

By: Representative Fleming

To: Universities and
Colleges; Appropriations

HOUSE BILL NO. 212

1 AN ACT TO AMEND SECTION 37-101-41, MISSISSIPPI CODE OF 1972,
2 TO INCLUDE THE UNIVERSITY OF MISSISSIPPI IN THE LIST OF STATE
3 UNIVERSITIES FOR WHICH THE BOARD OF TRUSTEES OF STATE INSTITUTIONS
4 OF HIGHER LEARNING MAY PROVIDE FOR CONSTRUCTION OF PARKING
5 STRUCTURES AND DORMITORIES BY LEASES WITH PRIVATE ENTITIES; TO
6 PROVIDE THAT SUCH DORMITORIES OR PARKING STRUCTURES SHALL BE
7 LEASED BACK TO THE CONCERNED STATE INSTITUTION OF HIGHER LEARNING
8 FOR A FIXED PERIOD; TO CREATE A NEW SECTION TO BE CODIFIED AS
9 SECTION 37-101-44, MISSISSIPPI CODE OF 1972, TO PRESCRIBE AN
10 ALTERNATE PROCEDURE THAT THE BOARD OF TRUSTEES OF INSTITUTIONS OF
11 HIGHER LEARNING MAY EMPLOY FOR THE AWARD OF SUCH CONTRACTS BASED
12 UPON A DESIGN-BUILD DELIVERY SYSTEM; TO AMEND SECTION 31-7-13,
13 MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

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

15 **SECTION 1.** Section 37-101-41, Mississippi Code of 1972, is
16 amended as follows:

17 37-101-41. The Board of Trustees of State Institutions of
18 Higher Learning may lease to private individuals or corporations,
19 for a term not exceeding thirty-one (31) years, any land at any of
20 the following state-supported institutions: the University of
21 Mississippi, Mississippi State University of Agriculture and
22 Applied Science, Jackson State University, Mississippi Valley
23 State University, Alcorn State University, University of Southern
24 Mississippi, Mississippi University for Women and Delta State
25 University, for the purpose of constructing thereon parking
26 structures or dormitories on the main campus of the university,
27 for active faculty and students. The dormitories or parking
28 structures shall be constructed thereon by private financing, and
29 shall be leased back to the board for use by the concerned
30 state-supported institution of higher learning. The lease shall
31 be for a fixed term of ten (10), fifteen (15), twenty (20) or
32 thirty (30) years. The lease shall contain a provision permitting

33 said board to purchase the building located thereon for the sum of
34 one dollar (\$1.00) after payment by said board of all sums of
35 money due under said lease.

36 The entity may not construct apartment buildings under the
37 authority of this section. No (a) State General Fund
38 appropriations, (b) bonds backed by the state, or (c) university
39 self-generated funds from any source other than student housing
40 fees, may be used to finance the construction or maintenance of
41 any such dormitory facilities or parking structures. No student
42 housing fees charged at such dormitories may exceed housing fees
43 charged at other public university housing facilities on campus.

44 **SECTION 2.** The following shall be codified as Section
45 37-101-44, Mississippi Code of 1972:

46 37-101-44. (1) As an alternative to the procedures
47 described in Section 37-101-43, and before entering into or
48 awarding any lease under the provisions of Section 37-101-41, the
49 Board of Trustees of State Institutions of Higher Learning may
50 award contracts for privately financed design and construction of
51 dormitory facilities or parking structures on the main campus of
52 any state institution of higher learning, provided that the
53 entities receiving the contract or contracts and those entities to
54 which work or services are subcontracted are duly licensed and are
55 qualified in the state to perform the contract or contracts.

56 (2) Such a design-build delivery system may be authorized
57 only when the Board of Trustees of State Institutions of Higher
58 Learning makes a determination, entered on its minutes, with
59 specific findings for each project demonstrating how it is in the
60 best interest of the public to enter into a design-build contract.
61 At a minimum, such determination shall give a detailed explanation
62 of why a design-build approach for a particular project satisfies
63 the public need better than the traditional design-bid-build
64 approach.

