

# School Trust Lands Policies & Procedures Manual



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SECRETARY OF STATE

# SCHOOL TRUST LANDS POLICIES AND PROCEDURES

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## I.

# General Management Responsibilities

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5. Managing board to incur and be reimbursed for expenses

# A. Managers of the Lands and Funds

## 1. The Secretary of State

“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.” *Miss. Code Ann. Section 29-3-1(1)*.

## 2. The Managing Board of Education

### **a. One district in the township: the school district’s board of education**

“Board of education’ shall mean that school board of the school district in whose present jurisdiction (i) is situated a sixteenth section of land, or (ii) was originally situated a sixteenth section of land for which land has been granted in lieu thereof.” *Miss. Code Ann. Section 29-3-1.1*.

### **b. Two or more districts in the township: the board whose district is the largest in the township**

“Provided, however, that in the event a sixteenth section is situated within two (2) or more school districts, the term ‘board of education’ shall mean that school board whose school district embraces the greatest land area within the township in which said sixteenth section is located.” *Miss. Code Ann. Section 29-3-1.1*.

### **c. County line divides the township: the board whose district includes the land**

“Where a township is divided so that parts are situated in different counties, the county in which the sixteenth section or lands in lieu thereof may be situated shall have jurisdiction thereof. . . .” *Miss. Code Ann. Section 29-3-127*.

### **d. County line divides the land: the board whose district includes the land; cooperation**

“[I]f the section or land in lieu thereof be in several counties, each county has jurisdiction of the part lying in it, or the counties may co-operate in the management thereof.” *Miss. Code Ann. Section 29-3-127*.

## 3. Superintendent of Education

“It shall be the duty of the superintendent of education to supervise generally the administration of all sixteenth section lands within his jurisdiction.” *Miss. Code Ann. Section 29-3-57*.

“Superintendent of education’ shall mean that superintendent of schools of a school district whose board of education has control and jurisdiction over any sixteenth section lands or lands granted in lieu thereof.” *Miss. Code Ann. Section 29-3-1.1*.

## 4. Other Management Review and Assistance

### **a. The Mississippi Forestry Commission: Management of Forest Resources**

“The State Forestry Commission shall have the sole authority and control in prescribing the forestry management practices and 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. . . .” *Miss. Code Ann. Section 29-3-45(1)(b)*.

### **b. The County Board of Supervisors: review of rent amounts on private contract leases**

“Within thirty (30) days of the receipt of the lease [submitted by the board of education], the board of supervisors shall accept or reject the proposed rental amount.” *Miss. Code Ann. Section 29-3-45(1)(c)*.



**c. Private Registered Foresters and Contractors: reforestation and review**

“...any school board may contract with private persons or businesses for the reforestation of sixteenth section lands...” *Miss. Code Ann. Section 29-3-45(1)(a).*

“...any school board ... 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.” *Miss. Code Ann. Section 29-3-45(1)(a).*

**d. Appraiser: determination of fair market value**

“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.” *Miss. Code Ann. Section 29-3-65.*

**e. Attorney: collection of delinquent rents**

“The superintendent of education, with the approval of the board of education, may employ an attorney or other person to aid in collecting any such funds when in his opinion the same is necessary, and may pay reasonable compensation therefor out of funds collected, not to exceed in any case twenty-five (25%) of the amount actually collected.” *Miss. Code Ann. Section 29-3-57.*

## **B. Duties of Secretary of State**

### **1. General Oversight**

“The board of education under the general supervision of the state land commissioner, shall have control and jurisdiction of said school trust lands and of all funds arising from any disposition thereof heretofore or hereafter made.” *Miss. Code Ann. Section 29-3-1.*

“It shall be the duty of the Secretary of State to assist the local school districts, when so requested, in establishing and maintaining local school trust land management systems. The Secretary of State shall also identify and coordinate consultative services which might be available to the school districts from other agencies within the state.” *Miss. Code Ann. Section 29-3-2.*

“The land commissioner has a supervisory power over sixteenth section lands or lands granted in lieu thereof ...” *Miss. Code Ann. Section 29-1-3.*

“If said state land commissioner shall find that said statutes have not been complied with in any case, he shall call the same to the attention of the board of education involved. If any board of education shall fail or refuse to comply with the mandate of this section, then the action of mandamus shall lie to compel such compliance, and such action may be brought either by the attorney general or any resident citizen of the State of Mississippi on the relation of the attorney general. If the state land commissioner shall find that any board of education is failing to take the necessary steps to effectively comply with said statutes in any case, he shall so certify to the attorney general.” *Miss. Code Ann. Section 29-3-9.*

The state land commissioner's functions have been taken over by the Secretary of State.  
*Miss. Code Ann. Section 7-11-11.*

## **2. Review of Land Uses, Legal Instruments, and Funds**

“From time to time the Secretary of State may institute proceedings to reclassify any sixteenth section lands which he may deem advisable and when any land is so reclassified, the Secretary of State shall file a report thereof with the board of education.” *Miss. Code Ann. Section 29-3-39.*

“... under the general supervision of the state land commissioner, shall have control and jurisdiction of said school trust lands and of all funds arising from any disposition thereof heretofore or hereafter made.” *Miss. Code Ann. Section 29-3-1.*

## **3. Obtain and Maintain Records Pertaining to Public School Trust Lands**

“It shall be the duty of the board of education to survey periodically the classification of all sixteenth section land under its jurisdiction and to reclassify that land as it may deem advisable because of changes of conditions, and when any land is so reclassified, the board of education shall file a report thereof with the Secretary of State.” *Miss. Code Ann. Section 29-3-39.*

“All sixteenth section or lieu land leases shall be reduced to writing and signed ... by the president of the board of supervisors, the president of the board of education and the superintendent of education. The chancery clerk shall certify one (1) copy of the lease ... to the state land commissioner ...” *Miss. Code Ann. Section 29-3-82(g).*

“Any state, county or municipal official shall supply annually to the [Secretary of State] such sixteenth section management information as shall be requested by the commissioner. Such information shall include, but not be limited to, the following items pertaining to all new leases, rights of way, easements and sales of school trust lands[;] the number of acres in each parcel; the consideration paid for each transaction; the length and expiration of each lease, easement, or right of way; and the use to be made of each parcel.” *Miss. Code Ann. Section 29-1-3(3).*

## **4. Report to Legislature Every Two Years**

“The land commissioner has a supervisory power over sixteenth section lands or lands granted in lieu thereof; and he shall supply to the members of the legislature, the boards of supervisors, the boards of education and other interested persons information concerning those lands and make such recommendations and suggestions as he may deem proper.” *Miss. Code Ann. Section 29-1-3(1).*

“The land commissioner shall prepare a biennial report which shall include the terms of all leases on sixteenth section school lands, or lands granted in lieu thereof, the condition of the title to all such lands and the current income from all sources earned by such lands, and he shall maintain such report in his office for examination by any interested person.” *Miss. Code Ann. Section 29-1-3(2).*

## C. Managing Superintendent and Board Duties

### 1. Land Generally Managed as Trust Land

“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. . . . It shall be the duty of the board of education to manage the school trust lands and all funds arising therefrom as trust property.” *Miss. Code Ann. Section 29-3-1(1)*.

### 2. Adequate Compensation for All Uses

“Accordingly, the board shall assure that adequate compensation is received for all uses of the trust lands, except for uses by the public schools.” *Miss. Code Ann. Section 29-3-1(1)*.

### 3. Superintendent of Managing District to Administer

“It shall be the duty of the superintendent of education to supervise generally the administration of all sixteenth section lands within his jurisdiction.” *Miss. Code Ann. Section 29-3-57*.

“‘Superintendent of education’ shall mean that superintendent of schools of a school district whose board of education has control and jurisdiction over any sixteenth section lands or lands granted in lieu thereof.” *Miss. Code Ann. Section 29-3-1*.

#### a. *Keep Docket of Leases*

“The superintendent of education shall keep a current docket as to the expiration date of all leases on sixteenth section lands; likewise, he shall keep a correct current docket upon the existing leases or any extensions thereof as to the amounts and time of payment of rentals provided for by such lease.” *Miss. Code Ann. Section 29-3-5*

#### b. *Collect Rents and Investment Proceeds*

“It shall be the duty of the superintendent of education to collect promptly all rentals due and all principal and interest due upon loans and investments of sixteenth section funds.” *Miss. Code Ann. Section 29-3-57*.

“All rentals, or other revenue payable under any leases executed pursuant to this chapter shall be paid to and collected by the superintendent of education. . . .” *Miss. Code Ann. Section 29-3-59*.

#### c. *Cancel Delinquent Leases*

“Upon a sixty (60) day default in payment of any rentals according to the terms of such lease, the lease shall be declared terminated unless the board of education finds extenuating circumstances were present, and the board shall inaugurate the proper legal proceedings to terminate such lease.” *Miss. Code Ann. Section 29-3-57*.

#### d. *Collections of Past Rents and Penalties*

“The superintendent of education, with the approval of the board of education, may employ an attorney or other person to aid in collecting any such funds when in his opinion the same is necessary, and may pay reasonable compensation therefor out of funds collected, not to exceed in any case twenty-five percent (25%) of the amount actually collected. . . . In all cases where leases of sixteenth section lands are entered into, it shall be the duty of the superintendent of education to take the notes of the lessees for the rents provided by said lease and turn them over to the county depository and attend to their collection.” *Miss. Code Ann. Section 29-3-57*.

**e. Report to Department of Education**

“Any superintendent of education receiving any [lease] revenue shall make annual report thereof to the state superintendent of education.” *Miss. Code Ann. Section 29-3-59.*

**f. File all leases and information with the Secretary of State**

“Any state, county or municipal official shall supply annually to the [Secretary of State] such sixteenth section management information as shall be requested by the commissioner. Such information shall include, but not be limited to, the following items pertaining to all new leases, rights of way, easements and sales of school trust lands[;] the number of acres in each parcel; the consideration paid for each transaction; the length and expiration of each lease, easement, or right of way; and the use to be made of each parcel.” *Miss. Code Ann. Section 29-1-3(3).* See also *Miss. Code Ann. Section 29-3-82.*

**4. Managing board to keep funds, direct investment, share revenues as necessary**

“It shall be the duty of the board of education to keep the principal fund invested in any direct obligation issued by or guaranteed in full as to principal and interest by the United States of America or in certificates of deposit issued by a qualified depository of the State of Mississippi as approved by the State Treasurer. The certificates of deposit may bear interest at any rate per annum which may be mutually agreed upon but in no case shall said rate be less than that paid on passbook savings.” *Miss. Code Ann. Section 29-3-113.*

“The board of education is authorized to invest the funds in interest bearing deposits or other obligations of the types described in Section 27-105-33 or in any other type investment in which any other political subdivision of the State of Mississippi may invest, except that one hundred percent (100%) of the funds are authorized to be invested. For the purposes of investment, the principal fund of each township may be combined into one or more district accounts; however, the docket book of the county superintendent shall at all times reflect the proper source of such funds. Provided that funds received from the sale of timber shall be placed in a separate principal fund account, and may be expended for any of the purposes authorized by law.” *Miss. Code Ann. Section 29-3-113.*

“The school district having jurisdiction and control of the sixteenth section or lieu lands in the township (the “custodial school district”) shall pay to each other school district lying wholly or partly in the township which is entitled to a part of the township funds the district’s pro rata share of the available township funds, as determined from the lists of children prepared pursuant to Section 29-3-121, promptly after collecting such funds. The custodial school district shall make its books and records pertaining to the income and funds of any shared township available for inspection and copying to all other school districts sharing in the income from the township upon reasonable notice of such request.” *Miss. Code Ann. Section 29-3-119(4).*

**5. Managing board to incur and be reimbursed for expenses**

“The expenses incurred by the board of education for the performance of their duties under the provisions of this chapter shall be paid out of proper sixteenth section funds.” *Miss. Code Ann. Section 29-3-131.*

“The boards of education are also authorized to expend reasonable sums from the school land trust expendable funds for school land management assistance when the needed assistance is not available from the Secretary of State or other public agencies within the state.” *Miss. Code Ann. Section 29-3-131.*



## II. Frequently Asked Questions

### 1. OWNERSHIP - *Who owns the Sixteenth Section Public School Trust Lands?*

**Answer:** Title to the Sixteenth Section Public School Trust Lands is vested in the State of Mississippi, in trust for the support of public education. Sixteenth Section Public School Trust Lands are not ordinary public lands. They are trust land, and legal principles regarding the management of trust apply. The law imposes on those responsible for the management of trusts the highest standards of care and attention.

### 2. SCHOOL BOARD'S ROLE - *Who controls the leasing of Sixteenth Section Public School Trust Lands?*

**Answer:** Although title to Sixteenth Section Public School Trust Lands is vested in the State of Mississippi in trust, laws enacted by the State Legislature place jurisdiction and control over leasing and day to day management of the lands in the hands of the local school board where the land is located.

### 3. SECRETARY OF STATE'S ROLE - *What responsibility does the Secretary of State have in the management and leasing of Sixteenth Section Public School Trust Lands?*

**Answer:** The Secretary of State exercises general supervision of the local school districts' management of Sixteenth Section Public School Trust Lands. Local School Districts are required to file copies of all leases which they grant on Sixteenth Section Public School Trust Lands as well as reports concerning their management of the lands and income received from leasing and investment of funds. The Secretary of State monitors the local school districts to insure compliance with laws regulating the management of Sixteenth Section Public School Trust Lands. The Secretary of State also provides legal assistance and training to the districts.

### 4. BOARD OF SUPERVISORS' ROLE - *What role does the County Board of Supervisors play in the leasing of Sixteenth Section Public School Trust Lands?*

**Answer:** Under the current law, the County Boards of Supervisors approve the amount of annual rent on all leases in which the rent is determined by appraisal. The Boards of Supervisors are not required to approve rental amounts in those leases in which rent is determined by competitive bids. Pursuant to Attorney General Opinion No. 2008-00266, the County Board of Supervisors has the authority to object to the rental value on sixteenth section land set by the board of education, but no legal authority to approve terms unrelated to the rental value of a sixteenth section land lease. The same AG Opinion further states that "like the board of education, the board of supervisors is also held to the standard of care of a trustee." *Miss. Code Ann. §29-3-1.*

### 5. RENT - *How are rents set for leases of Sixteenth Section Public School Trust Lands?*

**Answer:** Annual rent for leases of hunting and fishing rights on Forest Land, Agricultural Land, and mineral exploration and mining rights are set by competitive bids solicited through public notices published in the legal advertising section of newspapers. Annual rent on all other land classifications is determined by appraisal of the

land. The appraisal must determine the fair market rental value. Also, we would like the fair market value of the land in order to calculate the rate of return. Commercial leases require rent to be not less than five (5%) of the fair market value.

**6. TAXES - *Are Sixteenth Section Public School Trust Lands subject to property taxes?***

**Answer:** Yes, once Sixteenth Section Public School Trust Lands are leased, they are subject to property taxes in the same way that privately owned land is taxed. All classes of lessees are responsible for paying the property tax. The lease may be cancelled for failure to pay the taxes. When the land is not leased, the local school district is not required to pay the usual property taxes on the land, although it may be responsible for certain drainage district taxes.

**7. TIMBER - *If I am leasing Sixteenth Section Public School Trust Lands, may I cut timber growing on the land?***

**Answer:** Upon leasing, the law requires that all timber be reserved to the local school district. No timber may be cut and used by the lessee except for fuel and necessary repairs and improvements on the lease premises. However, before cutting any timber for firewood, repairs or improvements, the lessee should obtain written permission from the Mississippi Forestry Commission. The following uses of Sixteenth Section timber by the lessee are not authorized: selling of firewood; allowing others who do not have a lease to cut firewood; cutting and selling timber to buy fencing, posts and construction materials; cutting and selling timber to be cut in dimensioned lumber for construction or addition to leaseholder's home, barns, or outbuildings that are lessee-owned improvements, or any other indirect use; or selling or trading timber.

**8. MINERALS – *Does the lessee have any rights to the minerals?***

**Answer:** No. All minerals are reserved to the local school district.

**9. MANAGEMENT OF FOREST LANDS – *Who manages the timber on Sixteenth Section Public School Trust Lands?***

**Answer:** Pursuant to §29-3-45, the Mississippi Forestry Commission is the appointed managing forester.

**10. REVENUE – *Can the School District spend all the money generated off of Sixteenth Section Public School Trust Lands?***

**Answer:** No. Pursuant to §29-3-111, only money from oil and gas bonus and delay rentals, surface leases, interest upon loans or investments, and timber sales (less forestry escrow) may be spent. Other sources of revenue must be placed in the Principal Fund.

**11. PRINCIPAL FUND – *What money must go into the principal fund?***

**Answer:** Under §29-3-113, funds from easements and rights of way, funds from the sale of lieu lands, funds received from the permanent damage to school trust lands, funds received from the sale of non-renewable resources, and funds received from the sale of buildings must be placed in the principal fund.

**12. USE OF FUNDS - *What is the income from Sixteenth Section Public School Trust Lands used for?***

**Answer:** Under §29-3-115, income from Sixteenth Section Public School Trust Lands is considered as a local funding source, and the expendable income may be spent for any educational purposes authorized by law.

**13. SALE/SWAP OF LAND - *Can Sixteenth Section Public School Trust Lands be sold or swapped for other land?***

**Answer:** According to §211 of the Constitution, 16th Section Public School Trust Lands cannot be sold or swapped for other lands. The only exception is that land may be sold for industrial development. Where land is sold for industrial development, the school district must purchase replacement land of like acreage and value.

**14. HUNTING – *Who is allowed to hunt on Sixteenth Section Lands?***

**Answer:** Sixteenth Section Public School Trust Lands classified as Forest Land are not open to hunting by the general public. Only the holder of a valid lease of the hunting and fishing rights may hunt on Sixteenth Section Forest Lands. If there is no lease of the hunting and fishing rights on Forest Land, the school district must post the land and prevent hunting and fishing on the land.

**15. HUNTING LEASE/RIGHT TO MATCH BID – *Does an existing hunting and fishing lessee have the right to match a bid?***

**Answer:** Pursuant to §29-3-41, an existing hunting and fishing lessee who is current with the payment of annual rent, payment of taxes, and in compliance with the other terms of the lease has the right to match the highest bid submitted for the hunting and fishing rights, so long as the existing lessee submits a bid. The school board always has the right to reject all bids, even from an existing lessee. If the school board rejects the bids it may re-advertise, conduct an auction, or within ninety (90) days execute a private contract for more than the amount rejected.

**TRIGGERING AN AUCTION:**

We recommend all hunters should participate in the bidding. The advertisement should clearly state the school has the right to reject all bids that would trigger an auction – must be present at the board meeting to participate in the auction. (This will cause the hunting clubs to pre-decide their highest bid amount.) The Auction winner will be determined at the board meeting – nobody can halt the auction to consult with their hunting club.

**16. AGRICULTURE LEASE/NO RIGHT TO MATCH BID – *Does an existing agriculture lessee have the right to match a bid?***

**Answer:** Pursuant to §29-3-81, an existing agriculture lessee has NO right to match a higher bid. The law does allow an existing agriculture lessee the right to tender a second bid of at least one hundred five (105%) of the highest acceptable sealed bid and thereby trigger an open auction among all of those who submitted sealed bids. In order for the existing leaseholder to submit a second bid, the school board must have received at least one acceptable bid and the existing leaseholder must meet these qualifications: (a) he must have submitted a sealed bid in response to the advertisement; (b) he must have made board approved improvements on the land during the term of the existing lease; and (c) he must not be in default on any payments and covenants in the lease.

**17. AGRICULTURE LEASE/RIGHT TO EXTEND LEASE – *Does an existing agriculture lessee have the right to extend its lease without going through the bid process?***

**Answer:** Pursuant to §29-3-81, an existing agriculture lessee can request a one-time, five (5) year extension of the lease. The extension must be approved by the Secretary of State's Office. Factors the Secretary of State's Office looks at in evaluating a request for an extension are:

- (1) Leaseholder's timely and faithful performance of his obligations under leases with the school district;
- (2) Improvements to the land made by the Leaseholder during existing lease;
- (3) Agreement by the Leaseholder to make improvements during the term of the renewed lease;
- (4) Farming practices of the Leaseholder under the existing lease;
- (5) Crop yields produced by the Leaseholder under the existing lease;
- (6) Rent trends under other Sixteenth Section and private farm leases;
- (7) Any special or unusual factors which indicate that such a re-leasing would produce more revenue for the

school than other, more standard leasing procedures; and

(8) Such other factors as the Secretary of State's Office may deem relevant under the circumstances. Lease renewal will automatically be denied if the school board grants a renewal lease without first obtaining approval in writing from the Secretary of State's Office.

**18. FREE USE - *Does anyone have the right to use Sixteenth Section Public School Trust Lands without paying a fair rent?***

**Answer:** Only the local school district having jurisdiction and control of the land may use Sixteenth Section Public School Trust Lands as a site for school buildings without paying fair market rental. However, all other persons and entities, including federal, state, and local governments must pay fair market rental for the use of Sixteenth Section Public School Trust Lands.

**19. NORTH MISSISSIPPI - *Why don't school districts in counties in North Mississippi have Sixteenth Section Public School Trust Lands?***

**Answer:** The treaty with the Chickasaw Indian Nation ceding their land to the United States failed to specifically reserve Sixteenth Sections and when the lands were later sold by the government, no provision was made for the reservation of school trust lands. Later the United States granted the State of Mississippi lieu land as compensation for this error. However, this lieu land was sold by the State, and the money invested in railroad bonds. The investment was lost during the Civil War. The State Legislature currently makes annual appropriations to school districts in the Chickasaw Cession area to compensate for this lost source of local education funding.





## III.

# Classification and Reclassification

### A. General Duties

1. Generally
2. School Board
  - a. Duty to Survey Land Uses
  - b. Duty to Reclassify Land to Highest and Best Use
3. Secretary of State

### B. Available Classifications

### C. When to Classify and Reclassify Land

1. As part of a regular land use survey
  - a. Requirement to survey and classify land
  - b. Frequency of survey: periodically
2. At the conclusion of a lease: within one (1) year prior to expiration date
3. Upon acquisition of additional public school trust lands
4. Upon changes of conditions

### D. Procedure for Reclassifying Land

1. Who may reclassify: Managing Board and Secretary of State
2. Restrictions to reclassification
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3. Standards for reclassification
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4. Public Notice: Three (3) Consecutive Weeks
5. Notice to lessee of reclassified property
6. Objections
  - a. Who may file objection: Secretary of State, any other party in interest
  - b. Filing objection with chancery clerk
  - c. When no objection is filed, classification is final
  - d. When an objection is filed
  - e. Representation of Secretary of State by Attorney General, managing board to provide help
  - f. Appeal of Chancellor's order
7. Reports of reclassification to Secretary of State, board of education, forms

**E. Assistance with Reclassification**

**F. Appendix**

1. Reclassification Checklist
2. Board Resolution for Reclassification
3. Form Public Notice of Reclassification
4. Form Letter to Leaseholders Regarding Reclassification
5. SOS Form 16

## A. General Duties

### 1. Generally

The classification system was enacted to give the managing board a transparent way to have greater control over the uses of the trust lands it manages, and to provide local taxpayers a way to safeguard against below-market payments for those uses. Land should only be leased or used in accordance with its classification, and the classification must represent the highest and best use of the property.

All trust lands were classified when management authority was transferred to local schools in 1978. Only lands purchased in lieu of land sold for industrial development need to be classified. All other lands need to be reclassified to its highest and best use when conditions warrant: usually at the expiration of a lease or in response to improved economic activity or growth nearby.

### 2. School Board

#### a. *Duty to Survey Land Uses:*

“It shall be the duty of the board of education to survey periodically the classification of all Sixteenth Section Public School Trust Lands under its jurisdiction. . . .” *Miss. Code Ann. §29-3-39.*

Since 1978, all sixteenth section land has been classified according to statute for particular uses, so there should be no unclassified land. In the case of lieu lands purchased to replace sixteenth section lands sold for industrial development, the land should be classified immediately according to its use at that time.

#### b. *Duty to Reclassify Land to Highest and Best Use:*

“It shall be the duty of the board of education to periodically. . . reclassify land as it may deem advisable because of changes of conditions.” *Miss. Code Ann. §29-3-39.*

Land should be classified “based upon the finding of the highest and best use of each parcel or tract for producing a maximum of revenue by proper utilization. In determining the highest and best use of these lands, the same principles shall be followed as are applied in determining the highest and best use of land in private ownership.” *Miss. Code Ann. §29-3-31.*

The statutory classifications can be found at subsection C. The land should be leased consistent with its classification. For example, land leased by a retail store should be classified as “Commercial.”

### 3. Secretary of State

“From time to time the [Secretary of State] may institute proceedings to reclassify any sixteenth section lands which he may deem advisable and when any land is so reclassified, the state land commissioner shall file a report thereof with the board of education.” *Miss. Code Ann. §29-3-39.*

## B. Available Classifications

**(1) Forest land:** [A]ll land at least ninety percent (90%) of the total area of which is at present forest or wasteland, or land which will produce a maximum of revenue by utilization to produce timber or other forest products, shall be classified as forest land. The unit of measurement to be used in arriving at the classification of forest land shall be the smallest division of the government survey covering said lands in counties where such government survey has been made, and in other counties shall be forty (40) acres.

(2) **Agricultural land:** That land most suitable for pasturage or cultivation.

(3) **Industrial land:** That land most suitable for port, harbor, industrial manufacturing, or warehouse use.

(4) **Commercial land:** That land most suitable for wholesale or retail business, financial institutions, professional offices and clinics, service trades and occupations, privately owned public utilities and similar businesses.

(5) **Farm-residential land:** Any tract of land upon which a leaseholder resides not exceeding one hundred and sixty (160) acres in size existing July 1, 1978, which is utilized for agricultural purposes. Provided, however, that farm-residential land may consist of two (2) noncontiguous tracts not exceeding one hundred and sixty (160) acres in the aggregate (a) with reasonable easements connecting the residential and outlying tracts; or (b) with the residential tract situated a distance not exceeding one and one-half (1 ½) miles from the outlying tract. Provided further that no sixteenth section lands or lands granted in lieu thereof, situated in a county lying wholly or partially within a levee district shall be classified as farm residential land.

(6) **Residential land:** Any tract of land upon which a lessee or board-approved sublessee is residing. Such lands should be laid out in a rectangular pattern, as nearly as possible, to include the houses and other permanent improvements as placed thereon by the lessee or his predecessor. However, such land shall not exceed 5 acres.

(7) **Recreational land:** That land most suitable for uses which provided for activities or service of a recreational nature such as, but not limited to, parks, campsites, lodges, and similar uses and facilities.

(8) **Other land:** Any land which is not suitable for any of the uses described above.  
*Miss. Code Ann. Section 29-3-31 and 29-3-33(a)-(g), (i).*

(9) **Oil, gas and minerals:** (i) oil, gas, carbon dioxide and other gaseous substances; (ii) metals, compounds of metals, or metal-bearing ores; (iii) coal, including anthracite, bituminous, subbituminous, lignite and their constituent components and products and minerals intermingled or associated therewith; and (iv) sulphur, salt, sand, gravel, fill dirt and clay, in, on and under the lands classified above. *Miss. Code Ann. Section 29-3-33(j).*

“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.” *Miss. Code Ann. Section 29-3-31.*

(10) **Catfish Farming land:** Land most suitable for the construction of catfish ponds and for wholesale or retail catfish farm raising and harvesting. *Miss. Code Ann. Section 29-3-33(h).*

(11) **School Use land:** Although not technically a classification, managing boards may “set aside, reserve, and dedicate any available sixteenth section lands or lands in lieu thereof for use by such school district as a site for school buildings, with such dedication and reservation shall be for such length of time, not exceeding fifty (50) years, and upon such terms and conditions as the board of education, in its discretion, shall deem proper. Any such reservation or dedication . . . shall automatically cease and terminate if, at any time, the land involved shall cease to be used for the purpose for which the dedication or reservation is made.”  
*Miss. Code Ann. Section 29-3-87.*

## C. When to Classify and Reclassify Land

### 1. As part of a regular land use survey

#### a. Requirement to survey and classify land

“It is hereby made the duty of the board of education . . . 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.”  
*Miss. Code Ann. Section 29-3-31.*

“The board of education is authorized and empowered to supervise and direct the classification of all sixteenth section lands or lieu lands according to the definitions hereinabove set out.”  
*Miss. Code Ann. Section 29-3-35.*

#### b. Frequency of survey: periodically

“It shall be the duty of the board of education to survey **periodically** the classification of all sixteenth section land under its jurisdiction and to reclassify said land as it may deem advisable. . . .”  
*Miss. Code Ann. Section 29-3-39* (emphasis added).

### 2. At the conclusion of a lease: within one (1) year prior to expiration date

“Provided, however, that all sixteenth section land shall be classified, or reclassified as is necessary, within one (1) year prior to the expiration date of any existing lease, and within sixty (60) days of the terminating of any lease of sixteenth section land by final court order.” *Miss. Code Ann. Section 29-3-39.*  
See also *Miss. Code Ann. Section 29-3-81(2).*

### 3. Upon acquisition of additional public school trust lands

Land added to the trust as part of a sale of public school trust lands for industrial development should be immediately classified consistent with its current use.

### 4. Upon changes of conditions

“It shall be the duty of the board of education to survey periodically the classification of all sixteenth section land under its jurisdiction and to reclassify that land as it may deem advisable **because of changes of conditions...**” *Miss. Code Ann. 29-3-39* (emphasis added).

## D. Procedure for Reclassifying Land

### 1. Who may reclassify: Managing Board and Secretary of State

“It shall be the duty of the board of education to survey periodically the classification of all sixteenth section land under its jurisdiction and to reclassify said land as it may deem advisable because of changes in conditions... From time to time the [Secretary of State] may institute proceedings to reclassify any sixteenth section lands which he may deem advisable. . . .” *Miss. Code Ann. Section 29-3-39.*

## 2. Restrictions to Reclassification

### a. *Cannot reclassify occupied residence: Farm Residential and Residential 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.” *Miss. Code Ann. §29-3-31.*

### b. *Cannot add Farm Residential Land*

If the land was not classified Farm Residential on or before July 1, 1978, it cannot be reclassified to Farm Residential land afterward. If the land was classified Farm Residential on that date, and has subsequently been reclassified, it cannot be changed back to the Farm Residential classification. *Miss. Code Ann. §29-3-33(f).*

### c. *Agricultural Land 5-year extension*

“If, during the final year of an existing lease, the board notifies the holder of the existing lease that the board intends to reclassify the land under Section 29-3-39, the holder of the existing lease may re-lease the land for a term of five (5) years and for a rental amount that is equal to one hundred twenty percent (120%) of the total rental value of the existing lease. Thereafter, the board shall proceed with the reclassification of the land, and the new classification will be implemented upon the expiration of the lease. This subsection does not apply if the board of education intends to reclassify the land under the “commercial” or “industrial” land classification based on a valid business proposal presented to and approved by the board of education.” *Miss. Code Ann. §29-3-81(2).*

## 3. Standards for Reclassification

### a. *Highest and Best Use*

“The classifications shall be applied to said lands based upon the finding of the highest and best use of each parcel or tract. . . .” *Miss. Code Ann. Section 29-3-31.*

“In determining the highest and best use of these lands, the same principles shall be followed as are applied in determining the highest and best use of land in private ownership.” *Id.*

When appraising a property to determine its value, the appraiser will offer an opinion about its highest and best use. If the highest and best use designated by the appraiser is different from the land’s existing classification, the board should take the opinion under advisement and consider reclassifying the land.

