

By: Representative Dedeaux

To: Judiciary B; Ways and  
Means

## HOUSE BILL NO. 1371

1 AN ACT TO CREATE NEW SECTION 31-7-13.1, MISSISSIPPI CODE OF  
2 1972 MISSISSIPPI CODE OF 1972, TO AUTHORIZE AND PRESCRIBE THE  
3 PROCEDURES FOR USING THE DUAL-PHASE DESIGN-BUILD METHOD OF  
4 CONSTRUCTION CONTRACTING; TO PROVIDE THAT A TWO-PHASE PROCEDURE  
5 FOR AWARDING A CONTRACT MUST BE ADOPTED FOR EACH PROPOSED  
6 DUAL-PHASE DESIGN-BUILD PROJECT; TO PRESCRIBE THE PROCEDURES TO BE  
7 FOLLOWED FOR EACH PHASE; TO AMEND SECTIONS 31-7-13, 31-11-3 AND  
8 65-1-85, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING  
9 PROVISIONS; AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** The following shall be codified as Section  
12 31-7-13.1, Mississippi Code of 1972:

13 31-7-13.1. (1) The method of contracting for construction  
14 described in this section shall be known as the "dual-phase  
15 design-build method" of construction contracting. This method of  
16 construction contracting may be used only when the Legislature has  
17 specifically required or authorized the use of this method in the  
18 legislation authorizing a project, or when the Department of  
19 Finance and Administration, the governing board or commission of  
20 an agency or the governing authority makes a determination,  
21 entered on its minutes, with specific findings for the project  
22 demonstrating how it is in the best interest of the public to  
23 enter into a dual-phase design-build construction contract. At a  
24 minimum, the determination must include a detailed explanation of  
25 why a dual-phase design-build approach for a particular project  
26 satisfies the public need better than the traditional  
27 design-bid-build approach.

28 (2) For each proposed dual-phase design-build project, a  
29 two-phase procedure for awarding a contract must be adopted.  
30 During Phase One, and before solicitation of initial proposals,

31 the agency or governing authority shall develop, with the  
32 assistance of a registered architect or engineer, a scope of work  
33 statement that provides prospective offerors with sufficient  
34 information regarding the requirements of the agency or governing  
35 authority. The scope of work statement must include, but is not  
36 limited to, the following information:

37 (a) Floor plans showing spaces by name and number,  
38 actual net area of each space, structural module, fixed equipment,  
39 mechanical spaces, chases and circulation areas. Drawings must  
40 show overall building dimensions and major lines of dimensions,  
41 and site plans that show topography, adjacent buildings and  
42 utilities;

43 (b) Drawings must include information to adequately  
44 explain HVAC, electrical and structural requirements;

45 (c) Information concerning furnishings, miscellaneous  
46 equipment, layouts, lists and schedules necessary to explain the  
47 plans must be indicated on floor plans;

48 (d) The registered architect or engineer engaged by the  
49 board also shall prepare preliminary specifications following the  
50 Construction Specifications Institute format and giving basic  
51 descriptions of essential building materials, finishes, components  
52 and all systems;

53 (e) The scope of work statement also must include  
54 building elevations, sections and design details. Building  
55 elevations must show fenestration and proposed exterior materials;  
56 and

57 (f) The scope of work statement must include general  
58 budget parameters, schedule or delivery requirements, relevant  
59 criteria for evaluation of proposals, and any other information  
60 necessary to enable the design-builders to submit proposals that  
61 meet the needs of the agency or governing authority.

62 (3) The agency or governing authority shall cause to be  
63 published once a week, for at least three (3) consecutive weeks

64 and not less than twenty-one (21) days in at least one (1)  
65 newspaper having a general circulation in the county in which the  
66 project is to be located and in one (1) newspaper with a general  
67 statewide circulation, a notice inviting proposals for the  
68 dual-phase design-build constructed project. The notice must  
69 inform potential offerors of how to obtain the scope of work  
70 statement developed for the project, and the notice must contain  
71 such other information to describe adequately the general nature  
72 and scope of the project so as to promote full, equal and open  
73 competition.

74 (4) The agency or governing authority shall accept initial  
75 proposals only from entities able to provide, either in-house or  
76 through contractual arrangements, an experienced and qualified  
77 design-build team that includes, at a minimum, an architect or  
78 engineer registered in Mississippi and a contractor properly  
79 licensed in Mississippi for the type of work required. From  
80 evaluation of initial proposals under Phase One, the agency or  
81 governing authority shall select a minimum of two (2) and a  
82 maximum of five (5) design-builders as "short-listed firms" to  
83 submit proposals for Phase Two.

84 (5) During Phase Two, the short-listed firms will be invited  
85 to submit detailed designs, specific technical concepts or  
86 solutions, pricing, scheduling and other information deemed  
87 appropriate by the agency or governing authority as necessary to  
88 evaluate and rank acceptability of the Phase Two proposals. After  
89 evaluation of these Phase Two proposals, the agency or governing  
90 authority shall award a contract to the design-builder determined  
91 to offer the best value to the public in accordance with  
92 evaluation criteria set forth in the request for proposals, of  
93 which price must be one, but not necessarily the only, criterion.

94 (6) If the agency or governing authority accepts a proposal  
95 other than the lowest dollar proposal actually submitted, the  
96 agency or governing authority shall enter on its minutes detailed

97 calculations and a narrative summary showing why the accepted  
98 proposal was determined to provide the best value, and the agency  
99 or governing authority shall state specifically on its minutes the  
100 justification for its award.

101 (7) All private contractors or private entities contracting  
102 or performing under this section must comply at all times with all  
103 applicable laws, codes and other legal requirements pertaining to  
104 the project.

105 (8) At its discretion, the agency or governing authority may  
106 award a stipulated fee equal to a percentage, as prescribed in the  
107 request for proposals, of the project's final design and  
108 construction budget, as prescribed in the request for proposals,  
109 but not less than two-tenths of one percent (2/10 of 1%) of the  
110 project's final design and construction budget, to each short-list  
111 offeror who provides a responsive, but unsuccessful, proposal. If  
112 the agency or governing authority does not award a contract, all  
113 responsive final list offerors shall receive the stipulated fee  
114 based on the owner's estimate of the project final design and  
115 construction budget as included in the request for proposals. The  
116 agency or governing authority shall pay the stipulated fee to each  
117 offeror within ninety (90) days after the award of the initial  
118 contract or the decision not to award a contract. In  
119 consideration for paying the stipulated fee, the agency or  
120 governing authority may use any ideas or information contained in  
121 the proposals in connection with any contract awarded for the  
122 project, or in connection with a subsequent procurement, without  
123 any obligation to pay any additional compensation to the  
124 unsuccessful offerors. Notwithstanding the other provisions of  
125 this subsection, an unsuccessful short-list offeror may elect to  
126 waive the stipulated fee. If an unsuccessful short-list offeror  
127 elects to waive the stipulated fee, the agency or governing  
128 authority may not use ideas and information contained in the  
129 offeror's proposal, except that this restriction does not prevent

130 the agency or governing authority from using any idea or  
131 information if the idea or information is also included in a  
132 proposal of an offeror that accepts the stipulated fee.

