

By: Representative Dedeaux

To: Appropriations

HOUSE BILL NO. 1535
(As Passed the House)

1 AN ACT TO BRING FORWARD SECTION 31-3-21, MISSISSIPPI CODE OF
2 1972, WHICH GOVERNS BIDDING AND AWARDING OF CONTRACTS TO
3 CONTRACTORS; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972,
4 TO ALLOW A STATE AGENCY OR GOVERNING AUTHORITY TO USE A PROJECT OR
5 CONSTRUCTION MANAGER ON CERTAIN PUBLIC PROJECTS; TO AMEND SECTION
6 37-151-7, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING
7 SECTION; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 31-3-21, Mississippi Code of 1972, is
10 brought forward as follows:

11 31-3-21. (1) It shall be unlawful for any person who does
12 not hold a certificate of responsibility issued under this
13 chapter, or a similar certificate issued by another state
14 recognizing such certificate issued by the State of Mississippi,
15 to submit a bid, enter into a contract, or otherwise engage in or
16 continue in this state in the business of a contractor, as defined
17 in this chapter. Any bid which is submitted without a certificate
18 of responsibility number issued under this chapter and without
19 that number appearing on the exterior of the bid envelope, as and
20 if herein required, at the time designated for the opening of such
21 bid, shall not be considered further, and the person or public
22 agency soliciting bids shall not enter into a contract with a
23 contractor submitting a bid in violation of this section. In
24 addition, any person violating this section by knowingly and
25 willfully submitting a bid for projects without holding a
26 certificate of responsibility number issued under this chapter, as
27 and if herein required, at the time of the submission or opening
28 of such bid shall be guilty of a misdemeanor and, upon conviction,
29 shall be punished by a fine of not more than One Thousand Dollars

30 (\$1,000.00), or by imprisonment for not more than six (6) months,
31 or by both such fine and imprisonment.

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

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

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

71 (a) The amount of the contract.

72 (b) The name and address of the contractor reviewing
73 the contract.

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

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

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

89 31-7-13. All agencies and governing authorities shall
90 purchase their commodities and printing; contract for garbage
91 collection or disposal; contract for solid waste collection or
92 disposal; contract for sewage collection or disposal; contract for
93 public construction; and contract for rentals as herein provided.

94 (a) **Bidding procedure for purchases not over \$3,500.00.**

95 Purchases which do not involve an expenditure of more than Three

96 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
97 shipping charges, may be made without advertising or otherwise
98 requesting competitive bids. However, nothing contained in this
99 paragraph (a) shall be construed to prohibit any agency or
100 governing authority from establishing procedures which require
101 competitive bids on purchases of Three Thousand Five Hundred
102 Dollars (\$3,500.00) or less.

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

129 authorized personnel representing the vendor. "Competitive" shall
130 mean that the bids are developed based upon comparable
131 identification of the needs and are developed independently and
132 without knowledge of other bids or prospective bids. Bids may be
133 submitted by facsimile, electronic mail or other generally
134 accepted method of information distribution. Bids submitted by
135 electronic transmission shall not require the signature of the
136 vendor's representative unless required by agencies or governing
137 authorities.

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

139 (i) **Publication requirement.** Purchases which
140 involve an expenditure of more than Fifteen Thousand Dollars
141 (\$15,000.00), exclusive of freight and shipping charges, may be
142 made from the lowest and best bidder after advertising for
143 competitive sealed bids once each week for two (2) consecutive
144 weeks in a regular newspaper published in the county or
145 municipality in which such agency or governing authority is
146 located. The date as published for the bid opening shall not be
147 less than seven (7) working days after the last published notice;
148 however, if the purchase involves a construction project in which
149 the estimated cost is in excess of Fifteen Thousand Dollars
150 (\$15,000.00), such bids shall not be opened in less than fifteen
151 (15) working days after the last notice is published and the
152 notice for the purchase of such construction shall be published
153 once each week for two (2) consecutive weeks. The notice of
154 intention to let contracts or purchase equipment shall state the
155 time and place at which bids shall be received, list the contracts
156 to be made or types of equipment or supplies to be purchased, and,
157 if all plans and/or specifications are not published, refer to the
158 plans and/or specifications on file. If there is no newspaper
159 published in the county or municipality, then such notice shall be
160 given by posting same at the courthouse, or for municipalities at
161 the city hall, and at two (2) other public places in the county or

162 municipality, and also by publication once each week for two (2)
163 consecutive weeks in some newspaper having a general circulation
164 in the county or municipality in the above provided manner. On
165 the same date that the notice is submitted to the newspaper for
166 publication, the agency or governing authority involved shall mail
167 written notice to, or provide electronic notification to the main
168 office of the Mississippi Contract Procurement Center that
169 contains the same information as that in the published notice.

