

By: Senator(s) Caughman

To: Education

SENATE BILL NO. 2662

1 AN ACT TO AMEND SECTION 29-3-45, MISSISSIPPI CODE OF 1972, TO
 2 PROVIDE THAT LOCAL MANAGING BOARDS OF EDUCATION OR SCHOOL
 3 DISTRICTS MAY ENTER INTO SUPPLY AGREEMENTS FOR THE SALE OF FOREST
 4 PRODUCTS OFF OF SIXTEENTH SECTION LAND; TO PROVIDE FOR CERTAIN
 5 REQUIREMENTS RELATING TO THOSE AGREEMENTS; AND FOR RELATED
 6 PURPOSES.

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

8 **SECTION 1.** Section 29-3-45, Mississippi Code of 1972, is
 9 amended as follows:

10 29-3-45. (1) (a) The board of education shall, by order
 11 placed upon its minutes, enter into an agreement with the State
 12 Forestry Commission for the general supervision and management of
 13 all lands classified as forest lands and of all timber or other
 14 forest products under the control of the board on sixteenth
 15 section lands, and lieu lands which have not been so classified.
 16 However, any school board may contract with private persons or
 17 businesses for the reforestation of sixteenth section lands and
 18 may contract with a registered forester to be paid from the 16th
 19 Section Interest Fund for a review of any forestry management
 20 decision or forestry practice including the sale of timber for



21 sixteenth section forest land provided that any implementation of
22 a forestry management decision or forestry practice to be taken as
23 a result of the review described in this subsection shall be
24 subject to the approval of both the commission and the Secretary
25 of State. When such agreement has been entered into, no timber or
26 other forest products shall be sold from any of the sixteenth
27 section lands or lieu lands except such as have been marked or
28 approved for cutting by the State Forestry Commission's employees.
29 The Forestry Commission, or its designated employee, shall fix the
30 minimum total cash price or minimum price per unit, one thousand
31 (1,000) feet or other measure, at which the marked timber or other
32 forest products shall be sold. The sales may be made for a lump
33 sum or upon a unit price as in the opinion of the board may be
34 calculated to bring the greatest return. Sales shall be made upon
35 such other terms and conditions as to manner of cutting, damages
36 for cutting of unmarked trees, damages to trees not cut and other
37 pertinent matters as the board of education shall approve.

38 (b) The State Forestry Commission shall have the sole
39 authority and control in scheduling of all cutting and harvesting
40 of timber or other forest products when such timber stands or
41 other forest products are determined by the State Forestry
42 Commission to be economically ready for cutting and harvesting.

43 (c) Should a school board disagree with the Forestry
44 Commission concerning the time of cutting and harvesting, the
45 board may make an appeal to the Forestry Commission at a regular



46 monthly scheduled meeting of the commission. If the school board
47 is not satisfied after the appeal to the commission, the board may
48 then appeal to the Secretary of State who will make the final
49 decision as to the time for cutting and harvesting. In the event
50 that the local school board is divested of its management
51 authority under subsection (3) hereof, the Secretary of State
52 after due consultation with the Forestry Commission shall retain
53 the right to make final decisions concerning the management and
54 sale of timber and other forest products.

55 (d) It is hereby made the duty of the State Forestry
56 Commission, from time to time, to mark timber which should be cut
57 from the lands, to determine what planting, deadening or other
58 forestry improvements should be made, giving due consideration to
59 food and habitat for wildlife, and to report to the appropriate
60 board of education. The State Forestry Commission and the board
61 of education shall supervise the cutting of any timber or
62 harvesting of other forest products sold from the lands herein
63 designated and shall have authority to require any timber-cutting
64 operations on the lands to cease until proper adjustment is made,
65 whenever it shall appear that timber is being cut in violation of
66 the terms of the sale. In the event that it is desired to lease
67 any of such lands or standing timber for turpentine purposes, such
68 lease shall only cover such trees as the State Forestry Commission
69 shall designate, and the commission through its employees shall
70 approve the number of faces, method of chipping and boxing of such



71 timber, and shall fix a minimum total cash price or minimum price
72 per unit.

