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To: Highways and
Transportation

SENATE BILL NO. 2001
(As Passed the Senate)

1 AN ACT TO CREATE THE MISSISSIPPI LOTTERY LAW TO ESTABLISH A
2 STATE LOTTERY; TO CREATE THE MISSISSIPPI LOTTERY CORPORATION TO
3 ADMINISTER THE STATE LOTTERY; TO PROVIDE THAT THE AFFAIRS OF THE
4 CORPORATION SHALL BE ADMINISTERED AND GOVERNED BY A BOARD OF
5 DIRECTORS APPOINTED BY THE GOVERNOR WITH THE ADVICE AND CONSENT OF
6 THE SENATE; TO PROVIDE THE TERMS OF OFFICE AND POWERS AND DUTIES
7 OF THE BOARD OF DIRECTORS; TO PROVIDE THAT THE MISSISSIPPI LOTTERY
8 CORPORATION SHALL BE MANAGED BY A PRESIDENT SELECTED BY THE BOARD
9 WITH THE APPROVAL OF THE GOVERNOR; TO PROVIDE THAT THE PRESIDENT
10 SHALL SERVE AT THE PLEASURE OF THE BOARD OF DIRECTORS; TO PROVIDE
11 FOR THE POWERS AND DUTIES OF THE PRESIDENT; TO PROVIDE THAT
12 CORPORATION EMPLOYEES SHALL NOT BE CONSIDERED EMPLOYEES OF THE
13 STATE OF MISSISSIPPI; TO PROVIDE THAT MEETINGS OF THE BOARD OF
14 DIRECTORS SHALL BE NOTICED AND OPEN TO THE PUBLIC; TO PROVIDE THE
15 MATTERS FOR WHICH THE BOARD OF DIRECTORS MAY ENTER INTO EXECUTIVE
16 SESSION; TO PROVIDE THE MANNER IN WHICH THE BOARD OF DIRECTORS MAY
17 ENTER INTO EXECUTIVE SESSION; TO PROVIDE THAT RECORDS OF THE
18 CORPORATION SHALL BE EXEMPT FROM THE MISSISSIPPI PUBLIC RECORDS
19 ACT OF 1983; TO AUTHORIZE THE BOARD TO EMPLOY LEGAL COUNSEL; TO
20 REQUIRE BACKGROUND INVESTIGATION OF APPLICANTS FOR EMPLOYMENT WITH
21 THE CORPORATION; TO REQUIRE THE CORPORATION TO SUBMIT QUARTERLY
22 AND ANNUAL REPORTS TO THE GOVERNOR, THE LIEUTENANT GOVERNOR, THE
23 SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE STATE TREASURER, THE
24 STATE AUDITOR, THE JOINT LEGISLATIVE COMMITTEE ON PERFORMANCE
25 EVALUATION AND EXPENDITURE REVIEW, AND THE COMMISSIONER OF REVENUE
26 CONTAINING FINANCIAL INFORMATION AND PROJECTIONS WHICH INCLUDE,
27 BUT ARE NOT LIMITED TO, DISCLOSURE OF GROSS REVENUES, EXPENSES AND
28 NET PROCEEDS FOR THE PERIOD; TO REQUIRE THE PUBLICATION OF
29 QUARTERLY FINANCIAL STATEMENTS; TO PROVIDE FOR THE DISPOSITION OF
30 PROCEEDS RECEIVED FROM THE SALE OF LOTTERY TICKETS; TO PROVIDE FOR
31 APPEALS BY RETAILERS, VENDORS OR APPLICANTS AGGRIEVED BY DECISIONS
32 OF THE PRESIDENT OR THE BOARD OF DIRECTORS; TO PROHIBIT THE SALE
33 OF LOTTERY TICKETS TO ANYONE UNDER THE AGE OF 21; TO PROVIDE THE
34 MANNER IN WHICH PRIZES MAY BE PAID AND TO AUTHORIZE THE VOLUNTARY



35 ASSIGNMENT OF PRIZES; TO AUTHORIZE THE CORPORATION TO ADOPT
36 SPECIAL RULES AND REGULATIONS PROVIDING FOR SPECIAL PROCEDURES
37 WHEREBY THE CORPORATION MAY MAKE PROCUREMENTS; TO PROVIDE FOR THE
38 SELECTION OF LOTTERY TICKET RETAILERS AND THE REQUIREMENTS THAT
39 MUST BE MET TO BECOME A RETAILER; TO PROVIDE THAT THE PROCEEDS
40 FROM THE SALE OF LOTTERY TICKETS AND RECEIVED BY A LOTTERY
41 RETAILER SHALL CONSTITUTE A TRUST; TO PLACE CERTAIN REQUIREMENTS
42 ON VENDORS OF GOODS OR SERVICES NECESSARY FOR THE IMPLEMENTATION
43 OF THE STATE LOTTERY; TO PROVIDE FOR CRIMINAL BACKGROUND
44 INVESTIGATIONS BY THE MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY ON
45 POTENTIAL VENDORS, POTENTIAL RETAILERS AND CERTAIN EMPLOYEES OF
46 THE CORPORATION; TO MAKE UNLAWFUL CERTAIN ACTS WITH REGARD TO THE
47 STATE LOTTERY; TO PROVIDE FOR THE DISPOSITION OF PROCEEDS RECEIVED
48 FROM THE SALE OF LOTTERY TICKETS; TO PROVIDE THAT THE NET PROCEEDS
49 COLLECTED FROM THE SALE OF LOTTERY TICKETS SHALL BE DEPOSITED INTO
50 A LOTTERY PROCEEDS FUND CREATED IN THE STATE TREASURY AND
51 TRANSFERRED INTO THE STATE HIGHWAY FUND; TO REQUIRE THE
52 CORPORATION TO CONTRACT WITH AN INDEPENDENT AUDITOR WHO IS A
53 CERTIFIED PUBLIC ACCOUNTANT OR FIRM TO CONDUCT AN ANNUAL FINANCIAL
54 AUDIT OF THE BOOKS AND RECORDS OF THE CORPORATION; TO AMEND
55 SECTION 7-7-211, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
56 DEPARTMENT OF AUDIT TO REVIEW AND APPROVE ANY INDEPENDENT AUDITOR
57 SELECTED BY THE MISSISSIPPI LOTTERY CORPORATION TO CONDUCT AN
58 ANNUAL AUDIT OF THE CORPORATION AND TO CONDUCT AUDITS OR
59 INVESTIGATIONS OF THE MISSISSIPPI LOTTERY CORPORATION IF IN THE
60 OPINION OF THE STATE AUDITOR CONDITIONS JUSTIFY SUCH AUDITS OR
61 INVESTIGATIONS; TO AMEND SECTIONS 25-9-107, 25-11-103, 25-41-3,
62 31-7-13, 67-1-71, 97-33-9, 97-33-11, 97-33-13, 97-33-21, 97-33-23,
63 97-33-31, 97-33-33, 97-33-35, 97-33-37, 97-33-39, 97-33-41,
64 97-33-43, 97-33-45, 97-33-47 AND 97-33-49, MISSISSIPPI CODE OF
65 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED
66 PURPOSES.

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

68 **SECTION 1.** This act shall be referred to as the "Mississippi
69 Lottery Law."

70 **SECTION 2.** The Legislature recognizes that the operations of
71 a state lottery are unique activities for state government and
72 that a corporate structure will best enable the lottery to be
73 managed in an entrepreneurial and business-like manner. It is the
74 intent of the Legislature that the Mississippi Lottery Corporation
75 shall be accountable to the Governor, the Legislature, and the



76 people of the state through a system of audits, reports, and
77 disclosures as required by this act.

78 **SECTION 3.** As used in this act, the following words and
79 phrases shall have the following meanings unless the context
80 clearly requires otherwise:

81 (a) "Corporation" means the Mississippi Lottery
82 Corporation.

83 (b) "Lottery" means any game of chance approved by the
84 corporation and operated pursuant to this act.

85 (c) "Major procurement" means any item, product or
86 service in the amount of One Million Dollars (\$1,000,000.00) or
87 more, including, but not limited to, major advertising contracts,
88 annuity contracts, prizes, products, and services unique to the
89 Mississippi lottery, but not including materials, supplies,
90 equipment, and services common to the ordinary operations of a
91 corporation.

92 (d) "Net proceeds" means gross lottery revenues minus
93 amounts paid or estimated to be paid as prizes and expenses of
94 operation of the lottery.

95 (e) "Person" means any individual, corporation,
96 partnership, unincorporated association or other legal entity.

97 (f) "President" means the President of the Mississippi
98 Lottery Corporation, who shall also serve as chief executive
99 officer of the corporation.



100 (g) "Retailer" means any person with whom the
101 corporation has contracted to sell lottery tickets to the public.

102 (h) "Security" means the protection of information that
103 would provide an unfair advantage to any individual involved in
104 the operation of the lottery, protection and preservation of the
105 integrity of lottery games and operations, as well as measures
106 taken to prevent crimes against the corporation and its retailers.

107 (i) "Vendor" means any person who has entered into a
108 contract with the corporation.

109 (j) "Fiscal year" means the fiscal year used by state
110 government.

111 (k) "Board" means the Mississippi Lottery Corporation
112 Board of Directors.

113 (l) "Instant ticket" means a lottery game in which a
114 player scratches a coating from one or more play areas on a ticket
115 to determine if he or she has won, as indicated by the symbols and
116 words that are revealed.

117 (m) "Online game" means computerized numbers games
118 (such as Powerball, Mega Millions) that are part of a network of
119 lottery computer terminals that are all linked to a central
120 computer that keeps track of the lottery activity. Online game
121 does not mean a video lottery terminal or games offered via the
122 Internet on an individual's personally owned device.

123 (n) "Video lottery terminal" means any electronic
124 interactive computerized game machine or device, located outside



125 of a corporate gaming facility that holds a valid license from the
126 Mississippi Gaming Commission, equipped with a video screen and
127 buttons, keys, a keyboard, touchscreen or other input device
128 allowing input by an individual player and into which the player
129 inserts coins, tokens, currency or other representation of value
130 (including, but not limited to, an electronic card, ticket or
131 other thing on which value is recorded electronically) as
132 consideration in order for play of a game to be available, and
133 through which, as a result of the play of a game, the player may
134 receive free games, credits redeemable for cash or a noncash
135 prize, or some other thing of value, whether or not received
136 directly from the device, or nothing, determined wholly or
137 predominantly by chance.

138 **SECTION 4.** (1) There is hereby created a state lottery,
139 which shall be administered by a corporation which shall be known
140 as the "Mississippi Lottery Corporation." The corporation shall
141 be managed in such a manner that enables the people of the state
142 to benefit from its profits and to ensure the integrity of the
143 lottery.

144 (2) The existence of the corporation shall begin upon the
145 appointment of all five (5) members of the board as provided in
146 Section 5 of this act.

147 (3) The exclusive venue for any action or matter against the
148 corporation arising out of or in connection with the issuance,
149 nonissuance, delivery or failure to deliver a lottery ticket or



150 payment or nonpayment of a lottery prize is the county in which
151 its corporate headquarters is located, and the circuit court for
152 that county has exclusive jurisdiction thereof. For purposes of
153 court costs, the corporation shall be a private corporation.

154 **SECTION 5.** (1) The affairs of the corporation shall be
155 administered by the Mississippi Lottery Corporation Board of
156 Directors. The board shall be composed of five (5) members
157 appointed by the Governor, with the advice and consent of the
158 Senate. The Commissioner of Revenue and the State Treasurer shall
159 serve as ex officio, nonvoting members. Members appointed when
160 the Senate is not in session shall serve only until the end of the
161 next regular session, unless confirmed by the Senate.

162 (2) (a) Members of the board shall be residents of the
163 State of Mississippi.

164 (b) Of the initial appointees, the members' terms shall
165 be staggered as follows: one (1) term to expire on December 31,
166 2019; December 31, 2020; December 31, 2021; December 31, 2022; and
167 December 31, 2023. After the expiration of the initial terms,
168 members of the board shall serve terms of five (5) years.

169 (c) Members may serve beyond the end of their
170 respective terms until their successors have been appointed and
171 qualified. No member shall serve more than two (2) consecutive
172 five-year terms. Members may be removed by the Governor for
173 neglect of duty, misfeasance or nonfeasance in office. The board
174 shall annually elect a chairman from among its voting members.



175 (3) Appointed members of the board shall be entitled to per
176 diem compensation pursuant to Section 25-3-69 and shall be
177 reimbursed by the corporation for necessary travel and other
178 reasonable expenses incurred in the performance of their official
179 duties. No appointed member of the board of the corporation shall
180 be considered as a public officer.

181 (4) The board, upon the initial call of the Governor and the
182 chairman thereafter, shall meet at least monthly for the first
183 eighteen (18) months and at such other times as the chairman or
184 the president may determine. Three (3) voting members of the
185 board shall constitute a quorum. The board shall also meet upon
186 call of three (3) or more of the voting members of the board. The
187 board shall keep accurate and complete records of all its
188 meetings.

189 (5) All meetings of the board shall be noticed and open to
190 the public. The board shall adopt rules and regulations for
191 noticing and conducting board meetings. In any case where a
192 member of the board believes that a matter or matters on the
193 meeting agenda will involve the disclosure of trade secrets,
194 confidential commercial and financial information, information
195 that is confidential under law or by contractual agreement,
196 matters involving investigations of vendors, employees, or
197 retailers, personnel matters affecting the administration of the
198 board and staff, or matters related to violations of law by any
199 person, such member may offer a motion that such matter or matters



200 be discussed and disposed of in executive session. Upon a
201 majority vote, the board may enter into executive session to
202 discuss and vote on only such matters. Prior to going into
203 executive session, the public must be given notice of the reasons
204 for discussing and voting upon certain items in executive session.
205 No matters other than those set out in the motion may be dealt
206 with in executive session. Upon completion of an executive
207 session, the board shall announce any actions taken in executive
208 session, including any votes taken on matters considered in
209 executive session, and all votes taken while in executive session.

210 **SECTION 6.** (1) The president of the corporation shall be
211 appointed by the board subject to the approval of the Governor.
212 The Governor shall, within thirty (30) days after receiving the
213 nomination of the president in writing, either approve or reject
214 the nomination. If the Governor refuses to approve the nomination
215 of the president, then the board shall submit another name. The
216 president of the corporation shall manage the daily affairs of the
217 corporation and shall have such powers and duties as specified by
218 this act, by the board, and any rules or regulations adopted by
219 the board of directors. The president shall not be a member of
220 the board. The president of the corporation shall serve at the
221 pleasure of the board of directors.

222 (2) The president shall employ such personnel as he or she
223 deems necessary. All personnel shall serve at the pleasure of the
224 president, unless otherwise specified by the president.



225 (3) The board shall set the salary of the president.

226 (4) No employee shall be a member of the board.

227 **SECTION 7.** (1) The board of directors shall provide the
228 president with private sector perspectives on the operation of a
229 business, large marketing enterprise, and the like. The board
230 shall:

231 (a) Approve, disapprove, amend or modify the budget
232 recommended by the president for the operation of the corporation.

233 (b) Approve, disapprove, amend or modify the terms of
234 major procurements recommended by the president.

235 (c) Serve as a board of appeals for any denial,
236 revocation or cancellation by the president of a contract with a
237 lottery retailer.

238 (d) Adopt such administrative rules and regulations as
239 may be necessary to carry out and implement its powers and duties,
240 the operations of the corporation, the conduct of lottery games in
241 general and any other matters necessary or desirable for the
242 efficient and effective operation of the lottery or convenience of
243 the public.

244 (2) Any policies adopted by authority of this section or any
245 other section of this act must be published and posted on the
246 corporation's website thirty (30) days prior to becoming
247 effective.



248 **SECTION 8.** (1) The board may adopt rules and regulations
249 for the conduct of specific lottery games and operations,
250 including, but not limited to, rules specifying:

251 (a) The types of games to be conducted including, but
252 not limited to, instant tickets, online games, and other games
253 traditional to the lottery.

254 (b) The sale price of tickets.

255 (c) The number and amount of prizes.

256 (d) The method and location of selecting or validating
257 winning lottery tickets.

258 (e) The frequency and the means of conducting drawings
259 which shall be open to the public.

260 (f) The manner of payment of prizes.

261 (g) The frequency of games and drawings.

262 (h) The manner and amount of compensation to lottery
263 retailers, except all compensation shall be uniform.

264 (i) Any other matters necessary to carry out this act
265 and necessary for the efficient and effective operation of the
266 lottery or for the convenience of the public.

267 (2) In all other matters, the board shall advise and make
268 recommendations. In addition, the board shall:

269 (a) Conduct hearings upon complaints charging
270 violations of this act or of administrative regulations adopted by
271 the corporation and shall conduct such other hearings as may be
272 provided by administrative regulation.



273 (b) Periodically, review the performance of the
274 corporation and:

275 (i) Advise the president and make recommendations
276 to him or her regarding operations of the corporation; and

277 (ii) Identify potential improvements in this act,
278 the administrative regulations of the corporation, and management
279 of the corporation.

280 (c) Request from the corporation any information the
281 board determines to be relevant to its duties.

282 **SECTION 9.** (1) The corporation shall conduct and administer
283 lottery games which will result in maximization of revenues to the
284 State of Mississippi. The corporation, its employees, and the
285 members of the board shall provide for the effective operation of
286 lottery games which ensure the integrity of the lottery and
287 maintain the dignity of the state and the general welfare of its
288 citizens.

289 (2) The corporation, in pursuance of the attainment of the
290 objectives and the purposes of this act, may:

291 (a) Sue and be sued in its corporate name.

292 (b) Adopt a corporate seal and a symbol.

293 (c) Hold patents, copyrights, trademarks, and service
294 marks and enforce its rights with respect thereto.

295 (d) Register to do business in Mississippi and appoint
296 agents upon which process may be served.



297 (e) Enter into written agreements with one or more
298 other states or sovereigns for the operation, marketing and
299 promotion of a joint lottery or joint-lottery games.

300 (f) Acquire real property and make improvements
301 thereon.

302 (g) Make, solicit and request proposals and offers, and
303 execute and effectuate any and all agreements or contracts,
304 including, but not limited to:

305 (i) Contracts for the purchase of such goods and
306 services as are necessary for the operation and promotion of the
307 lottery.

308 (ii) Contracts that provide for the placement of
309 commercial advertising on tickets.

310 (iii) Contracts for the purchase and/or lease of
311 real property as are necessary for the operation and promotion of
312 the lottery.

313 (iv) Any contract and/or agreement necessary for
314 the implementation, operation, and promotion of the lottery and
315 this act.

316 (h) Adopt and amend such bylaws, rules and regulations,
317 with the approval of the board as it deems necessary to administer
318 this act.

319 (3) The corporation shall:



320 (a) Supervise and administer the lottery in accordance
321 with the provisions of this act and the administrative rules and
322 regulations adopted by the board.

323 (b) Submit quarterly and annual reports to the
324 Governor, the Lieutenant Governor, the Speaker of the House of
325 Representatives, the State Treasurer, the State Auditor, the Joint
326 Legislative Committee on Performance Evaluation and Expenditure
327 Review, and the Commissioner of Revenue containing financial
328 information and projections which include, but are not limited to,
329 disclosure of gross revenues, expenses and net proceeds for the
330 period.

331 (c) Adopt by administrative regulation a system of
332 continuous internal audits.

333 (d) Maintain weekly or more frequent records of lottery
334 transactions, including distribution of tickets to lottery
335 retailers, revenues received, claims for prizes, prizes paid and
336 all other financial transactions of the corporation.

337 (e) Adopt by administrative regulation a code of ethics
338 for officers and employees of the corporation to carry out the
339 standards of conduct established by this act.

340 (f) Adopt by administrative regulation guidelines for
341 the disposal of lottery property if the corporation is dissolved.

342 (4) The corporation and the board shall be exempt from the
343 Mississippi Public Records Act of 1983.



344 (5) There shall be no liability on the part of, and no cause
345 of action shall arise against, the corporation, its governing
346 board, staff, agents, vendors, or employees, arising out of or in
347 connection with the issuance, failure to issue, or delivery of a
348 lottery ticket.

349 (5) The corporation shall not adopt any rules or regulations
350 that authorize or permit the use of a video lottery terminal.

351 **SECTION 10.** (1) The president, as chief executive officer
352 of the corporation, shall direct and supervise all administrative
353 and technical activities in accordance with the provisions of this
354 act and within the administrative regulations adopted by the
355 board. The president shall:

356 (a) Supervise and administer the operation of the
357 corporation, the lottery and its games.

358 (b) Employ and direct such personnel as may be
359 necessary to carry out the purposes of this act and utilize such
360 services, personnel or facilities of the corporation as he or she
361 may deem necessary.

362 (c) Contract in accordance with the administrative
363 regulations adopted by the corporation with persons to sell
364 lottery tickets at retail.

365 (d) Make available for inspection by the board or any
366 member of the board, upon request, all books, records, files, and
367 other information and documents of his or her office and to advise
368 the board and recommend such administrative regulations and other



369 matters he or she deems necessary and advisable to improve the
370 operation and administration of the lottery.

371 (e) Enter into any contract pursuant to this act with
372 any person, firm or corporation for the promotion and operation of
373 the lottery or for the performance of any of the functions as
374 provided in this act or administrative regulations adopted by the
375 board.

376 (f) Attend meetings of the board or appoint a designee
377 to attend on his or her behalf.

378 (g) Not later than thirty (30) days before the
379 beginning of the corporation's fiscal year, submit the proposed
380 annual budget of the corporation and projected net proceeds to the
381 board for review and approval. In addition, the proposed annual
382 budget of the corporation shall include a personnel table
383 reporting information for each full-time and part-time permanent
384 position, as follows:

385 (i) The position title and the salary for each
386 position in the existing operating budget for the current fiscal
387 year, indicating whether each position is filled or vacant as of
388 the reporting date.

