By: Representative Evans (43rd) (By Request) To: Education; Judiciary A

HOUSE BILL NO. 1221

AN ACT TO CLARIFY THAT A LEASE OF SIXTEENTH SECTION LANDS THAT IS DULY EXECUTED BY THE SCHOOL BOARD OF THE LOCAL SCHOOL DISTRICT IS PRESUMED TO BE VALID; TO CLARIFY THAT THE APPROVAL OF THE SECRETARY OF STATE IS NOT NECESSARY BEFORE THE SCHOOL BOARD MAY ENTER INTO ANY SUCH LEASE; TO PROVIDE THAT THE SECRETARY OF STATE MAY OBJECT TO THE VALIDITY OF SUCH A LEASE BY FILING AN ACTION IN THE APPROPRIATE CHANCERY COURT AND DEMONSTRATING THAT THE LEASE IS UNCONSCIONABLE OR OTHERWISE NOT VALID; TO PROVIDE THAT SCHOOL BOARD MEMBERS ACTING IN GOOD FAITH ARE IMMUNE FROM INDIVIDUAL LIABILITY ASSOCIATED WITH ENTERING INTO THE LEASE; TO GRANT CERTAIN FORMER LEASEHOLDERS OF SIXTEENTH SECTION LAND PREVIOUSLY CLASSIFIED AS FARM RESIDENTIAL BEFORE BEING ARBITRARILY REAPPRAISED AND RECLASSIFIED AS FOREST LAND THE OPTION OF AGAIN LEASING THE LAND AS FARM RESIDENTIAL LAND; TO AUTHORIZE SIXTEENTH SECTION LEASEHOLDERS TO FILE COMPLAINTS OF ALLEGED WRONGDOING BY THE BOARD OF EDUCATION AND SECRETARY OF STATE IN RELATION TO THE MANAGEMENT OF SIXTEENTH SECTION LANDS WITH THE ATTORNEY GENERAL; TO AMEND SECTION 29-3-31, MISSISSIPPI CODE OF 1972, TO DELETE THE REQUIREMENT THAT SIXTEENTH SECTION LANDS BE CLASSIFIED ACCORDING TO THEIR HIGHEST AND BEST USE; TO AMEND SECTION 29-3-63, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PRECEDING PROVISIONS OF THIS ACT; TO AMEND SECTION 29-3-69, MISSISSIPPI CODE of 1972, IN CONFORMITY TO THE PRECEDING PROVISIONS AND TO AUTHORIZE THE TRANSFER OF FARM RESIDENTIAL LEASEHOLD INTERESTS; TO AMEND SECTION 29-3-65, MISSISSIPPI CODE OF 1972, TO REQUIRE AN APPRAISAL TO BE PERFORMED ON ALL SIXTEENTH SECTION LANDS AND LIEU LANDS CLASSIFIED AS RESIDENTIAL, FARM-RESIDENTIAL, RECREATIONAL, CATFISH FARMING OR OTHER LAND NO LESS THAN ONCE EVERY FIVE YEARS; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) If a lease of sixteenth section lands, or lands granted in lieu thereof, including leases and any renewal, replacement or extension of such leases, granted under any provision of this chapter is duly executed by the board of education after approval of the rental value of the land by the board of supervisors, then the lease must be presumed valid. The board of education must provide the Secretary of State with notice of the execution of such a lease within ten (10) days of its execution. The approval of the Secretary of State is not necessary before the board may enter into any such lease; however, if the Secretary of State objects to the validity of the lease, then an action must be filed by the Secretary of State, within thirty (30) days of the notice of the lease's execution, in the chancery court in which the land is located. The Secretary of State must demonstrate by clear and convincing evidence that the lease is unconscionable or otherwise not valid. Members of the board of education, acting in good faith and relying on the advice or opinion of the board attorney, shall be immune from individual liability associated with entering into the lease.

(2) The provisions of this section shall be supplemental to the provisions of Section 29-3-52 regarding the prima facie validity of such a lease that is executed and recorded in substantial conformity with the provisions of this chapter.

SECTION 2. The most recent leaseholder or the immediate family of the most recent leaseholder of any sixteenth section

lands or lieu lands previously classified as farm residential land before being reclassified as forest land within the five (5) years preceding the effective date of this act which, before their reclassification as agricultural land or forest land by the Secretary of State were reappraised as having an arbitrary fair market rental value of five percent (5%) of the fair market land value rather than a fair market rental value determined in the manner prescribed under Section 29-3-65, must be given the option to again lease the land as farm residential land. If the former leaseholder or a member of his immediate family elects to exercise this option, the Secretary of State shall proceed immediately to reclassify the land that is the subject of the lease as farm residential land, and the board of education shall proceed to execute a lease following the procedure established under Section 29-3-82. The fair market rental value of the farm residential land must be established in the manner prescribed in Section 29-3-65. If the leaseholder or a member of his immediate family does not elect to exercise the option provided under this section, the subject lands may remain classified as agricultural land or forest land.

