

By: Representative Dedeaux

To: Appropriations

HOUSE BILL NO. 1291

1 AN ACT TO AMEND SECTIONS 31-3-21 AND 31-7-13, MISSISSIPPI
 2 CODE OF 1972, TO REQUIRE A CONTRACTOR WHO SUBMITS A BID ON PUBLIC
 3 PROJECTS TO HAVE A POLICY THAT PROHIBITS THE USE OF ILLEGAL DRUGS
 4 BY THE PERSONS WORKING UNDER THE CONTRACT; TO REQUIRE STATE
 5 AGENCIES AND GOVERNING AUTHORITIES TO REJECT BIDS FROM A
 6 CONTRACTOR WHO DOES NOT HAVE SUCH A POLICY; TO ALLOW STATE
 7 AGENCIES AND GOVERNING AUTHORITIES TO USE PROJECT MANAGERS ON
 8 CERTAIN PROJECTS; TO AMEND SECTION 37-151-7, MISSISSIPPI CODE OF
 9 1972, TO CONFORM TO THE PRECEDING SECTIONS; AND FOR RELATED
 10 PURPOSES.

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

12 **SECTION 1.** Section 31-3-21, Mississippi Code of 1972, is
 13 amended as follows:

14 31-3-21. (1) It shall be unlawful for any person who does
 15 not hold a certificate of responsibility issued under this
 16 chapter, or a similar certificate issued by another state
 17 recognizing such certificate issued by the State of Mississippi,
 18 to submit a bid, enter into a contract, or otherwise engage in or
 19 continue in this state in the business of a contractor, as defined
 20 in this chapter. Any bid which is submitted without a certificate
 21 of responsibility number issued under this chapter and without
 22 that number appearing on the exterior of the bid envelope, as and
 23 if herein required, at the time designated for the opening of such
 24 bid, shall not be considered further, and the person or public
 25 agency soliciting bids shall not enter into a contract with a
 26 contractor submitting a bid in violation of this section. In
 27 addition, any person violating this section by knowingly and
 28 willfully submitting a bid for projects without holding a
 29 certificate of responsibility number issued under this chapter, as
 30 and if herein required, at the time of the submission or opening
 31 of such bid shall be guilty of a misdemeanor and, upon conviction,

32 shall be punished by a fine of not more than One Thousand Dollars
33 (\$1,000.00), or by imprisonment for not more than six (6) months,
34 or by both such fine and imprisonment.

35 (2) All bids submitted for public or private projects where
36 said bid is in excess of Fifty Thousand Dollars (\$50,000.00) with
37 respect to public projects and in excess of One Hundred Thousand
38 Dollars (\$100,000.00) with respect to private projects shall
39 contain on the outside or exterior of the envelope or container of
40 such bid the contractor's current certificate number, and no bid
41 shall be opened or considered unless such contractor's current
42 certificate number appears on the outside or exterior of said
43 envelope or container, or unless there appears a statement on the
44 outside or exterior of such envelope or container to the effect
45 that the bid enclosed therewith did not exceed Fifty Thousand
46 Dollars (\$50,000.00) with respect to public projects or One
47 Hundred Thousand Dollars (\$100,000.00) with respect to private
48 projects. Any person violating the provisions of this subsection
49 shall be guilty of a misdemeanor and, upon conviction, shall be
50 punished by a fine of not more than One Thousand Dollars
51 (\$1,000.00), or by imprisonment for not more than six (6) months,
52 or by both such fine and imprisonment.

53 (3) In the letting of public contracts preference shall be
54 given to resident contractors, and a nonresident bidder domiciled
55 in a state having laws granting preference to local contractors
56 shall be awarded Mississippi public contracts only on the same
57 basis as the nonresident bidder's state awards contracts to
58 Mississippi contractors bidding under similar circumstances; and
59 resident contractors actually domiciled in Mississippi, be they
60 corporate, individuals, or partnerships, are to be granted
61 preference over nonresidents in awarding of contracts in the same
62 manner and to the same extent as provided by the laws of the state
63 of domicile of the nonresident. When a nonresident contractor
64 submits a bid for a public project, he shall attach thereto a copy

65 of his resident state's current law pertaining to such state's
66 treatment of nonresident contractors. As used in this section,
67 the term "resident contractors" includes a nonresident person,
68 firm or corporation that has been qualified to do business in this
69 state and has maintained a permanent full-time office in the State
70 of Mississippi for two (2) years prior to January 1, 1986, and the
71 subsidiaries and affiliates of such a person, firm or corporation.
72 Any public agency awarding a contract shall promptly report to the
73 State Tax Commission the following information:

74 (a) The amount of the contract.

75 (b) The name and address of the contractor reviewing
76 the contract.

77 (c) The name and location of the project.

78 (4) All persons submitting bids on public projects shall
79 have a drug policy that prohibits the use of illegal drugs by the
80 persons working under the contract and shall be enforced by random
81 drug tests.

82 (5) In addition to any other penalties provided in this
83 chapter, and upon a finding of a violation of this chapter, the
84 State Board of Contractors may, after notice and hearing, issue an
85 order of abatement directing the contractor to cease all actions
86 constituting violations of this chapter until such time as the
87 contractor complies with Mississippi state law, and to pay to the
88 board a civil penalty to be deposited into the State Board of
89 Contractors' Fund, created in Section 31-3-17, of not more than
90 three percent (3%) of the total contract being performed by the
91 contractor. The funds collected from civil penalty payments shall
92 be used by the State Board of Contractors for enforcement and
93 education.

94 **SECTION 2.** Section 31-7-13, Mississippi Code of 1972, is
95 amended as follows:

96 31-7-13. All agencies and governing authorities shall
97 purchase their commodities and printing; contract for garbage

98 collection or disposal; contract for solid waste collection or
99 disposal; contract for sewage collection or disposal; contract for
100 public construction; and contract for rentals as herein provided.

101 (a) **Bidding procedure for purchases not over \$3,500.00.**
102 Purchases which do not involve an expenditure of more than Three
103 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
104 shipping charges, may be made without advertising or otherwise
105 requesting competitive bids. However, nothing contained in this
106 paragraph (a) shall be construed to prohibit any agency or
107 governing authority from establishing procedures which require
108 competitive bids on purchases of Three Thousand Five Hundred
109 Dollars (\$3,500.00) or less.

110 (b) **Bidding procedure for purchases over \$3,500.00 but**
111 **not over \$15,000.00.** Purchases which involve an expenditure of
112 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
113 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
114 freight and shipping charges may be made from the lowest and best
115 bidder without publishing or posting advertisement for bids,
116 provided at least two (2) competitive written bids have been
117 obtained. Any governing authority purchasing commodities pursuant
118 to this paragraph (b) may authorize its purchasing agent, or his
119 designee, with regard to governing authorities other than
120 counties, or its purchase clerk, or his designee, with regard to
121 counties, to accept the lowest and best competitive written bid.
122 Such authorization shall be made in writing by the governing
123 authority and shall be maintained on file in the primary office of
124 the agency and recorded in the official minutes of the governing
125 authority, as appropriate. The purchasing agent or the purchase
126 clerk, or their designee, as the case may be, and not the
127 governing authority, shall be liable for any penalties and/or
128 damages as may be imposed by law for any act or omission of the
129 purchasing agent or purchase clerk, or their designee,
130 constituting a violation of law in accepting any bid without

131 approval by the governing authority. The term "competitive
132 written bid" shall mean a bid submitted on a bid form furnished by
133 the buying agency or governing authority and signed by authorized
134 personnel representing the vendor, or a bid submitted on a
135 vendor's letterhead or identifiable bid form and signed by
136 authorized personnel representing the vendor. "Competitive" shall
137 mean that the bids are developed based upon comparable
138 identification of the needs and are developed independently and
139 without knowledge of other bids or prospective bids. Bids may be
140 submitted by facsimile, electronic mail or other generally
141 accepted method of information distribution. Bids submitted by
142 electronic transmission shall not require the signature of the
143 vendor's representative unless required by agencies or governing
144 authorities.

