

By: Representative Franks

To: Judiciary A

HOUSE BILL NO. 775

1 AN ACT TO AMEND SECTIONS 31-3-21 AND 31-7-13, MISSISSIPPI
2 CODE OF 1972, TO REQUIRE CONTRACTORS WHO SUBMIT A BID IN EXCESS OF
3 \$100,000.00 TO LIST SUBCONTRACTORS WHO WILL WORK UNDER THE
4 CONTRACT; TO PROHIBIT STATE AGENCIES AND GOVERNING AUTHORITIES
5 FROM ACCEPTING BIDS IN EXCESS OF \$100,000.00 WITHOUT A LIST OF
6 SUBCONTRACTORS WHO WILL WORK UNDER THE CONTRACT; TO PROHIBIT
7 CONTRACTORS FROM CHANGING THE LISTED SUBCONTRACTOR WITHOUT THE
8 APPROVAL OF THE AGENCY OR GOVERNING AUTHORITY; TO ALLOW STATE
9 AGENCIES AND GOVERNING AUTHORITIES TO USE PROJECT MANAGERS FOR
10 CERTAIN PROJECTS; TO AMEND SECTION 37-151-7, MISSISSIPPI CODE OF
11 1972, TO CONFORM TO THE PRECEDING SECTIONS; AND FOR RELATED
12 PURPOSES.

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

14 **SECTION 1.** Section 31-3-21, Mississippi Code of 1972, is
15 amended as follows:

16 31-3-21. (1) It shall be unlawful for any person who does
17 not hold a certificate of responsibility issued under this
18 chapter, or a similar certificate issued by another state
19 recognizing such certificate issued by the State of Mississippi,
20 to submit a bid, enter into a contract, or otherwise engage in or
21 continue in this state in the business of a contractor, as defined
22 in this chapter. Any bid which is submitted without a certificate
23 of responsibility number issued under this chapter and without
24 that number appearing on the exterior of the bid envelope, as and
25 if herein required, at the time designated for the opening of such
26 bid, shall not be considered further, and the person or public
27 agency soliciting bids shall not enter into a contract with a
28 contractor submitting a bid in violation of this section. In
29 addition, any person violating this section by knowingly and
30 willfully submitting a bid for projects without holding a
31 certificate of responsibility number issued under this chapter, as
32 and if herein required, at the time of the submission or opening

33 of such bid shall be guilty of a misdemeanor and, upon conviction,
34 shall be punished by a fine of not more than One Thousand Dollars
35 (\$1,000.00), or by imprisonment for not more than six (6) months,
36 or by both such fine and imprisonment.

37 (2) (a) All bids submitted for public or private projects
38 where said bid is in excess of Fifty Thousand Dollars (\$50,000.00)
39 with respect to public projects and in excess of One Hundred
40 Thousand Dollars (\$100,000.00) with respect to private projects
41 shall contain on the outside or exterior of the envelope or
42 container of such bid the contractor's current certificate number,
43 and no bid shall be opened or considered unless such contractor's
44 current certificate number appears on the outside or exterior of
45 said envelope or container, or unless there appears a statement on
46 the outside or exterior of such envelope or container to the
47 effect that the bid enclosed therewith did not exceed Fifty
48 Thousand Dollars (\$50,000.00) with respect to public projects or
49 One Hundred Thousand Dollars (\$100,000.00) with respect to private
50 projects. Any person violating the provisions of this subsection
51 shall be guilty of a misdemeanor and, upon conviction, shall be
52 punished by a fine of not more than One Thousand Dollars
53 (\$1,000.00), or by imprisonment for not more than six (6) months,
54 or by both such fine and imprisonment.

55 (b) All bids submitted for public projects where said
56 bid is in excess of One Hundred Thousand Dollars (\$100,000.00)
57 shall contain a list of subcontractors who will work under the
58 contract. The subcontractors listed may not be changed by the
59 contractor without the approval of the agency or governing
60 authority for which the public project is being done. A civil
61 penalty equal to three percent (3%) of the total value of the
62 contract shall be assessed against a contractor who uses any
63 subcontractor other than the subcontractors listed by the
64 contractor during the bidding process. The civil penalty shall be
65 collected by the agency or governing authority for which the work

66 is being done and shall be used by such agency or governing
67 authority.

68 (3) In the letting of public contracts preference shall be
69 given to resident contractors, and a nonresident bidder domiciled
70 in a state having laws granting preference to local contractors
71 shall be awarded Mississippi public contracts only on the same
72 basis as the nonresident bidder's state awards contracts to
73 Mississippi contractors bidding under similar circumstances; and
74 resident contractors actually domiciled in Mississippi, be they
75 corporate, individuals, or partnerships, are to be granted
76 preference over nonresidents in awarding of contracts in the same
77 manner and to the same extent as provided by the laws of the state
78 of domicile of the nonresident. When a nonresident contractor
79 submits a bid for a public project, he shall attach thereto a copy
80 of his resident state's current law pertaining to such state's
81 treatment of nonresident contractors. As used in this section,
82 the term "resident contractors" includes a nonresident person,
83 firm or corporation that has been qualified to do business in this
84 state and has maintained a permanent full-time office in the State
85 of Mississippi for two (2) years prior to January 1, 1986, and the
86 subsidiaries and affiliates of such a person, firm or corporation.
87 Any public agency awarding a contract shall promptly report to the
88 State Tax Commission the following information:

89 (a) The amount of the contract.

90 (b) The name and address of the contractor reviewing
91 the contract.

92 (c) The name and location of the project.

