

By: Representatives Weathersby, Sykes

To: Public Property

COMMITTEE SUBSTITUTE
FOR
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 public facility and infrastructure projects that provide economic
61 and social value;

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

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



68 (d) Provide flexibility in contracting and delivering
69 public facility and infrastructure projects;

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

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

74 **SECTION 3.** The following shall be codified as Section
75 31-33-5, Mississippi Code of 1972:

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

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

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

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



92 for the right to receive all or a portion of the revenues of the
93 qualifying project.

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

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

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

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



117 single contract and wherein the private partner is required to
118 satisfactorily perform, at a minimum, the design, construction,
119 financing, operation and maintenance of the qualifying project.

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

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

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

136 (k) "Eligible costs" means, to the extent determined by
137 the responsible public entity and the P3 Review Board, a
138 percentage of the estimated costs incurred by a private partner
139 (not to exceed fifteen percent (15%)) in responding to a request
140 for proposals issued by a responsible public entity pursuant to
141 this chapter.



142 (1) "Fees" means rates, tolls, fees, rents, leases or
143 other charges or funds imposed by the private partner or
144 responsible public entity for use of all or a portion of a
145 qualifying project pursuant to a public-private partnership
146 agreement.

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

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

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

161 (p) "Private partner" means any natural person,
162 corporation, general partnership, limited liability company,
163 limited partnership, joint venture, business trust, public benefit
164 corporation, nonprofit entity, other private business entity or
165 any combination thereof, who has entered into a public-private



166 partnership agreement for the construction of a qualifying project
167 using:

168 (i) Contractors who are licensed in Mississippi,
169 but may be licensed in another state, and has satisfied the
170 requirements of Sections 31-3-5, 31-3-21 and 31-5-51 for
171 certificates of responsibility, performance and payments of bonds,
172 and proof of insurance for public construction contracts; and

173 (ii) Engineers and/or architects who are licensed
174 in Mississippi, but may be licensed in another state, and has
175 satisfied the requirements of Section 73-13-45 for construction
176 contracts of any public works.

177 (q) "Proposal" means a plan to develop a qualifying
178 project submitted by a private partner with detail beyond a
179 conceptual level for which all terms determined to be necessary by
180 the responsible public entity are defined, including without
181 limitation, but depending on any delivery methods set forth in
182 Section 31-33-19 and specified in a request for proposals, costs,
183 payment schedules, plans, designs, operation, maintenance
184 arrangements, financing, deliverables and project schedule.

185 (r) "Public-private partnership" means when a
186 responsible public entity enters into a public-private partnership
187 agreement with a private partner to develop a qualifying project
188 utilizing one or more of the delivery methods set forth in Section
189 31-33-19 for the benefit of the public.



190 (s) "Public-private partnership agreement" means an
191 agreement between one or more private partners and one or more
192 responsible public entities contractually providing for and
193 allocating the responsibilities of and among all parties to
194 develop and/or operate a qualifying project in a public-private
195 partnership, which such agreement shall have a term not to exceed
196 fifty (50) years unless the P3 Review Board approves a longer term
197 not to exceed seventy (70) years upon finding that the qualifying
198 project is of such an extraordinary nature that the public benefit
199 justifies the extended term.

200 (t) "Qualifying project" means any public facility or
201 infrastructure or improvement to any public facility or
202 infrastructure with an estimated cost in excess of Ten Million
203 Dollars (\$10,000,000.00) that is used or will be used by the
204 public at large or in support of a public purpose or activity
205 including, but not limited to: civic or education facilities;
206 surface transportation facilities such as roads, bridges, tunnels,
207 public transit systems, ferry facilities, port facilities,
208 airports, railroads, rail systems and intermodal systems; cultural
209 or recreational facilities; medical facilities; utility facilities
210 and distribution systems for water, wastewater, gas and electric
211 facilities; telecommunications facilities; and any other
212 facilities, buildings, stadiums, parking areas, appurtenances and
213 any other property needs to operate any of the foregoing.



214 (u) "Responsible public entity" means (i) the State of
215 Mississippi or any agency or department thereof; (ii) the State
216 Institutions of Higher Learning; (iii) any education building
217 corporation established for the State Institutions of Higher
218 Learning; or (iv) any combination of the foregoing.

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

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

226 (x) "Request for qualifications" means the process for
227 soliciting the qualifications of private partners by a responsible
228 public entity in anticipation of issuing a request for proposals
229 to develop a qualifying project, all as further described in
230 Section 31-33-11.

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

232 **SECTION 4.** The following shall be codified as Section
233 31-33-7, Mississippi Code of 1972:

234 31-33-7. (1) There is created the P3 Review Board, for the
235 purposes of reviewing and approving all public-private partnership
236 agreements and the creation of guidelines governing all
237 public-private partnership agreements. The board shall be
238 comprised of nine (9) members, as follows:



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

241 (b) Two (2) members to be appointed by the Lieutenant
242 Governor;

243 (c) The Secretary of State or, if the guidelines
244 described in subsection (2) (a) of this section are approved, his
245 or her designee;

246 (d) The Executive Director of the Mississippi
247 Department of Transportation or his or her designee;

248 (e) The Executive Director of the Mississippi
249 Department of Finance and Administration or his or her designee;

250 (f) The Commissioner of the Mississippi Institutions of
251 Higher Learning or his or her designee; and

252 (g) The Executive Director of the Mississippi
253 Department of Environmental Quality or his or her designee.

254 At least one (1) of the appointed members of the board shall
255 be a licensed member of the Mississippi Bar Association with
256 expertise in representing responsible public entities in public
257 works construction. Each appointed member of the board shall have
258 subject matter experience in architecture, construction
259 management, engineering, finance or real estate development.
260 Appointed members of the board shall serve four-year terms and
261 represent geographically diverse regions of the state to the
262 extent practicable. Members of the board may be removed by the



263 public official who appointed them upon written notice and shall
264 appoint a successor as soon as reasonable thereafter.

265 (2) The board shall:

266 (a) Promulgate regulations by July 1, 2019, following a
267 period of public review, setting forth a uniform process for the
268 review, solicitation, evaluation, award, and delivery of
269 public-private partnership agreements, including timeframes and
270 requirements for public outreach prior to entering into a
271 public-private partnership agreement on a selected proposal. The
272 timeframes and requirements shall provide for a reasonable period
273 of public review and comment;

274 (b) Make any recommendations to the Legislature and the
275 Governor on any amendments to this chapter deemed helpful to carry
276 out the purposes of this chapter;

277 (c) Make any recommendations to the departments and
278 agencies of the state concerning any amendments to the regulations
279 of each respective agency deemed necessary to carry out the
280 purposes of this chapter;

281 (d) Review all public-private partnership agreements
282 authorized by this chapter;

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

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



288 (3) All responsible public entities shall follow the final
289 regulations of the board with regard to any public-private
290 partnership agreement subject to this chapter, however, a
291 responsible public entity may also adopt supplemental guidelines
292 for public-private partnerships other than those described in this
293 section so long as such guidelines are supplemental to and not
294 inconsistent with this chapter.

295 (4) The responsible public entity must assess, through a
296 standardized screening process (as outlined in the regulations
297 adopted by the board), whether a public-private partnership for a
298 qualified project may provide a greater value added than
299 traditional procurement. Such findings from the screening process
300 shall be submitted to the P3 Review Board for review and approval
301 prior to the responsible public entity entering into a
302 public-private partnership agreement.

303 (5) The operations and activities of the board in carrying
304 out the purposes of this chapter shall be administered by the
305 Mississippi Department of Finance and Administration. The board
306 shall elect from its membership a chairman and a vice chairman,
307 each of whom shall perform the usual duties of such offices. The
308 initial and subsequent chairman of the board shall be the
309 Secretary of State. The initial chairman shall call the initial
310 meeting of the board and shall serve while the regulations
311 required to be promulgated by subsection (2) (a) of this section
312 are approved by the board. The Executive Director of the



313 Mississippi Department of Finance and Administration, or his or
314 her designee, shall serve as secretary of the board. Five (5)
315 members of the board shall constitute a quorum. The board may
316 adopt a seal. At the request of the board, the Mississippi
317 Department of Finance and Administration is authorized to employ
318 such personnel, including administrative and clerical staff, as
319 may be necessary for the board to comply with its duties and
320 responsibilities pursuant to this chapter.

321 **SECTION 5.** The following shall be codified as Section
322 31-33-9, Mississippi Code of 1972:

323 31-33-9. The responsible public entity may, either
324 separately or in combination with any other public entities, enter
325 into working agreements, coordination agreements, or similar
326 implementation agreements, including the formation of bi-state or
327 multistate organizations, to develop or operate a qualifying
328 project subject to the requirements of this chapter. These
329 agreements must conform to any relevant state laws and to the laws
330 of the United States regarding interstate compacts.

331 **SECTION 6.** The following shall be codified as Section
332 31-33-11, Mississippi Code of 1972:

333 31-33-11. (1) The responsible public entity may request
334 proposals from private partners for the development of a
335 qualifying project under one or more of the project delivery
336 methods described in Section 31-33-19. Private partners who
337 respond to requests for proposals from responsible public entities



338 but whom are not selected to perform the services described in
339 such request may be recompensed for eligible costs incurred as
340 part of the response to proposal process, but only to the extent
341 provided in the request for proposal issued by the responsible
342 public entity.

343 (2) Upon submitting a proposal, a private partner shall
344 identify those portions of a proposal that the private partner
345 considers to be a trade secret or confidential commercial,
346 financial, or proprietary information and provide any
347 justification as to why these materials, upon request, should not
348 be disclosed by the responsible public entity. A private partner
349 shall fully comply with any applicable state laws for such
350 materials to be exempt from disclosure. Patent information will
351 be exempt from disclosure until the patent expires. Records of
352 negotiation are exempt from disclosure under the Mississippi
353 Public Records Act of 1983. Other information such as originality
354 of design may only be protected under this section until a
355 public-private partnership agreement is reached. Projects under
356 federal jurisdiction or using federal funds must conform to
357 federal regulations under the Freedom of Information Act. Subject
358 to the foregoing requirements, the related responsible public
359 entity shall determine what is exempt from disclosure and shall
360 otherwise comply with the Mississippi Public Records Act of 1983.

361 (3) For any selected proposal for a qualifying project, the
362 responsible public entity shall obtain an independent audit of the



363 proposed private-public partnership, including an assessment of
364 projected usage and public costs, before the public-private
365 partnership agreement is executed. The analysis shall be
366 disclosed to the public prior to execution of a public-private
367 partnership agreement. In addition to disclosing the independent
368 audit to the public, the responsible public entity shall provide a
369 copy of the audit to the State Bond Commission, the chairmen of
370 the House of Representatives Public Property, Ways and Means and
371 Appropriations Committees, and to the chairmen of the Senate
372 Public Property, Finance and Appropriations Committees prior to
373 the execution of a public-private partnership agreement.

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

378 (5) Professionals, consultants and experts (including
379 without limitation accountants, architects, attorneys, engineers
380 and financial advisors) may be engaged by a responsible public
381 entity at any point to assist in the evaluation, negotiation and
382 development of qualifying projects.

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



386 (a) Seek competing private partners for the qualifying
387 project by issuing a request for qualifications for not less than
388 ninety (90) days.

389 (b) Review all qualifications submitted in response to
390 such request for qualifications based on the criteria established
391 in such request for qualifications.

392 (c) If exactly one (1) private partner responds to the
393 request for qualifications and such private partner meets the
394 criteria defined in such request for qualifications, the
395 responsible public entity may: (i) begin negotiations with such
396 private partner to enter into a public-private partnership
397 agreement and submit a request for proposals to such private
398 partner under the processes and procedures described in this
399 chapter; (ii) reject the private-partner applicant and re-submit
400 its request for qualifications; or (iii) cancel its request for
401 qualifications and reject all private-partner applicants.

402 (d) If more than one (1) private partner submits
403 qualifications meeting the criteria defined in such request for
404 qualifications, the responsible public entity shall seek competing
405 proposals for the qualifying project by issuing a request for
406 proposals for not less than ninety (90) days. Thereafter the P3
407 Review Board shall review all proposals submitted to responsible
408 public entities in response to such request for competing
409 proposals based on the criteria established in such request for
410 competing proposals.



411 (7) When the time for receiving proposals expires, the P3
412 Review Board shall first rank the proposals in accordance with the
413 factors set forth in the request for proposals. The responsible
414 public entity shall not be required to select the proposal with
415 the lowest price offer, but it may consider price as one (1) of
416 various factors in evaluating the proposals received in response
417 to the request for proposals for a qualifying project. Factors
418 that may be considered include:

419 (a) The proposed cost to develop the qualifying
420 project;

421 (b) The estimated life-cycle cost of the qualifying
422 project;

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

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

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

429 (f) Estimated benefits to the public;

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

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

434 (i) Other criteria that the responsible public entity
435 deems appropriate.



436 (8) After ranking the proposals by the P3 Review Board, the
437 responsible public entity shall begin simultaneous negotiations
438 with all potentially eligible ranked private partners before
439 requesting best and final offers from eligible private partners.
440 If the responsible public entity and the potentially eligible
441 ranked private partner submitting the best and final offer do not
442 reach a public-private partnership agreement or interim agreement,
443 then the responsible public entity may conduct negotiations with
444 another potentially eligible ranked private partner. This process
445 shall continue until the responsible public entity either
446 voluntarily abandons the process or executes a public-private
447 partnership agreement or interim agreement with a private partner.

448 (9) At any time during the process outlined in this chapter,
449 but before the full execution of a public-private partnership
450 agreement, the responsible public entity may, without liability to
451 any private partner or third party (except to the extent of
452 eligible costs, if any, provided for in the request for
453 qualifications and/or request for proposals), cancel its request
454 for proposals or reject all proposals received in response to its
455 request for proposals, for any reason whatsoever.

456 (10) Responsible public entities who utilize the processes
457 and procedures described in this chapter shall not be subject to
458 Chapter 7, Title 31, Mississippi Code of 1972, or any other public
459 bidding laws of this state.



460 **SECTION 7.** The following shall be codified as Section
461 31-33-13, Mississippi Code of 1972:

462 31-33-13. (1) The responsible public entity may enter into
463 a public-private partnership agreement to develop a qualifying
464 project only after the chief executive officer of the responsible
465 public entity makes a finding of public interest and regional plan
466 compatibility. Such findings shall, at a minimum, consider the
467 following:

468 (a) Benefits to the public;

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

473 (c) Sources of funding and financing for the qualifying
474 project;

475 (d) The general reputation, qualifications, industry
476 experience and financial capacity of the private partner or
477 private partners;

478 (e) The proposal's compatibility with regional
479 infrastructure plans; and

480 (f) Other criteria that the responsible public entity
481 deems appropriate.

482 (2) The responsible public entity shall publicly disclose
483 all findings of public interest and regional compatibility made
484 pursuant to the requirements of subsection (1)(a) and (b) of this



485 section in a public report which shall be available on the
486 Department of Finance and Administration's website and, which
487 shall include a detailed discussion of all considerations on which
488 the findings are based followed by fourteen (14) days of public
489 comment before execution of a public-private partnership
490 agreement.

491 **SECTION 8.** The following shall be codified as Section
492 31-33-15, Mississippi Code of 1972:

493 31-33-15. (1) Before entering into a public-private
494 partnership agreement, the responsible public entity shall notify
495 affected jurisdictions in writing of such proposal from the
496 private partner and by furnish a copy of the proposal from the
497 private partner to each affected jurisdiction.

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

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

506 **SECTION 9.** The following shall be codified as Section
507 31-33-17, Mississippi Code of 1972:

508 31-33-17. (1) Before or in connection with the negotiation
509 of a public-private partnership agreement, the responsible public



510 entity may enter into an interim agreement with the private
511 partner that submitted the selected proposal, provided that such
512 interim agreement has been first approved by the P3 Review Board.
513 An interim agreement shall not obligate the responsible public
514 entity to enter into a public-private partnership agreement. The
515 interim agreement is wholly discretionary; the responsible public
516 entity and the private partner may proceed directly to creating a
517 public-private partnership agreement without creating an interim
518 agreement. An interim agreement shall only:

519 (a) Authorize the private partner to commence
520 activities for which it may be compensated related to the proposed
521 qualifying project, including, but not limited to, project
522 planning, design and engineering, environmental analysis and
523 mitigation and ascertaining the availability of financing for the
524 proposed facility; and

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

527 (2) A responsible public entity may enter into an interim
528 agreement with multiple private partners if the responsible public
529 entity determines, in writing, that it is in the public interest
530 to do so.

531 (3) Prior to developing a qualifying project, the private
532 partner that submitted the selected proposal shall enter into a
533 public-private partnership agreement with the responsible public
534 entity stipulating the obligations of and the allocation of



535 responsibilities among the parties, which, in addition to other
536 contract terms, must include:

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

539 (b) How the parties will share management of the risks
540 of the qualifying project;

541 (c) How the parties will share the various costs to
542 develop the qualifying project;

543 (d) How the parties will allocate financial
544 responsibility for cost overruns;

545 (e) The term of the public-private partnership
546 agreement;

547 (f) Any safeguards to mitigate additional costs or
548 service disruptions to the public in the event of a material
549 default or cancellation of the public-private partnership
550 agreement;

551 (g) Performance standards and any damages for
552 nonperformance;

553 (h) Any performance incentives;

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

556 (j) The responsibility for reconstruction or
557 renovations required for a qualifying project to meet all
558 applicable government standards upon reversion of the qualifying



559 project to the responsible public entity at the termination of the
560 public-private partnership agreement; and

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

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

567 (5) The public-private partnership agreement shall contain a
568 provision by which a private partner expressly agrees that it is
569 prohibited from seeking injunctive or other equitable relief to
570 delay, prevent or otherwise hinder the responsible public entity
571 or any jurisdiction from developing or operating any project that
572 was planned and that may impact the revenue that the private
573 partner may derive from the qualifying project under a
574 public-private partnership agreement, except that the
575 public-private partnership agreement may provide for reasonable
576 compensation to the private partner for the adverse effect on
577 revenues resulting from an unplanned revenue-impacting project
578 undertaken by any responsible public entity.

579 **SECTION 10.** The following shall be codified as Section
580 31-33-19, Mississippi Code of 1972:

581 31-33-19. (1) Subject to the requirements of this chapter,
582 the responsible public entity may utilize any project delivery



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

- 585 (a) A design-build agreement;
- 586 (b) A design-build-finance agreement;
- 587 (c) A design-build-finance-operate agreement;
- 588 (d) A design-build-finance-operate-maintain agreement;
- 589 (e) A design-build-maintain agreement;
- 590 (f) A design-build-operate-maintain agreement;
- 591 (g) An operate-maintain agreement;
- 592 (h) A concession providing for the private partner to

593 design, build, operate, maintain, manage, and/or lease a
594 qualifying project; or

- 595 (i) Any other innovative or nontraditional project
596 delivery method or agreement or combination of methods or
597 agreements that the responsible public entity determines will
598 serve the public interest.

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

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



606 (b) The responsible public entity shall maintain
607 detailed records on qualifying projects separate and apart from
608 its regular record keeping.

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

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

615 (ii) A complete description of such public-private
616 partnership agreement's management system, including a description
617 of the system the responsible public entity put into place on all
618 projects managed under the system to ensure that it has the
619 complete information on costs and to ensure proper analysis of any
620 proposal the responsible public entity receives from a private
621 partner;

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

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



631 (v) The method used by the responsible public
632 entity to select qualifying projects to utilize such
633 public-private partnership agreement's system of management and
634 all other systems, policies and procedures that the responsible
635 public entity considered as necessary components to such
636 public-private partnership agreement's management system; and

637 (vi) A comparison of the costs between the
638 selected public-private partnership agreement and the anticipated
639 cost of a traditional procurement process.

640 **SECTION 11.** The following shall be codified as Section
641 31-33-21, Mississippi Code of 1972:

642 31-33-21. (1) Any financing of a qualifying project may be
643 in such amounts and upon such terms and conditions as may be
644 determined by the parties to the public-private partnership
645 agreement. The private partner and the responsible public entity
646 may utilize any and all revenues that may be available to them for
647 the purposes of this chapter, to the extent provided in the
648 related public-private partnership agreement, and may include,
649 arrangements relating to:

- 650 (a) Issuer debt, equity, or other securities or
651 obligations;
- 652 (b) Leases, concessions, and grant and loan agreements;
- 653 (c) Access to any designated state funds;
- 654 (d) Loans or grants from any state agency or state
655 infrastructure bank; and



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

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

662 (3) The responsible public entity may take any action to
663 obtain federal, state, and/or local assistance for a qualifying
664 project that serves the purpose of this chapter and may enter into
665 contracts required to receive such assistance. To the fullest
666 extent allowed by law, federal, state and local monies may be
667 combined with any private sector monies in connection with a
668 qualifying project.

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

672 (5) Within a public-private partnership agreement, a
673 responsible public entity and a private partner may agree in
674 writing that a responsible public entity may cause the Department
675 of Revenue or any state agency, department or commission created
676 pursuant to state law to:

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



681 state agency, department or commission created pursuant to state
682 law; and

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

687 If the private partner files a copy of such written
688 agreement, together with a statement of delinquency, with the
689 Department of Revenue or any state agency, department or
690 commission created pursuant to state law, then the Department of
691 Revenue or any such state agency, department or commission created
692 pursuant to state law shall immediately make the withholdings
693 provided in such agreement from the amounts due the private
694 partner and shall continue to pay the same over until all such
695 delinquencies are satisfied.

696 **SECTION 12.** The following shall be codified as Section
697 31-33-23, Mississippi Code of 1972:

698 31-33-23. (1) All public-private partnership agreements
699 completed under the authority of this chapter shall be validated
700 in the Chancery Court of the First Judicial District of Hinds
701 County, Mississippi, with all public agencies involved in such
702 approved qualifying project being parties to the validation
703 proceedings, with the full right to any party in interest to file
704 objections thereto, in the manner provided now by Chapter 13,
705 Title 31, Mississippi Code of 1972, and the validation decree of



706 the chancellor validating the conditions and obligations of the
707 public-private partnership agreement and its approval shall carry
708 the same force and effect therein. All objections to any matters
709 relating to such public-private partnership agreement shall be
710 adjudicated and determined by the chancery court in the validation
711 proceedings and in no other manner, and all rights of the parties
712 shall be preserved and not foreclosed, for the hearing before the
713 chancery court or the chancellor in vacation.

714 (2) All such public-private partnership agreements may be
715 completed without any other proceedings or the happening of any
716 other conditions or things other than those proceedings,
717 conditions and things which are specified or required by this
718 chapter.

719 **SECTION 13.** The following shall be codified as Section
720 31-33-25, Mississippi Code of 1972:

721 31-33-25. (1) As set forth in the declaration of finding
722 and purpose herein, the responsible public entities will be
723 performing an essential governmental function in the exercise of
724 the powers conferred upon the responsible public entities by this
725 chapter, and any bonds or other obligations of a responsible
726 public entity in connection with a qualifying project and the
727 income therefrom including any profit made on the sale thereof and
728 all its fees, charges, gifts, grants, revenues, receipts and other
729 monies received, pledged to pay or secure the payment of such
730 bonds shall at all times be free from taxation of every kind by



731 the state and by the municipalities and all other political
732 subdivisions of the state.

733 (2) The property and materials contained therein
734 constituting a qualifying project and its income and operation
735 shall be exempt from taxation and assessments.

736 **SECTION 14.** The following shall be codified as Section
737 31-33-27, Mississippi Code of 1972:

738 31-33-27. If any section, subsection, paragraph, sentence,
739 clause or provision of this chapter shall be unconstitutional or
740 ineffective, in whole or in part, to the extent that it is not
741 unconstitutional or ineffective, it shall be valid and effective
742 and no other section, subdivision, paragraph, sentence, clause or
743 provision shall on account thereof be deemed invalid or
744 ineffective.

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

747 31-7-13. All agencies and governing authorities shall
748 purchase their commodities and printing; contract for garbage
749 collection or disposal; contract for solid waste collection or
750 disposal; contract for sewage collection or disposal; contract for
751 public construction; and contract for rentals as herein provided.

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



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

760 (b) **Bidding procedure for purchases over \$5,000.00 but**
761 **not over \$50,000.00.** Purchases which involve an expenditure of
762 more than Five Thousand Dollars (\$5,000.00) but not more than
763 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and
764 shipping charges, may be made from the lowest and best bidder
765 without publishing or posting advertisement for bids, provided at
766 least two (2) competitive written bids have been obtained. Any
767 state agency or community/junior college purchasing commodities or
768 procuring construction pursuant to this paragraph (b) may
769 authorize its purchasing agent, or his designee, to accept the
770 lowest competitive written bid under Fifty Thousand Dollars
771 (\$50,000.00). Any governing authority purchasing commodities
772 pursuant to this paragraph (b) may authorize its purchasing agent,
773 or his designee, with regard to governing authorities other than
774 counties, or its purchase clerk, or his designee, with regard to
775 counties, to accept the lowest and best competitive written bid.
776 Such authorization shall be made in writing by the governing
777 authority and shall be maintained on file in the primary office of
778 the agency and recorded in the official minutes of the governing
779 authority, as appropriate. The purchasing agent or the purchase
780 clerk, or their designee, as the case may be, and not the



781 governing authority, shall be liable for any penalties and/or
782 damages as may be imposed by law for any act or omission of the
783 purchasing agent or purchase clerk, or their designee,
784 constituting a violation of law in accepting any bid without
785 approval by the governing authority. The term "competitive
786 written bid" shall mean a bid submitted on a bid form furnished by
787 the buying agency or governing authority and signed by authorized
788 personnel representing the vendor, or a bid submitted on a
789 vendor's letterhead or identifiable bid form and signed by
790 authorized personnel representing the vendor. "Competitive" shall
791 mean that the bids are developed based upon comparable
792 identification of the needs and are developed independently and
793 without knowledge of other bids or prospective bids. Any bid item
794 for construction in excess of Five Thousand Dollars (\$5,000.00)
795 shall be broken down by components to provide detail of component
796 description and pricing. These details shall be submitted with
797 the written bids and become part of the bid evaluation criteria.
798 Bids may be submitted by facsimile, electronic mail or other
799 generally accepted method of information distribution. Bids
800 submitted by electronic transmission shall not require the
801 signature of the vendor's representative unless required by
802 agencies or governing authorities.