133 (9) This section shall not authorize the awarding of  
134 construction contracts according to any contracting method that  
135 does not require the contractor to satisfactorily perform, at a  
136 minimum, both any balance of design and construction of the  
137 project for which the contract is awarded.

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

140 31-7-13. All agencies and governing authorities shall  
141 purchase their commodities and printing; contract for garbage  
142 collection or disposal; contract for solid waste collection or  
143 disposal; contract for sewage collection or disposal; contract for  
144 public construction; and contract for rentals as herein provided.

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

154 (b) **Bidding procedure for purchases over \$3,500.00 but**  
155 **not over \$15,000.00.** Purchases which involve an expenditure of  
156 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not  
157 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
158 freight and shipping charges may be made from the lowest and best  
159 bidder without publishing or posting advertisement for bids,  
160 provided at least two (2) competitive written bids have been  
161 obtained. Any governing authority purchasing commodities pursuant  
162 to this paragraph (b) may authorize its purchasing agent, or his

163 designee, with regard to governing authorities other than  
164 counties, or its purchase clerk, or his designee, with regard to  
165 counties, to accept the lowest and best competitive written bid.  
166 Such authorization shall be made in writing by the governing  
167 authority and shall be maintained on file in the primary office of  
168 the agency and recorded in the official minutes of the governing  
169 authority, as appropriate. The purchasing agent or the purchase  
170 clerk, or their designee, as the case may be, and not the  
171 governing authority, shall be liable for any penalties and/or  
172 damages as may be imposed by law for any act or omission of the  
173 purchasing agent or purchase clerk, or their designee,  
174 constituting a violation of law in accepting any bid without  
175 approval by the governing authority. The term "competitive  
176 written bid" shall mean a bid submitted on a bid form furnished by  
177 the buying agency or governing authority and signed by authorized  
178 personnel representing the vendor, or a bid submitted on a  
179 vendor's letterhead or identifiable bid form and signed by  
180 authorized personnel representing the vendor. "Competitive" shall  
181 mean that the bids are developed based upon comparable  
182 identification of the needs and are developed independently and  
183 without knowledge of other bids or prospective bids. Bids may be  
184 submitted by facsimile, electronic mail or other generally  
185 accepted method of information distribution. Bids submitted by  
186 electronic transmission shall not require the signature of the  
187 vendor's representative unless required by agencies or governing  
188 authorities.

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

190 (i) **Publication requirement.** Purchases which  
191 involve an expenditure of more than Fifteen Thousand Dollars  
192 (\$15,000.00), exclusive of freight and shipping charges, may be  
193 made from the lowest and best bidder after advertising for  
194 competitive sealed bids once each week for two (2) consecutive  
195 weeks in a regular newspaper published in the county or

196 municipality in which such agency or governing authority is  
197 located. The date as published for the bid opening shall not be  
198 less than seven (7) working days after the last published notice;  
199 however, if the purchase involves a construction project in which  
200 the estimated cost is in excess of Fifteen Thousand Dollars  
201 (\$15,000.00), such bids shall not be opened in less than fifteen  
202 (15) working days after the last notice is published and the  
203 notice for the purchase of such construction shall be published  
204 once each week for two (2) consecutive weeks. The notice of  
205 intention to let contracts or purchase equipment shall state the  
206 time and place at which bids shall be received, list the contracts  
207 to be made or types of equipment or supplies to be purchased, and,  
208 if all plans and/or specifications are not published, refer to the  
209 plans and/or specifications on file. If there is no newspaper  
210 published in the county or municipality, then such notice shall be  
211 given by posting same at the courthouse, or for municipalities at  
212 the city hall, and at two (2) other public places in the county or  
213 municipality, and also by publication once each week for two (2)  
214 consecutive weeks in some newspaper having a general circulation  
215 in the county or municipality in the above provided manner. On  
216 the same date that the notice is submitted to the newspaper for  
217 publication, the agency or governing authority involved shall mail  
218 written notice to, or provide electronic notification to the main  
219 office of the Mississippi Contract Procurement Center that  
220 contains the same information as that in the published notice.

221           (ii) **Bidding process amendment procedure.** If all  
222 plans and/or specifications are published in the notification,  
223 then the plans and/or specifications may not be amended. If all  
224 plans and/or specifications are not published in the notification,  
225 then amendments to the plans/specifications, bid opening date, bid  
226 opening time and place may be made, provided that the agency or  
227 governing authority maintains a list of all prospective bidders  
228 who are known to have received a copy of the bid documents and all

229 such prospective bidders are sent copies of all amendments. This  
230 notification of amendments may be made via mail, facsimile,  
231 electronic mail or other generally accepted method of information  
232 distribution. No addendum to bid specifications may be issued  
233 within two (2) working days of the time established for the  
234 receipt of bids unless such addendum also amends the bid opening  
235 to a date not less than five (5) working days after the date of  
236 the addendum.

237                   (iii) **Filing requirement.** In all cases involving  
238 governing authorities, before the notice shall be published or  
239 posted, the plans or specifications for the construction or  
240 equipment being sought shall be filed with the clerk of the board  
241 of the governing authority. In addition to these requirements, a  
242 bid file shall be established which shall indicate those vendors  
243 to whom such solicitations and specifications were issued, and  
244 such file shall also contain such information as is pertinent to  
245 the bid.

246                   (iv) **Specification restrictions.**

247                   1. Specifications pertinent to such bidding  
248 shall be written so as not to exclude comparable equipment of  
249 domestic manufacture. However, if valid justification is  
250 presented, the Department of Finance and Administration or the  
251 board of a governing authority may approve a request for specific  
252 equipment necessary to perform a specific job. Further, such  
253 justification, when placed on the minutes of the board of a  
254 governing authority, may serve as authority for that governing  
255 authority to write specifications to require a specific item of  
256 equipment needed to perform a specific job. In addition to these  
257 requirements, from and after July 1, 1990, vendors of relocatable  
258 classrooms and the specifications for the purchase of such  
259 relocatable classrooms published by local school boards shall meet  
260 all pertinent regulations of the State Board of Education,

261 including prior approval of such bid by the State Department of  
262 Education.

