

By: Representatives Weathersby, Brown,
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To: Universities and
Colleges; Ways and Means

HOUSE BILL NO. 1208

1 AN ACT TO AMEND SECTION 37-101-41, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER
3 LEARNING TO AUTHORIZE UNIVERSITIES TO LEASE LAND AT THE UNIVERSITY
4 FOR THE CONSTRUCTION OF FACILITIES BY PRIVATE FINANCING FOR A TERM
5 OF THIRTY-ONE YEARS; TO REQUIRE THAT SUCH FACILITIES COMPLY WITH
6 THE MINIMUM BUILDING CODE STANDARDS EMPLOYED BY THE STATE; TO
7 PROVIDE FOR THE MAXIMUM PERCENTAGE OF LAND TO BE LEASED ON ANY
8 CAMPUS FOR SUCH BUILDINGS AND NUMBER OF PROJECTS PER ANNUM DURING
9 THE ORIGINAL LEASE PERIOD; TO REQUIRE COMPLIANCE WITH STATE BID
10 LAW REQUIREMENTS; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF
11 1972, IN CONFORMITY, REQUIRING PRIVATELY FINANCED CONTRACTS FOR
12 CONSTRUCTION OF AUXILIARY FACILITIES TO BE IN COMPLIANCE WITH
13 STATE BID REQUIREMENTS WHEN ENTERED INTO WITH A SINGLE ENTITY BY
14 THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING;
15 AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** Section 37-101-41, Mississippi Code of 1972, is
18 amended as follows:

19 37-101-41. (1) (a) Except as otherwise provided in
20 paragraph (b) of this section, the Board of Trustees of State
21 Institutions of Higher Learning is hereby authorized and empowered
22 to lease to private individuals or corporations, for a term not
23 exceeding thirty-one (31) years, any land at any of the following
24 state-supported institutions: Mississippi State University of
25 Agriculture and Applied Science, Jackson State University,
26 Mississippi Valley State University, University of Mississippi,
27 Alcorn State University, University of Southern Mississippi,
28 Mississippi University for Women and Delta State University, for
29 the purpose of erecting auxiliary facilities thereon for active
30 faculty and students. The auxiliary facilities shall be
31 constructed thereon by private financing, and shall be leased back
32 to the board for use by the concerned state-supported institution
33 of higher learning. The lease shall contain a provision

34 permitting the board to purchase the building located thereon for
35 the sum of One Dollar (\$1.00) after payment by the board of all
36 sums of money due under said lease.

37 (b) The Board of Trustees of State Institutions of Higher
38 Learning may grant authority to universities to lease to private
39 individuals or corporations, for a term not exceeding thirty-one
40 (31) years, any land at the university, for the purpose of
41 erecting auxiliary facilities thereon for active faculty and
42 students. The auxiliary facilities shall be constructed thereon
43 by private financing, and shall be leased back to the board for
44 use by the university. The lease shall contain a provision
45 permitting the board to purchase the auxiliary facilities located
46 thereon for the sum of One Dollar (\$1.00) after payment by the
47 board of all sums of money due under said lease.

48 (2) Upon there being an agreement reached with the Board of
49 Trustees of State Institutions of Higher Learning and a
50 university, upon whose land the auxiliary facility will be
51 constructed, with the private individual or corporation, to enter
52 into such lease agreement as described in subsection (1), therein
53 shall be stipulated that all newly constructed auxiliary
54 facilities shall be in compliance with the minimum building code
55 standards employed by the state as required under Section
56 31-11-33.

57 (3) The board in conjunction with the university shall have
58 sole discretion to decide the placement of auxiliary facilities
59 upon the university's campus. However, the scope of any such
60 construction by private entities shall be limited to two (2)
61 projects per annum, for each university, and shall not exceed in
62 the aggregate twenty-five percent (25%) of the university's total
63 main or satellite campus property under the original lease period.

64 (4) No contractual lease agreement for the construction of
65 privately financed auxiliary facilities shall be entered into by a
66 university without prior approval of the Board of Trustees of

67 State Institutions of Higher Learning. An auxiliary facility is a
68 facility that is defined by the Higher Education General
69 Information Survey (HEGIS) categories 500/600/700/800/900.

70 Prior to entering into contractual lease agreement for the
71 construction of privately financed auxiliary facilities, the Board
72 of Trustees for the State Institutions of Higher Learning shall
73 establish rules and procedures to ensure adequate public
74 advertisement of any requirement for the construction of privately
75 financed auxiliary facilities at a university in order to promote
76 full and open competition and which set forth the requirements for
77 evaluation of offers and award of the contract lease agreement to
78 the private entity.

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

81 31-7-13. All agencies and governing authorities shall
82 purchase their commodities and printing; contract for garbage
83 collection or disposal; contract for solid waste collection or
84 disposal; contract for sewage collection or disposal; contract for
85 public construction; and contract for rentals as herein provided.

