

By: Senator(s) Mettetal, Jackson (32nd)

To: Public Property;
Appropriations

SENATE BILL NO. 2486
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 31-11-3, MISSISSIPPI CODE OF 1972, TO
2 ASSIGN ADDITIONAL POWERS AND DUTIES TO THE DEPARTMENT OF FINANCE
3 AND ADMINISTRATION RELATING TO STATE AGENCY LEASES, PARKING SPACES
4 AND EASEMENT ACQUISITIONS; TO AMEND SECTION 27-104-7, MISSISSIPPI
5 CODE OF 1972, TO ASSIGN ADDITIONAL POWERS TO THE PUBLIC
6 PROCUREMENT REVIEW BOARD RELATING TO THE APPROVAL OF STATE AGENCY
7 LEASES; TO AMEND SECTION 29-5-2, MISSISSIPPI CODE OF 1972, TO
8 REVISE THE DUTIES OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION
9 RELATING TO STATE AGENCY PARKING; TO AMEND SECTION 29-5-77,
10 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE DEPARTMENT OF FINANCE
11 AND ADMINISTRATION TO ENFORCE LAWS ON CERTAIN PROPERTY OF THE
12 BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING; TO
13 AMEND SECTIONS 7-9-151 AND 7-9-153, MISSISSIPPI CODE OF 1972, TO
14 REVISE THE AMOUNT OF FUNDS IN THE CAPITAL IMPROVEMENT PREPLANNING
15 FUND WHICH MAY BE EXPENDED; TO AMEND SECTION 31-11-27, MISSISSIPPI
16 CODE OF 1972, TO REVISE THE DOLLAR AMOUNT OF PROJECTS THAT SHALL
17 BE INCLUDED IN THE ANNUAL REPORT SUBMITTED BY THE DEPARTMENT OF
18 FINANCE AND ADMINISTRATION; TO AMEND SECTION 31-11-30, MISSISSIPPI
19 CODE OF 1972, TO REVISE THE DOLLAR AMOUNT OF PROJECTS THAT SHALL
20 NOT BE REQUIRED TO BE PREPLANNED; TO AMEND SECTION 31-7-13,
21 MISSISSIPPI CODE OF 1972, TO CLARIFY THAT PUBLIC CONSTRUCTION
22 CONTRACTS MAY INCLUDE ALLOWANCES FOR SPECIFIED ITEMS AND AMOUNTS;
23 AND FOR RELATED PURPOSES.

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

25 **SECTION 1.** Section 31-11-3, Mississippi Code of 1972, is
26 amended as follows:

27 31-11-3. (1) The Department of Finance and Administration,
28 for the purposes of carrying out the provisions of this chapter,
29 in addition to all other rights and powers granted by law, shall
30 have full power and authority to escalate, and compensate
31 architects or other employees necessary for the purpose of making
32 inspections, preparing plans and specifications, supervising the
33 erection of any buildings, and making any repairs or additions as
34 may be determined by the Department of Finance and Administration
35 to be necessary, pursuant to the rules and regulations of the
36 State Personnel Board. The department shall have entire control
37 and supervision of, and determine what, if any, buildings,

38 additions, repairs, demolitions, with concurrence of the Chairmen
39 of the Public Properties Committees of the House and Senate, or
40 improvements are to be made under the provisions of this chapter,
41 subject to the regulations adopted by the Public Procurement
42 Review Board.

43 (2) The department shall have full power to erect buildings,
44 make repairs, additions, demolitions, with concurrence of the
45 Chairmen of the Public Properties Committees of the House and
46 Senate, or improvements, and buy materials, supplies and equipment
47 for any of the institutions or departments of the state subject to
48 the regulations adopted by the Public Procurement Review Board.

49 In addition to other powers conferred, the department shall have
50 full power and authority as directed by the Legislature, or when
51 funds have been appropriated for its use for these purposes, to:

52 (a) Build a state office building;

53 (b) Build suitable plants or buildings for the use and
54 housing of any state schools or institutions, including the
55 building of plants or buildings for new state schools or
56 institutions, as provided for by the Legislature;

57 (c) Provide state aid for the construction of school
58 buildings;

59 (d) Promote and develop the training of returned
60 veterans of the United States in all sorts of educational and
61 vocational learning to be supplied by the proper educational
62 institution of the State of Mississippi, and in so doing allocate
63 monies appropriated to it for these purposes to the Governor for
64 use by him in setting up, maintaining and operating an office and
65 employing a state director of on-the-job training for veterans and
66 the personnel necessary in carrying out Public Law No. 346 of the
67 United States;

68 (e) Build and equip a hospital and administration
69 building at the Mississippi State Penitentiary;

70 (f) Build and equip additional buildings and wards at
71 the Boswell Retardation Center;

72 (g) Construct a sewage disposal and treatment plant at
73 the state insane hospital, and in so doing acquire additional land
74 as may be necessary, and to exercise the right of eminent domain
75 in the acquisition of this land;

76 (h) Build and equip the Mississippi central market and
77 purchase or acquire by eminent domain, if necessary, any lands
78 needed for this purpose;

79 (i) Build and equip suitable facilities for a training
80 and employing center for the blind;

81 (j) Build and equip a gymnasium at Columbia Training
82 School;

83 (k) Approve or disapprove the expenditure of any money
84 appropriated by the Legislature when authorized by the bill making
85 the appropriation;

86 (l) Expend monies appropriated to it in paying the
87 state's part of the cost of any street paving;

88 (m) Sell and convey state lands when authorized by the
89 Legislature, cause said lands to be properly surveyed and platted,
90 execute all deeds or other legal instruments, and do any and all
91 other things required to effectively carry out the purpose and
92 intent of the Legislature. Any transaction which involves state
93 lands under the provisions of this paragraph shall be done in a
94 manner consistent with the provisions of Section 29-1-1;

95 (n) Collect and receive from educational institutions
96 of the State of Mississippi monies required to be paid by these
97 institutions to the state in carrying out any veterans'
98 educational programs;

99 (o) Purchase lands for building sites, or as additions
100 to building sites, for the erection of buildings and other
101 facilities which the department is authorized to erect, and
102 demolish and dispose of old buildings, when necessary for the

103 proper construction of new buildings. Any transaction which
104 involves state lands under the provisions of this paragraph shall
105 be done in a manner consistent with the provisions of Section
106 29-1-1; * * *

107 (p) Obtain business property insurance with a
108 deductible of not less than One Hundred Thousand Dollars
109 (\$100,000.00) on state-owned buildings under the management and
110 control of the department;

111 (q) Take the following actions, on projects authorized
112 by the Legislature, with approval of the Chairmen of the Public
113 Property Committees of the Senate and the House of Representatives
114 in the event that waiting for legislative direction and/or
115 appropriation required under this subsection (2) will not be
116 economically advantageous to the state:

117 (i) With approval of the Public Procurement Review
118 Board, enter into, sign, execute and deliver long-term or
119 multiyear leases of real and personal property to and from other
120 state and federal agencies and any governmental entity;

121 (ii) Enter into contracts for the purpose of
122 providing parking spaces for state employees;

123 (iii) Grant easements and rights-of-way; and

124 (iv) Acquire easements and rights-of-way.

125 (3) The department shall survey state-owned and
126 state-utilized buildings to establish an estimate of the costs of
127 architectural alterations, pursuant to the Americans With
128 Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The
129 department shall establish priorities for making the identified
130 architectural alterations and shall make known to the Legislative
131 Budget Office and to the Legislature the required cost to
132 effectuate such alterations. To meet the requirements of this
133 section, the department shall use standards of accessibility that
134 are at least as stringent as any applicable federal requirements
135 and may consider:

136 (a) Federal minimum guidelines and requirements issued
137 by the United States Architectural and Transportation Barriers
138 Compliance Board and standards issued by other federal agencies;

139 (b) The criteria contained in the American Standard
140 Specifications for Making Buildings Accessible and Usable by the
141 Physically Handicapped and any amendments thereto as approved by
142 the American Standards Association, Incorporated (ANSI Standards);

143 (c) Design manuals;

144 (d) Applicable federal guidelines;

145 (e) Current literature in the field;

146 (f) Applicable safety standards; and

147 (g) Any applicable environmental impact statements.

