

By: Representative Weathersby

To: Public Property;  
Appropriations

HOUSE BILL NO. 1537  
(As Sent to Governor)

1 AN ACT TO CREATE NEW SECTION 31-7-13.1, MISSISSIPPI CODE OF  
2 1972, TO AUTHORIZE AND PRESCRIBE THE PROCEDURES FOR USING THE  
3 DUAL-PHASE DESIGN-BUILD METHOD OF CONSTRUCTION CONTRACTING; TO  
4 PROVIDE THAT A TWO-PHASE PROCEDURE FOR AWARDING A CONTRACT MUST BE  
5 ADOPTED FOR EACH PROPOSED DUAL-PHASE DESIGN-BUILD PROJECT; TO  
6 PRESCRIBE THE PROCEDURES TO BE FOLLOWED FOR EACH PHASE; TO AMEND  
7 SECTION 31-11-3, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE  
8 PRECEDING PROVISIONS; TO CREATE A NEW SECTION TO BE CODIFIED AS  
9 SECTION 37-101-44, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE  
10 BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING TO  
11 AUTHORIZE UNIVERSITIES TO CONTRACT WITH A SINGLE ENTITY FOR THE  
12 DESIGN AND CONSTRUCTION OF FACILITIES AT UNIVERSITIES; TO AMEND  
13 SECTION 37-101-43, MISSISSIPPI CODE OF 1972, IN CONFORMITY  
14 THERETO; TO CREATE NEW SECTION 31-7-13.2, MISSISSIPPI CODE OF  
15 1972, TO PRESCRIBE THE PROCEDURES FOR AWARDING CONTRACTS FOR  
16 CONSTRUCTION MANAGERS AT RISK; TO DEFINE QUALIFICATION-BASED  
17 SELECTION PROCEDURES FOR PURPOSES OF PROCURING ARCHITECTS AND  
18 DESIGN ENGINEERS; TO AMEND SECTION 37-101-41, MISSISSIPPI CODE OF  
19 1972, TO AUTHORIZE THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF  
20 HIGHER LEARNING TO AUTHORIZE UNIVERSITIES TO LEASE LAND AT  
21 UNIVERSITIES FOR THE CONSTRUCTION OF AUXILIARY FACILITIES BY  
22 PRIVATE FINANCING FOR A PERIOD NOT EXCEEDING THIRTY-ONE YEARS; TO  
23 AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO EXEMPT FROM  
24 STATE BID REQUIREMENTS CONTRACTS FOR THE DESIGN-BUILD METHOD AND  
25 DUAL-PHASE DESIGN-BUILD METHOD OF CONTRACTING; AND FOR RELATED  
26 PURPOSES.

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

28 **SECTION 1.** The following shall be codified as Section  
29 31-7-13.1, Mississippi Code of 1972:

30 31-7-13.1. (1) The method of contracting for construction  
31 described in this section shall be known as the "dual-phase  
32 design-build method" of construction contracting. This method of  
33 construction contracting may be used only when the Legislature has  
34 specifically required or authorized the use of this method in the  
35 legislation authorizing a project. At a minimum, the  
36 determination must include a detailed explanation of why using the  
37 dual-phase design-build method for a particular project satisfies  
38 the public need better than the traditional design-bid-build  
39 method based on the following criteria:

40 (a) The project provides a savings in time or cost over  
41 traditional methods; and

42 (b) The size and type of the project is suitable for  
43 design-build.

44 (2) For each proposed dual-phase design-build project, a  
45 two-phase procedure for awarding a contract must be adopted.  
46 During Phase One, and before solicitation of initial proposals,  
47 the agency or governing authority shall develop, with the  
48 assistance of an architectural or engineering firm, a scope of  
49 work statement that provides prospective offerors with sufficient  
50 information regarding the requirements of the agency or governing  
51 authority. The scope of work statement must include, but is not  
52 limited to, the following information:

53 (a) Drawings must show overall building dimensions and  
54 major lines of dimensions, and site plans that show topography,  
55 adjacent buildings and utilities;

56 (b) Drawings must include information to adequately  
57 explain HVAC, electrical and structural requirements;

58 (c) The scope of work statement also must include  
59 building elevations, sections and design details; and

60 (d) The scope of work statement must include general  
61 budget parameters, schedule or delivery requirements, relevant  
62 criteria for evaluation of proposals, and any other information  
63 necessary to enable the design-builders to submit proposals that  
64 meet the needs of the agency or governing authority.

65 (3) The agency or governing authority shall cause to be  
66 published once a week, for at least two (2) consecutive weeks in a  
67 regular newspaper published in the county in which the project is  
68 to be located, or a newspaper with statewide circulation, a notice  
69 inviting proposals for the dual-phase design-build construction  
70 project. The proposals shall not be opened in less than fifteen  
71 (15) working days after the last notice is published. The notice  
72 must inform potential offerors of how to obtain the scope of work

73 statement developed for the project, and the notice must contain  
74 such other information to describe adequately the general nature  
75 and scope of the project so as to promote full, equal and open  
76 competition.

77 (4) The agency or governing authority shall accept initial  
78 proposals only from entities able to provide an experienced and  
79 qualified design-build team that includes, at a minimum, an  
80 architectural or engineering firm registered in Mississippi and a  
81 contractor properly licensed and domiciled in Mississippi for the  
82 type of work required. From evaluation of initial proposals under  
83 Phase One, the agency or governing authority shall select a  
84 minimum of two (2) and a maximum of five (5) design-builders as  
85 "short-listed firms" to submit proposals for Phase Two.

86 (5) During Phase Two, the short-listed firms will be invited  
87 to submit detailed designs, specific technical concepts or  
88 solutions, pricing, scheduling and other information deemed  
89 appropriate by the agency or governing authority as necessary to  
90 evaluate and rank acceptability of the Phase Two proposals. After  
91 evaluation of these Phase Two proposals, the agency or governing  
92 authority shall award a contract to the design-builder determined  
93 to offer the best value to the public in accordance with  
94 evaluation criteria set forth in the request for proposals, of  
95 which price must be one, but not necessarily the only, criterion.

96 (6) If the agency or governing authority accepts a proposal  
97 other than the lowest dollar proposal actually submitted, the  
98 agency or governing authority shall enter on its minutes detailed  
99 calculations and a narrative summary showing why the accepted  
100 proposal was determined to provide the best value, and the agency  
101 or governing authority shall state specifically on its minutes the  
102 justification for its award.

103 (7) All facilities that are governed by this section shall  
104 be designed and constructed to comply with standards equal to or  
105 exceeding the minimum building code standards employed by the

106 state as required under Section 31-11-33 in force at the time of  
107 contracting. All private contractors or private entities  
108 contracting or performing under this section must comply at all  
109 times with all applicable laws, codes and other legal requirements  
110 pertaining to the project.

111 (8) At its discretion, the agency or governing authority may  
112 award a stipulated fee equal to a percentage, as prescribed in the  
113 request for proposals, of the project's final design and  
114 construction budget, as prescribed in the request for proposals,  
115 but not less than two-tenths of one percent (2/10 of 1%) of the  
116 project's final design and construction budget, to each short-list  
117 offeror who provides a responsive, but unsuccessful, proposal. If  
118 the agency or governing authority does not award a contract, all  
119 responsive final list offerors shall receive the stipulated fee  
120 based on the owner's estimate of the project final design and  
121 construction budget as included in the request for proposals. The  
122 agency or governing authority shall pay the stipulated fee to each  
123 offeror within ninety (90) days after the award of the initial  
124 contract or the decision not to award a contract. In  
125 consideration for paying the stipulated fee, the agency or  
126 governing authority may use any ideas or information contained in  
127 the proposals in connection with any contract awarded for the  
128 project, or in connection with a subsequent procurement, without  
129 any obligation to pay any additional compensation to the  
130 unsuccessful offerors. Notwithstanding the other provisions of  
131 this subsection, an unsuccessful short-list offeror may elect to  
132 waive the stipulated fee. If an unsuccessful short-list offeror  
133 elects to waive the stipulated fee, the agency or governing  
134 authority may not use ideas and information contained in the  
135 offeror's proposal, except that this restriction does not prevent  
136 the agency or governing authority from using any idea or  
137 information if the idea or information is also included in a  
138 proposal of an offeror that accepts the stipulated fee.

139           (9) This section shall not authorize the awarding of  
140 construction contracts according to any contracting method that  
141 does not require the contractor to satisfactorily perform, at a  
142 minimum, both any balance of design, using an independent  
143 professional licensed in Mississippi, and construction of the  
144 project for which the contract is awarded.

145           (10) The provisions of this section shall not affect any  
146 procurement by the Mississippi Transportation Commission.

