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To: Universities and
Colleges; Appropriations

HOUSE BILL NO. 992

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

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

17 **SECTION 1.** The following shall be codified as Section
18 37-101-44, Mississippi Code of 1972:

19 37-101-44. (1) In lieu of exercising the authority set
20 forth in Section 37-101-43 and before entering into or awarding
21 any lease under Section 37-101-41, the Board of Trustees of State
22 Institutions of Higher Learning may award contracts to a single
23 entity for privately financed design and construction of parking
24 structures, on the University of Southern Mississippi campus if
25 the entities receiving the contract or contracts and those
26 entities to which work or services are subcontracted are duly
27 licensed and qualified in the state to perform the contract or
28 contracts. State General Fund appropriations or bonds backed by
29 the state may not be used to finance the construction or
30 maintenance of any such parking structure.

31 (2) The design-build delivery system described under
32 subsection (1) of this section may be authorized only when the
33 Board of Trustees of State Institutions of Higher Learning makes a

determination, entered on its minutes, with specific findings for the project demonstrating how it is in the best interest of the public to enter into a design-build contract. At a minimum, the determination must include a detailed explanation of why a design-build approach for a particular project satisfies the public need better than the traditional design-bid-build approach.

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

(a) During phase one, and before solicitation of initial proposals, the board shall develop, with the assistance of a registered architect or engineer, a scope of work statement that provides prospective offerors with sufficient information regarding the board's requirements. The scope of work statement must include floor plans showing spaces by name and number, actual net area of each space, structural module, fixed equipment, mechanical spaces, chases and circulation areas. Drawings must show overall structure dimensions and major lines of dimensions, and site plans which show topography, adjacent buildings and utilities. Drawings must include information to adequately explain HVAC, electrical and structural requirements. Information concerning furnishings, miscellaneous equipment, layouts, lists and schedules necessary to explain the plans must be indicated on floor plans. The registered architect or engineer engaged by the board also shall prepare preliminary specifications following the Construction Specifications Institute format and giving basic descriptions of essential building materials, finishes, components and all systems. The scope of work statement also must include structure elevations, sections and design details. Structure elevations must show fenestration and proposed exterior materials. The scope of work statement must include general budget parameters, schedule or delivery requirements, relevant criteria for evaluation of proposals, and any other information necessary

67 to enable the design-builders to submit proposals that meet the
68 board's needs.

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

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

91 (d) During phase two, the shortlisted firms will be
92 invited to submit detailed designs, specific technical concepts or
93 solutions, pricing, scheduling and other information deemed
94 appropriate by the board as necessary to evaluate and rank
95 acceptability of the phase two proposals. After evaluation of
96 these phase two proposals, the board shall award a contract to the
97 design-builder determined to offer the best value to the public in
98 accordance with evaluation criteria set forth in the request for

proposals, of which price must be one, but not necessarily the only, criterion.

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

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

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

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

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

37-101-43. (a) Except as otherwise provided in Section 37-101-44, before entering into or awarding any such lease contract under the provisions of Section 37-101-41, the Board of Trustees of State Institutions of Higher Learning shall cause the interested state-supported institution upon which a facility is proposed to be constructed to select and submit three (3)

architects to the board. Thereupon, the board shall approve and employ an architect, who shall be paid by the interested institution from any funds available to the interested institution. The architect, under the direction of the interested institution, shall prepare complete plans and specifications for the facility desired to be constructed on the leased property.

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

165 The board shall award the lease contract to the lowest and
166 best bidder, who will comply with the terms imposed by the
167 contract documents. At the time of the awarding of the lease
168 contract the successful bidder shall enter into bond with
169 sufficient sureties, to be approved by the board, in such penalty
170 as may be fixed by the board, but in no case to be less than the
171 estimated gross construction cost of the facility to be
172 constructed as estimated by the board, conditioned for the prompt,
173 proper and efficient performance of the contract. The bond shall
174 be made by an authorized corporate surety bonding company.
175 The * * * bid security herein provided for shall be forfeited if
176 the successful bidder fails to enter into lease contract and
177 commence construction within the time limitation set forth in the
178 notice. At such time, and simultaneously with the signing of the
179 contract, the successful bidder shall deposit a sum of money, in
180 cash or certified or cashier's check, not less than the bid
181 security previously deposited as bid security to reimburse the
182 interested institution for all sums expended by it for
183 architectural services and other expenditures of the board and
184 interested institution connected with the bided lease contract, of
185 which such other anticipated expenditures notice is to be given to
186 bidder in the notice. The bid security posted by an unsuccessful
187 bidder shall be refunded to him.