93 (4) In addition to any other penalties provided in this
94 chapter, and upon a finding of a violation of this chapter, the
95 State Board of Contractors may, after notice and hearing, issue an
96 order of abatement directing the contractor to cease all actions
97 constituting violations of this chapter until such time as the
98 contractor complies with Mississippi state law, and to pay to the

99 board a civil penalty to be deposited into the State Board of
100 Contractors' Fund, created in Section 31-3-17, of not more than
101 three percent (3%) of the total contract being performed by the
102 contractor. The funds collected from civil penalty payments shall
103 be used by the State Board of Contractors for enforcement and
104 education.

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

107 31-7-13. All agencies and governing authorities shall
108 purchase their commodities and printing; contract for garbage
109 collection or disposal; contract for solid waste collection or
110 disposal; contract for sewage collection or disposal; contract for
111 public construction; and contract for rentals as herein provided.

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

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

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

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

157 (i) **Publication requirement.** 1. Purchases which
158 involve an expenditure of more than Fifteen Thousand Dollars
159 (\$15,000.00), exclusive of freight and shipping charges, may be
160 made from the lowest and best bidder after advertising for
161 competitive bids once each week for two (2) consecutive weeks in a
162 regular newspaper published in the county or municipality in which
163 such agency or governing authority is located.

164 2. The purchasing entity may designate the
165 method by which the bids will be received, including, but not
166 limited to, bids sealed in an envelope, bids received
167 electronically in a secure system, bids received via a reverse
168 auction, or bids received by any other method that promotes open
169 competition and has been approved by the Office of Purchasing and
170 Travel. The provisions of this part 2 of subparagraph (i) shall
171 be repealed on July 1, 2008.

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

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

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

222 (iv) **Specification restrictions.**

223 1. Specifications pertinent to such bidding
224 shall be written so as not to exclude comparable equipment of
225 domestic manufacture. However, if valid justification is
226 presented, the Department of Finance and Administration or the
227 board of a governing authority may approve a request for specific
228 equipment necessary to perform a specific job. Further, such
229 justification, when placed on the minutes of the board of a

230 governing authority, may serve as authority for that governing
231 authority to write specifications to require a specific item of
232 equipment needed to perform a specific job. In addition to these
233 requirements, from and after July 1, 1990, vendors of relocatable
234 classrooms and the specifications for the purchase of such
235 relocatable classrooms published by local school boards shall meet
236 all pertinent regulations of the State Board of Education,
237 including prior approval of such bid by the State Department of
238 Education.

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

247 (v) Agencies and governing authorities may
248 establish secure procedures by which bids may be submitted via
249 electronic means.

250 (vi) **Bids in excess of One Hundred Thousand**
251 **Dollars (\$100,000.00)**. In addition to other procedures for
252 purchases over Fifteen Thousand Dollars (\$15,000.00), a contractor
253 who submits a bid in excess of One Hundred Thousand Dollars
254 (\$100,000.00) shall list the subcontractors who will work under
255 the contract. No bid in excess of One Hundred Thousand Dollars
256 (\$100,000.00) shall be accepted without a list of the
257 subcontractors who will work under the contract. The
258 subcontractors listed may not be changed by the contractor without
259 the approval of the agency or governing authority for which the
260 public project is being done. A civil penalty equal to three
261 percent (3%) of the total value of the contract shall be assessed
262 against a contractor who uses any subcontractor other than the

263 subcontractors listed by the contractor during the bidding
264 process. The civil penalty shall be collected by the agency or
265 governing authority for which the work is being done and shall be
266 used by such agency or governing authority.

267 (vii) **Project management.** Any public project with
268 an estimated project cost of more than Twenty-Five Million Dollars
269 (\$25,000,000.00) may be done with program management of the
270 process with respect to design and construction. No project
271 management of the process with respect to design and construction
272 shall be used for any project with an estimated project cost of
273 less than Twenty-five Million Dollars (\$25,000,000.00). Any
274 individuals, partnerships, companies or other entities acting as a
275 program manager on behalf of an agency or governing authority and
276 performing program management services for projects covered under
277 this paragraph shall be approved by the State Department of
278 Education.

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

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

295 (ii) **Decision procedure for Certified Purchasing**
296 **Offices.** In addition to the decision procedure set forth in
297 paragraph (d)(i), Certified Purchasing Offices may also use the
298 following procedure: Purchases may be made from the bidder
299 offering the best value. In determining the best value bid,
300 freight and shipping charges shall be included. Life-cycle
301 costing, total cost bids, warranties, guaranteed buy-back
302 provisions, documented previous experience, training costs and
303 other relevant provisions may be included in the best value
304 calculation. This provision shall authorize Certified Purchasing
305 Offices to utilize a Request For Proposals (RFP) process when
306 purchasing commodities. All best value procedures for state
307 agencies must be in compliance with regulations established by the
308 Department of Finance and Administration. No agency or governing
309 authority shall accept a bid based on items or criteria not
310 included in the specifications.

