

By: Representatives Guice, Davis, Clarke,  
Reynolds, Watson

To: Appropriations

HOUSE BILL NO. 295  
(As Passed the House)

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
2 REVISE THE PUBLIC PURCHASING LAWS TO PROHIBIT ANY ADDENDUMS TO BID  
3 SPECIFICATIONS WITHIN TWO BUSINESS DAYS OF RECEIPT OF BIDS AND TO  
4 EXEMPT FROM STATE BID REQUIREMENTS CONTRACTS FOR THE DESIGN AND  
5 CONSTRUCTION OF PARKING STRUCTURES ENTERED INTO WITH A SINGLE  
6 ENTITY BY THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER  
7 LEARNING; TO CREATE A NEW SECTION 37-101-44, MISSISSIPPI CODE OF  
8 1972, TO AUTHORIZE THE BOARD OF TRUSTEES TO CONTRACT WITH A SINGLE  
9 ENTITY FOR THE DESIGN AND CONSTRUCTION OF PARKING STRUCTURES; TO  
10 AMEND SECTION 37-101-43, MISSISSIPPI CODE OF 1972, IN CONFORMITY  
11 THERE TO; TO AMEND SECTION 37-101-41, MISSISSIPPI CODE OF 1972, TO  
12 AUTHORIZE THE BOARD OF TRUSTEES TO LEASE LAND AT CERTAIN  
13 INSTITUTIONS FOR THE CONSTRUCTION OF PARKING STRUCTURES BY PRIVATE  
14 FINANCING; AND FOR RELATED PURPOSES.

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

16 SECTION 1. Section 31-7-13, Mississippi Code of 1972, is  
17 amended as follows:

18 31-7-13. All agencies and governing authorities shall  
19 purchase their commodities and printing; contract for garbage  
20 collection or disposal; contract for solid waste collection or  
21 disposal; contract for sewage collection or disposal; contract for  
22 public construction; and contract for rentals as herein provided.

23 (a) **Bidding procedure for purchases not over \$1,500.00.**  
24 Purchases which do not involve an expenditure of more than One  
25 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or  
26 shipping charges, may be made without advertising or otherwise  
27 requesting competitive bids. Provided, however, that nothing  
28 contained in this paragraph (a) shall be construed to prohibit any  
29 agency or governing authority from establishing procedures which  
30 require competitive bids on purchases of One Thousand Five Hundred  
31 Dollars (\$1,500.00) or less.

32           (b) **Bidding procedure for purchases over \$1,500.00 but**  
33 **not over \$10,000.00.** Purchases which involve an expenditure of  
34 more than One Thousand Five Hundred Dollars (\$1,500.00) but not  
35 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight  
36 and shipping charges may be made from the lowest and best bidder  
37 without publishing or posting advertisement for bids, provided at  
38 least two (2) competitive written bids have been obtained. Any  
39 governing authority purchasing commodities pursuant to this  
40 paragraph (b) may authorize its purchasing agent, or his designee,  
41 with regard to governing authorities other than counties, or its  
42 purchase clerk, or his designee, with regard to counties, to  
43 accept the lowest and best competitive written bid. Such  
44 authorization shall be made in writing by the governing authority  
45 and shall be maintained on file in the primary office of the  
46 agency and recorded in the official minutes of the governing  
47 authority, as appropriate. The purchasing agent or the purchase  
48 clerk, or their designee, as the case may be, and not the  
49 governing authority, shall be liable for any penalties and/or  
50 damages as may be imposed by law for any act or omission of the  
51 purchasing agent or purchase clerk, or their designee,  
52 constituting a violation of law in accepting any bid without  
53 approval by the governing authority. The term "competitive  
54 written bid" shall mean a bid submitted on a bid form furnished by  
55 the buying agency or governing authority and signed by authorized  
56 personnel representing the vendor, or a bid submitted on a  
57 vendor's letterhead or identifiable bid form and signed by  
58 authorized personnel representing the vendor. Bids may be  
59 submitted by facsimile, electronic mail or other generally  
60 accepted method of information distribution. Bids submitted by  
61 electronic transmission shall not require the signature of the  
62 vendor's representative unless required by agencies or governing  
63 authorities.

64                   (c) **Bidding procedure for purchases over \$10,000.00.**  
65                   (i) **Publication requirement.** Purchases which  
66 involve an expenditure of more than Ten Thousand Dollars  
67 (\$10,000.00), exclusive of freight and shipping charges may be  
68 made from the lowest and best bidder after advertising for  
69 competitive sealed bids once each week for two (2) consecutive  
70 weeks in a regular newspaper published in the county or  
71 municipality in which such agency or governing authority is  
72 located. The date as published for the bid opening shall not be  
73 less than seven (7) working days after the last published notice;  
74 however, if the purchase involves a construction project in which  
75 the estimated cost is in excess of Fifteen Thousand Dollars  
76 (\$15,000.00), such bids shall not be opened in less than fifteen  
77 (15) working days after the last notice is published and the  
78 notice for the purchase of such construction shall be published  
79 once each week for two (2) consecutive weeks. The notice of  
80 intention to let contracts or purchase equipment shall state the  
81 time and place at which bids shall be received, list the contracts  
82 to be made or types of equipment or supplies to be purchased, and,  
83 if all plans and/or specifications are not published, refer to the  
84 plans and/or specifications on file. If there is no newspaper  
85 published in the county or municipality, then such notice shall be  
86 given by posting same at the courthouse, or for municipalities at  
87 the city hall, and at two (2) other public places in the county or  
88 municipality, and also by publication once each week for two (2)  
89 consecutive weeks in some newspaper having a general circulation  
90 in the county or municipality in the above provided manner. On  
91 the same date that the notice is submitted to the newspaper for  
92 publication, the agency or governing authority involved shall mail  
93 written notice to, or provide electronic notification to the main  
94 office of the Mississippi Contract Procurement Center that  
95 contains the same information as that in the published notice.