188 (b) Pursuant to the authority granted under Section
189 37-101-44, the requirements of paragraph (a) of this section shall
190 not apply to the Board of Trustees of the University of Southern
191 Mississippi authority to contract with a single entity for
192 privately financed design and construction of parking structures
193 on the university's campus.

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

196 37-101-41. (a) Except as otherwise provided in paragraph
197 (b) of this section, the Board of Trustees of State Institutions

of Higher Learning is hereby authorized and empowered to lease to private individuals or corporations, for a term not exceeding thirty-one (31) years, any land at any of the following state-supported institutions: Mississippi State University of Agriculture and Applied Science, Jackson State University, Mississippi Valley State University, Alcorn State University, University of Southern Mississippi, Mississippi University for Women and Delta State University, for the purpose of erecting housing and dormitory facilities thereon for active faculty and students. The housing facilities shall be constructed thereon by private financing, and shall be leased back to the board for use by the concerned state-supported institution of higher learning. The lease shall contain a provision permitting the board to purchase the building located thereon for the sum of One Dollar (\$1.00) after payment by the board of all sums of money due under said lease.

(b) Pursuant to the authority granted under Section 37-101-44, the Board of Trustees of the University of Southern Mississippi may lease to private individuals or corporations, for a term not exceeding thirty-one (31) years, any land at the university, for the purpose of erecting parking structures thereon for active faculty and students. The parking structures shall be constructed thereon by private financing, and shall be leased back to the board for use by the university. The lease shall contain a provision permitting the board to purchase the parking structures located thereon for the sum of One Dollar (\$1.00) after payment by the board of all sums of money due under said lease.

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

31-7-13. All agencies and governing authorities shall purchase their commodities and printing; contract for garbage collection or disposal; contract for solid waste collection or

disposal; contract for sewage collection or disposal; contract for public construction; and contract for rentals as herein provided.

(a) **Bidding procedure for purchases not over \$3,500.00.**

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

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

263 written bid" shall mean a bid submitted on a bid form furnished by
264 the buying agency or governing authority and signed by authorized
265 personnel representing the vendor, or a bid submitted on a
266 vendor's letterhead or identifiable bid form and signed by
267 authorized personnel representing the vendor. "Competitive" shall
268 mean that the bids are developed based upon comparable
269 identification of the needs and are developed independently and
270 without knowledge of other bids or prospective bids. Bids may be
271 submitted by facsimile, electronic mail or other generally
272 accepted method of information distribution. Bids submitted by
273 electronic transmission shall not require the signature of the
274 vendor's representative unless required by agencies or governing
275 authorities.

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

277 (i) **Publication requirement.** Purchases which
278 involve an expenditure of more than Fifteen Thousand Dollars
279 (\$15,000.00), exclusive of freight and shipping charges, may be
280 made from the lowest and best bidder after advertising for
281 competitive sealed bids once each week for two (2) consecutive
282 weeks in a regular newspaper published in the county or
283 municipality in which such agency or governing authority is
284 located. The date as published for the bid opening shall not be
285 less than seven (7) working days after the last published notice;
286 however, if the purchase involves a construction project in which
287 the estimated cost is in excess of Fifteen Thousand Dollars
288 (\$15,000.00), such bids shall not be opened in less than fifteen
289 (15) working days after the last notice is published and the
290 notice for the purchase of such construction shall be published
291 once each week for two (2) consecutive weeks. The notice of
292 intention to let contracts or purchase equipment shall state the
293 time and place at which bids shall be received, list the contracts
294 to be made or types of equipment or supplies to be purchased, and,
295 if all plans and/or specifications are not published, refer to the

plans and/or specifications on file. If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or municipality in the above provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to, or provide electronic notification to the main office of the Mississippi Contract Procurement Center that contains the same information as that in the published notice.

