

By: Representative Weathersby

To: Public Property

HOUSE BILL NO. 188

1 AN ACT TO BRING FORWARD SECTIONS 19-11-9, 29-3-88, 29-9-1,
 2 29-9-3, 29-9-5, 29-9-7, 31-5-25, 31-7-13, 31-8-13, 31-11-1,
 3 31-11-3, 31-11-4, 31-11-7, 31-11-25, 31-11-27, 31-11-29, 31-11-30,
 4 31-11-31, 31-11-33, 31-11-35, 31-25-20, 55-19-15, 77-3-105,
 5 77-6-59 AND 77-5-767, MISSISSIPPI CODE OF 1972, WHICH PRESCRIBE
 6 VARIOUS PROVISIONS RELATING TO THE ACQUISITION, AUDIT AND
 7 INVENTORY OF PUBLIC CONSTRUCTION PROJECTS; AND FOR RELATED
 8 PURPOSES.

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

10 **SECTION 1.** Section 19-11-9, Mississippi Code of 1972, is
 11 brought forward as follows:

12 19-11-9. The budget of expenses, revenues and working cash
 13 balance shall be prepared in such form as may be necessary, upon
 14 forms to be prescribed by the State Auditor, as the head of the
 15 State Department of Audit, or by the director thereof appointed by
 16 the State Auditor. Such budget of expenses shall show in detail
 17 all estimates of the expenditures to be made out of the general
 18 county fund and its auxiliary funds, all estimates of expenditures
 19 to be made out of the road and bridge maintenance and construction
 20 funds, and all amounts to be paid out of the several bond and



21 interest sinking funds for the bonded debt service in the next
22 fiscal year.

23 **SECTION 2.** Section 29-3-88, Mississippi Code of 1972, is
24 brought forward as follows:

25 29-3-88. The board of education is authorized and empowered
26 to acquire in its own name by purchase, contribution or otherwise
27 all land situated in its district within sixteenth section or lieu
28 lands and under a lease contract which shall be necessary and
29 desirable in connection with the construction of any public school
30 building or structure. If the board shall be unable to agree with
31 the lessee of any such land in connection with any such project,
32 the board shall have the power and authority to acquire any such
33 land by condemnation proceedings in the manner otherwise provided
34 by law and, for such purpose, the right of eminent domain is
35 hereby conferred upon and vested in said board.

36 **SECTION 3.** Section 29-9-1, Mississippi Code of 1972, is
37 brought forward as follows:

38 29-9-1. The State Auditor of Public Accounts shall require
39 the heads of all state agencies to make an inventory of all lands,
40 buildings, equipment, furniture, and other personal property owned
41 by or under the control of the respective agencies, except highway
42 rights-of-way owned or acquired by the Mississippi State Highway
43 Commission. The inventories shall be made on forms to be
44 prescribed and furnished by said State Auditor. Agencies,
45 including the Legislature, which have on file proper inventories



46 on August 8, 1968, shall not be required to make new inventories,
47 but the remaining provisions of this chapter respecting
48 inventories shall be applicable thereto.

49 **SECTION 4.** Section 29-9-3, Mississippi Code of 1972, is
50 brought forward as follows:

51 29-9-3. The inventories herein required shall show the name,
52 description, serial number, purchase or construction date, and the
53 cost or purchase price of each article or piece of property, and
54 any further information which the state auditor may require. A
55 number shall be securely attached to each piece of furniture,
56 equipment, or other property designated by the auditor not having
57 a serial number, and the number shall be used in inventories as a
58 serial number. Estimates may be used for purchase prices and
59 dates on items purchased prior to January, 1946, provided records
60 of same are not available.

61 **SECTION 5.** Section 29-9-5, Mississippi Code of 1972, is
62 brought forward as follows:

63 29-9-5. Each inventory shall be executed in duplicate, the
64 copy shall be retained by the maker for his files, and the
65 original shall be delivered to the State Auditor of public
66 accounts. The original shall be certified by the heads of the
67 respective institutions, departments, commissions, and agencies,
68 or a responsible bonded property officer designated by him.

69 **SECTION 6.** Section 29-9-7, Mississippi Code of 1972, is
70 brought forward as follows:



71 29-9-7. The auditor of public accounts shall compile or
72 cause to be compiled from the inventories thus submitted to him
73 one master inventory for the state as a whole, which shall be
74 available for inspection to all state officials and newly elected
75 or appointed officials who are about to take office.

76 **SECTION 7.** Section 31-5-25, Mississippi Code of 1972, is
77 brought forward as follows:

78 31-5-25. (1) All sums due contractors under all public
79 construction contracts shall be paid as follows:

80 (a) Partial, progress or interim payments: All
81 partial, progress or interim payments or monies owed contractors
82 shall be paid when due and payable under the terms of the
83 contract. If they are not paid within forty-five (45) calendar
84 days from the day they were due and payable, then they shall bear
85 interest from the due date until paid at the rate of one percent
86 (1%) per month until fully paid.

87 (b) Final payments: The final payment of all monies
88 owed contractors shall be due and payable:

89 (i) At the completion of the project or after the
90 work has been substantially completed in accordance with the terms
91 and provisions of the contract;

92 (ii) When the owner beneficially uses or occupies
93 the project except in the case where the project involves
94 renovation or alteration to an existing facility in which the



95 owner maintains beneficial use or occupancy during the course of
96 the project;

97 (iii) When the project is certified as having been
98 completed by the architect or engineer authorized to make such
99 certification; or

100 (iv) When the project is certified as having been
101 completed by the contracting authority representing the State of
102 Mississippi or any of its political subdivisions, whichever event
103 shall first occur.

104 If the contractor is not paid in full within forty-five (45)
105 calendar days from the first occurrence of one (1) of the
106 above-mentioned events, then said final payment shall bear
107 interest from the date of said first occurrence at the rate of one
108 percent (1%) per month until fully paid.

109 In no event shall said final payment due the contractor be
110 made until the consent of the contractor's surety has been
111 obtained in writing and delivered to the proper contracting
112 authority.

113 (c) Contracts for the construction of prison facilities
114 let or approved by the State Prison Emergency Construction and
115 Management Board when exercising its emergency powers to remove
116 two thousand (2,000) inmates from county jails are exempt from
117 this section; however, this exemption does not apply to contracts
118 for the construction of private correctional facilities and
119 additional facilities at the South Mississippi Correctional



120 Institution and the Central Mississippi Correctional Facility.
121 This paragraph shall stand repealed from and after July 1, 1996.

122 (2) Contractors shall submit monthly certification to the
123 project engineer or architect indicating payments to
124 subcontractors on prior payment request.

125 **SECTION 8.** Section 31-7-13, Mississippi Code of 1972, is
126 brought forward as follows:

127 31-7-13. All agencies and governing authorities shall
128 purchase their commodities and printing; contract for garbage
129 collection or disposal; contract for solid waste collection or
130 disposal; contract for sewage collection or disposal; contract for
131 public construction; and contract for rentals as herein provided.

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

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

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

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

141 **not over \$50,000.00.** Purchases which involve an expenditure of
142 more than Five Thousand Dollars (\$5,000.00) but not more than
143 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and
144 shipping charges, may be made from the lowest and best bidder



145 without publishing or posting advertisement for bids, provided at
146 least two (2) competitive written bids have been obtained. Any
147 state agency or community/junior college purchasing commodities or
148 procuring construction pursuant to this paragraph (b) may
149 authorize its purchasing agent, or his designee, to accept the
150 lowest competitive written bid under Fifty Thousand Dollars
151 (\$50,000.00). Any governing authority purchasing commodities
152 pursuant to this paragraph (b) may authorize its purchasing agent,
153 or his designee, with regard to governing authorities other than
154 counties, or its purchase clerk, or his designee, with regard to
155 counties, to accept the lowest and best competitive written bid.
156 Such authorization shall be made in writing by the governing
157 authority and shall be maintained on file in the primary office of
158 the agency and recorded in the official minutes of the governing
159 authority, as appropriate. The purchasing agent or the purchase
160 clerk, or their designee, as the case may be, and not the
161 governing authority, shall be liable for any penalties and/or
162 damages as may be imposed by law for any act or omission of the
163 purchasing agent or purchase clerk, or their designee,
164 constituting a violation of law in accepting any bid without
165 approval by the governing authority. The term "competitive
166 written bid" shall mean a bid submitted on a bid form furnished by
167 the buying agency or governing authority and signed by authorized
168 personnel representing the vendor, or a bid submitted on a
169 vendor's letterhead or identifiable bid form and signed by



170 authorized personnel representing the vendor. "Competitive" shall
171 mean that the bids are developed based upon comparable
172 identification of the needs and are developed independently and
173 without knowledge of other bids or prospective bids. Any bid item
174 for construction in excess of Five Thousand Dollars (\$5,000.00)
175 shall be broken down by components to provide detail of component
176 description and pricing. These details shall be submitted with
177 the written bids and become part of the bid evaluation criteria.
178 Bids may be submitted by facsimile, electronic mail or other
179 generally accepted method of information distribution. Bids
180 submitted by electronic transmission shall not require the
181 signature of the vendor's representative unless required by
182 agencies or governing authorities.

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

184 (i) **Publication requirement.**

185 1. Purchases which involve an expenditure of
186 more than Fifty Thousand Dollars (\$50,000.00), exclusive of
187 freight and shipping charges, may be made from the lowest and best
188 bidder after advertising for competitive bids once each week for
189 two (2) consecutive weeks in a regular newspaper published in the
190 county or municipality in which such agency or governing authority
191 is located. However, all American Recovery and Reinvestment Act
192 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
193 shall be bid. All references to American Recovery and
194 Reinvestment Act projects in this section shall not apply to



195 programs identified in Division B of the American Recovery and
196 Reinvestment Act.

197 2. Reverse auctions shall be the primary
198 method for receiving bids during the bidding process. If a
199 purchasing entity determines that a reverse auction is not in the
200 best interest of the state, then that determination must be
201 approved by the Public Procurement Review Board. The purchasing
202 entity shall submit a detailed explanation of why a reverse
203 auction would not be in the best interest of the state and present
204 an alternative process to be approved by the Public Procurement
205 Review Board. If the Public Procurement Review Board authorizes
206 the purchasing entity to solicit bids with a method other than
207 reverse auction, then the purchasing entity may designate the
208 other methods by which the bids will be received, including, but
209 not limited to, bids sealed in an envelope, bids received
210 electronically in a secure system, or bids received by any other
211 method that promotes open competition and has been approved by the
212 Office of Purchasing and Travel. However, reverse auction shall
213 not be used for any public contract for design or construction of
214 public facilities, including buildings, roads and bridges. The
215 Public Procurement Review Board must approve any contract entered
216 into by alternative process. The provisions of this item 2 shall
217 not apply to the individual state institutions of higher learning.