148 (4) The department shall observe the provisions of Section
149 31-5-23, in letting contracts and shall use Mississippi products,
150 including paint, varnish and lacquer which contain as vehicles
151 tung oil and either ester gum or modified resin (with rosin as the
152 principal base of constituents), and turpentine shall be used as a
153 solvent or thinner, where these products are available at a cost
154 not to exceed the cost of products grown, produced, prepared, made
155 or manufactured outside of the State of Mississippi.

156 (5) The department shall have authority to accept grants,
157 loans or donations from the United States government or from any
158 other sources for the purpose of matching funds in carrying out
159 the provisions of this chapter.

160 (6) The department shall build a wheelchair ramp at the War
161 Memorial Building which complies with all applicable federal laws,
162 regulations and specifications regarding wheelchair ramps.

163 (7) The department shall review and preapprove all
164 architectural or engineering service contracts entered into by any
165 state agency, institution, commission, board or authority
166 regardless of the source of funding used to defray the costs of
167 the construction or renovation project for which services are to
168 be obtained. The provisions of this subsection (7) shall not

169 apply to any architectural or engineering contract paid for by
170 self-generated funds of any of the state institutions of higher
171 learning, nor shall they apply to community college projects that
172 are funded from local funds or other nonstate sources which are
173 outside the Department of Finance and Administration's
174 appropriations or as directed by the Legislature. The provisions
175 of this subsection (7) shall not apply to any construction or
176 design projects of the State Military Department that are funded
177 from federal funds or other nonstate sources.

178 (8) The department shall have the authority to obtain
179 annually from the state institutions of higher learning
180 information on all building, construction and renovation projects
181 including duties, responsibilities and costs of any architect or
182 engineer hired by any such institutions.

183 (9) (a) As an alternative to other methods of awarding
184 contracts as prescribed by law, the department may use the
185 design-build method or the design-build bridging method of
186 contracting for new capital construction projects to be used as a
187 pilot program for the following projects:

188 (i) Projects for the Mississippi Development
189 Authority pursuant to agreements between both governmental
190 entities;

191 (ii) Any project with an estimated cost of not
192 more than Ten Million Dollars (\$10,000,000.00), not to exceed two
193 (2) projects per fiscal year; and

194 (iii) Any project which has an estimated cost of
195 more than Fifty Million Dollars (\$50,000,000.00), not to exceed
196 one (1) project per fiscal year.

197 (b) As used in this subsection:

198 (i) "Design-build method of contracting" means a
199 contract that combines the design and construction phases of a
200 project into a single contract and the contractor is required to

201 satisfactorily perform, at a minimum, both the design and
202 construction of the project.

203 (ii) "Design-build bridging method of contracting"
204 means a contract that requires design through the design
205 development phase by a professional designer, after which a
206 request for qualifications for design completion and construction
207 is required for the completion of the project from a single
208 contractor that combines the balance of design and construction
209 phases of a project into a single contract. The contractor is
210 required to satisfactorily perform, at a minimum, both the balance
211 of design and construction of the project.

212 (c) The department shall establish detailed criteria
213 for the selection of the successful design-build/design-build
214 bridging contractor in each request for design-build/design-build
215 bridging proposals. The request for qualifications evaluation of
216 the selection committee is a public record and shall be maintained
217 for a minimum of three (3) years after project completion.

218 (d) The department shall maintain detailed records on
219 projects separate and apart from its regular record keeping. The
220 department shall file a report to the Legislature evaluating the
221 design-build/design-build bridging method of contracting by
222 comparing it to the low-bid method of contracting. At a minimum,
223 the report must include:

224 (i) The management goals and objectives for the
225 design-build/design-build bridging system of management;

226 (ii) A complete description of the components of
227 the design-build/design-build bridging management system,
228 including a description of the system the department put into
229 place on all projects managed under the system to insure that it
230 has the complete information on building segment costs and to
231 insure proper analysis of any proposal the department receives
232 from a contractor;

233 (iii) The accountability systems the department
234 established to monitor any design-build/design-build bridging
235 project's compliance with specific goals and objectives for the
236 project;

237 (iv) The outcome of any project or any interim
238 report on an ongoing project let under a design-build/design-build
239 bridging management system showing compliance with the goals,
240 objectives, policies and procedures the department set for the
241 project; and

242 (v) The method used by the department to select
243 projects to be let under the design-build/design-build bridging
244 system of management and all other systems, policies and
245 procedures that the department considered as necessary components
246 to a design-build/design-build bridging management system.

247 (e) All contracts let under the provisions of this
248 subsection shall be subject to oversight and review by the State
249 Auditor.

250 **SECTION 2.** Section 27-104-7, Mississippi Code of 1972, is
251 amended as follows:

252 27-104-7. (1) There is hereby created within the Department
253 of Finance and Administration the Public Procurement Review Board,
254 which shall be composed of the Executive Director of the
255 Department of Finance and Administration, the head of the Office
256 of Budget and Policy Development and an employee of the Office of
257 General Services who is familiar with the purchasing laws of this
258 state. The Executive Director of the Department of Finance and
259 Administration shall be chairman and shall preside over the
260 meetings of the board. The board shall annually elect a vice
261 chairman, who shall serve in the absence of the chairman. No
262 business shall be transacted, including adoption of rules of
263 procedure, without the presence of a quorum of the board. Two (2)
264 members shall be a quorum. No action shall be valid unless
265 approved by the chairman and one (1) other of those members

266 present and voting, entered upon the minutes of the board and
267 signed by the chairman. The board shall meet on a monthly basis
268 and at any other time when notified by the chairman. Necessary
269 clerical and administrative support for the board shall be
270 provided by the Department of Finance and Administration. Minutes
271 shall be kept of the proceedings of each meeting, copies of which
272 shall be filed on a monthly basis with the Legislative Budget
273 Office.

274 (2) The Public Procurement Review Board shall have the
275 following powers and responsibilities:

276 (a) Approve all purchasing regulations governing the
277 purchase or lease by any agency, as defined in Section 31-7-1, of
278 commodities and equipment, except computer equipment acquired
279 pursuant to Sections 25-53-1 through 25-53-29;

280 (b) Adopt regulations governing the approval of
281 contracts let for the construction and maintenance of state
282 buildings and other state facilities;

283 (c) Adopt regulations governing any lease or rental
284 agreement by any state agency or department, including any state
285 agency financed entirely by federal funds, for space outside the
286 buildings under the jurisdiction of the Department of Finance and
287 Administration; * * *

288 (d) Adopt, in its discretion, regulations to set aside
289 at least five percent (5%) of anticipated annual expenditures for
290 the purchase of commodities from minority businesses; however, all
291 such set-aside purchases shall comply with all purchasing
292 regulations promulgated by the department and shall be subject to
293 all bid requirements. Set-aside purchases for which competitive
294 bids are required shall be made from the lowest and best minority
295 business bidder; however, if no minority bid is available or if
296 the minority bid is more than two percent (2%) higher than the
297 lowest bid, then bids shall be accepted and awarded to the lowest
298 and best bidder. Provided, however, that the provisions herein

299 shall not be construed to prohibit the rejection of a bid when
300 only one (1) bid is received. Such rejection shall be placed in
301 the minutes. For the purposes of this paragraph, the term
302 "minority business" means a business which is owned by a person
303 who is a citizen or lawful permanent resident of the United States
304 and who is:

305 (i) Black: having origins in any of the black
306 racial groups of Africa.

307 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
308 Central or South American, or other Spanish or Portuguese culture
309 or origin regardless of race.

310 (iii) Asian American: having origins in any of
311 the original peoples of the Far East, Southeast Asia, the Indian
312 subcontinent, or the Pacific Islands.

313 (iv) American Indian or Alaskan Native: having
314 origins in any of the original peoples of North America.

315 (v) Female;

316 (e) (i) With concurrence of Chairmen of the House and
317 Senate Public Property Committees, authorize state agencies to
318 enter into long-term or multiyear leases of real property to and
319 from other state and federal agencies or any other governmental
320 entities;

321 (ii) Approve leases entered into by state agencies
322 for the purpose of providing parking arrangements; and

323 (iii) Authorize state agencies to obtain business
324 personal property insurance on state-owned buildings under the
325 management and control of the Department of Finance and
326 Administration.

327 (3) No member of the Public Procurement Review Board shall
328 use his official authority or influence to coerce, by threat of
329 discharge from employment, or otherwise, the purchase of
330 commodities or the contracting for public construction under this
331 chapter.

