

By: Representatives Smith, Sykes

To: Revenue and Expenditure
General Bills

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1452

1 AN ACT TO AMEND SECTION 37-115-31, MISSISSIPPI CODE OF 1972,
2 TO EXEMPT THE TEACHING HOSPITAL AT THE UNIVERSITY OF MISSISSIPPI
3 MEDICAL CENTER FROM THE PROVISIONS OF CERTAIN PURCHASING
4 PRACTICES; TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972, TO
5 EXEMPT THE TEACHING HOSPITAL FROM THE PROVISIONS OF THE PUBLIC
6 PROCUREMENT REVIEW BOARD; TO AMEND SECTION 31-7-9, MISSISSIPPI
7 CODE OF 1972, TO EXEMPT THE TEACHING HOSPITAL FROM REGULATIONS
8 RELATING TO THE PURCHASING OF COMMODITIES; TO AMEND SECTION
9 31-7-10, MISSISSIPPI CODE OF 1972, TO EXEMPT THE TEACHING HOSPITAL
10 FROM THE PROVISIONS OF STATE EQUIPMENT PURCHASING AND THE MASTER
11 LEASE-PURCHASE PROGRAM; TO AMEND SECTION 31-7-11, MISSISSIPPI CODE
12 OF 1972, TO EXEMPT THE TEACHING HOSPITAL FROM OVERSIGHT OVER ITS
13 PURCHASING AND PURCHASING PRACTICES; TO AMEND SECTION 31-7-12,
14 MISSISSIPPI CODE OF 1972, TO EXEMPT THE TEACHING HOSPITAL FROM THE
15 PROVISION RELATING TO THE PURCHASING PRICE OF COMMODITIES; TO
16 AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO EXEMPT THE
17 TEACHING HOSPITAL FROM CERTAIN BIDDING REQUIREMENTS; AND FOR
18 RELATED PURPOSES.

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

20 **SECTION 1.** Section 37-115-31, Mississippi Code of 1972, is
21 amended as follows:

22 37-115-31. The teaching hospital and related facilities
23 shall be utilized to serve the people of Mississippi generally.
24 The teaching hospital and related facilities shall have the power
25 necessary to enter into group purchasing arrangements as deemed
26 reasonable and necessary, and such powers as are necessary to



27 establish and operate health maintenance organizations, preferred
28 provider organizations, prepaid health benefit plans and other
29 managed care entities regulated by Section 83-41-301 et seq., and
30 the power to establish rates and charges for health care services,
31 either on a fee for service, discounted, capitated or other risk
32 based payment basis, and provided that any such entity shall
33 primarily provide care and services to indigent persons or
34 qualified beneficiaries of the State Medicaid Program; and further
35 provided, however, any entity, or any affiliate of any such
36 entity, that now or in the future provides management services to
37 the University of Mississippi Medical Center or any of its
38 facilities, shall not be affiliated in any manner with any managed
39 care product established by the University of Mississippi Medical
40 Center under the authority of this section. There shall be a
41 reasonable volume of free work; however, said volume shall never
42 be less than one-half of its bed capacity for indigent patients
43 who are eligible and qualified under the state charity fund for
44 charity hospitalization of indigent persons, or qualified
45 beneficiaries of the State Medicaid Program. The income derived
46 from the operations of said hospital, including all facilities
47 thereof, shall be utilized toward the payment of the operating
48 expenses of said hospital, including all facilities thereof.
49 Purchases of commodities, as defined in Section 31-7-1(e), made by
50 the teaching hospital and related facilities that are used for
51 clinical purposes shall be exempt from the provisions of Sections



52 27-104-7, 31-7-9, 31-7-10, 31-7-11, 31-7-12 and 31-7-13. However,
53 such exemption shall only apply to commodities (i) intended for
54 use in the diagnosis of disease or other conditions or in the
55 cure, mitigation, treatment or prevention of disease, and (ii)
56 comprised of medical devices, biologicals, drugs and radiation
57 emitting devices as defined by the United States Food and Drug
58 Administration.

59 **SECTION 2.** Section 27-104-7, Mississippi Code of 1972, is
60 amended as follows:

61 27-104-7. (1) There is created within the Department of
62 Finance and Administration the Public Procurement Review Board,
63 which shall be composed of the Executive Director of the
64 Department of Finance and Administration, the head of the Office
65 of Budget and Policy Development and an employee of the Office of
66 General Services who is familiar with the purchasing laws of this
67 state. The Executive Director of the Department of Finance and
68 Administration shall be chairman and shall preside over the
69 meetings of the board. The board shall annually elect a vice
70 chairman, who shall serve in the absence of the chairman. No
71 business shall be transacted, including adoption of rules of
72 procedure, without the presence of a quorum of the board. Two (2)
73 members shall be a quorum. No action shall be valid unless
74 approved by the chairman and one (1) other of those members
75 present and voting, entered upon the minutes of the board and
76 signed by the chairman. The board shall meet on a monthly basis



77 and at any other time when notified by the chairman. Necessary
78 clerical and administrative support for the board shall be
79 provided by the Department of Finance and Administration. Minutes
80 shall be kept of the proceedings of each meeting, copies of which
81 shall be filed on a monthly basis with the Legislative Budget
82 Office.

83 (2) The Public Procurement Review Board shall have the
84 following powers and responsibilities:

85 (a) Approve all purchasing regulations governing the
86 purchase or lease by any agency, as defined in Section 31-7-1, of
87 commodities and equipment, except computer equipment acquired
88 pursuant to Sections 25-53-1 through 25-53-29;

89 (b) Adopt regulations governing the approval of
90 contracts let for the construction and maintenance of state
91 buildings and other state facilities;

92 (c) Adopt regulations governing any lease or rental
93 agreement by any state agency or department, including any state
94 agency financed entirely by federal funds, for space outside the
95 buildings under the jurisdiction of the Department of Finance and
96 Administration. These regulations shall require each agency
97 requesting to lease such space to provide the following
98 information that shall be published by the Department of Finance
99 and Administration on its website: the agency to lease the space;
100 the terms of the lease; the approximate square feet to be leased;
101 the use for the space; a description of a suitable space; the



102 general location desired for the leased space; the contact
103 information for a person from the agency; the deadline date for
104 the agency to have received a lease proposal; any other specific
105 terms or conditions of the agency; and any other information
106 deemed appropriate by the Division of Real Property Management or
107 the Public Procurement Review Board;

108 (d) Adopt, in its discretion, regulations to set aside
109 at least five percent (5%) of anticipated annual expenditures for
110 the purchase of commodities from minority businesses; however, all
111 such set-aside purchases shall comply with all purchasing
112 regulations promulgated by the department and shall be subject to
113 all bid requirements. Set-aside purchases for which competitive
114 bids are required shall be made from the lowest and best minority
115 business bidder; however, if no minority bid is available or if
116 the minority bid is more than two percent (2%) higher than the
117 lowest bid, then bids shall be accepted and awarded to the lowest
118 and best bidder. However, the provisions in this paragraph shall
119 not be construed to prohibit the rejection of a bid when only one
120 (1) bid is received. Such rejection shall be placed in the
121 minutes. For the purposes of this paragraph, the term "minority
122 business" means a business which is owned by a person who is a
123 citizen or lawful permanent resident of the United States and who
124 is:

125 (i) Black: having origins in any of the black
126 racial groups of Africa;



127 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
128 Central or South American, or other Spanish or Portuguese culture
129 or origin regardless of race;

130 (iii) Asian-American: having origins in any of
131 the original peoples of the Far East, Southeast Asia, the Indian
132 subcontinent, or the Pacific Islands;

133 (iv) American Indian or Alaskan Native: having
134 origins in any of the original peoples of North America; or

135 (v) Female;

136 (e) In consultation with and approval by the Chairmen
137 of the Senate and House Public Property Committees, approve
138 leases, for a term not to exceed eighteen (18) months, entered
139 into by state agencies for the purpose of providing parking
140 arrangements for state employees who work in the Woolfolk
141 Building, the Carroll Gartin Justice Building or the Walter
142 Sillers Office Building.

143 (3) No member of the Public Procurement Review Board shall
144 use his official authority or influence to coerce, by threat of
145 discharge from employment, or otherwise, the purchase of
146 commodities or the contracting for public construction under this
147 chapter.

148 (4) Notwithstanding any other laws or rules to the contrary,
149 the provisions of subsection (2) of this section shall not be
150 applicable to the Mississippi State Port Authority at Gulfport.