218 3. The date as published for the bid opening
219 shall not be less than seven (7) working days after the last



220 published notice; however, if the purchase involves a construction
221 project in which the estimated cost is in excess of Fifty Thousand
222 Dollars (\$50,000.00), such bids shall not be opened in less than
223 fifteen (15) working days after the last notice is published and
224 the notice for the purchase of such construction shall be
225 published once each week for two (2) consecutive weeks. However,
226 all American Recovery and Reinvestment Act projects in excess of
227 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
228 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
229 under the American Recovery and Reinvestment Act, publication
230 shall be made one (1) time and the bid opening for construction
231 projects shall not be less than ten (10) working days after the
232 date of the published notice. The notice of intention to let
233 contracts or purchase equipment shall state the time and place at
234 which bids shall be received, list the contracts to be made or
235 types of equipment or supplies to be purchased, and, if all plans
236 and/or specifications are not published, refer to the plans and/or
237 specifications on file. If there is no newspaper published in the
238 county or municipality, then such notice shall be given by posting
239 same at the courthouse, or for municipalities at the city hall,
240 and at two (2) other public places in the county or municipality,
241 and also by publication once each week for two (2) consecutive
242 weeks in some newspaper having a general circulation in the county
243 or municipality in the above-provided manner. On the same date
244 that the notice is submitted to the newspaper for publication, the



245 agency or governing authority involved shall mail written notice
246 to, or provide electronic notification to the main office of the
247 Mississippi Procurement Technical Assistance Program under the
248 Mississippi Development Authority that contains the same
249 information as that in the published notice. Submissions received
250 by the Mississippi Procurement Technical Assistance Program for
251 projects funded by the American Recovery and Reinvestment Act
252 shall be displayed on a separate and unique Internet web page
253 accessible to the public and maintained by the Mississippi
254 Development Authority for the Mississippi Procurement Technical
255 Assistance Program. Those American Recovery and Reinvestment Act
256 related submissions shall be publicly posted within twenty-four
257 (24) hours of receipt by the Mississippi Development Authority and
258 the bid opening shall not occur until the submission has been
259 posted for ten (10) consecutive days. The Department of Finance
260 and Administration shall maintain information regarding contracts
261 and other expenditures from the American Recovery and Reinvestment
262 Act, on a unique Internet web page accessible to the public. The
263 Department of Finance and Administration shall promulgate rules
264 regarding format, content and deadlines, unless otherwise
265 specified by law, of the posting of award notices, contract
266 execution and subsequent amendments, links to the contract
267 documents, expenditures against the awarded contracts and general
268 expenditures of funds from the American Recovery and Reinvestment
269 Act. Within one (1) working day of the contract award, the agency



270 or governing authority shall post to the designated web page
271 maintained by the Department of Finance and Administration, notice
272 of the award, including the award recipient, the contract amount,
273 and a brief summary of the contract in accordance with rules
274 promulgated by the department. Within one (1) working day of the
275 contract execution, the agency or governing authority shall post
276 to the designated web page maintained by the Department of Finance
277 and Administration a summary of the executed contract and make a
278 copy of the appropriately redacted contract documents available
279 for linking to the designated web page in accordance with the
280 rules promulgated by the department. The information provided by
281 the agency or governing authority shall be posted to the web page
282 for the duration of the American Recovery and Reinvestment Act
283 funding or until the project is completed, whichever is longer.

284 (ii) **Bidding process amendment procedure.** If all
285 plans and/or specifications are published in the notification,
286 then the plans and/or specifications may not be amended. If all
287 plans and/or specifications are not published in the notification,
288 then amendments to the plans/specifications, bid opening date, bid
289 opening time and place may be made, provided that the agency or
290 governing authority maintains a list of all prospective bidders
291 who are known to have received a copy of the bid documents and all
292 such prospective bidders are sent copies of all amendments. This
293 notification of amendments may be made via mail, facsimile,
294 electronic mail or other generally accepted method of information



295 distribution. No addendum to bid specifications may be issued
296 within two (2) working days of the time established for the
297 receipt of bids unless such addendum also amends the bid opening
298 to a date not less than five (5) working days after the date of
299 the addendum.

300 (iii) **Filing requirement.** In all cases involving
301 governing authorities, before the notice shall be published or
302 posted, the plans or specifications for the construction or
303 equipment being sought shall be filed with the clerk of the board
304 of the governing authority. In addition to these requirements, a
305 bid file shall be established which shall indicate those vendors
306 to whom such solicitations and specifications were issued, and
307 such file shall also contain such information as is pertinent to
308 the bid.

309 (iv) **Specification restrictions.**

310 1. Specifications pertinent to such bidding
311 shall be written so as not to exclude comparable equipment of
312 domestic manufacture. However, if valid justification is
313 presented, the Department of Finance and Administration or the
314 board of a governing authority may approve a request for specific
315 equipment necessary to perform a specific job. Further, such
316 justification, when placed on the minutes of the board of a
317 governing authority, may serve as authority for that governing
318 authority to write specifications to require a specific item of
319 equipment needed to perform a specific job. In addition to these



320 requirements, from and after July 1, 1990, vendors of relocatable
321 classrooms and the specifications for the purchase of such
322 relocatable classrooms published by local school boards shall meet
323 all pertinent regulations of the State Board of Education,
324 including prior approval of such bid by the State Department of
325 Education.

326 2. Specifications for construction projects
327 may include an allowance for commodities, equipment, furniture,
328 construction materials or systems in which prospective bidders are
329 instructed to include in their bids specified amounts for such
330 items so long as the allowance items are acquired by the vendor in
331 a commercially reasonable manner and approved by the
332 agency/governing authority. Such acquisitions shall not be made
333 to circumvent the public purchasing laws.

334 (v) **Electronic bids.** Agencies and governing
335 authorities shall provide a secure electronic interactive system
336 for the submittal of bids requiring competitive bidding that shall
337 be an additional bidding option for those bidders who choose to
338 submit their bids electronically. The Department of Finance and
339 Administration shall provide, by regulation, the standards that
340 agencies must follow when receiving electronic bids. Agencies and
341 governing authorities shall make the appropriate provisions
342 necessary to accept electronic bids from those bidders who choose
343 to submit their bids electronically for all purchases requiring
344 competitive bidding under this section. Any special condition or



345 requirement for the electronic bid submission shall be specified
346 in the advertisement for bids required by this section. Agencies
347 or governing authorities that are currently without available high
348 speed Internet access shall be exempt from the requirement of this
349 subparagraph (v) until such time that high speed Internet access
350 becomes available. Any county having a population of less than
351 twenty thousand (20,000) shall be exempt from the provisions of
352 this subparagraph (v). Any municipality having a population of
353 less than ten thousand (10,000) shall be exempt from the
354 provisions of this subparagraph (v). The provisions of this
355 subparagraph (v) shall not require any bidder to submit bids
356 electronically. When construction bids are submitted
357 electronically, the requirement for including a certificate of
358 responsibility, or a statement that the bid enclosed does not
359 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
360 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
361 deemed in compliance with by including same as an attachment with
362 the electronic bid submittal.

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

364 (i) **Decision procedure.** Purchases may be made
365 from the lowest and best bidder. In determining the lowest and
366 best bid, freight and shipping charges shall be included.
367 Life-cycle costing, total cost bids, warranties, guaranteed
368 buy-back provisions and other relevant provisions may be included
369 in the best bid calculation. All best bid procedures for state



370 agencies must be in compliance with regulations established by the
371 Department of Finance and Administration. If any governing
372 authority accepts a bid other than the lowest bid actually
373 submitted, it shall place on its minutes detailed calculations and
374 narrative summary showing that the accepted bid was determined to
375 be the lowest and best bid, including the dollar amount of the
376 accepted bid and the dollar amount of the lowest bid. No agency
377 or governing authority shall accept a bid based on items not
378 included in the specifications.

379 (ii) **Decision procedure for Certified Purchasing**
380 **Offices.** In addition to the decision procedure set forth in
381 subparagraph (i) of this paragraph (d), Certified Purchasing
382 Offices may also use the following procedure: Purchases may be
383 made from the bidder offering the best value. In determining the
384 best value bid, freight and shipping charges shall be included.
385 Life-cycle costing, total cost bids, warranties, guaranteed
386 buy-back provisions, documented previous experience, training
387 costs and other relevant provisions, including, but not limited
388 to, a bidder having a local office and inventory located within
389 the jurisdiction of the governing authority, may be included in
390 the best value calculation. This provision shall authorize
391 Certified Purchasing Offices to utilize a Request For Proposals
392 (RFP) process when purchasing commodities. All best value
393 procedures for state agencies must be in compliance with
394 regulations established by the Department of Finance and



395 Administration. No agency or governing authority shall accept a
396 bid based on items or criteria not included in the specifications.

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

398 **Landmarks.** In addition to the decision procedure set forth in
399 subparagraph (i) of this paragraph (d), where purchase involves
400 renovation, restoration, or both, of the State Capitol Building or
401 any other historical building designated for at least five (5)
402 years as a Mississippi Landmark by the Board of Trustees of the
403 Department of Archives and History under the authority of Sections
404 39-7-7 and 39-7-11, the agency or governing authority may use the
405 following procedure: Purchases may be made from the lowest and
406 best prequalified bidder. Prequalification of bidders shall be
407 determined not less than fifteen (15) working days before the
408 first published notice of bid opening. Prequalification criteria
409 shall be limited to bidder's knowledge and experience in
410 historical restoration, preservation and renovation. In
411 determining the lowest and best bid, freight and shipping charges
412 shall be included. Life-cycle costing, total cost bids,
413 warranties, guaranteed buy-back provisions and other relevant
414 provisions may be included in the best bid calculation. All best
415 bid and prequalification procedures for state agencies must be in
416 compliance with regulations established by the Department of
417 Finance and Administration. If any governing authority accepts a
418 bid other than the lowest bid actually submitted, it shall place
419 on its minutes detailed calculations and narrative summary showing



420 that the accepted bid was determined to be the lowest and best
421 bid, including the dollar amount of the accepted bid and the
422 dollar amount of the lowest bid. No agency or governing authority
423 shall accept a bid based on items not included in the
424 specifications.

