MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Clark

To: Wildlife, Fisheries and Parks; Appropriations

HOUSE BILL NO. 264

AN ACT TO AUTHORIZE THE MISSISSIPPI DEPARTMENT OF WILDLIFE, FISHERIES AND PARKS, ACTING IN CONJUNCTION WITH THE MISSISSIPPI DEVELOPMENT AUTHORITY AND WITH THE APPROVAL OF THE MISSISSIPPI COMMISSION ON WILDLIFE, FISHERIES AND PARKS, TO LEASE CERTAIN LANDS WITHIN THE HOLMES COUNTY STATE PARK FOR COMMERCIAL AND/OR RESIDENTIAL DEVELOPMENT; TO ESTABLISH THE PROCESS FOR ENTERING INTO SUCH LEASES; TO CREATE THE HOLMES COUNTY STATE PARK LEASE DEVELOPMENT ENDOWMENT FUND; TO REQUIRE REVENUES DERIVED FROM SUCH LEASES TO BE DEPOSITED INTO THE FUND; TO CREATE A LEGISLATIVE OVERSIGHT COMMITTEE TO SERVE IN AN ADVISORY CAPACITY REGARDING LEASES EXECUTED UNDER THIS ACT; TO AMEND SECTIONS 55-3-33 AND 55-3-47, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT AND TO AUTHORIZE THE DEPARTMENT OF WILDLIFE, FISHERIES AND PARKS TO ENTER INTO AGREEMENTS AND CONTRACTS WITH ANY PERSON OR PRIVATE OR GOVERNMENTAL ENTITY FOR THE PURPOSE OF OBTAINING SERVICES NECESSARY TO MANAGE, MAINTAIN, OPERATE OR IMPROVE THE HOLMES COUNTY STATE PARK; AND FOR RELATED PURPOSES.

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

SECTION 1. For the purposes of Sections 1 through 5 of this act, the following terms have the meanings as defined in this section unless the context clearly requires otherwise:

(a) "Commission" means the Mississippi Commission on Wildlife, Fisheries and Parks.

(b) "Department" means the Mississippi Department of Wildlife, Fisheries and Parks.

(c) "MDA" means the Mississippi Development Authority.

SECTION 2. (1) The Mississippi Development Authority and the Mississippi Department of Wildlife, Fisheries and Parks, with the approval of the Commission on Wildlife, Fisheries and Parks, may identify certain land or property within the Holmes County State Park which may be leased to third parties for commercial and/or residential development. The MDA and the commission shall establish criteria for identifying such land or property, including, but not limited to, whether or not the land or property is owned by the state in fee simple and may be improved for commercial, residential or other development, or, whether the land or property is leased from the federal government or an agency thereof, and may be restricted by federal law or regulations or by the terms of such lease to limited development purposes. Sixteenth section or lieu lands may not be leased under this act.

(2) Before approving any land or property in the Holmes County State Park for lease and development, whether the lease is for commercial or residential purposes, the commission must make an affirmative finding and enter upon its official minutes a statement that the development of the land will be compatible with the outdoor recreational purposes and opportunities existing at the park.

(3) The MDA shall provide the technical assistance and advice to the commission and the department as may be necessary to obtain the best combination of revenue producing development

opportunities and projects that complement the unique qualities of the park. In addition, the MDA shall assist the department in complying with all applicable state guidelines for leasing state land for development.

(4) If any lease executed under this act results in a person being terminated or removed from employment with the department, the department shall give preference to hiring that person when filling vacant or new employment positions elsewhere within the department.

(5) A developer/lessee may sublease such portions of his lease as may be necessary for the development of a project. A sublease is an assignable contract and may be for commercial or other purposes, as approved by the commission; however, a sublease may not be for a term in excess of the remaining term of the developer's lease. Each sublease from the developer shall contain an option for the sublessee to renew or renegotiate the lease directly with the department, at any time following ten (10) years after the beginning date of any sublease from the developer.

(6) Rental payments due under any lease executed under this act must be paid to the department and deposited into the Holmes County State Park Lease Development Endowment Fund created in Section 4 of this act.

