

By: Representative Moore

To: Labor; Judiciary B

## HOUSE BILL NO. 463

1 AN ACT TO AUTHORIZE THE SECURE AND VERIFIABLE DOCUMENT; TO  
 2 PROHIBIT A PUBLIC ENTITY FROM ACCEPTING, RELYING OR UTILIZING ANY  
 3 IDENTIFICATION DOCUMENT THAT IS NOT SECURE AND VERIFIABLE; TO  
 4 PROVIDE PENALTIES FOR VIOLATION; TO AMEND SECTION 31-5-17,  
 5 MISSISSIPPI CODE OF 1972, TO PROHIBIT THE AWARDING OF STATE  
 6 CONTRACTS TO CONTRACTORS THAT HAVE PERSONS WHO ARE NOT AMERICAN  
 7 CITIZENS OR LEGAL ALIENS WHO WILL WORK UNDER THE STATE CONTRACT;  
 8 TO REQUIRE THAT EVERY PUBLIC OFFICER, CONTRACTOR, OR AGENT WHO  
 9 ENGAGES IN OR IS IN CHARGE OF THE CONSTRUCTION OF ANY STATE  
 10 BUILDING OR PUBLIC WORK FOR THE STATE EMPLOY ONLY WORKERS WHO ARE  
 11 AMERICAN CITIZENS OR LEGAL ALIENS OR WHO HAVE SOME SPECIALTY FOR  
 12 WHICH AMERICAN CITIZENS OR LEGAL ALIENS CANNOT BE FOUND; TO ASSESS  
 13 PENALTIES AGAINST THOSE CONTRACTORS WHO VIOLATE THIS REQUIREMENT;  
 14 TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO PROHIBIT  
 15 STATE AGENCIES AND GOVERNING AUTHORITIES FROM ACCEPTING BIDS FROM  
 16 OR ENTERING INTO A CONTRACT WITH A CONTRACTOR OR VENDOR THAT HAS  
 17 PERSONS WHO ARE NOT AMERICAN CITIZENS OR LEGAL ALIENS WHO WILL  
 18 WORK UNDER THE CONTRACT; TO ALLOW CONTRACTORS OR VENDORS ENTERING  
 19 INTO A CONTRACT WITH STATE AGENCIES TO HAVE PERSONS WHO WILL WORK  
 20 UNDER THE CONTRACT WHO HAVE SOME SPECIALTY FOR WHICH AMERICAN  
 21 CITIZENS OR LEGAL ALIENS CANNOT BE FOUND; TO ASSESS PENALTIES  
 22 AGAINST THOSE CONTRACTORS WHO VIOLATE THIS REQUIREMENT; TO AMEND  
 23 SECTION 45-1-3, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE  
 24 COMMISSIONER OF PUBLIC SAFETY TO CREATE RULES TO DIRECT LAW  
 25 ENFORCEMENT OFFICERS TO ASSIST THE FEDERAL GOVERNMENT WITH  
 26 IMMIGRATION EFFORTS; AND FOR RELATED PURPOSES.

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

28 **SECTION 1.** (1) The following words and phrases shall have  
 29 the meanings ascribed in this section:

30 (a) "Children" means children as defined by 42 USCS  
 31 Section 1786(b).

32 (b) "Infants" means infants as defined by 42 USCS  
 33 Section 1786 (b).

34 (c) "Public entity" means an agency, department, board,  
 35 division, bureau, commission, council or political subdivision of  
 36 the state.

37 (d) "Public official" means an elected or appointed  
 38 official, an employee or an agent of a public entity.

39           (e) "Secure and verifiable document" means a document  
40 issued by a state or federal jurisdiction or recognized by the  
41 United States government and that is verifiable by federal or  
42 state law enforcement, intelligence or homeland security agencies.

43           (2) (a) A public entity that provides services shall not  
44 accept, rely upon or utilize an identification document to provide  
45 services unless it is a secure and verifiable document.

46           (b) A public entity that is issuing an identification  
47 card, license, permit or official document shall not authorize  
48 acceptance of an identification document, nor shall a public  
49 official acting in an official capacity accept an identification  
50 document before issuing such documents, unless such identification  
51 document is a secure and verifiable document.

52           (3) Information gathered pursuant to subsection (5) of this  
53 section shall be a public record unless the subject of the  
54 information is a juvenile or the information concerns an ongoing  
55 criminal investigation. Such records shall be retained for three  
56 (3) years, but may be disposed of after three (3) years.

57           (4) (a) Actions taken in knowing violation of this article  
58 shall not be protected by governmental immunity provided to public  
59 employees.

60           (b) A peace officer who, in the performance of the  
61 officer's duties, utilizes identification that is not secure and  
62 verifiable shall not forfeit governmental immunity pursuant to  
63 this section if such officer:

64                   (i) Gathers all information from such  
65 identification; and

66                   (ii) If feasible, according to any applicable law  
67 enforcement agency guidelines, gathers fingerprint information  
68 from such person and stores such fingerprints for at least one (1)  
69 year as a criminal justice record.

