

By: Senator(s) Tindell

To: Appropriations

SENATE BILL NO. 2675

1 AN ACT TO CREATE A PUBLIC BODY CORPORATE AND POLITIC TO BE
 2 DESIGNATED AS THE MISSISSIPPI GULF COAST ECONOMIC RESTORATION
 3 TRUST, WHICH IS DESIGNED TO BE A PILOT PROJECT FOR CREATION OF A
 4 PERPETUAL TRUST; TO PROVIDE THAT \$25,000,000.00 OF THE FUNDS
 5 RECEIVED FROM THE BP ECONOMIC DAMAGES SETTLEMENT AGREEMENT BE
 6 APPROPRIATED TO THE MISSISSIPPI GULF COAST ECONOMIC RESTORATION
 7 TRUST; TO PROVIDE FOR A BOARD OF TRUSTEES TO SERVE AS THE
 8 GOVERNING BODY OF THE MISSISSIPPI GULF COAST ECONOMIC RESTORATION
 9 TRUST; TO PROVIDE FOR THE COMPOSITION AND POWERS OF THE BOARD OF
 10 TRUSTEES; TO REQUIRE THAT THE BOARD OF TRUSTEES ESTABLISH CRITERIA
 11 AND RULES FOR APPLICATION FOR AND INVESTMENT OF FUNDS FOR ECONOMIC
 12 DEVELOPMENT PROJECTS OF REGIONAL SIGNIFICANCE TO CREATE NEW
 13 PERMANENT JOBS AND EXPANSION OF SALES AND INCOME TAX RECEIPTS FOR
 14 THE STATE TREASURY AND SALES AND PROPERTY TAX RECEIPTS FOR
 15 MUNICIPALITIES, COUNTIES AND SCHOOL DISTRICTS; TO PROVIDE THAT THE
 16 BOARD OF TRUSTEES MAY CONTRACT WITH THE MISSISSIPPI DEPARTMENT OF
 17 MARINE RESOURCES FOR CERTAIN ADMINISTRATIVE SERVICES; TO PROVIDE
 18 FOR AN ECONOMIC RECOVERY ADVISORY BOARD; AND FOR OTHER PURPOSES.

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

20 **SECTION 1. Legislative intent.** It is declared by the
 21 Legislature that the funds received by the State of Mississippi
 22 from BP p.l.c. and related companies from and through the State of
 23 Mississippi's BP Economic Damages Settlement Agreement pertaining
 24 to civil actions brought against those companies by the State of
 25 Mississippi should be applied primarily toward economic
 26 restoration of the regional economy of the Mississippi Gulf Coast.



27 It is the intent of the Legislature by this act to provide a pilot
28 project to explore the best practices, manner and means necessary
29 to carry out those purposes.

30 **SECTION 2. Definitions.** For the purposes of this act, the
31 following words shall have the meanings ascribed herein, unless
32 the context otherwise requires:

33 (a) "Beneficiary" means every public-private
34 partnership, individual, corporation, partnership, joint venture,
35 association, trust, limited liability company, unincorporated
36 organization, municipality, county, political subdivision of the
37 state, public or private educational institution, public or
38 private research institution, or other for-profit or
39 not-for-profit entity to whom financial aid is provided pursuant
40 to the provisions of this act.

41 (b) "BP Economic Damages Settlement Agreement" means
42 the settlement of the litigation between the state and BP p.l.c.
43 and related parties with respect to economic damages to the State
44 of Mississippi arising out of the Deepwater Horizon Oil Spill.

45 (c) "Board" or "Board of Trustees" means the Board of
46 Trustees of the Trust, and should said board be abolished, the
47 board or entity succeeding the board in the performance of its
48 functions, powers and duties.

49 (d) "Bonds" means bonds, notes or any other evidence of
50 indebtedness.



51 (e) "Deepwater Horizon Oil Spill" means the oil spill
52 occurring in the Gulf of Mexico caused by BP p.l.c. and related
53 entities and other companies that began on April 20, 2010.

54 (f) "Public-private partnership" means any partnership,
55 joint venture, or other business entity or public agency created
56 by a combination of one or more privately owned businesses,
57 educational institutions, or research institutions with one or
58 more municipalities, counties, political subdivisions of the
59 state, public educational institutions, or public research
60 institutions.

61 (g) "Trust" means the Mississippi Gulf Coast Economic
62 Restoration Trust created pursuant to Section 3 of this act.

