

By: Representative Dedeaux

To: Appropriations

HOUSE BILL NO. 1535

1 AN ACT TO AMEND SECTION 31-3-21, MISSISSIPPI CODE OF 1972, TO
 2 REQUIRE PERSONS SUBMITTING BIDS ON PUBLIC CONSTRUCTION PROJECTS
 3 OVER \$100,000.00 TO USE THE BIDS OF SUBCONTRACTORS WHO PAY THE
 4 PERSONS WHO WILL WORK UNDER THE CONTRACT HEALTH INSURANCE,
 5 RETIREMENT BENEFITS AND THE MOST RECENT AVERAGE ANNUAL WAGE; TO
 6 REQUIRE CONTRACTORS WHO SUBMIT A BID IN EXCESS OF \$100,000.00 TO
 7 LIST SUBCONTRACTORS WHO WILL WORK UNDER THE CONTRACT; TO PROHIBIT
 8 STATE AGENCIES FROM ACCEPTING BIDS IN EXCESS OF \$100,000.00
 9 WITHOUT A LIST OF SUBCONTRACTORS WHO WILL WORK UNDER THE CONTRACT;
 10 TO REQUIRE A CONTRACTOR WHO SUBMITS A BID ON PUBLIC PROJECTS TO
 11 HAVE A POLICY THAT PROHIBITS THE USE OF ILLEGAL DRUGS BY THE
 12 PERSONS WORKING UNDER THE CONTRACT; TO REQUIRE STATE AGENCIES AND
 13 GOVERNING AUTHORITIES TO REJECT BIDS FROM A CONTRACTOR WHO DOES
 14 NOT HAVE A POLICY THAT PROHIBITS THE USE OF ILLEGAL DRUGS BY THE
 15 PERSONS WORKING UNDER THE CONTRACT ON CERTAIN CONTRACTS; AN ACT TO
 16 AMEND SECTION 31-5-17, MISSISSIPPI CODE OF 1972, TO PROHIBIT THE
 17 AWARDING OF STATE CONTRACTS TO CONTRACTORS THAT HAVE PERSONS WHO
 18 ARE NOT AMERICAN CITIZENS OR LEGAL ALIENS WHO WILL WORK UNDER THE
 19 STATE CONTRACT; TO REQUIRE THAT EVERY PUBLIC OFFICER, CONTRACTOR,
 20 OR AGENT WHO ENGAGES IN OR IS IN CHARGE OF THE CONSTRUCTION OF ANY
 21 STATE BUILDING OR PUBLIC WORK FOR THE STATE EMPLOY ONLY WORKERS
 22 WHO ARE AMERICAN CITIZENS OR LEGAL ALIENS OR WHO HAVE SOME
 23 SPECIALTY FOR WHICH AMERICAN CITIZENS OR LEGAL ALIENS CANNOT BE
 24 FOUND; TO ASSESS PENALTIES AGAINST THOSE CONTRACTORS WHO VIOLATE
 25 THIS REQUIREMENT; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF
 26 1972, TO REQUIRE PERSONS SUBMITTING BIDS ON PUBLIC CONSTRUCTION
 27 PROJECTS OVER \$100,000.00 TO USE THE BIDS OF SUBCONTRACTORS WHO
 28 PAY THE PERSONS WHO WILL WORK UNDER THE CONTRACT HEALTH INSURANCE,
 29 RETIREMENT BENEFITS AND THE MOST RECENT AVERAGE ANNUAL WAGE; TO
 30 REQUIRE THE CONTRACTORS TO FILE A MONTHLY CERTIFIED PAYROLL; TO
 31 REQUIRE CONTRACTORS WHO SUBMIT A BID IN EXCESS OF \$100,000.00 TO
 32 LIST SUBCONTRACTORS WHO WILL WORK UNDER THE CONTRACT; TO PROHIBIT
 33 STATE AGENCIES FROM ACCEPTING BIDS IN EXCESS OF \$100,000.00
 34 WITHOUT A LIST OF SUBCONTRACTORS WHO WILL WORK UNDER THE CONTRACT;
 35 TO PROVIDE PENALTIES FOR FAILURE TO FILE A CERTIFIED PAYROLL AS
 36 REQUIRED; TO ALLOW THE AGENCY OR GOVERNING AUTHORITY TO USE THE
 37 COLLECTED CIVIL PENALTIES FOR ENFORCEMENT; TO ALLOW A STATE AGENCY
 38 OR GOVERNING AUTHORITY TO USE A PROJECT MANAGER ON CERTAIN PUBLIC
 39 PROJECTS; TO AMEND 37-151-7, MISSISSIPPI CODE OF 1972, TO CONFORM
 40 TO THE PRECEDING SECTION; AND FOR RELATED PURPOSES.

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

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

44 31-3-21. (1) It shall be unlawful for any person who does
 45 not hold a certificate of responsibility issued under this
 46 chapter, or a similar certificate issued by another state

47 recognizing such certificate issued by the State of Mississippi,
48 to submit a bid, enter into a contract, or otherwise engage in or
49 continue in this state in the business of a contractor, as defined
50 in this chapter. Any bid which is submitted without a certificate
51 of responsibility number issued under this chapter and without
52 that number appearing on the exterior of the bid envelope, as and
53 if herein required, at the time designated for the opening of such
54 bid, shall not be considered further, and the person or public
55 agency soliciting bids shall not enter into a contract with a
56 contractor submitting a bid in violation of this section. In
57 addition, any person violating this section by knowingly and
58 willfully submitting a bid for projects without holding a
59 certificate of responsibility number issued under this chapter, as
60 and if herein required, at the time of the submission or opening
61 of such bid shall be guilty of a misdemeanor and, upon conviction,
62 shall be punished by a fine of not more than One Thousand Dollars
63 (\$1,000.00), or by imprisonment for not more than six (6) months,
64 or by both such fine and imprisonment.

65 (2) (a) All bids submitted for public or private projects
66 where said bid is in excess of Fifty Thousand Dollars (\$50,000.00)
67 with respect to public projects and in excess of One Hundred
68 Thousand Dollars (\$100,000.00) with respect to private projects
69 shall contain on the outside or exterior of the envelope or
70 container of such bid the contractor's current certificate number,
71 and no bid shall be opened or considered unless such contractor's
72 current certificate number appears on the outside or exterior of
73 said envelope or container, or unless there appears a statement on
74 the outside or exterior of such envelope or container to the
75 effect that the bid enclosed therewith did not exceed Fifty
76 Thousand Dollars (\$50,000.00) with respect to public projects or
77 One Hundred Thousand Dollars (\$100,000.00) with respect to private
78 projects. Any person violating the provisions of this subsection
79 shall be guilty of a misdemeanor and, upon conviction, shall be

80 punished by a fine of not more than One Thousand Dollars
81 (\$1,000.00), or by imprisonment for not more than six (6) months,
82 or by both such fine and imprisonment.

83 (b) All bids submitted for public construction projects
84 in excess of One Hundred Thousand Dollars (\$100,000.00) shall
85 include bids that use subcontractors who pay to the persons who
86 will work under the contract (i) health insurance and retirement,
87 and (ii) the most recently published average annual wage of the
88 state or the most recently published average annual wage of the
89 county in which the project is located as determined by the
90 Mississippi Employment Security Commission. In addition, all bids
91 submitted for public projects where said bid is in excess of One
92 Hundred Thousand Dollars (\$100,000.00) shall contain a list of
93 subcontractors who will work under the contract.

94 (3) In the letting of public contracts preference shall be
95 given to resident contractors, and a nonresident bidder domiciled
96 in a state having laws granting preference to local contractors
97 shall be awarded Mississippi public contracts only on the same
98 basis as the nonresident bidder's state awards contracts to
99 Mississippi contractors bidding under similar circumstances; and
100 resident contractors actually domiciled in Mississippi, be they
101 corporate, individuals, or partnerships, are to be granted
102 preference over nonresidents in awarding of contracts in the same
103 manner and to the same extent as provided by the laws of the state
104 of domicile of the nonresident. When a nonresident contractor
105 submits a bid for a public project, he shall attach thereto a copy
106 of his resident state's current law pertaining to such state's
107 treatment of nonresident contractors. As used in this section,
108 the term "resident contractors" includes a nonresident person,
109 firm or corporation that has been qualified to do business in this
110 state and has maintained a permanent full-time office in the State
111 of Mississippi for two (2) years prior to January 1, 1986, and the
112 subsidiaries and affiliates of such a person, firm or corporation.

113 Any public agency awarding a contract shall promptly report to the
114 State Tax Commission the following information:

115 (a) The amount of the contract.

116 (b) The name and address of the contractor reviewing
117 the contract.

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

119 (4) All persons submitting bids on public projects shall
120 have a policy that prohibits the use of illegal drugs by the
121 persons working under the contract.

