

By: Representative Miles

To: Transportation

## 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,  
22 individually or jointly with other governmental entities, one or  
23 more new toll roads or toll bridges in the state for motor vehicle  
24 traffic, including toll booths and related facilities, at and  
25 along such locations where an alternate untolled route exists.  
26 All such highways, pavement, bridges, drainage related structures  
27 and other infrastructure comprising the projects shall be built  
28 and maintained in accordance with not less than the minimum  
29 highway design, construction and maintenance standards established  
30 by the contracting governmental entity for such highways,  
31 infrastructure and facilities.

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

35 Section 1 of this act, in their discretion, may contract,  
36 individually or jointly with other governmental entities, with any  
37 persons, corporations, partnerships or other businesses licensed  
38 to do business in the State of Mississippi (hereinafter referred  
39 to as "companies" or "company") for the purpose of designing,  
40 financing, constructing, operating and maintaining one or more new  
41 toll roads or toll bridges in the state for motor vehicle traffic,  
42 including toll booths and related facilities, at and along such  
43 locations where an alternate untolled route exists. Such  
44 contracts shall provide that land held by the governmental  
45 entities, whether in fee simple, as an easement or other interest,  
46 shall be leased or assigned to a company for design, construction,  
47 operation and maintenance of roadways, highways or bridges for  
48 motor vehicle traffic, toll booths and related facilities. All  
49 such highways, pavement, bridges, drainage related structures and  
50 other infrastructure comprising the projects shall be built and  
51 maintained in accordance with not less than the minimum highway  
52 design, construction and maintenance standards established by the  
53 contracting governmental entity for such highways, infrastructure  
54 and facilities. The contracting governmental entity shall conduct  
55 periodic inspections of any such project throughout the term of  
56 the contract to ensure compliance by the company. Failure of a  
57 company to comply with minimum standards established for the  
58 project by the contracting governmental entity shall constitute a  
59 breach and shall subject the company to liability on its bond or  
60 security or to rescission of the contract in accordance with the  
61 terms and provisions of the contract.

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

67 maintenance, and/or operation of a new toll road or toll bridge  
68 project.

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

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

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

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

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

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

99           (d) The governmental entity shall rank each proposal  
100 based on the criteria described in the request for proposals and  
101 select the company whose proposal offers the best value to the  
102 governmental entity. The governmental entity may enter into  
103 discussions with the company whose proposal offers the best value.  
104 If at any point during the discussions it appears to the  
105 governmental entity that the highest ranking proposal will not  
106 provide the governmental entity with the overall best value, the  
107 governmental entity may enter into discussions with the company  
108 submitting the next-highest ranking proposal.

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

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

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

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

132 for construction and maintenance of the highways or bridges built  
133 pursuant to contracts entered into under this section. Upon  
134 expiration, termination or rescission of the contract, all  
135 interests that the company may have in the land, infrastructure,  
136 facilities or other improvements to the property subject to  
137 contract shall terminate and automatically, by operation of law,  
138 be returned or conveyed to and vest title, ownership and  
139 possession in the contracting governmental entity. Upon  
140 termination, expiration or rescission of the contract, the  
141 collection of tolls shall cease after all associated debts have  
142 been retired or released.

143 (4) During the term of any contract entered into under this  
144 section, the company may establish, charge and collect motor  
145 vehicle operators tolls for use of the highway or bridge and its  
146 facilities. The amount of such tolls, and any modification  
147 thereto, shall be subject to approval by the contracting  
148 governmental entity after notice and public hearing; however, all  
149 such contracts entered into with the Mississippi Transportation  
150 Commission may require a company to pay a percentage of all tolls  
151 collected to the Mississippi Department of Transportation. All  
152 such tolls paid to the department shall be deposited into the  
153 special bond sinking fund under Section 5 of this act and may be  
154 expended only as authorized by the Legislature.

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

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

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

172 (7) The powers conferred by this section shall be in  
173 addition to the powers conferred by any other law, general,  
174 special or local. This section shall be construed as an  
175 additional and alternative method of funding all or any portion of  
176 the purchasing, building, improving, owning or operating of  
177 roadways, highways or bridges under the jurisdiction of the  
178 Mississippi Transportation Commission, county boards of  
179 supervisors or municipal governing authorities, any provision of  
180 the laws of the state or any charter of any municipality to the  
181 contrary notwithstanding.

182 **SECTION 3.** (1) For the purpose of providing funds to defray  
183 the expenses of projects authorized pursuant to Sections 1 and 2  
184 of this act, the board of supervisors of a county or the governing  
185 authorities of a municipality shall have the right to borrow money  
186 for the project, and to issue revenue bonds therefor in such  
187 principal amounts as the board of supervisors or governing  
188 authorities may determine to be necessary to provide sufficient  
189 funds to defray the expenses of projects authorized pursuant to  
190 Sections 1 and 2 of this act. The bonds shall be payable out of  
191 any revenues derived from the project, including grants or  
192 contributions from the federal government or other sources. Such  
193 bonds may be sold at public or private sale at not less than par  
194 and shall bear interest at a rate or rates not exceeding that  
195 allowed in Section 75-17-103. Any such bonds so issued shall not  
196 constitute a debt of the county, the municipality or any political  
197 subdivision of the county or the city within the meaning of any

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

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

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

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

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

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



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

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

286 **SECTION 4.** (1) (a) A special fund, to be designated as the  
287 "Toll Road Revenue Bond Fund," is created within the State  
288 Treasury. The fund shall be maintained by the State Treasurer as  
289 a separate and special fund, separate and apart from the General  
290 Fund of the state. Unexpended amounts remaining in the fund at  
291 the end of a fiscal year shall not lapse into the State General  
292 Fund, and any interest earned or investment earnings on amounts in  
293 the fund shall be deposited into such fund.

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

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

299 (2) Amounts deposited into such special fund shall be  
300 disbursed to pay the expenses described in subsection (1) of this  
301 section. If any monies in the special fund are not used within  
302 six (6) years after the date the proceeds of the bonds authorized  
303 under Sections 4 through 19 of this act are deposited into such  
304 fund, then the Mississippi Transportation Commission shall provide  
305 an accounting of such unused monies to the State Bond Commission.  
306 Promptly after the State Bond Commission has certified, by  
307 resolution duly adopted, that the projects for which the revenue  
308 bonds have been issued shall have been completed, abandoned or  
309 cannot be completed in a timely fashion, any amounts remaining in  
310 such special fund shall be applied to pay debt service on the  
311 bonds issued under Sections 4 through 19 of this act, in  
312 accordance with the proceedings authorizing the issuance of such  
313 bonds and as directed by the State Bond Commission.

