

By: Senator(s) Carmichael, King

To: Education

SENATE BILL NO. 3016

1 AN ACT TO AUTHORIZE TWELVE (12) OR MORE PUBLIC SCHOOL
2 DISTRICTS TO ENTER IN AN AGREEMENT TO ESTABLISH AN EDUCATIONAL
3 SERVICE AGENCY WHICH SHALL BE ORGANIZED AS A NONPROFIT TAX-EXEMPT
4 CORPORATION; TO PROVIDE FOR THE APPOINTMENT OF AN ADVISORY PANEL
5 AND A BOARD OF DIRECTORS FOR SUCH EDUCATIONAL SERVICE AGENCIES; TO
6 PRESCRIBE THE POWERS AND RESPONSIBILITIES OF SUCH EDUCATIONAL
7 SERVICE AGENCIES; TO AMEND SECTION 37-7-301, MISSISSIPPI CODE OF
8 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** (1) A regional educational service agency (ESA)
11 may be established in a region of the state when twelve or more
12 school districts determine there are benefits and services that
13 can be derived from the collective and collaborative formation of
14 an agency for the purpose of pooling and leveraging resources for
15 the common benefit of students, teachers, administrators and
16 taxpayers. An educational service agency shall be incorporated in
17 the State of Mississippi and organized under the laws of the State
18 of Mississippi as a nonprofit corporation. The educational
19 service agency shall obtain 501(c)(3) status with the Internal
20 Revenue Service.

21 (2) The operation and management of the educational service
22 agency shall be the responsibility of a public advisory board
23 composed of the superintendents of schools or their designees from
24 each participating school district.

25 (3) A board of directors shall be elected on an annual basis
26 from the advisory board to oversee the day-to-day operations of
27 the agency.

28 (4) The executive board shall hire an Executive Director to
29 serve as the executive agent of the board of the regional
30 educational service agency.

31 (5) The board of directors of a regional educational service
32 agency shall have the authority to establish policies for the
33 regional educational service to determine the programs and
34 services to be provided, to employ staff, to prepare and expend
35 the budget, to provide for financing programs and projects of the
36 regional educational service agency, and to annually evaluate the
37 performance of the agency. The board may purchase, hold, encumber
38 and dispose of real property, in the name of the agency, for use
39 as its office or for any educational service provided by the
40 agency.

41 (6) The educational service agency is authorized and
42 empowered to: develop, manage and provide support services and/or
43 programs as determined by the needs of the local school district.
44 Educational service agencies (ESAs) shall:

45 (a) Act primarily as service agencies in providing
46 services and/or programs as identified and requested by member
47 school districts (services may include, but are not limited to,
48 professional development, instructional materials, educational
49 technology, curriculum development and alternative educational
50 programs);

51 (b) Provide for economy, efficiency and cost-
52 effectiveness in the cooperative delivery and purchase or lease of
53 educational services, materials and products (services may
54 include, but are not limited to, purchasing cooperatives,
55 insurance cooperatives, business manager services, auditing and
56 accounting services, school safety/risk prevention, and data
57 processing and student records);

58 (c) Provide administrative services (services may
59 include, but are not limited to, communications/public
60 information, employee background checks, grants management,
61 printing/publications and internships).

62 (d) Provide educational services through leadership,
63 research and development in elementary and secondary education;

(e) Act in a cooperative and supportive role, including contracting, with the Mississippi Department of Education, Mississippi Institutes of Higher Learning, Mississippi Community Colleges and other state educational organizations in the development and implementation of long-range plans, strategies and goals for the enhancement of educational opportunities in elementary and secondary education; and

(f) Serve, when appropriate and as funds become available, as a repository, clearinghouse and administrator of federal, state, local and private funds on behalf of school districts which choose to participate in special programs, projects or grants in order to enhance the quality of education in Mississippi schools.