122 (5) In addition to any other penalties provided in this
123 chapter, and upon a finding of a violation of this chapter, the
124 State Board of Contractors may, after notice and hearing, issue an
125 order of abatement directing the contractor to cease all actions
126 constituting violations of this chapter until such time as the
127 contractor complies with Mississippi state law, and to pay to the
128 board a civil penalty to be deposited into the State Board of
129 Contractors' Fund, created in Section 31-3-17, of not more than
130 three percent (3%) of the total contract being performed by the
131 contractor. The funds collected from civil penalty payments shall
132 be used by the State Board of Contractors for enforcement and
133 education.

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

136 31-5-17. (1) Every public officer, contractor,
137 superintendent, or agent engaged in or in charge of the
138 construction of any state or public building or public work of any
139 kind for the State of Mississippi or for any board, city
140 commission, governmental agency, or municipality of the State of
141 Mississippi shall employ only workmen and laborers who have
142 actually resided in Mississippi for two years next preceding such
143 employment.

144 (2) No contract shall be awarded to a contractor that has
145 persons who are not American citizens or legal aliens who will

146 work under the state contract. However, a state contract may be
147 awarded to a contractor that has persons who will work under the
148 state contract who have some specialty for which American citizens
149 or legal aliens cannot be found. Every public officer,
150 contractor, superintendent, or agent engaged in or in charge of
151 the construction of any state building or public work of any kind
152 for the State of Mississippi shall employ only workmen and
153 laborers who are American citizens or legal aliens or who have
154 some specialty for which American citizens or legal aliens cannot
155 be found.

156 Any person who violates the provisions of this subsection
157 shall be assessed the following penalties: (a) for the first
158 offense, a civil penalty of One Thousand Dollars (\$1,000.00) for
159 every person who is not an American citizen or legal alien as
160 required; and (b) for any subsequent violation, a contractor shall
161 pay a civil penalty equal to three percent (3%) of the total
162 contract being performed by the contractor. The funds collected
163 from civil penalty payments shall be used by the agency for which
164 the project is being done.

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

167 31-7-13. All agencies and governing authorities shall
168 purchase their commodities and printing; contract for garbage
169 collection or disposal; contract for solid waste collection or
170 disposal; contract for sewage collection or disposal; contract for
171 public construction; and contract for rentals as herein provided.

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

179 competitive bids on purchases of Three Thousand Five Hundred
180 Dollars (\$3,500.00) or less.

181 (b) **Bidding procedure for purchases over \$3,500.00 but**
182 **not over \$15,000.00.** Purchases which involve an expenditure of
183 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
184 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
185 freight and shipping charges may be made from the lowest and best
186 bidder without publishing or posting advertisement for bids,
187 provided at least two (2) competitive written bids have been
188 obtained. Any governing authority purchasing commodities pursuant
189 to this paragraph (b) may authorize its purchasing agent, or his
190 designee, with regard to governing authorities other than
191 counties, or its purchase clerk, or his designee, with regard to
192 counties, to accept the lowest and best competitive written bid.
193 Such authorization shall be made in writing by the governing
194 authority and shall be maintained on file in the primary office of
195 the agency and recorded in the official minutes of the governing
196 authority, as appropriate. The purchasing agent or the purchase
197 clerk, or their designee, as the case may be, and not the
198 governing authority, shall be liable for any penalties and/or
199 damages as may be imposed by law for any act or omission of the
200 purchasing agent or purchase clerk, or their designee,
201 constituting a violation of law in accepting any bid without
202 approval by the governing authority. The term "competitive
203 written bid" shall mean a bid submitted on a bid form furnished by
204 the buying agency or governing authority and signed by authorized
205 personnel representing the vendor, or a bid submitted on a
206 vendor's letterhead or identifiable bid form and signed by
207 authorized personnel representing the vendor. "Competitive" shall
208 mean that the bids are developed based upon comparable
209 identification of the needs and are developed independently and
210 without knowledge of other bids or prospective bids. Bids may be
211 submitted by facsimile, electronic mail or other generally

212 accepted method of information distribution. Bids submitted by
213 electronic transmission shall not require the signature of the
214 vendor's representative unless required by agencies or governing
215 authorities.

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

217 (i) **Publication requirement.** Purchases which
218 involve an expenditure of more than Fifteen Thousand Dollars
219 (\$15,000.00), exclusive of freight and shipping charges, may be
220 made from the lowest and best bidder after advertising for
221 competitive sealed bids once each week for two (2) consecutive
222 weeks in a regular newspaper published in the county or
223 municipality in which such agency or governing authority is
224 located. The date as published for the bid opening shall not be
225 less than seven (7) working days after the last published notice;
226 however, if the purchase involves a construction project in which
227 the estimated cost is in excess of Fifteen Thousand Dollars
228 (\$15,000.00), such bids shall not be opened in less than fifteen
229 (15) working days after the last notice is published and the
230 notice for the purchase of such construction shall be published
231 once each week for two (2) consecutive weeks. The notice of
232 intention to let contracts or purchase equipment shall state the
233 time and place at which bids shall be received, list the contracts
234 to be made or types of equipment or supplies to be purchased, and,
235 if all plans and/or specifications are not published, refer to the
236 plans and/or specifications on file. If there is no newspaper
237 published in the county or municipality, then such notice shall be
238 given by posting same at the courthouse, or for municipalities at
239 the city hall, and at two (2) other public places in the county or
240 municipality, and also by publication once each week for two (2)
241 consecutive weeks in some newspaper having a general circulation
242 in the county or municipality in the above provided manner. On
243 the same date that the notice is submitted to the newspaper for
244 publication, the agency or governing authority involved shall mail

245 written notice to, or provide electronic notification to the main
246 office of the Mississippi Contract Procurement Center that
247 contains the same information as that in the published notice.

248 (ii) **Bidding process amendment procedure.** If all
249 plans and/or specifications are published in the notification,
250 then the plans and/or specifications may not be amended. If all
251 plans and/or specifications are not published in the notification,
252 then amendments to the plans/specifications, bid opening date, bid
253 opening time and place may be made, provided that the agency or
254 governing authority maintains a list of all prospective bidders
255 who are known to have received a copy of the bid documents and all
256 such prospective bidders are sent copies of all amendments. This
257 notification of amendments may be made via mail, facsimile,
258 electronic mail or other generally accepted method of information
259 distribution. No addendum to bid specifications may be issued
260 within two (2) working days of the time established for the
261 receipt of bids unless such addendum also amends the bid opening
262 to a date not less than five (5) working days after the date of
263 the addendum.

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

273 (iv) **Specification restrictions.** Specifications
274 pertinent to such bidding shall be written so as not to exclude
275 comparable equipment of domestic manufacture. However, if valid
276 justification is presented, the Department of Finance and
277 Administration or the board of a governing authority may approve a

278 request for specific equipment necessary to perform a specific
279 job. Further, such justification, when placed on the minutes of
280 the board of a governing authority, may serve as authority for
281 that governing authority to write specifications to require a
282 specific item of equipment needed to perform a specific job. In
283 addition to these requirements, from and after July 1, 1990,
284 vendors of relocatable classrooms and the specifications for the
285 purchase of such relocatable classrooms published by local school
286 boards shall meet all pertinent regulations of the State Board of
287 Education, including prior approval of such bid by the State
288 Department of Education.

289 (v) Agencies and governing authorities may
290 establish secure procedures by which bids may be submitted via
291 electronic means.

292 (vi) **Bids in excess of One Hundred Thousand**
293 **Dollars (\$100,000.00)**. In addition to other procedures for
294 purchases over Fifteen Thousand Dollars (\$15,000.00), a contractor
295 who submits a bid in excess of One Hundred Thousand Dollars
296 (\$100,000.00) shall list the subcontractors who will work under
297 the contract. A state agency shall not accept a bid in excess of
298 One Hundred Thousand Dollars (\$100,000.00) without a list of the
299 subcontractors who will work under the contract.

300 The subcontractors listed may not be changed by the
301 contractor without the approval of the agency or governing
302 authority for which the public project is being done. A civil
303 penalty equal to three percent (3%) of the total value of the
304 contract shall be assessed against a contractor who uses any
305 subcontractor other than the subcontractors listed by the
306 contractor during the bidding process. The civil penalty shall be
307 collected by the agency or governing authority for which the work
308 is being done and shall be used by such agency or governing
309 authority.

310 (vii) **Program management.** Any public project with
311 an estimated project cost of more than Twenty-Five Million Dollars
312 (\$25,000,000.00) may be done with program management with respect
313 to design and construction. No program management of the process
314 with respect to design and construction shall be used for any
315 project with an estimated project cost of less than Twenty-five
316 Million Dollars (\$25,000,000.00). Any individuals, partnerships,
317 companies or other entities acting as a program manager on behalf
318 of an agency or governing authority and performing program
319 management services for projects covered under this paragraph
320 shall be approved by the agency or governing authority for which
321 the project is being done.