### b. *Maximum of Revenue*

“The classifications shall be applied to said lands . . . for producing a maximum of revenue by proper utilization.” *Miss. Code Ann. Section 29-3-31.*

When reviewing whether a particular parcel of land should be reclassified, alternative sources of revenue, such as revenue from the sale of timber or availability for exploration for oil and gas, should be considered. If the current classification of the land does not facilitate the production of this revenue, and the additional revenue will help maximize the revenue to the board, then the classification should be changed.

## 4. Public Notice: Three (3) Consecutive Weeks

“When any land is reclassified under this section, notice thereof, rights to object thereto and rights to appeal therefrom shall be given in the same manner provided in Section 29-3-37 with reference to the original

classification.” *Miss. Code Ann. Section 29-3-39.*

“The board of education shall immediately cause notice to be given of the completion of such classification, such notice to be published in a newspaper in said county once each week for three (3) consecutive weeks, or if no newspaper is published in said county then in a newspaper having a general circulation therein, listing all lands so classified and notifying all parties in interest that they will have a right to appeal and object to the classification as made.” *Miss. Code Ann. Section 29-3-37.*

## **5. Notice to lessee of reclassified property**

“A copy of such notice shall be mailed by the superintendent of education to each lessee of any part of such lands, such notice to be so mailed not later than the date of the first publication of the notice of the classification of such land, which notice shall also set for the classification which has been established for all lands under lease by such lessee.” *Miss. Code Ann. Section 29-3-37.*

## **6. Objections**

### ***a. Who may file objection: Secretary of State, any other party in interest***

Objections may be made by “the public lands division of the secretary of state or any other party in interest...” *Miss. Code Ann. Section 29-3-37.*

### ***b. Filing objection with chancery clerk***

Objections “must be reduced to writing and filed with the chancery clerk within thirty (30) days from the date of the final publication. . . .” *Miss. Code Ann. Section 29-3-37.*

### ***c. When no objection is filed, classification is final***

“If no objections are made as to the classification of any particular parcel of said land . . . the classification as to such parcel or parcels of land shall be final. *Miss. Code Ann. Section 29-3-37.*

### ***d. When an objection is filed***

“If objections are filed, then the matter shall be heard by the chancery court in term time or in vacation, and the court shall either confirm or modify the classification as the circumstances shall demand. Upon the filing of such objection by an individual other than the public lands division of the secretary of state, the chancery clerk shall immediately forward a certified copy of such objection to the public lands division of the secretary of state and the appropriate board of education, along with any necessary service of process.” *Miss. Code Ann. Section 29-3-37.*

### ***e. Representation of Secretary of State by Attorney General, managing board to provide help***

“In all litigation which may result from the classification or reclassification of lands by the [Secretary of State] under sections 29-3-31 through 29-3-39, said [Secretary of State] shall be represented by the attorney general, who shall have control of the litigation, but it shall be the duty of the various boards of education to furnish local legal assistance when requested so to do by the attorney general.” *Miss. Code Ann. Section 29-3-39.*

### ***f. Appeal of Chancellor’s Order***

“The public lands division of the secretary of state and any other person aggrieved by the order of the chancery court shall have the same rights of appeal as is provided by law for appeals from other orders of the chancery court, and such appeal shall be perfected as other appeals are now required to be so perfected.” *Miss. Code Ann. Section 29-3-37.*

## **7. Reports of reclassification to Secretary of State, board of education, forms**

“It shall be the duty of the board of education . . . to reclassify said land . . . , and when any land is so reclassified, the board of education shall file a report thereof with the [Secretary of State]. [T]he [Secretary of State] may institute proceedings to reclassify any sixteenth section lands . . . and when any land is so reclassified, the [Secretary of State] shall file a report thereof with the board of education.” *Miss. Code Ann. Section 29-3-39.*

“At any time when any or all portions of such land lying in a county shall have been classified as hereinabove required, a classification report shall be compiled by the board of education and filed with the public lands division of the secretary of state who shall provide forms for such purpose.” *Miss. Code Ann. Section 29-3-37.*

In preparing SOS Form 16, show the new classification of the land that was changed and restate the existing classification for the remainder of the section so that the most recently filed Form 16 will be an accurate record of the current classification of the entire section.

### **E. Assistance with Reclassification**

“The board of education may survey these lands, “using the services of all appropriate public agencies. . . .” *Miss. Code Ann. Section 29-3-31.*

“In making the classifications provided by sections 29-3-1 through 29-3-39, the board of education is authorized and empowered to request the services of any public agency within this state which is equipped and qualified to assist in such classification. It is hereby made the duty of any such agency when so requested to assist the board of education in making such classification.” *Miss. Code Ann. Section 29-3-35.*

The Mississippi Forestry Commission can provide valuable assistance in determining which sections are transitioning from rural to more urban uses. The Mississippi Development Authority can provide valuable information about land development and business opportunities. The Secretary of State’s Office is always available to provide advice and guidance about land uses and legal questions.

### **F. Appendix**

- 1. Reclassification Checklist**
- 2. Board Resolution for Reclassification**
- 3. Form Public Notice of Reclassification**
- 4. Form Letter to Leaseholders Regarding Reclassification**
- 5. SOS Form 16**



# 1. Reclassification Checklist

<b>1 Identify leases set to expire within 1 year or needing reclassification and list here:</b>							<b>Vote</b>	
	Lease #	Section-Township-Range	Class	Exp. Date	New Class	Yes	No	
<b>2 Check to see if there are any legal restrictions to reclassifying the land</b>								
<b>3 Place the reclassification resolution on the board's agenda for discussion and vote</b>								
-Date of Board Meeting								
-Indicate results of resolution above for each leased area above								
<b>4 Prepare public notice of reclassification for all properties reclassified and send to paper</b>								
-Notice must run in paper published in county or paper with general circulation in the county at least once per week for three (3) consecutive weeks								
-Date of first publication								
-Proof of publication received from paper								
<b>5 Send letter to current lessee of properties</b>								
-This letter should include a copy of the notice reclassifying the property								
-Letter should also list classification of all lands leased by lessee								
-Letter should be sent no later than the date of first publication of public notice								
-Date letter sent								
<b>6 If an objection is filed with the chancery clerk, notify the Secretary of State's office immediately</b>								
<b>7 If no objection is filed, send the following to the Secretary of State:</b>								
Copy of Board resolution reclassifying land								
Copy of Public Notice								
Copy of notice sent to leaseholders with a list of all leaseholders and addresses								
SOS Form 16								
Proof of Publication of public notice (after publication is completed)								

## 2. Board Resolution for Reclassification

RESOLUTION OF THE BOARD OF EDUCATION OF THE \_\_\_\_\_ SCHOOL DISTRICT

WHEREAS, the Board of Education of the \_\_\_\_\_ School District is duly and properly convened at this the \_\_\_\_\_, 2\_\_\_\_ meeting of said Board at \_\_\_\_\_, Mississippi,

WHEREAS the Board finds that it has jurisdiction and control of the following described Sixteenth Section Public School Trust Lands situated in \_\_\_\_\_ County, Mississippi:

Lease Number	Lessee	Section-Township-Range	Legal Description

WHEREAS, under MISS. CODE ANN. 1972 § 29 3 39 this Board of Education is authorized to reclassify the above-described land according to its highest and best use

WHEREAS the board investigated the current and potential uses of the above-described Sixteenth Section Public School Trust Land and, because of changes of conditions and based upon the finding of the highest and best use of said land for producing a maximum of revenue by proper utilization, it is the opinion of the board the land should be reclassified.

NOW THEREFORE, BE IT RESOLVED AND ORDERED as follows:

The above-described land is hereby re-classified as follows:

Lease Number	Current Classification	New Classification	Legal Description

The Superintendent of the School District is hereby directed and authorized to: (1) cause notice to be given to all parties interested of the completion of this reclassification by public notice published once a week for three (3) consecutive weeks in a newspaper having a general circulation in the county, (2) mail a copy of this notice of reclassification to each lessee of any part of the land described above via first class or certified mail no later than the date of the first publication of the reclassification notice, and (3) include with the notice mailing the classification which has been established for all lands under lease by such lessee. Said public notice shall be published within two weeks of the date of this order.

BE IT FURTHER RESOLVED, that the President of the Board of Education and the Superintendent are hereby authorized, empowered and directed to do all acts necessary to fully and legally reclassify the above-described land as authorized by law.

**2. Board Resolution for Reclassification (continued)**

The above and foregoing resolution authorizing the reclassification of the above-described lands came before this Board upon the motion of \_\_\_\_\_, duly seconded by \_\_\_\_\_ and was adopted by the Board. The attendance and voting of the members of this Board of Education on said resolution is recorded as follows:

Board Member	For	Against	Abstain	Absent

RESOLUTION APPROVED AND ADOPTED, this the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_, BY THE \_\_\_\_\_ BOARD OF EDUCATION OF THE \_\_\_\_\_ SCHOOL DISTRICT.

\_\_\_\_\_  
BOARD PRESIDENT: \_\_\_\_\_

ATTEST

\_\_\_\_\_  
BOARD SECRETARY: \_\_\_\_\_

### 3. Form Public Notice of Reclassification

PUBLIC NOTICE

To all persons having an interest in the following described Sixteenth Section Public School Trust Land situated in \_\_\_\_\_ County, Mississippi, that is under the jurisdiction and control of the \_\_\_\_\_ Board of Education:

Lease Number	Lessee	Section-Township-Range	Legal Description

Said Board of Education has conducted an investigation into the current and potential uses of the above-described Sixteenth Section Public School Trust Land. Because of changes of conditions and based upon the finding of the highest and best use of said land for producing a maximum of revenue by proper utilization, said Board of Education by resolution duly adopted and incorporated into its minutes has reclassified the above-described land from the current classification(s) to the new classification designated below.

Lease Number	Current Classification	New Classification	Legal Description

All parties in interest have the right to object to and appeal the reclassification of the above-described land by filing a written objection with the Chancery Clerk of the county wherein the above-described land is located. Objections must be filed with the Chancery Clerk within thirty (30) days of the final publication of this notice. If no objections are filed within the time allowed, the reclassification shall be final.

Reclassification of the above-described lands is made by order of the \_\_\_\_\_ Board of Education pursuant to Sections 29-3-31 through 29-3-39, of the Mississippi Code.

\_\_\_\_\_ BOARD OF EDUCATION

BY \_\_\_\_\_  
SUPERINTENDENT OF EDUCATION

Publish for 3 consecutive weeks on

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### 4. Form Letter to Leaseholders Regarding Reclassification

Date

School District Board of Education  
Superintendent  
Mailing Address  
City, State ZIP

Mr. & Mrs. Lessee  
Street Address  
City, Mississippi

RE: Reclassification of leased property

Dear Mr. & Mrs. Lessee:

Enclosed, please find a public notice of the reclassification of the property that you currently lease. In order to comply with Mississippi laws that require the board to properly classify the land under its jurisdiction, the board reclassified all or a portion of the following land you lease:

Lease Number	Current Classification	New Classification	Legal Description

[You lease no other land managed by the board of education

OR

The other lands you lease, listed below, are not affected]

Please refer to the attached public notice for information regarding the reclassification. If you should object to the reclassification, file a written objection with the Chancery Clerk of the county wherein the above-described land is located. Objections must be filed with the Chancery Clerk within thirty (30) days of the final publication of this notice and will be heard by the Chancery Court. If no objections are filed within the time allowed, the reclassification shall be final.

Sincerely,

\_\_\_\_\_  
Superintendent of Education

5. SOS Form 16

SIXTEENTH SECTION AND LIEU LAND CLASSIFICATION REPORT																																																			
TO:	SECRETARY OF STATE PUBLIC LANDS DIVISION	DATE SUBMITTED _____																																																	
FROM:	_____	FOR Sixteenth Section or Lieu Lands located in																																																	
	_____	Section	Township																																																
	_____	Range	County																																																
Telephone	_____	Total Acreage _____																																																	
<p>1. Identify the classification(s) for each parcel(s) according to the following classifications and indicate the classifications on the map below, by shading or coloring the appropriate color.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Classification</th> <th style="width: 10%;">Color</th> <th style="width: 60%;">Description</th> <th style="width: 20%;">Acres</th> </tr> </thead> <tbody> <tr> <td>a. Forest</td> <td>GREEN</td> <td>Land at least 90% of the total area is at present forest or wasteland or which will produce a maximum of revenue by utilization of timber or other forest products</td> <td style="height: 20px;"></td> </tr> <tr> <td>b. Agricultural</td> <td>BROWN</td> <td>Land most suitable for pasture or cultivation</td> <td style="height: 20px;"></td> </tr> <tr> <td>c. Industrial</td> <td>BLUE</td> <td>Land most suitable for port, harbor, industrial, manufacturing or warehouse use</td> <td style="height: 20px;"></td> </tr> <tr> <td>d. Commercial</td> <td>BLACK</td> <td>Land most suitable for wholesale or retail business, financial institutions, professional offices and clinics, service trades and occupations, privately-owned public utilities, and similar businesses</td> <td style="height: 20px;"></td> </tr> <tr> <td>e. Residential</td> <td>RED</td> <td>A tract of land, not exceeding 5 acres, upon which the Lessee is residing</td> <td style="height: 20px;"></td> </tr> <tr> <td>f. Farm Residential</td> <td>YELLOW</td> <td>A tract of land not exceeding 160 acres upon which a Lessee resides (or who resides within 1.5 miles) AND uses for agricultural purposes. The land must have been Farm Residential as of July 1, 1978.</td> <td style="height: 20px;"></td> </tr> <tr> <td>g. Recreational</td> <td>ORANGE</td> <td>Land most suitable for uses which provide for activities or services of a recreational nature.</td> <td style="height: 20px;"></td> </tr> <tr> <td>h. Catfish Farming</td> <td>PINK</td> <td>Land most suitable for the construction of catfish ponds and for wholesale or retail catfish farm raising and harvesting.</td> <td style="height: 20px;"></td> </tr> <tr> <td>i. Other</td> <td>PURPLE</td> <td>Any land which is not suitable for any of the uses described above.</td> <td style="height: 20px;"></td> </tr> <tr> <td>j. School</td> <td>AQUA</td> <td>Land used for school buildings or administration</td> <td style="height: 20px;"></td> </tr> <tr> <td colspan="3" style="text-align: right;"><b>Total Leased Acreage</b></td> <td style="height: 20px;"></td> </tr> </tbody> </table>				Classification	Color	Description	Acres	a. Forest	GREEN	Land at least 90% of the total area is at present forest or wasteland or which will produce a maximum of revenue by utilization of timber or other forest products		b. Agricultural	BROWN	Land most suitable for pasture or cultivation		c. Industrial	BLUE	Land most suitable for port, harbor, industrial, manufacturing or warehouse use		d. Commercial	BLACK	Land most suitable for wholesale or retail business, financial institutions, professional offices and clinics, service trades and occupations, privately-owned public utilities, and similar businesses		e. Residential	RED	A tract of land, not exceeding 5 acres, upon which the Lessee is residing		f. Farm Residential	YELLOW	A tract of land not exceeding 160 acres upon which a Lessee resides (or who resides within 1.5 miles) AND uses for agricultural purposes. The land must have been Farm Residential as of July 1, 1978.		g. Recreational	ORANGE	Land most suitable for uses which provide for activities or services of a recreational nature.		h. Catfish Farming	PINK	Land most suitable for the construction of catfish ponds and for wholesale or retail catfish farm raising and harvesting.		i. Other	PURPLE	Any land which is not suitable for any of the uses described above.		j. School	AQUA	Land used for school buildings or administration		<b>Total Leased Acreage</b>			
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2. Please identify any incorporated municipality whose limits include all or part of this section. _____																																																			
3. Please explain if any classifications are inconsistent with city or county zoning ordinances. _____																																																			

NW	NE	NW	NE	NW	NE	NW	NE
	W		E		W		E
SW	SE	SW	SE	SW	SE	SW	SE
	N		N		N		N
NW	NE	W	NW	NE	NW	NE	E
	W		E		W		E
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	W		E		W		E
SW	SE	SW	SE	SW	SE	SW	SE
	S		S		S		S



## IV. Surface Leasing

### A. General Duties

1. Managing Board of Education
2. Superintendent of Education
3. Board of Supervisors
4. Secretary of State

### B. Procedure for Leasing the Surface of Trust Lands

1. By Public Contract (*Public Bidding*)
  - a. Generally
  - b. Hunting and Fishing
    - i. What lands may be leased: Forest-classified lands
    - ii. Notice: Two successive weeks; at least ten days prior to opening bids; Form
    - iii. Bid Opening: at a regular or special meeting of the board
    - iv. Award of lease
    - v. Right to match highest bid
    - vi. Review and Signatures
    - vii. Renewal
    - viii. Additional Considerations
      - (i.) Posting against trespassers
      - (ii.) Bid bond
  - c. Agricultural
    - i. What land may be leased: Agricultural-classified lands
    - ii. Notice: Two successive weeks; at least 10 days prior to opening; no more than 4 months before expiration of existing lease; form
    - iii. Bid Opening: at a regular or special meeting of the board
    - iv. Award of lease
      - (i.) General Procedure
      - (ii.) 105% Second Bid
      - (iii.) No bids received
    - v. Right to match highest bid
    - vi. Review and signatures
    - vii. Renewal
      - (i.) 120% Extension
      - (ii.) Reclassification extension
    - viii. Additional considerations
      - (i.) Posting against trespassers
      - (ii.) Bid bond
      - (iii.) Cancellation; emergency lease by private contract for remainder of current year
      - (iv.) Board to execute new lease before expiration of current lease

2. By Private Contract (Appraisal)
  - a. What lands may be leased:
    - i. Industrial
    - ii. Commercial
    - iii. Residential
    - iv. Farm Residential
    - v. Recreational
    - vi. Catfish Farming
    - vii. Other
  - b. Application by lessee, interested party
  - c. Appraisal
  - d. Superintendent to make recommendation, managing board to review, provide lease form within 30 days
  - e. Board of Supervisors review
  - f. Chancery Court appeal of disputed rental value
  - g. Filing and copies
  - h. Renewal
    - i. Lessee right of first refusal; conditional upon agreement of managing board and lessee
    - ii. Lessee Option to Renew
    - iii. Appraisal to determine rent, one year in advance of availability
    - iv. Procedure and terms other than rent
  - i. Other considerations
    - i. Posting against trespassers
    - ii. Mutual Access Easements (Permanent Easements)
    - iii. Condemnation by authority other than board of education
3. By Dedication of the Board of Education
  - a. What lands may be dedicated (Other and Forest classified lands)
  - b. Procedure for dedicating lands
    - i. Qualified churches, state parks, public parks and recreation areas
    - ii. Land Clearing and Development
    - iii. School Uses
    - iv. Easements (New Road)
4. Submitting Leases to the Office of the Secretary of State for Review

### **C. The Lease Document**

1. Format
2. Required Terms and Restrictions In All Leases
  - a. Mandatory Reservations
  - b. Prohibition against cutting timber and forest products
  - c. Premises subject to zoning restrictions
  - d. Payment of Taxes
  - e. Cancellation on Waste
  - f. Annual Payment of Ground Rental
  - g. Maximum Term, Size Restrictions, Rent Requirements, and Rent Adjustment
    - i. Maximum Term
      - (i.) Agricultural (10 years rice and pasturage, 5 years all others)
      - (ii.) Hunting and Fishing (15 years)
      - (iii.) Commercial, Industrial, Residential, Farm Residential, Recreational, Catfish Farming, Other (40 years)
      - (iv.) School Uses (50 years)



- (v.) Qualified Churches (99 years)
    - (vi.) Permanent Easements (perpetuity; reversion)
    - (vii.) State Parks (99 years)
    - (viii.) Public parks and recreation areas (50 years)
    - (ix.) Uncleared lands (such short terms as may be deemed proper)
  - ii. Maximum Size
    - (i.) Agricultural, Forestry, Commercial, Industrial, Recreational, Catfish Farming, Other, School Uses, Easements, Parks, and Uncleared lands (no limitation)
    - (ii.) Residential (5 acres)
    - (iii.) Farm Residential (160 acres)
    - (iv.) Qualified Churches (3 acres)
  - iii. Rent Minimums and Maximums
    - (i.) Agricultural and Hunting and Fishing (Board Discretion)
    - (ii.) Commercial and Industrial (5% of fee value)
    - (iii.) Catfish Farming, Farm Residential, Residential, Recreational, Other (fair market rental value)
    - (iv.) Farm Residential and Residential (will not exceed fair market rental value)
    - (v.) School Uses (no compensation)
    - (vi.) Qualified Churches, State Parks, and Public parks and recreation areas (fair market rental value)
    - (vii.) Permanent Easements (free; like-kind swap, fee value)
    - (viii.) Uncleared Land (value of improvements)
  - iv. Rent Adjustment
    - (i.) Agricultural and Hunting and Fishing (None Required)
    - (ii.) Hunting and Fishing, Catfish Farming, Commercial, Industrial, Other, Recreational, State Parks, Pubic parks and recreational areas (No less than Once every Ten Years)
    - (iii.) Residential and Farm Residential (optional)
    - (iv.) School Uses (not required)
    - (v.) Qualified Churches (not less than once every 25 years)
    - (vi.) Permanent Easements (not required)
    - (vii.) Uncleared lands (none required)
- 3. Required terms and restrictions in specific leases
  - a. Agricultural
    - i. Leases to expire December 31; new lease executed before expiration of current lease
  - b. School Uses
    - i. Dedication to specific use; resolution of board
    - ii. Compensation to lessee; surrender of lease; condemnation of leasehold interest
    - iii. Surface Only to be used
  - c. Public parks and recreation areas
    - i. Dedication to specific use; resolution of board
    - ii. Timber management agreement
    - iii. Forestry-classified lands only
    - iv. Surface Only
    - v. No lease on land
  - d. State Parks
    - i. Specifically dedicated for use as a state park by board of education
    - ii. Dedication by Governor for use as a state park; closing and reversion
    - iii. Surface Only

- iv. No lease on land
- 4. Optional Terms
  - a. Insurance
  - b. Rent Escalation Clauses
  - c. Option to renew for 25 years (Commercial, Industrial, Residential, Farm Residential, Recreational, Other, Catfish Farming)
  - d. Subleasing and Assignments
  - e. Security Interest in Crops (Agricultural)
  - f. Cemeteries (Church Use)
  - g. Improvements

**D. Improvements**

- 1. Generally
- 2. Ownership of improvement controlled by lease language
- 3. Lessor authorized to purchase improvements: Forest classified lands
- 4. Improvements on leases in effect prior to July 1, 1978: Lessee not charged in successive periods
- 5. Agriculture Improvements
- 6. Lessor may purchase improvements where illegal leases
- 7. Lessor may sell unused buildings on unleased premises

## **A. General Duties**

### **1. Managing Board of Education**

The managing board of education is generally charged with reviewing surface leasing legal documents and setting policies for 16th Section surface leasing management. It can approve or disapprove the initial leasing of 16th Section lands; the assignment, transfer, or subleasing of those lands; the renewal or cancellation of a lease; the appointment of an appraiser to determine the fair market rental value of the lands under its jurisdiction; the advertising for bidders for leases and improvements; and several related duties. It is required by law to assure that adequate compensation for all uses of trust lands is received.

The President of the managing board of education is required to sign all surface leases.

### **2. Superintendent of Education**

The Superintendent of Education for the managing board is responsible for the day-to-day general administration of school trust lands. This includes receiving applications and bids for surface leasing and making recommendations to the board as it considers these. The Superintendent will also maintain an index of public school trust land property, keep records related to all leases of those properties, and collect rents and interest payments related to surface leasing. The superintendent reports the current disposition of trust lands annually to the Mississippi Department of Education and the Secretary of State.

The Superintendent is required to sign all surface leases and certify reports of surface leases made to the Mississippi Department of Education and the Secretary of State.

### **3. Board of Supervisors**

The board of supervisors for the county where the school trust land is located is required to review the rental amount set by appraisal in the board-of-education-approved surface lease. In cases where the supervisors disagree with the board of education concerning the adequacy of the rent, the statutes provide a dispute resolution mechanism.

The president of the board of supervisors is required to sign the surface leases it reviews and approves.

### **4. Secretary of State**

The Secretary of State is required to generally assist the managing boards of education in the leasing of school trust lands. The Secretary of State has a supervisory power, and surface leasing occurs under the Secretary's "general oversight." The Secretary is also required to maintain files, make recommendations and coordinate services, and report to agencies and the Legislature concerning the disposition of all school trust lands.

## B. Procedure for Leasing the Surface of Trust Lands

### 1. By Public Contract (Public Bidding)

#### a. Generally

Surface leases let by public contract are generally awarded by the managing board of education to the highest bidder after publication of notice of availability to lease in a newspaper of general circulation in the county. Only the surface of land classified as Forestry or Agricultural may be let by public contract.

The terms of the lease are generally set in advance and the bidders are given an opportunity to review the lease on file with the board before the deadline set to receive and open bids. There are many differences in the mechanics of awarding hunting and fishing and agricultural leases, so they are addressed below.

#### b. Hunting and Fishing

##### i. What lands may be leased: Forest-classified lands

(i.) “[A]ll land which has been classified as forest land and which is not now under lease . . . shall be reserved and kept as forest lands. . . . [T]he board of education may grant leases to the surface of said lands classified as forest, which are limited to hunting and fishing rights and activities in relation thereto. . . .” *Miss. Code Ann. Section 29-3-41*

(ii.) “‘Forest land’ shall mean all land at least ninety percent (90%) of the total area of which is at present forest or wasteland, or land which will produce a maximum of revenue by utilization to produce timber or other forest products, shall be classified forest land. The unit of measurement to be used in arriving at the classification of forest land shall be the smallest division of the government survey covering said lands in counties where such government survey has been made, and in other counties shall be forty (40) acres.” *Miss. Code Ann. Section 29-3-33(a)*.

##### ii. Notice: Two successive weeks; at least ten days prior to opening bids ; Form

(i.) The board of education may lease the hunting and fishing rights “after having advertised same for rent in a newspaper published in said county or, if no newspaper be published in said county, then in a newspaper having a general circulation therein, for two (2) successive weeks, and the first being at least ten (10) days prior to said public contract.” *Miss. Code Ann. Section 29-3-41*.

(ii.) There is no set form of public notice. It is good practice to reserve the right to reject all bids, and the board may determine and publish minimum rents as part of the notice.

##### iii. Bid Opening: at a regular or special meeting of the board

(i.) “Bids received by the board of education in response to the advertisement shall be opened at a regular or special meeting of the board.” *Id.*

##### iv. Award of lease

(i.) Once bids are opened, the board of education has several courses of action:

- “Reject all bids” and re-advertise for additional bids.
- “Reject all bids” and “lease [the land] by private contract for an amount greater than the highest bid previously rejected”

- “Accept the highest and best bid received in response to the advertisement”
- “Hold an auction among those who submitted bids in response to the advertisement, provided that three (3) or more persons who submitted bids in response to the advertisement participate in the auction.”

The board may use alternative 2 above in conjunction with an auction that involves less than three (3) bidders. Alternative 4 does not require the board reject or accept any bids received.

Please note that Alternative 3 involves accepting the “highest and best” bid, where another place within the statute states, “Said hunting and fishing rights shall be leased to the person offering the highest rental.” We believe the language quoted in Alternative 3, which was added as part of the most recent amendment to the statute, controls.

*v. Right to match highest bid*

Under Alternatives 3 and 4 above, “the most recent holder of said hunting and fishing rights if it shall have made an offer, shall have the final right to extend its lease for the term advertised at the annual rate equal to said highest offer received by the board of education, or equal to the highest bid offered at the auction.”

Under Alternative 2 above, “the most recent holder of said hunting and fishing rights, if it shall have made an offer, shall have the final right to extend its lease on the same terms and conditions as those contained in the private contract proposed to be accepted by the board of education.”

For purposes of determining the identity of “the most recent holder of said hunting and fishing rights,” we believe the following to be the best practice:

*(i.) For expiring hunting leases:*

- Where both a group and individual are identified as the lessee on the face or front page of the lease: The entity.
- Where two (2) or more individuals are identified as the lessee on the face or front page of the lease: Both individuals together. (*They cannot act separately or bid against each other and have the right to match.*)

*(ii.) For lease transitioning from other classifications:*

- Where the previous lessee is deceased: All of the heirs-at-law together, unless the heirs have assigned their interests to the bidder and have furnished sufficient proof of heirship to the board (a court order, quitclaim deeds, or affidavits of heirship are sufficient).

The board has discretion when determining the amount of time it allows the most recent holder of hunting rights to match the highest bid or offer. We recommend no longer than one (1) week.

*vi. Review and Signatures*

Leases let by public contract are not subject to review by the county board of supervisors. The superintendent of education and president of the board of education will sign the lease along with the lessee.

The Secretary of State's office provides a free review of the leasing documents and notices. Please contact the Secretary of State's office for further information.

*vii. Renewal*

Hunting and fishing leases have no secondary term and are not renewable. At the expiration of one lease, the lessee must bid at public contract in order to lease the premises again.

*viii. Additional Considerations*

*(i.) Posting against trespassers*

"Any leaseholder of sixteenth section land, or land granted in lieu thereof, shall be authorized to post such land against trespassers; provided that such posting shall not prohibit the inspection of said lands by individuals responsible for the management or supervision thereof acting in their official capacity." *Miss. Code Ann. Section 29-3-54.*

*(ii.) Bid bond*

In order to deter the submission of bids not made in good faith, the managing board may require bidders submit earnest money as part of the bid.

