

By: Representatives Davis, Howell

To: Universities and
Colleges; Appropriations

HOUSE BILL NO. 1093

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

321 (iv) **Specification restrictions.**

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

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

338 2. Specifications for construction projects
339 may include an allowance for commodities, equipment, furniture,
340 construction materials or systems in which prospective bidders are
341 instructed to include in their bids specified amounts for such
342 items so long as the allowance items are acquired by the vendor in
343 a commercially reasonable manner and approved by the
344 agency/governing authority. Such acquisitions shall not be made
345 to circumvent the public purchasing laws.

346 (v) Agencies and governing authorities may
347 establish secure procedures by which bids may be submitted via
348 electronic means.

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

350 (i) **Decision procedure.** Purchases may be made
351 from the lowest and best bidder. In determining the lowest and
352 best bid, freight and shipping charges shall be included.
353 Life-cycle costing, total cost bids, warranties, guaranteed
354 buy-back provisions and other relevant provisions may be included
355 in the best bid calculation. All best bid procedures for state
356 agencies must be in compliance with regulations established by the
357 Department of Finance and Administration. If any governing
358 authority accepts a bid other than the lowest bid actually
359 submitted, it shall place on its minutes detailed calculations and
360 narrative summary showing that the accepted bid was determined to
361 be the lowest and best bid, including the dollar amount of the
362 accepted bid and the dollar amount of the lowest bid. No agency

363 or governing authority shall accept a bid based on items not
364 included in the specifications.

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

381 (iii) **Construction project negotiations authority.**
382 If the lowest and best bid is not more than ten percent (10%)
383 above the amount of funds allocated for a public construction or
384 renovation project, then the agency or governing authority shall
385 be permitted to negotiate with the lowest bidder in order to enter
386 into a contract for an amount not to exceed the funds allocated.

387 (e) **Lease-purchase authorization.** For the purposes of
388 this section, the term "equipment" shall mean equipment, furniture
389 and, if applicable, associated software and other applicable
390 direct costs associated with the acquisition. Any lease-purchase
391 of equipment which an agency is not required to lease-purchase
392 under the master lease-purchase program pursuant to Section
393 31-7-10 and any lease-purchase of equipment which a governing
394 authority elects to lease-purchase may be acquired by a
395 lease-purchase agreement under this paragraph (e). Lease-purchase

396 financing may also be obtained from the vendor or from a
397 third-party source after having solicited and obtained at least
398 two (2) written competitive bids, as defined in paragraph (b) of
399 this section, for such financing without advertising for such
400 bids. Solicitation for the bids for financing may occur before or
401 after acceptance of bids for the purchase of such equipment or,
402 where no such bids for purchase are required, at any time before
403 the purchase thereof. No such lease-purchase agreement shall be
404 for an annual rate of interest which is greater than the overall
405 maximum interest rate to maturity on general obligation
406 indebtedness permitted under Section 75-17-101, and the term of
407 such lease-purchase agreement shall not exceed the useful life of
408 equipment covered thereby as determined according to the upper
409 limit of the asset depreciation range (ADR) guidelines for the
410 Class Life Asset Depreciation Range System established by the
411 Internal Revenue Service pursuant to the United States Internal
412 Revenue Code and regulations thereunder as in effect on December
413 31, 1980, or comparable depreciation guidelines with respect to
414 any equipment not covered by ADR guidelines. Any lease-purchase
415 agreement entered into pursuant to this paragraph (e) may contain
416 any of the terms and conditions which a master lease-purchase
417 agreement may contain under the provisions of Section 31-7-10(5),
418 and shall contain an annual allocation dependency clause
419 substantially similar to that set forth in Section 31-7-10(8).
420 Each agency or governing authority entering into a lease-purchase
421 transaction pursuant to this paragraph (e) shall maintain with
422 respect to each such lease-purchase transaction the same
423 information as required to be maintained by the Department of
424 Finance and Administration pursuant to Section 31-7-10(13).
425 However, nothing contained in this section shall be construed to
426 permit agencies to acquire items of equipment with a total
427 acquisition cost in the aggregate of less than Ten Thousand
428 Dollars (\$10,000.00) by a single lease-purchase transaction. All

429 equipment, and the purchase thereof by any lessor, acquired by
430 lease-purchase under this paragraph and all lease-purchase
431 payments with respect thereto shall be exempt from all Mississippi
432 sales, use and ad valorem taxes. Interest paid on any
433 lease-purchase agreement under this section shall be exempt from
434 State of Mississippi income taxation.