332 **SECTION 3.** Section 29-5-2, Mississippi Code of 1972, is
333 amended as follows:

334 29-5-2. The duties of the Department of Finance and
335 Administration shall be as follows:

336 (a) (i) To exercise general supervision and care over
337 and keep in good condition the following state property located in
338 the City of Jackson: the New State Capitol Building, the Woolfolk
339 State Office Building, the Carroll Gartin Justice Building, the
340 Walter Sillers Office Building, the War Veterans' Memorial
341 Building, the Charlotte Capers Building, the William F. Winter
342 Archives and History Building, the Ike Sanford Veterans Affairs
343 Building, the Old State Capitol Building, the Governor's Mansion,
344 the Heber Ladner Building, the Burroughs Building, the Robert E.
345 Lee Office Building, the Robert E. Lee Parking Garage, the Manship
346 House Restoration and Visitor Center, the State Records Center,
347 the Robert G. Clark, Jr., Building, and all other properties
348 acquired in the same transaction at the time of the purchase of
349 the Robert E. Lee Hotel property from the First Federal Savings
350 and Loan Association of Jackson, Mississippi, which properties are
351 more particularly described in a warranty deed heretofore executed
352 and delivered on April 22, 1969, and filed for record in the
353 office of the Chancery Clerk of the First Judicial District of
354 Hinds County, Mississippi, located in Jackson, Mississippi, on
355 April 25, 1969, at 9:00 a.m., and recorded in Deed Book No. 1822,
356 page 136 et seq., and the Central High Building and 101 Capitol
357 Centre.

358 (ii) To exercise general supervision and care over
359 and keep in good condition the Dr. Eldon Langston Bolton Building
360 located in Biloxi, Mississippi.

361 (iii) To exercise general supervision and care
362 over and keep in good condition the State Service Center, located
363 at the intersection of State Highway 49 and John Merl Tatum
364 Industrial Drive in Hattiesburg, Mississippi.

365 (b) To assign suitable office space for the various
366 state departments, officers and employees who are provided with an
367 office in any of the buildings under the jurisdiction or control
368 of the Department of Finance and Administration. However, the
369 assignment of space in the New Capitol Building shall be
370 designated by duly passed resolution of the combined Senate Rules
371 Committee and the House Management Committee, meeting as a joint
372 committee, approved by the Lieutenant Governor and Speaker of the
373 House of Representatives. A majority vote of the members of the
374 Senate Rules Committee and a majority vote of the members of the
375 House Management Committee shall be required on all actions taken,
376 resolutions or reports adopted, and all other matters considered
377 by the full combined committee on occasions when the Senate Rules
378 Committee and the House Management Committee shall meet as a full
379 combined committee.

380 (c) To approve or disapprove with the concurrence of
381 the Public Procurement Review Board, any lease or rental
382 agreements by any state agency or department, including any state
383 agency financed entirely by federal and special funds, for space
384 including, but not limited to, parking, outside the buildings
385 under the jurisdiction of the Department of Finance and
386 Administration. In no event shall any employee, officer,
387 department, federally funded agency or bureau of the state be
388 authorized to enter a lease or rental agreement without prior
389 approval of the Department of Finance and Administration and the
390 Public Procurement Review Board.

391 The Department of Finance and Administration is authorized to
392 use architects, engineers, building inspectors and other personnel
393 for the purpose of making inspections as may be deemed necessary
394 in carrying out its duties and maintaining the facilities.

395 (d) To acquire by lease, lease-purchase agreement, or
396 otherwise, as provided in Section 27-104-107, and to assign
397 through the Office of General Services, by lease or sublease

398 agreement from the office, and with the concurrence of the Public
399 Procurement Review Board, to any state agency or department,
400 including any state agency financed entirely by federal and
401 special funds, appropriate office space in the buildings acquired.

402 SECTION 4. Section 29-5-77, Mississippi Code of 1972, is
403 amended as follows:

404 29-5-77. The Department of Finance and Administration shall
405 have jurisdiction relative to the enforcement of all laws of the
406 State of Mississippi on the properties set forth in Section
407 29-5-2, the Court of Appeals Building, the Mississippi Department
408 of Transportation Building and the Public Employees' Retirement
409 System Building. The Department of Finance and Administration
410 shall, through any person or persons appointed by the Department
411 of Finance and Administration, or through the Department of Public
412 Safety when requested by the Department of Finance and
413 Administration, make arrests for any violation of any law of the
414 State of Mississippi on those grounds of or within those
415 properties. The Department of Finance and Administration shall
416 enforce the provisions of Sections 29-5-57 through 29-5-67,
417 29-5-71 through 29-5-77, and 29-5-81 through 29-5-95, and
418 prescribe such rules and regulations as are necessary therefor.

419 When in the opinion of the Governor or, in his absence, the
420 Lieutenant Governor, it is readily apparent that an emergency
421 exists that the persons appointed by the Department of Finance and
422 Administration are unable to control in the accomplishment of the
423 provisions of Sections 29-5-57 through 29-5-67, 29-5-71 through
424 29-5-77, and 29-5-81 through 29-5-95 in regard to law enforcement,
425 then the Governor, or in his absence, the Lieutenant Governor, may
426 call upon the Department of Public Safety, members of which shall
427 have power to arrest and detain any persons violating the
428 provisions of those sections of law, until the person can be
429 brought before the proper authorities for trial.

430 Subject to the approval of the Board of Trustees of State
431 Institutions of Higher Learning, the Board of Trustees and the
432 Department of Finance and Administration shall be authorized to
433 enter into a contract for the Department of Finance and
434 Administration to supply the security personnel with jurisdiction
435 relative to the enforcement of all laws of the State of
436 Mississippi on the property of the Board of Trustees located at
437 the corner of Ridgewood Road and Lakeland Drive in the City of
438 Jackson.

439 **SECTION 5.** Section 7-9-151, Mississippi Code of 1972, is
440 amended as follows:

441 7-9-151. There is hereby established in the State Treasury a
442 revolving fund to be designated as the "Capital Improvements
443 Preplanning Fund" which shall consist of monies appropriated or
444 otherwise made available therefor by the Legislature. Such funds
445 as may be deposited in the revolving fund may be expended by the
446 Bureau of Building, Grounds and Real Property Management to obtain
447 preliminary studies and plans for projects authorized by the
448 Legislature. Funds also may be expended, in an amount not to
449 exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) for any
450 project, for the purpose of obtaining preliminary studies and
451 plans, to include appraisals and the purchase of options on real
452 property, for projects the bureau may consider proposing to the
453 Legislature for authorization. The bureau shall consider
454 architectural and aesthetic compatibility in the preplanning of
455 any project conducted using money from the Capital Improvements
456 Preplanning Fund.

457 **SECTION 6.** Section 7-9-153, Mississippi Code of 1972, is
458 amended as follows:

459 7-9-153. (1) All expenses for preplanning projects
460 authorized by the Legislature shall be paid upon warrants drawn on
461 the Capital Improvements Preplanning Fund created pursuant to
462 Sections 7-9-151 through 7-9-159. The Department of Finance and

463 Administration shall issue warrants upon requisitions signed by
464 the Director of the Bureau of Building, Grounds and Real Property
465 Management. Such requisitions shall set forth the name of the
466 project and estimated cost of the project, and the total of prior
467 expenditures for such project. The Department of Finance and
468 Administration shall not issue a warrant against the Capital
469 Improvements Preplanning Fund if the total amount expended for
470 preliminary study and planning on the project exceeds two and
471 one-half percent (2 1/2%) of the estimated cost of such project or
472 appraised price of the proposed property.

473 (2) Expenses for preliminary studies and plans, to include
474 appraisals and the purchase of options on real property, for
475 projects the bureau may consider proposing to the Legislature for
476 authorization shall be paid upon warrants drawn on the Capital
477 Improvements Preplanning Fund created pursuant to Sections 7-9-151
478 through 7-9-159. The Department of Finance and Administration
479 shall issue warrants upon requisitions signed by the Director of
480 the Bureau of Building, Grounds and Real Property Management.
481 Such requisitions shall set forth the name of the project and
482 estimated cost of the project, and the total of prior expenditures
483 for such project. The Department of Finance and Administration
484 shall not issue a warrant against the Capital Improvements
485 Preplanning Fund for a project if the total amount expended for
486 preliminary studies and plans, to include appraisals and the
487 purchase of options on real property, for the project exceeds Two
488 Hundred Fifty Thousand Dollars (\$250,000.00).

