

By: Senator(s) Ross

To: Highways and
Transportation; Finance

SENATE BILL NO. 2375

1 AN ACT TO AUTHORIZE THE MISSISSIPPI TRANSPORTATION
2 COMMISSION, COUNTY BOARDS OF SUPERVISORS AND THE GOVERNING
3 AUTHORITIES OF MUNICIPALITIES TO CONSTRUCT, INDIVIDUALLY OR
4 JOINTLY WITH OTHER GOVERNMENTAL ENTITIES, TOLL ROAD OR TOLL BRIDGE
5 PROJECTS WITHIN THE STATE; TO AUTHORIZE THE MISSISSIPPI
6 TRANSPORTATION COMMISSION, COUNTY BOARDS OF SUPERVISORS AND THE
7 GOVERNING AUTHORITIES OF MUNICIPALITIES TO CONTRACT WITH ANY
8 PERSON, CORPORATION OR OTHER BUSINESS LICENSED TO DO BUSINESS IN
9 THE STATE FOR THE PURPOSE OF CONSTRUCTING TOLL ROADS OR BRIDGES;
10 TO PRESCRIBE THE TERMS AND CONDITIONS FOR THE LETTING OF SUCH
11 CONTRACTS AND THE RIGHTS AND DUTIES OF THE PARTIES ENTERING INTO
12 SUCH CONTRACTS; TO AUTHORIZE COUNTIES, CITIES AND THE STATE TO
13 ISSUE REVENUE BONDS TO FINANCE TOLL ROAD AND TOLL BRIDGE PROJECTS;
14 TO PROVIDE THAT TOLLS SHALL CEASE DURING A STATE OF EMERGENCY; TO
15 AMEND SECTIONS 11-46-9, 31-7-13, 65-1-85 AND 65-3-1, MISSISSIPPI
16 CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR
17 RELATED PURPOSES.

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

19 **SECTION 1.** The Mississippi Transportation Commission, county
20 boards of supervisors and/or the governing authorities of
21 municipalities (hereinafter referred to as governmental entities),
22 in their discretion, may construct, operate and maintain,
23 individually or jointly with other governmental entities, one or
24 more new toll roads or toll bridges in the state for motor vehicle
25 traffic, including toll booths and related facilities, at and
26 along only those locations where an alternate untolled route
27 exists. An existing road or any segment of an existing road shall
28 not be part of a new toll road, and the reconstruction, relocation
29 or repair of an existing road shall not be tolled. To qualify as
30 an alternate untolled route, the route must meet or exceed the
31 same design, construction and maintenance standards established by
32 the Mississippi Transportation Commission for highways and bridges
33 on the state highway system. All such highways, pavement,
34 bridges, drainage-related structures and other infrastructure

35 comprising the projects shall be built and maintained in
36 accordance with not less than the minimum highway design,
37 construction and maintenance standards established by the
38 contracting governmental entity for such highways, infrastructure
39 and facilities.

40 **SECTION 2.** (1) In addition to and as an alternative to any
41 other authority granted by law, including, but not limited to,
42 Section 1 of this act, any governmental entities, as defined in
43 Section 1 of this act, in their discretion, may contract,
44 individually or jointly with other governmental entities, with any
45 persons, corporations, partnerships or other businesses licensed
46 to do business in the State of Mississippi (hereinafter referred
47 to as "companies" or "company") for the purpose of designing,
48 financing, constructing, operating and maintaining one or more new
49 toll roads or toll bridges in the state for motor vehicle traffic,
50 including toll booths and related facilities, at and along only
51 those locations where an alternate untolled route exists. An
52 existing road or any segment of an existing road shall not be part
53 of a new toll road, and the reconstruction, relocation or repair
54 of an existing road shall not be tolled. Such contracts shall
55 provide that land held by the governmental entities, whether in
56 fee simple, as an easement or other interest, shall be leased or
57 assigned to a company for design, construction, operation and
58 maintenance of roadways, highways or bridges for motor vehicle
59 traffic, toll booths and related facilities. All such highways,
60 pavement, bridges, drainage-related structures and other
61 infrastructure comprising the projects shall be built and
62 maintained in accordance with not less than the minimum highway
63 design, construction and maintenance standards established by the
64 contracting governmental entity for such highways, infrastructure
65 and facilities. The contracting governmental entity shall conduct
66 periodic inspections of any such project throughout the term of
67 the contract to ensure compliance by the company. Failure of a

68 company to comply with minimum standards established for the
69 project by the contracting governmental entity shall constitute a
70 breach and shall subject the company to liability on its bond or
71 security or to rescission of the contract in accordance with the
72 terms and provisions of the contract.

73 (2) (a) Every contract entered into by a governmental
74 entity under this section (except for contracts entered into with
75 another governmental entity), at a minimum, must provide for the
76 design and construction of a new toll road or toll bridge project
77 and may also provide for the financing, acquisition, lease,
78 maintenance, and/or operation of a new toll road or toll bridge
79 project.

80 (b) If a governmental entity enters into a contract
81 with a company as authorized by Section 2 of this act, such
82 governmental entity shall use a competitive procurement process
83 that provides the best value for the governmental entity. The
84 governmental entity may accept unsolicited proposals for a
85 proposed new toll road or solicit proposals in accordance with
86 this section.

87 (c) A governmental entity shall publish a request for
88 competing proposals and qualifications in a newspaper having a
89 general circulation within such governmental entity or, if the
90 governmental entity is the Mississippi Transportation Commission,
91 shall publish the request in a newspaper having a general
92 circulation at the seat of government and, if the governmental
93 entity has a Web site, shall post the request on such Web site.
94 Such request shall include the criteria used to evaluate the
95 proposals, the relative weight given to the criteria and a
96 deadline by which proposals must be received. At a minimum, a
97 proposal submitted in response to such request must contain:

98 (i) Information regarding the proposed project
99 location, scope and limits;

100 (ii) Information regarding the company's
101 qualifications, experience, technical competence, and capability
102 to develop the project; and

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

106 A governmental entity may interview a company submitting a
107 solicited or unsolicited proposal. In evaluating such proposals,
108 a governmental entity may solicit input from other sources
109 regarding such proposals.

110 (d) The governmental entity shall rank each proposal
111 based on the criteria described in the request for proposals and
112 select the company whose proposal offers the best value to the
113 governmental entity. The governmental entity may enter into
114 discussions with the company whose proposal offers the best value.
115 If at any point during the discussions it appears to the
116 governmental entity that the highest ranking proposal will not
117 provide the governmental entity with the overall best value, the
118 governmental entity may enter into discussions with the company
119 submitting the next-highest ranking proposal.

120 (e) The governmental entity may withdraw a request for
121 competing proposals and qualifications at any time and for any
122 reason and may reject any one or all proposals. In either case,
123 the governmental entity may then publish a new request for
124 competing proposals and qualifications. A governmental entity
125 shall not be required to pay any company for the costs of
126 preparing or submitting proposals.

127 (f) The governmental entity shall prescribe the general
128 form of a contract authorized by this section and may include any
129 matter the governmental entity considers advantageous to it. The
130 governmental entity and the company shall negotiate the specific
131 terms of the contract.

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

136 (h) The transportation commission shall evaluate each
137 proposal based on the criteria established by the commission. The
138 transportation commission shall approve or disapprove a proposal
139 within ninety (90) days after receipt of the proposal. If the
140 transportation commission needs additional information, it may
141 delay approval for an additional sixty (60) days.

142 (3) Every contract entered into by a governmental entity
143 under this section shall require a company to enter into bond and
144 provide such security as the governmental entity determines may be
145 necessary or advisable to ensure timely completion and proper
146 execution and performance of the contract. The term of the
147 contract shall not exceed the date of the retirement of the debt
148 for construction of the toll road and the tolls shall cease the
149 date the debt is retired. The governmental entities are
150 authorized to acquire such property or interests in property as
151 may be necessary, by gift, purchase or eminent domain, for
152 construction and maintenance of the highways or bridges built
153 pursuant to contracts entered into under this section. Upon
154 expiration, termination or rescission of the contract, or upon the
155 retirement of the debt for construction, whichever comes first,
156 all interests that the company may have in the land,
157 infrastructure, facilities or other improvements to the property
158 subject to contract shall terminate and automatically, by
159 operation of law, be returned or conveyed to and vested in the
160 State of Mississippi or the contracting governmental entity. Upon
161 termination, expiration or rescission of the contract, or upon the
162 retirement of the debt for construction, whichever comes first,
163 the collection of tolls shall cease.

164 (4) During the term of any contract entered into under this
165 section, the company may establish, charge and collect motor
166 vehicle operator tolls for use of the highway and its facilities.
167 The amount of such tolls, and any modification thereto, shall be
168 subject to approval by the contracting governmental entity;
169 however, all such contracts entered into with the Mississippi
170 Transportation Commission may require a company to pay a
171 percentage of all tolls collected to the Mississippi Department of
172 Transportation. All such tolls paid to the department shall be
173 deposited into the special bond sinking fund under Section 5 of
174 this act and may be expended only as authorized by the
175 Legislature.

176 (5) If a toll road is a designated evacuation route and a
177 declaration of a state of emergency is issued by the President of
178 the United States or by the Governor, the collection of tolls
179 shall cease until the termination of the state of emergency.

180 (6) All statutes of this state relating to traffic
181 regulation and control shall be applicable to motor vehicles
182 operated upon highways and bridges constructed under this section
183 and shall be enforceable by the Mississippi Department of Public
184 Safety, the Mississippi Highway Safety Patrol or any other law
185 enforcement agency having jurisdiction over such highways and
186 bridges.

187 (7) The State of Mississippi, the Mississippi Transportation
188 Commission, the Mississippi Department of Transportation,
189 counties, municipalities or any other agency or political
190 subdivision, or any officer or employee thereof, shall not be
191 liable for any tortious act or omission arising out of the
192 construction, maintenance or operation of any highway or bridge
193 project under the provisions of this section where the act or
194 omission occurs during the term of any such contract entered into
195 by the Mississippi Transportation Commission or other governmental
196 entity and a company.