SECTION 2. Section 37-7-301, Mississippi Code of 1972, is amended as follows:

37-7-301. The school boards of all school districts shall have the following powers, authority and duties in addition to all others imposed or granted by law, to wit:

(a) To organize and operate the schools of the district and to make such division between the high school grades and elementary grades as, in their judgment, will serve the best interests of the school;

(b) To introduce public school music, art, manual training and other special subjects into either the elementary or high school grades, as the board shall deem proper;

(c) To be the custodians of real and personal school property and to manage, control and care for same, both during the school term and during vacation;

(d) To have responsibility for the erection, repairing and equipping of school facilities and the making of necessary school improvements;

(e) To suspend or to expel a pupil or to change the placement of a pupil to the school district's alternative school

or home-bound program for misconduct in the school or on school property, as defined in Section 37-11-29, on the road to and from school, or at any school-related activity or event, or for conduct occurring on property other than school property or other than at a school-related activity or event when such conduct by a pupil, in the determination of the school superintendent or principal, renders that pupil's presence in the classroom a disruption to the educational environment of the school or a detriment to the best interest and welfare of the pupils and teacher of such class as a whole, and to delegate such authority to the appropriate officials of the school district;

(f) To visit schools in the district, in their discretion, in a body for the purpose of determining what can be done for the improvement of the school in a general way;

(g) To support, within reasonable limits, the superintendent, principal and teachers where necessary for the proper discipline of the school;

(h) To exclude from the schools students with what appears to be infectious or contagious diseases; provided, however, such student may be allowed to return to school upon presenting a certificate from a public health officer, duly licensed physician or nurse practitioner that the student is free from such disease;

(i) To require those vaccinations specified by the State Health Officer as provided in Section 41-23-37, Mississippi Code of 1972;

(j) To see that all necessary utilities and services are provided in the schools at all times when same are needed;

(k) To authorize the use of the school buildings and grounds for the holding of public meetings and gatherings of the people under such regulations as may be prescribed by said board;

(l) To prescribe and enforce rules and regulations not inconsistent with law or with the regulations of the State Board

of Education for their own government and for the government of the schools, and to transact their business at regular and special meetings called and held in the manner provided by law;

(m) To maintain and operate all of the schools under their control for such length of time during the year as may be required;

(n) To enforce in the schools the courses of study and the use of the textbooks prescribed by the proper authorities;

(o) To make orders directed to the superintendent of schools for the issuance of pay certificates for lawful purposes on any available funds of the district and to have full control of the receipt, distribution, allotment and disbursement of all funds provided for the support and operation of the schools of such school district whether such funds be derived from state appropriations, local ad valorem tax collections, or otherwise;

(p) To select all school district personnel in the manner provided by law, and to provide for such employee fringe benefit programs, including accident reimbursement plans, as may be deemed necessary and appropriate by the board;

(q) To provide athletic programs and other school activities and to regulate the establishment and operation of such programs and activities;

(r) To join, in their discretion, any association of school boards and other public school-related organizations, and to pay from local funds other than minimum foundation funds, any membership dues;

(s) To expend local school activity funds, or other available school district funds, other than minimum education program funds, for the purposes prescribed under this paragraph. "Activity funds" shall mean all funds received by school officials in all school districts paid or collected to participate in any school activity, such activity being part of the school program and partially financed with public funds or supplemented by public

funds. The term "activity funds" shall not include any funds raised and/or expended by any organization unless commingled in a bank account with existing activity funds, regardless of whether the funds were raised by school employees or received by school employees during school hours or using school facilities, and regardless of whether a school employee exercises influence over the expenditure or disposition of such funds. Organizations shall not be required to make any payment to any school for the use of any school facility if, in the discretion of the local school governing board, the organization's function shall be deemed to be beneficial to the official or extracurricular programs of the school. For the purposes of this provision, the term "organization" shall not include any organization subject to the control of the local school governing board. Activity funds may only be expended for any necessary expenses or travel costs, including advances, incurred by students and their chaperons in attending any in-state or out-of-state school-related programs, conventions or seminars and/or any commodities, equipment, travel expenses, purchased services or school supplies which the local school governing board, in its discretion, shall deem beneficial to the official or extracurricular programs of the district, including items which may subsequently become the personal property of individuals, including yearbooks, athletic apparel, book covers and trophies. Activity funds may be used to pay travel expenses of school district personnel. The local school governing board shall be authorized and empowered to promulgate rules and regulations specifically designating for what purposes school activity funds may be expended. The local school governing board shall provide (i) that such school activity funds shall be maintained and expended by the principal of the school generating the funds in individual bank accounts, or (ii) that such school activity funds shall be maintained and expended by the superintendent of schools in a central depository approved by the

board. The local school governing board shall provide that such school activity funds be audited as part of the annual audit required in Section 37-9-18. The State Auditor shall prescribe a uniform system of accounting and financial reporting for all school activity fund transactions;