147           **SECTION 2.** The following shall be codified as Section  
148 31-7-13.2, Mississippi Code of 1972:

149           31-7-13.2 (1) When used in this section, "construction  
150 manager at risk" means a method of project delivery in which a  
151 construction manager guarantees a maximum price for the  
152 construction of a project and in which the governing authority or  
153 board, before using this method of project delivery, shall include  
154 a detailed explanation of why using the construction manager at  
155 risk method of project delivery for a particular project satisfies  
156 the public need better than that traditional design-bid-build  
157 method based on the following criteria:

158           (a) The use of construction manager at risk for the  
159 project provides a savings in time or cost over traditional  
160 methods; and

161           (b) The size and type of the project is suitable for  
162 use of the construction management at risk method of project  
163 delivery.

164           (2) When the construction manager at risk method of project  
165 delivery is used:

166           (a) There may be a separate contract for design  
167 services and a separate contract for construction services;

168           (b) The contract for construction services may be  
169 entered into at the same time as a contract for the design  
170 services or later;

171 (c) Design and construction of the project may be in  
172 sequential or concurrent phases; and

173 (d) Finance, maintenance, operation, reconstruction or  
174 other related services may be included for a guaranteed maximum  
175 price.

176 (3) When procuring design professional services under a  
177 construction manager at risk project delivery method, the agency  
178 or governing authority shall procure the services of a design  
179 professional pursuant to qualifications-based selection  
180 procedures.

181 (4) Before the substantial completion of the design  
182 documents, the agency or governing authority may elect to hire a  
183 construction manager.

184 (5) When procuring construction management services, the  
185 agency or governing authority shall follow the  
186 qualifications-based selection procedures as outlined in  
187 subsection (10) of this section or the competitive sealed proposal  
188 procedures as outlined in Section 31-17-13.

189 (6) The agency or governing authority may require the  
190 architect or engineer and the construction manager, by contract,  
191 to cooperate in the design, planning and scheduling, and  
192 construction process. The contract shall not make the primary  
193 designer or construction manager a subcontractor or joint venture  
194 partner to the other or limit the primary designer's or  
195 construction manager's independent obligations to the agency or  
196 governing authority.

197 (7) Notwithstanding anything to the contrary in this  
198 chapter:

199 (a) Each project for construction under a construction  
200 manager at risk contract shall be a specific, single project with  
201 a minimum construction cost of Twenty-Five Million Dollars  
202 (\$25,000,000.00).

203           (b) Each project under a construction manager at risk  
204 contract shall be a specific, single project. For the purposes of  
205 this paragraph, "specific, single project" means a project that is  
206 constructed at a single location, at a common location or for a  
207 common purpose.

208           (8) Agencies shall retain an independent architectural or  
209 engineering firm to provide guidance and administration of the  
210 professional engineering or professional architecture aspects of  
211 the project throughout the development of the scope, design, and  
212 construction of the project.

213           (9) The state shall, on an annual basis, compile and make  
214 public all proceedings, records, contracts and other public  
215 records relating to procurement transactions authorized under this  
216 section.

217           (10) For purposes of this section, the "qualifications-based  
218 selection procedure" shall include:

219           (a) Publicly announcing all requirements for  
220 architectural, engineering, and land surveying services, to  
221 procure these services on the basis of demonstrated competence and  
222 qualifications, and to negotiate contracts at fair and reasonable  
223 prices after the most qualified firm has been selected.

224           (b) Agencies or governing authorities shall establish  
225 procedures to prequalify firms seeking to provide architectural,  
226 engineering, and land surveying services or may use  
227 prequalification lists from other state agencies or governing  
228 authorities to meet the requirements of this section.

229           (c) Whenever a project requiring architectural,  
230 engineering, or land surveying services is proposed for an agency  
231 or governing authority, the agency or governing authority shall  
232 provide advance notice published in a professional services  
233 bulletin or advertised within the official state newspaper setting  
234 forth the projects and services to be procured for not less than  
235 fourteen (14) days. The professional services bulletin shall be

236 mailed to each firm that has requested the information or is  
237 prequalified under Section 31-7-13. The professional services  
238 bulletin shall include a description of each project and shall  
239 state the time and place for interested firms to submit a letter  
240 of interest and, if required by the public notice, a statement of  
241 qualifications.

242 (d) The agency or governing authority shall evaluate  
243 the firms submitting letters of interest and other prequalified  
244 firms, taking into account qualifications. The agency or  
245 governing authority may consider, but shall not be limited to,  
246 considering:

- 247 (i) Ability of professional personnel;
- 248 (ii) Past record and experience;
- 249 (iii) Performance data on file;
- 250 (iv) Willingness to meet time requirements;
- 251 (v) Location;
- 252 (vi) Workload of the firm; and
- 253 (vii) Any other qualifications-based factors as  
254 the agency or governing authority may determine in writing are  
255 applicable.

256 The agency or governing authority may conduct discussions  
257 with and require public presentations by firms deemed to be the  
258 most qualified regarding their qualifications, approach to the  
259 project and ability to furnish the required services.

260 (e) The agency or governing authority shall establish a  
261 committee to select firms to provide architectural, engineering,  
262 and land surveying services. A selection committee may include at  
263 least one (1) public member nominated by a statewide association  
264 of the profession affected. The public member may not be employed  
265 or associated with any firm holding a contract with the agency or  
266 governing authority nor may the public members' firm be considered  
267 for a contract with that agency or governing authority while  
268 serving as a public member of the committee. In no case shall the

269 agency or governing authority, before selecting a firm for  
270 negotiation under paragraph (f) of this section, seek formal or  
271 informal submission of verbal or written estimates of costs or  
272 proposals in terms of dollars, hours required, percentage of  
273 construction cost, or any other measure of compensation.

274 (f) On the basis of evaluations, discussions, and any  
275 presentations, the agency or governing authority shall select no  
276 less than three (3) firms that it determines to be qualified to  
277 provide services for the project and rank them in order of  
278 qualifications to provide services regarding the specific project.  
279 The agency or governing authority shall then contact the firm  
280 ranked most preferred to negotiate a contract at a fair and  
281 reasonable compensation. If fewer than three (3) firms submit  
282 letters of interest and the agency or governing authority  
283 determines that one (1) or both of those firms are so qualified,  
284 the agency or governing authority may proceed to negotiate a  
285 contract under paragraph (g) of this section.

286 (g) The agency or governing authority shall prepare a  
287 written description of the scope of the proposed services to be  
288 used as a basis for negotiations and shall negotiate a contract  
289 with the highest qualified firm at compensation that the agency or  
290 governing authority determines in writing to be fair and  
291 reasonable. In making this decision, the agency or governing  
292 authority shall take into account the estimated value, scope,  
293 complexity, and professional nature of the services to be  
294 rendered. In no case may the agency or governing authority  
295 establish a maximum overhead rate or other payment formula  
296 designed to eliminate firms from contention or restrict  
297 competition or negotiation of fees. If the agency or governing  
298 authority is unable to negotiate a satisfactory contract with the  
299 firm that is most preferred, negotiations with that firm shall be  
300 terminated. The agency or governing authority shall then begin  
301 negotiations with the firm that is next preferred. If the agency

302 or governing authority is unable to negotiate a satisfactory  
303 contract with that firm, negotiations with that firm shall be  
304 terminated. The agency or governing authority shall then begin  
305 negotiations with the firm that is next preferred. If the agency  
306 or governing authority is unable to negotiate a satisfactory  
307 contract with any of the selected firms, the agency or governing  
308 authority shall reevaluate the architectural, engineering, or land  
309 surveying services requested, including the estimated value,  
310 scope, complexity, and fee requirements. The agency or governing  
311 authority shall then compile a second list of not less than three  
312 (3) qualified firms and proceed in accordance with the provisions  
313 of this section. A firm negotiating a contract with an agency or  
314 governing authority shall negotiate subcontracts for  
315 architectural, engineering, and land surveying services at  
316 compensation that the firm determines in writing to be fair and  
317 reasonable based upon a written description of the scope of the  
318 proposed services.

319 (11) The provisions of this section shall not affect any  
320 procurement by the Mississippi Transportation Commission.

321 **SECTION 3.** The use of either the design-build method of  
322 project delivery as provided in Section 31-7-13.1 or the  
323 construction manager at risk method of project delivery as  
324 provided in Section 31-7-13.2 must comply with the provisions of  
325 Section 31-5-51.

326 **SECTION 4.** The following shall be codified as Section  
327 37-101-44, Mississippi Code of 1972:

328 37-101-44. (1) In lieu of exercising the authority set  
329 forth in Section 37-101-43 and before entering into or awarding  
330 any lease under Section 37-101-41, the Board of Trustees of State  
331 Institutions of Higher Learning, subject to the provisions of  
332 Section 9 of this act, may award contracts to a single entity for  
333 privately financed design and construction of facilities on  
334 university campuses if the entities receiving the contract or

335 contracts and those entities to which work or services are  
336 subcontracted are duly licensed and qualified in the state to  
337 perform the contract or contracts. State General Fund  
338 appropriations or bonds backed by the state may not be used to  
339 finance the construction or maintenance of any such facility.

