

By: Representative Dedeaux

To: Appropriations

HOUSE BILL NO. 1293

1 AN ACT TO AMEND SECTION 31-5-17, MISSISSIPPI CODE OF 1972, TO
 2 PROHIBIT THE AWARDING OF STATE CONTRACTS TO CONTRACTORS THAT HAVE
 3 PERSONS WHO ARE NOT AMERICAN CITIZENS OR LEGAL ALIENS WHO WILL
 4 WORK UNDER THE STATE CONTRACT; TO REQUIRE THAT EVERY PUBLIC
 5 OFFICER, CONTRACTOR, OR AGENT WHO ENGAGES IN OR IS IN CHARGE OF
 6 THE CONSTRUCTION OF ANY STATE BUILDING OR PUBLIC WORK FOR THE
 7 STATE EMPLOY ONLY WORKERS WHO ARE AMERICAN CITIZENS OR LEGAL
 8 ALIENS OR WHO HAVE SOME SPECIALTY FOR WHICH AMERICAN CITIZENS OR
 9 LEGAL ALIENS CANNOT BE FOUND; TO ASSESS PENALTIES AGAINST THOSE
 10 CONTRACTORS WHO VIOLATE THIS REQUIREMENT; TO AMEND SECTION
 11 31-7-13, MISSISSIPPI CODE OF 1972, TO PROHIBIT STATE AGENCIES AND
 12 GOVERNING AUTHORITIES FROM ACCEPTING BIDS FROM OR ENTERING INTO A
 13 CONTRACT WITH A CONTRACTOR OR VENDOR THAT HAS PERSONS WHO ARE NOT
 14 AMERICAN CITIZENS OR LEGAL ALIENS WHO WILL WORK UNDER THE
 15 CONTRACT; TO ALLOW CONTRACTORS OR VENDORS ENTERING INTO A CONTRACT
 16 WITH STATE AGENCIES TO HAVE PERSONS WHO WILL WORK UNDER THE
 17 CONTRACT WHO HAVE SOME SPECIALTY FOR WHICH AMERICAN CITIZENS OR
 18 LEGAL ALIENS CANNOT BE FOUND; TO ASSESS PENALTIES AGAINST THOSE
 19 CONTRACTORS WHO VIOLATE THIS REQUIREMENT; TO ALLOW STATE AGENCIES
 20 AND GOVERNING AUTHORITIES TO USE PROJECT MANAGERS ON CERTAIN
 21 PROJECTS; TO AMEND SECTION 37-151-7, MISSISSIPPI CODE OF 1972, TO
 22 CONFORM TO THE PRECEDING SECTIONS; AND FOR RELATED PURPOSES.

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

24 **SECTION 1.** Section 31-5-17, Mississippi Code of 1972, is
 25 amended as follows:

26 31-5-17. (1) Every public officer, contractor,
 27 superintendent, or agent engaged in or in charge of the
 28 construction of any state or public building or public work of any
 29 kind for the State of Mississippi or for any board, city
 30 commission, governmental agency, or municipality of the State of
 31 Mississippi shall employ only workmen and laborers who have
 32 actually resided in Mississippi for two (2) years next preceding
 33 such employment.

34 (2) No state contract shall be awarded to a contractor that
 35 has persons who are not American citizens or legal aliens who will
 36 work under the state contract. However, a state contract may be
 37 awarded to a contractor that has persons who will work under the

38 state contract who have some specialty for which American citizens
39 or legal aliens cannot be found. Every public officer,
40 contractor, superintendent, or agent engaged in or in charge of
41 the construction of any state building or public work of any kind
42 for the State of Mississippi shall employ only workmen and
43 laborers who are American citizens or legal aliens or who have
44 some specialty for which American citizens or legal aliens cannot
45 be found.

46 Any person who violates the provisions of this subsection
47 shall be assessed the following penalties: (a) For the first
48 offense, One Thousand Dollars (\$1,000.00) for every person who is
49 not an American citizen or legal alien as required, (b) For any
50 subsequent violation, a contractor shall pay a civil penalty equal
51 to three percent (3%) of the total contract being performed by the
52 contractor.

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

55 31-7-13. All agencies and governing authorities shall
56 purchase their commodities and printing; contract for garbage
57 collection or disposal; contract for solid waste collection or
58 disposal; contract for sewage collection or disposal; contract for
59 public construction; and contract for rentals as herein provided.

60 (a) **Bidding procedure for purchases not over \$3,500.00.**
61 Purchases which do not involve an expenditure of more than Three
62 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
63 shipping charges, may be made without advertising or otherwise
64 requesting competitive bids. However, nothing contained in this
65 paragraph (a) shall be construed to prohibit any agency or
66 governing authority from establishing procedures which require
67 competitive bids on purchases of Three Thousand Five Hundred
68 Dollars (\$3,500.00) or less.

69 (b) **Bidding procedure for purchases over \$3,500.00 but**
70 **not over \$15,000.00.** Purchases which involve an expenditure of

71 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
72 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
73 freight and shipping charges may be made from the lowest and best
74 bidder without publishing or posting advertisement for bids,
75 provided at least two (2) competitive written bids have been
76 obtained. Any governing authority purchasing commodities pursuant
77 to this paragraph (b) may authorize its purchasing agent, or his
78 designee, with regard to governing authorities other than
79 counties, or its purchase clerk, or his designee, with regard to
80 counties, to accept the lowest and best competitive written bid.
81 Such authorization shall be made in writing by the governing
82 authority and shall be maintained on file in the primary office of
83 the agency and recorded in the official minutes of the governing
84 authority, as appropriate. The purchasing agent or the purchase
85 clerk, or their designee, as the case may be, and not the
86 governing authority, shall be liable for any penalties and/or
87 damages as may be imposed by law for any act or omission of the
88 purchasing agent or purchase clerk, or their designee,
89 constituting a violation of law in accepting any bid without
90 approval by the governing authority. The term "competitive
91 written bid" shall mean a bid submitted on a bid form furnished by
92 the buying agency or governing authority and signed by authorized
93 personnel representing the vendor, or a bid submitted on a
94 vendor's letterhead or identifiable bid form and signed by
95 authorized personnel representing the vendor. "Competitive" shall
96 mean that the bids are developed based upon comparable
97 identification of the needs and are developed independently and
98 without knowledge of other bids or prospective bids. Bids may be
99 submitted by facsimile, electronic mail or other generally
100 accepted method of information distribution. Bids submitted by
101 electronic transmission shall not require the signature of the
102 vendor's representative unless required by agencies or governing
103 authorities.

104 (c) **Bidding procedure for purchases over \$15,000.00.**
105 (i) **Publication requirement.** Purchases which
106 involve an expenditure of more than Fifteen Thousand Dollars
107 (\$15,000.00), exclusive of freight and shipping charges, may be
108 made from the lowest and best bidder after advertising for
109 competitive sealed bids once each week for two (2) consecutive
110 weeks in a regular newspaper published in the county or
111 municipality in which such agency or governing authority is
112 located. The date as published for the bid opening shall not be
113 less than seven (7) working days after the last published notice;
114 however, if the purchase involves a construction project in which
115 the estimated cost is in excess of Fifteen Thousand Dollars
116 (\$15,000.00), such bids shall not be opened in less than fifteen
117 (15) working days after the last notice is published and the
118 notice for the purchase of such construction shall be published
119 once each week for two (2) consecutive weeks. The notice of
120 intention to let contracts or purchase equipment shall state the
121 time and place at which bids shall be received, list the contracts
122 to be made or types of equipment or supplies to be purchased, and,
123 if all plans and/or specifications are not published, refer to the
124 plans and/or specifications on file. If there is no newspaper
125 published in the county or municipality, then such notice shall be
126 given by posting same at the courthouse, or for municipalities at
127 the city hall, and at two (2) other public places in the county or
128 municipality, and also by publication once each week for two (2)
129 consecutive weeks in some newspaper having a general circulation
130 in the county or municipality in the above provided manner. On
131 the same date that the notice is submitted to the newspaper for
132 publication, the agency or governing authority involved shall mail
133 written notice to, or provide electronic notification to the main
134 office of the Mississippi Contract Procurement Center that
135 contains the same information as that in the published notice.