63 **SECTION 3. Creation of the Trust.** (1) (a) There is
64 created an independent public body corporate and politic to be
65 designated as the "Mississippi Gulf Coast Economic Restoration
66 Trust," hereafter in this act also referred to as "Trust." The
67 Trust shall be a political subdivision of the state and not a
68 state agency. The Trust is created solely to accomplish the
69 purposes of the state under this act, and the exercise by the
70 Trust of the powers conferred by this act shall be deemed and held
71 to be the performance of an essential public function. The Trust
72 and its corporate existence shall continue in perpetuity or until
73 terminated by law; provided, however, that no such law of
74 termination shall take effect so long as the Trust shall have
75 bonds or other obligations outstanding, unless provision has been



76 made for the full and complete payment thereof. Upon termination
77 of the existence of the Trust, all its rights and properties shall
78 pass to and be vested in the state.

79 (b) The following sum is appropriated out of any money
80 to the credit of the Budget Contingency Fund out of the funds
81 already received from the BP Settlement Agreement, and allocated
82 in a manner as determined by the Treasurer's office, to defray the
83 expense of the Mississippi Gulf Coast Economic Restoration Trust
84 Fund.....\$25,000,000.00.

85 **SECTION 4. General powers of the Trust.** The Board of
86 Trustees shall have the powers, rights and duties of trustees as
87 defined in the Mississippi Uniform Trust Code (Sections 91-8-101
88 through 91-8-1206, Mississippi Code of 1972), and in addition and
89 supplementary thereto, the Trust shall also have and be able to
90 exercise, through its Board of Trustees, all powers necessary or
91 convenient to implement and carry out the purposes and provisions
92 of this act, including, but not limited to, the following express
93 powers:

94 (a) Sue and be sued, complain and defend, in the name
95 of the Trust;

96 (b) Have an official seal, which may be altered by
97 resolution, and to use it, or a facsimile of it, by impressing or
98 affixing it or in any other manner reproducing it;

99 (c) Establish bank accounts in the name of the Trust in
100 any qualified state depository into which the funds of the Trust



101 shall be deposited and held except for such funds as are invested
102 as permitted by this act;

103 (d) Contract for necessary goods and services, employ
104 necessary personnel, and engage the services of consultants for
105 administrative and technical assistance in carrying out its duties
106 and responsibilities under this act;

107 (e) Enter into other contracts and/or agreements that
108 the Board of Trustees determines to be necessary in carrying out
109 its duties and responsibilities under this act;

110 (f) Receive and administer any gift, concession, loan
111 or donation of any property or as money, including, but not
112 limited to, those made by the state or any agency or
113 instrumentality thereof, and spend or lend the same or the income
114 therefrom for any of its purposes and comply with all lawful
115 conditions or requirements thereof;

116 (g) Provide to or on behalf of any Beneficiary Trust
117 funds under terms approved by the board;

118 (h) Pledge or assign any monies, revenues, fees or any
119 other income, including all or part of the monies received or to
120 be received from the Settlement Agreement;

121 (i) Borrow money and issue bonds or obligations of the
122 Trust for any of its purposes, including, but not limited to, the
123 financing of all or part of the costs and expenses of approved
124 projects, and lend or otherwise provide funds to a beneficiary,
125 including, but not limited to, the payment of all or part of any



126 debt of said beneficiary or for any other purpose authorized by
127 this act;

128 (j) In addition to its investments in Trust projects
129 pursuant to this act, invest its funds in any of the investments
130 permitted by Section 37-155-9, Mississippi Code of 1972, as
131 amended, subject to the restrictions or limitations set forth
132 therein and to applicable restrictions in any contract, resolution
133 or indenture then in effect with respect to outstanding bonds of
134 the Trust;

135 (k) Acquire through purchase, lease, donation or
136 otherwise, any real or personal property, with or without
137 improvements, with or without liens, and rights over lands, even
138 though they are inferior to the full ownership thereof, in order
139 to execute any of its powers and purposes;

140 (l) Retain, reacquire, or otherwise acquire the title
141 to any real or personal property related to any Trust project that
142 has been acquired with funds that the Trust has donated, granted,
143 transferred or otherwise provided in favor of any beneficiary, and
144 sell, lease, cede, donate, transfer or otherwise dispose of said
145 real or personal property for those purposes that the board deems
146 prudent and necessary to achieve the objectives of this act;

147 (m) Establish criteria, rules and procedures for
148 accepting, reviewing and granting or denying applications for
149 assistance under this act to achieve the objectives of this act.

