

By: Representatives Martinson, Gunn, Baker
(8th), Staples, Formby, Stevens, Lott

To: Appropriations

HOUSE BILL NO. 1123
(As Passed the House)

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 PARKING
5 STRUCTURES; TO AMEND SECTION 37-101-43, MISSISSIPPI CODE OF 1972,
6 IN CONFORMITY THERETO; TO AMEND SECTION 37-101-41, MISSISSIPPI
7 CODE OF 1972, TO AUTHORIZE THE BOARD OF TRUSTEES TO LEASE LAND AT
8 CERTAIN STATE INSTITUTIONS OF HIGHER LEARNING FOR THE CONSTRUCTION
9 OF PARKING STRUCTURES BY PRIVATE FINANCING; TO AMEND SECTION
10 31-7-13, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ALLOWANCES WILL
11 BE PERMITTED FOR PUBLIC CONSTRUCTION PROJECTS ONLY WHEN THE STATE
12 AGENCY OR GOVERNING AUTHORITY AND THE DESIGN PROFESSIONAL AGREE
13 THAT A SCOPE OF WORK CANNOT BE DEFINED AT THE TIME OF THE BID, AND
14 ONLY IF IT CAN BE DETERMINED THAT THIS METHOD IS IN THE BEST
15 INTEREST OF THE AGENCY OR GOVERNING AUTHORITY; TO PROVIDE THAT THE
16 AMOUNT OF THE ALLOWANCE SHALL BE ESTABLISHED AND IDENTIFIED FOR
17 THE BIDDING PROCESS AND THE SCOPE SHALL BE DEFINED AT A LATER
18 DATE; TO PROVIDE THAT ONCE THE SCOPE OF WORK IS DEFINED, THE
19 CONTRACTOR SHALL BE REQUIRED TO SOLICIT COMPETITIVE BIDS, IF
20 AVAILABLE, AND BIDS SHALL BE RECEIVED, OPENED AND AWARDED IN A
21 MANNER CONSISTENT WITH STATE LAW; TO EXEMPT FROM STATE BID
22 REQUIREMENTS CONTRACTS FOR THE DESIGN AND CONSTRUCTION OF PARKING
23 STRUCTURES ENTERED INTO WITH A SINGLE ENTITY BY THE BOARD OF
24 TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING; AND FOR RELATED
25 PURPOSES.

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

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

28 37-101-44, Mississippi Code of 1972:

29 37-101-44. (1) In lieu of exercising the authority set
30 forth in Section 37-101-43 and before entering into or awarding
31 any lease under Section 37-101-41, the Board of Trustees of State
32 Institutions of Higher Learning may award contracts to a single
33 entity for privately financed design and construction of parking
34 structures if the entities receiving the contract or contracts and
35 those entities to which work or services are subcontracted are
36 duly licensed and qualified in the state to perform the contract
37 or contracts. State General Fund appropriations or bonds backed

38 by the state may not be used to finance the construction or
39 maintenance of any such building or facility or parking structure.

40 (2) The design-build delivery system described under
41 subsection (1) of this section may be authorized only when the
42 Board of Trustees of State Institutions of Higher Learning makes a
43 determination, entered on its minutes, with specific findings for
44 the project demonstrating how it is in the best interest of the
45 public to enter into a design-build contract. At a minimum, the
46 determination must include a detailed explanation of why a
47 design-build approach for a particular project satisfies the
48 public need better than the traditional design-bid-build approach.

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

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

71 building elevations, sections and design details. Building
72 elevations must show fenestration and proposed exterior materials.
73 The scope of work statement must include general budget
74 parameters, schedule or delivery requirements, relevant criteria
75 for evaluation of proposals, and any other information necessary
76 to enable the design-builders to submit proposals that meet the
77 board's needs.

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

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

100 (d) During Phase Two, the shortlisted firms will be
101 invited to submit detailed designs, specific technical concepts or
102 solutions, pricing, scheduling and other information deemed
103 appropriate by the board as necessary to evaluate and rank

104 acceptability of the Phase Two proposals. After evaluation of
105 these Phase Two proposals, the board shall award a contract to the
106 design-builder determined to offer the best value to the public in
107 accordance with evaluation criteria set forth in the request for
108 proposals, of which price must be one, but not necessarily the
109 only, criterion.

110 (e) If the board accepts a proposal other than the
111 lowest dollar proposal actually submitted, the board shall enter
112 on its minutes detailed calculations and a narrative summary
113 showing why the accepted proposal was determined to provide the
114 best value, and the board shall state specifically on its minutes
115 the justification for its award.

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

122 (5) (a) A public official or employee of a state agency who
123 has duties or responsibilities related to the contracting,
124 constructing, leasing, acquiring or operating of a facility under
125 this section may not become an employee, consultant or contract
126 vendor to a private entity providing such facility or services to
127 the state for a period of one (1) year after the date of
128 termination of the person's public service or state employment.

