

By: Senator(s) Ross, Dawkins, Dearing,
Walley

To: Highways and
Transportation; Finance

SENATE BILL NO. 2375
(As Sent to Governor)

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; TO
17 PROVIDE FOR THE REPEAL OF SECTIONS 65-23-101 THROUGH 65-23-121,
18 MISSISSIPPI CODE OF 1972, WHICH AUTHORIZE THE DEPARTMENT OF
19 TRANSPORTATION TO CONSTRUCT TOLL BRIDGES ACROSS BAYS AND RIVERS OF
20 THE GULF OF MEXICO; TO FURTHER AMEND SECTION 31-7-13, MISSISSIPPI
21 CODE OF 1972, TO CHANGE THE NAME OF THE MISSISSIPPI CONTRACT
22 PROCUREMENT CENTER TO THE MISSISSIPPI PROCUREMENT TECHNICAL
23 ASSISTANCE PROGRAM; TO EXEMPT FROM BID REQUIREMENTS CONTRACTS FOR
24 THE DESIGN-BUILD METHOD AND DUAL-PHASE DESIGN-BUILD METHOD OF
25 CONTRACTING; AND FOR RELATED PURPOSES.

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

27 **SECTION 1.** The Mississippi Transportation Commission, county
28 boards of supervisors and/or the governing authorities of
29 municipalities (hereinafter referred to as governmental entities),
30 in their discretion, may construct, operate and maintain,
31 individually or jointly with other governmental entities, one or
32 more new toll roads or toll bridges in the state for motor vehicle
33 traffic, including toll booths and related facilities, at and
34 along only those locations where an alternate untolled route
35 exists. An existing road or any segment of an existing road shall
36 not be part of a new toll road, and the reconstruction or repair
37 of an existing road shall not be tolled. All such highways,
38 pavement, bridges, drainage-related structures and other

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

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

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

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

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

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

101 (i) Information regarding the proposed project
102 location, scope and limits;

103 (ii) Information regarding the company's
104 qualifications, experience, technical competence, and capability
105 to develop the project; and

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

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

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

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

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

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

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

145 (3) Every contract entered into by a governmental entity
146 under this section shall require a company to enter into bond and
147 provide such security as the governmental entity determines may be
148 necessary or advisable to ensure timely completion and proper
149 execution and performance of the contract. The term of the
150 contract shall not exceed thirty (30) years and shall not be
151 extended or renewed. The governmental entities are authorized to
152 acquire such property or interests in property as may be
153 necessary, by gift, purchase or eminent domain, for construction
154 and maintenance of the highways or bridges built pursuant to
155 contracts entered into under this section. Upon expiration,
156 termination or rescission of the contract, all interests that the
157 company may have in the land, infrastructure, facilities or other
158 improvements to the property subject to contract shall terminate
159 and automatically, by operation of law, be returned or conveyed to
160 and vested in the State of Mississippi or the contracting
161 governmental entity. Upon termination, expiration or rescission
162 of the contract, the collection of tolls shall cease.

163 (4) During the term of any contract entered into under this
164 section, the company may establish, charge and collect motor
165 vehicle operators tolls for use of the highway or bridge and its
166 facilities. The amount of such tolls, and any modification
167 thereto, shall be subject to approval by the contracting

168 governmental entity after notice and public hearing. All such
169 contracts entered into with the Mississippi Transportation
170 Commission may require a company to pay a percentage of all tolls
171 collected to the Mississippi Department of Transportation. All
172 such tolls paid to the department shall be deposited into the
173 special bond sinking fund under Section 6 of this act and may be
174 expended only as authorized by the Legislature.

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

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

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

196 **SECTION 3.** The powers conferred by Sections 1 and 2 of this
197 act shall be in addition to the powers conferred by any other law,
198 general, special or local. Sections 1 and 2 shall be construed as
199 an additional and alternative method of funding all or any portion
200 of the purchasing, building, improving, owning or operating of

201 roadways, highways or bridges under the jurisdiction of the
202 Mississippi Transportation Commission, county boards of
203 supervisors or municipal governing authorities, any provision of
204 the laws of the state or any charter of any municipality to the
205 contrary notwithstanding.

206 **SECTION 4.** (1) For the purpose of providing funds to defray
207 the expenses of projects authorized pursuant to Sections 1 and 2
208 of this act, the board of supervisors of a county or the governing
209 authorities of a municipality shall have the right to borrow money
210 for the project, and to issue revenue bonds therefor in such
211 principal amounts as the board of supervisors or governing
212 authorities may determine to be necessary to provide sufficient
213 funds to defray the expenses of projects authorized pursuant to
214 Sections 1 and 2 of this act. The bonds shall be payable out of
215 any revenues derived from the project, including grants or
216 contributions from the federal government or other sources. Such
217 bonds may be sold at public or private sale at not less than par
218 and shall bear interest at a rate or rates not exceeding that
219 allowed in Section 75-17-103. Any such bonds so issued shall not
220 constitute a debt of the county, the municipality or any political
221 subdivision of the county or the city within the meaning of any
222 constitutional, statutory or charter restriction, limitation or
223 provision. It shall be plainly stated on the face of each bond in
224 substance that the bond has been issued pursuant to the authority
225 granted in this section and that the taxing power of the county or
226 municipality issuing the bond is not pledged to the payment of the
227 bond or the interest on it and that the bond and the interest on
228 it are payable solely from the revenues of the project for which
229 the bond is issued.

230 (2) All bonds issued under the authority of this section
231 shall bear such date or dates, shall be in such form or
232 denomination, shall bear such rate of interest, and shall mature
233 at such times as the county or municipality shall determine, but

234 no bonds issued under the authority of this section shall mature
235 more than thirty (30) years from the date of the issuance thereof
236 and none of the bonds shall be sold for less than par and accrued
237 interest. All bonds shall be sold in the manner now provided by
238 law for the sale of bonds without any restrictions, limitations,
239 requirements or conditions applicable to the borrowing of such
240 money and the issuance of such bonds which are not herein
241 contained. The denomination, form, place of payment and other
242 details of such bonds may be determined by resolution or order of
243 the board of supervisors of a county or the governing authorities
244 of a municipality, and shall be executed on behalf of the county
245 or municipality as is now provided by law.

246 (3) Before issuing any bonds under the provisions of this
247 section, the board of supervisors of the county or the governing
248 authorities of the municipality shall, by resolution spread upon
249 the minutes, declare its intention to issue such bonds for the
250 purposes authorized by this section and shall state in the
251 resolution the amount of bonds proposed to be issued and shall
252 likewise fix in the resolution the date upon which the board of
253 supervisors of the county or the governing authorities of the
254 municipality proposes to direct the issuance of the bonds. Notice
255 of such intention shall be published once a week for at least
256 three (3) consecutive weeks in a newspaper published or having a
257 general circulation in the county or the municipality, with the
258 first publication of the notice to be made not less than
259 twenty-one (21) days prior to the date fixed in the resolution for
260 the issuance of the bonds and the last publication to be made not
261 more than seven (7) days prior to such date. If, on or before the
262 date specified in the resolution, twenty percent (20%) or fifteen
263 hundred (1500), whichever is less, of the qualified electors of
264 the county or municipality shall file a written protest against
265 the issuance of the bonds, then an election upon the issuance of
266 the bonds shall be called, and held, as provided in this section.

267 If no such protest shall be filed, then the board of supervisors
268 of the county or the governing authorities of the municipality may
269 issue such bonds without an election on the question of the
270 issuance of the bonds at any time within a period of two (2) years
271 after the date specified in the resolution.