314 **SECTION 5.** For the purpose of providing for the payment of  
315 the principal of and interest upon bonds issued under the  
316 provisions of Sections 4 through 19 of this act, there is created  
317 a special bond sinking fund in the State Treasury. The special  
318 bond sinking fund shall consist of the monies required to be  
319 deposited into the fund under Section 2 of this act and such other  
320 amounts as the Legislature may direct to be paid into the fund by  
321 appropriation or other authorization by the Legislature.  
322 Unexpended amounts remaining in the special bond sinking fund at  
323 the end of a fiscal year shall not lapse into the State General  
324 Fund, and any interest earned or investment earnings on amounts in  
325 the special bond sinking fund shall be deposited into such sinking  
326 fund.

327 **SECTION 6.** (1) The State Bond Commission, at one time or  
328 from time to time, may declare by resolution the necessity for  
329 issuance of revenue bonds of the State of Mississippi for the

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

348 (2) Any investment earnings on amounts deposited into the  
349 special fund created in Section 4 of this act shall be used to pay  
350 debt service on bonds issued under Sections 4 through 19 of this  
351 act, in accordance with the proceedings authorizing issuance of  
352 such bonds.

353 **SECTION 7.** The principal of and interest on the bonds  
354 authorized under Sections 4 through 19 of this act shall be  
355 payable in the manner provided in this section. Such bonds shall  
356 bear such date or dates, be in such denomination or denominations,  
357 bear interest at such rate or rates (not to exceed the limits set  
358 forth in Section 75-17-103, Mississippi Code of 1972), be payable  
359 at such place or places within or without the State of  
360 Mississippi, shall mature absolutely at such time or times not to  
361 exceed thirty (30) years from date of issue, be redeemable before  
362 maturity at such time or times and upon such terms, with or

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

366       **SECTION 8.** The bonds authorized by Sections 4 through 19 of  
367 this act shall be signed by the Chairman of the State Bond  
368 Commission, or by his facsimile signature, and the official seal  
369 of the State Bond Commission shall be affixed thereto, attested by  
370 the secretary of the commission. The interest coupons, if any, to  
371 be attached to such bonds may be executed by the facsimile  
372 signatures of such officers. Whenever any such bonds shall have  
373 been signed by the officials designated to sign the bonds who were  
374 in office at the time of such signing but who may have ceased to  
375 be such officers before the sale and delivery of such bonds, or  
376 who may not have been in office on the date such bonds may bear,  
377 the signatures of such officers upon such bonds and coupons shall  
378 nevertheless be valid and sufficient for all purposes and have the  
379 same effect as if the person so officially signing such bonds had  
380 remained in office until their delivery to the purchaser, or had  
381 been in office on the date such bonds may bear. However,  
382 notwithstanding anything herein to the contrary, such bonds may be  
383 issued as provided in the Registered Bond Act of the State of  
384 Mississippi.

385       **SECTION 9.** All bonds and interest coupons issued under the  
386 provisions of Sections 4 through 19 of this act have all the  
387 qualities and incidents of negotiable instruments under the  
388 provisions of the Uniform Commercial Code, and in exercising the  
389 powers granted by Sections 4 through 19 of this act, the State  
390 Bond Commission shall not be required to and need not comply with  
391 the provisions of the Uniform Commercial Code.

392       **SECTION 10.** The State Bond Commission shall act as the  
393 issuing agent for the bonds authorized under Sections 4 through 19  
394 of this act, prescribe the form of the bonds, advertise for and  
395 accept bids, issue and sell, at public or private sale, the bonds

396 so authorized to be sold, pay all fees and costs incurred in such  
397 issuance and sale, and do any and all other things necessary and  
398 advisable in connection with the issuance and sale of such bonds.  
399 The State Bond Commission is authorized and empowered to pay the  
400 costs that are incident to the sale, issuance and delivery of the  
401 bonds authorized under Sections 4 through 19 of this act from the  
402 proceeds derived from the sale of such bonds. The State Bond  
403 Commission shall sell such bonds on sealed bids at public or  
404 private sale, and for such price as it may determine to be for the  
405 best interest of the State of Mississippi, but no such sale shall  
406 be made at a price less than par plus accrued interest to the date  
407 of delivery of the bonds to the purchaser. All interest accruing  
408 on such bonds so issued shall be payable semiannually or annually;  
409 however, the first interest payment may be for any period of not  
410 more than one (1) year.

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

418 The State Bond Commission, when issuing any bonds under the  
419 authority of Sections 4 through 19 of this act, may provide that  
420 bonds, at the option of the State of Mississippi, may be called in  
421 for payment and redemption at the call price named therein and  
422 accrued interest on such date or dates named therein.

423 **SECTION 11.** Bonds issued under authority of Sections 4  
424 through 19 of this act shall be revenue bonds of the state, the  
425 principal of and interest on which shall be payable solely from  
426 the revenue from projects authorized under Section 1 or 2 of this  
427 act. The bonds shall never constitute an indebtedness of the  
428 state within the meaning of any state constitutional provision or

429 statutory limitation, and shall never constitute or give rise to a  
430 pecuniary liability of the state, or a charge against its general  
431 credit or taxing powers, and such fact shall be plainly stated on  
432 the face of each such bond. The bonds shall not be considered  
433 when computing any limitation of indebtedness of the state. All  
434 bonds issued under the authority of Sections 4 through 19 of this  
435 act and all interest coupons applicable thereto shall be construed  
436 to be negotiable instruments, despite the fact that they are  
437 payable solely from a specified source.

438       **SECTION 12.** Upon the issuance and sale of bonds under the  
439 provisions of Sections 4 through 19 of this act, the State Bond  
440 Commission shall transfer the proceeds of any such sale or sales  
441 to a special fund created in Section 4 of this act. The proceeds  
442 of such bonds shall be disbursed solely upon the order of the  
443 Mississippi Transportation Commission under such restrictions, if  
444 any, as may be contained in the resolution providing for the  
445 issuance of the bonds.