96                   (ii) **Bidding process amendment procedure.** If all  
97 plans and/or specifications are published in the notification,  
98 then the plans and/or specifications may not be amended. If all  
99 plans and/or specifications are not published in the notification,  
100 then amendments to the plans/specifications, bid opening date, bid  
101 opening time and place may be made, provided that the agency or  
102 governing authority maintains a list of all prospective bidders  
103 who are known to have received a copy of the bid documents and all  
104 such prospective bidders are sent copies of all amendments. This  
105 notification of amendments may be made via mail, facsimile,  
106 electronic mail or other generally accepted method of information  
107 distribution. No addendum to bid specifications may be issued  
108 within two (2) working days of the time established for the  
109 receipt of bids unless such addendum also amends the bid opening  
110 to a date not less than five (5) working days after the date of  
111 the addendum.

112                   (iii) **Filing requirement.** In all cases involving  
113 governing authorities, before the notice shall be published or  
114 posted, the plans or specifications for the construction or  
115 equipment being sought shall be filed with the clerk of the board  
116 of the governing authority. In addition to these requirements, a  
117 bid file shall be established which shall indicate those vendors  
118 to whom such solicitations and specifications were issued, and  
119 such file shall also contain such information as is pertinent to  
120 the bid.

121                   (iv) **Specification restrictions.** Specifications  
122 pertinent to such bidding shall be written so as not to exclude  
123 comparable equipment of domestic manufacture. Provided, however,  
124 that should valid justification be presented, the Department of  
125 Finance and Administration or the board of a governing authority  
126 may approve a request for specific equipment necessary to perform  
127 a specific job. Further, such justification, when placed on the  
128 minutes of the board of a governing authority, may serve as

129 authority for that governing authority to write specifications to  
130 require a specific item of equipment needed to perform a specific  
131 job. In addition to these requirements, from and after July 1,  
132 1990, vendors of relocatable classrooms and the specifications for  
133 the purchase of such relocatable classrooms published by local  
134 school boards shall meet all pertinent regulations of the State  
135 Board of Education, including prior approval of such bid by the  
136 State Department of Education.

137 (d) **Lowest and best bid decision procedure.**

138 (i) **Decision procedure.** Purchases may be made  
139 from the lowest and best bidder. In determining the lowest and  
140 best bid, freight and shipping charges shall be included.  
141 Life-cycle costing, total cost bids, warranties, guaranteed  
142 buy-back provisions and other relevant provisions may be included  
143 in the best bid calculation. All best bid procedures for state  
144 agencies must be in compliance with regulations established by the  
145 Department of Finance and Administration. If any governing  
146 authority accepts a bid other than the lowest bid actually  
147 submitted, it shall place on its minutes detailed calculations and  
148 narrative summary showing that the accepted bid was determined to  
149 be the lowest and best bid, including the dollar amount of the  
150 accepted bid and the dollar amount of the lowest bid. No agency  
151 or governing authority shall accept a bid based on items not  
152 included in the specifications.

153 (ii) **Construction project negotiations authority.**

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

159 (e) **Lease-purchase authorization.** For the purposes of  
160 this section, the term "equipment" shall mean equipment, furniture  
161 and, if applicable, associated software and other applicable

162 direct costs associated with the acquisition. Any lease-purchase  
163 of equipment which an agency is not required to lease-purchase  
164 under the master lease-purchase program pursuant to Section  
165 31-7-10 and any lease-purchase of equipment which a governing  
166 authority elects to lease-purchase may be acquired by a  
167 lease-purchase agreement under this paragraph (e). Lease-purchase  
168 financing may also be obtained from the vendor or from a  
169 third-party source after having solicited and obtained at least  
170 two (2) written competitive bids, as defined in paragraph (b) of  
171 this section, for such financing without advertising for such  
172 bids. Solicitation for the bids for financing may occur before or  
173 after acceptance of bids for the purchase of such equipment or,  
174 where no such bids for purchase are required, at any time before  
175 the purchase thereof. No such lease-purchase agreement shall be  
176 for an annual rate of interest which is greater than the overall  
177 maximum interest rate to maturity on general obligation  
178 indebtedness permitted under Section 75-17-101, and the term of  
179 such lease-purchase agreement shall not exceed the useful life of  
180 equipment covered thereby as determined according to the upper  
181 limit of the asset depreciation range (ADR) guidelines for the  
182 Class Life Asset Depreciation Range System established by the  
183 Internal Revenue Service pursuant to the United States Internal  
184 Revenue Code and regulations thereunder as in effect on December  
185 31, 1980, or comparable depreciation guidelines with respect to  
186 any equipment not covered by ADR guidelines. Any lease-purchase  
187 agreement entered into pursuant to this paragraph (e) may contain  
188 any of the terms and conditions which a master lease-purchase  
189 agreement may contain under the provisions of Section 31-7-10(5),  
190 and shall contain an annual allocation dependency clause  
191 substantially similar to that set forth in Section 31-7-10(8).  
192 Each agency or governing authority entering into a lease-purchase  
193 transaction pursuant to this paragraph (e) shall maintain with  
194 respect to each such lease-purchase transaction the same

