

By: Representative Davis

To: Universities and
Colleges; Appropriations

HOUSE BILL NO. 1446

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

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

14 SECTION 1. The following shall be codified as Section
 15 37-101-44, Mississippi Code of 1972:

16 37-101-44. (1) In lieu of exercising the authority set
 17 forth in Section 37-101-43 and before entering into or awarding
 18 any lease under Section 37-101-41, the Board of Trustees of State
 19 Institutions of Higher Learning may award contracts to a single
 20 entity for privately financed design and construction of parking
 21 structures, provided that the entities receiving the contract or
 22 contracts and those entities to which work or services are
 23 subcontracted are duly licensed and qualified in the state to
 24 perform the contract or contracts. State General Fund
 25 appropriations or bonds backed by the state may not be used to
 26 finance the construction or maintenance of any such parking
 27 structures.

28 (2) Such a design-build delivery system may be authorized
 29 only when the Board of Trustees of State Institutions of Higher
 30 Learning makes a determination, entered on its minutes, with

31 specific findings for the project demonstrating how it is in the
32 best interest of the public to enter into a design-build contract.

33 (3) All facilities that are governed by this section shall
34 be designed and constructed to equal or exceed the Southern
35 Building Code Standards in force at the time of contracting. In
36 addition, all private contractors or private entities contracting
37 or performing under this section must comply at all times with all
38 applicable laws, codes and other legal requirements pertaining to
39 the project.

40 (4) (a) A public official or employee of a state agency who
41 has duties or responsibilities related to the contracting,
42 constructing, leasing, acquiring or operating of a facility under
43 this section may not become an employee, consultant or contract
44 vendor to a private entity providing such facility or services to
45 the state for a period of one (1) year after the date of
46 termination of his service or employment.

47 (b) Any person violating this subsection shall be
48 guilty of a misdemeanor and punished by a fine of not less than
49 Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars
50 (\$1,000.00).

51 SECTION 2. Section 31-7-13, Mississippi Code of 1972, is
52 amended as follows:

53 31-7-13. All agencies and governing authorities shall
54 purchase their commodities and printing; contract for garbage
55 collection or disposal; contract for solid waste collection or
56 disposal; contract for sewage collection or disposal; contract for
57 public construction; and contract for rentals as herein provided.

58 (a) **Bidding procedure for purchases not over \$1,500.00.**
59 Purchases which do not involve an expenditure of more than One
60 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or
61 shipping charges, may be made without advertising or otherwise
62 requesting competitive bids. Provided, however, that nothing
63 contained in this paragraph (a) shall be construed to prohibit any

64 agency or governing authority from establishing procedures which
65 require competitive bids on purchases of One Thousand Five Hundred
66 Dollars (\$1,500.00) or less.

67 (b) **Bidding procedure for purchases over \$1,500.00 but**
68 **not over \$10,000.00.** Purchases which involve an expenditure of
69 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
70 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
71 and shipping charges may be made from the lowest and best bidder
72 without publishing or posting advertisement for bids, provided at
73 least two (2) competitive written bids have been obtained. Any
74 governing authority purchasing commodities pursuant to this
75 paragraph (b) may authorize its purchasing agent, or his designee,
76 with regard to governing authorities other than counties, or its
77 purchase clerk, or his designee, with regard to counties, to
78 accept the lowest and best competitive written bid. Such
79 authorization shall be made in writing by the governing authority
80 and shall be maintained on file in the primary office of the
81 agency and recorded in the official minutes of the governing
82 authority, as appropriate. The purchasing agent or the purchase
83 clerk, or their designee, as the case may be, and not the
84 governing authority, shall be liable for any penalties and/or
85 damages as may be imposed by law for any act or omission of the
86 purchasing agent or purchase clerk, or their designee,
87 constituting a violation of law in accepting any bid without
88 approval by the governing authority. The term "competitive
89 written bid" shall mean a bid submitted on a bid form furnished by
90 the buying agency or governing authority and signed by authorized
91 personnel representing the vendor, or a bid submitted on a
92 vendor's letterhead or identifiable bid form and signed by
93 authorized personnel representing the vendor. Bids may be
94 submitted by facsimile, electronic mail or other generally
95 accepted method of information distribution. Bids submitted by
96 electronic transmission shall not require the signature of the

97 vendor's representative unless required by agencies or governing
98 authorities.