**c. Agricultural**

*i. What land may be leased: Agricultural-classified lands*

"Sixteenth section lands, or any lands granted in lieu of sixteenth section lands, classified as agricultural may be leased for [agricultural purposes]." *Miss. Code Ann. Section 29-3-81(1).*

"Agricultural land' shall mean land most suitable for pasturage or cultivation."

*Miss. Code Ann. Section 29-3-33(b).*

*ii. Notice: Two successive weeks; at least 10 days prior to opening; no more than 4 months before expiration of existing lease; form*

The board of education can lease land for agricultural purposes "after having advertised such lands for rent in a newspaper published in the county or, if no newspaper is published in the county, then in a newspaper having a general circulation therein, for two (2) successive weeks, the first being at least ten (10) days before the public contract." *Miss. Code Ann. Section 29-3-81(1).*

"[T]he board of education shall publish an advertisement of agricultural land for rent which publication shall be not more than four (4) months before the expiration of the term of an existing lease of the land." *Miss. Code Ann. Section 29-3-81(1).*

*iii. Bid Opening: at a regular or special meeting of the board*

"Bids received by the board of education in response to the advertisement shall be opened at a regular or special meeting of the board." *Id.*

*iv. Award of lease*

(i.) General Procedure. Once the time for receiving bids is completed, the board of education has several courses of action:

- “reject all bids” and re-advertise for additional bidders.
- “reject all bids” and lease the land by private contract for an amount greater than the highest bid previously rejected
- accept the highest and best bid received in response to the advertisement.”
- “hold an auction among those who submitted bids in response to the advertisement”
- Where no bids have been received, lease the land by private contract.

Under alternative 2, the board may lease the premises at private contract if either the bids received are not acceptable, or if the results of the auction under alternative 4 are unacceptable. The lease must be executed “within ninety (90) days . . . for an amount greater than the highest bid previously rejected.

(ii.) 105% Second Bid. Under alternative 3, if the holder of the existing lease:

- “submitted a bid in response to the advertisement”;
- “constructed or made improvements on the leasehold premises after receiving approval of the board of education during the term of the existing lease”;
- Is not delinquent in the payment of rent;
- Is not delinquent in the payment of taxes;
- Is not delinquent in the payment of any other payments owed under the terms of the lease;
- Is not otherwise in default of any term or provision of the lease and such default has not been corrected or cured to the satisfaction of the board of education after more than thirty (30)-day’s notice to the leaseholder of the default he may “submit a second bid in an amount not less than one hundred five percent (105%) of the highest acceptable bid received.”

“If the holder of the existing lease elects to submit a second bid, the board of education shall hold an auction among those who submitted bids in response to the advertisement. The opening bid at the auction shall be the second bid of the holder of the existing lease. . . . If an auction is held, the auction may be conducted at the meeting at which bids are opened or at a subsequent regular or special meeting. The board shall announce the time and place of the auction at the meeting at which bids are opened, and no further notice of the auction is required.”

Under alternative 4, “If the board of education elects to hold an auction, no bidder shall be granted any preference. The opening bid at the auction shall be highest and best received in response to the advertisement.” The language “no bidder shall be granted any preference” includes the existing lessee, who will not have the right to match or exceed the highest bid at the auction at its conclusion.

(iii.) No bids received

Under alternative 5, the board “may negotiate a private contract for a fair rental value, and the term of such contract shall expire December 31 of the same calendar year in which the contract is made.”

*v. Right to match highest bid*

The current holder of the lease does not have the right to match the highest bid received by the board of education. Alternative 3 above permits the current holder of the lease to submit a second bid if specific criteria are met. Only if these conditions are met will the second bid trigger an auction.

*vi. Reviews and signatures*

Leases let by public contract are not subject to review by the county board of supervisors.

The superintendent of education and president of the board of education will sign the lease along with the lessee.

The Secretary of State's office provides a free review of the leasing documents and notices. Please contact the Secretary of State's office for further information.

*vii. Renewal*

"[N]o 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."

*Miss. Code Ann. Section 29-3-63(1).*

*(i.) 120% Extension*

"[B]efore the expiration of an existing lease of land classified as agricultural land, except as otherwise provided in subsection (2) for lands intended to be reclassified, the board of education, in its discretion and subject to the prior approval of the Secretary of State, may authorize the holder of the existing lease to re-lease the land, on no more than one (1) occasion for a term not to exceed five years and for a rental amount that is no less than one hundred twenty percent (120%) of the total rental value of the existing lease." *Miss. Code Ann. Section 29-3-81(1).*

The Secretary of State's Office considers the following factors when determining whether to approve 120% extension requests:

- Leaseholder's timely and faithful performance of his obligations under leases with the school district;
- Improvements to the land made by Leaseholder during existing lease;
- Agreement by the Leaseholder to make improvements during the term of the renewed lease;

Farming practices of the Leaseholder under the existing lease;

- Crop yields produced by the Leaseholder under the existing lease;
- Rent trends under other Sixteenth Section and private farm leases;
- Any special or unusual factors which indicate that such a re-leasing would produce more revenue for the school than other, more standard leasing procedures;
- Such other factors as the Secretary of State may deem relevant under the circumstances;
- Lease renewal will automatically be denied if the school board grants a renewal lease without first obtaining approval in writing from the Secretary of State.

*(ii.) Reclassification extension*

"If, during the final year of an existing lease, the board of education notifies the holder of the existing lease that the board of education intends to reclassify the land under Section 29-3-39, the holder of the existing lease may re-lease the land for a term of five (5) years and for a rental amount that is



equal to one hundred twenty percent (120%) of the total rental value of the existing lease. Thereafter, the board of education shall proceed with the reclassification of the land, and the new classification will be implemented upon the expiration of the lease. This subsection does not apply if the board of education intends to reclassify the land under the 'commercial' or 'industrial' land classification based on a valid business proposal presented to and approved by the board of education." *Miss. Code Ann. Section 29-3-81(2).*

**viii. Additional considerations**

*(i.) Posting against trespassers*

"Any leaseholder of sixteenth section land, or land granted in lieu thereof, shall be authorized to post such land against trespassers; provided that such posting shall not prohibit the inspection of said lands by individuals responsible for the management or supervision thereof acting in their official capacity." *Miss. Code Ann. Section 29-3-54.*

*(ii.) Bid bond*

"The board of education may require bidders to furnish bond or submit evidence of financial ability." *Miss. Code Ann. Section 29-3-81(1).*

*(iii.) Cancellation; emergency lease by private contract for remainder of current year*

"If an existing lease is terminated before the expiration of the term originally set therein, upon finding that immediate action is necessary to prevent damage or loss to growing crops or to prevent loss of opportunity to lease the land for the current growing season, the board of education may negotiate a private contract for a fair rental value, and the term of such lease shall expire on December 31 of the same calendar year in which the contract is made." *Miss. Code Ann. Section 29-3-81(3)(e).*

*(iv.) Board to execute new lease before expiration of current lease*

"Subject to the classification of the land, the board of education shall enter into a new lease on agricultural land before the expiration of an existing lease on the same land, and the new lease shall take effect on the day immediately following the day on which the existing lease expires." *Miss. Code Ann. Section 29-3-81(1).*

## **2. By Private Contract (Appraisal)**

**a. What lands may be leased:**

Lands classified as Catfish Farming, Commercial, Farm Residential, Industrial, Other, Recreational, and Residential; Easements. "The following procedure shall be followed for the leasing of Sixteenth Section school lands or lands granted in lieu thereof which are not classified as agricultural land. . . ."

*Miss. Code Ann. Section 29-3-82.*

**i.** "Industrial land" shall mean land most suitable for port, harbor, industrial, manufacturing or warehousing use.

**ii.** "Commercial land" shall mean land most suitable for wholesale or retail businesses, financial institutions, professional offices and clinics, service trades and occupations, privately owned public utilities and similar businesses.

**iii.** "Residential land" shall mean any tract of land upon which the lessee or board-approved sub-lessee is residing. Such lands shall be set up, as nearly as possible, in a rectangular form so as to include the houses and such other permanent improvements as may have been placed thereon by said lessee or his predecessor in title; provided, however, that such tract of land shall not exceed five (5) acres.

*iv. "Farm residential land" shall mean any tract of land upon which a leaseholder resides not exceeding one hundred sixty (160) acres in size existing on July 1, 1978, which is utilized for agricultural purposes. Provided, however, that farm residential land may consist of two (2) noncontiguous tracts not exceeding one hundred sixty (160) acres in the aggregate (a) with reasonable easements connecting the residential and outlying tracts; or (b) within the residential tract situated a distance not exceeding one and one-half (1 1/2) miles from the outlying tract. Provided further that no sixteenth section lands or lands granted in lieu thereof, situated in a county lying wholly or partially within a levee district shall be classified as farm residential land.*

*v. "Recreational land" shall mean land most suitable for uses which provide for activities or services of a recreational nature. Recreational nature shall include, but not be limited to, parks, campsites, lodges and similar uses and facilities.*

*vi. "Catfish farming land" shall mean land most suitable for the construction of catfish ponds and for wholesale or retail catfish farm raising and harvesting.*

*vii. "Other land" shall mean any land which is not suitable for any of the uses described above. Miss. Code Ann. Section 29-3-33(c) – (i).*

***b. Application by lessee, interested party***

*"Any present leaseholder who desires to renew his lease, or any person who desires to lease sixteenth section or lieu lands, shall make application to the superintendent of education."*

*Miss. Code Ann. Section 29-3-82(a).*

*"Any lease executed pursuant to this chapter shall inure to the benefit of the lessee therein named, his heirs and assigns, and in case the lessee be a corporation, to such lessee and its assigns."*

*Miss. Code Ann. Section 29-3-53.*

***c. Appraisal***

*"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."*

*"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." Miss. Code Ann. Section 29-3-65.*

*"[T]he 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." Miss. Code Ann. Section 29-3-63(1).*

*Pursuant to the Attorney General Opinion to Jeffrey C. Smith dated April 16, 1991 (1991 WL 577492) a school district may increase the annual rental amount to recoup the appraisal fee.*

***d. Superintendent to make recommendation, managing board to review, provide lease form within 30 days***

*"Upon receipt of an application for the lease of such lands, the superintendent of education shall promptly give consideration to the application and he shall record his recommendation in writing and present it to the board of education at the next regular meeting of the board.*

*The board of education, at its meeting, shall consider the application and recommendation of the superin-*

tendent of education and may receive any other information which it considers bearing upon the approval of the application and lease of such land. Within thirty (30) days of the receipt of an application, the board shall act on the application and if such action is favorable, the board of education shall submit to the superintendent of education a suggested lease agreement.” *Miss. Code Ann. Section 29-3-82(b)-(c).*

***e. Board of Supervisors review***

“The superintendent of education shall then present the lease to the board of supervisors of the county where such land is located. Within thirty (30) days of the receipt of the lease, the board of supervisors shall accept or reject the proposed rental amount.

If the board of supervisors accepts the lease as proposed by the board of education, the superintendent of education shall execute the lease to the applicant under the terms and conditions set forth in the lease. If the board of supervisors refuses to accept the rental value set by the board of education in the proposed lease, the rental value of the lease shall be determined under the provisions set forth in section 29-3-1(2).” *Miss. Code Ann. Section 29-3-82(d)-(f).*

“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 of the receipt of the appraisers’ report.” *Miss. Code Ann. Section 29-3-1(2)*

***f. Chancery Court appeal of disputed rental value***

“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.” *Miss. Code Ann. Section 29-3-1(2).*

***g. Filing and copies***

“All sixteenth section or lieu land leases shall be reduced to writing and signed in triplicate by the president of the board of supervisors, the president of the board of education and the superintendent of education. The chancery clerk shall certify one (1) copy of the lease to the superintendent of education and one (1) copy to the state land commissioner, and shall record the original on the deed records of the county, abstract the lease as a mesne conveyance, and record it on the minutes of the board of supervisors. The chancery clerk shall charge and collect from the lessee the full recording fees.” *Miss. Code Ann. Section 29-3-82(g).*

***h. Renewal***

***i. Lessee right of first refusal; conditional upon agreement of managing board and lessee***

“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.”

*Miss. Code Ann. Section 29-3-63(1).*

**ii. Lessee Option to Renew**

The expiring lease may contain an option to renew for twenty-five 25 years. See below for more details.

**iii. Appraisal to determine rent, one year in advance of availability**

“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 29-3-65.”

“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.” *Miss. Code Ann. Section 29-3-65.*

**iv. Procedure and terms other than rent**

The procedure for renewing a lease and determining the terms of that lease is the same as outlined above.

**i. Other considerations**

**i. Posting against trespassers**

(i.) “Any leaseholder of sixteenth section land, or land granted in lieu thereof, shall be authorized to post such land against trespassers; provided that such posting shall not prohibit the inspection of said lands by individuals responsible for the management or supervision thereof acting in their official capacity.” *Miss. Code Ann. Section 29-3-54.*

**ii. Mutual Access Easements (Permanent Easements)**

(i.) Generally, leasing land for mutual access with adjoining landowners, where there is a substantial benefit to the managing board (such as improved rents, maintenance, or access to landlocked areas), may be done on equal footing.

“[T]he local school board is authorized to grant an easement for ingress and egress over sixteenth section land or lieu land in exchange for a similar easement upon adjoining land where the exchange of easements affords substantial benefit to the sixteenth section land. . . .” *Miss. Code Ann. Section 37-7-301(aa).*

(ii.) Equal values or adjustment by cash payment

“[T]he exchange must be based upon values as determined by a competent appraiser, with any differential in value to be adjusted by cash payment.” *Miss. Code Ann. Section 37-7-301(aa).*

(iii.) Reversion

“Any easement rights granted over sixteenth section land under such authority shall terminate when the easement ceases to be used for its stated purpose.” *Miss. Code Ann. Section 37-7-301(aa).*

(iv.) Shall not burden existing lease

“No sixteenth section or lieu land which is subject to an existing lease shall be burdened by any such easement except by consent of the lessee or unless the school district shall acquire the unexpired leasehold interest affected by the easement. . . .” *Miss. Code Ann. Section 37-7-301(aa).*

**iii. Condemnation by authority other than board of education.**

“Except as otherwise provided in subsection (2) of this section, whenever the United States or any agency thereof, or the state or any agency or subdivision thereof, or any private organization, corporation, association, or person acquires, by condemnation or otherwise, any easement or right-of-way across any sixteenth section land or lieu land, then adequate compensation therefor shall be paid by the party acquiring the same to the board of education concerned; and the sum or sums so received shall be placed

in the principal fund or funds of the school district or districts concerned.”  
*Miss. Code Ann. Section 29-3-91(1).*

### **3. By Dedication of the Board of Education**

#### ***a. What lands may be dedicated (Other and Forest classified lands)***

Forest lands may be dedicated for use as public parks and recreation areas.

The classification for all other dedications is other classified lands.

#### ***b. Procedure for dedicating lands***

The law provides no specific procedure for dedicating lands to particular uses. It does require a “resolution spread upon the minutes” of the board. See *Miss. Code Ann. Sections 29-3-87 and 29-3-91.*

The Secretary of State recommends the matter of dedicating lands to public use be generally handled as leasing land by private contract is usually handled.

##### ***i. Qualified churches, state parks, public parks and recreation areas***

Uses for churches, public parks and state parks all require a determination of fair market rent, a lease document, and records filed at the chancery clerk’s office. Use the procedure for leases let by private contract to complete the dedication of lands for these uses:

(i.) Appraisal by independent appraiser

(ii.) Superintendent recommendation, managing board review, provide lease form within thirty (30) days (at this meeting, the board should vote on the resolution of dedication and spread the final resolution upon the minutes of the board)

(iii.) Board of Supervisors review of rental amount

(iv.) Chancery Court review of rent dispute, if necessary

(v.) Filing and copies

Pursuant to Attorney General Opinion regarding utilizing 16th Section Land as a Public Park, a school board may lawfully set aside, reserve and dedicate, if it is classified as forest land. *Miss. Code Ann. §29-3-87*

Pursuant to Attorney General Opinion to Arthur F. Jernigan dated October 24, 1979 (1979 WL 41495) the nature and character of the land must stay as forest land to allow for a dedication.

##### ***ii. Land Clearing and Development***

For land clearing and development leases without annual rental payment, an itemized account of the goods and services to be used to improve the premises should be obtained prior to the dedication. This itemization should be substituted for the appraisal in the steps outlined above. Otherwise, the procedure outlined in “a” above should be followed.

***iii.*** School Uses: School uses do not require rent. As a result, there is no need for an appraisal or review by the board of supervisors. The board may simply take up the matter of dedicating land for school use at its public meeting and vote on a resolution dedicating the land to school use, spreading the resolution on the minutes and forwarding a copy of the resolution to the Secretary of State’s office for filing.

***iv.*** Easements (New Road): Similar to school uses, where the managing board finds a new road is necessary to provide access to and on school trust land, the new road will enhance the value of the land, and requests the city or county construct and maintain the road at its own expense, the board may dedicate it for such use using the same procedure as in “c” above. The dedication will last into perpetuity so long as the land is used as a road.

“If the local board of education, by resolution duly adopted and spread upon its minutes, determines that a new road is necessary to provide access to and on sixteenth section land or lieu land, that the new road will enhance the value of the sixteenth section land or lieu land, and requests that a county or city construct and maintain the road, then, upon agreement by the county or city to bear all costs of construction and maintenance, the local board of education may provide a right-of-way for the new road without compensation from the county or city if the initial cost of constructing the new road exceeds the value of the right-of-way. The local board of education shall have sole discretion in determining the location of any new road constructed under the authority of this subsection. This subsection shall not apply to state road projects or to any change or improvement to or relocation of existing roads under the jurisdiction of a county or city.” *Miss. Code Ann. Section 29-3-91(2).*

#### 4. Submitting Leases to the Office of the Secretary of State for Review

<b>Lease Classification</b>	<b>Appraisal</b>	<b>Bid Sheets</b>	<b>Proof of Publication</b>
Residential	Yes	No	No
Recreation	Yes	No	No
Commercial	Yes	No	No
Farm Residential	Yes	No	No
Industrial	Yes	No	No
Other	Yes	No	No
Cell Tower/Billboards	Yes	No	No
Church	Yes	No	No
Catfish	Yes	No	No
Easement / Right of Ways	Yes	No	No
School Use	No	No	No
Agriculture	No	Yes	Yes
Forest (Hunting/Fishing)	No	Yes	Yes
Mineral	No	Yes	Yes

*a. Documents needed by the Secretary of State’s Office for review.*

*b. Review of leases is voluntary and can take place after signatures or before.*

### C. The Lease Document

#### 1. Format

Except as otherwise provided in subsections (3) and (4), any document or instrument presented to the clerk of the chancery court for recording shall meet the following requirements:

(a) Each document or instrument shall consist of one (1) or more individual pages printed only on one (1) side. The document or instrument shall not consist of pages that are permanently bound or in a continuous form and shall not have any attachment stapled or otherwise affixed to any page except as necessary to comply with statutory requirements. However, the individual pages of a document or instrument may be stapled together for presentation for recording. A label that is firmly attached with a bar code or return address may be accepted for recording.

(b) All documents must be printed or typed in a font no smaller than ten-point in size. If a document or instrument, other than a plat or survey or a drawing related to a plat or survey, presented for recording contains type smaller than ten-point type, the document or instrument shall be accompanied by an exact typewritten or printed copy that meets the requirements of this section.

(c) Each document shall be of sufficient legibility to produce a clear reproduction. If a document or instrument, other than a plat or survey or a drawing related to a plat or survey, is not sufficiently legible to produce a clear reproduction, the document or instrument shall be accompanied by an exact typewritten or printed copy that meets the type size requirements of paragraph (b) and shall be recorded contemporaneously as additional pages of the document or instrument.

(d) Each document or instrument, other than a plat or survey or a drawing related to a plat or survey, shall be on white paper of not less than twenty-pound weight. All text within the document or instrument shall be of sufficient color and clarity to ensure that the text is readable when reproduced from the record.

(e) All signatures on a document or instrument shall be in black or blue ink and of sufficient color and clarity to ensure that the signatures are of sufficient legibility to produce a clear reproduction when the document or instrument is reproduced from the record. The corresponding name shall be typed, printed or stamped beneath the original signature. The typing or printing of a name or the application of an embossed or inked stamp shall not cover or otherwise materially interfere with any part of the document or instrument except where provided by law. Failure to print or type signatures as required in this paragraph does not invalidate the document or instrument.

(f) The first page of each document or instrument, other than a plat or survey or a drawing related to a plat or survey, shall have a top margin of at least three (3) inches of vertical space from left to right which shall be reserved for the recorder's use. All other margins on the document or instrument shall be a minimum of three-fourths (3/4) of one (1) inch:

*i. Nonessential information including, but not limited to, form numbers or customer notations may be placed in a margin other than the top margin. A document may be recorded if a minor portion of a seal or incidental writing extends into a margin. The recorder shall not incur any liability for failure to show a seal or information that extends beyond the margin of the permanent archival record.*

*ii. Each document or instrument, other than a plat or survey or a drawing related to a plat or survey, that is presented for recording and that contains any of the following information shall have that information on the first page below the three-inch margin:*

*(i.) The name, physical business mailing address and business or employment telephone number of the individual who prepared the document; and the name, mailing address and telephone number of every grantor, grantee, borrower, beneficiary, trustee or other party to the instrument.*

*(ii.) A return address.*

*(iii.) The title of the document or instrument.*

*(iv.) Any address and telephone number required by Section 27-3-51, Mississippi Code of 1972.*

*(v.) The legal description of the property or indexing instruction per Section 89-5-33(3). If there is insufficient space on the first page for the entire legal description or the entire indexing instruction, immediately succeeding pages shall be used.*

*iii. The following documents or instruments are exempt from the format requirements of this section:*

*(i.) A document or instrument that was executed before July 1, 2009.*

*(ii.) A military separation document or instrument.*

*(iii.) A document or instrument executed outside the United States.*

*(iv.) A certified copy of a document or instrument issued by a court or governmental agency, including a vital record.*

- (v.) A document or instrument where one (1) of the original parties is deceased or otherwise incapacitated.
- (vi.) A document or instrument formatted to meet court requirements.
- (vii.) A federal tax lien.
- (viii.) A filing under the Uniform Commercial Code.

*iv. The recorder shall record a document or instrument that does not substantially conform to the format standards specified in subsections (1) and (2) of this section upon payment of an additional recording fee of Ten Dollars (\$ 10.00) per document or instrument. The fee shall be charged only for documents or instruments dated on or after July 1, 2009; this fee may not be charged for those documents or instruments specifically exempted in subsection (3).*

*v. Failure to conform to the format standards specified in this section does not affect the validity or enforceability of the document or instrument. Miss. Code Ann. Section 89-5-24.*

## **2. Required Terms and Restrictions In All Leases**

### **a. Mandatory Reservations**

All leases for school trust lands are subject to mandatory statutory reservations. The managing board reserves:

*i. Title to all timber and forest products growing or that may come to grow or be located on the premises.*

*ii. Title to oil, gas, and all other surface and subsurface minerals, liquids and gasses.*

*iii. The right to ingress and egress to remove the natural resources listed above.*

*iv. The right to grant or sell easements and rights-of-way across the leased premises for a road, highway, railroad, or any public utility line, provided only that the leaseholder be paid a reasonable rental for the unexpired term of his lease by the grantee of such right-of-way.*

*v. The right to immediate cancellation of the lease and ejectment of the lessee in the event the lessee commits, causes to be committed, or permits the commission of any act of waste on the leased premises.*

*Miss. Code Ann. Section 29-3-85.*

### **b. Prohibition against cutting timber and forest products**

“In all surface leases of sixteenth section land made by the board of education, . . . no timber shall be cut and used by the lessees except for fuel and necessary repairs and improvements on the leased premises.”

*Miss. Code Ann. Section 29-3-85.*

### **c. Premises subject to zoning restrictions**

“Nothing in this chapter shall be construed to supersede or modify any power or authority of a county, municipality, or combination thereof, or any zoning or planning board or agency, or similar public authority, to adopt and enforce zoning or land use laws, ordinances or regulations.”

*Miss. Code Ann. Section 29-3-132.*

### **d. Payment of Taxes**

“Sixteenth section lands reserved for the use of schools, or lands reserved or granted in lieu of or as a substitute for the sixteenth sections, shall be liable, after the same shall have been leased, to be taxed as other lands are taxed during the continuance of the lease, but in case of sale thereof for taxes, only the title of the lessee or his heirs or assigns shall pass by the sale.” *Miss. Code Ann. Section 29-3-71.*



“Where any school land, generally known as sixteenth sections, reserved for the use of schools, or land reserved or granted in lieu of or substituted for sixteenth sections lies within or partly within any drainage district created under the laws of this state, and will be benefited by such drainage district, such land so benefited shall be liable for its pro rata share of the costs, expenses, taxes, and assessments relating to said district as if owned by an individual, and shall be assessed accordingly, as other lands are assessed. But in case of a sale of such lands for such taxes or assessments, only the title of the lessee holding such lands under lease at the time of the sale shall pass by the sale.

Where such sixteenth section land, or land taken in lieu thereof, shall be held by any lessee, whether his lease shall have heretofore been acquired or shall hereafter be acquired, all such drainage taxes and assessments accruing thereon during such lease shall, in the discretion of the board of education, either be paid by the lessee, his grantees or assigns, or by the board of education, but the liability for such drainage taxes shall be fixed by the lease contract when said lands are leased.” *Miss. Code Ann. Section 29-3-73.*

***e. Cancellation on Waste***

“If any surface lessee of any such sixteenth section land shall commit, cause to be committed, or permit the commission of any act of waste on any sixteenth section lands under lease to such lessee, then such lease shall thereupon, as to such lessee, cease and terminate and shall thenceforth be null and void; and the board of education shall have the right to institute an action in any court of competent jurisdiction to secure the cancellation of same of record, to recover damages for such waste, and to maintain an action in ejectment to recover possession of the same.” *Miss. Code Ann. Section 29-3-85.*

***f. Annual Payment of Ground Rental***

“[T]he Legislature may provide for the lease of sixteenth section lands . . . for a ground rental, payable annually, and in the case of uncleared lands may lease them for such short terms as may be deemed proper in consideration of the improvement thereof, with right thereafter to lease for a term or to hold on payment of ground rent. . . .” *Miss. Const. Article 6, Section 211 (a).*

“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.” *Miss. Code Ann. Section 29-3-69.*

“Said hunting and fishing rights shall be leased to the person offering the highest annual rental.” *Miss. Code Ann. Section 29-3-41.*

***g. Maximum Term, Size Restrictions, Rent Requirements, and Rent Adjustment***

Each classification and particular uses within a classification have a maximum length the lease may be in force, size of the leased premises, and minimum rent:

<b>Classifications</b>	<b>Maximum Term</b>	<b>Maximum Size</b>	<b>Rent Minimum</b>	<b>Rent Adjustment</b>
Agricultural	5 years	No limit	Board discretion	Not required
Rice and Pasturage	10 years	No limit	Board discretion	Not required
Hunting and Fishing	15 years	No limit	Board discretion	<= 10 years
Commercial	40 years	No limit	5% of fee value	<= 10 years
Industrial	40 years	No limit	5% of fee value	<= 10 years
Residential	40 years	5 acres	Fair market rental	Optional
Farm Residential	40 years	160 acres	Fair market rental	Optional
Recreational	40 years	No limit	Fair market rental	<= 10 years
Catfish Farming	40 years	No limit	Fair market rental	<= 10 years
Other	40 years	No limit	Fair market rental	<=10 years
<b>Special Uses</b>				
School Uses	50 years	No limit	No compensation	Not applicable
Qualified Churches	99 years	3 acres	Fair market rent	>= 25 years
Permanent Easements	indefinite	No limit	Fee value	Not applicable
State Parks	99 years	No limit	Fair market rent	<=10 years
Public Parks	50 years	No limit	Fair market rent	<=10 years
Uncleared lands	Short terms	No limit	Improvements	Not applicable

***i. Maximum Term***

*(i.) Agricultural (10 years rice and pasturage, 5 years all others)*

“Sixteenth section lands, . . . classified as agricultural may be leased for the cultivation of rice, or pasturage, for a term not to exceed ten (10) years. All other sixteenth section or lieu lands classified as agricultural may be leased for a term not exceeding five (5) years.”

*Miss. Code Ann. Section 29-3-81(1).*

“[T]he Legislature may provide for the lease of sixteenth section lands for a term of years not exceeding twenty-five (25) years for . . . agricultural lands.” *Miss. Const. Article 6, Section 211(1).*

*(ii.) Hunting and Fishing (15 years)*

“[T]he board of education may grant leases to the surface of said lands classified as forest, which are limited to hunting and fishing rights and activities in relation thereto, and which shall not extend for a period longer than fifteen (15) years.” *Miss. Code Ann. Section 29-3-41*

“[T]he Legislature may provide for the lease of sixteenth section lands for a term of years not exceeding twenty-five (25) years for forest . . . lands.” *Miss. Const. Article 6, Section 211(1).*

*(iii.) Commercial, Industrial, Residential, Farm Residential, Recreational, Catfish Farming, Other (40 years)*

“[T]he legislature may provide for the lease of sixteenth section lands for a term of years . . . not exceeding forty (40) years for all other classifications [than forest or agricultural classified lands]. *Miss. Const. Article 6, Section 211(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.” *Miss. Code Ann. Section 29-3-69.*

*(iv.) School Uses (50 years)*

“[S]uch dedication and reservation shall be for such length of time, not exceeding fifty (50) years. . . .” *Miss. Code Ann. Section 29-3-87.*

*(v.) Qualified Churches (99 years)*

“The Legislature may authorize the lease of not more than three (3) acres of sixteenth section lands or lands granted in lieu thereof for a term not exceeding ninety-nine (99) years . . . 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.” *Miss. Const. Article 6, Section 211(1).*

“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.” *Miss. Code Ann. Section 29-3-69.*

*(vi.) Permanent Easements (perpetuity; reversion)*

Pursuant to *Miss. Code Ann. Section 29-3-91(1)*

Historically, the Secretary of State has as policy favored annual payment easements, with the exception for entities with the Federal right of condemnation and for roadways. All lump-sum, paid up leases must contain a reverter clause in the event they are no longer needed. Attorney General Opinion Biggs, January 2, 1987.