389 (ii) The position title and the salary recommended
390 for each position for the next fiscal year.

391 (2) The president, with the approval of the board, may amend
392 or modify the budget at any time in any manner deemed necessary
393 for the proper operation of the corporation.



394 (3) Following his or her approval by the Governor and during
395 his or her entire employment by the board, the president shall
396 reside in Mississippi.

397 (4) The president and the board shall conduct an ongoing
398 examination of the operation and administration of lotteries in
399 other states and/or countries, including reviewing available
400 literature on the subject, of federal laws and regulations which
401 may affect the operation of the lottery, and of the reaction of
402 citizens of this state to existing or proposed features of lottery
403 games with a view toward implementing improvements that will tend
404 to serve the purposes of this act. The president may also
405 establish one or more market or equipment research centers for
406 lottery products and may establish lottery player information
407 centers.

408 (5) The president shall require bond from corporate
409 employees with access to corporate funds or lottery funds in such
410 an amount as provided in the administrative regulations of the
411 board.

412 (6) The president may:

413 (a) Require bond from other employees as he or she
414 deems necessary.

415 (b) For good cause, suspend, revoke or refuse to renew
416 any contract entered into in accordance with this act or the
417 administrative regulations of the board.



418 (c) Upon specific or general approval of the board,
419 conduct hearings and administer oaths to persons for the purpose
420 of assuring the security or integrity of lottery operations, or to
421 determine the qualifications or compliance by vendors and
422 retailers.

423 (d) Enter into personal service contracts pursuant to
424 rules and regulations adopted by the board and compensate such
425 consultants and technical assistants as may be required to carry
426 out the provisions of this act.

427 (e) By agreement, secure information and services as he
428 or she may deem necessary from any department, agency or unit of
429 the federal, state or local government, and to the extent allowed
430 by federal or state law, may compensate such department, agency or
431 unit of government for its services.

432 (7) Agencies, departments or units of state government shall
433 cooperate with the corporation and provide such information and
434 services as may be required by the corporation to assure the
435 integrity of the lottery and the effective operation of the
436 lottery games.

437 **SECTION 11.** (1) The corporation may enter into intelligence
438 sharing, reciprocal use, or restricted use agreements with the
439 federal government, law enforcement agencies, lottery regulation
440 agencies, and gaming enforcement agencies of other jurisdictions
441 which provide for and regulate the use of information provided and
442 received pursuant to the agreement.



443 (2) Records, documents and information in the possession of
444 the corporation received pursuant to an intelligence sharing,
445 reciprocal use or restricted use agreement entered into by the
446 corporation with a federal department or agency, any law
447 enforcement agency, or the lottery regulation or gaming
448 enforcement agency of any jurisdiction shall not be released by
449 the corporation without the permission of the person or agency
450 providing the record or information.

451 **SECTION 12.** The board may employ an attorney and/or may
452 contract with outside counsel when the board determines the need
453 for such counsel.

454 **SECTION 13.** (1) The corporation may enter into contracts
455 with any persons that provide for the placement of commercial
456 advertising on tickets. For purposes of this section, "commercial
457 advertising" means advertising intended for the sole benefit of
458 the advertiser.

459 (2) The nature of the advertising authorized in this section
460 and the procedures for its acceptance as well as the
461 implementation of this section shall be provided by rules adopted
462 by the board. The board shall retain, in its discretion, the
463 authority to accept or reject any bid. Advertisements for tobacco
464 and alcohol products shall not be accepted.

465 (3) Implementation of this section shall be in the manner
466 provided in the procurement rules and regulations adopted by the
467 board.



468 **SECTION 14.** (1) The corporation shall establish and
469 maintain a personnel program, including rules and regulations for
470 its employees. The corporation may procure benefit programs or
471 group insurance plans and shall provide or arrange for a
472 retirement plan. Unless otherwise specified by the president,
473 employees of the corporation shall serve at the pleasure of the
474 president who shall determine their compensation and benefits.
475 The employees shall be subject to suspension, dismissal, reduction
476 in pay, demotion, transfer, or other personnel action at the
477 discretion of the president and shall not be subject to civil
478 service provisions. The compensation of officers at the division
479 head level and above shall be determined by the board.
480 Corporation employees shall not be considered employees of the
481 State of Mississippi.

482 (2) No officer or employee of the corporation or any member
483 of the board of directors or any spouse, sibling, ascendant or
484 descendant of an officer, employee or member of the board of
485 directors shall have a financial interest in any vendor doing
486 business or proposing to do business with the corporation.

487 (3) No officer or employee of the corporation with
488 decision-making authority shall participate in any decision
489 involving a retailer with whom the officer or employee has a
490 financial interest.

491 (4) No officer or employee of the corporation who leaves the
492 employ of the corporation or board member may represent any vendor



493 or lottery retailer before the corporation for a period of one (1)
494 year following termination of employment with the corporation or
495 membership on the board.

496 **SECTION 15.** (1) A background investigation shall be
497 conducted by the chief security officer of the corporation or his
498 or her agent or designee on every applicant who has reached the
499 final selection process prior to employment by the corporation.
500 The background investigation shall include testing the applicants
501 for the presence of illegal controlled substances. Applicants
502 shall be fingerprinted as a condition of employment. In addition,
503 all division chiefs and deputy chiefs, directors of the
504 corporation, and employees of the corporation performing duties
505 primarily related to security matters, and, other employee
506 positions, prior to employment as determined by the board, shall
507 be subject to a background investigation report conducted by the
508 Department of Public Safety.

509 (2) The Department of Public Safety shall be reimbursed by
510 the corporation for the cost of investigations conducted pursuant
511 to this section.

512 (3) No person who has been convicted of a felony, bookmaking
513 or other forms of illegal gambling, or a crime involving moral
514 turpitude shall be employed by the corporation. The board may by
515 regulation provide for a definition of moral turpitude.

516 **SECTION 16.** (1) Any retailer, vendor or applicant for a
517 retailer or vendor contract aggrieved by an action of the



518 president of the corporation may appeal that decision to the board
519 in accordance with the regulations of the board.

520 (2) Any person aggrieved by a decision of the board may
521 appeal the decision to the chancery court of the county in which
522 its corporate headquarters is located within ten (10) days of the
523 date of the decision of the board.

524 (3) The chancery court shall hear appeals from the board.

525 (4) The chancery court may remand an appeal to the board to
526 conduct further hearings necessary to adjudicate the appeal.

527 (5) Any person who appeals the award of a lottery
528 procurement for the supply of a lottery ticket or an online
529 lottery system shall be liable for all costs of appeal and defense
530 in the event the appeal is denied or the contract award upheld.
531 Costs of appeal and defense may include, but should not be limited
532 to, court costs, bond, legal fees and loss of income to the
533 corporation resulting from institution of the appeal if, upon the
534 motion of the corporation, the court finds the appeal to have been
535 frivolous.

536 **SECTION 17.** Whenever a bond is required for the protection
537 of the corporation, letters of credit or other surety approved by
538 the corporation may be utilized in lieu of a bond. All bonds or
539 letters of credit shall be reviewed at least annually as to their
540 solvency and sufficiency.

541 **SECTION 18.** The board shall promulgate administrative rules
542 and regulations that define and prohibit the bulk sale of online



543 lottery tickets by a retailer and the bulk purchase of such
544 tickets by an investment syndicate, investment group, or
545 individual for investment purposes.

546 **SECTION 19.** The corporation shall require as a part of any
547 contract for the production or printing of lottery tickets that
548 each ticket include the toll-free telephone number of any state or
549 national organization that provides information and referral
550 services regarding compulsive or problem gambling.

551 **SECTION 20.** The corporation shall publish quarterly
552 financial statements, which shall be made available to the public
553 within thirty (30) days following the close of each quarter. The
554 quarterly financial statements shall include disposition of all
555 funds expended by the corporation for any purpose including
556 disclosure of any major procurements.

557 **SECTION 21.** (1) Proceeds of any lottery prize of Six
558 Hundred Dollars (\$600.00) or more shall be subject to state and
559 federal income tax laws, as applicable. Any attachments,
560 garnishments or executions authorized and issued pursuant to law
561 shall also be withheld if timely served upon the process agent of
562 the corporation. This section shall not apply to a retailer
563 except for the payment of state or local tax.

564 (2) The board shall adopt rules to establish a system of
565 verifying the validity of tickets claimed to win prizes and to
566 effect payment of such prizes, except that:



567 (a) No prize, nor any portion of a prize, nor any right
568 of any person to a prize awarded shall be assignable, except as
569 provided for in Section 23 of this act. Any prize, or portion
570 thereof, remaining unpaid at the death of a prizewinner shall be
571 paid to the estate of the deceased prizewinner or to the trustee
572 of a trust established by the deceased prizewinner if a copy of
573 the trust document or instrument has been filed with the
574 corporation, along with a notarized letter of direction from the
575 deceased prizewinner, and no written notice of revocation has been
576 received by the corporation prior to the deceased prizewinner's
577 death. Following a deceased prizewinner's death and prior to any
578 payment to such a trustee, the corporation shall obtain from the
579 trustee and each trust beneficiary a written agreement to
580 indemnify and hold the corporation harmless with respect to any
581 claims that may be asserted against the corporation arising from
582 payment to or through the trust. Notwithstanding any other
583 provisions of this act, any person, pursuant to an appropriate
584 judicial order, shall be paid the prize to which a winner is
585 entitled.

586 (b) No ticket shall knowingly be sold to any person
587 under the age of twenty-one (21).

588 (c) No prize shall be paid arising from claimed tickets
589 that are stolen, counterfeit, altered, fraudulent, unissued,
590 produced or issued in error, unreadable, not received, unclaimed
591 or not recorded by the corporation within applicable deadlines,



592 lacking in captions that conform and agree with the play symbols
593 as appropriate to the lottery game involved, or not in compliance
594 with such additional specific rules and public or confidential
595 validation and security tests of the corporation appropriate to
596 the particular lottery game involved.

597 (d) No particular prize in any lottery game shall be
598 paid more than once, and in the event of a binding determination
599 that more than one (1) claimant is entitled to a particular prize,
600 the sole remedy of such claimants is the award to each of them an
601 equal share in the prize.

602 (e) A holder of a winning lottery ticket from a
603 Mississippi lottery game or from a multistate or multisovereign
604 lottery game shall claim a prize within the timeframe provided for
605 in rules and regulations adopted by the board. If a valid claim
606 is not made for a prize within the applicable period, the prize
607 shall constitute an unclaimed prize for purposes of paragraph (c)
608 of this subsection.

609 (f) A person holding a winning lottery ticket in the
610 amount of Six Hundred Dollars (\$600.00) or more from a lottery
611 game must provide his or her name and city or area of residence to
612 the corporation to claim a prize. The corporation shall not
613 disclose the identity of the person holding a winning lottery
614 ticket without that person's written permission.



615 (3) No prize shall be paid upon a ticket purchased or sold
616 in violation of this act. Any such prize shall constitute an
617 unclaimed prize for purposes of subsection (2)(c) of this section.

618 (4) Any unclaimed prize money shall be added to the pool
619 from which future prizes are to be awarded or used for special
620 prize promotions.

621 (5) The corporation is discharged of all liability upon
622 payment of a prize.

623 (6) No ticket shall be purchased by and no prize shall be
624 paid to any of the following persons:

625 (a) Any member of the board;

626 (b) Any officer or employee of the corporation; or

627 (c) Any spouse, child, brother, sister or parent
628 residing as a member of the same household in the principal place
629 of abode of any person listed in paragraph (a) or (b) of this
630 subsection.

631 **SECTION 22.** (1) The board shall coordinate with the
632 Department of Human Services to promulgate rules and regulations
633 providing for the withholding of lottery prizes of persons who
634 have outstanding child support arrearages as reported to the
635 corporation, beginning at prize levels to be determined by the
636 board. The corporation may require any agency reporting current
637 child support arrearages to the corporation to provide information
638 relating to such arrearages in a manner, format or record approved
639 by the corporation. The corporation shall not be liable for



640 withholding a lottery prize based upon child support arrearage
641 information provided to it. Additionally, the corporation shall
642 employ the same methods, procedures and parameters to withhold
643 lottery prizes for persons who have delinquent debt as submitted
644 by a claimant agency to the Department of Revenue for recovery
645 under Section 27-7-501 et seq. The corporation shall not be
646 liable for withholding a lottery prize based upon delinquent debt
647 information provided to it by the Department of Revenue.

648 (2) To the extent feasible, the board shall coordinate with
649 state agencies to promulgate rules and regulations providing for
650 the withholding of lottery prizes of persons who have outstanding
651 debts owed to the state.

652 **SECTION 23.** (1) Under an appropriate judicial order, any
653 prize, or any portion of a prize, or any right of any person to a
654 prize awarded, payable by the corporation in deferred annuity
655 payments, may be paid to any person other than the winner.

656 (2) The right of a person to a prize payable by the
657 corporation in deferred annuity payments may be voluntarily
658 assigned as a whole or in part, if the assignment is made to a
659 person designated in accordance with an order of the chancery
660 court in the county where the corporation's headquarters is
661 located. Any such order shall be deemed an appropriate judicial
662 order.

663 (3) On the filing by the assignor or the assignee in
664 chancery court of a petition seeking approval of a voluntary



665 assignment, the court shall issue an order approving a voluntary
666 assignment and directing the corporation to make prize payments as
667 a whole or in part to the assignee if the court finds all of the
668 following:

669 (a) The assignment is in writing, is executed by the
670 assignor, and is by its terms subject to the laws of this state.

671 (b) The assignor provides a sworn affidavit attesting
672 that the assignor is of sound mind, is in full command of the
673 assignor's faculties, and is not acting under duress.

674 (c) The assignor has been advised about the assignment
675 by an independent attorney who is not related to and not
676 compensated by the assignee or an affiliate of the assignee.

677 (d) The assignor understands that the assignor will not
678 receive the prize payments or parts of payments during the years
679 assigned.

680 (e) The assignor understands and agrees, with regard to
681 the assigned payments, that the corporation, board of directors,
682 and officials and employees of the corporation shall have no
683 further liability or responsibility for making the assigned
684 payments.

685 (f) The assignee provides the assignor with a one-page
686 disclosure statement that sets forth in bold type not less than
687 fourteen (14) points in size the payments being assigned by amount
688 and payment date, the purchase price, the rate of discount to
689 present value, assuming daily compounding and funding on the



690 contract date, and any origination or closing fee that will be
691 charged to the assignor.

692 (g) The contract of assignment expressly states that
693 the assignor has three (3) business days after signing the
694 contract to cancel the assignment.

695 (h) The assignor and assignee do not seek assignment
696 for purposes of evading creditors, judgments or obligations of
697 child support.

698 (i) The assignor and assignee have certified that
699 neither of them has a child support obligation or, if either does
700 have a child support obligation, that no arrearage is due, and
701 that neither the assignor nor the assignee is obligated to repay
702 any public assistance benefits or overpayment of child support.

703 (j) The petition required by this subsection shall be
704 accompanied by a certification from a representative of the
705 Mississippi Department of Human Services stating any of the
706 following:

707 (i) That the assignor or assignee does not
708 currently have a child support arrearage, or the assignor or
709 assignee does not owe an obligation to repay any public assistance
710 benefits or an overpayment of child support benefits to the
711 Mississippi Department of Human Services.

712 (ii) That the assignor or assignee does currently
713 have a child support obligation and that no arrearage is due to
714 the Mississippi Department of Human Services.



715 (iii) That the assignor or assignee does currently
716 have a child support arrearage, or the assignor or assignee does
717 owe an obligation to repay any public assistance benefits or an
718 overpayment of child support benefits to the Mississippi
719 Department of Human Services.

720 The certification from the Mississippi Department of Human
721 Services, shall be provided to the assignor and the assignee
722 promptly upon the request of the assignor or the assignee, and in
723 no event more than ten (10) business days after the request is
724 received by the Mississippi Department of Human Services.

725 (4) Written notice of the petition and proposed assignment
726 and any court hearing concerning the petition and proposed
727 assignment shall be served on the corporation, which shall be made
728 a party thereto.

729 (5) (a) The corporation, not later than ten (10) days after
730 receiving a certified copy of a court order approving a voluntary
731 assignment, shall send the assignor and the assignee written
732 confirmation of both of the following:

733 (i) The court-approved assignment.

734 (ii) The intent of the corporation to rely on the
735 assignment in making payments to the assignee named in the order
736 free from any attachments, garnishments or executions.

737 (b) The corporation shall thereafter make payments in
738 accordance with the assignment.



739 (6) (a) Neither the state nor the corporation, its board of
740 directors, nor any of its officials or employees shall be liable
741 in any manner for any assigned payments made by the corporation
742 pursuant to this section.

743 (b) The assignor and assignee shall hold harmless and
744 indemnify the state, the corporation, its board of directors, and
745 its employees and agents from all claims, suits, actions,
746 complaints or liabilities related to the assignment.

747 (7) The assignee shall pay any costs incurred by the
748 corporation related to the assignments.

749 (8) The assignee shall notify the corporation of its
750 business location and mailing address for payment purposes and of
751 any change in location or address during the entire course of the
752 assignment.

753 (9) A court order or a combination of court orders issued
754 pursuant to this section may not require the corporation to divide
755 a single prize payment among more than three (3) different
756 persons.

757 (10) If the Internal Revenue Service or a court of competent
758 jurisdiction issues a determination letter, revenue ruling, or
759 other public document declaring that the voluntary assignment of
760 prizes will affect the federal income taxation treatment of
761 lottery prizewinners who do not assign their prizes, the following
762 shall occur:



763 (a) Within fifteen (15) days after the corporation
764 receives the letter, ruling or other document, the president of
765 the corporation shall file a copy of it with the Attorney General;
766 and

767 (b) A court shall not issue an order authorizing a
768 voluntary assignment under this section.

769 (11) This section shall prevail over any inconsistent
770 provision in Mississippi law.

771 **SECTION 24.** (1) The corporation shall enter into its
772 contracts for major procurements after negotiation or bidding.
773 The corporation may adopt special rules and regulations pursuant
774 to the provisions of this act providing for special procedures
775 whereby the Mississippi Lottery Corporation may make any class of
776 procurement.

777 (2) In its bidding and negotiation processes, the
778 corporation may do its own bidding and procurement or may utilize
779 the services of the Department of Finance and Administration, the
780 Department of Information Technology Services, or other state
781 agencies as appropriate and necessary. The president of the
782 corporation may, with approval of the board, declare an emergency
783 for purchasing purposes.

784 **SECTION 25.** (1) (a) All monies received by the corporation
785 from the sale of lottery tickets and all other sources shall be
786 deposited into a corporate operating account. Such account shall
787 be established in a fiscal agent or state depository and



788 collateralized. The corporation may use all monies in the
789 corporate operating account for the purposes of paying prizes and
790 the necessary expenses of the corporation and dividends to the
791 state. The corporation shall estimate and allocate the amount to
792 be paid by the corporation to prizewinners.

793 (b) (i) The investment of monies in the corporate
794 operating account, other than the amount specifically required for
795 the purchase of securities for payment of deferred prizes, shall
796 be invested in a manner prescribed by the board, consistent with
797 law. Such securities purchased as investments by the corporation
798 shall be issued in the name of the corporation and shall be safe
799 kept at a custodian financial institution or Federal Reserve Bank
800 domiciled in the State of Mississippi.

801 (ii) The investment of monies in the corporate
802 operating account, other than the amount specifically required for
803 the purchase of securities for deferred prize payments to winners
804 shall be invested only in securities in a manner prescribed by the
805 board, consistent with law. Such securities purchased as
806 investments by the corporation shall be issued in the name of the
807 corporation and shall be safe kept at a custodian financial
808 institution domiciled in the State of Mississippi or a Federal
809 Reserve Bank.

810 (iii) These instruments may be in varying
811 maturities and may be in book-entry form.



812 (iv) For the purpose of payment of deferred prizes
813 to winners, the corporation may only purchase those securities
814 prescribed by the board, consistent with law.

815 (v) For the purpose of deferred prize payments to
816 winners, the corporation shall purchase or invest in only those
817 securities prescribed by the board, consistent with law.

818 (c) Within twenty (20) days following the close of each
819 calendar month, the corporation shall transfer to the Lottery
820 Proceeds Fund in the State Treasury the amount of net revenues
821 which the corporation determines are surplus to its needs. Net
822 revenues or proceeds shall be determined by deducting from gross
823 revenues the payment costs incurred or estimated to be incurred in
824 the operation and administration of the lottery. This shall
825 include the expenses of the corporation and the costs resulting
826 from any contract or contracts entered into for promotional,
827 advertising or operational services or for the purchase or lease
828 of lottery equipment and materials, fixed capital outlays, and the
829 payment of prizes to the holders of winning lottery tickets.

830 (d) The apportionment of the total revenues accruing
831 from the sale of lottery tickets or shares and from all other
832 sources shall be as follows:

833 (i) The payment of prizes to the holders of
834 winning lottery tickets or shares which in any case shall be no
835 less than fifty percent (50%) of the total revenues accruing from
836 the sale of lottery tickets;



837 (ii) The payment of costs incurred in the
838 operation and administration of the lottery, including the
839 expenses of the corporation and the costs resulting from any
840 contract or contracts entered into for promotional, advertising or
841 operational services or for the purchase or lease of lottery
842 equipment and materials, which in no case shall exceed fifteen
843 percent (15%) of the total revenues accruing from the sale of
844 lottery tickets; however, this restriction shall not apply until
845 after the first twelve (12) months of revenue generation by the
846 lottery.