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

186 (iii) **Filing requirement.** In all cases involving
187 governing authorities, before the notice shall be published or
188 posted, the plans or specifications for the construction or
189 equipment being sought shall be filed with the clerk of the board
190 of the governing authority. In addition to these requirements, a
191 bid file shall be established which shall indicate those vendors
192 to whom such solicitations and specifications were issued, and
193 such file shall also contain such information as is pertinent to
194 the bid.

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

211 (v) Agencies and governing authorities may
212 establish secure procedures by which bids may be submitted via
213 electronic means.

214 (vi) Program or construction management. Any
215 public project with an estimated project cost of more than
216 Twenty-Five Million Dollars (\$25,000,000.00) may be done with
217 program or construction management with respect to design and
218 construction. No program or construction management of the
219 process with respect to design and construction shall be used for
220 any project with an estimated project cost of less than
221 Twenty-five Million Dollars (\$25,000,000.00). Any individuals,
222 partnerships, companies or other entities acting as a program or
223 construction manager on behalf of an agency or governing authority
224 and performing program or construction management services for
225 projects covered under this paragraph shall be approved by the
226 agency or governing authority for which the project is being done.

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

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

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

249 (e) **Lease-purchase authorization.** For the purposes of
250 this section, the term "equipment" shall mean equipment, furniture
251 and, if applicable, associated software and other applicable
252 direct costs associated with the acquisition. Any lease-purchase
253 of equipment which an agency is not required to lease-purchase
254 under the master lease-purchase program pursuant to Section
255 31-7-10 and any lease-purchase of equipment which a governing
256 authority elects to lease-purchase may be acquired by a
257 lease-purchase agreement under this paragraph (e). Lease-purchase
258 financing may also be obtained from the vendor or from a
259 third-party source after having solicited and obtained at least
260 two (2) written competitive bids, as defined in paragraph (b) of

261 this section, for such financing without advertising for such
262 bids. Solicitation for the bids for financing may occur before or
263 after acceptance of bids for the purchase of such equipment or,
264 where no such bids for purchase are required, at any time before
265 the purchase thereof. No such lease-purchase agreement shall be
266 for an annual rate of interest which is greater than the overall
267 maximum interest rate to maturity on general obligation
268 indebtedness permitted under Section 75-17-101, and the term of
269 such lease-purchase agreement shall not exceed the useful life of
270 equipment covered thereby as determined according to the upper
271 limit of the asset depreciation range (ADR) guidelines for the
272 Class Life Asset Depreciation Range System established by the
273 Internal Revenue Service pursuant to the United States Internal
274 Revenue Code and regulations thereunder as in effect on December
275 31, 1980, or comparable depreciation guidelines with respect to
276 any equipment not covered by ADR guidelines. Any lease-purchase
277 agreement entered into pursuant to this paragraph (e) may contain
278 any of the terms and conditions which a master lease-purchase
279 agreement may contain under the provisions of Section 31-7-10(5),
280 and shall contain an annual allocation dependency clause
281 substantially similar to that set forth in Section 31-7-10(8).
282 Each agency or governing authority entering into a lease-purchase
283 transaction pursuant to this paragraph (e) shall maintain with
284 respect to each such lease-purchase transaction the same
285 information as required to be maintained by the Department of
286 Finance and Administration pursuant to Section 31-7-10(13).
287 However, nothing contained in this section shall be construed to
288 permit agencies to acquire items of equipment with a total
289 acquisition cost in the aggregate of less than Ten Thousand
290 Dollars (\$10,000.00) by a single lease-purchase transaction. All
291 equipment, and the purchase thereof by any lessor, acquired by
292 lease-purchase under this paragraph and all lease-purchase
293 payments with respect thereto shall be exempt from all Mississippi

294 sales, use and ad valorem taxes. Interest paid on any
295 lease-purchase agreement under this section shall be exempt from
296 State of Mississippi income taxation.

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

306 (g) **Construction contract change authorization.** In the
307 event a determination is made by an agency or governing authority
308 after a construction contract is let that changes or modifications
309 to the original contract are necessary or would better serve the
310 purpose of the agency or the governing authority, such agency or
311 governing authority may, in its discretion, order such changes
312 pertaining to the construction that are necessary under the
313 circumstances without the necessity of further public bids;
314 provided that such change shall be made in a commercially
315 reasonable manner and shall not be made to circumvent the public
316 purchasing statutes. In addition to any other authorized person,
317 the architect or engineer hired by an agency or governing
318 authority with respect to any public construction contract shall
319 have the authority, when granted by an agency or governing
320 authority, to authorize changes or modifications to the original
321 contract without the necessity of prior approval of the agency or
322 governing authority when any such change or modification is less
323 than one percent (1%) of the total contract amount. The agency or
324 governing authority may limit the number, manner or frequency of
325 such emergency changes or modifications.