340 (2) The design-build delivery system described under  
341 subsection (1) of this section shall be administered pursuant to  
342 Section 31-7-13.1 and may be authorized only when the Board of  
343 Trustees of State Institutions of Higher Learning makes a  
344 determination, entered on its minutes, with specific findings for  
345 the project demonstrating how it is in the best interest of the  
346 public to enter into a design-build contract.

347 **SECTION 5.** Section 37-101-43, Mississippi Code of 1972, is  
348 amended as follows:

349 37-101-43. (a) Except as otherwise provided in Section  
350 37-101-44, and subject to the provisions of Section 9 of this act,  
351 before entering into or awarding any such lease contract under the  
352 provisions of Section 37-101-41, the Board of Trustees of State  
353 Institutions of Higher Learning shall cause the interested  
354 state-supported institution upon which a facility is proposed to  
355 be constructed to select and submit three (3) architects to the  
356 board. Thereupon, the board shall approve and employ an  
357 architect, who shall be paid by the interested institution from  
358 any funds available to the interested institution. The architect,  
359 under the direction of the interested institution, shall prepare  
360 complete plans and specifications for the facility desired to be  
361 constructed on the leased property.

362 Upon completion of the plans and specifications and the  
363 approval thereof by the board, and before entering into any lease  
364 contract, the board shall cause to be published once a week for at  
365 least three (3) consecutive weeks and not less than twenty-one  
366 (21) days in at least one (1) newspaper having a general  
367 circulation in the county in which the interested institution is

368 located and in one (1) newspaper with a general statewide  
369 circulation, a notice inviting bids or proposals for the leasing,  
370 construction and leasing back of the land and constructed  
371 facility, the facility to be constructed in accordance with the  
372 plans and specifications. The notice shall distinctly state the  
373 thing to be done, and invite sealed proposals, to be filed with  
374 the board, to do the thing to be done. The notice shall contain  
375 the following specific provisions, together with such others as  
376 the board in its discretion deems appropriate, to wit: bids shall  
377 be accompanied by a bid security evidenced by a certified or  
378 cashier's check or bid-bond payable to the board in a sum of not  
379 less than five percent (5%) of the gross construction cost of the  
380 facility to be constructed as estimated by the board and the bids  
381 shall contain proof satisfactory to the board of interim and  
382 permanent financing. The board shall state in the notice when  
383 construction shall commence. The bid shall contain the proposed  
384 contractor's certificate of responsibility number and bidder's  
385 license. In all cases, before the notice shall be published, the  
386 plans and specifications shall be filed with the board and also in  
387 the office of the president of the interested institution, there  
388 to remain.

389 The board shall award the lease contract to the lowest and  
390 best bidder, who will comply with the terms imposed by the  
391 contract documents. At the time of the awarding of the lease  
392 contract the successful bidder shall enter into bond with  
393 sufficient sureties, to be approved by the board, in such penalty  
394 as may be fixed by the board, but in no case to be less than the  
395 estimated gross construction cost of the facility to be  
396 constructed as estimated by the board, conditioned for the prompt,  
397 proper and efficient performance of the contract. The bond shall  
398 be made by an authorized corporate surety bonding company.

399 The \* \* \* bid security herein provided for shall be forfeited if  
400 the successful bidder fails to enter into lease contract and

401 commence construction within the time limitation set forth in the  
402 notice. At such time, and simultaneously with the signing of the  
403 contract, the successful bidder shall deposit a sum of money, in  
404 cash or certified or cashier's check, not less than the bid  
405 security previously deposited as bid security to reimburse the  
406 interested institution for all sums expended by it for  
407 architectural services and other expenditures of the board and  
408 interested institution connected with the bidden lease contract,  
409 of which such other anticipated expenditures notice is to be given  
410 to bidder in the notice. The bid security posted by an  
411 unsuccessful bidder shall be refunded to him.

412 (b) Under the authority granted under Section  
413 37-101-44, the requirements of paragraph (a) of this section shall  
414 not apply to the Board of Trustees of State Institutions of Higher  
415 Learning to grant to universities the authority to contract with a  
416 single entity for privately financed design and construction of  
417 facilities on university campuses.

418 **SECTION 6.** Section 37-101-41, Mississippi Code of 1972, is  
419 amended as follows:

420 37-101-41. (1) (a) Except as otherwise provided in  
421 paragraph (b) of this section, and subject to the provisions of  
422 Section 9 of this act, the Board of Trustees of State Institutions  
423 of Higher Learning is \* \* \* authorized and empowered to lease to  
424 private individuals or corporations for a term not exceeding  
425 thirty-one (31) years any land at any of the following  
426 state-supported institutions: Mississippi State University of  
427 Agriculture and Applied Science, Jackson State University,  
428 Mississippi Valley State University, University of Mississippi,  
429 Alcorn State University, University of Southern Mississippi,  
430 Mississippi University for Women and Delta State University, for  
431 the purpose of erecting auxiliary facilities thereon for active  
432 faculty and students. The auxiliary facilities shall be  
433 constructed thereon by private financing, and shall be leased back

434 to the board for use by the concerned state-supported institution  
435 of higher learning. The lease shall contain a provision  
436 permitting the board to purchase the building located thereon for  
437 the sum of One Dollar (\$1.00) after payment by the board of all  
438 sums of money due under said lease.

439 (b) The Board of Trustees of State Institutions of  
440 Higher Learning may grant authority to universities to lease to  
441 private individuals or corporations for a period not exceeding  
442 thirty-one (31) years, any land at the university, for the purpose  
443 of erecting auxiliary facilities thereon for active faculty and  
444 students. The auxiliary facilities shall be constructed thereon  
445 by private financing, and shall be leased back to the board for  
446 use by the university. The lease shall contain a provision  
447 permitting the board to purchase the auxiliary facilities located  
448 thereon for the sum of One Dollar (\$1.00) after payment by the  
449 board of all sums of money due under the lease.

450 (2) Upon there being an agreement reached between the Board  
451 of Trustees of State Institutions of Higher Learning and a  
452 university upon whose land the auxiliary facility will be  
453 constructed and a private individual or corporation to enter into  
454 such lease agreement as described in subsection (1), it shall be  
455 stipulated in the agreement that all newly constructed auxiliary  
456 facilities shall be in compliance with the minimum building code  
457 standards employed by the state as required under Section  
458 31-11-33.

459 (3) The board, in conjunction with the university, shall  
460 have sole discretion to decide the placement of auxiliary  
461 facilities upon the university's campus. However, the scope of  
462 any such construction by private entities shall be limited to two  
463 (2) projects per year for each university, and shall not exceed in  
464 the aggregate five percent (5%) of the university's total main or  
465 satellite campus property under the original lease period.

466       (4) No contractual lease agreement for the construction of  
467 privately financed auxiliary facilities shall be entered into by a  
468 university without prior approval of the Board of Trustees of  
469 State Institutions of Higher Learning. An auxiliary facility is a  
470 facility that is defined by the Higher Education General  
471 Information Survey (HEGIS) categories 500/600/700/800/900.

472       Before entering into contractual lease agreement for the  
473 construction of privately financed auxiliary facilities, the Board  
474 of Trustees for the State Institutions of Higher Learning shall  
475 establish rules and procedures to ensure adequate public  
476 advertisement of any requirement for the construction of privately  
477 financed auxiliary facilities at a university in order to promote  
478 full and open competition and which set forth the requirements for  
479 evaluation of offers and award of the contract lease agreement to  
480 the private entity.

481       **SECTION 7.** Section 31-7-13, Mississippi Code of 1972, is  
482 amended as follows:

483       31-7-13. All agencies and governing authorities shall  
484 purchase their commodities and printing; contract for garbage  
485 collection or disposal; contract for solid waste collection or  
486 disposal; contract for sewage collection or disposal; contract for  
487 public construction; and contract for rentals as herein provided.

488       (a) **Bidding procedure for purchases not over \$3,500.00.**  
489 Purchases which do not involve an expenditure of more than Three  
490 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or  
491 shipping charges, may be made without advertising or otherwise  
492 requesting competitive bids. However, nothing contained in this  
493 paragraph (a) shall be construed to prohibit any agency or  
494 governing authority from establishing procedures which require  
495 competitive bids on purchases of Three Thousand Five Hundred  
496 Dollars (\$3,500.00) or less.