150 The board may *sua sponte* initiate projects by submitting



151 applications that comply with the criteria, rules and procedures;
152 and

153 (n) Employ an Executive Director of the Trust, whose
154 administrative office shall be located in the same building as the
155 Executive Director of the Department of Marine Resources, which
156 shall provide clerical and support services and facilities to the
157 Executive Director of the Trust.

158 **SECTION 5. Board of Trustees.** (1) There is hereby
159 established a Board of Trustees of the Trust which will serve as
160 the governing authority of the Trust. The board shall use the
161 Trust's property exclusively for the purposes defined in this act.

162 (2) The Board of Trustees of the Trust shall consist of
163 three (3) members ("Trustees"). No Trustee shall be an elected
164 official. The Trustees shall be appointed as follows:

165 (a) One (1) member shall be appointed by written
166 consent of a supermajority of the President of the Hancock County
167 Board of Supervisors and the mayors of the incorporated
168 municipalities within Hancock County, with the supermajority
169 defined as a number equal to the sum of one (1) plus the total
170 number of incorporated municipalities within Hancock County minus
171 one (1);

172 (b) One (1) member shall be appointed by written
173 consent of a supermajority of the President of the Harrison County
174 Board of Supervisors and the mayors of the incorporated
175 municipalities within Harrison County, with the supermajority



176 defined as a number equal to the sum of one (1) plus the total
177 number of incorporated municipalities within Harrison County minus
178 one (1);

179 (c) One (1) member shall be appointed by written
180 consent of a supermajority of the President of the Jackson County
181 Board of Supervisors and the mayors of the incorporated
182 municipalities within Jackson County, with the supermajority
183 defined as a number equal to the sum of one (1) plus the total
184 number of incorporated municipalities within Jackson County minus
185 one (1).

186 (3) All initial appointments shall be made no later than
187 thirty (30) days after the effective date of this act, and no
188 later than fifteen (15) days after the effective date of this act,
189 the respective Presidents of the Boards of Supervisors of each
190 county shall call a meeting and preside at the meeting of the
191 President of the Board and all the mayors within the county for
192 the purpose of considering the initial appointment of a Trustee
193 from that county. The meeting of the President of the Board and
194 the Mayors may continue from day to day until a selection is made.
195 The vote shall be recorded by a written statement of consent of
196 the required number to select the Trustee, and the statement shall
197 be delivered to the Secretary of State to issue an official
198 commission to the Trustee. The Board of Trustees shall annually
199 elect one (1) member to serve as chairman of the board. The Board
200 of Trustees shall meet as soon as practicable after appointments



201 have been made, upon the call of the chairman, and shall organize
202 for business.

203 (4) All actions of the Board of Trustees shall require
204 unanimous consent of the three (3) members of the Board of
205 Trustees.

206 (5) The term of office of the members of the Board of
207 Trustees shall be for four (4) years, with the first term
208 beginning on the thirty-first (31st) day after the effective date
209 of this act. No later than thirty (30) days prior to the
210 expiration of the initial term and each quadrennial term
211 thereafter, the appointment of members of the Board of Trustees
212 shall be made in the same manner as the initial appointments.
213 Members shall be eligible for reappointment at the expiration of
214 their terms. Vacancies shall be filled in the same manner as
215 regular appointments to complete the remainder of the term of the
216 member being replaced.

217 (6) Members of the Board of Trustees shall serve without
218 compensation, but shall be reimbursed for each day's official
219 duties of the board at the same per diem as established by Section
220 25-3-69, Mississippi Code of 1972, and actual travel and expenses
221 as established by Section 25-3-41, Mississippi Code of 1972. All
222 expenses of the Board of Trustees in carrying out its duties and
223 responsibilities under this act, including the payment of per diem
224 and expenses of the members of the board, shall be paid from the
225 Trust.



226 (7) The board and its members in their individual capacity,
227 as well as the officials, agents and employees of the Trust, shall
228 not incur civil liability for any action taken in good faith in
229 the performance of their duties and responsibilities, pursuant to
230 the provisions of this act, and they shall be compensated for all
231 the costs they incur in relation to any claim for which they enjoy
232 immunity according to these provisions. The board and its members
233 in their individual capacity, as well as the officials, agents or
234 employees of the Trust, shall be fully compensated for any civil
235 liability adjudicated under the laws of the state and the laws of
236 the United States of America, provided their actions and decisions
237 have been made in good faith within the framework of their
238 functions. For the defense of the board and its members against
239 all such claims of civil liability, the state shall provide legal
240 representation through the Office of the Attorney General and
241 shall assume payment regarding any judgment against any member of
242 the Board who is sued for damages in his/her individual capacity
243 when the cause of action is based on alleged violations of the
244 civil rights of the defendant, or due to actions or omissions
245 incurred in good faith in the course of his/her work and within
246 the framework of his/her functions.