263                   2. Specifications for construction projects  
264 may include an allowance for commodities, equipment, furniture,  
265 construction materials or systems in which prospective bidders are  
266 instructed to include in their bids specified amounts for such  
267 items so long as the allowance items are acquired by the vendor in  
268 a commercially reasonable manner and approved by the  
269 agency/governing authority. Such acquisitions shall not be made  
270 to circumvent the public purchasing laws.

271                   (v) Agencies and governing authorities may  
272 establish secure procedures by which bids may be submitted via  
273 electronic means.

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

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

290                   (ii) **Decision procedure for Certified Purchasing**  
291 **Offices.** In addition to the decision procedure set forth in  
292 paragraph (d)(i), Certified Purchasing Offices may also use the  
293 following procedure: Purchases may be made from the bidder

294 offering the best value. In determining the best value bid,  
295 freight and shipping charges shall be included. Life-cycle  
296 costing, total cost bids, warranties, guaranteed buy-back  
297 provisions, documented previous experience, training costs and  
298 other relevant provisions may be included in the best value  
299 calculation. This provision shall authorize Certified Purchasing  
300 Offices to utilize a Request For Proposals (RFP) process when  
301 purchasing commodities. All best value procedures for state  
302 agencies must be in compliance with regulations established by the  
303 Department of Finance and Administration. No agency or governing  
304 authority shall accept a bid based on items or criteria not  
305 included in the specifications.

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

312 (e) **Lease-purchase authorization.** For the purposes of  
313 this section, the term "equipment" shall mean equipment, furniture  
314 and, if applicable, associated software and other applicable  
315 direct costs associated with the acquisition. Any lease-purchase  
316 of equipment which an agency is not required to lease-purchase  
317 under the master lease-purchase program pursuant to Section  
318 31-7-10 and any lease-purchase of equipment which a governing  
319 authority elects to lease-purchase may be acquired by a  
320 lease-purchase agreement under this paragraph (e). Lease-purchase  
321 financing may also be obtained from the vendor or from a  
322 third-party source after having solicited and obtained at least  
323 two (2) written competitive bids, as defined in paragraph (b) of  
324 this section, for such financing without advertising for such  
325 bids. Solicitation for the bids for financing may occur before or  
326 after acceptance of bids for the purchase of such equipment or,

327 where no such bids for purchase are required, at any time before  
328 the purchase thereof. No such lease-purchase agreement shall be  
329 for an annual rate of interest which is greater than the overall  
330 maximum interest rate to maturity on general obligation  
331 indebtedness permitted under Section 75-17-101, and the term of  
332 such lease-purchase agreement shall not exceed the useful life of  
333 equipment covered thereby as determined according to the upper  
334 limit of the asset depreciation range (ADR) guidelines for the  
335 Class Life Asset Depreciation Range System established by the  
336 Internal Revenue Service pursuant to the United States Internal  
337 Revenue Code and regulations thereunder as in effect on December  
338 31, 1980, or comparable depreciation guidelines with respect to  
339 any equipment not covered by ADR guidelines. Any lease-purchase  
340 agreement entered into pursuant to this paragraph (e) may contain  
341 any of the terms and conditions which a master lease-purchase  
342 agreement may contain under the provisions of Section 31-7-10(5),  
343 and shall contain an annual allocation dependency clause  
344 substantially similar to that set forth in Section 31-7-10(8).  
345 Each agency or governing authority entering into a lease-purchase  
346 transaction pursuant to this paragraph (e) shall maintain with  
347 respect to each such lease-purchase transaction the same  
348 information as required to be maintained by the Department of  
349 Finance and Administration pursuant to Section 31-7-10(13).  
350 However, nothing contained in this section shall be construed to  
351 permit agencies to acquire items of equipment with a total  
352 acquisition cost in the aggregate of less than Ten Thousand  
353 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
354 equipment, and the purchase thereof by any lessor, acquired by  
355 lease-purchase under this paragraph and all lease-purchase  
356 payments with respect thereto shall be exempt from all Mississippi  
357 sales, use and ad valorem taxes. Interest paid on any  
358 lease-purchase agreement under this section shall be exempt from  
359 State of Mississippi income taxation.

360           (f) **Alternate bid authorization.** When necessary to  
361 ensure ready availability of commodities for public works and the  
362 timely completion of public projects, no more than two (2)  
363 alternate bids may be accepted by a governing authority for  
364 commodities. No purchases may be made through use of such  
365 alternate bids procedure unless the lowest and best bidder cannot  
366 deliver the commodities contained in his bid. In that event,  
367 purchases of such commodities may be made from one (1) of the  
368 bidders whose bid was accepted as an alternate.

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

389           (h) **Petroleum purchase alternative.** In addition to  
390 other methods of purchasing authorized in this chapter, when any  
391 agency or governing authority shall have a need for gas, diesel  
392 fuel, oils and/or other petroleum products in excess of the amount

393 set forth in paragraph (a) of this section, such agency or  
394 governing authority may purchase the commodity after having  
395 solicited and obtained at least two (2) competitive written bids,  
396 as defined in paragraph (b) of this section. If two (2)  
397 competitive written bids are not obtained, the entity shall comply  
398 with the procedures set forth in paragraph (c) of this section.  
399 In the event any agency or governing authority shall have  
400 advertised for bids for the purchase of gas, diesel fuel, oils and  
401 other petroleum products and coal and no acceptable bids can be  
402 obtained, such agency or governing authority is authorized and  
403 directed to enter into any negotiations necessary to secure the  
404 lowest and best contract available for the purchase of such  
405 commodities.

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

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

457           (k) **Governing authority emergency purchase procedure.**  
458 If the governing authority, or the governing authority acting

459 through its designee, shall determine that an emergency exists in  
460 regard to the purchase of any commodities or repair contracts, so  
461 that the delay incident to giving opportunity for competitive  
462 bidding would be detrimental to the interest of the governing  
463 authority, then the provisions herein for competitive bidding  
464 shall not apply and any officer or agent of such governing  
465 authority having general or special authority therefor in making  
466 such purchase or repair shall approve the bill presented therefor,  
467 and he shall certify in writing thereon from whom such purchase  
468 was made, or with whom such a repair contract was made. At the  
469 board meeting next following the emergency purchase or repair  
470 contract, documentation of the purchase or repair contract,  
471 including a description of the commodity purchased, the price  
472 thereof and the nature of the emergency shall be presented to the  
473 board and shall be placed on the minutes of the board of such  
474 governing authority.

