

By: Representatives White, Gibbs (72nd),
Reynolds

To: Public Health and Human
Services; Ways and Means

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 926

1 AN ACT TO BE KNOWN AS THE HEALTH CARE COLLABORATION ACT OF
2 2017; TO DEFINE CERTAIN TERMS; TO AUTHORIZE THE BOARD OF TRUSTEES
3 OF STATE INSTITUTIONS OF HIGHER LEARNING AND THE UNIVERSITY OF
4 MISSISSIPPI MEDICAL CENTER TO INCORPORATE HEALTH CARE
5 COLLABORATIVES AND TO SPECIFY THE PROCEDURE FOR INCORPORATION
6 UNDER THE MISSISSIPPI NONPROFIT CORPORATION ACT; TO SPECIFY THE
7 POWERS OF HEALTH CARE COLLABORATIVES; TO AUTHORIZE HEALTH CARE
8 COLLABORATIVES TO BORROW MONEY OR INCUR INDEBTEDNESS AND ISSUE
9 BONDS, NOTES OR OTHER EVIDENCE OF INDEBTEDNESS; TO EXEMPT THE
10 PROPERTY AND CERTAIN ACTIVITIES OF HEALTH CARE COLLABORATIVES FROM
11 SALES TAX, AD VALOREM TAX AND FRANCHISE TAX; TO AUTHORIZE THE
12 STATE, ANY GOVERNMENTAL ENTITY, ANY UNIVERSITY OR ANY PUBLIC
13 CORPORATION TO PLEDGE ITS FULL FAITH AND CREDIT TO OR FOR THE
14 BENEFIT OF A HEALTH CARE COLLABORATIVE OR PLEDGE ANY REVENUES THAT
15 IT IS LEGALLY ENTITLED TO PLEDGE TO OR FOR THE BENEFIT OF A HEALTH
16 CARE COLLABORATIVE; TO PROVIDE THAT HEALTH CARE COLLABORATIVES
17 SHALL BE IMMUNIZED FROM LIABILITY UNDER THE FEDERAL AND STATE
18 ANTITRUST OR COMPETITION LAWS TO THE FULLEST EXTENT ALLOWED BY
19 LAW; TO EXEMPT HEALTH CARE COLLABORATIVES FROM THE ETHICS IN
20 GOVERNMENT LAWS, THE STATE PERSONNEL SYSTEM LAWS, THE OPEN
21 MEETINGS ACT, THE ADMINISTRATIVE PROCEDURES LAW, THE INFORMATION
22 TECHNOLOGY SERVICES LAWS, THE MISSISSIPPI PUBLIC RECORDS ACT, THE
23 MISSISSIPPI ACCOUNTABILITY AND TRANSPARENCY ACT AND THE PUBLIC
24 PURCHASING LAWS; TO PROVIDE THAT HEALTH CARE COLLABORATIVES SHALL
25 NOT HAVE THE RIGHT TO ACQUIRE ANY REAL PROPERTY BY THE EXERCISE OF
26 THE POWER OF EMINENT DOMAIN; TO SPECIFY THE PROCEDURE FOR
27 DISSOLVING A HEALTH CARE COLLABORATIVE; TO ESTABLISH WITHIN THE
28 BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING THE
29 UNIVERSITY OF MISSISSIPPI MEDICAL CENTER RELATED HEALTH CARE
30 COMMISSION TO ASSIST THE TRUSTEES IN THEIR MANAGEMENT AND CONTROL
31 OF THE UNIVERSITY OF MISSISSIPPI MEDICAL CENTER; TO AMEND SECTIONS
32 41-13-15, 41-13-35, 11-46-1, 25-4-103, 25-9-107, 25-41-3,
33 25-43-1.102, 25-53-3, 25-61-3, 27-7-15, 27-13-5, 27-31-1,
34 27-65-19, 27-65-105, 27-104-153, 31-7-1 AND 41-7-205, MISSISSIPPI



35 CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISIONS; TO AMEND
36 SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO EXEMPT CERTAIN
37 PURCHASES BY AN ACADEMIC MEDICAL CENTER OR HEALTH SCIENCES SCHOOL
38 FROM THE PUBLIC PURCHASING LAWS; AND FOR RELATED PURPOSES.

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

40 **SECTION 1.** This act shall be known and may be cited as the
41 "Health Care Collaboration Act of 2017."

42 **SECTION 2.** For purposes of this act, the following terms
43 shall have the following meanings:

44 (a) "Academic medical center" means the teaching,
45 research, and clinical facilities and services provided,
46 established, or operated by a public university under Chapter 115,
47 Title 37, Mississippi Code of 1972.

48 (b) "Board" means the board of directors of a health
49 care collaborative.

50 (c) "Commission" means the University of Mississippi
51 Medical Center Related Health Care Commission, authorized under
52 this act by the Board of Trustees of State Institutions of Higher
53 Learning.

54 (d) "Director" means a member of the board of a health
55 care collaborative.

56 (e) "Governmental entity" means the state, a county, a
57 municipality, or any agency, department, board or commission of
58 the state, a county or a municipality.

59 (f) "Heath care collaborative" means a public
60 corporation organized under the provisions of this act.



61 (g) "Health care facility" means all property or rights
62 in property, real or personal, tangible or intangible, useful to a
63 health care collaborative in its operations, including without
64 limitation, the following:

65 (i) Facilities, sites of service or functions
66 necessary or desirable to the operation of an academic medical
67 center, one or more health sciences schools, hospitals, public
68 health care clinics, treatment centers, emergency facilities,
69 outpatient facilities, laboratories, service or support
70 facilities, and any other facilities or sites of service or
71 functions related to the operation of any of the foregoing or any
72 networks with which a health collaborative is associated or any
73 collaborative relationships among providers involving a health
74 care collaborative.

75 (ii) Biomedical or public health research
76 establishments of any type.

77 (iii) Ambulance, helicopter and other similar
78 facilities and services for the transportation of sick or injured
79 persons.

80 (iv) Land necessary or desirable to any of the
81 foregoing, whether presently or in the future.

82 (v) Machinery, equipment, furniture, and fixtures
83 useful or desirable in the operation of any of the foregoing.

84 Health care facilities may serve or address physical or mental



85 health. A determination by a board that an asset constitutes a
86 health care facility shall be conclusive, absent manifest error.

87 (h) "Health sciences school" means any school of
88 medicine, dentistry, nursing, pharmacy and any other health care
89 related educational program operated or provided by an academic
90 medical center in this state.

91 (i) "Indebtedness" means bonds, notes, certificates of
92 indebtedness, debt securities, capital lease agreements or any
93 other evidence of indebtedness, including but not limited to
94 indebtedness incurred to refund or refinance other outstanding
95 indebtedness.

96 (j) "Nonprofit organization" means any nonprofit
97 corporation, limited liability company, partnership, or other form
98 of business organization in which no part of the income or profit
99 is distributable to any individual or entity other than a
100 university, a health care collaborative, a governmental entity, a
101 public corporation, or a nonprofit corporation that is an
102 organization described in Section 501(c)(3) of the Internal
103 Revenue Code.

104 (k) "Public corporation" means a (i) nonmember,
105 nonprofit corporation organized under the Mississippi Nonprofit
106 Corporation Act, Section 101 et seq. of Chapter 11, Title 79,
107 Mississippi Code of 1972, that is subject to the limitations on
108 distributions set forth in Section 79-11-336(c), or (ii) a
109 nonstock corporation organized for public purposes under any other



110 statutory authority created by the Legislature of the State of
111 Mississippi, which, in either case, is organized by the state, a
112 county, a municipality or any political subdivision of any of the
113 foregoing, or any public board, bureau, commission or authority
114 created by the Legislature, whether acting alone or jointly, under
115 state law. Except to the extent set forth in this act or
116 otherwise set forth in a public corporation's authorizing
117 legislation, a public corporation that is a health care
118 collaborative shall be subject to and governed by the Mississippi
119 Nonprofit Corporation Act, Section 101 et seq. of Chapter 11,
120 Title 79, Mississippi Code of 1972.

121 (l) "Security document" means a trust indenture, loan
122 agreement, lease agreement, mortgage, security instrument or
123 agreement, or other document securing any indebtedness or other
124 obligation of a health care collaborative or by which its assets
125 or revenues are pledged or encumbered in favor of the holder or
126 holders of any such indebtedness or other obligation or a trustee
127 for such holders, and which may include such security documents or
128 resolutions that obligate an obligated group as provided in this
129 paragraph.

130 (m) "Sponsoring university" or "university" means the
131 University of Mississippi Medical Center, a department of the
132 University of Mississippi under the management and control of the
133 Board of Trustees of State Institutions of Higher Learning.



134 (n) "Trustees" or "board of trustees" means the Board
135 of Trustees of State Institutions of Higher Learning, as provided
136 for in Article 8, Section 213-A of the Mississippi Constitution.
137 Any reference to "board of trustees" or "trustees" in this act
138 also means the commission established by the trustees under this
139 act to the extent that the board of trustees delegates its
140 authority to the commission.

141 **SECTION 3.** (1) The Legislature finds that the promotion of
142 education, research and health care by the academic medical center
143 for the benefit of the State of Mississippi requires that the
144 academic medical center, in addition to all of its other
145 responsibilities, consider and where prudent and approved by the
146 trustees, establish linkages, networks and service arrangements
147 and health care facilities pursuant to joint ventures or other
148 collaborative delivery systems with other providers, to better
149 serve the state, improve the quality of health care available
150 across the state, lower the cost of health care and further the
151 educational and research purposes of the academic medical center.

152 (2) In order to incorporate a health care collaborative, the
153 trustees shall adopt a resolution containing at least the
154 following provisions:

155 (a) A finding that it is necessary, desirable and in
156 the best interests of the sponsoring university that the proposed
157 collaborative be incorporated.



158 (b) Approval of the form of articles of incorporation,
159 which shall comply with the provisions of Section 4 of this act.

160 (c) Approval of bylaws.

161 (d) Approval of the members of the initial board of
162 directors.

163 (e) Authorization to proceed to form the proposed
164 collaborative by executing the articles of incorporation approved
165 by the institutional executive officer of the sponsoring
166 university and filing the same with the Secretary of State,
167 appointing the initial directors, and requiring the directors to
168 adopt the approved bylaws.

169 (3) The trustees may incorporate more than one (1)
170 collaborative if it determines that each collaborative promotes
171 the health care mission of the university.

172 **SECTION 4.** (1) In addition to the contents of the articles
173 of incorporation required or permitted under Section 79-11-137,
174 other applicable requirements of the Mississippi Nonprofit
175 Corporation Act, Section 101 et seq. of Chapter 11, Title 79,
176 Mississippi Code of 1972, and other matters relating to the health
177 care collaborative that the sponsoring university recommends and
178 the trustees choose to insert and that are not inconsistent with
179 state law, the articles of incorporation of a health care
180 collaborative shall include the following provisions:



181 (a) The name of the collaborative shall include the
182 word "collaborative" and shall include words identifying the
183 sponsoring university.

184 (b) A statement that the health care collaborative is
185 organized under the provisions of this act.

186 (c) If not specified in the collaborative's bylaws as
187 approved by the trustees, the number of directors, which shall be
188 an odd number not less than three (3), and the duration of their
189 respective terms of office, each of which shall not be in excess
190 of three (3) years. Directors may serve multiple terms,
191 consecutive or otherwise, if duly appointed or reappointed in
192 accordance with this act.

193 (d) If not specified in the collaborative's bylaws as
194 approved by the trustees, provisions for appointing or removing
195 directors of the health care collaborative, subject to the
196 provisions of Section 6 of this act. In addition, and
197 notwithstanding any provision in this section to the contrary, the
198 initial directors of a health care collaborative shall be selected
199 by the sponsoring university and listed in the initial articles of
200 incorporation submitted to the trustees for its consideration as
201 provided in Section 3 of this act. That list shall expressly
202 classify the directors into three (3) groups, one (1) of which
203 shall serve an initial term of one (1) year, one (1) of which
204 shall serve an initial term of two (2) years and one (1) of which
205 shall serve an initial term of three (3) years.



206 (2) Consistent with the provisions of Section 79-11-139,
207 upon the filing for record of the articles of incorporation with
208 the Secretary of State, the health care collaborative shall come
209 into existence and, subject to the requirements of this act, it
210 shall constitute a public corporation under the name set forth in
211 its articles of incorporation. The sponsoring university shall
212 provide a copy of the articles of incorporation and bylaws to the
213 trustees within thirty (30) days of the filing of the articles of
214 incorporation with the Secretary of State.

215 **SECTION 5.** (1) In addition to the applicable requirements
216 for amendment of the articles of incorporation set forth in the
217 Mississippi Nonprofit Corporation Act, Section 101 et seq. of
218 Chapter 11, Title 79, Mississippi Code of 1972, the articles of
219 incorporation of any health care collaborative may be amended by
220 filing articles of amendment with the Secretary of State, but
221 neither the articles of incorporation nor the bylaws may be
222 amended without the approval of the board of the health care
223 collaborative, the sponsoring university and the trustees in the
224 manner provided in this section.

225 (2) In order to amend the articles of incorporation or the
226 bylaws, the following steps shall be completed:

227 (a) The board of the health care collaborative shall
228 first adopt a resolution approving articles of amendment or
229 amendment of the bylaws and recommending approval thereof by the
230 sponsoring university.



231 (b) After adoption of a resolution approving articles
232 of amendment or amendment of the bylaws by the board of the health
233 care collaborative, the collaborative shall file a written request
234 for approval of the articles of amendment or amendment of the
235 bylaws by the sponsoring university.

236 (c) As soon as may be practicable after receipt of the
237 request from the health care collaborative, the sponsoring
238 university shall review the application and shall either approve
239 or reject the articles of amendment or amendment of the bylaws as
240 approved and recommended to it by the health care collaborative.

241 (d) If the proposed articles of amendment or amendment
242 of the bylaws are approved by the sponsoring university, then as
243 soon as may be practicable after the approval of the articles of
244 amendment, the sponsoring university shall submit the articles of
245 amendment or amendment of the bylaws to the Commissioner of Higher
246 Education for his review. The Commissioner of Higher Education
247 shall submit the articles of amendment or amendment of the bylaws
248 to the trustees for further action.

249 (3) If the trustees grant approval, the president or vice
250 president of the health care collaborative shall file for record
251 in the Office of the Secretary of State the articles of amendment.
252 When approved, the amendments to the bylaws shall be appropriately
253 documented in the corporate records of the health care
254 collaborative.



255 (4) Upon the filing for record of the articles of amendment
256 in accordance with the foregoing procedures, the articles of
257 amendment or amended bylaws shall become effective.

258 (5) In addition to the applicable requirements for the
259 amendment and restatement of the articles of incorporation set
260 forth in the Mississippi Nonprofit Corporation Act, Section 101 et
261 seq. of Chapter 11, Title 79, Mississippi Code of 1972, the
262 articles of amendment of a health care collaborative may amend and
263 restate the articles of incorporation of a health care
264 collaborative if approved in accordance with this section.

265 (6) Notwithstanding the provisions of this section, the name
266 and address of the registered agent of a health care collaborative
267 may be changed by the board of a health care collaborative without
268 following the procedure set forth in this section. A health care
269 collaborative shall use any appropriate form promulgated by the
270 Secretary of State for this purpose.

271 **SECTION 6.** (1) Subject to the requirements of Section
272 4(1)(c) of this act, each health care collaborative shall have a
273 board of directors composed of the number of director positions
274 provided in the articles of incorporation or bylaws of the health
275 care collaborative, as applicable.

276 (2) Consistent with the Mississippi Nonprofit Corporation
277 Act, Section 101 et seq. of Chapter 11, Title 79, Mississippi Code
278 of 1972, all powers of a health care collaborative shall be
279 exercised by or under the direction of its board of directors;



280 however, except for (a) duly appointed officers exercising
281 authority delegated to them in the collaborative's bylaws, and (b)
282 duly constituted committees of the board meeting the requirements
283 of Section 79-11-265 and consisting of no less than three (3)
284 directors, a majority of which were appointed (without nomination
285 by any other person) by the sponsoring university, the board shall
286 not be permitted to authorize any person or persons to exercise
287 some or all of its powers under Section 79-11-231(3).

288 (3) Except for ex-officio directors specified in the
289 articles of incorporation, or bylaws, all directors of a health
290 care collaborative shall be appointed by the sponsoring
291 university, subject to the approval of the trustees. The articles
292 of incorporation or bylaws may provide that specified officers or
293 employees of the sponsoring university shall be ex-officio
294 directors of a health care collaborative, so long as a majority of
295 the directors are appointed by the sponsoring university and
296 approved by the trustees.

297 (4) The articles of incorporation may provide that a
298 business organization, governmental entity, public corporation, or
299 nonprofit organization may nominate one or more directors of a
300 health care collaborative, provided that the number of directors
301 appointed by the sponsoring university and approved by the
302 trustees without nomination may never be less than a majority of
303 the directors, and the sponsoring university shall not be required
304 to appoint any such nominee and the trustees shall not be required



305 to approve any such nominee. If the sponsoring university does
306 not appoint a nominee or if a nominee is not approved by the
307 trustees, the nominating entity shall provide an alternate nominee
308 for consideration by the sponsoring university.

309 (5) All directors appointed by the sponsoring university may
310 be removed by the sponsoring university or the trustees at any
311 time, with or without cause.

312 (6) If, at the expiration of any term of office of any
313 director, a successor has not been appointed as provided in the
314 articles of incorporation or the bylaws, then the director whose
315 term of office has expired shall continue to hold office until his
316 or her successor is appointed.

317 (7) Each director shall serve without compensation but may
318 be reimbursed for expenses actually incurred by him or her in
319 connection with the performance of his or her duties.

320 (8) No vacancy in the membership of the board shall impair
321 the right of a quorum to exercise all the powers and perform all
322 the duties of the board.

323 (9) The composition of the board of directors of a health
324 care collaborative shall be presumed valid absent a final
325 determination by a court of competent jurisdiction that the board
326 is not constituted in good faith by the sponsoring university.

327 **SECTION 7.** A health care collaborative may duly constitute
328 offices of the collaborative and appoint officers to hold such
329 positions so created, in the manner and for any purpose provided



330 in the Mississippi Nonprofit Corporation Act, Section 101 et seq.
331 of Chapter 11, Title 79, Mississippi Code of 1972.

332 **SECTION 8.** (1) In its approval of the sponsoring
333 university's request to establish a health care collaborative, the
334 board of trustees shall, by regulation or otherwise, specify the
335 powers and scope of authority that the health care collaborative
336 will have and may exercise, which may include any power granted to
337 nonprofit corporations under the Mississippi Nonprofit Corporation
338 Act, Section 101 et seq. of Chapter 11, Title 79, Mississippi Code
339 of 1972, together with all powers incidental thereto or necessary
340 or desirable to the discharge thereof, including, without
341 limitation, the following specific powers:

342 (a) To adopt, maintain, and amend bylaws and a
343 corporate seal.

344 (b) To sue and, subject to the limitations in this
345 paragraph, be sued; however, any action against a health care
346 collaborative, or a person acting in his or her capacity as a
347 board member, officer or employee of the health care collaborative
348 to recover damages for any injury shall be subject to the
349 provisions of Chapter 46, Title 11, Mississippi Code of 1972.

350 (c) To acquire, construct, equip, lease, manage,
351 operate, engage in a joint venture or joint operating agreement
352 regarding, or otherwise deal in those health care facilities it
353 considers necessary or desirable.



354 (d) To enter into contracts and agreements, with
355 contractual terms or respect to such periods of time as the health
356 care collaborative deems necessary or advisable without regard to
357 restrictions associated with terms of public officials or members
358 of public bodies, including contracts or agreements to guarantee
359 the obligations of another party, to indemnify another party, to
360 borrow money, incur indebtedness, and issue bonds, notes, debt
361 securities, or any other evidence of indebtedness.

362 (e) To pledge the general credit of the health care
363 collaborative or any revenues or income of the health care
364 collaborative to repayment of any of its indebtedness.

365 (f) To mortgage or pledge its health care facilities or
366 its other assets or any part thereof, whether then owned or
367 thereafter acquired, as security for its indebtedness.

368 (g) To lend money to, to assume the indebtedness of, or
369 to guarantee the indebtedness of any other health care
370 collaborative, governmental entity, public corporation or
371 nonprofit organization.

372 (h) To create, establish, acquire, operate or support
373 subsidiaries, networks, joint ventures, and affiliates, either
374 for-profit or nonprofit, to assist a health care collaborative in
375 fulfilling its purposes.

376 (i) To participate in joint ventures, affiliations,
377 management agreements, or similar endeavors that provide health
378 care or engage in activities related thereto.



379 (j) To make and arrange for loans, contributions to
380 capital, and other debt and equity financing for the activities of
381 any lawful form of business organization of which the health care
382 collaborative is a member, and to guarantee loans and any other
383 obligations for such purpose.

384 (k) To enter into any derivative agreement.

385 (l) To provide for and support the educational programs
386 of any university or any other two-year college or four-year
387 college or university in the state.

388 (m) To establish, collect, and alter charges for
389 services rendered and supplies furnished by it.

390 (n) To contract for or to accept any gifts, grants,
391 endowments, or any other aid in any form from the federal
392 government, a governmental entity, or any public corporation, or
393 any other source, or any combination thereof, and to comply with
394 the terms and conditions thereof.

395 (o) To invest its funds in any investment authorized by
396 the sponsoring university for investment of its own funds or in
397 any investment permitted or authorized for state-regulated
398 insurance companies, including, without limitation, investments
399 permitted for domestic insurers and health maintenance
400 organizations under Section 83-19-51.

401 (p) To seek protection of the federal bankruptcy laws
402 by filing a petition in any United States Bankruptcy Court located
403 in the state.



404 (q) To organize, or to own an interest in, any other
405 corporation, partnership, limited liability company, joint
406 venture, or other form of business organization, whether
407 for-profit or nonprofit, in furtherance of its health, education,
408 or research mission.

409 (r) To engage in arrangements, contracts, information
410 sharing, and other collaborative activities with public or private
411 entities and individuals, including, without limitation: joint
412 ventures, joint purchasing arrangements, joint negotiations with
413 physicians, hospitals and payors (whether those negotiations
414 result in separate or combined agreements), leases and agreements
415 that involve delivery system network creation or operation.

416 (s) To provide such insurance, retirement, and other
417 benefits to employees and other servants as it determines
418 necessary or desirable.

419 (t) To purchase, sell, exchange, lease, accept, receive
420 or hold title or leasehold interest in real, personal and mixed
421 property from any source whatsoever or to otherwise deal with any
422 such property to the extent reasonable or necessary to accomplish
423 the purposes of the collaborative.

424 (2) Nothing in this section shall be construed as granting
425 to a health care collaborative the power to levy any taxes.

426 (3) Nothing in this section shall be construed as
427 authorizing a health care collaborative to sell, lease, exchange
428 or dispose of all or substantially all of its property outside the



429 ordinary course of business in a single transaction or series of
430 transactions without authorization from the sponsoring university
431 and trustees.

432 (4) Any of the powers granted under this section may be
433 exercised by a health care collaborative in such manner as it may
434 determine to be consistent with the purposes of this act,
435 notwithstanding that, as a consequence of the exercise of powers
436 it engages in, activities (a) may be deemed anticompetitive, or
437 (b) may result in the acquisition or maintenance of monopoly power
438 in some relevant market, in either case within the meaning of
439 state or federal antitrust or competition laws and notwithstanding
440 that these activities may have the effect of displacing
441 competition in the provision of hospital, physician or other
442 health care or financing related services.

443 **SECTION 9.** (1) With approval of the sponsoring university
444 and the trustees, a health care collaborative from time to time
445 may borrow money or incur indebtedness and issue bonds, notes or
446 other evidence of indebtedness in such principal amounts as the
447 board determines by resolution to be necessary, desirable and in
448 the best interests of the health care collaborative in order to
449 provide funds to carry out its corporate powers. Indebtedness may
450 be incurred for any lawful purpose of the health care
451 collaborative, including, without limitation, any of the
452 following:



453 (a) Indebtedness to finance the acquisition,
454 construction, expansion, renovation, furnishing and equipping of
455 health care facilities and related improvements thereto.

456 (b) Indebtedness to provide working capital or funds
457 for operating expenses.

458 (c) Indebtedness to refund, extend, refinance or
459 restructure any indebtedness of the health care collaborative or
460 any indebtedness assumed or guaranteed by the health care
461 collaborative.

462 (2) Indebtedness may be in the form of and secured by any of
463 the following or any combination thereof, or any similar financing
464 structures or instruments common in the market at the time that
465 the indebtedness is incurred, issued, modified, renewed or
466 considered:

467 (a) A general obligation of the health care
468 collaborative to the payment of which its full faith and credit is
469 pledged.

470 (b) Payable solely out of one or more general or
471 specific revenues of the health care collaborative or any of its
472 facilities.

473 (c) Secured by any one or combination of a guaranty
474 from or pledge of any available funds of or any tax levied by a
475 governmental entity that has been made available to a health care
476 collaborative or any of its facilities.



477 (3) Indebtedness may provide for any of the following or any
478 combination thereof:

479 (a) Provide for no interest.

480 (b) Provide for current interest.

481 (c) Provide for capitalized interest.

482 (d) Provide for accretion or other increase in
483 principal amount in lieu of interest.

484 (4) Any properly approved resolution authorizing the
485 issuance of any indebtedness shall create a contract with the
486 holders of the indebtedness issued by the resolution.

487 (5) Evidence of indebtedness shall be executed and delivered
488 as provided in the resolution of the board authorizing the same.

489 (6) Indebtedness may be sold at public or private sale or in
490 exchange for indebtedness of the health care collaborative at such
491 price or on such terms as the board may determine.

492 (7) All indebtedness of a health care collaborative may be
493 subject to redemption or prepayment on such terms as the board may
494 determine.

495 (8) No indebtedness of a health care collaborative shall
496 mature more than forty (40) years from the date of issuance,
497 without regard to whether the indebtedness is refunding,
498 extending, refinancing or restructuring existing indebtedness.

499 (9) The health care collaborative may, subject to security
500 documents or other agreements with holders as may then exist,
501 purchase its indebtedness in the open market, through



502 intermediaries or directly from the holder of an obligation, with
503 any funds available for that purpose. Any obligation so purchased
504 may be cancelled by the health care collaborative or may be
505 resold, as authorized by the board.

506 **SECTION 10.** (1) With approval of the sponsoring university
507 and the trustees, any pledge of any revenues of a health care
508 collaborative including, without limitation, tax revenues made
509 available to a health care collaborative, shall be valid and
510 binding from the time that the pledge is made, and the revenues or
511 taxes so pledged and thereafter received by the health care
512 collaborative shall immediately become subject to the lien of that
513 pledge without any physical delivery thereof or further act. The
514 lien of that pledge shall be valid and binding against all parties
515 having claims of any kind against the health care collaborative,
516 irrespective of whether the parties have actual notice thereof.
517 The resolution or security document establishing a pledge of
518 revenues or taxes may provide that the lien established extends,
519 on a pari passu (equal footing) basis, to any additional
520 indebtedness issued as a parity obligation in accordance with the
521 terms of the financing document.

522 (2) Any security document relating to any real property,
523 personal property, fixtures, or other tangible property of a
524 health care collaborative shall be subject to the applicable
525 requirements of state law regarding creation, perfection and



526 priority with respect to any liens thereon, including without
527 limitation, Chapter 9, Title 75, Mississippi Code of 1972.

