

By: Hewes, Burton

To: Universities and  
Colleges

SENATE BILL NO. 2918  
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 37-155-9, MISSISSIPPI CODE OF 1972,  
2 TO EXPAND THE AUTHORITY OF THE BOARD OF DIRECTORS OF THE  
3 MISSISSIPPI PREPAID AFFORDABLE COLLEGE TUITION (MPACT) PROGRAM  
4 TRUST FUND TO INVEST FUNDS IN INSTITUTIONAL INVESTMENT TRUSTS AND  
5 INSTITUTIONAL CLASS SHARES OF INVESTMENT COMPANIES; AND FOR  
6 RELATED PURPOSES.

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

8 SECTION 1. Section 37-155-9, Mississippi Code of 1972, is  
9 amended as follows:[HS1]

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

17 (a) To adopt and amend bylaws;

18 (b) To adopt such rules and regulations as are  
19 necessary to implement the provisions of this chapter;

20 (c) To invest any funds of the trust fund in any  
21 instrument, obligation, security or property that constitutes  
22 legal investments for public funds in the state and to name and  
23 use depositories for its investments and holdings;

24 (d) To execute contracts and other necessary  
25 instruments;

26 (e) To impose reasonable requirements for residency for  
27 beneficiaries at the time or purchase of the contract;

28 (f) To impose reasonable limits on the number of

29 contract participants in the trust fund at any given period of  
30 time;

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

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

43 (i) To define the terms and conditions under which  
44 payments may be withdrawn or refunded from the trust fund,  
45 including, but not limited to, the amount paid in and an  
46 additional amount in the nature of interest at a rate that  
47 corresponds, at a minimum, to the prevailing interest rates for  
48 savings accounts provided by banks and savings and loan  
49 associations and impose reasonable charges for such withdrawal or  
50 refund;

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

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

57 (ii) If the beneficiary of a plan described by  
58 Section 37-155-11 enrolls in any in-state or out-of-state  
59 regionally accredited private four- or two-year college or an  
60 out-of-state regionally accredited, state-supported, nonprofit  
61 four- or two-year college or university, the board shall pay to

62 the institution an amount up to, but not greater than, the tuition  
63 and required fees that the board would have paid had the  
64 beneficiary enrolled in an institution of higher education covered  
65 by the plan selected in the prepaid tuition contract. The  
66 beneficiary is responsible for paying a private institution or an  
67 out-of-state public institution the amount by which the tuition  
68 and required fees of the institution exceed the tuition and  
69 required fees paid by the board;

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

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

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

75 (n) To sue and be sued;

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

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

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

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

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

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

93 (u) To administer the fund in a manner that is  
94 sufficiently actuarially sound to meet the obligations of the

95 program. The board shall annually evaluate or cause to be  
96 evaluated the actuarial soundness of the fund. If the board  
97 perceives a need for additional assets in order to preserve  
98 actuarial soundness, the board may adjust the terms of subsequent  
99 advance payment contracts to ensure such soundness;

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

105 (i) Bonds, notes, certificates and other valid  
106 general obligations of the State of Mississippi, or of any county,  
107 or of any city, or of any supervisors district of any county of  
108 the State of Mississippi, or of any school district bonds of the  
109 State of Mississippi; notes or certificates of indebtedness issued  
110 by the Veterans' Home Purchase Board of Mississippi, provided such  
111 notes or certificates of indebtedness are secured by the pledge of  
112 collateral equal to two hundred percent (200%) of the amount of  
113 the loan, which collateral is also guaranteed at least for fifty  
114 percent (50%) of the face value by the United States government,  
115 and provided that not more than five percent (5%) of the total  
116 investment holdings of the system shall be in Veterans' Home  
117 Purchase Board notes or certificates at any time; real estate  
118 mortgage loans one hundred percent (100%) insured by the Federal  
119 Housing Administration on single family homes located in the State  
120 of Mississippi, where monthly collections and all servicing  
121 matters are handled by Federal Housing Administration approved  
122 mortgagees authorized to make such loans in the State of  
123 Mississippi;

124 (ii) State of Mississippi highway bonds;

125 (iii) Funds may be deposited in federally insured  
126 institutions domiciled in the State of Mississippi or a custodial  
127 bank which appears on the State of Mississippi Treasury