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

317 (e) **Lease-purchase authorization.** For the purposes of
318 this section, the term "equipment" shall mean equipment, furniture
319 and, if applicable, associated software and other applicable
320 direct costs associated with the acquisition. Any lease-purchase
321 of equipment which an agency is not required to lease-purchase
322 under the master lease-purchase program pursuant to Section
323 31-7-10 and any lease-purchase of equipment which a governing
324 authority elects to lease-purchase may be acquired by a
325 lease-purchase agreement under this paragraph (e). Lease-purchase
326 financing may also be obtained from the vendor or from a
327 third-party source after having solicited and obtained at least

328 two (2) written competitive bids, as defined in paragraph (b) of
329 this section, for such financing without advertising for such
330 bids. Solicitation for the bids for financing may occur before or
331 after acceptance of bids for the purchase of such equipment or,
332 where no such bids for purchase are required, at any time before
333 the purchase thereof. No such lease-purchase agreement shall be
334 for an annual rate of interest which is greater than the overall
335 maximum interest rate to maturity on general obligation
336 indebtedness permitted under Section 75-17-101, and the term of
337 such lease-purchase agreement shall not exceed the useful life of
338 equipment covered thereby as determined according to the upper
339 limit of the asset depreciation range (ADR) guidelines for the
340 Class Life Asset Depreciation Range System established by the
341 Internal Revenue Service pursuant to the United States Internal
342 Revenue Code and regulations thereunder as in effect on December
343 31, 1980, or comparable depreciation guidelines with respect to
344 any equipment not covered by ADR guidelines. Any lease-purchase
345 agreement entered into pursuant to this paragraph (e) may contain
346 any of the terms and conditions which a master lease-purchase
347 agreement may contain under the provisions of Section 31-7-10(5),
348 and shall contain an annual allocation dependency clause
349 substantially similar to that set forth in Section 31-7-10(8).
350 Each agency or governing authority entering into a lease-purchase
351 transaction pursuant to this paragraph (e) shall maintain with
352 respect to each such lease-purchase transaction the same
353 information as required to be maintained by the Department of
354 Finance and Administration pursuant to Section 31-7-10(13).
355 However, nothing contained in this section shall be construed to
356 permit agencies to acquire items of equipment with a total
357 acquisition cost in the aggregate of less than Ten Thousand
358 Dollars (\$10,000.00) by a single lease-purchase transaction. All
359 equipment, and the purchase thereof by any lessor, acquired by
360 lease-purchase under this paragraph and all lease-purchase

361 payments with respect thereto shall be exempt from all Mississippi
362 sales, use and ad valorem taxes. Interest paid on any
363 lease-purchase agreement under this section shall be exempt from
364 State of Mississippi income taxation.

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

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

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

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

427 any additional profit or overhead as part of the adjustment. The
428 bid proposals or document contract shall contain the basis and
429 methods of adjusting unit prices for the change in the cost of
430 such petroleum products.

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

460 state agency emergency purchases and supporting documentation for
461 each emergency purchase.

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

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

480 (l) **Hospital purchase, lease-purchase and lease**
481 **authorization.**

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

487 (ii) In addition to the authority granted in
488 subparagraph (i) of this paragraph (l), the commissioners or board
489 of trustees is authorized to enter into contracts for the lease of
490 equipment or services, or both, which it considers necessary for
491 the proper care of patients if, in its opinion, it is not
492 financially feasible to purchase the necessary equipment or

493 services. Any such contract for the lease of equipment or
494 services executed by the commissioners or board shall not exceed a
495 maximum of five (5) years' duration and shall include a
496 cancellation clause based on unavailability of funds. If such
497 cancellation clause is exercised, there shall be no further
498 liability on the part of the lessee. Any such contract for the
499 lease of equipment or services executed on behalf of the
500 commissioners or board that complies with the provisions of this
501 subparagraph (ii) shall be excepted from the bid requirements set
502 forth in this section.

503 (m) **Exceptions from bidding requirements.** Excepted
504 from bid requirements are:

505 (i) **Purchasing agreements approved by department.**
506 Purchasing agreements, contracts and maximum price regulations
507 executed or approved by the Department of Finance and
508 Administration.

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

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

526 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
527 of gravel or fill dirt which are to be removed and transported by
528 the purchaser.

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

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

558 approval from the Department of Finance and Administration, prior
559 to releasing or taking possession of the commodities.

560 (vii) **Perishable supplies or food.** Perishable
561 supplies or food purchased for use in connection with hospitals,
562 the school lunch programs, homemaking programs and for the feeding
563 of county or municipal prisoners.

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

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

591 and such other matters as are determined by the governing
592 authority or agency to be appropriate for inclusion; and after
593 responses to the request for proposals have been duly received,
594 the governing authority or agency may select the most qualified
595 proposal or proposals on the basis of price, technology and other
596 relevant factors and from such proposals, but not limited to the
597 terms thereof, negotiate and enter contracts with one or more of
598 the persons or firms submitting proposals.

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

602 (xi) **Information technology products.** Purchases
603 of information technology products made by governing authorities
604 under the provisions of purchase schedules, or contracts executed
605 or approved by the Mississippi Department of Information
606 Technology Services and designated for use by governing
607 authorities.

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

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

618 (xiv) **Library books and other reference materials.**
619 Purchases by libraries or for libraries of books and periodicals;
620 processed film, video cassette tapes, filmstrips and slides;
621 recorded audio tapes, cassettes and diskettes; and any such items
622 as would be used for teaching, research or other information
623 distribution; however, equipment such as projectors, recorders,

624 audio or video equipment, and monitor televisions are not exempt
625 under this subparagraph.

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

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

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

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

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

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

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

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

658 (xxii) **Garbage, solid waste and sewage contracts.**
659 Contracts for garbage collection or disposal, contracts for solid
660 waste collection or disposal and contracts for sewage collection
661 or disposal.

662 (xxiii) **Municipal water tank maintenance**
663 **contracts.** Professional maintenance program contracts for the
664 repair or maintenance of municipal water tanks, which provide
665 professional services needed to maintain municipal water storage
666 tanks for a fixed annual fee for a duration of two (2) or more
667 years.