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

343 (i) **Road construction petroleum products price**
344 **adjustment clause authorization.** Any agency or governing
345 authority authorized to enter into contracts for the construction,
346 maintenance, surfacing or repair of highways, roads or streets,
347 may include in its bid proposal and contract documents a price
348 adjustment clause with relation to the cost to the contractor,
349 including taxes, based upon an industry-wide cost index, of
350 petroleum products including asphalt used in the performance or
351 execution of the contract or in the production or manufacture of
352 materials for use in such performance. Such industry-wide index
353 shall be established and published monthly by the Mississippi
354 Department of Transportation with a copy thereof to be mailed,
355 upon request, to the clerks of the governing authority of each
356 municipality and the clerks of each board of supervisors
357 throughout the state. The price adjustment clause shall be based
358 on the cost of such petroleum products only and shall not include

359 any additional profit or overhead as part of the adjustment. The
360 bid proposals or document contract shall contain the basis and
361 methods of adjusting unit prices for the change in the cost of
362 such petroleum products.

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

392 state agency emergency purchases and supporting documentation for
393 each emergency purchases.

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

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

412 (l) **Hospital purchase, lease-purchase and lease**
413 **authorization.**

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

419 (ii) In addition to the authority granted in
420 subparagraph (i) of this paragraph (l), the commissioners or board
421 of trustees is authorized to enter into contracts for the lease of
422 equipment or services, or both, which it considers necessary for
423 the proper care of patients if, in its opinion, it is not
424 financially feasible to purchase the necessary equipment or

425 services. Any such contract for the lease of equipment or
426 services executed by the commissioners or board shall not exceed a
427 maximum of five (5) years' duration and shall include a
428 cancellation clause based on unavailability of funds. If such
429 cancellation clause is exercised, there shall be no further
430 liability on the part of the lessee. Any such contract for the
431 lease of equipment or services executed on behalf of the
432 commissioners or board that complies with the provisions of this
433 subparagraph (ii) shall be excepted from the bid requirements set
434 forth in this section.

435 (m) **Exceptions from bidding requirements.** Excepted
436 from bid requirements are:

437 (i) **Purchasing agreements approved by department.**
438 Purchasing agreements, contracts and maximum price regulations
439 executed or approved by the Department of Finance and
440 Administration.

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

452 (iii) **In-house equipment repairs.** Purchases of
453 parts for repairs to equipment, when such repairs are made by
454 personnel of the agency or governing authority; however, entire
455 assemblies, such as engines or transmissions, shall not be
456 included in this exemption when the entire assembly is being
457 replaced instead of being repaired.

458 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
459 of gravel or fill dirt which are to be removed and transported by
460 the purchaser.

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

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

490 approval from the Department of Finance and Administration, prior
491 to releasing or taking possession of the commodities.

492 (vii) **Perishable supplies or food.** Perishable
493 supplies or foods purchased for use in connection with hospitals,
494 the school lunch programs, homemaking programs and for the feeding
495 of county or municipal prisoners.

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

510 (ix) **Waste disposal facility construction**
511 **contracts.** Construction of incinerators and other facilities for
512 disposal of solid wastes in which products either generated
513 therein, such as steam, or recovered therefrom, such as materials
514 for recycling, are to be sold or otherwise disposed of; however,
515 in constructing such facilities, a governing authority or agency
516 shall publicly issue requests for proposals, advertised for in the
517 same manner as provided herein for seeking bids for public
518 construction projects, concerning the design, construction,
519 ownership, operation and/or maintenance of such facilities,
520 wherein such requests for proposals when issued shall contain
521 terms and conditions relating to price, financial responsibility,
522 technology, environmental compatibility, legal responsibilities

523 and such other matters as are determined by the governing
524 authority or agency to be appropriate for inclusion; and after
525 responses to the request for proposals have been duly received,
526 the governing authority or agency may select the most qualified
527 proposal or proposals on the basis of price, technology and other
528 relevant factors and from such proposals, but not limited to the
529 terms thereof, negotiate and enter contracts with one or more of
530 the persons or firms submitting proposals.

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

534 (xi) **Information technology products.** Purchases
535 of information technology products made by governing authorities
536 under the provisions of purchase schedules, or contracts executed
537 or approved by the Mississippi Department of Information
538 Technology Services and designated for use by governing
539 authorities.

540 (xii) **Energy efficiency services and equipment.**
541 Energy efficiency services and equipment acquired by school
542 districts, community and junior colleges, institutions of higher
543 learning and state agencies or other applicable governmental
544 entities on a shared-savings, lease or lease-purchase basis
545 pursuant to Section 31-7-14.

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

550 (xiv) **Library books and other reference materials.**
551 Purchases by libraries or for libraries of books and periodicals;
552 processed film, video cassette tapes, filmstrips and slides;
553 recorded audio tapes, cassettes and diskettes; and any such items
554 as would be used for teaching, research or other information
555 distribution; however, equipment such as projectors, recorders,

556 audio or video equipment, and monitor televisions are not exempt
557 under this subparagraph.