847 (2) A Lottery Proceeds Fund is hereby established in the
848 State Treasury. Net lottery proceeds shall be deposited into
849 this fund as provided in subsection (1) of this section. Monies
850 deposited into the Lottery Proceeds Fund shall be invested by the
851 state in accordance with state investment practices, and all
852 earnings from such investments shall accrue to this account. No
853 monies shall be allotted or expended from this account unless
854 pursuant to a warrant issued by the State Fiscal Officer upon
855 requisition of the Transportation Commission for funds to be
856 transferred to the State Highway Fund in accordance with Section
857 43 of this act.

858 **SECTION 26.** (1) The corporation may accept and expend such
859 monies as may be appropriated by the Legislature or such monies as
860 may be received from any source, including income from the
861 corporation's operations, for effectuating its corporate purposes,



862 including the payment of the initial expenses of administration
863 and operation of the corporation and the lottery.

864 (2) The corporation is intended to be self-sustaining and
865 self-funded. Monies in the State General Fund shall not be used
866 or obligated to pay the prizes of the lottery, and no claim for
867 the payment of an expense of the lottery or prizes of the lottery
868 may be made against any monies other than monies credited to the
869 corporate operating account.

870 **SECTION 27.** (1) The Legislature hereby recognizes that to
871 conduct a successful lottery, the corporation must develop and
872 maintain a statewide network of lottery retailers that will serve
873 the public convenience and promote the sale of tickets, while
874 insuring the integrity of the lottery operations, games and
875 activities.

876 (2) To govern the selection of lottery retailers, the board
877 shall, by administrative regulation, develop a list of objective
878 criteria upon which the selection of lottery retailers shall be
879 based. Separate criteria shall be developed to govern the
880 selection of retailers of instant tickets and online retailers.
881 In developing these criteria, the board shall consider such
882 factors as the applicant's financial responsibility, location and
883 security of the applicant's place of business or activity,
884 integrity, and reputation; however, the board shall not consider
885 political affiliation, activities or monetary contributions to



886 political organizations or candidates for any public office. The
887 criteria shall include, but not be limited to, the following:

888 (a) The applicant shall be current in payment of all
889 taxes, interest and penalties owed to any taxing political
890 subdivision where the lottery retailer will sell lottery tickets.

891 (b) The applicant shall be current in filing all
892 applicable tax returns and in payment of all taxes, interest and
893 penalties owed to the State of Mississippi, excluding items under
894 formal appeal pursuant to applicable statutes, before a license is
895 issued and before each renewal.

896 (c) No person, partnership, unincorporated association,
897 corporation or other business entity shall be selected as a
898 lottery retailer for the sale of instant tickets or online games
899 who:

900 (i) Has been convicted of a criminal offense
901 related to the security or integrity of the lottery in this or any
902 other jurisdiction.

903 (ii) Has been convicted of any illegal gambling
904 activity, false statements, false swearing or perjury in this or
905 any other jurisdiction, or convicted of any crime punishable by
906 more than one (1) year imprisonment or a fine of more than One
907 Thousand Dollars (\$1,000.00), or both.

908 (iii) Has been found to have violated the
909 provisions of this act or any administrative regulation adopted
910 hereunder, unless either ten (10) years have passed since the



911 violation, or the president and the board find the violation both
912 minor and unintentional in nature.

913 (iv) Is a vendor or an employee or agent of any
914 vendor doing business with the corporation.

915 (v) Resides in the same household as an officer of
916 the corporation.

917 (vi) Has made a statement of material fact to the
918 corporation, knowing such statement to be false.

919 **SECTION 28.** (1) In addition to the provisions of Section 27
920 of this act, no person, partnership, unincorporated association,
921 corporation or other business entity shall be selected as an
922 online lottery retailer who:

923 (a) Has been denied a license to sell instant tickets
924 on the basis of objective criteria established by the board, or
925 any provision of this act.

926 (b) Has failed to sell sufficient instant tickets to
927 indicate that the location of an online game at his or her outlet
928 would be of economic benefit to him or her or the lottery
929 corporation.

930 (2) The applicant shall not be engaged exclusively in the
931 sale of lottery tickets. However, this subsection does not
932 preclude the corporation from contracting for the sale of lottery
933 tickets with nonprofit, charitable organizations or units of local
934 government in accordance with the provisions of this act.



935 (3) Any lottery retailer contract executed pursuant to this
936 section may, for good cause, be suspended, revoked, or terminated
937 by the president if the retailer is found to have violated any
938 provision of this act or objective criteria established by the
939 board. Review of such activities shall be in accordance with the
940 procedures outlined in this act. All lottery retailer contracts
941 shall be renewable annually after issuance unless sooner cancelled
942 or terminated.

943 **SECTION 29.** (1) After one (1) year of operation, any
944 retailer who purchased or leased online equipment pursuant to this
945 act and whose sales are equal to or greater than the statewide
946 average of sales of online retailers may be reimbursed the cost of
947 the purchase or lease by the corporation as authorized by rule and
948 regulation of the board. The board may purchase the terminals of
949 other retailers who purchased their equipment if the board
950 determines that such purchase is in the best interest of the
951 lottery.

952 (2) No lottery retailer contract awarded pursuant to this
953 act shall be transferable or assignable. No lottery retailer
954 shall contract with any person for lottery goods or services
955 except with the approval of the board.

956 (3) Each lottery retailer shall be issued a lottery retailer
957 certificate which shall be conspicuously displayed at the place
958 where the lottery retailer is authorized to sell lottery tickets.



959 Lottery tickets shall only be sold by the retailer at the location
960 stated on the lottery retailer certificate.

961 (4) For the convenience of the public, all retailers may pay
962 winners up to Six Hundred Dollars (\$600.00) after performing
963 validation procedures appropriate to the lottery game involved.

964 **SECTION 30.** The corporation shall require each retailer to
965 post a letter of credit or a bond with the corporation using a
966 surety acceptable to the corporation in an amount not to exceed
967 twice the average lottery ticket sales of the retailer for the
968 period within which the retailer is required to remit lottery
969 funds to the corporation. For the first ninety (90) days of sales
970 of a new retailer, the amount of the bond shall not exceed twice
971 the average estimated lottery ticket sales for the period within
972 which the retailer is required to remit lottery funds to the
973 corporation. This section does not apply to lottery tickets which
974 are prepaid by the retailers. The corporation may facilitate the
975 purchase of letters of credit by establishing retailer pools for
976 the purchase of bonds and letters of credit for retailers.

977 **SECTION 31.** (1) Any contract executed by the corporation
978 with a retailer pursuant to this section shall specify the reasons
979 for which any contract may be cancelled, suspended, revoked or
980 terminated by the corporation, which reasons shall include, but
981 not be limited to:

982 (a) Commission of a violation of this act or
983 administrative regulations adopted pursuant thereto.



984 (b) Failure to accurately account for lottery tickets,
985 revenues or prizes as required by the corporation.

986 (c) Commission of any fraud, deceit or
987 misrepresentation.

988 (d) Insufficient sale of tickets.

989 (e) Conduct prejudicial to public confidence in the
990 lottery.

991 (f) The retailer filing for or being placed in
992 bankruptcy or receivership.

993 (g) Any material change in any matter considered by the
994 corporation in executing the contract with the retailer.

995 (h) Failure to meet any of the objective criteria
996 established by the board pursuant to this act.

997 (2) If, in the discretion of the president, cancellation,
998 denial, revocation, suspension or rejection of renewal of a
999 lottery retailer contract is in the best interest of the lottery,
1000 the public welfare, or the State of Mississippi, the president may
1001 cancel, suspend, revoke or terminate, after notice and a hearing,
1002 any contract issued pursuant to this act. Such contract may,
1003 however, be temporarily suspended by the president without prior
1004 notice, pending any prosecution, hearing or investigation, whether
1005 by a third party or by the president. A contract may be
1006 suspended, revoked or terminated by the president for any one or
1007 more of the reasons enumerated in this section.



1008 SECTION 32. (1) (a) All proceeds from the sale of lottery
1009 tickets received by a lottery retailer shall constitute a trust
1010 fund until paid to the corporation either directly or through the
1011 corporation's authorized collection representative. A lottery
1012 retailer shall have a fiduciary duty to preserve and account for
1013 lottery proceeds, and lottery retailers shall be personally liable
1014 for all proceeds. Proceeds shall include unsold instant tickets
1015 received by a lottery retailer and cash proceeds of sale of any
1016 lottery products, net of allowable sales commissions and credit
1017 for lottery prizes to winners by lottery retailers. Sales
1018 proceeds and unused instant tickets shall be delivered to the
1019 corporation or its authorized collection representative upon
1020 demand.

1021 (b) The corporation shall, by rules and regulations,
1022 require retailers to place all lottery proceeds due the
1023 corporation in accounts in institutions insured by the Federal
1024 Deposit Insurance Corporation not later than the close of the next
1025 banking day after the date of their collection by the retailer
1026 until the date they are paid over to the corporation. The
1027 corporation may require a retailer to establish a single, separate
1028 electronic funds transfer account, where available, for the
1029 purpose of receiving monies from ticket sales, making payments to
1030 the corporation, and receiving payments from the corporation.
1031 Unless otherwise authorized in writing by the corporation, each
1032 lottery retailer shall establish a separate bank account for



1033 lottery proceeds which shall be kept separate and apart from all
1034 other funds and assets and shall not be commingled with any other
1035 funds or assets.

1036 (c) This section shall apply to all lottery tickets
1037 generated by computer terminal or other electronic devices and any
1038 other tickets delivered to lottery retailers.

1039 (2) Whenever any person who receives proceeds from the sale
1040 of lottery tickets in the capacity of a lottery retailer becomes
1041 insolvent, or dies insolvent, the proceeds due the corporation
1042 from such person or his or her estate shall have preference over
1043 all debts or demands.

1044 **SECTION 33.** (1) No person shall sell a ticket at a price
1045 other than established by the corporation, unless authorized in
1046 writing by the president. No person other than a duly certified
1047 lottery retailer shall sell lottery tickets, but this shall not be
1048 construed to prevent a person who may lawfully purchase tickets
1049 from making a gift of lottery tickets to another. Nothing in this
1050 act shall be construed to prohibit the corporation from
1051 designating certain of its agents and employees to sell lottery
1052 tickets directly to the public.

1053 (2) Lottery tickets may be given by merchants as a means of
1054 promoting goods or services to customers or prospective customers
1055 subject to approval by the corporation.

1056 (3) No lottery retailer shall sell a ticket except from the
1057 locations listed in the contract.



1058 (4) No lottery tickets shall be sold at State of Mississippi
1059 safety rest areas.

1060 **SECTION 34.** The corporation shall require the posting of one
1061 or more signs on licensed premises at each point of entry into
1062 areas where lottery tickets are sold to inform patrons of a
1063 toll-free telephone number of any state or national organization
1064 that provides information and referral services regarding
1065 compulsive or problem gambling. Failure by the owner of the
1066 licensed premises to post and maintain such a sign or signs shall
1067 be cause for the imposition of a fine to be determined by the
1068 board.

1069 **SECTION 35.** (1) The corporation may purchase, lease or
1070 lease-purchase such goods or services as are necessary for
1071 effectuating the purposes of this act. The corporation shall not
1072 contract with any person or entity for the total operation and
1073 administration of the lottery, but it may make procurements which
1074 integrate such functions as lottery game design, lottery ticket
1075 distribution to retailers, supply of goods and services and
1076 advertising. In all procurement decisions, the corporation shall
1077 take into account the particularly sensitive nature of the lottery
1078 and shall act to promote and ensure security, honesty, fairness
1079 and integrity in the operation and administration of the lottery
1080 and the objectives of raising net proceeds for the benefit of the
1081 public.



1082 (2) The corporation shall investigate the financial
1083 responsibility, security and integrity of any lottery system
1084 vendor who submits a bid, proposal or offer. At the time of
1085 submitting such bid, proposal or offer to the corporation, the
1086 corporation may require the following items:

1087 (a) A disclosure of the vendor's name and address and,
1088 as applicable, the name and address of the following:

1089 (i) If the vendor is a corporation, the officers,
1090 directors and each stockholder in such corporation; however, in
1091 the case of owners of equity securities of a publicly traded
1092 corporation, only the names and addresses of those known to the
1093 corporation to own beneficially five percent (5%) or more of such
1094 securities need be disclosed.

1095 (ii) If the vendor is a trust, the trustee and all
1096 persons entitled to receive income or benefits from the trust.

1097 (iii) If the vendor is an association, the
1098 members, officers and directors.

1099 (iv) If the vendor is a partnership or joint
1100 venture, all of the general partners, limited partners, or joint
1101 venturers.

1102 (b) A disclosure of all the states and jurisdictions in
1103 which the vendor does business, and the nature of the business for
1104 each such state or jurisdiction.

1105 (c) A disclosure of all the states and jurisdictions in
1106 which the vendor has contracts to supply gaming goods or services,



1107 including, but not limited to, lottery goods and services, and the
1108 nature of the goods or services involved for each such state or
1109 jurisdiction.

1110 (d) A disclosure of all the states and jurisdictions in
1111 which the vendor has applied for, has sought renewal of, has
1112 received, has been denied, has pending, or has had revoked a
1113 gaming license of any kind, or had fines or penalties assessed on
1114 their license, contract, or operation, and the disposition of such
1115 in each such state or jurisdiction. If any lottery or gaming
1116 license or contract has been revoked or has not been renewed or
1117 any lottery or gaming license or application has been either
1118 denied or is pending and has remained pending for more than six
1119 (6) months, all of the facts and circumstances underlying the
1120 failure to receive such a license shall be disclosed.

1121 (e) A disclosure of the details of any finding of a
1122 plea, conviction or adjudication for guilt, in a state or federal
1123 court, of the vendor for any felony or any other criminal offense
1124 other than a traffic violation.

1125 (f) A disclosure of the details of any bankruptcy,
1126 insolvency, reorganization, corporate or individual purchase or
1127 takeover of another corporation, including bonded indebtedness, or
1128 any pending litigation of the vendor.

1129 (g) Such additional disclosures and information as the
1130 corporation may determine to be appropriate for the procurement
1131 involved. If the vendor subcontracts any substantial portion of



1132 the work to be performed under the contract to a subcontractor,
1133 the vendor shall disclose all of the information required by this
1134 subsection for the subcontractor as if the subcontractor were
1135 itself a vendor.

1136 (3) The corporation shall not enter into a contract for a
1137 procurement with any lottery system vendor who has not complied
1138 with the disclosures described in subsection (2) of this section
1139 if required by the corporation, and any contract with such a
1140 vendor is unenforceable. Any contract with a vendor who does not
1141 comply with such requirements for periodically updating such
1142 disclosures during the tenure of contract as may be specified in
1143 such contract shall be terminated by the corporation. The
1144 provisions of this section shall be construed broadly and
1145 liberally to achieve the ends of full disclosure of all
1146 information necessary to allow for a full and complete evaluation
1147 by the corporation of the competence, integrity, background and
1148 character of vendors.

1149 (4) (a) A contract shall not be entered into with any
1150 vendor who has been found guilty of a felony related to the
1151 security or integrity of the lottery in this or any other
1152 jurisdiction.

1153 (b) A contract shall not be entered into with any
1154 vendor who has not first obtained a signed tax clearance from the
1155 Commissioner of Revenue indicating that the vendor is current in
1156 filing all applicable tax returns and in payment of all taxes,



1157 interest and penalties owed to the State of Mississippi, excluding
1158 items under formal appeal pursuant to applicable statutes.

1159 (5) The corporation may require that each vendor, at the
1160 execution of the contract with the corporation, post a performance
1161 bond or letter of credit from a bank acceptable to the
1162 corporation, in an amount established by the corporation. In lieu
1163 of the bond, a vendor may, to assure the faithful performance of
1164 its obligations, deposit and maintain with the corporation
1165 securities that are interest-bearing or accruing and that are
1166 rated in one (1) of the three (3) highest classifications by an
1167 established nationally recognized investment rating service.

1168 Securities eligible under this subsection are limited to:

1169 (a) Certificates of deposit issued by solvent banks or
1170 savings associations approved by the corporation and which are
1171 organized and existing under the laws of this state or under the
1172 laws of the United States.

1173 (b) United States bonds, notes, and bills for which the
1174 full faith and credit of the government of the United States is
1175 pledged for the payment of principal and interest.

1176 (c) Corporate bonds approved by the corporation. The
1177 corporation which issued the bonds shall not be an affiliate or
1178 subsidiary of the depositor. Such securities shall be held in
1179 trust.

1180 (6) Every contract entered into by the corporation pursuant
1181 to this section shall contain a provision for payment of



1182 liquidated damages to the corporation for any breach of contract
1183 by the vendor.

1184 (7) Each vendor shall be qualified to do business in this
1185 state and shall file appropriate tax returns as provided by the
1186 laws of this state. All contracts under this section shall be
1187 governed by the laws of this state.

1188 **SECTION 36.** (1) The Mississippi Department of Public Safety
1189 shall perform full criminal background investigations on all
1190 potential vendors, potential retailers, and potential employees of
1191 the corporation at the level of division director and above, and
1192 at any level within a division handling security, and, as
1193 determined by the board, on any other employee of the corporation.
1194 The corporation shall reimburse the Department of Public Safety
1195 for the actual costs of such investigations.

1196 (2) The corporation or its division handling security shall:

1197 (a) Conduct criminal background investigations and
1198 credit investigations on all potential retailers and investigate
1199 all potential employees of the corporation not referred to in
1200 subsection (1) of this section or not investigated by the
1201 Department of Public Safety.

1202 (b) Supervise ticket validation and lottery drawings.

1203 (c) Inspect at times determined solely by the division
1204 the facilities of any vendor in order to determine the integrity
1205 of the vendor's product and in order to determine whether the
1206 vendor is in compliance with its contract.



1207 (d) Report any suspected violations of this act to the
1208 appropriate district attorney, or the Attorney General, and law
1209 enforcement agencies.

1210 (e) Upon request, provide assistance to any district
1211 attorney, the Attorney General, or law enforcement agency
1212 investigating a violation of this act.

1213 **SECTION 37.** (1) (a) No lottery retailer and no agent,
1214 associate, employee, representative or servant of any such person
1215 shall sell a lottery ticket to any person unless the person
1216 submits any one (1) of the following forms of identification which
1217 establish the age of the person as twenty-one (21) years or older:

1218 (i) A valid and current Mississippi driver's
1219 license which contains a photograph of the person presenting the
1220 driver's license.

1221 (ii) A valid and current driver's license of
1222 another state which contains a photograph of the person and birth
1223 date of the person submitting the driver's license.

1224 (iii) A valid and current special identification
1225 card issued by the State of Mississippi containing a photograph of
1226 the person submitting the identification card.

1227 (iv) A valid and current passport or visa issued
1228 by the federal government or another country or nation that
1229 contains a permanently attached photograph of the person and the
1230 date of birth of the person submitting the passport or visa.



1231 (v) A valid and current military or federal
1232 identification card issued by the federal government containing a
1233 photograph of the person and date of birth of the person
1234 submitting the identification card.

1235 (b) Each form of identification listed in paragraph (a)
1236 of this subsection must on its face establish the age of the
1237 person as twenty-one (21) years of age or older, and there must be
1238 no reason to doubt the authenticity or correctness of the
1239 identification. No form of identification mentioned in paragraph
1240 (a) of this subsection shall be accepted as proof of age if it is
1241 expired, defaced, mutilated or altered. If the driver's license,
1242 state identification card or lawful identification submitted is a
1243 duplicate, the person shall submit additional identification which
1244 contains the name, date of birth and photograph of the person.

1245 (c) An educational institution identification card,
1246 check-cashing identification card, or employee identification card
1247 shall not be considered as lawful identification for the purposes
1248 of this subsection.

1249 (2) Any person who knowingly sells a lottery ticket to a
1250 person under twenty-one (21) years of age shall be fined not less
1251 than One Hundred Dollars (\$100.00) nor more than Five Hundred
1252 Dollars (\$500.00) for the first offense and, for each subsequent
1253 offense, not less than Two Hundred Dollars (\$200.00) or more than
1254 One Thousand Dollars (\$1,000.00).



1255 (3) (a) It is unlawful for any person under twenty-one (21)
1256 years of age to purchase a lottery ticket.

1257 (b) Whoever violates the provisions of this subsection
1258 shall be fined not more than One Hundred Dollars (\$100.00).

1259 (c) Any person apprehended while violating the
1260 provisions of this subsection shall be issued a citation by the
1261 apprehending law enforcement officer, which shall be paid in the
1262 same manner as provided for the offenders of local traffic
1263 violations.

1264 **SECTION 38.** (1) Any person, with intent to defraud, who
1265 falsely makes, alters, forges, utters, passes or counterfeits a
1266 state lottery ticket shall be punished as provided in subsection
1267 (2) of this section.

1268 (2) Any person who influences or attempts to influence the
1269 winning of a prize through the use of coercion, fraud, deception
1270 or tampering with lottery equipment or materials shall be punished
1271 by imprisonment for not less than one (1) year and not more than
1272 twenty (20) years, by a fine of not more than Fifty Thousand
1273 Dollars (\$50,000.00), or by both fine and imprisonment.

1274 **SECTION 39.** (1) No former member of the board or officer of
1275 the corporation, or a corporation or other entity owned in whole
1276 or in part by a former board member or corporation officer, shall
1277 solicit or accept employment or enter into a contract for
1278 compensation of any kind with a vendor of the corporation within
1279 one (1) year after termination of service with the corporation.



