

By: Representatives Miles, Clarke

To: Transportation

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 351

1 AN ACT TO AUTHORIZE THE MISSISSIPPI TRANSPORTATION
2 COMMISSION, COUNTY BOARDS OF SUPERVISORS AND THE GOVERNING
3 AUTHORITIES OF MUNICIPALITIES TO CONSTRUCT, INDIVIDUALLY OR
4 JOINTLY WITH OTHER GOVERNMENTAL ENTITIES, TOLL ROAD OR TOLL BRIDGE
5 PROJECTS WITHIN THE STATE; TO AUTHORIZE THE MISSISSIPPI
6 TRANSPORTATION COMMISSION, COUNTY BOARDS OF SUPERVISORS AND THE
7 GOVERNING AUTHORITIES OF MUNICIPALITIES TO CONTRACT WITH ANY
8 PERSON, CORPORATION OR OTHER BUSINESS LICENSED TO DO BUSINESS IN
9 THE STATE FOR THE PURPOSE OF CONSTRUCTING TOLL ROADS OR BRIDGES;
10 TO PRESCRIBE THE TERMS AND CONDITIONS FOR THE LETTING OF SUCH
11 CONTRACTS AND THE RIGHTS AND DUTIES OF THE PARTIES ENTERING INTO
12 SUCH CONTRACTS; TO AUTHORIZE COUNTIES, CITIES AND THE STATE TO
13 ISSUE REVENUE BONDS TO FINANCE TOLL ROAD AND TOLL BRIDGE PROJECTS;
14 TO AMEND SECTIONS 65-3-1, 65-1-85, 31-7-13 AND 11-46-9,
15 MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS
16 ACT; AND FOR RELATED PURPOSES.

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

18 **SECTION 1.** The Mississippi Transportation Commission, county
19 boards of supervisors and/or the governing authorities of
20 municipalities (hereinafter referred to as governmental entities),
21 in their discretion, may construct, operate and maintain one or
22 more new toll roads or toll bridges in the state for motor vehicle
23 traffic, including toll booths and related facilities, at and
24 along such locations where an alternate untolled route exists.
25 All such highways, pavement, bridges, drainage related structures
26 and other infrastructure comprising the projects shall be built
27 and maintained in accordance with not less than the minimum
28 highway design, construction and maintenance standards established
29 by the contracting governmental entity for such highways,
30 infrastructure and facilities.

31 **SECTION 2.** (1) In addition to and as an alternative to any
32 other authority granted by law including, but not limited to,
33 Section 1 of this act, any governmental entities, as defined in
34 Section 1 of this act, in their discretion, may contract,

35 individually or jointly with other governmental entities, with any
36 persons, corporations, partnerships or other businesses licensed
37 to do business in the State of Mississippi (hereinafter referred
38 to as "companies" or "company") for the purpose of designing,
39 financing, constructing, operating and maintaining one or more new
40 toll roads or toll bridges in the state for motor vehicle traffic,
41 including toll booths and related facilities, at and along such
42 locations where an alternate untolled route exists. Such
43 contracts shall provide that land held by the governmental
44 entities, whether in fee simple, as an easement or other interest,
45 shall be leased or assigned to a company for design, construction,
46 operation and maintenance of roadways, highways or bridges for
47 motor vehicle traffic, toll booths and related facilities. All
48 such highways, pavement, bridges, drainage related structures and
49 other infrastructure comprising the projects shall be built and
50 maintained in accordance with not less than the minimum highway
51 design, construction and maintenance standards established by the
52 contracting governmental entity for such highways, infrastructure
53 and facilities. The contracting governmental entity shall conduct
54 periodic inspections of any such project throughout the term of
55 the contract to ensure compliance by the company. Failure of a
56 company to comply with minimum standards established for the
57 project by the contracting governmental entity shall constitute a
58 breach and shall subject the company to liability on its bond or
59 security or to rescission of the contract in accordance with the
60 terms and provisions of the contract.

61 (2) (a) Every contract entered into by a governmental
62 entity under this section (except for contracts entered into with
63 another governmental entity), at a minimum, must provide for the
64 design and construction of a new toll road or toll bridge project
65 and may also provide for the financing, acquisition, lease,
66 maintenance, and/or operation of a new toll road or toll bridge
67 project.

68 (b) If a governmental entity enters into a contract
69 with a company as authorized by Section 2 of this act, such
70 governmental entity shall use a competitive procurement process
71 that provides the best value for the governmental entity. The
72 governmental entity may accept unsolicited proposals for a
73 proposed new toll road or solicit proposals in accordance with
74 this section.

75 (c) A governmental entity shall publish a request for
76 competing proposals and qualifications in a newspaper having a
77 general circulation within such governmental entity or, if the
78 governmental entity is the Mississippi Transportation Commission,
79 shall publish the request in a newspaper having a general
80 circulation at the seat of government and, if the governmental
81 entity has a website, shall post the request on such website.
82 Such request shall include the criteria used to evaluate the
83 proposals, the relative weight given to the criteria and a
84 deadline by which proposals must be received. At a minimum, a
85 proposal submitted in response to such request must contain:

86 (i) Information regarding the proposed project
87 location, scope and limits;

88 (ii) Information regarding the company's
89 qualifications, experience, technical competence, and capability
90 to develop the project; and

91 (iii) A proposed financial plan for the proposed
92 project that includes, at a minimum, the projected project costs,
93 projected revenues and proposed sources of funds.

94 A governmental entity may interview a company submitting a
95 solicited or unsolicited proposal. In evaluating such proposals,
96 a governmental entity may solicit input from other sources
97 regarding such proposals.

98 (d) The governmental entity shall rank each proposal
99 based on the criteria described in the request for proposals and
100 select the company whose proposal offers the best value to the

101 governmental entity. The governmental entity may enter into
102 discussions with the company whose proposal offers the best value.
103 If at any point during the discussions it appears to the
104 governmental entity that the highest ranking proposal will not
105 provide the governmental entity with the overall best value, the
106 governmental entity may enter into discussions with the company
107 submitting the next-highest ranking proposal.

108 (e) The governmental entity may withdraw a request for
109 competing proposals and qualifications at any time and for any
110 reason and may reject any one or all proposals. In either case,
111 the governmental entity may then publish a new request for
112 competing proposals and qualifications. A governmental entity
113 shall not be required to pay any company for the costs of
114 preparing or submitting proposals.

115 (f) The governmental entity shall prescribe the general
116 form of a contract authorized by this section and may include any
117 matter the governmental entity considers advantageous to it. The
118 governmental entity and the company shall negotiate the specific
119 terms of the contract.

120 (g) Except as provided under this subsection (2), no
121 such contract entered into hereunder shall be subject to the
122 provisions of Section 65-1-8, Section 31-7-13 or any other public
123 bid or public procurement laws of this state.

124 (3) Every contract entered into by a governmental entity
125 under this section shall require a company to enter into bond and
126 provide such security as the governmental entity determines may be
127 necessary or advisable to ensure timely completion and proper
128 execution and performance of the contract. The governmental
129 entities are authorized to acquire such property or interests in
130 property as may be necessary, by gift, purchase or eminent domain,
131 for construction and maintenance of the highways or bridges built
132 pursuant to contracts entered into under this section.

133 Acquisition of all property pursuant to this section shall be, in

134 all respects, consistent to, and not in conflict with, the
135 provisions of House Bill No. 300, 2007 Regular Session. Upon
136 expiration, termination or rescission of the contract, all
137 interests that the company may have in the land, infrastructure,
138 facilities or other improvements to the property subject to
139 contract shall terminate and automatically, by operation of law,
140 be returned or conveyed to and vest title, ownership and
141 possession in the contracting governmental entity. Upon
142 termination, expiration or rescission of the contract, the
143 collection of tolls shall cease after all associated debts have
144 been retired or released.

145 (4) During the term of any contract entered into under this
146 section, the company may establish, charge and collect motor
147 vehicle operators tolls for use of the highway or bridge and its
148 facilities. The amount of such tolls, and any modification
149 thereto, shall be subject to approval by the contracting
150 governmental entity after notice and public hearing; however, all
151 such contracts entered into with the Mississippi Transportation
152 Commission may require a company to pay a percentage of all tolls
153 collected to the Mississippi Department of Transportation. All
154 such tolls paid to the department shall be deposited into the
155 special bond sinking fund under Section 6 of this act and may be
156 expended only as authorized by the Legislature.

157 (5) All statutes of this state relating to traffic
158 regulation and control shall be applicable to motor vehicles
159 operated upon highways and bridges constructed under this section
160 and shall be enforceable by the Mississippi Department of Public
161 Safety, the Mississippi Highway Safety Patrol and any other law
162 enforcement agency having jurisdiction over such highways and
163 bridges.

164 (6) The State of Mississippi, the Mississippi Transportation
165 Commission, the Mississippi Department of Transportation,
166 counties, municipalities or any other agency or political

167 subdivision, or any officer or employee thereof, shall not be
168 liable for any tortious act or omission arising out of the
169 construction, maintenance or operation of any highway, bridge or
170 roadway project under the provisions of this section where the act
171 or omission occurs during the term of any such contract entered
172 into by the Mississippi Transportation Commission or other
173 governmental entity and a company.

174 **SECTION 3.** The powers conferred by Sections 1 and 2 of House
175 Bill No. 351, 2007 Regular Session, shall be in addition to the
176 powers conferred by any other law, general, special or local and
177 shall be construed as an additional and alternative method of
178 funding all or any portion of the purchasing, building, improving,
179 owning or operating of roadways, highways or bridges under the
180 jurisdiction of the Mississippi Transportation Commission, county
181 boards of supervisors or municipal governing authorities, any
182 provision of the laws of the state or any charter of any
183 municipality to the contrary notwithstanding.