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

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

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

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

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

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

585 (xxi) **Certain school district purchases.**
586 Purchases of commodities made by school districts from vendors
587 with which any levying authority of the school district, as

588 defined in Section 37-57-1, has contracted through competitive
589 bidding procedures for purchases of the same commodities.

590 (xxii) **Garbage, solid waste and sewage contracts.**
591 Contracts for garbage collection or disposal, contracts for solid
592 waste collection or disposal and contracts for sewage collection
593 or disposal.

594 (xxiii) **Municipal water tank maintenance**
595 **contracts.** Professional maintenance program contracts for the
596 repair or maintenance of municipal water tanks, which provide
597 professional services needed to maintain municipal water storage
598 tanks for a fixed annual fee for a duration of two (2) or more
599 years.

600 (xxiv) **Purchases of Mississippi Industries for the**
601 **Blind products.** Purchases made by state agencies or governing
602 authorities involving any item that is manufactured, processed or
603 produced by the Mississippi Industries for the Blind.

604 (xxv) **Purchases of state-adopted textbooks.**
605 Purchases of state-adopted textbooks by public school districts.

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

609 (xxvii) **Used heavy or specialized machinery or**
610 **equipment for installation of soil and water conservation**
611 **practices purchased at auction.** Used heavy or specialized
612 machinery or equipment used for the installation and
613 implementation of soil and water conservation practices or
614 measures purchased subject to the restrictions provided in
615 Sections 69-27-331 through 69-27-341. Any purchase by the State
616 Soil and Water Conservation Commission under the exemption
617 authorized by this subparagraph shall require advance
618 authorization spread upon the minutes of the commission to include
619 the listing of the item or items authorized to be purchased and
620 the maximum bid authorized to be paid for each item or items.

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

624 (xxix) **Purchases made pursuant to qualified**
625 **cooperative purchasing agreements.** Purchases made by certified
626 purchasing offices of state agencies or governing authorities
627 under cooperative purchasing agreements previously approved by the
628 Office of Purchasing and Travel and established by or for any
629 municipality, county, parish or state government or the federal
630 government, provided that the notification to potential
631 contractors includes a clause that sets forth the availability of
632 the cooperative purchasing agreement to other governmental
633 entities. Such purchases shall only be made if the use of the
634 cooperative purchasing agreements is determined to be in the best
635 interest of the government entity.

636 (n) **Term contract authorization.** All contracts for the
637 purchase of:

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

648 (ii) Bid proposals and contracts may include price
649 adjustment clauses with relation to the cost to the contractor
650 based upon a nationally published industry-wide or nationally
651 published and recognized cost index. The cost index used in a
652 price adjustment clause shall be determined by the Department of
653 Finance and Administration for the state agencies and by the

654 governing board for governing authorities. The bid proposal and
655 contract documents utilizing a price adjustment clause shall
656 contain the basis and method of adjusting unit prices for the
657 change in the cost of such commodities, equipment and public
658 construction.

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

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

681 (q) **Fuel management system bidding procedure.** Any
682 governing authority or agency of the state shall, before
683 contracting for the services and products of a fuel management or
684 fuel access system, enter into negotiations with not fewer than
685 two (2) sellers of fuel management or fuel access systems for
686 competitive written bids to provide the services and products for

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

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

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

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

753 Black, Hispanic or Native American, according to the following
754 definitions:

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

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

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

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

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

774 (u) **Purchase authorization clarification.** Nothing in
775 this section shall be construed as authorizing any purchase not
776 authorized by law.

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

779 37-151-7. The annual allocation to each school district for
780 the operation of the adequate education program shall be
781 determined as follows:

782 (1) Computation of the basic amount to be included for
783 current operation in the adequate education program. The
784 following procedure shall be followed in determining the annual
785 allocation to each school district:

786 (a) **Determination of average daily attendance.** During
787 months two (2) and three (3) of the current school year, the
788 average daily attendance of a school district shall be computed,
789 or the average daily attendance for the prior school year shall be
790 used, whichever is greater. For purposes of this calculation,
791 "current" school year shall mean the school year for which
792 appropriations are made by the Legislature, and "prior" school
793 year shall mean the school year immediately preceding the year for
794 which appropriations are made by the Legislature. The district's
795 average daily attendance shall be computed and currently
796 maintained in accordance with regulations promulgated by the State
797 Board of Education.

798 (b) **Determination of base student cost.** The State
799 Board of Education, on or before August 1, with adjusted estimate
800 no later than January 2, shall annually submit to the Legislative
801 Budget Office and the Governor a proposed base student cost
802 adequate to provide the following cost components of educating a
803 pupil in an average school district meeting Level III
804 accreditation standards required by the Commission on School
805 Accreditation: (i) Instructional Cost; (ii) Administrative Cost;
806 (iii) Operation and Maintenance of Plant; and (iv) Ancillary
807 Support Cost. The department shall utilize a statistical
808 methodology which considers such factors as, but not limited to,
809 (i) school size; (ii) assessed valuation per pupil; (iii) the
810 percentage of students receiving free lunch; (iv) the local
811 district maintenance tax levy; (v) other local school district
812 revenues; and (vi) the district's accreditation level, in the
813 selection of the representative Mississippi school districts for
814 which cost information shall be obtained for each of the above
815 listed cost areas.