1280 (2) The name of any individual who is a board member or an
1281 officer or an employee of the corporation shall not appear upon
1282 any lottery ticket, lottery game, lottery form or paper used in
1283 playing any lottery game.

1284 (3) Violation of any provision of this section by a member
1285 of the board or an officer of the corporation shall constitute
1286 cause for removal from office or dismissal from employment.

1287 (4) The provisions of subsections (1) and (3) of this
1288 section shall not apply to ex officio members of the board of
1289 directors.

1290 (5) The State Ethics Commission shall administer and enforce
1291 the provisions of this section. The procedures and penalties
1292 provided for in Section 25-4-101 et seq. shall apply to the
1293 administration and enforcement of the provisions of this section.

1294 **SECTION 40.** (1) Skimming of lottery proceeds is the
1295 intentional excluding, or the taking of any action in an attempt
1296 to exclude, anything or its value from the deposit, counting,
1297 collection or computation of gross revenues or net proceeds from
1298 lottery activities.

1299 (2) Whoever commits the crime of skimming of lottery
1300 proceeds when the amount skimmed or to be skimmed is less than One
1301 Thousand Dollars (\$1,000.00) may be imprisoned for not more than
1302 five (5) years, or may be fined not more than Five Thousand
1303 Dollars (\$5,000.00), or both.



1304 (3) Whoever commits the crime of skimming of lottery
1305 proceeds when the amount skimmed, or to be skimmed, is One
1306 Thousand Dollars (\$1,000.00) or more but less than Ten Thousand
1307 Dollars (\$10,000.00), shall be imprisoned for not less than three
1308 (3) years nor more than ten (10) years without benefit of
1309 probation, parole, or suspension of sentence, and may be fined not
1310 more than Twenty-five Thousand Dollars (\$25,000.00).

1311 (4) Whoever commits the crime of skimming lottery proceeds
1312 when the amount skimmed, or to be skimmed, is Ten Thousand Dollars
1313 (\$10,000.00) or more shall be imprisoned for not less than ten
1314 (10) years and not more than twenty-five (25) years without
1315 benefit of probation, parole, or suspension of sentence, and may
1316 be fined not more than Fifty Thousand Dollars (\$50,000.00), or
1317 both imprisonment and fine.

1318 **SECTION 41.** No person shall knowingly or intentionally use
1319 or possess a form of illegal lottery device or make a material
1320 false statement in any application for a license or proposal to
1321 conduct lottery activities or make a material false entry in any
1322 book or record which is compiled or maintained or submitted to the
1323 corporation pursuant to the provisions of this act. Any person
1324 who violates the provisions of this section may be imprisoned for
1325 not less than five (5) and not more than ten (10) years without
1326 benefit of probation, parole or suspension of imposition of
1327 sentence and may be fined an amount not to exceed Twenty-five



1328 Thousand Dollars (\$25,000.00) or the dollar amount of the false
1329 entry or statement, whichever is greater.

1330 **SECTION 42.** (1) Illegal lottery devices as described in
1331 this section are considered gambling devices and contraband.

1332 (2) As used in this section, the term "illegal lottery
1333 device" means:

1334 (a) Forged, counterfeit, or stolen, or improperly
1335 issued or illegally possessed lottery tickets.

1336 (b) Any device, located outside of a corporate gaming
1337 facility that holds a valid license from the Mississippi Gaming
1338 Commission, which utilizes a cathode ray tube or video screen upon
1339 which symbols, numbers, cards, figures, facsimiles, or data appear
1340 for observation by the player and which is equipped with either:

1341 (i) A cash automatic payout device, or

1342 (ii) A capability, design, device or programming
1343 capable of releasing free games, credits or replays and a
1344 capability, design, device, or programming to record the free
1345 games, credits or free plays so released.

1346 (c) Any video device, located outside of a corporate
1347 gaming facility that holds a valid license from the Mississippi
1348 Gaming Commission, which accepts coins or credits for the purpose
1349 of advancing the odds or benefits to the player for successful
1350 completion of the object of play, or which may award a cumulative
1351 total in excess of fifteen (15) free games or replays.

1352 (d) Video lottery terminals.



1353 (3) All law enforcement officers of municipal police forces,
1354 sheriff's departments, and the state may confiscate and
1355 immediately destroy all illegal lottery devices or other video
1356 machines used for illegal gambling that come to their attention.

1357 (4) Any video lottery device or equipment in possession of a
1358 licensed manufacturer, seller, distributor, transporter or
1359 repairman in this state shall not be subject to confiscation and
1360 destruction unless such device or equipment is being used for
1361 unlawful gambling activities.

1362 (5) Any law enforcement agency which seizes any illegal
1363 lottery device in accordance with this section may, in lieu of the
1364 immediate destruction of the device, file a petition in the
1365 circuit court where the device was seized seeking a judicial
1366 determination that the seized device is an illegal lottery device.
1367 The petition shall require the persons and entities from whom the
1368 device was seized and such other persons as the agency believes
1369 may have an interest in the device to appear and show cause why
1370 the seized device should not be destroyed as an illegal lottery
1371 device.

1372 (6) The provisions of this section shall not apply to
1373 electronic bingo machines the possession and use of which has been
1374 authorized and licensed pursuant to law, video or electronic
1375 gaming machines the possession and use of which has been
1376 authorized and licensed pursuant to law and the Mississippi Gaming



1377 Commission or to any lottery game or equipment authorized pursuant
1378 to this act.

1379 (7) Neither the state nor any political subdivision, agency,
1380 agent, or enforcement officer thereof shall be liable civilly or
1381 criminally for the destruction of any illegal lottery device.

1382 **SECTION 43.** Until June 30, 2028, revenues generated by the
1383 Mississippi Lottery Law, created pursuant to Sections 1 through 46
1384 of this act and deposited into the Lottery Proceeds Fund under
1385 Section 25(2) of this act shall be paid into the State Highway
1386 Fund by warrant issued by the State Fiscal Officer upon
1387 requisition of the State Transportation Commission as needed to
1388 provide funds to repair, renovate and maintain highways and
1389 bridges of the state; however, funds paid into the State Highway
1390 Fund under this section shall be first used for matching federal
1391 funds authorized to the state pursuant to any federal highway
1392 infrastructure program implemented after September 1, 2018. From
1393 and after July 1, 2028, the revenue shall be deposited into the
1394 Lottery Proceeds Fund shall be transferred to the State General
1395 Fund or diverted to other purposes for which the Legislature may
1396 determine.

1397 **SECTION 44.** All directors, officers and employees of the
1398 corporation shall be considered public servants as defined in
1399 Section 25-4-101 et seq., Mississippi Code of 1972. All directors
1400 and officers of the corporation are subject to Section 25-4-25,
1401 Mississippi Code of 1972, and shall be required to file a



1402 Statement of Economic Interest with the Mississippi Ethics
1403 Commission.

1404 **SECTION 45.** To ensure the financial integrity of the
1405 lottery, the corporation through its board of directors shall:

1406 (a) Compile and submit quarterly and annual reports and
1407 financial statements, in compliance with Section 9(3)(b) and
1408 Section 20 of this act;

1409 (b) Contract with an independent auditor who is a
1410 certified public accountant or firm to conduct an annual financial
1411 audit of the books and records of the corporation. The cost of
1412 this annual financial audit shall be an operating expense of the
1413 corporation:

1414 (i) Such independent auditor shall have no
1415 financial interest in any vendor with whom the corporation is
1416 under contract;

1417 (ii) All contracts for independent auditors shall
1418 be reviewed by and subject to the approval of the State Auditor to
1419 ensure that the independent auditor is qualified to perform the
1420 audit;

1421 (iii) The audit shall be completed within ninety
1422 (90) days after the close of the corporation's fiscal year; and

1423 (iv) Contracts may be entered into for audit
1424 services for a period not to exceed five (5) years and the same
1425 firm shall not receive two (2) consecutive audit contracts.



1426 **SECTION 46.** For informational purposes only, the corporation
1427 shall submit to the Joint Legislative Budget Committee a copy of
1428 the corporation's annual operating budget for the upcoming fiscal
1429 year. The budget shall include an estimate of net proceeds to be
1430 deposited into the State Highway Fund during the succeeding fiscal
1431 year.

1432 **SECTION 47.** Section 7-7-211, Mississippi Code of 1972, is
1433 amended as follows:

1434 7-7-211. The department shall have the power and it shall be
1435 its duty:

1436 (a) To identify and define for all public offices of
1437 the state and its subdivisions generally accepted accounting
1438 principles or other accounting principles as promulgated by
1439 nationally recognized professional organizations and to consult
1440 with the State Fiscal Officer in the prescription and
1441 implementation of accounting rules and regulations;

1442 (b) To provide best practices, for all public offices
1443 of regional and local subdivisions of the state, systems of
1444 accounting, budgeting and reporting financial facts relating to
1445 said offices in conformity with legal requirements and with
1446 generally accepted accounting principles or other accounting
1447 principles as promulgated by nationally recognized professional
1448 organizations; to assist such subdivisions in need of assistance
1449 in the installation of such systems; to revise such systems when
1450 deemed necessary, and to report to the Legislature at periodic



1451 times the extent to which each office is maintaining such systems,
1452 along with such recommendations to the Legislature for improvement
1453 as seem desirable;

1454 (c) To study and analyze existing managerial policies,
1455 methods, procedures, duties and services of the various state
1456 departments and institutions upon written request of the Governor,
1457 the Legislature or any committee or other body empowered by the
1458 Legislature to make such request to determine whether and where
1459 operations can be eliminated, combined, simplified and improved;

1460 (d) To postaudit each year and, when deemed necessary,
1461 preaudit and investigate the financial affairs of the departments,
1462 institutions, boards, commissions, or other agencies of state
1463 government, as part of the publication of a comprehensive annual
1464 financial report for the State of Mississippi, or as deemed
1465 necessary by the State Auditor. In complying with the
1466 requirements of this paragraph, the department shall have the
1467 authority to conduct all necessary audit procedures on an interim
1468 and year-end basis;

1469 (e) To postaudit and, when deemed necessary, preaudit
1470 and investigate separately the financial affairs of (i) the
1471 offices, boards and commissions of county governments and any
1472 departments and institutions thereof and therein; (ii) public
1473 school districts, departments of education and junior college
1474 districts; and (iii) any other local offices or agencies which
1475 share revenues derived from taxes or fees imposed by the State



1476 Legislature or receive grants from revenues collected by
1477 governmental divisions of the state; the cost of such audits,
1478 investigations or other services to be paid as follows: Such part
1479 shall be paid by the state from appropriations made by the
1480 Legislature for the operation of the State Department of Audit as
1481 may exceed the sum of Thirty-five Dollars (\$35.00) per man-hour
1482 for the services of each staff person engaged in performing the
1483 audit or other service plus the actual cost of any independent
1484 specialist firm contracted by the State Auditor to assist in the
1485 performance of the audit, which sum shall be paid by the county,
1486 district, department, institution or other agency audited out of
1487 its general fund or any other available funds from which such
1488 payment is not prohibited by law. Costs paid for independent
1489 specialists or firms contracted by the State Auditor shall be paid
1490 by the audited entity through the State Auditor to the specialist
1491 or firm conducting the postaudit.

1492 Each school district in the state shall have its financial
1493 records audited annually, at the end of each fiscal year, either
1494 by the State Auditor or by a certified public accountant approved
1495 by the State Auditor. Beginning with the audits of fiscal year
1496 2010 activity, no certified public accountant shall be selected to
1497 perform the annual audit of a school district who has audited that
1498 district for three (3) or more consecutive years previously.
1499 Certified public accountants shall be selected in a manner
1500 determined by the State Auditor. The school district shall have



1501 the responsibility to pay for the audit, including the review by
1502 the State Auditor of audits performed by certified public
1503 accountants;

1504 (f) To postaudit and, when deemed necessary, preaudit
1505 and investigate the financial affairs of the levee boards;
1506 agencies created by the Legislature or by executive order of the
1507 Governor; profit or nonprofit business entities administering
1508 programs financed by funds flowing through the State Treasury or
1509 through any of the agencies of the state, or its subdivisions; and
1510 all other public bodies supported by funds derived in part or
1511 wholly from public funds, except municipalities which annually
1512 submit an audit prepared by a qualified certified public
1513 accountant using methods and procedures prescribed by the
1514 department;

1515 (g) To make written demand, when necessary, for the
1516 recovery of any amounts representing public funds improperly
1517 withheld, misappropriated and/or otherwise illegally expended by
1518 an officer, employee or administrative body of any state, county
1519 or other public office, and/or for the recovery of the value of
1520 any public property disposed of in an unlawful manner by a public
1521 officer, employee or administrative body, such demands to be made
1522 (i) upon the person or persons liable for such amounts and upon
1523 the surety on official bond thereof, and/or (ii) upon any
1524 individual, partnership, corporation or association to whom the
1525 illegal expenditure was made or with whom the unlawful disposition



1526 of public property was made, if such individual, partnership,
1527 corporation or association knew or had reason to know through the
1528 exercising of reasonable diligence that the expenditure was
1529 illegal or the disposition unlawful. Such demand shall be
1530 premised on competent evidence, which shall include at least one
1531 (1) of the following: (i) sworn statements, (ii) written
1532 documentation, (iii) physical evidence, or (iv) reports and
1533 findings of government or other law enforcement agencies. Other
1534 provisions notwithstanding, a demand letter issued pursuant to
1535 this paragraph shall remain confidential by the State Auditor
1536 until the individual against whom the demand letter is being filed
1537 has been served with a copy of such demand letter. If, however,
1538 such individual cannot be notified within fifteen (15) days using
1539 reasonable means and due diligence, such notification shall be
1540 made to the individual's bonding company, if he or she is bonded.
1541 Each such demand shall be paid into the proper treasury of the
1542 state, county or other public body through the office of the
1543 department in the amount demanded within thirty (30) days from the
1544 date thereof, together with interest thereon in the sum of one
1545 percent (1%) per month from the date such amount or amounts were
1546 improperly withheld, misappropriated and/or otherwise illegally
1547 expended. In the event, however, such person or persons or such
1548 surety shall refuse, neglect or otherwise fail to pay the amount
1549 demanded and the interest due thereon within the allotted thirty
1550 (30) days, the State Auditor shall have the authority and it shall



1551 be his duty to institute suit, and the Attorney General shall
1552 prosecute the same in any court of the state to the end that there
1553 shall be recovered the total of such amounts from the person or
1554 persons and surety on official bond named therein; and the amounts
1555 so recovered shall be paid into the proper treasury of the state,
1556 county or other public body through the State Auditor. In any
1557 case where written demand is issued to a surety on the official
1558 bond of such person or persons and the surety refuses, neglects or
1559 otherwise fails within one hundred twenty (120) days to either pay
1560 the amount demanded and the interest due thereon or to give the
1561 State Auditor a written response with specific reasons for
1562 nonpayment, then the surety shall be subject to a civil penalty in
1563 an amount of twelve percent (12%) of the bond, not to exceed Ten
1564 Thousand Dollars (\$10,000.00), to be deposited into the State
1565 General Fund;

1566 (h) To investigate any alleged or suspected violation
1567 of the laws of the state by any officer or employee of the state,
1568 county or other public office in the purchase, sale or the use of
1569 any supplies, services, equipment or other property belonging
1570 thereto; and in such investigation to do any and all things
1571 necessary to procure evidence sufficient either to prove or
1572 disprove the existence of such alleged or suspected violations.
1573 The Department of Investigation of the State Department of Audit
1574 may investigate, for the purpose of prosecution, any suspected
1575 criminal violation of the provisions of this chapter. For the



1576 purpose of administration and enforcement of this chapter, the
1577 enforcement employees of the Department of Investigation of the
1578 State Department of Audit have the powers of a law enforcement
1579 officer of this state, and shall be empowered to make arrests and
1580 to serve and execute search warrants and other valid legal process
1581 anywhere within the State of Mississippi. All enforcement
1582 employees of the Department of Investigation of the State
1583 Department of Audit hired on or after July 1, 1993, shall be
1584 required to complete the Law Enforcement Officers Training Program
1585 and shall meet the standards of the program;

1586 (i) To issue subpoenas, with the approval of, and
1587 returnable to, a judge of a chancery or circuit court, in termtime
1588 or in vacation, to examine the records, documents or other
1589 evidence of persons, firms, corporations or any other entities
1590 insofar as such records, documents or other evidence relate to
1591 dealings with any state, county or other public entity. The
1592 circuit or chancery judge must serve the county in which the
1593 records, documents or other evidence is located; or where all or
1594 part of the transaction or transactions occurred which are the
1595 subject of the subpoena;

1596 (j) In any instances in which the State Auditor is or
1597 shall be authorized or required to examine or audit, whether
1598 preaudit or postaudit, any books, ledgers, accounts or other
1599 records of the affairs of any public hospital owned or owned and
1600 operated by one or more political subdivisions or parts thereof or



1601 any combination thereof, or any school district, including
1602 activity funds thereof, it shall be sufficient compliance
1603 therewith, in the discretion of the State Auditor, that such
1604 examination or audit be made from the report of any audit or other
1605 examination certified by a certified public accountant and
1606 prepared by or under the supervision of such certified public
1607 accountant. Such audits shall be made in accordance with
1608 generally accepted standards of auditing, with the use of an audit
1609 program prepared by the State Auditor, and final reports of such
1610 audits shall conform to the format prescribed by the State
1611 Auditor. All files, working papers, notes, correspondence and all
1612 other data compiled during the course of the audit shall be
1613 available, without cost, to the State Auditor for examination and
1614 abstracting during the normal business hours of any business day.
1615 The expense of such certified reports shall be borne by the
1616 respective hospital, or any available school district funds other
1617 than minimum program funds, subject to examination or audit. The
1618 State Auditor shall not be bound by such certified reports and
1619 may, in his or their discretion, conduct such examination or audit
1620 from the books, ledgers, accounts or other records involved as may
1621 be appropriate and authorized by law;

1622 (k) The State Auditor shall have the authority to
1623 contract with qualified public accounting firms to perform
1624 selected audits required in paragraphs (d), (e), (f) and (j) of
1625 this section, if funds are made available for such contracts by



1626 the Legislature, or if funds are available from the governmental
1627 entity covered by paragraphs (d), (e), (f) and (j). Such audits
1628 shall be made in accordance with generally accepted standards of
1629 auditing. All files, working papers, notes, correspondence and
1630 all other data compiled during the course of the audit shall be
1631 available, without cost, to the State Auditor for examination and
1632 abstracting during the normal business hours of any business day;

1633 (1) The State Auditor shall have the authority to
1634 establish training courses and programs for the personnel of the
1635 various state and local governmental entities under the
1636 jurisdiction of the Office of the State Auditor. The training
1637 courses and programs shall include, but not be limited to, topics
1638 on internal control of funds, property and equipment control and
1639 inventory, governmental accounting and financial reporting, and
1640 internal auditing. The State Auditor is authorized to charge a
1641 fee from the participants of these courses and programs, which fee
1642 shall be deposited into the Department of Audit Special Fund.
1643 State and local governmental entities are authorized to pay such
1644 fee and any travel expenses out of their general funds or any
1645 other available funds from which such payment is not prohibited by
1646 law;

1647 (m) Upon written request by the Governor or any member
1648 of the State Legislature, the State Auditor may audit any state
1649 funds and/or state and federal funds received by any nonprofit
1650 corporation incorporated under the laws of this state;



1651 (n) To conduct performance audits of personal or
1652 professional service contracts by state agencies on a random
1653 sampling basis, or upon request of the State Personal Service
1654 Contract Review Board under Section 25-9-120(3); * * *

1655 (o) At the discretion of the State Auditor, the Auditor
1656 may conduct risk assessments, as well as performance and
1657 compliance audits based on Generally Accepted Government Auditing
1658 Standards (GAGAS) of any state-funded economic development program
1659 authorized under Title 57, Mississippi Code of 1972. After risk
1660 assessments or program audits, the State Auditor may conduct
1661 audits of those projects deemed high-risk, specifically as they
1662 identify any potential wrongdoing or noncompliance based on
1663 objectives of the economic development program. The Auditor is
1664 granted authority to gather, audit and review data and information
1665 from the Mississippi Development Authority or any of its agents,
1666 the Department of Revenue, and when necessary under this
1667 paragraph, the recipient business or businesses or any other
1668 private, public or nonprofit entity with information relevant to
1669 the audit project. The maximum amount the State Auditor may bill
1670 the oversight agency under this paragraph in any fiscal year is
1671 One Hundred Thousand Dollars (\$100,000.00), based on reasonable
1672 and necessary expenses * * *;

1673 (p) To review and approve any independent auditor
1674 selected by the Mississippi Lottery Corporation in accordance with



1675 Section 45 of this act, to conduct an annual audit of the
1676 corporation; and

1677 (q) To conduct audits or investigations of the
1678 Mississippi Lottery Corporation if in the opinion of the State
1679 Auditor conditions justify such audits or investigations.

1680 **SECTION 48.** Section 25-9-107, Mississippi Code of 1972, is
1681 amended as follows:

1682 25-9-107. The following terms, when used in this chapter,
1683 unless a different meaning is plainly required by the context,
1684 shall have the following meanings:

1685 (a) "Board" means the State Personnel Board created
1686 under the provisions of this chapter.

1687 (b) "State service" means all employees of state
1688 departments, agencies and institutions as defined herein, except
1689 those officers and employees excluded by this chapter.