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

(iii) **Filing requirement.** In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board of the governing authority. In addition to these requirements, a

329 bid file shall be established which shall indicate those vendors
330 to whom such solicitations and specifications were issued, and
331 such file shall also contain such information as is pertinent to
332 the bid.

333 (iv) **Specification restrictions.**

334 1. Specifications pertinent to such bidding
335 shall be written so as not to exclude comparable equipment of
336 domestic manufacture. However, if valid justification is
337 presented, the Department of Finance and Administration or the
338 board of a governing authority may approve a request for specific
339 equipment necessary to perform a specific job. Further, such
340 justification, when placed on the minutes of the board of a
341 governing authority, may serve as authority for that governing
342 authority to write specifications to require a specific item of
343 equipment needed to perform a specific job. In addition to these
344 requirements, from and after July 1, 1990, vendors of relocatable
345 classrooms and the specifications for the purchase of such
346 relocatable classrooms published by local school boards shall meet
347 all pertinent regulations of the State Board of Education,
348 including prior approval of such bid by the State Department of
349 Education.

350 2. Specifications for construction projects
351 may include an allowance for commodities, equipment, furniture,
352 construction materials or systems in which prospective bidders are
353 instructed to include in their bids specified amounts for such
354 items so long as the allowance items are acquired by the vendor in
355 a commercially reasonable manner and approved by the
356 agency/governing authority. Such acquisitions shall not be made
357 to circumvent the public purchasing laws.

358 (v) Agencies and governing authorities may
359 establish secure procedures by which bids may be submitted via
360 electronic means.

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

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

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

(iii) **Construction project negotiations authority.**
If the lowest and best bid is not more than ten percent (10%)

above the amount of funds allocated for a public construction or renovation project, then the agency or governing authority shall be permitted to negotiate with the lowest bidder in order to enter into a contract for an amount not to exceed the funds allocated.

(e) **Lease-purchase authorization.** For the purposes of this section, the term "equipment" shall mean equipment, furniture and, if applicable, associated software and other applicable direct costs associated with the acquisition. Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof. No such lease-purchase agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101, and the term of such lease-purchase agreement shall not exceed the useful life of equipment covered thereby as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to this paragraph (e) may contain

428 any of the terms and conditions which a master lease-purchase
429 agreement may contain under the provisions of Section 31-7-10(5),
430 and shall contain an annual allocation dependency clause
431 substantially similar to that set forth in Section 31-7-10(8).
432 Each agency or governing authority entering into a lease-purchase
433 transaction pursuant to this paragraph (e) shall maintain with
434 respect to each such lease-purchase transaction the same
435 information as required to be maintained by the Department of
436 Finance and Administration pursuant to Section 31-7-10(13).
437 However, nothing contained in this section shall be construed to
438 permit agencies to acquire items of equipment with a total
439 acquisition cost in the aggregate of less than Ten Thousand
440 Dollars (\$10,000.00) by a single lease-purchase transaction. All
441 equipment, and the purchase thereof by any lessor, acquired by
442 lease-purchase under this paragraph and all lease-purchase
443 payments with respect thereto shall be exempt from all Mississippi
444 sales, use and ad valorem taxes. Interest paid on any
445 lease-purchase agreement under this section shall be exempt from
446 State of Mississippi income taxation.