816 For the instructional cost component, the department shall
817 determine the instructional cost of each of the representative
818 school districts selected above, excluding instructional cost of

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

852 adjustments for additional state requirements as determined by the
853 State Board of Education. Provided, however, that the base
854 student cost in fiscal year 1998 shall be Two Thousand Six Hundred
855 Sixty-four Dollars (\$2,664.00).

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

860 Multiply the average daily attendance of the district by the
861 base student cost as established by the Legislature, which yields
862 the total base program cost for each school district.

863 (d) **Adjustment to the base student cost for at-risk**
864 **pupils.** The amount to be included for at-risk pupil programs for
865 each school district shall be computed as follows: Multiply the
866 base student cost for the appropriate fiscal year as determined
867 under paragraph (b) by five percent (5%), and multiply that
868 product by the number of pupils participating in the federal free
869 school lunch program in such school district, which yields the
870 total adjustment for at-risk pupil programs for such school
871 district.

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

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

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

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

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

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

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

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

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

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

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

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

911 (g) **Supplemental grant to school districts.** In
912 addition to the adequate education program grant, the State
913 Department of Education shall annually distribute an additional
914 amount as follows: Multiply the base student cost for the
915 appropriate fiscal year as determined under paragraph (b) by
916 thirteen one-hundredths percent (.13%) and multiply that product
917 by the average daily attendance of each school district. Such

918 grant shall not be subject to the local revenue requirement
919 provided in subsection (2).

920 (2) **Computation of the required local revenue in support of**
921 **the adequate education program.** The amount that each district
922 shall provide toward the cost of the adequate education program
923 shall be calculated as follows:

924 (a) The State Board of Education shall certify to each
925 school district that twenty-eight (28) mills, less the estimated
926 amount of the yield of the School Ad Valorem Tax Reduction Fund
927 grants as determined by the State Department of Education, is the
928 millage rate required to provide the district required local
929 effort for that year, or twenty-seven percent (27%) of the basic
930 adequate education program cost for such school district as
931 determined under subsection (c), whichever is a lesser amount. In
932 the case of an agricultural high school the millage requirement
933 shall be set at a level which generates an equitable amount per
934 pupil to be determined by the State Board of Education.

935 (b) The State Board of Education shall determine (i)
936 the total assessed valuation of nonexempt property for school
937 purposes in each school district; (ii) assessed value of exempt
938 property owned by homeowners aged sixty-five (65) or older or
939 disabled as defined in Section 27-33-67(2), Mississippi Code of
940 1972; (iii) the school district's tax loss from exemptions
941 provided to applicants under the age of sixty-five (65) and not
942 disabled as defined in Section 27-33-67(1), Mississippi Code of
943 1972; and (iv) the school district's homestead reimbursement
944 revenues.

945 (c) The amount of the total adequate education program
946 funding which shall be contributed by each school district shall
947 be the sum of the ad valorem receipts generated by the millage
948 required under this subsection plus the following local revenue
949 sources for the appropriate fiscal year which are or may be
950 available for current expenditure by the school district:

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

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

955 (a) The required state effort in support of the
956 adequate education program shall be determined by subtracting the
957 sum of the required local tax effort as set forth in subsection
958 (2)(a) of this section and the other local revenue sources as set
959 forth in subsection (2)(c) of this section in an amount not to
960 exceed twenty-seven percent (27%) of the total projected adequate
961 education program cost as set forth in subsection (1)(f) of this
962 section from the total projected adequate education program cost
963 as set forth in subsection (1)(f) of this section.

964 (b) Provided, however, that in fiscal year 1998 and in
965 the fiscal year in which the adequate education program is fully
966 funded by the Legislature, any increase in the said state
967 contribution, including the supplemental grant to school districts
968 provided under subsection (1)(g), to any district calculated under
969 this section shall be not less than eight percent (8%) in excess
970 of the amount received by said district from state funds for the
971 fiscal year immediately preceding. For purposes of this paragraph
972 (b), state funds shall include minimum program funds less the
973 add-on programs, state Uniform Millage Assistance Grant funds,
974 Education Enhancement Funds appropriated for Uniform Millage
975 Assistance Grants and state textbook allocations, and State
976 General Funds allocated for textbooks.

977 (c) If the appropriation is less than full funding for
978 fiscal year 2003, allocations for state contributions to school
979 districts in support of the adequate education program will be
980 determined by the State Department of Education in the following
981 manner:

982 (i) Calculation of the full funding amount under
983 this chapter, with proportionate reductions as required by the
984 appropriation level.

