

By: Representative Davis

To: Universities and  
Colleges; Appropriations

HOUSE BILL NO. 379

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

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

17 **SECTION 1.** The following shall be codified as Section  
 18 37-101-44, Mississippi Code of 1972:

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

32 (2) The design-build delivery system described under  
 33 subsection (1) of this section may be authorized only when the



34 Board of Trustees of State Institutions of Higher Learning makes a  
35 determination, entered on its minutes, with specific findings for  
36 the project demonstrating how it is in the best interest of the  
37 public to enter into a design-build contract. At a minimum, the  
38 determination must include a detailed explanation of why a  
39 design-build approach for a particular project satisfies the  
40 public need better than the traditional design-bid-build approach.

41 (3) For each proposed design-build project, a two-phase  
42 procedure for awarding design-build contracts must be adopted and  
43 must include the following:

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



67 for evaluation of proposals, and any other information necessary  
68 to enable the design-builders to submit proposals that meet the  
69 board's needs.

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

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

92 (d) During Phase Two, the shortlisted firms will be  
93 invited to submit detailed designs, specific technical concepts or  
94 solutions, pricing, scheduling and other information deemed  
95 appropriate by the board as necessary to evaluate and rank  
96 acceptability of the Phase Two proposals. After evaluation of  
97 these Phase Two proposals, the board shall award a contract to the  
98 design-builder determined to offer the best value to the public in  
99 accordance with evaluation criteria set forth in the request for



100 proposals, of which price must be one, but not necessarily the  
101 only, criterion.

102 (e) If the board accepts a proposal other than the  
103 lowest dollar proposal actually submitted, the board shall enter  
104 on its minutes detailed calculations and a narrative summary  
105 showing why the accepted proposal was determined to provide the  
106 best value, and the board shall state specifically on its minutes  
107 the justification for its award.

108 (4) All facilities that are governed by this section must be  
109 designed and constructed to equal or exceed the Southern Building  
110 Code Standards in force at the time of contracting. All private  
111 contractors or private entities contracting or performing under  
112 this section must comply at all times with all applicable laws,  
113 codes and other legal requirements pertaining to the project.

114 (5) (a) A public official or employee of a state agency who  
115 has duties or responsibilities related to the contracting,  
116 constructing, leasing, acquiring or operating of a facility under  
117 this section may not become an employee, consultant or contract  
118 vendor to a private entity providing such facility or services to  
119 the state for a period of one (1) year after the date of  
120 termination of the person's public service or state employment.

121 (b) Any person violating this subsection shall be  
122 guilty of a misdemeanor and punished by a fine of not less than  
123 Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars  
124 (\$1,000.00).

125 **SECTION 2.** Section 37-101-43, Mississippi Code of 1972, is  
126 amended as follows:

127 37-101-43. As an alternative to the authority granted under  
128 Section 37-101-44, before entering into or awarding any such lease  
129 contract under the provisions of Section 37-101-41, the Board of  
130 Trustees of State Institutions of Higher Learning, in its  
131 discretion, may cause the interested state-supported institution  
132 upon which a facility is proposed to be constructed to select and



133 submit three (3) architects to the board. Thereupon, the board  
134 may approve and employ an architect, who shall be paid by the  
135 interested institution from any funds available to the interested  
136 institution. The architect, under the direction of the interested  
137 institution, shall prepare complete plans and specifications for  
138 the facility desired to be constructed on the leased property.