86 (a) **Bidding procedure for purchases not over \$3,500.00.**
87 Purchases which do not involve an expenditure of more than Three
88 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
89 shipping charges, may be made without advertising or otherwise
90 requesting competitive bids. However, nothing contained in this
91 paragraph (a) shall be construed to prohibit any agency or
92 governing authority from establishing procedures which require
93 competitive bids on purchases of Three Thousand Five Hundred
94 Dollars (\$3,500.00) or less.

95 (b) **Bidding procedure for purchases over \$3,500.00 but**
96 **not over \$15,000.00.** Purchases which involve an expenditure of
97 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
98 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
99 freight and shipping charges may be made from the lowest and best

100 bidder without publishing or posting advertisement for bids,
101 provided at least two (2) competitive written bids have been
102 obtained. Any governing authority purchasing commodities pursuant
103 to this paragraph (b) may authorize its purchasing agent, or his
104 designee, with regard to governing authorities other than
105 counties, or its purchase clerk, or his designee, with regard to
106 counties, to accept the lowest and best competitive written bid.
107 Such authorization shall be made in writing by the governing
108 authority and shall be maintained on file in the primary office of
109 the agency and recorded in the official minutes of the governing
110 authority, as appropriate. The purchasing agent or the purchase
111 clerk, or their designee, as the case may be, and not the
112 governing authority, shall be liable for any penalties and/or
113 damages as may be imposed by law for any act or omission of the
114 purchasing agent or purchase clerk, or their designee,
115 constituting a violation of law in accepting any bid without
116 approval by the governing authority. The term "competitive
117 written bid" shall mean a bid submitted on a bid form furnished by
118 the buying agency or governing authority and signed by authorized
119 personnel representing the vendor, or a bid submitted on a
120 vendor's letterhead or identifiable bid form and signed by
121 authorized personnel representing the vendor. "Competitive" shall
122 mean that the bids are developed based upon comparable
123 identification of the needs and are developed independently and
124 without knowledge of other bids or prospective bids. Bids may be
125 submitted by facsimile, electronic mail or other generally
126 accepted method of information distribution. Bids submitted by
127 electronic transmission shall not require the signature of the
128 vendor's representative unless required by agencies or governing
129 authorities.

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

131 (i) **Publication requirement.**

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

139 2. The purchasing entity may designate the
140 method by which the bids will be received, including, but not
141 limited to, bids sealed in an envelope, bids received
142 electronically in a secure system, bids received via a reverse
143 auction, or bids received by any other method that promotes open
144 competition and has been approved by the Office of Purchasing and
145 Travel. The provisions of this part 2 of subparagraph (i) shall
146 be repealed on July 1, 2008.

147 3. The date as published for the bid opening
148 shall not be less than seven (7) working days after the last
149 published notice; however, if the purchase involves a construction
150 project in which the estimated cost is in excess of Fifteen
151 Thousand Dollars (\$15,000.00), such bids shall not be opened in
152 less than fifteen (15) working days after the last notice is
153 published and the notice for the purchase of such construction
154 shall be published once each week for two (2) consecutive weeks.
155 The notice of intention to let contracts or purchase equipment
156 shall state the time and place at which bids shall be received,
157 list the contracts to be made or types of equipment or supplies to
158 be purchased, and, if all plans and/or specifications are not
159 published, refer to the plans and/or specifications on file. If
160 there is no newspaper published in the county or municipality,
161 then such notice shall be given by posting same at the courthouse,
162 or for municipalities at the city hall, and at two (2) other
163 public places in the county or municipality, and also by
164 publication once each week for two (2) consecutive weeks in some

165 newspaper having a general circulation in the county or
166 municipality in the above provided manner. On the same date that
167 the notice is submitted to the newspaper for publication, the
168 agency or governing authority involved shall mail written notice
169 to, or provide electronic notification to the main office of the
170 Mississippi Contract Procurement Center that contains the same
171 information as that in the published notice.

172 (ii) **Bidding process amendment procedure.** If all
173 plans and/or specifications are published in the notification,
174 then the plans and/or specifications may not be amended. If all
175 plans and/or specifications are not published in the notification,
176 then amendments to the plans/specifications, bid opening date, bid
177 opening time and place may be made, provided that the agency or
178 governing authority maintains a list of all prospective bidders
179 who are known to have received a copy of the bid documents and all
180 such prospective bidders are sent copies of all amendments. This
181 notification of amendments may be made via mail, facsimile,
182 electronic mail or other generally accepted method of information
183 distribution. No addendum to bid specifications may be issued
184 within two (2) working days of the time established for the
185 receipt of bids unless such addendum also amends the bid opening
186 to a date not less than five (5) working days after the date of
187 the addendum.

