HOUSE BILL NO. 1268

AN ACT TO AMEND SECTION 57-75-9, MISSISSIPPI CODE OF 1972, TO EXEMPT CONTRACTS ENTERED INTO UNDER THE MISSISSIPPI MAJOR ECONOMIC IMPACT ACT FROM CERTAIN PROCUREMENT LAWS IF CERTAIN CONDITIONS ARE MET; TO AMEND SECTIONS 29-5-2, 25-9-120, 25-53-5 AND 31-11-3, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 57-75-9, Mississippi Code of 1972, is amended as follows:

57-75-9. (1) The authority is hereby designated and empowered to act on behalf of the state in submitting a siting proposal for any project eligible for assistance under this act. The authority is empowered to take all steps appropriate or necessary to effect the siting, development, and operation of the project within the state, including the negotiation of a fee-in-lieu. If the state is selected as the preferred site for the project, the authority is hereby designated and empowered to act on behalf of the state and to represent the state in the planning, financing, development, construction and operation of the project or any facility related to the project, with the concurrence of the affected public agency. The authority may take affirmative steps to coordinate fully all aspects of the submission of a siting proposal for the project and, if the state is selected as the preferred site, to coordinate fully, with the concurrence of the affected public agency, the development of the project or any facility related to the project with private business, the United States government and other public agencies. All public agencies are encouraged to cooperate to the fullest extent possible to effectuate the duties of the authority;
however, the development of the project or any facility related to the project by the authority may be done only with the concurrence of the affected public agency.

(2) (a) Contracts, by the authority or a public agency, including, but not limited to, design and construction contracts, for the acquisition, purchase, construction or installation of a project or any facility related to the project shall be exempt from the provisions of Sections 25-9-120, 25-53-5, 29-5-2, 31-7-13 and 31-11-3 if:

(i) The authority finds and records such finding on its minutes, that because of availability or the particular nature of a project, it would not be in the public interest or would less effectively achieve the purposes of this chapter to enter into such contracts on the basis of Section 31-7-13; and

(ii) The enterprise that is involved in the project concurs in such finding.

(b) When the requirements of paragraph (a) of this subsection are met:

(i) The requirements of Section 31-7-13 shall not apply to such contracts; and

(ii) The contracts may be entered into on the basis of negotiation.

(c) The enterprise involved with the project may, upon approval of the authority, negotiate such contracts in the name of the authority.

(d) The provisions of this subsection (2) shall not apply to contracts by the authority for excavation, fill dirt and compaction for the preparation of the site of a project as defined in Section 57-75-5(f)(iv)1 and such contracts may be entered into pursuant to subsection (3) of this section.

(3) Contracts by the authority for excavation, fill dirt and compaction for the preparation of the site of a project defined in Section 57-75-5(f)(iv)1 shall be exempt from the provisions of...
Section 31-7-13 and the following procedure shall be followed in the award of such contracts:

(a) The authority shall advertise for a period of time to be set by the authority, but in no event less than one (1) business day, the date, time and place of a meeting with the authority to receive specifications on a request for proposals on excavation, fill dirt and compaction for the preparation of the site of the project defined in Section 57-75-5(f)(iv)1.

(b) The authority shall set the minimum qualifications necessary to be considered for award of the contract and the advertisement shall set forth such minimum qualifications.

(c) Following the meeting the authority shall, in its discretion, select one or more of the qualified contractors with whom to negotiate or award the contract. The decision of the authority concerning the selection of the contractor shall be final.

SECTION 2. Section 29-5-2, Mississippi Code of 1972, is amended as follows:

29-5-2. The duties of the Department of Finance and Administration shall be as follows:

(a) (i) To exercise general supervision and care over and keep in good condition the following state property located in the City of Jackson: the New State Capitol Building, the Woolfolk State Office Building, the Carroll Gartin Justice Building, the Walter Sillers Office Building, the War Veterans' Memorial Building, the Charlotte Capers Building, the William F. Winter Archives and History Building, the Ike Sanford Veterans Affairs Building, the Old State Capitol Building, the Governor's Mansion, the Heber Ladner Building, the Burroughs Building, the Robert E. Lee Office Building, the Robert E. Lee Parking Garage, the Manship House Restoration and Visitor Center, the State Records Center, the 301 Lamar Street Building, and all other properties acquired in the same transaction at the time of the purchase of the Robert...
E. Lee Hotel property from the First Federal Savings and Loan
Association of Jackson, Mississippi, which properties are more
particularly described in a warranty deed heretofore executed and
delivered on April 22, 1969, and filed for record in the office of
the Chancery Clerk of the First Judicial District of Hinds County,
Mississippi, located in Jackson, Mississippi, on April 25, 1969,
at 9:00 a.m., and recorded in Deed Book No. 1822, page 136 et
seq., and the Central High Building and 101 Capitol Centre.

