

By: Representative Dedeaux

To: Appropriations

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1535

1 AN ACT TO AMEND SECTION 31-3-21, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE A CONTRACTOR WHO SUBMITS A BID FOR A PUBLIC PROJECT IN
3 EXCESS OF \$100,000.00 TO LIST SUBCONTRACTORS WHO WILL WORK UNDER
4 THE CONTRACT; TO AMEND SECTION 31-5-17, MISSISSIPPI CODE OF 1972,
5 TO PROHIBIT THE AWARDING OF STATE CONTRACTS TO CONTRACTORS THAT
6 HAVE PERSONS WHO ARE NOT AMERICAN CITIZENS OR LEGAL ALIENS WHO
7 WILL WORK UNDER THE STATE CONTRACT; TO REQUIRE THAT EVERY PUBLIC
8 OFFICER, CONTRACTOR, OR AGENT WHO ENGAGES IN OR IS IN CHARGE OF
9 THE CONSTRUCTION OF ANY STATE BUILDING OR PUBLIC WORK FOR THE
10 STATE EMPLOY ONLY WORKERS WHO ARE AMERICAN CITIZENS OR LEGAL
11 ALIENS OR WHO HAVE SOME SPECIALTY FOR WHICH AMERICAN CITIZENS OR
12 LEGAL ALIENS CANNOT BE FOUND; TO ASSESS PENALTIES AGAINST THOSE
13 CONTRACTORS WHO VIOLATE THIS REQUIREMENT; TO AMEND SECTION
14 31-7-13, MISSISSIPPI CODE OF 1972, TO REQUIRE A CONTRACTOR WHO
15 SUBMITS A BID FOR A PUBLIC PROJECT IN EXCESS OF \$100,000.00 TO
16 LIST SUBCONTRACTORS WHO WILL WORK UNDER THE CONTRACT; TO PROHIBIT
17 A STATE AGENCY OR GOVERNING AUTHORITY FROM ACCEPTING BIDS IN
18 EXCESS OF \$100,000.00 WITHOUT A LIST OF SUBCONTRACTORS WHO WILL
19 WORK UNDER THE CONTRACT; TO ASSESS PENALTIES AGAINST THOSE
20 CONTRACTORS WHO VIOLATE THE PROVISIONS; TO PROHIBIT THE AWARDING
21 OF STATE CONTRACTS TO CONTRACTORS THAT HAVE PERSONS WHO ARE NOT
22 AMERICAN CITIZENS OR LEGAL ALIENS WHO WILL WORK UNDER THE
23 CONTRACT; TO ALLOW A STATE AGENCY OR GOVERNING AUTHORITY TO USE A
24 PROJECT OR CONSTRUCTION MANAGER ON CERTAIN PUBLIC PROJECTS; TO
25 AMEND SECTION 37-151-7, MISSISSIPPI CODE OF 1972, TO CONFORM TO
26 THE PRECEDING SECTION; AND FOR RELATED PURPOSES.

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

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

30 31-3-21. (1) It shall be unlawful for any person who does
31 not hold a certificate of responsibility issued under this
32 chapter, or a similar certificate issued by another state
33 recognizing such certificate issued by the State of Mississippi,
34 to submit a bid, enter into a contract, or otherwise engage in or
35 continue in this state in the business of a contractor, as defined
36 in this chapter. Any bid which is submitted without a certificate
37 of responsibility number issued under this chapter and without
38 that number appearing on the exterior of the bid envelope, as and
39 if herein required, at the time designated for the opening of such

40 bid, shall not be considered further, and the person or public
41 agency soliciting bids shall not enter into a contract with a
42 contractor submitting a bid in violation of this section. In
43 addition, any person violating this section by knowingly and
44 willfully submitting a bid for projects without holding a
45 certificate of responsibility number issued under this chapter, as
46 and if herein required, at the time of the submission or opening
47 of such bid shall be guilty of a misdemeanor and, upon conviction,
48 shall be punished by a fine of not more than One Thousand Dollars
49 (\$1,000.00), or by imprisonment for not more than six (6) months,
50 or by both such fine and imprisonment.

51 (2) (a) All bids submitted for public or private projects
52 where said bid is in excess of Fifty Thousand Dollars (\$50,000.00)
53 with respect to public projects and in excess of One Hundred
54 Thousand Dollars (\$100,000.00) with respect to private projects
55 shall contain on the outside or exterior of the envelope or
56 container of such bid the contractor's current certificate number,
57 and no bid shall be opened or considered unless such contractor's
58 current certificate number appears on the outside or exterior of
59 said envelope or container, or unless there appears a statement on
60 the outside or exterior of such envelope or container to the
61 effect that the bid enclosed therewith did not exceed Fifty
62 Thousand Dollars (\$50,000.00) with respect to public projects or
63 One Hundred Thousand Dollars (\$100,000.00) with respect to private
64 projects. Any person violating the provisions of this subsection
65 shall be guilty of a misdemeanor and, upon conviction, shall be
66 punished by a fine of not more than One Thousand Dollars
67 (\$1,000.00), or by imprisonment for not more than six (6) months,
68 or by both such fine and imprisonment.

69 (b) All bids submitted for public projects where said
70 bid is in excess of One Hundred Thousand Dollars (\$100,000.00)
71 shall contain a list of subcontractors who will work under the
72 contract.

73 (3) In the letting of public contracts preference shall be
74 given to resident contractors, and a nonresident bidder domiciled
75 in a state having laws granting preference to local contractors
76 shall be awarded Mississippi public contracts only on the same
77 basis as the nonresident bidder's state awards contracts to
78 Mississippi contractors bidding under similar circumstances; and
79 resident contractors actually domiciled in Mississippi, be they
80 corporate, individuals, or partnerships, are to be granted
81 preference over nonresidents in awarding of contracts in the same
82 manner and to the same extent as provided by the laws of the state
83 of domicile of the nonresident. When a nonresident contractor
84 submits a bid for a public project, he shall attach thereto a copy
85 of his resident state's current law pertaining to such state's
86 treatment of nonresident contractors. As used in this section,
87 the term "resident contractors" includes a nonresident person,
88 firm or corporation that has been qualified to do business in this
89 state and has maintained a permanent full-time office in the State
90 of Mississippi for two (2) years prior to January 1, 1986, and the
91 subsidiaries and affiliates of such a person, firm or corporation.
92 Any public agency awarding a contract shall promptly report to the
93 State Tax Commission the following information:

94 (a) The amount of the contract.

95 (b) The name and address of the contractor reviewing
96 the contract.

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

98 (4) In addition to any other penalties provided in this
99 chapter, and upon a finding of a violation of this chapter, the
100 State Board of Contractors may, after notice and hearing, issue an
101 order of abatement directing the contractor to cease all actions
102 constituting violations of this chapter until such time as the
103 contractor complies with Mississippi state law, and to pay to the
104 board a civil penalty to be deposited into the State Board of
105 Contractors' Fund, created in Section 31-3-17, of not more than

106 three percent (3%) of the total contract being performed by the
107 contractor. The funds collected from civil penalty payments shall
108 be used by the State Board of Contractors for enforcement and
109 education.