65 (3) For each proposed design-build project, a two-phase
66 procedure for awarding design-build contracts shall be adopted and
67 shall include the following:

68 (a) During Phase One, and before solicitation of
69 initial proposals, the board shall develop, with the assistance of
70 a registered architect or engineer, a scope of work statement that
71 provides prospective offerors with sufficient information
72 regarding the board's requirements. The scope of work statement
73 shall include floor plans showing spaces by name and number,
74 actual net area of each space, structural module, fixed equipment,
75 mechanical spaces, chases and circulation areas. Drawings shall
76 show overall building dimensions and major lines of dimensions,
77 and site plans which show topography, adjacent buildings and
78 utilities. Drawings shall include information to adequately
79 explain HVAC, electrical and structural requirements. Information
80 concerning furnishings, miscellaneous equipment, layouts, lists
81 and schedules necessary to explain the plans are to be indicated
82 on floor plans. The registered architect or engineer engaged by
83 the board shall also prepare preliminary specifications following
84 the Construction Specifications Institute format and giving basic
85 descriptions of essential building materials, finishes, components
86 and all systems. The scope of work statement shall also include
87 building elevations, sections and design details. Building
88 elevations shall show fenestration and proposed exterior
89 materials. The scope of work statement shall include general
90 budget parameters, schedule or delivery requirements, relevant
91 criteria for evaluation of proposals, and any other information
92 necessary to enable the design-builders to submit proposals which
93 meet the board's needs.

94 (b) The board shall cause to be published once a week
95 for at least three (3) consecutive weeks and not less than
96 twenty-one (21) days in at least one (1) newspaper having a
97 general circulation in the county in which the interested

98 institution is located and in one (1) newspaper with a general
99 statewide circulation, a notice inviting proposals for the
100 leasing, design-build deconstruction and leasing back of said land
101 and design-build constructed facility. The notice shall inform
102 potential offerors of how to obtain the scope of work statement
103 developed for the project and the notice shall contain such other
104 information to describe adequately the general nature and scope of
105 the design-build project so as to promote full, equal and open
106 competition.

107 (c) The board shall accept initial proposals only from
108 an entity able to provide, either in-house or through contractual
109 arrangements, an experienced and qualified design-build team which
110 shall include, at a minimum, an architect or engineer registered
111 in Mississippi and a contractor properly licensed in Mississippi
112 for the type of work required. From evaluation of initial
113 proposals under Phase One, the board shall select a minimum of two
114 (2) and a maximum of five (5) design-builders to submit proposals
115 for Phase Two.

116 (d) During Phase Two, the short listed firms shall be
117 invited to submit detailed designs, specific technical concepts or
118 solutions, pricing, scheduling, and other information deemed
119 appropriate by the board as necessary to evaluate and rank
120 acceptability of the Phase Two proposals. After evaluation of
121 these Phase Two proposals, the board shall award a contract to the
122 design-builder determined to offer the best value to the public in
123 accordance with evaluation criteria set forth in the request for
124 proposals, of which price must be one (1) but not necessarily the
125 only criterion.

126 (e) If the board accepts a proposal other than the
127 lowest dollar proposal actually submitted, the board shall enter
128 on its minutes detailed calculations and a narrative summary
129 showing why the accepted proposal was determined to provide the

130 best value, and the board shall specifically state on its minutes
131 the justification for its award.

132 (4) All facilities governed by this section shall be
133 designed and constructed to equal or exceed the Southern Building
134 Code Standards in force at the time of contracting. In addition,
135 all private contracts or private entities contracting or
136 performing pursuant to this section shall at all times comply with
137 all applicable laws, codes, and other legal requirements
138 pertaining to the project. In addition, all private contracts
139 pursuant to this section shall be approved by the Public
140 Procurement Review Board.

141 (5) (a) No public official or an employee of a state agency
142 who has duties or responsibilities related to the contracting,
143 constructing, leasing, acquiring or operating said facility may
144 become an employee, consultant or contract vendor to a private
145 entity providing such design-build services to the board within
146 one (1) year after the termination of his service or employment.

147 (b) Any person violating this section shall be guilty
148 of a misdemeanor and punished by a fine of not less than Five
149 Hundred Dollars (\$500.00) but not more than One Thousand Dollars
150 (\$1,000.00).

151 (6) The board shall promulgate rules and regulations,
152 consistent with this section, to ensure fair, uniform, clear, and
153 effective procedures for full, equal, and open competition for
154 design-build projects and for delivery of quality design-build
155 projects on time, within budget, and in the public interest.

156 (7) The board shall report annually to the Legislature the
157 following:

158 (a) The total number of design-build projects under
159 contract, commenced and completed;

160 (b) The dollar amounts of each design-build contract,
161 both as awarded and with any adjustments, and the total dollar
162 volume of all design-build contracts awarded; and

163 (c) For each design-build project, a listing of all
164 design-builders, architects, engineers, general contractors, and
165 first-tier subcontractors, to include the principal office address
166 of each such entity.

167 (8) This section shall stand repealed from and after June
168 30, 2007.