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

1002 (iii) The portion of any district's allocation
1003 calculated in item (i) of this paragraph which exceeds amounts as
1004 calculated in item (ii) shall be reduced by an amount not to
1005 exceed twenty-one percent (21%). The amount of funds generated by
1006 this reduction of funds shall be redistributed proportionately
1007 among those districts receiving insufficient funds to meet the
1008 amount calculated in item (ii). In no case may any district
1009 receive funds in an amount greater than the amount that the
1010 district would have received under full funding of the program for
1011 fiscal year 2003.

1012 (d) If the school board of any school district shall
1013 determine that it is not economically feasible or practicable to
1014 operate any school within the district for the full one hundred

1015 eighty (180) days required for a school term of a scholastic year
1016 as required in Section 37-13-63, Mississippi Code of 1972, due to
1017 an enemy attack, a manmade, technological or natural disaster in
1018 which the Governor has declared a disaster emergency under the
1019 laws of this state or the President of the United States has
1020 declared an emergency or major disaster to exist in this state,
1021 said school board may notify the State Department of Education of
1022 such disaster and submit a plan for altering the school term. If
1023 the State Board of Education finds such disaster to be the cause
1024 of the school not operating for the contemplated school term and
1025 that such school was in a school district covered by the
1026 Governor's or President's disaster declaration, it may permit said
1027 school board to operate the schools in its district for less than
1028 one hundred eighty (180) days and, in such case, the State
1029 Department of Education shall not reduce the state contributions
1030 to the adequate education program allotment for such district,
1031 because of the failure to operate said schools for one hundred
1032 eighty (180) days.

1033 (4) If during the year for which adequate education program
1034 funds are appropriated, any school district experiences a three
1035 percent (3%) or greater increase in average daily attendance
1036 during the second and third month over the preceding year's second
1037 and third month, an additional allocation of adequate education
1038 program funds calculated in the following manner shall be granted
1039 to that district, using any additional funds available to the
1040 Department of Education that exceed the amount of funds due to the
1041 school districts under the basic adequate education program
1042 distribution as provided for in this chapter:

1043 (a) Determine the percentage increase in average daily
1044 attendance for the second and third months of the year for which
1045 adequate education program funds are appropriated over the
1046 preceding year's second and third month average daily attendance.

1047 (b) For those districts that have a three percent (3%)
1048 or greater increase as calculated in paragraph (a) of this
1049 subsection, multiply the total increase in students in average
1050 daily attendance for the second and third months of the year for
1051 which adequate education program funds are appropriated over the
1052 preceding year's second and third month average daily attendance
1053 times the base student cost used in the appropriation.

1054 (c) Subtract the percentage of the district's local
1055 contribution arrived at in subsection (2) of this section from the
1056 amount calculated in paragraph (b) of this subsection. The
1057 remainder is the additional allocation in adequate education
1058 program funds for that district.

1059 If the funds available to the Department of Education are not
1060 sufficient to fully fund the additional allocations to school
1061 districts eligible for those allocations, then the department
1062 shall prorate the available funds among the eligible school
1063 districts, using the same percentage of the total funds that the
1064 school district would have received if the allocations were fully
1065 funded.

1066 This subsection (4) shall stand repealed on July 1, 2004.

1067 (5) The Interim School District Capital Expenditure Fund is
1068 hereby established in the State Treasury which shall be used to
1069 distribute any funds specifically appropriated by the Legislature
1070 to such fund to school districts entitled to increased allocations
1071 of state funds under the adequate education program funding
1072 formula prescribed in Sections 37-151-3 through 37-151-7,
1073 Mississippi Code of 1972, until such time as the said adequate
1074 education program is fully funded by the Legislature. The
1075 following percentages of the total state cost of increased
1076 allocations of funds under the adequate education program funding
1077 formula shall be appropriated by the Legislature into the Interim
1078 School District Capital Expenditure Fund to be distributed to all
1079 school districts under the formula: Nine and two-tenths percent

1080 (9.2%) shall be appropriated in fiscal year 1998, twenty percent
1081 (20%) shall be appropriated in fiscal year 1999, forty percent
1082 (40%) shall be appropriated in fiscal year 2000, sixty percent
1083 (60%) shall be appropriated in fiscal year 2001, eighty percent
1084 (80%) shall be appropriated in fiscal year 2002, and one hundred
1085 percent (100%) shall be appropriated in fiscal year 2003 into the
1086 State Adequate Education Program Fund created in subsection (4).
1087 Until July 1, 2002, such money shall be used by school districts
1088 for the following purposes:

1089 (a) Purchasing, erecting, repairing, equipping,
1090 remodeling and enlarging school buildings and related facilities,
1091 including gymnasiums, auditoriums, lunchrooms, vocational training
1092 buildings, libraries, school barns and garages for transportation
1093 vehicles, school athletic fields and necessary facilities
1094 connected therewith, and purchasing land therefor. Any such
1095 capital improvement project by a school district shall be approved
1096 by the State Board of Education, and based on an approved
1097 long-range plan. The State Board of Education shall promulgate
1098 minimum requirements for the approval of school district capital
1099 expenditure plans.

