

By: Representative Franks

To: Judiciary B

HOUSE BILL NO. 846

1 AN ACT TO AMEND SECTIONS 31-3-21 AND 31-7-13, MISSISSIPPI
2 CODE OF 1972, TO REQUIRE CONTRACTORS WHO SUBMIT A BID IN EXCESS OF
3 \$100,000.00 TO LIST SUBCONTRACTORS WHO WILL WORK UNDER THE
4 CONTRACT; TO PROHIBIT STATE AGENCIES AND GOVERNING AUTHORITIES
5 FROM ACCEPTING BIDS IN EXCESS OF \$100,000.00 WITHOUT A LIST OF
6 SUBCONTRACTORS WHO WILL WORK UNDER THE CONTRACT; TO PROHIBIT
7 CONTRACTORS FROM CHANGING THE LISTED SUBCONTRACTOR WITHOUT THE
8 APPROVAL OF THE AGENCY OR GOVERNING AUTHORITY; TO ALLOW STATE
9 AGENCIES AND GOVERNING AUTHORITIES TO USE PROJECT MANAGERS FOR
10 CERTAIN PROJECTS; TO AMEND SECTION 37-151-7, MISSISSIPPI CODE OF
11 1972, TO CONFORM TO THE PRECEDING SECTIONS; AND FOR RELATED
12 PURPOSES.

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

14 **SECTION 1.** Section 31-3-21, Mississippi Code of 1972, is
15 amended as follows:

16 31-3-21. (1) It shall be unlawful for any person who does
17 not hold a certificate of responsibility issued under this
18 chapter, or a similar certificate issued by another state
19 recognizing such certificate issued by the State of Mississippi,
20 to submit a bid, enter into a contract, or otherwise engage in or
21 continue in this state in the business of a contractor, as defined
22 in this chapter. Any bid which is submitted without a certificate
23 of responsibility number issued under this chapter and without
24 that number appearing on the exterior of the bid envelope, as and
25 if herein required, at the time designated for the opening of such
26 bid, shall not be considered further, and the person or public
27 agency soliciting bids shall not enter into a contract with a
28 contractor submitting a bid in violation of this section. In
29 addition, any person violating this section by knowingly and
30 willfully submitting a bid for projects without holding a
31 certificate of responsibility number issued under this chapter, as
32 and if herein required, at the time of the submission or opening

33 of such bid shall be guilty of a misdemeanor and, upon conviction,
34 shall be punished by a fine of not more than One Thousand Dollars
35 (\$1,000.00), or by imprisonment for not more than six (6) months,
36 or by both such fine and imprisonment.

37 (2) (a) All bids submitted for public or private projects
38 where said bid is in excess of Fifty Thousand Dollars (\$50,000.00)
39 with respect to public projects and in excess of One Hundred
40 Thousand Dollars (\$100,000.00) with respect to private projects
41 shall contain on the outside or exterior of the envelope or
42 container of such bid the contractor's current certificate number,
43 and no bid shall be opened or considered unless such contractor's
44 current certificate number appears on the outside or exterior of
45 said envelope or container, or unless there appears a statement on
46 the outside or exterior of such envelope or container to the
47 effect that the bid enclosed therewith did not exceed Fifty
48 Thousand Dollars (\$50,000.00) with respect to public projects or
49 One Hundred Thousand Dollars (\$100,000.00) with respect to private
50 projects. Any person violating the provisions of this subsection
51 shall be guilty of a misdemeanor and, upon conviction, shall be
52 punished by a fine of not more than One Thousand Dollars
53 (\$1,000.00), or by imprisonment for not more than six (6) months,
54 or by both such fine and imprisonment.

55 (b) All bids submitted for public projects where said
56 bid is in excess of One Hundred Thousand Dollars (\$100,000.00)
57 shall contain a list of subcontractors who will work under the
58 contract. The subcontractors listed may not be changed by the
59 contractor without the approval of the agency or governing
60 authority for which the public project is being done. A civil
61 penalty equal to three percent (3%) of the total value of the
62 contract shall be assessed against a contractor who uses any
63 subcontractor other than the subcontractors listed by the
64 contractor during the bidding process. The civil penalty shall be
65 collected by the agency or governing authority for which the work

66 is being done and shall be used by such agency or governing
67 authority.

68 (3) In the letting of public contracts preference shall be
69 given to resident contractors, and a nonresident bidder domiciled
70 in a state having laws granting preference to local contractors
71 shall be awarded Mississippi public contracts only on the same
72 basis as the nonresident bidder's state awards contracts to
73 Mississippi contractors bidding under similar circumstances; and
74 resident contractors actually domiciled in Mississippi, be they
75 corporate, individuals, or partnerships, are to be granted
76 preference over nonresidents in awarding of contracts in the same
77 manner and to the same extent as provided by the laws of the state
78 of domicile of the nonresident. When a nonresident contractor
79 submits a bid for a public project, he shall attach thereto a copy
80 of his resident state's current law pertaining to such state's
81 treatment of nonresident contractors. As used in this section,
82 the term "resident contractors" includes a nonresident person,
83 firm or corporation that has been qualified to do business in this
84 state and has maintained a permanent full-time office in the State
85 of Mississippi for two (2) years prior to January 1, 1986, and the
86 subsidiaries and affiliates of such a person, firm or corporation.
87 Any public agency awarding a contract shall promptly report to the
88 State Tax Commission the following information:

89 (a) The amount of the contract.

90 (b) The name and address of the contractor reviewing
91 the contract.

92 (c) The name and location of the project.

93 (4) In addition to any other penalties provided in this
94 chapter, and upon a finding of a violation of this chapter, the
95 State Board of Contractors may, after notice and hearing, issue an
96 order of abatement directing the contractor to cease all actions
97 constituting violations of this chapter until such time as the
98 contractor complies with Mississippi state law, and to pay to the

99 board a civil penalty to be deposited into the State Board of
100 Contractors' Fund, created in Section 31-3-17, of not more than
101 three percent (3%) of the total contract being performed by the
102 contractor. The funds collected from civil penalty payments shall
103 be used by the State Board of Contractors for enforcement and
104 education.

105 **SECTION 2.** Section 31-7-13, Mississippi Code of 1972, is
106 amended as follows:

107 31-7-13. All agencies and governing authorities shall
108 purchase their commodities and printing; contract for garbage
109 collection or disposal; contract for solid waste collection or
110 disposal; contract for sewage collection or disposal; contract for
111 public construction; and contract for rentals as herein provided.

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

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

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

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

157 (i) **Publication requirement.** Purchases which
158 involve an expenditure of more than Fifteen Thousand Dollars
159 (\$15,000.00), exclusive of freight and shipping charges, may be
160 made from the lowest and best bidder after advertising for
161 competitive sealed bids once each week for two (2) consecutive
162 weeks in a regular newspaper published in the county or
163 municipality in which such agency or governing authority is
164 located. The date as published for the bid opening shall not be

165 less than seven (7) working days after the last published notice;
166 however, if the purchase involves a construction project in which
167 the estimated cost is in excess of Fifteen Thousand Dollars
168 (\$15,000.00), such bids shall not be opened in less than fifteen
169 (15) working days after the last notice is published and the
170 notice for the purchase of such construction shall be published
171 once each week for two (2) consecutive weeks. The notice of
172 intention to let contracts or purchase equipment shall state the
173 time and place at which bids shall be received, list the contracts
174 to be made or types of equipment or supplies to be purchased, and,
175 if all plans and/or specifications are not published, refer to the
176 plans and/or specifications on file. If there is no newspaper
177 published in the county or municipality, then such notice shall be
178 given by posting same at the courthouse, or for municipalities at
179 the city hall, and at two (2) other public places in the county or
180 municipality, and also by publication once each week for two (2)
181 consecutive weeks in some newspaper having a general circulation
182 in the county or municipality in the above provided manner. On
183 the same date that the notice is submitted to the newspaper for
184 publication, the agency or governing authority involved shall mail
185 written notice to, or provide electronic notification to the main
186 office of the Mississippi Contract Procurement Center that
187 contains the same information as that in the published notice.

