MISSISSIPPI LEGISLATURE REGULAR SESSION 2007

By: Senator(s) Williamson, Dearing, Posey, Gordon, Jackson (11th), Frazier, Horhn, Butler, Pickering, Ross, Burton

To: Public Property

SENATE BILL NO. 2732

AN ACT TO RETURN THE NANIH WAIYA STATE PARK AND MOUND TO THE MISSISSIPPI BAND OF CHOCTAW INDIANS; TO AMEND SECTIONS 29-1-1 AND 55-3-47, MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

SECTION 1. The Legislature finds that in 2004 several state parks were requiring substantial subsidies from the General Fund, and the Mississippi Commission on Wildlife, Fisheries and Parks was directed to promptly dispose of those parks through closure, lease, sale or transfer. The Nanih Waiya State Park was one of those state parks to be promptly disposed of by the commission. Nanih Waiya is the site of a sacred mound of the Choctaw Nation and on lands ceded to the United States by the Choctaw Nation under the Treaty of Dancing Rabbit Creek. The Nanih Waiya Mound is venerated by the Choctaws and the site is considered to be the birthplace of the Choctaws. The Mississippi Band of Choctaw Indians desires to have this site of great historical significance to the Choctaws returned to them. The Legislature finds that it is in the public interest to return this historical site of the Choctaw Indians to the Mississippi Band of Choctaw Indians.

SECTION 2. The Commission on Wildlife, Fisheries and Parks and the Department of Wildlife, Fisheries and Parks shall take any and all actions necessary to donate and to convey the Nanih Waiya State Park to the Mississippi Band of Choctaw Indians. The executive director of the department is authorized to execute any document or instrument to accomplish the donation and conveyance of the park.

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

29-1-1. (1) Except as otherwise provided in subsections (7), (8) and (9) of this section, the title to all lands held by any agency of the State of Mississippi which were acquired solely by the use of funds appropriated by the state shall appear on all deeds and land records under the name of the "State of Mississippi." For the purpose of this section, the term "agency" shall be defined as set forth in Section 31-7-1(a). The provisions of this section shall not affect the authority of any agency to use any land held by the agency. No assets or property of the Public Employees' Retirement System of Mississippi shall be transferred in violation of Section 272A of the Mississippi Constitution of 1890. Before September 1, 1993, each state agency shall inventory any state-held lands which were acquired solely by the use of funds appropriated by the state, and which are titled in the name of the agency. The agency shall execute quitclaim deeds and any other necessary documents to transfer the name and title of the property to the State of Mississippi.

(2) The Secretary of State, under the general direction of the Governor and as authorized by law, shall sell and convey the public lands in the manner and on the terms provided herein for the several classes thereof; he shall perform all the administrative and executive duties appertaining to the selection, location, surveying, platting, listing, and registering these lands or otherwise concerning them; and he shall investigate the status of the various "percent" funds accrued and accruing to the state from the sale of lands by the United States, and shall collect and pay the funds into the treasury in the manner provided by law.

(3) In accordance with Sections 7-11-11 and 7-11-13, the Secretary of State shall be required to sign all conveyances of all state-held land. For purposes of this section, the term

"conveyance" shall mean any sale or purchase of land by the State of Mississippi for use by any agency, board or commission thereof. Failure to obtain legislative approval pursuant to subsection (4) of this section and the signature of the Secretary of State on any conveyance regarding the sale or purchase of lands for the state including any agency, board or commission thereof, shall render the attempted sale or purchase of the lands void. Nothing in this section shall be construed to authorize any state agency, board, commission or public official to convey any state-held land unless this authority is otherwise granted by law. The Secretary of State shall not withhold arbitrarily his signature from any purchase or sale authorized by the Mississippi State Legislature. All sales of state-held lands, except those lands forfeited to the state for the nonpayment of taxes and those lands acquired by the Mississippi Transportation Commission under Section 65-1-123, shall be sold for not less than the fair market value as determined by two (2) professional appraisers selected by the State Department of Finance and Administration, who are certified general appraisers of the State of Mississippi. The proceeds from any sale by an agency, board, commission or public official of state-held lands shall be deposited into the State General Fund unless otherwise provided by law.

(4) Before any state-held land is sold to any individual or private entity, thirty (30) days' advance notice of the intended sale shall be provided by the Secretary of State to the State Legislature, to all state agencies and to all governing authorities within the state for the purpose of ascertaining whether an agency or governing authority has a need for the land and for the purpose of ascertaining whether the sale of the land was authorized by law. If no agency or governing authority within the state expresses in writing to the Secretary of State by the end of the thirty-day period a desire to use the land, then the Secretary of State, with the prior approval of the Mississippi

Legislature to sell the state-held land, may offer the land for sale to any individual or private entity.

(5) A cultural resources survey may be performed on any state-held land before the disposition of the land if the State Department of Archives and History deems this survey necessary. The cost of the survey and any archaeological studies deemed necessary by the State Department of Archives and History shall be paid by the selling agency and recouped from the proceeds of the sale.

(6) Before any land may be purchased by the state for the benefit of any state agency, the Secretary of State, or his designee, shall search and examine all state land records to determine whether the state owns any land that may fit the particular need of the agency. The Secretary of State, or his designee, shall notify the agency if it is determined that any state-held land is available for use by the agency. The agency shall determine if such land accommodates its needs and shall determine whether to make an official request to the proper authorities to have the use of the land.

(7) Any lands purchased or acquired for construction and maintenance of highways or highway rights-of-way by the Mississippi Department of Transportation shall be excluded from the provisions of this section.

(8) This section shall not apply to any agency of the State of Mississippi that holds title to lands purchased solely by the use of federal funds or whose authority to transfer or dispose of these lands is governed by federal law or federal regulations.