475           (1) **Hospital purchase, lease-purchase and lease**  
476 **authorization.**

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

482           (ii) In addition to the authority granted in  
483 subparagraph (i) of this paragraph (1), the commissioners or board  
484 of trustees is authorized to enter into contracts for the lease of  
485 equipment or services, or both, which it considers necessary for  
486 the proper care of patients if, in its opinion, it is not  
487 financially feasible to purchase the necessary equipment or  
488 services. Any such contract for the lease of equipment or  
489 services executed by the commissioners or board shall not exceed a  
490 maximum of five (5) years' duration and shall include a  
491 cancellation clause based on unavailability of funds. If such

492 cancellation clause is exercised, there shall be no further  
493 liability on the part of the lessee. Any such contract for the  
494 lease of equipment or services executed on behalf of the  
495 commissioners or board that complies with the provisions of this  
496 subparagraph (ii) shall be excepted from the bid requirements set  
497 forth in this section.

498 (m) **Exceptions from bidding requirements.** Excepted  
499 from bid requirements are:

500 (i) **Purchasing agreements approved by department.**  
501 Purchasing agreements, contracts and maximum price regulations  
502 executed or approved by the Department of Finance and  
503 Administration.

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

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

521 (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
522 of gravel or fill dirt which are to be removed and transported by  
523 the purchaser.

524                   (v) **Governmental equipment auctions.** Motor  
525 vehicles or other equipment purchased from a federal agency or  
526 authority, another governing authority or state agency of the  
527 State of Mississippi, or any governing authority or state agency  
528 of another state at a public auction held for the purpose of  
529 disposing of such vehicles or other equipment. Any purchase by a  
530 governing authority under the exemption authorized by this  
531 subparagraph (v) shall require advance authorization spread upon  
532 the minutes of the governing authority to include the listing of  
533 the item or items authorized to be purchased and the maximum bid  
534 authorized to be paid for each item or items.

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

555                   (vii) **Perishable supplies or food.** Perishable  
556 supplies or food purchased for use in connection with hospitals,

557 the school lunch programs, homemaking programs and for the feeding  
558 of county or municipal prisoners.

559                   (viii) **Single source items.** Noncompetitive items  
560 available from one (1) source only. In connection with the  
561 purchase of noncompetitive items only available from one (1)  
562 source, a certification of the conditions and circumstances  
563 requiring the purchase shall be filed by the agency with the  
564 Department of Finance and Administration and by the governing  
565 authority with the board of the governing authority. Upon receipt  
566 of that certification the Department of Finance and Administration  
567 or the board of the governing authority, as the case may be, may,  
568 in writing, authorize the purchase, which authority shall be noted  
569 on the minutes of the body at the next regular meeting thereafter.  
570 In those situations, a governing authority is not required to  
571 obtain the approval of the Department of Finance and  
572 Administration.

573                   (ix) **Waste disposal facility construction**  
574 **contracts.** Construction of incinerators and other facilities for  
575 disposal of solid wastes in which products either generated  
576 therein, such as steam, or recovered therefrom, such as materials  
577 for recycling, are to be sold or otherwise disposed of; however,  
578 in constructing such facilities, a governing authority or agency  
579 shall publicly issue requests for proposals, advertised for in the  
580 same manner as provided herein for seeking bids for public  
581 construction projects, concerning the design, construction,  
582 ownership, operation and/or maintenance of such facilities,  
583 wherein such requests for proposals when issued shall contain  
584 terms and conditions relating to price, financial responsibility,  
585 technology, environmental compatibility, legal responsibilities  
586 and such other matters as are determined by the governing  
587 authority or agency to be appropriate for inclusion; and after  
588 responses to the request for proposals have been duly received,  
589 the governing authority or agency may select the most qualified

590 proposal or proposals on the basis of price, technology and other  
591 relevant factors and from such proposals, but not limited to the  
592 terms thereof, negotiate and enter contracts with one or more of  
593 the persons or firms submitting proposals.

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

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

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

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

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

621           (xv) **Unmarked vehicles.** Purchases of unmarked  
622 vehicles when such purchases are made in accordance with

623 purchasing regulations adopted by the Department of Finance and  
624 Administration pursuant to Section 31-7-9(2).

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

627 (xvii) **Multichannel interactive video systems.**  
628 From and after July 1, 1990, contracts by Mississippi Authority  
629 for Educational Television with any private educational  
630 institution or private nonprofit organization whose purposes are  
631 educational in regard to the construction, purchase, lease or  
632 lease-purchase of facilities and equipment and the employment of  
633 personnel for providing multichannel interactive video systems  
634 (ITSF) in the school districts of this state.

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

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

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

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

653 (xxii) **Garbage, solid waste and sewage contracts.**  
654 Contracts for garbage collection or disposal, contracts for solid

655 waste collection or disposal and contracts for sewage collection  
656 or disposal.

657                   (xxiii) **Municipal water tank maintenance**  
658 **contracts.** Professional maintenance program contracts for the  
659 repair or maintenance of municipal water tanks, which provide  
660 professional services needed to maintain municipal water storage  
661 tanks for a fixed annual fee for a duration of two (2) or more  
662 years.

663                   (xxiv) **Purchases of Mississippi Industries for the**  
664 **Blind products.** Purchases made by state agencies or governing  
665 authorities involving any item that is manufactured, processed or  
666 produced by the Mississippi Industries for the Blind.

667                   (xxv) **Purchases of state-adopted textbooks.**  
668 Purchases of state-adopted textbooks by public school districts.

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

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

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

687                   (xxix) **Purchases made pursuant to qualified**  
688 **cooperative purchasing agreements.** Purchases made by certified  
689 purchasing offices of state agencies or governing authorities  
690 under cooperative purchasing agreements previously approved by the  
691 Office of Purchasing and Travel and established by or for any  
692 municipality, county, parish or state government or the federal  
693 government, provided that the notification to potential  
694 contractors includes a clause that sets forth the availability of  
695 the cooperative purchasing agreement to other governmental  
696 entities. Such purchases shall only be made if the use of the  
697 cooperative purchasing agreements is determined to be in the best  
698 interest of the governmental entity.

