

By: Representatives Davis, Howell

To: Public Property;
Appropriations

HOUSE BILL NO. 1572

1 AN ACT TO CREATE A NEW SECTION TO BE CODIFIED AS SECTION
2 37-101-44, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD OF
3 TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING TO CONTRACT WITH
4 A SINGLE ENTITY FOR THE DESIGN AND CONSTRUCTION OF BUILDINGS AND
5 FACILITIES, EXCLUDING DORMITORIES, AND PARKING STRUCTURES; TO
6 AMEND SECTION 37-101-43, MISSISSIPPI CODE OF 1972, IN CONFORMITY
7 THERETO; TO AMEND SECTION 37-101-41, MISSISSIPPI CODE OF 1972, TO
8 AUTHORIZE THE BOARD OF TRUSTEES TO LEASE LAND AT CERTAIN STATE
9 INSTITUTIONS OF HIGHER LEARNING FOR THE CONSTRUCTION OF BUILDINGS
10 AND FACILITIES, EXCLUDING DORMITORIES, AND PARKING STRUCTURES BY
11 PRIVATE FINANCING; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF
12 1972, TO EXEMPT FROM STATE BID REQUIREMENTS CONTRACTS FOR THE
13 DESIGN AND CONSTRUCTION OF BUILDINGS AND FACILITIES, EXCLUDING
14 DORMITORIES, AND PARKING STRUCTURES ENTERED INTO WITH A SINGLE
15 ENTITY BY THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER
16 LEARNING; AND FOR RELATED PURPOSES.

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

18 **SECTION 1.** The following shall be codified as Section

19 37-101-44, Mississippi Code of 1972:

20 37-101-44. (1) In lieu of exercising the authority set
21 forth in Section 37-101-43 and before entering into or awarding
22 any lease under Section 37-101-41, the Board of Trustees of State
23 Institutions of Higher Learning may award contracts to a single
24 entity for privately financed design and construction of buildings
25 and facilities, excluding dormitories, and parking structures if
26 the entities receiving the contract or contracts and those
27 entities to which work or services are subcontracted are duly
28 licensed and qualified in the state to perform the contract or
29 contracts. State General Fund appropriations or bonds backed by
30 the state may not be used to finance the construction or
31 maintenance of any such building or facility or parking structure.

32 (2) The design-build delivery system described under
33 subsection (1) of this section may be authorized only when the
34 Board of Trustees of State Institutions of Higher Learning makes a

35 determination, entered on its minutes, with specific findings for
36 the project demonstrating how it is in the best interest of the
37 public to enter into a design-build contract. At a minimum, the
38 determination must include a detailed explanation of why a
39 design-build approach for a particular project satisfies the
40 public need better than the traditional design-bid-build approach.

41 (3) For each proposed design-build project, a two-phase
42 procedure for awarding design-build contracts must be adopted and
43 must include the following:

44 (a) During Phase One, and before solicitation of
45 initial proposals, the board shall develop, with the assistance of
46 a registered architect or engineer, a scope of work statement that
47 provides prospective offerors with sufficient information
48 regarding the board's requirements. The scope of work statement
49 must include floor plans showing spaces by name and number, actual
50 net area of each space, structural module, fixed equipment,
51 mechanical spaces, chases and circulation areas. Drawings must
52 show overall building dimensions and major lines of dimensions,
53 and site plans which show topography, adjacent buildings and
54 utilities. Drawings must include information to adequately
55 explain HVAC, electrical and structural requirements. Information
56 concerning furnishings, miscellaneous equipment, layouts, lists
57 and schedules necessary to explain the plans must be indicated on
58 floor plans. The registered architect or engineer engaged by the
59 board also shall prepare preliminary specifications following the
60 Construction Specifications Institute format and giving basic
61 descriptions of essential building materials, finishes, components
62 and all systems. The scope of work statement also must include
63 building elevations, sections and design details. Building
64 elevations must show fenestration and proposed exterior materials.
65 The scope of work statement must include general budget
66 parameters, schedule or delivery requirements, relevant criteria
67 for evaluation of proposals, and any other information necessary

68 to enable the design-builders to submit proposals that meet the
69 board's needs.

70 (b) The board shall cause to be published once a week,
71 for at least three (3) consecutive weeks and not less than
72 twenty-one (21) days in at least one (1) newspaper having a
73 general circulation in the county in which the interested
74 institution is located and in one (1) newspaper with a general
75 statewide circulation, a notice inviting proposals for the
76 leasing, design-build deconstruction and leasing back of the land
77 and design-build constructed facility. The notice must inform
78 potential offerors of how to obtain the scope of work statement
79 developed for the project, and the notice must contain such other
80 information to describe adequately the general nature and scope of
81 the design-build project so as to promote full, equal and open
82 competition.

83 (c) The board shall accept initial proposals only from
84 entities able to provide, either in-house or through contractual
85 arrangements, an experienced and qualified design-build team that
86 includes, at a minimum, an architect or engineer registered in
87 Mississippi and a contractor properly licensed in Mississippi for
88 the type of work required. From evaluation of initial proposals
89 under Phase One, the board shall select a minimum of two (2) and a
90 maximum of five (5) design-builders to submit proposals for Phase
91 Two.