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

804 (i) **Publication requirement.**



805 1. Purchases which involve an expenditure of
806 more than Fifty Thousand Dollars (\$50,000.00), exclusive of
807 freight and shipping charges, may be made from the lowest and best
808 bidder after advertising for competitive bids once each week for
809 two (2) consecutive weeks in a regular newspaper published in the
810 county or municipality in which such agency or governing authority
811 is located. However, all American Recovery and Reinvestment Act
812 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
813 shall be bid. All references to American Recovery and
814 Reinvestment Act projects in this section shall not apply to
815 programs identified in Division B of the American Recovery and
816 Reinvestment Act.

817 2. Reverse auctions shall be the primary
818 method for receiving bids during the bidding process. If a
819 purchasing entity determines that a reverse auction is not in the
820 best interest of the state, then that determination must be
821 approved by the Public Procurement Review Board. The purchasing
822 entity shall submit a detailed explanation of why a reverse
823 auction would not be in the best interest of the state and present
824 an alternative process to be approved by the Public Procurement
825 Review Board. If the Public Procurement Review Board authorizes
826 the purchasing entity to solicit bids with a method other than
827 reverse auction, then the purchasing entity may designate the
828 other methods by which the bids will be received, including, but
829 not limited to, bids sealed in an envelope, bids received



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

838 3. The date as published for the bid opening
839 shall not be less than seven (7) working days after the last
840 published notice; however, if the purchase involves a construction
841 project in which the estimated cost is in excess of Fifty Thousand
842 Dollars (\$50,000.00), such bids shall not be opened in less than
843 fifteen (15) working days after the last notice is published and
844 the notice for the purchase of such construction shall be
845 published once each week for two (2) consecutive weeks. However,
846 all American Recovery and Reinvestment Act projects in excess of
847 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
848 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
849 under the American Recovery and Reinvestment Act, publication
850 shall be made one (1) time and the bid opening for construction
851 projects shall not be less than ten (10) working days after the
852 date of the published notice. The notice of intention to let
853 contracts or purchase equipment shall state the time and place at
854 which bids shall be received, list the contracts to be made or



855 types of equipment or supplies to be purchased, and, if all plans
856 and/or specifications are not published, refer to the plans and/or
857 specifications on file. If there is no newspaper published in the
858 county or municipality, then such notice shall be given by posting
859 same at the courthouse, or for municipalities at the city hall,
860 and at two (2) other public places in the county or municipality,
861 and also by publication once each week for two (2) consecutive
862 weeks in some newspaper having a general circulation in the county
863 or municipality in the above-provided manner. On the same date
864 that the notice is submitted to the newspaper for publication, the
865 agency or governing authority involved shall mail written notice
866 to, or provide electronic notification to the main office of the
867 Mississippi Procurement Technical Assistance Program under the
868 Mississippi Development Authority that contains the same
869 information as that in the published notice. Submissions received
870 by the Mississippi Procurement Technical Assistance Program for
871 projects funded by the American Recovery and Reinvestment Act
872 shall be displayed on a separate and unique Internet web page
873 accessible to the public and maintained by the Mississippi
874 Development Authority for the Mississippi Procurement Technical
875 Assistance Program. Those American Recovery and Reinvestment Act
876 related submissions shall be publicly posted within twenty-four
877 (24) hours of receipt by the Mississippi Development Authority and
878 the bid opening shall not occur until the submission has been
879 posted for ten (10) consecutive days. The Department of Finance



880 and Administration shall maintain information regarding contracts
881 and other expenditures from the American Recovery and Reinvestment
882 Act, on a unique Internet web page accessible to the public. The
883 Department of Finance and Administration shall promulgate rules
884 regarding format, content and deadlines, unless otherwise
885 specified by law, of the posting of award notices, contract
886 execution and subsequent amendments, links to the contract
887 documents, expenditures against the awarded contracts and general
888 expenditures of funds from the American Recovery and Reinvestment
889 Act. Within one (1) working day of the contract award, the agency
890 or governing authority shall post to the designated web page
891 maintained by the Department of Finance and Administration, notice
892 of the award, including the award recipient, the contract amount,
893 and a brief summary of the contract in accordance with rules
894 promulgated by the department. Within one (1) working day of the
895 contract execution, the agency or governing authority shall post
896 to the designated web page maintained by the Department of Finance
897 and Administration a summary of the executed contract and make a
898 copy of the appropriately redacted contract documents available
899 for linking to the designated web page in accordance with the
900 rules promulgated by the department. The information provided by
901 the agency or governing authority shall be posted to the web page
902 for the duration of the American Recovery and Reinvestment Act
903 funding or until the project is completed, whichever is longer.



904 (ii) **Bidding process amendment procedure.** If all
905 plans and/or specifications are published in the notification,
906 then the plans and/or specifications may not be amended. If all
907 plans and/or specifications are not published in the notification,
908 then amendments to the plans/specifications, bid opening date, bid
909 opening time and place may be made, provided that the agency or
910 governing authority maintains a list of all prospective bidders
911 who are known to have received a copy of the bid documents and all
912 such prospective bidders are sent copies of all amendments. This
913 notification of amendments may be made via mail, facsimile,
914 electronic mail or other generally accepted method of information
915 distribution. No addendum to bid specifications may be issued
916 within two (2) working days of the time established for the
917 receipt of bids unless such addendum also amends the bid opening
918 to a date not less than five (5) working days after the date of
919 the addendum.

920 (iii) **Filing requirement.** In all cases involving
921 governing authorities, before the notice shall be published or
922 posted, the plans or specifications for the construction or
923 equipment being sought shall be filed with the clerk of the board
924 of the governing authority. In addition to these requirements, a
925 bid file shall be established which shall indicate those vendors
926 to whom such solicitations and specifications were issued, and
927 such file shall also contain such information as is pertinent to
928 the bid.



929 (iv) **Specification restrictions.**

930 1. Specifications pertinent to such bidding
931 shall be written so as not to exclude comparable equipment of
932 domestic manufacture. However, if valid justification is
933 presented, the Department of Finance and Administration or the
934 board of a governing authority may approve a request for specific
935 equipment necessary to perform a specific job. Further, such
936 justification, when placed on the minutes of the board of a
937 governing authority, may serve as authority for that governing
938 authority to write specifications to require a specific item of
939 equipment needed to perform a specific job. In addition to these
940 requirements, from and after July 1, 1990, vendors of relocatable
941 classrooms and the specifications for the purchase of such
942 relocatable classrooms published by local school boards shall meet
943 all pertinent regulations of the State Board of Education,
944 including prior approval of such bid by the State Department of
945 Education.

946 2. Specifications for construction projects
947 may include an allowance for commodities, equipment, furniture,
948 construction materials or systems in which prospective bidders are
949 instructed to include in their bids specified amounts for such
950 items so long as the allowance items are acquired by the vendor in
951 a commercially reasonable manner and approved by the
952 agency/governing authority. Such acquisitions shall not be made
953 to circumvent the public purchasing laws.



954 (v) **Electronic bids.** Agencies and governing
955 authorities shall provide a secure electronic interactive system
956 for the submittal of bids requiring competitive bidding that shall
957 be an additional bidding option for those bidders who choose to
958 submit their bids electronically. The Department of Finance and
959 Administration shall provide, by regulation, the standards that
960 agencies must follow when receiving electronic bids. Agencies and
961 governing authorities shall make the appropriate provisions
962 necessary to accept electronic bids from those bidders who choose
963 to submit their bids electronically for all purchases requiring
964 competitive bidding under this section. Any special condition or
965 requirement for the electronic bid submission shall be specified
966 in the advertisement for bids required by this section. Agencies
967 or governing authorities that are currently without available high
968 speed Internet access shall be exempt from the requirement of this
969 subparagraph (v) until such time that high speed Internet access
970 becomes available. Any county having a population of less than
971 twenty thousand (20,000) shall be exempt from the provisions of
972 this subparagraph (v). Any municipality having a population of
973 less than ten thousand (10,000) shall be exempt from the
974 provisions of this subparagraph (v). The provisions of this
975 subparagraph (v) shall not require any bidder to submit bids
976 electronically. When construction bids are submitted
977 electronically, the requirement for including a certificate of
978 responsibility, or a statement that the bid enclosed does not



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

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

984 (i) **Decision procedure.** Purchases may be made
985 from the lowest and best bidder. In determining the lowest and
986 best bid, freight and shipping charges shall be included.
987 Life-cycle costing, total cost bids, warranties, guaranteed
988 buy-back provisions and other relevant provisions may be included
989 in the best bid calculation. All best bid procedures for state
990 agencies must be in compliance with regulations established by the
991 Department of Finance and Administration. If any governing
992 authority accepts a bid other than the lowest bid actually
993 submitted, it shall place on its minutes detailed calculations and
994 narrative summary showing that the accepted bid was determined to
995 be the lowest and best bid, including the dollar amount of the
996 accepted bid and the dollar amount of the lowest bid. No agency
997 or governing authority shall accept a bid based on items not
998 included in the specifications.

999 (ii) **Decision procedure for Certified Purchasing**
1000 **Offices.** In addition to the decision procedure set forth in
1001 subparagraph (i) of this paragraph (d), Certified Purchasing
1002 Offices may also use the following procedure: Purchases may be
1003 made from the bidder offering the best value. In determining the



1004 best value bid, freight and shipping charges shall be included.
1005 Life-cycle costing, total cost bids, warranties, guaranteed
1006 buy-back provisions, documented previous experience, training
1007 costs and other relevant provisions, including, but not limited
1008 to, a bidder having a local office and inventory located within
1009 the jurisdiction of the governing authority, may be included in
1010 the best value calculation. This provision shall authorize
1011 Certified Purchasing Offices to utilize a Request For Proposals
1012 (RFP) process when purchasing commodities. All best value
1013 procedures for state agencies must be in compliance with
1014 regulations established by the Department of Finance and
1015 Administration. No agency or governing authority shall accept a
1016 bid based on items or criteria not included in the specifications.

1017 (iii) **Decision procedure for Mississippi**

1018 **Landmarks.** In addition to the decision procedure set forth in
1019 subparagraph (i) of this paragraph (d), where purchase involves
1020 renovation, restoration, or both, of the State Capitol Building or
1021 any other historical building designated for at least five (5)
1022 years as a Mississippi Landmark by the Board of Trustees of the
1023 Department of Archives and History under the authority of Sections
1024 39-7-7 and 39-7-11, the agency or governing authority may use the
1025 following procedure: Purchases may be made from the lowest and
1026 best prequalified bidder. Prequalification of bidders shall be
1027 determined not less than fifteen (15) working days before the
1028 first published notice of bid opening. Prequalification criteria



1029 shall be limited to bidder's knowledge and experience in
1030 historical restoration, preservation and renovation. In
1031 determining the lowest and best bid, freight and shipping charges
1032 shall be included. Life-cycle costing, total cost bids,
1033 warranties, guaranteed buy-back provisions and other relevant
1034 provisions may be included in the best bid calculation. All best
1035 bid and prequalification procedures for state agencies must be in
1036 compliance with regulations established by the Department of
1037 Finance and Administration. If any governing authority accepts a
1038 bid other than the lowest bid actually submitted, it shall place
1039 on its minutes detailed calculations and narrative summary showing
1040 that the accepted bid was determined to be the lowest and best
1041 bid, including the dollar amount of the accepted bid and the
1042 dollar amount of the lowest bid. No agency or governing authority
1043 shall accept a bid based on items not included in the
1044 specifications.

1045 (iv) **Construction project negotiations authority.**

1046 If the lowest and best bid is not more than ten percent (10%)
1047 above the amount of funds allocated for a public construction or
1048 renovation project, then the agency or governing authority shall
1049 be permitted to negotiate with the lowest bidder in order to enter
1050 into a contract for an amount not to exceed the funds allocated.

1051 (e) **Lease-purchase authorization.** For the purposes of
1052 this section, the term "equipment" shall mean equipment, furniture
1053 and, if applicable, associated software and other applicable



1054 direct costs associated with the acquisition. Any lease-purchase
1055 of equipment which an agency is not required to lease-purchase
1056 under the master lease-purchase program pursuant to Section
1057 31-7-10 and any lease-purchase of equipment which a governing
1058 authority elects to lease-purchase may be acquired by a
1059 lease-purchase agreement under this paragraph (e). Lease-purchase
1060 financing may also be obtained from the vendor or from a
1061 third-party source after having solicited and obtained at least
1062 two (2) written competitive bids, as defined in paragraph (b) of
1063 this section, for such financing without advertising for such
1064 bids. Solicitation for the bids for financing may occur before or
1065 after acceptance of bids for the purchase of such equipment or,
1066 where no such bids for purchase are required, at any time before
1067 the purchase thereof. No such lease-purchase agreement shall be
1068 for an annual rate of interest which is greater than the overall
1069 maximum interest rate to maturity on general obligation
1070 indebtedness permitted under Section 75-17-101, and the term of
1071 such lease-purchase agreement shall not exceed the useful life of
1072 equipment covered thereby as determined according to the upper
1073 limit of the asset depreciation range (ADR) guidelines for the
1074 Class Life Asset Depreciation Range System established by the
1075 Internal Revenue Service pursuant to the United States Internal
1076 Revenue Code and regulations thereunder as in effect on December
1077 31, 1980, or comparable depreciation guidelines with respect to
1078 any equipment not covered by ADR guidelines. Any lease-purchase



1079 agreement entered into pursuant to this paragraph (e) may contain
1080 any of the terms and conditions which a master lease-purchase
1081 agreement may contain under the provisions of Section 31-7-10(5),
1082 and shall contain an annual allocation dependency clause
1083 substantially similar to that set forth in Section 31-7-10(8).
1084 Each agency or governing authority entering into a lease-purchase
1085 transaction pursuant to this paragraph (e) shall maintain with
1086 respect to each such lease-purchase transaction the same
1087 information as required to be maintained by the Department of
1088 Finance and Administration pursuant to Section 31-7-10(13).
1089 However, nothing contained in this section shall be construed to
1090 permit agencies to acquire items of equipment with a total
1091 acquisition cost in the aggregate of less than Ten Thousand
1092 Dollars (\$10,000.00) by a single lease-purchase transaction. All
1093 equipment, and the purchase thereof by any lessor, acquired by
1094 lease-purchase under this paragraph and all lease-purchase
1095 payments with respect thereto shall be exempt from all Mississippi
1096 sales, use and ad valorem taxes. Interest paid on any
1097 lease-purchase agreement under this section shall be exempt from
1098 State of Mississippi income taxation.

1099 (f) **Alternate bid authorization.** When necessary to
1100 ensure ready availability of commodities for public works and the
1101 timely completion of public projects, no more than two (2)
1102 alternate bids may be accepted by a governing authority for
1103 commodities. No purchases may be made through use of such



1104 alternate bids procedure unless the lowest and best bidder cannot
1105 deliver the commodities contained in his bid. In that event,
1106 purchases of such commodities may be made from one (1) of the
1107 bidders whose bid was accepted as an alternate.

1108 (g) **Construction contract change authorization.** In the
1109 event a determination is made by an agency or governing authority
1110 after a construction contract is let that changes or modifications
1111 to the original contract are necessary or would better serve the
1112 purpose of the agency or the governing authority, such agency or
1113 governing authority may, in its discretion, order such changes
1114 pertaining to the construction that are necessary under the
1115 circumstances without the necessity of further public bids;
1116 provided that such change shall be made in a commercially
1117 reasonable manner and shall not be made to circumvent the public
1118 purchasing statutes. In addition to any other authorized person,
1119 the architect or engineer hired by an agency or governing
1120 authority with respect to any public construction contract shall
1121 have the authority, when granted by an agency or governing
1122 authority, to authorize changes or modifications to the original
1123 contract without the necessity of prior approval of the agency or
1124 governing authority when any such change or modification is less
1125 than one percent (1%) of the total contract amount. The agency or
1126 governing authority may limit the number, manner or frequency of
1127 such emergency changes or modifications.



1128 (h) **Petroleum purchase alternative.** In addition to
1129 other methods of purchasing authorized in this chapter, when any
1130 agency or governing authority shall have a need for gas, diesel
1131 fuel, oils and/or other petroleum products in excess of the amount
1132 set forth in paragraph (a) of this section, such agency or
1133 governing authority may purchase the commodity after having
1134 solicited and obtained at least two (2) competitive written bids,
1135 as defined in paragraph (b) of this section. If two (2)
1136 competitive written bids are not obtained, the entity shall comply
1137 with the procedures set forth in paragraph (c) of this section.
1138 In the event any agency or governing authority shall have
1139 advertised for bids for the purchase of gas, diesel fuel, oils and
1140 other petroleum products and coal and no acceptable bids can be
1141 obtained, such agency or governing authority is authorized and
1142 directed to enter into any negotiations necessary to secure the
1143 lowest and best contract available for the purchase of such
1144 commodities.

1145 (i) **Road construction petroleum products price**
1146 **adjustment clause authorization.** Any agency or governing
1147 authority authorized to enter into contracts for the construction,
1148 maintenance, surfacing or repair of highways, roads or streets,
1149 may include in its bid proposal and contract documents a price
1150 adjustment clause with relation to the cost to the contractor,
1151 including taxes, based upon an industry-wide cost index, of
1152 petroleum products including asphalt used in the performance or



1153 execution of the contract or in the production or manufacture of
1154 materials for use in such performance. Such industry-wide index
1155 shall be established and published monthly by the Mississippi
1156 Department of Transportation with a copy thereof to be mailed,
1157 upon request, to the clerks of the governing authority of each
1158 municipality and the clerks of each board of supervisors
1159 throughout the state. The price adjustment clause shall be based
1160 on the cost of such petroleum products only and shall not include
1161 any additional profit or overhead as part of the adjustment. The
1162 bid proposals or document contract shall contain the basis and
1163 methods of adjusting unit prices for the change in the cost of
1164 such petroleum products.

1165 (j) **State agency emergency purchase procedure.** If the
1166 governing board or the executive head, or his designees, of any
1167 agency of the state shall determine that an emergency exists in
1168 regard to the purchase of any commodities or repair contracts, so
1169 that the delay incident to giving opportunity for competitive
1170 bidding would be detrimental to the interests of the state, then
1171 the head of such agency, or his designees, shall file with the
1172 Department of Finance and Administration (i) a statement
1173 explaining the conditions and circumstances of the emergency,
1174 which shall include a detailed description of the events leading
1175 up to the situation and the negative impact to the entity if the
1176 purchase is made following the statutory requirements set forth in
1177 paragraph (a), (b) or (c) of this section, and (ii) a certified



1178 copy of the appropriate minutes of the board of such agency
1179 requesting the emergency purchase, if applicable. Upon receipt of
1180 the statement and applicable board certification, the State Fiscal
1181 Officer, or his designees, may, in writing, authorize the purchase
1182 or repair without having to comply with competitive bidding
1183 requirements.

1184 If the governing board or the executive head, or his
1185 designees, of any agency determines 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 threaten the health or safety of any person, or the
1189 preservation or protection of property, then the provisions in
1190 this section for competitive bidding shall not apply, and any
1191 officer or agent of the agency having general or specific
1192 authority for making the purchase or repair contract shall approve
1193 the bill presented for payment, and he shall certify in writing
1194 from whom the purchase was made, or with whom the repair contract
1195 was made.

1196 Total purchases made under this paragraph (j) shall only be
1197 for the purpose of meeting needs created by the emergency
1198 situation. Following the emergency purchase, documentation of the
1199 purchase, including a description of the commodity purchased, the
1200 purchase price thereof and the nature of the emergency shall be
1201 filed with the Department of Finance and Administration. Any



1202 contract awarded pursuant to this paragraph (j) shall not exceed a
1203 term of one (1) year.

1204 (k) **Governing authority emergency purchase procedure.**

1205 If the governing authority, or the governing authority acting
1206 through its designee, shall determine that an emergency exists in
1207 regard to the purchase of any commodities or repair contracts, so
1208 that the delay incident to giving opportunity for competitive
1209 bidding would be detrimental to the interest of the governing
1210 authority, then the provisions herein for competitive bidding
1211 shall not apply and any officer or agent of such governing
1212 authority having general or special authority therefor in making
1213 such purchase or repair shall approve the bill presented therefor,
1214 and he shall certify in writing thereon from whom such purchase
1215 was made, or with whom such a repair contract was made. At the
1216 board meeting next following the emergency purchase or repair
1217 contract, documentation of the purchase or repair contract,
1218 including a description of the commodity purchased, the price
1219 thereof and the nature of the emergency shall be presented to the
1220 board and shall be placed on the minutes of the board of such
1221 governing authority.

1222 (l) **Hospital purchase, lease-purchase and lease**
1223 **authorization.**

1224 (i) The commissioners or board of trustees of any
1225 public hospital may contract with such lowest and best bidder for
1226 the purchase or lease-purchase of any commodity under a contract



1227 of purchase or lease-purchase agreement whose obligatory payment
1228 terms do not exceed five (5) years.

1229 (ii) In addition to the authority granted in
1230 subparagraph (i) of this paragraph (1), the commissioners or board
1231 of trustees is authorized to enter into contracts for the lease of
1232 equipment or services, or both, which it considers necessary for
1233 the proper care of patients if, in its opinion, it is not
1234 financially feasible to purchase the necessary equipment or
1235 services. Any such contract for the lease of equipment or
1236 services executed by the commissioners or board shall not exceed a
1237 maximum of five (5) years' duration and shall include a
1238 cancellation clause based on unavailability of funds. If such
1239 cancellation clause is exercised, there shall be no further
1240 liability on the part of the lessee. Any such contract for the
1241 lease of equipment or services executed on behalf of the
1242 commissioners or board that complies with the provisions of this
1243 subparagraph (ii) shall be excepted from the bid requirements set
1244 forth in this section.

1245 (m) **Exceptions from bidding requirements.** Excepted
1246 from bid requirements are:

1247 (i) **Purchasing agreements approved by department.**
1248 Purchasing agreements, contracts and maximum price regulations
1249 executed or approved by the Department of Finance and
1250 Administration.



1251 (ii) **Outside equipment repairs.** Repairs to
1252 equipment, when such repairs are made by repair facilities in the
1253 private sector; however, engines, transmissions, rear axles and/or
1254 other such components shall not be included in this exemption when
1255 replaced as a complete unit instead of being repaired and the need
1256 for such total component replacement is known before disassembly
1257 of the component; however, invoices identifying the equipment,
1258 specific repairs made, parts identified by number and name,
1259 supplies used in such repairs, and the number of hours of labor
1260 and costs therefor shall be required for the payment for such
1261 repairs.

1262 (iii) **In-house equipment repairs.** Purchases of
1263 parts for repairs to equipment, when such repairs are made by
1264 personnel of the agency or governing authority; however, entire
1265 assemblies, such as engines or transmissions, shall not be
1266 included in this exemption when the entire assembly is being
1267 replaced instead of being repaired.

1268 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
1269 of gravel or fill dirt which are to be removed and transported by
1270 the purchaser.

1271 (v) **Governmental equipment auctions.** Motor
1272 vehicles or other equipment purchased from a federal agency or
1273 authority, another governing authority or state agency of the
1274 State of Mississippi, or any governing authority or state agency
1275 of another state at a public auction held for the purpose of



1276 disposing of such vehicles or other equipment. Any purchase by a
1277 governing authority under the exemption authorized by this
1278 subparagraph (v) shall require advance authorization spread upon
1279 the minutes of the governing authority to include the listing of
1280 the item or items authorized to be purchased and the maximum bid
1281 authorized to be paid for each item or items.

1282 (vi) **Intergovernmental sales and transfers.**

1283 Purchases, sales, transfers or trades by governing authorities or
1284 state agencies when such purchases, sales, transfers or trades are
1285 made by a private treaty agreement or through means of
1286 negotiation, from any federal agency or authority, another
1287 governing authority or state agency of the State of Mississippi,
1288 or any state agency or governing authority of another state.
1289 Nothing in this section shall permit such purchases through public
1290 auction except as provided for in subparagraph (v) of this
1291 paragraph (m). It is the intent of this section to allow
1292 governmental entities to dispose of and/or purchase commodities
1293 from other governmental entities at a price that is agreed to by
1294 both parties. This shall allow for purchases and/or sales at
1295 prices which may be determined to be below the market value if the
1296 selling entity determines that the sale at below market value is
1297 in the best interest of the taxpayers of the state. Governing
1298 authorities shall place the terms of the agreement and any
1299 justification on the minutes, and state agencies shall obtain



1300 approval from the Department of Finance and Administration, prior
1301 to releasing or taking possession of the commodities.

1302 (vii) **Perishable supplies or food.** Perishable
1303 supplies or food purchased for use in connection with hospitals,
1304 the school lunch programs, homemaking programs and for the feeding
1305 of county or municipal prisoners.

1306 (viii) **Single source items.** Noncompetitive items
1307 available from one (1) source only. In connection with the
1308 purchase of noncompetitive items only available from one (1)
1309 source, a certification of the conditions and circumstances
1310 requiring the purchase shall be filed by the agency with the
1311 Department of Finance and Administration and by the governing
1312 authority with the board of the governing authority. Upon receipt
1313 of that certification the Department of Finance and Administration
1314 or the board of the governing authority, as the case may be, may,
1315 in writing, authorize the purchase, which authority shall be noted
1316 on the minutes of the body at the next regular meeting thereafter.
1317 In those situations, a governing authority is not required to
1318 obtain the approval of the Department of Finance and
1319 Administration. Following the purchase, the executive head of the
1320 state agency, or his designees, shall file with the Department of
1321 Finance and Administration, documentation of the purchase,
1322 including a description of the commodity purchased, the purchase
1323 price thereof and the source from whom it was purchased.



1324 (ix) **Waste disposal facility construction**
1325 **contracts.** Construction of incinerators and other facilities for
1326 disposal of solid wastes in which products either generated
1327 therein, such as steam, or recovered therefrom, such as materials
1328 for recycling, are to be sold or otherwise disposed of; however,
1329 in constructing such facilities, a governing authority or agency
1330 shall publicly issue requests for proposals, advertised for in the
1331 same manner as provided herein for seeking bids for public
1332 construction projects, concerning the design, construction,
1333 ownership, operation and/or maintenance of such facilities,
1334 wherein such requests for proposals when issued shall contain
1335 terms and conditions relating to price, financial responsibility,
1336 technology, environmental compatibility, legal responsibilities
1337 and such other matters as are determined by the governing
1338 authority or agency to be appropriate for inclusion; and after
1339 responses to the request for proposals have been duly received,
1340 the governing authority or agency may select the most qualified
1341 proposal or proposals on the basis of price, technology and other
1342 relevant factors and from such proposals, but not limited to the
1343 terms thereof, negotiate and enter contracts with one or more of
1344 the persons or firms submitting proposals.