73 (e) No sale of any timber, turpentine or other forest
74 products lease shall be made until notice of same shall have been
75 published once a week for three (3) consecutive weeks in at least
76 one (1) newspaper published in such county. The first publication
77 of such notice shall be made not less than twenty-one (21) days
78 prior to the date fixed for the sale, and the last publication
79 shall be made not more than seven (7) days prior to such date. If
80 no newspaper is published in such county, then such notice shall
81 be given by publishing the same for the required time in some
82 newspaper having a general circulation in such county and, in
83 addition thereto, by posting a copy of such notice for at least
84 twenty-one (21) days next preceding such sale at three (3) public
85 places in such county.

86 (f) Notwithstanding the above provision pertaining to
87 the sale of any timber, turpentine or other forest products, in
88 the event that timber must be cleared from an existing road or
89 existing utility right-of-way, the public notice requirement may
90 be waived. Prior to waiver of the public notice requirement, the
91 State Forestry Commission must make a finding that, due to the
92 small area of timber to be cleared, a public notice sale would not
93 be in the best interest of the local board of education. If the
94 State Forestry Commission makes such a finding, then it shall set



95 the value of the timber to be paid to the local board of education
96 by the party requesting the timber be removed.

97 (g) Provided, however, in the case of damage by fire,
98 windstorm or other natural causes which would require immediate
99 sale of the timber, because the time involved for advertisement as
100 prescribed herein would allow decay, rot or destruction
101 substantially decreasing the purchase price to be received had not
102 such delay occurred, the advertisement provisions of this section
103 shall not apply. The local board of education, with a written
104 recommendation from a designated employee of the State Forestry
105 Commission filed in the minutes of the local board of education,
106 shall determine when immediate sale of the timber is required.
107 When the board of education shall find an immediate sale necessary
108 for the causes stated herein, it shall, in its discretion, set the
109 time for receipt of bids on the purchase of the timber, but shall
110 show due diligence in notifying competitive bidders so that a true
111 competitive bid shall be received.

112 (2) (a) A local board of education having control of the
113 sixteenth section lands in the Hurricane Katrina Disaster of 2005
114 shall be granted emergency powers to take any and all actions of a
115 reasonably prudent trustee acting under emergency conditions to
116 recover damaged timber, prevent further loss or damage to timber,
117 and to minimize economic loss. All such actions shall be taken in
118 consultation with and shall be subject to the prior approval from



119 the Secretary of State and the State Forestry Commission. The
120 emergency powers shall be as follows:

121 (i) Contract with any individual or entity for
122 management advice, sale of timber, clearing of damage to timber
123 producing lands, transporting of timber, repairing access roads to
124 timber lands, conducting aerial spraying, or taking any other type
125 of action to prevent further loss of timber or diminution in value
126 of existing timber as the result of the incident which
127 necessitated the declaration of a natural disaster. In
128 contracting with any individual or entity, the local board of
129 education shall use its best efforts to ensure that all costs
130 incurred are reasonable and that a fair price is received for all
131 sales.

132 (ii) Enter into agreements with any individual,
133 private company, or other governmental entities for the pooling of
134 resources, or the sharing of costs so as to maximize the
135 mitigation of loss and minimize the expense of mitigating the loss
136 of timber.

137 (iii) Apply for any state, federal, or private
138 party grant or nonrepayable funds to cover costs associated with
139 emergency management contracts, sale timber, including loss for
140 diminution of value, transporting of timber, replanting of timber,
141 repairing access roads to timber, conducting aerial spraying, or
142 reimbursement for any other action taken to prevent further timber
143 damage, as well as mitigating the loss of funds due to damage.



144 (b) The emergency powers granted herein shall be for a
145 period of one (1) year from the date of designation as a disaster
146 area due to Hurricane Katrina. The emergency powers may be
147 extended for one (1) additional one-year period upon prior written
148 approval from the Secretary of State.

149 (c) The emergency powers shall also apply to the
150 management of timber by the Secretary of State pursuant to
151 subsection (3) of this section.