136 (ii) **Bidding process amendment procedure.** If all
137 plans and/or specifications are published in the notification,
138 then the plans and/or specifications may not be amended. If all
139 plans and/or specifications are not published in the notification,
140 then amendments to the plans/specifications, bid opening date, bid
141 opening time and place may be made, provided that the agency or
142 governing authority maintains a list of all prospective bidders
143 who are known to have received a copy of the bid documents and all
144 such prospective bidders are sent copies of all amendments. This
145 notification of amendments may be made via mail, facsimile,
146 electronic mail or other generally accepted method of information
147 distribution. No addendum to bid specifications may be issued
148 within two (2) working days of the time established for the
149 receipt of bids unless such addendum also amends the bid opening
150 to a date not less than five (5) working days after the date of
151 the addendum.

152 (iii) **Filing requirement.** In all cases involving
153 governing authorities, before the notice shall be published or
154 posted, the plans or specifications for the construction or
155 equipment being sought shall be filed with the clerk of the board
156 of the governing authority. In addition to these requirements, a
157 bid file shall be established which shall indicate those vendors
158 to whom such solicitations and specifications were issued, and
159 such file shall also contain such information as is pertinent to
160 the bid.

161 (iv) **Specification restrictions.** Specifications
162 pertinent to such bidding shall be written so as not to exclude
163 comparable equipment of domestic manufacture. However, if valid
164 justification is presented, the Department of Finance and
165 Administration or the board of a governing authority may approve a
166 request for specific equipment necessary to perform a specific
167 job. Further, such justification, when placed on the minutes of
168 the board of a governing authority, may serve as authority for

169 that governing authority to write specifications to require a
170 specific item of equipment needed to perform a specific job. In
171 addition to these requirements, from and after July 1, 1990,
172 vendors of relocatable classrooms and the specifications for the
173 purchase of such relocatable classrooms published by local school
174 boards shall meet all pertinent regulations of the State Board of
175 Education, including prior approval of such bid by the State
176 Department of Education.

177 (v) Agencies and governing authorities may
178 establish secure procedures by which bids may be submitted via
179 electronic means.

180 (vi) **Project management.** Any public project with
181 an estimated project cost of more than Twenty-Five Million Dollars
182 (\$25,000,000.00) may be done with program management with respect
183 to design and construction. No project management of the process
184 with respect to design and construction shall be used for any
185 project with an estimated project cost of less than Twenty-five
186 Million Dollars (\$25,000,000.00). Any individuals, partnerships,
187 companies or other entities acting as a program manager on behalf
188 of an agency or governing authority and performing program
189 management services for projects covered under this paragraph
190 shall be approved by the agency or governing authority for which
191 the project is being done.

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

193 (i) **Decision procedure.** Purchases may be made
194 from the lowest and best bidder. In determining the lowest and
195 best bid, freight and shipping charges shall be included.
196 Life-cycle costing, total cost bids, warranties, guaranteed
197 buy-back provisions and other relevant provisions may be included
198 in the best bid calculation. All best bid procedures for state
199 agencies must be in compliance with regulations established by the
200 Department of Finance and Administration. If any governing
201 authority accepts a bid other than the lowest bid actually

202 submitted, it shall place on its minutes detailed calculations and
203 narrative summary showing that the accepted bid was determined to
204 be the lowest and best bid, including the dollar amount of the
205 accepted bid and the dollar amount of the lowest bid. No agency
206 or governing authority shall accept a bid based on items not
207 included in the specifications.

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

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

214 (e) **Lease-purchase authorization.** For the purposes of
215 this section, the term "equipment" shall mean equipment, furniture
216 and, if applicable, associated software and other applicable
217 direct costs associated with the acquisition. Any lease-purchase
218 of equipment which an agency is not required to lease-purchase
219 under the master lease-purchase program pursuant to Section
220 31-7-10 and any lease-purchase of equipment which a governing
221 authority elects to lease-purchase may be acquired by a
222 lease-purchase agreement under this paragraph (e). Lease-purchase
223 financing may also be obtained from the vendor or from a
224 third-party source after having solicited and obtained at least
225 two (2) written competitive bids, as defined in paragraph (b) of
226 this section, for such financing without advertising for such
227 bids. Solicitation for the bids for financing may occur before or
228 after acceptance of bids for the purchase of such equipment or,
229 where no such bids for purchase are required, at any time before
230 the purchase thereof. No such lease-purchase agreement shall be
231 for an annual rate of interest which is greater than the overall
232 maximum interest rate to maturity on general obligation
233 indebtedness permitted under Section 75-17-101, and the term of
234 such lease-purchase agreement shall not exceed the useful life of

235 equipment covered thereby as determined according to the upper
236 limit of the asset depreciation range (ADR) guidelines for the
237 Class Life Asset Depreciation Range System established by the
238 Internal Revenue Service pursuant to the United States Internal
239 Revenue Code and regulations thereunder as in effect on December
240 31, 1980, or comparable depreciation guidelines with respect to
241 any equipment not covered by ADR guidelines. Any lease-purchase
242 agreement entered into pursuant to this paragraph (e) may contain
243 any of the terms and conditions which a master lease-purchase
244 agreement may contain under the provisions of Section 31-7-10(5),
245 and shall contain an annual allocation dependency clause
246 substantially similar to that set forth in Section 31-7-10(8).
247 Each agency or governing authority entering into a lease-purchase
248 transaction pursuant to this paragraph (e) shall maintain with
249 respect to each such lease-purchase transaction the same
250 information as required to be maintained by the Department of
251 Finance and Administration pursuant to Section 31-7-10(13).
252 However, nothing contained in this section shall be construed to
253 permit agencies to acquire items of equipment with a total
254 acquisition cost in the aggregate of less than Ten Thousand
255 Dollars (\$10,000.00) by a single lease-purchase transaction. All
256 equipment, and the purchase thereof by any lessor, acquired by
257 lease-purchase under this paragraph and all lease-purchase
258 payments with respect thereto shall be exempt from all Mississippi
259 sales, use and ad valorem taxes. Interest paid on any
260 lease-purchase agreement under this section shall be exempt from
261 State of Mississippi income taxation.

262 (f) **Alternate bid authorization.** When necessary to
263 ensure ready availability of commodities for public works and the
264 timely completion of public projects, no more than two (2)
265 alternate bids may be accepted by a governing authority for
266 commodities. No purchases may be made through use of such
267 alternate bids procedure unless the lowest and best bidder cannot

268 deliver the commodities contained in his bid. In that event,
269 purchases of such commodities may be made from one (1) of the
270 bidders whose bid was accepted as an alternate.

