

By: Representatives Currie, Turner

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 1455

1 AN ACT TO AMEND SECTION 31-7-23, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO ESTABLISH
3 POLICIES THAT GOVERN THE ACCRUAL AND USE OF REBATES EARNED BY
4 STATE AGENCIES FROM THE USE OF BANK ISSUED PROCUREMENT CARDS; TO
5 BRING FORWARD SECTIONS 27-104-33, 31-7-9 AND 37-181-5, MISSISSIPPI
6 CODE OF 1972, WHICH PROVIDE CERTAIN REGULATIONS FOR THE USE OF
7 PROCUREMENT CARDS AND CREDIT CARDS BY DIFFERENT ENTITIES, FOR THE
8 PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** Section 31-7-23, Mississippi Code of 1972, is
11 amended as follows:

12 31-7-23. (1) Any rebates, refunds, coupons, merit points,
13 gratuities or any article of value tendered or received by any
14 agency or governing authority from any vendor of material,
15 supplies, equipment or other articles shall inure to the benefit
16 of the agency or governing authority making the purchase. The
17 agency or governing authority may, in accordance with its best
18 interest, either take delivery of the article of value tendered
19 and use the same or convert it to cash by selling it for its fair
20 and reasonable value, making use of the proceeds from such sale
21 for the exclusive benefit of the agency or governing authority.



22 (2) The Department of Finance and Administration shall adopt
23 policies regarding state agency receipt and use of rebates from
24 purchases made on bank issued credit cards, or procurement cards
25 (p-cards). The policies created shall address the rebates that
26 agencies accrue and set out how agencies that use special funds
27 for procurement purposes may access the rebates accrued that are
28 to be used by that agency. The policies shall also clarify that
29 when purchases are made using general funds and those purchases
30 accrue rebates, the rebates so accrued shall be deposited into the
31 state general fund.

32 (3) The Department of Finance and Administration shall work
33 with a bank that has issued procurement cards to determine whether
34 the state and its individual agencies are receiving the full
35 benefit of the rebates accrued from their purchases. The
36 Department of Finance and Administration shall provide an annual
37 report to the agencies that shows the amount of rebates earned
38 that are attributable to the agencies' purchases.

39 **SECTION 2.** Section 27-104-33, Mississippi Code of 1972, is
40 brought forward as follows:

41 27-104-33. The State Department of Finance and
42 Administration shall establish policies that allow the payment of
43 various fees and other accounts receivable to state agencies, and
44 the payment for retail merchandise sold by state agencies, by
45 credit cards, charge cards, debit cards and other forms of
46 electronic payment in the discretion of the department. Any fees



47 or charges associated with the use of such electronic payments
48 shall be assessed to the user of the electronic payment as an
49 additional charge for processing the electronic payment, so that
50 the user will pay the full cost of using the electronic payment.

51 Agencies, with the approval of the Department of Finance and
52 Administration, may bear the full cost of processing such
53 electronic payments if the agency can demonstrate to the
54 department's satisfaction that they are able to assume these costs
55 and provide the related service for the same or lesser cost.
56 However, state agencies may bear the full cost of processing such
57 electronic payments for retail merchandise sold by state agencies.

58 **SECTION 3.** Section 31-7-9, Mississippi Code of 1972, is
59 brought forward as follows:

60 31-7-9. (1) (a) The Office of Purchasing, Travel and Fleet
61 Management shall adopt purchasing regulations governing the
62 purchase by any agency of any commodity or commodities and
63 establishing standards and specifications for a commodity or
64 commodities and the maximum fair prices of a commodity or
65 commodities, subject to the approval of the Public Procurement
66 Review Board. It shall have the power to amend, add to or
67 eliminate purchasing regulations. The adoption of, amendment,
68 addition to or elimination of purchasing regulations shall be
69 based upon a determination by the Office of Purchasing, Travel and
70 Fleet Management with the approval of the Public Procurement
71 Review Board, that such action is reasonable and practicable and



72 advantageous to promote efficiency and economy in the purchase of
73 commodities by the agencies of the state. Upon the adoption of
74 any purchasing regulation, or an amendment, addition or
75 elimination therein, copies of same shall be furnished to the
76 State Auditor and to all agencies affected thereby. Thereafter,
77 and except as otherwise may be provided in subsection (2) of this
78 section, no agency of the state shall purchase any commodities
79 covered by existing purchasing regulations unless such commodities
80 be in conformity with the standards and specifications set forth
81 in the purchasing regulations and unless the price thereof does
82 not exceed the maximum fair price established by such purchasing
83 regulations. The Office of Purchasing, Travel and Fleet
84 Management shall furnish to any county or municipality or other
85 local public agency of the state requesting same, copies of
86 purchasing regulations adopted by the Office of Purchasing, Travel
87 and Fleet Management and any amendments, changes or eliminations
88 of same that may be made from time to time.