446       **SECTION 13.** The bonds authorized under Sections 4 through 19  
447 of this act may be issued without any other proceedings or the  
448 happening of any other conditions or things other than those  
449 proceedings, conditions and things which are specified or required  
450 by Sections 4 through 19 of this act. Any resolution providing  
451 for the issuance of bonds under the provisions of Sections 4  
452 through 19 of this act shall become effective immediately upon its  
453 adoption by the commission, and any such resolution may be adopted  
454 at any regular or special meeting of the commission by a majority  
455 of its members.

456       **SECTION 14.** The bonds authorized under the authority of  
457 Sections 4 through 19 of this act may be validated in the Chancery  
458 Court of the First Judicial District of Hinds County, Mississippi,  
459 in the manner and with the force and effect provided by Chapter  
460 13, Title 31, Mississippi Code of 1972, for the validation of  
461 county, municipal, school district and other bonds. The notice to

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

465       **SECTION 15.** Any holder of bonds issued under the provisions  
466 of Sections 4 through 19 of this act or of any of the interest  
467 coupons pertaining thereto may, either at law or in equity, by  
468 suit, action, mandamus or other proceeding, protect and enforce  
469 any and all rights granted under Sections 4 through 19 of this  
470 act, or under such resolution, and may enforce and compel  
471 performance of all duties required by Sections 4 through 19 of  
472 this act to be performed, in order to provide for the payment of  
473 bonds and interest thereon.

474       **SECTION 16.** All bonds issued under the provisions of  
475 Sections 4 through 19 of this act shall be legal investments for  
476 trustees and other fiduciaries, and for savings banks, trust  
477 companies and insurance companies organized under the laws of the  
478 State of Mississippi, and such bonds shall be legal securities  
479 which may be deposited with and shall be received by all public  
480 officers and bodies of this state and all municipalities and  
481 political subdivisions for the purpose of securing the deposit of  
482 public funds.

483       **SECTION 17.** Bonds issued under the provisions of Sections 4  
484 through 19 of this act and income therefrom shall be exempt from  
485 all taxation in the State of Mississippi.

486       **SECTION 18.** The proceeds of the bonds issued under Sections  
487 4 through 19 of this act shall be used solely for the purposes  
488 provided in Sections 4 through 19 of this act, including the costs  
489 incident to the issuance and sale of such bonds.

490       **SECTION 19.** The State Treasurer is authorized, without  
491 further process of law, to certify to the Department of Finance  
492 and Administration the necessity for warrants, and the Department  
493 of Finance and Administration is authorized and directed to issue  
494 such warrants, in such amounts as may be necessary to pay when due

495 the principal of, premium, if any, and interest on, or the  
496 accreted value of, all bonds issued under Sections 4 through 19 of  
497 this act; and the State Treasurer shall forward the necessary  
498 amount to the designated place or places of payment of such bonds  
499 in ample time to discharge such bonds, or the interest thereon, on  
500 the due dates thereof.

501       **SECTION 20.** Section 65-3-1, Mississippi Code of 1972, is  
502 amended as follows:

503       65-3-1. Subject only to the provisions hereinafter  
504 contained, it shall be unlawful for any person, acting privately  
505 or in any official capacity or as an employee of any subdivision  
506 of the state, to charge or collect any toll or other charge from  
507 any person for the privilege of traveling on any part of any  
508 highway which has been heretofore or may hereafter be designated  
509 as a state highway, and being a part of the state highway system,  
510 or on or across any bridge wholly within this state, which is a  
511 part of any such highway.

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

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

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



527           **SECTION 21.** Section 65-1-85, Mississippi Code of 1972, is  
528 amended as follows:

529           65-1-85. (1) All contracts by or on behalf of the  
530 commission for the purchase of materials, equipment and supplies  
531 shall be made in compliance with Section 31-7-1 et seq. All  
532 contracts by or on behalf of the commission for construction,  
533 reconstruction or other public work authorized to be done under  
534 the provisions of this chapter, except maintenance, shall be made  
535 by the executive director, subject to the approval of the  
536 commission, only upon competitive bids after due advertisement as  
537 follows, to wit:

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

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

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

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

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

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

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

592 or criminal act, if any, of the contractor, his agent or  
593 employees.

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

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

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

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

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

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

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

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

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

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

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

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

690 (2) projects per fiscal year; and

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

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

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

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

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

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

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

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

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

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

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

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

746 **SECTION 22.** Section 31-7-13, Mississippi Code of 1972, is  
747 amended as follows:

748 31-7-13. All agencies and governing authorities shall  
749 purchase their commodities and printing; contract for garbage  
750 collection or disposal; contract for solid waste collection or  
751 disposal; contract for sewage collection or disposal; contract for  
752 public construction; and contract for rentals as herein provided.

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

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

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



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

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

798 (i) **Publication requirement.**

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

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

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

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

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

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

864                   (iv) **Specification restrictions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1007           (h) **Petroleum purchase alternative.** In addition to  
1008 other methods of purchasing authorized in this chapter, when any  
1009 agency or governing authority shall have a need for gas, diesel  
1010 fuel, oils and/or other petroleum products in excess of the amount  
1011 set forth in paragraph (a) of this section, such agency or  
1012 governing authority may purchase the commodity after having  
1013 solicited and obtained at least two (2) competitive written bids,  
1014 as defined in paragraph (b) of this section. If two (2)  
1015 competitive written bids are not obtained, the entity shall comply  
1016 with the procedures set forth in paragraph (c) of this section.  
1017 In the event any agency or governing authority shall have

1018 advertised for bids for the purchase of gas, diesel fuel, oils and  
1019 other petroleum products and coal and no acceptable bids can be  
1020 obtained, such agency or governing authority is authorized and  
1021 directed to enter into any negotiations necessary to secure the  
1022 lowest and best contract available for the purchase of such  
1023 commodities.