188 (iii) **Filing requirement.** In all cases involving
189 governing authorities, before the notice shall be published or
190 posted, the plans or specifications for the construction or
191 equipment being sought shall be filed with the clerk of the board
192 of the governing authority. In addition to these requirements, a
193 bid file shall be established which shall indicate those vendors
194 to whom such solicitations and specifications were issued, and
195 such file shall also contain such information as is pertinent to
196 the bid.

197 (iv) **Specification restrictions.**

198 1. Specifications pertinent to such bidding
199 shall be written so as not to exclude comparable equipment of
200 domestic manufacture. However, if valid justification is
201 presented, the Department of Finance and Administration or the
202 board of a governing authority may approve a request for specific
203 equipment necessary to perform a specific job. Further, such
204 justification, when placed on the minutes of the board of a
205 governing authority, may serve as authority for that governing
206 authority to write specifications to require a specific item of
207 equipment needed to perform a specific job. In addition to these
208 requirements, from and after July 1, 1990, vendors of relocatable
209 classrooms and the specifications for the purchase of such
210 relocatable classrooms published by local school boards shall meet
211 all pertinent regulations of the State Board of Education,
212 including prior approval of such bid by the State Department of
213 Education.

214 2. Specifications for construction projects
215 may include an allowance for commodities, equipment, furniture,
216 construction materials or systems in which prospective bidders are
217 instructed to include in their bids specified amounts for such
218 items so long as the allowance items are acquired by the vendor in
219 a commercially reasonable manner and approved by the
220 agency/governing authority. Such acquisitions shall not be made
221 to circumvent the public purchasing laws.

222 (v) Agencies and governing authorities may
223 establish secure procedures by which bids may be submitted via
224 electronic means.

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

226 (i) **Decision procedure.** Purchases may be made
227 from the lowest and best bidder. In determining the lowest and
228 best bid, freight and shipping charges shall be included.
229 Life-cycle costing, total cost bids, warranties, guaranteed
230 buy-back provisions and other relevant provisions may be included

231 in the best bid calculation. All best bid procedures for state
232 agencies must be in compliance with regulations established by the
233 Department of Finance and Administration. If any governing
234 authority accepts a bid other than the lowest bid actually
235 submitted, it shall place on its minutes detailed calculations and
236 narrative summary showing that the accepted bid was determined to
237 be the lowest and best bid, including the dollar amount of the
238 accepted bid and the dollar amount of the lowest bid. No agency
239 or governing authority shall accept a bid based on items not
240 included in the specifications.

241 (ii) **Decision procedure for Certified Purchasing**
242 **Offices.** In addition to the decision procedure set forth in
243 paragraph (d)(i), Certified Purchasing Offices may also use the
244 following procedure: Purchases may be made from the bidder
245 offering the best value. In determining the best value bid,
246 freight and shipping charges shall be included. Life-cycle
247 costing, total cost bids, warranties, guaranteed buy-back
248 provisions, documented previous experience, training costs and
249 other relevant provisions may be included in the best value
250 calculation. This provision shall authorize Certified Purchasing
251 Offices to utilize a Request For Proposals (RFP) process when
252 purchasing commodities. All best value procedures for state
253 agencies must be in compliance with regulations established by the
254 Department of Finance and Administration. No agency or governing
255 authority shall accept a bid based on items or criteria not
256 included in the specifications.

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

263 (e) **Lease-purchase authorization.** For the purposes of
264 this section, the term "equipment" shall mean equipment, furniture
265 and, if applicable, associated software and other applicable
266 direct costs associated with the acquisition. Any lease-purchase
267 of equipment which an agency is not required to lease-purchase
268 under the master lease-purchase program pursuant to Section
269 31-7-10 and any lease-purchase of equipment which a governing
270 authority elects to lease-purchase may be acquired by a
271 lease-purchase agreement under this paragraph (e). Lease-purchase
272 financing may also be obtained from the vendor or from a
273 third-party source after having solicited and obtained at least
274 two (2) written competitive bids, as defined in paragraph (b) of
275 this section, for such financing without advertising for such
276 bids. Solicitation for the bids for financing may occur before or
277 after acceptance of bids for the purchase of such equipment or,
278 where no such bids for purchase are required, at any time before
279 the purchase thereof. No such lease-purchase agreement shall be
280 for an annual rate of interest which is greater than the overall
281 maximum interest rate to maturity on general obligation
282 indebtedness permitted under Section 75-17-101, and the term of
283 such lease-purchase agreement shall not exceed the useful life of
284 equipment covered thereby as determined according to the upper
285 limit of the asset depreciation range (ADR) guidelines for the
286 Class Life Asset Depreciation Range System established by the
287 Internal Revenue Service pursuant to the United States Internal
288 Revenue Code and regulations thereunder as in effect on December
289 31, 1980, or comparable depreciation guidelines with respect to
290 any equipment not covered by ADR guidelines. Any lease-purchase
291 agreement entered into pursuant to this paragraph (e) may contain
292 any of the terms and conditions which a master lease-purchase
293 agreement may contain under the provisions of Section 31-7-10(5),
294 and shall contain an annual allocation dependency clause
295 substantially similar to that set forth in Section 31-7-10(8).