497       (b) **Bidding procedure for purchases over \$3,500.00 but**  
498 **not over \$15,000.00.** Purchases which involve an expenditure of

499 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not  
500 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
501 freight and shipping charges may be made from the lowest and best  
502 bidder without publishing or posting advertisement for bids,  
503 provided at least two (2) competitive written bids have been  
504 obtained. Any governing authority purchasing commodities pursuant  
505 to this paragraph (b) may authorize its purchasing agent, or his  
506 designee, with regard to governing authorities other than  
507 counties, or its purchase clerk, or his designee, with regard to  
508 counties, to accept the lowest and best competitive written bid.  
509 Such authorization shall be made in writing by the governing  
510 authority and shall be maintained on file in the primary office of  
511 the agency and recorded in the official minutes of the governing  
512 authority, as appropriate. The purchasing agent or the purchase  
513 clerk, or their designee, as the case may be, and not the  
514 governing authority, shall be liable for any penalties and/or  
515 damages as may be imposed by law for any act or omission of the  
516 purchasing agent or purchase clerk, or their designee,  
517 constituting a violation of law in accepting any bid without  
518 approval by the governing authority. The term "competitive  
519 written bid" shall mean a bid submitted on a bid form furnished by  
520 the buying agency or governing authority and signed by authorized  
521 personnel representing the vendor, or a bid submitted on a  
522 vendor's letterhead or identifiable bid form and signed by  
523 authorized personnel representing the vendor. "Competitive" shall  
524 mean that the bids are developed based upon comparable  
525 identification of the needs and are developed independently and  
526 without knowledge of other bids or prospective bids. Bids may be  
527 submitted by facsimile, electronic mail or other generally  
528 accepted method of information distribution. Bids submitted by  
529 electronic transmission shall not require the signature of the  
530 vendor's representative unless required by agencies or governing  
531 authorities.

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

533 (i) **Publication requirement.**

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

541 2. The purchasing entity may designate the  
542 method by which the bids will be received, including, but not  
543 limited to, bids sealed in an envelope, bids received  
544 electronically in a secure system, bids received via a reverse  
545 auction, or bids received by any other method that promotes open  
546 competition and has been approved by the Office of Purchasing and  
547 Travel. The provisions of this part 2 of subparagraph (i) shall  
548 be repealed on July 1, 2008.

549 3. The date as published for the bid opening  
550 shall not be less than seven (7) working days after the last  
551 published notice; however, if the purchase involves a construction  
552 project in which the estimated cost is in excess of Fifteen  
553 Thousand Dollars (\$15,000.00), such bids shall not be opened in  
554 less than fifteen (15) working days after the last notice is  
555 published and the notice for the purchase of such construction  
556 shall be published once each week for two (2) consecutive weeks.  
557 The notice of intention to let contracts or purchase equipment  
558 shall state the time and place at which bids shall be received,  
559 list the contracts to be made or types of equipment or supplies to  
560 be purchased, and, if all plans and/or specifications are not  
561 published, refer to the plans and/or specifications on file. If  
562 there is no newspaper published in the county or municipality,  
563 then such notice shall be given by posting same at the courthouse,  
564 or for municipalities at the city hall, and at two (2) other

565 public places in the county or municipality, and also by  
566 publication once each week for two (2) consecutive weeks in some  
567 newspaper having a general circulation in the county or  
568 municipality in the above provided manner. On the same date that  
569 the notice is submitted to the newspaper for publication, the  
570 agency or governing authority involved shall mail written notice  
571 to, or provide electronic notification to the main office of the  
572 Mississippi Contract Procurement Center that contains the same  
573 information as that in the published notice.

574           (ii) **Bidding process amendment procedure.** If all  
575 plans and/or specifications are published in the notification,  
576 then the plans and/or specifications may not be amended. If all  
577 plans and/or specifications are not published in the notification,  
578 then amendments to the plans/specifications, bid opening date, bid  
579 opening time and place may be made, provided that the agency or  
580 governing authority maintains a list of all prospective bidders  
581 who are known to have received a copy of the bid documents and all  
582 such prospective bidders are sent copies of all amendments. This  
583 notification of amendments may be made via mail, facsimile,  
584 electronic mail or other generally accepted method of information  
585 distribution. No addendum to bid specifications may be issued  
586 within two (2) working days of the time established for the  
587 receipt of bids unless such addendum also amends the bid opening  
588 to a date not less than five (5) working days after the date of  
589 the addendum.

590           (iii) **Filing requirement.** In all cases involving  
591 governing authorities, before the notice shall be published or  
592 posted, the plans or specifications for the construction or  
593 equipment being sought shall be filed with the clerk of the board  
594 of the governing authority. In addition to these requirements, a  
595 bid file shall be established which shall indicate those vendors  
596 to whom such solicitations and specifications were issued, and

597 such file shall also contain such information as is pertinent to  
598 the bid.

599 (iv) **Specification restrictions.**

600 1. Specifications pertinent to such bidding  
601 shall be written so as not to exclude comparable equipment of  
602 domestic manufacture. However, if valid justification is  
603 presented, the Department of Finance and Administration or the  
604 board of a governing authority may approve a request for specific  
605 equipment necessary to perform a specific job. Further, such  
606 justification, when placed on the minutes of the board of a  
607 governing authority, may serve as authority for that governing  
608 authority to write specifications to require a specific item of  
609 equipment needed to perform a specific job. In addition to these  
610 requirements, from and after July 1, 1990, vendors of relocatable  
611 classrooms and the specifications for the purchase of such  
612 relocatable classrooms published by local school boards shall meet  
613 all pertinent regulations of the State Board of Education,  
614 including prior approval of such bid by the State Department of  
615 Education.

616 2. Specifications for construction projects  
617 may include an allowance for commodities, equipment, furniture,  
618 construction materials or systems in which prospective bidders are  
619 instructed to include in their bids specified amounts for such  
620 items so long as the allowance items are acquired by the vendor in  
621 a commercially reasonable manner and approved by the  
622 agency/governing authority. Such acquisitions shall not be made  
623 to circumvent the public purchasing laws.

624 (v) Agencies and governing authorities may  
625 establish secure procedures by which bids may be submitted via  
626 electronic means.

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

628 (i) **Decision procedure.** Purchases may be made  
629 from the lowest and best bidder. In determining the lowest and

630 best bid, freight and shipping charges shall be included.  
631 Life-cycle costing, total cost bids, warranties, guaranteed  
632 buy-back provisions and other relevant provisions may be included  
633 in the best bid calculation. All best bid procedures for state  
634 agencies must be in compliance with regulations established by the  
635 Department of Finance and Administration. If any governing  
636 authority accepts a bid other than the lowest bid actually  
637 submitted, it shall place on its minutes detailed calculations and  
638 narrative summary showing that the accepted bid was determined to  
639 be the lowest and best bid, including the dollar amount of the  
640 accepted bid and the dollar amount of the lowest bid. No agency  
641 or governing authority shall accept a bid based on items not  
642 included in the specifications.

643                   (ii) **Decision procedure for Certified Purchasing**  
644 **Offices.** In addition to the decision procedure set forth in  
645 paragraph (d)(i), Certified Purchasing Offices may also use the  
646 following procedure: Purchases may be made from the bidder  
647 offering the best value. In determining the best value bid,  
648 freight and shipping charges shall be included. Life-cycle  
649 costing, total cost bids, warranties, guaranteed buy-back  
650 provisions, documented previous experience, training costs and  
651 other relevant provisions may be included in the best value  
652 calculation. This provision shall authorize Certified Purchasing  
653 Offices to utilize a Request For Proposals (RFP) process when  
654 purchasing commodities. All best value procedures for state  
655 agencies must be in compliance with regulations established by the  
656 Department of Finance and Administration. No agency or governing  
657 authority shall accept a bid based on items or criteria not  
658 included in the specifications.

659                   (iii) **Construction project negotiations authority.**  
660 If the lowest and best bid is not more than ten percent (10%)  
661 above the amount of funds allocated for a public construction or  
662 renovation project, then the agency or governing authority shall

663 be permitted to negotiate with the lowest bidder in order to enter  
664 into a contract for an amount not to exceed the funds allocated.