271 (g) **Construction contract change authorization.** In the
272 event a determination is made by an agency or governing authority
273 after a construction contract is let that changes or modifications
274 to the original contract are necessary or would better serve the
275 purpose of the agency or the governing authority, such agency or
276 governing authority may, in its discretion, order such changes
277 pertaining to the construction that are necessary under the
278 circumstances without the necessity of further public bids;
279 provided that such change shall be made in a commercially
280 reasonable manner and shall not be made to circumvent the public
281 purchasing statutes. In addition to any other authorized person,
282 the architect or engineer hired by an agency or governing
283 authority with respect to any public construction contract shall
284 have the authority, when granted by an agency or governing
285 authority, to authorize changes or modifications to the original
286 contract without the necessity of prior approval of the agency or
287 governing authority when any such change or modification is less
288 than one percent (1%) of the total contract amount. The agency or
289 governing authority may limit the number, manner or frequency of
290 such emergency changes or modifications.

291 (h) **Petroleum purchase alternative.** In addition to
292 other methods of purchasing authorized in this chapter, when any
293 agency or governing authority shall have a need for gas, diesel
294 fuel, oils and/or other petroleum products in excess of the amount
295 set forth in paragraph (a) of this section, such agency or
296 governing authority may purchase the commodity after having
297 solicited and obtained at least two (2) competitive written bids,
298 as defined in paragraph (b) of this section. If two (2)
299 competitive written bids are not obtained, the entity shall comply
300 with the procedures set forth in paragraph (c) of this section.

301 In the event any agency or governing authority shall have
302 advertised for bids for the purchase of gas, diesel fuel, oils and
303 other petroleum products and coal and no acceptable bids can be
304 obtained, such agency or governing authority is authorized and
305 directed to enter into any negotiations necessary to secure the
306 lowest and best contract available for the purchase of such
307 commodities.

308 (i) **Road construction petroleum products price**
309 **adjustment clause authorization.** Any agency or governing
310 authority authorized to enter into contracts for the construction,
311 maintenance, surfacing or repair of highways, roads or streets,
312 may include in its bid proposal and contract documents a price
313 adjustment clause with relation to the cost to the contractor,
314 including taxes, based upon an industry-wide cost index, of
315 petroleum products including asphalt used in the performance or
316 execution of the contract or in the production or manufacture of
317 materials for use in such performance. Such industry-wide index
318 shall be established and published monthly by the Mississippi
319 Department of Transportation with a copy thereof to be mailed,
320 upon request, to the clerks of the governing authority of each
321 municipality and the clerks of each board of supervisors
322 throughout the state. The price adjustment clause shall be based
323 on the cost of such petroleum products only and shall not include
324 any additional profit or overhead as part of the adjustment. The
325 bid proposals or document contract shall contain the basis and
326 methods of adjusting unit prices for the change in the cost of
327 such petroleum products.

328 (j) **State agency emergency purchase procedure.** If the
329 governing board or the executive head, or his designee, of any
330 agency of the state shall determine that an emergency exists in
331 regard to the purchase of any commodities or repair contracts, so
332 that the delay incident to giving opportunity for competitive
333 bidding would be detrimental to the interests of the state, then

334 the provisions herein for competitive bidding shall not apply and
335 the head of such agency shall be authorized to make the purchase
336 or repair. Total purchases so made shall only be for the purpose
337 of meeting needs created by the emergency situation. In the event
338 such executive head is responsible to an agency board, at the
339 meeting next following the emergency purchase, documentation of
340 the purchase, including a description of the commodity purchased,
341 the purchase price thereof and the nature of the emergency shall
342 be presented to the board and placed on the minutes of the board
343 of such agency. The head of such agency, or his designee, shall,
344 at the earliest possible date following such emergency purchase,
345 file with the Department of Finance and Administration (i) a
346 statement explaining the conditions and circumstances of the
347 emergency, which shall include a detailed description of the
348 events leading up to the situation and the negative impact to the
349 entity if the purchase is made following the statutory
350 requirements set forth in paragraph (a), (b) or (c) of this
351 section, and (ii) a certified copy of the appropriate minutes of
352 the board of such agency, if applicable. On or before September 1
353 of each year, the State Auditor shall prepare and deliver to the
354 Senate Fees, Salaries and Administration Committee, the House Fees
355 and Salaries of Public Officers Committee and the Joint
356 Legislative Budget Committee a report containing a list of all
357 state agency emergency purchases and supporting documentation for
358 each emergency purchases.

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

360 If the governing authority, or the governing authority acting
361 through its designee, shall determine that an emergency exists in
362 regard to the purchase of any commodities or repair contracts, so
363 that the delay incident to giving opportunity for competitive
364 bidding would be detrimental to the interest of the governing
365 authority, then the provisions herein for competitive bidding
366 shall not apply and any officer or agent of such governing

367 authority having general or special authority therefor in making
368 such purchase or repair shall approve the bill presented therefor,
369 and he shall certify in writing thereon from whom such purchase
370 was made, or with whom such a repair contract was made. At the
371 board meeting next following the emergency purchase or repair
372 contract, documentation of the purchase or repair contract,
373 including a description of the commodity purchased, the price
374 thereof and the nature of the emergency shall be presented to the
375 board and shall be placed on the minutes of the board of such
376 governing authority.

377 (1) **Hospital purchase, lease-purchase and lease**
378 **authorization.**

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

384 (ii) In addition to the authority granted in
385 subparagraph (i) of this paragraph (1), the commissioners or board
386 of trustees is authorized to enter into contracts for the lease of
387 equipment or services, or both, which it considers necessary for
388 the proper care of patients if, in its opinion, it is not
389 financially feasible to purchase the necessary equipment or
390 services. Any such contract for the lease of equipment or
391 services executed by the commissioners or board shall not exceed a
392 maximum of five (5) years' duration and shall include a
393 cancellation clause based on unavailability of funds. If such
394 cancellation clause is exercised, there shall be no further
395 liability on the part of the lessee. Any such contract for the
396 lease of equipment or services executed on behalf of the
397 commissioners or board that complies with the provisions of this
398 subparagraph (ii) shall be excepted from the bid requirements set
399 forth in this section.

400 (m) **Exceptions from bidding requirements.** Excepted
401 from bid requirements are:

402 (i) **Purchasing agreements approved by department.**
403 Purchasing agreements, contracts and maximum price regulations
404 executed or approved by the Department of Finance and
405 Administration.

406 (ii) **Outside equipment repairs.** Repairs to
407 equipment, when such repairs are made by repair facilities in the
408 private sector; however, engines, transmissions, rear axles and/or
409 other such components shall not be included in this exemption when
410 replaced as a complete unit instead of being repaired and the need
411 for such total component replacement is known before disassembly
412 of the component; however, invoices identifying the equipment,
413 specific repairs made, parts identified by number and name,
414 supplies used in such repairs, and the number of hours of labor
415 and costs therefor shall be required for the payment for such
416 repairs.

417 (iii) **In-house equipment repairs.** Purchases of
418 parts for repairs to equipment, when such repairs are made by
419 personnel of the agency or governing authority; however, entire
420 assemblies, such as engines or transmissions, shall not be
421 included in this exemption when the entire assembly is being
422 replaced instead of being repaired.

423 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
424 of gravel or fill dirt which are to be removed and transported by
425 the purchaser.

426 (v) **Governmental equipment auctions.** Motor
427 vehicles or other equipment purchased from a federal agency or
428 authority, another governing authority or state agency of the
429 State of Mississippi, or any governing authority or state agency
430 of another state at a public auction held for the purpose of
431 disposing of such vehicles or other equipment. Any purchase by a
432 governing authority under the exemption authorized by this

433 subparagraph (v) shall require advance authorization spread upon
434 the minutes of the governing authority to include the listing of
435 the item or items authorized to be purchased and the maximum bid
436 authorized to be paid for each item or items.