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

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

431 (e) **Lease-purchase authorization.** For the purposes of
432 this section, the term "equipment" shall mean equipment, furniture
433 and, if applicable, associated software and other applicable
434 direct costs associated with the acquisition. Any lease-purchase
435 of equipment which an agency is not required to lease-purchase
436 under the master lease-purchase program pursuant to Section
437 31-7-10 and any lease-purchase of equipment which a governing
438 authority elects to lease-purchase may be acquired by a
439 lease-purchase agreement under this paragraph (e). Lease-purchase
440 financing may also be obtained from the vendor or from a
441 third-party source after having solicited and obtained at least
442 two (2) written competitive bids, as defined in paragraph (b) of
443 this section, for such financing without advertising for such
444 bids. Solicitation for the bids for financing may occur before or



445 after acceptance of bids for the purchase of such equipment or,
446 where no such bids for purchase are required, at any time before
447 the purchase thereof. No such lease-purchase agreement shall be
448 for an annual rate of interest which is greater than the overall
449 maximum interest rate to maturity on general obligation
450 indebtedness permitted under Section 75-17-101, and the term of
451 such lease-purchase agreement shall not exceed the useful life of
452 equipment covered thereby as determined according to the upper
453 limit of the asset depreciation range (ADR) guidelines for the
454 Class Life Asset Depreciation Range System established by the
455 Internal Revenue Service pursuant to the United States Internal
456 Revenue Code and regulations thereunder as in effect on December
457 31, 1980, or comparable depreciation guidelines with respect to
458 any equipment not covered by ADR guidelines. Any lease-purchase
459 agreement entered into pursuant to this paragraph (e) may contain
460 any of the terms and conditions which a master lease-purchase
461 agreement may contain under the provisions of Section 31-7-10(5),
462 and shall contain an annual allocation dependency clause
463 substantially similar to that set forth in Section 31-7-10(8).
464 Each agency or governing authority entering into a lease-purchase
465 transaction pursuant to this paragraph (e) shall maintain with
466 respect to each such lease-purchase transaction the same
467 information as required to be maintained by the Department of
468 Finance and Administration pursuant to Section 31-7-10(13).
469 However, nothing contained in this section shall be construed to



470 permit agencies to acquire items of equipment with a total
471 acquisition cost in the aggregate of less than Ten Thousand
472 Dollars (\$10,000.00) by a single lease-purchase transaction. All
473 equipment, and the purchase thereof by any lessor, acquired by
474 lease-purchase under this paragraph and all lease-purchase
475 payments with respect thereto shall be exempt from all Mississippi
476 sales, use and ad valorem taxes. Interest paid on any
477 lease-purchase agreement under this section shall be exempt from
478 State of Mississippi income taxation.

479 (f) **Alternate bid authorization.** When necessary to
480 ensure ready availability of commodities for public works and the
481 timely completion of public projects, no more than two (2)
482 alternate bids may be accepted by a governing authority for
483 commodities. No purchases may be made through use of such
484 alternate bids procedure unless the lowest and best bidder cannot
485 deliver the commodities contained in his bid. In that event,
486 purchases of such commodities may be made from one (1) of the
487 bidders whose bid was accepted as an alternate.

488 (g) **Construction contract change authorization.** In the
489 event a determination is made by an agency or governing authority
490 after a construction contract is let that changes or modifications
491 to the original contract are necessary or would better serve the
492 purpose of the agency or the governing authority, such agency or
493 governing authority may, in its discretion, order such changes
494 pertaining to the construction that are necessary under the



495 circumstances without the necessity of further public bids;
496 provided that such change shall be made in a commercially
497 reasonable manner and shall not be made to circumvent the public
498 purchasing statutes. In addition to any other authorized person,
499 the architect or engineer hired by an agency or governing
500 authority with respect to any public construction contract shall
501 have the authority, when granted by an agency or governing
502 authority, to authorize changes or modifications to the original
503 contract without the necessity of prior approval of the agency or
504 governing authority when any such change or modification is less
505 than one percent (1%) of the total contract amount. The agency or
506 governing authority may limit the number, manner or frequency of
507 such emergency changes or modifications.

508 (h) **Petroleum purchase alternative.** In addition to
509 other methods of purchasing authorized in this chapter, when any
510 agency or governing authority shall have a need for gas, diesel
511 fuel, oils and/or other petroleum products in excess of the amount
512 set forth in paragraph (a) of this section, such agency or
513 governing authority may purchase the commodity after having
514 solicited and obtained at least two (2) competitive written bids,
515 as defined in paragraph (b) of this section. If two (2)
516 competitive written bids are not obtained, the entity shall comply
517 with the procedures set forth in paragraph (c) of this section.
518 In the event any agency or governing authority shall have
519 advertised for bids for the purchase of gas, diesel fuel, oils and



520 other petroleum products and coal and no acceptable bids can be
521 obtained, such agency or governing authority is authorized and
522 directed to enter into any negotiations necessary to secure the
523 lowest and best contract available for the purchase of such
524 commodities.

525 (i) **Road construction petroleum products price**
526 **adjustment clause authorization.** Any agency or governing
527 authority authorized to enter into contracts for the construction,
528 maintenance, surfacing or repair of highways, roads or streets,
529 may include in its bid proposal and contract documents a price
530 adjustment clause with relation to the cost to the contractor,
531 including taxes, based upon an industry-wide cost index, of
532 petroleum products including asphalt used in the performance or
533 execution of the contract or in the production or manufacture of
534 materials for use in such performance. Such industry-wide index
535 shall be established and published monthly by the Mississippi
536 Department of Transportation with a copy thereof to be mailed,
537 upon request, to the clerks of the governing authority of each
538 municipality and the clerks of each board of supervisors
539 throughout the state. The price adjustment clause shall be based
540 on the cost of such petroleum products only and shall not include
541 any additional profit or overhead as part of the adjustment. The
542 bid proposals or document contract shall contain the basis and
543 methods of adjusting unit prices for the change in the cost of
544 such petroleum products.



545 (j) **State agency emergency purchase procedure.** If the
546 governing board or the executive head, or his designees, of any
547 agency of the state shall determine that an emergency exists in
548 regard to the purchase of any commodities or repair contracts, so
549 that the delay incident to giving opportunity for competitive
550 bidding would be detrimental to the interests of the state, then
551 the head of such agency, or his designees, shall file with the
552 Department of Finance and Administration (i) a statement
553 explaining the conditions and circumstances of the emergency,
554 which shall include a detailed description of the events leading
555 up to the situation and the negative impact to the entity if the
556 purchase is made following the statutory requirements set forth in
557 paragraph (a), (b) or (c) of this section, and (ii) a certified
558 copy of the appropriate minutes of the board of such agency
559 requesting the emergency purchase, if applicable. Upon receipt of
560 the statement and applicable board certification, the State Fiscal
561 Officer, or his designees, may, in writing, authorize the purchase
562 or repair without having to comply with competitive bidding
563 requirements.

564 If the governing board or the executive head, or his
565 designees, of any agency determines that an emergency exists in
566 regard to the purchase of any commodities or repair contracts, so
567 that the delay incident to giving opportunity for competitive
568 bidding would threaten the health or safety of any person, or the
569 preservation or protection of property, then the provisions in



570 this section for competitive bidding shall not apply, and any
571 officer or agent of the agency having general or specific
572 authority for making the purchase or repair contract shall approve
573 the bill presented for payment, and he shall certify in writing
574 from whom the purchase was made, or with whom the repair contract
575 was made.

576 Total purchases made under this paragraph (j) shall only be
577 for the purpose of meeting needs created by the emergency
578 situation. Following the emergency purchase, documentation of the
579 purchase, including a description of the commodity purchased, the
580 purchase price thereof and the nature of the emergency shall be
581 filed with the Department of Finance and Administration. Any
582 contract awarded pursuant to this paragraph (j) shall not exceed a
583 term of one (1) year.

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

585 If the governing authority, or the governing authority acting
586 through its designee, shall determine that an emergency exists in
587 regard to the purchase of any commodities or repair contracts, so
588 that the delay incident to giving opportunity for competitive
589 bidding would be detrimental to the interest of the governing
590 authority, then the provisions herein for competitive bidding
591 shall not apply and any officer or agent of such governing
592 authority having general or special authority therefor in making
593 such purchase or repair shall approve the bill presented therefor,
594 and he shall certify in writing thereon from whom such purchase



595 was made, or with whom such a repair contract was made. At the
596 board meeting next following the emergency purchase or repair
597 contract, documentation of the purchase or repair contract,
598 including a description of the commodity purchased, the price
599 thereof and the nature of the emergency shall be presented to the
600 board and shall be placed on the minutes of the board of such
601 governing authority.

602 (1) **Hospital purchase, lease-purchase and lease**
603 **authorization.**

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

609 (ii) In addition to the authority granted in
610 subparagraph (i) of this paragraph (1), the commissioners or board
611 of trustees is authorized to enter into contracts for the lease of
612 equipment or services, or both, which it considers necessary for
613 the proper care of patients if, in its opinion, it is not
614 financially feasible to purchase the necessary equipment or
615 services. Any such contract for the lease of equipment or
616 services executed by the commissioners or board shall not exceed a
617 maximum of five (5) years' duration and shall include a
618 cancellation clause based on unavailability of funds. If such
619 cancellation clause is exercised, there shall be no further



620 liability on the part of the lessee. Any such contract for the
621 lease of equipment or services executed on behalf of the
622 commissioners or board that complies with the provisions of this
623 subparagraph (ii) shall be excepted from the bid requirements set
624 forth in this section.

625 (m) **Exceptions from bidding requirements.** Excepted
626 from bid requirements are:

627 (i) **Purchasing agreements approved by department.**

628 Purchasing agreements, contracts and maximum price regulations
629 executed or approved by the Department of Finance and
630 Administration.

631 (ii) **Outside equipment repairs.** Repairs to
632 equipment, when such repairs are made by repair facilities in the
633 private sector; however, engines, transmissions, rear axles and/or
634 other such components shall not be included in this exemption when
635 replaced as a complete unit instead of being repaired and the need
636 for such total component replacement is known before disassembly
637 of the component; however, invoices identifying the equipment,
638 specific repairs made, parts identified by number and name,
639 supplies used in such repairs, and the number of hours of labor
640 and costs therefor shall be required for the payment for such
641 repairs.

642 (iii) **In-house equipment repairs.** Purchases of
643 parts for repairs to equipment, when such repairs are made by
644 personnel of the agency or governing authority; however, entire



645 assemblies, such as engines or transmissions, shall not be
646 included in this exemption when the entire assembly is being
647 replaced instead of being repaired.

648 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
649 of gravel or fill dirt which are to be removed and transported by
650 the purchaser.

651 (v) **Governmental equipment auctions.** Motor
652 vehicles or other equipment purchased from a federal agency or
653 authority, another governing authority or state agency of the
654 State of Mississippi, or any governing authority or state agency
655 of another state at a public auction held for the purpose of
656 disposing of such vehicles or other equipment. Any purchase by a
657 governing authority under the exemption authorized by this
658 subparagraph (v) shall require advance authorization spread upon
659 the minutes of the governing authority to include the listing of
660 the item or items authorized to be purchased and the maximum bid
661 authorized to be paid for each item or items.

662 (vi) **Intergovernmental sales and transfers.**
663 Purchases, sales, transfers or trades by governing authorities or
664 state agencies when such purchases, sales, transfers or trades are
665 made by a private treaty agreement or through means of
666 negotiation, from any federal agency or authority, another
667 governing authority or state agency of the State of Mississippi,
668 or any state agency or governing authority of another state.
669 Nothing in this section shall permit such purchases through public



670 auction except as provided for in subparagraph (v) of this
671 paragraph (m). It is the intent of this section to allow
672 governmental entities to dispose of and/or purchase commodities
673 from other governmental entities at a price that is agreed to by
674 both parties. This shall allow for purchases and/or sales at
675 prices which may be determined to be below the market value if the
676 selling entity determines that the sale at below market value is
677 in the best interest of the taxpayers of the state. Governing
678 authorities shall place the terms of the agreement and any
679 justification on the minutes, and state agencies shall obtain
680 approval from the Department of Finance and Administration, prior
681 to releasing or taking possession of the commodities.