139 Upon completion of the plans and specifications and the  
140 approval thereof by the board, and before entering into any lease  
141 contract, the board shall cause to be published once a week for at  
142 least three (3) consecutive weeks and not less than twenty-one  
143 (21) days in at least one (1) newspaper having a general  
144 circulation in the county in which the interested institution is  
145 located and in one (1) newspaper with a general statewide  
146 circulation, a notice inviting bids or proposals for the leasing,  
147 construction and leasing back of the land and constructed  
148 facility, which facility must be constructed in accordance with  
149 the plans and specifications. The notice shall distinctly state  
150 the thing to be done, and invite sealed proposals, to be filed  
151 with the board, to do the thing to be done. The notice shall  
152 contain the following specific provisions, together with such  
153 others as the board, in its discretion, deems appropriate, to wit:  
154 bids shall be accompanied by a bid security evidenced by a  
155 certified or cashier's check or bid-bond payable to the board in a  
156 sum of not less than five percent (5%) of the gross construction  
157 cost of the facility to be constructed, as estimated by the board,  
158 and the bids shall contain proof satisfactory to the board of  
159 interim and permanent financing. The board shall state in the  
160 notice when construction shall commence. The bid shall contain  
161 the proposed contractor's certificate of responsibility number and  
162 bidder's license. In all cases, before the notice shall be  
163 published, the plans and specifications shall be filed with the  
164 board and also in the office of the president of the interested  
165 institution, there to remain.



166           The board shall award the lease contract to the lowest and  
167 best bidder, who will comply with the terms imposed by the  
168 contract documents. At the time of the awarding of the lease  
169 contract, the successful bidder shall enter into bond with  
170 sufficient sureties, to be approved by the board, in such penalty  
171 as may be fixed by the board, but in no case to be less than the  
172 estimated gross construction cost of the facility to be  
173 constructed as estimated by the board, conditioned for the prompt,  
174 proper and efficient performance of the contract. The bond shall  
175 be made by an authorized corporate surety bonding company.  
176 The \* \* \* bid security herein provided for shall be forfeited if  
177 the successful bidder fails to enter into lease contract and  
178 commence construction within the time limitation set forth in the  
179 notice. At such time, and simultaneously with the signing of the  
180 contract, the successful bidder shall deposit a sum of money, in  
181 cash or certified or cashier's check, not less than the bid  
182 security previously deposited as bid security to reimburse the  
183 interested institution for all sums expended by it for  
184 architectural services and other expenditures of the board and  
185 interested institution connected with the bidden lease contract,  
186 of which such other anticipated expenditures notice is to be given  
187 to bidder in the notice. The bid security posted by an  
188 unsuccessful bidder shall be refunded to him.

189           **SECTION 3.** Section 37-101-41, Mississippi Code of 1972, is  
190 amended as follows:

191           37-101-41. The Board of Trustees of State Institutions of  
192 Higher Learning is \* \* \* authorized and empowered to lease to  
193 private individuals or corporations, for a term not exceeding  
194 thirty-one (31) years, any land at any of the following  
195 state-supported institutions: the University of Mississippi,  
196 Mississippi State University of Agriculture and Applied Science,  
197 Jackson State University, Mississippi Valley State University,  
198 Alcorn State University, University of Southern Mississippi,



199 Mississippi University for Women and Delta State University, for  
200 the purpose of erecting dormitories, other buildings and  
201 facilities and parking structures thereon for active faculty and  
202 students. The dormitories, other buildings or facilities or  
203 parking structures shall be constructed thereon by private  
204 financing, and shall be leased back to the board for use by the  
205 concerned state-supported institution of higher learning. The  
206 lease shall contain a provision permitting the board to purchase  
207 the dormitory, other building or facility or parking structure  
208 located thereon for the sum of One Dollar (\$1.00) after payment by  
209 the board of all sums of money due under said lease.

210       **SECTION 4.** Section 31-7-13, Mississippi Code of 1972, is  
211 amended as follows:

212       31-7-13. All agencies and governing authorities shall  
213 purchase their commodities and printing; contract for garbage  
214 collection or disposal; contract for solid waste collection or  
215 disposal; contract for sewage collection or disposal; contract for  
216 public construction; and contract for rentals as herein provided.

217       (a) **Bidding procedure for purchases not over \$3,500.00.**  
218 Purchases which do not involve an expenditure of more than Three  
219 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or  
220 shipping charges, may be made without advertising or otherwise  
221 requesting competitive bids. Provided, however, that nothing  
222 contained in this paragraph (a) shall be construed to prohibit any  
223 agency or governing authority from establishing procedures which  
224 require competitive bids on purchases of Three Thousand Five  
225 Hundred Dollars (\$3,500.00) or less.