195 information as required to be maintained by the Department of  
196 Finance and Administration pursuant to Section 31-7-10(13).  
197 However, nothing contained in this section shall be construed to  
198 permit agencies to acquire items of equipment with a total  
199 acquisition cost in the aggregate of less than Ten Thousand  
200 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
201 equipment, and the purchase thereof by any lessor, acquired by  
202 lease-purchase under this paragraph and all lease-purchase  
203 payments with respect thereto shall be exempt from all Mississippi  
204 sales, use and ad valorem taxes. Interest paid on any  
205 lease-purchase agreement under this section shall be exempt from  
206 State of Mississippi income taxation.

207           (f) **Alternate bid authorization.** When necessary to  
208 ensure ready availability of commodities for public works and the  
209 timely completion of public projects, no more than two (2)  
210 alternate bids may be accepted by a governing authority for  
211 commodities. No purchases may be made through use of such  
212 alternate bids procedure unless the lowest and best bidder, for  
213 reasons beyond his control, cannot deliver the commodities  
214 contained in his bid. In that event, purchases of such  
215 commodities may be made from one (1) of the bidders whose bid was  
216 accepted as an alternate.

217           (g) **Construction contract change authorization.** In the  
218 event a determination is made by an agency or governing authority  
219 after a construction contract is let that changes or modifications  
220 to the original contract are necessary or would better serve the  
221 purpose of the agency or the governing authority, such agency or  
222 governing authority may, in its discretion, order such changes  
223 pertaining to the construction that are necessary under the  
224 circumstances without the necessity of further public bids;  
225 provided that such change shall be made in a commercially  
226 reasonable manner and shall not be made to circumvent the public  
227 purchasing statutes. In addition to any other authorized person,

228 the architect or engineer hired by an agency or governing  
229 authority with respect to any public construction contract shall  
230 have the authority, when granted by an agency or governing  
231 authority, to authorize changes or modifications to the original  
232 contract without the necessity of prior approval of the agency or  
233 governing authority when any such change or modification is less  
234 than one percent (1%) of the total contract amount. The agency or  
235 governing authority may limit the number, manner or frequency of  
236 such emergency changes or modifications.

237           (h) **Petroleum purchase alternative.** In addition to  
238 other methods of purchasing authorized in this chapter, when any  
239 agency or governing authority shall have a need for gas, diesel  
240 fuel, oils and/or other petroleum products in excess of the amount  
241 set forth in paragraph (a) of this section, such agency or  
242 governing authority may purchase the commodity after having  
243 solicited and obtained at least two (2) competitive written bids,  
244 as defined in paragraph (b) of this section. If two (2)  
245 competitive written bids are not obtained the entity shall comply  
246 with the procedures set forth in paragraph (c) of this section.  
247 In the event any agency or governing authority shall have  
248 advertised for bids for the purchase of gas, diesel fuel, oils and  
249 other petroleum products and coal and no acceptable bids can be  
250 obtained, such agency or governing authority is authorized and  
251 directed to enter into any negotiations necessary to secure the  
252 lowest and best contract available for the purchase of such  
253 commodities.

254           (i) **Road construction petroleum products price**  
255 **adjustment clause authorization.** Any agency or governing  
256 authority authorized to enter into contracts for the construction,  
257 maintenance, surfacing or repair of highways, roads or streets,  
258 may include in its bid proposal and contract documents a price  
259 adjustment clause with relation to the cost to the contractor,  
260 including taxes, based upon an industry-wide cost index, of



261 petroleum products including asphalt used in the performance or  
262 execution of the contract or in the production or manufacture of  
263 materials for use in such performance. Such industry-wide index  
264 shall be established and published monthly by the Mississippi  
265 Department of Transportation with a copy thereof to be mailed,  
266 upon request, to the clerks of the governing authority of each  
267 municipality and the clerks of each board of supervisors  
268 throughout the state. The price adjustment clause shall be based  
269 on the cost of such petroleum products only and shall not include  
270 any additional profit or overhead as part of the adjustment. The  
271 bid proposals or document contract shall contain the basis and  
272 methods of adjusting unit prices for the change in the cost of  
273 such petroleum products.