70           (5) This article shall not apply to a person reporting a  
71 crime; a public entity or official accepting a crime report,

72 conducting a criminal investigation, accepting an application for  
73 the provision of services or providing services to infants and  
74 children born in the United States pursuant to 42 USCS Section  
75 1786, or providing emergency medical service; a peace officer in  
76 the performance of the officer's duties and within the scope of  
77 the officer's employment if such officer complies with subsection  
78 (2) of this section; or instances when a federal law mandates  
79 acceptance of a document.

80 **SECTION 2.** Section 31-5-17, Mississippi Code of 1972, is  
81 amended as follows:

82 31-5-17. (1) Every public officer, contractor,  
83 superintendent or agent engaged in or in charge of the  
84 construction of any state or public building or public work of any  
85 kind for the State of Mississippi or for any board, city  
86 commission, governmental agency or municipality of the State of  
87 Mississippi shall employ only workmen and laborers who have  
88 actually resided in Mississippi for two (2) years next preceding  
89 such employment.

90 (2) No state contract shall be awarded to a contractor that  
91 has persons who are not American citizens or legal aliens who will  
92 work under the state contract. However, a state contract may be  
93 awarded to a contractor that has persons who will work under the  
94 state contract who have some specialty for which American citizens  
95 or legal aliens cannot be found. Every public officer,  
96 contractor, superintendent or agent engaged in or in charge of the  
97 construction of any state building or public work of any kind for  
98 the State of Mississippi shall employ only workmen and laborers  
99 who are American citizens or legal aliens or who have some  
100 specialty for which American citizens or legal aliens cannot be  
101 found.

102 Any person who violates the provisions of this subsection  
103 shall be assessed the following penalties: (a) For the first  
104 offense, One Thousand Dollars (\$1,000.00) for every person who is

105 not an American citizen or legal alien as required, (b) For any  
106 subsequent violation, a contractor shall pay a civil penalty equal  
107 to three percent (3%) of the total contract being performed by the  
108 contractor and such contractor's license shall be revoked.

109       **SECTION 3.** Section 31-7-13, Mississippi Code of 1972, is  
110 amended as follows:

111       31-7-13. All agencies and governing authorities shall  
112 purchase their commodities and printing; contract for garbage  
113 collection or disposal; contract for solid waste collection or  
114 disposal; contract for sewage collection or disposal; contract for  
115 public construction; and contract for rentals as herein provided.

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

125       (b) **Bidding procedure for purchases over \$3,500.00 but**  
126 **not over \$15,000.00.** Purchases which involve an expenditure of  
127 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not  
128 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
129 freight and shipping charges may be made from the lowest and best  
130 bidder without publishing or posting advertisement for bids,  
131 provided at least two (2) competitive written bids have been  
132 obtained. Any governing authority purchasing commodities pursuant  
133 to this paragraph (b) may authorize its purchasing agent, or his  
134 designee, with regard to governing authorities other than  
135 counties, or its purchase clerk, or his designee, with regard to  
136 counties, to accept the lowest and best competitive written bid.  
137 Such authorization shall be made in writing by the governing

138 authority and shall be maintained on file in the primary office of  
139 the agency and recorded in the official minutes of the governing  
140 authority, as appropriate. The purchasing agent or the purchase  
141 clerk, or their designee, as the case may be, and not the  
142 governing authority, shall be liable for any penalties and/or  
143 damages as may be imposed by law for any act or omission of the  
144 purchasing agent or purchase clerk, or their designee,  
145 constituting a violation of law in accepting any bid without  
146 approval by the governing authority. The term "competitive  
147 written bid" shall mean a bid submitted on a bid form furnished by  
148 the buying agency or governing authority and signed by authorized  
149 personnel representing the vendor, or a bid submitted on a  
150 vendor's letterhead or identifiable bid form and signed by  
151 authorized personnel representing the vendor. "Competitive" shall  
152 mean that the bids are developed based upon comparable  
153 identification of the needs and are developed independently and  
154 without knowledge of other bids or prospective bids. Bids may be  
155 submitted by facsimile, electronic mail or other generally  
156 accepted method of information distribution. Bids submitted by  
157 electronic transmission shall not require the signature of the  
158 vendor's representative unless required by agencies or governing  
159 authorities.

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

161 (i) **Publication requirement.**

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

169 2. The purchasing entity may designate the  
170 method by which the bids will be received, including, but not

171 limited to, bids sealed in an envelope, bids received  
172 electronically in a secure system, bids received via a reverse  
173 auction, or bids received by any other method that promotes open  
174 competition and has been approved by the Office of Purchasing and  
175 Travel. The provisions of this part 2 of subparagraph (i) shall  
176 be repealed on July 1, 2008.