(ii) To exercise general supervision and care over
and keep in good condition the Dr. Eldon Langston Bolton Building
located in Biloxi, Mississippi.

(iii) To exercise general supervision and care
over and keep in good condition the State Service Center, located
at the intersection of State Highway 49 and John Merl Tatum
Industrial Drive in Hattiesburg, Mississippi.

(b) To assign suitable office space for the various
state departments, officers and employees who are provided with an
office in any of the buildings under the jurisdiction or control
of the Department of Finance and Administration. However, the
assignment of space in the New Capitol Building shall be
designated by duly passed resolution of the combined Senate Rules
Committee and the House Management Committee, meeting as a joint
committee, approved by the Lieutenant Governor and Speaker of the
House of Representatives. A majority vote of the members of the
Senate Rules Committee and a majority vote of the members of the
House Management Committee shall be required on all actions taken,
resolutions or reports adopted, and all other matters considered
by the full combined committee on occasions when the Senate Rules
Committee and the House Management Committee shall meet as a full
combined committee.

(c) To approve or disapprove with the concurrence of
the Public Procurement Review Board, any lease or rental
agreements by any state agency or department, including any state
agency financed entirely by federal and special funds, for space outside the buildings under the jurisdiction of the Department of Finance and Administration.

* * * No * * * employee, officer, department, federally funded agency or bureau of the state shall enter a lease or rental agreement without prior approval of the Department of Finance and Administration and the Public Procurement Review Board; however, this provision shall not apply to leases or rental agreements entered into pursuant to Section 57-75-9(2).

The Department of Finance and Administration is authorized to use architects, engineers, building inspectors and other personnel for the purpose of making inspections as may be deemed necessary in carrying out its duties and maintaining the facilities.

(d) To acquire by lease, lease-purchase agreement, or otherwise, as provided in Section 27-104-107, and to assign through the Office of General Services, by lease or sublease agreement from the office, and with the concurrence of the Public Procurement Review Board, to any state agency or department, including any state agency financed entirely by federal and special funds, appropriate office space in the buildings acquired.

SECTION 3. Section 25-9-120, Mississippi Code of 1972, is amended as follows:

25-9-120. (1) Contract personnel, whether classified as contract workers or independent contractors shall not be deemed state service or nonstate service employees of the State of Mississippi, and shall not be eligible to participate in the Public Employees' Retirement System, or the state employee health plan, nor be allowed credit for personal and sick leave and other leave benefits as employees of the State of Mississippi, notwithstanding Sections 25-3-91 through 25-3-101; 25-9-101 through 25-9-151; 25-11-1 through 25-11-126; 25-11-128 through 25-11-131; 25-15-1 through 25-15-23 and for the purpose set forth herein. Contract workers, i.e., contract personnel who do not
meet the criteria of independent contractors, shall be subject to the provisions of Section 25-11-127.

(2) There is hereby created the Personal Service Contract Review Board, which shall be composed of the State Personnel Director, the Executive Director of the Department of Finance and Administration, or his designee, the Commissioner of Corrections, or his designee, the Executive Director of the Mississippi Department of Wildlife and Fisheries, or his designee, and the Executive Director of the Department of Environmental Quality, or his designee. The State Personnel Director shall be chairman and shall preside over the meetings of the board. The board shall annually elect a vice chairman, who shall serve in the absence of the chairman. No business shall be transacted, including adoption of rules of procedure, without the presence of a quorum of the board. Three (3) members shall be a quorum. No action shall be valid unless approved by the chairman and two (2) other of those members present and voting, entered upon the minutes of the board and signed by the chairman. Necessary clerical and administrative support for the board shall be provided by the State Personnel Board. Minutes shall be kept of the proceedings of each meeting, copies of which shall be filed on a monthly basis with the Legislative Budget Office.