296 Each agency or governing authority entering into a lease-purchase
297 transaction pursuant to this paragraph (e) shall maintain with
298 respect to each such lease-purchase transaction the same
299 information as required to be maintained by the Department of
300 Finance and Administration pursuant to Section 31-7-10(13).
301 However, nothing contained in this section shall be construed to
302 permit agencies to acquire items of equipment with a total
303 acquisition cost in the aggregate of less than Ten Thousand
304 Dollars (\$10,000.00) by a single lease-purchase transaction. All
305 equipment, and the purchase thereof by any lessor, acquired by
306 lease-purchase under this paragraph and all lease-purchase
307 payments with respect thereto shall be exempt from all Mississippi
308 sales, use and ad valorem taxes. Interest paid on any
309 lease-purchase agreement under this section shall be exempt from
310 State of Mississippi income taxation.

311 (f) **Alternate bid authorization.** When necessary to
312 ensure ready availability of commodities for public works and the
313 timely completion of public projects, no more than two (2)
314 alternate bids may be accepted by a governing authority for
315 commodities. No purchases may be made through use of such
316 alternate bids procedure unless the lowest and best bidder cannot
317 deliver the commodities contained in his bid. In that event,
318 purchases of such commodities may be made from one (1) of the
319 bidders whose bid was accepted as an alternate.

320 (g) **Construction contract change authorization.** In the
321 event a determination is made by an agency or governing authority
322 after a construction contract is let that changes or modifications
323 to the original contract are necessary or would better serve the
324 purpose of the agency or the governing authority, such agency or
325 governing authority may, in its discretion, order such changes
326 pertaining to the construction that are necessary under the
327 circumstances without the necessity of further public bids;
328 provided that such change shall be made in a commercially

329 reasonable manner and shall not be made to circumvent the public
330 purchasing statutes. In addition to any other authorized person,
331 the architect or engineer hired by an agency or governing
332 authority with respect to any public construction contract shall
333 have the authority, when granted by an agency or governing
334 authority, to authorize changes or modifications to the original
335 contract without the necessity of prior approval of the agency or
336 governing authority when any such change or modification is less
337 than one percent (1%) of the total contract amount. The agency or
338 governing authority may limit the number, manner or frequency of
339 such emergency changes or modifications.

340 (h) **Petroleum purchase alternative.** In addition to
341 other methods of purchasing authorized in this chapter, when any
342 agency or governing authority shall have a need for gas, diesel
343 fuel, oils and/or other petroleum products in excess of the amount
344 set forth in paragraph (a) of this section, such agency or
345 governing authority may purchase the commodity after having
346 solicited and obtained at least two (2) competitive written bids,
347 as defined in paragraph (b) of this section. If two (2)
348 competitive written bids are not obtained, the entity shall comply
349 with the procedures set forth in paragraph (c) of this section.
350 In the event any agency or governing authority shall have
351 advertised for bids for the purchase of gas, diesel fuel, oils and
352 other petroleum products and coal and no acceptable bids can be
353 obtained, such agency or governing authority is authorized and
354 directed to enter into any negotiations necessary to secure the
355 lowest and best contract available for the purchase of such
356 commodities.

357 (i) **Road construction petroleum products price**
358 **adjustment clause authorization.** Any agency or governing
359 authority authorized to enter into contracts for the construction,
360 maintenance, surfacing or repair of highways, roads or streets,
361 may include in its bid proposal and contract documents a price

362 adjustment clause with relation to the cost to the contractor,
363 including taxes, based upon an industry-wide cost index, of
364 petroleum products including asphalt used in the performance or
365 execution of the contract or in the production or manufacture of
366 materials for use in such performance. Such industry-wide index
367 shall be established and published monthly by the Mississippi
368 Department of Transportation with a copy thereof to be mailed,
369 upon request, to the clerks of the governing authority of each
370 municipality and the clerks of each board of supervisors
371 throughout the state. The price adjustment clause shall be based
372 on the cost of such petroleum products only and shall not include
373 any additional profit or overhead as part of the adjustment. The
374 bid proposals or document contract shall contain the basis and
375 methods of adjusting unit prices for the change in the cost of
376 such petroleum products.