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

283 (5) When the results of any election provided for in this
284 section shall have been canvassed by the election commissioners of
285 the county or municipality and certified by them to the proper
286 authorities, it shall be the duty of the board of supervisors of
287 the county or the governing authorities of the municipality to
288 determine and adjudicate whether or not a majority of the
289 qualified electors who voted in the election voted in favor of the
290 issuance of the bonds and unless a majority of the qualified
291 electors who voted in the election voted in favor of the issuance
292 of the bonds, then the bonds shall not be issued. Should a
293 majority of the qualified electors who vote in the election vote
294 in favor of the bonds, the board of supervisors of the county or
295 the governing authorities of the municipality may issue the bonds,
296 either in whole or in part, within two (2) years from the date of
297 such election, or within two (2) years after final favorable
298 determination of any litigation affecting the issuance of such
299 bonds at such time or times, and in such amount or amounts, not

300 exceeding that specified in the notice of the election, as shall
301 be deemed proper.

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

310 **SECTION 5.** (1) (a) A special fund, to be designated as the
311 "Toll Road Revenue Bond Fund," is created within the State
312 Treasury. The fund shall be maintained by the State Treasurer as
313 a separate and special fund, separate and apart from the General
314 Fund of the state. Unexpended amounts remaining in the fund at
315 the end of a fiscal year shall not lapse into the State General
316 Fund, and any interest earned or investment earnings on amounts in
317 the fund shall be deposited into such fund.

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

322 (2) Amounts deposited into such special fund shall be
323 disbursed to pay the expenses described in subsection (1) of this
324 section. If any monies in the special fund are not used within
325 six (6) years after the date the proceeds of the bonds authorized
326 under Sections 5 through 20 of this act are deposited into such
327 fund, then the Mississippi Transportation Commission shall provide
328 an accounting of such unused monies to the State Bond Commission.
329 Promptly after the State Bond Commission has certified, by
330 resolution duly adopted, that the projects for which the revenue
331 bonds have been issued shall have been completed, abandoned or
332 cannot be completed in a timely fashion, any amounts remaining in

333 such special fund shall be applied to pay debt service on the
334 bonds issued under Sections 5 through 20 of this act, in
335 accordance with the proceedings authorizing the issuance of such
336 bonds and as directed by the State Bond Commission.

337 **SECTION 6.** For the purpose of providing for the payment of
338 the principal of and interest upon bonds issued under the
339 provisions of Sections 5 through 20 of this act, there is created
340 a special bond sinking fund in the State Treasury. The special
341 bond sinking fund shall consist of the monies required to be
342 deposited into the fund under Section 2 of this act and such other
343 amounts as the Legislature may direct to be paid into the fund by
344 appropriation or other authorization by the Legislature.
345 Unexpended amounts remaining in the special bond sinking fund at
346 the end of a fiscal year shall not lapse into the State General
347 Fund, and any interest earned or investment earnings on amounts in
348 the special bond sinking fund shall be deposited into such sinking
349 fund.

350 **SECTION 7.** The State Bond Commission, at one time or from
351 time to time, may declare by resolution the necessity for issuance
352 of revenue bonds of the State of Mississippi for the purpose of
353 providing funds to defray the expenses of projects authorized
354 pursuant to Sections 1 and 2 of this act. Upon the adoption of a
355 resolution by the Mississippi Transportation Commission, declaring
356 the necessity for the issuance of the revenue bonds authorized by
357 this section, the Mississippi Transportation Commission shall
358 deliver a certified copy of its resolution or resolutions to the
359 State Bond Commission. Upon receipt of such resolution, the State
360 Bond Commission, in its discretion, may act as the issuing agent,
361 prescribe the form of the bonds, advertise for and accept bids,
362 issue and sell, at public or private sale, the bonds so authorized
363 to be sold and do any and all other things necessary and advisable
364 in connection with the issuance and sale of such bonds. Revenue
365 bonds issued under this section shall be in such principal amounts

366 as the Mississippi Transportation Commission may determine to be
367 necessary to provide sufficient funds to defray the expenses of
368 projects authorized pursuant to Sections 1 and 2 of this act.

369 (2) Any investment earnings on amounts deposited into the
370 special fund created in Section 5 of this act shall be used to pay
371 debt service on bonds issued under Sections 5 through 20 of this
372 act, in accordance with the proceedings authorizing issuance of
373 such bonds.

374 **SECTION 8.** The principal of and interest on the bonds
375 authorized under Sections 5 through 20 of this act shall be
376 payable in the manner provided in this section. Such bonds shall
377 bear such date or dates, be in such denomination or denominations,
378 bear interest at such rate or rates (not to exceed the limits set
379 forth in Section 75-17-103, Mississippi Code of 1972), be payable
380 at such place or places within or without the State of
381 Mississippi, shall mature absolutely at such time or times not to
382 exceed thirty (30) years from date of issue, be redeemable before
383 maturity at such time or times and upon such terms, with or
384 without premium, shall bear such registration privileges, and
385 shall be substantially in such form, all as shall be determined by
386 resolution of the State Bond Commission.

387 **SECTION 9.** The bonds authorized by Sections 5 through 20 of
388 this act shall be signed by the Chairman of the State Bond
389 Commission, or by his facsimile signature, and the official seal
390 of the State Bond Commission shall be affixed thereto, attested by
391 the secretary of the commission. The interest coupons, if any, to
392 be attached to such bonds may be executed by the facsimile
393 signatures of such officers. Whenever any such bonds shall have
394 been signed by the officials designated to sign the bonds who were
395 in office at the time of such signing but who may have ceased to
396 be such officers before the sale and delivery of such bonds, or
397 who may not have been in office on the date such bonds may bear,
398 the signatures of such officers upon such bonds and coupons shall

399 nevertheless be valid and sufficient for all purposes and have the
400 same effect as if the person so officially signing such bonds had
401 remained in office until their delivery to the purchaser, or had
402 been in office on the date such bonds may bear. However,
403 notwithstanding anything herein to the contrary, such bonds may be
404 issued as provided in the Registered Bond Act of the State of
405 Mississippi.

406 SECTION 10. All bonds and interest coupons issued under the
407 provisions of Sections 5 through 20 of this act have all the
408 qualities and incidents of negotiable instruments under the
409 provisions of the Uniform Commercial Code, and in exercising the
410 powers granted by Sections 5 through 20 of this act, the State
411 Bond Commission shall not be required to and need not comply with
412 the provisions of the Uniform Commercial Code.

413 SECTION 11. The State Bond Commission shall act as the
414 issuing agent for the bonds authorized under Sections 5 through 20
415 of this act, prescribe the form of the bonds, advertise for and
416 accept bids, issue and sell, at public or private sale, the bonds
417 so authorized to be sold, pay all fees and costs incurred in such
418 issuance and sale, and do any and all other things necessary and
419 advisable in connection with the issuance and sale of such bonds.
420 The State Bond Commission is authorized and empowered to pay the
421 costs that are incident to the sale, issuance and delivery of the
422 bonds authorized under Sections 5 through 20 of this act from the
423 proceeds derived from the sale of such bonds. The State Bond
424 Commission shall sell such bonds on sealed bids at public or
425 private sale, and for such price as it may determine to be for the
426 best interest of the State of Mississippi, but no such sale shall
427 be made at a price less than par plus accrued interest to the date
428 of delivery of the bonds to the purchaser. All interest accruing
429 on such bonds so issued shall be payable semiannually or annually;
430 however, the first interest payment may be for any period of not
431 more than one (1) year.

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

439 The State Bond Commission, when issuing any bonds under the
440 authority of Sections 5 through 20 of this act, may provide that
441 bonds, at the option of the State of Mississippi, may be called in
442 for payment and redemption at the call price named therein and
443 accrued interest on such date or dates named therein.