274 (j) **State agency emergency purchase procedure.** If the  
275 executive head of any agency of the state shall determine that an  
276 emergency exists in regard to the purchase of any commodities or  
277 repair contracts, so that the delay incident to giving opportunity  
278 for competitive bidding would be detrimental to the interests of  
279 the state, then the provisions herein for competitive bidding  
280 shall not apply and the head of such agency shall be authorized to  
281 make the purchase or repair. Total purchases so made shall only  
282 be for the purpose of meeting needs created by the emergency  
283 situation. In the event such executive head is responsible to an  
284 agency board, at the meeting next following the emergency  
285 purchase, documentation of the purchase, including a description  
286 of the commodity purchased, the purchase price thereof and the  
287 nature of the emergency shall be presented to the board and placed  
288 on the minutes of the board of such agency. The head of such  
289 agency shall, at the earliest possible date following such  
290 emergency purchase, file with the Department of Finance and  
291 Administration (i) a statement under oath certifying the  
292 conditions and circumstances of the emergency, and (ii) a

293 certified copy of the appropriate minutes of the board of such  
294 agency, if applicable.

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

296 If the governing authority, or the governing authority acting  
297 through its designee, shall determine that an emergency exists in  
298 regard to the purchase of any commodities or repair contracts, so  
299 that the delay incident to giving opportunity for competitive  
300 bidding would be detrimental to the interest of the governing  
301 authority, then the provisions herein for competitive bidding  
302 shall not apply and any officer or agent of such governing  
303 authority having general or special authority therefor in making  
304 such purchase or repair shall approve the bill presented therefor,  
305 and he shall certify in writing thereon from whom such purchase  
306 was made, or with whom such a repair contract was made. At the  
307 board meeting next following the emergency purchase or repair  
308 contract, documentation of the purchase or repair contract,  
309 including a description of the commodity purchased, the price  
310 thereof and the nature of the emergency shall be presented to the  
311 board and shall be placed on the minutes of the board of such  
312 governing authority.

313 (l) **Hospital purchase or lease authorization.** The  
314 commissioners or board of trustees of any hospital owned or owned  
315 and operated separately or jointly by one or more counties,  
316 cities, towns, supervisors districts or election districts, or  
317 combinations thereof, may contract with such lowest and best  
318 bidder for the purchase or lease of any commodity under a contract  
319 of purchase or lease-purchase agreement whose obligatory terms do  
320 not exceed five (5) years. In addition to the authority granted  
321 herein, the commissioners or board of trustees are authorized to  
322 enter into contracts for the lease of equipment or services, or  
323 both, which it considers necessary for the proper care of patients  
324 if, in its opinion, it is not financially feasible to purchase the  
325 necessary equipment or services. Any such contract for the lease

326 of equipment or services executed by the commissioners or board  
327 shall not exceed a maximum of five (5) years' duration and shall  
328 include a cancellation clause based on unavailability of funds.  
329 If such cancellation clause is exercised, there shall be no  
330 further liability on the part of the lessee.

331 (m) **Exceptions from bidding requirements.** Excepted  
332 from bid requirements are:

333 (i) **Purchasing agreements approved by department.**  
334 Purchasing agreements, contracts and maximum price regulations  
335 executed or approved by the Department of Finance and  
336 Administration.

337 (ii) **Outside equipment repairs.** Repairs to  
338 equipment, when such repairs are made by repair facilities in the  
339 private sector; however, engines, transmissions, rear axles and/or  
340 other such components shall not be included in this exemption when  
341 replaced as a complete unit instead of being repaired and the need  
342 for such total component replacement is known before disassembly  
343 of the component; provided, however, that invoices identifying the  
344 equipment, specific repairs made, parts identified by number and  
345 name, supplies used in such repairs, and the number of hours of  
346 labor and costs therefor shall be required for the payment for  
347 such repairs.

348 (iii) **In-house equipment repairs.** Purchases of  
349 parts for repairs to equipment, when such repairs are made by  
350 personnel of the agency or governing authority; however, entire  
351 assemblies, such as engines or transmissions, shall not be  
352 included in this exemption when the entire assembly is being  
353 replaced instead of being repaired.

354 (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
355 of gravel or fill dirt which are to be removed and transported by  
356 the purchaser.

357 (v) **Governmental equipment auctions.** Motor  
358 vehicles or other equipment purchased from a federal or state

359 agency or a governing authority at a public auction held for the  
360 purpose of disposing of such vehicles or other equipment. Any  
361 purchase by a governing authority under the exemption authorized  
362 by this subparagraph (v) shall require advance authorization  
363 spread upon the minutes of the governing authority to include the  
364 listing of the item or items authorized to be purchased and the  
365 maximum bid authorized to be paid for each item or items.