377 (j) **State agency emergency purchase procedure.** If the
378 governing board or the executive head, or his designee, of any
379 agency of the state shall determine that an emergency exists in
380 regard to the purchase of any commodities or repair contracts, so
381 that the delay incident to giving opportunity for competitive
382 bidding would be detrimental to the interests of the state, then
383 the provisions herein for competitive bidding shall not apply and
384 the head of such agency shall be authorized to make the purchase
385 or repair. Total purchases so made shall only be for the purpose
386 of meeting needs created by the emergency situation. In the event
387 such executive head is responsible to an agency board, at the
388 meeting next following the emergency purchase, documentation of
389 the purchase, including a description of the commodity purchased,
390 the purchase price thereof and the nature of the emergency shall
391 be presented to the board and placed on the minutes of the board
392 of such agency. The head of such agency, or his designee, shall,
393 at the earliest possible date following such emergency purchase,
394 file with the Department of Finance and Administration (i) a

395 statement explaining the conditions and circumstances of the
396 emergency, which shall include a detailed description of the
397 events leading up to the situation and the negative impact to the
398 entity if the purchase is made following the statutory
399 requirements set forth in paragraph (a), (b) or (c) of this
400 section, and (ii) a certified copy of the appropriate minutes of
401 the board of such agency, if applicable. On or before September 1
402 of each year, the State Auditor shall prepare and deliver to the
403 Senate Fees, Salaries and Administration Committee, the House Fees
404 and Salaries of Public Officers Committee and the Joint
405 Legislative Budget Committee a report containing a list of all
406 state agency emergency purchases and supporting documentation for
407 each emergency purchase.

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

409 If the governing authority, or the governing authority acting
410 through its designee, shall determine that an emergency exists in
411 regard to the purchase of any commodities or repair contracts, so
412 that the delay incident to giving opportunity for competitive
413 bidding would be detrimental to the interest of the governing
414 authority, then the provisions herein for competitive bidding
415 shall not apply and any officer or agent of such governing
416 authority having general or special authority therefor in making
417 such purchase or repair shall approve the bill presented therefor,
418 and he shall certify in writing thereon from whom such purchase
419 was made, or with whom such a repair contract was made. At the
420 board meeting next following the emergency purchase or repair
421 contract, documentation of the purchase or repair contract,
422 including a description of the commodity purchased, the price
423 thereof and the nature of the emergency shall be presented to the
424 board and shall be placed on the minutes of the board of such
425 governing authority.

426 (l) **Hospital purchase, lease-purchase and lease**

427 **authorization.**

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

433 (ii) In addition to the authority granted in
434 subparagraph (i) of this paragraph (1), the commissioners or board
435 of trustees is authorized to enter into contracts for the lease of
436 equipment or services, or both, which it considers necessary for
437 the proper care of patients if, in its opinion, it is not
438 financially feasible to purchase the necessary equipment or
439 services. Any such contract for the lease of equipment or
440 services executed by the commissioners or board shall not exceed a
441 maximum of five (5) years' duration and shall include a
442 cancellation clause based on unavailability of funds. If such
443 cancellation clause is exercised, there shall be no further
444 liability on the part of the lessee. Any such contract for the
445 lease of equipment or services executed on behalf of the
446 commissioners or board that complies with the provisions of this
447 subparagraph (ii) shall be excepted from the bid requirements set
448 forth in this section.

449 (m) **Exceptions from bidding requirements.** Excepted
450 from bid requirements are:

451 (i) **Purchasing agreements approved by department.**
452 Purchasing agreements, contracts and maximum price regulations
453 executed or approved by the Department of Finance and
454 Administration.

455 (ii) **Outside equipment repairs.** Repairs to
456 equipment, when such repairs are made by repair facilities in the
457 private sector; however, engines, transmissions, rear axles and/or
458 other such components shall not be included in this exemption when
459 replaced as a complete unit instead of being repaired and the need
460 for such total component replacement is known before disassembly

461 of the component; however, invoices identifying the equipment,
462 specific repairs made, parts identified by number and name,
463 supplies used in such repairs, and the number of hours of labor
464 and costs therefor shall be required for the payment for such
465 repairs.

466 (iii) **In-house equipment repairs.** Purchases of
467 parts for repairs to equipment, when such repairs are made by
468 personnel of the agency or governing authority; however, entire
469 assemblies, such as engines or transmissions, shall not be
470 included in this exemption when the entire assembly is being
471 replaced instead of being repaired.

472 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
473 of gravel or fill dirt which are to be removed and transported by
474 the purchaser.

475 (v) **Governmental equipment auctions.** Motor
476 vehicles or other equipment purchased from a federal agency or
477 authority, another governing authority or state agency of the
478 State of Mississippi, or any governing authority or state agency
479 of another state at a public auction held for the purpose of
480 disposing of such vehicles or other equipment. Any purchase by a
481 governing authority under the exemption authorized by this
482 subparagraph (v) shall require advance authorization spread upon
483 the minutes of the governing authority to include the listing of
484 the item or items authorized to be purchased and the maximum bid
485 authorized to be paid for each item or items.

