

By: Senator(s) Posey

To: Appropriations

SENATE BILL NO. 2002
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 29-3-45, MISSISSIPPI CODE OF 1972, TO
2 ALLOW FOR THE WAIVER OF THE PUBLIC NOTICE REQUIREMENT IN THE EVENT
3 THAT TIMBER ON SIXTEENTH SECTION LANDS MUST BE CLEARED FROM AN
4 EXISTING ROAD OR EXISTING UTILITY RIGHT-OF-WAY; TO PROVIDE THAT
5 DUE TO HURRICANE KATRINA, A SCHOOL BOARD SHALL BE GRANTED
6 EMERGENCY POWERS TO TAKE ANY AND ALL ACTIONS OF A REASONABLY
7 PRUDENT TRUSTEE TO RECOVER DAMAGED TIMBER, PREVENT FURTHER LOSS OR
8 DAMAGE TO TIMBER, AND TO MINIMIZE ECONOMIC LOSS; TO PROVIDE
9 EMERGENCY AUTHORITY TO THE LOCAL SCHOOL BOARD; AND FOR RELATED
10 PURPOSES.

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

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

14 29-3-45. (1) (a) The board of education shall by order
15 placed upon its minutes, enter into an agreement with the State
16 Forestry Commission for the general supervision and management of
17 all lands classified as forest lands, as hereinabove provided, and
18 of all timber or other forest products under the control of the
19 board on sixteenth section lands, and lieu lands which have not
20 been so classified; however, any school board may contract with
21 private persons or businesses for the reforestation of sixteenth
22 section lands. When such agreement has been entered into, no
23 timber or other forest products shall be sold from any of said
24 sixteenth section lands or lieu lands except such as have been
25 marked for cutting by the State Forestry Commission's employees,
26 and the said Forestry Commission, or its designated employee,
27 shall fix the minimum total cash price or minimum price per unit,
28 one thousand (1,000) feet or other measure, at which said marked
29 timber or other forest products shall be sold. Said sales may be
30 made for a lump sum or upon a unit price as in the opinion of the
31 board may be calculated to bring the greatest return. Sales shall

32 be made upon such other terms and conditions as to manner of
33 cutting, damages for cutting of unmarked trees, damages to trees
34 not cut and other pertinent matters as the board of education
35 shall approve.

36 (b) The State Forestry Commission shall have the sole
37 authority and control in prescribing the forestry management
38 practices and scheduling of all cutting and harvesting of timber
39 or other forest products when such timber stands or other forest
40 products are determined by the State Forestry Commission to be
41 economically ready for cutting and harvesting; however, any school
42 board may contract with private persons or businesses for the
43 reforestation of sixteenth section lands.

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

56 (d) It is hereby made the duty of the State Forestry
57 Commission, from time to time, to mark timber which should be cut
58 from said lands, to determine what planting, deadening or other
59 forestry improvements should be made, giving due consideration to
60 food and habitat for wildlife, and to report to the appropriate
61 board of education. The State Forestry Commission and the Board
62 of Education shall supervise the cutting of any timber or
63 harvesting of other forest products sold from said lands herein
64 designated and shall have authority to require any timber-cutting

65 operations on said lands to cease until proper adjustment is made,
66 whenever it shall appear that timber is being cut in violation of
67 the terms of the sale. In the event that it is desired to lease
68 any of such lands or standing timber for turpentine purposes, such
69 lease shall only cover such trees as the State Forestry Commission
70 shall designate, and said commission through its employees shall
71 approve the number of faces, method of chipping and boxing of such
72 timber, and shall fix a minimum total cash price or minimum price
73 per unit.

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

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

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

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

122 (i) Contract with any individual or entity for
123 management advice, sale of timber, clearing of damage to timber
124 producing lands, transporting of timber, repairing access roads to
125 timber lands, conducting aerial spraying, or taking any other type
126 of action to prevent further loss of timber or diminution in value
127 of existing timber as the result of the incident which
128 necessitated the declaration of a natural disaster. In
129 contracting with any individual or entity, the board of education

130 shall use its best efforts to ensure that all costs incurred are
131 reasonable and that a fair price is received for all 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 said board, then said 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. Said
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, said
194 board of education shall immediately notify the Secretary of State
195 in writing. Likewise, said 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 said 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 **SECTION 2.** This act shall take effect and be in force from
224 and after its passage.