

By: Senator(s) Moran, Gollott, Dearing, Simmons (13th), Carter, Blackwell, Seymour, Wiggins, Chassaniol, Jackson (11th) To: Highways and Transportation

SENATE BILL NO. 2001 (As Sent to Governor)

1 AN ACT TO CREATE THE ALYCE G. CLARKE MISSISSIPPI LOTTERY LAW
2 TO ESTABLISH A STATE LOTTERY; TO CREATE THE MISSISSIPPI LOTTERY
3 CORPORATION TO ADMINISTER THE STATE LOTTERY; TO PROVIDE THAT THE
4 AFFAIRS OF THE CORPORATION SHALL BE ADMINISTERED AND GOVERNED BY A
5 BOARD OF DIRECTORS APPOINTED BY THE GOVERNOR WITH THE ADVICE AND
6 CONSENT OF THE SENATE; TO PROVIDE THE TERMS OF OFFICE AND POWERS
7 AND DUTIES OF THE BOARD; 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; TO PROVIDE FOR THE
11 POWERS AND DUTIES OF THE PRESIDENT; TO AUTHORIZE THE BOARD TO
12 EMPLOY LEGAL COUNSEL; TO REQUIRE BACKGROUND INVESTIGATION OF
13 APPLICANTS FOR EMPLOYMENT WITH THE CORPORATION; TO PROVIDE FOR THE
14 DISPOSITION OF PROCEEDS RECEIVED FROM THE SALE OF LOTTERY TICKETS;
15 TO PROVIDE FOR APPEALS BY RETAILERS, VENDORS OR APPLICANTS
16 AGGRIEVED BY DECISIONS OF THE PRESIDENT OR THE BOARD OF DIRECTORS;
17 TO PROHIBIT THE SALE OF LOTTERY TICKETS TO ANYONE UNDER THE AGE OF
18 21; TO PROVIDE THE MANNER IN WHICH PRIZES MAY BE PAID AND TO
19 AUTHORIZE THE VOLUNTARY ASSIGNMENT OF PRIZES; TO PROVIDE FOR THE
20 SELECTION OF LOTTERY TICKET RETAILERS AND THE REQUIREMENTS THAT
21 MUST BE MET TO BECOME A RETAILER; TO PROVIDE THAT THE PROCEEDS
22 FROM THE SALE OF LOTTERY TICKETS AND RECEIVED BY A LOTTERY
23 RETAILER SHALL CONSTITUTE A TRUST; TO PLACE CERTAIN REQUIREMENTS
24 ON VENDORS OF GOODS OR SERVICES NECESSARY FOR THE IMPLEMENTATION
25 OF THE STATE LOTTERY; TO PROVIDE FOR CRIMINAL BACKGROUND
26 INVESTIGATIONS BY THE MISSISSIPPI DEPARTMENT OF PUBLIC SAFETY ON
27 POTENTIAL VENDORS, POTENTIAL RETAILERS AND CERTAIN EMPLOYEES OF
28 THE CORPORATION; TO MAKE UNLAWFUL CERTAIN ACTS WITH REGARD TO THE
29 STATE LOTTERY; TO PROVIDE FOR THE DISPOSITION OF PROCEEDS RECEIVED
30 FROM THE SALE OF LOTTERY TICKETS; TO PROVIDE THAT THE NET PROCEEDS
31 COLLECTED FROM THE SALE OF LOTTERY TICKETS SHALL BE DEPOSITED INTO
32 A LOTTERY PROCEEDS FUND CREATED IN THE STATE TREASURY FOR VARIOUS
33 PURPOSES; TO AMEND SECTION 7-7-211, MISSISSIPPI CODE OF 1972, TO
34 AUTHORIZE THE DEPARTMENT OF AUDIT TO REVIEW AND APPROVE ANY



35 INDEPENDENT AUDITOR SELECTED BY THE MISSISSIPPI LOTTERY
36 CORPORATION TO CONDUCT AN ANNUAL AUDIT OF THE CORPORATION AND TO
37 CONDUCT AUDITS OR INVESTIGATIONS OF THE MISSISSIPPI LOTTERY
38 CORPORATION IF IN THE OPINION OF THE STATE AUDITOR CONDITIONS
39 JUSTIFY SUCH AUDITS OR INVESTIGATIONS; TO AMEND SECTIONS 25-9-107,
40 25-11-103, 25-41-3, 31-7-13, 67-1-71, 97-33-9, 97-33-11, 97-33-13,
41 97-33-21, 97-33-23, 97-33-31, 97-33-33, 97-33-35, 97-33-37,
42 97-33-39, 97-33-41, 97-33-43, 97-33-45, 97-33-47 AND 97-33-49,
43 MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS
44 ACT; AND FOR RELATED PURPOSES.

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

46 **SECTION 1.** This act shall be referred to as the "Alyce G.
47 Clarke Mississippi Lottery Law."