1690 (c) "Nonstate service" means the following officers and
1691 employees excluded from the state service by this chapter. The
1692 following are excluded from the state service:

1693 (i) Members of the State Legislature, their staff
1694 and other employees of the legislative branch;

1695 (ii) The Governor and staff members of the
1696 immediate Office of the Governor;

1697 (iii) Justices and judges of the judicial branch
1698 or members of appeals boards on a per diem basis;



1699 (iv) The Lieutenant Governor, staff members of the
1700 immediate Office of the Lieutenant Governor and officers and
1701 employees directly appointed by the Lieutenant Governor;

1702 (v) Officers and officials elected by popular vote
1703 and persons appointed to fill vacancies in elective offices;

1704 (vi) Members of boards and commissioners appointed
1705 by the Governor, Lieutenant Governor or the State Legislature;

1706 (vii) All academic officials, members of the
1707 teaching staffs and employees of the state institutions of higher
1708 learning, the Mississippi Community College Board, and community
1709 and junior colleges;

1710 (viii) Officers and enlisted members of the
1711 National Guard of the state;

1712 (ix) Prisoners, inmates, student or patient help
1713 working in or about institutions;

1714 (x) Contract personnel; provided, that any agency
1715 which employs state service employees may enter into contracts for
1716 personal and professional services only if such contracts are
1717 approved in compliance with the rules and regulations promulgated
1718 by the State Personal Service Contract Review Board under Section
1719 25-9-120(3). Before paying any warrant for such contractual
1720 services in excess of One Hundred Thousand Dollars (\$100,000.00),
1721 the Auditor of Public Accounts, or the successor to those duties,
1722 shall determine whether the contract involved was for personal or



1723 professional services, and, if so, was approved by the State
1724 Personal Service Contract Review Board;

1725 (xi) Part-time employees; provided, however,
1726 part-time employees shall only be hired into authorized employment
1727 positions classified by the board, shall meet minimum
1728 qualifications as set by the board, and shall be paid in
1729 accordance with the Variable Compensation Plan as certified by the
1730 board;

1731 (xii) Persons appointed on an emergency basis for
1732 the duration of the emergency; the effective date of the emergency
1733 appointments shall not be earlier than the date approved by the
1734 State Personnel Director, and shall be limited to thirty (30)
1735 working days. Emergency appointments may be extended to sixty
1736 (60) working days by the State Personnel Board;

1737 (xiii) Physicians, dentists, veterinarians, nurse
1738 practitioners and attorneys, while serving in their professional
1739 capacities in authorized employment positions who are required by
1740 statute to be licensed, registered or otherwise certified as such,
1741 provided that the State Personnel Director shall verify that the
1742 statutory qualifications are met prior to issuance of a payroll
1743 warrant by the Auditor;

1744 (xiv) Personnel who are employed and paid from
1745 funds received from a federal grant program which has been
1746 approved by the Legislature or the Department of Finance and
1747 Administration whose length of employment has been determined to



1748 be time-limited in nature. This subparagraph shall apply to
1749 personnel employed under the provisions of the Comprehensive
1750 Employment and Training Act of 1973, as amended, and other special
1751 federal grant programs which are not a part of regular federally
1752 funded programs wherein appropriations and employment positions
1753 are appropriated by the Legislature. Such employees shall be paid
1754 in accordance with the Variable Compensation Plan and shall meet
1755 all qualifications required by federal statutes or by the
1756 Mississippi Classification Plan;

1757 (xv) The administrative head who is in charge of
1758 any state department, agency, institution, board or commission,
1759 wherein the statute specifically authorizes the Governor, board,
1760 commission or other authority to appoint said administrative head;
1761 provided, however, that the salary of such administrative head
1762 shall be determined by the State Personnel Board in accordance
1763 with the Variable Compensation Plan unless otherwise fixed by
1764 statute;

1765 (xvi) The State Personnel Board shall exclude
1766 top-level positions if the incumbents determine and publicly
1767 advocate substantive program policy and report directly to the
1768 agency head, or the incumbents are required to maintain a direct
1769 confidential working relationship with a key excluded official.
1770 Provided further, a written job classification shall be approved
1771 by the board for each such position, and positions so excluded
1772 shall be paid in conformity with the Variable Compensation Plan;



1773 (xvii) Employees whose employment is solely in
1774 connection with an agency's contract to produce, store or
1775 transport goods, and whose compensation is derived therefrom;
1776 (xviii) Repealed;
1777 (xix) The associate director, deputy directors and
1778 bureau directors within the Department of Agriculture and
1779 Commerce;
1780 (xx) Personnel employed by the Mississippi
1781 Industries for the Blind; provided, that any agency may enter into
1782 contracts for the personal services of MIB employees without the
1783 prior approval of the State Personnel Board or the State Personal
1784 Service Contract Review Board; however, any agency contracting for
1785 the personal services of an MIB employee shall provide the MIB
1786 employee with not less than the entry-level compensation and
1787 benefits that the agency would provide to a full-time employee of
1788 the agency who performs the same services;
1789 (xxi) Personnel employed by the Mississippi
1790 Department of Wildlife, Fisheries and Parks and the Mississippi
1791 Department of Marine Resources as law enforcement trainees
1792 (cadets); such personnel shall be paid in accordance with the
1793 Colonel Guy Groff State Variable Compensation Plan * * *;
1794 (xxii) The President of the Mississippi Lottery
1795 Corporation and personnel employed by the Mississippi Lottery
1796 Corporation.



1797 (d) "Agency" means any state board, commission,
1798 committee, council, department or unit thereof created by the
1799 Constitution or statutes if such board, commission, committee,
1800 council, department, unit or the head thereof, is authorized to
1801 appoint subordinate staff by the Constitution or statute, except a
1802 legislative or judicial board, commission, committee, council,
1803 department or unit thereof.

1804 **SECTION 49.** Section 25-11-103, Mississippi Code of 1972, is
1805 amended as follows:

1806 25-11-103. (1) The following words and phrases as used in
1807 Articles 1 and 3, unless a different meaning is plainly required
1808 by the context, have the following meanings:

1809 (a) "Accumulated contributions" means the sum of all
1810 the amounts deducted from the compensation of a member and
1811 credited to his or her individual account in the annuity savings
1812 account, together with regular interest as provided in Section
1813 25-11-123.

1814 (b) "Actuarial cost" means the amount of funds
1815 presently required to provide future benefits as determined by the
1816 board based on applicable tables and formulas provided by the
1817 actuary.

1818 (c) "Actuarial equivalent" means a benefit of equal
1819 value to the accumulated contributions, annuity or benefit, as the
1820 case may be, when computed upon the basis of such mortality tables
1821 as adopted by the board of trustees, and regular interest.



1822 (d) "Actuarial tables" means such tables of mortality
1823 and rates of interest as adopted by the board in accordance with
1824 the recommendation of the actuary.

1825 (e) "Agency" means any governmental body employing
1826 persons in the state service.

1827 (f) "Average compensation" means the average of the
1828 four (4) highest years of earned compensation reported for an
1829 employee in a fiscal or calendar year period, or combination
1830 thereof that do not overlap, or the last forty-eight (48)
1831 consecutive months of earned compensation reported for an
1832 employee. The four (4) years need not be successive or joined
1833 years of service. In computing the average compensation for
1834 retirement, disability or survivor benefits, any amount lawfully
1835 paid in a lump sum for personal leave or major medical leave shall
1836 be included in the calculation to the extent that the amount does
1837 not exceed an amount that is equal to thirty (30) days of earned
1838 compensation and to the extent that it does not cause the
1839 employee's earned compensation to exceed the maximum reportable
1840 amount specified in paragraph (k) of this section; however, this
1841 thirty-day limitation shall not prevent the inclusion in the
1842 calculation of leave earned under federal regulations before July
1843 1, 1976, and frozen as of that date as referred to in Section
1844 25-3-99. In computing the average compensation, no amounts shall
1845 be used that are in excess of the amount on which contributions
1846 were required and paid, and no nontaxable amounts paid by the



1847 employer for health or life insurance premiums for the employee
1848 shall be used. If any member who is or has been granted any
1849 increase in annual salary or compensation of more than eight
1850 percent (8%) retires within twenty-four (24) months from the date
1851 that the increase becomes effective, then the board shall exclude
1852 that part of the increase in salary or compensation that exceeds
1853 eight percent (8%) in calculating that member's average
1854 compensation for retirement purposes. The board may enforce this
1855 provision by rule or regulation. However, increases in
1856 compensation in excess of eight percent (8%) per year granted
1857 within twenty-four (24) months of the date of retirement may be
1858 included in the calculation of average compensation if
1859 satisfactory proof is presented to the board showing that the
1860 increase in compensation was the result of an actual change in the
1861 position held or services rendered, or that the compensation
1862 increase was authorized by the State Personnel Board or was
1863 increased as a result of statutory enactment, and the employer
1864 furnishes an affidavit stating that the increase granted within
1865 the last twenty-four (24) months was not contingent on a promise
1866 or agreement of the employee to retire. Nothing in Section
1867 25-3-31 shall affect the calculation of the average compensation
1868 of any member for the purposes of this article. The average
1869 compensation of any member who retires before July 1, 1992, shall
1870 not exceed the annual salary of the Governor.



1871 (g) "Beneficiary" means any person entitled to receive
1872 a retirement allowance, an annuity or other benefit as provided by
1873 Articles 1 and 3. The term "beneficiary" may also include an
1874 organization, estate, trust or entity; however, a beneficiary
1875 designated or entitled to receive monthly payments under an
1876 optional settlement based on life contingency or under a statutory
1877 monthly benefit may only be a natural person. In the event of the
1878 death before retirement of any member who became a member of the
1879 system before July 1, 2007, and whose spouse and/or children are
1880 not entitled to a retirement allowance on the basis that the
1881 member has less than four (4) years of membership service credit,
1882 or who became a member of the system on or after July 1, 2007, and
1883 whose spouse and/or children are not entitled to a retirement
1884 allowance on the basis that the member has less than eight (8)
1885 years of membership service credit, and/or has not been married
1886 for a minimum of one (1) year or the spouse has waived his or her
1887 entitlement to a retirement allowance under Section 25-11-114, the
1888 lawful spouse of a member at the time of the death of the member
1889 shall be the beneficiary of the member unless the member has
1890 designated another beneficiary after the date of marriage in
1891 writing, and filed that writing in the office of the executive
1892 director of the board of trustees. No designation or change of
1893 beneficiary shall be made in any other manner.



1894 (h) "Board" means the board of trustees provided in
1895 Section 25-11-15 to administer the retirement system created under
1896 this article.

1897 (i) "Creditable service" means "prior service,"
1898 "retroactive service" and all lawfully credited unused leave not
1899 exceeding the accrual rates and limitations provided in Section
1900 25-3-91 et seq., as of the date of withdrawal from service plus
1901 "membership service" and other service for which credit is
1902 allowable as provided in Section 25-11-109. Except to limit
1903 creditable service reported to the system for the purpose of
1904 computing an employee's retirement allowance or annuity or
1905 benefits provided in this article, nothing in this paragraph shall
1906 limit or otherwise restrict the power of the governing authority
1907 of a municipality or other political subdivision of the state to
1908 adopt such vacation and sick leave policies as it deems necessary.

1909 (j) "Child" means either a natural child of the member,
1910 a child that has been made a child of the member by applicable
1911 court action before the death of the member, or a child under the
1912 permanent care of the member at the time of the latter's death,
1913 which permanent care status shall be determined by evidence
1914 satisfactory to the board. For purposes of this paragraph, a
1915 natural child of the member is a child of the member that is
1916 conceived before the death of the member.

1917 (k) "Earned compensation" means the full amount earned
1918 during a fiscal year by an employee not to exceed the employee



1919 compensation limit set pursuant to Section 401(a) (17) of the
1920 Internal Revenue Code for the calendar year in which the fiscal
1921 year begins and proportionately for less than one (1) year of
1922 service. Except as otherwise provided in this paragraph, the
1923 value of maintenance furnished to an employee shall not be
1924 included in earned compensation. Earned compensation shall not
1925 include any amounts paid by the employer for health or life
1926 insurance premiums for an employee. Earned compensation shall be
1927 limited to the regular periodic compensation paid, exclusive of
1928 litigation fees, bond fees, performance-based incentive payments,
1929 and other similar extraordinary nonrecurring payments. In
1930 addition, any member in a covered position, as defined by Public
1931 Employees' Retirement System laws and regulations, who is also
1932 employed by another covered agency or political subdivision shall
1933 have the earnings of that additional employment reported to the
1934 Public Employees' Retirement System regardless of whether the
1935 additional employment is sufficient in itself to be a covered
1936 position. In addition, computation of earned compensation shall
1937 be governed by the following:

1938 (i) In the case of constables, the net earnings
1939 from their office after deduction of expenses shall apply, except
1940 that in no case shall earned compensation be less than the total
1941 direct payments made by the state or governmental subdivisions to
1942 the official.



1943 (ii) In the case of chancery or circuit clerks,
1944 the net earnings from their office after deduction of expenses
1945 shall apply as expressed in Section 25-11-123(f) (4).

1946 (iii) In the case of members of the State
1947 Legislature, all remuneration or amounts paid, except mileage
1948 allowance, shall apply.

1949 (iv) The amount by which an eligible employee's
1950 salary is reduced under a salary reduction agreement authorized
1951 under Section 25-17-5 shall be included as earned compensation
1952 under this paragraph, provided this inclusion does not conflict
1953 with federal law, including federal regulations and federal
1954 administrative interpretations under the federal law, pertaining
1955 to the Federal Insurance Contributions Act or to Internal Revenue
1956 Code Section 125 cafeteria plans.

1957 (v) Compensation in addition to an employee's base
1958 salary that is paid to the employee under the vacation and sick
1959 leave policies of a municipality or other political subdivision of
1960 the state that employs him or her that exceeds the maximums
1961 authorized by Section 25-3-91 et seq. shall be excluded from the
1962 calculation of earned compensation under this article.

1963 (vi) The maximum salary applicable for retirement
1964 purposes before July 1, 1992, shall be the salary of the Governor.

1965 (vii) Nothing in Section 25-3-31 shall affect the
1966 determination of the earned compensation of any member for the
1967 purposes of this article.



1968 (viii) The value of maintenance furnished to an
1969 employee before July 1, 2013, for which the proper amount of
1970 employer and employee contributions have been paid, shall be
1971 included in earned compensation. From and after July 1, 2013, the
1972 value of maintenance furnished to an employee shall be reported as
1973 earned compensation only if the proper amount of employer and
1974 employee contributions have been paid on the maintenance and the
1975 employee was receiving maintenance and having maintenance reported
1976 to the system as of June 30, 2013. The value of maintenance when
1977 not paid in money shall be fixed by the employing state agency,
1978 and, in case of doubt, by the board of trustees as defined in
1979 Section 25-11-15.

1980 (ix) Except as otherwise provided in this
1981 paragraph, the value of any in-kind benefits provided by the
1982 employer shall not be included in earned compensation. As used in
1983 this subparagraph, "in-kind benefits" shall include, but not be
1984 limited to, group life insurance premiums, health or dental
1985 insurance premiums, nonpaid major medical and personal leave,
1986 employer contributions for social security and retirement, tuition
1987 reimbursement or educational funding, day care or transportation
1988 benefits.

1989 (1) "Employee" means any person legally occupying a
1990 position in the state service, and shall include the employees of
1991 the retirement system created under this article.



1992 (m) "Employer" means the State of Mississippi or any of
1993 its departments, agencies or subdivisions from which any employee
1994 receives his or her compensation.

1995 (n) "Executive director" means the secretary to the
1996 board of trustees, as provided in Section 25-11-15(9), and the
1997 administrator of the Public Employees' Retirement System and all
1998 systems under the management of the board of trustees. Wherever
1999 the term "Executive Secretary of the Public Employees' Retirement
2000 System" or "executive secretary" appears in this article or in any
2001 other provision of law, it shall be construed to mean the
2002 Executive Director of the Public Employees' Retirement System.

2003 (o) "Fiscal year" means the period beginning on July 1
2004 of any year and ending on June 30 of the next succeeding year.

2005 (p) "Medical board" means the board of physicians or
2006 any governmental or nongovernmental disability determination
2007 service designated by the board of trustees that is qualified to
2008 make disability determinations as provided for in Section
2009 25-11-119.

2010 (q) "Member" means any person included in the
2011 membership of the system as provided in Section 25-11-105. For
2012 purposes of Sections 25-11-103, 25-11-105, 25-11-109, 25-11-111,
2013 25-11-113, 25-11-114, 25-11-115 and 25-11-117, if a member of the
2014 system withdrew from state service and received a refund of the
2015 amount of the accumulated contributions to the credit of the
2016 member in the annuity savings account before July 1, 2007, and the



2017 person reenters state service and becomes a member of the system
2018 again on or after July 1, 2007, and repays all or part of the
2019 amount received as a refund and interest in order to receive
2020 creditable service for service rendered before July 1, 2007, the
2021 member shall be considered to have become a member of the system
2022 on or after July 1, 2007, subject to the eight-year membership
2023 service requirement, as applicable in those sections. For
2024 purposes of Sections 25-11-103, 25-11-111, 25-11-114 and
2025 25-11-115, if a member of the system withdrew from state service
2026 and received a refund of the amount of the accumulated
2027 contributions to the credit of the member in the annuity savings
2028 account before July 1, 2011, and the person reenters state service
2029 and becomes a member of the system again on or after July 1, 2011,
2030 and repays all or part of the amount received as a refund and
2031 interest in order to receive creditable service for service
2032 rendered before July 1, 2011, the member shall be considered to
2033 have become a member of the system on or after July 1, 2011.

2034 (r) "Membership service" means service as an employee
2035 in a covered position rendered while a contributing member of the
2036 retirement system.

2037 (s) "Position" means any office or any employment in
2038 the state service, or two (2) or more of them, the duties of which
2039 call for services to be rendered by one (1) person, including
2040 positions jointly employed by federal and state agencies
2041 administering federal and state funds. The employer shall



2042 determine upon initial employment and during the course of
2043 employment of an employee who does not meet the criteria for
2044 coverage in the Public Employees' Retirement System based on the
2045 position held, whether the employee is or becomes eligible for
2046 coverage in the Public Employees' Retirement System based upon any
2047 other employment in a covered agency or political subdivision. If
2048 or when the employee meets the eligibility criteria for coverage
2049 in the other position, then the employer must withhold
2050 contributions and report wages from the noncovered position in
2051 accordance with the provisions for reporting of earned
2052 compensation. Failure to deduct and report those contributions
2053 shall not relieve the employee or employer of liability thereof.
2054 The board shall adopt such rules and regulations as necessary to
2055 implement and enforce this provision.

2056 (t) "Prior service" means:

2057 (i) For persons who became members of the system
2058 before July 1, 2007, service rendered before February 1, 1953, for
2059 which credit is allowable under Sections 25-11-105 and 25-11-109,
2060 and which shall allow prior service for any person who is now or
2061 becomes a member of the Public Employees' Retirement System and
2062 who does contribute to the system for a minimum period of four (4)
2063 years.

2064 (ii) For persons who became members of the system
2065 on or after July 1, 2007, service rendered before February 1,
2066 1953, for which credit is allowable under Sections 25-11-105 and



2067 25-11-109, and which shall allow prior service for any person who
2068 is now or becomes a member of the Public Employees' Retirement
2069 System and who does contribute to the system for a minimum period
2070 of eight (8) years.

2071 (u) "Regular interest" means interest compounded
2072 annually at such a rate as determined by the board in accordance
2073 with Section 25-11-121.

2074 (v) "Retirement allowance" means an annuity for life as
2075 provided in this article, payable each year in twelve (12) equal
2076 monthly installments beginning as of the date fixed by the board.
2077 The retirement allowance shall be calculated in accordance with
2078 Section 25-11-111. However, any spouse who received a spouse
2079 retirement benefit in accordance with Section 25-11-111(d) before
2080 March 31, 1971, and those benefits were terminated because of
2081 eligibility for a social security benefit, may again receive his
2082 or her spouse retirement benefit from and after making application
2083 with the board of trustees to reinstate the spouse retirement
2084 benefit.

2085 (w) "Retroactive service" means service rendered after
2086 February 1, 1953, for which credit is allowable under Section
2087 25-11-105(b) and Section 25-11-105(k).

2088 (x) "System" means the Public Employees' Retirement
2089 System of Mississippi established and described in Section
2090 25-11-101.



2091 (y) "State" means the State of Mississippi or any
2092 political subdivision thereof or instrumentality of the state.

2093 (z) "State service" means all offices and positions of
2094 trust or employment in the employ of the state, or any political
2095 subdivision or instrumentality of the state, that elect to
2096 participate as provided by Section 25-11-105(f), including the
2097 position of elected or fee officials of the counties and their
2098 deputies and employees performing public services or any
2099 department, independent agency, board or commission thereof, and
2100 also includes all offices and positions of trust or employment in
2101 the employ of joint state and federal agencies administering state
2102 and federal funds and service rendered by employees of the public
2103 schools. Effective July 1, 1973, all nonprofessional public
2104 school employees, such as bus drivers, janitors, maids,
2105 maintenance workers and cafeteria employees, shall have the option
2106 to become members in accordance with Section 25-11-105(b), and
2107 shall be eligible to receive credit for services before July 1,
2108 1973, provided that the contributions and interest are paid by the
2109 employee in accordance with that section; in addition, the county
2110 or municipal separate school district may pay the employer
2111 contribution and pro rata share of interest of the retroactive
2112 service from available funds. "State service" shall not include
2113 the President of the Mississippi Lottery Corporation and personnel
2114 employed by the Mississippi Lottery Corporation. From and after



2115 July 1, 1998, retroactive service credit shall be purchased at the
2116 actuarial cost in accordance with Section 25-11-105(b).

2117 (aa) "Withdrawal from service" or "termination from
2118 service" means complete severance of employment in the state
2119 service of any member by resignation, dismissal or discharge.