435 (f) **Alternate bid authorization.** When necessary to
436 ensure ready availability of commodities for public works and the
437 timely completion of public projects, no more than two (2)
438 alternate bids may be accepted by a governing authority for
439 commodities. No purchases may be made through use of such
440 alternate bids procedure unless the lowest and best bidder cannot
441 deliver the commodities contained in his bid. In that event,
442 purchases of such commodities may be made from one (1) of the
443 bidders whose bid was accepted as an alternate.

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

462 governing authority may limit the number, manner or frequency of
463 such emergency changes or modifications.

464 (h) **Petroleum purchase alternative.** In addition to
465 other methods of purchasing authorized in this chapter, when any
466 agency or governing authority shall have a need for gas, diesel
467 fuel, oils and/or other petroleum products in excess of the amount
468 set forth in paragraph (a) of this section, such agency or
469 governing authority may purchase the commodity after having
470 solicited and obtained at least two (2) competitive written bids,
471 as defined in paragraph (b) of this section. If two (2)
472 competitive written bids are not obtained, the entity shall comply
473 with the procedures set forth in paragraph (c) of this section.
474 In the event any agency or governing authority shall have
475 advertised for bids for the purchase of gas, diesel fuel, oils and
476 other petroleum products and coal and no acceptable bids can be
477 obtained, such agency or governing authority is authorized and
478 directed to enter into any negotiations necessary to secure the
479 lowest and best contract available for the purchase of such
480 commodities.

481 (i) **Road construction petroleum products price**
482 **adjustment clause authorization.** Any agency or governing
483 authority authorized to enter into contracts for the construction,
484 maintenance, surfacing or repair of highways, roads or streets,
485 may include in its bid proposal and contract documents a price
486 adjustment clause with relation to the cost to the contractor,
487 including taxes, based upon an industry-wide cost index, of
488 petroleum products including asphalt used in the performance or
489 execution of the contract or in the production or manufacture of
490 materials for use in such performance. Such industry-wide index
491 shall be established and published monthly by the Mississippi
492 Department of Transportation with a copy thereof to be mailed,
493 upon request, to the clerks of the governing authority of each
494 municipality and the clerks of each board of supervisors

495 throughout the state. The price adjustment clause shall be based
496 on the cost of such petroleum products only and shall not include
497 any additional profit or overhead as part of the adjustment. The
498 bid proposals or document contract shall contain the basis and
499 methods of adjusting unit prices for the change in the cost of
500 such petroleum products.

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

528 and Salaries of Public Officers Committee and the Joint
529 Legislative Budget Committee a report containing a list of all
530 state agency emergency purchases and supporting documentation for
531 each emergency purchase.

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

533 If the governing authority, or the governing authority acting
534 through its designee, shall determine that an emergency exists in
535 regard to the purchase of any commodities or repair contracts, so
536 that the delay incident to giving opportunity for competitive
537 bidding would be detrimental to the interest of the governing
538 authority, then the provisions herein for competitive bidding
539 shall not apply and any officer or agent of such governing
540 authority having general or special authority therefor in making
541 such purchase or repair shall approve the bill presented therefor,
542 and he shall certify in writing thereon from whom such purchase
543 was made, or with whom such a repair contract was made. At the
544 board meeting next following the emergency purchase or repair
545 contract, documentation of the purchase or repair contract,
546 including a description of the commodity purchased, the price
547 thereof and the nature of the emergency shall be presented to the
548 board and shall be placed on the minutes of the board of such
549 governing authority.

550 (l) **Hospital purchase, lease-purchase and lease**
551 **authorization.**

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

557 (ii) In addition to the authority granted in
558 subparagraph (i) of this paragraph (l), the commissioners or board
559 of trustees is authorized to enter into contracts for the lease of
560 equipment or services, or both, which it considers necessary for

561 the proper care of patients if, in its opinion, it is not
562 financially feasible to purchase the necessary equipment or
563 services. Any such contract for the lease of equipment or
564 services executed by the commissioners or board shall not exceed a
565 maximum of five (5) years' duration and shall include a
566 cancellation clause based on unavailability of funds. If such
567 cancellation clause is exercised, there shall be no further
568 liability on the part of the lessee. Any such contract for the
569 lease of equipment or services executed on behalf of the
570 commissioners or board that complies with the provisions of this
571 subparagraph (ii) shall be excepted from the bid requirements set
572 forth in this section.

573 (m) **Exceptions from bidding requirements.** Excepted
574 from bid requirements are:

575 (i) **Purchasing agreements approved by department.**
576 Purchasing agreements, contracts and maximum price regulations
577 executed or approved by the Department of Finance and
578 Administration.

