

By: Representative Moore

To: Labor; Judiciary B

HOUSE BILL NO. 504

1 AN ACT TO AUTHORIZE THE SECURE AND VERIFIABLE DOCUMENT; TO
2 PROHIBIT A PUBLIC ENTITY FROM ACCEPTING, RELYING OR UTILIZING ANY
3 IDENTIFICATION DOCUMENT THAT IS NOT SECURE AND VERIFIABLE; TO
4 PROVIDE PENALTIES FOR VIOLATION; TO AMEND SECTION 31-5-17,
5 MISSISSIPPI CODE OF 1972, TO PROHIBIT THE AWARDING OF STATE
6 CONTRACTS TO CONTRACTORS THAT HAVE PERSONS WHO ARE NOT AMERICAN
7 CITIZENS OR LEGAL ALIENS WHO WILL WORK UNDER THE STATE CONTRACT;
8 TO REQUIRE THAT EVERY PUBLIC OFFICER, CONTRACTOR, OR AGENT WHO
9 ENGAGES IN OR IS IN CHARGE OF THE CONSTRUCTION OF ANY STATE
10 BUILDING OR PUBLIC WORK FOR THE STATE EMPLOY ONLY WORKERS WHO ARE
11 AMERICAN CITIZENS OR LEGAL ALIENS OR WHO HAVE SOME SPECIALTY FOR
12 WHICH AMERICAN CITIZENS OR LEGAL ALIENS CANNOT BE FOUND; TO ASSESS
13 PENALTIES AGAINST THOSE CONTRACTORS WHO VIOLATE THIS REQUIREMENT;
14 TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO PROHIBIT
15 STATE AGENCIES AND GOVERNING AUTHORITIES FROM ACCEPTING BIDS FROM
16 OR ENTERING INTO A CONTRACT WITH A CONTRACTOR OR VENDOR THAT HAS
17 PERSONS WHO ARE NOT AMERICAN CITIZENS OR LEGAL ALIENS WHO WILL
18 WORK UNDER THE CONTRACT; TO ALLOW CONTRACTORS OR VENDORS ENTERING
19 INTO A CONTRACT WITH STATE AGENCIES TO HAVE PERSONS WHO WILL WORK
20 UNDER THE CONTRACT WHO HAVE SOME SPECIALTY FOR WHICH AMERICAN
21 CITIZENS OR LEGAL ALIENS CANNOT BE FOUND; TO ASSESS PENALTIES
22 AGAINST THOSE CONTRACTORS WHO VIOLATE THIS REQUIREMENT; TO AMEND
23 SECTION 45-1-3, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
24 COMMISSIONER OF PUBLIC SAFETY TO CREATE RULES TO DIRECT LAW
25 ENFORCEMENT OFFICERS TO ASSIST THE FEDERAL GOVERNMENT WITH
26 IMMIGRATION EFFORTS; AND FOR RELATED PURPOSES.

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

28 **SECTION 1.** (1) The following words and phrases shall have
29 the meanings ascribed in this section:

30 (a) "Children" means children as defined by 42 USCS
31 Section 1786(b).

32 (b) "Infants" means infants as defined by 42 USCS
33 Section 1786 (b).

34 (c) "Public entity" means an agency, department, board,
35 division, bureau, commission, council or political subdivision of
36 the state.

37 (d) "Public official" means an elected or appointed
38 official, an employee or an agent of a public entity.

39 (e) "Secure and verifiable document" means a document
40 issued by a state or federal jurisdiction or recognized by the
41 United States government and that is verifiable by federal or
42 state law enforcement, intelligence or homeland security agencies.

43 (2) (a) A public entity that provides services shall not
44 accept, rely upon or utilize an identification document to provide
45 services unless it is a secure and verifiable document.

46 (b) A public entity that is issuing an identification
47 card, license, permit or official document shall not authorize
48 acceptance of an identification document, nor shall a public
49 official acting in an official capacity accept an identification
50 document before issuing such documents, unless such identification
51 document is a secure and verifiable document.

52 (3) Information gathered pursuant to subsection (5) of this
53 section shall be a public record unless the subject of the
54 information is a juvenile or the information concerns an ongoing
55 criminal investigation. Such records shall be retained for three
56 (3) years, but may be disposed of after three (3) years.

57 (4) (a) Actions taken in knowing violation of this article
58 shall not be protected by governmental immunity provided to public
59 employees.

60 (b) A peace officer who, in the performance of the
61 officer's duties, utilizes identification that is not secure and
62 verifiable shall not forfeit governmental immunity pursuant to
63 this section if such officer:

64 (i) Gathers all information from such
65 identification; and

66 (ii) If feasible, according to any applicable law
67 enforcement agency guidelines, gathers fingerprint information
68 from such person and stores such fingerprints for at least one (1)
69 year as a criminal justice record.

70 (5) This article shall not apply to a person reporting a
71 crime; a public entity or official accepting a crime report,

72 conducting a criminal investigation, accepting an application for
73 the provision of services or providing services to infants and
74 children born in the United States pursuant to 42 USCS Section
75 1786, or providing emergency medical service; a peace officer in
76 the performance of the officer's duties and within the scope of
77 the officer's employment if such officer complies with subsection
78 (2) of this section; or instances when a federal law mandates
79 acceptance of a document.

