

By: Representative Weathersby

To: Public Property

HOUSE BILL NO. 794

1 AN ACT TO CREATE NEW SECTION 31-33-1, MISSISSIPPI CODE OF
2 1972, TO DESIGNATE A NEW CHAPTER OF LAW AS THE "MISSISSIPPI
3 PUBLIC-PRIVATE PARTNERSHIP ACT OF 2018"; TO CREATE NEW SECTION
4 31-33-3, MISSISSIPPI CODE OF 1972, TO SPECIFY THE INTENT OF THE
5 LEGISLATURE REGARDING PUBLIC-PRIVATE PARTNERSHIPS; TO CREATE NEW
6 SECTION 31-33-5, MISSISSIPPI CODE OF 1972, TO PROVIDE CERTAIN
7 DEFINITIONS; TO CREATE NEW SECTION 31-33-7, MISSISSIPPI CODE OF
8 1972, TO ESTABLISH THE P3 REVIEW BOARD TO REVIEW AND APPROVE
9 PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS AND TO CREATE GUIDELINES TO
10 GOVERN SUCH AGREEMENTS; TO CREATE NEW SECTION 31-33-9, MISSISSIPPI
11 CODE OF 1972, TO AUTHORIZE RESPONSIBLE PUBLIC ENTITIES TO ENTER
12 INTO CERTAIN AGREEMENTS TO DEVELOP QUALIFYING PROJECTS; TO CREATE
13 NEW SECTION 31-33-11, MISSISSIPPI CODE OF 1972, TO PROVIDE HOW A
14 RESPONSIBLE PUBLIC ENTITY REQUESTS, RECEIVES AND RESPONDS TO
15 PROPOSALS FOR QUALIFYING PROJECTS; TO CREATE NEW SECTION 31-33-13,
16 MISSISSIPPI CODE OF 1972, TO REQUIRE THE CHIEF EXECUTIVE OF A
17 RESPONSIBLE PUBLIC ENTITY TO MAKE A FINDING OF PUBLIC INTEREST
18 BEFORE ENTERING INTO A PARTNERSHIP AGREEMENT; TO CREATE NEW
19 SECTION 31-33-15, MISSISSIPPI CODE OF 1972, TO REQUIRE NOTICE OF
20 PROPOSED PROJECTS BE GIVEN TO AFFECTED JURISDICTIONS; TO CREATE
21 NEW SECTION 31-33-17, MISSISSIPPI CODE OF 1972, TO AUTHORIZE
22 RESPONSIBLE PUBLIC ENTITIES AND PRIVATE PARTNERS TO ENTER INTO
23 INTERIM AGREEMENTS; TO CREATE NEW SECTION 31-33-19, MISSISSIPPI
24 CODE OF 1972, TO SPECIFY THE PROJECT DELIVERY METHODS THAT A
25 RESPONSIBLE PUBLIC ENTITY MAY UTILIZE; TO CREATE NEW SECTION
26 31-33-21, MISSISSIPPI CODE OF 1972, TO SPECIFY HOW A QUALIFYING
27 PROJECT MAY BE FINANCED; TO CREATE NEW SECTION 31-33-23,
28 MISSISSIPPI CODE OF 1972, TO REQUIRE PUBLIC-PRIVATE PARTNERSHIP
29 AGREEMENTS TO BE VALIDATED IN THE SAME MANNER AS BONDS; TO CREATE
30 NEW SECTION 31-33-25, MISSISSIPPI CODE OF 1972, TO EXEMPT BONDS
31 AND OBLIGATIONS OF A RESPONSIBLE PUBLIC ENTITY IN CONNECTION WITH
32 A QUALIFYING PROJECT FROM TAXATION IN ADDITION TO THE PROPERTY AND
33 INCOME OF A QUALIFYING PROJECT; TO CREATE NEW SECTION 31-33-27,
34 MISSISSIPPI CODE OF 1972, TO PROVIDE A SEVERANCE CLAUSE; TO AMEND



35 SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO REMOVE
36 PUBLIC-PRIVATE PARTNERSHIPS FROM CERTAIN PROVISIONS OF THE PUBLIC
37 BIDDING LAWS; TO BRING FORWARD SECTION 31-7-1, MISSISSIPPI CODE OF
38 1972, FOR THE PURPOSE OF POSSIBLE AMENDMENT; TO AMEND SECTION
39 65-1-85, MISSISSIPPI CODE OF 1972, TO EXEMPT PUBLIC-PRIVATE
40 PARTNERSHIP AGREEMENTS FROM CERTAIN PROVISIONS RELATING TO THE
41 TRANSPORTATION COMMISSION; TO BRING FORWARD SECTIONS 27-31-1,
42 27-13-5, 27-7-15, 31-7-3, 31-7-5, 31-7-7, 31-7-9, 31-7-10,
43 31-7-11, 31-7-12, 31-7-13.1, 31-7-13.2, 31-7-14, 31-7-15, 31-7-16,
44 31-7-18, 31-7-21, 31-7-23, 31-7-38, 31-7-47, 31-7-49, 31-7-53,
45 31-7-55, 31-7-57, 31-7-59, 31-7-61, 31-7-63, 31-7-65, 31-7-73,
46 31-7-301, 31-7-303, 31-7-305, 31-7-307, 31-7-309, 31-7-311,
47 31-7-313, 31-7-315, 31-17-3, 31-7-317 AND 57-62-13, MISSISSIPPI
48 CODE OF 1972, FOR PURPOSES OF POSSIBLE AMENDMENT; AND FOR RELATED
49 PURPOSES.

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

51 **SECTION 1.** The following shall be codified as Section
52 31-33-1, Mississippi Code of 1972:

53 31-33-1. This chapter shall be known and may be cited as the
54 "Mississippi Public-Private Partnership Act of 2018."

55 **SECTION 2.** The following shall be codified as Section
56 31-33-3, Mississippi Code of 1972:

57 31-33-3. It is the intent of this chapter by encouraging
58 public-private partnerships to:

59 (a) Promote the development and operation of quality
60 infrastructure projects that provide economic and social value;

61 (b) Provide a well-defined mechanism to facilitate
62 collaboration between responsible public entities and private
63 partners in infrastructure development and operation and enable
64 increased investment of private capital;

65 (c) Promote innovation with respect to the delivery and
66 financing of public projects;



67 (d) Provide flexibility in contracting and delivering
68 infrastructure projects;

69 (e) Reduce total life-cycle costs of public
70 infrastructure; and

71 (f) Allow for cost and risk sharing between responsible
72 public entities and private partners.

73 **SECTION 3.** The following shall be codified as Section
74 31-33-5, Mississippi Code of 1972:

75 31-33-5. As used in this chapter, the following terms shall
76 have the meanings ascribed unless the context clearly indicates
77 otherwise:

78 (a) "Affected jurisdiction" means any county,
79 municipality, city, town or special district in which all or a
80 portion of the qualifying project is located.

81 (b) "Board" means the P3 Review Board, establish under
82 Section 31-33-7, to review and approve public-private partnership
83 agreements and administer the program through the promulgation of
84 guidelines for the governance of such agreements.

85 (c) "Concession" means any lease, license, franchise,
86 easement, or other binding agreement transferring from a
87 responsible public entity to a private partner rights for the use
88 or control, in whole or in part, of a qualifying project for a
89 definite term during which the private partner will provide
90 services in return for the right to receive all or a portion of
91 the revenues of the qualifying project.



92 (d) "Design-build agreement" means a contract between a
93 responsible public entity and a private partner that combines the
94 design and construction phases of a qualifying project into a
95 single contract and wherein the private partner is required to
96 satisfactorily perform, at a minimum, the design and construction
97 of the qualifying project.

98 (e) "Design-build-finance agreement" means a contract
99 between a responsible public entity and a private partner that
100 combines the design, construction and financing phases of a
101 qualifying project into a single contract and wherein the private
102 partner is required to satisfactorily perform, at a minimum, the
103 design, construction and financing of the qualifying project.

104 (f) "Design-build-finance-operate agreement" means a
105 contract between a responsible public entity and a private partner
106 that combines the design, construction, financing and operation
107 phases of a qualifying project into a single contract and wherein
108 the private partner is required to satisfactorily perform, at a
109 minimum, the design, construction, financing and operation of the
110 qualifying project.

111 (g) "Design-build-finance-operate-maintain agreement"
112 means a contract between a responsible public entity and a private
113 partner that combines the design, construction, financing,
114 operation and maintenance phases of a qualifying project into a
115 single contract and wherein the private partner is required to



116 satisfactorily perform, at a minimum, the design, construction,
117 financing, operation and maintenance of the qualifying project.

118 (h) "Design-build-operate-maintain agreement" means a
119 contract between a responsible public entity and a private partner
120 that combines the design, construction, operation and maintenance
121 phases of a qualifying project into a single contract and wherein
122 the private partner is required to satisfactorily perform, at a
123 minimum, the design, construction, operation and maintenance of
124 the qualifying project.

125 (i) "Design-build-maintain agreement" means a contract
126 between a responsible public entity and a private partner that
127 combines the design and construction phases of a qualifying
128 project into a single contract and wherein the private partner is
129 required to satisfactorily perform, at a minimum, the design,
130 construction and maintenance of the qualifying project.

131 (j) "Develop" means to plan, design, develop, improve,
132 equip, modify, repair, operate, maintain, finance, lease, acquire,
133 install, construct and/or expand a qualifying project.

134 (k) "Eligible costs" means, to the extent determined by
135 the responsible public entity, a percentage of the estimated costs
136 incurred by a private partner (not to exceed twenty-five percent
137 (25%)) in responding to a request for proposals issued by a
138 responsible public entity pursuant to this chapter.

139 (l) "Fees" means rates, tolls, fees or other charges
140 imposed by the private partner or responsible public entity for



141 use of all or a portion of a qualifying project pursuant to a
142 public-private partnership agreement.

143 (m) "Interim agreement" means an agreement between a
144 private partner and a responsible public entity concerning the
145 terms discussed in Section 31-33-17.

146 (n) "Material default" means, to the extent provided in
147 a public-private partnership agreement, any default by a private
148 partner in the performance of its duties as outlined in such
149 public-private partnership agreement which is not remedied
150 following notice and a reasonable cure period.

151 (o) "Operate-maintain agreement" means a contract
152 between a responsible public entity and a private partner that
153 combines the operation and maintenance phases of a qualifying
154 project into a single contract and wherein the private partner is
155 required to satisfactorily perform, at a minimum, the operation
156 and maintenance of the qualifying project.

157 (p) "Private partner" means any natural person,
158 corporation, general partnership, limited liability company,
159 limited partnership, joint venture, business trust, public benefit
160 corporation, nonprofit entity, other private business entity or
161 any combination thereof.

162 (q) "Proposal" means a plan to develop a qualifying
163 project submitted by a private partner with detail beyond a
164 conceptual level for which all terms determined to be necessary by
165 the responsible public entity are defined, including without



166 limitation, but depending on any delivery methods set forth in
167 Section 31-33-19 and specified in a request for proposals, costs,
168 payment schedules, plans, designs, operation, maintenance
169 arrangements, financing, deliverables and project schedule.

170 (r) "Public-private partnership" means when a
171 responsible public entity enters into a public-private partnership
172 agreement with a private partner to develop a qualifying project
173 utilizing one or more of the delivery methods set forth in Section
174 31-33-19 for the benefit of the public.

175 (s) "Public-private partnership agreement" means an
176 agreement between one or more private partners and one or more
177 responsible public entities contractually providing for and
178 allocating the responsibilities of and among all parties to
179 develop and/or operate a qualifying project in a public-private
180 partnership, which such agreement shall have a term not to exceed
181 fifty (50) years unless the P3 Review Board approves a longer term
182 not to exceed ninety (90) years upon finding that the qualifying
183 project is of such an extraordinary nature that the public benefit
184 justifies the extended term.

185 (t) "Qualifying project" means any public facility or
186 infrastructure or improvement to any public facility or
187 infrastructure with an estimated cost in excess of Ten Million
188 Dollars (\$10,000,000.00) that is used or will be used by the
189 public at large or in support of a public purpose or activity
190 including, but not limited to: civic or education facilities;



191 surface transportation facilities such as roads, bridges, tunnels,
192 public transit systems, ferry facilities, port facilities,
193 airports, railroads, rail systems and intermodal systems; cultural
194 or recreational facilities; medical facilities; utility facilities
195 and distribution systems for water, wastewater, gas and electric
196 facilities; telecommunications facilities; and any other
197 facilities, buildings, stadiums, parking areas, appurtenances and
198 any other property needs to operate any of the foregoing.

199 (u) "Responsible public entity" means (i) the State of
200 Mississippi or any agency or department thereof; (ii) the State
201 Institutions of Higher Learning; (iii) any education building
202 corporation established for the State Institutions of Higher
203 Learning; or (iv) any combination of the foregoing.

204 (v) "Revenues" means all taxes, fees, charges, monies,
205 profits, payments of principal of or interest on securities and
206 other investments, gifts, grants, contributions, appropriations
207 and all other income derived by a responsible public entity.

208 (w) "Request for proposals" means the process for
209 soliciting proposals to develop a qualifying project as further
210 described in Section 31-33-11.

211 (x) "Request for qualifications" means the process for
212 soliciting the qualifications of private partners by a responsible
213 public entity in anticipation of issuing a request for proposals
214 to develop a qualifying project, all as further described in
215 Section 31-33-11.



216 (z) "State" means the State of Mississippi.

217 **SECTION 4.** The following shall be codified as Section
218 31-33-7, Mississippi Code of 1972:

219 31-33-7. (1) There is created the P3 Review Board, for the
220 purposes of reviewing and approving all public-private partnership
221 agreements and the creation of guidelines governing all
222 public-private partnership agreements. The board shall be
223 comprised of eleven (11) members, as follows:

224 (a) Two (2) members to be appointed by the Speaker of
225 the House of Representatives;

226 (b) Two (2) members to be appointed by the Lieutenant
227 Governor;

228 (c) The Secretary of State or, if the guidelines are
229 approved, his or her designee;

230 (d) The State Auditor or his or her designee;

231 (e) The Executive Director of the Mississippi
232 Department of Transportation or his or her designee;

233 (f) The Executive Director of the Mississippi
234 Department of Finance and Administration or his or her designee;

235 (g) The Executive Director of the Mississippi
236 Development Authority or his or her designee;

237 (h) The Commissioner of the Mississippi Institutions of
238 Higher Learning or his or her designee; and

239 (i) The Executive Director of the Mississippi
240 Department of Environmental Quality or his or her designee.



241 At least one (1) of the appointed members of the board shall
242 be a licensed member of the Mississippi Bar Association with
243 expertise in representing responsible public entities in public
244 works construction. Each appointed member of the board shall have
245 subject matter experience in architecture, construction
246 management, engineering, finance or real estate development.
247 Appointed members of the board shall serve five-year terms and
248 represent geographically diverse regions of the state to the
249 extent practicable.

250 (2) The board shall:

251 (a) Promulgate guidelines by July 1, 2018, or as soon
252 as practicable, following a period of public review, setting forth
253 a uniform process for the review, solicitation, evaluation, award,
254 and delivery of public-private partnership agreements, including
255 timeframes and requirements for public outreach prior to entering
256 into a public-private partnership agreement on a selected
257 proposal. The timeframes and requirements shall provide for a
258 reasonable period of public review and comment;

259 (b) Make any recommendations to the Legislature and the
260 Governor on any amendments to this chapter deemed helpful to carry
261 out the purposes of this chapter;

262 (c) Make any recommendations to the departments and
263 agencies of the state concerning any amendments to the regulations
264 of each respective agency deemed necessary to carry out the
265 purposes of this chapter;



266 (d) Review all public-private partnership agreements
267 authorized by this chapter;

268 (e) Render any necessary advice to responsible public
269 entities in order to accomplish the purposes of this chapter; and

270 (f) Retain and exercise approval power over all
271 public-private partnership agreements prior to the responsible
272 public entity executing a public-private partnership agreement.

273 (3) All responsible public entities shall follow the final
274 guidelines of the board with regard to any public-private
275 partnership agreement subject to this chapter, however, a
276 responsible public entity may also adopt supplemental guidelines
277 for public-private partnerships other than those described in this
278 section so long as such guidelines are supplemental to and not
279 inconsistent with this chapter.

280 (4) The responsible public entity must assess, through a
281 standardized screening process (as outlined in the guidelines
282 adopted by the board), whether a public-private partnership for a
283 qualified project may provide a greater value added than
284 traditional procurement. Such findings from the screening process
285 shall be submitted to the State Bond Commission for review prior
286 to the responsible public entity entering into a public-private
287 partnership agreement.

288 (5) The operations and activities of the board in
289 carrying out the purposes of this chapter shall be administered by
290 the Mississippi Department of Finance and Administration. The



291 board shall elect from its membership a chairman and a vice
292 chairman, each of whom shall perform the usual duties of such
293 offices. However, the initial chairman of the board shall be the
294 Secretary of State. The initial chairman shall call the initial
295 meeting of the board and shall serve until the guidelines required
296 to be promulgated by subsection (2) (a) of this section are
297 approved by the board. The Executive Director of the Mississippi
298 Department of Finance and Administration, or his or her designee,
299 shall serve as secretary of the board. Six (6) members of the
300 board shall constitute a quorum. The board may adopt a seal. At
301 the request of the board, the Mississippi Department of Finance
302 and Administration is authorized to employ such personnel,
303 including administrative and clerical staff, as may be necessary
304 for the board to comply with its duties and responsibilities
305 pursuant to this chapter.

306 **SECTION 5.** The following shall be codified as Section
307 31-33-9, Mississippi Code of 1972:

308 31-33-9. The responsible public entity may, either
309 separately or in combination with any other public entities, enter
310 into working agreements, coordination agreements, or similar
311 implementation agreements, including the formation of bi-state or
312 multistate organizations, to develop or operate a qualifying
313 project subject to the requirements of this chapter. These
314 agreements must conform to any relevant state laws and to the laws
315 of the United States regarding interstate compacts.



316 **SECTION 6.** The following shall be codified as Section
317 31-33-11, Mississippi Code of 1972:

318 31-33-11. (1) The responsible public entity may request
319 proposals from private partners for the development of a
320 qualifying project under one or more of the project delivery
321 methods described in Section 31-33-19. Private partners who
322 respond to requests for proposals from responsible public entities
323 but whom are not selected to perform the services described in
324 such request may be recompensed for eligible costs incurred as
325 part of the response to proposal process, but only to the extent
326 provided in the request for proposal issued by the responsible
327 public entity.

328 (2) Upon submitting a proposal, a private partner shall
329 identify those portions of a proposal that the private partner
330 considers to be a trade secret or confidential commercial,
331 financial, or proprietary information and provide any
332 justification as to why these materials, upon request, should not
333 be disclosed by the responsible public entity. A private partner
334 shall fully comply with any applicable state laws for such
335 materials to be exempt from disclosure. Patent information will
336 be exempt from disclosure until the patent expires. Records of
337 negotiation are exempt from disclosure under the Mississippi
338 Public Records Act of 1983. Other information such as originality
339 of design may only be protected under this section until a
340 public-private partnership agreement is reached. Projects under



341 federal jurisdiction or using federal funds must conform to
342 federal regulations under the Freedom of Information Act. Subject
343 to the foregoing requirements, the related responsible public
344 entity shall determine what is exempt from disclosure and shall
345 otherwise comply with the Mississippi Public Records Act of 1983.

346 (3) For any selected proposal for a qualifying project, the
347 responsible public entity shall obtain an independent audit of the
348 proposed private-public partnership, including an assessment of
349 projected usage and public costs, before the public-private
350 partnership agreement is executed. The analysis shall be
351 disclosed to the public prior to execution of a public-private
352 partnership agreement. In addition to disclosing the independent
353 audit to the public, the responsible public entity shall provide a
354 copy of the audit to the chairmen of the House of Representatives
355 Public Property, Ways and Means and Appropriations Committees, and
356 to the chairmen of the Senate Public Property, Finance and
357 Appropriations Committees prior to the execution of a
358 public-private partnership agreement.

359 (4) The responsible public entity may apply for local, state
360 or federal credit assistance, or endorse such applications
361 submitted by private partners, to develop any qualifying project
362 pursuant to a public-private partnership agreement.

363 (5) Professionals, consultants and experts (including
364 without limitation accountants, architects, attorneys, engineers
365 and financial advisors) may be engaged by a responsible public



366 entity at any point to assist in the evaluation, negotiation and
367 development of qualifying projects.

368 (6) After the responsible public entity makes a
369 determination of a qualifying project as provided in subsection
370 (1) of this section, the responsible public entity shall:

371 (a) Seek competing private partners for the qualifying
372 project by issuing a request for qualifications for not less than
373 ninety (90) days.

374 (b) Review all qualifications submitted in response to
375 such request for qualifications based on the criteria established
376 in such request for qualifications.

377 (c) If exactly one (1) private partner responds to the
378 request for qualifications and such private partner meets the
379 criteria defined in such request for qualifications, the
380 responsible public entity may: (i) begin negotiations with such
381 private partner to enter into a public-private partnership
382 agreement and submit a request for proposals to such private
383 partner under the processes and procedures described in this
384 chapter; (ii) reject the private-partner applicant and re-submit
385 its request for qualifications; or (iii) cancel its request for
386 qualifications and reject all private-partner applicants.

387 (d) If more than one (1) private partner submits
388 qualifications meeting the criteria defined in such request for
389 qualifications, the responsible public entity shall seek competing
390 proposals for the qualifying project by issuing a request for



391 proposals for not less than ninety (90) days. Thereafter the
392 responsible public entity shall review all proposals submitted in
393 response to such request for competing proposals based on the
394 criteria established in such request for competing proposals.

395 (7) When the time for receiving proposals expires, the
396 responsible public entity shall first rank the proposals in
397 accordance with the factors set forth in the request for
398 proposals. The responsible public entity shall not be required to
399 select the proposal with the lowest price offer, but it may
400 consider price as one (1) of various factors in evaluating the
401 proposals received in response to the request for proposals for a
402 qualifying project. Factors that may be considered include:

403 (a) The proposed cost to develop the qualifying
404 project;

405 (b) The estimated life-cycle cost of the qualifying
406 project;

407 (c) The general reputation, industry experience, and
408 financial capacity of the private partner;

409 (d) The proposed design of the qualifying project;

410 (e) The eligibility of the qualifying project for
411 accelerated selection, review, and documentation timelines under
412 the P3 Review Board's guidelines;

413 (f) Estimated benefits to the public;

414 (g) The private partner's compliance with a minority
415 business enterprise participation plan;



416 (h) The private partner's plans to employ local
417 contractors and residents; and

418 (i) Other criteria that the responsible public entity
419 deems appropriate.

420 (8) After ranking the proposals, the responsible public
421 entity shall begin simultaneous negotiations with the first and
422 second ranked private partners. If the responsible public entity
423 and the first or second ranked private partner do not reach a
424 public-private partnership agreement or interim agreement, then
425 the responsible public entity may conduct negotiations with the
426 next ranked private partner. This process shall continue until
427 the responsible public entity either voluntarily abandons the
428 process or executes a public-private partnership agreement or
429 interim agreement with a private partner.

430 (9) At any time during the process outlined in this chapter,
431 but before the full execution of a public-private partnership
432 agreement, the responsible public entity may, without liability to
433 any private partner or third party (except to the extent of
434 eligible costs, if any, provided for in the request for
435 qualifications and/or request for proposals), cancel its request
436 for proposals or reject all proposals received in response to its
437 request for proposals, for any reason whatsoever.

438 (10) Responsible public entities who utilize the processes
439 and procedures described in this chapter shall not be subject to



440 Chapter 7, Title 31, Mississippi Code of 1972, or any other public
441 bidding laws of this state.

442 **SECTION 7.** The following shall be codified as Section
443 31-33-13, Mississippi Code of 1972:

444 31-33-13. (1) The responsible public entity may enter into
445 a public-private partnership agreement to develop a qualifying
446 project only after the chief executive officer of the responsible
447 public entity makes a finding of public interest and regional plan
448 compatibility. Such findings shall, at a minimum, consider the
449 following:

450 (a) Benefits to the public;

451 (b) Advantages or disadvantages to develop the
452 qualifying project as a public-private partnership versus a
453 traditional procurement, including the anticipated cost over the
454 project life-cycle, adjusted for risk and risk transfers;

455 (c) Sources of funding and financing for the qualifying
456 project;

457 (d) The general reputation, qualifications, industry
458 experience and financial capacity of the private partner or
459 private partners;

460 (e) The proposal's compatibility with regional
461 infrastructure plans; and

462 (f) Other criteria that the responsible public entity
463 deems appropriate.



464 (2) The responsible public entity shall publicly disclose
465 all findings of public interest and regional compatibility made
466 pursuant to the requirements of subsection (1)(a) and (b) of this
467 section in a public report, which shall include a detailed
468 discussion of all considerations on which the findings are based
469 followed by fourteen (14) days of public comment before execution
470 of a public-private partnership agreement.

471 **SECTION 8.** The following shall be codified as Section
472 31-33-15, Mississippi Code of 1972:

473 31-33-15. (1) Before entering into a public-private
474 partnership agreement, the responsible public entity shall notify
475 affected jurisdictions in writing of such proposal from the
476 private partner and by furnish a copy of the proposal from the
477 private partner to each affected jurisdiction.

478 (2) Each affected jurisdiction may, within sixty (60) days
479 after receiving the notice required under subsection (1) of this
480 section, submit in writing any comments to the responsible public
481 entity on the project's potential impact and compatibility with
482 local and regional budgets and infrastructure plans.

483 (3) The responsible public entity shall consider the
484 comments of the affected jurisdiction before entering into a
485 public-private partnership agreement with a private partner.

486 **SECTION 9.** The following shall be codified as Section
487 31-33-17, Mississippi Code of 1972:



488 31-33-17. (1) Before or in connection with the negotiation
489 of a public-private partnership agreement, the responsible public
490 entity may enter into an interim agreement with the private
491 partner that submitted the selected proposal. An interim
492 agreement shall not obligate the responsible public entity to
493 enter into a public-private partnership agreement. The interim
494 agreement is wholly discretionary; the responsible public entity
495 and the private partner may proceed directly to creating a
496 public-private partnership agreement without creating an interim
497 agreement. An interim agreement shall only:

498 (a) Authorize the private partner to commence
499 activities for which it may be compensated related to the proposed
500 qualifying project, including, but not limited to, project
501 planning, design and engineering, environmental analysis and
502 mitigation and ascertaining the availability of financing for the
503 proposed facility; and

504 (b) Establish the process and timing of the negotiation
505 of the public-private partnership agreement.

506 (2) A responsible public entity may enter into an interim
507 agreement with multiple private partners if the responsible public
508 entity determines, in writing, that it is in the public interest
509 to do so.

510 (3) Prior to developing a qualifying project, the private
511 partner that submitted the selected proposal shall enter into a
512 public-private partnership agreement with the responsible public



513 entity stipulating the obligations of and the allocation of
514 responsibilities among the parties, which, in addition to other
515 contract terms, must include:

516 (a) Descriptions of which party will assume
517 responsibility for specific project elements and when;

518 (b) How the parties will share management of the risks
519 of the qualifying project;

520 (c) How the parties will share the various costs to
521 develop the qualifying project;

522 (d) How the parties will allocate financial
523 responsibility for cost overruns;

524 (e) The term of the public-private partnership
525 agreement;

526 (f) Any safeguards to mitigate additional costs or
527 service disruptions to the public in the event of a material
528 default or cancellation of the public-private partnership
529 agreement;

530 (g) Performance standards and any damages for
531 nonperformance;

532 (h) Any performance incentives;

533 (i) Accounting and auditing standards to be used to
534 evaluate work on the qualifying project;

535 (j) The responsibility for reconstruction or
536 renovations required for a qualifying project to meet all
537 applicable government standards upon reversion of the qualifying



538 project to the responsible public entity at the termination of the
539 public-private partnership agreement; and

540 (k) Such other terms and conditions agreed to mutually
541 by the responsible public entity and the private partner.

542 (4) The public-private partnership agreement shall provide
543 for such fees as may be established by agreement of the parties
544 and shall not be subject to Chapter 7, Title 31, Mississippi Code
545 of 1972.

