

*****Adopted*****

AMENDMENT No. 1 PROPOSED TO

Committee Sub. for SB NO. 3177

By Senator(s) Burton

9 **Amend by striking all after the enacting clause and inserting**
10 **in lieu thereof the following:**

11

12 SECTION 1. The following shall be codified as Section
13 37-101-44, Mississippi Code of 1972:

14 37-101-44. (1) In lieu of Section 37-101-43 and prior to
15 entering into or awarding any such lease under the provisions of
16 Section 37-101-41, the Board of Trustees of State Institutions of
17 Higher Learning may award contracts to a single entity for
18 privately financed design and construction of housing, dormitory
19 facilities or parking structures, provided that the entity or
20 entities receiving the contract or contracts and those entities to
21 which work or services are subcontracted are duly licensed and are
22 qualified in the state to perform the contract or contracts. No
23 state general fund appropriations or bonds backed by the state
24 shall be used to finance the construction or maintenance of any
25 such housing, dormitory facilities or parking structures.

26 (2) Such a design-build delivery system may be authorized
27 only when the Board of Trustees of State Institutions of Higher
28 Learning makes a determination, entered on its minutes, with
29 specific findings for each project demonstrating how it is in the
30 best interest of the public to enter into a design-build contract.
31 At a minimum, such determination shall give a detailed

32 explanation of why a design-build approach for a particular
33 project satisfies the public need better than the traditional
34 design-bid-build approach.

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

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

64 (b) The board shall cause to be published once a week
65 for at least three (3) consecutive weeks and not less than
66 twenty-one (21) days in at least one (1) newspaper having a

67general circulation in the county in which the interested
68institution is located and in one (1) newspaper with a general
69statewide circulation, a notice inviting proposals for the
70leasing, design-build deconstruction and leasing back of said land
71and design-build constructed facility. Said notice shall inform
72potential offerors of how to obtain the scope of work statement
73developed for the project and the notice shall contain such other
74information to describe adequately the general nature and scope of
75the design-build project so as to promote full, equal and open
76competition.

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

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

96 (e) If the board accepts a proposal other than the
97lowest dollar proposal actually submitted, the board shall enter
98on its minutes detailed calculations and a narrative summary
99showing why the accepted proposal was determined to provide the
100best value, and the board shall specifically state on its minutes
101the justification for its award.

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

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

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

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

124 (7) The board shall report annually to the Legislature the
125 following:

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

128 (b) The dollar amounts of each design-build contract,
129 both as awarded and with any adjustments, and the total dollar
130 volume of all design-build contracts awarded; and

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

135 (8) This section shall stand repealed from and after June
136 30, 2003.

137 SECTION 2. Section 37-101-41, Mississippi Code of 1972, is
138 amended as follows:

139 37-101-41. The board of trustees of state institutions of
140 higher learning is hereby authorized and empowered to lease to
141 private individuals or corporations, for a term not exceeding
142 thirty-one (31) years, any land at any of the following
143 state-supported institutions: the University of Mississippi,
144 Mississippi State University of Agriculture and Applied Science,
145 Jackson State University, Mississippi Valley State University,
146 Alcorn State University, University of Southern Mississippi,
147 Mississippi University for Women and Delta State University, for
148 the purpose of erecting thereon parking structures or
149 housing * * * facilities * * * ,including dormitories, for active
150 faculty and students. Said housing, dormitories or parking
151 structures shall be constructed thereon by private financing, and
152 shall be leased back to said board for use by the concerned
153 state-supported institution of higher learning. The lease shall
154 contain a provision permitting said board to purchase the building
155 located thereon for the sum of one dollar (\$1.00) after payment by
156 said board of all sums of money due under said lease.

157 SECTION 3. Section 37-101-43, Mississippi Code of 1972, is
158 amended as follows:

159 37-101-43. Prior to entering into or awarding any such lease
160 contract under the provisions of Section 37-101-41, the Board of
161 Trustees of State Institutions of Higher Learning may cause the
162 interested state-supported institution upon which a facility is
163 proposed to be constructed to select and submit three architects
164 to the board. Thereupon, the board may approve and employ an
165 architect, who shall be paid by said interested institution from
166 any funds available to said interested institution. Said
167 architect, under the direction of said interested institution,
168 shall prepare complete plans and specifications for the facility
169 desired to be constructed on the leased property.