(t) To contract, on a shared savings, lease or lease-purchase basis, for energy efficiency services and/or equipment as provided for in Section 31-7-14, not to exceed ten (10) years;

(u) To maintain accounts and issue pay certificates on school food service bank accounts;

(v) (i) To lease a school building from an individual, partnership, nonprofit corporation or a private for-profit corporation for the use of such school district, and to expend funds therefor as may be available from any nonminimum program sources. The school board of the school district desiring to lease a school building shall declare by resolution that a need exists for a school building and that the school district cannot provide the necessary funds to pay the cost or its proportionate share of the cost of a school building required to meet the present needs. The resolution so adopted by the school board shall be published once each week for three (3) consecutive weeks in a newspaper having a general circulation in the school district involved, with the first publication thereof to be made not less than thirty (30) days prior to the date upon which the school board is to act on the question of leasing a school building. If no petition requesting an election is filed prior to such meeting as hereinafter provided, then the school board may, by resolution spread upon its minutes, proceed to lease a school building. If at any time prior to said meeting a petition signed by not less than twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of the school district involved shall be filed with the school board requesting that an election

229 be called on the question, then the school board shall, not later
230 than the next regular meeting, adopt a resolution calling an
231 election to be held within such school district upon the question
232 of authorizing the school board to lease a school building. Such
233 election shall be called and held, and notice thereof shall be
234 given, in the same manner for elections upon the questions of the
235 issuance of the bonds of school districts, and the results thereof
236 shall be certified to the school board. If at least three-fifths
237 (3/5) of the qualified electors of the school district who voted
238 in such election shall vote in favor of the leasing of a school
239 building, then the school board shall proceed to lease a school
240 building. The term of the lease contract shall not exceed twenty
241 (20) years, and the total cost of such lease shall be either the
242 amount of the lowest and best bid accepted by the school board
243 after advertisement for bids or an amount not to exceed the
244 current fair market value of the lease as determined by the
245 averaging of at least two (2) appraisals by certified general
246 appraisers licensed by the State of Mississippi. The term "school
247 building" as used in this item (v) shall be construed to mean any
248 building or buildings used for classroom purposes in connection
249 with the operation of schools and shall include the site therefor,
250 necessary support facilities, and the equipment thereof and
251 appurtenances thereto such as heating facilities, water supply,
252 sewage disposal, landscaping, walks, drives and playgrounds. The
253 term "lease" as used in this item (v)(i) may include a
254 lease/purchase contract;

255 (ii) If two (2) or more school districts propose
256 to enter into a lease contract jointly, then joint meetings of the
257 school boards having control may be held but no action taken shall
258 be binding on any such school district unless the question of
259 leasing a school building is approved in each participating school
260 district under the procedure hereinabove set forth in item (v)(i).
261 All of the provisions of item (v)(i) regarding the term and amount

of the lease contract shall apply to the school boards of school districts acting jointly. Any lease contract executed by two (2) or more school districts as joint lessees shall set out the amount of the aggregate lease rental to be paid by each, which may be agreed upon, but there shall be no right of occupancy by any lessee unless the aggregate rental is paid as stipulated in the lease contract. All rights of joint lessees under the lease contract shall be in proportion to the amount of lease rental paid by each;

(w) To employ all noninstructional and noncertificated employees and fix the duties and compensation of such personnel deemed necessary pursuant to the recommendation of the superintendent of schools;

(x) To employ and fix the duties and compensation of such legal counsel as deemed necessary;

(y) Subject to rules and regulations of the State Board of Education, to purchase, own and operate trucks, vans and other motor vehicles, which shall bear the proper identification required by law;

(z) To expend funds for the payment of substitute teachers and to adopt reasonable regulations for the employment and compensation of such substitute teachers;