(3) The Personal Service Contract Review Board shall have the following powers and responsibilities:

(a) Promulgate rules and regulations governing the solicitation and selection of contractual services personnel including personal and professional services contracts for any form of consulting, policy analysis, public relations, marketing, public affairs, legislative advocacy services or any other contract that the board deems appropriate for oversight, with the exception of any personal service contracts entered into for computer or information technology-related services governed by the Mississippi Department of Information Technology Services, any
personal service contracts entered into by the Mississippi Department of Transportation, and any contract for attorney, accountant, auditor, physician, dentist, architect, engineer, veterinarian and utility rate expert services. Any such rules and regulations shall provide for maintaining continuous internal audit covering the activities of such agency affecting its revenue and expenditures as required under Section 7-7-3(6)(d),

(b) Approve all personal and professional services contracts involving the expenditures of funds in excess of One Hundred Thousand Dollars ($100,000.00);

(c) Develop standards with respect to contractual services personnel which require invitations for public bid, requests for proposals, record keeping and financial responsibility of contractors. The Personal Service Contract Review Board may, in its discretion, require the agency involved to advertise such contract for public bid, and may reserve the right to reject any or all bids;

(d) Prescribe certain circumstances whereby agency heads may enter into contracts for personal and professional services without receiving prior approval from the Personal Service Contract Review Board. The Personal Service Contract Review Board may establish a pre-approved list of providers of various personal and professional services for set prices with which state agencies may contract without bidding or prior approval from the board;

(e) To provide standards for the issuance of requests for proposals, the evaluation of proposals received, consideration of costs and quality of services proposed, contract negotiations, the administrative monitoring of contract performance by the agency and successful steps in terminating a contract;
(f) To present recommendations for governmental privatization and to evaluate privatization proposals submitted by any state agency;

(g) To authorize personal and professional service contracts to be effective for more than one (1) year provided a funding condition is included in any such multiple year contract, except the State Board of Education, which shall have the authority to enter into contractual agreements for student assessment for a period up to ten (10) years. The State Board of Education shall procure these services in accordance with the Personal Service Contract Review Board procurement regulations;

(h) To request the State Auditor to conduct a performance audit on any personal or professional service contract;

(i) Prepare an annual report to the Legislature concerning the issuance of personal service contracts during the previous year, collecting any necessary information from state agencies in making such report.

(4) No member of the Personal Service Contract Review Board shall use his official authority or influence to coerce, by threat of discharge from employment, or otherwise, the purchase of commodities or the contracting for personal or professional services under this section.

(5) The provisions of subsection (3) of this section shall not apply to contracts for personal and professional services entered into pursuant to Section 57-75-9(2).

SECTION 4. Section 25-53-5, Mississippi Code of 1972, is amended as follows:

25-53-5. (1) The authority shall have the following powers, duties, and responsibilities:

(a) The authority shall provide for the development of plans for the efficient acquisition and utilization of computer equipment and services by all agencies of state government, and
provide for their implementation. In so doing, the authority may
use the MDITS staff, at the discretion of the executive director
of the authority, or the authority may contract for the services
of qualified consulting firms in the field of information
technology and utilize the service of such consultants as may be
necessary for such purposes.

(b) The authority shall immediately institute
procedures for carrying out the purposes of this chapter and
supervise the efficient execution of the powers and duties of the
office of executive director of the authority. In the execution
of its functions under this chapter, the authority shall maintain
as a paramount consideration the successful internal organization
and operation of the several agencies so that efficiency existing
therein shall not be adversely affected or impaired. In executing
its functions in relation to the institutions of higher learning
and junior colleges in the state, the authority shall take into
consideration the special needs of such institutions in relation
to the fields of teaching and scientific research.

(c) Title of whatever nature of all computer equipment
now vested in any agency of the State of Mississippi is hereby
vested in the authority, and no such equipment shall be disposed
of in any manner except in accordance with the direction of the
authority or under the provisions of such rules and regulations as
may hereafter be adopted by the authority in relation thereto.

