

By: Burton

To: Universities and
Colleges; Finance

SENATE BILL NO. 3177
(As Passed the Senate)

1 AN ACT TO CODIFY SECTION 37-101-44, MISSISSIPPI CODE OF 1972,
2 AND TO AMEND SECTIONS 37-101-41 AND 31-7-13, MISSISSIPPI CODE OF
3 1972, TO AUTHORIZE THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF
4 HIGHER LEARNING TO AWARD PUBLIC CONSTRUCTION CONTRACTS FOR THE
5 DESIGN AND FOR THE CONSTRUCTION OF SPECIFIED PUBLIC WORK ON
6 CAMPUS; AND FOR RELATED PURPOSES.

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

8 SECTION 1. The following shall be codified as Section
9 37-101-44, Mississippi Code of 1972:

10 37-101-44. (1) In lieu of Section 37-101-43 and prior to
11 entering into or awarding any such lease under the provisions of
12 Section 37-101-41, the Board of Trustees of State Institutions of
13 Higher Learning may award contracts for privately financed design
14 and construction of dormitory facilities or parking structures on
15 the main campus of the university, provided that the entities
16 receiving the contract or contracts and those entities to which
17 work or services are subcontracted are duly licensed and are
18 qualified in the state to perform the contract or contracts. The
19 entity shall not be authorized to construct apartment buildings
20 under the authority of this section. No (a) State General Fund
21 appropriations, (b) bonds backed by the state, or (c) university
22 self-generated funds from any source other than student housing
23 fees, shall be used to finance the construction or maintenance of
24 any such dormitory facilities or parking structures. No student
25 housing fees charged at such dormitories shall exceed housing fees
26 charged at other public university housing facilities on campus.

27 (2) Such a design-build delivery system may be authorized
28 only when the Board of Trustees of State Institutions of Higher

29 Learning makes a determination, entered on its minutes, with
30 specific findings for each project demonstrating how it is in the
31 best interest of the public to enter into a design-build contract.

32 At a minimum, such determination shall give a detailed
33 explanation of why a design-build approach for a particular
34 project satisfies the public need better than the traditional
35 design-bid-build approach.

36 (3) For each proposed design-build project, a two-phase
37 procedure for awarding design-build contracts shall be adopted and
38 shall include the following:

39 (a) During Phase One, and prior to solicitation of
40 initial proposals, the board shall develop, with the assistance of
41 a registered architect or engineer, a scope of work statement that
42 provides prospective offerors with sufficient information
43 regarding the board's requirements. The scope of work statement
44 shall include floor plans showing spaces by name and number,
45 actual net area of each space, structural module, fixed equipment,
46 mechanical spaces, chases and circulation areas. Drawings shall
47 show overall building dimensions and major lines of dimensions,
48 and site plans which show topography, adjacent buildings and
49 utilities. Drawings shall include information to adequately
50 explain HVAC, electrical and structural requirements. Information
51 concerning furnishings, miscellaneous equipment, layouts, lists
52 and schedules necessary to explain the plans are to be indicated
53 on floor plans. The registered architect or engineer engaged by
54 the board shall also prepare preliminary specifications following
55 the Construction Specifications Institute format and giving basic
56 descriptions of essential building materials, finishes, components
57 and all systems. The scope of work statement shall also include
58 building elevations, sections and design details. Building
59 elevations shall show fenestration and proposed exterior
60 materials. The scope of work statement shall include general
61 budget parameters, schedule or delivery requirements, relevant
62 criteria for evaluation of proposals, and any other information
63 necessary to enable the design-builders to submit proposals which
64 meet the board's needs.

65 (b) The board shall cause to be published once a week

66 for at least three (3) consecutive weeks and not less than
67 twenty-one (21) days in at least one (1) newspaper having a
68 general circulation in the county in which the interested
69 institution is located and in one (1) newspaper with a general
70 statewide circulation, a notice inviting proposals for the
71 leasing, design-build deconstruction and leasing back of said land
72 and design-build constructed facility. Said notice shall inform
73 potential offerors of how to obtain the scope of work statement
74 developed for the project and the notice shall contain such other
75 information to describe adequately the general nature and scope of
76 the design-build project so as to promote full, equal and open
77 competition.

78 (c) The board shall accept initial proposals only from
79 an entity able to provide, either in-house or through contractual
80 arrangements, an experienced and qualified design-build team which
81 shall include, at a minimum, an architect or engineer registered
82 in Mississippi and a contractor properly licensed in Mississippi
83 for the type of work required. From evaluation of initial
84 proposals under Phase One, the board shall select a minimum of two
85 (2) and a maximum of five (5) design-builders to submit proposals
86 for Phase Two.

87 (d) During Phase Two, the shortlisted firms shall be
88 invited to submit detailed designs, specific technical concepts or
89 solutions, pricing, scheduling, and other information deemed
90 appropriate by the board as necessary to evaluate and rank
91 acceptability of the Phase Two proposals. After evaluation of
92 these Phase Two proposals, the board shall award a contract to the
93 design-builder determined to offer the best value to the public in
94 accordance with evaluation criteria set forth in the request for
95 proposals, of which price must be one (1) but not necessarily the
96 only criterion.