152 (d) In the event a local board of education is unable
153 to acquire the services of the State Forestry Commission or the
154 Secretary of State to meet an immediate need to salvage, remove or
155 take other appropriate action on damaged timber, the local board
156 of education shall unilaterally be granted the authority to take
157 such actions as necessary regarding the management or sale of
158 timber or other forest products.

159 (e) In exercising emergency powers, a local board of
160 education or the Secretary of State shall exercise the general
161 powers of a trustee with the same general restrictions and general
162 liabilities of a trustee and shall exercise the care and skill of
163 an ordinary prudent person to protect the beneficiaries of the
164 trust under such emergency circumstances.

165 (f) Any contractor with a local board of education or
166 the Secretary of State shall be entitled to rely on
167 representations by such board of education or the Secretary of
168 State as to who has authority to enter contracts for the



169 management or sale of timber or other forest products, and
170 reliance on such representations shall not be grounds for voiding
171 any contract.

172 (3) (a) In the event that any member of a local board of
173 education may have a personal interest, either direct or indirect,
174 in the decisions regarding the management or sale of timber or
175 other forest products or in a contract for the sale of timber or
176 other forest products from sixteenth section school lands under
177 the jurisdiction and control of the board, then the board of
178 education shall automatically be divested of all authority and
179 power to manage and sell timber or other forest products on
180 sixteenth section lands under its control and jurisdiction. The
181 divestiture shall extend for the period of service, and for one
182 (1) year thereafter, of the board member having a direct or
183 indirect personal interest in the sale or decision to sell timber
184 or other forest products.

185 (b) During the time in which any local board of
186 education may be divested of authority and power to manage and
187 sell timber and other forest products, such authority and power
188 shall be vested in the Secretary of State, as supervisory trustee
189 of sixteenth section lands. Upon the appointment or election of a
190 member of a local board of education who may have such an
191 appointment or election of a member of a local board of education
192 who may have such an interest in decisions and contracts regarding
193 the management and sale of timber or other forest products, the



194 board of education shall immediately notify the Secretary of State
195 in writing. Likewise, the board shall give written notification
196 to the Secretary of State within thirty (30) days prior to the
197 expiration of any such divestiture period. Any contractor with a
198 local board of education or the Secretary of State shall be
199 entitled to rely on representations by such board or the Secretary
200 of State as to who has authority to enter contracts for the
201 management or sale of timber or other forest products, and
202 reliance on such representations shall not be grounds for voiding
203 any contract.

204 (c) The laws providing for the management and sale of
205 timber and other forest products by local boards of education
206 shall apply to the management and sale of timber and other forest
207 products by the Secretary of State. The Mississippi Forestry
208 Commission shall provide the Secretary of State with advice and
209 services in the same manner as provided to local boards of
210 education.

211 (d) The Secretary of State shall be paid all monies
212 derived from the sale of timber or other forest products and shall
213 promptly forward the same to the superintendent of education for
214 such school district with instructions for the proper settlement,
215 deposit and investment of the monies. Such local school board
216 shall reimburse the Secretary of State for all direct costs
217 relating to the management and sale of timber or other forest
218 products, and in the case of a sale of timber or other forest



219 products, the Secretary of State may deduct such direct cost from
220 the proceeds of sale. The Secretary of State shall furnish an
221 itemized listing of all direct cost charged to the local school
222 district.

223 (4) The local managing board of education may enter into
224 supply agreements for a term not to exceed ten (10) years for the
225 sale of forest products consisting of wood waster, wood fiber,
226 pulpwood or biomass. Such supply agreements may be entered into
227 by public contract after notice and upon the terms set forth in
228 subsection (1) of this section, or by private contract after the
229 Forestry Commission provides the board with the following:

230 (a) A written appraisal of the value of the forest
231 products to be harvested under the terms of the supply agreement;
232 and

233 (b) The minimum value at which the forest products may
234 be sold.

235 These supply agreements may only be entered into upon the
236 recommendation of the Mississippi Forestry Commission and
237 according to contractual terms approved by the Forestry Commission
238 and the Secretary of State.

239 **SECTION 2.** This act shall take effect and be in force from
240 and after July 1, 2021.