170 Upon completion of said plans and specifications and the
171 approval thereof by said board, and before entering into any lease

172contract, said board shall cause to be published once a week for
173at least three consecutive weeks and not less than twenty-one (21)
174days in at least one (1) newspaper having a general circulation in
175the county in which the interested institution is located and in
176one (1) newspaper with a general statewide circulation, a notice
177inviting bids or proposals for the leasing, construction and
178leasing back of said land and constructed facility, said facility
179to be constructed in accordance with said plans and
180specifications. Said notice shall distinctly state the thing to
181be done, and invite sealed proposals, to be filed with said board,
182to do the thing to be done. Said notice shall contain the
183following specific provisions, together with such others as said
184board in its discretion deems appropriate, to wit: bids shall be
185accompanied by a bid security evidenced by a certified or
186cashier's check or bid-bond payable to said board in a sum of not
187less than five percent (5%) of the gross construction cost of the
188facility to be constructed as estimated by said board and the bids
189shall contain proof satisfactory to the board of interim and
190permanent financing. The board shall state in the notice when
191construction shall commence. The bid shall contain the proposed
192contractor's certificate of responsibility number and bidder's
193license. In all cases, before the notice shall be published, the
194plans and specifications shall be filed with said board and also
195in the office of the president of the interested institution,
196there to remain.

197 The board shall award the lease contract to the lowest and
198best bidder, who will comply with the terms imposed by said
199contract documents. At the time of the awarding of the lease
200contract the successful bidder shall enter into bond with
201sufficient sureties, to be approved by the board, in such penalty
202as may be fixed by the board, but in no case to be less than the
203estimated gross construction cost of the facility to be
204constructed as estimated by said board, conditioned for the
205prompt, proper and efficient performance of the contract. The
206bond shall be made by an authorized corporate surety bonding

207 company. The said bid security herein provided for shall be
208 forfeited if the successful bidder fails to enter into lease
209 contract and commence construction within the time limitation set
210 forth in the notice. At such time, and simultaneously with the
211 signing of said contract, the successful bidder shall deposit a
212 sum of money, in cash or certified or cashier's check, not less
213 than the bid security previously deposited as bid security to
214 reimburse the interested institution for all sums expended by it
215 for architectural services and other expenditures of the board and
216 interested institution connected with the bid lease contract,
217 of which such other anticipated expenditures notice is to be given
218 to bidder in said notice. The bid security posted by an
219 unsuccessful bidder shall be refunded to him.

220 SECTION 4. Section 31-7-13, Mississippi Code of 1972, is
221 amended as follows:

222 31-7-13. All agencies and governing authorities shall
223 purchase their commodities and printing; contract for fire
224 insurance, automobile insurance, casualty insurance (other than
225 workers' compensation) and liability insurance; contract for
226 garbage collection or disposal; contract for solid waste
227 collection or disposal; contract for sewage collection or
228 disposal; and contract for public construction as herein provided.

229 (a) **Bidding procedure for purchases not over \$1,500.00.**
230 Purchases which do not involve an expenditure of more than One
231 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or
232 shipping charges, may be made without advertising or otherwise
233 requesting competitive bids. Provided, however, that nothing
234 contained in this paragraph (a) shall be construed to prohibit any
235 agency or governing authority from establishing procedures which
236 require competitive bids on purchases of One Thousand Five Hundred
237 Dollars (\$1,500.00) or less.

238 (b) **Bidding procedure for purchases over \$1,500.00 but**
239 **not over \$10,000.00.** Purchases which involve an expenditure of
240 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
241 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight

242and shipping charges may be made from the lowest and best bidder
243without publishing or posting advertisement for bids, provided at
244least two (2) competitive written bids have been obtained. Any
245governing authority purchasing commodities pursuant to this
246paragraph (b) may authorize its purchasing agent, or his designee,
247with regard to governing authorities other than counties, or its
248purchase clerk, or his designee, with regard to counties, to
249accept the lowest and best competitive written bid. Such
250authorization shall be made in writing by the governing authority
251and shall be maintained on file in the primary office of the
252agency and recorded in the official minutes of the governing
253authority, as appropriate. The purchasing agent or the purchase
254clerk, or their designee, as the case may be, and not the
255governing authority, shall be liable for any penalties and/or
256damages as may be imposed by law for any act or omission of the
257purchasing agent or purchase clerk, or their designee,
258constituting a violation of law in accepting any bid without
259approval by the governing authority. The term "competitive
260written bid" shall mean a bid submitted on a bid form furnished by
261the buying agency or governing authority and signed by authorized
262personnel representing the vendor, or a bid submitted on a
263vendor's letterhead or identifiable bid form and signed by
264authorized personnel representing the vendor. Bids may be
265submitted by facsimile, electronic mail or other generally
266accepted method of information distribution. Bids submitted by
267electronic transmission shall not require the signature of the
268vendor's representative unless required by agencies or governing
269authorities.