92 (d) During Phase Two, the shortlisted firms will be
93 invited to submit detailed designs, specific technical concepts or
94 solutions, pricing, scheduling and other information deemed
95 appropriate by the board as necessary to evaluate and rank
96 acceptability of the Phase Two proposals. After evaluation of
97 these Phase Two proposals, the board shall award a contract to the
98 design-builder determined to offer the best value to the public in
99 accordance with evaluation criteria set forth in the request for

100 proposals, of which price must be one, but not necessarily the
101 only, criterion.

102 (e) If the board accepts a proposal other than the
103 lowest dollar proposal actually submitted, the board shall enter
104 on its minutes detailed calculations and a narrative summary
105 showing why the accepted proposal was determined to provide the
106 best value, and the board shall state specifically on its minutes
107 the justification for its award.

108 (4) All facilities that are governed by this section must be
109 designed and constructed to equal or exceed the Southern Building
110 Code Standards in force at the time of contracting. All private
111 contractors or private entities contracting or performing under
112 this section must comply at all times with all applicable laws,
113 codes and other legal requirements pertaining to the project.

114 (5) (a) A public official or employee of a state agency who
115 has duties or responsibilities related to the contracting,
116 constructing, leasing, acquiring or operating of a facility under
117 this section may not become an employee, consultant or contract
118 vendor to a private entity providing such facility or services to
119 the state for a period of one (1) year after the date of
120 termination of the person's public service or state employment.

121 (b) Any person violating this subsection shall be
122 guilty of a misdemeanor and punished by a fine of not less than
123 Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars
124 (\$1,000.00).

125 **SECTION 2.** Section 37-101-43, Mississippi Code of 1972, is
126 amended as follows:

127 37-101-43. As an alternative to the authority granted under
128 Section 37-101-44, before entering into or awarding any such lease
129 contract under the provisions of Section 37-101-41, the Board of
130 Trustees of State Institutions of Higher Learning, in its
131 discretion, may cause the interested state-supported institution
132 upon which a facility is proposed to be constructed to select and

133 submit three (3) architects to the board. Thereupon, the board
134 may approve and employ an architect, who shall be paid by the
135 interested institution from any funds available to the interested
136 institution. The architect, under the direction of the interested
137 institution, shall prepare complete plans and specifications for
138 the facility desired to be constructed on the leased property.

139 Upon completion of the plans and specifications and the
140 approval thereof by the board, and before entering into any lease
141 contract, the board shall cause to be published once a week for at
142 least three (3) consecutive weeks and not less than twenty-one
143 (21) days in at least one (1) newspaper having a general
144 circulation in the county in which the interested institution is
145 located and in one (1) newspaper with a general statewide
146 circulation, a notice inviting bids or proposals for the leasing,
147 construction and leasing back of the land and constructed
148 facility, which facility must be constructed in accordance with
149 the plans and specifications. The notice shall distinctly state
150 the thing to be done, and invite sealed proposals, to be filed
151 with the board, to do the thing to be done. The notice shall
152 contain the following specific provisions, together with such
153 others as the board, in its discretion, deems appropriate, to wit:
154 bids shall be accompanied by a bid security evidenced by a
155 certified or cashier's check or bid-bond payable to the board in a
156 sum of not less than five percent (5%) of the gross construction
157 cost of the facility to be constructed, as estimated by the board,
158 and the bids shall contain proof satisfactory to the board of
159 interim and permanent financing. The board shall state in the
160 notice when construction shall commence. The bid shall contain
161 the proposed contractor's certificate of responsibility number and
162 bidder's license. In all cases, before the notice shall be
163 published, the plans and specifications shall be filed with the
164 board and also in the office of the president of the interested
165 institution, there to remain.

166 The board shall award the lease contract to the lowest and
167 best bidder, who will comply with the terms imposed by the
168 contract documents. At the time of the awarding of the lease
169 contract, the successful bidder shall enter into bond with
170 sufficient sureties, to be approved by the board, in such penalty
171 as may be fixed by the board, but in no case to be less than the
172 estimated gross construction cost of the facility to be
173 constructed as estimated by the board, conditioned for the prompt,
174 proper and efficient performance of the contract. The bond shall
175 be made by an authorized corporate surety bonding company.
176 The * * * bid security herein provided for shall be forfeited if
177 the successful bidder fails to enter into lease contract and
178 commence construction within the time limitation set forth in the
179 notice. At such time, and simultaneously with the signing of the
180 contract, the successful bidder shall deposit a sum of money, in
181 cash or certified or cashier's check, not less than the bid
182 security previously deposited as bid security to reimburse the
183 interested institution for all sums expended by it for
184 architectural services and other expenditures of the board and
185 interested institution connected with the bidden lease contract,
186 of which such other anticipated expenditures notice is to be given
187 to bidder in the notice. The bid security posted by an
188 unsuccessful bidder shall be refunded to him.

