AN ACT TO CREATE THE EFFICIENCY IN GOVERNMENT ACT; TO DECLARE LEGISLATIVE INTENT; TO DEFINE CERTAIN TERMS; TO PROHIBIT ANY AGENCY FROM PERFORMING GOVERNMENT COMMERCIAL OR INDUSTRIAL ACTIVITIES EXCEPT IN ACCORDANCE WITH THIS ACT; TO ESTABLISH WORKING GROUPS TO EVALUATE CURRENT ACTIVITIES, COORDINATE MAKE OR BUY ANALYSES AND IMPLEMENT RECOMMENDATIONS FOR GREATER EFFICIENCY; TO REQUIRE EACH AGENCY TO PREPARE AN INVENTORY OF ALL IN-HOUSE GOVERNMENT COMMERCIAL OR INDUSTRIAL ACTIVITIES; TO AUTHORIZE THE STATE AUDITOR, AS AN ELEMENT OF REGULAR AUDITS, TO INCLUDE AN ASSESSMENT OF AN AGENCY OR MUNICIPALITY’S IMPLEMENTATION OF THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. This act may be cited as the Efficiency In Government Act.

SECTION 2. It is the public policy of the state to provide the highest quality services at the lowest possible cost to taxpayers. Efficiency cannot be achieved, however, if government is permitted to act as a monopoly, with no competitive incentive to reduce costs or improve services. In order to achieve competition and efficiency, decisions about how services should be provided must be governed by three fundamental principles:

(a) The government should not be in the business to compete with private sector services. Government should look first to the private sector to provide the goods and services that the public needs.

(b) Certain functions are inherently governmental. These activities are intimately related to the public interest.

(c) When activities are not clearly governmental functions, the government should conduct a rigorous comparison of private sector costs and in-house costs.

SECTION 3. As used in this act:
(a) "Agency" means any department, board, bureau, commission, division, office council, committee or officer of the state, public benefit corporation or public authority at least one (1) of those members is appointed by the Governor.

(b) "Commercial source" means any not-for-profit or private sector entity.

(c) "Conversion" means the transfer of work from a government commercial or industrial activity to performance by a private commercial source under contract.

(d) "Expansion" means the modernization, replacement, upgrade, or involving additional capital investment of One Hundred Thousand Dollars ($100,000.00) or more, or increasing operating annual costs by Two Hundred Thousand Dollars ($200,000.00) or more; provided, however, the increase exceeds twenty percent (20%) of total investment or annual operating costs. Consolidation of two or more activities is not an "expansion" unless the proposed total capital investment or operating cost exceeds the total from the individual activities by the amount of the threshold. An expansion which increases either capital investment or annual operating cost by one hundred percent (100%) or more is a new start.

(e) "Government commercial or industrial activity" means an activity that is operated and managed by a state agency and which provides a product or a service that could be obtained from a private source.

(f) "Governmental function" means a function which must be performed in-house due to a special relationship in executing governmental responsibilities, such as functions involving the discretionary application of governmental authority. Such functions include, but are not limited to, investigation, prosecution and other judicial functions, the overall management and direction of government programs, selection of program priorities, and regulatory activities.
(g) "In-house activity" means a good or service provided by an agency.

(h) "Make or buy analysis" means a good or service provided by an agency.

(i) "New start" means a newly-established government commercial or industrial activity, including a transfer of work from contract to in-house performance. Also included is any expansion which would increase capital investment or annual operating cost by one hundred percent (100%) or more.

SECTION 4. (1) No agency shall perform or engage in a contract for government commercial or industrial activities, except in accordance with the provisions of this act, or as otherwise provided by law.

(2) Each agency shall retain full control of service quantities, service specifications, standards and any other matter demonstrably related to the delivery of a particular public good or service in a manner consistent with the public interest.

(3) Each agency shall designate one official, an assistant commissioner or the equal, who shall, with the working groups established pursuant to subsection (4) of this act:

(a) Coordinate the process of evaluating current activities, expansions and new start proposals;

(b) Implement the required make or buy analyses; and

(c) Implement the recommendations of the working groups, established pursuant to this act, concerning whether the good or service shall be delivered by in-house or commercial sources.

(4) Agency employees shall be encouraged to participate in the activities required by this act, each agency shall create a working group chained by the designated official. In addition to such official, the group shall consist of an equal number of members representing management and an equal number representing
all collective bargaining units which represent agency employees, to develop and implement the process.

