AN ACT TO CREATE THE ELECTRONIC GOVERNMENT SERVICES ACT; TO PROVIDE A STATEMENT OF PURPOSE; TO PROHIBIT STATE GOVERNMENT FROM PROVIDING ELECTRONIC COMMERCE SERVICES IF THE PRIVATE SECTOR PROVIDES SUCH SERVICES; TO PROVIDE EXCEPTIONS TO THE PROHIBITION; TO REQUIRE ANNUAL REPORTING TO THE LEGISLATURE IF AN AGENCY ELECTS TO PROVIDE ELECTRONIC SERVICES IN A JURISDICTION WHERE A PRIVATE ENTERPRISE DELIVERS THE SAME ELECTRONIC SERVICE; AND FOR RELATED PURPOSES.

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

SECTION 1. This act may be cited as the Electronic Government Services Act.

SECTION 2. The Legislature finds and declares that the growth of private enterprise is essential to the health, welfare and prosperity of this state and that government competes with the private sector when it provides goods and services to the public. It is the intent of the Legislature and the purpose of this act to protect economic opportunities for private industry against unfair competition by government agencies and enhance the efficient provision of public goods and services.

SECTION 3. As used in this act:

(a) "Electronic commerce services" means services that are the same, similar to or overlapping those information technology-based services provided by the private sector to the general public, for example, any transaction completed over a computer network such as the buying of goods and services on the Internet.

(b) "Commercial activity" means performing services or providing goods which can normally be obtained from private enterprise.
(c) "Direct costs" means all costs, whether capital costs, operating costs, or otherwise, that would be eliminated if the service or function to which they relate were discontinued.

(d) "Full cost accounting" means, in accordance with applicable generally accepted accounting principles, accounting for all direct and indirect costs, including capital costs, that are incurred in the ownership, management or operation of an electronic service.

(e) "Government agency" means the state, any unit of state government and any local government or other subdivision or district of the state, and shall not be construed to exclude any entity which is not majority owned as private property and which established under the Constitution, statutes, ordinances or any other order or action by any such entity or its officers.

(f) "Indirect costs accounting" means, all costs, whether capital costs, operating costs, or otherwise, that are not direct costs. Indirect costs that support multiple services or functions shall be allocated among those services and functions in proportion to the relative burden each service or function places on the cost category and by any reasonable method consistent with applicable generally accepted accounting principles.

(g) "Private enterprise" means an individual, firm, partnership, joint venture, corporation, association or any other legal entity engaging in the manufacturing, processing, sale, offering for sale, rental, leasing, delivery, dispensing, distributing or advertising of goods or services for profit.

(h) "Private sector" means two (2) or more competing privately-owned companies.

SECTION 4. If the private sector (defined as two (2) or more competing privately-owned companies) provides electronic commerce services to the public, government shall not start or carry on any activity to provide or offer such services, or expand similar services at government expense or provision. Nothing in this act
prohibits government from providing electronic commerce services
to the public in the absence of the private sector provision of
such services.

SECTION 5. A government agency can provide duplicative or
competing electronic commerce services; provided, the head of the
agency that proposes to provide duplicative or competing
electronic commerce services to the general public shall provide
public notice and the opportunity of the public to comment on the
agency’s proposed services. Such notice shall include:

(a) The agency’s proposed findings of fact and
conclusions of law describing the reasons why it believes it is
necessary and in the public interest to provide duplicative or
competing electronic commerce services. The agency must specify:

(i) The initial and total lifecycle costs of the
proposed government services, which include, but are not limited
to, all technology, infrastructure, services, contracts and direct
and indirect personnel costs;

(ii) The individual per taxpayer cost of such
services on an annualized basis, and the cost of such services per
user on an annualized basis;

(iii) A description of the agency’s reasons for
believing that the cost benefits of providing such services
require the expenditure of public funds;

(iv) Identification of unmet needs in the consumer
marketplace which the government service offer would fulfill;

(v) A description of how the proposed government
service offers would differ from those provided by the private
sector; and

(vi) An economic impact analysis demonstrating
that the offering of proposed electronic commerce services by
government will not be anti-competitive in its effect on the
existing industry, and will not adversely impact or distort the
private sector marketplace for the same or similar electronic commerce services.

(b) Subsequent to receiving the comments of the public, if the head of the agency wishes to proceed with duplicative or competing services, the head of the agency must sign factual and legal conclusions enumerating all of the factors described in paragraph (a).

(c) Any provider of electronic commerce services who resides within or does business in the state has standing to judicially challenge the factual and legal sufficiency of the findings in paragraph (b) pursuant to the state’s procedures for hearing and resolving complaints filed under this act.

(d) Any provider of electronic commerce services, who resides within or does business in the state, has standing to judicially challenge the provision of electronic commerce services by the government agency not made in conformance with this act pursuant to the state’s procedures for hearing and resolving complaints filed under this act.

SECTION 6. Nothing contained in this act may be construed to prohibit a government agency from offering electronic government services to the general public services prior to the enactment of the act.

SECTION 7. If an agency elects to provide electronic services in a jurisdiction where a private enterprise delivers the same electronic service, the agency shall prepare and publish, on or before January 1 an annual report on its electronic services. The report shall be substantially in accordance with full cost accounting and shall include disclosure of the amount, source and cost of working capital utilized for its electronic services.

SECTION 8. This act shall take effect and be in force from and after July 1, 2003.