366                   (vi) **Intergovernmental sales and transfers.**  
367 Purchases, sales, transfers or trades by governing authorities or  
368 state agencies when such purchases, sales, transfers or trades are  
369 made by a private treaty agreement or through means of  
370 negotiation, from any federal agency or authority, another  
371 governing authority or state agency of the State of Mississippi,  
372 or any state agency of another state. Nothing in this section  
373 shall permit such purchases through public auction except as  
374 provided for in subparagraph (v) of this section. It is the  
375 intent of this section to allow governmental entities to dispose  
376 of and/or purchase commodities from other governmental entities at  
377 a price that is agreed to by both parties. This shall allow for  
378 purchases and/or sales at prices which may be determined to be  
379 below the market value if the selling entity determines that the  
380 sale at below market value is in the best interest of the  
381 taxpayers of the state. Governing authorities shall place the  
382 terms of the agreement and any justification on the minutes, and  
383 state agencies shall obtain approval from the Department of  
384 Finance and Administration, prior to releasing or taking  
385 possession of the commodities.

386                   (vii) **Perishable supplies or food.** Perishable  
387 supplies or foods purchased for use in connection with hospitals,  
388 the school lunch programs, homemaking programs and for the feeding  
389 of county or municipal prisoners.

390                   (viii) **Single source items.** Noncompetitive items  
391 available from one (1) source only. In connection with the

392 purchase of noncompetitive items only available from one (1)  
393 source, a certification of the conditions and circumstances  
394 requiring the purchase shall be filed by the agency with the  
395 Department of Finance and Administration and by the governing  
396 authority with the board of the governing authority. Upon receipt  
397 of that certification the Department of Finance and Administration  
398 or the board of the governing authority, as the case may be, may,  
399 in writing, authorize the purchase, which authority shall be noted  
400 on the minutes of the body at the next regular meeting thereafter.  
401 In those situations, a governing authority is not required to  
402 obtain the approval of the Department of Finance and  
403 Administration.

404                   (ix) **Waste disposal facility construction**  
405 **contracts.** Construction of incinerators and other facilities for  
406 disposal of solid wastes in which products either generated  
407 therein, such as steam, or recovered therefrom, such as materials  
408 for recycling, are to be sold or otherwise disposed of; provided,  
409 however, in constructing such facilities a governing authority or  
410 agency shall publicly issue requests for proposals, advertised for  
411 in the same manner as provided herein for seeking bids for public  
412 construction projects, concerning the design, construction,  
413 ownership, operation and/or maintenance of such facilities,  
414 wherein such requests for proposals when issued shall contain  
415 terms and conditions relating to price, financial responsibility,  
416 technology, environmental compatibility, legal responsibilities  
417 and such other matters as are determined by the governing  
418 authority or agency to be appropriate for inclusion; and after  
419 responses to the request for proposals have been duly received,  
420 the governing authority or agency may select the most qualified  
421 proposal or proposals on the basis of price, technology and other  
422 relevant factors and from such proposals, but not limited to the  
423 terms thereof, negotiate and enter contracts with one or more of  
424 the persons or firms submitting proposals.

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

428                   (xi) **Information technology products.** Purchases  
429 of information technology products made by governing authorities  
430 under the provisions of purchase schedules, or contracts executed  
431 or approved by the Mississippi Department of Information  
432 Technology Services and designated for use by governing  
433 authorities.

434                   (xii) **Energy efficiency services and equipment.**  
435 Energy efficiency services and equipment acquired by school  
436 districts, community and junior colleges, institutions of higher  
437 learning and state agencies or other applicable governmental  
438 entities on a shared-savings, lease or lease-purchase basis  
439 pursuant to Section 31-7-14.

440                   (xiii) **Municipal electrical utility system fuel.**  
441 Purchases of coal and/or natural gas by municipally-owned electric  
442 power generating systems that have the capacity to use both coal  
443 and natural gas for the generation of electric power.

444                   (xiv) **Library books and other reference materials.**  
445 Purchases by libraries or for libraries of books and periodicals;  
446 processed film, video cassette tapes, filmstrips and slides;  
447 recorded audio tapes, cassettes and diskettes; and any such items  
448 as would be used for teaching, research or other information  
449 distribution; however, equipment such as projectors, recorders,  
450 audio or video equipment, and monitor televisions are not exempt  
451 under this subparagraph.

452                   (xv) **Unmarked vehicles.** Purchases of unmarked  
453 vehicles when such purchases are made in accordance with  
454 purchasing regulations adopted by the Department of Finance and  
455 Administration pursuant to Section 31-7-9(2).

456                   (xvi) **Election ballots.** Purchases of ballots  
457 printed pursuant to Section 23-15-351.

458                   (xvii) **Multichannel interactive video systems.**  
459 From and after July 1, 1990, contracts by Mississippi Authority  
460 for Educational Television with any private educational  
461 institution or private nonprofit organization whose purposes are  
462 educational in regard to the construction, purchase, lease or  
463 lease-purchase of facilities and equipment and the employment of  
464 personnel for providing multichannel interactive video systems  
465 (ITSF) in the school districts of this state.

466                   (xviii) **Purchases of prison industry products.**  
467 From and after January 1, 1991, purchases made by state agencies  
468 or governing authorities involving any item that is manufactured,  
469 processed, grown or produced from the state's prison industries.