177                   3. The date as published for the bid opening  
178 shall not be less than seven (7) working days after the last  
179 published notice; however, if the purchase involves a construction  
180 project in which the estimated cost is in excess of Fifteen  
181 Thousand Dollars (\$15,000.00), such bids shall not be opened in  
182 less than fifteen (15) working days after the last notice is  
183 published and the notice for the purchase of such construction  
184 shall be published once each week for two (2) consecutive weeks.  
185 The notice of intention to let contracts or purchase equipment  
186 shall state the time and place at which bids shall be received,  
187 list the contracts to be made or types of equipment or supplies to  
188 be purchased, and, if all plans and/or specifications are not  
189 published, refer to the plans and/or specifications on file. If  
190 there is no newspaper published in the county or municipality,  
191 then such notice shall be given by posting same at the courthouse,  
192 or for municipalities at the city hall, and at two (2) other  
193 public places in the county or municipality, and also by  
194 publication once each week for two (2) consecutive weeks in some  
195 newspaper having a general circulation in the county or  
196 municipality in the above provided manner. On the same date that  
197 the notice is submitted to the newspaper for publication, the  
198 agency or governing authority involved shall mail written notice  
199 to, or provide electronic notification to the main office of the  
200 Mississippi Contract Procurement Center that contains the same  
201 information as that in the published notice.

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

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

218 (iii) **Filing requirement.** In all cases involving  
219 governing authorities, before the notice shall be published or  
220 posted, the plans or specifications for the construction or  
221 equipment being sought shall be filed with the clerk of the board  
222 of the governing authority. In addition to these requirements, a  
223 bid file shall be established which shall indicate those vendors  
224 to whom such solicitations and specifications were issued, and  
225 such file shall also contain such information as is pertinent to  
226 the bid.

227 (iv) **Specification restrictions.**

228 1. Specifications pertinent to such bidding  
229 shall be written so as not to exclude comparable equipment of  
230 domestic manufacture. However, if valid justification is  
231 presented, the Department of Finance and Administration or the  
232 board of a governing authority may approve a request for specific  
233 equipment necessary to perform a specific job. Further, such  
234 justification, when placed on the minutes of the board of a  
235 governing authority, may serve as authority for that governing  
236 authority to write specifications to require a specific item of

237 equipment needed to perform a specific job. In addition to these  
238 requirements, from and after July 1, 1990, vendors of relocatable  
239 classrooms and the specifications for the purchase of such  
240 relocatable classrooms published by local school boards shall meet  
241 all pertinent regulations of the State Board of Education,  
242 including prior approval of such bid by the State Department of  
243 Education.

244                   2. Specifications for construction projects  
245 may include an allowance for commodities, equipment, furniture,  
246 construction materials or systems in which prospective bidders are  
247 instructed to include in their bids specified amounts for such  
248 items so long as the allowance items are acquired by the vendor in  
249 a commercially reasonable manner and approved by the  
250 agency/governing authority. Such acquisitions shall not be made  
251 to circumvent the public purchasing laws.

252                   (v) Agencies and governing authorities may  
253 establish secure procedures by which bids may be submitted via  
254 electronic means.

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

256                   (i) **Decision procedure.** Purchases may be made  
257 from the lowest and best bidder. In determining the lowest and  
258 best bid, freight and shipping charges shall be included.  
259 Life-cycle costing, total cost bids, warranties, guaranteed  
260 buy-back provisions and other relevant provisions may be included  
261 in the best bid calculation. All best bid procedures for state  
262 agencies must be in compliance with regulations established by the  
263 Department of Finance and Administration. If any governing  
264 authority accepts a bid other than the lowest bid actually  
265 submitted, it shall place on its minutes detailed calculations and  
266 narrative summary showing that the accepted bid was determined to  
267 be the lowest and best bid, including the dollar amount of the  
268 accepted bid and the dollar amount of the lowest bid. No agency



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

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

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

293 (e) **Lease-purchase authorization.** For the purposes of  
294 this section, the term "equipment" shall mean equipment, furniture  
295 and, if applicable, associated software and other applicable  
296 direct costs associated with the acquisition. Any lease-purchase  
297 of equipment which an agency is not required to lease-purchase  
298 under the master lease-purchase program pursuant to Section  
299 31-7-10 and any lease-purchase of equipment which a governing  
300 authority elects to lease-purchase may be acquired by a  
301 lease-purchase agreement under this paragraph (e). Lease-purchase