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

323 (i) **Decision procedure.** Purchases may be made
324 from the lowest and best bidder. In determining the lowest and
325 best bid, freight and shipping charges shall be included.
326 Life-cycle costing, total cost bids, warranties, guaranteed
327 buy-back provisions and other relevant provisions may be included
328 in the best bid calculation. All best bid procedures for state
329 agencies must be in compliance with regulations established by the
330 Department of Finance and Administration. If any governing
331 authority accepts a bid other than the lowest bid actually
332 submitted, it shall place on its minutes detailed calculations and
333 narrative summary showing that the accepted bid was determined to
334 be the lowest and best bid, including the dollar amount of the
335 accepted bid and the dollar amount of the lowest bid. No agency
336 or governing authority shall accept a bid based on items not
337 included in the specifications.

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

339 If the lowest and best bid is not more than ten percent (10%)
340 above the amount of funds allocated for a public construction or
341 renovation project, then the agency or governing authority shall

342 be permitted to negotiate with the lowest bidder in order to enter
343 into a contract for an amount not to exceed the funds allocated.

344 (iii) Construction projects over \$100,000.00. The
345 lowest and best bid for construction projects over One Hundred
346 Thousand Dollars (\$100,000.00) shall include bids of which
347 contractors, in calculating the bid submitted to the agency or
348 governing authority, use subcontractors who pay to the persons who
349 will work under the contract (a) health insurance and retirement,
350 and (b) the most recently published average annual wage of the
351 state or the most recently published average annual wage of the
352 county in which the project is located as determined by the
353 Mississippi Employment Security Commission. The agency or
354 governing authority shall reject bids from contractors who do not
355 submit bids or hire subcontractors as required in this
356 subparagraph.

357 The agency or governing authority shall require contractors
358 who will work under the contract to file a monthly payroll to the
359 agency or governing authority with an affidavit signed under oath
360 certifying the correctness and authenticity of the payroll. The
361 agency or governing authority may randomly inspect the correctness
362 of the payroll.

363 Failure by a contractor to file a payroll as required in this
364 subparagraph shall result in the following penalties: (a) the
365 agency or governing authority may not pay the contractor for the
366 month following the month in which a payroll was not filed, (b)
367 the contractor shall pay civil penalty equal to ten percent (10%)
368 of the total contract being performed by the contractor. The
369 penalties collected may be used by the agency or governing
370 authority to enforce the requirements of this subparagraph.

371 The requirements in this subparagraph shall be in addition to
372 any other requirements for construction projects.

373 (e) **Lease-purchase authorization.** For the purposes of
374 this section, the term "equipment" shall mean equipment, furniture

375 and, if applicable, associated software and other applicable
376 direct costs associated with the acquisition. Any lease-purchase
377 of equipment which an agency is not required to lease-purchase
378 under the master lease-purchase program pursuant to Section
379 31-7-10 and any lease-purchase of equipment which a governing
380 authority elects to lease-purchase may be acquired by a
381 lease-purchase agreement under this paragraph (e). Lease-purchase
382 financing may also be obtained from the vendor or from a
383 third-party source after having solicited and obtained at least
384 two (2) written competitive bids, as defined in paragraph (b) of
385 this section, for such financing without advertising for such
386 bids. Solicitation for the bids for financing may occur before or
387 after acceptance of bids for the purchase of such equipment or,
388 where no such bids for purchase are required, at any time before
389 the purchase thereof. No such lease-purchase agreement shall be
390 for an annual rate of interest which is greater than the overall
391 maximum interest rate to maturity on general obligation
392 indebtedness permitted under Section 75-17-101, and the term of
393 such lease-purchase agreement shall not exceed the useful life of
394 equipment covered thereby as determined according to the upper
395 limit of the asset depreciation range (ADR) guidelines for the
396 Class Life Asset Depreciation Range System established by the
397 Internal Revenue Service pursuant to the United States Internal
398 Revenue Code and regulations thereunder as in effect on December
399 31, 1980, or comparable depreciation guidelines with respect to
400 any equipment not covered by ADR guidelines. Any lease-purchase
401 agreement entered into pursuant to this paragraph (e) may contain
402 any of the terms and conditions which a master lease-purchase
403 agreement may contain under the provisions of Section 31-7-10(5),
404 and shall contain an annual allocation dependency clause
405 substantially similar to that set forth in Section 31-7-10(8).
406 Each agency or governing authority entering into a lease-purchase
407 transaction pursuant to this paragraph (e) shall maintain with

408 respect to each such lease-purchase transaction the same
409 information as required to be maintained by the Department of
410 Finance and Administration pursuant to Section 31-7-10(13).
411 However, nothing contained in this section shall be construed to
412 permit agencies to acquire items of equipment with a total
413 acquisition cost in the aggregate of less than Ten Thousand
414 Dollars (\$10,000.00) by a single lease-purchase transaction. All
415 equipment, and the purchase thereof by any lessor, acquired by
416 lease-purchase under this paragraph and all lease-purchase
417 payments with respect thereto shall be exempt from all Mississippi
418 sales, use and ad valorem taxes. Interest paid on any
419 lease-purchase agreement under this section shall be exempt from
420 State of Mississippi income taxation.

421 (f) **Alternate bid authorization.** When necessary to
422 ensure ready availability of commodities for public works and the
423 timely completion of public projects, no more than two (2)
424 alternate bids may be accepted by a governing authority for
425 commodities. No purchases may be made through use of such
426 alternate bids procedure unless the lowest and best bidder cannot
427 deliver the commodities contained in his bid. In that event,
428 purchases of such commodities may be made from one (1) of the
429 bidders whose bid was accepted as an alternate.

430 (g) **Construction contract change authorization.** In the
431 event a determination is made by an agency or governing authority
432 after a construction contract is let that changes or modifications
433 to the original contract are necessary or would better serve the
434 purpose of the agency or the governing authority, such agency or
435 governing authority may, in its discretion, order such changes
436 pertaining to the construction that are necessary under the
437 circumstances without the necessity of further public bids;
438 provided that such change shall be made in a commercially
439 reasonable manner and shall not be made to circumvent the public
440 purchasing statutes. In addition to any other authorized person,

441 the architect or engineer hired by an agency or governing
442 authority with respect to any public construction contract shall
443 have the authority, when granted by an agency or governing
444 authority, to authorize changes or modifications to the original
445 contract without the necessity of prior approval of the agency or
446 governing authority when any such change or modification is less
447 than one percent (1%) of the total contract amount. The agency or
448 governing authority may limit the number, manner or frequency of
449 such emergency changes or modifications.

450 (h) **Petroleum purchase alternative.** In addition to
451 other methods of purchasing authorized in this chapter, when any
452 agency or governing authority shall have a need for gas, diesel
453 fuel, oils and/or other petroleum products in excess of the amount
454 set forth in paragraph (a) of this section, such agency or
455 governing authority may purchase the commodity after having
456 solicited and obtained at least two (2) competitive written bids,
457 as defined in paragraph (b) of this section. If two (2)
458 competitive written bids are not obtained, the entity shall comply
459 with the procedures set forth in paragraph (c) of this section.
460 In the event any agency or governing authority shall have
461 advertised for bids for the purchase of gas, diesel fuel, oils and
462 other petroleum products and coal and no acceptable bids can be
463 obtained, such agency or governing authority is authorized and
464 directed to enter into any negotiations necessary to secure the
465 lowest and best contract available for the purchase of such
466 commodities.

467 (i) **Road construction petroleum products price**
468 **adjustment clause authorization.** Any agency or governing
469 authority authorized to enter into contracts for the construction,
470 maintenance, surfacing or repair of highways, roads or streets,
471 may include in its bid proposal and contract documents a price
472 adjustment clause with relation to the cost to the contractor,
473 including taxes, based upon an industry-wide cost index, of

474 petroleum products including asphalt used in the performance or
475 execution of the contract or in the production or manufacture of
476 materials for use in such performance. Such industry-wide index
477 shall be established and published monthly by the Mississippi
478 Department of Transportation with a copy thereof to be mailed,
479 upon request, to the clerks of the governing authority of each
480 municipality and the clerks of each board of supervisors
481 throughout the state. The price adjustment clause shall be based
482 on the cost of such petroleum products only and shall not include
483 any additional profit or overhead as part of the adjustment. The
484 bid proposals or document contract shall contain the basis and
485 methods of adjusting unit prices for the change in the cost of
486 such petroleum products.