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

705                   (xxxi) **Design-build method or the design-build**  
706 **bridging method of contracting.** Contracts entered into under the  
707 provisions of Section 31-11-3(9) or Section 31-7-13.1.

708                   (n) **Term contract authorization.** All contracts for the  
709 purchase of:

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

720 (ii) Bid proposals and contracts may include price  
721 adjustment clauses with relation to the cost to the contractor  
722 based upon a nationally published industry-wide or nationally  
723 published and recognized cost index. The cost index used in a  
724 price adjustment clause shall be determined by the Department of  
725 Finance and Administration for the state agencies and by the  
726 governing board for governing authorities. The bid proposal and  
727 contract documents utilizing a price adjustment clause shall  
728 contain the basis and method of adjusting unit prices for the  
729 change in the cost of such commodities, equipment and public  
730 construction.

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

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

753           (q) **Fuel management system bidding procedure.** Any  
754 governing authority or agency of the state shall, before  
755 contracting for the services and products of a fuel management or  
756 fuel access system, enter into negotiations with not fewer than  
757 two (2) sellers of fuel management or fuel access systems for  
758 competitive written bids to provide the services and products for  
759 the systems. In the event that the governing authority or agency  
760 cannot locate two (2) sellers of such systems or cannot obtain  
761 bids from two (2) sellers of such systems, it shall show proof  
762 that it made a diligent, good-faith effort to locate and negotiate  
763 with two (2) sellers of such systems. Such proof shall include,  
764 but not be limited to, publications of a request for proposals and  
765 letters soliciting negotiations and bids. For purposes of this  
766 paragraph (q), a fuel management or fuel access system is an  
767 automated system of acquiring fuel for vehicles as well as  
768 management reports detailing fuel use by vehicles and drivers, and  
769 the term "competitive written bid" shall have the meaning as  
770 defined in paragraph (b) of this section. Governing authorities  
771 and agencies shall be exempt from this process when contracting  
772 for the services and products of a fuel management or fuel access  
773 systems under the terms of a state contract established by the  
774 Office of Purchasing and Travel.

775           (r) **Solid waste contract proposal procedure.** Before  
776 entering into any contract for garbage collection or disposal,  
777 contract for solid waste collection or disposal or contract for  
778 sewage collection or disposal, which involves an expenditure of  
779 more than Fifty Thousand Dollars (\$50,000.00), a governing  
780 authority or agency shall issue publicly a request for proposals  
781 concerning the specifications for such services which shall be  
782 advertised for in the same manner as provided in this section for  
783 seeking bids for purchases which involve an expenditure of more  
784 than the amount provided in paragraph (c) of this section. Any  
785 request for proposals when issued shall contain terms and

786 conditions relating to price, financial responsibility,  
787 technology, legal responsibilities and other relevant factors as  
788 are determined by the governing authority or agency to be  
789 appropriate for inclusion; all factors determined relevant by the  
790 governing authority or agency or required by this paragraph (r)  
791 shall be duly included in the advertisement to elicit proposals.  
792 After responses to the request for proposals have been duly  
793 received, the governing authority or agency shall select the most  
794 qualified proposal or proposals on the basis of price, technology  
795 and other relevant factors and from such proposals, but not  
796 limited to the terms thereof, negotiate and enter contracts with  
797 one or more of the persons or firms submitting proposals. If the  
798 governing authority or agency deems none of the proposals to be  
799 qualified or otherwise acceptable, the request for proposals  
800 process may be reinitiated. Notwithstanding any other provisions  
801 of this paragraph, where a county with at least thirty-five  
802 thousand (35,000) nor more than forty thousand (40,000)  
803 population, according to the 1990 federal decennial census, owns  
804 or operates a solid waste landfill, the governing authorities of  
805 any other county or municipality may contract with the governing  
806 authorities of the county owning or operating the landfill,  
807 pursuant to a resolution duly adopted and spread upon the minutes  
808 of each governing authority involved, for garbage or solid waste  
809 collection or disposal services through contract negotiations.

810 (s) **Minority set-aside authorization.** Notwithstanding  
811 any provision of this section to the contrary, any agency or  
812 governing authority, by order placed on its minutes, may, in its  
813 discretion, set aside not more than twenty percent (20%) of its  
814 anticipated annual expenditures for the purchase of commodities  
815 from minority businesses; however, all such set-aside purchases  
816 shall comply with all purchasing regulations promulgated by the  
817 Department of Finance and Administration and shall be subject to  
818 bid requirements under this section. Set-aside purchases for

819 which competitive bids are required shall be made from the lowest  
820 and best minority business bidder. For the purposes of this  
821 paragraph, the term "minority business" means a business which is  
822 owned by a majority of persons who are United States citizens or  
823 permanent resident aliens (as defined by the Immigration and  
824 Naturalization Service) of the United States, and who are Asian,  
825 Black, Hispanic or Native American, according to the following  
826 definitions:

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

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

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

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

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

846           (u) **Purchase authorization clarification.** Nothing in  
847 this section shall be construed as authorizing any purchase not  
848 authorized by law.

849           **SECTION 3.** Section 31-11-3, Mississippi Code of 1972, is  
850 amended as follows:

851           31-11-3. (1) The Department of Finance and Administration,  
852 for the purposes of carrying out the provisions of this chapter,  
853 in addition to all other rights and powers granted by law, shall  
854 have full power and authority to employ and compensate architects  
855 or other employees necessary for the purpose of making  
856 inspections, preparing plans and specifications, supervising the  
857 erection of any buildings, and making any repairs or additions as  
858 may be determined by the Department of Finance and Administration  
859 to be necessary, pursuant to the rules and regulations of the  
860 State Personnel Board. The department shall have entire control  
861 and supervision of, and determine what, if any, buildings,  
862 additions, repairs or improvements are to be made under the  
863 provisions of this chapter, subject to the approval of the Public  
864 Procurement Review Board.