486 (vi) **Intergovernmental sales and transfers.**
487 Purchases, sales, transfers or trades by governing authorities or
488 state agencies when such purchases, sales, transfers or trades are
489 made by a private treaty agreement or through means of
490 negotiation, from any federal agency or authority, another
491 governing authority or state agency of the State of Mississippi,
492 or any state agency or governing authority of another state.
493 Nothing in this section shall permit such purchases through public

494 auction except as provided for in subparagraph (v) of this
495 section. It is the intent of this section to allow governmental
496 entities to dispose of and/or purchase commodities from other
497 governmental entities at a price that is agreed to by both
498 parties. This shall allow for purchases and/or sales at prices
499 which may be determined to be below the market value if the
500 selling entity determines that the sale at below market value is
501 in the best interest of the taxpayers of the state. Governing
502 authorities shall place the terms of the agreement and any
503 justification on the minutes, and state agencies shall obtain
504 approval from the Department of Finance and Administration, prior
505 to releasing or taking possession of the commodities.

506 (vii) **Perishable supplies or food.** Perishable
507 supplies or food purchased for use in connection with hospitals,
508 the school lunch programs, homemaking programs and for the feeding
509 of county or municipal prisoners.

510 (viii) **Single source items.** Noncompetitive items
511 available from one (1) source only. In connection with the
512 purchase of noncompetitive items only available from one (1)
513 source, a certification of the conditions and circumstances
514 requiring the purchase shall be filed by the agency with the
515 Department of Finance and Administration and by the governing
516 authority with the board of the governing authority. Upon receipt
517 of that certification the Department of Finance and Administration
518 or the board of the governing authority, as the case may be, may,
519 in writing, authorize the purchase, which authority shall be noted
520 on the minutes of the body at the next regular meeting thereafter.
521 In those situations, a governing authority is not required to
522 obtain the approval of the Department of Finance and
523 Administration.

524 (ix) **Waste disposal facility construction**
525 **contracts.** Construction of incinerators and other facilities for
526 disposal of solid wastes in which products either generated

527 therein, such as steam, or recovered therefrom, such as materials
528 for recycling, are to be sold or otherwise disposed of; however,
529 in constructing such facilities, a governing authority or agency
530 shall publicly issue requests for proposals, advertised for in the
531 same manner as provided herein for seeking bids for public
532 construction projects, concerning the design, construction,
533 ownership, operation and/or maintenance of such facilities,
534 wherein such requests for proposals when issued shall contain
535 terms and conditions relating to price, financial responsibility,
536 technology, environmental compatibility, legal responsibilities
537 and such other matters as are determined by the governing
538 authority or agency to be appropriate for inclusion; and after
539 responses to the request for proposals have been duly received,
540 the governing authority or agency may select the most qualified
541 proposal or proposals on the basis of price, technology and other
542 relevant factors and from such proposals, but not limited to the
543 terms thereof, negotiate and enter contracts with one or more of
544 the persons or firms submitting proposals.

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

548 (xi) **Information technology products.** Purchases
549 of information technology products made by governing authorities
550 under the provisions of purchase schedules, or contracts executed
551 or approved by the Mississippi Department of Information
552 Technology Services and designated for use by governing
553 authorities.

554 (xii) **Energy efficiency services and equipment.**
555 Energy efficiency services and equipment acquired by school
556 districts, community and junior colleges, institutions of higher
557 learning and state agencies or other applicable governmental
558 entities on a shared-savings, lease or lease-purchase basis
559 pursuant to Section 31-7-14.

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

564 (xiv) **Library books and other reference materials.**
565 Purchases by libraries or for libraries of books and periodicals;
566 processed film, video cassette tapes, filmstrips and slides;
567 recorded audio tapes, cassettes and diskettes; and any such items
568 as would be used for teaching, research or other information
569 distribution; however, equipment such as projectors, recorders,
570 audio or video equipment, and monitor televisions are not exempt
571 under this subparagraph.

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

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

578 (xvii) **Multichannel interactive video systems.**
579 From and after July 1, 1990, contracts by Mississippi Authority
580 for Educational Television with any private educational
581 institution or private nonprofit organization whose purposes are
582 educational in regard to the construction, purchase, lease or
583 lease-purchase of facilities and equipment and the employment of
584 personnel for providing multichannel interactive video systems
585 (ITSF) in the school districts of this state.

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

590 (xix) **Undercover operations equipment.** Purchases
591 of surveillance equipment or any other high-tech equipment to be
592 used by law enforcement agents in undercover operations, provided

593 that any such purchase shall be in compliance with regulations
594 established by the Department of Finance and Administration.