528 **SECTION 11.** (1) With approval of the sponsoring university
529 and the trustees, all agreements and covenants undertaken, and all
530 indebtedness issued, by a health care collaborative shall be
531 solely and exclusively an obligation of the health care
532 collaborative and, except as otherwise provided in a written
533 agreement in accordance with Sections 9 and 16 of this act, shall
534 not create a debt of or obligate the state, the sponsoring
535 university or any other governmental entity within the meaning of
536 any constitutional or statutory provision.

537 (2) Neither the directors nor any officer of a health care
538 collaborative executing indebtedness issued under this act shall
539 be personally liable for that indebtedness by reason of the
540 execution or issuance thereof.

541 (3) The state and the sponsoring university pledge to and
542 agree with the holders of any indebtedness issued under this act
543 that neither the state nor the sponsoring university will limit or
544 alter the rights vested in the health care collaborative to
545 fulfill the terms of any indebtedness or related security
546 documents made with the holders thereof or in any way impair the
547 rights and remedies of the holders until such indebtedness,
548 together with the interest thereon, and all costs and expenses in
549 connection with any action or proceeding by or on behalf of the
550 holders, are fully met and discharged. A health care



551 collaborative is authorized to include this pledge and agreement
552 of this state or sponsoring university in any agreement with the
553 holders of its indebtedness.

554 **SECTION 12.** With approval of the sponsoring university and
555 the trustees, indebtedness issued under the provisions of this act
556 is made a legal investment for savings banks and insurance
557 companies organized under state law and for trustees, executors,
558 administrators, guardians, persons or organizations acting in a
559 fiduciary capacity, unless otherwise directed by a court having
560 jurisdiction or by a document providing fiduciary health care
561 collaborative. Any governmental entity or public corporation is
562 authorized, in its discretion, to invest any available funds in
563 securities of the health care collaborative.

564 **SECTION 13.** (1) If there is any default in the payment of
565 the principal of, or interest on, any indebtedness issued under
566 this act or of any agreements contained in any security document,
567 and the period for cure of the default has passed, then the holder
568 of the indebtedness and the trustee under any security document,
569 or any one or more of them, subject to the terms of the financing
570 documents authorizing the indebtedness or any security document
571 applicable thereto:

572 (a) May, by mandamus, injunction or other proceedings,
573 compel performance of any covenant or agreement of the health care
574 collaborative contained in any applicable resolution or security
575 document by its board or its officers.



576 (b) May be entitled to a judgment against the health
577 care collaborative for the principal of and interest on the
578 indebtedness so in default, together with all reasonable costs of
579 collection.

580 (c) May, if the indebtedness is secured by a mortgage
581 on, or security interest in, any physical properties of the health
582 care collaborative, foreclose the mortgage or pledge, exercise any
583 powers of sale contained in the security documents, or exercise
584 any possessory or other similar rights as are provided for in the
585 financing documents or security document applicable to the
586 indebtedness.

587 (d) Regardless of the sufficiency of the security for
588 the obligation in default, may be entitled to the appointment of a
589 receiver upon order of a court of competent jurisdiction who
590 shall, upon that appointment, assume all powers granted in the
591 applicable financing documents or security document applicable to
592 the obligation in default, provided that the income derived from
593 any activity undertaken by a receiver under this section shall be
594 expended solely in accordance with the applicable provisions of
595 any orders of the court by which such receiver is appointed, and
596 absent judicial direction, of the applicable financing documents
597 or security document applicable to the obligation in default.

598 (2) The remedies specified in this section shall be
599 cumulative to all other remedies that may otherwise be available,



600 by law or contract, for the benefit of the holders of indebtedness
601 of a health care collaborative.

602 **SECTION 14.** (1) Notwithstanding any provision of law to the
603 contrary:

604 (a) Any indebtedness issued by a health care
605 collaborative or any entity controlled by a health care
606 collaborative and the income derived therefrom, including any
607 profit from the sale thereof, shall be exempt from taxation by the
608 state or by any political subdivision, agency or other
609 governmental unit of or within the state.

610 (b) All properties of a health care collaborative or
611 any entity controlled by a health care collaborative, including
612 all leases, leaseholds or leasehold interests of or with respect
613 to any such properties, whether real, personal, or mixed, and the
614 derived income therefrom, shall be exempt from any and all
615 taxation by the state or by any political subdivision, agency or
616 other governmental unit of or within the state.

617 (c) The sales and use taxes, franchise taxes, provider
618 taxes or other taxes of similar type levied by this state, or any
619 political subdivision of this state, shall not apply to sales or
620 leases to a health care collaborative or any entity controlled by
621 a health care collaborative of the following when acquired for or
622 used in establishing or operating a health care facility or
623 otherwise carrying on the business and activities of a health care



624 collaborative or any entity controlled by a health care
625 collaborative:

626 (i) Any personal property or fixtures, including
627 without limitation, sales or leases to such entities of:

628 1. Furniture, fixtures and equipment
629 (inclusive of all communications, computer, server, software and
630 other hardware equipment);

631 2. All replacements of, repair parts for or
632 services to repair items described in item 1 of this subparagraph
633 (i);

634 3. Office and operating materials and
635 supplies;

636 4. Electricity, current, power, natural gas,
637 liquefied petroleum gas or other fuel for heating, lighting or
638 other use, and potable water; and

639 5. All services taxable under Section
640 27-65-23 required to establish, support, operate and/or maintain a
641 health care facility or otherwise operate or carry on the business
642 and activities of a health care collaborative or any entity
643 controlled by a health care collaborative; or

644 (ii) Any component building materials, machinery
645 and equipment used:

646 1. In the construction of a health care
647 facility building or other building owned by a health care



648 collaborative or any entity controlled by a health care
649 collaborative; or

650 2. In making any additions or improvements to
651 such properties.

652 (2) Notwithstanding the foregoing, no exemption provided in
653 this section shall apply to taxes levied by Section 27-65-21.

654 (3) The sponsoring university's health care collaborative
655 shall not be financially combined with the sponsoring university
656 for financial reporting or accounting purposes.

657 **SECTION 15.** (1) Each health care collaborative shall engage
658 a firm or firms of certified public accountants to conduct an
659 annual audit of the financial statement of the health care
660 collaborative. Each audit shall be conducted in accordance with
661 generally accepted auditing standards applied to governmental
662 entities.

663 (2) The board shall submit all audits required by subsection
664 (1) of this section to the sponsoring university and the trustees
665 as promptly as practicable after the end of each fiscal year of
666 the health care collaborative. Health care collaboratives shall
667 observe the same fiscal year as the sponsoring university.

668 **SECTION 16.** (1) With approval of the sponsoring university
669 and the trustees, notwithstanding anything to the contrary
670 contained in Chapter 13, Title 41, Mississippi Code of 1972, the
671 state, any university, any governmental entity, any governmental
672 subdivision, any community hospital and any public corporation is



673 authorized to give, transfer, convey, lease or sell to any health
674 care collaborative, on terms and conditions that are fair, just
675 and reasonable to the health care collaborative and the party or
676 parties involved:

677 (a) Any of its health care facilities, community
678 hospitals and other properties, real or personal, and any funds
679 and assets, tangible or intangible, relative to the ownership or
680 operation of any such health care facilities or community
681 hospitals, including any certificates of need, licenses, or other
682 similar rights appertaining or ancillary thereto, irrespective of
683 whether they have been exercised; and

684 (b) Any taxes, revenues, or funds owned or controlled
685 by it.

686 (2) The state, any governmental entity, any university, or
687 any public corporation, with approval of the trustees, may pledge
688 its full faith and credit to or for the benefit of a health care
689 collaborative or may pledge any revenues that it is legally
690 entitled to pledge to or for the benefit of a health care
691 collaborative.

692 (3) With approval of the trustees, the sponsoring university
693 may enter into agreements with its health care collaborative for
694 the provision of goods or services, lease of property, risk
695 sharing, group purchasing or other operational matters, provided
696 that any such agreement requires a fair market value payment.



697 **SECTION 17.** In support of and in furtherance of the powers
698 granted in Section 8 of this act, the Legislature finds and
699 declares all of the following:

700 (a) Health care collaboratives organized under this act
701 are performing essential public functions on behalf of the state,
702 the sponsoring university, and other governmental entities in the
703 state.

704 (b) Any of the powers granted under this act may be
705 exercised, and activities may be engaged in, by a health care
706 collaborative in such manner as it may determine to be consistent
707 with the purposes of this act, notwithstanding that, as a
708 consequence of that exercise of powers and those activities, its
709 conduct (i) may be deemed anticompetitive or as resulting in an
710 unreasonable restraint of trade, or (ii) may result in the
711 acquisition, maintenance or exercise of monopoly power in a
712 relevant geographic or product market, or (iii) have spillover
713 effects that are anticompetitive in some other market, within the
714 meaning of state or federal antitrust or competition laws, and
715 notwithstanding the fact that those activities may have the effect
716 of displacing competition in the provision of hospital, physician,
717 clinic, freestanding health facility, health care administration,
718 health care financing or any related activities, markets or lines
719 of business. It is the intention of the Legislature that such
720 conduct be exempt from scrutiny under federal and state antitrust
721 laws.



722 (c) In addition, any such activities of a health care
723 collaborative shall be subject to active supervision by the board
724 of trustees to the extent required by applicable judicial
725 decisions made to ensure that those activities are exempt from
726 federal and state antitrust laws, or the policy of the trustees,
727 whichever is greater. That active supervision shall include,
728 without limitation (i) submission to the trustees reasonably in
729 advance of the commencement of a health care collaborative of a
730 description of the scope of its activities and its participants,
731 the principal terms of the proposed venture, the effect on health
732 care delivery, and the effects on competition (to the extent
733 readily discernible); (ii) review by the trustees; (iii) comments
734 on the proposal by the trustees, including any required changes to
735 terms; (iv) approval by the trustees to proceed; and (v) an annual
736 report to the trustees by the health care collaborative on its
737 activities and results.

738 (d) In carrying out its public health mission through
739 the exercise of the powers granted by this act, including, without
740 limitation, the collaborative activities expressly authorized by
741 this act, a health care collaborative, as well as the public or
742 private entities and individuals with which they collaborate,
743 shall be immunized from liability under the federal and state
744 antitrust or competition laws to the fullest extent allowed by
745 law.



746 SECTION 18. Notwithstanding any other provision of law to
747 the contrary:

748 (a) All members of boards of directors of health care
749 collaboratives shall be subject to the provisions of the
750 Mississippi Nonprofit Corporation Act, Section 101 et seq. of
751 Chapter 11, Title 79, Mississippi Code of 1972, governing
752 fiduciary obligations of directors, including, but not limited to,
753 Section 79-11-269. Health care collaboratives, members of the
754 governing bodies of health care collaboratives, and officers and
755 employees of health care collaboratives shall not be subject to
756 state ethics laws that apply to public employees, public officials
757 and public servants, including, without limitation, the provisions
758 of Chapter 4, Title 25, Mississippi Code of 1972 [Ethics in
759 Government].

760 (b) All health care collaboratives shall provide copies
761 of all minutes of meetings of the board of directors to the
762 sponsoring university as soon as practical, but not more than
763 thirty (30) days after adoption, and all records of health care
764 collaboratives shall be subject to inspection by the sponsoring
765 university and the trustees. Notwithstanding the foregoing, a
766 health care collaborative shall not be considered a public body
767 for purposes of Chapter 61, Title 25, Mississippi Code of 1972
768 [Mississippi Public Records Act], including, but not limited to,
769 Section 25-61-3, and Chapter 41, Title 25, Mississippi Code of



770 1972 [Open Meetings], including, but not limited to, Section
771 25-41-3.

772 (c) Deposits of health care collaboratives, supported
773 wholly or in part by the state, shall be made in conformity with
774 Section 7-9-41 [Treasury Withdrawals by Warrant] and Section
775 7-9-43 [Contracts With Selected State Depositories].

776 (d) Health care collaboratives shall not be subject to
777 the procurement laws of the state, including, without limitation,
778 the provisions of Chapter 7, Title 31, Mississippi Code of 1972
779 [Public Purchases]; Chapter 9, Title 25, Mississippi Code of 1972
780 [Statewide Personnel System]; and Chapter 53, Title 25,
781 Mississippi Code of 1972 [Mississippi Department of Information
782 Technology Services]. However, erection of all buildings,
783 additions, or repairs by a health care collaborative using funds
784 provided by legislative appropriation shall be subject to Chapter
785 11, Title 31, Mississippi Code of 1972 [State Construction
786 Projects]. Notwithstanding the foregoing, the provisions of this
787 paragraph (d) shall not apply to any architectural or engineering
788 service contract fully paid for by self-generated funds of any of
789 the state institutions of higher learning or funds generated by
790 the health care collaborative, nor shall they apply to health care
791 collaborative projects that are fully funded from local funds or
792 other nonstate sources that are outside the Department of Finance
793 and Administration's appropriations or as directed by the
794 Legislature.



795 (e) Health care collaboratives shall have the authority
796 to secure accounting, legal and all such personal and professional
797 services on such terms as the board of the health care
798 collaborative deems appropriate; however, all contracts for those
799 services shall be submitted to the sponsoring university within
800 thirty (30) days of approval by the board. Notwithstanding the
801 foregoing, health care collaboratives shall not be subject to the
802 provisions of Chapter 104, Title 27, Mississippi Code of 1972
803 [Mississippi Accountability and Transparency Act].

804 (f) All requests for copies of minutes, contracts,
805 audits, or other records of a health care collaborative made to a
806 public body under the Mississippi Public Records Act of 1983 shall
807 be handled in the manner provide for in Section 25-61-9.

808 (g) No expenditure authorized or permitted by the
809 provisions of this act shall be considered to be a donation,
810 lending of credit or a granting of public money or thing of value
811 to or in aid of any individual, association, or corporation within
812 the meaning of any constitutional or statutory provision.

813 (h) Nothing in this act shall be construed as allowing
814 a health care collaborative to be exempt from compliance with all
815 applicable laws and regulations of the State Department of Health
816 as they pertain to licensure and the Mississippi Health Care
817 Certificate of Need Law of 1979, Section 171 et seq. of Chapter 7,
818 Title 41, Mississippi Code of 1972; however, the department may
819 determine that no certificate of need is required if the activity,



820 otherwise subject to regulation, is justified by the sponsoring
821 university or health care collaborative's teaching or research
822 mission.

823 (i) Health care collaboratives shall not be subject to
824 the provisions of Chapter 43, Title 25, Mississippi Code of 1972
825 [Administrative Procedures Law].

826 (j) Health care collaboratives shall not have the right
827 to acquire any real property by the exercise of the power of
828 eminent domain, including, but not limited to, those powers
829 conferred by Chapter 27, Title 11, Mississippi Code of 1972
830 [Eminent Domain].

831 **SECTION 19.** No part of the net earnings of a health care
832 collaborative remaining after payment of its expenses shall inure
833 to the benefit of any person other than a university, a
834 governmental entity, or any nonprofit corporation that is an
835 organization described in Section 501(c)(3) of the Internal
836 Revenue Code.

837 **SECTION 20.** (1) A health care collaborative may be
838 dissolved in accordance with the applicable provisions and
839 requirements of the Mississippi Nonprofit Corporation Act, Section
840 101 et seq. of Chapter 11, Title 79, Mississippi Code of 1972, but
841 only with the approval of the board of the health care
842 collaborative, the sponsoring university, and the trustees in the
843 manner provided in this section.



844 (2) In addition to the requirements for dissolution as set
845 forth in the Mississippi Nonprofit Corporation Act, Section 101 et
846 seq. of Chapter 11, Title 79, Mississippi Code of 1972, in order
847 to dissolve a health care collaborative, the following steps shall
848 be completed:

849 (a) The board shall first adopt a resolution approving
850 proposed articles of dissolution and a related plan of dissolution
851 of the health care collaborative.

852 (b) After the adoption by the board of a resolution
853 approving articles of dissolution and the related plan of
854 dissolution, the health care collaborative shall file a written
855 request to the sponsoring university that it approve the articles
856 of dissolution and related plan of dissolution of the health care
857 collaborative.

858 (c) As soon as may be practicable after the receipt of
859 the application from the health care collaborative, the sponsoring
860 university shall review the application, and it shall either
861 approve or reject the proposed articles of dissolution and related
862 plan of dissolution of the health care collaborative as approved
863 and recommended to it by the health care collaborative.

864 (d) As soon as may be practicable after the sponsoring
865 university approves the proposed articles of dissolution and
866 related plan of dissolution of the health care collaborative the
867 trustees shall review the application, and it shall either approve
868 or reject the proposed articles of dissolution and related plan of



869 dissolution of the health care collaborative as approved and
870 recommended to it by the sponsoring university.

871 (3) Within thirty (30) days following the approval of
872 dissolution of a health care collaborative by the sponsoring
873 university and the trustees, an authorized representative of the
874 health care collaborative shall file for record in the Office of
875 Secretary of State the articles of dissolution (including the plan
876 of dissolution).

877 (4) Upon the filing for record of the articles of
878 dissolution (including the plan of dissolution) approved in
879 accordance with the procedures contained in this section, the
880 articles of dissolution shall become effective.

881 (5) Upon dissolution of the health care collaborative,
882 subject to any contractual obligation the health care
883 collaborative may have entered into for fair disposition of assets
884 and liabilities upon dissolution, title to all assets after
885 provision for liabilities of the health care collaborative shall
886 vest in the sponsoring university.

887 (6) If the trustees determine that it is in the best
888 interest of the sponsoring university that a health care
889 collaborative be dissolved, the trustees may dissolve the health
890 care collaborative without permission from the board of the health
891 care collaborative or the sponsoring university, and in that
892 event, the trustees are deemed to be acting on behalf of the board



893 of directors in proceeding with that dissolution under Section
894 79-11-101 et seq. of the Mississippi Code of 1972.

895 **SECTION 21.** (1) If and at such time as the board of
896 trustees determines on its minutes that it is appropriate and in
897 the best interests of the University of Mississippi Medical Center
898 and the State of Mississippi, the board of trustees is legally
899 authorized to create and establish a commission to be known as the
900 University of Mississippi Medical Center Related Health Care
901 Commission. The board of trustees may delegate to the commission
902 such of its powers as determined appropriate by the trustees as
903 will allow the commission to assist the board of trustees in its
904 management and control of the University of Mississippi Medical
905 Center and with respect to powers of the trustees related to
906 health care collaboratives or other entities associated with the
907 University of Mississippi Medical Center.

908 (2) The commission shall be composed of such number of
909 members as shall be appointed by the board of trustees, to serve
910 at the will and pleasure of the trustees, for such terms as the
911 trustees may determine. Members of the commission may be
912 appointed to an unlimited number of successive terms at the
913 pleasure of the trustees. Members of the commission may be
914 removed by the trustees with or without cause. In case of a
915 vacancy among the membership of the commission for any reason, the
916 trustees shall appoint a successor to serve for the remainder of
917 the unexpired term or may reduce the size of the commission.



918 Trustees or employees of the board of trustees shall not be
919 disqualified for membership solely because of their office or
920 employment status. The board of trustees is provided explicit
921 legal authority to appoint employees, trustees, nonemployees
922 and/or nontrustees as members of the commission.

923 (3) Commission members shall receive per diem and
924 reimbursement of travel expenses commensurate with that provided
925 for members of the trustees in Section 37-101-9. All expenses of
926 the commission shall be paid from the appropriations or other
927 revenues of the University of Mississippi Medical Center.

928 (4) The board of trustees may authorize the employment of
929 such other personnel as may be required from time to time to carry
930 out the functions of the commission and may assign to the
931 personnel so employed such functions and duties and such powers of
932 the trustees as may be necessary to accomplish the purposes for
933 which the commission was established. All such personnel shall be
934 employed by the Commissioner of Higher Education with the approval
935 of the trustees and shall hold office at the pleasure of the
936 Commissioner of Higher Education and the board of trustees. The
937 board of trustees, or the Commissioner of Higher Education with
938 the approval of the trustees, shall also have the power to employ
939 on a fee basis such technical and professional assistance as may
940 be necessary to carry out the powers, duties and purposes of the
941 commission. The board of trustees may determine that expenses of
942 those personnel or consultants shall be paid from the



943 appropriations or other revenues of the University of Mississippi
944 Medical Center.

945 (5) The board of trustees, in its discretion, may from time
946 to time delegate to the commission such powers of the board of
947 trustees as determined appropriate by the board of trustees for
948 the management and control of the University of Mississippi
949 Medical Center and to accomplish the purposes of this act, and may
950 limit, restrict or withdraw that delegation at any time. The
951 board of trustees may promulgate regulations or policies defining
952 the duties and responsibilities of the commission, and may
953 delineate matters that are reserved to the board of trustees for
954 decision.

955 **SECTION 22.** The board of trustees, by adoption of a
956 resolution, may elect to exercise all of the sponsoring
957 university's rights and authority under this act. If the board of
958 trustees passes such a resolution, all references in this act to
959 the sponsoring institution shall mean the trustees until such time
960 as the trustees adopt another resolution terminating and revoking
961 the initial resolution. The trustees may elect to exercise their
962 rights under this section with respect to some or all of the
963 sponsoring university's health care collaboratives.

964 **SECTION 23.** The board of trustees may adopt rules and
965 regulations necessary to carry out the intent and purpose of
966 this act, including, without limitation, rules and regulations
967 that reserve to the board of trustees certain powers and approvals



968 required to authorize a health care collaborative to take certain
969 action.

970 **SECTION 24.** With the approval of the trustees, the academic
971 medical center is authorized to directly or indirectly enter into
972 joint purchasing arrangements, however structured, on terms
973 customary in the market or required by the organization and to
974 enter into joint ventures, joint operating agreements or similar
975 arrangements with community hospitals or other public or private
976 health-related organizations, or with for-profit or nonprofit
977 corporations or other organizations, either directly or through a
978 health care collaborative, to establish arrangements for the
979 academic medical center to participate in financial integration
980 and/or clinical integration or clinically integrated networks with
981 a joint venture, with community hospitals or other public or
982 private health-related organizations, or with other for-profit or
983 nonprofit corporations or other organizations, or through a joint
984 operating agreement, and to provide for contracts of employment or
985 contracts for services and ownership of property on terms that
986 will protect the public interest.

987 **SECTION 25.** Section 41-13-15, Mississippi Code of 1972, is
988 amended as follows:

989 41-13-15. (1) Any county and/or any political or judicial
990 subdivision of a county and/or any municipality of the State of
991 Mississippi, acting individually or jointly, may acquire and hold
992 real estate for a community hospital either recognized and/or



993 licensed as such by either the State of Mississippi or the United
994 States government, and may, after complying with applicable health
995 planning and licensure statutes, construct a community hospital
996 thereon and/or appropriate funds according to the provisions of
997 this chapter for the construction, remodeling, maintaining,
998 equipping, furnishing and expansion of such facilities by the
999 board of trustees upon such real estate.

1000 (2) Where joint ownership of a community hospital is
1001 involved, the owners are hereby authorized to contract with each
1002 other for determining the pro rata ownership of such community
1003 hospital, the proportionate cost of maintenance and operation, and
1004 the proportionate financing that each will contribute to the
1005 community hospital.

1006 (3) The owners may likewise contract with each other, or on
1007 behalf of any subordinate political or judicial subdivision, or
1008 with the board of trustees of a community hospital, and/or any
1009 agency of the State of Mississippi or the United States
1010 government, or any health care collaborative as defined in Section
1011 2 of this act, for necessary purposes related to the
1012 establishment, operation or maintenance of community hospitals and
1013 related programs wherever located, and may either accept from,
1014 sell or contribute to the other entities, monies, personal
1015 property or existing health facilities. The owners or the board
1016 of trustees may also receive monies, property or any other



1017 valuables of any kind through gifts, donations, devises or other
1018 recognized means from any source for the purpose of hospital use.

1019 (4) Owners and boards of trustees, acting jointly or
1020 severally, may acquire and hold real estate for offices for
1021 physicians and other health care practitioners and related health
1022 care or support facilities, provided that any contract for the
1023 purchase of real property must be ratified by the owner, and may
1024 thereon construct and equip, maintain and remodel or expand such
1025 offices and related facilities, and the board of trustees may
1026 lease same to members of the hospital staff or others at a rate
1027 deemed to be in the best interest of the community hospital.

1028 (5) If any political or judicial subdivision of a county is
1029 obligated hereunder, the boundaries of such district shall not be
1030 altered in such a manner as to relieve any portion thereof of its
1031 obligation hereunder.

1032 (6) Owners may convey to any other owner, or any health care
1033 collaborative as defined in Section 2 of this act, any or all
1034 property, real or personal, comprising any existing community
1035 hospital, including related facilities, wherever located, owned by
1036 such conveying owner. Such conveyance shall be upon such terms
1037 and conditions as may be agreed upon and may make such provisions
1038 for transfers of operating funds and/or for the assumption of
1039 liabilities of the community hospital as may be deemed appropriate
1040 by the respective owners.



1041 (7) (a) Except as provided for in subsection (11) of this
1042 section, owners may lease all or part of the property, real or
1043 personal, comprising a community hospital, including any related
1044 facilities, wherever located, and/or assets of such community
1045 hospital, to any individual, partnership or corporation, whether
1046 operating on a nonprofit basis or on a profit basis, or to the
1047 board of trustees of such community hospital or any other owner or
1048 board of trustees, subject to the applicable provisions of
1049 subsections (8), (9) and (10) of this section. The term of such
1050 lease shall not exceed fifty (50) years. Such lease shall be
1051 conditioned upon (i) the leased facility continuing to operate in
1052 a manner safeguarding community health interests; (ii) the
1053 proceeds from the lease being first applied against such bonds,
1054 notes or other evidence of indebtedness as are issued pursuant to
1055 Section 41-13-19 as and when they are due, provided that the terms
1056 of the lease shall cover any indebtedness pursuant to Section
1057 41-13-19; and (iii) any surplus proceeds from the lease being
1058 deposited in the general fund of the owner, which proceeds may be
1059 used for any lawful purpose. Such lease shall be subject to the
1060 express approval of the board of trustees of the community
1061 hospital, except in the case where the board of trustees of the
1062 community hospital will be the lessee. However, owners may not
1063 lease any community hospital to the University of Mississippi
1064 Medical Center unless first the University of Mississippi Medical
1065 Center has obtained authority to lease such hospital under



1066 specific terms and conditions from the Board of Trustees of State
1067 Institutions of Higher Learning.

1068 If the owner wishes to lease a community hospital without an
1069 option to sell it and the approval of the board of trustees of the
1070 community hospital is required but is not given within thirty (30)
1071 days of the request for its approval by the owner, then the owner
1072 may enter such lease as described herein on the following
1073 conditions: A resolution by the owner describing its intention to
1074 enter such lease shall be published once a week for at least three
1075 (3) consecutive weeks in at least one (1) newspaper published in
1076 the county or city, as the case may be, or if none be so
1077 published, in a newspaper having a general circulation therein.
1078 The first publication of such notice shall be made not less than
1079 twenty-one (21) days prior to the date fixed in such resolution
1080 for the lease of the community hospital and the last publication
1081 shall be made not more than seven (7) days prior to such date.
1082 If, on or prior to the date fixed in such resolution for the lease
1083 of the community hospital, there shall be filed with the clerk of
1084 the owner a petition signed by twenty percent (20%) or fifteen
1085 hundred (1500), whichever is less, of the qualified voters of such
1086 owner, requesting that an election be called and held on the
1087 question of the lease of the community hospital, then it shall be
1088 the duty of the owner to call and provide for the holding of an
1089 election as petitioned for. In such case, no such lease shall be
1090 entered into unless authorized by the affirmative vote of the



1091 majority of the qualified voters of such owner who vote on the
1092 proposition at such election. Notice of such election shall be
1093 given by publication in like manner as hereinabove provided for
1094 the publication of the initial resolution. Such election shall be
1095 conducted and the return thereof made, canvassed and declared as
1096 nearly as may be in like manner as is now or may hereafter be
1097 provided by law in the case of general elections in such owner.
1098 If, on or prior to the date fixed in the owner's resolution for
1099 the lease of the community hospital, no such petition as described
1100 above is filed with the clerk of the owner, then the owner may
1101 proceed with the lease subject to the other requirements of this
1102 section. Subject to the above conditions, the lease agreement
1103 shall be upon such terms and conditions as may be agreed upon and
1104 may make such provision for transfers of tangible and intangible
1105 personal property and operating funds and/or for the assumption of
1106 liabilities of the community hospital and for such lease payments,
1107 all as may be deemed appropriate by the owners.

