

By: Senator(s) Doxey, Chaney

To: Education; Finance

SENATE BILL NO. 2978

1 AN ACT TO AMEND SECTION 37-7-485, MISSISSIPPI CODE OF 1972,  
 2 TO AUTHORIZE LOCAL SCHOOL BOARDS TO CONTRACT WITH OTHER ENTITIES  
 3 FOR THE DEVELOPMENT, DESIGN, CONSTRUCTION, FINANCING, OWNERSHIP  
 4 AND OPERATION OF SURPLUS SCHOOL PROPERTY PURSUANT TO THE  
 5 PROVISIONS OF THE SCHOOL PROPERTY DEVELOPMENT ACT; TO AUTHORIZE  
 6 SCHOOL BOARDS TO ISSUE NOTES AND OTHER WRITTEN OBLIGATIONS TO  
 7 FINANCE SUCH ACTIVITIES; TO AUTHORIZE SCHOOL BOARDS TO PLEDGE  
 8 TAXES COLLECTED UPON SUCH LAND AS SECURITY FOR SUCH NOTES; TO  
 9 REQUIRE ANY TRANSACTIONS INVOLVING SIXTEENTH SECTION LAND TO  
 10 CONFORM TO SECTION 29-3-1 ET SEQ., MISSISSIPPI CODE OF 1972, TO  
 11 REMOVE THE REPEALER FOR THE SCHOOL PROPERTY DEVELOPMENT ACT; AND  
 12 FOR RELATED PURPOSES.

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

14 **SECTION 1.** Section 37-7-485, Mississippi Code of 1972, is  
 15 amended as follows:

16 37-7-485. (1) This section shall be referred to as the  
 17 "School Property Development Act of 2005." It is the intent of  
 18 the Legislature that this section shall provide school boards with  
 19 an alternative optional method of disposal of surplus school  
 20 property that may generate greater returns to the district than a  
 21 public disposal sale, or to promote or stimulate economic  
 22 development within the school district or to promote, stabilize or  
 23 enhance property and tax values within the school district.

24 (2) The school board of any school district shall be  
 25 authorized and empowered, in its discretion, to sell, convey or  
 26 exchange a partial interest, undivided interest or any other  
 27 interest in real property (other than sixteenth section public  
 28 school trust land), in whole or in part, for a nonoperational  
 29 interest in any proposed development of the property, including  
 30 ownership of shares of a domestic corporation or a membership  
 31 interest in a limited liability company or a limited partnership  
 32 interest, any of which is organized for the operation of any

33 project, development or activity that, in the discretion of the  
34 school board, will have the potential for fostering economic  
35 development activities, increasing property values, increasing  
36 student development or enhancing public safety. The school board  
37 may contract with any other governmental entity, university or  
38 community college, corporation, person or other legal entity for  
39 the development, design, construction, financing, ownership or  
40 operation of any project, development or activity and may issue  
41 notes, leases, bonds or other written obligations to finance such  
42 activities. The school board may pledge any revenues or taxes it  
43 is to receive from such sale, conveyance or exchange, including  
44 any shares of a corporation or membership interest in a limited  
45 liability company or limited partnership interest under this  
46 subsection or under Sections 37-7-471 through 37-7-483, to secure  
47 the repayment of any notes, leases (excluding leases of sixteenth  
48 section public school trust land), bonds or other written  
49 obligations of the district issued under any provision of state  
50 law. Any such pledge of revenues or other monies shall be valid  
51 and binding from the date the pledge is made; such revenues or  
52 other monies so pledged and thereafter received by the school  
53 district shall immediately be subject to the lien of such pledge  
54 without any physical delivery thereof or further act, and the lien  
55 of any such pledge shall be valid and binding as against all  
56 parties having claims of any kind in tort, contract or otherwise  
57 against the school district irrespective of whether such parties  
58 have notice thereof. Neither the resolutions, contracts or any  
59 other instrument by which a pledge is created need be recorded.  
60 Any debt secured in whole or in part by a pledge of such revenues  
61 or other monies shall not be subject to or included in any debt  
62 limitation imposed on the issuance of such debt. This subsection  
63 (2) shall not be construed to apply to sixteenth section public  
64 school trust land.