668 (xxiv) **Purchases of Mississippi Industries for the**
669 **Blind products.** Purchases made by state agencies or governing
670 authorities involving any item that is manufactured, processed or
671 produced by the Mississippi Industries for the Blind.

672 (xxv) **Purchases of state-adopted textbooks.**
673 Purchases of state-adopted textbooks by public school districts.

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

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

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

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

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

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

713 (n) **Term contract authorization.** All contracts for the
714 purchase of:

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

722 ratification or cancellation by governing authority boards taking
723 office subsequent to the governing authority board entering the
724 contract.

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

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

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

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

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

780 (r) **Solid waste contract proposal procedure.** Before
781 entering into any contract for garbage collection or disposal,
782 contract for solid waste collection or disposal or contract for
783 sewage collection or disposal, which involves an expenditure of
784 more than Fifty Thousand Dollars (\$50,000.00), a governing
785 authority or agency shall issue publicly a request for proposals
786 concerning the specifications for such services which shall be
787 advertised for in the same manner as provided in this section for

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

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

821 shall comply with all purchasing regulations promulgated by the
822 Department of Finance and Administration and shall be subject to
823 bid requirements under this section. Set-aside purchases for
824 which competitive bids are required shall be made from the lowest
825 and best minority business bidder. For the purposes of this
826 paragraph, the term "minority business" means a business which is
827 owned by a majority of persons who are United States citizens or
828 permanent resident aliens (as defined by the Immigration and
829 Naturalization Service) of the United States, and who are Asian,
830 Black, Hispanic or Native American, according to the following
831 definitions:

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

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

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

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

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

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

854 **SECTION 3.** Section 37-151-7, Mississippi Code of 1972, is
855 amended as follows:

856 37-151-7. The annual allocation to each school district for
857 the operation of the adequate education program shall be
858 determined as follows:

859 (1) **Computation of the basic amount to be included for**
860 **current operation in the adequate education program.** The
861 following procedure shall be followed in determining the annual
862 allocation to each school district:

863 (a) **Determination of average daily attendance.**
864 Effective with fiscal year 2011, the State Department of Education
865 shall determine the percentage change from the prior year of each
866 year of each school district's average of months two (2) and three
867 (3) average daily attendance (ADA) for the three (3) immediately
868 preceding school years of the year for which funds are being
869 appropriated. For any school district that experiences a positive
870 growth in the average of months two (2) and three (3) ADA each
871 year of the three (3) years, the average percentage growth over
872 the three-year period shall be multiplied times the school
873 district's average of months two (2) and three (3) ADA for the
874 year immediately preceding the year for which MAEP funds are being
875 appropriated. The resulting amount shall be added to the school
876 district's average of months two (2) and three (3) ADA for the
877 year immediately preceding the year for which MAEP funds are being
878 appropriated to arrive at the ADA to be used in determining a
879 school district's MAEP allocation. Otherwise, months two (2) and
880 three (3) ADA for the year immediately preceding the year for
881 which MAEP funds are being appropriated will be used in
882 determining a school district's MAEP allocation. In any fiscal
883 year prior to 2010 in which the MAEP formula is not fully funded,
884 for those districts that do not demonstrate a three-year positive
885 growth in months two (2) and three (3) ADA, months one (1) through
886 nine (9) ADA of the second preceding year for which funds are

887 being appropriated or months two (2) and three (3) ADA of the
888 preceding year for which funds are being appropriated, whichever
889 is greater, shall be used to calculate the district's MAEP
890 allocation. The district's average daily attendance shall be
891 computed and currently maintained in accordance with regulations
892 promulgated by the State Board of Education.

893 (b) **Determination of base student cost.** Effective with
894 fiscal year 2011 and every fourth fiscal year thereafter, the
895 State Board of Education, on or before August 1, with adjusted
896 estimate no later than January 2, shall submit to the Legislative
897 Budget Office and the Governor a proposed base student cost
898 adequate to provide the following cost components of educating a
899 pupil in a successful school district: (i) Instructional Cost;
900 (ii) Administrative Cost; (iii) Operation and Maintenance of
901 Plant; and (iv) Ancillary Support Cost. For purposes of these
902 calculations, the Department of Education shall utilize financial
903 data from the second preceding year of the year for which funds
904 are being appropriated.

905 For the instructional cost component, the Department of
906 Education shall select districts that have been identified as
907 instructionally successful and have a ratio of a number of
908 teachers per one thousand (1,000) students that is between one (1)
909 standard deviation above the mean and two (2) standard deviations
910 below the mean of the statewide average of teachers per one
911 thousand (1,000) students. The instructional cost component shall
912 be calculated by dividing the latest available months one (1)
913 through nine (9) ADA into the instructional expenditures of these
914 selected districts. For the purpose of this calculation, the
915 Department of Education shall use the following funds, functions
916 and objects:

917 Fund 1120 Functions 1110-1199 Objects 100-999, Functions
918 1210, 1220, 2150-2159 Objects 210 and 215;
919 Fund 1130 All Functions, Object Code 210 and 215;

920 Fund 2001 Functions 1110-1199 Objects 100-999;
921 Fund 2070 Functions 1110-1199 Objects 100-999;
922 Fund 2420 Functions 1110-1199 Objects 100-999;
923 Fund 2711 All Functions, Object Code 210 and 215.

924 Prior to the calculation of the instructional cost component,
925 there shall be subtracted from the above expenditures any revenue
926 received for Chickasaw Cession payments, Master Teacher
927 Certification payments and the district's portion of state revenue
928 received from the MAEP at-risk allocation.