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

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

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

185 (b) **Bidding procedure for purchases over \$3,500.00 but**
186 **not over \$15,000.00.** Purchases which involve an expenditure of
187 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
188 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
189 freight and shipping charges may be made from the lowest and best
190 bidder without publishing or posting advertisement for bids,
191 provided at least two (2) competitive written bids have been
192 obtained. Any governing authority purchasing commodities pursuant
193 to this paragraph (b) may authorize its purchasing agent, or his
194 designee, with regard to governing authorities other than
195 counties, or its purchase clerk, or his designee, with regard to

196 counties, to accept the lowest and best competitive written bid.
197 Such authorization shall be made in writing by the governing
198 authority and shall be maintained on file in the primary office of
199 the agency and recorded in the official minutes of the governing
200 authority, as appropriate. The purchasing agent or the purchase
201 clerk, or their designee, as the case may be, and not the
202 governing authority, shall be liable for any penalties and/or
203 damages as may be imposed by law for any act or omission of the
204 purchasing agent or purchase clerk, or their designee,
205 constituting a violation of law in accepting any bid without
206 approval by the governing authority. The term "competitive
207 written bid" shall mean a bid submitted on a bid form furnished by
208 the buying agency or governing authority and signed by authorized
209 personnel representing the vendor, or a bid submitted on a
210 vendor's letterhead or identifiable bid form and signed by
211 authorized personnel representing the vendor. "Competitive" shall
212 mean that the bids are developed based upon comparable
213 identification of the needs and are developed independently and
214 without knowledge of other bids or prospective bids. Bids may be
215 submitted by facsimile, electronic mail or other generally
216 accepted method of information distribution. Bids submitted by
217 electronic transmission shall not require the signature of the
218 vendor's representative unless required by agencies or governing
219 authorities.

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

221 (i) **Publication requirement.** Purchases which
222 involve an expenditure of more than Fifteen Thousand Dollars
223 (\$15,000.00), exclusive of freight and shipping charges, may be
224 made from the lowest and best bidder after advertising for
225 competitive sealed bids once each week for two (2) consecutive
226 weeks in a regular newspaper published in the county or
227 municipality in which such agency or governing authority is
228 located. The date as published for the bid opening shall not be

229 less than seven (7) working days after the last published notice;
230 however, if the purchase involves a construction project in which
231 the estimated cost is in excess of Fifteen Thousand Dollars
232 (\$15,000.00), such bids shall not be opened in less than fifteen
233 (15) working days after the last notice is published and the
234 notice for the purchase of such construction shall be published
235 once each week for two (2) consecutive weeks. The notice of
236 intention to let contracts or purchase equipment shall state the
237 time and place at which bids shall be received, list the contracts
238 to be made or types of equipment or supplies to be purchased, and,
239 if all plans and/or specifications are not published, refer to the
240 plans and/or specifications on file. If there is no newspaper
241 published in the county or municipality, then such notice shall be
242 given by posting same at the courthouse, or for municipalities at
243 the city hall, and at two (2) other public places in the county or
244 municipality, and also by publication once each week for two (2)
245 consecutive weeks in some newspaper having a general circulation
246 in the county or municipality in the above provided manner. On
247 the same date that the notice is submitted to the newspaper for
248 publication, the agency or governing authority involved shall mail
249 written notice to, or provide electronic notification to the main
250 office of the Mississippi Contract Procurement Center that
251 contains the same information as that in the published notice.

252 (ii) **Bidding process amendment procedure.** If all
253 plans and/or specifications are published in the notification,
254 then the plans and/or specifications may not be amended. If all
255 plans and/or specifications are not published in the notification,
256 then amendments to the plans/specifications, bid opening date, bid
257 opening time and place may be made, provided that the agency or
258 governing authority maintains a list of all prospective bidders
259 who are known to have received a copy of the bid documents and all
260 such prospective bidders are sent copies of all amendments. This
261 notification of amendments may be made via mail, facsimile,

262 electronic mail or other generally accepted method of information
263 distribution. No addendum to bid specifications may be issued
264 within two (2) working days of the time established for the
265 receipt of bids unless such addendum also amends the bid opening
266 to a date not less than five (5) working days after the date of
267 the addendum.

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

277 (iv) **Specification restrictions.** Specifications
278 pertinent to such bidding shall be written so as not to exclude
279 comparable equipment of domestic manufacture. However, if valid
280 justification is presented, the Department of Finance and
281 Administration or the board of a governing authority may approve a
282 request for specific equipment necessary to perform a specific
283 job. Further, such justification, when placed on the minutes of
284 the board of a governing authority, may serve as authority for
285 that governing authority to write specifications to require a
286 specific item of equipment needed to perform a specific job. In
287 addition to these requirements, from and after July 1, 1990,
288 vendors of relocatable classrooms and the specifications for the
289 purchase of such relocatable classrooms published by local school
290 boards shall meet all pertinent regulations of the State Board of
291 Education, including prior approval of such bid by the State
292 Department of Education.

