

By: Senator(s) Williamson, Hyde-Smith

To: Public Property

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2803

1 AN ACT TO RETURN THE NANIH WAIYA STATE PARK AND MOUND TO THE  
2 MISSISSIPPI BAND OF CHOCTAW INDIANS; TO AMEND CHAPTER 512, LAWS OF  
3 2005, TO CLARIFY THAT THE DEPARTMENT OF TRANSPORTATION SHALL  
4 DONATE AND CONVEY CERTAIN STATE-OWNED PROPERTY TO THE CITY OF  
5 BROOKHAVEN AND THE COUNTY OF LAWRENCE; TO AMEND SECTIONS 29-1-1  
6 AND 55-3-47, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED  
7 PURPOSES.

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

9 **SECTION 1.** The Legislature finds that in 2004 several state  
10 parks were requiring substantial subsidies from the General Fund,  
11 and the Mississippi Commission on Wildlife, Fisheries and Parks  
12 was directed to promptly dispose of those parks through closure,  
13 lease, sale or transfer. The Nanih Waiya State Park was one of  
14 those state parks to be promptly disposed of by the commission.  
15 Nanih Waiya is the site of a sacred mound of the Choctaw Nation  
16 and on lands ceded to the United States by the Choctaw Nation  
17 under the Treaty of Dancing Rabbit Creek. The Nanih Waiya Mound  
18 is venerated by the Choctaws and the site is considered to be the  
19 birthplace of the Choctaws. The Mississippi Band of Choctaw  
20 Indians desires to have this site of great historical significance  
21 to the Choctaws returned to them. The Legislature finds that it  
22 is in the public interest to return this historical site of the  
23 Choctaw Indians to the Mississippi Band of Choctaw Indians.

24 **SECTION 2.** The Commission on Wildlife, Fisheries and Parks  
25 and the Department of Wildlife, Fisheries and Parks shall take any  
26 and all actions necessary to donate and to convey the Nanih Waiya  
27 State Park to the Mississippi Band of Choctaw Indians. The  
28 executive director of the department is authorized to execute any

29 document or instrument to accomplish the donation and conveyance  
30 of the park.

31 **SECTION 3.** Section 3 of Chapter 512, Laws of 2005, is  
32 amended as follows:

33 Section 3. \* \* \* The Mississippi Department of  
34 Transportation shall donate and convey to the City of Brookhaven,  
35 Mississippi, all of the right, title and interest in certain real  
36 property located within the County of Lincoln, described more  
37 specifically as follows:

38 2.63 acres, more or less, situated in Lot 7 of the Price  
39 Estate, City of Brookhaven, said lands are situated in  
40 the SW 1/4 of the SE 1/4 of Section 12, Township 7  
41 North, Range 7 East, Lincoln County, Mississippi, and  
42 described in particular as follows: Commencing at a  
43 Nail in the center of Hartman Street marking the NE  
44 Corner of the SW 1/4 of the SE 1/4 of Section 12 run N  
45 89°16'00"W 30.00 ft. to a Fence Corner on the West side  
46 of said Hartman Street and the Point of Beginning.  
47 Thence S 00°16'45"E 125.22 ft. along said Street to a  
48 1/2 Inch Iron Pin on the North Right-of-Way of the  
49 Mississippi Central Railroad, thence away from said  
50 Street and along said Right-of-Way S 77°53'15"W 618.94  
51 ft. to a concrete Right-of-Way Marker, thence away from  
52 said Railroad Right-of-Way N 00°41'00"W 251.91 ft. to a  
53 concrete Right-of-Way Marker, thence N 89°41'45"E 607.56  
54 ft. to the Point of Beginning.

55 \* \* \*

56 **SECTION 4.** Section 5 of Chapter 512, Laws of 2005, is  
57 amended as follows:

58 Section 5. \* \* \* The Mississippi Department of  
59 Transportation shall donate and convey to the County of Lawrence,  
60 Mississippi, all of the right, title and interest in certain real

61 property located within the County of Lawrence, described more  
62 specifically as follows:

63 2.89 Acres, more or less, situated in the East 1/2 of  
64 the NE 1/4 of Section 32, Township 7 North, Range 11  
65 East, Lawrence County, Mississippi, and described in  
66 particular as follows: Commencing at a Cotton Picker  
67 Spindle marking the NE Corner of said Section 32 run  
68 WEST 14.43 ft., run SOUTH 589.41 ft. to a 1/2 Inch Iron  
69 Pin on the East R/W of old Highway 27 50 ft. rt. of  
70 Station 1745+80 and the point of beginning. Thence S  
71 00°25'00"E 1375.55 ft. to a R/W Marker, thence S  
72 56°53'30"W 250.03 ft. to a R/W Marker, thence N  
73 10°47'30"E 184.12 ft. to a 1/2 Inch Iron Pin, thence N  
74 79°10'15"W 10.00 ft. to a 1/2 Inch Iron Pin, thence  
75 along a R/W Curve to the left with a Delta Angle of  
76 6°40'43", a Radius of 11509.16 ft., a Length of 1341.55  
77 ft., and a Chord of N 07°29'20"E 1340.79 ft. to the  
78 Point of Beginning.

79 \* \* \*

80 **SECTION 5.** Section 29-1-1, Mississippi Code of 1972, is  
81 amended as follows:

82 29-1-1. (1) Except as otherwise provided in subsections  
83 (7), (8) and (9) of this section, the title to all lands held by  
84 any agency of the State of Mississippi which were acquired solely  
85 by the use of funds appropriated by the state shall appear on all  
86 deeds and land records under the name of the "State of  
87 Mississippi." For the purpose of this section, the term "agency"  
88 shall be defined as set forth in Section 31-7-1(a). The  
89 provisions of this section shall not affect the authority of any  
90 agency to use any land held by the agency. No assets or property  
91 of the Public Employees' Retirement System of Mississippi shall be  
92 transferred in violation of Section 272A of the Mississippi  
93 Constitution of 1890. Before September 1, 1993, each state agency

94 shall inventory any state-held lands which were acquired solely by  
95 the use of funds appropriated by the state, and which are titled  
96 in the name of the agency. The agency shall execute quitclaim  
97 deeds and any other necessary documents to transfer the name and  
98 title of the property to the State of Mississippi.

99 (2) The Secretary of State, under the general direction of  
100 the Governor and as authorized by law, shall sell and convey the  
101 public lands in the manner and on the terms provided herein for  
102 the several classes thereof; he shall perform all the  
103 administrative and executive duties appertaining to the selection,  
104 location, surveying, platting, listing, and registering these  
105 lands or otherwise concerning them; and he shall investigate the  
106 status of the various "percent" funds accrued and accruing to the  
107 state from the sale of lands by the United States, and shall  
108 collect and pay the funds into the treasury in the manner provided  
109 by law.

110 (3) In accordance with Sections 7-11-11 and 7-11-13, the  
111 Secretary of State shall be required to sign all conveyances of  
112 all state-held land. For purposes of this section, the term  
113 "conveyance" shall mean any sale or purchase of land by the State  
114 of Mississippi for use by any agency, board or commission thereof.  
115 Failure to obtain legislative approval pursuant to subsection (4)  
116 of this section and the signature of the Secretary of State on any  
117 conveyance regarding the sale or purchase of lands for the state  
118 including any agency, board or commission thereof, shall render  
119 the attempted sale or purchase of the lands void. Nothing in this  
120 section shall be construed to authorize any state agency, board,  
121 commission or public official to convey any state-held land unless  
122 this authority is otherwise granted by law. The Secretary of  
123 State shall not withhold arbitrarily his signature from any  
124 purchase or sale authorized by the Mississippi State Legislature.  
125 All sales of state-held lands, except those lands forfeited to the  
126 state for the nonpayment of taxes and those lands acquired by the

127 Mississippi Transportation Commission under Section 65-1-123,  
128 shall be sold for not less than the fair market value as  
129 determined by two (2) professional appraisers selected by the  
130 State Department of Finance and Administration, who are certified  
131 general appraisers of the State of Mississippi. The proceeds from  
132 any sale by an agency, board, commission or public official of  
133 state-held lands shall be deposited into the State General Fund  
134 unless otherwise provided by law.

135 (4) Before any state-held land is sold to any individual or  
136 private entity, thirty (30) days' advance notice of the intended  
137 sale shall be provided by the Secretary of State to the State  
138 Legislature, to all state agencies and to all governing  
139 authorities within the state for the purpose of ascertaining  
140 whether an agency or governing authority has a need for the land  
141 and for the purpose of ascertaining whether the sale of the land  
142 was authorized by law. If no agency or governing authority within  
143 the state expresses in writing to the Secretary of State by the  
144 end of the thirty-day period a desire to use the land, then the  
145 Secretary of State, with the prior approval of the Mississippi  
146 Legislature to sell the state-held land, may offer the land for  
147 sale to any individual or private entity.

