

By: Representatives Mettetal, Holloway

To: Universities and
Colleges; Appropriations

HOUSE BILL NO. 1293

1 AN ACT TO AMEND SECTION 37-155-9, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE INVESTMENT POWERS AND DUTIES OF THE BOARD OF
3 DIRECTORS OF THE COLLEGE SAVINGS PLANS OF MISSISSIPPI TRUST FUNDS;
4 AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 37-155-9, Mississippi Code of 1972, is
7 amended as follows:

8 37-155-9. In addition to the powers granted by any other
9 provision of this article, the board of directors shall have the
10 powers necessary or convenient to carry out the purposes and
11 provisions of this article, the purposes and objectives of the
12 trust fund and the powers delegated by any other law of the state
13 or any executive order thereof, including, but not limited to, the
14 following express powers:

15 (a) To adopt and amend bylaws;

16 (b) To adopt such rules and regulations as are
17 necessary to implement the provisions of this article;

18 (c) To invest any funds of the trust fund in any
19 instrument, obligation, security or property that constitutes



20 legal investments for public funds in the state and to name and
21 use depositories for its investments and holdings;

22 (d) To execute contracts and other necessary
23 instruments;

24 (e) To impose reasonable requirements for residency for
25 beneficiaries at the time of purchase of the contract and to
26 establish rules to govern purchase of contracts for beneficiaries
27 who are nonresidents at the time the purchaser enters into the
28 prepaid tuition contract;

29 (f) To impose reasonable limits on the number of
30 contract participants in the trust fund at any given period of
31 time;

32 (g) To contract for necessary goods and services, to
33 employ necessary personnel, and to engage the services of
34 consultants for administrative and technical assistance in
35 carrying out the responsibilities of the trust fund;

36 (h) To solicit and accept gifts, including
37 bequeathments or other testamentary gifts made by will, trust or
38 other disposition, grants, loans and other aids from any personal
39 source or to participate in any other way in any federal, state or
40 local governmental programs in carrying out the purposes of this
41 article. Any gifts made to the board under this subsection shall
42 be deductible from taxable income of the state in the tax year;

43 (i) To define the terms and conditions under which
44 payments may be withdrawn or refunded from the trust fund,



including, but not limited to, the amount paid in and an additional amount in the nature of interest at a rate that corresponds, at a minimum, to the prevailing interest rates for savings accounts provided by banks and savings and loan associations and impose reasonable charges for such withdrawal or refund;

(j) To ensure applicability to private and out-of-state tuitions:

(i) Under the program, a state purchaser may enter into a prepaid tuition contract with the board under which the purchaser agrees to attend a public institution of higher education in Mississippi;

(ii) If the beneficiary of a plan described by Section 37-155-11 enrolls in any in-state or out-of-state regionally accredited private four- or two-year college or an out-of-state regionally accredited, state-supported, nonprofit four- or two-year college or university, or any in-state or out-of-state regionally accredited graduate institution, the board shall pay to the institution an amount up to, but not greater than, the undergraduate tuition and required fees that the board would have paid had the beneficiary enrolled in an institution of higher education covered by the plan selected in the prepaid tuition contract. The beneficiary is responsible for paying a private undergraduate or graduate institution or an out-of-state public undergraduate or graduate institution the amount by which



70 the tuition and required fees of the institution exceed the
71 tuition and required fees paid by the board;

72 (k) To impose reasonable time limits on the use of the
73 tuition benefits provided by the program;

74 (l) To provide for the receipt of contributions to the
75 trust fund in lump sums or installment payments;

76 (m) To adopt an official seal and rules;

77 (n) To sue and be sued;

78 (o) To establish agreements or other transactions with
79 federal, state and local agencies, including state universities
80 and community colleges;

81 (p) To appear in its own behalf before boards,
82 commissions or other governmental agencies;

83 (q) To segregate contributions and payments to the fund
84 into various accounts and funds;

85 (r) To require and collect administrative fees and
86 charges in connection with any transaction and impose reasonable
87 penalties, including default, for delinquent payments or for
88 entering into an advance payment contract on a fraudulent basis;

89 (s) To procure insurance against any loss in connection
90 with the property, assets and activities of the fund or the board;

91 (t) To require that purchasers of advance payment
92 contracts verify, under oath, any requests for contract
93 conversions, substitutions, transfers, cancellations, refund
94 requests or contract changes of any nature;



95 (u) To administer the fund in a manner that is
96 sufficiently actuarially sound to meet the obligations of the
97 program. The board shall annually evaluate or cause to be
98 evaluated the actuarial soundness of the fund. If the board
99 perceives a need for additional assets in order to preserve
100 actuarial soundness, the board may adjust the terms of subsequent
101 advance payment contracts to ensure such soundness;

102 (v) To establish a comprehensive investment plan for
103 the purposes of this section. The comprehensive investment plan
104 shall specify the investment policies to be utilized by the board
105 in its administration of the fund. The board may authorize
106 investments in:

107 (* * *1) Corporate bonds and taxable municipal
108 bonds of investment grade as rated by Standard & Poor's, Fitch
109 Ratings, Ltd., or * * * Moody's Investment Service * * *; or
110 corporate short-term obligations of corporations or of wholly
111 owned subsidiaries of corporations, whose short-term obligations
112 are rated * * * A-2 or better by Standard and Poor's * * * P-2 or
113 better by Moody's Investment Service, or F-2 or better by Fitch
114 Ratings, Ltd., or the equivalent of these ratings if assigned by
115 another United States Securities and Exchange Commission
116 designated Nationally Recognized Statistical Rating Organization;

117 (ii) Agency and nonagency residential and
118 commercial mortgage-backed securities and collateralized mortgage
119 obligations;



120 (iii) Convertible bonds;
121 (* * * iv) Bonds of the Tennessee Valley
122 Authority;
123 (* * * y) Bonds issued, assumed, or guaranteed by
124 the State of Israel;
125 (vi) Bonds, notes, certificates and other valid
126 obligations of the United States, and other valid obligations of
127 any federal instrumentality that issues securities under authority
128 of an act of Congress and are exempt from registration with the
129 Securities and Exchange Commission;
130 (vii) Bonds, notes, debentures and other
131 securities issued by any federal instrumentality and fully
132 guaranteed by the United States. Direct obligations issued by the
133 United States of America shall be deemed to include securities of,
134 or other interests in, any open-end or closed-end management type
135 investment company or investment trust registered under the
136 provisions of * * * the Investment Company Act of 1940, provided
137 that the portfolio of such investment company or investment trust
138 is limited to direct obligations issued by the United States of
139 America, United States government agencies, United States
140 government instrumentalities or United States government sponsored
141 enterprises, and to repurchase agreements fully collateralized by
142 direct obligations of the United States of America, United States
143 government agencies, United States government instrumentalities or
144 United States government sponsored enterprises, and the investment



company or investment trust takes delivery of such collateral for the repurchase agreement, either directly or through an authorized custodian * * *;

(viii) Interest-bearing revenue bonds or notes; or bonds or notes which are general obligations of any * * * state in the United States or of any city or county therein, provided * * * that the bonds or notes are of investment grade as rated by Standard and Poor's, Fitch Ratings, Ltd., or Moody's Investment Service;

(ix) Shares of stocks, common and/or preferred, of corporations created by or existing under the laws of the United States or any state, district or territory thereof * * * and shares of stocks, common and/or preferred, and convertible securities of non-United States companies, provided:

(A) The maximum investments in stocks shall not exceed * * * seventy percent (70%) of the book value of the total investment fund * * *;

(B) The stock of such corporation shall:

1. Be listed on a national stock exchange; or

2. Be traded in the over-the-counter market, provided price quotations for such over-the-counter stocks are quoted by the National Association of Securities Dealers Automated Quotation System (NASDAQ);



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

(D) The amount of investment in any one (1) corporation shall not exceed * * * five percent (5%) of the book value of the assets of the * * * fund; and

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

The board may take requisite action to effectuate or hedge such transactions for shares of stock and convertible securities of non-United States companies through foreign or domestic banks, including the purchase and sale, transfer, exchange or otherwise disposal of, and generally deal in foreign exchange through the use of foreign currency, interbank forward contracts, futures contracts, options contracts, swaps and other related derivative instruments, notwithstanding any other provisions of this article to the contrary;

(x) Bonds * * * of investment grade, stocks and convertible securities of established non-United States companies and foreign government securities of investment grade rated by a recognized rating agency, which companies are listed on only primary national stock exchanges of foreign nations; * * * provided that the total book value of investments under this paragraph shall at no time exceed * * * thirty percent (30%) of



the total book value of all investments of the * * * fund. The board may take requisite action to effectuate or hedge such transactions through foreign or domestic banks, including the purchase and sale, transfer, exchange or otherwise disposal of, and generally deal in foreign exchange through the use of foreign currency, interbank forward contracts, futures contracts, options contracts, swaps and other related derivative instruments, notwithstanding any other provisions of this article to the contrary;

(xi) Covered call and put options on securities or indices traded on one or more of the regulated exchanges;

(xii) Institutional investment trusts managed by a corporate trustee or by a Securities and Exchange Commission registered investment advisory firm retained as an investment manager by the board of directors, and institutional class shares of investment companies and unit investment trusts registered under the Investment Company Act of 1940 where such funds or shares are comprised of common or preferred stocks, bonds, money market instruments or other investments authorized under this section. Any investment manager or managers approved by the board of directors shall invest such funds or shares as a fiduciary;

(xiii) Pooled or commingled real estate funds or real estate securities managed by a corporate trustee or by a Securities and Exchange Commission registered investment advisory firm retained as an investment manager by the board of directors.