48 **SECTION 2.** The Legislature recognizes that the operations of
49 a state lottery are unique activities for state government and
50 that a corporate structure will best enable the lottery to be
51 managed in an entrepreneurial and business-like manner. It is the
52 intent of the Legislature that the Mississippi Lottery Corporation
53 shall be accountable to the Governor, the Legislature, and the
54 people of the state through a system of audits, reports, and
55 disclosures as required by this act.

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

59 (a) "Corporation" means the Mississippi Lottery
60 Corporation.

61 (b) "Lottery" means any game of chance approved by the
62 corporation and operated pursuant to this act, which utilizes the
63 sale of paper tickets for various intrastate and multistate or
64 multisovereign lottery games (such as Pick-3, Pick-4, Mega



65 Millions, Powerball), and "instant tickets" as defined, but
66 specifically excluding any form of "video lottery" or use of
67 "video lottery terminal" as defined.

68 (c) "Major procurement" means any item, product or
69 service in the amount of One Million Dollars (\$1,000,000.00) or
70 more, including, but not limited to, major advertising contracts,
71 annuity contracts, prizes, products, and services unique to the
72 Mississippi lottery.

73 (d) "Net proceeds" means gross lottery revenues minus
74 amounts paid as prizes and expenses of operation of the lottery.

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

77 (f) "President" means the President of the Mississippi
78 Lottery Corporation, who shall also serve as chief executive
79 officer of the corporation.

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

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

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



89 (j) "Fiscal year" means the fiscal year used by the
90 State of Mississippi government.

91 (k) "Board" means the Mississippi Lottery Corporation
92 Board of Directors.

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

97 (m) "Video lottery" and "video lottery terminal" means
98 any electronic interactive computerized game machine or device
99 equipped with a video screen and buttons, keys, a keyboard,
100 touchscreen or other input device allowing input by an individual
101 player and into which the player inserts coins, tokens, currency
102 or other representation of value (including, but not limited to,
103 an electronic card, ticket or other thing on which value is
104 recorded electronically) as consideration in order for play of a
105 game to be available, and through which, as a result of the play
106 of a game, the player may receive free games, credits redeemable
107 for cash or a noncash prize, or some other thing of value, whether
108 or not received directly from the device, or nothing, determined
109 wholly or predominantly by chance.

110 **SECTION 4.** (1) There is hereby created a state lottery,
111 which shall be administered by a corporation which shall be known
112 as the "Mississippi Lottery Corporation." The corporation shall
113 be managed in such a manner that enables the people of the state



114 to benefit from its profits and to ensure the integrity of the
115 lottery.

116 (2) The existence of the corporation, which shall be
117 domiciled in the State of Mississippi, shall begin upon the
118 appointment of all five (5) members of the board as provided in
119 Section 5 of this act.

120 (3) The exclusive venue for any action or matter against the
121 corporation arising out of or in connection with the issuance,
122 nonissuance, delivery or failure to deliver a lottery ticket or
123 payment or nonpayment of a lottery prize is the county in which
124 its corporate headquarters is located, and the circuit court for
125 that county has exclusive jurisdiction thereof. For purposes of
126 court costs, the corporation shall be a private corporation.

127 **SECTION 5.** (1) The affairs of the corporation shall be
128 administered by the Mississippi Lottery Corporation Board of
129 Directors. The board shall be composed of five (5) members
130 appointed by the Governor, with the advice and consent of the
131 Senate. The Commissioner of Revenue and the State Treasurer shall
132 serve as ex officio, nonvoting members. Members appointed when
133 the Senate is not in session shall serve only until the end of the
134 next regular session, unless confirmed by the Senate.

135 (2) (a) Members of the board shall be residents of the
136 State of Mississippi, and the Governor shall take into account the
137 goals of geographic, racial, gender and other categories of
138 diversity when nominating board members.



139 (b) Of the initial appointees, the members' terms shall
140 be staggered as follows: one (1) term to expire on December 31,
141 2019; December 31, 2020; December 31, 2021; December 31, 2022; and
142 December 31, 2023. After the expiration of the initial terms,
143 members of the board shall serve terms of five (5) years.

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

150 (3) Appointed members of the board shall be entitled to per
151 diem compensation pursuant to Section 25-3-69 paid by the
152 corporation and shall be reimbursed by the corporation for
153 necessary travel and other reasonable expenses incurred in the
154 performance of their official duties. No appointed member of the
155 board shall be considered a public officer.

156 (4) The board, upon the initial call of the Governor and the
157 chairman thereafter, shall meet at least monthly for the first
158 eighteen (18) months and at such other times as the chairman may
159 determine. Three (3) voting members of the board shall constitute
160 a quorum. The board shall also meet upon call of three (3) or
161 more of the voting members of the board. The board shall keep
162 accurate and complete records of all its meetings.



163 (5) All meetings of the board shall be subject to the Open
164 Meetings Act in Section 25-41-1 et seq.