226       (b) **Bidding procedure for purchases over \$3,500.00 but**  
227 **not over \$15,000.00.** Purchases which involve an expenditure of  
228 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not  
229 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
230 freight and shipping charges may be made from the lowest and best  
231 bidder without publishing or posting advertisement for bids,



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

258 (c) **Bidding procedure for purchases over \$15,000.00.**

259 (i) **Publication requirement.** Purchases which  
260 involve an expenditure of more than Fifteen Thousand Dollars  
261 (\$15,000.00), exclusive of freight and shipping charges may be  
262 made from the lowest and best bidder after advertising for  
263 competitive sealed bids once each week for two (2) consecutive  
264 weeks in a regular newspaper published in the county or



265 municipality in which such agency or governing authority is  
266 located. The date as published for the bid opening shall not be  
267 less than seven (7) working days after the last published notice;  
268 however, if the purchase involves a construction project in which  
269 the estimated cost is in excess of Fifteen Thousand Dollars  
270 (\$15,000.00), such bids shall not be opened in less than fifteen  
271 (15) working days after the last notice is published and the  
272 notice for the purchase of such construction shall be published  
273 once each week for two (2) consecutive weeks. The notice of  
274 intention to let contracts or purchase equipment shall state the  
275 time and place at which bids shall be received, list the contracts  
276 to be made or types of equipment or supplies to be purchased, and,  
277 if all plans and/or specifications are not published, refer to the  
278 plans and/or specifications on file. If there is no newspaper  
279 published in the county or municipality, then such notice shall be  
280 given by posting same at the courthouse, or for municipalities at  
281 the city hall, and at two (2) other public places in the county or  
282 municipality, and also by publication once each week for two (2)  
283 consecutive weeks in some newspaper having a general circulation  
284 in the county or municipality in the above provided manner. On  
285 the same date that the notice is submitted to the newspaper for  
286 publication, the agency or governing authority involved shall mail  
287 written notice to, or provide electronic notification to the main  
288 office of the Mississippi Contract Procurement Center that  
289 contains the same information as that in the published notice.

290 (ii) **Bidding process amendment procedure.** If all  
291 plans and/or specifications are published in the notification,  
292 then the plans and/or specifications may not be amended. If all  
293 plans and/or specifications are not published in the notification,  
294 then amendments to the plans/specifications, bid opening date, bid  
295 opening time and place may be made, provided that the agency or  
296 governing authority maintains a list of all prospective bidders  
297 who are known to have received a copy of the bid documents and all



298 such prospective bidders are sent copies of all amendments. This  
299 notification of amendments may be made via mail, facsimile,  
300 electronic mail or other generally accepted method of information  
301 distribution. No addendum to bid specifications may be issued  
302 within two (2) working days of the time established for the  
303 receipt of bids unless such addendum also amends the bid opening  
304 to a date not less than five (5) working days after the date of  
305 the addendum.

306 (iii) **Filing requirement.** In all cases involving  
307 governing authorities, before the notice shall be published or  
308 posted, the plans or specifications for the construction or  
309 equipment being sought shall be filed with the clerk of the board  
310 of the governing authority. In addition to these requirements, a  
311 bid file shall be established which shall indicate those vendors  
312 to whom such solicitations and specifications were issued, and  
313 such file shall also contain such information as is pertinent to  
314 the bid.

315 (iv) **Specification restrictions.** Specifications  
316 pertinent to such bidding shall be written so as not to exclude  
317 comparable equipment of domestic manufacture. Provided, however,  
318 that should valid justification be presented, the Department of  
319 Finance and Administration or the board of a governing authority  
320 may approve a request for specific equipment necessary to perform  
321 a specific job. Further, such justification, when placed on the  
322 minutes of the board of a governing authority, may serve as  
323 authority for that governing authority to write specifications to  
324 require a specific item of equipment needed to perform a specific  
325 job. In addition to these requirements, from and after July 1,  
326 1990, vendors of relocatable classrooms and the specifications for  
327 the purchase of such relocatable classrooms published by local  
328 school boards shall meet all pertinent regulations of the State  
329 Board of Education, including prior approval of such bid by the  
330 State Department of Education.