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

456 (g) **Construction contract change authorization.** In the
457 event a determination is made by an agency or governing authority
458 after a construction contract is let that changes or modifications
459 to the original contract are necessary or would better serve the
460 purpose of the agency or the governing authority, such agency or

461 governing authority may, in its discretion, order such changes
462 pertaining to the construction that are necessary under the
463 circumstances without the necessity of further public bids;
464 provided that such change shall be made in a commercially
465 reasonable manner and shall not be made to circumvent the public
466 purchasing statutes. In addition to any other authorized person,
467 the architect or engineer hired by an agency or governing
468 authority with respect to any public construction contract shall
469 have the authority, when granted by an agency or governing
470 authority, to authorize changes or modifications to the original
471 contract without the necessity of prior approval of the agency or
472 governing authority when any such change or modification is less
473 than one percent (1%) of the total contract amount. The agency or
474 governing authority may limit the number, manner or frequency of
475 such emergency changes or modifications.

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

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

(j) **State agency emergency purchase procedure.** If the governing board or the executive head, or his designee, of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the provisions herein for competitive bidding shall not apply and the head of such agency shall be authorized to make the purchase or repair. Total purchases so made shall only be for the purpose of meeting needs created by the emergency situation. In the event such executive head is responsible to an agency board, at the meeting next following the emergency purchase, documentation of the purchase, including a description of the commodity purchased,

the purchase price thereof and the nature of the emergency shall be presented to the board and placed on the minutes of the board of such agency. The head of such agency, or his designee, shall, at the earliest possible date following such emergency purchase, file with the Department of Finance and Administration (i) a statement explaining the conditions and circumstances of the emergency, which shall include a detailed description of the events leading up to the situation and the negative impact to the entity if the purchase is made following the statutory requirements set forth in paragraph (a), (b) or (c) of this section, and (ii) a certified copy of the appropriate minutes of the board of such agency, if applicable. On or before September 1 of each year, the State Auditor shall prepare and deliver to the Senate Fees, Salaries and Administration Committee, the House Fees and Salaries of Public Officers Committee and the Joint Legislative Budget Committee a report containing a list of all state agency emergency purchases and supporting documentation for each emergency purchase.

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

If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefor in making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price

559 thereof and the nature of the emergency shall be presented to the
560 board and shall be placed on the minutes of the board of such
561 governing authority.

562 (1) **Hospital purchase, lease-purchase and lease**
563 **authorization.**

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

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

585 (m) **Exceptions from bidding requirements.** Excepted
586 from bid requirements are:

587 (i) **Purchasing agreements approved by department.**
588 Purchasing agreements, contracts and maximum price regulations
589 executed or approved by the Department of Finance and
590 Administration.

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

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

608 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
609 of gravel or fill dirt which are to be removed and transported by
610 the purchaser.

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

622 (vi) **Intergovernmental sales and transfers.**
623 Purchases, sales, transfers or trades by governing authorities or

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

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

(viii) **Single source items.** Noncompetitive items available from one (1) source only. In connection with the purchase of noncompetitive items only available from one (1) source, a certification of the conditions and circumstances requiring the purchase shall be filed by the agency with the Department of Finance and Administration and by the governing authority with the board of the governing authority. Upon receipt of that certification the Department of Finance and Administration or the board of the governing authority, as the case may be, may, in writing, authorize the purchase, which authority shall be noted on the minutes of the body at the next regular meeting thereafter.

657 In those situations, a governing authority is not required to
658 obtain the approval of the Department of Finance and
659 Administration.

660 (ix) **Waste disposal facility construction**
661 **contracts.** Construction of incinerators and other facilities for
662 disposal of solid wastes in which products either generated
663 therein, such as steam, or recovered therefrom, such as materials
664 for recycling, are to be sold or otherwise disposed of; however,
665 in constructing such facilities, a governing authority or agency
666 shall publicly issue requests for proposals, advertised for in the
667 same manner as provided herein for seeking bids for public
668 construction projects, concerning the design, construction,
669 ownership, operation and/or maintenance of such facilities,
670 wherein such requests for proposals when issued shall contain
671 terms and conditions relating to price, financial responsibility,
672 technology, environmental compatibility, legal responsibilities
673 and such other matters as are determined by the governing
674 authority or agency to be appropriate for inclusion; and after
675 responses to the request for proposals have been duly received,
676 the governing authority or agency may select the most qualified
677 proposal or proposals on the basis of price, technology and other
678 relevant factors and from such proposals, but not limited to the
679 terms thereof, negotiate and enter contracts with one or more of
680 the persons or firms submitting proposals.