487 (j) **State agency emergency purchase procedure.** If the
488 governing board or the executive head, or his designee, of any
489 agency of the state shall determine that an emergency exists in
490 regard to the purchase of any commodities or repair contracts, so
491 that the delay incident to giving opportunity for competitive
492 bidding would be detrimental to the interests of the state, then
493 the provisions herein for competitive bidding shall not apply and
494 the head of such agency shall be authorized to make the purchase
495 or repair. Total purchases so made shall only be for the purpose
496 of meeting needs created by the emergency situation. In the event
497 such executive head is responsible to an agency board, at the
498 meeting next following the emergency purchase, documentation of
499 the purchase, including a description of the commodity purchased,
500 the purchase price thereof and the nature of the emergency shall
501 be presented to the board and placed on the minutes of the board
502 of such agency. The head of such agency, or his designee, shall,
503 at the earliest possible date following such emergency purchase,
504 file with the Department of Finance and Administration (i) a
505 statement explaining the conditions and circumstances of the
506 emergency, which shall include a detailed description of the

507 events leading up to the situation and the negative impact to the
508 entity if the purchase is made following the statutory
509 requirements set forth in paragraph (a), (b) or (c) of this
510 section, and (ii) a certified copy of the appropriate minutes of
511 the board of such agency, if applicable. On or before September 1
512 of each year, the State Auditor shall prepare and deliver to the
513 Senate Fees, Salaries and Administration Committee, the House Fees
514 and Salaries of Public Officers Committee and the Joint
515 Legislative Budget Committee a report containing a list of all
516 state agency emergency purchases and supporting documentation for
517 each emergency purchases.

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

519 If the governing authority, or the governing authority acting
520 through its designee, shall determine that an emergency exists in
521 regard to the purchase of any commodities or repair contracts, so
522 that the delay incident to giving opportunity for competitive
523 bidding would be detrimental to the interest of the governing
524 authority, then the provisions herein for competitive bidding
525 shall not apply and any officer or agent of such governing
526 authority having general or special authority therefor in making
527 such purchase or repair shall approve the bill presented therefor,
528 and he shall certify in writing thereon from whom such purchase
529 was made, or with whom such a repair contract was made. At the
530 board meeting next following the emergency purchase or repair
531 contract, documentation of the purchase or repair contract,
532 including a description of the commodity purchased, the price
533 thereof and the nature of the emergency shall be presented to the
534 board and shall be placed on the minutes of the board of such
535 governing authority.

536 (l) **Hospital purchase, lease-purchase and lease**
537 **authorization.**

538 (i) The commissioners or board of trustees of any
539 public hospital may contract with such lowest and best bidder for

540 the purchase or lease-purchase of any commodity under a contract
541 of purchase or lease-purchase agreement whose obligatory payment
542 terms do not exceed five (5) years.

543 (ii) In addition to the authority granted in
544 subparagraph (i) of this paragraph (1), the commissioners or board
545 of trustees is authorized to enter into contracts for the lease of
546 equipment or services, or both, which it considers necessary for
547 the proper care of patients if, in its opinion, it is not
548 financially feasible to purchase the necessary equipment or
549 services. Any such contract for the lease of equipment or
550 services executed by the commissioners or board shall not exceed a
551 maximum of five (5) years' duration and shall include a
552 cancellation clause based on unavailability of funds. If such
553 cancellation clause is exercised, there shall be no further
554 liability on the part of the lessee. Any such contract for the
555 lease of equipment or services executed on behalf of the
556 commissioners or board that complies with the provisions of this
557 subparagraph (ii) shall be excepted from the bid requirements set
558 forth in this section.

559 (m) **Exceptions from bidding requirements.** Excepted
560 from bid requirements are:

561 (i) **Purchasing agreements approved by department.**
562 Purchasing agreements, contracts and maximum price regulations
563 executed or approved by the Department of Finance and
564 Administration.

565 (ii) **Outside equipment repairs.** Repairs to
566 equipment, when such repairs are made by repair facilities in the
567 private sector; however, engines, transmissions, rear axles and/or
568 other such components shall not be included in this exemption when
569 replaced as a complete unit instead of being repaired and the need
570 for such total component replacement is known before disassembly
571 of the component; however, invoices identifying the equipment,
572 specific repairs made, parts identified by number and name,

573 supplies used in such repairs, and the number of hours of labor
574 and costs therefor shall be required for the payment for such
575 repairs.

576 (iii) **In-house equipment repairs.** Purchases of
577 parts for repairs to equipment, when such repairs are made by
578 personnel of the agency or governing authority; however, entire
579 assemblies, such as engines or transmissions, shall not be
580 included in this exemption when the entire assembly is being
581 replaced instead of being repaired.

582 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
583 of gravel or fill dirt which are to be removed and transported by
584 the purchaser.

585 (v) **Governmental equipment auctions.** Motor
586 vehicles or other equipment purchased from a federal agency or
587 authority, another governing authority or state agency of the
588 State of Mississippi, or any governing authority or state agency
589 of another state at a public auction held for the purpose of
590 disposing of such vehicles or other equipment. Any purchase by a
591 governing authority under the exemption authorized by this
592 subparagraph (v) shall require advance authorization spread upon
593 the minutes of the governing authority to include the listing of
594 the item or items authorized to be purchased and the maximum bid
595 authorized to be paid for each item or items.

596 (vi) **Intergovernmental sales and transfers.**
597 Purchases, sales, transfers or trades by governing authorities or
598 state agencies when such purchases, sales, transfers or trades are
599 made by a private treaty agreement or through means of
600 negotiation, from any federal agency or authority, another
601 governing authority or state agency of the State of Mississippi,
602 or any state agency or governing authority of another state.
603 Nothing in this section shall permit such purchases through public
604 auction except as provided for in subparagraph (v) of this
605 section. It is the intent of this section to allow governmental

606 entities to dispose of and/or purchase commodities from other
607 governmental entities at a price that is agreed to by both
608 parties. This shall allow for purchases and/or sales at prices
609 which may be determined to be below the market value if the
610 selling entity determines that the sale at below market value is
611 in the best interest of the taxpayers of the state. Governing
612 authorities shall place the terms of the agreement and any
613 justification on the minutes, and state agencies shall obtain
614 approval from the Department of Finance and Administration, prior
615 to releasing or taking possession of the commodities.

616 (vii) **Perishable supplies or food.** Perishable
617 supplies or foods purchased for use in connection with hospitals,
618 the school lunch programs, homemaking programs and for the feeding
619 of county or municipal prisoners.

620 (viii) **Single source items.** Noncompetitive items
621 available from one (1) source only. In connection with the
622 purchase of noncompetitive items only available from one (1)
623 source, a certification of the conditions and circumstances
624 requiring the purchase shall be filed by the agency with the
625 Department of Finance and Administration and by the governing
626 authority with the board of the governing authority. Upon receipt
627 of that certification the Department of Finance and Administration
628 or the board of the governing authority, as the case may be, may,
629 in writing, authorize the purchase, which authority shall be noted
630 on the minutes of the body at the next regular meeting thereafter.
631 In those situations, a governing authority is not required to
632 obtain the approval of the Department of Finance and
633 Administration.

634 (ix) **Waste disposal facility construction**
635 **contracts.** Construction of incinerators and other facilities for
636 disposal of solid wastes in which products either generated
637 therein, such as steam, or recovered therefrom, such as materials
638 for recycling, are to be sold or otherwise disposed of; however,

639 in constructing such facilities, a governing authority or agency
640 shall publicly issue requests for proposals, advertised for in the
641 same manner as provided herein for seeking bids for public
642 construction projects, concerning the design, construction,
643 ownership, operation and/or maintenance of such facilities,
644 wherein such requests for proposals when issued shall contain
645 terms and conditions relating to price, financial responsibility,
646 technology, environmental compatibility, legal responsibilities
647 and such other matters as are determined by the governing
648 authority or agency to be appropriate for inclusion; and after
649 responses to the request for proposals have been duly received,
650 the governing authority or agency may select the most qualified
651 proposal or proposals on the basis of price, technology and other
652 relevant factors and from such proposals, but not limited to the
653 terms thereof, negotiate and enter contracts with one or more of
654 the persons or firms submitting proposals.

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

658 (xi) **Information technology products.** Purchases
659 of information technology products made by governing authorities
660 under the provisions of purchase schedules, or contracts executed
661 or approved by the Mississippi Department of Information
662 Technology Services and designated for use by governing
663 authorities.

664 (xii) **Energy efficiency services and equipment.**
665 Energy efficiency services and equipment acquired by school
666 districts, community and junior colleges, institutions of higher
667 learning and state agencies or other applicable governmental
668 entities on a shared-savings, lease or lease-purchase basis
669 pursuant to Section 31-7-14.

670 (xiii) **Municipal electrical utility system fuel.**
671 Purchases of coal and/or natural gas by municipally-owned electric

672 power generating systems that have the capacity to use both coal
673 and natural gas for the generation of electric power.

674 (xiv) **Library books and other reference materials.**

675 Purchases by libraries or for libraries of books and periodicals;
676 processed film, video cassette tapes, filmstrips and slides;
677 recorded audio tapes, cassettes and diskettes; and any such items
678 as would be used for teaching, research or other information
679 distribution; however, equipment such as projectors, recorders,
680 audio or video equipment, and monitor televisions are not exempt
681 under this subparagraph.

