

By: Representative Fleming

To: Universities and
Colleges; Appropriations

HOUSE BILL NO. 493

1 AN ACT TO AMEND SECTION 37-101-41, MISSISSIPPI CODE OF 1972,
2 TO INCLUDE THE UNIVERSITY OF MISSISSIPPI IN THE LIST OF STATE
3 UNIVERSITIES FOR WHICH THE BOARD OF TRUSTEES OF STATE INSTITUTIONS
4 OF HIGHER LEARNING MAY PROVIDE FOR CONSTRUCTION OF PARKING
5 STRUCTURES AND DORMITORIES BY LEASES WITH PRIVATE ENTITIES; TO
6 PROVIDE THAT SUCH DORMITORIES OR PARKING STRUCTURES SHALL BE
7 LEASED BACK TO THE CONCERNED STATE INSTITUTION OF HIGHER LEARNING
8 FOR A FIXED PERIOD; TO CREATE A NEW SECTION TO BE CODIFIED AS
9 SECTION 37-101-44, MISSISSIPPI CODE OF 1972, TO PRESCRIBE AN
10 ALTERNATE PROCEDURE THAT THE BOARD OF TRUSTEES OF INSTITUTIONS OF
11 HIGHER LEARNING MAY EMPLOY FOR THE AWARD OF SUCH CONTRACTS BASED
12 UPON A DESIGN-BUILD DELIVERY SYSTEM; TO AMEND SECTION 31-7-13,
13 MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** Section 37-101-41, Mississippi Code of 1972, is
16 amended as follows:

17 37-101-41. The Board of Trustees of State Institutions of
18 Higher Learning may lease to private individuals or corporations,
19 for a term not exceeding thirty-one (31) years, any land at any of
20 the following state-supported institutions: the University of
21 Mississippi, Mississippi State University of Agriculture and
22 Applied Science, Jackson State University, Mississippi Valley
23 State University, Alcorn State University, University of Southern
24 Mississippi, Mississippi University for Women and Delta State
25 University, for the purpose of constructing thereon parking
26 structures or dormitories on the main campus of the university,
27 for active faculty and students. The dormitories or parking
28 structures shall be constructed thereon by private financing, and
29 shall be leased back to the board for use by the concerned
30 state-supported institution of higher learning. The lease shall
31 be for a fixed term of ten (10), fifteen (15), twenty (20) or
32 thirty (30) years. The lease shall contain a provision permitting

33 said board to purchase the building located thereon for the sum of
34 one dollar (\$1.00) after payment by said board of all sums of
35 money due under said lease.

36 The entity may not construct apartment buildings under the
37 authority of this section. No (a) State General Fund
38 appropriations, (b) bonds backed by the state, or (c) university
39 self-generated funds from any source other than student housing
40 fees, may be used to finance the construction or maintenance of
41 any such dormitory facilities or parking structures. No student
42 housing fees charged at such dormitories may exceed housing fees
43 charged at other public university housing facilities on campus.

44 **SECTION 2.** The following shall be codified as Section
45 37-101-44, Mississippi Code of 1972:

46 37-101-44. (1) As an alternative to the procedures
47 described in Section 37-101-43, and before entering into or
48 awarding any lease under the provisions of Section 37-101-41, the
49 Board of Trustees of State Institutions of Higher Learning may
50 award contracts for privately financed design and construction of
51 dormitory facilities or parking structures on the main campus of
52 any state institution of higher learning, provided that the
53 entities receiving the contract or contracts and those entities to
54 which work or services are subcontracted are duly licensed and are
55 qualified in the state to perform the contract or contracts.

56 (2) Such a design-build delivery system may be authorized
57 only when the Board of Trustees of State Institutions of Higher
58 Learning makes a determination, entered on its minutes, with
59 specific findings for each project demonstrating how it is in the
60 best interest of the public to enter into a design-build contract.
61 At a minimum, such determination shall give a detailed explanation
62 of why a design-build approach for a particular project satisfies
63 the public need better than the traditional design-bid-build
64 approach.

65 (3) For each proposed design-build project, a two-phase
66 procedure for awarding design-build contracts shall be adopted and
67 shall include the following:

68 (a) During Phase One, and before solicitation of
69 initial proposals, the board shall develop, with the assistance of
70 a registered architect or engineer, a scope of work statement that
71 provides prospective offerors with sufficient information
72 regarding the board's requirements. The scope of work statement
73 shall include floor plans showing spaces by name and number,
74 actual net area of each space, structural module, fixed equipment,
75 mechanical spaces, chases and circulation areas. Drawings shall
76 show overall building dimensions and major lines of dimensions,
77 and site plans which show topography, adjacent buildings and
78 utilities. Drawings shall include information to adequately
79 explain HVAC, electrical and structural requirements. Information
80 concerning furnishings, miscellaneous equipment, layouts, lists
81 and schedules necessary to explain the plans are to be indicated
82 on floor plans. The registered architect or engineer engaged by
83 the board shall also prepare preliminary specifications following
84 the Construction Specifications Institute format and giving basic
85 descriptions of essential building materials, finishes, components
86 and all systems. The scope of work statement shall also include
87 building elevations, sections and design details. Building
88 elevations shall show fenestration and proposed exterior
89 materials. The scope of work statement shall include general
90 budget parameters, schedule or delivery requirements, relevant
91 criteria for evaluation of proposals, and any other information
92 necessary to enable the design-builders to submit proposals which
93 meet the board's needs.