(5) An interagency task force, to consist of the State Personnel Director, the Executive Director of the Department of Finance and Administration, two (2) executive directors of agencies selected by the Governor, and three (3) representatives of collective bargaining units representing state employees shall review issues relating to employee adjustments resulting from the implementation of this act, and shall develop procedures to minimize employee dislocations.

(6) Each agency shall create a working group consisting of equal numbers representing management and all collective bargaining units representing employees, to address employee concerns relating to the impact of conversions of government commercial or industrial activities from in-house to commercial providers. Groups shall develop policies to minimize worker dislocations refuting from such conversions through such approaches as the use of reassignment, retraining and attrition, and shall consider such other employee concerns as are brought before them.

(7) The Department of Finance and Administration shall provide technical assistance to agencies in implementing the provision of this act. Functions of the department shall include, but not limited to:

(a) Preparing a nonexclusive list of activities which are commercial or industrial, to be made available to all agencies; and
(b) Advising agencies on cost analysis issues.

SECTION 5. (1) Each agency shall prepare an inventory of all in-house government commercial or industrial activities.

(2) Every year, at least five percent (5%) of an agency's in-house government commercial and industrial activities shall be reviewed.
(a) Each agency shall determine goals and standards for activities under review.

(b) Each agency shall consider alternative methods for performing in-house activities with effectiveness and cost-efficiency as primary concerns.

(c) Each agency shall determine, for each in-house activity, whether these are known commercial sources.

(3) If the agency determines that there is potential that a private commercial source can perform the activity the agency shall pursue a request for petitions of interest.

(4) If the agency finds that there are no known private commercial sources which can perform an active, it shall initiate a petition of interest process.

(5) Such inventory shall be available for review by the Department of Finance and Administration.

SECTION 6. (1) For each in-house government commercial, or industrial activity of an agency, other than an activity exempted by this act, a commercial source may submit a petition of interest at any time. Upon receipt of an unsolicited petition of interest, an agency shall schedule such an activity for review, as is provided by this act, within twelve (12) months of receipt, an agency may decline a petition where a petition regarding the same services has been considered during the past twelve (12) months of receipt. An agency may decline a petition where a petition regarding the same service has been considered during the past twelve (12) months. A make or buy analysis is not required for any public good or service for any period during which such public good or service is to be provided under an existing competitive contract.

(2) Each agency shall solicit petitions of interest for any proposed expansions or new start activities for which there is no known commercial source.

(3) At a minimum the agency shall solicit petitions through:
(a) The procurement opportunities newsletter of the department of economic development; and
(b) A relevant trade or service journal.

(4) Each petition of interest submitted by a commercial entity shall include:

(a) A description of the good of service the entity offers to provide;
(b) A description of the entity’s financial capacity to undertake this activity; and
(c) A description of the entity’s technical ability to provide the good or service with references to identical, similar, or relevant goods or services presently provided by the entity.

(5) Within sixty (60) days of receipt, the agency shall determine whether there is sufficient reason to believe that an entity has the financial and technical ability to provide the public good or service.

(6) The agency may make one (1) of two (2) findings:

(a) Where the agency determines that the entity has insufficient financial and technical ability to provide the good or service, it shall issue a written denial of the petition and state its justification for such finding; or
(b) Where the agency determines that there are commercial sources with sufficient financial and technical ability to provide a good or service, the agency shall proceed to conduct a make or buy analysis. Such analysis shall be subject to the requirements of this act.

SECTION 7. (1) Where an agency is aware of commercial sources for a government commercial or industrial activity, a make or buy analysis shall be performed whenever an agency considers an expansion of an in-house activity or performance of a new start activity in-house.

(2) A make or buy analysis shall be performed through evaluation of bids or proposals which are solicited through a
competitive procedure from commercial sources and state agencies in accordance with Sections 9 and 11 of this act.

(3) An agency may request the Department of Finance and Administration to authorize in-house performance of a new commercial of industrial activity or an expansion of an existing in-house government commercial or industrial activity without a make or buy analysis where it demonstrates that:

(a) There is no commercial source capable of providing the product or service that is needed and that it has solicited a petition of interest, as required by this act; or

(b) Use of a commercial source would cause an unacceptable delay or disruption of essential programs.