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

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

688 (xvii) **Multichannel interactive video systems.**
689 From and after July 1, 1990, contracts by Mississippi Authority
690 for Educational Television with any private educational
691 institution or private nonprofit organization whose purposes are
692 educational in regard to the construction, purchase, lease or
693 lease-purchase of facilities and equipment and the employment of
694 personnel for providing multichannel interactive video systems
695 (ITSF) in the school districts of this state.

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

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

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

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

714 (xxii) **Garbage, solid waste and sewage contracts.**
715 Contracts for garbage collection or disposal, contracts for solid
716 waste collection or disposal and contracts for sewage collection
717 or disposal.

718 (xxiii) **Municipal water tank maintenance**
719 **contracts.** Professional maintenance program contracts for the
720 repair or maintenance of municipal water tanks, which provide
721 professional services needed to maintain municipal water storage
722 tanks for a fixed annual fee for a duration of two (2) or more
723 years.

724 (xxiv) **Purchases of Mississippi Industries for the**
725 **Blind products.** Purchases made by state agencies or governing
726 authorities involving any item that is manufactured, processed or
727 produced by the Mississippi Industries for the Blind.

728 (xxv) **Purchases of state-adopted textbooks.**
729 Purchases of state-adopted textbooks by public school districts.

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

733 (xxvii) **Used heavy or specialized machinery or**
734 **equipment for installation of soil and water conservation**
735 **practices purchased at auction.** Used heavy or specialized
736 machinery or equipment used for the installation and
737 implementation of soil and water conservation practices or

738 measures purchased subject to the restrictions provided in
739 Sections 69-27-331 through 69-27-341. Any purchase by the State
740 Soil and Water Conservation Commission under the exemption
741 authorized by this subparagraph shall require advance
742 authorization spread upon the minutes of the commission to include
743 the listing of the item or items authorized to be purchased and
744 the maximum bid authorized to be paid for each item or items.

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

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

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

749 **cooperative purchasing agreements.** Purchases made by certified
750 purchasing offices of state agencies or governing authorities
751 under cooperative purchasing agreements previously approved by the
752 Office of Purchasing and Travel and established by or for any
753 municipality, county, parish or state government or the federal
754 government, provided that the notification to potential
755 contractors includes a clause that sets forth the availability of
756 the cooperative purchasing agreement to other governmental
757 entities. Such purchases shall only be made if the use of the
758 cooperative purchasing agreements is determined to be in the best
759 interest of the government entity.

760 (n) **Term contract authorization.** All contracts for the
761 purchase of:

762 (i) All contracts for the purchase of commodities,
763 equipment and public construction (including, but not limited to,
764 repair and maintenance), may be let for periods of not more than
765 sixty (60) months in advance, subject to applicable statutory
766 provisions prohibiting the letting of contracts during specified
767 periods near the end of terms of office. Term contracts for a
768 period exceeding twenty-four (24) months shall also be subject to
769 ratification or cancellation by governing authority boards taking

770 office subsequent to the governing authority board entering the
771 contract.

772 (ii) Bid proposals and contracts may include price
773 adjustment clauses with relation to the cost to the contractor
774 based upon a nationally published industry-wide or nationally
775 published and recognized cost index. The cost index used in a
776 price adjustment clause shall be determined by the Department of
777 Finance and Administration for the state agencies and by the
778 governing board for governing authorities. The bid proposal and
779 contract documents utilizing a price adjustment clause shall
780 contain the basis and method of adjusting unit prices for the
781 change in the cost of such commodities, equipment and public
782 construction.

783 (o) **Purchase law violation prohibition and vendor**
784 **penalty.** No contract or purchase as herein authorized shall be
785 made for the purpose of circumventing the provisions of this
786 section requiring competitive bids, nor shall it be lawful for any
787 person or concern to submit individual invoices for amounts within
788 those authorized for a contract or purchase where the actual value
789 of the contract or commodity purchased exceeds the authorized
790 amount and the invoices therefor are split so as to appear to be
791 authorized as purchases for which competitive bids are not
792 required. Submission of such invoices shall constitute a
793 misdemeanor punishable by a fine of not less than Five Hundred
794 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
795 or by imprisonment for thirty (30) days in the county jail, or
796 both such fine and imprisonment. In addition, the claim or claims
797 submitted shall be forfeited.

798 (p) **Electrical utility petroleum-based equipment**
799 **purchase procedure.** When in response to a proper advertisement
800 therefor, no bid firm as to price is submitted to an electric
801 utility for power transformers, distribution transformers, power
802 breakers, reclosers or other articles containing a petroleum

803 product, the electric utility may accept the lowest and best bid
804 therefor although the price is not firm.

805 (q) **Fuel management system bidding procedure.** Any
806 governing authority or agency of the state shall, before
807 contracting for the services and products of a fuel management or
808 fuel access system, enter into negotiations with not fewer than
809 two (2) sellers of fuel management or fuel access systems for
810 competitive written bids to provide the services and products for
811 the systems. In the event that the governing authority or agency
812 cannot locate two (2) sellers of such systems or cannot obtain
813 bids from two (2) sellers of such systems, it shall show proof
814 that it made a diligent, good-faith effort to locate and negotiate
815 with two (2) sellers of such systems. Such proof shall include,
816 but not be limited to, publications of a request for proposals and
817 letters soliciting negotiations and bids. For purposes of this
818 paragraph (q), a fuel management or fuel access system is an
819 automated system of acquiring fuel for vehicles as well as
820 management reports detailing fuel use by vehicles and drivers, and
821 the term "competitive written bid" shall have the meaning as
822 defined in paragraph (b) of this section. Governing authorities
823 and agencies shall be exempt from this process when contracting
824 for the services and products of a fuel management or fuel access
825 systems under the terms of a state contract established by the
826 Office of Purchasing and Travel.

827 (r) **Solid waste contract proposal procedure.** Before
828 entering into any contract for garbage collection or disposal,
829 contract for solid waste collection or disposal or contract for
830 sewage collection or disposal, which involves an expenditure of
831 more than Fifty Thousand Dollars (\$50,000.00), a governing
832 authority or agency shall issue publicly a request for proposals
833 concerning the specifications for such services which shall be
834 advertised for in the same manner as provided in this section for
835 seeking bids for purchases which involve an expenditure of more

836 than the amount provided in paragraph (c) of this section. Any
837 request for proposals when issued shall contain terms and
838 conditions relating to price, financial responsibility,
839 technology, legal responsibilities and other relevant factors as
840 are determined by the governing authority or agency to be
841 appropriate for inclusion; all factors determined relevant by the
842 governing authority or agency or required by this paragraph (r)
843 shall be duly included in the advertisement to elicit proposals.
844 After responses to the request for proposals have been duly
845 received, the governing authority or agency shall select the most
846 qualified proposal or proposals on the basis of price, technology
847 and other relevant factors and from such proposals, but not
848 limited to the terms thereof, negotiate and enter contracts with
849 one or more of the persons or firms submitting proposals. If the
850 governing authority or agency deems none of the proposals to be
851 qualified or otherwise acceptable, the request for proposals
852 process may be reinitiated. Notwithstanding any other provisions
853 of this paragraph, where a county with at least thirty-five
854 thousand (35,000) nor more than forty thousand (40,000)
855 population, according to the 1990 federal decennial census, owns
856 or operates a solid waste landfill, the governing authorities of
857 any other county or municipality may contract with the governing
858 authorities of the county owning or operating the landfill,
859 pursuant to a resolution duly adopted and spread upon the minutes
860 of each governing authority involved, for garbage or solid waste
861 collection or disposal services through contract negotiations.

862 (s) **Minority set aside authorization.** Notwithstanding
863 any provision of this section to the contrary, any agency or
864 governing authority, by order placed on its minutes, may, in its
865 discretion, set aside not more than twenty percent (20%) of its
866 anticipated annual expenditures for the purchase of commodities
867 from minority businesses; however, all such set-aside purchases
868 shall comply with all purchasing regulations promulgated by the

869 Department of Finance and Administration and shall be subject to
870 bid requirements under this section. Set-aside purchases for
871 which competitive bids are required shall be made from the lowest
872 and best minority business bidder. For the purposes of this
873 paragraph, the term "minority business" means a business which is
874 owned by a majority of persons who are United States citizens or
875 permanent resident aliens (as defined by the Immigration and
876 Naturalization Service) of the United States, and who are Asian,
877 Black, Hispanic or Native American, according to the following
878 definitions:

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

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

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

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

890 (t) **Construction punch list restriction.** The
891 architect, engineer or other representative designated by the
892 agency or governing authority that is contracting for public
893 construction or renovation may prepare and submit to the
894 contractor only one (1) preliminary punch list of items that do
895 not meet the contract requirements at the time of substantial
896 completion and one (1) final list immediately before final
897 completion and final payment.