489 **SECTION 7.** Section 31-11-27, Mississippi Code of 1972, is
490 amended as follows:

491 31-11-27. (1) (a) The Department of Finance and
492 Administration shall conduct a detailed study of the building and
493 other capital needs at each state institution and at each junior
494 college immediately prior to September first in each year. This
495 study shall include, but shall not be limited to, the following

496 matters: (i) an inventory of every state building and other
497 capital facility which is the property of the State of
498 Mississippi; (ii) the location, date of construction or
499 acquisition, the purpose for which used, outstanding indebtedness
500 against such facility, if any, and cost of repairs for the
501 preceding fiscal year; (iii) an examination of the condition of
502 the building or other facility; (iv) an estimate of the cost of
503 repairs required to place the facility in good condition; (v) an
504 estimate of the cost of major renovations, if contemplated; and
505 (vi) a determination of the new building and other facility needs
506 of each institution with such needs classified under immediate or
507 long range requirements.

508 (b) All state agencies, departments and institutions
509 are hereby authorized and directed to cooperate with the
510 Department of Finance and Administration in carrying out the
511 provisions of this section.

512 (c) The Department of Finance and Administration shall
513 submit a detailed report to the Legislative Budget Office on or
514 before September first of each year. Such report shall be in such
515 detail and in such form as may be prescribed by the Legislative
516 Budget Office.

517 (d) The architect or building inspector of the
518 Department of Finance and Administration shall make a biennial
519 inspection of the New Capitol, Old Capitol, Woolfolk State Office
520 Building, War Memorial Building, the Governor's Mansion, and all
521 other buildings under jurisdiction of the Department of Finance
522 and Administration for structural or other physical needs or
523 defects of such buildings, and he shall further inquire of the
524 department or its representatives regarding the condition of the
525 buildings. He shall make a written report of his finding to the
526 Department of Finance and Administration, Governor, Lieutenant
527 Governor and Speaker of the House of Representatives. The report

528 shall also make recommendations for repairs and list, by number,
529 the priority which should be given to making necessary repairs.

530 (2) (a) In addition to any report required in subsection
531 (1) of this section, the Department of Finance and Administration
532 shall prepare and submit an annual report to the Legislative
533 Budget Office, the House Public Buildings, Grounds and Lands
534 Committee and the Senate Public Property Committee describing the
535 proposed capital improvements projects for state agencies,
536 departments and institutions for the upcoming five-year period.
537 The Department of Finance and Administration shall not be required
538 to include in the report any project costing less than Three
539 Million Dollars (\$3,000,000.00). The department shall submit the
540 report before September 1 of each year. The report shall include
541 at least the following information:

542 (i) A prioritized list of the projects proposed
543 for the five-year period, with each project ranked on the basis of
544 need;

545 (ii) A prioritized list of the projects proposed
546 for the next regular legislative session, with each project ranked
547 on the basis of need;

548 (iii) A prioritized list of the projects requested
549 by each state agency, department or institution;

550 (iv) A detailed explanation of criteria used by
551 the Department of Finance and Administration to rank projects for
552 purposes of any list it prepares under this paragraph (a);

553 (v) A detailed statement of justification for each
554 project;

555 (vi) The approximate cost for each project,
556 including, but not limited to, itemized estimates of costs for
557 preplanning, constructing, furnishing and equipping a project, and
558 costs for property acquisition;

559 (vii) The estimated beginning date and completion
560 date for each project;

561 (viii) Whether a project, as proposed, is a
562 complete project or a phase or part of a project;

563 (ix) How a project will affect the operating
564 budget of the applicable agency, department or institution for the
565 upcoming five-year period, regarding such items as additional
566 personnel requirements, utility costs, maintenance costs, security
567 costs, etc.;

568 (x) The proposed method of financing each project
569 and the effect such financing will have on the state budget,
570 including an estimate of any required debt service for the
571 project, and an estimate of any federal funds or other funds that
572 the agency, department or institution may have access to because
573 of the project; and

574 (xi) A list of the projects requested by each
575 agency, department or institution for the five-year period, with
576 each project ranked by the appropriate agency, department or
577 institution on the basis of need.

578 (b) To enable the Department of Finance and
579 Administration to prepare the report required in this subsection
580 (2), it may require all state agencies, departments and
581 institutions to file a capital improvements projects request with
582 such information and in such form and in such detail as the
583 department may deem necessary and advisable. Such request shall
584 be filed with the Department of Finance and Administration no
585 later than August 1 of each year.

586 **SECTION 8.** Section 31-11-30, Mississippi Code of 1972, is
587 amended as follows:

588 31-11-30. (1) Every capital improvements project, costing
589 Three Million Dollars (\$3,000,000.00) or more, which is developed
590 to repair, renovate, construct, remodel, add to or improve a
591 state-owned public building shall be funded by the Legislature in
592 two (2) phases. The two-phase funding requirement shall not apply
593 to capital improvements projects for a state-owned port or where

594 the Legislature finds that an emergency or critical need must be
595 met or a court order complied with. The two (2) phases shall not
596 be funded in the same regular session of the Legislature. Each
597 phase shall be funded in a separate session of the Legislature.
598 Phase 1 shall be a preplanned capital improvements project budget
599 projection for the project and shall be funded first. Phase 2
600 shall be the actual repair, renovation, construction, remodeling,
601 addition to or improvement of the state-owned public building and
602 the acquisition of furniture and equipment for the capital
603 improvements project and shall be funded second.

604 (2) For the purposes of this section, the term "preplanned"
605 or "preplanning" means the preliminary planning that establishes
606 the program, scope, design and budget for a capital improvements
607 project.

608 (3) Every state agency that plans to repair, renovate,
609 construct, remodel, add to or improve a state-owned public
610 building shall submit a preplanned capital improvements project
611 budget projection to the Bureau of Building, Grounds and Real
612 Property Management for evaluation. The bureau shall assess the
613 need for all preplanned projects submitted and shall compile a
614 report on its findings. Any capital improvements project costing
615 less than Three Million Dollars (\$3,000,000.00) shall not be
616 required to be preplanned.

617 (4) Upon the completion of any preplanning for a capital
618 improvements project, if such preplanning is funded with
619 self-generated funds by a state agency, the plan shall be
620 submitted to the bureau for evaluation.

621 (5) This section shall not apply to capital improvements
622 projects authorized by the Legislature before the 2001 Regular
623 Session of the Legislature.

624 **SECTION 9.** Section 31-7-13, Mississippi Code of 1972, is
625 amended as follows:

626 31-7-13. All agencies and governing authorities shall
627 purchase their commodities and printing; contract for garbage
628 collection or disposal; contract for solid waste collection or
629 disposal; contract for sewage collection or disposal; contract for
630 public construction; and contract for rentals as herein provided.

631 (a) **Bidding procedure for purchases not over \$3,500.00.**
632 Purchases which do not involve an expenditure of more than Three
633 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
634 shipping charges, may be made without advertising or otherwise
635 requesting competitive bids. However, nothing contained in this
636 paragraph (a) shall be construed to prohibit any agency or
637 governing authority from establishing procedures which require
638 competitive bids on purchases of Three Thousand Five Hundred
639 Dollars (\$3,500.00) or less.

640 (b) **Bidding procedure for purchases over \$3,500.00 but**
641 **not over \$15,000.00.** Purchases which involve an expenditure of
642 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
643 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
644 freight and shipping charges may be made from the lowest and best
645 bidder without publishing or posting advertisement for bids,
646 provided at least two (2) competitive written bids have been
647 obtained. Any governing authority purchasing commodities pursuant
648 to this paragraph (b) may authorize its purchasing agent, or his
649 designee, with regard to governing authorities other than
650 counties, or its purchase clerk, or his designee, with regard to
651 counties, to accept the lowest and best competitive written bid.
652 Such authorization shall be made in writing by the governing
653 authority and shall be maintained on file in the primary office of
654 the agency and recorded in the official minutes of the governing
655 authority, as appropriate. The purchasing agent or the purchase
656 clerk, or their designee, as the case may be, and not the
657 governing authority, shall be liable for any penalties and/or
658 damages as may be imposed by law for any act or omission of the

659 purchasing agent or purchase clerk, or their designee,
660 constituting a violation of law in accepting any bid without
661 approval by the governing authority. The term "competitive
662 written bid" shall mean a bid submitted on a bid form furnished by
663 the buying agency or governing authority and signed by authorized
664 personnel representing the vendor, or a bid submitted on a
665 vendor's letterhead or identifiable bid form and signed by
666 authorized personnel representing the vendor. "Competitive" shall
667 mean that the bids are developed based upon comparable
668 identification of the needs and are developed independently and
669 without knowledge of other bids or prospective bids. Bids may be
670 submitted by facsimile, electronic mail or other generally
671 accepted method of information distribution. Bids submitted by
672 electronic transmission shall not require the signature of the
673 vendor's representative unless required by agencies or governing
674 authorities.