437 (vi) **Intergovernmental sales and transfers.**

438 Purchases, sales, transfers or trades by governing authorities or
439 state agencies when such purchases, sales, transfers or trades are
440 made by a private treaty agreement or through means of
441 negotiation, from any federal agency or authority, another
442 governing authority or state agency of the State of Mississippi,
443 or any state agency or governing authority of another state.
444 Nothing in this section shall permit such purchases through public
445 auction except as provided for in subparagraph (v) of this
446 section. It is the intent of this section to allow governmental
447 entities to dispose of and/or purchase commodities from other
448 governmental entities at a price that is agreed to by both
449 parties. This shall allow for purchases and/or sales at prices
450 which may be determined to be below the market value if the
451 selling entity determines that the sale at below market value is
452 in the best interest of the taxpayers of the state. Governing
453 authorities shall place the terms of the agreement and any
454 justification on the minutes, and state agencies shall obtain
455 approval from the Department of Finance and Administration, prior
456 to releasing or taking possession of the commodities.

457 (vii) **Perishable supplies or food.** Perishable
458 supplies or foods purchased for use in connection with hospitals,
459 the school lunch programs, homemaking programs and for the feeding
460 of county or municipal prisoners.

461 (viii) **Single source items.** Noncompetitive items
462 available from one (1) source only. In connection with the
463 purchase of noncompetitive items only available from one (1)
464 source, a certification of the conditions and circumstances
465 requiring the purchase shall be filed by the agency with the

466 Department of Finance and Administration and by the governing
467 authority with the board of the governing authority. Upon receipt
468 of that certification the Department of Finance and Administration
469 or the board of the governing authority, as the case may be, may,
470 in writing, authorize the purchase, which authority shall be noted
471 on the minutes of the body at the next regular meeting thereafter.
472 In those situations, a governing authority is not required to
473 obtain the approval of the Department of Finance and
474 Administration.

475 (ix) **Waste disposal facility construction**
476 **contracts.** Construction of incinerators and other facilities for
477 disposal of solid wastes in which products either generated
478 therein, such as steam, or recovered therefrom, such as materials
479 for recycling, are to be sold or otherwise disposed of; however,
480 in constructing such facilities, a governing authority or agency
481 shall publicly issue requests for proposals, advertised for in the
482 same manner as provided herein for seeking bids for public
483 construction projects, concerning the design, construction,
484 ownership, operation and/or maintenance of such facilities,
485 wherein such requests for proposals when issued shall contain
486 terms and conditions relating to price, financial responsibility,
487 technology, environmental compatibility, legal responsibilities
488 and such other matters as are determined by the governing
489 authority or agency to be appropriate for inclusion; and after
490 responses to the request for proposals have been duly received,
491 the governing authority or agency may select the most qualified
492 proposal or proposals on the basis of price, technology and other
493 relevant factors and from such proposals, but not limited to the
494 terms thereof, negotiate and enter contracts with one or more of
495 the persons or firms submitting proposals.

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

499 (xi) **Information technology products.** Purchases
500 of information technology products made by governing authorities
501 under the provisions of purchase schedules, or contracts executed
502 or approved by the Mississippi Department of Information
503 Technology Services and designated for use by governing
504 authorities.

505 (xii) **Energy efficiency services and equipment.**
506 Energy efficiency services and equipment acquired by school
507 districts, community and junior colleges, institutions of higher
508 learning and state agencies or other applicable governmental
509 entities on a shared-savings, lease or lease-purchase basis
510 pursuant to Section 31-7-14.

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

515 (xiv) **Library books and other reference materials.**
516 Purchases by libraries or for libraries of books and periodicals;
517 processed film, video cassette tapes, filmstrips and slides;
518 recorded audio tapes, cassettes and diskettes; and any such items
519 as would be used for teaching, research or other information
520 distribution; however, equipment such as projectors, recorders,
521 audio or video equipment, and monitor televisions are not exempt
522 under this subparagraph.

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

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

529 (xvii) **Multichannel interactive video systems.**
530 From and after July 1, 1990, contracts by Mississippi Authority
531 for Educational Television with any private educational

532 institution or private nonprofit organization whose purposes are
533 educational in regard to the construction, purchase, lease or
534 lease-purchase of facilities and equipment and the employment of
535 personnel for providing multichannel interactive video systems
536 (ITSF) in the school districts of this state.

537 (xviii) **Purchases of prison industry products.**

538 From and after January 1, 1991, purchases made by state agencies
539 or governing authorities involving any item that is manufactured,
540 processed, grown or produced from the state's prison industries.

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

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

550 (xxi) **Certain school district purchases.**

551 Purchases of commodities made by school districts from vendors
552 with which any levying authority of the school district, as
553 defined in Section 37-57-1, has contracted through competitive
554 bidding procedures for purchases of the same commodities.

555 (xxii) **Garbage, solid waste and sewage contracts.**

556 Contracts for garbage collection or disposal, contracts for solid
557 waste collection or disposal and contracts for sewage collection
558 or disposal.

559 (xxiii) **Municipal water tank maintenance**

560 **contracts.** Professional maintenance program contracts for the
561 repair or maintenance of municipal water tanks, which provide
562 professional services needed to maintain municipal water storage
563 tanks for a fixed annual fee for a duration of two (2) or more
564 years.

565 (xxiv) **Purchases of Mississippi Industries for the**
566 **Blind products.** Purchases made by state agencies or governing
567 authorities involving any item that is manufactured, processed or
568 produced by the Mississippi Industries for the Blind.

569 (xxv) **Purchases of state-adopted textbooks.**
570 Purchases of state-adopted textbooks by public school districts.

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

574 (xxvii) **Used heavy or specialized machinery or**
575 **equipment for installation of soil and water conservation**
576 **practices purchased at auction.** Used heavy or specialized
577 machinery or equipment used for the installation and
578 implementation of soil and water conservation practices or
579 measures purchased subject to the restrictions provided in
580 Sections 69-27-331 through 69-27-341. Any purchase by the State
581 Soil and Water Conservation Commission under the exemption
582 authorized by this subparagraph shall require advance
583 authorization spread upon the minutes of the commission to include
584 the listing of the item or items authorized to be purchased and
585 the maximum bid authorized to be paid for each item or items.

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

589 (xxix) **Purchases made pursuant to qualified**
590 **cooperative purchasing agreements.** Purchases made by certified
591 purchasing offices of state agencies or governing authorities
592 under cooperative purchasing agreements previously approved by the
593 Office of Purchasing and Travel and established by or for any
594 municipality, county, parish or state government or the federal
595 government, provided that the notification to potential
596 contractors includes a clause that sets forth the availability of
597 the cooperative purchasing agreement to other governmental

598 entities. Such purchases shall only be made if the use of the
599 cooperative purchasing agreements is determined to be in the best
600 interest of the government entity.

601 (n) **Term contract authorization.** All contracts for the
602 purchase of:

603 (i) All contracts for the purchase of commodities,
604 equipment and public construction (including, but not limited to,
605 repair and maintenance), may be let for periods of not more than
606 sixty (60) months in advance, subject to applicable statutory
607 provisions prohibiting the letting of contracts during specified
608 periods near the end of terms of office. Term contracts for a
609 period exceeding twenty-four (24) months shall also be subject to
610 ratification or cancellation by governing authority boards taking
611 office subsequent to the governing authority board entering the
612 contract.

613 (ii) Bid proposals and contracts may include price
614 adjustment clauses with relation to the cost to the contractor
615 based upon a nationally published industry-wide or nationally
616 published and recognized cost index. The cost index used in a
617 price adjustment clause shall be determined by the Department of
618 Finance and Administration for the state agencies and by the
619 governing board for governing authorities. The bid proposal and
620 contract documents utilizing a price adjustment clause shall
621 contain the basis and method of adjusting unit prices for the
622 change in the cost of such commodities, equipment and public
623 construction.

