

By: Senator(s) Williamson, Dearing, Posey,
Gordon, Jackson (11th), Frazier, Horhn,
Butler, Pickering, Ross, Burton

To: Public Property

SENATE BILL NO. 2732

1 AN ACT TO RETURN THE NANIH WAIYA STATE PARK AND MOUND TO THE
2 MISSISSIPPI BAND OF CHOCTAW INDIANS; TO AMEND SECTIONS 29-1-1 AND
3 55-3-47, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED
4 PURPOSES.

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

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

21 **SECTION 2.** The Commission on Wildlife, Fisheries and Parks
22 and the Department of Wildlife, Fisheries and Parks shall take any
23 and all actions necessary to donate and to convey the Nanih Waiya
24 State Park to the Mississippi Band of Choctaw Indians. The
25 executive director of the department is authorized to execute any
26 document or instrument to accomplish the donation and conveyance
27 of the park.

28 **SECTION 3.** Section 29-1-1, Mississippi Code of 1972, is
29 amended as follows:

30 29-1-1. (1) Except as otherwise provided in subsections
31 (7), (8) and (9) of this section, the title to all lands held by
32 any agency of the State of Mississippi which were acquired solely
33 by the use of funds appropriated by the state shall appear on all
34 deeds and land records under the name of the "State of
35 Mississippi." For the purpose of this section, the term "agency"
36 shall be defined as set forth in Section 31-7-1(a). The
37 provisions of this section shall not affect the authority of any
38 agency to use any land held by the agency. No assets or property
39 of the Public Employees' Retirement System of Mississippi shall be
40 transferred in violation of Section 272A of the Mississippi
41 Constitution of 1890. Before September 1, 1993, each state agency
42 shall inventory any state-held lands which were acquired solely by
43 the use of funds appropriated by the state, and which are titled
44 in the name of the agency. The agency shall execute quitclaim
45 deeds and any other necessary documents to transfer the name and
46 title of the property to the State of Mississippi.

47 (2) The Secretary of State, under the general direction of
48 the Governor and as authorized by law, shall sell and convey the
49 public lands in the manner and on the terms provided herein for
50 the several classes thereof; he shall perform all the
51 administrative and executive duties appertaining to the selection,
52 location, surveying, platting, listing, and registering these
53 lands or otherwise concerning them; and he shall investigate the
54 status of the various "percent" funds accrued and accruing to the
55 state from the sale of lands by the United States, and shall
56 collect and pay the funds into the treasury in the manner provided
57 by law.

58 (3) In accordance with Sections 7-11-11 and 7-11-13, the
59 Secretary of State shall be required to sign all conveyances of
60 all state-held land. For purposes of this section, the term

61 "conveyance" shall mean any sale or purchase of land by the State
62 of Mississippi for use by any agency, board or commission thereof.
63 Failure to obtain legislative approval pursuant to subsection (4)
64 of this section and the signature of the Secretary of State on any
65 conveyance regarding the sale or purchase of lands for the state
66 including any agency, board or commission thereof, shall render
67 the attempted sale or purchase of the lands void. Nothing in this
68 section shall be construed to authorize any state agency, board,
69 commission or public official to convey any state-held land unless
70 this authority is otherwise granted by law. The Secretary of
71 State shall not withhold arbitrarily his signature from any
72 purchase or sale authorized by the Mississippi State Legislature.
73 All sales of state-held lands, except those lands forfeited to the
74 state for the nonpayment of taxes and those lands acquired by the
75 Mississippi Transportation Commission under Section 65-1-123,
76 shall be sold for not less than the fair market value as
77 determined by two (2) professional appraisers selected by the
78 State Department of Finance and Administration, who are certified
79 general appraisers of the State of Mississippi. The proceeds from
80 any sale by an agency, board, commission or public official of
81 state-held lands shall be deposited into the State General Fund
82 unless otherwise provided by law.