129 (b) Any person violating this subsection shall be
130 guilty of a misdemeanor and punished by a fine of not less than
131 Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars
132 (\$1,000.00).

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

135 37-101-43. As an alternative to the authority granted under
136 Section 37-101-44, before entering into or awarding any such lease

137 contract under the provisions of Section 37-101-41, the Board of
138 Trustees of State Institutions of Higher Learning, in its
139 discretion, may cause the interested state-supported institution
140 upon which a facility is proposed to be constructed to select and
141 submit three (3) architects to the board. Thereupon, the board
142 may approve and employ an architect, who shall be paid by the
143 interested institution from any funds available to the interested
144 institution. The architect, under the direction of the interested
145 institution, shall prepare complete plans and specifications for
146 the facility desired to be constructed on the leased property.

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

170 bidder's license. In all cases, before the notice shall be
171 published, the plans and specifications shall be filed with the
172 board and also in the office of the president of the interested
173 institution, there to remain.

174 The board shall award the lease contract to the lowest and
175 best bidder, who will comply with the terms imposed by the
176 contract documents. At the time of the awarding of the lease
177 contract, the successful bidder shall enter into bond with
178 sufficient sureties, to be approved by the board, in such penalty
179 as may be fixed by the board, but in no case to be less than the
180 estimated gross construction cost of the facility to be
181 constructed as estimated by the board, conditioned for the prompt,
182 proper and efficient performance of the contract. The bond shall
183 be made by an authorized corporate surety bonding company.

184 The * * * bid security herein provided for shall be forfeited if
185 the successful bidder fails to enter into lease contract and
186 commence construction within the time limitation set forth in the
187 notice. At such time, and simultaneously with the signing of the
188 contract, the successful bidder shall deposit a sum of money, in
189 cash or certified or cashier's check, not less than the bid
190 security previously deposited as bid security to reimburse the
191 interested institution for all sums expended by it for
192 architectural services and other expenditures of the board and
193 interested institution connected with the bidded lease contract,
194 of which such other anticipated expenditures notice is to be given
195 to bidder in the notice. The bid security posted by an
196 unsuccessful bidder shall be refunded to him.

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

199 37-101-41. The Board of Trustees of State Institutions of
200 Higher Learning may lease to private individuals or corporations,
201 for a term not exceeding thirty-one (31) years, any land at any of
202 the following state-supported institutions: the University of

203 Mississippi, Mississippi State University of Agriculture and
204 Applied Science, Jackson State University, Mississippi Valley
205 State University, Alcorn State University, University of Southern
206 Mississippi, Mississippi University for Women and Delta State
207 University, for the purpose of erecting housing and dormitory
208 facilities thereon for active faculty and students. The housing
209 facilities or parking structures shall be constructed thereon by
210 private financing, and shall be leased back to the board for use
211 by the concerned state-supported institution of higher learning.
212 The lease shall contain a provision permitting the board to
213 purchase the building or parking structures located thereon for
214 the sum of One Dollar (\$1.00) after payment by the board of all
215 sums of money due under said lease.

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

218 31-7-13. All agencies and governing authorities shall
219 purchase their commodities and printing; contract for garbage
220 collection or disposal; contract for solid waste collection or
221 disposal; contract for sewage collection or disposal; contract for
222 public construction; and contract for rentals as herein provided.

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

232 (b) **Bidding procedure for purchases over \$3,500.00 but**
233 **not over \$15,000.00.** Purchases which involve an expenditure of
234 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
235 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of

236 freight and shipping charges may be made from the lowest and best
237 bidder without publishing or posting advertisement for bids,
238 provided at least two (2) competitive written bids have been
239 obtained. Any governing authority purchasing commodities pursuant
240 to this paragraph (b) may authorize its purchasing agent, or his
241 designee, with regard to governing authorities other than
242 counties, or its purchase clerk, or his designee, with regard to
243 counties, to accept the lowest and best competitive written bid.
244 Such authorization shall be made in writing by the governing
245 authority and shall be maintained on file in the primary office of
246 the agency and recorded in the official minutes of the governing
247 authority, as appropriate. The purchasing agent or the purchase
248 clerk, or their designee, as the case may be, and not the
249 governing authority, shall be liable for any penalties and/or
250 damages as may be imposed by law for any act or omission of the
251 purchasing agent or purchase clerk, or their designee,
252 constituting a violation of law in accepting any bid without
253 approval by the governing authority. The term "competitive
254 written bid" shall mean a bid submitted on a bid form furnished by
255 the buying agency or governing authority and signed by authorized
256 personnel representing the vendor, or a bid submitted on a
257 vendor's letterhead or identifiable bid form and signed by
258 authorized personnel representing the vendor. "Competitive" shall
259 mean that the bids are developed based upon comparable
260 identification of the needs and are developed independently and
261 without knowledge of other bids or prospective bids. Bids may be
262 submitted by facsimile, electronic mail or other generally
263 accepted method of information distribution. Bids submitted by
264 electronic transmission shall not require the signature of the
265 vendor's representative unless required by agencies or governing
266 authorities.