197 (8) The powers conferred by this section shall be in
198 addition to the powers conferred by any other law, general,
199 special or local. This section shall be construed as an
200 additional and alternative method of funding all or any portion of
201 the purchasing, building, improving, owning or operating of
202 roadways, highways or bridges under the jurisdiction of the
203 Mississippi Transportation Commission, county boards of
204 supervisors or municipal governing authorities, any provision of
205 the laws of the state or any charter of any municipality to the
206 contrary notwithstanding.

207 **SECTION 3.** (1) For the purpose of providing funds to defray
208 the expenses of projects authorized pursuant to Sections 1 and 2
209 of this act, the board of supervisors of a county or the governing
210 authorities of a municipality shall have the right to borrow money
211 for the project, and to issue revenue bonds therefor in such
212 principal amounts as the board of supervisors or governing
213 authorities may determine to be necessary to provide sufficient
214 funds to defray the expenses of projects authorized pursuant to
215 Sections 1 and 2 of this act. The bonds shall be payable out of
216 any revenues derived from the project, including grants or
217 contributions from the federal government or other sources. Such
218 bonds may be sold at public or private sale at not less than par
219 and shall bear interest at a rate or rates not exceeding that
220 allowed in Section 75-17-103. Any such bonds so issued shall not
221 constitute a debt of the county, the municipality or any political
222 subdivision of the county or the city within the meaning of any
223 constitutional, statutory or charter restriction, limitation or
224 provision. It shall be plainly stated on the face of each bond in
225 substance that the bond has been issued pursuant to the authority
226 granted in this section and that the taxing power of the county or
227 municipality issuing the bond is not pledged to the payment of the
228 bond or the interest on it and that the bond and the interest on

229 it are payable solely from the revenues of the project for which
230 the bond is issued.

231 (2) All bonds issued under the authority of this section
232 shall bear such date or dates, shall be in such form or
233 denomination, shall bear such rate of interest, and shall mature
234 at such times as the county or municipality shall determine, but
235 no bonds issued under the authority of this section shall mature
236 more than twenty-five (25) years from the date of the issuance
237 thereof and none of the bonds shall be sold for less than par and
238 accrued interest. All bonds shall be sold in the manner now
239 provided by law for the sale of bonds without any restrictions,
240 limitations, requirements or conditions applicable to the
241 borrowing of such money and the issuance of such bonds which are
242 not herein contained. The denomination, form, place of payment
243 and other details of such bonds may be determined by resolution or
244 order of the board of supervisors of a county or the governing
245 authorities of a municipality, and shall be executed on behalf of
246 the county or municipality as is now provided by law.

247 (3) Before issuing any bonds under the provisions of this
248 section, the board of supervisors of the county or the governing
249 authorities of the municipality shall, by resolution spread upon
250 the minutes, declare its intention to issue such bonds for the
251 purposes authorized by this section and shall state in the
252 resolution the amount of bonds proposed to be issued and shall
253 likewise fix in the resolution the date upon which the board of
254 supervisors of the county or the governing authorities of the
255 municipality proposes to direct the issuance of the bonds. Notice
256 of such intention shall be published once a week for at least
257 three (3) consecutive weeks in a newspaper published or having a
258 general circulation in the county or the municipality, with the
259 first publication of the notice to be made not less than
260 twenty-one (21) days prior to the date fixed in the resolution for
261 the issuance of the bonds and the last publication to be made not

262 more than seven (7) days prior to such date. If, on or before the
263 date specified in the resolution, twenty percent (20%) or fifteen
264 hundred (1500), whichever is less, of the qualified electors of
265 the county or municipality shall file a written protest against
266 the issuance of the bonds, then an election upon the issuance of
267 the bonds shall be called, and held, as provided in this section.
268 If no such protest shall be filed, then the board of supervisors
269 of the county or the governing authorities of the municipality may
270 issue such bonds without an election on the question of the
271 issuance of the bonds at any time within a period of two (2) years
272 after the date specified in the resolution.

273 (4) If an election is called under the provisions of this
274 section on the question of the issuance of bonds, the election
275 shall be held, insofar as practicable, in the same manner as other
276 elections are held in the county or municipality. At the
277 election, all qualified electors of the county or municipality may
278 vote and the ballots used in the election shall have printed
279 thereon a brief statement of the amount and purposes of the
280 proposed bond issue and the words "FOR THE BOND ISSUE" and the
281 words "AGAINST THE BOND ISSUE," and the voters shall vote by
282 placing a cross (X) or check mark (✓) opposite their choice on the
283 proposition.

284 (5) When the results of any election provided for in this
285 section shall have been canvassed by the election commissioners of
286 the county or municipality and certified by them to the proper
287 authorities, it shall be the duty of the board of supervisors of
288 the county or the governing authorities of the municipality to
289 determine and adjudicate whether or not a majority of the
290 qualified electors who voted in the election voted in favor of the
291 issuance of the bonds and unless a majority of the qualified
292 electors who voted in the election voted in favor of the issuance
293 of the bonds, then the bonds shall not be issued. Should a
294 majority of the qualified electors who vote in the election vote

295 in favor of the bonds, the board of supervisors of the county or
296 the governing authorities of the municipality may issue the bonds,
297 either in whole or in part, within two (2) years from the date of
298 such election, or within two (2) years after final favorable
299 determination of any litigation affecting the issuance of such
300 bonds at such time or times, and in such amount or amounts, not
301 exceeding that specified in the notice of the election, as shall
302 be deemed proper.

303 (6) This section, without reference to any other statute,
304 shall be deemed to be full and complete authority for the issuance
305 of bonds and borrowing of money as authorized in this section by
306 counties or municipalities, and shall be construed as an
307 additional and alternate method therefor. The bonds authorized by
308 this section shall not constitute an indebtedness within the
309 meaning of any constitutional or statutory limitation or
310 restriction.

311 **SECTION 4.** (1) (a) A special fund, to be designated as the
312 "Toll Road Revenue Bond Fund," is created within the State
313 Treasury. The fund shall be maintained by the State Treasurer as
314 a separate and special fund, separate and apart from the General
315 Fund of the state. Unexpended amounts remaining in the fund at
316 the end of a fiscal year shall not lapse into the State General
317 Fund, and any interest earned or investment earnings on amounts in
318 the fund shall be deposited into such fund.

319 (b) Monies deposited into the fund shall be disbursed,
320 in the discretion of the Mississippi Transportation Commission, to
321 pay the costs incurred in defraying the expenses of projects
322 authorized pursuant to Sections 1 and 2 of this act.

323 (2) Amounts deposited into such special fund shall be
324 disbursed to pay the expenses described in subsection (1) of this
325 section. If any monies in the special fund are not used within
326 six (6) years after the date the proceeds of the bonds authorized
327 under Sections 4 through 19 of this act are deposited into such

328 fund, then the Mississippi Transportation Commission shall provide
329 an accounting of such unused monies to the State Bond Commission.
330 Promptly after the State Bond Commission has certified, by
331 resolution duly adopted, that the projects for which the revenue
332 bonds have been issued shall have been completed, abandoned or
333 cannot be completed in a timely fashion, any amounts remaining in
334 such special fund shall be applied to pay debt service on the
335 bonds issued under Sections 4 through 19 of this act, in
336 accordance with the proceedings authorizing the issuance of such
337 bonds and as directed by the commission.

338 **SECTION 5.** For the purpose of providing for the payment of
339 the principal of and interest upon bonds issued under the
340 provisions of Sections 4 through 19 of this act, there is created
341 a special bond sinking fund in the State Treasury. The special
342 bond sinking fund shall consist of the monies required to be
343 deposited into the fund under Section 2 of this act and such other
344 amounts as the Legislature may direct to be paid into the fund by
345 appropriation or other authorization by the Legislature.
346 Unexpended amounts remaining in the special bond sinking fund at
347 the end of a fiscal year shall not lapse into the State General
348 Fund, and any interest earned or investment earnings on amounts in
349 the special bond sinking fund shall be deposited into such sinking
350 fund.

351 **SECTION 6.** The State Bond Commission, at one time or from
352 time to time, may declare by resolution the necessity for issuance
353 of revenue bonds of the State of Mississippi for the purpose of
354 providing funds to defray the expenses of projects authorized
355 pursuant to Sections 1 and 2 of this act. Upon the adoption of a
356 resolution by the Mississippi Transportation Commission, declaring
357 the necessity for the issuance of the revenue bonds authorized by
358 this section, the Mississippi Transportation Commission shall
359 deliver a certified copy of its resolution or resolutions to the
360 State Bond Commission. Upon receipt of such resolution, the State

361 Bond Commission, in its discretion, may act as the issuing agent,
362 prescribe the form of the bonds, advertise for and accept bids,
363 issue and sell, at public or private sale, the bonds so authorized
364 to be sold and do any and all other things necessary and advisable
365 in connection with the issuance and sale of such bonds. Revenue
366 bonds issued under this section shall be in such principal amounts
367 as the Mississippi Transportation Commission may determine to be
368 necessary to provide sufficient funds to defray the expenses of
369 projects authorized pursuant to Sections 1 and 2 of this act.

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

375 **SECTION 7.** The principal of and interest on the bonds
376 authorized under Sections 4 through 19 of this act shall be
377 payable in the manner provided in this section. Such bonds shall
378 bear such date or dates, be in such denomination or denominations,
379 bear interest at such rate or rates (not to exceed the limits set
380 forth in Section 75-17-103, Mississippi Code of 1972), be payable
381 at such place or places within or without the State of
382 Mississippi, shall mature absolutely at such time or times not to
383 exceed twenty-five (25) years from date of issue, be redeemable
384 before maturity at such time or times and upon such terms, with or
385 without premium, shall bear such registration privileges, and
386 shall be substantially in such form, all as shall be determined by
387 resolution of the State Bond Commission.