165 **SECTION 6.** (1) The president of the corporation shall be
166 appointed by the board subject to the approval of the Governor.
167 The Governor shall, within thirty (30) days after receiving the
168 nomination of the president in writing, either approve or reject
169 the nomination. Failure to take either action within the required
170 time shall constitute approval by the Governor. If the Governor
171 rejects the nomination of the president, then the board shall
172 submit a different nominee to the Governor. The president shall
173 manage the daily affairs of the corporation and shall have such
174 powers and duties as specified by this act, by the board, and any
175 rules or regulations adopted by the board. The president shall
176 not be a member of the board. The president shall serve at the
177 will and pleasure of the board.

178 (2) The president shall employ such personnel as he or she
179 deems necessary. All personnel shall serve at the will and
180 pleasure of the president, unless otherwise specified by the
181 president.

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

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

184 **SECTION 7.** (1) Except as provided under Section 12 of this
185 act, all records of the corporation shall be deemed public records
186 and subject to public inspection as provided by Section 25-61-1 et
187 seq. unless:



188 (a) The record relates to or was provided by a
189 confidential source or informant and relates to lottery security,
190 applicant, vendor, or retailer qualifications or conduct;

191 (b) The record involves a trade secret of the
192 corporation or of a vendor;

193 (c) The disclosure of the record would endanger the
194 security of the lottery or its retailers; or

195 (d) The record is covered by another exemption under
196 federal or state law.

197 (2) Records pertaining to the security of lottery
198 operations, whether current or proposed, the security director,
199 and the division handling security shall be deemed to be records
200 containing security procedures, investigative techniques, or
201 internal security information.

202 **SECTION 8.** (1) The board shall provide the president with
203 private sector perspectives on the operation of a business, large
204 marketing enterprise, and the like. The board shall:

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

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

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



212 (d) Adopt such administrative rules and regulations as
213 may be necessary to carry out and implement its powers and duties,
214 the operations of the corporation, the conduct of lottery games in
215 general and any other matters necessary or desirable for the
216 efficient and effective operation of the lottery or convenience of
217 the public.

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

222 **SECTION 9.** (1) The board shall not authorize, conduct or
223 administer lottery games involving the use of a "video lottery
224 terminal" as defined or any mobile or Internet-based or
225 monitor-based interactive game, or any simulated casino-style
226 game, including video poker, video roulette, slot machines or
227 video blackjack, or any variant of these prohibited games.

228 (2) The board may adopt administrative rules and regulations
229 for the conduct of specific lottery games and operations,
230 including, but not limited to, administrative rules and
231 regulations specifying:

232 (a) The types of lottery games to be conducted which
233 utilize the sale of paper tickets for various intrastate and
234 multistate or multisoovereign lottery games (such as Pick-3,
235 Pick-4, Mega Millions, Powerball) and "instant tickets" as
236 defined.



237 (b) The sale price of tickets.

238 (c) The number and amount of prizes.

239 (d) The methods to be used in selling tickets for
240 lottery games; provided, however, the corporation shall not permit
241 any lottery game to be played or ticket to be purchased, sold or
242 played by any method involving (i) a video lottery terminal or
243 (ii) by any personal computer, tablet, smartphone, mobile device
244 or other similar equipment or type of device.

245 (e) The methods and location of selecting or validating
246 winning tickets.

247 (f) The frequency and the means of conducting drawings
248 which shall be open to the public.

249 (g) The manner of payment of prizes.

250 (h) The frequency of games and drawings.

251 (i) The manner and amount of compensation to lottery
252 retailers, except all compensation shall be uniform.

253 (j) Any other matters necessary to carry out this act
254 and necessary for the efficient and effective operation of the
255 lottery or for the convenience of the public.

256 (3) In all other matters, the board shall advise and make
257 recommendations. In addition, the board shall:

258 (a) Conduct hearings upon complaints charging
259 violations of this act or of administrative rules and regulations
260 adopted by the corporation and shall conduct such other hearings
261 as may be provided by administrative rules and regulations.



262 (b) Periodically, review the performance of the
263 corporation and:

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

266 (ii) Identify potential improvements in this act,
267 the administrative rules and regulations of the corporation, and
268 the management of the corporation.

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

271 (4) Nothing in this act shall be construed to govern, affect
272 or limit gaming operations at a licensed gaming facility nor shall
273 this act be construed to supersede or preempt the authority of the
274 Mississippi Gaming Commission as it relates to gaming operations
275 occurring at a licensed gaming facility.

276 (5) Nothing in this act shall prohibit a licensed gaming
277 facility under the Mississippi Gaming Commission from applying and
278 operating as a lottery retailer under this act.

279 **SECTION 10.** (1) The corporation shall conduct and
280 administer lottery games to result in maximization of revenues to
281 the State of Mississippi. The corporation, its employees, and the
282 members of the board shall provide for the efficient and effective
283 operation of lottery games which ensure the integrity of the
284 lottery and maintain the dignity of the state and the general
285 welfare of its citizens.