293 (v) Agencies and governing authorities may
294 establish secure procedures by which bids may be submitted via
295 electronic means.

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

297 (i) **Decision procedure.** Purchases may be made
298 from the lowest and best bidder. In determining the lowest and
299 best bid, freight and shipping charges shall be included.
300 Life-cycle costing, total cost bids, warranties, guaranteed
301 buy-back provisions and other relevant provisions may be included
302 in the best bid calculation. All best bid procedures for state
303 agencies must be in compliance with regulations established by the
304 Department of Finance and Administration. If any governing
305 authority accepts a bid other than the lowest bid actually
306 submitted, it shall place on its minutes detailed calculations and
307 narrative summary showing that the accepted bid was determined to
308 be the lowest and best bid, including the dollar amount of the
309 accepted bid and the dollar amount of the lowest bid. No agency
310 or governing authority shall accept a bid based on items not
311 included in the specifications.

312 (ii) **Decision procedure for Certified Purchasing**
313 **Offices.** In addition to the decision procedure set forth in
314 paragraph (d)(i), Certified Purchasing Offices may also use the
315 following procedure: Purchases may be made from the bidder
316 offering the best value. In determining the best value bid,
317 freight and shipping charges shall be included. Life-cycle
318 costing, total cost bids, warranties, guaranteed buy-back
319 provisions, documented previous experience, training costs and
320 other relevant provisions may be included in the best value
321 calculation. This provision shall authorize Certified Purchasing
322 Offices to utilize a Request For Proposals (RFP) process when
323 purchasing commodities. All best value procedures for state
324 agencies must be in compliance with regulations established by the
325 Department of Finance and Administration. No agency or governing

326 authority shall accept a bid based on items or criteria not
327 included in the specifications.

328 (iii) **Construction project negotiations authority.**

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

334 (e) **Lease-purchase authorization.** For the purposes of
335 this section, the term "equipment" shall mean equipment, furniture
336 and, if applicable, associated software and other applicable
337 direct costs associated with the acquisition. Any lease-purchase
338 of equipment which an agency is not required to lease-purchase
339 under the master lease-purchase program pursuant to Section
340 31-7-10 and any lease-purchase of equipment which a governing
341 authority elects to lease-purchase may be acquired by a
342 lease-purchase agreement under this paragraph (e). Lease-purchase
343 financing may also be obtained from the vendor or from a
344 third-party source after having solicited and obtained at least
345 two (2) written competitive bids, as defined in paragraph (b) of
346 this section, for such financing without advertising for such
347 bids. Solicitation for the bids for financing may occur before or
348 after acceptance of bids for the purchase of such equipment or,
349 where no such bids for purchase are required, at any time before
350 the purchase thereof. No such lease-purchase agreement shall be
351 for an annual rate of interest which is greater than the overall
352 maximum interest rate to maturity on general obligation
353 indebtedness permitted under Section 75-17-101, and the term of
354 such lease-purchase agreement shall not exceed the useful life of
355 equipment covered thereby as determined according to the upper
356 limit of the asset depreciation range (ADR) guidelines for the
357 Class Life Asset Depreciation Range System established by the
358 Internal Revenue Service pursuant to the United States Internal

359 Revenue Code and regulations thereunder as in effect on December
360 31, 1980, or comparable depreciation guidelines with respect to
361 any equipment not covered by ADR guidelines. Any lease-purchase
362 agreement entered into pursuant to this paragraph (e) may contain
363 any of the terms and conditions which a master lease-purchase
364 agreement may contain under the provisions of Section 31-7-10(5),
365 and shall contain an annual allocation dependency clause
366 substantially similar to that set forth in Section 31-7-10(8).
367 Each agency or governing authority entering into a lease-purchase
368 transaction pursuant to this paragraph (e) shall maintain with
369 respect to each such lease-purchase transaction the same
370 information as required to be maintained by the Department of
371 Finance and Administration pursuant to Section 31-7-10(13).
372 However, nothing contained in this section shall be construed to
373 permit agencies to acquire items of equipment with a total
374 acquisition cost in the aggregate of less than Ten Thousand
375 Dollars (\$10,000.00) by a single lease-purchase transaction. All
376 equipment, and the purchase thereof by any lessor, acquired by
377 lease-purchase under this paragraph and all lease-purchase
378 payments with respect thereto shall be exempt from all Mississippi
379 sales, use and ad valorem taxes. Interest paid on any
380 lease-purchase agreement under this section shall be exempt from
381 State of Mississippi income taxation.