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

676 (i) **Publication requirement.** Purchases which
677 involve an expenditure of more than Fifteen Thousand Dollars
678 (\$15,000.00), exclusive of freight and shipping charges, may be
679 made from the lowest and best bidder after advertising for
680 competitive sealed bids once each week for two (2) consecutive
681 weeks in a regular newspaper published in the county or
682 municipality in which such agency or governing authority is
683 located. The date as published for the bid opening shall not be
684 less than seven (7) working days after the last published notice;
685 however, if the purchase involves a construction project in which
686 the estimated cost is in excess of Fifteen Thousand Dollars
687 (\$15,000.00), such bids shall not be opened in less than fifteen
688 (15) working days after the last notice is published and the
689 notice for the purchase of such construction shall be published
690 once each week for two (2) consecutive weeks. The notice of
691 intention to let contracts or purchase equipment shall state the

692 time and place at which bids shall be received, list the contracts
693 to be made or types of equipment or supplies to be purchased, and,
694 if all plans and/or specifications are not published, refer to the
695 plans and/or specifications on file. If there is no newspaper
696 published in the county or municipality, then such notice shall be
697 given by posting same at the courthouse, or for municipalities at
698 the city hall, and at two (2) other public places in the county or
699 municipality, and also by publication once each week for two (2)
700 consecutive weeks in some newspaper having a general circulation
701 in the county or municipality in the above provided manner. On
702 the same date that the notice is submitted to the newspaper for
703 publication, the agency or governing authority involved shall mail
704 written notice to, or provide electronic notification to the main
705 office of the Mississippi Contract Procurement Center that
706 contains the same information as that in the published notice.

707 (ii) **Bidding process amendment procedure.** If all
708 plans and/or specifications are published in the notification,
709 then the plans and/or specifications may not be amended. If all
710 plans and/or specifications are not published in the notification,
711 then amendments to the plans/specifications, bid opening date, bid
712 opening time and place may be made, provided that the agency or
713 governing authority maintains a list of all prospective bidders
714 who are known to have received a copy of the bid documents and all
715 such prospective bidders are sent copies of all amendments. This
716 notification of amendments may be made via mail, facsimile,
717 electronic mail or other generally accepted method of information
718 distribution. No addendum to bid specifications may be issued
719 within two (2) working days of the time established for the
720 receipt of bids unless such addendum also amends the bid opening
721 to a date not less than five (5) working days after the date of
722 the addendum.

723 (iii) **Filing requirement.** In all cases involving
724 governing authorities, before the notice shall be published or

725 posted, the plans or specifications for the construction or
726 equipment being sought shall be filed with the clerk of the board
727 of the governing authority. In addition to these requirements, a
728 bid file shall be established which shall indicate those vendors
729 to whom such solicitations and specifications were issued, and
730 such file shall also contain such information as is pertinent to
731 the bid.

732 (iv) **Specification restrictions.** 1.

733 Specifications pertinent to such bidding shall be written so as
734 not to exclude comparable equipment of domestic manufacture.

735 However, if valid justification is presented, the Department of
736 Finance and Administration or the board of a governing authority
737 may approve a request for specific equipment necessary to perform
738 a specific job. Further, such justification, when placed on the
739 minutes of the board of a governing authority, may serve as
740 authority for that governing authority to write specifications to
741 require a specific item of equipment needed to perform a specific
742 job. In addition to these requirements, from and after July 1,
743 1990, vendors of relocatable classrooms and the specifications for
744 the purchase of such relocatable classrooms published by local
745 school boards shall meet all pertinent regulations of the State
746 Board of Education, including prior approval of such bid by the
747 State Department of Education.

748 2. Specifications for construction projects
749 may include an allowance for commodities, equipment, furniture,
750 construction materials or hardware in which prospective bidders
751 are instructed to include in their bids specified amounts for such
752 items so long as the allowance items are acquired by the vendor in
753 a commercially reasonable manner and approved by the
754 agency/governing authority. Such acquisitions shall not be made
755 to circumvent the public purchasing laws.

756 (v) Agencies and governing authorities may
757 establish secure procedures by which bids may be submitted via
758 electronic means.

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

760 (i) **Decision procedure.** Purchases may be made
761 from the lowest and best bidder. In determining the lowest and
762 best bid, freight and shipping charges shall be included.
763 Life-cycle costing, total cost bids, warranties, guaranteed
764 buy-back provisions and other relevant provisions may be included
765 in the best bid calculation. All best bid procedures for state
766 agencies must be in compliance with regulations established by the
767 Department of Finance and Administration. If any governing
768 authority accepts a bid other than the lowest bid actually
769 submitted, it shall place on its minutes detailed calculations and
770 narrative summary showing that the accepted bid was determined to
771 be the lowest and best bid, including the dollar amount of the
772 accepted bid and the dollar amount of the lowest bid. No agency
773 or governing authority shall accept a bid based on items not
774 included in the specifications.

775 (ii) **Decision procedure for Certified Purchasing**
776 **Offices.** In addition to the decision procedure set forth in
777 paragraph (d)(i), Certified Purchasing Offices may also use the
778 following procedure: Purchases may be made from the bidder
779 offering the best value. In determining the best value bid,
780 freight and shipping charges shall be included. Life-cycle
781 costing, total cost bids, warranties, guaranteed buy-back
782 provisions, documented previous experience, training costs and
783 other relevant provisions may be included in the best value
784 calculation. This provision shall authorize Certified Purchasing
785 Offices to utilize a Request For Proposals (RFP) process when
786 purchasing commodities. All best value procedures for state
787 agencies must be in compliance with regulations established by the
788 Department of Finance and Administration. No agency or governing

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

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

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

797 (e) **Lease-purchase authorization.** For the purposes of
798 this section, the term "equipment" shall mean equipment, furniture
799 and, if applicable, associated software and other applicable
800 direct costs associated with the acquisition. Any lease-purchase
801 of equipment which an agency is not required to lease-purchase
802 under the master lease-purchase program pursuant to Section
803 31-7-10 and any lease-purchase of equipment which a governing
804 authority elects to lease-purchase may be acquired by a
805 lease-purchase agreement under this paragraph (e). Lease-purchase
806 financing may also be obtained from the vendor or from a
807 third-party source after having solicited and obtained at least
808 two (2) written competitive bids, as defined in paragraph (b) of
809 this section, for such financing without advertising for such
810 bids. Solicitation for the bids for financing may occur before or
811 after acceptance of bids for the purchase of such equipment or,
812 where no such bids for purchase are required, at any time before
813 the purchase thereof. No such lease-purchase agreement shall be
814 for an annual rate of interest which is greater than the overall
815 maximum interest rate to maturity on general obligation
816 indebtedness permitted under Section 75-17-101, and the term of
817 such lease-purchase agreement shall not exceed the useful life of
818 equipment covered thereby as determined according to the upper
819 limit of the asset depreciation range (ADR) guidelines for the
820 Class Life Asset Depreciation Range System established by the
821 Internal Revenue Service pursuant to the United States Internal

822 Revenue Code and regulations thereunder as in effect on December
823 31, 1980, or comparable depreciation guidelines with respect to
824 any equipment not covered by ADR guidelines. Any lease-purchase
825 agreement entered into pursuant to this paragraph (e) may contain
826 any of the terms and conditions which a master lease-purchase
827 agreement may contain under the provisions of Section 31-7-10(5),
828 and shall contain an annual allocation dependency clause
829 substantially similar to that set forth in Section 31-7-10(8).
830 Each agency or governing authority entering into a lease-purchase
831 transaction pursuant to this paragraph (e) shall maintain with
832 respect to each such lease-purchase transaction the same
833 information as required to be maintained by the Department of
834 Finance and Administration pursuant to Section 31-7-10(13).
835 However, nothing contained in this section shall be construed to
836 permit agencies to acquire items of equipment with a total
837 acquisition cost in the aggregate of less than Ten Thousand
838 Dollars (\$10,000.00) by a single lease-purchase transaction. All
839 equipment, and the purchase thereof by any lessor, acquired by
840 lease-purchase under this paragraph and all lease-purchase
841 payments with respect thereto shall be exempt from all Mississippi
842 sales, use and ad valorem taxes. Interest paid on any
843 lease-purchase agreement under this section shall be exempt from
844 State of Mississippi income taxation.

