By: Representatives Henley, Eubanks, Hopkins To: Appropriations

HOUSE BILL NO. 1069

AN ACT TO CREATE NEW SECTION 29-3-2.1, MISSISSIPPI CODE OF 1972, TO REQUIRE THE SECRETARY OF STATE TO SERVE AS AN INTERIM MANAGER OF SIXTEENTH SECTION LANDS AND LANDS GRANTED IN LIEU THEREOF WHICH ARE SITUATED IN SCHOOL DISTRICTS IN WHICH A STATE OF EMERGENCY HAS BEEN DECLARED DUE TO VIOLATIONS OF ACCREDITATION STANDARDS OR STATE OR FEDERAL LAW; TO AUTHORIZE LOCAL SCHOOL BOARDS TO VOLUNTARILY ASSIGN MANAGERIAL AUTHORITY OVER SIXTEENTH SECTION AND LIEU LANDS TO THE SECRETARY OF STATE; TO AMEND SECTIONS 29-3-1 AND 29-3-45, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PRECEDING PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. The following shall be codified as Section 29-3-2.1, Mississippi Code of 1972:

29-3-2.1. (1) Whenever a state of emergency in a school district is declared under Section 37-17-6, the Secretary of State will be assigned, as interim manager, the management, operation and leasing of, and all other duties relating to, the sixteenth section lands and lands granted in lieu thereof under the control and jurisdiction of the board of education of that school district. The duties of the Secretary of State under this section include, but are not limited to, the collection of funds arising

from the sixteenth section lands and lands granted in lieu thereof and the management and sale of timber or other forest products on those lands.

(2) Payments arising from sixteenth section lands or lands granted in lieu thereof under contracts, leases or agreements entered into by the Secretary of State must continue to be paid directly to the local school district; however, the Secretary of State must be reimbursed by the school district for direct costs incurred in the management of the sixteenth section and lieu lands, including, but not limited to, the sale and management of timber or other forest products. For purposes of reimbursement, the Secretary of State shall provide the local school district with an itemized listing of all costs before the sixteenth day of each month.

(3) The assignment of duties under subsection (1) will terminate upon receipt by the Secretary of State of a written request from the local board of education or one (1) year after the termination date of the state of emergency in the school district, whichever occurs first. The Secretary of State shall notify the local board of education and the State Board of Education when the Secretary transfers duties relating to sixteenth section lands and lands granted in lieu thereof back to the local board of education.

(4) At any time by order placed upon its minutes, the local board of education voluntarily may assign to the Secretary of

State the authority and power to manage the sixteenth section lands and lands granted in lieu thereof under its control and jurisdiction, including, but not limited to, the management and sale of timber or other forest products. An assignment of duties under this subsection must extend until rescinded by a subsequent order of the local board of education placed upon its minutes; however, the rescission may not occur sooner than one (1) year from the date of the order assigning the authority and power to manage the sixteenth section and lieu lands to the Secretary of State. All orders adopted under this subsection must be placed upon the minutes of the local board of education and filed with the Office of the Secretary of State.

SECTION 2. Section 29-3-1, Mississippi Code of 1972, is amended as follows:

29-3-1. (1) Sixteenth section school lands, or lands granted in lieu thereof, constitute property held in trust for the benefit of the public schools and must be treated as such. Except as otherwise provided in Section 29-3-2.1, the board of education, under the general supervision of the *** * *** Secretary of State, shall have control and jurisdiction of said school trust lands and of all funds arising from any disposition thereof heretofore or hereafter made. It shall be the duty of the board of education to manage the school trust lands and all funds arising therefrom as trust property. Accordingly, the board shall assure that adequate

compensation is received for all uses of the trust lands, except for uses by the public schools.

(2) In the event the board of supervisors declines to approve the rental value of the land set by the board of education, the board of education shall within ten (10) days appoint one (1) appraiser, the board of supervisors shall within twenty (20) days appoint one (1) appraiser and the two (2) appraisers so appointed shall within twenty (20) days appoint a third appraiser whose duty it shall be to appraise the land, exclusive of buildings and improvements, the title to which is not held in trust for the public schools, and to file a written report with each board setting forth their recommendation for the rental value of the land within thirty (30) days. The cost of the appraisal shall be paid from any available sixteenth section school funds or other school funds of the district. If no appeal is taken within twenty (20) days as provided hereunder, the lease shall be executed in accordance with said recommended rental value within thirty (30) days of the receipt of the appraisers' report. In the event any party is aggrieved by the decision of the appraisers setting forth the appraised rental value, the party so aggrieved shall be entitled to an appeal to the chancery court in which the land is located. Such appeal shall be taken within twenty (20) days following the decision. The chancery court, on appeal, may review all of the proceedings, may receive additional evidence, and make findings of fact, as well as conclusions of law

to insure that a fair and reasonable return may be obtained on the sixteenth section lands or lands in lieu thereof.