SECTION 3. Except as otherwise provided in Section 29-3-37 for objecting to the classification of sixteenth section or lieu lands, a leaseholder of sixteenth section lands or lands granted in lieu thereof aggrieved by a decision or action of the board of education or the Secretary of State relating to the management and

supervision of sixteenth section or lieu lands and the leasehold interests of those lands may file a complaint with the Attorney General. The leaseholder's complaint must include a statement setting forth the alleged wrongdoing by the board of education or Secretary of State, or both, with references made to the specific statute or statutes that allegedly have been violated. To assist leaseholders, the Attorney General shall develop a form for the filing of complaints under this section, which form must be made available to the public in the Office of the Attorney General and on the Attorney General's Internet website.

SECTION 4. Section 29-3-31, Mississippi Code of 1972, is amended as follows:

29-3-31. It is hereby made the duty of the board of education, using the services of all appropriate public agencies, to survey and classify all sixteenth section lands in the Choctaw purchase and lands granted in lieu thereof reserved for the support of township schools. Said lands shall be classified into eight (8) categories, as follows: (1) forest land; (2) agricultural land; (3) industrial land; (4) commercial land; (5) farm-land; (6) residential land; (7) recreational land; and (8) other land. *** * *** Notwithstanding anything herein to the contrary, all land that is being used as "residential land" or "farm-residential land" shall continue to be classified as "residential land" or "farm-residential land" until such land ceases to be used as a residence.

All sixteenth section lands in the Choctaw purchase and lands granted in lieu thereof, regardless of classification, shall be deemed to contain oil, gas and minerals, including the following: (a) oil, gas, carbon dioxide and other gaseous substances; (b) metals, compounds of metals or metal-bearing ores; (c) coal, including anthracite, bituminous, subbituminous, lignite and their constituent components and products and minerals intermingled or associated therewith; and (d) sulphur, salt, sand, gravel, fill dirt and clay.

Such oil, gas and minerals shall be leased for exploration, mining, production and development as provided for in Section 29-3-99, regardless of the classifications of the lands in, on or under which such oil, gas and minerals are situated. Statutory procedures for the leasing of the surface of the land in such eight (8) classifications shall not apply to such oil, gas and minerals in, on or under such lands.

Such oil, gas and minerals shall be deemed a separate classification of sixteenth section lands for the purpose of Section 211 of the Mississippi Constitution.

SECTION 5. Section 29-3-63, Mississippi Code of 1972, is amended as follows:

29-3-63. (1) The holder of a lease of sixteenth section or lieu land, at the expiration thereof, shall have a prior right, exclusive of all other persons, to re-lease or to extend an existing lease as may be agreed upon between the holder of the

lease and board of education subject to the classification of said land. Provided, however, no holder of a lease of sixteenth section land classified as agricultural land shall have any priority rights in extending his lease contract, except as otherwise provided in Section 29-3-81. Provided, however, the compensation on an annual basis shall be the fair market rental of the land excluding buildings and improvements made on such land by the lessee, the title to which is not held in trust for the public schools, but in no event shall the compensation be less than the minimum amounts prescribed in subsection (2) of this section.

(2) The board of education shall not lease or extend a lease on land classified as industrial or commercial at an annual rental less than five percent (5%) of the current market value, exclusive of buildings or improvements not owned by the school district. Such minimum acceptable percentage shall not apply to land classified as farm-residential, residential, recreational and other land; however, fair market rental will apply to those lands as determined by appraisal, comparative analysis or comparison with the private sector.

(3) The prior right to re-lease or extend an existing oil, gas and mineral lease, or any part thereof, granted under this section shall be conditioned upon the existence of production of oil, gas or other minerals thereunder in paying quantities, or the existence of a well capable of such production, or the existence of drilling or reworking operations at the time of lease

expiration. Provided, however, that said lease may, in the discretion of the board of education, be extended only as to the lands included in a unit or units as defined by the appropriate agency having jurisdiction over said unit or units. The replacement lease shall be upon such terms and conditions as may be agreed upon between the holder of the lease and the board of education, provided that the rental and royalty provisions shall not be less than the rental and royalty provisions as set out in the expired lease and the primary term shall not exceed the limitations in Section 29-3-99. Bonus payment for the replacement lease shall be consistent with the requirements set out in Section 29-3-65 with respect to oil, gas and mineral leases.

(4) Where used in this section and Section 29-3-65, the term "oil and gas lease" or "oil, gas and mineral lease" shall include all leases originally executed pursuant to Section 29-3-99.

(5) The right to re-lease an oil, gas and mineral lease provided in subsection (3) above extends to oil, gas and mineral leases which have already expired as of the effective date of this section, subject to an accounting for production from the date of lease expiration to the date of the replacement lease authorized herein.

(6) The provisions of Section 1 of this act shall apply to the re-lease of any lands under the provisions of this section.