865           (2) The department shall have full power to erect buildings,  
866 make repairs, additions or improvements, and buy materials,  
867 supplies and equipment for any of the institutions or departments  
868 of the state subject to the approval of the Public Procurement  
869 Review Board. In addition to other powers conferred, the  
870 department shall have full power and authority as directed by the  
871 Legislature, or when funds have been appropriated for its use for  
872 these purposes, to:

873                   (a) Build a state office building;

874                   (b) Build suitable plants or buildings for the use and  
875 housing of any state schools or institutions, including the  
876 building of plants or buildings for new state schools or  
877 institutions, as provided for by the Legislature;

878                   (c) Provide state aid for the construction of school  
879 buildings;

880                   (d) Promote and develop the training of returned  
881 veterans of the United States in all sorts of educational and  
882 vocational learning to be supplied by the proper educational  
883 institution of the State of Mississippi, and in so doing allocate

884 monies appropriated to it for these purposes to the Governor for  
885 use by him in setting up, maintaining and operating an office and  
886 employing a state director of on-the-job training for veterans and  
887 the personnel necessary in carrying out Public Law No. 346 of the  
888 United States;

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

891 (f) Build and equip additional buildings and wards at  
892 the Boswell Retardation Center;

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

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

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

902 (j) Build and equip a gymnasium at Columbia Training  
903 School;

904 (k) Approve or disapprove the expenditure of any money  
905 appropriated by the Legislature when authorized by the bill making  
906 the appropriation;

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

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

916           (n) Collect and receive from educational institutions  
917 of the State of Mississippi monies required to be paid by these  
918 institutions to the state in carrying out any veterans'  
919 educational programs;

920           (o) Purchase lands for building sites, or as additions  
921 to building sites, for the erection of buildings and other  
922 facilities which the department is authorized to erect, and  
923 demolish and dispose of old buildings, when necessary for the  
924 proper construction of new buildings. Any transaction which  
925 involves state lands under the provisions of this paragraph shall  
926 be done in a manner consistent with the provisions of Section  
927 29-1-1;

928           (p) Obtain business property insurance with a  
929 deductible of not less than One Hundred Thousand Dollars  
930 (\$100,000.00) on state-owned buildings under the management and  
931 control of the department; and

932           (q) In consultation with and approval by the Chairmen  
933 of the Public Property Committees of the Senate and the House of  
934 Representatives, enter into contracts for the purpose of providing  
935 parking spaces for state employees who work in the Woolfolk  
936 Building, the Carroll Gartin Justice Building or the Walter  
937 Sillers Office Building. The provisions of this paragraph (q)  
938 shall stand repealed on July 1, 2006.

939           (3) The department shall survey state-owned and  
940 state-utilized buildings to establish an estimate of the costs of  
941 architectural alterations, pursuant to the Americans With  
942 Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The  
943 department shall establish priorities for making the identified  
944 architectural alterations and shall make known to the Legislative  
945 Budget Office and to the Legislature the required cost to  
946 effectuate such alterations. To meet the requirements of this  
947 section, the department shall use standards of accessibility that

948 are at least as stringent as any applicable federal requirements  
949 and may consider:

950 (a) Federal minimum guidelines and requirements issued  
951 by the United States Architectural and Transportation Barriers  
952 Compliance Board and standards issued by other federal agencies;

953 (b) The criteria contained in the American Standard  
954 Specifications for Making Buildings Accessible and Usable by the  
955 Physically Handicapped and any amendments thereto as approved by  
956 the American Standards Association, Incorporated (ANSI Standards);

957 (c) Design manuals;

958 (d) Applicable federal guidelines;

959 (e) Current literature in the field;

960 (f) Applicable safety standards; and

961 (g) Any applicable environmental impact statements.

962 (4) The department shall observe the provisions of Section  
963 31-5-23, in letting contracts and shall use Mississippi products,  
964 including paint, varnish and lacquer which contain as vehicles  
965 tung oil and either ester gum or modified resin (with rosin as the  
966 principal base of constituents), and turpentine shall be used as a  
967 solvent or thinner, where these products are available at a cost  
968 not to exceed the cost of products grown, produced, prepared, made  
969 or manufactured outside of the State of Mississippi.

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

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

977 (7) The department shall review and preapprove all  
978 architectural or engineering service contracts entered into by any  
979 state agency, institution, commission, board or authority  
980 regardless of the source of funding used to defray the costs of

981 the construction or renovation project for which services are to  
982 be obtained. The provisions of this subsection (7) shall not  
983 apply to any architectural or engineering contract paid for by  
984 self-generated funds of any of the state institutions of higher  
985 learning, nor shall they apply to community college projects that  
986 are funded from local funds or other nonstate sources which are  
987 outside the Department of Finance and Administration's  
988 appropriations or as directed by the Legislature. The provisions  
989 of this subsection (7) shall not apply to any construction or  
990 design projects of the State Military Department that are funded  
991 from federal funds or other nonstate sources.

992 (8) The department shall have the authority to obtain  
993 annually from the state institutions of higher learning  
994 information on all building, construction and renovation projects  
995 including duties, responsibilities and costs of any architect or  
996 engineer hired by any such institutions.

997 (9) (a) As an alternative to other methods of awarding  
998 contracts as prescribed by law, the department may use the  
999 design-build method or the design-build bridging method of  
1000 contracting for new capital construction projects to be used as a  
1001 pilot program for the following projects:

1002 (i) Projects for the Mississippi Development  
1003 Authority pursuant to agreements between both governmental  
1004 entities;

1005 (ii) Any project with an estimated cost of not  
1006 more than Ten Million Dollars (\$10,000,000.00), not to exceed two  
1007 (2) projects per fiscal year; and

1008 (iii) Any project which has an estimated cost of  
1009 more than Fifty Million Dollars (\$50,000,000.00), not to exceed  
1010 one (1) project per fiscal year.

1011 (b) As used in this subsection:

1012 (i) "Design-build method of contracting" means a  
1013 contract that combines the design and construction phases of a

1014 project into a single contract and the contractor is required to  
1015 satisfactorily perform, at a minimum, both the design and  
1016 construction of the project.

1017 (ii) "Design-build bridging method of contracting"  
1018 means a contract that requires design through the design  
1019 development phase by a professional designer, after which a  
1020 request for qualifications for design completion and construction  
1021 is required for the completion of the project from a single  
1022 contractor that combines the balance of design and construction  
1023 phases of a project into a single contract. The contractor is  
1024 required to satisfactorily perform, at a minimum, both the balance  
1025 of design and construction of the project.

1026 (c) The department shall establish detailed criteria  
1027 for the selection of the successful design-build/design-build  
1028 bridging contractor in each request for design-build/design-build  
1029 bridging proposals. The request for qualifications evaluation of  
1030 the selection committee is a public record and shall be maintained  
1031 for a minimum of three (3) years after project completion.