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

332 (i) **Decision procedure.** Purchases may be made  
333 from the lowest and best bidder. In determining the lowest and  
334 best bid, freight and shipping charges shall be included.  
335 Life-cycle costing, total cost bids, warranties, guaranteed  
336 buy-back provisions and other relevant provisions may be included  
337 in the best bid calculation. All best bid procedures for state  
338 agencies must be in compliance with regulations established by the  
339 Department of Finance and Administration. If any governing  
340 authority accepts a bid other than the lowest bid actually  
341 submitted, it shall place on its minutes detailed calculations and  
342 narrative summary showing that the accepted bid was determined to  
343 be the lowest and best bid, including the dollar amount of the  
344 accepted bid and the dollar amount of the lowest bid. No agency  
345 or governing authority shall accept a bid based on items not  
346 included in the specifications.

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

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

353 (e) **Lease-purchase authorization.** For the purposes of  
354 this section, the term "equipment" shall mean equipment, furniture  
355 and, if applicable, associated software and other applicable  
356 direct costs associated with the acquisition. Any lease-purchase  
357 of equipment which an agency is not required to lease-purchase  
358 under the master lease-purchase program pursuant to Section  
359 31-7-10 and any lease-purchase of equipment which a governing  
360 authority elects to lease-purchase may be acquired by a  
361 lease-purchase agreement under this paragraph (e). Lease-purchase  
362 financing may also be obtained from the vendor or from a  
363 third-party source after having solicited and obtained at least



364 two (2) written competitive bids, as defined in paragraph (b) of  
365 this section, for such financing without advertising for such  
366 bids. Solicitation for the bids for financing may occur before or  
367 after acceptance of bids for the purchase of such equipment or,  
368 where no such bids for purchase are required, at any time before  
369 the purchase thereof. No such lease-purchase agreement shall be  
370 for an annual rate of interest which is greater than the overall  
371 maximum interest rate to maturity on general obligation  
372 indebtedness permitted under Section 75-17-101, and the term of  
373 such lease-purchase agreement shall not exceed the useful life of  
374 equipment covered thereby as determined according to the upper  
375 limit of the asset depreciation range (ADR) guidelines for the  
376 Class Life Asset Depreciation Range System established by the  
377 Internal Revenue Service pursuant to the United States Internal  
378 Revenue Code and regulations thereunder as in effect on December  
379 31, 1980, or comparable depreciation guidelines with respect to  
380 any equipment not covered by ADR guidelines. Any lease-purchase  
381 agreement entered into pursuant to this paragraph (e) may contain  
382 any of the terms and conditions which a master lease-purchase  
383 agreement may contain under the provisions of Section 31-7-10(5),  
384 and shall contain an annual allocation dependency clause  
385 substantially similar to that set forth in Section 31-7-10(8).  
386 Each agency or governing authority entering into a lease-purchase  
387 transaction pursuant to this paragraph (e) shall maintain with  
388 respect to each such lease-purchase transaction the same  
389 information as required to be maintained by the Department of  
390 Finance and Administration pursuant to Section 31-7-10(13).  
391 However, nothing contained in this section shall be construed to  
392 permit agencies to acquire items of equipment with a total  
393 acquisition cost in the aggregate of less than Ten Thousand  
394 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
395 equipment, and the purchase thereof by any lessor, acquired by  
396 lease-purchase under this paragraph and all lease-purchase



397 payments with respect thereto shall be exempt from all Mississippi  
398 sales, use and ad valorem taxes. Interest paid on any  
399 lease-purchase agreement under this section shall be exempt from  
400 State of Mississippi income taxation.

401 (f) **Alternate bid authorization.** When necessary to  
402 ensure ready availability of commodities for public works and the  
403 timely completion of public projects, no more than two (2)  
404 alternate bids may be accepted by a governing authority for  
405 commodities. No purchases may be made through use of such  
406 alternate bids procedure unless the lowest and best bidder, for  
407 reasons beyond his control, cannot deliver the commodities  
408 contained in his bid. In that event, purchases of such  
409 commodities may be made from one (1) of the bidders whose bid was  
410 accepted as an alternate.