99 (c) **Bidding procedure for purchases over \$10,000.00.**

100 (i) **Publication requirement.** Purchases which
101 involve an expenditure of more than Ten Thousand Dollars
102 (\$10,000.00), exclusive of freight and shipping charges may be
103 made from the lowest and best bidder after advertising for
104 competitive sealed bids once each week for two (2) consecutive
105 weeks in a regular newspaper published in the county or
106 municipality in which such agency or governing authority is
107 located. The date as published for the bid opening shall not be
108 less than seven (7) working days after the last published notice;
109 however, if the purchase involves a construction project in which
110 the estimated cost is in excess of Fifteen Thousand Dollars
111 (\$15,000.00), such bids shall not be opened in less than fifteen
112 (15) working days after the last notice is published and the
113 notice for the purchase of such construction shall be published
114 once each week for two (2) consecutive weeks. The notice of
115 intention to let contracts or purchase equipment shall state the
116 time and place at which bids shall be received, list the contracts
117 to be made or types of equipment or supplies to be purchased, and,
118 if all plans and/or specifications are not published, refer to the
119 plans and/or specifications on file. If there is no newspaper
120 published in the county or municipality, then such notice shall be
121 given by posting same at the courthouse, or for municipalities at
122 the city hall, and at two (2) other public places in the county or
123 municipality, and also by publication once each week for two (2)
124 consecutive weeks in some newspaper having a general circulation
125 in the county or municipality in the above provided manner. On
126 the same date that the notice is submitted to the newspaper for
127 publication, the agency or governing authority involved shall mail
128 written notice to, or provide electronic notification to the main

129 office of the Mississippi Contract Procurement Center that
130 contains the same information as that in the published notice.

131 (ii) **Bidding process amendment procedure.** If all
132 plans and/or specifications are published in the notification,
133 then the plans and/or specifications may not be amended. If all
134 plans and/or specifications are not published in the notification,
135 then amendments to the plans/specifications, bid opening date, bid
136 opening time and place may be made, provided that the agency or
137 governing authority maintains a list of all prospective bidders
138 who are known to have received a copy of the bid documents and all
139 such prospective bidders are sent copies of all amendments. This
140 notification of amendments may be made via mail, facsimile,
141 electronic mail or other generally accepted method of information
142 distribution. No addendum to bid specifications may be issued
143 within forty-eight (48) working hours of the time established for
144 the receipt of bids unless such addendum also amends the bid
145 opening to a date not less than five (5) working days after the
146 date of the addendum.

147 (iii) **Filing requirement.** In all cases involving
148 governing authorities, before the notice shall be published or
149 posted, the plans or specifications for the construction or
150 equipment being sought shall be filed with the clerk of the board
151 of the governing authority. In addition to these requirements, a
152 bid file shall be established which shall indicate those vendors
153 to whom such solicitations and specifications were issued, and
154 such file shall also contain such information as is pertinent to
155 the bid.

156 (iv) **Specification restrictions.** Specifications
157 pertinent to such bidding shall be written so as not to exclude
158 comparable equipment of domestic manufacture. Provided, however,
159 that should valid justification be presented, the Department of
160 Finance and Administration or the board of a governing authority
161 may approve a request for specific equipment necessary to perform

162 a specific job. Further, such justification, when placed on the
163 minutes of the board of a governing authority, may serve as
164 authority for that governing authority to write specifications to
165 require a specific item of equipment needed to perform a specific
166 job. In addition to these requirements, from and after July 1,
167 1990, vendors of relocatable classrooms and the specifications for
168 the purchase of such relocatable classrooms published by local
169 school boards shall meet all pertinent regulations of the State
170 Board of Education, including prior approval of such bid by the
171 State Department of Education.