*(vii.) State Parks (99 years)*

“The setting aside, reservation and dedication of any such sixteenth section lands, or lands granted in lieu thereof by a board of education to the state park commission for the purpose of locating a state park thereon may be for a length of time not exceeding ninety-nine (99) years.” *Miss. Code Ann. Section 29-3-87.*

*(viii.) Public parks and recreation areas (50 years)*

As this use is permitted “in the same manner and subject to the same provisions hereinabove set forth,” the term limitation of 50 years is the maximum time allowed by law for this use. *See Miss. Code Ann. Section 29-3-87.*

*(ix.) Uncleared lands (such short terms as may be deemed proper)*

“[T]he Legislature may provide for the lease of sixteenth section lands . . . for a ground rental, payable annually, and in the case of uncleared lands may lease them for such short terms as may be deemed proper in consideration of the improvement thereof, with right thereafter to lease for a term or to hold on payment of ground rent. . . .” *Miss. Const. Article 6, Section 211(a).*

“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.” *Miss. Code Ann. Section 29-3-69.*

**ii. Maximum Size**

*(i.) Agricultural, Forestry, Commercial, Industrial, Recreational, Catfish Farming, Other, School Uses, Easements, Parks, and Uncleared lands (no limitation)*

The law provides for no size limitations for these classifications and uses and there is no comprehensive size limitation. The Secretary of State recommends limiting the leased or dedicated premises to only “the amount of land reasonably required for immediate use and for such future expansion as may be reasonably anticipated.” See e.g. *Miss. Code Ann. Section 29-3-29*.

*(ii.) Residential (5 acres)*

“Residential land” shall mean any tract of land upon which the lessee or board-approved sub-lessee is residing. Such lands . . . shall not exceed five (5) acres. *Miss. Code Ann. Section 29-3-33(e)*.

*(iii.) Farm Residential (160 acres)*

“Farm residential land” shall mean any tract of land upon which a leaseholder resides not exceeding one hundred sixty (160) acres in size existing on July 1, 1978, which is utilized for agricultural purposes. Provided, however, that farm residential land may consist of two (2) noncontiguous tracts not exceeding one hundred sixty (160) acres in the aggregate (a) with reasonable easements connecting the residential and outlying tracts; or (b) within the residential tract situated a distance not exceeding one and one-half (1 1/2) miles from the outlying tract. Provided further that no sixteenth section lands or lands granted in lieu thereof, situated in a county lying wholly or partially within a levee district shall be classified as farm residential land. *Miss. Code Ann. Section 29-3-33(f)*.

*(iv.) Qualified Churches (3 acres)*

“The Legislature may authorize the lease of not more than three (3) acres of sixteenth section lands or lands granted in lieu thereof for a term not exceeding ninety-nine (99) years . . . 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.”  
*Miss. Const. Article 6, Section 211(1)*.

“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. *Miss. Code Ann. Section 29-3-69*.

**iii. Rent Minimums and Maximums**

*(i.) Agricultural and Hunting and Fishing (Board Discretion)*

There is no minimum bid requirement in the law for initial bids. For leases negotiated by private contract, the minimum bids are the highest bid received in response to the public notice.

A board may set, and in its discretion publish, minimum bids for the right to lease these lands.

*(ii.) Commercial and Industrial (5% of fee value)*

“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 and improvements not owned by the school district.” *Miss. Code Ann. Section 29-3-63(2)*.

(iii.) *Catfish Farming, Farm Residential, Residential, Recreational, Other (fair market rental value)*

“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.” *Miss. Code Ann. Section 29-3-63(2)*.

(iv.) *Farm Residential and Residential (will not exceed fair market rental value)*

“In leases of land 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.” *Miss. Code Ann. Section 29-3-69*.

(v.) *School Uses (no compensation)*

“[T]he board shall assure that adequate compensation is received for all uses of the trust lands, except for uses by the public schools.” *Miss. Code Ann. Section 29-3-1(1)*.

(vi.) *Qualified Churches, State Parks, and Public parks and recreation areas (fair market rental value)*

No provision is made for the determination of rent in the statute for these uses, and there is no exemption from the requirement that the managing board “shall assure that adequate compensation is received for all uses of the trust lands.” *Miss. Code Ann. Section 29-3-1(1)*. Therefore, the Secretary of State recommends treating leases for these uses as requests for leases by private contract outlined above, with the rent to be determined by independent appraisal.

(vii.) *Permanent Easements (free; like-kind swap, fee value)*

Whenever the United States or any agency thereof, or the state or any agency or subdivision thereof, or any private organization, corporation, association, or person acquires, by condemnation or otherwise, any easement or right-of-way across any sixteenth section land or lieu land, then adequate compensation therefor shall be paid by the party acquiring the same to the board of education concerned; and the sum or sums so received shall be placed in the principal fund or funds of the school district or districts concerned. *Miss. Code Ann. Section 29-3-91(1)*.

The policy of the Secretary of State has been that only entities with the Federal right of condemnation, and for road usage, be allowed to obtain an easement for a perpetual term, upon a one-time lump sum payment. Electric companies, gas companies, telephone companies, rural water associations, rural electric associations have varying levels of condemnation authority but general no right to condemn State property.

If a school board negotiates with an entity and allows a one-time lump sum payment the Secretary of State suggests the value paid include any costs that might have been incurred if the entity had to litigate access.

A reverter clause must be included in all one-time lump sum payment easements in the event the easement is no longer used for its purpose. Attorney General Opinion, Briggs, January 2, 1987.

... the local school board is authorized to grant an easement for ingress and egress over sixteenth section land or lieu land in exchange for a similar easement upon adjoining land where the exchange of easements affords substantial benefit to the sixteenth section land; provided, however, the exchange must be based upon values as determined by a competent appraiser, with any differential in value to be adjusted by cash payment. Any easement rights granted over sixteenth section land under such authority shall terminate when the easement ceases to be used for its stated purpose.

*Miss. Code Ann. Section 37-7-301(aa)*.

*(viii.) Uncleared Land (value of improvements)*

“[T]he Legislature may provide for the lease of sixteenth section lands . . . for a ground rental, payable annually, and in the case of uncleared lands may lease them for such short terms as may be deemed proper in consideration of the improvement thereof, with right thereafter to lease for a term or to hold on payment of ground rent. . . .” *Miss. Const. Article 6, Section 211(a)*.

“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.” *Miss. Code Ann. Section 29-3-69*.

**iv. Rent Adjustment**

*(i.) Agricultural and Hunting and Fishing (None Required)*

Agricultural cannot run longer than ten (10) years and extensions of those leases provide for rental adjustment. Nothing further is necessary for the board to do.

*(ii.) Hunting and Fishing, Catfish Farming, Commercial, Industrial, Other, Recreational, State Parks, Public parks and recreational areas (No less than Once every ten (10) Years)*

“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.

*Miss. Code Ann. Section 29-3-69.*

*(iii.) Residential and Farm Residential (optional)*

“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.”

*Miss. Code Ann. Section 29-3-69.*

*(iv.) School Uses (not required)*

Since no rent is required for school uses, no adjustment is required.

*(v.) Qualified Churches (not less than once every 25 years)*

“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.” *Miss. Code Ann. Section 29-3-69.*

*(vi.) Permanent Easements (not required)*

Since the land is either dedicated for public use or condemned for public use, the board should either receive in-kind benefits such as improved access or leasing value, or cash payments due to purchase or condemnation of a right-of-way. No additional consideration is necessary.

(vii.) *Uncleared lands (none required)*

Leases for uncleared lands are “for such short terms as may be deemed proper in consideration of the improvement thereof.” Since the school is receiving the value of the improvement to the land, and there are no other provisions for rent adjustment for uncleared lands, none is required.

### **3. Required terms and restrictions in specific leases**

#### ***a. Agricultural***

*i. Leases to expire December 31; new lease executed before expiration of current lease.*

“All leases of land classified as agricultural shall be for a term to expire on December 31.” Miss. Code Ann. Section 29-3-81(1)

#### ***b. School Uses***

*i. Dedication to specific use; resolution of board:*

“Notwithstanding the provisions of this or any other statute, the several boards of education are hereby authorized and empowered, in their discretion and by resolution spread upon the minutes, to set aside, reserve, and dedicate any available sixteenth section lands or lands in lieu thereof for use by such school district as a site for school buildings . . . upon such terms and conditions as the board of education, in its discretion, shall deem proper. *Miss. Code Ann. Section 29-3-87.*

*ii. Compensation to lessee; surrender of lease; condemnation of leasehold interest*

“No sixteenth section or lieu land which is subject to an existing lease shall be set aside, dedicated, and reserved as a school building site . . . under the provisions of this section unless the school district involved shall acquire the unexpired leasehold interest from the leaseholder, or unless such lease and leasehold interest shall be surrendered and relinquished by the leaseholder.” *Miss. Code Ann. Section 29-3-87.*

“The board of education is authorized and empowered to acquire in its own name by purchase, contribution, or otherwise all land situated in its district within sixteenth section or lieu lands and under a lease contract which shall be necessary and desirable in connection with the construction of any public school building or structure. If the board shall be unable to agree with the lessee of any such land in connection with any such project, the board shall have the power and authority to acquire any such land by condemnation proceedings in the manner otherwise provided by law and, for such purpose, the right of eminent domain is hereby conferred upon and vested in said board.” *Miss. Code Ann. Section 29-3-88.*

*iii. Surface Only to be used*

“The reservation or dedication shall cover the surface of said lands only and shall not prevent the board of education from leasing said lands for oil, gas, and mineral exploration and development in a manner otherwise provided by law.” *Id.*

#### ***c. Public parks and recreation areas***

*i. Dedication to specific use; resolution of board*

This use, like school uses, requires a dedication by the board of education to a specific use. Where the land is no longer used for that purpose, the dedication expires. See above.

*ii. Timber management agreement*

“In the same manner and subject to the same provisions hereinabove set forth the board of education having a timber management and marketing agreement with the state forestry commission or National Forest Service, may set aside, reserve and dedicate any available sixteenth section lands or lands granted in lieu thereof . . . to be utilized for public parks and recreation areas. *Miss. Code Ann. Section 29-3-87.*

*iii. Forestry-classified lands only*

“[T]he board of education . . . may set aside, reserve and dedicate any available sixteenth section lands or lands granted in lieu thereof, which has been classified as forest land under the provisions of section 29-3-31 et seq., Mississippi Code of 1972, to be utilized for public parks and recreation areas.” *Id.*

*iv. Surface Only*

As this use is permitted “in the same manner and subject to the same provisions hereinabove set forth,” only the surface of the land may be dedicated to use as a public park and recreation area, with the school retaining the right to explore for and produce oil, gas, and minerals. See School Uses above.

*v. No lease on land*

“[T]he board of education . . . may set aside, reserve and dedicate any available sixteenth section lands or lands granted in lieu thereof . . . to be utilized for public parks and recreation areas.”

*Miss. Code Ann. Section 29-3-87.*

No provision is made to condemn the leasehold interest of an existing lease to use the premises as a public park or recreation area.

**d. State Parks**

*i. Specifically dedicated for use as a state park by board of education*

This use, like school uses, requires a dedication by the board of education to a specific use.

In this case, the dedication must specifically state the use will be for a state park. Where the land is no longer used as a state park, the dedication expires. See above.

*ii. Dedication by Governor for use as a state park; closing and reversion*

The Governor is responsible for declaring dedications of land for use as a state park. See *Miss. Code Ann. Section 55-3-7*. The Governor is likewise responsible for closing state parks. See *Miss. Code Ann. Section 55-3-101*. A proclamation closing a park located on school trust land should operate to end the dedication by the board of education and the lease for such land should explicitly provide for this.

*iii. Surface Only*

As this use is permitted “in the same manner and subject to the same provisions hereinabove set forth,” only the surface of the land may be dedicated to use as a public park and recreation area, with the school retaining the right to explore for and produce oil, gas, and minerals. See School Uses above.

*iv. No lease on land*

“[T]he board of education . . . may set aside, reserve and dedicate any available sixteenth section lands or lands granted in lieu thereof . . . to be utilized for public parks and recreation areas.”

*Miss. Code Ann. Section 29-3-87.*

No provision is made to condemn the leasehold interest of an existing lease to use the premises as a public park or recreation area.



## 4. Optional Terms

### **a. Insurance**

“Any leaseholder shall have the right at his own expense to keep his interest in the buildings and other improvements on the leased premises insured against loss or damage by fire and windstorm.”

*Miss. Code Ann. Section 29-3-75.*

### **b. Rent Escalation Clauses**

“The board of education may use rent escalation clauses or other such devices to adjust rental amounts during the lease term.” *Miss. Code Ann. Section 29-3-65.*

### **c. Option to renew for 25 years (Commercial, Industrial, Residential, Farm Residential, Recreational, Other, Catfish Farming)**

“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.”

*Miss. Code Ann. Section 29-3-69.*

### **d. Subleasing and Assignments**

“Subleasing or assignment of any lease of school trust 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.” *Miss. Code Ann. Section 29-3-69.*

### **e. Security Interest in Crops (Agricultural)**

“The board of education may take the notes for the rent and attend to their collection. The board has the right and remedies for the security and collection of such rents given by law to the agricultural landlords.” *Miss. Code Ann. Section 29-3-81(3)(d).*

“In the case of the leasing of agricultural lands, the school district shall have the same rights and remedies for the security and collection of such rent as are given by law to agricultural landlords.”

*Miss. Code Ann. Section 29-3-57. See also Miss. Code Ann. Section 89-7-51.*

### **f. Cemeteries (Church Use)**

Churches frequently lease land for cemeteries, or such lands are part of the current church grounds. It is the policy of the Secretary of State that such uses permanently encumber future uses of the land, constituting permanent damage to trust lands, for which the school should be reimbursed. As there is no other use for the land, payment should be in the form of obtaining fee value for the property, in addition to the rental payment or a promise to maintain the property into perpetuity. The Secretary of State also recommends managing boards fence existing leases and authorize no additional land to this use.

**g. Improvements**

Where the lease provides explicitly for the disposition of improvements at the end of the lease term, such language will control.

Where the lease does not provide for the disposition of improvements, either:

- i. The lessee must return the property to the condition it was in at the beginning of the lease, or in better condition, or*
- ii. The improvements become the property of the Lessor, or*
- iii. Both, to the satisfaction of the managing board.*

## **D. Improvements**

### **1. Generally**

The premises of a public school trust land lease may include an improvement such as a house, mobile home, barn, or storefront. The lessee may also wish to add another improvement, tear down existing improvements, or modify existing improvements to the property.

The lessee's ability to make use of these improvements will depend on the ownership of these improvements, the language in the lease agreement, and the managing board's desire to maintain control of the look of the premises.

### **2. Ownership of improvements controlled by lease language**

During the term of the lease, all improvements made to the premises by the lessee will be the property of the lessee unless the lease agreement states otherwise. The lease should always state the disposition of improvements at the conclusion of a lease. The matter of ownership usually does not become an issue until the end of the lease agreement (by early termination, forfeiture, or expiration of the lease). At that time, there are several options:

- a. All improvements become the property of the Lessor without payment*
- b. The Lessor purchases the improvements from the Lessee*
- c. The lessee removes the improvements (either before the lease ends or a reasonable time afterwards, such as ten (10) days)*
- d. The lessee retains ownership of the improvements for a limited time (usually long enough to facilitate the sale of the improvements to the new lessee)*
- e. The lending company assumes ownership of the improvements and responsibility for performing the terms of the lease contract*
- f. The lessee pays for the restoration of the property to its original condition*
- g. The lessee abandons any interest in the property*
- h. The lessee renews the lease and retains ownership of the improvements*

A lease can specifically provide for any of these outcomes. See *Miss. Code Ann. Section 89-7-3*. When the lease does not specifically state the outcome, all improvements will become the property of the lessor.

### **3. Lessor authorized to purchase improvements: Forest classified lands**

“If any sixteenth section land is declared forest land at the end of a lease, the board of education shall make an appraisal and either pay a suitable amount to the lessee for the improvements or allow lessee to remove the same from the section land.” *Miss. Code Ann. Section 29-3-43.*

### **4. Improvements on leases in effect prior to July 1, 1978: lessee not charged in successive periods.**

“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.”

*Miss. Code Ann. Section 29-3-65.*

### **5. Agricultural Improvements**

As part of obtaining a one hundred five percent “(105%) Second Bid” or a one hundred twenty percent “(120%) Renewal” of an agricultural lease, a lessee must make board-authorized improvements to the land. These improvements will become the property of the Lessor unless the lease agreements states otherwise.

### **6. Lessor may purchase improvements where illegal leases**

In certain circumstances where a lease is void, the chancellor may award the lessee the cost of improvements made to the property that the lessee no longer holds title to:

“Should it appear to the court that the lease under which the complainant holds or claims title was illegally made and void, then the court may proceed to have an account stated of the amount of money, principal and interest which has actually been paid in consideration for such lease by the complainant and those under whom he may claim, and an account of the rents, issues and profits arising from said land, less the cost of any necessary, permanent, valuable, and not ornamental improvements made upon said land, and may decree any excess of money paid and interest and cost of improvements over the rent, issues, and profits to complainants. Such decree shall be a lien upon the rents, issues and profits accrued or to accrue from the particular sixteenth section involved in such suit until the same is fully paid and satisfied. Upon the rendition of such decree, the secretary of the board of education shall issue a warrant for the amount decreed to be paid to the complainant against the funds of such sixteenth section, and the same shall be paid out of the first available money to the credit of such funds. Any excess in the amount of the rents, issues and profits, after deducting the cost of improvements and amount paid by complainant, shall be decreed against him, together with a writ of possession in favor of the defendant. All court costs in suits brought shall be paid by the party or parties seeking relief under the provisions hereof.”

*Miss. Code Ann. Section 29-3-107.*

### **7. Lessor may sell unused buildings on unleased premises**

“Where buildings are located on sixteenth section lands which are not subject to an existing lease and such buildings have ceased to be used for the purpose for which they were constructed, the board of education may sell and dispose of such buildings pursuant to the procedures prescribed in Sections 37-7-451 through 37-7-483.”

*Miss. Code Ann. Section 29-3-77.*

“When any school district shall own any land, buildings or other property that is not used for school or related school purposes and not needed in the operation of the schools of the district, the school board of such school district may sell and convey such land, buildings or other property in the manner provided in Sections 37-7-453 through 37-7-457.” *Miss. Code Ann. Section 37-7-451.*

“The Legislature hereby declares that it is its intention and purpose to authorize and permit each and every type of disposition of property permitted in Sections 37-7-471 through 37-7-481 and by each and every type of transfer mentioned, and by every combination possible thereunder.

Said sections shall be construed to be supplemental to Sections 37-7-451 through 37-7-457 and Sections 37-7-501 through 37-7-511, and to all other statutes dealing with the subject matter thereof, and shall be deemed to provide a supplemental, additional and alternate method for the disposition of school buildings, land, property and other school facilities which are no longer to be used for school purposes and are not needed in the operation of the schools of the district or for the conveyance of a partial ownership interest or for exchange, sale or conveyance of an undivided interest in school buildings, land, property or other school facilities that may yield a long-term economic value to the district, in the discretion of the local school board, based on an objective cost/benefit analysis as to whether the proposal shall maximize the interest of the taxpayers.” *Miss. Code Ann. Section 37-7-483.*



## V. Mineral Leasing

### A. General Duties

1. Superintendent
2. Board of Education
3. Secretary of State

### B. Procedure for leasing lands for mineral production

1. What minerals may be leased
  - a. Any minerals located on or beneath public school trust lands
  - b. Prohibition from leasing lands sold prior to 1890
2. How minerals are leased
  - a. Interested party may nominate; board may approve on own motion
  - b. Lease to be by public contract, competitive bid
  - c. Lease terms to be determined in advance of publication
  - d. Consultation with Secretary of State and other state agencies (optional)
  - e. Board-approved minimum bonus
  - f. Public Notice
    - i. Time: at least three weeks in county newspaper, county-wide circulation
    - ii. Form of Notice: legal description of lands, inviting sealed proposals
    - iii. Internet Publication: Secretary of State's Office (optional)
    - iv. Industry Publications: available resources
  - g. Lease available for inspection prior to bid
  - h. Only bonus payment to be bid; sand, gravel, clay, and fill dirt excepted
  - i. Bids for sand, gravel, clay, and fill dirt to be taken in price per cubic yard truck measure
  - j. Lease awarded to highest and best bidder (clay, sand, gravel, fill dirt); highest bidder (all others)
  - k. Lease to be let at regular board meeting only
  - l. File lease in chancery clerk's office
  - m. Send filed and stamped copy of lease with book and page to Secretary of State

### C. The Lease Document

1. Format
2. Required terms and restrictions in all leases
  - a. Annual payment of rental; royalty
  - b. Surface minerals lessee to protect and compensate existing surface lessee, board
  - c. Ingress and egress; use of surface for mining and processing
  - d. Reimbursement for damage to surface

- e. Subsequent surface lease subject to mineral lease terms
- f. No withholding of Severance Taxes
- g. Maximum Term, Royalty Requirements
  - i. Maximum Primary term: 5 years, may be held by operations (not including coal)
  - ii. Maximum Primary term Coal: 20 years
  - iii. Minimum Royalties:
    - (i.) Oil: 1/8th of production
    - (ii.) Gas: 1/8th of sales
    - (iii.) Coal: 1/20th per short ton (2,000 pounds)
    - (iv.) Sulphur: 50 cents per long ton (2,000 pounds)
    - (v.) Salt: 5 cents per ton
    - (vi.) Sand, Gravel, Clay and fill dirt: regular market price including royalty
    - (vii.) All other minerals: 1/16th in kind or of value at well or mine
    - (viii.) Minimum Bonus Payment: \$1.00 per acre
- 3. Optional Lease Terms
  - a. Pugh clauses
  - b. Uniform oil and gas lease rider
  - c. Assignments and Subleasing

**D. Renewal of mineral leases**

- 1. Generally: lessee cannot renew lease without contract through public bid
- 2. Coal: renewal bonus to be bid
- 3. Oil and gas leases pre-dating 1991: appraisal

**E. Mineral lessee's rights**

- 1. To enter premises and explore for oil and gas or other minerals, and to produce them
- 2. To file suit to quiet title to minerals
- 3. To pass lease on to heirs

## A. General Duties

### 1. Superintendent

Similar to surface leasing, the Superintendent is the day-to-day manager of mineral leasing. The superintendent is responsible for receiving and maintaining records, issuing notices and collecting rents and royalties, and reporting as necessary to the Secretary of State. See below for further details.

### 2. Board of Education

The managing board of education sets the terms of mineral leases in advance, receives bids for mineral leases, and takes whatever action it deems best in its discretion for final approval of leasing.

### 3. Secretary of State

The Secretary of State provides free advice and analysis of market conditions for oil and gas leasing and review of the proposed terms of all mineral leases. The Secretary of State also receives and maintains copies of:

- a. Lease records and riders*
- b. Royalty and bonus payments*
- c. Division orders and rulings of the state oil and gas board*

The Secretary of State's office also performs royalty payment audits upon request.

## B. Procedure for leasing lands for mineral production

### 1. What minerals may be leased

#### *a. Any minerals located on or beneath public school trust lands*

“The board of education is hereby authorized and empowered, in its discretion, to let, demise and lease sixteenth section lands, included in the Choctaw Purchase, or the lands held in lieu of same whether located therein or elsewhere, reserved for the support of township schools, for exploration, mining, production and development by any method of oil, gas, and minerals, including (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, upon such terms and conditions and for such consideration as the board of education, in its discretion, shall deem proper and advisable.” *Miss. Code Ann. Section 29-3-99.*

“Oil, gas and minerals’ shall mean the following: (i) oil, gas, carbon dioxide and other gaseous substances; (ii) metals, compounds of metals, or metal-bearing ores; (iii) coal, including anthracite, bituminous, subbituminous, lignite and their constituent components and products and minerals intermingled or associated therewith; and (iv) sulphur, salt, sand, gravel, fill dirt and clay, in, on and under the lands classified above. Such oil, gas and minerals shall be a classification of land separate and distinct from the classifications set forth above in paragraphs (a) through (h) inclusive.” *Miss. Code Ann. Section 29-3-33(j).*

The board may also authorize, by surface lease, a lessee to conduct geological and seismic testing for gas and minerals. See the Surface Leasing tab.

***b. Prohibition from leasing lands sold prior to 1890***

“The board of education shall not lease any sixteenth section land that was sold and conveyed in fee simple forever by a board of supervisors prior to 1890.” *Miss. Code Ann. Section 29-3-99.*

**2. How minerals are leased**

***a. Interested party may nominate; board may approve on own motion***

The managing board, through appropriate resolution, motion, and vote, determines which lands to lease for mineral production and the terms of the lease. As a matter of usual practice, someone interested in producing minerals from public school trust lands makes a request to the superintendent or board to lease the property. At that point, the terms of the lease are set. The board then votes to advertise for and receive sealed bids from all interested parties for the mineral rights. However, a board may take this action on its own, without a request from interested parties, if it desires.

Included with this manual, and available on the Secretary of State’s website are checklists, mineral lease forms, a standard oil and gas lease rider, and board resolutions which may be used to lease trust lands for mineral production.

***b. Lease to be by public contract, competitive bid***

“Such leasing shall, except as hereinafter provided, be done by competitive bids only. . . .”  
*Miss. Code Ann. Section 29-3-99.*

***c. Lease terms to be determined in advance of publication***

“Before bids are requested, the board shall prescribe the form of the lease. . . .”  
*Miss. Code Ann. Section 29-3-99.*

***d. Consultation with Secretary of State and other state agencies (optional)***

The Secretary of State’s Office provides consultation services and is experienced in leasing all marketable minerals located on public school trust lands in the state. We are available to assist you in obtaining the maximum revenues for your oil and gas leases, sand and gravel leases, clay and fill-dirt leases, and coal leases. We maintain leasing data, including retained royalty interests and bonus payments for oil and gas leases, and prices for sand, gravel, clay, and fill-dirt.

We also consult with other agencies to determine a range or goal for bonus payments for oil and gas leases in unleased areas. This takes into consideration the likelihood of production. In areas where the likelihood of production is high, the board may wish to retain a higher royalty interest and expect a lower bonus payment as a result. Where the likelihood of production is lower, the board may wish to retain a lower royalty interest and obtain a higher bonus payment. We also obtain information about nearby rates and other nearby activities.

We highly recommend obtaining this information before determining the final terms of the mineral lease. For confidential inquiries, contact the Secretary of State’s office.

***e. Board-approved minimum bonus***

After the consultation discussed above, the board of education may pre-determine a minimum amount it will accept as a bonus payment for the mineral lease which is in excess of the \$1.00 minimum mentioned



as the minimum above. We recommend setting a minimum, or determining a goal for the bonus by which the board may judge the bids it receives for mineral leases.

**f. Public Notice**

**i. Time: at least three (3) weeks in county newspaper, county-wide circulation**

“Such leasing shall . . . be . . . made upon at least three (3) weeks public notice given by advertisement in a newspaper published in the county wherein such lands are situated, or if no newspaper be published in said county then in a newspaper having general circulation therein.” *Miss. Code Ann. Section 29-3-99.*

**ii. Form of Notice: legal description of lands, inviting sealed proposals**

“Such advertisement shall give an accurate legal description of the lands to be leased, inviting sealed proposals thereon to be filed with the superintendent of education.” *Miss. Code Ann. Section 29-3-99.*

**iii. Internet Publication: Secretary of State’s Office (optional)**

The Secretary of State’s Office maintains a website that publishes public notices for public contract leases. You can have a public notice for bids for oil and gas leases published online, for no charge, by emailing the notice to the Secretary of State’s office.

**iv. Industry Publications: available resources**

In addition to the county newspaper and internet publication, the board may generate more interest in mineral leases by advertising with an industry publication such as the Southeastern Oil Scout. For further information, contact the Secretary of State’s office.

**g. Lease available for inspection prior to bid**

“The lease form and the terms so prescribed shall be on file and available for inspection in the office of the superintendent from and after the public notice by advertisement and until finally accepted by the board.” *Miss. Code Ann. Section 29-3-99.*

**h. Only bonus payment to be bid; sand, gravel, clay, and fill dirt excepted**

Public contracts for mineral leases “shall have as subject to bid only the bonus to be paid by lessee. . . .” *Miss. Code Ann. Section 29-3-99.*

**i. Bids for sand, gravel, clay, and fill dirt to be taken in price per cubic yard truck measure**

“In leasing said lands for the mining and removal of clay, sand, gravel and fill dirt, the bid shall be by the cubic yard truck measure. . . .” *Miss. Code Ann. Section 29-3-99.*

**j. Lease awarded to highest and best bidder (clay, sand, gravel, fill dirt); highest bidder (all others)**

“The board of education shall award the lease to the highest bidder in the manner provided by law.” *Miss. Code Ann. Section 29-3-99.*

“In leasing said lands for the mining and removal of clay, sand, gravel and fill dirt,” the lease will be awarded “to the highest and best bidder.” *Miss. Code Ann. Section 29-3-99.*

**k. Lease to be let at regular board meeting only**

“It is further specifically provided that such leases shall not be let at a special meeting of the board of education.” *Miss. Code Ann. Section 29-3-99.*

The managing board does not need to obtain the approval of the board of supervisors for mineral leases.

***l. File lease in chancery clerk's office***

Either the board or the lessee may file the lease at the chancery clerk's office. Sometimes the lessee will delay filing until the entire area can be leased for minerals. This does not make the lease invalid. The clerk should return a copy to the board with a stamp, indicating the time and date the record was filed and the book and page where the lease is recorded. If the lessee files the lease, make sure it provides a filed, stamped copy of the lease to the board for its records.

***m. Send filed and stamped copy of lease with book and page to the Secretary of State***

Once the lease is filed, send a copy of the lease with a completed data change sheet to the Secretary of State's office for inclusion in the board's lease docket and inclusion in the annual review reports.

## **C. The Lease Document**

### **1. Format**

(1) Except as otherwise provided in subsections (3) and (4), any document or instrument presented to the clerk of the chancery court for recording shall meet the following requirements:

(a) Each document or instrument shall consist of one or more individual pages printed only on one (1) side. The document or instrument shall not consist of pages that are permanently bound or in a continuous form and shall not have any attachment stapled or otherwise affixed to any page except as necessary to comply with statutory requirements. However, the individual pages of a document or instrument may be stapled together for presentation for recording. A label that is firmly attached with a bar code or return address may be accepted for recording.

(b) All documents must be printed or typed in a font no smaller than ten-point in size. If a document or instrument, other than a plat or survey or a drawing related to a plat or survey, presented for recording contains type smaller than ten-point type, the document or instrument shall be accompanied by an exact typewritten or printed copy that meets the requirements of this section.

(c) Each document shall be of sufficient legibility to produce a clear reproduction. If a document or instrument, other than a plat or survey or a drawing related to a plat or survey, is not sufficiently legible to produce a clear reproduction, the document or instrument shall be accompanied by an exact typewritten or printed copy that meets the type size requirements of paragraph (b) and shall be recorded contemporaneously as additional pages of the document or instrument.