110 **SECTION 2.** Section 31-5-17, Mississippi Code of 1972, is
111 amended as follows:

112 31-5-17. (1) Every public officer, contractor,
113 superintendent, or agent engaged in or in charge of the
114 construction of any state or public building or public work of any
115 kind for the State of Mississippi or for any board, city
116 commission, governmental agency, or municipality of the State of
117 Mississippi shall employ only workmen and laborers who have
118 actually resided in Mississippi for two years next preceding such
119 employment.

120 (2) No contract shall be awarded to a contractor that has
121 persons who are not American citizens or legal aliens who will
122 work under the state contract. However, a state contract may be
123 awarded to a contractor that has persons who will work under the
124 state contract who have some specialty for which American citizens
125 or legal aliens cannot be found. Every public officer,
126 contractor, superintendent, or agent engaged in or in charge of
127 the construction of any state building or public work of any kind
128 for the State of Mississippi shall employ only workmen and
129 laborers who are American citizens or legal aliens or who have
130 some specialty for which American citizens or legal aliens cannot
131 be found.

132 Any person who violates the provisions of this subsection
133 shall be assessed the following penalties: (a) for the first
134 offense, a civil penalty of One Thousand Dollars (\$1,000.00) for
135 every person who is not an American citizen or legal alien as
136 required; and (b) for any subsequent violation, a contractor shall
137 pay a civil penalty equal to three percent (3%) of the total
138 contract being performed by the contractor. The funds collected

139 from civil penalty payments shall be used by the agency for which
140 the project is being done.

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

143 31-7-13. All agencies and governing authorities shall
144 purchase their commodities and printing; contract for garbage
145 collection or disposal; contract for solid waste collection or
146 disposal; contract for sewage collection or disposal; contract for
147 public construction; and contract for rentals as herein provided.

148 (a) **Bidding procedure for purchases not over \$3,500.00.**
149 Purchases which do not involve an expenditure of more than Three
150 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
151 shipping charges, may be made without advertising or otherwise
152 requesting competitive bids. However, nothing contained in this
153 paragraph (a) shall be construed to prohibit any agency or
154 governing authority from establishing procedures which require
155 competitive bids on purchases of Three Thousand Five Hundred
156 Dollars (\$3,500.00) or less.

157 (b) **Bidding procedure for purchases over \$3,500.00 but**
158 **not over \$15,000.00.** Purchases which involve an expenditure of
159 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
160 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
161 freight and shipping charges may be made from the lowest and best
162 bidder without publishing or posting advertisement for bids,
163 provided at least two (2) competitive written bids have been
164 obtained. Any governing authority purchasing commodities pursuant
165 to this paragraph (b) may authorize its purchasing agent, or his
166 designee, with regard to governing authorities other than
167 counties, or its purchase clerk, or his designee, with regard to
168 counties, to accept the lowest and best competitive written bid.
169 Such authorization shall be made in writing by the governing
170 authority and shall be maintained on file in the primary office of
171 the agency and recorded in the official minutes of the governing

172 authority, as appropriate. The purchasing agent or the purchase
173 clerk, or their designee, as the case may be, and not the
174 governing authority, shall be liable for any penalties and/or
175 damages as may be imposed by law for any act or omission of the
176 purchasing agent or purchase clerk, or their designee,
177 constituting a violation of law in accepting any bid without
178 approval by the governing authority. The term "competitive
179 written bid" shall mean a bid submitted on a bid form furnished by
180 the buying agency or governing authority and signed by authorized
181 personnel representing the vendor, or a bid submitted on a
182 vendor's letterhead or identifiable bid form and signed by
183 authorized personnel representing the vendor. "Competitive" shall
184 mean that the bids are developed based upon comparable
185 identification of the needs and are developed independently and
186 without knowledge of other bids or prospective bids. Bids may be
187 submitted by facsimile, electronic mail or other generally
188 accepted method of information distribution. Bids submitted by
189 electronic transmission shall not require the signature of the
190 vendor's representative unless required by agencies or governing
191 authorities.

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

193 (i) **Publication requirement.** Purchases which
194 involve an expenditure of more than Fifteen Thousand Dollars
195 (\$15,000.00), exclusive of freight and shipping charges, may be
196 made from the lowest and best bidder after advertising for
197 competitive sealed bids once each week for two (2) consecutive
198 weeks in a regular newspaper published in the county or
199 municipality in which such agency or governing authority is
200 located. The date as published for the bid opening shall not be
201 less than seven (7) working days after the last published notice;
202 however, if the purchase involves a construction project in which
203 the estimated cost is in excess of Fifteen Thousand Dollars
204 (\$15,000.00), such bids shall not be opened in less than fifteen

205 (15) working days after the last notice is published and the
206 notice for the purchase of such construction shall be published
207 once each week for two (2) consecutive weeks. The notice of
208 intention to let contracts or purchase equipment shall state the
209 time and place at which bids shall be received, list the contracts
210 to be made or types of equipment or supplies to be purchased, and,
211 if all plans and/or specifications are not published, refer to the
212 plans and/or specifications on file. If there is no newspaper
213 published in the county or municipality, then such notice shall be
214 given by posting same at the courthouse, or for municipalities at
215 the city hall, and at two (2) other public places in the county or
216 municipality, and also by publication once each week for two (2)
217 consecutive weeks in some newspaper having a general circulation
218 in the county or municipality in the above provided manner. On
219 the same date that the notice is submitted to the newspaper for
220 publication, the agency or governing authority involved shall mail
221 written notice to, or provide electronic notification to the main
222 office of the Mississippi Contract Procurement Center that
223 contains the same information as that in the published notice.

224 (ii) **Bidding process amendment procedure.** If all
225 plans and/or specifications are published in the notification,
226 then the plans and/or specifications may not be amended. If all
227 plans and/or specifications are not published in the notification,
228 then amendments to the plans/specifications, bid opening date, bid
229 opening time and place may be made, provided that the agency or
230 governing authority maintains a list of all prospective bidders
231 who are known to have received a copy of the bid documents and all
232 such prospective bidders are sent copies of all amendments. This
233 notification of amendments may be made via mail, facsimile,
234 electronic mail or other generally accepted method of information
235 distribution. No addendum to bid specifications may be issued
236 within two (2) working days of the time established for the
237 receipt of bids unless such addendum also amends the bid opening

238 to a date not less than five (5) working days after the date of
239 the addendum.

240 (iii) **Filing requirement.** In all cases involving
241 governing authorities, before the notice shall be published or
242 posted, the plans or specifications for the construction or
243 equipment being sought shall be filed with the clerk of the board
244 of the governing authority. In addition to these requirements, a
245 bid file shall be established which shall indicate those vendors
246 to whom such solicitations and specifications were issued, and
247 such file shall also contain such information as is pertinent to
248 the bid.

249 (iv) **Specification restrictions.** Specifications
250 pertinent to such bidding shall be written so as not to exclude
251 comparable equipment of domestic manufacture. However, if valid
252 justification is presented, the Department of Finance and
253 Administration or the board of a governing authority may approve a
254 request for specific equipment necessary to perform a specific
255 job. Further, such justification, when placed on the minutes of
256 the board of a governing authority, may serve as authority for
257 that governing authority to write specifications to require a
258 specific item of equipment needed to perform a specific job. In
259 addition to these requirements, from and after July 1, 1990,
260 vendors of relocatable classrooms and the specifications for the
261 purchase of such relocatable classrooms published by local school
262 boards shall meet all pertinent regulations of the State Board of
263 Education, including prior approval of such bid by the State
264 Department of Education.