151 (5) Purchases of commodities by the teaching hospital and
152 related facilities, as described in Section 37-115-25, that are
153 used for clinical purposes are exempt from the provisions of this
154 section as provided in Section 37-115-31.

155 **SECTION 3.** Section 31-7-9, Mississippi Code of 1972, is
156 amended as follows:

157 31-7-9. (1) (a) The Office of Purchasing, Travel and Fleet
158 Management shall adopt purchasing regulations governing the
159 purchase by any agency of any commodity or commodities and
160 establishing standards and specifications for a commodity or
161 commodities and the maximum fair prices of a commodity or
162 commodities, subject to the approval of the Public Procurement
163 Review Board. It shall have the power to amend, add to or
164 eliminate purchasing regulations. The adoption of, amendment,
165 addition to or elimination of purchasing regulations shall be
166 based upon a determination by the Office of Purchasing, Travel and
167 Fleet Management with the approval of the Public Procurement
168 Review Board, that such action is reasonable and practicable and
169 advantageous to promote efficiency and economy in the purchase of
170 commodities by the agencies of the state. Upon the adoption of
171 any purchasing regulation, or an amendment, addition or
172 elimination therein, copies of same shall be furnished to the
173 State Auditor and to all agencies affected thereby. Thereafter,
174 and except as otherwise may be provided in subsection (2) of this
175 section, no agency of the state shall purchase any commodities



176 covered by existing purchasing regulations unless such commodities
177 be in conformity with the standards and specifications set forth
178 in the purchasing regulations and unless the price thereof does
179 not exceed the maximum fair price established by such purchasing
180 regulations. The Office of Purchasing, Travel and Fleet
181 Management shall furnish to any county or municipality or other
182 local public agency of the state requesting same, copies of
183 purchasing regulations adopted by the Office of Purchasing, Travel
184 and Fleet Management and any amendments, changes or eliminations
185 of same that may be made from time to time.

186 (b) The Office of Purchasing, Travel and Fleet
187 Management may adopt purchasing regulations governing the use of
188 credit cards, procurement cards and purchasing club membership
189 cards to be used by state agencies, governing authorities of
190 counties and municipalities, school districts and the Chickasawhay
191 Natural Gas District. Use of the cards shall be in strict
192 compliance with the regulations promulgated by the office. Any
193 amounts due on the cards shall incur interest charges as set forth
194 in Section 31-7-305 and shall not be considered debt.

195 (c) Pursuant to the provision of Section 37-61-33(3),
196 the Office of Purchasing, Travel and Fleet Management of the
197 Department of Finance and Administration is authorized to issue
198 procurement cards to all public school district classroom teachers
199 and other necessary direct support personnel at the beginning of
200 the school year for the purchase of instructional supplies using



201 Educational Enhancement Funds. The cards will be issued in equal
202 amounts per teacher determined by the total number of qualifying
203 personnel and the then current state appropriation for classroom
204 instructional supplies under the Education Enhancement Fund. All
205 purchases shall be in accordance with state law and teachers are
206 responsible for verification of capital asset requirements when
207 pooling monies to purchase equipment. The cards will expire on a
208 pre-determined date at the end of each school year. All
209 unexpended amounts will be carried forward, to be combined with
210 the following year's instructional supply fund allocation, and
211 reallocated for the following year. The Department of Finance and
212 Administration is authorized to loan any start-up funds at the
213 beginning of the school year to fund this procurement system for
214 instructional supplies with loan repayment being made from sales
215 tax receipts earmarked for the Education Enhancement Fund.

216 (d) In a sale of goods or services, the seller shall
217 not impose a surcharge on a buyer who uses a state-issued credit
218 card, procurement card, travel card, or fuel card. The Department
219 of Finance and Administration shall have exclusive jurisdiction to
220 enforce and adopt rules relating to this paragraph. Any rules
221 adopted under this paragraph shall be consistent with federal laws
222 and regulations governing credit card transactions described by
223 this paragraph. This paragraph does not create a cause of action
224 against an individual for a violation of this paragraph.



225 (2) The Office of Purchasing, Travel and Fleet Management
226 shall adopt, subject to the approval of the Public Procurement
227 Review Board, purchasing regulations governing the purchase of
228 unmarked vehicles to be used by the Bureau of Narcotics and
229 Department of Public Safety in official investigations pursuant to
230 Section 25-1-87. Such regulations shall ensure that purchases of
231 such vehicles shall be at a fair price and shall take into
232 consideration the peculiar needs of the Bureau of Narcotics and
233 Department of Public Safety in undercover operations.

234 (3) The Office of Purchasing, Travel and Fleet Management
235 shall adopt, subject to the approval of the Public Procurement
236 Review Board, regulations governing the certification process for
237 certified purchasing offices, including the Mississippi Purchasing
238 Certification Program, which shall be required of all purchasing
239 officials at state agencies. Such regulations shall require
240 entities desiring to be classified as certified purchasing offices
241 to submit applications and applicable documents on an annual
242 basis, and in the case of a state agency purchasing office, to
243 have one hundred percent (100%) participation and completion by
244 purchasing officials in the Mississippi Purchasing Certification
245 Program, at which time the Office of Purchasing, Travel and Fleet
246 Management may provide the governing entity with a certification
247 valid for one (1) year from the date of issuance. The Office of
248 Purchasing, Travel and Fleet Management shall set a fee in an
249 amount that recovers its costs to administer the Mississippi



250 Purchasing Certification Program, which shall be assessed to the
251 participating state agencies.

252 (4) Purchases of commodities by the teaching hospital and
253 related facilities, as described in Section 37-115-25, that are
254 used for clinical purposes are exempt from the provisions of this
255 section as provided in Section 37-115-31.

256 **SECTION 4.** Section 31-7-10, Mississippi Code of 1972, is
257 amended as follows:

258 31-7-10. (1) For the purposes of this section, the term
259 "equipment" shall mean equipment, furniture, and if applicable,
260 associated software and other applicable direct costs associated
261 with the acquisition. In addition to its other powers and duties,
262 the Department of Finance and Administration shall have the
263 authority to develop a master lease-purchase program and, pursuant
264 to that program, shall have the authority to execute on behalf of
265 the state master lease-purchase agreements for equipment to be
266 used by an agency, as provided in this section. Each agency
267 electing to acquire equipment by a lease-purchase agreement shall
268 participate in the Department of Finance and Administration's
269 master lease-purchase program, unless the Department of Finance
270 and Administration makes a determination that such equipment
271 cannot be obtained under the program or unless the equipment can
272 be obtained elsewhere at an overall cost lower than that for which
273 the equipment can be obtained under the program. Such
274 lease-purchase agreements may include the refinancing or



275 consolidation, or both, of any state agency lease-purchase
276 agreements entered into after June 30, 1990.

277 (2) All funds designated by agencies for procurement of
278 equipment and financing thereof under the master lease-purchase
279 program shall be paid into a special fund created in the State
280 Treasury known as the "Master Lease-Purchase Program Fund," which
281 shall be used by the Department of Finance and Administration for
282 payment to the lessors for equipment acquired under master
283 lease-purchase agreements.

284 (3) Upon final approval of an appropriation bill, each
285 agency shall submit to the Public Procurement Review Board a
286 schedule of proposed equipment acquisitions for the master
287 lease-purchase program. Upon approval of an equipment schedule by
288 the Public Procurement Review Board with the advice of the
289 Department of Information Technology Services, the Office of
290 Purchasing, Travel and Fleet Management, and the Division of
291 Energy and Transportation of the Mississippi Development Authority
292 as it pertains to energy efficient climate control systems, the
293 Public Procurement Review Board shall forward a copy of the
294 equipment schedule to the Department of Finance and
295 Administration.

296 (4) The level of lease-purchase debt recommended by the
297 Department of Finance and Administration shall be subject to
298 approval by the State Bond Commission. After such approval, the
299 Department of Finance and Administration shall be authorized to



300 advertise and solicit written competitive proposals for a lessor,
301 who will purchase the equipment pursuant to bid awards made by the
302 using agency under a given category and then transfer the
303 equipment to the Department of Finance and Administration as
304 lessee, pursuant to a master lease-purchase agreement.

305 The Department of Finance and Administration shall select the
306 successful proposer for the financing of equipment under the
307 master lease-purchase program with the approval of the State Bond
308 Commission.