624 (o) **Purchase law violation prohibition and vendor**
625 **penalty.** No contract or purchase as herein authorized shall be
626 made for the purpose of circumventing the provisions of this
627 section requiring competitive bids, nor shall it be lawful for any
628 person or concern to submit individual invoices for amounts within
629 those authorized for a contract or purchase where the actual value
630 of the contract or commodity purchased exceeds the authorized

631 amount and the invoices therefor are split so as to appear to be
632 authorized as purchases for which competitive bids are not
633 required. Submission of such invoices shall constitute a
634 misdemeanor punishable by a fine of not less than Five Hundred
635 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
636 or by imprisonment for thirty (30) days in the county jail, or
637 both such fine and imprisonment. In addition, the claim or claims
638 submitted shall be forfeited.

639 (p) **Electrical utility petroleum-based equipment**
640 **purchase procedure.** When in response to a proper advertisement
641 therefor, no bid firm as to price is submitted to an electric
642 utility for power transformers, distribution transformers, power
643 breakers, reclosers or other articles containing a petroleum
644 product, the electric utility may accept the lowest and best bid
645 therefor although the price is not firm.

646 (q) **Fuel management system bidding procedure.** Any
647 governing authority or agency of the state shall, before
648 contracting for the services and products of a fuel management or
649 fuel access system, enter into negotiations with not fewer than
650 two (2) sellers of fuel management or fuel access systems for
651 competitive written bids to provide the services and products for
652 the systems. In the event that the governing authority or agency
653 cannot locate two (2) sellers of such systems or cannot obtain
654 bids from two (2) sellers of such systems, it shall show proof
655 that it made a diligent, good-faith effort to locate and negotiate
656 with two (2) sellers of such systems. Such proof shall include,
657 but not be limited to, publications of a request for proposals and
658 letters soliciting negotiations and bids. For purposes of this
659 paragraph (q), a fuel management or fuel access system is an
660 automated system of acquiring fuel for vehicles as well as
661 management reports detailing fuel use by vehicles and drivers, and
662 the term "competitive written bid" shall have the meaning as
663 defined in paragraph (b) of this section. Governing authorities

664 and agencies shall be exempt from this process when contracting
665 for the services and products of a fuel management or fuel access
666 systems under the terms of a state contract established by the
667 Office of Purchasing and Travel.

668 (r) **Solid waste contract proposal procedure.** Before
669 entering into any contract for garbage collection or disposal,
670 contract for solid waste collection or disposal or contract for
671 sewage collection or disposal, which involves an expenditure of
672 more than Fifty Thousand Dollars (\$50,000.00), a governing
673 authority or agency shall issue publicly a request for proposals
674 concerning the specifications for such services which shall be
675 advertised for in the same manner as provided in this section for
676 seeking bids for purchases which involve an expenditure of more
677 than the amount provided in paragraph (c) of this section. Any
678 request for proposals when issued shall contain terms and
679 conditions relating to price, financial responsibility,
680 technology, legal responsibilities and other relevant factors as
681 are determined by the governing authority or agency to be
682 appropriate for inclusion; all factors determined relevant by the
683 governing authority or agency or required by this paragraph (r)
684 shall be duly included in the advertisement to elicit proposals.
685 After responses to the request for proposals have been duly
686 received, the governing authority or agency shall select the most
687 qualified proposal or proposals on the basis of price, technology
688 and other relevant factors and from such proposals, but not
689 limited to the terms thereof, negotiate and enter contracts with
690 one or more of the persons or firms submitting proposals. If the
691 governing authority or agency deems none of the proposals to be
692 qualified or otherwise acceptable, the request for proposals
693 process may be reinitiated. Notwithstanding any other provisions
694 of this paragraph, where a county with at least thirty-five
695 thousand (35,000) nor more than forty thousand (40,000)
696 population, according to the 1990 federal decennial census, owns

697 or operates a solid waste landfill, the governing authorities of
698 any other county or municipality may contract with the governing
699 authorities of the county owning or operating the landfill,
700 pursuant to a resolution duly adopted and spread upon the minutes
701 of each governing authority involved, for garbage or solid waste
702 collection or disposal services through contract negotiations.

703 (s) **Minority set aside authorization.** Notwithstanding
704 any provision of this section to the contrary, any agency or
705 governing authority, by order placed on its minutes, may, in its
706 discretion, set aside not more than twenty percent (20%) of its
707 anticipated annual expenditures for the purchase of commodities
708 from minority businesses; however, all such set-aside purchases
709 shall comply with all purchasing regulations promulgated by the
710 Department of Finance and Administration and shall be subject to
711 bid requirements under this section. Set-aside purchases for
712 which competitive bids are required shall be made from the lowest
713 and best minority business bidder. For the purposes of this
714 paragraph, the term "minority business" means a business which is
715 owned by a majority of persons who are United States citizens or
716 permanent resident aliens (as defined by the Immigration and
717 Naturalization Service) of the United States, and who are Asian,
718 Black, Hispanic or Native American, according to the following
719 definitions:

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

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

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

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

731 (t) **Construction punch list restriction.** The
732 architect, engineer or other representative designated by the
733 agency or governing authority that is contracting for public
734 construction or renovation may prepare and submit to the
735 contractor only one (1) preliminary punch list of items that do
736 not meet the contract requirements at the time of substantial
737 completion and one (1) final list immediately before final
738 completion and final payment.

739 (u) **Contract restrictions.** No agency or governing
740 authority shall accept a bid from or enter into a contract with a
741 contractor or vendor that has persons who are not American
742 citizens or legal aliens who will work under the contract.
743 However, an agency or governing authority may accept a bid from or
744 enter into a contract with a contractor or vendor that has persons
745 who will work under the contract who have some specialty for which
746 American citizens or legal aliens cannot be found. The agency or
747 governing authority shall require contractors and vendors
748 submitting bids to attach an affidavit stating that all persons
749 who will work under the contract are American citizens or legal
750 aliens or have some specialty for which American citizens or legal
751 aliens cannot be found.

752 Any contractor who attaches an affidavit without true
753 information about the persons who will work under the contract, or
754 has persons working under the contract in violation of the
755 requirements of the provisions of this subsection, shall be
756 assessed the following penalties: (a) For the first violation, a
757 contractor shall pay One Thousand Dollars (\$1,000.00) for every
758 person who is not an American citizen or legal alien as provided
759 in this subsection, (b) For any subsequent violation, a contractor

760 shall pay a civil penalty equal to three percent (3%) of the total
761 contract being performed by the contractor.

762 (v) Purchase authorization clarification. Nothing in
763 this section shall be construed as authorizing any purchase not
764 authorized by law.

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

767 37-151-7. The annual allocation to each school district for
768 the operation of the adequate education program shall be
769 determined as follows:

770 (1) Computation of the basic amount to be included for
771 current operation in the adequate education program. The
772 following procedure shall be followed in determining the annual
773 allocation to each school district:

774 (a) **Determination of average daily attendance.** During
775 months two (2) and three (3) of the current school year, the
776 average daily attendance of a school district shall be computed,
777 or the average daily attendance for the prior school year shall be
778 used, whichever is greater. For purposes of this calculation,
779 "current" school year shall mean the school year for which
780 appropriations are made by the Legislature, and "prior" school
781 year shall mean the school year immediately preceding the year for
782 which appropriations are made by the Legislature. The district's
783 average daily attendance shall be computed and currently
784 maintained in accordance with regulations promulgated by the State
785 Board of Education.