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

173 (i) **Decision procedure.** Purchases may be made
174 from the lowest and best bidder. In determining the lowest and
175 best bid, freight and shipping charges shall be included.
176 Life-cycle costing, total cost bids, warranties, guaranteed
177 buy-back provisions and other relevant provisions may be included
178 in the best bid calculation. All best bid procedures for state
179 agencies must be in compliance with regulations established by the
180 Department of Finance and Administration. If any governing
181 authority accepts a bid other than the lowest bid actually
182 submitted, it shall place on its minutes detailed calculations and
183 narrative summary showing that the accepted bid was determined to
184 be the lowest and best bid, including the dollar amount of the
185 accepted bid and the dollar amount of the lowest bid. No agency
186 or governing authority shall accept a bid based on items not
187 included in the specifications.

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

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

194 (e) **Lease-purchase authorization.** For the purposes of
195 this section, the term "equipment" shall mean equipment, furniture
196 and, if applicable, associated software and other applicable
197 direct costs associated with the acquisition. Any lease-purchase
198 of equipment which an agency is not required to lease-purchase
199 under the master lease-purchase program pursuant to Section
200 31-7-10 and any lease-purchase of equipment which a governing
201 authority elects to lease-purchase may be acquired by a
202 lease-purchase agreement under this paragraph (e). Lease-purchase
203 financing may also be obtained from the vendor or from a
204 third-party source after having solicited and obtained at least
205 two (2) written competitive bids, as defined in paragraph (b) of
206 this section, for such financing without advertising for such
207 bids. Solicitation for the bids for financing may occur before or
208 after acceptance of bids for the purchase of such equipment or,
209 where no such bids for purchase are required, at any time before
210 the purchase thereof. No such lease-purchase agreement shall be
211 for an annual rate of interest which is greater than the overall
212 maximum interest rate to maturity on general obligation
213 indebtedness permitted under Section 75-17-101, and the term of
214 such lease-purchase agreement shall not exceed the useful life of
215 equipment covered thereby as determined according to the upper
216 limit of the asset depreciation range (ADR) guidelines for the
217 Class Life Asset Depreciation Range System established by the
218 Internal Revenue Service pursuant to the United States Internal
219 Revenue Code and regulations thereunder as in effect on December
220 31, 1980, or comparable depreciation guidelines with respect to
221 any equipment not covered by ADR guidelines. Any lease-purchase
222 agreement entered into pursuant to this paragraph (e) may contain
223 any of the terms and conditions which a master lease-purchase
224 agreement may contain under the provisions of Section 31-7-10(5),
225 and shall contain an annual allocation dependency clause
226 substantially similar to that set forth in Section 31-7-10(8).

227 Each agency or governing authority entering into a lease-purchase
228 transaction pursuant to this paragraph (e) shall maintain with
229 respect to each such lease-purchase transaction the same
230 information as required to be maintained by the Department of
231 Finance and Administration pursuant to Section 31-7-10(13).
232 However, nothing contained in this section shall be construed to
233 permit agencies to acquire items of equipment with a total
234 acquisition cost in the aggregate of less than Ten Thousand
235 Dollars (\$10,000.00) by a single lease-purchase transaction. All
236 equipment, and the purchase thereof by any lessor, acquired by
237 lease-purchase under this paragraph and all lease-purchase
238 payments with respect thereto shall be exempt from all Mississippi
239 sales, use and ad valorem taxes. Interest paid on any
240 lease-purchase agreement under this section shall be exempt from
241 State of Mississippi income taxation.

242 (f) **Alternate bid authorization.** When necessary to
243 ensure ready availability of commodities for public works and the
244 timely completion of public projects, no more than two (2)
245 alternate bids may be accepted by a governing authority for
246 commodities. No purchases may be made through use of such
247 alternate bids procedure unless the lowest and best bidder, for
248 reasons beyond his control, cannot deliver the commodities
249 contained in his bid. In that event, purchases of such
250 commodities may be made from one (1) of the bidders whose bid was
251 accepted as an alternate.