189 **SECTION 3.** Section 37-101-41, Mississippi Code of 1972, is
190 amended as follows:

191 37-101-41. The Board of Trustees of State Institutions of
192 Higher Learning may lease to private individuals or corporations,
193 for a term not exceeding thirty-one (31) years, any land at any of
194 the following state-supported institutions: the University of
195 Mississippi, Mississippi State University of Agriculture and
196 Applied Science, Jackson State University, Mississippi Valley
197 State University, Alcorn State University, University of Southern
198 Mississippi, Mississippi University for Women and Delta State

199 University, for the purpose of erecting buildings and facilities,
200 excluding dormitories, and parking structures thereon for active
201 faculty and students. The buildings or facilities, excluding
202 dormitories, or parking structures shall be constructed thereon by
203 private financing, and shall be leased back to the board for use
204 by the concerned state-supported institution of higher learning.
205 The lease shall contain a provision permitting the board to
206 purchase the building or facility or parking structure located
207 thereon for the sum of One Dollar (\$1.00) after payment by the
208 board of all sums of money due under said lease.

209 **SECTION 4.** Section 31-7-13, Mississippi Code of 1972, is
210 amended as follows:

211 31-7-13. All agencies and governing authorities shall
212 purchase their commodities and printing; contract for garbage
213 collection or disposal; contract for solid waste collection or
214 disposal; contract for sewage collection or disposal; contract for
215 public construction; and contract for rentals as herein provided.

216 (a) **Bidding procedure for purchases not over \$3,500.00.**
217 Purchases which do not involve an expenditure of more than Three
218 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
219 shipping charges, may be made without advertising or otherwise
220 requesting competitive bids. However, nothing contained in this
221 paragraph (a) shall be construed to prohibit any agency or
222 governing authority from establishing procedures which require
223 competitive bids on purchases of Three Thousand Five Hundred
224 Dollars (\$3,500.00) or less.

225 (b) **Bidding procedure for purchases over \$3,500.00 but**
226 **not over \$15,000.00.** Purchases which involve an expenditure of
227 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
228 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
229 freight and shipping charges may be made from the lowest and best
230 bidder without publishing or posting advertisement for bids,
231 provided at least two (2) competitive written bids have been

232 obtained. Any governing authority purchasing commodities pursuant
233 to this paragraph (b) may authorize its purchasing agent, or his
234 designee, with regard to governing authorities other than
235 counties, or its purchase clerk, or his designee, with regard to
236 counties, to accept the lowest and best competitive written bid.
237 Such authorization shall be made in writing by the governing
238 authority and shall be maintained on file in the primary office of
239 the agency and recorded in the official minutes of the governing
240 authority, as appropriate. The purchasing agent or the purchase
241 clerk, or their designee, as the case may be, and not the
242 governing authority, shall be liable for any penalties and/or
243 damages as may be imposed by law for any act or omission of the
244 purchasing agent or purchase clerk, or their designee,
245 constituting a violation of law in accepting any bid without
246 approval by the governing authority. The term "competitive
247 written bid" shall mean a bid submitted on a bid form furnished by
248 the buying agency or governing authority and signed by authorized
249 personnel representing the vendor, or a bid submitted on a
250 vendor's letterhead or identifiable bid form and signed by
251 authorized personnel representing the vendor. "Competitive" shall
252 mean that the bids are developed based upon comparable
253 identification of the needs and are developed independently and
254 without knowledge of other bids or prospective bids. Bids may be
255 submitted by facsimile, electronic mail or other generally
256 accepted method of information distribution. Bids submitted by
257 electronic transmission shall not require the signature of the
258 vendor's representative unless required by agencies or governing
259 authorities.

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

261 (i) **Publication requirement.** Purchases which
262 involve an expenditure of more than Fifteen Thousand Dollars
263 (\$15,000.00), exclusive of freight and shipping charges, may be
264 made from the lowest and best bidder after advertising for

265 competitive sealed bids once each week for two (2) consecutive
266 weeks in a regular newspaper published in the county or
267 municipality in which such agency or governing authority is
268 located. The date as published for the bid opening shall not be
269 less than seven (7) working days after the last published notice;
270 however, if the purchase involves a construction project in which
271 the estimated cost is in excess of Fifteen Thousand Dollars
272 (\$15,000.00), such bids shall not be opened in less than fifteen
273 (15) working days after the last notice is published and the
274 notice for the purchase of such construction shall be published
275 once each week for two (2) consecutive weeks. The notice of
276 intention to let contracts or purchase equipment shall state the
277 time and place at which bids shall be received, list the contracts
278 to be made or types of equipment or supplies to be purchased, and,
279 if all plans and/or specifications are not published, refer to the
280 plans and/or specifications on file. If there is no newspaper
281 published in the county or municipality, then such notice shall be
282 given by posting same at the courthouse, or for municipalities at
283 the city hall, and at two (2) other public places in the county or
284 municipality, and also by publication once each week for two (2)
285 consecutive weeks in some newspaper having a general circulation
286 in the county or municipality in the above provided manner. On
287 the same date that the notice is submitted to the newspaper for
288 publication, the agency or governing authority involved shall mail
289 written notice to, or provide electronic notification to the main
290 office of the Mississippi Contract Procurement Center that
291 contains the same information as that in the published notice.