786 (b) **Determination of base student cost.** The State
787 Board of Education, on or before August 1, with adjusted estimate
788 no later than January 2, shall annually submit to the Legislative
789 Budget Office and the Governor a proposed base student cost
790 adequate to provide the following cost components of educating a
791 pupil in an average school district meeting Level III
792 accreditation standards required by the Commission on School

793 Accreditation: (i) Instructional Cost; (ii) Administrative Cost;
794 (iii) Operation and Maintenance of Plant; and (iv) Ancillary
795 Support Cost. The department shall utilize a statistical
796 methodology which considers such factors as, but not limited to,
797 (i) school size; (ii) assessed valuation per pupil; (iii) the
798 percentage of students receiving free lunch; (iv) the local
799 district maintenance tax levy; (v) other local school district
800 revenues; and (vi) the district's accreditation level, in the
801 selection of the representative Mississippi school districts for
802 which cost information shall be obtained for each of the above
803 listed cost areas.

804 For the instructional cost component, the department shall
805 determine the instructional cost of each of the representative
806 school districts selected above, excluding instructional cost of
807 self-contained special education programs and vocational education
808 programs, and the average daily attendance in the selected school
809 districts. The instructional cost is then totaled and divided by
810 the total average daily attendance for the selected school
811 districts to yield the instructional cost component. For the
812 administrative cost component, the department shall determine the
813 administrative cost of each of the representative school districts
814 selected above, excluding administrative cost of self-contained
815 special education programs and vocational education programs, and
816 the average daily attendance in the selected school districts.
817 The administrative cost is then totaled and divided by the total
818 average daily attendance for the selected school districts to
819 yield the administrative cost component. For the plant and
820 maintenance cost component, the department shall determine the
821 plant and maintenance cost of each of the representative school
822 districts selected above, excluding plant and maintenance cost of
823 self-contained special education programs and vocational education
824 programs, and the average daily attendance in the selected school
825 districts. The plant and maintenance cost is then totaled and

826 divided by the total average daily attendance for the selected
827 school districts to yield the plant and maintenance cost
828 component. For the ancillary support cost component, the
829 department shall determine the ancillary support cost of each of
830 the representative school districts selected above, excluding
831 ancillary support cost of self-contained special education
832 programs and vocational education programs, and the average daily
833 attendance in the selected school districts. The ancillary
834 support cost is then totaled and divided by the total average
835 daily attendance for the selected school districts to yield the
836 ancillary support cost component. The total base cost for each
837 year shall be the sum of the instructional cost component,
838 administrative cost component, plant and maintenance cost
839 component and ancillary support cost component, and any estimated
840 adjustments for additional state requirements as determined by the
841 State Board of Education. Provided, however, that the base
842 student cost in fiscal year 1998 shall be Two Thousand Six Hundred
843 Sixty-four Dollars (\$2,664.00).

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

848 Multiply the average daily attendance of the district by the
849 base student cost as established by the Legislature, which yields
850 the total base program cost for each school district.

851 (d) **Adjustment to the base student cost for at-risk**
852 **pupils.** The amount to be included for at-risk pupil programs for
853 each school district shall be computed as follows: Multiply the
854 base student cost for the appropriate fiscal year as determined
855 under paragraph (b) by five percent (5%), and multiply that
856 product by the number of pupils participating in the federal free
857 school lunch program in such school district, which yields the

858 total adjustment for at-risk pupil programs for such school
859 district.

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

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

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

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

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

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

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

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

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

889 The sum of the items listed above (i) transportation, (ii)
890 vocational or technical education, (iii) special education, (iv)

891 gifted education, (v) alternative school, (vi) extended school
892 year, (vii) university-based, and (viii) bus driver training shall
893 yield the add-on cost for each school district.

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

895 The total Mississippi Adequate Education Program Cost shall be the
896 sum of the total basic adequate education program cost (paragraph
897 (c)), and the adjustment to the base student cost for at-risk
898 pupils (paragraph (d)) for each school district.

899 (g) **Supplemental grant to school districts.** In
900 addition to the adequate education program grant, the State
901 Department of Education shall annually distribute an additional
902 amount as follows: Multiply the base student cost for the
903 appropriate fiscal year as determined under paragraph (b) by
904 thirteen one-hundredths percent (.13%) and multiply that product
905 by the average daily attendance of each school district. Such
906 grant shall not be subject to the local revenue requirement
907 provided in subsection (2).

908 (2) **Computation of the required local revenue in support of**
909 **the adequate education program.** The amount that each district
910 shall provide toward the cost of the adequate education program
911 shall be calculated as follows:

912 (a) The State Board of Education shall certify to each
913 school district that twenty-eight (28) mills, less the estimated
914 amount of the yield of the School Ad Valorem Tax Reduction Fund
915 grants as determined by the State Department of Education, is the
916 millage rate required to provide the district required local
917 effort for that year, or twenty-seven percent (27%) of the basic
918 adequate education program cost for such school district as
919 determined under subsection (c), whichever is a lesser amount. In
920 the case of an agricultural high school the millage requirement
921 shall be set at a level which generates an equitable amount per
922 pupil to be determined by the State Board of Education.

923 (b) The State Board of Education shall determine (i)
924 the total assessed valuation of nonexempt property for school
925 purposes in each school district; (ii) assessed value of exempt
926 property owned by homeowners aged sixty-five (65) or older or
927 disabled as defined in Section 27-33-67(2), Mississippi Code of
928 1972; (iii) the school district's tax loss from exemptions
929 provided to applicants under the age of sixty-five (65) and not
930 disabled as defined in Section 27-33-67(1), Mississippi Code of
931 1972; and (iv) the school district's homestead reimbursement
932 revenues.

933 (c) The amount of the total adequate education program
934 funding which shall be contributed by each school district shall
935 be the sum of the ad valorem receipts generated by the millage
936 required under this subsection plus the following local revenue
937 sources for the appropriate fiscal year which are or may be
938 available for current expenditure by the school district:

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

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

943 (a) The required state effort in support of the
944 adequate education program shall be determined by subtracting the
945 sum of the required local tax effort as set forth in subsection
946 (2)(a) of this section and the other local revenue sources as set
947 forth in subsection (2)(c) of this section in an amount not to
948 exceed twenty-seven percent (27%) of the total projected adequate
949 education program cost as set forth in subsection (1)(f) of this
950 section from the total projected adequate education program cost
951 as set forth in subsection (1)(f) of this section.

952 (b) Provided, however, that in fiscal year 1998 and in
953 the fiscal year in which the adequate education program is fully
954 funded by the Legislature, any increase in the said state
955 contribution, including the supplemental grant to school districts

956 provided under subsection (1)(g), to any district calculated under
957 this section shall be not less than eight percent (8%) in excess
958 of the amount received by said district from state funds for the
959 fiscal year immediately preceding. For purposes of this paragraph
960 (b), state funds shall include minimum program funds less the
961 add-on programs, state Uniform Millage Assistance Grant funds,
962 Education Enhancement Funds appropriated for Uniform Millage
963 Assistance Grants and state textbook allocations, and State
964 General Funds allocated for textbooks.

965 (c) If the appropriation is less than full funding for
966 fiscal year 2003, allocations for state contributions to school
967 districts in support of the adequate education program will be
968 determined by the State Department of Education in the following
969 manner:

970 (i) Calculation of the full funding amount under
971 this chapter, with proportionate reductions as required by the
972 appropriation level.