1024           (i) **Road construction petroleum products price**  
1025 **adjustment clause authorization.** Any agency or governing  
1026 authority authorized to enter into contracts for the construction,  
1027 maintenance, surfacing or repair of highways, roads or streets,  
1028 may include in its bid proposal and contract documents a price  
1029 adjustment clause with relation to the cost to the contractor,  
1030 including taxes, based upon an industry-wide cost index, of  
1031 petroleum products including asphalt used in the performance or  
1032 execution of the contract or in the production or manufacture of  
1033 materials for use in such performance. Such industry-wide index  
1034 shall be established and published monthly by the Mississippi  
1035 Department of Transportation with a copy thereof to be mailed,  
1036 upon request, to the clerks of the governing authority of each  
1037 municipality and the clerks of each board of supervisors  
1038 throughout the state. The price adjustment clause shall be based  
1039 on the cost of such petroleum products only and shall not include  
1040 any additional profit or overhead as part of the adjustment. The  
1041 bid proposals or document contract shall contain the basis and  
1042 methods of adjusting unit prices for the change in the cost of  
1043 such petroleum products.

1044           (j) **State agency emergency purchase procedure.** If the  
1045 governing board or the executive head, or his designee, of any  
1046 agency of the state shall determine that an emergency exists in  
1047 regard to the purchase of any commodities or repair contracts, so  
1048 that the delay incident to giving opportunity for competitive  
1049 bidding would be detrimental to the interests of the state, then  
1050 the provisions herein for competitive bidding shall not apply and



1051 the head of such agency shall be authorized to make the purchase  
1052 or repair. Total purchases so made shall only be for the purpose  
1053 of meeting needs created by the emergency situation. In the event  
1054 such executive head is responsible to an agency board, at the  
1055 meeting next following the emergency purchase, documentation of  
1056 the purchase, including a description of the commodity purchased,  
1057 the purchase price thereof and the nature of the emergency shall  
1058 be presented to the board and placed on the minutes of the board  
1059 of such agency. The head of such agency, or his designee, shall,  
1060 at the earliest possible date following such emergency purchase,  
1061 file with the Department of Finance and Administration (i) a  
1062 statement explaining the conditions and circumstances of the  
1063 emergency, which shall include a detailed description of the  
1064 events leading up to the situation and the negative impact to the  
1065 entity if the purchase is made following the statutory  
1066 requirements set forth in paragraph (a), (b) or (c) of this  
1067 section, and (ii) a certified copy of the appropriate minutes of  
1068 the board of such agency, if applicable. On or before September 1  
1069 of each year, the State Auditor shall prepare and deliver to the  
1070 Senate Fees, Salaries and Administration Committee, the House Fees  
1071 and Salaries of Public Officers Committee and the Joint  
1072 Legislative Budget Committee a report containing a list of all  
1073 state agency emergency purchases and supporting documentation for  
1074 each emergency purchase.

1075 (k) **Governing authority emergency purchase procedure.**

1076 If the governing authority, or the governing authority acting  
1077 through its designee, shall determine that an emergency exists in  
1078 regard to the purchase of any commodities or repair contracts, so  
1079 that the delay incident to giving opportunity for competitive  
1080 bidding would be detrimental to the interest of the governing  
1081 authority, then the provisions herein for competitive bidding  
1082 shall not apply and any officer or agent of such governing  
1083 authority having general or special authority therefor in making

1084 such purchase or repair shall approve the bill presented therefor,  
1085 and he shall certify in writing thereon from whom such purchase  
1086 was made, or with whom such a repair contract was made. At the  
1087 board meeting next following the emergency purchase or repair  
1088 contract, documentation of the purchase or repair contract,  
1089 including a description of the commodity purchased, the price  
1090 thereof and the nature of the emergency shall be presented to the  
1091 board and shall be placed on the minutes of the board of such  
1092 governing authority.

1093           (1) **Hospital purchase, lease-purchase and lease**  
1094 **authorization.**

1095           (i) The commissioners or board of trustees of any  
1096 public hospital may contract with such lowest and best bidder for  
1097 the purchase or lease-purchase of any commodity under a contract  
1098 of purchase or lease-purchase agreement whose obligatory payment  
1099 terms do not exceed five (5) years.

1100           (ii) In addition to the authority granted in  
1101 subparagraph (i) of this paragraph (1), the commissioners or board  
1102 of trustees is authorized to enter into contracts for the lease of  
1103 equipment or services, or both, which it considers necessary for  
1104 the proper care of patients if, in its opinion, it is not  
1105 financially feasible to purchase the necessary equipment or  
1106 services. Any such contract for the lease of equipment or  
1107 services executed by the commissioners or board shall not exceed a  
1108 maximum of five (5) years' duration and shall include a  
1109 cancellation clause based on unavailability of funds. If such  
1110 cancellation clause is exercised, there shall be no further  
1111 liability on the part of the lessee. Any such contract for the  
1112 lease of equipment or services executed on behalf of the  
1113 commissioners or board that complies with the provisions of this  
1114 subparagraph (ii) shall be excepted from the bid requirements set  
1115 forth in this section.

1116 (m) **Exceptions from bidding requirements.** Excepted  
1117 from bid requirements are:

1118 (i) **Purchasing agreements approved by department.**  
1119 Purchasing agreements, contracts and maximum price regulations  
1120 executed or approved by the Department of Finance and  
1121 Administration.

1122 (ii) **Outside equipment repairs.** Repairs to  
1123 equipment, when such repairs are made by repair facilities in the  
1124 private sector; however, engines, transmissions, rear axles and/or  
1125 other such components shall not be included in this exemption when  
1126 replaced as a complete unit instead of being repaired and the need  
1127 for such total component replacement is known before disassembly  
1128 of the component; however, invoices identifying the equipment,  
1129 specific repairs made, parts identified by number and name,  
1130 supplies used in such repairs, and the number of hours of labor  
1131 and costs therefor shall be required for the payment for such  
1132 repairs.

1133 (iii) **In-house equipment repairs.** Purchases of  
1134 parts for repairs to equipment, when such repairs are made by  
1135 personnel of the agency or governing authority; however, entire  
1136 assemblies, such as engines or transmissions, shall not be  
1137 included in this exemption when the entire assembly is being  
1138 replaced instead of being repaired.

1139 (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
1140 of gravel or fill dirt which are to be removed and transported by  
1141 the purchaser.

1142 (v) **Governmental equipment auctions.** Motor  
1143 vehicles or other equipment purchased from a federal agency or  
1144 authority, another governing authority or state agency of the  
1145 State of Mississippi, or any governing authority or state agency  
1146 of another state at a public auction held for the purpose of  
1147 disposing of such vehicles or other equipment. Any purchase by a  
1148 governing authority under the exemption authorized by this

1149 subparagraph (v) shall require advance authorization spread upon  
1150 the minutes of the governing authority to include the listing of  
1151 the item or items authorized to be purchased and the maximum bid  
1152 authorized to be paid for each item or items.