80 **SECTION 2.** Section 31-5-17, Mississippi Code of 1972, is
81 amended as follows:

82 31-5-17. (1) Every public officer, contractor,
83 superintendent or agent engaged in or in charge of the
84 construction of any state or public building or public work of any
85 kind for the State of Mississippi or for any board, city
86 commission, governmental agency or municipality of the State of
87 Mississippi shall employ only workmen and laborers who have
88 actually resided in Mississippi for two (2) years next preceding
89 such employment.

90 (2) No state contract shall be awarded to a contractor that
91 has persons who are not American citizens or legal aliens who will
92 work under the state contract. However, a state contract may be
93 awarded to a contractor that has persons who will work under the
94 state contract who have some specialty for which American citizens
95 or legal aliens cannot be found. Every public officer,
96 contractor, superintendent or agent engaged in or in charge of the
97 construction of any state building or public work of any kind for
98 the State of Mississippi shall employ only workmen and laborers
99 who are American citizens or legal aliens or who have some
100 specialty for which American citizens or legal aliens cannot be
101 found.

102 Any person who violates the provisions of this subsection
103 shall be assessed the following penalties: (a) For the first
104 offense, One Thousand Dollars (\$1,000.00) for every person who is

105 not an American citizen or legal alien as required, (b) For any
106 subsequent violation, a contractor shall pay a civil penalty equal
107 to three percent (3%) of the total contract being performed by the
108 contractor and such contractor's license shall be revoked.

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

111 31-7-13. All agencies and governing authorities shall
112 purchase their commodities and printing; contract for garbage
113 collection or disposal; contract for solid waste collection or
114 disposal; contract for sewage collection or disposal; contract for
115 public construction; and contract for rentals as herein provided.

116 (a) **Bidding procedure for purchases not over \$3,500.00.**
117 Purchases which do not involve an expenditure of more than Three
118 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
119 shipping charges, may be made without advertising or otherwise
120 requesting competitive bids. However, nothing contained in this
121 paragraph (a) shall be construed to prohibit any agency or
122 governing authority from establishing procedures which require
123 competitive bids on purchases of Three Thousand Five Hundred
124 Dollars (\$3,500.00) or less.

125 (b) **Bidding procedure for purchases over \$3,500.00 but**
126 **not over \$15,000.00.** Purchases which involve an expenditure of
127 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
128 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
129 freight and shipping charges may be made from the lowest and best
130 bidder without publishing or posting advertisement for bids,
131 provided at least two (2) competitive written bids have been
132 obtained. Any governing authority purchasing commodities pursuant
133 to this paragraph (b) may authorize its purchasing agent, or his
134 designee, with regard to governing authorities other than
135 counties, or its purchase clerk, or his designee, with regard to
136 counties, to accept the lowest and best competitive written bid.
137 Such authorization shall be made in writing by the governing

138 authority and shall be maintained on file in the primary office of
139 the agency and recorded in the official minutes of the governing
140 authority, as appropriate. The purchasing agent or the purchase
141 clerk, or their designee, as the case may be, and not the
142 governing authority, shall be liable for any penalties and/or
143 damages as may be imposed by law for any act or omission of the
144 purchasing agent or purchase clerk, or their designee,
145 constituting a violation of law in accepting any bid without
146 approval by the governing authority. The term "competitive
147 written bid" shall mean a bid submitted on a bid form furnished by
148 the buying agency or governing authority and signed by authorized
149 personnel representing the vendor, or a bid submitted on a
150 vendor's letterhead or identifiable bid form and signed by
151 authorized personnel representing the vendor. "Competitive" shall
152 mean that the bids are developed based upon comparable
153 identification of the needs and are developed independently and
154 without knowledge of other bids or prospective bids. Bids may be
155 submitted by facsimile, electronic mail or other generally
156 accepted method of information distribution. Bids submitted by
157 electronic transmission shall not require the signature of the
158 vendor's representative unless required by agencies or governing
159 authorities.

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

161 (i) **Publication requirement.** Purchases which
162 involve an expenditure of more than Fifteen Thousand Dollars
163 (\$15,000.00), exclusive of freight and shipping charges, may be
164 made from the lowest and best bidder after advertising for
165 competitive sealed bids once each week for two (2) consecutive
166 weeks in a regular newspaper published in the county or
167 municipality in which such agency or governing authority is
168 located. The date as published for the bid opening shall not be
169 less than seven (7) working days after the last published notice;
170 however, if the purchase involves a construction project in which

171 the estimated cost is in excess of Fifteen Thousand Dollars
172 (\$15,000.00), such bids shall not be opened in less than fifteen
173 (15) working days after the last notice is published and the
174 notice for the purchase of such construction shall be published
175 once each week for two (2) consecutive weeks. The notice of
176 intention to let contracts or purchase equipment shall state the
177 time and place at which bids shall be received, list the contracts
178 to be made or types of equipment or supplies to be purchased, and,
179 if all plans and/or specifications are not published, refer to the
180 plans and/or specifications on file. If there is no newspaper
181 published in the county or municipality, then such notice shall be
182 given by posting same at the courthouse, or for municipalities at
183 the city hall, and at two (2) other public places in the county or
184 municipality, and also by publication once each week for two (2)
185 consecutive weeks in some newspaper having a general circulation
186 in the county or municipality in the above provided manner. On
187 the same date that the notice is submitted to the newspaper for
188 publication, the agency or governing authority involved shall mail
189 written notice to, or provide electronic notification to the main
190 office of the Mississippi Contract Procurement Center that
191 contains the same information as that in the published notice.