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

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

299 (ii) **Bidding process amendment procedure.** If all
300 plans and/or specifications are published in the notification,

301 then the plans and/or specifications may not be amended. If all
302 plans and/or specifications are not published in the notification,
303 then amendments to the plans/specifications, bid opening date, bid
304 opening time and place may be made, provided that the agency or
305 governing authority maintains a list of all prospective bidders
306 who are known to have received a copy of the bid documents and all
307 such prospective bidders are sent copies of all amendments. This
308 notification of amendments may be made via mail, facsimile,
309 electronic mail or other generally accepted method of information
310 distribution. No addendum to bid specifications may be issued
311 within two (2) working days of the time established for the
312 receipt of bids unless such addendum also amends the bid opening
313 to a date not less than five (5) working days after the date of
314 the addendum.

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

324 (iv) **Specification restrictions.** 1.
325 Specifications pertinent to such bidding shall be written so as
326 not to exclude comparable equipment of domestic manufacture.
327 However, if valid justification is presented, the Department of
328 Finance and Administration or the board of a governing authority
329 may approve a request for specific equipment necessary to perform
330 a specific job. Further, such justification, when placed on the
331 minutes of the board of a governing authority, may serve as
332 authority for that governing authority to write specifications to
333 require a specific item of equipment needed to perform a specific

334 job. In addition to these requirements, from and after July 1,
335 1990, vendors of relocatable classrooms and the specifications for
336 the purchase of such relocatable classrooms published by local
337 school boards shall meet all pertinent regulations of the State
338 Board of Education, including prior approval of such bid by the
339 State Department of Education.

340 2. Allowances will be permitted for
341 construction projects only when the agency or governing authority
342 and the design professional agree that a scope of work cannot be
343 defined at the time of the bid, and only if it can be determined
344 that this method is in the best interest of the agency or
345 governing authority. The amount of the allowance shall be
346 established and identified for the bidding process and the scope
347 shall be defined at a later date. Once the scope of work is
348 defined, the contractor shall be required to solicit competitive
349 bids, if available, and bids shall be received, opened and awarded
350 in a manner consistent with state law. However, contingency
351 allowances for latent conditions or design errors shall not be
352 permitted.

353 (v) Agencies and governing authorities may
354 establish secure procedures by which bids may be submitted via
355 electronic means.

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

357 (i) **Decision procedure.** Purchases may be made
358 from the lowest and best bidder. In determining the lowest and
359 best bid, freight and shipping charges shall be included.
360 Life-cycle costing, total cost bids, warranties, guaranteed
361 buy-back provisions and other relevant provisions may be included
362 in the best bid calculation. All best bid procedures for state
363 agencies must be in compliance with regulations established by the
364 Department of Finance and Administration. If any governing
365 authority accepts a bid other than the lowest bid actually
366 submitted, it shall place on its minutes detailed calculations and

367 narrative summary showing that the accepted bid was determined to
368 be the lowest and best bid, including the dollar amount of the
369 accepted bid and the dollar amount of the lowest bid. No agency
370 or governing authority shall accept a bid based on items not
371 included in the specifications.

372 (ii) **Decision procedure for Certified Purchasing**
373 **Offices.** In addition to the decision procedure set forth in
374 paragraph (d)(i), Certified Purchasing Offices may also use the
375 following procedure: Purchases may be made from the bidder
376 offering the best value. In determining the best value bid,
377 freight and shipping charges shall be included. Life-cycle
378 costing, total cost bids, warranties, guaranteed buy-back
379 provisions, documented previous experience, training costs and
380 other relevant provisions may be included in the best value
381 calculation. This provision shall authorize Certified Purchasing
382 Offices to utilize a Request For Proposals (RFP) process when
383 purchasing commodities. All best value procedures for state
384 agencies must be in compliance with regulations established by the
385 Department of Finance and Administration. No agency or governing
386 authority shall accept a bid based on items or criteria not
387 included in the specifications.

388 (iii) **Construction project negotiations authority.**
389 If the lowest and best bid is not more than ten percent (10%)
390 above the amount of funds allocated for a public construction or
391 renovation project, then the agency or governing authority shall
392 be permitted to negotiate with the lowest bidder in order to enter
393 into a contract for an amount not to exceed the funds allocated.