682 (vii) **Perishable supplies or food.** Perishable
683 supplies or food purchased for use in connection with hospitals,
684 the school lunch programs, homemaking programs and for the feeding
685 of county or municipal prisoners.

686 (viii) **Single source items.** Noncompetitive items
687 available from one (1) source only. In connection with the
688 purchase of noncompetitive items only available from one (1)
689 source, a certification of the conditions and circumstances
690 requiring the purchase shall be filed by the agency with the
691 Department of Finance and Administration and by the governing
692 authority with the board of the governing authority. Upon receipt
693 of that certification the Department of Finance and Administration
694 or the board of the governing authority, as the case may be, may,



695 in writing, authorize the purchase, which authority shall be noted
696 on the minutes of the body at the next regular meeting thereafter.
697 In those situations, a governing authority is not required to
698 obtain the approval of the Department of Finance and
699 Administration. Following the purchase, the executive head of the
700 state agency, or his designees, shall file with the Department of
701 Finance and Administration, documentation of the purchase,
702 including a description of the commodity purchased, the purchase
703 price thereof and the source from whom it was purchased.

704 (ix) **Waste disposal facility construction**

705 **contracts.** Construction of incinerators and other facilities for
706 disposal of solid wastes in which products either generated
707 therein, such as steam, or recovered therefrom, such as materials
708 for recycling, are to be sold or otherwise disposed of; however,
709 in constructing such facilities, a governing authority or agency
710 shall publicly issue requests for proposals, advertised for in the
711 same manner as provided herein for seeking bids for public
712 construction projects, concerning the design, construction,
713 ownership, operation and/or maintenance of such facilities,
714 wherein such requests for proposals when issued shall contain
715 terms and conditions relating to price, financial responsibility,
716 technology, environmental compatibility, legal responsibilities
717 and such other matters as are determined by the governing
718 authority or agency to be appropriate for inclusion; and after
719 responses to the request for proposals have been duly received,



720 the governing authority or agency may select the most qualified
721 proposal or proposals on the basis of price, technology and other
722 relevant factors and from such proposals, but not limited to the
723 terms thereof, negotiate and enter contracts with one or more of
724 the persons or firms submitting proposals.

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

728 (xi) **Information technology products.** Purchases
729 of information technology products made by governing authorities
730 under the provisions of purchase schedules, or contracts executed
731 or approved by the Mississippi Department of Information
732 Technology Services and designated for use by governing
733 authorities.

734 (xii) **Energy efficiency services and equipment.**
735 Energy efficiency services and equipment acquired by school
736 districts, community and junior colleges, institutions of higher
737 learning and state agencies or other applicable governmental
738 entities on a shared-savings, lease or lease-purchase basis
739 pursuant to Section 31-7-14.

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



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

745 Purchases by libraries or for libraries of books and periodicals;
746 processed film, videocassette tapes, filmstrips and slides;
747 recorded audiotapes, cassettes and diskettes; and any such items
748 as would be used for teaching, research or other information
749 distribution; however, equipment such as projectors, recorders,
750 audio or video equipment, and monitor televisions are not exempt
751 under this subparagraph.

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

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

758 (xvii) **Multichannel interactive video systems.**
759 From and after July 1, 1990, contracts by Mississippi Authority
760 for Educational Television with any private educational
761 institution or private nonprofit organization whose purposes are
762 educational in regard to the construction, purchase, lease or
763 lease-purchase of facilities and equipment and the employment of
764 personnel for providing multichannel interactive video systems
765 (ITSF) in the school districts of this state.

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



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

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

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

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

786 (xxii) **Garbage, solid waste and sewage contracts.**
787 Contracts for garbage collection or disposal, contracts for solid
788 waste collection or disposal and contracts for sewage collection
789 or disposal.

790 (xxiii) **Municipal water tank maintenance**
791 **contracts.** Professional maintenance program contracts for the
792 repair or maintenance of municipal water tanks, which provide
793 professional services needed to maintain municipal water storage



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

796 (xxiv) **Purchases of Mississippi Industries for the**
797 **Blind products.** Purchases made by state agencies or governing
798 authorities involving any item that is manufactured, processed or
799 produced by the Mississippi Industries for the Blind.

800 (xxv) **Purchases of state-adopted textbooks.**
801 Purchases of state-adopted textbooks by public school districts.

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

805 (xxvii) **Used heavy or specialized machinery or**
806 **equipment for installation of soil and water conservation**
807 **practices purchased at auction.** Used heavy or specialized
808 machinery or equipment used for the installation and
809 implementation of soil and water conservation practices or
810 measures purchased subject to the restrictions provided in
811 Sections 69-27-331 through 69-27-341. Any purchase by the State
812 Soil and Water Conservation Commission under the exemption
813 authorized by this subparagraph shall require advance
814 authorization spread upon the minutes of the commission to include
815 the listing of the item or items authorized to be purchased and
816 the maximum bid authorized to be paid for each item or items.



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

820 (xxix) **Purchases made pursuant to qualified**
821 **cooperative purchasing agreements.** Purchases made by certified
822 purchasing offices of state agencies or governing authorities
823 under cooperative purchasing agreements previously approved by the
824 Office of Purchasing and Travel and established by or for any
825 municipality, county, parish or state government or the federal
826 government, provided that the notification to potential
827 contractors includes a clause that sets forth the availability of
828 the cooperative purchasing agreement to other governmental
829 entities. Such purchases shall only be made if the use of the
830 cooperative purchasing agreements is determined to be in the best
831 interest of the governmental entity.

832 (xxx) **School yearbooks.** Purchases of school
833 yearbooks by state agencies or governing authorities; provided,
834 however, that state agencies and governing authorities shall use
835 for these purchases the RFP process as set forth in the
836 Mississippi Procurement Manual adopted by the Office of Purchasing
837 and Travel.

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



841 (xxxii) **Toll roads and bridge construction**
842 **projects.** Contracts entered into under the provisions of Section
843 65-43-1 or 65-43-3.

844 (xxxiii) **Certain purchases under Section 57-1-221.**
845 Contracts entered into pursuant to the provisions of Section
846 57-1-221.

847 (xxxiv) **Certain transfers made pursuant to the**
848 **provisions of Section 57-105-1(7).** Transfers of public property
849 or facilities under Section 57-105-1(7) and construction related
850 to such public property or facilities.

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

854 (xxxvi) **Certain purchases by an academic medical**
855 **center or health sciences school.** Purchases by an academic
856 medical center or health sciences school, as defined in Section
857 37-115-50, of commodities that are used for clinical purposes and
858 1. intended for use in the diagnosis of disease or other
859 conditions or in the cure, mitigation, treatment or prevention of
860 disease, and 2. medical devices, biological, drugs and
861 radiation-emitting devices as defined by the United States Food
862 and Drug Administration.

863 (n) **Term contract authorization.** All contracts for the
864 purchase of:



865 (i) All contracts for the purchase of commodities,
866 equipment and public construction (including, but not limited to,
867 repair and maintenance), may be let for periods of not more than
868 sixty (60) months in advance, subject to applicable statutory
869 provisions prohibiting the letting of contracts during specified
870 periods near the end of terms of office. Term contracts for a
871 period exceeding twenty-four (24) months shall also be subject to
872 ratification or cancellation by governing authority boards taking
873 office subsequent to the governing authority board entering the
874 contract.

875 (ii) Bid proposals and contracts may include price
876 adjustment clauses with relation to the cost to the contractor
877 based upon a nationally published industry-wide or nationally
878 published and recognized cost index. The cost index used in a
879 price adjustment clause shall be determined by the Department of
880 Finance and Administration for the state agencies and by the
881 governing board for governing authorities. The bid proposal and
882 contract documents utilizing a price adjustment clause shall
883 contain the basis and method of adjusting unit prices for the
884 change in the cost of such commodities, equipment and public
885 construction.

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



890 person or concern to submit individual invoices for amounts within
891 those authorized for a contract or purchase where the actual value
892 of the contract or commodity purchased exceeds the authorized
893 amount and the invoices therefor are split so as to appear to be
894 authorized as purchases for which competitive bids are not
895 required. Submission of such invoices shall constitute a
896 misdemeanor punishable by a fine of not less than Five Hundred
897 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
898 or by imprisonment for thirty (30) days in the county jail, or
899 both such fine and imprisonment. In addition, the claim or claims
900 submitted shall be forfeited.

901 (p) **Electrical utility petroleum-based equipment**
902 **purchase procedure.** When in response to a proper advertisement
903 therefor, no bid firm as to price is submitted to an electric
904 utility for power transformers, distribution transformers, power
905 breakers, reclosers or other articles containing a petroleum
906 product, the electric utility may accept the lowest and best bid
907 therefor although the price is not firm.

908 (q) **Fuel management system bidding procedure.** Any
909 governing authority or agency of the state shall, before
910 contracting for the services and products of a fuel management or
911 fuel access system, enter into negotiations with not fewer than
912 two (2) sellers of fuel management or fuel access systems for
913 competitive written bids to provide the services and products for
914 the systems. In the event that the governing authority or agency



915 cannot locate two (2) sellers of such systems or cannot obtain
916 bids from two (2) sellers of such systems, it shall show proof
917 that it made a diligent, good-faith effort to locate and negotiate
918 with two (2) sellers of such systems. Such proof shall include,
919 but not be limited to, publications of a request for proposals and
920 letters soliciting negotiations and bids. For purposes of this
921 paragraph (q), a fuel management or fuel access system is an
922 automated system of acquiring fuel for vehicles as well as
923 management reports detailing fuel use by vehicles and drivers, and
924 the term "competitive written bid" shall have the meaning as
925 defined in paragraph (b) of this section. Governing authorities
926 and agencies shall be exempt from this process when contracting
927 for the services and products of fuel management or fuel access
928 systems under the terms of a state contract established by the
929 Office of Purchasing and Travel.

930 (r) **Solid waste contract proposal procedure.** Before
931 entering into any contract for garbage collection or disposal,
932 contract for solid waste collection or disposal or contract for
933 sewage collection or disposal, which involves an expenditure of
934 more than Fifty Thousand Dollars (\$50,000.00), a governing
935 authority or agency shall issue publicly a request for proposals
936 concerning the specifications for such services which shall be
937 advertised for in the same manner as provided in this section for
938 seeking bids for purchases which involve an expenditure of more
939 than the amount provided in paragraph (c) of this section. Any



940 request for proposals when issued shall contain terms and
941 conditions relating to price, financial responsibility,
942 technology, legal responsibilities and other relevant factors as
943 are determined by the governing authority or agency to be
944 appropriate for inclusion; all factors determined relevant by the
945 governing authority or agency or required by this paragraph (r)
946 shall be duly included in the advertisement to elicit proposals.
947 After responses to the request for proposals have been duly
948 received, the governing authority or agency shall select the most
949 qualified proposal or proposals on the basis of price, technology
950 and other relevant factors and from such proposals, but not
951 limited to the terms thereof, negotiate and enter into contracts
952 with one or more of the persons or firms submitting proposals. If
953 the governing authority or agency deems none of the proposals to
954 be qualified or otherwise acceptable, the request for proposals
955 process may be reinitiated. Notwithstanding any other provisions
956 of this paragraph, where a county with at least thirty-five
957 thousand (35,000) nor more than forty thousand (40,000)
958 population, according to the 1990 federal decennial census, owns
959 or operates a solid waste landfill, the governing authorities of
960 any other county or municipality may contract with the governing
961 authorities of the county owning or operating the landfill,
962 pursuant to a resolution duly adopted and spread upon the minutes
963 of each governing authority involved, for garbage or solid waste
964 collection or disposal services through contract negotiations.



