

By: Representative Denny

To: Judiciary A

HOUSE BILL NO. 1112
(As Sent to Governor)

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 CONFORM TO THE PROVISIONS OF SENATE BILL NO. 2323,
7 2006 REGULAR SESSION, TO CLARIFY THE INVESTMENT AUTHORITY OF THE
8 PUBLIC EMPLOYEES' RETIREMENT SYSTEM; TO AMEND SECTIONS 25-11-121,
9 25-11-145, 37-155-115, 91-9-9, 91-9-103 AND 91-9-107, MISSISSIPPI
10 CODE OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

35 (1) General economic conditions;

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

37 (3) The expected tax consequences of investment
38 decisions or strategies;

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

43 (5) The expected total return from income and the
44 appreciation of capital;

45 (6) Other resources of the beneficiaries;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

182 (b) State of Mississippi highway bonds;

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

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

193 (e) Bonds of the Tennessee Valley Authority;

194 (f) Bonds, notes, certificates and other valid
195 obligations of the United States, and other valid obligations of

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

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

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

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

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

218 (ii) The stock of such corporation shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

373 * * *

374 25-11-145. (1) This provision of this section shall become
375 effective from and after July 1 of the year in which Section
376 25-11-143 becomes effective as provided in subsection (1) of
377 Section 25-11-143.

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

387 (a) Funds may be deposited in federally insured
388 institutions;

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

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

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

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

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

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

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

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

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

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

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

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

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

455 (i) Pooled or commingled real estate funds or real
456 estate securities managed by a corporate trustee or by a

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

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

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

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

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

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

491 (8) The board of trustees shall be the custodian and
492 fiduciary of the fund.

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

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

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

516 (12) Investment management fees and costs shall be paid from
517 the fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

672 91-9-103. The following words when used in this article
673 shall have the following meanings:

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

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

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

691 * * *

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

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

699 (a) The powers specified in subsection (3) of this
700 section, and

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

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

708 (3) A trustee has the power, subject to subsections (1) and
709 (2):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

807 (4) If a trustee has determined that either (a) the market
808 value of a trust is less than One Hundred Fifty Thousand Dollars
809 (\$150,000.00) and that, in relation to the costs of administration

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

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

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

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

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

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

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

875 consolidation or severance is effective passes with that amount,
876 portion or specific asset.

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

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

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

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