898 (u) **Contract restrictions.** No agency shall accept a
899 bid from or enter into a contract with a contractor or vendor that
900 has persons who are not American citizens or legal aliens who will
901 work under the contract. However, an agency may accept a bid from

902 or enter into a contract with a contractor or vendor that has
903 persons who will work under the contract who have some specialty
904 for which American citizens or legal aliens cannot be found. The
905 agency shall require contractors and vendors submitting bids to
906 attach an affidavit stating that all persons who will work under
907 the contract are American citizens or legal aliens or have some
908 specialty for which American citizens or legal aliens cannot be
909 found.

910 (v) Purchase authorization clarification. Nothing in
911 this section shall be construed as authorizing any purchase not
912 authorized by law.

913 (w) Drug policy requirement. Any agency or governing
914 authority shall reject bids on public projects from contractors
915 who do not have a policy that prohibits the use of illegal drugs
916 by the persons working under the contract.

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

919 37-151-7. The annual allocation to each school district for
920 the operation of the adequate education program shall be
921 determined as follows:

922 (1) Computation of the basic amount to be included for
923 current operation in the adequate education program. The
924 following procedure shall be followed in determining the annual
925 allocation to each school district:

926 (a) **Determination of average daily attendance.** During
927 months two (2) and three (3) of the current school year, the
928 average daily attendance of a school district shall be computed,
929 or the average daily attendance for the prior school year shall be
930 used, whichever is greater. For purposes of this calculation,
931 "current" school year shall mean the school year for which
932 appropriations are made by the Legislature, and "prior" school
933 year shall mean the school year immediately preceding the year for
934 which appropriations are made by the Legislature. The district's

935 average daily attendance shall be computed and currently
936 maintained in accordance with regulations promulgated by the State
937 Board of Education.

938 (b) **Determination of base student cost.** The State
939 Board of Education, on or before August 1, with adjusted estimate
940 no later than January 2, shall annually submit to the Legislative
941 Budget Office and the Governor a proposed base student cost
942 adequate to provide the following cost components of educating a
943 pupil in an average school district meeting Level III
944 accreditation standards required by the Commission on School
945 Accreditation: (i) Instructional Cost; (ii) Administrative Cost;
946 (iii) Operation and Maintenance of Plant; and (iv) Ancillary
947 Support Cost. The department shall utilize a statistical
948 methodology which considers such factors as, but not limited to,
949 (i) school size; (ii) assessed valuation per pupil; (iii) the
950 percentage of students receiving free lunch; (iv) the local
951 district maintenance tax levy; (v) other local school district
952 revenues; and (vi) the district's accreditation level, in the
953 selection of the representative Mississippi school districts for
954 which cost information shall be obtained for each of the above
955 listed cost areas.

956 For the instructional cost component, the department shall
957 determine the instructional cost of each of the representative
958 school districts selected above, excluding instructional cost of
959 self-contained special education programs and vocational education
960 programs, and the average daily attendance in the selected school
961 districts. The instructional cost is then totaled and divided by
962 the total average daily attendance for the selected school
963 districts to yield the instructional cost component. For the
964 administrative cost component, the department shall determine the
965 administrative cost of each of the representative school districts
966 selected above, excluding administrative cost of self-contained
967 special education programs and vocational education programs, and

968 the average daily attendance in the selected school districts.
969 The administrative cost is then totaled and divided by the total
970 average daily attendance for the selected school districts to
971 yield the administrative cost component. For the plant and
972 maintenance cost component, the department shall determine the
973 plant and maintenance cost of each of the representative school
974 districts selected above, excluding plant and maintenance cost of
975 self-contained special education programs and vocational education
976 programs, and the average daily attendance in the selected school
977 districts. The plant and maintenance cost is then totaled and
978 divided by the total average daily attendance for the selected
979 school districts to yield the plant and maintenance cost
980 component. For the ancillary support cost component, the
981 department shall determine the ancillary support cost of each of
982 the representative school districts selected above, excluding
983 ancillary support cost of self-contained special education
984 programs and vocational education programs, and the average daily
985 attendance in the selected school districts. The ancillary
986 support cost is then totaled and divided by the total average
987 daily attendance for the selected school districts to yield the
988 ancillary support cost component. The total base cost for each
989 year shall be the sum of the instructional cost component,
990 administrative cost component, plant and maintenance cost
991 component and ancillary support cost component, and any estimated
992 adjustments for additional state requirements as determined by the
993 State Board of Education. Provided, however, that the base
994 student cost in fiscal year 1998 shall be Two Thousand Six Hundred
995 Sixty-four Dollars (\$2,664.00).

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

1000 Multiply the average daily attendance of the district by the
1001 base student cost as established by the Legislature, which yields
1002 the total base program cost for each school district.

1003 (d) **Adjustment to the base student cost for at-risk**
1004 **pupils.** The amount to be included for at-risk pupil programs for
1005 each school district shall be computed as follows: Multiply the
1006 base student cost for the appropriate fiscal year as determined
1007 under paragraph (b) by five percent (5%), and multiply that
1008 product by the number of pupils participating in the federal free
1009 school lunch program in such school district, which yields the
1010 total adjustment for at-risk pupil programs for such school
1011 district.

1012 (e) **Add-on program cost.** The amount to be allocated to
1013 school districts in addition to the adequate education program
1014 cost for add-on programs for each school district shall be
1015 computed as follows:

1016 (i) Transportation cost shall be the amount
1017 allocated to such school district for the operational support of
1018 the district transportation system from state funds.

1019 (ii) Vocational or technical education program
1020 cost shall be the amount allocated to such school district from
1021 state funds for the operational support of such programs.

1022 (iii) Special education program cost shall be the
1023 amount allocated to such school district from state funds for the
1024 operational support of such programs.

1025 (iv) Gifted education program cost shall be the
1026 amount allocated to such school district from state funds for the
1027 operational support of such programs.

1028 (v) Alternative school program cost shall be the
1029 amount allocated to such school district from state funds for the
1030 operational support of such programs.

1031 (vi) Extended school year programs shall be the
1032 amount allocated to school districts for those programs authorized
1033 by law which extend beyond the normal school year.

1034 (vii) University-based programs shall be the
1035 amount allocated to school districts for those university-based
1036 programs for handicapped children as defined and provided for in
1037 Section 37-23-131 et seq., Mississippi Code of 1972.

1038 (viii) Bus driver training programs shall be the
1039 amount provided for those driver training programs as provided for
1040 in Section 37-41-1, Mississippi Code of 1972.

1041 The sum of the items listed above (i) transportation, (ii)
1042 vocational or technical education, (iii) special education, (iv)
1043 gifted education, (v) alternative school, (vi) extended school
1044 year, (vii) university-based, and (viii) bus driver training shall
1045 yield the add-on cost for each school district.

1046 (f) **Total projected adequate education program cost.**
1047 The total Mississippi Adequate Education Program Cost shall be the
1048 sum of the total basic adequate education program cost (paragraph
1049 (c)), and the adjustment to the base student cost for at-risk
1050 pupils (paragraph (d)) for each school district.

1051 (g) **Supplemental grant to school districts.** In
1052 addition to the adequate education program grant, the State
1053 Department of Education shall annually distribute an additional
1054 amount as follows: Multiply the base student cost for the
1055 appropriate fiscal year as determined under paragraph (b) by
1056 thirteen one-hundredths percent (.13%) and multiply that product
1057 by the average daily attendance of each school district. Such
1058 grant shall not be subject to the local revenue requirement
1059 provided in subsection (2).

1060 (2) **Computation of the required local revenue in support of**
1061 **the adequate education program.** The amount that each district
1062 shall provide toward the cost of the adequate education program
1063 shall be calculated as follows:

1064 (a) The State Board of Education shall certify to each
1065 school district that twenty-eight (28) mills, less the estimated
1066 amount of the yield of the School Ad Valorem Tax Reduction Fund
1067 grants as determined by the State Department of Education, is the
1068 millage rate required to provide the district required local
1069 effort for that year, or twenty-seven percent (27%) of the basic
1070 adequate education program cost for such school district as
1071 determined under subsection (c), whichever is a lesser amount. In
1072 the case of an agricultural high school the millage requirement
1073 shall be set at a level which generates an equitable amount per
1074 pupil to be determined by the State Board of Education.

1075 (b) The State Board of Education shall determine (i)
1076 the total assessed valuation of nonexempt property for school
1077 purposes in each school district; (ii) assessed value of exempt
1078 property owned by homeowners aged sixty-five (65) or older or
1079 disabled as defined in Section 27-33-67(2), Mississippi Code of
1080 1972; (iii) the school district's tax loss from exemptions
1081 provided to applicants under the age of sixty-five (65) and not
1082 disabled as defined in Section 27-33-67(1), Mississippi Code of
1083 1972; and (iv) the school district's homestead reimbursement
1084 revenues.