309 (5) Each master lease-purchase agreement, and any subsequent
310 amendments, shall include such terms and conditions as the State
311 Bond Commission shall determine to be appropriate and in the
312 public interest, and may include any covenants deemed necessary or
313 desirable to protect the interests of the lessor, including, but
314 not limited to, provisions setting forth the interest rate (or
315 method for computing interest rates) for financing pursuant to
316 such agreement, covenants concerning application of payments and
317 funds held in the Master Lease-Purchase Program Fund, covenants to
318 maintain casualty insurance with respect to equipment subject to
319 the master lease-purchase agreement (and all state agencies are
320 specifically authorized to purchase any insurance required by a
321 master lease-purchase agreement) and covenants precluding or
322 limiting the right of the lessee or user to acquire equipment
323 within a specified time (not to exceed five (5) years) after
324 cancellation on the basis of a failure to appropriate funds for



325 payment of amounts due under a lease-purchase agreement covering
326 comparable equipment. The State Bond Commission shall transmit
327 copies of each such master lease-purchase agreement and each such
328 amendment to the Joint Legislative Budget Committee. To the
329 extent provided in any master lease-purchase agreement, title to
330 equipment leased pursuant thereto shall be deemed to be vested in
331 the state or the user of the equipment (as specified in such
332 master lease-purchase agreement), subject to default under or
333 termination of such master lease-purchase agreement.

334 A master lease-purchase agreement may provide for payment by
335 the lessor to the lessee of the purchase price of the equipment to
336 be acquired pursuant thereto prior to the date on which payment is
337 due to the vendor for such equipment and that the lease payments
338 by the lessee shall commence as though the equipment had been
339 provided on the date of payment. If the lessee, or lessee's
340 escrow agent, has sufficient funds for payment of equipment
341 purchases prior to payment due date to vendor of equipment, such
342 funds shall be held or utilized on an as-needed basis for payment
343 of equipment purchases either by the State Treasurer (in which
344 event the master lease-purchase agreement may include provisions
345 concerning the holding of such funds, the creation of a security
346 interest for the benefit of the lessor in such funds until
347 disbursed and other appropriate provisions approved by the Bond
348 Commission) or by a corporate trustee selected by the Department
349 of Finance and Administration (in which event the Department of



350 Finance and Administration shall have the authority to enter into
351 an agreement with such a corporate trustee containing terms and
352 conditions approved by the Bond Commission). Earnings on any
353 amount paid by the lessor prior to the acquisition of the
354 equipment may be used to make lease payments under the master
355 lease-purchase agreement or applied to pay costs and expenses
356 incurred in connection with such lease-purchase agreement. In
357 such event, the equipment-use agreements with the user agency may
358 provide for lease payments to commence upon the date of payment by
359 the lessor and may also provide for a credit against such payments
360 to the extent that investment receipts from investment of the
361 purchase price are to be used to make lease-purchase payments.

362 (6) The annual rate of interest paid under any
363 lease-purchase agreement authorized under this section shall not
364 exceed the maximum interest rate to maturity on general obligation
365 indebtedness permitted under Section 75-17-101.

366 (7) The Department of Finance and Administration shall
367 furnish the equipment to the various agencies, also known as the
368 user, pursuant to an equipment-use agreement developed by the
369 Department of Finance and Administration. Such agreements shall
370 require that all monthly payments due from such agency be paid,
371 transferred or allocated into the Master Lease-Purchase Program
372 Fund pursuant to a schedule established by the Department of
373 Finance and Administration. In the event such sums are not paid
374 by the defined payment period, the Executive Director of the



375 Department of Finance and Administration shall issue a requisition
376 for a warrant to draw such amount as may be due from any funds
377 appropriated for the use of the agency which has failed to make
378 the payment as agreed.

379 (8) All master lease-purchase agreements executed under the
380 authority of this section shall contain the following annual
381 allocation dependency clause or an annual allocation dependency
382 clause which is substantially equivalent thereto: "The
383 continuation of each equipment schedule to this agreement is
384 contingent in whole or in part upon the appropriation of funds by
385 the Legislature to make the lease-purchase payments required under
386 such equipment schedule. If the Legislature fails to appropriate
387 sufficient funds to provide for the continuation of the
388 lease-purchase payments under any such equipment schedule, then
389 the obligations of the lessee and of the agency to make such
390 lease-purchase payments and the corresponding provisions of any
391 such equipment schedule to this agreement shall terminate on the
392 last day of the fiscal year for which appropriations were made."

393 (9) The maximum lease term for any equipment acquired under
394 the master lease-purchase program shall not exceed the useful life
395 of such equipment as determined according to the upper limit of
396 the asset depreciation range (ADR) guidelines for the Class Life
397 Asset Depreciation Range System established by the Internal
398 Revenue Service pursuant to the United States Internal Revenue
399 Code and Regulations thereunder as in effect on December 31, 1980,



400 or comparable depreciation guidelines with respect to any
401 equipment not covered by ADR guidelines. The Department of
402 Finance and Administration shall be deemed to have met the
403 requirements of this subsection if the term of a master
404 lease-purchase agreement does not exceed the weighted average
405 useful life of all equipment covered by such agreement and the
406 schedules thereto as determined by the Department of Finance and
407 Administration. For purposes of this subsection, the "term of a
408 master lease-purchase agreement" shall be the weighted average
409 maturity of all principal payments to be made under such master
410 lease-purchase agreement and all schedules thereto.

411 (10) Interest paid on any master lease-purchase agreement
412 under this section shall be exempt from State of Mississippi
413 income taxation. All equipment, and the purchase thereof by any
414 lessor, acquired under the master lease-purchase program and all
415 lease-purchase payments with respect thereto shall be exempt from
416 all Mississippi sales, use and ad valorem taxes.

417 (11) The Governor, in his annual executive budget to the
418 Legislature, shall recommend appropriations sufficient to provide
419 funds to pay all amounts due and payable during the applicable
420 fiscal year under master lease-purchase agreements entered into
421 pursuant to this section.

422 (12) Any master lease-purchase agreement reciting in
423 substance that such agreement has been entered into pursuant to
424 this section shall be conclusively deemed to have been entered



425 into in accordance with all of the provisions and conditions set
426 forth in this section. Any defect or irregularity arising with
427 respect to procedures applicable to the acquisition of any
428 equipment shall not invalidate or otherwise limit the obligation
429 of the Department of Finance and Administration, or the state or
430 any agency of the state, under any master lease-purchase agreement
431 or any equipment-use agreement.

432 (13) There shall be maintained by the Department of Finance
433 and Administration, with respect to each master lease-purchase
434 agreement, an itemized statement of the cash price, interest
435 rates, interest costs, commissions, debt service schedules and all
436 other costs and expenses paid by the state incident to the
437 lease-purchase of equipment under such agreement.

438 (14) Lease-purchase agreements entered into by the Board of
439 Trustees of State Institutions of Higher Learning pursuant to the
440 authority of Section 37-101-413 or by any other agency which has
441 specific statutory authority other than pursuant to Section
442 31-7-13(e) to acquire equipment by lease-purchase shall not be
443 made pursuant to the master lease-purchase program under this
444 section, unless the Board of Trustees of State Institutions of
445 Higher Learning or such other agency elects to participate as to
446 part or all of its lease-purchase acquisitions in the master
447 lease-purchase program pursuant to this section.

448 (15) The Department of Finance and Administration may
449 develop a master lease-purchase program for school districts and,



450 pursuant to that program, may execute on behalf of the school
451 districts master lease-purchase agreements for equipment to be
452 used by the school districts. The form and structure of this
453 program shall be substantially the same as set forth in this
454 section for the master lease-purchase program for state agencies.
455 If sums due from a school district under the master lease-purchase
456 program are not paid by the expiration of the defined payment
457 period, the Executive Director of the Department of Finance and
458 Administration may withhold such amount that is due from the
459 school district's minimum education or adequate education program
460 fund allotments.

461 (16) The Department of Finance and Administration may
462 develop a master lease-purchase program for community and junior
463 college districts and, pursuant to that program, may execute on
464 behalf of the community and junior college districts master
465 lease-purchase agreements for equipment to be used by the
466 community and junior college districts. The form and structure of
467 this program must be substantially the same as set forth in this
468 section for the master lease-purchase program for state agencies.
469 If sums due from a community or junior college district under the
470 master lease-purchase program are not paid by the expiration of
471 the defined payment period, the Executive Director of the
472 Department of Finance and Administration may withhold an amount
473 equal to the amount due under the program from any funds allocated
474 for that community or junior college district in the state



475 appropriations for the use and support of the community and junior
476 colleges.