252 (g) **Construction contract change authorization.** In the
253 event a determination is made by an agency or governing authority
254 after a construction contract is let that changes or modifications
255 to the original contract are necessary or would better serve the
256 purpose of the agency or the governing authority, such agency or
257 governing authority may, in its discretion, order such changes
258 pertaining to the construction that are necessary under the
259 circumstances without the necessity of further public bids;

260 provided that such change shall be made in a commercially
261 reasonable manner and shall not be made to circumvent the public
262 purchasing statutes. In addition to any other authorized person,
263 the architect or engineer hired by an agency or governing
264 authority with respect to any public construction contract shall
265 have the authority, when granted by an agency or governing
266 authority, to authorize changes or modifications to the original
267 contract without the necessity of prior approval of the agency or
268 governing authority when any such change or modification is less
269 than one percent (1%) of the total contract amount. The agency or
270 governing authority may limit the number, manner or frequency of
271 such emergency changes or modifications.

272 (h) **Petroleum purchase alternative.** In addition to
273 other methods of purchasing authorized in this chapter, when any
274 agency or governing authority shall have a need for gas, diesel
275 fuel, oils and/or other petroleum products in excess of the amount
276 set forth in paragraph (a) of this section, such agency or
277 governing authority may purchase the commodity after having
278 solicited and obtained at least two (2) competitive written bids,
279 as defined in paragraph (b) of this section. If two (2)
280 competitive written bids are not obtained the entity shall comply
281 with the procedures set forth in paragraph (c) of this section.
282 In the event any agency or governing authority shall have
283 advertised for bids for the purchase of gas, diesel fuel, oils and
284 other petroleum products and coal and no acceptable bids can be
285 obtained, such agency or governing authority is authorized and
286 directed to enter into any negotiations necessary to secure the
287 lowest and best contract available for the purchase of such
288 commodities.

289 (i) **Road construction petroleum products price**
290 **adjustment clause authorization.** Any agency or governing
291 authority authorized to enter into contracts for the construction,
292 maintenance, surfacing or repair of highways, roads or streets,

293 may include in its bid proposal and contract documents a price
294 adjustment clause with relation to the cost to the contractor,
295 including taxes, based upon an industry-wide cost index, of
296 petroleum products including asphalt used in the performance or
297 execution of the contract or in the production or manufacture of
298 materials for use in such performance. Such industry-wide index
299 shall be established and published monthly by the Mississippi
300 Department of Transportation with a copy thereof to be mailed,
301 upon request, to the clerks of the governing authority of each
302 municipality and the clerks of each board of supervisors
303 throughout the state. The price adjustment clause shall be based
304 on the cost of such petroleum products only and shall not include
305 any additional profit or overhead as part of the adjustment. The
306 bid proposals or document contract shall contain the basis and
307 methods of adjusting unit prices for the change in the cost of
308 such petroleum products.

309 (j) **State agency emergency purchase procedure.** If the
310 executive head of any agency of the state shall determine that an
311 emergency exists in regard to the purchase of any commodities or
312 repair contracts, so that the delay incident to giving opportunity
313 for competitive bidding would be detrimental to the interests of
314 the state, then the provisions herein for competitive bidding
315 shall not apply and the head of such agency shall be authorized to
316 make the purchase or repair. Total purchases so made shall only
317 be for the purpose of meeting needs created by the emergency
318 situation. In the event such executive head is responsible to an
319 agency board, at the meeting next following the emergency
320 purchase, documentation of the purchase, including a description
321 of the commodity purchased, the purchase price thereof and the
322 nature of the emergency shall be presented to the board and placed
323 on the minutes of the board of such agency. The head of such
324 agency shall, at the earliest possible date following such
325 emergency purchase, file with the Department of Finance and

326 Administration (i) a statement under oath certifying the
327 conditions and circumstances of the emergency, and (ii) a
328 certified copy of the appropriate minutes of the board of such
329 agency, if applicable.

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

331 If the governing authority, or the governing authority acting
332 through its designee, shall determine that an emergency exists in
333 regard to the purchase of any commodities or repair contracts, so
334 that the delay incident to giving opportunity for competitive
335 bidding would be detrimental to the interest of the governing
336 authority, then the provisions herein for competitive bidding
337 shall not apply and any officer or agent of such governing
338 authority having general or special authority therefor in making
339 such purchase or repair shall approve the bill presented therefor,
340 and he shall certify in writing thereon from whom such purchase
341 was made, or with whom such a repair contract was made. At the
342 board meeting next following the emergency purchase or repair
343 contract, documentation of the purchase or repair contract,
344 including a description of the commodity purchased, the price
345 thereof and the nature of the emergency shall be presented to the
346 board and shall be placed on the minutes of the board of such
347 governing authority.