388 **SECTION 8.** The bonds authorized by Sections 4 through 19 of
389 this act shall be signed by the Chairman of the State Bond
390 Commission, or by his facsimile signature, and the official seal
391 of the State Bond Commission shall be affixed thereto, attested by
392 the secretary of the commission. The interest coupons, if any, to
393 be attached to such bonds may be executed by the facsimile

394 signatures of such officers. Whenever any such bonds shall have
395 been signed by the officials designated to sign the bonds who were
396 in office at the time of such signing but who may have ceased to
397 be such officers before the sale and delivery of such bonds, or
398 who may not have been in office on the date such bonds may bear,
399 the signatures of such officers upon such bonds and coupons shall
400 nevertheless be valid and sufficient for all purposes and have the
401 same effect as if the person so officially signing such bonds had
402 remained in office until their delivery to the purchaser, or had
403 been in office on the date such bonds may bear. However,
404 notwithstanding anything herein to the contrary, such bonds may be
405 issued as provided in the Registered Bond Act of the State of
406 Mississippi.

407 **SECTION 9.** All bonds and interest coupons issued under the
408 provisions of Sections 4 through 19 of this act have all the
409 qualities and incidents of negotiable instruments under the
410 provisions of the Uniform Commercial Code, and in exercising the
411 powers granted by Sections 4 through 19 of this act, the State
412 Bond Commission shall not be required to and need not comply with
413 the provisions of the Uniform Commercial Code.

414 **SECTION 10.** The State Bond Commission shall act as the
415 issuing agent for the bonds authorized under Sections 4 through 19
416 of this act, prescribe the form of the bonds, advertise for and
417 accept bids, issue and sell, at public or private sale, the bonds
418 so authorized to be sold, pay all fees and costs incurred in such
419 issuance and sale, and do any and all other things necessary and
420 advisable in connection with the issuance and sale of such bonds.
421 The State Bond Commission is authorized and empowered to pay the
422 costs that are incident to the sale, issuance and delivery of the
423 bonds authorized under Sections 4 through 19 of this act from the
424 proceeds derived from the sale of such bonds. The State Bond
425 Commission shall sell such bonds on sealed bids at public or
426 private sale, and for such price as it may determine to be for the

427 best interest of the State of Mississippi, but no such sale shall
428 be made at a price less than par plus accrued interest to the date
429 of delivery of the bonds to the purchaser. All interest accruing
430 on such bonds so issued shall be payable semiannually or annually;
431 however, the first interest payment may be for any period of not
432 more than one (1) year.

433 Notice of the sale of any such bonds shall be published at
434 least one time, not less than ten (10) days before the date of
435 sale, and shall be so published in one or more newspapers
436 published or having a general circulation in the City of Jackson,
437 Mississippi, and in one or more other newspapers or financial
438 journals with a national circulation, to be selected by the State
439 Bond Commission.

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

445 **SECTION 11.** Bonds issued under authority of Sections 4
446 through 19 of this act shall be revenue bonds of the state, the
447 principal of and interest on which shall be payable solely from
448 the revenue from projects authorized under Section 1 or 2 of this
449 act. The bonds shall never constitute an indebtedness of the
450 state within the meaning of any state constitutional provision or
451 statutory limitation, and shall never constitute or give rise to a
452 pecuniary liability of the state, or a charge against its general
453 credit or taxing powers, and such fact shall be plainly stated on
454 the face of each such bond. The bonds shall not be considered
455 when computing any limitation of indebtedness of the state. All
456 bonds issued under the authority of Sections 4 through 19 of this
457 act and all interest coupons applicable thereto shall be construed
458 to be negotiable instruments, despite the fact that they are
459 payable solely from a specified source.

460 **SECTION 12.** Upon the issuance and sale of bonds under the
461 provisions of Sections 4 through 19 of this act, the State Bond
462 Commission shall transfer the proceeds of any such sale or sales
463 to a special fund created in Section 4 of this act. The proceeds
464 of such bonds shall be disbursed solely upon the order of the
465 Mississippi Transportation Commission under such restrictions, if
466 any, as may be contained in the resolution providing for the
467 issuance of the bonds.

468 **SECTION 13.** The bonds authorized under Sections 4 through 19
469 of this act may be issued without any other proceedings or the
470 happening of any other conditions or things other than those
471 proceedings, conditions and things which are specified or required
472 by Sections 4 through 19 of this act. Any resolution providing
473 for the issuance of bonds under the provisions of Sections 4
474 through 19 of this act shall become effective immediately upon its
475 adoption by the commission, and any such resolution may be adopted
476 at any regular or special meeting of the commission by a majority
477 of its members.

478 **SECTION 14.** The bonds authorized under the authority of
479 Sections 4 through 19 of this act may be validated in the Chancery
480 Court of the First Judicial District of Hinds County, Mississippi,
481 in the manner and with the force and effect provided by Chapter
482 13, Title 31, Mississippi Code of 1972, for the validation of
483 county, municipal, school district and other bonds. The notice to
484 taxpayers required by such statutes shall be published in a
485 newspaper published or having a general circulation in the City of
486 Jackson, Mississippi.

487 **SECTION 15.** Any holder of bonds issued under the provisions
488 of Sections 4 through 19 of this act or of any of the interest
489 coupons pertaining thereto may, either at law or in equity, by
490 suit, action, mandamus or other proceeding, protect and enforce
491 any and all rights granted under Sections 4 through 19 of this
492 act, or under such resolution, and may enforce and compel

493 performance of all duties required by Sections 4 through 19 of
494 this act to be performed, in order to provide for the payment of
495 bonds and interest thereon.

496 **SECTION 16.** All bonds issued under the provisions of
497 Sections 4 through 19 of this act shall be legal investments for
498 trustees and other fiduciaries, and for savings banks, trust
499 companies and insurance companies organized under the laws of the
500 State of Mississippi, and such bonds shall be legal securities
501 which may be deposited with and shall be received by all public
502 officers and bodies of this state and all municipalities and
503 political subdivisions for the purpose of securing the deposit of
504 public funds.

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

508 **SECTION 18.** The proceeds of the bonds issued under Sections
509 4 through 19 of this act shall be used solely for the purposes
510 provided in Sections 4 through 19 of this act, including the costs
511 incident to the issuance and sale of such bonds.

512 **SECTION 19.** The State Treasurer is authorized, without
513 further process of law, to certify to the Department of Finance
514 and Administration the necessity for warrants, and the Department
515 of Finance and Administration is authorized and directed to issue
516 such warrants, in such amounts as may be necessary to pay when due
517 the principal of, premium, if any, and interest on, or the
518 accreted value of, all bonds issued under Sections 4 through 19 of
519 this act; and the State Treasurer shall forward the necessary
520 amount to the designated place or places of payment of such bonds
521 in ample time to discharge such bonds, or the interest thereon, on
522 the due dates thereof.

523 **SECTION 20.** Section 11-46-9, Mississippi Code of 1972, is
524 amended as follows:

525 11-46-9. (1) A governmental entity and its employees acting
526 within the course and scope of their employment or duties shall
527 not be liable for any claim:

528 (a) Arising out of a legislative or judicial action or
529 inaction, or administrative action or inaction of a legislative or
530 judicial nature;

531 (b) Arising out of any act or omission of an employee
532 of a governmental entity exercising ordinary care in reliance
533 upon, or in the execution or performance of, or in the failure to
534 execute or perform, a statute, ordinance or regulation, whether or
535 not the statute, ordinance or regulation be valid;

536 (c) Arising out of any act or omission of an employee
537 of a governmental entity engaged in the performance or execution
538 of duties or activities relating to police or fire protection
539 unless the employee acted in reckless disregard of the safety and
540 well-being of any person not engaged in criminal activity at the
541 time of injury;

542 (d) Based upon the exercise or performance or the
543 failure to exercise or perform a discretionary function or duty on
544 the part of a governmental entity or employee thereof, whether or
545 not the discretion be abused;

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

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

550 (g) Arising out of the exercise of discretion in
551 determining whether or not to seek or provide the resources
552 necessary for the purchase of equipment, the construction or
553 maintenance of facilities, the hiring of personnel and, in
554 general, the provision of adequate governmental services;

555 (h) Arising out of the issuance, denial, suspension or
556 revocation of, or the failure or refusal to issue, deny, suspend
557 or revoke any privilege, ticket, pass, permit, license,

558 certificate, approval, order or similar authorization where the
559 governmental entity or its employee is authorized by law to
560 determine whether or not such authorization should be issued,
561 denied, suspended or revoked unless such issuance, denial,
562 suspension or revocation, or failure or refusal thereof, is of a
563 malicious or arbitrary and capricious nature;

564 (i) Arising out of the assessment or collection of any
565 tax or fee;

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

569 (k) Arising out of the imposition or establishment of a
570 quarantine, whether such quarantine relates to persons or
571 property;

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

576 (m) Of any claimant who at the time the claim arises is
577 an inmate of any detention center, jail, workhouse, penal farm,
578 penitentiary or other such institution, regardless of whether such
579 claimant is or is not an inmate of any detention center, jail,
580 workhouse, penal farm, penitentiary or other such institution when
581 the claim is filed;

582 (n) Arising out of any work performed by a person
583 convicted of a crime when the work is performed pursuant to any
584 sentence or order of any court or pursuant to laws of the State of
585 Mississippi authorizing or requiring such work;

586 (o) Under circumstances where liability has been or is
587 hereafter assumed by the United States, to the extent of such
588 assumption of liability, including, but not limited to, any claim
589 based on activities of the Mississippi National Guard when such
590 claim is cognizable under the National Guard Tort Claims Act of

591 the United States, 32 USCS 715 (32 USCS 715), or when such claim
592 accrues as a result of active federal service or state service at
593 the call of the Governor for quelling riots and civil
594 disturbances;

595 (p) Arising out of a plan or design for construction or
596 improvements to public property, including, but not limited to,
597 public buildings, highways, roads, streets, bridges, levees,
598 dikes, dams, impoundments, drainage channels, diversion channels,
599 harbors, ports, wharfs or docks, where such plan or design has
600 been approved in advance of the construction or improvement by the
601 legislative body or governing authority of a governmental entity
602 or by some other body or administrative agency, exercising
603 discretion by authority to give such approval, and where such plan
604 or design is in conformity with engineering or design standards in
605 effect at the time of preparation of the plan or design;

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

608 (r) Arising out of the lack of adequate personnel or
609 facilities at a state hospital or state corrections facility if
610 reasonable use of available appropriations has been made to
611 provide such personnel or facilities;

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

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

616 (u) Arising out of or resulting from riots, unlawful
617 assemblies, unlawful public demonstrations, mob violence or civil
618 disturbances;

619 (v) Arising out of an injury caused by a dangerous
620 condition on property of the governmental entity that was not
621 caused by the negligent or other wrongful conduct of an employee
622 of the governmental entity or of which the governmental entity did
623 not have notice, either actual or constructive, and adequate

624 opportunity to protect or warn against; provided, however, that a
625 governmental entity shall not be liable for the failure to warn of
626 a dangerous condition which is obvious to one exercising due care;

627 (w) Arising out of the absence, condition, malfunction
628 or removal by third parties of any sign, signal, warning device,
629 illumination device, guardrail or median barrier, unless the
630 absence, condition, malfunction or removal is not corrected by the
631 governmental entity responsible for its maintenance within a
632 reasonable time after actual or constructive notice; * * *

633 (x) Arising out of the administration of corporal
634 punishment or the taking of any action to maintain control and
635 discipline of students, as defined in Section 37-11-57, by a
636 teacher, assistant teacher, principal or assistant principal of a
637 public school district in the state unless the teacher, assistant
638 teacher, principal or assistant principal acted in bad faith or
639 with malicious purpose or in a manner exhibiting a wanton and
640 willful disregard of human rights or safety; or

641 (y) Arising out of the construction, maintenance or
642 operation of any highway, bridge or roadway project entered into
643 by the Mississippi Transportation Commission or other governmental
644 entity and a company under the provisions of Section 1 or 2 of
645 Senate Bill No. 2375, 2007 Regular Session, where the act or
646 omission occurs during the term of any such contract.