192 (ii) **Bidding process amendment procedure.** If all
193 plans and/or specifications are published in the notification,
194 then the plans and/or specifications may not be amended. If all
195 plans and/or specifications are not published in the notification,
196 then amendments to the plans/specifications, bid opening date, bid
197 opening time and place may be made, provided that the agency or
198 governing authority maintains a list of all prospective bidders
199 who are known to have received a copy of the bid documents and all
200 such prospective bidders are sent copies of all amendments. This
201 notification of amendments may be made via mail, facsimile,
202 electronic mail or other generally accepted method of information
203 distribution. No addendum to bid specifications may be issued

204 within two (2) working days of the time established for the
205 receipt of bids unless such addendum also amends the bid opening
206 to a date not less than five (5) working days after the date of
207 the addendum.

208 (iii) **Filing requirement.** In all cases involving
209 governing authorities, before the notice shall be published or
210 posted, the plans or specifications for the construction or
211 equipment being sought shall be filed with the clerk of the board
212 of the governing authority. In addition to these requirements, a
213 bid file shall be established which shall indicate those vendors
214 to whom such solicitations and specifications were issued, and
215 such file shall also contain such information as is pertinent to
216 the bid.

217 (iv) **Specification restrictions.**

218 1. Specifications pertinent to such bidding
219 shall be written so as not to exclude comparable equipment of
220 domestic manufacture. However, if valid justification is
221 presented, the Department of Finance and Administration or the
222 board of a governing authority may approve a request for specific
223 equipment necessary to perform a specific job. Further, such
224 justification, when placed on the minutes of the board of a
225 governing authority, may serve as authority for that governing
226 authority to write specifications to require a specific item of
227 equipment needed to perform a specific job. In addition to these
228 requirements, from and after July 1, 1990, vendors of relocatable
229 classrooms and the specifications for the purchase of such
230 relocatable classrooms published by local school boards shall meet
231 all pertinent regulations of the State Board of Education,
232 including prior approval of such bid by the State Department of
233 Education.

234 2. Specifications for construction projects
235 may include an allowance for commodities, equipment, furniture,
236 construction materials or systems in which prospective bidders are

237 instructed to include in their bids specified amounts for such
238 items so long as the allowance items are acquired by the vendor in
239 a commercially reasonable manner and approved by the
240 agency/governing authority. Such acquisitions shall not be made
241 to circumvent the public purchasing laws.

242 (v) Agencies and governing authorities may
243 establish secure procedures by which bids may be submitted via
244 electronic means.

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

246 (i) **Decision procedure.** Purchases may be made
247 from the lowest and best bidder. In determining the lowest and
248 best bid, freight and shipping charges shall be included.
249 Life-cycle costing, total cost bids, warranties, guaranteed
250 buy-back provisions and other relevant provisions may be included
251 in the best bid calculation. All best bid procedures for state
252 agencies must be in compliance with regulations established by the
253 Department of Finance and Administration. If any governing
254 authority accepts a bid other than the lowest bid actually
255 submitted, it shall place on its minutes detailed calculations and
256 narrative summary showing that the accepted bid was determined to
257 be the lowest and best bid, including the dollar amount of the
258 accepted bid and the dollar amount of the lowest bid. No agency
259 or governing authority shall accept a bid based on items not
260 included in the specifications.

261 (ii) **Decision procedure for Certified Purchasing**
262 **Offices.** In addition to the decision procedure set forth in
263 paragraph (d)(i), Certified Purchasing Offices may also use the
264 following procedure: Purchases may be made from the bidder
265 offering the best value. In determining the best value bid,
266 freight and shipping charges shall be included. Life-cycle
267 costing, total cost bids, warranties, guaranteed buy-back
268 provisions, documented previous experience, training costs and
269 other relevant provisions may be included in the best value

270 calculation. This provision shall authorize Certified Purchasing
271 Offices to utilize a Request For Proposals (RFP) process when
272 purchasing commodities. All best value procedures for state
273 agencies must be in compliance with regulations established by the
274 Department of Finance and Administration. No agency or governing
275 authority shall accept a bid based on items or criteria not
276 included in the specifications.