(7) Before the commission or department may lease the land or property to a third party, the lease of land or property must

be authorized specifically by an act of the Legislature that amends or refers to this section.

(8) Any construction occurring on land or property leased under this act must comply fully with all applicable state laws, rules and regulations and any local building codes and zoning ordinances. Development plans and construction must have the prior approval of the MDA and the commission.

SECTION 3. The department, with approval of the commission and assistance of the MDA, may enter into contracts or agreements with agencies of the United States government, municipalities, corporations, districts, public agencies, political subdivisions of any kind, and others for any services, facilities, utilities or commodities that any development project under this act may require. The contract or agreement may be assigned to the developer/lessee, may be upon any terms and for any time as the parties may agree, and may provide that the contract or agreement will continue in effect until assigned to, or renegotiated by, a sublessee of the developer/lessee.

SECTION 4. There is created in the State Treasury a special fund to be known as the "Holmes County State Park Lease Development Endowment Fund." The fund will consist of all monies required to be deposited in the fund under Section 2 of this act. The principal of the fund shall remain inviolate and shall be invested as provided by law. Interest and income derived from investment of the principal of the fund may be expended by the

department, upon appropriation by the Legislature, only for the purpose of constructing, reconstructing, repairing, renovating or making improvements to real and personal property and facilities in the Holmes County State Park. Unexpended amounts remaining in the fund at the end of a fiscal year do not lapse into the State General Fund, and any interest earned on amounts in the fund must be deposited to the credit of the fund.

SECTION 5. (1) There is created the State Parks Development Legislative Oversight Committee to serve in an advisory capacity to the MDA, the commission and the department for the purpose of reviewing recommendations, proposals and plans of the MDA, the commission and the department in selecting, designating and authorizing the leasing of Holmes County State Park lands for commercial and/or residential development under this act and for the purpose of notifying and providing information to, and receiving input from, members of the Legislature representing Holmes County.

(2) The committee shall consist of the following members:

(a) The Chair of the Senate Wildlife, Fisheries and Parks Committee;

(b) The Chair of the House Wildlife, Fisheries and Parks Committee;

(c) The Chair of the Senate Appropriations Committee;

(d) The Chair of the House Appropriations Committee;

(e) Two (2) members of the Senate to be appointed by the Lieutenant Governor, one (1) of whom must be a member of the Senate Wildlife, Fisheries and Parks Committee and one (1) of whom must be a member of the Senate Appropriations Committee; and

(f) Two (2) members of the House to be appointed by the Speaker of the House, one (1) of whom must be a member of the House Wildlife, Fisheries and Parks Committee and one (1) of whom must be a member of the House Appropriations Committee.

(3) Members of the committee shall be paid from the contingent expense funds of their respective houses in the same manner as provided for committee meetings when the Legislature is not in session. However, no per diem or expense for attending meetings of the committee may be paid to members of the committee while the Legislature is in session. No committee member may incur per diem, travel or other expenses unless previously authorized by vote, at a meeting of the committee, which action must be recorded in the official minutes of the meeting.

SECTION 6. Section 55-3-33, Mississippi Code of 1972, is amended as follows:

55-3-33. (1) The Mississippi Department of Wildlife, Fisheries and Parks may:

(a) Take charge and have full jurisdiction and control over all state parks, which parks shall be operated for the purpose of providing outdoor recreational activities and enjoyment

for the citizens of the State of Mississippi and for the purpose of attracting visitors to the state.

(b) Set up a uniform accounting procedure for the state parks and prescribe the manner in which books, records and accounts shall be kept, which procedure shall account for all monies taken in and expended by the various parks and shall provide for periodic audits of such books.

(c) Accept gifts, bequests of money or other property, real or personal, to be used for the purpose of advancing the recreation and conservation interests in state parks. The department is authorized, subject to approval by the State Legislature, to purchase property, real or personal, to be used for state park purposes.