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

- 649 (a) Is inactive and dormant;
650 (b) Receives no revenue;
651 (c) Has no employees; and
652 (d) Owns no property.

653 (3) If a governmental entity exempt from liability by
654 subsection (2) becomes active, receives income, hires employees or
655 acquires any property, such governmental entity shall no longer be

656 exempt from liability as provided in subsection (2) and shall be
657 subject to the provisions of this chapter.

658 **SECTION 21.** Section 31-7-13, Mississippi Code of 1972, is
659 amended as follows:

660 31-7-13. All agencies and governing authorities shall
661 purchase their commodities and printing; contract for garbage
662 collection or disposal; contract for solid waste collection or
663 disposal; contract for sewage collection or disposal; contract for
664 public construction; and contract for rentals as herein provided.

665 (a) **Bidding procedure for purchases not over \$3,500.00.**
666 Purchases which do not involve an expenditure of more than Three
667 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
668 shipping charges, may be made without advertising or otherwise
669 requesting competitive bids. However, nothing contained in this
670 paragraph (a) shall be construed to prohibit any agency or
671 governing authority from establishing procedures which require
672 competitive bids on purchases of Three Thousand Five Hundred
673 Dollars (\$3,500.00) or less.

674 (b) **Bidding procedure for purchases over \$3,500.00 but**
675 **not over \$15,000.00.** Purchases which involve an expenditure of
676 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
677 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
678 freight and shipping charges may be made from the lowest and best
679 bidder without publishing or posting advertisement for bids,
680 provided at least two (2) competitive written bids have been
681 obtained. Any governing authority purchasing commodities pursuant
682 to this paragraph (b) may authorize its purchasing agent, or his
683 designee, with regard to governing authorities other than
684 counties, or its purchase clerk, or his designee, with regard to
685 counties, to accept the lowest and best competitive written bid.
686 Such authorization shall be made in writing by the governing
687 authority and shall be maintained on file in the primary office of
688 the agency and recorded in the official minutes of the governing

689 authority, as appropriate. The purchasing agent or the purchase
690 clerk, or their designee, as the case may be, and not the
691 governing authority, shall be liable for any penalties and/or
692 damages as may be imposed by law for any act or omission of the
693 purchasing agent or purchase clerk, or their designee,
694 constituting a violation of law in accepting any bid without
695 approval by the governing authority. The term "competitive
696 written bid" shall mean a bid submitted on a bid form furnished by
697 the buying agency or governing authority and signed by authorized
698 personnel representing the vendor, or a bid submitted on a
699 vendor's letterhead or identifiable bid form and signed by
700 authorized personnel representing the vendor. "Competitive" shall
701 mean that the bids are developed based upon comparable
702 identification of the needs and are developed independently and
703 without knowledge of other bids or prospective bids. Bids may be
704 submitted by facsimile, electronic mail or other generally
705 accepted method of information distribution. Bids submitted by
706 electronic transmission shall not require the signature of the
707 vendor's representative unless required by agencies or governing
708 authorities.

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

710 (i) **Publication requirement.**

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

718 2. The purchasing entity may designate the
719 method by which the bids will be received, including, but not
720 limited to, bids sealed in an envelope, bids received
721 electronically in a secure system, bids received via a reverse

722 auction, or bids received by any other method that promotes open
723 competition and has been approved by the Office of Purchasing and
724 Travel. The provisions of this part 2 of subparagraph (i) shall
725 be repealed on July 1, 2008.

726 3. The date as published for the bid opening
727 shall not be less than seven (7) working days after the last
728 published notice; however, if the purchase involves a construction
729 project in which the estimated cost is in excess of Fifteen
730 Thousand Dollars (\$15,000.00), such bids shall not be opened in
731 less than fifteen (15) working days after the last notice is
732 published and the notice for the purchase of such construction
733 shall be published once each week for two (2) consecutive weeks.
734 The notice of intention to let contracts or purchase equipment
735 shall state the time and place at which bids shall be received,
736 list the contracts to be made or types of equipment or supplies to
737 be purchased, and, if all plans and/or specifications are not
738 published, refer to the plans and/or specifications on file. If
739 there is no newspaper published in the county or municipality,
740 then such notice shall be given by posting same at the courthouse,
741 or for municipalities at the city hall, and at two (2) other
742 public places in the county or municipality, and also by
743 publication once each week for two (2) consecutive weeks in some
744 newspaper having a general circulation in the county or
745 municipality in the above provided manner. On the same date that
746 the notice is submitted to the newspaper for publication, the
747 agency or governing authority involved shall mail written notice
748 to, or provide electronic notification to the main office of the
749 Mississippi Contract Procurement Center that contains the same
750 information as that in the published notice.

751 (ii) **Bidding process amendment procedure.** If all
752 plans and/or specifications are published in the notification,
753 then the plans and/or specifications may not be amended. If all
754 plans and/or specifications are not published in the notification,

755 then amendments to the plans/specifications, bid opening date, bid
756 opening time and place may be made, provided that the agency or
757 governing authority maintains a list of all prospective bidders
758 who are known to have received a copy of the bid documents and all
759 such prospective bidders are sent copies of all amendments. This
760 notification of amendments may be made via mail, facsimile,
761 electronic mail or other generally accepted method of information
762 distribution. No addendum to bid specifications may be issued
763 within two (2) working days of the time established for the
764 receipt of bids unless such addendum also amends the bid opening
765 to a date not less than five (5) working days after the date of
766 the addendum.

767 (iii) **Filing requirement.** In all cases involving
768 governing authorities, before the notice shall be published or
769 posted, the plans or specifications for the construction or
770 equipment being sought shall be filed with the clerk of the board
771 of the governing authority. In addition to these requirements, a
772 bid file shall be established which shall indicate those vendors
773 to whom such solicitations and specifications were issued, and
774 such file shall also contain such information as is pertinent to
775 the bid.

776 (iv) **Specification restrictions.**

777 1. Specifications pertinent to such bidding
778 shall be written so as not to exclude comparable equipment of
779 domestic manufacture. However, if valid justification is
780 presented, the Department of Finance and Administration or the
781 board of a governing authority may approve a request for specific
782 equipment necessary to perform a specific job. Further, such
783 justification, when placed on the minutes of the board of a
784 governing authority, may serve as authority for that governing
785 authority to write specifications to require a specific item of
786 equipment needed to perform a specific job. In addition to these
787 requirements, from and after July 1, 1990, vendors of relocatable

788 classrooms and the specifications for the purchase of such
789 relocatable classrooms published by local school boards shall meet
790 all pertinent regulations of the State Board of Education,
791 including prior approval of such bid by the State Department of
792 Education.

793 2. Specifications for construction projects
794 may include an allowance for commodities, equipment, furniture,
795 construction materials or systems in which prospective bidders are
796 instructed to include in their bids specified amounts for such
797 items so long as the allowance items are acquired by the vendor in
798 a commercially reasonable manner and approved by the
799 agency/governing authority. Such acquisitions shall not be made
800 to circumvent the public purchasing laws.

801 (v) Agencies and governing authorities may
802 establish secure procedures by which bids may be submitted via
803 electronic means.

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

805 (i) **Decision procedure.** Purchases may be made
806 from the lowest and best bidder. In determining the lowest and
807 best bid, freight and shipping charges shall be included.
808 Life-cycle costing, total cost bids, warranties, guaranteed
809 buy-back provisions and other relevant provisions may be included
810 in the best bid calculation. All best bid procedures for state
811 agencies must be in compliance with regulations established by the
812 Department of Finance and Administration. If any governing
813 authority accepts a bid other than the lowest bid actually
814 submitted, it shall place on its minutes detailed calculations and
815 narrative summary showing that the accepted bid was determined to
816 be the lowest and best bid, including the dollar amount of the
817 accepted bid and the dollar amount of the lowest bid. No agency
818 or governing authority shall accept a bid based on items not
819 included in the specifications.

820 (ii) **Decision procedure for Certified Purchasing**
821 **Offices.** In addition to the decision procedure set forth in
822 paragraph (d)(i), Certified Purchasing Offices may also use the
823 following procedure: Purchases may be made from the bidder
824 offering the best value. In determining the best value bid,
825 freight and shipping charges shall be included. Life-cycle
826 costing, total cost bids, warranties, guaranteed buy-back
827 provisions, documented previous experience, training costs and
828 other relevant provisions may be included in the best value
829 calculation. This provision shall authorize Certified Purchasing
830 Offices to utilize a Request For Proposals (RFP) process when
831 purchasing commodities. All best value procedures for state
832 agencies must be in compliance with regulations established by the
833 Department of Finance and Administration. No agency or governing
834 authority shall accept a bid based on items or criteria not
835 included in the specifications.