302 financing may also be obtained from the vendor or from a  
303 third-party source after having solicited and obtained at least  
304 two (2) written competitive bids, as defined in paragraph (b) of  
305 this section, for such financing without advertising for such  
306 bids. Solicitation for the bids for financing may occur before or  
307 after acceptance of bids for the purchase of such equipment or,  
308 where no such bids for purchase are required, at any time before  
309 the purchase thereof. No such lease-purchase agreement shall be  
310 for an annual rate of interest which is greater than the overall  
311 maximum interest rate to maturity on general obligation  
312 indebtedness permitted under Section 75-17-101, and the term of  
313 such lease-purchase agreement shall not exceed the useful life of  
314 equipment covered thereby as determined according to the upper  
315 limit of the asset depreciation range (ADR) guidelines for the  
316 Class Life Asset Depreciation Range System established by the  
317 Internal Revenue Service pursuant to the United States Internal  
318 Revenue Code and regulations thereunder as in effect on December  
319 31, 1980, or comparable depreciation guidelines with respect to  
320 any equipment not covered by ADR guidelines. Any lease-purchase  
321 agreement entered into pursuant to this paragraph (e) may contain  
322 any of the terms and conditions which a master lease-purchase  
323 agreement may contain under the provisions of Section 31-7-10(5),  
324 and shall contain an annual allocation dependency clause  
325 substantially similar to that set forth in Section 31-7-10(8).  
326 Each agency or governing authority entering into a lease-purchase  
327 transaction pursuant to this paragraph (e) shall maintain with  
328 respect to each such lease-purchase transaction the same  
329 information as required to be maintained by the Department of  
330 Finance and Administration pursuant to Section 31-7-10(13).  
331 However, nothing contained in this section shall be construed to  
332 permit agencies to acquire items of equipment with a total  
333 acquisition cost in the aggregate of less than Ten Thousand  
334 Dollars (\$10,000.00) by a single lease-purchase transaction. All

335 equipment, and the purchase thereof by any lessor, acquired by  
336 lease-purchase under this paragraph and all lease-purchase  
337 payments with respect thereto shall be exempt from all Mississippi  
338 sales, use and ad valorem taxes. Interest paid on any  
339 lease-purchase agreement under this section shall be exempt from  
340 State of Mississippi income taxation.

341 (f) **Alternate bid authorization.** When necessary to  
342 ensure ready availability of commodities for public works and the  
343 timely completion of public projects, no more than two (2)  
344 alternate bids may be accepted by a governing authority for  
345 commodities. No purchases may be made through use of such  
346 alternate bids procedure unless the lowest and best bidder cannot  
347 deliver the commodities contained in his bid. In that event,  
348 purchases of such commodities may be made from one (1) of the  
349 bidders whose bid was accepted as an alternate.

350 (g) **Construction contract change authorization.** In the  
351 event a determination is made by an agency or governing authority  
352 after a construction contract is let that changes or modifications  
353 to the original contract are necessary or would better serve the  
354 purpose of the agency or the governing authority, such agency or  
355 governing authority may, in its discretion, order such changes  
356 pertaining to the construction that are necessary under the  
357 circumstances without the necessity of further public bids;  
358 provided that such change shall be made in a commercially  
359 reasonable manner and shall not be made to circumvent the public  
360 purchasing statutes. In addition to any other authorized person,  
361 the architect or engineer hired by an agency or governing  
362 authority with respect to any public construction contract shall  
363 have the authority, when granted by an agency or governing  
364 authority, to authorize changes or modifications to the original  
365 contract without the necessity of prior approval of the agency or  
366 governing authority when any such change or modification is less  
367 than one percent (1%) of the total contract amount. The agency or

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

370           (h) **Petroleum purchase alternative.** In addition to  
371 other methods of purchasing authorized in this chapter, when any  
372 agency or governing authority shall have a need for gas, diesel  
373 fuel, oils and/or other petroleum products in excess of the amount  
374 set forth in paragraph (a) of this section, such agency or  
375 governing authority may purchase the commodity after having  
376 solicited and obtained at least two (2) competitive written bids,  
377 as defined in paragraph (b) of this section. If two (2)  
378 competitive written bids are not obtained, the entity shall comply  
379 with the procedures set forth in paragraph (c) of this section.  
380 In the event any agency or governing authority shall have  
381 advertised for bids for the purchase of gas, diesel fuel, oils and  
382 other petroleum products and coal and no acceptable bids can be  
383 obtained, such agency or governing authority is authorized and  
384 directed to enter into any negotiations necessary to secure the  
385 lowest and best contract available for the purchase of such  
386 commodities.

387           (i) **Road construction petroleum products price**  
388 **adjustment clause authorization.** Any agency or governing  
389 authority authorized to enter into contracts for the construction,  
390 maintenance, surfacing or repair of highways, roads or streets,  
391 may include in its bid proposal and contract documents a price  
392 adjustment clause with relation to the cost to the contractor,  
393 including taxes, based upon an industry-wide cost index, of  
394 petroleum products including asphalt used in the performance or  
395 execution of the contract or in the production or manufacture of  
396 materials for use in such performance. Such industry-wide index  
397 shall be established and published monthly by the Mississippi  
398 Department of Transportation with a copy thereof to be mailed,  
399 upon request, to the clerks of the governing authority of each  
400 municipality and the clerks of each board of supervisors

401 throughout the state. The price adjustment clause shall be based  
402 on the cost of such petroleum products only and shall not include  
403 any additional profit or overhead as part of the adjustment. The  
404 bid proposals or document contract shall contain the basis and  
405 methods of adjusting unit prices for the change in the cost of  
406 such petroleum products.