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

146 (i) **Publication requirement.** Purchases which
147 involve an expenditure of more than Fifteen Thousand Dollars
148 (\$15,000.00), exclusive of freight and shipping charges, may be
149 made from the lowest and best bidder after advertising for
150 competitive sealed bids once each week for two (2) consecutive
151 weeks in a regular newspaper published in the county or
152 municipality in which such agency or governing authority is
153 located. The date as published for the bid opening shall not be
154 less than seven (7) working days after the last published notice;
155 however, if the purchase involves a construction project in which
156 the estimated cost is in excess of Fifteen Thousand Dollars
157 (\$15,000.00), such bids shall not be opened in less than fifteen
158 (15) working days after the last notice is published and the
159 notice for the purchase of such construction shall be published
160 once each week for two (2) consecutive weeks. The notice of
161 intention to let contracts or purchase equipment shall state the
162 time and place at which bids shall be received, list the contracts
163 to be made or types of equipment or supplies to be purchased, and,

164 if all plans and/or specifications are not published, refer to the
165 plans and/or specifications on file. If there is no newspaper
166 published in the county or municipality, then such notice shall be
167 given by posting same at the courthouse, or for municipalities at
168 the city hall, and at two (2) other public places in the county or
169 municipality, and also by publication once each week for two (2)
170 consecutive weeks in some newspaper having a general circulation
171 in the county or municipality in the above provided manner. On
172 the same date that the notice is submitted to the newspaper for
173 publication, the agency or governing authority involved shall mail
174 written notice to, or provide electronic notification to the main
175 office of the Mississippi Contract Procurement Center that
176 contains the same information as that in the published notice.

177 (ii) **Bidding process amendment procedure.** If all
178 plans and/or specifications are published in the notification,
179 then the plans and/or specifications may not be amended. If all
180 plans and/or specifications are not published in the notification,
181 then amendments to the plans/specifications, bid opening date, bid
182 opening time and place may be made, provided that the agency or
183 governing authority maintains a list of all prospective bidders
184 who are known to have received a copy of the bid documents and all
185 such prospective bidders are sent copies of all amendments. This
186 notification of amendments may be made via mail, facsimile,
187 electronic mail or other generally accepted method of information
188 distribution. No addendum to bid specifications may be issued
189 within two (2) working days of the time established for the
190 receipt of bids unless such addendum also amends the bid opening
191 to a date not less than five (5) working days after the date of
192 the addendum.

193 (iii) **Filing requirement.** In all cases involving
194 governing authorities, before the notice shall be published or
195 posted, the plans or specifications for the construction or
196 equipment being sought shall be filed with the clerk of the board

197 of the governing authority. In addition to these requirements, a
198 bid file shall be established which shall indicate those vendors
199 to whom such solicitations and specifications were issued, and
200 such file shall also contain such information as is pertinent to
201 the bid.

202 (iv) **Specification restrictions.** Specifications
203 pertinent to such bidding shall be written so as not to exclude
204 comparable equipment of domestic manufacture. However, if valid
205 justification is presented, the Department of Finance and
206 Administration or the board of a governing authority may approve a
207 request for specific equipment necessary to perform a specific
208 job. Further, such justification, when placed on the minutes of
209 the board of a governing authority, may serve as authority for
210 that governing authority to write specifications to require a
211 specific item of equipment needed to perform a specific job. In
212 addition to these requirements, from and after July 1, 1990,
213 vendors of relocatable classrooms and the specifications for the
214 purchase of such relocatable classrooms published by local school
215 boards shall meet all pertinent regulations of the State Board of
216 Education, including prior approval of such bid by the State
217 Department of Education.

218 (v) Agencies and governing authorities may
219 establish secure procedures by which bids may be submitted via
220 electronic means.

221 (vi) **Project management.** Any public project with
222 an estimated project cost of more than Twenty-Five Million Dollars
223 (\$25,000,000.00) may be done with program management with respect
224 to design and construction. No project management of the process
225 with respect to design and construction shall be used for any
226 project with an estimated project cost of less than Twenty-five
227 Million Dollars (\$25,000,000.00). Any individuals, partnerships,
228 companies or other entities acting as a program manager on behalf
229 of an agency or governing authority and performing program

230 management services for projects covered under this paragraph
231 shall be approved by the agency or governing authority for which
232 the project is being done.

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

234 (i) **Decision procedure.** Purchases may be made
235 from the lowest and best bidder. In determining the lowest and
236 best bid, freight and shipping charges shall be included.
237 Life-cycle costing, total cost bids, warranties, guaranteed
238 buy-back provisions and other relevant provisions may be included
239 in the best bid calculation. All best bid procedures for state
240 agencies must be in compliance with regulations established by the
241 Department of Finance and Administration. If any governing
242 authority accepts a bid other than the lowest bid actually
243 submitted, it shall place on its minutes detailed calculations and
244 narrative summary showing that the accepted bid was determined to
245 be the lowest and best bid, including the dollar amount of the
246 accepted bid and the dollar amount of the lowest bid. No agency
247 or governing authority shall accept a bid based on items not
248 included in the specifications.

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

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

255 (e) **Lease-purchase authorization.** For the purposes of
256 this section, the term "equipment" shall mean equipment, furniture
257 and, if applicable, associated software and other applicable
258 direct costs associated with the acquisition. Any lease-purchase
259 of equipment which an agency is not required to lease-purchase
260 under the master lease-purchase program pursuant to Section
261 31-7-10 and any lease-purchase of equipment which a governing
262 authority elects to lease-purchase may be acquired by a

263 lease-purchase agreement under this paragraph (e). Lease-purchase
264 financing may also be obtained from the vendor or from a
265 third-party source after having solicited and obtained at least
266 two (2) written competitive bids, as defined in paragraph (b) of
267 this section, for such financing without advertising for such
268 bids. Solicitation for the bids for financing may occur before or
269 after acceptance of bids for the purchase of such equipment or,
270 where no such bids for purchase are required, at any time before
271 the purchase thereof. No such lease-purchase agreement shall be
272 for an annual rate of interest which is greater than the overall
273 maximum interest rate to maturity on general obligation
274 indebtedness permitted under Section 75-17-101, and the term of
275 such lease-purchase agreement shall not exceed the useful life of
276 equipment covered thereby as determined according to the upper
277 limit of the asset depreciation range (ADR) guidelines for the
278 Class Life Asset Depreciation Range System established by the
279 Internal Revenue Service pursuant to the United States Internal
280 Revenue Code and regulations thereunder as in effect on December
281 31, 1980, or comparable depreciation guidelines with respect to
282 any equipment not covered by ADR guidelines. Any lease-purchase
283 agreement entered into pursuant to this paragraph (e) may contain
284 any of the terms and conditions which a master lease-purchase
285 agreement may contain under the provisions of Section 31-7-10(5),
286 and shall contain an annual allocation dependency clause
287 substantially similar to that set forth in Section 31-7-10(8).
288 Each agency or governing authority entering into a lease-purchase
289 transaction pursuant to this paragraph (e) shall maintain with
290 respect to each such lease-purchase transaction the same
291 information as required to be maintained by the Department of
292 Finance and Administration pursuant to Section 31-7-10(13).
293 However, nothing contained in this section shall be construed to
294 permit agencies to acquire items of equipment with a total
295 acquisition cost in the aggregate of less than Ten Thousand

296 Dollars (\$10,000.00) by a single lease-purchase transaction. All
297 equipment, and the purchase thereof by any lessor, acquired by
298 lease-purchase under this paragraph and all lease-purchase
299 payments with respect thereto shall be exempt from all Mississippi
300 sales, use and ad valorem taxes. Interest paid on any
301 lease-purchase agreement under this section shall be exempt from
302 State of Mississippi income taxation.