292 (ii) **Bidding process amendment procedure.** If all
293 plans and/or specifications are published in the notification,
294 then the plans and/or specifications may not be amended. If all
295 plans and/or specifications are not published in the notification,
296 then amendments to the plans/specifications, bid opening date, bid
297 opening time and place may be made, provided that the agency or

298 governing authority maintains a list of all prospective bidders
299 who are known to have received a copy of the bid documents and all
300 such prospective bidders are sent copies of all amendments. This
301 notification of amendments may be made via mail, facsimile,
302 electronic mail or other generally accepted method of information
303 distribution. No addendum to bid specifications may be issued
304 within two (2) working days of the time established for the
305 receipt of bids unless such addendum also amends the bid opening
306 to a date not less than five (5) working days after the date of
307 the addendum.

308 (iii) **Filing requirement.** In all cases involving
309 governing authorities, before the notice shall be published or
310 posted, the plans or specifications for the construction or
311 equipment being sought shall be filed with the clerk of the board
312 of the governing authority. In addition to these requirements, a
313 bid file shall be established which shall indicate those vendors
314 to whom such solicitations and specifications were issued, and
315 such file shall also contain such information as is pertinent to
316 the bid.

317 (iv) **Specification restrictions.** Specifications
318 pertinent to such bidding shall be written so as not to exclude
319 comparable equipment of domestic manufacture. However, if valid
320 justification is presented, the Department of Finance and
321 Administration or the board of a governing authority may approve a
322 request for specific equipment necessary to perform a specific
323 job. Further, such justification, when placed on the minutes of
324 the board of a governing authority, may serve as authority for
325 that governing authority to write specifications to require a
326 specific item of equipment needed to perform a specific job. In
327 addition to these requirements, from and after July 1, 1990,
328 vendors of relocatable classrooms and the specifications for the
329 purchase of such relocatable classrooms published by local school
330 boards shall meet all pertinent regulations of the State Board of

331 Education, including prior approval of such bid by the State
332 Department of Education.

333 (v) Agencies and governing authorities may
334 establish secure procedures by which bids may be submitted via
335 electronic means.

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

337 (i) **Decision procedure.** Purchases may be made
338 from the lowest and best bidder. In determining the lowest and
339 best bid, freight and shipping charges shall be included.
340 Life-cycle costing, total cost bids, warranties, guaranteed
341 buy-back provisions and other relevant provisions may be included
342 in the best bid calculation. All best bid procedures for state
343 agencies must be in compliance with regulations established by the
344 Department of Finance and Administration. If any governing
345 authority accepts a bid other than the lowest bid actually
346 submitted, it shall place on its minutes detailed calculations and
347 narrative summary showing that the accepted bid was determined to
348 be the lowest and best bid, including the dollar amount of the
349 accepted bid and the dollar amount of the lowest bid. No agency
350 or governing authority shall accept a bid based on items not
351 included in the specifications.

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

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

358 (e) **Lease-purchase authorization.** For the purposes of
359 this section, the term "equipment" shall mean equipment, furniture
360 and, if applicable, associated software and other applicable
361 direct costs associated with the acquisition. Any lease-purchase
362 of equipment which an agency is not required to lease-purchase
363 under the master lease-purchase program pursuant to Section

364 31-7-10 and any lease-purchase of equipment which a governing
365 authority elects to lease-purchase may be acquired by a
366 lease-purchase agreement under this paragraph (e). Lease-purchase
367 financing may also be obtained from the vendor or from a
368 third-party source after having solicited and obtained at least
369 two (2) written competitive bids, as defined in paragraph (b) of
370 this section, for such financing without advertising for such
371 bids. Solicitation for the bids for financing may occur before or
372 after acceptance of bids for the purchase of such equipment or,
373 where no such bids for purchase are required, at any time before
374 the purchase thereof. No such lease-purchase agreement shall be
375 for an annual rate of interest which is greater than the overall
376 maximum interest rate to maturity on general obligation
377 indebtedness permitted under Section 75-17-101, and the term of
378 such lease-purchase agreement shall not exceed the useful life of
379 equipment covered thereby as determined according to the upper
380 limit of the asset depreciation range (ADR) guidelines for the
381 Class Life Asset Depreciation Range System established by the
382 Internal Revenue Service pursuant to the United States Internal
383 Revenue Code and regulations thereunder as in effect on December
384 31, 1980, or comparable depreciation guidelines with respect to
385 any equipment not covered by ADR guidelines. Any lease-purchase
386 agreement entered into pursuant to this paragraph (e) may contain
387 any of the terms and conditions which a master lease-purchase
388 agreement may contain under the provisions of Section 31-7-10(5),
389 and shall contain an annual allocation dependency clause
390 substantially similar to that set forth in Section 31-7-10(8).
391 Each agency or governing authority entering into a lease-purchase
392 transaction pursuant to this paragraph (e) shall maintain with
393 respect to each such lease-purchase transaction the same
394 information as required to be maintained by the Department of
395 Finance and Administration pursuant to Section 31-7-10(13).
396 However, nothing contained in this section shall be construed to

397 permit agencies to acquire items of equipment with a total
398 acquisition cost in the aggregate of less than Ten Thousand
399 Dollars (\$10,000.00) by a single lease-purchase transaction. All
400 equipment, and the purchase thereof by any lessor, acquired by
401 lease-purchase under this paragraph and all lease-purchase
402 payments with respect thereto shall be exempt from all Mississippi
403 sales, use and ad valorem taxes. Interest paid on any
404 lease-purchase agreement under this section shall be exempt from
405 State of Mississippi income taxation.