394 (e) **Lease-purchase authorization.** For the purposes of
395 this section, the term "equipment" shall mean equipment, furniture
396 and, if applicable, associated software and other applicable
397 direct costs associated with the acquisition. Any lease-purchase
398 of equipment which an agency is not required to lease-purchase
399 under the master lease-purchase program pursuant to Section

400 31-7-10 and any lease-purchase of equipment which a governing
401 authority elects to lease-purchase may be acquired by a
402 lease-purchase agreement under this paragraph (e). Lease-purchase
403 financing may also be obtained from the vendor or from a
404 third-party source after having solicited and obtained at least
405 two (2) written competitive bids, as defined in paragraph (b) of
406 this section, for such financing without advertising for such
407 bids. Solicitation for the bids for financing may occur before or
408 after acceptance of bids for the purchase of such equipment or,
409 where no such bids for purchase are required, at any time before
410 the purchase thereof. No such lease-purchase agreement shall be
411 for an annual rate of interest which is greater than the overall
412 maximum interest rate to maturity on general obligation
413 indebtedness permitted under Section 75-17-101, and the term of
414 such lease-purchase agreement shall not exceed the useful life of
415 equipment covered thereby as determined according to the upper
416 limit of the asset depreciation range (ADR) guidelines for the
417 Class Life Asset Depreciation Range System established by the
418 Internal Revenue Service pursuant to the United States Internal
419 Revenue Code and regulations thereunder as in effect on December
420 31, 1980, or comparable depreciation guidelines with respect to
421 any equipment not covered by ADR guidelines. Any lease-purchase
422 agreement entered into pursuant to this paragraph (e) may contain
423 any of the terms and conditions which a master lease-purchase
424 agreement may contain under the provisions of Section 31-7-10(5),
425 and shall contain an annual allocation dependency clause
426 substantially similar to that set forth in Section 31-7-10(8).
427 Each agency or governing authority entering into a lease-purchase
428 transaction pursuant to this paragraph (e) shall maintain with
429 respect to each such lease-purchase transaction the same
430 information as required to be maintained by the Department of
431 Finance and Administration pursuant to Section 31-7-10(13).
432 However, nothing contained in this section shall be construed to

433 permit agencies to acquire items of equipment with a total
434 acquisition cost in the aggregate of less than Ten Thousand
435 Dollars (\$10,000.00) by a single lease-purchase transaction. All
436 equipment, and the purchase thereof by any lessor, acquired by
437 lease-purchase under this paragraph and all lease-purchase
438 payments with respect thereto shall be exempt from all Mississippi
439 sales, use and ad valorem taxes. Interest paid on any
440 lease-purchase agreement under this section shall be exempt from
441 State of Mississippi income taxation.

442 (f) **Alternate bid authorization.** When necessary to
443 ensure ready availability of commodities for public works and the
444 timely completion of public projects, no more than two (2)
445 alternate bids may be accepted by a governing authority for
446 commodities. No purchases may be made through use of such
447 alternate bids procedure unless the lowest and best bidder cannot
448 deliver the commodities contained in his bid. In that event,
449 purchases of such commodities may be made from one (1) of the
450 bidders whose bid was accepted as an alternate.

451 (g) **Construction contract change authorization.** In the
452 event a determination is made by an agency or governing authority
453 after a construction contract is let that changes or modifications
454 to the original contract are necessary or would better serve the
455 purpose of the agency or the governing authority, such agency or
456 governing authority may, in its discretion, order such changes
457 pertaining to the construction that are necessary under the
458 circumstances without the necessity of further public bids;
459 provided that such change shall be made in a commercially
460 reasonable manner and shall not be made to circumvent the public
461 purchasing statutes. In addition to any other authorized person,
462 the architect or engineer hired by an agency or governing
463 authority with respect to any public construction contract shall
464 have the authority, when granted by an agency or governing
465 authority, to authorize changes or modifications to the original

466 contract without the necessity of prior approval of the agency or
467 governing authority when any such change or modification is less
468 than one percent (1%) of the total contract amount. The agency or
469 governing authority may limit the number, manner or frequency of
470 such emergency changes or modifications.

471 (h) **Petroleum purchase alternative.** In addition to
472 other methods of purchasing authorized in this chapter, when any
473 agency or governing authority shall have a need for gas, diesel
474 fuel, oils and/or other petroleum products in excess of the amount
475 set forth in paragraph (a) of this section, such agency or
476 governing authority may purchase the commodity after having
477 solicited and obtained at least two (2) competitive written bids,
478 as defined in paragraph (b) of this section. If two (2)
479 competitive written bids are not obtained, the entity shall comply
480 with the procedures set forth in paragraph (c) of this section.
481 In the event any agency or governing authority shall have
482 advertised for bids for the purchase of gas, diesel fuel, oils and
483 other petroleum products and coal and no acceptable bids can be
484 obtained, such agency or governing authority is authorized and
485 directed to enter into any negotiations necessary to secure the
486 lowest and best contract available for the purchase of such
487 commodities.