89 (b) The Office of Purchasing, Travel and Fleet
90 Management may adopt purchasing regulations governing the use of
91 credit cards, procurement cards and purchasing club membership
92 cards to be used by state agencies, governing authorities of
93 counties and municipalities, school districts and the Chickasawhay
94 Natural Gas District. Use of the cards shall be in strict
95 compliance with the regulations promulgated by the office. Any



96 amounts due on the cards shall incur interest charges as set forth
97 in Section 31-7-305 and shall not be considered debt.

98 (c) Pursuant to the provision of Section 37-61-33(3),
99 the Office of Purchasing, Travel and Fleet Management of the
100 Department of Finance and Administration is authorized to issue
101 procurement cards to all public school district classroom teachers
102 and other necessary direct support personnel at the beginning of
103 the school year for the purchase of instructional supplies using
104 Educational Enhancement Funds. The cards will be issued in equal
105 amounts per teacher determined by the total number of qualifying
106 personnel and the then current state appropriation for classroom
107 instructional supplies under the Education Enhancement Fund. All
108 purchases shall be in accordance with state law and teachers are
109 responsible for verification of capital asset requirements when
110 pooling monies to purchase equipment. The cards will expire on a
111 pre-determined date at the end of each school year. All
112 unexpended amounts will be carried forward, to be combined with
113 the following year's instructional supply fund allocation, and
114 reallocated for the following year. The Department of Finance and
115 Administration is authorized to loan any start-up funds at the
116 beginning of the school year to fund this procurement system for
117 instructional supplies with loan repayment being made from sales
118 tax receipts earmarked for the Education Enhancement Fund.

119 (d) In a sale of goods or services, the seller shall
120 not impose a surcharge on a buyer who uses a state-issued credit



121 card, procurement card, travel card, or fuel card. The Department
122 of Finance and Administration shall have exclusive jurisdiction to
123 enforce and adopt rules relating to this paragraph. Any rules
124 adopted under this paragraph shall be consistent with federal laws
125 and regulations governing credit card transactions described by
126 this paragraph. This paragraph does not create a cause of action
127 against an individual for a violation of this paragraph.

128 (2) The Office of Purchasing, Travel and Fleet Management
129 shall adopt, subject to the approval of the Public Procurement
130 Review Board, purchasing regulations governing the purchase of
131 unmarked vehicles to be used by the Bureau of Narcotics and
132 Department of Public Safety in official investigations pursuant to
133 Section 25-1-87. Such regulations shall ensure that purchases of
134 such vehicles shall be at a fair price and shall take into
135 consideration the peculiar needs of the Bureau of Narcotics and
136 Department of Public Safety in undercover operations.

137 (3) The Office of Purchasing, Travel and Fleet Management
138 shall adopt, subject to the approval of the Public Procurement
139 Review Board, regulations governing the certification process for
140 certified purchasing offices, including the Mississippi Purchasing
141 Certification Program, which shall be required of all purchasing
142 officials at state agencies. Such regulations shall require
143 entities desiring to be classified as certified purchasing offices
144 to submit applications and applicable documents on an annual
145 basis, and in the case of a state agency purchasing office, to



146 have one hundred percent (100%) participation and completion by
147 purchasing officials in the Mississippi Purchasing Certification
148 Program, at which time the Office of Purchasing, Travel and Fleet
149 Management may provide the governing entity with a certification
150 valid for one (1) year from the date of issuance. The Office of
151 Purchasing, Travel and Fleet Management shall set a fee in an
152 amount that recovers its costs to administer the Mississippi
153 Purchasing Certification Program, which shall be assessed to the
154 participating state agencies.

155 **SECTION 4.** Section 37-181-5, Mississippi Code of 1972, is
156 brought forward as follows:

157 37-181-5. (1) An eligible student shall qualify to
158 participate in the program if the parent signs an agreement
159 promising:

160 (a) To provide an organized, appropriate educational
161 program with measurable annual goals to their participating
162 student and, to the extent reasonably deemed appropriate by the
163 parent, to provide an education for the qualified student in at
164 least the subjects of reading, grammar, mathematics, social
165 studies and science;

166 (b) To document their participating student's
167 disability at intervals and in a manner required under subsection
168 (8) of this section;

169 (c) Not to enroll their participating student in a
170 public school and to acknowledge as part of the agreement that the



171 home school district has provided clear notice to the parent that
172 the participating student has no individual entitlement to a free
173 appropriate public education (FAPE) from their home school
174 district, including special education and related services, for as
175 long as the student is participating in the program;

176 (d) Not to file for their participating student a
177 certificate of enrollment indicating participation in a home
178 instruction program under Section 37-13-91, Mississippi Code of
179 1972; and

180 (e) Not to participate in the Mississippi Dyslexia
181 Therapy Scholarship for Students with Dyslexia Program or the
182 Mississippi Speech-Language Therapy Scholarship for Students with
183 Speech-Language Impairments Program while participating in the ESA
184 program.