270 (c) **Bidding procedure for purchases over \$10,000.00.**
271Purchases which involve an expenditure of more than Ten Thousand
272Dollars (\$10,000.00), exclusive of freight and shipping charges
273may be made from the lowest and best bidder after advertising for
274competitive sealed bids once each week for two (2) consecutive
275weeks in a regular newspaper published in the county or
276municipality in which such agency or governing authority is

277located. The date as published for the bid opening shall not be
278less than seven (7) working days after the last published notice;
279however, if the purchase involves a construction project in which
280the estimated cost is in excess of Fifteen Thousand Dollars
281(\$15,000.00), such bids shall not be opened in less than fifteen
282(15) working days after the last notice is published and the
283notice for the purchase of such construction shall be published
284once each week for two (2) consecutive weeks. The notice of
285intention to let contracts or purchase equipment shall state the
286time and place at which bids shall be received, list the contracts
287to be made or types of equipment or supplies to be purchased, and,
288if all plans and/or specifications are not published, refer to the
289plans and/or specifications on file. If all plans and/or
290specifications are published in the notification, then the plans
291and/or specifications may not be amended. If all plans and/or
292specifications are not published in the notification, then
293amendments to the plans/specifications, bid opening date, bid
294opening time and place may be made, provided that the agency or
295governing authority maintains a list of all prospective bidders
296who are known to have received a copy of the bid documents and all
297such prospective bidders are sent copies of all amendments. This
298notification of amendments may be made via mail, facsimile,
299electronic mail or other generally accepted method of information
300distribution. In all cases involving governing authorities,
301before the notice shall be published or posted, the plans or
302specifications for the construction or equipment being sought
303shall be filed with the clerk of the board of the governing
304authority, and there remain. If there is no newspaper published
305in the county or municipality, then such notice shall be given by
306posting same at the courthouse, or for municipalities at the city
307hall, and at two (2) other public places in the county or
308municipality, and also by publication once each week for two (2)
309consecutive weeks in some newspaper having a general circulation
310in the county or municipality in the above provided manner. On
311the same date that the notice is submitted to the newspaper for

312publication, the agency or governing authority involved shall mail
313written notice to the main office of the Mississippi Contract
314Procurement Center that contains the same information as that in
315the published notice. In addition to these requirements, agencies
316shall maintain a vendor file and vendors of the equipment or
317commodities being sought may be mailed solicitations and
318specifications, and a bid file shall be established which shall
319indicate those vendors to whom such solicitations and
320specifications were mailed, and such file shall also contain such
321information as is pertinent to the bid. Specifications pertinent
322to such bidding shall be written so as not to exclude comparable
323equipment of domestic manufacture. Provided, however, that should
324valid justification be presented, the Department of Finance and
325Administration or the board of a governing authority may approve a
326request for specific equipment necessary to perform a specific
327job. Provided further, that a registered professional engineer or
328architect may write specifications for a governing authority to
329require a specific item of equipment available only from limited
330sources or vendors when such specifications conform with the rules
331and regulations promulgated by an appropriate federal agency
332regulating such matters under the federal procurement laws.
333Further, such justification, when placed on the minutes of the
334board of a governing authority, may serve as authority for that
335governing authority to write specifications to require a specific
336item of equipment needed to perform a specific job. In addition
337to these requirements, from and after July 1, 1990, vendors of
338relocatable classrooms and the specifications for the purchase of
339such relocatable classrooms published by local school boards shall
340meet all pertinent regulations of the State Board of Education,
341including prior approval of such bid by the State Department of
342Education. Nothing in this section shall prohibit any agency or
343governing authority from writing specifications to include
344life-cycle costing, total cost bids, extended warranties or
345guaranteed buy-back provisions, provided that such bid
346requirements shall be in compliance with regulations established

347by the Department of Audit.

348 (d) **Lowest and best bid decision procedure.** (i)

349Purchases may be made from the lowest and best bidder. In
350determining the lowest and best bid, freight and shipping charges
351shall be included. If any governing authority accepts a bid other
352than the lowest bid actually submitted, it shall place on its
353minutes detailed calculations and narrative summary showing that
354the accepted bid was determined to be the lowest and best bid,
355including the dollar amount of the accepted bid and the dollar
356amount of the lowest bid. No agency or governing authority shall
357accept a bid based on items not included in the specifications.

358 (ii) If the lowest and best bid is not more than
359ten percent (10%) above the amount of funds allocated for a public
360construction or renovation project, then the agency or governing
361authority shall be permitted to negotiate with the lowest bidder
362in order to enter into a contract for an amount not to exceed the
363funds allocated.

364 (iii) Whenever bids are solicited for a public
365construction or renovation project and only one (1) bid is
366received, the agency or the governing authority may accept such
367bid if the bid is opened, it is within the funds allocated for the
368project, it is responsive to the solicitation and the contractor
369is capable of performing the contract in accordance with the
370solicitation.

371 (iv) No addendum to bid specifications for such
372projects may be issued by the agency or governing authority within
373twelve (12) hours of the time established by the agency or
374governing authority for the receipt of bids.