477 (17) Purchases of commodities by the teaching hospital and
478 related facilities, as described in Section 37-115-25, that are
479 used for clinical purposes are exempt from the provisions of this
480 section as provided in Section 37-115-31.

481 **SECTION 5.** Section 31-7-11, Mississippi Code of 1972, is
482 amended as follows:

483 31-7-11. Each agency of the state shall furnish information
484 relative to its purchase of commodities, and as to its method of
485 purchasing such commodities, to the Department of Finance and
486 Administration annually and at such other times as the Department
487 of Finance and Administration may request.

488 The Department of Finance and Administration shall have
489 supervision over the purchasing and purchasing practices of each
490 state agency and may by regulation or order correct any practice
491 that appears contrary to the provisions of this chapter or to the
492 best interests of the state. If it shall appear that any agency
493 is not practicing economy in its purchasing or is permitting
494 favoritism or any improper purchasing practice, the Department of
495 Finance and Administration shall require that the agency
496 immediately cease such improper activity, with full and complete
497 authority in the Department of Finance and Administration to carry
498 into effect its directions in such regard.



499 All purchases, trade-ins, sales or transfer of personal
500 property made by any officer, board, agency, department or branch
501 of the state government except the Legislature shall be subject to
502 the approval of the Department of Finance and Administration.
503 Such transaction shall be made in accordance with rules and
504 regulations of the Department of Finance and Administration
505 relating to the purchase of state-owned motor vehicles and all
506 other personal property. The title of such property shall remain
507 in the name of the state.

508 Purchases of commodities by the teaching hospital and related
509 facilities, as described in Section 37-115-25, that are used for
510 clinical purposes are exempt from the provisions of this section
511 as provided in Section 37-115-31.

512 **SECTION 6.** Section 31-7-12, Mississippi Code of 1972, is
513 amended as follows:

514 31-7-12. (1) Except in regard to purchases of unmarked
515 vehicles made in accordance with purchasing regulations adopted by
516 the Department of Finance and Administration pursuant to Section
517 31-7-9(2), all agencies shall purchase commodities at the state
518 contract price from the approved source, unless approval is
519 granted by the Department of Finance and Administration to solicit
520 purchases outside the terms of the contracts. However, prices
521 accepted by an agency shall be less than the prices set by the
522 state contract. Prices accepted by an agency shall be obtained in
523 compliance with paragraph (a), (b) or (c) of Section 31-7-13. It



524 shall be the responsibility of the Department of Finance and
525 Administration to ascertain that the resulting prices shall
526 provide a cost effective alternative to the established state
527 contract.

528 (2) Governing authorities may purchase commodities approved
529 by the Department of Finance and Administration from the state
530 contract vendor, or from any source offering the identical
531 commodity, at a price not exceeding the state contract price
532 established by the Department of Finance and Administration for
533 such commodity, without obtaining or advertising for competitive
534 bids. Governing authorities that do not exercise the option to
535 purchase such commodities from the state contract vendor or from
536 another source offering the identical commodity at a price not
537 exceeding the state contract price established by the Department
538 of Finance and Administration shall make such purchases pursuant
539 to the provisions of Section 31-7-13 without regard to state
540 contract prices established by the Department of Finance and
541 Administration, unless such purchases are authorized to be made
542 under subsection (5) of this section.

543 (3) Nothing in this section shall prohibit governing
544 authorities from purchasing, pursuant to subsection (2) of this
545 section, commodities approved by the Department of Finance and
546 Administration at a price not exceeding the state contract price
547 established by the Department of Finance and Administration.



548 (4) The Department of Finance and Administration shall
549 ensure that the prices of all commodities on the state contract
550 are the lowest and best prices available from any source offering
551 that commodity at the same level of quality or service, utilizing
552 the reasonable standards established therefor by the Department of
553 Finance and Administration. If the Department of Finance and
554 Administration does not list an approved price for the particular
555 item involved, purchase shall be made according to statutory
556 bidding and licensing requirements. To encourage prudent
557 purchasing practices, the Department of Finance and Administration
558 shall be authorized and empowered to exempt certain commodities
559 from the requirement that the lowest and best price be approved by
560 order placed on its minutes.

561 (5) Any school district may purchase commodities from
562 vendors with which any levying authority of the school district,
563 as defined in Section 37-57-1, has contracted through competitive
564 bidding procedures pursuant to Section 31-7-13 for purchases of
565 the same commodities. Purchases authorized by this subsection may
566 be made by a school district without obtaining or advertising for
567 competitive bids, and such purchases shall be made at the same
568 prices and under the same conditions as purchases of the same
569 commodities are to be made by the levying authority of the school
570 district under the contract with the vendor.

571 (6) Purchases of commodities by the teaching hospital and
572 related facilities, as described in Section 37-115-25, that are



573 used for clinical purposes are exempt from the provisions of this
574 section as provided in Section 37-115-31.

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

577 31-7-13. All agencies and governing authorities shall
578 purchase their commodities and printing; contract for garbage
579 collection or disposal; contract for solid waste collection or
580 disposal; contract for sewage collection or disposal; contract for
581 public construction; and contract for rentals as herein provided.

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

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

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

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

591 **not over \$50,000.00.** Purchases which involve an expenditure of

592 more than Five Thousand Dollars (\$5,000.00) but not more than

593 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and

594 shipping charges may be made from the lowest and best bidder

595 without publishing or posting advertisement for bids, provided at

596 least two (2) competitive written bids have been obtained. Any

597 state agency or community/junior college purchasing commodities or



598 procuring construction pursuant to this paragraph (b) may
599 authorize its purchasing agent, or his designee, to accept the
600 lowest competitive written bid under Fifty Thousand Dollars
601 (\$50,000.00). Any governing authority purchasing commodities
602 pursuant to this paragraph (b) may authorize its purchasing agent,
603 or his designee, with regard to governing authorities other than
604 counties, or its purchase clerk, or his designee, with regard to
605 counties, to accept the lowest and best competitive written bid.
606 Such authorization shall be made in writing by the governing
607 authority and shall be maintained on file in the primary office of
608 the agency and recorded in the official minutes of the governing
609 authority, as appropriate. The purchasing agent or the purchase
610 clerk, or their designee, as the case may be, and not the
611 governing authority, shall be liable for any penalties and/or
612 damages as may be imposed by law for any act or omission of the
613 purchasing agent or purchase clerk, or their designee,
614 constituting a violation of law in accepting any bid without
615 approval by the governing authority. The term "competitive
616 written bid" shall mean a bid submitted on a bid form furnished by
617 the buying agency or governing authority and signed by authorized
618 personnel representing the vendor, or a bid submitted on a
619 vendor's letterhead or identifiable bid form and signed by
620 authorized personnel representing the vendor. "Competitive" shall
621 mean that the bids are developed based upon comparable
622 identification of the needs and are developed independently and



623 without knowledge of other bids or prospective bids. Any bid item
624 for construction in excess of Five Thousand Dollars (\$5,000.00)
625 shall be broken down by components to provide detail of component
626 description and pricing. These details shall be submitted with
627 the written bids and become part of the bid evaluation criteria.
628 Bids may be submitted by facsimile, electronic mail or other
629 generally accepted method of information distribution. Bids
630 submitted by electronic transmission shall not require the
631 signature of the vendor's representative unless required by
632 agencies or governing authorities.

633 (c) **Bidding procedure for purchases over \$50,000.00.**

634 (i) **Publication requirement.**

635 1. Purchases which involve an expenditure of
636 more than Fifty Thousand Dollars (\$50,000.00), exclusive of
637 freight and shipping charges, may be made from the lowest and best
638 bidder after advertising for competitive bids once each week for
639 two (2) consecutive weeks in a regular newspaper published in the
640 county or municipality in which such agency or governing authority
641 is located. However, all American Recovery and Reinvestment Act
642 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
643 shall be bid. All references to American Recovery and
644 Reinvestment Act projects in this section shall not apply to
645 programs identified in Division B of the American Recovery and
646 Reinvestment Act.



647 2. The purchasing entity may designate the
648 method by which the bids will be received, including, but not
649 limited to, bids sealed in an envelope, bids received
650 electronically in a secure system, bids received via a reverse
651 auction, or bids received by any other method that promotes open
652 competition and has been approved by the Office of Purchasing and
653 Travel. However, reverse auction shall not be used for any public
654 contract for design or construction of public facilities,
655 including buildings, roads and bridges.