406 (f) **Alternate bid authorization.** When necessary to
407 ensure ready availability of commodities for public works and the
408 timely completion of public projects, no more than two (2)
409 alternate bids may be accepted by a governing authority for
410 commodities. No purchases may be made through use of such
411 alternate bids procedure unless the lowest and best bidder cannot
412 deliver the commodities contained in his bid. In that event,
413 purchases of such commodities may be made from one (1) of the
414 bidders whose bid was accepted as an alternate.

415 (g) **Construction contract change authorization.** In the
416 event a determination is made by an agency or governing authority
417 after a construction contract is let that changes or modifications
418 to the original contract are necessary or would better serve the
419 purpose of the agency or the governing authority, such agency or
420 governing authority may, in its discretion, order such changes
421 pertaining to the construction that are necessary under the
422 circumstances without the necessity of further public bids;
423 provided that such change shall be made in a commercially
424 reasonable manner and shall not be made to circumvent the public
425 purchasing statutes. In addition to any other authorized person,
426 the architect or engineer hired by an agency or governing
427 authority with respect to any public construction contract shall
428 have the authority, when granted by an agency or governing
429 authority, to authorize changes or modifications to the original

430 contract without the necessity of prior approval of the agency or
431 governing authority when any such change or modification is less
432 than one percent (1%) of the total contract amount. The agency or
433 governing authority may limit the number, manner or frequency of
434 such emergency changes or modifications.

435 (h) **Petroleum purchase alternative.** In addition to
436 other methods of purchasing authorized in this chapter, when any
437 agency or governing authority shall have a need for gas, diesel
438 fuel, oils and/or other petroleum products in excess of the amount
439 set forth in paragraph (a) of this section, such agency or
440 governing authority may purchase the commodity after having
441 solicited and obtained at least two (2) competitive written bids,
442 as defined in paragraph (b) of this section. If two (2)
443 competitive written bids are not obtained, the entity shall comply
444 with the procedures set forth in paragraph (c) of this section.
445 In the event any agency or governing authority shall have
446 advertised for bids for the purchase of gas, diesel fuel, oils and
447 other petroleum products and coal and no acceptable bids can be
448 obtained, such agency or governing authority is authorized and
449 directed to enter into any negotiations necessary to secure the
450 lowest and best contract available for the purchase of such
451 commodities.

452 (i) **Road construction petroleum products price**
453 **adjustment clause authorization.** Any agency or governing
454 authority authorized to enter into contracts for the construction,
455 maintenance, surfacing or repair of highways, roads or streets,
456 may include in its bid proposal and contract documents a price
457 adjustment clause with relation to the cost to the contractor,
458 including taxes, based upon an industry-wide cost index, of
459 petroleum products including asphalt used in the performance or
460 execution of the contract or in the production or manufacture of
461 materials for use in such performance. Such industry-wide index
462 shall be established and published monthly by the Mississippi

463 Department of Transportation with a copy thereof to be mailed,
464 upon request, to the clerks of the governing authority of each
465 municipality and the clerks of each board of supervisors
466 throughout the state. The price adjustment clause shall be based
467 on the cost of such petroleum products only and shall not include
468 any additional profit or overhead as part of the adjustment. The
469 bid proposals or document contract shall contain the basis and
470 methods of adjusting unit prices for the change in the cost of
471 such petroleum products.

472 (j) **State agency emergency purchase procedure.** If the
473 governing board or the executive head, or his designee, of any
474 agency of the state shall determine that an emergency exists in
475 regard to the purchase of any commodities or repair contracts, so
476 that the delay incident to giving opportunity for competitive
477 bidding would be detrimental to the interests of the state, then
478 the provisions herein for competitive bidding shall not apply and
479 the head of such agency shall be authorized to make the purchase
480 or repair. Total purchases so made shall only be for the purpose
481 of meeting needs created by the emergency situation. In the event
482 such executive head is responsible to an agency board, at the
483 meeting next following the emergency purchase, documentation of
484 the purchase, including a description of the commodity purchased,
485 the purchase price thereof and the nature of the emergency shall
486 be presented to the board and placed on the minutes of the board
487 of such agency. The head of such agency, or his designee, shall,
488 at the earliest possible date following such emergency purchase,
489 file with the Department of Finance and Administration (i) a
490 statement explaining the conditions and circumstances of the
491 emergency, which shall include a detailed description of the
492 events leading up to the situation and the negative impact to the
493 entity if the purchase is made following the statutory
494 requirements set forth in paragraph (a), (b) or (c) of this
495 section, and (ii) a certified copy of the appropriate minutes of

496 the board of such agency, if applicable. On or before September 1
497 of each year, the State Auditor shall prepare and deliver to the
498 Senate Fees, Salaries and Administration Committee, the House Fees
499 and Salaries of Public Officers Committee and the Joint
500 Legislative Budget Committee a report containing a list of all
501 state agency emergency purchases and supporting documentation for
502 each emergency purchases.