97 (e) If the board accepts a proposal other than the
98 lowest dollar proposal actually submitted, the board shall enter

99 on its minutes detailed calculations and a narrative summary
100 showing why the accepted proposal was determined to provide the
101 best value, and the board shall specifically state on its minutes
102 the justification for its award.

103 (4) All facilities governed by this section shall be
104 designed and constructed to equal or exceed the Southern Building
105 Code Standards in force at the time of contracting. In addition,
106 all private contracts or private entities contracting or
107 performing pursuant to this section shall at all times comply with
108 all applicable laws, codes, and other legal requirements
109 pertaining to the project. In addition, all private contracts
110 pursuant to this section shall be approved by the Public
111 Procurement Review Board.

112 (5) (a) No public official or an employee of a state agency
113 who has duties or responsibilities related to the contracting,
114 constructing, leasing, acquiring or operating said facility may
115 become an employee, consultant or contract vendor to a private
116 entity providing such design-build services to the board within
117 one (1) year after the termination of his service or employment.

118 (b) Any person violating this section shall be guilty
119 of a misdemeanor and punished by a fine of not less than Five
120 Hundred Dollars (\$500.00) but not more than One Thousand Dollars
121 (\$1,000.00).

122 (6) The board shall promulgate rules and regulations,
123 consistent with this section, to ensure fair, uniform, clear, and
124 effective procedures for full, equal, and open competition for
125 design-build projects and for delivery of quality design-build
126 projects on time, within budget, and in the public interest.

127 (7) The board shall report annually to the Legislature the
128 following:

129 (a) The total number of design-build projects under
130 contract, commenced and completed;

131 (b) The dollar amounts of each design-build contract,

132 both as awarded and with any adjustments, and the total dollar
133 volume of all design-build contracts awarded; and

134 (c) For each design-build project, a listing of all
135 design-builders, architects, engineers, general contractors, and
136 first-tier subcontractors, to include the principal office address
137 of each such entity.

138 (8) This section shall stand repealed from and after June
139 30, 2003.

140 SECTION 2. Section 37-101-41, Mississippi Code of 1972, is
141 amended as follows:[CRG1]

142 37-101-41. The board of trustees of state institutions of
143 higher learning is hereby authorized and empowered to lease to
144 private individuals or corporations, for a term not exceeding
145 thirty-one (31) years, any land at any of the following
146 state-supported institutions: the University of Mississippi,
147 Mississippi State University of Agriculture and Applied Science,
148 Jackson State University, Mississippi Valley State University,
149 Alcorn State University, University of Southern Mississippi,
150 Mississippi University for Women and Delta State University, for
151 the purpose of erecting thereon parking structures or * * *
152 dormitories on the main campus of the university, for active
153 faculty and students. Said dormitories or parking structures
154 shall be constructed thereon by private financing, and shall be
155 leased back to said board for use by the concerned state-supported
156 institution of higher learning. The lease shall be for a fixed
157 term of ten (10), fifteen (15) or twenty (20) years. The lease
158 shall contain a provision permitting said board to purchase the
159 building located thereon for the sum of one dollar (\$1.00) after
160 payment by said board of all sums of money due under said lease.

161 SECTION 3. Section 31-7-13, Mississippi Code of 1972, is
162 amended as follows:[RDD2]

163 31-7-13. All agencies and governing authorities shall
164 purchase their commodities and printing; contract for fire

165 insurance, automobile insurance, casualty insurance (other than
166 workers' compensation) and liability insurance; contract for
167 garbage collection or disposal; contract for solid waste
168 collection or disposal; contract for sewage collection or
169 disposal; and contract for public construction as herein provided.

170 (a) **Bidding procedure for purchases not over \$1,500.00.**

171 Purchases which do not involve an expenditure of more than One
172 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or
173 shipping charges, may be made without advertising or otherwise
174 requesting competitive bids. Provided, however, that nothing
175 contained in this paragraph (a) shall be construed to prohibit any
176 agency or governing authority from establishing procedures which
177 require competitive bids on purchases of One Thousand Five Hundred
178 Dollars (\$1,500.00) or less.

179 (b) **Bidding procedure for purchases over \$1,500.00 but
180 not over \$10,000.00.** Purchases which involve an expenditure of

181 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
182 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
183 and shipping charges may be made from the lowest and best bidder
184 without publishing or posting advertisement for bids, provided at
185 least two (2) competitive written bids have been obtained. Any
186 governing authority purchasing commodities pursuant to this
187 paragraph (b) may authorize its purchasing agent, or his designee,
188 with regard to governing authorities other than counties, or its
189 purchase clerk, or his designee, with regard to counties, to
190 accept the lowest and best competitive written bid. Such
191 authorization shall be made in writing by the governing authority
192 and shall be maintained on file in the primary office of the
193 agency and recorded in the official minutes of the governing
194 authority, as appropriate. The purchasing agent or the purchase
195 clerk, or their designee, as the case may be, and not the
196 governing authority, shall be liable for any penalties and/or
197 damages as may be imposed by law for any act or omission of the

198 purchasing agent or purchase clerk, or their designee,
199 constituting a violation of law in accepting any bid without
200 approval by the governing authority. The term "competitive
201 written bid" shall mean a bid submitted on a bid form furnished by
202 the buying agency or governing authority and signed by authorized
203 personnel representing the vendor, or a bid submitted on a
204 vendor's letterhead or identifiable bid form and signed by
205 authorized personnel representing the vendor. Bids may be
206 submitted by facsimile, electronic mail or other generally
207 accepted method of information distribution. Bids submitted by
208 electronic transmission shall not require the signature of the
209 vendor's representative unless required by agencies or governing
210 authorities.

