

By: Representatives Davis, Fillingane,
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To: Universities and
Colleges; Appropriations

HOUSE BILL NO. 1250

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

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

20 **SECTION 1.** The following shall be codified as Section
21 37-101-44, Mississippi Code of 1972:

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

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

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

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

68 The scope of work statement must include general budget
69 parameters, schedule or delivery requirements, relevant criteria
70 for evaluation of proposals, and any other information necessary
71 to enable the design-builders to submit proposals that meet the
72 board's needs.

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

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

95 (d) During Phase Two, the shortlisted firms will be
96 invited to submit detailed designs, specific technical concepts or
97 solutions, pricing, scheduling and other information deemed
98 appropriate by the board as necessary to evaluate and rank
99 acceptability of the Phase Two proposals. After evaluation of
100 these Phase Two proposals, the board shall award a contract to the

101 design-builder determined to offer the best value to the public in
102 accordance with evaluation criteria set forth in the request for
103 proposals, of which price must be one, but not necessarily the
104 only, criterion.

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

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

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

124 (b) Any person violating this subsection shall be
125 guilty of a misdemeanor and punished by a fine of not less than
126 Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars
127 (\$1,000.00).

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

130 37-101-43. As an alternative to the authority granted under
131 Section 37-101-44, before entering into or awarding any such lease
132 contract under the provisions of Section 37-101-41, the Board of
133 Trustees of State Institutions of Higher Learning, in its

134 discretion, may cause the interested state-supported institution
135 upon which a facility is proposed to be constructed to select and
136 submit three (3) architects to the board. Thereupon, the board
137 may approve and employ an architect, who shall be paid by the
138 interested institution from any funds available to the interested
139 institution. The architect, under the direction of the interested
140 institution, shall prepare complete plans and specifications for
141 the facility desired to be constructed on the leased property.

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

167 board and also in the office of the president of the interested
168 institution, there to remain.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

337 (v) Agencies and governing authorities may
338 establish secure procedures by which bids may be submitted via
339 electronic means.

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

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

356 (ii) **Decision procedure for Certified Purchasing**
357 **Offices.** In addition to the decision procedure set forth in
358 paragraph (d)(i), Certified Purchasing Offices may also use the
359 following procedure: Purchases may be made from the bidder
360 offering the best value. In determining the best value bid,
361 freight and shipping charges shall be included. Life-cycle
362 costing, total cost bids, warranties, guaranteed buy-back
363 provisions, documented previous experience, training costs and

364 other relevant provisions may be included in the best value
365 calculation. This provision shall authorize Certified Purchasing
366 Offices to utilize a Request For Proposals (RFP) process when
367 purchasing commodities. All best value procedures for state
368 agencies must be in compliance with regulations established by the
369 Department of Finance and Administration. No agency or governing
370 authority shall accept a bid based on items or criteria not
371 included in the specifications.

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

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

378 (e) **Lease-purchase authorization.** For the purposes of
379 this section, the term "equipment" shall mean equipment, furniture
380 and, if applicable, associated software and other applicable
381 direct costs associated with the acquisition. Any lease-purchase
382 of equipment which an agency is not required to lease-purchase
383 under the master lease-purchase program pursuant to Section
384 31-7-10 and any lease-purchase of equipment which a governing
385 authority elects to lease-purchase may be acquired by a
386 lease-purchase agreement under this paragraph (e). Lease-purchase
387 financing may also be obtained from the vendor or from a
388 third-party source after having solicited and obtained at least
389 two (2) written competitive bids, as defined in paragraph (b) of
390 this section, for such financing without advertising for such
391 bids. Solicitation for the bids for financing may occur before or
392 after acceptance of bids for the purchase of such equipment or,
393 where no such bids for purchase are required, at any time before
394 the purchase thereof. No such lease-purchase agreement shall be
395 for an annual rate of interest which is greater than the overall
396 maximum interest rate to maturity on general obligation