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

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

283 (e) **Lease-purchase authorization.** For the purposes of
284 this section, the term "equipment" shall mean equipment, furniture
285 and, if applicable, associated software and other applicable
286 direct costs associated with the acquisition. Any lease-purchase
287 of equipment which an agency is not required to lease-purchase
288 under the master lease-purchase program pursuant to Section
289 31-7-10 and any lease-purchase of equipment which a governing
290 authority elects to lease-purchase may be acquired by a
291 lease-purchase agreement under this paragraph (e). Lease-purchase
292 financing may also be obtained from the vendor or from a
293 third-party source after having solicited and obtained at least
294 two (2) written competitive bids, as defined in paragraph (b) of
295 this section, for such financing without advertising for such
296 bids. Solicitation for the bids for financing may occur before or
297 after acceptance of bids for the purchase of such equipment or,
298 where no such bids for purchase are required, at any time before
299 the purchase thereof. No such lease-purchase agreement shall be
300 for an annual rate of interest which is greater than the overall
301 maximum interest rate to maturity on general obligation
302 indebtedness permitted under Section 75-17-101, and the term of

303 such lease-purchase agreement shall not exceed the useful life of
304 equipment covered thereby as determined according to the upper
305 limit of the asset depreciation range (ADR) guidelines for the
306 Class Life Asset Depreciation Range System established by the
307 Internal Revenue Service pursuant to the United States Internal
308 Revenue Code and regulations thereunder as in effect on December
309 31, 1980, or comparable depreciation guidelines with respect to
310 any equipment not covered by ADR guidelines. Any lease-purchase
311 agreement entered into pursuant to this paragraph (e) may contain
312 any of the terms and conditions which a master lease-purchase
313 agreement may contain under the provisions of Section 31-7-10(5),
314 and shall contain an annual allocation dependency clause
315 substantially similar to that set forth in Section 31-7-10(8).
316 Each agency or governing authority entering into a lease-purchase
317 transaction pursuant to this paragraph (e) shall maintain with
318 respect to each such lease-purchase transaction the same
319 information as required to be maintained by the Department of
320 Finance and Administration pursuant to Section 31-7-10(13).
321 However, nothing contained in this section shall be construed to
322 permit agencies to acquire items of equipment with a total
323 acquisition cost in the aggregate of less than Ten Thousand
324 Dollars (\$10,000.00) by a single lease-purchase transaction. All
325 equipment, and the purchase thereof by any lessor, acquired by
326 lease-purchase under this paragraph and all lease-purchase
327 payments with respect thereto shall be exempt from all Mississippi
328 sales, use and ad valorem taxes. Interest paid on any
329 lease-purchase agreement under this section shall be exempt from
330 State of Mississippi income taxation.

331 (f) **Alternate bid authorization.** When necessary to
332 ensure ready availability of commodities for public works and the
333 timely completion of public projects, no more than two (2)
334 alternate bids may be accepted by a governing authority for
335 commodities. No purchases may be made through use of such

336 alternate bids procedure unless the lowest and best bidder cannot
337 deliver the commodities contained in his bid. In that event,
338 purchases of such commodities may be made from one (1) of the
339 bidders whose bid was accepted as an alternate.

340 (g) **Construction contract change authorization.** In the
341 event a determination is made by an agency or governing authority
342 after a construction contract is let that changes or modifications
343 to the original contract are necessary or would better serve the
344 purpose of the agency or the governing authority, such agency or
345 governing authority may, in its discretion, order such changes
346 pertaining to the construction that are necessary under the
347 circumstances without the necessity of further public bids;
348 provided that such change shall be made in a commercially
349 reasonable manner and shall not be made to circumvent the public
350 purchasing statutes. In addition to any other authorized person,
351 the architect or engineer hired by an agency or governing
352 authority with respect to any public construction contract shall
353 have the authority, when granted by an agency or governing
354 authority, to authorize changes or modifications to the original
355 contract without the necessity of prior approval of the agency or
356 governing authority when any such change or modification is less
357 than one percent (1%) of the total contract amount. The agency or
358 governing authority may limit the number, manner or frequency of
359 such emergency changes or modifications.

360 (h) **Petroleum purchase alternative.** In addition to
361 other methods of purchasing authorized in this chapter, when any
362 agency or governing authority shall have a need for gas, diesel
363 fuel, oils and/or other petroleum products in excess of the amount
364 set forth in paragraph (a) of this section, such agency or
365 governing authority may purchase the commodity after having
366 solicited and obtained at least two (2) competitive written bids,
367 as defined in paragraph (b) of this section. If two (2)
368 competitive written bids are not obtained, the entity shall comply

369 with the procedures set forth in paragraph (c) of this section.
370 In the event any agency or governing authority shall have
371 advertised for bids for the purchase of gas, diesel fuel, oils and
372 other petroleum products and coal and no acceptable bids can be
373 obtained, such agency or governing authority is authorized and
374 directed to enter into any negotiations necessary to secure the
375 lowest and best contract available for the purchase of such
376 commodities.

377 (i) **Road construction petroleum products price**
378 **adjustment clause authorization.** Any agency or governing
379 authority authorized to enter into contracts for the construction,
380 maintenance, surfacing or repair of highways, roads or streets,
381 may include in its bid proposal and contract documents a price
382 adjustment clause with relation to the cost to the contractor,
383 including taxes, based upon an industry-wide cost index, of
384 petroleum products including asphalt used in the performance or
385 execution of the contract or in the production or manufacture of
386 materials for use in such performance. Such industry-wide index
387 shall be established and published monthly by the Mississippi
388 Department of Transportation with a copy thereof to be mailed,
389 upon request, to the clerks of the governing authority of each
390 municipality and the clerks of each board of supervisors
391 throughout the state. The price adjustment clause shall be based
392 on the cost of such petroleum products only and shall not include
393 any additional profit or overhead as part of the adjustment. The
394 bid proposals or document contract shall contain the basis and
395 methods of adjusting unit prices for the change in the cost of
396 such petroleum products.