375 (e) **Lease-purchase authorization.** Any lease-purchase
376of equipment which an agency is not required to lease-purchase
377under the master lease-purchase program pursuant to Section
37831-7-10 and any lease-purchase of equipment which a governing
379authority elects to lease-purchase may be acquired by a
380lease-purchase agreement under this paragraph (e). Lease-purchase
381financing may also be obtained from the vendor or from a

382third-party source after having solicited and obtained at least
383two (2) written competitive bids, as defined in paragraph (b) of
384this section, for such financing without advertising for such
385bids. Solicitation for the bids for financing may occur before or
386after acceptance of bids for the purchase of such equipment or,
387where no such bids for purchase are required, at any time before
388the purchase thereof. No such lease-purchase agreement shall be
389for an annual rate of interest which is greater than the overall
390maximum interest rate to maturity on general obligation
391indebtedness permitted under Section 75-17-101, and the term of
392such lease-purchase agreement shall not exceed the useful life of
393property covered thereby as determined according to the upper
394limit of the asset depreciation range (ADR) guidelines for the
395Class Life Asset Depreciation Range System established by the
396Internal Revenue Service pursuant to the United States Internal
397Revenue Code and regulations thereunder as in effect on December
39831, 1980, or comparable depreciation guidelines with respect to
399any equipment not covered by ADR guidelines. Any lease-purchase
400agreement entered into pursuant to this paragraph (e) may contain
401any of the terms and conditions which a master lease-purchase
402agreement may contain under the provisions of Section 31-7-10(5),
403and shall contain an annual allocation dependency clause
404substantially similar to that set forth in Section 31-7-10(8).
405Each agency or governing authority entering into a lease-purchase
406transaction pursuant to this paragraph (e) shall maintain with
407respect to each such lease-purchase transaction the same
408information as required to be maintained by the Department of
409Finance and Administration pursuant to Section 31-7-10(13).
410However, nothing contained in this section shall be construed to
411permit agencies to acquire items of equipment with a total
412acquisition cost in the aggregate of less than Ten Thousand
413Dollars (\$10,000.00) by a single lease-purchase transaction. All
414equipment, and the purchase thereof by any lessor, acquired by
415lease-purchase under this paragraph and all lease-purchase
416payments with respect thereto shall be exempt from all Mississippi

417 sales, use and ad valorem taxes. Interest paid on any
418 lease-purchase agreement under this section shall be exempt from
419 State of Mississippi income taxation.

420 (f) **Alternate bid authorization.** When necessary to
421 ensure ready availability of commodities for public works and the
422 timely completion of public projects, no more than two (2)
423 alternate bids may be accepted by a governing authority for
424 commodities. No purchases may be made through use of such
425 alternate bids procedure unless the lowest and best bidder, for
426 reasons beyond his control, cannot deliver the commodities
427 contained in his bid. In that event, purchases of such
428 commodities may be made from one (1) of the bidders whose bid was
429 accepted as an alternate.

430 (g) **Construction contract change authorization.** In the
431 event a determination is made by an agency or governing authority
432 after a construction contract is let that changes or modifications
433 to the original contract are necessary or would better serve the
434 purpose of the agency or the governing authority, such agency or
435 governing authority may, in its discretion, order such changes
436 pertaining to the construction that are necessary under the
437 circumstances without the necessity of further public bids;
438 provided that such change shall be made in a commercially
439 reasonable manner and shall not be made to circumvent the public
440 purchasing statutes. In addition to any other authorized person,
441 the architect or engineer hired by an agency or governing
442 authority with respect to any public construction contract shall
443 have the authority, when granted by an agency or governing
444 authority, to authorize changes or modifications to the original
445 contract without the necessity of prior approval of the agency or
446 governing authority when any such change or modification is less
447 than one percent (1%) of the total contract amount. The agency or
448 governing authority may limit the number, manner or frequency of
449 such emergency changes or modifications.

450 (h) **Petroleum purchase alternative.** In the event any
451 agency or governing authority shall have advertised for bids for

452the purchase of gas, diesel fuel, oils and other petroleum
453products and coal and no acceptable bids can be obtained, such
454agency or governing authority is authorized and directed to enter
455into any negotiations necessary to secure the lowest and best
456contract available for the purchase of such commodities.

457 (i) **Road construction petroleum products price**
458**adjustment clause authorization.** Any agency or governing
459authority authorized to enter into contracts for the construction,
460maintenance, surfacing or repair of highways, roads or streets,
461may include in its bid proposal and contract documents a price
462adjustment clause with relation to the cost to the contractor,
463including taxes, based upon an industry-wide cost index, of
464petroleum products including asphalt used in the performance or
465execution of the contract or in the production or manufacture of
466materials for use in such performance. Such industry-wide index
467shall be established and published monthly by the State Department
468of Transportation with a copy thereof to be mailed, upon request,
469to the clerks of the governing authority of each municipality and
470the clerks of each board of supervisors throughout the state. The
471price adjustment clause shall be based on the cost of such
472petroleum products only and shall not include any additional
473profit or overhead as part of the adjustment. The bid proposals
474or document contract shall contain the basis and methods of
475adjusting unit prices for the change in the cost of such petroleum
476products.