397 indebtedness permitted under Section 75-17-101, and the term of
398 such lease-purchase agreement shall not exceed the useful life of
399 equipment covered thereby as determined according to the upper
400 limit of the asset depreciation range (ADR) guidelines for the
401 Class Life Asset Depreciation Range System established by the
402 Internal Revenue Service pursuant to the United States Internal
403 Revenue Code and regulations thereunder as in effect on December
404 31, 1980, or comparable depreciation guidelines with respect to
405 any equipment not covered by ADR guidelines. Any lease-purchase
406 agreement entered into pursuant to this paragraph (e) may contain
407 any of the terms and conditions which a master lease-purchase
408 agreement may contain under the provisions of Section 31-7-10(5),
409 and shall contain an annual allocation dependency clause
410 substantially similar to that set forth in Section 31-7-10(8).
411 Each agency or governing authority entering into a lease-purchase
412 transaction pursuant to this paragraph (e) shall maintain with
413 respect to each such lease-purchase transaction the same
414 information as required to be maintained by the Department of
415 Finance and Administration pursuant to Section 31-7-10(13).
416 However, nothing contained in this section shall be construed to
417 permit agencies to acquire items of equipment with a total
418 acquisition cost in the aggregate of less than Ten Thousand
419 Dollars (\$10,000.00) by a single lease-purchase transaction. All
420 equipment, and the purchase thereof by any lessor, acquired by
421 lease-purchase under this paragraph and all lease-purchase
422 payments with respect thereto shall be exempt from all Mississippi
423 sales, use and ad valorem taxes. Interest paid on any
424 lease-purchase agreement under this section shall be exempt from
425 State of Mississippi income taxation.

426 (f) **Alternate bid authorization.** When necessary to
427 ensure ready availability of commodities for public works and the
428 timely completion of public projects, no more than two (2)
429 alternate bids may be accepted by a governing authority for

430 commodities. No purchases may be made through use of such
431 alternate bids procedure unless the lowest and best bidder cannot
432 deliver the commodities contained in his bid. In that event,
433 purchases of such commodities may be made from one (1) of the
434 bidders whose bid was accepted as an alternate.

435 (g) **Construction contract change authorization.** In the
436 event a determination is made by an agency or governing authority
437 after a construction contract is let that changes or modifications
438 to the original contract are necessary or would better serve the
439 purpose of the agency or the governing authority, such agency or
440 governing authority may, in its discretion, order such changes
441 pertaining to the construction that are necessary under the
442 circumstances without the necessity of further public bids;
443 provided that such change shall be made in a commercially
444 reasonable manner and shall not be made to circumvent the public
445 purchasing statutes. In addition to any other authorized person,
446 the architect or engineer hired by an agency or governing
447 authority with respect to any public construction contract shall
448 have the authority, when granted by an agency or governing
449 authority, to authorize changes or modifications to the original
450 contract without the necessity of prior approval of the agency or
451 governing authority when any such change or modification is less
452 than one percent (1%) of the total contract amount. The agency or
453 governing authority may limit the number, manner or frequency of
454 such emergency changes or modifications.

455 (h) **Petroleum purchase alternative.** In addition to
456 other methods of purchasing authorized in this chapter, when any
457 agency or governing authority shall have a need for gas, diesel
458 fuel, oils and/or other petroleum products in excess of the amount
459 set forth in paragraph (a) of this section, such agency or
460 governing authority may purchase the commodity after having
461 solicited and obtained at least two (2) competitive written bids,
462 as defined in paragraph (b) of this section. If two (2)

463 competitive written bids are not obtained, the entity shall comply
464 with the procedures set forth in paragraph (c) of this section.
465 In the event any agency or governing authority shall have
466 advertised for bids for the purchase of gas, diesel fuel, oils and
467 other petroleum products and coal and no acceptable bids can be
468 obtained, such agency or governing authority is authorized and
469 directed to enter into any negotiations necessary to secure the
470 lowest and best contract available for the purchase of such
471 commodities.