411 (g) **Construction contract change authorization.** In the  
412 event a determination is made by an agency or governing authority  
413 after a construction contract is let that changes or modifications  
414 to the original contract are necessary or would better serve the  
415 purpose of the agency or the governing authority, such agency or  
416 governing authority may, in its discretion, order such changes  
417 pertaining to the construction that are necessary under the  
418 circumstances without the necessity of further public bids;  
419 provided that such change shall be made in a commercially  
420 reasonable manner and shall not be made to circumvent the public  
421 purchasing statutes. In addition to any other authorized person,  
422 the architect or engineer hired by an agency or governing  
423 authority with respect to any public construction contract shall  
424 have the authority, when granted by an agency or governing  
425 authority, to authorize changes or modifications to the original  
426 contract without the necessity of prior approval of the agency or  
427 governing authority when any such change or modification is less  
428 than one percent (1%) of the total contract amount. The agency or



429 governing authority may limit the number, manner or frequency of  
430 such emergency changes or modifications.

431           (h) **Petroleum purchase alternative.** In addition to  
432 other methods of purchasing authorized in this chapter, when any  
433 agency or governing authority shall have a need for gas, diesel  
434 fuel, oils and/or other petroleum products in excess of the amount  
435 set forth in paragraph (a) of this section, such agency or  
436 governing authority may purchase the commodity after having  
437 solicited and obtained at least two (2) competitive written bids,  
438 as defined in paragraph (b) of this section. If two (2)  
439 competitive written bids are not obtained the entity shall comply  
440 with the procedures set forth in paragraph (c) of this section.  
441 In the event any agency or governing authority shall have  
442 advertised for bids for the purchase of gas, diesel fuel, oils and  
443 other petroleum products and coal and no acceptable bids can be  
444 obtained, such agency or governing authority is authorized and  
445 directed to enter into any negotiations necessary to secure the  
446 lowest and best contract available for the purchase of such  
447 commodities.

448           (i) **Road construction petroleum products price**  
449 **adjustment clause authorization.** Any agency or governing  
450 authority authorized to enter into contracts for the construction,  
451 maintenance, surfacing or repair of highways, roads or streets,  
452 may include in its bid proposal and contract documents a price  
453 adjustment clause with relation to the cost to the contractor,  
454 including taxes, based upon an industry-wide cost index, of  
455 petroleum products including asphalt used in the performance or  
456 execution of the contract or in the production or manufacture of  
457 materials for use in such performance. Such industry-wide index  
458 shall be established and published monthly by the Mississippi  
459 Department of Transportation with a copy thereof to be mailed,  
460 upon request, to the clerks of the governing authority of each  
461 municipality and the clerks of each board of supervisors



462 throughout the state. The price adjustment clause shall be based  
463 on the cost of such petroleum products only and shall not include  
464 any additional profit or overhead as part of the adjustment. The  
465 bid proposals or document contract shall contain the basis and  
466 methods of adjusting unit prices for the change in the cost of  
467 such petroleum products.

468 (j) **State agency emergency purchase procedure.** If the  
469 executive head of any agency of the state shall determine that an  
470 emergency exists in regard to the purchase of any commodities or  
471 repair contracts, so that the delay incident to giving opportunity  
472 for competitive bidding would be detrimental to the interests of  
473 the state, then the provisions herein for competitive bidding  
474 shall not apply and the head of such agency shall be authorized to  
475 make the purchase or repair. Total purchases so made shall only  
476 be for the purpose of meeting needs created by the emergency  
477 situation. In the event such executive head is responsible to an  
478 agency board, at the meeting next following the emergency  
479 purchase, documentation of the purchase, including a description  
480 of the commodity purchased, the purchase price thereof and the  
481 nature of the emergency shall be presented to the board and placed  
482 on the minutes of the board of such agency. The head of such  
483 agency shall, at the earliest possible date following such  
484 emergency purchase, file with the Department of Finance and  
485 Administration (i) a statement under oath certifying the  
486 conditions and circumstances of the emergency, and (ii) a  
487 certified copy of the appropriate minutes of the board of such  
488 agency, if applicable. On or before September 1 of each year, the  
489 State Auditor shall prepare and deliver to the Senate Fees,  
490 Salaries and Administration Committee, the House Fees and Salaries  
491 of Public Officers Committee and the Joint Legislative Budget  
492 Committee a report containing a list of all state agency emergency  
493 purchases and supporting documentation for each emergency  
494 purchases.