(aa) To acquire in its own name by purchase all real property which shall be necessary and desirable in connection with the construction, renovation or improvement of any public school building or structure. Whenever the purchase price for such real property is greater than Fifty Thousand Dollars (\$50,000.00), the school board shall not purchase the property for an amount exceeding the fair market value of such property as determined by the average of at least two (2) independent appraisals by certified general appraisers licensed by the State of Mississippi. If the board shall be unable to agree with the owner of any such real property in connection with any such project, the board shall

295 have the power and authority to acquire any such real property by
296 condemnation proceedings pursuant to Section 11-27-1 et seq.,
297 Mississippi Code of 1972, and for such purpose, the right of
298 eminent domain is hereby conferred upon and vested in said board.
299 Provided further, that the local school board is authorized to
300 grant an easement for ingress and egress over sixteenth section
301 land or lieu land in exchange for a similar easement upon
302 adjoining land where the exchange of easements affords substantial
303 benefit to the sixteenth section land; provided, however, the
304 exchange must be based upon values as determined by a competent
305 appraiser, with any differential in value to be adjusted by cash
306 payment. Any easement rights granted over sixteenth section land
307 under such authority shall terminate when the easement ceases to
308 be used for its stated purpose. No sixteenth section or lieu land
309 which is subject to an existing lease shall be burdened by any
310 such easement except by consent of the lessee or unless the school
311 district shall acquire the unexpired leasehold interest affected
312 by the easement;

313 (bb) To charge reasonable fees related to the
314 educational programs of the district, in the manner prescribed in
315 Section 37-7-335;

316 (cc) Subject to rules and regulations of the State
317 Board of Education, to purchase relocatable classrooms for the use
318 of such school district, in the manner prescribed in Section
319 37-1-13;

320 (dd) Enter into contracts or agreements with other
321 school districts, political subdivisions or governmental entities
322 to carry out one or more of the powers or duties of the school
323 board, or to allow more efficient utilization of limited resources
324 for providing services to the public;

325 (ee) To provide for in-service training for employees
326 of the district. Until June 30, 1994, the school boards may
327 designate two (2) days of the minimum school term, as defined in

Section 37-19-1, for employee in-service training for implementation of the new statewide testing system as developed by the State Board of Education. Such designation shall be subject to approval by the State Board of Education pursuant to uniform rules and regulations;

(ff) As part of their duties to prescribe the use of textbooks, to provide that parents and legal guardians shall be responsible for the textbooks and for the compensation to the school district for any books which are not returned to the proper schools upon the withdrawal of their dependent child. If a textbook is lost or not returned by any student who drops out of the public school district, the parent or legal guardian shall also compensate the school district for the fair market value of the textbooks;

(gg) To conduct fund-raising activities on behalf of the school district that the local school board, in its discretion, deems appropriate or beneficial to the official or extracurricular programs of the district; provided that:

(i) Any proceeds of the fund-raising activities shall be treated as "activity funds" and shall be accounted for as are other activity funds under this section; and

(ii) Fund-raising activities conducted or authorized by the board for the sale of school pictures, the rental of caps and gowns or the sale of graduation invitations for which the school board receives a commission, rebate or fee shall contain a disclosure statement advising that a portion of the proceeds of the sales or rentals shall be contributed to the student activity fund;

(hh) To allow individual lessons for music, art and other curriculum-related activities for academic credit or nonacademic credit during school hours and using school equipment and facilities, subject to uniform rules and regulations adopted by the school board;

361 (ii) To charge reasonable fees for participating in an
362 extracurricular activity for academic or nonacademic credit for
363 necessary and required equipment such as safety equipment, band
364 instruments and uniforms;

365 (jj) To conduct or participate in any fund-raising
366 activities on behalf of or in connection with a tax-exempt
367 charitable organization;

368 (kk) To exercise such powers as may be reasonably
369 necessary to carry out the provisions of this section; * * *

370 (ll) To expend funds for the services of nonprofit arts
371 organizations or other such nonprofit organizations who provide
372 performances or other services for the students of the school
373 district; and

374 (mm) To enter into agreements with other local school
375 boards for the establishment of an Educational Service Agency
376 (ESA) to provide for the cooperative needs of the region in which
377 the school district is located, as provided in Section 1 of Senate
378 Bill No. 3016, 2004 Regular Session.

379 **SECTION 3.** This act shall take effect and be in force from
380 and after July 1, 2004.