472 (i) **Road construction petroleum products price**
473 **adjustment clause authorization.** Any agency or governing
474 authority authorized to enter into contracts for the construction,
475 maintenance, surfacing or repair of highways, roads or streets,
476 may include in its bid proposal and contract documents a price
477 adjustment clause with relation to the cost to the contractor,
478 including taxes, based upon an industry-wide cost index, of
479 petroleum products including asphalt used in the performance or
480 execution of the contract or in the production or manufacture of
481 materials for use in such performance. Such industry-wide index
482 shall be established and published monthly by the Mississippi
483 Department of Transportation with a copy thereof to be mailed,
484 upon request, to the clerks of the governing authority of each
485 municipality and the clerks of each board of supervisors
486 throughout the state. The price adjustment clause shall be based
487 on the cost of such petroleum products only and shall not include
488 any additional profit or overhead as part of the adjustment. The
489 bid proposals or document contract shall contain the basis and
490 methods of adjusting unit prices for the change in the cost of
491 such petroleum products.

492 (j) **State agency emergency purchase procedure.** If the
493 governing board or the executive head, or his designee, of any
494 agency of the state shall determine that an emergency exists in
495 regard to the purchase of any commodities or repair contracts, so

496 that the delay incident to giving opportunity for competitive
497 bidding would be detrimental to the interests of the state, then
498 the provisions herein for competitive bidding shall not apply and
499 the head of such agency shall be authorized to make the purchase
500 or repair. Total purchases so made shall only be for the purpose
501 of meeting needs created by the emergency situation. In the event
502 such executive head is responsible to an agency board, at the
503 meeting next following the emergency purchase, documentation of
504 the purchase, including a description of the commodity purchased,
505 the purchase price thereof and the nature of the emergency shall
506 be presented to the board and placed on the minutes of the board
507 of such agency. The head of such agency, or his designee, shall,
508 at the earliest possible date following such emergency purchase,
509 file with the Department of Finance and Administration (i) a
510 statement explaining the conditions and circumstances of the
511 emergency, which shall include a detailed description of the
512 events leading up to the situation and the negative impact to the
513 entity if the purchase is made following the statutory
514 requirements set forth in paragraph (a), (b) or (c) of this
515 section, and (ii) a certified copy of the appropriate minutes of
516 the board of such agency, if applicable. On or before September 1
517 of each year, the State Auditor shall prepare and deliver to the
518 Senate Fees, Salaries and Administration Committee, the House Fees
519 and Salaries of Public Officers Committee and the Joint
520 Legislative Budget Committee a report containing a list of all
521 state agency emergency purchases and supporting documentation for
522 each emergency purchase.

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

524 If the governing authority, or the governing authority acting
525 through its designee, shall determine that an emergency exists in
526 regard to the purchase of any commodities or repair contracts, so
527 that the delay incident to giving opportunity for competitive
528 bidding would be detrimental to the interest of the governing

529 authority, then the provisions herein for competitive bidding
530 shall not apply and any officer or agent of such governing
531 authority having general or special authority therefor in making
532 such purchase or repair shall approve the bill presented therefor,
533 and he shall certify in writing thereon from whom such purchase
534 was made, or with whom such a repair contract was made. At the
535 board meeting next following the emergency purchase or repair
536 contract, documentation of the purchase or repair contract,
537 including a description of the commodity purchased, the price
538 thereof and the nature of the emergency shall be presented to the
539 board and shall be placed on the minutes of the board of such
540 governing authority.

541 (1) **Hospital purchase, lease-purchase and lease**
542 **authorization.**

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

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

562 subparagraph (ii) shall be excepted from the bid requirements set
563 forth in this section.

564 (m) **Exceptions from bidding requirements.** Excepted
565 from bid requirements are:

566 (i) **Purchasing agreements approved by department.**
567 Purchasing agreements, contracts and maximum price regulations
568 executed or approved by the Department of Finance and
569 Administration.

570 (ii) **Outside equipment repairs.** Repairs to
571 equipment, when such repairs are made by repair facilities in the
572 private sector; however, engines, transmissions, rear axles and/or
573 other such components shall not be included in this exemption when
574 replaced as a complete unit instead of being repaired and the need
575 for such total component replacement is known before disassembly
576 of the component; however, invoices identifying the equipment,
577 specific repairs made, parts identified by number and name,
578 supplies used in such repairs, and the number of hours of labor
579 and costs therefor shall be required for the payment for such
580 repairs.

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

587 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
588 of gravel or fill dirt which are to be removed and transported by
589 the purchaser.