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

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

513                   (1) **Hospital purchase, lease-purchase and lease**  
514 **authorization.**

515                   (i) The commissioners or board of trustees of any  
516 public hospital may contract with such lowest and best bidder for  
517 the purchase or lease-purchase of any commodity under a contract  
518 of purchase or lease-purchase agreement whose obligatory payment  
519 terms do not exceed five (5) years.

520                   (ii) In addition to the authority granted in  
521 subparagraph (i) of this paragraph (1), the commissioners or board  
522 of trustees is authorized to enter into contracts for the lease of  
523 equipment or services, or both, which it considers necessary for  
524 the proper care of patients if, in its opinion, it is not  
525 financially feasible to purchase the necessary equipment or  
526 services. Any such contract for the lease of equipment or  
527 services executed by the commissioners or board shall not exceed a



528 maximum of five (5) years' duration and shall include a  
529 cancellation clause based on unavailability of funds. If such  
530 cancellation clause is exercised, there shall be no further  
531 liability on the part of the lessee. Any such contract for the  
532 lease of equipment or services executed on behalf of the  
533 commissioners or board that complies with the provisions of this  
534 subparagraph (ii) shall be excepted from the bid requirements set  
535 forth in this section.

536 (m) **Exceptions from bidding requirements.** Excepted  
537 from bid requirements are:

538 (i) **Purchasing agreements approved by department.**

539 Purchasing agreements, contracts and maximum price regulations  
540 executed or approved by the Department of Finance and  
541 Administration.

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

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



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

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

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



591 (vii) **Perishable supplies or food.** Perishable  
592 supplies or foods purchased for use in connection with hospitals,  
593 the school lunch programs, homemaking programs and for the feeding  
594 of county or municipal prisoners.

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

609 (ix) **Waste disposal facility construction**  
610 **contracts.** Construction of incinerators and other facilities for  
611 disposal of solid wastes in which products either generated  
612 therein, such as steam, or recovered therefrom, such as materials  
613 for recycling, are to be sold or otherwise disposed of; provided,  
614 however, in constructing such facilities a governing authority or  
615 agency shall publicly issue requests for proposals, advertised for  
616 in the same manner as provided herein for seeking bids for public  
617 construction projects, concerning the design, construction,  
618 ownership, operation and/or maintenance of such facilities,  
619 wherein such requests for proposals when issued shall contain  
620 terms and conditions relating to price, financial responsibility,  
621 technology, environmental compatibility, legal responsibilities  
622 and such other matters as are determined by the governing  
623 authority or agency to be appropriate for inclusion; and after



624 responses to the request for proposals have been duly received,  
625 the governing authority or agency may select the most qualified  
626 proposal or proposals on the basis of price, technology and other  
627 relevant factors and from such proposals, but not limited to the  
628 terms thereof, negotiate and enter contracts with one or more of  
629 the persons or firms submitting proposals.

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

633           (xi) **Information technology products.** Purchases  
634 of information technology products made by governing authorities  
635 under the provisions of purchase schedules, or contracts executed  
636 or approved by the Mississippi Department of Information  
637 Technology Services and designated for use by governing  
638 authorities.

639           (xii) **Energy efficiency services and equipment.**  
640 Energy efficiency services and equipment acquired by school  
641 districts, community and junior colleges, institutions of higher  
642 learning and state agencies or other applicable governmental  
643 entities on a shared-savings, lease or lease-purchase basis  
644 pursuant to Section 31-7-14.