188 (ii) **Bidding process amendment procedure.** If all
189 plans and/or specifications are published in the notification,
190 then the plans and/or specifications may not be amended. If all
191 plans and/or specifications are not published in the notification,
192 then amendments to the plans/specifications, bid opening date, bid
193 opening time and place may be made, provided that the agency or
194 governing authority maintains a list of all prospective bidders
195 who are known to have received a copy of the bid documents and all
196 such prospective bidders are sent copies of all amendments. This
197 notification of amendments may be made via mail, facsimile,

198 electronic mail or other generally accepted method of information
199 distribution. No addendum to bid specifications may be issued
200 within two (2) working days of the time established for the
201 receipt of bids unless such addendum also amends the bid opening
202 to a date not less than five (5) working days after the date of
203 the addendum.

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

213 (iv) **Specification restrictions.**

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

230 2. Specifications for construction projects
231 may include an allowance for commodities, equipment, furniture,
232 construction materials or systems in which prospective bidders are
233 instructed to include in their bids specified amounts for such
234 items so long as the allowance items are acquired by the vendor in
235 a commercially reasonable manner and approved by the
236 agency/governing authority. Such acquisitions shall not be made
237 to circumvent the public purchasing laws.

238 (v) Agencies and governing authorities may
239 establish secure procedures by which bids may be submitted via
240 electronic means.

241 (vi) **Bids in excess of One Hundred Thousand**
242 **Dollars (\$100,000.00)**. In addition to other procedures for
243 purchases over Fifteen Thousand Dollars (\$15,000.00), a contractor
244 who submits a bid in excess of One Hundred Thousand Dollars
245 (\$100,000.00) shall list the subcontractors who will work under
246 the contract. No bid in excess of One Hundred Thousand Dollars
247 (\$100,000.00) shall be accepted without a list of the
248 subcontractors who will work under the contract. The
249 subcontractors listed may not be changed by the contractor without
250 the approval of the agency or governing authority for which the
251 public project is being done. A civil penalty equal to three
252 percent (3%) of the total value of the contract shall be assessed
253 against a contractor who uses any subcontractor other than the
254 subcontractors listed by the contractor during the bidding
255 process. The civil penalty shall be collected by the agency or
256 governing authority for which the work is being done and shall be
257 used by such agency or governing authority.

258 (vii) **Project management.** Any public project with
259 an estimated project cost of more than Twenty-Five Million Dollars
260 (\$25,000,000.00) may be done with program management of the
261 process with respect to design and construction. No project
262 management of the process with respect to design and construction

263 shall be used for any project with an estimated project cost of
264 less than Twenty-five Million Dollars (\$25,000,000.00). Any
265 individuals, partnerships, companies or other entities acting as a
266 program manager on behalf of an agency or governing authority and
267 performing program management services for projects covered under
268 this paragraph shall be approved by the State Department of
269 Education.

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

271 (i) **Decision procedure.** Purchases may be made
272 from the lowest and best bidder. In determining the lowest and
273 best bid, freight and shipping charges shall be included.
274 Life-cycle costing, total cost bids, warranties, guaranteed
275 buy-back provisions and other relevant provisions may be included
276 in the best bid calculation. All best bid procedures for state
277 agencies must be in compliance with regulations established by the
278 Department of Finance and Administration. If any governing
279 authority accepts a bid other than the lowest bid actually
280 submitted, it shall place on its minutes detailed calculations and
281 narrative summary showing that the accepted bid was determined to
282 be the lowest and best bid, including the dollar amount of the
283 accepted bid and the dollar amount of the lowest bid. No agency
284 or governing authority shall accept a bid based on items not
285 included in the specifications.

286 (ii) **Decision procedure for Certified Purchasing**
287 **Offices.** In addition to the decision procedure set forth in
288 paragraph (d)(i), Certified Purchasing Offices may also use the
289 following procedure: Purchases may be made from the bidder
290 offering the best value. In determining the best value bid,
291 freight and shipping charges shall be included. Life-cycle
292 costing, total cost bids, warranties, guaranteed buy-back
293 provisions, documented previous experience, training costs and
294 other relevant provisions may be included in the best value
295 calculation. This provision shall authorize Certified Purchasing

296 Offices to utilize a Request For Proposals (RFP) process when
297 purchasing commodities. All best value procedures for state
298 agencies must be in compliance with regulations established by the
299 Department of Finance and Administration. No agency or governing
300 authority shall accept a bid based on items or criteria not
301 included in the specifications.

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

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

308 (e) **Lease-purchase authorization.** For the purposes of
309 this section, the term "equipment" shall mean equipment, furniture
310 and, if applicable, associated software and other applicable
311 direct costs associated with the acquisition. Any lease-purchase
312 of equipment which an agency is not required to lease-purchase
313 under the master lease-purchase program pursuant to Section
314 31-7-10 and any lease-purchase of equipment which a governing
315 authority elects to lease-purchase may be acquired by a
316 lease-purchase agreement under this paragraph (e). Lease-purchase
317 financing may also be obtained from the vendor or from a
318 third-party source after having solicited and obtained at least
319 two (2) written competitive bids, as defined in paragraph (b) of
320 this section, for such financing without advertising for such
321 bids. Solicitation for the bids for financing may occur before or
322 after acceptance of bids for the purchase of such equipment or,
323 where no such bids for purchase are required, at any time before
324 the purchase thereof. No such lease-purchase agreement shall be
325 for an annual rate of interest which is greater than the overall
326 maximum interest rate to maturity on general obligation
327 indebtedness permitted under Section 75-17-101, and the term of
328 such lease-purchase agreement shall not exceed the useful life of

329 equipment covered thereby as determined according to the upper
330 limit of the asset depreciation range (ADR) guidelines for the
331 Class Life Asset Depreciation Range System established by the
332 Internal Revenue Service pursuant to the United States Internal
333 Revenue Code and regulations thereunder as in effect on December
334 31, 1980, or comparable depreciation guidelines with respect to
335 any equipment not covered by ADR guidelines. Any lease-purchase
336 agreement entered into pursuant to this paragraph (e) may contain
337 any of the terms and conditions which a master lease-purchase
338 agreement may contain under the provisions of Section 31-7-10(5),
339 and shall contain an annual allocation dependency clause
340 substantially similar to that set forth in Section 31-7-10(8).
341 Each agency or governing authority entering into a lease-purchase
342 transaction pursuant to this paragraph (e) shall maintain with
343 respect to each such lease-purchase transaction the same
344 information as required to be maintained by the Department of
345 Finance and Administration pursuant to Section 31-7-10(13).
346 However, nothing contained in this section shall be construed to
347 permit agencies to acquire items of equipment with a total
348 acquisition cost in the aggregate of less than Ten Thousand
349 Dollars (\$10,000.00) by a single lease-purchase transaction. All
350 equipment, and the purchase thereof by any lessor, acquired by
351 lease-purchase under this paragraph and all lease-purchase
352 payments with respect thereto shall be exempt from all Mississippi
353 sales, use and ad valorem taxes. Interest paid on any
354 lease-purchase agreement under this section shall be exempt from
355 State of Mississippi income taxation.

356 (f) **Alternate bid authorization.** When necessary to
357 ensure ready availability of commodities for public works and the
358 timely completion of public projects, no more than two (2)
359 alternate bids may be accepted by a governing authority for
360 commodities. No purchases may be made through use of such
361 alternate bids procedure unless the lowest and best bidder cannot

362 deliver the commodities contained in his bid. In that event,
363 purchases of such commodities may be made from one (1) of the
364 bidders whose bid was accepted as an alternate.