265 (v) Agencies and governing authorities may
266 establish secure procedures by which bids may be submitted via
267 electronic means.

268 (vi) **Bids in excess of One Hundred Thousand**
269 **Dollars (\$100,000.00).** In addition to other procedures for
270 **purchases over Fifteen Thousand Dollars (\$15,000.00), a contractor**

271 who submits a bid in excess of One Hundred Thousand Dollars
272 (\$100,000.00) shall list the subcontractors who will work under
273 the contract. A state agency or governing authority shall not
274 accept a bid in excess of One Hundred Thousand Dollars
275 (\$100,000.00) without a list of the subcontractors who will work
276 under the contract.

277 The subcontractors listed may not be changed by the
278 contractor without the approval of the agency or governing
279 authority for which the public project is being done. A civil
280 penalty equal to three percent (3%) of the total value of the
281 contract shall be assessed against a contractor who uses any
282 subcontractor other than the subcontractors listed by the
283 contractor during the bidding process. The civil penalty shall be
284 collected by the agency or governing authority for which the work
285 is being done and shall be used by such agency or governing
286 authority.

287 (vii) **Program or construction management.** Any
288 public project with an estimated project cost of more than
289 Twenty-Five Million Dollars (\$25,000,000.00) may be done with
290 program or construction management with respect to design and
291 construction. No program or construction management of the
292 process with respect to design and construction shall be used for
293 any project with an estimated project cost of less than
294 Twenty-five Million Dollars (\$25,000,000.00). Any individuals,
295 partnerships, companies or other entities acting as a program or
296 construction manager on behalf of an agency or governing authority
297 and performing program or construction management services for
298 projects covered under this paragraph shall be approved by the
299 agency or governing authority for which the project is being done.

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

301 (i) **Decision procedure.** Purchases may be made
302 from the lowest and best bidder. In determining the lowest and
303 best bid, freight and shipping charges shall be included.

304 Life-cycle costing, total cost bids, warranties, guaranteed
305 buy-back provisions and other relevant provisions may be included
306 in the best bid calculation. All best bid procedures for state
307 agencies must be in compliance with regulations established by the
308 Department of Finance and Administration. If any governing
309 authority accepts a bid other than the lowest bid actually
310 submitted, it shall place on its minutes detailed calculations and
311 narrative summary showing that the accepted bid was determined to
312 be the lowest and best bid, including the dollar amount of the
313 accepted bid and the dollar amount of the lowest bid. No agency
314 or governing authority shall accept a bid based on items not
315 included in the specifications.

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

322 (e) **Lease-purchase authorization.** For the purposes of
323 this section, the term "equipment" shall mean equipment, furniture
324 and, if applicable, associated software and other applicable
325 direct costs associated with the acquisition. Any lease-purchase
326 of equipment which an agency is not required to lease-purchase
327 under the master lease-purchase program pursuant to Section
328 31-7-10 and any lease-purchase of equipment which a governing
329 authority elects to lease-purchase may be acquired by a
330 lease-purchase agreement under this paragraph (e). Lease-purchase
331 financing may also be obtained from the vendor or from a
332 third-party source after having solicited and obtained at least
333 two (2) written competitive bids, as defined in paragraph (b) of
334 this section, for such financing without advertising for such
335 bids. Solicitation for the bids for financing may occur before or
336 after acceptance of bids for the purchase of such equipment or,

337 where no such bids for purchase are required, at any time before
338 the purchase thereof. No such lease-purchase agreement shall be
339 for an annual rate of interest which is greater than the overall
340 maximum interest rate to maturity on general obligation
341 indebtedness permitted under Section 75-17-101, and the term of
342 such lease-purchase agreement shall not exceed the useful life of
343 equipment covered thereby as determined according to the upper
344 limit of the asset depreciation range (ADR) guidelines for the
345 Class Life Asset Depreciation Range System established by the
346 Internal Revenue Service pursuant to the United States Internal
347 Revenue Code and regulations thereunder as in effect on December
348 31, 1980, or comparable depreciation guidelines with respect to
349 any equipment not covered by ADR guidelines. Any lease-purchase
350 agreement entered into pursuant to this paragraph (e) may contain
351 any of the terms and conditions which a master lease-purchase
352 agreement may contain under the provisions of Section 31-7-10(5),
353 and shall contain an annual allocation dependency clause
354 substantially similar to that set forth in Section 31-7-10(8).
355 Each agency or governing authority entering into a lease-purchase
356 transaction pursuant to this paragraph (e) shall maintain with
357 respect to each such lease-purchase transaction the same
358 information as required to be maintained by the Department of
359 Finance and Administration pursuant to Section 31-7-10(13).
360 However, nothing contained in this section shall be construed to
361 permit agencies to acquire items of equipment with a total
362 acquisition cost in the aggregate of less than Ten Thousand
363 Dollars (\$10,000.00) by a single lease-purchase transaction. All
364 equipment, and the purchase thereof by any lessor, acquired by
365 lease-purchase under this paragraph and all lease-purchase
366 payments with respect thereto shall be exempt from all Mississippi
367 sales, use and ad valorem taxes. Interest paid on any
368 lease-purchase agreement under this section shall be exempt from
369 State of Mississippi income taxation.

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

379 (g) **Construction contract change authorization.** In the
380 event a determination is made by an agency or governing authority
381 after a construction contract is let that changes or modifications
382 to the original contract are necessary or would better serve the
383 purpose of the agency or the governing authority, such agency or
384 governing authority may, in its discretion, order such changes
385 pertaining to the construction that are necessary under the
386 circumstances without the necessity of further public bids;
387 provided that such change shall be made in a commercially
388 reasonable manner and shall not be made to circumvent the public
389 purchasing statutes. In addition to any other authorized person,
390 the architect or engineer hired by an agency or governing
391 authority with respect to any public construction contract shall
392 have the authority, when granted by an agency or governing
393 authority, to authorize changes or modifications to the original
394 contract without the necessity of prior approval of the agency or
395 governing authority when any such change or modification is less
396 than one percent (1%) of the total contract amount. The agency or
397 governing authority may limit the number, manner or frequency of
398 such emergency changes or modifications.

399 (h) **Petroleum purchase alternative.** In addition to
400 other methods of purchasing authorized in this chapter, when any
401 agency or governing authority shall have a need for gas, diesel
402 fuel, oils and/or other petroleum products in excess of the amount

403 set forth in paragraph (a) of this section, such agency or
404 governing authority may purchase the commodity after having
405 solicited and obtained at least two (2) competitive written bids,
406 as defined in paragraph (b) of this section. If two (2)
407 competitive written bids are not obtained, the entity shall comply
408 with the procedures set forth in paragraph (c) of this section.
409 In the event any agency or governing authority shall have
410 advertised for bids for the purchase of gas, diesel fuel, oils and
411 other petroleum products and coal and no acceptable bids can be
412 obtained, such agency or governing authority is authorized and
413 directed to enter into any negotiations necessary to secure the
414 lowest and best contract available for the purchase of such
415 commodities.