382 (f) **Alternate bid authorization.** When necessary to
383 ensure ready availability of commodities for public works and the
384 timely completion of public projects, no more than two (2)
385 alternate bids may be accepted by a governing authority for
386 commodities. No purchases may be made through use of such
387 alternate bids procedure unless the lowest and best bidder cannot
388 deliver the commodities contained in his bid. In that event,
389 purchases of such commodities may be made from one (1) of the
390 bidders whose bid was accepted as an alternate.

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

411 (h) **Petroleum purchase alternative.** In addition to
412 other methods of purchasing authorized in this chapter, when any
413 agency or governing authority shall have a need for gas, diesel
414 fuel, oils and/or other petroleum products in excess of the amount
415 set forth in paragraph (a) of this section, such agency or
416 governing authority may purchase the commodity after having
417 solicited and obtained at least two (2) competitive written bids,
418 as defined in paragraph (b) of this section. If two (2)
419 competitive written bids are not obtained, the entity shall comply
420 with the procedures set forth in paragraph (c) of this section.
421 In the event any agency or governing authority shall have
422 advertised for bids for the purchase of gas, diesel fuel, oils and
423 other petroleum products and coal and no acceptable bids can be

424 obtained, such agency or governing authority is authorized and
425 directed to enter into any negotiations necessary to secure the
426 lowest and best contract available for the purchase of such
427 commodities.

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

448 (j) **State agency emergency purchase procedure.** If the
449 governing board or the executive head, or his designee, of any
450 agency of the state shall determine that an emergency exists in
451 regard to the purchase of any commodities or repair contracts, so
452 that the delay incident to giving opportunity for competitive
453 bidding would be detrimental to the interests of the state, then
454 the provisions herein for competitive bidding shall not apply and
455 the head of such agency shall be authorized to make the purchase
456 or repair. Total purchases so made shall only be for the purpose

457 of meeting needs created by the emergency situation. In the event
458 such executive head is responsible to an agency board, at the
459 meeting next following the emergency purchase, documentation of
460 the purchase, including a description of the commodity purchased,
461 the purchase price thereof and the nature of the emergency shall
462 be presented to the board and placed on the minutes of the board
463 of such agency. The head of such agency, or his designee, shall,
464 at the earliest possible date following such emergency purchase,
465 file with the Department of Finance and Administration (i) a
466 statement explaining the conditions and circumstances of the
467 emergency, which shall include a detailed description of the
468 events leading up to the situation and the negative impact to the
469 entity if the purchase is made following the statutory
470 requirements set forth in paragraph (a), (b) or (c) of this
471 section, and (ii) a certified copy of the appropriate minutes of
472 the board of such agency, if applicable. On or before September 1
473 of each year, the State Auditor shall prepare and deliver to the
474 Senate Fees, Salaries and Administration Committee, the House Fees
475 and Salaries of Public Officers Committee and the Joint
476 Legislative Budget Committee a report containing a list of all
477 state agency emergency purchases and supporting documentation for
478 each emergency purchase.

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

480 If the governing authority, or the governing authority acting
481 through its designee, shall determine that an emergency exists in
482 regard to the purchase of any commodities or repair contracts, so
483 that the delay incident to giving opportunity for competitive
484 bidding would be detrimental to the interest of the governing
485 authority, then the provisions herein for competitive bidding
486 shall not apply and any officer or agent of such governing
487 authority having general or special authority therefor in making
488 such purchase or repair shall approve the bill presented therefor,
489 and he shall certify in writing thereon from whom such purchase

490 was made, or with whom such a repair contract was made. At the
491 board meeting next following the emergency purchase or repair
492 contract, documentation of the purchase or repair contract,
493 including a description of the commodity purchased, the price
494 thereof and the nature of the emergency shall be presented to the
495 board and shall be placed on the minutes of the board of such
496 governing authority.

497 (1) **Hospital purchase, lease-purchase and lease**
498 **authorization.**

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

504 (ii) In addition to the authority granted in
505 subparagraph (i) of this paragraph (1), the commissioners or board
506 of trustees is authorized to enter into contracts for the lease of
507 equipment or services, or both, which it considers necessary for
508 the proper care of patients if, in its opinion, it is not
509 financially feasible to purchase the necessary equipment or
510 services. Any such contract for the lease of equipment or
511 services executed by the commissioners or board shall not exceed a
512 maximum of five (5) years' duration and shall include a
513 cancellation clause based on unavailability of funds. If such
514 cancellation clause is exercised, there shall be no further
515 liability on the part of the lessee. Any such contract for the
516 lease of equipment or services executed on behalf of the
517 commissioners or board that complies with the provisions of this
518 subparagraph (ii) shall be excepted from the bid requirements set
519 forth in this section.