407           (j) **State agency emergency purchase procedure.** If the  
408 governing board or the executive head, or his designee, of any  
409 agency of the state shall determine that an emergency exists in  
410 regard to the purchase of any commodities or repair contracts, so  
411 that the delay incident to giving opportunity for competitive  
412 bidding would be detrimental to the interests of the state, then  
413 the provisions herein for competitive bidding shall not apply and  
414 the head of such agency shall be authorized to make the purchase  
415 or repair. Total purchases so made shall only be for the purpose  
416 of meeting needs created by the emergency situation. In the event  
417 such executive head is responsible to an agency board, at the  
418 meeting next following the emergency purchase, documentation of  
419 the purchase, including a description of the commodity purchased,  
420 the purchase price thereof and the nature of the emergency shall  
421 be presented to the board and placed on the minutes of the board  
422 of such agency. The head of such agency, or his designee, shall,  
423 at the earliest possible date following such emergency purchase,  
424 file with the Department of Finance and Administration (i) a  
425 statement explaining the conditions and circumstances of the  
426 emergency, which shall include a detailed description of the  
427 events leading up to the situation and the negative impact to the  
428 entity if the purchase is made following the statutory  
429 requirements set forth in paragraph (a), (b) or (c) of this  
430 section, and (ii) a certified copy of the appropriate minutes of  
431 the board of such agency, if applicable. On or before September 1  
432 of each year, the State Auditor shall prepare and deliver to the  
433 Senate Fees, Salaries and Administration Committee, the House Fees

434 and Salaries of Public Officers Committee and the Joint  
435 Legislative Budget Committee a report containing a list of all  
436 state agency emergency purchases and supporting documentation for  
437 each emergency purchase.

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

439 If the governing authority, or the governing authority acting  
440 through its designee, shall determine that an emergency exists in  
441 regard to the purchase of any commodities or repair contracts, so  
442 that the delay incident to giving opportunity for competitive  
443 bidding would be detrimental to the interest of the governing  
444 authority, then the provisions herein for competitive bidding  
445 shall not apply and any officer or agent of such governing  
446 authority having general or special authority therefor in making  
447 such purchase or repair shall approve the bill presented therefor,  
448 and he shall certify in writing thereon from whom such purchase  
449 was made, or with whom such a repair contract was made. At the  
450 board meeting next following the emergency purchase or repair  
451 contract, documentation of the purchase or repair contract,  
452 including a description of the commodity purchased, the price  
453 thereof and the nature of the emergency shall be presented to the  
454 board and shall be placed on the minutes of the board of such  
455 governing authority.

456 (l) **Hospital purchase, lease-purchase and lease**  
457 **authorization.**

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

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

467 the proper care of patients if, in its opinion, it is not  
468 financially feasible to purchase the necessary equipment or  
469 services. Any such contract for the lease of equipment or  
470 services executed by the commissioners or board shall not exceed a  
471 maximum of five (5) years' duration and shall include a  
472 cancellation clause based on unavailability of funds. If such  
473 cancellation clause is exercised, there shall be no further  
474 liability on the part of the lessee. Any such contract for the  
475 lease of equipment or services executed on behalf of the  
476 commissioners or board that complies with the provisions of this  
477 subparagraph (ii) shall be excepted from the bid requirements set  
478 forth in this section.

479 (m) **Exceptions from bidding requirements.** Excepted  
480 from bid requirements are:

481 (i) **Purchasing agreements approved by department.**  
482 Purchasing agreements, contracts and maximum price regulations  
483 executed or approved by the Department of Finance and  
484 Administration.

485 (ii) **Outside equipment repairs.** Repairs to  
486 equipment, when such repairs are made by repair facilities in the  
487 private sector; however, engines, transmissions, rear axles and/or  
488 other such components shall not be included in this exemption when  
489 replaced as a complete unit instead of being repaired and the need  
490 for such total component replacement is known before disassembly  
491 of the component; however, invoices identifying the equipment,  
492 specific repairs made, parts identified by number and name,  
493 supplies used in such repairs, and the number of hours of labor  
494 and costs therefor shall be required for the payment for such  
495 repairs.

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

500 included in this exemption when the entire assembly is being  
501 replaced instead of being repaired.

502                   (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
503 of gravel or fill dirt which are to be removed and transported by  
504 the purchaser.

505                   (v) **Governmental equipment auctions.** Motor  
506 vehicles or other equipment purchased from a federal agency or  
507 authority, another governing authority or state agency of the  
508 State of Mississippi, or any governing authority or state agency  
509 of another state at a public auction held for the purpose of  
510 disposing of such vehicles or other equipment. Any purchase by a  
511 governing authority under the exemption authorized by this  
512 subparagraph (v) shall require advance authorization spread upon  
513 the minutes of the governing authority to include the listing of  
514 the item or items authorized to be purchased and the maximum bid  
515 authorized to be paid for each item or items.