211 (c) **Bidding procedure for purchases over \$10,000.00.**
212 Purchases which involve an expenditure of more than Ten Thousand
213 Dollars (\$10,000.00), exclusive of freight and shipping charges
214 may be made from the lowest and best bidder after advertising for
215 competitive sealed bids once each week for two (2) consecutive
216 weeks in a regular newspaper published in the county or
217 municipality in which such agency or governing authority is
218 located. The date as published for the bid opening shall not be
219 less than seven (7) working days after the last published notice;
220 however, if the purchase involves a construction project in which
221 the estimated cost is in excess of Fifteen Thousand Dollars
222 (\$15,000.00), such bids shall not be opened in less than fifteen
223 (15) working days after the last notice is published and the
224 notice for the purchase of such construction shall be published
225 once each week for two (2) consecutive weeks. The notice of
226 intention to let contracts or purchase equipment shall state the
227 time and place at which bids shall be received, list the contracts
228 to be made or types of equipment or supplies to be purchased, and,
229 if all plans and/or specifications are not published, refer to the
230 plans and/or specifications on file. If all plans and/or

231 specifications are published in the notification, then the plans
232 and/or specifications may not be amended. If all plans and/or
233 specifications are not published in the notification, then
234 amendments to the plans/specifications, bid opening date, bid
235 opening time and place may be made, provided that the agency or
236 governing authority maintains a list of all prospective bidders
237 who are known to have received a copy of the bid documents and all
238 such prospective bidders are sent copies of all amendments. This
239 notification of amendments may be made via mail, facsimile,
240 electronic mail or other generally accepted method of information
241 distribution. In all cases involving governing authorities,
242 before the notice shall be published or posted, the plans or
243 specifications for the construction or equipment being sought
244 shall be filed with the clerk of the board of the governing
245 authority, and there remain. If there is no newspaper published
246 in the county or municipality, then such notice shall be given by
247 posting same at the courthouse, or for municipalities at the city
248 hall, and at two (2) other public places in the county or
249 municipality, and also by publication once each week for two (2)
250 consecutive weeks in some newspaper having a general circulation
251 in the county or municipality in the above provided manner. On
252 the same date that the notice is submitted to the newspaper for
253 publication, the agency or governing authority involved shall mail
254 written notice to the main office of the Mississippi Contract
255 Procurement Center that contains the same information as that in
256 the published notice. In addition to these requirements, agencies
257 shall maintain a vendor file and vendors of the equipment or
258 commodities being sought may be mailed solicitations and
259 specifications, and a bid file shall be established which shall
260 indicate those vendors to whom such solicitations and
261 specifications were mailed, and such file shall also contain such
262 information as is pertinent to the bid. Specifications pertinent
263 to such bidding shall be written so as not to exclude comparable

264 equipment of domestic manufacture. Provided, however, that should
265 valid justification be presented, the Department of Finance and
266 Administration or the board of a governing authority may approve a
267 request for specific equipment necessary to perform a specific
268 job. Provided further, that a registered professional engineer or
269 architect may write specifications for a governing authority to
270 require a specific item of equipment available only from limited
271 sources or vendors when such specifications conform with the rules
272 and regulations promulgated by an appropriate federal agency
273 regulating such matters under the federal procurement laws.
274 Further, such justification, when placed on the minutes of the
275 board of a governing authority, may serve as authority for that
276 governing authority to write specifications to require a specific
277 item of equipment needed to perform a specific job. In addition
278 to these requirements, from and after July 1, 1990, vendors of
279 relocatable classrooms and the specifications for the purchase of
280 such relocatable classrooms published by local school boards shall
281 meet all pertinent regulations of the State Board of Education,
282 including prior approval of such bid by the State Department of
283 Education. Nothing in this section shall prohibit any agency or
284 governing authority from writing specifications to include
285 life-cycle costing, total cost bids, extended warranties or
286 guaranteed buy-back provisions, provided that such bid
287 requirements shall be in compliance with regulations established
288 by the Department of Audit.

289 (d) **Lowest and best bid decision procedure.** (i)
290 Purchases may be made from the lowest and best bidder. In
291 determining the lowest and best bid, freight and shipping charges
292 shall be included. If any governing authority accepts a bid other
293 than the lowest bid actually submitted, it shall place on its
294 minutes detailed calculations and narrative summary showing that
295 the accepted bid was determined to be the lowest and best bid,
296 including the dollar amount of the accepted bid and the dollar

297 amount of the lowest bid. No agency or governing authority shall
298 accept a bid based on items not included in the specifications.

299 (ii) If the lowest and best bid is not more than
300 ten percent (10%) above the amount of funds allocated for a public
301 construction or renovation project, then the agency or governing
302 authority shall be permitted to negotiate with the lowest bidder
303 in order to enter into a contract for an amount not to exceed the
304 funds allocated.