94 (b) The board shall cause to be published once a week
95 for at least three (3) consecutive weeks and not less than
96 twenty-one (21) days in at least one (1) newspaper having a
97 general circulation in the county in which the interested

98 institution is located and in one (1) newspaper with a general
99 statewide circulation, a notice inviting proposals for the
100 leasing, design-build deconstruction and leasing back of said land
101 and design-build constructed facility. The notice shall inform
102 potential offerors of how to obtain the scope of work statement
103 developed for the project and the notice shall contain such other
104 information to describe adequately the general nature and scope of
105 the design-build project so as to promote full, equal and open
106 competition.

107 (c) The board shall accept initial proposals only from
108 an entity able to provide, either in-house or through contractual
109 arrangements, an experienced and qualified design-build team which
110 shall include, at a minimum, an architect or engineer registered
111 in Mississippi and a contractor properly licensed in Mississippi
112 for the type of work required. From evaluation of initial
113 proposals under Phase One, the board shall select a minimum of two
114 (2) and a maximum of five (5) design-builders to submit proposals
115 for Phase Two.

116 (d) During Phase Two, the short listed firms shall be
117 invited to submit detailed designs, specific technical concepts or
118 solutions, pricing, scheduling, and other information deemed
119 appropriate by the board as necessary to evaluate and rank
120 acceptability of the Phase Two proposals. After evaluation of
121 these Phase Two proposals, the board shall award a contract to the
122 design-builder determined to offer the best value to the public in
123 accordance with evaluation criteria set forth in the request for
124 proposals, of which price must be one (1) but not necessarily the
125 only criterion.

126 (e) If the board accepts a proposal other than the
127 lowest dollar proposal actually submitted, the board shall enter
128 on its minutes detailed calculations and a narrative summary
129 showing why the accepted proposal was determined to provide the

130 best value, and the board shall specifically state on its minutes
131 the justification for its award.

132 (4) All facilities governed by this section shall be
133 designed and constructed to equal or exceed the Southern Building
134 Code Standards in force at the time of contracting. In addition,
135 all private contracts or private entities contracting or
136 performing pursuant to this section shall at all times comply with
137 all applicable laws, codes, and other legal requirements
138 pertaining to the project. In addition, all private contracts
139 pursuant to this section shall be approved by the Public
140 Procurement Review Board.

141 (5) (a) No public official or an employee of a state agency
142 who has duties or responsibilities related to the contracting,
143 constructing, leasing, acquiring or operating said facility may
144 become an employee, consultant or contract vendor to a private
145 entity providing such design-build services to the board within
146 one (1) year after the termination of his service or employment.

147 (b) Any person violating this section shall be guilty
148 of a misdemeanor and punished by a fine of not less than Five
149 Hundred Dollars (\$500.00) but not more than One Thousand Dollars
150 (\$1,000.00).

151 (6) The board shall promulgate rules and regulations,
152 consistent with this section, to ensure fair, uniform, clear, and
153 effective procedures for full, equal, and open competition for
154 design-build projects and for delivery of quality design-build
155 projects on time, within budget, and in the public interest.

156 (7) The board shall report annually to the Legislature the
157 following:

158 (a) The total number of design-build projects under
159 contract, commenced and completed;

160 (b) The dollar amounts of each design-build contract,
161 both as awarded and with any adjustments, and the total dollar
162 volume of all design-build contracts awarded; and

163 (c) For each design-build project, a listing of all
164 design-builders, architects, engineers, general contractors, and
165 first-tier subcontractors, to include the principal office address
166 of each such entity.

167 (8) This section shall stand repealed from and after June
168 30, 2007.

169 **SECTION 3.** Section 31-7-13, Mississippi Code of 1972, is
170 amended as follows:

171 31-7-13. All agencies and governing authorities shall
172 purchase their commodities and printing; contract for garbage
173 collection or disposal; contract for solid waste collection or
174 disposal; contract for sewage collection or disposal; contract for
175 public construction; and contract for rentals as herein provided.

176 (a) **Bidding procedure for purchases not over \$3,500.00.**
177 Purchases which do not involve an expenditure of more than Three
178 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
179 shipping charges, may be made without advertising or otherwise
180 requesting competitive bids. However, nothing contained in this
181 paragraph (a) shall be construed to prohibit any agency or
182 governing authority from establishing procedures which require
183 competitive bids on purchases of Three Thousand Five Hundred
184 Dollars (\$3,500.00) or less.