1108 (b) Owners may sell and convey all or part of the
1109 property, real or personal, comprising a community hospital,
1110 including any related facilities, wherever located, and/or assets
1111 of such community hospital, to any individual, partnership or
1112 corporation, whether operating on a nonprofit basis or on a profit
1113 basis, or to the board of trustees of such community hospital or
1114 any other owner or board of trustees, subject to the applicable
1115 provisions of subsections (8) and (10) of this section. Such sale



1116 and conveyance shall be upon such terms and conditions as may be
1117 agreed upon by the owner and the purchaser that are consistent
1118 with the requirements of this section, and the parties may make
1119 such provisions for the transfer of operating funds or for the
1120 assumption of liabilities of the facility, or both, as they deem
1121 appropriate. However, such sale and conveyance shall be
1122 conditioned upon (i) the facility continuing to operate in a
1123 manner safeguarding community health interests; (ii) the proceeds
1124 from such sale being first applied against such bonds, notes or
1125 other evidence of indebtedness as are issued pursuant to Section
1126 41-13-19 as and when they are due, provided that the terms of the
1127 sale shall cover any indebtedness pursuant to Section 41-13-19;
1128 and (iii) any surplus proceeds from the sale being deposited in
1129 the general fund of the owner, which proceeds may be used for any
1130 lawful purpose. However, owners may not sell or convey any
1131 community hospital to the University of Mississippi Medical Center
1132 unless first the University of Mississippi Medical Center has
1133 obtained authority to purchase such hospital under specific terms
1134 and conditions from the Board of Trustees of State Institutions of
1135 Higher Learning.

1136 (8) Whenever any owner decides that it may be in its best
1137 interests to sell or lease a community hospital as provided for
1138 under subsection (7) of this section, the owner shall first
1139 contract with a certified public accounting firm, a law firm or
1140 competent professional health care or management consultants to



1141 review the current operating condition of the community hospital.

1142 The review shall consist of, at minimum, the following:

1143 (a) A review of the community's inpatient facility
1144 needs based on current workload, historical trends and
1145 projections, based on demographic data, of future needs.

1146 (b) A review of the competitive market for services,
1147 including other hospitals which serve the same area, the services
1148 provided and the market perception of the competitive hospitals.

1149 (c) A review of the hospital's strengths relative to
1150 the competition and its capacity to compete in light of projected
1151 trends and competition.

1152 (d) An analysis of the hospital's options, including
1153 service mix and pricing strategies. If the study concludes that a
1154 sale or lease should occur, the study shall include an analysis of
1155 which option would be best for the community and how much revenues
1156 should be derived from the lease or sale.

1157 (9) After the review and analysis under subsection (8) of
1158 this section, an owner may choose to sell or lease the community
1159 hospital. If an owner chooses to sell such hospital or lease the
1160 hospital with an option to sell it, the owner shall follow the
1161 procedure specified in subsection (10) of this section. If an
1162 owner chooses to lease the hospital without an option to sell it,
1163 it shall first spread upon its minutes why such a lease is in the
1164 best interests of the persons living in the area served by the
1165 facility to be leased, and it shall make public any and all



1166 findings and recommendations made in the review required under
1167 proposals for the lease, which shall state clearly the minimum
1168 required terms of all respondents and the evaluation process that
1169 will be used when the owner reviews the proposals. The owner
1170 shall lease to the respondent submitting the highest and best
1171 proposal. In no case may the owner deviate from the process
1172 provided for in the request for proposals.

1173 (10) If an owner wishes to sell such community hospital or
1174 lease the hospital with an option to sell it, the owner first
1175 shall conduct a public hearing on the issue of the proposed sale
1176 or lease with an option to sell the hospital. Notice of the date,
1177 time, location and purpose of the public hearing shall be
1178 published once a week for at least three (3) consecutive weeks in
1179 at least one (1) newspaper published in the county or city, as the
1180 case may be, or if none be so published, in a newspaper having a
1181 general circulation therein. The first publication of the notice
1182 shall be made not less than twenty-one (21) days before the date
1183 of the public hearing and the last publication shall be made not
1184 more than seven (7) days before that date. If, after the public
1185 hearing, the owner chooses to sell or lease with an option to sell
1186 the hospital, the owner shall adopt a resolution describing its
1187 intention to sell or lease with an option to sell the hospital,
1188 which shall include the owner's reasons why such a sale or lease
1189 is in the best interests of the persons living in the area served
1190 by the facility to be sold or leased. The owner then shall



1191 publish a copy of the resolution; the requirements for proposals
1192 for the sale or lease with an option to sell the hospital, which
1193 shall state clearly the minimum required terms of all respondents
1194 and the evaluation process that will be used when the owner
1195 reviews the proposals; and the date proposed by the owner for the
1196 sale or lease with an option to sell the hospital. Such
1197 publication shall be made once a week for at least three (3)
1198 consecutive weeks in at least one (1) newspaper published in the
1199 county or city, as the case may be, or if none be so published, in
1200 a newspaper having a general circulation therein. The first
1201 publication of the notice shall be made not less than twenty-one
1202 (21) days before the date proposed for the sale or lease with an
1203 option to sell the hospital and the last publication shall be made
1204 not more than seven (7) days before that date. If, on or before
1205 the date proposed for the sale or lease of the hospital, there is
1206 filed with the clerk of the owner a petition signed by twenty
1207 percent (20%) or fifteen hundred (1500), whichever is less, of the
1208 qualified voters of the owner, requesting that an election be
1209 called and held on the question of the sale or lease with an
1210 option to sell the hospital, then it shall be the duty of the
1211 owner to call and provide for the holding of an election as
1212 petitioned for. In that case, no such sale or lease shall be
1213 entered into unless authorized by the affirmative vote of the
1214 majority of the qualified voters of the owner who vote on the
1215 proposition at such election. Notice of the election shall be



1216 given by publication in the same manner as provided for the
1217 publication of the initial resolution. The election shall be
1218 conducted and the return thereof made, canvassed and declared in
1219 the same manner as provided by law in the case of general
1220 elections in the owner. If, on or before the date proposed for
1221 the sale or lease of the hospital, no such petition is filed with
1222 the clerk of the owner, then the owner may sell or lease with an
1223 option to sell the hospital. Such sale or lease shall be made to
1224 the respondent submitting the highest and best proposal. In no
1225 case may the owner deviate from the process provided for in the
1226 request for proposals.

1227 (11) A lessee of a community hospital, under a lease entered
1228 into under the authority of Section 41-13-15, in effect prior to
1229 July 15, 1993, or an affiliate thereof, may extend or renew such
1230 lease whether or not an option to renew or extend the lease is
1231 contained in the lease, for a term not to exceed fifteen (15)
1232 years, conditioned upon (a) the leased facility continuing to
1233 operate in a manner safeguarding community health interest; (b)
1234 proceeds from the lease being first applied against such bonds,
1235 notes or other evidence of indebtedness as are issued pursuant to
1236 Section 41-13-19; (c) surplus proceeds from the lease being used
1237 for health related purposes; (d) subject to the express approval
1238 of the board of trustees of the community hospital; and (e)
1239 subject to the express approval of the owner. If no board of
1240 trustees is then existing, the owner shall have the right to enter



1241 into a lease upon such terms and conditions as agreed upon by the
1242 parties. Any lease entered into under this subsection (11) may
1243 contain an option to purchase the hospital, on such terms as the
1244 parties shall agree.

1245 **SECTION 26.** Section 41-13-35, Mississippi Code of 1972, is
1246 amended as follows:

1247 41-13-35. (1) The board of trustees of any community
1248 hospital shall have full authority to appoint an administrator,
1249 who shall not be a member of the board of trustees, and to
1250 delegate reasonable authority to such administrator for the
1251 operation and maintenance of such hospital and all property and
1252 facilities otherwise appertaining thereto.

1253 (2) The board of trustees shall have full authority to
1254 select from its members, officers and committees and, by
1255 resolution or through the board bylaws, to delegate to such
1256 officers and committees reasonable authority to carry out and
1257 enforce the powers and duties of the board of trustees during the
1258 interim periods between regular meetings of the board of trustees;
1259 provided, however, that any such action taken by an officer or
1260 committee shall be subject to review by the board, and actions may
1261 be withdrawn or nullified at the next subsequent meeting of the
1262 board of trustees if the action is in excess of delegated
1263 authority.

1264 (3) The board of trustees shall be responsible for governing
1265 the community hospital under its control and shall make and



1266 enforce staff and hospital bylaws and/or rules and regulations
1267 necessary for the administration, government, maintenance and/or
1268 expansion of such hospitals. The board of trustees shall keep
1269 minutes of its official business and shall comply with Section
1270 41-9-68.

1271 (4) The decisions of said board of trustees of the community
1272 hospital shall be valid and binding unless expressly prohibited by
1273 applicable statutory or constitutional provisions.

1274 (5) The power of the board of trustees shall specifically
1275 include, but not be limited to, the following authority:

1276 (a) To deposit and invest funds of the community
1277 hospital in accordance with Section 27-105-365;

1278 (b) To establish such equitable wage and salary
1279 programs and other employment benefits as may be deemed expedient
1280 or proper, and in so doing, to expend reasonable funds for such
1281 employee salary and benefits. Allowable employee programs shall
1282 specifically include, but not be limited to, medical benefit,
1283 life, accidental death and dismemberment, disability, retirement
1284 and other employee coverage plans. The hospital may offer and
1285 fund such programs directly or by contract with any third party
1286 and shall be authorized to take all actions necessary to
1287 implement, administer and operate such plans, including payroll
1288 deductions for such plans;



1289 (c) To authorize employees to attend and to pay actual
1290 expenses incurred by employees while engaged in hospital business
1291 or in attending recognized educational or professional meetings;

1292 (d) To enter into loan or scholarship agreements with
1293 employees or students to provide educational assistance where such
1294 student or employee agrees to work for a stipulated period of time
1295 for the hospital;

1296 (e) To devise and implement employee incentive
1297 programs;

1298 (f) To recruit and financially assist physicians and
1299 other health care practitioners in establishing, or relocating
1300 practices within the service area of the community hospital
1301 including, without limitation, direct and indirect financial
1302 assistance, loan agreements, agreements guaranteeing minimum
1303 incomes for a stipulated period from opening of the practice and
1304 providing free office space or reduced rental rates for office
1305 space where such recruitment would directly benefit the community
1306 hospital and/or the health and welfare of the citizens of the
1307 service area;

1308 (g) To contract by way of lease, lease-purchase or
1309 otherwise, with any agency, department or other office of
1310 government or any individual, partnership, corporation, owner,
1311 other board of trustees, or other health care facility, for the
1312 providing of property, equipment or services by or to the
1313 community hospital or other entity or regarding any facet of the



1314 construction, management, funding or operation of the community
1315 hospital or any division or department thereof, or any related
1316 activity, including, without limitation, shared management
1317 expertise or employee insurance and retirement programs, and to
1318 terminate said contracts when deemed in the best interests of the
1319 community hospital;

1320 (h) To file suit on behalf of the community hospital to
1321 enforce any right or claims accruing to the hospital and to defend
1322 and/or settle claims against the community hospital and/or its
1323 board of trustees;

1324 (i) To sell or otherwise dispose of any chattel
1325 property of the community hospital by any method deemed
1326 appropriate by the board where such disposition is consistent with
1327 the hospital purposes or where such property is deemed by the
1328 board to be surplus or otherwise unneeded;

1329 (j) To let contracts for the construction, remodeling,
1330 expansion or acquisition, by lease or purchase, of hospital or
1331 health care facilities, including real property, within the
1332 service area for community hospital purposes where such may be
1333 done with operational funds without encumbrancing the general
1334 funds of the county or municipality, provided that any contract
1335 for the purchase of real property must be ratified by the owner;

1336 (k) To borrow money and enter other financing
1337 arrangements for community hospital and related purposes and to
1338 grant security interests in hospital equipment and other hospital



1339 assets and to pledge a percentage of hospital revenues as security
1340 for such financings where needed; provided that the owner shall
1341 specify by resolution the maximum borrowing authority and maximum
1342 percent of revenue which may be pledged by the board of trustees
1343 during any given fiscal year;

1344 (l) To expend hospital funds for public relations or
1345 advertising programs;

1346 (m) To offer the following inpatient and outpatient
1347 services, after complying with applicable health planning,
1348 licensure statutes and regulations, whether or not heretofore
1349 offered by such hospital or other similar hospitals in this state
1350 and whether or not heretofore authorized to be offered, long-term
1351 care, extended care, home care, after-hours clinic services,
1352 ambulatory surgical clinic services, preventative health care
1353 services including wellness services, health education,
1354 rehabilitation and diagnostic and treatment services; to promote,
1355 develop, operate and maintain a center providing care or
1356 residential facilities for the aged, convalescent or handicapped;
1357 and to promote, develop and institute any other services having an
1358 appropriate place in the operation of a hospital offering complete
1359 community health care;

1360 (n) To promote, develop, acquire, operate and maintain
1361 on a nonprofit basis, or on a profit basis if the community
1362 hospital's share of profits is used solely for community hospital
1363 and related purposes in accordance with this chapter, either



1364 separately or jointly with one or more other hospitals or
1365 health-related organizations, facilities and equipment for
1366 providing goods, services and programs for hospitals, other health
1367 care providers, and other persons or entities in need of such
1368 goods, services and programs and, in doing so, to provide for
1369 contracts of employment or contracts for services and ownership of
1370 property on terms that will protect the public interest;

1371 (o) To establish and operate medical offices, child
1372 care centers, wellness or fitness centers and other facilities and
1373 programs which the board determines are appropriate in the
1374 operation of a community hospital for the benefit of its
1375 employees, personnel and/or medical staff which shall be operated
1376 as an integral part of the hospital and which may, in the
1377 direction of the board of trustees, be offered to the general
1378 public. If such programs are not established in existing
1379 facilities or constructed on real estate previously acquired by
1380 the owners, the board of trustees shall also have authority to
1381 acquire, by lease or purchase, such facilities and real property
1382 within the service area, whether or not adjacent to existing
1383 facilities, provided that any contract for the purchase of real
1384 property shall be ratified by the owner. The trustees shall lease
1385 any such medical offices to members of the medical staff at rates
1386 deemed appropriate and may, in its discretion, establish rates to
1387 be paid for the use of other facilities or programs by its



1388 employees or personnel or members of the public whom the trustees
1389 may determine may properly use such other facilities or programs;

1390 (p) Provide, at its discretion, ambulance service
1391 and/or to contract with any third party, public or private, for
1392 the providing of such service;

1393 (q) Establish a fair and equitable system for the
1394 billing of patients for care or users of services received through
1395 the community hospital, which in the exercise of the board of
1396 trustees' prudent fiscal discretion, may allow for rates to be
1397 classified according to the potential usage by an identified group
1398 or groups of patients of the community hospital's services and may
1399 allow for standard discounts where the discount is designed to
1400 reduce the operating costs or increase the revenues of the
1401 community hospital. Such billing system may also allow for the
1402 payment of charges by means of a credit card or similar device and
1403 allow for payment of administrative fees as may be regularly
1404 imposed by a banking institution or other credit service
1405 organization for the use of such cards;

1406 (r) To establish as an organizational part of the
1407 hospital or to aid in establishing as a separate entity from the
1408 hospital, hospital auxiliaries designed to aid the hospital, its
1409 patients, and/or families and visitors of patients, and when the
1410 auxiliary is established as a separate entity from the hospital,
1411 the board of trustees may cooperate with the auxiliary in its
1412 operations as the board of trustees deems appropriate; * * *



1413 (s) To make any agreements or contracts with the
1414 federal government or any agency thereof, the State of Mississippi
1415 or any agency thereof, and any county, city, town, supervisors
1416 district or election district within this state, jointly or
1417 separately, for the maintenance of charity facilities * * *;

1418 (t) To negotiate and enter into contracts and
1419 agreements on behalf of the community hospital for the community
1420 hospital to become a member of a limited liability company, a
1421 joint venturer in a joint venture, or a member in a nonprofit
1422 corporation, in furtherance of providing health care services to
1423 the public; and

1424 (u) To enter into joint ventures, joint operating
1425 agreements, or similar arrangements with other public or private
1426 health-related organizations, or with for-profit or nonprofit
1427 corporations or other organizations, either directly or through a
1428 nonprofit corporation formed by the community hospital, for the
1429 joint operation of all or part of the community hospital, or the
1430 joint operation of any services or facilities of the community
1431 hospital, and in doing so, to agree to an allocation of revenue,
1432 income and/or expenses, to convey any community hospital assets,
1433 services lines or facilities to the joint venture or to any other
1434 organization or entity for fair market value, to establish
1435 arrangements for the community hospital to participate in
1436 financial integration and/or clinical integration or clinically
1437 integrated networks with a joint venture, with other public or



1438 private health-related organizations, or with other for-profit or
1439 nonprofit corporations or other organizations, or through a joint
1440 operating agreement, and to provide for contracts of employment or
1441 contracts for services and ownership of property on terms that
1442 will protect the public interest.

1443 (6) No board of trustees of any community hospital may
1444 accept any grant of money or other thing of value from any
1445 not-for-profit or for-profit organization established for the
1446 purpose of supporting health care in the area served by the
1447 facility unless two-thirds (2/3) of the trustees vote to accept
1448 the grant.

1449 (7) No board of trustees, individual trustee or any other
1450 person who is an agent or servant of the trustees of any community
1451 hospital shall have any personal financial interest in any
1452 not-for-profit or for-profit organization which, regardless of its
1453 stated purpose of incorporation, provides assistance in the form
1454 of grants of money or property to community hospitals or provides
1455 services to community hospitals in the form of performance of
1456 functions normally associated with the operations of a hospital.

1457 **SECTION 27.** Section 11-46-1, Mississippi Code of 1972, is
1458 amended as follows:

1459 11-46-1. As used in this chapter, the following terms shall
1460 have the meanings ascribed unless the context otherwise requires:

1461 (a) "Claim" means any demand to recover damages from a
1462 governmental entity as compensation for injuries.



1463 (b) "Claimant" means any person seeking compensation
1464 under the provisions of this chapter, whether by administrative
1465 remedy or through the courts.

1466 (c) "Board" means the Mississippi Tort Claims Board.

1467 (d) "Department" means the Department of Finance and
1468 Administration.

1469 (e) "Director" means the executive director of the
1470 department who is also the executive director of the board.

1471 (f) "Employee" means any officer, employee or servant
1472 of the State of Mississippi or a political subdivision of the
1473 state, including elected or appointed officials and persons acting
1474 on behalf of the state or a political subdivision in any official
1475 capacity, temporarily or permanently, in the service of the state
1476 or a political subdivision whether with or without compensation,
1477 including firefighters who are members of a volunteer fire
1478 department that is a political subdivision. The term "employee"
1479 shall not mean a person or other legal entity while acting in the
1480 capacity of an independent contractor under contract to the state
1481 or a political subdivision; and

1482 (i) For purposes of the limits of liability
1483 provided for in Section 11-46-15, the term "employee" shall
1484 include:

1485 1. Physicians under contract to provide
1486 health services with the State Board of Health, the State Board of



1487 Mental Health or any county or municipal jail facility while
1488 rendering services under the contract;

1489 2. Any physician, dentist or other health
1490 care practitioner employed by the University of Mississippi
1491 Medical Center (UMMC) and its departmental practice plans who is a
1492 faculty member and provides health care services only for patients
1493 at UMMC or its affiliated practice sites;

1494 3. Any physician, dentist or other health
1495 care practitioner employed by any university under the control of
1496 the Board of Trustees of State Institutions of Higher Learning who
1497 practices only on the campus of any university under the control
1498 of the Board of Trustees of State Institutions of Higher Learning;

1499 4. Any physician, dentist or other health
1500 care practitioner employed by the State Veterans Affairs Board and
1501 who provides health care services for patients for the State
1502 Veterans Affairs Board;

1503 (ii) The term "employee" shall also include
1504 Mississippi Department of Human Services licensed foster parents
1505 for the limited purposes of coverage under the Tort Claims Act as
1506 provided in Section 11-46-8; and

1507 (iii) The term "employee" also shall include any
1508 employee or member of the governing board of a charter school but
1509 shall not include any person or entity acting in the capacity of
1510 an independent contractor to provide goods or services under a
1511 contract with a charter school.



1512 (g) "Governmental entity" means the state and political
1513 subdivisions.

1514 (h) "Injury" means death, injury to a person, damage to
1515 or loss of property or any other injury that a person may suffer
1516 that is actionable at law or in equity.

1517 (i) "Political subdivision" means any body politic or
1518 body corporate other than the state responsible for governmental
1519 activities only in geographic areas smaller than that of the
1520 state, including, but not limited to, any county, municipality,
1521 school district, charter school, volunteer fire department that is
1522 a chartered nonprofit corporation providing emergency services
1523 under contract with a county or municipality, community hospital
1524 as defined in Section 41-13-10, airport authority, or other
1525 instrumentality of the state, whether or not the body or
1526 instrumentality has the authority to levy taxes or to sue or be
1527 sued in its own name.

1528 (j) "State" means the State of Mississippi and any
1529 office, department, agency, division, bureau, commission, board,
1530 institution, hospital, college, university, airport authority,
1531 health care collaborative as defined in Section 2 of this act or
1532 other instrumentality thereof, whether or not the body or
1533 instrumentality has the authority to levy taxes or to sue or be
1534 sued in its own name.

1535 (k) "Law" means all species of law, including, but not
1536 limited to, any and all constitutions, statutes, case law, common



1537 law, customary law, court order, court rule, court decision, court
1538 opinion, court judgment or mandate, administrative rule or
1539 regulation, executive order, or principle or rule of equity.

1540 **SECTION 28.** Section 25-4-103, Mississippi Code of 1972, is
1541 amended as follows:

1542 25-4-103. The following definitions apply in this article
1543 unless the context otherwise requires:

1544 (a) "Authority" means any component unit of a
1545 governmental entity.

1546 (b) "Benefit" means any gain or advantage to the
1547 beneficiary, including any gain or advantage to a third person
1548 pursuant to the desire or consent of the beneficiary.

1549 (c) "Business" means any corporation, partnership, sole
1550 proprietorship, firm, enterprise, franchise, association,
1551 organization, holding company, self-employed individual,
1552 joint-stock company, receivership, trust or other legal entity or
1553 undertaking organized for economic gain, a nonprofit corporation
1554 or other such entity, association or organization receiving public
1555 funds.

1556 (d) "Business with which he is associated" means any
1557 business of which a public servant or his relative is an officer,
1558 director, owner, partner, employee or is a holder of more than ten
1559 percent (10%) of the fair market value or from which he or his
1560 relative derives more than Two Thousand Five Hundred Dollars



1561 (\$2,500.00) in annual income or over which such public servant or
1562 his relative exercises control.

1563 (e) "Compensation" means money or thing of value
1564 received, or to be received, from any person for services
1565 rendered.

1566 (f) "Contract" means:

1567 (i) Any agreement to which the government is a
1568 party; or

1569 (ii) Any agreement on behalf of the government
1570 which involves the payment of public funds.

1571 (g) "Government" means the state and all political
1572 entities thereof, both collectively and separately, including, but
1573 not limited to:

1574 (i) Counties;

1575 (ii) Municipalities;

1576 (iii) All school districts;

1577 (iv) All courts; and

1578 (v) Any department, agency, board, commission,
1579 institution, instrumentality, or legislative or administrative
1580 body of the state, counties or municipalities created by statute,
1581 ordinance or executive order including all units that expend
1582 public funds.

1583 (h) "Governmental entity" means the state, a county, a
1584 municipality or any other separate political subdivision
1585 authorized by law to exercise a part of the sovereign power of the



1586 state. However, this term does not include a health care
1587 collaborative as defined in Section 2 of this act.

1588 (i) "Income" means money or thing of value received, or
1589 to be received, from any source derived, including, but not
1590 limited to, any salary, wage, advance, payment, dividend,
1591 interest, rent, forgiveness of debt, fee, royalty, commission or
1592 any combination thereof.

1593 (j) "Intellectual property" means any formula, pattern,
1594 compilation, program, device, method, technique or process created
1595 primarily as a result of the research effort of an employee or
1596 employees of an institution of higher learning of the State of
1597 Mississippi.

1598 (k) "Material financial interest" means a personal and
1599 pecuniary interest, direct or indirect, accruing to a public
1600 servant or spouse, either individually or in combination with each
1601 other. Notwithstanding the foregoing, the following shall not be
1602 deemed to be a material financial interest with respect to a
1603 business with which a public servant may be associated:

1604 (i) Ownership of any interest of less than ten
1605 percent (10%) in a business where the aggregate annual net income
1606 to the public servant therefrom is less than One Thousand Dollars
1607 (\$1,000.00);

1608 (ii) Ownership of any interest of less than two
1609 percent (2%) in a business where the aggregate annual net income



1610 to the public servant therefrom is less than Five Thousand Dollars
1611 (\$5,000.00);

1612 (iii) The income as an employee of a relative if
1613 neither the public servant or relative is an officer, director or
1614 partner in the business and any ownership interest would not be
1615 deemed material pursuant to subparagraph (i) or (ii) herein; or

1616 (iv) The income of the spouse of a public servant
1617 when such spouse is a contractor, subcontractor or vendor with the
1618 governmental entity that employs the public servant and the public
1619 servant exercises no control, direct or indirect, over the
1620 contract between the spouse and such governmental entity.

1621 (l) "Pecuniary benefit" means benefit in the form of
1622 money, property, commercial interests or anything else the primary
1623 significance of which is economic gain. Expenses associated with
1624 social occasions afforded public servants shall not be deemed a
1625 pecuniary benefit.

1626 (m) "Person" means any individual, firm, business,
1627 corporation, association, partnership, union or other legal
1628 entity, and where appropriate a governmental entity.

1629 (n) "Property" means all real or personal property.

1630 (o) "Public funds" means money belonging to the
1631 government.

1632 (p) "Public servant" means:

1633 (i) Any elected or appointed official of the
1634 government;



1635 (ii) Any officer, director, commissioner,
1636 supervisor, chief, head, agent or employee of the government or
1637 any agency thereof, or of any public entity created by or under
1638 the laws of the State of Mississippi or created by an agency or
1639 governmental entity thereof, any of which is funded by public
1640 funds or which expends, authorizes or recommends the use of public
1641 funds; or

1642 (iii) Any individual who receives a salary, per
1643 diem or expenses paid in whole or in part out of funds authorized
1644 to be expended by the government.

1645 The term "public servant" does not include a member of the
1646 board of directors of or an officer or employee of a health care
1647 collaborative as defined in Section 2 of this act.

1648 (q) "Relative" means:

1649 (i) The spouse of the public servant;

1650 (ii) The child of the public servant;

1651 (iii) The parent of the public servant;

1652 (iv) The sibling of the public servant; and

1653 (v) The spouse of any of the relatives of the

1654 public servant specified in subparagraphs (ii) through (iv).

1655 (r) "Securities" means stocks, bonds, notes,
1656 convertible debentures, warrants, evidences of debts or property
1657 or other such documents.