656 3. The date as published for the bid opening
657 shall not be less than seven (7) working days after the last
658 published notice; however, if the purchase involves a construction
659 project in which the estimated cost is in excess of Fifty Thousand
660 Dollars (\$50,000.00), such bids shall not be opened in less than
661 fifteen (15) working days after the last notice is published and
662 the notice for the purchase of such construction shall be
663 published once each week for two (2) consecutive weeks. However,
664 all American Recovery and Reinvestment Act projects in excess of
665 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
666 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
667 under the American Recovery and Reinvestment Act, publication
668 shall be made one (1) time and the bid opening for construction
669 projects shall not be less than ten (10) working days after the
670 date of the published notice. The notice of intention to let
671 contracts or purchase equipment shall state the time and place at



672 which bids shall be received, list the contracts to be made or
673 types of equipment or supplies to be purchased, and, if all plans
674 and/or specifications are not published, refer to the plans and/or
675 specifications on file. If there is no newspaper published in the
676 county or municipality, then such notice shall be given by posting
677 same at the courthouse, or for municipalities at the city hall,
678 and at two (2) other public places in the county or municipality,
679 and also by publication once each week for two (2) consecutive
680 weeks in some newspaper having a general circulation in the county
681 or municipality in the above-provided manner. On the same date
682 that the notice is submitted to the newspaper for publication, the
683 agency or governing authority involved shall mail written notice
684 to, or provide electronic notification to the main office of the
685 Mississippi Procurement Technical Assistance Program under the
686 Mississippi Development Authority that contains the same
687 information as that in the published notice. Submissions received
688 by the Mississippi Procurement Technical Assistance Program for
689 projects funded by the American Recovery and Reinvestment Act
690 shall be displayed on a separate and unique Internet web page
691 accessible to the public and maintained by the Mississippi
692 Development Authority for the Mississippi Procurement Technical
693 Assistance Program. Those American Recovery and Reinvestment Act
694 related submissions shall be publicly posted within twenty-four
695 (24) hours of receipt by the Mississippi Development Authority and
696 the bid opening shall not occur until the submission has been



697 posted for ten (10) consecutive days. The Department of Finance
698 and Administration shall maintain information regarding contracts
699 and other expenditures from the American Recovery and Reinvestment
700 Act, on a unique Internet web page accessible to the public. The
701 Department of Finance and Administration shall promulgate rules
702 regarding format, content and deadlines, unless otherwise
703 specified by law, of the posting of award notices, contract
704 execution and subsequent amendments, links to the contract
705 documents, expenditures against the awarded contracts and general
706 expenditures of funds from the American Recovery and Reinvestment
707 Act. Within one (1) working day of the contract award, the agency
708 or governing authority shall post to the designated web page
709 maintained by the Department of Finance and Administration, notice
710 of the award, including the award recipient, the contract amount,
711 and a brief summary of the contract in accordance with rules
712 promulgated by the department. Within one (1) working day of the
713 contract execution, the agency or governing authority shall post
714 to the designated web page maintained by the Department of Finance
715 and Administration a summary of the executed contract and make a
716 copy of the appropriately redacted contract documents available
717 for linking to the designated web page in accordance with the
718 rules promulgated by the department. The information provided by
719 the agency or governing authority shall be posted to the web page
720 for the duration of the American Recovery and Reinvestment Act
721 funding or until the project is completed, whichever is longer.



722 (ii) **Bidding process amendment procedure.** If all
723 plans and/or specifications are published in the notification,
724 then the plans and/or specifications may not be amended. If all
725 plans and/or specifications are not published in the notification,
726 then amendments to the plans/specifications, bid opening date, bid
727 opening time and place may be made, provided that the agency or
728 governing authority maintains a list of all prospective bidders
729 who are known to have received a copy of the bid documents and all
730 such prospective bidders are sent copies of all amendments. This
731 notification of amendments may be made via mail, facsimile,
732 electronic mail or other generally accepted method of information
733 distribution. No addendum to bid specifications may be issued
734 within two (2) working days of the time established for the
735 receipt of bids unless such addendum also amends the bid opening
736 to a date not less than five (5) working days after the date of
737 the addendum.

738 (iii) **Filing requirement.** In all cases involving
739 governing authorities, before the notice shall be published or
740 posted, the plans or specifications for the construction or
741 equipment being sought shall be filed with the clerk of the board
742 of the governing authority. In addition to these requirements, a
743 bid file shall be established which shall indicate those vendors
744 to whom such solicitations and specifications were issued, and
745 such file shall also contain such information as is pertinent to
746 the bid.



747 (iv) **Specification restrictions.**

748 1. Specifications pertinent to such bidding
749 shall be written so as not to exclude comparable equipment of
750 domestic manufacture. However, if valid justification is
751 presented, the Department of Finance and Administration or the
752 board of a governing authority may approve a request for specific
753 equipment necessary to perform a specific job. Further, such
754 justification, when placed on the minutes of the board of a
755 governing authority, may serve as authority for that governing
756 authority to write specifications to require a specific item of
757 equipment needed to perform a specific job. In addition to these
758 requirements, from and after July 1, 1990, vendors of relocatable
759 classrooms and the specifications for the purchase of such
760 relocatable classrooms published by local school boards shall meet
761 all pertinent regulations of the State Board of Education,
762 including prior approval of such bid by the State Department of
763 Education.

764 2. Specifications for construction projects
765 may include an allowance for commodities, equipment, furniture,
766 construction materials or systems in which prospective bidders are
767 instructed to include in their bids specified amounts for such
768 items so long as the allowance items are acquired by the vendor in
769 a commercially reasonable manner and approved by the
770 agency/governing authority. Such acquisitions shall not be made
771 to circumvent the public purchasing laws.



772 (v) Agencies and governing authorities may
773 establish secure procedures by which bids may be submitted via
774 electronic means.

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

776 (i) **Decision procedure.** Purchases may be made
777 from the lowest and best bidder. In determining the lowest and
778 best bid, freight and shipping charges shall be included.
779 Life-cycle costing, total cost bids, warranties, guaranteed
780 buy-back provisions and other relevant provisions may be included
781 in the best bid calculation. All best bid procedures for state
782 agencies must be in compliance with regulations established by the
783 Department of Finance and Administration. If any governing
784 authority accepts a bid other than the lowest bid actually
785 submitted, it shall place on its minutes detailed calculations and
786 narrative summary showing that the accepted bid was determined to
787 be the lowest and best bid, including the dollar amount of the
788 accepted bid and the dollar amount of the lowest bid. No agency
789 or governing authority shall accept a bid based on items not
790 included in the specifications.

791 (ii) **Decision procedure for Certified Purchasing**
792 **Offices.** In addition to the decision procedure set forth in * * *
793 subparagraph (i) of this paragraph (d), Certified Purchasing
794 Offices may also use the following procedure: Purchases may be
795 made from the bidder offering the best value. In determining the
796 best value bid, freight and shipping charges shall be included.



797 Life-cycle costing, total cost bids, warranties, guaranteed
798 buy-back provisions, documented previous experience, training
799 costs and other relevant provisions, including, but not limited
800 to, a bidder having a local office and inventory located within
801 the jurisdiction of the governing authority, may be included in
802 the best value calculation. This provision shall authorize
803 Certified Purchasing Offices to utilize a Request For Proposals
804 (RFP) process when purchasing commodities. All best value
805 procedures for state agencies must be in compliance with
806 regulations established by the Department of Finance and
807 Administration. No agency or governing authority shall accept a
808 bid based on items or criteria not included in the specifications.