416 (i) **Road construction petroleum products price**
417 **adjustment clause authorization.** Any agency or governing
418 authority authorized to enter into contracts for the construction,
419 maintenance, surfacing or repair of highways, roads or streets,
420 may include in its bid proposal and contract documents a price
421 adjustment clause with relation to the cost to the contractor,
422 including taxes, based upon an industry-wide cost index, of
423 petroleum products including asphalt used in the performance or
424 execution of the contract or in the production or manufacture of
425 materials for use in such performance. Such industry-wide index
426 shall be established and published monthly by the Mississippi
427 Department of Transportation with a copy thereof to be mailed,
428 upon request, to the clerks of the governing authority of each
429 municipality and the clerks of each board of supervisors
430 throughout the state. The price adjustment clause shall be based
431 on the cost of such petroleum products only and shall not include
432 any additional profit or overhead as part of the adjustment. The
433 bid proposals or document contract shall contain the basis and
434 methods of adjusting unit prices for the change in the cost of
435 such petroleum products.

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

467 (k) **Governing authority emergency purchase procedure.**
468 If the governing authority, or the governing authority acting

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

485 (1) **Hospital purchase, lease-purchase and lease**
486 **authorization.**

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

492 (ii) In addition to the authority granted in
493 subparagraph (i) of this paragraph (1), the commissioners or board
494 of trustees is authorized to enter into contracts for the lease of
495 equipment or services, or both, which it considers necessary for
496 the proper care of patients if, in its opinion, it is not
497 financially feasible to purchase the necessary equipment or
498 services. Any such contract for the lease of equipment or
499 services executed by the commissioners or board shall not exceed a
500 maximum of five (5) years' duration and shall include a
501 cancellation clause based on unavailability of funds. If such

502 cancellation clause is exercised, there shall be no further
503 liability on the part of the lessee. Any such contract for the
504 lease of equipment or services executed on behalf of the
505 commissioners or board that complies with the provisions of this
506 subparagraph (ii) shall be excepted from the bid requirements set
507 forth in this section.

508 (m) **Exceptions from bidding requirements.** Excepted
509 from bid requirements are:

510 (i) **Purchasing agreements approved by department.**
511 Purchasing agreements, contracts and maximum price regulations
512 executed or approved by the Department of Finance and
513 Administration.

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

525 (iii) **In-house equipment repairs.** Purchases of
526 parts for repairs to equipment, when such repairs are made by
527 personnel of the agency or governing authority; however, entire
528 assemblies, such as engines or transmissions, shall not be
529 included in this exemption when the entire assembly is being
530 replaced instead of being repaired.

531 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
532 of gravel or fill dirt which are to be removed and transported by
533 the purchaser.

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

545 (vi) **Intergovernmental sales and transfers.**
546 Purchases, sales, transfers or trades by governing authorities or
547 state agencies when such purchases, sales, transfers or trades are
548 made by a private treaty agreement or through means of
549 negotiation, from any federal agency or authority, another
550 governing authority or state agency of the State of Mississippi,
551 or any state agency or governing authority of another state.
552 Nothing in this section shall permit such purchases through public
553 auction except as provided for in subparagraph (v) of this
554 section. It is the intent of this section to allow governmental
555 entities to dispose of and/or purchase commodities from other
556 governmental entities at a price that is agreed to by both
557 parties. This shall allow for purchases and/or sales at prices
558 which may be determined to be below the market value if the
559 selling entity determines that the sale at below market value is
560 in the best interest of the taxpayers of the state. Governing
561 authorities shall place the terms of the agreement and any
562 justification on the minutes, and state agencies shall obtain
563 approval from the Department of Finance and Administration, prior
564 to releasing or taking possession of the commodities.

565 (vii) **Perishable supplies or food.** Perishable
566 supplies or foods purchased for use in connection with hospitals,

567 the school lunch programs, homemaking programs and for the feeding
568 of county or municipal prisoners.

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

583 (ix) **Waste disposal facility construction**
584 **contracts.** Construction of incinerators and other facilities for
585 disposal of solid wastes in which products either generated
586 therein, such as steam, or recovered therefrom, such as materials
587 for recycling, are to be sold or otherwise disposed of; however,
588 in constructing such facilities, a governing authority or agency
589 shall publicly issue requests for proposals, advertised for in the
590 same manner as provided herein for seeking bids for public
591 construction projects, concerning the design, construction,
592 ownership, operation and/or maintenance of such facilities,
593 wherein such requests for proposals when issued shall contain
594 terms and conditions relating to price, financial responsibility,
595 technology, environmental compatibility, legal responsibilities
596 and such other matters as are determined by the governing
597 authority or agency to be appropriate for inclusion; and after
598 responses to the request for proposals have been duly received,
599 the governing authority or agency may select the most qualified

600 proposal or proposals on the basis of price, technology and other
601 relevant factors and from such proposals, but not limited to the
602 terms thereof, negotiate and enter contracts with one or more of
603 the persons or firms submitting proposals.

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

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

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

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

623 (xiv) **Library books and other reference materials.**
624 Purchases by libraries or for libraries of books and periodicals;
625 processed film, video cassette tapes, filmstrips and slides;
626 recorded audio tapes, cassettes and diskettes; and any such items
627 as would be used for teaching, research or other information
628 distribution; however, equipment such as projectors, recorders,
629 audio or video equipment, and monitor televisions are not exempt
630 under this subparagraph.

631 (xv) **Unmarked vehicles.** Purchases of unmarked
632 vehicles when such purchases are made in accordance with

633 purchasing regulations adopted by the Department of Finance and
634 Administration pursuant to Section 31-7-9(2).

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

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

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

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

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

658 (xxi) **Certain school district purchases.**
659 Purchases of commodities made by school districts from vendors
660 with which any levying authority of the school district, as
661 defined in Section 37-57-1, has contracted through competitive
662 bidding procedures for purchases of the same commodities.

663 (xxii) **Garbage, solid waste and sewage contracts.**
664 Contracts for garbage collection or disposal, contracts for solid

665 waste collection or disposal and contracts for sewage collection
666 or disposal.

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

673 (xxiv) **Purchases of Mississippi Industries for the**
674 **Blind products.** Purchases made by state agencies or governing
675 authorities involving any item that is manufactured, processed or
676 produced by the Mississippi Industries for the Blind.

677 (xxv) **Purchases of state-adopted textbooks.**
678 Purchases of state-adopted textbooks by public school districts.

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

682 (xxvii) **Used heavy or specialized machinery or**
683 **equipment for installation of soil and water conservation**
684 **practices purchased at auction.** Used heavy or specialized
685 machinery or equipment used for the installation and
686 implementation of soil and water conservation practices or
687 measures purchased subject to the restrictions provided in
688 Sections 69-27-331 through 69-27-341. Any purchase by the State
689 Soil and Water Conservation Commission under the exemption
690 authorized by this subparagraph shall require advance
691 authorization spread upon the minutes of the commission to include
692 the listing of the item or items authorized to be purchased and
693 the maximum bid authorized to be paid for each item or items.

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

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

709 (n) **Term contract authorization.** All contracts for the
710 purchase of:

711 (i) All contracts for the purchase of commodities,
712 equipment and public construction (including, but not limited to,
713 repair and maintenance), may be let for periods of not more than
714 sixty (60) months in advance, subject to applicable statutory
715 provisions prohibiting the letting of contracts during specified
716 periods near the end of terms of office. Term contracts for a
717 period exceeding twenty-four (24) months shall also be subject to
718 ratification or cancellation by governing authority boards taking
719 office subsequent to the governing authority board entering the
720 contract.