1153                   (vi) **Intergovernmental sales and transfers.**

1154 Purchases, sales, transfers or trades by governing authorities or  
1155 state agencies when such purchases, sales, transfers or trades are  
1156 made by a private treaty agreement or through means of  
1157 negotiation, from any federal agency or authority, another  
1158 governing authority or state agency of the State of Mississippi,  
1159 or any state agency or governing authority of another state.  
1160 Nothing in this section shall permit such purchases through public  
1161 auction except as provided for in subparagraph (v) of this  
1162 section. It is the intent of this section to allow governmental  
1163 entities to dispose of and/or purchase commodities from other  
1164 governmental entities at a price that is agreed to by both  
1165 parties. This shall allow for purchases and/or sales at prices  
1166 which may be determined to be below the market value if the  
1167 selling entity determines that the sale at below market value is  
1168 in the best interest of the taxpayers of the state. Governing  
1169 authorities shall place the terms of the agreement and any  
1170 justification on the minutes, and state agencies shall obtain  
1171 approval from the Department of Finance and Administration, prior  
1172 to releasing or taking possession of the commodities.

1173                   (vii) **Perishable supplies or food.** Perishable  
1174 supplies or food purchased for use in connection with hospitals,  
1175 the school lunch programs, homemaking programs and for the feeding  
1176 of county or municipal prisoners.

1177                   (viii) **Single source items.** Noncompetitive items  
1178 available from one (1) source only. In connection with the  
1179 purchase of noncompetitive items only available from one (1)  
1180 source, a certification of the conditions and circumstances  
1181 requiring the purchase shall be filed by the agency with the

1182 Department of Finance and Administration and by the governing  
1183 authority with the board of the governing authority. Upon receipt  
1184 of that certification the Department of Finance and Administration  
1185 or the board of the governing authority, as the case may be, may,  
1186 in writing, authorize the purchase, which authority shall be noted  
1187 on the minutes of the body at the next regular meeting thereafter.  
1188 In those situations, a governing authority is not required to  
1189 obtain the approval of the Department of Finance and  
1190 Administration.

1191                   (ix) **Waste disposal facility construction**  
1192 **contracts.** Construction of incinerators and other facilities for  
1193 disposal of solid wastes in which products either generated  
1194 therein, such as steam, or recovered therefrom, such as materials  
1195 for recycling, are to be sold or otherwise disposed of; however,  
1196 in constructing such facilities, a governing authority or agency  
1197 shall publicly issue requests for proposals, advertised for in the  
1198 same manner as provided herein for seeking bids for public  
1199 construction projects, concerning the design, construction,  
1200 ownership, operation and/or maintenance of such facilities,  
1201 wherein such requests for proposals when issued shall contain  
1202 terms and conditions relating to price, financial responsibility,  
1203 technology, environmental compatibility, legal responsibilities  
1204 and such other matters as are determined by the governing  
1205 authority or agency to be appropriate for inclusion; and after  
1206 responses to the request for proposals have been duly received,  
1207 the governing authority or agency may select the most qualified  
1208 proposal or proposals on the basis of price, technology and other  
1209 relevant factors and from such proposals, but not limited to the  
1210 terms thereof, negotiate and enter contracts with one or more of  
1211 the persons or firms submitting proposals.

1212                   (x) **Hospital group purchase contracts.** Supplies,  
1213 commodities and equipment purchased by hospitals through group  
1214 purchase programs pursuant to Section 31-7-38.

1215                   (xi) **Information technology products.** Purchases  
1216 of information technology products made by governing authorities  
1217 under the provisions of purchase schedules, or contracts executed  
1218 or approved by the Mississippi Department of Information  
1219 Technology Services and designated for use by governing  
1220 authorities.

1221                   (xii) **Energy efficiency services and equipment.**  
1222 Energy efficiency services and equipment acquired by school  
1223 districts, community and junior colleges, institutions of higher  
1224 learning and state agencies or other applicable governmental  
1225 entities on a shared-savings, lease or lease-purchase basis  
1226 pursuant to Section 31-7-14.

1227                   (xiii) **Municipal electrical utility system fuel.**  
1228 Purchases of coal and/or natural gas by municipally-owned electric  
1229 power generating systems that have the capacity to use both coal  
1230 and natural gas for the generation of electric power.

1231                   (xiv) **Library books and other reference materials.**  
1232 Purchases by libraries or for libraries of books and periodicals;  
1233 processed film, video cassette tapes, filmstrips and slides;  
1234 recorded audio tapes, cassettes and diskettes; and any such items  
1235 as would be used for teaching, research or other information  
1236 distribution; however, equipment such as projectors, recorders,  
1237 audio or video equipment, and monitor televisions are not exempt  
1238 under this subparagraph.

1239                   (xv) **Unmarked vehicles.** Purchases of unmarked  
1240 vehicles when such purchases are made in accordance with  
1241 purchasing regulations adopted by the Department of Finance and  
1242 Administration pursuant to Section 31-7-9(2).

1243                   (xvi) **Election ballots.** Purchases of ballots  
1244 printed pursuant to Section 23-15-351.

1245                   (xvii) **Multichannel interactive video systems.**  
1246 From and after July 1, 1990, contracts by Mississippi Authority  
1247 for Educational Television with any private educational

1248 institution or private nonprofit organization whose purposes are  
1249 educational in regard to the construction, purchase, lease or  
1250 lease-purchase of facilities and equipment and the employment of  
1251 personnel for providing multichannel interactive video systems  
1252 (ITSF) in the school districts of this state.

1253 (xviii) **Purchases of prison industry products.**

1254 From and after January 1, 1991, purchases made by state agencies  
1255 or governing authorities involving any item that is manufactured,  
1256 processed, grown or produced from the state's prison industries.

1257 (xix) **Undercover operations equipment.** Purchases  
1258 of surveillance equipment or any other high-tech equipment to be  
1259 used by law enforcement agents in undercover operations, provided  
1260 that any such purchase shall be in compliance with regulations  
1261 established by the Department of Finance and Administration.

1262 (xx) **Junior college books for rent.** Purchases by  
1263 community or junior colleges of textbooks which are obtained for  
1264 the purpose of renting such books to students as part of a book  
1265 service system.