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

684 (xi) **Information technology products.** Purchases
685 of information technology products made by governing authorities
686 under the provisions of purchase schedules, or contracts executed
687 or approved by the Mississippi Department of Information
688 Technology Services and designated for use by governing
689 authorities.

690 (xii) **Energy efficiency services and equipment.**

691 Energy efficiency services and equipment acquired by school
692 districts, community and junior colleges, institutions of higher
693 learning and state agencies or other applicable governmental
694 entities on a shared-savings, lease or lease-purchase basis
695 pursuant to Section 31-7-14.

696 (xiii) **Municipal electrical utility system fuel.**

697 Purchases of coal and/or natural gas by municipally-owned electric
698 power generating systems that have the capacity to use both coal
699 and natural gas for the generation of electric power.

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

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

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

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

714 (xvii) **Multichannel interactive video systems.**

715 From and after July 1, 1990, contracts by Mississippi Authority
716 for Educational Television with any private educational
717 institution or private nonprofit organization whose purposes are
718 educational in regard to the construction, purchase, lease or
719 lease-purchase of facilities and equipment and the employment of
720 personnel for providing multichannel interactive video systems
721 (ITSF) in the school districts of this state.

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

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

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

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

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

740 (xxii) **Garbage, solid waste and sewage contracts.**
741 Contracts for garbage collection or disposal, contracts for solid
742 waste collection or disposal and contracts for sewage collection
743 or disposal.

744 (xxiii) **Municipal water tank maintenance**
745 **contracts.** Professional maintenance program contracts for the
746 repair or maintenance of municipal water tanks, which provide
747 professional services needed to maintain municipal water storage
748 tanks for a fixed annual fee for a duration of two (2) or more
749 years.

750 (xxiv) **Purchases of Mississippi Industries for the**
751 **Blind products.** Purchases made by state agencies or governing
752 authorities involving any item that is manufactured, processed or
753 produced by the Mississippi Industries for the Blind.

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

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

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

757 **Major Economic Impact Act.** Contracts entered into pursuant to the

758 provisions of Section 57-75-9(2) and (3).

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

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

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

762 machinery or equipment used for the installation and

763 implementation of soil and water conservation practices or

764 measures purchased subject to the restrictions provided in

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

766 Soil and Water Conservation Commission under the exemption

767 authorized by this subparagraph shall require advance

768 authorization spread upon the minutes of the commission to include

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

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

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

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

773 compliance with paragraph (1)(ii).

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

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

776 purchasing offices of state agencies or governing authorities

777 under cooperative purchasing agreements previously approved by the

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

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

780 government, provided that the notification to potential

781 contractors includes a clause that sets forth the availability of

782 the cooperative purchasing agreement to other governmental

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

784 cooperative purchasing agreements is determined to be in the best

785 interest of the governmental entity.

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

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

795 (xxxii) **Procurement of design and construction**
796 **services by state institutions of higher learning.** Privately
797 financed contracts awarded by the Board of Trustees of State
798 Institutions of Higher Learning for the design and construction of
799 buildings or facilities, including parking structures, classrooms
800 and athletic facilities on the campus of a state institution of
801 higher learning, as provided in Sections 1, 2 and 3 of this act.

802 (n) **Term contract authorization.** All contracts for the
803 purchase of:

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

814 (ii) Bid proposals and contracts may include price
815 adjustment clauses with relation to the cost to the contractor
816 based upon a nationally published industry-wide or nationally
817 published and recognized cost index. The cost index used in a
818 price adjustment clause shall be determined by the Department of

819 Finance and Administration for the state agencies and by the
820 governing board for governing authorities. The bid proposal and
821 contract documents utilizing a price adjustment clause shall
822 contain the basis and method of adjusting unit prices for the
823 change in the cost of such commodities, equipment and public
824 construction.