721 (ii) Bid proposals and contracts may include price
722 adjustment clauses with relation to the cost to the contractor
723 based upon a nationally published industry-wide or nationally
724 published and recognized cost index. The cost index used in a
725 price adjustment clause shall be determined by the Department of
726 Finance and Administration for the state agencies and by the
727 governing board for governing authorities. The bid proposal and
728 contract documents utilizing a price adjustment clause shall
729 contain the basis and method of adjusting unit prices for the

730 change in the cost of such commodities, equipment and public
731 construction.

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

747 (p) **Electrical utility petroleum-based equipment**
748 **purchase procedure.** When in response to a proper advertisement
749 therefor, no bid firm as to price is submitted to an electric
750 utility for power transformers, distribution transformers, power
751 breakers, reclosers or other articles containing a petroleum
752 product, the electric utility may accept the lowest and best bid
753 therefor although the price is not firm.

754 (q) **Fuel management system bidding procedure.** Any
755 governing authority or agency of the state shall, before
756 contracting for the services and products of a fuel management or
757 fuel access system, enter into negotiations with not fewer than
758 two (2) sellers of fuel management or fuel access systems for
759 competitive written bids to provide the services and products for
760 the systems. In the event that the governing authority or agency
761 cannot locate two (2) sellers of such systems or cannot obtain
762 bids from two (2) sellers of such systems, it shall show proof

763 that it made a diligent, good-faith effort to locate and negotiate
764 with two (2) sellers of such systems. Such proof shall include,
765 but not be limited to, publications of a request for proposals and
766 letters soliciting negotiations and bids. For purposes of this
767 paragraph (q), a fuel management or fuel access system is an
768 automated system of acquiring fuel for vehicles as well as
769 management reports detailing fuel use by vehicles and drivers, and
770 the term "competitive written bid" shall have the meaning as
771 defined in paragraph (b) of this section. Governing authorities
772 and agencies shall be exempt from this process when contracting
773 for the services and products of a fuel management or fuel access
774 systems under the terms of a state contract established by the
775 Office of Purchasing and Travel.

776 (r) **Solid waste contract proposal procedure.** Before
777 entering into any contract for garbage collection or disposal,
778 contract for solid waste collection or disposal or contract for
779 sewage collection or disposal, which involves an expenditure of
780 more than Fifty Thousand Dollars (\$50,000.00), a governing
781 authority or agency shall issue publicly a request for proposals
782 concerning the specifications for such services which shall be
783 advertised for in the same manner as provided in this section for
784 seeking bids for purchases which involve an expenditure of more
785 than the amount provided in paragraph (c) of this section. Any
786 request for proposals when issued shall contain terms and
787 conditions relating to price, financial responsibility,
788 technology, legal responsibilities and other relevant factors as
789 are determined by the governing authority or agency to be
790 appropriate for inclusion; all factors determined relevant by the
791 governing authority or agency or required by this paragraph (r)
792 shall be duly included in the advertisement to elicit proposals.
793 After responses to the request for proposals have been duly
794 received, the governing authority or agency shall select the most
795 qualified proposal or proposals on the basis of price, technology

796 and other relevant factors and from such proposals, but not
797 limited to the terms thereof, negotiate and enter contracts with
798 one or more of the persons or firms submitting proposals. If the
799 governing authority or agency deems none of the proposals to be
800 qualified or otherwise acceptable, the request for proposals
801 process may be reinitiated. Notwithstanding any other provisions
802 of this paragraph, where a county with at least thirty-five
803 thousand (35,000) nor more than forty thousand (40,000)
804 population, according to the 1990 federal decennial census, owns
805 or operates a solid waste landfill, the governing authorities of
806 any other county or municipality may contract with the governing
807 authorities of the county owning or operating the landfill,
808 pursuant to a resolution duly adopted and spread upon the minutes
809 of each governing authority involved, for garbage or solid waste
810 collection or disposal services through contract negotiations.

811 (s) **Minority set aside authorization.** Notwithstanding
812 any provision of this section to the contrary, any agency or
813 governing authority, by order placed on its minutes, may, in its
814 discretion, set aside not more than twenty percent (20%) of its
815 anticipated annual expenditures for the purchase of commodities
816 from minority businesses; however, all such set-aside purchases
817 shall comply with all purchasing regulations promulgated by the
818 Department of Finance and Administration and shall be subject to
819 bid requirements under this section. Set-aside purchases for
820 which competitive bids are required shall be made from the lowest
821 and best minority business bidder. For the purposes of this
822 paragraph, the term "minority business" means a business which is
823 owned by a majority of persons who are United States citizens or
824 permanent resident aliens (as defined by the Immigration and
825 Naturalization Service) of the United States, and who are Asian,
826 Black, Hispanic or Native American, according to the following
827 definitions:

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

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

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

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

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

847 (u) **Contract restrictions.** No agency shall accept a
848 bid from or enter into a contract with a contractor or vendor that
849 has persons who are not American citizens or legal aliens who will
850 work under the contract. However, an agency may accept a bid from
851 or enter into a contract with a contractor or vendor that has
852 persons who will work under the contract who have some specialty
853 for which American citizens or legal aliens cannot be found. The
854 agency shall require contractors and vendors submitting bids to
855 attach an affidavit stating that all persons who will work under
856 the contract are American citizens or legal aliens or have some
857 specialty for which American citizens or legal aliens cannot be
858 found.

859 (v) **Purchase authorization clarification.** Nothing in
860 this section shall be construed as authorizing any purchase not
861 authorized by law.

862 **SECTION 4.** Section 37-151-7, Mississippi Code of 1972, is
863 amended as follows:

864 37-151-7. The annual allocation to each school district for
865 the operation of the adequate education program shall be
866 determined as follows:

867 (1) Computation of the basic amount to be included for
868 current operation in the adequate education program. The
869 following procedure shall be followed in determining the annual
870 allocation to each school district:

871 (a) **Determination of average daily attendance.** During
872 months two (2) and three (3) of the current school year, the
873 average daily attendance of a school district shall be computed,
874 or the average daily attendance for the prior school year shall be
875 used, whichever is greater. For purposes of this calculation,
876 "current" school year shall mean the school year for which
877 appropriations are made by the Legislature, and "prior" school
878 year shall mean the school year immediately preceding the year for
879 which appropriations are made by the Legislature. The district's
880 average daily attendance shall be computed and currently
881 maintained in accordance with regulations promulgated by the State
882 Board of Education.

883 (b) **Determination of base student cost.** The State
884 Board of Education, on or before August 1, with adjusted estimate
885 no later than January 2, shall annually submit to the Legislative
886 Budget Office and the Governor a proposed base student cost
887 adequate to provide the following cost components of educating a
888 pupil in an average school district meeting Level III
889 accreditation standards required by the Commission on School
890 Accreditation: (i) Instructional Cost; (ii) Administrative Cost;
891 (iii) Operation and Maintenance of Plant; and (iv) Ancillary

892 Support Cost. The department shall utilize a statistical
893 methodology which considers such factors as, but not limited to,
894 (i) school size; (ii) assessed valuation per pupil; (iii) the
895 percentage of students receiving free lunch; (iv) the local
896 district maintenance tax levy; (v) other local school district
897 revenues; and (vi) the district's accreditation level, in the
898 selection of the representative Mississippi school districts for
899 which cost information shall be obtained for each of the above
900 listed cost areas.