365 (g) **Construction contract change authorization.** In the
366 event a determination is made by an agency or governing authority
367 after a construction contract is let that changes or modifications
368 to the original contract are necessary or would better serve the
369 purpose of the agency or the governing authority, such agency or
370 governing authority may, in its discretion, order such changes
371 pertaining to the construction that are necessary under the
372 circumstances without the necessity of further public bids;
373 provided that such change shall be made in a commercially
374 reasonable manner and shall not be made to circumvent the public
375 purchasing statutes. In addition to any other authorized person,
376 the architect or engineer hired by an agency or governing
377 authority with respect to any public construction contract shall
378 have the authority, when granted by an agency or governing
379 authority, to authorize changes or modifications to the original
380 contract without the necessity of prior approval of the agency or
381 governing authority when any such change or modification is less
382 than one percent (1%) of the total contract amount. The agency or
383 governing authority may limit the number, manner or frequency of
384 such emergency changes or modifications.

385 (h) **Petroleum purchase alternative.** In addition to
386 other methods of purchasing authorized in this chapter, when any
387 agency or governing authority shall have a need for gas, diesel
388 fuel, oils and/or other petroleum products in excess of the amount
389 set forth in paragraph (a) of this section, such agency or
390 governing authority may purchase the commodity after having
391 solicited and obtained at least two (2) competitive written bids,
392 as defined in paragraph (b) of this section. If two (2)
393 competitive written bids are not obtained, the entity shall comply
394 with the procedures set forth in paragraph (c) of this section.

395 In the event any agency or governing authority shall have
396 advertised for bids for the purchase of gas, diesel fuel, oils and
397 other petroleum products and coal and no acceptable bids can be
398 obtained, such agency or governing authority is authorized and
399 directed to enter into any negotiations necessary to secure the
400 lowest and best contract available for the purchase of such
401 commodities.

402 (i) **Road construction petroleum products price**
403 **adjustment clause authorization.** Any agency or governing
404 authority authorized to enter into contracts for the construction,
405 maintenance, surfacing or repair of highways, roads or streets,
406 may include in its bid proposal and contract documents a price
407 adjustment clause with relation to the cost to the contractor,
408 including taxes, based upon an industry-wide cost index, of
409 petroleum products including asphalt used in the performance or
410 execution of the contract or in the production or manufacture of
411 materials for use in such performance. Such industry-wide index
412 shall be established and published monthly by the Mississippi
413 Department of Transportation with a copy thereof to be mailed,
414 upon request, to the clerks of the governing authority of each
415 municipality and the clerks of each board of supervisors
416 throughout the state. The price adjustment clause shall be based
417 on the cost of such petroleum products only and shall not include
418 any additional profit or overhead as part of the adjustment. The
419 bid proposals or document contract shall contain the basis and
420 methods of adjusting unit prices for the change in the cost of
421 such petroleum products.

422 (j) **State agency emergency purchase procedure.** If the
423 governing board or the executive head, or his designee, of any
424 agency of the state shall determine that an emergency exists in
425 regard to the purchase of any commodities or repair contracts, so
426 that the delay incident to giving opportunity for competitive
427 bidding would be detrimental to the interests of the state, then

428 the provisions herein for competitive bidding shall not apply and
429 the head of such agency shall be authorized to make the purchase
430 or repair. Total purchases so made shall only be for the purpose
431 of meeting needs created by the emergency situation. In the event
432 such executive head is responsible to an agency board, at the
433 meeting next following the emergency purchase, documentation of
434 the purchase, including a description of the commodity purchased,
435 the purchase price thereof and the nature of the emergency shall
436 be presented to the board and placed on the minutes of the board
437 of such agency. The head of such agency, or his designee, shall,
438 at the earliest possible date following such emergency purchase,
439 file with the Department of Finance and Administration (i) a
440 statement explaining the conditions and circumstances of the
441 emergency, which shall include a detailed description of the
442 events leading up to the situation and the negative impact to the
443 entity if the purchase is made following the statutory
444 requirements set forth in paragraph (a), (b) or (c) of this
445 section, and (ii) a certified copy of the appropriate minutes of
446 the board of such agency, if applicable. On or before September 1
447 of each year, the State Auditor shall prepare and deliver to the
448 Senate Fees, Salaries and Administration Committee, the House Fees
449 and Salaries of Public Officers Committee and the Joint
450 Legislative Budget Committee a report containing a list of all
451 state agency emergency purchases and supporting documentation for
452 each emergency purchase.

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

454 If the governing authority, or the governing authority acting
455 through its designee, shall determine that an emergency exists in
456 regard to the purchase of any commodities or repair contracts, so
457 that the delay incident to giving opportunity for competitive
458 bidding would be detrimental to the interest of the governing
459 authority, then the provisions herein for competitive bidding
460 shall not apply and any officer or agent of such governing

461 authority having general or special authority therefor in making
462 such purchase or repair shall approve the bill presented therefor,
463 and he shall certify in writing thereon from whom such purchase
464 was made, or with whom such a repair contract was made. At the
465 board meeting next following the emergency purchase or repair
466 contract, documentation of the purchase or repair contract,
467 including a description of the commodity purchased, the price
468 thereof and the nature of the emergency shall be presented to the
469 board and shall be placed on the minutes of the board of such
470 governing authority.

471 (1) **Hospital purchase, lease-purchase and lease**
472 **authorization.**

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

478 (ii) In addition to the authority granted in
479 subparagraph (i) of this paragraph (1), the commissioners or board
480 of trustees is authorized to enter into contracts for the lease of
481 equipment or services, or both, which it considers necessary for
482 the proper care of patients if, in its opinion, it is not
483 financially feasible to purchase the necessary equipment or
484 services. Any such contract for the lease of equipment or
485 services executed by the commissioners or board shall not exceed a
486 maximum of five (5) years' duration and shall include a
487 cancellation clause based on unavailability of funds. If such
488 cancellation clause is exercised, there shall be no further
489 liability on the part of the lessee. Any such contract for the
490 lease of equipment or services executed on behalf of the
491 commissioners or board that complies with the provisions of this
492 subparagraph (ii) shall be excepted from the bid requirements set
493 forth in this section.

494 (m) **Exceptions from bidding requirements.** Excepted
495 from bid requirements are:

496 (i) **Purchasing agreements approved by department.**
497 Purchasing agreements, contracts and maximum price regulations
498 executed or approved by the Department of Finance and
499 Administration.

500 (ii) **Outside equipment repairs.** Repairs to
501 equipment, when such repairs are made by repair facilities in the
502 private sector; however, engines, transmissions, rear axles and/or
503 other such components shall not be included in this exemption when
504 replaced as a complete unit instead of being repaired and the need
505 for such total component replacement is known before disassembly
506 of the component; however, invoices identifying the equipment,
507 specific repairs made, parts identified by number and name,
508 supplies used in such repairs, and the number of hours of labor
509 and costs therefor shall be required for the payment for such
510 repairs.

511 (iii) **In-house equipment repairs.** Purchases of
512 parts for repairs to equipment, when such repairs are made by
513 personnel of the agency or governing authority; however, entire
514 assemblies, such as engines or transmissions, shall not be
515 included in this exemption when the entire assembly is being
516 replaced instead of being repaired.

517 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
518 of gravel or fill dirt which are to be removed and transported by
519 the purchaser.

520 (v) **Governmental equipment auctions.** Motor
521 vehicles or other equipment purchased from a federal agency or
522 authority, another governing authority or state agency of the
523 State of Mississippi, or any governing authority or state agency
524 of another state at a public auction held for the purpose of
525 disposing of such vehicles or other equipment. Any purchase by a
526 governing authority under the exemption authorized by this

527 subparagraph (v) shall require advance authorization spread upon
528 the minutes of the governing authority to include the listing of
529 the item or items authorized to be purchased and the maximum bid
530 authorized to be paid for each item or items.