965 (s) **Minority set-aside authorization.** Notwithstanding
966 any provision of this section to the contrary, any agency or
967 governing authority, by order placed on its minutes, may, in its
968 discretion, set aside not more than twenty percent (20%) of its
969 anticipated annual expenditures for the purchase of commodities
970 from minority businesses; however, all such set-aside purchases
971 shall comply with all purchasing regulations promulgated by the
972 Department of Finance and Administration and shall be subject to
973 bid requirements under this section. Set-aside purchases for
974 which competitive bids are required shall be made from the lowest
975 and best minority business bidder. For the purposes of this
976 paragraph, the term "minority business" means a business which is
977 owned by a majority of persons who are United States citizens or
978 permanent resident aliens (as defined by the Immigration and
979 Naturalization Service) of the United States, and who are Asian,
980 Black, Hispanic or Native American, according to the following
981 definitions:

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

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

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



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

993 (t) **Construction punch list restriction.** The
994 architect, engineer or other representative designated by the
995 agency or governing authority that is contracting for public
996 construction or renovation may prepare and submit to the
997 contractor only one (1) preliminary punch list of items that do
998 not meet the contract requirements at the time of substantial
999 completion and one (1) final list immediately before final
1000 completion and final payment.

1001 (u) **Procurement of construction services by state**
1002 **institutions of higher learning.** Contracts for privately financed
1003 construction of auxiliary facilities on the campus of a state
1004 institution of higher learning may be awarded by the Board of
1005 Trustees of State Institutions of Higher Learning to the lowest
1006 and best bidder, where sealed bids are solicited, or to the
1007 offeror whose proposal is determined to represent the best value
1008 to the citizens of the State of Mississippi, where requests for
1009 proposals are solicited.

1010 (v) **Insurability of bidders for public construction or**
1011 **other public contracts.** In any solicitation for bids to perform
1012 public construction or other public contracts to which this
1013 section applies including, but not limited to, contracts for
1014 repair and maintenance, for which the contract will require



1015 insurance coverage in an amount of not less than One Million
1016 Dollars (\$1,000,000.00), bidders shall be permitted to either
1017 submit proof of current insurance coverage in the specified amount
1018 or demonstrate ability to obtain the required coverage amount of
1019 insurance if the contract is awarded to the bidder. Proof of
1020 insurance coverage shall be submitted within five (5) business
1021 days from bid acceptance.

1022 (w) **Purchase authorization clarification.** Nothing in
1023 this section shall be construed as authorizing any purchase not
1024 authorized by law.

1025 **SECTION 9.** Section 31-8-13, Mississippi Code of 1972, is
1026 brought forward as follows:

1027 31-8-13. This chapter, without reference to any other
1028 statute, shall be deemed to be full and complete authority for the
1029 authorization, execution and delivery of lease agreements
1030 authorized hereunder, and shall be construed as an additional and
1031 alternative method therefor, and none of the present restrictions,
1032 requirements, conditions and limitations of law applicable to the
1033 acquisition, construction and drawing of buildings or facilities
1034 in this state shall apply to lease agreements under this chapter,
1035 and no proceedings shall be required for the authorization,
1036 execution and delivery of such leases other than those required
1037 herein, and all powers necessary to be exercised in order to carry
1038 out the provisions of this chapter are hereby conferred.



1039 **SECTION 10.** Section 31-11-1, Mississippi Code of 1972, is
1040 brought forward as follows:

1041 31-11-1. (1) For purposes of this chapter, the term "State
1042 Building Commission" shall mean the Governor's Office of General
1043 Services acting through the Bureau of Building, Grounds and Real
1044 Property Management.

1045 (2) Wherever the term "State Building Commission" or
1046 "building commission" appears in the laws of the State of
1047 Mississippi, it shall be construed to mean the Governor's Office
1048 of General Services.

1049 **SECTION 11.** Section 31-11-3, Mississippi Code of 1972, is
1050 brought forward as follows:

1051 31-11-3. (1) The Department of Finance and Administration,
1052 for the purposes of carrying out the provisions of this chapter,
1053 in addition to all other rights and powers granted by law, shall
1054 have full power and authority to employ and compensate architects
1055 or other employees necessary for the purpose of making
1056 inspections, preparing plans and specifications, supervising the
1057 erection of any buildings, and making any repairs or additions as
1058 may be determined by the Department of Finance and Administration
1059 to be necessary, pursuant to the rules and regulations of the
1060 State Personnel Board. The department shall have entire control
1061 and supervision of, and determine what, if any, buildings,
1062 additions, repairs, demolitions or improvements are to be made



1063 under the provisions of this chapter, subject to the regulations
1064 adopted by the Public Procurement Review Board.

1065 (2) The department shall have full power to erect buildings,
1066 make repairs, additions or improvements, demolitions, to grant or
1067 acquire easements or rights-of-way, and to buy materials, supplies
1068 and equipment for any of the institutions or departments of the
1069 state subject to the regulations adopted by the Public Procurement
1070 Review Board. In addition to other powers conferred, the
1071 department shall have full power and authority as directed by the
1072 Legislature, or when funds have been appropriated for its use for
1073 these purposes, to:

1074 (a) Build a state office building;

1075 (b) Build suitable plants or buildings for the use and
1076 housing of any state schools or institutions, including the
1077 building of plants or buildings for new state schools or
1078 institutions, as provided for by the Legislature;

1079 (c) Provide state aid for the construction of school
1080 buildings;

1081 (d) Promote and develop the training of returned
1082 veterans of the United States in all sorts of educational and
1083 vocational learning to be supplied by the proper educational
1084 institution of the State of Mississippi, and in so doing allocate
1085 monies appropriated to it for these purposes to the Governor for
1086 use by him in setting up, maintaining and operating an office and
1087 employing a state director of on-the-job training for veterans and



1088 the personnel necessary in carrying out Public Law No. 346 of the
1089 United States;

1090 (e) Build and equip a hospital and administration
1091 building at the Mississippi State Penitentiary;

1092 (f) Build and equip additional buildings and wards at
1093 the Boswell Retardation Center;

1094 (g) Construct a sewage disposal and treatment plant at
1095 the Mississippi State Hospital, and in so doing acquire additional
1096 land as may be necessary, and to exercise the right of eminent
1097 domain in the acquisition of this land;

1098 (h) Build and equip the Mississippi central market and
1099 purchase or acquire by eminent domain, if necessary, any lands
1100 needed for this purpose;

1101 (i) Build and equip suitable facilities for a training
1102 and employing center for the blind;

1103 (j) Build and equip a gymnasium at Columbia Training
1104 School;

1105 (k) Approve or disapprove the expenditure of any money
1106 appropriated by the Legislature when authorized by the bill making
1107 the appropriation;

1108 (l) Expend monies appropriated to it in paying the
1109 state's part of the cost of any street paving;

1110 (m) Sell and convey state lands when authorized by the
1111 Legislature, cause said lands to be properly surveyed and platted,
1112 execute all deeds or other legal instruments, and do any and all



1113 other things required to effectively carry out the purpose and
1114 intent of the Legislature. Any transaction which involves state
1115 lands under the provisions of this paragraph shall be done in a
1116 manner consistent with the provisions of Section 29-1-1;

1117 (n) Collect and receive from educational institutions
1118 of the State of Mississippi monies required to be paid by these
1119 institutions to the state in carrying out any veterans'
1120 educational programs;

1121 (o) Purchase lands for building sites, or as additions
1122 to building sites, for the erection of buildings and other
1123 facilities which the department is authorized to erect, and
1124 demolish and dispose of old buildings, when necessary for the
1125 proper construction of new buildings. Any transaction which
1126 involves state lands under the provisions of this paragraph shall
1127 be done in a manner consistent with the provisions of Section
1128 29-1-1;

1129 (p) Obtain business property insurance with a
1130 deductible of not less than One Hundred Thousand Dollars
1131 (\$100,000.00) on state-owned buildings under the management and
1132 control of the department; and

1133 (q) In consultation with and approval by the Chairmen
1134 of the Public Property Committees of the Senate and the House of
1135 Representatives, enter into contracts for the purpose of providing
1136 parking spaces for state employees who work in the Woolfolk



1137 Building, the Carroll Gartin Justice Building or the Walter
1138 Sillers Office Building.

1139 (3) The department shall survey state-owned and
1140 state-utilized buildings to establish an estimate of the costs of
1141 architectural alterations, pursuant to the Americans With
1142 Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The
1143 department shall establish priorities for making the identified
1144 architectural alterations and shall make known to the Legislative
1145 Budget Office and to the Legislature the required cost to
1146 effectuate such alterations. To meet the requirements of this
1147 section, the department shall use standards of accessibility that
1148 are at least as stringent as any applicable federal requirements
1149 and may consider:

1150 (a) Federal minimum guidelines and requirements issued
1151 by the United States Architectural and Transportation Barriers
1152 Compliance Board and standards issued by other federal agencies;

1153 (b) The criteria contained in the American Standard
1154 Specifications for Making Buildings Accessible and Usable by the
1155 Physically Handicapped and any amendments thereto as approved by
1156 the American Standards Association, Incorporated (ANSI Standards);

1157 (c) Design manuals;

1158 (d) Applicable federal guidelines;

1159 (e) Current literature in the field;

1160 (f) Applicable safety standards; and

1161 (g) Any applicable environmental impact statements.



1162 (4) The department shall observe the provisions of Section
1163 31-5-23, in letting contracts and shall use Mississippi products,
1164 including paint, varnish and lacquer which contain as vehicles
1165 tung oil and either ester gum or modified resin (with rosin as the
1166 principal base of constituents), and turpentine shall be used as a
1167 solvent or thinner, where these products are available at a cost
1168 not to exceed the cost of products grown, produced, prepared, made
1169 or manufactured outside of the State of Mississippi.

1170 (5) The department shall have authority to accept grants,
1171 loans or donations from the United States government or from any
1172 other sources for the purpose of matching funds in carrying out
1173 the provisions of this chapter.

1174 (6) The department shall build a wheelchair ramp at the War
1175 Memorial Building which complies with all applicable federal laws,
1176 regulations and specifications regarding wheelchair ramps.