(d) The authority shall adopt rules, regulations, and
procedures governing the acquisition of computer and
telecommunications equipment and services which shall, to the
fullest extent practicable, insure the maximum of competition
between all manufacturers of supplies or equipment or services.
In the writing of specifications, in the making of contracts
relating to the acquisition of such equipment and services, and in
the performance of its other duties the authority shall provide
for the maximum compatibility of all information systems hereafter
installed or utilized by all state agencies and may require the
use of common computer languages where necessary to accomplish the
purposes of this chapter. The authority may establish by
regulation and charge reasonable fees on a nondiscriminatory basis
for the furnishing to bidders of copies of bid specifications and
other documents issued by the authority.

(e) The authority shall adopt rules and regulations
governing the sharing with, or the sale or lease of information
technology services to any nonstate agency or person. Such
regulations shall provide that any such sharing, sale, or lease
shall be restricted in that same shall be accomplished only where
such services are not readily available otherwise within the
state, and then only at a charge to the user not less than the
prevailing rate of charge for similar services by private
enterprise within this state.

(f) The authority may, in its discretion, establish a
special technical advisory committee or committees to study and
make recommendations on technology matters within the competence
of the authority as the authority may see fit. Persons serving on
the Information Resource Council, its task forces, or any such
technical advisory committees shall be entitled to receive their
actual and necessary expenses actually incurred in the performance
of such duties, together with mileage as provided by law for state
employees, provided the same has been authorized by a resolution
duly adopted by the authority and entered on its minutes prior to
the performance of such duties.

(g) The authority may provide for the development and
require the adoption of standardized computer programs and may
provide for the dissemination of information to and the
establishment of training programs for the personnel of the
various information technology centers of state agencies and
personnel of the agencies utilizing the services thereof.
(h) The authority shall adopt reasonable rules and regulations requiring the reporting to the authority through the office of executive director of such information as may be required for carrying out the purposes of this chapter and may also establish such reasonable procedures to be followed in the presentation of bills for payment under the terms of all contracts for the acquisition of computer equipment and services now or hereafter in force as may be required by the authority or by the executive director in the execution of their powers and duties.

(i) The authority shall require such adequate documentation of information technology procedures utilized by the various state agencies and may require the establishment of such organizational structures within state agencies relating to information technology operations as may be necessary to effectuate the purposes of this chapter.

(j) The authority may adopt such further reasonable rules and regulations as may be necessary to fully implement the purposes of this chapter. All rules and regulations adopted by the authority shall be published and disseminated in readily accessible form to all affected state agencies, and to all current suppliers of computer equipment and services to the state, and to all prospective suppliers requesting the same. Such rules and regulations shall be kept current, be periodically revised, and copies thereof shall be available at all times for inspection by the public at reasonable hours in the offices of the authority. Whenever possible no rule, regulation or any proposed amendment to such rules and regulations shall be finally adopted or enforced until copies of said proposed rules and regulations have been furnished to all interested parties for their comment and suggestions.

(k) The authority shall establish rules and regulations which shall provide for the submission of all contracts proposed to be executed by the executive director for computer equipment or
services to the authority for approval before final execution, and
the authority may provide that such contracts involving the
expenditure of less than such specified amount as may be
established by the authority may be finally executed by the
executive director without first obtaining such approval by the
authority.

(l) The authority is authorized to purchase, lease, or
rent computer equipment or services and to operate said equipment
and utilize said services in providing services to one or more
state agencies when in its opinion such operation will provide
maximum efficiency and economy in the functions of any such agency
or agencies.

(m) The authority shall assist political subdivisions
and instrumentalities in their development of plans for the
efficient acquisition and utilization of computer equipment and
services. An appropriate fee shall be charged the political
subdivision by the authority for such assistance.

(n) The authority shall adopt rules and regulations
governing the protest procedures to be followed by any actual or
prospective bidder, offerer or contractor who is aggrieved in
connection with the solicitation or award of a contract for the
acquisition of computer equipment or services. Such rules and
regulations shall prescribe the manner, time and procedure for
making protests and may provide that a protest not timely filed
shall be summarily denied. The authority may require the
protesting party, at the time of filing the protest, to post a
bond, payable to the state, in an amount that the authority
determines sufficient to cover any expense or loss incurred by the
state, the authority or any state agency as a result of the
protest if the protest subsequently is determined by a court of
competent jurisdiction to have been filed without any substantial
basis or reasonable expectation to believe that the protest was
meritorious; however, in no event may the amount of the bond
required exceed a reasonable estimate of the total project cost.

