Act of
447 1940, where the pooled or commingled funds or shares are comprised
448 of common or preferred stocks, bonds, money market instruments or
449 other investments authorized under this section. The investment
450 in commingled funds or shares shall be held in trust. Any
451 investment manager approved by the board of trustees shall invest
452 the commingled funds or shares as a fiduciary;

453 (i) Pooled or commingled real estate funds or real
454 estate securities managed by a corporate trustee or by a

455 Securities and Exchange Commission registered investment advisory
456 firm retained as an investment manager by the board of trustees,
457 provided that the total book value of investments under this
458 paragraph at no time shall exceed five percent (5%) of the total
459 book value of all investments of the total investment fund. The
460 investment in commingled funds or shares shall be held in trust.
461 Any investment manager approved by the board of trustees shall
462 invest the commingled funds or shares as a fiduciary.

463 (3) All investments shall be acquired at prices not
464 exceeding the prevailing market values for the securities.

465 (4) Any limitations set forth in this section shall be
466 applicable only at the time of purchase and shall not require the
467 liquidation of any investment at any time. All investments shall
468 be clearly marked to indicate ownership by the fund and to the
469 extent possible shall be registered in the name of the fund.

470 (5) Subject to the preceding terms, conditions, limitations
471 and restrictions, the board shall have power to sell, assign,
472 transfer and dispose of any of the securities and investments of
473 the fund, provided that the sale, assignment or transfer has the
474 majority approval of the entire board. The board may employ or
475 contract with investment managers, evaluation services or other
476 such services as determined by the board to be necessary for the
477 effective and efficient operation of the fund.

478 (6) Except as otherwise provided in this section, no trustee
479 and no employee of the board shall have any direct or indirect
480 interest in the income, gains or profits of any investment made by
481 the board, nor shall any such person receive any pay or emolument
482 for his services in connection with any investment made by the
483 board. No trustee or employee of the board shall become an
484 endorser or surety, or in any manner an obligor for money loaned
485 by or borrowed from the fund.

486 (7) All interest derived from investments and any gains from
487 the sale or exchange of investments shall be credited by the board
488 to the account of the fund.

489 (8) The board of trustees shall be the custodian and
490 fiduciary of the fund.

491 (9) For the purpose of meeting disbursements, cash may be
492 kept available, not exceeding the requirements of the fund for a
493 period of ninety (90) days, on deposit in one or more banks or
494 trust companies organized under the laws of the State of
495 Mississippi or the laws of the United States, provided that the
496 sum on deposit in any one (1) bank or trust company shall not
497 exceed thirty-five percent (35%) of the paid-up capital and
498 regular surplus of the bank or trust company.

499 (10) The board of trustees shall determine the degree of
500 collateralization necessary for both foreign and domestic demand
501 deposit accounts in addition to that which is guaranteed by the
502 Federal Deposit Insurance Corporation or such other federal
503 insurance program as may be in effect.

504 (11) The board, the executive director and employees shall
505 discharge their duties with respect to the investments of the
506 system solely for the interest of the fund with the care, skill,
507 prudence and diligence under the circumstances then prevailing
508 that a prudent investor acting in a like capacity and familiar
509 with those matters would use in the conduct of an enterprise of a
510 like character and with like aims, including diversifying the
511 investments of the system so as to minimize the risk of large
512 losses, unless under the circumstances it is clearly prudent not
513 to do so.

514 (12) Investment management fees and costs shall be paid from
515 the fund.

516 **SECTION 17.** Section 37-155-115, Mississippi Code of 1972, is
517 amended as follows:

518 37-155-115. (1) The board has authority to establish a
519 comprehensive investment plan for the purposes of this article, to
520 invest any funds of the MACS Trust Fund in any instrument,
521 obligation, security or property that constitutes legal
522 investments for public funds in the state, and to name and use
523 depositories for its investments and holdings. The comprehensive
524 investment plan shall specify the investment policies to be
525 utilized by the board in its administration of the funds. The
526 board may authorize investments in any investment vehicle
527 authorized for the Mississippi Prepaid Affordable College Tuition
528 (MPACT) Program under Section 37-155-9. However, the restrictions
529 in Section 37-155-9 as to percentages of the total fund that may
530 be invested in any category of authorized investment shall not
531 apply to the MACS Trust Fund. The program account, in its
532 discretion, may invest in obligations of the state or any
533 political subdivision of the state or in any business entity in
534 the state.