809 (iii) **Decision procedure for Mississippi**

810 **Landmarks.** In addition to the decision procedure set forth
811 in * * * subparagraph (i) of this paragraph (d), where purchase
812 involves renovation, restoration, or both, of the State Capitol
813 Building or any other historical building designated for at least
814 five (5) years as a Mississippi Landmark by the Board of Trustees
815 of the Department of Archives and History under the authority of
816 Sections 39-7-7 and 39-7-11, the agency or governing authority may
817 use the following procedure: Purchases may be made from the
818 lowest and best prequalified bidder. Prequalification of bidders
819 shall be determined not less than fifteen (15) working days before
820 the first published notice of bid opening. Prequalification
821 criteria shall be limited to bidder's knowledge and experience in



822 historical restoration, preservation and renovation. In
823 determining the lowest and best bid, freight and shipping charges
824 shall be included. Life-cycle costing, total cost bids,
825 warranties, guaranteed buy-back provisions and other relevant
826 provisions may be included in the best bid calculation. All best
827 bid and prequalification procedures for state agencies must be in
828 compliance with regulations established by the Department of
829 Finance and Administration. If any governing authority accepts a
830 bid other than the lowest bid actually submitted, it shall place
831 on its minutes detailed calculations and narrative summary showing
832 that the accepted bid was determined to be the lowest and best
833 bid, including the dollar amount of the accepted bid and the
834 dollar amount of the lowest bid. No agency or governing authority
835 shall accept a bid based on items not included in the
836 specifications.

837 (iv) **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 designees, 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 head of such agency, or his designees, shall file with the
964 Department of Finance and Administration (i) a statement
965 explaining the conditions and circumstances of the emergency,
966 which shall include a detailed description of the events leading
967 up to the situation and the negative impact to the entity if the
968 purchase is made following the statutory requirements set forth in
969 paragraph (a), (b) or (c) of this section, and (ii) a certified
970 copy of the appropriate minutes of the board of such agency
971 requesting the emergency purchase, if applicable. Upon receipt of



972 the statement and applicable board certification, the State Fiscal
973 Officer, or his designees, may, in writing, authorize the purchase
974 or repair without having to comply with competitive bidding
975 requirements.

976 If the governing board or the executive head, or his
977 designees, of any agency determines that an emergency exists in
978 regard to the purchase of any commodities or repair contracts, so
979 that the delay incident to giving opportunity for competitive
980 bidding would threaten the health or safety of any person, or the
981 preservation or protection of property, then the provisions in
982 this section for competitive bidding shall not apply, and any
983 officer or agent of the agency having general or specific
984 authority for making the purchase or repair contract shall approve
985 the bill presented for payment, and he shall certify in writing
986 from whom the purchase was made, or with whom the repair contract
987 was made.

988 Total purchases made under this paragraph (j) shall only be
989 for the purpose of meeting needs created by the emergency
990 situation. Following the emergency purchase, documentation of the
991 purchase, including a description of the commodity purchased, the
992 purchase price thereof and the nature of the emergency shall be
993 filed with the Department of Finance and Administration.

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

995 If the governing authority, or the governing authority acting
996 through its designee, shall determine that an emergency exists in



997 regard to the purchase of any commodities or repair contracts, so
998 that the delay incident to giving opportunity for competitive
999 bidding would be detrimental to the interest of the governing
1000 authority, then the provisions herein for competitive bidding
1001 shall not apply and any officer or agent of such governing
1002 authority having general or special authority therefor in making
1003 such purchase or repair shall approve the bill presented therefor,
1004 and he shall certify in writing thereon from whom such purchase
1005 was made, or with whom such a repair contract was made. At the
1006 board meeting next following the emergency purchase or repair
1007 contract, documentation of the purchase or repair contract,
1008 including a description of the commodity purchased, the price
1009 thereof and the nature of the emergency shall be presented to the
1010 board and shall be placed on the minutes of the board of such
1011 governing authority.

1012 (1) **Hospital purchase, lease-purchase and lease**
1013 **authorization.**

1014 (i) The commissioners or board of trustees of any
1015 public hospital may contract with such lowest and best bidder for
1016 the purchase or lease-purchase of any commodity under a contract
1017 of purchase or lease-purchase agreement whose obligatory payment
1018 terms do not exceed five (5) years.

1019 (ii) In addition to the authority granted in
1020 subparagraph (i) of this paragraph (1), the commissioners or board
1021 of trustees is authorized to enter into contracts for the lease of



1022 equipment or services, or both, which it considers necessary for
1023 the proper care of patients if, in its opinion, it is not
1024 financially feasible to purchase the necessary equipment or
1025 services. Any such contract for the lease of equipment or
1026 services executed by the commissioners or board shall not exceed a
1027 maximum of five (5) years' duration and shall include a
1028 cancellation clause based on unavailability of funds. If such
1029 cancellation clause is exercised, there shall be no further
1030 liability on the part of the lessee. Any such contract for the
1031 lease of equipment or services executed on behalf of the
1032 commissioners or board that complies with the provisions of this
1033 subparagraph (ii) shall be excepted from the bid requirements set
1034 forth in this section.

1035 (m) **Exceptions from bidding requirements.** Excepted
1036 from bid requirements are:

1037 (i) **Purchasing agreements approved by department.**
1038 Purchasing agreements, contracts and maximum price regulations
1039 executed or approved by the Department of Finance and
1040 Administration.

1041 (ii) **Outside equipment repairs.** Repairs to
1042 equipment, when such repairs are made by repair facilities in the
1043 private sector; however, engines, transmissions, rear axles and/or
1044 other such components shall not be included in this exemption when
1045 replaced as a complete unit instead of being repaired and the need
1046 for such total component replacement is known before disassembly



1047 of the component; however, invoices identifying the equipment,
1048 specific repairs made, parts identified by number and name,
1049 supplies used in such repairs, and the number of hours of labor
1050 and costs therefor shall be required for the payment for such
1051 repairs.

1052 (iii) **In-house equipment repairs.** Purchases of
1053 parts for repairs to equipment, when such repairs are made by
1054 personnel of the agency or governing authority; however, entire
1055 assemblies, such as engines or transmissions, shall not be
1056 included in this exemption when the entire assembly is being
1057 replaced instead of being repaired.

1058 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
1059 of gravel or fill dirt which are to be removed and transported by
1060 the purchaser.

1061 (v) **Governmental equipment auctions.** Motor
1062 vehicles or other equipment purchased from a federal agency or
1063 authority, another governing authority or state agency of the
1064 State of Mississippi, or any governing authority or state agency
1065 of another state at a public auction held for the purpose of
1066 disposing of such vehicles or other equipment. Any purchase by a
1067 governing authority under the exemption authorized by this
1068 subparagraph (v) shall require advance authorization spread upon
1069 the minutes of the governing authority to include the listing of
1070 the item or items authorized to be purchased and the maximum bid
1071 authorized to be paid for each item or items.



1072 (vi) **Intergovernmental sales and transfers.**
1073 Purchases, sales, transfers or trades by governing authorities or
1074 state agencies when such purchases, sales, transfers or trades are
1075 made by a private treaty agreement or through means of
1076 negotiation, from any federal agency or authority, another
1077 governing authority or state agency of the State of Mississippi,
1078 or any state agency or governing authority of another state.
1079 Nothing in this section shall permit such purchases through public
1080 auction except as provided for in subparagraph (v) of this * * *
1081 paragraph (m). It is the intent of this section to allow
1082 governmental entities to dispose of and/or purchase commodities
1083 from other governmental entities at a price that is agreed to by
1084 both parties. This shall allow for purchases and/or sales at
1085 prices which may be determined to be below the market value if the
1086 selling entity determines that the sale at below market value is
1087 in the best interest of the taxpayers of the state. Governing
1088 authorities shall place the terms of the agreement and any
1089 justification on the minutes, and state agencies shall obtain
1090 approval from the Department of Finance and Administration, prior
1091 to releasing or taking possession of the commodities.

1092 (vii) **Perishable supplies or food.** Perishable
1093 supplies or food purchased for use in connection with hospitals,
1094 the school lunch programs, homemaking programs and for the feeding
1095 of county or municipal prisoners.



1096 (viii) **Single source items.** Noncompetitive items
1097 available from one (1) source only. In connection with the
1098 purchase of noncompetitive items only available from one (1)
1099 source, a certification of the conditions and circumstances
1100 requiring the purchase shall be filed by the agency with the
1101 Department of Finance and Administration and by the governing
1102 authority with the board of the governing authority. Upon receipt
1103 of that certification the Department of Finance and Administration
1104 or the board of the governing authority, as the case may be, may,
1105 in writing, authorize the purchase, which authority shall be noted
1106 on the minutes of the body at the next regular meeting thereafter.
1107 In those situations, a governing authority is not required to
1108 obtain the approval of the Department of Finance and
1109 Administration. Following the purchase, the executive head of the
1110 state agency, or his designees, shall file with the Department of
1111 Finance and Administration, documentation of the purchase,
1112 including a description of the commodity purchased, the purchase
1113 price thereof and the source from whom it was purchased.