488 (i) **Road construction petroleum products price**
489 **adjustment clause authorization.** Any agency or governing
490 authority authorized to enter into contracts for the construction,
491 maintenance, surfacing or repair of highways, roads or streets,
492 may include in its bid proposal and contract documents a price
493 adjustment clause with relation to the cost to the contractor,
494 including taxes, based upon an industry-wide cost index, of
495 petroleum products including asphalt used in the performance or
496 execution of the contract or in the production or manufacture of
497 materials for use in such performance. Such industry-wide index
498 shall be established and published monthly by the Mississippi

499 Department of Transportation with a copy thereof to be mailed,
500 upon request, to the clerks of the governing authority of each
501 municipality and the clerks of each board of supervisors
502 throughout the state. The price adjustment clause shall be based
503 on the cost of such petroleum products only and shall not include
504 any additional profit or overhead as part of the adjustment. The
505 bid proposals or document contract shall contain the basis and
506 methods of adjusting unit prices for the change in the cost of
507 such petroleum products.

508 (j) **State agency emergency purchase procedure.** If the
509 governing board or the executive head, or his designee, of any
510 agency of the state shall determine that an emergency exists in
511 regard to the purchase of any commodities or repair contracts, so
512 that the delay incident to giving opportunity for competitive
513 bidding would be detrimental to the interests of the state, then
514 the provisions herein for competitive bidding shall not apply and
515 the head of such agency shall be authorized to make the purchase
516 or repair. Total purchases so made shall only be for the purpose
517 of meeting needs created by the emergency situation. In the event
518 such executive head is responsible to an agency board, at the
519 meeting next following the emergency purchase, documentation of
520 the purchase, including a description of the commodity purchased,
521 the purchase price thereof and the nature of the emergency shall
522 be presented to the board and placed on the minutes of the board
523 of such agency. The head of such agency, or his designee, shall,
524 at the earliest possible date following such emergency purchase,
525 file with the Department of Finance and Administration (i) a
526 statement explaining the conditions and circumstances of the
527 emergency, which shall include a detailed description of the
528 events leading up to the situation and the negative impact to the
529 entity if the purchase is made following the statutory
530 requirements set forth in paragraph (a), (b) or (c) of this
531 section, and (ii) a certified copy of the appropriate minutes of

532 the board of such agency, if applicable. On or before September 1
533 of each year, the State Auditor shall prepare and deliver to the
534 Senate Fees, Salaries and Administration Committee, the House Fees
535 and Salaries of Public Officers Committee and the Joint
536 Legislative Budget Committee a report containing a list of all
537 state agency emergency purchases and supporting documentation for
538 each emergency purchase.

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

540 If the governing authority, or the governing authority acting
541 through its designee, shall determine that an emergency exists in
542 regard to the purchase of any commodities or repair contracts, so
543 that the delay incident to giving opportunity for competitive
544 bidding would be detrimental to the interest of the governing
545 authority, then the provisions herein for competitive bidding
546 shall not apply and any officer or agent of such governing
547 authority having general or special authority therefor in making
548 such purchase or repair shall approve the bill presented therefor,
549 and he shall certify in writing thereon from whom such purchase
550 was made, or with whom such a repair contract was made. At the
551 board meeting next following the emergency purchase or repair
552 contract, documentation of the purchase or repair contract,
553 including a description of the commodity purchased, the price
554 thereof and the nature of the emergency shall be presented to the
555 board and shall be placed on the minutes of the board of such
556 governing authority.

557 (l) **Hospital purchase, lease-purchase and lease**
558 **authorization.**

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

564 (ii) In addition to the authority granted in
565 subparagraph (i) of this paragraph (1), the commissioners or board
566 of trustees is authorized to enter into contracts for the lease of
567 equipment or services, or both, which it considers necessary for
568 the proper care of patients if, in its opinion, it is not
569 financially feasible to purchase the necessary equipment or
570 services. Any such contract for the lease of equipment or
571 services executed by the commissioners or board shall not exceed a
572 maximum of five (5) years' duration and shall include a
573 cancellation clause based on unavailability of funds. If such
574 cancellation clause is exercised, there shall be no further
575 liability on the part of the lessee. Any such contract for the
576 lease of equipment or services executed on behalf of the
577 commissioners or board that complies with the provisions of this
578 subparagraph (ii) shall be excepted from the bid requirements set
579 forth in this section.

580 (m) **Exceptions from bidding requirements.** Excepted
581 from bid requirements are:

582 (i) **Purchasing agreements approved by department.**
583 Purchasing agreements, contracts and maximum price regulations
584 executed or approved by the Department of Finance and
585 Administration.