(d) Each document or instrument, other than a plat or survey or a drawing related to a plat or survey, shall be on white paper of not less than twenty-pound weight. All text within the document or instrument shall be of sufficient color and clarity to ensure that the text is readable when reproduced from the record.

(e) All signatures on a document or instrument shall be in black or blue ink and of sufficient color and clarity to ensure that the signatures are of sufficient legibility to produce a clear reproduction when the document or instrument is reproduced from the record. The corresponding name shall be typed, printed or stamped beneath the original signature. The typing or printing of a name or the application of an embossed or inked stamp shall not cover or otherwise materially interfere with any part of the document or instrument except where provided by law. Failure to print or type signatures as required in this paragraph does not invalidate the document or instrument.

(f) The first page of each document or instrument, other than a plat or survey or a drawing related to a plat or survey, shall have a top margin of at least three (3) inches of vertical space from left to right which shall be reserved for the recorder's use. All other margins on the document or instrument shall be a minimum of three-fourths ( 3/4) of one (1) inch. Nonessential information including, but not limited to, form numbers or customer notations may be placed in a margin other than the top margin. A document may be recorded if a minor portion of a seal or incidental writing extends into a margin. The recorder shall not incur any liability for failure to show a seal or information that extends beyond the margin of the permanent archival record.

(2) Each document or instrument, other than a plat or survey or a drawing related to a plat or survey, that is presented for recording and that contains any of the following information shall have that information on the first page below the three-inch margin:

(a) The name, physical business mailing address and business or employment telephone number of the individual who prepared the document; and the name, mailing address and telephone number of every grantor, grantee, borrower, beneficiary, trustee or other party to the instrument.

(b) A return address.

(c) The title of the document or instrument.

(d) Any address and telephone number required by *Section 27-3-51, Mississippi Code of 1972*.

(e) The legal description of the property or indexing instruction per Section 89-5-33(3). If there is insufficient space on the first page for the entire legal description or the entire indexing instruction, immediately succeeding pages shall be used.

(3) The following documents or instruments are exempt from the format requirements of this section:

(a) A document or instrument that was executed before July 1, 2009.

(b) A military separation document or instrument.

(c) A document or instrument executed outside the United States.

(d) A certified copy of a document or instrument issued by a court or governmental agency, including a vital record.

(e) A document or instrument where one (1) of the original parties is deceased or otherwise incapacitated.

(f) A document or instrument formatted to meet court requirements.

(g) A federal tax lien.

(h) A filing under the Uniform Commercial Code.

(4) The recorder shall record a document or instrument that does not substantially conform to the format standards specified in subsections (1) and (2) of this section upon payment of an additional recording fee of Ten Dollars (\$ 10.00) per document or instrument. The fee shall be charged only for documents or instruments dated

on or after July 1, 2009; this fee may not be charged for those documents or instruments specifically exempted in subsection (3).

(5) Failure to conform to the format standards specified in this section does not affect the validity or enforceability of the document or instrument. *Miss. Code Ann. Section 89-5-24.*

## **2. Required terms and restrictions in all leases**

### ***a. Annual payment of rental; royalty***

“...the board ... shall prescribe the royalty to be retained by the lessor [and] the annual rental to be paid by [the] lessee. . . .” *Miss. Code Ann. Section 29-3-99.*

Due to this requirement, the Secretary of State’s office recommends the use of the “Producers 88 (9/70) – With Pooling Provision; Mississippi, Alabama, Florida” lease form for all oil and gas leases. This is available from the Secretary of State’s office. The use of any “paid up” lease form to lease oil and gas for production is contrary to this requirement, making the lease void.

### ***b. Surface minerals lessee to protect and compensate existing surface lessee, board***

Coal, metals, precious gems, sand, gravel, fill-dirt, and clay are minerals which may lie on, or directly beneath the surface of the land. The lease to produce these minerals must include environmental safeguards to protect any lessee of the surface, and compensation to the lessee for any damage done to the leasehold estate covered under the lessee’s surface lease.

“Leases for metals, coals, sand, gravel, fill dirt or clay may be executed covering land upon which leases are outstanding for the exploration, mining, and development of oil, gas, and other minerals, provided proper safeguards are incorporated in the lease for the protection of the other leaseholders. All such leases shall contain suitable provisions for adequate compensation to the surface lessee, if any, for any damage done to the leasehold estate in such lands. . . .”

*Miss. Code Ann. Section 29-3-99.*

Also, the lease must include compensation to the managing board for use of the surface if the surface is not leased, or if a surface lease expires or is cancelled during the term of the mineral lease.

### ***c. Ingress and egress; use of surface for mining and processing***

“All such leases shall contain suitable provisions . . . for the use of a substantial portion of the surface thereof for such mining and/or developing or processing purposes, and for rights of ingress and egress. . . .” *Miss. Code Ann. Section 29-3-99.*

### ***d. Reimbursement for permanent damage to surface***

“[A]ll such leases shall further contain suitable provisions for adequate compensation to the board of education for any permanent damage done to the surface of the land or any timber thereon.”

*Miss. Code Ann. Section 29-3-99.*

### ***e. Subsequent surface lease subject to mineral lease terms***

“Any future lease of said land after expiration of the present lease thereon will be subject to the rights of any lessee under provisions hereof.” *Miss. Code Ann. Section 29-3-99.*

**f. No withholding of Severance Taxes**

The lessee, its assigns or successors, should not withhold revenues generated from the sale of minerals or the purpose of paying severance taxes. Neither the State nor the managing board of education owes severance taxes on the royalty interest retained in the lease. For example, the operator should pay severance taxes on 7/8ths of the revenue generated from the sale of oil produced under the lease where the managing board retained 1/8th interest in the oil.

**g. Maximum Term, Royalty Requirements**

There are several restrictions on mineral leases, including restrictions on length and minimum royalties. They are summarized here:

<b>Mineral</b>	<b>Max. term*</b>	<b>Max. Size</b>	<b>Minimum Bonus/Royalty</b>
Oil	5 years	No limit	\$1 per acre or 1/8 royalty
Gas	5 years	No limit	\$1 per acre or 1/8 royalty
Carbon Dioxide	5 years	No limit	\$1 per acre or 1/8 royalty
Sulphur	5 years	No limit	\$0.50 per long ton
Salt	5 years	No limit	\$0.05 per ton
Sand and Gravel	5 years	No Limit	\$ regular market price
Coal	20 years	5,000 acres	1/20 royalty
All other minerals	5 years	No Limit	1/16 royalty

\*With the exception of leases for coal, sand and gravel, all leases for minerals can be extended “so long as the lease is being maintained by other lease provisions. . .” *Miss. Code Ann. Section 29-3-99.*

**i. Maximum Primary term: 5 years, may be held by operations (not including coal)**

“Such lands shall not be leased for oil, gas, and other minerals for a primary term of more than five (5) years and so long thereafter as oil, gas or other minerals are being produced and mined from said lands, or so long as the lease is being maintained by other lease provisions, except that a lease shall in no event extend longer than permitted by Section 211 of the Mississippi Constitution.”

*Miss. Code Ann. Section 29-3-99.*

“Notwithstanding any limitation on the terms of leases provided in subsection (1) of this section, the Legislature may provide, by general law, for leases on liquid, solid or gaseous minerals with terms coextensive with the operations to produce such minerals.” Article 8, Section 211(2), Mississippi Constitution of 1890.

**ii. Maximum Primary term Coal: 20 years**

“Such lands shall not be leased for coal for a primary term of more than twenty (20) years and so long thereafter as coal is being mined and sold or utilized by lessee from such lands or from adjoining lands within a mine plan which includes such lands or so long as mining operations are being prosecuted on such lands on a continuous basis; provided, however, that any lease of coal may provide for one (1) renewal term of not more than twenty (20) years from and after expiration of the initial term upon payment by lessee of a renewal bonus of not less than One Dollar (\$1.00) per acre. Any mine plan referred

to in this paragraph shall not contain more than (5,000) acres.” *Miss. Code Ann. Section 29-3-99.*

**iii. Minimum Royalties:**

“The royalties to be paid shall not be less than ...”

(i.) Oil: One-eighth (1/8) of production

“on oil, one-eighth (1/8) of that produced and saved from said lands;”

(ii.) Gas: One-eighth (1/8) of sales

“on gas, including casinghead gas or other gaseous substances produced from said land and sold or used off the premises or in the manufacture of gasoline or other products therefrom, the market value at the well of one-eighth (1/8) of the amount realized from such sale;”

(iii.) Coal: One-twentieth (1/20) per short ton (2,000 pounds)

“on coal mined on such land and sold or utilized by lessee, one-twentieth (1/20) of the market value at the mine of each ton of two thousand (2,000) pounds;”

(iv.) Sulphur: Fifty-cents (50c) per long ton (2,000 pounds)

“except that on sulphur mined and marketed, the royalty shall be not less than Fifty Cents (50c) per long ton;”

(v.) Salt: Five cents (5c) per ton

“except, further, that on salt the royalty shall be not less than Five Cents (5c) per ton mined.”

(vi.) Sand, Gravel, Clay and fill dirt: regular market price including royalty

“In leasing said lands for the mining and removal of clay, sand, gravel and fill dirt, . . . these materials shall not be sold therefrom for less than the regular market price thereof, such price to include the value of the royalty provided for herein.”

(vii.) All other minerals: One-sixteenth (1/16) in kind or of value at well or mine

“on all other minerals produced, mined and marketed, one-sixteenth (1/16) either in kind or value at the well or mine at lessor’s election. . . .” *Miss. Code Ann. Section 29-3-99.*

(viii.) Minimum Bonus Payment: \$1.00 per acre

“Said school lands shall not be leased for oil, gas, and minerals, including metals, compounds of metals, or metal-bearing ores, coal and clay, exploration, mining, production, and development for a bonus of less than One Dollar (\$1.00) per acre and a renewal rental or renewal bonus of less than One Dollar (\$1.00) per acre per annum during the primary term.” *Miss. Code Ann. Section 29-3-99.*

### **3. Optional Lease Terms**

#### **a. Pugh clauses**

If you do not use the form rider, we highly recommend including horizontal and vertical Pugh clauses which permit the expiration of a lease for lands not being utilized by the Lessee for production. Please see the form Rider or contact the Secretary of State’s office for more information.

#### **b. Uniform oil and gas lease rider**

The Secretary of State’s office has developed, in conjunction with the Mississippi Development Authority, a rider to attach to all oil and gas leases. This rider contains many clauses favorable to the managing board, including required amendments to the Producers 88 lease form, Pugh clauses, reporting requirements, and notice requirements. We recommend using it, and it can be obtained from the office by contacting the Secretary of State’s office.

### ***c. Assignments and Subleasing***

The terms of a mineral lease may allow the lessee to freely assign or sublease the interest conveyed in the lease. Where the lease does not discuss assignment or subleasing, the approval of the board is required before it can be done. The lease terms may also require this approval.

“Subleasing or assignment of any lease of school trust 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.” *Miss. Code Ann. Section 29-3-69.*

For any lease executed before July 1, 1978, the language of the lease will control.

## **D. Renewal of mineral leases**

### **1. Generally: lessee cannot renew lease without contract through public bid**

The statutes governing leasing of minerals do not provide for renewals, except in two particular cases: coal leases that are a part of a mine plan; and oil and gas leases that pre-date 1991 and cover productive wells or land within a productive unit. They are discussed below.

Other than these two cases, mineral leases must be let using the procedures discussed above.

### **2. Coal: renewal bonus to be bid**

Public contracts for coal leases “shall have as subject to bid only the bonus to be paid by lessee, and, for leases of coal, the bonus to be paid by lessee for any renewal term as hereinafter provided.”

*Miss. Code Ann. Section 29-3-99.*

### **3. Oil and gas leases pre-dating 1991: appraisal**

“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 limitations in Section 29-3-99. Bonus payment for the replacement lease shall be consistent with the requirements set out in Sections 29-3-65 with respect to oil, gas and mineral leases. *Miss. Code Ann. Section 29-3-63(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.” *Miss. Code Ann. Section 29-3-65.*

## **E. Mineral lessee's rights**

### **1. To enter premises and explore for oil and gas or other minerals, and to produce them**

“Every such lease shall empower the lessee to enter upon the premises leased and explore and develop such premises for oil, gas, or either of them, or such other mineral as may be included in the terms of said lease, and to do all things necessary or expedient for the production and preservation of any of such products; and shall inure to the lessee, his heirs or assigns.” *Miss. Code Ann. Section 29-3-101.*

### **2. To file suit to quiet title to minerals**

Any person holding or claiming any sixteenth section school land under a lease or extension thereof made by the board of education or by their authority or direction, may proceed by bill in chancery court to have such lease or extension thereof confirmed and quieted. *Miss. Code Ann. Section 29-3-103.*

### **3. To pass lease on to heirs**

“Every such lease . . . shall inure to the lessee, his heirs or assigns.” *Miss. Code Ann. Section 29-3-101.*





## VI. Managing the Lease

### A. **Default**

1. Generally
2. Notice
3. Cure

### B. **Remedies at Default**

1. Entry and Repossession
2. Distrain, Attachment, or Distress of Property
3. Forfeiture

### C. **Death of Lessee**

1. Generally
2. Where the Lessee died with a will
3. Where the Lessee died without a will

### D. **Assignment and Subleasing**

### E. **Rent Adjustment**

1. Generally
2. Board of Supervisors do not review
3. Late Rent Adjustments
4. Acreage Amendments

### F. **Subsequent Improvement**

### G. **Condemnation**

## A. Default

### 1. Generally

A lease agreement generally is a contract between a Lessor to provide the use of land free and clear of adverse title claims to the Lessee in exchange for the performance of certain specifically-identified tasks, such as the timely payment of rent. When either party does not do what the lease document requires, that party is said to be in “default” of the contract. If the Lessee fails to “cure” the default, various courses of action can be taken by the Lessor up to and including canceling the lease.

This section discusses the time between when the Lessee defaults on the lease and the end of the lease agreement.

### 2. Notice

When the Lessee defaults on the terms of the lease (e.g. fails to pay rent on time), the language of the lease controls what notice to give the Lessee. A good lease will clearly identify when notices are required, the form of notice, and where notices are to be sent.

If the lease agreement is silent regarding notice to Lessor or Lessee, it is good practice to provide sixty (60) days’ notice of default and intent to cancel the lease by certified mail to the lessee identified on the lease or any assignment document. See generally *Miss. Code Ann. 29-3-57; 89-7-23*. In the case of agriculture leases, this time can be as short as thirty (30) days. See *Miss. Code Ann. Section 29-3-81(3)(b)*.

Notice entitles the Lessor to double rent for hold-over tenants. See *Miss. Code Ann. Section 89-7-25*.

The Lessor is not required to give notice to the Lessee when the lease expires according to its own terms.

### 3. Cure

Most leases grant a time after breach of the lease agreement for the Lessee to fix its conduct to bring it back in compliance with the lease terms. For instance, a Lessee can eventually pay the rent plus penalties and interest; the Lessee can return to live on the property; or the Lessee can pay the taxes owed on the land. When this occurs, the lease language allows the lease to continue without further action. If the Lessee does not cure the default, the Lessor is allowed to take action to protect its interest. This is discussed below.

The right to cure is especially important in leases involving a mortgage. The right to cure allows the mortgagee the opportunity to preserve its interest in the property when the Lessee/mortgagor fails to perform under the lease (such as failing to pay rent).

## B. Remedies at Default

### 1. Entry and Repossession

The language of any lease should permit the Lessor to re-enter and repossess the property upon default without process of law.

The judicial process for re-entering and repossessing the land and ejecting the holdover tenant is found at Section 89-7-27 of the Mississippi Code.

The judicial process for re-entering and repossessing land a tenant has deserted is found at Section 89-7-49 of the Mississippi Code.

*Turney v. Marion County Bd. of Educ.*, 481 So. 2d 770, 781 (Miss. 1985), suggests the correct means to terminate a lease and repossess the property is the institution of legal proceedings under Section 29-3-57 of the Mississippi Code.

## **2. Distrain, Attachment, or Distress of Property**

In addition to simply re-taking the land, a lease may grant to the Lessor the ability to go on the Leased Premises and secure the personal property of the Lessee as collateral for the rent owed. If the rent is not paid, the seized property can be sold by the Lessor to satisfy the rent and penalties owed, with any surplus returned to the lessee.

The judicial process for attachment or distress of property is found at Sections 89-7-55 through 89-7-125 of the Mississippi Code.

## **3. Forfeiture**

There is nothing in the statutes that prohibit a lessee from voluntarily forfeiting its interest in the remaining term of the lease. As part of the forfeiture, it is recommended the Lessor obtain from the Lessee a written document expressing its intent to forfeit its interest in the lease and to have it cancelled, and of the lessee's abandonment of the Leased Premises.

# **C. Death of Lessee**

## **1. Generally**

A lease is an heritable asset of the lessee. See generally *Miss. Code Ann. Section 29-3-53*. As such, when a lessee dies during the term of the lease, his heirs generally will inherit the remaining interest in the lease. The only exception is where the lessee leases the land "as joint tenants with right of survivorship" of another person. If that is the case, the other person named, if living, will retain the full rights of the lease, regardless of the heirs of the lessee. Finally, there is nothing in the statutes that prohibit a lease from terminating upon the death of the Lessee.

## **2. Where the Lessee died with a will**

If the lessee died after having made a will, the will determines who inherits the property. If no specific mention of the lease is made in the will, most wills have a residual clause that gives all remaining property to someone. The residual beneficiary will inherit the lease.

There is no requirement that wills are probated. In all cases where there is a will, the Lessor should obtain a copy of the will, or an order of the court that tried the will which determines who inherits the lease, before taking any action with respect to the lease. The Lessor should then proceed in accordance with the court order or will, or both.

## **3. Where the Lessee died without a will**

If the lessee died without a will, the law provides the specific identities of the kinship of the people who will inherit the lease. Usually, this is the spouse of the deceased and children, and their children if they themselves have died.

Before taking any action with respect to the lease, the Lessor should obtain an affidavit from one of the heirs listing the names of the other potential heirs and stating their kinship to the deceased. The heirs that fall within the correct degree of kinship will hold the remaining leasehold interest as tenants in common.

If some or all of these heirs do not wish to lease the property, they may forfeit the lease back to the managing board, or they may quitclaim their interest to someone who wants to continue under the lease. In all cases, the Lessor should obtain copies of the quitclaim deeds or forfeiture notices from all of the relatives identified in the affidavit.

## **D. Assignment and Subleasing**

Leases for public school trust lands may contain clauses that allow the Lessee to freely assign the lease, freely assign the lease with notice to the Lessor, assign the lease with the approval of the Lessor, or prohibit the assignment of the lease. The same is true of subleasing. In all circumstances, the language of the lease will control if the lease is not silent.

In cases where the lease is silent, “[s]ubleasing or assignment . . . shall only be allowed . . . at the discretion of the board of education; provided that permission to sublease or assign shall not be arbitrarily withheld.”

*Miss. Code Ann. Section 29-3-69.*

The Secretary of State’s office suggests leases should only be assignable or subleased with the express approval of the managing board. Subleasing by the Lessee to a sub-lessee for an amount greater than the rent to the Lessor should be carefully scrutinized. The managing board should receive adequate compensation for all uses. This includes determining whether the Lessee is subleasing at a profit the board could also obtain without risk of default or increased management costs. In certain cases, it will benefit the board to have a Lessee make a reasonable profit from subleasing where the arrangement produces stable income and reduced management costs.

## **E. Rent Adjustment**

### **1. Generally**

Almost every surface lease of public school trust lands is required to undergo rent adjustment not less than once every ten (10) years. *Miss. Code Ann. Section 29-3-69.* This length can be shortened, based upon board policy.

Before that occurs, the school should have the property appraised to determine fair market rental value of the land, exclusive of improvements. The managing board should consider this appraisal, as well as any board policies concerning rent, and determine the new rent for the property. This determination and the appraisal should be forwarded to the Lessee. The Lessor and Lessee should then sign an amendment of the lease reflecting the change in the rental. This document should then be filed at the courthouse.

### **2. Board of Supervisors do not review**

Because the board of supervisors approved the original lease with the rent adjustment clause, the rental amendment document does not need to be approved by that board.

### **3. Late Rent Adjustments**

When the rent has not been adjusted according to statute or the terms of the lease, the board of education may proceed to adjust the lease as outlined above. When this is completed, the board should resume with the rental adjustment schedule found within the terms of the lease, and not otherwise alter the schedule. For instance, if the ten-year rent adjustment occurs during year thirteen (13) of the lease, the next rental adjustment should still occur during year twenty (20).

### **4. Acreage Amendments**

There may come an occasion where the proposed rent adjustment for the leased premises is in excess of what the Lessee is willing to pay. This has been common with Farm Residential leases which have not undergone rent

adjustment for a long time. It is possible at this time to discuss a reduction of acreage under lease to off-set the increase in rent. This procedure should not apply to land surveyed into lots or which is otherwise indivisible due to size, or result in creating areas incapable of being leased.

At the time of the rent adjustment, the land may be reclassified to comport to current conditions. Areas within the leased premises where forest products are growing or which are suitable for the production of forest products may be reclassified to Forest; land suitable for cultivation or pasturage may be reclassified to Agricultural; and land currently used as a residence can be reclassified to Residential or Other. The procedure for reclassifying land should be used to divide the property accordingly. The current lease will be amended so its legal description reflects a smaller area for the home, and new leases will be prepared for reclassified areas. In the case of Forest-classified areas, the current Lessee will have the right to match the highest bid for the hunting and fishing lease, as most recent holder of the right to hunt and fish on the property.

Copies of the reclassification documents and reports, along with the new leases and their supporting documentation, and brief explanation of the entire transaction should be provided to the Secretary of State's office when this is done.

## **F. Subsequent Improvement**

All surface leases, except for those permitting hunting and fishing, allow the Lessee to make improvements to the premises. These improvements could range anywhere from a new home, water well, fencing, the installation of water and sewer lines, or mobile homes. In order to maintain control of the premises, the lease contract should require board approval of the location for any improvements to be made on the premises and subject to zoning and covenant restrictions. The lease should also state clearly the ownership of the improvements at the end of the lease.

A Lessee who possesses the right of first refusal of the lease can maintain ownership of the improvements while he is in possession of the lease. The Lessee can also maintain ownership of the improvements where the lease specifically provides for his continued ownership after the expiration of the lease. The Lessee can then sell the improvements to a subsequent Lessee or assignee. Finally, the Lessee can remove the improvements from the premises and restore the premises to its condition at the beginning of the lease before the lease expires.

Otherwise, all improvements become the property of the Lessor at the conclusion of the lease. We recommend the lease explicitly provide for the disposition of the improvements at the conclusion of the lease.

If the board acquires possession of improvements to the property at the conclusion of a lease, it may sell the improvements to an interested party, including the subsequent lessee. "Where buildings are located on sixteenth section lands which are not subject to an existing lease and such buildings have ceased to be used for the purpose for which they were constructed, the board of education may sell and dispose of such buildings pursuant to the procedures prescribed in section 37-7-451 through 37-7-483." *Miss. Code Ann. Section 29-3-77.*

"If any sixteenth section land is declared forest land at the end of a lease, the board of education shall make an appraisal and either pay a suitable amount to the lessee for the improvements or allow lessee to remove the same from the section land." *Miss. Code Ann. Section 29-3-43.*

The value of improvements not owned by the managing board are not to be considered when determining fair market rental value for the lease.

## **G. Condemnation**

There may come a time when an authority granted the right to condemn land for easements and rights-of-way, such as the county board of supervisors or a pipeline company granted a certificate of convenience and necessity, desires to locate a power line or road on public school trust land. In that event, compensation for the destruction of the leasehold interest and a reduction in rent to account for the loss of use should be provided to the Lessee. Another payment for the loss of use should be paid to the managing board, to be placed in its principal fund, for its permanent loss of use. Instruments granting the easement or right-of-way should contain reverter clauses that place the board back in complete possession of the property should it fail to be used for its stated purpose and clauses that state the specific use of the easement (such as “for a road”) in order to preserve the board’s ability to receive compensation for additional uses of the easement area (such as for telecommunication lines).



## VII.

# Surveys and Boundary Maintenance

### A. General Duties

1. School District
2. Secretary of State

### B. Establishing and Maintaining Boundaries

1. Exterior Boundaries to be maintained on a regular basis
  - a. Managing Board to pay for establishment and maintenance
  - b. Mississippi Forestry Commission may maintain lines
  - c. Interior Boundaries to be clearly identified in leases; maintained by lessees
2. Secretary of State to be party in any boundary dispute lawsuits

### C. Guidelines and Assistance for Establishing and Maintaining Boundaries

1. Managing Board may request survey from county surveyor
2. Qualifications of County surveyor
3. Board may use Private Surveyors; Qualifications of private surveyors
4. Establishing Section corners and boundaries
5. Property Acquisitions and Easements
6. Quality of survey to request
7. Products to obtain
8. Payment of surveying expenses

## **A. General Duties**

### **1. School District**

The school district is generally responsible for leasing and maintaining 16th Section lands. This will include the establishment and maintenance of section boundary lines and corners, obtaining easements to provide access to 16th Section lands, purchasing lieu lands, and marking the boundaries between leased areas.

### **2. Secretary of State**

The Secretary of State's office maintains records of the original surveys of all public lands, which surveyors will use as reference in their surveys. The Secretary of State's office will also maintain records of any surveys done by the managing boards for reference.

## **B. Establishing and Maintaining Boundaries**

### **1. Exterior Boundaries to be maintained on a regular basis**

#### ***a. Managing Board to pay for establishment and maintenance***

Well-established and maintained boundary lines in rural sections will increase the enjoyment of the property by lessees, warn trespassers, reduce boundary disputes between the managing board and adjoining landowners, and facilitate the removal of natural resources such as timber and sand and gravel. Therefore, it is in the best interest of the managing board and the public trust for the managing board to regularly survey and maintain exterior boundary lines.

A managing board should have all exterior boundaries of an entire section, or an entire parcel, surveyed on a regular basis. We recommend once every fifty (50) years, or as needed or recommended by assisting agencies such as the Mississippi Forestry Commission. Funds in the expendable fund may be used to pay for the survey, which can be in excess of \$50,000.

The entire boundary should be surveyed whenever there is a boundary dispute or a regular survey of the lines in order to maintain the original size of the property. Surveying only one (1) line, or only a disputed area can lead to the reduction of acreage under management.

#### ***b. Mississippi Forestry Commission may maintain lines***

Whenever the lines are established, the Mississippi Forestry Commission, as part of its management of local forest products and resources, should maintain the line at the board's request.

If the area is primarily agricultural, the managing board should maintain the line by establishing clear markers and survey points resistant to destruction or removal.

#### ***c. Interior Boundaries to be clearly identified in leases; maintained by lessees***

The vast majority of properties managed by the managing board are subdivided by surface leases. Each lessee is only responsible to maintain and protect the area identified in the lease agreement. Each lease agreement must have specific boundaries which can be clearly identified and not modified by usage or neglect. For example, a lease for "all non-forested acres" is insufficient because, over a long term, fields may become forests if they aren't maintained. Further, the managing board should be sure a lease does not overlap or encroach upon the boundaries of another lease.



Where there is a boundary dispute between adjacent lessees, the managing board may work to resolve the dispute and provide accurate documentation as to the boundaries of the leases. When two or more leases cover the same area, the oldest lease should control and the newer leases should be amended to remove the disputed land.

The lessees should be required to pay for all surveys and costs associated with establishing an interior boundary, especially when a new boundary is created through a subdivision of property or an improvement is being made such as a commercial building being built on the property. Have the lessee provide a copy of the survey to the managing board for record keeping.

## **2. Secretary of State to be party in any boundary dispute lawsuits**

The Secretary of State, as commissioner of public lands and supervisory trustee, should be a party to any lawsuit where the title to and boundary of public school trust lands is questioned or may result in loss of property to the State.

# **C. Guidelines and Assistance for Establishing and Maintaining Boundaries**

## **1. Managing Board may request survey from county surveyor**

“It shall be the duty of the surveyor faithfully to execute all orders of survey directed to him by any court, and to make all surveys of land within his county, at the request of the owners or proprietors thereof, and to do whatsoever in the surveying, resurveying, measuring, and dividing of land that may be required of him by any person.”

*Miss. Code Ann. Section 19-27-3.*

See Miss. Code Ann. Section 19-27-1 through 19-27-35 for more information.

## **2. Qualifications of County surveyor**

“[S]uch surveyor shall be a registered land surveyor as provided for in Sections 73-13-71 through 73-13-99.”

*Miss. Code Ann. Section 19-27-1.*

## **3. Board may use Private Surveyors; Qualifications of private surveyors**

All surveys should be completed by surveyors registered and licensed pursuant to Miss. Code Ann. Section 73-13-71 through 73-13-99.

## **4. Establishing Section corners and boundaries**

Occasionally, it will become necessary for districts to re-survey boundary lines and establish monuments for section corners. On those occasions, the surveyor should comply with the most recent “Restoration of Lost or Obliterated Corners and Subdivision of Sections” surveyor’s manual, or equivalent, published by the United States’ Bureau of Land Management, Department of the Interior.

The resulting survey should also comply with the rules and regulations of the Mississippi State Board of Licensure for Professional Engineers and Surveyors, including its standards of practice for surveying. Rule 21 of the Rules and Regulations of Procedure of the Mississippi Board of Licensure for Professional Engineers and Surveyors.

A school district should never admit or acquiesce to the movement of accepted boundary lines without first conducting a survey of all section corners.

## 5. Property Acquisitions and Easements

Whenever the school district purchases lieu lands or obtains an easement for access to 16th Section lands, it should hire a professional surveyor to survey the land.

## 6. Quality of survey to request

When surveying interior parcels, the classification of the survey will depend upon the following:

Class.	Type	Description
A	Urban Business District	Surveys of extensively developed and expensive properties which require maximum surveying accuracy. This includes, but is not limited to, surveys of urban business district properties and highly developed commercial properties.
B	Urban	Surveys of properties which are subject to costly improvements and justify a high degree of surveying accuracy. This includes, but is not limited to, surveys of commercial properties and higher priced residential properties located outside urban business districts and highly developed commercial areas.
C	Suburban	Surveys of residential and surrounding areas which are apt to increase rapidly in value. This includes, but is not necessarily limited to, surveys of residential areas which cannot be classified as Class A or Class B surveys.
D	Rural	Surveys of all remaining properties which cannot be classified as Class A, B, or C surveys. This includes, but is not limited to, surveys of farm lands and rural areas.