185 (2) Parents shall use the funds deposited in a participating
186 student's ESA for any of the following qualifying expenses to
187 educate the student using any of the below methods or combination
188 of methods that meet the requirement in subsection (1)(a) of this
189 section:

190 (a) Tuition and/or fees at an eligible school;

191 (b) Textbooks;

192 (c) Payment to a tutor;

193 (d) Payment for purchase of curriculum, including any
194 supplemental materials required by the curriculum;



195 (e) Fees for transportation to and from an educational
196 service provider paid to a fee-for-service transportation
197 provider;

198 (f) Tuition and/or fees for online learning programs or
199 courses;

200 (g) Fees for nationally standardized norm-referenced
201 achievement tests, including alternate assessments; and fees for
202 Advanced Placement examinations or similar courses and any
203 examinations related to college or university admission;

204 (h) Educational services or therapies from a licensed
205 or certified practitioner or provider, including licensed or
206 certified paraprofessionals or educational aides;

207 (i) Services provided by a public school, including
208 individual classes and extracurricular programs;

209 (j) Tuition and fees at a postsecondary institution;

210 (k) Textbooks related to coursework at a postsecondary
211 institution;

212 (l) Surety bond payments if required by the department;

213 (m) No more than Fifty Dollars (\$50.00) in annual
214 consumable school supplies necessary for educational services and
215 therapies, daily classroom activities, and tutoring;

216 (n) Computer hardware and software and other
217 technological devices if an eligible school, licensed or certified
218 tutor, licensed or certified educational service practitioner or
219 provider, or licensed medical professional verifies in writing



220 that these items are essential for the student to meet annual,
221 measurable goals. Once a student is no longer eligible for the
222 program, computer hardware and software and other technological
223 devices purchased with ESA funds may be donated to a library or a
224 nonprofit organization with expertise and training in working with
225 parents to educate children with disabilities or a nonprofit
226 organization with expertise and training in working with disabled
227 adults.

228 (3) Neither a participating student, nor anyone on the
229 student's behalf, may receive cash or cash-equivalent items, such
230 as gift cards or store credit, from any refunds or rebates from
231 any provider of services or products in this program. Any refunds
232 or rebates shall be credited directly to the participating
233 student's ESA. The funds in an ESA may only be used for
234 education-related purposes. Eligible schools, postsecondary
235 institutions and educational service providers that serve
236 participating students shall provide parents with a receipt for
237 all qualifying expenses.

238 (4) Payment for educational services through an ESA shall
239 not preclude parents from paying for educational services using
240 non-ESA funds.

241 (5) ESA funds may not be used to attend an eligible school
242 that maintains its primary location in a state other than
243 Mississippi unless that school is approved for the Educable Child
244 Program; or unless the parent verifies in writing that their child



245 cannot reasonably obtain appropriate special education and related
246 services in Mississippi at a location within thirty (30) miles of
247 their legal residence.

248 (6) For purposes of continuity of educational attainment,
249 students who enroll in the program shall remain eligible to
250 receive quarterly ESA payments until the participating student
251 returns to a public school, completes high school, completes the
252 school year in which the student reaches the age of twenty-one
253 (21), or does not have eligibility verified by a parent as
254 required under subsection (8) of this section, whichever occurs
255 first.

256 (7) Any funds remaining in a student's Education Scholarship
257 Account upon completion of high school shall be returned to the
258 state's General Fund.

259 (8) Every three (3) years after initial enrollment in the
260 program, a parent of a participating student, except a student
261 diagnosed as being a person with a permanent disability, shall
262 document that the student continues to be identified by the school
263 district, a federal or state government agency, or a licensed
264 physician or psychometrist as a child with a disability, as
265 defined by the federal Individuals with Disabilities Education Act
266 (20 USCS Section 1401(3)).

267 (9) A participating student shall be allowed to return to
268 his home school district at any time after enrolling in the
269 program, in compliance with regulations adopted by the department



270 providing for the least disruptive process for doing so. Upon a
271 participating student's return to his home school district, that
272 student's Education Scholarship Account shall be closed and any
273 remaining funds shall be returned to the state's General Fund.

274 (10) The department shall begin accepting applications for
275 the program on July 1, 2015.

276 **SECTION 5.** This act shall take effect and be in force from
277 and after July 1, 2016.