184 **SECTION 4.** (1) For the purpose of providing funds to defray
185 the expenses of projects authorized pursuant to Sections 1 and 2
186 of this act, the board of supervisors of a county or the governing
187 authorities of a municipality shall have the right to borrow money
188 for the project, and to issue revenue bonds therefor in such
189 principal amounts as the board of supervisors or governing
190 authorities may determine to be necessary to provide sufficient
191 funds to defray the expenses of projects authorized pursuant to
192 Sections 1 and 2 of this act. The bonds shall be payable out of
193 any revenues derived from the project, including grants or
194 contributions from the federal government or other sources. Such
195 bonds may be sold at public or private sale at not less than par
196 and shall bear interest at a rate or rates not exceeding that
197 allowed in Section 75-17-103. Any such bonds so issued shall not
198 constitute a debt of the county, the municipality or any political
199 subdivision of the county or the city within the meaning of any

200 constitutional, statutory or charter restriction, limitation or
201 provision. It shall be plainly stated on the face of each bond in
202 substance that the bond has been issued pursuant to the authority
203 granted in this section and that the taxing power of the county or
204 municipality issuing the bond is not pledged to the payment of the
205 bond or the interest on it and that the bond and the interest on
206 it are payable solely from the revenues of the project for which
207 the bond is issued.

208 (2) All bonds issued under the authority of this section
209 shall bear such date or dates, shall be in such form or
210 denomination, shall bear such rate of interest, and shall mature
211 at such times as the county or municipality shall determine, but
212 no bonds issued under the authority of this section shall mature
213 more than thirty (30) years from the date of the issuance thereof
214 and none of the bonds shall be sold for less than par and accrued
215 interest. All bonds shall be sold in the manner now provided by
216 law for the sale of bonds without any restrictions, limitations,
217 requirements or conditions applicable to the borrowing of such
218 money and the issuance of such bonds which are not herein
219 contained. The denomination, form, place of payment and other
220 details of such bonds may be determined by resolution or order of
221 the board of supervisors of a county or the governing authorities
222 of a municipality, and shall be executed on behalf of the county
223 or municipality as is now provided by law.

224 (3) Before issuing any bonds under the provisions of this
225 section, the board of supervisors of the county or the governing
226 authorities of the municipality shall, by resolution spread upon
227 the minutes, declare its intention to issue such bonds for the
228 purposes authorized by this section and shall state in the
229 resolution the amount of bonds proposed to be issued and shall
230 likewise fix in the resolution the date upon which the board of
231 supervisors of the county or the governing authorities of the
232 municipality proposes to direct the issuance of the bonds. Notice

233 of such intention shall be published once a week for at least
234 three (3) consecutive weeks in a newspaper published or having a
235 general circulation in the county or the municipality, with the
236 first publication of the notice to be made not less than
237 twenty-one (21) days prior to the date fixed in the resolution for
238 the issuance of the bonds and the last publication to be made not
239 more than seven (7) days prior to such date. If, on or before the
240 date specified in the resolution, twenty percent (20%) or fifteen
241 hundred (1500), whichever is less, of the qualified electors of
242 the county or municipality shall file a written protest against
243 the issuance of the bonds, then an election upon the issuance of
244 the bonds shall be called, and held, as provided in this section.
245 If no such protest shall be filed, then the board of supervisors
246 of the county or the governing authorities of the municipality may
247 issue such bonds without an election on the question of the
248 issuance of the bonds at any time within a period of two (2) years
249 after the date specified in the resolution.

250 (4) If an election is called under the provisions of this
251 section on the question of the issuance of bonds, the election
252 shall be held, insofar as practicable, in the same manner as other
253 elections are held in the county or municipality. At the
254 election, all qualified electors of the county or municipality may
255 vote and the ballots used in the election shall have printed
256 thereon a brief statement of the amount and purposes of the
257 proposed bond issue and the words "FOR THE BOND ISSUE" and the
258 words "AGAINST THE BOND ISSUE," and the voters shall vote by
259 placing a cross (X) or check mark (√) opposite their choice on the
260 proposition.

261 (5) When the results of any election provided for in this
262 section shall have been canvassed by the election commissioners of
263 the county or municipality and certified by them to the proper
264 authorities, it shall be the duty of the board of supervisors of
265 the county or the governing authorities of the municipality to

266 determine and adjudicate whether or not a majority of the
267 qualified electors who voted in the election voted in favor of the
268 issuance of the bonds, and unless a majority of the qualified
269 electors who voted in the election voted in favor of the issuance
270 of the bonds, then the bonds shall not be issued. Should a
271 majority of the qualified electors who vote in the election vote
272 in favor of the bonds, the board of supervisors of the county or
273 the governing authorities of the municipality may issue the bonds,
274 either in whole or in part, within two (2) years from the date of
275 such election, or within two (2) years after final favorable
276 determination of any litigation affecting the issuance of such
277 bonds at such time or times, and in such amount or amounts, not
278 exceeding that specified in the notice of the election, as shall
279 be deemed proper.

280 (6) This section, without reference to any other statute,
281 shall be deemed to be full and complete authority for the issuance
282 of bonds and borrowing of money as authorized in this section by
283 counties or municipalities, and shall be construed as an
284 additional and alternate method therefor. The bonds authorized by
285 this section shall not constitute an indebtedness within the
286 meaning of any constitutional or statutory limitation or
287 restriction.

288 **SECTION 5.** (1) (a) A special fund, to be designated as the
289 "Toll Road Revenue Bond Fund," is created within the State
290 Treasury. The fund shall be maintained by the State Treasurer as
291 a separate and special fund, separate and apart from the General
292 Fund of the state. Unexpended amounts remaining in the fund at
293 the end of a fiscal year shall not lapse into the State General
294 Fund, and any interest earned or investment earnings on amounts in
295 the fund shall be deposited into such fund.

296 (b) Monies deposited into the fund shall be disbursed,
297 in the discretion of the Mississippi Transportation Commission, to
298 pay the costs incurred in defraying the expenses of projects

299 authorized by the Mississippi Transportation Commission pursuant
300 to Sections 1 and 2 of this act.

301 (2) Amounts deposited into such special fund shall be
302 disbursed to pay the expenses described in subsection (1) of this
303 section. If any monies in the special fund are not used within
304 six (6) years after the date the proceeds of the bonds authorized
305 under Sections 5 through 20 of this act are deposited into such
306 fund, then the Mississippi Transportation Commission shall provide
307 an accounting of such unused monies to the State Bond Commission.
308 Promptly after the State Bond Commission has certified, by
309 resolution duly adopted, that the projects for which the revenue
310 bonds have been issued shall have been completed, abandoned or
311 cannot be completed in a timely fashion, any amounts remaining in
312 such special fund shall be applied to pay debt service on the
313 bonds issued under Sections 5 through 20 of this act, in
314 accordance with the proceedings authorizing the issuance of such
315 bonds and as directed by the State Bond Commission.

316 **SECTION 6.** For the purpose of providing for the payment of
317 the principal of and interest upon bonds issued under the
318 provisions of Sections 5 through 20 of this act, there is created
319 a special bond sinking fund in the State Treasury. The special
320 bond sinking fund shall consist of the monies required to be
321 deposited into the fund under Section 2 of this act and such other
322 amounts as the Legislature may direct to be paid into the fund by
323 appropriation or other authorization by the Legislature.
324 Unexpended amounts remaining in the special bond sinking fund at
325 the end of a fiscal year shall not lapse into the State General
326 Fund, and any interest earned or investment earnings on amounts in
327 the special bond sinking fund shall be deposited into such sinking
328 fund.

329 **SECTION 7.** (1) The State Bond Commission, at one time or
330 from time to time, may declare by resolution the necessity for
331 issuance of revenue bonds of the State of Mississippi for the

332 purpose of providing funds to defray the expenses of projects
333 authorized by the Mississippi Transportation Commission pursuant
334 to Sections 1 and 2 of this act. Upon the adoption of a
335 resolution by the Mississippi Transportation Commission, declaring
336 the necessity for the issuance of the revenue bonds authorized by
337 this section, the Mississippi Transportation Commission shall
338 deliver a certified copy of its resolution or resolutions to the
339 State Bond Commission. Upon receipt of such resolution, the State
340 Bond Commission, in its discretion, may act as the issuing agent,
341 prescribe the form of the bonds, advertise for and accept bids,
342 issue and sell, at public or private sale, the bonds so authorized
343 to be sold and do any and all other things necessary and advisable
344 in connection with the issuance and sale of such bonds. Revenue
345 bonds issued under this section shall be in such principal amounts
346 as the Mississippi Transportation Commission may determine to be
347 necessary to provide sufficient funds to defray the expenses of
348 projects authorized by the Mississippi Transportation Commission
349 pursuant to Sections 1 and 2 of this act.

350 (2) Any investment earnings on amounts deposited into the
351 special fund created in Section 5 of this act shall be used to pay
352 debt service on bonds issued under Sections 5 through 20 of this
353 act, in accordance with the proceedings authorizing issuance of
354 such bonds.

355 **SECTION 8.** The principal of and interest on the bonds
356 authorized under Sections 5 through 20 of this act shall be
357 payable in the manner provided in this section. Such bonds shall
358 bear such date or dates, be in such denomination or denominations,
359 bear interest at such rate or rates (not to exceed the limits set
360 forth in Section 75-17-103, Mississippi Code of 1972), be payable
361 at such place or places within or without the State of
362 Mississippi, shall mature absolutely at such time or times not to
363 exceed thirty (30) years from date of issue, be redeemable before
364 maturity at such time or times and upon such terms, with or

365 without premium, shall bear such registration privileges, and
366 shall be substantially in such form, all as shall be determined by
367 resolution of the State Bond Commission.

368 **SECTION 9.** The bonds authorized by Sections 5 through 20 of
369 this act shall be signed by the Chairman of the State Bond
370 Commission, or by his facsimile signature, and the official seal
371 of the State Bond Commission shall be affixed thereto, attested by
372 the secretary of the commission. The interest coupons, if any, to
373 be attached to such bonds may be executed by the facsimile
374 signatures of such officers. Whenever any such bonds shall have
375 been signed by the officials designated to sign the bonds who were
376 in office at the time of such signing but who may have ceased to
377 be such officers before the sale and delivery of such bonds, or
378 who may not have been in office on the date such bonds may bear,
379 the signatures of such officers upon such bonds and coupons shall
380 nevertheless be valid and sufficient for all purposes and have the
381 same effect as if the person so officially signing such bonds had
382 remained in office until their delivery to the purchaser, or had
383 been in office on the date such bonds may bear. However,
384 notwithstanding anything herein to the contrary, such bonds may be
385 issued as provided in the Registered Bond Act of the State of
386 Mississippi.