SECTION 6. Section 29-3-69, Mississippi Code of 1972, is amended as follows:

29-3-69. (1) The board of education may lease school trust lands classified as industrial, commercial, farm-residential, residential, recreational, catfish farming or other for a term not exceeding forty (40) years for a ground rental, payable annually. All leases, except leases of residential or farm-residential lands, made for a ground rental shall contain rent adjustment clauses or other such provisions requiring that the consideration for every lease of such lands shall be adjusted not less than once every ten (10) years from the date of the lease to reflect the current fair market rental value of the lands, exclusive of any improvements thereon. In leases of lands which are or which are to become residential or farm-residential land, the board of education may require a rent adjustment clause in which rents are to be adjusted, provided that such adjustments will not exceed the fair market rental value of the lands, exclusive of improvements thereon, as of the rental adjustment dates. If a rent adjustment clause is not contained in a lease of lands which are or which are to become residential or farm-residential land, the reasons for not including such clause in the lease shall be stated in the lease and entered on the minutes of the board. In the case of uncleared lands, the board of education may lease them for such short terms as may be deemed proper in consideration of the improvement thereof, with the right thereafter to lease or to hold on payment of a ground rental. The board of education may lease not more than three (3) acres of any such lands for a term not

exceeding ninety-nine (99) years for a ground rental, payable annually, to any church having its principal place of worship situated on such lands, which has been in continuous operation at that location for not less than twenty-five (25) years at the time of the lease. The consideration for every lease of such lands to a church shall be renegotiated not less than once every twenty-five (25) years from the date of the lease to reflect the current fair market rental value of the lands, exclusive of any improvements thereon.

The board of education may, at any time, by agreement with any lessee of lands, except for lands classified as forest or agricultural, cancel an existing lease and execute a new lease contract on such land where major capital improvements have been made or for the purpose of facilitating the addition of major capital improvements, provided that the rental amount of such new lease shall not be less than the rental amount in the prior lease. The term of such new lease shall not exceed forty (40) years for a ground rental, payable annually, provided that prior to the execution of such new lease contract, the provisions of all applicable statutes setting forth the procedure and requirements for the execution of a lease for sixteenth section lands or lieu lands have been satisfied.

The board of education may find that in the interest of good trust management it may be necessary to grant in the original lease contract an option to renew any lease not subject to

competitive bid procedures, for a term not to exceed twenty-five (25) years. If such a finding be made, it shall be entered on the minutes of the board and the option granted; provided that the execution of a new lease shall be required to effectuate the additional lease period and the provisions of all applicable statutes setting forth the procedure and requirements for the execution of a lease for sixteenth section lands or lieu lands have been satisfied.

(2) Except as otherwise provided under this subsection, subleasing or assignment of any lease of * * * sixteenth section or lieu lands executed after July 1, 1978, shall only be allowed when provided in the lease contract or at the discretion of the board of education; provided that permission to sublease or assign shall not be arbitrarily withheld. However, a lessee of sixteenth section or lieu lands classified as farm residential, in his discretion, may transfer his leasehold interest on such terms and conditions agreed upon between the leaseholder and transferee without seeking permission or approval of the transfer from the board of education.

(3) The provisions of Section 1 of this act shall apply to the lease of any lands under the provisions of this section.

SECTION 7. Section 29-3-65, Mississippi Code of 1972, is amended as follows:

29-3-65. (1) One (1) year prior to the date, when any such lands, not subject to competitive bid procedures, shall become

available for lease, the board of education shall appoint a competent appraiser to appraise the land and report to the board his recommendation for the fair market rental amount. The board shall then determine whether the same be a reasonable amount, and shall grant the lease pursuant to Section 29-3-63. Provided that in the event any such land becomes available for lease prior to July 1, 1979, an appraisal shall be required prior to the granting of said lease.

The board of education may use rent escalation clauses or other such devices to adjust rental amounts during the lease term. Owners of leaseholds under a lease granted prior to July 1, 1978, which have improvements constructed thereon, shall not be charged for such improvements in successive lease periods unless the lease contract clearly specifies otherwise. The cost of the appraisal under this section shall be paid from any available sixteenth section school funds or other school funds of the district.

(2) In addition to the appraisal required under subsection (1), the board of education shall require an appraisal to be performed in the manner prescribed under this chapter on all sixteenth section lands and lieu lands classified as residential, farm-residential, recreational, catfish farming or other land for the purpose of determining the fair market rental value of those lands no less than once every five (5) years. However, in any year in which an appraisal of such lands is performed pursuant to subsection (1) of this section, that appraisal shall satisfy the

requirements of this subsection, and no additional appraisal may be required during the five-year period in which that appraisal is performed.

(3) The appraisal pertaining to renewal oil, gas and mineral leases executed pursuant to Section 29-3-63 may be made either before or after the expiration of the original lease and shall appraise the fair market value for the bonus to be paid for a renewal lease containing the terms and conditions agreed upon by the holder of the lease and the board of education.

SECTION 8. The provisions of Sections 1 through 3 of this act shall be codified in Chapter 3, Title 29, Mississippi Code of 1972.

SECTION 9. This act shall take effect and be in force from and after its passage.