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

590 (iii) **In-house equipment repairs.** Purchases of
591 parts for repairs to equipment, when such repairs are made by
592 personnel of the agency or governing authority; however, entire
593 assemblies, such as engines or transmissions, shall not be

594 included in this exemption when the entire assembly is being
595 replaced instead of being repaired.

596 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
597 of gravel or fill dirt which are to be removed and transported by
598 the purchaser.

599 (v) **Governmental equipment auctions.** Motor
600 vehicles or other equipment purchased from a federal agency or
601 authority, another governing authority or state agency of the
602 State of Mississippi, or any governing authority or state agency
603 of another state at a public auction held for the purpose of
604 disposing of such vehicles or other equipment. Any purchase by a
605 governing authority under the exemption authorized by this
606 subparagraph (v) shall require advance authorization spread upon
607 the minutes of the governing authority to include the listing of
608 the item or items authorized to be purchased and the maximum bid
609 authorized to be paid for each item or items.

610 (vi) **Intergovernmental sales and transfers.**
611 Purchases, sales, transfers or trades by governing authorities or
612 state agencies when such purchases, sales, transfers or trades are
613 made by a private treaty agreement or through means of
614 negotiation, from any federal agency or authority, another
615 governing authority or state agency of the State of Mississippi,
616 or any state agency or governing authority of another state.
617 Nothing in this section shall permit such purchases through public
618 auction except as provided for in subparagraph (v) of this
619 section. It is the intent of this section to allow governmental
620 entities to dispose of and/or purchase commodities from other
621 governmental entities at a price that is agreed to by both
622 parties. This shall allow for purchases and/or sales at prices
623 which may be determined to be below the market value if the
624 selling entity determines that the sale at below market value is
625 in the best interest of the taxpayers of the state. Governing
626 authorities shall place the terms of the agreement and any

627 justification on the minutes, and state agencies shall obtain
628 approval from the Department of Finance and Administration, prior
629 to releasing or taking possession of the commodities.

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

634 (viii) **Single source items.** Noncompetitive items
635 available from one (1) source only. In connection with the
636 purchase of noncompetitive items only available from one (1)
637 source, a certification of the conditions and circumstances
638 requiring the purchase shall be filed by the agency with the
639 Department of Finance and Administration and by the governing
640 authority with the board of the governing authority. Upon receipt
641 of that certification the Department of Finance and Administration
642 or the board of the governing authority, as the case may be, may,
643 in writing, authorize the purchase, which authority shall be noted
644 on the minutes of the body at the next regular meeting thereafter.
645 In those situations, a governing authority is not required to
646 obtain the approval of the Department of Finance and
647 Administration.

648 (ix) **Waste disposal facility construction**
649 **contracts.** Construction of incinerators and other facilities for
650 disposal of solid wastes in which products either generated
651 therein, such as steam, or recovered therefrom, such as materials
652 for recycling, are to be sold or otherwise disposed of; however,
653 in constructing such facilities, a governing authority or agency
654 shall publicly issue requests for proposals, advertised for in the
655 same manner as provided herein for seeking bids for public
656 construction projects, concerning the design, construction,
657 ownership, operation and/or maintenance of such facilities,
658 wherein such requests for proposals when issued shall contain
659 terms and conditions relating to price, financial responsibility,

660 technology, environmental compatibility, legal responsibilities
661 and such other matters as are determined by the governing
662 authority or agency to be appropriate for inclusion; and after
663 responses to the request for proposals have been duly received,
664 the governing authority or agency may select the most qualified
665 proposal or proposals on the basis of price, technology and other
666 relevant factors and from such proposals, but not limited to the
667 terms thereof, negotiate and enter contracts with one or more of
668 the persons or firms submitting proposals.

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

672 (xi) **Information technology products.** Purchases
673 of information technology products made by governing authorities
674 under the provisions of purchase schedules, or contracts executed
675 or approved by the Mississippi Department of Information
676 Technology Services and designated for use by governing
677 authorities.

678 (xii) **Energy efficiency services and equipment.**
679 Energy efficiency services and equipment acquired by school
680 districts, community and junior colleges, institutions of higher
681 learning and state agencies or other applicable governmental
682 entities on a shared-savings, lease or lease-purchase basis
683 pursuant to Section 31-7-14.

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

688 (xiv) **Library books and other reference materials.**
689 Purchases by libraries or for libraries of books and periodicals;
690 processed film, video cassette tapes, filmstrips and slides;
691 recorded audio tapes, cassettes and diskettes; and any such items
692 as would be used for teaching, research or other information

693 distribution; however, equipment such as projectors, recorders,
694 audio or video equipment, and monitor televisions are not exempt
695 under this subparagraph.