477 (j) **State agency emergency purchase procedure.** If the
478executive head of any agency of the state shall determine that an
479emergency exists in regard to the purchase of any commodities or
480repair contracts, so that the delay incident to giving opportunity
481for competitive bidding would be detrimental to the interests of
482the state, then the provisions herein for competitive bidding
483shall not apply and the head of such agency shall be authorized to
484make the purchase or repair. Total purchases so made shall only
485be for the purpose of meeting needs created by the emergency
486situation. In the event such executive head is responsible to an

487agency board, at the meeting next following the emergency
488purchase, documentation of the purchase, including a description
489of the commodity purchased, the purchase price thereof and the
490nature of the emergency shall be presented to the board and placed
491on the minutes of the board of such agency. The head of such
492agency shall, at the earliest possible date following such
493emergency purchase, file with the Department of Finance and
494Administration (i) a statement under oath certifying the
495conditions and circumstances of the emergency, and (ii) a
496certified copy of the appropriate minutes of the board of such
497agency, if applicable.

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

499If the governing authority, or the governing authority acting
500through its designee, shall determine that an emergency exists in
501regard to the purchase of any commodities or repair contracts, so
502that the delay incident to giving opportunity for competitive
503bidding would be detrimental to the interest of the governing
504authority, then the provisions herein for competitive bidding
505shall not apply and any officer or agent of such governing
506authority having general or special authority therefor in making
507such purchase or repair shall approve the bill presented therefor,
508and he shall certify in writing thereon from whom such purchase
509was made, or with whom such a repair contract was made. At the
510board meeting next following the emergency purchase or repair
511contract, documentation of the purchase or repair contract,
512including a description of the commodity purchased, the price
513thereof and the nature of the emergency shall be presented to the
514board and shall be placed on the minutes of the board of such
515governing authority.

516 (l) **Hospital purchase or lease authorization.** The
517commissioners or board of trustees of any hospital owned or owned
518and operated separately or jointly by one or more counties,
519cities, towns, supervisors districts or election districts, or
520combinations thereof, may contract with such lowest and best
521bidder for the purchase or lease of any commodity under a contract

522of purchase or lease-purchase agreement whose obligatory terms do
523not exceed five (5) years. In addition to the authority granted
524herein, the commissioners or board of trustees are authorized to
525enter into contracts for the lease of equipment or services, or
526both, which it considers necessary for the proper care of patients
527if, in its opinion, it is not financially feasible to purchase the
528necessary equipment or services. Any such contract for the lease
529of equipment or services executed by the commissioners or board
530shall not exceed a maximum of five (5) years' duration and shall
531include a cancellation clause based on unavailability of funds.
532If such cancellation clause is exercised, there shall be no
533further liability on the part of the lessee.

534 (m) **Exceptions from bidding requirements.** Excepted
535from bid requirements are:

536 (i) **Purchasing agreements approved by department.**
537 Purchasing agreements, contracts and maximum price regulations
538executed or approved by the Department of Finance and
539Administration.

540 (ii) **Outside equipment repairs.** Repairs to
541equipment, when such repairs are made by repair facilities in the
542private sector; however, engines, transmissions, rear axles and/or
543other such components shall not be included in this exemption when
544replaced as a complete unit instead of being repaired and the need
545for such total component replacement is known before disassembly
546of the component; provided, however, that invoices identifying the
547equipment, specific repairs made, parts identified by number and
548name, supplies used in such repairs, and the number of hours of
549labor and costs therefor shall be required for the payment for
550such repairs.

551 (iii) **In-house equipment repairs.** Purchases of
552parts for repairs to equipment, when such repairs are made by
553personnel of the agency or governing authority; however, entire
554assemblies, such as engines or transmissions, shall not be
555included in this exemption when the entire assembly is being
556replaced instead of being repaired.

557 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
558 of gravel or fill dirt which are to be removed and transported by
559 the purchaser.

560 (v) **Governmental equipment auctions.** Motor
561 vehicles or other equipment purchased from a federal or state
562 agency or a governing authority at a public auction held for the
563 purpose of disposing of such vehicles or other equipment. Any
564 purchase by a governing authority under the exemption authorized
565 by this paragraph (v) shall require advance authorization spread
566 upon the minutes of the governing authority to include the listing
567 of the item or items authorized to be purchased and the maximum
568 bid authorized to be paid for each item or items.

569 (vi) **Intergovernmental sales and transfers.**
570 Purchases, sales, transfers or trades by governing authorities or
571 state agencies when such purchases, sales, transfers or trades are
572 made by a private treaty agreement or through means of
573 negotiation, from any federal agency or authority, another
574 governing authority or state agency of the State of Mississippi,
575 or any state agency of another state. Nothing in this section
576 shall permit such purchases through public auction except as
577 provided for in paragraph (v) of this section. It is the intent
578 of this section to allow governmental entities to dispose of
579 and/or purchase commodities from other governmental entities at a
580 price that is agreed to by both parties. This shall allow for
581 purchases and/or sales at prices which may be determined to be
582 below the market value if the selling entity determines that the
583 sale at below market value is in the best interest of the
584 taxpayers of the state. Governing authorities shall place the
585 terms of the agreement and any justification on the minutes, and
586 state agencies shall obtain approval from the Department of
587 Finance and Administration, prior to releasing or taking
588 possession of the commodities.