535 Notwithstanding any state law to the contrary, the board
536 shall invest or cause to be invested amounts on deposit in the
537 MACS Trust Fund, including the program account, in a manner
538 reasonable and appropriate to achieve the objectives of the
539 program, exercising the discretion and care of a prudent investor
540 in similar circumstances with similar objectives. The board shall
541 give due consideration to the risk, expected rate of return, term
542 or maturity, diversification of total investments, liquidity and
543 anticipated investments in and withdrawals from the MACS Trust
544 Fund.

545 (2) All investments shall be acquired by the board at prices
546 not exceeding the prevailing market values for such securities.

547 (3) Any limitations set forth in this section shall be
548 applicable only at the time of purchase and shall not require the
549 liquidation of any investment at any time. All investments shall

550 be marked clearly to indicate ownership by the system and, to the
551 extent possible, shall be registered in the name of the system.

552 (4) Subject to the terms, conditions, limitations and
553 restrictions set forth in this section, the board may sell,
554 assign, transfer and dispose of any of the securities and
555 investments of the system if the sale, assignment or transfer has
556 the majority approval of the entire board. The board may employ
557 or contract with investment managers, evaluation services, or
558 other such services as determined by the board to be necessary for
559 the effective and efficient operation of the system.

560 (5) Except as otherwise provided in this section, no trustee
561 or employee of the board may have any direct or indirect interest
562 in the income, gains or profits of any investment made by the
563 board, and such person may not receive any pay or emolument for
564 his services in connection with any investment made by the board.
565 No trustee or employee of the board may become an endorser or
566 surety or in any manner an obligor for money loaned by or borrowed
567 from the system.

568 (6) Under the authority granted in Section 37-155-107, the
569 board may establish criteria for investment managers, mutual funds
570 or other such entities to act as contractors or consultants to the
571 board. The board may contract, either directly or through such
572 contractors or consultants, to provide such services as may be a
573 part of the comprehensive investment plan or as may be deemed
574 necessary or proper by the board, including, but not limited to,
575 providing consolidated billing, individual and collective record
576 keeping and accounting, and asset purchase, control and
577 safekeeping.

578 (7) No account owner, contributor, payor or beneficiary may
579 directly or indirectly direct the investment of any account except
580 as may be permitted under Section 529 of the Internal Revenue Code
581 of 1986, as amended.

582 (8) The board may approve different investment plans and
583 options to be offered to participants to the extent permitted
584 under Section 529 of the Internal Revenue Code of 1986, as
585 amended, and consistent with the objectives of this article and
586 may require the assistance of investment counseling before
587 participation in different options.

588 (9) Interests or accounts in the MACS Trust Fund and
589 transactions in such interests or accounts shall be exempt from
590 Sections 75-71-113 and 75-71-401.

591 **SECTION 18.** Section 91-9-9, Mississippi Code of 1972, is
592 amended as follows:

593 91-9-9. (1) In addition to powers, remedies and rights
594 which may be set forth in any will, trust agreement or other
595 document which is the source of authority, a trustee, executor,
596 administrator, guardian, or one acting in any other fiduciary
597 capacity, whether an individual, corporation or other entity
598 ("fiduciary") shall have the following powers, rights and remedies
599 whether or not set forth in the will, trust agreement or other
600 document which is the source of authority:

601 (a) To inspect, investigate or cause to be inspected
602 and investigated, property held by the fiduciary, including
603 interests in sole proprietorships, partnerships, or corporations
604 and any assets owned by any such business enterprise, for the
605 purpose of determining compliance with any environmental law
606 affecting such property and to respond to any actual or potential
607 violation of any environmental law affecting property held by the
608 fiduciary;

609 (b) To take on behalf of the estate or trust, any
610 action necessary to prevent, abate, or otherwise remedy any actual
611 or potential violation of any environmental law affecting property
612 held by the fiduciary, either before or after the initiation of an
613 enforcement action by any governmental body;

614 (c) To refuse to accept property in trust if the
615 fiduciary determines that any property to be donated or conveyed
616 to the trust either is contaminated by any hazardous substance, or
617 is being used or has been used for any activity directly or
618 indirectly involving any hazardous substance, which could result
619 in liability to the trust or otherwise impair the value of the
620 assets held therein;