387 **SECTION 10.** All bonds and interest coupons issued under the
388 provisions of Sections 5 through 20 of this act have all the
389 qualities and incidents of negotiable instruments under the
390 provisions of the Uniform Commercial Code, and in exercising the
391 powers granted by Sections 5 through 20 of this act, the State
392 Bond Commission shall not be required to and need not comply with
393 the provisions of the Uniform Commercial Code.

394 **SECTION 11.** The State Bond Commission shall act as the
395 issuing agent for the bonds authorized under Sections 5 through 20
396 of this act, prescribe the form of the bonds, advertise for and
397 accept bids, issue and sell, at public or private sale, the bonds

398 so authorized to be sold, pay all fees and costs incurred in such
399 issuance and sale, and do any and all other things necessary and
400 advisable in connection with the issuance and sale of such bonds.
401 The State Bond Commission is authorized and empowered to pay the
402 costs that are incident to the sale, issuance and delivery of the
403 bonds authorized under Sections 5 through 20 of this act from the
404 proceeds derived from the sale of such bonds. The State Bond
405 Commission shall sell such bonds on sealed bids at public or
406 private sale, and for such price as it may determine to be for the
407 best interest of the State of Mississippi, but no such sale shall
408 be made at a price less than par plus accrued interest to the date
409 of delivery of the bonds to the purchaser. All interest accruing
410 on such bonds so issued shall be payable semiannually or annually;
411 however, the first interest payment may be for any period of not
412 more than one (1) year.

413 Notice of the sale of any such bonds shall be published at
414 least one time, not less than ten (10) days before the date of
415 sale, and shall be so published in one or more newspapers
416 published or having a general circulation in the City of Jackson,
417 Mississippi, and in one or more other newspapers or financial
418 journals with a national circulation, to be selected by the State
419 Bond Commission.

420 The State Bond Commission, when issuing any bonds under the
421 authority of Sections 5 through 20 of this act, may provide that
422 bonds, at the option of the State of Mississippi, may be called in
423 for payment and redemption at the call price named therein and
424 accrued interest on such date or dates named therein.

425 **SECTION 12.** Bonds issued under authority of Sections 5
426 through 20 of this act shall be revenue bonds of the state, the
427 principal of and interest on which shall be payable solely from
428 the revenue from projects authorized under Section 1 or 2 of this
429 act. The bonds shall never constitute an indebtedness of the
430 state within the meaning of any state constitutional provision or

431 statutory limitation, and shall never constitute or give rise to a
432 pecuniary liability of the state, or a charge against its general
433 credit or taxing powers, and such fact shall be plainly stated on
434 the face of each such bond. The bonds shall not be considered
435 when computing any limitation of indebtedness of the state. All
436 bonds issued under the authority of Sections 5 through 20 of this
437 act and all interest coupons applicable thereto shall be construed
438 to be negotiable instruments, despite the fact that they are
439 payable solely from a specified source.

440 **SECTION 13.** Upon the issuance and sale of bonds under the
441 provisions of Sections 5 through 20 of this act, the State Bond
442 Commission shall transfer the proceeds of any such sale or sales
443 to a special fund created in Section 5 of this act. The proceeds
444 of such bonds shall be disbursed solely upon the order of the
445 Mississippi Transportation Commission under such restrictions, if
446 any, as may be contained in the resolution providing for the
447 issuance of the bonds.

448 **SECTION 14.** The bonds authorized under Sections 5 through 20
449 of this act may be issued without any other proceedings or the
450 happening of any other conditions or things other than those
451 proceedings, conditions and things which are specified or required
452 by Sections 5 through 20 of this act. Any resolution providing
453 for the issuance of bonds under the provisions of Sections 5
454 through 20 of this act shall become effective immediately upon its
455 adoption by the commission, and any such resolution may be adopted
456 at any regular or special meeting of the commission by a majority
457 of its members.

458 **SECTION 15.** The bonds authorized under the authority of
459 Sections 5 through 20 of this act may be validated in the Chancery
460 Court of the First Judicial District of Hinds County, Mississippi,
461 in the manner and with the force and effect provided by Chapter
462 13, Title 31, Mississippi Code of 1972, for the validation of
463 county, municipal, school district and other bonds. The notice to

464 taxpayers required by such statutes shall be published in a
465 newspaper published or having a general circulation in the City of
466 Jackson, Mississippi.

467 **SECTION 16.** Any holder of bonds issued under the provisions
468 of Sections 5 through 20 of this act or of any of the interest
469 coupons pertaining thereto may, either at law or in equity, by
470 suit, action, mandamus or other proceeding, protect and enforce
471 any and all rights granted under Sections 5 through 20 of this
472 act, or under such resolution, and may enforce and compel
473 performance of all duties required by Sections 5 through 20 of
474 this act to be performed, in order to provide for the payment of
475 bonds and interest thereon.

476 **SECTION 17.** All bonds issued under the provisions of
477 Sections 5 through 20 of this act shall be legal investments for
478 trustees and other fiduciaries, and for savings banks, trust
479 companies and insurance companies organized under the laws of the
480 State of Mississippi, and such bonds shall be legal securities
481 which may be deposited with and shall be received by all public
482 officers and bodies of this state and all municipalities and
483 political subdivisions for the purpose of securing the deposit of
484 public funds.

485 **SECTION 18.** Bonds issued under the provisions of Sections 5
486 through 20 of this act and income therefrom shall be exempt from
487 all taxation in the State of Mississippi.

488 **SECTION 19.** The proceeds of the bonds issued under Sections
489 5 through 20 of this act shall be used solely for the purposes
490 provided in Sections 5 through 20 of this act, including the costs
491 incident to the issuance and sale of such bonds.

492 **SECTION 20.** The State Treasurer is authorized, without
493 further process of law, to certify to the Department of Finance
494 and Administration the necessity for warrants, and the Department
495 of Finance and Administration is authorized and directed to issue
496 such warrants, in such amounts as may be necessary to pay when due

497 the principal of, premium, if any, and interest on, or the
498 accreted value of, all bonds issued under Sections 5 through 20 of
499 this act; and the State Treasurer shall forward the necessary
500 amount to the designated place or places of payment of such bonds
501 in ample time to discharge such bonds, or the interest thereon, on
502 the due dates thereof.

503 **SECTION 21.** Section 65-3-1, Mississippi Code of 1972, is
504 amended as follows:

505 65-3-1. Subject only to the provisions hereinafter
506 contained, it shall be unlawful for any person, acting privately
507 or in any official capacity or as an employee of any subdivision
508 of the state, to charge or collect any toll or other charge from
509 any person for the privilege of traveling on any part of any
510 highway which has been heretofore or may hereafter be designated
511 as a state highway, and being a part of the state highway system,
512 or on or across any bridge wholly within this state, which is a
513 part of any such highway.

514 For a violation of this section, any judge or chancellor may,
515 in termtime or vacation, grant an injunction upon complaint of the
516 Mississippi Transportation Commission.

517 However, none of the provisions of this section shall
518 prohibit the collection of any toll or other charge for the
519 privilege of traveling on, or the use of, any causeway, bridge,
520 tunnel, toll bridge, or any combination of such facility
521 constructed under the provisions of Sections 65-23-101 through
522 65-23-119, forming a part of U.S. Highway * * * 90 across the Bay
523 of St. Louis, or across or under the East Pascagoula River or the
524 West Pascagoula River on * * * U.S. Highway 90.

525 The provisions of this section shall be inapplicable to any
526 toll road or bridge built or operated under the authority of
527 Section 1 or Section 2 of House Bill No. 351, 2007 Regular
528 Session.

529 **SECTION 22.** Section 65-1-85, Mississippi Code of 1972, is
530 amended as follows:

531 65-1-85. (1) All contracts by or on behalf of the
532 commission for the purchase of materials, equipment and supplies
533 shall be made in compliance with Section 31-7-1 et seq. All
534 contracts by or on behalf of the commission for construction,
535 reconstruction or other public work authorized to be done under
536 the provisions of this chapter, except maintenance, shall be made
537 by the executive director, subject to the approval of the
538 commission, only upon competitive bids after due advertisement as
539 follows, to wit:

540 (a) Advertisement for bids shall be in accordance with
541 such rules and regulations, in addition to those herein provided,
542 as may be adopted therefor by the commission, and the commission
543 is authorized and empowered to make and promulgate such rules and
544 regulations as it may deem proper, to provide and adopt standard
545 specifications for road and bridge construction, and to amend such
546 rules and regulations from time to time.

547 (b) The advertisement shall be inserted twice, being
548 once a week for two (2) successive weeks in a newspaper published
549 at the seat of government in Jackson, Mississippi, having a
550 general circulation throughout the state, and no letting shall be
551 less than fourteen (14) days nor more than sixty (60) days after
552 the publication of the first notice of such letting, and notices
553 of such letting may be placed in a metropolitan paper or national
554 trade publication.

555 (c) Before advertising for such work, the executive
556 director shall cause to be prepared and filed in the department
557 detailed plans and specifications covering the work proposed to be
558 done and copies of the plans and specifications shall be subject
559 to inspection by any citizen during all office hours and made
560 available to all prospective bidders upon such reasonable terms
561 and conditions as may be required by the commission. A fee shall

562 be charged equal to the cost of producing a copy of any such plans
563 and specifications.

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

567 (e) Each bid for such a construction and reconstruction
568 contract must be accompanied by a cashier's check, a certified
569 check or bidders bond executed by a surety company authorized to
570 do business in the State of Mississippi, in the principal amount
571 of not less than five percent (5%) of the bid, guaranteeing that
572 the bidder will give bond and enter into a contract for the
573 faithful performance of the contract according to plans and
574 specifications on file.