546 (5) The public-private partnership agreement shall contain a
547 provision by which a private partner expressly agrees that it is
548 prohibited from seeking injunctive or other equitable relief to
549 delay, prevent or otherwise hinder the responsible public entity
550 or any jurisdiction from developing or operating any project that
551 was planned and that may impact the revenue that the private
552 partner may derive from the qualifying project under a
553 public-private partnership agreement, except that the
554 public-private partnership agreement may provide for reasonable
555 compensation to the private partner for the adverse effect on
556 revenues resulting from an unplanned revenue-impacting project
557 undertaken by any responsible public entity.

558 **SECTION 10.** The following shall be codified as Section
559 31-33-19, Mississippi Code of 1972:

560 31-33-19. (1) Subject to the requirements of this chapter,
561 the responsible public entity may utilize any project delivery



562 method or agreement or combination of methods or agreements to
563 develop a qualifying project including, but not limited to:

- 564 (a) A design-build agreement;
- 565 (b) A design-build-finance agreement;
- 566 (c) A design-build-finance-operate agreement;
- 567 (d) A design-build-finance-operate-maintain agreement;
- 568 (e) A design-build-maintain agreement;
- 569 (f) A design-build-operate-maintain agreement;
- 570 (g) An operate-maintain agreement;
- 571 (h) A concession providing for the private partner to

572 design, build, operate, maintain, manage, and/or lease a
573 qualifying project; or

- 574 (i) Any other innovative or nontraditional project
575 delivery method or agreement or combination of methods or
576 agreements that the responsible public entity determines will
577 serve the public interest.

578 (2) For each of the types of public-private partnership
579 agreements authorized under subsection (1) of this section, the
580 following process shall apply:

- 581 (a) Subject to Section 31-33-11(2), the evaluation of
582 the responsible public entity is a public record and shall be
583 maintained for a minimum of ten (10) years after project
584 completion by the responsible public entity.



585 (b) The responsible public entity shall maintain
586 detailed records on qualifying projects separate and apart from
587 its regular record keeping.

588 (c) The responsible public entity shall file a report
589 to the P3 Review Board evaluating the chosen method of contracting
590 by comparing it to the low-bid method of contracting. At a
591 minimum, the report must include:

592 (i) The management goals and objectives for such
593 public-private partnership agreement's system of management;

594 (ii) A complete description of such public-private
595 partnership agreement's management system, including a description
596 of the system the responsible public entity put into place on all
597 projects managed under the system to ensure that it has the
598 complete information on costs and to ensure proper analysis of any
599 proposal the responsible public entity receives from a private
600 partner;

601 (iii) The accountability systems the responsible
602 public entity established to monitor any of such public-private
603 partnership agreement's compliance with specific goals and
604 objectives for the qualifying project;

605 (iv) The outcome of any qualifying project or any
606 interim report on an ongoing project let under the public-private
607 partnership agreement's management system showing compliance with
608 the goals, objectives, policies and procedures the responsible
609 public entity set for the qualifying project;



610 (v) The method used by the responsible public
611 entity to select qualifying projects to utilize such
612 public-private partnership agreement's system of management and
613 all other systems, policies and procedures that the responsible
614 public entity considered as necessary components to such
615 public-private partnership agreement's management system; and

616 (vi) A comparison of the costs between the
617 selected public-private partnership agreement and the anticipated
618 cost of a traditional procurement process.

619 **SECTION 11.** The following shall be codified as Section
620 31-33-21, Mississippi Code of 1972:

621 31-33-21. (1) Any financing of a qualifying project may be
622 in such amounts and upon such terms and conditions as may be
623 determined by the parties to the public-private partnership
624 agreement. The private partner and the responsible public entity
625 may utilize any and all revenues that may be available to them for
626 the purposes of this chapter, to the extent provided in the
627 related public-private partnership agreement, and may include,
628 arrangements relating to:

- 629 (a) Issuer debt, equity, or other securities or
630 obligations;
- 631 (b) Leases, concessions, and grant and loan agreements;
- 632 (c) Access to any designated state funds;
- 633 (d) Loans or grants from any state agency or state
634 infrastructure bank; and



635 (e) Any other financing secured with a pledge of,
636 security interest in, or lien on all or a portion of its property
637 interests in the qualifying project.

638 (2) A responsible public entity may issue bonds as otherwise
639 authorized by state law to fund a public-private partnership
640 agreement.

641 (3) The responsible public entity may take any action to
642 obtain federal, state, and/or local assistance for a qualifying
643 project that serves the purpose of this chapter and may enter into
644 contracts required to receive such assistance. To the fullest
645 extent allowed by law, federal, state and local monies may be
646 combined with any private sector monies in connection with a
647 qualifying project.

648 (4) The responsible public entity is authorized to acquire
649 right-of-way by any means allowable under applicable federal and
650 state constitutional, legal and regulatory requirements.

651 (5) Within a public-private partnership agreement, a
652 responsible public entity and a private partner may agree in
653 writing that a responsible public entity may cause the Department
654 of Revenue or any state agency, department or commission created
655 pursuant to state law to:

656 (a) Withhold all or any part (as agreed by the
657 responsible public entity) of any monies that such private partner
658 is entitled to receive from time to time, pursuant to any law, and
659 that is in the possession of the Department of Revenue or any



660 state agency, department or commission created pursuant to state
661 law; and

662 (b) Pay the same over to a commercial bank acting as
663 trustee to satisfy any delinquent payments due and owing by such
664 responsible public entity under a public-private partnership
665 agreement, all as the same shall occur.

666 If the private partner files a copy of such written
667 agreement, together with a statement of delinquency, with the
668 Department of Revenue or any state agency, department or
669 commission created pursuant to state law, then the Department of
670 Revenue or any such state agency, department or commission created
671 pursuant to state law shall immediately make the withholdings
672 provided in such agreement from the amounts due the private
673 partner and shall continue to pay the same over until all such
674 delinquencies are satisfied.

675 **SECTION 12.** The following shall be codified as Section
676 31-33-23, Mississippi Code of 1972:

677 31-33-23. (1) All public-private partnership agreements
678 completed under the authority of this chapter shall be validated
679 in the Chancery Court of the First Judicial District of Hinds
680 County, Mississippi, with all public agencies involved in such
681 approved qualifying project being parties to the validation
682 proceedings, with the full right to any party in interest to file
683 objections thereto, in the manner provided now by Chapter 13,
684 Title 31, Mississippi Code of 1972, and the validation decree of



685 the chancellor validating the conditions and obligations of the
686 public-private partnership agreement and its approval shall carry
687 the same force and effect therein. All objections to any matters
688 relating to such public-private partnership agreement shall be
689 adjudicated and determined by the chancery court in the validation
690 proceedings and in no other manner, and all rights of the parties
691 shall be preserved and not foreclosed, for the hearing before the
692 chancery court or the chancellor in vacation.

693 (2) All such public-private partnership agreements may be
694 completed without any other proceedings or the happening of any
695 other conditions or things other than those proceedings,
696 conditions and things which are specified or required by this
697 chapter.

698 **SECTION 13.** The following shall be codified as Section
699 31-33-25, Mississippi Code of 1972:

700 31-33-25. (1) As set forth in the declaration of finding
701 and purpose herein, the responsible public entities will be
702 performing an essential governmental function in the exercise of
703 the powers conferred upon the responsible public entities by this
704 chapter, and any bonds or other obligations of a responsible
705 public entity in connection with a qualifying project and the
706 income therefrom including any profit made on the sale thereof and
707 all its fees, charges, gifts, grants, revenues, receipts and other
708 monies received, pledged to pay or secure the payment of such
709 bonds shall at all times be free from taxation of every kind by



710 the state and by the municipalities and all other political
711 subdivisions of the state.

712 (2) The property and materials contained therein
713 constituting a qualifying project and its income and operation
714 shall be exempt from taxation and assessments.

715 **SECTION 14.** The following shall be codified as Section
716 31-33-27, Mississippi Code of 1972:

717 31-33-27. If any section, subsection, paragraph, sentence,
718 clause or provision of this chapter shall be unconstitutional or
719 ineffective, in whole or in part, to the extent that it is not
720 unconstitutional or ineffective, it shall be valid and effective
721 and no other section, subdivision, paragraph, sentence, clause or
722 provision shall on account thereof be deemed invalid or
723 ineffective.

724 **SECTION 15.** Section 31-7-13, Mississippi Code of 1972, is
725 amended as follows:

726 31-7-13. All agencies and governing authorities shall
727 purchase their commodities and printing; contract for garbage
728 collection or disposal; contract for solid waste collection or
729 disposal; contract for sewage collection or disposal; contract for
730 public construction; and contract for rentals as herein provided.

731 (a) **Bidding procedure for purchases not over \$5,000.00.**
732 Purchases which do not involve an expenditure of more than Five
733 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
734 charges, may be made without advertising or otherwise requesting



735 competitive bids. However, nothing contained in this paragraph
736 (a) shall be construed to prohibit any agency or governing
737 authority from establishing procedures which require competitive
738 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

739 (b) **Bidding procedure for purchases over \$5,000.00 but**
740 **not over \$50,000.00.** Purchases which involve an expenditure of
741 more than Five Thousand Dollars (\$5,000.00) but not more than
742 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and
743 shipping charges, may be made from the lowest and best bidder
744 without publishing or posting advertisement for bids, provided at
745 least two (2) competitive written bids have been obtained. Any
746 state agency or community/junior college purchasing commodities or
747 procuring construction pursuant to this paragraph (b) may
748 authorize its purchasing agent, or his designee, to accept the
749 lowest competitive written bid under Fifty Thousand Dollars
750 (\$50,000.00). Any governing authority purchasing commodities
751 pursuant to this paragraph (b) may authorize its purchasing agent,
752 or his designee, with regard to governing authorities other than
753 counties, or its purchase clerk, or his designee, with regard to
754 counties, to accept the lowest and best competitive written bid.
755 Such authorization shall be made in writing by the governing
756 authority and shall be maintained on file in the primary office of
757 the agency and recorded in the official minutes of the governing
758 authority, as appropriate. The purchasing agent or the purchase
759 clerk, or their designee, as the case may be, and not the



760 governing authority, shall be liable for any penalties and/or
761 damages as may be imposed by law for any act or omission of the
762 purchasing agent or purchase clerk, or their designee,
763 constituting a violation of law in accepting any bid without
764 approval by the governing authority. The term "competitive
765 written bid" shall mean a bid submitted on a bid form furnished by
766 the buying agency or governing authority and signed by authorized
767 personnel representing the vendor, or a bid submitted on a
768 vendor's letterhead or identifiable bid form and signed by
769 authorized personnel representing the vendor. "Competitive" shall
770 mean that the bids are developed based upon comparable
771 identification of the needs and are developed independently and
772 without knowledge of other bids or prospective bids. Any bid item
773 for construction in excess of Five Thousand Dollars (\$5,000.00)
774 shall be broken down by components to provide detail of component
775 description and pricing. These details shall be submitted with
776 the written bids and become part of the bid evaluation criteria.
777 Bids may be submitted by facsimile, electronic mail or other
778 generally accepted method of information distribution. Bids
779 submitted by electronic transmission shall not require the
780 signature of the vendor's representative unless required by
781 agencies or governing authorities.

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

783 (i) **Publication requirement.**



784 1. Purchases which involve an expenditure of
785 more than Fifty Thousand Dollars (\$50,000.00), exclusive of
786 freight and shipping charges, may be made from the lowest and best
787 bidder after advertising for competitive bids once each week for
788 two (2) consecutive weeks in a regular newspaper published in the
789 county or municipality in which such agency or governing authority
790 is located. However, all American Recovery and Reinvestment Act
791 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
792 shall be bid. All references to American Recovery and
793 Reinvestment Act projects in this section shall not apply to
794 programs identified in Division B of the American Recovery and
795 Reinvestment Act.

796 2. Reverse auctions shall be the primary
797 method for receiving bids during the bidding process. If a
798 purchasing entity determines that a reverse auction is not in the
799 best interest of the state, then that determination must be
800 approved by the Public Procurement Review Board. The purchasing
801 entity shall submit a detailed explanation of why a reverse
802 auction would not be in the best interest of the state and present
803 an alternative process to be approved by the Public Procurement
804 Review Board. If the Public Procurement Review Board authorizes
805 the purchasing entity to solicit bids with a method other than
806 reverse auction, then the purchasing entity may designate the
807 other methods by which the bids will be received, including, but
808 not limited to, bids sealed in an envelope, bids received



809 electronically in a secure system, or bids received by any other
810 method that promotes open competition and has been approved by the
811 Office of Purchasing and Travel. However, reverse auction shall
812 not be used for any public contract for design or construction of
813 public facilities, including buildings, roads and bridges. The
814 Public Procurement Review Board must approve any contract entered
815 into by alternative process. The provisions of this item 2 shall
816 not apply to the individual state institutions of higher learning.

817 3. The date as published for the bid opening
818 shall not be less than seven (7) working days after the last
819 published notice; however, if the purchase involves a construction
820 project in which the estimated cost is in excess of Fifty Thousand
821 Dollars (\$50,000.00), such bids shall not be opened in less than
822 fifteen (15) working days after the last notice is published and
823 the notice for the purchase of such construction shall be
824 published once each week for two (2) consecutive weeks. However,
825 all American Recovery and Reinvestment Act projects in excess of
826 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
827 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
828 under the American Recovery and Reinvestment Act, publication
829 shall be made one (1) time and the bid opening for construction
830 projects shall not be less than ten (10) working days after the
831 date of the published notice. The notice of intention to let
832 contracts or purchase equipment shall state the time and place at
833 which bids shall be received, list the contracts to be made or



834 types of equipment or supplies to be purchased, and, if all plans
835 and/or specifications are not published, refer to the plans and/or
836 specifications on file. If there is no newspaper published in the
837 county or municipality, then such notice shall be given by posting
838 same at the courthouse, or for municipalities at the city hall,
839 and at two (2) other public places in the county or municipality,
840 and also by publication once each week for two (2) consecutive
841 weeks in some newspaper having a general circulation in the county
842 or municipality in the above-provided manner. On the same date
843 that the notice is submitted to the newspaper for publication, the
844 agency or governing authority involved shall mail written notice
845 to, or provide electronic notification to the main office of the
846 Mississippi Procurement Technical Assistance Program under the
847 Mississippi Development Authority that contains the same
848 information as that in the published notice. Submissions received
849 by the Mississippi Procurement Technical Assistance Program for
850 projects funded by the American Recovery and Reinvestment Act
851 shall be displayed on a separate and unique Internet web page
852 accessible to the public and maintained by the Mississippi
853 Development Authority for the Mississippi Procurement Technical
854 Assistance Program. Those American Recovery and Reinvestment Act
855 related submissions shall be publicly posted within twenty-four
856 (24) hours of receipt by the Mississippi Development Authority and
857 the bid opening shall not occur until the submission has been
858 posted for ten (10) consecutive days. The Department of Finance



859 and Administration shall maintain information regarding contracts
860 and other expenditures from the American Recovery and Reinvestment
861 Act, on a unique Internet web page accessible to the public. The
862 Department of Finance and Administration shall promulgate rules
863 regarding format, content and deadlines, unless otherwise
864 specified by law, of the posting of award notices, contract
865 execution and subsequent amendments, links to the contract
866 documents, expenditures against the awarded contracts and general
867 expenditures of funds from the American Recovery and Reinvestment
868 Act. Within one (1) working day of the contract award, the agency
869 or governing authority shall post to the designated web page
870 maintained by the Department of Finance and Administration, notice
871 of the award, including the award recipient, the contract amount,
872 and a brief summary of the contract in accordance with rules
873 promulgated by the department. Within one (1) working day of the
874 contract execution, the agency or governing authority shall post
875 to the designated web page maintained by the Department of Finance
876 and Administration a summary of the executed contract and make a
877 copy of the appropriately redacted contract documents available
878 for linking to the designated web page in accordance with the
879 rules promulgated by the department. The information provided by
880 the agency or governing authority shall be posted to the web page
881 for the duration of the American Recovery and Reinvestment Act
882 funding or until the project is completed, whichever is longer.



883 (ii) **Bidding process amendment procedure.** If all
884 plans and/or specifications are published in the notification,
885 then the plans and/or specifications may not be amended. If all
886 plans and/or specifications are not published in the notification,
887 then amendments to the plans/specifications, bid opening date, bid
888 opening time and place may be made, provided that the agency or
889 governing authority maintains a list of all prospective bidders
890 who are known to have received a copy of the bid documents and all
891 such prospective bidders are sent copies of all amendments. This
892 notification of amendments may be made via mail, facsimile,
893 electronic mail or other generally accepted method of information
894 distribution. No addendum to bid specifications may be issued
895 within two (2) working days of the time established for the
896 receipt of bids unless such addendum also amends the bid opening
897 to a date not less than five (5) working days after the date of
898 the addendum.

899 (iii) **Filing requirement.** In all cases involving
900 governing authorities, before the notice shall be published or
901 posted, the plans or specifications for the construction or
902 equipment being sought shall be filed with the clerk of the board
903 of the governing authority. In addition to these requirements, a
904 bid file shall be established which shall indicate those vendors
905 to whom such solicitations and specifications were issued, and
906 such file shall also contain such information as is pertinent to
907 the bid.



908 (iv) **Specification restrictions.**

909 1. Specifications pertinent to such bidding
910 shall be written so as not to exclude comparable equipment of
911 domestic manufacture. However, if valid justification is
912 presented, the Department of Finance and Administration or the
913 board of a governing authority may approve a request for specific
914 equipment necessary to perform a specific job. Further, such
915 justification, when placed on the minutes of the board of a
916 governing authority, may serve as authority for that governing
917 authority to write specifications to require a specific item of
918 equipment needed to perform a specific job. In addition to these
919 requirements, from and after July 1, 1990, vendors of relocatable
920 classrooms and the specifications for the purchase of such
921 relocatable classrooms published by local school boards shall meet
922 all pertinent regulations of the State Board of Education,
923 including prior approval of such bid by the State Department of
924 Education.

925 2. Specifications for construction projects
926 may include an allowance for commodities, equipment, furniture,
927 construction materials or systems in which prospective bidders are
928 instructed to include in their bids specified amounts for such
929 items so long as the allowance items are acquired by the vendor in
930 a commercially reasonable manner and approved by the
931 agency/governing authority. Such acquisitions shall not be made
932 to circumvent the public purchasing laws.



933 (v) **Electronic bids.** Agencies and governing
934 authorities shall provide a secure electronic interactive system
935 for the submittal of bids requiring competitive bidding that shall
936 be an additional bidding option for those bidders who choose to
937 submit their bids electronically. The Department of Finance and
938 Administration shall provide, by regulation, the standards that
939 agencies must follow when receiving electronic bids. Agencies and
940 governing authorities shall make the appropriate provisions
941 necessary to accept electronic bids from those bidders who choose
942 to submit their bids electronically for all purchases requiring
943 competitive bidding under this section. Any special condition or
944 requirement for the electronic bid submission shall be specified
945 in the advertisement for bids required by this section. Agencies
946 or governing authorities that are currently without available high
947 speed Internet access shall be exempt from the requirement of this
948 subparagraph (v) until such time that high speed Internet access
949 becomes available. Any county having a population of less than
950 twenty thousand (20,000) shall be exempt from the provisions of
951 this subparagraph (v). Any municipality having a population of
952 less than ten thousand (10,000) shall be exempt from the
953 provisions of this subparagraph (v). The provisions of this
954 subparagraph (v) shall not require any bidder to submit bids
955 electronically. When construction bids are submitted
956 electronically, the requirement for including a certificate of
957 responsibility, or a statement that the bid enclosed does not



958 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
959 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
960 deemed in compliance with by including same as an attachment with
961 the electronic bid submittal.

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

963 (i) **Decision procedure.** Purchases may be made
964 from the lowest and best bidder. In determining the lowest and
965 best bid, freight and shipping charges shall be included.
966 Life-cycle costing, total cost bids, warranties, guaranteed
967 buy-back provisions and other relevant provisions may be included
968 in the best bid calculation. All best bid procedures for state
969 agencies must be in compliance with regulations established by the
970 Department of Finance and Administration. If any governing
971 authority accepts a bid other than the lowest bid actually
972 submitted, it shall place on its minutes detailed calculations and
973 narrative summary showing that the accepted bid was determined to
974 be the lowest and best bid, including the dollar amount of the
975 accepted bid and the dollar amount of the lowest bid. No agency
976 or governing authority shall accept a bid based on items not
977 included in the specifications.

978 (ii) **Decision procedure for Certified Purchasing**
979 **Offices.** In addition to the decision procedure set forth in
980 subparagraph (i) of this paragraph (d), Certified Purchasing
981 Offices may also use the following procedure: Purchases may be
982 made from the bidder offering the best value. In determining the



983 best value bid, freight and shipping charges shall be included.
984 Life-cycle costing, total cost bids, warranties, guaranteed
985 buy-back provisions, documented previous experience, training
986 costs and other relevant provisions, including, but not limited
987 to, a bidder having a local office and inventory located within
988 the jurisdiction of the governing authority, may be included in
989 the best value calculation. This provision shall authorize
990 Certified Purchasing Offices to utilize a Request For Proposals
991 (RFP) process when purchasing commodities. All best value
992 procedures for state agencies must be in compliance with
993 regulations established by the Department of Finance and
994 Administration. No agency or governing authority shall accept a
995 bid based on items or criteria not included in the specifications.

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

997 **Landmarks.** In addition to the decision procedure set forth in
998 subparagraph (i) of this paragraph (d), where purchase involves
999 renovation, restoration, or both, of the State Capitol Building or
1000 any other historical building designated for at least five (5)
1001 years as a Mississippi Landmark by the Board of Trustees of the
1002 Department of Archives and History under the authority of Sections
1003 39-7-7 and 39-7-11, the agency or governing authority may use the
1004 following procedure: Purchases may be made from the lowest and
1005 best prequalified bidder. Prequalification of bidders shall be
1006 determined not less than fifteen (15) working days before the
1007 first published notice of bid opening. Prequalification criteria



1008 shall be limited to bidder's knowledge and experience in
1009 historical restoration, preservation and renovation. In
1010 determining the lowest and best bid, freight and shipping charges
1011 shall be included. Life-cycle costing, total cost bids,
1012 warranties, guaranteed buy-back provisions and other relevant
1013 provisions may be included in the best bid calculation. All best
1014 bid and prequalification procedures for state agencies must be in
1015 compliance with regulations established by the Department of
1016 Finance and Administration. If any governing authority accepts a
1017 bid other than the lowest bid actually submitted, it shall place
1018 on its minutes detailed calculations and narrative summary showing
1019 that the accepted bid was determined to be the lowest and best
1020 bid, including the dollar amount of the accepted bid and the
1021 dollar amount of the lowest bid. No agency or governing authority
1022 shall accept a bid based on items not included in the
1023 specifications.

1024 (iv) **Construction project negotiations authority.**

1025 If the lowest and best bid is not more than ten percent (10%)
1026 above the amount of funds allocated for a public construction or
1027 renovation project, then the agency or governing authority shall
1028 be permitted to negotiate with the lowest bidder in order to enter
1029 into a contract for an amount not to exceed the funds allocated.

1030 (e) **Lease-purchase authorization.** For the purposes of
1031 this section, the term "equipment" shall mean equipment, furniture
1032 and, if applicable, associated software and other applicable



1033 direct costs associated with the acquisition. Any lease-purchase
1034 of equipment which an agency is not required to lease-purchase
1035 under the master lease-purchase program pursuant to Section
1036 31-7-10 and any lease-purchase of equipment which a governing
1037 authority elects to lease-purchase may be acquired by a
1038 lease-purchase agreement under this paragraph (e). Lease-purchase
1039 financing may also be obtained from the vendor or from a
1040 third-party source after having solicited and obtained at least
1041 two (2) written competitive bids, as defined in paragraph (b) of
1042 this section, for such financing without advertising for such
1043 bids. Solicitation for the bids for financing may occur before or
1044 after acceptance of bids for the purchase of such equipment or,
1045 where no such bids for purchase are required, at any time before
1046 the purchase thereof. No such lease-purchase agreement shall be
1047 for an annual rate of interest which is greater than the overall
1048 maximum interest rate to maturity on general obligation
1049 indebtedness permitted under Section 75-17-101, and the term of
1050 such lease-purchase agreement shall not exceed the useful life of
1051 equipment covered thereby as determined according to the upper
1052 limit of the asset depreciation range (ADR) guidelines for the
1053 Class Life Asset Depreciation Range System established by the
1054 Internal Revenue Service pursuant to the United States Internal
1055 Revenue Code and regulations thereunder as in effect on December
1056 31, 1980, or comparable depreciation guidelines with respect to
1057 any equipment not covered by ADR guidelines. Any lease-purchase



1058 agreement entered into pursuant to this paragraph (e) may contain
1059 any of the terms and conditions which a master lease-purchase
1060 agreement may contain under the provisions of Section 31-7-10(5),
1061 and shall contain an annual allocation dependency clause
1062 substantially similar to that set forth in Section 31-7-10(8).
1063 Each agency or governing authority entering into a lease-purchase
1064 transaction pursuant to this paragraph (e) shall maintain with
1065 respect to each such lease-purchase transaction the same
1066 information as required to be maintained by the Department of
1067 Finance and Administration pursuant to Section 31-7-10(13).
1068 However, nothing contained in this section shall be construed to
1069 permit agencies to acquire items of equipment with a total
1070 acquisition cost in the aggregate of less than Ten Thousand
1071 Dollars (\$10,000.00) by a single lease-purchase transaction. All
1072 equipment, and the purchase thereof by any lessor, acquired by
1073 lease-purchase under this paragraph and all lease-purchase
1074 payments with respect thereto shall be exempt from all Mississippi
1075 sales, use and ad valorem taxes. Interest paid on any
1076 lease-purchase agreement under this section shall be exempt from
1077 State of Mississippi income taxation.

1078 (f) **Alternate bid authorization.** When necessary to
1079 ensure ready availability of commodities for public works and the
1080 timely completion of public projects, no more than two (2)
1081 alternate bids may be accepted by a governing authority for
1082 commodities. No purchases may be made through use of such



1083 alternate bids procedure unless the lowest and best bidder cannot
1084 deliver the commodities contained in his bid. In that event,
1085 purchases of such commodities may be made from one (1) of the
1086 bidders whose bid was accepted as an alternate.

1087 (g) **Construction contract change authorization.** In the
1088 event a determination is made by an agency or governing authority
1089 after a construction contract is let that changes or modifications
1090 to the original contract are necessary or would better serve the
1091 purpose of the agency or the governing authority, such agency or
1092 governing authority may, in its discretion, order such changes
1093 pertaining to the construction that are necessary under the
1094 circumstances without the necessity of further public bids;
1095 provided that such change shall be made in a commercially
1096 reasonable manner and shall not be made to circumvent the public
1097 purchasing statutes. In addition to any other authorized person,
1098 the architect or engineer hired by an agency or governing
1099 authority with respect to any public construction contract shall
1100 have the authority, when granted by an agency or governing
1101 authority, to authorize changes or modifications to the original
1102 contract without the necessity of prior approval of the agency or
1103 governing authority when any such change or modification is less
1104 than one percent (1%) of the total contract amount. The agency or
1105 governing authority may limit the number, manner or frequency of
1106 such emergency changes or modifications.



1107 (h) **Petroleum purchase alternative.** In addition to
1108 other methods of purchasing authorized in this chapter, when any
1109 agency or governing authority shall have a need for gas, diesel
1110 fuel, oils and/or other petroleum products in excess of the amount
1111 set forth in paragraph (a) of this section, such agency or
1112 governing authority may purchase the commodity after having
1113 solicited and obtained at least two (2) competitive written bids,
1114 as defined in paragraph (b) of this section. If two (2)
1115 competitive written bids are not obtained, the entity shall comply
1116 with the procedures set forth in paragraph (c) of this section.
1117 In the event any agency or governing authority shall have
1118 advertised for bids for the purchase of gas, diesel fuel, oils and
1119 other petroleum products and coal and no acceptable bids can be
1120 obtained, such agency or governing authority is authorized and
1121 directed to enter into any negotiations necessary to secure the
1122 lowest and best contract available for the purchase of such
1123 commodities.