665           (e) **Lease-purchase authorization.** For the purposes of  
666 this section, the term "equipment" shall mean equipment, furniture  
667 and, if applicable, associated software and other applicable  
668 direct costs associated with the acquisition. Any lease-purchase  
669 of equipment which an agency is not required to lease-purchase  
670 under the master lease-purchase program pursuant to Section  
671 31-7-10 and any lease-purchase of equipment which a governing  
672 authority elects to lease-purchase may be acquired by a  
673 lease-purchase agreement under this paragraph (e). Lease-purchase  
674 financing may also be obtained from the vendor or from a  
675 third-party source after having solicited and obtained at least  
676 two (2) written competitive bids, as defined in paragraph (b) of  
677 this section, for such financing without advertising for such  
678 bids. Solicitation for the bids for financing may occur before or  
679 after acceptance of bids for the purchase of such equipment or,  
680 where no such bids for purchase are required, at any time before  
681 the purchase thereof. No such lease-purchase agreement shall be  
682 for an annual rate of interest which is greater than the overall  
683 maximum interest rate to maturity on general obligation  
684 indebtedness permitted under Section 75-17-101, and the term of  
685 such lease-purchase agreement shall not exceed the useful life of  
686 equipment covered thereby as determined according to the upper  
687 limit of the asset depreciation range (ADR) guidelines for the  
688 Class Life Asset Depreciation Range System established by the  
689 Internal Revenue Service pursuant to the United States Internal  
690 Revenue Code and regulations thereunder as in effect on December  
691 31, 1980, or comparable depreciation guidelines with respect to  
692 any equipment not covered by ADR guidelines. Any lease-purchase  
693 agreement entered into pursuant to this paragraph (e) may contain  
694 any of the terms and conditions which a master lease-purchase  
695 agreement may contain under the provisions of Section 31-7-10(5),

696 and shall contain an annual allocation dependency clause  
697 substantially similar to that set forth in Section 31-7-10(8).  
698 Each agency or governing authority entering into a lease-purchase  
699 transaction pursuant to this paragraph (e) shall maintain with  
700 respect to each such lease-purchase transaction the same  
701 information as required to be maintained by the Department of  
702 Finance and Administration pursuant to Section 31-7-10(13).  
703 However, nothing contained in this section shall be construed to  
704 permit agencies to acquire items of equipment with a total  
705 acquisition cost in the aggregate of less than Ten Thousand  
706 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
707 equipment, and the purchase thereof by any lessor, acquired by  
708 lease-purchase under this paragraph and all lease-purchase  
709 payments with respect thereto shall be exempt from all Mississippi  
710 sales, use and ad valorem taxes. Interest paid on any  
711 lease-purchase agreement under this section shall be exempt from  
712 State of Mississippi income taxation.

713           (f) **Alternate bid authorization.** When necessary to  
714 ensure ready availability of commodities for public works and the  
715 timely completion of public projects, no more than two (2)  
716 alternate bids may be accepted by a governing authority for  
717 commodities. No purchases may be made through use of such  
718 alternate bids procedure unless the lowest and best bidder cannot  
719 deliver the commodities contained in his bid. In that event,  
720 purchases of such commodities may be made from one (1) of the  
721 bidders whose bid was accepted as an alternate.

722           (g) **Construction contract change authorization.** In the  
723 event a determination is made by an agency or governing authority  
724 after a construction contract is let that changes or modifications  
725 to the original contract are necessary or would better serve the  
726 purpose of the agency or the governing authority, such agency or  
727 governing authority may, in its discretion, order such changes  
728 pertaining to the construction that are necessary under the

729 circumstances without the necessity of further public bids;  
730 provided that such change shall be made in a commercially  
731 reasonable manner and shall not be made to circumvent the public  
732 purchasing statutes. In addition to any other authorized person,  
733 the architect or engineer hired by an agency or governing  
734 authority with respect to any public construction contract shall  
735 have the authority, when granted by an agency or governing  
736 authority, to authorize changes or modifications to the original  
737 contract without the necessity of prior approval of the agency or  
738 governing authority when any such change or modification is less  
739 than one percent (1%) of the total contract amount. The agency or  
740 governing authority may limit the number, manner or frequency of  
741 such emergency changes or modifications.

742           (h) **Petroleum purchase alternative.** In addition to  
743 other methods of purchasing authorized in this chapter, when any  
744 agency or governing authority shall have a need for gas, diesel  
745 fuel, oils and/or other petroleum products in excess of the amount  
746 set forth in paragraph (a) of this section, such agency or  
747 governing authority may purchase the commodity after having  
748 solicited and obtained at least two (2) competitive written bids,  
749 as defined in paragraph (b) of this section. If two (2)  
750 competitive written bids are not obtained, the entity shall comply  
751 with the procedures set forth in paragraph (c) of this section.  
752 In the event any agency or governing authority shall have  
753 advertised for bids for the purchase of gas, diesel fuel, oils and  
754 other petroleum products and coal and no acceptable bids can be  
755 obtained, such agency or governing authority is authorized and  
756 directed to enter into any negotiations necessary to secure the  
757 lowest and best contract available for the purchase of such  
758 commodities.

759           (i) **Road construction petroleum products price**  
760 **adjustment clause authorization.** Any agency or governing  
761 authority authorized to enter into contracts for the construction,

762 maintenance, surfacing or repair of highways, roads or streets,  
763 may include in its bid proposal and contract documents a price  
764 adjustment clause with relation to the cost to the contractor,  
765 including taxes, based upon an industry-wide cost index, of  
766 petroleum products including asphalt used in the performance or  
767 execution of the contract or in the production or manufacture of  
768 materials for use in such performance. Such industry-wide index  
769 shall be established and published monthly by the Mississippi  
770 Department of Transportation with a copy thereof to be mailed,  
771 upon request, to the clerks of the governing authority of each  
772 municipality and the clerks of each board of supervisors  
773 throughout the state. The price adjustment clause shall be based  
774 on the cost of such petroleum products only and shall not include  
775 any additional profit or overhead as part of the adjustment. The  
776 bid proposals or document contract shall contain the basis and  
777 methods of adjusting unit prices for the change in the cost of  
778 such petroleum products.

779           (j) **State agency emergency purchase procedure.** If the  
780 governing board or the executive head, or his designee, of any  
781 agency of the state shall determine that an emergency exists in  
782 regard to the purchase of any commodities or repair contracts, so  
783 that the delay incident to giving opportunity for competitive  
784 bidding would be detrimental to the interests of the state, then  
785 the provisions herein for competitive bidding shall not apply and  
786 the head of such agency shall be authorized to make the purchase  
787 or repair. Total purchases so made shall only be for the purpose  
788 of meeting needs created by the emergency situation. In the event  
789 such executive head is responsible to an agency board, at the  
790 meeting next following the emergency purchase, documentation of  
791 the purchase, including a description of the commodity purchased,  
792 the purchase price thereof and the nature of the emergency shall  
793 be presented to the board and placed on the minutes of the board  
794 of such agency. The head of such agency, or his designee, shall,

795 at the earliest possible date following such emergency purchase,  
796 file with the Department of Finance and Administration (i) a  
797 statement explaining the conditions and circumstances of the  
798 emergency, which shall include a detailed description of the  
799 events leading up to the situation and the negative impact to the  
800 entity if the purchase is made following the statutory  
801 requirements set forth in paragraph (a), (b) or (c) of this  
802 section, and (ii) a certified copy of the appropriate minutes of  
803 the board of such agency, if applicable. On or before September 1  
804 of each year, the State Auditor shall prepare and deliver to the  
805 Senate Fees, Salaries and Administration Committee, the House Fees  
806 and Salaries of Public Officers Committee and the Joint  
807 Legislative Budget Committee a report containing a list of all  
808 state agency emergency purchases and supporting documentation for  
809 each emergency purchase.

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

811 If the governing authority, or the governing authority acting  
812 through its designee, shall determine that an emergency exists in  
813 regard to the purchase of any commodities or repair contracts, so  
814 that the delay incident to giving opportunity for competitive  
815 bidding would be detrimental to the interest of the governing  
816 authority, then the provisions herein for competitive bidding  
817 shall not apply and any officer or agent of such governing  
818 authority having general or special authority therefor in making  
819 such purchase or repair shall approve the bill presented therefor,  
820 and he shall certify in writing thereon from whom such purchase  
821 was made, or with whom such a repair contract was made. At the  
822 board meeting next following the emergency purchase or repair  
823 contract, documentation of the purchase or repair contract,  
824 including a description of the commodity purchased, the price  
825 thereof and the nature of the emergency shall be presented to the  
826 board and shall be placed on the minutes of the board of such  
827 governing authority.

828           (1) **Hospital purchase, lease-purchase and lease**  
829 **authorization.**

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

835           (ii) In addition to the authority granted in  
836 subparagraph (i) of this paragraph (1), the commissioners or board  
837 of trustees is authorized to enter into contracts for the lease of  
838 equipment or services, or both, which it considers necessary for  
839 the proper care of patients if, in its opinion, it is not  
840 financially feasible to purchase the necessary equipment or  
841 services. Any such contract for the lease of equipment or  
842 services executed by the commissioners or board shall not exceed a  
843 maximum of five (5) years' duration and shall include a  
844 cancellation clause based on unavailability of funds. If such  
845 cancellation clause is exercised, there shall be no further  
846 liability on the part of the lessee. Any such contract for the  
847 lease of equipment or services executed on behalf of the  
848 commissioners or board that complies with the provisions of this  
849 subparagraph (ii) shall be excepted from the bid requirements set  
850 forth in this section.

851           (m) **Exceptions from bidding requirements.** Excepted  
852 from bid requirements are:

853           (i) **Purchasing agreements approved by department.**  
854 Purchasing agreements, contracts and maximum price regulations  
855 executed or approved by the Department of Finance and  
856 Administration.

857           (ii) **Outside equipment repairs.** Repairs to  
858 equipment, when such repairs are made by repair facilities in the  
859 private sector; however, engines, transmissions, rear axles and/or  
860 other such components shall not be included in this exemption when

861 replaced as a complete unit instead of being repaired and the need  
862 for such total component replacement is known before disassembly  
863 of the component; however, invoices identifying the equipment,  
864 specific repairs made, parts identified by number and name,  
865 supplies used in such repairs, and the number of hours of labor  
866 and costs therefor shall be required for the payment for such  
867 repairs.