247 **SECTION 6. Powers of the board.** All powers of the Trust are
248 vested in and shall be exercised by or under the authority of the
249 Board of Trustees, and the business and affairs of the Trust shall
250 be managed by or under the direction of the Board of Trustees.



251 The board shall have all powers necessary or convenient to
252 implement and carry out the purposes and provisions of this act,
253 including, but not limited to, the following express powers:

254 (a) Act as governing authority of the Trust;

255 (b) Draft, adopt, amend and repeal bylaws, rules and
256 regulations to govern its activities and those of the Trust;
257 determine the eligibility of the proponents of projects to be
258 benefited by the Trust funds and its internal operations; exercise
259 and perform the powers and duties granted and imposed thereto by
260 this act; and authorize the accounting and disbursement of funds
261 and other administrative operations in establishing the Trust;

262 (c) Establish the public policy and the objectives of
263 the Trust in harmony with this act and approve the necessary
264 operating standards and regulations;

265 (d) The Board of Trustees shall establish criteria,
266 rules and procedures for accepting, reviewing and granting or
267 denying applications for assistance under this act. The board may
268 *sua sponte* initiate projects by submitting applications that
269 comply with the criteria, rules and procedures;

270 (e) Enter into agreements to achieve the objectives
271 provided in this act, including, but not limited to, agreements
272 with the Department of Marine Resources for administration as
273 provided in Section 7 of this act;

274 (f) The rules and regulations of the board are exempt
275 from the Administrative Procedures Act.



276 **SECTION 7. Administration.** (1) The Executive Director of
277 the Trust shall be selected by and employed by the Board of
278 Trustees. The Executive Director shall execute and supervise any
279 contract needed for the operations of the Trust, subject to the
280 rules, regulations and procedures established by the Board of
281 Trustees. The Executive Director of the Trust shall have an
282 office in the administrative offices of the Department of Marine
283 Resources.

284 (2) The Executive Director of the Department of Marine
285 Resources is empowered, by agreement with the Board of Trustees,
286 to appoint personnel of the Department of Marine Resources to
287 provide services to the Trust and to the Executive Director of the
288 Trust. The Department of Marine Resources, or any successor
289 entity, may, by agreement with the board, provide facilities,
290 equipment and personnel services for the Trust and the Executive
291 Director of the Trust and by agreement with the Board of Trustees
292 shall be compensated by the Trust for those expenses incurred
293 specifically for facilities, equipment and personnel services to
294 assist the Trust with the provisions of this act.

295 (3) The Department of Marine Resources, under the direction
296 of the Board of Trustees and the Executive Director of the Trust,
297 may, by agreement with the Board of Trustees, perform the
298 following services for the Trust, according to the rules and
299 regulations of the Trust, for a fixed fee for each proposed
300 project, provided such fees are limited to an amount sufficient



301 only to cover costs incurred by the Department of Marine Resources
302 for such services:

303 (a) Receive and evaluate applications and applicants;

304 (b) Review proposed Trust projects for compliance with
305 criteria set by the board;

306 (c) Administer award agreements with beneficiaries,
307 including recordkeeping, project supervision and monitoring of
308 Trust projects for compliance with terms of the awards.

309 **SECTION 8. Trust projects.** The Trust is empowered, on such
310 terms and conditions as it may determine, to make equity
311 investments (but only with a put option), construction and
312 permanent loans, gap loans, loan guarantees, loan loss reserve
313 guarantees, revenue guarantees, loans with delayed or contingent
314 repayment schedules, and any other financial assistance that is
315 reasonably expected to be recaptured by the Trust, in and to
316 beneficiaries whose projects are approved by the board for
317 assistance. For assistance to trust projects under this act, the
318 Board of Trustees shall establish criteria, rules and procedures
319 for accepting, reviewing and granting or denying applications, for
320 terms and conditions of financial assistance, including, but not
321 limited to, interest (if any), security (if any), and for physical
322 location or locations of real and personal property of trust
323 projects, to achieve the purposes of this act. Public
324 infrastructure projects may qualify as trust projects, if the
325 project meets Trust criteria for financial assistance that is