1266 (xxi) **Certain school district purchases.**

1267 Purchases of commodities made by school districts from vendors  
1268 with which any levying authority of the school district, as  
1269 defined in Section 37-57-1, has contracted through competitive  
1270 bidding procedures for purchases of the same commodities.

1271 (xxii) **Garbage, solid waste and sewage contracts.**

1272 Contracts for garbage collection or disposal, contracts for solid  
1273 waste collection or disposal and contracts for sewage collection  
1274 or disposal.

1275 (xxiii) **Municipal water tank maintenance**

1276 **contracts.** Professional maintenance program contracts for the  
1277 repair or maintenance of municipal water tanks, which provide  
1278 professional services needed to maintain municipal water storage  
1279 tanks for a fixed annual fee for a duration of two (2) or more  
1280 years.

1281 (xxiv) **Purchases of Mississippi Industries for the**  
1282 **Blind products.** Purchases made by state agencies or governing  
1283 authorities involving any item that is manufactured, processed or  
1284 produced by the Mississippi Industries for the Blind.

1285 (xxv) **Purchases of state-adopted textbooks.**  
1286 Purchases of state-adopted textbooks by public school districts.

1287 (xxvi) **Certain purchases under the Mississippi**  
1288 **Major Economic Impact Act.** Contracts entered into pursuant to the  
1289 provisions of Section 57-75-9(2) and (3).

1290 (xxvii) **Used heavy or specialized machinery or**  
1291 **equipment for installation of soil and water conservation**  
1292 **practices purchased at auction.** Used heavy or specialized  
1293 machinery or equipment used for the installation and  
1294 implementation of soil and water conservation practices or  
1295 measures purchased subject to the restrictions provided in  
1296 Sections 69-27-331 through 69-27-341. Any purchase by the State  
1297 Soil and Water Conservation Commission under the exemption  
1298 authorized by this subparagraph shall require advance  
1299 authorization spread upon the minutes of the commission to include  
1300 the listing of the item or items authorized to be purchased and  
1301 the maximum bid authorized to be paid for each item or items.

1302 (xxviii) **Hospital lease of equipment or services.**  
1303 Leases by hospitals of equipment or services if the leases are in  
1304 compliance with paragraph (1)(ii).

1305 (xxix) **Purchases made pursuant to qualified**  
1306 **cooperative purchasing agreements.** Purchases made by certified  
1307 purchasing offices of state agencies or governing authorities  
1308 under cooperative purchasing agreements previously approved by the  
1309 Office of Purchasing and Travel and established by or for any  
1310 municipality, county, parish or state government or the federal  
1311 government, provided that the notification to potential  
1312 contractors includes a clause that sets forth the availability of  
1313 the cooperative purchasing agreement to other governmental



1314 entities. Such purchases shall only be made if the use of the  
1315 cooperative purchasing agreements is determined to be in the best  
1316 interest of the governmental entity.

1317 (xxx) **School yearbooks.** Purchases of school  
1318 yearbooks by state agencies or governing authorities; provided,  
1319 however, that state agencies and governing authorities shall use  
1320 for these purchases the RFP process as set forth in the  
1321 Mississippi Procurement Manual adopted by the Office of Purchasing  
1322 and Travel.

1323 (xxxix) **Toll roads and bridge construction**  
1324 **projects.** Contracts entered into under the provisions of Section  
1325 1 or 2 of House Bill No. 351, 2007 Regular Session.

1326 (n) **Term contract authorization.** All contracts for the  
1327 purchase of:

1328 (i) All contracts for the purchase of commodities,  
1329 equipment and public construction (including, but not limited to,  
1330 repair and maintenance), may be let for periods of not more than  
1331 sixty (60) months in advance, subject to applicable statutory  
1332 provisions prohibiting the letting of contracts during specified  
1333 periods near the end of terms of office. Term contracts for a  
1334 period exceeding twenty-four (24) months shall also be subject to  
1335 ratification or cancellation by governing authority boards taking  
1336 office subsequent to the governing authority board entering the  
1337 contract.

1338 (ii) Bid proposals and contracts may include price  
1339 adjustment clauses with relation to the cost to the contractor  
1340 based upon a nationally published industry-wide or nationally  
1341 published and recognized cost index. The cost index used in a  
1342 price adjustment clause shall be determined by the Department of  
1343 Finance and Administration for the state agencies and by the  
1344 governing board for governing authorities. The bid proposal and  
1345 contract documents utilizing a price adjustment clause shall  
1346 contain the basis and method of adjusting unit prices for the

1347 change in the cost of such commodities, equipment and public  
1348 construction.

1349           (o) **Purchase law violation prohibition and vendor**  
1350 **penalty.** No contract or purchase as herein authorized shall be  
1351 made for the purpose of circumventing the provisions of this  
1352 section requiring competitive bids, nor shall it be lawful for any  
1353 person or concern to submit individual invoices for amounts within  
1354 those authorized for a contract or purchase where the actual value  
1355 of the contract or commodity purchased exceeds the authorized  
1356 amount and the invoices therefor are split so as to appear to be  
1357 authorized as purchases for which competitive bids are not  
1358 required. Submission of such invoices shall constitute a  
1359 misdemeanor punishable by a fine of not less than Five Hundred  
1360 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
1361 or by imprisonment for thirty (30) days in the county jail, or  
1362 both such fine and imprisonment. In addition, the claim or claims  
1363 submitted shall be forfeited.

1364           (p) **Electrical utility petroleum-based equipment**  
1365 **purchase procedure.** When in response to a proper advertisement  
1366 therefor, no bid firm as to price is submitted to an electric  
1367 utility for power transformers, distribution transformers, power  
1368 breakers, reclosers or other articles containing a petroleum  
1369 product, the electric utility may accept the lowest and best bid  
1370 therefor although the price is not firm.