444 **SECTION 12.** Bonds issued under the authority of Sections 5
445 through 20 of this act shall be revenue bonds of the state, the
446 principal of and interest on which shall be payable solely from
447 the revenue from projects authorized under Section 1 or 2 of this
448 act. The bonds shall never constitute an indebtedness of the
449 state within the meaning of any state constitutional provision or
450 statutory limitation, and shall never constitute or give rise to a
451 pecuniary liability of the state, or a charge against its general
452 credit or taxing powers, and such fact shall be plainly stated on
453 the face of each such bond. The bonds shall not be considered
454 when computing any limitation of indebtedness of the state. All
455 bonds issued under the authority of Sections 5 through 20 of this
456 act and all interest coupons applicable thereto shall be construed
457 to be negotiable instruments, despite the fact that they are
458 payable solely from a specified source.

459 **SECTION 13.** Upon the issuance and sale of bonds under the
460 provisions of Sections 5 through 20 of this act, the State Bond
461 Commission shall transfer the proceeds of any such sale or sales
462 to a special fund created in Section 5 of this act. The proceeds
463 of such bonds shall be disbursed solely upon the order of the
464 Mississippi Transportation Commission under such restrictions, if

465 any, as may be contained in the resolution providing for the
466 issuance of the bonds.

467 **SECTION 14.** The bonds authorized under Sections 5 through 20
468 of this act may be issued without any other proceedings or the
469 happening of any other conditions or things other than those
470 proceedings, conditions and things which are specified or required
471 by Sections 5 through 20 of this act. Any resolution providing
472 for the issuance of bonds under the provisions of Sections 5
473 through 20 of this act shall become effective immediately upon its
474 adoption by the commission, and any such resolution may be adopted
475 at any regular or special meeting of the commission by a majority
476 of its members.

477 **SECTION 15.** The bonds authorized under the authority of
478 Sections 5 through 20 of this act may be validated in the Chancery
479 Court of the First Judicial District of Hinds County, Mississippi,
480 in the manner and with the force and effect provided by Chapter
481 13, Title 31, Mississippi Code of 1972, for the validation of
482 county, municipal, school district and other bonds. The notice to
483 taxpayers required by such statutes shall be published in a
484 newspaper published or having a general circulation in the City of
485 Jackson, Mississippi.

486 **SECTION 16.** Any holder of bonds issued under the provisions
487 of Sections 5 through 20 of this act or of any of the interest
488 coupons pertaining thereto may, either at law or in equity, by
489 suit, action, mandamus or other proceeding, protect and enforce
490 any and all rights granted under Sections 5 through 20 of this
491 act, or under such resolution, and may enforce and compel
492 performance of all duties required by Sections 5 through 20 of
493 this act to be performed, in order to provide for the payment of
494 bonds and interest thereon.

495 **SECTION 17.** All bonds issued under the provisions of
496 Sections 5 through 20 of this act shall be legal investments for
497 trustees and other fiduciaries, and for savings banks, trust

498 companies and insurance companies organized under the laws of the
499 State of Mississippi, and such bonds shall be legal securities
500 which may be deposited with and shall be received by all public
501 officers and bodies of this state and all municipalities and
502 political subdivisions for the purpose of securing the deposit of
503 public funds.

504 **SECTION 18.** Bonds issued under the provisions of Sections 5
505 through 20 of this act and income therefrom shall be exempt from
506 all taxation in the State of Mississippi.

507 **SECTION 19.** The proceeds of the bonds issued under Sections
508 5 through 20 of this act shall be used solely for the purposes
509 provided in Sections 5 through 20 of this act, including the costs
510 incident to the issuance and sale of such bonds.

511 **SECTION 20.** The State Treasurer is authorized, without
512 further process of law, to certify to the Department of Finance
513 and Administration the necessity for warrants, and the Department
514 of Finance and Administration is authorized and directed to issue
515 such warrants, in such amounts as may be necessary to pay when due
516 the principal of, premium, if any, and interest on, or the
517 accreted value of, all bonds issued under Sections 5 through 20 of
518 this act; and the State Treasurer shall forward the necessary
519 amount to the designated place or places of payment of such bonds
520 in ample time to discharge such bonds, or the interest thereon, on
521 the due dates thereof.

522 **SECTION 21.** Section 11-46-9, Mississippi Code of 1972, is
523 amended as follows:

524 11-46-9. (1) A governmental entity and its employees acting
525 within the course and scope of their employment or duties shall
526 not be liable for any claim:

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

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

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

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

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

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

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

554 (h) Arising out of the issuance, denial, suspension or
555 revocation of, or the failure or refusal to issue, deny, suspend
556 or revoke any privilege, ticket, pass, permit, license,
557 certificate, approval, order or similar authorization where the
558 governmental entity or its employee is authorized by law to
559 determine whether or not such authorization should be issued,
560 denied, suspended or revoked unless such issuance, denial,
561 suspension or revocation, or failure or refusal thereof, is of a
562 malicious or arbitrary and capricious nature;

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

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

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

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

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

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

585 (o) Under circumstances where liability has been or is
586 hereafter assumed by the United States, to the extent of such
587 assumption of liability, including, but not limited to, any claim
588 based on activities of the Mississippi National Guard when such
589 claim is cognizable under the National Guard Tort Claims Act of
590 the United States, 32 USCS 715 (32 USCS 715), or when such claim
591 accrues as a result of active federal service or state service at
592 the call of the Governor for quelling riots and civil
593 disturbances;

594 (p) Arising out of a plan or design for construction or
595 improvements to public property, including, but not limited to,

596 public buildings, highways, roads, streets, bridges, levees,
597 dikes, dams, impoundments, drainage channels, diversion channels,
598 harbors, ports, wharfs or docks, where such plan or design has
599 been approved in advance of the construction or improvement by the
600 legislative body or governing authority of a governmental entity
601 or by some other body or administrative agency, exercising
602 discretion by authority to give such approval, and where such plan
603 or design is in conformity with engineering or design standards in
604 effect at the time of preparation of the plan or design;

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

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

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

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

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

618 (v) Arising out of an injury caused by a dangerous
619 condition on property of the governmental entity that was not
620 caused by the negligent or other wrongful conduct of an employee
621 of the governmental entity or of which the governmental entity did
622 not have notice, either actual or constructive, and adequate
623 opportunity to protect or warn against; provided, however, that a
624 governmental entity shall not be liable for the failure to warn of
625 a dangerous condition which is obvious to one exercising due care;

626 (w) Arising out of the absence, condition, malfunction
627 or removal by third parties of any sign, signal, warning device,
628 illumination device, guardrail or median barrier, unless the

629 absence, condition, malfunction or removal is not corrected by the
630 governmental entity responsible for its maintenance within a
631 reasonable time after actual or constructive notice; * * *

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

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

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

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

652 (3) If a governmental entity exempt from liability by
653 subsection (2) becomes active, receives income, hires employees or
654 acquires any property, such governmental entity shall no longer be
655 exempt from liability as provided in subsection (2) and shall be
656 subject to the provisions of this chapter.

657 **SECTION 22.** Section 31-7-13, Mississippi Code of 1972, as
658 amended by House Bill No. 1012, 2007 Regular Session, House Bill
659 No. 1208, 2007 Regular Session, and House Bill No. 1537, 2007
660 Regular Session, is amended as follows:

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

666 (a) **Bidding procedure for purchases not over \$5,000.00.**

667 Purchases which do not involve an expenditure of more than Five
668 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
669 charges, may be made without advertising or otherwise requesting
670 competitive bids. However, nothing contained in this paragraph

671 (a) shall be construed to prohibit any agency or governing
672 authority from establishing procedures which require competitive
673 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

674 (b) **Bidding procedure for purchases over \$5,000.00 but**

675 **not over \$25,000.00.** Purchases which involve an expenditure of
676 more than Five Thousand Dollars (\$5,000.00) but not more than
677 Twenty-five Thousand Dollars (\$25,000.00), exclusive of freight
678 and shipping charges may be made from the lowest and best bidder
679 without publishing or posting advertisement for bids, provided at
680 least two (2) competitive written bids have been obtained. Any
681 governing authority purchasing commodities pursuant to this
682 paragraph (b) may authorize its purchasing agent, or his designee,
683 with regard to governing authorities other than counties, or its
684 purchase clerk, or his designee, with regard to counties, to
685 accept the lowest and best competitive written bid. Such
686 authorization shall be made in writing by the governing authority
687 and shall be maintained on file in the primary office of the
688 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 \$25,000.00.**

710 (i) **Publication requirement.**

711 1. Purchases which involve an expenditure of
712 more than Twenty-five Thousand Dollars (\$25,000.00), 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 Twenty-five
730 Thousand Dollars (\$25,000.00), 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 Procurement Technical Assistance Program under the
750 Mississippi Development Authority that contains the same
751 information as that in the published notice.