973 (ii) Calculation of the amount equal to the state
974 funds allocated to school districts for fiscal year 2002 plus the
975 estimated amount to fund the adequate education program salary
976 schedule for fiscal year 2003. For purposes of this item (ii),
977 state funds shall be those described in paragraph (b) and an
978 amount equal to the allocation for the adequate education program
979 in fiscal year 2002, plus any additional amount required to
980 satisfy fiscal year 2003 pledges in accordance with paragraphs
981 (d), (e) and (f) of subsection (5) of this section. If a school
982 district's fiscal year 2003 pledge is different than the pledge
983 amount for fiscal year 2002, the district shall receive an amount
984 equal to the fiscal year 2003 pledge or the amount of funds
985 calculated under the adequate education formula for fiscal year
986 2002 before any pledge guarantee for fiscal year 2002, whichever
987 is greater. If the pledge is no longer in effect, the district

988 shall receive the amount of funds calculated under the formula for
989 fiscal year 2002 before any pledge guarantee for fiscal year 2002.

990 (iii) The portion of any district's allocation
991 calculated in item (i) of this paragraph which exceeds amounts as
992 calculated in item (ii) shall be reduced by an amount not to
993 exceed twenty-one percent (21%). The amount of funds generated by
994 this reduction of funds shall be redistributed proportionately
995 among those districts receiving insufficient funds to meet the
996 amount calculated in item (ii). In no case may any district
997 receive funds in an amount greater than the amount that the
998 district would have received under full funding of the program for
999 fiscal year 2003.

1000 (d) If the school board of any school district shall
1001 determine that it is not economically feasible or practicable to
1002 operate any school within the district for the full one hundred
1003 eighty (180) days required for a school term of a scholastic year
1004 as required in Section 37-13-63, Mississippi Code of 1972, due to
1005 an enemy attack, a manmade, technological or natural disaster in
1006 which the Governor has declared a disaster emergency under the
1007 laws of this state or the President of the United States has
1008 declared an emergency or major disaster to exist in this state,
1009 said school board may notify the State Department of Education of
1010 such disaster and submit a plan for altering the school term. If
1011 the State Board of Education finds such disaster to be the cause
1012 of the school not operating for the contemplated school term and
1013 that such school was in a school district covered by the
1014 Governor's or President's disaster declaration, it may permit said
1015 school board to operate the schools in its district for less than
1016 one hundred eighty (180) days and, in such case, the State
1017 Department of Education shall not reduce the state contributions
1018 to the adequate education program allotment for such district,
1019 because of the failure to operate said schools for one hundred
1020 eighty (180) days.

1021 (4) If during the year for which adequate education program
1022 funds are appropriated, any school district experiences a three
1023 percent (3%) or greater increase in average daily attendance
1024 during the second and third month over the preceding year's second
1025 and third month, an additional allocation of adequate education
1026 program funds calculated in the following manner shall be granted
1027 to that district, using any additional funds available to the
1028 Department of Education that exceed the amount of funds due to the
1029 school districts under the basic adequate education program
1030 distribution as provided for in this chapter:

1031 (a) Determine the percentage increase in average daily
1032 attendance for the second and third months of the year for which
1033 adequate education program funds are appropriated over the
1034 preceding year's second and third month average daily attendance.

1035 (b) For those districts that have a three percent (3%)
1036 or greater increase as calculated in paragraph (a) of this
1037 subsection, multiply the total increase in students in average
1038 daily attendance for the second and third months of the year for
1039 which adequate education program funds are appropriated over the
1040 preceding year's second and third month average daily attendance
1041 times the base student cost used in the appropriation.

1042 (c) Subtract the percentage of the district's local
1043 contribution arrived at in subsection (2) of this section from the
1044 amount calculated in paragraph (b) of this subsection. The
1045 remainder is the additional allocation in adequate education
1046 program funds for that district.

1047 If the funds available to the Department of Education are not
1048 sufficient to fully fund the additional allocations to school
1049 districts eligible for those allocations, then the department
1050 shall prorate the available funds among the eligible school
1051 districts, using the same percentage of the total funds that the
1052 school district would have received if the allocations were fully
1053 funded.

1054 This subsection (4) shall stand repealed on July 1, 2004.

1055 (5) The Interim School District Capital Expenditure Fund is
1056 hereby established in the State Treasury which shall be used to
1057 distribute any funds specifically appropriated by the Legislature
1058 to such fund to school districts entitled to increased allocations
1059 of state funds under the adequate education program funding
1060 formula prescribed in Sections 37-151-3 through 37-151-7,
1061 Mississippi Code of 1972, until such time as the said adequate
1062 education program is fully funded by the Legislature. The
1063 following percentages of the total state cost of increased
1064 allocations of funds under the adequate education program funding
1065 formula shall be appropriated by the Legislature into the Interim
1066 School District Capital Expenditure Fund to be distributed to all
1067 school districts under the formula: Nine and two-tenths percent
1068 (9.2%) shall be appropriated in fiscal year 1998, twenty percent
1069 (20%) shall be appropriated in fiscal year 1999, forty percent
1070 (40%) shall be appropriated in fiscal year 2000, sixty percent
1071 (60%) shall be appropriated in fiscal year 2001, eighty percent
1072 (80%) shall be appropriated in fiscal year 2002, and one hundred
1073 percent (100%) shall be appropriated in fiscal year 2003 into the
1074 State Adequate Education Program Fund created in subsection (4).
1075 Until July 1, 2002, such money shall be used by school districts
1076 for the following purposes:

1077 (a) Purchasing, erecting, repairing, equipping,
1078 remodeling and enlarging school buildings and related facilities,
1079 including gymnasiums, auditoriums, lunchrooms, vocational training
1080 buildings, libraries, school barns and garages for transportation
1081 vehicles, school athletic fields and necessary facilities
1082 connected therewith, and purchasing land therefor. Any such
1083 capital improvement project by a school district shall be approved
1084 by the State Board of Education, and based on an approved
1085 long-range plan. The State Board of Education shall promulgate

1086 minimum requirements for the approval of school district capital
1087 expenditure plans.

1088 (b) Providing necessary water, light, heating, air
1089 conditioning, and sewerage facilities for school buildings, and
1090 purchasing land therefor.

1091 (c) Paying debt service on existing capital improvement
1092 debt of the district or refinancing outstanding debt of a district
1093 if such refinancing will result in an interest cost savings to the
1094 district.

1095 (d) From and after October 1, 1997, through June 30,
1096 1998, pursuant to a school district capital expenditure plan
1097 approved by the State Department of Education, a school district
1098 may pledge such funds until July 1, 2002, plus funds provided for
1099 in paragraph (e) of this subsection (5) that are not otherwise
1100 permanently pledged under such paragraph (e) to pay all or a
1101 portion of the debt service on debt issued by the school district
1102 under Sections 37-59-1 through 37-59-45, 37-59-101 through
1103 37-59-115, 37-7-351 through 37-7-359, 37-41-89 through 37-41-99,
1104 37-7-301, 37-7-302 and 37-41-81, Mississippi Code of 1972, or debt
1105 issued by boards of supervisors for agricultural high schools
1106 pursuant to Section 37-27-65, Mississippi Code of 1972, or
1107 lease-purchase contracts entered into pursuant to Section 31-7-13,
1108 Mississippi Code of 1972, or to retire or refinance outstanding
1109 debt of a district, if such pledge is accomplished pursuant to a
1110 written contract or resolution approved and spread upon the
1111 minutes of an official meeting of the district's school board or
1112 board of supervisors. It is the intent of this provision to allow
1113 school districts to irrevocably pledge their Interim School
1114 District Capital Expenditure Fund allotments as a constant stream
1115 of revenue to secure a debt issued under the foregoing code
1116 sections. To allow school districts to make such an irrevocable
1117 pledge, the state shall take all action necessary to ensure that
1118 the amount of a district's Interim School District Capital

1119 Expenditure Fund allotments shall not be reduced below the amount
1120 certified by the department or the district's total allotment
1121 under the Interim Capital Expenditure Fund if fully funded, so
1122 long as such debt remains outstanding.