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

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



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

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

663                   (xvii)   **Multichannel interactive video systems.**  
664 From and after July 1, 1990, contracts by Mississippi Authority  
665 for Educational Television with any private educational  
666 institution or private nonprofit organization whose purposes are  
667 educational in regard to the construction, purchase, lease or  
668 lease-purchase of facilities and equipment and the employment of  
669 personnel for providing multichannel interactive video systems  
670 (ITSF) in the school districts of this state.

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

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

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

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



689                   (xxii) **Garbage, solid waste and sewage contracts.**  
690 Contracts for garbage collection or disposal, contracts for solid  
691 waste collection or disposal and contracts for sewage collection  
692 or disposal.

693                   (xxiii) **Municipal water tank maintenance**  
694 **contracts.** Professional maintenance program contracts for the  
695 repair or maintenance of municipal water tanks, which provide  
696 professional services needed to maintain municipal water storage  
697 tanks for a fixed annual fee for a duration of two (2) or more  
698 years.

699                   (xxiv) **Purchases of Mississippi Industries for the**  
700 **Blind products.** Purchases made by state agencies or governing  
701 authorities involving any item that is manufactured, processed or  
702 produced by the Mississippi Industries for the Blind.

703                   (xxv) **Purchases of state-adopted textbooks.**  
704 Purchases of state-adopted textbooks by public school districts.

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

708                   (xxvii) **Used heavy or specialized machinery or**  
709 **equipment for installation of soil and water conservation**  
710 **practices purchased at auction.** Used heavy or specialized  
711 machinery or equipment used for the installation and  
712 implementation of soil and water conservation practices or  
713 measures purchased subject to the restrictions provided in  
714 Sections 69-27-331 through 69-27-341. Any purchase by the State  
715 Soil and Water Conservation Commission under the exemption  
716 authorized by this subparagraph shall require advance  
717 authorization spread upon the minutes of the commission to include  
718 the listing of the item or items authorized to be purchased and  
719 the maximum bid authorized to be paid for each item or items.



720 (xxviii) **Hospital lease of equipment or services.**  
721 Leases by hospitals of equipment or services if the leases are in  
722 compliance with paragraph (1)(ii).

723 (xxix) **Procurement of design and construction**  
724 **services by state institutions of higher learning.** Privately  
725 financed contracts awarded by the Board of Trustees of State  
726 Institutions of Higher Learning for the design and construction of  
727 dormitories, other buildings or facilities or parking structures  
728 on the campus of a state institution of higher learning, as  
729 provided in Section 32-101-44.

730 (n) **Term contract authorization.** All contracts for the  
731 purchase of:

732 (i) All contracts for the purchase of commodities,  
733 equipment and public construction (including, but not limited to,  
734 repair and maintenance), may be let for periods of not more than  
735 sixty (60) months in advance, subject to applicable statutory  
736 provisions prohibiting the letting of contracts during specified  
737 periods near the end of terms of office. Term contracts for a  
738 period exceeding twenty-four (24) months shall also be subject to  
739 ratification or cancellation by governing authority boards taking  
740 office subsequent to the governing authority board entering the  
741 contract.

742 (ii) Bid proposals and contracts may include price  
743 adjustment clauses with relation to the cost to the contractor  
744 based upon a nationally published industry-wide or nationally  
745 published and recognized cost index. The cost index used in a  
746 price adjustment clause shall be determined by the Department of  
747 Finance and Administration for the state agencies and by the  
748 governing board for governing authorities. The bid proposal and  
749 contract documents utilizing a price adjustment clause shall  
750 contain the basis and method of adjusting unit prices for the  
751 change in the cost of such commodities, equipment and public  
752 construction.



753                   (o)   **Purchase law violation prohibition and vendor**  
754 **penalty.** No contract or purchase as herein authorized shall be  
755 made for the purpose of circumventing the provisions of this  
756 section requiring competitive bids, nor shall it be lawful for any  
757 person or concern to submit individual invoices for amounts within  
758 those authorized for a contract or purchase where the actual value  
759 of the contract or commodity purchased exceeds the authorized  
760 amount and the invoices therefor are split so as to appear to be  
761 authorized as purchases for which competitive bids are not  
762 required. Submission of such invoices shall constitute a  
763 misdemeanor punishable by a fine of not less than Five Hundred  
764 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
765 or by imprisonment for thirty (30) days in the county jail, or  
766 both such fine and imprisonment. In addition, the claim or claims  
767 submitted shall be forfeited.

