

By: Representative Gunn

To: Forestry; Education

HOUSE BILL NO. 935

1 AN ACT TO AMEND SECTION 29-3-45, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE LOCAL SCHOOL BOARDS TO ENTER INTO CONTRACTS WITH
3 PRIVATE, REGISTERED FORESTERS FOR THE MANAGEMENT OF SIXTEENTH
4 SECTION FOREST LANDS; TO AMEND SECTIONS 29-3-47, 29-3-49, 29-3-54,
5 29-3-85 AND 29-3-87, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO
6 THE PROVISIONS OF THIS ACT; AND FOR RELATED 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 school board shall, by order placed
11 upon its minutes, enter into an agreement with either the State
12 Forestry Commission or a private, registered forester licensed
13 under the Foresters Registration Law of 1977 for the general
14 supervision and management of all lands classified as forest
15 lands, as * * * provided for in this chapter, and of all timber or
16 other forest products under the control of the board on sixteenth
17 section lands, and lieu lands which have not been so classified.
18 The school board also may contract with private persons or
19 businesses for the reforestation of sixteenth section lands. When
20 such agreement has been entered into, no timber or other forest
21 products shall be sold from any of the sixteenth section lands or
22 lieu lands except such as have been marked for cutting by the
23 State Forestry Commission's employees or the registered forester,
24 and the * * * Forestry Commission or its designated employee or
25 the registered forester shall fix the minimum total cash price or
26 minimum price per unit, one thousand (1,000) feet or other
27 measure, at which the marked timber or other forest products shall
28 be sold. The sales may be made for a lump sum or upon a unit
29 price as in the opinion of the board may be calculated to bring

30 the greatest return. Sales shall be made upon such other terms
31 and conditions as to manner of cutting, damages for cutting of
32 unmarked trees, damages to trees not cut and other pertinent
33 matters as the school board * * * shall approve.

34 (b) The State Forestry Commission or the registered
35 forester with whom the school board has contracted shall have the
36 sole authority and control in prescribing the forestry management
37 practices and scheduling of all cutting and harvesting of timber
38 or other forest products when such timber stands or other forest
39 products are determined by the State Forestry Commission or the
40 private forester to be economically ready for cutting and
41 harvesting * * *.

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

55 (d) It is * * * the duty of the State Forestry
56 Commission or registered forester with whom the school board has
57 contracted, from time to time, to mark timber which should be cut
58 from the 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 school board * * *. The State Forestry Commission or private
62 forester and the school board * * * shall supervise the cutting of

63 any timber or harvesting of other forest products sold from the
64 lands * * * and shall have authority to require any timber-cutting
65 operations on the 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 or private registered forester shall designate, and the
71 commission, through its employees, or private forester shall
72 approve the number of faces, method of chipping and boxing of such
73 timber, and shall fix a minimum total cash price or minimum price
74 per unit.

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

89 (f) Notwithstanding the * * * provisions of paragraph
90 (e) pertaining to the sale of any timber, turpentine or other
91 forest products, in the event that timber must be cleared from an
92 existing road or existing utility right-of-way, the public notice
93 requirement may be waived. Prior to waiver of the public notice
94 requirement, the State Forestry Commission or private registered
95 forester must make a finding that, due to the small area of timber

96 to be cleared, a public notice sale would not be in the best
97 interest of the local school board * * *. If the State Forestry
98 Commission or private registered forester makes such a finding,
99 then it shall set the value of the timber to be paid to the local
100 school board * * * by the party requesting the timber be removed.

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

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

127 (i) Contract with any individual or entity for
128 management advice, sale of timber, clearing of damage to timber

129 producing lands, transporting of timber, repairing access roads to
130 timber lands, conducting aerial spraying, or taking any other type
131 of action to prevent further loss of timber or diminution in value
132 of existing timber as the result of the incident which
133 necessitated the declaration of a natural disaster. In
134 contracting with any individual or entity, the school board * * *
135 shall use its best efforts to ensure that all costs incurred are
136 reasonable and that a fair price is received for all sales.

137 (ii) Enter into agreements with any individual,
138 private company, or other governmental entities for the pooling of
139 resources, or the sharing of costs so as to maximize the
140 mitigation of loss and minimize the expense of mitigating the loss
141 of timber.

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

149 (b) The emergency powers granted under this subsection
150 shall be for a period of one (1) year from the date of designation
151 as a disaster area due to Hurricane Katrina. The emergency powers
152 may be extended for one (1) additional one-year period upon prior
153 written approval from the Secretary of State.

154 (c) The emergency powers shall also apply to the
155 management of timber by the Secretary of State pursuant to
156 subsection (3) of this section.

157 (d) In the event a local school board * * * is unable
158 to acquire the services of the State Forestry Commission or the
159 Secretary of State to meet an immediate need to salvage, remove or
160 take other appropriate action on damaged timber, the local school
161 board * * * shall unilaterally be granted the authority to take

162 such actions as necessary regarding the management or sale of
163 timber or other forest products.