1177 (7) The department shall review and preapprove all
1178 architectural or engineering service contracts entered into by any
1179 state agency, institution, commission, board or authority
1180 regardless of the source of funding used to defray the costs of
1181 the construction or renovation project for which services are to
1182 be obtained to ensure compliance with purchasing regulations and
1183 to confirm that the contracts are procured by a competitive
1184 qualification-based selection process except where such
1185 appointment is for an emergency project or for a continuation of a
1186 previous appointment for a directly related project. The



1187 provisions of this subsection (7) shall not apply to any
1188 architectural or engineering contract fully paid for by
1189 self-generated funds of any of the state institutions of higher
1190 learning, nor shall they apply to community college projects that
1191 are fully funded from local funds or other nonstate sources which
1192 are outside the Department of Finance and Administration's
1193 appropriations or as directed by the Legislature. The provisions
1194 of this subsection (7) shall not apply to any construction or
1195 design projects of the State Military Department that are fully or
1196 partially funded from federal funds or other nonstate sources, nor
1197 shall they apply to any project of the State Department of
1198 Transportation.

1199 (8) (a) The department shall have the authority to obtain
1200 annually from the state institutions of higher learning, the state
1201 community colleges and junior colleges, the Department of Mental
1202 Health, the Department of Corrections and the Department of
1203 Wildlife, Fisheries and Parks information on all renovation and
1204 repair expenditures for buildings under their operation and
1205 control, including duties, responsibilities and costs of any
1206 architect or engineer hired by any such institutions, and shall
1207 annually report the same to the Legislative Budget Office, the
1208 Chairman of the House Public Property Committee and the Chairman
1209 of the Senate Public Property Committee before September 1.



1210 (b) All state agencies, departments and institutions
1211 are required to cooperate with the Department of Finance and
1212 Administration in carrying out the provisions of this subsection.

1213 (c) Expenditures shall not include those amounts
1214 expended for janitorial, landscaping or administrative support,
1215 but shall include expenditures from both state and nonstate
1216 sources.

1217 (d) Expenditures shall not include amounts expended by
1218 the department on behalf of state agencies, departments and
1219 institutions through the Department of Finance and Administration
1220 administered contracts, but shall include amounts transferred to
1221 the Department of Finance and Administration for support of such
1222 contracts.

1223 (9) As an alternative to other methods of awarding contracts
1224 as prescribed by law, the department may elect to use the method
1225 of contracting for construction projects set out in Sections
1226 31-7-13.1 and 31-7-13.2; however, the dual-phase design-build
1227 method of construction contracting authorized under Section
1228 31-7-13.1 may be used only when the Legislature has specifically
1229 required or authorized the use of this method in the legislation
1230 authorizing a project.

1231 (10) The department shall have the authority, for the
1232 purposes of carrying out the provisions of this chapter, and in
1233 addition to all other rights and powers granted by law, to create
1234 and maintain a list of suspended and debarred contractors and



1235 subcontractors. Consistent with this authority, the department
1236 may adopt regulations governing the suspension or debarment of
1237 contractors and subcontractors, which regulations shall be subject
1238 to the approval of the Public Procurement Review Board. A
1239 suspended or debarred contractor or subcontractor shall be
1240 disqualified from consideration for contracts with the department
1241 during the suspension or debarment period in accordance with the
1242 department's regulations.

1243 (11) This section shall not apply to the Mississippi State
1244 Port Authority.

1245 **SECTION 12.** Section 31-11-4, Mississippi Code of 1972, is
1246 brought forward as follows:

1247 31-11-4. (1) There is hereby created the Facilities
1248 Management Advisory Committee, hereinafter referred to as the
1249 "committee," for the purpose of advising the Bureau of Building,
1250 Grounds and Real Property Management, Department of Finance and
1251 Administration, with its duties of preplanning, construction,
1252 repair and renovation for buildings of all state agencies,
1253 institutions and departments.

1254 (2) The committee shall be composed of the following eight
1255 (8) members:

1256 (a) The Chairman and Vice Chairman of the Senate Public
1257 Property Committee;

1258 (b) The Chairman and Vice Chairman of the House Public
1259 Building, Grounds and Lands Committee;



1260 (c) Two (2) Senators appointed by the Lieutenant
1261 Governor; and

1262 (d) Two (2) Representatives appointed by the Speaker of
1263 the House of Representatives.

1264 (3) The committee shall advise the Bureau of Building,
1265 Grounds and Real Property Management with its duties of
1266 preplanning, construction, repair and renovation for buildings of
1267 all state agencies, institutions and departments, including but
1268 not limited to the following:

1269 (a) Traveling with the Bureau of Building, Grounds and
1270 Real Property Management to inspect and consider requests for
1271 improvement and repair of buildings of state agencies,
1272 institutions and departments;

1273 (b) Acquiring a working knowledge of state building
1274 matters in order to become leaders in facility related
1275 legislation; and

1276 (c) Advising and making recommendations to the
1277 Legislature on matters relating to preplanning, construction,
1278 repair and renovation for all state buildings.

1279 (4) The members of the committee shall have no jurisdiction
1280 or vote on any matter within the jurisdiction of the Bureau of
1281 Building, Grounds and Real Property Management.

1282 (5) No committee member may receive per diem, travel or
1283 other expenses unless authorized by the Management Committees of
1284 the Senate and the House of Representatives. Members of the



1285 committee shall be paid from the contingent expense funds of the
1286 Senate and the House of Representatives in the same amounts as
1287 provided for committee meetings when the Legislature is not in
1288 session; however, no per diem or expense for attending meetings
1289 of the committee will be paid while the Legislature is in session.

1290 **SECTION 13.** Section 31-11-7, Mississippi Code of 1972, is
1291 brought forward as follows:

1292 31-11-7. The Office of General Services shall submit a full
1293 report of its work and all transactions carried on by it and a
1294 complete statement of all expenditures made by it, to each regular
1295 session of the Legislature or to a special session before that
1296 time if its work has been completed.

1297 **SECTION 14.** Section 31-11-25, Mississippi Code of 1972, is
1298 brought forward as follows:

1299 31-11-25. The Office of General Services with the approval
1300 of the Public Procurement Review Board shall have the power and
1301 authority to acquire in its own name, or in the name of such other
1302 agency or instrumentality in the State of Mississippi as it may
1303 deem proper, by purchase, contribution or otherwise, all land and
1304 real property which shall be necessary and desirable in connection
1305 with the development or expansion of any state institution or
1306 public agency of this state upon any real property adjacent to or
1307 contiguous to such institution or agency or in connection with any
1308 project under the supervision of said Office of General Services
1309 for the construction, repair, remodeling, renovating, or making



1310 additions to any building structure or other facility which the
1311 Office of General Services is required or authorized by law to
1312 construct, repair, remodel, or make an addition to. If the Office
1313 of General Services shall be unable to agree with the owner or
1314 owners of any such land or real property which is necessary or
1315 desirable for the public use in connection with any such project,
1316 the Office of General Services shall have the power and authority
1317 to acquire any such land or real property by condemnation
1318 proceedings in the manner otherwise provided by law and, for such
1319 purpose, the right of eminent domain is hereby conferred upon and
1320 vested in said Office of General Services.

1321 **SECTION 15.** Section 31-11-27, Mississippi Code of 1972, is
1322 brought forward as follows:

1323 31-11-27. (1) (a) The Department of Finance and
1324 Administration shall conduct a detailed study of the building and
1325 other capital needs at each state institution and at each junior
1326 college immediately prior to September first in each year. This
1327 study shall include, but shall not be limited to, the following
1328 matters: (i) an inventory of every state building and other
1329 capital facility which is the property of the State of
1330 Mississippi; (ii) the location, date of construction or
1331 acquisition, the purpose for which used, outstanding indebtedness
1332 against such facility, if any, and cost of repairs for the
1333 preceding fiscal year; (iii) an examination of the condition of
1334 the building or other facility; (iv) an estimate of the cost of



1335 repairs required to place the facility in good condition; (v) an
1336 estimate of the cost of major renovations, if contemplated; and
1337 (vi) a determination of the new building and other facility needs
1338 of each institution with such needs classified under immediate or
1339 long range requirements.

1340 (b) All state agencies, departments and institutions
1341 are hereby authorized and directed to cooperate with the
1342 Department of Finance and Administration in carrying out the
1343 provisions of this section.

1344 (c) The Department of Finance and Administration shall
1345 submit a detailed report to the Legislative Budget Office on or
1346 before September first of each year. Such report shall be in such
1347 detail and in such form as may be prescribed by the Legislative
1348 Budget Office.

1349 (d) The architect or building inspector of the
1350 Department of Finance and Administration shall make a biennial
1351 inspection of the New Capitol, Old Capitol, Woolfolk State Office
1352 Building, War Memorial Building, the Governor's Mansion, and all
1353 other buildings under jurisdiction of the Department of Finance
1354 and Administration for structural or other physical needs or
1355 defects of such buildings, and he shall further inquire of the
1356 department or its representatives regarding the condition of the
1357 buildings. He shall make a written report of his finding to the
1358 Department of Finance and Administration, Governor, Lieutenant
1359 Governor and Speaker of the House of Representatives. The report



1360 shall also make recommendations for repairs and list, by number,
1361 the priority which should be given to making necessary repairs.

1362 (2) (a) In addition to any report required in subsection
1363 (1) of this section, the Department of Finance and Administration
1364 shall prepare and submit an annual report to the Legislative
1365 Budget Office, the House Public Buildings, Grounds and Lands
1366 Committee and the Senate Public Property Committee describing the
1367 proposed capital improvements projects for state agencies,
1368 departments and institutions for the upcoming five-year period.
1369 The Department of Finance and Administration shall not be required
1370 to include in the report any project costing less than One Million
1371 Dollars (\$1,000,000.00). The department shall submit the report
1372 before September 1 of each year. The report shall include at
1373 least the following information:

1374 (i) A prioritized list of the projects proposed
1375 for the five-year period, with each project ranked on the basis of
1376 need;

1377 (ii) A prioritized list of the projects proposed
1378 for the next regular legislative session, with each project ranked
1379 on the basis of need;

1380 (iii) A prioritized list of the projects requested
1381 by each state agency, department or institution;

1382 (iv) A detailed explanation of criteria used by
1383 the Department of Finance and Administration to rank projects for
1384 purposes of any list it prepares under this paragraph (a);



1385 (v) A detailed statement of justification for each
1386 project;

1387 (vi) The approximate cost for each project,
1388 including, but not limited to, itemized estimates of costs for
1389 preplanning, constructing, furnishing and equipping a project, and
1390 costs for property acquisition;

1391 (vii) The estimated beginning date and completion
1392 date for each project;

1393 (viii) Whether a project, as proposed, is a
1394 complete project or a phase or part of a project;

1395 (ix) How a project will affect the operating
1396 budget of the applicable agency, department or institution for the
1397 upcoming five-year period, regarding such items as additional
1398 personnel requirements, utility costs, maintenance costs, security
1399 costs, etc.;

1400 (x) The proposed method of financing each project
1401 and the effect such financing will have on the state budget,
1402 including an estimate of any required debt service for the
1403 project, and an estimate of any federal funds or other funds that
1404 the agency, department or institution may have access to because
1405 of the project; and

1406 (xi) A list of the projects requested by each
1407 agency, department or institution for the five-year period, with
1408 each project ranked by the appropriate agency, department or
1409 institution on the basis of need.