185 (b) **Bidding procedure for purchases over \$3,500.00 but**
186 **not over \$15,000.00.** Purchases which involve an expenditure of
187 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
188 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
189 freight and shipping charges may be made from the lowest and best
190 bidder without publishing or posting advertisement for bids,
191 provided at least two (2) competitive written bids have been
192 obtained. Any governing authority purchasing commodities pursuant
193 to this paragraph (b) may authorize its purchasing agent, or his
194 designee, with regard to governing authorities other than
195 counties, or its purchase clerk, or his designee, with regard to

196 counties, to accept the lowest and best competitive written bid.
197 Such authorization shall be made in writing by the governing
198 authority and shall be maintained on file in the primary office of
199 the agency and recorded in the official minutes of the governing
200 authority, as appropriate. The purchasing agent or the purchase
201 clerk, or their designee, as the case may be, and not the
202 governing authority, shall be liable for any penalties and/or
203 damages as may be imposed by law for any act or omission of the
204 purchasing agent or purchase clerk, or their designee,
205 constituting a violation of law in accepting any bid without
206 approval by the governing authority. The term "competitive
207 written bid" shall mean a bid submitted on a bid form furnished by
208 the buying agency or governing authority and signed by authorized
209 personnel representing the vendor, or a bid submitted on a
210 vendor's letterhead or identifiable bid form and signed by
211 authorized personnel representing the vendor. "Competitive" shall
212 mean that the bids are developed based upon comparable
213 identification of the needs and are developed independently and
214 without knowledge of other bids or prospective bids. Bids may be
215 submitted by facsimile, electronic mail or other generally
216 accepted method of information distribution. Bids submitted by
217 electronic transmission shall not require the signature of the
218 vendor's representative unless required by agencies or governing
219 authorities.

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

221 (i) **Publication requirement.** Purchases which
222 involve an expenditure of more than Fifteen Thousand Dollars
223 (\$15,000.00), exclusive of freight and shipping charges, may be
224 made from the lowest and best bidder after advertising for
225 competitive sealed bids once each week for two (2) consecutive
226 weeks in a regular newspaper published in the county or
227 municipality in which such agency or governing authority is
228 located. The date as published for the bid opening shall not be

229 less than seven (7) working days after the last published notice;
230 however, if the purchase involves a construction project in which
231 the estimated cost is in excess of Fifteen Thousand Dollars
232 (\$15,000.00), such bids shall not be opened in less than fifteen
233 (15) working days after the last notice is published and the
234 notice for the purchase of such construction shall be published
235 once each week for two (2) consecutive weeks. The notice of
236 intention to let contracts or purchase equipment shall state the
237 time and place at which bids shall be received, list the contracts
238 to be made or types of equipment or supplies to be purchased, and,
239 if all plans and/or specifications are not published, refer to the
240 plans and/or specifications on file. If there is no newspaper
241 published in the county or municipality, then such notice shall be
242 given by posting same at the courthouse, or for municipalities at
243 the city hall, and at two (2) other public places in the county or
244 municipality, and also by publication once each week for two (2)
245 consecutive weeks in some newspaper having a general circulation
246 in the county or municipality in the above provided manner. On
247 the same date that the notice is submitted to the newspaper for
248 publication, the agency or governing authority involved shall mail
249 written notice to, or provide electronic notification to the main
250 office of the Mississippi Contract Procurement Center that
251 contains the same information as that in the published notice.

252 (ii) **Bidding process amendment procedure.** If all
253 plans and/or specifications are published in the notification,
254 then the plans and/or specifications may not be amended. If all
255 plans and/or specifications are not published in the notification,
256 then amendments to the plans/specifications, bid opening date, bid
257 opening time and place may be made, provided that the agency or
258 governing authority maintains a list of all prospective bidders
259 who are known to have received a copy of the bid documents and all
260 such prospective bidders are sent copies of all amendments. This
261 notification of amendments may be made via mail, facsimile,

262 electronic mail or other generally accepted method of information
263 distribution. No addendum to bid specifications may be issued
264 within two (2) working days of the time established for the
265 receipt of bids unless such addendum also amends the bid opening
266 to a date not less than five (5) working days after the date of
267 the addendum.

268 (iii) **Filing requirement.** In all cases involving
269 governing authorities, before the notice shall be published or
270 posted, the plans or specifications for the construction or
271 equipment being sought shall be filed with the clerk of the board
272 of the governing authority. In addition to these requirements, a
273 bid file shall be established which shall indicate those vendors
274 to whom such solicitations and specifications were issued, and
275 such file shall also contain such information as is pertinent to
276 the bid.

277 (iv) **Specification restrictions.** Specifications
278 pertinent to such bidding shall be written so as not to exclude
279 comparable equipment of domestic manufacture. However, if valid
280 justification is presented, the Department of Finance and
281 Administration or the board of a governing authority may approve a
282 request for specific equipment necessary to perform a specific
283 job. Further, such justification, when placed on the minutes of
284 the board of a governing authority, may serve as authority for
285 that governing authority to write specifications to require a
286 specific item of equipment needed to perform a specific job. In
287 addition to these requirements, from and after July 1, 1990,
288 vendors of relocatable classrooms and the specifications for the
289 purchase of such relocatable classrooms published by local school
290 boards shall meet all pertinent regulations of the State Board of
291 Education, including prior approval of such bid by the State
292 Department of Education.

293 (v) Agencies and governing authorities may
294 establish secure procedures by which bids may be submitted via
295 electronic means.