305 (iii) Whenever bids are solicited for a public
306 construction or renovation project and only one (1) bid is
307 received, the agency or the governing authority may accept such
308 bid if the bid is opened, it is within the funds allocated for the
309 project, it is responsive to the solicitation and the contractor
310 is capable of performing the contract in accordance with the
311 solicitation.

312 (iv) No addendum to bid specifications for such
313 projects may be issued by the agency or governing authority within
314 twelve (12) hours of the time established by the agency or
315 governing authority for the receipt of bids.

316 (e) **Lease-purchase authorization.** Any lease-purchase
317 of equipment which an agency is not required to lease-purchase
318 under the master lease-purchase program pursuant to Section
319 31-7-10 and any lease-purchase of equipment which a governing
320 authority elects to lease-purchase may be acquired by a
321 lease-purchase agreement under this paragraph (e). Lease-purchase
322 financing may also be obtained from the vendor or from a
323 third-party source after having solicited and obtained at least
324 two (2) written competitive bids, as defined in paragraph (b) of
325 this section, for such financing without advertising for such
326 bids. Solicitation for the bids for financing may occur before or
327 after acceptance of bids for the purchase of such equipment or,
328 where no such bids for purchase are required, at any time before
329 the purchase thereof. No such lease-purchase agreement shall be

330 for an annual rate of interest which is greater than the overall
331 maximum interest rate to maturity on general obligation
332 indebtedness permitted under Section 75-17-101, and the term of
333 such lease-purchase agreement shall not exceed the useful life of
334 property covered thereby as determined according to the upper
335 limit of the asset depreciation range (ADR) guidelines for the
336 Class Life Asset Depreciation Range System established by the
337 Internal Revenue Service pursuant to the United States Internal
338 Revenue Code and regulations thereunder as in effect on December
339 31, 1980, or comparable depreciation guidelines with respect to
340 any equipment not covered by ADR guidelines. Any lease-purchase
341 agreement entered into pursuant to this paragraph (e) may contain
342 any of the terms and conditions which a master lease-purchase
343 agreement may contain under the provisions of Section 31-7-10(5),
344 and shall contain an annual allocation dependency clause
345 substantially similar to that set forth in Section 31-7-10(8).
346 Each agency or governing authority entering into a lease-purchase
347 transaction pursuant to this paragraph (e) shall maintain with
348 respect to each such lease-purchase transaction the same
349 information as required to be maintained by the Department of
350 Finance and Administration pursuant to Section 31-7-10(13).
351 However, nothing contained in this section shall be construed to
352 permit agencies to acquire items of equipment with a total
353 acquisition cost in the aggregate of less than Ten Thousand
354 Dollars (\$10,000.00) by a single lease-purchase transaction. All
355 equipment, and the purchase thereof by any lessor, acquired by
356 lease-purchase under this paragraph and all lease-purchase
357 payments with respect thereto shall be exempt from all Mississippi
358 sales, use and ad valorem taxes. Interest paid on any
359 lease-purchase agreement under this section shall be exempt from
360 State of Mississippi income taxation.

361 (f) **Alternate bid authorization.** When necessary to
362 ensure ready availability of commodities for public works and the

363 timely completion of public projects, no more than two (2)
364 alternate bids may be accepted by a governing authority for
365 commodities. No purchases may be made through use of such
366 alternate bids procedure unless the lowest and best bidder, for
367 reasons beyond his control, cannot deliver the commodities
368 contained in his bid. In that event, purchases of such
369 commodities may be made from one (1) of the bidders whose bid was
370 accepted as an alternate.

371 (g) **Construction contract change authorization.** In the
372 event a determination is made by an agency or governing authority
373 after a construction contract is let that changes or modifications
374 to the original contract are necessary or would better serve the
375 purpose of the agency or the governing authority, such agency or
376 governing authority may, in its discretion, order such changes
377 pertaining to the construction that are necessary under the
378 circumstances without the necessity of further public bids;
379 provided that such change shall be made in a commercially
380 reasonable manner and shall not be made to circumvent the public
381 purchasing statutes. In addition to any other authorized person,
382 the architect or engineer hired by an agency or governing
383 authority with respect to any public construction contract shall
384 have the authority, when granted by an agency or governing
385 authority, to authorize changes or modifications to the original
386 contract without the necessity of prior approval of the agency or
387 governing authority when any such change or modification is less
388 than one percent (1%) of the total contract amount. The agency or
389 governing authority may limit the number, manner or frequency of
390 such emergency changes or modifications.

391 (h) **Petroleum purchase alternative.** In the event any
392 agency or governing authority shall have advertised for bids for
393 the purchase of gas, diesel fuel, oils and other petroleum
394 products and coal and no acceptable bids can be obtained, such
395 agency or governing authority is authorized and directed to enter

396 into any negotiations necessary to secure the lowest and best
397 contract available for the purchase of such commodities.