1410 (b) To enable the Department of Finance and
1411 Administration to prepare the report required in this subsection
1412 (2), it may require all state agencies, departments and
1413 institutions to file a capital improvements projects request with
1414 such information and in such form and in such detail as the
1415 department may deem necessary and advisable. Such request shall
1416 be filed with the Department of Finance and Administration no
1417 later than August 1 of each year.

1418 **SECTION 16.** Section 31-11-29, Mississippi Code of 1972, is
1419 brought forward as follows:

1420 31-11-29. The Legislative Budget Office shall prepare and
1421 submit to each regular session of the Legislature a "capital
1422 expense and development" budget based on information furnished as
1423 herein provided by the Office of General Services, plus such other
1424 information as may be obtained. The said budget shall contain an
1425 estimate of the immediate and the long term capital needs of each
1426 state department, agency, institution, and each junior college.
1427 Such budget shall include a description of the buildings and other
1428 facilities which are recommended as needed at each institution,
1429 along with an estimate of the cost. The budget shall also include
1430 a suggested method of financing the immediate needs. "Immediate
1431 needs" shall be construed to mean: buildings, major improvements,
1432 and other facilities required for the proper functioning of the
1433 institution for the next year. "Long range" needs shall be
1434 construed to mean: buildings, major improvements, and other



1435 facilities of a similar nature which may be required at some
1436 indefinite date in the future.

1437 **SECTION 17.** Section 31-11-30, Mississippi Code of 1972, is
1438 brought forward as follows:

1439 31-11-30. (1) Every capital improvements project for new
1440 facilities, costing Two Million Dollars (\$2,000,000.00) or more,
1441 which is developed to repair, renovate, construct, remodel, add to
1442 or improve a state-owned public building shall be funded by the
1443 Legislature in two (2) phases. The two-phase funding requirement
1444 shall not apply to capital improvements projects for a state-owned
1445 port or where the Legislature finds that an emergency or critical
1446 need must be met or a court order complied with. The two (2)
1447 phases shall not be funded in the same regular session of the
1448 Legislature. Each phase shall be funded in a separate session of
1449 the Legislature. Phase 1 shall be a preplanned capital
1450 improvements project budget projection for the project and shall
1451 be funded first. Phase 2 shall be the actual repair, renovation,
1452 construction, remodeling, addition to or improvement of the
1453 state-owned public building and the acquisition of furniture and
1454 equipment for the capital improvements project and shall be funded
1455 second.

1456 (2) For the purposes of this section:

1457 (a) "Preplanned" or "preplanning" means the preliminary
1458 planning that establishes the program, scope, design and budget
1459 for a capital improvements project.



1460 (b) "Emergency" has the meaning as defined in Section
1461 31-7-1.

1462 (c) "Critical need" means necessary to meet
1463 accreditation standards or necessary to respond to failures in
1464 planning.

1465 (3) Every state agency that plans to repair, renovate,
1466 construct, remodel, add to or improve a state-owned public
1467 building shall submit a preplanned capital improvements project
1468 budget projection to the Bureau of Building, Grounds and Real
1469 Property Management for evaluation. The bureau shall assess the
1470 need for all preplanned projects submitted and shall compile a
1471 report on its findings. Any capital improvements project for new
1472 facilities costing less than Two Million Dollars (\$2,000,000.00)
1473 shall not be required to be preplanned.

1474 (4) Upon the completion of any preplanning for a capital
1475 improvements project, if such preplanning is funded with
1476 self-generated funds by a state agency, the plan shall be
1477 submitted to the bureau for evaluation.

1478 (5) This section shall not apply to capital improvements
1479 projects authorized by the Legislature before the 2001 Regular
1480 Session of the Legislature.

1481 (6) This section shall not apply to any community or junior
1482 college project funded in whole or in part by either state bonds
1483 or funds appropriated for that construction by the Legislature.



1484 **SECTION 18.** Section 31-11-31, Mississippi Code of 1972, is
1485 brought forward as follows:

1486 31-11-31. The Office of General Services of the State of
1487 Mississippi is hereby authorized and empowered to act as the
1488 commission designated to perform all functions on behalf of the
1489 State of Mississippi as provided for and required in Public Law
1490 No. 88-204 of the 88th Congress of the United States of America
1491 and being entitled "Higher Education Facilities Act of 1963" as
1492 thereafter amended, and the said Office of General Services is
1493 hereby granted such power and authority necessary for the purpose
1494 of performing for and on behalf of the State of Mississippi all
1495 things required to be done and performed by the Office of General
1496 Services as specified in said Public Law No. 88-204 of the 88th
1497 Congress of the United States government, as thereafter amended.

1498 **SECTION 19.** Section 31-11-33, Mississippi Code of 1972, is
1499 brought forward as follows:

1500 31-11-33. (1) For purposes of this section, the following
1501 terms shall have the meanings hereinafter ascribed:

1502 (a) "Department" means the Department of Finance and
1503 Administration, Bureau of Building, Grounds and Real Property
1504 Management.

1505 (b) "Public facility" means any building or other
1506 facility owned by the State of Mississippi, or by any agency,
1507 department of the State of Mississippi, that is occupied, used or
1508 under the control of the State of Mississippi, or any agency or



1509 department of the State of Mississippi, or any junior college
1510 district of the State of Mississippi, or the Board of Trustees of
1511 State Institutions of Higher Learning of the State of Mississippi,
1512 or any institution under the jurisdiction of the Board of Trustees
1513 of State Institutions of Higher Learning of the State of
1514 Mississippi.

1515 (2) Any public facility newly constructed from and after
1516 July 1, 2006, shall comply with and be built according to
1517 specifications not less stringent than those required by the
1518 International Code Council and such other standards as adopted by
1519 the department that provide guidelines for plumbing, electrical,
1520 gas, sanitary and other physical components of new building
1521 construction.

1522 (3) Upon the awarding of a design contract for a new public
1523 facility, the architect/engineer shall prepare drawings and
1524 specifications in conformity with the code requirements in effect
1525 at the time of agreement or, if the code requirements at the time
1526 of the agreement are amended, then the drawings and specifications
1527 shall be prepared according to the more stringent standards.

1528 (4) The department may regulate the height, number of
1529 stories and size of public facilities, the percentage of the lot
1530 that may be occupied, courts and other open spaces, and the
1531 location and use of public facilities.

1532 **SECTION 20.** Section 31-11-35, Mississippi Code of 1972, is
1533 brought forward as follows:



1534 31-11-35. (1) The Department of Finance and Administration
1535 shall adopt rules and regulations which:

1536 (a) Optimize the energy performance of state-funded
1537 buildings throughout the state;

1538 (b) Increase the demand for building and construction
1539 materials, finishes, furnishings and other products made in or
1540 incorporating materials produced in Mississippi;

1541 (c) Improve environmental quality in this state by
1542 decreasing the discharge of pollutants from state-funded
1543 buildings;

1544 (d) Conserve energy and utilize local and renewable
1545 energy sources;

1546 (e) Protect and restore this state's natural resources
1547 by avoiding development of inappropriate state-funded building
1548 sites;

1549 (f) Reduce the burden on public water supply and
1550 treatment by reducing potable water consumption; and

1551 (g) Encourage obtaining ENERGY STAR designation from
1552 the United States Environmental Protection Agency to further
1553 demonstrate a building project's energy independence.

1554 (2) Except as otherwise provided in Section 39-25-1, each
1555 major facility project shall be designed and constructed to meet
1556 or exceed the requirements of ASHRAE 90.1-2010 or any more
1557 stringent code adopted by the Bureau of Building, Grounds and Real



1558 Property Management and the Department of Finance and
1559 Administration.

1560 (3) In order to achieve sustainable building standards,
1561 construction projects may utilize a nationally recognized high
1562 performance environmental building rating system; provided,
1563 however, that any such rating system that uses a material or
1564 product-based credit system which is disadvantageous to materials
1565 or products manufactured or produced in Mississippi shall not be
1566 utilized. Additionally, such rating systems shall not exclude
1567 certificate credits for forest products certified by the
1568 Sustainable Forestry Initiative, Forest Stewardship Council or the
1569 American Tree Farm System. The Department of Finance and
1570 Administration shall designate rating systems which meet these
1571 criteria and may establish its own rating system.

1572 (4) A nationally certified commissioning authority
1573 professional shall certify that the major facility project's
1574 systems for heating, ventilation, air-conditioning, energy
1575 conservation and water conservation are installed and working
1576 properly to ensure that each major facility project performs
1577 according to the major facility project's overall environmental
1578 design intent and operational objectives.

1579 (5) For purposes of this section, a major facility project
1580 shall mean either:

1581 (a) A state-funded new construction building project
1582 which is:



1583 (i) From July 1 through December 31, 2009, the
1584 project shall be larger than twenty thousand (20,000) gross square
1585 feet;

1586 (ii) From January 1, 2010, through December 31,
1587 2010, the project shall be larger than fifteen thousand (15,000)
1588 gross square feet;

1589 (iii) From January 1, 2011, through December 31,
1590 2011, the project shall be larger than ten thousand (10,000) gross
1591 square feet; and

1592 (iv) From January 1, 2012, and thereafter, the
1593 project shall be larger than five thousand (5,000) gross square
1594 feet.

1595 (b) A state-funded renovation project which involves
1596 more than fifty percent (50%) of the replacement value of the
1597 facility where compliance is cost-effective and practical.

1598 (6) A major facility project shall not mean a building,
1599 regardless of size, which does not have conditioned space as
1600 defined by Standard 90.1 of the American Society of Heating,
1601 Refrigerating, and Air-Conditioning Engineers.

1602 (7) For purposes of this section, a "major facility project"
1603 shall include, but not be limited to, the construction or
1604 renovation of buildings that are financed, in whole or in part,
1605 through the use of a Community Development Block Grant.

1606 **SECTION 21.** Section 31-25-20, Mississippi Code of 1972, is
1607 brought forward as follows:



1608 31-25-20. In addition to the other powers granted to the
1609 bank under this section, the bank shall have the powers:

1610 (a) To make, enter into and enforce all contracts or
1611 agreements necessary, convenient or pertaining to any loan to a
1612 local governmental unit under this section;

1613 (b) To loan money to local governmental units for any
1614 of the purposes set forth in this section;

1615 (c) To charge for its costs and services in reviewing
1616 or considering any proposed loan to a local governmental unit and
1617 such costs may be established in such manner as the bank shall
1618 determine;

1619 (d) To fix and prescribe any form of application or
1620 procedure to be required of a local governmental unit for the
1621 purpose of any loan to be made to such governmental unit and to
1622 fix the terms and conditions of any such loan;

1623 (e) To issue revenue bonds to fund loans to local
1624 governmental units for the acquisition, construction and
1625 installation of energy related improvements, and other related or
1626 similar infrastructure improvements consistent with the
1627 intentions, purposes and objects of this section. Before any
1628 bonds may be issued for this purpose, the requirements of Section
1629 31-25-28(6) must be satisfied; and

1630 (f) To issue revenue bonds to fund or assist in funding
1631 retirement systems established pursuant to Sections 21-29-201
1632 through 21-29-261. Before any revenue bonds may be issued for



1633 this purpose, the municipality whose retirement system is being
1634 funded by such bonds shall have an actuary perform a study through
1635 the Public Employees Retirement System to determine the effect of
1636 such revenue bonds on such retirement system.