752 (ii) **Bidding process amendment procedure.** If all
753 plans and/or specifications are published in the notification,
754 then the plans and/or specifications may not be amended. If all
755 plans and/or specifications are not published in the notification,
756 then amendments to the plans/specifications, bid opening date, bid
757 opening time and place may be made, provided that the agency or
758 governing authority maintains a list of all prospective bidders

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

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

777 (iv) **Specification restrictions.**

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

792 including prior approval of such bid by the State Department of
793 Education.

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

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

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

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

821 (ii) **Decision procedure for Certified Purchasing**
822 **Offices.** In addition to the decision procedure set forth in
823 paragraph (d)(i), Certified Purchasing Offices may also use the
824 following procedure: Purchases may be made from the bidder

825 offering the best value. In determining the best value bid,
826 freight and shipping charges shall be included. Life-cycle
827 costing, total cost bids, warranties, guaranteed buy-back
828 provisions, documented previous experience, training costs and
829 other relevant provisions may be included in the best value
830 calculation. This provision shall authorize Certified Purchasing
831 Offices to utilize a Request For Proposals (RFP) process when
832 purchasing commodities. All best value procedures for state
833 agencies must be in compliance with regulations established by the
834 Department of Finance and Administration. No agency or governing
835 authority shall accept a bid based on items or criteria not
836 included in the specifications.

837 (iii) **Construction project negotiations authority.**

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

843 (e) **Lease-purchase authorization.** For the purposes of
844 this section, the term "equipment" shall mean equipment, furniture
845 and, if applicable, associated software and other applicable
846 direct costs associated with the acquisition. Any lease-purchase
847 of equipment which an agency is not required to lease-purchase
848 under the master lease-purchase program pursuant to Section
849 31-7-10 and any lease-purchase of equipment which a governing
850 authority elects to lease-purchase may be acquired by a
851 lease-purchase agreement under this paragraph (e). Lease-purchase
852 financing may also be obtained from the vendor or from a
853 third-party source after having solicited and obtained at least
854 two (2) written competitive bids, as defined in paragraph (b) of
855 this section, for such financing without advertising for such
856 bids. Solicitation for the bids for financing may occur before or
857 after acceptance of bids for the purchase of such equipment or,

858 where no such bids for purchase are required, at any time before
859 the purchase thereof. No such lease-purchase agreement shall be
860 for an annual rate of interest which is greater than the overall
861 maximum interest rate to maturity on general obligation
862 indebtedness permitted under Section 75-17-101, and the term of
863 such lease-purchase agreement shall not exceed the useful life of
864 equipment covered thereby as determined according to the upper
865 limit of the asset depreciation range (ADR) guidelines for the
866 Class Life Asset Depreciation Range System established by the
867 Internal Revenue Service pursuant to the United States Internal
868 Revenue Code and regulations thereunder as in effect on December
869 31, 1980, or comparable depreciation guidelines with respect to
870 any equipment not covered by ADR guidelines. Any lease-purchase
871 agreement entered into pursuant to this paragraph (e) may contain
872 any of the terms and conditions which a master lease-purchase
873 agreement may contain under the provisions of Section 31-7-10(5),
874 and shall contain an annual allocation dependency clause
875 substantially similar to that set forth in Section 31-7-10(8).
876 Each agency or governing authority entering into a lease-purchase
877 transaction pursuant to this paragraph (e) shall maintain with
878 respect to each such lease-purchase transaction the same
879 information as required to be maintained by the Department of
880 Finance and Administration pursuant to Section 31-7-10(13).
881 However, nothing contained in this section shall be construed to
882 permit agencies to acquire items of equipment with a total
883 acquisition cost in the aggregate of less than Ten Thousand
884 Dollars (\$10,000.00) by a single lease-purchase transaction. All
885 equipment, and the purchase thereof by any lessor, acquired by
886 lease-purchase under this paragraph and all lease-purchase
887 payments with respect thereto shall be exempt from all Mississippi
888 sales, use and ad valorem taxes. Interest paid on any
889 lease-purchase agreement under this section shall be exempt from
890 State of Mississippi income taxation.

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

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

920 (h) **Petroleum purchase alternative.** In addition to
921 other methods of purchasing authorized in this chapter, when any
922 agency or governing authority shall have a need for gas, diesel
923 fuel, oils and/or other petroleum products in excess of the amount

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

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

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

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

989 If the governing authority, or the governing authority acting

990 through its designee, shall determine that an emergency exists in
991 regard to the purchase of any commodities or repair contracts, so
992 that the delay incident to giving opportunity for competitive
993 bidding would be detrimental to the interest of the governing
994 authority, then the provisions herein for competitive bidding
995 shall not apply and any officer or agent of such governing
996 authority having general or special authority therefor in making
997 such purchase or repair shall approve the bill presented therefor,
998 and he shall certify in writing thereon from whom such purchase
999 was made, or with whom such a repair contract was made. At the
1000 board meeting next following the emergency purchase or repair
1001 contract, documentation of the purchase or repair contract,
1002 including a description of the commodity purchased, the price
1003 thereof and the nature of the emergency shall be presented to the
1004 board and shall be placed on the minutes of the board of such
1005 governing authority.

1006 (1) **Hospital purchase, lease-purchase and lease**
1007 **authorization.**

1008 (i) The commissioners or board of trustees of any
1009 public hospital may contract with such lowest and best bidder for
1010 the purchase or lease-purchase of any commodity under a contract
1011 of purchase or lease-purchase agreement whose obligatory payment
1012 terms do not exceed five (5) years.

1013 (ii) In addition to the authority granted in
1014 subparagraph (i) of this paragraph (1), the commissioners or board
1015 of trustees is authorized to enter into contracts for the lease of
1016 equipment or services, or both, which it considers necessary for
1017 the proper care of patients if, in its opinion, it is not
1018 financially feasible to purchase the necessary equipment or
1019 services. Any such contract for the lease of equipment or
1020 services executed by the commissioners or board shall not exceed a
1021 maximum of five (5) years' duration and shall include a
1022 cancellation clause based on unavailability of funds. If such

1023 cancellation clause is exercised, there shall be no further
1024 liability on the part of the lessee. Any such contract for the
1025 lease of equipment or services executed on behalf of the
1026 commissioners or board that complies with the provisions of this
1027 subparagraph (ii) shall be excepted from the bid requirements set
1028 forth in this section.

1029 (m) **Exceptions from bidding requirements.** Excepted
1030 from bid requirements are:

1031 (i) **Purchasing agreements approved by department.**
1032 Purchasing agreements, contracts and maximum price regulations
1033 executed or approved by the Department of Finance and
1034 Administration.

1035 (ii) **Outside equipment repairs.** Repairs to
1036 equipment, when such repairs are made by repair facilities in the
1037 private sector; however, engines, transmissions, rear axles and/or
1038 other such components shall not be included in this exemption when
1039 replaced as a complete unit instead of being repaired and the need
1040 for such total component replacement is known before disassembly
1041 of the component; however, invoices identifying the equipment,
1042 specific repairs made, parts identified by number and name,
1043 supplies used in such repairs, and the number of hours of labor
1044 and costs therefor shall be required for the payment for such
1045 repairs.