621 (d) To settle or compromise at any time any and all
622 claims against the trust or estate which may be asserted by any
623 governmental body or private party involving the alleged violation
624 of any environmental law affecting property held in trust or in an
625 estate;

626 (e) To disclaim any power granted by any document,
627 statute, or rule of law which, in the sole discretion of the
628 fiduciary, may cause the fiduciary to incur personal liability
629 under any environmental law;

630 (f) To decline to serve as a fiduciary, if the
631 fiduciary reasonably believes that there is or may be a conflict
632 of interest between the fiduciary in its or his fiduciary capacity
633 and in its or his individual capacity, because of potential claims
634 or liabilities which may be asserted against the fiduciary on
635 behalf of the trust or estate due to the type or condition of
636 assets held therein.

637 (2) An administrator, executor, guardian or conservator is
638 not relieved under this chapter from obtaining court approval for
639 any actions which otherwise are required to be approved by a
640 court.

641 (3) The fiduciary shall be entitled to charge the cost of
642 any inspection, investigation, review, abatement, response,
643 cleanup, or remedial action authorized herein against the income
644 or principal of the trust or estate. A fiduciary shall not be
645 personally liable to any beneficiary or other party for any
646 decrease in value of assets in trust or in an estate by reason of

647 the fiduciary's compliance or efforts to comply with any
648 environmental law, specifically including any reporting
649 requirement under such law. Neither the acceptance by the
650 fiduciary of property or a failure by the fiduciary to inspect or
651 investigate property shall be deemed to create any inference as to
652 whether there is or may be any liability under any environmental
653 law with respect to such property.

654 (4) For purposes of this section, "environmental law" means
655 any federal, state, or local law, rule, regulation, or ordinance
656 relating to protection of the environment or human health. For
657 purposes of this section, "hazardous substances" means any
658 substance defined as hazardous or toxic or otherwise regulated by
659 any environmental law.

660 (5) A fiduciary in its or his individual capacity shall not
661 be considered an owner or operator of any property of the trust or
662 estate for the purposes of any environmental law.

663 (6) Notwithstanding any other provision of this chapter, the
664 fiduciary is subject at all times to the provisions of the Prudent
665 Investor Standard in all its dealings.

666 (7) The provisions of this section shall stand repealed from
667 and after July 1, 2008.

668 **SECTION 19.** Section 91-9-103, Mississippi Code of 1972, is
669 amended as follows:

670 91-9-103. The following words when used in this article
671 shall have the following meanings:

672 (a) "Trust" means an express trust created by a trust
673 instrument, including a will, whereby a trustee has the duty to
674 administer a trust asset for the benefit of a named or otherwise
675 described income or principal beneficiary, or both; "trust" does
676 not include a resulting or constructive trust, a business trust
677 which provides for certificates to be issued to the beneficiary,
678 an investment trust, a voting trust, a security instrument, a
679 trust created by the judgment or decree of a court, a liquidation

680 trust, or a trust for the primary purpose of paying dividends,
681 interests, interest coupons, salaries, wages, pensions, profits,
682 or employee benefits of any kind, an instrument wherein a person
683 is nominee or escrowee for another, a trust created in deposits in
684 any financial institution, or other trust the nature of which does
685 not admit of general trust administration.

686 (b) "Trustee" means an original, added, or successor
687 trustee; and in the case of a corporate trustee, includes its
688 successor by merger or consolidation.

689 * * *

690 **SECTION 20.** Section 91-9-107, Mississippi Code of 1972, is
691 amended as follows:

692 91-9-107. (1) From time of creation of the trust until
693 final distribution of the assets of the trust, a trustee has the
694 power to perform, without court authorization, every act which a
695 prudent investor would perform for the purposes of the trust,
696 including, but not limited to:

697 (a) The powers specified in subsection (3) of this
698 section, and

699 (b) Those powers, rights and remedies set forth in
700 Section 91-9-9, related to compliance with environmental laws
701 affecting property held by fiduciaries. The provisions of this
702 paragraph (b) shall stand repealed from and after July 1, 2008.

703 (2) In the exercise of his powers, including the powers
704 granted by this article, a trustee has a duty to act with due
705 regard to his obligation as a fiduciary.