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

775                   (q)   **Fuel management system bidding procedure.** Any  
776 governing authority or agency of the state shall, before  
777 contracting for the services and products of a fuel management or  
778 fuel access system, enter into negotiations with not fewer than  
779 two (2) sellers of fuel management or fuel access systems for  
780 competitive written bids to provide the services and products for  
781 the systems. In the event that the governing authority or agency  
782 cannot locate two (2) sellers of such systems or cannot obtain  
783 bids from two (2) sellers of such systems, it shall show proof  
784 that it made a diligent, good-faith effort to locate and negotiate  
785 with two (2) sellers of such systems. Such proof shall include,



786 but not be limited to, publications of a request for proposals and  
787 letters soliciting negotiations and bids. For purposes of this  
788 paragraph (q), a fuel management or fuel access system is an  
789 automated system of acquiring fuel for vehicles as well as  
790 management reports detailing fuel use by vehicles and drivers, and  
791 the term "competitive written bid" shall have the meaning as  
792 defined in paragraph (b) of this section. Governing authorities  
793 and agencies shall be exempt from this process when contracting  
794 for the services and products of a fuel management or fuel access  
795 systems under the terms of a state contract established by the  
796 Office of Purchasing and Travel.

797 (r) **Solid waste contract proposal procedure.** Before  
798 entering into any contract for garbage collection or disposal,  
799 contract for solid waste collection or disposal or contract for  
800 sewage collection or disposal, which involves an expenditure of  
801 more than Fifty Thousand Dollars (\$50,000.00), a governing  
802 authority or agency shall issue publicly a request for proposals  
803 concerning the specifications for such services which shall be  
804 advertised for in the same manner as provided in this section for  
805 seeking bids for purchases which involve an expenditure of more  
806 than Ten Thousand Dollars (\$10,000.00). Any request for proposals  
807 when issued shall contain terms and conditions relating to price,  
808 financial responsibility, technology, legal responsibilities and  
809 other relevant factors as are determined by the governing  
810 authority or agency to be appropriate for inclusion; all factors  
811 determined relevant by the governing authority or agency or  
812 required by this paragraph (r) shall be duly included in the  
813 advertisement to elicit proposals. After responses to the request  
814 for proposals have been duly received, the governing authority or  
815 agency shall select the most qualified proposal or proposals on  
816 the basis of price, technology and other relevant factors and from  
817 such proposals, but not limited to the terms thereof, negotiate  
818 and enter contracts with one or more of the persons or firms



819 submitting proposals. If the governing authority or agency deems  
820 none of the proposals to be qualified or otherwise acceptable, the  
821 request for proposals process may be reinitiated. Notwithstanding  
822 any other provisions of this paragraph, where a county with at  
823 least thirty-five thousand (35,000) nor more than forty thousand  
824 (40,000) population, according to the 1990 federal decennial  
825 census, owns or operates a solid waste landfill, the governing  
826 authorities of any other county or municipality may contract with  
827 the governing authorities of the county owning or operating the  
828 landfill, pursuant to a resolution duly adopted and spread upon  
829 the minutes of each governing authority involved, for garbage or  
830 solid waste collection or disposal services through contract  
831 negotiations.

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

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



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

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

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

860 (t) **Construction punch list restriction.** The  
861 architect, engineer or other representative designated by the  
862 agency or governing authority that is contracting for public  
863 construction or renovation may prepare and submit to the  
864 contractor only one (1) preliminary punch list of items that do  
865 not meet the contract requirements at the time of substantial  
866 completion and one (1) final list immediately before final  
867 completion and final payment.

868 (u) **Purchase authorization clarification.** Nothing in  
869 this section shall be construed as authorizing any purchase not  
870 authorized by law.

871 **SECTION 5.** This act shall take effect and be in force from  
872 and after July 1, 2003.