348 (l) **Hospital purchase or lease authorization.** The
349 commissioners or board of trustees of any hospital owned or owned
350 and operated separately or jointly by one or more counties,
351 cities, towns, supervisors districts or election districts, or
352 combinations thereof, may contract with such lowest and best
353 bidder for the purchase or lease of any commodity under a contract
354 of purchase or lease-purchase agreement whose obligatory terms do
355 not exceed five (5) years. In addition to the authority granted
356 herein, the commissioners or board of trustees are authorized to
357 enter into contracts for the lease of equipment or services, or
358 both, which it considers necessary for the proper care of patients

359 if, in its opinion, it is not financially feasible to purchase the
360 necessary equipment or services. Any such contract for the lease
361 of equipment or services executed by the commissioners or board
362 shall not exceed a maximum of five (5) years' duration and shall
363 include a cancellation clause based on unavailability of funds.
364 If such cancellation clause is exercised, there shall be no
365 further liability on the part of the lessee.

366 (m) **Exceptions from bidding requirements.** Excepted
367 from bid requirements are:

368 (i) **Purchasing agreements approved by department.**
369 Purchasing agreements, contracts and maximum price regulations
370 executed or approved by the Department of Finance and
371 Administration.

372 (ii) **Outside equipment repairs.** Repairs to
373 equipment, when such repairs are made by repair facilities in the
374 private sector; however, engines, transmissions, rear axles and/or
375 other such components shall not be included in this exemption when
376 replaced as a complete unit instead of being repaired and the need
377 for such total component replacement is known before disassembly
378 of the component; provided, however, that invoices identifying the
379 equipment, specific repairs made, parts identified by number and
380 name, supplies used in such repairs, and the number of hours of
381 labor and costs therefor shall be required for the payment for
382 such repairs.

383 (iii) **In-house equipment repairs.** Purchases of
384 parts for repairs to equipment, when such repairs are made by
385 personnel of the agency or governing authority; however, entire
386 assemblies, such as engines or transmissions, shall not be
387 included in this exemption when the entire assembly is being
388 replaced instead of being repaired.

389 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
390 of gravel or fill dirt which are to be removed and transported by
391 the purchaser.

392 (v) **Governmental equipment auctions.** Motor
393 vehicles or other equipment purchased from a federal or state
394 agency or a governing authority at a public auction held for the
395 purpose of disposing of such vehicles or other equipment. Any
396 purchase by a governing authority under the exemption authorized
397 by this subparagraph (v) shall require advance authorization
398 spread upon the minutes of the governing authority to include the
399 listing of the item or items authorized to be purchased and the
400 maximum bid authorized to be paid for each item or items.

401 (vi) **Intergovernmental sales and transfers.**
402 Purchases, sales, transfers or trades by governing authorities or
403 state agencies when such purchases, sales, transfers or trades are
404 made by a private treaty agreement or through means of
405 negotiation, from any federal agency or authority, another
406 governing authority or state agency of the State of Mississippi,
407 or any state agency of another state. Nothing in this section
408 shall permit such purchases through public auction except as
409 provided for in subparagraph (v) of this section. It is the
410 intent of this section to allow governmental entities to dispose
411 of and/or purchase commodities from other governmental entities at
412 a price that is agreed to by both parties. This shall allow for
413 purchases and/or sales at prices which may be determined to be
414 below the market value if the selling entity determines that the
415 sale at below market value is in the best interest of the
416 taxpayers of the state. Governing authorities shall place the
417 terms of the agreement and any justification on the minutes, and
418 state agencies shall obtain approval from the Department of
419 Finance and Administration, prior to releasing or taking
420 possession of the commodities.

421 (vii) **Perishable supplies or food.** Perishable
422 supplies or foods purchased for use in connection with hospitals,
423 the school lunch programs, homemaking programs and for the feeding
424 of county or municipal prisoners.