1345 (x) **Hospital group purchase contracts.** Supplies,
1346 commodities and equipment purchased by hospitals through group
1347 purchase programs pursuant to Section 31-7-38.



1348 (xi) **Information technology products.** Purchases
1349 of information technology products made by governing authorities
1350 under the provisions of purchase schedules, or contracts executed
1351 or approved by the Mississippi Department of Information
1352 Technology Services and designated for use by governing
1353 authorities.

1354 (xii) **Energy efficiency services and equipment.**
1355 Energy efficiency services and equipment acquired by school
1356 districts, community and junior colleges, institutions of higher
1357 learning and state agencies or other applicable governmental
1358 entities on a shared-savings, lease or lease-purchase basis
1359 pursuant to Section 31-7-14.

1360 (xiii) **Municipal electrical utility system fuel.**
1361 Purchases of coal and/or natural gas by municipally owned electric
1362 power generating systems that have the capacity to use both coal
1363 and natural gas for the generation of electric power.

1364 (xiv) **Library books and other reference materials.**
1365 Purchases by libraries or for libraries of books and periodicals;
1366 processed film, videocassette tapes, filmstrips and slides;
1367 recorded audiotapes, cassettes and diskettes; and any such items
1368 as would be used for teaching, research or other information
1369 distribution; however, equipment such as projectors, recorders,
1370 audio or video equipment, and monitor televisions are not exempt
1371 under this subparagraph.



1372 (xv) **Unmarked vehicles.** Purchases of unmarked
1373 vehicles when such purchases are made in accordance with
1374 purchasing regulations adopted by the Department of Finance and
1375 Administration pursuant to Section 31-7-9(2).

1376 (xvi) **Election ballots.** Purchases of ballots
1377 printed pursuant to Section 23-15-351.

1378 (xvii) **Multichannel interactive video systems.**
1379 From and after July 1, 1990, contracts by Mississippi Authority
1380 for Educational Television with any private educational
1381 institution or private nonprofit organization whose purposes are
1382 educational in regard to the construction, purchase, lease or
1383 lease-purchase of facilities and equipment and the employment of
1384 personnel for providing multichannel interactive video systems
1385 (ITSF) in the school districts of this state.

1386 (xviii) **Purchases of prison industry products by**
1387 **the Department of Corrections, regional correctional facilities or**
1388 **privately owned prisons.** Purchases made by the Mississippi
1389 Department of Corrections, regional correctional facilities or
1390 privately owned prisons involving any item that is manufactured,
1391 processed, grown or produced from the state's prison industries.

1392 (xix) **Undercover operations equipment.** Purchases
1393 of surveillance equipment or any other high-tech equipment to be
1394 used by law enforcement agents in undercover operations, provided
1395 that any such purchase shall be in compliance with regulations
1396 established by the Department of Finance and Administration.



1397 (xx) **Junior college books for rent.** Purchases by
1398 community or junior colleges of textbooks which are obtained for
1399 the purpose of renting such books to students as part of a book
1400 service system.

1401 (xxi) **Certain school district purchases.**
1402 Purchases of commodities made by school districts from vendors
1403 with which any levying authority of the school district, as
1404 defined in Section 37-57-1, has contracted through competitive
1405 bidding procedures for purchases of the same commodities.

1406 (xxii) **Garbage, solid waste and sewage contracts.**
1407 Contracts for garbage collection or disposal, contracts for solid
1408 waste collection or disposal and contracts for sewage collection
1409 or disposal.

1410 (xxiii) **Municipal water tank maintenance**
1411 **contracts.** Professional maintenance program contracts for the
1412 repair or maintenance of municipal water tanks, which provide
1413 professional services needed to maintain municipal water storage
1414 tanks for a fixed annual fee for a duration of two (2) or more
1415 years.

1416 (xxiv) **Purchases of Mississippi Industries for the**
1417 **Blind products.** Purchases made by state agencies or governing
1418 authorities involving any item that is manufactured, processed or
1419 produced by the Mississippi Industries for the Blind.

1420 (xxv) **Purchases of state-adopted textbooks.**
1421 Purchases of state-adopted textbooks by public school districts.



1422 (xxvi) **Certain purchases under the Mississippi**
1423 **Major Economic Impact Act.** Contracts entered into pursuant to the
1424 provisions of Section 57-75-9(2), (3) and (4).

1425 (xxvii) **Used heavy or specialized machinery or**
1426 **equipment for installation of soil and water conservation**
1427 **practices purchased at auction.** Used heavy or specialized
1428 machinery or equipment used for the installation and
1429 implementation of soil and water conservation practices or
1430 measures purchased subject to the restrictions provided in
1431 Sections 69-27-331 through 69-27-341. Any purchase by the State
1432 Soil and Water Conservation Commission under the exemption
1433 authorized by this subparagraph shall require advance
1434 authorization spread upon the minutes of the commission to include
1435 the listing of the item or items authorized to be purchased and
1436 the maximum bid authorized to be paid for each item or items.

1437 (xxviii) **Hospital lease of equipment or services.**
1438 Leases by hospitals of equipment or services if the leases are in
1439 compliance with paragraph (1)(ii).

1440 (xxix) **Purchases made pursuant to qualified**
1441 **cooperative purchasing agreements.** Purchases made by certified
1442 purchasing offices of state agencies or governing authorities
1443 under cooperative purchasing agreements previously approved by the
1444 Office of Purchasing and Travel and established by or for any
1445 municipality, county, parish or state government or the federal
1446 government, provided that the notification to potential



1447 contractors includes a clause that sets forth the availability of
1448 the cooperative purchasing agreement to other governmental
1449 entities. Such purchases shall only be made if the use of the
1450 cooperative purchasing agreements is determined to be in the best
1451 interest of the governmental entity.

1452 (xxx) **School yearbooks.** Purchases of school
1453 yearbooks by state agencies or governing authorities; provided,
1454 however, that state agencies and governing authorities shall use
1455 for these purchases the RFP process as set forth in the
1456 Mississippi Procurement Manual adopted by the Office of Purchasing
1457 and Travel.

1458 (xxxii) **Design-build method and dual-phase**
1459 **design-build method of contracting.** Contracts entered into under
1460 the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

1461 (xxxiii) **Toll roads and bridge construction**
1462 **projects.** Contracts entered into under the provisions of Section
1463 65-43-1 or 65-43-3.

1464 (xxxiiii) **Certain purchases under Section 57-1-221.**
1465 Contracts entered into pursuant to the provisions of Section
1466 57-1-221.

1467 (xxxv) **Certain transfers made pursuant to the**
1468 **provisions of Section 57-105-1(7).** Transfers of public property
1469 or facilities under Section 57-105-1(7) and construction related
1470 to such public property or facilities.



1471 (xxxv) **Certain purchases or transfers entered into**
1472 **with local electrical power associations.** Contracts or agreements
1473 entered into under the provisions of Section 55-3-33.

1474 (xxxvi) **Certain purchases by an academic medical**
1475 **center or health sciences school.** Purchases by an academic
1476 medical center or health sciences school, as defined in Section
1477 27-115-50, of commodities that are used for clinical purposes and
1478 1. intended for use in the diagnosis of disease or other
1479 conditions or in the cure, mitigation, treatment or prevention of
1480 disease, and 2. medical devices, biological, drugs and
1481 radiation-emitting devices as defined by the United States Food
1482 and Drug Administration.

1483 (xxxvii) **Public-private partnership agreements.**
1484 Contracts or agreements entered into under the provisions of
1485 Sections 31-33-1 through 31-33-25.

1486 (n) **Term contract authorization.** All contracts for the
1487 purchase of:

1488 (i) All contracts for the purchase of commodities,
1489 equipment and public construction (including, but not limited to,
1490 repair and maintenance), may be let for periods of not more than
1491 sixty (60) months in advance, subject to applicable statutory
1492 provisions prohibiting the letting of contracts during specified
1493 periods near the end of terms of office. Term contracts for a
1494 period exceeding twenty-four (24) months shall also be subject to
1495 ratification or cancellation by governing authority boards taking



1496 office subsequent to the governing authority board entering the
1497 contract.

1498 (ii) Bid proposals and contracts may include price
1499 adjustment clauses with relation to the cost to the contractor
1500 based upon a nationally published industry-wide or nationally
1501 published and recognized cost index. The cost index used in a
1502 price adjustment clause shall be determined by the Department of
1503 Finance and Administration for the state agencies and by the
1504 governing board for governing authorities. The bid proposal and
1505 contract documents utilizing a price adjustment clause shall
1506 contain the basis and method of adjusting unit prices for the
1507 change in the cost of such commodities, equipment and public
1508 construction.

1509 (o) **Purchase law violation prohibition and vendor**
1510 **penalty.** No contract or purchase as herein authorized shall be
1511 made for the purpose of circumventing the provisions of this
1512 section requiring competitive bids, nor shall it be lawful for any
1513 person or concern to submit individual invoices for amounts within
1514 those authorized for a contract or purchase where the actual value
1515 of the contract or commodity purchased exceeds the authorized
1516 amount and the invoices therefor are split so as to appear to be
1517 authorized as purchases for which competitive bids are not
1518 required. Submission of such invoices shall constitute a
1519 misdemeanor punishable by a fine of not less than Five Hundred
1520 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),



1521 or by imprisonment for thirty (30) days in the county jail, or
1522 both such fine and imprisonment. In addition, the claim or claims
1523 submitted shall be forfeited.

1524 (p) **Electrical utility petroleum-based equipment**
1525 **purchase procedure.** When in response to a proper advertisement
1526 therefor, no bid firm as to price is submitted to an electric
1527 utility for power transformers, distribution transformers, power
1528 breakers, reclosers or other articles containing a petroleum
1529 product, the electric utility may accept the lowest and best bid
1530 therefor although the price is not firm.

1531 (q) **Fuel management system bidding procedure.** Any
1532 governing authority or agency of the state shall, before
1533 contracting for the services and products of a fuel management or
1534 fuel access system, enter into negotiations with not fewer than
1535 two (2) sellers of fuel management or fuel access systems for
1536 competitive written bids to provide the services and products for
1537 the systems. In the event that the governing authority or agency
1538 cannot locate two (2) sellers of such systems or cannot obtain
1539 bids from two (2) sellers of such systems, it shall show proof
1540 that it made a diligent, good-faith effort to locate and negotiate
1541 with two (2) sellers of such systems. Such proof shall include,
1542 but not be limited to, publications of a request for proposals and
1543 letters soliciting negotiations and bids. For purposes of this
1544 paragraph (q), a fuel management or fuel access system is an
1545 automated system of acquiring fuel for vehicles as well as



1546 management reports detailing fuel use by vehicles and drivers, and
1547 the term "competitive written bid" shall have the meaning as
1548 defined in paragraph (b) of this section. Governing authorities
1549 and agencies shall be exempt from this process when contracting
1550 for the services and products of fuel management or fuel access
1551 systems under the terms of a state contract established by the
1552 Office of Purchasing and Travel.

1553 (r) **Solid waste contract proposal procedure.** Before
1554 entering into any contract for garbage collection or disposal,
1555 contract for solid waste collection or disposal or contract for
1556 sewage collection or disposal, which involves an expenditure of
1557 more than Fifty Thousand Dollars (\$50,000.00), a governing
1558 authority or agency shall issue publicly a request for proposals
1559 concerning the specifications for such services which shall be
1560 advertised for in the same manner as provided in this section for
1561 seeking bids for purchases which involve an expenditure of more
1562 than the amount provided in paragraph (c) of this section. Any
1563 request for proposals when issued shall contain terms and
1564 conditions relating to price, financial responsibility,
1565 technology, legal responsibilities and other relevant factors as
1566 are determined by the governing authority or agency to be
1567 appropriate for inclusion; all factors determined relevant by the
1568 governing authority or agency or required by this paragraph (r)
1569 shall be duly included in the advertisement to elicit proposals.
1570 After responses to the request for proposals have been duly



1571 received, the governing authority or agency shall select the most
1572 qualified proposal or proposals on the basis of price, technology
1573 and other relevant factors and from such proposals, but not
1574 limited to the terms thereof, negotiate and enter into contracts
1575 with one or more of the persons or firms submitting proposals. If
1576 the governing authority or agency deems none of the proposals to
1577 be qualified or otherwise acceptable, the request for proposals
1578 process may be reinitiated. Notwithstanding any other provisions
1579 of this paragraph, where a county with at least thirty-five
1580 thousand (35,000) nor more than forty thousand (40,000)
1581 population, according to the 1990 federal decennial census, owns
1582 or operates a solid waste landfill, the governing authorities of
1583 any other county or municipality may contract with the governing
1584 authorities of the county owning or operating the landfill,
1585 pursuant to a resolution duly adopted and spread upon the minutes
1586 of each governing authority involved, for garbage or solid waste
1587 collection or disposal services through contract negotiations.

1588 (s) **Minority set-aside authorization.** Notwithstanding
1589 any provision of this section to the contrary, any agency or
1590 governing authority, by order placed on its minutes, may, in its
1591 discretion, set aside not more than twenty percent (20%) of its
1592 anticipated annual expenditures for the purchase of commodities
1593 from minority businesses; however, all such set-aside purchases
1594 shall comply with all purchasing regulations promulgated by the
1595 Department of Finance and Administration and shall be subject to



1596 bid requirements under this section. Set-aside purchases for
1597 which competitive bids are required shall be made from the lowest
1598 and best minority business bidder. For the purposes of this
1599 paragraph, the term "minority business" means a business which is
1600 owned by a majority of persons who are United States citizens or
1601 permanent resident aliens (as defined by the Immigration and
1602 Naturalization Service) of the United States, and who are Asian,
1603 Black, Hispanic or Native American, according to the following
1604 definitions:

1605 (i) "Asian" means persons having origins in any of
1606 the original people of the Far East, Southeast Asia, the Indian
1607 subcontinent, or the Pacific Islands.

1608 (ii) "Black" means persons having origins in any
1609 black racial group of Africa.

1610 (iii) "Hispanic" means persons of Spanish or
1611 Portuguese culture with origins in Mexico, South or Central
1612 America, or the Caribbean Islands, regardless of race.

1613 (iv) "Native American" means persons having
1614 origins in any of the original people of North America, including
1615 American Indians, Eskimos and Aleuts.

1616 (t) **Construction punch list restriction.** The
1617 architect, engineer or other representative designated by the
1618 agency or governing authority that is contracting for public
1619 construction or renovation may prepare and submit to the
1620 contractor only one (1) preliminary punch list of items that do



1621 not meet the contract requirements at the time of substantial
1622 completion and one (1) final list immediately before final
1623 completion and final payment.

1624 (u) **Procurement of construction services by state**
1625 **institutions of higher learning.** Contracts for privately financed
1626 construction of auxiliary facilities on the campus of a state
1627 institution of higher learning may be awarded by the Board of
1628 Trustees of State Institutions of Higher Learning to the lowest
1629 and best bidder, where sealed bids are solicited, or to the
1630 offeror whose proposal is determined to represent the best value
1631 to the citizens of the State of Mississippi, where requests for
1632 proposals are solicited.

1633 (v) **Insurability of bidders for public construction or**
1634 **other public contracts.** In any solicitation for bids to perform
1635 public construction or other public contracts to which this
1636 section applies including, but not limited to, contracts for
1637 repair and maintenance, for which the contract will require
1638 insurance coverage in an amount of not less than One Million
1639 Dollars (\$1,000,000.00), bidders shall be permitted to either
1640 submit proof of current insurance coverage in the specified amount
1641 or demonstrate ability to obtain the required coverage amount of
1642 insurance if the contract is awarded to the bidder. Proof of
1643 insurance coverage shall be submitted within five (5) business
1644 days from bid acceptance.



1645 (w) **Purchase authorization clarification.** Nothing in
1646 this section shall be construed as authorizing any purchase not
1647 authorized by law.

1648 **SECTION 16.** Section 31-7-1, Mississippi Code of 1972, is
1649 brought forward as follows:

1650 31-7-1. The following terms are defined for the purposes of
1651 this chapter to have the following meanings:

1652 (a) "Agency" means any state board, commission,
1653 committee, council, university, department or unit thereof created
1654 by the Constitution or statutes if such board, commission,
1655 committee, council, university, department, unit or the head
1656 thereof is authorized to appoint subordinate staff by the
1657 Constitution or statute, except a legislative or judicial board,
1658 commission, committee, council, department or unit thereof; except
1659 a charter school authorized by the Mississippi Charter School
1660 Authorizer Board; and except the Mississippi State Port Authority.
1661 An academic medical center or health sciences school as defined in
1662 Section 37-115-50 is not an "agency" for those purchases of
1663 commodities as defined in this section that are used for clinical
1664 purposes and (i) intended for use in the diagnosis of disease or
1665 other conditions or in the cure, mitigation, treatment or
1666 prevention of disease, and (ii) medical devices, biological, drugs
1667 and radiation emitting devices as defined by the United States
1668 Food and Drug Administration.



1669 (b) "Governing authority" means boards of supervisors,
1670 governing boards of all school districts, all boards of directors
1671 of public water supply districts, boards of directors of master
1672 public water supply districts, municipal public utility
1673 commissions, governing authorities of all municipalities, port
1674 authorities, Mississippi State Port Authority, commissioners and
1675 boards of trustees of any public hospitals, boards of trustees of
1676 public library systems, district attorneys, school attendance
1677 officers and any political subdivision of the state supported
1678 wholly or in part by public funds of the state or political
1679 subdivisions thereof, including commissions, boards and agencies
1680 created or operated under the authority of any county or
1681 municipality of this state. The term "governing authority" shall
1682 not include economic development authorities supported in part by
1683 private funds, or commissions appointed to hold title to and
1684 oversee the development and management of lands and buildings
1685 which are donated by private individuals to the public for the use
1686 and benefit of the community and which are supported in part by
1687 private funds. The term "governing authority" also shall not
1688 include the governing board of a charter school.

1689 (c) "Purchasing agent" means any administrator,
1690 superintendent, purchase clerk or other chief officer so
1691 designated having general or special authority to negotiate for
1692 and make private contract for or purchase for any governing



1693 authority or agency, including issue purchase orders, invitations
1694 for bid, requests for proposals, and receive and accept bids.

1695 (d) "Public funds" means and includes any appropriated
1696 funds, special funds, fees or any other emoluments received by an
1697 agency or governing authority.

1698 (e) "Commodities" means and includes the various
1699 commodities, goods, merchandise, furniture, equipment, automotive
1700 equipment of every kind, and other personal property purchased by
1701 the agencies of the state and governing authorities, but not
1702 commodities purchased for resale or raw materials converted into
1703 products for resale.

1704 (i) "Equipment" shall be construed to include:
1705 automobiles, trucks, tractors, office appliances and all other
1706 equipment of every kind and description.

1707 (ii) "Furniture" shall be construed to include:
1708 desks, chairs, tables, seats, filing cabinets, bookcases and all
1709 other items of a similar nature as well as dormitory furniture,
1710 appliances, carpets and all other items of personal property
1711 generally referred to as home, office or school furniture.

1712 (f) "Emergency" means any circumstances caused by fire,
1713 flood, explosion, storm, earthquake, epidemic, riot, insurrection
1714 or caused by any inherent defect due to defective construction, or
1715 when the immediate preservation of order or of public health is
1716 necessary by reason of unforeseen emergency, or when the immediate
1717 restoration of a condition of usefulness of any public building,



1718 equipment, road or bridge appears advisable, or in the case of a
1719 public utility when there is a failure of any machine or other
1720 thing used and useful in the generation, production or
1721 distribution of electricity, water or natural gas, or in the
1722 transportation or treatment of sewage; or when the delay incident
1723 to obtaining competitive bids could cause adverse impact upon the
1724 governing authorities or agency, its employees or its citizens; or
1725 in the case of a public airport, when the delay incident to
1726 publishing an advertisement for competitive bids would endanger
1727 public safety in a specific (not general) manner, result in or
1728 perpetuate a specific breach of airport security, or prevent the
1729 airport from providing specific air transportation services.

1730 (g) "Construction" means the process of building,
1731 altering, improving, renovating or demolishing a public structure,
1732 public building, or other public real property. It does not
1733 include routine operation, routine repair or regularly scheduled
1734 maintenance of existing public structures, public buildings or
1735 other public real property.

1736 (h) "Purchase" means buying, renting, leasing or
1737 otherwise acquiring.

1738 (i) "Certified purchasing office" means any purchasing
1739 office in which fifty percent (50%) or more of the purchasing
1740 agents hold a certification from the Universal Public Purchasing
1741 Certification Council or other nationally recognized purchasing
1742 certification, and in which, in the case of a state agency



1743 purchasing office, in addition to the national certification, one
1744 hundred percent (100%) of the purchasing officials hold a
1745 certification from the State of Mississippi's Basic or Advanced
1746 Purchasing Certification Program.

1747 (j) "Certified Mississippi Purchasing Agent" means a
1748 state agency purchasing official who holds a certification from
1749 the Mississippi Basic Purchasing Certification Program as
1750 established by the Office of Purchasing, Travel and Fleet
1751 Management.

1752 (k) "Certified Mississippi Procurement Manager" means a
1753 state agency purchasing official who holds a certification from
1754 the Mississippi Advanced Purchasing Certification Program as
1755 established by the Office of Purchasing, Travel and Fleet
1756 Management.

1757 **SECTION 17.** Section 65-1-85, Mississippi Code of 1972, is
1758 amended as follows:

1759 65-1-85. (1) All contracts by or on behalf of the
1760 commission for the purchase of materials, equipment and supplies
1761 shall be made in compliance with Section 31-7-1 et seq. All
1762 contracts by or on behalf of the commission for construction,
1763 reconstruction or other public work authorized to be done under
1764 the provisions of this chapter, except maintenance, shall be made
1765 by the executive director, subject to the approval of the
1766 commission, only upon competitive bids after due advertisement as
1767 follows, to wit:



1768 (a) Advertisement for bids shall be in accordance with
1769 such rules and regulations, in addition to those herein provided,
1770 as may be adopted therefor by the commission, and the commission
1771 is authorized and empowered to make and promulgate such rules and
1772 regulations as it may deem proper, to provide and adopt standard
1773 specifications for road and bridge construction, and to amend such
1774 rules and regulations from time to time.

1775 (b) The advertisement shall be inserted twice, being
1776 once a week for two (2) successive weeks in a newspaper published
1777 at the seat of government in Jackson, Mississippi, having a
1778 general circulation throughout the state, and no letting shall be
1779 less than fourteen (14) days nor more than sixty (60) days after
1780 the publication of the first notice of such letting, and notices
1781 of such letting may be placed in a metropolitan paper or national
1782 trade publication.

1783 (c) Before advertising for such work, the executive
1784 director shall cause to be prepared and filed in the department
1785 detailed plans and specifications covering the work proposed to be
1786 done and copies of the plans and specifications shall be subject
1787 to inspection by any citizen during all office hours and made
1788 available to all prospective bidders upon such reasonable terms
1789 and conditions as may be required by the commission. A fee shall
1790 be charged equal to the cost of producing a copy of any such plans
1791 and specifications.



1792 (d) All such contracts shall be let to a responsible
1793 bidder with the lowest and best bid, and a record of all bids
1794 received for construction and reconstruction shall be preserved.

1795 (e) Each bid for such a construction and reconstruction
1796 contract must be accompanied by a cashier's check, a certified
1797 check or bidders bond executed by a surety company authorized to
1798 do business in the State of Mississippi, in the principal amount
1799 of not less than five percent (5%) of the bid, guaranteeing that
1800 the bidder will give bond and enter into a contract for the
1801 faithful performance of the contract according to plans and
1802 specifications on file.

1803 (f) Bonds shall be required of the successful bidder in
1804 an amount equal to the contract price. The contract price shall
1805 mean the entire cost of the particular contract let. In the event
1806 change orders are made after the execution of a contract which
1807 results in increasing the total contract price, additional bond in
1808 the amount of the increased cost may be required. The surety or
1809 sureties on such bonds shall be a surety company or surety
1810 companies authorized to do business in the State of Mississippi,
1811 all bonds to be payable to the State of Mississippi and to be
1812 conditioned for the prompt, faithful and efficient performance of
1813 the contract according to plans and specifications, and for the
1814 prompt payment of all persons furnishing labor, material,
1815 equipment and supplies therefor. Such bonds shall be subject to
1816 the additional obligation that the principal and surety or



1817 sureties executing the same shall be liable to the state in a
1818 civil action instituted by the state at the instance of the
1819 commission or any officer of the state authorized in such cases,
1820 for double any amount in money or property the state may lose or
1821 be overcharged or otherwise defrauded of by reason of any wrongful
1822 or criminal act, if any, of the contractor, his agent or
1823 employees.

1824 (2) With respect to equipment used in the construction,
1825 reconstruction or other public work authorized to be done under
1826 the provisions of this chapter: the word "equipment," in addition
1827 to all equipment incorporated into or fully consumed in connection
1828 with such project, shall include the reasonable value of the use
1829 of all equipment of every kind and character and all accessories
1830 and attachments thereto which are reasonably necessary to be used
1831 and which are used in carrying out the performance of the
1832 contract, and the reasonable value of the use thereof, during the
1833 period of time the same are used in carrying out the performance
1834 of the contract, shall be the amount as agreed upon by the persons
1835 furnishing the equipment and those using the same to be paid
1836 therefor, which amount, however, shall not be in excess of the
1837 maximum current rates and charges allowable for leasing or renting
1838 as specified in Section 65-7-95; the word "labor" shall include
1839 all work performed in repairing equipment used in carrying out the
1840 performance of the contract, which repair labor is reasonably
1841 necessary to the efficient operation of said equipment; and the



1842 words "materials" and "supplies" shall include all repair parts
1843 installed in or on equipment used in carrying out the performance
1844 of the contract, which repair parts are reasonably necessary to
1845 the efficient operation of said equipment.

1846 (3) The executive director, subject to the approval of the
1847 commission, shall have the right to reject any and all bids,
1848 whether such right is reserved in the notice or not.

1849 (4) The commission may require the prequalification of any
1850 and all bidders and the failure to comply with prequalification
1851 requirements may be the basis for the rejection of any bid by the
1852 commission. The commission may require the prequalification of
1853 any and all subcontractors before they are approved to participate
1854 in any contract awarded under this section.

1855 (5) The commission may adopt rules and regulations for the
1856 termination of any previously awarded contract which is not timely
1857 proceeding toward completion. The failure of a contractor to
1858 comply with such rules and regulations shall be a lawful basis for
1859 the commission to terminate the contract with such contractor. In
1860 the event of a termination under such rules and regulations, the
1861 contractor shall not be entitled to any payment, benefit or
1862 damages beyond the cost of the work actually completed.