(d) Contract with the *** * *** Mississippi Transportation Commission, any municipality or board of supervisors of the state for locating, constructing and maintaining roads and other improvements in state parks and for payment of a part of the costs thereof; however, no county or municipality more than twenty-five (25) miles distant from a state park may contract for, or do, or pay for any such work for a state park other than the International Gardens of Mississippi. Any county or municipality authorized to assist financially under the provisions of Sections 55-3-31 through 55-3-51 is authorized, in the discretion of its respective governing authority, to set aside, appropriate and expend monies from the General Fund for the purpose of defraying

such expense after a mandatory election is held on the question within the county or municipality.

(e) Designate employees as peace officers with power to make arrests for infraction of the rules and regulations of the department. Such officers are authorized to carry weapons and to enforce the laws of the State of Mississippi within the confines of a state park.

(f) Enforce and delegate the responsibility to enforce all reasonable rules and regulations governing the occupancy and use of lands and waters in state parks under its jurisdiction, supply recreational and conservation facilities and charge fees for the use of same; review all rates and charges for facilities and accommodations furnished at the various state parks annually, making such charges as are justified; and establish fees for entrance to state parks.

(g) *** * *** Periodically establish a discounted fee or fees for the entry and use of selected state parks and recreational facilities. The discounted fee or fees shall only be used for the purpose or purposes of marketing and promotion to increase the patronage and revenue of those selected parks and facilities. The discounted fee or fees shall not be considered a donation of state property.

Each park shall retain from revenues generated therein, a sum sufficient to pay necessary expenses of operation, but in no event to be less than seventy-five percent (75%) of such revenues.

(h) Enter into agreements and contracts with any person or with any private or governmental entity for the purpose of obtaining or providing any services that are necessary to manage, maintain, operate or improve the Holmes County State Park from a source other than the department and its employees. Those services include, but are not limited to: (i) personal services that may be provided by professional, security enforcement, technical and clerical personnel, as may be needed, from time to time, or on a seasonal basis; and (ii) services for the performance of any function associated with the management, maintenance, operation or improvement of the park, including any such function being performed by employees of the department on July 1, 2021; however, the department ultimately is responsible for the proper and adequate maintenance, management and operation of the park.

(i) Enter into a lease of land or property located in the Holmes County State Park under Sections 1 through 5 of this act with any person or private or governmental entity, which lease may be for buildings, recreational activities or facilities located in the park and made available for the use and enjoyment of the general public.

(2) The department shall have the authority to lease to any entity, sell and convey or otherwise transfer to any county or municipality, or close any state park or historical site within its jurisdiction which received a general fund subsidy in fiscal

year 1985 in excess of Two Dollars ($2.00) per visitor to such state park or historical site; * * * however, * * * this authority shall not include the authority to sell, lease or convey any park that was not in operation under the jurisdiction of the department for a full fiscal year prior to fiscal year 1986.

(3) The department may execute agreements with rails-to-trails and recreational districts by which the department will assume responsibility for the operation and maintenance of trails developed under Sections 55-25-1 through 55-25-15.

(4) (a) The department may contract with the electric public utility with a certificate of public convenience and necessity to serve the area where a state park is located for the transfer of ownership of the electrical infrastructure in the state park to that electric public utility.

(b) If the electric public utility enters into an agreement for the operation and maintenance of electrical facilities in a state park, the electric public utility may perform any upgrades to the electrical infrastructure of the park that are necessary for the electrical infrastructure to be in compliance with the electric public utility standards. The electric public utility may assess the costs of the upgrades to the department upon the terms and conditions agreed to by the department and the electric public utility.

(c) The department may contract with the electric public utility with the certificate of public convenience and

necessity to serve the area for the erection, construction, maintenance, operation and control of electric distribution substations, electric transmission lines, electrical appurtenances, electrical appliances or electrical equipment necessary or useful in the operation or distribution of electric power or energy in the state park.

(d) Any agreement entered into by the department and an electric public utility under this subsection is exempt from the public purchasing requirements under Section 31-7-13.

SECTION 7. 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. Except as otherwise provided for the lease of land or property in the Holmes County State Park under Sections 1 through 5 of this act, 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 * * *; and 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 8. This act shall take effect and be in force from and after July 1, 2021.

~ OFFICIAL ~

ST: Holmes County State Park; Department of Wildlife, Fisheries and Parks may lease land in and contract for services to operate.