706 (3) A trustee has the power, subject to subsections (1) and
707 (2):

708 (a) To collect, hold and retain trust assets received
709 from a trustor until, in the judgment of the trustee, disposition
710 of the assets should be made; and the assets may be retained even
711 though they include an asset in which the trustee is personally
712 interested;

713 (b) To receive additions to the assets of the trust;
714 (c) To continue or participate in the operation of any
715 business or other enterprise, and to effect incorporation,
716 dissolution or other change in the form of the organization of the
717 business or enterprise;
718 (d) To acquire an undivided interest in a trust asset
719 in which the trustee, in any trust capacity, holds an undivided
720 interest;
721 (e) To invest and reinvest trust assets in accordance
722 with the provisions of the trust or as provided by law;
723 (f) To deposit trust funds in a bank, including a bank
724 operated by the trustee;
725 (g) To acquire or dispose of an asset, for cash or on
726 credit, at public or private sale; and to manage, develop,
727 improve, exchange, partition, change the character of, or abandon
728 a trust asset or any interest therein; and to encumber, mortgage
729 or pledge a trust asset for a term within or extending beyond the
730 term of the trust, in connection with the exercise of any power
731 vested in the trustee;
732 (h) To make ordinary or extraordinary repairs or
733 alterations in buildings, improvements or other structures; to
734 demolish any improvements; to raze existing or erect new party
735 walls, buildings or improvements;
736 (i) To subdivide, develop or dedicate land to public
737 use; or to make or obtain the vacation of plats and adjust
738 boundaries; or to adjust differences in valuation on exchange or
739 partition by giving or receiving consideration; or to dedicate
740 easements to public use without consideration;
741 (j) To enter for any purpose into a lease as lessor or
742 lessee with or without option to purchase or renew for a term
743 within or extending beyond the term of the trust;

744 (k) To enter into a lease or arrangement for
745 exploration and removal of minerals or other natural resources, or
746 enter into a pooling or unitization agreement;

747 (l) To grant an option involving disposition of a trust
748 asset, or to take an option for the acquisition of any asset;

749 (m) To vote a security, in person or by general or
750 limited proxy;

751 (n) To pay calls, assessments and any other sums
752 chargeable or accruing against or on account of securities;

753 (o) To sell or exercise stock subscription or
754 conversion rights; to consent, directly or through a committee or
755 other agent, to the reorganization, consolidation, merger,
756 dissolution or liquidation of a corporation or other business
757 enterprise;

758 (p) To hold a security in the name of a nominee or in
759 other form without disclosure of the trust, so that title to the
760 security may pass by delivery, but the trustee is liable for any
761 act of the nominee in connection with the stock so held;

762 (q) To insure the assets of the trust against damage or
763 loss, and the trustee against liability with respect to third
764 persons;

765 (r) To borrow money to be repaid from trust assets or
766 otherwise; to advance money for the protection of the trust and
767 for all expenses, losses and liability sustained in the
768 administration of the trust or because of the holding or ownership
769 of any trust assets, for which advances with any interest the
770 trustee has a lien on the trust assets as against the beneficiary;

771 (s) To pay or contest any claim; to settle a claim by
772 or against the trust by compromise, arbitration or otherwise; and
773 to release, in whole or in part, any claim belonging to the trust
774 to the extent that the claim is uncollectible;

775 (t) To pay taxes, assessments, compensation of the
776 trustee, and other expenses incurred in the collection, care,
777 administration and protection of the trust;

778 (u) To allocate items of income or expense to either
779 trust income or principal, as provided by law, including creation
780 of reserves out of income for depreciation, obsolescence or
781 amortization, or for depletion in mineral or timber properties;

782 (v) To pay any sum distributable to a beneficiary under
783 legal disability, without liability to the trustee, by paying the
784 sum to the beneficiary or by using same for his benefit or by
785 paying the sum for the use of the beneficiary either to a legal
786 representative appointed by the court, or if none, to a relative
787 or to an adult person with whom beneficiary is residing, who is
788 believed to be reliable by trustee;

789 (w) To effect distribution of property and money in
790 divided or undivided interests and to adjust resulting differences
791 in valuation;

792 (x) To employ persons, including attorneys, auditors,
793 investment advisors or agents, even if they are associated with
794 the trustee, to advise or assist the trustee in the performance of
795 his administrative duties; to act without independent
796 investigation upon their recommendations; and instead of acting
797 personally, to employ one or more agents to perform any act of
798 administration, whether or not discretionary;

799 (y) To prosecute or defend actions, claims or
800 proceedings for the protection of trust assets and of the trustee
801 in the performance of his duties;

802 (z) To execute and deliver all instruments which will
803 accomplish or facilitate the exercise of the powers vested in the
804 trustee.