868                   (iii) **In-house equipment repairs.** Purchases of  
869 parts for repairs to equipment, when such repairs are made by  
870 personnel of the agency or governing authority; however, entire  
871 assemblies, such as engines or transmissions, shall not be  
872 included in this exemption when the entire assembly is being  
873 replaced instead of being repaired.

874                   (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
875 of gravel or fill dirt which are to be removed and transported by  
876 the purchaser.

877                   (v) **Governmental equipment auctions.** Motor  
878 vehicles or other equipment purchased from a federal agency or  
879 authority, another governing authority or state agency of the  
880 State of Mississippi, or any governing authority or state agency  
881 of another state at a public auction held for the purpose of  
882 disposing of such vehicles or other equipment. Any purchase by a  
883 governing authority under the exemption authorized by this  
884 subparagraph (v) shall require advance authorization spread upon  
885 the minutes of the governing authority to include the listing of  
886 the item or items authorized to be purchased and the maximum bid  
887 authorized to be paid for each item or items.

888                   (vi) **Intergovernmental sales and transfers.**  
889 Purchases, sales, transfers or trades by governing authorities or  
890 state agencies when such purchases, sales, transfers or trades are  
891 made by a private treaty agreement or through means of  
892 negotiation, from any federal agency or authority, another  
893 governing authority or state agency of the State of Mississippi,

894 or any state agency or governing authority of another state.  
895 Nothing in this section shall permit such purchases through public  
896 auction except as provided for in subparagraph (v) of this  
897 section. It is the intent of this section to allow governmental  
898 entities to dispose of and/or purchase commodities from other  
899 governmental entities at a price that is agreed to by both  
900 parties. This shall allow for purchases and/or sales at prices  
901 which may be determined to be below the market value if the  
902 selling entity determines that the sale at below market value is  
903 in the best interest of the taxpayers of the state. Governing  
904 authorities shall place the terms of the agreement and any  
905 justification on the minutes, and state agencies shall obtain  
906 approval from the Department of Finance and Administration, prior  
907 to releasing or taking possession of the commodities.

908 (vii) **Perishable supplies or food.** Perishable  
909 supplies or food purchased for use in connection with hospitals,  
910 the school lunch programs, homemaking programs and for the feeding  
911 of county or municipal prisoners.

912 (viii) **Single source items.** Noncompetitive items  
913 available from one (1) source only. In connection with the  
914 purchase of noncompetitive items only available from one (1)  
915 source, a certification of the conditions and circumstances  
916 requiring the purchase shall be filed by the agency with the  
917 Department of Finance and Administration and by the governing  
918 authority with the board of the governing authority. Upon receipt  
919 of that certification the Department of Finance and Administration  
920 or the board of the governing authority, as the case may be, may,  
921 in writing, authorize the purchase, which authority shall be noted  
922 on the minutes of the body at the next regular meeting thereafter.  
923 In those situations, a governing authority is not required to  
924 obtain the approval of the Department of Finance and  
925 Administration.

926                   (ix) **Waste disposal facility construction**  
927 **contracts.** Construction of incinerators and other facilities for  
928 disposal of solid wastes in which products either generated  
929 therein, such as steam, or recovered therefrom, such as materials  
930 for recycling, are to be sold or otherwise disposed of; however,  
931 in constructing such facilities, a governing authority or agency  
932 shall publicly issue requests for proposals, advertised for in the  
933 same manner as provided herein for seeking bids for public  
934 construction projects, concerning the design, construction,  
935 ownership, operation and/or maintenance of such facilities,  
936 wherein such requests for proposals when issued shall contain  
937 terms and conditions relating to price, financial responsibility,  
938 technology, environmental compatibility, legal responsibilities  
939 and such other matters as are determined by the governing  
940 authority or agency to be appropriate for inclusion; and after  
941 responses to the request for proposals have been duly received,  
942 the governing authority or agency may select the most qualified  
943 proposal or proposals on the basis of price, technology and other  
944 relevant factors and from such proposals, but not limited to the  
945 terms thereof, negotiate and enter contracts with one or more of  
946 the persons or firms submitting proposals.

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

950                   (xi) **Information technology products.** Purchases  
951 of information technology products made by governing authorities  
952 under the provisions of purchase schedules, or contracts executed  
953 or approved by the Mississippi Department of Information  
954 Technology Services and designated for use by governing  
955 authorities.

956                   (xii) **Energy efficiency services and equipment.**  
957 Energy efficiency services and equipment acquired by school  
958 districts, community and junior colleges, institutions of higher

959 learning and state agencies or other applicable governmental  
960 entities on a shared-savings, lease or lease-purchase basis  
961 pursuant to Section 31-7-14.

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

966                   (xiv) **Library books and other reference materials.**  
967 Purchases by libraries or for libraries of books and periodicals;  
968 processed film, video cassette tapes, filmstrips and slides;  
969 recorded audio tapes, cassettes and diskettes; and any such items  
970 as would be used for teaching, research or other information  
971 distribution; however, equipment such as projectors, recorders,  
972 audio or video equipment, and monitor televisions are not exempt  
973 under this subparagraph.

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

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

980                   (xvii) **Multichannel interactive video systems.**  
981 From and after July 1, 1990, contracts by Mississippi Authority  
982 for Educational Television with any private educational  
983 institution or private nonprofit organization whose purposes are  
984 educational in regard to the construction, purchase, lease or  
985 lease-purchase of facilities and equipment and the employment of  
986 personnel for providing multichannel interactive video systems  
987 (ITSF) in the school districts of this state.

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

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

997                   (xx) **Junior college books for rent.** Purchases by  
998 community or junior colleges of textbooks which are obtained for  
999 the purpose of renting such books to students as part of a book  
1000 service system.

1001                   (xxi) **Certain school district purchases.**  
1002 Purchases of commodities made by school districts from vendors  
1003 with which any levying authority of the school district, as  
1004 defined in Section 37-57-1, has contracted through competitive  
1005 bidding procedures for purchases of the same commodities.

1006                   (xxii) **Garbage, solid waste and sewage contracts.**  
1007 Contracts for garbage collection or disposal, contracts for solid  
1008 waste collection or disposal and contracts for sewage collection  
1009 or disposal.

1010                   (xxiii) **Municipal water tank maintenance**  
1011 **contracts.** Professional maintenance program contracts for the  
1012 repair or maintenance of municipal water tanks, which provide  
1013 professional services needed to maintain municipal water storage  
1014 tanks for a fixed annual fee for a duration of two (2) or more  
1015 years.

1016                   (xxiv) **Purchases of Mississippi Industries for the**  
1017 **Blind products.** Purchases made by state agencies or governing  
1018 authorities involving any item that is manufactured, processed or  
1019 produced by the Mississippi Industries for the Blind.

1020                   (xxv) **Purchases of state-adopted textbooks.**  
1021 Purchases of state-adopted textbooks by public school districts.

1022                   (xxvi) **Certain purchases under the Mississippi**  
1023 **Major Economic Impact Act.** Contracts entered into pursuant to the  
1024 provisions of Section 57-75-9(2) and (3).

1025                    (xxvii) **Used heavy or specialized machinery or**  
1026 **equipment for installation of soil and water conservation**  
1027 **practices purchased at auction.** Used heavy or specialized  
1028 machinery or equipment used for the installation and  
1029 implementation of soil and water conservation practices or  
1030 measures purchased subject to the restrictions provided in  
1031 Sections 69-27-331 through 69-27-341. Any purchase by the State  
1032 Soil and Water Conservation Commission under the exemption  
1033 authorized by this subparagraph shall require advance  
1034 authorization spread upon the minutes of the commission to include  
1035 the listing of the item or items authorized to be purchased and  
1036 the maximum bid authorized to be paid for each item or items.

1037                    (xxviii) **Hospital lease of equipment or services.**  
1038 Leases by hospitals of equipment or services if the leases are in  
1039 compliance with paragraph (1)(ii).

1040                    (xxix) **Purchases made pursuant to qualified**  
1041 **cooperative purchasing agreements.** Purchases made by certified  
1042 purchasing offices of state agencies or governing authorities  
1043 under cooperative purchasing agreements previously approved by the  
1044 Office of Purchasing and Travel and established by or for any  
1045 municipality, county, parish or state government or the federal  
1046 government, provided that the notification to potential  
1047 contractors includes a clause that sets forth the availability of  
1048 the cooperative purchasing agreement to other governmental  
1049 entities. Such purchases shall only be made if the use of the  
1050 cooperative purchasing agreements is determined to be in the best  
1051 interest of the governmental entity.