## 7. Products to obtain

The surveyor should provide the district with the following at the conclusion of the survey:

- A paper copy of any completed field notebooks, plats, maps, reports of survey, corner cards, corner registration certificates and any other documents produced with the survey.
- An electronic copy of the same.
- An electronic copy of any features, lines, points, or polygons generated from a geographic information system or computer-aided design program locating and showing the results of the survey, including corner markings, witness trees, bearings, distances and all calls of road crossings, fence lines, creeks, and other permanent topographic features.
- The latitude and longitude of at least one (1) true coordinate of either a section corner or the point of beginning. Reference may also be made to the State Plane Coordinate System so long as the Mississippi Coordinate System of 1983 is used. If the entire section is surveyed, a true coordinate for all section corners should be required.

## 8. Payment of surveying expenses

Surveying costs can be paid from the 16th Section expendable fund. Where a survey of a section line is necessary to facilitate the management or harvesting of timber, consult with the local service forester and consider using funds available in the forestry escrow to pay for the survey.



## VIII.

# Forestry Management

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    - i. Forestry Commission to determine time for sale and designate products to be sold
    - ii. Where disagreement between commission employees and board, appeal to commission's governing Board
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    - iv. Public Notice of Sale
      - (i.) Generally: 3 consecutive weeks; not more than 7 days after last publication
      - (ii.) Small sale area; no public notice required
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      - (i.) Generally
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  - e. Contract terms
    - i. Lump sum or unit price
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  - f. Sale proceeds to be placed in escrow
  - g. Forestry Commission and board to supervise harvesting work; cease operations when necessary

#### **D. Forestry Escrow Fund**

- 1. Restricted Fund, comprised of 15% of proceeds from sale of timber
- 2. Board may add additional funds
  - a. Generally
  - b. Funds added from sales receipts
  - c. Funds added through Principal Fund loan
  - d. Minimum Foundation Program funds excluded
- 3. Board may withdraw excess funds; permission of Commission

## **A. General Duties**

### **1. Mississippi Forestry Commission**

Section 29-3-45 of the Mississippi Code gives the Mississippi Forestry Commission the “sole authority and control in prescribing the forestry management practices and 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. . . .”

The school board must enter into an agreement with the forestry commission for the general supervision and management of all forested sixteenth section and lieu lands under the control of the board. If the board has not done so, or no record exists of any such agreement, the agreement at the end of this section may be used to remedy the problem. We recommend the board review and update its forest management agreement periodically.

### **2. School Board**

The school board’s participation in managing forest products on sixteenth section lands is limited to review, approval and reimbursement. The board reimburses the Mississippi Forestry Commission for the actual expenses it incurs in the management of the forested sixteenth section land. The board approves the Commission’s use of contractors to perform management activities on the forested lands, and, after being presented with itemized bills for the work, reimburses the Commission or the contractor. The board also reimburses its own contractors for replanting and review.

Where the board does not approve the harvesting prescriptions made by the service forester, it may appeal the forester’s prescription decision to the governing board of the Mississippi Forestry Commission. The board approves the terms and conditions of a timber sale contract. It is required to sell the forest products by either a lump sum or unit price “as in the opinion of the board may be calculated to bring the greatest return.” After a school district receives bids for the sale of timber products located on sixteenth section lands, it may accept or reject the bids in its discretion. However, the board cannot accept a bid below the minimum total cash price or minimum price per unit set by the Mississippi Forestry Commission.

### **3. Private Contractors**

The board may enter into contracts with private vendors for the reforestation of sixteenth section land.

The board may hire a registered forester to review any forest management decision or forestry practice, including the sale of timber for sixteenth section forest land. The cost of the review must be paid from the Interest Fund, and the actions to be taken as a result of the review must be approved by the Mississippi Forestry Commission and the Secretary of State before the actions are taken.

The board may also approve the Mississippi Forestry Commission’s use of private contractors to perform work for the board under the supervision of the Commission.

### **4. Secretary of State**

The Secretary of State’s Office employs registered foresters who review and audit the work of the Mississippi Forestry Commission under a Memorandum of Understanding with the Commission. At the request of the board,

they can provide an independent review of the management plan for the board and the work of the Commission and its contractors during the year. This service is free of charge.

The Secretary of State is also the final authority in resolving disputes between the school board and the service forester after the appeal has been heard by the Mississippi Forestry Commission governing board.

If a school district is divested of its authority discussed above due to a member of the board having a personal interest in decisions regarding the management or sale of timber, that authority will be assumed by the Secretary of State.

## **B. Who Controls the Management of Forest Resources Located on Public School Trust lands**

### **1. Mississippi Forestry Commission to manage all forested lands**

“The State Forestry Commission shall have the sole authority and control in prescribing the forestry management practices and 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. . . .” *Miss. Code Ann. Section 29-3-45(1)(b)*.

### **2. Managing board must enter into agreement with Commission to manage**

#### ***a. Generally***

“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, as hereinabove provided, 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. . . .” *Miss. Code Ann. Section 29-3-45(1)(a)*.

“It shall be the duty of the state forestry commission, in the manner hereinabove provided in section 29-3-45, to enter into agreements for timber improvement purposes with the board of education upon the request of said board.” *Miss. Code Ann. Section 29-3-49*.

#### ***b. Requirements of management agreement***

“Said contract shall provide for the carrying out of a long term program of timber improvement, including any or all of the following: The deadening of undesirable hardwoods, the planting of trees, the cutting and maintaining of fire lanes, and the establishment of marked boundaries on all lands classified as forest lands in said agreements, which provide for the reimbursement of all current costs incurred by the state forestry commission and the carrying out of the duties required by such agreements.” *Miss. Code Ann. Section 29-3-49*.

### **3. Secretary of State to manage where conflict of interest**

#### ***a. Creation of conflict of interest; automatic immediate divestiture***

“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 said board, then said 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. . . .” *Miss. Code Ann. Section 29-3-45(3)(a)*.

**b. Length of Divestiture: term of service plus one year**

“Said 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.” *Miss. Code Ann. Section 29-3-45(3)(a)*.

**c. Written Notices given to Secretary of State by board**

**i. First notice: Immediate notice of appointment or election of interested board member**

“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, said board of education shall immediately notify the Secretary of State in writing.”

*Miss. Code Ann. Section 29-3-45(3)(b)*.

**ii. Final notice: Thirty-days’ notice of expiration of divestiture period**

“Likewise, said board shall give written notification to the Secretary of State within thirty (30) days prior to the expiration of any such divestiture period.” *Miss. Code Ann. Section 29-3-45(3)(b)*.

**d. Powers and duties of Secretary of State during divestiture period**

**i. Forestry Management and Sale of Timber**

“In the event, 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.”

*Miss. Code Ann. Section 29-3-45(1)(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.” *Miss. Code Ann. Section 29-3-45(3)(c)*.

**ii. Duties relating to timber sales**

“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 said 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 costs from the proceeds of the sale. The Secretary of State shall furnish an itemized listing of all direct cost charged to the local school district.” *Miss. Code Ann. Section 29-3-45(3)(d)*.

## **C. What Forest Management Practices May Be Done and By Whom**

### **1. General Management**

**a. Forestry Commission: to generally manage and prescribe practices**

“The State Forestry Commission shall have the sole authority and control in prescribing the forestry management practices and scheduling of all cutting and harvesting of timber. . . .”

*Miss. Code Ann. Section 29-3-45(1)(b)*.

“It is hereby made the duty of the State Forestry Commission, from time to time, . . . to determine what . . . deadening or other forestry improvements should be made . . . and to report to the appropriate board of education.” *Miss. Code Ann. Section 29-3-45(1)(d)*.

***b. Private Forester: Managing Board may contract for management review; decisions to be approved by Commission and Secretary of State***

The board of education “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.” *Miss. Code Ann. Section 29-3-45(1)(a)*.

## **2. Purchases and Expenditures**

***a. Authorized Expenses***

***i. Reforestation***

(i.) School District may contract to replant with private vendor

“[A]ny school board may contract with private persons or businesses for the reforestation of sixteenth section lands.” *Miss. Code Ann. Section 29-3-45(1)(a)*.

“[A]ny school board may contract with private persons or businesses for the reforestation of sixteenth section lands.” *Miss. Code Ann. Section 29-3-45(1)(b)*.

(ii.) Forestry Commission may replant; hire contractors with board approval

The agreement between the school board and the Forestry Commission “shall provide for the carrying out of a long term program of timber improvement, including any or all of the following: . . . the planting of trees. . . , which [the agreement will] provide for the reimbursement of all current costs incurred by the state forestry commission and the carrying out of the duties required by such agreements. *Miss. Code Ann. Section 29-3-49*.

“[T]he commission, in its discretion, may have the option to contract with a private contractor, subject to the approval of said board, to perform this work under the supervision of the commission.” *Id.*

***ii. Fire lanes, herbicide application, boundary marking, etc.***

(i.) Forestry Commission may perform work; hire contractors with board approval

The agreement between the school board and the Forestry Commission “shall provide for the carrying out of a long term program of timber improvement, including any or all of the following: The deadening of undesirable hardwoods, . . . the cutting and maintaining of fire lanes, and the establishment of marked boundaries . . . which [the agreement will] provide for the reimbursement of all current costs incurred by the state forestry commission and the carrying out of the duties required by such agreements. *Miss. Code Ann. Section 29-3-49*.

“[T]he commission, in its discretion, may have the option to contract with a private contractor, subject to the approval of said board, to perform this work under the supervision of the commission.” *Id.*

***iii. Wildlife habitat management***

“It is hereby made the duty of the State Forestry Commission, from time to time, . . . to determine what . . . forestry improvements should be made, giving due consideration to food and habitat for wildlife, and to report to the appropriate board of education.” *Miss. Code Ann. Section 29-3-45(1)(d)*.



**b. Public bidding, request for quotes, when required**

The compensation to be paid to the Forestry Commission will be determined by the terms of the mandated contract. *Miss. Code Ann. Section 29-3-45.*

Acquiring private forestry services should be done under the requirements of Section 31-7-13 of the Mississippi Code.

**c. Payment to be made upon presentation of itemized bills**

*i. Mississippi Forestry Commission; actual expenses incurred*

“For its services the state forestry commission shall be entitled to receive its actual expenses incurred in the discharge of the duties herein imposed. . . . Such payments shall be equal to the actual expenses incurred by the commission as substantiated by itemized bills presented to the board.”

*Miss. Code Ann. Section 29-3-47.*

“Payment of the reimbursements as hereinabove set forth to the said forestry commission . . . shall be made upon presentation of itemized bills therefor by said commission. . . .”

*Miss. Code Ann. Section 29-3-49.*

*ii. Private Contractors: itemized bills*

“[C]ompensation due under any such contract with private contractors shall be made upon presentation of itemized bills therefor by . . . said private contractors. . . .”

*Miss. Code Ann. Section 29-3-49.*

**d. Expenses to be paid from various funds**

*i. Generally: Board may use any sixteenth section funds, minimum foundation program funds excluded*

“Payment . . . may be made out of any sixteenth section funds to the credit of, or accruing to, any school district in which such work shall be done, or out of any other funds available to such district, excluding minimum foundation program funds.” *Miss. Code Ann. Section 29-3-49.*

*ii. Forestry Management review: paid from Expendable/Interest fund only*

“[A]ny school board . . . 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. . . .”

*Miss. Code Ann. Section 29-3-45(1)(a).*

*iii. Management expenses of commission and contractors: paid from Forestry Escrow Fund; board approval required*

“[F]ifteen percent (15%) of all receipts from the sales of forest products shall be placed by the board in a forestry escrow fund and reserved to pay for work performed by the state forestry commission.”

*Miss. Code Ann. Section 29-3-47.*

“Expenditures from the forestry escrow fund for tree planting, timber stand improvement, and other forestry work will be limited to payment for work recommended by the forestry commission and agreed to by the board of education.” *Id.*

**3. Sales**

**a. Authorized Sales**

*i. Merchantable Timber*

“[N]o timber . . . shall be sold from any of said sixteen section lands or lieu lands except such as have been marked or approved for cutting by the State Forestry Commission’s employees. . . .”

*Miss. Code Ann. Section 29-3-45(1)(a).*

*ii. Turpentine*

“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 said commission through its employees shall approve the number of faces, method of chipping and boxing of such timber. . .” *Miss. Code Ann. Section 29-3-45(1)(d)*.

*iii. Other Forest Products*

“[N]o . . . other forest products shall be sold from any of said sixteen section lands or lieu lands except such as have been marked or approved for cutting by the State Forestry Commission’s employees. . .” *Miss. Code Ann. Section 29-3-45(1)(a)*.

**b. Generally by public contract**

The method of selling forest products is generally the same. The time for sale and products to be sold are determined by the Forestry Commission, public notice of the sale is provided with the contract on file for examination, and the contract is awarded to the highest and best bidder. See below for more details.

**c. Board has right to sell forest products regardless of lease**

“The board of education, notwithstanding the fact that such land may have been leased for other purposes, shall have the right, from time to time, to sell all merchantable timber on such lands. . .” *Miss. Code Ann. Section 29-3-85*.

**d. Procedure for sale**

*i. Forestry Commission to determine time for sale and designate products to be sold*

“[N]o timber or other forest products shall be sold from any of said sixteen section lands or lieu lands except such as have been marked or approved for cutting by the State Forestry Commission’s employees. . .” *Miss. Code Ann. Section 29-3-45(1)(a)*.

“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. . .” *Miss. Code Ann. Section 29-3-45(1)(b)*.

“It is hereby made the duty of the State Forestry Commission, from time to time, to mark timber which should be cut from said lands . . . and to report to the appropriate board of education.” *Miss. Code Ann. Section 29-3-45(1)(d)*.

“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 said commission through its employees shall approve the number of faces, method of chipping and boxing of such timber. . .” *Miss. Code Ann. Section 29-3-45(1)(d)*.

*ii. Where disagreement between commission employees and board, appeal to commission’s governing Board*

“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.” *Miss. Code Ann. Section 29-3-45(1)(c)*.

*iii. Where disagreement exists, appeal to Secretary of State; final decision*

“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.”

*Miss. Code Ann. Section 29-3-45(1)(c).*

*iv. Public Notice of Sale*

(i.) Generally: 3 consecutive weeks; not more than 7 days after last publication

“No sale of any timber . . . or other forest product . . . 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 said 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.” *Miss. Code Ann. Section 29-3-45(1)(e).*

(ii.) Small sale area; no public notice required

“[I]n the event that timber must be cleared from an existing road or existing utility right-of-way, said 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.”

*Miss. Code Ann. Section 29-3-45(1)(f).*

(iii.) Emergency sales; damage by fire, windstorm, etc.; no public notice required; due diligence

“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.”

*Miss. Code Ann. Section 29-3-45(1)(g).*

“The board of education, with a written recommendation from a designated employee of the State Forestry Commission filed in the minutes of the 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 said timber, but shall show due diligence in notifying competitive bidders so that a true competitive bid shall be received.” *Id.*

*v. Forestry Commission to set minimum price*

(i.) Generally

“[T]he said 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 said marked timber or other forest products shall be sold.” *Miss. Code Ann. Section 29-3-45(1)(a).*

“In the event that it is desired to lease any of such lands or standing timber for turpentine purposes, . . . [the State Forestry commission] through its employees . . . shall fix a minimum total cash price or minimum price per unit.” *Miss. Code Ann. Section 29-3-45(1)(d).*

(ii.) Small area sales

“If the State Forestry Commission makes such a finding [that a public notice sale would not be in the best interest of the local board of education], 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.” *Miss. Code Ann. Section 29-3-45(1)(f)*.

**e. Contract terms**

**i. Lump sum or unit price**

“Said 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.” *Miss. Code Ann. Section 29-3-45(1)(a)*.

**ii. Other terms and conditions**

“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.” *Miss. Code Ann. Section 29-3-45(1)(a)*.

**f. Sale proceeds to be placed in escrow**

“In order to provide funds with which to pay for the general supervision and sale of forest products, fifteen percent (15%) of all receipts from the sales of forest products shall be placed by the board in a forestry escrow fund and reserved to pay for work performed by the state forestry commission.”

*Miss. Code Ann. Section 29-3-47.*

**g. Forestry Commission and board to supervise harvesting work; cease operations when necessary**

“The State Forestry Commission and the Board of Education shall supervise the cutting of any timber or harvesting of other forest products sold from said lands herein designated and shall have authority to require any timber-cutting operations on said 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.”

*Miss. Code Ann. Section 29-3-45(1)(d)*.

## **D. Forestry Escrow Fund**

### **1. Restricted Fund, comprised of 15% of proceeds from sale of timber**

“In order to provide funds with which to pay for the general supervision and sale of forest products, fifteen percent (15%) of all receipts from the sales of forest products shall be placed by the board in a forestry escrow fund and reserved to pay for work performed by the state forestry commission. Such payments shall be equal to the actual expenses incurred by the commission as substantiated by itemized bills presented to the board.

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

*Miss. Code Ann. Section 29-3-47.*

### **2. Board may add additional funds**

**a. Generally**

“In each school district having need of tree planting and timber stand improvement, the board of education is authorized to place additional amounts in the forestry escrow fund to reimburse the state forestry commission for the actual expenses incurred in performing this work, or to pay for any work done under private contract under the supervision of said commission.” *Miss. Code Ann. Section 29-3-47.*

**b. Funds added from sales receipts**

“Such additional amounts may be made available from forest products sales receipts. . . .”

*Miss. Code Ann. Section 29-3-47.*

**c. Funds added through Principal Fund loan**

“Such additional amounts may be made available from . . . funds borrowed from the sixteenth section principal fund as is provided for in section 29-3-113. . . .” *Miss. Code Ann. Section 29-3-47.*

“The board of education shall have authority to borrow such [principal] funds . . . to provide additional funds for forest stand improvement as set forth in Section 29-3-47.” *Miss. Code Ann. Section 29-3-13.*

Please see the “Funds” tab for more information.

**d. Minimum Foundation Program funds excluded**

“Such additional amounts may be made available from . . . any other funds available to the board of education excluding minimum foundation program funds.” *Miss. Code Ann. Section 29-3-47.*

**3. Board may withdraw excess funds; permission of Commission**

“When it becomes evident that the amount of money in the forestry escrow fund is in excess of the amount necessary to accomplish the work needed to achieve the goals set by the board of education and the forestry commission, the state forestry commission shall advise said board to release any part of such funds as will not be needed, which may then be spent for any purpose authorized by law.” *Miss. Code Ann. Section 29-3-47.*



## IX. Land Sales

### A. General Duties

1. School District
2. Secretary Of State's Office
3. County Board Of Supervisors
4. County Superintendent Of Education
5. Mississippi Development Authority
6. Mississippi Forestry Commission

### B. Procedure For Selling Public School Trust Land

1. Property Which May be Sold
  - a. 16th Section Lands for Industrial Development Only
    - i. General Authorization
    - ii. Industrial Parks
    - iii. Size not in excess of requirements
    - iv. Prompt and Substantial industrial development
  - b. Lieu Lands located outside the County of the managing District
  - c. Buildings located on 16th Section lands
2. Mandatory Pre-Sale Requirements for Land Sales for Industrial Development
  - a. School Board's Findings
    - i. Appraisal – Fair Market Value
    - ii. In the best interests of the schools of the district
    - iii. Size not in excess of requirements
    - iv. Prompt and Substantial industrial development
  - b. Legal option to purchase substitute lands in the county
  - c. Public Notice of Sale: 3 consecutive weeks after approval of resolution to sell
  - d. Board of Supervisors Approval
    - i. Form of Submission from school board
    - ii. Independent investigation
    - iii. Resolution to approve or disapprove sale/purchase
  - e. County Superintendent of Education Approval
    - i. Where one exists
    - ii. If one does not exist
  - f. Mississippi Development Authority Approval
    - i. Investigation
    - ii. Certificate of Approval
      - (i.) No election required
      - (ii.) Election required

- (iii.) Declining to issue Certificate of Approval
- g. County Election (Optional)
  - i. When required by Mississippi Development Authority
  - ii. When required by petition of voters after public notice of intent to sell
- h. Requirements for election
  - i. Board of Supervisors to call and oversee
  - ii. Notice of election: 3 consecutive weeks prior to election for sale
  - iii. Ballot information, voting eligibility, and voting options
  - iv. Two-thirds of votes cast must approve of sale

**C. Deed Requirements For Sale Of 16th Section Lands**

- 1. All Mineral Rights Reserved
  - a. Generally
  - b. Lowndes County exception
  - c. Mississippi Major Economic Act
- 2. Grantor of 16th Section Land: State of Mississippi
- 3. Signature authority: Superintendent of Education

**D. Deed Requirements for Purchase of Substitute Lands**

- 1. Grantee of substitute property: State of Mississippi

**E. Post-Sale Requirements**

- 1. Notice to Secretary of State and Mississippi Forestry Commission
- 2. Excess proceeds from sale deposited in the principal fund

**F. Policy Recommendations**

## **A. General Duties**

### **1. School District**

On occasion, a managing school district may be presented with the opportunity to sell 16th Section Land for industrial development. On those occasions, the district must hear the proposal for industrial development and agree to the sale, determine by appraisal the fair market value of the 16th Section land, obtain a contract to purchase substitute lands of equal or greater value, forward the sales documents to the board of supervisors for approval, obtain the approval of the Mississippi Development Authority, and retain mineral interests in the property sold and acquire the substitute lands.

The district must also report any sale of 16th Section land to the Mississippi Forestry Commission and the Secretary of State's Office.

### **2. Secretary Of State's Office**

The Secretary of State provides general guidance as the supervisory trustee. The Secretary of State will also assist the school districts in reviewing the proposal for sale, and reviewing any legal documents prepared for the transaction.

The Secretary of State will also maintain records of 16th Section land bought and sold across the state.

### **3. County Board Of Supervisors**

The Board of Supervisors for the county where the 16th Section is located is required to conduct an independent investigation of the proposed sale to determine if the sale is in the best interest of the school district and either concur or object to the terms of the sale after the board of education approves the sale. If the Board of Supervisors objects to the sale, its decision is final.

### **4. County Superintendent Of Education**

Where there exists a county superintendent of education, the proposed sale of the 16th Section lands will be forwarded to him for approval. Where none exists, the county board of education will forward the proposed sale to the Mississippi Development Authority.

### **5. Mississippi Development Authority**

The Mississippi Development Authority, as successor agency of the Mississippi Agricultural and Industrial Board and the Mississippi Department of Economic and Community Development, will investigate to determine whether the proposed sale of 16th Section land will promote prompt and substantial industrial development of the land, among other things, and issue a certificate providing the board of education the authority to enter into the proposed sale.

### **6. Mississippi Forestry Commission**

The Mississippi Forestry Commission should review the forestry assets located on the land to be sold, and the forestry assets found on the substitute land, and provide its opinion as to the quality of the substitute land for forest management.



## B. Procedure for Selling Pubic School Trust Land

### 1. Property Which May Be Sold

#### **a. 16th Section Lands for Industrial Development Only**

##### *i. General Authorization*

The only way 16th Section land may be sold by a managing district is for industrial development. The land cannot be sold by any other means.

“The Legislature . . . shall provide that the sixteenth section lands reserved for the support of township schools, except as hereinafter provided, shall not be sold . . . but provided further, however, that the Legislature, for industrial development thereon, may authorize the sale, in whole or in part for a gross sum or otherwise, of sixteenth section lands, or lands granted in lieu thereof situated within the county; . . .”

*Art. 8, Section 211, Mississippi Constitution of 1890.*

“No sixteenth section lands or lands granted in lieu thereof, in whole or in part, situated within the school district holding or owning the same shall ever be sold, except that the board of education may, under the procedures hereinafter provided, sell such lands for industrial development thereon, therein, or thereunder to any persons, firms, or corporations in fee simple, or any lesser estate therein, for a purchase price not less than the fair market value thereof; and when any such sale is made, the deed shall be executed in the name of the State of Mississippi by the superintendent of the said board of education.”

*Miss. Code Ann. Section 29-3-27.*

##### *ii. Industrial Parks*

“Not more than one hundred (100) acres in any one (1) sixteenth section school lands in any county may be sold under this chapter for the purpose of being made an industrial park or a part of such industrial park, provided the provisions of this section and Sections 57-5-1 and 57-5-23 are fully complied with.”

*Miss. Code Ann. Section 29-3-27.*

##### *iii. Size not in excess of requirements*

The managing school district must find “that the acreage to be sold . . . is not in excess of the amount of land reasonably required for immediate use and for such future expansion as may be reasonably anticipated. . . .”

*Miss. Code Ann. Section 29-3-29.*

##### *iv. Prompt and Substantial industrial development*

The managing school district must find “that there will be prompt and substantial industrial development on, in, or under said land after the sale . . . .”

*Miss. Code Ann. Section 29-3-29.*

#### **b. Lieu Lands located outside the County of the managing District**

The law still permits the sale of the surface of lieu lands situated outside of the county managing the lieu lands, or the swapping of lieu lands for other State-owned lands. Since no such lieu lands exist anymore, this method of sales cannot be used to sell lieu lands and will not be discussed further.

#### **c. Buildings located on 16th Section lands**

“Where buildings are located on sixteenth section lands which are not subject to an existing lease and such buildings have ceased to be used for the purpose for which they were constructed, the board of education may sell and dispose of such buildings pursuant to the procedures prescribed in section 37-7-451 through 37-7-483.”

*Miss. Code Ann. Section 29-3-77.*

## 2. Mandatory Pre-Sale Requirements for Land Sales for Industrial Development

### **a. School Board's Findings**

The managing school board must make the following findings about the sale of 16th Section lands and spread the findings on the minutes of the managing board.

#### **i. Appraisal – Fair Market Value**

The managing school district “shall first determine that such sale . . . will be [for] fair market value. In the determination of the fair market value of said land the comparative sales method shall be used, and the highest and best use of said sixteenth section lands shall be determined on the basis of finding that said land shall be susceptible to any use that comparative land in private ownership may be used . . .”

*Miss. Code Ann. Section 29-3-29.*

#### **ii. In the best interests of the schools of the district**

The managing school district must find “that such sale . . . will be beneficial to and in the best interest of the schools of the district for which said land is held.” *Miss. Code Ann. Section 29-3-29.*

#### **iii. Size not in excess of requirements**

The managing school district must find “that the acreage to be sold . . . is not in excess of the amount of land reasonably required for immediate use and for such future expansion as may be reasonably anticipated. . .” *Miss. Code Ann. Section 29-3-29.*

#### **iv. Prompt and Substantial industrial development**

The managing school district must find “that there will be prompt and substantial industrial development on, in, or under said land after the sale . . .” *Miss. Code Ann. Section 29-3-29.*

### **b. Legal option to purchase substitute lands in the county**

Finally, if the managing district “proposes to sell said land, said board shall first enter into a contract or obtain a legal option to purchase, for a specified price not in excess of fair market value, other land in the county of acreage of equivalent fair market value, and such contract or option shall be spread on the minutes of said board.” *Miss. Code Ann. Section 29-3-29.*

### **c. Public Notice of Sale: 3 consecutive weeks after approval of resolution to sell**

“The board of education shall further be required, prior to passing of a resolution expressing its intent to sell said land, to publish a notice of intent to sell land for three (3) consecutive weeks in a newspaper published in said county or, if there be none, in a newspaper having a general circulation in said county, and to post three (3) notices thereof in three (3) public places in said county, one (1) of which shall be at the courthouse, for said time.” *Miss. Code Ann. Section 29-3-29.*

### **d. Board of Supervisors Approval**

#### **i. Form of Submission from school board**

“A certified copy of the resolution or order of the board of education, setting out the foregoing findings, together with a certified copy of the order approving and setting out the terms of the contract or option to purchase other lands where a sale of land is proposed and an application to the [Mississippi Development Authority] for the certificate authorizing said sale . . ., shall be forwarded to the county board of supervisors . . .” *Miss. Code Ann. Section 29-3-29.*

#### **ii. Independent investigation**

The board of supervisors “shall make an independent investigation of the proposed sale . . . and of the proposed purchase of other land.”

*iii. Resolution to approve or disapprove sale/purchase*

“If said county board of supervisors shall concur in the finding of fact of the board of education, and shall find that it is to the best interests of the schools of the district to enter into such sale or lease, it may enter on its minutes a resolution or order approving the action of the board of education.”

“If the said county board of supervisors shall not concur in the findings of the board of education, or shall find that the proposed sale or lease will not be in the best interest of the schools of the district, then it may, by resolution or order, disapprove the proposed sale . . . , and such action shall be final.”

*Miss. Code Ann. Section 29-3-29.*

***e. County Superintendent of Education Approval***

*i. Where one exists*

“Certified copies of the resolutions or orders of the board of supervisors . . . shall be transmitted to the county superintendent of education, if there be one in the county, who, if he approves the proposed sale . . . , shall so certify and forward same to the [Mississippi Development Authority].”

*Miss. Code Ann. Section 29-3-29.*

*ii. If one does not exist*

“If there be no county superintendent of education in the county, the board of education whose district embraces the entire county shall so certify and transmit said copies to the [Mississippi Development Authority] for further action.” *Miss. Code Ann. Section 29-3-29.*

***f. Mississippi Development Authority Approval***

*i. Investigation*

“Upon receipt of the aforesaid application and certified copies of the said resolution and orders, the [Mississippi Development Authority] shall make investigation to determine whether or not the proposed sale . . . of said land will promote prompt and substantial industrial development thereon, therein, or thereunder. If the [Mississippi Development Authority] finds that

- (i.) such sale or lease will promote prompt and substantial industrial development thereon, therein, or thereunder,
- (ii.) and further finds the person, firm or corporation who proposes to establish said industry is financially responsible,
- (iii.) and that the acreage to be sold . . . is not in excess of the amount of land reasonably required for immediate use and for such future expansion as may be reasonably anticipated;”
- (iv.) [then it can proceed as outlined below].

***ii. Certificate of Approval***

(i.) No election required

[If the investigation meets the statutory requirements], “then the [Mississippi Development Authority], in its discretion, may issue a certificate to the board of education of said district so certifying, and said certificate shall be the authority for the board of education to enter into the proposed sale . . . .” *Miss. Code Ann. Section 29-3-29.*

(ii.) Election required

“The [Mississippi Development Authority], when issuing a certificate to the county board of education certifying its findings and authorizing said sale or lease, may, nevertheless, in its discretion, make such sale . . . conditioned on and subject to the vote of the qualified electors of said district.” *Miss. Code Ann. Section 29-3-29.*

(iii.) Declining to issue Certificate of Approval

“If the [Mississippi Development Authority] does not so find [that the statutory requirements have been met], then it shall decline to issue said certificate which action shall be final.”