575 (f) Bonds shall be required of the successful bidder in
576 an amount equal to the contract price. The contract price shall
577 mean the entire cost of the particular contract let. In the event
578 change orders are made after the execution of a contract which
579 results in increasing the total contract price, additional bond in
580 the amount of the increased cost may be required. The surety or
581 sureties on such bonds shall be a surety company or surety
582 companies authorized to do business in the State of Mississippi,
583 all bonds to be payable to the State of Mississippi and to be
584 conditioned for the prompt, faithful and efficient performance of
585 the contract according to plans and specifications, and for the
586 prompt payment of all persons furnishing labor, material,
587 equipment and supplies therefor. Such bonds shall be subject to
588 the additional obligation that the principal and surety or
589 sureties executing the same shall be liable to the state in a
590 civil action instituted by the state at the instance of the
591 commission or any officer of the state authorized in such cases,
592 for double any amount in money or property the state may lose or
593 be overcharged or otherwise defrauded of by reason of any wrongful

594 or criminal act, if any, of the contractor, his agent or
595 employees.

596 (2) With respect to equipment used in the construction,
597 reconstruction or other public work authorized to be done under
598 the provisions of this chapter: the word "equipment," in addition
599 to all equipment incorporated into or fully consumed in connection
600 with such project, shall include the reasonable value of the use
601 of all equipment of every kind and character and all accessories
602 and attachments thereto which are reasonably necessary to be used
603 and which are used in carrying out the performance of the
604 contract, and the reasonable value of the use thereof, during the
605 period of time the same are used in carrying out the performance
606 of the contract, shall be the amount as agreed upon by the persons
607 furnishing the equipment and those using the same to be paid
608 therefor, which amount, however, shall not be in excess of the
609 maximum current rates and charges allowable for leasing or renting
610 as specified in Section 65-7-95; the word "labor" shall include
611 all work performed in repairing equipment used in carrying out the
612 performance of the contract, which repair labor is reasonably
613 necessary to the efficient operation of said equipment; and the
614 words "materials" and "supplies" shall include all repair parts
615 installed in or on equipment used in carrying out the performance
616 of the contract, which repair parts are reasonably necessary to
617 the efficient operation of said equipment.

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

621 (4) The commission may require the pre-qualification of any
622 and all bidders and the failure to comply with pre-qualification
623 requirements may be the basis for the rejection of any bid by the
624 commission. The commission may require the pre-qualification of
625 any and all subcontractors before they are approved to participate
626 in any contract awarded under this section.

627 (5) The commission may adopt rules and regulations for the
628 termination of any previously awarded contract which is not timely
629 proceeding toward completion. The failure of a contractor to
630 comply with such rules and regulations shall be a lawful basis for
631 the commission to terminate the contract with such contractor. In
632 the event of a termination under such rules and regulations, the
633 contractor shall not be entitled to any payment, benefit or
634 damages beyond the cost of the work actually completed.

635 (6) Any contract for construction or paving of any highway
636 may be entered into for any cost which does not exceed the amount
637 of funds that may be made available therefor through bond issues
638 or from other sources of revenue, and the letting of contracts for
639 such construction or paving shall not necessarily be delayed until
640 the funds are actually on hand, provided authorization for the
641 issuance of necessary bonds has been granted by law to supplement
642 other anticipated revenue, or when the department certifies to the
643 Department of Finance and Administration and the Legislative
644 Budget Office that projected receipts of funds by the department
645 will be sufficient to pay such contracts as they become due and
646 the Department of Finance and Administration determines that the
647 projections are reasonable and receipts will be sufficient to pay
648 the contracts as they become due. The Department of Finance and
649 Administration shall spread such determination on its minutes
650 prior to the letting of any contracts based on projected receipts.
651 Nothing in this subsection shall prohibit the issuance of bonds,
652 which have been authorized, at any time in the discretion of the
653 State Bond Commission, nor to prevent investment of surplus funds
654 in United States government bonds or State of Mississippi bonds as
655 presently authorized by Section 12, Chapter 312, Laws of 1956.

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

660 (8) The commission shall not empower or authorize the
661 executive director, or any one or more of its members, or any
662 engineer or other person to let or make contracts for the
663 construction or repair of public roads, or building bridges, or
664 for the purchase of material, equipment or supplies contrary to
665 the provisions of this chapter as set forth in this section,
666 except in cases of flood or other cases of emergency where the
667 public interest requires that the work be done or the materials,
668 equipment or supplies be purchased without the delay incident to
669 advertising for competitive bids. Such emergency contracts may be
670 made without advertisement under such rules and regulations as the
671 commission may prescribe.

672 (9) The executive director, subject to the approval of the
673 commission, is authorized to negotiate and make agreements with
674 communities and/or civic organizations for landscaping,
675 beautification and maintenance of highway rights-of-way; however,
676 nothing in this subsection shall be construed as authorization for
677 the executive director or commission to participate in such a
678 project to an extent greater than the average cost for maintenance
679 of shoulders, backslopes and median areas with respect thereto.

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

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

687 (i) Projects for the Mississippi Development
688 Authority pursuant to agreements between both governmental
689 entities;

690 (ii) Any project with an estimated cost of not
691 more than Ten Million Dollars (\$10,000,000.00), not to exceed two

692 (2) projects per fiscal year; and

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

696 (b) As used in this subsection, the term "design-build"
697 method of contracting means a contract that combines the design
698 and construction phases of a project into a single contract and
699 the contractor is required to satisfactorily perform, at a
700 minimum, both the design and construction of the project.

701 (c) The commission shall establish detailed criteria
702 for the selection of the successful design-build contractor in
703 each request for design-build proposals. The evaluation of the
704 selection committee is a public record and shall be maintained for
705 a minimum of ten (10) years after project completion.

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

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

713 (ii) A complete description of the components of
714 the design-build management system, including a description of the
715 system the department put into place on all projects managed under
716 the system to insure that it has the complete information on
717 highway segment costs and to insure proper analysis of any
718 proposal the commission receives from a highway contractor;

719 (iii) The accountability systems the
720 Transportation Department established to monitor any design-build
721 project's compliance with specific goals and objectives for the
722 project;

723 (iv) The outcome of any project or any interim
724 report on an ongoing project let under a design-build management

725 system showing compliance with the goals, objectives, policies and
726 procedures the department set for the project; and

727 (v) The method used by the department to select
728 projects to be let under the design-build system of management and
729 all other systems, policies and procedures that the department
730 considered as necessary components to a design-build management
731 system.

732 (e) All contracts let under the provisions of this
733 subsection shall be subject to oversight and review by the State
734 Auditor. The State Auditor shall file a report with the
735 Legislature on or before January 1 of each year detailing his
736 findings with regard to any contract let or project performed in
737 violation of the provisions of this subsection. The actual and
738 necessary expenses incurred by the State Auditor in complying with
739 this paragraph (e) shall be paid for and reimbursed by the
740 Mississippi Department of Transportation out of funds made
741 available for the contract or contracts let and project or
742 projects performed.

743 (12) The provisions of this section shall not be construed
744 to prohibit the commission from awarding or entering into
745 contracts for the design, construction and financing of toll
746 roads, highways and bridge projects as provided under Sections 1
747 and 2 of House Bill No. 351, 2007 Regular Session.

748 **SECTION 23.** Section 31-7-13, Mississippi Code of 1972, is
749 amended as follows:

750 31-7-13. All agencies and governing authorities shall
751 purchase their commodities and printing; contract for garbage
752 collection or disposal; contract for solid waste collection or
753 disposal; contract for sewage collection or disposal; contract for
754 public construction; and contract for rentals as herein provided.

755 (a) **Bidding procedure for purchases not over \$3,500.00.**
756 Purchases which do not involve an expenditure of more than Three
757 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or

758 shipping charges, may be made without advertising or otherwise
759 requesting competitive bids. However, nothing contained in this
760 paragraph (a) shall be construed to prohibit any agency or
761 governing authority from establishing procedures which require
762 competitive bids on purchases of Three Thousand Five Hundred
763 Dollars (\$3,500.00) or less.

764 (b) **Bidding procedure for purchases over \$3,500.00 but**
765 **not over \$15,000.00.** Purchases which involve an expenditure of
766 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
767 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
768 freight and shipping charges may be made from the lowest and best
769 bidder without publishing or posting advertisement for bids,
770 provided at least two (2) competitive written bids have been
771 obtained. Any governing authority purchasing commodities pursuant
772 to this paragraph (b) may authorize its purchasing agent, or his
773 designee, with regard to governing authorities other than
774 counties, or its purchase clerk, or his designee, with regard to
775 counties, to accept the lowest and best competitive written bid.
776 Such authorization shall be made in writing by the governing
777 authority and shall be maintained on file in the primary office of
778 the agency and recorded in the official minutes of the governing
779 authority, as appropriate. The purchasing agent or the purchase
780 clerk, or their designee, as the case may be, and not the
781 governing authority, shall be liable for any penalties and/or
782 damages as may be imposed by law for any act or omission of the
783 purchasing agent or purchase clerk, or their designee,
784 constituting a violation of law in accepting any bid without
785 approval by the governing authority. The term "competitive
786 written bid" shall mean a bid submitted on a bid form furnished by
787 the buying agency or governing authority and signed by authorized
788 personnel representing the vendor, or a bid submitted on a
789 vendor's letterhead or identifiable bid form and signed by
790 authorized personnel representing the vendor. "Competitive" shall

791 mean that the bids are developed based upon comparable
792 identification of the needs and are developed independently and
793 without knowledge of other bids or prospective bids. Bids may be
794 submitted by facsimile, electronic mail or other generally
795 accepted method of information distribution. Bids submitted by
796 electronic transmission shall not require the signature of the
797 vendor's representative unless required by agencies or governing
798 authorities.