516                   (vi) **Intergovernmental sales and transfers.**  
517 Purchases, sales, transfers or trades by governing authorities or  
518 state agencies when such purchases, sales, transfers or trades are  
519 made by a private treaty agreement or through means of  
520 negotiation, from any federal agency or authority, another  
521 governing authority or state agency of the State of Mississippi,  
522 or any state agency or governing authority of another state.  
523 Nothing in this section shall permit such purchases through public  
524 auction except as provided for in subparagraph (v) of this  
525 section. It is the intent of this section to allow governmental  
526 entities to dispose of and/or purchase commodities from other  
527 governmental entities at a price that is agreed to by both  
528 parties. This shall allow for purchases and/or sales at prices  
529 which may be determined to be below the market value if the  
530 selling entity determines that the sale at below market value is  
531 in the best interest of the taxpayers of the state. Governing  
532 authorities shall place the terms of the agreement and any



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

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

540 (viii) **Single source items.** Noncompetitive items  
541 available from one (1) source only. In connection with the  
542 purchase of noncompetitive items only available from one (1)  
543 source, a certification of the conditions and circumstances  
544 requiring the purchase shall be filed by the agency with the  
545 Department of Finance and Administration and by the governing  
546 authority with the board of the governing authority. Upon receipt  
547 of that certification the Department of Finance and Administration  
548 or the board of the governing authority, as the case may be, may,  
549 in writing, authorize the purchase, which authority shall be noted  
550 on the minutes of the body at the next regular meeting thereafter.  
551 In those situations, a governing authority is not required to  
552 obtain the approval of the Department of Finance and  
553 Administration.

554 (ix) **Waste disposal facility construction**  
555 **contracts.** Construction of incinerators and other facilities for  
556 disposal of solid wastes in which products either generated  
557 therein, such as steam, or recovered therefrom, such as materials  
558 for recycling, are to be sold or otherwise disposed of; however,  
559 in constructing such facilities, a governing authority or agency  
560 shall publicly issue requests for proposals, advertised for in the  
561 same manner as provided herein for seeking bids for public  
562 construction projects, concerning the design, construction,  
563 ownership, operation and/or maintenance of such facilities,  
564 wherein such requests for proposals when issued shall contain  
565 terms and conditions relating to price, financial responsibility,

566 technology, environmental compatibility, legal responsibilities  
567 and such other matters as are determined by the governing  
568 authority or agency to be appropriate for inclusion; and after  
569 responses to the request for proposals have been duly received,  
570 the governing authority or agency may select the most qualified  
571 proposal or proposals on the basis of price, technology and other  
572 relevant factors and from such proposals, but not limited to the  
573 terms thereof, negotiate and enter contracts with one or more of  
574 the persons or firms submitting proposals.

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

578                   (xi) **Information technology products.** Purchases  
579 of information technology products made by governing authorities  
580 under the provisions of purchase schedules, or contracts executed  
581 or approved by the Mississippi Department of Information  
582 Technology Services and designated for use by governing  
583 authorities.

584                   (xii) **Energy efficiency services and equipment.**  
585 Energy efficiency services and equipment acquired by school  
586 districts, community and junior colleges, institutions of higher  
587 learning and state agencies or other applicable governmental  
588 entities on a shared-savings, lease or lease-purchase basis  
589 pursuant to Section 31-7-14.

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

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

599 distribution; however, equipment such as projectors, recorders,  
600 audio or video equipment, and monitor televisions are not exempt  
601 under this subparagraph.

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

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

608                   (xvii) **Multichannel interactive video systems.**  
609 From and after July 1, 1990, contracts by Mississippi Authority  
610 for Educational Television with any private educational  
611 institution or private nonprofit organization whose purposes are  
612 educational in regard to the construction, purchase, lease or  
613 lease-purchase of facilities and equipment and the employment of  
614 personnel for providing multichannel interactive video systems  
615 (ITSF) in the school districts of this state.

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

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

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

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

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

634 (xxii) **Garbage, solid waste and sewage contracts.**  
635 Contracts for garbage collection or disposal, contracts for solid  
636 waste collection or disposal and contracts for sewage collection  
637 or disposal.

638 (xxiii) **Municipal water tank maintenance**  
639 **contracts.** Professional maintenance program contracts for the  
640 repair or maintenance of municipal water tanks, which provide  
641 professional services needed to maintain municipal water storage  
642 tanks for a fixed annual fee for a duration of two (2) or more  
643 years.

644 (xxiv) **Purchases of Mississippi Industries for the**  
645 **Blind products.** Purchases made by state agencies or governing  
646 authorities involving any item that is manufactured, processed or  
647 produced by the Mississippi Industries for the Blind.

648 (xxv) **Purchases of state-adopted textbooks.**  
649 Purchases of state-adopted textbooks by public school districts.

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

653 (xxvii) **Used heavy or specialized machinery or**  
654 **equipment for installation of soil and water conservation**  
655 **practices purchased at auction.** Used heavy or specialized  
656 machinery or equipment used for the installation and  
657 implementation of soil and water conservation practices or  
658 measures purchased subject to the restrictions provided in  
659 Sections 69-27-331 through 69-27-341. Any purchase by the State  
660 Soil and Water Conservation Commission under the exemption  
661 authorized by this subparagraph shall require advance  
662 authorization spread upon the minutes of the commission to include  
663 the listing of the item or items authorized to be purchased and  
664 the maximum bid authorized to be paid for each item or items.