128 Department's approved depository list and/or safekeeper list;

129                   (iv) Corporate bonds of investment grade as rated  
130 by Standard & Poor's or by Moody's Investment Service, with bonds  
131 rated BAA/BBB not to exceed five percent (5%) of the book value of  
132 the total fixed income investments; or corporate short-term  
133 obligations of corporations or of wholly owned subsidiaries of  
134 corporations, whose short-term obligations are rated A-3 or better  
135 by Standard and Poor's or rated P-3 or better by Moody's  
136 Investment Service;

137                   (v) Bonds of the Tennessee Valley Authority;

138                   (vi) Bonds, notes, certificates and other valid  
139 obligations of the United States, and other valid obligations of  
140 any federal instrumentality that issues securities under authority  
141 of an act of Congress and are exempt from registration with the  
142 Securities and Exchange Commission;

143                   (vii) Bonds, notes, debentures and other  
144 securities issued by any federal instrumentality and fully  
145 guaranteed by the United States. Direct obligations issued by the  
146 United States of America shall be deemed to include securities of,  
147 or other interests in, any open-end or closed-end management type  
148 investment company or investment trust registered under the  
149 provisions of 15 USCS Section 80(a)-1 et seq., provided that the  
150 portfolio of such investment company or investment trust is  
151 limited to direct obligations issued by the United States of  
152 America, United States government agencies, United States  
153 government instrumentalities or United States government sponsored  
154 enterprises, and to repurchase agreements fully collateralized by  
155 direct obligations of the United States of America, United States  
156 government agencies, United States government instrumentalities or  
157 United States government sponsored enterprises, and the investment  
158 company or investment trust takes delivery of such collateral for  
159 the repurchase agreement, either directly or through an authorized  
160 custodian. The State Treasurer and the Executive Director of the

161 Department of Finance and Administration shall review and approve  
162 the investment companies and investment trusts in which funds may  
163 be invested \* \* \*;

164 (viii) Interest-bearing bonds or notes which are  
165 general obligations of any other state in the United States or of  
166 any city or county therein, provided such city or county had a  
167 population as shown by the federal census next preceding such  
168 investment of not less than twenty-five thousand (25,000)  
169 inhabitants and provided that such state, city or county has not  
170 defaulted for a period longer than thirty (30) days in the payment  
171 of principal or interest on any of its general obligation  
172 indebtedness during a period of ten (10) calendar years  
173 immediately preceding such investment;

174 (ix) Shares of stocks, common and/or preferred, of  
175 corporations created by or existing under the laws of the United  
176 States or any state, district or territory thereof; provided:

177 (A) The maximum investments in stocks shall  
178 not exceed fifty percent (50%) of the book value of the total  
179 investment fund of the system;

180 (B) The stock of such corporation shall:

181 1. Be listed on a national stock  
182 exchange, or

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

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

190 (D) The amount of investment in any one (1)  
191 corporation shall not exceed three percent (3%) of the book value  
192 of the assets of the system; and

193 (E) The shares of any one (1) corporation

194 owned by the system shall not exceed five percent (5%) of that  
195 corporation's outstanding stock;

196 (x) Bonds rated Single A or better, stocks and  
197 convertible securities of established non-United States companies,  
198 which companies are listed on only primary national stock  
199 exchanges of foreign nations; and in foreign government securities  
200 rated Single A or better by a recognized rating agency; provided  
201 that the total book value of investments under this paragraph  
202 shall at no time exceed twenty percent (20%) of the total book  
203 value of all investments of the system. The board may take  
204 requisite action to effectuate or hedge such transactions through  
205 foreign banks, including the purchase and sale, transfer, exchange  
206 or otherwise disposal of, and generally deal in foreign exchange  
207 through the use of foreign currency, interbank forward contracts,  
208 futures contracts, options contracts, swaps and other related  
209 derivative instruments, notwithstanding any other provisions of  
210 this chapter to the contrary;

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

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

224 (xiii) Pooled or commingled real estate funds or  
225 real estate securities managed by a corporate trustee or by a  
226 Securities and Exchange Commission registered investment advisory

227 firm retained as an investment manager by the board of directors.