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

800 (i) **Publication requirement.**

801 1. Purchases which involve an expenditure of
802 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
803 freight and shipping charges, may be made from the lowest and best
804 bidder after advertising for competitive bids once each week for
805 two (2) consecutive weeks in a regular newspaper published in the
806 county or municipality in which such agency or governing authority
807 is located.

808 2. The purchasing entity may designate the
809 method by which the bids will be received, including, but not
810 limited to, bids sealed in an envelope, bids received
811 electronically in a secure system, bids received via a reverse
812 auction, or bids received by any other method that promotes open
813 competition and has been approved by the Office of Purchasing and
814 Travel. The provisions of this part 2 of subparagraph (i) shall
815 be repealed on July 1, 2008.

816 3. The date as published for the bid opening
817 shall not be less than seven (7) working days after the last
818 published notice; however, if the purchase involves a construction
819 project in which the estimated cost is in excess of Fifteen
820 Thousand Dollars (\$15,000.00), such bids shall not be opened in
821 less than fifteen (15) working days after the last notice is
822 published and the notice for the purchase of such construction
823 shall be published once each week for two (2) consecutive weeks.

824 The notice of intention to let contracts or purchase equipment
825 shall state the time and place at which bids shall be received,
826 list the contracts to be made or types of equipment or supplies to
827 be purchased, and, if all plans and/or specifications are not
828 published, refer to the plans and/or specifications on file. If
829 there is no newspaper published in the county or municipality,
830 then such notice shall be given by posting same at the courthouse,
831 or for municipalities at the city hall, and at two (2) other
832 public places in the county or municipality, and also by
833 publication once each week for two (2) consecutive weeks in some
834 newspaper having a general circulation in the county or
835 municipality in the above provided manner. On the same date that
836 the notice is submitted to the newspaper for publication, the
837 agency or governing authority involved shall mail written notice
838 to, or provide electronic notification to the main office of the
839 Mississippi Contract Procurement Center that contains the same
840 information as that in the published notice.

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

857 (iii) **Filing requirement.** In all cases involving
858 governing authorities, before the notice shall be published or
859 posted, the plans or specifications for the construction or
860 equipment being sought shall be filed with the clerk of the board
861 of the governing authority. In addition to these requirements, a
862 bid file shall be established which shall indicate those vendors
863 to whom such solicitations and specifications were issued, and
864 such file shall also contain such information as is pertinent to
865 the bid.

866 (iv) **Specification restrictions.**

867 1. Specifications pertinent to such bidding
868 shall be written so as not to exclude comparable equipment of
869 domestic manufacture. However, if valid justification is
870 presented, the Department of Finance and Administration or the
871 board of a governing authority may approve a request for specific
872 equipment necessary to perform a specific job. Further, such
873 justification, when placed on the minutes of the board of a
874 governing authority, may serve as authority for that governing
875 authority to write specifications to require a specific item of
876 equipment needed to perform a specific job. In addition to these
877 requirements, from and after July 1, 1990, vendors of relocatable
878 classrooms and the specifications for the purchase of such
879 relocatable classrooms published by local school boards shall meet
880 all pertinent regulations of the State Board of Education,
881 including prior approval of such bid by the State Department of
882 Education.

883 2. Specifications for construction projects
884 may include an allowance for commodities, equipment, furniture,
885 construction materials or systems in which prospective bidders are
886 instructed to include in their bids specified amounts for such
887 items so long as the allowance items are acquired by the vendor in
888 a commercially reasonable manner and approved by the

889 agency/governing authority. Such acquisitions shall not be made
890 to circumvent the public purchasing laws.

891 (v) Agencies and governing authorities may
892 establish secure procedures by which bids may be submitted via
893 electronic means.

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

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

910 (ii) **Decision procedure for Certified Purchasing**
911 **Offices.** In addition to the decision procedure set forth in
912 paragraph (d)(i), Certified Purchasing Offices may also use the
913 following procedure: Purchases may be made from the bidder
914 offering the best value. In determining the best value bid,
915 freight and shipping charges shall be included. Life-cycle
916 costing, total cost bids, warranties, guaranteed buy-back
917 provisions, documented previous experience, training costs and
918 other relevant provisions may be included in the best value
919 calculation. This provision shall authorize Certified Purchasing
920 Offices to utilize a Request For Proposals (RFP) process when
921 purchasing commodities. All best value procedures for state

922 agencies must be in compliance with regulations established by the
923 Department of Finance and Administration. No agency or governing
924 authority shall accept a bid based on items or criteria not
925 included in the specifications.

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

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

932 (e) **Lease-purchase authorization.** For the purposes of
933 this section, the term "equipment" shall mean equipment, furniture
934 and, if applicable, associated software and other applicable
935 direct costs associated with the acquisition. Any lease-purchase
936 of equipment which an agency is not required to lease-purchase
937 under the master lease-purchase program pursuant to Section
938 31-7-10 and any lease-purchase of equipment which a governing
939 authority elects to lease-purchase may be acquired by a
940 lease-purchase agreement under this paragraph (e). Lease-purchase
941 financing may also be obtained from the vendor or from a
942 third-party source after having solicited and obtained at least
943 two (2) written competitive bids, as defined in paragraph (b) of
944 this section, for such financing without advertising for such
945 bids. Solicitation for the bids for financing may occur before or
946 after acceptance of bids for the purchase of such equipment or,
947 where no such bids for purchase are required, at any time before
948 the purchase thereof. No such lease-purchase agreement shall be
949 for an annual rate of interest which is greater than the overall
950 maximum interest rate to maturity on general obligation
951 indebtedness permitted under Section 75-17-101, and the term of
952 such lease-purchase agreement shall not exceed the useful life of
953 equipment covered thereby as determined according to the upper
954 limit of the asset depreciation range (ADR) guidelines for the

955 Class Life Asset Depreciation Range System established by the
956 Internal Revenue Service pursuant to the United States Internal
957 Revenue Code and regulations thereunder as in effect on December
958 31, 1980, or comparable depreciation guidelines with respect to
959 any equipment not covered by ADR guidelines. Any lease-purchase
960 agreement entered into pursuant to this paragraph (e) may contain
961 any of the terms and conditions which a master lease-purchase
962 agreement may contain under the provisions of Section 31-7-10(5),
963 and shall contain an annual allocation dependency clause
964 substantially similar to that set forth in Section 31-7-10(8).
965 Each agency or governing authority entering into a lease-purchase
966 transaction pursuant to this paragraph (e) shall maintain with
967 respect to each such lease-purchase transaction the same
968 information as required to be maintained by the Department of
969 Finance and Administration pursuant to Section 31-7-10(13).
970 However, nothing contained in this section shall be construed to
971 permit agencies to acquire items of equipment with a total
972 acquisition cost in the aggregate of less than Ten Thousand
973 Dollars (\$10,000.00) by a single lease-purchase transaction. All
974 equipment, and the purchase thereof by any lessor, acquired by
975 lease-purchase under this paragraph and all lease-purchase
976 payments with respect thereto shall be exempt from all Mississippi
977 sales, use and ad valorem taxes. Interest paid on any
978 lease-purchase agreement under this section shall be exempt from
979 State of Mississippi income taxation.

980 (f) **Alternate bid authorization.** When necessary to
981 ensure ready availability of commodities for public works and the
982 timely completion of public projects, no more than two (2)
983 alternate bids may be accepted by a governing authority for
984 commodities. No purchases may be made through use of such
985 alternate bids procedure unless the lowest and best bidder cannot
986 deliver the commodities contained in his bid. In that event,

987 purchases of such commodities may be made from one (1) of the
988 bidders whose bid was accepted as an alternate.

989 (g) **Construction contract change authorization.** In the
990 event a determination is made by an agency or governing authority
991 after a construction contract is let that changes or modifications
992 to the original contract are necessary or would better serve the
993 purpose of the agency or the governing authority, such agency or
994 governing authority may, in its discretion, order such changes
995 pertaining to the construction that are necessary under the
996 circumstances without the necessity of further public bids;
997 provided that such change shall be made in a commercially
998 reasonable manner and shall not be made to circumvent the public
999 purchasing statutes. In addition to any other authorized person,
1000 the architect or engineer hired by an agency or governing
1001 authority with respect to any public construction contract shall
1002 have the authority, when granted by an agency or governing
1003 authority, to authorize changes or modifications to the original
1004 contract without the necessity of prior approval of the agency or
1005 governing authority when any such change or modification is less
1006 than one percent (1%) of the total contract amount. The agency or
1007 governing authority may limit the number, manner or frequency of
1008 such emergency changes or modifications.

1009 (h) **Petroleum purchase alternative.** In addition to
1010 other methods of purchasing authorized in this chapter, when any
1011 agency or governing authority shall have a need for gas, diesel
1012 fuel, oils and/or other petroleum products in excess of the amount
1013 set forth in paragraph (a) of this section, such agency or
1014 governing authority may purchase the commodity after having
1015 solicited and obtained at least two (2) competitive written bids,
1016 as defined in paragraph (b) of this section. If two (2)
1017 competitive written bids are not obtained, the entity shall comply
1018 with the procedures set forth in paragraph (c) of this section.
1019 In the event any agency or governing authority shall have

1020 advertised for bids for the purchase of gas, diesel fuel, oils and
1021 other petroleum products and coal and no acceptable bids can be
1022 obtained, such agency or governing authority is authorized and
1023 directed to enter into any negotiations necessary to secure the
1024 lowest and best contract available for the purchase of such
1025 commodities.

1026 (i) **Road construction petroleum products price**
1027 **adjustment clause authorization.** Any agency or governing
1028 authority authorized to enter into contracts for the construction,
1029 maintenance, surfacing or repair of highways, roads or streets,
1030 may include in its bid proposal and contract documents a price
1031 adjustment clause with relation to the cost to the contractor,
1032 including taxes, based upon an industry-wide cost index, of
1033 petroleum products including asphalt used in the performance or
1034 execution of the contract or in the production or manufacture of
1035 materials for use in such performance. Such industry-wide index
1036 shall be established and published monthly by the Mississippi
1037 Department of Transportation with a copy thereof to be mailed,
1038 upon request, to the clerks of the governing authority of each
1039 municipality and the clerks of each board of supervisors
1040 throughout the state. The price adjustment clause shall be based
1041 on the cost of such petroleum products only and shall not include
1042 any additional profit or overhead as part of the adjustment. The
1043 bid proposals or document contract shall contain the basis and
1044 methods of adjusting unit prices for the change in the cost of
1045 such petroleum products.