1114 (ix) **Waste disposal facility construction**
1115 **contracts.** Construction of incinerators and other facilities for
1116 disposal of solid wastes in which products either generated
1117 therein, such as steam, or recovered therefrom, such as materials
1118 for recycling, are to be sold or otherwise disposed of; however,
1119 in constructing such facilities, a governing authority or agency
1120 shall publicly issue requests for proposals, advertised for in the



1121 same manner as provided herein for seeking bids for public
1122 construction projects, concerning the design, construction,
1123 ownership, operation and/or maintenance of such facilities,
1124 wherein such requests for proposals when issued shall contain
1125 terms and conditions relating to price, financial responsibility,
1126 technology, environmental compatibility, legal responsibilities
1127 and such other matters as are determined by the governing
1128 authority or agency to be appropriate for inclusion; and after
1129 responses to the request for proposals have been duly received,
1130 the governing authority or agency may select the most qualified
1131 proposal or proposals on the basis of price, technology and other
1132 relevant factors and from such proposals, but not limited to the
1133 terms thereof, negotiate and enter contracts with one or more of
1134 the persons or firms submitting proposals.

1135 (x) **Hospital group purchase contracts.** Supplies,
1136 commodities and equipment purchased by hospitals through group
1137 purchase programs pursuant to Section 31-7-38.

1138 (xi) **Information technology products.** Purchases
1139 of information technology products made by governing authorities
1140 under the provisions of purchase schedules, or contracts executed
1141 or approved by the Mississippi Department of Information
1142 Technology Services and designated for use by governing
1143 authorities.

1144 (xii) **Energy efficiency services and equipment.**
1145 Energy efficiency services and equipment acquired by school



1146 districts, community and junior colleges, institutions of higher
1147 learning and state agencies or other applicable governmental
1148 entities on a shared-savings, lease or lease-purchase basis
1149 pursuant to Section 31-7-14.

1150 (xiii) **Municipal electrical utility system fuel.**
1151 Purchases of coal and/or natural gas by municipally owned electric
1152 power generating systems that have the capacity to use both coal
1153 and natural gas for the generation of electric power.

1154 (xiv) **Library books and other reference materials.**
1155 Purchases by libraries or for libraries of books and periodicals;
1156 processed film, videocassette tapes, filmstrips and slides;
1157 recorded audiotapes, cassettes and diskettes; and any such items
1158 as would be used for teaching, research or other information
1159 distribution; however, equipment such as projectors, recorders,
1160 audio or video equipment, and monitor televisions are not exempt
1161 under this subparagraph.

1162 (xv) **Unmarked vehicles.** Purchases of unmarked
1163 vehicles when such purchases are made in accordance with
1164 purchasing regulations adopted by the Department of Finance and
1165 Administration pursuant to Section 31-7-9(2).

1166 (xvi) **Election ballots.** Purchases of ballots
1167 printed pursuant to Section 23-15-351.

1168 (xvii) **Multichannel interactive video systems.**
1169 From and after July 1, 1990, contracts by Mississippi Authority
1170 for Educational Television with any private educational



1171 institution or private nonprofit organization whose purposes are
1172 educational in regard to the construction, purchase, lease or
1173 lease-purchase of facilities and equipment and the employment of
1174 personnel for providing multichannel interactive video systems
1175 (ITSF) in the school districts of this state.

1176 (xviii) **Purchases of prison industry products by**
1177 **the Department of Corrections, regional correctional facilities or**
1178 **privately owned prisons.** Purchases made by the Mississippi
1179 Department of Corrections, regional correctional facilities or
1180 privately owned prisons involving any item that is manufactured,
1181 processed, grown or produced from the state's prison industries.

1182 (xix) **Undercover operations equipment.** Purchases
1183 of surveillance equipment or any other high-tech equipment to be
1184 used by law enforcement agents in undercover operations, provided
1185 that any such purchase shall be in compliance with regulations
1186 established by the Department of Finance and Administration.

1187 (xx) **Junior college books for rent.** Purchases by
1188 community or junior colleges of textbooks which are obtained for
1189 the purpose of renting such books to students as part of a book
1190 service system.

1191 (xxi) **Certain school district purchases.**
1192 Purchases of commodities made by school districts from vendors
1193 with which any levying authority of the school district, as
1194 defined in Section 37-57-1, has contracted through competitive
1195 bidding procedures for purchases of the same commodities.



1196 (xxii) **Garbage, solid waste and sewage contracts.**
1197 Contracts for garbage collection or disposal, contracts for solid
1198 waste collection or disposal and contracts for sewage collection
1199 or disposal.

1200 (xxiii) **Municipal water tank maintenance**
1201 **contracts.** Professional maintenance program contracts for the
1202 repair or maintenance of municipal water tanks, which provide
1203 professional services needed to maintain municipal water storage
1204 tanks for a fixed annual fee for a duration of two (2) or more
1205 years.

1206 (xxiv) **Purchases of Mississippi Industries for the**
1207 **Blind products.** Purchases made by state agencies or governing
1208 authorities involving any item that is manufactured, processed or
1209 produced by the Mississippi Industries for the Blind.

1210 (xxv) **Purchases of state-adopted textbooks.**
1211 Purchases of state-adopted textbooks by public school districts.

1212 (xxvi) **Certain purchases under the Mississippi**
1213 **Major Economic Impact Act.** Contracts entered into pursuant to the
1214 provisions of Section 57-75-9(2), (3) and (4).

1215 (xxvii) **Used heavy or specialized machinery or**
1216 **equipment for installation of soil and water conservation**
1217 **practices purchased at auction.** Used heavy or specialized
1218 machinery or equipment used for the installation and
1219 implementation of soil and water conservation practices or
1220 measures purchased subject to the restrictions provided in



1221 Sections 69-27-331 through 69-27-341. Any purchase by the State
1222 Soil and Water Conservation Commission under the exemption
1223 authorized by this subparagraph shall require advance
1224 authorization spread upon the minutes of the commission to include
1225 the listing of the item or items authorized to be purchased and
1226 the maximum bid authorized to be paid for each item or items.

1227 (xxviii) **Hospital lease of equipment or services.**
1228 Leases by hospitals of equipment or services if the leases are in
1229 compliance with paragraph (1)(ii).

1230 (xxix) **Purchases made pursuant to qualified**
1231 **cooperative purchasing agreements.** Purchases made by certified
1232 purchasing offices of state agencies or governing authorities
1233 under cooperative purchasing agreements previously approved by the
1234 Office of Purchasing and Travel and established by or for any
1235 municipality, county, parish or state government or the federal
1236 government, provided that the notification to potential
1237 contractors includes a clause that sets forth the availability of
1238 the cooperative purchasing agreement to other governmental
1239 entities. Such purchases shall only be made if the use of the
1240 cooperative purchasing agreements is determined to be in the best
1241 interest of the governmental entity.

1242 (xxx) **School yearbooks.** Purchases of school
1243 yearbooks by state agencies or governing authorities; provided,
1244 however, that state agencies and governing authorities shall use
1245 for these purchases the RFP process as set forth in the



1246 Mississippi Procurement Manual adopted by the Office of Purchasing
1247 and Travel.

1248 (xxxii) **Design-build method and dual-phase**
1249 **design-build method of contracting.** Contracts entered into under
1250 the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

1251 (xxxiii) **Toll roads and bridge construction**
1252 **projects.** Contracts entered into under the provisions of Section
1253 65-43-1 or 65-43-3.

1254 (xxxiii) **Certain purchases under Section 57-1-221.**
1255 Contracts entered into pursuant to the provisions of Section
1256 57-1-221.

1257 (xxxiv) **Certain transfers made pursuant to the**
1258 **provisions of Section 57-105-1(7).** Transfers of public property
1259 or facilities under Section 57-105-1(7) and construction related
1260 to such public property or facilities.

1261 (xxxv) **Certain purchases or transfers entered into**
1262 **with local electrical power associations.** Contracts or agreements
1263 entered into under the provisions of Section 55-3-33.

1264 (xxxvi) **Certain purchases or transfers made by the**
1265 **UMMC teaching hospital.** Purchases of commodities by the teaching
1266 hospital and related facilities, as described in Section
1267 37-115-25, that are used for clinical purposes as provided in
1268 Section 37-115-31.