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

297 (i) **Decision procedure.** Purchases may be made
298 from the lowest and best bidder. In determining the lowest and
299 best bid, freight and shipping charges shall be included.
300 Life-cycle costing, total cost bids, warranties, guaranteed
301 buy-back provisions and other relevant provisions may be included
302 in the best bid calculation. All best bid procedures for state
303 agencies must be in compliance with regulations established by the
304 Department of Finance and Administration. If any governing
305 authority accepts a bid other than the lowest bid actually
306 submitted, it shall place on its minutes detailed calculations and
307 narrative summary showing that the accepted bid was determined to
308 be the lowest and best bid, including the dollar amount of the
309 accepted bid and the dollar amount of the lowest bid. No agency
310 or governing authority shall accept a bid based on items not
311 included in the specifications.

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

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

318 (e) **Lease-purchase authorization.** For the purposes of
319 this section, the term "equipment" shall mean equipment, furniture
320 and, if applicable, associated software and other applicable
321 direct costs associated with the acquisition. Any lease-purchase
322 of equipment which an agency is not required to lease-purchase
323 under the master lease-purchase program pursuant to Section
324 31-7-10 and any lease-purchase of equipment which a governing
325 authority elects to lease-purchase may be acquired by a

326 lease-purchase agreement under this paragraph (e). Lease-purchase
327 financing may also be obtained from the vendor or from a
328 third-party source after having solicited and obtained at least
329 two (2) written competitive bids, as defined in paragraph (b) of
330 this section, for such financing without advertising for such
331 bids. Solicitation for the bids for financing may occur before or
332 after acceptance of bids for the purchase of such equipment or,
333 where no such bids for purchase are required, at any time before
334 the purchase thereof. No such lease-purchase agreement shall be
335 for an annual rate of interest which is greater than the overall
336 maximum interest rate to maturity on general obligation
337 indebtedness permitted under Section 75-17-101, and the term of
338 such lease-purchase agreement shall not exceed the useful life of
339 equipment covered thereby as determined according to the upper
340 limit of the asset depreciation range (ADR) guidelines for the
341 Class Life Asset Depreciation Range System established by the
342 Internal Revenue Service pursuant to the United States Internal
343 Revenue Code and regulations thereunder as in effect on December
344 31, 1980, or comparable depreciation guidelines with respect to
345 any equipment not covered by ADR guidelines. Any lease-purchase
346 agreement entered into pursuant to this paragraph (e) may contain
347 any of the terms and conditions which a master lease-purchase
348 agreement may contain under the provisions of Section 31-7-10(5),
349 and shall contain an annual allocation dependency clause
350 substantially similar to that set forth in Section 31-7-10(8).
351 Each agency or governing authority entering into a lease-purchase
352 transaction pursuant to this paragraph (e) shall maintain with
353 respect to each such lease-purchase transaction the same
354 information as required to be maintained by the Department of
355 Finance and Administration pursuant to Section 31-7-10(13).
356 However, nothing contained in this section shall be construed to
357 permit agencies to acquire items of equipment with a total
358 acquisition cost in the aggregate of less than Ten Thousand

359 Dollars (\$10,000.00) by a single lease-purchase transaction. All
360 equipment, and the purchase thereof by any lessor, acquired by
361 lease-purchase under this paragraph and all lease-purchase
362 payments with respect thereto shall be exempt from all Mississippi
363 sales, use and ad valorem taxes. Interest paid on any
364 lease-purchase agreement under this section shall be exempt from
365 State of Mississippi income taxation.

366 (f) **Alternate bid authorization.** When necessary to
367 ensure ready availability of commodities for public works and the
368 timely completion of public projects, no more than two (2)
369 alternate bids may be accepted by a governing authority for
370 commodities. No purchases may be made through use of such
371 alternate bids procedure unless the lowest and best bidder cannot
372 deliver the commodities contained in his bid. In that event,
373 purchases of such commodities may be made from one (1) of the
374 bidders whose bid was accepted as an alternate.

375 (g) **Construction contract change authorization.** In the
376 event a determination is made by an agency or governing authority
377 after a construction contract is let that changes or modifications
378 to the original contract are necessary or would better serve the
379 purpose of the agency or the governing authority, such agency or
380 governing authority may, in its discretion, order such changes
381 pertaining to the construction that are necessary under the
382 circumstances without the necessity of further public bids;
383 provided that such change shall be made in a commercially
384 reasonable manner and shall not be made to circumvent the public
385 purchasing statutes. In addition to any other authorized person,
386 the architect or engineer hired by an agency or governing
387 authority with respect to any public construction contract shall
388 have the authority, when granted by an agency or governing
389 authority, to authorize changes or modifications to the original
390 contract without the necessity of prior approval of the agency or
391 governing authority when any such change or modification is less

392 than one percent (1%) of the total contract amount. The agency or
393 governing authority may limit the number, manner or frequency of
394 such emergency changes or modifications.