83 (4) Before any state-held land is sold to any individual or
84 private entity, thirty (30) days' advance notice of the intended
85 sale shall be provided by the Secretary of State to the State
86 Legislature, to all state agencies and to all governing
87 authorities within the state for the purpose of ascertaining
88 whether an agency or governing authority has a need for the land
89 and for the purpose of ascertaining whether the sale of the land
90 was authorized by law. If no agency or governing authority within
91 the state expresses in writing to the Secretary of State by the
92 end of the thirty-day period a desire to use the land, then the
93 Secretary of State, with the prior approval of the Mississippi

94 Legislature to sell the state-held land, may offer the land for
95 sale to any individual or private entity.

96 (5) A cultural resources survey may be performed on any
97 state-held land before the disposition of the land if the State
98 Department of Archives and History deems this survey necessary.
99 The cost of the survey and any archaeological studies deemed
100 necessary by the State Department of Archives and History shall be
101 paid by the selling agency and recouped from the proceeds of the
102 sale.

103 (6) Before any land may be purchased by the state for the
104 benefit of any state agency, the Secretary of State, or his
105 designee, shall search and examine all state land records to
106 determine whether the state owns any land that may fit the
107 particular need of the agency. The Secretary of State, or his
108 designee, shall notify the agency if it is determined that any
109 state-held land is available for use by the agency. The agency
110 shall determine if such land accommodates its needs and shall
111 determine whether to make an official request to the proper
112 authorities to have the use of the land.

113 (7) Any lands purchased or acquired for construction and
114 maintenance of highways or highway rights-of-way by the
115 Mississippi Department of Transportation shall be excluded from
116 the provisions of this section.

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

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

124 (10) The Secretary of State may recover from any agency,
125 corporation, board, commission, entity or individual any cost that

126 is incurred by his office for the record-keeping responsibilities
127 regarding the sale or purchase of any state-held lands.

128 (11) Subsections (3), (4), (5) and (6) of this section shall
129 not apply to sales or purchases of land when the Legislature
130 expressly authorizes or directs a state agency to sell, purchase
131 or lease-purchase a specifically described property. However,
132 when the Legislature authorizes a state agency to sell or
133 otherwise convey specifically described real property to another
134 state agency or other entity such as a county, municipality,
135 economic development district created under Section 19-5-99 or
136 similar entity, without providing that the conveyance may not be
137 made for less than the fair market value of the property, then the
138 state agency authorized to convey such property must make the
139 following determinations before conveying the property:

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

143 (b) That there are quantifiable benefits that will
144 inure to the state agency or other entity to which the proposed
145 conveyance is to be made which outweigh any quantifiable costs to
146 the state agency authorized to make the conveyance; and

147 (c) That the state agency or other entity to which the
148 proposed conveyance is to be made lacks available funds to pay
149 fair market value for the property. If the state agency
150 authorized to convey such property fails to make such
151 determinations, then it shall not convey the property for less
152 than the fair market value of the property.

153 (12) This section shall not apply to the donation and
154 conveyance of the Nanih Waiya State Park to the Mississippi Band
155 of Choctaw Indians.

156 **SECTION 4.** Section 55-3-47, Mississippi Code of 1972, is
157 amended as follows:

158 55-3-47. (1) In order to carry out its management
159 responsibilities over all state park lands which are now or which
160 may hereafter come under its jurisdiction, the Mississippi
161 Department of Wildlife, Fisheries and Parks is hereby authorized
162 to lease, and to grant easements and rights-of-way over and
163 across, any part of such state park lands. Such leases, easements
164 and rights-of-way may be granted for such consideration, and upon
165 such terms and conditions, as the department may deem to be in the
166 best interest of the state, consistent with the use of said lands
167 for recreational purposes, and subject to the following
168 limitations: The department shall lease such lands for a term not
169 exceeding twenty-five (25) years and shall grant in the original
170 lease contract a nonnegotiable option to renew such lease for an
171 additional term not to exceed twenty-five (25) years. Both the
172 original lease contract and the option to renew such lease shall
173 be transferable contracts. Further, the department shall not
174 lease such lands for purposes which are incompatible with
175 recreational use and may place such terms, limitations,
176 restrictions and conditions in such leases as are deemed necessary
177 to ensure the proper utilization of such lands. Any easement for
178 a utility line shall be granted for that period of time which the
179 department deems to be in the best interest of a state park.