219 Such investment in commingled funds or shares shall be held in
220 trust; provided that the total book value of investments under
221 this paragraph shall at no time exceed * * * ten percent (10%) of
222 the total book value of all investments of the * * * fund. Any
223 investment manager approved by the board of directors shall invest
224 such commingled funds or shares as a fiduciary; and

225 (xiv) Types of investments not specifically
226 authorized by this paragraph (v) if the investments are in the
227 form of a separate account managed by a Securities and Exchange
228 Commission registered investment advisory firm retained as an
229 investment manager by the board; or a limited partnership or
230 commingled fund approved by the board; provided that the total
231 book value of investments under this subparagraph (xiv) may at no
232 time exceed ten percent (10%) of the total book value of all
233 investments of the fund. Any person or entity who exercises any
234 discretionary authority or discretionary control respecting
235 management of the separate account, limited partnership or
236 commingled fund, or who exercises any authority or control
237 respecting management or disposition of the assets of the separate
238 account, limited partnership or commingled fund shall exercise
239 such authority or control as a fiduciary.

240 (w) All investments shall be acquired * * * at prices
241 not exceeding the prevailing market values for such * * *
242 investments;



243 (x) Any limitations herein set forth shall be
244 applicable only at the time of purchase and shall not require the
245 liquidation of any investment at any time. All investments shall
246 be clearly marked to indicate ownership by the * * * fund and to
247 the extent possible shall be registered in the name of the * * *
248 fund;

249 (y) Subject to the above terms, conditions, limitations
250 and restrictions, the board shall have power to sell, assign,
251 transfer and dispose of any of the securities and investments of
252 the * * * fund, provided that the sale, assignment or transfer has
253 the majority approval of the entire board. The board may employ
254 or contract with investment managers, evaluation services or other
255 such services as determined by the board to be necessary for the
256 effective and efficient operation of the * * * fund;

257 (z) Except as otherwise provided herein, no trustee and
258 no employee of the board shall have any direct or indirect
259 interest in the income, gains or profits of any investment made by
260 the board, nor shall any such person receive any pay or emolument
261 for his services in connection with any investment made by the
262 board. No trustee or employee of the board shall become an
263 endorser or surety, or in any manner an obligor for money loaned
264 by or borrowed from the * * * fund;

265 (aa) Funds may be deposited in any institution insured
266 by the Federal Deposit Insurance Corporation which maintains a
267 facility that takes deposits in the State of Mississippi which



268 appears on the State of Mississippi Treasury Department's approved
269 depository list and/or safekeeper list or a custodial bank;

270 (bb) All interest derived from investments and any
271 gains from the sale or exchange of investments shall be credited
272 by the board to the account of the * * * fund;

273 (* * * cc) To delegate responsibility for
274 administration of the comprehensive investment plan to a
275 consultant the board determines to be qualified. Such consultant
276 shall be compensated by the board. Directly or through such
277 consultant, the board may contract to provide such services as may
278 be a part of the comprehensive investment plan or as may be deemed
279 necessary or proper by the board or such consultant, including,
280 but not limited to, providing consolidated billing, individual and
281 collective record keeping and accounting, and asset purchase,
282 control and safekeeping;

283 (* * * dd) To annually prepare or cause to be prepared
284 a report setting forth in appropriate detail an accounting of the
285 fund and a description of the financial condition of the program
286 at the close of each fiscal year. Such report shall be submitted
287 to the Governor, the Lieutenant Governor, the President of the
288 Senate, the Speaker of the House of Representatives, and members
289 of the Board of Trustees of State Institutions of Higher Learning,
290 the Mississippi Community College Board and the State Board of
291 Education on or before March 31 each year. In addition, the board
292 shall make the report available to purchasers of advance payment



293 contracts. The board shall provide to the Board of Trustees of
294 State Institutions of Higher Learning and the Mississippi
295 Community College Board by March 31 each year complete advance
296 payment contract sales information including projected
297 postsecondary enrollments of beneficiaries. The accounts of the
298 fund shall be subject to annual audits by the State Auditor or his
299 designee;

300 (* * *ee) To solicit proposals for the marketing of
301 the Mississippi Prepaid Affordable College Tuition Program. The
302 entity designated pursuant to this paragraph shall serve as a
303 centralized marketing agent for the program and shall solely be
304 responsible for the marketing of the program. Any materials
305 produced for the purpose of marketing the programs shall be
306 submitted to the board for review. No such materials shall be
307 made available to the public before the materials are approved by
308 the board. Any educational institution may distribute marketing
309 materials produced for the program; however, all such materials
310 shall have been approved by the board prior to distribution.
311 Neither the state nor the board shall be liable for
312 misrepresentation of the program by a marketing agent; and

313 (* * *ff) To establish other policies, procedures and
314 criteria necessary to implement and administer the provisions of
315 this article.

316 For efficient and effective administration of the program and
317 trust fund, the board may authorize the State of Mississippi



318 Treasury Department and/or the State Treasurer to carry out any or
319 all of the powers and duties enumerated above.

320 **SECTION 2.** This act shall take effect and be in force from
321 and after July 1, 2017.