228 Such investment in commingled funds or shares shall be held in  
229 trust; provided that the total book value of investments under  
230 this paragraph shall at no time exceed five percent (5%) of the  
231 total book value of all investments of the system. Any investment  
232 manager approved by the board of directors shall invest such  
233 commingled funds or shares as a fiduciary \* \* \*;

234 (w) All investments shall be acquired by the board at  
235 prices not exceeding the prevailing market values for such  
236 securities;

237 (x) Any limitations herein set forth shall be  
238 applicable only at the time of purchase and shall not require the  
239 liquidation of any investment at any time. All investments shall  
240 be clearly marked to indicate ownership by the system and to the  
241 extent possible shall be registered in the name of the system;

242 (y) Subject to the above terms, conditions, limitations  
243 and restrictions, the board shall have power to sell, assign,  
244 transfer and dispose of any of the securities and investments of  
245 the system, provided that the sale, assignment or transfer has the  
246 majority approval of the entire board. The board may employ or  
247 contract with investment managers, evaluation services or other  
248 such services as determined by the board to be necessary for the  
249 effective and efficient operation of the system;

250 (z) Except as otherwise provided herein, no trustee and  
251 no employee of the board shall have any direct or indirect  
252 interest in the income, gains or profits of any investment made by  
253 the board, nor shall any such person receive any pay or emolument  
254 for his services in connection with any investment made by the  
255 board. No trustee or employee of the board shall become an  
256 endorser or surety, or in any manner an obligor for money loaned  
257 by or borrowed from the system;

258 (aa) All interest derived from investments and any  
259 gains from the sale or exchange of investments shall be credited



260 by the board to the account of the system;

261 (bb) To delegate responsibility for administration of  
262 the comprehensive investment plan to a consultant the board  
263 determines to be qualified. Such consultant shall be compensated  
264 by the board. Directly or through such consultant, the board may  
265 contract to provide such services as may be a part of the  
266 comprehensive investment plan or as may be deemed necessary or  
267 proper by the board or such consultant, including, but not limited  
268 to, providing consolidated billing, individual and collective  
269 record keeping and accounting, and asset purchase, control and  
270 safekeeping;

271 (cc) To annually prepare or cause to be prepared a  
272 report setting forth in appropriate detail an accounting of the  
273 fund and a description of the financial condition of the program  
274 at the close of each fiscal year. Such report shall be submitted  
275 to the Governor, the Lieutenant Governor, the President of the  
276 Senate, the Speaker of the House of Representatives, and members  
277 of the Board of Trustees of State Institutions of Higher Learning,  
278 the State Board for Community and Junior Colleges \* \* \* and the  
279 State Board of Education on or before March 31 each year. In  
280 addition, the board shall make the report available to purchasers  
281 of advance payment contracts. The board shall provide to the  
282 Board of Trustees of State Institutions of Higher Learning and the  
283 State Board for Community and Junior Colleges by March 31 each  
284 year complete advance payment contract sales information including  
285 projected postsecondary enrollments of beneficiaries. The  
286 accounts of the fund shall be subject to annual audits by the  
287 State Auditor or his designee;

288 (dd) To solicit proposals for the marketing of the  
289 Mississippi Prepaid Affordable College Tuition Program. The  
290 entity designated pursuant to this paragraph shall serve as a  
291 centralized marketing agent for the program and shall solely be  
292 responsible for the marketing of the program. Any materials

293 produced for the purpose of marketing the programs shall be  
294 submitted to the board for review. No such materials shall be  
295 made available to the public before the materials are approved by  
296 the board. Any educational institution may distribute marketing  
297 materials produced for the program; however, all such materials  
298 shall have been approved by the board prior to distribution.

299 Neither the state nor the board shall be liable for  
300 misrepresentation of the program by a marketing agent; and

301 (ee) To establish other policies, procedures and  
302 criteria necessary to implement and administer the provisions of  
303 this chapter.

304 For efficient and effective administration of the program and  
305 trust fund, the board may authorize the State of Mississippi  
306 Treasury Department and/or the State Treasurer to carry out any or  
307 all of the powers and duties enumerated above.

308 SECTION 2. This act shall take effect and be in force from  
309 and after July 1, 2000.