1124 (i) **Road construction petroleum products price**
1125 **adjustment clause authorization.** Any agency or governing
1126 authority authorized to enter into contracts for the construction,
1127 maintenance, surfacing or repair of highways, roads or streets,
1128 may include in its bid proposal and contract documents a price
1129 adjustment clause with relation to the cost to the contractor,
1130 including taxes, based upon an industry-wide cost index, of
1131 petroleum products including asphalt used in the performance or



1132 execution of the contract or in the production or manufacture of
1133 materials for use in such performance. Such industry-wide index
1134 shall be established and published monthly by the Mississippi
1135 Department of Transportation with a copy thereof to be mailed,
1136 upon request, to the clerks of the governing authority of each
1137 municipality and the clerks of each board of supervisors
1138 throughout the state. The price adjustment clause shall be based
1139 on the cost of such petroleum products only and shall not include
1140 any additional profit or overhead as part of the adjustment. The
1141 bid proposals or document contract shall contain the basis and
1142 methods of adjusting unit prices for the change in the cost of
1143 such petroleum products.

1144 (j) **State agency emergency purchase procedure.** If the
1145 governing board or the executive head, or his designees, of any
1146 agency of the state shall determine that an emergency exists in
1147 regard to the purchase of any commodities or repair contracts, so
1148 that the delay incident to giving opportunity for competitive
1149 bidding would be detrimental to the interests of the state, then
1150 the head of such agency, or his designees, shall file with the
1151 Department of Finance and Administration (i) a statement
1152 explaining the conditions and circumstances of the emergency,
1153 which shall include a detailed description of the events leading
1154 up to the situation and the negative impact to the entity if the
1155 purchase is made following the statutory requirements set forth in
1156 paragraph (a), (b) or (c) of this section, and (ii) a certified



1157 copy of the appropriate minutes of the board of such agency
1158 requesting the emergency purchase, if applicable. Upon receipt of
1159 the statement and applicable board certification, the State Fiscal
1160 Officer, or his designees, may, in writing, authorize the purchase
1161 or repair without having to comply with competitive bidding
1162 requirements.

1163 If the governing board or the executive head, or his
1164 designees, of any agency determines that an emergency exists in
1165 regard to the purchase of any commodities or repair contracts, so
1166 that the delay incident to giving opportunity for competitive
1167 bidding would threaten the health or safety of any person, or the
1168 preservation or protection of property, then the provisions in
1169 this section for competitive bidding shall not apply, and any
1170 officer or agent of the agency having general or specific
1171 authority for making the purchase or repair contract shall approve
1172 the bill presented for payment, and he shall certify in writing
1173 from whom the purchase was made, or with whom the repair contract
1174 was made.

1175 Total purchases made under this paragraph (j) shall only be
1176 for the purpose of meeting needs created by the emergency
1177 situation. Following the emergency purchase, documentation of the
1178 purchase, including a description of the commodity purchased, the
1179 purchase price thereof and the nature of the emergency shall be
1180 filed with the Department of Finance and Administration. Any



1181 contract awarded pursuant to this paragraph (j) shall not exceed a
1182 term of one (1) year.

1183 (k) **Governing authority emergency purchase procedure.**

1184 If the governing authority, or the governing authority acting
1185 through its designee, shall determine that an emergency exists in
1186 regard to the purchase of any commodities or repair contracts, so
1187 that the delay incident to giving opportunity for competitive
1188 bidding would be detrimental to the interest of the governing
1189 authority, then the provisions herein for competitive bidding
1190 shall not apply and any officer or agent of such governing
1191 authority having general or special authority therefor in making
1192 such purchase or repair shall approve the bill presented therefor,
1193 and he shall certify in writing thereon from whom such purchase
1194 was made, or with whom such a repair contract was made. At the
1195 board meeting next following the emergency purchase or repair
1196 contract, documentation of the purchase or repair contract,
1197 including a description of the commodity purchased, the price
1198 thereof and the nature of the emergency shall be presented to the
1199 board and shall be placed on the minutes of the board of such
1200 governing authority.

1201 (l) **Hospital purchase, lease-purchase and lease**
1202 **authorization.**

1203 (i) The commissioners or board of trustees of any
1204 public hospital may contract with such lowest and best bidder for
1205 the purchase or lease-purchase of any commodity under a contract



1206 of purchase or lease-purchase agreement whose obligatory payment
1207 terms do not exceed five (5) years.

1208 (ii) In addition to the authority granted in
1209 subparagraph (i) of this paragraph (1), the commissioners or board
1210 of trustees is authorized to enter into contracts for the lease of
1211 equipment or services, or both, which it considers necessary for
1212 the proper care of patients if, in its opinion, it is not
1213 financially feasible to purchase the necessary equipment or
1214 services. Any such contract for the lease of equipment or
1215 services executed by the commissioners or board shall not exceed a
1216 maximum of five (5) years' duration and shall include a
1217 cancellation clause based on unavailability of funds. If such
1218 cancellation clause is exercised, there shall be no further
1219 liability on the part of the lessee. Any such contract for the
1220 lease of equipment or services executed on behalf of the
1221 commissioners or board that complies with the provisions of this
1222 subparagraph (ii) shall be excepted from the bid requirements set
1223 forth in this section.

1224 (m) **Exceptions from bidding requirements.** Excepted
1225 from bid requirements are:

1226 (i) **Purchasing agreements approved by department.**
1227 Purchasing agreements, contracts and maximum price regulations
1228 executed or approved by the Department of Finance and
1229 Administration.



1230 (ii) **Outside equipment repairs.** Repairs to
1231 equipment, when such repairs are made by repair facilities in the
1232 private sector; however, engines, transmissions, rear axles and/or
1233 other such components shall not be included in this exemption when
1234 replaced as a complete unit instead of being repaired and the need
1235 for such total component replacement is known before disassembly
1236 of the component; however, invoices identifying the equipment,
1237 specific repairs made, parts identified by number and name,
1238 supplies used in such repairs, and the number of hours of labor
1239 and costs therefor shall be required for the payment for such
1240 repairs.

1241 (iii) **In-house equipment repairs.** Purchases of
1242 parts for repairs to equipment, when such repairs are made by
1243 personnel of the agency or governing authority; however, entire
1244 assemblies, such as engines or transmissions, shall not be
1245 included in this exemption when the entire assembly is being
1246 replaced instead of being repaired.

1247 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
1248 of gravel or fill dirt which are to be removed and transported by
1249 the purchaser.

1250 (v) **Governmental equipment auctions.** Motor
1251 vehicles or other equipment purchased from a federal agency or
1252 authority, another governing authority or state agency of the
1253 State of Mississippi, or any governing authority or state agency
1254 of another state at a public auction held for the purpose of



1255 disposing of such vehicles or other equipment. Any purchase by a
1256 governing authority under the exemption authorized by this
1257 subparagraph (v) shall require advance authorization spread upon
1258 the minutes of the governing authority to include the listing of
1259 the item or items authorized to be purchased and the maximum bid
1260 authorized to be paid for each item or items.

1261 (vi) **Intergovernmental sales and transfers.**

1262 Purchases, sales, transfers or trades by governing authorities or
1263 state agencies when such purchases, sales, transfers or trades are
1264 made by a private treaty agreement or through means of
1265 negotiation, from any federal agency or authority, another
1266 governing authority or state agency of the State of Mississippi,
1267 or any state agency or governing authority of another state.
1268 Nothing in this section shall permit such purchases through public
1269 auction except as provided for in subparagraph (v) of this
1270 paragraph (m). It is the intent of this section to allow
1271 governmental entities to dispose of and/or purchase commodities
1272 from other governmental entities at a price that is agreed to by
1273 both parties. This shall allow for purchases and/or sales at
1274 prices which may be determined to be below the market value if the
1275 selling entity determines that the sale at below market value is
1276 in the best interest of the taxpayers of the state. Governing
1277 authorities shall place the terms of the agreement and any
1278 justification on the minutes, and state agencies shall obtain



1279 approval from the Department of Finance and Administration, prior
1280 to releasing or taking possession of the commodities.

1281 (vii) **Perishable supplies or food.** Perishable
1282 supplies or food purchased for use in connection with hospitals,
1283 the school lunch programs, homemaking programs and for the feeding
1284 of county or municipal prisoners.

1285 (viii) **Single source items.** Noncompetitive items
1286 available from one (1) source only. In connection with the
1287 purchase of noncompetitive items only available from one (1)
1288 source, a certification of the conditions and circumstances
1289 requiring the purchase shall be filed by the agency with the
1290 Department of Finance and Administration and by the governing
1291 authority with the board of the governing authority. Upon receipt
1292 of that certification the Department of Finance and Administration
1293 or the board of the governing authority, as the case may be, may,
1294 in writing, authorize the purchase, which authority shall be noted
1295 on the minutes of the body at the next regular meeting thereafter.
1296 In those situations, a governing authority is not required to
1297 obtain the approval of the Department of Finance and
1298 Administration. Following the purchase, the executive head of the
1299 state agency, or his designees, shall file with the Department of
1300 Finance and Administration, documentation of the purchase,
1301 including a description of the commodity purchased, the purchase
1302 price thereof and the source from whom it was purchased.



1303 (ix) **Waste disposal facility construction**
1304 **contracts.** Construction of incinerators and other facilities for
1305 disposal of solid wastes in which products either generated
1306 therein, such as steam, or recovered therefrom, such as materials
1307 for recycling, are to be sold or otherwise disposed of; however,
1308 in constructing such facilities, a governing authority or agency
1309 shall publicly issue requests for proposals, advertised for in the
1310 same manner as provided herein for seeking bids for public
1311 construction projects, concerning the design, construction,
1312 ownership, operation and/or maintenance of such facilities,
1313 wherein such requests for proposals when issued shall contain
1314 terms and conditions relating to price, financial responsibility,
1315 technology, environmental compatibility, legal responsibilities
1316 and such other matters as are determined by the governing
1317 authority or agency to be appropriate for inclusion; and after
1318 responses to the request for proposals have been duly received,
1319 the governing authority or agency may select the most qualified
1320 proposal or proposals on the basis of price, technology and other
1321 relevant factors and from such proposals, but not limited to the
1322 terms thereof, negotiate and enter contracts with one or more of
1323 the persons or firms submitting proposals.

1324 (x) **Hospital group purchase contracts.** Supplies,
1325 commodities and equipment purchased by hospitals through group
1326 purchase programs pursuant to Section 31-7-38.



1327 (xi) **Information technology products.** Purchases
1328 of information technology products made by governing authorities
1329 under the provisions of purchase schedules, or contracts executed
1330 or approved by the Mississippi Department of Information
1331 Technology Services and designated for use by governing
1332 authorities.

1333 (xii) **Energy efficiency services and equipment.**
1334 Energy efficiency services and equipment acquired by school
1335 districts, community and junior colleges, institutions of higher
1336 learning and state agencies or other applicable governmental
1337 entities on a shared-savings, lease or lease-purchase basis
1338 pursuant to Section 31-7-14.

1339 (xiii) **Municipal electrical utility system fuel.**
1340 Purchases of coal and/or natural gas by municipally owned electric
1341 power generating systems that have the capacity to use both coal
1342 and natural gas for the generation of electric power.

1343 (xiv) **Library books and other reference materials.**
1344 Purchases by libraries or for libraries of books and periodicals;
1345 processed film, videocassette tapes, filmstrips and slides;
1346 recorded audiotapes, cassettes and diskettes; and any such items
1347 as would be used for teaching, research or other information
1348 distribution; however, equipment such as projectors, recorders,
1349 audio or video equipment, and monitor televisions are not exempt
1350 under this subparagraph.



1351 (xv) **Unmarked vehicles.** Purchases of unmarked
1352 vehicles when such purchases are made in accordance with
1353 purchasing regulations adopted by the Department of Finance and
1354 Administration pursuant to Section 31-7-9(2).

1355 (xvi) **Election ballots.** Purchases of ballots
1356 printed pursuant to Section 23-15-351.

1357 (xvii) **Multichannel interactive video systems.**
1358 From and after July 1, 1990, contracts by Mississippi Authority
1359 for Educational Television with any private educational
1360 institution or private nonprofit organization whose purposes are
1361 educational in regard to the construction, purchase, lease or
1362 lease-purchase of facilities and equipment and the employment of
1363 personnel for providing multichannel interactive video systems
1364 (ITSF) in the school districts of this state.

1365 (xviii) **Purchases of prison industry products by**
1366 **the Department of Corrections, regional correctional facilities or**
1367 **privately owned prisons.** Purchases made by the Mississippi
1368 Department of Corrections, regional correctional facilities or
1369 privately owned prisons involving any item that is manufactured,
1370 processed, grown or produced from the state's prison industries.

1371 (xix) **Undercover operations equipment.** Purchases
1372 of surveillance equipment or any other high-tech equipment to be
1373 used by law enforcement agents in undercover operations, provided
1374 that any such purchase shall be in compliance with regulations
1375 established by the Department of Finance and Administration.



1376 (xx) **Junior college books for rent.** Purchases by
1377 community or junior colleges of textbooks which are obtained for
1378 the purpose of renting such books to students as part of a book
1379 service system.

1380 (xxi) **Certain school district purchases.**
1381 Purchases of commodities made by school districts from vendors
1382 with which any levying authority of the school district, as
1383 defined in Section 37-57-1, has contracted through competitive
1384 bidding procedures for purchases of the same commodities.

1385 (xxii) **Garbage, solid waste and sewage contracts.**
1386 Contracts for garbage collection or disposal, contracts for solid
1387 waste collection or disposal and contracts for sewage collection
1388 or disposal.

1389 (xxiii) **Municipal water tank maintenance**
1390 **contracts.** Professional maintenance program contracts for the
1391 repair or maintenance of municipal water tanks, which provide
1392 professional services needed to maintain municipal water storage
1393 tanks for a fixed annual fee for a duration of two (2) or more
1394 years.

1395 (xxiv) **Purchases of Mississippi Industries for the**
1396 **Blind products.** Purchases made by state agencies or governing
1397 authorities involving any item that is manufactured, processed or
1398 produced by the Mississippi Industries for the Blind.

1399 (xxv) **Purchases of state-adopted textbooks.**
1400 Purchases of state-adopted textbooks by public school districts.



1401 (xxvi) **Certain purchases under the Mississippi**
1402 **Major Economic Impact Act.** Contracts entered into pursuant to the
1403 provisions of Section 57-75-9(2), (3) and (4).

1404 (xxvii) **Used heavy or specialized machinery or**
1405 **equipment for installation of soil and water conservation**
1406 **practices purchased at auction.** Used heavy or specialized
1407 machinery or equipment used for the installation and
1408 implementation of soil and water conservation practices or
1409 measures purchased subject to the restrictions provided in
1410 Sections 69-27-331 through 69-27-341. Any purchase by the State
1411 Soil and Water Conservation Commission under the exemption
1412 authorized by this subparagraph shall require advance
1413 authorization spread upon the minutes of the commission to include
1414 the listing of the item or items authorized to be purchased and
1415 the maximum bid authorized to be paid for each item or items.

1416 (xxviii) **Hospital lease of equipment or services.**
1417 Leases by hospitals of equipment or services if the leases are in
1418 compliance with paragraph (1)(ii).

1419 (xxix) **Purchases made pursuant to qualified**
1420 **cooperative purchasing agreements.** Purchases made by certified
1421 purchasing offices of state agencies or governing authorities
1422 under cooperative purchasing agreements previously approved by the
1423 Office of Purchasing and Travel and established by or for any
1424 municipality, county, parish or state government or the federal
1425 government, provided that the notification to potential



1426 contractors includes a clause that sets forth the availability of
1427 the cooperative purchasing agreement to other governmental
1428 entities. Such purchases shall only be made if the use of the
1429 cooperative purchasing agreements is determined to be in the best
1430 interest of the governmental entity.

1431 (xxx) **School yearbooks.** Purchases of school
1432 yearbooks by state agencies or governing authorities; provided,
1433 however, that state agencies and governing authorities shall use
1434 for these purchases the RFP process as set forth in the
1435 Mississippi Procurement Manual adopted by the Office of Purchasing
1436 and Travel.

1437 (xxxii) **Design-build method and dual-phase**
1438 **design-build method of contracting.** Contracts entered into under
1439 the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

1440 (xxxiii) **Toll roads and bridge construction**
1441 **projects.** Contracts entered into under the provisions of Section
1442 65-43-1 or 65-43-3.

1443 (xxxiiii) **Certain purchases under Section 57-1-221.**
1444 Contracts entered into pursuant to the provisions of Section
1445 57-1-221.

1446 (xxxiv) **Certain transfers made pursuant to the**
1447 **provisions of Section 57-105-1(7).** Transfers of public property
1448 or facilities under Section 57-105-1(7) and construction related
1449 to such public property or facilities.



1450 (xxxv) **Certain purchases or transfers entered into**
1451 **with local electrical power associations.** Contracts or agreements
1452 entered into under the provisions of Section 55-3-33.

1453 (xxxvi) **Certain purchases by an academic medical**
1454 **center or health sciences school.** Purchases by an academic
1455 medical center or health sciences school, as defined in Section
1456 27-115-50, of commodities that are used for clinical purposes and
1457 1. intended for use in the diagnosis of disease or other
1458 conditions or in the cure, mitigation, treatment or prevention of
1459 disease, and 2. medical devices, biological, drugs and
1460 radiation-emitting devices as defined by the United States Food
1461 and Drug Administration.

1462 (xxxvii) **Public-private partnership agreements.**
1463 Contracts or agreements entered into under the provisions of
1464 Sections 31-33-1 through 31-33-25.

1465 (n) **Term contract authorization.** All contracts for the
1466 purchase of:

1467 (i) All contracts for the purchase of commodities,
1468 equipment and public construction (including, but not limited to,
1469 repair and maintenance), may be let for periods of not more than
1470 sixty (60) months in advance, subject to applicable statutory
1471 provisions prohibiting the letting of contracts during specified
1472 periods near the end of terms of office. Term contracts for a
1473 period exceeding twenty-four (24) months shall also be subject to
1474 ratification or cancellation by governing authority boards taking



1475 office subsequent to the governing authority board entering the
1476 contract.

1477 (ii) Bid proposals and contracts may include price
1478 adjustment clauses with relation to the cost to the contractor
1479 based upon a nationally published industry-wide or nationally
1480 published and recognized cost index. The cost index used in a
1481 price adjustment clause shall be determined by the Department of
1482 Finance and Administration for the state agencies and by the
1483 governing board for governing authorities. The bid proposal and
1484 contract documents utilizing a price adjustment clause shall
1485 contain the basis and method of adjusting unit prices for the
1486 change in the cost of such commodities, equipment and public
1487 construction.

1488 (o) **Purchase law violation prohibition and vendor**
1489 **penalty.** No contract or purchase as herein authorized shall be
1490 made for the purpose of circumventing the provisions of this
1491 section requiring competitive bids, nor shall it be lawful for any
1492 person or concern to submit individual invoices for amounts within
1493 those authorized for a contract or purchase where the actual value
1494 of the contract or commodity purchased exceeds the authorized
1495 amount and the invoices therefor are split so as to appear to be
1496 authorized as purchases for which competitive bids are not
1497 required. Submission of such invoices shall constitute a
1498 misdemeanor punishable by a fine of not less than Five Hundred
1499 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),



1500 or by imprisonment for thirty (30) days in the county jail, or
1501 both such fine and imprisonment. In addition, the claim or claims
1502 submitted shall be forfeited.

1503 (p) **Electrical utility petroleum-based equipment**
1504 **purchase procedure.** When in response to a proper advertisement
1505 therefor, no bid firm as to price is submitted to an electric
1506 utility for power transformers, distribution transformers, power
1507 breakers, reclosers or other articles containing a petroleum
1508 product, the electric utility may accept the lowest and best bid
1509 therefor although the price is not firm.

1510 (q) **Fuel management system bidding procedure.** Any
1511 governing authority or agency of the state shall, before
1512 contracting for the services and products of a fuel management or
1513 fuel access system, enter into negotiations with not fewer than
1514 two (2) sellers of fuel management or fuel access systems for
1515 competitive written bids to provide the services and products for
1516 the systems. In the event that the governing authority or agency
1517 cannot locate two (2) sellers of such systems or cannot obtain
1518 bids from two (2) sellers of such systems, it shall show proof
1519 that it made a diligent, good-faith effort to locate and negotiate
1520 with two (2) sellers of such systems. Such proof shall include,
1521 but not be limited to, publications of a request for proposals and
1522 letters soliciting negotiations and bids. For purposes of this
1523 paragraph (q), a fuel management or fuel access system is an
1524 automated system of acquiring fuel for vehicles as well as



1525 management reports detailing fuel use by vehicles and drivers, and
1526 the term "competitive written bid" shall have the meaning as
1527 defined in paragraph (b) of this section. Governing authorities
1528 and agencies shall be exempt from this process when contracting
1529 for the services and products of fuel management or fuel access
1530 systems under the terms of a state contract established by the
1531 Office of Purchasing and Travel.

1532 (r) **Solid waste contract proposal procedure.** Before
1533 entering into any contract for garbage collection or disposal,
1534 contract for solid waste collection or disposal or contract for
1535 sewage collection or disposal, which involves an expenditure of
1536 more than Fifty Thousand Dollars (\$50,000.00), a governing
1537 authority or agency shall issue publicly a request for proposals
1538 concerning the specifications for such services which shall be
1539 advertised for in the same manner as provided in this section for
1540 seeking bids for purchases which involve an expenditure of more
1541 than the amount provided in paragraph (c) of this section. Any
1542 request for proposals when issued shall contain terms and
1543 conditions relating to price, financial responsibility,
1544 technology, legal responsibilities and other relevant factors as
1545 are determined by the governing authority or agency to be
1546 appropriate for inclusion; all factors determined relevant by the
1547 governing authority or agency or required by this paragraph (r)
1548 shall be duly included in the advertisement to elicit proposals.
1549 After responses to the request for proposals have been duly



1550 received, the governing authority or agency shall select the most
1551 qualified proposal or proposals on the basis of price, technology
1552 and other relevant factors and from such proposals, but not
1553 limited to the terms thereof, negotiate and enter into contracts
1554 with one or more of the persons or firms submitting proposals. If
1555 the governing authority or agency deems none of the proposals to
1556 be qualified or otherwise acceptable, the request for proposals
1557 process may be reinitiated. Notwithstanding any other provisions
1558 of this paragraph, where a county with at least thirty-five
1559 thousand (35,000) nor more than forty thousand (40,000)
1560 population, according to the 1990 federal decennial census, owns
1561 or operates a solid waste landfill, the governing authorities of
1562 any other county or municipality may contract with the governing
1563 authorities of the county owning or operating the landfill,
1564 pursuant to a resolution duly adopted and spread upon the minutes
1565 of each governing authority involved, for garbage or solid waste
1566 collection or disposal services through contract negotiations.

1567 (s) **Minority set-aside authorization.** Notwithstanding
1568 any provision of this section to the contrary, any agency or
1569 governing authority, by order placed on its minutes, may, in its
1570 discretion, set aside not more than twenty percent (20%) of its
1571 anticipated annual expenditures for the purchase of commodities
1572 from minority businesses; however, all such set-aside purchases
1573 shall comply with all purchasing regulations promulgated by the
1574 Department of Finance and Administration and shall be subject to



1575 bid requirements under this section. Set-aside purchases for
1576 which competitive bids are required shall be made from the lowest
1577 and best minority business bidder. For the purposes of this
1578 paragraph, the term "minority business" means a business which is
1579 owned by a majority of persons who are United States citizens or
1580 permanent resident aliens (as defined by the Immigration and
1581 Naturalization Service) of the United States, and who are Asian,
1582 Black, Hispanic or Native American, according to the following
1583 definitions:

1584 (i) "Asian" means persons having origins in any of
1585 the original people of the Far East, Southeast Asia, the Indian
1586 subcontinent, or the Pacific Islands.

1587 (ii) "Black" means persons having origins in any
1588 black racial group of Africa.

1589 (iii) "Hispanic" means persons of Spanish or
1590 Portuguese culture with origins in Mexico, South or Central
1591 America, or the Caribbean Islands, regardless of race.

1592 (iv) "Native American" means persons having
1593 origins in any of the original people of North America, including
1594 American Indians, Eskimos and Aleuts.

1595 (t) **Construction punch list restriction.** The
1596 architect, engineer or other representative designated by the
1597 agency or governing authority that is contracting for public
1598 construction or renovation may prepare and submit to the
1599 contractor only one (1) preliminary punch list of items that do



1600 not meet the contract requirements at the time of substantial
1601 completion and one (1) final list immediately before final
1602 completion and final payment.

1603 (u) **Procurement of construction services by state**
1604 **institutions of higher learning.** Contracts for privately financed
1605 construction of auxiliary facilities on the campus of a state
1606 institution of higher learning may be awarded by the Board of
1607 Trustees of State Institutions of Higher Learning to the lowest
1608 and best bidder, where sealed bids are solicited, or to the
1609 offeror whose proposal is determined to represent the best value
1610 to the citizens of the State of Mississippi, where requests for
1611 proposals are solicited.

1612 (v) **Insurability of bidders for public construction or**
1613 **other public contracts.** In any solicitation for bids to perform
1614 public construction or other public contracts to which this
1615 section applies including, but not limited to, contracts for
1616 repair and maintenance, for which the contract will require
1617 insurance coverage in an amount of not less than One Million
1618 Dollars (\$1,000,000.00), bidders shall be permitted to either
1619 submit proof of current insurance coverage in the specified amount
1620 or demonstrate ability to obtain the required coverage amount of
1621 insurance if the contract is awarded to the bidder. Proof of
1622 insurance coverage shall be submitted within five (5) business
1623 days from bid acceptance.



1624 (w) **Purchase authorization clarification.** Nothing in
1625 this section shall be construed as authorizing any purchase not
1626 authorized by law.

1627 **SECTION 16.** Section 31-7-1, Mississippi Code of 1972, is
1628 brought forward as follows:

1629 31-7-1. The following terms are defined for the purposes of
1630 this chapter to have the following meanings:

1631 (a) "Agency" means any state board, commission,
1632 committee, council, university, department or unit thereof created
1633 by the Constitution or statutes if such board, commission,
1634 committee, council, university, department, unit or the head
1635 thereof is authorized to appoint subordinate staff by the
1636 Constitution or statute, except a legislative or judicial board,
1637 commission, committee, council, department or unit thereof; except
1638 a charter school authorized by the Mississippi Charter School
1639 Authorizer Board; and except the Mississippi State Port Authority.
1640 An academic medical center or health sciences school as defined in
1641 Section 37-115-50 is not an "agency" for those purchases of
1642 commodities as defined in this section that are used for clinical
1643 purposes and (i) intended for use in the diagnosis of disease or
1644 other conditions or in the cure, mitigation, treatment or
1645 prevention of disease, and (ii) medical devices, biological, drugs
1646 and radiation emitting devices as defined by the United States
1647 Food and Drug Administration.



1648 (b) "Governing authority" means boards of supervisors,
1649 governing boards of all school districts, all boards of directors
1650 of public water supply districts, boards of directors of master
1651 public water supply districts, municipal public utility
1652 commissions, governing authorities of all municipalities, port
1653 authorities, Mississippi State Port Authority, commissioners and
1654 boards of trustees of any public hospitals, boards of trustees of
1655 public library systems, district attorneys, school attendance
1656 officers and any political subdivision of the state supported
1657 wholly or in part by public funds of the state or political
1658 subdivisions thereof, including commissions, boards and agencies
1659 created or operated under the authority of any county or
1660 municipality of this state. The term "governing authority" shall
1661 not include economic development authorities supported in part by
1662 private funds, or commissions appointed to hold title to and
1663 oversee the development and management of lands and buildings
1664 which are donated by private individuals to the public for the use
1665 and benefit of the community and which are supported in part by
1666 private funds. The term "governing authority" also shall not
1667 include the governing board of a charter school.

1668 (c) "Purchasing agent" means any administrator,
1669 superintendent, purchase clerk or other chief officer so
1670 designated having general or special authority to negotiate for
1671 and make private contract for or purchase for any governing



1672 authority or agency, including issue purchase orders, invitations
1673 for bid, requests for proposals, and receive and accept bids.

1674 (d) "Public funds" means and includes any appropriated
1675 funds, special funds, fees or any other emoluments received by an
1676 agency or governing authority.