1658 **SECTION 29.** Section 25-9-107, Mississippi Code of 1972, is
1659 amended as follows:



1660 25-9-107. The following terms, when used in this chapter,
1661 unless a different meaning is plainly required by the context,
1662 shall have the following meanings:

1663 (a) "Board" means the State Personnel Board created
1664 under the provisions of this chapter.

1665 (b) "State service" means all employees of state
1666 departments, agencies and institutions as defined herein, except
1667 those officers and employees excluded by this chapter.

1668 (c) "Nonstate service" means the following officers and
1669 employees excluded from the state service by this chapter. The
1670 following are excluded from the state service:

1671 (i) Members of the State Legislature, their staff
1672 and other employees of the legislative branch;

1673 (ii) The Governor and staff members of the
1674 immediate Office of the Governor;

1675 (iii) Justices and judges of the judicial branch
1676 or members of appeals boards on a per diem basis;

1677 (iv) The Lieutenant Governor, staff members of the
1678 immediate Office of the Lieutenant Governor and officers and
1679 employees directly appointed by the Lieutenant Governor;

1680 (v) Officers and officials elected by popular vote
1681 and persons appointed to fill vacancies in elective offices;

1682 (vi) Members of boards and commissioners appointed
1683 by the Governor, Lieutenant Governor or the State Legislature;



1684 (vii) All academic officials, members of the
1685 teaching staffs and employees of the state institutions of higher
1686 learning, the Mississippi Community College Board, and community
1687 and junior colleges;

1688 (viii) Officers and enlisted members of the
1689 National Guard of the state;

1690 (ix) Prisoners, inmates, student or patient help
1691 working in or about institutions;

1692 (x) Contract personnel; provided, that any agency
1693 which employs state service employees may enter into contracts for
1694 personal and professional services only if such contracts are
1695 approved in compliance with the rules and regulations promulgated
1696 by the State Personal Service Contract Review Board under Section
1697 25-9-120(3). Before paying any warrant for such contractual
1698 services in excess of One Hundred Thousand Dollars (\$100,000.00),
1699 the Auditor of Public Accounts, or the successor to those duties,
1700 shall determine whether the contract involved was for personal or
1701 professional services, and, if so, was approved by the State
1702 Personal Service Contract Review Board;

1703 (xi) Part-time employees; provided, however,
1704 part-time employees shall only be hired into authorized employment
1705 positions classified by the board, shall meet minimum
1706 qualifications as set by the board, and shall be paid in
1707 accordance with the Variable Compensation Plan as certified by the
1708 board;



1709 (xii) Persons appointed on an emergency basis for
1710 the duration of the emergency; the effective date of the emergency
1711 appointments shall not be earlier than the date approved by the
1712 State Personnel Director, and shall be limited to thirty (30)
1713 working days. Emergency appointments may be extended to sixty
1714 (60) working days by the State Personnel Board;

1715 (xiii) Physicians, dentists, veterinarians, nurse
1716 practitioners and attorneys, while serving in their professional
1717 capacities in authorized employment positions who are required by
1718 statute to be licensed, registered or otherwise certified as such,
1719 provided that the State Personnel Director shall verify that the
1720 statutory qualifications are met prior to issuance of a payroll
1721 warrant by the Auditor;

1722 (xiv) Personnel who are employed and paid from
1723 funds received from a federal grant program which has been
1724 approved by the Legislature or the Department of Finance and
1725 Administration whose length of employment has been determined to
1726 be time-limited in nature. This subparagraph shall apply to
1727 personnel employed under the provisions of the Comprehensive
1728 Employment and Training Act of 1973, as amended, and other special
1729 federal grant programs which are not a part of regular federally
1730 funded programs wherein appropriations and employment positions
1731 are appropriated by the Legislature. Such employees shall be paid
1732 in accordance with the Variable Compensation Plan and shall meet



1733 all qualifications required by federal statutes or by the
1734 Mississippi Classification Plan;

1735 (xv) The administrative head who is in charge of
1736 any state department, agency, institution, board or commission,
1737 wherein the statute specifically authorizes the Governor, board,
1738 commission or other authority to appoint said administrative head;
1739 provided, however, that the salary of such administrative head
1740 shall be determined by the State Personnel Board in accordance
1741 with the Variable Compensation Plan unless otherwise fixed by
1742 statute;

1743 (xvi) The State Personnel Board shall exclude
1744 top-level positions if the incumbents determine and publicly
1745 advocate substantive program policy and report directly to the
1746 agency head, or the incumbents are required to maintain a direct
1747 confidential working relationship with a key excluded official.
1748 Provided further, a written job classification shall be approved
1749 by the board for each such position, and positions so excluded
1750 shall be paid in conformity with the Variable Compensation Plan;

1751 (xvii) Employees whose employment is solely in
1752 connection with an agency's contract to produce, store or
1753 transport goods, and whose compensation is derived therefrom;

1754 (xviii) Repealed;

1755 (xix) The associate director, deputy directors and
1756 bureau directors within the Department of Agriculture and
1757 Commerce;



1758 (xx) Personnel employed by the Mississippi
1759 Industries for the Blind; provided, that any agency may enter into
1760 contracts for the personal services of MIB employees without the
1761 prior approval of the State Personnel Board or the State Personal
1762 Service Contract Review Board; however, any agency contracting for
1763 the personal services of an MIB employee shall provide the MIB
1764 employee with not less than the entry-level compensation and
1765 benefits that the agency would provide to a full-time employee of
1766 the agency who performs the same services;

1767 (xxi) Personnel employed by the Mississippi
1768 Department of Wildlife, Fisheries and Parks and the Mississippi
1769 Department of Marine Resources as law enforcement trainees
1770 (cadets); such personnel shall be paid in accordance with the
1771 Colonel Guy Groff State Variable Compensation Plan.

1772 (d) "Agency" means any state board, commission,
1773 committee, council, department or unit thereof created by the
1774 Constitution or statutes if such board, commission, committee,
1775 council, department, unit or the head thereof, is authorized to
1776 appoint subordinate staff by the Constitution or statute, except a
1777 legislative or judicial board, commission, committee, council,
1778 department or unit thereof. The term "agency" does not include a
1779 health care collaborative as defined by Section 2 of this act.

1780 **SECTION 30.** Section 25-41-3, Mississippi Code of 1972, is
1781 amended as follows:



1782 25-41-3. For purposes of this chapter, the following words
1783 shall have the meaning ascribed herein, to wit:

1784 (a) "Public body" means any executive or administrative
1785 board, commission, authority, council, department, agency, bureau
1786 or any other policymaking entity, or committee thereof, of the
1787 State of Mississippi, or any political subdivision or municipal
1788 corporation of the state, whether the entity be created by statute
1789 or executive order, which is supported wholly or in part by public
1790 funds or expends public funds, and any standing, interim or
1791 special committee of the Mississippi Legislature. The term
1792 "public body" includes the governing board of a charter school
1793 authorized by the Mississippi Charter School Authorizer Board and
1794 the board of trustees of a community hospital as defined in
1795 Section 41-13-10. There shall be exempted from the provisions of
1796 this chapter:

- 1797 (i) The judiciary, including all jury
1798 deliberations;
- 1799 (ii) Law enforcement officials;
- 1800 (iii) The military;
- 1801 (iv) The State Probation and Parole Board;
- 1802 (v) The Workers' Compensation Commission;
- 1803 (vi) Legislative subcommittees and legislative
1804 conference committees;
- 1805 (vii) The arbitration council established in
1806 Section 69-3-19;



1807 (viii) License revocation, suspension and
1808 disciplinary proceedings held by the Mississippi State Board of
1809 Dental Examiners; * * *

1810 (ix) Hearings and meetings of the Board of Tax
1811 Appeals and of the hearing officers and the board of review of the
1812 Department of Revenue as provided in Section 27-77-15 * * *;

1813 (x) Any health care collaborative as defined in
1814 Section 2 of this act.

1815 (b) "Meeting" means an assemblage of members of a
1816 public body at which official acts may be taken upon a matter over
1817 which the public body has supervision, control, jurisdiction or
1818 advisory power, including an assemblage through the use of video
1819 or teleconference devices that conforms to Section 25-41-5.

1820 **SECTION 31.** Section 25-43-1.102, Mississippi Code of 1972,
1821 is amended as follows:

1822 25-43-1.102. As used in this chapter, the following terms
1823 shall have the meanings ascribed to them in this section unless
1824 the context otherwise requires:

1825 (a) "Agency" means a board, commission, department,
1826 officer or other administrative unit of this state, including the
1827 agency head, and one or more members of the agency head or agency
1828 employees directly or indirectly purporting to act on behalf or
1829 under the authority of the agency head. The term does not include
1830 the Legislature or any of its component units, the judiciary or
1831 any of its component units or the Governor. The term does not



1832 include a political subdivision of the state or any of the
1833 administrative units of a political subdivision. The term does
1834 not include a health care collaborative as defined in Section 2 of
1835 this act. To the extent it purports to exercise authority subject
1836 to any provision of this chapter, an administrative unit otherwise
1837 qualifying as an "agency" must be treated as a separate agency
1838 even if the unit is located within or subordinate to another
1839 agency.

1840 (b) "Agency head" or "head of the agency" means an
1841 individual or body of individuals in whom the ultimate legal
1842 authority of the agency is vested by any provision of law.

1843 (c) "Agency proceeding" or "proceeding" means the
1844 process by which an agency considers:

1845 (i) A declaratory opinion pursuant to Section
1846 25-43-2.103, or

1847 (ii) A rule pursuant to Article III of this
1848 chapter.

1849 (d) "Agency record" means the official rule-making
1850 record of an agency pursuant to Section 25-43-3.112.

1851 (e) "Declaratory opinion" means an agency opinion
1852 rendered in accordance with the provisions of Section 25-43-2.103.

1853 (f) "Order" means an agency action of particular
1854 applicability that determines the legal rights, duties,
1855 privileges, immunities or other legal interests of one or more
1856 specific persons. An order shall be in writing signed by a person



1857 with authority to render the order, or if more than one (1) person
1858 has such authority by at least that number of such persons as
1859 jointly have the authority to render the order, or by a person
1860 authorized to render the order on behalf of all such persons. The
1861 term does not include an executive order issued by the Governor
1862 pursuant to Section 25-43-1.104, an opinion issued by the Attorney
1863 General pursuant to Section 7-5-25, an opinion issued by the
1864 Ethics Commission pursuant to Section 25-4-17, or a declaratory
1865 opinion rendered in accordance with Section 25-43-2.103.

1866 (g) "Person" means an individual, partnership,
1867 corporation, association, governmental subdivision or unit
1868 thereof, or public or private organization or entity of any
1869 character, and includes another agency.

1870 (h) "Provision of law" or "law" means the whole or a
1871 part of the federal or state Constitution, or of any federal or
1872 state (i) statute, (ii) case law or common law, (iii) rule of
1873 court, (iv) executive order, or (v) rule or order of an
1874 administrative agency.

1875 (i) "Rule" means the whole or a part of an agency
1876 regulation or other statement of general applicability that
1877 implements, interprets or prescribes:

1878 (i) Law or policy, or

1879 (ii) The organization, procedure or practice
1880 requirements of an agency. The term includes the amendment,



1881 repeal or suspension of an existing rule. "Rule" does not
1882 include:

1883 1. A regulation or statement concerning only
1884 the internal management of an agency which does not directly and
1885 substantially affect the procedural or substantive rights or
1886 duties of any segment of the public;

1887 2. A regulation or statement that establishes
1888 criteria or guidelines to be used by the staff of an agency in
1889 performing audits, investigations or inspections, settling
1890 commercial disputes, negotiating commercial arrangements or in the
1891 defense, prosecution or settlement of cases, if disclosure of the
1892 criteria or guidelines would:

1893 a. Enable law violators to avoid
1894 detection;

1895 b. Facilitate disregard of requirements
1896 imposed by law; or

1897 c. Give a clearly improper advantage to
1898 persons who are in an adverse position to the state;

1899 3. A regulation or statement that only
1900 establishes specific prices to be charged for particular goods or
1901 services sold by an agency;

1902 4. A regulation or statement concerning only
1903 the physical servicing, maintenance or care of agency owned or
1904 operated facilities or property;



1905 5. A regulation or statement relating only to
1906 the use of a particular facility or property owned, operated or
1907 maintained by the state or any of its subdivisions, if the
1908 substance of the regulation or statement is adequately indicated
1909 by means of signs or signals to persons who use the facility or
1910 property;

1911 6. A regulation or statement directly related
1912 only to inmates of a correctional or detention facility, students
1913 enrolled in an educational institution or patients admitted to a
1914 hospital, if adopted by that facility, institution or hospital;

1915 7. A form whose contents or substantive
1916 requirements are prescribed by rule or statute, and instructions
1917 for the execution or use of the form;

1918 8. An agency budget;

1919 9. A compact or agreement between an agency
1920 of this state and one or more agencies of another state or states;
1921 or

1922 10. An opinion of the Attorney General
1923 pursuant to Section 7-5-25, an opinion of the Ethics Commission
1924 pursuant to Section 25-4-17, or an Executive Order of the
1925 Governor.

1926 (j) "Rule-making" means the process for formulation and
1927 adoption of a rule.

1928 **SECTION 32.** Section 25-53-3, Mississippi Code of 1972, is
1929 amended as follows:



1930 25-53-3. (1) Whenever the term "Central Data Processing
1931 Authority" or the term "authority," when referring to the Central
1932 Data Processing Authority, is used in any law, rule, regulation,
1933 document or elsewhere, it shall be construed to mean the
1934 Mississippi Department of Information Technology Services.

1935 (2) For the purposes of this chapter the following terms
1936 shall have the meanings ascribed in this section unless the
1937 context otherwise requires:

1938 (a) "Central Data Processing Authority" and "CDPA" mean
1939 "Mississippi Department of Information Technology Services
1940 (MDITS)" and the term "authority" means "board of the MDITS."

1941 (b) "Bureau of Systems Policy and Planning," "Bureau of
1942 Telecommunications," "Bureau of Central Data Processing" and
1943 "bureau" mean "Mississippi Department of Information Technology
1944 Services."

1945 (c) "Computer equipment or services" means any
1946 information technology, computer or computer related
1947 telecommunications equipment, electronic word processing and
1948 office systems, or services utilized in connection therewith,
1949 including, but not limited to, all phases of computer software and
1950 consulting services, and insurance on all state-owned computer
1951 equipment.

1952 (d) "Acquisition" of computer or telecommunications
1953 equipment or services means the purchase, lease, rental, or



1954 acquisition in any other manner of any such computer or
1955 telecommunications equipment or services.

1956 (e) "Agency" means and includes all the various state
1957 agencies, officers, departments, boards, commissions, offices and
1958 institutions of the state. The term "agency" does not include a
1959 health care collaborative as defined under Section 2 of this act.

1960 (f) "Governing authority" means boards of supervisors,
1961 governing boards of all school districts, all boards of directors
1962 of public water supply districts, boards of directors of master
1963 public water supply districts, municipal public utility
1964 commissions, governing authorities of all municipalities, port
1965 authorities, commissioners and boards of trustees of any public
1966 hospitals and any political subdivision of the state supported,
1967 wholly or in part, by public funds of the state or political
1968 subdivisions thereof.

1969 (g) "Bid" means any of the valid source selection
1970 techniques and competitive procurement methods appropriate to
1971 information technology procurement in the public sector,
1972 including, but not limited to, competitive sealed bidding,
1973 competitive sealed proposals, simplified small purchase
1974 procedures, sole source procurements, and emergency procurements.

1975 (h) "Telecommunications transmission facility" means
1976 any transmission medium, switch, instrument, inside wiring system
1977 or other facility which is used, in whole or in part, to provide
1978 any transmission.



1979 (i) "Equipment support contract" means a contract which
1980 covers a single, specific class or classes of telecommunications
1981 equipment or service and all features associated with that class,
1982 through which state agencies may purchase or lease the item of
1983 equipment or service specified by issuing a purchase order under
1984 the terms of the contract without the necessity of further
1985 competitive bidding.

1986 (j) "Inside wiring system" means any wiring which:

1987 (i) Directly or indirectly, interconnects any
1988 terminal equipment with any other terminal equipment or with any
1989 regulated facility or common carrier services; and

1990 (ii) Is located at the premises of the customer
1991 and is not inside any terminal equipment.

1992 (k) "Procurement" means the selling, buying,
1993 purchasing, renting, leasing or otherwise obtaining
1994 telecommunications equipment, system or related services, as well
1995 as activities engaged in, resulting in or expected to result in
1996 selling, buying, purchasing, renting, leasing or otherwise
1997 obtaining telecommunications equipment.

1998 (l) "Telecommunications equipment, systems, related
1999 services" are limited to the equipment and means to provide:

2000 (i) Telecommunications transmission facilities.

2001 (ii) Telephone systems, including voice processing
2002 systems.

2003 (iii) Facsimile systems.



2004 (iv) Radio paging services.

2005 (v) Mobile telephone services, including cellular
2006 mobile telephone service.

2007 (vi) Intercom and paging systems.

2008 (vii) Video teleconferencing systems.

2009 (viii) Personal communications networks and
2010 services.

2011 (ix) Any and all systems based on emerging and
2012 future telecommunications technologies relative to (i) through
2013 (viii) above.

2014 (m) "Telecommunications system lease contract" means a
2015 contract between a supplier of telecommunications systems,
2016 including equipment and related services, and the Mississippi
2017 Department of Information Technology Services through which
2018 telecommunications systems, including equipment and related
2019 services, may be leased for a term which shall not exceed sixty
2020 (60) months for a system lease valued less than One Million
2021 Dollars (\$1,000,000.00) and shall not exceed one hundred twenty
2022 (120) months for a system lease valued One Million Dollars
2023 (\$1,000,000.00) or more.

2024 (n) "Tariffed or regulated service" means
2025 telecommunications service offered by common carriers and subject
2026 to control by the Mississippi Public Service Commission or the
2027 Federal Communications Commission.



2028 (o) "State Data Center" means one or more facilities
2029 operated by the Mississippi Department of Information Technology
2030 Services to provide information technology resources requiring
2031 enterprise computing resources or any other centrally managed
2032 information resources.

2033 **SECTION 33.** Section 25-61-3, Mississippi Code of 1972, is
2034 amended as follows:

2035 25-61-3. The following words shall have the meanings
2036 ascribed herein unless the context clearly requires otherwise:

2037 (a) "Public body" shall mean any department, bureau,
2038 division, council, commission, committee, subcommittee, board,
2039 agency and any other entity of the state or a political
2040 subdivision thereof, and any municipal corporation and any other
2041 entity created by the Constitution or by law, executive order,
2042 ordinance or resolution. The term "public body" includes the
2043 governing board of a charter school authorized by the Mississippi
2044 Charter School Authorizer Board. Within the meaning of this
2045 chapter, the term "entity" shall not be construed to include
2046 individuals employed by a public body or any appointed or elected
2047 public official. The term "public body" does not include a health
2048 care collaborative as defined in Section 2 of this act.

2049 (b) "Public records" shall mean all books, records,
2050 papers, accounts, letters, maps, photographs, films, cards, tapes,
2051 recordings or reproductions thereof, and any other documentary
2052 materials, regardless of physical form or characteristics, having



2053 been used, being in use, or prepared, possessed or retained for
2054 use in the conduct, transaction or performance of any business,
2055 transaction, work, duty or function of any public body, or
2056 required to be maintained by any public body.

2057 (c) "Data processing software" means the programs and
2058 routines used to employ and control the capabilities of data
2059 processing hardware, including, but not limited to, operating
2060 systems, compilers, assemblers, utilities, library routines,
2061 maintenance routines, applications and computer networking
2062 programs.

2063 (d) "Proprietary software" means data processing
2064 software that is obtained under a licensing agreement and is
2065 protected by copyright or trade secret laws.

2066 (e) "Incident report" means a narrative description, if
2067 such narrative description exists and if such narrative
2068 description does not contain investigative information, of an
2069 alleged offense, and at a minimum shall include the name and
2070 identification of each person charged with and arrested for the
2071 alleged offense, the time, date and location of the alleged
2072 offense, and the property involved, to the extent this information
2073 is known.

2074 (f) "Investigative report" means records of a law
2075 enforcement agency containing information beyond the scope of the
2076 matters contained in an incident report, and generally will



2077 include, but not be limited to, the following matters if beyond
2078 the scope of the matters contained in an incident report:

2079 (i) Records that are compiled in the process of
2080 detecting and investigating any unlawful activity or alleged
2081 unlawful activity, the disclosure of which would harm the
2082 investigation which may include crime scene reports and
2083 demonstrative evidence;

2084 (ii) Records that would reveal the identity of
2085 informants and/or witnesses;

2086 (iii) Records that would prematurely release
2087 information that would impede the public body's enforcement,
2088 investigative or detection efforts;

2089 (iv) Records that would disclose investigatory
2090 techniques and/or results of investigative techniques;

2091 (v) Records that would deprive a person of a right
2092 to a fair trial or an impartial adjudication;

2093 (vi) Records that would endanger the life or
2094 safety of a public official or law enforcement personnel, or
2095 confidential informants or witnesses;

2096 (vii) Records pertaining to quality control or
2097 PEER review activities; or

2098 (viii) Records that would impede or jeopardize a
2099 prosecutor's ability to prosecute the alleged offense.

2100 (g) "Law enforcement agency" means a public body that
2101 performs as one (1) of its principal functions activities



2102 pertaining to the enforcement of criminal laws, the apprehension
2103 and investigation of criminal offenders, or the investigation of
2104 criminal activities.

2105 **SECTION 34.** Section 27-7-15, Mississippi Code of 1972, is
2106 amended as follows:

2107 27-7-15. (1) For the purposes of this article, except as
2108 otherwise provided, the term "gross income" means and includes the
2109 income of a taxpayer derived from salaries, wages, fees or
2110 compensation for service, of whatever kind and in whatever form
2111 paid, including income from governmental agencies and subdivisions
2112 thereof; or from professions, vocations, trades, businesses,
2113 commerce or sales, or renting or dealing in property, or
2114 reacquired property; also from annuities, interest, rents,
2115 dividends, securities, insurance premiums, reinsurance premiums,
2116 considerations for supplemental insurance contracts, or the
2117 transaction of any business carried on for gain or profit, or
2118 gains, or profits, and income derived from any source whatever and
2119 in whatever form paid. The amount of all such items of income
2120 shall be included in the gross income for the taxable year in
2121 which received by the taxpayer. The amount by which an eligible
2122 employee's salary is reduced pursuant to a salary reduction
2123 agreement authorized under Section 25-17-5 shall be excluded from
2124 the term "gross income" within the meaning of this article.



2125 (2) In determining gross income for the purpose of this
2126 section, the following, under regulations prescribed by the
2127 commissioner, shall be applicable:

2128 (a) **Dealers in property.** Federal rules, regulations
2129 and revenue procedures shall be followed with respect to
2130 installment sales unless a transaction results in the shifting of
2131 income from inside the state to outside the state.

2132 (b) **Casual sales of property.**

2133 (i) Prior to January 1, 2001, federal rules,
2134 regulations and revenue procedures shall be followed with respect
2135 to installment sales except they shall be applied and administered
2136 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the
2137 106th Congress, had not been enacted. This provision will
2138 generally affect taxpayers, reporting on the accrual method of
2139 accounting, entering into installment note agreements on or after
2140 December 17, 1999. Any gain or profit resulting from the casual
2141 sale of property will be recognized in the year of sale.

2142 (ii) From and after January 1, 2001, federal
2143 rules, regulations and revenue procedures shall be followed with
2144 respect to installment sales except as provided in this
2145 subparagraph (ii). Gain or profit from the casual sale of
2146 property shall be recognized in the year of sale. When a taxpayer
2147 recognizes gain on the casual sale of property in which the gain
2148 is deferred for federal income tax purposes, a taxpayer may elect
2149 to defer the payment of tax resulting from the gain as allowed and



2150 to the extent provided under regulations prescribed by the
2151 commissioner. If the payment of the tax is made on a deferred
2152 basis, the tax shall be computed based on the applicable rate for
2153 the income reported in the year the payment is made. Except as
2154 otherwise provided in subparagraph (iii) of this paragraph (b),
2155 deferring the payment of the tax shall not affect the liability
2156 for the tax. If at any time the installment note is sold,
2157 contributed, transferred or disposed of in any manner and for any
2158 purpose by the original note holder, or the original note holder
2159 is merged, liquidated, dissolved or withdrawn from this state,
2160 then all deferred tax payments under this section shall
2161 immediately become due and payable.

2162 (iii) If the selling price of the property is
2163 reduced by any alteration in the terms of an installment note,
2164 including default by the purchaser, the gain to be recognized is
2165 recomputed based on the adjusted selling price in the same manner
2166 as for federal income tax purposes. The tax on this amount, less
2167 the previously paid tax on the recognized gain, is payable over
2168 the period of the remaining installments. If the tax on the
2169 previously recognized gain has been paid in full to this state,
2170 the return on which the payment was made may be amended for this
2171 purpose only. The statute of limitations in Section 27-7-49 shall
2172 not bar an amended return for this purpose.



2173 (c) **Reserves of insurance companies.** In the case of
2174 insurance companies, any amounts in excess of the legally required
2175 reserves shall be included as gross income.

2176 (d) **Affiliated companies or persons.** As regards sales,
2177 exchanges or payments for services from one to another of
2178 affiliated companies or persons or under other circumstances where
2179 the relation between the buyer and seller is such that gross
2180 proceeds from the sale or the value of the exchange or the payment
2181 for services are not indicative of the true value of the subject
2182 matter of the sale, exchange or payment for services, the
2183 commissioner shall prescribe uniform and equitable rules for
2184 determining the true value of the gross income, gross sales,
2185 exchanges or payment for services, or require consolidated returns
2186 of affiliates.

2187 (e) **Alimony and separate maintenance payments.** The
2188 federal rules, regulations and revenue procedures in determining
2189 the deductibility and taxability of alimony payments shall be
2190 followed in this state.

2191 (f) **Reimbursement for expenses of moving.** There shall
2192 be included in gross income (as compensation for services) any
2193 amount received or accrued, directly or indirectly, by an
2194 individual as a payment for or reimbursement of expenses of moving
2195 from one residence to another residence which is attributable to
2196 employment or self-employment.



2197 (3) In the case of taxpayers other than residents, gross
2198 income includes gross income from sources within this state.

2199 (4) The words "gross income" do not include the following
2200 items of income which shall be exempt from taxation under this
2201 article:

2202 (a) The proceeds of life insurance policies and
2203 contracts paid upon the death of the insured. However, the income
2204 from the proceeds of such policies or contracts shall be included
2205 in the gross income.

2206 (b) The amount received by the insured as a return of
2207 premium or premiums paid by him under life insurance policies,
2208 endowment, or annuity contracts, either during the term or at
2209 maturity or upon surrender of the contract.

2210 (c) The value of property acquired by gift, bequest,
2211 devise or descent, but the income from such property shall be
2212 included in the gross income.

2213 (d) Interest upon the obligations of the United States
2214 or its possessions, or securities issued under the provisions of
2215 the Federal Farm Loan Act of 1916, or bonds issued by the War
2216 Finance Corporation, or obligations of the State of Mississippi or
2217 political subdivisions thereof.

2218 (e) The amounts received through accident or health
2219 insurance as compensation for personal injuries or sickness, plus
2220 the amount of any damages received for such injuries or such
2221 sickness or injuries, or through the War Risk Insurance Act, or



2222 any law for the benefit or relief of injured or disabled members
2223 of the military or naval forces of the United States.