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

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

702 (xvii) **Multichannel interactive video systems.**
703 From and after July 1, 1990, contracts by Mississippi Authority
704 for Educational Television with any private educational
705 institution or private nonprofit organization whose purposes are
706 educational in regard to the construction, purchase, lease or
707 lease-purchase of facilities and equipment and the employment of
708 personnel for providing multichannel interactive video systems
709 (ITSF) in the school districts of this state.

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

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

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

723 (xxi) **Certain school district purchases.**
724 Purchases of commodities made by school districts from vendors
725 with which any levying authority of the school district, as

726 defined in Section 37-57-1, has contracted through competitive
727 bidding procedures for purchases of the same commodities.

728 (xxii) **Garbage, solid waste and sewage contracts.**
729 Contracts for garbage collection or disposal, contracts for solid
730 waste collection or disposal and contracts for sewage collection
731 or disposal.

732 (xxiii) **Municipal water tank maintenance**
733 **contracts.** Professional maintenance program contracts for the
734 repair or maintenance of municipal water tanks, which provide
735 professional services needed to maintain municipal water storage
736 tanks for a fixed annual fee for a duration of two (2) or more
737 years.

738 (xxiv) **Purchases of Mississippi Industries for the**
739 **Blind products.** Purchases made by state agencies or governing
740 authorities involving any item that is manufactured, processed or
741 produced by the Mississippi Industries for the Blind.

742 (xxv) **Purchases of state-adopted textbooks.**
743 Purchases of state-adopted textbooks by public school districts.

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

747 (xxvii) **Used heavy or specialized machinery or**
748 **equipment for installation of soil and water conservation**
749 **practices purchased at auction.** Used heavy or specialized
750 machinery or equipment used for the installation and
751 implementation of soil and water conservation practices or
752 measures purchased subject to the restrictions provided in
753 Sections 69-27-331 through 69-27-341. Any purchase by the State
754 Soil and Water Conservation Commission under the exemption
755 authorized by this subparagraph shall require advance
756 authorization spread upon the minutes of the commission to include
757 the listing of the item or items authorized to be purchased and
758 the maximum bid authorized to be paid for each item or items.

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

762 (xxix) **Purchases made pursuant to qualified**
763 **cooperative purchasing agreements.** Purchases made by certified
764 purchasing offices of state agencies or governing authorities
765 under cooperative purchasing agreements previously approved by the
766 Office of Purchasing and Travel and established by or for any
767 municipality, county, parish or state government or the federal
768 government, provided that the notification to potential
769 contractors includes a clause that sets forth the availability of
770 the cooperative purchasing agreement to other governmental
771 entities. Such purchases shall only be made if the use of the
772 cooperative purchasing agreements is determined to be in the best
773 interest of the governmental entity.

774 (xxx) **School yearbooks.** Purchases of school
775 yearbooks by state agencies or governing authorities; provided,
776 however, that state agencies and governing authorities shall use
777 for these purchases the RFP process as set forth in the
778 Mississippi Procurement Manual adopted by the Office of Purchasing
779 and Travel.

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

783 (xxxiii) Procurement of design and construction
784 services by state institutions of higher learning. Privately
785 financed contracts awarded by the Board of Trustees of State
786 Institutions of Higher Learning for the design and construction of
787 buildings or facilities, including parking structures, classrooms
788 and athletic facilities but excluding dormitories on the campus of
789 a state institution of higher learning, as provided in Section
790 37-101-44.

791 (n) **Term contract authorization.** All contracts for the
792 purchase of:

793 (i) All contracts for the purchase of commodities,
794 equipment and public construction (including, but not limited to,
795 repair and maintenance), may be let for periods of not more than
796 sixty (60) months in advance, subject to applicable statutory
797 provisions prohibiting the letting of contracts during specified
798 periods near the end of terms of office. Term contracts for a
799 period exceeding twenty-four (24) months shall also be subject to
800 ratification or cancellation by governing authority boards taking
801 office subsequent to the governing authority board entering the
802 contract.

803 (ii) Bid proposals and contracts may include price
804 adjustment clauses with relation to the cost to the contractor
805 based upon a nationally published industry-wide or nationally
806 published and recognized cost index. The cost index used in a
807 price adjustment clause shall be determined by the Department of
808 Finance and Administration for the state agencies and by the
809 governing board for governing authorities. The bid proposal and
810 contract documents utilizing a price adjustment clause shall
811 contain the basis and method of adjusting unit prices for the
812 change in the cost of such commodities, equipment and public
813 construction.