286 (2) The corporation, in pursuing the objectives and purposes
287 of this act, may:

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

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

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

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

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

297 (f) Acquire real property and make improvements
298 thereon.

299 (g) Make, solicit and request proposals and offers, and
300 execute and effectuate any and all agreements or contracts,
301 including, but not limited to:

302 (i) Contracts that provide for the placement of
303 commercial advertising on tickets.

304 (ii) Contracts for the purchase and/or lease of
305 real property as are necessary for the operation and promotion of
306 the lottery.

307 (iii) Any contract and/or agreement necessary for
308 the implementation, operation, and promotion of the lottery and
309 this act.



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

313 (3) The corporation shall:

314 (a) Supervise and administer the lottery in accordance
315 with the provisions of this act and the administrative rules and
316 regulations adopted by the board.

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

325 (c) Adopt by administrative rules and regulations a
326 system of continuous internal audits.

327 (d) Maintain weekly or more frequent records of lottery
328 transactions, including distribution of tickets to lottery
329 retailers, revenues received, claims for prizes, prizes paid and
330 all other financial transactions of the corporation.

331 (e) Adopt by administrative rules and regulations a
332 code of ethics for officers and employees of the corporation to
333 carry out the standards of conduct established by this act.



334 (f) Adopt by administrative rules and regulations
335 guidelines for the disposal of lottery property if the corporation
336 is dissolved.

337 (4) There shall be no liability on the part of, and no cause
338 of action shall arise against, the corporation, its governing
339 board, staff, agents, vendors, or employees, arising out of or in
340 connection with the issuance, failure to issue, or delivery of a
341 lottery ticket.

342 **SECTION 11.** (1) The president, as chief executive officer
343 of the corporation, shall direct and supervise all administrative
344 and technical activities in accordance with the provisions of this
345 act and within the administrative rules and regulations adopted by
346 the board. The president shall:

347 (a) Supervise and administer the operation of the
348 corporation, the lottery and its games.

349 (b) Employ and direct such personnel as may be
350 necessary to carry out the purposes of this act and utilize such
351 services, personnel or facilities of the corporation as he or she
352 may deem necessary.

353 (c) Contract in accordance with the administrative
354 rules and regulations adopted by the corporation with lottery
355 retailers.

356 (d) Make available for inspection by the board or any
357 member of the board, upon request, all books, records, files, and
358 other information and documents of his or her office and to advise



359 the board and recommend such administrative rules and regulations
360 and other matters he or she deems necessary and advisable to
361 improve the operation and administration of the lottery.

362 (e) Subject to the limitations under Section 35 of this
363 act, enter into any contract pursuant to this act with any person
364 for the promotion and operation of the lottery or for the
365 performance of any of the functions as provided in this act or
366 administrative rules and regulations adopted by the board.

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

369 (g) Not later than thirty (30) days before the
370 beginning of the corporation's fiscal year, submit the proposed
371 annual budget of the corporation and projected net proceeds to the
372 board for review and approval. In addition, the proposed annual
373 budget of the corporation shall include a personnel table
374 reporting information for each full-time and part-time permanent
375 position, as follows:

376 (i) The position title and the salary for each
377 position in the existing operating budget for the current fiscal
378 year, indicating whether each position is filled or vacant as of
379 the reporting date.

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



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

385 (3) Following his or her approval by the Governor and during
386 his or her entire employment by the board, the president shall
387 reside in Mississippi.

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

399 (5) The president shall require bond from corporate
400 employees with access to corporate funds or lottery funds in such
401 an amount as provided in the administrative rules and regulations
402 of the board.

403 (6) The president may:

404 (a) Require bond from other employees as he or she
405 deems necessary.



406 (b) For good cause, suspend, revoke or refuse to renew
407 any contract entered into in accordance with this act or the
408 administrative rules and regulations of the board.

409 (c) Upon specific or general approval of the board,
410 conduct hearings and administer oaths to persons for the purpose
411 of assuring the security or integrity of lottery operations, or to
412 determine the qualifications or compliance by vendors and
413 retailers.

414 (d) Upon specific or general approval of the board,
415 enter into personal service contracts pursuant to administrative
416 rules and regulations adopted by the board and compensate such
417 consultants and technical assistants as may be required to carry
418 out the provisions of this act.

419 (e) By agreement, secure information and services as he
420 or she may deem necessary from any department, agency or unit of
421 the federal, state or local government, and to the extent allowed
422 by federal or state law, may compensate such department, agency or
423 unit of government for its information and services.

424 (7) Agencies, departments or units of state government shall
425 cooperate with the corporation to assure the integrity of the
426 lottery and the effective operation of the lottery games.

427 **SECTION 12.** (1) The corporation may enter into intelligence
428 sharing, reciprocal use, or restricted use agreements with the
429 federal government, law enforcement agencies, lottery regulation
430 agencies, and gaming enforcement agencies of other jurisdictions



431 which provide for and regulate the use of information provided and
432 received pursuant to the agreement.