1863 (6) Any contract for construction or paving of any highway
1864 may be entered into for any cost which does not exceed the amount
1865 of funds that may be made available therefor through bond issues
1866 or from other sources of revenue, and the letting of contracts for



1867 such construction or paving shall not necessarily be delayed until
1868 the funds are actually on hand, provided authorization for the
1869 issuance of necessary bonds has been granted by law to supplement
1870 other anticipated revenue, or when the department certifies to the
1871 Department of Finance and Administration and the Legislative
1872 Budget Office that projected receipts of funds by the department
1873 will be sufficient to pay such contracts as they become due and
1874 the Department of Finance and Administration determines that the
1875 projections are reasonable and receipts will be sufficient to pay
1876 the contracts as they become due. The Department of Finance and
1877 Administration shall spread such determination on its minutes
1878 prior to the letting of any contracts based on projected receipts.
1879 Nothing in this subsection shall prohibit the issuance of bonds,
1880 which have been authorized, at any time in the discretion of the
1881 State Bond Commission, nor to prevent investment of surplus funds
1882 in United States government bonds or State of Mississippi bonds as
1883 presently authorized by Section 12, Chapter 312, Laws of 1956.

1884 (7) All other contracts for work to be done under the
1885 provisions of this chapter and for the purchase of materials,
1886 equipment and supplies to be used as provided for in this chapter
1887 shall be made in compliance with Section 31-7-1 et seq.

1888 (8) The commission shall not empower or authorize the
1889 executive director, or any one or more of its members, or any
1890 engineer or other person to let or make contracts for the
1891 construction or repair of public roads, or building bridges, or



1892 for the purchase of material, equipment or supplies contrary to
1893 the provisions of this chapter as set forth in this section,
1894 except in cases of flood or other cases of emergency where the
1895 public interest requires that the work be done or the materials,
1896 equipment or supplies be purchased without the delay incident to
1897 advertising for competitive bids. Such emergency contracts may be
1898 made without advertisement under such rules and regulations as the
1899 commission may prescribe.

1900 (9) The executive director, subject to the approval of the
1901 commission, is authorized to negotiate and make agreements with
1902 communities and/or civic organizations for landscaping,
1903 beautification and maintenance of highway rights-of-way; however,
1904 nothing in this subsection shall be construed as authorization for
1905 the executive director or commission to participate in such a
1906 project to an extent greater than the average cost for maintenance
1907 of shoulders, backslopes and median areas with respect thereto.

1908 (10) The executive director may negotiate and enter into
1909 contracts with private parties for the mowing of grass and
1910 trimming of vegetation on the rights-of-way of state highways
1911 whenever such practice is possible and cost effective.

1912 (11) (a) As an alternative to the method of awarding
1913 contracts as otherwise provided in this section, the commission
1914 may use the design-build method of contracting for the following:



1915 (i) Projects for the Mississippi Development
1916 Authority pursuant to agreements between both governmental
1917 entities;

1918 (ii) Any project with an estimated cost of not
1919 more than Ten Million Dollars (\$10,000,000.00), not to exceed two
1920 (2) projects per fiscal year; and

1921 (iii) Any project which has an estimated cost of
1922 more than Ten Million Dollars (\$10,000,000.00), not to exceed one
1923 (1) project per fiscal year.

1924 (b) As used in this subsection, the term "design-build"
1925 method of contracting means a contract that combines the design
1926 and construction phases of a project into a single contract and
1927 the contractor is required to satisfactorily perform, at a
1928 minimum, both the design and construction of the project.

1929 (c) The commission shall establish detailed criteria
1930 for the selection of the successful design-build contractor in
1931 each request for design-build proposals. The evaluation of the
1932 selection committee is a public record and shall be maintained for
1933 a minimum of ten (10) years after project completion.

1934 (d) The commission shall maintain detailed records on
1935 projects separate and apart from its regular record keeping. The
1936 commission shall file a report to the Legislature evaluating the
1937 design-build method of contracting by comparing it to the low-bid
1938 method of contracting. At a minimum, the report must include:



1939 (i) The management goals and objectives for the
1940 design-build system of management;

1941 (ii) A complete description of the components of
1942 the design-build management system, including a description of the
1943 system the department put into place on all projects managed under
1944 the system to insure that it has the complete information on
1945 highway segment costs and to insure proper analysis of any
1946 proposal the commission receives from a highway contractor;

1947 (iii) The accountability systems the
1948 Transportation Department established to monitor any design-build
1949 project's compliance with specific goals and objectives for the
1950 project;

1951 (iv) The outcome of any project or any interim
1952 report on an ongoing project let under a design-build management
1953 system showing compliance with the goals, objectives, policies and
1954 procedures the department set for the project; and

1955 (v) The method used by the department to select
1956 projects to be let under the design-build system of management and
1957 all other systems, policies and procedures that the department
1958 considered as necessary components to a design-build management
1959 system.

1960 (e) All contracts let under the provisions of this
1961 subsection shall be subject to oversight and review by the State
1962 Auditor. The State Auditor shall file a report with the
1963 Legislature on or before January 1 of each year detailing his



1964 findings with regard to any contract let or project performed in
1965 violation of the provisions of this subsection. The actual and
1966 necessary expenses incurred by the State Auditor in complying with
1967 this paragraph (e) shall be paid for and reimbursed by the
1968 Mississippi Department of Transportation out of funds made
1969 available for the contract or contracts let and project or
1970 projects performed.

1971 (12) The provisions of this section shall not be construed
1972 to prohibit the commission from awarding or entering into
1973 contracts for the design, construction and financing of toll
1974 roads, highways and bridge projects as provided under Sections
1975 65-43-1 and 65-43-3.

1976 (13) The provisions of this section shall not be construed
1977 to prohibit the commission from awarding or entering into
1978 contracts under the provisions of Sections 31-33-1 through
1979 31-33-25.

1980 **SECTION 18.** Section 27-31-1, Mississippi Code of 1972, is
1981 brought forward as follows:

1982 27-31-1. The following shall be exempt from taxation:

1983 (a) All cemeteries used exclusively for burial
1984 purposes.

1985 (b) All property, real or personal, belonging to the
1986 State of Mississippi or any of its political subdivisions, except
1987 property of a municipality not being used for a proper municipal
1988 purpose and located outside the county or counties in which such



1989 municipality is located. A proper municipal purpose within the
1990 meaning of this section shall be any authorized governmental or
1991 corporate function of a municipality.

1992 (c) All property, real or personal, owned by units of
1993 the Mississippi National Guard, or title to which is vested in
1994 trustees for the benefit of any unit of the Mississippi National
1995 Guard; provided such property is used exclusively for such unit,
1996 or for public purposes, and not-for-profit.

1997 (d) All property, real or personal, belonging to any
1998 religious society, or ecclesiastical body, or any congregation
1999 thereof, or to any charitable society, or to any historical or
2000 patriotic association or society, or to any garden or pilgrimage
2001 club or association and used exclusively for such society or
2002 association and not for profit; not exceeding, however, the amount
2003 of land which such association or society may own as provided in
2004 Section 79-11-33. All property, real or personal, belonging to
2005 any rural waterworks system or rural sewage disposal system
2006 incorporated under the provisions of Section 79-11-1. All
2007 property, real or personal, belonging to any college or
2008 institution for the education of youths, used directly and
2009 exclusively for such purposes, provided that no such college or
2010 institution for the education of youths shall have exempt from
2011 taxation more than six hundred forty (640) acres of land;
2012 provided, however, this exemption shall not apply to commercial
2013 schools and colleges or trade institutions or schools where the



2014 profits of same inure to individuals, associations or
2015 corporations. All property, real or personal, belonging to an
2016 individual, institution or corporation and used for the operation
2017 of a grammar school, junior high school, high school or military
2018 school. All property, real or personal, owned and occupied by a
2019 fraternal and benevolent organization, when used by such
2020 organization, and from which no rentals or other profits accrue to
2021 the organization, but any part rented or from which revenue is
2022 received shall be taxed.

2023 (e) All property, real or personal, held and occupied
2024 by trustees of public schools, and school lands of the respective
2025 townships for the use of public schools, and all property kept in
2026 storage for the convenience and benefit of the State of
2027 Mississippi in warehouses owned or leased by the State of
2028 Mississippi, wherein said property is to be sold by the Alcoholic
2029 Beverage Control Division of the Department of Revenue of the
2030 State of Mississippi.

2031 (f) All property, real or personal, whether belonging
2032 to religious or charitable or benevolent organizations, which is
2033 used for hospital purposes, and nurses' homes where a part
2034 thereof, and which maintain one or more charity wards that are for
2035 charity patients, and where all the income from said hospitals and
2036 nurses' homes is used entirely for the purposes thereof and no
2037 part of the same for profit.



2038 (g) The wearing apparel of every person; and also
2039 jewelry and watches kept by the owner for personal use to the
2040 extent of One Hundred Dollars (\$100.00) in value for each owner.

2041 (h) Provisions on hand for family consumption.

2042 (i) All farm products grown in this state for a period
2043 of two (2) years after they are harvested, when in the possession
2044 of or the title to which is in the producer, except the tax of
2045 one-fifth of one percent (1/5 of 1%) per pound on lint cotton now
2046 levied by the Board of Commissioners of the Mississippi Levee
2047 District; and lint cotton for five (5) years, and cottonseed,
2048 soybeans, oats, rice and wheat for one (1) year regardless of
2049 ownership.

2050 (j) All guns and pistols kept by the owner for private
2051 use.

2052 (k) All poultry in the hands of the producer.

2053 (l) Household furniture, including all articles kept in
2054 the home by the owner for his own personal or family use; but this
2055 shall not apply to hotels, rooming houses or rented or leased
2056 apartments.

2057 (m) All cattle and oxen.

2058 (n) All sheep, goats and hogs.

2059 (o) All horses, mules and asses.

2060 (p) Farming tools, implements and machinery, when used
2061 exclusively in the cultivation or harvesting of crops or timber.



2062 (q) All property of agricultural and mechanical
2063 associations and fairs used for promoting their objects, and where
2064 no part of the proceeds is used for profit.

2065 (r) The libraries of all persons.

2066 (s) All pictures and works of art, not kept for or
2067 offered for sale as merchandise.

2068 (t) The tools of any mechanic necessary for carrying on
2069 his trade.

2070 (u) All state, county, municipal, levee, drainage and
2071 all school bonds or other governmental obligations, and all bonds
2072 and/or evidences of debts issued by any church or church
2073 organization in this state, and all notes and evidences of
2074 indebtedness which bear a rate of interest not greater than the
2075 maximum rate per annum applicable under the law; and all money
2076 loaned at a rate of interest not exceeding the maximum rate per
2077 annum applicable under the law; and all stock in or bonds of
2078 foreign corporations or associations shall be exempt from all ad
2079 valorem taxes.

2080 (v) All lands and other property situated or located
2081 between the Mississippi River and the levee shall be exempt from
2082 the payment of any and all road taxes levied or assessed under any
2083 road laws of this state.

2084 (w) Any and all money on deposit in either national
2085 banks, state banks or trust companies, on open account, savings
2086 account or time deposit.



2087 (x) All wagons, carts, drays, carriages and other
2088 horse-drawn vehicles, kept for the use of the owner.

2089 (y) (i) Boats, seines and fishing equipment used in
2090 fishing and shrimping operations and in the taking or catching of
2091 oysters.

2092 (ii) All towboats, tugboats and barges documented
2093 under the laws of the United States, except watercraft of every
2094 kind and character used in connection with gaming operations.

2095 (z) (i) All materials used in the construction and/or
2096 conversion of vessels in this state;

2097 (ii) Vessels while under construction and/or
2098 conversion;

2099 (iii) Vessels while in the possession of the
2100 manufacturer, builder or converter, for a period of twelve (12)
2101 months after completion of construction and/or conversion;
2102 however, the twelve-month limitation shall not apply to:

2103 1. Vessels used for the exploration for, or
2104 production of, oil, gas and other minerals offshore outside the
2105 boundaries of this state; or

2106 2. Vessels that were used for the exploration
2107 for, or production of, oil, gas and other minerals that are
2108 converted to a new service for use outside the boundaries of this
2109 state;



2110 (iv) 1. In order for a vessel described in
2111 subparagraph (iii) of this paragraph (z) to be exempt for a period
2112 of more than twelve (12) months, the vessel must:

2113 a. Be operating or operable, generating
2114 or capable of generating its own power or connected to some other
2115 power source, and not removed from the service or use for which
2116 manufactured or to which converted; and

2117 b. The manufacturer, builder, converter
2118 or other entity possessing the vessel must be in compliance with
2119 any lease or other agreement with any applicable port authority or
2120 other entity regarding the vessel and in compliance with all
2121 applicable tax laws of this state and applicable federal tax laws.

2122 2. A vessel exempt from taxation under
2123 subparagraph (iii) of this paragraph (z) may not be exempt for a
2124 period of more than three (3) years unless the board of
2125 supervisors of the county and/or governing authorities of the
2126 municipality, as the case may be, in which the vessel would
2127 otherwise be taxable adopts a resolution or ordinance authorizing
2128 the extension of the exemption and setting a maximum period for
2129 the exemption.

2130 (v) As used in this paragraph (z), the term
2131 "vessel" includes ships, offshore drilling equipment, dry docks,
2132 boats and barges, except watercraft of every kind and character
2133 used in connection with gaming operations.



2134 (aa) Sixty-six and two-thirds percent (66-2/3%) of
2135 nuclear fuel and reprocessed, recycled or residual nuclear fuel
2136 by-products, fissionable or otherwise, used or to be used in
2137 generation of electricity by persons defined as public utilities
2138 in Section 77-3-3.

2139 (bb) All growing nursery stock.

2140 (cc) A semitrailer used in interstate commerce.

2141 (dd) All property, real or personal, used exclusively
2142 for the housing of and provision of services to elderly persons,
2143 disabled persons, mentally impaired persons or as a nursing home,
2144 which is owned, operated and managed by a not-for-profit
2145 corporation, qualified under Section 501(c)(3) of the Internal
2146 Revenue Code, whose membership or governing body is appointed or
2147 confirmed by a religious society or ecclesiastical body or any
2148 congregation thereof.

2149 (ee) All vessels while in the hands of bona fide
2150 dealers as merchandise and which are not being operated upon the
2151 waters of this state shall be exempt from ad valorem taxes. As
2152 used in this paragraph, the terms "vessel" and "waters of this
2153 state" shall have the meaning ascribed to such terms in Section
2154 59-21-3.

2155 (ff) All property, real or personal, owned by a
2156 nonprofit organization that: (i) is qualified as tax exempt under
2157 Section 501(c)(4) of the Internal Revenue Code of 1986, as
2158 amended; (ii) assists in the implementation of the national



2159 contingency plan or area contingency plan, and which is created in
2160 response to the requirements of Title IV, Subtitle B of the Oil
2161 Pollution Act of 1990, Public Law 101-380; (iii) engages primarily
2162 in programs to contain, clean up and otherwise mitigate spills of
2163 oil or other substances occurring in the United States coastal or
2164 tidal waters; and (iv) is used for the purposes of the
2165 organization.

2166 (gg) If a municipality changes its boundaries so as to
2167 include within the boundaries of such municipality the project
2168 site of any project as defined in Section 57-75-5(f)(iv)1, Section
2169 57-75-5(f)(xxi) or Section 57-75-5(f)(xxviii) or Section
2170 57-75-5(f)(xxix), all real and personal property located on the
2171 project site within the boundaries of such municipality that is
2172 owned by a business enterprise operating such project, shall be
2173 exempt from ad valorem taxation for a period of time not to exceed
2174 thirty (30) years upon receiving approval for such exemption by
2175 the Mississippi Major Economic Impact Authority. The provisions
2176 of this paragraph shall not be construed to authorize a breach of
2177 any agreement entered into pursuant to Section 21-1-59.

2178 (hh) All leases, lease contracts or lease agreements
2179 (including, but not limited to, subleases, sublease contracts and
2180 sublease agreements), and leaseholds or leasehold interests
2181 (including, but not limited to, subleaseholds and subleasehold
2182 interests), of or with respect to any and all property (real,
2183 personal or mixed) constituting all or any part of a facility for



2184 the manufacture, production, generation, transmission and/or
2185 distribution of electricity, and any real property related
2186 thereto, shall be exempt from ad valorem taxation during the
2187 period as the United States is both the title owner of the
2188 property and a sublessee of or with respect to the property;
2189 however, the exemption authorized by this paragraph (hh) shall not
2190 apply to any entity to whom the United States sub-subleases its
2191 interest in the property nor to any entity to whom the United
2192 States assigns its sublease interest in the property. As used in
2193 this paragraph, the term "United States" includes an agency or
2194 instrumentality of the United States of America. This paragraph
2195 (hh) shall apply to all assessments for ad valorem taxation for
2196 the 2003 calendar year and each calendar year thereafter.

2197 (ii) All property, real, personal or mixed, including
2198 fixtures and leaseholds, used by Mississippi nonprofit entities
2199 qualified, on or before January 1, 2005, under Section 501(c)(3)
2200 of the Internal Revenue Code to provide support and operate
2201 technology incubators for research and development startup
2202 companies, telecommunication startup companies and/or other
2203 technology startup companies, utilizing technology spun-off from
2204 research and development activities of the public colleges and
2205 universities of this state, State of Mississippi governmental
2206 research or development activities resulting therefrom located
2207 within the State of Mississippi.



2208 (jj) All property, real, personal or mixed, including
2209 fixtures and leaseholds, of startup companies (as described in
2210 paragraph (ii) of this section) for the period of time, not to
2211 exceed five (5) years, that the startup company remains a tenant
2212 of a technology incubator (as described in paragraph (ii) of this
2213 section).

2214 (kk) All leases, lease contracts or lease agreements
2215 (including, but not limited to, subleases, sublease contracts and
2216 sublease agreements), and leaseholds or leasehold interests, of or
2217 with respect to any and all property (real, personal or mixed)
2218 constituting all or any part of an auxiliary facility, and any
2219 real property related thereto, constructed or renovated pursuant
2220 to Section 37-101-41, Mississippi Code of 1972.

2221 (ll) Equipment brought into the state temporarily for
2222 use during a disaster response period as provided in Sections
2223 27-113-1 through 27-113-9 and subsequently removed from the state
2224 on or before the end of the disaster response period as defined in
2225 Section 27-113-5.

2226 (mm) For any lease or contractual arrangement to which
2227 the Department of Finance and Administration and a nonprofit
2228 corporation are a party to as provided in Section 39-25-1(5), the
2229 nonprofit corporation shall, along with the possessory and
2230 leasehold interests and/or real and personal property of the
2231 corporation, be exempt from all ad valorem taxation, including,
2232 but not limited to, school, city and county ad valorem taxes, for



2233 the term or period of time stated in the lease or contractual
2234 arrangement.

2235 **SECTION 19.** Section 27-13-5, Mississippi Code of 1972, is
2236 brought forward as follows:

2237 27-13-5. (1) (a) **Franchise tax levy.** Except as otherwise
2238 provided in subsections (3), (4), (5) and (7) of this section,
2239 there is hereby imposed, to be paid and collected as hereinafter
2240 provided, a franchise or excise tax upon every corporation,
2241 association or joint-stock company or partnership treated as a
2242 corporation under the income tax laws or regulations, organized or
2243 created for pecuniary gain, having privileges not possessed by
2244 individuals, and having authorized capital stock now existing in
2245 this state, or hereafter organized, created or established, under
2246 and by virtue of the laws of the State of Mississippi, equal to:

2247 (i) For tax years beginning before January 1,
2248 2018, Two Dollars and Fifty Cents (\$2.50) for each One Thousand
2249 Dollars (\$1,000.00), or fraction thereof, of the value of the
2250 capital used, invested or employed in the exercise of any power,
2251 privilege or right enjoyed by such organization within this state,
2252 except as hereinafter provided.

2253 (ii) For tax years beginning on or after January
2254 1, 2018, but before January 1, 2019, Two Dollars and Fifty Cents
2255 (\$2.50) for each One Thousand Dollars (\$1,000.00), or fraction
2256 thereof, in excess of One Hundred Thousand Dollars (\$100,000.00),
2257 of the value of the capital used, invested or employed in the



2258 exercise of any power, privilege or right enjoyed by such
2259 organization within this state, except as hereinafter provided.

2260 (iii) For tax years beginning on or after January
2261 1, 2019, but before January 1, 2020, Two Dollars and Twenty-five
2262 Cents (\$2.25) for each One Thousand Dollars (\$1,000.00), or
2263 fraction thereof, in excess of One Hundred Thousand Dollars
2264 (\$100,000.00), of the value of the capital used, invested or
2265 employed in the exercise of any power, privilege or right enjoyed
2266 by such organization within this state, except as hereinafter
2267 provided.

2268 (iv) For tax years beginning on or after January
2269 1, 2020, but before January 1, 2021, Two Dollars (\$2.00) for each
2270 One Thousand Dollars (\$1,000.00), or fraction thereof, in excess
2271 of One Hundred Thousand Dollars (\$100,000.00), of the value of the
2272 capital used, invested or employed in the exercise of any power,
2273 privilege or right enjoyed by such organization within this state,
2274 except as hereinafter provided.

2275 (v) For tax years beginning on or after January 1,
2276 2021, but before January 1, 2022, One Dollar and Seventy-five
2277 Cents (\$1.75) for each One Thousand Dollars (\$1,000.00), or
2278 fraction thereof, in excess of One Hundred Thousand Dollars
2279 (\$100,000.00), of the value of the capital used, invested or
2280 employed in the exercise of any power, privilege or right enjoyed
2281 by such organization within this state, except as hereinafter
2282 provided.



2283 (vi) For tax years beginning on or after January
2284 1, 2022, but before January 1, 2023, One Dollar and Fifty Cents
2285 (\$1.50) for each One Thousand Dollars (\$1,000.00), or fraction
2286 thereof, in excess of One Hundred Thousand Dollars (\$100,000.00),
2287 of the value of the capital used, invested or employed in the
2288 exercise of any power, privilege or right enjoyed by such
2289 organization within this state, except as hereinafter provided.

2290 (vii) For tax years beginning on or after January
2291 1, 2023, but before January 1, 2024, One Dollar and Twenty-five
2292 Cents (\$1.25) for each One Thousand Dollars (\$1,000.00), or
2293 fraction thereof, in excess of One Hundred Thousand Dollars
2294 (\$100,000.00), of the value of the capital used, invested or
2295 employed in the exercise of any power, privilege or right enjoyed
2296 by such organization within this state, except as hereinafter
2297 provided.

2298 (viii) For tax years beginning on or after January
2299 1, 2024, but before January 1, 2025, One Dollar (\$1.00) for each
2300 One Thousand Dollars (\$1,000.00), or fraction thereof, in excess
2301 of One Hundred Thousand Dollars (\$100,000.00), of the value of the
2302 capital used, invested or employed in the exercise of any power,
2303 privilege or right enjoyed by such organization within this state,
2304 except as hereinafter provided.

2305 (ix) For tax years beginning on or after January
2306 1, 2025, but before January 1, 2026, Seventy-five Cents (75¢) for
2307 each One Thousand Dollars (\$1,000.00), or fraction thereof, in



2308 excess of One Hundred Thousand Dollars (\$100,000.00), of the value
2309 of the capital used, invested or employed in the exercise of any
2310 power, privilege or right enjoyed by such organization within this
2311 state, except as hereinafter provided.

2312 (x) For tax years beginning on or after January 1,
2313 2026, but before January 1, 2027, Fifty Cents (50¢) for each One
2314 Thousand Dollars (\$1,000.00), or fraction thereof, in excess of
2315 One Hundred Thousand Dollars (\$100,000.00), of the value of the
2316 capital used, invested or employed in the exercise of any power,
2317 privilege or right enjoyed by such organization within this state,
2318 except as hereinafter provided.

2319 (xi) For tax years beginning on or after January
2320 1, 2027, but before January 1, 2028, Twenty-five Cents (25¢) for
2321 each One Thousand Dollars (\$1,000.00), or fraction thereof, in
2322 excess of One Hundred Thousand Dollars (\$100,000.00), of the value
2323 of the capital used, invested or employed in the exercise of any
2324 power, privilege or right enjoyed by such organization within this
2325 state, except as hereinafter provided.

2326 (b) In no case shall the franchise tax due for the
2327 accounting period be less than Twenty-five Dollars (\$25.00).

2328 (c) It is the purpose of this section to require the
2329 payment to the State of Mississippi of this tax for the right
2330 granted by the laws of this state to exist as such organization,
2331 and to enjoy, under the protection of the laws of this state, the



2332 powers, rights, privileges and immunities derived from the state
2333 by the form of such existence.

2334 (2) **Annual report of domestic corporations.** Each domestic
2335 corporation shall file an annual report as required by the
2336 provisions of Section 79-4-16.22.

2337 (3) (a) A corporation that has negotiated a fee-in-lieu as
2338 defined in Section 57-75-5 shall not be subject to the tax levied
2339 by this section on such project; however, the fee-in-lieu payment
2340 shall be otherwise treated in the same manner as the payment of
2341 franchise taxes.

2342 (b) (i) As used in this paragraph:

2343 1. "Authority" shall have the meaning
2344 ascribed to such term in Section 57-75-5(b);

2345 2. "Project" shall have the meaning ascribed
2346 to such term in Section 57-75-5(f)(xxix); and

2347 3. "Enterprise" shall mean the corporation
2348 authorized for the project pursuant to Section 57-75-5(f)(xxix).

2349 (ii) The term of the franchise tax fee-in-lieu
2350 agreement negotiated under this subsection and authorized by
2351 Section 57-75-5(j), between the authority and the enterprise for
2352 the project shall not exceed twenty-five (25) years. The
2353 franchise tax fee-in-lieu agreement shall apply only to new
2354 franchise tax liability attributable to the project, and shall not
2355 apply to any existing franchise tax liability of the enterprise in
2356 connection with any current operations in this state.



2357 (iii) In the event that the annual number of
2358 full-time jobs maintained by the enterprise falls below the
2359 minimum annual number of full-time jobs required by the authority
2360 pursuant to a written agreement between the authority and the
2361 enterprise for two (2) consecutive years, the franchise tax
2362 fee-in-lieu for the project shall be suspended until the first tax
2363 year during which the annual number of full-time jobs maintained
2364 by the enterprise reaches the minimum annual number of full-time
2365 jobs required by the authority pursuant to a written agreement
2366 between the authority and the enterprise.