1100 (b) Providing necessary water, light, heating, air
1101 conditioning, and sewerage facilities for school buildings, and
1102 purchasing land therefor.

1103 (c) Paying debt service on existing capital improvement
1104 debt of the district or refinancing outstanding debt of a district
1105 if such refinancing will result in an interest cost savings to the
1106 district.

1107 (d) From and after October 1, 1997, through June 30,
1108 1998, pursuant to a school district capital expenditure plan
1109 approved by the State Department of Education, a school district
1110 may pledge such funds until July 1, 2002, plus funds provided for
1111 in paragraph (e) of this subsection (5) that are not otherwise
1112 permanently pledged under such paragraph (e) to pay all or a

1113 portion of the debt service on debt issued by the school district
1114 under Sections 37-59-1 through 37-59-45, 37-59-101 through
1115 37-59-115, 37-7-351 through 37-7-359, 37-41-89 through 37-41-99,
1116 37-7-301, 37-7-302 and 37-41-81, Mississippi Code of 1972, or debt
1117 issued by boards of supervisors for agricultural high schools
1118 pursuant to Section 37-27-65, Mississippi Code of 1972, or
1119 lease-purchase contracts entered into pursuant to Section 31-7-13,
1120 Mississippi Code of 1972, or to retire or refinance outstanding
1121 debt of a district, if such pledge is accomplished pursuant to a
1122 written contract or resolution approved and spread upon the
1123 minutes of an official meeting of the district's school board or
1124 board of supervisors. It is the intent of this provision to allow
1125 school districts to irrevocably pledge their Interim School
1126 District Capital Expenditure Fund allotments as a constant stream
1127 of revenue to secure a debt issued under the foregoing code
1128 sections. To allow school districts to make such an irrevocable
1129 pledge, the state shall take all action necessary to ensure that
1130 the amount of a district's Interim School District Capital
1131 Expenditure Fund allotments shall not be reduced below the amount
1132 certified by the department or the district's total allotment
1133 under the Interim Capital Expenditure Fund if fully funded, so
1134 long as such debt remains outstanding.

1135 (e) From and after October 1, 1997, through June 30,
1136 1998, in addition to any other authority a school district may
1137 have, any school district may issue State Aid Capital Improvement
1138 Bonds secured in whole by a continuing annual pledge of any
1139 Mississippi Adequate Education Program funds available to the
1140 district, in an amount not to exceed One Hundred Sixty Dollars
1141 (\$160.00) per pupil based on the latest completed average daily
1142 attendance count certified by the department prior to the issuance
1143 of the bonds. Such State Aid Capital Improvement Bonds may be
1144 issued for the purposes enumerated in subsections (a), (b), (c)
1145 and (g) of this section. Prior to issuing such bonds, the school

1146 board of the district shall adopt a resolution declaring the
1147 necessity for and its intention of issuing such bonds and
1148 borrowing such money, specifying the approximate amount to be so
1149 borrowed, how such money is to be used and how such indebtedness
1150 is to be evidenced. Any capital improvement project financed with
1151 State Aid Capital Improvement Bonds shall be approved by the
1152 department, and based on an approved long-range plan. The State
1153 Board of Education shall promulgate minimum requirements for the
1154 approval of such school district capital expenditure plans. The
1155 State Board of Education shall not approve any capital expenditure
1156 plan for a pledge of funds under this paragraph unless it
1157 determines (i) that the quality of instruction in such district
1158 will not be reduced as a result of this pledge, and (ii) the
1159 district has other revenue available to attain and maintain at
1160 least Level III accreditation.

1161 A district issuing State Aid Capital Improvement Bonds may
1162 pledge for the repayment of such bonds all funds received by the
1163 district from the state, in an amount not to exceed One Hundred
1164 Sixty Dollars (\$160.00) per pupil in average daily attendance in
1165 the school district as set forth above, and not otherwise
1166 permanently pledged under paragraph (d) of this subsection or
1167 under Section 37-61-33(2)(d), Mississippi Code of 1972. The
1168 district's school board shall specify by resolution the amount of
1169 state funds, which are being pledged by the district for the
1170 repayment of the State Aid Capital Improvement Bonds. Once such a
1171 pledge is made to secure the bonds, the district shall notify the
1172 department of such pledge. Upon making such a pledge, the school
1173 district may request the department which may agree to irrevocably
1174 transfer a specified amount or percentage of the district's state
1175 revenue pledged to repay the district's State Aid Capital
1176 Improvement Bonds directly to a state or federally chartered bank
1177 serving as a trustee or paying agent on such bonds for the payment
1178 of all or portion of such State Aid Capital Improvement Bonds.