433 (2) Records, documents and information in the possession of
434 the corporation received pursuant to an intelligence sharing,
435 reciprocal use or restricted use agreement entered into by the
436 corporation with a federal department or agency, any law
437 enforcement agency, or the lottery regulation or gaming
438 enforcement agency of any jurisdiction shall be exempt from the
439 Mississippi Public Records Act of 1983 and shall not be released
440 by the corporation without the permission of the person or agency
441 providing the record or information.

442 **SECTION 13.** The board may employ an attorney and/or may
443 contract with outside counsel when the board determines the need
444 for such counsel.

445 **SECTION 14.** (1) The corporation may enter into contracts
446 with any person or persons that provide for the placement of
447 commercial advertising on tickets. For purposes of this section,
448 "commercial advertising" means advertising intended for the sole
449 benefit of the advertiser.

450 (2) The nature of the advertising authorized in this section
451 and the procedures for its acceptance as well as the
452 implementation of this section shall be provided by administrative
453 rules and regulations adopted by the board. The board shall
454 retain, in its discretion, the authority to accept or reject any



455 bid. Advertisements for tobacco and alcohol products shall not be
456 accepted.

457 (3) Implementation of this section shall be in the manner
458 provided in the administrative rules and regulations adopted by
459 the board.

460 **SECTION 15.** (1) The corporation shall establish and
461 maintain a personnel program, including administrative rules and
462 regulations for its employees. The corporation may procure
463 benefit programs or group insurance plans and shall provide or
464 arrange for a retirement plan. Unless otherwise specified by the
465 president, employees of the corporation shall serve at the will
466 and pleasure of the president who shall determine their
467 compensation and benefits. The employees shall be subject to
468 suspension, dismissal, reduction in pay, demotion, transfer, or
469 other personnel action at the discretion of the president and
470 shall not be subject to civil service provisions. The
471 compensation of officers at the division head level and above
472 shall be determined by the board. Corporation employees shall not
473 be considered employees of the State of Mississippi.

474 (2) No board member, officer or employee of the corporation
475 or any spouse, sibling, ascendant or descendant of a board member,
476 officer or employee shall have a financial interest in any vendor
477 doing business or proposing to do business with the corporation.

478 (3) No board member, officer or employee of the corporation
479 with decision-making authority shall participate in any decision



480 involving a lottery retailer with whom the board member, officer
481 or employee or any spouse, sibling, ascendant or descendant of
482 such board member, officer or employee has a financial interest.

483 (4) No officer or employee of the corporation who leaves the
484 employ of the corporation nor any board member may represent any
485 vendor or lottery retailer before the corporation for a period of
486 one (1) year following termination of employment with the
487 corporation or membership on the board.

488 **SECTION 16.** (1) A background investigation shall be
489 conducted by the security director of the corporation or his or
490 her agent or designee on every applicant who has reached the final
491 selection process prior to employment by the corporation. The
492 background investigation shall include testing the applicants for
493 the presence of illegal controlled substances. Applicants shall
494 be fingerprinted as a condition of employment. In addition, all
495 division chiefs and deputy chiefs, directors of the corporation,
496 and employees of the corporation performing duties primarily
497 related to security matters, and other employee positions prior to
498 employment as determined by the board, shall be subject to a
499 background investigation report conducted by the Department of
500 Public Safety.

501 (2) The Department of Public Safety shall be reimbursed by
502 the corporation for the cost of investigations conducted pursuant
503 to this section.



504 (3) No person who has been convicted of a felony, bookmaking
505 or other forms of illegal gambling, or a crime involving moral
506 turpitude shall be employed by the corporation. The board may by
507 administrative rules and regulations provide for a definition of
508 moral turpitude.

509 **SECTION 17.** (1) Any lottery retailer, vendor or applicant
510 for a lottery retailer or vendor contract aggrieved by an action
511 of the president of the corporation may appeal that decision to
512 the board in accordance with the administrative rules and
513 regulations of the board.

514 (2) Any person aggrieved by a decision of the board may
515 appeal the decision to the chancery court of the county in which
516 its corporate headquarters is located within ten (10) days of the
517 date of the decision of the board.

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

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

521 (5) Any person who appeals the award of a lottery
522 procurement for the supply of a lottery ticket shall be liable for
523 all costs of appeal and defense in the event the appeal is denied
524 or the contract award upheld. Costs of appeal and defense may
525 include, but should not be limited to, court costs, bond, legal
526 fees and loss of income to the corporation resulting from
527 institution of the appeal if, upon the motion of the corporation,
528 the court finds the appeal to have been frivolous.



529 **SECTION 18.** Whenever a bond is required for the protection
530 of the corporation, letters of credit or other surety approved by
531 the corporation may be utilized in lieu of a bond. All bonds or
532 letters of credit shall be reviewed at least annually as to their
533 solvency and sufficiency.