531 (vi) **Intergovernmental sales and transfers.**
532 Purchases, sales, transfers or trades by governing authorities or
533 state agencies when such purchases, sales, transfers or trades are
534 made by a private treaty agreement or through means of
535 negotiation, from any federal agency or authority, another
536 governing authority or state agency of the State of Mississippi,
537 or any state agency or governing authority of another state.
538 Nothing in this section shall permit such purchases through public
539 auction except as provided for in subparagraph (v) of this
540 section. It is the intent of this section to allow governmental
541 entities to dispose of and/or purchase commodities from other
542 governmental entities at a price that is agreed to by both
543 parties. This shall allow for purchases and/or sales at prices
544 which may be determined to be below the market value if the
545 selling entity determines that the sale at below market value is
546 in the best interest of the taxpayers of the state. Governing
547 authorities shall place the terms of the agreement and any
548 justification on the minutes, and state agencies shall obtain
549 approval from the Department of Finance and Administration, prior
550 to releasing or taking possession of the commodities.

551 (vii) **Perishable supplies or food.** Perishable
552 supplies or food purchased for use in connection with hospitals,
553 the school lunch programs, homemaking programs and for the feeding
554 of county or municipal prisoners.

555 (viii) **Single source items.** Noncompetitive items
556 available from one (1) source only. In connection with the
557 purchase of noncompetitive items only available from one (1)
558 source, a certification of the conditions and circumstances
559 requiring the purchase shall be filed by the agency with the

560 Department of Finance and Administration and by the governing
561 authority with the board of the governing authority. Upon receipt
562 of that certification the Department of Finance and Administration
563 or the board of the governing authority, as the case may be, may,
564 in writing, authorize the purchase, which authority shall be noted
565 on the minutes of the body at the next regular meeting thereafter.
566 In those situations, a governing authority is not required to
567 obtain the approval of the Department of Finance and
568 Administration.

569 (ix) **Waste disposal facility construction**
570 **contracts.** Construction of incinerators and other facilities for
571 disposal of solid wastes in which products either generated
572 therein, such as steam, or recovered therefrom, such as materials
573 for recycling, are to be sold or otherwise disposed of; however,
574 in constructing such facilities, a governing authority or agency
575 shall publicly issue requests for proposals, advertised for in the
576 same manner as provided herein for seeking bids for public
577 construction projects, concerning the design, construction,
578 ownership, operation and/or maintenance of such facilities,
579 wherein such requests for proposals when issued shall contain
580 terms and conditions relating to price, financial responsibility,
581 technology, environmental compatibility, legal responsibilities
582 and such other matters as are determined by the governing
583 authority or agency to be appropriate for inclusion; and after
584 responses to the request for proposals have been duly received,
585 the governing authority or agency may select the most qualified
586 proposal or proposals on the basis of price, technology and other
587 relevant factors and from such proposals, but not limited to the
588 terms thereof, negotiate and enter contracts with one or more of
589 the persons or firms submitting proposals.

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

593 (xi) **Information technology products.** Purchases
594 of information technology products made by governing authorities
595 under the provisions of purchase schedules, or contracts executed
596 or approved by the Mississippi Department of Information
597 Technology Services and designated for use by governing
598 authorities.

599 (xii) **Energy efficiency services and equipment.**
600 Energy efficiency services and equipment acquired by school
601 districts, community and junior colleges, institutions of higher
602 learning and state agencies or other applicable governmental
603 entities on a shared-savings, lease or lease-purchase basis
604 pursuant to Section 31-7-14.

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

609 (xiv) **Library books and other reference materials.**
610 Purchases by libraries or for libraries of books and periodicals;
611 processed film, video cassette tapes, filmstrips and slides;
612 recorded audio tapes, cassettes and diskettes; and any such items
613 as would be used for teaching, research or other information
614 distribution; however, equipment such as projectors, recorders,
615 audio or video equipment, and monitor televisions are not exempt
616 under this subparagraph.

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

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

623 (xvii) **Multichannel interactive video systems.**
624 From and after July 1, 1990, contracts by Mississippi Authority
625 for Educational Television with any private educational

626 institution or private nonprofit organization whose purposes are
627 educational in regard to the construction, purchase, lease or
628 lease-purchase of facilities and equipment and the employment of
629 personnel for providing multichannel interactive video systems
630 (ITSF) in the school districts of this state.

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

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

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

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

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

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

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

650 Contracts for garbage collection or disposal, contracts for solid
651 waste collection or disposal and contracts for sewage collection
652 or disposal.

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

654 **contracts.** Professional maintenance program contracts for the
655 repair or maintenance of municipal water tanks, which provide
656 professional services needed to maintain municipal water storage
657 tanks for a fixed annual fee for a duration of two (2) or more
658 years.

659 (xxiv) **Purchases of Mississippi Industries for the**
660 **Blind products.** Purchases made by state agencies or governing
661 authorities involving any item that is manufactured, processed or
662 produced by the Mississippi Industries for the Blind.

663 (xxv) **Purchases of state-adopted textbooks.**
664 Purchases of state-adopted textbooks by public school districts.

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

668 (xxvii) **Used heavy or specialized machinery or**
669 **equipment for installation of soil and water conservation**
670 **practices purchased at auction.** Used heavy or specialized
671 machinery or equipment used for the installation and
672 implementation of soil and water conservation practices or
673 measures purchased subject to the restrictions provided in
674 Sections 69-27-331 through 69-27-341. Any purchase by the State
675 Soil and Water Conservation Commission under the exemption
676 authorized by this subparagraph shall require advance
677 authorization spread upon the minutes of the commission to include
678 the listing of the item or items authorized to be purchased and
679 the maximum bid authorized to be paid for each item or items.

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

683 (xxix) **Purchases made pursuant to qualified**
684 **cooperative purchasing agreements.** Purchases made by certified
685 purchasing offices of state agencies or governing authorities
686 under cooperative purchasing agreements previously approved by the
687 Office of Purchasing and Travel and established by or for any
688 municipality, county, parish or state government or the federal
689 government, provided that the notification to potential
690 contractors includes a clause that sets forth the availability of
691 the cooperative purchasing agreement to other governmental

692 entities. Such purchases shall only be made if the use of the
693 cooperative purchasing agreements is determined to be in the best
694 interest of the governmental entity.

695 (xxx) **School yearbooks.** Purchases of school
696 yearbooks by state agencies or governing authorities; provided,
697 however, that state agencies and governing authorities shall use
698 for these purchases the RFP process as set forth in the
699 Mississippi Procurement Manual adopted by the Office of Purchasing
700 and Travel.

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

704 (n) **Term contract authorization.** All contracts for the
705 purchase of:

706 (i) All contracts for the purchase of commodities,
707 equipment and public construction (including, but not limited to,
708 repair and maintenance), may be let for periods of not more than
709 sixty (60) months in advance, subject to applicable statutory
710 provisions prohibiting the letting of contracts during specified
711 periods near the end of terms of office. Term contracts for a
712 period exceeding twenty-four (24) months shall also be subject to
713 ratification or cancellation by governing authority boards taking
714 office subsequent to the governing authority board entering the
715 contract.

716 (ii) Bid proposals and contracts may include price
717 adjustment clauses with relation to the cost to the contractor
718 based upon a nationally published industry-wide or nationally
719 published and recognized cost index. The cost index used in a
720 price adjustment clause shall be determined by the Department of
721 Finance and Administration for the state agencies and by the
722 governing board for governing authorities. The bid proposal and
723 contract documents utilizing a price adjustment clause shall
724 contain the basis and method of adjusting unit prices for the

725 change in the cost of such commodities, equipment and public
726 construction.