1052                    (xxx) **School yearbooks.** Purchases of school  
1053 yearbooks by state agencies or governing authorities; provided,  
1054 however, that state agencies and governing authorities shall use  
1055 for these purchases the RFP process as set forth in the  
1056 Mississippi Procurement Manual adopted by the Office of Purchasing  
1057 and Travel.

1058 (xxx) **Design-build method and dual-phase**  
1059 **design-build \* \* \* method of contracting.** Contracts entered into  
1060 under the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

1061 (n) **Term contract authorization.** All contracts for the  
1062 purchase of:

1063 (i) All contracts for the purchase of commodities,  
1064 equipment and public construction (including, but not limited to,  
1065 repair and maintenance), may be let for periods of not more than  
1066 sixty (60) months in advance, subject to applicable statutory  
1067 provisions prohibiting the letting of contracts during specified  
1068 periods near the end of terms of office. Term contracts for a  
1069 period exceeding twenty-four (24) months shall also be subject to  
1070 ratification or cancellation by governing authority boards taking  
1071 office subsequent to the governing authority board entering the  
1072 contract.

1073 (ii) Bid proposals and contracts may include price  
1074 adjustment clauses with relation to the cost to the contractor  
1075 based upon a nationally published industry-wide or nationally  
1076 published and recognized cost index. The cost index used in a  
1077 price adjustment clause shall be determined by the Department of  
1078 Finance and Administration for the state agencies and by the  
1079 governing board for governing authorities. The bid proposal and  
1080 contract documents utilizing a price adjustment clause shall  
1081 contain the basis and method of adjusting unit prices for the  
1082 change in the cost of such commodities, equipment and public  
1083 construction.

1084 (o) **Purchase law violation prohibition and vendor**  
1085 **penalty.** No contract or purchase as herein authorized shall be  
1086 made for the purpose of circumventing the provisions of this  
1087 section requiring competitive bids, nor shall it be lawful for any  
1088 person or concern to submit individual invoices for amounts within  
1089 those authorized for a contract or purchase where the actual value  
1090 of the contract or commodity purchased exceeds the authorized

1091 amount and the invoices therefor are split so as to appear to be  
1092 authorized as purchases for which competitive bids are not  
1093 required. Submission of such invoices shall constitute a  
1094 misdemeanor punishable by a fine of not less than Five Hundred  
1095 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
1096 or by imprisonment for thirty (30) days in the county jail, or  
1097 both such fine and imprisonment. In addition, the claim or claims  
1098 submitted shall be forfeited.

1099           (p) **Electrical utility petroleum-based equipment**  
1100 **purchase procedure.** When in response to a proper advertisement  
1101 therefor, no bid firm as to price is submitted to an electric  
1102 utility for power transformers, distribution transformers, power  
1103 breakers, reclosers or other articles containing a petroleum  
1104 product, the electric utility may accept the lowest and best bid  
1105 therefor although the price is not firm.

1106           (q) **Fuel management system bidding procedure.** Any  
1107 governing authority or agency of the state shall, before  
1108 contracting for the services and products of a fuel management or  
1109 fuel access system, enter into negotiations with not fewer than  
1110 two (2) sellers of fuel management or fuel access systems for  
1111 competitive written bids to provide the services and products for  
1112 the systems. In the event that the governing authority or agency  
1113 cannot locate two (2) sellers of such systems or cannot obtain  
1114 bids from two (2) sellers of such systems, it shall show proof  
1115 that it made a diligent, good-faith effort to locate and negotiate  
1116 with two (2) sellers of such systems. Such proof shall include,  
1117 but not be limited to, publications of a request for proposals and  
1118 letters soliciting negotiations and bids. For purposes of this  
1119 paragraph (q), a fuel management or fuel access system is an  
1120 automated system of acquiring fuel for vehicles as well as  
1121 management reports detailing fuel use by vehicles and drivers, and  
1122 the term "competitive written bid" shall have the meaning as  
1123 defined in paragraph (b) of this section. Governing authorities

1124 and agencies shall be exempt from this process when contracting  
1125 for the services and products of a fuel management or fuel access  
1126 systems under the terms of a state contract established by the  
1127 Office of Purchasing and Travel.

1128           (r) **Solid waste contract proposal procedure.** Before  
1129 entering into any contract for garbage collection or disposal,  
1130 contract for solid waste collection or disposal or contract for  
1131 sewage collection or disposal, which involves an expenditure of  
1132 more than Fifty Thousand Dollars (\$50,000.00), a governing  
1133 authority or agency shall issue publicly a request for proposals  
1134 concerning the specifications for such services which shall be  
1135 advertised for in the same manner as provided in this section for  
1136 seeking bids for purchases which involve an expenditure of more  
1137 than the amount provided in paragraph (c) of this section. Any  
1138 request for proposals when issued shall contain terms and  
1139 conditions relating to price, financial responsibility,  
1140 technology, legal responsibilities and other relevant factors as  
1141 are determined by the governing authority or agency to be  
1142 appropriate for inclusion; all factors determined relevant by the  
1143 governing authority or agency or required by this paragraph (r)  
1144 shall be duly included in the advertisement to elicit proposals.  
1145 After responses to the request for proposals have been duly  
1146 received, the governing authority or agency shall select the most  
1147 qualified proposal or proposals on the basis of price, technology  
1148 and other relevant factors and from such proposals, but not  
1149 limited to the terms thereof, negotiate and enter contracts with  
1150 one or more of the persons or firms submitting proposals. If the  
1151 governing authority or agency deems none of the proposals to be  
1152 qualified or otherwise acceptable, the request for proposals  
1153 process may be reinitiated. Notwithstanding any other provisions  
1154 of this paragraph, where a county with at least thirty-five  
1155 thousand (35,000) nor more than forty thousand (40,000)  
1156 population, according to the 1990 federal decennial census, owns

1157 or operates a solid waste landfill, the governing authorities of  
1158 any other county or municipality may contract with the governing  
1159 authorities of the county owning or operating the landfill,  
1160 pursuant to a resolution duly adopted and spread upon the minutes  
1161 of each governing authority involved, for garbage or solid waste  
1162 collection or disposal services through contract negotiations.

1163 (s) **Minority set-aside authorization.** Notwithstanding  
1164 any provision of this section to the contrary, any agency or  
1165 governing authority, by order placed on its minutes, may, in its  
1166 discretion, set aside not more than twenty percent (20%) of its  
1167 anticipated annual expenditures for the purchase of commodities  
1168 from minority businesses; however, all such set-aside purchases  
1169 shall comply with all purchasing regulations promulgated by the  
1170 Department of Finance and Administration and shall be subject to  
1171 bid requirements under this section. Set-aside purchases for  
1172 which competitive bids are required shall be made from the lowest  
1173 and best minority business bidder. For the purposes of this  
1174 paragraph, the term "minority business" means a business which is  
1175 owned by a majority of persons who are United States citizens or  
1176 permanent resident aliens (as defined by the Immigration and  
1177 Naturalization Service) of the United States, and who are Asian,  
1178 Black, Hispanic or Native American, according to the following  
1179 definitions:

1180 (i) "Asian" means persons having origins in any of  
1181 the original people of the Far East, Southeast Asia, the Indian  
1182 subcontinent, or the Pacific Islands.

1183 (ii) "Black" means persons having origins in any  
1184 black racial group of Africa.

1185 (iii) "Hispanic" means persons of Spanish or  
1186 Portuguese culture with origins in Mexico, South or Central  
1187 America, or the Caribbean Islands, regardless of race.

1188 (iv) "Native American" means persons having  
1189 origins in any of the original people of North America, including  
1190 American Indians, Eskimos and Aleuts.

1191 (t) **Construction punch list restriction.** The  
1192 architect, engineer or other representative designated by the  
1193 agency or governing authority that is contracting for public  
1194 construction or renovation may prepare and submit to the  
1195 contractor only one (1) preliminary punch list of items that do  
1196 not meet the contract requirements at the time of substantial  
1197 completion and one (1) final list immediately before final  
1198 completion and final payment.

1199 (u) **Procurement of construction services by state**  
1200 **institutions of higher learning.** Contracts for privately financed  
1201 construction of auxiliary facilities on the campus of a state  
1202 institution of higher learning may be awarded by the Board of  
1203 Trustees of State Institutions of Higher Learning to the lowest  
1204 and best bidder, where sealed bids are solicited, or to the  
1205 offeror whose proposal is determined to represent the best value  
1206 to the citizens of the State of Mississippi, where requests for  
1207 proposals are solicited.

1208 (v) **Purchase authorization clarification.** Nothing in  
1209 this section shall be construed as authorizing any purchase not  
1210 authorized by law.