1032 (d) The department shall maintain detailed records on  
1033 projects separate and apart from its regular record keeping. The  
1034 department shall file a report to the Legislature evaluating the  
1035 design-build/design-build bridging method of contracting by  
1036 comparing it to the low-bid method of contracting. At a minimum,  
1037 the report must include:

1038 (i) The management goals and objectives for the  
1039 design-build/design-build bridging system of management;

1040 (ii) A complete description of the components of  
1041 the design-build/design-build bridging management system,  
1042 including a description of the system the department put into  
1043 place on all projects managed under the system to insure that it  
1044 has the complete information on building segment costs and to  
1045 insure proper analysis of any proposal the department receives  
1046 from a contractor;

1047 (iii) The accountability systems the department  
1048 established to monitor any design-build/design-build bridging  
1049 project's compliance with specific goals and objectives for the  
1050 project;

1051 (iv) The outcome of any project or any interim  
1052 report on an ongoing project let under a design-build/design-build  
1053 bridging management system showing compliance with the goals,  
1054 objectives, policies and procedures the department set for the  
1055 project; and

1056 (v) The method used by the department to select  
1057 projects to be let under the design-build/design-build bridging  
1058 system of management and all other systems, policies and  
1059 procedures that the department considered as necessary components  
1060 to a design-build/design-build bridging management system.

1061 (e) All contracts let under the provisions of this  
1062 subsection shall be subject to oversight and review by the State  
1063 Auditor.

1064 (f) As an alternative to the authority granted to the  
1065 department in this subsection, the department may elect to use the  
1066 method of contracting for construction projects set out in Section  
1067 31-7-13.1.

1068 **SECTION 4.** Section 65-1-85, Mississippi Code of 1972, is  
1069 amended as follows:

1070 65-1-85. (1) All contracts by or on behalf of the  
1071 commission for the purchase of materials, equipment and supplies  
1072 shall be made in compliance with Section 31-7-1 et seq. All  
1073 contracts by or on behalf of the commission for construction,  
1074 reconstruction or other public work authorized to be done under  
1075 the provisions of this chapter, except maintenance, shall be made  
1076 by the executive director, subject to the approval of the  
1077 commission, only upon competitive bids after due advertisement as  
1078 follows, to wit:

1079           (a) Advertisement for bids shall be in accordance with  
1080 such rules and regulations, in addition to those herein provided,  
1081 as may be adopted therefor by the commission, and the commission  
1082 is authorized and empowered to make and promulgate such rules and  
1083 regulations as it may deem proper, to provide and adopt standard  
1084 specifications for road and bridge construction, and to amend such  
1085 rules and regulations from time to time.

1086           (b) The advertisement shall be inserted twice, being  
1087 once a week for two (2) successive weeks in a newspaper published  
1088 at the seat of government in Jackson, Mississippi, having a  
1089 general circulation throughout the state, and no letting shall be  
1090 less than fourteen (14) days nor more than sixty (60) days after  
1091 the publication of the first notice of such letting, and notices  
1092 of such letting may be placed in a metropolitan paper or national  
1093 trade publication.

1094           (c) Before advertising for such work, the executive  
1095 director shall cause to be prepared and filed in the department  
1096 detailed plans and specifications covering the work proposed to be  
1097 done and copies of the plans and specifications shall be subject  
1098 to inspection by any citizen during all office hours and made  
1099 available to all prospective bidders upon such reasonable terms  
1100 and conditions as may be required by the commission. A fee shall  
1101 be charged equal to the cost of producing a copy of any such plans  
1102 and specifications.

1103           (d) All such contracts shall be let to a responsible  
1104 bidder with the lowest and best bid, and a record of all bids  
1105 received for construction and reconstruction shall be preserved.

1106           (e) Each bid for such a construction and reconstruction  
1107 contract must be accompanied by a cashier's check, a certified  
1108 check or bidders bond executed by a surety company authorized to  
1109 do business in the State of Mississippi, in the principal amount  
1110 of not less than five percent (5%) of the bid, guaranteeing that  
1111 the bidder will give bond and enter into a contract for the

1112 faithful performance of the contract according to plans and  
1113 specifications on file.

1114 (f) Bonds shall be required of the successful bidder in  
1115 an amount equal to the contract price. The contract price shall  
1116 mean the entire cost of the particular contract let. In the event  
1117 change orders are made after the execution of a contract which  
1118 results in increasing the total contract price, additional bond in  
1119 the amount of the increased cost may be required. The surety or  
1120 sureties on such bonds shall be a surety company or surety  
1121 companies authorized to do business in the State of Mississippi,  
1122 all bonds to be payable to the State of Mississippi and to be  
1123 conditioned for the prompt, faithful and efficient performance of  
1124 the contract according to plans and specifications, and for the  
1125 prompt payment of all persons furnishing labor, material,  
1126 equipment and supplies therefor. Such bonds shall be subject to  
1127 the additional obligation that the principal and surety or  
1128 sureties executing the same shall be liable to the state in a  
1129 civil action instituted by the state at the instance of the  
1130 commission or any officer of the state authorized in such cases,  
1131 for double any amount in money or property the state may lose or  
1132 be overcharged or otherwise defrauded of by reason of any wrongful  
1133 or criminal act, if any, of the contractor, his agent or  
1134 employees.

1135 (2) With respect to equipment used in the construction,  
1136 reconstruction or other public work authorized to be done under  
1137 the provisions of this chapter: the word "equipment," in addition  
1138 to all equipment incorporated into or fully consumed in connection  
1139 with such project, shall include the reasonable value of the use  
1140 of all equipment of every kind and character and all accessories  
1141 and attachments thereto which are reasonably necessary to be used  
1142 and which are used in carrying out the performance of the  
1143 contract, and the reasonable value of the use thereof, during the  
1144 period of time the same are used in carrying out the performance

1145 of the contract, shall be the amount as agreed upon by the persons  
1146 furnishing the equipment and those using the same to be paid  
1147 therefor, which amount, however, shall not be in excess of the  
1148 maximum current rates and charges allowable for leasing or renting  
1149 as specified in Section 65-7-95; the word "labor" shall include  
1150 all work performed in repairing equipment used in carrying out the  
1151 performance of the contract, which repair labor is reasonably  
1152 necessary to the efficient operation of said equipment; and the  
1153 words "materials" and "supplies" shall include all repair parts  
1154 installed in or on equipment used in carrying out the performance  
1155 of the contract, which repair parts are reasonably necessary to  
1156 the efficient operation of said equipment.

1157 (3) The executive director, subject to the approval of the  
1158 commission, shall have the right to reject any and all bids,  
1159 whether such right is reserved in the notice or not.

1160 (4) The commission may require the pre-qualification of any  
1161 and all bidders and the failure to comply with pre-qualification  
1162 requirements may be the basis for the rejection of any bid by the  
1163 commission. The commission may require the pre-qualification of  
1164 any and all subcontractors before they are approved to participate  
1165 in any contract awarded under this section.