425 (viii) **Single source items.** Noncompetitive items
426 available from one (1) source only. In connection with the
427 purchase of noncompetitive items only available from one (1)
428 source, a certification of the conditions and circumstances
429 requiring the purchase shall be filed by the agency with the
430 Department of Finance and Administration and by the governing
431 authority with the board of the governing authority. Upon receipt
432 of that certification the Department of Finance and Administration
433 or the board of the governing authority, as the case may be, may,
434 in writing, authorize the purchase, which authority shall be noted
435 on the minutes of the body at the next regular meeting thereafter.
436 In those situations, a governing authority is not required to
437 obtain the approval of the Department of Finance and
438 Administration.

439 (ix) **Waste disposal facility construction**
440 **contracts.** Construction of incinerators and other facilities for
441 disposal of solid wastes in which products either generated
442 therein, such as steam, or recovered therefrom, such as materials
443 for recycling, are to be sold or otherwise disposed of; provided,
444 however, in constructing such facilities a governing authority or
445 agency shall publicly issue requests for proposals, advertised for
446 in the same manner as provided herein for seeking bids for public
447 construction projects, concerning the design, construction,
448 ownership, operation and/or maintenance of such facilities,
449 wherein such requests for proposals when issued shall contain
450 terms and conditions relating to price, financial responsibility,
451 technology, environmental compatibility, legal responsibilities
452 and such other matters as are determined by the governing
453 authority or agency to be appropriate for inclusion; and after
454 responses to the request for proposals have been duly received,
455 the governing authority or agency may select the most qualified
456 proposal or proposals on the basis of price, technology and other
457 relevant factors and from such proposals, but not limited to the

458 terms thereof, negotiate and enter contracts with one or more of
459 the persons or firms submitting proposals.

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

463 (xi) **Information technology products.** Purchases
464 of information technology products made by governing authorities
465 under the provisions of purchase schedules, or contracts executed
466 or approved by the Mississippi Department of Information
467 Technology Services and designated for use by governing
468 authorities.

469 (xii) **Energy efficiency services and equipment.**
470 Energy efficiency services and equipment acquired by school
471 districts, community and junior colleges, institutions of higher
472 learning and state agencies or other applicable governmental
473 entities on a shared-savings, lease or lease-purchase basis
474 pursuant to Section 31-7-14.

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

479 (xiv) **Library books and other reference materials.**
480 Purchases by libraries or for libraries of books and periodicals;
481 processed film, video cassette tapes, filmstrips and slides;
482 recorded audio tapes, cassettes and diskettes; and any such items
483 as would be used for teaching, research or other information
484 distribution; however, equipment such as projectors, recorders,
485 audio or video equipment, and monitor televisions are not exempt
486 under this subparagraph.

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

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

493 (xvii) **Multichannel interactive video systems.**
494 From and after July 1, 1990, contracts by Mississippi Authority
495 for Educational Television with any private educational
496 institution or private nonprofit organization whose purposes are
497 educational in regard to the construction, purchase, lease or
498 lease-purchase of facilities and equipment and the employment of
499 personnel for providing multichannel interactive video systems
500 (ITSF) in the school districts of this state.

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

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

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

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

519 (xxii) **Garbage, solid waste and sewage contracts.**
520 Contracts for garbage collection or disposal, contracts for solid
521 waste collection or disposal and contracts for sewage collection
522 or disposal.

523 (xxiii) **Municipal water tank maintenance**
524 **contracts.** Professional maintenance program contracts for the
525 repair or maintenance of municipal water tanks, which provide
526 professional services needed to maintain municipal water storage
527 tanks for a fixed annual fee for a duration of two (2) or more
528 years.

529 (xxiv) **Purchases of Mississippi Industries for the**
530 **Blind products.** Purchases made by state agencies or governing
531 authorities involving any item that is manufactured, processed or
532 produced by the Mississippi Industries for the Blind.

533 (xxv) **Purchases of state-adopted textbooks.**
534 Purchases of state-adopted textbooks by public school districts.