The authority, in its discretion, also may prohibit any prospective bidder, offerer or contractor who is a party to any litigation involving any such contract with the state, the authority or any agency of the state to participate in any other such bid, offer or contract, or to be awarded any such contract, during the pendency of the litigation.

(o) The authority shall make a report in writing to the Legislature each year in the month of January. Such report shall contain a full and detailed account of the work of the authority for the preceding year as specified in Section 25-53-29(3).

All acquisitions of computer equipment and services involving the expenditure of funds in excess of the dollar amount established in Section 31-7-13(c), or rentals or leases in excess of the dollar amount established in Section 31-7-13(c) for the term of the contract, shall be based upon competitive and open specifications, and contracts therefor shall be entered into only after advertisements for bids are published in one or more daily newspapers having a general circulation in the state not less than fourteen (14) days prior to receiving sealed bids therefor. The authority may reserve the right to reject any or all bids, and if all bids are rejected, the authority may negotiate a contract within the limitations of the specifications so long as the terms of any such negotiated contract are equal to or better than the comparable terms submitted by the lowest and best bidder, and so long as the total cost to the State of Mississippi does not exceed the lowest bid. If the authority accepts one (1) of such bids, it shall be that which is the lowest and best.

(p) When applicable, the authority may procure equipment, systems and related services in accordance with the law or regulations, or both, which govern the Bureau of Purchasing of the Office of General Services or which govern the Mississippi
Department of Information Technology Services procurement of telecommunications equipment, software and services.

(q) The authority is authorized to purchase, lease, or rent information technology and services for the purpose of establishing pilot projects to investigate emerging technologies. These acquisitions shall be limited to new technologies and shall be limited to an amount set by annual appropriation of the Legislature. These acquisitions shall be exempt from the advertising and bidding requirement.

(r) All fees collected by the Mississippi Department of Information Technology Services shall be deposited into the Mississippi Department of Information Technology Services Revolving Fund unless otherwise specified by the Legislature.

(2) The provisions of this section shall not apply to contracts for purchases and acquisitions entered into pursuant to the provision of Section 57-75-9(2).

SECTION 5. Section 31-11-3, Mississippi Code of 1972, is amended as follows:

31-11-3. (1) The Department of Finance and Administration, for the purposes of carrying out the provisions of this chapter, in addition to all other rights and powers granted by law, shall have full power and authority to employ and compensate architects or other employees necessary for the purpose of making inspections, preparing plans and specifications, supervising the erection of any buildings, and making any repairs or additions as may be determined by the Department of Finance and Administration to be necessary, pursuant to the rules and regulations of the State Personnel Board. The department shall have entire control and supervision of, and determine what, if any, buildings, additions, repairs or improvements are to be made under the provisions of this chapter, subject to the approval of the Public Procurement Review Board.
(2) The department shall have full power to erect buildings, make repairs, additions or improvements, and buy materials, supplies and equipment for any of the institutions or departments of the state subject to the approval of the Public Procurement Review Board. In addition to other powers conferred, the department shall have full power and authority as directed by the Legislature, or when funds have been appropriated for its use for these purposes, to:

(a) Build a state office building;

(b) Build suitable plants or buildings for the use and housing of any state schools or institutions, including the building of plants or buildings for new state schools or institutions, as provided for by the Legislature;

(c) Provide state aid for the construction of school buildings;

(d) Promote and develop the training of returned veterans of the United States in all sorts of educational and vocational learning to be supplied by the proper educational institution of the State of Mississippi, and in so doing allocate monies appropriated to it for these purposes to the Governor for use by him in setting up, maintaining and operating an office and employing a state director of on-the-job training for veterans and the personnel necessary in carrying out Public Law No. 346 of the United States;

(e) Build and equip a hospital and administration building at the Mississippi State Penitentiary;

(f) Build and equip additional buildings and wards at the Boswell Retardation Center;

(g) Construct a sewage disposal and treatment plant at the state insane hospital, and in so doing acquire additional land as may be necessary, and to exercise the right of eminent domain in the acquisition of this land;
(h) Build and equip the Mississippi central market and purchase or acquire by eminent domain, if necessary, any lands needed for this purpose;