398 (i) **Road construction petroleum products price**
399 **adjustment clause authorization.** Any agency or governing
400 authority authorized to enter into contracts for the construction,
401 maintenance, surfacing or repair of highways, roads or streets,
402 may include in its bid proposal and contract documents a price
403 adjustment clause with relation to the cost to the contractor,
404 including taxes, based upon an industry-wide cost index, of
405 petroleum products including asphalt used in the performance or
406 execution of the contract or in the production or manufacture of
407 materials for use in such performance. Such industry-wide index
408 shall be established and published monthly by the State Department
409 of Transportation with a copy thereof to be mailed, upon request,
410 to the clerks of the governing authority of each municipality and
411 the clerks of each board of supervisors throughout the state. The
412 price adjustment clause shall be based on the cost of such
413 petroleum products only and shall not include any additional
414 profit or overhead as part of the adjustment. The bid proposals
415 or document contract shall contain the basis and methods of
416 adjusting unit prices for the change in the cost of such petroleum
417 products.

418 (j) **State agency emergency purchase procedure.** If the
419 executive head of any agency of the state shall determine that an
420 emergency exists in regard to the purchase of any commodities or
421 repair contracts, so that the delay incident to giving opportunity
422 for competitive bidding would be detrimental to the interests of
423 the state, then the provisions herein for competitive bidding
424 shall not apply and the head of such agency shall be authorized to
425 make the purchase or repair. Total purchases so made shall only
426 be for the purpose of meeting needs created by the emergency
427 situation. In the event such executive head is responsible to an
428 agency board, at the meeting next following the emergency

429 purchase, documentation of the purchase, including a description
430 of the commodity purchased, the purchase price thereof and the
431 nature of the emergency shall be presented to the board and placed
432 on the minutes of the board of such agency. The head of such
433 agency shall, at the earliest possible date following such
434 emergency purchase, file with the Department of Finance and
435 Administration (i) a statement under oath certifying the
436 conditions and circumstances of the emergency, and (ii) a
437 certified copy of the appropriate minutes of the board of such
438 agency, if applicable.

439 (k) **Governing authority emergency purchase procedure.**

440 If the governing authority, or the governing authority acting
441 through its designee, shall determine that an emergency exists in
442 regard to the purchase of any commodities or repair contracts, so
443 that the delay incident to giving opportunity for competitive
444 bidding would be detrimental to the interest of the governing
445 authority, then the provisions herein for competitive bidding
446 shall not apply and any officer or agent of such governing
447 authority having general or special authority therefor in making
448 such purchase or repair shall approve the bill presented therefor,
449 and he shall certify in writing thereon from whom such purchase
450 was made, or with whom such a repair contract was made. At the
451 board meeting next following the emergency purchase or repair
452 contract, documentation of the purchase or repair contract,
453 including a description of the commodity purchased, the price
454 thereof and the nature of the emergency shall be presented to the
455 board and shall be placed on the minutes of the board of such
456 governing authority.

457 (l) **Hospital purchase or lease authorization.** The
458 commissioners or board of trustees of any hospital owned or owned
459 and operated separately or jointly by one or more counties,
460 cities, towns, supervisors districts or election districts, or
461 combinations thereof, may contract with such lowest and best

462 bidder for the purchase or lease of any commodity under a contract
463 of purchase or lease-purchase agreement whose obligatory terms do
464 not exceed five (5) years. In addition to the authority granted
465 herein, the commissioners or board of trustees are authorized to
466 enter into contracts for the lease of equipment or services, or
467 both, which it considers necessary for the proper care of patients
468 if, in its opinion, it is not financially feasible to purchase the
469 necessary equipment or services. Any such contract for the lease
470 of equipment or services executed by the commissioners or board
471 shall not exceed a maximum of five (5) years' duration and shall
472 include a cancellation clause based on unavailability of funds.
473 If such cancellation clause is exercised, there shall be no
474 further liability on the part of the lessee.

475 (m) **Exceptions from bidding requirements.** Excepted
476 from bid requirements are:

477 (i) **Purchasing agreements approved by department.**
478 Purchasing agreements, contracts and maximum price regulations
479 executed or approved by the Department of Finance and
480 Administration.

481 (ii) **Outside equipment repairs.** Repairs to
482 equipment, when such repairs are made by repair facilities in the
483 private sector; however, engines, transmissions, rear axles and/or
484 other such components shall not be included in this exemption when
485 replaced as a complete unit instead of being repaired and the need
486 for such total component replacement is known before disassembly
487 of the component; provided, however, that invoices identifying the
488 equipment, specific repairs made, parts identified by number and
489 name, supplies used in such repairs, and the number of hours of
490 labor and costs therefor shall be required for the payment for
491 such repairs.

492 (iii) **In-house equipment repairs.** Purchases of
493 parts for repairs to equipment, when such repairs are made by
494 personnel of the agency or governing authority; however, entire

495 assemblies, such as engines or transmissions, shall not be
496 included in this exemption when the entire assembly is being
497 replaced instead of being repaired.

498 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
499 of gravel or fill dirt which are to be removed and transported by
500 the purchaser.

501 (v) **Governmental equipment auctions.** Motor
502 vehicles or other equipment purchased from a federal or state
503 agency or a governing authority at a public auction held for the
504 purpose of disposing of such vehicles or other equipment. Any
505 purchase by a governing authority under the exemption authorized
506 by this paragraph (v) shall require advance authorization spread
507 upon the minutes of the governing authority to include the listing
508 of the item or items authorized to be purchased and the maximum
509 bid authorized to be paid for each item or items.