929 For the administrative cost component, the Department of
930 Education shall select districts that have been identified as
931 instructionally successful and have a ratio of an administrative
932 staff to nonadministrative staff between one standard deviation
933 above the mean and two standard deviations below the mean of the
934 statewide average administrative staff to nonadministrative staff.
935 The administrative cost component shall be calculated by dividing
936 the latest available months 1-9 ADA of the selected districts into
937 the administrative expenditures of these selected districts. For
938 the purpose of this calculation, the Department of Education shall
939 use the following funds, functions and objects:

940 Fund 1120 Functions 2300-2599, Functions 2800-2899,
941 Objects 100-999;

942 Fund 2711 Functions 2300-2599, Functions 2800-2899,
943 Objects 100-999.

944 For the plant and maintenance cost component, the Department
945 of Education shall select districts that have been identified as
946 instructionally successful and have a ratio of plant and
947 maintenance expenditures per one hundred thousand (100,000) square
948 feet of building space and a ratio of maintenance workers per one
949 hundred thousand (100,000) square feet of building space that are
950 both between one standard deviation above the mean and two
951 standard deviations below the mean of the statewide average. The
952 plant and maintenance cost component shall be calculated by

953 dividing the latest available months 1-9 ADA of the selected
954 districts into the plant and maintenance expenditures of these
955 selected districts. For the purpose of this calculation, the
956 Department of Education shall use the following funds, functions
957 and objects:

958 Fund 1120 Functions 2600-2699, Objects 100-699
959 and Objects 800-999;
960 Fund 2711 Functions 2600-2699, Objects 100-699
961 and Objects 800-999;
962 Fund 2430 Functions 2600-2699, Objects 100-699
963 and Objects 800-999.

964 For the ancillary support cost component, the Department of
965 Education shall select districts that have been identified as
966 instructionally successful and have a ratio of a number of
967 librarians, media specialists, guidance counselors and
968 psychologists per one thousand (1,000) students that is between
969 one standard deviation above the mean and two standard deviations
970 below the mean of the statewide average of librarians, media
971 specialists, guidance counselors and psychologists per one
972 thousand (1,000) students. The ancillary cost component shall be
973 calculated by dividing the latest available months 1-9 ADA into
974 the ancillary expenditures instructional expenditures of these
975 selected districts. For the purpose of this calculation, the
976 Department of Education shall use the following funds, functions
977 and objects:

978 Fund 1120 Functions 2110-2129, Objects 100-999;
979 Fund 1120 Functions 2140-2149, Objects 100-999;
980 Fund 1120 Functions 2220-2229, Objects 100-999;
981 Fund 2001 Functions 2100-2129, Objects 100-999;
982 Fund 2001 Functions 2140-2149, Objects 100-999;
983 Fund 2001 Functions 2220-2229, Objects 100-999.

984 The total base cost for each year shall be the sum of the
985 instructional cost component, administrative cost component, plant

986 and maintenance cost component and ancillary support cost
987 component, and any estimated adjustments for additional state
988 requirements as determined by the State Board of Education.
989 Provided, however, that the base student cost in fiscal year 1998
990 shall be Two Thousand Six Hundred Sixty-four Dollars (\$2,664.00).

991 For each of the fiscal years between the recalculation of the
992 base student cost under the provisions of this paragraph (b), the
993 base student cost shall be increased by an amount equal to forty
994 percent (40%) of the base student cost for the previous fiscal
995 year, multiplied by the latest annual rate of inflation for the
996 State of Mississippi as determined by the State Economist, plus
997 any adjustments for additional state requirements such as, but not
998 limited to, teacher pay raises and health insurance premium
999 increases.

1000 (c) **Determination of the basic adequate education**
1001 **program cost.** The basic amount for current operation to be
1002 included in the Mississippi Adequate Education Program for each
1003 school district shall be computed as follows:

1004 Multiply the average daily attendance of the district by the
1005 base student cost as established by the Legislature, which yields
1006 the total base program cost for each school district.

1007 (d) **Adjustment to the base student cost for at-risk**
1008 **pupils.** The amount to be included for at-risk pupil programs for
1009 each school district shall be computed as follows: Multiply the
1010 base student cost for the appropriate fiscal year as determined
1011 under paragraph (b) by five percent (5%), and multiply that
1012 product by the number of pupils participating in the federal free
1013 school lunch program in such school district, which yields the
1014 total adjustment for at-risk pupil programs for such school
1015 district.

1016 (e) **Add-on program cost.** The amount to be allocated to
1017 school districts in addition to the adequate education program

1018 cost for add-on programs for each school district shall be
1019 computed as follows:

1020 (i) Transportation cost shall be the amount
1021 allocated to such school district for the operational support of
1022 the district transportation system from state funds.

1023 (ii) Vocational or technical education program
1024 cost shall be the amount allocated to such school district from
1025 state funds for the operational support of such programs.

1026 (iii) Special education program cost shall be the
1027 amount allocated to such school district from state funds for the
1028 operational support of such programs.

1029 (iv) Gifted education program cost shall be the
1030 amount allocated to such school district from state funds for the
1031 operational support of such programs.

1032 (v) Alternative school program cost shall be the
1033 amount allocated to such school district from state funds for the
1034 operational support of such programs.

1035 (vi) Extended school year programs shall be the
1036 amount allocated to school districts for those programs authorized
1037 by law which extend beyond the normal school year.

1038 (vii) University-based programs shall be the
1039 amount allocated to school districts for those university-based
1040 programs for handicapped children as defined and provided for in
1041 Section 37-23-131 et seq., Mississippi Code of 1972.