2367 (iv) The enterprise shall be entitled to utilize a
2368 single sales apportionment factor in the calculation of its
2369 liability for franchise tax imposed by this chapter which is
2370 attributable to the project for any year for which it files a
2371 Mississippi franchise tax return. The enterprise shall be
2372 entitled to continue to utilize such single sales apportionment
2373 factor notwithstanding a suspension of the franchise tax
2374 fee-in-lieu pursuant to subparagraph (iii) of this paragraph.

2375 (4) An approved business enterprise as defined in the Growth
2376 and Prosperity Act shall not be subject to the tax levied by this
2377 section on the value of capital used, invested or employed by the
2378 approved business enterprise in a growth and prosperity county or
2379 supervisors district as provided in the Growth and Prosperity Act.

2380 (5) A business enterprise operating a project as defined in
2381 Section 57-64-33, in a county that is a member of a regional



2382 economic development alliance created under the Regional Economic
2383 Development Act shall not be subject to the tax levied by this
2384 section on the value of capital used, invested or employed by the
2385 business enterprise in such a county as provided in Section
2386 57-64-33.

2387 (6) The tax levied by this chapter and paid by a business
2388 enterprise located in a redevelopment project area under Sections
2389 57-91-1 through 57-91-11 shall be deposited into the Redevelopment
2390 Project Incentive Fund created in Section 57-91-9.

2391 (7) A business enterprise as defined in Section 57-113-1
2392 that is exempt from certain state taxes under Section 57-113-5
2393 shall not be subject to the tax levied by this section on the
2394 value of capital used, invested or employed by the business
2395 enterprise.

2396 **SECTION 20.** Section 27-7-15, Mississippi Code of 1972, is
2397 brought forward as follows:

2398 27-7-15. (1) For the purposes of this article, except as
2399 otherwise provided, the term "gross income" means and includes the
2400 income of a taxpayer derived from salaries, wages, fees or
2401 compensation for service, of whatever kind and in whatever form
2402 paid, including income from governmental agencies and subdivisions
2403 thereof; or from professions, vocations, trades, businesses,
2404 commerce or sales, or renting or dealing in property, or
2405 reacquired property; also from annuities, interest, rents,
2406 dividends, securities, insurance premiums, reinsurance premiums,



2407 considerations for supplemental insurance contracts, or the
2408 transaction of any business carried on for gain or profit, or
2409 gains, or profits, and income derived from any source whatever and
2410 in whatever form paid. The amount of all such items of income
2411 shall be included in the gross income for the taxable year in
2412 which received by the taxpayer. The amount by which an eligible
2413 employee's salary is reduced pursuant to a salary reduction
2414 agreement authorized under Section 25-17-5 shall be excluded from
2415 the term "gross income" within the meaning of this article.

2416 (2) In determining gross income for the purpose of this
2417 section, the following, under regulations prescribed by the
2418 commissioner, shall be applicable:

2419 (a) **Dealers in property.** Federal rules, regulations
2420 and revenue procedures shall be followed with respect to
2421 installment sales unless a transaction results in the shifting of
2422 income from inside the state to outside the state.

2423 (b) **Casual sales of property.**

2424 (i) Prior to January 1, 2001, federal rules,
2425 regulations and revenue procedures shall be followed with respect
2426 to installment sales except they shall be applied and administered
2427 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the
2428 106th Congress, had not been enacted. This provision will
2429 generally affect taxpayers, reporting on the accrual method of
2430 accounting, entering into installment note agreements on or after



2431 December 17, 1999. Any gain or profit resulting from the casual
2432 sale of property will be recognized in the year of sale.

2433 (ii) From and after January 1, 2001, federal
2434 rules, regulations and revenue procedures shall be followed with
2435 respect to installment sales except as provided in this
2436 subparagraph (ii). Gain or profit from the casual sale of
2437 property shall be recognized in the year of sale. When a taxpayer
2438 recognizes gain on the casual sale of property in which the gain
2439 is deferred for federal income tax purposes, a taxpayer may elect
2440 to defer the payment of tax resulting from the gain as allowed and
2441 to the extent provided under regulations prescribed by the
2442 commissioner. If the payment of the tax is made on a deferred
2443 basis, the tax shall be computed based on the applicable rate for
2444 the income reported in the year the payment is made. Except as
2445 otherwise provided in subparagraph (iii) of this paragraph (b),
2446 deferring the payment of the tax shall not affect the liability
2447 for the tax. If at any time the installment note is sold,
2448 contributed, transferred or disposed of in any manner and for any
2449 purpose by the original note holder, or the original note holder
2450 is merged, liquidated, dissolved or withdrawn from this state,
2451 then all deferred tax payments under this section shall
2452 immediately become due and payable.

2453 (iii) If the selling price of the property is
2454 reduced by any alteration in the terms of an installment note,
2455 including default by the purchaser, the gain to be recognized is



2456 recomputed based on the adjusted selling price in the same manner
2457 as for federal income tax purposes. The tax on this amount, less
2458 the previously paid tax on the recognized gain, is payable over
2459 the period of the remaining installments. If the tax on the
2460 previously recognized gain has been paid in full to this state,
2461 the return on which the payment was made may be amended for this
2462 purpose only. The statute of limitations in Section 27-7-49 shall
2463 not bar an amended return for this purpose.

2464 (c) **Reserves of insurance companies.** In the case of
2465 insurance companies, any amounts in excess of the legally required
2466 reserves shall be included as gross income.

2467 (d) **Affiliated companies or persons.** As regards sales,
2468 exchanges or payments for services from one to another of
2469 affiliated companies or persons or under other circumstances where
2470 the relation between the buyer and seller is such that gross
2471 proceeds from the sale or the value of the exchange or the payment
2472 for services are not indicative of the true value of the subject
2473 matter of the sale, exchange or payment for services, the
2474 commissioner shall prescribe uniform and equitable rules for
2475 determining the true value of the gross income, gross sales,
2476 exchanges or payment for services, or require consolidated returns
2477 of affiliates.

2478 (e) **Alimony and separate maintenance payments.** The
2479 federal rules, regulations and revenue procedures in determining



2480 the deductibility and taxability of alimony payments shall be
2481 followed in this state.

2482 (f) **Reimbursement for expenses of moving.** There shall
2483 be included in gross income (as compensation for services) any
2484 amount received or accrued, directly or indirectly, by an
2485 individual as a payment for or reimbursement of expenses of moving
2486 from one (1) residence to another residence which is attributable
2487 to employment or self-employment.

2488 (3) In the case of taxpayers other than residents, gross
2489 income includes gross income from sources within this state.

2490 (4) The words "gross income" do not include the following
2491 items of income which shall be exempt from taxation under this
2492 article:

2493 (a) The proceeds of life insurance policies and
2494 contracts paid upon the death of the insured. However, the income
2495 from the proceeds of such policies or contracts shall be included
2496 in the gross income.

2497 (b) The amount received by the insured as a return of
2498 premium or premiums paid by him under life insurance policies,
2499 endowment, or annuity contracts, either during the term or at
2500 maturity or upon surrender of the contract.

2501 (c) The value of property acquired by gift, bequest,
2502 devise or descent, but the income from such property shall be
2503 included in the gross income.



2504 (d) Interest upon the obligations of the United States
2505 or its possessions, or securities issued under the provisions of
2506 the Federal Farm Loan Act of 1916, or bonds issued by the War
2507 Finance Corporation, or obligations of the State of Mississippi or
2508 political subdivisions thereof.

2509 (e) The amounts received through accident or health
2510 insurance as compensation for personal injuries or sickness, plus
2511 the amount of any damages received for such injuries or such
2512 sickness or injuries, or through the War Risk Insurance Act, or
2513 any law for the benefit or relief of injured or disabled members
2514 of the military or naval forces of the United States.

2515 (f) Income received by any religious denomination or by
2516 any institution or trust for moral or mental improvements,
2517 religious, Bible, tract, charitable, benevolent, fraternal,
2518 missionary, hospital, infirmary, educational, scientific,
2519 literary, library, patriotic, historical or cemetery purposes or
2520 for two (2) or more of such purposes, if such income be used
2521 exclusively for carrying out one or more of such purposes.

2522 (g) Income received by a domestic corporation which is
2523 "taxable in another state" as this term is defined in this
2524 article, derived from business activity conducted outside this
2525 state. Domestic corporations taxable both within and without the
2526 state shall determine Mississippi income on the same basis as
2527 provided for foreign corporations under the provisions of this
2528 article.



2529 (h) In case of insurance companies, there shall be
2530 excluded from gross income such portion of actual premiums
2531 received from an individual policyholder as is paid back or
2532 credited to or treated as an abatement of premiums of such
2533 policyholder within the taxable year.

2534 (i) Income from dividends that has already borne a tax
2535 as dividend income under the provisions of this article, when such
2536 dividends may be specifically identified in the possession of the
2537 recipient.

2538 (j) Amounts paid by the United States to a person as
2539 added compensation for hazardous duty pay as a member of the Armed
2540 Forces of the United States in a combat zone designated by
2541 Executive Order of the President of the United States.

2542 (k) Amounts received as retirement allowances,
2543 pensions, annuities or optional retirement allowances paid under
2544 the federal Social Security Act, the Railroad Retirement Act, the
2545 Federal Civil Service Retirement Act, or any other retirement
2546 system of the United States government, retirement allowances paid
2547 under the Mississippi Public Employees' Retirement System,
2548 Mississippi Highway Safety Patrol Retirement System or any other
2549 retirement system of the State of Mississippi or any political
2550 subdivision thereof. The exemption allowed under this paragraph
2551 (k) shall be available to the spouse or other beneficiary at the
2552 death of the primary retiree.



2553 (1) Amounts received as retirement allowances,
2554 pensions, annuities or optional retirement allowances paid by any
2555 public or governmental retirement system not designated in
2556 paragraph (k) or any private retirement system or plan of which
2557 the recipient was a member at any time during the period of his
2558 employment. Amounts received as a distribution under a Roth
2559 Individual Retirement Account shall be treated in the same manner
2560 as provided under the Internal Revenue Code of 1986, as amended.
2561 The exemption allowed under this paragraph (1) shall be available
2562 to the spouse or other beneficiary at the death of the primary
2563 retiree.

2564 (m) National Guard or Reserve Forces of the United
2565 States compensation not to exceed the aggregate sum of Five
2566 Thousand Dollars (\$5,000.00) for any taxable year through the 2005
2567 taxable year, and not to exceed the aggregate sum of Fifteen
2568 Thousand Dollars (\$15,000.00) for any taxable year thereafter.

2569 (n) Compensation received for active service as a
2570 member below the grade of commissioned officer and so much of the
2571 compensation as does not exceed the maximum enlisted amount
2572 received for active service as a commissioned officer in the Armed
2573 Forces of the United States for any month during any part of which
2574 such members of the Armed Forces (i) served in a combat zone as
2575 designated by Executive Order of the President of the United
2576 States or a qualified hazardous duty area as defined by federal
2577 law, or both; or (ii) was hospitalized as a result of wounds,



2578 disease or injury incurred while serving in such combat zone. For
2579 the purposes of this paragraph (n), the term "maximum enlisted
2580 amount" means and has the same definition as that term has in 26
2581 USCS 112.

2582 (o) The proceeds received from federal and state
2583 forestry incentive programs.

2584 (p) The amount representing the difference between the
2585 increase of gross income derived from sales for export outside the
2586 United States as compared to the preceding tax year wherein gross
2587 income from export sales was highest, and the net increase in
2588 expenses attributable to such increased exports. In the absence
2589 of direct accounting, the ratio of net profits to total sales may
2590 be applied to the increase in export sales. This paragraph (p)
2591 shall only apply to businesses located in this state engaging in
2592 the international export of Mississippi goods and services. Such
2593 goods or services shall have at least fifty percent (50%) of value
2594 added at a location in Mississippi.

2595 (q) Amounts paid by the federal government for the
2596 construction of soil conservation systems as required by a
2597 conservation plan adopted pursuant to 16 USCS 3801 et seq.

2598 (r) The amount deposited in a medical savings account,
2599 and any interest accrued thereon, that is a part of a medical
2600 savings account program as specified in the Medical Savings
2601 Account Act under Sections 71-9-1 through 71-9-9; provided,
2602 however, that any amount withdrawn from such account for purposes



2603 other than paying eligible medical expense or to procure health
2604 coverage shall be included in gross income.

2605 (s) Amounts paid by the Mississippi Soil and Water
2606 Conservation Commission from the Mississippi Soil and Water
2607 Cost-Share Program for the installation of water quality best
2608 management practices.

2609 (t) Dividends received by a holding corporation, as
2610 defined in Section 27-13-1, from a subsidiary corporation, as
2611 defined in Section 27-13-1.

2612 (u) Interest, dividends, gains or income of any kind on
2613 any account in the Mississippi Affordable College Savings Trust
2614 Fund, as established in Sections 37-155-101 through 37-155-125, to
2615 the extent that such amounts remain on deposit in the MACS Trust
2616 Fund or are withdrawn pursuant to a qualified withdrawal, as
2617 defined in Section 37-155-105.

2618 (v) Interest, dividends or gains accruing on the
2619 payments made pursuant to a prepaid tuition contract, as provided
2620 for in Section 37-155-17.

2621 (w) Income resulting from transactions with a related
2622 member where the related member subject to tax under this chapter
2623 was required to, and did in fact, add back the expense of such
2624 transactions as required by Section 27-7-17(2). Under no
2625 circumstances may the exclusion from income exceed the deduction
2626 add-back of the related member, nor shall the exclusion apply to
2627 any income otherwise excluded under this chapter.



2628 (x) Amounts that are subject to the tax levied pursuant
2629 to Section 27-7-901, and are paid to patrons by gaming
2630 establishments licensed under the Mississippi Gaming Control Act.

2631 (y) Amounts that are subject to the tax levied pursuant
2632 to Section 27-7-903, and are paid to patrons by gaming
2633 establishments not licensed under the Mississippi Gaming Control
2634 Act.

2635 (z) Interest, dividends, gains or income of any kind on
2636 any account in a qualified tuition program and amounts received as
2637 distributions under a qualified tuition program shall be treated
2638 in the same manner as provided under the United States Internal
2639 Revenue Code, as amended. For the purposes of this paragraph (z),
2640 the term "qualified tuition program" means and has the same
2641 definition as that term has in 26 USCS 529.

2642 (aa) The amount deposited in a health savings account,
2643 and any interest accrued thereon, that is a part of a health
2644 savings account program as specified in the Health Savings
2645 Accounts Act created in Sections 83-62-1 through 83-62-9; however,
2646 any amount withdrawn from such account for purposes other than
2647 paying qualified medical expenses or to procure health coverage
2648 shall be included in gross income, except as otherwise provided by
2649 Sections 83-62-7 and 83-62-9.

2650 (bb) Amounts received as qualified disaster relief
2651 payments shall be treated in the same manner as provided under the
2652 United States Internal Revenue Code, as amended.



2653 (cc) Amounts received as a "qualified Hurricane Katrina
2654 distribution" as defined in the United States Internal Revenue
2655 Code, as amended.

2656 (dd) Amounts received by an individual which may be
2657 excluded from income as foreign earned income for federal income
2658 tax purposes.

2659 (ee) Amounts received by a qualified individual,
2660 directly or indirectly, from an employer or nonprofit housing
2661 organization that are qualified housing expenses associated with
2662 an employer-assisted housing program. For purposes of this
2663 paragraph (ee):

2664 (i) "Qualified individual" means any individual
2665 whose household income does not exceed one hundred twenty percent
2666 (120%) of the area median gross income (as defined by the United
2667 States Department of Housing and Urban Development), adjusted for
2668 household size, for the area in which the housing is located.

2669 (ii) "Nonprofit housing organization" means an
2670 organization that is organized as a not-for-profit organization
2671 under the laws of this state or another state and has as one of
2672 its purposes:

2673 1. Homeownership education or counseling;
2674 2. The development of affordable housing; or
2675 3. The development or administration of
2676 employer-assisted housing programs.



2677 (iii) "Employer-assisted housing program" means a
2678 separate written plan of any employer (including, without
2679 limitation, tax-exempt organizations and public employers) for the
2680 exclusive benefit of the employer's employees to pay qualified
2681 housing expenses to assist the employer's employees in securing
2682 affordable housing.

2683 (iv) "Qualified housing expenses" means:

2684 1. With respect to rental assistance, an
2685 amount not to exceed Two Thousand Dollars (\$2,000.00) paid for the
2686 purpose of assisting employees with security deposits and rental
2687 subsidies; and

2688 2. With respect to homeownership assistance,
2689 an amount not to exceed the lesser of Ten Thousand Dollars
2690 (\$10,000.00) or six percent (6%) of the purchase price of the
2691 employee's principal residence that is paid for the purpose of
2692 assisting employees with down payments, payment of closing costs,
2693 reduced interest mortgages, mortgage guarantee programs, mortgage
2694 forgiveness programs, equity contribution programs, or
2695 contributions to homebuyer education and/or homeownership
2696 counseling of eligible employees.

2697 (ff) For the 2010 taxable year and any taxable year
2698 thereafter, amounts converted in accordance with the United States
2699 Internal Revenue Code, as amended, from a traditional Individual
2700 Retirement Account to a Roth Individual Retirement Account. The
2701 exemption allowed under this paragraph (ff) shall be available to



2702 the spouse or other beneficiary at the death of the primary
2703 retiree.

2704 (gg) Amounts received for the performance of disaster
2705 or emergency-related work as defined in Section 27-113-5.

2706 (hh) The amount deposited in a catastrophe savings
2707 account established under Sections 27-7-1001 through 27-7-1007,
2708 interest income earned on the catastrophe savings account, and
2709 distributions from the catastrophe savings account; however, any
2710 amount withdrawn from a catastrophe savings account for purposes
2711 other than paying qualified catastrophe expenses shall be included
2712 in gross income, except as otherwise provided by Sections
2713 27-7-1001 through 27-7-1007.

2714 (ii) Interest, dividends, gains or income of any kind
2715 on any account in the Mississippi Achieving a Better Life
2716 Experience (ABLE) Trust Fund, as established in Chapter 28, Title
2717 43, to the extent that such amounts remain on deposit in the ABLE
2718 Trust Fund or are withdrawn pursuant to a qualified withdrawal, as
2719 defined in Section 43-28-11.

2720 (jj) Subject to the limitations provided under Section
2721 27-7-1103, amounts deposited into a first-time homebuyer savings
2722 account and any interest or other income earned attributable to an
2723 account and monies or funds withdrawn or distributed from an
2724 account for the payment of eligible costs by or on behalf of a
2725 qualified beneficiary; however, any monies or funds withdrawn or
2726 distributed from a first-time homebuyer savings account for any



2727 purpose other than the payment of eligible costs by or on behalf
2728 of a qualified beneficiary shall be included in gross income. For
2729 the purpose of this paragraph (jj), the terms "first-time
2730 homebuyer savings account," "eligible costs" and "qualified
2731 beneficiary" mean and have the same definitions as such terms have
2732 in Section 27-7-1101.

2733 (5) Prisoners of war, missing in action-taxable status.

2734 (a) **Members of the Armed Forces.** Gross income does not
2735 include compensation received for active service as a member of
2736 the Armed Forces of the United States for any month during any
2737 part of which such member is in a missing status, as defined in
2738 paragraph (d) of this subsection, during the Vietnam Conflict as a
2739 result of such conflict.

2740 (b) **Civilian employees.** Gross income does not include
2741 compensation received for active service as an employee for any
2742 month during any part of which such employee is in a missing
2743 status during the Vietnam Conflict as a result of such conflict.

2744 (c) **Period of conflict.** For the purpose of this
2745 subsection, the Vietnam Conflict began February 28, 1961, and ends
2746 on the date designated by the President by Executive Order as the
2747 date of the termination of combatant activities in Vietnam. For
2748 the purpose of this subsection, an individual is in a missing
2749 status as a result of the Vietnam Conflict if immediately before
2750 such status began he was performing service in Vietnam or was
2751 performing service in Southeast Asia in direct support of military



2752 operations in Vietnam. "Southeast Asia," as used in this
2753 paragraph, is defined to include Cambodia, Laos, Thailand and
2754 waters adjacent thereto.

2755 (d) "Missing status" means the status of an employee or
2756 member of the Armed Forces who is in active service and is
2757 officially carried or determined to be absent in a status of (i)
2758 missing; (ii) missing in action; (iii) interned in a foreign
2759 country; (iv) captured, beleaguered or besieged by a hostile
2760 force; or (v) detained in a foreign country against his will; but
2761 does not include the status of an employee or member of the Armed
2762 Forces for a period during which he is officially determined to be
2763 absent from his post of duty without authority.

2764 (e) "Active service" means active federal service by an
2765 employee or member of the Armed Forces of the United States in an
2766 active duty status.

2767 (f) "Employee" means one who is a citizen or national
2768 of the United States or an alien admitted to the United States for
2769 permanent residence and is a resident of the State of Mississippi
2770 and is employed in or under a federal executive agency or
2771 department of the Armed Forces.

2772 (g) "Compensation" means (i) basic pay; (ii) special
2773 pay; (iii) incentive pay; (iv) basic allowance for quarters; (v)
2774 basic allowance for subsistence; and (vi) station per diem
2775 allowances for not more than ninety (90) days.



2776 (h) If refund or credit of any overpayment of tax for
2777 any taxable year resulting from the application of this subsection
2778 (5) is prevented by the operation of any law or rule of law, such
2779 refund or credit of such overpayment of tax may, nevertheless, be
2780 made or allowed if claim therefor is filed with the Department of
2781 Revenue within three (3) years after the date of the enactment of
2782 this subsection.

2783 (i) The provisions of this subsection shall be
2784 effective for taxable years ending on or after February 28, 1961.

2785 (6) A shareholder of an S corporation, as defined in Section
2786 27-8-3(1)(g), shall take into account the income, loss, deduction
2787 or credit of the S corporation only to the extent provided in
2788 Section 27-8-7(2).

2789 **SECTION 21.** Section 31-7-3, Mississippi Code of 1972, is
2790 brought forward as follows:

2791 31-7-3. The Department of Finance and Administration shall
2792 administer the provisions of this chapter.

2793 The purposes or aims of the Department of Finance and
2794 Administration in carrying out said provisions shall be to
2795 coordinate and promote efficiency and economy in the purchase of
2796 commodities by the agencies of the state.

2797 **SECTION 22.** Section 31-7-5, Mississippi Code of 1972, is
2798 brought forward as follows:

2799 31-7-5. The Department of Finance and Administration shall
2800 prescribe rules and regulations governing the manner in which the



2801 authority and duties granted to it by law may be carried out. It
2802 shall employ suitable and competent personnel, necessary to carry
2803 out its purposes. The Department of Finance and Administration
2804 may establish an Office of Purchasing, Travel and Fleet Management
2805 and employ a competent person as Director of the Office of
2806 Purchasing, Travel and Fleet Management who shall be nonstate
2807 service and paid a salary as determined by the Executive Director
2808 of the Department of Finance and Administration with the approval
2809 of the State Personnel Board.

2810 **SECTION 23.** Section 31-7-7, Mississippi Code of 1972, is
2811 brought forward as follows:

2812 31-7-7. Through its director and other supervisory personnel
2813 and, upon its request, through the agencies of the state, the
2814 Office of General Services shall supervise the performance of the
2815 following duties imposed upon it by this chapter:

2816 (a) A study of the purchases of commodities by the
2817 agencies of the state; the compilation, exchange and coordination
2818 of information concerning same; and the distribution of such
2819 information to the agencies and governing authorities requesting
2820 same.

2821 (b) The planning and coordination of purchases in
2822 volume for the agencies in order to take advantage of and secure
2823 the economies possible by volume purchasing; the arrangement of
2824 agreements between agencies and between governing authorities
2825 whereby one may make a purchase or purchases for the other or



2826 whereby an agency may make a purchase for a governing authority;
2827 the arrangement of agreements whereby purchases of commodities can
2828 be made between an agency and another agency or governing
2829 authority at a fair price, less depreciated value; the
2830 negotiations and execution of purchasing agreements and contracts
2831 through and under which the Office of General Services may require
2832 state agencies to purchase; and the obtaining or establishment of
2833 methods for obtaining of competitive bid prices upon which any
2834 agency of the state may purchase at the price approved by the
2835 Office of General Services.

2836 (c) The arrangement of provisions in purchase contracts
2837 of the state, or any agency, providing that the same price for
2838 which a commodity is available to an agency, may also, during the
2839 period of time provided therein, be available to any governing
2840 authority.

2841 **SECTION 24.** Section 31-7-9, Mississippi Code of 1972, is
2842 brought forward as follows:

2843 31-7-9. (1) (a) The Office of Purchasing, Travel and Fleet
2844 Management shall adopt purchasing regulations governing the
2845 purchase by any agency of any commodity or commodities and
2846 establishing standards and specifications for a commodity or
2847 commodities and the maximum fair prices of a commodity or
2848 commodities, subject to the approval of the Public Procurement
2849 Review Board. It shall have the power to amend, add to or
2850 eliminate purchasing regulations. The adoption of, amendment,



2851 addition to or elimination of purchasing regulations shall be
2852 based upon a determination by the Office of Purchasing, Travel and
2853 Fleet Management with the approval of the Public Procurement
2854 Review Board, that such action is reasonable and practicable and
2855 advantageous to promote efficiency and economy in the purchase of
2856 commodities by the agencies of the state. Upon the adoption of
2857 any purchasing regulation, or an amendment, addition or
2858 elimination therein, copies of same shall be furnished to the
2859 State Auditor and to all agencies affected thereby. Thereafter,
2860 and except as otherwise may be provided in subsection (2) of this
2861 section, no agency of the state shall purchase any commodities
2862 covered by existing purchasing regulations unless such commodities
2863 be in conformity with the standards and specifications set forth
2864 in the purchasing regulations and unless the price thereof does
2865 not exceed the maximum fair price established by such purchasing
2866 regulations. The Office of Purchasing, Travel and Fleet
2867 Management shall furnish to any county or municipality or other
2868 local public agency of the state requesting same, copies of
2869 purchasing regulations adopted by the Office of Purchasing, Travel
2870 and Fleet Management and any amendments, changes or eliminations
2871 of same that may be made from time to time.

2872 (b) The Office of Purchasing, Travel and Fleet
2873 Management may adopt purchasing regulations governing the use of
2874 credit cards, procurement cards and purchasing club membership
2875 cards to be used by state agencies, governing authorities of



2876 counties and municipalities, school districts and the Chickasawhay
2877 Natural Gas District. Use of the cards shall be in strict
2878 compliance with the regulations promulgated by the office. Any
2879 amounts due on the cards shall incur interest charges as set forth
2880 in Section 31-7-305 and shall not be considered debt.