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

504 If the governing authority, or the governing authority acting
505 through its designee, shall determine that an emergency exists in
506 regard to the purchase of any commodities or repair contracts, so
507 that the delay incident to giving opportunity for competitive
508 bidding would be detrimental to the interest of the governing
509 authority, then the provisions herein for competitive bidding
510 shall not apply and any officer or agent of such governing
511 authority having general or special authority therefor in making
512 such purchase or repair shall approve the bill presented therefor,
513 and he shall certify in writing thereon from whom such purchase
514 was made, or with whom such a repair contract was made. At the
515 board meeting next following the emergency purchase or repair
516 contract, documentation of the purchase or repair contract,
517 including a description of the commodity purchased, the price
518 thereof and the nature of the emergency shall be presented to the
519 board and shall be placed on the minutes of the board of such
520 governing authority.

521 (l) **Hospital purchase, lease-purchase and lease**
522 **authorization.**

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

528 (ii) In addition to the authority granted in
529 subparagraph (i) of this paragraph (1), the commissioners or board
530 of trustees is authorized to enter into contracts for the lease of
531 equipment or services, or both, which it considers necessary for
532 the proper care of patients if, in its opinion, it is not
533 financially feasible to purchase the necessary equipment or
534 services. Any such contract for the lease of equipment or
535 services executed by the commissioners or board shall not exceed a
536 maximum of five (5) years' duration and shall include a
537 cancellation clause based on unavailability of funds. If such
538 cancellation clause is exercised, there shall be no further
539 liability on the part of the lessee. Any such contract for the
540 lease of equipment or services executed on behalf of the
541 commissioners or board that complies with the provisions of this
542 subparagraph (ii) shall be excepted from the bid requirements set
543 forth in this section.

544 (m) **Exceptions from bidding requirements.** Excepted
545 from bid requirements are:

546 (i) **Purchasing agreements approved by department.**
547 Purchasing agreements, contracts and maximum price regulations
548 executed or approved by the Department of Finance and
549 Administration.

550 (ii) **Outside equipment repairs.** Repairs to
551 equipment, when such repairs are made by repair facilities in the
552 private sector; however, engines, transmissions, rear axles and/or
553 other such components shall not be included in this exemption when
554 replaced as a complete unit instead of being repaired and the need
555 for such total component replacement is known before disassembly
556 of the component; however, invoices identifying the equipment,
557 specific repairs made, parts identified by number and name,
558 supplies used in such repairs, and the number of hours of labor
559 and costs therefor shall be required for the payment for such
560 repairs.

561 (iii) **In-house equipment repairs.** Purchases of
562 parts for repairs to equipment, when such repairs are made by
563 personnel of the agency or governing authority; however, entire
564 assemblies, such as engines or transmissions, shall not be
565 included in this exemption when the entire assembly is being
566 replaced instead of being repaired.

567 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
568 of gravel or fill dirt which are to be removed and transported by
569 the purchaser.

570 (v) **Governmental equipment auctions.** Motor
571 vehicles or other equipment purchased from a federal agency or
572 authority, another governing authority or state agency of the
573 State of Mississippi, or any governing authority or state agency
574 of another state at a public auction held for the purpose of
575 disposing of such vehicles or other equipment. Any purchase by a
576 governing authority under the exemption authorized by this
577 subparagraph (v) shall require advance authorization spread upon
578 the minutes of the governing authority to include the listing of
579 the item or items authorized to be purchased and the maximum bid
580 authorized to be paid for each item or items.

581 (vi) **Intergovernmental sales and transfers.**
582 Purchases, sales, transfers or trades by governing authorities or
583 state agencies when such purchases, sales, transfers or trades are
584 made by a private treaty agreement or through means of
585 negotiation, from any federal agency or authority, another
586 governing authority or state agency of the State of Mississippi,
587 or any state agency or governing authority of another state.
588 Nothing in this section shall permit such purchases through public
589 auction except as provided for in subparagraph (v) of this
590 section. It is the intent of this section to allow governmental
591 entities to dispose of and/or purchase commodities from other
592 governmental entities at a price that is agreed to by both
593 parties. This shall allow for purchases and/or sales at prices

594 which may be determined to be below the market value if the
595 selling entity determines that the sale at below market value is
596 in the best interest of the taxpayers of the state. Governing
597 authorities shall place the terms of the agreement and any
598 justification on the minutes, and state agencies shall obtain
599 approval from the Department of Finance and Administration, prior
600 to releasing or taking possession of the commodities.