845 (f) **Alternate bid authorization.** When necessary to
846 ensure ready availability of commodities for public works and the
847 timely completion of public projects, no more than two (2)
848 alternate bids may be accepted by a governing authority for
849 commodities. No purchases may be made through use of such
850 alternate bids procedure unless the lowest and best bidder cannot
851 deliver the commodities contained in his bid. In that event,
852 purchases of such commodities may be made from one (1) of the
853 bidders whose bid was accepted as an alternate.

854 (g) **Construction contract change authorization.** In the
855 event a determination is made by an agency or governing authority
856 after a construction contract is let that changes or modifications
857 to the original contract are necessary or would better serve the
858 purpose of the agency or the governing authority, such agency or
859 governing authority may, in its discretion, order such changes
860 pertaining to the construction that are necessary under the
861 circumstances without the necessity of further public bids;
862 provided that such change shall be made in a commercially
863 reasonable manner and shall not be made to circumvent the public
864 purchasing statutes. In addition to any other authorized person,
865 the architect or engineer hired by an agency or governing
866 authority with respect to any public construction contract shall
867 have the authority, when granted by an agency or governing
868 authority, to authorize changes or modifications to the original
869 contract without the necessity of prior approval of the agency or
870 governing authority when any such change or modification is less
871 than one percent (1%) of the total contract amount. The agency or
872 governing authority may limit the number, manner or frequency of
873 such emergency changes or modifications.

874 (h) **Petroleum purchase alternative.** In addition to
875 other methods of purchasing authorized in this chapter, when any
876 agency or governing authority shall have a need for gas, diesel
877 fuel, oils and/or other petroleum products in excess of the amount
878 set forth in paragraph (a) of this section, such agency or
879 governing authority may purchase the commodity after having
880 solicited and obtained at least two (2) competitive written bids,
881 as defined in paragraph (b) of this section. If two (2)
882 competitive written bids are not obtained, the entity shall comply
883 with the procedures set forth in paragraph (c) of this section.
884 In the event any agency or governing authority shall have
885 advertised for bids for the purchase of gas, diesel fuel, oils and
886 other petroleum products and coal and no acceptable bids can be

887 obtained, such agency or governing authority is authorized and
888 directed to enter into any negotiations necessary to secure the
889 lowest and best contract available for the purchase of such
890 commodities.

891 (i) **Road construction petroleum products price**
892 **adjustment clause authorization.** Any agency or governing
893 authority authorized to enter into contracts for the construction,
894 maintenance, surfacing or repair of highways, roads or streets,
895 may include in its bid proposal and contract documents a price
896 adjustment clause with relation to the cost to the contractor,
897 including taxes, based upon an industry-wide cost index, of
898 petroleum products including asphalt used in the performance or
899 execution of the contract or in the production or manufacture of
900 materials for use in such performance. Such industry-wide index
901 shall be established and published monthly by the Mississippi
902 Department of Transportation with a copy thereof to be mailed,
903 upon request, to the clerks of the governing authority of each
904 municipality and the clerks of each board of supervisors
905 throughout the state. The price adjustment clause shall be based
906 on the cost of such petroleum products only and shall not include
907 any additional profit or overhead as part of the adjustment. The
908 bid proposals or document contract shall contain the basis and
909 methods of adjusting unit prices for the change in the cost of
910 such petroleum products.

911 (j) **State agency emergency purchase procedure.** If the
912 governing board or the executive head, or his designee, of any
913 agency of the state shall determine that an emergency exists in
914 regard to the purchase of any commodities or repair contracts, so
915 that the delay incident to giving opportunity for competitive
916 bidding would be detrimental to the interests of the state, then
917 the provisions herein for competitive bidding shall not apply and
918 the head of such agency shall be authorized to make the purchase
919 or repair. Total purchases so made shall only be for the purpose

920 of meeting needs created by the emergency situation. In the event
921 such executive head is responsible to an agency board, at the
922 meeting next following the emergency purchase, documentation of
923 the purchase, including a description of the commodity purchased,
924 the purchase price thereof and the nature of the emergency shall
925 be presented to the board and placed on the minutes of the board
926 of such agency. The head of such agency, or his designee, shall,
927 at the earliest possible date following such emergency purchase,
928 file with the Department of Finance and Administration (i) a
929 statement explaining the conditions and circumstances of the
930 emergency, which shall include a detailed description of the
931 events leading up to the situation and the negative impact to the
932 entity if the purchase is made following the statutory
933 requirements set forth in paragraph (a), (b) or (c) of this
934 section, and (ii) a certified copy of the appropriate minutes of
935 the board of such agency, if applicable. On or before September 1
936 of each year, the State Auditor shall prepare and deliver to the
937 Senate Fees, Salaries and Administration Committee, the House Fees
938 and Salaries of Public Officers Committee and the Joint
939 Legislative Budget Committee a report containing a list of all
940 state agency emergency purchases and supporting documentation for
941 each emergency purchase.

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

943 If the governing authority, or the governing authority acting
944 through its designee, shall determine that an emergency exists in
945 regard to the purchase of any commodities or repair contracts, so
946 that the delay incident to giving opportunity for competitive
947 bidding would be detrimental to the interest of the governing
948 authority, then the provisions herein for competitive bidding
949 shall not apply and any officer or agent of such governing
950 authority having general or special authority therefor in making
951 such purchase or repair shall approve the bill presented therefor,
952 and he shall certify in writing thereon from whom such purchase

953 was made, or with whom such a repair contract was made. At the
954 board meeting next following the emergency purchase or repair
955 contract, documentation of the purchase or repair contract,
956 including a description of the commodity purchased, the price
957 thereof and the nature of the emergency shall be presented to the
958 board and shall be placed on the minutes of the board of such
959 governing authority.

960 (1) **Hospital purchase, lease-purchase and lease**
961 **authorization.**

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

967 (ii) In addition to the authority granted in
968 subparagraph (i) of this paragraph (1), the commissioners or board
969 of trustees is authorized to enter into contracts for the lease of
970 equipment or services, or both, which it considers necessary for
971 the proper care of patients if, in its opinion, it is not
972 financially feasible to purchase the necessary equipment or
973 services. Any such contract for the lease of equipment or
974 services executed by the commissioners or board shall not exceed a
975 maximum of five (5) years' duration and shall include a
976 cancellation clause based on unavailability of funds. If such
977 cancellation clause is exercised, there shall be no further
978 liability on the part of the lessee. Any such contract for the
979 lease of equipment or services executed on behalf of the
980 commissioners or board that complies with the provisions of this
981 subparagraph (ii) shall be excepted from the bid requirements set
982 forth in this section.

983 (m) **Exceptions from bidding requirements.** Excepted
984 from bid requirements are:

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

986 Purchasing agreements, contracts and maximum price regulations
987 executed or approved by the Department of Finance and
988 Administration.

989 (ii) **Outside equipment repairs.** Repairs to
990 equipment, when such repairs are made by repair facilities in the
991 private sector; however, engines, transmissions, rear axles and/or
992 other such components shall not be included in this exemption when
993 replaced as a complete unit instead of being repaired and the need
994 for such total component replacement is known before disassembly
995 of the component; however, invoices identifying the equipment,
996 specific repairs made, parts identified by number and name,
997 supplies used in such repairs, and the number of hours of labor
998 and costs therefor shall be required for the payment for such
999 repairs.

1000 (iii) **In-house equipment repairs.** Purchases of
1001 parts for repairs to equipment, when such repairs are made by
1002 personnel of the agency or governing authority; however, entire
1003 assemblies, such as engines or transmissions, shall not be
1004 included in this exemption when the entire assembly is being
1005 replaced instead of being repaired.

1006 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
1007 of gravel or fill dirt which are to be removed and transported by
1008 the purchaser.

1009 (v) **Governmental equipment auctions.** Motor
1010 vehicles or other equipment purchased from a federal agency or
1011 authority, another governing authority or state agency of the
1012 State of Mississippi, or any governing authority or state agency
1013 of another state at a public auction held for the purpose of
1014 disposing of such vehicles or other equipment. Any purchase by a
1015 governing authority under the exemption authorized by this
1016 subparagraph (v) shall require advance authorization spread upon
1017 the minutes of the governing authority to include the listing of

1018 the item or items authorized to be purchased and the maximum bid
1019 authorized to be paid for each item or items.