180 (2) The department is further authorized to enter into such
181 agreements as may be required, upon such terms as may be found to
182 be in the best interest of the state, in settlement of disputes or
183 litigation regarding the title to or boundaries of any state park
184 lands within the jurisdiction of the department, provided such
185 settlement agreements shall be negotiated and drafted with the
186 advice, counsel and assistance of the Attorney General and shall
187 be approved by the Department of Finance and Administration.

188 (3) In case any of the real estate within any state park
189 under the jurisdiction of the department shall cease to be used or
190 useful for state park purposes, or becomes the subject of boundary

191 or title disputes or litigation, the department may sell and
192 convey the same, with the approval of the Department of Finance
193 and Administration, upon such terms as the Department of Finance
194 and Administration may elect and may, in addition, exchange the
195 same, with the approval of the department, for real estate
196 belonging to any other political subdivision or state, county or
197 local governmental agency or department. The department is
198 authorized to sell and convey or otherwise transfer any state park
199 or historical site as described in subsection (2) of Section
200 55-3-33. Before any such sale or transfer, except as may occur in
201 settlement of title or boundary disputes or litigation, the
202 department shall publish notice of its intention to sell the park
203 land by public sale to the highest and best bidder at least once
204 each week for three (3) consecutive weeks in at least one (1)
205 public newspaper of general circulation in the county where such
206 land is located and also in at least one (1) newspaper of general
207 circulation throughout the state. Prior to any such sale, the
208 department shall obtain at least two (2) separate and independent
209 appraisals of the land to be sold and may not accept any bid lower
210 than the average of all appraisals made. The department may
211 reject any and all bids. The owner or any co-owner of record next
212 preceding the state in title to any lands sold hereunder by public
213 bid, excluding any entity which may have exercised the power of
214 eminent domain to assist the state in acquiring said lands, shall
215 have the opportunity to reacquire such lands by matching the
216 successful bid therefor. If the owner or any co-owner of record
217 next preceding the state in title, or the heirs or estate of such
218 owner or co-owner, acquires said lands, then the department shall
219 not reserve unto the state any minerals owned by the state
220 underlying the conveyed lands. However, if anyone other than such
221 owner or co-owner, or his heirs or estate, acquires said lands,
222 then the department shall reserve unto the state one-half (1/2) of
223 the minerals owned by the state underlying the conveyed lands,

224 except for lands sold in settlement of title or boundary disputes
225 or litigation, in which case the department may, in its
226 discretion, reserve said minerals. Appraisal fees shall be shared
227 equally by the department and purchaser.

228 (4) In exercising the authority granted in this section, the
229 department may act by and through its executive director in the
230 execution of any document or instrument prepared hereunder. Any
231 lease, deed or settlement agreement executed under the provisions
232 of this section shall bear the seal and attest of the Secretary of
233 State, with whom said instrument or document shall be filed and
234 recorded in addition to any other recording requirements of state
235 law.

236 This section shall not apply to sixteenth section school
237 lands or lieu lands included within any state park, except as may
238 be necessary or appropriate for the department to ratify or
239 confirm any action taken by the agency or department having
240 jurisdiction over such school or lieu lands.

241 All revenues collected by the department by virtue of any
242 transaction consummated under the provisions of this section shall
243 be deposited in the Mississippi Park Fund created by Section
244 55-3-41, from which funds shall be expended only as authorized by
245 the legislative appropriations process.

246 (5) This section shall not apply to the donation and
247 conveyance of the Nanih Waiya State Park to the Mississippi Band
248 of Choctaw Indians.

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