(i) Build and equip suitable facilities for a training and employing center for the blind;

(j) Build and equip a gymnasium at Columbia Training School;

(k) Approve or disapprove the expenditure of any money appropriated by the Legislature when authorized by the bill making the appropriation;

(l) Expend monies appropriated to it in paying the state's part of the cost of any street paving;

(m) Sell and convey state lands when authorized by the Legislature, cause said lands to be properly surveyed and platted, execute all deeds or other legal instruments, and do any and all other things required to effectively carry out the purpose and intent of the Legislature. Any transaction which involves state lands under the provisions of this paragraph shall be done in a manner consistent with the provisions of Section 29-1-1;

(n) Collect and receive from educational institutions of the State of Mississippi monies required to be paid by these institutions to the state in carrying out any veterans' educational programs; and

(o) Purchase lands for building sites, or as additions to building sites, for the erection of buildings and other facilities which the department is authorized to erect, and demolish and dispose of old buildings, when necessary for the proper construction of new buildings. Any transaction which involves state lands under the provisions of this paragraph shall be done in a manner consistent with the provisions of Section 29-1-1.

(3) The department shall survey state-owned and state-utilized buildings to establish an estimate of the costs of
architectural alterations, pursuant to the Americans with Disabilities Act of 1990, 42 USCS Section 12111 et seq. The department shall establish priorities for making the identified architectural alterations and shall make known to the Legislative Budget Office and to the Legislature the required cost to effectuate such alterations. To meet the requirements of this section, the department shall use standards of accessibility that are at least as stringent as any applicable federal requirements and may consider:

(a) Federal minimum guidelines and requirements issued by the United States Architectural and Transportation Barriers Compliance Board and standards issued by other federal agencies;

(b) The criteria contained in the American Standard Specifications for Making Buildings Accessible and Usable by the Physically Handicapped and any amendments thereto as approved by the American Standards Association, Incorporated (ANSI Standards);

(c) Design manuals;

(d) Applicable federal guidelines;

(e) Current literature in the field;

(f) Applicable safety standards; and

(g) Any applicable environmental impact statements.

(4) The department shall observe the provisions of Section 31-5-23, in letting contracts and shall use Mississippi products, including paint, varnish and lacquer which contain as vehicles tung oil and either ester gum or modified resin (with rosin as the principal base of constituents), and turpentine shall be used as a solvent or thinner, where these products are available at a cost not to exceed the cost of products grown, produced, prepared, made or manufactured outside of the State of Mississippi.

(5) The department shall have authority to accept grants, loans or donations from the United States government or from any other sources for the purpose of matching funds in carrying out the provisions of this chapter.
(6) The department shall build a wheelchair ramp at the War Memorial Building which complies with all applicable federal laws, regulations and specifications regarding wheelchair ramps.

(7) The department shall review and preapprove all architectural or engineering service contracts entered into by any state agency, institution, commission, board or authority regardless of the source of funding used to defray the costs of the construction or renovation project for which services are to be obtained. The provisions of this subsection (7) shall not apply to:

(a) Any architectural or engineering contract paid for by self-generated funds of any of the state institutions of higher learning;

(b) Community college projects that are funded from local funds or other nonstate sources which are outside the Department of Finance and Administration's appropriations or as directed by the Legislature;

(c) Any construction or design projects of the State Military Department that are funded from federal funds or other nonstate sources; or

(d) Any architectural or engineering contract entered into pursuant to Section 57-75-9(2).

(8) The department shall have the authority to obtain annually from the state institutions of higher learning information on all building, construction and renovation projects including duties, responsibilities and costs of any architect or engineer hired by any such institutions.

(9) Contracts let or approved by the State Prison Emergency Construction and Management Board when it exercises its emergency powers to remove two thousand (2,000) inmates from county jails are exempt from this section; however, this exemption does not apply to contracts for the construction of private correctional facilities and additional facilities at the South Mississippi
Correctional Institution and the Central Mississippi Correctional Facility. This subsection shall stand repealed from and after July 1, 1996.

SECTION 6. This act shall take effect and be in force from and after July 1, 2003.