601 (vii) **Perishable supplies or food.** Perishable
602 supplies or foods purchased for use in connection with hospitals,
603 the school lunch programs, homemaking programs and for the feeding
604 of county or municipal prisoners.

605 (viii) **Single source items.** Noncompetitive items
606 available from one (1) source only. In connection with the
607 purchase of noncompetitive items only available from one (1)
608 source, a certification of the conditions and circumstances
609 requiring the purchase shall be filed by the agency with the
610 Department of Finance and Administration and by the governing
611 authority with the board of the governing authority. Upon receipt
612 of that certification the Department of Finance and Administration
613 or the board of the governing authority, as the case may be, may,
614 in writing, authorize the purchase, which authority shall be noted
615 on the minutes of the body at the next regular meeting thereafter.
616 In those situations, a governing authority is not required to
617 obtain the approval of the Department of Finance and
618 Administration.

619 (ix) **Waste disposal facility construction**
620 **contracts.** Construction of incinerators and other facilities for
621 disposal of solid wastes in which products either generated
622 therein, such as steam, or recovered therefrom, such as materials
623 for recycling, are to be sold or otherwise disposed of; however,
624 in constructing such facilities, a governing authority or agency
625 shall publicly issue requests for proposals, advertised for in the
626 same manner as provided herein for seeking bids for public

627 construction projects, concerning the design, construction,
628 ownership, operation and/or maintenance of such facilities,
629 wherein such requests for proposals when issued shall contain
630 terms and conditions relating to price, financial responsibility,
631 technology, environmental compatibility, legal responsibilities
632 and such other matters as are determined by the governing
633 authority or agency to be appropriate for inclusion; and after
634 responses to the request for proposals have been duly received,
635 the governing authority or agency may select the most qualified
636 proposal or proposals on the basis of price, technology and other
637 relevant factors and from such proposals, but not limited to the
638 terms thereof, negotiate and enter contracts with one or more of
639 the persons or firms submitting proposals.

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

643 (xi) **Information technology products.** Purchases
644 of information technology products made by governing authorities
645 under the provisions of purchase schedules, or contracts executed
646 or approved by the Mississippi Department of Information
647 Technology Services and designated for use by governing
648 authorities.

649 (xii) **Energy efficiency services and equipment.**
650 Energy efficiency services and equipment acquired by school
651 districts, community and junior colleges, institutions of higher
652 learning and state agencies or other applicable governmental
653 entities on a shared-savings, lease or lease-purchase basis
654 pursuant to Section 31-7-14.

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

659 (xiv) **Library books and other reference materials.**
660 Purchases by libraries or for libraries of books and periodicals;
661 processed film, video cassette tapes, filmstrips and slides;
662 recorded audio tapes, cassettes and diskettes; and any such items
663 as would be used for teaching, research or other information
664 distribution; however, equipment such as projectors, recorders,
665 audio or video equipment, and monitor televisions are not exempt
666 under this subparagraph.

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

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

673 (xvii) **Multichannel interactive video systems.**
674 From and after July 1, 1990, contracts by Mississippi Authority
675 for Educational Television with any private educational
676 institution or private nonprofit organization whose purposes are
677 educational in regard to the construction, purchase, lease or
678 lease-purchase of facilities and equipment and the employment of
679 personnel for providing multichannel interactive video systems
680 (ITSF) in the school districts of this state.

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

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

690 (xx) **Junior college books for rent.** Purchases by
691 community or junior colleges of textbooks which are obtained for

692 the purpose of renting such books to students as part of a book
693 service system.

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

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

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

700 Contracts for garbage collection or disposal, contracts for solid
701 waste collection or disposal and contracts for sewage collection
702 or disposal.

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

704 **contracts.** Professional maintenance program contracts for the
705 repair or maintenance of municipal water tanks, which provide
706 professional services needed to maintain municipal water storage
707 tanks for a fixed annual fee for a duration of two (2) or more
708 years.

709 (xxiv) **Purchases of Mississippi Industries for the**

710 **Blind products.** Purchases made by state agencies or governing
711 authorities involving any item that is manufactured, processed or
712 produced by the Mississippi Industries for the Blind.

713 (xxv) **Purchases of state-adopted textbooks.**

714 Purchases of state-adopted textbooks by public school districts.

715 (xxvi) **Certain purchases under the Mississippi**

716 **Major Economic Impact Act.** Contracts entered into pursuant to the
717 provisions of Section 57-75-9(2) and (3).

718 (xxvii) **Used heavy or specialized machinery or**

719 **equipment for installation of soil and water conservation**

720 **practices purchased at auction.** Used heavy or specialized

721 machinery or equipment used for the installation and

722 implementation of soil and water conservation practices or

723 measures purchased subject to the restrictions provided in

724 Sections 69-27-331 through 69-27-341. Any purchase by the State

725 Soil and Water Conservation Commission under the exemption
726 authorized by this subparagraph shall require advance
727 authorization spread upon the minutes of the commission to include
728 the listing of the item or items authorized to be purchased and
729 the maximum bid authorized to be paid for each item or items.