510 (vi) **Intergovernmental sales and transfers.**
511 Purchases, sales, transfers or trades by governing authorities or
512 state agencies when such purchases, sales, transfers or trades are
513 made by a private treaty agreement or through means of
514 negotiation, from any federal agency or authority, another
515 governing authority or state agency of the State of Mississippi,
516 or any state agency of another state. Nothing in this section
517 shall permit such purchases through public auction except as
518 provided for in paragraph (v) of this section. It is the intent
519 of this section to allow governmental entities to dispose of
520 and/or purchase commodities from other governmental entities at a
521 price that is agreed to by both parties. This shall allow for
522 purchases and/or sales at prices which may be determined to be
523 below the market value if the selling entity determines that the
524 sale at below market value is in the best interest of the
525 taxpayers of the state. Governing authorities shall place the
526 terms of the agreement and any justification on the minutes, and
527 state agencies shall obtain approval from the Department of

528 Finance and Administration, prior to releasing or taking
529 possession of the commodities.

530 (vii) **Perishable supplies or food.** Perishable
531 supplies or foods purchased for use in connection with hospitals,
532 the school lunch programs, homemaking programs and for the feeding
533 of county or municipal prisoners.

534 (viii) **Single source items.** Noncompetitive items
535 available from one (1) source only. In connection with the
536 purchase of noncompetitive items only available from one (1)
537 source, a certification of the conditions and circumstances
538 requiring the purchase shall be filed by the agency with the
539 Department of Finance and Administration and by the governing
540 authority with the board of the governing authority. Upon receipt
541 of that certification the Department of Finance and Administration
542 or the board of the governing authority, as the case may be, may,
543 in writing, authorize the purchase, which authority shall be noted
544 on the minutes of the body at the next regular meeting thereafter.

545 In those situations, a governing authority is not required to
546 obtain the approval of the Department of Finance and
547 Administration.

548 (ix) **Waste disposal facility construction**
549 **contracts.** Construction of incinerators and other facilities for
550 disposal of solid wastes in which products either generated
551 therein, such as steam, or recovered therefrom, such as materials
552 for recycling, are to be sold or otherwise disposed of; provided,
553 however, in constructing such facilities a governing authority or
554 agency shall publicly issue requests for proposals, advertised for
555 in the same manner as provided herein for seeking bids for public
556 construction projects, concerning the design, construction,
557 ownership, operation and/or maintenance of such facilities,
558 wherein such requests for proposals when issued shall contain
559 terms and conditions relating to price, financial responsibility,
560 technology, environmental compatibility, legal responsibilities

561 and such other matters as are determined by the governing
562 authority or agency to be appropriate for inclusion; and after
563 responses to the request for proposals have been duly received,
564 the governing authority or agency may select the most qualified
565 proposal or proposals on the basis of price, technology and other
566 relevant factors and from such proposals, but not limited to the
567 terms thereof, negotiate and enter contracts with one or more of
568 the persons or firms submitting proposals.

569 (x) **Hospital group purchase contracts.** Supplies,
570 commodities and equipment purchased by hospitals through group
571 purchase programs pursuant to Section 31-7-38.

572 (xi) **Data processing equipment.** Purchases of data
573 processing equipment made by governing authorities under the
574 provisions of purchase agreements, contracts or maximum price
575 regulations executed or approved by the Mississippi Department of
576 Information Technology Services.

577 (xii) **Energy efficiency services and equipment.**
578 Energy efficiency services and equipment acquired by school
579 districts, junior colleges, institutions of higher learning and
580 state agencies or other applicable governmental entities on a
581 shared-savings, lease or lease-purchase basis pursuant to Section
582 31-7-14.

583 (xiii) **Insurance contracts.** Purchases of
584 contracts for fire insurance, automobile insurance, casualty
585 insurance, health insurance and liability insurance by governing
586 authorities or agencies.

587 (xiv) **Municipal electrical utility system fuel.**
588 Purchases of coal and/or natural gas by municipally-owned electric
589 power generating systems that have the capacity to use both coal
590 and natural gas for the generation of electric power.

591 (xv) **Library books and other reference materials.**
592 Purchases by libraries or for libraries of books and periodicals;
593 processed film, video cassette tapes, filmstrips and slides;

594 recorded audio tapes, cassettes and diskettes; and any such items
595 as would be used for teaching, research or other information
596 distribution; however, equipment such as projectors, recorders,
597 audio or video equipment, and monitor televisions are not exempt
598 under this paragraph.

599 (xvi) **Unmarked vehicles.** Purchases of unmarked
600 vehicles when such purchases are made in accordance with
601 purchasing regulations adopted by the Department of Finance and
602 Administration pursuant to Section 31-7-9(2).

603 (xvii) **Sales and transfers between governing**
604 **authorities.** Sales, transfers or trades of any personal property
605 between governing authorities within a county or any such
606 transaction involving governing authorities of two (2) or more
607 counties.

608 (xviii) **Election ballots.** Purchases of ballots
609 printed pursuant to Section 23-15-351.