589 (vii) **Perishable supplies or food.** Perishable
590 supplies or foods purchased for use in connection with hospitals,
591 the school lunch programs, homemaking programs and for the feeding

592of county or municipal prisoners.

593 (viii) **Single source items.** Noncompetitive items
594available from one (1) source only. In connection with the
595purchase of noncompetitive items only available from one (1)
596source, a certification of the conditions and circumstances
597requiring the purchase shall be filed by the agency with the
598Department of Finance and Administration and by the governing
599authority with the board of the governing authority. Upon receipt
600of that certification the Department of Finance and Administration
601or the board of the governing authority, as the case may be, may,
602in writing, authorize the purchase, which authority shall be noted
603on the minutes of the body at the next regular meeting thereafter.
604 In those situations, a governing authority is not required to
605obtain the approval of the Department of Finance and
606Administration.

607 (ix) **Waste disposal facility construction**
608**contracts.** Construction of incinerators and other facilities for
609disposal of solid wastes in which products either generated
610therein, such as steam, or recovered therefrom, such as materials
611for recycling, are to be sold or otherwise disposed of; provided,
612however, in constructing such facilities a governing authority or
613agency shall publicly issue requests for proposals, advertised for
614in the same manner as provided herein for seeking bids for public
615construction projects, concerning the design, construction,
616ownership, operation and/or maintenance of such facilities,
617wherein such requests for proposals when issued shall contain
618terms and conditions relating to price, financial responsibility,
619technology, environmental compatibility, legal responsibilities
620and such other matters as are determined by the governing
621authority or agency to be appropriate for inclusion; and after
622responses to the request for proposals have been duly received,
623the governing authority or agency may select the most qualified
624proposal or proposals on the basis of price, technology and other
625relevant factors and from such proposals, but not limited to the
626terms thereof, negotiate and enter contracts with one or more of

627the persons or firms submitting proposals.

628 (x) **Hospital group purchase contracts.** Supplies,
629commodities and equipment purchased by hospitals through group
630purchase programs pursuant to Section 31-7-38.

631 (xi) **Data processing equipment.** Purchases of data
632processing equipment made by governing authorities under the
633provisions of purchase agreements, contracts or maximum price
634regulations executed or approved by the Mississippi Department of
635Information Technology Services.

636 (xii) **Energy efficiency services and equipment.**
637Energy efficiency services and equipment acquired by school
638districts, junior colleges, institutions of higher learning and
639state agencies or other applicable governmental entities on a
640shared-savings, lease or lease-purchase basis pursuant to Section
64131-7-14.

642 (xiii) **Insurance contracts.** Purchases of
643contracts for fire insurance, automobile insurance, casualty
644insurance, health insurance and liability insurance by governing
645authorities or agencies.

646 (xiv) **Municipal electrical utility system fuel.**
647Purchases of coal and/or natural gas by municipally-owned electric
648power generating systems that have the capacity to use both coal
649and natural gas for the generation of electric power.

650 (xv) **Library books and other reference materials.**
651 Purchases by libraries or for libraries of books and periodicals;
652processed film, video cassette tapes, filmstrips and slides;
653recorded audio tapes, cassettes and diskettes; and any such items
654as would be used for teaching, research or other information
655distribution; however, equipment such as projectors, recorders,
656audio or video equipment, and monitor televisions are not exempt
657under this paragraph.

658 (xvi) **Unmarked vehicles.** Purchases of unmarked
659vehicles when such purchases are made in accordance with
660purchasing regulations adopted by the Department of Finance and
661Administration pursuant to Section 31-7-9(2).

662 (xvii) **Sales and transfers between governing**
663**authorities.** Sales, transfers or trades of any personal property
664between governing authorities within a county or any such
665transaction involving governing authorities of two (2) or more
666counties.

667 (xviii) **Election ballots.** Purchases of ballots
668printed pursuant to Section 23-15-351.

669 (xix) **Educational television contracts.** From and
670after July 1, 1990, contracts by Mississippi Authority for
671Educational Television with any private educational institution or
672private nonprofit organization whose purposes are educational in
673regard to the construction, purchase, lease or lease-purchase of
674facilities and equipment and the employment of personnel for
675providing multichannel interactive video systems (ITSF) in the
676school districts of this state.

677 (xx) **Prison industry products.** From and after
678January 1, 1991, purchases made by state agencies involving any
679item that is manufactured, processed, grown or produced from the
680state's prison industries.

681 (xxi) **Undercover operations equipment.** Purchases
682of surveillance equipment or any other high-tech equipment to be
683used by narcotics agents in undercover operations, provided that
684any such purchase shall be in compliance with regulations
685established by the Department of Finance and Administration.

686 (xxii) **Junior college books for rent.** Purchases
687by community or junior colleges of textbooks which are obtained
688for the purpose of renting such books to students as part of a
689book service system.