901 For the instructional cost component, the department shall
902 determine the instructional cost of each of the representative
903 school districts selected above, excluding instructional cost of
904 self-contained special education programs and vocational education
905 programs, and the average daily attendance in the selected school
906 districts. The instructional cost is then totaled and divided by
907 the total average daily attendance for the selected school
908 districts to yield the instructional cost component. For the
909 administrative cost component, the department shall determine the
910 administrative cost of each of the representative school districts
911 selected above, excluding administrative cost of self-contained
912 special education programs and vocational education programs, and
913 the average daily attendance in the selected school districts.
914 The administrative cost is then totaled and divided by the total
915 average daily attendance for the selected school districts to
916 yield the administrative cost component. For the plant and
917 maintenance cost component, the department shall determine the
918 plant and maintenance cost of each of the representative school
919 districts selected above, excluding plant and maintenance cost of
920 self-contained special education programs and vocational education
921 programs, and the average daily attendance in the selected school
922 districts. The plant and maintenance cost is then totaled and
923 divided by the total average daily attendance for the selected
924 school districts to yield the plant and maintenance cost

925 component. For the ancillary support cost component, the
926 department shall determine the ancillary support cost of each of
927 the representative school districts selected above, excluding
928 ancillary support cost of self-contained special education
929 programs and vocational education programs, and the average daily
930 attendance in the selected school districts. The ancillary
931 support cost is then totaled and divided by the total average
932 daily attendance for the selected school districts to yield the
933 ancillary support cost component. The total base cost for each
934 year shall be the sum of the instructional cost component,
935 administrative cost component, plant and maintenance cost
936 component and ancillary support cost component, and any estimated
937 adjustments for additional state requirements as determined by the
938 State Board of Education. Provided, however, that the base
939 student cost in fiscal year 1998 shall be Two Thousand Six Hundred
940 Sixty-four Dollars (\$2,664.00).

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

945 Multiply the average daily attendance of the district by the
946 base student cost as established by the Legislature, which yields
947 the total base program cost for each school district.

948 (d) **Adjustment to the base student cost for at-risk**
949 **pupils.** The amount to be included for at-risk pupil programs for
950 each school district shall be computed as follows: Multiply the
951 base student cost for the appropriate fiscal year as determined
952 under paragraph (b) by five percent (5%), and multiply that
953 product by the number of pupils participating in the federal free
954 school lunch program in such school district, which yields the
955 total adjustment for at-risk pupil programs for such school
956 district.

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

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

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

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

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

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

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

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

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

986 The sum of the items listed above (i) transportation, (ii)
987 vocational or technical education, (iii) special education, (iv)
988 gifted education, (v) alternative school, (vi) extended school

989 year, (vii) university-based, and (viii) bus driver training shall
990 yield the add-on cost for each school district.

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

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

996 (g) **Supplemental grant to school districts.** In
997 addition to the adequate education program grant, the State
998 Department of Education shall annually distribute an additional
999 amount as follows: Multiply the base student cost for the
1000 appropriate fiscal year as determined under paragraph (b) by
1001 thirteen one-hundredths percent (.13%) and multiply that product
1002 by the average daily attendance of each school district. Such
1003 grant shall not be subject to the local revenue requirement
1004 provided in subsection (2).

1005 (2) **Computation of the required local revenue in support of**
1006 **the adequate education program.** The amount that each district
1007 shall provide toward the cost of the adequate education program
1008 shall be calculated as follows:

1009 (a) The State Board of Education shall certify to each
1010 school district that twenty-eight (28) mills, less the estimated
1011 amount of the yield of the School Ad Valorem Tax Reduction Fund
1012 grants as determined by the State Department of Education, is the
1013 millage rate required to provide the district required local
1014 effort for that year, or twenty-seven percent (27%) of the basic
1015 adequate education program cost for such school district as
1016 determined under subsection (c), whichever is a lesser amount. In
1017 the case of an agricultural high school the millage requirement
1018 shall be set at a level which generates an equitable amount per
1019 pupil to be determined by the State Board of Education.

1020 (b) The State Board of Education shall determine (i)
1021 the total assessed valuation of nonexempt property for school

1022 purposes in each school district; (ii) assessed value of exempt
1023 property owned by homeowners aged sixty-five (65) or older or
1024 disabled as defined in Section 27-33-67(2), Mississippi Code of
1025 1972; (iii) the school district's tax loss from exemptions
1026 provided to applicants under the age of sixty-five (65) and not
1027 disabled as defined in Section 27-33-67(1), Mississippi Code of
1028 1972; and (iv) the school district's homestead reimbursement
1029 revenues.

1030 (c) The amount of the total adequate education program
1031 funding which shall be contributed by each school district shall
1032 be the sum of the ad valorem receipts generated by the millage
1033 required under this subsection plus the following local revenue
1034 sources for the appropriate fiscal year which are or may be
1035 available for current expenditure by the school district:

1036 One hundred percent (100%) of Grand Gulf income as prescribed
1037 in Section 27-35-309.

1038 (3) **Computation of the required state effort in support of**
1039 **the adequate education program.**

1040 (a) The required state effort in support of the
1041 adequate education program shall be determined by subtracting the
1042 sum of the required local tax effort as set forth in subsection
1043 (2)(a) of this section and the other local revenue sources as set
1044 forth in subsection (2)(c) of this section in an amount not to
1045 exceed twenty-seven percent (27%) of the total projected adequate
1046 education program cost as set forth in subsection (1)(f) of this
1047 section from the total projected adequate education program cost
1048 as set forth in subsection (1)(f) of this section.

1049 (b) Provided, however, that in fiscal year 1998 and in
1050 the fiscal year in which the adequate education program is fully
1051 funded by the Legislature, any increase in the said state
1052 contribution, including the supplemental grant to school districts
1053 provided under subsection (1)(g), to any district calculated under
1054 this section shall be not less than eight percent (8%) in excess

1055 of the amount received by said district from state funds for the
1056 fiscal year immediately preceding. For purposes of this paragraph
1057 (b), state funds shall include minimum program funds less the
1058 add-on programs, state Uniform Millage Assistance Grant funds,
1059 Education Enhancement Funds appropriated for Uniform Millage
1060 Assistance Grants and state textbook allocations, and State
1061 General Funds allocated for textbooks.

1062 (c) If the appropriation is less than full funding for
1063 fiscal year 2003, allocations for state contributions to school
1064 districts in support of the adequate education program will be
1065 determined by the State Department of Education in the following
1066 manner:

1067 (i) Calculation of the full funding amount under
1068 this chapter, with proportionate reductions as required by the
1069 appropriation level.

1070 (ii) Calculation of the amount equal to the state
1071 funds allocated to school districts for fiscal year 2002 plus the
1072 estimated amount to fund the adequate education program salary
1073 schedule for fiscal year 2003. For purposes of this item (ii),
1074 state funds shall be those described in paragraph (b) and an
1075 amount equal to the allocation for the adequate education program
1076 in fiscal year 2002, plus any additional amount required to
1077 satisfy fiscal year 2003 pledges in accordance with paragraphs
1078 (d), (e) and (f) of subsection (5) of this section. If a school
1079 district's fiscal year 2003 pledge is different than the pledge
1080 amount for fiscal year 2002, the district shall receive an amount
1081 equal to the fiscal year 2003 pledge or the amount of funds
1082 calculated under the adequate education formula for fiscal year
1083 2002 before any pledge guarantee for fiscal year 2002, whichever
1084 is greater. If the pledge is no longer in effect, the district
1085 shall receive the amount of funds calculated under the formula for
1086 fiscal year 2002 before any pledge guarantee for fiscal year 2002.