1677 (e) "Commodities" means and includes the various
1678 commodities, goods, merchandise, furniture, equipment, automotive
1679 equipment of every kind, and other personal property purchased by
1680 the agencies of the state and governing authorities, but not
1681 commodities purchased for resale or raw materials converted into
1682 products for resale.

1683 (i) "Equipment" shall be construed to include:
1684 automobiles, trucks, tractors, office appliances and all other
1685 equipment of every kind and description.

1686 (ii) "Furniture" shall be construed to include:
1687 desks, chairs, tables, seats, filing cabinets, bookcases and all
1688 other items of a similar nature as well as dormitory furniture,
1689 appliances, carpets and all other items of personal property
1690 generally referred to as home, office or school furniture.

1691 (f) "Emergency" means any circumstances caused by fire,
1692 flood, explosion, storm, earthquake, epidemic, riot, insurrection
1693 or caused by any inherent defect due to defective construction, or
1694 when the immediate preservation of order or of public health is
1695 necessary by reason of unforeseen emergency, or when the immediate
1696 restoration of a condition of usefulness of any public building,



1697 equipment, road or bridge appears advisable, or in the case of a
1698 public utility when there is a failure of any machine or other
1699 thing used and useful in the generation, production or
1700 distribution of electricity, water or natural gas, or in the
1701 transportation or treatment of sewage; or when the delay incident
1702 to obtaining competitive bids could cause adverse impact upon the
1703 governing authorities or agency, its employees or its citizens; or
1704 in the case of a public airport, when the delay incident to
1705 publishing an advertisement for competitive bids would endanger
1706 public safety in a specific (not general) manner, result in or
1707 perpetuate a specific breach of airport security, or prevent the
1708 airport from providing specific air transportation services.

1709 (g) "Construction" means the process of building,
1710 altering, improving, renovating or demolishing a public structure,
1711 public building, or other public real property. It does not
1712 include routine operation, routine repair or regularly scheduled
1713 maintenance of existing public structures, public buildings or
1714 other public real property.

1715 (h) "Purchase" means buying, renting, leasing or
1716 otherwise acquiring.

1717 (i) "Certified purchasing office" means any purchasing
1718 office in which fifty percent (50%) or more of the purchasing
1719 agents hold a certification from the Universal Public Purchasing
1720 Certification Council or other nationally recognized purchasing
1721 certification, and in which, in the case of a state agency



1722 purchasing office, in addition to the national certification, one
1723 hundred percent (100%) of the purchasing officials hold a
1724 certification from the State of Mississippi's Basic or Advanced
1725 Purchasing Certification Program.

1726 (j) "Certified Mississippi Purchasing Agent" means a
1727 state agency purchasing official who holds a certification from
1728 the Mississippi Basic Purchasing Certification Program as
1729 established by the Office of Purchasing, Travel and Fleet
1730 Management.

1731 (k) "Certified Mississippi Procurement Manager" means a
1732 state agency purchasing official who holds a certification from
1733 the Mississippi Advanced Purchasing Certification Program as
1734 established by the Office of Purchasing, Travel and Fleet
1735 Management.

1736 **SECTION 17.** Section 65-1-85, Mississippi Code of 1972, is
1737 amended as follows:

1738 65-1-85. (1) All contracts by or on behalf of the
1739 commission for the purchase of materials, equipment and supplies
1740 shall be made in compliance with Section 31-7-1 et seq. All
1741 contracts by or on behalf of the commission for construction,
1742 reconstruction or other public work authorized to be done under
1743 the provisions of this chapter, except maintenance, shall be made
1744 by the executive director, subject to the approval of the
1745 commission, only upon competitive bids after due advertisement as
1746 follows, to wit:



1747 (a) Advertisement for bids shall be in accordance with
1748 such rules and regulations, in addition to those herein provided,
1749 as may be adopted therefor by the commission, and the commission
1750 is authorized and empowered to make and promulgate such rules and
1751 regulations as it may deem proper, to provide and adopt standard
1752 specifications for road and bridge construction, and to amend such
1753 rules and regulations from time to time.

1754 (b) The advertisement shall be inserted twice, being
1755 once a week for two (2) successive weeks in a newspaper published
1756 at the seat of government in Jackson, Mississippi, having a
1757 general circulation throughout the state, and no letting shall be
1758 less than fourteen (14) days nor more than sixty (60) days after
1759 the publication of the first notice of such letting, and notices
1760 of such letting may be placed in a metropolitan paper or national
1761 trade publication.

1762 (c) Before advertising for such work, the executive
1763 director shall cause to be prepared and filed in the department
1764 detailed plans and specifications covering the work proposed to be
1765 done and copies of the plans and specifications shall be subject
1766 to inspection by any citizen during all office hours and made
1767 available to all prospective bidders upon such reasonable terms
1768 and conditions as may be required by the commission. A fee shall
1769 be charged equal to the cost of producing a copy of any such plans
1770 and specifications.



1771 (d) All such contracts shall be let to a responsible
1772 bidder with the lowest and best bid, and a record of all bids
1773 received for construction and reconstruction shall be preserved.

1774 (e) Each bid for such a construction and reconstruction
1775 contract must be accompanied by a cashier's check, a certified
1776 check or bidders bond executed by a surety company authorized to
1777 do business in the State of Mississippi, in the principal amount
1778 of not less than five percent (5%) of the bid, guaranteeing that
1779 the bidder will give bond and enter into a contract for the
1780 faithful performance of the contract according to plans and
1781 specifications on file.

1782 (f) Bonds shall be required of the successful bidder in
1783 an amount equal to the contract price. The contract price shall
1784 mean the entire cost of the particular contract let. In the event
1785 change orders are made after the execution of a contract which
1786 results in increasing the total contract price, additional bond in
1787 the amount of the increased cost may be required. The surety or
1788 sureties on such bonds shall be a surety company or surety
1789 companies authorized to do business in the State of Mississippi,
1790 all bonds to be payable to the State of Mississippi and to be
1791 conditioned for the prompt, faithful and efficient performance of
1792 the contract according to plans and specifications, and for the
1793 prompt payment of all persons furnishing labor, material,
1794 equipment and supplies therefor. Such bonds shall be subject to
1795 the additional obligation that the principal and surety or



1796 sureties executing the same shall be liable to the state in a
1797 civil action instituted by the state at the instance of the
1798 commission or any officer of the state authorized in such cases,
1799 for double any amount in money or property the state may lose or
1800 be overcharged or otherwise defrauded of by reason of any wrongful
1801 or criminal act, if any, of the contractor, his agent or
1802 employees.

1803 (2) With respect to equipment used in the construction,
1804 reconstruction or other public work authorized to be done under
1805 the provisions of this chapter: the word "equipment," in addition
1806 to all equipment incorporated into or fully consumed in connection
1807 with such project, shall include the reasonable value of the use
1808 of all equipment of every kind and character and all accessories
1809 and attachments thereto which are reasonably necessary to be used
1810 and which are used in carrying out the performance of the
1811 contract, and the reasonable value of the use thereof, during the
1812 period of time the same are used in carrying out the performance
1813 of the contract, shall be the amount as agreed upon by the persons
1814 furnishing the equipment and those using the same to be paid
1815 therefor, which amount, however, shall not be in excess of the
1816 maximum current rates and charges allowable for leasing or renting
1817 as specified in Section 65-7-95; the word "labor" shall include
1818 all work performed in repairing equipment used in carrying out the
1819 performance of the contract, which repair labor is reasonably
1820 necessary to the efficient operation of said equipment; and the



1821 words "materials" and "supplies" shall include all repair parts
1822 installed in or on equipment used in carrying out the performance
1823 of the contract, which repair parts are reasonably necessary to
1824 the efficient operation of said equipment.

1825 (3) The executive director, subject to the approval of the
1826 commission, shall have the right to reject any and all bids,
1827 whether such right is reserved in the notice or not.

1828 (4) The commission may require the prequalification of any
1829 and all bidders and the failure to comply with prequalification
1830 requirements may be the basis for the rejection of any bid by the
1831 commission. The commission may require the prequalification of
1832 any and all subcontractors before they are approved to participate
1833 in any contract awarded under this section.

1834 (5) The commission may adopt rules and regulations for the
1835 termination of any previously awarded contract which is not timely
1836 proceeding toward completion. The failure of a contractor to
1837 comply with such rules and regulations shall be a lawful basis for
1838 the commission to terminate the contract with such contractor. In
1839 the event of a termination under such rules and regulations, the
1840 contractor shall not be entitled to any payment, benefit or
1841 damages beyond the cost of the work actually completed.

1842 (6) Any contract for construction or paving of any highway
1843 may be entered into for any cost which does not exceed the amount
1844 of funds that may be made available therefor through bond issues
1845 or from other sources of revenue, and the letting of contracts for



1846 such construction or paving shall not necessarily be delayed until
1847 the funds are actually on hand, provided authorization for the
1848 issuance of necessary bonds has been granted by law to supplement
1849 other anticipated revenue, or when the department certifies to the
1850 Department of Finance and Administration and the Legislative
1851 Budget Office that projected receipts of funds by the department
1852 will be sufficient to pay such contracts as they become due and
1853 the Department of Finance and Administration determines that the
1854 projections are reasonable and receipts will be sufficient to pay
1855 the contracts as they become due. The Department of Finance and
1856 Administration shall spread such determination on its minutes
1857 prior to the letting of any contracts based on projected receipts.
1858 Nothing in this subsection shall prohibit the issuance of bonds,
1859 which have been authorized, at any time in the discretion of the
1860 State Bond Commission, nor to prevent investment of surplus funds
1861 in United States government bonds or State of Mississippi bonds as
1862 presently authorized by Section 12, Chapter 312, Laws of 1956.

1863 (7) All other contracts for work to be done under the
1864 provisions of this chapter and for the purchase of materials,
1865 equipment and supplies to be used as provided for in this chapter
1866 shall be made in compliance with Section 31-7-1 et seq.

1867 (8) The commission shall not empower or authorize the
1868 executive director, or any one or more of its members, or any
1869 engineer or other person to let or make contracts for the
1870 construction or repair of public roads, or building bridges, or



1871 for the purchase of material, equipment or supplies contrary to
1872 the provisions of this chapter as set forth in this section,
1873 except in cases of flood or other cases of emergency where the
1874 public interest requires that the work be done or the materials,
1875 equipment or supplies be purchased without the delay incident to
1876 advertising for competitive bids. Such emergency contracts may be
1877 made without advertisement under such rules and regulations as the
1878 commission may prescribe.

1879 (9) The executive director, subject to the approval of the
1880 commission, is authorized to negotiate and make agreements with
1881 communities and/or civic organizations for landscaping,
1882 beautification and maintenance of highway rights-of-way; however,
1883 nothing in this subsection shall be construed as authorization for
1884 the executive director or commission to participate in such a
1885 project to an extent greater than the average cost for maintenance
1886 of shoulders, backslopes and median areas with respect thereto.

1887 (10) The executive director may negotiate and enter into
1888 contracts with private parties for the mowing of grass and
1889 trimming of vegetation on the rights-of-way of state highways
1890 whenever such practice is possible and cost effective.

1891 (11) (a) As an alternative to the method of awarding
1892 contracts as otherwise provided in this section, the commission
1893 may use the design-build method of contracting for the following:



1894 (i) Projects for the Mississippi Development
1895 Authority pursuant to agreements between both governmental
1896 entities;

1897 (ii) Any project with an estimated cost of not
1898 more than Ten Million Dollars (\$10,000,000.00), not to exceed two
1899 (2) projects per fiscal year; and

1900 (iii) Any project which has an estimated cost of
1901 more than Ten Million Dollars (\$10,000,000.00), not to exceed one
1902 (1) project per fiscal year.

1903 (b) As used in this subsection, the term "design-build"
1904 method of contracting means a contract that combines the design
1905 and construction phases of a project into a single contract and
1906 the contractor is required to satisfactorily perform, at a
1907 minimum, both the design and construction of the project.

1908 (c) The commission shall establish detailed criteria
1909 for the selection of the successful design-build contractor in
1910 each request for design-build proposals. The evaluation of the
1911 selection committee is a public record and shall be maintained for
1912 a minimum of ten (10) years after project completion.

1913 (d) The commission shall maintain detailed records on
1914 projects separate and apart from its regular record keeping. The
1915 commission shall file a report to the Legislature evaluating the
1916 design-build method of contracting by comparing it to the low-bid
1917 method of contracting. At a minimum, the report must include:



1918 (i) The management goals and objectives for the
1919 design-build system of management;

1920 (ii) A complete description of the components of
1921 the design-build management system, including a description of the
1922 system the department put into place on all projects managed under
1923 the system to insure that it has the complete information on
1924 highway segment costs and to insure proper analysis of any
1925 proposal the commission receives from a highway contractor;

1926 (iii) The accountability systems the
1927 Transportation Department established to monitor any design-build
1928 project's compliance with specific goals and objectives for the
1929 project;

1930 (iv) The outcome of any project or any interim
1931 report on an ongoing project let under a design-build management
1932 system showing compliance with the goals, objectives, policies and
1933 procedures the department set for the project; and

1934 (v) The method used by the department to select
1935 projects to be let under the design-build system of management and
1936 all other systems, policies and procedures that the department
1937 considered as necessary components to a design-build management
1938 system.

1939 (e) All contracts let under the provisions of this
1940 subsection shall be subject to oversight and review by the State
1941 Auditor. The State Auditor shall file a report with the
1942 Legislature on or before January 1 of each year detailing his



1943 findings with regard to any contract let or project performed in
1944 violation of the provisions of this subsection. The actual and
1945 necessary expenses incurred by the State Auditor in complying with
1946 this paragraph (e) shall be paid for and reimbursed by the
1947 Mississippi Department of Transportation out of funds made
1948 available for the contract or contracts let and project or
1949 projects performed.

1950 (12) The provisions of this section shall not be construed
1951 to prohibit the commission from awarding or entering into
1952 contracts for the design, construction and financing of toll
1953 roads, highways and bridge projects as provided under Sections
1954 65-43-1 and 65-43-3.

1955 (13) The provisions of this section shall not be construed
1956 to prohibit the commission from awarding or entering into
1957 contracts under the provisions of Sections 31-33-1 through
1958 31-33-25.

1959 **SECTION 18.** Section 27-31-1, Mississippi Code of 1972, is
1960 brought forward as follows:

1961 27-31-1. The following shall be exempt from taxation:

1962 (a) All cemeteries used exclusively for burial
1963 purposes.

1964 (b) All property, real or personal, belonging to the
1965 State of Mississippi or any of its political subdivisions, except
1966 property of a municipality not being used for a proper municipal
1967 purpose and located outside the county or counties in which such



1968 municipality is located. A proper municipal purpose within the
1969 meaning of this section shall be any authorized governmental or
1970 corporate function of a municipality.

1971 (c) All property, real or personal, owned by units of
1972 the Mississippi National Guard, or title to which is vested in
1973 trustees for the benefit of any unit of the Mississippi National
1974 Guard; provided such property is used exclusively for such unit,
1975 or for public purposes, and not-for-profit.

1976 (d) All property, real or personal, belonging to any
1977 religious society, or ecclesiastical body, or any congregation
1978 thereof, or to any charitable society, or to any historical or
1979 patriotic association or society, or to any garden or pilgrimage
1980 club or association and used exclusively for such society or
1981 association and not for profit; not exceeding, however, the amount
1982 of land which such association or society may own as provided in
1983 Section 79-11-33. All property, real or personal, belonging to
1984 any rural waterworks system or rural sewage disposal system
1985 incorporated under the provisions of Section 79-11-1. All
1986 property, real or personal, belonging to any college or
1987 institution for the education of youths, used directly and
1988 exclusively for such purposes, provided that no such college or
1989 institution for the education of youths shall have exempt from
1990 taxation more than six hundred forty (640) acres of land;
1991 provided, however, this exemption shall not apply to commercial
1992 schools and colleges or trade institutions or schools where the



1993 profits of same inure to individuals, associations or
1994 corporations. All property, real or personal, belonging to an
1995 individual, institution or corporation and used for the operation
1996 of a grammar school, junior high school, high school or military
1997 school. All property, real or personal, owned and occupied by a
1998 fraternal and benevolent organization, when used by such
1999 organization, and from which no rentals or other profits accrue to
2000 the organization, but any part rented or from which revenue is
2001 received shall be taxed.

2002 (e) All property, real or personal, held and occupied
2003 by trustees of public schools, and school lands of the respective
2004 townships for the use of public schools, and all property kept in
2005 storage for the convenience and benefit of the State of
2006 Mississippi in warehouses owned or leased by the State of
2007 Mississippi, wherein said property is to be sold by the Alcoholic
2008 Beverage Control Division of the Department of Revenue of the
2009 State of Mississippi.

2010 (f) All property, real or personal, whether belonging
2011 to religious or charitable or benevolent organizations, which is
2012 used for hospital purposes, and nurses' homes where a part
2013 thereof, and which maintain one or more charity wards that are for
2014 charity patients, and where all the income from said hospitals and
2015 nurses' homes is used entirely for the purposes thereof and no
2016 part of the same for profit.



2017 (g) The wearing apparel of every person; and also
2018 jewelry and watches kept by the owner for personal use to the
2019 extent of One Hundred Dollars (\$100.00) in value for each owner.

2020 (h) Provisions on hand for family consumption.

2021 (i) All farm products grown in this state for a period
2022 of two (2) years after they are harvested, when in the possession
2023 of or the title to which is in the producer, except the tax of
2024 one-fifth of one percent (1/5 of 1%) per pound on lint cotton now
2025 levied by the Board of Commissioners of the Mississippi Levee
2026 District; and lint cotton for five (5) years, and cottonseed,
2027 soybeans, oats, rice and wheat for one (1) year regardless of
2028 ownership.

2029 (j) All guns and pistols kept by the owner for private
2030 use.

2031 (k) All poultry in the hands of the producer.

2032 (l) Household furniture, including all articles kept in
2033 the home by the owner for his own personal or family use; but this
2034 shall not apply to hotels, rooming houses or rented or leased
2035 apartments.

2036 (m) All cattle and oxen.

2037 (n) All sheep, goats and hogs.

2038 (o) All horses, mules and asses.

2039 (p) Farming tools, implements and machinery, when used
2040 exclusively in the cultivation or harvesting of crops or timber.



2041 (q) All property of agricultural and mechanical
2042 associations and fairs used for promoting their objects, and where
2043 no part of the proceeds is used for profit.

2044 (r) The libraries of all persons.

2045 (s) All pictures and works of art, not kept for or
2046 offered for sale as merchandise.

2047 (t) The tools of any mechanic necessary for carrying on
2048 his trade.

2049 (u) All state, county, municipal, levee, drainage and
2050 all school bonds or other governmental obligations, and all bonds
2051 and/or evidences of debts issued by any church or church
2052 organization in this state, and all notes and evidences of
2053 indebtedness which bear a rate of interest not greater than the
2054 maximum rate per annum applicable under the law; and all money
2055 loaned at a rate of interest not exceeding the maximum rate per
2056 annum applicable under the law; and all stock in or bonds of
2057 foreign corporations or associations shall be exempt from all ad
2058 valorem taxes.

2059 (v) All lands and other property situated or located
2060 between the Mississippi River and the levee shall be exempt from
2061 the payment of any and all road taxes levied or assessed under any
2062 road laws of this state.

2063 (w) Any and all money on deposit in either national
2064 banks, state banks or trust companies, on open account, savings
2065 account or time deposit.



2066 (x) All wagons, carts, drays, carriages and other
2067 horse-drawn vehicles, kept for the use of the owner.

2068 (y) (i) Boats, seines and fishing equipment used in
2069 fishing and shrimping operations and in the taking or catching of
2070 oysters.

2071 (ii) All towboats, tugboats and barges documented
2072 under the laws of the United States, except watercraft of every
2073 kind and character used in connection with gaming operations.

2074 (z) (i) All materials used in the construction and/or
2075 conversion of vessels in this state;

2076 (ii) Vessels while under construction and/or
2077 conversion;

2078 (iii) Vessels while in the possession of the
2079 manufacturer, builder or converter, for a period of twelve (12)
2080 months after completion of construction and/or conversion;
2081 however, the twelve-month limitation shall not apply to:

2082 1. Vessels used for the exploration for, or
2083 production of, oil, gas and other minerals offshore outside the
2084 boundaries of this state; or

2085 2. Vessels that were used for the exploration
2086 for, or production of, oil, gas and other minerals that are
2087 converted to a new service for use outside the boundaries of this
2088 state;



2089 (iv) 1. In order for a vessel described in
2090 subparagraph (iii) of this paragraph (z) to be exempt for a period
2091 of more than twelve (12) months, the vessel must:

2092 a. Be operating or operable, generating
2093 or capable of generating its own power or connected to some other
2094 power source, and not removed from the service or use for which
2095 manufactured or to which converted; and

2096 b. The manufacturer, builder, converter
2097 or other entity possessing the vessel must be in compliance with
2098 any lease or other agreement with any applicable port authority or
2099 other entity regarding the vessel and in compliance with all
2100 applicable tax laws of this state and applicable federal tax laws.

2101 2. A vessel exempt from taxation under
2102 subparagraph (iii) of this paragraph (z) may not be exempt for a
2103 period of more than three (3) years unless the board of
2104 supervisors of the county and/or governing authorities of the
2105 municipality, as the case may be, in which the vessel would
2106 otherwise be taxable adopts a resolution or ordinance authorizing
2107 the extension of the exemption and setting a maximum period for
2108 the exemption.

2109 (v) As used in this paragraph (z), the term
2110 "vessel" includes ships, offshore drilling equipment, dry docks,
2111 boats and barges, except watercraft of every kind and character
2112 used in connection with gaming operations.



2113 (aa) Sixty-six and two-thirds percent (66-2/3%) of
2114 nuclear fuel and reprocessed, recycled or residual nuclear fuel
2115 by-products, fissionable or otherwise, used or to be used in
2116 generation of electricity by persons defined as public utilities
2117 in Section 77-3-3.

2118 (bb) All growing nursery stock.

2119 (cc) A semitrailer used in interstate commerce.

2120 (dd) All property, real or personal, used exclusively
2121 for the housing of and provision of services to elderly persons,
2122 disabled persons, mentally impaired persons or as a nursing home,
2123 which is owned, operated and managed by a not-for-profit
2124 corporation, qualified under Section 501(c)(3) of the Internal
2125 Revenue Code, whose membership or governing body is appointed or
2126 confirmed by a religious society or ecclesiastical body or any
2127 congregation thereof.

2128 (ee) All vessels while in the hands of bona fide
2129 dealers as merchandise and which are not being operated upon the
2130 waters of this state shall be exempt from ad valorem taxes. As
2131 used in this paragraph, the terms "vessel" and "waters of this
2132 state" shall have the meaning ascribed to such terms in Section
2133 59-21-3.

2134 (ff) All property, real or personal, owned by a
2135 nonprofit organization that: (i) is qualified as tax exempt under
2136 Section 501(c)(4) of the Internal Revenue Code of 1986, as
2137 amended; (ii) assists in the implementation of the national



2138 contingency plan or area contingency plan, and which is created in
2139 response to the requirements of Title IV, Subtitle B of the Oil
2140 Pollution Act of 1990, Public Law 101-380; (iii) engages primarily
2141 in programs to contain, clean up and otherwise mitigate spills of
2142 oil or other substances occurring in the United States coastal or
2143 tidal waters; and (iv) is used for the purposes of the
2144 organization.

2145 (gg) If a municipality changes its boundaries so as to
2146 include within the boundaries of such municipality the project
2147 site of any project as defined in Section 57-75-5(f)(iv)1, Section
2148 57-75-5(f)(xxi) or Section 57-75-5(f)(xxviii) or Section
2149 57-75-5(f)(xxix), all real and personal property located on the
2150 project site within the boundaries of such municipality that is
2151 owned by a business enterprise operating such project, shall be
2152 exempt from ad valorem taxation for a period of time not to exceed
2153 thirty (30) years upon receiving approval for such exemption by
2154 the Mississippi Major Economic Impact Authority. The provisions
2155 of this paragraph shall not be construed to authorize a breach of
2156 any agreement entered into pursuant to Section 21-1-59.

2157 (hh) All leases, lease contracts or lease agreements
2158 (including, but not limited to, subleases, sublease contracts and
2159 sublease agreements), and leaseholds or leasehold interests
2160 (including, but not limited to, subleaseholds and subleasehold
2161 interests), of or with respect to any and all property (real,
2162 personal or mixed) constituting all or any part of a facility for



2163 the manufacture, production, generation, transmission and/or
2164 distribution of electricity, and any real property related
2165 thereto, shall be exempt from ad valorem taxation during the
2166 period as the United States is both the title owner of the
2167 property and a sublessee of or with respect to the property;
2168 however, the exemption authorized by this paragraph (hh) shall not
2169 apply to any entity to whom the United States sub-subleases its
2170 interest in the property nor to any entity to whom the United
2171 States assigns its sublease interest in the property. As used in
2172 this paragraph, the term "United States" includes an agency or
2173 instrumentality of the United States of America. This paragraph
2174 (hh) shall apply to all assessments for ad valorem taxation for
2175 the 2003 calendar year and each calendar year thereafter.

2176 (ii) All property, real, personal or mixed, including
2177 fixtures and leaseholds, used by Mississippi nonprofit entities
2178 qualified, on or before January 1, 2005, under Section 501(c)(3)
2179 of the Internal Revenue Code to provide support and operate
2180 technology incubators for research and development startup
2181 companies, telecommunication startup companies and/or other
2182 technology startup companies, utilizing technology spun-off from
2183 research and development activities of the public colleges and
2184 universities of this state, State of Mississippi governmental
2185 research or development activities resulting therefrom located
2186 within the State of Mississippi.



2187 (jj) All property, real, personal or mixed, including
2188 fixtures and leaseholds, of startup companies (as described in
2189 paragraph (ii) of this section) for the period of time, not to
2190 exceed five (5) years, that the startup company remains a tenant
2191 of a technology incubator (as described in paragraph (ii) of this
2192 section).

2193 (kk) All leases, lease contracts or lease agreements
2194 (including, but not limited to, subleases, sublease contracts and
2195 sublease agreements), and leaseholds or leasehold interests, of or
2196 with respect to any and all property (real, personal or mixed)
2197 constituting all or any part of an auxiliary facility, and any
2198 real property related thereto, constructed or renovated pursuant
2199 to Section 37-101-41, Mississippi Code of 1972.

2200 (ll) Equipment brought into the state temporarily for
2201 use during a disaster response period as provided in Sections
2202 27-113-1 through 27-113-9 and subsequently removed from the state
2203 on or before the end of the disaster response period as defined in
2204 Section 27-113-5.

2205 (mm) For any lease or contractual arrangement to which
2206 the Department of Finance and Administration and a nonprofit
2207 corporation are a party to as provided in Section 39-25-1(5), the
2208 nonprofit corporation shall, along with the possessory and
2209 leasehold interests and/or real and personal property of the
2210 corporation, be exempt from all ad valorem taxation, including,
2211 but not limited to, school, city and county ad valorem taxes, for



2212 the term or period of time stated in the lease or contractual
2213 arrangement.

2214 **SECTION 19.** Section 27-13-5, Mississippi Code of 1972, is
2215 brought forward as follows:

2216 27-13-5. (1) (a) **Franchise tax levy.** Except as otherwise
2217 provided in subsections (3), (4), (5) and (7) of this section,
2218 there is hereby imposed, to be paid and collected as hereinafter
2219 provided, a franchise or excise tax upon every corporation,
2220 association or joint-stock company or partnership treated as a
2221 corporation under the income tax laws or regulations, organized or
2222 created for pecuniary gain, having privileges not possessed by
2223 individuals, and having authorized capital stock now existing in
2224 this state, or hereafter organized, created or established, under
2225 and by virtue of the laws of the State of Mississippi, equal to:

2226 (i) For tax years beginning before January 1,
2227 2018, Two Dollars and Fifty Cents (\$2.50) for each One Thousand
2228 Dollars (\$1,000.00), or fraction thereof, of the value of the
2229 capital used, invested or employed in the exercise of any power,
2230 privilege or right enjoyed by such organization within this state,
2231 except as hereinafter provided.