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

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

604 (xxii) **Garbage, solid waste and sewage contracts.**
605 Contracts for garbage collection or disposal, contracts for solid
606 waste collection or disposal and contracts for sewage collection
607 or disposal.

608 (xxiii) **Municipal water tank maintenance**
609 **contracts.** Professional maintenance program contracts for the
610 repair or maintenance of municipal water tanks, which provide
611 professional services needed to maintain municipal water storage
612 tanks for a fixed annual fee for a duration of two (2) or more
613 years.

614 (xxiv) **Purchases of Mississippi Industries for the**
615 **Blind products.** Purchases made by state agencies or governing
616 authorities involving any item that is manufactured, processed or
617 produced by the Mississippi Industries for the Blind.

618 (xxv) **Purchases of state-adopted textbooks.**
619 Purchases of state-adopted textbooks by public school districts.

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

623 (xxvii) **Used heavy or specialized machinery or**
624 **equipment for installation of soil and water conservation**
625 **practices purchased at auction.** Used heavy or specialized

626 machinery or equipment used for the installation and
627 implementation of soil and water conservation practices or
628 measures purchased subject to the restrictions provided in
629 Sections 69-27-331 through 69-27-341. Any purchase by the State
630 Soil and Water Conservation Commission under the exemption
631 authorized by this subparagraph shall require advance
632 authorization spread upon the minutes of the commission to include
633 the listing of the item or items authorized to be purchased and
634 the maximum bid authorized to be paid for each item or items.

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

638 (xxix) **Purchases made pursuant to qualified**
639 **cooperative purchasing agreements.** Purchases made by certified
640 purchasing offices of state agencies or governing authorities
641 under cooperative purchasing agreements previously approved by the
642 Office of Purchasing and Travel and established by or for any
643 municipality, county, parish or state government or the federal
644 government, provided that the notification to potential
645 contractors includes a clause that sets forth the availability of
646 the cooperative purchasing agreement to other governmental
647 entities. Such purchases shall only be made if the use of the
648 cooperative purchasing agreements is determined to be in the best
649 interest of the governmental entity.

650 (xxx) **School yearbooks.** Purchases of school
651 yearbooks by state agencies or governing authorities; provided,
652 however, that state agencies and governing authorities shall use
653 for these purchases the RFP process as set forth in the
654 Mississippi Procurement Manual adopted by the Office of Purchasing
655 and Travel.

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

659 (n) **Term contract authorization.** All contracts for the
660 purchase of:

661 (i) All contracts for the purchase of commodities,
662 equipment and public construction (including, but not limited to,
663 repair and maintenance), may be let for periods of not more than
664 sixty (60) months in advance, subject to applicable statutory
665 provisions prohibiting the letting of contracts during specified
666 periods near the end of terms of office. Term contracts for a
667 period exceeding twenty-four (24) months shall also be subject to
668 ratification or cancellation by governing authority boards taking
669 office subsequent to the governing authority board entering the
670 contract.

671 (ii) Bid proposals and contracts may include price
672 adjustment clauses with relation to the cost to the contractor
673 based upon a nationally published industry-wide or nationally
674 published and recognized cost index. The cost index used in a
675 price adjustment clause shall be determined by the Department of
676 Finance and Administration for the state agencies and by the
677 governing board for governing authorities. The bid proposal and
678 contract documents utilizing a price adjustment clause shall
679 contain the basis and method of adjusting unit prices for the
680 change in the cost of such commodities, equipment and public
681 construction.

682 (o) **Purchase law violation prohibition and vendor**
683 **penalty.** No contract or purchase as herein authorized shall be
684 made for the purpose of circumventing the provisions of this
685 section requiring competitive bids, nor shall it be lawful for any
686 person or concern to submit individual invoices for amounts within
687 those authorized for a contract or purchase where the actual value
688 of the contract or commodity purchased exceeds the authorized
689 amount and the invoices therefor are split so as to appear to be
690 authorized as purchases for which competitive bids are not
691 required. Submission of such invoices shall constitute a

692 misdemeanor punishable by a fine of not less than Five Hundred
693 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
694 or by imprisonment for thirty (30) days in the county jail, or
695 both such fine and imprisonment. In addition, the claim or claims
696 submitted shall be forfeited.

697 (p) **Electrical utility petroleum-based equipment**
698 **purchase procedure.** When in response to a proper advertisement
699 therefor, no bid firm as to price is submitted to an electric
700 utility for power transformers, distribution transformers, power
701 breakers, reclosers or other articles containing a petroleum
702 product, the electric utility may accept the lowest and best bid
703 therefor although the price is not firm.