1087 (iii) The portion of any district's allocation
1088 calculated in item (i) of this paragraph which exceeds amounts as
1089 calculated in item (ii) shall be reduced by an amount not to
1090 exceed twenty-one percent (21%). The amount of funds generated by
1091 this reduction of funds shall be redistributed proportionately
1092 among those districts receiving insufficient funds to meet the
1093 amount calculated in item (ii). In no case may any district
1094 receive funds in an amount greater than the amount that the
1095 district would have received under full funding of the program for
1096 fiscal year 2003.

1097 (d) If the school board of any school district shall
1098 determine that it is not economically feasible or practicable to
1099 operate any school within the district for the full one hundred
1100 eighty (180) days required for a school term of a scholastic year
1101 as required in Section 37-13-63, Mississippi Code of 1972, due to
1102 an enemy attack, a manmade, technological or natural disaster in
1103 which the Governor has declared a disaster emergency under the
1104 laws of this state or the President of the United States has
1105 declared an emergency or major disaster to exist in this state,
1106 said school board may notify the State Department of Education of
1107 such disaster and submit a plan for altering the school term. If
1108 the State Board of Education finds such disaster to be the cause
1109 of the school not operating for the contemplated school term and
1110 that such school was in a school district covered by the
1111 Governor's or President's disaster declaration, it may permit said
1112 school board to operate the schools in its district for less than
1113 one hundred eighty (180) days and, in such case, the State
1114 Department of Education shall not reduce the state contributions
1115 to the adequate education program allotment for such district,
1116 because of the failure to operate said schools for one hundred
1117 eighty (180) days.

1118 (4) If during the year for which adequate education program
1119 funds are appropriated, any school district experiences a three

1120 percent (3%) or greater increase in average daily attendance
1121 during the second and third month over the preceding year's second
1122 and third month, an additional allocation of adequate education
1123 program funds calculated in the following manner shall be granted
1124 to that district, using any additional funds available to the
1125 Department of Education that exceed the amount of funds due to the
1126 school districts under the basic adequate education program
1127 distribution as provided for in this chapter:

1128 (a) Determine the percentage increase in average daily
1129 attendance for the second and third months of the year for which
1130 adequate education program funds are appropriated over the
1131 preceding year's second and third month average daily attendance.

1132 (b) For those districts that have a three percent (3%)
1133 or greater increase as calculated in paragraph (a) of this
1134 subsection, multiply the total increase in students in average
1135 daily attendance for the second and third months of the year for
1136 which adequate education program funds are appropriated over the
1137 preceding year's second and third month average daily attendance
1138 times the base student cost used in the appropriation.

1139 (c) Subtract the percentage of the district's local
1140 contribution arrived at in subsection (2) of this section from the
1141 amount calculated in paragraph (b) of this subsection. The
1142 remainder is the additional allocation in adequate education
1143 program funds for that district.

1144 If the funds available to the Department of Education are not
1145 sufficient to fully fund the additional allocations to school
1146 districts eligible for those allocations, then the department
1147 shall prorate the available funds among the eligible school
1148 districts, using the same percentage of the total funds that the
1149 school district would have received if the allocations were fully
1150 funded.

1151 This subsection (4) shall stand repealed on July 1, 2004.

1152 (5) The Interim School District Capital Expenditure Fund is
1153 hereby established in the State Treasury which shall be used to
1154 distribute any funds specifically appropriated by the Legislature
1155 to such fund to school districts entitled to increased allocations
1156 of state funds under the adequate education program funding
1157 formula prescribed in Sections 37-151-3 through 37-151-7,
1158 Mississippi Code of 1972, until such time as the said adequate
1159 education program is fully funded by the Legislature. The
1160 following percentages of the total state cost of increased
1161 allocations of funds under the adequate education program funding
1162 formula shall be appropriated by the Legislature into the Interim
1163 School District Capital Expenditure Fund to be distributed to all
1164 school districts under the formula: Nine and two-tenths percent
1165 (9.2%) shall be appropriated in fiscal year 1998, twenty percent
1166 (20%) shall be appropriated in fiscal year 1999, forty percent
1167 (40%) shall be appropriated in fiscal year 2000, sixty percent
1168 (60%) shall be appropriated in fiscal year 2001, eighty percent
1169 (80%) shall be appropriated in fiscal year 2002, and one hundred
1170 percent (100%) shall be appropriated in fiscal year 2003 into the
1171 State Adequate Education Program Fund created in subsection (4).
1172 Until July 1, 2002, such money shall be used by school districts
1173 for the following purposes:

1174 (a) Purchasing, erecting, repairing, equipping,
1175 remodeling and enlarging school buildings and related facilities,
1176 including gymnasiums, auditoriums, lunchrooms, vocational training
1177 buildings, libraries, school barns and garages for transportation
1178 vehicles, school athletic fields and necessary facilities
1179 connected therewith, and purchasing land therefor. Any such
1180 capital improvement project by a school district shall be approved
1181 by the State Board of Education, and based on an approved
1182 long-range plan. The State Board of Education shall promulgate
1183 minimum requirements for the approval of school district capital
1184 expenditure plans.

1185 (b) Providing necessary water, light, heating, air
1186 conditioning, and sewerage facilities for school buildings, and
1187 purchasing land therefor.

1188 (c) Paying debt service on existing capital improvement
1189 debt of the district or refinancing outstanding debt of a district
1190 if such refinancing will result in an interest cost savings to the
1191 district.

1192 (d) From and after October 1, 1997, through June 30,
1193 1998, pursuant to a school district capital expenditure plan
1194 approved by the State Department of Education, a school district
1195 may pledge such funds until July 1, 2002, plus funds provided for
1196 in paragraph (e) of this subsection (5) that are not otherwise
1197 permanently pledged under such paragraph (e) to pay all or a
1198 portion of the debt service on debt issued by the school district
1199 under Sections 37-59-1 through 37-59-45, 37-59-101 through
1200 37-59-115, 37-7-351 through 37-7-359, 37-41-89 through 37-41-99,
1201 37-7-301, 37-7-302 and 37-41-81, Mississippi Code of 1972, or debt
1202 issued by boards of supervisors for agricultural high schools
1203 pursuant to Section 37-27-65, Mississippi Code of 1972, or
1204 lease-purchase contracts entered into pursuant to Section 31-7-13,
1205 Mississippi Code of 1972, or to retire or refinance outstanding
1206 debt of a district, if such pledge is accomplished pursuant to a
1207 written contract or resolution approved and spread upon the
1208 minutes of an official meeting of the district's school board or
1209 board of supervisors. It is the intent of this provision to allow
1210 school districts to irrevocably pledge their Interim School
1211 District Capital Expenditure Fund allotments as a constant stream
1212 of revenue to secure a debt issued under the foregoing code
1213 sections. To allow school districts to make such an irrevocable
1214 pledge, the state shall take all action necessary to ensure that
1215 the amount of a district's Interim School District Capital
1216 Expenditure Fund allotments shall not be reduced below the amount
1217 certified by the department or the district's total allotment

1218 under the Interim Capital Expenditure Fund if fully funded, so
1219 long as such debt remains outstanding.