303 (f) **Alternate bid authorization.** When necessary to
304 ensure ready availability of commodities for public works and the
305 timely completion of public projects, no more than two (2)
306 alternate bids may be accepted by a governing authority for
307 commodities. No purchases may be made through use of such
308 alternate bids procedure unless the lowest and best bidder cannot
309 deliver the commodities contained in his bid. In that event,
310 purchases of such commodities may be made from one (1) of the
311 bidders whose bid was accepted as an alternate.

312 (g) **Construction contract change authorization.** In the
313 event a determination is made by an agency or governing authority
314 after a construction contract is let that changes or modifications
315 to the original contract are necessary or would better serve the
316 purpose of the agency or the governing authority, such agency or
317 governing authority may, in its discretion, order such changes
318 pertaining to the construction that are necessary under the
319 circumstances without the necessity of further public bids;
320 provided that such change shall be made in a commercially
321 reasonable manner and shall not be made to circumvent the public
322 purchasing statutes. In addition to any other authorized person,
323 the architect or engineer hired by an agency or governing
324 authority with respect to any public construction contract shall
325 have the authority, when granted by an agency or governing
326 authority, to authorize changes or modifications to the original
327 contract without the necessity of prior approval of the agency or
328 governing authority when any such change or modification is less

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

332 (h) **Petroleum purchase alternative.** In addition to
333 other methods of purchasing authorized in this chapter, when any
334 agency or governing authority shall have a need for gas, diesel
335 fuel, oils and/or other petroleum products in excess of the amount
336 set forth in paragraph (a) of this section, such agency or
337 governing authority may purchase the commodity after having
338 solicited and obtained at least two (2) competitive written bids,
339 as defined in paragraph (b) of this section. If two (2)
340 competitive written bids are not obtained, the entity shall comply
341 with the procedures set forth in paragraph (c) of this section.
342 In the event any agency or governing authority shall have
343 advertised for bids for the purchase of gas, diesel fuel, oils and
344 other petroleum products and coal and no acceptable bids can be
345 obtained, such agency or governing authority is authorized and
346 directed to enter into any negotiations necessary to secure the
347 lowest and best contract available for the purchase of such
348 commodities.

349 (i) **Road construction petroleum products price**
350 **adjustment clause authorization.** Any agency or governing
351 authority authorized to enter into contracts for the construction,
352 maintenance, surfacing or repair of highways, roads or streets,
353 may include in its bid proposal and contract documents a price
354 adjustment clause with relation to the cost to the contractor,
355 including taxes, based upon an industry-wide cost index, of
356 petroleum products including asphalt used in the performance or
357 execution of the contract or in the production or manufacture of
358 materials for use in such performance. Such industry-wide index
359 shall be established and published monthly by the Mississippi
360 Department of Transportation with a copy thereof to be mailed,
361 upon request, to the clerks of the governing authority of each

362 municipality and the clerks of each board of supervisors
363 throughout the state. The price adjustment clause shall be based
364 on the cost of such petroleum products only and shall not include
365 any additional profit or overhead as part of the adjustment. The
366 bid proposals or document contract shall contain the basis and
367 methods of adjusting unit prices for the change in the cost of
368 such petroleum products.

369 (j) **State agency emergency purchase procedure.** If the
370 governing board or the executive head, or his designee, of any
371 agency of the state shall determine that an emergency exists in
372 regard to the purchase of any commodities or repair contracts, so
373 that the delay incident to giving opportunity for competitive
374 bidding would be detrimental to the interests of the state, then
375 the provisions herein for competitive bidding shall not apply and
376 the head of such agency shall be authorized to make the purchase
377 or repair. Total purchases so made shall only be for the purpose
378 of meeting needs created by the emergency situation. In the event
379 such executive head is responsible to an agency board, at the
380 meeting next following the emergency purchase, documentation of
381 the purchase, including a description of the commodity purchased,
382 the purchase price thereof and the nature of the emergency shall
383 be presented to the board and placed on the minutes of the board
384 of such agency. The head of such agency, or his designee, shall,
385 at the earliest possible date following such emergency purchase,
386 file with the Department of Finance and Administration (i) a
387 statement explaining the conditions and circumstances of the
388 emergency, which shall include a detailed description of the
389 events leading up to the situation and the negative impact to the
390 entity if the purchase is made following the statutory
391 requirements set forth in paragraph (a), (b) or (c) of this
392 section, and (ii) a certified copy of the appropriate minutes of
393 the board of such agency, if applicable. On or before September 1
394 of each year, the State Auditor shall prepare and deliver to the

395 Senate Fees, Salaries and Administration Committee, the House Fees
396 and Salaries of Public Officers Committee and the Joint
397 Legislative Budget Committee a report containing a list of all
398 state agency emergency purchases and supporting documentation for
399 each emergency purchases.

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

401 If the governing authority, or the governing authority acting
402 through its designee, shall determine that an emergency exists in
403 regard to the purchase of any commodities or repair contracts, so
404 that the delay incident to giving opportunity for competitive
405 bidding would be detrimental to the interest of the governing
406 authority, then the provisions herein for competitive bidding
407 shall not apply and any officer or agent of such governing
408 authority having general or special authority therefor in making
409 such purchase or repair shall approve the bill presented therefor,
410 and he shall certify in writing thereon from whom such purchase
411 was made, or with whom such a repair contract was made. At the
412 board meeting next following the emergency purchase or repair
413 contract, documentation of the purchase or repair contract,
414 including a description of the commodity purchased, the price
415 thereof and the nature of the emergency shall be presented to the
416 board and shall be placed on the minutes of the board of such
417 governing authority.

418 (l) **Hospital purchase, lease-purchase and lease**
419 **authorization.**

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

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

428 equipment or services, or both, which it considers necessary for
429 the proper care of patients if, in its opinion, it is not
430 financially feasible to purchase the necessary equipment or
431 services. Any such contract for the lease of equipment or
432 services executed by the commissioners or board shall not exceed a
433 maximum of five (5) years' duration and shall include a
434 cancellation clause based on unavailability of funds. If such
435 cancellation clause is exercised, there shall be no further
436 liability on the part of the lessee. Any such contract for the
437 lease of equipment or services executed on behalf of the
438 commissioners or board that complies with the provisions of this
439 subparagraph (ii) shall be excepted from the bid requirements set
440 forth in this section.

441 (m) **Exceptions from bidding requirements.** Excepted
442 from bid requirements are:

443 (i) **Purchasing agreements approved by department.**
444 Purchasing agreements, contracts and maximum price regulations
445 executed or approved by the Department of Finance and
446 Administration.

447 (ii) **Outside equipment repairs.** Repairs to
448 equipment, when such repairs are made by repair facilities in the
449 private sector; however, engines, transmissions, rear axles and/or
450 other such components shall not be included in this exemption when
451 replaced as a complete unit instead of being repaired and the need
452 for such total component replacement is known before disassembly
453 of the component; however, invoices identifying the equipment,
454 specific repairs made, parts identified by number and name,
455 supplies used in such repairs, and the number of hours of labor
456 and costs therefor shall be required for the payment for such
457 repairs.

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

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

464 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
465 of gravel or fill dirt which are to be removed and transported by
466 the purchaser.