1042 (viii) Bus driver training programs shall be the
1043 amount provided for those driver training programs as provided for
1044 in Section 37-41-1, Mississippi Code of 1972.

1045 The sum of the items listed above (i) transportation, (ii)
1046 vocational or technical education, (iii) special education, (iv)
1047 gifted education, (v) alternative school, (vi) extended school
1048 year, (vii) university-based, and (viii) bus driver training shall
1049 yield the add-on cost for each school district.

1050 (f) **Total projected adequate education program cost.**

1051 The total Mississippi Adequate Education Program cost shall be the
1052 sum of the total basic adequate education program cost (paragraph
1053 (c)), and the adjustment to the base student cost for at-risk
1054 pupils (paragraph (d)) for each school district. In any year in
1055 which the MAEP is not fully funded, the Legislature shall direct
1056 the Department of Education in the K-12 appropriation bill as to
1057 how to allocate MAEP funds to school districts for that year.

1058 (g) The State Auditor shall annually verify the State
1059 Board of Education's estimated calculations for the Mississippi
1060 Adequate Education Program that are submitted each year to the
1061 Legislative Budget Office on August 1 and the final calculation
1062 that is submitted on January 2.

1063 (2) **Computation of the required local revenue in support of**
1064 **the adequate education program.** The amount that each district
1065 shall provide toward the cost of the adequate education program
1066 shall be calculated as follows:

1067 (a) The State Department of Education shall certify to
1068 each school district that twenty-eight (28) mills, less the
1069 estimated amount of the yield of the School Ad Valorem Tax
1070 Reduction Fund grants as determined by the State Department of
1071 Education, is the millage rate required to provide the district
1072 required local effort for that year, or twenty-seven percent (27%)
1073 of the basic adequate education program cost for such school
1074 district as determined under paragraph (c), whichever is a lesser
1075 amount. In the case of an agricultural high school, the millage
1076 requirement shall be set at a level which generates an equitable
1077 amount per pupil to be determined by the State Board of Education.

1078 (b) The State Department of Education shall determine
1079 (i) the total assessed valuation of nonexempt property for school
1080 purposes in each school district; (ii) assessed value of exempt
1081 property owned by homeowners aged sixty-five (65) or older or
1082 disabled as defined in Section 27-33-67(2), Mississippi Code of

1083 1972; (iii) the school district's tax loss from exemptions
1084 provided to applicants under the age of sixty-five (65) and not
1085 disabled as defined in Section 27-33-67(1), Mississippi Code of
1086 1972; and (iv) the school district's homestead reimbursement
1087 revenues.

1088 (c) The amount of the total adequate education program
1089 funding which shall be contributed by each school district shall
1090 be the sum of the ad valorem receipts generated by the millage
1091 required under this subsection plus the following local revenue
1092 sources for the appropriate fiscal year which are or may be
1093 available for current expenditure by the school district:

1094 One hundred percent (100%) of Grand Gulf income as prescribed
1095 in Section 27-35-309.

1096 One hundred percent (100%) of any fees in lieu of taxes as
1097 prescribed in Section 27-31-104.

1098 (3) **Computation of the required state effort in support of**
1099 **the adequate education program.**

1100 (a) The required state effort in support of the
1101 adequate education program shall be determined by subtracting the
1102 sum of the required local tax effort as set forth in subsection
1103 (2)(a) of this section and the other local revenue sources as set
1104 forth in subsection (2)(c) of this section in an amount not to
1105 exceed twenty-seven percent (27%) of the total projected adequate
1106 education program cost as set forth in subsection (1)(f) of this
1107 section from the total projected adequate education program cost
1108 as set forth in subsection (1)(f) of this section.

1109 (b) Provided, however, that in fiscal year 1998 and in
1110 the fiscal year in which the adequate education program is fully
1111 funded by the Legislature, any increase in the said state
1112 contribution to any district calculated under this section shall
1113 be not less than eight percent (8%) in excess of the amount
1114 received by said district from state funds for the fiscal year
1115 immediately preceding. For purposes of this paragraph (b), state

1116 funds shall include minimum program funds less the add-on
1117 programs, State Uniform Millage Assistance Grant Funds, Education
1118 Enhancement Funds appropriated for Uniform Millage Assistance
1119 Grants and state textbook allocations, and State General Funds
1120 allocated for textbooks.

1121 (c) If the school board of any school district shall
1122 determine that it is not economically feasible or practicable to
1123 operate any school within the district for the full one hundred
1124 eighty (180) days required for a school term of a scholastic year
1125 as required in Section 37-13-63, Mississippi Code of 1972, due to
1126 an enemy attack, a man-made, technological or natural disaster in
1127 which the Governor has declared a disaster emergency under the
1128 laws of this state or the President of the United States has
1129 declared an emergency or major disaster to exist in this state,
1130 said school board may notify the State Department of Education of
1131 such disaster and submit a plan for altering the school term. If
1132 the State Board of Education finds such disaster to be the cause
1133 of the school not operating for the contemplated school term and
1134 that such school was in a school district covered by the
1135 Governor's or President's disaster declaration, it may permit said
1136 school board to operate the schools in its district for less than
1137 one hundred eighty (180) days and, in such case, the State
1138 Department of Education shall not reduce the state contributions
1139 to the adequate education program allotment for such district,
1140 because of the failure to operate said schools for one hundred
1141 eighty (180) days.