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

733 (xxix) **Purchases made pursuant to qualified**
734 **cooperative purchasing agreements.** Purchases made by certified
735 purchasing offices of state agencies or governing authorities
736 under cooperative purchasing agreements previously approved by the
737 Office of Purchasing and Travel and established by or for any
738 municipality, county, parish or state government or the federal
739 government, provided that the notification to potential
740 contractors includes a clause that sets forth the availability of
741 the cooperative purchasing agreement to other governmental
742 entities. Such purchases shall only be made if the use of the
743 cooperative purchasing agreements is determined to be in the best
744 interest of the government entity.

745 (xxx) **Procurement of design and construction**
746 **services by state institutions of higher learning.** Privately
747 financed contracts awarded by the Board of Trustees of State
748 Institutions of Higher Learning for the design and construction of
749 buildings or facilities, excluding dormitories, or parking
750 structures on the campus of a state institution of higher
751 learning, as provided in Section 37-101-44.

752 (n) **Term contract authorization.** All contracts for the
753 purchase of:

754 (i) All contracts for the purchase of commodities,
755 equipment and public construction (including, but not limited to,
756 repair and maintenance), may be let for periods of not more than
757 sixty (60) months in advance, subject to applicable statutory

758 provisions prohibiting the letting of contracts during specified
759 periods near the end of terms of office. Term contracts for a
760 period exceeding twenty-four (24) months shall also be subject to
761 ratification or cancellation by governing authority boards taking
762 office subsequent to the governing authority board entering the
763 contract.

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

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

790 (p) **Electrical utility petroleum-based equipment**
791 **purchase procedure.** When in response to a proper advertisement
792 therefor, no bid firm as to price is submitted to an electric
793 utility for power transformers, distribution transformers, power
794 breakers, reclosers or other articles containing a petroleum
795 product, the electric utility may accept the lowest and best bid
796 therefor although the price is not firm.

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

819 (r) **Solid waste contract proposal procedure.** Before
820 entering into any contract for garbage collection or disposal,
821 contract for solid waste collection or disposal or contract for
822 sewage collection or disposal, which involves an expenditure of

823 more than Fifty Thousand Dollars (\$50,000.00), a governing
824 authority or agency shall issue publicly a request for proposals
825 concerning the specifications for such services which shall be
826 advertised for in the same manner as provided in this section for
827 seeking bids for purchases which involve an expenditure of more
828 than the amount provided in paragraph (c) of this section. Any
829 request for proposals when issued shall contain terms and
830 conditions relating to price, financial responsibility,
831 technology, legal responsibilities and other relevant factors as
832 are determined by the governing authority or agency to be
833 appropriate for inclusion; all factors determined relevant by the
834 governing authority or agency or required by this paragraph (r)
835 shall be duly included in the advertisement to elicit proposals.
836 After responses to the request for proposals have been duly
837 received, the governing authority or agency shall select the most
838 qualified proposal or proposals on the basis of price, technology
839 and other relevant factors and from such proposals, but not
840 limited to the terms thereof, negotiate and enter contracts with
841 one or more of the persons or firms submitting proposals. If the
842 governing authority or agency deems none of the proposals to be
843 qualified or otherwise acceptable, the request for proposals
844 process may be reinitiated. Notwithstanding any other provisions
845 of this paragraph, where a county with at least thirty-five
846 thousand (35,000) nor more than forty thousand (40,000)
847 population, according to the 1990 federal decennial census, owns
848 or operates a solid waste landfill, the governing authorities of
849 any other county or municipality may contract with the governing
850 authorities of the county owning or operating the landfill,
851 pursuant to a resolution duly adopted and spread upon the minutes
852 of each governing authority involved, for garbage or solid waste
853 collection or disposal services through contract negotiations.

854 (s) **Minority set aside authorization.** Notwithstanding
855 any provision of this section to the contrary, any agency or

856 governing authority, by order placed on its minutes, may, in its
857 discretion, set aside not more than twenty percent (20%) of its
858 anticipated annual expenditures for the purchase of commodities
859 from minority businesses; however, all such set-aside purchases
860 shall comply with all purchasing regulations promulgated by the
861 Department of Finance and Administration and shall be subject to
862 bid requirements under this section. Set-aside purchases for
863 which competitive bids are required shall be made from the lowest
864 and best minority business bidder. For the purposes of this
865 paragraph, the term "minority business" means a business which is
866 owned by a majority of persons who are United States citizens or
867 permanent resident aliens (as defined by the Immigration and
868 Naturalization Service) of the United States, and who are Asian,
869 Black, Hispanic or Native American, according to the following
870 definitions:

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

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

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

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

882 (t) **Construction punch list restriction.** The
883 architect, engineer or other representative designated by the
884 agency or governing authority that is contracting for public
885 construction or renovation may prepare and submit to the
886 contractor only one (1) preliminary punch list of items that do
887 not meet the contract requirements at the time of substantial

888 completion and one (1) final list immediately before final
889 completion and final payment.

890 (u) **Purchase authorization clarification.** Nothing in
891 this section shall be construed as authorizing any purchase not
892 authorized by law.

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