470                   (xix) **Undercover operations equipment.** Purchases  
471 of surveillance equipment or any other high-tech equipment to be  
472 used by law enforcement agents in undercover operations, provided  
473 that any such purchase shall be in compliance with regulations  
474 established by the Department of Finance and Administration.

475                   (xx) **Junior college books for rent.** Purchases by  
476 community or junior colleges of textbooks which are obtained for  
477 the purpose of renting such books to students as part of a book  
478 service system.

479                   (xxi) **Certain school district purchases.**  
480 Purchases of commodities made by school districts from vendors  
481 with which any levying authority of the school district, as  
482 defined in Section 37-57-1, has contracted through competitive  
483 bidding procedures for purchases of the same commodities.

484                   (xxii) **Garbage, solid waste and sewage contracts.**  
485 Contracts for garbage collection or disposal, contracts for solid  
486 waste collection or disposal and contracts for sewage collection  
487 or disposal.

488                   (xxiii) **Municipal water tank maintenance**  
489 **contracts.** Professional maintenance program contracts for the  
490 repair or maintenance of municipal water tanks, which provide

491 professional services needed to maintain municipal water storage  
492 tanks for a fixed annual fee for a duration of two (2) or more  
493 years.

494 (xxiv) **Purchases of Mississippi Industries for the**  
495 **Blind products.** Purchases made by state agencies or governing  
496 authorities involving any item that is manufactured, processed or  
497 produced by the Mississippi Industries for the Blind.

498 (xxv) **Purchases of state-adopted textbooks.**  
499 Purchases of state-adopted textbooks by public school districts.

500 (xxvi) **Certain purchases under the Mississippi**  
501 **Major Economic Impact Act.** Contracts entered into pursuant to the  
502 provisions of Section 57-75-9(2) and (3).

503 (xxvii) Procurement of design and construction  
504 service by the University of Southern Mississippi for parking  
505 structures. This section does not restrict the right of the Board  
506 of Trustees of State Institutions of Higher Learning to award  
507 privately financed contracts for the design and construction of  
508 parking structures on the campus of the university as provided in  
509 Section 32-101-44.

510 (n) **Term contract authorization.** All contracts for the  
511 purchase of:

512 (i) All contracts for the purchase of commodities,  
513 equipment and public construction (including, but not limited to,  
514 repair and maintenance), may be let for periods of not more than  
515 sixty (60) months in advance, subject to applicable statutory  
516 provisions prohibiting the letting of contracts during specified  
517 periods near the end of terms of office. Term contracts for a  
518 period exceeding twenty-four (24) months shall also be subject to  
519 ratification or cancellation by governing authority boards taking  
520 office subsequent to the governing authority board entering the  
521 contract.

522 (ii) Bid proposals and contracts may include price  
523 adjustment clauses with relation to the cost to the contractor



524 based upon a nationally published industry-wide or nationally  
525 published and recognized cost index. The cost index used in a  
526 price adjustment clause shall be determined by the Department of  
527 Finance and Administration for the state agencies and by the  
528 governing board for governing authorities. The bid proposal and  
529 contract documents utilizing a price adjustment clause shall  
530 contain the basis and method of adjusting unit prices for the  
531 change in the cost of such commodities, equipment and public  
532 construction.

533           (o) **Purchase law violation prohibition and vendor**  
534 **penalty.** No contract or purchase as herein authorized shall be  
535 made for the purpose of circumventing the provisions of this  
536 section requiring competitive bids, nor shall it be lawful for any  
537 person or concern to submit individual invoices for amounts within  
538 those authorized for a contract or purchase where the actual value  
539 of the contract or commodity purchased exceeds the authorized  
540 amount and the invoices therefor are split so as to appear to be  
541 authorized as purchases for which competitive bids are not  
542 required. Submission of such invoices shall constitute a  
543 misdemeanor punishable by a fine of not less than Five Hundred  
544 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
545 or by imprisonment for thirty (30) days in the county jail, or  
546 both such fine and imprisonment. In addition, the claim or claims  
547 submitted shall be forfeited.

548           (p) **Electrical utility petroleum-based equipment**  
549 **purchase procedure.** When in response to a proper advertisement  
550 therefor, no bid firm as to price is submitted to an electric  
551 utility for power transformers, distribution transformers, power  
552 breakers, reclosers or other articles containing a petroleum  
553 product, the electric utility may accept the lowest and best bid  
554 therefor although the price is not firm.

555           (q) **Fuel management system bidding procedure.** Any  
556 governing authority or agency of the state shall, before

557 contracting for the services and products of a fuel management or  
558 fuel access system, enter into negotiations with not fewer than  
559 two (2) sellers of fuel management or fuel access systems for  
560 competitive written bids to provide the services and products for  
561 the systems. In the event that the governing authority or agency  
562 cannot locate two (2) sellers of such systems or cannot obtain  
563 bids from two (2) sellers of such systems, it shall show proof  
564 that it made a diligent, good-faith effort to locate and negotiate  
565 with two (2) sellers of such systems. Such proof shall include,  
566 but not be limited to, publications of a request for proposals and  
567 letters soliciting negotiations and bids. For purposes of this  
568 paragraph (q), a fuel management or fuel access system is an  
569 automated system of acquiring fuel for vehicles as well as  
570 management reports detailing fuel use by vehicles and drivers, and  
571 the term "competitive written bid" shall have the meaning as  
572 defined in paragraph (b) of this section. Governing authorities  
573 and agencies shall be exempt from this process when contracting  
574 for the services and products of a fuel management or fuel access  
575 systems under the terms of a state contract established by the  
576 Office of Purchasing and Travel.