1085 (c) The amount of the total adequate education program
1086 funding which shall be contributed by each school district shall
1087 be the sum of the ad valorem receipts generated by the millage
1088 required under this subsection plus the following local revenue
1089 sources for the appropriate fiscal year which are or may be
1090 available for current expenditure by the school district:

1091 One hundred percent (100%) of Grand Gulf income as prescribed
1092 in Section 27-35-309.

1093 **(3) Computation of the required state effort in support of**
1094 **the adequate education program.**

1095 (a) The required state effort in support of the
1096 adequate education program shall be determined by subtracting the

1097 sum of the required local tax effort as set forth in subsection
1098 (2)(a) of this section and the other local revenue sources as set
1099 forth in subsection (2)(c) of this section in an amount not to
1100 exceed twenty-seven percent (27%) of the total projected adequate
1101 education program cost as set forth in subsection (1)(f) of this
1102 section from the total projected adequate education program cost
1103 as set forth in subsection (1)(f) of this section.

1104 (b) Provided, however, that in fiscal year 1998 and in
1105 the fiscal year in which the adequate education program is fully
1106 funded by the Legislature, any increase in the said state
1107 contribution, including the supplemental grant to school districts
1108 provided under subsection (1)(g), to any district calculated under
1109 this section shall be not less than eight percent (8%) in excess
1110 of the amount received by said district from state funds for the
1111 fiscal year immediately preceding. For purposes of this paragraph
1112 (b), state funds shall include minimum program funds less the
1113 add-on programs, state Uniform Millage Assistance Grant funds,
1114 Education Enhancement Funds appropriated for Uniform Millage
1115 Assistance Grants and state textbook allocations, and State
1116 General Funds allocated for textbooks.

1117 (c) If the appropriation is less than full funding for
1118 fiscal year 2003, allocations for state contributions to school
1119 districts in support of the adequate education program will be
1120 determined by the State Department of Education in the following
1121 manner:

1122 (i) Calculation of the full funding amount under
1123 this chapter, with proportionate reductions as required by the
1124 appropriation level.

1125 (ii) Calculation of the amount equal to the state
1126 funds allocated to school districts for fiscal year 2002 plus the
1127 estimated amount to fund the adequate education program salary
1128 schedule for fiscal year 2003. For purposes of this item (ii),
1129 state funds shall be those described in paragraph (b) and an

1130 amount equal to the allocation for the adequate education program
1131 in fiscal year 2002, plus any additional amount required to
1132 satisfy fiscal year 2003 pledges in accordance with paragraphs
1133 (d), (e) and (f) of subsection (5) of this section. If a school
1134 district's fiscal year 2003 pledge is different than the pledge
1135 amount for fiscal year 2002, the district shall receive an amount
1136 equal to the fiscal year 2003 pledge or the amount of funds
1137 calculated under the adequate education formula for fiscal year
1138 2002 before any pledge guarantee for fiscal year 2002, whichever
1139 is greater. If the pledge is no longer in effect, the district
1140 shall receive the amount of funds calculated under the formula for
1141 fiscal year 2002 before any pledge guarantee for fiscal year 2002.

1142 (iii) The portion of any district's allocation
1143 calculated in item (i) of this paragraph which exceeds amounts as
1144 calculated in item (ii) shall be reduced by an amount not to
1145 exceed twenty-one percent (21%). The amount of funds generated by
1146 this reduction of funds shall be redistributed proportionately
1147 among those districts receiving insufficient funds to meet the
1148 amount calculated in item (ii). In no case may any district
1149 receive funds in an amount greater than the amount that the
1150 district would have received under full funding of the program for
1151 fiscal year 2003.

1152 (d) If the school board of any school district shall
1153 determine that it is not economically feasible or practicable to
1154 operate any school within the district for the full one hundred
1155 eighty (180) days required for a school term of a scholastic year
1156 as required in Section 37-13-63, Mississippi Code of 1972, due to
1157 an enemy attack, a manmade, technological or natural disaster in
1158 which the Governor has declared a disaster emergency under the
1159 laws of this state or the President of the United States has
1160 declared an emergency or major disaster to exist in this state,
1161 said school board may notify the State Department of Education of
1162 such disaster and submit a plan for altering the school term. If

1163 the State Board of Education finds such disaster to be the cause
1164 of the school not operating for the contemplated school term and
1165 that such school was in a school district covered by the
1166 Governor's or President's disaster declaration, it may permit said
1167 school board to operate the schools in its district for less than
1168 one hundred eighty (180) days and, in such case, the State
1169 Department of Education shall not reduce the state contributions
1170 to the adequate education program allotment for such district,
1171 because of the failure to operate said schools for one hundred
1172 eighty (180) days.

1173 (4) If during the year for which adequate education program
1174 funds are appropriated, any school district experiences a three
1175 percent (3%) or greater increase in average daily attendance
1176 during the second and third month over the preceding year's second
1177 and third month, an additional allocation of adequate education
1178 program funds calculated in the following manner shall be granted
1179 to that district, using any additional funds available to the
1180 Department of Education that exceed the amount of funds due to the
1181 school districts under the basic adequate education program
1182 distribution as provided for in this chapter:

1183 (a) Determine the percentage increase in average daily
1184 attendance for the second and third months of the year for which
1185 adequate education program funds are appropriated over the
1186 preceding year's second and third month average daily attendance.

1187 (b) For those districts that have a three percent (3%)
1188 or greater increase as calculated in paragraph (a) of this
1189 subsection, multiply the total increase in students in average
1190 daily attendance for the second and third months of the year for
1191 which adequate education program funds are appropriated over the
1192 preceding year's second and third month average daily attendance
1193 times the base student cost used in the appropriation.

1194 (c) Subtract the percentage of the district's local
1195 contribution arrived at in subsection (2) of this section from the

1196 amount calculated in paragraph (b) of this subsection. The
1197 remainder is the additional allocation in adequate education
1198 program funds for that district.

1199 If the funds available to the Department of Education are not
1200 sufficient to fully fund the additional allocations to school
1201 districts eligible for those allocations, then the department
1202 shall prorate the available funds among the eligible school
1203 districts, using the same percentage of the total funds that the
1204 school district would have received if the allocations were fully
1205 funded.

1206 This subsection (4) shall stand repealed on July 1, 2004.

1207 (5) The Interim School District Capital Expenditure Fund is
1208 hereby established in the State Treasury which shall be used to
1209 distribute any funds specifically appropriated by the Legislature
1210 to such fund to school districts entitled to increased allocations
1211 of state funds under the adequate education program funding
1212 formula prescribed in Sections 37-151-3 through 37-151-7,
1213 Mississippi Code of 1972, until such time as the said adequate
1214 education program is fully funded by the Legislature. The
1215 following percentages of the total state cost of increased
1216 allocations of funds under the adequate education program funding
1217 formula shall be appropriated by the Legislature into the Interim
1218 School District Capital Expenditure Fund to be distributed to all
1219 school districts under the formula: Nine and two-tenths percent
1220 (9.2%) shall be appropriated in fiscal year 1998, twenty percent
1221 (20%) shall be appropriated in fiscal year 1999, forty percent
1222 (40%) shall be appropriated in fiscal year 2000, sixty percent
1223 (60%) shall be appropriated in fiscal year 2001, eighty percent
1224 (80%) shall be appropriated in fiscal year 2002, and one hundred
1225 percent (100%) shall be appropriated in fiscal year 2003 into the
1226 State Adequate Education Program Fund created in subsection (4).
1227 Until July 1, 2002, such money shall be used by school districts
1228 for the following purposes:

1229 (a) Purchasing, erecting, repairing, equipping,
1230 remodeling and enlarging school buildings and related facilities,
1231 including gymnasiums, auditoriums, lunchrooms, vocational training
1232 buildings, libraries, school barns and garages for transportation
1233 vehicles, school athletic fields and necessary facilities
1234 connected therewith, and purchasing land therefor. Any such
1235 capital improvement project by a school district shall be approved
1236 by the State Board of Education, and based on an approved
1237 long-range plan. The State Board of Education shall promulgate
1238 minimum requirements for the approval of school district capital
1239 expenditure plans.

1240 (b) Providing necessary water, light, heating, air
1241 conditioning, and sewerage facilities for school buildings, and
1242 purchasing land therefor.

1243 (c) Paying debt service on existing capital improvement
1244 debt of the district or refinancing outstanding debt of a district
1245 if such refinancing will result in an interest cost savings to the
1246 district.