825 (o) **Purchase law violation prohibition and vendor**
826 **penalty.** No contract or purchase as herein authorized shall be
827 made for the purpose of circumventing the provisions of this
828 section requiring competitive bids, nor shall it be lawful for any
829 person or concern to submit individual invoices for amounts within
830 those authorized for a contract or purchase where the actual value
831 of the contract or commodity purchased exceeds the authorized
832 amount and the invoices therefor are split so as to appear to be
833 authorized as purchases for which competitive bids are not
834 required. Submission of such invoices shall constitute a
835 misdemeanor punishable by a fine of not less than Five Hundred
836 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
837 or by imprisonment for thirty (30) days in the county jail, or
838 both such fine and imprisonment. In addition, the claim or claims
839 submitted shall be forfeited.

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

847 (q) **Fuel management system bidding procedure.** Any
848 governing authority or agency of the state shall, before
849 contracting for the services and products of a fuel management or
850 fuel access system, enter into negotiations with not fewer than
851 two (2) sellers of fuel management or fuel access systems for

852 competitive written bids to provide the services and products for
853 the systems. In the event that the governing authority or agency
854 cannot locate two (2) sellers of such systems or cannot obtain
855 bids from two (2) sellers of such systems, it shall show proof
856 that it made a diligent, good-faith effort to locate and negotiate
857 with two (2) sellers of such systems. Such proof shall include,
858 but not be limited to, publications of a request for proposals and
859 letters soliciting negotiations and bids. For purposes of this
860 paragraph (q), a fuel management or fuel access system is an
861 automated system of acquiring fuel for vehicles as well as
862 management reports detailing fuel use by vehicles and drivers, and
863 the term "competitive written bid" shall have the meaning as
864 defined in paragraph (b) of this section. Governing authorities
865 and agencies shall be exempt from this process when contracting
866 for the services and products of a fuel management or fuel access
867 systems under the terms of a state contract established by the
868 Office of Purchasing and Travel.

869 (r) **Solid waste contract proposal procedure.** Before
870 entering into any contract for garbage collection or disposal,
871 contract for solid waste collection or disposal or contract for
872 sewage collection or disposal, which involves an expenditure of
873 more than Fifty Thousand Dollars (\$50,000.00), a governing
874 authority or agency shall issue publicly a request for proposals
875 concerning the specifications for such services which shall be
876 advertised for in the same manner as provided in this section for
877 seeking bids for purchases which involve an expenditure of more
878 than the amount provided in paragraph (c) of this section. Any
879 request for proposals when issued shall contain terms and
880 conditions relating to price, financial responsibility,
881 technology, legal responsibilities and other relevant factors as
882 are determined by the governing authority or agency to be
883 appropriate for inclusion; all factors determined relevant by the
884 governing authority or agency or required by this paragraph (r)

885 shall be duly included in the advertisement to elicit proposals.
886 After responses to the request for proposals have been duly
887 received, the governing authority or agency shall select the most
888 qualified proposal or proposals on the basis of price, technology
889 and other relevant factors and from such proposals, but not
890 limited to the terms thereof, negotiate and enter contracts with
891 one or more of the persons or firms submitting proposals. If the
892 governing authority or agency deems none of the proposals to be
893 qualified or otherwise acceptable, the request for proposals
894 process may be reinitiated. Notwithstanding any other provisions
895 of this paragraph, where a county with at least thirty-five
896 thousand (35,000) nor more than forty thousand (40,000)
897 population, according to the 1990 federal decennial census, owns
898 or operates a solid waste landfill, the governing authorities of
899 any other county or municipality may contract with the governing
900 authorities of the county owning or operating the landfill,
901 pursuant to a resolution duly adopted and spread upon the minutes
902 of each governing authority involved, for garbage or solid waste
903 collection or disposal services through contract negotiations.

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

918 Naturalization Service) of the United States, and who are Asian,
919 Black, Hispanic or Native American, according to the following
920 definitions:

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

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

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

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

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

940 (u) **Purchase authorization clarification.** Nothing in
941 this section shall be construed as authorizing any purchase not
942 authorized by law.

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