704 (q) **Fuel management system bidding procedure.** Any
705 governing authority or agency of the state shall, before
706 contracting for the services and products of a fuel management or
707 fuel access system, enter into negotiations with not fewer than
708 two (2) sellers of fuel management or fuel access systems for
709 competitive written bids to provide the services and products for
710 the systems. In the event that the governing authority or agency
711 cannot locate two (2) sellers of such systems or cannot obtain
712 bids from two (2) sellers of such systems, it shall show proof
713 that it made a diligent, good-faith effort to locate and negotiate
714 with two (2) sellers of such systems. Such proof shall include,
715 but not be limited to, publications of a request for proposals and
716 letters soliciting negotiations and bids. For purposes of this
717 paragraph (q), a fuel management or fuel access system is an
718 automated system of acquiring fuel for vehicles as well as
719 management reports detailing fuel use by vehicles and drivers, and
720 the term "competitive written bid" shall have the meaning as
721 defined in paragraph (b) of this section. Governing authorities
722 and agencies shall be exempt from this process when contracting
723 for the services and products of a fuel management or fuel access

724 systems under the terms of a state contract established by the
725 Office of Purchasing and Travel.

726 (r) **Solid waste contract proposal procedure.** Before
727 entering into any contract for garbage collection or disposal,
728 contract for solid waste collection or disposal or contract for
729 sewage collection or disposal, which involves an expenditure of
730 more than Fifty Thousand Dollars (\$50,000.00), a governing
731 authority or agency shall issue publicly a request for proposals
732 concerning the specifications for such services which shall be
733 advertised for in the same manner as provided in this section for
734 seeking bids for purchases which involve an expenditure of more
735 than the amount provided in paragraph (c) of this section. Any
736 request for proposals when issued shall contain terms and
737 conditions relating to price, financial responsibility,
738 technology, legal responsibilities and other relevant factors as
739 are determined by the governing authority or agency to be
740 appropriate for inclusion; all factors determined relevant by the
741 governing authority or agency or required by this paragraph (r)
742 shall be duly included in the advertisement to elicit proposals.
743 After responses to the request for proposals have been duly
744 received, the governing authority or agency shall select the most
745 qualified proposal or proposals on the basis of price, technology
746 and other relevant factors and from such proposals, but not
747 limited to the terms thereof, negotiate and enter contracts with
748 one or more of the persons or firms submitting proposals. If the
749 governing authority or agency deems none of the proposals to be
750 qualified or otherwise acceptable, the request for proposals
751 process may be reinitiated. Notwithstanding any other provisions
752 of this paragraph, where a county with at least thirty-five
753 thousand (35,000) nor more than forty thousand (40,000)
754 population, according to the 1990 federal decennial census, owns
755 or operates a solid waste landfill, the governing authorities of
756 any other county or municipality may contract with the governing

757 authorities of the county owning or operating the landfill,
758 pursuant to a resolution duly adopted and spread upon the minutes
759 of each governing authority involved, for garbage or solid waste
760 collection or disposal services through contract negotiations.

761 (s) **Minority set-aside authorization.** Notwithstanding
762 any provision of this section to the contrary, any agency or
763 governing authority, by order placed on its minutes, may, in its
764 discretion, set aside not more than twenty percent (20%) of its
765 anticipated annual expenditures for the purchase of commodities
766 from minority businesses; however, all such set-aside purchases
767 shall comply with all purchasing regulations promulgated by the
768 Department of Finance and Administration and shall be subject to
769 bid requirements under this section. Set-aside purchases for
770 which competitive bids are required shall be made from the lowest
771 and best minority business bidder. For the purposes of this
772 paragraph, the term "minority business" means a business which is
773 owned by a majority of persons who are United States citizens or
774 permanent resident aliens (as defined by the Immigration and
775 Naturalization Service) of the United States, and who are Asian,
776 Black, Hispanic or Native American, according to the following
777 definitions:

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

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

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

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

789 (t) **Construction punch list restriction.** The
790 architect, engineer or other representative designated by the
791 agency or governing authority that is contracting for public
792 construction or renovation may prepare and submit to the
793 contractor only one (1) preliminary punch list of items that do
794 not meet the contract requirements at the time of substantial
795 completion and one (1) final list immediately before final
796 completion and final payment.

797 (u) **Procurement of construction services by state**
798 **institutions of higher learning.** Contracts for privately financed
799 construction of auxiliary facilities on the campus of a state
800 institution of higher learning may be awarded by the Board of
801 Trustees of State Institutions of Higher Learning to the lowest
802 and best bidder, where sealed bids are solicited, or to the
803 offeror whose proposal is determined to represent the best value
804 to the citizens of the State of Mississippi, where requests for
805 proposals are solicited.

806 (v) **Purchase authorization clarification.** Nothing in
807 this section shall be construed as authorizing any purchase not
808 authorized by law.

809 **SECTION 3.** This act shall take effect and be in force from
810 and after July 1, 2007.