1046 (iii) **In-house equipment repairs.** Purchases of
1047 parts for repairs to equipment, when such repairs are made by
1048 personnel of the agency or governing authority; however, entire
1049 assemblies, such as engines or transmissions, shall not be
1050 included in this exemption when the entire assembly is being
1051 replaced instead of being repaired.

1052 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
1053 of gravel or fill dirt which are to be removed and transported by
1054 the purchaser.

1055 (v) **Governmental equipment auctions.** Motor
1056 vehicles or other equipment purchased from a federal agency or
1057 authority, another governing authority or state agency of the
1058 State of Mississippi, or any governing authority or state agency
1059 of another state at a public auction held for the purpose of
1060 disposing of such vehicles or other equipment. Any purchase by a
1061 governing authority under the exemption authorized by this
1062 subparagraph (v) shall require advance authorization spread upon
1063 the minutes of the governing authority to include the listing of
1064 the item or items authorized to be purchased and the maximum bid
1065 authorized to be paid for each item or items.

1066 (vi) **Intergovernmental sales and transfers.**
1067 Purchases, sales, transfers or trades by governing authorities or
1068 state agencies when such purchases, sales, transfers or trades are
1069 made by a private treaty agreement or through means of
1070 negotiation, from any federal agency or authority, another
1071 governing authority or state agency of the State of Mississippi,
1072 or any state agency or governing authority of another state.
1073 Nothing in this section shall permit such purchases through public
1074 auction except as provided for in subparagraph (v) of this
1075 section. It is the intent of this section to allow governmental
1076 entities to dispose of and/or purchase commodities from other
1077 governmental entities at a price that is agreed to by both
1078 parties. This shall allow for purchases and/or sales at prices
1079 which may be determined to be below the market value if the
1080 selling entity determines that the sale at below market value is
1081 in the best interest of the taxpayers of the state. Governing
1082 authorities shall place the terms of the agreement and any
1083 justification on the minutes, and state agencies shall obtain
1084 approval from the Department of Finance and Administration, prior
1085 to releasing or taking possession of the commodities.

1086 (vii) **Perishable supplies or food.** Perishable
1087 supplies or food purchased for use in connection with hospitals,

1088 the school lunch programs, homemaking programs and for the feeding
1089 of county or municipal prisoners.

1090 (viii) **Single source items.** Noncompetitive items
1091 available from one (1) source only. In connection with the
1092 purchase of noncompetitive items only available from one (1)
1093 source, a certification of the conditions and circumstances
1094 requiring the purchase shall be filed by the agency with the
1095 Department of Finance and Administration and by the governing
1096 authority with the board of the governing authority. Upon receipt
1097 of that certification the Department of Finance and Administration
1098 or the board of the governing authority, as the case may be, may,
1099 in writing, authorize the purchase, which authority shall be noted
1100 on the minutes of the body at the next regular meeting thereafter.
1101 In those situations, a governing authority is not required to
1102 obtain the approval of the Department of Finance and
1103 Administration.

1104 (ix) **Waste disposal facility construction**
1105 **contracts.** Construction of incinerators and other facilities for
1106 disposal of solid wastes in which products either generated
1107 therein, such as steam, or recovered therefrom, such as materials
1108 for recycling, are to be sold or otherwise disposed of; however,
1109 in constructing such facilities, a governing authority or agency
1110 shall publicly issue requests for proposals, advertised for in the
1111 same manner as provided herein for seeking bids for public
1112 construction projects, concerning the design, construction,
1113 ownership, operation and/or maintenance of such facilities,
1114 wherein such requests for proposals when issued shall contain
1115 terms and conditions relating to price, financial responsibility,
1116 technology, environmental compatibility, legal responsibilities
1117 and such other matters as are determined by the governing
1118 authority or agency to be appropriate for inclusion; and after
1119 responses to the request for proposals have been duly received,
1120 the governing authority or agency may select the most qualified

1121 proposal or proposals on the basis of price, technology and other
1122 relevant factors and from such proposals, but not limited to the
1123 terms thereof, negotiate and enter contracts with one or more of
1124 the persons or firms submitting proposals.

1125 (x) **Hospital group purchase contracts.** Supplies,
1126 commodities and equipment purchased by hospitals through group
1127 purchase programs pursuant to Section 31-7-38.

1128 (xi) **Information technology products.** Purchases
1129 of information technology products made by governing authorities
1130 under the provisions of purchase schedules, or contracts executed
1131 or approved by the Mississippi Department of Information
1132 Technology Services and designated for use by governing
1133 authorities.

1134 (xii) **Energy efficiency services and equipment.**
1135 Energy efficiency services and equipment acquired by school
1136 districts, community and junior colleges, institutions of higher
1137 learning and state agencies or other applicable governmental
1138 entities on a shared-savings, lease or lease-purchase basis
1139 pursuant to Section 31-7-14.

1140 (xiii) **Municipal electrical utility system fuel.**
1141 Purchases of coal and/or natural gas by municipally-owned electric
1142 power generating systems that have the capacity to use both coal
1143 and natural gas for the generation of electric power.

1144 (xiv) **Library books and other reference materials.**
1145 Purchases by libraries or for libraries of books and periodicals;
1146 processed film, video cassette tapes, filmstrips and slides;
1147 recorded audio tapes, cassettes and diskettes; and any such items
1148 as would be used for teaching, research or other information
1149 distribution; however, equipment such as projectors, recorders,
1150 audio or video equipment, and monitor televisions are not exempt
1151 under this subparagraph.

1152 (xv) **Unmarked vehicles.** Purchases of unmarked
1153 vehicles when such purchases are made in accordance with

1154 purchasing regulations adopted by the Department of Finance and
1155 Administration pursuant to Section 31-7-9(2).

1156 (xvi) **Election ballots.** Purchases of ballots
1157 printed pursuant to Section 23-15-351.

1158 (xvii) **Multichannel interactive video systems.**
1159 From and after July 1, 1990, contracts by Mississippi Authority
1160 for Educational Television with any private educational
1161 institution or private nonprofit organization whose purposes are
1162 educational in regard to the construction, purchase, lease or
1163 lease-purchase of facilities and equipment and the employment of
1164 personnel for providing multichannel interactive video systems
1165 (ITSF) in the school districts of this state.

1166 (xviii) **Purchases of prison industry products.**
1167 From and after January 1, 1991, purchases made by state agencies
1168 or governing authorities involving any item that is manufactured,
1169 processed, grown or produced from the state's prison industries.

1170 (xix) **Undercover operations equipment.** Purchases
1171 of surveillance equipment or any other high-tech equipment to be
1172 used by law enforcement agents in undercover operations, provided
1173 that any such purchase shall be in compliance with regulations
1174 established by the Department of Finance and Administration.

1175 (xx) **Junior college books for rent.** Purchases by
1176 community or junior colleges of textbooks which are obtained for
1177 the purpose of renting such books to students as part of a book
1178 service system.

1179 (xxi) **Certain school district purchases.**
1180 Purchases of commodities made by school districts from vendors
1181 with which any levying authority of the school district, as
1182 defined in Section 37-57-1, has contracted through competitive
1183 bidding procedures for purchases of the same commodities.

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

1186 waste collection or disposal and contracts for sewage collection
1187 or disposal.

1188 (xxiii) **Municipal water tank maintenance**
1189 **contracts.** Professional maintenance program contracts for the
1190 repair or maintenance of municipal water tanks, which provide
1191 professional services needed to maintain municipal water storage
1192 tanks for a fixed annual fee for a duration of two (2) or more
1193 years.

1194 (xxiv) **Purchases of Mississippi Industries for the**
1195 **Blind products.** Purchases made by state agencies or governing
1196 authorities involving any item that is manufactured, processed or
1197 produced by the Mississippi Industries for the Blind.

1198 (xxv) **Purchases of state-adopted textbooks.**
1199 Purchases of state-adopted textbooks by public school districts.