395 (h) **Petroleum purchase alternative.** In addition to
396 other methods of purchasing authorized in this chapter, when any
397 agency or governing authority shall have a need for gas, diesel
398 fuel, oils and/or other petroleum products in excess of the amount
399 set forth in paragraph (a) of this section, such agency or
400 governing authority may purchase the commodity after having
401 solicited and obtained at least two (2) competitive written bids,
402 as defined in paragraph (b) of this section. If two (2)
403 competitive written bids are not obtained, the entity shall comply
404 with the procedures set forth in paragraph (c) of this section.
405 In the event any agency or governing authority shall have
406 advertised for bids for the purchase of gas, diesel fuel, oils and
407 other petroleum products and coal and no acceptable bids can be
408 obtained, such agency or governing authority is authorized and
409 directed to enter into any negotiations necessary to secure the
410 lowest and best contract available for the purchase of such
411 commodities.

412 (i) **Road construction petroleum products price**
413 **adjustment clause authorization.** Any agency or governing
414 authority authorized to enter into contracts for the construction,
415 maintenance, surfacing or repair of highways, roads or streets,
416 may include in its bid proposal and contract documents a price
417 adjustment clause with relation to the cost to the contractor,
418 including taxes, based upon an industry-wide cost index, of
419 petroleum products including asphalt used in the performance or
420 execution of the contract or in the production or manufacture of
421 materials for use in such performance. Such industry-wide index
422 shall be established and published monthly by the Mississippi
423 Department of Transportation with a copy thereof to be mailed,
424 upon request, to the clerks of the governing authority of each

425 municipality and the clerks of each board of supervisors
426 throughout the state. The price adjustment clause shall be based
427 on the cost of such petroleum products only and shall not include
428 any additional profit or overhead as part of the adjustment. The
429 bid proposals or document contract shall contain the basis and
430 methods of adjusting unit prices for the change in the cost of
431 such petroleum products.

432 (j) **State agency emergency purchase procedure.** If the
433 governing board or the executive head, or his designee, of any
434 agency of the state shall determine that an emergency exists in
435 regard to the purchase of any commodities or repair contracts, so
436 that the delay incident to giving opportunity for competitive
437 bidding would be detrimental to the interests of the state, then
438 the provisions herein for competitive bidding shall not apply and
439 the head of such agency shall be authorized to make the purchase
440 or repair. Total purchases so made shall only be for the purpose
441 of meeting needs created by the emergency situation. In the event
442 such executive head is responsible to an agency board, at the
443 meeting next following the emergency purchase, documentation of
444 the purchase, including a description of the commodity purchased,
445 the purchase price thereof and the nature of the emergency shall
446 be presented to the board and placed on the minutes of the board
447 of such agency. The head of such agency, or his designee, shall,
448 at the earliest possible date following such emergency purchase,
449 file with the Department of Finance and Administration (i) a
450 statement explaining the conditions and circumstances of the
451 emergency, which shall include a detailed description of the
452 events leading up to the situation and the negative impact to the
453 entity if the purchase is made following the statutory
454 requirements set forth in paragraph (a), (b) or (c) of this
455 section, and (ii) a certified copy of the appropriate minutes of
456 the board of such agency, if applicable. On or before September 1
457 of each year, the State Auditor shall prepare and deliver to the

458 Senate Fees, Salaries and Administration Committee, the House Fees
459 and Salaries of Public Officers Committee and the Joint
460 Legislative Budget Committee a report containing a list of all
461 state agency emergency purchases and supporting documentation for
462 each emergency purchases.

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

464 If the governing authority, or the governing authority acting
465 through its designee, shall determine that an emergency exists in
466 regard to the purchase of any commodities or repair contracts, so
467 that the delay incident to giving opportunity for competitive
468 bidding would be detrimental to the interest of the governing
469 authority, then the provisions herein for competitive bidding
470 shall not apply and any officer or agent of such governing
471 authority having general or special authority therefor in making
472 such purchase or repair shall approve the bill presented therefor,
473 and he shall certify in writing thereon from whom such purchase
474 was made, or with whom such a repair contract was made. At the
475 board meeting next following the emergency purchase or repair
476 contract, documentation of the purchase or repair contract,
477 including a description of the commodity purchased, the price
478 thereof and the nature of the emergency shall be presented to the
479 board and shall be placed on the minutes of the board of such
480 governing authority.

481 (l) **Hospital purchase, lease-purchase and lease**
482 **authorization.**

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

488 (ii) In addition to the authority granted in
489 subparagraph (i) of this paragraph (l), the commissioners or board
490 of trustees is authorized to enter into contracts for the lease of

491 equipment or services, or both, which it considers necessary for
492 the proper care of patients if, in its opinion, it is not
493 financially feasible to purchase the necessary equipment or
494 services. Any such contract for the lease of equipment or
495 services executed by the commissioners or board shall not exceed a
496 maximum of five (5) years' duration and shall include a
497 cancellation clause based on unavailability of funds. If such
498 cancellation clause is exercised, there shall be no further
499 liability on the part of the lessee. Any such contract for the
500 lease of equipment or services executed on behalf of the
501 commissioners or board that complies with the provisions of this
502 subparagraph (ii) shall be excepted from the bid requirements set
503 forth in this section.

504 (m) **Exceptions from bidding requirements.** Excepted
505 from bid requirements are:

506 (i) **Purchasing agreements approved by department.**
507 Purchasing agreements, contracts and maximum price regulations
508 executed or approved by the Department of Finance and
509 Administration.