*Miss. Code Ann. Section 29-3-29.*

**g. County Election (Optional)**

*i. When required by Mississippi Development Authority*

If the Mississippi Development Authority approves the sale of the land conditioned upon the vote of the qualified electors of the school district, then, “Upon receipt of a certificate so conditioned upon an election, . . . the board of education, by resolution spread upon its minutes, shall forward a copy of the certificate to the board of supervisors . . .”*Miss. Code Ann. Section 29-3-29.*

*ii. When required by petition of voters after public notice of intent to sell*

“If within the period of three (3) weeks following the first publication of said intent, a petition signed by twenty percent (20%) of the qualified electors of said county shall be filed with the board of supervisors requesting an election concerning the sale, then an election shall be called as hereinabove provided.”

*Miss. Code Ann. Section 29-3-29.*

**h. Requirements for election**

*i. Board of Supervisors to call and oversee*

If the Mississippi Development Authority approves the sale of the land conditioned upon a vote of the qualified electors of the district, and the board of supervisors receives the resolution of the managing district regarding the election, “the board of supervisors who by resolution upon its minutes, shall call an election to be held in the manner now provided by law for holding county elections, and shall fix in such resolution a date upon which such an election shall be held. . . .”

“If within the period of three (3) weeks following the first publication of said intent, a petition signed by twenty percent (20%) of the qualified electors of said county shall be filed with the board of supervisors requesting an election concerning the sale, then an election shall be called as hereinabove provided.”

*ii. Notice of election: 3 consecutive weeks prior to election for sale*

When the board of supervisors calls for the election, it must provide public notice of the date of the election “of which not less than three (3) weeks notice shall be given by the clerk of said board of supervisors by publishing a notice in a newspaper published in said county once each week for three (3) consecutive weeks preceding the same, or if no newspaper is published in said county, then in a newspaper having a general circulation therein, and by posting a notice for three (3) weeks preceding said election at three (3) public places in said county.”

*iii. Ballot information, voting eligibility, and voting options*

“At such election, all qualified voters of the county may vote, and the ballots used shall have printed thereon a brief statement of the proposed sale . . . of said land, including the description and price, together with the words ‘For the proposed sale or lease’ and the words ‘Against the proposed sale or lease,’ and the voter shall vote by placing a cross (x) or check (v) opposite his choice of the proposition.”

*iv. Two-thirds of votes cast must approve of sale*

“Should the election provided for herein result in favor of the proposed sale . . . by at least two-thirds (2/3) of the votes cast being in favor of the said proposition, the board of supervisors shall notify the board of education who may proceed forthwith to sell . . . said land in accordance with the proposition so submitted to the electors. If less than two-thirds (2/3) of those voting in such special election vote in favor of the said sale or lease, then said land shall not be sold. . . .”

## **C. Deed Requirements for Sale of 16th Section Lands**

### **1. All Mineral Rights Reserved**

*a. Generally*

“There shall be reserved all minerals in, on, and under any lands conveyed under the provisions hereof.”

*b. Lowndes County exception*

“Upon the sale of any sixteenth section lands for industrial purposes as provided by law, the board of education, the superintendent of education and the [Mississippi Development Authority], may sell and convey all minerals except oil, gas, sulphur and casinghead gas on, in and under the said sixteenth section lands so sold for industrial purposes. Said oil, gas, sulphur and casinghead gas shall be reserved together with such rights of use, ingress and egress as shall not unreasonably interfere with the use of the lands by the purchaser. Prior written approval for such use, ingress and egress, shall be obtained from the surface owner or, if such approval is unreasonably withheld, may be obtained from the chancery court of the county in which said land is located.” *Miss. Code Ann. Section 29-3-29.*

*c. Mississippi Major Economic Act*

“In any county in which there is to be located a project, upon the sale of any sixteenth section lands for industrial purposes as provided by law for such project, the board of education controlling such lands, the superintendent of education and the Mississippi Development Authority, on behalf of the state, may sell and convey all minerals in, on and under any such lands for such consideration determined to be adequate by, and upon such terms and conditions prescribed by, such board of education, superintendent of education and the Mississippi Development Authority.”

### **2. Grantor of 16th Section Land: State of Mississippi**

“The deed shall be executed in the name of the State of Mississippi. . . .” *Miss. Code Ann. Section 29-3-27.*

### **3. Signature authority: Superintendent of Education**

“The deed shall be executed . . . by the superintendent of the said board of education.”  
*Miss. Code Ann. Section 29-3-27.*

## **D. Deed Requirements for Purchase of Substitute Lands**

### **1. Grantee of substitute property: State of Mississippi**

The land purchased to replace the sixteenth section land sold “shall be held and reserved by the State of Mississippi for the support of the township schools in lieu of the land thus sold, as other sixteenth section lieu land is held, and shall be subject to all laws applicable thereto.” *Miss. Code Ann. Section 29-3-27.*

## **E. Post-Sale Requirements**

### **1. Notice to Secretary of State and Mississippi Forestry Commission**

“Every such sale and every such purchase of land in lieu thereof shall be reported by the secretary of the board of education to the [Secretary of State] and to the State Forestry Commission within ninety (90) days after the consummation of each such sale and purchase.” *Miss. Code Ann. Section 29-3-27.*

The managing district must also classify the substitute lands according to their highest and best use as discussed in Chapter 4.

### **2. Excess proceeds from sale deposited in the principal fund**

“Any funds from a sale in fee simple of any sixteenth section land, or land granted in lieu thereof, in excess of any amount used to purchase said land in lieu thereof, shall be treated as corpus and shall be invested by the board of education as provided by law. Only the income from such investment shall be expended for current operating expenses of the schools.” *Miss. Code Ann. Section 29-3-27.*

## **F. Policy Recommendations**

1. Care should be taken to ensure the land being purchased to replace the 16th Section land is not in an industrial growth zone which might entail the replaced land to be sold for industrial development in the future.
2. Language in the statute which states the acreage purchased must be equivalent fair market value should be interpreted to mean similar amount of acres not just a similar price.
3. The one (100) acre limitation only applies to Industrial Parks, not a sale to a single entity.
4. Mandatory Pre-sale Requirements

-If the appraiser finds that the highest and best use of the property is not for industry or industrial development, the sale should not occur.



## X. Funds

### A. General Duties

1. School District
2. Secretary of State's Office
3. Mississippi Forestry Commission
4. Mississippi Department of Education

### B. The Principal Fund

1. What to place in the principal fund
2. How the principal fund can be used
  - a. Expenses:
    - i. Principal: Asbestos removal; where fund exceeds \$5 million
    - ii. Interest income: Any use to which expendable funds may be spent
  - b. Investments:
    - i. Certificates of Deposit; Treasury Bills
    - ii. Any investments available to Treasurer or other governmental entities
  - c. Loans:
    - i. Building and repair loans; timber stand improvement (20 years)
    - ii. Bus purchase loans (10 years)
    - iii. Other loans prohibited; liability
3. Loans to be repaid first
4. Excess funds from Lieu Land Purchases to be Deposited in Principal Fund
5. Transfer of funds to other accounts

### C. The Expendable Fund ("Interest Fund")

1. What to place in the expendable fund
  - a. Oil and Gas bonus payments; delay rentals
  - b. Surface rental payments
  - c. Investment income from Principal Fund investments
  - d. Timber Sale Income (85% of receipts)
2. How the expendable fund can be used
  - a. Expenses:
    - i. Generally
    - ii. Building and repairing school facilities
    - iii. Equipment purchases
    - iv. Teachers' salaries; operations
    - v. Improvement of sixteenth section lands
    - vi. Payment of taxes; assessments

- vii. Attorneys' fees
- viii. Education of district school children generally; liability for insufficient security
- ix. Forest management decisions review
- x. Management assistance
- xi. Easements for access to land

b. Investments

**D Forestry Escrow Fund**

1. What to place in the escrow: (15% of timber sale receipts)
2. How the escrow can be used:
  - a. Expenses:
    - i. Reimbursement of Forestry Commission work
    - ii. Private contractor work approved by board under Commission supervision
  - b. Investments:
3. Cannot be used for independent forestry management review
4. Transfer of Excess Funds into other accounts:

**E. Policy Recommendations**



## A. General Duties

### 1. School District

The 16th Section laws discuss three (3) distinct funds to be maintained by the school district: the Principal Fund, the Expendable Fund, and the Forestry Escrow. The district is responsible for collecting revenues from all uses of 16th Section land and placing them in the correct fund. The district may then expend, loan, and invest money according to the specific laws discussed below.

The school district must report the balances of these funds once a year to the Secretary of State's Office and to the Mississippi Department of Education.

### 2. Secretary of State's Office

The Secretary of State must report biennially on the status of the fund balances to the Legislature. The agency also provides a revenue report to the Department of Education once a year for purposes of determining the Chickasaw Cession payment.

### 3. Mississippi Forestry Commission

The Mississippi Forestry Commission will submit itemized bills for the forestry management work it performs on 16th Section lands to be paid from the forestry escrow. It will also notify the school district in writing when the balance of forestry escrow funds exceeds the amount necessary to provide adequate forest management so that the district may spend the excess from the escrow.

### 4. Mississippi Department of Education

The superintendent of education of the managing district "receiving any [leasing] revenue shall make annual report thereof to the state superintendent of education."

## B. The Principal Fund

"The principal fund shall be a permanent township fund which shall consist of funds heretofore or hereafter derived from certain uses or for certain resources of school trust lands which shall be invested and, except as otherwise provided in this section, only the interest and income derived from such funds shall be expendable by the school district." *Miss. Code Ann. Section 29-3-113.*

### 1. What to place in the principal fund:

"The principal fund shall consist of:

- a. Funds received for permanent easements and rights-of-way pursuant to Section 29-3-91;
- b. Funds received for sales of lieu land pursuant to Section 29-3-15 through 29-3-25;
- c. Funds received from any permanent damage to the school trust land;
- d. Funds received from the sale of nonrenewable resources including, but not limited to, the sale of sand, gravel, dirt, clays and royalties received from the sale of mineral ores, coal, oil and gas;
- e. Funds received from the sale of buildings pursuant to Section 29-3-77;
- f. Funds received from the sale of timber ; and
- g. Funds received pursuant to 29-3-23(2) [repealed]. *Miss. Code Ann. Section 29-3-113.*
- h. Funds from the sale of lieu land and purchase of substitute lands pursuant to Section 29-3-27 *Miss. Code Ann. Section 29-3-27.*

## 2. How the principal fund can be used:

### **a. Expenses:**

#### **i. Principal: Asbestos removal; where fund exceeds \$5 million**

“The board of education of any school district in any county that has an aggregate amount of assets in its principal fund in excess of Five Million Dollars (\$5,000,000.00), may deduct an amount not to exceed Five Hundred Thousand Dollars (\$500,000.00) for the purpose of covering the cost of asbestos removal from school district buildings. Such asbestos removal shall be construed to constitute the repair of school district facilities as prescribed in Section 29-3-115.” *Miss. Code Ann. Section 29-3-113.*

#### **ii. Interest income: Any use to which expendable funds may be spent**

“[E]xcept as otherwise provided in this section, only the interest and income derived from such funds shall be expendable by the school district.” *Miss. Code Ann. Section 29-3-113.*

“Only the income from such investment [of excess funds from the sale of land for industrial development] shall be expended for current operating expenses of the schools.” *Miss. Code Ann. Section 29-3-27.*

“Provided that funds received from the sale of timber shall be placed in a separate principal fund account, and may be expended for any of the purposes authorized by law.”

*Miss. Code Ann. Section 29-3-113.*

### **b. Investments:**

#### **i. Certificates of Deposit; Treasury Bills**

“It shall be the duty of the board of education to keep the principal fund invested in any direct obligation issued by or guaranteed in full as to principal and interest by the United States of America or in certificates of deposit issued by a qualified depository of the State of Mississippi as approved by the State Treasurer. The certificates of deposit may bear interest at any rate per annum which may be mutually agreed upon but in no case shall said rate be less than that paid on passbook savings.”

*Miss. Code Ann. Section 29-3-113.*

#### **ii. Any investments available to Treasurer or other governmental entities**

“The board of education is authorized to invest the funds in interest bearing deposits or other obligations of the types described in Section 27-105-33 or in any other type investment in which any other political subdivision of the State of Mississippi may invest, except that one hundred percent (100%) of the funds are authorized to be invested. For the purposes of investment, the principal fund of each township may be combined into one or more district accounts; however, the docket book of the county superintendent shall at all times reflect the proper source of such funds.” *Miss. Code Ann. Section 29-3-113.*

Please see Miss. Code Ann. Section 27-105-33 for a list of acceptable investments. They are summarized as follows:

- (i.) Time certificates of deposits with qualified state depositories
- (ii.) Direct United States Treasury obligations
- (iii.) United States Government obligations (e.g. GNMA securities)
- (iv.) Direct security repurchase agreements of any federal book entry of those securities listed in #2 and #3

**c. Loans:**

**i. Building and repair loans; timber stand improvement (20 years)**

“The board of education shall have authority to borrow such funds at a rate of interest not less than four percent (4%) per annum and for a term not exceeding twenty (20) years, for the erection, equipment or repair of said district schools, to provide local funds for any building project approved by the State Board of Education or to provide additional funds for forest stand improvement as set forth in Section 293-47.” *Miss. Code Ann. Section 29-3-113.*

**ii. Bus purchase loans (10 years)**

“In addition, the board may borrow funds under the same interest restrictions [“not less than four percent (4%) per annum”] for a term not exceeding ten (10) years to provide funds for the purchase of school buses.” *Miss. Code Ann. Section 29-3-113.*

**iii. Other loans prohibited; liability**

“It shall be unlawful for the board of education to borrow any sixteenth section school funds in any other manner than that prescribed herein, and if any such funds shall be borrowed or invested in any other manner, any officer concerned in making such loan and investment or suffering the same to be made in violation of the provisions of this section, shall be liable personally and on his official bond for the safety of the funds so loaned.” *Miss. Code Ann. Section 29-3-113.*

**3. Loans to be repaid first**

“No school land trust funds may be expended after the annual payment date until the payment is made on such loan. The annual payment can be made from any funds available to the school district except minimum foundation program funds.” *Miss. Code Ann. Section 29-3-113.*

**4. Excess funds from Lieu Land Purchases to be Deposited in Principal Fund**

“Any funds from a sale in fee simple of any sixteenth section land, or land granted in lieu thereof, in excess of any amount used to purchase said land in lieu thereof, shall be treated as corpus and shall be invested by the board of education as provided by law. Only the income from such investment shall be expended for current operating expenses of the schools.” *Miss. Code Ann. Section 29-3-27.*

**5. Transfer of funds to other accounts**

“In cases where said [expendable] moneys have been transferred to the principal fund and it is determined to expend same for any of the purposes authorized by law, such moneys shall be transferred to the proper fund for expenditure upon order of the board of education.” *Miss. Code Ann. Section 29-3-111.*

**C. The Expendable Fund (“Interest Fund”)**

**1. What to place in the expendable fund:**

**a. Oil and Gas bonus payments; delay rentals**

“All moneys heretofore or hereafter derived from the leasing of said lands for oil, gas and mineral purposes, including any bonus or delay rental payable under such leases, ... may be expended for any of the purposes authorized by law.” *Miss. Code Ann. Section 29-3-111.*

**b. Surface rental payments**

“[A]ll money derived from the annual payment of rents from the leasing of said lands for agricultural, residential, commercial, industrial, grazing or other purposes . . . may be expended for any of the purposes authorized by law.” *Miss. Code Ann. Section 29-3-111.*

“All rentals, or other revenue payable under any leases executed pursuant to this chapter shall be paid to and collected by the superintendent of education and shall be credited to the township school fund. . . .” *Miss. Code Ann. Section 29-3-59.*

“All expendable sixteenth section revenues to which a school district shall become entitled, as provided in sections 29-3-115 through 29-3-123 from annual rents, interest and other sources shall be paid into the maintenance or building fund of the school district entitled thereto on order of the board of education.” *Miss. Code Ann. Section 29-3-117.*

**c. Investment income from Principal Fund investments**

“[A]ll monies . . . derived as interest upon loans or investments of principal funds . . . may be expended for any of the purposes authorized by law.” *Miss. Code Ann. Section 29-3-111.*

**d. Timber Sale Income (85% of receipts)**

“[A]ll moneys heretofore or hereafter derived from the sale of timber, may be expended for any of the purposes authorized by law.” *Miss. Code Ann. Section 29-3-111.*

**2. How the expendable fund can be used:**

**a. Expenses:**

**i. Generally**

“All rentals, or other revenue payable under any leases executed pursuant to this chapter shall be . . . used and expended in the same manner and subject to the same restrictions as provided by law in the case of other money belonging to such funds.” *Miss. Code Ann. Section 29-3-59.*

**ii. Building and repairing school facilities**

“The expendable funds derived from sixteenth section or lieu lands may be expended for the building and repair of schoolhouses, teachers’ homes, and other school facilities. . . .” *Miss. Code Ann. Section 29-3-115.*

**iii. Equipment purchases**

“. . . the purchase of furniture, school vehicles and equipment for same . . . .” *Miss. Code Ann. Section 29-3-115.*

**iv. Teachers’ salaries; operations**

“. . . the payment of teachers’ salaries, and for all other purposes in operating and maintaining the schools of the district to which such funds belong for which other available school funds may be expended.” *Miss. Code Ann. Section 29-3-115.*

**v. Improvement of sixteenth section lands**

“Such funds may also be expended for clearing, draining, reforestation and otherwise improving any sixteenth section lands of township to which any such available funds may belong.” *Miss. Code Ann. Section 29-3-115.*

*vi. Payment of taxes; assessments*

“Such funds may also be expended for the purpose of paying any drainage district taxes, costs, expenses, and assessments for which the sixteenth section may be liable, and in such case the same shall be paid by the board of education out of any such funds which would otherwise be paid over to the school district entitled thereto under the provisions of sections 29-3-115 through 29-3-123.”

*Miss. Code Ann. Section 29-3-115; also Section 29-3-57*

*vii. Attorneys’ fees*

“Such funds may also be expended to pay all reasonable and necessary attorneys’ fees incurred to clear the title on any sixteenth section lieu lands located outside the county.”

*Miss. Code Ann. Section 29-3-115; also Section 29-3-57.*

*viii. Education of district school children generally; liability for insufficient security*

“All expendable funds derived from sixteenth section or lieu lands shall be credited to the school districts of the township in which such sixteenth section lands may be located, or to which any sixteenth section lieu lands may belong. Such funds shall not be expended except for the purpose of education of the educable children of the school district to which they belong, or as otherwise may be provided by law.

The board of education shall require additional securities from the county depository when necessary to protect such funds and, in the event of their failure to do so, they shall be liable therefor upon their official bond.” *Miss. Code Ann. Section 29-3-109*

*ix. Forest management decisions review*

The school board “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. . . .”

*Miss. Code Ann. Section 29-3-45(1)(a).*

*x. Management assistance*

“The boards of education are also authorized to expend reasonable sums from the school land trust expendable funds for school land management assistance when the needed assistance is not available from the Secretary of State or other public agencies within the state.” *Miss. Code Ann. Section 29-3-131.*

*xi. Easements for Access to Land*

The school board of a school district may acquire, in the name of the district, by purchase, all easements that are necessary and desirable for access to sixteenth section lands or lieu lands. Whenever the purchase price for property on which an easement is to be located is greater than Fifty Thousand Dollars (\$ 50,000.00), the school board may not purchase the property for an amount exceeding the fair market value of the property, as determined by the average of at least two (2) independent appraisals by certified general appraisers licensed by the State of Mississippi. *Miss. Code Ann. Section 29-3-92(1).*

***b. Investments:***

Unspent funds in the expendable fund can be invested in any way authorized by law. Please refer to the investments available under the Principal Fund section.

The income from such investment may be spent in the same manner as the principal in the expendable fund.

## D. Forestry Escrow Fund

### 1. What to place in the escrow: (15% of timber sale receipts)

“In order to provide funds with which to pay for the general supervision and sale of forest products, fifteen percent (15%) of all receipts from the sales of forest products shall be placed by the board in a forestry escrow fund. . .” *Miss. Code Ann. Section 29-3-47.*

### 2. How the escrow can be used:

#### a. Expenses:

##### i. Reimbursement of Forestry Commission work

The funds “shall be placed by the board in a forestry escrow fund and reserved to pay for work performed by the state forestry commission.” *Miss. Code Ann. Section 29-3-47.*

##### ii. Private contractor work approved by board under Commission supervision

“In the alternative, the commission, in its discretion, may have the option to contract with a private contractor, subject to the approval of said board, to perform this work under the supervision of the commission. Payment of the reimbursements as hereinabove set forth to the said forestry commission, or of compensation due under any such contract with private contractors shall be made upon presentation of itemized bills therefore by said commission or said private contractors, as the case may be, and may be made out of any sixteenth section funds to the credit of, or accruing to, any school district in which such work shall be done, or out of any other funds available to such district, excluding minimum foundation program funds.” *Miss. Code Ann. Section 29-3-49.*

#### b. Investments:

Unspent funds in the escrow can be invested in any way authorized by law. Please refer to the investments available under the Principal Fund section.

The income from such investment may be placed in the escrow or transferred to the expendable fund and spent accordingly.

### 3. Cannot be used for independent forestry management review

The independent review of forestry management decisions and practices is to be paid specifically from the Interest Fund or with expendable funds. Therefore, the district cannot use Forestry Escrow Funds.

### 4. Transfer of Excess Funds into other accounts:

“When it becomes evident that the amount of money in the forestry escrow fund is in excess of the amount necessary to accomplish the work needed to achieve the goals set by the board of education and the forestry commission, the state forestry commission shall advise said board to release any part of such funds as will not be needed, which may then be spent for any purpose authorized by law.” *Miss. Code Ann. Section 29-3-47.*

## E. Policy Recommendations

If the revenue received from an easement is an annual payment rather than a one-time lump sum payment it can be placed in the Expendable Fund.



# XI.

## Shared Townships

### A. General Duties

1. Managing School Board
2. Sharing School Boards
3. State Auditor's Office
4. Secretary of State

### B. What revenues are to be shared

### C. What lands are shared

1. Where one district located in the township: the managing board keeps all revenues
2. Where two or more districts located in the township in the same county: per resident enrolled student
  - a. Generally: revenues split between boards inside township
  - b. Share based on two factors: (1) Students living in township and (2) enrolled in district schools
3. Where a county line splits the township: per educable children
  - a. Share based on one factor: the number of educable children in the township
4. Where county line splits the land: per educable children
  - a. Share based on one factor: the number of educable children in the township
5. Where no children reside in township: per district enrollment
  - a. Where one district in township: managing board keeps all revenues
  - b. Where two or more districts in township: share based on total enrollment in schools
  - c. Example
6. Where land split by district or section line (surface damage payments ONLY): per amount of shared township land within district
7. Municipal separate school districts

### D. Duties of all sharing boards

1. All boards to make lists of educable children in township; provide lists to other boards
  - a. Generally required
  - b. Exception: Not required when one district in township
  - c. Superintendent to make list
  - d. List to be based on first month enrollment of current year
  - e. Separate lists required for each shared township
  - f. Due to managing district by December 31 for distributions the next calendar year
  - g. Lists available for inspection; preserved
  - h. Failure to supply list will result in forfeit of proceeds

2. Procedure for Disputed Lists
  - a. Superintendent may file written challenge to other districts' lists
  - b. State Auditor, in discretion, to order and supervise recount
  - c. Costs to be paid by challenging and challenged district pro rata; payment
  - d. Recount shall supersede submitted list
3. Notify Secretary of State of change in district boundaries, district mergers, and divisions
4. Claims against managing district must be made within 1 year

**E. Specific duties of managing boards**

1. Promptly pay sharing boards
2. Not to pay sharing boards which do not file list of township children
3. Keep books and records; make available for review; public record
4. Notify Secretary of State of changes in district lines within all townships; mergers and divisions of sharing schools



## **A. General Duties**

### **1. Managing School Board**

The school district that manages the leasing and revenue from the shared section is responsible for the following duties:

- Properly classify and lease the section as outlined above
- Manage the forested areas to maximize revenue from timber sales for the sharing districts
- Count the number of students living in the shared township and enrolled in the schools of the managing board by December 31 of every year and report this number to the other sharing boards
- Distribute the revenue generated from the uses of the shared section to the sharing boards pro rata
- Report to the Secretary of State's office the disbursements made to the sharing boards by revenue type (e.g. revenues to be deposited in the expendable fund, revenues to be deposited in the principal fund, etc.)
- In the event the managing board is consolidated with another, or the managing board's lines are modified in any way, the managing board shall report the change to the Secretary of State's Office immediately

### **2. Sharing School Boards**

All school boards that share revenue from public school trust lands are responsible for the following duties, regardless of whether the sharing district also manages another section:

- Count the number of students living in the shared township and enrolled in the schools of that district by December 31 of every year, and report this number to the managing board and other sharing boards
- Receive the board's pro rata share of the revenues generated from the section and place them in the correct funds
- Report to the Secretary of State the disbursements received from the managing board by revenue type
- In the event the sharing board is consolidated with another board, or the sharing board's district lines are modified in any way, the sharing board shall report the change to the Secretary of State's Office immediately

### **3. State Auditor's Office**

In the event there is a dispute about the number of children living in the shared township and enrolled in the schools of the sharing boards, the State Auditor's Office may order, arrange for, and supervise a recount of the children.

### **4. Secretary of State**

The Secretary of State's Office will maintain a list of all shared townships by managing board, listing any sharing boards.

## **B. What revenues are to be shared**

All revenues generated from the use of public school trust lands lying within a shared township should be shared among the sharing districts. Generally, this means expendable funds, including, but is not limited to:

- Surface lease revenues
- Mineral lease revenues and sales of minerals\*
- Bonus payments made by mineral lessees
- Sales of timber and forest products (85% of revenues generated from the sale)
- Interest income from, and authorized draw-downs of, forestry escrow funds
- Excess proceeds, once lieu lands have been purchased, from the sale of land for industrial development
- Sales of buildings and other resources located on the property
- Payments for damage to the surface of the land\*
- Lump-sum easement income and proceeds from condemnation of trust lands\*

- All income attributable to the property, except as provided below
  - \*These funds should be placed in the principal fund accounts of all sharing boards and not spent.
  - There are a few items which are excluded from the list of revenues to be shared:
- Funds to be placed into the forestry escrow account from the sale of timber (15% of revenues)
- Income from the investment of principal fund monies

## **C. What lands are shared**

### **1. Where one district located in the township: the managing board keeps all revenues**

“Where there is only one (1) school district in the township to which the available funds belong, such school district shall be entitled to the whole of such funds, and the funds shall be handled in the manner set forth in this section.” *Miss. Code Ann. Section 29-3-119(1)*.

### **2. Where two or more districts located in the township in the same county: per resident enrolled student**

#### ***a. Generally: revenues split between boards inside township***

“In cases where a township having available funds is occupied by two (2) or more school districts or parts of school districts, the available funds of the township shall be divided between the districts lying wholly or partly within such township. . . .” *Miss. Code Ann. Section 29-3-119(2)*.

#### ***b. Share based on two factors: (1) Students living in township and (2) enrolled in district schools***

“[T]he available funds of the township shall be divided . . . in proportion to the number of children residing in that portion of each district which lies within such township and enrolled in the schools of that district, as compared to the total number of children residing in such township and enrolled all districts lying wholly or partly in that township.” *Miss. Code Ann. Section 29-3-119(2)*.

Home schooled children, children who transfer to the other district, and children going to private schools are not counted when determining the revenue share.

### **3. Where a county line splits the township: per educable children**

#### ***a. Share based on one factor: the number of educable children in the township***

“Where a township is divided so that parts are situated in different counties, . . . the fund shall be accounted for with each county according to the number of educable children in the part of the township as compared with the whole number in the township.” *Miss. Code Ann. Section 29-3-127*.

### **4. Where County Line splits the land: per educable children**

#### ***a. Share based on one factor: the number of educable children in the township***

“[I]f the section or land in lieu thereof be in several counties, . . . the fund shall be accounted for with each county according to the number of educable children in the part of the township in it as compared with the whole number in the township.” *Miss. Code Ann. Section 29-3-127*.

## **5. Where no children reside in township: per district enrollment**

### **a. Where one district in township: managing board keeps all revenues**

“Where any such township is located wholly within one (1) school district, the available township funds shall be distributed to that district.” *Miss. Code Ann. Section 29-3-119(3)(a)*.

### **b. Where two or more districts in township: share based on total enrollment in schools**

“Where any such township having such funds available for distribution is located either in whole or in part in two (2) or more school districts, such available funds shall be distributed to the two (2) or more school districts in proportion to the number of children residing in that part of the two (2) or more school districts which is common or coextensive to each of the school districts, distribution being made on the basis of the enrollment of the school children in their respective schools.” *Miss. Code Ann. Section 29-3-119(3)(b)*.

### **c. Example**

District A manages land which produces \$1,000 in revenue. District B is also located in the township. No educable children live in the township. There are fifteen-hundred (1,500) students enrolled in District A; there are twelve-hundred (1,200) students enrolled in District B.

- District A keeps \$555.55:
- $\$1,000 * (\text{fifteen-hundred (1,500) students enrolled in District A} / \text{twenty-seven hundred (2,700) total enrollment})$
- District B receives \$444.45 from District A:
- $\$1,000 * (\text{twelve-hundred (1,200) students enrolled in District A} / \text{twenty-seven hundred (2,700) total enrollment})$

## **6. Where land split by district or section line (Surface Damage payments ONLY): per amount of shared township land within district**

“Where sixteenth section or lieu land allotted the township in lieu of a sixteenth section shall lie in two (2) or more school districts and trespass shall have been committed on said sixteenth section or lieu land, and suit shall have been filed and money collected because of said trespass or for any cause, it shall be the duty of the board of education where the money shall have been collected and deposited to the credit of the said district, unless the decree or order of the court provides otherwise, to divide said money so collected so that each county shall receive its share in proportion to the area in said sixteenth section lying in or allotted to each county; and the money, when so paid over to the respective district or districts, shall be placed to the credit of said township fund, to be invested and the interest therefrom to be used as now provided by law. This method of division provided herein shall apply to moneys collected and paid into any district treasury.” *Miss. Code Ann. Section 29-3-129*.

## **7. Municipal separate school districts**

“Municipal separate school districts shall be entitled to their pro rata part of such funds in the same manner as other school districts.” *Miss. Code Ann. Section 29-3-119(2)*.