2224 (f) Income received by any religious denomination or by
2225 any institution or trust for moral or mental improvements,
2226 religious, Bible, tract, charitable, benevolent, fraternal,
2227 missionary, hospital, infirmary, educational, scientific,
2228 literary, library, patriotic, historical or cemetery purposes or
2229 for two (2) or more of such purposes, if such income be used
2230 exclusively for carrying out one or more of such purposes.

2231 (g) Income received by a domestic corporation which is
2232 "taxable in another state" as this term is defined in this
2233 article, derived from business activity conducted outside this
2234 state. Domestic corporations taxable both within and without the
2235 state shall determine Mississippi income on the same basis as
2236 provided for foreign corporations under the provisions of this
2237 article.

2238 (h) In case of insurance companies, there shall be
2239 excluded from gross income such portion of actual premiums
2240 received from an individual policyholder as is paid back or
2241 credited to or treated as an abatement of premiums of such
2242 policyholder within the taxable year.

2243 (i) Income from dividends that has already borne a tax
2244 as dividend income under the provisions of this article, when such
2245 dividends may be specifically identified in the possession of the
2246 recipient.



2247 (j) Amounts paid by the United States to a person as
2248 added compensation for hazardous duty pay as a member of the Armed
2249 Forces of the United States in a combat zone designated by
2250 Executive Order of the President of the United States.

2251 (k) Amounts received as retirement allowances,
2252 pensions, annuities or optional retirement allowances paid under
2253 the federal Social Security Act, the Railroad Retirement Act, the
2254 Federal Civil Service Retirement Act, or any other retirement
2255 system of the United States government, retirement allowances paid
2256 under the Mississippi Public Employees' Retirement System,
2257 Mississippi Highway Safety Patrol Retirement System or any other
2258 retirement system of the State of Mississippi or any political
2259 subdivision thereof. The exemption allowed under this paragraph
2260 (k) shall be available to the spouse or other beneficiary at the
2261 death of the primary retiree.

2262 (l) Amounts received as retirement allowances,
2263 pensions, annuities or optional retirement allowances paid by any
2264 public or governmental retirement system not designated in
2265 paragraph (k) or any private retirement system or plan of which
2266 the recipient was a member at any time during the period of his
2267 employment. Amounts received as a distribution under a Roth
2268 Individual Retirement Account shall be treated in the same manner
2269 as provided under the Internal Revenue Code of 1986, as amended.
2270 The exemption allowed under this paragraph (l) shall be available



2271 to the spouse or other beneficiary at the death of the primary
2272 retiree.

2273 (m) National Guard or Reserve Forces of the United
2274 States compensation not to exceed the aggregate sum of Five
2275 Thousand Dollars (\$5,000.00) for any taxable year through the 2005
2276 taxable year, and not to exceed the aggregate sum of Fifteen
2277 Thousand Dollars (\$15,000.00) for any taxable year thereafter.

2278 (n) Compensation received for active service as a
2279 member below the grade of commissioned officer and so much of the
2280 compensation as does not exceed the maximum enlisted amount
2281 received for active service as a commissioned officer in the Armed
2282 Forces of the United States for any month during any part of which
2283 such members of the Armed Forces (i) served in a combat zone as
2284 designated by Executive Order of the President of the United
2285 States or a qualified hazardous duty area as defined by federal
2286 law, or both; or (ii) was hospitalized as a result of wounds,
2287 disease or injury incurred while serving in such combat zone. For
2288 the purposes of this paragraph (n), the term "maximum enlisted
2289 amount" means and has the same definition as that term has in 26
2290 USCS 112.

2291 (o) The proceeds received from federal and state
2292 forestry incentive programs.

2293 (p) The amount representing the difference between the
2294 increase of gross income derived from sales for export outside the
2295 United States as compared to the preceding tax year wherein gross



2296 income from export sales was highest, and the net increase in
2297 expenses attributable to such increased exports. In the absence
2298 of direct accounting, the ratio of net profits to total sales may
2299 be applied to the increase in export sales. This paragraph (p)
2300 shall only apply to businesses located in this state engaging in
2301 the international export of Mississippi goods and services. Such
2302 goods or services shall have at least fifty percent (50%) of value
2303 added at a location in Mississippi.

2304 (q) Amounts paid by the federal government for the
2305 construction of soil conservation systems as required by a
2306 conservation plan adopted pursuant to 16 USCS 3801 et seq.

2307 (r) The amount deposited in a medical savings account,
2308 and any interest accrued thereon, that is a part of a medical
2309 savings account program as specified in the Medical Savings
2310 Account Act under Sections 71-9-1 through 71-9-9; provided,
2311 however, that any amount withdrawn from such account for purposes
2312 other than paying eligible medical expense or to procure health
2313 coverage shall be included in gross income.

2314 (s) Amounts paid by the Mississippi Soil and Water
2315 Conservation Commission from the Mississippi Soil and Water
2316 Cost-Share Program for the installation of water quality best
2317 management practices.

2318 (t) Dividends received by a holding corporation, as
2319 defined in Section 27-13-1, from a subsidiary corporation, as
2320 defined in Section 27-13-1.



2321 (u) Interest, dividends, gains or income of any kind on
2322 any account in the Mississippi Affordable College Savings Trust
2323 Fund, as established in Sections 37-155-101 through 37-155-125, to
2324 the extent that such amounts remain on deposit in the MACS Trust
2325 Fund or are withdrawn pursuant to a qualified withdrawal, as
2326 defined in Section 37-155-105.

2327 (v) Interest, dividends or gains accruing on the
2328 payments made pursuant to a prepaid tuition contract, as provided
2329 for in Section 37-155-17.

2330 (w) Income resulting from transactions with a related
2331 member where the related member subject to tax under this chapter
2332 was required to, and did in fact, add back the expense of such
2333 transactions as required by Section 27-7-17(2). Under no
2334 circumstances may the exclusion from income exceed the deduction
2335 add-back of the related member, nor shall the exclusion apply to
2336 any income otherwise excluded under this chapter.

2337 (x) Amounts that are subject to the tax levied pursuant
2338 to Section 27-7-901, and are paid to patrons by gaming
2339 establishments licensed under the Mississippi Gaming Control Act.

2340 (y) Amounts that are subject to the tax levied pursuant
2341 to Section 27-7-903, and are paid to patrons by gaming
2342 establishments not licensed under the Mississippi Gaming Control
2343 Act.

2344 (z) Interest, dividends, gains or income of any kind on
2345 any account in a qualified tuition program and amounts received as



2346 distributions under a qualified tuition program shall be treated
2347 in the same manner as provided under the United States Internal
2348 Revenue Code, as amended. For the purposes of this paragraph (z),
2349 the term "qualified tuition program" means and has the same
2350 definition as that term has in 26 USCS 529.

2351 (aa) The amount deposited in a health savings account,
2352 and any interest accrued thereon, that is a part of a health
2353 savings account program as specified in the Health Savings
2354 Accounts Act created in Sections 83-62-1 through 83-62-9; however,
2355 any amount withdrawn from such account for purposes other than
2356 paying qualified medical expenses or to procure health coverage
2357 shall be included in gross income, except as otherwise provided by
2358 Sections 83-62-7 and 83-62-9.

2359 (bb) Amounts received as qualified disaster relief
2360 payments shall be treated in the same manner as provided under the
2361 United States Internal Revenue Code, as amended.

2362 (cc) Amounts received as a "qualified Hurricane Katrina
2363 distribution" as defined in the United States Internal Revenue
2364 Code, as amended.

2365 (dd) Amounts received by an individual which may be
2366 excluded from income as foreign earned income for federal income
2367 tax purposes.

2368 (ee) Amounts received by a qualified individual,
2369 directly or indirectly, from an employer or nonprofit housing
2370 organization that are qualified housing expenses associated with



2371 an employer-assisted housing program. For purposes of this
2372 paragraph (ee):

2373 (i) "Qualified individual" means any individual
2374 whose household income does not exceed one hundred twenty percent
2375 (120%) of the area median gross income (as defined by the United
2376 States Department of Housing and Urban Development), adjusted for
2377 household size, for the area in which the housing is located.

2378 (ii) "Nonprofit housing organization" means an
2379 organization that is organized as a not-for-profit organization
2380 under the laws of this state or another state and has as one of
2381 its purposes:

2382 1. Homeownership education or counseling;
2383 2. The development of affordable housing; or
2384 3. The development or administration of
2385 employer-assisted housing programs.

2386 (iii) "Employer-assisted housing program" means a
2387 separate written plan of any employer (including, without
2388 limitation, tax-exempt organizations and public employers) for the
2389 exclusive benefit of the employer's employees to pay qualified
2390 housing expenses to assist the employer's employees in securing
2391 affordable housing.

2392 (iv) "Qualified housing expenses" means:

2393 1. With respect to rental assistance, an
2394 amount not to exceed Two Thousand Dollars (\$2,000.00) paid for the



2395 purpose of assisting employees with security deposits and rental
2396 subsidies; and

2397 2. With respect to homeownership assistance,
2398 an amount not to exceed the lesser of Ten Thousand Dollars
2399 (\$10,000.00) or six percent (6%) of the purchase price of the
2400 employee's principal residence that is paid for the purpose of
2401 assisting employees with down payments, payment of closing costs,
2402 reduced interest mortgages, mortgage guarantee programs, mortgage
2403 forgiveness programs, equity contribution programs, or
2404 contributions to home buyer education and/or homeownership
2405 counseling of eligible employees.

2406 (ff) For the 2010 taxable year and any taxable year
2407 thereafter, amounts converted in accordance with the United States
2408 Internal Revenue Code, as amended, from a traditional Individual
2409 Retirement Account to a Roth Individual Retirement Account. The
2410 exemption allowed under this paragraph (ff) shall be available to
2411 the spouse or other beneficiary at the death of the primary
2412 retiree.

2413 (gg) Amounts received for the performance of disaster
2414 or emergency-related work as defined in Section 27-113-5.

2415 (hh) The amount deposited in a catastrophe savings
2416 account established under Sections 27-7-1001 through 27-7-1007,
2417 interest income earned on the catastrophe savings account, and
2418 distributions from the catastrophe savings account; however, any
2419 amount withdrawn from a catastrophe savings account for purposes



2420 other than paying qualified catastrophe expenses shall be included
2421 in gross income, except as otherwise provided by Sections
2422 27-7-1001 through 27-7-1007.

2423 (ii) Amounts received from the activities described in
2424 Section 14(1)(a) and (b) of this act by a health care
2425 collaborative as defined in Section 2 of this act or an entity
2426 controlled by a health care collaborative, except amounts that are
2427 subject to the tax levied under Section 27-65-21.

2428 (5) Prisoners of war, missing in action-taxable status.

2429 (a) **Members of the Armed Forces.** Gross income does not
2430 include compensation received for active service as a member of
2431 the Armed Forces of the United States for any month during any
2432 part of which such member is in a missing status, as defined in
2433 paragraph (d) of this subsection, during the Vietnam Conflict as a
2434 result of such conflict.

2435 (b) **Civilian employees.** Gross income does not include
2436 compensation received for active service as an employee for any
2437 month during any part of which such employee is in a missing
2438 status during the Vietnam Conflict as a result of such conflict.

2439 (c) **Period of conflict.** For the purpose of this
2440 subsection, the Vietnam Conflict began February 28, 1961, and ends
2441 on the date designated by the President by Executive Order as the
2442 date of the termination of combatant activities in Vietnam. For
2443 the purpose of this subsection, an individual is in a missing
2444 status as a result of the Vietnam Conflict if immediately before



2445 such status began he was performing service in Vietnam or was
2446 performing service in Southeast Asia in direct support of military
2447 operations in Vietnam. "Southeast Asia," as used in this
2448 paragraph, is defined to include Cambodia, Laos, Thailand and
2449 waters adjacent thereto.

2450 (d) "Missing status" means the status of an employee or
2451 member of the Armed Forces who is in active service and is
2452 officially carried or determined to be absent in a status of (i)
2453 missing; (ii) missing in action; (iii) interned in a foreign
2454 country; (iv) captured, beleaguered or besieged by a hostile
2455 force; or (v) detained in a foreign country against his will; but
2456 does not include the status of an employee or member of the Armed
2457 Forces for a period during which he is officially determined to be
2458 absent from his post of duty without authority.

2459 (e) "Active service" means active federal service by an
2460 employee or member of the Armed Forces of the United States in an
2461 active duty status.

2462 (f) "Employee" means one who is a citizen or national
2463 of the United States or an alien admitted to the United States for
2464 permanent residence and is a resident of the State of Mississippi
2465 and is employed in or under a federal executive agency or
2466 department of the Armed Forces.

2467 (g) "Compensation" means (i) basic pay; (ii) special
2468 pay; (iii) incentive pay; (iv) basic allowance for quarters; (v)



2469 basic allowance for subsistence; and (vi) station per diem
2470 allowances for not more than ninety (90) days.

2471 (h) If refund or credit of any overpayment of tax for
2472 any taxable year resulting from the application of this subsection
2473 (5) is prevented by the operation of any law or rule of law, such
2474 refund or credit of such overpayment of tax may, nevertheless, be
2475 made or allowed if claim therefor is filed with the Department of
2476 Revenue within three (3) years after the date of the enactment of
2477 this subsection.

2478 (i) The provisions of this subsection shall be
2479 effective for taxable years ending on or after February 28, 1961.

2480 (6) A shareholder of an S corporation, as defined in Section
2481 27-8-3(1)(g), shall take into account the income, loss, deduction
2482 or credit of the S corporation only to the extent provided in
2483 Section 27-8-7(2).

2484 **SECTION 35.** Section 27-13-5, Mississippi Code of 1972, is
2485 amended as follows:

2486 27-13-5. (1) (a) **Franchise tax levy.** Except as otherwise
2487 provided in subsections (3), (4), (5), * * * (7) and (8) of this
2488 section, there is hereby imposed, to be paid and collected as
2489 hereinafter provided, a franchise or excise tax upon every
2490 corporation, association or joint-stock company or partnership
2491 treated as a corporation under the income tax laws or regulations,
2492 organized or created for pecuniary gain, having privileges not
2493 possessed by individuals, and having authorized capital stock now



2494 existing in this state, or hereafter organized, created or
2495 established, under and by virtue of the laws of the State of
2496 Mississippi, equal to:

2497 (i) For tax years beginning before January 1,
2498 2018, Two Dollars and Fifty Cents (\$2.50) for each One Thousand
2499 Dollars (\$1,000.00), or fraction thereof, of the value of the
2500 capital used, invested or employed in the exercise of any power,
2501 privilege or right enjoyed by such organization within this state,
2502 except as hereinafter provided.

2503 (ii) For tax years beginning on or after January
2504 1, 2018, but before January 1, 2019, Two Dollars and Fifty Cents
2505 (\$2.50) for each One Thousand Dollars (\$1,000.00), or fraction
2506 thereof, in excess of One Hundred Thousand Dollars (\$100,000.00),
2507 of the value of the capital used, invested or employed in the
2508 exercise of any power, privilege or right enjoyed by such
2509 organization within this state, except as hereinafter provided.

2510 (iii) For tax years beginning on or after January
2511 1, 2019, but before January 1, 2020, Two Dollars and Twenty-five
2512 Cents (\$2.25) for each One Thousand Dollars (\$1,000.00), or
2513 fraction thereof, in excess of One Hundred Thousand Dollars
2514 (\$100,000.00), of the value of the capital used, invested or
2515 employed in the exercise of any power, privilege or right enjoyed
2516 by such organization within this state, except as hereinafter
2517 provided.



2518 (iv) For tax years beginning on or after January
2519 1, 2020, but before January 1, 2021, Two Dollars (\$2.00) for each
2520 One Thousand Dollars (\$1,000.00), or fraction thereof, in excess
2521 of One Hundred Thousand Dollars (\$100,000.00), of the value of the
2522 capital used, invested or employed in the exercise of any power,
2523 privilege or right enjoyed by such organization within this state,
2524 except as hereinafter provided.

2525 (v) For tax years beginning on or after January 1,
2526 2021, but before January 1, 2022, One Dollar and Seventy-five
2527 Cents (\$1.75) for each One Thousand Dollars (\$1,000.00), or
2528 fraction thereof, in excess of One Hundred Thousand Dollars
2529 (\$100,000.00), of the value of the capital used, invested or
2530 employed in the exercise of any power, privilege or right enjoyed
2531 by such organization within this state, except as hereinafter
2532 provided.

2533 (vi) For tax years beginning on or after January
2534 1, 2022, but before January 1, 2023, One Dollar and Fifty Cents
2535 (\$1.50) for each One Thousand Dollars (\$1,000.00), or fraction
2536 thereof, in excess of One Hundred Thousand Dollars (\$100,000.00),
2537 of the value of the capital used, invested or employed in the
2538 exercise of any power, privilege or right enjoyed by such
2539 organization within this state, except as hereinafter provided.

2540 (vii) For tax years beginning on or after January
2541 1, 2023, but before January 1, 2024, One Dollar and Twenty-five
2542 Cents (\$1.25) for each One Thousand Dollars (\$1,000.00), or



2543 fraction thereof, in excess of One Hundred Thousand Dollars
2544 (\$100,000.00), of the value of the capital used, invested or
2545 employed in the exercise of any power, privilege or right enjoyed
2546 by such organization within this state, except as hereinafter
2547 provided.

2548 (viii) For tax years beginning on or after January
2549 1, 2024, but before January 1, 2025, One Dollar (\$1.00) for each
2550 One Thousand Dollars (\$1,000.00), or fraction thereof, in excess
2551 of One Hundred Thousand Dollars (\$100,000.00), of the value of the
2552 capital used, invested or employed in the exercise of any power,
2553 privilege or right enjoyed by such organization within this state,
2554 except as hereinafter provided.

2555 (ix) For tax years beginning on or after January
2556 1, 2025, but before January 1, 2026, Seventy-five Cents (75¢) for
2557 each One Thousand Dollars (\$1,000.00), or fraction thereof, in
2558 excess of One Hundred Thousand Dollars (\$100,000.00), of the value
2559 of the capital used, invested or employed in the exercise of any
2560 power, privilege or right enjoyed by such organization within this
2561 state, except as hereinafter provided.

2562 (x) For tax years beginning on or after January 1,
2563 2026, but before January 1, 2027, Fifty Cents (50¢) for each One
2564 Thousand Dollars (\$1,000.00), or fraction thereof, in excess of
2565 One Hundred Thousand Dollars (\$100,000.00), of the value of the
2566 capital used, invested or employed in the exercise of any power,



2567 privilege or right enjoyed by such organization within this state,
2568 except as hereinafter provided.

2569 (xi) For tax years beginning on or after January
2570 1, 2027, but before January 1, 2028, Twenty-five Cents (25¢) for
2571 each One Thousand Dollars (\$1,000.00), or fraction thereof, in
2572 excess of One Hundred Thousand Dollars (\$100,000.00), of the value
2573 of the capital used, invested or employed in the exercise of any
2574 power, privilege or right enjoyed by such organization within this
2575 state, except as hereinafter provided.

2576 (b) In no case shall the franchise tax due for the
2577 accounting period be less than Twenty-five Dollars (\$25.00).

2578 (c) It is the purpose of this section to require the
2579 payment to the State of Mississippi of this tax for the right
2580 granted by the laws of this state to exist as such organization,
2581 and to enjoy, under the protection of the laws of this state, the
2582 powers, rights, privileges and immunities derived from the state
2583 by the form of such existence.

2584 (2) **Annual report of domestic corporations.** Each domestic
2585 corporation shall file an annual report as required by the
2586 provisions of Section 79-4-16.22.

2587 (3) (a) A corporation that has negotiated a fee-in-lieu as
2588 defined in Section 57-75-5 shall not be subject to the tax levied
2589 by this section on such project; however, the fee-in-lieu payment
2590 shall be otherwise treated in the same manner as the payment of
2591 franchise taxes.



2592 (b) (i) As used in this paragraph:

2593 1. "Authority" shall have the meaning
2594 ascribed to such term in Section 57-75-5(b);

2595 2. "Project" shall have the meaning ascribed
2596 to such term in Section 57-75-5(f)(xxix); and

2597 3. "Enterprise" shall mean the corporation
2598 authorized for the project pursuant to Section 57-75-5(f)(xxix).

2599 (ii) The term of the franchise tax fee-in-lieu
2600 agreement negotiated under this subsection and authorized by
2601 Section 57-75-5(j), between the authority and the enterprise for
2602 the project shall not exceed twenty-five (25) years. The
2603 franchise tax fee-in-lieu agreement shall apply only to new
2604 franchise tax liability attributable to the project, and shall not
2605 apply to any existing franchise tax liability of the enterprise in
2606 connection with any current operations in this state.

2607 (iii) In the event that the annual number of
2608 full-time jobs maintained by the enterprise falls below the
2609 minimum annual number of full-time jobs required by the authority
2610 pursuant to a written agreement between the authority and the
2611 enterprise for two (2) consecutive years, the franchise tax
2612 fee-in-lieu for the project shall be suspended until the first tax
2613 year during which the annual number of full-time jobs maintained
2614 by the enterprise reaches the minimum annual number of full-time
2615 jobs required by the authority pursuant to a written agreement
2616 between the authority and the enterprise.



2617 (iv) The enterprise shall be entitled to utilize a
2618 single sales apportionment factor in the calculation of its
2619 liability for franchise tax imposed by this chapter which is
2620 attributable to the project for any year for which it files a
2621 Mississippi franchise tax return. The enterprise shall be
2622 entitled to continue to utilize such single sales apportionment
2623 factor notwithstanding a suspension of the franchise tax
2624 fee-in-lieu pursuant to subparagraph (iii) of this paragraph.

2625 (4) An approved business enterprise as defined in the Growth
2626 and Prosperity Act shall not be subject to the tax levied by this
2627 section on the value of capital used, invested or employed by the
2628 approved business enterprise in a growth and prosperity county or
2629 supervisors district as provided in the Growth and Prosperity Act.

2630 (5) A business enterprise operating a project as defined in
2631 Section 57-64-33, in a county that is a member of a regional
2632 economic development alliance created under the Regional Economic
2633 Development Act shall not be subject to the tax levied by this
2634 section on the value of capital used, invested or employed by the
2635 business enterprise in such a county as provided in Section
2636 57-64-33.

2637 (6) The tax levied by this chapter and paid by a business
2638 enterprise located in a redevelopment project area under Sections
2639 57-91-1 through 57-91-11 shall be deposited into the Redevelopment
2640 Project Incentive Fund created in Section 57-91-9.



2641 (7) A business enterprise as defined in Section 57-113-1
2642 that is exempt from certain state taxes under Section 57-113-5
2643 shall not be subject to the tax levied by this section on the
2644 value of capital used, invested or employed by the business
2645 enterprise.

2646 (8) A health care collaborative as defined in Section 2 of
2647 this act or an entity controlled by a health care collaborative
2648 shall not be subject to the tax levied by this section on the
2649 value of capital used, invested or employed by the health care
2650 collaborative or entity in establishing, operating or otherwise
2651 carrying on the business and activities of the health care
2652 collaborative or entity.

2653 **SECTION 36.** Section 27-31-1, Mississippi Code of 1972, is
2654 amended as follows:

2655 27-31-1. The following shall be exempt from taxation:

2656 (a) All cemeteries used exclusively for burial
2657 purposes.

2658 (b) All property, real or personal, belonging to the
2659 State of Mississippi or any of its political subdivisions, except
2660 property of a municipality not being used for a proper municipal
2661 purpose and located outside the county or counties in which such
2662 municipality is located. A proper municipal purpose within the
2663 meaning of this section shall be any authorized governmental or
2664 corporate function of a municipality.



2665 (c) All property, real or personal, owned by units of
2666 the Mississippi National Guard, or title to which is vested in
2667 trustees for the benefit of any unit of the Mississippi National
2668 Guard; provided such property is used exclusively for such unit,
2669 or for public purposes, and not for profit.

2670 (d) All property, real or personal, belonging to any
2671 religious society, or ecclesiastical body, or any congregation
2672 thereof, or to any charitable society, or to any historical or
2673 patriotic association or society, or to any garden or pilgrimage
2674 club or association and used exclusively for such society or
2675 association and not for profit; not exceeding, however, the amount
2676 of land which such association or society may own as provided in
2677 Section 79-11-33. All property, real or personal, belonging to
2678 any rural waterworks system or rural sewage disposal system
2679 incorporated under the provisions of Section 79-11-1. All
2680 property, real or personal, belonging to any college or
2681 institution for the education of youths, used directly and
2682 exclusively for such purposes, provided that no such college or
2683 institution for the education of youths shall have exempt from
2684 taxation more than six hundred forty (640) acres of land;
2685 provided, however, this exemption shall not apply to commercial
2686 schools and colleges or trade institutions or schools where the
2687 profits of same inure to individuals, associations or
2688 corporations. All property, real or personal, belonging to an
2689 individual, institution or corporation and used for the operation



2690 of a grammar school, junior high school, high school or military
2691 school. All property, real or personal, owned and occupied by a
2692 fraternal and benevolent organization, when used by such
2693 organization, and from which no rentals or other profits accrue to
2694 the organization, but any part rented or from which revenue is
2695 received shall be taxed.

2696 (e) All property, real or personal, held and occupied
2697 by trustees of public schools, and school lands of the respective
2698 townships for the use of public schools, and all property kept in
2699 storage for the convenience and benefit of the State of
2700 Mississippi in warehouses owned or leased by the State of
2701 Mississippi, wherein said property is to be sold by the Alcoholic
2702 Beverage Control Division of the Department of Revenue of the
2703 State of Mississippi.

2704 (f) All property, real or personal, whether belonging
2705 to religious or charitable or benevolent organizations, which is
2706 used for hospital purposes, and nurses' homes where a part
2707 thereof, and which maintain one or more charity wards that are for
2708 charity patients, and where all the income from said hospitals and
2709 nurses' homes is used entirely for the purposes thereof and no
2710 part of the same for profit.

2711 (g) The wearing apparel of every person; and also
2712 jewelry and watches kept by the owner for personal use to the
2713 extent of One Hundred Dollars (\$100.00) in value for each owner.

2714 (h) Provisions on hand for family consumption.



2715 (i) All farm products grown in this state for a period
2716 of two (2) years after they are harvested, when in the possession
2717 of or the title to which is in the producer, except the tax of
2718 one-fifth of one percent (1/5 of 1%) per pound on lint cotton now
2719 levied by the Board of Commissioners of the Mississippi Levee
2720 District; and lint cotton for five (5) years, and cottonseed,
2721 soybeans, oats, rice and wheat for one (1) year regardless of
2722 ownership.

2723 (j) All guns and pistols kept by the owner for private
2724 use.

2725 (k) All poultry in the hands of the producer.

2726 (l) Household furniture, including all articles kept in
2727 the home by the owner for his own personal or family use; but this
2728 shall not apply to hotels, rooming houses or rented or leased
2729 apartments.

2730 (m) All cattle and oxen.

2731 (n) All sheep, goats and hogs.

2732 (o) All horses, mules and asses.

2733 (p) Farming tools, implements and machinery, when used
2734 exclusively in the cultivation or harvesting of crops or timber.

2735 (q) All property of agricultural and mechanical
2736 associations and fairs used for promoting their objects, and where
2737 no part of the proceeds is used for profit.

2738 (r) The libraries of all persons.



2739 (s) All pictures and works of art, not kept for or
2740 offered for sale as merchandise.

2741 (t) The tools of any mechanic necessary for carrying on
2742 his trade.

2743 (u) All state, county, municipal, levee, drainage and
2744 all school bonds or other governmental obligations, and all bonds
2745 and/or evidences of debts issued by any church or church
2746 organization in this state, and all notes and evidences of
2747 indebtedness which bear a rate of interest not greater than the
2748 maximum rate per annum applicable under the law; and all money
2749 loaned at a rate of interest not exceeding the maximum rate per
2750 annum applicable under the law; and all stock in or bonds of
2751 foreign corporations or associations shall be exempt from all ad
2752 valorem taxes.