(4) The Department of Finance and Administration shall make a decision within thirty (30) days of receiving a documented explanation from the relevant agency where such agency seeks to perform a commercial or industrial activity in-house. Such documentation shall include:

(a) Delay or disruption explained specifically in terms of cost, time and performance measures;

(b) Disruption shown to be of a lasting or unacceptable nature. Transitory disruption caused by a change shall not be sufficient cause.

SECTION 8. (1) Both agency and commercial source cost analysis shall be based on the same scope of work and the same level of performance. A precise work statement with standards that can be monitored shall be required.

(2) The Department of Finance and Administration shall be required to determine standard cost factors, which shall be applied by agencies performing analysis pursuant to this act.

(3) Cost comparisons shall be done by using fully allocated costs.

(a) All significant costs, including, but not limited to, fixed costs, variable costs, overhead costs, direct and
indirect costs shall be considered both for in-house and nongovernmental sources.

(b) The Department of Finance and Administration shall review agency cost comparisons and shall determine whether costing was done using full cost comparisons.

(4) In the solicitation for bids from commercial sources for workloads of a continuing nature, unless otherwise inappropriate, solicitations shall provide for pre-priced options for out-years.

(5) The Department of Finance and Administration shall compute a rate to be applied by agencies for the opportunity cost of capital investments and of the net proceeds from the potential sale of capital assets, utilizing the best available date for comparable commercial and industrial activities.

(6) Agencies shall not be required to conduct cost comparisons for goods or services estimated for which annual operation costs are estimated to be less than One Hundred Dollars ($100.00).

(a) Activities below such threshold should be performed by contract unless otherwise exempted by this act.

(b) Where there is reason to believe that inadequate competition or other factors are causing commercial prices to be unreasonable. A cost comparison may be conducted. However, reasonable effort shall first be conducted to obtain satisfactory prices from existing commercial sources.

SECTION 9. (1) Any public good or service provided through a competitive bidding process shall be subject to a new competitive bidding process at least every five (5) years. No change in contract or renewal option payment amounts to a private contractor or agency shall be made except as provided in the contract executed at the start of service. Payment charges in contracts shall be limited to indices, escalators, deflators, changes in service level and other expressly stated or calculable
amounts, consistent with the proposal of the private contractor or agency awarded the contract.

(2) In no case shall a good or service which has been procured through a competitive process be procured from an external source or returned to in-house performance without conducting the make or buy analysis required by this act.

(3) For any positions made available as a result of a conversion from an in-house activity to one provided by a commercial source, the commercial sources shall first consider persons who were laid off from public employment because of such conversion.

(4) An agency may not establish any requirement relating to conditions of employment of contracted employees other than those required by applicable state and federal laws.

(5) Under no circumstances shall an agency increase payment to an in-house or private provider of services except as is explicitly stated in the terms of the contract.

SECTION 10. (1) The State Auditor, as an element of the regular audits of agency activities, shall include an assessment of:

(a) Progress on implementation of this act;

(b) Compliance with the competitive proposal requirement;

(c) Compliance with fully allocated cost requirement;

(d) Level of contract compliance by private contractors;

(e) Cost of such compliance;

(f) Whether such costs will be recurring or reduced;

and

g) The costs and benefits of further efforts to privatize.

SECTION 11. (1) The Director of the Department of Finance and Administration shall establish a procedure for administrative
review of determinations in accordance with the requirements of
the state administrative procedure act. This procedure will only
be used to resolve questions of determinations between in-house
and contract performance, and shall not apply to questions
concerning award to a contractor in preference to another
contractor. Upon written request from a directly affected party
raising a specific objection, the appeals procedure will provide
for:

(a) An independent, objective review of the initial
determination and the rationale upon which the decision was based;
and

(b) An expeditious determination, within thirty (30)
days.

(2) The appeals procedure is intended to provide an
administrative safeguard to assure that agency decisions are fair,
equitable, and in accordance with established policy.

(3) Since the appeal procedure is intended to protect the
rights of all affected parties (state employees and their
representative organizations, contractors and contract employees
and their representatives) the procedure and agency determinations
may not be subject to negotiation, arbitration, or agreements with
any one (1) of those parties.

(4) Any decision of the Director of the Department of
Finance and Administration shall be final and shall be subject to
judicial review.

SECTION 12. This act shall take effect and be in force from
and after July 1, 2002.