1020 (vi) **Intergovernmental sales and transfers.**

1021 Purchases, sales, transfers or trades by governing authorities or
1022 state agencies when such purchases, sales, transfers or trades are
1023 made by a private treaty agreement or through means of
1024 negotiation, from any federal agency or authority, another
1025 governing authority or state agency of the State of Mississippi,
1026 or any state agency or governing authority of another state.
1027 Nothing in this section shall permit such purchases through public
1028 auction except as provided for in subparagraph (v) of this
1029 section. It is the intent of this section to allow governmental
1030 entities to dispose of and/or purchase commodities from other
1031 governmental entities at a price that is agreed to by both
1032 parties. This shall allow for purchases and/or sales at prices
1033 which may be determined to be below the market value if the
1034 selling entity determines that the sale at below market value is
1035 in the best interest of the taxpayers of the state. Governing
1036 authorities shall place the terms of the agreement and any
1037 justification on the minutes, and state agencies shall obtain
1038 approval from the Department of Finance and Administration, prior
1039 to releasing or taking possession of the commodities.

1040 (vii) **Perishable supplies or food.** Perishable
1041 supplies or foods purchased for use in connection with hospitals,
1042 the school lunch programs, homemaking programs and for the feeding
1043 of county or municipal prisoners.

1044 (viii) **Single source items.** Noncompetitive items
1045 available from one (1) source only. In connection with the
1046 purchase of noncompetitive items only available from one (1)
1047 source, a certification of the conditions and circumstances
1048 requiring the purchase shall be filed by the agency with the
1049 Department of Finance and Administration and by the governing
1050 authority with the board of the governing authority. Upon receipt

1051 of that certification the Department of Finance and Administration
1052 or the board of the governing authority, as the case may be, may,
1053 in writing, authorize the purchase, which authority shall be noted
1054 on the minutes of the body at the next regular meeting thereafter.
1055 In those situations, a governing authority is not required to
1056 obtain the approval of the Department of Finance and
1057 Administration.

1058 (ix) **Waste disposal facility construction**
1059 **contracts.** Construction of incinerators and other facilities for
1060 disposal of solid wastes in which products either generated
1061 therein, such as steam, or recovered therefrom, such as materials
1062 for recycling, are to be sold or otherwise disposed of; however,
1063 in constructing such facilities, a governing authority or agency
1064 shall publicly issue requests for proposals, advertised for in the
1065 same manner as provided herein for seeking bids for public
1066 construction projects, concerning the design, construction,
1067 ownership, operation and/or maintenance of such facilities,
1068 wherein such requests for proposals when issued shall contain
1069 terms and conditions relating to price, financial responsibility,
1070 technology, environmental compatibility, legal responsibilities
1071 and such other matters as are determined by the governing
1072 authority or agency to be appropriate for inclusion; and after
1073 responses to the request for proposals have been duly received,
1074 the governing authority or agency may select the most qualified
1075 proposal or proposals on the basis of price, technology and other
1076 relevant factors and from such proposals, but not limited to the
1077 terms thereof, negotiate and enter contracts with one or more of
1078 the persons or firms submitting proposals.

1079 (x) **Hospital group purchase contracts.** Supplies,
1080 commodities and equipment purchased by hospitals through group
1081 purchase programs pursuant to Section 31-7-38.

1082 (xi) **Information technology products.** Purchases
1083 of information technology products made by governing authorities

1084 under the provisions of purchase schedules, or contracts executed
1085 or approved by the Mississippi Department of Information
1086 Technology Services and designated for use by governing
1087 authorities.

1088 (xii) **Energy efficiency services and equipment.**
1089 Energy efficiency services and equipment acquired by school
1090 districts, community and junior colleges, institutions of higher
1091 learning and state agencies or other applicable governmental
1092 entities on a shared-savings, lease or lease-purchase basis
1093 pursuant to Section 31-7-14.

1094 (xiii) **Municipal electrical utility system fuel.**
1095 Purchases of coal and/or natural gas by municipally-owned electric
1096 power generating systems that have the capacity to use both coal
1097 and natural gas for the generation of electric power.

1098 (xiv) **Library books and other reference materials.**
1099 Purchases by libraries or for libraries of books and periodicals;
1100 processed film, video cassette tapes, filmstrips and slides;
1101 recorded audio tapes, cassettes and diskettes; and any such items
1102 as would be used for teaching, research or other information
1103 distribution; however, equipment such as projectors, recorders,
1104 audio or video equipment, and monitor televisions are not exempt
1105 under this subparagraph.

1106 (xv) **Unmarked vehicles.** Purchases of unmarked
1107 vehicles when such purchases are made in accordance with
1108 purchasing regulations adopted by the Department of Finance and
1109 Administration pursuant to Section 31-7-9(2).

1110 (xvi) **Election ballots.** Purchases of ballots
1111 printed pursuant to Section 23-15-351.

1112 (xvii) **Multichannel interactive video systems.**
1113 From and after July 1, 1990, contracts by Mississippi Authority
1114 for Educational Television with any private educational
1115 institution or private nonprofit organization whose purposes are
1116 educational in regard to the construction, purchase, lease or

1117 lease-purchase of facilities and equipment and the employment of
1118 personnel for providing multichannel interactive video systems
1119 (ITSF) in the school districts of this state.

1120 (xviii) **Purchases of prison industry products.**

1121 From and after January 1, 1991, purchases made by state agencies
1122 or governing authorities involving any item that is manufactured,
1123 processed, grown or produced from the state's prison industries.

1124 (xix) **Undercover operations equipment.** Purchases
1125 of surveillance equipment or any other high-tech equipment to be
1126 used by law enforcement agents in undercover operations, provided
1127 that any such purchase shall be in compliance with regulations
1128 established by the Department of Finance and Administration.

1129 (xx) **Junior college books for rent.** Purchases by
1130 community or junior colleges of textbooks which are obtained for
1131 the purpose of renting such books to students as part of a book
1132 service system.

1133 (xxi) **Certain school district purchases.**

1134 Purchases of commodities made by school districts from vendors
1135 with which any levying authority of the school district, as
1136 defined in Section 37-57-1, has contracted through competitive
1137 bidding procedures for purchases of the same commodities.

1138 (xxii) **Garbage, solid waste and sewage contracts.**

1139 Contracts for garbage collection or disposal, contracts for solid
1140 waste collection or disposal and contracts for sewage collection
1141 or disposal.

1142 (xxiii) **Municipal water tank maintenance**

1143 **contracts.** Professional maintenance program contracts for the
1144 repair or maintenance of municipal water tanks, which provide
1145 professional services needed to maintain municipal water storage
1146 tanks for a fixed annual fee for a duration of two (2) or more
1147 years.

1148 (xxiv) **Purchases of Mississippi Industries for the**

1149 **Blind products.** Purchases made by state agencies or governing

1150 authorities involving any item that is manufactured, processed or
1151 produced by the Mississippi Industries for the Blind.

1152 (xxv) **Purchases of state-adopted textbooks.**

1153 Purchases of state-adopted textbooks by public school districts.

1154 (xxvi) **Certain purchases under the Mississippi**

1155 **Major Economic Impact Act.** Contracts entered into pursuant to the
1156 provisions of Section 57-75-9(2) and (3).

1157 (xxvii) **Used heavy or specialized machinery or**

1158 **equipment for installation of soil and water conservation**

1159 **practices purchased at auction.** Used heavy or specialized

1160 machinery or equipment used for the installation and

1161 implementation of soil and water conservation practices or

1162 measures purchased subject to the restrictions provided in

1163 Sections 69-27-331 through 69-27-341. Any purchase by the State

1164 Soil and Water Conservation Commission under the exemption

1165 authorized by this subparagraph shall require advance

1166 authorization spread upon the minutes of the commission to include

1167 the listing of the item or items authorized to be purchased and

1168 the maximum bid authorized to be paid for each item or items.

1169 (xxviii) **Hospital lease of equipment or services.**

1170 Leases by hospitals of equipment or services if the leases are in

1171 compliance with paragraph (1)(ii).