590 (v) **Governmental equipment auctions.** Motor
591 vehicles or other equipment purchased from a federal agency or
592 authority, another governing authority or state agency of the
593 State of Mississippi, or any governing authority or state agency
594 of another state at a public auction held for the purpose of

595 disposing of such vehicles or other equipment. Any purchase by a
596 governing authority under the exemption authorized by this
597 subparagraph (v) shall require advance authorization spread upon
598 the minutes of the governing authority to include the listing of
599 the item or items authorized to be purchased and the maximum bid
600 authorized to be paid for each item or items.

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

602 Purchases, sales, transfers or trades by governing authorities or
603 state agencies when such purchases, sales, transfers or trades are
604 made by a private treaty agreement or through means of
605 negotiation, from any federal agency or authority, another
606 governing authority or state agency of the State of Mississippi,
607 or any state agency or governing authority of another state.
608 Nothing in this section shall permit such purchases through public
609 auction except as provided for in subparagraph (v) of this
610 section. It is the intent of this section to allow governmental
611 entities to dispose of and/or purchase commodities from other
612 governmental entities at a price that is agreed to by both
613 parties. This shall allow for purchases and/or sales at prices
614 which may be determined to be below the market value if the
615 selling entity determines that the sale at below market value is
616 in the best interest of the taxpayers of the state. Governing
617 authorities shall place the terms of the agreement and any
618 justification on the minutes, and state agencies shall obtain
619 approval from the Department of Finance and Administration, prior
620 to releasing or taking possession of the commodities.

621 (vii) **Perishable supplies or food.** Perishable
622 supplies or foods purchased for use in connection with hospitals,
623 the school lunch programs, homemaking programs and for the feeding
624 of county or municipal prisoners.

625 (viii) **Single source items.** Noncompetitive items
626 available from one (1) source only. In connection with the
627 purchase of noncompetitive items only available from one (1)

628 source, a certification of the conditions and circumstances
629 requiring the purchase shall be filed by the agency with the
630 Department of Finance and Administration and by the governing
631 authority with the board of the governing authority. Upon receipt
632 of that certification the Department of Finance and Administration
633 or the board of the governing authority, as the case may be, may,
634 in writing, authorize the purchase, which authority shall be noted
635 on the minutes of the body at the next regular meeting thereafter.
636 In those situations, a governing authority is not required to
637 obtain the approval of the Department of Finance and
638 Administration.

639 (ix) **Waste disposal facility construction**
640 **contracts.** Construction of incinerators and other facilities for
641 disposal of solid wastes in which products either generated
642 therein, such as steam, or recovered therefrom, such as materials
643 for recycling, are to be sold or otherwise disposed of; however,
644 in constructing such facilities, a governing authority or agency
645 shall publicly issue requests for proposals, advertised for in the
646 same manner as provided herein for seeking bids for public
647 construction projects, concerning the design, construction,
648 ownership, operation and/or maintenance of such facilities,
649 wherein such requests for proposals when issued shall contain
650 terms and conditions relating to price, financial responsibility,
651 technology, environmental compatibility, legal responsibilities
652 and such other matters as are determined by the governing
653 authority or agency to be appropriate for inclusion; and after
654 responses to the request for proposals have been duly received,
655 the governing authority or agency may select the most qualified
656 proposal or proposals on the basis of price, technology and other
657 relevant factors and from such proposals, but not limited to the
658 terms thereof, negotiate and enter contracts with one or more of
659 the persons or firms submitting proposals.

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

663 (xi) **Information technology products.** Purchases
664 of information technology products made by governing authorities
665 under the provisions of purchase schedules, or contracts executed
666 or approved by the Mississippi Department of Information
667 Technology Services and designated for use by governing
668 authorities.

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

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

679 (xiv) **Library books and other reference materials.**
680 Purchases by libraries or for libraries of books and periodicals;
681 processed film, video cassette tapes, filmstrips and slides;
682 recorded audio tapes, cassettes and diskettes; and any such items
683 as would be used for teaching, research or other information
684 distribution; however, equipment such as projectors, recorders,
685 audio or video equipment, and monitor televisions are not exempt
686 under this subparagraph.