1220 (e) From and after October 1, 1997, through June 30,
1221 1998, in addition to any other authority a school district may
1222 have, any school district may issue State Aid Capital Improvement
1223 Bonds secured in whole by a continuing annual pledge of any
1224 Mississippi Adequate Education Program funds available to the
1225 district, in an amount not to exceed One Hundred Sixty Dollars
1226 (\$160.00) per pupil based on the latest completed average daily
1227 attendance count certified by the department prior to the issuance
1228 of the bonds. Such State Aid Capital Improvement Bonds may be
1229 issued for the purposes enumerated in subsections (a), (b), (c)
1230 and (g) of this section. Prior to issuing such bonds, the school
1231 board of the district shall adopt a resolution declaring the
1232 necessity for and its intention of issuing such bonds and
1233 borrowing such money, specifying the approximate amount to be so
1234 borrowed, how such money is to be used and how such indebtedness
1235 is to be evidenced. Any capital improvement project financed with
1236 State Aid Capital Improvement Bonds shall be approved by the
1237 department, and based on an approved long-range plan. The State
1238 Board of Education shall promulgate minimum requirements for the
1239 approval of such school district capital expenditure plans. The
1240 State Board of Education shall not approve any capital expenditure
1241 plan for a pledge of funds under this paragraph unless it
1242 determines (i) that the quality of instruction in such district
1243 will not be reduced as a result of this pledge, and (ii) the
1244 district has other revenue available to attain and maintain at
1245 least Level III accreditation.

1246 A district issuing State Aid Capital Improvement Bonds may
1247 pledge for the repayment of such bonds all funds received by the
1248 district from the state, in an amount not to exceed One Hundred
1249 Sixty Dollars (\$160.00) per pupil in average daily attendance in
1250 the school district as set forth above, and not otherwise

1251 permanently pledged under paragraph (d) of this subsection or
1252 under Section 37-61-33(2)(d), Mississippi Code of 1972. The
1253 district's school board shall specify by resolution the amount of
1254 state funds, which are being pledged by the district for the
1255 repayment of the State Aid Capital Improvement Bonds. Once such a
1256 pledge is made to secure the bonds, the district shall notify the
1257 department of such pledge. Upon making such a pledge, the school
1258 district may request the department which may agree to irrevocably
1259 transfer a specified amount or percentage of the district's state
1260 revenue pledged to repay the district's State Aid Capital
1261 Improvement Bonds directly to a state or federally chartered bank
1262 serving as a trustee or paying agent on such bonds for the payment
1263 of all or portion of such State Aid Capital Improvement Bonds.
1264 Such instructions shall be incorporated into a resolution by the
1265 school board for the benefit of holders of the bonds and may
1266 provide that such withholding and transfer of such other available
1267 funds shall be made only upon notification by a trustee or paying
1268 agent on such bonds that the amounts available to pay such bonds
1269 on any payment date will not be sufficient. It is the intent of
1270 this provision to allow school districts to irrevocably pledge a
1271 certain, constant stream of revenue as security for State Aid
1272 Capital Improvement Bonds issued hereunder. To allow school
1273 districts to make such an irrevocable pledge, the state shall take
1274 all action necessary to ensure that the amount of a district's
1275 state revenues up to an amount equal to One Hundred Sixty Dollars
1276 (\$160.00) per pupil as set forth above which have been pledged to
1277 repay debt as set forth herein shall not be reduced so long as any
1278 State Aid Capital Improvement Bonds are outstanding.

1279 Any such State Aid Capital Improvement bonds shall mature as
1280 determined by the district's school bond over a period not to
1281 exceed twenty (20) years. Such bonds shall not bear a greater
1282 overall maximum interest rate to maturity than that allowed in
1283 Section 75-17-101, Mississippi Code of 1972. The further details

1284 and terms of such bonds shall be as determined by the school board
1285 of the district.

1286 The provisions of this subsection shall be cumulative and
1287 supplemental to any existing funding programs or other authority
1288 conferred upon school districts or school boards. Debt of a
1289 school district secured in whole by a pledge of revenue pursuant
1290 to this section shall not be subject to any debt limitation.

1291 For purposes of this paragraph (e), "State Aid Capital
1292 Improvement Bond" shall mean any bond, note, or other certificate
1293 of indebtedness issued by a school district under the provisions
1294 hereof.

1295 This paragraph (e) shall stand repealed from and after June
1296 30, 1998.

1297 (f) As an alternative to the authority granted under
1298 paragraph (e), a school district, in its discretion, may authorize
1299 the State Board of Education to withhold an amount of the
1300 district's adequate education program allotment equal to up to One
1301 Hundred Sixty Dollars (\$160.00) per student in average daily
1302 attendance in the district to be allocated to the State Public
1303 School Building Fund to the credit of such school district. A
1304 school district may choose the option provided under this
1305 paragraph (e) or paragraph (f), but not both. In addition to the
1306 grants made by the state pursuant to Section 37-47-9, a school
1307 district shall be entitled to grants based on the allotments to
1308 the State Public School Building Fund credited to such school
1309 district under this paragraph. This paragraph (f) shall stand
1310 repealed from and after June 30, 1998.

1311 (g) The State Board of Education may authorize the
1312 school district to expend not more than twenty percent (20%) of
1313 its annual allotment of such funds or Twenty Thousand Dollars
1314 (\$20,000.00), whichever is greater, for technology needs of the
1315 school district, including computers, software,
1316 telecommunications, cable television, interactive video, film

1317 low-power television, satellite communications, microwave
1318 communications, technology-based equipment installation and
1319 maintenance, and the training of staff in the use of such
1320 technology-based instruction. Any such technology expenditure
1321 shall be reflected in the local district technology plan approved
1322 by the State Board of Education under Section 37-151-17,
1323 Mississippi Code of 1972.

1324 (h) To the extent a school district has not utilized
1325 twenty percent (20%) of its annual allotment for technology
1326 purposes under paragraph (g), a school district may expend not
1327 more than twenty percent (20%) of its annual allotment or Twenty
1328 Thousand Dollars (\$20,000.00), whichever is greater, for
1329 instructional purposes. The State Board of Education may
1330 authorize a school district to expend more than said twenty
1331 percent (20%) of its annual allotment for instructional purposes
1332 if it determines that such expenditures are needed for
1333 accreditation purposes.

1334 (i) The State Department of Education or the State
1335 Board of Education may require that any project commenced pursuant
1336 to this act with an estimated project cost of more than
1337 Twenty-five Million Dollars (\$25,000,000.00) be done * * *
1338 pursuant to program or construction management of the process with
1339 respect to design and construction. No program or construction
1340 management of the process with respect to design and construction
1341 shall be used for any project with an estimated project cost of
1342 less than Twenty-five Million Dollars (\$25,000,000.00). Any
1343 individuals, partnerships, companies or other entities acting as a
1344 program or construction manager on behalf of a local school
1345 district and performing program or construction management
1346 services for projects covered under this subsection shall be
1347 approved by the State Department of Education.

1348 Any interest accruing on any unexpended balance in the
1349 Interim School District Capital Expenditure Fund shall be invested

1350 by the State Treasurer and placed to the credit of each school
1351 district participating in such fund in its proportionate share.

1352 The provisions of this subsection (5) shall be cumulative and
1353 supplemental to any existing funding programs or other authority
1354 conferred upon school districts or school boards.

1355 **SECTION 5.** This act shall take effect and be in force from
1356 and after July 1, 2004.