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

842 (e) **Lease-purchase authorization.** For the purposes of
843 this section, the term "equipment" shall mean equipment, furniture
844 and, if applicable, associated software and other applicable
845 direct costs associated with the acquisition. Any lease-purchase
846 of equipment which an agency is not required to lease-purchase
847 under the master lease-purchase program pursuant to Section
848 31-7-10 and any lease-purchase of equipment which a governing
849 authority elects to lease-purchase may be acquired by a
850 lease-purchase agreement under this paragraph (e). Lease-purchase
851 financing may also be obtained from the vendor or from a
852 third-party source after having solicited and obtained at least

853 two (2) written competitive bids, as defined in paragraph (b) of
854 this section, for such financing without advertising for such
855 bids. Solicitation for the bids for financing may occur before or
856 after acceptance of bids for the purchase of such equipment or,
857 where no such bids for purchase are required, at any time before
858 the purchase thereof. No such lease-purchase agreement shall be
859 for an annual rate of interest which is greater than the overall
860 maximum interest rate to maturity on general obligation
861 indebtedness permitted under Section 75-17-101, and the term of
862 such lease-purchase agreement shall not exceed the useful life of
863 equipment covered thereby as determined according to the upper
864 limit of the asset depreciation range (ADR) guidelines for the
865 Class Life Asset Depreciation Range System established by the
866 Internal Revenue Service pursuant to the United States Internal
867 Revenue Code and regulations thereunder as in effect on December
868 31, 1980, or comparable depreciation guidelines with respect to
869 any equipment not covered by ADR guidelines. Any lease-purchase
870 agreement entered into pursuant to this paragraph (e) may contain
871 any of the terms and conditions which a master lease-purchase
872 agreement may contain under the provisions of Section 31-7-10(5),
873 and shall contain an annual allocation dependency clause
874 substantially similar to that set forth in Section 31-7-10(8).
875 Each agency or governing authority entering into a lease-purchase
876 transaction pursuant to this paragraph (e) shall maintain with
877 respect to each such lease-purchase transaction the same
878 information as required to be maintained by the Department of
879 Finance and Administration pursuant to Section 31-7-10(13).
880 However, nothing contained in this section shall be construed to
881 permit agencies to acquire items of equipment with a total
882 acquisition cost in the aggregate of less than Ten Thousand
883 Dollars (\$10,000.00) by a single lease-purchase transaction. All
884 equipment, and the purchase thereof by any lessor, acquired by
885 lease-purchase under this paragraph and all lease-purchase

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

890 (f) **Alternate bid authorization.** When necessary to
891 ensure ready availability of commodities for public works and the
892 timely completion of public projects, no more than two (2)
893 alternate bids may be accepted by a governing authority for
894 commodities. No purchases may be made through use of such
895 alternate bids procedure unless the lowest and best bidder cannot
896 deliver the commodities contained in his bid. In that event,
897 purchases of such commodities may be made from one (1) of the
898 bidders whose bid was accepted as an alternate.

899 (g) **Construction contract change authorization.** In the
900 event a determination is made by an agency or governing authority
901 after a construction contract is let that changes or modifications
902 to the original contract are necessary or would better serve the
903 purpose of the agency or the governing authority, such agency or
904 governing authority may, in its discretion, order such changes
905 pertaining to the construction that are necessary under the
906 circumstances without the necessity of further public bids;
907 provided that such change shall be made in a commercially
908 reasonable manner and shall not be made to circumvent the public
909 purchasing statutes. In addition to any other authorized person,
910 the architect or engineer hired by an agency or governing
911 authority with respect to any public construction contract shall
912 have the authority, when granted by an agency or governing
913 authority, to authorize changes or modifications to the original
914 contract without the necessity of prior approval of the agency or
915 governing authority when any such change or modification is less
916 than one percent (1%) of the total contract amount. The agency or
917 governing authority may limit the number, manner or frequency of
918 such emergency changes or modifications.

919 (h) **Petroleum purchase alternative.** In addition to
920 other methods of purchasing authorized in this chapter, when any
921 agency or governing authority shall have a need for gas, diesel
922 fuel, oils and/or other petroleum products in excess of the amount
923 set forth in paragraph (a) of this section, such agency or
924 governing authority may purchase the commodity after having
925 solicited and obtained at least two (2) competitive written bids,
926 as defined in paragraph (b) of this section. If two (2)
927 competitive written bids are not obtained, the entity shall comply
928 with the procedures set forth in paragraph (c) of this section.
929 In the event any agency or governing authority shall have
930 advertised for bids for the purchase of gas, diesel fuel, oils and
931 other petroleum products and coal and no acceptable bids can be
932 obtained, such agency or governing authority is authorized and
933 directed to enter into any negotiations necessary to secure the
934 lowest and best contract available for the purchase of such
935 commodities.

936 (i) **Road construction petroleum products price**
937 **adjustment clause authorization.** Any agency or governing
938 authority authorized to enter into contracts for the construction,
939 maintenance, surfacing or repair of highways, roads or streets,
940 may include in its bid proposal and contract documents a price
941 adjustment clause with relation to the cost to the contractor,
942 including taxes, based upon an industry-wide cost index, of
943 petroleum products including asphalt used in the performance or
944 execution of the contract or in the production or manufacture of
945 materials for use in such performance. Such industry-wide index
946 shall be established and published monthly by the Mississippi
947 Department of Transportation with a copy thereof to be mailed,
948 upon request, to the clerks of the governing authority of each
949 municipality and the clerks of each board of supervisors
950 throughout the state. The price adjustment clause shall be based
951 on the cost of such petroleum products only and shall not include

952 any additional profit or overhead as part of the adjustment. The
953 bid proposals or document contract shall contain the basis and
954 methods of adjusting unit prices for the change in the cost of
955 such petroleum products.

956 (j) **State agency emergency purchase procedure.** If the
957 governing board or the executive head, or his designee, of any
958 agency of the state shall determine that an emergency exists in
959 regard to the purchase of any commodities or repair contracts, so
960 that the delay incident to giving opportunity for competitive
961 bidding would be detrimental to the interests of the state, then
962 the provisions herein for competitive bidding shall not apply and
963 the head of such agency shall be authorized to make the purchase
964 or repair. Total purchases so made shall only be for the purpose
965 of meeting needs created by the emergency situation. In the event
966 such executive head is responsible to an agency board, at the
967 meeting next following the emergency purchase, documentation of
968 the purchase, including a description of the commodity purchased,
969 the purchase price thereof and the nature of the emergency shall
970 be presented to the board and placed on the minutes of the board
971 of such agency. The head of such agency, or his designee, shall,
972 at the earliest possible date following such emergency purchase,
973 file with the Department of Finance and Administration (i) a
974 statement explaining the conditions and circumstances of the
975 emergency, which shall include a detailed description of the
976 events leading up to the situation and the negative impact to the
977 entity if the purchase is made following the statutory
978 requirements set forth in paragraph (a), (b) or (c) of this
979 section, and (ii) a certified copy of the appropriate minutes of
980 the board of such agency, if applicable. On or before September 1
981 of each year, the State Auditor shall prepare and deliver to the
982 Senate Fees, Salaries and Administration Committee, the House Fees
983 and Salaries of Public Officers Committee and the Joint
984 Legislative Budget Committee a report containing a list of all

985 state agency emergency purchases and supporting documentation for
986 each emergency purchase.

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

988 If the governing authority, or the governing authority acting
989 through its designee, shall determine that an emergency exists in
990 regard to the purchase of any commodities or repair contracts, so
991 that the delay incident to giving opportunity for competitive
992 bidding would be detrimental to the interest of the governing
993 authority, then the provisions herein for competitive bidding
994 shall not apply and any officer or agent of such governing
995 authority having general or special authority therefor in making
996 such purchase or repair shall approve the bill presented therefor,
997 and he shall certify in writing thereon from whom such purchase
998 was made, or with whom such a repair contract was made. At the
999 board meeting next following the emergency purchase or repair
1000 contract, documentation of the purchase or repair contract,
1001 including a description of the commodity purchased, the price
1002 thereof and the nature of the emergency shall be presented to the
1003 board and shall be placed on the minutes of the board of such
1004 governing authority.

1005 (l) **Hospital purchase, lease-purchase and lease**
1006 **authorization.**

1007 (i) The commissioners or board of trustees of any
1008 public hospital may contract with such lowest and best bidder for
1009 the purchase or lease-purchase of any commodity under a contract
1010 of purchase or lease-purchase agreement whose obligatory payment
1011 terms do not exceed five (5) years.

1012 (ii) In addition to the authority granted in
1013 subparagraph (i) of this paragraph (l), the commissioners or board
1014 of trustees is authorized to enter into contracts for the lease of
1015 equipment or services, or both, which it considers necessary for
1016 the proper care of patients if, in its opinion, it is not
1017 financially feasible to purchase the necessary equipment or

1018 services. Any such contract for the lease of equipment or
1019 services executed by the commissioners or board shall not exceed a
1020 maximum of five (5) years' duration and shall include a
1021 cancellation clause based on unavailability of funds. If such
1022 cancellation clause is exercised, there shall be no further
1023 liability on the part of the lessee. Any such contract for the
1024 lease of equipment or services executed on behalf of the
1025 commissioners or board that complies with the provisions of this
1026 subparagraph (ii) shall be excepted from the bid requirements set
1027 forth in this section.

1028 (m) **Exceptions from bidding requirements.** Excepted
1029 from bid requirements are:

1030 (i) **Purchasing agreements approved by department.**
1031 Purchasing agreements, contracts and maximum price regulations
1032 executed or approved by the Department of Finance and
1033 Administration.

1034 (ii) **Outside equipment repairs.** Repairs to
1035 equipment, when such repairs are made by repair facilities in the
1036 private sector; however, engines, transmissions, rear axles and/or
1037 other such components shall not be included in this exemption when
1038 replaced as a complete unit instead of being repaired and the need
1039 for such total component replacement is known before disassembly
1040 of the component; however, invoices identifying the equipment,
1041 specific repairs made, parts identified by number and name,
1042 supplies used in such repairs, and the number of hours of labor
1043 and costs therefor shall be required for the payment for such
1044 repairs.