2881 (c) Pursuant to the provision of Section 37-61-33(3),
2882 the Office of Purchasing, Travel and Fleet Management of the
2883 Department of Finance and Administration is authorized to issue
2884 procurement cards to all public school district classroom teachers
2885 and other necessary direct support personnel at the beginning of
2886 the school year for the purchase of instructional supplies using
2887 Educational Enhancement Funds. The cards will be issued in equal
2888 amounts per teacher determined by the total number of qualifying
2889 personnel and the then current state appropriation for classroom
2890 instructional supplies under the Education Enhancement Fund. All
2891 purchases shall be in accordance with state law and teachers are
2892 responsible for verification of capital asset requirements when
2893 pooling monies to purchase equipment. The cards will expire on a
2894 predetermined date at the end of each school year. All unexpended
2895 amounts will be carried forward, to be combined with the following
2896 year's instructional supply fund allocation, and reallocated for
2897 the following year. The Department of Finance and Administration
2898 is authorized to loan any start-up funds at the beginning of the
2899 school year to fund this procurement system for instructional



2900 supplies with loan repayment being made from sales tax receipts
2901 earmarked for the Education Enhancement Fund.

2902 (d) In a sale of goods or services, the seller shall
2903 not impose a surcharge on a buyer who uses a state-issued credit
2904 card, procurement card, travel card, or fuel card. The Department
2905 of Finance and Administration shall have exclusive jurisdiction to
2906 enforce and adopt rules relating to this paragraph. Any rules
2907 adopted under this paragraph shall be consistent with federal laws
2908 and regulations governing credit card transactions described by
2909 this paragraph. This paragraph does not create a cause of action
2910 against an individual for a violation of this paragraph.

2911 (2) The Office of Purchasing, Travel and Fleet Management
2912 shall adopt, subject to the approval of the Public Procurement
2913 Review Board, purchasing regulations governing the purchase of
2914 unmarked vehicles to be used by the Bureau of Narcotics and
2915 Department of Public Safety in official investigations pursuant to
2916 Section 25-1-87. Such regulations shall ensure that purchases of
2917 such vehicles shall be at a fair price and shall take into
2918 consideration the peculiar needs of the Bureau of Narcotics and
2919 Department of Public Safety in undercover operations.

2920 (3) The Office of Purchasing, Travel and Fleet Management
2921 shall adopt, subject to the approval of the Public Procurement
2922 Review Board, regulations governing the certification process for
2923 certified purchasing offices, including the Mississippi Purchasing
2924 Certification Program, which shall be required of all purchasing



2925 agents at state agencies. Such regulations shall require entities
2926 desiring to be classified as certified purchasing offices to
2927 submit applications and applicable documents on an annual basis,
2928 and in the case of a state agency purchasing office, to have one
2929 hundred percent (100%) participation and completion by purchasing
2930 agents in the Mississippi Purchasing Certification Program, at
2931 which time the Office of Purchasing, Travel and Fleet Management
2932 may provide the governing entity with a certification valid for
2933 one (1) year from the date of issuance. The Office of Purchasing,
2934 Travel and Fleet Management shall set a fee in an amount that
2935 recovers its costs to administer the Mississippi Purchasing
2936 Certification Program, which shall be assessed to the
2937 participating state agencies.

2938 **SECTION 25.** Section 31-7-10, Mississippi Code of 1972, is
2939 brought forward as follows:

2940 31-7-10. (1) For the purposes of this section, the term
2941 "equipment" shall mean equipment, furniture, and if applicable,
2942 associated software and other applicable direct costs associated
2943 with the acquisition. In addition to its other powers and duties,
2944 the Department of Finance and Administration shall have the
2945 authority to develop a master lease-purchase program and, pursuant
2946 to that program, shall have the authority to execute on behalf of
2947 the state master lease-purchase agreements for equipment to be
2948 used by an agency, as provided in this section. Each agency
2949 electing to acquire equipment by a lease-purchase agreement shall



2950 participate in the Department of Finance and Administration's
2951 master lease-purchase program, unless the Department of Finance
2952 and Administration makes a determination that such equipment
2953 cannot be obtained under the program or unless the equipment can
2954 be obtained elsewhere at an overall cost lower than that for which
2955 the equipment can be obtained under the program. Such
2956 lease-purchase agreements may include the refinancing or
2957 consolidation, or both, of any state agency lease-purchase
2958 agreements entered into after June 30, 1990.

2959 (2) All funds designated by agencies for procurement of
2960 equipment and financing thereof under the master lease-purchase
2961 program shall be paid into a special fund created in the State
2962 Treasury known as the "Master Lease-Purchase Program Fund," which
2963 shall be used by the Department of Finance and Administration for
2964 payment to the lessors for equipment acquired under master
2965 lease-purchase agreements.

2966 (3) Upon final approval of an appropriation bill, each
2967 agency shall submit to the Public Procurement Review Board a
2968 schedule of proposed equipment acquisitions for the master
2969 lease-purchase program. Upon approval of an equipment schedule by
2970 the Public Procurement Review Board with the advice of the
2971 Department of Information Technology Services, the Office of
2972 Purchasing, Travel and Fleet Management, and the Division of
2973 Energy and Transportation of the Mississippi Development Authority
2974 as it pertains to energy efficient climate control systems, the



2975 Public Procurement Review Board shall forward a copy of the
2976 equipment schedule to the Department of Finance and
2977 Administration.

2978 (4) The level of lease-purchase debt recommended by the
2979 Department of Finance and Administration shall be subject to
2980 approval by the State Bond Commission. After such approval, the
2981 Department of Finance and Administration shall be authorized to
2982 advertise and solicit written competitive proposals for a lessor,
2983 who will purchase the equipment pursuant to bid awards made by the
2984 using agency under a given category and then transfer the
2985 equipment to the Department of Finance and Administration as
2986 lessee, pursuant to a master lease-purchase agreement.

2987 The Department of Finance and Administration shall select the
2988 successful proposer for the financing of equipment under the
2989 master lease-purchase program with the approval of the State Bond
2990 Commission.

2991 (5) Each master lease-purchase agreement, and any subsequent
2992 amendments, shall include such terms and conditions as the State
2993 Bond Commission shall determine to be appropriate and in the
2994 public interest, and may include any covenants deemed necessary or
2995 desirable to protect the interests of the lessor, including, but
2996 not limited to, provisions setting forth the interest rate (or
2997 method for computing interest rates) for financing pursuant to
2998 such agreement, covenants concerning application of payments and
2999 funds held in the Master Lease-Purchase Program Fund, covenants to



3000 maintain casualty insurance with respect to equipment subject to
3001 the master lease-purchase agreement (and all state agencies are
3002 specifically authorized to purchase any insurance required by a
3003 master lease-purchase agreement) and covenants precluding or
3004 limiting the right of the lessee or user to acquire equipment
3005 within a specified time (not to exceed five (5) years) after
3006 cancellation on the basis of a failure to appropriate funds for
3007 payment of amounts due under a lease-purchase agreement covering
3008 comparable equipment. The State Bond Commission shall transmit
3009 copies of each such master lease-purchase agreement and each such
3010 amendment to the Joint Legislative Budget Committee. To the
3011 extent provided in any master lease-purchase agreement, title to
3012 equipment leased pursuant thereto shall be deemed to be vested in
3013 the state or the user of the equipment (as specified in such
3014 master lease-purchase agreement), subject to default under or
3015 termination of such master lease-purchase agreement.

3016 A master lease-purchase agreement may provide for payment by
3017 the lessor to the lessee of the purchase price of the equipment to
3018 be acquired pursuant thereto prior to the date on which payment is
3019 due to the vendor for such equipment and that the lease payments
3020 by the lessee shall commence as though the equipment had been
3021 provided on the date of payment. If the lessee, or lessee's
3022 escrow agent, has sufficient funds for payment of equipment
3023 purchases prior to payment due date to vendor of equipment, such
3024 funds shall be held or utilized on an as-needed basis for payment



3025 of equipment purchases either by the State Treasurer (in which
3026 event the master lease-purchase agreement may include provisions
3027 concerning the holding of such funds, the creation of a security
3028 interest for the benefit of the lessor in such funds until
3029 disbursed and other appropriate provisions approved by the Bond
3030 Commission) or by a corporate trustee selected by the Department
3031 of Finance and Administration (in which event the Department of
3032 Finance and Administration shall have the authority to enter into
3033 an agreement with such a corporate trustee containing terms and
3034 conditions approved by the Bond Commission). Earnings on any
3035 amount paid by the lessor prior to the acquisition of the
3036 equipment may be used to make lease payments under the master
3037 lease-purchase agreement or applied to pay costs and expenses
3038 incurred in connection with such lease-purchase agreement. In
3039 such event, the equipment-use agreements with the user agency may
3040 provide for lease payments to commence upon the date of payment by
3041 the lessor and may also provide for a credit against such payments
3042 to the extent that investment receipts from investment of the
3043 purchase price are to be used to make lease-purchase payments.

3044 (6) The annual rate of interest paid under any
3045 lease-purchase agreement authorized under this section shall not
3046 exceed the maximum interest rate to maturity on general obligation
3047 indebtedness permitted under Section 75-17-101.

3048 (7) The Department of Finance and Administration shall
3049 furnish the equipment to the various agencies, also known as the



3050 user, pursuant to an equipment-use agreement developed by the
3051 Department of Finance and Administration. Such agreements shall
3052 require that all monthly payments due from such agency be paid,
3053 transferred or allocated into the Master Lease-Purchase Program
3054 Fund pursuant to a schedule established by the Department of
3055 Finance and Administration. In the event such sums are not paid
3056 by the defined payment period, the Executive Director of the
3057 Department of Finance and Administration shall issue a requisition
3058 for a warrant to draw such amount as may be due from any funds
3059 appropriated for the use of the agency which has failed to make
3060 the payment as agreed.

3061 (8) All master lease-purchase agreements executed under the
3062 authority of this section shall contain the following annual
3063 allocation dependency clause or an annual allocation dependency
3064 clause which is substantially equivalent thereto: "The
3065 continuation of each equipment schedule to this agreement is
3066 contingent in whole or in part upon the appropriation of funds by
3067 the Legislature to make the lease-purchase payments required under
3068 such equipment schedule. If the Legislature fails to appropriate
3069 sufficient funds to provide for the continuation of the
3070 lease-purchase payments under any such equipment schedule, then
3071 the obligations of the lessee and of the agency to make such
3072 lease-purchase payments and the corresponding provisions of any
3073 such equipment schedule to this agreement shall terminate on the
3074 last day of the fiscal year for which appropriations were made."



3075 (9) The maximum lease term for any equipment acquired under
3076 the master lease-purchase program shall not exceed the useful life
3077 of such equipment as determined according to the upper limit of
3078 the asset depreciation range (ADR) guidelines for the Class Life
3079 Asset Depreciation Range System established by the Internal
3080 Revenue Service pursuant to the United States Internal Revenue
3081 Code and Regulations thereunder as in effect on December 31, 1980,
3082 or comparable depreciation guidelines with respect to any
3083 equipment not covered by ADR guidelines. The Department of
3084 Finance and Administration shall be deemed to have met the
3085 requirements of this subsection if the term of a master
3086 lease-purchase agreement does not exceed the weighted average
3087 useful life of all equipment covered by such agreement and the
3088 schedules thereto as determined by the Department of Finance and
3089 Administration. For purposes of this subsection, the "term of a
3090 master lease-purchase agreement" shall be the weighted average
3091 maturity of all principal payments to be made under such master
3092 lease-purchase agreement and all schedules thereto.

3093 (10) Interest paid on any master lease-purchase agreement
3094 under this section shall be exempt from State of Mississippi
3095 income taxation. All equipment, and the purchase thereof by any
3096 lessor, acquired under the master lease-purchase program and all
3097 lease-purchase payments with respect thereto shall be exempt from
3098 all Mississippi sales, use and ad valorem taxes.



3099 (11) The Governor, in his annual executive budget to the
3100 Legislature, shall recommend appropriations sufficient to provide
3101 funds to pay all amounts due and payable during the applicable
3102 fiscal year under master lease-purchase agreements entered into
3103 pursuant to this section.

3104 (12) Any master lease-purchase agreement reciting in
3105 substance that such agreement has been entered into pursuant to
3106 this section shall be conclusively deemed to have been entered
3107 into in accordance with all of the provisions and conditions set
3108 forth in this section. Any defect or irregularity arising with
3109 respect to procedures applicable to the acquisition of any
3110 equipment shall not invalidate or otherwise limit the obligation
3111 of the Department of Finance and Administration, or the state or
3112 any agency of the state, under any master lease-purchase agreement
3113 or any equipment-use agreement.

3114 (13) There shall be maintained by the Department of Finance
3115 and Administration, with respect to each master lease-purchase
3116 agreement, an itemized statement of the cash price, interest
3117 rates, interest costs, commissions, debt service schedules and all
3118 other costs and expenses paid by the state incident to the
3119 lease-purchase of equipment under such agreement.

3120 (14) Lease-purchase agreements entered into by the Board of
3121 Trustees of State Institutions of Higher Learning pursuant to the
3122 authority of Section 37-101-413 or by any other agency which has
3123 specific statutory authority other than pursuant to Section



3124 31-7-13(e) to acquire equipment by lease-purchase shall not be
3125 made pursuant to the master lease-purchase program under this
3126 section, unless the Board of Trustees of State Institutions of
3127 Higher Learning or such other agency elects to participate as to
3128 part or all of its lease-purchase acquisitions in the master
3129 lease-purchase program pursuant to this section.

3130 (15) The Department of Finance and Administration may
3131 develop a master lease-purchase program for school districts and,
3132 pursuant to that program, may execute on behalf of the school
3133 districts master lease-purchase agreements for equipment to be
3134 used by the school districts. The form and structure of this
3135 program shall be substantially the same as set forth in this
3136 section for the master lease-purchase program for state agencies.
3137 If sums due from a school district under the master lease-purchase
3138 program are not paid by the expiration of the defined payment
3139 period, the Executive Director of the Department of Finance and
3140 Administration may withhold such amount that is due from the
3141 school district's minimum education or adequate education program
3142 fund allotments.

3143 (16) The Department of Finance and Administration may
3144 develop a master lease-purchase program for community and junior
3145 college districts and, pursuant to that program, may execute on
3146 behalf of the community and junior college districts master
3147 lease-purchase agreements for equipment to be used by the
3148 community and junior college districts. The form and structure of



3149 this program must be substantially the same as set forth in this
3150 section for the master lease-purchase program for state agencies.
3151 If sums due from a community or junior college district under the
3152 master lease-purchase program are not paid by the expiration of
3153 the defined payment period, the Executive Director of the
3154 Department of Finance and Administration may withhold an amount
3155 equal to the amount due under the program from any funds allocated
3156 for that community or junior college district in the state
3157 appropriations for the use and support of the community and junior
3158 colleges.

3159 (17) From and after July 1, 2016, the expenses of this
3160 agency shall be defrayed by appropriation from the State General
3161 Fund and all user charges and fees authorized under this section
3162 shall be deposited into the State General Fund as authorized by
3163 law.

3164 (18) From and after July 1, 2016, no state agency shall
3165 charge another state agency a fee, assessment, rent or other
3166 charge for services or resources received by authority of this
3167 section.

3168 **SECTION 26.** Section 31-7-11, Mississippi Code of 1972, is
3169 brought forward as follows:

3170 31-7-11. Each agency of the state shall furnish information
3171 relative to its purchase of commodities, and as to its method of
3172 purchasing such commodities, to the Department of Finance and



3173 Administration annually and at such other times as the Department
3174 of Finance and Administration may request.

3175 The Department of Finance and Administration shall have
3176 supervision over the purchasing and purchasing practices of each
3177 state agency and may by regulation or order correct any practice
3178 that appears contrary to the provisions of this chapter or to the
3179 best interests of the state. If it shall appear that any agency
3180 is not practicing economy in its purchasing or is permitting
3181 favoritism or any improper purchasing practice, the Department of
3182 Finance and Administration shall require that the agency
3183 immediately cease such improper activity, with full and complete
3184 authority in the Department of Finance and Administration to carry
3185 into effect its directions in such regard.

3186 All purchases, trade-ins, sales or transfer of personal
3187 property made by any officer, board, agency, department or branch
3188 of the state government except the Legislature shall be subject to
3189 the approval of the Department of Finance and Administration.
3190 Such transaction shall be made in accordance with rules and
3191 regulations of the Department of Finance and Administration
3192 relating to the purchase of state-owned motor vehicles and all
3193 other personal property. The title of such property shall remain
3194 in the name of the state.

3195 **SECTION 27.** Section 31-7-12, Mississippi Code of 1972, is
3196 brought forward as follows:



3197 31-7-12. (1) Except in regard to purchases of unmarked
3198 vehicles made in accordance with purchasing regulations adopted by
3199 the Department of Finance and Administration pursuant to Section
3200 31-7-9(2), all agencies shall purchase commodities at the state
3201 contract price from the approved source, unless approval is
3202 granted by the Department of Finance and Administration to solicit
3203 purchases outside the terms of the contracts. However, prices
3204 accepted by an agency shall be less than the prices set by the
3205 state contract. Prices accepted by an agency shall be obtained in
3206 compliance with paragraph (a), (b) or (c) of Section 31-7-13. It
3207 shall be the responsibility of the Department of Finance and
3208 Administration to ascertain that the resulting prices shall
3209 provide a cost effective alternative to the established state
3210 contract.

3211 (2) Governing authorities may purchase commodities approved
3212 by the Department of Finance and Administration from the state
3213 contract vendor, or from any source offering the identical
3214 commodity, at a price not exceeding the state contract price
3215 established by the Department of Finance and Administration for
3216 such commodity, without obtaining or advertising for competitive
3217 bids. Governing authorities that do not exercise the option to
3218 purchase such commodities from the state contract vendor or from
3219 another source offering the identical commodity at a price not
3220 exceeding the state contract price established by the Department
3221 of Finance and Administration shall make such purchases pursuant



3222 to the provisions of Section 31-7-13 without regard to state
3223 contract prices established by the Department of Finance and
3224 Administration, unless such purchases are authorized to be made
3225 under subsection (5) of this section.

3226 (3) Nothing in this section shall prohibit governing
3227 authorities from purchasing, pursuant to subsection (2) of this
3228 section, commodities approved by the Department of Finance and
3229 Administration at a price not exceeding the state contract price
3230 established by the Department of Finance and Administration.

3231 (4) The Department of Finance and Administration shall
3232 ensure that the prices of all commodities on the state contract
3233 are the lowest and best prices available from any source offering
3234 that commodity at the same level of quality or service, utilizing
3235 the reasonable standards established therefor by the Department of
3236 Finance and Administration. If the Department of Finance and
3237 Administration does not list an approved price for the particular
3238 item involved, purchase shall be made according to statutory
3239 bidding and licensing requirements. To encourage prudent
3240 purchasing practices, the Department of Finance and Administration
3241 shall be authorized and empowered to exempt certain commodities
3242 from the requirement that the lowest and best price be approved by
3243 order placed on its minutes.

3244 (5) Any school district may purchase commodities from
3245 vendors with which any levying authority of the school district,
3246 as defined in Section 37-57-1, has contracted through competitive



3247 bidding procedures pursuant to Section 31-7-13 for purchases of
3248 the same commodities. Purchases authorized by this subsection may
3249 be made by a school district without obtaining or advertising for
3250 competitive bids, and such purchases shall be made at the same
3251 prices and under the same conditions as purchases of the same
3252 commodities are to be made by the levying authority of the school
3253 district under the contract with the vendor.

3254 **SECTION 28.** Section 31-7-13.1, Mississippi Code of 1972, is
3255 brought forward as follows:

3256 31-7-13.1. (1) The method of contracting for construction
3257 described in this section shall be known as the "dual-phase
3258 design-build method" of construction contracting. This method of
3259 construction contracting may be used only when the Legislature has
3260 specifically required or authorized the use of this method in the
3261 legislation authorizing a project. At a minimum, the
3262 determination must include a detailed explanation of why using the
3263 dual-phase design-build method for a particular project satisfies
3264 the public need better than the traditional design-bid-build
3265 method based on the following criteria:

3266 (a) The project provides a savings in time or cost over
3267 traditional methods; and

3268 (b) The size and type of the project is suitable for
3269 design-build.

3270 (2) For each proposed dual-phase design-build project, a
3271 two-phase procedure for awarding a contract must be adopted.



3272 During Phase One, and before solicitation of initial proposals,
3273 the agency or governing authority shall develop, with the
3274 assistance of an architectural or engineering firm, a scope of
3275 work statement that provides prospective offerors with sufficient
3276 information regarding the requirements of the agency or governing
3277 authority. The scope of work statement must include, but is not
3278 limited to, the following information:

3279 (a) Drawings must show overall building dimensions and
3280 major lines of dimensions, and site plans that show topography,
3281 adjacent buildings and utilities;

3282 (b) Drawings must include information to adequately
3283 explain HVAC, electrical and structural requirements;

3284 (c) The scope of work statement also must include
3285 building elevations, sections and design details; and

3286 (d) The scope of work statement must include general
3287 budget parameters, schedule or delivery requirements, relevant
3288 criteria for evaluation of proposals, and any other information
3289 necessary to enable the design-builders to submit proposals that
3290 meet the needs of the agency or governing authority.

3291 (3) The agency or governing authority shall cause to be
3292 published once a week, for at least two (2) consecutive weeks in a
3293 regular newspaper published in the county in which the project is
3294 to be located, or a newspaper with statewide circulation, a notice
3295 inviting proposals for the dual-phase design-build construction
3296 project. The proposals shall not be opened in less than fifteen



3297 (15) working days after the last notice is published. The notice
3298 must inform potential offerors of how to obtain the scope of work
3299 statement developed for the project, and the notice must contain
3300 such other information to describe adequately the general nature
3301 and scope of the project so as to promote full, equal and open
3302 competition.

3303 (4) The agency or governing authority shall accept initial
3304 proposals only from entities able to provide an experienced and
3305 qualified design-build team that includes, at a minimum, an
3306 architectural or engineering firm registered in Mississippi and a
3307 contractor properly licensed and domiciled in Mississippi for the
3308 type of work required. From evaluation of initial proposals under
3309 Phase One, the agency or governing authority shall select a
3310 minimum of two (2) and a maximum of five (5) design-builders as
3311 "short-listed firms" to submit proposals for Phase Two.

3312 (5) During Phase Two, the short-listed firms will be invited
3313 to submit detailed designs, specific technical concepts or
3314 solutions, pricing, scheduling and other information deemed
3315 appropriate by the agency or governing authority as necessary to
3316 evaluate and rank acceptability of the Phase Two proposals. After
3317 evaluation of these Phase Two proposals, the agency or governing
3318 authority shall award a contract to the design-builder determined
3319 to offer the best value to the public in accordance with
3320 evaluation criteria set forth in the request for proposals, of
3321 which price must be one, but not necessarily the only, criterion.



3322 (6) If the agency or governing authority accepts a proposal
3323 other than the lowest dollar proposal actually submitted, the
3324 agency or governing authority shall enter on its minutes detailed
3325 calculations and a narrative summary showing why the accepted
3326 proposal was determined to provide the best value, and the agency
3327 or governing authority shall state specifically on its minutes the
3328 justification for its award.

3329 (7) All facilities that are governed by this section shall
3330 be designed and constructed to comply with standards equal to or
3331 exceeding the minimum building code standards employed by the
3332 state as required under Section 31-11-33 in force at the time of
3333 contracting. All private contractors or private entities
3334 contracting or performing under this section must comply at all
3335 times with all applicable laws, codes and other legal requirements
3336 pertaining to the project.

3337 (8) At its discretion, the agency or governing authority may
3338 award a stipulated fee equal to a percentage, as prescribed in the
3339 request for proposals, of the project's final design and
3340 construction budget, as prescribed in the request for proposals,
3341 but not less than two-tenths of one percent (2/10 of 1%) of the
3342 project's final design and construction budget, to each short-list
3343 offeror who provides a responsive, but unsuccessful, proposal. If
3344 the agency or governing authority does not award a contract, all
3345 responsive final list offerors shall receive the stipulated fee
3346 based on the owner's estimate of the project final design and



3347 construction budget as included in the request for proposals. The
3348 agency or governing authority shall pay the stipulated fee to each
3349 offeror within ninety (90) days after the award of the initial
3350 contract or the decision not to award a contract. In
3351 consideration for paying the stipulated fee, the agency or
3352 governing authority may use any ideas or information contained in
3353 the proposals in connection with any contract awarded for the
3354 project, or in connection with a subsequent procurement, without
3355 any obligation to pay any additional compensation to the
3356 unsuccessful offerors. Notwithstanding the other provisions of
3357 this subsection, an unsuccessful short-list offeror may elect to
3358 waive the stipulated fee. If an unsuccessful short-list offeror
3359 elects to waive the stipulated fee, the agency or governing
3360 authority may not use ideas and information contained in the
3361 offeror's proposal, except that this restriction does not prevent
3362 the agency or governing authority from using any idea or
3363 information if the idea or information is also included in a
3364 proposal of an offeror that accepts the stipulated fee.

3365 (9) This section shall not authorize the awarding of
3366 construction contracts according to any contracting method that
3367 does not require the contractor to satisfactorily perform, at a
3368 minimum, both any balance of design, using an independent
3369 professional licensed in Mississippi, and construction of the
3370 project for which the contract is awarded.



3371 (10) The provisions of this section shall not affect any
3372 procurement by the Mississippi Transportation Commission.

3373 (11) The provisions of this section shall not apply to
3374 procurement authorized in Section 59-5-37(3).

3375 **SECTION 29.** Section 31-7-13.2, Mississippi Code of 1972, is
3376 brought forward as follows:

3377 31-7-13.2 (1) When used in this section, "construction
3378 manager at risk" means a method of project delivery in which a
3379 construction manager guarantees a maximum price for the
3380 construction of a project and in which the governing authority or
3381 board, before using this method of project delivery, shall include
3382 a detailed explanation of why using the construction manager at
3383 risk method of project delivery for a particular project satisfies
3384 the public need better than that traditional design-bid-build
3385 method based on the following criteria:

3386 (a) The use of construction manager at risk for the
3387 project provides a savings in time or cost over traditional
3388 methods; and

3389 (b) The size and type of the project is suitable for
3390 use of the construction management at risk method of project
3391 delivery.

3392 (2) When the construction manager at risk method of project
3393 delivery is used:

3394 (a) There may be a separate contract for design
3395 services and a separate contract for construction services;



3396 (b) The contract for construction services may be
3397 entered into at the same time as a contract for the design
3398 services or later;

3399 (c) Design and construction of the project may be in
3400 sequential or concurrent phases; and

3401 (d) Finance, maintenance, operation, reconstruction or
3402 other related services may be included for a guaranteed maximum
3403 price.