520 (m) **Exceptions from bidding requirements.** Excepted
521 from bid requirements are:

522 (i) **Purchasing agreements approved by department.**

523 Purchasing agreements, contracts and maximum price regulations
524 executed or approved by the Department of Finance and
525 Administration.

526 (ii) **Outside equipment repairs.** Repairs to
527 equipment, when such repairs are made by repair facilities in the
528 private sector; however, engines, transmissions, rear axles and/or
529 other such components shall not be included in this exemption when
530 replaced as a complete unit instead of being repaired and the need
531 for such total component replacement is known before disassembly
532 of the component; however, invoices identifying the equipment,
533 specific repairs made, parts identified by number and name,
534 supplies used in such repairs, and the number of hours of labor
535 and costs therefor shall be required for the payment for such
536 repairs.

537 (iii) **In-house equipment repairs.** Purchases of
538 parts for repairs to equipment, when such repairs are made by
539 personnel of the agency or governing authority; however, entire
540 assemblies, such as engines or transmissions, shall not be
541 included in this exemption when the entire assembly is being
542 replaced instead of being repaired.

543 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
544 of gravel or fill dirt which are to be removed and transported by
545 the purchaser.

546 (v) **Governmental equipment auctions.** Motor
547 vehicles or other equipment purchased from a federal agency or
548 authority, another governing authority or state agency of the
549 State of Mississippi, or any governing authority or state agency
550 of another state at a public auction held for the purpose of
551 disposing of such vehicles or other equipment. Any purchase by a
552 governing authority under the exemption authorized by this
553 subparagraph (v) shall require advance authorization spread upon
554 the minutes of the governing authority to include the listing of

555 the item or items authorized to be purchased and the maximum bid
556 authorized to be paid for each item or items.

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

558 Purchases, sales, transfers or trades by governing authorities or
559 state agencies when such purchases, sales, transfers or trades are
560 made by a private treaty agreement or through means of
561 negotiation, from any federal agency or authority, another
562 governing authority or state agency of the State of Mississippi,
563 or any state agency or governing authority of another state.
564 Nothing in this section shall permit such purchases through public
565 auction except as provided for in subparagraph (v) of this
566 section. It is the intent of this section to allow governmental
567 entities to dispose of and/or purchase commodities from other
568 governmental entities at a price that is agreed to by both
569 parties. This shall allow for purchases and/or sales at prices
570 which may be determined to be below the market value if the
571 selling entity determines that the sale at below market value is
572 in the best interest of the taxpayers of the state. Governing
573 authorities shall place the terms of the agreement and any
574 justification on the minutes, and state agencies shall obtain
575 approval from the Department of Finance and Administration, prior
576 to releasing or taking possession of the commodities.

577 (vii) **Perishable supplies or food.** Perishable
578 supplies or foods purchased for use in connection with hospitals,
579 the school lunch programs, homemaking programs and for the feeding
580 of county or municipal prisoners.

581 (viii) **Single source items.** Noncompetitive items
582 available from one (1) source only. In connection with the
583 purchase of noncompetitive items only available from one (1)
584 source, a certification of the conditions and circumstances
585 requiring the purchase shall be filed by the agency with the
586 Department of Finance and Administration and by the governing
587 authority with the board of the governing authority. Upon receipt

588 of that certification the Department of Finance and Administration
589 or the board of the governing authority, as the case may be, may,
590 in writing, authorize the purchase, which authority shall be noted
591 on the minutes of the body at the next regular meeting thereafter.
592 In those situations, a governing authority is not required to
593 obtain the approval of the Department of Finance and
594 Administration.

595 (ix) **Waste disposal facility construction**
596 **contracts.** Construction of incinerators and other facilities for
597 disposal of solid wastes in which products either generated
598 therein, such as steam, or recovered therefrom, such as materials
599 for recycling, are to be sold or otherwise disposed of; however,
600 in constructing such facilities, a governing authority or agency
601 shall publicly issue requests for proposals, advertised for in the
602 same manner as provided herein for seeking bids for public
603 construction projects, concerning the design, construction,
604 ownership, operation and/or maintenance of such facilities,
605 wherein such requests for proposals when issued shall contain
606 terms and conditions relating to price, financial responsibility,
607 technology, environmental compatibility, legal responsibilities
608 and such other matters as are determined by the governing
609 authority or agency to be appropriate for inclusion; and after
610 responses to the request for proposals have been duly received,
611 the governing authority or agency may select the most qualified
612 proposal or proposals on the basis of price, technology and other
613 relevant factors and from such proposals, but not limited to the
614 terms thereof, negotiate and enter contracts with one or more of
615 the persons or firms submitting proposals.

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

619 (xi) **Information technology products.** Purchases
620 of information technology products made by governing authorities

621 under the provisions of purchase schedules, or contracts executed
622 or approved by the Mississippi Department of Information
623 Technology Services and designated for use by governing
624 authorities.