727 (o) **Purchase law violation prohibition and vendor**
728 **penalty.** No contract or purchase as herein authorized shall be
729 made for the purpose of circumventing the provisions of this
730 section requiring competitive bids, nor shall it be lawful for any
731 person or concern to submit individual invoices for amounts within
732 those authorized for a contract or purchase where the actual value
733 of the contract or commodity purchased exceeds the authorized
734 amount and the invoices therefor are split so as to appear to be
735 authorized as purchases for which competitive bids are not
736 required. Submission of such invoices shall constitute a
737 misdemeanor punishable by a fine of not less than Five Hundred
738 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
739 or by imprisonment for thirty (30) days in the county jail, or
740 both such fine and imprisonment. In addition, the claim or claims
741 submitted shall be forfeited.

742 (p) **Electrical utility petroleum-based equipment**
743 **purchase procedure.** When in response to a proper advertisement
744 therefor, no bid firm as to price is submitted to an electric
745 utility for power transformers, distribution transformers, power
746 breakers, reclosers or other articles containing a petroleum
747 product, the electric utility may accept the lowest and best bid
748 therefor although the price is not firm.

749 (q) **Fuel management system bidding procedure.** Any
750 governing authority or agency of the state shall, before
751 contracting for the services and products of a fuel management or
752 fuel access system, enter into negotiations with not fewer than
753 two (2) sellers of fuel management or fuel access systems for
754 competitive written bids to provide the services and products for
755 the systems. In the event that the governing authority or agency
756 cannot locate two (2) sellers of such systems or cannot obtain
757 bids from two (2) sellers of such systems, it shall show proof

758 that it made a diligent, good-faith effort to locate and negotiate
759 with two (2) sellers of such systems. Such proof shall include,
760 but not be limited to, publications of a request for proposals and
761 letters soliciting negotiations and bids. For purposes of this
762 paragraph (q), a fuel management or fuel access system is an
763 automated system of acquiring fuel for vehicles as well as
764 management reports detailing fuel use by vehicles and drivers, and
765 the term "competitive written bid" shall have the meaning as
766 defined in paragraph (b) of this section. Governing authorities
767 and agencies shall be exempt from this process when contracting
768 for the services and products of a fuel management or fuel access
769 systems under the terms of a state contract established by the
770 Office of Purchasing and Travel.

771 (r) **Solid waste contract proposal procedure.** Before
772 entering into any contract for garbage collection or disposal,
773 contract for solid waste collection or disposal or contract for
774 sewage collection or disposal, which involves an expenditure of
775 more than Fifty Thousand Dollars (\$50,000.00), a governing
776 authority or agency shall issue publicly a request for proposals
777 concerning the specifications for such services which shall be
778 advertised for in the same manner as provided in this section for
779 seeking bids for purchases which involve an expenditure of more
780 than the amount provided in paragraph (c) of this section. Any
781 request for proposals when issued shall contain terms and
782 conditions relating to price, financial responsibility,
783 technology, legal responsibilities and other relevant factors as
784 are determined by the governing authority or agency to be
785 appropriate for inclusion; all factors determined relevant by the
786 governing authority or agency or required by this paragraph (r)
787 shall be duly included in the advertisement to elicit proposals.
788 After responses to the request for proposals have been duly
789 received, the governing authority or agency shall select the most
790 qualified proposal or proposals on the basis of price, technology

791 and other relevant factors and from such proposals, but not
792 limited to the terms thereof, negotiate and enter contracts with
793 one or more of the persons or firms submitting proposals. If the
794 governing authority or agency deems none of the proposals to be
795 qualified or otherwise acceptable, the request for proposals
796 process may be reinitiated. Notwithstanding any other provisions
797 of this paragraph, where a county with at least thirty-five
798 thousand (35,000) nor more than forty thousand (40,000)
799 population, according to the 1990 federal decennial census, owns
800 or operates a solid waste landfill, the governing authorities of
801 any other county or municipality may contract with the governing
802 authorities of the county owning or operating the landfill,
803 pursuant to a resolution duly adopted and spread upon the minutes
804 of each governing authority involved, for garbage or solid waste
805 collection or disposal services through contract negotiations.

806 (s) **Minority set-aside authorization.** Notwithstanding
807 any provision of this section to the contrary, any agency or
808 governing authority, by order placed on its minutes, may, in its
809 discretion, set aside not more than twenty percent (20%) of its
810 anticipated annual expenditures for the purchase of commodities
811 from minority businesses; however, all such set-aside purchases
812 shall comply with all purchasing regulations promulgated by the
813 Department of Finance and Administration and shall be subject to
814 bid requirements under this section. Set-aside purchases for
815 which competitive bids are required shall be made from the lowest
816 and best minority business bidder. For the purposes of this
817 paragraph, the term "minority business" means a business which is
818 owned by a majority of persons who are United States citizens or
819 permanent resident aliens (as defined by the Immigration and
820 Naturalization Service) of the United States, and who are Asian,
821 Black, Hispanic or Native American, according to the following
822 definitions:

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

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

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

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

834 (t) **Construction punch list restriction.** The
835 architect, engineer or other representative designated by the
836 agency or governing authority that is contracting for public
837 construction or renovation may prepare and submit to the
838 contractor only one (1) preliminary punch list of items that do
839 not meet the contract requirements at the time of substantial
840 completion and one (1) final list immediately before final
841 completion and final payment.

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

845 **SECTION 3.** Section 37-151-7, Mississippi Code of 1972, is
846 amended as follows:

847 37-151-7. The annual allocation to each school district for
848 the operation of the adequate education program shall be
849 determined as follows:

850 (1) **Computation of the basic amount to be included for**
851 **current operation in the adequate education program.** The
852 following procedure shall be followed in determining the annual
853 allocation to each school district:

854 (a) **Determination of average daily attendance.** During
855 months two and three of the current school year, the average daily

856 attendance of a school district shall be computed, or the average
857 daily attendance for the prior school year shall be used,
858 whichever is greater. The district's average daily attendance
859 shall be computed and currently maintained in accordance with
860 regulations promulgated by the State Board of Education.

861 (b) **Determination of base student cost.** The State
862 Board of Education, on or before August 1, with adjusted estimate
863 no later than January 2, shall annually submit to the Legislative
864 Budget Office and the Governor a proposed base student cost
865 adequate to provide the following cost components of educating a
866 pupil in an average school district meeting Level III
867 accreditation standards required by the Commission on School
868 Accreditation: (i) Instructional Cost; (ii) Administrative Cost;
869 (iii) Operation and Maintenance of Plant; and (iv) Ancillary
870 Support Cost. The department shall utilize a statistical
871 methodology which considers such factors as, but not limited to,
872 (i) school size; (ii) assessed valuation per pupil; (iii) the
873 percentage of students receiving free lunch; (iv) the local
874 district maintenance tax levy; (v) other local school district
875 revenues; and (vi) the district's accreditation level, in the
876 selection of the representative Mississippi school districts for
877 which cost information shall be obtained for each of the above
878 listed cost areas.

879 For the instructional cost component, the department shall
880 determine the instructional cost of each of the representative
881 school districts selected above, excluding instructional cost of
882 self-contained special education programs and vocational education
883 programs, and the average daily attendance in the selected school
884 districts. The instructional cost is then totaled and divided by
885 the total average daily attendance for the selected school
886 districts to yield the instructional cost component. For the
887 administrative cost component, the department shall determine the
888 administrative cost of each of the representative school districts

889 selected above, excluding administrative cost of self-contained
890 special education programs and vocational education programs, and
891 the average daily attendance in the selected school districts.
892 The administrative cost is then totaled and divided by the total
893 average daily attendance for the selected school districts to
894 yield the administrative cost component. For the plant and
895 maintenance cost component, the department shall determine the
896 plant and maintenance cost of each of the representative school
897 districts selected above, excluding plant and maintenance cost of
898 self-contained special education programs and vocational education
899 programs, and the average daily attendance in the selected school
900 districts. The plant and maintenance cost is then totaled and
901 divided by the total average daily attendance for the selected
902 school districts to yield the plant and maintenance cost
903 component. For the ancillary support cost component, the
904 department shall determine the ancillary support cost of each of
905 the representative school districts selected above, excluding
906 ancillary support cost of self-contained special education
907 programs and vocational education programs, and the average daily
908 attendance in the selected school districts. The ancillary
909 support cost is then totaled and divided by the total average
910 daily attendance for the selected school districts to yield the
911 ancillary support cost component. The total base cost for each
912 year shall be the sum of the instructional cost component,
913 administrative cost component, plant and maintenance cost
914 component and ancillary support cost component, and any estimated
915 adjustments for additional state requirements as determined by the
916 State Board of Education. Provided, however, that the base
917 student cost in fiscal year 1998 shall be Two Thousand Six Hundred
918 Sixty-four Dollars (\$2,664.00).