610 (xix) **Educational television contracts.** From and
611 after July 1, 1990, contracts by Mississippi Authority for
612 Educational Television with any private educational institution or
613 private nonprofit organization whose purposes are educational in
614 regard to the construction, purchase, lease or lease-purchase of
615 facilities and equipment and the employment of personnel for
616 providing multichannel interactive video systems (ITSF) in the
617 school districts of this state.

618 (xx) **Prison industry products.** From and after
619 January 1, 1991, purchases made by state agencies involving any
620 item that is manufactured, processed, grown or produced from the
621 state's prison industries.

622 (xxi) **Undercover operations equipment.** Purchases
623 of surveillance equipment or any other high-tech equipment to be
624 used by narcotics agents in undercover operations, provided that
625 any such purchase shall be in compliance with regulations
626 established by the Department of Finance and Administration.

627 (xxii) **Junior college books for rent.** Purchases
628 by community or junior colleges of textbooks which are obtained
629 for the purpose of renting such books to students as part of a
630 book service system.

631 (xxiii) **School purchases from county/municipal**
632 **contracts.** Purchases of commodities made by school districts from
633 vendors with which any levying authority of the school district,
634 as defined in Section 37-57-1, has contracted through competitive
635 bidding procedures for purchases of the same commodities.

636 (xxiv) **Emergency purchases by retirement system.**
637 Emergency purchases made by the Public Employees' Retirement
638 System pursuant to Section 25-11-15(7).

639 (xxv) Repealed.

640 (xxvi) **Garbage, solid waste and sewage contracts.**
641 Contracts for garbage collection or disposal, contracts for solid
642 waste collection or disposal and contracts for sewage collection
643 or disposal.

644 (xxvii) **Municipal water tank maintenance**
645 **contracts.** Professional maintenance program contracts for the
646 repair or maintenance of municipal water tanks, which provide
647 professional services needed to maintain municipal water storage
648 tanks for a fixed annual fee for a duration of two (2) or more
649 years.

650 (xxviii) **Industries for the Blind products.**
651 Purchases made by state agencies involving any item that is
652 manufactured, processed or produced by the Mississippi Industries
653 for the Blind.

654 (xxix) **Purchases of state-adopted textbooks.**
655 Purchases of state-adopted textbooks by public school districts.

656 (xxx) Procurement of design and construction
657 **services by universities.** Nothing in this section restricts the
658 right of the Board of Trustees of State Institutions of Higher
659 Learning to award privately financed contracts for the design and

660 for the construction of dormitories or parking structures on the
661 main campus of the university, as provided in Section 37-101-44.

662 This paragraph (xxx) shall stand repealed from and
663 after June 30, 2003.

664 (n) (i) **Term contract authorization.** All contracts
665 for the purchase of:

666 (A) Commodities, equipment and public
667 construction (including, but not limited to, repair and
668 maintenance), and

669 (B) Water lines, sewer lines, storm drains,
670 drainage ditches, asphalt milling, traffic striping, asphalt
671 overlay of streets, and curb and gutter (not to exceed One Hundred
672 Fifty Thousand Dollars (\$150,000.00) per project listed in this
673 item B) may be let for periods of not more than twenty-four (24)
674 months in advance, subject to applicable statutory provisions
675 prohibiting the letting of contracts during specified periods near
676 the end of terms of office.

677 (ii) All purchases made by governing authorities,
678 including purchases made pursuant to the provisions of
679 subparagraph (i) of this paragraph (n), may be made upon one (1)
680 purchase order issued per month to each individual vendor prior to
681 delivery of such commodities provided that each individual
682 delivery, load or shipment purchased is properly requisitioned and
683 is properly received and receipted by signed ticket, receipt or
684 invoice, indicating thereon the point of delivery, and provided
685 that, with respect to counties, such commodities are properly
686 accounted for by the receiving clerk or an assistant receiving
687 clerk as provided by Section 31-7-109. Such purchase order shall
688 be invalid on the first calendar day of the month immediately
689 following the month in which it was issued. Purchases in such
690 month immediately following may be made only if a purchase order
691 is issued for such month. Each monthly purchase order shall be
692 retained in the records of the governing authority. Agencies may

693 make purchases as authorized under this subparagraph (ii) in
694 accordance with such regulations, policies and procedures as are
695 promulgated by the Department of Finance and Administration.

696 (o) **Purchase law violation prohibition and vendor**
697 **penalty.** No contract or purchase as herein authorized shall be
698 made for the purpose of circumventing the provisions of this
699 section requiring competitive bids, nor shall it be lawful for any
700 person or concern to submit individual invoices for amounts within
701 those authorized for a contract or purchase where the actual value
702 of the contract or commodity purchased exceeds the authorized
703 amount and the invoices therefor are split so as to appear to be
704 authorized as purchases for which competitive bids are not
705 required. Submission of such invoices shall constitute a
706 misdemeanor punishable by a fine of not less than Five Hundred
707 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
708 or by imprisonment for thirty (30) days in the county jail, or
709 both such fine and imprisonment. In addition, the claim or claims
710 submitted shall be forfeited.

711 (p) **Electrical utility petroleum-based equipment**
712 **purchase procedure.** When in response to a proper advertisement
713 therefor, no bid firm as to price is submitted to an electric
714 utility for power transformers, distribution transformers, power
715 breakers, reclosers or other articles containing a petroleum
716 product, the electric utility may accept the lowest and best bid
717 therefor although the price is not firm.