467 (v) **Governmental equipment auctions.** Motor
468 vehicles or other equipment purchased from a federal agency or
469 authority, another governing authority or state agency of the
470 State of Mississippi, or any governing authority or state agency
471 of another state at a public auction held for the purpose of
472 disposing of such vehicles or other equipment. Any purchase by a
473 governing authority under the exemption authorized by this
474 subparagraph (v) shall require advance authorization spread upon
475 the minutes of the governing authority to include the listing of
476 the item or items authorized to be purchased and the maximum bid
477 authorized to be paid for each item or items.

478 (vi) **Intergovernmental sales and transfers.**
479 Purchases, sales, transfers or trades by governing authorities or
480 state agencies when such purchases, sales, transfers or trades are
481 made by a private treaty agreement or through means of
482 negotiation, from any federal agency or authority, another
483 governing authority or state agency of the State of Mississippi,
484 or any state agency or governing authority of another state.
485 Nothing in this section shall permit such purchases through public
486 auction except as provided for in subparagraph (v) of this
487 section. It is the intent of this section to allow governmental
488 entities to dispose of and/or purchase commodities from other
489 governmental entities at a price that is agreed to by both
490 parties. This shall allow for purchases and/or sales at prices
491 which may be determined to be below the market value if the
492 selling entity determines that the sale at below market value is
493 in the best interest of the taxpayers of the state. Governing

494 authorities shall place the terms of the agreement and any
495 justification on the minutes, and state agencies shall obtain
496 approval from the Department of Finance and Administration, prior
497 to releasing or taking possession of the commodities.

498 (vii) **Perishable supplies or food.** Perishable
499 supplies or foods purchased for use in connection with hospitals,
500 the school lunch programs, homemaking programs and for the feeding
501 of county or municipal prisoners.

502 (viii) **Single source items.** Noncompetitive items
503 available from one (1) source only. In connection with the
504 purchase of noncompetitive items only available from one (1)
505 source, a certification of the conditions and circumstances
506 requiring the purchase shall be filed by the agency with the
507 Department of Finance and Administration and by the governing
508 authority with the board of the governing authority. Upon receipt
509 of that certification the Department of Finance and Administration
510 or the board of the governing authority, as the case may be, may,
511 in writing, authorize the purchase, which authority shall be noted
512 on the minutes of the body at the next regular meeting thereafter.
513 In those situations, a governing authority is not required to
514 obtain the approval of the Department of Finance and
515 Administration.

516 (ix) **Waste disposal facility construction**
517 **contracts.** Construction of incinerators and other facilities for
518 disposal of solid wastes in which products either generated
519 therein, such as steam, or recovered therefrom, such as materials
520 for recycling, are to be sold or otherwise disposed of; however,
521 in constructing such facilities, a governing authority or agency
522 shall publicly issue requests for proposals, advertised for in the
523 same manner as provided herein for seeking bids for public
524 construction projects, concerning the design, construction,
525 ownership, operation and/or maintenance of such facilities,
526 wherein such requests for proposals when issued shall contain

527 terms and conditions relating to price, financial responsibility,
528 technology, environmental compatibility, legal responsibilities
529 and such other matters as are determined by the governing
530 authority or agency to be appropriate for inclusion; and after
531 responses to the request for proposals have been duly received,
532 the governing authority or agency may select the most qualified
533 proposal or proposals on the basis of price, technology and other
534 relevant factors and from such proposals, but not limited to the
535 terms thereof, negotiate and enter contracts with one or more of
536 the persons or firms submitting proposals.

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

540 (xi) **Information technology products.** Purchases
541 of information technology products made by governing authorities
542 under the provisions of purchase schedules, or contracts executed
543 or approved by the Mississippi Department of Information
544 Technology Services and designated for use by governing
545 authorities.

546 (xii) **Energy efficiency services and equipment.**
547 Energy efficiency services and equipment acquired by school
548 districts, community and junior colleges, institutions of higher
549 learning and state agencies or other applicable governmental
550 entities on a shared-savings, lease or lease-purchase basis
551 pursuant to Section 31-7-14.

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

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

560 as would be used for teaching, research or other information
561 distribution; however, equipment such as projectors, recorders,
562 audio or video equipment, and monitor televisions are not exempt
563 under this subparagraph.

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

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

570 (xvii) **Multichannel interactive video systems.**
571 From and after July 1, 1990, contracts by Mississippi Authority
572 for Educational Television with any private educational
573 institution or private nonprofit organization whose purposes are
574 educational in regard to the construction, purchase, lease or
575 lease-purchase of facilities and equipment and the employment of
576 personnel for providing multichannel interactive video systems
577 (ITSF) in the school districts of this state.

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

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

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

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

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

596 (xxii) **Garbage, solid waste and sewage contracts.**
597 Contracts for garbage collection or disposal, contracts for solid
598 waste collection or disposal and contracts for sewage collection
599 or disposal.

600 (xxiii) **Municipal water tank maintenance**
601 **contracts.** Professional maintenance program contracts for the
602 repair or maintenance of municipal water tanks, which provide
603 professional services needed to maintain municipal water storage
604 tanks for a fixed annual fee for a duration of two (2) or more
605 years.

606 (xxiv) **Purchases of Mississippi Industries for the**
607 **Blind products.** Purchases made by state agencies or governing
608 authorities involving any item that is manufactured, processed or
609 produced by the Mississippi Industries for the Blind.

610 (xxv) **Purchases of state-adopted textbooks.**
611 Purchases of state-adopted textbooks by public school districts.

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

615 (xxvii) **Used heavy or specialized machinery or**
616 **equipment for installation of soil and water conservation**
617 **practices purchased at auction.** Used heavy or specialized
618 machinery or equipment used for the installation and
619 implementation of soil and water conservation practices or
620 measures purchased subject to the restrictions provided in
621 Sections 69-27-331 through 69-27-341. Any purchase by the State
622 Soil and Water Conservation Commission under the exemption
623 authorized by this subparagraph shall require advance
624 authorization spread upon the minutes of the commission to include

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

627 (xxviii) **Hospital lease of equipment or services.**

628 Leases by hospitals of equipment or services if the leases are in
629 compliance with subparagraph (1)(ii).

630 (xxix) **Purchases made pursuant to qualified**

631 **cooperative purchasing agreements.** Purchases made by certified
632 purchasing offices of state agencies or governing authorities
633 under cooperative purchasing agreements previously approved by the
634 Office of Purchasing and Travel and established by or for any
635 municipality, county, parish or state government or the federal
636 government, provided that the notification to potential
637 contractors includes a clause that sets forth the availability of
638 the cooperative purchasing agreement to other governmental
639 entities. Such purchases shall only be made if the use of the
640 cooperative purchasing agreements is determined to be in the best
641 interest of the government entity.

642 (n) **Term contract authorization.** All contracts for the
643 purchase of:

644 (i) All contracts for the purchase of commodities,
645 equipment and public construction (including, but not limited to,
646 repair and maintenance), may be let for periods of not more than
647 sixty (60) months in advance, subject to applicable statutory
648 provisions prohibiting the letting of contracts during specified
649 periods near the end of terms of office. Term contracts for a
650 period exceeding twenty-four (24) months shall also be subject to
651 ratification or cancellation by governing authority boards taking
652 office subsequent to the governing authority board entering the
653 contract.

654 (ii) Bid proposals and contracts may include price
655 adjustment clauses with relation to the cost to the contractor
656 based upon a nationally published industry-wide or nationally
657 published and recognized cost index. The cost index used in a

658 price adjustment clause shall be determined by the Department of
659 Finance and Administration for the state agencies and by the
660 governing board for governing authorities. The bid proposal and
661 contract documents utilizing a price adjustment clause shall
662 contain the basis and method of adjusting unit prices for the
663 change in the cost of such commodities, equipment and public
664 construction.