2232 (ii) For tax years beginning on or after January
2233 1, 2018, but before January 1, 2019, Two Dollars and Fifty Cents
2234 (\$2.50) for each One Thousand Dollars (\$1,000.00), or fraction
2235 thereof, in excess of One Hundred Thousand Dollars (\$100,000.00),
2236 of the value of the capital used, invested or employed in the



2237 exercise of any power, privilege or right enjoyed by such
2238 organization within this state, except as hereinafter provided.

2239 (iii) For tax years beginning on or after January
2240 1, 2019, but before January 1, 2020, Two Dollars and Twenty-five
2241 Cents (\$2.25) for each One Thousand Dollars (\$1,000.00), or
2242 fraction thereof, in excess of One Hundred Thousand Dollars
2243 (\$100,000.00), of the value of the capital used, invested or
2244 employed in the exercise of any power, privilege or right enjoyed
2245 by such organization within this state, except as hereinafter
2246 provided.

2247 (iv) For tax years beginning on or after January
2248 1, 2020, but before January 1, 2021, Two Dollars (\$2.00) for each
2249 One Thousand Dollars (\$1,000.00), or fraction thereof, in excess
2250 of One Hundred Thousand Dollars (\$100,000.00), of the value of the
2251 capital used, invested or employed in the exercise of any power,
2252 privilege or right enjoyed by such organization within this state,
2253 except as hereinafter provided.

2254 (v) For tax years beginning on or after January 1,
2255 2021, but before January 1, 2022, One Dollar and Seventy-five
2256 Cents (\$1.75) for each One Thousand Dollars (\$1,000.00), or
2257 fraction thereof, in excess of One Hundred Thousand Dollars
2258 (\$100,000.00), of the value of the capital used, invested or
2259 employed in the exercise of any power, privilege or right enjoyed
2260 by such organization within this state, except as hereinafter
2261 provided.



2262 (vi) For tax years beginning on or after January
2263 1, 2022, but before January 1, 2023, One Dollar and Fifty Cents
2264 (\$1.50) for each One Thousand Dollars (\$1,000.00), or fraction
2265 thereof, in excess of One Hundred Thousand Dollars (\$100,000.00),
2266 of the value of the capital used, invested or employed in the
2267 exercise of any power, privilege or right enjoyed by such
2268 organization within this state, except as hereinafter provided.

2269 (vii) For tax years beginning on or after January
2270 1, 2023, but before January 1, 2024, One Dollar and Twenty-five
2271 Cents (\$1.25) for each One Thousand Dollars (\$1,000.00), or
2272 fraction thereof, in excess of One Hundred Thousand Dollars
2273 (\$100,000.00), of the value of the capital used, invested or
2274 employed in the exercise of any power, privilege or right enjoyed
2275 by such organization within this state, except as hereinafter
2276 provided.

2277 (viii) For tax years beginning on or after January
2278 1, 2024, but before January 1, 2025, One Dollar (\$1.00) for each
2279 One Thousand Dollars (\$1,000.00), or fraction thereof, in excess
2280 of One Hundred Thousand Dollars (\$100,000.00), of the value of the
2281 capital used, invested or employed in the exercise of any power,
2282 privilege or right enjoyed by such organization within this state,
2283 except as hereinafter provided.

2284 (ix) For tax years beginning on or after January
2285 1, 2025, but before January 1, 2026, Seventy-five Cents (75¢) for
2286 each One Thousand Dollars (\$1,000.00), or fraction thereof, in



2287 excess of One Hundred Thousand Dollars (\$100,000.00), of the value
2288 of the capital used, invested or employed in the exercise of any
2289 power, privilege or right enjoyed by such organization within this
2290 state, except as hereinafter provided.

2291 (x) For tax years beginning on or after January 1,
2292 2026, but before January 1, 2027, Fifty Cents (50¢) for each One
2293 Thousand Dollars (\$1,000.00), or fraction thereof, in excess of
2294 One Hundred Thousand Dollars (\$100,000.00), of the value of the
2295 capital used, invested or employed in the exercise of any power,
2296 privilege or right enjoyed by such organization within this state,
2297 except as hereinafter provided.

2298 (xi) For tax years beginning on or after January
2299 1, 2027, but before January 1, 2028, Twenty-five Cents (25¢) for
2300 each One Thousand Dollars (\$1,000.00), or fraction thereof, in
2301 excess of One Hundred Thousand Dollars (\$100,000.00), of the value
2302 of the capital used, invested or employed in the exercise of any
2303 power, privilege or right enjoyed by such organization within this
2304 state, except as hereinafter provided.

2305 (b) In no case shall the franchise tax due for the
2306 accounting period be less than Twenty-five Dollars (\$25.00).

2307 (c) It is the purpose of this section to require the
2308 payment to the State of Mississippi of this tax for the right
2309 granted by the laws of this state to exist as such organization,
2310 and to enjoy, under the protection of the laws of this state, the



2311 powers, rights, privileges and immunities derived from the state
2312 by the form of such existence.

2313 (2) **Annual report of domestic corporations.** Each domestic
2314 corporation shall file an annual report as required by the
2315 provisions of Section 79-4-16.22.

2316 (3) (a) A corporation that has negotiated a fee-in-lieu as
2317 defined in Section 57-75-5 shall not be subject to the tax levied
2318 by this section on such project; however, the fee-in-lieu payment
2319 shall be otherwise treated in the same manner as the payment of
2320 franchise taxes.

2321 (b) (i) As used in this paragraph:

2322 1. "Authority" shall have the meaning
2323 ascribed to such term in Section 57-75-5(b);

2324 2. "Project" shall have the meaning ascribed
2325 to such term in Section 57-75-5(f)(xxix); and

2326 3. "Enterprise" shall mean the corporation
2327 authorized for the project pursuant to Section 57-75-5(f)(xxix).

2328 (ii) The term of the franchise tax fee-in-lieu
2329 agreement negotiated under this subsection and authorized by
2330 Section 57-75-5(j), between the authority and the enterprise for
2331 the project shall not exceed twenty-five (25) years. The
2332 franchise tax fee-in-lieu agreement shall apply only to new
2333 franchise tax liability attributable to the project, and shall not
2334 apply to any existing franchise tax liability of the enterprise in
2335 connection with any current operations in this state.



2336 (iii) In the event that the annual number of
2337 full-time jobs maintained by the enterprise falls below the
2338 minimum annual number of full-time jobs required by the authority
2339 pursuant to a written agreement between the authority and the
2340 enterprise for two (2) consecutive years, the franchise tax
2341 fee-in-lieu for the project shall be suspended until the first tax
2342 year during which the annual number of full-time jobs maintained
2343 by the enterprise reaches the minimum annual number of full-time
2344 jobs required by the authority pursuant to a written agreement
2345 between the authority and the enterprise.

2346 (iv) The enterprise shall be entitled to utilize a
2347 single sales apportionment factor in the calculation of its
2348 liability for franchise tax imposed by this chapter which is
2349 attributable to the project for any year for which it files a
2350 Mississippi franchise tax return. The enterprise shall be
2351 entitled to continue to utilize such single sales apportionment
2352 factor notwithstanding a suspension of the franchise tax
2353 fee-in-lieu pursuant to subparagraph (iii) of this paragraph.

2354 (4) An approved business enterprise as defined in the Growth
2355 and Prosperity Act shall not be subject to the tax levied by this
2356 section on the value of capital used, invested or employed by the
2357 approved business enterprise in a growth and prosperity county or
2358 supervisors district as provided in the Growth and Prosperity Act.

2359 (5) A business enterprise operating a project as defined in
2360 Section 57-64-33, in a county that is a member of a regional



2361 economic development alliance created under the Regional Economic
2362 Development Act shall not be subject to the tax levied by this
2363 section on the value of capital used, invested or employed by the
2364 business enterprise in such a county as provided in Section
2365 57-64-33.

2366 (6) The tax levied by this chapter and paid by a business
2367 enterprise located in a redevelopment project area under Sections
2368 57-91-1 through 57-91-11 shall be deposited into the Redevelopment
2369 Project Incentive Fund created in Section 57-91-9.

2370 (7) A business enterprise as defined in Section 57-113-1
2371 that is exempt from certain state taxes under Section 57-113-5
2372 shall not be subject to the tax levied by this section on the
2373 value of capital used, invested or employed by the business
2374 enterprise.

2375 **SECTION 20.** Section 27-7-15, Mississippi Code of 1972, is
2376 brought forward as follows:

2377 27-7-15. (1) For the purposes of this article, except as
2378 otherwise provided, the term "gross income" means and includes the
2379 income of a taxpayer derived from salaries, wages, fees or
2380 compensation for service, of whatever kind and in whatever form
2381 paid, including income from governmental agencies and subdivisions
2382 thereof; or from professions, vocations, trades, businesses,
2383 commerce or sales, or renting or dealing in property, or
2384 reacquired property; also from annuities, interest, rents,
2385 dividends, securities, insurance premiums, reinsurance premiums,



2386 considerations for supplemental insurance contracts, or the
2387 transaction of any business carried on for gain or profit, or
2388 gains, or profits, and income derived from any source whatever and
2389 in whatever form paid. The amount of all such items of income
2390 shall be included in the gross income for the taxable year in
2391 which received by the taxpayer. The amount by which an eligible
2392 employee's salary is reduced pursuant to a salary reduction
2393 agreement authorized under Section 25-17-5 shall be excluded from
2394 the term "gross income" within the meaning of this article.

2395 (2) In determining gross income for the purpose of this
2396 section, the following, under regulations prescribed by the
2397 commissioner, shall be applicable:

2398 (a) **Dealers in property.** Federal rules, regulations
2399 and revenue procedures shall be followed with respect to
2400 installment sales unless a transaction results in the shifting of
2401 income from inside the state to outside the state.

2402 (b) **Casual sales of property.**

2403 (i) Prior to January 1, 2001, federal rules,
2404 regulations and revenue procedures shall be followed with respect
2405 to installment sales except they shall be applied and administered
2406 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the
2407 106th Congress, had not been enacted. This provision will
2408 generally affect taxpayers, reporting on the accrual method of
2409 accounting, entering into installment note agreements on or after



2410 December 17, 1999. Any gain or profit resulting from the casual
2411 sale of property will be recognized in the year of sale.

2412 (ii) From and after January 1, 2001, federal
2413 rules, regulations and revenue procedures shall be followed with
2414 respect to installment sales except as provided in this
2415 subparagraph (ii). Gain or profit from the casual sale of
2416 property shall be recognized in the year of sale. When a taxpayer
2417 recognizes gain on the casual sale of property in which the gain
2418 is deferred for federal income tax purposes, a taxpayer may elect
2419 to defer the payment of tax resulting from the gain as allowed and
2420 to the extent provided under regulations prescribed by the
2421 commissioner. If the payment of the tax is made on a deferred
2422 basis, the tax shall be computed based on the applicable rate for
2423 the income reported in the year the payment is made. Except as
2424 otherwise provided in subparagraph (iii) of this paragraph (b),
2425 deferring the payment of the tax shall not affect the liability
2426 for the tax. If at any time the installment note is sold,
2427 contributed, transferred or disposed of in any manner and for any
2428 purpose by the original note holder, or the original note holder
2429 is merged, liquidated, dissolved or withdrawn from this state,
2430 then all deferred tax payments under this section shall
2431 immediately become due and payable.

2432 (iii) If the selling price of the property is
2433 reduced by any alteration in the terms of an installment note,
2434 including default by the purchaser, the gain to be recognized is



2435 recomputed based on the adjusted selling price in the same manner
2436 as for federal income tax purposes. The tax on this amount, less
2437 the previously paid tax on the recognized gain, is payable over
2438 the period of the remaining installments. If the tax on the
2439 previously recognized gain has been paid in full to this state,
2440 the return on which the payment was made may be amended for this
2441 purpose only. The statute of limitations in Section 27-7-49 shall
2442 not bar an amended return for this purpose.

2443 (c) **Reserves of insurance companies.** In the case of
2444 insurance companies, any amounts in excess of the legally required
2445 reserves shall be included as gross income.

2446 (d) **Affiliated companies or persons.** As regards sales,
2447 exchanges or payments for services from one to another of
2448 affiliated companies or persons or under other circumstances where
2449 the relation between the buyer and seller is such that gross
2450 proceeds from the sale or the value of the exchange or the payment
2451 for services are not indicative of the true value of the subject
2452 matter of the sale, exchange or payment for services, the
2453 commissioner shall prescribe uniform and equitable rules for
2454 determining the true value of the gross income, gross sales,
2455 exchanges or payment for services, or require consolidated returns
2456 of affiliates.

2457 (e) **Alimony and separate maintenance payments.** The
2458 federal rules, regulations and revenue procedures in determining



2459 the deductibility and taxability of alimony payments shall be
2460 followed in this state.

2461 (f) **Reimbursement for expenses of moving.** There shall
2462 be included in gross income (as compensation for services) any
2463 amount received or accrued, directly or indirectly, by an
2464 individual as a payment for or reimbursement of expenses of moving
2465 from one (1) residence to another residence which is attributable
2466 to employment or self-employment.

2467 (3) In the case of taxpayers other than residents, gross
2468 income includes gross income from sources within this state.

2469 (4) The words "gross income" do not include the following
2470 items of income which shall be exempt from taxation under this
2471 article:

2472 (a) The proceeds of life insurance policies and
2473 contracts paid upon the death of the insured. However, the income
2474 from the proceeds of such policies or contracts shall be included
2475 in the gross income.

2476 (b) The amount received by the insured as a return of
2477 premium or premiums paid by him under life insurance policies,
2478 endowment, or annuity contracts, either during the term or at
2479 maturity or upon surrender of the contract.

2480 (c) The value of property acquired by gift, bequest,
2481 devise or descent, but the income from such property shall be
2482 included in the gross income.



2483 (d) Interest upon the obligations of the United States
2484 or its possessions, or securities issued under the provisions of
2485 the Federal Farm Loan Act of 1916, or bonds issued by the War
2486 Finance Corporation, or obligations of the State of Mississippi or
2487 political subdivisions thereof.

2488 (e) The amounts received through accident or health
2489 insurance as compensation for personal injuries or sickness, plus
2490 the amount of any damages received for such injuries or such
2491 sickness or injuries, or through the War Risk Insurance Act, or
2492 any law for the benefit or relief of injured or disabled members
2493 of the military or naval forces of the United States.

2494 (f) Income received by any religious denomination or by
2495 any institution or trust for moral or mental improvements,
2496 religious, Bible, tract, charitable, benevolent, fraternal,
2497 missionary, hospital, infirmary, educational, scientific,
2498 literary, library, patriotic, historical or cemetery purposes or
2499 for two (2) or more of such purposes, if such income be used
2500 exclusively for carrying out one or more of such purposes.

2501 (g) Income received by a domestic corporation which is
2502 "taxable in another state" as this term is defined in this
2503 article, derived from business activity conducted outside this
2504 state. Domestic corporations taxable both within and without the
2505 state shall determine Mississippi income on the same basis as
2506 provided for foreign corporations under the provisions of this
2507 article.



2508 (h) In case of insurance companies, there shall be
2509 excluded from gross income such portion of actual premiums
2510 received from an individual policyholder as is paid back or
2511 credited to or treated as an abatement of premiums of such
2512 policyholder within the taxable year.

2513 (i) Income from dividends that has already borne a tax
2514 as dividend income under the provisions of this article, when such
2515 dividends may be specifically identified in the possession of the
2516 recipient.

2517 (j) Amounts paid by the United States to a person as
2518 added compensation for hazardous duty pay as a member of the Armed
2519 Forces of the United States in a combat zone designated by
2520 Executive Order of the President of the United States.

2521 (k) Amounts received as retirement allowances,
2522 pensions, annuities or optional retirement allowances paid under
2523 the federal Social Security Act, the Railroad Retirement Act, the
2524 Federal Civil Service Retirement Act, or any other retirement
2525 system of the United States government, retirement allowances paid
2526 under the Mississippi Public Employees' Retirement System,
2527 Mississippi Highway Safety Patrol Retirement System or any other
2528 retirement system of the State of Mississippi or any political
2529 subdivision thereof. The exemption allowed under this paragraph
2530 (k) shall be available to the spouse or other beneficiary at the
2531 death of the primary retiree.



2532 (1) Amounts received as retirement allowances,
2533 pensions, annuities or optional retirement allowances paid by any
2534 public or governmental retirement system not designated in
2535 paragraph (k) or any private retirement system or plan of which
2536 the recipient was a member at any time during the period of his
2537 employment. Amounts received as a distribution under a Roth
2538 Individual Retirement Account shall be treated in the same manner
2539 as provided under the Internal Revenue Code of 1986, as amended.
2540 The exemption allowed under this paragraph (1) shall be available
2541 to the spouse or other beneficiary at the death of the primary
2542 retiree.

2543 (m) National Guard or Reserve Forces of the United
2544 States compensation not to exceed the aggregate sum of Five
2545 Thousand Dollars (\$5,000.00) for any taxable year through the 2005
2546 taxable year, and not to exceed the aggregate sum of Fifteen
2547 Thousand Dollars (\$15,000.00) for any taxable year thereafter.

2548 (n) Compensation received for active service as a
2549 member below the grade of commissioned officer and so much of the
2550 compensation as does not exceed the maximum enlisted amount
2551 received for active service as a commissioned officer in the Armed
2552 Forces of the United States for any month during any part of which
2553 such members of the Armed Forces (i) served in a combat zone as
2554 designated by Executive Order of the President of the United
2555 States or a qualified hazardous duty area as defined by federal
2556 law, or both; or (ii) was hospitalized as a result of wounds,



2557 disease or injury incurred while serving in such combat zone. For
2558 the purposes of this paragraph (n), the term "maximum enlisted
2559 amount" means and has the same definition as that term has in 26
2560 USCS 112.

2561 (o) The proceeds received from federal and state
2562 forestry incentive programs.

2563 (p) The amount representing the difference between the
2564 increase of gross income derived from sales for export outside the
2565 United States as compared to the preceding tax year wherein gross
2566 income from export sales was highest, and the net increase in
2567 expenses attributable to such increased exports. In the absence
2568 of direct accounting, the ratio of net profits to total sales may
2569 be applied to the increase in export sales. This paragraph (p)
2570 shall only apply to businesses located in this state engaging in
2571 the international export of Mississippi goods and services. Such
2572 goods or services shall have at least fifty percent (50%) of value
2573 added at a location in Mississippi.

2574 (q) Amounts paid by the federal government for the
2575 construction of soil conservation systems as required by a
2576 conservation plan adopted pursuant to 16 USCS 3801 et seq.

2577 (r) The amount deposited in a medical savings account,
2578 and any interest accrued thereon, that is a part of a medical
2579 savings account program as specified in the Medical Savings
2580 Account Act under Sections 71-9-1 through 71-9-9; provided,
2581 however, that any amount withdrawn from such account for purposes



2582 other than paying eligible medical expense or to procure health
2583 coverage shall be included in gross income.

2584 (s) Amounts paid by the Mississippi Soil and Water
2585 Conservation Commission from the Mississippi Soil and Water
2586 Cost-Share Program for the installation of water quality best
2587 management practices.

2588 (t) Dividends received by a holding corporation, as
2589 defined in Section 27-13-1, from a subsidiary corporation, as
2590 defined in Section 27-13-1.

2591 (u) Interest, dividends, gains or income of any kind on
2592 any account in the Mississippi Affordable College Savings Trust
2593 Fund, as established in Sections 37-155-101 through 37-155-125, to
2594 the extent that such amounts remain on deposit in the MACS Trust
2595 Fund or are withdrawn pursuant to a qualified withdrawal, as
2596 defined in Section 37-155-105.

2597 (v) Interest, dividends or gains accruing on the
2598 payments made pursuant to a prepaid tuition contract, as provided
2599 for in Section 37-155-17.

2600 (w) Income resulting from transactions with a related
2601 member where the related member subject to tax under this chapter
2602 was required to, and did in fact, add back the expense of such
2603 transactions as required by Section 27-7-17(2). Under no
2604 circumstances may the exclusion from income exceed the deduction
2605 add-back of the related member, nor shall the exclusion apply to
2606 any income otherwise excluded under this chapter.



2607 (x) Amounts that are subject to the tax levied pursuant
2608 to Section 27-7-901, and are paid to patrons by gaming
2609 establishments licensed under the Mississippi Gaming Control Act.

2610 (y) Amounts that are subject to the tax levied pursuant
2611 to Section 27-7-903, and are paid to patrons by gaming
2612 establishments not licensed under the Mississippi Gaming Control
2613 Act.

2614 (z) Interest, dividends, gains or income of any kind on
2615 any account in a qualified tuition program and amounts received as
2616 distributions under a qualified tuition program shall be treated
2617 in the same manner as provided under the United States Internal
2618 Revenue Code, as amended. For the purposes of this paragraph (z),
2619 the term "qualified tuition program" means and has the same
2620 definition as that term has in 26 USCS 529.

2621 (aa) The amount deposited in a health savings account,
2622 and any interest accrued thereon, that is a part of a health
2623 savings account program as specified in the Health Savings
2624 Accounts Act created in Sections 83-62-1 through 83-62-9; however,
2625 any amount withdrawn from such account for purposes other than
2626 paying qualified medical expenses or to procure health coverage
2627 shall be included in gross income, except as otherwise provided by
2628 Sections 83-62-7 and 83-62-9.

2629 (bb) Amounts received as qualified disaster relief
2630 payments shall be treated in the same manner as provided under the
2631 United States Internal Revenue Code, as amended.



2632 (cc) Amounts received as a "qualified Hurricane Katrina
2633 distribution" as defined in the United States Internal Revenue
2634 Code, as amended.

2635 (dd) Amounts received by an individual which may be
2636 excluded from income as foreign earned income for federal income
2637 tax purposes.

2638 (ee) Amounts received by a qualified individual,
2639 directly or indirectly, from an employer or nonprofit housing
2640 organization that are qualified housing expenses associated with
2641 an employer-assisted housing program. For purposes of this
2642 paragraph (ee):

2643 (i) "Qualified individual" means any individual
2644 whose household income does not exceed one hundred twenty percent
2645 (120%) of the area median gross income (as defined by the United
2646 States Department of Housing and Urban Development), adjusted for
2647 household size, for the area in which the housing is located.

2648 (ii) "Nonprofit housing organization" means an
2649 organization that is organized as a not-for-profit organization
2650 under the laws of this state or another state and has as one of
2651 its purposes:

2652 1. Homeownership education or counseling;
2653 2. The development of affordable housing; or
2654 3. The development or administration of
2655 employer-assisted housing programs.



2656 (iii) "Employer-assisted housing program" means a
2657 separate written plan of any employer (including, without
2658 limitation, tax-exempt organizations and public employers) for the
2659 exclusive benefit of the employer's employees to pay qualified
2660 housing expenses to assist the employer's employees in securing
2661 affordable housing.

2662 (iv) "Qualified housing expenses" means:

2663 1. With respect to rental assistance, an
2664 amount not to exceed Two Thousand Dollars (\$2,000.00) paid for the
2665 purpose of assisting employees with security deposits and rental
2666 subsidies; and

2667 2. With respect to homeownership assistance,
2668 an amount not to exceed the lesser of Ten Thousand Dollars
2669 (\$10,000.00) or six percent (6%) of the purchase price of the
2670 employee's principal residence that is paid for the purpose of
2671 assisting employees with down payments, payment of closing costs,
2672 reduced interest mortgages, mortgage guarantee programs, mortgage
2673 forgiveness programs, equity contribution programs, or
2674 contributions to homebuyer education and/or homeownership
2675 counseling of eligible employees.

2676 (ff) For the 2010 taxable year and any taxable year
2677 thereafter, amounts converted in accordance with the United States
2678 Internal Revenue Code, as amended, from a traditional Individual
2679 Retirement Account to a Roth Individual Retirement Account. The
2680 exemption allowed under this paragraph (ff) shall be available to



2681 the spouse or other beneficiary at the death of the primary
2682 retiree.

2683 (gg) Amounts received for the performance of disaster
2684 or emergency-related work as defined in Section 27-113-5.

2685 (hh) The amount deposited in a catastrophe savings
2686 account established under Sections 27-7-1001 through 27-7-1007,
2687 interest income earned on the catastrophe savings account, and
2688 distributions from the catastrophe savings account; however, any
2689 amount withdrawn from a catastrophe savings account for purposes
2690 other than paying qualified catastrophe expenses shall be included
2691 in gross income, except as otherwise provided by Sections
2692 27-7-1001 through 27-7-1007.

2693 (ii) Interest, dividends, gains or income of any kind
2694 on any account in the Mississippi Achieving a Better Life
2695 Experience (ABLE) Trust Fund, as established in Chapter 28, Title
2696 43, to the extent that such amounts remain on deposit in the ABLE
2697 Trust Fund or are withdrawn pursuant to a qualified withdrawal, as
2698 defined in Section 43-28-11.

2699 (jj) Subject to the limitations provided under Section
2700 27-7-1103, amounts deposited into a first-time homebuyer savings
2701 account and any interest or other income earned attributable to an
2702 account and monies or funds withdrawn or distributed from an
2703 account for the payment of eligible costs by or on behalf of a
2704 qualified beneficiary; however, any monies or funds withdrawn or
2705 distributed from a first-time homebuyer savings account for any



2706 purpose other than the payment of eligible costs by or on behalf
2707 of a qualified beneficiary shall be included in gross income. For
2708 the purpose of this paragraph (jj), the terms "first-time
2709 homebuyer savings account," "eligible costs" and "qualified
2710 beneficiary" mean and have the same definitions as such terms have
2711 in Section 27-7-1101.

2712 (5) Prisoners of war, missing in action-taxable status.

2713 (a) **Members of the Armed Forces.** Gross income does not
2714 include compensation received for active service as a member of
2715 the Armed Forces of the United States for any month during any
2716 part of which such member is in a missing status, as defined in
2717 paragraph (d) of this subsection, during the Vietnam Conflict as a
2718 result of such conflict.

2719 (b) **Civilian employees.** Gross income does not include
2720 compensation received for active service as an employee for any
2721 month during any part of which such employee is in a missing
2722 status during the Vietnam Conflict as a result of such conflict.

2723 (c) **Period of conflict.** For the purpose of this
2724 subsection, the Vietnam Conflict began February 28, 1961, and ends
2725 on the date designated by the President by Executive Order as the
2726 date of the termination of combatant activities in Vietnam. For
2727 the purpose of this subsection, an individual is in a missing
2728 status as a result of the Vietnam Conflict if immediately before
2729 such status began he was performing service in Vietnam or was
2730 performing service in Southeast Asia in direct support of military



2731 operations in Vietnam. "Southeast Asia," as used in this
2732 paragraph, is defined to include Cambodia, Laos, Thailand and
2733 waters adjacent thereto.

2734 (d) "Missing status" means the status of an employee or
2735 member of the Armed Forces who is in active service and is
2736 officially carried or determined to be absent in a status of (i)
2737 missing; (ii) missing in action; (iii) interned in a foreign
2738 country; (iv) captured, beleaguered or besieged by a hostile
2739 force; or (v) detained in a foreign country against his will; but
2740 does not include the status of an employee or member of the Armed
2741 Forces for a period during which he is officially determined to be
2742 absent from his post of duty without authority.

2743 (e) "Active service" means active federal service by an
2744 employee or member of the Armed Forces of the United States in an
2745 active duty status.

2746 (f) "Employee" means one who is a citizen or national
2747 of the United States or an alien admitted to the United States for
2748 permanent residence and is a resident of the State of Mississippi
2749 and is employed in or under a federal executive agency or
2750 department of the Armed Forces.

2751 (g) "Compensation" means (i) basic pay; (ii) special
2752 pay; (iii) incentive pay; (iv) basic allowance for quarters; (v)
2753 basic allowance for subsistence; and (vi) station per diem
2754 allowances for not more than ninety (90) days.



2755 (h) If refund or credit of any overpayment of tax for
2756 any taxable year resulting from the application of this subsection
2757 (5) is prevented by the operation of any law or rule of law, such
2758 refund or credit of such overpayment of tax may, nevertheless, be
2759 made or allowed if claim therefor is filed with the Department of
2760 Revenue within three (3) years after the date of the enactment of
2761 this subsection.

2762 (i) The provisions of this subsection shall be
2763 effective for taxable years ending on or after February 28, 1961.