164 (e) In exercising emergency powers, a local school
165 board * * * or the Secretary of State shall exercise the general
166 powers of a trustee with the same general restrictions and general
167 liabilities of a trustee and shall exercise the care and skill of
168 an ordinary prudent person to protect the beneficiaries of the
169 trust under such emergency circumstances.

170 (f) Any contractor with a local school board * * * or
171 the Secretary of State shall be entitled to rely on
172 representations by the school board * * * or the Secretary of
173 State as to who has authority to enter contracts for the
174 management or sale of timber or other forest products, and
175 reliance on such representations shall not be grounds for voiding
176 any contract.

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

190 (b) During the time in which any local school
191 board * * * may be divested of authority and power to manage and
192 sell timber and other forest products, such authority and power
193 shall be vested in the Secretary of State, as supervisory trustee
194 of sixteenth section lands. Upon the appointment or election of a

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

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

214 (d) The Secretary of State shall be paid all monies
215 derived from the sale of timber or other forest products and shall
216 promptly forward the same to the superintendent of education for
217 such school district with instructions for the proper settlement,
218 deposit and investment of those monies. Such local school board
219 shall reimburse the Secretary of State for all direct costs
220 relating to the management and sale of timber or other forest
221 products, and in the case of a sale of timber or other forest
222 products, the Secretary of State may deduct such direct cost from
223 the proceeds of sale. The Secretary of State shall furnish an
224 itemized listing of all direct cost charged to the local school
225 district.

226 **SECTION 2.** Section 29-3-47, Mississippi Code of 1972, is
227 amended as follows:

228 29-3-47. For its services, the State Forestry Commission
229 shall be entitled to receive its actual expenses incurred in the
230 discharge of the duties * * * imposed in this chapter. In order
231 to provide funds with which to pay for the general supervision and
232 sale of forest products, fifteen percent (15%) of all receipts
233 from the sales of forest products shall be placed by the board in
234 a forestry escrow fund and reserved to pay for work performed by
235 the State Forestry Commission or private forester with whom the
236 school board has contracted. Such payments shall be equal to the
237 actual expenses incurred by the commission, as substantiated by
238 itemized bills presented to the board, or in the case of a private
239 forester, an amount consistent with the terms of the contract
240 between the school board and private forester.

241 Money in the forestry escrow fund may be used to pay for any
242 forestry work authorized during the period of the agreement and
243 shall not be subject to lapse by reason of county budget
244 limitations.

245 In each school district having need of tree planting and
246 timber stand improvement, the school board * * * is authorized to
247 place additional amounts in the forestry escrow fund to reimburse
248 the State Forestry Commission for actual expenses incurred in
249 performing this work or to pay for any work done under private
250 contract * * *. Such additional amounts may be made available
251 from forest products sales receipts, funds borrowed from the
252 sixteenth section principal fund as is provided for in Section
253 29-3-113, or any other funds available to the school board,
254 excluding adequate education program funds. Expenditures from the
255 forestry escrow fund for tree planting, timber stand improvement,
256 and other forestry work will be limited to payment for work
257 recommended by the Forestry Commission or private forester and
258 agreed to by the school board * * *.

259 When it becomes evident that the amount of money in the
260 forestry escrow fund is in excess of the amount necessary to

261 accomplish the work needed to achieve the goals set by the school
262 board * * * and the Forestry Commission or private forester, the
263 State Forestry Commission or private forester shall advise the
264 board to release any part of such funds as will not be needed,
265 which may then be spent for any purpose authorized by law.

266 **SECTION 3.** Section 29-3-49, Mississippi Code of 1972, is
267 amended as follows:

268 29-3-49. It shall be the duty of the State Forestry
269 Commission, in the manner * * * provided in Section 29-3-45, to
270 enter into agreements for timber improvement purposes with the
271 school board * * * upon the request of the board. The contract
272 shall provide for the carrying out of a long-term program of
273 timber improvement, including any or all of the following: The
274 deadening of undesirable hardwoods; the planting of trees; the
275 cutting and maintaining of fire lanes; and the establishment of
276 marked boundaries on all lands classified as forest lands in the
277 agreements, which must provide for the reimbursement of all
278 current costs incurred by the State Forestry Commission and the
279 carrying out of the duties required by such agreements. In the
280 alternative, the school board, in its discretion, may have the
281 option to contract with a private contractor * * * to perform this
282 work * * *. Payment of the reimbursements required under this
283 section to the * * * Forestry Commission, or of compensation due
284 under any such contract with private contractors, shall be made
285 upon presentation of itemized bills therefor by the commission or
286 the private contractors, as the case may be, and may be made out
287 of any sixteenth section funds to the credit of, or accruing to,
288 any school district in which such work shall be done, or out of
289 any other funds available to such district, excluding adequate
290 education program funds.