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

668                   (xxix) **Purchases made pursuant to qualified**  
669 **cooperative purchasing agreements.** Purchases made by certified  
670 purchasing offices of state agencies or governing authorities  
671 under cooperative purchasing agreements previously approved by the  
672 Office of Purchasing and Travel and established by or for any  
673 municipality, county, parish or state government or the federal  
674 government, provided that the notification to potential  
675 contractors includes a clause that sets forth the availability of  
676 the cooperative purchasing agreement to other governmental  
677 entities. Such purchases shall only be made if the use of the  
678 cooperative purchasing agreements is determined to be in the best  
679 interest of the governmental entity.

680                   (xxx) **School yearbooks.** Purchases of school  
681 yearbooks by state agencies or governing authorities; provided,  
682 however, that state agencies and governing authorities shall use  
683 for these purchases the RFP process as set forth in the  
684 Mississippi Procurement Manual adopted by the Office of Purchasing  
685 and Travel.

686                   (xxxi) **Design-build method or the design-build**  
687 **bridging method of contracting.** Contracts entered into under the  
688 provisions of Section 31-11-3(9).

689                   (n) **Term contract authorization.** All contracts for the  
690 purchase of:

691                   (i) All contracts for the purchase of commodities,  
692 equipment and public construction (including, but not limited to,  
693 repair and maintenance), may be let for periods of not more than  
694 sixty (60) months in advance, subject to applicable statutory  
695 provisions prohibiting the letting of contracts during specified  
696 periods near the end of terms of office. Term contracts for a  
697 period exceeding twenty-four (24) months shall also be subject to

698 ratification or cancellation by governing authority boards taking  
699 office subsequent to the governing authority board entering the  
700 contract.

701 (ii) Bid proposals and contracts may include price  
702 adjustment clauses with relation to the cost to the contractor  
703 based upon a nationally published industry-wide or nationally  
704 published and recognized cost index. The cost index used in a  
705 price adjustment clause shall be determined by the Department of  
706 Finance and Administration for the state agencies and by the  
707 governing board for governing authorities. The bid proposal and  
708 contract documents utilizing a price adjustment clause shall  
709 contain the basis and method of adjusting unit prices for the  
710 change in the cost of such commodities, equipment and public  
711 construction.

712 (o) **Purchase law violation prohibition and vendor**  
713 **penalty.** No contract or purchase as herein authorized shall be  
714 made for the purpose of circumventing the provisions of this  
715 section requiring competitive bids, nor shall it be lawful for any  
716 person or concern to submit individual invoices for amounts within  
717 those authorized for a contract or purchase where the actual value  
718 of the contract or commodity purchased exceeds the authorized  
719 amount and the invoices therefor are split so as to appear to be  
720 authorized as purchases for which competitive bids are not  
721 required. Submission of such invoices shall constitute a  
722 misdemeanor punishable by a fine of not less than Five Hundred  
723 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
724 or by imprisonment for thirty (30) days in the county jail, or  
725 both such fine and imprisonment. In addition, the claim or claims  
726 submitted shall be forfeited.

727 (p) **Electrical utility petroleum-based equipment**  
728 **purchase procedure.** When in response to a proper advertisement  
729 therefor, no bid firm as to price is submitted to an electric  
730 utility for power transformers, distribution transformers, power

731 breakers, reclosers or other articles containing a petroleum  
732 product, the electric utility may accept the lowest and best bid  
733 therefor although the price is not firm.

734           (q) **Fuel management system bidding procedure.** Any  
735 governing authority or agency of the state shall, before  
736 contracting for the services and products of a fuel management or  
737 fuel access system, enter into negotiations with not fewer than  
738 two (2) sellers of fuel management or fuel access systems for  
739 competitive written bids to provide the services and products for  
740 the systems. In the event that the governing authority or agency  
741 cannot locate two (2) sellers of such systems or cannot obtain  
742 bids from two (2) sellers of such systems, it shall show proof  
743 that it made a diligent, good-faith effort to locate and negotiate  
744 with two (2) sellers of such systems. Such proof shall include,  
745 but not be limited to, publications of a request for proposals and  
746 letters soliciting negotiations and bids. For purposes of this  
747 paragraph (q), a fuel management or fuel access system is an  
748 automated system of acquiring fuel for vehicles as well as  
749 management reports detailing fuel use by vehicles and drivers, and  
750 the term "competitive written bid" shall have the meaning as  
751 defined in paragraph (b) of this section. Governing authorities  
752 and agencies shall be exempt from this process when contracting  
753 for the services and products of a fuel management or fuel access  
754 systems under the terms of a state contract established by the  
755 Office of Purchasing and Travel.