1166 (5) The commission may adopt rules and regulations for the  
1167 termination of any previously awarded contract which is not timely  
1168 proceeding toward completion. The failure of a contractor to  
1169 comply with such rules and regulations shall be a lawful basis for  
1170 the commission to terminate the contract with such contractor. In  
1171 the event of a termination under such rules and regulations, the  
1172 contractor shall not be entitled to any payment, benefit or  
1173 damages beyond the cost of the work actually completed.

1174 (6) Any contract for construction or paving of any highway  
1175 may be entered into for any cost which does not exceed the amount  
1176 of funds that may be made available therefor through bond issues  
1177 or from other sources of revenue, and the letting of contracts for

1178 such construction or paving shall not necessarily be delayed until  
1179 the funds are actually on hand, provided authorization for the  
1180 issuance of necessary bonds has been granted by law to supplement  
1181 other anticipated revenue, or when the department certifies to the  
1182 Department of Finance and Administration and the Legislative  
1183 Budget Office that projected receipts of funds by the department  
1184 will be sufficient to pay such contracts as they become due and  
1185 the Department of Finance and Administration determines that the  
1186 projections are reasonable and receipts will be sufficient to pay  
1187 the contracts as they become due. The Department of Finance and  
1188 Administration shall spread such determination on its minutes  
1189 prior to the letting of any contracts based on projected receipts.  
1190 Nothing in this subsection shall prohibit the issuance of bonds,  
1191 which have been authorized, at any time in the discretion of the  
1192 State Bond Commission, nor to prevent investment of surplus funds  
1193 in United States government bonds or State of Mississippi bonds as  
1194 presently authorized by Section 12, Chapter 312, Laws of 1956.

1195 (7) All other contracts for work to be done under the  
1196 provisions of this chapter and for the purchase of materials,  
1197 equipment and supplies to be used as provided for in this chapter  
1198 shall be made in compliance with Section 31-7-1 et seq.

1199 (8) The commission shall not empower or authorize the  
1200 executive director, or any one or more of its members, or any  
1201 engineer or other person to let or make contracts for the  
1202 construction or repair of public roads, or building bridges, or  
1203 for the purchase of material, equipment or supplies contrary to  
1204 the provisions of this chapter as set forth in this section,  
1205 except in cases of flood or other cases of emergency where the  
1206 public interest requires that the work be done or the materials,  
1207 equipment or supplies be purchased without the delay incident to  
1208 advertising for competitive bids. Such emergency contracts may be  
1209 made without advertisement under such rules and regulations as the  
1210 commission may prescribe.

1211           (9) The executive director, subject to the approval of the  
1212 commission, is authorized to negotiate and make agreements with  
1213 communities and/or civic organizations for landscaping,  
1214 beautification and maintenance of highway rights-of-way; however,  
1215 nothing in this subsection shall be construed as authorization for  
1216 the executive director or commission to participate in such a  
1217 project to an extent greater than the average cost for maintenance  
1218 of shoulders, backslopes and median areas with respect thereto.

1219           (10) The executive director may negotiate and enter into  
1220 contracts with private parties for the mowing of grass and  
1221 trimming of vegetation on the rights-of-way of state highways  
1222 whenever such practice is possible and cost effective.

1223           (11) (a) As an alternative to the method of awarding  
1224 contracts as otherwise provided in this section, the commission  
1225 may use the design-build method of contracting for the following:

1226                       (i) Projects for the Mississippi Development  
1227 Authority pursuant to agreements between both governmental  
1228 entities;

1229                       (ii) Any project with an estimated cost of not  
1230 more than Ten Million Dollars (\$10,000,000.00), not to exceed two  
1231 (2) projects per fiscal year; and

1232                       (iii) Any project which has an estimated cost of  
1233 more than Fifty Million Dollars (\$50,000,000.00), not to exceed  
1234 one (1) project per fiscal year.

1235           (b) As used in this subsection, the term "design-build"  
1236 method of contracting means a contract that combines the design  
1237 and construction phases of a project into a single contract and  
1238 the contractor is required to satisfactorily perform, at a  
1239 minimum, both the design and construction of the project.

1240           (c) The commission shall establish detailed criteria  
1241 for the selection of the successful design-build contractor in  
1242 each request for design-build proposals. The evaluation of the

1243 selection committee is a public record and shall be maintained for  
1244 a minimum of ten (10) years after project completion.

1245 (d) The commission shall maintain detailed records on  
1246 projects separate and apart from its regular record keeping. The  
1247 commission shall file a report to the Legislature evaluating the  
1248 design-build method of contracting by comparing it to the low-bid  
1249 method of contracting. At a minimum, the report must include:

1250 (i) The management goals and objectives for the  
1251 design-build system of management;

1252 (ii) A complete description of the components of  
1253 the design-build management system, including a description of the  
1254 system the department put into place on all projects managed under  
1255 the system to insure that it has the complete information on  
1256 highway segment costs and to insure proper analysis of any  
1257 proposal the commission receives from a highway contractor;

1258 (iii) The accountability systems the  
1259 Transportation Department established to monitor any design-build  
1260 project's compliance with specific goals and objectives for the  
1261 project;

1262 (iv) The outcome of any project or any interim  
1263 report on an ongoing project let under a design-build management  
1264 system showing compliance with the goals, objectives, policies and  
1265 procedures the department set for the project; and

1266 (v) The method used by the department to select  
1267 projects to be let under the design-build system of management and  
1268 all other systems, policies and procedures that the department  
1269 considered as necessary components to a design-build management  
1270 system.

1271 (e) All contracts let under the provisions of this  
1272 subsection shall be subject to oversight and review by the State  
1273 Auditor. The State Auditor shall file a report with the  
1274 Legislature on or before January 1 of each year detailing his  
1275 findings with regard to any contract let or project performed in

1276 violation of the provisions of this subsection. The actual and  
1277 necessary expenses incurred by the State Auditor in complying with  
1278 this paragraph (e) shall be paid for and reimbursed by the  
1279 Mississippi Department of Transportation out of funds made  
1280 available for the contract or contracts let and project or  
1281 projects performed.

1282 (f) As an alternative to the authority granted to the  
1283 commission in this subsection, the commission may elect to use the  
1284 method of contracting for construction projects set out in Section  
1285 31-7-13.1.

1286 **SECTION 5.** This act shall take effect and be in force from  
1287 and after July 1, 2006.