3404 (3) When procuring design professional services under a
3405 construction manager at risk project delivery method, the agency
3406 or governing authority shall procure the services of a design
3407 professional pursuant to qualifications-based selection
3408 procedures.

3409 (4) Before the substantial completion of the design
3410 documents, the agency or governing authority may elect to hire a
3411 construction manager.

3412 (5) When procuring construction management services, the
3413 agency or governing authority shall follow the
3414 qualifications-based selection procedures as outlined in
3415 subsection (10) of this section or the competitive sealed proposal
3416 procedures as outlined in Section 31-17-13.

3417 (6) The agency or governing authority may require the
3418 architect or engineer and the construction manager, by contract,
3419 to cooperate in the design, planning and scheduling, and
3420 construction process. The contract shall not make the primary



3421 designer or construction manager a subcontractor or joint-venture
3422 partner to the other or limit the primary designer's or
3423 construction manager's independent obligations to the agency or
3424 governing authority.

3425 (7) Notwithstanding anything to the contrary in this
3426 chapter:

3427 (a) Each project for construction under a construction
3428 manager at risk contract shall be a specific, single project with
3429 a minimum construction cost of Twenty-five Million Dollars
3430 (\$25,000,000.00).

3431 (b) Each project under a construction manager at risk
3432 contract shall be a specific, single project. For the purposes of
3433 this paragraph, "specific, single project" means a project that is
3434 constructed at a single location, at a common location or for a
3435 common purpose.

3436 (8) Agencies shall retain an independent architectural or
3437 engineering firm to provide guidance and administration of the
3438 professional engineering or professional architecture aspects of
3439 the project throughout the development of the scope, design, and
3440 construction of the project.

3441 (9) The state shall, on an annual basis, compile and make
3442 public all proceedings, records, contracts and other public
3443 records relating to procurement transactions authorized under this
3444 section.



3445 (10) For purposes of this section, the "qualifications-based
3446 selection procedure" shall include:

3447 (a) Publicly announcing all requirements for
3448 architectural, engineering, and land surveying services, to
3449 procure these services on the basis of demonstrated competence and
3450 qualifications, and to negotiate contracts at fair and reasonable
3451 prices after the most qualified firm has been selected.

3452 (b) Agencies or governing authorities shall establish
3453 procedures to prequalify firms seeking to provide architectural,
3454 engineering, and land surveying services or may use
3455 prequalification lists from other state agencies or governing
3456 authorities to meet the requirements of this section.

3457 (c) Whenever a project requiring architectural,
3458 engineering, or land surveying services is proposed for an agency
3459 or governing authority, the agency or governing authority shall
3460 provide advance notice published in a professional services
3461 bulletin or advertised within the official state newspaper setting
3462 forth the projects and services to be procured for not less than
3463 fourteen (14) days. The professional services bulletin shall be
3464 mailed to each firm that has requested the information or is
3465 prequalified under Section 31-7-13. The professional services
3466 bulletin shall include a description of each project and shall
3467 state the time and place for interested firms to submit a letter
3468 of interest and, if required by the public notice, a statement of
3469 qualifications.



3470 (d) The agency or governing authority shall evaluate
3471 the firms submitting letters of interest and other prequalified
3472 firms, taking into account qualifications. The agency or
3473 governing authority may consider, but shall not be limited to,
3474 considering:

- 3475 (i) Ability of professional personnel;
- 3476 (ii) Past record and experience;
- 3477 (iii) Performance data on file;
- 3478 (iv) Willingness to meet time requirements;
- 3479 (v) Location;
- 3480 (vi) Workload of the firm; and
- 3481 (vii) Any other qualifications-based factors as
3482 the agency or governing authority may determine in writing are
3483 applicable.

3484 The agency or governing authority may conduct discussions
3485 with and require public presentations by firms deemed to be the
3486 most qualified regarding their qualifications, approach to the
3487 project and ability to furnish the required services.

3488 (e) The agency or governing authority shall establish a
3489 committee to select firms to provide architectural, engineering,
3490 and land surveying services. A selection committee may include at
3491 least one (1) public member nominated by a statewide association
3492 of the profession affected. The public member may not be employed
3493 or associated with any firm holding a contract with the agency or
3494 governing authority nor may the public member's firm be considered



3495 for a contract with that agency or governing authority while
3496 serving as a public member of the committee. In no case shall the
3497 agency or governing authority, before selecting a firm for
3498 negotiation under paragraph (f) of this section, seek formal or
3499 informal submission of verbal or written estimates of costs or
3500 proposals in terms of dollars, hours required, percentage of
3501 construction cost, or any other measure of compensation.

3502 (f) On the basis of evaluations, discussions, and any
3503 presentations, the agency or governing authority shall select no
3504 less than three (3) firms that it determines to be qualified to
3505 provide services for the project and rank them in order of
3506 qualifications to provide services regarding the specific project.
3507 The agency or governing authority shall then contact the firm
3508 ranked most preferred to negotiate a contract at a fair and
3509 reasonable compensation. If fewer than three (3) firms submit
3510 letters of interest and the agency or governing authority
3511 determines that one (1) or both of those firms are so qualified,
3512 the agency or governing authority may proceed to negotiate a
3513 contract under paragraph (g) of this section.

3514 (g) The agency or governing authority shall prepare a
3515 written description of the scope of the proposed services to be
3516 used as a basis for negotiations and shall negotiate a contract
3517 with the highest qualified firm at compensation that the agency or
3518 governing authority determines in writing to be fair and
3519 reasonable. In making this decision, the agency or governing



3520 authority shall take into account the estimated value, scope,
3521 complexity, and professional nature of the services to be
3522 rendered. In no case may the agency or governing authority
3523 establish a maximum overhead rate or other payment formula
3524 designed to eliminate firms from contention or restrict
3525 competition or negotiation of fees. If the agency or governing
3526 authority is unable to negotiate a satisfactory contract with the
3527 firm that is most preferred, negotiations with that firm shall be
3528 terminated. The agency or governing authority shall then begin
3529 negotiations with the firm that is next preferred. If the agency
3530 or governing authority is unable to negotiate a satisfactory
3531 contract with that firm, negotiations with that firm shall be
3532 terminated. The agency or governing authority shall then begin
3533 negotiations with the firm that is next preferred. If the agency
3534 or governing authority is unable to negotiate a satisfactory
3535 contract with any of the selected firms, the agency or governing
3536 authority shall reevaluate the architectural, engineering, or land
3537 surveying services requested, including the estimated value,
3538 scope, complexity, and fee requirements. The agency or governing
3539 authority shall then compile a second list of not less than three
3540 (3) qualified firms and proceed in accordance with the provisions
3541 of this section. A firm negotiating a contract with an agency or
3542 governing authority shall negotiate subcontracts for
3543 architectural, engineering, and land surveying services at
3544 compensation that the firm determines in writing to be fair and



3545 reasonable based upon a written description of the scope of the
3546 proposed services.

3547 (11) The provisions of this section shall not affect any
3548 procurement by the Mississippi Transportation Commission.

3549 **SECTION 30.** Section 31-7-14, Mississippi Code of 1972, is
3550 brought forward as follows:

3551 31-7-14. (1) (a) For purposes of this section, the
3552 following words and phrases shall have the meaning ascribed
3553 herein, unless the context clearly indicates otherwise:

3554 (i) "Division" means the Energy Division of the
3555 Mississippi Development Authority.

3556 (ii) "Energy services" or "energy efficient
3557 services" means energy efficiency equipment, services relating to
3558 the installation, operation and maintenance of equipment and
3559 improvements reasonably required to existing or new equipment and
3560 existing or new improvements and facilities including, but not
3561 limited to, heating, ventilation and air-conditioning systems,
3562 lighting, windows, insulation and energy management controls, life
3563 safety measures that provide long-term, operating-cost reductions,
3564 building operation programs that reduce operating costs,
3565 alternative fuel motor vehicles including vehicles that have been
3566 converted to such and ancillary equipment related to or associated
3567 with the fueling of alternative fuel motor vehicles, or other
3568 energy-conservation-related improvements, including improvements
3569 or equipment related to renewable energy, water and other natural



3570 resources conservation, including accuracy and measurement of
3571 water distribution and/or consumption, and other equipment,
3572 services and improvements providing verifiable cost savings.

3573 (iii) "Energy services provider" means a person or
3574 business with a successful record of documented energy savings
3575 projects that is experienced in the design, implementation and
3576 installation of energy conservation measures; has the technical
3577 capabilities to verify that such measures generate energy and
3578 operational cost savings or enhanced revenues; has the ability to
3579 guarantee the savings; has the ability to secure or arrange the
3580 financing necessary to support the implementation of the energy
3581 conservation measures; and is approved by the division.

3582 Approval by the division of an energy services provider shall
3583 be granted in a prequalification process.

3584 Such energy services providers may petition the division to
3585 review their qualifications and deem them to be qualified for
3586 inclusion on a prequalification list if they meet the
3587 qualifications set forth by the division.

3588 Any energy services project that has been competitively bid
3589 and awarded prior to any change in law shall be allowed to
3590 continue under the laws current at the time the project was
3591 awarded.

3592 The division shall ensure that small businesses are not
3593 disadvantaged in the determination of a qualified energy services
3594 provider.



3595 (iv) "Entity" means the board of trustees of any
3596 public school district, junior college, institution of higher
3597 learning, publicly owned hospital, state agency or governmental
3598 authority under this chapter.

3599 (v) "Energy services contract" means an agreement
3600 to provide energy services which include, but are not limited to,
3601 the design, installation, financing and maintenance or management
3602 of the energy systems or equipment in order to improve its energy
3603 efficiency. Payments for the contract are not contingent upon the
3604 actual savings realized from the equipment.

3605 (vi) "Energy performance contract" means an
3606 agreement to provide energy services which includes, but is not
3607 limited to, the design, installation, financing and maintenance or
3608 management of the energy systems or equipment in order to improve
3609 its energy efficiency.

3610 (vii) "Shared-savings contract" means an agreement
3611 where the contractor and the entity each receive a preagreed
3612 percentage or dollar value of the energy cost savings over the
3613 life of the contract.

3614 (viii) "Reduce operating costs" means elimination
3615 of future expenses or avoidance of future replacement expenditures
3616 as a result of new equipment installed or services performed.
3617 Material savings, labor savings, cancelled maintenance contracts,
3618 et cetera, shall be considered as being viable to reduce operating
3619 costs. Reduce operating costs may be included in the performance



3620 contract or energy services agreement solely at the discretion of
3621 the entity. A contract that otherwise satisfies the requirements
3622 of this section shall satisfy the requirements allowing use of an
3623 energy performance, energy services or shared-savings contract
3624 even if the sole expense being eliminated is maintenance expense.

3625 (ix) "Capital cost avoidance" means planned
3626 capital improvement expenditures that will be avoided through
3627 implementation of the energy services project. Capital cost
3628 avoidance may be included in an energy services contract or an
3629 energy performance contract solely at the discretion of the
3630 entity. Capital cost avoidance may be claimed as an annual
3631 avoidance or as a one-time avoidance in a specific year of the
3632 contract term, depending upon the nature of the avoided capital
3633 cost.

3634 (x) "Alternative fuel motor vehicle" means a motor
3635 vehicle propelled by alternative fuel either as a dedicated
3636 alternative fuel vehicle, as a bi-fuel vehicle using alternative
3637 fuel as one of its fuels, or as a dual fuel vehicle using
3638 alternative fuel as one of its fuels.

3639 (xi) "Energy conservation measure" means the
3640 individual items or components of a large energy services or
3641 energy efficient services program.

3642 (xii) "Simple payback period" means the amount of
3643 time for the recuperation of the initial investment. The simple
3644 payback period is calculated by dividing the initial investment by



3645 the annual savings. The simple payback period for any contract
3646 shall not exceed twenty (20) years. The simple payback period of
3647 an individual energy conservation measure shall not be considered
3648 in any evaluation provided the simple payback period for the
3649 contract does not exceed twenty (20) years.

3650 (b) An entity may enter into an energy services
3651 contract, energy performance contract, shared-savings contract,
3652 any of which may contain a lease, or lease-purchase contract for
3653 energy efficiency equipment, services relating to the
3654 installation, operation and maintenance of equipment or
3655 improvements reasonably required to existing or new equipment and
3656 existing or new improvements and facilities and shall contract in
3657 accordance with the following provisions:

3658 (i) The division may assemble a list of
3659 prequalified energy services providers. The division shall use
3660 objective criteria in the selection process. The criteria for
3661 evaluation shall include, but shall not be limited to, the
3662 following factors: to assess the capability of the qualified
3663 energy services provider in the area of design engineering,
3664 installation, maintenance and repairs associated with energy
3665 services or guaranteed energy performance contracts;
3666 qualifications including engineering depth and experience,
3667 post-installation project monitoring, data collection, and
3668 verification of and reporting of savings; overall project
3669 experience and qualifications; management capability; ability to



3670 access long-term sources of project financing; financial health
3671 and stability, litigation history with customers and other factors
3672 determined by the division to be relevant and appropriate and
3673 related to the ability to perform the project. The division shall
3674 either accept or reject an application for prequalification from
3675 an energy services provider within sixty (60) days after receipt.
3676 If the division fails to act within sixty (60) days from the date
3677 of receiving an application, then the application shall
3678 automatically be accepted and the energy services provider shall
3679 be added to the prequalified list.

3680 (ii) An entity shall publicly issue requests for
3681 proposals, advertised in the same manner as provided in Section
3682 31-7-13 for seeking competitive sealed bids, concerning the
3683 provision of energy efficiency services relating to the
3684 installation, operation and maintenance of equipment, improvements
3685 reasonably required to existing or new equipment and existing or
3686 new improvements and facilities or the design, installation,
3687 ownership, operation and maintenance of energy efficiency
3688 equipment. Those requests for proposals shall contain terms and
3689 conditions relating to submission of proposals, evaluation and
3690 selection of proposals, financial terms, legal responsibilities,
3691 and any other matters as the entity determines to be appropriate
3692 for inclusion.

3693 (iii) Upon receiving responses to the request for
3694 proposals, the entity may select the most qualified proposal or



3695 proposals on the basis of experience and qualifications of the
3696 proposers, the technical approach, the financial arrangements, the
3697 overall benefits to the entity and any other relevant factors
3698 determined to be appropriate.

3699 (iv) An entity shall negotiate and enter into
3700 contracts with the person, persons, firm or firms submitting the
3701 proposal selected as the most qualified under this section.

3702 (v) The annual rate of interest paid under any
3703 lease-purchase agreement authorized by this section shall not
3704 exceed the maximum interest rate to maturity on general obligation
3705 indebtedness permitted under Section 75-17-101.

3706 (vi) The maximum lease-purchase term for any
3707 equipment acquired under this section shall not exceed the lesser
3708 of twenty (20) years or the average useful life of the energy
3709 conservation measures from the date the energy conservation
3710 measures have been completed and accepted by the governmental
3711 unit.

3712 (vii) This subsection shall, with respect to the
3713 procurement of energy efficiency services and/or equipment,
3714 supersede any contradictory or conflicting provisions of Chapter
3715 7, Title 31, Mississippi Code of 1972, and other laws with respect
3716 to awarding public contracts.

3717 (2) (a) The division may contract with a party selected
3718 under this subsection to provide financing to entities and private
3719 "nonprofit" hospitals, to purchase energy efficiency equipment,



3720 services relating to the installation, operation and maintenance
3721 of equipment or improvements reasonably required to existing or
3722 new equipment and existing or new improvements and facilities or
3723 an energy saving performance contract, energy services contract,
3724 or lease-purchase basis. Any energy efficiency lease financing
3725 contract entered into by the division before May 15, 1992, shall
3726 be valid and binding when the contract was entered into under this
3727 subsection.

3728 (b) The entities and private "nonprofit" hospitals that
3729 decide to contract for energy efficiency equipment, services
3730 relating to the installation, operation and maintenance of
3731 equipment or improvements reasonably required to existing or new
3732 equipment and existing or new improvements and facilities on a
3733 lease, energy services contract or lease-purchase basis, may
3734 request financial assistance from the division.

3735 (c) The provisions of any energy efficiency
3736 lease-purchase agreements authorized under this subsection (2)
3737 shall comply with the requirements of subsection (1)(b)(v) of this
3738 section. The term of any lease or lease-purchase agreement for
3739 energy efficiency services and/or equipment entered into under
3740 this section shall not exceed twenty (20) years, commencing on the
3741 completion of the installation of equipment or improvements under
3742 the contract.

3743 (d) Any entity or private "nonprofit" hospital having
3744 approval of the division may borrow money in anticipation of



3745 entering into a lease-purchase agreement pursuant to subsection
3746 (2)(b) of this section. Any borrowing may be upon terms and
3747 conditions as may be agreed upon by the borrowing entity and the
3748 party advancing interim funds; however, the principal on any
3749 borrowing shall be repaid within a period of time not to exceed
3750 one hundred eighty (180) days. In borrowing money under this
3751 paragraph (d), it is not necessary to publish notice of intention
3752 to do so or to secure the consent of the qualified electors,
3753 either by election or otherwise. Any borrowing may be negotiated
3754 between the parties and is not required to be publicly bid, may be
3755 evidenced by negotiable notes or lease and shall not be considered
3756 when computing any limitation of indebtedness of the borrowing
3757 entity established by law. The principal, interest and costs of
3758 incurring any borrowing shall not exceed the principal amount of
3759 the final contract or agreement approved by the division, and
3760 accepted by the borrowing entity, under subsection (2)(b) of this
3761 section.

3762 (e) This subsection (2) shall, with respect to the
3763 procurement of energy efficiency services and/or equipment,
3764 supersede the provisions of any contradictory or conflicting
3765 provisions of Chapter 7, Title 31, Mississippi Code of 1972, and
3766 other laws with respect to awarding public contracts.

3767 (3) All lease-purchase agreements authorized by this section
3768 and the income from those agreements shall be exempt from all



3769 taxation within the State of Mississippi, except gift, transfer
3770 and inheritance taxes.

3771 (4) (a) An entity may contract for energy efficiency
3772 equipment services relating to the installation, operation or
3773 maintenance of equipment or improvements reasonably required to
3774 existing or new equipment and existing or new improvements and
3775 facilities on a shared-savings basis or performance basis.

3776 (b) If an entity decides to enter into a contract for
3777 energy efficiency equipment, services relating to the
3778 installation, operation or maintenance of equipment or
3779 improvements reasonably required to existing or new equipment and
3780 existing or new improvements and facilities on a shared-savings
3781 basis or performance basis, the entity shall issue a request for
3782 proposals or a request for qualifications, as determined necessary
3783 by the division, in the same manner as prescribed under subsection
3784 (1)(b) of this section. The entity shall notify the division in
3785 writing of its intention to issue a request for proposals or a
3786 request for qualifications.

3787 (c) The terms of any shared-savings contract, energy
3788 services contract, or energy performance contract entered into
3789 under this section may not exceed twenty (20) years, commencing on
3790 the completion of the installation of equipment or improvements
3791 under the contract.

3792 (d) The terms of any shared savings or energy
3793 performance contract entered into under this section must contain



3794 a guarantee of savings clause from the company providing energy
3795 efficiency equipment services relating to the installation,
3796 operation and maintenance of equipment or improvements reasonably
3797 required to existing or new equipment and existing or new
3798 improvements and facilities.

3799 (5) (a) By March 1 and September 1 of each year, each
3800 entity that enters into an energy performance contract or
3801 shared-savings contract shall report to the division its energy
3802 usage by meter in dollars and consumption by fuel type for the
3803 previous six-month period determined by the division.

3804 (b) The division shall remove qualified status of an
3805 energy services provider that fails to meet the reporting
3806 requirements of paragraph (a) of this subsection after two (2)
3807 such violations.

3808 (c) Any costs associated with the reporting made under
3809 this subsection (5) shall be paid by the energy services provider.

3810 (6) The contract may be construed to provide flexibility to
3811 public agencies in structuring agreements entered into hereunder
3812 so that economic benefits may be maximized.

3813 (7) This section shall stand repealed on July 1, 2019.

3814 **SECTION 31.** Section 31-7-15, Mississippi Code of 1972, is
3815 brought forward as follows:

3816 31-7-15. (1) Whenever two (2) or more competitive bids are
3817 received, one or more of which relates to commodities grown,
3818 processed or manufactured within this state, and whenever all



3819 things stated in such received bids are equal with respect to
3820 price, quality and service, the commodities grown, processed or
3821 manufactured within this state shall be given preference. A
3822 similar preference shall be given to commodities grown, processed
3823 or manufactured within this state whenever purchases are made
3824 without competitive bids, and when practical the Department of
3825 Finance and Administration may by regulation establish reasonable
3826 preferential policies for other commodities, giving preference to
3827 resident suppliers of this state.

3828 (2) Any foreign manufacturing company with a factory in the
3829 state and with over fifty (50) employees working in the state
3830 shall have preference over any other foreign company where both
3831 price and quality are the same, regardless of where the product is
3832 manufactured.

3833 (3) On or before January 1, 1991, the Department of Finance
3834 and Administration shall adopt bid and product specifications to
3835 be utilized by all state agencies that encourage the procurement
3836 of commodities made from recovered materials. Preference in
3837 awarding contracts for commodities shall be given to commodities
3838 offered at a competitive price.

3839 (4) Each state agency is required to procure products made
3840 from recovered materials when those products are available at a
3841 competitive price. For purposes of this subsection, "competitive
3842 price" means a price not greater than ten percent (10%) above the
3843 lowest and best bidder. A decision not to procure products made



3844 from recovered materials must be based on a determination that
3845 such procurement:

3846 (a) Is not available within a reasonable period of
3847 time; or

3848 (b) Fails to meet the performance standards set forth
3849 in the applicable specifications; or

3850 (c) Is not available at a competitive price.

3851 (5) Whenever economically feasible, each state agency is
3852 required to purchase products manufactured or sold by the
3853 Mississippi Industries for the Blind.

3854 **SECTION 32.** Section 31-7-16, Mississippi Code of 1972, is
3855 brought forward as follows:

3856 31-7-16. In the event equipment is required which is capable
3857 of being manufactured or assembled in separate units such as
3858 school bus chassis and bodies or other bodies of equipment
3859 installed upon chassis, and there is a manufacturer of such bodies
3860 located within the State of Mississippi, a public purchase may be
3861 made of such chassis and such body or equipment as separate items.

3862 **SECTION 33.** Section 31-7-18, Mississippi Code of 1972, is
3863 brought forward as follows:

3864 31-7-18. In addition to the method of purchasing authorized
3865 in this chapter, said governing authorities are hereby authorized
3866 to accept the lowest bid received from a motor vehicle dealer
3867 domiciled within the county of the governing authority for the
3868 purchase of any motor vehicle having a gross vehicle weight rating



3869 of less than twenty-six thousand (26,000) pounds that shall not
3870 exceed a sum equal to three percent (3%) greater than the price or
3871 cost which the dealer pays the manufacturer, as evidenced by the
3872 factory invoice for the motor vehicle. In the event said county
3873 does not have an authorized motor vehicle dealer, said board or
3874 governing authority may, in like manner, receive bids from motor
3875 vehicle dealers in any adjoining county.

3876 No purchase of a motor vehicle under the provisions of this
3877 section shall be valid unless the purchase is made according to
3878 statutory bidding and licensing requirements. Provided, however,
3879 that the governing authorities may choose to purchase a motor
3880 vehicle from the authorized state contract dealer without having
3881 to advertise and receive bids therefor.

3882 No purchase shall be made in excess of the approved state
3883 contract price by any of the aforementioned governing authorities
3884 when such authorities are situated wholly or in part in the county
3885 wherein the authorized state contract dealer for a particular item
3886 is domiciled.

3887 **SECTION 34.** Section 31-7-21, Mississippi Code of 1972, is
3888 brought forward as follows:

3889 31-7-21. The provisions of this chapter shall neither repeal
3890 nor modify the functions of the Governor's Office of General
3891 Services as set forth in Sections 31-11-1 through 31-11-89.

3892 **SECTION 35.** Section 31-7-23, Mississippi Code of 1972, is
3893 brought forward as follows:



3894 31-7-23. Any rebates, refunds, coupons, merit points,
3895 gratuities or any article of value tendered or received by any
3896 agency or governing authority from any vendor of material,
3897 supplies, equipment or other articles shall inure to the benefit
3898 of the agency or governing authority making the purchase. The
3899 agency or governing authority may, in accordance with its best
3900 interest, either take delivery of the article of value tendered
3901 and use the same or convert it to cash by selling it for its fair
3902 and reasonable value, making use of the proceeds from such sale
3903 for the exclusive benefit of the agency or governing authority.

3904 **SECTION 36.** Section 31-7-38, Mississippi Code of 1972, is
3905 brought forward as follows:

3906 31-7-38. The board of trustees or governing board of any
3907 hospital or regional mental health center owned or owned and
3908 operated separately or jointly by the State of Mississippi or any
3909 of its branches, agencies, departments or subdivisions, or by one
3910 or more counties, cities, towns, supervisors districts or election
3911 districts, or combinations thereof, may authorize by resolution
3912 the organization and operation of, or the participation in, a
3913 group purchasing program with other hospitals or regional mental
3914 health centers, for the purchase of supplies, commodities and
3915 equipment when it appears to the board of trustees or governing
3916 board that such a group purchasing program could or would affect
3917 economy or efficiency in their operations. Purchases by hospitals
3918 or regional mental health centers participating in group



3919 purchasing programs of supplies, commodities and equipment through
3920 such programs shall be exempt from the provisions of Sections
3921 31-7-9, 31-7-10, 31-7-11, 31-7-12 and 31-7-13.

3922 **SECTION 37.** Section 31-7-47, Mississippi Code of 1972, is
3923 brought forward as follows:

3924 31-7-47. In the letting of public contracts, preference
3925 shall be given to resident contractors, and a nonresident bidder
3926 domiciled in a state, city, county, parish, province, nation or
3927 political subdivision having laws granting preference to local
3928 contractors shall be awarded Mississippi public contracts only on
3929 the same basis as the nonresident bidder's state, city, county,
3930 parish, province, nation or political subdivision awards contracts
3931 to Mississippi contractors bidding under similar circumstances.
3932 Resident contractors actually domiciled in Mississippi, be they
3933 corporate, individuals or partnerships, are to be granted
3934 preference over nonresidents in awarding of contracts in the same
3935 manner and to the same extent as provided by the laws of the
3936 state, city, county, parish, province, nation or political
3937 subdivision of domicile of the nonresident.