665 (o) **Purchase law violation prohibition and vendor**
666 **penalty.** No contract or purchase as herein authorized shall be
667 made for the purpose of circumventing the provisions of this
668 section requiring competitive bids, nor shall it be lawful for any
669 person or concern to submit individual invoices for amounts within
670 those authorized for a contract or purchase where the actual value
671 of the contract or commodity purchased exceeds the authorized
672 amount and the invoices therefor are split so as to appear to be
673 authorized as purchases for which competitive bids are not
674 required. Submission of such invoices shall constitute a
675 misdemeanor punishable by a fine of not less than Five Hundred
676 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
677 or by imprisonment for thirty (30) days in the county jail, or
678 both such fine and imprisonment. In addition, the claim or claims
679 submitted shall be forfeited.

680 (p) **Electrical utility petroleum-based equipment**
681 **purchase procedure.** When in response to a proper advertisement
682 therefor, no bid firm as to price is submitted to an electric
683 utility for power transformers, distribution transformers, power
684 breakers, reclosers or other articles containing a petroleum
685 product, the electric utility may accept the lowest and best bid
686 therefor although the price is not firm.

687 (q) **Fuel management system bidding procedure.** Any
688 governing authority or agency of the state shall, before
689 contracting for the services and products of a fuel management or
690 fuel access system, enter into negotiations with not fewer than

691 two (2) sellers of fuel management or fuel access systems for
692 competitive written bids to provide the services and products for
693 the systems. In the event that the governing authority or agency
694 cannot locate two (2) sellers of such systems or cannot obtain
695 bids from two (2) sellers of such systems, it shall show proof
696 that it made a diligent, good-faith effort to locate and negotiate
697 with two (2) sellers of such systems. Such proof shall include,
698 but not be limited to, publications of a request for proposals and
699 letters soliciting negotiations and bids. For purposes of this
700 paragraph (q), a fuel management or fuel access system is an
701 automated system of acquiring fuel for vehicles as well as
702 management reports detailing fuel use by vehicles and drivers, and
703 the term "competitive written bid" shall have the meaning as
704 defined in paragraph (b) of this section. Governing authorities
705 and agencies shall be exempt from this process when contracting
706 for the services and products of a fuel management or fuel access
707 systems under the terms of a state contract established by the
708 Office of Purchasing and Travel.

709 (r) **Solid waste contract proposal procedure.** Before
710 entering into any contract for garbage collection or disposal,
711 contract for solid waste collection or disposal or contract for
712 sewage collection or disposal, which involves an expenditure of
713 more than Fifty Thousand Dollars (\$50,000.00), a governing
714 authority or agency shall issue publicly a request for proposals
715 concerning the specifications for such services which shall be
716 advertised for in the same manner as provided in this section for
717 seeking bids for purchases which involve an expenditure of more
718 than the amount provided in paragraph (c) of this section. Any
719 request for proposals when issued shall contain terms and
720 conditions relating to price, financial responsibility,
721 technology, legal responsibilities and other relevant factors as
722 are determined by the governing authority or agency to be
723 appropriate for inclusion; all factors determined relevant by the

724 governing authority or agency or required by this paragraph (r)
725 shall be duly included in the advertisement to elicit proposals.
726 After responses to the request for proposals have been duly
727 received, the governing authority or agency shall select the most
728 qualified proposal or proposals on the basis of price, technology
729 and other relevant factors and from such proposals, but not
730 limited to the terms thereof, negotiate and enter contracts with
731 one or more of the persons or firms submitting proposals. If the
732 governing authority or agency deems none of the proposals to be
733 qualified or otherwise acceptable, the request for proposals
734 process may be reinitiated. Notwithstanding any other provisions
735 of this paragraph, where a county with at least thirty-five
736 thousand (35,000) nor more than forty thousand (40,000)
737 population, according to the 1990 federal decennial census, owns
738 or operates a solid waste landfill, the governing authorities of
739 any other county or municipality may contract with the governing
740 authorities of the county owning or operating the landfill,
741 pursuant to a resolution duly adopted and spread upon the minutes
742 of each governing authority involved, for garbage or solid waste
743 collection or disposal services through contract negotiations.

744 (s) **Minority set aside authorization.** Notwithstanding
745 any provision of this section to the contrary, any agency or
746 governing authority, by order placed on its minutes, may, in its
747 discretion, set aside not more than twenty percent (20%) of its
748 anticipated annual expenditures for the purchase of commodities
749 from minority businesses; however, all such set-aside purchases
750 shall comply with all purchasing regulations promulgated by the
751 Department of Finance and Administration and shall be subject to
752 bid requirements under this section. Set-aside purchases for
753 which competitive bids are required shall be made from the lowest
754 and best minority business bidder. For the purposes of this
755 paragraph, the term "minority business" means a business which is
756 owned by a majority of persons who are United States citizens or

757 permanent resident aliens (as defined by the Immigration and
758 Naturalization Service) of the United States, and who are Asian,
759 Black, Hispanic or Native American, according to the following
760 definitions:

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

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

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

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

772 (t) **Construction punch list restriction.** The
773 architect, engineer or other representative designated by the
774 agency or governing authority that is contracting for public
775 construction or renovation may prepare and submit to the
776 contractor only one (1) preliminary punch list of items that do
777 not meet the contract requirements at the time of substantial
778 completion and one (1) final list immediately before final
779 completion and final payment.

780 (u) **Purchase authorization clarification.** Nothing in
781 this section shall be construed as authorizing any purchase not
782 authorized by law.

783 (v) **Drug policy requirement.** Agencies and governing
784 authorities shall reject bids on public projects from contractors
785 who do not have a policy that prohibits the use of illegal drugs
786 by the persons working under the contract.

787 **SECTION 3.** Section 37-151-7, Mississippi Code of 1972, is
788 amended as follows:

789 37-151-7. The annual allocation to each school district for
790 the operation of the adequate education program shall be
791 determined as follows:

792 (1) Computation of the basic amount to be included for
793 current operation in the adequate education program. The
794 following procedure shall be followed in determining the annual
795 allocation to each school district:

796 (a) **Determination of average daily attendance.** During
797 months two (2) and three (3) of the current school year, the
798 average daily attendance of a school district shall be computed,
799 or the average daily attendance for the prior school year shall be
800 used, whichever is greater. For purposes of this calculation,
801 "current" school year shall mean the school year for which
802 appropriations are made by the Legislature, and "prior" school
803 year shall mean the school year immediately preceding the year for
804 which appropriations are made by the Legislature. The district's
805 average daily attendance shall be computed and currently
806 maintained in accordance with regulations promulgated by the State
807 Board of Education.

808 (b) **Determination of base student cost.** The State
809 Board of Education, on or before August 1, with adjusted estimate
810 no later than January 2, shall annually submit to the Legislative
811 Budget Office and the Governor a proposed base student cost
812 adequate to provide the following cost components of educating a
813 pupil in an average school district meeting Level III
814 accreditation standards required by the Commission on School
815 Accreditation: (i) Instructional Cost; (ii) Administrative Cost;
816 (iii) Operation and Maintenance of Plant; and (iv) Ancillary
817 Support Cost. The department shall utilize a statistical
818 methodology which considers such factors as, but not limited to,
819 (i) school size; (ii) assessed valuation per pupil; (iii) the
820 percentage of students receiving free lunch; (iv) the local
821 district maintenance tax levy; (v) other local school district

822 revenues; and (vi) the district's accreditation level, in the
823 selection of the representative Mississippi school districts for
824 which cost information shall be obtained for each of the above
825 listed cost areas.