291 **SECTION 4.** Section 29-3-54, Mississippi Code of 1972, is
292 amended as follows:

293 29-3-54. Any leaseholder of sixteenth section land, or land
294 granted in lieu thereof, shall be authorized to post such land
295 against trespassers; however, such posting shall not prohibit the
296 inspection of the lands by individuals responsible for the
297 management or supervision of the lands acting in their official
298 capacity. In the event hunting or fishing rights have been leased
299 on lands classified as forest land, the holder of such rights and
300 the State Forestry Commission or the registered forester with whom
301 the school board has contracted for timber management services, as
302 the case may be, shall be authorized to post such land against
303 trespassers.

304 **SECTION 5.** Section 29-3-85, Mississippi Code of 1972, is
305 amended as follows:

306 29-3-85. In all surface leases of sixteenth section land
307 made by the school board * * *, whether such leases are original
308 leases or extensions of existing leases, title to all timber,
309 minerals, oil, and gas on such lands shall be reserved, together
310 with the right of ingress and egress to remove same, whether such
311 provisions be included in the terms of any such lease or not; and
312 no timber shall be cut and used by the lessees except for fuel and
313 necessary repairs and improvements on the leased premises. The
314 school board * * *, notwithstanding the fact that such land may
315 have been leased for other purposes, shall have the right, from
316 time to time, to sell all merchantable timber on such lands in the
317 manner * * * provided in this chapter. * * * In any surface
318 lease, the school board * * * shall reserve the right to grant or
319 sell rights-of-way across any of the land for a road, highway,
320 railroad, or any public utility line, provided only that the
321 leaseholder be paid a reasonable rental for the unexpired term of
322 his lease by the grantee of such right-of-way. If any surface
323 lessee of any such sixteenth section land shall commit, cause to
324 be committed, or permit the commission of any act of waste on any
325 sixteenth section lands under lease to such lessee, then such

326 lease shall thereupon, as to such lessee, cease and terminate and
327 shall thenceforth be null and void; and the school board * * *
328 shall have the right to institute an action in any court of
329 competent jurisdiction to secure the cancellation of same of
330 record, to recover damages for such waste, and to maintain an
331 action in ejectment to recover possession of the same. To this
332 end, the school board * * * is * * * authorized and empowered to
333 employ competent counsel to institute and maintain any such action
334 or actions on behalf of the board.

335 **SECTION 6.** Section 29-3-87, Mississippi Code of 1972, is
336 amended as follows:

337 29-3-87. Notwithstanding the provisions of this or any other
338 statute, the several school boards * * * are * * * authorized and
339 empowered, in their discretion and by resolution spread upon the
340 minutes, to set aside, reserve, and dedicate any available
341 sixteenth section lands or lands in lieu thereof for use by such
342 school district as a site for school buildings, which such
343 dedication and reservation shall be for such length of time, not
344 exceeding fifty (50) years, and upon such terms and conditions as
345 the school board * * *, in its discretion, shall deem proper. Any
346 such reservation or dedication of sixteenth section lands shall
347 automatically cease and terminate if, at any time, the land
348 involved shall cease to be used for the purpose for which the
349 dedication or reservation is made. The reservation or dedication
350 shall cover the surface of the lands only and shall not prevent
351 the school board * * * from leasing the lands for oil, gas, and
352 mineral exploration and development in a manner otherwise provided
353 by law.

354 In the same manner and subject to the same provisions * * *
355 set forth in this section, the school board * * * having a timber
356 management and marketing agreement with the State Forestry
357 Commission or National Forest Service may set aside, reserve and
358 dedicate any available sixteenth section lands or lands granted in

359 lieu thereof, which has been classified as forest land under the
360 provisions of this chapter, to be utilized for public parks and
361 recreation areas. The board of supervisors or the governing
362 authorities of any municipality wherein such lands or any portion
363 thereof lie may expend any funds otherwise available for park or
364 recreational areas in the construction and maintenance of
365 improvements to be located thereon.

366 The setting aside, reservation and dedication of any such
367 sixteenth section lands, or lands granted in lieu thereof by a
368 school board * * * to the Department of Wildlife, Fisheries and
369 Parks for the purpose of locating a state park thereon may be for
370 a length of time not exceeding ninety-nine (99) years.

371 No sixteenth section or lieu land which is subject to an
372 existing lease shall be set aside, dedicated, and reserved as a
373 school building site or for public park or recreational purposes
374 under the provisions of this section unless the school district
375 involved shall acquire the unexpired leasehold interest from the
376 leaseholder, or unless such lease and leasehold interest shall be
377 surrendered and relinquished by the leaseholder.

378 **SECTION 7.** This act shall take effect and be in force from
379 and after July 1, 2007.