534 **SECTION 19.** The board shall promulgate administrative rules
535 and regulations that define and prohibit the bulk sale of lottery
536 tickets by a retailer and the bulk purchase of such tickets by an
537 investment syndicate, investment group, or individual for
538 investment purposes.

539 **SECTION 20.** The corporation shall require as a part of any
540 contract for the production or printing of lottery tickets that
541 each ticket include the toll-free telephone number of any state or
542 national organization that provides information and referral
543 services regarding compulsive or problem gambling.

544 **SECTION 21.** The corporation shall publish quarterly and
545 annual financial statements, which shall be made available to the
546 public within thirty (30) days following the close of each
547 quarter. The quarterly and annual financial statements shall
548 include disposition of all funds expended by the corporation for
549 any purpose, including disclosure of any major procurements.

550 **SECTION 22.** (1) Proceeds of any lottery prize of Six
551 Hundred Dollars (\$600.00) or more shall be subject to state and
552 federal income tax withholding laws, as applicable. Any
553 attachments, garnishments or executions authorized and issued



554 pursuant to law shall also be withheld if timely served upon the
555 process agent of the corporation.

556 (2) The board shall adopt administrative rules and
557 regulations to establish a system of verifying the validity of
558 tickets claimed to win prizes and to effect payment of such
559 prizes, except that:

560 (a) No prize, nor any portion of a prize, nor any right
561 of any person to a prize awarded shall be assignable, except as
562 provided for in Section 24 of this act. Any prize, or portion
563 thereof, remaining unpaid at the death of a prizewinner shall be
564 paid to the estate of the deceased prizewinner or to the trustee
565 of a trust established by the deceased prizewinner if a copy of
566 the trust document or instrument has been filed with the
567 corporation, along with a notarized letter of direction from the
568 deceased prizewinner, and no written notice of revocation has been
569 received by the corporation prior to the deceased prizewinner's
570 death. Following a deceased prizewinner's death and prior to any
571 payment to such a trustee, the corporation shall obtain from the
572 trustee and each trust beneficiary a written agreement to
573 indemnify and hold the corporation harmless with respect to any
574 claims that may be asserted against the corporation arising from
575 payment to or through the trust. Notwithstanding any other
576 provisions of this act, any person, pursuant to an appropriate
577 judicial order, shall be paid the prize to which a winner is
578 entitled.



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

581 (c) No prize shall be paid arising from claimed tickets
582 that are stolen, counterfeit, altered, fraudulent, unissued,
583 produced or issued in error, unreadable, not received, unclaimed
584 or not recorded by the corporation within applicable deadlines,
585 lacking in captions that conform and agree with the play symbols
586 as appropriate to the lottery game involved, or not in compliance
587 with such additional specific rules and public or confidential
588 validation and security tests of the corporation appropriate to
589 the particular lottery game involved.

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

595 (e) A holder of a winning ticket from a Mississippi
596 lottery game or from a multistate or multisovereign lottery game
597 shall claim a prize within the timeframe provided for in
598 administrative rules and regulations. If a valid claim is not
599 made for a prize within the applicable period, the prize shall
600 constitute an unclaimed prize for purposes of paragraph (c) of
601 this subsection.

602 (f) A person holding a winning lottery ticket in the
603 amount of Six Hundred Dollars (\$600.00) or more from a lottery



604 game must provide his or her name and city or area of residence to
605 the corporation to claim a prize. The corporation shall not
606 disclose the identity of the person holding a winning lottery
607 ticket without that person's written permission.

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

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

614 (5) The corporation is discharged of all liability upon
615 payment of a prize.

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

618 (a) Any member of the board;

619 (b) Any officer, or employee of the corporation;

620 (c) Any vendor, including lottery retailers; or

621 (d) Any spouse, child, brother, sister or parent

622 residing as a member of the same household in the principal place
623 of abode of any person listed in paragraph (a), (b) or (c) of this
624 subsection.

625 **SECTION 23.** (1) The board shall coordinate with the
626 Department of Human Services to promulgate rules and regulations
627 providing for the withholding of lottery prizes of persons who
628 have outstanding child support arrearages as reported to the



629 corporation, beginning at prize levels to be determined by the
630 board. The corporation may require any agency reporting current
631 child support arrearages to the corporation to provide information
632 relating to such arrearages in a manner, format or record approved
633 by the corporation. The corporation shall not be liable for
634 withholding a lottery prize based upon child support arrearage
635 information provided to it. Additionally, the corporation shall
636 employ the same methods, procedures and parameters to withhold
637 lottery prizes for persons who have delinquent debt as submitted
638 by a claimant agency to the Department of Revenue for recovery
639 under Section 27-7-501 et seq. The corporation shall not be
640 liable for withholding a lottery prize based upon delinquent debt
641 information provided to it by the Department of Revenue.

642 (2) To the extent feasible, the board shall coordinate with
643 state agencies to promulgate administrative rules and regulations
644 providing for the withholding of lottery prizes of persons who
645 have outstanding debts owed to the state.