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

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

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

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

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

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

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

719 (xxii) **Garbage, solid waste and sewage contracts.**
720 Contracts for garbage collection or disposal, contracts for solid
721 waste collection or disposal and contracts for sewage collection
722 or disposal.

723 (xxiii) **Municipal water tank maintenance**
724 **contracts.** Professional maintenance program contracts for the
725 repair or maintenance of municipal water tanks, which provide

726 professional services needed to maintain municipal water storage
727 tanks for a fixed annual fee for a duration of two (2) or more
728 years.

729 (xxiv) **Purchases of Mississippi Industries for the**
730 **Blind products.** Purchases made by state agencies or governing
731 authorities involving any item that is manufactured, processed or
732 produced by the Mississippi Industries for the Blind.

733 (xxv) **Purchases of state-adopted textbooks.**
734 Purchases of state-adopted textbooks by public school districts.

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

738 (xxvii) **Used heavy or specialized machinery or**
739 **equipment for installation of soil and water conservation**
740 **practices purchased at auction.** Used heavy or specialized
741 machinery or equipment used for the installation and
742 implementation of soil and water conservation practices or
743 measures purchased subject to the restrictions provided in
744 Sections 69-27-331 through 69-27-341. Any purchase by the State
745 Soil and Water Conservation Commission under the exemption
746 authorized by this subparagraph shall require advance
747 authorization spread upon the minutes of the commission to include
748 the listing of the item or items authorized to be purchased and
749 the maximum bid authorized to be paid for each item or items.

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

753 (xxix) **Purchases made pursuant to qualified**
754 **cooperative purchasing agreements.** Purchases made by certified
755 purchasing offices of state agencies or governing authorities
756 under cooperative purchasing agreements previously approved by the
757 Office of Purchasing and Travel and established by or for any
758 municipality, county, parish or state government or the federal

759 government, provided that the notification to potential
760 contractors includes a clause that sets forth the availability of
761 the cooperative purchasing agreement to other governmental
762 entities. Such purchases shall only be made if the use of the
763 cooperative purchasing agreements is determined to be in the best
764 interest of the government entity.

765 (xxx) **School yearbooks.** Purchases of school
766 yearbooks by state agencies or governing authorities; provided,
767 however, that state agencies and governing authorities shall use
768 for these purchases the RFP process as set forth in the
769 Mississippi Procurement Manual adopted by the Office of Purchasing
770 and Travel.

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

774 (xxxiii) Procurement of design and construction
775 services by state institutions of higher learning. Privately
776 financed contracts awarded by the Board of Trustees of State
777 Institutions of Higher Learning for the design and construction of
778 buildings or facilities, including parking structures, classrooms
779 and athletic facilities but excluding dormitories on the campus of
780 a state institution of higher learning, as provided in Section
781 37-101-44.

782 (n) **Term contract authorization.** All contracts for the
783 purchase of:

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

792 office subsequent to the governing authority board entering the
793 contract.

794 (ii) Bid proposals and contracts may include price
795 adjustment clauses with relation to the cost to the contractor
796 based upon a nationally published industry-wide or nationally
797 published and recognized cost index. The cost index used in a
798 price adjustment clause shall be determined by the Department of
799 Finance and Administration for the state agencies and by the
800 governing board for governing authorities. The bid proposal and
801 contract documents utilizing a price adjustment clause shall
802 contain the basis and method of adjusting unit prices for the
803 change in the cost of such commodities, equipment and public
804 construction.

805 (o) **Purchase law violation prohibition and vendor**
806 **penalty.** No contract or purchase as herein authorized shall be
807 made for the purpose of circumventing the provisions of this
808 section requiring competitive bids, nor shall it be lawful for any
809 person or concern to submit individual invoices for amounts within
810 those authorized for a contract or purchase where the actual value
811 of the contract or commodity purchased exceeds the authorized
812 amount and the invoices therefor are split so as to appear to be
813 authorized as purchases for which competitive bids are not
814 required. Submission of such invoices shall constitute a
815 misdemeanor punishable by a fine of not less than Five Hundred
816 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
817 or by imprisonment for thirty (30) days in the county jail, or
818 both such fine and imprisonment. In addition, the claim or claims
819 submitted shall be forfeited.