756           (r) **Solid waste contract proposal procedure.** Before  
757 entering into any contract for garbage collection or disposal,  
758 contract for solid waste collection or disposal or contract for  
759 sewage collection or disposal, which involves an expenditure of  
760 more than Fifty Thousand Dollars (\$50,000.00), a governing  
761 authority or agency shall issue publicly a request for proposals  
762 concerning the specifications for such services which shall be  
763 advertised for in the same manner as provided in this section for

764 seeking bids for purchases which involve an expenditure of more  
765 than the amount provided in paragraph (c) of this section. Any  
766 request for proposals when issued shall contain terms and  
767 conditions relating to price, financial responsibility,  
768 technology, legal responsibilities and other relevant factors as  
769 are determined by the governing authority or agency to be  
770 appropriate for inclusion; all factors determined relevant by the  
771 governing authority or agency or required by this paragraph (r)  
772 shall be duly included in the advertisement to elicit proposals.  
773 After responses to the request for proposals have been duly  
774 received, the governing authority or agency shall select the most  
775 qualified proposal or proposals on the basis of price, technology  
776 and other relevant factors and from such proposals, but not  
777 limited to the terms thereof, negotiate and enter contracts with  
778 one or more of the persons or firms submitting proposals. If the  
779 governing authority or agency deems none of the proposals to be  
780 qualified or otherwise acceptable, the request for proposals  
781 process may be reinitiated. Notwithstanding any other provisions  
782 of this paragraph, where a county with at least thirty-five  
783 thousand (35,000) nor more than forty thousand (40,000)  
784 population, according to the 1990 federal decennial census, owns  
785 or operates a solid waste landfill, the governing authorities of  
786 any other county or municipality may contract with the governing  
787 authorities of the county owning or operating the landfill,  
788 pursuant to a resolution duly adopted and spread upon the minutes  
789 of each governing authority involved, for garbage or solid waste  
790 collection or disposal services through contract negotiations.

791 (s) **Minority set-aside authorization.** Notwithstanding  
792 any provision of this section to the contrary, any agency or  
793 governing authority, by order placed on its minutes, may, in its  
794 discretion, set aside not more than twenty percent (20%) of its  
795 anticipated annual expenditures for the purchase of commodities  
796 from minority businesses; however, all such set-aside purchases



797 shall comply with all purchasing regulations promulgated by the  
798 Department of Finance and Administration and shall be subject to  
799 bid requirements under this section. Set-aside purchases for  
800 which competitive bids are required shall be made from the lowest  
801 and best minority business bidder. For the purposes of this  
802 paragraph, the term "minority business" means a business which is  
803 owned by a majority of persons who are United States citizens or  
804 permanent resident aliens (as defined by the Immigration and  
805 Naturalization Service) of the United States, and who are Asian,  
806 Black, Hispanic or Native American, according to the following  
807 definitions:

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

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

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

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

819 (t) **Construction punch list restriction.** The  
820 architect, engineer or other representative designated by the  
821 agency or governing authority that is contracting for public  
822 construction or renovation may prepare and submit to the  
823 contractor only one (1) preliminary punch list of items that do  
824 not meet the contract requirements at the time of substantial  
825 completion and one (1) final list immediately before final  
826 completion and final payment.

827 (u) **Contract restrictions.** No agency or governing  
828 authority shall accept a bid from or enter into a contract with a  
829 contractor or vendor that has persons who are not American

830 citizens or legal aliens who will work under the contract.  
831 However, an agency or governing authority may accept a bid from or  
832 enter into a contract with a contractor or vendor that has persons  
833 who will work under the contract who have some specialty for which  
834 American citizens or legal aliens cannot be found. The agency or  
835 governing authority shall require contractors and vendors  
836 submitting bids to attach an affidavit stating that all persons  
837 who will work under the contract are American citizens or legal  
838 aliens or have some specialty for which American citizens or legal  
839 aliens cannot be found.

840 Any contractor who attaches an affidavit without true  
841 information about the persons who will work under the contract, or  
842 has persons working under the contract in violation of the  
843 requirements of the provisions of this subsection, shall be  
844 assessed the following penalties: (a) For the first violation, a  
845 contractor shall pay One Thousand Dollars (\$1,000.00) for every  
846 person who is not an American citizen or legal alien as provided  
847 in this subsection, (b) For any subsequent violation, a contractor  
848 shall pay a civil penalty equal to three percent (3%) of the total  
849 contract being performed by the contractor and such contractor's  
850 license shall be revoked.

851 (v) Purchase authorization clarification. Nothing in  
852 this section shall be construed as authorizing any purchase not  
853 authorized by law.

854 **SECTION 4.** Section 45-1-3, Mississippi Code of 1972, is  
855 amended as follows:

856 45-1-3. (1) When not otherwise specifically provided, the  
857 commissioner is authorized to make and promulgate reasonable rules  
858 and regulations to be coordinated and carry out the general  
859 provisions of the Highway Safety Patrol and Driver's License Law  
860 of 1938.

861 (2) The commissioner is authorized to make and promulgate  
862 reasonable rules and regulations to receive intelligence from

863 federal authorities relating to homeland security and ensure that,  
864 to the extent allowed by law, all appropriate and necessary  
865 intelligence and law enforcement of this state assist the federal  
866 government relating to immigration and efforts to improve the  
867 security of the borders, territorial waters and ports of the  
868 United States.

869         **SECTION 5.** This act shall take effect and be in force from  
870 and after July 1, 2007.