2764 (6) A shareholder of an S corporation, as defined in Section
2765 27-8-3(1)(g), shall take into account the income, loss, deduction
2766 or credit of the S corporation only to the extent provided in
2767 Section 27-8-7(2).

2768 **SECTION 21.** Section 31-7-3, Mississippi Code of 1972, is
2769 brought forward as follows:

2770 31-7-3. The Department of Finance and Administration shall
2771 administer the provisions of this chapter.

2772 The purposes or aims of the Department of Finance and
2773 Administration in carrying out said provisions shall be to
2774 coordinate and promote efficiency and economy in the purchase of
2775 commodities by the agencies of the state.

2776 **SECTION 22.** Section 31-7-5, Mississippi Code of 1972, is
2777 brought forward as follows:

2778 31-7-5. The Department of Finance and Administration shall
2779 prescribe rules and regulations governing the manner in which the



2780 authority and duties granted to it by law may be carried out. It
2781 shall employ suitable and competent personnel, necessary to carry
2782 out its purposes. The Department of Finance and Administration
2783 may establish an Office of Purchasing, Travel and Fleet Management
2784 and employ a competent person as Director of the Office of
2785 Purchasing, Travel and Fleet Management who shall be nonstate
2786 service and paid a salary as determined by the Executive Director
2787 of the Department of Finance and Administration with the approval
2788 of the State Personnel Board.

2789 **SECTION 23.** Section 31-7-7, Mississippi Code of 1972, is
2790 brought forward as follows:

2791 31-7-7. Through its director and other supervisory personnel
2792 and, upon its request, through the agencies of the state, the
2793 Office of General Services shall supervise the performance of the
2794 following duties imposed upon it by this chapter:

2795 (a) A study of the purchases of commodities by the
2796 agencies of the state; the compilation, exchange and coordination
2797 of information concerning same; and the distribution of such
2798 information to the agencies and governing authorities requesting
2799 same.

2800 (b) The planning and coordination of purchases in
2801 volume for the agencies in order to take advantage of and secure
2802 the economies possible by volume purchasing; the arrangement of
2803 agreements between agencies and between governing authorities
2804 whereby one may make a purchase or purchases for the other or



2805 whereby an agency may make a purchase for a governing authority;
2806 the arrangement of agreements whereby purchases of commodities can
2807 be made between an agency and another agency or governing
2808 authority at a fair price, less depreciated value; the
2809 negotiations and execution of purchasing agreements and contracts
2810 through and under which the Office of General Services may require
2811 state agencies to purchase; and the obtaining or establishment of
2812 methods for obtaining of competitive bid prices upon which any
2813 agency of the state may purchase at the price approved by the
2814 Office of General Services.

2815 (c) The arrangement of provisions in purchase contracts
2816 of the state, or any agency, providing that the same price for
2817 which a commodity is available to an agency, may also, during the
2818 period of time provided therein, be available to any governing
2819 authority.

2820 **SECTION 24.** Section 31-7-9, Mississippi Code of 1972, is
2821 brought forward as follows:

2822 31-7-9. (1) (a) The Office of Purchasing, Travel and Fleet
2823 Management shall adopt purchasing regulations governing the
2824 purchase by any agency of any commodity or commodities and
2825 establishing standards and specifications for a commodity or
2826 commodities and the maximum fair prices of a commodity or
2827 commodities, subject to the approval of the Public Procurement
2828 Review Board. It shall have the power to amend, add to or
2829 eliminate purchasing regulations. The adoption of, amendment,



2830 addition to or elimination of purchasing regulations shall be
2831 based upon a determination by the Office of Purchasing, Travel and
2832 Fleet Management with the approval of the Public Procurement
2833 Review Board, that such action is reasonable and practicable and
2834 advantageous to promote efficiency and economy in the purchase of
2835 commodities by the agencies of the state. Upon the adoption of
2836 any purchasing regulation, or an amendment, addition or
2837 elimination therein, copies of same shall be furnished to the
2838 State Auditor and to all agencies affected thereby. Thereafter,
2839 and except as otherwise may be provided in subsection (2) of this
2840 section, no agency of the state shall purchase any commodities
2841 covered by existing purchasing regulations unless such commodities
2842 be in conformity with the standards and specifications set forth
2843 in the purchasing regulations and unless the price thereof does
2844 not exceed the maximum fair price established by such purchasing
2845 regulations. The Office of Purchasing, Travel and Fleet
2846 Management shall furnish to any county or municipality or other
2847 local public agency of the state requesting same, copies of
2848 purchasing regulations adopted by the Office of Purchasing, Travel
2849 and Fleet Management and any amendments, changes or eliminations
2850 of same that may be made from time to time.

2851 (b) The Office of Purchasing, Travel and Fleet
2852 Management may adopt purchasing regulations governing the use of
2853 credit cards, procurement cards and purchasing club membership
2854 cards to be used by state agencies, governing authorities of



2855 counties and municipalities, school districts and the Chickasawhay
2856 Natural Gas District. Use of the cards shall be in strict
2857 compliance with the regulations promulgated by the office. Any
2858 amounts due on the cards shall incur interest charges as set forth
2859 in Section 31-7-305 and shall not be considered debt.

2860 (c) Pursuant to the provision of Section 37-61-33(3),
2861 the Office of Purchasing, Travel and Fleet Management of the
2862 Department of Finance and Administration is authorized to issue
2863 procurement cards to all public school district classroom teachers
2864 and other necessary direct support personnel at the beginning of
2865 the school year for the purchase of instructional supplies using
2866 Educational Enhancement Funds. The cards will be issued in equal
2867 amounts per teacher determined by the total number of qualifying
2868 personnel and the then current state appropriation for classroom
2869 instructional supplies under the Education Enhancement Fund. All
2870 purchases shall be in accordance with state law and teachers are
2871 responsible for verification of capital asset requirements when
2872 pooling monies to purchase equipment. The cards will expire on a
2873 predetermined date at the end of each school year. All unexpended
2874 amounts will be carried forward, to be combined with the following
2875 year's instructional supply fund allocation, and reallocated for
2876 the following year. The Department of Finance and Administration
2877 is authorized to loan any start-up funds at the beginning of the
2878 school year to fund this procurement system for instructional



2879 supplies with loan repayment being made from sales tax receipts
2880 earmarked for the Education Enhancement Fund.

2881 (d) In a sale of goods or services, the seller shall
2882 not impose a surcharge on a buyer who uses a state-issued credit
2883 card, procurement card, travel card, or fuel card. The Department
2884 of Finance and Administration shall have exclusive jurisdiction to
2885 enforce and adopt rules relating to this paragraph. Any rules
2886 adopted under this paragraph shall be consistent with federal laws
2887 and regulations governing credit card transactions described by
2888 this paragraph. This paragraph does not create a cause of action
2889 against an individual for a violation of this paragraph.

2890 (2) The Office of Purchasing, Travel and Fleet Management
2891 shall adopt, subject to the approval of the Public Procurement
2892 Review Board, purchasing regulations governing the purchase of
2893 unmarked vehicles to be used by the Bureau of Narcotics and
2894 Department of Public Safety in official investigations pursuant to
2895 Section 25-1-87. Such regulations shall ensure that purchases of
2896 such vehicles shall be at a fair price and shall take into
2897 consideration the peculiar needs of the Bureau of Narcotics and
2898 Department of Public Safety in undercover operations.

2899 (3) The Office of Purchasing, Travel and Fleet Management
2900 shall adopt, subject to the approval of the Public Procurement
2901 Review Board, regulations governing the certification process for
2902 certified purchasing offices, including the Mississippi Purchasing
2903 Certification Program, which shall be required of all purchasing



2904 agents at state agencies. Such regulations shall require entities
2905 desiring to be classified as certified purchasing offices to
2906 submit applications and applicable documents on an annual basis,
2907 and in the case of a state agency purchasing office, to have one
2908 hundred percent (100%) participation and completion by purchasing
2909 agents in the Mississippi Purchasing Certification Program, at
2910 which time the Office of Purchasing, Travel and Fleet Management
2911 may provide the governing entity with a certification valid for
2912 one (1) year from the date of issuance. The Office of Purchasing,
2913 Travel and Fleet Management shall set a fee in an amount that
2914 recovers its costs to administer the Mississippi Purchasing
2915 Certification Program, which shall be assessed to the
2916 participating state agencies.

2917 **SECTION 25.** Section 31-7-10, Mississippi Code of 1972, is
2918 brought forward as follows:

2919 31-7-10. (1) For the purposes of this section, the term
2920 "equipment" shall mean equipment, furniture, and if applicable,
2921 associated software and other applicable direct costs associated
2922 with the acquisition. In addition to its other powers and duties,
2923 the Department of Finance and Administration shall have the
2924 authority to develop a master lease-purchase program and, pursuant
2925 to that program, shall have the authority to execute on behalf of
2926 the state master lease-purchase agreements for equipment to be
2927 used by an agency, as provided in this section. Each agency
2928 electing to acquire equipment by a lease-purchase agreement shall



2929 participate in the Department of Finance and Administration's
2930 master lease-purchase program, unless the Department of Finance
2931 and Administration makes a determination that such equipment
2932 cannot be obtained under the program or unless the equipment can
2933 be obtained elsewhere at an overall cost lower than that for which
2934 the equipment can be obtained under the program. Such
2935 lease-purchase agreements may include the refinancing or
2936 consolidation, or both, of any state agency lease-purchase
2937 agreements entered into after June 30, 1990.

2938 (2) All funds designated by agencies for procurement of
2939 equipment and financing thereof under the master lease-purchase
2940 program shall be paid into a special fund created in the State
2941 Treasury known as the "Master Lease-Purchase Program Fund," which
2942 shall be used by the Department of Finance and Administration for
2943 payment to the lessors for equipment acquired under master
2944 lease-purchase agreements.

2945 (3) Upon final approval of an appropriation bill, each
2946 agency shall submit to the Public Procurement Review Board a
2947 schedule of proposed equipment acquisitions for the master
2948 lease-purchase program. Upon approval of an equipment schedule by
2949 the Public Procurement Review Board with the advice of the
2950 Department of Information Technology Services, the Office of
2951 Purchasing, Travel and Fleet Management, and the Division of
2952 Energy and Transportation of the Mississippi Development Authority
2953 as it pertains to energy efficient climate control systems, the



2954 Public Procurement Review Board shall forward a copy of the
2955 equipment schedule to the Department of Finance and
2956 Administration.

2957 (4) The level of lease-purchase debt recommended by the
2958 Department of Finance and Administration shall be subject to
2959 approval by the State Bond Commission. After such approval, the
2960 Department of Finance and Administration shall be authorized to
2961 advertise and solicit written competitive proposals for a lessor,
2962 who will purchase the equipment pursuant to bid awards made by the
2963 using agency under a given category and then transfer the
2964 equipment to the Department of Finance and Administration as
2965 lessee, pursuant to a master lease-purchase agreement.

2966 The Department of Finance and Administration shall select the
2967 successful proposer for the financing of equipment under the
2968 master lease-purchase program with the approval of the State Bond
2969 Commission.

2970 (5) Each master lease-purchase agreement, and any subsequent
2971 amendments, shall include such terms and conditions as the State
2972 Bond Commission shall determine to be appropriate and in the
2973 public interest, and may include any covenants deemed necessary or
2974 desirable to protect the interests of the lessor, including, but
2975 not limited to, provisions setting forth the interest rate (or
2976 method for computing interest rates) for financing pursuant to
2977 such agreement, covenants concerning application of payments and
2978 funds held in the Master Lease-Purchase Program Fund, covenants to



2979 maintain casualty insurance with respect to equipment subject to
2980 the master lease-purchase agreement (and all state agencies are
2981 specifically authorized to purchase any insurance required by a
2982 master lease-purchase agreement) and covenants precluding or
2983 limiting the right of the lessee or user to acquire equipment
2984 within a specified time (not to exceed five (5) years) after
2985 cancellation on the basis of a failure to appropriate funds for
2986 payment of amounts due under a lease-purchase agreement covering
2987 comparable equipment. The State Bond Commission shall transmit
2988 copies of each such master lease-purchase agreement and each such
2989 amendment to the Joint Legislative Budget Committee. To the
2990 extent provided in any master lease-purchase agreement, title to
2991 equipment leased pursuant thereto shall be deemed to be vested in
2992 the state or the user of the equipment (as specified in such
2993 master lease-purchase agreement), subject to default under or
2994 termination of such master lease-purchase agreement.

2995 A master lease-purchase agreement may provide for payment by
2996 the lessor to the lessee of the purchase price of the equipment to
2997 be acquired pursuant thereto prior to the date on which payment is
2998 due to the vendor for such equipment and that the lease payments
2999 by the lessee shall commence as though the equipment had been
3000 provided on the date of payment. If the lessee, or lessee's
3001 escrow agent, has sufficient funds for payment of equipment
3002 purchases prior to payment due date to vendor of equipment, such
3003 funds shall be held or utilized on an as-needed basis for payment



3004 of equipment purchases either by the State Treasurer (in which
3005 event the master lease-purchase agreement may include provisions
3006 concerning the holding of such funds, the creation of a security
3007 interest for the benefit of the lessor in such funds until
3008 disbursed and other appropriate provisions approved by the Bond
3009 Commission) or by a corporate trustee selected by the Department
3010 of Finance and Administration (in which event the Department of
3011 Finance and Administration shall have the authority to enter into
3012 an agreement with such a corporate trustee containing terms and
3013 conditions approved by the Bond Commission). Earnings on any
3014 amount paid by the lessor prior to the acquisition of the
3015 equipment may be used to make lease payments under the master
3016 lease-purchase agreement or applied to pay costs and expenses
3017 incurred in connection with such lease-purchase agreement. In
3018 such event, the equipment-use agreements with the user agency may
3019 provide for lease payments to commence upon the date of payment by
3020 the lessor and may also provide for a credit against such payments
3021 to the extent that investment receipts from investment of the
3022 purchase price are to be used to make lease-purchase payments.

3023 (6) The annual rate of interest paid under any
3024 lease-purchase agreement authorized under this section shall not
3025 exceed the maximum interest rate to maturity on general obligation
3026 indebtedness permitted under Section 75-17-101.

3027 (7) The Department of Finance and Administration shall
3028 furnish the equipment to the various agencies, also known as the



3029 user, pursuant to an equipment-use agreement developed by the
3030 Department of Finance and Administration. Such agreements shall
3031 require that all monthly payments due from such agency be paid,
3032 transferred or allocated into the Master Lease-Purchase Program
3033 Fund pursuant to a schedule established by the Department of
3034 Finance and Administration. In the event such sums are not paid
3035 by the defined payment period, the Executive Director of the
3036 Department of Finance and Administration shall issue a requisition
3037 for a warrant to draw such amount as may be due from any funds
3038 appropriated for the use of the agency which has failed to make
3039 the payment as agreed.

3040 (8) All master lease-purchase agreements executed under the
3041 authority of this section shall contain the following annual
3042 allocation dependency clause or an annual allocation dependency
3043 clause which is substantially equivalent thereto: "The
3044 continuation of each equipment schedule to this agreement is
3045 contingent in whole or in part upon the appropriation of funds by
3046 the Legislature to make the lease-purchase payments required under
3047 such equipment schedule. If the Legislature fails to appropriate
3048 sufficient funds to provide for the continuation of the
3049 lease-purchase payments under any such equipment schedule, then
3050 the obligations of the lessee and of the agency to make such
3051 lease-purchase payments and the corresponding provisions of any
3052 such equipment schedule to this agreement shall terminate on the
3053 last day of the fiscal year for which appropriations were made."



3054 (9) The maximum lease term for any equipment acquired under
3055 the master lease-purchase program shall not exceed the useful life
3056 of such equipment as determined according to the upper limit of
3057 the asset depreciation range (ADR) guidelines for the Class Life
3058 Asset Depreciation Range System established by the Internal
3059 Revenue Service pursuant to the United States Internal Revenue
3060 Code and Regulations thereunder as in effect on December 31, 1980,
3061 or comparable depreciation guidelines with respect to any
3062 equipment not covered by ADR guidelines. The Department of
3063 Finance and Administration shall be deemed to have met the
3064 requirements of this subsection if the term of a master
3065 lease-purchase agreement does not exceed the weighted average
3066 useful life of all equipment covered by such agreement and the
3067 schedules thereto as determined by the Department of Finance and
3068 Administration. For purposes of this subsection, the "term of a
3069 master lease-purchase agreement" shall be the weighted average
3070 maturity of all principal payments to be made under such master
3071 lease-purchase agreement and all schedules thereto.

3072 (10) Interest paid on any master lease-purchase agreement
3073 under this section shall be exempt from State of Mississippi
3074 income taxation. All equipment, and the purchase thereof by any
3075 lessor, acquired under the master lease-purchase program and all
3076 lease-purchase payments with respect thereto shall be exempt from
3077 all Mississippi sales, use and ad valorem taxes.



3078 (11) The Governor, in his annual executive budget to the
3079 Legislature, shall recommend appropriations sufficient to provide
3080 funds to pay all amounts due and payable during the applicable
3081 fiscal year under master lease-purchase agreements entered into
3082 pursuant to this section.

3083 (12) Any master lease-purchase agreement reciting in
3084 substance that such agreement has been entered into pursuant to
3085 this section shall be conclusively deemed to have been entered
3086 into in accordance with all of the provisions and conditions set
3087 forth in this section. Any defect or irregularity arising with
3088 respect to procedures applicable to the acquisition of any
3089 equipment shall not invalidate or otherwise limit the obligation
3090 of the Department of Finance and Administration, or the state or
3091 any agency of the state, under any master lease-purchase agreement
3092 or any equipment-use agreement.

3093 (13) There shall be maintained by the Department of Finance
3094 and Administration, with respect to each master lease-purchase
3095 agreement, an itemized statement of the cash price, interest
3096 rates, interest costs, commissions, debt service schedules and all
3097 other costs and expenses paid by the state incident to the
3098 lease-purchase of equipment under such agreement.

3099 (14) Lease-purchase agreements entered into by the Board of
3100 Trustees of State Institutions of Higher Learning pursuant to the
3101 authority of Section 37-101-413 or by any other agency which has
3102 specific statutory authority other than pursuant to Section



3103 31-7-13(e) to acquire equipment by lease-purchase shall not be
3104 made pursuant to the master lease-purchase program under this
3105 section, unless the Board of Trustees of State Institutions of
3106 Higher Learning or such other agency elects to participate as to
3107 part or all of its lease-purchase acquisitions in the master
3108 lease-purchase program pursuant to this section.

3109 (15) The Department of Finance and Administration may
3110 develop a master lease-purchase program for school districts and,
3111 pursuant to that program, may execute on behalf of the school
3112 districts master lease-purchase agreements for equipment to be
3113 used by the school districts. The form and structure of this
3114 program shall be substantially the same as set forth in this
3115 section for the master lease-purchase program for state agencies.
3116 If sums due from a school district under the master lease-purchase
3117 program are not paid by the expiration of the defined payment
3118 period, the Executive Director of the Department of Finance and
3119 Administration may withhold such amount that is due from the
3120 school district's minimum education or adequate education program
3121 fund allotments.

3122 (16) The Department of Finance and Administration may
3123 develop a master lease-purchase program for community and junior
3124 college districts and, pursuant to that program, may execute on
3125 behalf of the community and junior college districts master
3126 lease-purchase agreements for equipment to be used by the
3127 community and junior college districts. The form and structure of



3128 this program must be substantially the same as set forth in this
3129 section for the master lease-purchase program for state agencies.
3130 If sums due from a community or junior college district under the
3131 master lease-purchase program are not paid by the expiration of
3132 the defined payment period, the Executive Director of the
3133 Department of Finance and Administration may withhold an amount
3134 equal to the amount due under the program from any funds allocated
3135 for that community or junior college district in the state
3136 appropriations for the use and support of the community and junior
3137 colleges.

3138 (17) From and after July 1, 2016, the expenses of this
3139 agency shall be defrayed by appropriation from the State General
3140 Fund and all user charges and fees authorized under this section
3141 shall be deposited into the State General Fund as authorized by
3142 law.

3143 (18) From and after July 1, 2016, no state agency shall
3144 charge another state agency a fee, assessment, rent or other
3145 charge for services or resources received by authority of this
3146 section.

3147 **SECTION 26.** Section 31-7-11, Mississippi Code of 1972, is
3148 brought forward as follows:

3149 31-7-11. Each agency of the state shall furnish information
3150 relative to its purchase of commodities, and as to its method of
3151 purchasing such commodities, to the Department of Finance and



3152 Administration annually and at such other times as the Department
3153 of Finance and Administration may request.

3154 The Department of Finance and Administration shall have
3155 supervision over the purchasing and purchasing practices of each
3156 state agency and may by regulation or order correct any practice
3157 that appears contrary to the provisions of this chapter or to the
3158 best interests of the state. If it shall appear that any agency
3159 is not practicing economy in its purchasing or is permitting
3160 favoritism or any improper purchasing practice, the Department of
3161 Finance and Administration shall require that the agency
3162 immediately cease such improper activity, with full and complete
3163 authority in the Department of Finance and Administration to carry
3164 into effect its directions in such regard.

3165 All purchases, trade-ins, sales or transfer of personal
3166 property made by any officer, board, agency, department or branch
3167 of the state government except the Legislature shall be subject to
3168 the approval of the Department of Finance and Administration.
3169 Such transaction shall be made in accordance with rules and
3170 regulations of the Department of Finance and Administration
3171 relating to the purchase of state-owned motor vehicles and all
3172 other personal property. The title of such property shall remain
3173 in the name of the state.

3174 **SECTION 27.** Section 31-7-12, Mississippi Code of 1972, is
3175 brought forward as follows:



3176 31-7-12. (1) Except in regard to purchases of unmarked
3177 vehicles made in accordance with purchasing regulations adopted by
3178 the Department of Finance and Administration pursuant to Section
3179 31-7-9(2), all agencies shall purchase commodities at the state
3180 contract price from the approved source, unless approval is
3181 granted by the Department of Finance and Administration to solicit
3182 purchases outside the terms of the contracts. However, prices
3183 accepted by an agency shall be less than the prices set by the
3184 state contract. Prices accepted by an agency shall be obtained in
3185 compliance with paragraph (a), (b) or (c) of Section 31-7-13. It
3186 shall be the responsibility of the Department of Finance and
3187 Administration to ascertain that the resulting prices shall
3188 provide a cost effective alternative to the established state
3189 contract.

3190 (2) Governing authorities may purchase commodities approved
3191 by the Department of Finance and Administration from the state
3192 contract vendor, or from any source offering the identical
3193 commodity, at a price not exceeding the state contract price
3194 established by the Department of Finance and Administration for
3195 such commodity, without obtaining or advertising for competitive
3196 bids. Governing authorities that do not exercise the option to
3197 purchase such commodities from the state contract vendor or from
3198 another source offering the identical commodity at a price not
3199 exceeding the state contract price established by the Department
3200 of Finance and Administration shall make such purchases pursuant



3201 to the provisions of Section 31-7-13 without regard to state
3202 contract prices established by the Department of Finance and
3203 Administration, unless such purchases are authorized to be made
3204 under subsection (5) of this section.

3205 (3) Nothing in this section shall prohibit governing
3206 authorities from purchasing, pursuant to subsection (2) of this
3207 section, commodities approved by the Department of Finance and
3208 Administration at a price not exceeding the state contract price
3209 established by the Department of Finance and Administration.

3210 (4) The Department of Finance and Administration shall
3211 ensure that the prices of all commodities on the state contract
3212 are the lowest and best prices available from any source offering
3213 that commodity at the same level of quality or service, utilizing
3214 the reasonable standards established therefor by the Department of
3215 Finance and Administration. If the Department of Finance and
3216 Administration does not list an approved price for the particular
3217 item involved, purchase shall be made according to statutory
3218 bidding and licensing requirements. To encourage prudent
3219 purchasing practices, the Department of Finance and Administration
3220 shall be authorized and empowered to exempt certain commodities
3221 from the requirement that the lowest and best price be approved by
3222 order placed on its minutes.

3223 (5) Any school district may purchase commodities from
3224 vendors with which any levying authority of the school district,
3225 as defined in Section 37-57-1, has contracted through competitive



3226 bidding procedures pursuant to Section 31-7-13 for purchases of
3227 the same commodities. Purchases authorized by this subsection may
3228 be made by a school district without obtaining or advertising for
3229 competitive bids, and such purchases shall be made at the same
3230 prices and under the same conditions as purchases of the same
3231 commodities are to be made by the levying authority of the school
3232 district under the contract with the vendor.

3233 **SECTION 28.** Section 31-7-13.1, Mississippi Code of 1972, is
3234 brought forward as follows:

3235 31-7-13.1. (1) The method of contracting for construction
3236 described in this section shall be known as the "dual-phase
3237 design-build method" of construction contracting. This method of
3238 construction contracting may be used only when the Legislature has
3239 specifically required or authorized the use of this method in the
3240 legislation authorizing a project. At a minimum, the
3241 determination must include a detailed explanation of why using the
3242 dual-phase design-build method for a particular project satisfies
3243 the public need better than the traditional design-bid-build
3244 method based on the following criteria:

3245 (a) The project provides a savings in time or cost over
3246 traditional methods; and

3247 (b) The size and type of the project is suitable for
3248 design-build.

3249 (2) For each proposed dual-phase design-build project, a
3250 two-phase procedure for awarding a contract must be adopted.



3251 During Phase One, and before solicitation of initial proposals,
3252 the agency or governing authority shall develop, with the
3253 assistance of an architectural or engineering firm, a scope of
3254 work statement that provides prospective offerors with sufficient
3255 information regarding the requirements of the agency or governing
3256 authority. The scope of work statement must include, but is not
3257 limited to, the following information:

3258 (a) Drawings must show overall building dimensions and
3259 major lines of dimensions, and site plans that show topography,
3260 adjacent buildings and utilities;

3261 (b) Drawings must include information to adequately
3262 explain HVAC, electrical and structural requirements;

3263 (c) The scope of work statement also must include
3264 building elevations, sections and design details; and

3265 (d) The scope of work statement must include general
3266 budget parameters, schedule or delivery requirements, relevant
3267 criteria for evaluation of proposals, and any other information
3268 necessary to enable the design-builders to submit proposals that
3269 meet the needs of the agency or governing authority.

3270 (3) The agency or governing authority shall cause to be
3271 published once a week, for at least two (2) consecutive weeks in a
3272 regular newspaper published in the county in which the project is
3273 to be located, or a newspaper with statewide circulation, a notice
3274 inviting proposals for the dual-phase design-build construction
3275 project. The proposals shall not be opened in less than fifteen



3276 (15) working days after the last notice is published. The notice
3277 must inform potential offerors of how to obtain the scope of work
3278 statement developed for the project, and the notice must contain
3279 such other information to describe adequately the general nature
3280 and scope of the project so as to promote full, equal and open
3281 competition.

3282 (4) The agency or governing authority shall accept initial
3283 proposals only from entities able to provide an experienced and
3284 qualified design-build team that includes, at a minimum, an
3285 architectural or engineering firm registered in Mississippi and a
3286 contractor properly licensed and domiciled in Mississippi for the
3287 type of work required. From evaluation of initial proposals under
3288 Phase One, the agency or governing authority shall select a
3289 minimum of two (2) and a maximum of five (5) design-builders as
3290 "short-listed firms" to submit proposals for Phase Two.

3291 (5) During Phase Two, the short-listed firms will be invited
3292 to submit detailed designs, specific technical concepts or
3293 solutions, pricing, scheduling and other information deemed
3294 appropriate by the agency or governing authority as necessary to
3295 evaluate and rank acceptability of the Phase Two proposals. After
3296 evaluation of these Phase Two proposals, the agency or governing
3297 authority shall award a contract to the design-builder determined
3298 to offer the best value to the public in accordance with
3299 evaluation criteria set forth in the request for proposals, of
3300 which price must be one, but not necessarily the only, criterion.



3301 (6) If the agency or governing authority accepts a proposal
3302 other than the lowest dollar proposal actually submitted, the
3303 agency or governing authority shall enter on its minutes detailed
3304 calculations and a narrative summary showing why the accepted
3305 proposal was determined to provide the best value, and the agency
3306 or governing authority shall state specifically on its minutes the
3307 justification for its award.