718 (q) **Exception to county/municipal budget limitations.**
719 The prohibitions and restrictions set forth in Sections 19-11-27,
720 21-35-27 and 31-7-49 shall not apply to a contract, lease or
721 lease-purchase agreement entered pursuant to the requirements of
722 this chapter.

723 (r) **Definition of purchase.** For the purposes of this
724 section, the term "purchase" shall mean the total amount of money
725 encumbered by a single purchase order.

726 (s) **Fuel management system bidding procedure.** Any
727 governing authority or agency of the state shall, before
728 contracting for the services and products of a fuel management or
729 fuel access system, enter into negotiations with not fewer than
730 two (2) sellers of fuel management or fuel access systems for
731 competitive written bids to provide the services and products for
732 the systems. In the event that the governing authority or agency
733 cannot locate two (2) sellers of such systems or cannot obtain
734 bids from two (2) sellers of such systems, it shall show proof
735 that it made a diligent, good-faith effort to locate and negotiate
736 with two (2) sellers of such systems. Such proof shall include,
737 but not be limited to, publications of a request for proposals and
738 letters soliciting negotiations and bids. For purposes of this
739 paragraph (s), a fuel management or fuel access system is an
740 automated system of acquiring fuel for vehicles as well as
741 management reports detailing fuel use by vehicles and drivers, and
742 the term "competitive written bid" shall have the meaning as
743 defined in paragraph (b) of this section.

744 (t) **Solid waste contract proposal procedure.** Before
745 entering into any contract for garbage collection or disposal,
746 contract for solid waste collection or disposal or contract for
747 sewage collection or disposal, which involves an expenditure of
748 more than Fifty Thousand Dollars (\$50,000.00), a governing
749 authority or agency shall issue publicly a request for proposals
750 concerning the specifications for such services which shall be
751 advertised for in the same manner as provided in this section for
752 seeking bids for purchases which involve an expenditure of more
753 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
754 when issued shall contain terms and conditions relating to price,
755 financial responsibility, technology, legal responsibilities and
756 other relevant factors as are determined by the governing
757 authority or agency to be appropriate for inclusion; all factors
758 determined relevant by the governing authority or agency or

759 required by this paragraph (t) shall be duly included in the
760 advertisement to elicit proposals. After responses to the request
761 for proposals have been duly received, the governing authority or
762 agency shall select the most qualified proposal or proposals on
763 the basis of price, technology and other relevant factors and from
764 such proposals, but not limited to the terms thereof, negotiate
765 and enter contracts with one or more of the persons or firms
766 submitting proposals. If the governing authority or agency deems
767 none of the proposals to be qualified or otherwise acceptable, the
768 request for proposals process may be reinitiated. Notwithstanding
769 any other provisions of this paragraph, where a county with at
770 least thirty-five thousand (35,000) nor more than forty thousand
771 (40,000) population, according to the 1990 federal decennial
772 census, owns or operates a solid waste landfill, the governing
773 authorities of any other county or municipality may contract with
774 the governing authorities of the county owning or operating the
775 landfill, pursuant to a resolution duly adopted and spread upon
776 the minutes of each governing authority involved, for garbage or
777 solid waste collection or disposal services through contract
778 negotiations.

779 (u) **Minority set aside authorization.** Notwithstanding
780 any provision of this section to the contrary, any agency or
781 governing authority, by order placed on its minutes, may, in its
782 discretion, set aside not more than twenty percent (20%) of its
783 anticipated annual expenditures for the purchase of commodities
784 from minority businesses; however, all such set-aside purchases
785 shall comply with all purchasing regulations promulgated by the
786 Department of Finance and Administration and shall be subject to
787 bid requirements under this section. Set-aside purchases for
788 which competitive bids are required shall be made from the lowest
789 and best minority business bidder. For the purposes of this
790 paragraph, the term "minority business" means a business which is
791 owned by a majority of persons who are United States citizens or

792 permanent resident aliens (as defined by the Immigration and
793 Naturalization Service) of the United States, and who are Asian,
794 Black, Hispanic or Native American, according to the following
795 definitions:

796 (i) "Asian" means persons having origins in any of
797 the original people of the Far East, Southeast Asia, the Indian
798 subcontinent, or the Pacific Islands.

799 (ii) "Black" means persons having origins in any
800 black racial group of Africa.

801 (iii) "Hispanic" means persons of Spanish or
802 Portuguese culture with origins in Mexico, South or Central
803 America, or the Caribbean Islands, regardless of race.

804 (iv) "Native American" means persons having
805 origins in any of the original people of North America, including
806 American Indians, Eskimos and Aleuts.

807 (v) **Construction punch list restriction.** The
808 architect, engineer or other representative designated by the
809 agency or governing authority that is contracting for public
810 construction or renovation may prepare and submit to the
811 contractor only one (1) preliminary punch list of items that do
812 not meet the contract requirements at the time of substantial
813 completion and one (1) final list immediately before final
814 completion and final payment.

815 (w) **Purchase authorization clarification.** Nothing in
816 this section shall be construed as authorizing any purchase not
817 authorized by law.

818 SECTION 4. This act shall take effect and be in force from
819 and after its passage.