397 (j) **State agency emergency purchase procedure.** If the
398 governing board or the executive head, or his designee, of any
399 agency of the state shall determine that an emergency exists in
400 regard to the purchase of any commodities or repair contracts, so
401 that the delay incident to giving opportunity for competitive

402 bidding would be detrimental to the interests of the state, then
403 the provisions herein for competitive bidding shall not apply and
404 the head of such agency shall be authorized to make the purchase
405 or repair. Total purchases so made shall only be for the purpose
406 of meeting needs created by the emergency situation. In the event
407 such executive head is responsible to an agency board, at the
408 meeting next following the emergency purchase, documentation of
409 the purchase, including a description of the commodity purchased,
410 the purchase price thereof and the nature of the emergency shall
411 be presented to the board and placed on the minutes of the board
412 of such agency. The head of such agency, or his designee, shall,
413 at the earliest possible date following such emergency purchase,
414 file with the Department of Finance and Administration (i) a
415 statement explaining the conditions and circumstances of the
416 emergency, which shall include a detailed description of the
417 events leading up to the situation and the negative impact to the
418 entity if the purchase is made following the statutory
419 requirements set forth in paragraph (a), (b) or (c) of this
420 section, and (ii) a certified copy of the appropriate minutes of
421 the board of such agency, if applicable. On or before September 1
422 of each year, the State Auditor shall prepare and deliver to the
423 Senate Fees, Salaries and Administration Committee, the House Fees
424 and Salaries of Public Officers Committee and the Joint
425 Legislative Budget Committee a report containing a list of all
426 state agency emergency purchases and supporting documentation for
427 each emergency purchase.

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

429 If the governing authority, or the governing authority acting
430 through its designee, shall determine that an emergency exists in
431 regard to the purchase of any commodities or repair contracts, so
432 that the delay incident to giving opportunity for competitive
433 bidding would be detrimental to the interest of the governing
434 authority, then the provisions herein for competitive bidding

435 shall not apply and any officer or agent of such governing
436 authority having general or special authority therefor in making
437 such purchase or repair shall approve the bill presented therefor,
438 and he shall certify in writing thereon from whom such purchase
439 was made, or with whom such a repair contract was made. At the
440 board meeting next following the emergency purchase or repair
441 contract, documentation of the purchase or repair contract,
442 including a description of the commodity purchased, the price
443 thereof and the nature of the emergency shall be presented to the
444 board and shall be placed on the minutes of the board of such
445 governing authority.

446 (1) **Hospital purchase, lease-purchase and lease**
447 **authorization.**

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

453 (ii) In addition to the authority granted in
454 subparagraph (i) of this paragraph (1), the commissioners or board
455 of trustees is authorized to enter into contracts for the lease of
456 equipment or services, or both, which it considers necessary for
457 the proper care of patients if, in its opinion, it is not
458 financially feasible to purchase the necessary equipment or
459 services. Any such contract for the lease of equipment or
460 services executed by the commissioners or board shall not exceed a
461 maximum of five (5) years' duration and shall include a
462 cancellation clause based on unavailability of funds. If such
463 cancellation clause is exercised, there shall be no further
464 liability on the part of the lessee. Any such contract for the
465 lease of equipment or services executed on behalf of the
466 commissioners or board that complies with the provisions of this

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

469 (m) **Exceptions from bidding requirements.** Excepted
470 from bid requirements are:

471 (i) **Purchasing agreements approved by department.**
472 Purchasing agreements, contracts and maximum price regulations
473 executed or approved by the Department of Finance and
474 Administration.

475 (ii) **Outside equipment repairs.** Repairs to
476 equipment, when such repairs are made by repair facilities in the
477 private sector; however, engines, transmissions, rear axles and/or
478 other such components shall not be included in this exemption when
479 replaced as a complete unit instead of being repaired and the need
480 for such total component replacement is known before disassembly
481 of the component; however, invoices identifying the equipment,
482 specific repairs made, parts identified by number and name,
483 supplies used in such repairs, and the number of hours of labor
484 and costs therefor shall be required for the payment for such
485 repairs.

486 (iii) **In-house equipment repairs.** Purchases of
487 parts for repairs to equipment, when such repairs are made by
488 personnel of the agency or governing authority; however, entire
489 assemblies, such as engines or transmissions, shall not be
490 included in this exemption when the entire assembly is being
491 replaced instead of being repaired.

492 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
493 of gravel or fill dirt which are to be removed and transported by
494 the purchaser.

495 (v) **Governmental equipment auctions.** Motor
496 vehicles or other equipment purchased from a federal agency or
497 authority, another governing authority or state agency of the
498 State of Mississippi, or any governing authority or state agency
499 of another state at a public auction held for the purpose of

500 disposing of such vehicles or other equipment. Any purchase by a
501 governing authority under the exemption authorized by this
502 subparagraph (v) shall require advance authorization spread upon
503 the minutes of the governing authority to include the listing of
504 the item or items authorized to be purchased and the maximum bid
505 authorized to be paid for each item or items.