1371           (q) **Fuel management system bidding procedure.** Any  
1372 governing authority or agency of the state shall, before  
1373 contracting for the services and products of a fuel management or  
1374 fuel access system, enter into negotiations with not fewer than  
1375 two (2) sellers of fuel management or fuel access systems for  
1376 competitive written bids to provide the services and products for  
1377 the systems. In the event that the governing authority or agency  
1378 cannot locate two (2) sellers of such systems or cannot obtain  
1379 bids from two (2) sellers of such systems, it shall show proof

1380 that it made a diligent, good-faith effort to locate and negotiate  
1381 with two (2) sellers of such systems. Such proof shall include,  
1382 but not be limited to, publications of a request for proposals and  
1383 letters soliciting negotiations and bids. For purposes of this  
1384 paragraph (q), a fuel management or fuel access system is an  
1385 automated system of acquiring fuel for vehicles as well as  
1386 management reports detailing fuel use by vehicles and drivers, and  
1387 the term "competitive written bid" shall have the meaning as  
1388 defined in paragraph (b) of this section. Governing authorities  
1389 and agencies shall be exempt from this process when contracting  
1390 for the services and products of a fuel management or fuel access  
1391 systems under the terms of a state contract established by the  
1392 Office of Purchasing and Travel.

1393 (r) **Solid waste contract proposal procedure.** Before  
1394 entering into any contract for garbage collection or disposal,  
1395 contract for solid waste collection or disposal or contract for  
1396 sewage collection or disposal, which involves an expenditure of  
1397 more than Fifty Thousand Dollars (\$50,000.00), a governing  
1398 authority or agency shall issue publicly a request for proposals  
1399 concerning the specifications for such services which shall be  
1400 advertised for in the same manner as provided in this section for  
1401 seeking bids for purchases which involve an expenditure of more  
1402 than the amount provided in paragraph (c) of this section. Any  
1403 request for proposals when issued shall contain terms and  
1404 conditions relating to price, financial responsibility,  
1405 technology, legal responsibilities and other relevant factors as  
1406 are determined by the governing authority or agency to be  
1407 appropriate for inclusion; all factors determined relevant by the  
1408 governing authority or agency or required by this paragraph (r)  
1409 shall be duly included in the advertisement to elicit proposals.  
1410 After responses to the request for proposals have been duly  
1411 received, the governing authority or agency shall select the most  
1412 qualified proposal or proposals on the basis of price, technology

1413 and other relevant factors and from such proposals, but not  
1414 limited to the terms thereof, negotiate and enter contracts with  
1415 one or more of the persons or firms submitting proposals. If the  
1416 governing authority or agency deems none of the proposals to be  
1417 qualified or otherwise acceptable, the request for proposals  
1418 process may be reinitiated. Notwithstanding any other provisions  
1419 of this paragraph, where a county with at least thirty-five  
1420 thousand (35,000) nor more than forty thousand (40,000)  
1421 population, according to the 1990 federal decennial census, owns  
1422 or operates a solid waste landfill, the governing authorities of  
1423 any other county or municipality may contract with the governing  
1424 authorities of the county owning or operating the landfill,  
1425 pursuant to a resolution duly adopted and spread upon the minutes  
1426 of each governing authority involved, for garbage or solid waste  
1427 collection or disposal services through contract negotiations.

1428           (s) **Minority set-aside authorization.** Notwithstanding  
1429 any provision of this section to the contrary, any agency or  
1430 governing authority, by order placed on its minutes, may, in its  
1431 discretion, set aside not more than twenty percent (20%) of its  
1432 anticipated annual expenditures for the purchase of commodities  
1433 from minority businesses; however, all such set-aside purchases  
1434 shall comply with all purchasing regulations promulgated by the  
1435 Department of Finance and Administration and shall be subject to  
1436 bid requirements under this section. Set-aside purchases for  
1437 which competitive bids are required shall be made from the lowest  
1438 and best minority business bidder. For the purposes of this  
1439 paragraph, the term "minority business" means a business which is  
1440 owned by a majority of persons who are United States citizens or  
1441 permanent resident aliens (as defined by the Immigration and  
1442 Naturalization Service) of the United States, and who are Asian,  
1443 Black, Hispanic or Native American, according to the following  
1444 definitions:

1445 (i) "Asian" means persons having origins in any of  
1446 the original people of the Far East, Southeast Asia, the Indian  
1447 subcontinent, or the Pacific Islands.

1448 (ii) "Black" means persons having origins in any  
1449 black racial group of Africa.

1450 (iii) "Hispanic" means persons of Spanish or  
1451 Portuguese culture with origins in Mexico, South or Central  
1452 America, or the Caribbean Islands, regardless of race.

1453 (iv) "Native American" means persons having  
1454 origins in any of the original people of North America, including  
1455 American Indians, Eskimos and Aleuts.

1456 (t) **Construction punch list restriction.** The  
1457 architect, engineer or other representative designated by the  
1458 agency or governing authority that is contracting for public  
1459 construction or renovation may prepare and submit to the  
1460 contractor only one (1) preliminary punch list of items that do  
1461 not meet the contract requirements at the time of substantial  
1462 completion and one (1) final list immediately before final  
1463 completion and final payment.

1464 (u) **Purchase authorization clarification.** Nothing in  
1465 this section shall be construed as authorizing any purchase not  
1466 authorized by law.

1467 **SECTION 23.** Section 11-46-9, Mississippi Code of 1972, is  
1468 amended as follows:

1469 11-46-9. (1) A governmental entity and its employees acting  
1470 within the course and scope of their employment or duties shall  
1471 not be liable for any claim:

1472 (a) Arising out of a legislative or judicial action or  
1473 inaction, or administrative action or inaction of a legislative or  
1474 judicial nature;

1475 (b) Arising out of any act or omission of an employee  
1476 of a governmental entity exercising ordinary care in reliance  
1477 upon, or in the execution or performance of, or in the failure to

1478 execute or perform, a statute, ordinance or regulation, whether or  
1479 not the statute, ordinance or regulation be valid;

1480 (c) Arising out of any act or omission of an employee  
1481 of a governmental entity engaged in the performance or execution  
1482 of duties or activities relating to police or fire protection  
1483 unless the employee acted in reckless disregard of the safety and  
1484 well-being of any person not engaged in criminal activity at the  
1485 time of injury;

1486 (d) Based upon the exercise or performance or the  
1487 failure to exercise or perform a discretionary function or duty on  
1488 the part of a governmental entity or employee thereof, whether or  
1489 not the discretion be abused;

1490 (e) Arising out of an injury caused by adopting or  
1491 failing to adopt a statute, ordinance or regulation;

1492 (f) Which is limited or barred by the provisions of any  
1493 other law;

1494 (g) Arising out of the exercise of discretion in  
1495 determining whether or not to seek or provide the resources  
1496 necessary for the purchase of equipment, the construction or  
1497 maintenance of facilities, the hiring of personnel and, in  
1498 general, the provision of adequate governmental services;