919 (c) **Determination of the basic adequate education**
920 **program cost.** The basic amount for current operation to be

921 included in the Mississippi Adequate Education Program for each
922 school district shall be computed as follows:

923 Multiply the average daily attendance of the district by the
924 base student cost as established by the Legislature, which yields
925 the total base program cost for each school district.

926 (d) **Adjustment to the base student cost for at-risk**
927 **pupils.** The amount to be included for at-risk pupil programs for
928 each school district shall be computed as follows: Multiply the
929 base student cost for the appropriate fiscal year as determined
930 under paragraph (b) by five percent (5%), and multiply that
931 product by the number of pupils participating in the federal free
932 school lunch program in such school district, which yields the
933 total adjustment for at-risk pupil programs for such school
934 district.

935 (e) **Add-on program cost.** The amount to be allocated to
936 school districts in addition to the adequate education program
937 cost for add-on programs for each school district shall be
938 computed as follows:

939 (i) Transportation cost shall be the amount
940 allocated to such school district for the operational support of
941 the district transportation system from state funds.

942 (ii) Vocational or technical education program
943 cost shall be the amount allocated to such school district from
944 state funds for the operational support of such programs.

945 (iii) Special education program cost shall be the
946 amount allocated to such school district from state funds for the
947 operational support of such programs.

948 (iv) Gifted education program cost shall be the
949 amount allocated to such school district from state funds for the
950 operational support of such programs.

951 (v) Alternative school program cost shall be the
952 amount allocated to such school district from state funds for the
953 operational support of such programs.

954 (vi) Extended school year programs shall be the
955 amount allocated to school districts for those programs authorized
956 by law which extend beyond the normal school year.

957 (vii) University-based programs shall be the
958 amount allocated to school districts for those university-based
959 programs for handicapped children as defined and provided for in
960 Section 37-23-131 et seq., Mississippi Code of 1972.

961 (viii) Bus driver training programs shall be the
962 amount provided for those driver training programs as provided for
963 in Section 37-41-1, Mississippi Code of 1972.

964 The sum of the items listed above (i) transportation, (ii)
965 vocational or technical education, (iii) special education, (iv)
966 gifted education, (v) alternative school, (vi) extended school
967 year, (vii) university-based, and (viii) bus driver training shall
968 yield the add-on cost for each school district.

969 (f) **Total projected adequate education program cost.**
970 The total Mississippi Adequate Education Program cost shall be the
971 sum of the total basic adequate education program cost (paragraph
972 (c)), and the adjustment to the base student cost for at-risk
973 pupils (paragraph (d)) for each school district.

974 (g) **Supplemental grant to school districts.** In
975 addition to the adequate education program grant, the State
976 Department of Education shall annually distribute an additional
977 amount as follows: Multiply the base student cost for the
978 appropriate fiscal year as determined under paragraph (b) by
979 thirteen one-hundredths percent (.13%) and multiply that product
980 by the average daily attendance of each school district. Such
981 grant shall not be subject to the local revenue requirement
982 provided in subsection (2).

983 (h) The State Auditor shall annually verify the State
984 Board of Education's estimated calculations for the Mississippi
985 Adequate Education Program that are submitted each year to the

986 Legislative Budget Office on August 1 and the final calculation
987 that is submitted on January 2.

988 (2) **Computation of the required local revenue in support of**
989 **the adequate education program.** The amount that each district
990 shall provide toward the cost of the adequate education program
991 shall be calculated as follows:

992 (a) The State Board of Education shall certify to each
993 school district that twenty-eight (28) mills, less the estimated
994 amount of the yield of the School Ad Valorem Tax Reduction Fund
995 grants as determined by the State Department of Education, is the
996 millage rate required to provide the district required local
997 effort for that year, or twenty-seven percent (27%) of the basic
998 adequate education program cost for such school district as
999 determined under paragraph (c), whichever is a lesser amount. In
1000 the case of an agricultural high school the millage requirement
1001 shall be set at a level which generates an equitable amount per
1002 pupil to be determined by the State Board of Education.

1003 (b) The State Board of Education shall determine (i)
1004 the total assessed valuation of nonexempt property for school
1005 purposes in each school district; (ii) assessed value of exempt
1006 property owned by homeowners aged sixty-five (65) or older or
1007 disabled as defined in Section 27-33-67(2), Mississippi Code of
1008 1972; (iii) the school district's tax loss from exemptions
1009 provided to applicants under the age of sixty-five (65) and not
1010 disabled as defined in Section 27-33-67(1), Mississippi Code of
1011 1972; and (iv) the school district's homestead reimbursement
1012 revenues.

1013 (c) The amount of the total adequate education program
1014 funding which shall be contributed by each school district shall
1015 be the sum of the ad valorem receipts generated by the millage
1016 required under this subsection plus the following local revenue
1017 sources for the appropriate fiscal year which are or may be
1018 available for current expenditure by the school district:

1019 One hundred percent (100%) of Grand Gulf income as prescribed
1020 in Section 27-35-309.

1021 (3) **Computation of the required state effort in support of**
1022 **the adequate education program.**

1023 (a) The required state effort in support of the
1024 adequate education program shall be determined by subtracting the
1025 sum of the required local tax effort as set forth in subsection
1026 (2)(a) of this section and the other local revenue sources as set
1027 forth in subsection (2)(c) of this section in an amount not to
1028 exceed twenty-seven percent (27%) of the total projected adequate
1029 education program cost as set forth in subsection (1)(f) of this
1030 section from the total projected adequate education program cost
1031 as set forth in subsection (1)(f) of this section.

1032 (b) Provided, however, that in fiscal year 1998 and in
1033 the fiscal year in which the adequate education program is fully
1034 funded by the Legislature, any increase in the said state
1035 contribution, including the supplemental grant to school districts
1036 provided under subsection (1)(g), to any district calculated under
1037 this section shall be not less than eight percent (8%) in excess
1038 of the amount received by said district from state funds for the
1039 fiscal year immediately preceding. For purposes of this paragraph
1040 (b), state funds shall include minimum program funds less the
1041 add-on programs, State Uniform Millage Assistance Grant Funds,
1042 Education Enhancement Funds appropriated for Uniform Millage
1043 Assistance Grants and state textbook allocations, and State
1044 General Funds allocated for textbooks.

1045 (c) If the appropriation is less than full funding for
1046 fiscal year 2003, allocations for state contributions to school
1047 districts in support of the adequate education program will be
1048 determined by the State Department of Education in the following
1049 manner:

1050 (i) Calculation of the full funding amount under
1051 this chapter, with proportionate reductions as required by the
1052 appropriation level.