2120 (bb) The masculine pronoun, wherever used, includes the
2121 feminine pronoun.

2122 (2) For purposes of this article, the term "political
2123 subdivision" shall have the meaning ascribed to such term in
2124 Section 25-11-5 and shall also include public charter schools.

2125 **SECTION 50.** Section 25-41-3, Mississippi Code of 1972, is
2126 amended as follows:

2127 25-41-3. For purposes of this chapter, the following words
2128 shall have the meaning ascribed herein, to wit:

2129 (a) "Public body" means any executive or administrative
2130 board, commission, authority, council, department, agency, bureau
2131 or any other policymaking entity, or committee thereof, of the
2132 State of Mississippi, or any political subdivision or municipal
2133 corporation of the state, whether the entity be created by statute
2134 or executive order, which is supported wholly or in part by public
2135 funds or expends public funds, and any standing, interim or
2136 special committee of the Mississippi Legislature. The term
2137 "public body" includes the governing board of a charter school
2138 authorized by the Mississippi Charter School Authorizer Board and
2139 the board of trustees of a community hospital as defined in



2140 Section 41-13-10. There shall be exempted from the provisions of
2141 this chapter:

2142 (i) The judiciary, including all jury
2143 deliberations;

2144 (ii) Law enforcement officials;

2145 (iii) The military;

2146 (iv) The State Probation and Parole Board;

2147 (v) The Workers' Compensation Commission;

2148 (vi) Legislative subcommittees and legislative
2149 conference committees;

2150 (vii) The arbitration council established in
2151 Section 69-3-19;

2152 (viii) License revocation, suspension and
2153 disciplinary proceedings held by the Mississippi State Board of
2154 Dental Examiners; * * *

2155 (ix) Hearings and meetings of the Board of Tax
2156 Appeals and of the hearing officers and the board of review of the
2157 Department of Revenue as provided in Section 27-77-15 * * *; and

2158 (x) The Mississippi Lottery Corporation.

2159 (b) "Meeting" means an assemblage of members of a
2160 public body at which official acts may be taken upon a matter over
2161 which the public body has supervision, control, jurisdiction or
2162 advisory power, including an assemblage through the use of video
2163 or teleconference devices that conforms to Section 25-41-5.



2164 **SECTION 51.** Section 31-7-13, Mississippi Code of 1972, is
2165 amended as follows:

2166 31-7-13. All agencies and governing authorities shall
2167 purchase their commodities and printing; contract for garbage
2168 collection or disposal; contract for solid waste collection or
2169 disposal; contract for sewage collection or disposal; contract for
2170 public construction; and contract for rentals as herein provided.

2171 (a) **Bidding procedure for purchases not over \$5,000.00.**

2172 Purchases which do not involve an expenditure of more than Five
2173 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
2174 charges, may be made without advertising or otherwise requesting
2175 competitive bids. However, nothing contained in this paragraph
2176 (a) shall be construed to prohibit any agency or governing
2177 authority from establishing procedures which require competitive
2178 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

2179 (b) **Bidding procedure for purchases over \$5,000.00 but**

2180 **not over \$50,000.00.** Purchases which involve an expenditure of
2181 more than Five Thousand Dollars (\$5,000.00) but not more than
2182 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and
2183 shipping charges, may be made from the lowest and best bidder
2184 without publishing or posting advertisement for bids, provided at
2185 least two (2) competitive written bids have been obtained. Any
2186 state agency or community/junior college purchasing commodities or
2187 procuring construction pursuant to this paragraph (b) may
2188 authorize its purchasing agent, or his designee, to accept the



2189 lowest competitive written bid under Fifty Thousand Dollars
2190 (\$50,000.00). Any governing authority purchasing commodities
2191 pursuant to this paragraph (b) may authorize its purchasing agent,
2192 or his designee, with regard to governing authorities other than
2193 counties, or its purchase clerk, or his designee, with regard to
2194 counties, to accept the lowest and best competitive written bid.
2195 Such authorization shall be made in writing by the governing
2196 authority and shall be maintained on file in the primary office of
2197 the agency and recorded in the official minutes of the governing
2198 authority, as appropriate. The purchasing agent or the purchase
2199 clerk, or their designee, as the case may be, and not the
2200 governing authority, shall be liable for any penalties and/or
2201 damages as may be imposed by law for any act or omission of the
2202 purchasing agent or purchase clerk, or their designee,
2203 constituting a violation of law in accepting any bid without
2204 approval by the governing authority. The term "competitive
2205 written bid" shall mean a bid submitted on a bid form furnished by
2206 the buying agency or governing authority and signed by authorized
2207 personnel representing the vendor, or a bid submitted on a
2208 vendor's letterhead or identifiable bid form and signed by
2209 authorized personnel representing the vendor. "Competitive" shall
2210 mean that the bids are developed based upon comparable
2211 identification of the needs and are developed independently and
2212 without knowledge of other bids or prospective bids. Any bid item
2213 for construction in excess of Five Thousand Dollars (\$5,000.00)



2214 shall be broken down by components to provide detail of component
2215 description and pricing. These details shall be submitted with
2216 the written bids and become part of the bid evaluation criteria.
2217 Bids may be submitted by facsimile, electronic mail or other
2218 generally accepted method of information distribution. Bids
2219 submitted by electronic transmission shall not require the
2220 signature of the vendor's representative unless required by
2221 agencies or governing authorities.

2222 (c) **Bidding procedure for purchases over \$50,000.00.**

2223 (i) **Publication requirement.**

2224 1. Purchases which involve an expenditure of
2225 more than Fifty Thousand Dollars (\$50,000.00), exclusive of
2226 freight and shipping charges, may be made from the lowest and best
2227 bidder after advertising for competitive bids once each week for
2228 two (2) consecutive weeks in a regular newspaper published in the
2229 county or municipality in which such agency or governing authority
2230 is located. However, all American Recovery and Reinvestment Act
2231 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
2232 shall be bid. All references to American Recovery and
2233 Reinvestment Act projects in this section shall not apply to
2234 programs identified in Division B of the American Recovery and
2235 Reinvestment Act.

2236 2. Reverse auctions shall be the primary
2237 method for receiving bids during the bidding process. If a
2238 purchasing entity determines that a reverse auction is not in the



2239 best interest of the state, then that determination must be
2240 approved by the Public Procurement Review Board. The purchasing
2241 entity shall submit a detailed explanation of why a reverse
2242 auction would not be in the best interest of the state and present
2243 an alternative process to be approved by the Public Procurement
2244 Review Board. If the Public Procurement Review Board authorizes
2245 the purchasing entity to solicit bids with a method other than
2246 reverse auction, then the purchasing entity may designate the
2247 other methods by which the bids will be received, including, but
2248 not limited to, bids sealed in an envelope, bids received
2249 electronically in a secure system, or bids received by any other
2250 method that promotes open competition and has been approved by the
2251 Office of Purchasing and Travel. However, reverse auction shall
2252 not be used for any public contract for design or construction of
2253 public facilities, including buildings, roads and bridges. The
2254 Public Procurement Review Board must approve any contract entered
2255 into by alternative process. The provisions of this item 2 shall
2256 not apply to the individual state institutions of higher learning.

2257 3. The date as published for the bid opening
2258 shall not be less than seven (7) working days after the last
2259 published notice; however, if the purchase involves a construction
2260 project in which the estimated cost is in excess of Fifty Thousand
2261 Dollars (\$50,000.00), such bids shall not be opened in less than
2262 fifteen (15) working days after the last notice is published and
2263 the notice for the purchase of such construction shall be



2264 published once each week for two (2) consecutive weeks. However,
2265 all American Recovery and Reinvestment Act projects in excess of
2266 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
2267 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
2268 under the American Recovery and Reinvestment Act, publication
2269 shall be made one (1) time and the bid opening for construction
2270 projects shall not be less than ten (10) working days after the
2271 date of the published notice. The notice of intention to let
2272 contracts or purchase equipment shall state the time and place at
2273 which bids shall be received, list the contracts to be made or
2274 types of equipment or supplies to be purchased, and, if all plans
2275 and/or specifications are not published, refer to the plans and/or
2276 specifications on file. If there is no newspaper published in the
2277 county or municipality, then such notice shall be given by posting
2278 same at the courthouse, or for municipalities at the city hall,
2279 and at two (2) other public places in the county or municipality,
2280 and also by publication once each week for two (2) consecutive
2281 weeks in some newspaper having a general circulation in the county
2282 or municipality in the above-provided manner. On the same date
2283 that the notice is submitted to the newspaper for publication, the
2284 agency or governing authority involved shall mail written notice
2285 to, or provide electronic notification to the main office of the
2286 Mississippi Procurement Technical Assistance Program under the
2287 Mississippi Development Authority that contains the same
2288 information as that in the published notice. Submissions received



2289 by the Mississippi Procurement Technical Assistance Program for
2290 projects funded by the American Recovery and Reinvestment Act
2291 shall be displayed on a separate and unique Internet web page
2292 accessible to the public and maintained by the Mississippi
2293 Development Authority for the Mississippi Procurement Technical
2294 Assistance Program. Those American Recovery and Reinvestment Act
2295 related submissions shall be publicly posted within twenty-four
2296 (24) hours of receipt by the Mississippi Development Authority and
2297 the bid opening shall not occur until the submission has been
2298 posted for ten (10) consecutive days. The Department of Finance
2299 and Administration shall maintain information regarding contracts
2300 and other expenditures from the American Recovery and Reinvestment
2301 Act, on a unique Internet web page accessible to the public. The
2302 Department of Finance and Administration shall promulgate rules
2303 regarding format, content and deadlines, unless otherwise
2304 specified by law, of the posting of award notices, contract
2305 execution and subsequent amendments, links to the contract
2306 documents, expenditures against the awarded contracts and general
2307 expenditures of funds from the American Recovery and Reinvestment
2308 Act. Within one (1) working day of the contract award, the agency
2309 or governing authority shall post to the designated web page
2310 maintained by the Department of Finance and Administration, notice
2311 of the award, including the award recipient, the contract amount,
2312 and a brief summary of the contract in accordance with rules
2313 promulgated by the department. Within one (1) working day of the



2314 contract execution, the agency or governing authority shall post
2315 to the designated web page maintained by the Department of Finance
2316 and Administration a summary of the executed contract and make a
2317 copy of the appropriately redacted contract documents available
2318 for linking to the designated web page in accordance with the
2319 rules promulgated by the department. The information provided by
2320 the agency or governing authority shall be posted to the web page
2321 for the duration of the American Recovery and Reinvestment Act
2322 funding or until the project is completed, whichever is longer.

2323 (ii) **Bidding process amendment procedure.** If all
2324 plans and/or specifications are published in the notification,
2325 then the plans and/or specifications may not be amended. If all
2326 plans and/or specifications are not published in the notification,
2327 then amendments to the plans/specifications, bid opening date, bid
2328 opening time and place may be made, provided that the agency or
2329 governing authority maintains a list of all prospective bidders
2330 who are known to have received a copy of the bid documents and all
2331 such prospective bidders are sent copies of all amendments. This
2332 notification of amendments may be made via mail, facsimile,
2333 electronic mail or other generally accepted method of information
2334 distribution. No addendum to bid specifications may be issued
2335 within two (2) working days of the time established for the
2336 receipt of bids unless such addendum also amends the bid opening
2337 to a date not less than five (5) working days after the date of
2338 the addendum.



2339 (iii) **Filing requirement.** In all cases involving
2340 governing authorities, before the notice shall be published or
2341 posted, the plans or specifications for the construction or
2342 equipment being sought shall be filed with the clerk of the board
2343 of the governing authority. In addition to these requirements, a
2344 bid file shall be established which shall indicate those vendors
2345 to whom such solicitations and specifications were issued, and
2346 such file shall also contain such information as is pertinent to
2347 the bid.

2348 (iv) **Specification restrictions.**

2349 1. Specifications pertinent to such bidding
2350 shall be written so as not to exclude comparable equipment of
2351 domestic manufacture. However, if valid justification is
2352 presented, the Department of Finance and Administration or the
2353 board of a governing authority may approve a request for specific
2354 equipment necessary to perform a specific job. Further, such
2355 justification, when placed on the minutes of the board of a
2356 governing authority, may serve as authority for that governing
2357 authority to write specifications to require a specific item of
2358 equipment needed to perform a specific job. In addition to these
2359 requirements, from and after July 1, 1990, vendors of relocatable
2360 classrooms and the specifications for the purchase of such
2361 relocatable classrooms published by local school boards shall meet
2362 all pertinent regulations of the State Board of Education,



2363 including prior approval of such bid by the State Department of
2364 Education.

2365 2. Specifications for construction projects
2366 may include an allowance for commodities, equipment, furniture,
2367 construction materials or systems in which prospective bidders are
2368 instructed to include in their bids specified amounts for such
2369 items so long as the allowance items are acquired by the vendor in
2370 a commercially reasonable manner and approved by the
2371 agency/governing authority. Such acquisitions shall not be made
2372 to circumvent the public purchasing laws.

2373 (v) **Electronic bids.** Agencies and governing
2374 authorities shall provide a secure electronic interactive system
2375 for the submittal of bids requiring competitive bidding that shall
2376 be an additional bidding option for those bidders who choose to
2377 submit their bids electronically. The Department of Finance and
2378 Administration shall provide, by regulation, the standards that
2379 agencies must follow when receiving electronic bids. Agencies and
2380 governing authorities shall make the appropriate provisions
2381 necessary to accept electronic bids from those bidders who choose
2382 to submit their bids electronically for all purchases requiring
2383 competitive bidding under this section. Any special condition or
2384 requirement for the electronic bid submission shall be specified
2385 in the advertisement for bids required by this section. Agencies
2386 or governing authorities that are currently without available high
2387 speed Internet access shall be exempt from the requirement of this



2388 subparagraph (v) until such time that high-speed Internet access
2389 becomes available. Any county having a population of less than
2390 twenty thousand (20,000) shall be exempt from the provisions of
2391 this subparagraph (v). Any municipality having a population of
2392 less than ten thousand (10,000) shall be exempt from the
2393 provisions of this subparagraph (v). The provisions of this
2394 subparagraph (v) shall not require any bidder to submit bids
2395 electronically. When construction bids are submitted
2396 electronically, the requirement for including a certificate of
2397 responsibility, or a statement that the bid enclosed does not
2398 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
2399 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
2400 deemed in compliance with by including same as an attachment with
2401 the electronic bid submittal.

2402 (d) **Lowest and best bid decision procedure.**

2403 (i) **Decision procedure.** Purchases may be made
2404 from the lowest and best bidder. In determining the lowest and
2405 best bid, freight and shipping charges shall be included.
2406 Life-cycle costing, total cost bids, warranties, guaranteed
2407 buy-back provisions and other relevant provisions may be included
2408 in the best bid calculation. All best bid procedures for state
2409 agencies must be in compliance with regulations established by the
2410 Department of Finance and Administration. If any governing
2411 authority accepts a bid other than the lowest bid actually
2412 submitted, it shall place on its minutes detailed calculations and



2413 narrative summary showing that the accepted bid was determined to
2414 be the lowest and best bid, including the dollar amount of the
2415 accepted bid and the dollar amount of the lowest bid. No agency
2416 or governing authority shall accept a bid based on items not
2417 included in the specifications.

2418 (ii) **Decision procedure for Certified Purchasing**
2419 **Offices.** In addition to the decision procedure set forth in
2420 subparagraph (i) of this paragraph (d), Certified Purchasing
2421 Offices may also use the following procedure: Purchases may be
2422 made from the bidder offering the best value. In determining the
2423 best value bid, freight and shipping charges shall be included.
2424 Life-cycle costing, total cost bids, warranties, guaranteed
2425 buy-back provisions, documented previous experience, training
2426 costs and other relevant provisions, including, but not limited
2427 to, a bidder having a local office and inventory located within
2428 the jurisdiction of the governing authority, may be included in
2429 the best value calculation. This provision shall authorize
2430 Certified Purchasing Offices to utilize a Request For Proposals
2431 (RFP) process when purchasing commodities. All best value
2432 procedures for state agencies must be in compliance with
2433 regulations established by the Department of Finance and
2434 Administration. No agency or governing authority shall accept a
2435 bid based on items or criteria not included in the specifications.

2436 (iii) **Decision procedure for Mississippi**
2437 **Landmarks.** In addition to the decision procedure set forth in



2438 subparagraph (i) of this paragraph (d), where purchase involves
2439 renovation, restoration, or both, of the State Capitol Building or
2440 any other historical building designated for at least five (5)
2441 years as a Mississippi Landmark by the Board of Trustees of the
2442 Department of Archives and History under the authority of Sections
2443 39-7-7 and 39-7-11, the agency or governing authority may use the
2444 following procedure: Purchases may be made from the lowest and
2445 best prequalified bidder. Prequalification of bidders shall be
2446 determined not less than fifteen (15) working days before the
2447 first published notice of bid opening. Prequalification criteria
2448 shall be limited to bidder's knowledge and experience in
2449 historical restoration, preservation and renovation. In
2450 determining the lowest and best bid, freight and shipping charges
2451 shall be included. Life-cycle costing, total cost bids,
2452 warranties, guaranteed buy-back provisions and other relevant
2453 provisions may be included in the best bid calculation. All best
2454 bid and prequalification procedures for state agencies must be in
2455 compliance with regulations established by the Department of
2456 Finance and Administration. If any governing authority accepts a
2457 bid other than the lowest bid actually submitted, it shall place
2458 on its minutes detailed calculations and narrative summary showing
2459 that the accepted bid was determined to be the lowest and best
2460 bid, including the dollar amount of the accepted bid and the
2461 dollar amount of the lowest bid. No agency or governing authority



2462 shall accept a bid based on items not included in the
2463 specifications.

2464 (iv) **Construction project negotiations authority.**

2465 If the lowest and best bid is not more than ten percent (10%)
2466 above the amount of funds allocated for a public construction or
2467 renovation project, then the agency or governing authority shall
2468 be permitted to negotiate with the lowest bidder in order to enter
2469 into a contract for an amount not to exceed the funds allocated.

2470 (e) **Lease-purchase authorization.** For the purposes of
2471 this section, the term "equipment" shall mean equipment, furniture
2472 and, if applicable, associated software and other applicable
2473 direct costs associated with the acquisition. Any lease-purchase
2474 of equipment which an agency is not required to lease-purchase
2475 under the master lease-purchase program pursuant to Section
2476 31-7-10 and any lease-purchase of equipment which a governing
2477 authority elects to lease-purchase may be acquired by a
2478 lease-purchase agreement under this paragraph (e). Lease-purchase
2479 financing may also be obtained from the vendor or from a
2480 third-party source after having solicited and obtained at least
2481 two (2) written competitive bids, as defined in paragraph (b) of
2482 this section, for such financing without advertising for such
2483 bids. Solicitation for the bids for financing may occur before or
2484 after acceptance of bids for the purchase of such equipment or,
2485 where no such bids for purchase are required, at any time before
2486 the purchase thereof. No such lease-purchase agreement shall be



2487 for an annual rate of interest which is greater than the overall
2488 maximum interest rate to maturity on general obligation
2489 indebtedness permitted under Section 75-17-101, and the term of
2490 such lease-purchase agreement shall not exceed the useful life of
2491 equipment covered thereby as determined according to the upper
2492 limit of the asset depreciation range (ADR) guidelines for the
2493 Class Life Asset Depreciation Range System established by the
2494 Internal Revenue Service pursuant to the United States Internal
2495 Revenue Code and regulations thereunder as in effect on December
2496 31, 1980, or comparable depreciation guidelines with respect to
2497 any equipment not covered by ADR guidelines. Any lease-purchase
2498 agreement entered into pursuant to this paragraph (e) may contain
2499 any of the terms and conditions which a master lease-purchase
2500 agreement may contain under the provisions of Section 31-7-10(5),
2501 and shall contain an annual allocation dependency clause
2502 substantially similar to that set forth in Section 31-7-10(8).
2503 Each agency or governing authority entering into a lease-purchase
2504 transaction pursuant to this paragraph (e) shall maintain with
2505 respect to each such lease-purchase transaction the same
2506 information as required to be maintained by the Department of
2507 Finance and Administration pursuant to Section 31-7-10(13).
2508 However, nothing contained in this section shall be construed to
2509 permit agencies to acquire items of equipment with a total
2510 acquisition cost in the aggregate of less than Ten Thousand
2511 Dollars (\$10,000.00) by a single lease-purchase transaction. All



2512 equipment, and the purchase thereof by any lessor, acquired by
2513 lease-purchase under this paragraph and all lease-purchase
2514 payments with respect thereto shall be exempt from all Mississippi
2515 sales, use and ad valorem taxes. Interest paid on any
2516 lease-purchase agreement under this section shall be exempt from
2517 State of Mississippi income taxation.

2518 (f) **Alternate bid authorization.** When necessary to
2519 ensure ready availability of commodities for public works and the
2520 timely completion of public projects, no more than two (2)
2521 alternate bids may be accepted by a governing authority for
2522 commodities. No purchases may be made through use of such
2523 alternate bids procedure unless the lowest and best bidder cannot
2524 deliver the commodities contained in his bid. In that event,
2525 purchases of such commodities may be made from one (1) of the
2526 bidders whose bid was accepted as an alternate.