2753 (v) All lands and other property situated or located
2754 between the Mississippi River and the levee shall be exempt from
2755 the payment of any and all road taxes levied or assessed under any
2756 road laws of this state.

2757 (w) Any and all money on deposit in either national
2758 banks, state banks or trust companies, on open account, savings
2759 account or time deposit.

2760 (x) All wagons, carts, drays, carriages and other
2761 horse-drawn vehicles, kept for the use of the owner.



2762 (y) (i) Boats, seines and fishing equipment used in
2763 fishing and shrimping operations and in the taking or catching of
2764 oysters.

2765 (ii) All towboats, tugboats and barges documented
2766 under the laws of the United States, except watercraft of every
2767 kind and character used in connection with gaming operations.

2768 (z) All materials used in the construction and/or
2769 conversion of vessels in this state; vessels while under
2770 construction and/or conversion; vessels while in the possession of
2771 the manufacturer, builder or converter, for a period of twelve
2772 (12) months after completion of construction and/or conversion,
2773 and as used herein the term "vessel" shall include ships, offshore
2774 drilling equipment, dry docks, boats and barges, except watercraft
2775 of every kind and character used in connection with gaming
2776 operations.

2777 (aa) Sixty-six and two-thirds percent (66-2/3%) of
2778 nuclear fuel and reprocessed, recycled or residual nuclear fuel
2779 by-products, fissionable or otherwise, used or to be used in
2780 generation of electricity by persons defined as public utilities
2781 in Section 77-3-3.

2782 (bb) All growing nursery stock.

2783 (cc) A semitrailer used in interstate commerce.

2784 (dd) All property, real or personal, used exclusively
2785 for the housing of and provision of services to elderly persons,
2786 disabled persons, mentally impaired persons or as a nursing home,



2787 which is owned, operated and managed by a not-for-profit
2788 corporation, qualified under Section 501(c)(3) of the Internal
2789 Revenue Code, whose membership or governing body is appointed or
2790 confirmed by a religious society or ecclesiastical body or any
2791 congregation thereof.

2792 (ee) All vessels while in the hands of bona fide
2793 dealers as merchandise and which are not being operated upon the
2794 waters of this state shall be exempt from ad valorem taxes. As
2795 used in this paragraph, the terms "vessel" and "waters of this
2796 state" shall have the meaning ascribed to such terms in Section
2797 59-21-3.

2798 (ff) All property, real or personal, owned by a
2799 nonprofit organization that: (i) is qualified as tax exempt under
2800 Section 501(c)(4) of the Internal Revenue Code of 1986, as
2801 amended; (ii) assists in the implementation of the national
2802 contingency plan or area contingency plan, and which is created in
2803 response to the requirements of Title IV, Subtitle B of the Oil
2804 Pollution Act of 1990, Public Law 101-380; (iii) engages primarily
2805 in programs to contain, clean up and otherwise mitigate spills of
2806 oil or other substances occurring in the United States coastal or
2807 tidal waters; and (iv) is used for the purposes of the
2808 organization.

2809 (gg) If a municipality changes its boundaries so as to
2810 include within the boundaries of such municipality the project
2811 site of any project as defined in Section 57-75-5(f)(iv)1, Section



2812 57-75-5(f) (xxi) or Section 57-75-5(f) (xxviii) or Section
2813 57-75-5(f) (xxix), all real and personal property located on the
2814 project site within the boundaries of such municipality that is
2815 owned by a business enterprise operating such project, shall be
2816 exempt from ad valorem taxation for a period of time not to exceed
2817 thirty (30) years upon receiving approval for such exemption by
2818 the Mississippi Major Economic Impact Authority. The provisions
2819 of this paragraph shall not be construed to authorize a breach of
2820 any agreement entered into pursuant to Section 21-1-59.

2821 (hh) All leases, lease contracts or lease agreements
2822 (including, but not limited to, subleases, sublease contracts and
2823 sublease agreements), and leaseholds or leasehold interests
2824 (including, but not limited to, subleaseholds and subleasehold
2825 interests), of or with respect to any and all property (real,
2826 personal or mixed) constituting all or any part of a facility for
2827 the manufacture, production, generation, transmission and/or
2828 distribution of electricity, and any real property related
2829 thereto, shall be exempt from ad valorem taxation during the
2830 period as the United States is both the title owner of the
2831 property and a sublessee of or with respect to the property;
2832 however, the exemption authorized by this paragraph (hh) shall not
2833 apply to any entity to whom the United States sub-subleases its
2834 interest in the property nor to any entity to whom the United
2835 States assigns its sublease interest in the property. As used in
2836 this paragraph, the term "United States" includes an agency or



2837 instrumentality of the United States of America. This paragraph
2838 (hh) shall apply to all assessments for ad valorem taxation for
2839 the 2003 calendar year and each calendar year thereafter.

2840 (ii) All property, real, personal or mixed, including
2841 fixtures and leaseholds, used by Mississippi nonprofit entities
2842 qualified, on or before January 1, 2005, under Section 501(c)(3)
2843 of the Internal Revenue Code to provide support and operate
2844 technology incubators for research and development start-up
2845 companies, telecommunication start-up companies and/or other
2846 technology start-up companies, utilizing technology spun-off from
2847 research and development activities of the public colleges and
2848 universities of this state, State of Mississippi governmental
2849 research or development activities resulting therefrom located
2850 within the State of Mississippi.

2851 (jj) All property, real, personal or mixed, including
2852 fixtures and leaseholds, of start-up companies (as described in
2853 paragraph (ii) of this section) for the period of time, not to
2854 exceed five (5) years, that the start-up company remains a tenant
2855 of a technology incubator (as described in paragraph (ii) of this
2856 section).

2857 (kk) All leases, lease contracts or lease agreements
2858 (including, but not limited to, subleases, sublease contracts and
2859 sublease agreements), and leaseholds or leasehold interests, of or
2860 with respect to any and all property (real, personal or mixed)
2861 constituting all or any part of an auxiliary facility, and any



2862 real property related thereto, constructed or renovated pursuant
2863 to Section 37-101-41, Mississippi Code of 1972.

2864 (ll) Equipment brought into the state temporarily for
2865 use during a disaster response period as provided in Sections
2866 27-113-1 through 27-113-9 and subsequently removed from the state
2867 on or before the end of the disaster response period as defined in
2868 Section 27-113-5.

2869 (mm) All property of a health care collaborative as
2870 defined in Section 2 of this act or an entity controlled by a
2871 health care collaborative, as provided in Section 14(1)(b) of this
2872 act.

2873 **SECTION 37.** Section 27-65-19, Mississippi Code of 1972, is
2874 amended as follows:

2875 27-65-19. (1) (a) (i) Except as otherwise provided in
2876 this subsection, upon every person selling to consumers,
2877 electricity, current, power, potable water, steam, coal, natural
2878 gas, liquefied petroleum gas or other fuel, there is hereby
2879 levied, assessed and shall be collected a tax equal to seven
2880 percent (7%) of the gross income of the business. Provided, gross
2881 income from sales to consumers of electricity, current, power,
2882 natural gas, liquefied petroleum gas or other fuel for residential
2883 heating, lighting or other residential noncommercial or
2884 nonagricultural use, and sales of potable water for residential,
2885 noncommercial or nonagricultural use shall be excluded from
2886 taxable gross income of the business. Provided further, upon



2887 every such seller using electricity, current, power, potable
2888 water, steam, coal, natural gas, liquefied petroleum gas or other
2889 fuel for nonindustrial purposes, there is hereby levied, assessed
2890 and shall be collected a tax equal to seven percent (7%) of the
2891 cost or value of the product or service used.

2892 (ii) Gross income from sales to a church that is
2893 exempt from federal income taxation under 26 USCS Section
2894 501(c)(3) of electricity, current, power, natural gas, liquefied
2895 petroleum gas or other fuel for heating, lighting or other use,
2896 and sales of potable water to such a church shall be excluded from
2897 taxable gross income of the business if the electricity, current,
2898 power, natural gas, liquefied petroleum gas or potable water is
2899 utilized on property that is primarily used for religious or
2900 educational purposes.

2901 (iii) Gross income from sales of electricity,
2902 current, power, natural gas, liquefied petroleum gas or other fuel
2903 for heating, lighting or other use, and sales of potable water to
2904 a health care collaborative as defined in Section 2 of this act or
2905 an entity controlled by a health care collaborative, as provided
2906 in Section 14(1)(c) of this act.

2907 (b) (i) There is hereby levied, assessed and shall be
2908 collected a tax equal to one and one-half percent (1-1/2%) of the
2909 gross income of the business from the sale of naturally occurring
2910 carbon dioxide and anthropogenic carbon dioxide lawfully injected
2911 into the earth for:



2912 1. Use in an enhanced oil recovery project,
2913 including, but not limited to, use for cycling, repressuring or
2914 lifting of oil; or

2915 2. Permanent sequestration in a geological
2916 formation.

2917 (ii) The one and one-half percent (1-1/2%) rate
2918 provided for in this subsection shall apply to electricity,
2919 current, power, steam, coal, natural gas, liquefied petroleum gas
2920 or other fuel that is sold to a producer of oil and gas for use
2921 directly in enhanced oil recovery using carbon dioxide and/or the
2922 permanent sequestration of carbon dioxide in a geological
2923 formation.

2924 (c) The one and one-half percent (1-1/2%) rate provided
2925 for in this subsection shall not apply to sales of fuel for
2926 automobiles, trucks, truck-tractors, buses, farm tractors or
2927 airplanes.

2928 (d) (i) Upon every person providing services in this
2929 state, there is hereby levied, assessed and shall be collected:

2930 1. A tax equal to seven percent (7%) of the
2931 gross income received from all charges for intrastate
2932 telecommunications services.

2933 2. A tax equal to seven percent (7%) of the
2934 gross income received from all charges for interstate
2935 telecommunications services.



2936 3. A tax equal to seven percent (7%) of the
2937 gross income received from all charges for international
2938 telecommunications services.

2939 4. A tax equal to seven percent (7%) of the
2940 gross income received from all charges for ancillary services.

2941 5. A tax equal to seven percent (7%) of the
2942 gross income received from all charges for products delivered
2943 electronically, including, but not limited to, software, music,
2944 games, reading materials or ring tones.

2945 (ii) A person, upon proof that he has paid a tax
2946 in another state on an event described in subparagraph (i) of this
2947 paragraph (d), shall be allowed a credit against the tax imposed
2948 in this paragraph (d) on interstate telecommunications service
2949 charges to the extent that the amount of such tax is properly due
2950 and actually paid in such other state and to the extent that the
2951 rate of sales tax imposed by and paid in such other state does not
2952 exceed the rate of sales tax imposed by this paragraph (d).

2953 (iii) Charges by one (1) telecommunications
2954 provider to another telecommunications provider holding a permit
2955 issued under Section 27-65-27 for services that are resold by such
2956 other telecommunications provider, including, but not limited to,
2957 access charges, shall not be subject to the tax levied pursuant to
2958 this paragraph (d).

2959 (iv) For purposes of this paragraph (d):



2960 1. "Telecommunications service" means the
2961 electronic transmission, conveyance or routing of voice, data,
2962 audio, video or any other information or signals to a point, or
2963 between points. The term "telecommunications service" includes
2964 such transmission, conveyance or routing in which computer
2965 processing applications are used to act on the form, code or
2966 protocol of the content for purposes of transmission, conveyance
2967 or routing without regard to whether such service is referred to
2968 as voice over Internet protocol services or is classified by the
2969 Federal Communications Commission as enhanced or value added. The
2970 term "telecommunications service" shall not include:

2971 a. Data processing and information
2972 services that allow data to be generated, acquired, stored,
2973 processed or retrieved and delivered by an electronic transmission
2974 to a purchaser where such purchaser's primary purpose for the
2975 underlying transaction is the processed data or information;

2976 b. Installation or maintenance of wiring
2977 or equipment on a customer's premises;

2978 c. Tangible personal property;

2979 d. Advertising, including, but not
2980 limited to, directory advertising;

2981 e. Billing and collection services
2982 provided to third parties;

2983 f. Internet access service;



2984 g. Radio and television audio and video
2985 programming services regardless of the medium, including the
2986 furnishing of transmission, conveyance and routing of such
2987 services by the programming service provider. Radio and
2988 television audio and video programming services shall include, but
2989 not be limited to, cable service as defined in 47 USCS 522(6) and
2990 audio and video programming services delivered by commercial
2991 mobile radio service providers, as defined in 47 CFR 20.3;

2992 h. Ancillary services; or

2993 i. Digital products delivered
2994 electronically, including, but not limited to, software, music,
2995 video, reading materials or ring tones.

2996 2. "Ancillary services" means services that
2997 are associated with or incidental to the provision of
2998 telecommunications services, including, but not limited to,
2999 detailed telecommunications billing, directory assistance,
3000 vertical service and voice mail service.

3001 a. "Conference bridging" means an
3002 ancillary service that links two (2) or more participants of an
3003 audio or video conference call and may include the provision of a
3004 telephone number. Conference bridging does not include the
3005 telecommunications services used to reach the conference bridge.

3006 b. "Detailed telecommunications billing
3007 service" means an ancillary service of separately stating



3008 information pertaining to individual calls on a customer's billing
3009 statement.

3010 c. "Directory assistance" means an
3011 ancillary service of providing telephone number information and/or
3012 address information.

3013 d. "Vertical service" means an ancillary
3014 service that is offered in connection with one or more
3015 telecommunications services, which offers advanced calling
3016 features that allow customers to identify callers and to manage
3017 multiple calls and call connections, including conference bridging
3018 services.

3019 e. "Voice mail service" means an
3020 ancillary service that enables the customer to store, send or
3021 receive recorded messages. Voice mail service does not include
3022 any vertical services that the customer may be required to have in
3023 order to utilize the voice mail service.

3024 3. "Intrastate" means telecommunications
3025 service that originates in one (1) United States state or United
3026 States territory or possession, and terminates in the same United
3027 States state or United States territory or possession.

3028 4. "Interstate" means a telecommunications
3029 service that originates in one (1) United States state or United
3030 States territory or possession, and terminates in a different
3031 United States state or United States territory or possession.



3032 5. "International" means a telecommunications
3033 service that originates or terminates in the United States and
3034 terminates or originates outside the United States, respectively.

3035 (v) For purposes of paragraph (d), the following
3036 sourcing rules shall apply:

3037 1. Except for the defined telecommunications
3038 services in item 3 of this subparagraph, the sales of
3039 telecommunications services sold on a call-by-call basis shall be
3040 sourced to:

3041 a. Each level of taxing jurisdiction
3042 where the call originates and terminates in that jurisdiction, or

3043 b. Each level of taxing jurisdiction
3044 where the call either originates or terminates and in which the
3045 service address is also located.

3046 2. Except for the defined telecommunications
3047 services in item 3 of this subparagraph, a sale of
3048 telecommunications services sold on a basis other than a
3049 call-by-call basis, is sourced to the customer's place of primary
3050 use.

3051 3. The sale of the following
3052 telecommunications services shall be sourced to each level of
3053 taxing jurisdiction as follows:

3054 a. A sale of mobile telecommunications
3055 services other than air-to-ground radiotelephone service and
3056 prepaid calling service is sourced to the customer's place of



3057 primary use as required by the Mobile Telecommunication Sourcing
3058 Act.

3059 A. A home service provider shall be
3060 responsible for obtaining and maintaining the customer's place of
3061 primary use. The home service provider shall be entitled to rely
3062 on the applicable residential or business street address supplied
3063 by such customer, if the home service provider's reliance is in
3064 good faith; and the home service provider shall be held harmless
3065 from liability for any additional taxes based on a different
3066 determination of the place of primary use for taxes that are
3067 customarily passed on to the customer as a separate itemized
3068 charge. A home service provider shall be allowed to treat the
3069 address used for purposes of the tax levied by this chapter for
3070 any customer under a service contract in effect on August 1, 2002,
3071 as that customer's place of primary use for the remaining term of
3072 such service contract or agreement, excluding any extension or
3073 renewal of such service contract or agreement. Month-to-month
3074 services provided after the expiration of a contract shall be
3075 treated as an extension or renewal of such contract or agreement.

3076 B. If the commissioner determines
3077 that the address used by a home service provider as a customer's
3078 place of primary use does not meet the definition of the term
3079 "place of primary use" as defined in subitem a.A. of this item 3,
3080 the commissioner shall give binding notice to the home service
3081 provider to change the place of primary use on a prospective basis



3082 from the date of notice of determination; however, the customer
3083 shall have the opportunity, prior to such notice of determination,
3084 to demonstrate that such address satisfies the definition.

3085 C. The department has the right to
3086 collect any taxes due directly from the home service provider's
3087 customer that has failed to provide an address that meets the
3088 definition of the term "place of primary use" which resulted in a
3089 failure of tax otherwise due being remitted.

3090 b. A sale of postpaid calling service is
3091 sourced to the origination point of the telecommunications signal
3092 as first identified by either:

3093 A. The seller's telecommunications
3094 system; or

3095 B. Information received by the
3096 seller from its service provider, where the system used to
3097 transport such signals is not that of the seller.

3098 c. A sale of a prepaid calling service
3099 or prepaid wireless calling service shall be subject to the tax
3100 imposed by this paragraph if the sale takes place in this state.
3101 If the customer physically purchases a prepaid calling service or
3102 prepaid wireless calling service at the vendor's place of
3103 business, the sale is deemed to take place at the vendor's place
3104 of business. If the customer does not physically purchase the
3105 service at the vendor's place of business, the sale of a prepaid
3106 calling card or prepaid wireless calling card is deemed to take



3107 place at the first of the following locations that applies to the
3108 sale:

3109 A. The customer's shipping address,
3110 if the sale involves a shipment;

3111 B. The customer's billing address;

3112 C. Any other address of the
3113 customer that is known by the vendor; or

3114 D. The address of the vendor, or
3115 alternatively, in the case of a prepaid wireless calling service,
3116 the location associated with the mobile telephone number.

3117 4. A sale of a private communication service
3118 is sourced as follows:

3119 a. Service for a separate charge related
3120 to a customer channel termination point is sourced to each level
3121 of jurisdiction in which such customer channel termination point
3122 is located.

3123 b. Service where all customer
3124 termination points are located entirely within one (1)
3125 jurisdiction or levels of jurisdiction is sourced in such
3126 jurisdiction in which the customer channel termination points are
3127 located.

3128 c. Service for segments of a channel
3129 between two (2) customer channel termination points located in
3130 different jurisdictions and which segments of a channel are
3131 separately charged is sourced fifty percent (50%) in each level of



3132 jurisdiction in which the customer channel termination points are
3133 located.

3134 d. Service for segments of a channel
3135 located in more than one (1) jurisdiction or levels of
3136 jurisdiction and which segments are not separately billed is
3137 sourced in each jurisdiction based on the percentage determined by
3138 dividing the number of customer channel termination points in such
3139 jurisdiction by the total number of customer channel termination
3140 points.

3141 5. A sale of ancillary services is sourced to
3142 the customer's place of primary use.

3143 (vi) For purposes of subparagraph (v) of this
3144 paragraph (d):

3145 1. "Air-to-ground radiotelephone service"
3146 means a radio service, as that term is defined in 47 CFR 22.99, in
3147 which common carriers are authorized to offer and provide radio
3148 telecommunications service for hire to subscribers in aircraft.

3149 2. "Call-by-call basis" means any method of
3150 charging for telecommunications services where the price is
3151 measured by individual calls.

3152 3. "Communications channel" means a physical
3153 or virtual path of communications over which signals are
3154 transmitted between or among customer channel termination points.

3155 4. "Customer" means the person or entity that
3156 contracts with the seller of telecommunications services. If the



3157 end user of telecommunications services is not the contracting
3158 party, the end user of the telecommunications service is the
3159 customer of the telecommunications service. Customer does not
3160 include a reseller of telecommunications service or for mobile
3161 telecommunications service of a serving carrier under an agreement
3162 to serve the customer outside the home service provider's licensed
3163 service area.

3164 5. "Customer channel termination point" means
3165 the location where the customer either inputs or receives the
3166 communications.

3167 6. "End user" means the person who utilizes
3168 the telecommunications service. In the case of an entity, "end
3169 user" means the individual who utilizes the service on behalf of
3170 the entity.

3171 7. "Home service provider" has the meaning
3172 ascribed to such term in Section 124(5) of Public Law 106-252
3173 (Mobile Telecommunications Sourcing Act).

3174 8. "Mobile telecommunications service" has
3175 the meaning ascribed to such term in Section 124(7) of Public Law
3176 106-252 (Mobile Telecommunications Sourcing Act).

3177 9. "Place of primary use" means the street
3178 address representative of where the customer's use of the
3179 telecommunications service primarily occurs, which must be the
3180 residential street address or the primary business street address
3181 of the customer. In the case of mobile telecommunications



3182 services, the place of primary use must be within the licensed
3183 service area of the home service provider.

3184 10. "Post-paid calling service" means the
3185 telecommunications service obtained by making a payment on a
3186 call-by-call basis either through the use of a credit card or
3187 payment mechanism such as a bank card, travel card, credit card or
3188 debit card, or by charge made to a telephone number which is not
3189 associated with the origination or termination of the
3190 telecommunications service. A post-paid calling service includes
3191 a telecommunications service, except a prepaid wireless calling
3192 service that would be a prepaid calling service except it is not
3193 exclusively a telecommunications service.

3194 11. "Prepaid calling service" means the right
3195 to access exclusively telecommunications services, which must be
3196 paid for in advance and which enables the origination of calls
3197 using an access number or authorization code, whether manually or
3198 electronically dialed, and that is sold in predetermined units or
3199 dollars of which the number declines with use in a known amount.

3200 12. "Prepaid wireless calling service" means
3201 a telecommunications service that provides the right to utilize
3202 mobile wireless service as well as other nontelecommunications
3203 services, including the download of digital products delivered
3204 electronically, content and ancillary service, which must be paid
3205 for in advance that is sold in predetermined units or dollars of
3206 which the number declines with use in a known amount.



3207 13. "Private communication service" means a
3208 telecommunications service that entitles the customer to exclusive
3209 or priority use of a communications channel or group of channels
3210 between or among termination points, regardless of the manner in
3211 which such channel or channels are connected, and includes
3212 switching capacity, extension lines, stations and any other
3213 associated services that are provided in connection with the use
3214 of such channel or channels.

3215 14. "Service address" means:

3216 a. The location of the
3217 telecommunications equipment to which a customer's call is charged
3218 and from which the call originates or terminates, regardless of
3219 where the call is billed or paid.

3220 b. If the location in subitem a of this
3221 item 14 is not known, the origination point of the signal of the
3222 telecommunications services first identified by either the
3223 seller's telecommunications system or in information received by
3224 the seller from its service provider, where the system used to
3225 transport such signals is not that of the seller.

3226 c. If the location in subitems a and b
3227 of this item 14 are not known, the location of the customer's
3228 place of primary use.

3229 (vii) 1. For purposes of this subparagraph (vii),
3230 "bundled transaction" means a transaction that consists of
3231 distinct and identifiable properties or services which are sold



3232 for a single nonitemized price but which are treated differently
3233 for tax purposes.

3234 2. In the case of a bundled transaction that
3235 includes telecommunications services, ancillary services, Internet
3236 access, or audio or video programming services taxed under this
3237 chapter in which the price of the bundled transaction is
3238 attributable to properties or services that are taxable and
3239 nontaxable, the portion of the price that is attributable to any
3240 nontaxable property or service shall be subject to the tax unless
3241 the provider can reasonably identify that portion from its books
3242 and records kept in the regular course of business.

3243 3. In the case of a bundled transaction that
3244 includes telecommunications services, ancillary services, Internet
3245 access, audio or video programming services subject to tax under
3246 this chapter in which the price is attributable to properties or
3247 services that are subject to the tax but the tax revenue from the
3248 different properties or services are dedicated to different funds
3249 or purposes, the provider shall allocate the price among the
3250 properties or services:

3251 a. By reasonably identifying the portion
3252 of the price attributable to each of the properties and services
3253 from its books and records kept in the regular course of business;
3254 or

3255 b. Based on a reasonable allocation
3256 methodology approved by the department.



3257 4. This subparagraph (vii) shall not create a
3258 right of action for a customer to require that the provider or the
3259 department, for purposes of determining the amount of tax
3260 applicable to a bundled transaction, allocate the price to the
3261 different portions of the transaction in order to minimize the
3262 amount of tax charged to the customer. A customer shall not be
3263 entitled to rely on the fact that a portion of the price is
3264 attributable to properties or services not subject to tax unless
3265 the provider elects, after receiving a written request from the
3266 customer in the form required by the provider, to provide
3267 verifiable data based upon the provider's books and records that
3268 are kept in the regular course of business that reasonably
3269 identifies the portion of the price attributable to the properties
3270 or services not subject to the tax.

3271 (2) Persons making sales to consumers of electricity,
3272 current, power, natural gas, liquefied petroleum gas or other fuel
3273 for residential heating, lighting or other residential
3274 noncommercial or nonagricultural use or sales of potable water for
3275 residential, noncommercial or nonagricultural use shall indicate
3276 on each statement rendered to customers that such charges are
3277 exempt from sales taxes.

3278 (3) There is hereby levied, assessed and shall be paid on
3279 transportation charges on shipments moving between points within
3280 this state when paid directly by the consumer, a tax equal to the
3281 rate applicable to the sale of the property being transported.



3282 Such tax shall be reported and paid directly to the Department of
3283 Revenue by the consumer.

3284 **SECTION 38.** Section 27-65-105, Mississippi Code of 1972, is
3285 amended as follows:

3286 27-65-105. The exemption from the provisions of this chapter
3287 which are of a governmental nature or which are more properly
3288 classified as governmental exemptions than any other exemption
3289 classification of this chapter shall be confined to those persons
3290 or property exempted by this section or by provisions of the
3291 Constitutions of the United States or the State of Mississippi.
3292 No governmental exemption as now provided by any other section
3293 shall be valid as against the tax herein levied. Any subsequent
3294 governmental exemption from the tax levied hereunder shall be
3295 provided by amendment to this section.

3296 No exemption provided in this section shall apply to taxes
3297 levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972,
3298 except as provided by paragraph (f) of this section.

3299 The tax levied by this chapter shall not apply to the
3300 following:

3301 (a) Sales of property, labor, services or products
3302 taxable under Sections 27-65-17, 27-65-19, 27-65-23 and 27-19-26,
3303 when sold to and billed directly to and payment therefor is made
3304 directly by the United States government, the State of Mississippi
3305 and its departments, institutions, counties and municipalities or



3306 departments or school districts of said counties and
3307 municipalities.

3308 The exemption from the tax imposed under this chapter shall
3309 not apply to sales of tangible personal property or specified
3310 digital products, labor or services to contractors purchasing in
3311 the performance of contracts with the United States, the State of
3312 Mississippi, counties and municipalities.

3313 (b) Sales to schools, when such schools are supported
3314 wholly or in part by funds provided by the State of Mississippi,
3315 provided that this exemption does not apply to sales of property
3316 which is not to be used in the ordinary operation of the school,
3317 or which is to be resold to the students or the public.

3318 (c) Amounts received from the sale of school textbooks
3319 to students.

3320 (d) Sales to the Mississippi Band of Choctaw Indians,
3321 but not to Indians individually.

3322 (e) Sales of firefighting equipment to governmental
3323 fire departments or volunteer fire departments for their use.

3324 (f) Sales of any gas from any project, as defined in
3325 the Municipal Gas Authority of Mississippi Law, to any
3326 municipality shall not be subject to sales, use or other tax.