826 For the instructional cost component, the department shall
827 determine the instructional cost of each of the representative
828 school districts selected above, excluding instructional cost of
829 self-contained special education programs and vocational education
830 programs, and the average daily attendance in the selected school
831 districts. The instructional cost is then totaled and divided by
832 the total average daily attendance for the selected school
833 districts to yield the instructional cost component. For the
834 administrative cost component, the department shall determine the
835 administrative cost of each of the representative school districts
836 selected above, excluding administrative cost of self-contained
837 special education programs and vocational education programs, and
838 the average daily attendance in the selected school districts.
839 The administrative cost is then totaled and divided by the total
840 average daily attendance for the selected school districts to
841 yield the administrative cost component. For the plant and
842 maintenance cost component, the department shall determine the
843 plant and maintenance cost of each of the representative school
844 districts selected above, excluding plant and maintenance cost of
845 self-contained special education programs and vocational education
846 programs, and the average daily attendance in the selected school
847 districts. The plant and maintenance cost is then totaled and
848 divided by the total average daily attendance for the selected
849 school districts to yield the plant and maintenance cost
850 component. For the ancillary support cost component, the
851 department shall determine the ancillary support cost of each of
852 the representative school districts selected above, excluding
853 ancillary support cost of self-contained special education
854 programs and vocational education programs, and the average daily

855 attendance in the selected school districts. The ancillary
856 support cost is then totaled and divided by the total average
857 daily attendance for the selected school districts to yield the
858 ancillary support cost component. The total base cost for each
859 year shall be the sum of the instructional cost component,
860 administrative cost component, plant and maintenance cost
861 component and ancillary support cost component, and any estimated
862 adjustments for additional state requirements as determined by the
863 State Board of Education. Provided, however, that the base
864 student cost in fiscal year 1998 shall be Two Thousand Six Hundred
865 Sixty-four Dollars (\$2,664.00).

866 (c) **Determination of the basic adequate education**
867 **program cost.** The basic amount for current operation to be
868 included in the Mississippi Adequate Education Program for each
869 school district shall be computed as follows:

870 Multiply the average daily attendance of the district by the
871 base student cost as established by the Legislature, which yields
872 the total base program cost for each school district.

873 (d) **Adjustment to the base student cost for at-risk**
874 **pupils.** The amount to be included for at-risk pupil programs for
875 each school district shall be computed as follows: Multiply the
876 base student cost for the appropriate fiscal year as determined
877 under paragraph (b) by five percent (5%), and multiply that
878 product by the number of pupils participating in the federal free
879 school lunch program in such school district, which yields the
880 total adjustment for at-risk pupil programs for such school
881 district.

882 (e) **Add-on program cost.** The amount to be allocated to
883 school districts in addition to the adequate education program
884 cost for add-on programs for each school district shall be
885 computed as follows:

886 (i) Transportation cost shall be the amount
887 allocated to such school district for the operational support of
888 the district transportation system from state funds.

889 (ii) Vocational or technical education program
890 cost shall be the amount allocated to such school district from
891 state funds for the operational support of such programs.

892 (iii) Special education program cost shall be the
893 amount allocated to such school district from state funds for the
894 operational support of such programs.

895 (iv) Gifted education program cost shall be the
896 amount allocated to such school district from state funds for the
897 operational support of such programs.

898 (v) Alternative school program cost shall be the
899 amount allocated to such school district from state funds for the
900 operational support of such programs.

901 (vi) Extended school year programs shall be the
902 amount allocated to school districts for those programs authorized
903 by law which extend beyond the normal school year.

904 (vii) University-based programs shall be the
905 amount allocated to school districts for those university-based
906 programs for handicapped children as defined and provided for in
907 Section 37-23-131 et seq., Mississippi Code of 1972.

908 (viii) Bus driver training programs shall be the
909 amount provided for those driver training programs as provided for
910 in Section 37-41-1, Mississippi Code of 1972.

911 The sum of the items listed above (i) transportation, (ii)
912 vocational or technical education, (iii) special education, (iv)
913 gifted education, (v) alternative school, (vi) extended school
914 year, (vii) university-based, and (viii) bus driver training shall
915 yield the add-on cost for each school district.

916 (f) **Total projected adequate education program cost.**

917 The total Mississippi Adequate Education Program Cost shall be the
918 sum of the total basic adequate education program cost (paragraph

919 (c)), and the adjustment to the base student cost for at-risk
920 pupils (paragraph (d)) for each school district.

921 (g) **Supplemental grant to school districts.** In
922 addition to the adequate education program grant, the State
923 Department of Education shall annually distribute an additional
924 amount as follows: Multiply the base student cost for the
925 appropriate fiscal year as determined under paragraph (b) by
926 thirteen one-hundredths percent (.13%) and multiply that product
927 by the average daily attendance of each school district. Such
928 grant shall not be subject to the local revenue requirement
929 provided in subsection (2).

930 (2) **Computation of the required local revenue in support of**
931 **the adequate education program.** The amount that each district
932 shall provide toward the cost of the adequate education program
933 shall be calculated as follows:

934 (a) The State Board of Education shall certify to each
935 school district that twenty-eight (28) mills, less the estimated
936 amount of the yield of the School Ad Valorem Tax Reduction Fund
937 grants as determined by the State Department of Education, is the
938 millage rate required to provide the district required local
939 effort for that year, or twenty-seven percent (27%) of the basic
940 adequate education program cost for such school district as
941 determined under subsection (c), whichever is a lesser amount. In
942 the case of an agricultural high school the millage requirement
943 shall be set at a level which generates an equitable amount per
944 pupil to be determined by the State Board of Education.

945 (b) The State Board of Education shall determine (i)
946 the total assessed valuation of nonexempt property for school
947 purposes in each school district; (ii) assessed value of exempt
948 property owned by homeowners aged sixty-five (65) or older or
949 disabled as defined in Section 27-33-67(2), Mississippi Code of
950 1972; (iii) the school district's tax loss from exemptions
951 provided to applicants under the age of sixty-five (65) and not

952 disabled as defined in Section 27-33-67(1), Mississippi Code of
953 1972; and (iv) the school district's homestead reimbursement
954 revenues.

955 (c) The amount of the total adequate education program
956 funding which shall be contributed by each school district shall
957 be the sum of the ad valorem receipts generated by the millage
958 required under this subsection plus the following local revenue
959 sources for the appropriate fiscal year which are or may be
960 available for current expenditure by the school district:

961 One hundred percent (100%) of Grand Gulf income as prescribed
962 in Section 27-35-309.

963 (3) **Computation of the required state effort in support of**
964 **the adequate education program.**

965 (a) The required state effort in support of the
966 adequate education program shall be determined by subtracting the
967 sum of the required local tax effort as set forth in subsection
968 (2)(a) of this section and the other local revenue sources as set
969 forth in subsection (2)(c) of this section in an amount not to
970 exceed twenty-seven percent (27%) of the total projected adequate
971 education program cost as set forth in subsection (1)(f) of this
972 section from the total projected adequate education program cost
973 as set forth in subsection (1)(f) of this section.

974 (b) Provided, however, that in fiscal year 1998 and in
975 the fiscal year in which the adequate education program is fully
976 funded by the Legislature, any increase in the said state
977 contribution, including the supplemental grant to school districts
978 provided under subsection (1)(g), to any district calculated under
979 this section shall be not less than eight percent (8%) in excess
980 of the amount received by said district from state funds for the
981 fiscal year immediately preceding. For purposes of this paragraph
982 (b), state funds shall include minimum program funds less the
983 add-on programs, state Uniform Millage Assistance Grant funds,

984 Education Enhancement Funds appropriated for Uniform Millage
985 Assistance Grants and state textbook allocations, and State
986 General Funds allocated for textbooks.

987 (c) If the appropriation is less than full funding for
988 fiscal year 2003, allocations for state contributions to school
989 districts in support of the adequate education program will be
990 determined by the State Department of Education in the following
991 manner:

992 (i) Calculation of the full funding amount under
993 this chapter, with proportionate reductions as required by the
994 appropriation level.