1045 (iii) **In-house equipment repairs.** Purchases of
1046 parts for repairs to equipment, when such repairs are made by
1047 personnel of the agency or governing authority; however, entire
1048 assemblies, such as engines or transmissions, shall not be
1049 included in this exemption when the entire assembly is being
1050 replaced instead of being repaired.

1051 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
1052 of gravel or fill dirt which are to be removed and transported by
1053 the purchaser.

1054 (v) **Governmental equipment auctions.** Motor
1055 vehicles or other equipment purchased from a federal agency or
1056 authority, another governing authority or state agency of the
1057 State of Mississippi, or any governing authority or state agency
1058 of another state at a public auction held for the purpose of
1059 disposing of such vehicles or other equipment. Any purchase by a
1060 governing authority under the exemption authorized by this
1061 subparagraph (v) shall require advance authorization spread upon
1062 the minutes of the governing authority to include the listing of
1063 the item or items authorized to be purchased and the maximum bid
1064 authorized to be paid for each item or items.

1065 (vi) **Intergovernmental sales and transfers.**
1066 Purchases, sales, transfers or trades by governing authorities or
1067 state agencies when such purchases, sales, transfers or trades are
1068 made by a private treaty agreement or through means of
1069 negotiation, from any federal agency or authority, another
1070 governing authority or state agency of the State of Mississippi,
1071 or any state agency or governing authority of another state.
1072 Nothing in this section shall permit such purchases through public
1073 auction except as provided for in subparagraph (v) of this
1074 section. It is the intent of this section to allow governmental
1075 entities to dispose of and/or purchase commodities from other
1076 governmental entities at a price that is agreed to by both
1077 parties. This shall allow for purchases and/or sales at prices
1078 which may be determined to be below the market value if the
1079 selling entity determines that the sale at below market value is
1080 in the best interest of the taxpayers of the state. Governing
1081 authorities shall place the terms of the agreement and any
1082 justification on the minutes, and state agencies shall obtain

1083 approval from the Department of Finance and Administration, prior
1084 to releasing or taking possession of the commodities.

1085 (vii) **Perishable supplies or food.** Perishable
1086 supplies or food purchased for use in connection with hospitals,
1087 the school lunch programs, homemaking programs and for the feeding
1088 of county or municipal prisoners.

1089 (viii) **Single source items.** Noncompetitive items
1090 available from one (1) source only. In connection with the
1091 purchase of noncompetitive items only available from one (1)
1092 source, a certification of the conditions and circumstances
1093 requiring the purchase shall be filed by the agency with the
1094 Department of Finance and Administration and by the governing
1095 authority with the board of the governing authority. Upon receipt
1096 of that certification the Department of Finance and Administration
1097 or the board of the governing authority, as the case may be, may,
1098 in writing, authorize the purchase, which authority shall be noted
1099 on the minutes of the body at the next regular meeting thereafter.
1100 In those situations, a governing authority is not required to
1101 obtain the approval of the Department of Finance and
1102 Administration.

1103 (ix) **Waste disposal facility construction**
1104 **contracts.** Construction of incinerators and other facilities for
1105 disposal of solid wastes in which products either generated
1106 therein, such as steam, or recovered therefrom, such as materials
1107 for recycling, are to be sold or otherwise disposed of; however,
1108 in constructing such facilities, a governing authority or agency
1109 shall publicly issue requests for proposals, advertised for in the
1110 same manner as provided herein for seeking bids for public
1111 construction projects, concerning the design, construction,
1112 ownership, operation and/or maintenance of such facilities,
1113 wherein such requests for proposals when issued shall contain
1114 terms and conditions relating to price, financial responsibility,
1115 technology, environmental compatibility, legal responsibilities

1116 and such other matters as are determined by the governing
1117 authority or agency to be appropriate for inclusion; and after
1118 responses to the request for proposals have been duly received,
1119 the governing authority or agency may select the most qualified
1120 proposal or proposals on the basis of price, technology and other
1121 relevant factors and from such proposals, but not limited to the
1122 terms thereof, negotiate and enter contracts with one or more of
1123 the persons or firms submitting proposals.

1124 (x) **Hospital group purchase contracts.** Supplies,
1125 commodities and equipment purchased by hospitals through group
1126 purchase programs pursuant to Section 31-7-38.

1127 (xi) **Information technology products.** Purchases
1128 of information technology products made by governing authorities
1129 under the provisions of purchase schedules, or contracts executed
1130 or approved by the Mississippi Department of Information
1131 Technology Services and designated for use by governing
1132 authorities.

1133 (xii) **Energy efficiency services and equipment.**
1134 Energy efficiency services and equipment acquired by school
1135 districts, community and junior colleges, institutions of higher
1136 learning and state agencies or other applicable governmental
1137 entities on a shared-savings, lease or lease-purchase basis
1138 pursuant to Section 31-7-14.

1139 (xiii) **Municipal electrical utility system fuel.**
1140 Purchases of coal and/or natural gas by municipally-owned electric
1141 power generating systems that have the capacity to use both coal
1142 and natural gas for the generation of electric power.

1143 (xiv) **Library books and other reference materials.**
1144 Purchases by libraries or for libraries of books and periodicals;
1145 processed film, video cassette tapes, filmstrips and slides;
1146 recorded audio tapes, cassettes and diskettes; and any such items
1147 as would be used for teaching, research or other information
1148 distribution; however, equipment such as projectors, recorders,

1149 audio or video equipment, and monitor televisions are not exempt
1150 under this subparagraph.

1151 (xv) **Unmarked vehicles.** Purchases of unmarked
1152 vehicles when such purchases are made in accordance with
1153 purchasing regulations adopted by the Department of Finance and
1154 Administration pursuant to Section 31-7-9(2).

1155 (xvi) **Election ballots.** Purchases of ballots
1156 printed pursuant to Section 23-15-351.

1157 (xvii) **Multichannel interactive video systems.**
1158 From and after July 1, 1990, contracts by Mississippi Authority
1159 for Educational Television with any private educational
1160 institution or private nonprofit organization whose purposes are
1161 educational in regard to the construction, purchase, lease or
1162 lease-purchase of facilities and equipment and the employment of
1163 personnel for providing multichannel interactive video systems
1164 (ITSF) in the school districts of this state.

1165 (xviii) **Purchases of prison industry products.**
1166 From and after January 1, 1991, purchases made by state agencies
1167 or governing authorities involving any item that is manufactured,
1168 processed, grown or produced from the state's prison industries.

1169 (xix) **Undercover operations equipment.** Purchases
1170 of surveillance equipment or any other high-tech equipment to be
1171 used by law enforcement agents in undercover operations, provided
1172 that any such purchase shall be in compliance with regulations
1173 established by the Department of Finance and Administration.

1174 (xx) **Junior college books for rent.** Purchases by
1175 community or junior colleges of textbooks which are obtained for
1176 the purpose of renting such books to students as part of a book
1177 service system.

1178 (xxi) **Certain school district purchases.**
1179 Purchases of commodities made by school districts from vendors
1180 with which any levying authority of the school district, as

1181 defined in Section 37-57-1, has contracted through competitive
1182 bidding procedures for purchases of the same commodities.

1183 (xxii) **Garbage, solid waste and sewage contracts.**
1184 Contracts for garbage collection or disposal, contracts for solid
1185 waste collection or disposal and contracts for sewage collection
1186 or disposal.

1187 (xxiii) **Municipal water tank maintenance**
1188 **contracts.** Professional maintenance program contracts for the
1189 repair or maintenance of municipal water tanks, which provide
1190 professional services needed to maintain municipal water storage
1191 tanks for a fixed annual fee for a duration of two (2) or more
1192 years.

1193 (xxiv) **Purchases of Mississippi Industries for the**
1194 **Blind products.** Purchases made by state agencies or governing
1195 authorities involving any item that is manufactured, processed or
1196 produced by the Mississippi Industries for the Blind.

1197 (xxv) **Purchases of state-adopted textbooks.**
1198 Purchases of state-adopted textbooks by public school districts.

1199 (xxvi) **Certain purchases under the Mississippi**
1200 **Major Economic Impact Act.** Contracts entered into pursuant to the
1201 provisions of Section 57-75-9(2) and (3).

1202 (xxvii) **Used heavy or specialized machinery or**
1203 **equipment for installation of soil and water conservation**
1204 **practices purchased at auction.** Used heavy or specialized
1205 machinery or equipment used for the installation and
1206 implementation of soil and water conservation practices or
1207 measures purchased subject to the restrictions provided in
1208 Sections 69-27-331 through 69-27-341. Any purchase by the State
1209 Soil and Water Conservation Commission under the exemption
1210 authorized by this subparagraph shall require advance
1211 authorization spread upon the minutes of the commission to include
1212 the listing of the item or items authorized to be purchased and
1213 the maximum bid authorized to be paid for each item or items.

1214 (xxviii) **Hospital lease of equipment or services.**
1215 Leases by hospitals of equipment or services if the leases are in
1216 compliance with paragraph (1)(ii).

1217 (xxix) **Purchases made pursuant to qualified**
1218 **cooperative purchasing agreements.** Purchases made by certified
1219 purchasing offices of state agencies or governing authorities
1220 under cooperative purchasing agreements previously approved by the
1221 Office of Purchasing and Travel and established by or for any
1222 municipality, county, parish or state government or the federal
1223 government, provided that the notification to potential
1224 contractors includes a clause that sets forth the availability of
1225 the cooperative purchasing agreement to other governmental
1226 entities. Such purchases shall only be made if the use of the
1227 cooperative purchasing agreements is determined to be in the best
1228 interest of the governmental entity.

1229 (xxx) **School yearbooks.** Purchases of school
1230 yearbooks by state agencies or governing authorities; provided,
1231 however, that state agencies and governing authorities shall use
1232 for these purchases the RFP process as set forth in the
1233 Mississippi Procurement Manual adopted by the Office of Purchasing
1234 and Travel.

1235 (xxxii) **Toll roads and bridge construction**
1236 **projects.** Contracts entered into under the provisions of Section
1237 1 or 2 of Senate Bill No. 2375, 2007 Regular Session.