3327 (g) Sales of home medical equipment and home medical
3328 supplies listed as eligible for payment under Title XVIII of the
3329 Social Security Act or under the state plan for medical assistance
3330 under Title XIX of the Social Security Act, prosthetics,



3331 orthotics, hearing aids, hearing devices, prescription eyeglasses,
3332 oxygen and oxygen equipment, when ordered or prescribed by a
3333 licensed physician for medical purposes of a patient, and when
3334 payment for such equipment or supplies, or both, is made, in part
3335 or in whole, under the provisions of the Medicare or Medicaid
3336 program, then the entire sale shall be exempt from the taxes
3337 imposed by this chapter. Payment does not have to be made, in
3338 whole or in part, by any particular person to be eligible for this
3339 exemption. Purchases of home medical equipment and supplies by a
3340 provider of home health services or a provider of hospice services
3341 are eligible for this exemption if the purchases otherwise meet
3342 the requirements of this paragraph.

3343 (h) Sales to regional educational service agencies
3344 established under Section 37-7-345.

3345 (i) Sales of buses and other motor vehicles, and parts
3346 and labor used to maintain and/or repair such buses and motor
3347 vehicles, to an entity that (a) has entered into a contract with a
3348 school board under Section 37-41-31 for the purpose of
3349 transporting students to and from schools and (b) uses or will use
3350 the buses and other motor vehicles for such transportation
3351 purposes. This paragraph (i) shall apply to contracts entered
3352 into or renewed on or after July 1, 2010.

3353 (j) Parking at events held solely for religious or
3354 charitable purposes at livestock facilities, agriculture
3355 facilities or other facilities constructed, renovated or expanded



3356 with funds for the grant program authorized under Section 18,
3357 Chapter 530, Laws of 1995.

3358 (k) Sales of tangible personal property, labor,
3359 services or products to schools and school districts under a
3360 program that is administered by or coordinated with an agency,
3361 commission, department or other instrumentality of the United
3362 States government when payment for the tangible personal property,
3363 labor, services or products is made by or through a nonprofit
3364 organization or other entity established by or for the benefit of
3365 the agency, commission, department or other instrumentality of the
3366 United States government administering or coordinating such
3367 program.

3368 (l) Sales to a health care collaborative as defined in
3369 Section 2 of this act or an entity controlled by a health care
3370 collaborative, as provided in Section 14(1)(c) of this act.

3371 **SECTION 39.** Section 27-104-153, Mississippi Code of 1972, is
3372 amended as follows:

3373 27-104-153. As used in Sections 27-104-151 through
3374 27-104-159:

3375 (a) "Searchable website" means an Internet site that:

3376 (i) Allows the public to access information
3377 identified in Sections 27-104-151 through 27-104-159 without any
3378 fee or charge to the public for that access;

3379 (ii) Provides keyword or other efficient search
3380 capability to support the public's ability to find, aggregate and



3381 display that information with reasonable ease by accessing a
3382 single website; and

3383 (iii) Allows the public to programmatically search
3384 and access all data in a serialized machine readable format, such
3385 as XML, via a Web-services application programming interface.

3386 (b) "Agency" means a state agency, department,
3387 institution, board, commission, council, office, bureau, division,
3388 committee or subcommittee of the state. The term "agency"
3389 includes individual agencies and programs as well as multiple
3390 agencies whenever programs and activities involve more than one
3391 (1) agency. The term "agency" includes all elective offices in
3392 the executive, legislative and judicial branches of state
3393 government. The term "agency" does not include counties or
3394 municipalities, and does not include a health care collaborative
3395 as defined in Section 2 of this act.

3396 (c) "Entity" or "recipient" means a corporation,
3397 association, union, limited liability company, limited liability
3398 partnership, grantee, contractor, county, municipality or other
3399 local government entity, or any other legal business entity,
3400 including a nonprofit entity. The term "entity" or "recipient"
3401 does not include an individual recipient of state public
3402 assistance.

3403 (d) "Expenditure of state funds" means the disbursement
3404 or transfer of any funds, from any source or funds, whether
3405 appropriated or nonappropriated, from any agency. The term



3406 "expenditure of state funds" includes the expenditures from bond
3407 proceeds.

3408 (e) "Funding action" means the transfer of funds from a
3409 state agency to another entity for a specific purpose. These
3410 would include subgranting of funds for specific purposes or the
3411 funding through bonds or other authority specific projects and
3412 actions.

3413 (f) "Funding source" means the state account against
3414 which an expenditure is recorded.

3415 (g) "State audit or report" means any audit or report
3416 issued by the State Auditor, Joint Legislative Committee on
3417 Performance Evaluation and Expenditure Review (PEER) or an
3418 executive body relating to the entity or recipient of funds or to
3419 the budget program or activity or agency.

3420 **SECTION 40.** Section 31-7-1, Mississippi Code of 1972, is
3421 amended as follows:

3422 31-7-1. The following terms are defined for the purposes of
3423 this chapter to have the following meanings:

3424 (a) "Agency" means any state board, commission,
3425 committee, council, university, department or unit thereof created
3426 by the Constitution or statutes if such board, commission,
3427 committee, council, university, department, unit or the head
3428 thereof is authorized to appoint subordinate staff by the
3429 Constitution or statute, except a legislative or judicial board,
3430 commission, committee, council, department or unit thereof; except



3431 a charter school authorized by the Mississippi Charter School
3432 Authorizer Board; and except the Mississippi State Port Authority.
3433 The term "agency" does not include a health care collaborative as
3434 defined in Section 2 of this act.

3435 (b) "Governing authority" means boards of supervisors,
3436 governing boards of all school districts, all boards of directors
3437 of public water supply districts, boards of directors of master
3438 public water supply districts, municipal public utility
3439 commissions, governing authorities of all municipalities, port
3440 authorities, Mississippi State Port Authority, commissioners and
3441 boards of trustees of any public hospitals, boards of trustees of
3442 public library systems, district attorneys, school attendance
3443 officers and any political subdivision of the state supported
3444 wholly or in part by public funds of the state or political
3445 subdivisions thereof, including commissions, boards and agencies
3446 created or operated under the authority of any county or
3447 municipality of this state. The term "governing authority" shall
3448 not include economic development authorities supported in part by
3449 private funds, or commissions appointed to hold title to and
3450 oversee the development and management of lands and buildings
3451 which are donated by private individuals to the public for the use
3452 and benefit of the community and which are supported in part by
3453 private funds. The term "governing authority" also shall not
3454 include the governing board of a charter school.



3455 (c) "Purchasing agent" means any administrator,
3456 superintendent, purchase clerk or other chief officer so
3457 designated having general or special authority to negotiate for
3458 and make private contract for or purchase for any governing
3459 authority or agency, including issue purchase orders, invitations
3460 for bid, requests for proposals, and receive and accept bids.

3461 (d) "Public funds" means and includes any appropriated
3462 funds, special funds, fees or any other emoluments received by an
3463 agency or governing authority.

3464 (e) "Commodities" means and includes the various
3465 commodities, goods, merchandise, furniture, equipment, automotive
3466 equipment of every kind, and other personal property purchased by
3467 the agencies of the state and governing authorities, but not
3468 commodities purchased for resale or raw materials converted into
3469 products for resale.

3470 (i) "Equipment" shall be construed to include:
3471 automobiles, trucks, tractors, office appliances and all other
3472 equipment of every kind and description.

3473 (ii) "Furniture" shall be construed to include:
3474 desks, chairs, tables, seats, filing cabinets, bookcases and all
3475 other items of a similar nature as well as dormitory furniture,
3476 appliances, carpets and all other items of personal property
3477 generally referred to as home, office or school furniture.

3478 (f) "Emergency" means any circumstances caused by fire,
3479 flood, explosion, storm, earthquake, epidemic, riot, insurrection



3480 or caused by any inherent defect due to defective construction, or
3481 when the immediate preservation of order or of public health is
3482 necessary by reason of unforeseen emergency, or when the immediate
3483 restoration of a condition of usefulness of any public building,
3484 equipment, road or bridge appears advisable, or in the case of a
3485 public utility when there is a failure of any machine or other
3486 thing used and useful in the generation, production or
3487 distribution of electricity, water or natural gas, or in the
3488 transportation or treatment of sewage; or when the delay incident
3489 to obtaining competitive bids could cause adverse impact upon the
3490 governing authorities or agency, its employees or its citizens; or
3491 in the case of a public airport, when the delay incident to
3492 publishing an advertisement for competitive bids would endanger
3493 public safety in a specific (not general) manner, result in or
3494 perpetuate a specific breach of airport security, or prevent the
3495 airport from providing specific air transportation services.

3496 (g) "Construction" means the process of building,
3497 altering, improving, renovating or demolishing a public structure,
3498 public building, or other public real property. It does not
3499 include routine operation, routine repair or regularly scheduled
3500 maintenance of existing public structures, public buildings or
3501 other public real property.

3502 (h) "Purchase" means buying, renting, leasing or
3503 otherwise acquiring.



3504 (i) "Certified purchasing office" means any purchasing
3505 office in which fifty percent (50%) or more of the purchasing
3506 agents hold a certification from the Universal Public Purchasing
3507 Certification Council or other nationally recognized purchasing
3508 certification, and in which, in the case of a state agency
3509 purchasing office, in addition to the national certification, one
3510 hundred percent (100%) of the purchasing officials hold a
3511 certification from the State of Mississippi's Basic or Advanced
3512 Purchasing Certification Program.

3513 (j) "Certified Mississippi Purchasing Agent" means a
3514 state agency purchasing official who holds a certification from
3515 the Mississippi Basic Purchasing Certification Program as
3516 established by the Office of Purchasing, Travel and Fleet
3517 Management.

3518 (k) "Certified Mississippi Procurement Manager" means a
3519 state agency purchasing official who holds a certification from
3520 the Mississippi Advanced Purchasing Certification Program as
3521 established by the Office of Purchasing, Travel and Fleet
3522 Management.

3523 **SECTION 41.** Section 31-7-13, Mississippi Code of 1972, is
3524 amended as follows:

3525 31-7-13. All agencies and governing authorities shall
3526 purchase their commodities and printing; contract for garbage
3527 collection or disposal; contract for solid waste collection or



3528 disposal; contract for sewage collection or disposal; contract for
3529 public construction; and contract for rentals as herein provided.

3530 (a) **Bidding procedure for purchases not over \$5,000.00.**

3531 Purchases which do not involve an expenditure of more than Five
3532 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
3533 charges, may be made without advertising or otherwise requesting
3534 competitive bids. However, nothing contained in this paragraph

3535 (a) shall be construed to prohibit any agency or governing
3536 authority from establishing procedures which require competitive
3537 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

3538 (b) **Bidding procedure for purchases over \$5,000.00 but**

3539 **not over \$50,000.00.** Purchases which involve an expenditure of
3540 more than Five Thousand Dollars (\$5,000.00) but not more than
3541 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and
3542 shipping charges may be made from the lowest and best bidder
3543 without publishing or posting advertisement for bids, provided at
3544 least two (2) competitive written bids have been obtained. Any
3545 state agency or community/junior college purchasing commodities or
3546 procuring construction pursuant to this paragraph (b) may
3547 authorize its purchasing agent, or his designee, to accept the
3548 lowest competitive written bid under Fifty Thousand Dollars
3549 (\$50,000.00). Any governing authority purchasing commodities
3550 pursuant to this paragraph (b) may authorize its purchasing agent,
3551 or his designee, with regard to governing authorities other than
3552 counties, or its purchase clerk, or his designee, with regard to



3553 counties, to accept the lowest and best competitive written bid.
3554 Such authorization shall be made in writing by the governing
3555 authority and shall be maintained on file in the primary office of
3556 the agency and recorded in the official minutes of the governing
3557 authority, as appropriate. The purchasing agent or the purchase
3558 clerk, or their designee, as the case may be, and not the
3559 governing authority, shall be liable for any penalties and/or
3560 damages as may be imposed by law for any act or omission of the
3561 purchasing agent or purchase clerk, or their designee,
3562 constituting a violation of law in accepting any bid without
3563 approval by the governing authority. The term "competitive
3564 written bid" shall mean a bid submitted on a bid form furnished by
3565 the buying agency or governing authority and signed by authorized
3566 personnel representing the vendor, or a bid submitted on a
3567 vendor's letterhead or identifiable bid form and signed by
3568 authorized personnel representing the vendor. "Competitive" shall
3569 mean that the bids are developed based upon comparable
3570 identification of the needs and are developed independently and
3571 without knowledge of other bids or prospective bids. Any bid item
3572 for construction in excess of Five Thousand Dollars (\$5,000.00)
3573 shall be broken down by components to provide detail of component
3574 description and pricing. These details shall be submitted with
3575 the written bids and become part of the bid evaluation criteria.
3576 Bids may be submitted by facsimile, electronic mail or other
3577 generally accepted method of information distribution. Bids



3578 submitted by electronic transmission shall not require the
3579 signature of the vendor's representative unless required by
3580 agencies or governing authorities.

3581 (c) **Bidding procedure for purchases over \$50,000.00.**

3582 (i) **Publication requirement.**

3583 1. Purchases which involve an expenditure of
3584 more than Fifty Thousand Dollars (\$50,000.00), exclusive of
3585 freight and shipping charges, may be made from the lowest and best
3586 bidder after advertising for competitive bids once each week for
3587 two (2) consecutive weeks in a regular newspaper published in the
3588 county or municipality in which such agency or governing authority
3589 is located. However, all American Recovery and Reinvestment Act
3590 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
3591 shall be bid. All references to American Recovery and
3592 Reinvestment Act projects in this section shall not apply to
3593 programs identified in Division B of the American Recovery and
3594 Reinvestment Act.

3595 2. The purchasing entity may designate the
3596 method by which the bids will be received, including, but not
3597 limited to, bids sealed in an envelope, bids received
3598 electronically in a secure system, bids received via a reverse
3599 auction, or bids received by any other method that promotes open
3600 competition and has been approved by the Office of Purchasing and
3601 Travel. However, reverse auction shall not be used for any public



3602 contract for design or construction of public facilities,
3603 including buildings, roads and bridges.

3604 3. The date as published for the bid opening
3605 shall not be less than seven (7) working days after the last
3606 published notice; however, if the purchase involves a construction
3607 project in which the estimated cost is in excess of Fifty Thousand
3608 Dollars (\$50,000.00), such bids shall not be opened in less than
3609 fifteen (15) working days after the last notice is published and
3610 the notice for the purchase of such construction shall be
3611 published once each week for two (2) consecutive weeks. However,
3612 all American Recovery and Reinvestment Act projects in excess of
3613 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
3614 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
3615 under the American Recovery and Reinvestment Act, publication
3616 shall be made one (1) time and the bid opening for construction
3617 projects shall not be less than ten (10) working days after the
3618 date of the published notice. The notice of intention to let
3619 contracts or purchase equipment shall state the time and place at
3620 which bids shall be received, list the contracts to be made or
3621 types of equipment or supplies to be purchased, and, if all plans
3622 and/or specifications are not published, refer to the plans and/or
3623 specifications on file. If there is no newspaper published in the
3624 county or municipality, then such notice shall be given by posting
3625 same at the courthouse, or for municipalities at the city hall,
3626 and at two (2) other public places in the county or municipality,



3627 and also by publication once each week for two (2) consecutive
3628 weeks in some newspaper having a general circulation in the county
3629 or municipality in the above-provided manner. On the same date
3630 that the notice is submitted to the newspaper for publication, the
3631 agency or governing authority involved shall mail written notice
3632 to, or provide electronic notification to the main office of the
3633 Mississippi Procurement Technical Assistance Program under the
3634 Mississippi Development Authority that contains the same
3635 information as that in the published notice. Submissions received
3636 by the Mississippi Procurement Technical Assistance Program for
3637 projects funded by the American Recovery and Reinvestment Act
3638 shall be displayed on a separate and unique Internet web page
3639 accessible to the public and maintained by the Mississippi
3640 Development Authority for the Mississippi Procurement Technical
3641 Assistance Program. Those American Recovery and Reinvestment Act
3642 related submissions shall be publicly posted within twenty-four
3643 (24) hours of receipt by the Mississippi Development Authority and
3644 the bid opening shall not occur until the submission has been
3645 posted for ten (10) consecutive days. The Department of Finance
3646 and Administration shall maintain information regarding contracts
3647 and other expenditures from the American Recovery and Reinvestment
3648 Act, on a unique Internet web page accessible to the public. The
3649 Department of Finance and Administration shall promulgate rules
3650 regarding format, content and deadlines, unless otherwise
3651 specified by law, of the posting of award notices, contract



3652 execution and subsequent amendments, links to the contract
3653 documents, expenditures against the awarded contracts and general
3654 expenditures of funds from the American Recovery and Reinvestment
3655 Act. Within one (1) working day of the contract award, the agency
3656 or governing authority shall post to the designated web page
3657 maintained by the Department of Finance and Administration, notice
3658 of the award, including the award recipient, the contract amount,
3659 and a brief summary of the contract in accordance with rules
3660 promulgated by the department. Within one (1) working day of the
3661 contract execution, the agency or governing authority shall post
3662 to the designated web page maintained by the Department of Finance
3663 and Administration a summary of the executed contract and make a
3664 copy of the appropriately redacted contract documents available
3665 for linking to the designated web page in accordance with the
3666 rules promulgated by the department. The information provided by
3667 the agency or governing authority shall be posted to the web page
3668 for the duration of the American Recovery and Reinvestment Act
3669 funding or until the project is completed, whichever is longer.

3670 (ii) **Bidding process amendment procedure.** If all
3671 plans and/or specifications are published in the notification,
3672 then the plans and/or specifications may not be amended. If all
3673 plans and/or specifications are not published in the notification,
3674 then amendments to the plans/specifications, bid opening date, bid
3675 opening time and place may be made, provided that the agency or
3676 governing authority maintains a list of all prospective bidders



3677 who are known to have received a copy of the bid documents and all
3678 such prospective bidders are sent copies of all amendments. This
3679 notification of amendments may be made via mail, facsimile,
3680 electronic mail or other generally accepted method of information
3681 distribution. No addendum to bid specifications may be issued
3682 within two (2) working days of the time established for the
3683 receipt of bids unless such addendum also amends the bid opening
3684 to a date not less than five (5) working days after the date of
3685 the addendum.

3686 (iii) **Filing requirement.** In all cases involving
3687 governing authorities, before the notice shall be published or
3688 posted, the plans or specifications for the construction or
3689 equipment being sought shall be filed with the clerk of the board
3690 of the governing authority. In addition to these requirements, a
3691 bid file shall be established which shall indicate those vendors
3692 to whom such solicitations and specifications were issued, and
3693 such file shall also contain such information as is pertinent to
3694 the bid.

3695 (iv) **Specification restrictions.**

3696 1. Specifications pertinent to such bidding
3697 shall be written so as not to exclude comparable equipment of
3698 domestic manufacture. However, if valid justification is
3699 presented, the Department of Finance and Administration or the
3700 board of a governing authority may approve a request for specific
3701 equipment necessary to perform a specific job. Further, such



3702 justification, when placed on the minutes of the board of a
3703 governing authority, may serve as authority for that governing
3704 authority to write specifications to require a specific item of
3705 equipment needed to perform a specific job. In addition to these
3706 requirements, from and after July 1, 1990, vendors of relocatable
3707 classrooms and the specifications for the purchase of such
3708 relocatable classrooms published by local school boards shall meet
3709 all pertinent regulations of the State Board of Education,
3710 including prior approval of such bid by the State Department of
3711 Education.

3712 2. Specifications for construction projects
3713 may include an allowance for commodities, equipment, furniture,
3714 construction materials or systems in which prospective bidders are
3715 instructed to include in their bids specified amounts for such
3716 items so long as the allowance items are acquired by the vendor in
3717 a commercially reasonable manner and approved by the
3718 agency/governing authority. Such acquisitions shall not be made
3719 to circumvent the public purchasing laws.

3720 (v) Agencies and governing authorities may
3721 establish secure procedures by which bids may be submitted via
3722 electronic means.

3723 (d) **Lowest and best bid decision procedure.**

3724 (i) **Decision procedure.** Purchases may be made
3725 from the lowest and best bidder. In determining the lowest and
3726 best bid, freight and shipping charges shall be included.



3727 Life-cycle costing, total cost bids, warranties, guaranteed
3728 buy-back provisions and other relevant provisions may be included
3729 in the best bid calculation. All best bid procedures for state
3730 agencies must be in compliance with regulations established by the
3731 Department of Finance and Administration. If any governing
3732 authority accepts a bid other than the lowest bid actually
3733 submitted, it shall place on its minutes detailed calculations and
3734 narrative summary showing that the accepted bid was determined to
3735 be the lowest and best bid, including the dollar amount of the
3736 accepted bid and the dollar amount of the lowest bid. No agency
3737 or governing authority shall accept a bid based on items not
3738 included in the specifications.

3739 (ii) **Decision procedure for Certified Purchasing**
3740 **Offices.** In addition to the decision procedure set forth in * * *
3741 subparagraph (i) of this paragraph (d), Certified Purchasing
3742 Offices may also use the following procedure: Purchases may be
3743 made from the bidder offering the best value. In determining the
3744 best value bid, freight and shipping charges shall be included.
3745 Life-cycle costing, total cost bids, warranties, guaranteed
3746 buy-back provisions, documented previous experience, training
3747 costs and other relevant provisions, including, but not limited
3748 to, a bidder having a local office and inventory located within
3749 the jurisdiction of the governing authority, may be included in
3750 the best value calculation. This provision shall authorize
3751 Certified Purchasing Offices to utilize a Request For Proposals



3752 (RFP) process when purchasing commodities. All best value
3753 procedures for state agencies must be in compliance with
3754 regulations established by the Department of Finance and
3755 Administration. No agency or governing authority shall accept a
3756 bid based on items or criteria not included in the specifications.

3757 (iii) **Decision procedure for Mississippi**

3758 **Landmarks.** In addition to the decision procedure set forth
3759 in * * * subparagraph (i) of this paragraph (d), where purchase
3760 involves renovation, restoration, or both, of the State Capitol
3761 Building or any other historical building designated for at least
3762 five (5) years as a Mississippi Landmark by the Board of Trustees
3763 of the Department of Archives and History under the authority of
3764 Sections 39-7-7 and 39-7-11, the agency or governing authority may
3765 use the following procedure: Purchases may be made from the
3766 lowest and best prequalified bidder. Prequalification of bidders
3767 shall be determined not less than fifteen (15) working days before
3768 the first published notice of bid opening. Prequalification
3769 criteria shall be limited to bidder's knowledge and experience in
3770 historical restoration, preservation and renovation. In
3771 determining the lowest and best bid, freight and shipping charges
3772 shall be included. Life-cycle costing, total cost bids,
3773 warranties, guaranteed buy-back provisions and other relevant
3774 provisions may be included in the best bid calculation. All best
3775 bid and prequalification procedures for state agencies must be in
3776 compliance with regulations established by the Department of



3777 Finance and Administration. If any governing authority accepts a
3778 bid other than the lowest bid actually submitted, it shall place
3779 on its minutes detailed calculations and narrative summary showing
3780 that the accepted bid was determined to be the lowest and best
3781 bid, including the dollar amount of the accepted bid and the
3782 dollar amount of the lowest bid. No agency or governing authority
3783 shall accept a bid based on items not included in the
3784 specifications.

3785 (iv) **Construction project negotiations authority.**

3786 If the lowest and best bid is not more than ten percent (10%)
3787 above the amount of funds allocated for a public construction or
3788 renovation project, then the agency or governing authority shall
3789 be permitted to negotiate with the lowest bidder in order to enter
3790 into a contract for an amount not to exceed the funds allocated.

3791 (e) **Lease-purchase authorization.** For the purposes of
3792 this section, the term "equipment" shall mean equipment, furniture
3793 and, if applicable, associated software and other applicable
3794 direct costs associated with the acquisition. Any lease-purchase
3795 of equipment which an agency is not required to lease-purchase
3796 under the master lease-purchase program pursuant to Section
3797 31-7-10 and any lease-purchase of equipment which a governing
3798 authority elects to lease-purchase may be acquired by a
3799 lease-purchase agreement under this paragraph (e). Lease-purchase
3800 financing may also be obtained from the vendor or from a
3801 third-party source after having solicited and obtained at least



3802 two (2) written competitive bids, as defined in paragraph (b) of
3803 this section, for such financing without advertising for such
3804 bids. Solicitation for the bids for financing may occur before or
3805 after acceptance of bids for the purchase of such equipment or,
3806 where no such bids for purchase are required, at any time before
3807 the purchase thereof. No such lease-purchase agreement shall be
3808 for an annual rate of interest which is greater than the overall
3809 maximum interest rate to maturity on general obligation
3810 indebtedness permitted under Section 75-17-101, and the term of
3811 such lease-purchase agreement shall not exceed the useful life of
3812 equipment covered thereby as determined according to the upper
3813 limit of the asset depreciation range (ADR) guidelines for the
3814 Class Life Asset Depreciation Range System established by the
3815 Internal Revenue Service pursuant to the United States Internal
3816 Revenue Code and regulations thereunder as in effect on December
3817 31, 1980, or comparable depreciation guidelines with respect to
3818 any equipment not covered by ADR guidelines. Any lease-purchase
3819 agreement entered into pursuant to this paragraph (e) may contain
3820 any of the terms and conditions which a master lease-purchase
3821 agreement may contain under the provisions of Section 31-7-10(5),
3822 and shall contain an annual allocation dependency clause
3823 substantially similar to that set forth in Section 31-7-10(8).
3824 Each agency or governing authority entering into a lease-purchase
3825 transaction pursuant to this paragraph (e) shall maintain with
3826 respect to each such lease-purchase transaction the same



3827 information as required to be maintained by the Department of
3828 Finance and Administration pursuant to Section 31-7-10(13).
3829 However, nothing contained in this section shall be construed to
3830 permit agencies to acquire items of equipment with a total
3831 acquisition cost in the aggregate of less than Ten Thousand
3832 Dollars (\$10,000.00) by a single lease-purchase transaction. All
3833 equipment, and the purchase thereof by any lessor, acquired by
3834 lease-purchase under this paragraph and all lease-purchase
3835 payments with respect thereto shall be exempt from all Mississippi
3836 sales, use and ad valorem taxes. Interest paid on any
3837 lease-purchase agreement under this section shall be exempt from
3838 State of Mississippi income taxation.

3839 (f) **Alternate bid authorization.** When necessary to
3840 ensure ready availability of commodities for public works and the
3841 timely completion of public projects, no more than two (2)
3842 alternate bids may be accepted by a governing authority for
3843 commodities. No purchases may be made through use of such
3844 alternate bids procedure unless the lowest and best bidder cannot
3845 deliver the commodities contained in his bid. In that event,
3846 purchases of such commodities may be made from one (1) of the
3847 bidders whose bid was accepted as an alternate.

3848 (g) **Construction contract change authorization.** In the
3849 event a determination is made by an agency or governing authority
3850 after a construction contract is let that changes or modifications
3851 to the original contract are necessary or would better serve the



3852 purpose of the agency or the governing authority, such agency or
3853 governing authority may, in its discretion, order such changes
3854 pertaining to the construction that are necessary under the
3855 circumstances without the necessity of further public bids;
3856 provided that such change shall be made in a commercially
3857 reasonable manner and shall not be made to circumvent the public
3858 purchasing statutes. In addition to any other authorized person,
3859 the architect or engineer hired by an agency or governing
3860 authority with respect to any public construction contract shall
3861 have the authority, when granted by an agency or governing
3862 authority, to authorize changes or modifications to the original
3863 contract without the necessity of prior approval of the agency or
3864 governing authority when any such change or modification is less
3865 than one percent (1%) of the total contract amount. The agency or
3866 governing authority may limit the number, manner or frequency of
3867 such emergency changes or modifications.