690 (xxiii) **School purchases from county/municipal**
691**contracts.** Purchases of commodities made by school districts from
692vendors with which any levying authority of the school district,
693as defined in Section 37-57-1, has contracted through competitive
694bidding procedures for purchases of the same commodities.

695 (xxiv) **Emergency purchases by retirement system.**
696Emergency purchases made by the Public Employees' Retirement

697 System pursuant to Section 25-11-15(7).

698 (xxv) Repealed.

699 (xxvi) **Garbage, solid waste and sewage contracts.**

700 Contracts for garbage collection or disposal, contracts for solid
701 waste collection or disposal and contracts for sewage collection
702 or disposal.

703 (xxvii) **Municipal water tank maintenance**

704 **contracts.** Professional maintenance program contracts for the
705 repair or maintenance of municipal water tanks, which provide
706 professional services needed to maintain municipal water storage
707 tanks for a fixed annual fee for a duration of two (2) or more
708 years.

709 (xxviii) **Industries for the Blind products.**

710 Purchases made by state agencies involving any item that is
711 manufactured, processed or produced by the Mississippi Industries
712 for the Blind.

713 (xxix) **Purchases of state-adopted textbooks.**

714 Purchases of state-adopted textbooks by public school districts.

715 (xxx) **Procurement of design and construction**

716 **services by universities from a single source.** Nothing in this
717 section restricts the right of the Board of Trustees of State
718 Institutions of Higher Learning to award privately financed
719 contracts to a single entity for the design and for the
720 construction of housing, dormitories or parking structures, as
721 provided in Section 37-1-1-44.

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

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

726 (A) Commodities, equipment and public
727 construction (including, but not limited to, repair and
728 maintenance), and

729 (B) Water lines, sewer lines, storm drains,
730 drainage ditches, asphalt milling, traffic striping, asphalt
731 overlay of streets, and curb and gutter (not to exceed One Hundred

732 Fifty Thousand Dollars (\$150,000.00) per project listed in this
733 item B) may be let for periods of not more than twenty-four (24)
734 months in advance, subject to applicable statutory provisions
735 prohibiting the letting of contracts during specified periods near
736 the end of terms of office.

737 (ii) All purchases made by governing authorities,
738 including purchases made pursuant to the provisions of
739 subparagraph (i) of this paragraph (n), may be made upon one (1)
740 purchase order issued per month to each individual vendor prior to
741 delivery of such commodities provided that each individual
742 delivery, load or shipment purchased is properly requisitioned and
743 is properly received and receipted by signed ticket, receipt or
744 invoice, indicating thereon the point of delivery, and provided
745 that, with respect to counties, such commodities are properly
746 accounted for by the receiving clerk or an assistant receiving
747 clerk as provided by Section 31-7-109. Such purchase order shall
748 be invalid on the first calendar day of the month immediately
749 following the month in which it was issued. Purchases in such
750 month immediately following may be made only if a purchase order
751 is issued for such month. Each monthly purchase order shall be
752 retained in the records of the governing authority. Agencies may
753 make purchases as authorized under this subparagraph (ii) in
754 accordance with such regulations, policies and procedures as are
755 promulgated by the Department of Finance and Administration.

756 (o) **Purchase law violation prohibition and vendor**
757 **penalty.** No contract or purchase as herein authorized shall be
758 made for the purpose of circumventing the provisions of this
759 section requiring competitive bids, nor shall it be lawful for any
760 person or concern to submit individual invoices for amounts within
761 those authorized for a contract or purchase where the actual value
762 of the contract or commodity purchased exceeds the authorized
763 amount and the invoices therefor are split so as to appear to be
764 authorized as purchases for which competitive bids are not
765 required. Submission of such invoices shall constitute a
766 misdemeanor punishable by a fine of not less than Five Hundred

767Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
768or by imprisonment for thirty (30) days in the county jail, or
769both such fine and imprisonment. In addition, the claim or claims
770submitted shall be forfeited.

771 (p) **Electrical utility petroleum-based equipment**
772**purchase procedure.** When in response to a proper advertisement
773therefor, no bid firm as to price is submitted to an electric
774utility for power transformers, distribution transformers, power
775breakers, reclosers or other articles containing a petroleum
776product, the electric utility may accept the lowest and best bid
777therefor although the price is not firm.

778 (q) **Exception to county/municipal budget limitations.**
779The prohibitions and restrictions set forth in Sections 19-11-27,
78021-35-27 and 31-7-49 shall not apply to a contract, lease or
781lease-purchase agreement entered pursuant to the requirements of
782this chapter.

783 (r) **Definition of purchase.** For the purposes of this
784section, the term "purchase" shall mean the total amount of money
785encumbered by a single purchase order.