1046 (j) **State agency emergency purchase procedure.** If the
1047 governing board or the executive head, or his designee, of any
1048 agency of the state shall determine that an emergency exists in
1049 regard to the purchase of any commodities or repair contracts, so
1050 that the delay incident to giving opportunity for competitive
1051 bidding would be detrimental to the interests of the state, then
1052 the provisions herein for competitive bidding shall not apply and

1053 the head of such agency shall be authorized to make the purchase
1054 or repair. Total purchases so made shall only be for the purpose
1055 of meeting needs created by the emergency situation. In the event
1056 such executive head is responsible to an agency board, at the
1057 meeting next following the emergency purchase, documentation of
1058 the purchase, including a description of the commodity purchased,
1059 the purchase price thereof and the nature of the emergency shall
1060 be presented to the board and placed on the minutes of the board
1061 of such agency. The head of such agency, or his designee, shall,
1062 at the earliest possible date following such emergency purchase,
1063 file with the Department of Finance and Administration (i) a
1064 statement explaining the conditions and circumstances of the
1065 emergency, which shall include a detailed description of the
1066 events leading up to the situation and the negative impact to the
1067 entity if the purchase is made following the statutory
1068 requirements set forth in paragraph (a), (b) or (c) of this
1069 section, and (ii) a certified copy of the appropriate minutes of
1070 the board of such agency, if applicable. On or before September 1
1071 of each year, the State Auditor shall prepare and deliver to the
1072 Senate Fees, Salaries and Administration Committee, the House Fees
1073 and Salaries of Public Officers Committee and the Joint
1074 Legislative Budget Committee a report containing a list of all
1075 state agency emergency purchases and supporting documentation for
1076 each emergency purchase.

1077 (k) **Governing authority emergency purchase procedure.**

1078 If the governing authority, or the governing authority acting
1079 through its designee, shall determine that an emergency exists in
1080 regard to the purchase of any commodities or repair contracts, so
1081 that the delay incident to giving opportunity for competitive
1082 bidding would be detrimental to the interest of the governing
1083 authority, then the provisions herein for competitive bidding
1084 shall not apply and any officer or agent of such governing
1085 authority having general or special authority therefor in making

1086 such purchase or repair shall approve the bill presented therefor,
1087 and he shall certify in writing thereon from whom such purchase
1088 was made, or with whom such a repair contract was made. At the
1089 board meeting next following the emergency purchase or repair
1090 contract, documentation of the purchase or repair contract,
1091 including a description of the commodity purchased, the price
1092 thereof and the nature of the emergency shall be presented to the
1093 board and shall be placed on the minutes of the board of such
1094 governing authority.

1095 (1) **Hospital purchase, lease-purchase and lease**
1096 **authorization.**

1097 (i) The commissioners or board of trustees of any
1098 public hospital may contract with such lowest and best bidder for
1099 the purchase or lease-purchase of any commodity under a contract
1100 of purchase or lease-purchase agreement whose obligatory payment
1101 terms do not exceed five (5) years.

1102 (ii) In addition to the authority granted in
1103 subparagraph (i) of this paragraph (1), the commissioners or board
1104 of trustees is authorized to enter into contracts for the lease of
1105 equipment or services, or both, which it considers necessary for
1106 the proper care of patients if, in its opinion, it is not
1107 financially feasible to purchase the necessary equipment or
1108 services. Any such contract for the lease of equipment or
1109 services executed by the commissioners or board shall not exceed a
1110 maximum of five (5) years' duration and shall include a
1111 cancellation clause based on unavailability of funds. If such
1112 cancellation clause is exercised, there shall be no further
1113 liability on the part of the lessee. Any such contract for the
1114 lease of equipment or services executed on behalf of the
1115 commissioners or board that complies with the provisions of this
1116 subparagraph (ii) shall be excepted from the bid requirements set
1117 forth in this section.

1118 (m) **Exceptions from bidding requirements.** Excepted
1119 from bid requirements are:

1120 (i) **Purchasing agreements approved by department.**
1121 Purchasing agreements, contracts and maximum price regulations
1122 executed or approved by the Department of Finance and
1123 Administration.

1124 (ii) **Outside equipment repairs.** Repairs to
1125 equipment, when such repairs are made by repair facilities in the
1126 private sector; however, engines, transmissions, rear axles and/or
1127 other such components shall not be included in this exemption when
1128 replaced as a complete unit instead of being repaired and the need
1129 for such total component replacement is known before disassembly
1130 of the component; however, invoices identifying the equipment,
1131 specific repairs made, parts identified by number and name,
1132 supplies used in such repairs, and the number of hours of labor
1133 and costs therefor shall be required for the payment for such
1134 repairs.

1135 (iii) **In-house equipment repairs.** Purchases of
1136 parts for repairs to equipment, when such repairs are made by
1137 personnel of the agency or governing authority; however, entire
1138 assemblies, such as engines or transmissions, shall not be
1139 included in this exemption when the entire assembly is being
1140 replaced instead of being repaired.

1141 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
1142 of gravel or fill dirt which are to be removed and transported by
1143 the purchaser.

1144 (v) **Governmental equipment auctions.** Motor
1145 vehicles or other equipment purchased from a federal agency or
1146 authority, another governing authority or state agency of the
1147 State of Mississippi, or any governing authority or state agency
1148 of another state at a public auction held for the purpose of
1149 disposing of such vehicles or other equipment. Any purchase by a
1150 governing authority under the exemption authorized by this

1151 subparagraph (v) shall require advance authorization spread upon
1152 the minutes of the governing authority to include the listing of
1153 the item or items authorized to be purchased and the maximum bid
1154 authorized to be paid for each item or items.

1155 (vi) **Intergovernmental sales and transfers.**

1156 Purchases, sales, transfers or trades by governing authorities or
1157 state agencies when such purchases, sales, transfers or trades are
1158 made by a private treaty agreement or through means of
1159 negotiation, from any federal agency or authority, another
1160 governing authority or state agency of the State of Mississippi,
1161 or any state agency or governing authority of another state.
1162 Nothing in this section shall permit such purchases through public
1163 auction except as provided for in subparagraph (v) of this
1164 section. It is the intent of this section to allow governmental
1165 entities to dispose of and/or purchase commodities from other
1166 governmental entities at a price that is agreed to by both
1167 parties. This shall allow for purchases and/or sales at prices
1168 which may be determined to be below the market value if the
1169 selling entity determines that the sale at below market value is
1170 in the best interest of the taxpayers of the state. Governing
1171 authorities shall place the terms of the agreement and any
1172 justification on the minutes, and state agencies shall obtain
1173 approval from the Department of Finance and Administration, prior
1174 to releasing or taking possession of the commodities.

1175 (vii) **Perishable supplies or food.** Perishable
1176 supplies or food purchased for use in connection with hospitals,
1177 the school lunch programs, homemaking programs and for the feeding
1178 of county or municipal prisoners.

1179 (viii) **Single source items.** Noncompetitive items
1180 available from one (1) source only. In connection with the
1181 purchase of noncompetitive items only available from one (1)
1182 source, a certification of the conditions and circumstances
1183 requiring the purchase shall be filed by the agency with the

1184 Department of Finance and Administration and by the governing
1185 authority with the board of the governing authority. Upon receipt
1186 of that certification the Department of Finance and Administration
1187 or the board of the governing authority, as the case may be, may,
1188 in writing, authorize the purchase, which authority shall be noted
1189 on the minutes of the body at the next regular meeting thereafter.
1190 In those situations, a governing authority is not required to
1191 obtain the approval of the Department of Finance and
1192 Administration.

1193 (ix) **Waste disposal facility construction**
1194 **contracts.** Construction of incinerators and other facilities for
1195 disposal of solid wastes in which products either generated
1196 therein, such as steam, or recovered therefrom, such as materials
1197 for recycling, are to be sold or otherwise disposed of; however,
1198 in constructing such facilities, a governing authority or agency
1199 shall publicly issue requests for proposals, advertised for in the
1200 same manner as provided herein for seeking bids for public
1201 construction projects, concerning the design, construction,
1202 ownership, operation and/or maintenance of such facilities,
1203 wherein such requests for proposals when issued shall contain
1204 terms and conditions relating to price, financial responsibility,
1205 technology, environmental compatibility, legal responsibilities
1206 and such other matters as are determined by the governing
1207 authority or agency to be appropriate for inclusion; and after
1208 responses to the request for proposals have been duly received,
1209 the governing authority or agency may select the most qualified
1210 proposal or proposals on the basis of price, technology and other
1211 relevant factors and from such proposals, but not limited to the
1212 terms thereof, negotiate and enter contracts with one or more of
1213 the persons or firms submitting proposals.

1214 (x) **Hospital group purchase contracts.** Supplies,
1215 commodities and equipment purchased by hospitals through group
1216 purchase programs pursuant to Section 31-7-38.

1217 (xi) **Information technology products.** Purchases
1218 of information technology products made by governing authorities
1219 under the provisions of purchase schedules, or contracts executed
1220 or approved by the Mississippi Department of Information
1221 Technology Services and designated for use by governing
1222 authorities.

1223 (xii) **Energy efficiency services and equipment.**
1224 Energy efficiency services and equipment acquired by school
1225 districts, community and junior colleges, institutions of higher
1226 learning and state agencies or other applicable governmental
1227 entities on a shared-savings, lease or lease-purchase basis
1228 pursuant to Section 31-7-14.

1229 (xiii) **Municipal electrical utility system fuel.**
1230 Purchases of coal and/or natural gas by municipally-owned electric
1231 power generating systems that have the capacity to use both coal
1232 and natural gas for the generation of electric power.