1200 (xxvi) **Certain purchases under the Mississippi**
1201 **Major Economic Impact Act.** Contracts entered into pursuant to the
1202 provisions of Section 57-75-9(2) and (3).

1203 (xxvii) **Used heavy or specialized machinery or**
1204 **equipment for installation of soil and water conservation**
1205 **practices purchased at auction.** Used heavy or specialized
1206 machinery or equipment used for the installation and
1207 implementation of soil and water conservation practices or
1208 measures purchased subject to the restrictions provided in
1209 Sections 69-27-331 through 69-27-341. Any purchase by the State
1210 Soil and Water Conservation Commission under the exemption
1211 authorized by this subparagraph shall require advance
1212 authorization spread upon the minutes of the commission to include
1213 the listing of the item or items authorized to be purchased and
1214 the maximum bid authorized to be paid for each item or items.

1215 (xxviii) **Hospital lease of equipment or services.**
1216 Leases by hospitals of equipment or services if the leases are in
1217 compliance with paragraph (1)(ii).

1218 (xxix) **Purchases made pursuant to qualified**
1219 **cooperative purchasing agreements.** Purchases made by certified
1220 purchasing offices of state agencies or governing authorities
1221 under cooperative purchasing agreements previously approved by the
1222 Office of Purchasing and Travel and established by or for any
1223 municipality, county, parish or state government or the federal
1224 government, provided that the notification to potential
1225 contractors includes a clause that sets forth the availability of
1226 the cooperative purchasing agreement to other governmental
1227 entities. Such purchases shall only be made if the use of the
1228 cooperative purchasing agreements is determined to be in the best
1229 interest of the governmental entity.

1230 (xxx) **School yearbooks.** Purchases of school
1231 yearbooks by state agencies or governing authorities; provided,
1232 however, that state agencies and governing authorities shall use
1233 for these purchases the RFP process as set forth in the
1234 Mississippi Procurement Manual adopted by the Office of Purchasing
1235 and Travel.

1236 (xxxii) **Design-build method and dual-phase**
1237 **design-build * * * method of contracting.** Contracts entered into
1238 under the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

1239 (xxxiii) **Toll roads and bridge construction**
1240 **projects.** Contracts entered into under the provisions of Section
1241 1 or 2 of Senate Bill No. 2375, 2007 Regular Session.

1242 (n) **Term contract authorization.** All contracts for the
1243 purchase of:

1244 (i) All contracts for the purchase of commodities,
1245 equipment and public construction (including, but not limited to,
1246 repair and maintenance), may be let for periods of not more than
1247 sixty (60) months in advance, subject to applicable statutory
1248 provisions prohibiting the letting of contracts during specified
1249 periods near the end of terms of office. Term contracts for a
1250 period exceeding twenty-four (24) months shall also be subject to

1251 ratification or cancellation by governing authority boards taking
1252 office subsequent to the governing authority board entering the
1253 contract.

1254 (ii) Bid proposals and contracts may include price
1255 adjustment clauses with relation to the cost to the contractor
1256 based upon a nationally published industry-wide or nationally
1257 published and recognized cost index. The cost index used in a
1258 price adjustment clause shall be determined by the Department of
1259 Finance and Administration for the state agencies and by the
1260 governing board for governing authorities. The bid proposal and
1261 contract documents utilizing a price adjustment clause shall
1262 contain the basis and method of adjusting unit prices for the
1263 change in the cost of such commodities, equipment and public
1264 construction.

1265 (o) **Purchase law violation prohibition and vendor**
1266 **penalty.** No contract or purchase as herein authorized shall be
1267 made for the purpose of circumventing the provisions of this
1268 section requiring competitive bids, nor shall it be lawful for any
1269 person or concern to submit individual invoices for amounts within
1270 those authorized for a contract or purchase where the actual value
1271 of the contract or commodity purchased exceeds the authorized
1272 amount and the invoices therefor are split so as to appear to be
1273 authorized as purchases for which competitive bids are not
1274 required. Submission of such invoices shall constitute a
1275 misdemeanor punishable by a fine of not less than Five Hundred
1276 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1277 or by imprisonment for thirty (30) days in the county jail, or
1278 both such fine and imprisonment. In addition, the claim or claims
1279 submitted shall be forfeited.

1280 (p) **Electrical utility petroleum-based equipment**
1281 **purchase procedure.** When in response to a proper advertisement
1282 therefor, no bid firm as to price is submitted to an electric
1283 utility for power transformers, distribution transformers, power

1284 breakers, reclosers or other articles containing a petroleum
1285 product, the electric utility may accept the lowest and best bid
1286 therefor although the price is not firm.

1287 (q) **Fuel management system bidding procedure.** Any
1288 governing authority or agency of the state shall, before
1289 contracting for the services and products of a fuel management or
1290 fuel access system, enter into negotiations with not fewer than
1291 two (2) sellers of fuel management or fuel access systems for
1292 competitive written bids to provide the services and products for
1293 the systems. In the event that the governing authority or agency
1294 cannot locate two (2) sellers of such systems or cannot obtain
1295 bids from two (2) sellers of such systems, it shall show proof
1296 that it made a diligent, good-faith effort to locate and negotiate
1297 with two (2) sellers of such systems. Such proof shall include,
1298 but not be limited to, publications of a request for proposals and
1299 letters soliciting negotiations and bids. For purposes of this
1300 paragraph (q), a fuel management or fuel access system is an
1301 automated system of acquiring fuel for vehicles as well as
1302 management reports detailing fuel use by vehicles and drivers, and
1303 the term "competitive written bid" shall have the meaning as
1304 defined in paragraph (b) of this section. Governing authorities
1305 and agencies shall be exempt from this process when contracting
1306 for the services and products of a fuel management or fuel access
1307 systems under the terms of a state contract established by the
1308 Office of Purchasing and Travel.

1309 (r) **Solid waste contract proposal procedure.** Before
1310 entering into any contract for garbage collection or disposal,
1311 contract for solid waste collection or disposal or contract for
1312 sewage collection or disposal, which involves an expenditure of
1313 more than Fifty Thousand Dollars (\$50,000.00), a governing
1314 authority or agency shall issue publicly a request for proposals
1315 concerning the specifications for such services which shall be
1316 advertised for in the same manner as provided in this section for

1317 seeking bids for purchases which involve an expenditure of more
1318 than the amount provided in paragraph (c) of this section. Any
1319 request for proposals when issued shall contain terms and
1320 conditions relating to price, financial responsibility,
1321 technology, legal responsibilities and other relevant factors as
1322 are determined by the governing authority or agency to be
1323 appropriate for inclusion; all factors determined relevant by the
1324 governing authority or agency or required by this paragraph (r)
1325 shall be duly included in the advertisement to elicit proposals.
1326 After responses to the request for proposals have been duly
1327 received, the governing authority or agency shall select the most
1328 qualified proposal or proposals on the basis of price, technology
1329 and other relevant factors and from such proposals, but not
1330 limited to the terms thereof, negotiate and enter contracts with
1331 one or more of the persons or firms submitting proposals. If the
1332 governing authority or agency deems none of the proposals to be
1333 qualified or otherwise acceptable, the request for proposals
1334 process may be reinitiated. Notwithstanding any other provisions
1335 of this paragraph, where a county with at least thirty-five
1336 thousand (35,000) nor more than forty thousand (40,000)
1337 population, according to the 1990 federal decennial census, owns
1338 or operates a solid waste landfill, the governing authorities of
1339 any other county or municipality may contract with the governing
1340 authorities of the county owning or operating the landfill,
1341 pursuant to a resolution duly adopted and spread upon the minutes
1342 of each governing authority involved, for garbage or solid waste
1343 collection or disposal services through contract negotiations.