1172 (xxix) **Purchases made pursuant to qualified**

1173 **cooperative purchasing agreements.** Purchases made by certified

1174 purchasing offices of state agencies or governing authorities

1175 under cooperative purchasing agreements previously approved by the

1176 Office of Purchasing and Travel and established by or for any

1177 municipality, county, parish or state government or the federal

1178 government, provided that the notification to potential

1179 contractors includes a clause that sets forth the availability of

1180 the cooperative purchasing agreement to other governmental

1181 entities. Such purchases shall only be made if the use of the

1182 cooperative purchasing agreements is determined to be in the best
1183 interest of the government entity.

1184 (xxx) **School yearbooks.** Purchases of school
1185 yearbooks by state agencies or governing authorities; provided,
1186 however, that state agencies and governing authorities shall use
1187 for these purchases the RFP process as set forth in the
1188 Mississippi Procurement Manual adopted by the Office of Purchasing
1189 and Travel.

1190 (xxxi) **Design-build method or the design-build**
1191 **bridging method of contracting.** Contracts entered into the
1192 provisions of Section 31-11-3(9).

1193 (n) **Term contract authorization.** All contracts for the
1194 purchase of:

1195 (i) All contracts for the purchase of commodities,
1196 equipment and public construction (including, but not limited to,
1197 repair and maintenance), may be let for periods of not more than
1198 sixty (60) months in advance, subject to applicable statutory
1199 provisions prohibiting the letting of contracts during specified
1200 periods near the end of terms of office. Term contracts for a
1201 period exceeding twenty-four (24) months shall also be subject to
1202 ratification or cancellation by governing authority boards taking
1203 office subsequent to the governing authority board entering the
1204 contract.

1205 (ii) Bid proposals and contracts may include price
1206 adjustment clauses with relation to the cost to the contractor
1207 based upon a nationally published industry-wide or nationally
1208 published and recognized cost index. The cost index used in a
1209 price adjustment clause shall be determined by the Department of
1210 Finance and Administration for the state agencies and by the
1211 governing board for governing authorities. The bid proposal and
1212 contract documents utilizing a price adjustment clause shall
1213 contain the basis and method of adjusting unit prices for the

1214 change in the cost of such commodities, equipment and public
1215 construction.

1216 (o) **Purchase law violation prohibition and vendor**
1217 **penalty.** No contract or purchase as herein authorized shall be
1218 made for the purpose of circumventing the provisions of this
1219 section requiring competitive bids, nor shall it be lawful for any
1220 person or concern to submit individual invoices for amounts within
1221 those authorized for a contract or purchase where the actual value
1222 of the contract or commodity purchased exceeds the authorized
1223 amount and the invoices therefor are split so as to appear to be
1224 authorized as purchases for which competitive bids are not
1225 required. Submission of such invoices shall constitute a
1226 misdemeanor punishable by a fine of not less than Five Hundred
1227 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1228 or by imprisonment for thirty (30) days in the county jail, or
1229 both such fine and imprisonment. In addition, the claim or claims
1230 submitted shall be forfeited.

1231 (p) **Electrical utility petroleum-based equipment**
1232 **purchase procedure.** When in response to a proper advertisement
1233 therefor, no bid firm as to price is submitted to an electric
1234 utility for power transformers, distribution transformers, power
1235 breakers, reclosers or other articles containing a petroleum
1236 product, the electric utility may accept the lowest and best bid
1237 therefor although the price is not firm.

1238 (q) **Fuel management system bidding procedure.** Any
1239 governing authority or agency of the state shall, before
1240 contracting for the services and products of a fuel management or
1241 fuel access system, enter into negotiations with not fewer than
1242 two (2) sellers of fuel management or fuel access systems for
1243 competitive written bids to provide the services and products for
1244 the systems. In the event that the governing authority or agency
1245 cannot locate two (2) sellers of such systems or cannot obtain
1246 bids from two (2) sellers of such systems, it shall show proof

1247 that it made a diligent, good-faith effort to locate and negotiate
1248 with two (2) sellers of such systems. Such proof shall include,
1249 but not be limited to, publications of a request for proposals and
1250 letters soliciting negotiations and bids. For purposes of this
1251 paragraph (q), a fuel management or fuel access system is an
1252 automated system of acquiring fuel for vehicles as well as
1253 management reports detailing fuel use by vehicles and drivers, and
1254 the term "competitive written bid" shall have the meaning as
1255 defined in paragraph (b) of this section. Governing authorities
1256 and agencies shall be exempt from this process when contracting
1257 for the services and products of a fuel management or fuel access
1258 systems under the terms of a state contract established by the
1259 Office of Purchasing and Travel.

1260 (r) **Solid waste contract proposal procedure.** Before
1261 entering into any contract for garbage collection or disposal,
1262 contract for solid waste collection or disposal or contract for
1263 sewage collection or disposal, which involves an expenditure of
1264 more than Fifty Thousand Dollars (\$50,000.00), a governing
1265 authority or agency shall issue publicly a request for proposals
1266 concerning the specifications for such services which shall be
1267 advertised for in the same manner as provided in this section for
1268 seeking bids for purchases which involve an expenditure of more
1269 than the amount provided in paragraph (c) of this section. Any
1270 request for proposals when issued shall contain terms and
1271 conditions relating to price, financial responsibility,
1272 technology, legal responsibilities and other relevant factors as
1273 are determined by the governing authority or agency to be
1274 appropriate for inclusion; all factors determined relevant by the
1275 governing authority or agency or required by this paragraph (r)
1276 shall be duly included in the advertisement to elicit proposals.
1277 After responses to the request for proposals have been duly
1278 received, the governing authority or agency shall select the most
1279 qualified proposal or proposals on the basis of price, technology

1280 and other relevant factors and from such proposals, but not
1281 limited to the terms thereof, negotiate and enter contracts with
1282 one or more of the persons or firms submitting proposals. If the
1283 governing authority or agency deems none of the proposals to be
1284 qualified or otherwise acceptable, the request for proposals
1285 process may be reinitiated. Notwithstanding any other provisions
1286 of this paragraph, where a county with at least thirty-five
1287 thousand (35,000) nor more than forty thousand (40,000)
1288 population, according to the 1990 federal decennial census, owns
1289 or operates a solid waste landfill, the governing authorities of
1290 any other county or municipality may contract with the governing
1291 authorities of the county owning or operating the landfill,
1292 pursuant to a resolution duly adopted and spread upon the minutes
1293 of each governing authority involved, for garbage or solid waste
1294 collection or disposal services through contract negotiations.

1295 (s) **Minority set-aside authorization.** Notwithstanding
1296 any provision of this section to the contrary, any agency or
1297 governing authority, by order placed on its minutes, may, in its
1298 discretion, set aside not more than twenty percent (20%) of its
1299 anticipated annual expenditures for the purchase of commodities
1300 from minority businesses; however, all such set-aside purchases
1301 shall comply with all purchasing regulations promulgated by the
1302 Department of Finance and Administration and shall be subject to
1303 bid requirements under this section. Set-aside purchases for
1304 which competitive bids are required shall be made from the lowest
1305 and best minority business bidder. For the purposes of this
1306 paragraph, the term "minority business" means a business which is
1307 owned by a majority of persons who are United States citizens or
1308 permanent resident aliens (as defined by the Immigration and
1309 Naturalization Service) of the United States, and who are Asian,
1310 Black, Hispanic or Native American, according to the following
1311 definitions:

1312 (i) "Asian" means persons having origins in any of
1313 the original people of the Far East, Southeast Asia, the Indian
1314 subcontinent, or the Pacific Islands.

1315 (ii) "Black" means persons having origins in any
1316 black racial group of Africa.

1317 (iii) "Hispanic" means persons of Spanish or
1318 Portuguese culture with origins in Mexico, South or Central
1319 America, or the Caribbean Islands, regardless of race.

1320 (iv) "Native American" means persons having
1321 origins in any of the original people of North America, including
1322 American Indians, Eskimos and Aleuts.

1323 (t) **Construction punch list restriction.** The
1324 architect, engineer or other representative designated by the
1325 agency or governing authority that is contracting for public
1326 construction or renovation may prepare and submit to the
1327 contractor only one (1) preliminary punch list of items that do
1328 not meet the contract requirements at the time of substantial
1329 completion and one (1) final list immediately before final
1330 completion and final payment.

1331 (u) **Purchase authorization clarification.** Nothing in
1332 this section shall be construed as authorizing any purchase not
1333 authorized by law.

1334 **SECTION 10.** This act shall take effect and be in force from
1335 and after its passage.