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

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

827 (q) **Fuel management system bidding procedure.** Any
828 governing authority or agency of the state shall, before
829 contracting for the services and products of a fuel management or
830 fuel access system, enter into negotiations with not fewer than
831 two (2) sellers of fuel management or fuel access systems for
832 competitive written bids to provide the services and products for
833 the systems. In the event that the governing authority or agency
834 cannot locate two (2) sellers of such systems or cannot obtain
835 bids from two (2) sellers of such systems, it shall show proof
836 that it made a diligent, good-faith effort to locate and negotiate
837 with two (2) sellers of such systems. Such proof shall include,
838 but not be limited to, publications of a request for proposals and
839 letters soliciting negotiations and bids. For purposes of this
840 paragraph (q), a fuel management or fuel access system is an
841 automated system of acquiring fuel for vehicles as well as
842 management reports detailing fuel use by vehicles and drivers, and
843 the term "competitive written bid" shall have the meaning as
844 defined in paragraph (b) of this section. Governing authorities
845 and agencies shall be exempt from this process when contracting
846 for the services and products of a fuel management or fuel access
847 systems under the terms of a state contract established by the
848 Office of Purchasing and Travel.

849 (r) **Solid waste contract proposal procedure.** Before
850 entering into any contract for garbage collection or disposal,
851 contract for solid waste collection or disposal or contract for
852 sewage collection or disposal, which involves an expenditure of
853 more than Fifty Thousand Dollars (\$50,000.00), a governing
854 authority or agency shall issue publicly a request for proposals
855 concerning the specifications for such services which shall be
856 advertised for in the same manner as provided in this section for
857 seeking bids for purchases which involve an expenditure of more

858 than the amount provided in paragraph (c) of this section. Any
859 request for proposals when issued shall contain terms and
860 conditions relating to price, financial responsibility,
861 technology, legal responsibilities and other relevant factors as
862 are determined by the governing authority or agency to be
863 appropriate for inclusion; all factors determined relevant by the
864 governing authority or agency or required by this paragraph (r)
865 shall be duly included in the advertisement to elicit proposals.
866 After responses to the request for proposals have been duly
867 received, the governing authority or agency shall select the most
868 qualified proposal or proposals on the basis of price, technology
869 and other relevant factors and from such proposals, but not
870 limited to the terms thereof, negotiate and enter contracts with
871 one or more of the persons or firms submitting proposals. If the
872 governing authority or agency deems none of the proposals to be
873 qualified or otherwise acceptable, the request for proposals
874 process may be reinitiated. Notwithstanding any other provisions
875 of this paragraph, where a county with at least thirty-five
876 thousand (35,000) nor more than forty thousand (40,000)
877 population, according to the 1990 federal decennial census, owns
878 or operates a solid waste landfill, the governing authorities of
879 any other county or municipality may contract with the governing
880 authorities of the county owning or operating the landfill,
881 pursuant to a resolution duly adopted and spread upon the minutes
882 of each governing authority involved, for garbage or solid waste
883 collection or disposal services through contract negotiations.

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

891 Department of Finance and Administration and shall be subject to
892 bid requirements under this section. Set-aside purchases for
893 which competitive bids are required shall be made from the lowest
894 and best minority business bidder. For the purposes of this
895 paragraph, the term "minority business" means a business which is
896 owned by a majority of persons who are United States citizens or
897 permanent resident aliens (as defined by the Immigration and
898 Naturalization Service) of the United States, and who are Asian,
899 Black, Hispanic or Native American, according to the following
900 definitions:

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

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

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

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

912 (t) **Construction punch list restriction.** The
913 architect, engineer or other representative designated by the
914 agency or governing authority that is contracting for public
915 construction or renovation may prepare and submit to the
916 contractor only one (1) preliminary punch list of items that do
917 not meet the contract requirements at the time of substantial
918 completion and one (1) final list immediately before final
919 completion and final payment.

920 (u) **Purchase authorization clarification.** Nothing in
921 this section shall be construed as authorizing any purchase not
922 authorized by law.

923 **SECTION 5.** This act shall take effect and be in force from
924 and after July 1, 2005.