1269 (n) **Term contract authorization.** All contracts for the
1270 purchase of:



1271 (i) All contracts for the purchase of commodities,
1272 equipment and public construction (including, but not limited to,
1273 repair and maintenance), may be let for periods of not more than
1274 sixty (60) months in advance, subject to applicable statutory
1275 provisions prohibiting the letting of contracts during specified
1276 periods near the end of terms of office. Term contracts for a
1277 period exceeding twenty-four (24) months shall also be subject to
1278 ratification or cancellation by governing authority boards taking
1279 office subsequent to the governing authority board entering the
1280 contract.

1281 (ii) Bid proposals and contracts may include price
1282 adjustment clauses with relation to the cost to the contractor
1283 based upon a nationally published industry-wide or nationally
1284 published and recognized cost index. The cost index used in a
1285 price adjustment clause shall be determined by the Department of
1286 Finance and Administration for the state agencies and by the
1287 governing board for governing authorities. The bid proposal and
1288 contract documents utilizing a price adjustment clause shall
1289 contain the basis and method of adjusting unit prices for the
1290 change in the cost of such commodities, equipment and public
1291 construction.

1292 (o) **Purchase law violation prohibition and vendor**
1293 **penalty.** No contract or purchase as herein authorized shall be
1294 made for the purpose of circumventing the provisions of this
1295 section requiring competitive bids, nor shall it be lawful for any



1296 person or concern to submit individual invoices for amounts within
1297 those authorized for a contract or purchase where the actual value
1298 of the contract or commodity purchased exceeds the authorized
1299 amount and the invoices therefor are split so as to appear to be
1300 authorized as purchases for which competitive bids are not
1301 required. Submission of such invoices shall constitute a
1302 misdemeanor punishable by a fine of not less than Five Hundred
1303 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1304 or by imprisonment for thirty (30) days in the county jail, or
1305 both such fine and imprisonment. In addition, the claim or claims
1306 submitted shall be forfeited.

1307 (p) **Electrical utility petroleum-based equipment**
1308 **purchase procedure.** When in response to a proper advertisement
1309 therefor, no bid firm as to price is submitted to an electric
1310 utility for power transformers, distribution transformers, power
1311 breakers, reclosers or other articles containing a petroleum
1312 product, the electric utility may accept the lowest and best bid
1313 therefor although the price is not firm.

1314 (q) **Fuel management system bidding procedure.** Any
1315 governing authority or agency of the state shall, before
1316 contracting for the services and products of a fuel management or
1317 fuel access system, enter into negotiations with not fewer than
1318 two (2) sellers of fuel management or fuel access systems for
1319 competitive written bids to provide the services and products for
1320 the systems. In the event that the governing authority or agency



1321 cannot locate two (2) sellers of such systems or cannot obtain
1322 bids from two (2) sellers of such systems, it shall show proof
1323 that it made a diligent, good-faith effort to locate and negotiate
1324 with two (2) sellers of such systems. Such proof shall include,
1325 but not be limited to, publications of a request for proposals and
1326 letters soliciting negotiations and bids. For purposes of this
1327 paragraph (q), a fuel management or fuel access system is an
1328 automated system of acquiring fuel for vehicles as well as
1329 management reports detailing fuel use by vehicles and drivers, and
1330 the term "competitive written bid" shall have the meaning as
1331 defined in paragraph (b) of this section. Governing authorities
1332 and agencies shall be exempt from this process when contracting
1333 for the services and products of fuel management or fuel access
1334 systems under the terms of a state contract established by the
1335 Office of Purchasing and Travel.

1336 (r) **Solid waste contract proposal procedure.** Before
1337 entering into any contract for garbage collection or disposal,
1338 contract for solid waste collection or disposal or contract for
1339 sewage collection or disposal, which involves an expenditure of
1340 more than Fifty Thousand Dollars (\$50,000.00), a governing
1341 authority or agency shall issue publicly a request for proposals
1342 concerning the specifications for such services which shall be
1343 advertised for in the same manner as provided in this section for
1344 seeking bids for purchases which involve an expenditure of more
1345 than the amount provided in paragraph (c) of this section. Any



1346 request for proposals when issued shall contain terms and
1347 conditions relating to price, financial responsibility,
1348 technology, legal responsibilities and other relevant factors as
1349 are determined by the governing authority or agency to be
1350 appropriate for inclusion; all factors determined relevant by the
1351 governing authority or agency or required by this paragraph (r)
1352 shall be duly included in the advertisement to elicit proposals.
1353 After responses to the request for proposals have been duly
1354 received, the governing authority or agency shall select the most
1355 qualified proposal or proposals on the basis of price, technology
1356 and other relevant factors and from such proposals, but not
1357 limited to the terms thereof, negotiate and enter into contracts
1358 with one or more of the persons or firms submitting proposals. If
1359 the governing authority or agency deems none of the proposals to
1360 be qualified or otherwise acceptable, the request for proposals
1361 process may be reinitiated. Notwithstanding any other provisions
1362 of this paragraph, where a county with at least thirty-five
1363 thousand (35,000) nor more than forty thousand (40,000)
1364 population, according to the 1990 federal decennial census, owns
1365 or operates a solid waste landfill, the governing authorities of
1366 any other county or municipality may contract with the governing
1367 authorities of the county owning or operating the landfill,
1368 pursuant to a resolution duly adopted and spread upon the minutes
1369 of each governing authority involved, for garbage or solid waste
1370 collection or disposal services through contract negotiations.



1371 (s) **Minority set-aside authorization.** Notwithstanding
1372 any provision of this section to the contrary, any agency or
1373 governing authority, by order placed on its minutes, may, in its
1374 discretion, set aside not more than twenty percent (20%) of its
1375 anticipated annual expenditures for the purchase of commodities
1376 from minority businesses; however, all such set-aside purchases
1377 shall comply with all purchasing regulations promulgated by the
1378 Department of Finance and Administration and shall be subject to
1379 bid requirements under this section. Set-aside purchases for
1380 which competitive bids are required shall be made from the lowest
1381 and best minority business bidder. For the purposes of this
1382 paragraph, the term "minority business" means a business which is
1383 owned by a majority of persons who are United States citizens or
1384 permanent resident aliens (as defined by the Immigration and
1385 Naturalization Service) of the United States, and who are Asian,
1386 Black, Hispanic or Native American, according to the following
1387 definitions:

1388 (i) "Asian" means persons having origins in any of
1389 the original people of the Far East, Southeast Asia, the Indian
1390 subcontinent, or the Pacific Islands.

1391 (ii) "Black" means persons having origins in any
1392 black racial group of Africa.

1393 (iii) "Hispanic" means persons of Spanish or
1394 Portuguese culture with origins in Mexico, South or Central
1395 America, or the Caribbean Islands, regardless of race.



1396 (iv) "Native American" means persons having
1397 origins in any of the original people of North America, including
1398 American Indians, Eskimos and Aleuts.

1399 (t) **Construction punch list restriction.** The
1400 architect, engineer or other representative designated by the
1401 agency or governing authority that is contracting for public
1402 construction or renovation may prepare and submit to the
1403 contractor only one (1) preliminary punch list of items that do
1404 not meet the contract requirements at the time of substantial
1405 completion and one (1) final list immediately before final
1406 completion and final payment.

1407 (u) **Procurement of construction services by state**
1408 **institutions of higher learning.** Contracts for privately financed
1409 construction of auxiliary facilities on the campus of a state
1410 institution of higher learning may be awarded by the Board of
1411 Trustees of State Institutions of Higher Learning to the lowest
1412 and best bidder, where sealed bids are solicited, or to the
1413 offeror whose proposal is determined to represent the best value
1414 to the citizens of the State of Mississippi, where requests for
1415 proposals are solicited.

1416 (v) **Insurability of bidders for public construction or**
1417 **other public contracts.** In any solicitation for bids to perform
1418 public construction or other public contracts to which this
1419 section applies including, but not limited to, contracts for
1420 repair and maintenance, for which the contract will require



1421 insurance coverage in an amount of not less than One Million
1422 Dollars (\$1,000,000.00), bidders shall be permitted to either
1423 submit proof of current insurance coverage in the specified amount
1424 or demonstrate ability to obtain the required coverage amount of
1425 insurance if the contract is awarded to the bidder. Proof of
1426 insurance coverage shall be submitted within five (5) business
1427 days from bid acceptance.

1428 (w) **Purchase authorization clarification.** Nothing in
1429 this section shall be construed as authorizing any purchase not
1430 authorized by law.

1431 * * *

1432 **SECTION 8.** This act shall take effect and be in force from
1433 and after July 1, 2016.