3308 (7) All facilities that are governed by this section shall
3309 be designed and constructed to comply with standards equal to or
3310 exceeding the minimum building code standards employed by the
3311 state as required under Section 31-11-33 in force at the time of
3312 contracting. All private contractors or private entities
3313 contracting or performing under this section must comply at all
3314 times with all applicable laws, codes and other legal requirements
3315 pertaining to the project.

3316 (8) At its discretion, the agency or governing authority may
3317 award a stipulated fee equal to a percentage, as prescribed in the
3318 request for proposals, of the project's final design and
3319 construction budget, as prescribed in the request for proposals,
3320 but not less than two-tenths of one percent (2/10 of 1%) of the
3321 project's final design and construction budget, to each short-list
3322 offeror who provides a responsive, but unsuccessful, proposal. If
3323 the agency or governing authority does not award a contract, all
3324 responsive final list offerors shall receive the stipulated fee
3325 based on the owner's estimate of the project final design and



3326 construction budget as included in the request for proposals. The
3327 agency or governing authority shall pay the stipulated fee to each
3328 offeror within ninety (90) days after the award of the initial
3329 contract or the decision not to award a contract. In
3330 consideration for paying the stipulated fee, the agency or
3331 governing authority may use any ideas or information contained in
3332 the proposals in connection with any contract awarded for the
3333 project, or in connection with a subsequent procurement, without
3334 any obligation to pay any additional compensation to the
3335 unsuccessful offerors. Notwithstanding the other provisions of
3336 this subsection, an unsuccessful short-list offeror may elect to
3337 waive the stipulated fee. If an unsuccessful short-list offeror
3338 elects to waive the stipulated fee, the agency or governing
3339 authority may not use ideas and information contained in the
3340 offeror's proposal, except that this restriction does not prevent
3341 the agency or governing authority from using any idea or
3342 information if the idea or information is also included in a
3343 proposal of an offeror that accepts the stipulated fee.

3344 (9) This section shall not authorize the awarding of
3345 construction contracts according to any contracting method that
3346 does not require the contractor to satisfactorily perform, at a
3347 minimum, both any balance of design, using an independent
3348 professional licensed in Mississippi, and construction of the
3349 project for which the contract is awarded.



3350 (10) The provisions of this section shall not affect any
3351 procurement by the Mississippi Transportation Commission.

3352 (11) The provisions of this section shall not apply to
3353 procurement authorized in Section 59-5-37(3).

3354 **SECTION 29.** Section 31-7-13.2, Mississippi Code of 1972, is
3355 brought forward as follows:

3356 31-7-13.2 (1) When used in this section, "construction
3357 manager at risk" means a method of project delivery in which a
3358 construction manager guarantees a maximum price for the
3359 construction of a project and in which the governing authority or
3360 board, before using this method of project delivery, shall include
3361 a detailed explanation of why using the construction manager at
3362 risk method of project delivery for a particular project satisfies
3363 the public need better than that traditional design-bid-build
3364 method based on the following criteria:

3365 (a) The use of construction manager at risk for the
3366 project provides a savings in time or cost over traditional
3367 methods; and

3368 (b) The size and type of the project is suitable for
3369 use of the construction management at risk method of project
3370 delivery.

3371 (2) When the construction manager at risk method of project
3372 delivery is used:

3373 (a) There may be a separate contract for design
3374 services and a separate contract for construction services;



3375 (b) The contract for construction services may be
3376 entered into at the same time as a contract for the design
3377 services or later;

3378 (c) Design and construction of the project may be in
3379 sequential or concurrent phases; and

3380 (d) Finance, maintenance, operation, reconstruction or
3381 other related services may be included for a guaranteed maximum
3382 price.

3383 (3) When procuring design professional services under a
3384 construction manager at risk project delivery method, the agency
3385 or governing authority shall procure the services of a design
3386 professional pursuant to qualifications-based selection
3387 procedures.

3388 (4) Before the substantial completion of the design
3389 documents, the agency or governing authority may elect to hire a
3390 construction manager.

3391 (5) When procuring construction management services, the
3392 agency or governing authority shall follow the
3393 qualifications-based selection procedures as outlined in
3394 subsection (10) of this section or the competitive sealed proposal
3395 procedures as outlined in Section 31-17-13.

3396 (6) The agency or governing authority may require the
3397 architect or engineer and the construction manager, by contract,
3398 to cooperate in the design, planning and scheduling, and
3399 construction process. The contract shall not make the primary



3400 designer or construction manager a subcontractor or joint-venture
3401 partner to the other or limit the primary designer's or
3402 construction manager's independent obligations to the agency or
3403 governing authority.

3404 (7) Notwithstanding anything to the contrary in this
3405 chapter:

3406 (a) Each project for construction under a construction
3407 manager at risk contract shall be a specific, single project with
3408 a minimum construction cost of Twenty-five Million Dollars
3409 (\$25,000,000.00).

3410 (b) Each project under a construction manager at risk
3411 contract shall be a specific, single project. For the purposes of
3412 this paragraph, "specific, single project" means a project that is
3413 constructed at a single location, at a common location or for a
3414 common purpose.

3415 (8) Agencies shall retain an independent architectural or
3416 engineering firm to provide guidance and administration of the
3417 professional engineering or professional architecture aspects of
3418 the project throughout the development of the scope, design, and
3419 construction of the project.

3420 (9) The state shall, on an annual basis, compile and make
3421 public all proceedings, records, contracts and other public
3422 records relating to procurement transactions authorized under this
3423 section.



3424 (10) For purposes of this section, the "qualifications-based
3425 selection procedure" shall include:

3426 (a) Publicly announcing all requirements for
3427 architectural, engineering, and land surveying services, to
3428 procure these services on the basis of demonstrated competence and
3429 qualifications, and to negotiate contracts at fair and reasonable
3430 prices after the most qualified firm has been selected.

3431 (b) Agencies or governing authorities shall establish
3432 procedures to prequalify firms seeking to provide architectural,
3433 engineering, and land surveying services or may use
3434 prequalification lists from other state agencies or governing
3435 authorities to meet the requirements of this section.

3436 (c) Whenever a project requiring architectural,
3437 engineering, or land surveying services is proposed for an agency
3438 or governing authority, the agency or governing authority shall
3439 provide advance notice published in a professional services
3440 bulletin or advertised within the official state newspaper setting
3441 forth the projects and services to be procured for not less than
3442 fourteen (14) days. The professional services bulletin shall be
3443 mailed to each firm that has requested the information or is
3444 prequalified under Section 31-7-13. The professional services
3445 bulletin shall include a description of each project and shall
3446 state the time and place for interested firms to submit a letter
3447 of interest and, if required by the public notice, a statement of
3448 qualifications.



3449 (d) The agency or governing authority shall evaluate
3450 the firms submitting letters of interest and other prequalified
3451 firms, taking into account qualifications. The agency or
3452 governing authority may consider, but shall not be limited to,
3453 considering:

- 3454 (i) Ability of professional personnel;
- 3455 (ii) Past record and experience;
- 3456 (iii) Performance data on file;
- 3457 (iv) Willingness to meet time requirements;
- 3458 (v) Location;
- 3459 (vi) Workload of the firm; and
- 3460 (vii) Any other qualifications-based factors as
3461 the agency or governing authority may determine in writing are
3462 applicable.

3463 The agency or governing authority may conduct discussions
3464 with and require public presentations by firms deemed to be the
3465 most qualified regarding their qualifications, approach to the
3466 project and ability to furnish the required services.

3467 (e) The agency or governing authority shall establish a
3468 committee to select firms to provide architectural, engineering,
3469 and land surveying services. A selection committee may include at
3470 least one (1) public member nominated by a statewide association
3471 of the profession affected. The public member may not be employed
3472 or associated with any firm holding a contract with the agency or
3473 governing authority nor may the public member's firm be considered



3474 for a contract with that agency or governing authority while
3475 serving as a public member of the committee. In no case shall the
3476 agency or governing authority, before selecting a firm for
3477 negotiation under paragraph (f) of this section, seek formal or
3478 informal submission of verbal or written estimates of costs or
3479 proposals in terms of dollars, hours required, percentage of
3480 construction cost, or any other measure of compensation.

3481 (f) On the basis of evaluations, discussions, and any
3482 presentations, the agency or governing authority shall select no
3483 less than three (3) firms that it determines to be qualified to
3484 provide services for the project and rank them in order of
3485 qualifications to provide services regarding the specific project.
3486 The agency or governing authority shall then contact the firm
3487 ranked most preferred to negotiate a contract at a fair and
3488 reasonable compensation. If fewer than three (3) firms submit
3489 letters of interest and the agency or governing authority
3490 determines that one (1) or both of those firms are so qualified,
3491 the agency or governing authority may proceed to negotiate a
3492 contract under paragraph (g) of this section.

3493 (g) The agency or governing authority shall prepare a
3494 written description of the scope of the proposed services to be
3495 used as a basis for negotiations and shall negotiate a contract
3496 with the highest qualified firm at compensation that the agency or
3497 governing authority determines in writing to be fair and
3498 reasonable. In making this decision, the agency or governing



3499 authority shall take into account the estimated value, scope,
3500 complexity, and professional nature of the services to be
3501 rendered. In no case may the agency or governing authority
3502 establish a maximum overhead rate or other payment formula
3503 designed to eliminate firms from contention or restrict
3504 competition or negotiation of fees. If the agency or governing
3505 authority is unable to negotiate a satisfactory contract with the
3506 firm that is most preferred, negotiations with that firm shall be
3507 terminated. The agency or governing authority shall then begin
3508 negotiations with the firm that is next preferred. If the agency
3509 or governing authority is unable to negotiate a satisfactory
3510 contract with that firm, negotiations with that firm shall be
3511 terminated. The agency or governing authority shall then begin
3512 negotiations with the firm that is next preferred. If the agency
3513 or governing authority is unable to negotiate a satisfactory
3514 contract with any of the selected firms, the agency or governing
3515 authority shall reevaluate the architectural, engineering, or land
3516 surveying services requested, including the estimated value,
3517 scope, complexity, and fee requirements. The agency or governing
3518 authority shall then compile a second list of not less than three
3519 (3) qualified firms and proceed in accordance with the provisions
3520 of this section. A firm negotiating a contract with an agency or
3521 governing authority shall negotiate subcontracts for
3522 architectural, engineering, and land surveying services at
3523 compensation that the firm determines in writing to be fair and



3524 reasonable based upon a written description of the scope of the
3525 proposed services.

3526 (11) The provisions of this section shall not affect any
3527 procurement by the Mississippi Transportation Commission.

3528 **SECTION 30.** Section 31-7-14, Mississippi Code of 1972, is
3529 brought forward as follows:

3530 31-7-14. (1) (a) For purposes of this section, the
3531 following words and phrases shall have the meaning ascribed
3532 herein, unless the context clearly indicates otherwise:

3533 (i) "Division" means the Energy Division of the
3534 Mississippi Development Authority.

3535 (ii) "Energy services" or "energy efficient
3536 services" means energy efficiency equipment, services relating to
3537 the installation, operation and maintenance of equipment and
3538 improvements reasonably required to existing or new equipment and
3539 existing or new improvements and facilities including, but not
3540 limited to, heating, ventilation and air-conditioning systems,
3541 lighting, windows, insulation and energy management controls, life
3542 safety measures that provide long-term, operating-cost reductions,
3543 building operation programs that reduce operating costs,
3544 alternative fuel motor vehicles including vehicles that have been
3545 converted to such and ancillary equipment related to or associated
3546 with the fueling of alternative fuel motor vehicles, or other
3547 energy-conservation-related improvements, including improvements
3548 or equipment related to renewable energy, water and other natural



3549 resources conservation, including accuracy and measurement of
3550 water distribution and/or consumption, and other equipment,
3551 services and improvements providing verifiable cost savings.

3552 (iii) "Energy services provider" means a person or
3553 business with a successful record of documented energy savings
3554 projects that is experienced in the design, implementation and
3555 installation of energy conservation measures; has the technical
3556 capabilities to verify that such measures generate energy and
3557 operational cost savings or enhanced revenues; has the ability to
3558 guarantee the savings; has the ability to secure or arrange the
3559 financing necessary to support the implementation of the energy
3560 conservation measures; and is approved by the division.

3561 Approval by the division of an energy services provider shall
3562 be granted in a prequalification process.

3563 Such energy services providers may petition the division to
3564 review their qualifications and deem them to be qualified for
3565 inclusion on a prequalification list if they meet the
3566 qualifications set forth by the division.

3567 Any energy services project that has been competitively bid
3568 and awarded prior to any change in law shall be allowed to
3569 continue under the laws current at the time the project was
3570 awarded.

3571 The division shall ensure that small businesses are not
3572 disadvantaged in the determination of a qualified energy services
3573 provider.



3574 (iv) "Entity" means the board of trustees of any
3575 public school district, junior college, institution of higher
3576 learning, publicly owned hospital, state agency or governmental
3577 authority under this chapter.

3578 (v) "Energy services contract" means an agreement
3579 to provide energy services which include, but are not limited to,
3580 the design, installation, financing and maintenance or management
3581 of the energy systems or equipment in order to improve its energy
3582 efficiency. Payments for the contract are not contingent upon the
3583 actual savings realized from the equipment.

3584 (vi) "Energy performance contract" means an
3585 agreement to provide energy services which includes, but is not
3586 limited to, the design, installation, financing and maintenance or
3587 management of the energy systems or equipment in order to improve
3588 its energy efficiency.

3589 (vii) "Shared-savings contract" means an agreement
3590 where the contractor and the entity each receive a preagreed
3591 percentage or dollar value of the energy cost savings over the
3592 life of the contract.

3593 (viii) "Reduce operating costs" means elimination
3594 of future expenses or avoidance of future replacement expenditures
3595 as a result of new equipment installed or services performed.
3596 Material savings, labor savings, cancelled maintenance contracts,
3597 et cetera, shall be considered as being viable to reduce operating
3598 costs. Reduce operating costs may be included in the performance



3599 contract or energy services agreement solely at the discretion of
3600 the entity. A contract that otherwise satisfies the requirements
3601 of this section shall satisfy the requirements allowing use of an
3602 energy performance, energy services or shared-savings contract
3603 even if the sole expense being eliminated is maintenance expense.

3604 (ix) "Capital cost avoidance" means planned
3605 capital improvement expenditures that will be avoided through
3606 implementation of the energy services project. Capital cost
3607 avoidance may be included in an energy services contract or an
3608 energy performance contract solely at the discretion of the
3609 entity. Capital cost avoidance may be claimed as an annual
3610 avoidance or as a one-time avoidance in a specific year of the
3611 contract term, depending upon the nature of the avoided capital
3612 cost.

3613 (x) "Alternative fuel motor vehicle" means a motor
3614 vehicle propelled by alternative fuel either as a dedicated
3615 alternative fuel vehicle, as a bi-fuel vehicle using alternative
3616 fuel as one of its fuels, or as a dual fuel vehicle using
3617 alternative fuel as one of its fuels.

3618 (xi) "Energy conservation measure" means the
3619 individual items or components of a large energy services or
3620 energy efficient services program.

3621 (xii) "Simple payback period" means the amount of
3622 time for the recuperation of the initial investment. The simple
3623 payback period is calculated by dividing the initial investment by



3624 the annual savings. The simple payback period for any contract
3625 shall not exceed twenty (20) years. The simple payback period of
3626 an individual energy conservation measure shall not be considered
3627 in any evaluation provided the simple payback period for the
3628 contract does not exceed twenty (20) years.

3629 (b) An entity may enter into an energy services
3630 contract, energy performance contract, shared-savings contract,
3631 any of which may contain a lease, or lease-purchase contract for
3632 energy efficiency equipment, services relating to the
3633 installation, operation and maintenance of equipment or
3634 improvements reasonably required to existing or new equipment and
3635 existing or new improvements and facilities and shall contract in
3636 accordance with the following provisions:

3637 (i) The division may assemble a list of
3638 prequalified energy services providers. The division shall use
3639 objective criteria in the selection process. The criteria for
3640 evaluation shall include, but shall not be limited to, the
3641 following factors: to assess the capability of the qualified
3642 energy services provider in the area of design engineering,
3643 installation, maintenance and repairs associated with energy
3644 services or guaranteed energy performance contracts;
3645 qualifications including engineering depth and experience,
3646 post-installation project monitoring, data collection, and
3647 verification of and reporting of savings; overall project
3648 experience and qualifications; management capability; ability to



3649 access long-term sources of project financing; financial health
3650 and stability, litigation history with customers and other factors
3651 determined by the division to be relevant and appropriate and
3652 related to the ability to perform the project. The division shall
3653 either accept or reject an application for prequalification from
3654 an energy services provider within sixty (60) days after receipt.
3655 If the division fails to act within sixty (60) days from the date
3656 of receiving an application, then the application shall
3657 automatically be accepted and the energy services provider shall
3658 be added to the prequalified list.

3659 (ii) An entity shall publicly issue requests for
3660 proposals, advertised in the same manner as provided in Section
3661 31-7-13 for seeking competitive sealed bids, concerning the
3662 provision of energy efficiency services relating to the
3663 installation, operation and maintenance of equipment, improvements
3664 reasonably required to existing or new equipment and existing or
3665 new improvements and facilities or the design, installation,
3666 ownership, operation and maintenance of energy efficiency
3667 equipment. Those requests for proposals shall contain terms and
3668 conditions relating to submission of proposals, evaluation and
3669 selection of proposals, financial terms, legal responsibilities,
3670 and any other matters as the entity determines to be appropriate
3671 for inclusion.

3672 (iii) Upon receiving responses to the request for
3673 proposals, the entity may select the most qualified proposal or



3674 proposals on the basis of experience and qualifications of the
3675 proposers, the technical approach, the financial arrangements, the
3676 overall benefits to the entity and any other relevant factors
3677 determined to be appropriate.

3678 (iv) An entity shall negotiate and enter into
3679 contracts with the person, persons, firm or firms submitting the
3680 proposal selected as the most qualified under this section.

3681 (v) The annual rate of interest paid under any
3682 lease-purchase agreement authorized by this section shall not
3683 exceed the maximum interest rate to maturity on general obligation
3684 indebtedness permitted under Section 75-17-101.

3685 (vi) The maximum lease-purchase term for any
3686 equipment acquired under this section shall not exceed the lesser
3687 of twenty (20) years or the average useful life of the energy
3688 conservation measures from the date the energy conservation
3689 measures have been completed and accepted by the governmental
3690 unit.

3691 (vii) This subsection shall, with respect to the
3692 procurement of energy efficiency services and/or equipment,
3693 supersede any contradictory or conflicting provisions of Chapter
3694 7, Title 31, Mississippi Code of 1972, and other laws with respect
3695 to awarding public contracts.

3696 (2) (a) The division may contract with a party selected
3697 under this subsection to provide financing to entities and private
3698 "nonprofit" hospitals, to purchase energy efficiency equipment,



3699 services relating to the installation, operation and maintenance
3700 of equipment or improvements reasonably required to existing or
3701 new equipment and existing or new improvements and facilities or
3702 an energy saving performance contract, energy services contract,
3703 or lease-purchase basis. Any energy efficiency lease financing
3704 contract entered into by the division before May 15, 1992, shall
3705 be valid and binding when the contract was entered into under this
3706 subsection.

3707 (b) The entities and private "nonprofit" hospitals that
3708 decide to contract for energy efficiency equipment, services
3709 relating to the installation, operation and maintenance of
3710 equipment or improvements reasonably required to existing or new
3711 equipment and existing or new improvements and facilities on a
3712 lease, energy services contract or lease-purchase basis, may
3713 request financial assistance from the division.

3714 (c) The provisions of any energy efficiency
3715 lease-purchase agreements authorized under this subsection (2)
3716 shall comply with the requirements of subsection (1)(b)(v) of this
3717 section. The term of any lease or lease-purchase agreement for
3718 energy efficiency services and/or equipment entered into under
3719 this section shall not exceed twenty (20) years, commencing on the
3720 completion of the installation of equipment or improvements under
3721 the contract.

3722 (d) Any entity or private "nonprofit" hospital having
3723 approval of the division may borrow money in anticipation of



3724 entering into a lease-purchase agreement pursuant to subsection
3725 (2)(b) of this section. Any borrowing may be upon terms and
3726 conditions as may be agreed upon by the borrowing entity and the
3727 party advancing interim funds; however, the principal on any
3728 borrowing shall be repaid within a period of time not to exceed
3729 one hundred eighty (180) days. In borrowing money under this
3730 paragraph (d), it is not necessary to publish notice of intention
3731 to do so or to secure the consent of the qualified electors,
3732 either by election or otherwise. Any borrowing may be negotiated
3733 between the parties and is not required to be publicly bid, may be
3734 evidenced by negotiable notes or lease and shall not be considered
3735 when computing any limitation of indebtedness of the borrowing
3736 entity established by law. The principal, interest and costs of
3737 incurring any borrowing shall not exceed the principal amount of
3738 the final contract or agreement approved by the division, and
3739 accepted by the borrowing entity, under subsection (2)(b) of this
3740 section.

3741 (e) This subsection (2) shall, with respect to the
3742 procurement of energy efficiency services and/or equipment,
3743 supersede the provisions of any contradictory or conflicting
3744 provisions of Chapter 7, Title 31, Mississippi Code of 1972, and
3745 other laws with respect to awarding public contracts.

3746 (3) All lease-purchase agreements authorized by this section
3747 and the income from those agreements shall be exempt from all



3748 taxation within the State of Mississippi, except gift, transfer
3749 and inheritance taxes.

3750 (4) (a) An entity may contract for energy efficiency
3751 equipment services relating to the installation, operation or
3752 maintenance of equipment or improvements reasonably required to
3753 existing or new equipment and existing or new improvements and
3754 facilities on a shared-savings basis or performance basis.

3755 (b) If an entity decides to enter into a contract for
3756 energy efficiency equipment, services relating to the
3757 installation, operation or maintenance of equipment or
3758 improvements reasonably required to existing or new equipment and
3759 existing or new improvements and facilities on a shared-savings
3760 basis or performance basis, the entity shall issue a request for
3761 proposals or a request for qualifications, as determined necessary
3762 by the division, in the same manner as prescribed under subsection
3763 (1)(b) of this section. The entity shall notify the division in
3764 writing of its intention to issue a request for proposals or a
3765 request for qualifications.

3766 (c) The terms of any shared-savings contract, energy
3767 services contract, or energy performance contract entered into
3768 under this section may not exceed twenty (20) years, commencing on
3769 the completion of the installation of equipment or improvements
3770 under the contract.

3771 (d) The terms of any shared savings or energy
3772 performance contract entered into under this section must contain



3773 a guarantee of savings clause from the company providing energy
3774 efficiency equipment services relating to the installation,
3775 operation and maintenance of equipment or improvements reasonably
3776 required to existing or new equipment and existing or new
3777 improvements and facilities.

3778 (5) (a) By March 1 and September 1 of each year, each
3779 entity that enters into an energy performance contract or
3780 shared-savings contract shall report to the division its energy
3781 usage by meter in dollars and consumption by fuel type for the
3782 previous six-month period determined by the division.

3783 (b) The division shall remove qualified status of an
3784 energy services provider that fails to meet the reporting
3785 requirements of paragraph (a) of this subsection after two (2)
3786 such violations.

3787 (c) Any costs associated with the reporting made under
3788 this subsection (5) shall be paid by the energy services provider.

3789 (6) The contract may be construed to provide flexibility to
3790 public agencies in structuring agreements entered into hereunder
3791 so that economic benefits may be maximized.

3792 (7) This section shall stand repealed on July 1, 2019.

3793 **SECTION 31.** Section 31-7-15, Mississippi Code of 1972, is
3794 brought forward as follows:

3795 31-7-15. (1) Whenever two (2) or more competitive bids are
3796 received, one or more of which relates to commodities grown,
3797 processed or manufactured within this state, and whenever all



3798 things stated in such received bids are equal with respect to
3799 price, quality and service, the commodities grown, processed or
3800 manufactured within this state shall be given preference. A
3801 similar preference shall be given to commodities grown, processed
3802 or manufactured within this state whenever purchases are made
3803 without competitive bids, and when practical the Department of
3804 Finance and Administration may by regulation establish reasonable
3805 preferential policies for other commodities, giving preference to
3806 resident suppliers of this state.

3807 (2) Any foreign manufacturing company with a factory in the
3808 state and with over fifty (50) employees working in the state
3809 shall have preference over any other foreign company where both
3810 price and quality are the same, regardless of where the product is
3811 manufactured.

3812 (3) On or before January 1, 1991, the Department of Finance
3813 and Administration shall adopt bid and product specifications to
3814 be utilized by all state agencies that encourage the procurement
3815 of commodities made from recovered materials. Preference in
3816 awarding contracts for commodities shall be given to commodities
3817 offered at a competitive price.

3818 (4) Each state agency is required to procure products made
3819 from recovered materials when those products are available at a
3820 competitive price. For purposes of this subsection, "competitive
3821 price" means a price not greater than ten percent (10%) above the
3822 lowest and best bidder. A decision not to procure products made



3823 from recovered materials must be based on a determination that
3824 such procurement:

3825 (a) Is not available within a reasonable period of
3826 time; or

3827 (b) Fails to meet the performance standards set forth
3828 in the applicable specifications; or

3829 (c) Is not available at a competitive price.

3830 (5) Whenever economically feasible, each state agency is
3831 required to purchase products manufactured or sold by the
3832 Mississippi Industries for the Blind.

3833 **SECTION 32.** Section 31-7-16, Mississippi Code of 1972, is
3834 brought forward as follows:

3835 31-7-16. In the event equipment is required which is capable
3836 of being manufactured or assembled in separate units such as
3837 school bus chassis and bodies or other bodies of equipment
3838 installed upon chassis, and there is a manufacturer of such bodies
3839 located within the State of Mississippi, a public purchase may be
3840 made of such chassis and such body or equipment as separate items.

3841 **SECTION 33.** Section 31-7-18, Mississippi Code of 1972, is
3842 brought forward as follows:

3843 31-7-18. In addition to the method of purchasing authorized
3844 in this chapter, said governing authorities are hereby authorized
3845 to accept the lowest bid received from a motor vehicle dealer
3846 domiciled within the county of the governing authority for the
3847 purchase of any motor vehicle having a gross vehicle weight rating



3848 of less than twenty-six thousand (26,000) pounds that shall not
3849 exceed a sum equal to three percent (3%) greater than the price or
3850 cost which the dealer pays the manufacturer, as evidenced by the
3851 factory invoice for the motor vehicle. In the event said county
3852 does not have an authorized motor vehicle dealer, said board or
3853 governing authority may, in like manner, receive bids from motor
3854 vehicle dealers in any adjoining county.

3855 No purchase of a motor vehicle under the provisions of this
3856 section shall be valid unless the purchase is made according to
3857 statutory bidding and licensing requirements. Provided, however,
3858 that the governing authorities may choose to purchase a motor
3859 vehicle from the authorized state contract dealer without having
3860 to advertise and receive bids therefor.

3861 No purchase shall be made in excess of the approved state
3862 contract price by any of the aforementioned governing authorities
3863 when such authorities are situated wholly or in part in the county
3864 wherein the authorized state contract dealer for a particular item
3865 is domiciled.

3866 **SECTION 34.** Section 31-7-21, Mississippi Code of 1972, is
3867 brought forward as follows:

3868 31-7-21. The provisions of this chapter shall neither repeal
3869 nor modify the functions of the Governor's Office of General
3870 Services as set forth in Sections 31-11-1 through 31-11-89.

3871 **SECTION 35.** Section 31-7-23, Mississippi Code of 1972, is
3872 brought forward as follows:



3873 31-7-23. Any rebates, refunds, coupons, merit points,
3874 gratuities or any article of value tendered or received by any
3875 agency or governing authority from any vendor of material,
3876 supplies, equipment or other articles shall inure to the benefit
3877 of the agency or governing authority making the purchase. The
3878 agency or governing authority may, in accordance with its best
3879 interest, either take delivery of the article of value tendered
3880 and use the same or convert it to cash by selling it for its fair
3881 and reasonable value, making use of the proceeds from such sale
3882 for the exclusive benefit of the agency or governing authority.