510 (ii) **Outside equipment repairs.** Repairs to
511 equipment, when such repairs are made by repair facilities in the
512 private sector; however, engines, transmissions, rear axles and/or
513 other such components shall not be included in this exemption when
514 replaced as a complete unit instead of being repaired and the need
515 for such total component replacement is known before disassembly
516 of the component; however, invoices identifying the equipment,
517 specific repairs made, parts identified by number and name,
518 supplies used in such repairs, and the number of hours of labor
519 and costs therefor shall be required for the payment for such
520 repairs.

521 (iii) **In-house equipment repairs.** Purchases of
522 parts for repairs to equipment, when such repairs are made by
523 personnel of the agency or governing authority; however, entire

524 assemblies, such as engines or transmissions, shall not be
525 included in this exemption when the entire assembly is being
526 replaced instead of being repaired.

527 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
528 of gravel or fill dirt which are to be removed and transported by
529 the purchaser.

530 (v) **Governmental equipment auctions.** Motor
531 vehicles or other equipment purchased from a federal agency or
532 authority, another governing authority or state agency of the
533 State of Mississippi, or any governing authority or state agency
534 of another state at a public auction held for the purpose of
535 disposing of such vehicles or other equipment. Any purchase by a
536 governing authority under the exemption authorized by this
537 subparagraph (v) shall require advance authorization spread upon
538 the minutes of the governing authority to include the listing of
539 the item or items authorized to be purchased and the maximum bid
540 authorized to be paid for each item or items.

541 (vi) **Intergovernmental sales and transfers.**
542 Purchases, sales, transfers or trades by governing authorities or
543 state agencies when such purchases, sales, transfers or trades are
544 made by a private treaty agreement or through means of
545 negotiation, from any federal agency or authority, another
546 governing authority or state agency of the State of Mississippi,
547 or any state agency or governing authority of another state.
548 Nothing in this section shall permit such purchases through public
549 auction except as provided for in subparagraph (v) of this
550 section. It is the intent of this section to allow governmental
551 entities to dispose of and/or purchase commodities from other
552 governmental entities at a price that is agreed to by both
553 parties. This shall allow for purchases and/or sales at prices
554 which may be determined to be below the market value if the
555 selling entity determines that the sale at below market value is
556 in the best interest of the taxpayers of the state. Governing

557 authorities shall place the terms of the agreement and any
558 justification on the minutes, and state agencies shall obtain
559 approval from the Department of Finance and Administration, prior
560 to releasing or taking possession of the commodities.

561 (vii) **Perishable supplies or food.** Perishable
562 supplies or foods purchased for use in connection with hospitals,
563 the school lunch programs, homemaking programs and for the feeding
564 of county or municipal prisoners.

565 (viii) **Single source items.** Noncompetitive items
566 available from one (1) source only. In connection with the
567 purchase of noncompetitive items only available from one (1)
568 source, a certification of the conditions and circumstances
569 requiring the purchase shall be filed by the agency with the
570 Department of Finance and Administration and by the governing
571 authority with the board of the governing authority. Upon receipt
572 of that certification the Department of Finance and Administration
573 or the board of the governing authority, as the case may be, may,
574 in writing, authorize the purchase, which authority shall be noted
575 on the minutes of the body at the next regular meeting thereafter.
576 In those situations, a governing authority is not required to
577 obtain the approval of the Department of Finance and
578 Administration.

579 (ix) **Waste disposal facility construction**
580 **contracts.** Construction of incinerators and other facilities for
581 disposal of solid wastes in which products either generated
582 therein, such as steam, or recovered therefrom, such as materials
583 for recycling, are to be sold or otherwise disposed of; however,
584 in constructing such facilities, a governing authority or agency
585 shall publicly issue requests for proposals, advertised for in the
586 same manner as provided herein for seeking bids for public
587 construction projects, concerning the design, construction,
588 ownership, operation and/or maintenance of such facilities,
589 wherein such requests for proposals when issued shall contain

590 terms and conditions relating to price, financial responsibility,
591 technology, environmental compatibility, legal responsibilities
592 and such other matters as are determined by the governing
593 authority or agency to be appropriate for inclusion; and after
594 responses to the request for proposals have been duly received,
595 the governing authority or agency may select the most qualified
596 proposal or proposals on the basis of price, technology and other
597 relevant factors and from such proposals, but not limited to the
598 terms thereof, negotiate and enter contracts with one or more of
599 the persons or firms submitting proposals.

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

603 (xi) **Information technology products.** Purchases
604 of information technology products made by governing authorities
605 under the provisions of purchase schedules, or contracts executed
606 or approved by the Mississippi Department of Information
607 Technology Services and designated for use by governing
608 authorities.

609 (xii) **Energy efficiency services and equipment.**
610 Energy efficiency services and equipment acquired by school
611 districts, community and junior colleges, institutions of higher
612 learning and state agencies or other applicable governmental
613 entities on a shared-savings, lease or lease-purchase basis
614 pursuant to Section 31-7-14.