1637 (g) To issue bonds in the amount of Five Million
1638 Dollars (\$5,000,000.00) to provide additional funding for the
1639 grant program authorized under Section 18 of Chapter 530, Laws of
1640 1995, which provided funds to counties and municipalities for the
1641 construction, renovation and expansion of livestock facilities.

1642 **SECTION 22.** Section 55-19-15, Mississippi Code of 1972, is
1643 brought forward as follows:

1644 55-19-15. The district, upon ratification as required by
1645 Section 55-19-11, is hereby declared to have all the powers which
1646 it may deem reasonable, necessary and requisite to establish
1647 within the Bienville Recreational District recreational facilities
1648 of all types and kinds for the benefit of residents of the area
1649 and for nonresident citizens who shall be encouraged and invited
1650 to utilize these activities and facilities. Among these powers
1651 shall be the power to purchase, sell, exchange, lease, accept,
1652 receive or hold title or leasehold interest in real, personal and
1653 mixed property from any source whatsoever or to otherwise deal
1654 with any such property to the extent reasonably necessary to
1655 accomplish the purposes of the district. All such interests shall
1656 be received in the name of the State of Mississippi for the use
1657 and benefit of the Bienville Recreational District.



1658 Further, the powers shall include the right to contract with
1659 the State Highway Department, the board of supervisors of the
1660 counties within the district, or any other state or federal agency
1661 for the construction and maintenance of roads and bridges. In the
1662 exercise of its powers the district may employ administrative,
1663 technical, fiscal and professional personnel as may be found
1664 necessary to implement the purposes of this chapter with such
1665 personnel's compensation to be established by the Mississippi
1666 Personnel Board; to adopt and use a seal; accept grants, gifts and
1667 bequests from the United States or any agency or department
1668 thereof, or from any other public or private source; establish a
1669 bank account or accounts; develop the recreational facilities and
1670 activities of the district by letting of public contracts and
1671 entering into public contracts; receive and disburse all funds for
1672 lawful purposes; make needful rules and regulations within the
1673 purposes of this chapter; do any and all other acts or things
1674 necessary and requisite to the exercise of the powers, rights,
1675 privileges or functions conferred upon the district by this
1676 chapter or other general laws of the state; and fix and collect
1677 rates and charges to residents and nonresident persons for the use
1678 of the district's cabins, boats, recreational and other related
1679 facilities.

1680 It is expressly provided that the board of directors is
1681 subject to the general laws of the state to the same extent as any
1682 other state board, commission or department, including but not



1683 limited to the budget, State Department of Audit, public
1684 purchasing and public construction statutes.

1685 **SECTION 23.** Section 77-3-105, Mississippi Code of 1972, is
1686 brought forward as follows:

1687 77-3-105. (1) (a) The commission is fully empowered and
1688 authorized to include in an electric public utility's rate base
1689 and rates, as used and useful components of furnishing electric
1690 service, all expenditures determined to be prudently incurred
1691 preconstruction, construction, operating and related costs that
1692 the utility incurs in connection with a generating facility
1693 (including but not limited to all such costs contained in the
1694 utility's "Construction Work in Progress" or "CWIP" accounts),
1695 whether or not the construction of any generating facility is ever
1696 commenced or completed, or the generating facility is placed into
1697 commercial operation. However, all costs incurred before May 9,
1698 2008, may be reflected in rates only upon an order of the Public
1699 Service Commission after a finding of prudence.

1700 (b) The commission is further empowered and authorized
1701 to allow a public utility to accrue a just and reasonable rate of
1702 return to be determined by the commission on the unrecovered
1703 balance of any preconstruction or construction costs which shall
1704 include all costs incurred before May 9, 2008, and such costs may
1705 be reflected in rates only upon an order of the Public Service
1706 Commission after a finding of prudence.



1707 (c) The commission may order that preconstruction,
1708 construction, operating and related costs be reflected in rates
1709 either as a part of base rates or through the operation of a rider
1710 schedule or other similar rate mechanism, or through a combination
1711 thereof, as the commission deems appropriate and in the public
1712 interest, and such costs incurred before May 9, 2008, may be
1713 reflected in rates only upon an order of the Public Service
1714 Commission after a finding of prudence.

1715 (d) Notwithstanding other provisions of this section,
1716 recovery of any construction costs incurred in excess of the
1717 amount estimated by the public utility in a certificate proceeding
1718 will be addressed by the commission in a proceeding after the
1719 generating facility is completed and commences commercial
1720 operation, upon petition by the public utility.

1721 (e) Once the commission grants a facilities
1722 certificate, no public utility shall abandon or cancel
1723 construction of a generating facility without approval from the
1724 commission based on a finding that the construction is no longer
1725 in the public interest. Notwithstanding any provisions of this
1726 article to the contrary, if the generating facility is abandoned
1727 or cancelled without the approval of the commission, the
1728 commission shall determine whether the public interest will be
1729 served to allow (i) the recovery of all or part of the prudently
1730 incurred preconstruction, construction and related costs in
1731 connection with the generating facility and related facilities,



1732 (ii) the recovery of a return on the unrecovered balance of the
1733 utility's prudently incurred costs at a just and reasonable rate
1734 of return to be determined by the commission, or (iii) the
1735 implementation of credits, refunds or rebates to ratepayers to
1736 defray costs incurred for the generating facility.

1737 (2) (a) The commission is authorized to conduct prudence
1738 reviews on a periodic or ongoing basis with regard to any
1739 preconstruction, construction, operating and related costs
1740 associated with a generating facility, to hold hearings thereon,
1741 and to reflect the outcome of such commission reviews, including
1742 commission prudence determinations, in the public utility's rates.
1743 The commission is authorized to make and issue such prudence
1744 determinations as frequently as each calendar quarter. The
1745 commission is authorized to set a procedural schedule for such
1746 commission determinations. Any such prudence determinations shall
1747 be binding in all future regulatory proceedings affecting such
1748 generating facility, unless the generating facility is imprudently
1749 abandoned or cancelled.

1750 (b) The Executive Director of the Public Utilities
1751 Staff and the commission may enter into professional services
1752 contracts with one or more consultants to audit preconstruction,
1753 construction and related costs incurred for a generating facility
1754 and to make such reports and provide testimony thereon as may be
1755 required by the executive director or the commission, as
1756 applicable. Such contracts shall be considered to be for auditor



1757 or utility rate expert services under Section 25-9-120. Costs
1758 associated with such professional service contracts shall not
1759 exceed Three Hundred Fifty Thousand Dollars (\$350,000.00) for work
1760 performed on any given nuclear generating facility and Two Hundred
1761 Thousand Dollars (\$200,000.00) on any given non-nuclear generating
1762 facility, in any twelve-month period; provided, however, the
1763 Public Utilities Staff and the commission may by rule, after
1764 notice and hearing, modify these amounts. The consultants shall
1765 submit periodically to the executive director or the commission,
1766 as applicable, for approval of payment, itemized bills detailing
1767 the work performed. The executive director or the chairman of the
1768 commission, as applicable, shall requisition the audited public
1769 utility to make the requisite payments to such consultants.
1770 Payments by the audited public utility shall be considered as
1771 preconstruction, construction, operating or related costs and
1772 recoverable pursuant to paragraph (c) of subsection (1).

1773 (c) The provisions of Sections 77-3-37(7) (b) and
1774 77-3-39(10) and (15) shall not apply to any proceeding for the
1775 change in rates by the commission in connection with a generating
1776 facility.

1777 (3) Any party aggrieved by any final order of the commission
1778 relating to any generating facility shall have a right of direct
1779 appeal to the Mississippi Supreme Court. The procedures set out
1780 in Section 77-3-72 for direct appeal, including those provisions
1781 relating to periods of time in which filings are to be made, shall



1782 apply to any commission final order promulgated, in whole or in
1783 part, pursuant to this article.

1784 **SECTION 24.** Section 77-6-59, Mississippi Code of 1972, is
1785 brought forward as follows:

1786 77-6-59. The authority shall, following the closing of each
1787 fiscal year, submit an annual report of its activities for the
1788 preceding year to the governing authorities and to the utility
1789 commissions of its member municipalities. Each such report shall
1790 set forth a complete operating and financial statement covering
1791 the operations of the authority during such year. The authority
1792 shall cause an audit of its books of record and accounts to be
1793 made at least once in each year by certified public accountants
1794 and the cost thereof may be treated as a part of the cost of
1795 construction of a project or projects, or otherwise as part of the
1796 expense of administration of a project covered by such audit.

1797 The municipalities possessing ownership interests in a
1798 project shall, following the closing of each fiscal year, submit a
1799 consolidated or combined annual report of their activities with
1800 respect to such project for the preceding year to the respective
1801 governing authorities of such municipalities. Each such report
1802 shall set forth a complete operating and financial statement
1803 covering the operations of the jointly owned project during such
1804 year. The municipalities possessing ownership interests in a
1805 project shall cause an audit of the books of record and accounts
1806 relating to such project to be made at least once in each year by



1807 certified public accountants and the cost thereof may be treated
1808 as a cost of construction of the project, or otherwise as part of
1809 the expenses of the administration of the project covered by such
1810 audit.

1811 **SECTION 25.** Section 77-5-767, Mississippi Code of 1972, is
1812 brought forward as follows:

1813 77-5-767. Each joint agency shall, following the closing of
1814 each fiscal year, submit an annual report of its activities for
1815 the preceding year to the governing authorities and to the utility
1816 commissions of its member municipalities. Each such report shall
1817 set forth a complete operating and financial statement covering
1818 the operations of the joint agency during such year. The joint
1819 agency shall cause an audit of its books of record and accounts to
1820 be made at least once in each year by certified public accountants
1821 and the cost thereof may be treated as a part of the cost of
1822 construction of a project or projects, or otherwise as part of the
1823 expense of administration of a project covered by such audit.

1824 The municipalities possessing ownership interests in a
1825 project shall, following the closing of each fiscal year, submit a
1826 consolidated or combined annual report of their activities with
1827 respect to such project for the preceding year to the respective
1828 governing authorities of such municipalities, each such report
1829 shall set forth a complete operating and financial statement
1830 covering the operations of the jointly owned project during such
1831 year. The municipalities possessing ownership interests in a



1832 project shall cause an audit or the books of record and accounts
1833 relating to such project to be made at least once in each year by
1834 certified public accountants and the cost thereof may be treated
1835 as a cost of construction of the project, or otherwise as part of
1836 the expenses of the administration of the project covered by such
1837 audit.

1838 **SECTION 26.** This act shall take effect and be in force from
1839 and after July 1, 2018.