995 (ii) Calculation of the amount equal to the state
996 funds allocated to school districts for fiscal year 2002 plus the
997 estimated amount to fund the adequate education program salary
998 schedule for fiscal year 2003. For purposes of this item (ii),
999 state funds shall be those described in paragraph (b) and an
1000 amount equal to the allocation for the adequate education program
1001 in fiscal year 2002, plus any additional amount required to
1002 satisfy fiscal year 2003 pledges in accordance with paragraphs
1003 (d), (e) and (f) of subsection (5) of this section. If a school
1004 district's fiscal year 2003 pledge is different than the pledge
1005 amount for fiscal year 2002, the district shall receive an amount
1006 equal to the fiscal year 2003 pledge or the amount of funds
1007 calculated under the adequate education formula for fiscal year
1008 2002 before any pledge guarantee for fiscal year 2002, whichever
1009 is greater. If the pledge is no longer in effect, the district
1010 shall receive the amount of funds calculated under the formula for
1011 fiscal year 2002 before any pledge guarantee for fiscal year 2002.

1012 (iii) The portion of any district's allocation
1013 calculated in item (i) of this paragraph which exceeds amounts as
1014 calculated in item (ii) shall be reduced by an amount not to
1015 exceed twenty-one percent (21%). The amount of funds generated by
1016 this reduction of funds shall be redistributed proportionately

1017 among those districts receiving insufficient funds to meet the
1018 amount calculated in item (ii). In no case may any district
1019 receive funds in an amount greater than the amount that the
1020 district would have received under full funding of the program for
1021 fiscal year 2003.

1022 (d) If the school board of any school district shall
1023 determine that it is not economically feasible or practicable to
1024 operate any school within the district for the full one hundred
1025 eighty (180) days required for a school term of a scholastic year
1026 as required in Section 37-13-63, Mississippi Code of 1972, due to
1027 an enemy attack, a manmade, technological or natural disaster in
1028 which the Governor has declared a disaster emergency under the
1029 laws of this state or the President of the United States has
1030 declared an emergency or major disaster to exist in this state,
1031 said school board may notify the State Department of Education of
1032 such disaster and submit a plan for altering the school term. If
1033 the State Board of Education finds such disaster to be the cause
1034 of the school not operating for the contemplated school term and
1035 that such school was in a school district covered by the
1036 Governor's or President's disaster declaration, it may permit said
1037 school board to operate the schools in its district for less than
1038 one hundred eighty (180) days and, in such case, the State
1039 Department of Education shall not reduce the state contributions
1040 to the adequate education program allotment for such district,
1041 because of the failure to operate said schools for one hundred
1042 eighty (180) days.

1043 (4) If during the year for which adequate education program
1044 funds are appropriated, any school district experiences a three
1045 percent (3%) or greater increase in average daily attendance
1046 during the second and third month over the preceding year's second
1047 and third month, an additional allocation of adequate education
1048 program funds calculated in the following manner shall be granted
1049 to that district, using any additional funds available to the

1050 Department of Education that exceed the amount of funds due to the
1051 school districts under the basic adequate education program
1052 distribution as provided for in this chapter:

1053 (a) Determine the percentage increase in average daily
1054 attendance for the second and third months of the year for which
1055 adequate education program funds are appropriated over the
1056 preceding year's second and third month average daily attendance.

1057 (b) For those districts that have a three percent (3%)
1058 or greater increase as calculated in paragraph (a) of this
1059 subsection, multiply the total increase in students in average
1060 daily attendance for the second and third months of the year for
1061 which adequate education program funds are appropriated over the
1062 preceding year's second and third month average daily attendance
1063 times the base student cost used in the appropriation.

1064 (c) Subtract the percentage of the district's local
1065 contribution arrived at in subsection (2) of this section from the
1066 amount calculated in paragraph (b) of this subsection. The
1067 remainder is the additional allocation in adequate education
1068 program funds for that district.

1069 If the funds available to the Department of Education are not
1070 sufficient to fully fund the additional allocations to school
1071 districts eligible for those allocations, then the department
1072 shall prorate the available funds among the eligible school
1073 districts, using the same percentage of the total funds that the
1074 school district would have received if the allocations were fully
1075 funded.

1076 This subsection (4) shall stand repealed on July 1, 2004.

1077 (5) The Interim School District Capital Expenditure Fund is
1078 hereby established in the State Treasury which shall be used to
1079 distribute any funds specifically appropriated by the Legislature
1080 to such fund to school districts entitled to increased allocations
1081 of state funds under the adequate education program funding
1082 formula prescribed in Sections 37-151-3 through 37-151-7,

1083 Mississippi Code of 1972, until such time as the said adequate
1084 education program is fully funded by the Legislature. The
1085 following percentages of the total state cost of increased
1086 allocations of funds under the adequate education program funding
1087 formula shall be appropriated by the Legislature into the Interim
1088 School District Capital Expenditure Fund to be distributed to all
1089 school districts under the formula: Nine and two-tenths percent
1090 (9.2%) shall be appropriated in fiscal year 1998, twenty percent
1091 (20%) shall be appropriated in fiscal year 1999, forty percent
1092 (40%) shall be appropriated in fiscal year 2000, sixty percent
1093 (60%) shall be appropriated in fiscal year 2001, eighty percent
1094 (80%) shall be appropriated in fiscal year 2002, and one hundred
1095 percent (100%) shall be appropriated in fiscal year 2003 into the
1096 State Adequate Education Program Fund created in subsection (4).
1097 Until July 1, 2002, such money shall be used by school districts
1098 for the following purposes:

1099 (a) Purchasing, erecting, repairing, equipping,
1100 remodeling and enlarging school buildings and related facilities,
1101 including gymnasiums, auditoriums, lunchrooms, vocational training
1102 buildings, libraries, school barns and garages for transportation
1103 vehicles, school athletic fields and necessary facilities
1104 connected therewith, and purchasing land therefor. Any such
1105 capital improvement project by a school district shall be approved
1106 by the State Board of Education, and based on an approved
1107 long-range plan. The State Board of Education shall promulgate
1108 minimum requirements for the approval of school district capital
1109 expenditure plans.

1110 (b) Providing necessary water, light, heating, air
1111 conditioning, and sewerage facilities for school buildings, and
1112 purchasing land therefor.

1113 (c) Paying debt service on existing capital improvement
1114 debt of the district or refinancing outstanding debt of a district

1115 if such refinancing will result in an interest cost savings to the
1116 district.

1117 (d) From and after October 1, 1997, through June 30,
1118 1998, pursuant to a school district capital expenditure plan
1119 approved by the State Department of Education, a school district
1120 may pledge such funds until July 1, 2002, plus funds provided for
1121 in paragraph (e) of this subsection (5) that are not otherwise
1122 permanently pledged under such paragraph (e) to pay all or a
1123 portion of the debt service on debt issued by the school district
1124 under Sections 37-59-1 through 37-59-45, 37-59-101 through
1125 37-59-115, 37-7-351 through 37-7-359, 37-41-89 through 37-41-99,
1126 37-7-301, 37-7-302 and 37-41-81, Mississippi Code of 1972, or debt
1127 issued by boards of supervisors for agricultural high schools
1128 pursuant to Section 37-27-65, Mississippi Code of 1972, or
1129 lease-purchase contracts entered into pursuant to Section 31-7-13,
1130 Mississippi Code of 1972, or to retire or refinance outstanding
1131 debt of a district, if such pledge is accomplished pursuant to a
1132 written contract or resolution approved and spread upon the
1133 minutes of an official meeting of the district's school board or
1134 board of supervisors. It is the intent of this provision to allow
1135 school districts to irrevocably pledge their Interim School
1136 District Capital Expenditure Fund allotments as a constant stream
1137 of revenue to secure a debt issued under the foregoing code
1138 sections. To allow school districts to make such an irrevocable
1139 pledge, the state shall take all action necessary to ensure that
1140 the amount of a district's Interim School District Capital
1141 Expenditure Fund allotments shall not be reduced below the amount
1142 certified by the department or the district's total allotment
1143 under the Interim Capital Expenditure Fund if fully funded, so
1144 long as such debt remains outstanding.