1247 (d) From and after October 1, 1997, through June 30,
1248 1998, pursuant to a school district capital expenditure plan
1249 approved by the State Department of Education, a school district
1250 may pledge such funds until July 1, 2002, plus funds provided for
1251 in paragraph (e) of this subsection (5) that are not otherwise
1252 permanently pledged under such paragraph (e) to pay all or a
1253 portion of the debt service on debt issued by the school district
1254 under Sections 37-59-1 through 37-59-45, 37-59-101 through
1255 37-59-115, 37-7-351 through 37-7-359, 37-41-89 through 37-41-99,
1256 37-7-301, 37-7-302 and 37-41-81, Mississippi Code of 1972, or debt
1257 issued by boards of supervisors for agricultural high schools
1258 pursuant to Section 37-27-65, Mississippi Code of 1972, or
1259 lease-purchase contracts entered into pursuant to Section 31-7-13,
1260 Mississippi Code of 1972, or to retire or refinance outstanding
1261 debt of a district, if such pledge is accomplished pursuant to a

1262 written contract or resolution approved and spread upon the
1263 minutes of an official meeting of the district's school board or
1264 board of supervisors. It is the intent of this provision to allow
1265 school districts to irrevocably pledge their Interim School
1266 District Capital Expenditure Fund allotments as a constant stream
1267 of revenue to secure a debt issued under the foregoing code
1268 sections. To allow school districts to make such an irrevocable
1269 pledge, the state shall take all action necessary to ensure that
1270 the amount of a district's Interim School District Capital
1271 Expenditure Fund allotments shall not be reduced below the amount
1272 certified by the department or the district's total allotment
1273 under the Interim Capital Expenditure Fund if fully funded, so
1274 long as such debt remains outstanding.

1275 (e) From and after October 1, 1997, through June 30,
1276 1998, in addition to any other authority a school district may
1277 have, any school district may issue State Aid Capital Improvement
1278 Bonds secured in whole by a continuing annual pledge of any
1279 Mississippi Adequate Education Program funds available to the
1280 district, in an amount not to exceed One Hundred Sixty Dollars
1281 (\$160.00) per pupil based on the latest completed average daily
1282 attendance count certified by the department prior to the issuance
1283 of the bonds. Such State Aid Capital Improvement Bonds may be
1284 issued for the purposes enumerated in subsections (a), (b), (c)
1285 and (g) of this section. Prior to issuing such bonds, the school
1286 board of the district shall adopt a resolution declaring the
1287 necessity for and its intention of issuing such bonds and
1288 borrowing such money, specifying the approximate amount to be so
1289 borrowed, how such money is to be used and how such indebtedness
1290 is to be evidenced. Any capital improvement project financed with
1291 State Aid Capital Improvement Bonds shall be approved by the
1292 department, and based on an approved long-range plan. The State
1293 Board of Education shall promulgate minimum requirements for the
1294 approval of such school district capital expenditure plans. The

1295 State Board of Education shall not approve any capital expenditure
1296 plan for a pledge of funds under this paragraph unless it
1297 determines (i) that the quality of instruction in such district
1298 will not be reduced as a result of this pledge, and (ii) the
1299 district has other revenue available to attain and maintain at
1300 least Level III accreditation.

1301 A district issuing State Aid Capital Improvement Bonds may
1302 pledge for the repayment of such bonds all funds received by the
1303 district from the state, in an amount not to exceed One Hundred
1304 Sixty Dollars (\$160.00) per pupil in average daily attendance in
1305 the school district as set forth above, and not otherwise
1306 permanently pledged under paragraph (d) of this subsection or
1307 under Section 37-61-33(2)(d), Mississippi Code of 1972. The
1308 district's school board shall specify by resolution the amount of
1309 state funds, which are being pledged by the district for the
1310 repayment of the State Aid Capital Improvement Bonds. Once such a
1311 pledge is made to secure the bonds, the district shall notify the
1312 department of such pledge. Upon making such a pledge, the school
1313 district may request the department which may agree to irrevocably
1314 transfer a specified amount or percentage of the district's state
1315 revenue pledged to repay the district's State Aid Capital
1316 Improvement Bonds directly to a state or federally chartered bank
1317 serving as a trustee or paying agent on such bonds for the payment
1318 of all or portion of such State Aid Capital Improvement Bonds.
1319 Such instructions shall be incorporated into a resolution by the
1320 school board for the benefit of holders of the bonds and may
1321 provide that such withholding and transfer of such other available
1322 funds shall be made only upon notification by a trustee or paying
1323 agent on such bonds that the amounts available to pay such bonds
1324 on any payment date will not be sufficient. It is the intent of
1325 this provision to allow school districts to irrevocably pledge a
1326 certain, constant stream of revenue as security for State Aid
1327 Capital Improvement Bonds issued hereunder. To allow school

1328 districts to make such an irrevocable pledge, the state shall take
1329 all action necessary to ensure that the amount of a district's
1330 state revenues up to an amount equal to One Hundred Sixty Dollars
1331 (\$160.00) per pupil as set forth above which have been pledged to
1332 repay debt as set forth herein shall not be reduced so long as any
1333 State Aid Capital Improvement Bonds are outstanding.

1334 Any such State Aid Capital Improvement bonds shall mature as
1335 determined by the district's school bond over a period not to
1336 exceed twenty (20) years. Such bonds shall not bear a greater
1337 overall maximum interest rate to maturity than that allowed in
1338 Section 75-17-101, Mississippi Code of 1972. The further details
1339 and terms of such bonds shall be as determined by the school board
1340 of the district.

1341 The provisions of this subsection shall be cumulative and
1342 supplemental to any existing funding programs or other authority
1343 conferred upon school districts or school boards. Debt of a
1344 school district secured in whole by a pledge of revenue pursuant
1345 to this section shall not be subject to any debt limitation.

1346 For purposes of this paragraph (e), "State Aid Capital
1347 Improvement Bond" shall mean any bond, note, or other certificate
1348 of indebtedness issued by a school district under the provisions
1349 hereof.

1350 This paragraph (e) shall stand repealed from and after June
1351 30, 1998.

1352 (f) As an alternative to the authority granted under
1353 paragraph (e), a school district, in its discretion, may authorize
1354 the State Board of Education to withhold an amount of the
1355 district's adequate education program allotment equal to up to One
1356 Hundred Sixty Dollars (\$160.00) per student in average daily
1357 attendance in the district to be allocated to the State Public
1358 School Building Fund to the credit of such school district. A
1359 school district may choose the option provided under this
1360 paragraph (e) or paragraph (f), but not both. In addition to the

1361 grants made by the state pursuant to Section 37-47-9, a school
1362 district shall be entitled to grants based on the allotments to
1363 the State Public School Building Fund credited to such school
1364 district under this paragraph. This paragraph (f) shall stand
1365 repealed from and after June 30, 1998.

1366 (g) The State Board of Education may authorize the
1367 school district to expend not more than twenty percent (20%) of
1368 its annual allotment of such funds or Twenty Thousand Dollars
1369 (\$20,000.00), whichever is greater, for technology needs of the
1370 school district, including computers, software,
1371 telecommunications, cable television, interactive video, film
1372 low-power television, satellite communications, microwave
1373 communications, technology-based equipment installation and
1374 maintenance, and the training of staff in the use of such
1375 technology-based instruction. Any such technology expenditure
1376 shall be reflected in the local district technology plan approved
1377 by the State Board of Education under Section 37-151-17,
1378 Mississippi Code of 1972.

1379 (h) To the extent a school district has not utilized
1380 twenty percent (20%) of its annual allotment for technology
1381 purposes under paragraph (g), a school district may expend not
1382 more than twenty percent (20%) of its annual allotment or Twenty
1383 Thousand Dollars (\$20,000.00), whichever is greater, for
1384 instructional purposes. The State Board of Education may
1385 authorize a school district to expend more than said twenty
1386 percent (20%) of its annual allotment for instructional purposes
1387 if it determines that such expenditures are needed for
1388 accreditation purposes.

1389 (i) The State Department of Education or the State
1390 Board of Education may require that any project commenced pursuant
1391 to this act with an estimated project cost of more than
1392 Twenty-five Million Dollars (\$25,000,000.00) be done * * *
1393 pursuant to program management of the process with respect to

1394 design and construction. No program management of the process
1395 with respect to design and construction shall be used for any
1396 project with an estimated project cost of less than Twenty-five
1397 Million Dollars (\$25,000,000.00). Any individuals, partnerships,
1398 companies or other entities acting as a program manager on behalf
1399 of a local school district and performing program management
1400 services for projects covered under this subsection shall be
1401 approved by the State Department of Education.

1402 Any interest accruing on any unexpended balance in the
1403 Interim School District Capital Expenditure Fund shall be invested
1404 by the State Treasurer and placed to the credit of each school
1405 district participating in such fund in its proportionate share.

1406 The provisions of this subsection (5) shall be cumulative and
1407 supplemental to any existing funding programs or other authority
1408 conferred upon school districts or school boards.

1409 **SECTION 5.** This act shall take effect and be in force from
1410 and after July 1, 2004.