814 (o) **Purchase law violation prohibition and vendor**
815 **penalty.** No contract or purchase as herein authorized shall be
816 made for the purpose of circumventing the provisions of this
817 section requiring competitive bids, nor shall it be lawful for any
818 person or concern to submit individual invoices for amounts within
819 those authorized for a contract or purchase where the actual value
820 of the contract or commodity purchased exceeds the authorized
821 amount and the invoices therefor are split so as to appear to be
822 authorized as purchases for which competitive bids are not
823 required. Submission of such invoices shall constitute a

824 misdemeanor punishable by a fine of not less than Five Hundred
825 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
826 or by imprisonment for thirty (30) days in the county jail, or
827 both such fine and imprisonment. In addition, the claim or claims
828 submitted shall be forfeited.

829 (p) **Electrical utility petroleum-based equipment**
830 **purchase procedure.** When in response to a proper advertisement
831 therefor, no bid firm as to price is submitted to an electric
832 utility for power transformers, distribution transformers, power
833 breakers, reclosers or other articles containing a petroleum
834 product, the electric utility may accept the lowest and best bid
835 therefor although the price is not firm.

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

856 systems under the terms of a state contract established by the
857 Office of Purchasing and Travel.

858 (r) **Solid waste contract proposal procedure.** Before
859 entering into any contract for garbage collection or disposal,
860 contract for solid waste collection or disposal or contract for
861 sewage collection or disposal, which involves an expenditure of
862 more than Fifty Thousand Dollars (\$50,000.00), a governing
863 authority or agency shall issue publicly a request for proposals
864 concerning the specifications for such services which shall be
865 advertised for in the same manner as provided in this section for
866 seeking bids for purchases which involve an expenditure of more
867 than the amount provided in paragraph (c) of this section. Any
868 request for proposals when issued shall contain terms and
869 conditions relating to price, financial responsibility,
870 technology, legal responsibilities and other relevant factors as
871 are determined by the governing authority or agency to be
872 appropriate for inclusion; all factors determined relevant by the
873 governing authority or agency or required by this paragraph (r)
874 shall be duly included in the advertisement to elicit proposals.
875 After responses to the request for proposals have been duly
876 received, the governing authority or agency shall select the most
877 qualified proposal or proposals on the basis of price, technology
878 and other relevant factors and from such proposals, but not
879 limited to the terms thereof, negotiate and enter contracts with
880 one or more of the persons or firms submitting proposals. If the
881 governing authority or agency deems none of the proposals to be
882 qualified or otherwise acceptable, the request for proposals
883 process may be reinitiated. Notwithstanding any other provisions
884 of this paragraph, where a county with at least thirty-five
885 thousand (35,000) nor more than forty thousand (40,000)
886 population, according to the 1990 federal decennial census, owns
887 or operates a solid waste landfill, the governing authorities of
888 any other county or municipality may contract with the governing

889 authorities of the county owning or operating the landfill,
890 pursuant to a resolution duly adopted and spread upon the minutes
891 of each governing authority involved, for garbage or solid waste
892 collection or disposal services through contract negotiations.

893 (s) **Minority set-aside authorization.** Notwithstanding
894 any provision of this section to the contrary, any agency or
895 governing authority, by order placed on its minutes, may, in its
896 discretion, set aside not more than twenty percent (20%) of its
897 anticipated annual expenditures for the purchase of commodities
898 from minority businesses; however, all such set-aside purchases
899 shall comply with all purchasing regulations promulgated by the
900 Department of Finance and Administration and shall be subject to
901 bid requirements under this section. Set-aside purchases for
902 which competitive bids are required shall be made from the lowest
903 and best minority business bidder. For the purposes of this
904 paragraph, the term "minority business" means a business which is
905 owned by a majority of persons who are United States citizens or
906 permanent resident aliens (as defined by the Immigration and
907 Naturalization Service) of the United States, and who are Asian,
908 Black, Hispanic or Native American, according to the following
909 definitions:

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

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

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

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

921 (t) **Construction punch list restriction.** The
922 architect, engineer or other representative designated by the
923 agency or governing authority that is contracting for public
924 construction or renovation may prepare and submit to the
925 contractor only one (1) preliminary punch list of items that do
926 not meet the contract requirements at the time of substantial
927 completion and one (1) final list immediately before final
928 completion and final payment.

929 (u) **Purchase authorization clarification.** Nothing in
930 this section shall be construed as authorizing any purchase not
931 authorized by law.

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