586 (ii) **Outside equipment repairs.** Repairs to
587 equipment, when such repairs are made by repair facilities in the
588 private sector; however, engines, transmissions, rear axles and/or
589 other such components shall not be included in this exemption when
590 replaced as a complete unit instead of being repaired and the need
591 for such total component replacement is known before disassembly
592 of the component; however, invoices identifying the equipment,
593 specific repairs made, parts identified by number and name,
594 supplies used in such repairs, and the number of hours of labor
595 and costs therefor shall be required for the payment for such
596 repairs.

597 (iii) **In-house equipment repairs.** Purchases of
598 parts for repairs to equipment, when such repairs are made by
599 personnel of the agency or governing authority; however, entire
600 assemblies, such as engines or transmissions, shall not be
601 included in this exemption when the entire assembly is being
602 replaced instead of being repaired.

603 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
604 of gravel or fill dirt which are to be removed and transported by
605 the purchaser.

606 (v) **Governmental equipment auctions.** Motor
607 vehicles or other equipment purchased from a federal agency or
608 authority, another governing authority or state agency of the
609 State of Mississippi, or any governing authority or state agency
610 of another state at a public auction held for the purpose of
611 disposing of such vehicles or other equipment. Any purchase by a
612 governing authority under the exemption authorized by this
613 subparagraph (v) shall require advance authorization spread upon
614 the minutes of the governing authority to include the listing of
615 the item or items authorized to be purchased and the maximum bid
616 authorized to be paid for each item or items.

617 (vi) **Intergovernmental sales and transfers.**
618 Purchases, sales, transfers or trades by governing authorities or
619 state agencies when such purchases, sales, transfers or trades are
620 made by a private treaty agreement or through means of
621 negotiation, from any federal agency or authority, another
622 governing authority or state agency of the State of Mississippi,
623 or any state agency or governing authority of another state.
624 Nothing in this section shall permit such purchases through public
625 auction except as provided for in subparagraph (v) of this
626 section. It is the intent of this section to allow governmental
627 entities to dispose of and/or purchase commodities from other
628 governmental entities at a price that is agreed to by both
629 parties. This shall allow for purchases and/or sales at prices

630 which may be determined to be below the market value if the
631 selling entity determines that the sale at below market value is
632 in the best interest of the taxpayers of the state. Governing
633 authorities shall place the terms of the agreement and any
634 justification on the minutes, and state agencies shall obtain
635 approval from the Department of Finance and Administration, prior
636 to releasing or taking possession of the commodities.

637 (vii) **Perishable supplies or food.** Perishable
638 supplies or foods purchased for use in connection with hospitals,
639 the school lunch programs, homemaking programs and for the feeding
640 of county or municipal prisoners.

641 (viii) **Single source items.** Noncompetitive items
642 available from one (1) source only. In connection with the
643 purchase of noncompetitive items only available from one (1)
644 source, a certification of the conditions and circumstances
645 requiring the purchase shall be filed by the agency with the
646 Department of Finance and Administration and by the governing
647 authority with the board of the governing authority. Upon receipt
648 of that certification the Department of Finance and Administration
649 or the board of the governing authority, as the case may be, may,
650 in writing, authorize the purchase, which authority shall be noted
651 on the minutes of the body at the next regular meeting thereafter.
652 In those situations, a governing authority is not required to
653 obtain the approval of the Department of Finance and
654 Administration.

655 (ix) **Waste disposal facility construction**
656 **contracts.** Construction of incinerators and other facilities for
657 disposal of solid wastes in which products either generated
658 therein, such as steam, or recovered therefrom, such as materials
659 for recycling, are to be sold or otherwise disposed of; however,
660 in constructing such facilities, a governing authority or agency
661 shall publicly issue requests for proposals, advertised for in the
662 same manner as provided herein for seeking bids for public

663 construction projects, concerning the design, construction,
664 ownership, operation and/or maintenance of such facilities,
665 wherein such requests for proposals when issued shall contain
666 terms and conditions relating to price, financial responsibility,
667 technology, environmental compatibility, legal responsibilities
668 and such other matters as are determined by the governing
669 authority or agency to be appropriate for inclusion; and after
670 responses to the request for proposals have been duly received,
671 the governing authority or agency may select the most qualified
672 proposal or proposals on the basis of price, technology and other
673 relevant factors and from such proposals, but not limited to the
674 terms thereof, negotiate and enter contracts with one or more of
675 the persons or firms submitting proposals.

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

679 (xi) **Information technology products.** Purchases
680 of information technology products made by governing authorities
681 under the provisions of purchase schedules, or contracts executed
682 or approved by the Mississippi Department of Information
683 Technology Services and designated for use by governing
684 authorities.

685 (xii) **Energy efficiency services and equipment.**
686 Energy efficiency services and equipment acquired by school
687 districts, community and junior colleges, institutions of higher
688 learning and state agencies or other applicable governmental
689 entities on a shared-savings, lease or lease-purchase basis
690 pursuant to Section 31-7-14.