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

538 (xxvii) Procurement of design and construction
539 service by the University of Southern Mississippi for parking
540 structures. This section does not restrict the right of the Board
541 of Trustees of State Institutions of Higher Learning to award
542 privately financed contracts for the design and construction of
543 parking structures on the campus of the university as provided in
544 Section 32-101-44.

545 (n) **Term contract authorization.** All contracts for the
546 purchase of:

547 (i) All contracts for the purchase of commodities,
548 equipment and public construction (including, but not limited to,
549 repair and maintenance), may be let for periods of not more than
550 sixty (60) months in advance, subject to applicable statutory
551 provisions prohibiting the letting of contracts during specified
552 periods near the end of terms of office. Term contracts for a
553 period exceeding twenty-four (24) months shall also be subject to
554 ratification or cancellation by governing authority boards taking

555 office subsequent to the governing authority board entering the
556 contract.

557 (ii) Bid proposals and contracts may include price
558 adjustment clauses with relation to the cost to the contractor
559 based upon a nationally published industry-wide or nationally
560 published and recognized cost index. The cost index used in a
561 price adjustment clause shall be determined by the Department of
562 Finance and Administration for the state agencies and by the
563 governing board for governing authorities. The bid proposal and
564 contract documents utilizing a price adjustment clause shall
565 contain the basis and method of adjusting unit prices for the
566 change in the cost of such commodities, equipment and public
567 construction.

568 (o) **Purchase law violation prohibition and vendor**
569 **penalty.** No contract or purchase as herein authorized shall be
570 made for the purpose of circumventing the provisions of this
571 section requiring competitive bids, nor shall it be lawful for any
572 person or concern to submit individual invoices for amounts within
573 those authorized for a contract or purchase where the actual value
574 of the contract or commodity purchased exceeds the authorized
575 amount and the invoices therefor are split so as to appear to be
576 authorized as purchases for which competitive bids are not
577 required. Submission of such invoices shall constitute a
578 misdemeanor punishable by a fine of not less than Five Hundred
579 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
580 or by imprisonment for thirty (30) days in the county jail, or
581 both such fine and imprisonment. In addition, the claim or claims
582 submitted shall be forfeited.

583 (p) **Electrical utility petroleum-based equipment**
584 **purchase procedure.** When in response to a proper advertisement
585 therefor, no bid firm as to price is submitted to an electric
586 utility for power transformers, distribution transformers, power
587 breakers, reclosers or other articles containing a petroleum

588 product, the electric utility may accept the lowest and best bid
589 therefor although the price is not firm.

590 (q) **Fuel management system bidding procedure.** Any
591 governing authority or agency of the state shall, before
592 contracting for the services and products of a fuel management or
593 fuel access system, enter into negotiations with not fewer than
594 two (2) sellers of fuel management or fuel access systems for
595 competitive written bids to provide the services and products for
596 the systems. In the event that the governing authority or agency
597 cannot locate two (2) sellers of such systems or cannot obtain
598 bids from two (2) sellers of such systems, it shall show proof
599 that it made a diligent, good-faith effort to locate and negotiate
600 with two (2) sellers of such systems. Such proof shall include,
601 but not be limited to, publications of a request for proposals and
602 letters soliciting negotiations and bids. For purposes of this
603 paragraph (q), a fuel management or fuel access system is an
604 automated system of acquiring fuel for vehicles as well as
605 management reports detailing fuel use by vehicles and drivers, and
606 the term "competitive written bid" shall have the meaning as
607 defined in paragraph (b) of this section. Governing authorities
608 and agencies shall be exempt from this process when contracting
609 for the services and products of a fuel management or fuel access
610 systems under the terms of a state contract established by the
611 Office of Purchasing and Travel.