1145 (e) From and after October 1, 1997, through June 30,
1146 1998, in addition to any other authority a school district may
1147 have, any school district may issue State Aid Capital Improvement

1148 Bonds secured in whole by a continuing annual pledge of any
1149 Mississippi Adequate Education Program funds available to the
1150 district, in an amount not to exceed One Hundred Sixty Dollars
1151 (\$160.00) per pupil based on the latest completed average daily
1152 attendance count certified by the department prior to the issuance
1153 of the bonds. Such State Aid Capital Improvement Bonds may be
1154 issued for the purposes enumerated in subsections (a), (b), (c)
1155 and (g) of this section. Prior to issuing such bonds, the school
1156 board of the district shall adopt a resolution declaring the
1157 necessity for and its intention of issuing such bonds and
1158 borrowing such money, specifying the approximate amount to be so
1159 borrowed, how such money is to be used and how such indebtedness
1160 is to be evidenced. Any capital improvement project financed with
1161 State Aid Capital Improvement Bonds shall be approved by the
1162 department, and based on an approved long-range plan. The State
1163 Board of Education shall promulgate minimum requirements for the
1164 approval of such school district capital expenditure plans. The
1165 State Board of Education shall not approve any capital expenditure
1166 plan for a pledge of funds under this paragraph unless it
1167 determines (i) that the quality of instruction in such district
1168 will not be reduced as a result of this pledge, and (ii) the
1169 district has other revenue available to attain and maintain at
1170 least Level III accreditation.

1171 A district issuing State Aid Capital Improvement Bonds may
1172 pledge for the repayment of such bonds all funds received by the
1173 district from the state, in an amount not to exceed One Hundred
1174 Sixty Dollars (\$160.00) per pupil in average daily attendance in
1175 the school district as set forth above, and not otherwise
1176 permanently pledged under paragraph (d) of this subsection or
1177 under Section 37-61-33(2)(d), Mississippi Code of 1972. The
1178 district's school board shall specify by resolution the amount of
1179 state funds, which are being pledged by the district for the
1180 repayment of the State Aid Capital Improvement Bonds. Once such a

1181 pledge is made to secure the bonds, the district shall notify the
1182 department of such pledge. Upon making such a pledge, the school
1183 district may request the department which may agree to irrevocably
1184 transfer a specified amount or percentage of the district's state
1185 revenue pledged to repay the district's State Aid Capital
1186 Improvement Bonds directly to a state or federally chartered bank
1187 serving as a trustee or paying agent on such bonds for the payment
1188 of all or portion of such State Aid Capital Improvement Bonds.
1189 Such instructions shall be incorporated into a resolution by the
1190 school board for the benefit of holders of the bonds and may
1191 provide that such withholding and transfer of such other available
1192 funds shall be made only upon notification by a trustee or paying
1193 agent on such bonds that the amounts available to pay such bonds
1194 on any payment date will not be sufficient. It is the intent of
1195 this provision to allow school districts to irrevocably pledge a
1196 certain, constant stream of revenue as security for State Aid
1197 Capital Improvement Bonds issued hereunder. To allow school
1198 districts to make such an irrevocable pledge, the state shall take
1199 all action necessary to ensure that the amount of a district's
1200 state revenues up to an amount equal to One Hundred Sixty Dollars
1201 (\$160.00) per pupil as set forth above which have been pledged to
1202 repay debt as set forth herein shall not be reduced so long as any
1203 State Aid Capital Improvement Bonds are outstanding.

1204 Any such State Aid Capital Improvement bonds shall mature as
1205 determined by the district's school bond over a period not to
1206 exceed twenty (20) years. Such bonds shall not bear a greater
1207 overall maximum interest rate to maturity than that allowed in
1208 Section 75-17-101, Mississippi Code of 1972. The further details
1209 and terms of such bonds shall be as determined by the school board
1210 of the district.

1211 The provisions of this subsection shall be cumulative and
1212 supplemental to any existing funding programs or other authority
1213 conferred upon school districts or school boards. Debt of a

1214 school district secured in whole by a pledge of revenue pursuant
1215 to this section shall not be subject to any debt limitation.

1216 For purposes of this paragraph (e), "State Aid Capital
1217 Improvement Bond" shall mean any bond, note, or other certificate
1218 of indebtedness issued by a school district under the provisions
1219 hereof.

1220 This paragraph (e) shall stand repealed from and after June
1221 30, 1998.

1222 (f) As an alternative to the authority granted under
1223 paragraph (e), a school district, in its discretion, may authorize
1224 the State Board of Education to withhold an amount of the
1225 district's adequate education program allotment equal to up to One
1226 Hundred Sixty Dollars (\$160.00) per student in average daily
1227 attendance in the district to be allocated to the State Public
1228 School Building Fund to the credit of such school district. A
1229 school district may choose the option provided under this
1230 paragraph (e) or paragraph (f), but not both. In addition to the
1231 grants made by the state pursuant to Section 37-47-9, a school
1232 district shall be entitled to grants based on the allotments to
1233 the State Public School Building Fund credited to such school
1234 district under this paragraph. This paragraph (f) shall stand
1235 repealed from and after June 30, 1998.

1236 (g) The State Board of Education may authorize the
1237 school district to expend not more than twenty percent (20%) of
1238 its annual allotment of such funds or Twenty Thousand Dollars
1239 (\$20,000.00), whichever is greater, for technology needs of the
1240 school district, including computers, software,
1241 telecommunications, cable television, interactive video, film
1242 low-power television, satellite communications, microwave
1243 communications, technology-based equipment installation and
1244 maintenance, and the training of staff in the use of such
1245 technology-based instruction. Any such technology expenditure
1246 shall be reflected in the local district technology plan approved

1247 by the State Board of Education under Section 37-151-17,
1248 Mississippi Code of 1972.

1249 (h) To the extent a school district has not utilized
1250 twenty percent (20%) of its annual allotment for technology
1251 purposes under paragraph (g), a school district may expend not
1252 more than twenty percent (20%) of its annual allotment or Twenty
1253 Thousand Dollars (\$20,000.00), whichever is greater, for
1254 instructional purposes. The State Board of Education may
1255 authorize a school district to expend more than said twenty
1256 percent (20%) of its annual allotment for instructional purposes
1257 if it determines that such expenditures are needed for
1258 accreditation purposes.

1259 (i) The State Department of Education or the State
1260 Board of Education may require that any project commenced pursuant
1261 to this act with an estimated project cost of more than
1262 Twenty-Five Million Dollars (\$25,000,000.00) be done * * *
1263 pursuant to program management of the process with respect to
1264 design and construction. No project management of the process
1265 with respect to design and construction shall be used for any
1266 project with an estimated project cost of less than Twenty-five
1267 Million Dollars (\$25,000,000.00). Any individuals, partnerships,
1268 companies or other entities acting as a program manager on behalf
1269 of a local school district and performing program management
1270 services for projects covered under this subsection shall be
1271 approved by the State Department of Education.

1272 Any interest accruing on any unexpended balance in the
1273 Interim School District Capital Expenditure Fund shall be invested
1274 by the State Treasurer and placed to the credit of each school
1275 district participating in such fund in its proportionate share.

1276 The provisions of this subsection (5) shall be cumulative and
1277 supplemental to any existing funding programs or other authority
1278 conferred upon school districts or school boards.

1279 **SECTION 4.** This act shall take effect and be in force from
1280 and after July 1, 2004.