1233 (xiv) **Library books and other reference materials.**
1234 Purchases by libraries or for libraries of books and periodicals;
1235 processed film, video cassette tapes, filmstrips and slides;
1236 recorded audio tapes, cassettes and diskettes; and any such items
1237 as would be used for teaching, research or other information
1238 distribution; however, equipment such as projectors, recorders,
1239 audio or video equipment, and monitor televisions are not exempt
1240 under this subparagraph.

1241 (xv) **Unmarked vehicles.** Purchases of unmarked
1242 vehicles when such purchases are made in accordance with
1243 purchasing regulations adopted by the Department of Finance and
1244 Administration pursuant to Section 31-7-9(2).

1245 (xvi) **Election ballots.** Purchases of ballots
1246 printed pursuant to Section 23-15-351.

1247 (xvii) **Multichannel interactive video systems.**
1248 From and after July 1, 1990, contracts by Mississippi Authority
1249 for Educational Television with any private educational

1250 institution or private nonprofit organization whose purposes are
1251 educational in regard to the construction, purchase, lease or
1252 lease-purchase of facilities and equipment and the employment of
1253 personnel for providing multichannel interactive video systems
1254 (ITSF) in the school districts of this state.

1255 (xviii) **Purchases of prison industry products.**

1256 From and after January 1, 1991, purchases made by state agencies
1257 or governing authorities involving any item that is manufactured,
1258 processed, grown or produced from the state's prison industries.

1259 (xix) **Undercover operations equipment.** Purchases
1260 of surveillance equipment or any other high-tech equipment to be
1261 used by law enforcement agents in undercover operations, provided
1262 that any such purchase shall be in compliance with regulations
1263 established by the Department of Finance and Administration.

1264 (xx) **Junior college books for rent.** Purchases by
1265 community or junior colleges of textbooks which are obtained for
1266 the purpose of renting such books to students as part of a book
1267 service system.

1268 (xxi) **Certain school district purchases.**

1269 Purchases of commodities made by school districts from vendors
1270 with which any levying authority of the school district, as
1271 defined in Section 37-57-1, has contracted through competitive
1272 bidding procedures for purchases of the same commodities.

1273 (xxii) **Garbage, solid waste and sewage contracts.**

1274 Contracts for garbage collection or disposal, contracts for solid
1275 waste collection or disposal and contracts for sewage collection
1276 or disposal.

1277 (xxiii) **Municipal water tank maintenance**

1278 **contracts.** Professional maintenance program contracts for the
1279 repair or maintenance of municipal water tanks, which provide
1280 professional services needed to maintain municipal water storage
1281 tanks for a fixed annual fee for a duration of two (2) or more
1282 years.

1283 (xxiv) **Purchases of Mississippi Industries for the**
1284 **Blind products.** Purchases made by state agencies or governing
1285 authorities involving any item that is manufactured, processed or
1286 produced by the Mississippi Industries for the Blind.

1287 (xxv) **Purchases of state-adopted textbooks.**
1288 Purchases of state-adopted textbooks by public school districts.

1289 (xxvi) **Certain purchases under the Mississippi**
1290 **Major Economic Impact Act.** Contracts entered into pursuant to the
1291 provisions of Section 57-75-9(2) and (3).

1292 (xxvii) **Used heavy or specialized machinery or**
1293 **equipment for installation of soil and water conservation**
1294 **practices purchased at auction.** Used heavy or specialized
1295 machinery or equipment used for the installation and
1296 implementation of soil and water conservation practices or
1297 measures purchased subject to the restrictions provided in
1298 Sections 69-27-331 through 69-27-341. Any purchase by the State
1299 Soil and Water Conservation Commission under the exemption
1300 authorized by this subparagraph shall require advance
1301 authorization spread upon the minutes of the commission to include
1302 the listing of the item or items authorized to be purchased and
1303 the maximum bid authorized to be paid for each item or items.

1304 (xxviii) **Hospital lease of equipment or services.**
1305 Leases by hospitals of equipment or services if the leases are in
1306 compliance with paragraph (1)(ii).

1307 (xxix) **Purchases made pursuant to qualified**
1308 **cooperative purchasing agreements.** Purchases made by certified
1309 purchasing offices of state agencies or governing authorities
1310 under cooperative purchasing agreements previously approved by the
1311 Office of Purchasing and Travel and established by or for any
1312 municipality, county, parish or state government or the federal
1313 government, provided that the notification to potential
1314 contractors includes a clause that sets forth the availability of
1315 the cooperative purchasing agreement to other governmental

1316 entities. Such purchases shall only be made if the use of the
1317 cooperative purchasing agreements is determined to be in the best
1318 interest of the governmental entity.

1319 (xxx) **School yearbooks.** Purchases of school
1320 yearbooks by state agencies or governing authorities; provided,
1321 however, that state agencies and governing authorities shall use
1322 for these purchases the RFP process as set forth in the
1323 Mississippi Procurement Manual adopted by the Office of Purchasing
1324 and Travel.

1325 (xxxix) **Toll roads and bridge construction**
1326 **projects.** Contracts entered into under the provisions of Section
1327 1 or 2 of House Bill No. 351, 2007 Regular Session.

1328 (n) **Term contract authorization.** All contracts for the
1329 purchase of:

1330 (i) All contracts for the purchase of commodities,
1331 equipment and public construction (including, but not limited to,
1332 repair and maintenance), may be let for periods of not more than
1333 sixty (60) months in advance, subject to applicable statutory
1334 provisions prohibiting the letting of contracts during specified
1335 periods near the end of terms of office. Term contracts for a
1336 period exceeding twenty-four (24) months shall also be subject to
1337 ratification or cancellation by governing authority boards taking
1338 office subsequent to the governing authority board entering the
1339 contract.

1340 (ii) Bid proposals and contracts may include price
1341 adjustment clauses with relation to the cost to the contractor
1342 based upon a nationally published industry-wide or nationally
1343 published and recognized cost index. The cost index used in a
1344 price adjustment clause shall be determined by the Department of
1345 Finance and Administration for the state agencies and by the
1346 governing board for governing authorities. The bid proposal and
1347 contract documents utilizing a price adjustment clause shall
1348 contain the basis and method of adjusting unit prices for the

1349 change in the cost of such commodities, equipment and public
1350 construction.

1351 (o) **Purchase law violation prohibition and vendor**
1352 **penalty.** No contract or purchase as herein authorized shall be
1353 made for the purpose of circumventing the provisions of this
1354 section requiring competitive bids, nor shall it be lawful for any
1355 person or concern to submit individual invoices for amounts within
1356 those authorized for a contract or purchase where the actual value
1357 of the contract or commodity purchased exceeds the authorized
1358 amount and the invoices therefor are split so as to appear to be
1359 authorized as purchases for which competitive bids are not
1360 required. Submission of such invoices shall constitute a
1361 misdemeanor punishable by a fine of not less than Five Hundred
1362 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1363 or by imprisonment for thirty (30) days in the county jail, or
1364 both such fine and imprisonment. In addition, the claim or claims
1365 submitted shall be forfeited.

1366 (p) **Electrical utility petroleum-based equipment**
1367 **purchase procedure.** When in response to a proper advertisement
1368 therefor, no bid firm as to price is submitted to an electric
1369 utility for power transformers, distribution transformers, power
1370 breakers, reclosers or other articles containing a petroleum
1371 product, the electric utility may accept the lowest and best bid
1372 therefor although the price is not firm.

1373 (q) **Fuel management system bidding procedure.** Any
1374 governing authority or agency of the state shall, before
1375 contracting for the services and products of a fuel management or
1376 fuel access system, enter into negotiations with not fewer than
1377 two (2) sellers of fuel management or fuel access systems for
1378 competitive written bids to provide the services and products for
1379 the systems. In the event that the governing authority or agency
1380 cannot locate two (2) sellers of such systems or cannot obtain
1381 bids from two (2) sellers of such systems, it shall show proof

1382 that it made a diligent, good-faith effort to locate and negotiate
1383 with two (2) sellers of such systems. Such proof shall include,
1384 but not be limited to, publications of a request for proposals and
1385 letters soliciting negotiations and bids. For purposes of this
1386 paragraph (q), a fuel management or fuel access system is an
1387 automated system of acquiring fuel for vehicles as well as
1388 management reports detailing fuel use by vehicles and drivers, and
1389 the term "competitive written bid" shall have the meaning as
1390 defined in paragraph (b) of this section. Governing authorities
1391 and agencies shall be exempt from this process when contracting
1392 for the services and products of a fuel management or fuel access
1393 systems under the terms of a state contract established by the
1394 Office of Purchasing and Travel.

1395 (r) **Solid waste contract proposal procedure.** Before
1396 entering into any contract for garbage collection or disposal,
1397 contract for solid waste collection or disposal or contract for
1398 sewage collection or disposal, which involves an expenditure of
1399 more than Fifty Thousand Dollars (\$50,000.00), a governing
1400 authority or agency shall issue publicly a request for proposals
1401 concerning the specifications for such services which shall be
1402 advertised for in the same manner as provided in this section for
1403 seeking bids for purchases which involve an expenditure of more
1404 than the amount provided in paragraph (c) of this section. Any
1405 request for proposals when issued shall contain terms and
1406 conditions relating to price, financial responsibility,
1407 technology, legal responsibilities and other relevant factors as
1408 are determined by the governing authority or agency to be
1409 appropriate for inclusion; all factors determined relevant by the
1410 governing authority or agency or required by this paragraph (r)
1411 shall be duly included in the advertisement to elicit proposals.
1412 After responses to the request for proposals have been duly
1413 received, the governing authority or agency shall select the most
1414 qualified proposal or proposals on the basis of price, technology

1415 and other relevant factors and from such proposals, but not
1416 limited to the terms thereof, negotiate and enter contracts with
1417 one or more of the persons or firms submitting proposals. If the
1418 governing authority or agency deems none of the proposals to be
1419 qualified or otherwise acceptable, the request for proposals
1420 process may be reinitiated. Notwithstanding any other provisions
1421 of this paragraph, where a county with at least thirty-five
1422 thousand (35,000) nor more than forty thousand (40,000)
1423 population, according to the 1990 federal decennial census, owns
1424 or operates a solid waste landfill, the governing authorities of
1425 any other county or municipality may contract with the governing
1426 authorities of the county owning or operating the landfill,
1427 pursuant to a resolution duly adopted and spread upon the minutes
1428 of each governing authority involved, for garbage or solid waste
1429 collection or disposal services through contract negotiations.