1499 (h) Arising out of the issuance, denial, suspension or  
1500 revocation of, or the failure or refusal to issue, deny, suspend  
1501 or revoke any privilege, ticket, pass, permit, license,  
1502 certificate, approval, order or similar authorization where the  
1503 governmental entity or its employee is authorized by law to  
1504 determine whether or not such authorization should be issued,  
1505 denied, suspended or revoked unless such issuance, denial,  
1506 suspension or revocation, or failure or refusal thereof, is of a  
1507 malicious or arbitrary and capricious nature;

1508 (i) Arising out of the assessment or collection of any  
1509 tax or fee;

1510           (j) Arising out of the detention of any goods or  
1511 merchandise by any law enforcement officer, unless such detention  
1512 is of a malicious or arbitrary and capricious nature;

1513           (k) Arising out of the imposition or establishment of a  
1514 quarantine, whether such quarantine relates to persons or  
1515 property;

1516           (l) Of any claimant who is an employee of a  
1517 governmental entity and whose injury is covered by the Workers'  
1518 Compensation Law of this state by benefits furnished by the  
1519 governmental entity by which he is employed;

1520           (m) Of any claimant who at the time the claim arises is  
1521 an inmate of any detention center, jail, workhouse, penal farm,  
1522 penitentiary or other such institution, regardless of whether such  
1523 claimant is or is not an inmate of any detention center, jail,  
1524 workhouse, penal farm, penitentiary or other such institution when  
1525 the claim is filed;

1526           (n) Arising out of any work performed by a person  
1527 convicted of a crime when the work is performed pursuant to any  
1528 sentence or order of any court or pursuant to laws of the State of  
1529 Mississippi authorizing or requiring such work;

1530           (o) Under circumstances where liability has been or is  
1531 hereafter assumed by the United States, to the extent of such  
1532 assumption of liability, including, but not limited to, any claim  
1533 based on activities of the Mississippi National Guard when such  
1534 claim is cognizable under the National Guard Tort Claims Act of  
1535 the United States, 32 USCS 715 (32 USCS 715), or when such claim  
1536 accrues as a result of active federal service or state service at  
1537 the call of the Governor for quelling riots and civil  
1538 disturbances;

1539           (p) Arising out of a plan or design for construction or  
1540 improvements to public property, including, but not limited to,  
1541 public buildings, highways, roads, streets, bridges, levees,  
1542 dikes, dams, impoundments, drainage channels, diversion channels,

1543 harbors, ports, wharfs or docks, where such plan or design has  
1544 been approved in advance of the construction or improvement by the  
1545 legislative body or governing authority of a governmental entity  
1546 or by some other body or administrative agency, exercising  
1547 discretion by authority to give such approval, and where such plan  
1548 or design is in conformity with engineering or design standards in  
1549 effect at the time of preparation of the plan or design;

1550 (q) Arising out of an injury caused solely by the  
1551 effect of weather conditions on the use of streets and highways;

1552 (r) Arising out of the lack of adequate personnel or  
1553 facilities at a state hospital or state corrections facility if  
1554 reasonable use of available appropriations has been made to  
1555 provide such personnel or facilities;

1556 (s) Arising out of loss, damage or destruction of  
1557 property of a patient or inmate of a state institution;

1558 (t) Arising out of any loss of benefits or compensation  
1559 due under a program of public assistance or public welfare;

1560 (u) Arising out of or resulting from riots, unlawful  
1561 assemblies, unlawful public demonstrations, mob violence or civil  
1562 disturbances;

1563 (v) Arising out of an injury caused by a dangerous  
1564 condition on property of the governmental entity that was not  
1565 caused by the negligent or other wrongful conduct of an employee  
1566 of the governmental entity or of which the governmental entity did  
1567 not have notice, either actual or constructive, and adequate  
1568 opportunity to protect or warn against; provided, however, that a  
1569 governmental entity shall not be liable for the failure to warn of  
1570 a dangerous condition which is obvious to one exercising due care;

1571 (w) Arising out of the absence, condition, malfunction  
1572 or removal by third parties of any sign, signal, warning device,  
1573 illumination device, guardrail or median barrier, unless the  
1574 absence, condition, malfunction or removal is not corrected by the



1575 governmental entity responsible for its maintenance within a  
1576 reasonable time after actual or constructive notice; \* \* \*

1577 (x) Arising out of the administration of corporal  
1578 punishment or the taking of any action to maintain control and  
1579 discipline of students, as defined in Section 37-11-57, by a  
1580 teacher, assistant teacher, principal or assistant principal of a  
1581 public school district in the state unless the teacher, assistant  
1582 teacher, principal or assistant principal acted in bad faith or  
1583 with malicious purpose or in a manner exhibiting a wanton and  
1584 willful disregard of human rights or safety; or

1585 (y) Arising out of the construction, maintenance or  
1586 operation of any highway, bridge or roadway project entered into  
1587 by the Mississippi Transportation Commission or other governmental  
1588 entity and a company under the provisions of Section 1 or 2 of  
1589 House Bill No. 351, 2007 Regular Session, where the act or  
1590 omission occurs during the term of any such contract.

1591 (2) A governmental entity shall also not be liable for any  
1592 claim where the governmental entity:

- 1593 (a) Is inactive and dormant;
- 1594 (b) Receives no revenue;
- 1595 (c) Has no employees; and
- 1596 (d) Owns no property.

1597 (3) If a governmental entity exempt from liability by  
1598 subsection (2) becomes active, receives income, hires employees or  
1599 acquires any property, such governmental entity shall no longer be  
1600 exempt from liability as provided in subsection (2) and shall be  
1601 subject to the provisions of this chapter.

1602 **SECTION 24.** The Attorney General of the State of Mississippi  
1603 shall submit this act, immediately upon approval by the Governor,  
1604 or upon approval by the Legislature subsequent to a veto, to the  
1605 Attorney General of the United States or to the United States  
1606 District Court for the District of Columbia in accordance with the

1607 provisions of the Voting Rights Act of 1965, as amended and  
1608 extended.

1609           **SECTION 25.** This act shall take effect and be in force from  
1610 and after the date it is effectuated under Section 5 of the Voting  
1611 Rights Act of 1965, as amended and extended.