1238 (n) **Term contract authorization.** All contracts for the
1239 purchase of:

1240 (i) All contracts for the purchase of commodities,
1241 equipment and public construction (including, but not limited to,
1242 repair and maintenance), may be let for periods of not more than
1243 sixty (60) months in advance, subject to applicable statutory
1244 provisions prohibiting the letting of contracts during specified
1245 periods near the end of terms of office. Term contracts for a
1246 period exceeding twenty-four (24) months shall also be subject to

1247 ratification or cancellation by governing authority boards taking
1248 office subsequent to the governing authority board entering the
1249 contract.

1250 (ii) Bid proposals and contracts may include price
1251 adjustment clauses with relation to the cost to the contractor
1252 based upon a nationally published industry-wide or nationally
1253 published and recognized cost index. The cost index used in a
1254 price adjustment clause shall be determined by the Department of
1255 Finance and Administration for the state agencies and by the
1256 governing board for governing authorities. The bid proposal and
1257 contract documents utilizing a price adjustment clause shall
1258 contain the basis and method of adjusting unit prices for the
1259 change in the cost of such commodities, equipment and public
1260 construction.

1261 (o) **Purchase law violation prohibition and vendor**
1262 **penalty.** No contract or purchase as herein authorized shall be
1263 made for the purpose of circumventing the provisions of this
1264 section requiring competitive bids, nor shall it be lawful for any
1265 person or concern to submit individual invoices for amounts within
1266 those authorized for a contract or purchase where the actual value
1267 of the contract or commodity purchased exceeds the authorized
1268 amount and the invoices therefor are split so as to appear to be
1269 authorized as purchases for which competitive bids are not
1270 required. Submission of such invoices shall constitute a
1271 misdemeanor punishable by a fine of not less than Five Hundred
1272 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1273 or by imprisonment for thirty (30) days in the county jail, or
1274 both such fine and imprisonment. In addition, the claim or claims
1275 submitted shall be forfeited.

1276 (p) **Electrical utility petroleum-based equipment**
1277 **purchase procedure.** When in response to a proper advertisement
1278 therefor, no bid firm as to price is submitted to an electric
1279 utility for power transformers, distribution transformers, power

1280 breakers, reclosers or other articles containing a petroleum
1281 product, the electric utility may accept the lowest and best bid
1282 therefor although the price is not firm.

1283 (q) **Fuel management system bidding procedure.** Any
1284 governing authority or agency of the state shall, before
1285 contracting for the services and products of a fuel management or
1286 fuel access system, enter into negotiations with not fewer than
1287 two (2) sellers of fuel management or fuel access systems for
1288 competitive written bids to provide the services and products for
1289 the systems. In the event that the governing authority or agency
1290 cannot locate two (2) sellers of such systems or cannot obtain
1291 bids from two (2) sellers of such systems, it shall show proof
1292 that it made a diligent, good-faith effort to locate and negotiate
1293 with two (2) sellers of such systems. Such proof shall include,
1294 but not be limited to, publications of a request for proposals and
1295 letters soliciting negotiations and bids. For purposes of this
1296 paragraph (q), a fuel management or fuel access system is an
1297 automated system of acquiring fuel for vehicles as well as
1298 management reports detailing fuel use by vehicles and drivers, and
1299 the term "competitive written bid" shall have the meaning as
1300 defined in paragraph (b) of this section. Governing authorities
1301 and agencies shall be exempt from this process when contracting
1302 for the services and products of a fuel management or fuel access
1303 systems under the terms of a state contract established by the
1304 Office of Purchasing and Travel.

1305 (r) **Solid waste contract proposal procedure.** Before
1306 entering into any contract for garbage collection or disposal,
1307 contract for solid waste collection or disposal or contract for
1308 sewage collection or disposal, which involves an expenditure of
1309 more than Fifty Thousand Dollars (\$50,000.00), a governing
1310 authority or agency shall issue publicly a request for proposals
1311 concerning the specifications for such services which shall be
1312 advertised for in the same manner as provided in this section for

1313 seeking bids for purchases which involve an expenditure of more
1314 than the amount provided in paragraph (c) of this section. Any
1315 request for proposals when issued shall contain terms and
1316 conditions relating to price, financial responsibility,
1317 technology, legal responsibilities and other relevant factors as
1318 are determined by the governing authority or agency to be
1319 appropriate for inclusion; all factors determined relevant by the
1320 governing authority or agency or required by this paragraph (r)
1321 shall be duly included in the advertisement to elicit proposals.
1322 After responses to the request for proposals have been duly
1323 received, the governing authority or agency shall select the most
1324 qualified proposal or proposals on the basis of price, technology
1325 and other relevant factors and from such proposals, but not
1326 limited to the terms thereof, negotiate and enter contracts with
1327 one or more of the persons or firms submitting proposals. If the
1328 governing authority or agency deems none of the proposals to be
1329 qualified or otherwise acceptable, the request for proposals
1330 process may be reinitiated. Notwithstanding any other provisions
1331 of this paragraph, where a county with at least thirty-five
1332 thousand (35,000) nor more than forty thousand (40,000)
1333 population, according to the 1990 federal decennial census, owns
1334 or operates a solid waste landfill, the governing authorities of
1335 any other county or municipality may contract with the governing
1336 authorities of the county owning or operating the landfill,
1337 pursuant to a resolution duly adopted and spread upon the minutes
1338 of each governing authority involved, for garbage or solid waste
1339 collection or disposal services through contract negotiations.

1340 (s) **Minority set-aside authorization.** Notwithstanding
1341 any provision of this section to the contrary, any agency or
1342 governing authority, by order placed on its minutes, may, in its
1343 discretion, set aside not more than twenty percent (20%) of its
1344 anticipated annual expenditures for the purchase of commodities
1345 from minority businesses; however, all such set-aside purchases

1346 shall comply with all purchasing regulations promulgated by the
1347 Department of Finance and Administration and shall be subject to
1348 bid requirements under this section. Set-aside purchases for
1349 which competitive bids are required shall be made from the lowest
1350 and best minority business bidder. For the purposes of this
1351 paragraph, the term "minority business" means a business which is
1352 owned by a majority of persons who are United States citizens or
1353 permanent resident aliens (as defined by the Immigration and
1354 Naturalization Service) of the United States, and who are Asian,
1355 Black, Hispanic or Native American, according to the following
1356 definitions:

1357 (i) "Asian" means persons having origins in any of
1358 the original people of the Far East, Southeast Asia, the Indian
1359 subcontinent, or the Pacific Islands.

1360 (ii) "Black" means persons having origins in any
1361 black racial group of Africa.

1362 (iii) "Hispanic" means persons of Spanish or
1363 Portuguese culture with origins in Mexico, South or Central
1364 America, or the Caribbean Islands, regardless of race.

1365 (iv) "Native American" means persons having
1366 origins in any of the original people of North America, including
1367 American Indians, Eskimos and Aleuts.

1368 (t) **Construction punch list restriction.** The
1369 architect, engineer or other representative designated by the
1370 agency or governing authority that is contracting for public
1371 construction or renovation may prepare and submit to the
1372 contractor only one (1) preliminary punch list of items that do
1373 not meet the contract requirements at the time of substantial
1374 completion and one (1) final list immediately before final
1375 completion and final payment.

1376 (u) **Purchase authorization clarification.** Nothing in
1377 this section shall be construed as authorizing any purchase not
1378 authorized by law.

1379 **SECTION 22.** Section 65-1-85, Mississippi Code of 1972, is
1380 amended as follows:

1381 65-1-85. (1) All contracts by or on behalf of the
1382 commission for the purchase of materials, equipment and supplies
1383 shall be made in compliance with Section 31-7-1 et seq. All
1384 contracts by or on behalf of the commission for construction,
1385 reconstruction or other public work authorized to be done under
1386 the provisions of this chapter, except maintenance, shall be made
1387 by the executive director, subject to the approval of the
1388 commission, only upon competitive bids after due advertisement as
1389 follows, to wit:

1390 (a) Advertisement for bids shall be in accordance with
1391 such rules and regulations, in addition to those herein provided,
1392 as may be adopted therefor by the commission, and the commission
1393 is authorized and empowered to make and promulgate such rules and
1394 regulations as it may deem proper, to provide and adopt standard
1395 specifications for road and bridge construction, and to amend such
1396 rules and regulations from time to time.

1397 (b) The advertisement shall be inserted twice, being
1398 once a week for two (2) successive weeks in a newspaper published
1399 at the seat of government in Jackson, Mississippi, having a
1400 general circulation throughout the state, and no letting shall be
1401 less than fourteen (14) days nor more than sixty (60) days after
1402 the publication of the first notice of such letting, and notices
1403 of such letting may be placed in a metropolitan paper or national
1404 trade publication.

1405 (c) Before advertising for such work, the executive
1406 director shall cause to be prepared and filed in the department
1407 detailed plans and specifications covering the work proposed to be
1408 done and copies of the plans and specifications shall be subject
1409 to inspection by any citizen during all office hours and made
1410 available to all prospective bidders upon such reasonable terms
1411 and conditions as may be required by the commission. A fee shall

1412 be charged equal to the cost of producing a copy of any such plans
1413 and specifications.

1414 (d) All such contracts shall be let to a responsible
1415 bidder with the lowest and best bid, and a record of all bids
1416 received for construction and reconstruction shall be preserved.

1417 (e) Each bid for such a construction and reconstruction
1418 contract must be accompanied by a cashier's check, a certified
1419 check or bidders bond executed by a surety company authorized to
1420 do business in the State of Mississippi, in the principal amount
1421 of not less than five percent (5%) of the bid, guaranteeing that
1422 the bidder will give bond and enter into a contract for the
1423 faithful performance of the contract according to plans and
1424 specifications on file.

1425 (f) Bonds shall be required of the successful bidder in
1426 an amount equal to the contract price. The contract price shall
1427 mean the entire cost of the particular contract let. In the event
1428 change orders are made after the execution of a contract which
1429 results in increasing the total contract price, additional bond in
1430 the amount of the increased cost may be required. The surety or
1431 sureties on such bonds shall be a surety company or surety
1432 companies authorized to do business in the State of Mississippi,
1433 all bonds to be payable to the State of Mississippi and to be
1434 conditioned for the prompt, faithful and efficient performance of
1435 the contract according to plans and specifications, and for the
1436 prompt payment of all persons furnishing labor, material,
1437 equipment and supplies therefor. Such bonds shall be subject to
1438 the additional obligation that the principal and surety or
1439 sureties executing the same shall be liable to the state in a
1440 civil action instituted by the state at the instance of the
1441 commission or any officer of the state authorized in such cases,
1442 for double any amount in money or property the state may lose or
1443 be overcharged or otherwise defrauded of by reason of any wrongful

1444 or criminal act, if any, of the contractor, his agent or
1445 employees.