326 reasonably expected to be recaptured by the Trust. The board may
327 sua sponte initiate projects by submitting applications that
328 comply with the criteria, rules and procedures. Among other
329 criteria that may be considered by the Board of Trustees,
330 applications for equity investments, loans, loan guarantees,
331 revenue guarantees, loan loss reserve guarantees, and any other
332 financial assistance that is reasonably expected to be recaptured
333 by the Trust for projects under this act should describe the
334 project's ability to leverage additional funds and financial
335 assistance, should provide a benefit/cost analysis and
336 return-on-investment calculation that would reasonably
337 demonstrate, in the discretion of the board, that the likely
338 economic impact of the project-generated tax collections by
339 Mississippi state and local governments would be greater than the
340 initial dollars invested by the Trust. Projects should have a
341 reasonably significant economic impact on the regional economy of
342 the Mississippi Gulf Coast and should be reasonably transformative
343 in nature, thus allowing the invested funds to be capital
344 investments in economic recovery and growth opportunities for the
345 Mississippi Gulf Coast regional economy and the economy of the
346 state. The Board of Trustees shall make reasonable efforts to
347 assist projects that, in the aggregate, will yield a reasonable
348 return on investment to the Trust in order to establish and
349 maintain the Trust as a perpetual, economic development revolving
350 fund. No proposed project shall be approved if the total "soft



351 costs" of such proposed project (i.e., planning, design, internal
352 project management, financing and professional fees and the like)
353 exceed ten percent (10%) of the cost of the project; provided,
354 however, if upon sufficient and reasonable evidence submitted by
355 the applicant (beneficiary), the board finds and determines that
356 total soft costs for a project must exceed ten percent (10%) of
357 the project in order for the project to be feasible and
358 financeable and that "but for" soft costs exceeding ten percent
359 (10%) of the project the project cannot reasonably be completed,
360 the board may authorize specific soft costs in a total amount not
361 to exceed twenty-five percent (25%) of the project. The board
362 shall establish criteria for a beneficiary's procurement of
363 professional services in connection with the project, regardless
364 of whether Trust funds are used to pay such costs.

365 **SECTION 9. Financial controls and reports.** (1) All monies
366 of the Trust not invested in a trust project or projects shall be
367 deposited in qualified state depositories and maintained in a
368 separate account or accounts in the name of the Trust.
369 Disbursements shall be made according to the regulations and
370 budgets approved by the Trust.

371 (2) The Trust shall establish, according to generally
372 accepted public accounting principles, the accounting system
373 required for the proper control and recording of all deposit
374 accounts, invested funds, other assets and liabilities, income and
375 expenses belonging to, managed, incurred or controlled by the



376 Trust. The accounting procedures of the Trust shall be maintained
377 in such a way that the accounts may be properly identified and
378 kept separately, as advisable, in relation to the various types of
379 businesses, projects and activities of the Trust.

380 (3) The Trust shall be audited annually, at the expense of
381 the Trust, by the State Auditor or by an independent auditor
382 approved by the State Auditor.

383 (4) The Trust shall render a report to the Legislature which
384 shall include the following:

385 (a) A copy of the annual audit and a complete report of
386 the activities of the Trust for the previous fiscal year.

387 (b) A complete and detailed list of all assistance
388 granted, contracts executed and transactions conducted during the
389 fiscal year corresponding to the report.

390 (c) The report for the previous fiscal year shall be
391 submitted by the board to the Legislature within one hundred
392 eighty (180) days of the end of such fiscal year.

393 **SECTION 10. Economic Recovery Advisory Board.** There shall
394 be an Economic Recovery Advisory Board ("Advisory Board") to make
395 nonbinding, advisory reports and recommendations to the Board of
396 Trustees, subject to rules and regulations established by the
397 Board of Trustees. The Advisory Board shall be appointed for
398 four-year terms coterminous with the members of the Board of
399 Trustees and during the same time periods for the appointments of
400 the Trustees. The Advisory Board shall be appointed by the Board



401 of Trustees of the Trust, and the number of members of the
402 Advisory Board shall be determined by the Board of Trustees.

403 **SECTION 11. Effective date.** This act shall take effect and
404 be in force from and after its passage.

405 **SECTION 12.** This act shall take effect and be in force from
406 and after its passage.