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

619 (xiv) **Library books and other reference materials.**
620 Purchases by libraries or for libraries of books and periodicals;
621 processed film, video cassette tapes, filmstrips and slides;
622 recorded audio tapes, cassettes and diskettes; and any such items

623 as would be used for teaching, research or other information
624 distribution; however, equipment such as projectors, recorders,
625 audio or video equipment, and monitor televisions are not exempt
626 under this subparagraph.

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

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

633 (xvii) **Multichannel interactive video systems.**
634 From and after July 1, 1990, contracts by Mississippi Authority
635 for Educational Television with any private educational
636 institution or private nonprofit organization whose purposes are
637 educational in regard to the construction, purchase, lease or
638 lease-purchase of facilities and equipment and the employment of
639 personnel for providing multichannel interactive video systems
640 (ITSF) in the school districts of this state.

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

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

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

654 (xxi) **Certain school district purchases.**
655 Purchases of commodities made by school districts from vendors

656 with which any levying authority of the school district, as
657 defined in Section 37-57-1, has contracted through competitive
658 bidding procedures for purchases of the same commodities.

659 (xxii) **Garbage, solid waste and sewage contracts.**
660 Contracts for garbage collection or disposal, contracts for solid
661 waste collection or disposal and contracts for sewage collection
662 or disposal.

663 (xxiii) **Municipal water tank maintenance**
664 **contracts.** Professional maintenance program contracts for the
665 repair or maintenance of municipal water tanks, which provide
666 professional services needed to maintain municipal water storage
667 tanks for a fixed annual fee for a duration of two (2) or more
668 years.

669 (xxiv) **Purchases of Mississippi Industries for the**
670 **Blind products.** Purchases made by state agencies or governing
671 authorities involving any item that is manufactured, processed or
672 produced by the Mississippi Industries for the Blind.

673 (xxv) **Purchases of state-adopted textbooks.**
674 Purchases of state-adopted textbooks by public school districts.

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

678 (xxvii) **Used heavy or specialized machinery or**
679 **equipment for installation of soil and water conservation**
680 **practices purchased at auction.** Used heavy or specialized
681 machinery or equipment used for the installation and
682 implementation of soil and water conservation practices or
683 measures purchased subject to the restrictions provided in
684 Sections 69-27-331 through 69-27-341. Any purchase by the State
685 Soil and Water Conservation Commission under the exemption
686 authorized by this subparagraph shall require advance
687 authorization spread upon the minutes of the commission to include

688 the listing of the item or items authorized to be purchased and
689 the maximum bid authorized to be paid for each item or items.

690 (xxviii) **Hospital lease of equipment or services.**
691 Leases by hospitals of equipment or services if the leases are in
692 compliance with subparagraph (1)(ii).

693 (xxix) **Purchases made pursuant to qualified**
694 **cooperative purchasing agreements.** Purchases made by certified
695 purchasing offices of state agencies or governing authorities
696 under cooperative purchasing agreements previously approved by the
697 Office of Purchasing and Travel and established by or for any
698 municipality, county, parish or state government or the federal
699 government, provided that the notification to potential
700 contractors includes a clause that sets forth the availability of
701 the cooperative purchasing agreement to other governmental
702 entities. Such purchases shall only be made if the use of the
703 cooperative purchasing agreements is determined to be in the best
704 interest of the government entity.

705 (xxx) **Procurement of design and construction**
706 **services by universities.** Nothing in this section restricts the
707 right of the Board of Trustees of State Institutions of Higher
708 Learning to award privately financed contracts for the design and
709 for the construction of dormitories or parking structures on the
710 main campus of a state institution of higher learning, as provided
711 in Section 37-101-41.

712 This paragraph (xxx) shall stand repealed from and after June
713 30, 2007.

714 (n) **Term contract authorization.** All contracts for the
715 purchase of:

716 (i) All contracts for the purchase of commodities,
717 equipment and public construction (including, but not limited to,
718 repair and maintenance), may be let for periods of not more than
719 sixty (60) months in advance, subject to applicable statutory
720 provisions prohibiting the letting of contracts during specified

721 periods near the end of terms of office. Term contracts for a
722 period exceeding twenty-four (24) months shall also be subject to
723 ratification or cancellation by governing authority boards taking
724 office subsequent to the governing authority board entering the
725 contract.

726 (ii) Bid proposals and contracts may include price
727 adjustment clauses with relation to the cost to the contractor
728 based upon a nationally published industry-wide or nationally
729 published and recognized cost index. The cost index used in a
730 price adjustment clause shall be determined by the Department of
731 Finance and Administration for the state agencies and by the
732 governing board for governing authorities. The bid proposal and
733 contract documents utilizing a price adjustment clause shall
734 contain the basis and method of adjusting unit prices for the
735 change in the cost of such commodities, equipment and public
736 construction.

737 (o) **Purchase law violation prohibition and vendor**
738 **penalty.** No contract or purchase as herein authorized shall be
739 made for the purpose of circumventing the provisions of this
740 section requiring competitive bids, nor shall it be lawful for any
741 person or concern to submit individual invoices for amounts within
742 those authorized for a contract or purchase where the actual value
743 of the contract or commodity purchased exceeds the authorized
744 amount and the invoices therefor are split so as to appear to be
745 authorized as purchases for which competitive bids are not
746 required. Submission of such invoices shall constitute a
747 misdemeanor punishable by a fine of not less than Five Hundred
748 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
749 or by imprisonment for thirty (30) days in the county jail, or
750 both such fine and imprisonment. In addition, the claim or claims
751 submitted shall be forfeited.