1446 (2) With respect to equipment used in the construction,
1447 reconstruction or other public work authorized to be done under
1448 the provisions of this chapter: the word "equipment," in addition
1449 to all equipment incorporated into or fully consumed in connection
1450 with such project, shall include the reasonable value of the use
1451 of all equipment of every kind and character and all accessories
1452 and attachments thereto which are reasonably necessary to be used
1453 and which are used in carrying out the performance of the
1454 contract, and the reasonable value of the use thereof, during the
1455 period of time the same are used in carrying out the performance
1456 of the contract, shall be the amount as agreed upon by the persons
1457 furnishing the equipment and those using the same to be paid
1458 therefor, which amount, however, shall not be in excess of the
1459 maximum current rates and charges allowable for leasing or renting
1460 as specified in Section 65-7-95; the word "labor" shall include
1461 all work performed in repairing equipment used in carrying out the
1462 performance of the contract, which repair labor is reasonably
1463 necessary to the efficient operation of said equipment; and the
1464 words "materials" and "supplies" shall include all repair parts
1465 installed in or on equipment used in carrying out the performance
1466 of the contract, which repair parts are reasonably necessary to
1467 the efficient operation of said equipment.

1468 (3) The executive director, subject to the approval of the
1469 commission, shall have the right to reject any and all bids,
1470 whether such right is reserved in the notice or not.

1471 (4) The commission may require the pre-qualification of any
1472 and all bidders and the failure to comply with pre-qualification
1473 requirements may be the basis for the rejection of any bid by the
1474 commission. The commission may require the pre-qualification of
1475 any and all subcontractors before they are approved to participate
1476 in any contract awarded under this section.

1477 (5) The commission may adopt rules and regulations for the
1478 termination of any previously awarded contract which is not timely
1479 proceeding toward completion. The failure of a contractor to
1480 comply with such rules and regulations shall be a lawful basis for
1481 the commission to terminate the contract with such contractor. In
1482 the event of a termination under such rules and regulations, the
1483 contractor shall not be entitled to any payment, benefit or
1484 damages beyond the cost of the work actually completed.

1485 (6) Any contract for construction or paving of any highway
1486 may be entered into for any cost which does not exceed the amount
1487 of funds that may be made available therefor through bond issues
1488 or from other sources of revenue, and the letting of contracts for
1489 such construction or paving shall not necessarily be delayed until
1490 the funds are actually on hand, provided authorization for the
1491 issuance of necessary bonds has been granted by law to supplement
1492 other anticipated revenue, or when the department certifies to the
1493 Department of Finance and Administration and the Legislative
1494 Budget Office that projected receipts of funds by the department
1495 will be sufficient to pay such contracts as they become due and
1496 the Department of Finance and Administration determines that the
1497 projections are reasonable and receipts will be sufficient to pay
1498 the contracts as they become due. The Department of Finance and
1499 Administration shall spread such determination on its minutes
1500 prior to the letting of any contracts based on projected receipts.
1501 Nothing in this subsection shall prohibit the issuance of bonds,
1502 which have been authorized, at any time in the discretion of the
1503 State Bond Commission, nor to prevent investment of surplus funds
1504 in United States government bonds or State of Mississippi bonds as
1505 presently authorized by Section 12, Chapter 312, Laws of 1956.

1506 (7) All other contracts for work to be done under the
1507 provisions of this chapter and for the purchase of materials,
1508 equipment and supplies to be used as provided for in this chapter
1509 shall be made in compliance with Section 31-7-1 et seq.

1510 (8) The commission shall not empower or authorize the
1511 executive director, or any one or more of its members, or any
1512 engineer or other person to let or make contracts for the
1513 construction or repair of public roads, or building bridges, or
1514 for the purchase of material, equipment or supplies contrary to
1515 the provisions of this chapter as set forth in this section,
1516 except in cases of flood or other cases of emergency where the
1517 public interest requires that the work be done or the materials,
1518 equipment or supplies be purchased without the delay incident to
1519 advertising for competitive bids. Such emergency contracts may be
1520 made without advertisement under such rules and regulations as the
1521 commission may prescribe.

1522 (9) The executive director, subject to the approval of the
1523 commission, is authorized to negotiate and make agreements with
1524 communities and/or civic organizations for landscaping,
1525 beautification and maintenance of highway rights-of-way; however,
1526 nothing in this subsection shall be construed as authorization for
1527 the executive director or commission to participate in such a
1528 project to an extent greater than the average cost for maintenance
1529 of shoulders, backslopes and median areas with respect thereto.

1530 (10) The executive director may negotiate and enter into
1531 contracts with private parties for the mowing of grass and
1532 trimming of vegetation on the rights-of-way of state highways
1533 whenever such practice is possible and cost effective.

1534 (11) (a) As an alternative to the method of awarding
1535 contracts as otherwise provided in this section, the commission
1536 may use the design-build method of contracting for the following:

1537 (i) Projects for the Mississippi Development
1538 Authority pursuant to agreements between both governmental
1539 entities;

1540 (ii) Any project with an estimated cost of not
1541 more than Ten Million Dollars (\$10,000,000.00), not to exceed two

1542 (2) projects per fiscal year; and

1543 (iii) Any project which has an estimated cost of
1544 more than Fifty Million Dollars (\$50,000,000.00), not to exceed
1545 one (1) project per fiscal year.

1546 (b) As used in this subsection, the term "design-build"
1547 method of contracting means a contract that combines the design
1548 and construction phases of a project into a single contract and
1549 the contractor is required to satisfactorily perform, at a
1550 minimum, both the design and construction of the project.

1551 (c) The commission shall establish detailed criteria
1552 for the selection of the successful design-build contractor in
1553 each request for design-build proposals. The evaluation of the
1554 selection committee is a public record and shall be maintained for
1555 a minimum of ten (10) years after project completion.

1556 (d) The commission shall maintain detailed records on
1557 projects separate and apart from its regular record keeping. The
1558 commission shall file a report to the Legislature evaluating the
1559 design-build method of contracting by comparing it to the low-bid
1560 method of contracting. At a minimum, the report must include:

1561 (i) The management goals and objectives for the
1562 design-build system of management;

1563 (ii) A complete description of the components of
1564 the design-build management system, including a description of the
1565 system the department put into place on all projects managed under
1566 the system to insure that it has the complete information on
1567 highway segment costs and to insure proper analysis of any
1568 proposal the commission receives from a highway contractor;

1569 (iii) The accountability systems the
1570 Transportation Department established to monitor any design-build
1571 project's compliance with specific goals and objectives for the
1572 project;

1573 (iv) The outcome of any project or any interim
1574 report on an ongoing project let under a design-build management

1575 system showing compliance with the goals, objectives, policies and
1576 procedures the department set for the project; and

1577 (v) The method used by the department to select
1578 projects to be let under the design-build system of management and
1579 all other systems, policies and procedures that the department
1580 considered as necessary components to a design-build management
1581 system.

1582 (e) All contracts let under the provisions of this
1583 subsection shall be subject to oversight and review by the State
1584 Auditor. The State Auditor shall file a report with the
1585 Legislature on or before January 1 of each year detailing his
1586 findings with regard to any contract let or project performed in
1587 violation of the provisions of this subsection. The actual and
1588 necessary expenses incurred by the State Auditor in complying with
1589 this paragraph (e) shall be paid for and reimbursed by the
1590 Mississippi Department of Transportation out of funds made
1591 available for the contract or contracts let and project or
1592 projects performed.

1593 (12) The provisions of this section shall not be construed
1594 to prohibit the commission from awarding or entering into
1595 contracts for the design, construction and financing of toll
1596 roads, highways and bridge projects as provided under Sections 1
1597 and 2 of Senate Bill No. 2375, 2007 Regular Session.

1598 **SECTION 23.** Section 65-3-1, Mississippi Code of 1972, is
1599 amended as follows:

1600 65-3-1. Subject only to the provisions hereinafter
1601 contained, it shall be unlawful for any person, acting privately
1602 or in any official capacity or as an employee of any subdivision
1603 of the state, to charge or collect any toll or other charge from
1604 any person for the privilege of traveling on any part of any
1605 highway which has been heretofore or may hereafter be designated
1606 as a state highway, and being a part of the state highway system,

1607 or on or across any bridge wholly within this state, which is a
1608 part of any such highway.

1609 For a violation of this section, any judge or chancellor may,
1610 in termtime or vacation, grant an injunction upon complaint of the
1611 Mississippi Transportation Commission.

1612 However, none of the provisions of this section shall
1613 prohibit the collection of any toll or other charge for the
1614 privilege of traveling on, or the use of, any causeway, bridge,
1615 tunnel, toll bridge, or any combination of such facility
1616 constructed under the provisions of Sections 65-23-101 through
1617 65-23-119, forming a part of U.S. Highway * * * 90 across the Bay
1618 of St. Louis, or across or under the East Pascagoula River or the
1619 West Pascagoula River on * * * U.S. Highway 90.

1620 The provisions of this section shall be inapplicable to any
1621 toll road or bridge built or operated under the authority of
1622 Section 1 or Section 2 of Senate Bill No. 2375, 2007 Regular
1623 Session.

1624 **SECTION 24.** The Attorney General of the State of Mississippi
1625 shall submit this act, immediately upon approval by the Governor,
1626 or upon approval by the Legislature subsequent to a veto, to the
1627 Attorney General of the United States or to the United States
1628 District Court for the District of Columbia in accordance with the
1629 provisions of the Voting Rights Act of 1965, as amended and
1630 extended.

1631 **SECTION 25.** This act shall take effect and be in force from
1632 and after the date it is effectuated under Section 5 of the Voting
1633 Rights Act of 1965, as amended and extended.