65 (3) The school board shall use sound business practices when  
66 executing exchanges as provided in this section. The school board  
67 may utilize the services of the Mississippi Development Authority,  
68 the local planning and development district or the Board of  
69 Trustees of State Institutions of Higher Learning when executing  
70 exchanges as provided in this section. The local school board  
71 shall require, in any project exceeding Two Hundred Thousand  
72 Dollars (\$200,000.00) that the party with whom the school board is  
73 contracting shall provide the following information, at a minimum:

74 (a) A two-year business plan (which shall include pro  
75 forma balance sheets, income statements and monthly cash flow  
76 statements);

77 (b) Financial statements and tax returns for the three  
78 (3) years immediately prior to the date the contract is formed;

79 (c) Credit reports on all persons or entities with a  
80 twenty percent (20%) or greater interest in the entity;

81 (d) Data supporting the expertise of the entity's  
82 principals;

83 (e) A cost benefit analysis of the project performed by  
84 the Mississippi Development Authority, a state institution of  
85 higher learning or other entity selected by the local school  
86 board; and

87 (f) Any other information required by the local school  
88 board.

89 This subsection (3) shall not be construed to apply to  
90 sixteenth section public school trust land.

91 (4) The local school board shall make public record any  
92 final and signed contract created under this section.

93 (5) No person involved in any economic development project  
94 entered into by a school board under the provisions of this  
95 section shall be related by consanguinity or affinity within the  
96 third degree to any member of the school board or the  
97 superintendent or any assistant superintendent of the school

98 district, nor shall any such person have an interest in any  
99 business or have an economic relationship with any member of the  
100 school board or the superintendent or any assistant superintendent  
101 of the school district.

102 (6) No person, or any agent, subsidiary or parent  
103 corporation or firm owned in whole or in part by the person shall  
104 be eligible to bid or otherwise participate in the construction,  
105 contracting, or subcontracting on any project or part thereof for  
106 which the person has been hired to perform construction program  
107 management services. Any contract for public construction that  
108 violates this provision shall be void and against the public  
109 policy of the state. For purposes of this subsection, the term  
110 "construction program management services" means a set of  
111 management and technical services rendered by a person or firm to  
112 a public sector building owner during the predesign, design,  
113 construction, or post-construction phases of new construction,  
114 demolition, alteration, repair, or renovation projects. These  
115 services include any one or more of the following: project  
116 planning, budgeting, scheduling, coordination, design management,  
117 construction administration, or facility occupancy actions, but  
118 shall not include any component of the actual construction work.  
119 The term does not include the services performed by the general  
120 contractor who is engaged to perform the construction work, or  
121 services customarily performed by licensed architects or  
122 registered engineers.

123 (7) This section shall be supplemental and additional to any  
124 powers conferred by other laws on school districts. However, this  
125 act shall not grant any authority to a school board to issue debt  
126 in any amount that is not otherwise expressly provided for by law,  
127 and shall not grant any authority to impose, levy or collect any  
128 tax that is not otherwise expressly provided for by law.

129 (8) If a school board exercises its option to enter into a  
130 development agreement or other contract under this act or to

131 transfer any property or interest therein to a third party for  
132 purposes of future development, the following conditions shall  
133 apply:

134 (a) The board shall have the express authority to  
135 retain a deed of trust or such other security interest in the  
136 property in an amount equal at least to the value of the property  
137 at the time of such transfer, less any consideration paid by the  
138 developer or other parties;

139 (b) The liability of the school board and the school  
140 district under any such development agreement shall be limited to  
141 the value of any retained property interest in the development  
142 agreement or the property that is the subject of the development  
143 agreement. Neither the school board nor the district shall be  
144 liable to any party nor shall it indemnify or hold harmless any  
145 party for any liabilities, obligations, losses, damages,  
146 penalties, settlements, claims, actions, suits, proceedings or  
147 judgments of any kind and nature, costs, expenses, or attorney's  
148 fees incurred by such party or parties for any act or action  
149 arising out of, or in connection with any development agreement  
150 entered into by the school board, other than the value of the  
151 retained ownership interest in the property that was conveyed  
152 under such development agreement.

153 (9) Before entering into any transaction as provided in this  
154 section, the school board members shall certify that they are in  
155 compliance with Section 25-4-25 regarding filings of statements of  
156 economic interest with the Mississippi Ethics Commission and that  
157 they will receive no direct or indirect pecuniary benefit as a  
158 result of the transaction or be in violation of the provisions of  
159 Section 25-4-105 regarding the improper use of official position.

160 (10) [Deleted]

161 **SECTION 2.** This act shall take effect and be in force from  
162 and after July 1, 2006.