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

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

696 Purchases by libraries or for libraries of books and periodicals;
697 processed film, video cassette tapes, filmstrips and slides;
698 recorded audio tapes, cassettes and diskettes; and any such items
699 as would be used for teaching, research or other information
700 distribution; however, equipment such as projectors, recorders,
701 audio or video equipment, and monitor televisions are not exempt
702 under this subparagraph.

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

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

709 (xvii) **Multichannel interactive video systems.**
710 From and after July 1, 1990, contracts by Mississippi Authority
711 for Educational Television with any private educational
712 institution or private nonprofit organization whose purposes are
713 educational in regard to the construction, purchase, lease or
714 lease-purchase of facilities and equipment and the employment of
715 personnel for providing multichannel interactive video systems
716 (ITSF) in the school districts of this state.

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

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

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

728 the purpose of renting such books to students as part of a book
729 service system.

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

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

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

736 Contracts for garbage collection or disposal, contracts for solid
737 waste collection or disposal and contracts for sewage collection
738 or disposal.

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

740 **contracts.** Professional maintenance program contracts for the
741 repair or maintenance of municipal water tanks, which provide
742 professional services needed to maintain municipal water storage
743 tanks for a fixed annual fee for a duration of two (2) or more
744 years.

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

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

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

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

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

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

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

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

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

757 machinery or equipment used for the installation and

758 implementation of soil and water conservation practices or

759 measures purchased subject to the restrictions provided in

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

761 Soil and Water Conservation Commission under the exemption
762 authorized by this subparagraph shall require advance
763 authorization spread upon the minutes of the commission to include
764 the listing of the item or items authorized to be purchased and
765 the maximum bid authorized to be paid for each item or items.

766 (xxviii) **Hospital lease of equipment or services.**
767 Leases by hospitals of equipment or services if the leases are in
768 compliance with paragraph (1)(ii).

769 (xxix) **Purchases made pursuant to qualified**
770 **cooperative purchasing agreements.** Purchases made by certified
771 purchasing offices of state agencies or governing authorities
772 under cooperative purchasing agreements previously approved by the
773 Office of Purchasing and Travel and established by or for any
774 municipality, county, parish or state government or the federal
775 government, provided that the notification to potential
776 contractors includes a clause that sets forth the availability of
777 the cooperative purchasing agreement to other governmental
778 entities. Such purchases shall only be made if the use of the
779 cooperative purchasing agreements is determined to be in the best
780 interest of the government entity.

781 (xxx) **School yearbooks.** Purchases of school
782 yearbooks by state agencies or governing authorities; provided,
783 however, that state agencies and governing authorities shall use
784 for these purchases the RFP process as set forth in the
785 Mississippi Procurement Manual adopted by the Office of Purchasing
786 and Travel.

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

790 (xxxiii) Procurement of design and construction
791 services by state institutions of higher learning. Privately
792 financed contracts awarded by the Board of Trustees of State
793 Institutions of Higher Learning for the design and construction of

794 parking structures on the campus of a state institution of higher
795 learning, as provided in Section 37-101-44.

796 (n) **Term contract authorization.** All contracts for the
797 purchase of:

798 (i) All contracts for the purchase of commodities,
799 equipment and public construction (including, but not limited to,
800 repair and maintenance), may be let for periods of not more than
801 sixty (60) months in advance, subject to applicable statutory
802 provisions prohibiting the letting of contracts during specified
803 periods near the end of terms of office. Term contracts for a
804 period exceeding twenty-four (24) months shall also be subject to
805 ratification or cancellation by governing authority boards taking
806 office subsequent to the governing authority board entering the
807 contract.

808 (ii) Bid proposals and contracts may include price
809 adjustment clauses with relation to the cost to the contractor
810 based upon a nationally published industry-wide or nationally
811 published and recognized cost index. The cost index used in a
812 price adjustment clause shall be determined by the Department of
813 Finance and Administration for the state agencies and by the
814 governing board for governing authorities. The bid proposal and
815 contract documents utilizing a price adjustment clause shall
816 contain the basis and method of adjusting unit prices for the
817 change in the cost of such commodities, equipment and public
818 construction.

819 (o) **Purchase law violation prohibition and vendor**
820 **penalty.** No contract or purchase as herein authorized shall be
821 made for the purpose of circumventing the provisions of this
822 section requiring competitive bids, nor shall it be lawful for any
823 person or concern to submit individual invoices for amounts within
824 those authorized for a contract or purchase where the actual value
825 of the contract or commodity purchased exceeds the authorized
826 amount and the invoices therefor are split so as to appear to be

827 authorized as purchases for which competitive bids are not
828 required. Submission of such invoices shall constitute a
829 misdemeanor punishable by a fine of not less than Five Hundred
830 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
831 or by imprisonment for thirty (30) days in the county jail, or
832 both such fine and imprisonment. In addition, the claim or claims
833 submitted shall be forfeited.