646 **SECTION 24.** (1) Under an appropriate judicial order, any
647 prize, or any portion of a prize, or any right of any person to a
648 prize awarded, payable by the corporation in deferred annuity
649 payments, may be paid to any person other than the winner.

650 (2) The right of a person to a prize payable by the
651 corporation in deferred annuity payments may be voluntarily
652 assigned as a whole or in part, if the assignment is made to a
653 person designated in accordance with an order of the chancery



654 court in the county where the corporation's headquarters is
655 located. Any such order shall be deemed an appropriate judicial
656 order.

657 (3) On the filing by the assignor or the assignee in
658 chancery court of a petition seeking approval of a voluntary
659 assignment, the court may issue an order approving a voluntary
660 assignment and directing the corporation to make prize payments as
661 a whole or in part to the assignee if the court finds all of the
662 following:

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

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

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

671 (d) The assignor understands that the assignor will not
672 receive the prize payments or parts of payments during the years
673 assigned.

674 (e) The assignor understands and agrees, with regard to
675 the assigned payments, that the corporation, board of directors,
676 and officials and employees of the corporation shall have no
677 further liability or responsibility for making the assigned
678 payments.



679 (f) The assignee provides the assignor with a one-page
680 disclosure statement that sets forth in bold type not less than
681 fourteen (14) points in size the payments being assigned by amount
682 and payment date, the purchase price, the rate of discount to
683 present value, assuming daily compounding and funding on the
684 contract date, and any origination or closing fee that will be
685 charged to the assignor.

686 (g) The contract of assignment expressly states that
687 the assignor has three (3) business days after signing the
688 contract to cancel the assignment.

689 (h) The assignor and assignee do not seek assignment
690 for purposes of evading creditors, judgments or obligations of
691 child support.

692 (i) The assignor and assignee have certified that
693 neither of them has a child support obligation or, if either does
694 have a child support obligation, that no arrearage is due, and
695 that neither the assignor nor the assignee is obligated to repay
696 any public assistance benefits or overpayment of child support.

697 (j) The petition required by this subsection shall be
698 accompanied by a certification from a representative of the
699 Mississippi Department of Human Services stating any of the
700 following:

701 (i) That the assignor or assignee does not
702 currently have a child support arrearage, or the assignor or
703 assignee does not owe an obligation to repay any public assistance



704 benefits or an overpayment of child support benefits to the
705 Mississippi Department of Human Services.

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

709 (iii) That the assignor or assignee does currently
710 have a child support arrearage, or the assignor or assignee does
711 owe an obligation to repay any public assistance benefits or an
712 overpayment of child support benefits to the Mississippi
713 Department of Human Services.

714 The certification from the Mississippi Department of Human
715 Services shall be provided to the assignor and the assignee
716 promptly upon the request of the assignor or the assignee, and in
717 no event more than ten (10) business days after the request is
718 received by the Mississippi Department of Human Services.

719 (4) Written notice of the petition and proposed assignment
720 and any court hearing concerning the petition and proposed
721 assignment shall be served on the corporation, which shall be made
722 a party thereto.

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

727 (i) The court-approved assignment.



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

731 (b) The corporation shall thereafter make payments in
732 accordance with the assignment.

733 (6) (a) Neither the state nor the corporation, its board,
734 nor any of its officials or employees shall be liable in any
735 manner for any assigned payments made by the corporation pursuant
736 to this section.

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

741 (7) The assignee shall pay any costs incurred by the
742 corporation related to the assignment.

743 (8) The assignee shall notify the corporation of its
744 business location and mailing address for payment purposes and of
745 any change in location or address during the entire course of the
746 assignment.

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

751 (10) If the Internal Revenue Service or a court of competent
752 jurisdiction issues a determination letter, revenue ruling, or



753 other public document declaring that the voluntary assignment of
754 prizes will affect the federal income taxation treatment of
755 lottery prizewinners who do not assign their prizes, the following
756 shall occur:

757 (a) Within fifteen (15) days after the corporation
758 receives the letter, ruling or other document, the president of
759 the corporation shall file a copy of it with the Attorney General;
760 and

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

763 (11) This section shall prevail over any inconsistent
764 provision in Mississippi law.

765 **SECTION 25.** (1) The corporation shall enter into its
766 contracts for major procurements after bidding. The corporation
767 may adopt administrative rules and regulations pursuant to the
768 provisions of this act providing for special procedures whereby
769 the Mississippi Lottery Corporation may make any class of
770 procurement.

771 (2) In its bidding processes, the corporation may do its own
772 bidding and procurement or may utilize the services of the
773 Department of Finance and Administration, the Department of
774 Information Technology Services, or other state agencies as
775 appropriate and necessary. The president of the corporation may,
776 with approval of the board, declare an emergency for purchasing



777 purposes which shall be governed by the administrative rules and
778 regulations adopted by the board.