1344 (s) **Minority set-aside authorization.** Notwithstanding
1345 any provision of this section to the contrary, any agency or
1346 governing authority, by order placed on its minutes, may, in its
1347 discretion, set aside not more than twenty percent (20%) of its
1348 anticipated annual expenditures for the purchase of commodities
1349 from minority businesses; however, all such set-aside purchases

1350 shall comply with all purchasing regulations promulgated by the
1351 Department of Finance and Administration and shall be subject to
1352 bid requirements under this section. Set-aside purchases for
1353 which competitive bids are required shall be made from the lowest
1354 and best minority business bidder. For the purposes of this
1355 paragraph, the term "minority business" means a business which is
1356 owned by a majority of persons who are United States citizens or
1357 permanent resident aliens (as defined by the Immigration and
1358 Naturalization Service) of the United States, and who are Asian,
1359 Black, Hispanic or Native American, according to the following
1360 definitions:

1361 (i) "Asian" means persons having origins in any of
1362 the original people of the Far East, Southeast Asia, the Indian
1363 subcontinent, or the Pacific Islands.

1364 (ii) "Black" means persons having origins in any
1365 black racial group of Africa.

1366 (iii) "Hispanic" means persons of Spanish or
1367 Portuguese culture with origins in Mexico, South or Central
1368 America, or the Caribbean Islands, regardless of race.

1369 (iv) "Native American" means persons having
1370 origins in any of the original people of North America, including
1371 American Indians, Eskimos and Aleuts.

1372 (t) **Construction punch list restriction.** The
1373 architect, engineer or other representative designated by the
1374 agency or governing authority that is contracting for public
1375 construction or renovation may prepare and submit to the
1376 contractor only one (1) preliminary punch list of items that do
1377 not meet the contract requirements at the time of substantial
1378 completion and one (1) final list immediately before final
1379 completion and final payment.

1380 (u) **Procurement of construction services by state**
1381 **institutions of higher learning.** Contracts for privately financed
1382 construction of auxiliary facilities on the campus of a state

1383 institution of higher learning may be awarded by the Board of
1384 Trustees of State Institutions of Higher Learning to the lowest
1385 and best bidder, where sealed bids are solicited, or to the
1386 offeror whose proposal is determined to represent the best value
1387 to the citizens of the State of Mississippi, where requests for
1388 proposals are solicited.

1389 (v) **Purchase authorization clarification.** Nothing in
1390 this section shall be construed as authorizing any purchase not
1391 authorized by law.

1392 **SECTION 23.** Section 65-1-85, Mississippi Code of 1972, is
1393 amended as follows:

1394 65-1-85. (1) All contracts by or on behalf of the
1395 commission for the purchase of materials, equipment and supplies
1396 shall be made in compliance with Section 31-7-1 et seq. All
1397 contracts by or on behalf of the commission for construction,
1398 reconstruction or other public work authorized to be done under
1399 the provisions of this chapter, except maintenance, shall be made
1400 by the executive director, subject to the approval of the
1401 commission, only upon competitive bids after due advertisement as
1402 follows, to wit:

1403 (a) Advertisement for bids shall be in accordance with
1404 such rules and regulations, in addition to those herein provided,
1405 as may be adopted therefor by the commission, and the commission
1406 is authorized and empowered to make and promulgate such rules and
1407 regulations as it may deem proper, to provide and adopt standard
1408 specifications for road and bridge construction, and to amend such
1409 rules and regulations from time to time.

1410 (b) The advertisement shall be inserted twice, being
1411 once a week for two (2) successive weeks in a newspaper published
1412 at the seat of government in Jackson, Mississippi, having a
1413 general circulation throughout the state, and no letting shall be
1414 less than fourteen (14) days nor more than sixty (60) days after
1415 the publication of the first notice of such letting, and notices

1416 of such letting may be placed in a metropolitan paper or national
1417 trade publication.

1418 (c) Before advertising for such work, the executive
1419 director shall cause to be prepared and filed in the department
1420 detailed plans and specifications covering the work proposed to be
1421 done and copies of the plans and specifications shall be subject
1422 to inspection by any citizen during all office hours and made
1423 available to all prospective bidders upon such reasonable terms
1424 and conditions as may be required by the commission. A fee shall
1425 be charged equal to the cost of producing a copy of any such plans
1426 and specifications.

1427 (d) All such contracts shall be let to a responsible
1428 bidder with the lowest and best bid, and a record of all bids
1429 received for construction and reconstruction shall be preserved.

1430 (e) Each bid for such a construction and reconstruction
1431 contract must be accompanied by a cashier's check, a certified
1432 check or bidders bond executed by a surety company authorized to
1433 do business in the State of Mississippi, in the principal amount
1434 of not less than five percent (5%) of the bid, guaranteeing that
1435 the bidder will give bond and enter into a contract for the
1436 faithful performance of the contract according to plans and
1437 specifications on file.

1438 (f) Bonds shall be required of the successful bidder in
1439 an amount equal to the contract price. The contract price shall
1440 mean the entire cost of the particular contract let. In the event
1441 change orders are made after the execution of a contract which
1442 results in increasing the total contract price, additional bond in
1443 the amount of the increased cost may be required. The surety or
1444 sureties on such bonds shall be a surety company or surety
1445 companies authorized to do business in the State of Mississippi,
1446 all bonds to be payable to the State of Mississippi and to be
1447 conditioned for the prompt, faithful and efficient performance of
1448 the contract according to plans and specifications, and for the

1449 prompt payment of all persons furnishing labor, material,
1450 equipment and supplies therefor. Such bonds shall be subject to
1451 the additional obligation that the principal and surety or
1452 sureties executing the same shall be liable to the state in a
1453 civil action instituted by the state at the instance of the
1454 commission or any officer of the state authorized in such cases,
1455 for double any amount in money or property the state may lose or
1456 be overcharged or otherwise defrauded of by reason of any wrongful
1457 or criminal act, if any, of the contractor, his agent or
1458 employees.

1459 (2) With respect to equipment used in the construction,
1460 reconstruction or other public work authorized to be done under
1461 the provisions of this chapter: the word "equipment," in addition
1462 to all equipment incorporated into or fully consumed in connection
1463 with such project, shall include the reasonable value of the use
1464 of all equipment of every kind and character and all accessories
1465 and attachments thereto which are reasonably necessary to be used
1466 and which are used in carrying out the performance of the
1467 contract, and the reasonable value of the use thereof, during the
1468 period of time the same are used in carrying out the performance
1469 of the contract, shall be the amount as agreed upon by the persons
1470 furnishing the equipment and those using the same to be paid
1471 therefor, which amount, however, shall not be in excess of the
1472 maximum current rates and charges allowable for leasing or renting
1473 as specified in Section 65-7-95; the word "labor" shall include
1474 all work performed in repairing equipment used in carrying out the
1475 performance of the contract, which repair labor is reasonably
1476 necessary to the efficient operation of said equipment; and the
1477 words "materials" and "supplies" shall include all repair parts
1478 installed in or on equipment used in carrying out the performance
1479 of the contract, which repair parts are reasonably necessary to
1480 the efficient operation of said equipment.

1481 (3) The executive director, subject to the approval of the
1482 commission, shall have the right to reject any and all bids,
1483 whether such right is reserved in the notice or not.

1484 (4) The commission may require the pre-qualification of any
1485 and all bidders and the failure to comply with pre-qualification
1486 requirements may be the basis for the rejection of any bid by the
1487 commission. The commission may require the pre-qualification of
1488 any and all subcontractors before they are approved to participate
1489 in any contract awarded under this section.

1490 (5) The commission may adopt rules and regulations for the
1491 termination of any previously awarded contract which is not timely
1492 proceeding toward completion. The failure of a contractor to
1493 comply with such rules and regulations shall be a lawful basis for
1494 the commission to terminate the contract with such contractor. In
1495 the event of a termination under such rules and regulations, the
1496 contractor shall not be entitled to any payment, benefit or
1497 damages beyond the cost of the work actually completed.