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

507 Purchases, sales, transfers or trades by governing authorities or
508 state agencies when such purchases, sales, transfers or trades are
509 made by a private treaty agreement or through means of
510 negotiation, from any federal agency or authority, another
511 governing authority or state agency of the State of Mississippi,
512 or any state agency or governing authority of another state.
513 Nothing in this section shall permit such purchases through public
514 auction except as provided for in subparagraph (v) of this
515 section. It is the intent of this section to allow governmental
516 entities to dispose of and/or purchase commodities from other
517 governmental entities at a price that is agreed to by both
518 parties. This shall allow for purchases and/or sales at prices
519 which may be determined to be below the market value if the
520 selling entity determines that the sale at below market value is
521 in the best interest of the taxpayers of the state. Governing
522 authorities shall place the terms of the agreement and any
523 justification on the minutes, and state agencies shall obtain
524 approval from the Department of Finance and Administration, prior
525 to releasing or taking possession of the commodities.

526 (vii) **Perishable supplies or food.** Perishable
527 supplies or food purchased for use in connection with hospitals,
528 the school lunch programs, homemaking programs and for the feeding
529 of county or municipal prisoners.

530 (viii) **Single source items.** Noncompetitive items
531 available from one (1) source only. In connection with the
532 purchase of noncompetitive items only available from one (1)

533 source, a certification of the conditions and circumstances
534 requiring the purchase shall be filed by the agency with the
535 Department of Finance and Administration and by the governing
536 authority with the board of the governing authority. Upon receipt
537 of that certification the Department of Finance and Administration
538 or the board of the governing authority, as the case may be, may,
539 in writing, authorize the purchase, which authority shall be noted
540 on the minutes of the body at the next regular meeting thereafter.
541 In those situations, a governing authority is not required to
542 obtain the approval of the Department of Finance and
543 Administration.

544 (ix) **Waste disposal facility construction**
545 **contracts.** Construction of incinerators and other facilities for
546 disposal of solid wastes in which products either generated
547 therein, such as steam, or recovered therefrom, such as materials
548 for recycling, are to be sold or otherwise disposed of; however,
549 in constructing such facilities, a governing authority or agency
550 shall publicly issue requests for proposals, advertised for in the
551 same manner as provided herein for seeking bids for public
552 construction projects, concerning the design, construction,
553 ownership, operation and/or maintenance of such facilities,
554 wherein such requests for proposals when issued shall contain
555 terms and conditions relating to price, financial responsibility,
556 technology, environmental compatibility, legal responsibilities
557 and such other matters as are determined by the governing
558 authority or agency to be appropriate for inclusion; and after
559 responses to the request for proposals have been duly received,
560 the governing authority or agency may select the most qualified
561 proposal or proposals on the basis of price, technology and other
562 relevant factors and from such proposals, but not limited to the
563 terms thereof, negotiate and enter contracts with one or more of
564 the persons or firms submitting proposals.

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

568 (xi) **Information technology products.** Purchases
569 of information technology products made by governing authorities
570 under the provisions of purchase schedules, or contracts executed
571 or approved by the Mississippi Department of Information
572 Technology Services and designated for use by governing
573 authorities.

574 (xii) **Energy efficiency services and equipment.**
575 Energy efficiency services and equipment acquired by school
576 districts, community and junior colleges, institutions of higher
577 learning and state agencies or other applicable governmental
578 entities on a shared-savings, lease or lease-purchase basis
579 pursuant to Section 31-7-14.

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

584 (xiv) **Library books and other reference materials.**
585 Purchases by libraries or for libraries of books and periodicals;
586 processed film, video cassette tapes, filmstrips and slides;
587 recorded audio tapes, cassettes and diskettes; and any such items
588 as would be used for teaching, research or other information
589 distribution; however, equipment such as projectors, recorders,
590 audio or video equipment, and monitor televisions are not exempt
591 under this subparagraph.

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

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

598 (xvii) **Multichannel interactive video systems.**
599 From and after July 1, 1990, contracts by Mississippi Authority
600 for Educational Television with any private educational
601 institution or private nonprofit organization whose purposes are
602 educational in regard to the construction, purchase, lease or
603 lease-purchase of facilities and equipment and the employment of
604 personnel for providing multichannel interactive video systems
605 (ITSF) in the school districts of this state.

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

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

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

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

624 (xxii) **Garbage, solid waste and sewage contracts.**
625 Contracts for garbage collection or disposal, contracts for solid
626 waste collection or disposal and contracts for sewage collection
627 or disposal.

628 (xxiii) **Municipal water tank maintenance**
629 **contracts.** Professional maintenance program contracts for the
630 repair or maintenance of municipal water tanks, which provide

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

634 (xxiv) **Purchases of Mississippi Industries for the**
635 **Blind products.** Purchases made by state agencies or governing
636 authorities involving any item that is manufactured, processed or
637 produced by the Mississippi Industries for the Blind.