3883 **SECTION 36.** Section 31-7-38, Mississippi Code of 1972, is
3884 brought forward as follows:

3885 31-7-38. The board of trustees or governing board of any
3886 hospital or regional mental health center owned or owned and
3887 operated separately or jointly by the State of Mississippi or any
3888 of its branches, agencies, departments or subdivisions, or by one
3889 or more counties, cities, towns, supervisors districts or election
3890 districts, or combinations thereof, may authorize by resolution
3891 the organization and operation of, or the participation in, a
3892 group purchasing program with other hospitals or regional mental
3893 health centers, for the purchase of supplies, commodities and
3894 equipment when it appears to the board of trustees or governing
3895 board that such a group purchasing program could or would affect
3896 economy or efficiency in their operations. Purchases by hospitals
3897 or regional mental health centers participating in group



3898 purchasing programs of supplies, commodities and equipment through
3899 such programs shall be exempt from the provisions of Sections
3900 31-7-9, 31-7-10, 31-7-11, 31-7-12 and 31-7-13.

3901 **SECTION 37.** Section 31-7-47, Mississippi Code of 1972, is
3902 brought forward as follows:

3903 31-7-47. In the letting of public contracts, preference
3904 shall be given to resident contractors, and a nonresident bidder
3905 domiciled in a state, city, county, parish, province, nation or
3906 political subdivision having laws granting preference to local
3907 contractors shall be awarded Mississippi public contracts only on
3908 the same basis as the nonresident bidder's state, city, county,
3909 parish, province, nation or political subdivision awards contracts
3910 to Mississippi contractors bidding under similar circumstances.
3911 Resident contractors actually domiciled in Mississippi, be they
3912 corporate, individuals or partnerships, are to be granted
3913 preference over nonresidents in awarding of contracts in the same
3914 manner and to the same extent as provided by the laws of the
3915 state, city, county, parish, province, nation or political
3916 subdivision of domicile of the nonresident.

3917 **SECTION 38.** Section 31-7-49, Mississippi Code of 1972, is
3918 brought forward as follows:

3919 31-7-49. In placing orders for purchases under bids received
3920 and contracts awarded under the provisions of this chapter, the
3921 governing authority, by orders entered on its minutes, may
3922 authorize its members, or agents designated by its order, to place



3923 orders for the purchase of such supplies and materials from time
3924 to time during the period covered by the contract, as such
3925 supplies and materials are needed. Claims for such supplies so
3926 ordered by an individual board member or other duly authorized
3927 agent shall not be allowed and paid by the board until such claims
3928 shall have been approved in writing by the individual board member
3929 or agent who ordered such supplies or the successor to such member
3930 or agent.

3931 **SECTION 39.** Section 31-7-53, Mississippi Code of 1972, is
3932 brought forward as follows:

3933 31-7-53. In making any and all purchases of fertilizer for
3934 all state institutions and agencies, the board, officer, or
3935 employee given the authority to make such purchases shall take
3936 into consideration the chemical analysis and percentage of plant
3937 food unit value in such fertilizer in determining the lowest and
3938 best bid. No awards of contracts shall be made until the best
3939 price is determined on the basis of the chemical analysis as to
3940 the plant food unit value of the product, and the contract shall
3941 be awarded on the basis of such an analysis of the plant food unit
3942 value.

3943 This section does not apply for the purchase of material by
3944 research agencies of the state for use in experimental projects.

3945 The State Penitentiary Board, the Board of Trustees of the
3946 State Institutions of Higher Learning, and any other agency,
3947 department, or board of trustees of the State of Mississippi are



3948 hereby authorized to purchase all needed quantities of anhydrous
3949 ammonia and ammonium nitrate fertilizers available through the
3950 facilities of Mississippi State University of Agriculture and
3951 Applied Science. Such purchase may be at public or private sale,
3952 provided that such fertilizers can be obtained for not more than
3953 the price that the same are then available to such board, agency,
3954 or department from any other source.

3955 **SECTION 40.** Section 31-7-55, Mississippi Code of 1972, is
3956 brought forward as follows:

3957 31-7-55. **[For penalties applicable to violations occurring**
3958 **between January 1, 1981, and August 15, 1988, the following**
3959 **provisions govern.]**

3960 (1) It is hereby declared to be unlawful and a violation of
3961 public policy of the State of Mississippi for any elected or
3962 appointed public officer of the state or the executive head of a
3963 state board, commission, department, subdivision of the state
3964 government or governing authority to make any purchases without
3965 the full compliance with the provisions of Chapter 7, Title 31,
3966 Mississippi Code of 1972. Any elected or appointed public officer
3967 of the state or the executive head of a state board, commission,
3968 department, subdivision of the state government or governing
3969 authority who violates the provisions of Chapter 7, Title 31,
3970 Mississippi Code of 1972, shall be deemed guilty of a misdemeanor
3971 and, upon conviction therefor, shall be fined not less than One
3972 Hundred Dollars (\$100.00) and not more than Five Hundred Dollars



3973 (\$500.00) for each separate offense, or sentenced to the county
3974 jail for not more than six (6) months, or both such fine and
3975 imprisonment, and shall be removed from his office or position.

3976 (2) Any person diverting the benefits of any article of
3977 value tendered or received by any agency or governing authority to
3978 his or her personal use, in violation of Section 31-7-23, shall be
3979 guilty of a misdemeanor and, upon conviction, shall be punished by
3980 a fine of not less than One Hundred Dollars (\$100.00) nor more
3981 than Five Hundred Dollars (\$500.00), or sentenced to the county
3982 jail for not more than six (6) months, or by both such fine and
3983 imprisonment, and shall be required to return the money value of
3984 the article unlawfully diverted to the agency involved.

3985 **[The following provisions apply to violations which occur on**
3986 **or after August 16, 1988.]**

3987 (1) It is hereby declared to be unlawful and a violation of
3988 public policy of the State of Mississippi for any elected or
3989 appointed public officer of an agency or a governing authority, or
3990 the executive head, any employee or agent of an agency or
3991 governing authority to make any purchases without the full
3992 compliance with the provisions of Chapter 7, Title 31, Mississippi
3993 Code of 1972.

3994 (2) Except as otherwise provided in subsection (4) of this
3995 section, any person who intentionally, willfully and knowingly
3996 violates the provisions of Chapter 7, Title 31, Mississippi Code
3997 of 1972, shall be deemed guilty of a misdemeanor and, upon



3998 conviction thereof, shall be fined not less than One Hundred
3999 Dollars (\$100.00) and not more than Five Hundred Dollars (\$500.00)
4000 for each separate offense, or sentenced to the county jail for not
4001 more than six (6) months, or both such fine and imprisonment, and
4002 shall be removed from his office or position.

4003 (3) Any person who intentionally, willfully and knowingly
4004 violates the provisions of subsection (1) of Section 31-7-57 shall
4005 be guilty of a misdemeanor and, upon conviction thereof, shall be
4006 fined not less than One Hundred Dollars (\$100.00) and not more
4007 than Five Hundred Dollars (\$500.00), or sentenced to the county
4008 jail for not more than six (6) months, or both such fine and
4009 imprisonment, and shall be removed from his office or position.

4010 (4) Any person diverting the benefits of any article of
4011 value tendered or received by any agency or governing authority to
4012 his or her personal use, in violation of Section 31-7-23, if the
4013 value of such article be less than Five Hundred Dollars (\$500.00),
4014 shall be guilty of a misdemeanor and, upon conviction, shall be
4015 punished by a fine of not less than One Hundred Dollars (\$100.00)
4016 nor more than Five Hundred Dollars (\$500.00), or sentenced to the
4017 county jail for not more than six (6) months, or by both such fine
4018 and imprisonment, shall be removed from his office or position,
4019 and shall be required to return the money value of the article
4020 unlawfully diverted to the agency or governing authority involved.
4021 If the value of the article be Five Hundred Dollars (\$500.00) or
4022 more, such person shall be guilty of a felony and, upon



4023 conviction, shall be punished by a fine of not less than One
4024 Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars
4025 (\$5,000.00), or sentenced to the Department of Corrections for not
4026 less than one (1) year nor more than five (5) years, or by both
4027 such fine and imprisonment, shall be removed from his office or
4028 position, and shall be required to return the money value of the
4029 article unlawfully diverted to the agency or governing authority
4030 involved.

4031 (5) The provisions of this section are supplemental to any
4032 other criminal statutes of this state.

4033 **SECTION 41.** Section 31-7-57, Mississippi Code of 1972, is
4034 brought forward as follows:

4035 31-7-57. (1) Any elected or appointed public officer of an
4036 agency or a governing authority, or the executive head, any
4037 employee or agent of an agency or governing authority, who
4038 appropriates or authorizes the expenditure of any money to an
4039 object not authorized by law, shall be liable personally for up to
4040 the full amount of the appropriation or expenditure as will fully
4041 and completely compensate and repay such public funds for any
4042 actual loss caused by such appropriation or expenditure, to be
4043 recovered by suit in the name of the governmental entity involved,
4044 or in the name of any person who is a taxpayer suing for the use
4045 of the governmental entity involved, and such taxpayer shall be
4046 liable for costs in such case. In the case of a governing board
4047 of an agency or governing authority, only the individual members



4048 of the governing board who voted for the appropriation or
4049 authorization for expenditure shall be liable under this
4050 subsection.

4051 (2) No individual member, officer, employee or agent of any
4052 agency or board of a governing authority shall let contracts or
4053 purchase commodities or equipment except in the manner provided by
4054 law, including the provisions of Section 25-9-120(3), Mississippi
4055 Code of 1972, relating to personal and professional service
4056 contracts by state agencies; nor shall any such agency or board of
4057 a governing authority ratify any such contract or purchase made by
4058 any individual member, officer, employee or agent thereof, or pay
4059 for the same out of public funds unless such contract or purchase
4060 was made in the manner provided by law; provided, however, that
4061 any vendor who, in good faith, delivers commodities or printing or
4062 performs any services under a contract to or for the agency or
4063 governing authority, shall be entitled to recover the fair market
4064 value of such commodities, printing or services, notwithstanding
4065 some error or failure by the agency or governing authority to
4066 follow the law, if the contract was for an object authorized by
4067 law and the vendor had no control of, participation in, or actual
4068 knowledge of the error or failure by the agency or governing
4069 authority.

4070 (3) The individual members, officers, employees or agents of
4071 any agency or governing authority as defined in Section 31-7-1
4072 causing any public funds to be expended, any contract made or let,



4073 any payment made on any contract or any purchase made, or any
4074 payment made, in any manner whatsoever, contrary to or without
4075 complying with any statute of the State of Mississippi, regulating
4076 or prescribing the manner in which such contracts shall be let,
4077 payment on any contract made, purchase made, or any other payment
4078 or expenditure made, shall be liable, individually, and upon their
4079 official bond, for compensatory damages, in such sum up to the
4080 full amount of such contract, purchase, expenditure or payment as
4081 will fully and completely compensate and repay such public funds
4082 for any actual loss caused by such unlawful expenditure.

4083 (4) In addition to the foregoing provision, for any
4084 violation of any statute of the State of Mississippi prescribing
4085 the manner in which contracts shall be let, purchases made,
4086 expenditure or payment made, any individual member, officer,
4087 employee or agent of any agency or governing authority who shall
4088 substantially depart from the statutory method of letting
4089 contracts, making payments thereon, making purchases or expending
4090 public funds shall be liable, individually and on his official
4091 bond, for penal damages in such amount as may be assessed by any
4092 court of competent jurisdiction, up to three (3) times the amount
4093 of the contract, purchase, expenditure or payment. The person so
4094 charged may offer mitigating circumstances to be considered by the
4095 court in the assessment of any penal damages.



4096 (5) Any sum recovered under the provisions hereof shall be
4097 credited to the account from which such unlawful expenditure was
4098 made.

4099 (6) Except as otherwise provided in subsection (1) of this
4100 section, any individual member of an agency or governing authority
4101 as defined in Section 31-7-1 shall not be individually liable
4102 under this section if he voted against payment for contracts let
4103 or purchases made contrary to law and had his vote recorded in the
4104 official minutes of the board or governing authority at the time
4105 of such vote, or was absent at the time of such vote.

4106 **SECTION 42.** Section 31-7-59, Mississippi Code of 1972, is
4107 brought forward as follows:

4108 31-7-59. (1) Any municipality of over one hundred thousand
4109 (100,000) population, according to the latest decennial census and
4110 qualified to do so, is hereby empowered to purchase from the
4111 General Services Administration of the United States of America,
4112 without advertising for bids, any and all articles of supplies and
4113 equipment necessary for the operation of said municipality so long
4114 as the purchase price of such articles is below the purchase price
4115 of similar articles on a state contract accepted by the Office of
4116 General Services.

4117 (2) The aforesaid supplies and equipment may likewise be
4118 purchased from the General Services Administration without
4119 advertising for bids even though the Office of General Services
4120 does not have same listed on statewide contracts so long as the



4121 purchase price thereof is ten percent (10%) below the latest
4122 purchase price of comparable supplies and equipment.

4123 **SECTION 43.** Section 31-7-61, Mississippi Code of 1972, is
4124 brought forward as follows:

4125 31-7-61. It shall be unlawful for any person knowingly to
4126 purchase or to authorize or requisition the purchase of beef other
4127 than beef raised and produced within the United States when such
4128 purchase is to be paid by the state government or any of its
4129 political subdivisions out of public funds of any nature.

4130 However, all canned meats not available which are processed in the
4131 United States shall be exempt from Sections 31-7-61 through
4132 31-7-65.

4133 **SECTION 44.** Section 31-7-63, Mississippi Code of 1972, is
4134 brought forward as follows:

4135 31-7-63. Any person who violates the provisions of Section
4136 31-7-61 shall be guilty of a misdemeanor and upon conviction shall
4137 be punished by imprisonment for not more than thirty (30) days or
4138 by a fine of not less than One Hundred Dollars (\$100.00) nor more
4139 than Five Hundred Dollars (\$500.00). In addition to any criminal
4140 sanction authorized herein, a civil proceeding may be brought by a
4141 district attorney or county prosecuting attorney for recovery of
4142 funds paid out in violation of this section.

4143 **SECTION 45.** Section 31-7-65, Mississippi Code of 1972, is
4144 brought forward as follows:



4145 31-7-65. The Commissioner of Agriculture and Commerce of the
4146 State of Mississippi shall notify all state agencies, political
4147 subdivisions or public institutions within the State of
4148 Mississippi as to the provisions of Sections 31-7-61 through
4149 31-7-65.

4150 **SECTION 46.** Section 31-7-73, Mississippi Code of 1972, is
4151 brought forward as follows:

4152 31-7-73. Any state agency, as defined in Section 31-7-1,
4153 Mississippi Code of 1972, shall be authorized and empowered, in
4154 its discretion, to enter into an energy performance contract,
4155 energy services contract, on a shared-savings, lease or
4156 lease-purchase basis, for energy efficiency services and/or
4157 equipment as provided for in Section 31-7-14.

4158 **SECTION 47.** Section 31-7-301, Mississippi Code of 1972, is
4159 brought forward as follows:

4160 31-7-301. (1) The Legislature hereby declares that it is
4161 essential to the efficient operation of public bodies of this
4162 state that adequate supplies of goods and services continue to be
4163 available from private sources; that the good name and credit of
4164 the state may be promoted by timely and responsible payment of
4165 just claims; and that fair compensation be awarded suppliers when
4166 payments of their claims are delayed without justification.

4167 (2) The term "public bodies" shall mean all state agencies,
4168 political subdivisions, school districts, municipalities and
4169 public corporations, whether created by charter, statute or



4170 executive order, whether supported wholly or in part by public
4171 funds, or which expend public funds.

4172 **SECTION 48.** Section 31-7-303, Mississippi Code of 1972, is
4173 brought forward as follows:

4174 31-7-303. (1) The requisition for payment of an invoice
4175 submitted to a public body and required by law to be filed with
4176 the State Fiscal Management Board shall be filed with the State
4177 Fiscal Management Board not later than thirty (30) days after
4178 receipt of the invoice and receipt, inspection and approval of the
4179 goods or services, except that in the case of a bona fide dispute
4180 the requisition for payment shall contain a statement of the
4181 dispute and authorize payment only in the amount not disputed. If
4182 a requisition for payment filed within the thirty-day period is
4183 returned by the State Fiscal Management Board because of an error,
4184 it shall nevertheless be deemed timely filed. The thirty-day
4185 filing requirement may be waived by the State Fiscal Management
4186 Board on a showing of exceptional circumstances in accordance with
4187 rules and regulations established by the State Fiscal Management
4188 Board.

4189 (2) The warrant, in payment of an invoice submitted to a
4190 public body of the state, shall be mailed or otherwise delivered
4191 by the public body not later than fifteen (15) days after filing
4192 of the requisition for payment; however, this requirement may be
4193 waived by the State Fiscal Management Board on a showing of
4194 exceptional circumstances in accordance with rules and regulations



4195 of the State Fiscal Management Board or as otherwise provided in
4196 Section 7-7-35, Mississippi Code of 1972.

4197 **SECTION 49.** Section 31-7-305, Mississippi Code of 1972, is
4198 brought forward as follows:

4199 31-7-305. (1) All public bodies of the state, including
4200 those which issue checks and those which file requisitions for
4201 payment with the State Fiscal Management Board, shall keep a
4202 record of the date of receipt of the invoice, dates of receipt,
4203 inspection and approval of the goods or services, date of issuing
4204 the check or date of filing the requisition for payment, as the
4205 case may be, and date of mailing or otherwise delivering the
4206 warrant or check in payment thereof. In the event that the State
4207 Fiscal Management Board mails or otherwise delivers the warrant
4208 directly to the claimant, pursuant to Section 7-7-35, Mississippi
4209 Code of 1972, the State Fiscal Management Board shall notify the
4210 public body of the date thereof. The provisions of this section
4211 are supplemental to the requirements of Sections 19-13-29,
4212 21-39-7, 21-39-13 and 37-5-93, Mississippi Code of 1972.

4213 (2) All public bodies that are authorized to issue checks in
4214 payment of goods and services and are not required to issue
4215 requisitions for payment to the State Fiscal Management Board
4216 shall mail or otherwise deliver such checks no later than
4217 forty-five (45) days after receipt of the invoice and receipt,
4218 inspection and approval of the goods or services; however, in the



4219 event of a bona fide dispute, the public body shall pay only the
4220 amount not disputed.

4221 (3) If a warrant or check, as the case may be, in payment of
4222 an invoice is not mailed or otherwise delivered within forty-five
4223 (45) days after receipt of the invoice and receipt, inspection and
4224 approval of the goods and services, the public body shall be
4225 liable to the vendor, in addition to the amount of the invoice,
4226 for interest at a rate of one and one-half percent (1-1/2%) per
4227 month or portion thereof on the unpaid balance from the expiration
4228 of such forty-five-day period until such time as the warrant or
4229 check is mailed or otherwise delivered to the vendor. The
4230 provisions of this paragraph shall apply only to undisputed
4231 amounts for which payment has been authorized. In the case of an
4232 error on the part of the vendor, the forty-five-day period shall
4233 begin to run upon receipt of a corrected invoice by the public
4234 body and upon compliance with the other provisions of this
4235 section. The various public bodies shall be responsible for
4236 initiating the penalty payments required by this subsection and
4237 shall use this subsection as authority to make such payments.
4238 Also, at the time of initiating such penalty payment, the public
4239 body shall specify in writing an explanation of the delay and
4240 shall attach such explanation to the requisition for payment of
4241 the penalty or to the file copy of the check issued by the public
4242 body, as the case may be.



4243 (4) (a) In the event of a bona fide dispute as to an
4244 invoice, or any portion thereof, the dispute shall be settled
4245 within thirty (30) days after interest penalties could begin to be
4246 assessed, if it were not for the dispute.

4247 (b) If a warrant or check, as the case may be, in
4248 payment of an invoice, subject to a prior dispute, is not mailed
4249 or otherwise delivered within thirty (30) days after settlement of
4250 the dispute, the public body shall be liable to the vendor, in
4251 addition to the amount of the invoice, for interest at a rate of
4252 one and one-half percent (1-1/2%) per month or portion thereof on
4253 the unpaid balance from the expiration of said thirty-day period
4254 until such time as the warrant or check is mailed or otherwise
4255 delivered to the vendor. At the time of initiating such penalty
4256 payment, the public body shall specify in writing an explanation
4257 of the delay and shall attach such explanation to the requisition
4258 for payment of the penalty or to the file copy of the check issued
4259 by the public body, as the case may be. The interest penalty
4260 prescribed in this paragraph shall be in lieu of the penalty
4261 provided in subsection (3).

4262 **SECTION 50.** Section 31-7-307, Mississippi Code of 1972, is
4263 brought forward as follows:

4264 31-7-307. (1) The budget request submitted by a public body
4265 to the Legislature shall specifically disclose the amount of any
4266 interest paid by any public body pursuant to Sections 31-7-301
4267 through 31-7-317. However, no provision of Sections 31-7-301



4268 through 31-7-317 authorizes a new appropriation to cover such
4269 interest penalties, and public bodies shall not seek to increase
4270 appropriations for the purpose of obtaining funds to pay any
4271 interest penalties.

4272 (2) All public bodies of the state, including those which
4273 issue checks and those which file requisitions for payment with
4274 the State Fiscal Management Board, shall monthly notify the State
4275 Fiscal Management Board of the number and dollar amount of late
4276 payments by the public body along with the amounts of interest
4277 paid and the specific steps being taken to reduce the incidence of
4278 late payments.

4279 (3) If the terms of the invoice provide a discount for
4280 payment in less than forty-five (45) days, public bodies shall
4281 preferentially process it and use all diligence to obtain the
4282 savings by compliance with the invoice terms, if it would be cost
4283 effective.

4284 **SECTION 51.** Section 31-7-309, Mississippi Code of 1972, is
4285 brought forward as follows:

4286 31-7-309. Whenever a vendor brings formal administrative or
4287 judicial action to collect interest due under Sections 31-7-301
4288 through 31-7-317, the public body shall be required to pay any
4289 reasonable attorney's fees if the vendor prevails.

4290 **SECTION 52.** Section 31-7-311, Mississippi Code of 1972, is
4291 brought forward as follows:



4292 31-7-311. The State Fiscal Management Board shall submit to
4293 the Appropriations Committee of each house of the Legislature by
4294 January 15 of each year a report summarizing the payment record
4295 for the preceding fiscal year. The report shall include the
4296 number and dollar amount of late payments by each public body
4297 along with the amounts of interest paid and the specific steps
4298 being taken to reduce the incidence of late payments.

4299 **SECTION 53.** Section 31-7-313, Mississippi Code of 1972, is
4300 brought forward as follows:

4301 31-7-313. The State Fiscal Management Board is authorized
4302 and directed to adopt and promulgate rules and regulations
4303 necessary to implement this section.

4304 **SECTION 54.** Section 31-7-315, Mississippi Code of 1972, is
4305 brought forward as follows:

4306 31-7-315. Sections 31-7-301 through 31-7-317 shall not
4307 affect payment under public works contracts as provided in
4308 Sections 31-5-25 and 31-5-27, Mississippi Code of 1972.

4309 **SECTION 55.** Section 31-7-317, Mississippi Code of 1972, is
4310 brought forward as follows:

4311 31-7-317. (1) The Governor's Office of General Services
4312 shall study the feasibility of:

4313 (a) Requiring the Bureau of Purchasing to act as
4314 purchasing agent for state agencies;



4315 (b) Requiring the Bureau of Purchasing to purchase
4316 frequently used products and supplies and warehouse them for state
4317 agencies, especially in the Jackson metropolitan area; and

4318 (c) A small business/minority set-aside program.

4319 (2) On or before January 15, 1987, the Governor's Office of
4320 General Services shall transmit its written report of the
4321 feasibility studies to the Legislature, along with its
4322 recommendations and an estimate of the fiscal impact of the
4323 recommendations. If the Governor's Office of General Services
4324 recommends that the bureau should be required to act as purchasing
4325 agent for smaller state agencies, the report shall include a list
4326 of state agencies to be included.

4327 **SECTION 56.** Section 31-17-3, Mississippi Code of 1972, is
4328 brought forward as follows:

4329 31-17-3. The State Bond Commission, with the approval and
4330 consent of the State Auditor of Public Accounts and the Chairman
4331 of the State Tax Commission, is hereby authorized to purchase
4332 outstanding bonds of the State of Mississippi, retire such bonds,
4333 and pay the purchase price thereof out of any surplus remaining in
4334 the State Treasury at the end of any fiscal year, all in accord
4335 with the provisions of Sections 31-17-21 through 31-17-25. The
4336 State Bond Commission, with the consent and approval of the State
4337 Auditor of Public Accounts and the Chairman of the State Tax
4338 Commission, shall determine the amount of bonds to be purchased,
4339 the maximum price to be paid therefor not to exceed par and



4340 accrued interest, and the date upon which it will receive
4341 proposals to purchase such bonds, all in accord with the
4342 provisions of Sections 31-17-21 through 31-17-25.

4343 **SECTION 57.** Section 57-62-13, Mississippi Code of 1972, is
4344 brought forward as follows:

4345 57-62-13. (1) As soon as practicable after the end of a
4346 calendar quarter for which a qualified business or industry has
4347 qualified to receive an incentive payment, the qualified business
4348 or industry shall file a claim for the payment with the Department
4349 of Revenue and shall specify the actual number of new direct jobs
4350 created and maintained by the business or industry for the
4351 calendar quarter and the gross payroll thereof. The Department of
4352 Revenue shall verify the actual number of new direct jobs created
4353 and maintained by the business or industry and compliance with the
4354 average annual wage requirements for such business or industry
4355 under this chapter. If the qualified business or industry files a
4356 claim for an incentive payment during an additional incentive
4357 period provided under Section 57-62-9(2), the Department of
4358 Revenue shall verify the actual number of new direct jobs created
4359 and maintained by the business or industry and compliance with the
4360 average annual wage requirements for such business or industry
4361 under this chapter. If the Department of Revenue is not able to
4362 provide such verification utilizing all available resources, the
4363 Department of Revenue may request such additional information from
4364 the business or industry as may be necessary.



4365 (2) (a) Except as otherwise provided in this chapter, the
4366 business or industry must meet the salary and job requirements of
4367 this chapter for four (4) consecutive calendar quarters prior to
4368 payment of the first incentive payment. Except as otherwise
4369 provided in Section 57-62-9, if the business or industry does not
4370 maintain the salary or job requirements of this chapter at any
4371 other time during the ten-year period after the date the first
4372 payment was made, the incentive payments shall not be made and
4373 shall not be resumed until such time as the actual verified number
4374 of new direct jobs created and maintained by the business or
4375 industry equals or exceeds the requirements of this chapter for
4376 one (1) calendar quarter.

4377 (b) If the business or industry is qualified to receive
4378 incentive payments for an additional period provided under Section
4379 57-62-9(2), the business or industry must meet the wage and job
4380 requirements of Section 57-62-9(2), for four (4) consecutive
4381 calendar quarters prior to payment of the first incentive payment.
4382 If the business or industry does not maintain the wage or job
4383 requirements of Section 57-62-9(2), at any other time during the
4384 appropriate additional period after the date the first payment was
4385 made, the incentive payments shall not be made and shall not be
4386 resumed until such time as the actual verified number of new
4387 direct jobs created and maintained by the business or industry
4388 equals or exceeds the amounts specified in Section 57-62-9(2), for
4389 one (1) calendar quarter.



4390 (3) An establishment that has qualified pursuant to this
4391 chapter may receive payments only in accordance with the provision
4392 under which it initially applied and was approved. If an
4393 establishment that is receiving incentive payments expands, it may
4394 apply for additional incentive payments based on the new gross
4395 payroll for new direct jobs anticipated from the expansion only,
4396 pursuant to this chapter.

4397 (4) As soon as practicable after verification of the
4398 qualified business or industry meeting the requirements of this
4399 chapter and all rules and regulations, the Department of Finance
4400 and Administration, upon requisition of the Department of Revenue,
4401 shall issue a warrant drawn on the Mississippi Advantage Jobs
4402 Incentive Payment Fund to the establishment in the amount of the
4403 incentive payment as determined pursuant to subsection (1) of this
4404 section for the calendar quarter.

4405 **SECTION 58.** This act shall take effect and be in force from
4406 and after July 1, 2018.