3938 **SECTION 38.** Section 31-7-49, Mississippi Code of 1972, is
3939 brought forward as follows:

3940 31-7-49. In placing orders for purchases under bids received
3941 and contracts awarded under the provisions of this chapter, the
3942 governing authority, by orders entered on its minutes, may
3943 authorize its members, or agents designated by its order, to place



3944 orders for the purchase of such supplies and materials from time
3945 to time during the period covered by the contract, as such
3946 supplies and materials are needed. Claims for such supplies so
3947 ordered by an individual board member or other duly authorized
3948 agent shall not be allowed and paid by the board until such claims
3949 shall have been approved in writing by the individual board member
3950 or agent who ordered such supplies or the successor to such member
3951 or agent.

3952 **SECTION 39.** Section 31-7-53, Mississippi Code of 1972, is
3953 brought forward as follows:

3954 31-7-53. In making any and all purchases of fertilizer for
3955 all state institutions and agencies, the board, officer, or
3956 employee given the authority to make such purchases shall take
3957 into consideration the chemical analysis and percentage of plant
3958 food unit value in such fertilizer in determining the lowest and
3959 best bid. No awards of contracts shall be made until the best
3960 price is determined on the basis of the chemical analysis as to
3961 the plant food unit value of the product, and the contract shall
3962 be awarded on the basis of such an analysis of the plant food unit
3963 value.

3964 This section does not apply for the purchase of material by
3965 research agencies of the state for use in experimental projects.

3966 The State Penitentiary Board, the Board of Trustees of the
3967 State Institutions of Higher Learning, and any other agency,
3968 department, or board of trustees of the State of Mississippi are



3969 hereby authorized to purchase all needed quantities of anhydrous
3970 ammonia and ammonium nitrate fertilizers available through the
3971 facilities of Mississippi State University of Agriculture and
3972 Applied Science. Such purchase may be at public or private sale,
3973 provided that such fertilizers can be obtained for not more than
3974 the price that the same are then available to such board, agency,
3975 or department from any other source.

3976 **SECTION 40.** Section 31-7-55, Mississippi Code of 1972, is
3977 brought forward as follows:

3978 31-7-55. **[For penalties applicable to violations occurring**
3979 **between January 1, 1981, and August 15, 1988, the following**
3980 **provisions govern.]**

3981 (1) It is hereby declared to be unlawful and a violation of
3982 public policy of the State of Mississippi for any elected or
3983 appointed public officer of the state or the executive head of a
3984 state board, commission, department, subdivision of the state
3985 government or governing authority to make any purchases without
3986 the full compliance with the provisions of Chapter 7, Title 31,
3987 Mississippi Code of 1972. Any elected or appointed public officer
3988 of the state or the executive head of a state board, commission,
3989 department, subdivision of the state government or governing
3990 authority who violates the provisions of Chapter 7, Title 31,
3991 Mississippi Code of 1972, shall be deemed guilty of a misdemeanor
3992 and, upon conviction therefor, shall be fined not less than One
3993 Hundred Dollars (\$100.00) and not more than Five Hundred Dollars



3994 (\$500.00) for each separate offense, or sentenced to the county
3995 jail for not more than six (6) months, or both such fine and
3996 imprisonment, and shall be removed from his office or position.

3997 (2) Any person diverting the benefits of any article of
3998 value tendered or received by any agency or governing authority to
3999 his or her personal use, in violation of Section 31-7-23, shall be
4000 guilty of a misdemeanor and, upon conviction, shall be punished by
4001 a fine of not less than One Hundred Dollars (\$100.00) nor more
4002 than Five Hundred Dollars (\$500.00), or sentenced to the county
4003 jail for not more than six (6) months, or by both such fine and
4004 imprisonment, and shall be required to return the money value of
4005 the article unlawfully diverted to the agency involved.

4006 **[The following provisions apply to violations which occur on**
4007 **or after August 16, 1988.]**

4008 (1) It is hereby declared to be unlawful and a violation of
4009 public policy of the State of Mississippi for any elected or
4010 appointed public officer of an agency or a governing authority, or
4011 the executive head, any employee or agent of an agency or
4012 governing authority to make any purchases without the full
4013 compliance with the provisions of Chapter 7, Title 31, Mississippi
4014 Code of 1972.

4015 (2) Except as otherwise provided in subsection (4) of this
4016 section, any person who intentionally, willfully and knowingly
4017 violates the provisions of Chapter 7, Title 31, Mississippi Code
4018 of 1972, shall be deemed guilty of a misdemeanor and, upon



4019 conviction thereof, shall be fined not less than One Hundred
4020 Dollars (\$100.00) and not more than Five Hundred Dollars (\$500.00)
4021 for each separate offense, or sentenced to the county jail for not
4022 more than six (6) months, or both such fine and imprisonment, and
4023 shall be removed from his office or position.

4024 (3) Any person who intentionally, willfully and knowingly
4025 violates the provisions of subsection (1) of Section 31-7-57 shall
4026 be guilty of a misdemeanor and, upon conviction thereof, shall be
4027 fined not less than One Hundred Dollars (\$100.00) and not more
4028 than Five Hundred Dollars (\$500.00), or sentenced to the county
4029 jail for not more than six (6) months, or both such fine and
4030 imprisonment, and shall be removed from his office or position.

4031 (4) Any person diverting the benefits of any article of
4032 value tendered or received by any agency or governing authority to
4033 his or her personal use, in violation of Section 31-7-23, if the
4034 value of such article be less than Five Hundred Dollars (\$500.00),
4035 shall be guilty of a misdemeanor and, upon conviction, shall be
4036 punished by a fine of not less than One Hundred Dollars (\$100.00)
4037 nor more than Five Hundred Dollars (\$500.00), or sentenced to the
4038 county jail for not more than six (6) months, or by both such fine
4039 and imprisonment, shall be removed from his office or position,
4040 and shall be required to return the money value of the article
4041 unlawfully diverted to the agency or governing authority involved.
4042 If the value of the article be Five Hundred Dollars (\$500.00) or
4043 more, such person shall be guilty of a felony and, upon



4044 conviction, shall be punished by a fine of not less than One
4045 Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars
4046 (\$5,000.00), or sentenced to the Department of Corrections for not
4047 less than one (1) year nor more than five (5) years, or by both
4048 such fine and imprisonment, shall be removed from his office or
4049 position, and shall be required to return the money value of the
4050 article unlawfully diverted to the agency or governing authority
4051 involved.

4052 (5) The provisions of this section are supplemental to any
4053 other criminal statutes of this state.

4054 **SECTION 41.** Section 31-7-57, Mississippi Code of 1972, is
4055 brought forward as follows:

4056 31-7-57. (1) Any elected or appointed public officer of an
4057 agency or a governing authority, or the executive head, any
4058 employee or agent of an agency or governing authority, who
4059 appropriates or authorizes the expenditure of any money to an
4060 object not authorized by law, shall be liable personally for up to
4061 the full amount of the appropriation or expenditure as will fully
4062 and completely compensate and repay such public funds for any
4063 actual loss caused by such appropriation or expenditure, to be
4064 recovered by suit in the name of the governmental entity involved,
4065 or in the name of any person who is a taxpayer suing for the use
4066 of the governmental entity involved, and such taxpayer shall be
4067 liable for costs in such case. In the case of a governing board
4068 of an agency or governing authority, only the individual members



4069 of the governing board who voted for the appropriation or
4070 authorization for expenditure shall be liable under this
4071 subsection.

4072 (2) No individual member, officer, employee or agent of any
4073 agency or board of a governing authority shall let contracts or
4074 purchase commodities or equipment except in the manner provided by
4075 law, including the provisions of Section 25-9-120(3), Mississippi
4076 Code of 1972, relating to personal and professional service
4077 contracts by state agencies; nor shall any such agency or board of
4078 a governing authority ratify any such contract or purchase made by
4079 any individual member, officer, employee or agent thereof, or pay
4080 for the same out of public funds unless such contract or purchase
4081 was made in the manner provided by law; provided, however, that
4082 any vendor who, in good faith, delivers commodities or printing or
4083 performs any services under a contract to or for the agency or
4084 governing authority, shall be entitled to recover the fair market
4085 value of such commodities, printing or services, notwithstanding
4086 some error or failure by the agency or governing authority to
4087 follow the law, if the contract was for an object authorized by
4088 law and the vendor had no control of, participation in, or actual
4089 knowledge of the error or failure by the agency or governing
4090 authority.

4091 (3) The individual members, officers, employees or agents of
4092 any agency or governing authority as defined in Section 31-7-1
4093 causing any public funds to be expended, any contract made or let,



4094 any payment made on any contract or any purchase made, or any
4095 payment made, in any manner whatsoever, contrary to or without
4096 complying with any statute of the State of Mississippi, regulating
4097 or prescribing the manner in which such contracts shall be let,
4098 payment on any contract made, purchase made, or any other payment
4099 or expenditure made, shall be liable, individually, and upon their
4100 official bond, for compensatory damages, in such sum up to the
4101 full amount of such contract, purchase, expenditure or payment as
4102 will fully and completely compensate and repay such public funds
4103 for any actual loss caused by such unlawful expenditure.

4104 (4) In addition to the foregoing provision, for any
4105 violation of any statute of the State of Mississippi prescribing
4106 the manner in which contracts shall be let, purchases made,
4107 expenditure or payment made, any individual member, officer,
4108 employee or agent of any agency or governing authority who shall
4109 substantially depart from the statutory method of letting
4110 contracts, making payments thereon, making purchases or expending
4111 public funds shall be liable, individually and on his official
4112 bond, for penal damages in such amount as may be assessed by any
4113 court of competent jurisdiction, up to three (3) times the amount
4114 of the contract, purchase, expenditure or payment. The person so
4115 charged may offer mitigating circumstances to be considered by the
4116 court in the assessment of any penal damages.



4117 (5) Any sum recovered under the provisions hereof shall be
4118 credited to the account from which such unlawful expenditure was
4119 made.

4120 (6) Except as otherwise provided in subsection (1) of this
4121 section, any individual member of an agency or governing authority
4122 as defined in Section 31-7-1 shall not be individually liable
4123 under this section if he voted against payment for contracts let
4124 or purchases made contrary to law and had his vote recorded in the
4125 official minutes of the board or governing authority at the time
4126 of such vote, or was absent at the time of such vote.

4127 **SECTION 42.** Section 31-7-59, Mississippi Code of 1972, is
4128 brought forward as follows:

4129 31-7-59. (1) Any municipality of over one hundred thousand
4130 (100,000) population, according to the latest decennial census and
4131 qualified to do so, is hereby empowered to purchase from the
4132 General Services Administration of the United States of America,
4133 without advertising for bids, any and all articles of supplies and
4134 equipment necessary for the operation of said municipality so long
4135 as the purchase price of such articles is below the purchase price
4136 of similar articles on a state contract accepted by the Office of
4137 General Services.

4138 (2) The aforesaid supplies and equipment may likewise be
4139 purchased from the General Services Administration without
4140 advertising for bids even though the Office of General Services
4141 does not have same listed on statewide contracts so long as the



4142 purchase price thereof is ten percent (10%) below the latest
4143 purchase price of comparable supplies and equipment.

4144 **SECTION 43.** Section 31-7-61, Mississippi Code of 1972, is
4145 brought forward as follows:

4146 31-7-61. It shall be unlawful for any person knowingly to
4147 purchase or to authorize or requisition the purchase of beef other
4148 than beef raised and produced within the United States when such
4149 purchase is to be paid by the state government or any of its
4150 political subdivisions out of public funds of any nature.

4151 However, all canned meats not available which are processed in the
4152 United States shall be exempt from Sections 31-7-61 through
4153 31-7-65.

4154 **SECTION 44.** Section 31-7-63, Mississippi Code of 1972, is
4155 brought forward as follows:

4156 31-7-63. Any person who violates the provisions of Section
4157 31-7-61 shall be guilty of a misdemeanor and upon conviction shall
4158 be punished by imprisonment for not more than thirty (30) days or
4159 by a fine of not less than One Hundred Dollars (\$100.00) nor more
4160 than Five Hundred Dollars (\$500.00). In addition to any criminal
4161 sanction authorized herein, a civil proceeding may be brought by a
4162 district attorney or county prosecuting attorney for recovery of
4163 funds paid out in violation of this section.

4164 **SECTION 45.** Section 31-7-65, Mississippi Code of 1972, is
4165 brought forward as follows:



4166 31-7-65. The Commissioner of Agriculture and Commerce of the
4167 State of Mississippi shall notify all state agencies, political
4168 subdivisions or public institutions within the State of
4169 Mississippi as to the provisions of Sections 31-7-61 through
4170 31-7-65.

4171 **SECTION 46.** Section 31-7-73, Mississippi Code of 1972, is
4172 brought forward as follows:

4173 31-7-73. Any state agency, as defined in Section 31-7-1,
4174 Mississippi Code of 1972, shall be authorized and empowered, in
4175 its discretion, to enter into an energy performance contract,
4176 energy services contract, on a shared-savings, lease or
4177 lease-purchase basis, for energy efficiency services and/or
4178 equipment as provided for in Section 31-7-14.

4179 **SECTION 47.** Section 31-7-301, Mississippi Code of 1972, is
4180 brought forward as follows:

4181 31-7-301. (1) The Legislature hereby declares that it is
4182 essential to the efficient operation of public bodies of this
4183 state that adequate supplies of goods and services continue to be
4184 available from private sources; that the good name and credit of
4185 the state may be promoted by timely and responsible payment of
4186 just claims; and that fair compensation be awarded suppliers when
4187 payments of their claims are delayed without justification.

4188 (2) The term "public bodies" shall mean all state agencies,
4189 political subdivisions, school districts, municipalities and
4190 public corporations, whether created by charter, statute or



4191 executive order, whether supported wholly or in part by public
4192 funds, or which expend public funds.

4193 **SECTION 48.** Section 31-7-303, Mississippi Code of 1972, is
4194 brought forward as follows:

4195 31-7-303. (1) The requisition for payment of an invoice
4196 submitted to a public body and required by law to be filed with
4197 the State Fiscal Management Board shall be filed with the State
4198 Fiscal Management Board not later than thirty (30) days after
4199 receipt of the invoice and receipt, inspection and approval of the
4200 goods or services, except that in the case of a bona fide dispute
4201 the requisition for payment shall contain a statement of the
4202 dispute and authorize payment only in the amount not disputed. If
4203 a requisition for payment filed within the thirty-day period is
4204 returned by the State Fiscal Management Board because of an error,
4205 it shall nevertheless be deemed timely filed. The thirty-day
4206 filing requirement may be waived by the State Fiscal Management
4207 Board on a showing of exceptional circumstances in accordance with
4208 rules and regulations established by the State Fiscal Management
4209 Board.

4210 (2) The warrant, in payment of an invoice submitted to a
4211 public body of the state, shall be mailed or otherwise delivered
4212 by the public body not later than fifteen (15) days after filing
4213 of the requisition for payment; however, this requirement may be
4214 waived by the State Fiscal Management Board on a showing of
4215 exceptional circumstances in accordance with rules and regulations



4216 of the State Fiscal Management Board or as otherwise provided in
4217 Section 7-7-35, Mississippi Code of 1972.

4218 **SECTION 49.** Section 31-7-305, Mississippi Code of 1972, is
4219 brought forward as follows:

4220 31-7-305. (1) All public bodies of the state, including
4221 those which issue checks and those which file requisitions for
4222 payment with the State Fiscal Management Board, shall keep a
4223 record of the date of receipt of the invoice, dates of receipt,
4224 inspection and approval of the goods or services, date of issuing
4225 the check or date of filing the requisition for payment, as the
4226 case may be, and date of mailing or otherwise delivering the
4227 warrant or check in payment thereof. In the event that the State
4228 Fiscal Management Board mails or otherwise delivers the warrant
4229 directly to the claimant, pursuant to Section 7-7-35, Mississippi
4230 Code of 1972, the State Fiscal Management Board shall notify the
4231 public body of the date thereof. The provisions of this section
4232 are supplemental to the requirements of Sections 19-13-29,
4233 21-39-7, 21-39-13 and 37-5-93, Mississippi Code of 1972.

4234 (2) All public bodies that are authorized to issue checks in
4235 payment of goods and services and are not required to issue
4236 requisitions for payment to the State Fiscal Management Board
4237 shall mail or otherwise deliver such checks no later than
4238 forty-five (45) days after receipt of the invoice and receipt,
4239 inspection and approval of the goods or services; however, in the



4240 event of a bona fide dispute, the public body shall pay only the
4241 amount not disputed.

4242 (3) If a warrant or check, as the case may be, in payment of
4243 an invoice is not mailed or otherwise delivered within forty-five
4244 (45) days after receipt of the invoice and receipt, inspection and
4245 approval of the goods and services, the public body shall be
4246 liable to the vendor, in addition to the amount of the invoice,
4247 for interest at a rate of one and one-half percent (1-1/2%) per
4248 month or portion thereof on the unpaid balance from the expiration
4249 of such forty-five-day period until such time as the warrant or
4250 check is mailed or otherwise delivered to the vendor. The
4251 provisions of this paragraph shall apply only to undisputed
4252 amounts for which payment has been authorized. In the case of an
4253 error on the part of the vendor, the forty-five-day period shall
4254 begin to run upon receipt of a corrected invoice by the public
4255 body and upon compliance with the other provisions of this
4256 section. The various public bodies shall be responsible for
4257 initiating the penalty payments required by this subsection and
4258 shall use this subsection as authority to make such payments.
4259 Also, at the time of initiating such penalty payment, the public
4260 body shall specify in writing an explanation of the delay and
4261 shall attach such explanation to the requisition for payment of
4262 the penalty or to the file copy of the check issued by the public
4263 body, as the case may be.



4264 (4) (a) In the event of a bona fide dispute as to an
4265 invoice, or any portion thereof, the dispute shall be settled
4266 within thirty (30) days after interest penalties could begin to be
4267 assessed, if it were not for the dispute.

4268 (b) If a warrant or check, as the case may be, in
4269 payment of an invoice, subject to a prior dispute, is not mailed
4270 or otherwise delivered within thirty (30) days after settlement of
4271 the dispute, the public body shall be liable to the vendor, in
4272 addition to the amount of the invoice, for interest at a rate of
4273 one and one-half percent (1-1/2%) per month or portion thereof on
4274 the unpaid balance from the expiration of said thirty-day period
4275 until such time as the warrant or check is mailed or otherwise
4276 delivered to the vendor. At the time of initiating such penalty
4277 payment, the public body shall specify in writing an explanation
4278 of the delay and shall attach such explanation to the requisition
4279 for payment of the penalty or to the file copy of the check issued
4280 by the public body, as the case may be. The interest penalty
4281 prescribed in this paragraph shall be in lieu of the penalty
4282 provided in subsection (3).

4283 **SECTION 50.** Section 31-7-307, Mississippi Code of 1972, is
4284 brought forward as follows:

4285 31-7-307. (1) The budget request submitted by a public body
4286 to the Legislature shall specifically disclose the amount of any
4287 interest paid by any public body pursuant to Sections 31-7-301
4288 through 31-7-317. However, no provision of Sections 31-7-301



4289 through 31-7-317 authorizes a new appropriation to cover such
4290 interest penalties, and public bodies shall not seek to increase
4291 appropriations for the purpose of obtaining funds to pay any
4292 interest penalties.

4293 (2) All public bodies of the state, including those which
4294 issue checks and those which file requisitions for payment with
4295 the State Fiscal Management Board, shall monthly notify the State
4296 Fiscal Management Board of the number and dollar amount of late
4297 payments by the public body along with the amounts of interest
4298 paid and the specific steps being taken to reduce the incidence of
4299 late payments.

4300 (3) If the terms of the invoice provide a discount for
4301 payment in less than forty-five (45) days, public bodies shall
4302 preferentially process it and use all diligence to obtain the
4303 savings by compliance with the invoice terms, if it would be cost
4304 effective.

4305 **SECTION 51.** Section 31-7-309, Mississippi Code of 1972, is
4306 brought forward as follows:

4307 31-7-309. Whenever a vendor brings formal administrative or
4308 judicial action to collect interest due under Sections 31-7-301
4309 through 31-7-317, the public body shall be required to pay any
4310 reasonable attorney's fees if the vendor prevails.

4311 **SECTION 52.** Section 31-7-311, Mississippi Code of 1972, is
4312 brought forward as follows:



4313 31-7-311. The State Fiscal Management Board shall submit to
4314 the Appropriations Committee of each house of the Legislature by
4315 January 15 of each year a report summarizing the payment record
4316 for the preceding fiscal year. The report shall include the
4317 number and dollar amount of late payments by each public body
4318 along with the amounts of interest paid and the specific steps
4319 being taken to reduce the incidence of late payments.

4320 **SECTION 53.** Section 31-7-313, Mississippi Code of 1972, is
4321 brought forward as follows:

4322 31-7-313. The State Fiscal Management Board is authorized
4323 and directed to adopt and promulgate rules and regulations
4324 necessary to implement this section.

4325 **SECTION 54.** Section 31-7-315, Mississippi Code of 1972, is
4326 brought forward as follows:

4327 31-7-315. Sections 31-7-301 through 31-7-317 shall not
4328 affect payment under public works contracts as provided in
4329 Sections 31-5-25 and 31-5-27, Mississippi Code of 1972.

4330 **SECTION 55.** Section 31-7-317, Mississippi Code of 1972, is
4331 brought forward as follows:

4332 31-7-317. (1) The Governor's Office of General Services
4333 shall study the feasibility of:

4334 (a) Requiring the Bureau of Purchasing to act as
4335 purchasing agent for state agencies;



4336 (b) Requiring the Bureau of Purchasing to purchase
4337 frequently used products and supplies and warehouse them for state
4338 agencies, especially in the Jackson metropolitan area; and

4339 (c) A small business/minority set-aside program.

4340 (2) On or before January 15, 1987, the Governor's Office of
4341 General Services shall transmit its written report of the
4342 feasibility studies to the Legislature, along with its
4343 recommendations and an estimate of the fiscal impact of the
4344 recommendations. If the Governor's Office of General Services
4345 recommends that the bureau should be required to act as purchasing
4346 agent for smaller state agencies, the report shall include a list
4347 of state agencies to be included.

4348 **SECTION 56.** Section 31-17-3, Mississippi Code of 1972, is
4349 brought forward as follows:

4350 31-17-3. The State Bond Commission, with the approval and
4351 consent of the State Auditor of Public Accounts and the Chairman
4352 of the State Tax Commission, is hereby authorized to purchase
4353 outstanding bonds of the State of Mississippi, retire such bonds,
4354 and pay the purchase price thereof out of any surplus remaining in
4355 the State Treasury at the end of any fiscal year, all in accord
4356 with the provisions of Sections 31-17-21 through 31-17-25. The
4357 State Bond Commission, with the consent and approval of the State
4358 Auditor of Public Accounts and the Chairman of the State Tax
4359 Commission, shall determine the amount of bonds to be purchased,
4360 the maximum price to be paid therefor not to exceed par and



4361 accrued interest, and the date upon which it will receive
4362 proposals to purchase such bonds, all in accord with the
4363 provisions of Sections 31-17-21 through 31-17-25.

4364 **SECTION 57.** Section 57-62-13, Mississippi Code of 1972, is
4365 brought forward as follows:

4366 57-62-13. (1) As soon as practicable after the end of a
4367 calendar quarter for which a qualified business or industry has
4368 qualified to receive an incentive payment, the qualified business
4369 or industry shall file a claim for the payment with the Department
4370 of Revenue and shall specify the actual number of new direct jobs
4371 created and maintained by the business or industry for the
4372 calendar quarter and the gross payroll thereof. The Department of
4373 Revenue shall verify the actual number of new direct jobs created
4374 and maintained by the business or industry and compliance with the
4375 average annual wage requirements for such business or industry
4376 under this chapter. If the qualified business or industry files a
4377 claim for an incentive payment during an additional incentive
4378 period provided under Section 57-62-9(2), the Department of
4379 Revenue shall verify the actual number of new direct jobs created
4380 and maintained by the business or industry and compliance with the
4381 average annual wage requirements for such business or industry
4382 under this chapter. If the Department of Revenue is not able to
4383 provide such verification utilizing all available resources, the
4384 Department of Revenue may request such additional information from
4385 the business or industry as may be necessary.



4386 (2) (a) Except as otherwise provided in this chapter, the
4387 business or industry must meet the salary and job requirements of
4388 this chapter for four (4) consecutive calendar quarters prior to
4389 payment of the first incentive payment. Except as otherwise
4390 provided in Section 57-62-9, if the business or industry does not
4391 maintain the salary or job requirements of this chapter at any
4392 other time during the ten-year period after the date the first
4393 payment was made, the incentive payments shall not be made and
4394 shall not be resumed until such time as the actual verified number
4395 of new direct jobs created and maintained by the business or
4396 industry equals or exceeds the requirements of this chapter for
4397 one (1) calendar quarter.

4398 (b) If the business or industry is qualified to receive
4399 incentive payments for an additional period provided under Section
4400 57-62-9(2), the business or industry must meet the wage and job
4401 requirements of Section 57-62-9(2), for four (4) consecutive
4402 calendar quarters prior to payment of the first incentive payment.
4403 If the business or industry does not maintain the wage or job
4404 requirements of Section 57-62-9(2), at any other time during the
4405 appropriate additional period after the date the first payment was
4406 made, the incentive payments shall not be made and shall not be
4407 resumed until such time as the actual verified number of new
4408 direct jobs created and maintained by the business or industry
4409 equals or exceeds the amounts specified in Section 57-62-9(2), for
4410 one (1) calendar quarter.



4411 (3) An establishment that has qualified pursuant to this
4412 chapter may receive payments only in accordance with the provision
4413 under which it initially applied and was approved. If an
4414 establishment that is receiving incentive payments expands, it may
4415 apply for additional incentive payments based on the new gross
4416 payroll for new direct jobs anticipated from the expansion only,
4417 pursuant to this chapter.

4418 (4) As soon as practicable after verification of the
4419 qualified business or industry meeting the requirements of this
4420 chapter and all rules and regulations, the Department of Finance
4421 and Administration, upon requisition of the Department of Revenue,
4422 shall issue a warrant drawn on the Mississippi Advantage Jobs
4423 Incentive Payment Fund to the establishment in the amount of the
4424 incentive payment as determined pursuant to subsection (1) of this
4425 section for the calendar quarter.

4426 **SECTION 58.** This act shall take effect and be in force from
4427 and after July 1, 2018.