752 (p) **Electrical utility petroleum-based equipment**
753 **purchase procedure.** When in response to a proper advertisement

754 therefor, no bid firm as to price is submitted to an electric
755 utility for power transformers, distribution transformers, power
756 breakers, reclosers or other articles containing a petroleum
757 product, the electric utility may accept the lowest and best bid
758 therefor although the price is not firm.

759 (q) **Fuel management system bidding procedure.** Any
760 governing authority or agency of the state shall, before
761 contracting for the services and products of a fuel management or
762 fuel access system, enter into negotiations with not fewer than
763 two (2) sellers of fuel management or fuel access systems for
764 competitive written bids to provide the services and products for
765 the systems. In the event that the governing authority or agency
766 cannot locate two (2) sellers of such systems or cannot obtain
767 bids from two (2) sellers of such systems, it shall show proof
768 that it made a diligent, good-faith effort to locate and negotiate
769 with two (2) sellers of such systems. Such proof shall include,
770 but not be limited to, publications of a request for proposals and
771 letters soliciting negotiations and bids. For purposes of this
772 paragraph (q), a fuel management or fuel access system is an
773 automated system of acquiring fuel for vehicles as well as
774 management reports detailing fuel use by vehicles and drivers, and
775 the term "competitive written bid" shall have the meaning as
776 defined in paragraph (b) of this section. Governing authorities
777 and agencies shall be exempt from this process when contracting
778 for the services and products of a fuel management or fuel access
779 systems under the terms of a state contract established by the
780 Office of Purchasing and Travel.

781 (r) **Solid waste contract proposal procedure.** Before
782 entering into any contract for garbage collection or disposal,
783 contract for solid waste collection or disposal or contract for
784 sewage collection or disposal, which involves an expenditure of
785 more than Fifty Thousand Dollars (\$50,000.00), a governing
786 authority or agency shall issue publicly a request for proposals

787 concerning the specifications for such services which shall be
788 advertised for in the same manner as provided in this section for
789 seeking bids for purchases which involve an expenditure of more
790 than the amount provided in paragraph (c) of this section. Any
791 request for proposals when issued shall contain terms and
792 conditions relating to price, financial responsibility,
793 technology, legal responsibilities and other relevant factors as
794 are determined by the governing authority or agency to be
795 appropriate for inclusion; all factors determined relevant by the
796 governing authority or agency or required by this paragraph (r)
797 shall be duly included in the advertisement to elicit proposals.
798 After responses to the request for proposals have been duly
799 received, the governing authority or agency shall select the most
800 qualified proposal or proposals on the basis of price, technology
801 and other relevant factors and from such proposals, but not
802 limited to the terms thereof, negotiate and enter contracts with
803 one or more of the persons or firms submitting proposals. If the
804 governing authority or agency deems none of the proposals to be
805 qualified or otherwise acceptable, the request for proposals
806 process may be reinitiated. Notwithstanding any other provisions
807 of this paragraph, where a county with at least thirty-five
808 thousand (35,000) nor more than forty thousand (40,000)
809 population, according to the 1990 federal decennial census, owns
810 or operates a solid waste landfill, the governing authorities of
811 any other county or municipality may contract with the governing
812 authorities of the county owning or operating the landfill,
813 pursuant to a resolution duly adopted and spread upon the minutes
814 of each governing authority involved, for garbage or solid waste
815 collection or disposal services through contract negotiations.

816 (s) **Minority set aside authorization.** Notwithstanding
817 any provision of this section to the contrary, any agency or
818 governing authority, by order placed on its minutes, may, in its
819 discretion, set aside not more than twenty percent (20%) of its

820 anticipated annual expenditures for the purchase of commodities
821 from minority businesses; however, all such set-aside purchases
822 shall comply with all purchasing regulations promulgated by the
823 Department of Finance and Administration and shall be subject to
824 bid requirements under this section. Set-aside purchases for
825 which competitive bids are required shall be made from the lowest
826 and best minority business bidder. For the purposes of this
827 paragraph, the term "minority business" means a business which is
828 owned by a majority of persons who are United States citizens or
829 permanent resident aliens (as defined by the Immigration and
830 Naturalization Service) of the United States, and who are Asian,
831 Black, Hispanic or Native American, according to the following
832 definitions:

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

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

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

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

844 (t) **Construction punch list restriction.** The
845 architect, engineer or other representative designated by the
846 agency or governing authority that is contracting for public
847 construction or renovation may prepare and submit to the
848 contractor only one (1) preliminary punch list of items that do
849 not meet the contract requirements at the time of substantial
850 completion and one (1) final list immediately before final
851 completion and final payment.

852 (u) **Purchase authorization clarification.** Nothing in
853 this section shall be construed as authorizing any purchase not
854 authorized by law.

855 **SECTION 4.** This act shall take effect and be in force from
856 and after its passage.