(9) Any lands purchased by the Mississippi Major Economic Impact Authority for a "project" as defined in Section 57-75-5 shall be excluded from the provisions of this section.

(10) The Secretary of State may recover from any agency, corporation, board, commission, entity or individual any cost that

is incurred by his office for the record-keeping responsibilities regarding the sale or purchase of any state-held lands.

(11) Subsections (3), (4), (5) and (6) of this section shall not apply to sales or purchases of land when the Legislature expressly authorizes or directs a state agency to sell, purchase or lease-purchase a specifically described property. However, when the Legislature authorizes a state agency to sell or otherwise convey specifically described real property to another state agency or other entity such as a county, municipality, economic development district created under Section 19-5-99 or similar entity, without providing that the conveyance may not be made for less than the fair market value of the property, then the state agency authorized to convey such property must make the following determinations before conveying the property:

(a) That the state agency or other entity to which the proposed conveyance is to be made has an immediate need for the property;

(b) That there are quantifiable benefits that will inure to the state agency or other entity to which the proposed conveyance is to be made which outweigh any quantifiable costs to the state agency authorized to make the conveyance; and

(c) That the state agency or other entity to which the proposed conveyance is to be made lacks available funds to pay fair market value for the property. If the state agency authorized to convey such property fails to make such determinations, then it shall not convey the property for less than the fair market value of the property.

(12) This section shall not apply to the donation and conveyance of the Nanih Waiya State Park to the Mississippi Band of Choctaw Indians.

SECTION 4. Section 55-3-47, Mississippi Code of 1972, is amended as follows:

55-3-47. (1) In order to carry out its management responsibilities over all state park lands which are now or which may hereafter come under its jurisdiction, the Mississippi Department of Wildlife, Fisheries and Parks is hereby authorized to lease, and to grant easements and rights-of-way over and across, any part of such state park lands. Such leases, easements and rights-of-way may be granted for such consideration, and upon such terms and conditions, as the department may deem to be in the best interest of the state, consistent with the use of said lands for recreational purposes, and subject to the following limitations: The department shall lease such lands for a term not exceeding twenty-five (25) years and shall grant in the original lease contract a nonnegotiable option to renew such lease for an additional term not to exceed twenty-five (25) years. Both the original lease contract and the option to renew such lease shall be transferable contracts. Further, the department shall not lease such lands for purposes which are incompatible with recreational use and may place such terms, limitations, restrictions and conditions in such leases as are deemed necessary to ensure the proper utilization of such lands. Any easement for a utility line shall be granted for that period of time which the department deems to be in the best interest of a state park.

(2) The department is further authorized to enter into such agreements as may be required, upon such terms as may be found to be in the best interest of the state, in settlement of disputes or litigation regarding the title to or boundaries of any state park lands within the jurisdiction of the department, provided such settlement agreements shall be negotiated and drafted with the advice, counsel and assistance of the Attorney General and shall be approved by the Department of Finance and Administration.

(3) In case any of the real estate within any state park under the jurisdiction of the department shall cease to be used or useful for state park purposes, or becomes the subject of boundary

or title disputes or litigation, the department may sell and convey the same, with the approval of the Department of Finance and Administration, upon such terms as the Department of Finance and Administration may elect and may, in addition, exchange the same, with the approval of the department, for real estate belonging to any other political subdivision or state, county or local governmental agency or department. The department is authorized to sell and convey or otherwise transfer any state park or historical site as described in subsection (2) of Section 55-3-33. Before any such sale or transfer, except as may occur in settlement of title or boundary disputes or litigation, the department shall publish notice of its intention to sell the park land by public sale to the highest and best bidder at least once each week for three (3) consecutive weeks in at least one (1) public newspaper of general circulation in the county where such land is located and also in at least one (1) newspaper of general circulation throughout the state. Prior to any such sale, the department shall obtain at least two (2) separate and independent appraisals of the land to be sold and may not accept any bid lower than the average of all appraisals made. The department may reject any and all bids. The owner or any co-owner of record next preceding the state in title to any lands sold hereunder by public bid, excluding any entity which may have exercised the power of eminent domain to assist the state in acquiring said lands, shall have the opportunity to reacquire such lands by matching the successful bid therefor. If the owner or any co-owner of record next preceding the state in title, or the heirs or estate of such owner or co-owner, acquires said lands, then the department shall not reserve unto the state any minerals owned by the state underlying the conveyed lands. However, if anyone other than such owner or co-owner, or his heirs or estate, acquires said lands, then the department shall reserve unto the state one-half (1/2) of the minerals owned by the state underlying the conveyed lands,

except for lands sold in settlement of title or boundary disputes or litigation, in which case the department may, in its discretion, reserve said minerals. Appraisal fees shall be shared equally by the department and purchaser.

(4) In exercising the authority granted in this section, the department may act by and through its executive director in the execution of any document or instrument prepared hereunder. Any lease, deed or settlement agreement executed under the provisions of this section shall bear the seal and attest of the Secretary of State, with whom said instrument or document shall be filed and recorded in addition to any other recording requirements of state law.

This section shall not apply to sixteenth section school lands or lieu lands included within any state park, except as may be necessary or appropriate for the department to ratify or confirm any action taken by the agency or department having jurisdiction over such school or lieu lands.

All revenues collected by the department by virtue of any transaction consummated under the provisions of this section shall be deposited in the Mississippi Park Fund created by Section 55-3-41, from which funds shall be expended only as authorized by the legislative appropriations process.

(5) This section shall not apply to the donation and conveyance of the Nanih Waiya State Park to the Mississippi Band of Choctaw Indians.

SECTION 5. This act shall take effect and be in force from and after its passage.