1142 (4) The Interim School District Capital Expenditure Fund is
1143 hereby established in the State Treasury which shall be used to
1144 distribute any funds specifically appropriated by the Legislature
1145 to such fund to school districts entitled to increased allocations
1146 of state funds under the adequate education program funding
1147 formula prescribed in Sections 37-151-3 through 37-151-7,
1148 Mississippi Code of 1972, until such time as the said adequate

1149 education program is fully funded by the Legislature. The
1150 following percentages of the total state cost of increased
1151 allocations of funds under the adequate education program funding
1152 formula shall be appropriated by the Legislature into the Interim
1153 School District Capital Expenditure Fund to be distributed to all
1154 school districts under the formula: Nine and two-tenths percent
1155 (9.2%) shall be appropriated in fiscal year 1998, twenty percent
1156 (20%) shall be appropriated in fiscal year 1999, forty percent
1157 (40%) shall be appropriated in fiscal year 2000, sixty percent
1158 (60%) shall be appropriated in fiscal year 2001, eighty percent
1159 (80%) shall be appropriated in fiscal year 2002, and one hundred
1160 percent (100%) shall be appropriated in fiscal year 2003 into the
1161 State Adequate Education Program Fund. Until July 1, 2002, such
1162 money shall be used by school districts for the following
1163 purposes:

1164 (a) Purchasing, erecting, repairing, equipping,
1165 remodeling and enlarging school buildings and related facilities,
1166 including gymnasiums, auditoriums, lunchrooms, vocational training
1167 buildings, libraries, school barns and garages for transportation
1168 vehicles, school athletic fields and necessary facilities
1169 connected therewith, and purchasing land therefor. Any such
1170 capital improvement project by a school district shall be approved
1171 by the State Board of Education, and based on an approved
1172 long-range plan. The State Board of Education shall promulgate
1173 minimum requirements for the approval of school district capital
1174 expenditure plans.

1175 (b) Providing necessary water, light, heating, air
1176 conditioning, and sewerage facilities for school buildings, and
1177 purchasing land therefor.

1178 (c) Paying debt service on existing capital improvement
1179 debt of the district or refinancing outstanding debt of a district
1180 if such refinancing will result in an interest cost savings to the
1181 district.

1182 (d) From and after October 1, 1997, through June 30,
1183 1998, pursuant to a school district capital expenditure plan
1184 approved by the State Department of Education, a school district
1185 may pledge such funds until July 1, 2002, plus funds provided for
1186 in paragraph (e) of this subsection (4) that are not otherwise
1187 permanently pledged under such paragraph (e) to pay all or a
1188 portion of the debt service on debt issued by the school district
1189 under Sections 37-59-1 through 37-59-45, 37-59-101 through
1190 37-59-115, 37-7-351 through 37-7-359, 37-41-89 through 37-41-99,
1191 37-7-301, 37-7-302 and 37-41-81, Mississippi Code of 1972, or debt
1192 issued by boards of supervisors for agricultural high schools
1193 pursuant to Section 37-27-65, Mississippi Code of 1972, or
1194 lease-purchase contracts entered into pursuant to Section 31-7-13,
1195 Mississippi Code of 1972, or to retire or refinance outstanding
1196 debt of a district, if such pledge is accomplished pursuant to a
1197 written contract or resolution approved and spread upon the
1198 minutes of an official meeting of the district's school board or
1199 board of supervisors. It is the intent of this provision to allow
1200 school districts to irrevocably pledge their Interim School
1201 District Capital Expenditure Fund allotments as a constant stream
1202 of revenue to secure a debt issued under the foregoing code
1203 sections. To allow school districts to make such an irrevocable
1204 pledge, the state shall take all action necessary to ensure that
1205 the amount of a district's Interim School District Capital
1206 Expenditure Fund allotments shall not be reduced below the amount
1207 certified by the department or the district's total allotment
1208 under the Interim Capital Expenditure Fund if fully funded, so
1209 long as such debt remains outstanding.

1210 (e) From and after October 1, 1997, through June 30,
1211 1998, in addition to any other authority a school district may
1212 have, any school district may issue State Aid Capital Improvement
1213 Bonds secured in whole by a continuing annual pledge of any
1214 Mississippi Adequate Education Program funds available to the

1215 district, in an amount not to exceed One Hundred Sixty Dollars
1216 (\$160.00) per pupil based on the latest completed average daily
1217 attendance count certified by the department prior to the issuance
1218 of the bonds. Such State Aid Capital Improvement Bonds may be
1219 issued for the purposes enumerated in paragraphs (a), (b), (c) and
1220 (g) of this section. Prior to issuing such bonds, the school
1221 board of the district shall adopt a resolution declaring the
1222 necessity for and its intention of issuing such bonds and
1223 borrowing such money, specifying the approximate amount to be so
1224 borrowed, how such money is to be used and how such indebtedness
1225 is to be evidenced. Any capital improvement project financed with
1226 State Aid Capital Improvement Bonds shall be approved by the
1227 department, and based on an approved long-range plan. The State
1228 Board of Education shall promulgate minimum requirements for the
1229 approval of such school district capital expenditure plans. The
1230 State Board of Education shall not approve any capital expenditure
1231 plan for a pledge of funds under this paragraph unless it
1232 determines (i) that the quality of instruction in such district
1233 will not be reduced as a result of this pledge, and (ii) the
1234 district has other revenue available to attain and maintain at
1235 least Level III accreditation.