577 (r) **Solid waste contract proposal procedure.** Before  
578 entering into any contract for garbage collection or disposal,  
579 contract for solid waste collection or disposal or contract for  
580 sewage collection or disposal, which involves an expenditure of  
581 more than Fifty Thousand Dollars (\$50,000.00), a governing  
582 authority or agency shall issue publicly a request for proposals  
583 concerning the specifications for such services which shall be  
584 advertised for in the same manner as provided in this section for  
585 seeking bids for purchases which involve an expenditure of more  
586 than Ten Thousand Dollars (\$10,000.00). Any request for proposals  
587 when issued shall contain terms and conditions relating to price,  
588 financial responsibility, technology, legal responsibilities and  
589 other relevant factors as are determined by the governing

590 authority or agency to be appropriate for inclusion; all factors  
591 determined relevant by the governing authority or agency or  
592 required by this paragraph (r) shall be duly included in the  
593 advertisement to elicit proposals. After responses to the request  
594 for proposals have been duly received, the governing authority or  
595 agency shall select the most qualified proposal or proposals on  
596 the basis of price, technology and other relevant factors and from  
597 such proposals, but not limited to the terms thereof, negotiate  
598 and enter contracts with one or more of the persons or firms  
599 submitting proposals. If the governing authority or agency deems  
600 none of the proposals to be qualified or otherwise acceptable, the  
601 request for proposals process may be reinitiated. Notwithstanding  
602 any other provisions of this paragraph, where a county with at  
603 least thirty-five thousand (35,000) nor more than forty thousand  
604 (40,000) population, according to the 1990 federal decennial  
605 census, owns or operates a solid waste landfill, the governing  
606 authorities of any other county or municipality may contract with  
607 the governing authorities of the county owning or operating the  
608 landfill, pursuant to a resolution duly adopted and spread upon  
609 the minutes of each governing authority involved, for garbage or  
610 solid waste collection or disposal services through contract  
611 negotiations.

612 (s) **Minority set aside authorization.** Notwithstanding  
613 any provision of this section to the contrary, any agency or  
614 governing authority, by order placed on its minutes, may, in its  
615 discretion, set aside not more than twenty percent (20%) of its  
616 anticipated annual expenditures for the purchase of commodities  
617 from minority businesses; however, all such set-aside purchases  
618 shall comply with all purchasing regulations promulgated by the  
619 Department of Finance and Administration and shall be subject to  
620 bid requirements under this section. Set-aside purchases for  
621 which competitive bids are required shall be made from the lowest  
622 and best minority business bidder. For the purposes of this

623 paragraph, the term "minority business" means a business which is  
624 owned by a majority of persons who are United States citizens or  
625 permanent resident aliens (as defined by the Immigration and  
626 Naturalization Service) of the United States, and who are Asian,  
627 Black, Hispanic or Native American, according to the following  
628 definitions:

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

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

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

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

640 (t) **Construction punch list restriction.** The  
641 architect, engineer or other representative designated by the  
642 agency or governing authority that is contracting for public  
643 construction or renovation may prepare and submit to the  
644 contractor only one (1) preliminary punch list of items that do  
645 not meet the contract requirements at the time of substantial  
646 completion and one (1) final list immediately before final  
647 completion and final payment.

648 (u) **Purchase authorization clarification.** Nothing in  
649 this section shall be construed as authorizing any purchase not  
650 authorized by law.

651 SECTION 2. The following shall be codified as Section  
652 37-101-44, Mississippi Code of 1972:

653 37-101-44. (1) In lieu of exercising the authority set  
654 forth in Section 37-101-43 and before entering into or awarding  
655 any lease under Section 37-101-41, the Board of Trustees of State

656 Institutions of Higher Learning may award contracts to a single  
657 entity for privately financed design and construction of parking  
658 structures, provided that the entities receiving the contract or  
659 contracts and those entities to which work or services are  
660 subcontracted are duly licensed and qualified in the state to  
661 perform the contract or contracts. State General Fund  
662 appropriations or bonds backed by the state may not be used to  
663 finance the construction or maintenance of any such parking  
664 structures.

665 (2) Such a design-build delivery system may be authorized  
666 only when the Board of Trustees of State Institutions of Higher  
667 Learning makes a determination, entered on its minutes, with  
668 specific findings for the project demonstrating how it is in the  
669 best interest of the public to enter into a design-build contract.

670 (3) All facilities that are governed by this section shall  
671 be designed and constructed to equal or exceed the Southern  
672 Building Code Standards in force at the time of contracting. In  
673 addition, all private contractors or private entities contracting  
674 or performing under this section must comply at all times with all  
675 applicable laws, codes and other legal requirements pertaining to  
676 the project.