1430 (s) **Minority set-aside authorization.** Notwithstanding
1431 any provision of this section to the contrary, any agency or
1432 governing authority, by order placed on its minutes, may, in its
1433 discretion, set aside not more than twenty percent (20%) of its
1434 anticipated annual expenditures for the purchase of commodities
1435 from minority businesses; however, all such set-aside purchases
1436 shall comply with all purchasing regulations promulgated by the
1437 Department of Finance and Administration and shall be subject to
1438 bid requirements under this section. Set-aside purchases for
1439 which competitive bids are required shall be made from the lowest
1440 and best minority business bidder. For the purposes of this
1441 paragraph, the term "minority business" means a business which is
1442 owned by a majority of persons who are United States citizens or
1443 permanent resident aliens (as defined by the Immigration and
1444 Naturalization Service) of the United States, and who are Asian,
1445 Black, Hispanic or Native American, according to the following
1446 definitions:

1447 (i) "Asian" means persons having origins in any of
1448 the original people of the Far East, Southeast Asia, the Indian
1449 subcontinent, or the Pacific Islands.

1450 (ii) "Black" means persons having origins in any
1451 black racial group of Africa.

1452 (iii) "Hispanic" means persons of Spanish or
1453 Portuguese culture with origins in Mexico, South or Central
1454 America, or the Caribbean Islands, regardless of race.

1455 (iv) "Native American" means persons having
1456 origins in any of the original people of North America, including
1457 American Indians, Eskimos and Aleuts.

1458 (t) **Construction punch list restriction.** The
1459 architect, engineer or other representative designated by the
1460 agency or governing authority that is contracting for public
1461 construction or renovation may prepare and submit to the
1462 contractor only one (1) preliminary punch list of items that do
1463 not meet the contract requirements at the time of substantial
1464 completion and one (1) final list immediately before final
1465 completion and final payment.

1466 (u) **Purchase authorization clarification.** Nothing in
1467 this section shall be construed as authorizing any purchase not
1468 authorized by law.

1469 **SECTION 24.** Section 11-46-9, Mississippi Code of 1972, is
1470 amended as follows:

1471 11-46-9. (1) A governmental entity and its employees acting
1472 within the course and scope of their employment or duties shall
1473 not be liable for any claim:

1474 (a) Arising out of a legislative or judicial action or
1475 inaction, or administrative action or inaction of a legislative or
1476 judicial nature;

1477 (b) Arising out of any act or omission of an employee
1478 of a governmental entity exercising ordinary care in reliance
1479 upon, or in the execution or performance of, or in the failure to

1480 execute or perform, a statute, ordinance or regulation, whether or
1481 not the statute, ordinance or regulation be valid;

1482 (c) Arising out of any act or omission of an employee
1483 of a governmental entity engaged in the performance or execution
1484 of duties or activities relating to police or fire protection
1485 unless the employee acted in reckless disregard of the safety and
1486 well-being of any person not engaged in criminal activity at the
1487 time of injury;

1488 (d) Based upon the exercise or performance or the
1489 failure to exercise or perform a discretionary function or duty on
1490 the part of a governmental entity or employee thereof, whether or
1491 not the discretion be abused;

1492 (e) Arising out of an injury caused by adopting or
1493 failing to adopt a statute, ordinance or regulation;

1494 (f) Which is limited or barred by the provisions of any
1495 other law;

1496 (g) Arising out of the exercise of discretion in
1497 determining whether or not to seek or provide the resources
1498 necessary for the purchase of equipment, the construction or
1499 maintenance of facilities, the hiring of personnel and, in
1500 general, the provision of adequate governmental services;

1501 (h) Arising out of the issuance, denial, suspension or
1502 revocation of, or the failure or refusal to issue, deny, suspend
1503 or revoke any privilege, ticket, pass, permit, license,
1504 certificate, approval, order or similar authorization where the
1505 governmental entity or its employee is authorized by law to
1506 determine whether or not such authorization should be issued,
1507 denied, suspended or revoked unless such issuance, denial,
1508 suspension or revocation, or failure or refusal thereof, is of a
1509 malicious or arbitrary and capricious nature;

1510 (i) Arising out of the assessment or collection of any
1511 tax or fee;

1512 (j) Arising out of the detention of any goods or
1513 merchandise by any law enforcement officer, unless such detention
1514 is of a malicious or arbitrary and capricious nature;

1515 (k) Arising out of the imposition or establishment of a
1516 quarantine, whether such quarantine relates to persons or
1517 property;

1518 (l) Of any claimant who is an employee of a
1519 governmental entity and whose injury is covered by the Workers'
1520 Compensation Law of this state by benefits furnished by the
1521 governmental entity by which he is employed;

1522 (m) Of any claimant who at the time the claim arises is
1523 an inmate of any detention center, jail, workhouse, penal farm,
1524 penitentiary or other such institution, regardless of whether such
1525 claimant is or is not an inmate of any detention center, jail,
1526 workhouse, penal farm, penitentiary or other such institution when
1527 the claim is filed;

1528 (n) Arising out of any work performed by a person
1529 convicted of a crime when the work is performed pursuant to any
1530 sentence or order of any court or pursuant to laws of the State of
1531 Mississippi authorizing or requiring such work;

1532 (o) Under circumstances where liability has been or is
1533 hereafter assumed by the United States, to the extent of such
1534 assumption of liability, including, but not limited to, any claim
1535 based on activities of the Mississippi National Guard when such
1536 claim is cognizable under the National Guard Tort Claims Act of
1537 the United States, 32 USCS 715 (32 USCS 715), or when such claim
1538 accrues as a result of active federal service or state service at
1539 the call of the Governor for quelling riots and civil
1540 disturbances;

1541 (p) Arising out of a plan or design for construction or
1542 improvements to public property, including, but not limited to,
1543 public buildings, highways, roads, streets, bridges, levees,
1544 dikes, dams, impoundments, drainage channels, diversion channels,

1545 harbors, ports, wharfs or docks, where such plan or design has
1546 been approved in advance of the construction or improvement by the
1547 legislative body or governing authority of a governmental entity
1548 or by some other body or administrative agency, exercising
1549 discretion by authority to give such approval, and where such plan
1550 or design is in conformity with engineering or design standards in
1551 effect at the time of preparation of the plan or design;

1552 (q) Arising out of an injury caused solely by the
1553 effect of weather conditions on the use of streets and highways;

1554 (r) Arising out of the lack of adequate personnel or
1555 facilities at a state hospital or state corrections facility if
1556 reasonable use of available appropriations has been made to
1557 provide such personnel or facilities;

1558 (s) Arising out of loss, damage or destruction of
1559 property of a patient or inmate of a state institution;

1560 (t) Arising out of any loss of benefits or compensation
1561 due under a program of public assistance or public welfare;

1562 (u) Arising out of or resulting from riots, unlawful
1563 assemblies, unlawful public demonstrations, mob violence or civil
1564 disturbances;

1565 (v) Arising out of an injury caused by a dangerous
1566 condition on property of the governmental entity that was not
1567 caused by the negligent or other wrongful conduct of an employee
1568 of the governmental entity or of which the governmental entity did
1569 not have notice, either actual or constructive, and adequate
1570 opportunity to protect or warn against; provided, however, that a
1571 governmental entity shall not be liable for the failure to warn of
1572 a dangerous condition which is obvious to one exercising due care;

1573 (w) Arising out of the absence, condition, malfunction
1574 or removal by third parties of any sign, signal, warning device,
1575 illumination device, guardrail or median barrier, unless the
1576 absence, condition, malfunction or removal is not corrected by the

1577 governmental entity responsible for its maintenance within a
1578 reasonable time after actual or constructive notice; * * *

1579 (x) Arising out of the administration of corporal
1580 punishment or the taking of any action to maintain control and
1581 discipline of students, as defined in Section 37-11-57, by a
1582 teacher, assistant teacher, principal or assistant principal of a
1583 public school district in the state unless the teacher, assistant
1584 teacher, principal or assistant principal acted in bad faith or
1585 with malicious purpose or in a manner exhibiting a wanton and
1586 willful disregard of human rights or safety; or

1587 (y) Arising out of the construction, maintenance or
1588 operation of any highway, bridge or roadway project entered into
1589 by the Mississippi Transportation Commission or other governmental
1590 entity and a company under the provisions of Section 1 or 2 of
1591 House Bill No. 351, 2007 Regular Session, where the act or
1592 omission occurs during the term of any such contract.

1593 (2) A governmental entity shall also not be liable for any
1594 claim where the governmental entity:

- 1595 (a) Is inactive and dormant;
- 1596 (b) Receives no revenue;
- 1597 (c) Has no employees; and
- 1598 (d) Owns no property.

1599 (3) If a governmental entity exempt from liability by
1600 subsection (2) becomes active, receives income, hires employees or
1601 acquires any property, such governmental entity shall no longer be
1602 exempt from liability as provided in subsection (2) and shall be
1603 subject to the provisions of this chapter.

1604 **SECTION 25.** The Attorney General of the State of Mississippi
1605 shall submit this act, immediately upon approval by the Governor,
1606 or upon approval by the Legislature subsequent to a veto, to the
1607 Attorney General of the United States or to the United States
1608 District Court for the District of Columbia in accordance with the

1609 provisions of the Voting Rights Act of 1965, as amended and
1610 extended.

1611 **SECTION 26.** This act shall take effect and be in force from
1612 and after the date it is effectuated under Section 5 of the Voting
1613 Rights Act of 1965, as amended and extended.