1211 **SECTION 8.** Section 31-11-3, Mississippi Code of 1972, is  
1212 amended as follows:

1213 31-11-3. (1) The Department of Finance and Administration,  
1214 for the purposes of carrying out the provisions of this chapter,  
1215 in addition to all other rights and powers granted by law, shall  
1216 have full power and authority to employ and compensate architects  
1217 or other employees necessary for the purpose of making  
1218 inspections, preparing plans and specifications, supervising the  
1219 erection of any buildings, and making any repairs or additions as  
1220 may be determined by the Department of Finance and Administration

1221 to be necessary, pursuant to the rules and regulations of the  
1222 State Personnel Board. The department shall have entire control  
1223 and supervision of, and determine what, if any, buildings,  
1224 additions, repairs or improvements are to be made under the  
1225 provisions of this chapter, under regulations adopted by the  
1226 Public Procurement Review Board.

1227 (2) The department shall have full power to erect buildings,  
1228 make repairs, additions or improvements, and buy materials,  
1229 supplies and equipment for any of the institutions or departments  
1230 of the state under regulations adopted by the Public Procurement  
1231 Review Board. In addition to other powers conferred, the  
1232 department shall have full power and authority as directed by the  
1233 Legislature, or when funds have been appropriated for its use for  
1234 these purposes, to:

1235 (a) Build a state office building;

1236 (b) Build suitable plants or buildings for the use and  
1237 housing of any state schools or institutions, including the  
1238 building of plants or buildings for new state schools or  
1239 institutions, as provided for by the Legislature;

1240 (c) Provide state aid for the construction of school  
1241 buildings;

1242 (d) Promote and develop the training of returned  
1243 veterans of the United States in all sorts of educational and  
1244 vocational learning to be supplied by the proper educational  
1245 institution of the State of Mississippi, and in so doing allocate  
1246 monies appropriated to it for these purposes to the Governor for  
1247 use by him in setting up, maintaining and operating an office and  
1248 employing a state director of on-the-job training for veterans and  
1249 the personnel necessary in carrying out Public Law No. 346 of the  
1250 United States;

1251 (e) Build and equip a hospital and administration  
1252 building at the Mississippi State Penitentiary;

1253           (f) Build and equip additional buildings and wards at  
1254 the Boswell Retardation Center;

1255           (g) Construct a sewage disposal and treatment plant at  
1256 the state insane hospital, and in so doing acquire additional land  
1257 as may be necessary, and to exercise the right of eminent domain  
1258 in the acquisition of this land;

1259           (h) Build and equip the Mississippi central market and  
1260 purchase or acquire by eminent domain, if necessary, any lands  
1261 needed for this purpose;

1262           (i) Build and equip suitable facilities for a training  
1263 and employing center for the blind;

1264           (j) Build and equip a gymnasium at Columbia Training  
1265 School;

1266           (k) Approve or disapprove the expenditure of any money  
1267 appropriated by the Legislature when authorized by the bill making  
1268 the appropriation;

1269           (l) Expend monies appropriated to it in paying the  
1270 state's part of the cost of any street paving;

1271           (m) Sell and convey state lands when authorized by the  
1272 Legislature, cause said lands to be properly surveyed and platted,  
1273 execute all deeds or other legal instruments, and do any and all  
1274 other things required to effectively carry out the purpose and  
1275 intent of the Legislature. Any transaction which involves state  
1276 lands under the provisions of this paragraph shall be done in a  
1277 manner consistent with the provisions of Section 29-1-1;

1278           (n) Collect and receive from educational institutions  
1279 of the State of Mississippi monies required to be paid by these  
1280 institutions to the state in carrying out any veterans'  
1281 educational programs;

1282           (o) Purchase lands for building sites, or as additions  
1283 to building sites, for the erection of buildings and other  
1284 facilities which the department is authorized to erect, and  
1285 demolish and dispose of old buildings, when necessary for the

1286 proper construction of new buildings. Any transaction which  
1287 involves state lands under the provisions of this paragraph shall  
1288 be done in a manner consistent with the provisions of Section  
1289 29-1-1;

1290 (p) Obtain business property insurance with a  
1291 deductible of not less than One Hundred Thousand Dollars  
1292 (\$100,000.00) on state-owned buildings under the management and  
1293 control of the department; and

1294 (q) In consultation with and approval by the Chairmen  
1295 of the Public Property Committees of the Senate and the House of  
1296 Representatives, enter into contracts for the purpose of providing  
1297 parking spaces for state employees who work in the Woolfolk  
1298 Building, the Carroll Gartin Justice Building or the Walter  
1299 Sillers Office Building. The provisions of this paragraph (q)  
1300 shall stand repealed on July 1, 2010.

1301 (3) The department shall survey state-owned and  
1302 state-utilized buildings to establish an estimate of the costs of  
1303 architectural alterations, pursuant to the Americans With  
1304 Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The  
1305 department shall establish priorities for making the identified  
1306 architectural alterations and shall make known to the Legislative  
1307 Budget Office and to the Legislature the required cost to  
1308 effectuate such alterations. To meet the requirements of this  
1309 section, the department shall use standards of accessibility that  
1310 are at least as stringent as any applicable federal requirements  
1311 and may consider:

1312 (a) Federal minimum guidelines and requirements issued  
1313 by the United States Architectural and Transportation Barriers  
1314 Compliance Board and standards issued by other federal agencies;

1315 (b) The criteria contained in the American Standard  
1316 Specifications for Making Buildings Accessible and Usable by the  
1317 Physically Handicapped and any amendments thereto as approved by  
1318 the American Standards Association, Incorporated (ANSI Standards);

- 1319 (c) Design manuals;  
1320 (d) Applicable federal guidelines;  
1321 (e) Current literature in the field;  
1322 (f) Applicable safety standards; and  
1323 (g) Any applicable environmental impact statements.

1324 (4) The department shall observe the provisions of Section  
1325 31-5-23, in letting contracts and shall use Mississippi products,  
1326 including paint, varnish and lacquer which contain as vehicles  
1327 tung oil and either ester gum or modified resin (with rosin as the  
1328 principal base of constituents), and turpentine shall be used as a  
1329 solvent or thinner, where these products are available at a cost  
1330 not to exceed the cost of products grown, produced, prepared, made  
1331 or manufactured outside of the State of Mississippi.

1332 (5) The department shall have authority to accept grants,  
1333 loans or donations from the United States government or from any  
1334 other sources for the purpose of matching funds in carrying out  
1335 the provisions of this chapter.

1336 (6) The department shall build a wheelchair ramp at the War  
1337 Memorial Building which complies with all applicable federal laws,  
1338 regulations and specifications regarding wheelchair ramps.

1339 (7) The department shall review and preapprove all  
1340 architectural or engineering service contracts entered into by any  
1341 state agency, institution, commission, board or authority  
1342 regardless of the source of funding used to defray the costs of  
1343 the construction or renovation project for which services are to  
1344 be obtained. The provisions of this subsection (7) shall not  
1345 apply to any architectural or engineering contract paid for by  
1346 self-generated funds of any of the state institutions of higher  
1347 learning, nor shall they apply to community college projects that  
1348 are funded from local funds or other nonstate sources which are  
1349 outside the Department of Finance and Administration's  
1350 appropriations or as directed by the Legislature. The provisions  
1351 of this subsection (7) shall not apply to any construction or

1352 design projects of the State Military Department that are funded  
1353 from federal funds or other nonstate sources.

1354 (8) The department shall have the authority to obtain  
1355 annually from the state institutions of higher learning  
1356 information on all building, construction and renovation projects  
1357 including duties, responsibilities and costs of any architect or  
1358 engineer hired by any such institutions.

1359 (9) \* \* \* As an alternative to other methods of awarding  
1360 contracts as prescribed by law, the department may elect to use  
1361 the method of contracting for construction projects set out in  
1362 Sections 31-7-13.1 and 31-7-13.2; however, the dual-phase  
1363 design-build method of construction contracting authorized under  
1364 Section 31-7-13.1 may be used only when the Legislature has  
1365 specifically required or authorized the use of this method in the  
1366 legislation authorizing a project.

1367 \* \* \*

1368 **SECTION 9.** There is created an advisory committee to the  
1369 Board of Trustees of State Institutions of Higher Learning for the  
1370 lease of the property described in Sections 4, 5 and 6 of this  
1371 act, which shall be composed of the following members:

1372 (a) The respective Chairmen of the Public Property  
1373 Committees of the House of Representatives and the Senate;

1374 (b) The respective Chairmen of the Universities and  
1375 Colleges Committees of the House of Representatives and the  
1376 Senate;

1377 (c) One (1) member of the House of Representatives, to  
1378 be appointed by the Speaker of the House; and

1379 (d) One (1) member of the Senate, to be appointed by  
1380 the Lieutenant Governor.

1381 Before selecting the private developer to which to lease the  
1382 property described in Sections 4, 5 and 6, and while negotiating  
1383 the terms of the lease with the private developer that has been  
1384 selected, the Board of Trustees of State Institutions of Higher

1385 Learning shall consult with the advisory committee and consider  
1386 any suggestions and recommendations made by the advisory committee  
1387 regarding the lease of the property.

1388           **SECTION 10.** This act shall take effect and be in force from  
1389 and after July 1, 2007.