786 (s) **Fuel management system bidding procedure.** Any
787governing authority or agency of the state shall, before
788contracting for the services and products of a fuel management or
789fuel access system, enter into negotiations with not fewer than
790two (2) sellers of fuel management or fuel access systems for
791competitive written bids to provide the services and products for
792the systems. In the event that the governing authority or agency
793cannot locate two (2) sellers of such systems or cannot obtain
794bids from two (2) sellers of such systems, it shall show proof
795that it made a diligent, good-faith effort to locate and negotiate
796with two (2) sellers of such systems. Such proof shall include,
797but not be limited to, publications of a request for proposals and
798letters soliciting negotiations and bids. For purposes of this
799paragraph (s), a fuel management or fuel access system is an
800automated system of acquiring fuel for vehicles as well as
801management reports detailing fuel use by vehicles and drivers, and

802the term "competitive written bid" shall have the meaning as
803defined in paragraph (b) of this section.

804 (t) **Solid waste contract proposal procedure.** Before
805entering into any contract for garbage collection or disposal,
806contract for solid waste collection or disposal or contract for
807sewage collection or disposal, which involves an expenditure of
808more than Fifty Thousand Dollars (\$50,000.00), a governing
809authority or agency shall issue publicly a request for proposals
810concerning the specifications for such services which shall be
811advertised for in the same manner as provided in this section for
812seeking bids for purchases which involve an expenditure of more
813than Ten Thousand Dollars (\$10,000.00). Any request for proposals
814when issued shall contain terms and conditions relating to price,
815financial responsibility, technology, legal responsibilities and
816other relevant factors as are determined by the governing
817authority or agency to be appropriate for inclusion; all factors
818determined relevant by the governing authority or agency or
819required by this paragraph (t) shall be duly included in the
820advertisement to elicit proposals. After responses to the request
821for proposals have been duly received, the governing authority or
822agency shall select the most qualified proposal or proposals on
823the basis of price, technology and other relevant factors and from
824such proposals, but not limited to the terms thereof, negotiate
825and enter contracts with one or more of the persons or firms
826submitting proposals. If the governing authority or agency deems
827none of the proposals to be qualified or otherwise acceptable, the
828request for proposals process may be reinitiated. Notwithstanding
829any other provisions of this paragraph, where a county with at
830least thirty-five thousand (35,000) nor more than forty thousand
831(40,000) population, according to the 1990 federal decennial
832census, owns or operates a solid waste landfill, the governing
833authorities of any other county or municipality may contract with
834the governing authorities of the county owning or operating the
835landfill, pursuant to a resolution duly adopted and spread upon
836the minutes of each governing authority involved, for garbage or

837solid waste collection or disposal services through contract
838negotiations.

839 (u) **Minority set aside authorization.** Notwithstanding
840any provision of this section to the contrary, any agency or
841governing authority, by order placed on its minutes, may, in its
842discretion, set aside not more than twenty percent (20%) of its
843anticipated annual expenditures for the purchase of commodities
844from minority businesses; however, all such set-aside purchases
845shall comply with all purchasing regulations promulgated by the
846Department of Finance and Administration and shall be subject to
847bid requirements under this section. Set-aside purchases for
848which competitive bids are required shall be made from the lowest
849and best minority business bidder. For the purposes of this
850paragraph, the term "minority business" means a business which is
851owned by a majority of persons who are United States citizens or
852permanent resident aliens (as defined by the Immigration and
853Naturalization Service) of the United States, and who are Asian,
854Black, Hispanic or Native American, according to the following
855definitions:

856 (i) "Asian" means persons having origins in any of
857the original people of the Far East, Southeast Asia, the Indian
858subcontinent, or the Pacific Islands.

859 (ii) "Black" means persons having origins in any
860black racial group of Africa.

861 (iii) "Hispanic" means persons of Spanish or
862Portuguese culture with origins in Mexico, South or Central
863America, or the Caribbean Islands, regardless of race.

864 (iv) "Native American" means persons having
865origins in any of the original people of North America, including
866American Indians, Eskimos and Aleuts.

867 (v) **Construction punch list restriction.** The
868architect, engineer or other representative designated by the
869agency or governing authority that is contracting for public
870construction or renovation may prepare and submit to the
871contractor only one (1) preliminary punch list of items that do

872not meet the contract requirements at the time of substantial
873completion and one (1) final list immediately before final
874completion and final payment.

875 (w) **Purchase authorization clarification.** Nothing in
876this section shall be construed as authorizing any purchase not
877authorized by law.

878 SECTION 5. This act shall take effect and be in force from
879and after its passage.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO CODIFY SECTION 37-101-44, MISSISSIPPI CODE OF 1972,
2AND TO AMEND SECTIONS 37-101-41, 37-101-43 AND 31-7-13,
3MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD OF TRUSTEES OF
4STATE INSTITUTIONS OF HIGHER LEARNING TO AWARD PUBLIC CONSTRUCTION
5CONTRACTS TO A SINGLE ENTITY FOR THE DESIGN AND FOR THE
6CONSTRUCTION OF SPECIFIED PUBLIC WORK ON CAMPUS; AND FOR RELATED
7PURPOSES.