## D. Duties of all Sharing Boards

### 1. All boards to make lists of educable children in township; provide lists to other boards

*Miss. Code Ann. Section 29-3-119(3)*

#### **a. Generally required**

“For such purpose [of determining the proportion by which to distribute shared township revenues], annual lists shall be made of all children who reside in the township and who are enrolled in the schools of each district lying wholly or partly in that township, which lists shall be made in accordance with Section 29-3-121.” *Miss. Code Ann. Section 29-3-119(2)*.

#### **b. Exception: Not required when one district in township**

“Such lists shall not be made, however, as to any township which is wholly within one (1) school district.” *Miss. Code Ann. Section 29-3-121*.

#### **c. Superintendent to make list**

“It shall be the duty of the superintendent of each school district to make or cause to be made annual lists of the children enrolled in the schools of such district and who reside in such district. . . .” *Miss. Code Ann. Section 29-3-121*.

#### **d. List to be based on first month enrollment of current year**

“[These] lists shall be based upon the end of the first month enrollment required to be reported to the State Department of Education for the then current school year.” *Miss. Code Ann. Section 29-3-121*.

#### **e. Separate lists required for each shared township**

“The lists shall be made separately as to the townships in which such children reside.” *Miss. Code Ann. Section 29-3-121*.

#### **f. Due to managing district by December 31 for distributions the next calendar year**

“Such lists shall be filed with the superintendent of the custodial school district on or before December 31 of each year, and the lists shall be used in making the division of the available funds of each township during the ensuing calendar year, as provided by Section 29-3-119. *Miss. Code Ann. Section 29-3-121*.

#### **g. Lists available for inspection; preserved**

“The superintendent of the custodial school district shall make such lists available, upon request, to each school district sharing in the revenues of the township.” *Miss. Code Ann. Section 29-3-121*.

“All such lists shall be retained and preserved by the superintendent of the custodial school district as a public record.” *Miss. Code Ann. Section 29-3-121*.

#### **h. Failure to supply list will result in forfeit of proceeds**

“Any school district failing to timely provide the list to the superintendent of the custodial school district shall forfeit its right to such funds unless the school board of the custodial district and the school board of the other district or districts entitled to such funds have executed a written agreement providing for the distribution of such funds in a manner agreed upon by the school districts.”

*Miss. Code Ann. Section 29-3-121*.

### 2. Procedure for Disputed Lists

#### **a. Superintendent may file written challenge to other districts' lists**

“If any superintendent of a school district participating in the division of such funds shall challenge in writing the accuracy of any such list . . .” *Miss. Code Ann. Section 29-3-121*.

**b. State Auditor, in discretion, to order and supervise recount**

“[T]he Office of the State Auditor, upon receipt of such challenge, may, in its discretion, order and arrange for and supervise a recount of the children enrolled in the schools of such district and who reside in such district.” *Miss. Code Ann. Section 29-3-121.*

**c. Costs to be paid by challenging and challenged district pro rata; payment**

“All costs incurred in conducting the recount shall be borne by the challenging district and the district in which the recount is conducted on a pro rata basis, as determined from the results of the recount.”

“Such costs may be paid from the school district’s share of the available township funds.”

*Miss. Code Ann. Section 29-3-121.*

**d. Recount shall supersede submitted list**

“Such recount, when obtained, shall supersede the original list for the purposes of Sections 29-3-115 through 29-3-123.” *Miss. Code Ann. Section 29-3-121.*

**3. Notify Secretary of State of change in district boundaries, district mergers, and divisions**

As noted above, any change of the school district lines may result in new sharing districts, additional shared townships, the removal of sharing districts, or fewer shared townships. Any time a sharing district’s lines change, the board should notify the Secretary of State’s office and provide a map of the new district lines.

**4. Claims against managing district must be made within 1 year**

“Any district entitled to such funds which is not paid promptly may assert a claim against the custodial school district for its share of the funds not later than twelve (12) months from the end of the calendar year in which the custodial school district collected such funds.” *Miss. Code Ann. Section 29-3-119(4).*

**E. Specific Duties of Managing Boards**

**1. Promptly pay sharing boards**

“The school district having jurisdiction and control of the sixteenth section or lieu lands in the township . . . shall pay to each other school district . . . the district’s pro rata share of the available township funds . . . promptly after collecting such funds.” *Miss. Code Ann. Section 29-3-119(4).*

**2. Not to pay sharing boards which do not file list of township children**

“It shall be unlawful for any township funds to be expended by the custodial school district or paid over to school districts as provided in Section 29-3-115 through 29-3-123, where there are two (2) or more school districts or parts of school districts in the township until lists of the children residing in each district or part of district within such township who are enrolled in the schools thereof have been made as required under Section 29-3-121. . . . Any member of a local school board or any superintendent of a school district who shall order the payment of such funds or who shall issue a pay certificate therefor in violation of the provisions of this section shall be liable upon his bond for the amount so paid.” *Miss. Code Ann. Section 29-3-123.*

**3. Keep books and records; make available for review; public record**

“The custodial school district shall make its books and records pertaining to the income and funds of any shared township available for inspection and copying to all other school districts sharing in the income from the township upon reasonable notice of such request.” *Miss. Code Ann. Section 29-3-119(4).*

“The superintendent of the custodial school district shall make such lists available, upon request, to each school district sharing in the revenues of the township.” *Miss. Code Ann. Section 29-3-121.*

“All such lists shall be retained and preserved by the superintendent of the custodial school district as a public record.” *Miss. Code Ann. Section 29-3-121.*

#### **4. Notify Secretary of State of changes in district lines within all townships; mergers and divisions of sharing schools**

The Secretary of State is supervisory trustee and custodian of records for public school trust lands. A change in district lines in any township may result in a change in the managing board for school trust land, or the requirement that revenues from the township be shared. A merger or division of a sharing school district may affect the number and identity of the districts sharing the revenue from the township. Whenever any of these events occur, the managing board should notify the Secretary of State of the event and provide a suitable map showing the new district lines in the shared section.



## XII. Property Taxes

### A. General Duties

1. Managing Board
2. Secretary of State
3. Tax Collector
4. Lessee

### B. Applicable Taxes

1. Generally
2. Managing board and public school trust lands are generally not taxed
  - a. Ad Valorem Taxes (exempted)
  - b. Severance Taxes (not subject to tax)
  - c. Drainage District Taxes (to be paid by managing board or lessee)
    - i. Lands subject to tax
    - ii. Managing board to pay tax; may use expendable funds or obtain loan to pay
    - iii. Lessee to pay tax under terms of lease, in discretion of managing board
3. Lessee generally liable for all applicable taxes during term of lease
  - a. Ad Valorem Taxes
    - i. Lessee to pay ad valorem taxes when land under lease
    - ii. Managing board to provide leasing information to taxing authority
    - iii. Tax valuation:
    - iv. Homestead Exemptions: Residential lessee with lease longer than 10 years may receive
    - v. Lessee to pay ad valorem tax to Tax Collector, not managing board
  - b. Severance Taxes
    - i. Mineral Leases: no severance taxes owed on board's interest
    - ii. Timber Sales: winning bidder to pay severance tax

### C. Failure To Pay Taxes

1. Cancellation for non-payment of ad valorem taxes
2. Ad valorem tax sales
  - a. Managing board should check for non-payment of taxes
  - b. Tax Collector to sell public school trust land leases
  - c. Leasehold interest only in public school trust lands may be sold at tax sale
  - d. Where no purchaser at tax sale, lease sold to State of Mississippi; redemption of lease
  - e. Leases maturing to State of Mississippi are cancelled; board may re-lease
  - f. Tax Collector may notify managing board, report to Secretary of State
  - g. Subsequent lessee not responsible for previous taxes

## A. General Duties

### 1. Managing Board

The school board has several duties when it comes to taxes:

- Pay drainage district taxes or require lessee to pay drainage district taxes,
- Include language in all leases requiring the lessee to pay all taxes and that non-payment of taxes by the lessee causes default which could lead to cancellation of the lease,
- File all leases with the Chancery Clerk so the Tax Assessor will put the lease on the tax rolls and collect taxes from the lessee,
- Check whether lessee is making annual tax payments or lessee/contractor is incorrectly taking severance taxes from managing board's revenues
- Cancel leases and contracts where taxes are not being paid.

### 2. Secretary of State

The Secretary of State has one duty regarding taxes:

- Notify the managing board whenever a lease sold at a tax sale matures to the state

### 3. Tax Collector

The tax collector has two duties regarding taxes on public school trust lands:

- Place all surface leases on the land roll with the correct assessed owner to collect taxes
- Sell leases where the lessee is delinquent for paying taxes at the tax sale

### 4. Lessee

The lessees and contractors are generally required to pay all taxes owed on time.

## B. Applicable Taxes

### 1. Generally

There are several taxes which may be collected as a result of uses of public school trust lands:

*a. Ad Valorem: These taxes are paid on a yearly basis to the county tax collector on real and personal property within the county.*

*b. Severance Taxes: These taxes are paid to the Mississippi Department of Revenue at the time a resource (such as oil and gas or timber) is separated from the land.*

*c. Drainage District Taxes: These are taxes paid on a yearly basis to the county tax collector for lands lying within the geographic boundary of the drainage district.*

### 2. Managing board and public school trust lands are generally not taxed

School boards of education are considered to be part of the State. The state does not tax itself unless a statute specifically requires it. Other statutes may specifically exempt managing boards and lands from a tax that would ordinarily be applicable to them. Therefore, there are two general cases where the managing board is not required to pay taxes: (1) not specifically subjected to tax and (2) exempted from an applicable tax.



**a. Ad Valorem Taxes (exempted)**

“The following shall be exempt from [ad valorem] taxation:

(e) All property, real or personal, held and occupied by trustees of public schools, and school lands of the respective townships for the use of public schools. . . .” *Miss. Code Ann. Section 27-31-1(e)*.

**b. Severance Taxes (not subject to tax)**

Similarly, the operator or lessee of a mineral lease should not pay severance taxes to the state on the royalty interest retained by the managing board for the sale of minerals. For more information about severance taxes, please see *Miss. Code Ann. Section 27-25-1* and following.

**c. Drainage District Taxes (to be paid by managing board or lessee)**

**i. Lands subject to tax**

“Where any school land, generally known as sixteenth sections, reserved for the use of schools, or land reserved or granted in lieu of or substituted for sixteenth sections lies within or partly within any drainage district created under the laws of this state, and will be benefited by such drainage district, such lands so benefited shall be liable for its pro rata share of the costs, expenses, taxes, and assessments relating to said district as if owned by an individual, and shall be assessed accordingly, as other lands are assessed.” *Miss. Code Ann. Section 29-3-73*.

**ii. Managing board to pay tax; may use expendable funds or obtain loan to pay**

“All such drainage taxes and assessments accruing on any such lands while the same are not leased shall be paid by the board of education of the school district in which such lands are situated, out of any sixteenth section funds belonging to the township in which such lands are located, which may be on hand at the time when such drainage taxes or assessments become due or which may be thereafter at any time collected or acquired.” *Miss. Code Ann. Section 29-3-73*.

“For the purpose of paying such drainage taxes and assessments, the board of education may borrow all money necessary to pay the same. When any such funds are borrowed as aforesaid, for the purposes aforesaid, the same shall be repaid out of the first sixteenth section fund thereafter derived from the sixteenth section lands so taxed and assessed.” *Miss. Code Ann. Section 29-3-73*.

**iii. Lessee to pay tax under terms of lease, in discretion of managing board**

“Where such sixteenth section land, or land taken in lieu thereof, shall be held by any lessee, whether his lease shall have heretofore been acquired or shall hereafter be acquired, all such drainage taxes and assessments accruing thereon during such lease shall, in the discretion of the board of education, either be paid by the lessee, his grantees or assigns, or by the board of education. . . .” *Miss. Code Ann. Section 29-3-73*.

“[T]he liability for such drainage taxes shall be fixed by the lease contract when said lands are leased.” *Miss. Code Ann. Section 29-3-73*.

“Where said lands have been leased by the superintendent of education, with the consent of the board of education in open session, and said lease contract provides that the lessee shall pay all such drainage taxes and assessments, and the lessee has actually entered upon and occupied said lands as lessee and is recognized as such, the school district in which said sixteenth section is located shall not be liable for such drainage taxes on account of the secretary in failing to enter the order of the board approving said lease contract on its minutes. *Miss. Code Ann. Section 29-3-73*.

### 3. Lessee generally liable for all applicable taxes during term of lease

#### a. *Ad Valorem Taxes*

##### i. *Lessee to pay ad valorem taxes when land under lease*

“Sixteenth section lands reserved for the use of schools, or lands reserved or granted in lieu of or as a substitute for the sixteenth sections, shall be liable, after the same shall have been leased, to be taxed as other lands are taxed during the continuance of the lease. . . .” *Miss. Code Ann. Section 29-3-71.*

“All school lands known as the sixteenth sections, reserved for the use of schools, or lands reserved or granted in lieu of or as a substitute for the sixteenth sections, shall be liable, after the same shall have been leased, to be taxed as other lands are taxed during the continuance of the lease, but in case of sale thereof for taxes, only the title of the lessee or his assignee shall pass by the sale.” *Miss. Code Ann. Section 27-35-71.*

##### ii. *Managing board to provide leasing information to taxing authority*

In order to make sure the county and the school receives tax revenues owed by county landowners, a copy of any lease of those lands must be provided to the taxing authority. If it is not sent, the board will remain the assessed owner on the land roll, and revenues will be lost.

##### iii. *Tax valuation:*

###### (i.) *In general: Lease land valued the same as fee land*

The value of the leasehold interest in Sixteenth Section Lands is taxed the same as other lands, meaning it is taxed as if the lessee owns the land. *Board of Supervisors of Leflore County v. Whittington.*

###### (ii.) *Hunting and fishing leases: 10% capitalization rate*

Since a hunting and fishing lease only allows the lessee to hunt and take game from the property, it is valued differently by the tax assessor. This valuation is dependent upon the rent, so the taxing authority must be provided a copy of the lease as noted above.

##### iv. *Homestead Exemptions: Residential lessee with lease longer than 10 years may receive*

A Sixteenth Section Lessee is an “owner” for homestead exemption purposes if the lease of Sixteenth Section Lands is either perpetually renewable or leased for a term of ten (10) years or more. *Miss. Code Ann. § 27-33-17(c).*

“[H]omes legally assessed on the land roll, owned and actually occupied as a home by bona fide residents of this state, who are heads of families, shall be exempt from the ad valorem taxes herein enumerated, on not in excess of seven thousand five hundred dollars (\$7,500.00) of the assessed value. . . .” *Miss. Code Ann. Section 27-33-3(1).*

“The meaning of the words . . . ‘owned,’ . . . shall be limited to real estate, and to title, as follows:

(c) ‘School lands legally leased,’ meaning a legal lease of school land which is perpetually renewable, or school land legally leased for a term of ten (10) years or more under the provisions of Section 211 of the Mississippi Constitution, the owner of which lease is the head of a family who is entitled to and does occupy and use the property as a home, and who renders the property for assessment and pays the taxes thereon, as required by law.” *Miss. Code Ann. Section 27-33-17(c).*

##### v. *Lessee to pay ad valorem tax to Tax Collector, not managing board*

The managing board has no authority to collect ad valorem taxes from the lessee, nor to pay those taxes on behalf of the lessee when they are due. Therefore, the lessee should pay the tax to the tax collector.

## **b. Severance Taxes**

### *i. Mineral Leases: no severance taxes owed on board's interest*

(i.) Oil and gas, etc. (where interest is percentage of proceeds from sales)

When the managing board leases lands to produce and sell minerals where it retains a royalty interest in the proceeds (for instance, the minimum 1/8 interest). The production of oil or gas results in a levy of severance taxes on the production. The lessee of the lease or operator of the well is liable to pay severance taxes on its royalty interest (7/8). No tax is owed on the proceeds from the board's retained royalty (1/8).

(ii.) Sulphur, salt, sand and gravel, etc. (where interest is price per volume or weight)

When the managing board leases land to produce and sell minerals where a base price is used (for instance, \$1.00 per ton for coal), a severance tax is levied on the production. The lessee is responsible to pay severance taxes on the value of the production, after the board's interest is subtracted. No tax is owed on the proceeds paid to the board.

### *ii. Timber Sales: winning bidder to pay severance tax*

"Liability for the tax imposed by this article shall apply to any person who shall sever any timber or timber products from government-owned land or lands, either state or federal, in the event the timber or timber products severed enter commercial channels of trade or competitive markets."

*Miss. Code Ann. Section 27-25-13.*

## **C. Failure to pay taxes**

### **1. Cancellation for non-payment of ad valorem taxes**

There are three (3) points in time a board may select to cancel a lease for non-payment of ad valorem taxes:

- February: The lessee has until the first day of February to pay ad valorem taxes imposed the previous year without penalty. We recommend including a clause in all lease agreements which makes the lease subject to cancellation if the payment is not made when due.
- Tax Sale: The lease may make cancellation dependent on whether the lease is sold at the tax sale. Since some governments do not sell leases at the tax sale, and since the state can acquire an interest in the lease if no one purchases the lease at the sale, we do not recommend making this the event that causes cancellation.
- Expiration of Redemption: All leases cancel when the lessee does not pay the ad valorem tax or redeem the property from the tax sale, regardless of the language of the lease. Since this can be three (3) years after the tax is due, and some leases last only five (5) years, we do not recommend making this the event which causes cancellation.

Any lease agreement, or any contract for the sale of public school trust land resources (such as timber) should explicitly provide that the failure to pay taxes when due to the proper authority is grounds to cancel the lease agreement or contract. The lessee or contractor may be given time under the agreement to remedy the failure before it is cancelled.

Further, as a condition of the lease, a managing board may require the lessee to pre-pay taxes on any lease where the lease is set to expire during the year. Ad valorem taxes are collected in arrears (meaning the tax is paid at the end of the year). In order to assure that the ad valorem taxes are paid, it is recommended a condition of all leases impose upon the lessee the obligation to pay the entire ad valorem tax assessment for any year the lessee held the lease, regardless of how long the lessee held the lease during the year.

## 2. Ad valorem tax sales

### **a. Managing board should check for non-payment of taxes**

Where payment of taxes is a condition of the lease or contract, a manager should check to see they are paid. For ad valorem taxes, this means

*i. Contacting the county Tax Collector in February of each year to see whether the taxes are paid,*

*ii. Obtaining a list of lessees who do not pay, and*

*iii. Sending any required notice to the lessee to cure the problem.*

*iv. This should be done again before the tax sale in April or August, and if the lessee has not paid, then the lease should be cancelled before the tax sale.*

### **b. Tax Collector to sell public school trust land leases**

As noted above, leases can be sold at the tax sale due to the lessee's failure to pay the ad valorem tax assessment. See *Miss. Code Ann. Section 27-41-55*.

### **c. Leasehold interest only in public school trust lands may be sold at tax sale**

"[I]n case of sale [for taxes owed], only the title of the lessee or his heirs or assigns shall pass by the sale." *Miss. Code Ann. Section 29-3-71*.

### **d. Where no purchaser at tax sale, lease sold to State of Mississippi; redemption of lease**

If a sixteenth section lease is not purchased at a tax sale and not redeemed within two years, then the leasehold interest in the premises merges back with the fee estate and the managing district may then re-lease the land. See *Turney v. Marion County Bd. of Ed.*, 481 So. 2d 770 (Miss. 1985).

### **e. Leases maturing to State of Mississippi are cancelled; board may re-lease**

As noted above, if the lease is not redeemed, it matures to the State of Mississippi and is cancelled without further action. This immediately makes it available for lease by the managing board.

### **f. Tax Collector may notify managing board, report to Secretary of State**

There are two (2) means by which a managing board may become aware a lease matured to the state: One (1) the tax collector notifies the board in writing or two (2) the tax collector may notify the state along with any report of all the lands maturing to the state from a previous tax sale. The managing board may re-lease the land immediately under both circumstances.

We prefer the tax collector notify the state as part of the process of certifying tax-forfeited lands to the state. We will provide notice to the school of the maturity of the lease. If the collector does not do this, we ask the managing board to provide notice of maturity to the Secretary of State's office instead. For information about tax sales, please see *Miss. Code Ann. Section 27-41-55* through *27-41-89*.

### **g. Subsequent lessee not responsible for previous taxes**

If a lease has been cancelled or otherwise terminated, and the person applying for or receiving the lease is not the same as the lessee who did not pay taxes, the managing board may lease the land to that person. The subsequent lessee is not responsible to pay the outstanding taxes owed, but must pay all taxes owed for any time a lease incurs tax liability.



## XIII. Appraisals

### A. General Duties

1. School District

### B. Law

1. Appointment of Competent Appraiser
2. Fair Market Rent
3. Recommendation of Fair Market Rent Value; school to set rent
4. Improvements owned by the State
  - a. Buildings on Sixteenth Section Land
  - b. Improvements made under a Development Lease

### C. Policy Recommendations

1. Appraisal Sources
  - a. Tax Assessor Staff
  - b. Service Forester
  - c. Residential Appraiser (RA Certified)
  - d. General Appraiser (GA Certified)
  - e. Special Training (e.g. MAI Appraisers)
2. What sort of appraisal report should I request?
  - a. Tax Assessor Certificate
  - b. Due to the limitations of a tax assessor's certificate, the following restrictions apply to using a certificate
  - c. Standard Appraisals (USPAP)
  - d. All Appraisals Must Contain
  - e. Please Note
  - f. Mass Appraisal

## **A. General Duties**

### **1. School District**

At the beginning of a private contract lease, and at least once every ten years during the time the land is being leased, the school board must have the value of the land determined, exclusive of buildings and improvements not owned by the board. Miss. Code Ann. §§29-3-63 through 29-3-69. The board can do this by “appraisal, comparative analysis or comparison with the private sector.” *Miss. Code Ann. §29-3-6(2)*.

The board should retain a competent certified appraiser to determine land value and offer an opinion as to fair market rental value. The board will then determine if the recommended rental value is reasonable. The appraisal process will determine the rent for the property over the life of the lease.

The board can pay for such appraisals “from any available sixteenth section school funds or other school funds of the district.” *Miss. Code Ann. §29-3-1(2)*. The board may also require the lessee to pay for the appraisal in the terms of a lease. The board may recoup the costs for an appraisal over the life of a lease through yearly rental fees.

When submitting leases to the Secretary of State’s office, please include all appraisal documents:

- a. Appraisal or Tax Certificate
- b. Bid Sheets
- c. Proof of Publication

## **B. Law**

### **1. Appointment of Competent Appraiser**

“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.” *Miss. Code Ann. Section 29-3-65*.

Methods of determining Fair Market Rental Value: Farm-residential, Residential, Recreational, and Other leases

### **2. Fair Market Rent**

“[F]air market rental will apply to [Farm-residential, residential, recreational, and other land leases] as determined by appraisal, comparative analysis, or comparison with the private sector.” *Miss. Code Ann. Section 29-3-63(2)*. Appraisal to exclude improvements not owned by State, not held in trust

“Provided, however, the compensation on an annual basis shall be the fair market rental value 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. . . .” *Miss. Code Ann. Section 29-3-63(1)*.

### **3. Recommendation of Fair Market Rental Value; school to set rent**

“[The appraiser will] 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. . . .”  
*Miss. Code Ann. Section 29-3-65*.

“[T]he 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.” *Miss. Code Ann. Section 29-3-69.*

For Farm Residential and Residential leases with rent adjustment clauses, “such adjustments will not exceed the fair market rental value of the lands, exclusive of improvements thereon. . . .” *Id.*

In cases where the board of supervisors rejects the rent set by the school board, a third appraiser will be appointed by the representative appraisers for the board of supervisors and board of education. The third appraiser’s duty “shall be to appraise the land, exclusive of buildings and improvements, the title to which is not held in trust for the public schools. . . .” *Miss. Code Ann. Section 29-3-1(2).*

#### **4. Improvements owned by the State**

##### ***a. Buildings on 16th Section Land***

No appraisal is required to dispose of buildings owned by the State and located on a parcel of 16th section land. *Miss. Code Ann. Section 37-7-455.*

##### ***b. Improvements made under a development lease***

“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. . . .” *Miss. Code Ann. Section 29-3-69.* See also Article 8, Section 211(1), Mississippi Constitution of 1890.

### **C. Policy Recommendations**

#### **1. Appraisal Sources**

The law offers little guidance on the qualifications of an appraiser to be used by the board, requiring only that the board “appoint a competent appraiser to appraise the land. . . .” *Miss. Code Ann. §29-3-65.* At a minimum, this means the appraiser must be licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board. There are generally four (4) types of appraisers commonly used to value sixteenth section land:

##### ***a. Tax Assessor Staff***

Your local tax assessor’s office usually employs at least one (1) licensed appraiser to determine land values on the tax roll. The appraiser must be a Certified Appraiser according to the Mississippi Tax Commission, and may also have higher certifications. This appraiser must have attended the most recent yearly recertification course. If so, the appraiser’s land value can be used to determine the fair market value of sixteenth section land for all private contract surface leases under the restrictions discussed below.

##### ***b. Service Forester***

On certain occasions, such as the removal of individual trees growing on residential property, and the removal of trees along power line and pipe line corridors, the district can use the local forester to estimate the value of the tree to be cut down or the revenue that could be generated from the area being cleared for the utility.

##### ***c. Residential Appraiser (RA certified)***

Appraisers who are currently certified as a Residential Appraiser by the appraisal board may be used to determine the fair market rent of residential properties only.

**d. General Appraiser (GA certified)**

Appraisers who are currently certified as General Appraisers by the appraisal board may be used to determine the fair market value of sixteenth section land for all private contract surface leases.

**e. Special Training (e.g. MAI appraisers)**

Some licensed appraisers receive additional training and certifications than those discussed above. For example, an appraiser with additional training can become certified as a Member of the Appraisal Institute (M.A.I.). These appraisers may be used to determine the fair market value of sixteenth section land for all private contract leases. They should be used to perform more complex appraisals for land consistent with their additional training.

**2. What sort of appraisal report should I request?**

**a. Tax Assessor Certificate**

School boards frequently use tax assessor's certificates as a quick and free way to determine fair market value. Tax Assessors use a methodology of appraising known as a mass appraisal. This method does not usually take into consideration unique features of an individual property. Instead, adjacent properties having similar characteristics are given the same value. For instance, every parcel of land in a platted subdivision is given the same value. In practice, a mass appraisal can undervalue a parcel of property. Boards are cautioned that the money saved using a tax assessor's certificate may not make up for the rent lost on an undervalued lease.

Tax assessors are required to reappraise a parcel of property once every four (4) years. Mississippi law requires an appraisal for a new lease or for rent adjustment do be done within one year (1) of the rent due date. This means the tax assessor's certificate can be outdated, and cannot be used to determine fair market value.

Tax assessors also use different means to calculate fair market value of different types of property. For instance, the method of calculating the value of residential property differs from the method of calculating the value of agricultural land. This restricts the ways a board can use a tax assessor's certificate.

**b. Due to the limitations of a tax assessor's certificate, the following restrictions apply to using a certificate:**

- i. They may only be used for Residential and Commercial leases.*
- ii. They may be used when the total revenues from the lease over the next ten (10) years will be less than the cost of a private appraisal, or when the private appraisal will substantially reduce the revenue to the board.*
- iii. The value set by the tax assessor can only be used within one (1) year of the date the assessor appraises the property.*
- iv. They are not preferred when determining rent for a new lease.*
- v. If an existing tax parcel is being subdivided, or more than one tax parcel are being joined to create the lease, the tax assessor must independently appraise the new parcel to be leased. Otherwise, the certificate cannot be used. The board cannot simply add the value of two parcels together.*

*The tax assessor must independently assess the value of the land and complete the certificate. Do Not complete the certificate for the assessor.*

- vi. Use the Tax Certificate form supplied by the Secretary of State's office.*

It is easy to check tax assessor's value of the land first to determine if hiring a private appraiser is worth the expense. The Tax Assessor Certificate should be the mechanism of last resort in establishing the



value of 16th Section Public School Trust Land. The Tax Assessor Certificate cannot be used to value 16th Section Land classified as farm-residential because the valuation method used by the tax assessor does not comply with the laws applicable to 16th Section Land. Pursuant to §27-35-50(4) MISS CODE ANN (Supp 2002), the county tax assessor uses an arbitrary capitalization rate to determine the value of a farm-residential parcel for the purposes of taxes, the resulting “land value” is in conflict with the process set forth in §29-3-63.

**c. Standard Appraisals (USPAP)**

There are three (3) standard appraisal reports recognized by the Uniform Standards of Professional Appraisal Practice (USPAP):

*i. Self-Contained Appraisal Report*

*ii. Summary Appraisal Report*

*iii. Restricted Use Appraisal Report.*

The reports are listed above from most expensive to least expensive. The type of appraisal report the board should request depends on the revenues the board expects to receive weighed against the cost of the report. The following are suggestions about the type of report to obtain under certain circumstances.

The school board should obtain a self-contained report for the following occasions:

*i. Sales for industrial development*

*ii. New Industrial leases*

*iii. New Commercial leases*

*iv. New Catfish Farm leases*

*v. Perpetual easements (e.g. power lines, pipe lines, railroads)*

The school board should obtain a summary report on the following occasions:

*i. New Residential, Farm Residential, Recreational and Other leases*

*ii. Rent adjustments of Industrial and Commercial leases*

*iii. New leases on smaller Commercial properties (e.g. fruit stands, residential subleases)*

A restricted use report is useful on these occasions:

*i. Rent adjustments on Residential, Farm Residential, Recreational, and certain types of Other leases*

**d. All Appraisals must contain:**

In addition to providing all the information required in USPAP Standards Rule 2-2, any appraisal report obtained by the school board must include the following:

*i. A recommendation on Fair Market Rent*

*ii. Fair Market Rent of the Fee Simple interest in the land*

*iii. Contact information for appraiser*

*iv. If the highest and best use differs from current use, the report must clearly state both uses.*

*e. Please note*

The appraiser should always determine the fair market value of the State of Mississippi's fee simple interest in the land. The appraiser's opinion as to the value of the leasehold interest in the property should be reflected in the recommendation on fair market rent.

*f. Mass appraisal*

As noted above, mass appraisals are not preferred and may undervalue leases. Boards may wish to save money by having all the leases appraised in one year, however, the mass appraisal is only good for one year after its completion. The district may either save more money by having leases appraised as necessary or obtain higher rents by having each property individually appraised.

If a mass appraisal is selected and expires after one year, the district may subsequently request a letter from the appraiser performing the mass appraisal indicating any changes in the value of the properties covered by the previous appraisal. We suggest limiting the amount of time between the performance of mass appraisals to four years. This is the maximum amount of time allowable between appraisals performed by the tax assessor, and schools should not go longer without reappraisal.