2527 (g) **Construction contract change authorization.** In the
2528 event a determination is made by an agency or governing authority
2529 after a construction contract is let that changes or modifications
2530 to the original contract are necessary or would better serve the
2531 purpose of the agency or the governing authority, such agency or
2532 governing authority may, in its discretion, order such changes
2533 pertaining to the construction that are necessary under the
2534 circumstances without the necessity of further public bids;
2535 provided that such change shall be made in a commercially
2536 reasonable manner and shall not be made to circumvent the public



2537 purchasing statutes. In addition to any other authorized person,
2538 the architect or engineer hired by an agency or governing
2539 authority with respect to any public construction contract shall
2540 have the authority, when granted by an agency or governing
2541 authority, to authorize changes or modifications to the original
2542 contract without the necessity of prior approval of the agency or
2543 governing authority when any such change or modification is less
2544 than one percent (1%) of the total contract amount. The agency or
2545 governing authority may limit the number, manner or frequency of
2546 such emergency changes or modifications.

2547 (h) **Petroleum purchase alternative.** In addition to
2548 other methods of purchasing authorized in this chapter, when any
2549 agency or governing authority shall have a need for gas, diesel
2550 fuel, oils and/or other petroleum products in excess of the amount
2551 set forth in paragraph (a) of this section, such agency or
2552 governing authority may purchase the commodity after having
2553 solicited and obtained at least two (2) competitive written bids,
2554 as defined in paragraph (b) of this section. If two (2)
2555 competitive written bids are not obtained, the entity shall comply
2556 with the procedures set forth in paragraph (c) of this section.
2557 In the event any agency or governing authority shall have
2558 advertised for bids for the purchase of gas, diesel fuel, oils and
2559 other petroleum products and coal and no acceptable bids can be
2560 obtained, such agency or governing authority is authorized and
2561 directed to enter into any negotiations necessary to secure the



2562 lowest and best contract available for the purchase of such
2563 commodities.

2564 (i) **Road construction petroleum products price**
2565 **adjustment clause authorization.** Any agency or governing
2566 authority authorized to enter into contracts for the construction,
2567 maintenance, surfacing or repair of highways, roads or streets,
2568 may include in its bid proposal and contract documents a price
2569 adjustment clause with relation to the cost to the contractor,
2570 including taxes, based upon an industry-wide cost index, of
2571 petroleum products including asphalt used in the performance or
2572 execution of the contract or in the production or manufacture of
2573 materials for use in such performance. Such industry-wide index
2574 shall be established and published monthly by the Mississippi
2575 Department of Transportation with a copy thereof to be mailed,
2576 upon request, to the clerks of the governing authority of each
2577 municipality and the clerks of each board of supervisors
2578 throughout the state. The price adjustment clause shall be based
2579 on the cost of such petroleum products only and shall not include
2580 any additional profit or overhead as part of the adjustment. The
2581 bid proposals or document contract shall contain the basis and
2582 methods of adjusting unit prices for the change in the cost of
2583 such petroleum products.

2584 (j) **State agency emergency purchase procedure.** If the
2585 governing board or the executive head, or his designees, of any
2586 agency of the state shall determine that an emergency exists in



2587 regard to the purchase of any commodities or repair contracts, so
2588 that the delay incident to giving opportunity for competitive
2589 bidding would be detrimental to the interests of the state, then
2590 the head of such agency, or his designees, shall file with the
2591 Department of Finance and Administration (i) a statement
2592 explaining the conditions and circumstances of the emergency,
2593 which shall include a detailed description of the events leading
2594 up to the situation and the negative impact to the entity if the
2595 purchase is made following the statutory requirements set forth in
2596 paragraph (a), (b) or (c) of this section, and (ii) a certified
2597 copy of the appropriate minutes of the board of such agency
2598 requesting the emergency purchase, if applicable. Upon receipt of
2599 the statement and applicable board certification, the State Fiscal
2600 Officer, or his designees, may, in writing, authorize the purchase
2601 or repair without having to comply with competitive bidding
2602 requirements.

2603 If the governing board or the executive head, or his
2604 designees, of any agency determines that an emergency exists in
2605 regard to the purchase of any commodities or repair contracts, so
2606 that the delay incident to giving opportunity for competitive
2607 bidding would threaten the health or safety of any person, or the
2608 preservation or protection of property, then the provisions in
2609 this section for competitive bidding shall not apply, and any
2610 officer or agent of the agency having general or specific
2611 authority for making the purchase or repair contract shall approve



2612 the bill presented for payment, and he or she shall certify in
2613 writing from whom the purchase was made, or with whom the repair
2614 contract was made.

2615 Total purchases made under this paragraph (j) shall only be
2616 for the purpose of meeting needs created by the emergency
2617 situation. Following the emergency purchase, documentation of the
2618 purchase, including a description of the commodity purchased, the
2619 purchase price thereof and the nature of the emergency shall be
2620 filed with the Department of Finance and Administration. Any
2621 contract awarded pursuant to this paragraph (j) shall not exceed a
2622 term of one (1) year.

2623 (k) **Governing authority emergency purchase procedure.**

2624 If the governing authority, or the governing authority acting
2625 through its designee, shall determine that an emergency exists in
2626 regard to the purchase of any commodities or repair contracts, so
2627 that the delay incident to giving opportunity for competitive
2628 bidding would be detrimental to the interest of the governing
2629 authority, then the provisions herein for competitive bidding
2630 shall not apply and any officer or agent of such governing
2631 authority having general or special authority therefor in making
2632 such purchase or repair shall approve the bill presented therefor,
2633 and he or she shall certify in writing thereon from whom such
2634 purchase was made, or with whom such a repair contract was made.
2635 At the board meeting next following the emergency purchase or
2636 repair contract, documentation of the purchase or repair contract,



2637 including a description of the commodity purchased, the price
2638 thereof and the nature of the emergency shall be presented to the
2639 board and shall be placed on the minutes of the board of such
2640 governing authority.

2641 (1) **Hospital purchase, lease-purchase and lease**
2642 **authorization.**

2643 (i) The commissioners or board of trustees of any
2644 public hospital may contract with such lowest and best bidder for
2645 the purchase or lease-purchase of any commodity under a contract
2646 of purchase or lease-purchase agreement whose obligatory payment
2647 terms do not exceed five (5) years.

2648 (ii) In addition to the authority granted in
2649 subparagraph (i) of this paragraph (1), the commissioners or board
2650 of trustees is authorized to enter into contracts for the lease of
2651 equipment or services, or both, which it considers necessary for
2652 the proper care of patients if, in its opinion, it is not
2653 financially feasible to purchase the necessary equipment or
2654 services. Any such contract for the lease of equipment or
2655 services executed by the commissioners or board shall not exceed a
2656 maximum of five (5) years' duration and shall include a
2657 cancellation clause based on unavailability of funds. If such
2658 cancellation clause is exercised, there shall be no further
2659 liability on the part of the lessee. Any such contract for the
2660 lease of equipment or services executed on behalf of the
2661 commissioners or board that complies with the provisions of this



2662 subparagraph (ii) shall be excepted from the bid requirements set
2663 forth in this section.

2664 (m) **Exceptions from bidding requirements.** Excepted
2665 from bid requirements are:

2666 (i) **Purchasing agreements approved by department.**

2667 Purchasing agreements, contracts and maximum price regulations
2668 executed or approved by the Department of Finance and
2669 Administration.

2670 (ii) **Outside equipment repairs.** Repairs to
2671 equipment, when such repairs are made by repair facilities in the
2672 private sector; however, engines, transmissions, rear axles and/or
2673 other such components shall not be included in this exemption when
2674 replaced as a complete unit instead of being repaired and the need
2675 for such total component replacement is known before disassembly
2676 of the component; however, invoices identifying the equipment,
2677 specific repairs made, parts identified by number and name,
2678 supplies used in such repairs, and the number of hours of labor
2679 and costs therefor shall be required for the payment for such
2680 repairs.

2681 (iii) **In-house equipment repairs.** Purchases of
2682 parts for repairs to equipment, when such repairs are made by
2683 personnel of the agency or governing authority; however, entire
2684 assemblies, such as engines or transmissions, shall not be
2685 included in this exemption when the entire assembly is being
2686 replaced instead of being repaired.



2687 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
2688 of gravel or fill dirt which are to be removed and transported by
2689 the purchaser.

2690 (v) **Governmental equipment auctions.** Motor
2691 vehicles or other equipment purchased from a federal agency or
2692 authority, another governing authority or state agency of the
2693 State of Mississippi, or any governing authority or state agency
2694 of another state at a public auction held for the purpose of
2695 disposing of such vehicles or other equipment. Any purchase by a
2696 governing authority under the exemption authorized by this
2697 subparagraph (v) shall require advance authorization spread upon
2698 the minutes of the governing authority to include the listing of
2699 the item or items authorized to be purchased and the maximum bid
2700 authorized to be paid for each item or items.

2701 (vi) **Intergovernmental sales and transfers.**
2702 Purchases, sales, transfers or trades by governing authorities or
2703 state agencies when such purchases, sales, transfers or trades are
2704 made by a private treaty agreement or through means of
2705 negotiation, from any federal agency or authority, another
2706 governing authority or state agency of the State of Mississippi,
2707 or any state agency or governing authority of another state.
2708 Nothing in this section shall permit such purchases through public
2709 auction except as provided for in subparagraph (v) of this
2710 paragraph (m). It is the intent of this section to allow
2711 governmental entities to dispose of and/or purchase commodities



2712 from other governmental entities at a price that is agreed to by
2713 both parties. This shall allow for purchases and/or sales at
2714 prices which may be determined to be below the market value if the
2715 selling entity determines that the sale at below market value is
2716 in the best interest of the taxpayers of the state. Governing
2717 authorities shall place the terms of the agreement and any
2718 justification on the minutes, and state agencies shall obtain
2719 approval from the Department of Finance and Administration, prior
2720 to releasing or taking possession of the commodities.

2721 (vii) **Perishable supplies or food.** Perishable
2722 supplies or food purchased for use in connection with hospitals,
2723 the school lunch programs, homemaking programs and for the feeding
2724 of county or municipal prisoners.

2725 (viii) **Single-source items.** Noncompetitive items
2726 available from one (1) source only. In connection with the
2727 purchase of noncompetitive items only available from one (1)
2728 source, a certification of the conditions and circumstances
2729 requiring the purchase shall be filed by the agency with the
2730 Department of Finance and Administration and by the governing
2731 authority with the board of the governing authority. Upon receipt
2732 of that certification the Department of Finance and Administration
2733 or the board of the governing authority, as the case may be, may,
2734 in writing, authorize the purchase, which authority shall be noted
2735 on the minutes of the body at the next regular meeting thereafter.
2736 In those situations, a governing authority is not required to



2737 obtain the approval of the Department of Finance and
2738 Administration. Following the purchase, the executive head of the
2739 state agency, or his designees, shall file with the Department of
2740 Finance and Administration, documentation of the purchase,
2741 including a description of the commodity purchased, the purchase
2742 price thereof and the source from whom it was purchased.

2743 (ix) **Waste disposal facility construction**
2744 **contracts.** Construction of incinerators and other facilities for
2745 disposal of solid wastes in which products either generated
2746 therein, such as steam, or recovered therefrom, such as materials
2747 for recycling, are to be sold or otherwise disposed of; however,
2748 in constructing such facilities, a governing authority or agency
2749 shall publicly issue requests for proposals, advertised for in the
2750 same manner as provided herein for seeking bids for public
2751 construction projects, concerning the design, construction,
2752 ownership, operation and/or maintenance of such facilities,
2753 wherein such requests for proposals when issued shall contain
2754 terms and conditions relating to price, financial responsibility,
2755 technology, environmental compatibility, legal responsibilities
2756 and such other matters as are determined by the governing
2757 authority or agency to be appropriate for inclusion; and after
2758 responses to the request for proposals have been duly received,
2759 the governing authority or agency may select the most qualified
2760 proposal or proposals on the basis of price, technology and other
2761 relevant factors and from such proposals, but not limited to the



2762 terms thereof, negotiate and enter contracts with one or more of
2763 the persons or firms submitting proposals.

2764 (x) **Hospital group purchase contracts.** Supplies,
2765 commodities and equipment purchased by hospitals through group
2766 purchase programs pursuant to Section 31-7-38.

2767 (xi) **Information technology products.** Purchases
2768 of information technology products made by governing authorities
2769 under the provisions of purchase schedules, or contracts executed
2770 or approved by the Mississippi Department of Information
2771 Technology Services and designated for use by governing
2772 authorities.

2773 (xii) **Energy efficiency services and equipment.**
2774 Energy efficiency services and equipment acquired by school
2775 districts, community and junior colleges, institutions of higher
2776 learning and state agencies or other applicable governmental
2777 entities on a shared-savings, lease or lease-purchase basis
2778 pursuant to Section 31-7-14.

2779 (xiii) **Municipal electrical utility system fuel.**
2780 Purchases of coal and/or natural gas by municipally owned electric
2781 power generating systems that have the capacity to use both coal
2782 and natural gas for the generation of electric power.

2783 (xiv) **Library books and other reference materials.**
2784 Purchases by libraries or for libraries of books and periodicals;
2785 processed film, videocassette tapes, filmstrips and slides;
2786 recorded audiotapes, cassettes and diskettes; and any such items



2787 as would be used for teaching, research or other information
2788 distribution; however, equipment such as projectors, recorders,
2789 audio or video equipment, and monitor televisions are not exempt
2790 under this subparagraph.

2791 (xv) **Unmarked vehicles.** Purchases of unmarked
2792 vehicles when such purchases are made in accordance with
2793 purchasing regulations adopted by the Department of Finance and
2794 Administration pursuant to Section 31-7-9(2).

2795 (xvi) **Election ballots.** Purchases of ballots
2796 printed pursuant to Section 23-15-351.

2797 (xvii) **Multichannel interactive video systems.**
2798 From and after July 1, 1990, contracts by Mississippi Authority
2799 for Educational Television with any private educational
2800 institution or private nonprofit organization whose purposes are
2801 educational in regard to the construction, purchase, lease or
2802 lease-purchase of facilities and equipment and the employment of
2803 personnel for providing multichannel interactive video systems
2804 (ITSF) in the school districts of this state.

2805 (xviii) **Purchases of prison industry products by**
2806 **the Department of Corrections, regional correctional facilities or**
2807 **privately owned prisons.** Purchases made by the Mississippi
2808 Department of Corrections, regional correctional facilities or
2809 privately owned prisons involving any item that is manufactured,
2810 processed, grown or produced from the state's prison industries.



2811 (xix) **Undercover operations equipment.** Purchases
2812 of surveillance equipment or any other high-tech equipment to be
2813 used by law enforcement agents in undercover operations, provided
2814 that any such purchase shall be in compliance with regulations
2815 established by the Department of Finance and Administration.

2816 (xx) **Junior college books for rent.** Purchases by
2817 community or junior colleges of textbooks which are obtained for
2818 the purpose of renting such books to students as part of a book
2819 service system.

2820 (xxi) **Certain school district purchases.**
2821 Purchases of commodities made by school districts from vendors
2822 with which any levying authority of the school district, as
2823 defined in Section 37-57-1, has contracted through competitive
2824 bidding procedures for purchases of the same commodities.

2825 (xxii) **Garbage, solid waste and sewage contracts.**
2826 Contracts for garbage collection or disposal, contracts for solid
2827 waste collection or disposal and contracts for sewage collection
2828 or disposal.

2829 (xxiii) **Municipal water tank maintenance**
2830 **contracts.** Professional maintenance program contracts for the
2831 repair or maintenance of municipal water tanks, which provide
2832 professional services needed to maintain municipal water storage
2833 tanks for a fixed annual fee for a duration of two (2) or more
2834 years.



2835 (xxiv) **Purchases of Mississippi Industries for the**
2836 **Blind products.** Purchases made by state agencies or governing
2837 authorities involving any item that is manufactured, processed or
2838 produced by the Mississippi Industries for the Blind.

2839 (xxv) **Purchases of state-adopted textbooks.**
2840 Purchases of state-adopted textbooks by public school districts.

2841 (xxvi) **Certain purchases under the Mississippi**
2842 **Major Economic Impact Act.** Contracts entered into pursuant to the
2843 provisions of Section 57-75-9(2), (3) and (4).

2844 (xxvii) **Used heavy or specialized machinery or**
2845 **equipment for installation of soil and water conservation**
2846 **practices purchased at auction.** Used heavy or specialized
2847 machinery or equipment used for the installation and
2848 implementation of soil and water conservation practices or
2849 measures purchased subject to the restrictions provided in
2850 Sections 69-27-331 through 69-27-341. Any purchase by the State
2851 Soil and Water Conservation Commission under the exemption
2852 authorized by this subparagraph shall require advance
2853 authorization spread upon the minutes of the commission to include
2854 the listing of the item or items authorized to be purchased and
2855 the maximum bid authorized to be paid for each item or items.

2856 (xxviii) **Hospital lease of equipment or services.**
2857 Leases by hospitals of equipment or services if the leases are in
2858 compliance with paragraph (1)(ii).



2859 (xxix) **Purchases made pursuant to qualified**
2860 **cooperative purchasing agreements.** Purchases made by certified
2861 purchasing offices of state agencies or governing authorities
2862 under cooperative purchasing agreements previously approved by the
2863 Office of Purchasing and Travel and established by or for any
2864 municipality, county, parish or state government or the federal
2865 government, provided that the notification to potential
2866 contractors includes a clause that sets forth the availability of
2867 the cooperative purchasing agreement to other governmental
2868 entities. Such purchases shall only be made if the use of the
2869 cooperative purchasing agreements is determined to be in the best
2870 interest of the governmental entity.

2871 (xxx) **School yearbooks.** Purchases of school
2872 yearbooks by state agencies or governing authorities; provided,
2873 however, that state agencies and governing authorities shall use
2874 for these purchases the RFP process as set forth in the
2875 Mississippi Procurement Manual adopted by the Office of Purchasing
2876 and Travel.

2877 (xxxii) **Design-build method and dual-phase**
2878 **design-build method of contracting.** Contracts entered into under
2879 the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

2880 (xxxiii) **Toll roads and bridge construction**
2881 **projects.** Contracts entered into under the provisions of Section
2882 65-43-1 or 65-43-3.



2883 (xxxiii) **Certain purchases under Section 57-1-221.**
2884 Contracts entered into pursuant to the provisions of Section
2885 57-1-221.

2886 (xxxiv) **Certain transfers made pursuant to the**
2887 **provisions of Section 57-105-1(7).** Transfers of public property
2888 or facilities under Section 57-105-1(7) and construction related
2889 to such public property or facilities.

2890 (xxxv) **Certain purchases or transfers entered into**
2891 **with local electrical power associations.** Contracts or agreements
2892 entered into under the provisions of Section 55-3-33.

2893 (xxxvi) **Certain purchases by an academic medical**
2894 **center or health sciences school.** Purchases by an academic
2895 medical center or health sciences school, as defined in Section
2896 37-115-50, of commodities that are used for clinical purposes and
2897 1. intended for use in the diagnosis of disease or other
2898 conditions or in the cure, mitigation, treatment or prevention of
2899 disease, and 2. medical devices, biological, drugs and
2900 radiation-emitting devices as defined by the United States Food
2901 and Drug Administration.

2902 (xxxvii) **Certain purchases made by the Mississippi**
2903 **Lottery Corporation.** Contracts made by the Mississippi Lottery
2904 Corporation pursuant to the Mississippi Lottery Law.

2905 (n) **Term contract authorization.** All contracts for the
2906 purchase of:



2907 (i) All contracts for the purchase of commodities,
2908 equipment and public construction (including, but not limited to,
2909 repair and maintenance), may be let for periods of not more than
2910 sixty (60) months in advance, subject to applicable statutory
2911 provisions prohibiting the letting of contracts during specified
2912 periods near the end of terms of office. Term contracts for a
2913 period exceeding twenty-four (24) months shall also be subject to
2914 ratification or cancellation by governing authority boards taking
2915 office subsequent to the governing authority board entering the
2916 contract.

2917 (ii) Bid proposals and contracts may include price
2918 adjustment clauses with relation to the cost to the contractor
2919 based upon a nationally published industry-wide or nationally
2920 published and recognized cost index. The cost index used in a
2921 price adjustment clause shall be determined by the Department of
2922 Finance and Administration for the state agencies and by the
2923 governing board for governing authorities. The bid proposal and
2924 contract documents utilizing a price adjustment clause shall
2925 contain the basis and method of adjusting unit prices for the
2926 change in the cost of such commodities, equipment and public
2927 construction.

2928 (o) **Purchase law violation prohibition and vendor**
2929 **penalty.** No contract or purchase as herein authorized shall be
2930 made for the purpose of circumventing the provisions of this
2931 section requiring competitive bids, nor shall it be lawful for any



2932 person or concern to submit individual invoices for amounts within
2933 those authorized for a contract or purchase where the actual value
2934 of the contract or commodity purchased exceeds the authorized
2935 amount and the invoices therefor are split so as to appear to be
2936 authorized as purchases for which competitive bids are not
2937 required. Submission of such invoices shall constitute a
2938 misdemeanor punishable by a fine of not less than Five Hundred
2939 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
2940 or by imprisonment for thirty (30) days in the county jail, or
2941 both such fine and imprisonment. In addition, the claim or claims
2942 submitted shall be forfeited.

2943 (p) **Electrical utility petroleum-based equipment**
2944 **purchase procedure.** When in response to a proper advertisement
2945 therefor, no bid firm as to price is submitted to an electric
2946 utility for power transformers, distribution transformers, power
2947 breakers, reclosers or other articles containing a petroleum
2948 product, the electric utility may accept the lowest and best bid
2949 therefor although the price is not firm.