3868 (h) **Petroleum purchase alternative.** In addition to
3869 other methods of purchasing authorized in this chapter, when any
3870 agency or governing authority shall have a need for gas, diesel
3871 fuel, oils and/or other petroleum products in excess of the amount
3872 set forth in paragraph (a) of this section, such agency or
3873 governing authority may purchase the commodity after having
3874 solicited and obtained at least two (2) competitive written bids,
3875 as defined in paragraph (b) of this section. If two (2)
3876 competitive written bids are not obtained, the entity shall comply



3877 with the procedures set forth in paragraph (c) of this section.
3878 In the event any agency or governing authority shall have
3879 advertised for bids for the purchase of gas, diesel fuel, oils and
3880 other petroleum products and coal and no acceptable bids can be
3881 obtained, such agency or governing authority is authorized and
3882 directed to enter into any negotiations necessary to secure the
3883 lowest and best contract available for the purchase of such
3884 commodities.

3885 (i) **Road construction petroleum products price**
3886 **adjustment clause authorization.** Any agency or governing
3887 authority authorized to enter into contracts for the construction,
3888 maintenance, surfacing or repair of highways, roads or streets,
3889 may include in its bid proposal and contract documents a price
3890 adjustment clause with relation to the cost to the contractor,
3891 including taxes, based upon an industry-wide cost index, of
3892 petroleum products including asphalt used in the performance or
3893 execution of the contract or in the production or manufacture of
3894 materials for use in such performance. Such industry-wide index
3895 shall be established and published monthly by the Mississippi
3896 Department of Transportation with a copy thereof to be mailed,
3897 upon request, to the clerks of the governing authority of each
3898 municipality and the clerks of each board of supervisors
3899 throughout the state. The price adjustment clause shall be based
3900 on the cost of such petroleum products only and shall not include
3901 any additional profit or overhead as part of the adjustment. The



3902 bid proposals or document contract shall contain the basis and
3903 methods of adjusting unit prices for the change in the cost of
3904 such petroleum products.

3905 (j) **State agency emergency purchase procedure.** If the
3906 governing board or the executive head, or his designees, of any
3907 agency of the state shall determine that an emergency exists in
3908 regard to the purchase of any commodities or repair contracts, so
3909 that the delay incident to giving opportunity for competitive
3910 bidding would be detrimental to the interests of the state, then
3911 the head of such agency, or his designees, shall file with the
3912 Department of Finance and Administration (i) a statement
3913 explaining the conditions and circumstances of the emergency,
3914 which shall include a detailed description of the events leading
3915 up to the situation and the negative impact to the entity if the
3916 purchase is made following the statutory requirements set forth in
3917 paragraph (a), (b) or (c) of this section, and (ii) a certified
3918 copy of the appropriate minutes of the board of such agency
3919 requesting the emergency purchase, if applicable. Upon receipt of
3920 the statement and applicable board certification, the State Fiscal
3921 Officer, or his designees, may, in writing, authorize the purchase
3922 or repair without having to comply with competitive bidding
3923 requirements.

3924 If the governing board or the executive head, or his
3925 designees, of any agency determines that an emergency exists in
3926 regard to the purchase of any commodities or repair contracts, so



3927 that the delay incident to giving opportunity for competitive
3928 bidding would threaten the health or safety of any person, or the
3929 preservation or protection of property, then the provisions in
3930 this section for competitive bidding shall not apply, and any
3931 officer or agent of the agency having general or specific
3932 authority for making the purchase or repair contract shall approve
3933 the bill presented for payment, and he shall certify in writing
3934 from whom the purchase was made, or with whom the repair contract
3935 was made.

3936 Total purchases made under this paragraph (j) shall only be
3937 for the purpose of meeting needs created by the emergency
3938 situation. Following the emergency purchase, documentation of the
3939 purchase, including a description of the commodity purchased, the
3940 purchase price thereof and the nature of the emergency shall be
3941 filed with the Department of Finance and Administration.

3942 (k) **Governing authority emergency purchase procedure.**

3943 If the governing authority, or the governing authority acting
3944 through its designee, shall determine that an emergency exists in
3945 regard to the purchase of any commodities or repair contracts, so
3946 that the delay incident to giving opportunity for competitive
3947 bidding would be detrimental to the interest of the governing
3948 authority, then the provisions herein for competitive bidding
3949 shall not apply and any officer or agent of such governing
3950 authority having general or special authority therefor in making
3951 such purchase or repair shall approve the bill presented therefor,



3952 and he shall certify in writing thereon from whom such purchase
3953 was made, or with whom such a repair contract was made. At the
3954 board meeting next following the emergency purchase or repair
3955 contract, documentation of the purchase or repair contract,
3956 including a description of the commodity purchased, the price
3957 thereof and the nature of the emergency shall be presented to the
3958 board and shall be placed on the minutes of the board of such
3959 governing authority.

3960 (1) **Hospital purchase, lease-purchase and lease**
3961 **authorization.**

3962 (i) The commissioners or board of trustees of any
3963 public hospital may contract with such lowest and best bidder for
3964 the purchase or lease-purchase of any commodity under a contract
3965 of purchase or lease-purchase agreement whose obligatory payment
3966 terms do not exceed five (5) years.

3967 (ii) In addition to the authority granted in
3968 subparagraph (i) of this paragraph (1), the commissioners or board
3969 of trustees is authorized to enter into contracts for the lease of
3970 equipment or services, or both, which it considers necessary for
3971 the proper care of patients if, in its opinion, it is not
3972 financially feasible to purchase the necessary equipment or
3973 services. Any such contract for the lease of equipment or
3974 services executed by the commissioners or board shall not exceed a
3975 maximum of five (5) years' duration and shall include a
3976 cancellation clause based on unavailability of funds. If such



3977 cancellation clause is exercised, there shall be no further
3978 liability on the part of the lessee. Any such contract for the
3979 lease of equipment or services executed on behalf of the
3980 commissioners or board that complies with the provisions of this
3981 subparagraph (ii) shall be excepted from the bid requirements set
3982 forth in this section.

3983 (m) **Exceptions from bidding requirements.** Excepted
3984 from bid requirements are:

3985 (i) **Purchasing agreements approved by department.**
3986 Purchasing agreements, contracts and maximum price regulations
3987 executed or approved by the Department of Finance and
3988 Administration.

3989 (ii) **Outside equipment repairs.** Repairs to
3990 equipment, when such repairs are made by repair facilities in the
3991 private sector; however, engines, transmissions, rear axles and/or
3992 other such components shall not be included in this exemption when
3993 replaced as a complete unit instead of being repaired and the need
3994 for such total component replacement is known before disassembly
3995 of the component; however, invoices identifying the equipment,
3996 specific repairs made, parts identified by number and name,
3997 supplies used in such repairs, and the number of hours of labor
3998 and costs therefor shall be required for the payment for such
3999 repairs.

4000 (iii) **In-house equipment repairs.** Purchases of
4001 parts for repairs to equipment, when such repairs are made by



4002 personnel of the agency or governing authority; however, entire
4003 assemblies, such as engines or transmissions, shall not be
4004 included in this exemption when the entire assembly is being
4005 replaced instead of being repaired.

4006 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
4007 of gravel or fill dirt which are to be removed and transported by
4008 the purchaser.

4009 (v) **Governmental equipment auctions.** Motor
4010 vehicles or other equipment purchased from a federal agency or
4011 authority, another governing authority or state agency of the
4012 State of Mississippi, or any governing authority or state agency
4013 of another state at a public auction held for the purpose of
4014 disposing of such vehicles or other equipment. Any purchase by a
4015 governing authority under the exemption authorized by this
4016 subparagraph (v) shall require advance authorization spread upon
4017 the minutes of the governing authority to include the listing of
4018 the item or items authorized to be purchased and the maximum bid
4019 authorized to be paid for each item or items.

4020 (vi) **Intergovernmental sales and transfers.**
4021 Purchases, sales, transfers or trades by governing authorities or
4022 state agencies when such purchases, sales, transfers or trades are
4023 made by a private treaty agreement or through means of
4024 negotiation, from any federal agency or authority, another
4025 governing authority or state agency of the State of Mississippi,
4026 or any state agency or governing authority of another state.



4027 Nothing in this section shall permit such purchases through public
4028 auction except as provided for in subparagraph (v) of this * * *
4029 paragraph (m). It is the intent of this section to allow
4030 governmental entities to dispose of and/or purchase commodities
4031 from other governmental entities at a price that is agreed to by
4032 both parties. This shall allow for purchases and/or sales at
4033 prices which may be determined to be below the market value if the
4034 selling entity determines that the sale at below market value is
4035 in the best interest of the taxpayers of the state. Governing
4036 authorities shall place the terms of the agreement and any
4037 justification on the minutes, and state agencies shall obtain
4038 approval from the Department of Finance and Administration, prior
4039 to releasing or taking possession of the commodities.

4040 (vii) **Perishable supplies or food.** Perishable
4041 supplies or food purchased for use in connection with hospitals,
4042 the school lunch programs, homemaking programs and for the feeding
4043 of county or municipal prisoners.

4044 (viii) **Single source items.** Noncompetitive items
4045 available from one (1) source only. In connection with the
4046 purchase of noncompetitive items only available from one (1)
4047 source, a certification of the conditions and circumstances
4048 requiring the purchase shall be filed by the agency with the
4049 Department of Finance and Administration and by the governing
4050 authority with the board of the governing authority. Upon receipt
4051 of that certification the Department of Finance and Administration



4052 or the board of the governing authority, as the case may be, may,
4053 in writing, authorize the purchase, which authority shall be noted
4054 on the minutes of the body at the next regular meeting thereafter.
4055 In those situations, a governing authority is not required to
4056 obtain the approval of the Department of Finance and
4057 Administration. Following the purchase, the executive head of the
4058 state agency, or his designees, shall file with the Department of
4059 Finance and Administration, documentation of the purchase,
4060 including a description of the commodity purchased, the purchase
4061 price thereof and the source from whom it was purchased.

4062 (ix) **Waste disposal facility construction**
4063 **contracts.** Construction of incinerators and other facilities for
4064 disposal of solid wastes in which products either generated
4065 therein, such as steam, or recovered therefrom, such as materials
4066 for recycling, are to be sold or otherwise disposed of; however,
4067 in constructing such facilities, a governing authority or agency
4068 shall publicly issue requests for proposals, advertised for in the
4069 same manner as provided herein for seeking bids for public
4070 construction projects, concerning the design, construction,
4071 ownership, operation and/or maintenance of such facilities,
4072 wherein such requests for proposals when issued shall contain
4073 terms and conditions relating to price, financial responsibility,
4074 technology, environmental compatibility, legal responsibilities
4075 and such other matters as are determined by the governing
4076 authority or agency to be appropriate for inclusion; and after



4077 responses to the request for proposals have been duly received,
4078 the governing authority or agency may select the most qualified
4079 proposal or proposals on the basis of price, technology and other
4080 relevant factors and from such proposals, but not limited to the
4081 terms thereof, negotiate and enter contracts with one or more of
4082 the persons or firms submitting proposals.

4083 (x) **Hospital group purchase contracts.** Supplies,
4084 commodities and equipment purchased by hospitals through group
4085 purchase programs pursuant to Section 31-7-38.

4086 (xi) **Information technology products.** Purchases
4087 of information technology products made by governing authorities
4088 under the provisions of purchase schedules, or contracts executed
4089 or approved by the Mississippi Department of Information
4090 Technology Services and designated for use by governing
4091 authorities.

4092 (xii) **Energy efficiency services and equipment.**
4093 Energy efficiency services and equipment acquired by school
4094 districts, community and junior colleges, institutions of higher
4095 learning and state agencies or other applicable governmental
4096 entities on a shared-savings, lease or lease-purchase basis
4097 pursuant to Section 31-7-14.

4098 (xiii) **Municipal electrical utility system fuel.**
4099 Purchases of coal and/or natural gas by municipally owned electric
4100 power generating systems that have the capacity to use both coal
4101 and natural gas for the generation of electric power.



4102 (xiv) **Library books and other reference materials.**

4103 Purchases by libraries or for libraries of books and periodicals;
4104 processed film, videocassette tapes, filmstrips and slides;
4105 recorded audiotapes, cassettes and diskettes; and any such items
4106 as would be used for teaching, research or other information
4107 distribution; however, equipment such as projectors, recorders,
4108 audio or video equipment, and monitor televisions are not exempt
4109 under this subparagraph.

4110 (xv) **Unmarked vehicles.** Purchases of unmarked
4111 vehicles when such purchases are made in accordance with
4112 purchasing regulations adopted by the Department of Finance and
4113 Administration pursuant to Section 31-7-9(2).

4114 (xvi) **Election ballots.** Purchases of ballots
4115 printed pursuant to Section 23-15-351.

4116 (xvii) **Multichannel interactive video systems.**
4117 From and after July 1, 1990, contracts by Mississippi Authority
4118 for Educational Television with any private educational
4119 institution or private nonprofit organization whose purposes are
4120 educational in regard to the construction, purchase, lease or
4121 lease-purchase of facilities and equipment and the employment of
4122 personnel for providing multichannel interactive video systems
4123 (ITSF) in the school districts of this state.

4124 (xviii) **Purchases of prison industry products by**
4125 **the Department of Corrections, regional correctional facilities or**
4126 **privately owned prisons.** Purchases made by the Mississippi



4127 Department of Corrections, regional correctional facilities or
4128 privately owned prisons involving any item that is manufactured,
4129 processed, grown or produced from the state's prison industries.

4130 (xix) **Undercover operations equipment.** Purchases
4131 of surveillance equipment or any other high-tech equipment to be
4132 used by law enforcement agents in undercover operations, provided
4133 that any such purchase shall be in compliance with regulations
4134 established by the Department of Finance and Administration.

4135 (xx) **Junior college books for rent.** Purchases by
4136 community or junior colleges of textbooks which are obtained for
4137 the purpose of renting such books to students as part of a book
4138 service system.

4139 (xxi) **Certain school district purchases.**
4140 Purchases of commodities made by school districts from vendors
4141 with which any levying authority of the school district, as
4142 defined in Section 37-57-1, has contracted through competitive
4143 bidding procedures for purchases of the same commodities.

4144 (xxii) **Garbage, solid waste and sewage contracts.**
4145 Contracts for garbage collection or disposal, contracts for solid
4146 waste collection or disposal and contracts for sewage collection
4147 or disposal.

4148 (xxiii) **Municipal water tank maintenance**
4149 **contracts.** Professional maintenance program contracts for the
4150 repair or maintenance of municipal water tanks, which provide
4151 professional services needed to maintain municipal water storage



4152 tanks for a fixed annual fee for a duration of two (2) or more
4153 years.

4154 (xxiv) **Purchases of Mississippi Industries for the**
4155 **Blind products.** Purchases made by state agencies or governing
4156 authorities involving any item that is manufactured, processed or
4157 produced by the Mississippi Industries for the Blind.

4158 (xxv) **Purchases of state-adopted textbooks.**
4159 Purchases of state-adopted textbooks by public school districts.

4160 (xxvi) **Certain purchases under the Mississippi**
4161 **Major Economic Impact Act.** Contracts entered into pursuant to the
4162 provisions of Section 57-75-9(2), (3) and (4).

4163 (xxvii) **Used heavy or specialized machinery or**
4164 **equipment for installation of soil and water conservation**
4165 **practices purchased at auction.** Used heavy or specialized
4166 machinery or equipment used for the installation and
4167 implementation of soil and water conservation practices or
4168 measures purchased subject to the restrictions provided in
4169 Sections 69-27-331 through 69-27-341. Any purchase by the State
4170 Soil and Water Conservation Commission under the exemption
4171 authorized by this subparagraph shall require advance
4172 authorization spread upon the minutes of the commission to include
4173 the listing of the item or items authorized to be purchased and
4174 the maximum bid authorized to be paid for each item or items.



4175 (xxviii) **Hospital lease of equipment or services.**
4176 Leases by hospitals of equipment or services if the leases are in
4177 compliance with paragraph (1)(ii).

4178 (xxix) **Purchases made pursuant to qualified**
4179 **cooperative purchasing agreements.** Purchases made by certified
4180 purchasing offices of state agencies or governing authorities
4181 under cooperative purchasing agreements previously approved by the
4182 Office of Purchasing and Travel and established by or for any
4183 municipality, county, parish or state government or the federal
4184 government, provided that the notification to potential
4185 contractors includes a clause that sets forth the availability of
4186 the cooperative purchasing agreement to other governmental
4187 entities. Such purchases shall only be made if the use of the
4188 cooperative purchasing agreements is determined to be in the best
4189 interest of the governmental entity.

4190 (xxx) **School yearbooks.** Purchases of school
4191 yearbooks by state agencies or governing authorities; provided,
4192 however, that state agencies and governing authorities shall use
4193 for these purchases the RFP process as set forth in the
4194 Mississippi Procurement Manual adopted by the Office of Purchasing
4195 and Travel.

4196 (xxxi) **Design-build method and dual-phase**
4197 **design-build method of contracting.** Contracts entered into under
4198 the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.



4199 (xxxii) **Toll roads and bridge construction**
4200 **projects.** Contracts entered into under the provisions of Section
4201 65-43-1 or 65-43-3.

4202 (xxxiii) **Certain purchases under Section 57-1-221.**
4203 Contracts entered into pursuant to the provisions of Section
4204 57-1-221.

4205 (xxxiv) **Certain transfers made pursuant to the**
4206 **provisions of Section 57-105-1(7).** Transfers of public property
4207 or facilities under Section 57-105-1(7) and construction related
4208 to such public property or facilities.

4209 (xxxv) **Certain purchases or transfers entered into**
4210 **with local electrical power associations.** Contracts or agreements
4211 entered into under the provisions of Section 55-3-33.

4212 (xxxvi) **Certain purchases by an academic medical**
4213 **center or health sciences school.** Purchases by an academic
4214 medical center or health sciences school, as defined in Section 2
4215 of this act, of commodities that are used for clinical purposes
4216 and 1. intended for use in the diagnosis of disease or other
4217 conditions or in the cure, mitigation, treatment or prevention of
4218 disease, and 2. medical devices, biological, drugs and radiation
4219 emitting devices as defined by the United State Food and Drug
4220 Administration.

4221 (n) **Term contract authorization.** All contracts for the
4222 purchase of:



4223 (i) All contracts for the purchase of commodities,
4224 equipment and public construction (including, but not limited to,
4225 repair and maintenance), may be let for periods of not more than
4226 sixty (60) months in advance, subject to applicable statutory
4227 provisions prohibiting the letting of contracts during specified
4228 periods near the end of terms of office. Term contracts for a
4229 period exceeding twenty-four (24) months shall also be subject to
4230 ratification or cancellation by governing authority boards taking
4231 office subsequent to the governing authority board entering the
4232 contract.

4233 (ii) Bid proposals and contracts may include price
4234 adjustment clauses with relation to the cost to the contractor
4235 based upon a nationally published industry-wide or nationally
4236 published and recognized cost index. The cost index used in a
4237 price adjustment clause shall be determined by the Department of
4238 Finance and Administration for the state agencies and by the
4239 governing board for governing authorities. The bid proposal and
4240 contract documents utilizing a price adjustment clause shall
4241 contain the basis and method of adjusting unit prices for the
4242 change in the cost of such commodities, equipment and public
4243 construction.

4244 (o) **Purchase law violation prohibition and vendor**
4245 **penalty.** No contract or purchase as herein authorized shall be
4246 made for the purpose of circumventing the provisions of this
4247 section requiring competitive bids, nor shall it be lawful for any



4248 person or concern to submit individual invoices for amounts within
4249 those authorized for a contract or purchase where the actual value
4250 of the contract or commodity purchased exceeds the authorized
4251 amount and the invoices therefor are split so as to appear to be
4252 authorized as purchases for which competitive bids are not
4253 required. Submission of such invoices shall constitute a
4254 misdemeanor punishable by a fine of not less than Five Hundred
4255 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
4256 or by imprisonment for thirty (30) days in the county jail, or
4257 both such fine and imprisonment. In addition, the claim or claims
4258 submitted shall be forfeited.

4259 (p) **Electrical utility petroleum-based equipment**
4260 **purchase procedure.** When in response to a proper advertisement
4261 therefor, no bid firm as to price is submitted to an electric
4262 utility for power transformers, distribution transformers, power
4263 breakers, reclosers or other articles containing a petroleum
4264 product, the electric utility may accept the lowest and best bid
4265 therefor although the price is not firm.

4266 (q) **Fuel management system bidding procedure.** Any
4267 governing authority or agency of the state shall, before
4268 contracting for the services and products of a fuel management or
4269 fuel access system, enter into negotiations with not fewer than
4270 two (2) sellers of fuel management or fuel access systems for
4271 competitive written bids to provide the services and products for
4272 the systems. In the event that the governing authority or agency



4273 cannot locate two (2) sellers of such systems or cannot obtain
4274 bids from two (2) sellers of such systems, it shall show proof
4275 that it made a diligent, good-faith effort to locate and negotiate
4276 with two (2) sellers of such systems. Such proof shall include,
4277 but not be limited to, publications of a request for proposals and
4278 letters soliciting negotiations and bids. For purposes of this
4279 paragraph (q), a fuel management or fuel access system is an
4280 automated system of acquiring fuel for vehicles as well as
4281 management reports detailing fuel use by vehicles and drivers, and
4282 the term "competitive written bid" shall have the meaning as
4283 defined in paragraph (b) of this section. Governing authorities
4284 and agencies shall be exempt from this process when contracting
4285 for the services and products of fuel management or fuel access
4286 systems under the terms of a state contract established by the
4287 Office of Purchasing and Travel.

4288 (r) **Solid waste contract proposal procedure.** Before
4289 entering into any contract for garbage collection or disposal,
4290 contract for solid waste collection or disposal or contract for
4291 sewage collection or disposal, which involves an expenditure of
4292 more than Fifty Thousand Dollars (\$50,000.00), a governing
4293 authority or agency shall issue publicly a request for proposals
4294 concerning the specifications for such services which shall be
4295 advertised for in the same manner as provided in this section for
4296 seeking bids for purchases which involve an expenditure of more
4297 than the amount provided in paragraph (c) of this section. Any



4298 request for proposals when issued shall contain terms and
4299 conditions relating to price, financial responsibility,
4300 technology, legal responsibilities and other relevant factors as
4301 are determined by the governing authority or agency to be
4302 appropriate for inclusion; all factors determined relevant by the
4303 governing authority or agency or required by this paragraph (r)
4304 shall be duly included in the advertisement to elicit proposals.
4305 After responses to the request for proposals have been duly
4306 received, the governing authority or agency shall select the most
4307 qualified proposal or proposals on the basis of price, technology
4308 and other relevant factors and from such proposals, but not
4309 limited to the terms thereof, negotiate and enter into contracts
4310 with one or more of the persons or firms submitting proposals. If
4311 the governing authority or agency deems none of the proposals to
4312 be qualified or otherwise acceptable, the request for proposals
4313 process may be reinitiated. Notwithstanding any other provisions
4314 of this paragraph, where a county with at least thirty-five
4315 thousand (35,000) nor more than forty thousand (40,000)
4316 population, according to the 1990 federal decennial census, owns
4317 or operates a solid waste landfill, the governing authorities of
4318 any other county or municipality may contract with the governing
4319 authorities of the county owning or operating the landfill,
4320 pursuant to a resolution duly adopted and spread upon the minutes
4321 of each governing authority involved, for garbage or solid waste
4322 collection or disposal services through contract negotiations.



4323 (s) **Minority set-aside authorization.** Notwithstanding
4324 any provision of this section to the contrary, any agency or
4325 governing authority, by order placed on its minutes, may, in its
4326 discretion, set aside not more than twenty percent (20%) of its
4327 anticipated annual expenditures for the purchase of commodities
4328 from minority businesses; however, all such set-aside purchases
4329 shall comply with all purchasing regulations promulgated by the
4330 Department of Finance and Administration and shall be subject to
4331 bid requirements under this section. Set-aside purchases for
4332 which competitive bids are required shall be made from the lowest
4333 and best minority business bidder. For the purposes of this
4334 paragraph, the term "minority business" means a business which is
4335 owned by a majority of persons who are United States citizens or
4336 permanent resident aliens (as defined by the Immigration and
4337 Naturalization Service) of the United States, and who are Asian,
4338 Black, Hispanic or Native American, according to the following
4339 definitions:

4340 (i) "Asian" means persons having origins in any of
4341 the original people of the Far East, Southeast Asia, the Indian
4342 subcontinent, or the Pacific Islands.

4343 (ii) "Black" means persons having origins in any
4344 black racial group of Africa.

4345 (iii) "Hispanic" means persons of Spanish or
4346 Portuguese culture with origins in Mexico, South or Central
4347 America, or the Caribbean Islands, regardless of race.



4348 (iv) "Native American" means persons having
4349 origins in any of the original people of North America, including
4350 American Indians, Eskimos and Aleuts.

4351 (t) **Construction punch list restriction.** The
4352 architect, engineer or other representative designated by the
4353 agency or governing authority that is contracting for public
4354 construction or renovation may prepare and submit to the
4355 contractor only one (1) preliminary punch list of items that do
4356 not meet the contract requirements at the time of substantial
4357 completion and one (1) final list immediately before final
4358 completion and final payment.

4359 (u) **Procurement of construction services by state**
4360 **institutions of higher learning.** Contracts for privately financed
4361 construction of auxiliary facilities on the campus of a state
4362 institution of higher learning may be awarded by the Board of
4363 Trustees of State Institutions of Higher Learning to the lowest
4364 and best bidder, where sealed bids are solicited, or to the
4365 offeror whose proposal is determined to represent the best value
4366 to the citizens of the State of Mississippi, where requests for
4367 proposals are solicited.

4368 (v) **Insurability of bidders for public construction or**
4369 **other public contracts.** In any solicitation for bids to perform
4370 public construction or other public contracts to which this
4371 section applies including, but not limited to, contracts for
4372 repair and maintenance, for which the contract will require



4373 insurance coverage in an amount of not less than One Million
4374 Dollars (\$1,000,000.00), bidders shall be permitted to either
4375 submit proof of current insurance coverage in the specified amount
4376 or demonstrate ability to obtain the required coverage amount of
4377 insurance if the contract is awarded to the bidder. Proof of
4378 insurance coverage shall be submitted within five (5) business
4379 days from bid acceptance.

4380 (w) **Purchase authorization clarification.** Nothing in
4381 this section shall be construed as authorizing any purchase not
4382 authorized by law.

4383 **SECTION 42.** Section 41-7-205, Mississippi Code of 1972, is
4384 amended as follows:

4385 41-7-205. An applicant proposing a project which may be
4386 governed by the provisions of Section 41-7-171 et seq. may submit
4387 a determination of reviewability request to obtain a written
4388 declaratory opinion regarding the reviewability of the proposed
4389 project. If such opinion is sought, the requestor and department
4390 shall abide by the provisions of Section 25-43-2.103 as they are
4391 effective on July 1, 2016, except that the department's response
4392 shall be provided within forty-five (45) days of the request. A
4393 health care collaborative as defined in Section 2 of this act may
4394 seek an opinion from the department about whether a certificate of
4395 need is not required for a project of the health care
4396 collaborative because of the sponsoring university or health care



4397 collaborative's teaching or research mission, as provided in
4398 Section 18(h) of this act.

4399 **SECTION 43.** The provisions of this act are cumulative and
4400 shall not be deemed to repeal existing laws, except to the extent
4401 such laws are clearly inconsistent with the provisions of this
4402 act.

4403 **SECTION 44.** This act shall take effect and be in force from
4404 and after July 1, 2017.