638 (xxv) **Purchases of state-adopted textbooks.**
639 Purchases of state-adopted textbooks by public school districts.

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

643 (xxvii) **Used heavy or specialized machinery or**
644 **equipment for installation of soil and water conservation**
645 **practices purchased at auction.** Used heavy or specialized
646 machinery or equipment used for the installation and
647 implementation of soil and water conservation practices or
648 measures purchased subject to the restrictions provided in
649 Sections 69-27-331 through 69-27-341. Any purchase by the State
650 Soil and Water Conservation Commission under the exemption
651 authorized by this subparagraph shall require advance
652 authorization spread upon the minutes of the commission to include
653 the listing of the item or items authorized to be purchased and
654 the maximum bid authorized to be paid for each item or items.

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

658 (xxix) **Purchases made pursuant to qualified**
659 **cooperative purchasing agreements.** Purchases made by certified
660 purchasing offices of state agencies or governing authorities
661 under cooperative purchasing agreements previously approved by the
662 Office of Purchasing and Travel and established by or for any
663 municipality, county, parish or state government or the federal

664 government, provided that the notification to potential
665 contractors includes a clause that sets forth the availability of
666 the cooperative purchasing agreement to other governmental
667 entities. Such purchases shall only be made if the use of the
668 cooperative purchasing agreements is determined to be in the best
669 interest of the governmental entity.

670 (xxx) **School yearbooks.** Purchases of school
671 yearbooks by state agencies or governing authorities; provided,
672 however, that state agencies and governing authorities shall use
673 for these purchases the RFP process as set forth in the
674 Mississippi Procurement Manual adopted by the Office of Purchasing
675 and Travel.

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

679 (n) **Term contract authorization.** All contracts for the
680 purchase of:

681 (i) All contracts for the purchase of commodities,
682 equipment and public construction (including, but not limited to,
683 repair and maintenance), may be let for periods of not more than
684 sixty (60) months in advance, subject to applicable statutory
685 provisions prohibiting the letting of contracts during specified
686 periods near the end of terms of office. Term contracts for a
687 period exceeding twenty-four (24) months shall also be subject to
688 ratification or cancellation by governing authority boards taking
689 office subsequent to the governing authority board entering the
690 contract.

691 (ii) Bid proposals and contracts may include price
692 adjustment clauses with relation to the cost to the contractor
693 based upon a nationally published industry-wide or nationally
694 published and recognized cost index. The cost index used in a
695 price adjustment clause shall be determined by the Department of
696 Finance and Administration for the state agencies and by the

697 governing board for governing authorities. The bid proposal and
698 contract documents utilizing a price adjustment clause shall
699 contain the basis and method of adjusting unit prices for the
700 change in the cost of such commodities, equipment and public
701 construction.

702 (o) **Purchase law violation prohibition and vendor**
703 **penalty.** No contract or purchase as herein authorized shall be
704 made for the purpose of circumventing the provisions of this
705 section requiring competitive bids, nor shall it be lawful for any
706 person or concern to submit individual invoices for amounts within
707 those authorized for a contract or purchase where the actual value
708 of the contract or commodity purchased exceeds the authorized
709 amount and the invoices therefor are split so as to appear to be
710 authorized as purchases for which competitive bids are not
711 required. Submission of such invoices shall constitute a
712 misdemeanor punishable by a fine of not less than Five Hundred
713 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
714 or by imprisonment for thirty (30) days in the county jail, or
715 both such fine and imprisonment. In addition, the claim or claims
716 submitted shall be forfeited.

717 (p) **Electrical utility petroleum-based equipment**
718 **purchase procedure.** When in response to a proper advertisement
719 therefor, no bid firm as to price is submitted to an electric
720 utility for power transformers, distribution transformers, power
721 breakers, reclosers or other articles containing a petroleum
722 product, the electric utility may accept the lowest and best bid
723 therefor although the price is not firm.

724 (q) **Fuel management system bidding procedure.** Any
725 governing authority or agency of the state shall, before
726 contracting for the services and products of a fuel management or
727 fuel access system, enter into negotiations with not fewer than
728 two (2) sellers of fuel management or fuel access systems for
729 competitive written bids to provide the services and products for

730 the systems. In the event that the governing authority or agency
731 cannot locate two (2) sellers of such systems or cannot obtain
732 bids from two (2) sellers of such systems, it shall show proof
733 that it made a diligent, good-faith effort to locate and negotiate
734 with two (2) sellers of such systems. Such proof shall include,
735 but not be limited to, publications of a request for proposals and
736 letters soliciting negotiations and bids. For purposes of this
737 paragraph (q), a fuel management or fuel access system is an
738 automated system of acquiring fuel for vehicles as well as
739 management reports detailing fuel use by vehicles and drivers, and
740 the term "competitive written bid" shall have the meaning as
741 defined in paragraph (b) of this section. Governing authorities
742 and agencies shall be exempt from this process when contracting
743 for the services and products of a fuel management or fuel access
744 systems under the terms of a state contract established by the
745 Office of Purchasing and Travel.