677 (4) (a) A public official or employee of a state agency who  
678 has duties or responsibilities related to the contracting,  
679 constructing, leasing, acquiring or operating of a facility under  
680 this section may not become an employee, consultant or contract  
681 vendor to a private entity providing such facility or services to  
682 the state for a period of one (1) year after the date of  
683 termination of his service or employment.

684 (b) Any person violating this subsection shall be  
685 guilty of a misdemeanor and punished by a fine of not less than  
686 Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars  
687 (\$1,000.00).

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

690        37-101-43. Except as otherwise authorized under Section  
691 37-101-44, before entering into or awarding any such lease  
692 contract under the provisions of Section 37-101-41, the Board of  
693 Trustees of State Institutions of Higher Learning, in its  
694 discretion, may cause the interested state-supported institution  
695 upon which a facility is proposed to be constructed to select and  
696 submit three (3) architects to the board. Thereupon, the board  
697 may approve and employ an architect, who shall be paid by the  
698 interested institution from any funds available to the interested  
699 institution. The architect, under the direction of the interested  
700 institution, shall prepare complete plans and specifications for  
701 the facility desired to be constructed on the leased property.

702        Upon completion of the plans and specifications and the  
703 approval thereof by the board, and before entering into any lease  
704 contract, the board shall cause to be published once a week for at  
705 least three (3) consecutive weeks and not less than twenty-one  
706 (21) days in at least one (1) newspaper having a general  
707 circulation in the county in which the interested institution is  
708 located and in one (1) newspaper with a general statewide  
709 circulation, a notice inviting bids or proposals for the leasing,  
710 construction and leasing back of the land and constructed  
711 facility, which facility must be constructed in accordance with  
712 the plans and specifications. The notice shall distinctly state  
713 the thing to be done, and invite sealed proposals, to be filed  
714 with the board, to do the thing to be done. The notice shall  
715 contain the following specific provisions, together with such  
716 others as the board, in its discretion, deems appropriate, to wit:  
717 bids shall be accompanied by a bid security evidenced by a  
718 certified or cashier's check or bid-bond payable to the board in a  
719 sum of not less than five percent (5%) of the gross construction  
720 cost of the facility to be constructed, as estimated by the board,

721 and the bids shall contain proof satisfactory to the board of  
722 interim and permanent financing. The board shall state in the  
723 notice when construction shall commence. The bid shall contain  
724 the proposed contractor's certificate of responsibility number and  
725 bidder's license. In all cases, before the notice shall be  
726 published, the plans and specifications shall be filed with the  
727 board and also in the office of the president of the interested  
728 institution, there to remain.

729 The board shall award the lease contract to the lowest and  
730 best bidder, who will comply with the terms imposed by the  
731 contract documents. At the time of the awarding of the lease  
732 contract, the successful bidder shall enter into bond with  
733 sufficient sureties, to be approved by the board, in such penalty  
734 as may be fixed by the board, but in no case to be less than the  
735 estimated gross construction cost of the facility to be  
736 constructed as estimated by the board, conditioned for the prompt,  
737 proper and efficient performance of the contract. The bond shall  
738 be made by an authorized corporate surety bonding company.

739 The \* \* \* bid security herein provided for shall be forfeited if  
740 the successful bidder fails to enter into lease contract and  
741 commence construction within the time limitation set forth in the  
742 notice. At such time, and simultaneously with the signing of the  
743 contract, the successful bidder shall deposit a sum of money, in  
744 cash or certified or cashier's check, not less than the bid  
745 security previously deposited as bid security to reimburse the  
746 interested institution for all sums expended by it for  
747 architectural services and other expenditures of the board and  
748 interested institution connected with the bidden lease contract,  
749 of which such other anticipated expenditures notice is to be given  
750 to bidder in the notice. The bid security posted by an  
751 unsuccessful bidder shall be refunded to him.

752 SECTION 4. Section 37-101-41, Mississippi Code of 1972, is  
753 amended as follows:

754           37-101-41. The Board of Trustees of State Institutions of  
755 Higher Learning is \* \* \* authorized and empowered to lease to  
756 private individuals or corporations, for a term not exceeding  
757 thirty-one (31) years, any land at any of the following  
758 state-supported institutions: the University of Mississippi,  
759 Mississippi State University of Agriculture and Applied Science,  
760 Jackson State University, Mississippi Valley State University,  
761 Alcorn State University, University of Southern Mississippi,  
762 Mississippi University for Women and Delta State University, for  
763 the purpose of erecting parking structures thereon for active  
764 faculty and students. The parking structures shall be constructed  
765 thereon by private financing, and shall be leased back to the  
766 board for use by the concerned state-supported institution of  
767 higher learning. The lease shall contain a provision permitting  
768 the board to purchase the parking structure located thereon for  
769 the sum of One Dollar (\$1.00) after payment by the board of all  
770 sums of money due under said lease.

771           SECTION 5. This act shall take effect and be in force from  
772 and after July 1, 2001.