1179 Such instructions shall be incorporated into a resolution by the
1180 school board for the benefit of holders of the bonds and may
1181 provide that such withholding and transfer of such other available
1182 funds shall be made only upon notification by a trustee or paying
1183 agent on such bonds that the amounts available to pay such bonds
1184 on any payment date will not be sufficient. It is the intent of
1185 this provision to allow school districts to irrevocably pledge a
1186 certain, constant stream of revenue as security for State Aid
1187 Capital Improvement Bonds issued hereunder. To allow school
1188 districts to make such an irrevocable pledge, the state shall take
1189 all action necessary to ensure that the amount of a district's
1190 state revenues up to an amount equal to One Hundred Sixty Dollars
1191 (\$160.00) per pupil as set forth above which have been pledged to
1192 repay debt as set forth herein shall not be reduced so long as any
1193 State Aid Capital Improvement Bonds are outstanding.

1194 Any such State Aid Capital Improvement bonds shall mature as
1195 determined by the district's school bond over a period not to
1196 exceed twenty (20) years. Such bonds shall not bear a greater
1197 overall maximum interest rate to maturity than that allowed in
1198 Section 75-17-101, Mississippi Code of 1972. The further details
1199 and terms of such bonds shall be as determined by the school board
1200 of the district.

1201 The provisions of this subsection shall be cumulative and
1202 supplemental to any existing funding programs or other authority
1203 conferred upon school districts or school boards. Debt of a
1204 school district secured in whole by a pledge of revenue pursuant
1205 to this section shall not be subject to any debt limitation.

1206 For purposes of this paragraph (e), "State Aid Capital
1207 Improvement Bond" shall mean any bond, note, or other certificate
1208 of indebtedness issued by a school district under the provisions
1209 hereof.

1210 This paragraph (e) shall stand repealed from and after June
1211 30, 1998.

1212 (f) As an alternative to the authority granted under
1213 paragraph (e), a school district, in its discretion, may authorize
1214 the State Board of Education to withhold an amount of the
1215 district's adequate education program allotment equal to up to One
1216 Hundred Sixty Dollars (\$160.00) per student in average daily
1217 attendance in the district to be allocated to the State Public
1218 School Building Fund to the credit of such school district. A
1219 school district may choose the option provided under this
1220 paragraph (e) or paragraph (f), but not both. In addition to the
1221 grants made by the state pursuant to Section 37-47-9, a school
1222 district shall be entitled to grants based on the allotments to
1223 the State Public School Building Fund credited to such school
1224 district under this paragraph. This paragraph (f) shall stand
1225 repealed from and after June 30, 1998.

1226 (g) The State Board of Education may authorize the
1227 school district to expend not more than twenty percent (20%) of
1228 its annual allotment of such funds or Twenty Thousand Dollars
1229 (\$20,000.00), whichever is greater, for technology needs of the
1230 school district, including computers, software,
1231 telecommunications, cable television, interactive video, film
1232 low-power television, satellite communications, microwave
1233 communications, technology-based equipment installation and
1234 maintenance, and the training of staff in the use of such
1235 technology-based instruction. Any such technology expenditure
1236 shall be reflected in the local district technology plan approved
1237 by the State Board of Education under Section 37-151-17,
1238 Mississippi Code of 1972.

1239 (h) To the extent a school district has not utilized
1240 twenty percent (20%) of its annual allotment for technology
1241 purposes under paragraph (g), a school district may expend not
1242 more than twenty percent (20%) of its annual allotment or Twenty
1243 Thousand Dollars (\$20,000.00), whichever is greater, for
1244 instructional purposes. The State Board of Education may

1245 authorize a school district to expend more than said twenty
1246 percent (20%) of its annual allotment for instructional purposes
1247 if it determines that such expenditures are needed for
1248 accreditation purposes.

1249 (i) The State Department of Education or the State
1250 Board of Education may require that any project commenced pursuant
1251 to this act with an estimated project cost of more than
1252 Twenty-five Million Dollars (\$25,000,000.00) be done * * *
1253 pursuant to program or construction management of the process with
1254 respect to design and construction. No program or construction
1255 management of the process with respect to design and construction
1256 shall be used for any project with an estimated project cost of
1257 less than Twenty-five Million Dollars (\$25,000,000.00). Any
1258 individuals, partnerships, companies or other entities acting as a
1259 program or construction manager on behalf of a local school
1260 district and performing program or construction management
1261 services for projects covered under this subsection shall be
1262 approved by the State Department of Education.

1263 Any interest accruing on any unexpended balance in the
1264 Interim School District Capital Expenditure Fund shall be invested
1265 by the State Treasurer and placed to the credit of each school
1266 district participating in such fund in its proportionate share.

1267 The provisions of this subsection (5) shall be cumulative and
1268 supplemental to any existing funding programs or other authority
1269 conferred upon school districts or school boards.

1270 **SECTION 4.** This act shall take effect and be in force from
1271 and after July 1, 2004.