834 (p) **Electrical utility petroleum-based equipment**
835 **purchase procedure.** When in response to a proper advertisement
836 therefor, no bid firm as to price is submitted to an electric
837 utility for power transformers, distribution transformers, power
838 breakers, reclosers or other articles containing a petroleum
839 product, the electric utility may accept the lowest and best bid
840 therefor although the price is not firm.

841 (q) **Fuel management system bidding procedure.** Any
842 governing authority or agency of the state shall, before
843 contracting for the services and products of a fuel management or
844 fuel access system, enter into negotiations with not fewer than
845 two (2) sellers of fuel management or fuel access systems for
846 competitive written bids to provide the services and products for
847 the systems. In the event that the governing authority or agency
848 cannot locate two (2) sellers of such systems or cannot obtain
849 bids from two (2) sellers of such systems, it shall show proof
850 that it made a diligent, good-faith effort to locate and negotiate
851 with two (2) sellers of such systems. Such proof shall include,
852 but not be limited to, publications of a request for proposals and
853 letters soliciting negotiations and bids. For purposes of this
854 paragraph (q), a fuel management or fuel access system is an
855 automated system of acquiring fuel for vehicles as well as
856 management reports detailing fuel use by vehicles and drivers, and
857 the term "competitive written bid" shall have the meaning as
858 defined in paragraph (b) of this section. Governing authorities
859 and agencies shall be exempt from this process when contracting

860 for the services and products of a fuel management or fuel access
861 systems under the terms of a state contract established by the
862 Office of Purchasing and Travel.

863 (r) **Solid waste contract proposal procedure.** Before
864 entering into any contract for garbage collection or disposal,
865 contract for solid waste collection or disposal or contract for
866 sewage collection or disposal, which involves an expenditure of
867 more than Fifty Thousand Dollars (\$50,000.00), a governing
868 authority or agency shall issue publicly a request for proposals
869 concerning the specifications for such services which shall be
870 advertised for in the same manner as provided in this section for
871 seeking bids for purchases which involve an expenditure of more
872 than the amount provided in paragraph (c) of this section. Any
873 request for proposals when issued shall contain terms and
874 conditions relating to price, financial responsibility,
875 technology, legal responsibilities and other relevant factors as
876 are determined by the governing authority or agency to be
877 appropriate for inclusion; all factors determined relevant by the
878 governing authority or agency or required by this paragraph (r)
879 shall be duly included in the advertisement to elicit proposals.
880 After responses to the request for proposals have been duly
881 received, the governing authority or agency shall select the most
882 qualified proposal or proposals on the basis of price, technology
883 and other relevant factors and from such proposals, but not
884 limited to the terms thereof, negotiate and enter contracts with
885 one or more of the persons or firms submitting proposals. If the
886 governing authority or agency deems none of the proposals to be
887 qualified or otherwise acceptable, the request for proposals
888 process may be reinitiated. Notwithstanding any other provisions
889 of this paragraph, where a county with at least thirty-five
890 thousand (35,000) nor more than forty thousand (40,000)
891 population, according to the 1990 federal decennial census, owns
892 or operates a solid waste landfill, the governing authorities of

893 any other county or municipality may contract with the governing
894 authorities of the county owning or operating the landfill,
895 pursuant to a resolution duly adopted and spread upon the minutes
896 of each governing authority involved, for garbage or solid waste
897 collection or disposal services through contract negotiations.

898 (s) **Minority set-aside authorization.** Notwithstanding
899 any provision of this section to the contrary, any agency or
900 governing authority, by order placed on its minutes, may, in its
901 discretion, set aside not more than twenty percent (20%) of its
902 anticipated annual expenditures for the purchase of commodities
903 from minority businesses; however, all such set-aside purchases
904 shall comply with all purchasing regulations promulgated by the
905 Department of Finance and Administration and shall be subject to
906 bid requirements under this section. Set-aside purchases for
907 which competitive bids are required shall be made from the lowest
908 and best minority business bidder. For the purposes of this
909 paragraph, the term "minority business" means a business which is
910 owned by a majority of persons who are United States citizens or
911 permanent resident aliens (as defined by the Immigration and
912 Naturalization Service) of the United States, and who are Asian,
913 Black, Hispanic or Native American, according to the following
914 definitions:

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

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

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

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

926 (t) **Construction punch list restriction.** The
927 architect, engineer or other representative designated by the
928 agency or governing authority that is contracting for public
929 construction or renovation may prepare and submit to the
930 contractor only one (1) preliminary punch list of items that do
931 not meet the contract requirements at the time of substantial
932 completion and one (1) final list immediately before final
933 completion and final payment.

934 (u) **Purchase authorization clarification.** Nothing in
935 this section shall be construed as authorizing any purchase not
936 authorized by law.

937 **SECTION 5.** This act shall take effect and be in force from
938 and after its passage.