1236 A district issuing State Aid Capital Improvement Bonds may
1237 pledge for the repayment of such bonds all funds received by the
1238 district from the state, in an amount not to exceed One Hundred
1239 Sixty Dollars (\$160.00) per pupil in average daily attendance in
1240 the school district as set forth above, and not otherwise
1241 permanently pledged under paragraph (d) of this subsection or
1242 under Section 37-61-33(2)(d), Mississippi Code of 1972. The
1243 district's school board shall specify by resolution the amount of
1244 state funds, which are being pledged by the district for the
1245 repayment of the State Aid Capital Improvement Bonds. Once such a
1246 pledge is made to secure the bonds, the district shall notify the
1247 department of such pledge. Upon making such a pledge, the school

1248 district may request the department which may agree to irrevocably
1249 transfer a specified amount or percentage of the district's state
1250 revenue pledged to repay the district's State Aid Capital
1251 Improvement Bonds directly to a state or federally chartered bank
1252 serving as a trustee or paying agent on such bonds for the payment
1253 of all or portion of such State Aid Capital Improvement Bonds.
1254 Such instructions shall be incorporated into a resolution by the
1255 school board for the benefit of holders of the bonds and may
1256 provide that such withholding and transfer of such other available
1257 funds shall be made only upon notification by a trustee or paying
1258 agent on such bonds that the amounts available to pay such bonds
1259 on any payment date will not be sufficient. It is the intent of
1260 this provision to allow school districts to irrevocably pledge a
1261 certain, constant stream of revenue as security for State Aid
1262 Capital Improvement Bonds issued hereunder. To allow school
1263 districts to make such an irrevocable pledge, the state shall take
1264 all action necessary to ensure that the amount of a district's
1265 state revenues up to an amount equal to One Hundred Sixty Dollars
1266 (\$160.00) per pupil as set forth above which have been pledged to
1267 repay debt as set forth herein shall not be reduced so long as any
1268 State Aid Capital Improvement Bonds are outstanding.

1269 Any such State Aid Capital Improvement Bonds shall mature as
1270 determined by the district's school bond over a period not to
1271 exceed twenty (20) years. Such bonds shall not bear a greater
1272 overall maximum interest rate to maturity than that allowed in
1273 Section 75-17-101, Mississippi Code of 1972. The further details
1274 and terms of such bonds shall be as determined by the school board
1275 of the district.

1276 The provisions of this subsection shall be cumulative and
1277 supplemental to any existing funding programs or other authority
1278 conferred upon school districts or school boards. Debt of a
1279 school district secured in whole by a pledge of revenue pursuant
1280 to this section shall not be subject to any debt limitation.

1281 For purposes of this paragraph (e), "State Aid Capital
1282 Improvement Bond" shall mean any bond, note, or other certificate
1283 of indebtedness issued by a school district under the provisions
1284 hereof.

1285 This paragraph (e) shall stand repealed from and after June
1286 30, 1998.

1287 (f) As an alternative to the authority granted under
1288 paragraph (e), a school district, in its discretion, may authorize
1289 the State Board of Education to withhold an amount of the
1290 district's adequate education program allotment equal to up to One
1291 Hundred Sixty Dollars (\$160.00) per student in average daily
1292 attendance in the district to be allocated to the State Public
1293 School Building Fund to the credit of such school district. A
1294 school district may choose the option provided under this
1295 paragraph (e) or paragraph (f), but not both. In addition to the
1296 grants made by the state pursuant to Section 37-47-9, a school
1297 district shall be entitled to grants based on the allotments to
1298 the State Public School Building Fund credited to such school
1299 district under this paragraph. This paragraph (f) shall stand
1300 repealed from and after June 30, 1998.

1301 (g) The State Board of Education may authorize the
1302 school district to expend not more than twenty percent (20%) of
1303 its annual allotment of such funds or Twenty Thousand Dollars
1304 (\$20,000.00), whichever is greater, for technology needs of the
1305 school district, including computers, software,
1306 telecommunications, cable television, interactive video, film,
1307 low-power television, satellite communications, microwave
1308 communications, technology-based equipment installation and
1309 maintenance, and the training of staff in the use of such
1310 technology-based instruction. Any such technology expenditure
1311 shall be reflected in the local district technology plan approved
1312 by the State Board of Education under Section 37-151-17,
1313 Mississippi Code of 1972.

1314 (h) To the extent a school district has not utilized
1315 twenty percent (20%) of its annual allotment for technology
1316 purposes under paragraph (g), a school district may expend not
1317 more than twenty percent (20%) of its annual allotment or Twenty
1318 Thousand Dollars (\$20,000.00), whichever is greater, for
1319 instructional purposes. The State Board of Education may
1320 authorize a school district to expend more than said twenty
1321 percent (20%) of its annual allotment for instructional purposes
1322 if it determines that such expenditures are needed for
1323 accreditation purposes.

1324 (i) The State Department of Education or the State
1325 Board of Education may require that any project commenced under
1326 this section with an estimated project cost of more than
1327 Twenty-five Million Dollars (\$25,000,000.00) shall be done * * *
1328 pursuant to program management of the process with respect to
1329 design and construction. No project management of the process
1330 with respect to design and construction shall be used for any
1331 project with an estimated project cost of less than Twenty-five
1332 Million Dollars (\$25,000,000.00). Any individuals, partnerships,
1333 companies or other entities acting as a program manager on behalf
1334 of a local school district and performing program management
1335 services for projects covered under this subsection shall be
1336 approved by the State Department of Education.

1337 Any interest accruing on any unexpended balance in the
1338 Interim School District Capital Expenditure Fund shall be invested
1339 by the State Treasurer and placed to the credit of each school
1340 district participating in such fund in its proportionate share.

1341 The provisions of this subsection (4) shall be cumulative and
1342 supplemental to any existing funding programs or other authority
1343 conferred upon school districts or school boards.

1344 **SECTION 4.** This act shall take effect and be in force from
1345 and after July 1, 2007.