148 (5) A cultural resources survey may be performed on any  
149 state-held land before the disposition of the land if the State  
150 Department of Archives and History deems this survey necessary.  
151 The cost of the survey and any archaeological studies deemed  
152 necessary by the State Department of Archives and History shall be  
153 paid by the selling agency and recouped from the proceeds of the  
154 sale.

155 (6) Before any land may be purchased by the state for the  
156 benefit of any state agency, the Secretary of State, or his  
157 designee, shall search and examine all state land records to  
158 determine whether the state owns any land that may fit the  
159 particular need of the agency. The Secretary of State, or his

160 designee, shall notify the agency if it is determined that any  
161 state-held land is available for use by the agency. The agency  
162 shall determine if such land accommodates its needs and shall  
163 determine whether to make an official request to the proper  
164 authorities to have the use of the land.

165 (7) Any lands purchased or acquired for construction and  
166 maintenance of highways or highway rights-of-way by the  
167 Mississippi Department of Transportation shall be excluded from  
168 the provisions of this section.

169 (8) This section shall not apply to any agency of the State  
170 of Mississippi that holds title to lands purchased solely by the  
171 use of federal funds or whose authority to transfer or dispose of  
172 these lands is governed by federal law or federal regulations.

173 (9) Any lands purchased by the Mississippi Major Economic  
174 Impact Authority for a "project" as defined in Section 57-75-5  
175 shall be excluded from the provisions of this section.

176 (10) The Secretary of State may recover from any agency,  
177 corporation, board, commission, entity or individual any cost that  
178 is incurred by his office for the record-keeping responsibilities  
179 regarding the sale or purchase of any state-held lands.

180 (11) Subsections (3), (4), (5) and (6) of this section shall  
181 not apply to sales or purchases of land when the Legislature  
182 expressly authorizes or directs a state agency to sell, purchase  
183 or lease-purchase a specifically described property. However,  
184 when the Legislature authorizes a state agency to sell or  
185 otherwise convey specifically described real property to another  
186 state agency or other entity such as a county, municipality,  
187 economic development district created under Section 19-5-99 or  
188 similar entity, without providing that the conveyance may not be  
189 made for less than the fair market value of the property, then the  
190 state agency authorized to convey such property must make the  
191 following determinations before conveying the property:

192 (a) That the state agency or other entity to which the  
193 proposed conveyance is to be made has an immediate need for the  
194 property;

195 (b) That there are quantifiable benefits that will  
196 inure to the state agency or other entity to which the proposed  
197 conveyance is to be made which outweigh any quantifiable costs to  
198 the state agency authorized to make the conveyance; and

199 (c) That the state agency or other entity to which the  
200 proposed conveyance is to be made lacks available funds to pay  
201 fair market value for the property. If the state agency  
202 authorized to convey such property fails to make such  
203 determinations, then it shall not convey the property for less  
204 than the fair market value of the property.

205 (12) This section shall not apply to the donation and  
206 conveyance of the Nanih Waiya State Park to the Mississippi Band  
207 of Choctaw Indians.

208 (13) This section shall not apply to the donation and  
209 conveyance of certain state-owned land to the City of Brookhaven,  
210 Mississippi, and to Lawrence County, Mississippi, as provided in  
211 Chapter 512, Laws of 2005, as amended by Senate Bill No. 2803,  
212 2006 Regular Session.

213 **SECTION 6.** Section 55-3-47, Mississippi Code of 1972, is  
214 amended as follows:

215 55-3-47. (1) In order to carry out its management  
216 responsibilities over all state park lands which are now or which  
217 may hereafter come under its jurisdiction, the Mississippi  
218 Department of Wildlife, Fisheries and Parks is hereby authorized  
219 to lease, and to grant easements and rights-of-way over and  
220 across, any part of such state park lands. Such leases, easements  
221 and rights-of-way may be granted for such consideration, and upon  
222 such terms and conditions, as the department may deem to be in the  
223 best interest of the state, consistent with the use of said lands  
224 for recreational purposes, and subject to the following

225 limitations: The department shall lease such lands for a term not  
226 exceeding twenty-five (25) years and shall grant in the original  
227 lease contract a nonnegotiable option to renew such lease for an  
228 additional term not to exceed twenty-five (25) years. Both the  
229 original lease contract and the option to renew such lease shall  
230 be transferable contracts. Further, the department shall not  
231 lease such lands for purposes which are incompatible with  
232 recreational use and may place such terms, limitations,  
233 restrictions and conditions in such leases as are deemed necessary  
234 to ensure the proper utilization of such lands. Any easement for  
235 a utility line shall be granted for that period of time which the  
236 department deems to be in the best interest of a state park.