1053 (ii) Calculation of the amount equal to the state
1054 funds allocated to school districts for fiscal year 2002 plus the
1055 estimated amount to fund the adequate education program salary
1056 schedule for fiscal year 2003. For purposes of this item (ii),
1057 state funds shall be those described in paragraph (b) and an
1058 amount equal to the allocation for the adequate education program
1059 in fiscal year 2002, plus any additional amount required to
1060 satisfy fiscal year 2003 pledges in accordance with paragraphs
1061 (d), (e) and (f) of subsection (5) of this section. If a school
1062 district's fiscal year 2003 pledge is different than the pledge
1063 amount for fiscal year 2002, the district shall receive an amount
1064 equal to the fiscal year 2003 pledge or the amount of funds
1065 calculated under the adequate education formula for fiscal year
1066 2002 before any pledge guarantee for fiscal year 2002, whichever
1067 is greater. If the pledge is no longer in effect, the district
1068 shall receive the amount of funds calculated under the formula for
1069 fiscal year 2002 before any pledge guarantee for fiscal year 2002.

1070 (iii) The portion of any district's allocation
1071 calculated in item (i) of this paragraph which exceeds amounts as
1072 calculated in item (ii) shall be reduced by an amount not to
1073 exceed twenty-one percent (21%). The amount of funds generated by
1074 this reduction of funds shall be redistributed proportionately
1075 among those districts receiving insufficient funds to meet the
1076 amount calculated in item (ii). In no case may any district
1077 receive funds in an amount greater than the amount that the
1078 district would have received under full funding of the program for
1079 fiscal year 2003.

1080 (d) If the school board of any school district shall
1081 determine that it is not economically feasible or practicable to
1082 operate any school within the district for the full one hundred

1083 eighty (180) days required for a school term of a scholastic year
1084 as required in Section 37-13-63, Mississippi Code of 1972, due to
1085 an enemy attack, a man-made, technological or natural disaster in
1086 which the Governor has declared a disaster emergency under the
1087 laws of this state or the President of the United States has
1088 declared an emergency or major disaster to exist in this state,
1089 said school board may notify the State Department of Education of
1090 such disaster and submit a plan for altering the school term. If
1091 the State Board of Education finds such disaster to be the cause
1092 of the school not operating for the contemplated school term and
1093 that such school was in a school district covered by the
1094 Governor's or President's disaster declaration, it may permit said
1095 school board to operate the schools in its district for less than
1096 one hundred eighty (180) days and, in such case, the State
1097 Department of Education shall not reduce the state contributions
1098 to the adequate education program allotment for such district,
1099 because of the failure to operate said schools for one hundred
1100 eighty (180) days.

1101 (4) If during the year for which adequate education program
1102 funds are appropriated, any school district experiences a three
1103 percent (3%) or greater increase in average daily attendance
1104 during the second and third month over the preceding year's second
1105 and third month and the school district has requested a minimum
1106 increase of four percent (4%) in local ad valorem revenues over
1107 the previous year as authorized in Sections 37-57-104 and
1108 37-57-105, an additional allocation of adequate education program
1109 funds calculated in the following manner shall be granted to that
1110 district, using any additional funds available to the Department
1111 of Education that exceed the amount of funds due to the school
1112 districts under the basic adequate education program distribution
1113 as provided for in this chapter:

1114 (a) Determine the percentage increase in average daily
1115 attendance for the second and third months of the year for which

1116 adequate education program funds are appropriated over the
1117 preceding year's second and third month average daily attendance.

1118 (b) For those districts that have a three percent (3%)
1119 or greater increase as calculated in paragraph (a) of this
1120 subsection, multiply the total increase in students in average
1121 daily attendance for the second and third months of the year for
1122 which adequate education program funds are appropriated over the
1123 preceding year's second and third month average daily attendance
1124 times the base student cost used in the appropriation.

1125 (c) Subtract the percentage of the district's local
1126 contribution arrived at in subsection (2) of this section from the
1127 amount calculated in paragraph (b) of this subsection. The
1128 remainder is the additional allocation in adequate education
1129 program funds for that district.

1130 If the funds available to the Department of Education are not
1131 sufficient to fully fund the additional allocations to school
1132 districts eligible for those allocations, then the department
1133 shall prorate the available funds among the eligible school
1134 districts, using the same percentage of the total funds that the
1135 school district would have received if the allocations were fully
1136 funded. The State Department of Education shall study and develop
1137 a report to the Chairmen of the Senate and House Committees on
1138 Education by January 1, 2005, with options for legislative
1139 consideration that will insure that the Mississippi Adequate
1140 Education funds are distributed to school districts based on
1141 current year student attendance or enrollment.

1142 This subsection (4) shall stand repealed on July 1, 2006.

1143 (5) The Interim School District Capital Expenditure Fund is
1144 hereby established in the State Treasury which shall be used to
1145 distribute any funds specifically appropriated by the Legislature
1146 to such fund to school districts entitled to increased allocations
1147 of state funds under the adequate education program funding
1148 formula prescribed in Sections 37-151-3 through 37-151-7,

1149 Mississippi Code of 1972, until such time as the said adequate
1150 education program is fully funded by the Legislature. The
1151 following percentages of the total state cost of increased
1152 allocations of funds under the adequate education program funding
1153 formula shall be appropriated by the Legislature into the Interim
1154 School District Capital Expenditure Fund to be distributed to all
1155 school districts under the formula: Nine and two-tenths percent
1156 (9.2%) shall be appropriated in fiscal year 1998, twenty percent
1157 (20%) shall be appropriated in fiscal year 1999, forty percent
1158 (40%) shall be appropriated in fiscal year 2000, sixty percent
1159 (60%) shall be appropriated in fiscal year 2001, eighty percent
1160 (80%) shall be appropriated in fiscal year 2002, and one hundred
1161 percent (100%) shall be appropriated in fiscal year 2003 into the
1162 State Adequate Education Program Fund created in subsection (4).
1163 Until July 1, 2002, such money shall be used by school districts
1164 for the following purposes:

1165 (a) Purchasing, erecting, repairing, equipping,
1166 remodeling and enlarging school buildings and related facilities,
1167 including gymnasiums, auditoriums, lunchrooms, vocational training
1168 buildings, libraries, school barns and garages for transportation
1169 vehicles, school athletic fields and necessary facilities
1170 connected therewith, and purchasing land therefor. Any such
1171 capital improvement project by a school district shall be approved
1172 by the State Board of Education, and based on an approved
1173 long-range plan. The State Board of Education shall promulgate
1174 minimum requirements for the approval of school district capital
1175 expenditure plans.

1176 (b) Providing necessary water, light, heating, air
1177 conditioning, and sewerage facilities for school buildings, and
1178 purchasing land therefor.

1179 (c) Paying debt service on existing capital improvement
1180 debt of the district or refinancing outstanding debt of a district

1181 if such refinancing will result in an interest cost savings to the
1182 district.

1183 (d) From and after October 1, 1997, through June 30,
1184 1998, pursuant to a school district capital expenditure plan
1185 approved by the State Department of Education, a school district
1186 may pledge such funds until July 1, 2002, plus funds provided for
1187 in paragraph (e) of this subsection (5) that are not otherwise
1188 permanently pledged under such paragraph (e) to pay all or a
1189 portion of the debt service on debt issued by the school district
1190 under Sections 37-59-1 through 37-59-45, 37-59-101 through
1191 37-59-115, 37-7-351 through 37-7-359, 37-41-89 through 37-41-99,
1192 37-7-301, 37-7-302 and 37-41-81, Mississippi Code of 1972, or debt
1193 issued by boards of supervisors for agricultural high schools
1194 pursuant to Section 37-27-65, Mississippi Code of 1972, or
1195 lease-purchase contracts entered into pursuant to Section 31-7-13,
1196 Mississippi Code of 1972, or to retire or refinance outstanding
1197 debt of a district, if such pledge is accomplished pursuant to a
1198 written contract or resolution approved and spread upon the
1199 minutes of an official meeting of the district's school board or
1200 board of supervisors. It is the intent of this provision to allow
1201 school districts to irrevocably pledge their Interim School
1202 District Capital Expenditure Fund allotments as a constant stream
1203 of revenue to secure a debt issued under the foregoing code
1204 sections. To allow school districts to make such an irrevocable
1205 pledge, the state shall take all action necessary to ensure that
1206 the amount of a district's Interim School District Capital
1207 Expenditure Fund allotments shall not be reduced below the amount
1208 certified by the department or the district's total allotment
1209 under the Interim Capital Expenditure Fund if fully funded, so
1210 long as such debt remains outstanding.