1498 (6) Any contract for construction or paving of any highway
1499 may be entered into for any cost which does not exceed the amount
1500 of funds that may be made available therefor through bond issues
1501 or from other sources of revenue, and the letting of contracts for
1502 such construction or paving shall not necessarily be delayed until
1503 the funds are actually on hand, provided authorization for the
1504 issuance of necessary bonds has been granted by law to supplement
1505 other anticipated revenue, or when the department certifies to the
1506 Department of Finance and Administration and the Legislative
1507 Budget Office that projected receipts of funds by the department
1508 will be sufficient to pay such contracts as they become due and
1509 the Department of Finance and Administration determines that the
1510 projections are reasonable and receipts will be sufficient to pay
1511 the contracts as they become due. The Department of Finance and
1512 Administration shall spread such determination on its minutes
1513 prior to the letting of any contracts based on projected receipts.

1514 Nothing in this subsection shall prohibit the issuance of bonds,
1515 which have been authorized, at any time in the discretion of the
1516 State Bond Commission, nor to prevent investment of surplus funds
1517 in United States government bonds or State of Mississippi bonds as
1518 presently authorized by Section 12, Chapter 312, Laws of 1956.

1519 (7) All other contracts for work to be done under the
1520 provisions of this chapter and for the purchase of materials,
1521 equipment and supplies to be used as provided for in this chapter
1522 shall be made in compliance with Section 31-7-1 et seq.

1523 (8) The commission shall not empower or authorize the
1524 executive director, or any one or more of its members, or any
1525 engineer or other person to let or make contracts for the
1526 construction or repair of public roads, or building bridges, or
1527 for the purchase of material, equipment or supplies contrary to
1528 the provisions of this chapter as set forth in this section,
1529 except in cases of flood or other cases of emergency where the
1530 public interest requires that the work be done or the materials,
1531 equipment or supplies be purchased without the delay incident to
1532 advertising for competitive bids. Such emergency contracts may be
1533 made without advertisement under such rules and regulations as the
1534 commission may prescribe.

1535 (9) The executive director, subject to the approval of the
1536 commission, is authorized to negotiate and make agreements with
1537 communities and/or civic organizations for landscaping,
1538 beautification and maintenance of highway rights-of-way; however,
1539 nothing in this subsection shall be construed as authorization for
1540 the executive director or commission to participate in such a
1541 project to an extent greater than the average cost for maintenance
1542 of shoulders, backslopes and median areas with respect thereto.

1543 (10) The executive director may negotiate and enter into
1544 contracts with private parties for the mowing of grass and
1545 trimming of vegetation on the rights-of-way of state highways
1546 whenever such practice is possible and cost effective.

1547 (11) (a) As an alternative to the method of awarding
1548 contracts as otherwise provided in this section, the commission
1549 may use the design-build method of contracting for the following:

1550 (i) Projects for the Mississippi Development
1551 Authority pursuant to agreements between both governmental
1552 entities;

1553 (ii) Any project with an estimated cost of not
1554 more than Ten Million Dollars (\$10,000,000.00), not to exceed two
1555 (2) projects per fiscal year; and

1556 (iii) Any project which has an estimated cost of
1557 more than Fifty Million Dollars (\$50,000,000.00), not to exceed
1558 one (1) project per fiscal year.

1559 (b) As used in this subsection, the term "design-build"
1560 method of contracting means a contract that combines the design
1561 and construction phases of a project into a single contract and
1562 the contractor is required to satisfactorily perform, at a
1563 minimum, both the design and construction of the project.

1564 (c) The commission shall establish detailed criteria
1565 for the selection of the successful design-build contractor in
1566 each request for design-build proposals. The evaluation of the
1567 selection committee is a public record and shall be maintained for
1568 a minimum of ten (10) years after project completion.

1569 (d) The commission shall maintain detailed records on
1570 projects separate and apart from its regular record keeping. The
1571 commission shall file a report to the Legislature evaluating the
1572 design-build method of contracting by comparing it to the low-bid
1573 method of contracting. At a minimum, the report must include:

1574 (i) The management goals and objectives for the
1575 design-build system of management;

1576 (ii) A complete description of the components of
1577 the design-build management system, including a description of the
1578 system the department put into place on all projects managed under
1579 the system to insure that it has the complete information on

1580 highway segment costs and to insure proper analysis of any
1581 proposal the commission receives from a highway contractor;

1582 (iii) The accountability systems the
1583 Transportation Department established to monitor any design-build
1584 project's compliance with specific goals and objectives for the
1585 project;

1586 (iv) The outcome of any project or any interim
1587 report on an ongoing project let under a design-build management
1588 system showing compliance with the goals, objectives, policies and
1589 procedures the department set for the project; and

1590 (v) The method used by the department to select
1591 projects to be let under the design-build system of management and
1592 all other systems, policies and procedures that the department
1593 considered as necessary components to a design-build management
1594 system.

1595 (e) All contracts let under the provisions of this
1596 subsection shall be subject to oversight and review by the State
1597 Auditor. The State Auditor shall file a report with the
1598 Legislature on or before January 1 of each year detailing his
1599 findings with regard to any contract let or project performed in
1600 violation of the provisions of this subsection. The actual and
1601 necessary expenses incurred by the State Auditor in complying with
1602 this paragraph (e) shall be paid for and reimbursed by the
1603 Mississippi Department of Transportation out of funds made
1604 available for the contract or contracts let and project or
1605 projects performed.

1606 (12) The provisions of this section shall not be construed
1607 to prohibit the commission from awarding or entering into
1608 contracts for the design, construction and financing of toll
1609 roads, highways and bridge projects as provided under Sections 1
1610 and 2 of Senate Bill No. 2375, 2007 Regular Session.

1611 **SECTION 24.** Section 65-3-1, Mississippi Code of 1972, is
1612 amended as follows:

1613 65-3-1. Subject only to the provisions hereinafter
1614 contained, it shall be unlawful for any person, acting privately
1615 or in any official capacity or as an employee of any subdivision
1616 of the state, to charge or collect any toll or other charge from
1617 any person for the privilege of traveling on any part of any
1618 highway which has been heretofore or may hereafter be designated
1619 as a state highway, and being a part of the state highway system,
1620 or on or across any bridge wholly within this state, which is a
1621 part of any such highway.

1622 For a violation of this section, any judge or chancellor may,
1623 in termtime or vacation, grant an injunction upon complaint of the
1624 Mississippi Transportation Commission.

1625 * * *

1626 The provisions of this section shall be inapplicable to any
1627 toll road or bridge built or operated under the authority of
1628 Section 1 or Section 2 of Senate Bill No. 2375, 2007 Regular
1629 Session.

1630 **SECTION 25.** Sections 65-23-101, 65-23-103, 65-23-105,
1631 65-23-107, 65-23-109, 65-23-111, 65-23-113, 65-23-115, 65-23-117,
1632 65-23-119 and 65-23-121, Mississippi Code of 1972, which authorize
1633 the Department of Transportation to construct toll bridges across
1634 bays and rivers of the Gulf of Mexico, are hereby repealed.

1635 **SECTION 26.** The Attorney General of the State of Mississippi
1636 shall submit this act, immediately upon approval by the Governor,
1637 or upon approval by the Legislature subsequent to a veto, to the
1638 Attorney General of the United States or to the United States
1639 District Court for the District of Columbia in accordance with the
1640 provisions of the Voting Rights Act of 1965, as amended and
1641 extended.

1642 **SECTION 27.** This act shall take effect and be in force from
1643 and after July 1, 2007, if it is effectuated on or before that
1644 date under Section 5 of the Voting Rights Act of 1965, as amended
1645 and extended. If it is effectuated under Section 5 of the Voting

1646 Rights Act of 1965, as amended and extended, after July 1, 2007,
1647 this act shall take effect and be in force from and after the date
1648 it is effectuated under Section 5 of the Voting Rights Act of
1649 1965, as amended and extended.