805 (4) If a trustee has determined that either (a) the market
806 value of a trust is less than One Hundred Fifty Thousand Dollars
807 (\$150,000.00) and that, in relation to the costs of administration

808 of the trust, the continuance of the trust pursuant to its
809 existing terms will defeat or substantially impair the
810 accomplishment of the purposes of the trust; or (b) the trust no
811 longer has a legitimate purpose or that its purpose is being
812 thwarted with respect to any trust in any amount; then the trustee
813 may seek court approval to terminate the trust and the court, in
814 its discretion, may approve such termination. In such a case, the
815 court may provide for the distribution of trust property,
816 including principal and undistributed income, to the beneficiaries
817 in a manner which conforms as nearly as possible to the intention
818 of the settlor and the court shall make appropriate provisions for
819 the appointment of a guardian in the case of a minor beneficiary.

820 (5) (a) Unless expressly provided to the contrary in the
821 trust instrument, a trustee may consolidate two (2) or more trusts
822 having substantially similar terms into a single trust; divide on
823 a fractional basis a single trust into two (2) or more separate
824 trusts for any reason; and may segregate by allocation to a
825 separate account or trust a specific amount from, a portion of, or
826 a specific asset included in the trust property of any trust to
827 reflect a disclaimer, to reflect or result in differences in
828 federal tax attributes, to satisfy any federal tax requirement, to
829 make federal tax elections, to reduce potential
830 generation-skipping transfer tax liability, or for any other tax
831 planning purposes or other reasons.

832 (b) A separate trust created by severance or
833 segregation must be treated as a separate trust for all purposes
834 from the effective date in which the severance or segregation is
835 effective. The effective date of the severance or segregation may
836 be retroactive. In managing, investing, administering and
837 distributing the trust property of any separate account or trust
838 and in making applicable tax elections, the trustee may consider
839 the differences in federal tax attributes and all other factors

840 the trustee believes pertinent and may make disproportionate
841 distributions from the separate trusts or accounts created.

842 (c) A trust or account created by consolidation,
843 severance or segregation under this subsection (5) must be held on
844 terms and conditions that are substantially equivalent to the
845 terms of the trust before consolidation, severance or segregation
846 so that the aggregate interests of each beneficiary are
847 substantially equivalent to the beneficiary's interests in the
848 trust or trusts before consolidation, severance or segregation.
849 In determining whether a beneficiary's aggregate interests are
850 substantially equivalent, the trustee shall consider the economic
851 value of those interests to the extent they can be valued,
852 considering actuarial factors as appropriate. If a beneficiary's
853 interest cannot be valued with any reasonable degree of certainty
854 because of the nature of the trust property, the terms of the
855 trust, or other reasons, the trustee shall base the determination
856 upon such other factors as are reasonable and appropriate under
857 the facts and circumstances applicable to that particular trust,
858 including the purposes of the trust. Provided, however, the terms
859 of any trust before consolidation, severance or segregation which
860 permit qualification of that trust for an applicable federal tax
861 deduction, exclusion, election, exemption, or other special
862 federal tax status must remain identical in the consolidated trust
863 or in each of the separate trusts or accounts created by severance
864 or segregation.

865 (d) A trustee who acts in good faith is not liable to
866 any person for taking into consideration differences in federal
867 tax attributes and other pertinent factors in administering trust
868 property of any separate account or trust, in making tax
869 elections, and making distributions pursuant to the terms of the
870 separate trust.

871 (e) Income earned on a consolidated or severed or
872 segregated amount, portion, or specific asset after the

873 consolidation or severance is effective passes with that amount,
874 portion or specific asset.

875 (f) This subsection (5) applies to all trusts whenever
876 created, whether before, on, or after July 1, 2001, and whether
877 such trusts are inter vivos or testamentary, are created by the
878 same or different instruments, by the same or different persons
879 and regardless of where created or administered.

880 (g) This subsection (5) does not limit the right of a
881 trustee acting in accordance with the applicable provisions of the
882 governing instrument to divide or consolidate trusts.

883 (h) Nothing contained in this subsection (5) shall be
884 construed as granting to any trustee a general power of
885 appointment over any trust not otherwise expressly granted in the
886 trust instrument.

887 **SECTION 21.** This act shall take effect and be in force from
888 and after July 1, 2006.