1123 (e) From and after October 1, 1997, through June 30,
1124 1998, in addition to any other authority a school district may
1125 have, any school district may issue State Aid Capital Improvement
1126 Bonds secured in whole by a continuing annual pledge of any
1127 Mississippi Adequate Education Program funds available to the
1128 district, in an amount not to exceed One Hundred Sixty Dollars
1129 (\$160.00) per pupil based on the latest completed average daily
1130 attendance count certified by the department prior to the issuance
1131 of the bonds. Such State Aid Capital Improvement Bonds may be
1132 issued for the purposes enumerated in subsections (a), (b), (c)
1133 and (g) of this section. Prior to issuing such bonds, the school
1134 board of the district shall adopt a resolution declaring the
1135 necessity for and its intention of issuing such bonds and
1136 borrowing such money, specifying the approximate amount to be so
1137 borrowed, how such money is to be used and how such indebtedness
1138 is to be evidenced. Any capital improvement project financed with
1139 State Aid Capital Improvement Bonds shall be approved by the
1140 department, and based on an approved long-range plan. The State
1141 Board of Education shall promulgate minimum requirements for the
1142 approval of such school district capital expenditure plans. The
1143 State Board of Education shall not approve any capital expenditure
1144 plan for a pledge of funds under this paragraph unless it
1145 determines (i) that the quality of instruction in such district
1146 will not be reduced as a result of this pledge, and (ii) the
1147 district has other revenue available to attain and maintain at
1148 least Level III accreditation.

1149 A district issuing State Aid Capital Improvement Bonds may
1150 pledge for the repayment of such bonds all funds received by the
1151 district from the state, in an amount not to exceed One Hundred

1152 Sixty Dollars (\$160.00) per pupil in average daily attendance in
1153 the school district as set forth above, and not otherwise
1154 permanently pledged under paragraph (d) of this subsection or
1155 under Section 37-61-33(2)(d), Mississippi Code of 1972. The
1156 district's school board shall specify by resolution the amount of
1157 state funds, which are being pledged by the district for the
1158 repayment of the State Aid Capital Improvement Bonds. Once such a
1159 pledge is made to secure the bonds, the district shall notify the
1160 department of such pledge. Upon making such a pledge, the school
1161 district may request the department which may agree to irrevocably
1162 transfer a specified amount or percentage of the district's state
1163 revenue pledged to repay the district's State Aid Capital
1164 Improvement Bonds directly to a state or federally chartered bank
1165 serving as a trustee or paying agent on such bonds for the payment
1166 of all or portion of such State Aid Capital Improvement Bonds.
1167 Such instructions shall be incorporated into a resolution by the
1168 school board for the benefit of holders of the bonds and may
1169 provide that such withholding and transfer of such other available
1170 funds shall be made only upon notification by a trustee or paying
1171 agent on such bonds that the amounts available to pay such bonds
1172 on any payment date will not be sufficient. It is the intent of
1173 this provision to allow school districts to irrevocably pledge a
1174 certain, constant stream of revenue as security for State Aid
1175 Capital Improvement Bonds issued hereunder. To allow school
1176 districts to make such an irrevocable pledge, the state shall take
1177 all action necessary to ensure that the amount of a district's
1178 state revenues up to an amount equal to One Hundred Sixty Dollars
1179 (\$160.00) per pupil as set forth above which have been pledged to
1180 repay debt as set forth herein shall not be reduced so long as any
1181 State Aid Capital Improvement Bonds are outstanding.

1182 Any such State Aid Capital Improvement bonds shall mature as
1183 determined by the district's school bond over a period not to
1184 exceed twenty (20) years. Such bonds shall not bear a greater

1185 overall maximum interest rate to maturity than that allowed in
1186 Section 75-17-101, Mississippi Code of 1972. The further details
1187 and terms of such bonds shall be as determined by the school board
1188 of the district.

1189 The provisions of this subsection shall be cumulative and
1190 supplemental to any existing funding programs or other authority
1191 conferred upon school districts or school boards. Debt of a
1192 school district secured in whole by a pledge of revenue pursuant
1193 to this section shall not be subject to any debt limitation.

1194 For purposes of this paragraph (e), "State Aid Capital
1195 Improvement Bond" shall mean any bond, note, or other certificate
1196 of indebtedness issued by a school district under the provisions
1197 hereof.

1198 This paragraph (e) shall stand repealed from and after June
1199 30, 1998.

1200 (f) As an alternative to the authority granted under
1201 paragraph (e), a school district, in its discretion, may authorize
1202 the State Board of Education to withhold an amount of the
1203 district's adequate education program allotment equal to up to One
1204 Hundred Sixty Dollars (\$160.00) per student in average daily
1205 attendance in the district to be allocated to the State Public
1206 School Building Fund to the credit of such school district. A
1207 school district may choose the option provided under this
1208 paragraph (e) or paragraph (f), but not both. In addition to the
1209 grants made by the state pursuant to Section 37-47-9, a school
1210 district shall be entitled to grants based on the allotments to
1211 the State Public School Building Fund credited to such school
1212 district under this paragraph. This paragraph (f) shall stand
1213 repealed from and after June 30, 1998.

1214 (g) The State Board of Education may authorize the
1215 school district to expend not more than twenty percent (20%) of
1216 its annual allotment of such funds or Twenty Thousand Dollars
1217 (\$20,000.00), whichever is greater, for technology needs of the

1218 school district, including computers, software,
1219 telecommunications, cable television, interactive video, film
1220 low-power television, satellite communications, microwave
1221 communications, technology-based equipment installation and
1222 maintenance, and the training of staff in the use of such
1223 technology-based instruction. Any such technology expenditure
1224 shall be reflected in the local district technology plan approved
1225 by the State Board of Education under Section 37-151-17,
1226 Mississippi Code of 1972.

1227 (h) To the extent a school district has not utilized
1228 twenty percent (20%) of its annual allotment for technology
1229 purposes under paragraph (g), a school district may expend not
1230 more than twenty percent (20%) of its annual allotment or Twenty
1231 Thousand Dollars (\$20,000.00), whichever is greater, for
1232 instructional purposes. The State Board of Education may
1233 authorize a school district to expend more than said twenty
1234 percent (20%) of its annual allotment for instructional purposes
1235 if it determines that such expenditures are needed for
1236 accreditation purposes.

1237 (i) The State Department of Education or the State
1238 Board of Education may require that any project commenced pursuant
1239 to this act with an estimated project cost of more than
1240 Twenty-Five Million Dollars (\$25,000,000.00) be done * * *
1241 pursuant to program management of the process with respect to
1242 design and construction. No project management of the process
1243 with respect to design and construction shall be used for any
1244 project with an estimated project cost of less than Twenty-five
1245 Million Dollars (\$25,000,000.00). Any individuals, partnerships,
1246 companies or other entities acting as a program manager on behalf
1247 of a local school district and performing program management
1248 services for projects covered under this subsection shall be
1249 approved by the State Department of Education.

1250 Any interest accruing on any unexpended balance in the
1251 Interim School District Capital Expenditure Fund shall be invested
1252 by the State Treasurer and placed to the credit of each school
1253 district participating in such fund in its proportionate share.

1254 The provisions of this subsection (5) shall be cumulative and
1255 supplemental to any existing funding programs or other authority
1256 conferred upon school districts or school boards.

1257 **SECTION 4.** This act shall take effect and be in force from
1258 and after July 1, 2004.