1211 (e) From and after October 1, 1997, through June 30,
1212 1998, in addition to any other authority a school district may
1213 have, any school district may issue State Aid Capital Improvement

1214 Bonds secured in whole by a continuing annual pledge of any
1215 Mississippi Adequate Education Program funds available to the
1216 district, in an amount not to exceed One Hundred Sixty Dollars
1217 (\$160.00) per pupil based on the latest completed average daily
1218 attendance count certified by the department prior to the issuance
1219 of the bonds. Such State Aid Capital Improvement Bonds may be
1220 issued for the purposes enumerated in paragraphs (a), (b), (c) and
1221 (g) of this section. Prior to issuing such bonds, the school
1222 board of the district shall adopt a resolution declaring the
1223 necessity for and its intention of issuing such bonds and
1224 borrowing such money, specifying the approximate amount to be so
1225 borrowed, how such money is to be used and how such indebtedness
1226 is to be evidenced. Any capital improvement project financed with
1227 State Aid Capital Improvement Bonds shall be approved by the
1228 department, and based on an approved long-range plan. The State
1229 Board of Education shall promulgate minimum requirements for the
1230 approval of such school district capital expenditure plans. The
1231 State Board of Education shall not approve any capital expenditure
1232 plan for a pledge of funds under this paragraph unless it
1233 determines (i) that the quality of instruction in such district
1234 will not be reduced as a result of this pledge, and (ii) the
1235 district has other revenue available to attain and maintain at
1236 least Level III accreditation.

1237 A district issuing State Aid Capital Improvement Bonds may
1238 pledge for the repayment of such bonds all funds received by the
1239 district from the state, in an amount not to exceed One Hundred
1240 Sixty Dollars (\$160.00) per pupil in average daily attendance in
1241 the school district as set forth above, and not otherwise
1242 permanently pledged under paragraph (d) of this subsection or
1243 under Section 37-61-33(2)(d), Mississippi Code of 1972. The
1244 district's school board shall specify by resolution the amount of
1245 state funds, which are being pledged by the district for the
1246 repayment of the State Aid Capital Improvement Bonds. Once such a

1247 pledge is made to secure the bonds, the district shall notify the
1248 department of such pledge. Upon making such a pledge, the school
1249 district may request the department which may agree to irrevocably
1250 transfer a specified amount or percentage of the district's state
1251 revenue pledged to repay the district's State Aid Capital
1252 Improvement Bonds directly to a state or federally chartered bank
1253 serving as a trustee or paying agent on such bonds for the payment
1254 of all or portion of such State Aid Capital Improvement Bonds.
1255 Such instructions shall be incorporated into a resolution by the
1256 school board for the benefit of holders of the bonds and may
1257 provide that such withholding and transfer of such other available
1258 funds shall be made only upon notification by a trustee or paying
1259 agent on such bonds that the amounts available to pay such bonds
1260 on any payment date will not be sufficient. It is the intent of
1261 this provision to allow school districts to irrevocably pledge a
1262 certain, constant stream of revenue as security for State Aid
1263 Capital Improvement Bonds issued hereunder. To allow school
1264 districts to make such an irrevocable pledge, the state shall take
1265 all action necessary to ensure that the amount of a district's
1266 state revenues up to an amount equal to One Hundred Sixty Dollars
1267 (\$160.00) per pupil as set forth above which have been pledged to
1268 repay debt as set forth herein shall not be reduced so long as any
1269 State Aid Capital Improvement Bonds are outstanding.

1270 Any such State Aid Capital Improvement Bonds shall mature as
1271 determined by the district's school bond over a period not to
1272 exceed twenty (20) years. Such bonds shall not bear a greater
1273 overall maximum interest rate to maturity than that allowed in
1274 Section 75-17-101, Mississippi Code of 1972. The further details
1275 and terms of such bonds shall be as determined by the school board
1276 of the district.

1277 The provisions of this subsection shall be cumulative and
1278 supplemental to any existing funding programs or other authority
1279 conferred upon school districts or school boards. Debt of a

1280 school district secured in whole by a pledge of revenue pursuant
1281 to this section shall not be subject to any debt limitation.

1282 For purposes of this paragraph (e), "State Aid Capital
1283 Improvement Bond" shall mean any bond, note, or other certificate
1284 of indebtedness issued by a school district under the provisions
1285 hereof.

1286 This paragraph (e) shall stand repealed from and after June
1287 30, 1998.

1288 (f) As an alternative to the authority granted under
1289 paragraph (e), a school district, in its discretion, may authorize
1290 the State Board of Education to withhold an amount of the
1291 district's adequate education program allotment equal to up to One
1292 Hundred Sixty Dollars (\$160.00) per student in average daily
1293 attendance in the district to be allocated to the State Public
1294 School Building Fund to the credit of such school district. A
1295 school district may choose the option provided under this
1296 paragraph (e) or paragraph (f), but not both. In addition to the
1297 grants made by the state pursuant to Section 37-47-9, a school
1298 district shall be entitled to grants based on the allotments to
1299 the State Public School Building Fund credited to such school
1300 district under this paragraph. This paragraph (f) shall stand
1301 repealed from and after June 30, 1998.

1302 (g) The State Board of Education may authorize the
1303 school district to expend not more than twenty percent (20%) of
1304 its annual allotment of such funds or Twenty Thousand Dollars
1305 (\$20,000.00), whichever is greater, for technology needs of the
1306 school district, including computers, software,
1307 telecommunications, cable television, interactive video, film,
1308 low-power television, satellite communications, microwave
1309 communications, technology-based equipment installation and
1310 maintenance, and the training of staff in the use of such
1311 technology-based instruction. Any such technology expenditure
1312 shall be reflected in the local district technology plan approved

1313 by the State Board of Education under Section 37-151-17,
1314 Mississippi Code of 1972.

1315 (h) To the extent a school district has not utilized
1316 twenty percent (20%) of its annual allotment for technology
1317 purposes under paragraph (g), a school district may expend not
1318 more than twenty percent (20%) of its annual allotment or Twenty
1319 Thousand Dollars (\$20,000.00), whichever is greater, for
1320 instructional purposes. The State Board of Education may
1321 authorize a school district to expend more than said twenty
1322 percent (20%) of its annual allotment for instructional purposes
1323 if it determines that such expenditures are needed for
1324 accreditation purposes.

1325 (i) The State Department of Education or the State
1326 Board of Education may require that any project commenced under
1327 this section with an estimated project cost of more than
1328 Twenty-five Million Dollars (\$25,000,000.00) shall be done * * *
1329 pursuant to program management of the process with respect to
1330 design and construction. No project management of the process
1331 with respect to design and construction shall be used for any
1332 project with an estimated project cost of less than Twenty-five
1333 Million Dollars (\$25,000,000.00). Any individuals, partnerships,
1334 companies or other entities acting as a program manager on behalf
1335 of a local school district and performing program management
1336 services for projects covered under this subsection shall be
1337 approved by the State Department of Education.

1338 Any interest accruing on any unexpended balance in the
1339 Interim School District Capital Expenditure Fund shall be invested
1340 by the State Treasurer and placed to the credit of each school
1341 district participating in such fund in its proportionate share.

1342 The provisions of this subsection (5) shall be cumulative and
1343 supplemental to any existing funding programs or other authority
1344 conferred upon school districts or school boards.

1345 **SECTION 4.** This act shall take effect and be in force from
1346 and after July 1, 2006.