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

29-3-45. (1) (a) Except as otherwise provided under Section 29-3-2.1, the board of education shall, by order placed upon its minutes, enter into an agreement with the State Forestry Commission for the general supervision and management of all lands classified as forest lands and of all timber or other forest products under the control of the board on sixteenth section lands, and lieu lands which have not been so classified. However, any school board may contract with private persons or businesses for the reforestation of sixteenth section lands and may contract with a registered forester to be paid from the 16th Section Interest Fund for a review of any forestry management decision or forestry practice including the sale of timber for sixteenth section forest land provided that any implementation of a forestry management decision or forestry practice to be taken as a result of the review described in this subsection shall be subject to the approval of both the commission and the Secretary of State. When such agreement has been entered into, no timber or other forest products shall be sold from any of the sixteenth section lands or lieu lands except such as have been marked or approved for cutting by the State Forestry Commission's employees. The Forestry Commission, or its designated employee, shall fix the minimum

total cash price or minimum price per unit, one thousand (1,000) feet or other measure, at which the marked timber or other forest products shall be sold. The sales may be made for a lump sum or upon a unit price as in the opinion of the board may be calculated to bring the greatest return. Sales shall be made upon such other terms and conditions as to manner of cutting, damages for cutting of unmarked trees, damages to trees not cut and other pertinent matters as the board of education shall approve.

(b) The State Forestry Commission shall have the sole authority and control in scheduling of all cutting and harvesting of timber or other forest products when such timber stands or other forest products are determined by the State Forestry Commission to be economically ready for cutting and harvesting.

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

(d) It is hereby made the duty of the State Forestry Commission, from time to time, to mark timber which should be cut from the lands, to determine what planting, deadening or other forestry improvements should be made, giving due consideration to food and habitat for wildlife, and to report to the appropriate board of education. The State Forestry Commission and the board of education shall supervise the cutting of any timber or harvesting of other forest products sold from the lands herein designated and shall have authority to require any timber-cutting operations on the lands to cease until proper adjustment is made, whenever it shall appear that timber is being cut in violation of the terms of the sale. In the event that it is desired to lease any of such lands or standing timber for turpentine purposes, such lease shall only cover such trees as the State Forestry Commission shall designate, and the commission through its employees shall approve the number of faces, method of chipping and boxing of such timber, and shall fix a minimum total cash price or minimum price per unit.

(e) No sale of any timber, turpentine or other forest products lease shall be made until notice of same shall have been published once a week for three (3) consecutive weeks in at least one (1) newspaper published in such county. The first publication of such notice shall be made not less than twenty-one (21) days prior to the date fixed for the sale, and the last publication shall be made not more than seven (7) days prior to such date. If

no newspaper is published in such county, then such notice shall be given by publishing the same for the required time in some newspaper having a general circulation in such county and, in addition thereto, by posting a copy of such notice for at least twenty-one (21) days next preceding such sale at three (3) public places in such county.

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

(g) Provided, however, in the case of damage by fire, windstorm or other natural causes which would require immediate sale of the timber, because the time involved for advertisement as prescribed herein would allow decay, rot or destruction substantially decreasing the purchase price to be received had not such delay occurred, the advertisement provisions of this section shall not apply. The local board of education, with a written recommendation from a designated employee of the State Forestry

Commission filed in the minutes of the local board of education, shall determine when immediate sale of the timber is required. When the board of education shall find an immediate sale necessary for the causes stated herein, it shall, in its discretion, set the time for receipt of bids on the purchase of the timber, but shall show due diligence in notifying competitive bidders so that a true competitive bid shall be received.

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

(i) Contract with any individual or entity for management advice, sale of timber, clearing of damage to timber producing lands, transporting of timber, repairing access roads to timber lands, conducting aerial spraying, or taking any other type of action to prevent further loss of timber or diminution in value of existing timber as the result of the incident which necessitated the declaration of a natural disaster. In contracting with any individual or entity, the local board of education shall use its best efforts to ensure that all costs

incurred are reasonable and that a fair price is received for all sales.

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

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

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

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

(d) In the event a local board of education is unable to acquire the services of the State Forestry Commission or the Secretary of State to meet an immediate need to salvage, remove or

take other appropriate action on damaged timber, the local board of education shall unilaterally be granted the authority to take such actions as necessary regarding the management or sale of timber or other forest products.

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

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

(3) (a) In the event that any member of a local board of education may have a personal interest, either direct or indirect, in the decisions regarding the management or sale of timber or other forest products or in a contract for the sale of timber or other forest products from sixteenth section school lands under the jurisdiction and control of the board, then the board of education shall automatically be divested of all authority and power to manage and sell timber or other forest products on

sixteenth section lands under its control and jurisdiction. The divestiture shall extend for the period of service, and for one (1) year thereafter, of the board member having a direct or indirect personal interest in the sale or decision to sell timber or other forest products.

(b) During the time in which any local board of education may be divested of authority and power to manage and sell timber and other forest products, such authority and power shall be vested in the Secretary of State, as supervisory trustee of sixteenth section lands. Upon the appointment or election of a member of a local board of education who may have such an appointment or election of a member of a local board of education who may have such an interest in decisions and contracts regarding the management and sale of timber or other forest products, the board of education shall immediately notify the Secretary of State in writing. Likewise, the board shall give written notification to the Secretary of State within thirty (30) days prior to the expiration of any such divestiture period. Any contractor with a local board of education or the Secretary of State shall be entitled to rely on representations by such board or the Secretary of State as to who has authority to enter contracts for the management or sale of timber or other forest products, and reliance on such representations shall not be grounds for voiding any contract.

(c) The laws providing for the management and sale of timber and other forest products by local boards of education shall apply to the management and sale of timber and other forest products by the Secretary of State. The Mississippi Forestry Commission shall provide the Secretary of State with advice and services in the same manner as provided to local boards of education.

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

SECTION 4. This act shall take effect and be in force from and after July 1, 2016.