625 (xii) **Energy efficiency services and equipment.**
626 Energy efficiency services and equipment acquired by school
627 districts, community and junior colleges, institutions of higher
628 learning and state agencies or other applicable governmental
629 entities on a shared-savings, lease or lease-purchase basis
630 pursuant to Section 31-7-14.

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

635 (xiv) **Library books and other reference materials.**
636 Purchases by libraries or for libraries of books and periodicals;
637 processed film, video cassette tapes, filmstrips and slides;
638 recorded audio tapes, cassettes and diskettes; and any such items
639 as would be used for teaching, research or other information
640 distribution; however, equipment such as projectors, recorders,
641 audio or video equipment, and monitor televisions are not exempt
642 under this subparagraph.

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

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

649 (xvii) **Multichannel interactive video systems.**
650 From and after July 1, 1990, contracts by Mississippi Authority
651 for Educational Television with any private educational
652 institution or private nonprofit organization whose purposes are
653 educational in regard to the construction, purchase, lease or

654 lease-purchase of facilities and equipment and the employment of
655 personnel for providing multichannel interactive video systems
656 (ITSF) in the school districts of this state.

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

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

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

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

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

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

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

676 Contracts for garbage collection or disposal, contracts for solid
677 waste collection or disposal and contracts for sewage collection
678 or disposal.

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

680 **contracts.** Professional maintenance program contracts for the
681 repair or maintenance of municipal water tanks, which provide
682 professional services needed to maintain municipal water storage
683 tanks for a fixed annual fee for a duration of two (2) or more
684 years.

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

686 **Blind products.** Purchases made by state agencies or governing

687 authorities involving any item that is manufactured, processed or
688 produced by the Mississippi Industries for the Blind.

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

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

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

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

694 (xxvii) **Used heavy or specialized machinery or**
695 **equipment for installation of soil and water conservation**

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

697 machinery or equipment used for the installation and

698 implementation of soil and water conservation practices or

699 measures purchased subject to the restrictions provided in

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

701 Soil and Water Conservation Commission under the exemption

702 authorized by this subparagraph shall require advance

703 authorization spread upon the minutes of the commission to include

704 the listing of the item or items authorized to be purchased and

705 the maximum bid authorized to be paid for each item or items.

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

707 Leases by hospitals of equipment or services if the leases are in

708 compliance with paragraph (1)(ii).

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

710 **cooperative purchasing agreements.** Purchases made by certified

711 purchasing offices of state agencies or governing authorities

712 under cooperative purchasing agreements previously approved by the

713 Office of Purchasing and Travel and established by or for any

714 municipality, county, parish or state government or the federal

715 government, provided that the notification to potential

716 contractors includes a clause that sets forth the availability of

717 the cooperative purchasing agreement to other governmental

718 entities. Such purchases shall only be made if the use of the

719 cooperative purchasing agreements is determined to be in the best
720 interest of the government entity.

721 (xxx) **School yearbooks.** Purchases of school
722 yearbooks by state agencies or governing authorities; provided,
723 however, that state agencies and governing authorities shall use
724 for these purchases the RFP process as set forth in the
725 Mississippi Procurement Manual adopted by the Office of Purchasing
726 and Travel.

727 (xxxii) **Design-build method or the design-build**
728 **bridging method of contracting.** Contracts entered into the
729 provisions of Section 31-11-3(9).

730 (xxxiii) Procurement of design and construction
731 services by universities. Nothing in this section restricts the
732 right of the Board of Trustees of State Institutions of Higher
733 Learning to award privately financed contracts for the design and
734 for the construction of dormitories or parking structures on the
735 main campus of a state institution of higher learning, as provided
736 in Section 37-101-41.

737 This paragraph (xxxiii) shall stand repealed from and after
738 June 30, 2007.

739 (n) **Term contract authorization.** All contracts for the
740 purchase of:

741 (i) All contracts for the purchase of commodities,
742 equipment and public construction (including, but not limited to,
743 repair and maintenance), may be let for periods of not more than
744 sixty (60) months in advance, subject to applicable statutory
745 provisions prohibiting the letting of contracts during specified
746 periods near the end of terms of office. Term contracts for a
747 period exceeding twenty-four (24) months shall also be subject to
748 ratification or cancellation by governing authority boards taking
749 office subsequent to the governing authority board entering the
750 contract.

751 (ii) Bid proposals and contracts may include price
752 adjustment clauses with relation to the cost to the contractor
753 based upon a nationally published industry-wide or nationally
754 published and recognized cost index. The cost index used in a
755 price adjustment clause shall be determined by the Department of
756 Finance and Administration for the state agencies and by the
757 governing board for governing authorities. The bid proposal and
758 contract documents utilizing a price adjustment clause shall
759 contain the basis and method of adjusting unit prices for the
760 change in the cost of such commodities, equipment and public
761 construction.