612 (r) **Solid waste contract proposal procedure.** Before
613 entering into any contract for garbage collection or disposal,
614 contract for solid waste collection or disposal or contract for
615 sewage collection or disposal, which involves an expenditure of
616 more than Fifty Thousand Dollars (\$50,000.00), a governing
617 authority or agency shall issue publicly a request for proposals
618 concerning the specifications for such services which shall be
619 advertised for in the same manner as provided in this section for
620 seeking bids for purchases which involve an expenditure of more

621 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
622 when issued shall contain terms and conditions relating to price,
623 financial responsibility, technology, legal responsibilities and
624 other relevant factors as are determined by the governing
625 authority or agency to be appropriate for inclusion; all factors
626 determined relevant by the governing authority or agency or
627 required by this paragraph (r) shall be duly included in the
628 advertisement to elicit proposals. After responses to the request
629 for proposals have been duly received, the governing authority or
630 agency shall select the most qualified proposal or proposals on
631 the basis of price, technology and other relevant factors and from
632 such proposals, but not limited to the terms thereof, negotiate
633 and enter contracts with one or more of the persons or firms
634 submitting proposals. If the governing authority or agency deems
635 none of the proposals to be qualified or otherwise acceptable, the
636 request for proposals process may be reinitiated. Notwithstanding
637 any other provisions of this paragraph, where a county with at
638 least thirty-five thousand (35,000) nor more than forty thousand
639 (40,000) population, according to the 1990 federal decennial
640 census, owns or operates a solid waste landfill, the governing
641 authorities of any other county or municipality may contract with
642 the governing authorities of the county owning or operating the
643 landfill, pursuant to a resolution duly adopted and spread upon
644 the minutes of each governing authority involved, for garbage or
645 solid waste collection or disposal services through contract
646 negotiations.

647 (s) **Minority set aside authorization.** Notwithstanding
648 any provision of this section to the contrary, any agency or
649 governing authority, by order placed on its minutes, may, in its
650 discretion, set aside not more than twenty percent (20%) of its
651 anticipated annual expenditures for the purchase of commodities
652 from minority businesses; however, all such set-aside purchases
653 shall comply with all purchasing regulations promulgated by the

654 Department of Finance and Administration and shall be subject to
655 bid requirements under this section. Set-aside purchases for
656 which competitive bids are required shall be made from the lowest
657 and best minority business bidder. For the purposes of this
658 paragraph, the term "minority business" means a business which is
659 owned by a majority of persons who are United States citizens or
660 permanent resident aliens (as defined by the Immigration and
661 Naturalization Service) of the United States, and who are Asian,
662 Black, Hispanic or Native American, according to the following
663 definitions:

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

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

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

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

675 (t) **Construction punch list restriction.** The
676 architect, engineer or other representative designated by the
677 agency or governing authority that is contracting for public
678 construction or renovation may prepare and submit to the
679 contractor only one (1) preliminary punch list of items that do
680 not meet the contract requirements at the time of substantial
681 completion and one (1) final list immediately before final
682 completion and final payment.

683 (u) **Purchase authorization clarification.** Nothing in
684 this section shall be construed as authorizing any purchase not
685 authorized by law.

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

688 37-101-43. Except as otherwise authorized under Section
689 37-101-44, before entering into or awarding any such lease
690 contract under the provisions of Section 37-101-41, the Board of
691 Trustees of State Institutions of Higher Learning, in its
692 discretion, may cause the interested state-supported institution
693 upon which a facility is proposed to be constructed to select and
694 submit three (3) architects to the board. Thereupon, the board
695 may approve and employ an architect, who shall be paid by the
696 interested institution from any funds available to the interested
697 institution. The architect, under the direction of the interested
698 institution, shall prepare complete plans and specifications for
699 the facility desired to be constructed on the leased property.

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

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

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

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

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

752 37-101-41. The Board of Trustees of State Institutions of
753 Higher Learning is * * * authorized and empowered to lease to
754 private individuals or corporations, for a term not exceeding
755 thirty-one (31) years, any land at any of the following
756 state-supported institutions: the University of Mississippi,
757 Mississippi State University of Agriculture and Applied Science,
758 Jackson State University, Mississippi Valley State University,
759 Alcorn State University, University of Southern Mississippi,
760 Mississippi University for Women and Delta State University, for
761 the purpose of erecting parking structures thereon for active
762 faculty and students. The parking structures shall be constructed
763 thereon by private financing, and shall be leased back to the
764 board for use by the concerned state-supported institution of
765 higher learning. The lease shall contain a provision permitting
766 the board to purchase the parking structure located thereon for
767 the sum of One Dollar (\$1.00) after payment by the board of all
768 sums of money due under said lease.

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