237 (2) The department is further authorized to enter into such  
238 agreements as may be required, upon such terms as may be found to  
239 be in the best interest of the state, in settlement of disputes or  
240 litigation regarding the title to or boundaries of any state park  
241 lands within the jurisdiction of the department, provided such  
242 settlement agreements shall be negotiated and drafted with the  
243 advice, counsel and assistance of the Attorney General and shall  
244 be approved by the Department of Finance and Administration.

245 (3) In case any of the real estate within any state park  
246 under the jurisdiction of the department shall cease to be used or  
247 useful for state park purposes, or becomes the subject of boundary  
248 or title disputes or litigation, the department may sell and  
249 convey the same, with the approval of the Department of Finance  
250 and Administration, upon such terms as the Department of Finance  
251 and Administration may elect and may, in addition, exchange the  
252 same, with the approval of the department, for real estate  
253 belonging to any other political subdivision or state, county or  
254 local governmental agency or department. The department is  
255 authorized to sell and convey or otherwise transfer any state park  
256 or historical site as described in subsection (2) of Section  
257 55-3-33. Before any such sale or transfer, except as may occur in



258 settlement of title or boundary disputes or litigation, the  
259 department shall publish notice of its intention to sell the park  
260 land by public sale to the highest and best bidder at least once  
261 each week for three (3) consecutive weeks in at least one (1)  
262 public newspaper of general circulation in the county where such  
263 land is located and also in at least one (1) newspaper of general  
264 circulation throughout the state. Prior to any such sale, the  
265 department shall obtain at least two (2) separate and independent  
266 appraisals of the land to be sold and may not accept any bid lower  
267 than the average of all appraisals made. The department may  
268 reject any and all bids. The owner or any co-owner of record next  
269 preceding the state in title to any lands sold hereunder by public  
270 bid, excluding any entity which may have exercised the power of  
271 eminent domain to assist the state in acquiring said lands, shall  
272 have the opportunity to reacquire such lands by matching the  
273 successful bid therefor. If the owner or any co-owner of record  
274 next preceding the state in title, or the heirs or estate of such  
275 owner or co-owner, acquires said lands, then the department shall  
276 not reserve unto the state any minerals owned by the state  
277 underlying the conveyed lands. However, if anyone other than such  
278 owner or co-owner, or his heirs or estate, acquires said lands,  
279 then the department shall reserve unto the state one-half (1/2) of  
280 the minerals owned by the state underlying the conveyed lands,  
281 except for lands sold in settlement of title or boundary disputes  
282 or litigation, in which case the department may, in its  
283 discretion, reserve said minerals. Appraisal fees shall be shared  
284 equally by the department and purchaser.

285 (4) In exercising the authority granted in this section, the  
286 department may act by and through its executive director in the  
287 execution of any document or instrument prepared hereunder. Any  
288 lease, deed or settlement agreement executed under the provisions  
289 of this section shall bear the seal and attest of the Secretary of  
290 State, with whom said instrument or document shall be filed and

291 recorded in addition to any other recording requirements of state  
292 law.

293 This section shall not apply to sixteenth section school  
294 lands or lieu lands included within any state park, except as may  
295 be necessary or appropriate for the department to ratify or  
296 confirm any action taken by the agency or department having  
297 jurisdiction over such school or lieu lands.

298 All revenues collected by the department by virtue of any  
299 transaction consummated under the provisions of this section shall  
300 be deposited in the Mississippi Park Fund created by Section  
301 55-3-41, from which funds shall be expended only as authorized by  
302 the legislative appropriations process.

303 (5) This section shall not apply to the donation and  
304 conveyance of the Nanih Waiya State Park to the Mississippi Band  
305 of Choctaw Indians.

306 **SECTION 7.** This act shall take effect and be in force from  
307 and after its passage.