762 (o) **Purchase law violation prohibition and vendor**
763 **penalty.** No contract or purchase as herein authorized shall be
764 made for the purpose of circumventing the provisions of this
765 section requiring competitive bids, nor shall it be lawful for any
766 person or concern to submit individual invoices for amounts within
767 those authorized for a contract or purchase where the actual value
768 of the contract or commodity purchased exceeds the authorized
769 amount and the invoices therefor are split so as to appear to be
770 authorized as purchases for which competitive bids are not
771 required. Submission of such invoices shall constitute a
772 misdemeanor punishable by a fine of not less than Five Hundred
773 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
774 or by imprisonment for thirty (30) days in the county jail, or
775 both such fine and imprisonment. In addition, the claim or claims
776 submitted shall be forfeited.

777 (p) **Electrical utility petroleum-based equipment**
778 **purchase procedure.** When in response to a proper advertisement
779 therefor, no bid firm as to price is submitted to an electric
780 utility for power transformers, distribution transformers, power
781 breakers, reclosers or other articles containing a petroleum
782 product, the electric utility may accept the lowest and best bid
783 therefor although the price is not firm.

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

806 (r) **Solid waste contract proposal procedure.** Before
807 entering into any contract for garbage collection or disposal,
808 contract for solid waste collection or disposal or contract for
809 sewage collection or disposal, which involves an expenditure of
810 more than Fifty Thousand Dollars (\$50,000.00), a governing
811 authority or agency shall issue publicly a request for proposals
812 concerning the specifications for such services which shall be
813 advertised for in the same manner as provided in this section for
814 seeking bids for purchases which involve an expenditure of more
815 than the amount provided in paragraph (c) of this section. Any
816 request for proposals when issued shall contain terms and

817 conditions relating to price, financial responsibility,
818 technology, legal responsibilities and other relevant factors as
819 are determined by the governing authority or agency to be
820 appropriate for inclusion; all factors determined relevant by the
821 governing authority or agency or required by this paragraph (r)
822 shall be duly included in the advertisement to elicit proposals.
823 After responses to the request for proposals have been duly
824 received, the governing authority or agency shall select the most
825 qualified proposal or proposals on the basis of price, technology
826 and other relevant factors and from such proposals, but not
827 limited to the terms thereof, negotiate and enter contracts with
828 one or more of the persons or firms submitting proposals. If the
829 governing authority or agency deems none of the proposals to be
830 qualified or otherwise acceptable, the request for proposals
831 process may be reinitiated. Notwithstanding any other provisions
832 of this paragraph, where a county with at least thirty-five
833 thousand (35,000) nor more than forty thousand (40,000)
834 population, according to the 1990 federal decennial census, owns
835 or operates a solid waste landfill, the governing authorities of
836 any other county or municipality may contract with the governing
837 authorities of the county owning or operating the landfill,
838 pursuant to a resolution duly adopted and spread upon the minutes
839 of each governing authority involved, for garbage or solid waste
840 collection or disposal services through contract negotiations.

841 (s) **Minority set aside authorization.** Notwithstanding
842 any provision of this section to the contrary, any agency or
843 governing authority, by order placed on its minutes, may, in its
844 discretion, set aside not more than twenty percent (20%) of its
845 anticipated annual expenditures for the purchase of commodities
846 from minority businesses; however, all such set-aside purchases
847 shall comply with all purchasing regulations promulgated by the
848 Department of Finance and Administration and shall be subject to
849 bid requirements under this section. Set-aside purchases for

850 which competitive bids are required shall be made from the lowest
851 and best minority business bidder. For the purposes of this
852 paragraph, the term "minority business" means a business which is
853 owned by a majority of persons who are United States citizens or
854 permanent resident aliens (as defined by the Immigration and
855 Naturalization Service) of the United States, and who are Asian,
856 Black, Hispanic or Native American, according to the following
857 definitions:

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

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

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

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

869 (t) **Construction punch list restriction.** The
870 architect, engineer or other representative designated by the
871 agency or governing authority that is contracting for public
872 construction or renovation may prepare and submit to the
873 contractor only one (1) preliminary punch list of items that do
874 not meet the contract requirements at the time of substantial
875 completion and one (1) final list immediately before final
876 completion and final payment.

877 (u) **Purchase authorization clarification.** Nothing in
878 this section shall be construed as authorizing any purchase not
879 authorized by law.

880 **SECTION 4.** This act shall take effect and be in force from
881 and after its passage.