746 (r) **Solid waste contract proposal procedure.** Before
747 entering into any contract for garbage collection or disposal,
748 contract for solid waste collection or disposal or contract for
749 sewage collection or disposal, which involves an expenditure of
750 more than Fifty Thousand Dollars (\$50,000.00), a governing
751 authority or agency shall issue publicly a request for proposals
752 concerning the specifications for such services which shall be
753 advertised for in the same manner as provided in this section for
754 seeking bids for purchases which involve an expenditure of more
755 than the amount provided in paragraph (c) of this section. Any
756 request for proposals when issued shall contain terms and
757 conditions relating to price, financial responsibility,
758 technology, legal responsibilities and other relevant factors as
759 are determined by the governing authority or agency to be
760 appropriate for inclusion; all factors determined relevant by the
761 governing authority or agency or required by this paragraph (r)
762 shall be duly included in the advertisement to elicit proposals.

763 After responses to the request for proposals have been duly
764 received, the governing authority or agency shall select the most
765 qualified proposal or proposals on the basis of price, technology
766 and other relevant factors and from such proposals, but not
767 limited to the terms thereof, negotiate and enter contracts with
768 one or more of the persons or firms submitting proposals. If the
769 governing authority or agency deems none of the proposals to be
770 qualified or otherwise acceptable, the request for proposals
771 process may be reinitiated. Notwithstanding any other provisions
772 of this paragraph, where a county with at least thirty-five
773 thousand (35,000) nor more than forty thousand (40,000)
774 population, according to the 1990 federal decennial census, owns
775 or operates a solid waste landfill, the governing authorities of
776 any other county or municipality may contract with the governing
777 authorities of the county owning or operating the landfill,
778 pursuant to a resolution duly adopted and spread upon the minutes
779 of each governing authority involved, for garbage or solid waste
780 collection or disposal services through contract negotiations.

781 (s) **Minority set-aside authorization.** Notwithstanding
782 any provision of this section to the contrary, any agency or
783 governing authority, by order placed on its minutes, may, in its
784 discretion, set aside not more than twenty percent (20%) of its
785 anticipated annual expenditures for the purchase of commodities
786 from minority businesses; however, all such set-aside purchases
787 shall comply with all purchasing regulations promulgated by the
788 Department of Finance and Administration and shall be subject to
789 bid requirements under this section. Set-aside purchases for
790 which competitive bids are required shall be made from the lowest
791 and best minority business bidder. For the purposes of this
792 paragraph, the term "minority business" means a business which is
793 owned by a majority of persons who are United States citizens or
794 permanent resident aliens (as defined by the Immigration and
795 Naturalization Service) of the United States, and who are Asian,

796 Black, Hispanic or Native American, according to the following
797 definitions:

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

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

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

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

809 (t) **Construction punch list restriction.** The
810 architect, engineer or other representative designated by the
811 agency or governing authority that is contracting for public
812 construction or renovation may prepare and submit to the
813 contractor only one (1) preliminary punch list of items that do
814 not meet the contract requirements at the time of substantial
815 completion and one (1) final list immediately before final
816 completion and final payment.

817 (u) **Contract restrictions.** No agency or governing
818 authority shall accept a bid from or enter into a contract with a
819 contractor or vendor that has persons who are not American
820 citizens or legal aliens who will work under the contract.
821 However, an agency or governing authority may accept a bid from or
822 enter into a contract with a contractor or vendor that has persons
823 who will work under the contract who have some specialty for which
824 American citizens or legal aliens cannot be found. The agency or
825 governing authority shall require contractors and vendors
826 submitting bids to attach an affidavit stating that all persons
827 who will work under the contract are American citizens or legal

828 aliens or have some specialty for which American citizens or legal
829 aliens cannot be found.

830 Any contractor who attaches an affidavit without true
831 information about the persons who will work under the contract, or
832 has persons working under the contract in violation of the
833 requirements of the provisions of this subsection, shall be
834 assessed the following penalties: (a) For the first violation, a
835 contractor shall pay One Thousand Dollars (\$1,000.00) for every
836 person who is not an American citizen or legal alien as provided
837 in this subsection, (b) For any subsequent violation, a contractor
838 shall pay a civil penalty equal to three percent (3%) of the total
839 contract being performed by the contractor and such contractor's
840 license shall be revoked.

841 (v) Purchase authorization clarification. Nothing in
842 this section shall be construed as authorizing any purchase not
843 authorized by law.

844 **SECTION 4.** Section 45-1-3, Mississippi Code of 1972, is
845 amended as follows:

846 45-1-3. (1) When not otherwise specifically provided, the
847 commissioner is authorized to make and promulgate reasonable rules
848 and regulations to be coordinated and carry out the general
849 provisions of the Highway Safety Patrol and Driver's License Law
850 of 1938.

851 (2) The commissioner is authorized to make and promulgate
852 reasonable rules and regulations to receive intelligence from
853 federal authorities relating to homeland security and ensure that,
854 to the extent allowed by law, all appropriate and necessary
855 intelligence and law enforcement of this state assist the federal
856 government relating to immigration and efforts to improve the
857 security of the borders, territorial waters and ports of the
858 United States.

859 **SECTION 5.** This act shall take effect and be in force from
860 and after July 1, 2006.