2950 (q) **Fuel management system bidding procedure.** Any
2951 governing authority or agency of the state shall, before
2952 contracting for the services and products of a fuel management or
2953 fuel access system, enter into negotiations with not fewer than
2954 two (2) sellers of fuel management or fuel access systems for
2955 competitive written bids to provide the services and products for
2956 the systems. In the event that the governing authority or agency



2957 cannot locate two (2) sellers of such systems or cannot obtain
2958 bids from two (2) sellers of such systems, it shall show proof
2959 that it made a diligent, good-faith effort to locate and negotiate
2960 with two (2) sellers of such systems. Such proof shall include,
2961 but not be limited to, publications of a request for proposals and
2962 letters soliciting negotiations and bids. For purposes of this
2963 paragraph (q), a fuel management or fuel access system is an
2964 automated system of acquiring fuel for vehicles as well as
2965 management reports detailing fuel use by vehicles and drivers, and
2966 the term "competitive written bid" shall have the meaning as
2967 defined in paragraph (b) of this section. Governing authorities
2968 and agencies shall be exempt from this process when contracting
2969 for the services and products of fuel management or fuel access
2970 systems under the terms of a state contract established by the
2971 Office of Purchasing and Travel.

2972 (r) **Solid waste contract proposal procedure.** Before
2973 entering into any contract for garbage collection or disposal,
2974 contract for solid waste collection or disposal or contract for
2975 sewage collection or disposal, which involves an expenditure of
2976 more than Fifty Thousand Dollars (\$50,000.00), a governing
2977 authority or agency shall issue publicly a request for proposals
2978 concerning the specifications for such services which shall be
2979 advertised for in the same manner as provided in this section for
2980 seeking bids for purchases which involve an expenditure of more
2981 than the amount provided in paragraph (c) of this section. Any



2982 request for proposals when issued shall contain terms and
2983 conditions relating to price, financial responsibility,
2984 technology, legal responsibilities and other relevant factors as
2985 are determined by the governing authority or agency to be
2986 appropriate for inclusion; all factors determined relevant by the
2987 governing authority or agency or required by this paragraph (r)
2988 shall be duly included in the advertisement to elicit proposals.
2989 After responses to the request for proposals have been duly
2990 received, the governing authority or agency shall select the most
2991 qualified proposal or proposals on the basis of price, technology
2992 and other relevant factors and from such proposals, but not
2993 limited to the terms thereof, negotiate and enter into contracts
2994 with one or more of the persons or firms submitting proposals. If
2995 the governing authority or agency deems none of the proposals to
2996 be qualified or otherwise acceptable, the request for proposals
2997 process may be reinitiated. Notwithstanding any other provisions
2998 of this paragraph, where a county with at least thirty-five
2999 thousand (35,000) nor more than forty thousand (40,000)
3000 population, according to the 1990 federal decennial census, owns
3001 or operates a solid waste landfill, the governing authorities of
3002 any other county or municipality may contract with the governing
3003 authorities of the county owning or operating the landfill,
3004 pursuant to a resolution duly adopted and spread upon the minutes
3005 of each governing authority involved, for garbage or solid waste
3006 collection or disposal services through contract negotiations.



3007 (s) **Minority set-aside authorization.** Notwithstanding
3008 any provision of this section to the contrary, any agency or
3009 governing authority, by order placed on its minutes, may, in its
3010 discretion, set aside not more than twenty percent (20%) of its
3011 anticipated annual expenditures for the purchase of commodities
3012 from minority businesses; however, all such set-aside purchases
3013 shall comply with all purchasing regulations promulgated by the
3014 Department of Finance and Administration and shall be subject to
3015 bid requirements under this section. Set-aside purchases for
3016 which competitive bids are required shall be made from the lowest
3017 and best minority business bidder. For the purposes of this
3018 paragraph, the term "minority business" means a business which is
3019 owned by a majority of persons who are United States citizens or
3020 permanent resident aliens (as defined by the Immigration and
3021 Naturalization Service) of the United States, and who are Asian,
3022 Black, Hispanic or Native American, according to the following
3023 definitions:

3024 (i) "Asian" means persons having origins in any of
3025 the original people of the Far East, Southeast Asia, the Indian
3026 subcontinent, or the Pacific Islands.

3027 (ii) "Black" means persons having origins in any
3028 black racial group of Africa.

3029 (iii) "Hispanic" means persons of Spanish or
3030 Portuguese culture with origins in Mexico, South or Central
3031 America, or the Caribbean Islands, regardless of race.



3032 (iv) "Native American" means persons having
3033 origins in any of the original people of North America, including
3034 American Indians, Eskimos and Aleuts.

3035 (t) **Construction punch list restriction.** The
3036 architect, engineer or other representative designated by the
3037 agency or governing authority that is contracting for public
3038 construction or renovation may prepare and submit to the
3039 contractor only one (1) preliminary punch list of items that do
3040 not meet the contract requirements at the time of substantial
3041 completion and one (1) final list immediately before final
3042 completion and final payment.

3043 (u) **Procurement of construction services by state**
3044 **institutions of higher learning.** Contracts for privately financed
3045 construction of auxiliary facilities on the campus of a state
3046 institution of higher learning may be awarded by the Board of
3047 Trustees of State Institutions of Higher Learning to the lowest
3048 and best bidder, where sealed bids are solicited, or to the
3049 offeror whose proposal is determined to represent the best value
3050 to the citizens of the State of Mississippi, where requests for
3051 proposals are solicited.

3052 (v) **Insurability of bidders for public construction or**
3053 **other public contracts.** In any solicitation for bids to perform
3054 public construction or other public contracts to which this
3055 section applies including, but not limited to, contracts for
3056 repair and maintenance, for which the contract will require



3057 insurance coverage in an amount of not less than One Million
3058 Dollars (\$1,000,000.00), bidders shall be permitted to either
3059 submit proof of current insurance coverage in the specified amount
3060 or demonstrate ability to obtain the required coverage amount of
3061 insurance if the contract is awarded to the bidder. Proof of
3062 insurance coverage shall be submitted within five (5) business
3063 days from bid acceptance.

3064 (w) **Purchase authorization clarification.** Nothing in
3065 this section shall be construed as authorizing any purchase not
3066 authorized by law.

3067 **SECTION 52.** Section 67-1-71, Mississippi Code of 1972, is
3068 amended as follows:

3069 67-1-71. The department may revoke or suspend any permit
3070 issued by it for a violation by the permittee of any of the
3071 provisions of this chapter or of the regulations promulgated under
3072 it by the department.

3073 Permits must be revoked or suspended for the following
3074 causes:

3075 (a) Conviction of the permittee for the violation of
3076 any of the provisions of this chapter;

3077 (b) Willful failure or refusal by any permittee to
3078 comply with any of the provisions of this chapter or of any rule
3079 or regulation adopted pursuant thereto;

3080 (c) The making of any materially false statement in any
3081 application for a permit;



3082 (d) Conviction of one or more of the clerks, agents or
3083 employees of the permittee, of any violation of this chapter upon
3084 the premises covered by such permit within a period of time as
3085 designated by the rules or regulations of the department;

3086 (e) The possession on the premises of any retail
3087 permittee of any alcoholic beverages upon which the tax has not
3088 been paid;

3089 (f) The willful failure of any permittee to keep the
3090 records or make the reports required by this chapter, or to allow
3091 an inspection of such records by any duly authorized person;

3092 (g) The suspension or revocation of a permit issued to
3093 the permittee by the federal government, or conviction of
3094 violating any federal law relating to alcoholic beverages;

3095 (h) The failure to furnish any bond required by Section
3096 27-71-21 within fifteen (15) days after notice from the
3097 department; and

3098 (i) The conducting of any form of illegal gambling on
3099 the premises of any permittee or on any premises connected
3100 therewith or the presence on any such premises of any gambling
3101 device with the knowledge of the permittee.

3102 The provisions of paragraph (i) of this section shall not
3103 apply to gambling or the presence of any gambling devices, with
3104 knowledge of the permittee, on board a cruise vessel in the waters
3105 within the State of Mississippi, which lie adjacent to the State
3106 of Mississippi south of the three (3) most southern counties in



3107 the State of Mississippi, or on any vessel as defined in Section
3108 27-109-1 whenever such vessel is on the Mississippi River or
3109 navigable waters within any county bordering on the Mississippi
3110 River. The department may, in its discretion, issue on-premises
3111 retailer's permits to a common carrier of the nature described in
3112 this paragraph.

3113 The provisions of paragraph (i) of this section shall not
3114 apply to the operation of any game or lottery authorized by
3115 Sections 1 through 46 of this act.

3116 No permit shall be suspended or revoked until after the
3117 permittee has been provided reasonable notice of the charges
3118 against him for which suspension or revocation is sought and the
3119 opportunity to a hearing before the Board of Tax Appeals to
3120 contest such charges and the suspension or revocation proposed.
3121 Opportunity to a hearing is provided without an actual hearing if
3122 the permittee, after receiving reasonable notice, including notice
3123 of his right to a hearing, fails to timely request a hearing. The
3124 permittee may also at any time waive his rights to reasonable
3125 notice and/or to the opportunity to a hearing by agreeing to a
3126 suspension or revocation offered by the department.

3127 Notwithstanding the requirement above that a permit may not be
3128 suspended without notice and opportunity to a hearing, sales of
3129 alcoholic beverages by a permittee under a permit for which the
3130 bond under Section 27-71-21 has been cancelled shall be suspended
3131 from and after issuance of the notice provided in * * * paragraph



3132 (h) above and shall continue to be suspended until the bond is
3133 reinstated, a new bond is posted or sufficient cash or securities
3134 as provided under Section 27-71-21 are deposited with the State
3135 Treasurer for this permit.

3136 In addition to the causes specified in this section and other
3137 provisions of this chapter, the department shall be authorized to
3138 suspend the permit of any permit holder for being out of
3139 compliance with an order for support, as defined in Section
3140 93-11-153. The procedure for suspension of a permit for being out
3141 of compliance with an order for support, and the procedure for the
3142 reissuance or reinstatement of a permit suspended for that
3143 purpose, and the payment of any fees for the reissuance or
3144 reinstatement of a permit suspended for that purpose, shall be
3145 governed by Section 93-11-157 or 93-11-163, as the case may be.
3146 If there is any conflict between any provision of Section
3147 93-11-157 or 93-11-163 and any provision of this chapter, the
3148 provisions of Section 93-11-157 or 93-11-163, as the case may be,
3149 shall control.

3150 **SECTION 53.** Section 97-33-9, Mississippi Code of 1972, is
3151 amended as follows:

3152 97-33-9. Except as otherwise provided in Section 97-33-8, if
3153 any person shall be guilty of keeping or exhibiting any game or
3154 gaming table commonly called A.B.C. or E.O. roulette or
3155 rowley-powley, or rouge et noir, roredo, keno, monte, or any
3156 faro-bank, or other game, gaming table, or bank of the same or



3157 like kind or any other kind or description under any other name
3158 whatever, or shall be in any manner either directly or indirectly
3159 interested or concerned in any gaming tables, banks, or games,
3160 either by furnishing money or articles for the purpose of carrying
3161 on the same, being interested in the loss or gain of said table,
3162 bank or games, or employed in any manner in conducting, carrying
3163 on, or exhibiting said gaming tables, games, or banks, every
3164 person so offending and being thereof convicted, shall be fined
3165 not less than Twenty-five Dollars (\$25.00) nor more than Two
3166 Thousand Dollars (\$2,000.00), or be imprisoned in the county jail
3167 not longer than two (2) months, or by both such fine and
3168 imprisonment, in the discretion of the court. Nothing in this
3169 section shall apply to any person who owns, possesses, controls,
3170 installs, procures, repairs or transports any gambling device,
3171 machine or equipment in accordance with subsection (4) of Section
3172 97-33-7 or Section 75-76-34.

3173 This section shall not apply to the operation of any game or
3174 lottery authorized by Sections 1 through 46 of this act.

3175 **SECTION 54.** Section 97-33-11, Mississippi Code of 1972, is
3176 amended as follows:

3177 97-33-11. It shall not be lawful for any association of
3178 persons of the character commonly known as a "club," whether such
3179 association be incorporated or not, in any manner, either directly
3180 or indirectly, to have any interest or concern in any gambling
3181 tables, banks, or games, by means of what is sometimes called a



3182 "rake-off" or "take-out," or by means of an assessment upon
3183 certain combinations, or hands at cards, or by means of a
3184 percentage extracted from players, or an assessment made upon, or
3185 a contribution from them, or by any other means, device or
3186 contrivance whatsoever. It shall not be lawful for such an
3187 association to lend or advance money or any other valuable thing
3188 to any person engaged or about to engage in playing any game of
3189 chance prohibited by law, or to become responsible directly or
3190 indirectly for any money or other valuable thing lost, or which
3191 may be lost, by any player in any such game. If any such
3192 association shall violate any of the provisions of this section
3193 each and every member thereof shall be guilty of a misdemeanor
3194 and, upon conviction thereof, shall be fined in a sum not more
3195 than Five Hundred Dollars (\$500.00); and unless such fine and
3196 costs be immediately paid, shall be imprisoned in the county jail
3197 for not less than five (5) nor more than twenty (20) days. Each
3198 grand jury shall cause such of the members of such an association
3199 as it may choose to appear before them and submit to examination
3200 touching the observance or nonobservance by such association of
3201 the provisions hereof.

3202 This section shall not apply to the operation of any game or
3203 lottery authorized by Sections 1 through 46 of this act.

3204 **SECTION 55.** Section 97-33-13, Mississippi Code of 1972, is
3205 amended as follows:



3206 97-33-13. Any owner, lessee, or occupant of any outhouse or
3207 other building, who shall knowingly permit or suffer any of the
3208 beforementioned tables, banks, or games, or any other game
3209 prohibited by law, to be carried on, kept, or exhibited in his or
3210 her said house or other building, or on his or her lot or
3211 premises, being thereof convicted, shall be fined not less than
3212 One Hundred Dollars (\$100.00) nor more than Two Thousand Dollars
3213 (\$2,000.00).

3214 This section shall not apply to the operation of any game or
3215 lottery authorized by Sections 1 through 46 of this act.

3216 **SECTION 56.** Section 97-33-21, Mississippi Code of 1972, is
3217 amended as follows:

3218 97-33-21. Any person of full age who shall bet any money or
3219 thing of any value with a minor, or allow a minor to bet at any
3220 game or gaming table exhibited by him or her, or in which he or
3221 she is interested or in any manner concerned, on conviction
3222 thereof, shall be fined not less than Three Hundred Dollars
3223 (\$300.00) and imprisoned not less than three (3) months.

3224 This section shall apply to minors under the age of
3225 twenty-one (21) as it might apply to the operation of any game or
3226 lottery authorized by Sections 1 through 46 of this act.

3227 **SECTION 57.** Section 97-33-23, Mississippi Code of 1972, is
3228 amended as follows:

3229 97-33-23. Any person of full age who shall bet any money or
3230 thing of value with a minor, knowing such minor to be under the



3231 age of twenty-one (21) years, or allowing any such minor to bet at
3232 any game or games, or at any gaming table exhibited by him or her,
3233 or in which he or she is interested or in any manner concerned, on
3234 conviction thereof, shall be punished by imprisonment in the
3235 Penitentiary not exceeding two (2) years.

3236 This section shall apply to minors under the age of
3237 twenty-one (21) with regard to the operation of any game or
3238 lottery authorized by Sections 1 through 46 of this act.

3239 **SECTION 58.** Section 97-33-31, Mississippi Code of 1972, is
3240 amended as follows:

3241 97-33-31. If any person, in order to raise money for himself
3242 or another, or for any purpose whatever, shall publicly or
3243 privately put up a lottery to be drawn or adventured for, he or
3244 she shall, on conviction, be imprisoned in the Penitentiary not
3245 exceeding five (5) years.

3246 This section shall not apply to the operation of any game or
3247 lottery authorized by Sections 1 through 46 of this act.

3248 **SECTION 59.** Section 97-33-33, Mississippi Code of 1972, is
3249 amended as follows:

3250 97-33-33. If any person shall in any way advertise any
3251 lottery whatever, no matter where located, or shall knowingly have
3252 in his possession any posters or other lottery advertisements of
3253 any kind * * *, save a regularly issued newspaper containing such
3254 an advertisement without intent to circulate the same as an
3255 advertisement * * *, he or she shall, on conviction, be fined not



3256 less than Twenty-five Dollars (\$25.00) nor more than One Hundred
3257 Dollars (\$100.00), or be imprisoned in the county jail not
3258 exceeding three (3) months, or both.

3259 This section shall not apply to the operation of any game or
3260 lottery authorized by Sections 1 through 46 of this act.

3261 **SECTION 60.** Section 97-33-35, Mississippi Code of 1972, is
3262 amended as follows:

3263 97-33-35. If any newspaper published or circulated in this
3264 state shall contain an advertisement of any lottery whatever, or
3265 any matter intended to advertise a lottery, no matter where
3266 located, the editor or editors, publisher or publishers, and the
3267 owner or owners thereof permitting the same, shall be guilty of a
3268 misdemeanor * * * and, on conviction, shall be fined not less than
3269 One Hundred Dollars (\$100.00) nor more than One Thousand Dollars
3270 (\$1,000.00), and be imprisoned in the county jail not less than
3271 ten (10) days nor more than three (3) months, for each offense.
3272 The issuance of each separate daily or weekly edition of the
3273 newspaper that shall contain such an advertisement shall be
3274 considered a separate offense.

3275 This section shall not apply to the operation of any game or
3276 lottery authorized by Sections 1 through 46 of this act.

3277 **SECTION 61.** Section 97-33-37, Mississippi Code of 1972, is
3278 amended as follows:

3279 97-33-37. If any newsdealer or other person shall, directly
3280 or indirectly, sell or offer for sale any newspaper or other



3281 publication containing a lottery advertisement, he or she shall be
3282 guilty of a misdemeanor * * * and, upon conviction, shall be fined
3283 not less than Ten Dollars (\$10.00) or imprisoned not less than ten
3284 (10) days, or both.

3285 This section shall not apply to the operation of any game or
3286 lottery authorized by Sections 1 through 46 of this act.

3287 **SECTION 62.** Section 97-33-39, Mississippi Code of 1972, is
3288 amended as follows:

3289 97-33-39. If any person shall sell, or offer or expose for
3290 sale, any lottery ticket, whether the lottery be in or out of this
3291 state, or for or in any other state, territory, district, or
3292 country, he or she shall, on conviction, be fined not less than
3293 Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars
3294 (\$100.00), or imprisoned in the county jail not less than ten (10)
3295 days nor more than sixty (60) days, or both.

3296 This section shall not apply to the operation of any game or
3297 lottery authorized by Sections 1 through 46 of this act.

3298 **SECTION 63.** Section 97-33-41, Mississippi Code of 1972, is
3299 amended as follows:

3300 97-33-41. If any person shall buy in this state any lottery
3301 ticket, whether the lottery be in or out of this state, or of or
3302 in any other state, territory, district, or country, he or she
3303 shall, on conviction, be fined not less than Five Dollars (\$5.00)
3304 nor more than Twenty-five Dollars (\$25.00), or be imprisoned in
3305 the county jail not exceeding ten (10) days, or both.



3306 This section shall not apply to the operation of any game or
3307 lottery authorized by Sections 1 through 46 of this act.

3308 **SECTION 64.** Section 97-33-43, Mississippi Code of 1972, is
3309 amended as follows:

3310 97-33-43. If any railroad company shall suffer or permit the
3311 sale of a lottery ticket of any kind on its cars, or at its depots
3312 or depot grounds, or by its employees, no matter where the lottery
3313 is located, it shall be guilty of a misdemeanor * * * and, on
3314 conviction, shall be fined not less than Twenty Dollars (\$20.00)
3315 nor more than One Hundred Dollars (\$100.00) for every such ticket
3316 so sold.

3317 This section shall not apply to the operation of any game or
3318 lottery authorized by Sections 1 through 46 of this act.

3319 **SECTION 65.** Section 97-33-45, Mississippi Code of 1972, is
3320 amended as follows:

3321 97-33-45. If the owner or owners of any steamboat shall
3322 suffer or permit the sale of a lottery ticket of any kind on his
3323 or their boat, or by his or their employees, no matter where the
3324 lottery is located, he or she or they shall be guilty of a
3325 misdemeanor and shall, on conviction, be punished as prescribed in
3326 Section 97-33-43.

3327 This section shall not apply to the operation of any game or
3328 lottery authorized by Sections 1 through 46 of this act.

3329 **SECTION 66.** Section 97-33-47, Mississippi Code of 1972, is
3330 amended as follows:



3331 97-33-47. If any person shall act as agent for any lottery
3332 or lottery company, no matter where domiciled or located, or if he
3333 shall assume to so act as agent, or if he or she receive any money
3334 or other thing for any such lottery or lottery company, or deliver
3335 to any person any ticket or tickets, prize or prizes, or other
3336 thing from such lottery or lottery company, he or she shall, on
3337 conviction, be fined not less than One Hundred Dollars (\$100.00),
3338 nor more than Five Hundred Dollars (\$500.00), and be imprisoned in
3339 the county jail not less than three (3) months nor more than six
3340 (6) months.

3341 This section shall not apply to the operation of any game or
3342 lottery authorized by Sections 1 through 46 of this act.

3343 **SECTION 67.** Section 97-33-49, Mississippi Code of 1972, is
3344 amended as follows:

3345 97-33-49. Except as otherwise provided in Section 97-33-51,
3346 if any person, in order to raise money for himself or another,
3347 shall publicly or privately put up or in any way offer any prize
3348 or thing to be raffled or played for, he or she shall, on
3349 conviction, be fined not more than Twenty Dollars (\$20.00), or be
3350 imprisoned not more than one (1) month in the county jail.

3351 This section shall not apply to the operation of any game or
3352 lottery authorized by Sections 1 through 46 of this act.

3353 **SECTION 68.** This act shall take effect and be in force from
3354 and after September 1, 2018.