779 SECTION 26. (1) (a) All monies received by the corporation
780 from the sale of lottery tickets and all other sources shall be
781 deposited into a corporate operating account. Such account shall
782 be established in a custodian financial institution domiciled in
783 the State of Mississippi and insured by the Federal Deposit
784 Insurance Corporation and collateralized as prescribed by Section
785 27-105-5. The corporation may use all monies in the corporate
786 operating account for the purposes of paying prizes and the
787 necessary expenses of the corporation and dividends to the state.
788 The corporation shall estimate and allocate the amount to be paid
789 by the corporation to prizewinners.

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

798 (ii) The investment of monies in the corporate
799 operating account, other than the amount specifically required for
800 the purchase of securities for deferred prize payments to winners,
801 shall be invested only in securities in a manner prescribed by the



802 board, consistent with law. Such securities purchased as
803 investments by the corporation shall be issued in the name of the
804 corporation and shall be safe kept at a custodian financial
805 institution domiciled in the State of Mississippi insured by the
806 Federal Deposit Insurance Corporation.

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

809 (iv) For the purpose of deferred prize payments to
810 winners, the corporation shall purchase or invest in only those
811 securities prescribed by the board, consistent with law.

812 (c) Within twenty (20) days following the close of each
813 calendar month, the corporation shall transfer to the Lottery
814 Proceeds Fund in the State Treasury the amount of net proceeds.

815 (d) The apportionment of the total gross revenues
816 accruing from the sale of lottery tickets or shares and from all
817 other sources shall be as follows:

818 (i) The payment of prizes to the holders of
819 winning lottery tickets or shares which in any case shall be no
820 less than fifty percent (50%) of the total gross revenues accruing
821 from the sale of lottery tickets.

822 (ii) The payment of costs incurred in the
823 operation and administration of the lottery, including the
824 expenses of the corporation and the costs resulting from any
825 contract or contracts entered into for promotional, advertising or
826 operational services or for the purchase or lease of lottery



827 equipment and materials, which in no case shall exceed fifteen
828 percent (15%) of the total gross revenues accruing from the sale
829 of lottery tickets. However, this restriction shall not apply
830 until after the first twelve (12) months of revenue generation.

831 (2) A Lottery Proceeds Fund is hereby established in the
832 State Treasury. Net proceeds shall be deposited into this fund as
833 provided in subsection (1) of this section. Monies deposited into
834 the Lottery Proceeds Fund shall be invested by the state in
835 accordance with state investment practices, and all earnings from
836 such investments shall accrue to this account. No monies shall be
837 allotted or expended from this account unless pursuant to a
838 warrant issued as provided under Section 43 of this act.

839 **SECTION 27.** (1) The corporation may accept and expend such
840 monies as may be appropriated by the Legislature or such monies as
841 may be received from any source, including income from the
842 corporation's operations, for effectuating its corporate purposes,
843 including the payment of the initial expenses of administration
844 and operation of the corporation and the lottery.

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



851 SECTION 28. (1) The Legislature hereby recognizes that to
852 conduct a successful lottery, the corporation must develop and
853 maintain a statewide network of lottery retailers that will serve
854 the public convenience and promote the sale of tickets, while
855 ensuring the integrity of the lottery operations, games and
856 activities.

857 (2) To govern the selection of lottery retailers, the board
858 shall, by administrative rules and regulations, develop a list of
859 objective criteria upon which the selection of lottery retailers
860 shall be based. In developing these criteria, the board shall
861 consider such factors as the applicant's financial responsibility,
862 location and security of the applicant's place of business or
863 activity, integrity, and reputation; however, the board shall not
864 consider political affiliation, activities or monetary
865 contributions to political organizations or candidates for any
866 public office. The criteria shall include, but not be limited to,
867 the following:

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

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



876 (c) No person shall be selected as a lottery retailer
877 for the sale of lottery tickets who:

878 (i) Has been convicted of a criminal offense
879 related to the security or integrity of the lottery in this or any
880 other jurisdiction.

881 (ii) Has been convicted of any illegal gambling
882 activity, false statements, false swearing or perjury in this or
883 any other jurisdiction, or convicted of a felony.

884 (iii) Has been found to have violated the
885 provisions of this act or any administrative rules and regulations
886 adopted under this act, unless either ten (10) years have passed
887 since the violation, or the president and the board find the
888 violation both minor and unintentional in nature.

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

891 (v) Resides in the same household as an officer or
892 board member of the corporation.

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

895 **SECTION 29.** (1) No lottery retailer contract awarded
896 pursuant to this act shall be transferable or assignable. No
897 lottery retailer shall contract with any person for lottery goods
898 or services except with the approval of the board.

899 (2) Each lottery retailer shall be issued a lottery retailer
900 certificate which shall be conspicuously displayed at the place



901 where the lottery retailer is authorized to sell lottery tickets.
902 Lottery tickets shall only be sold by the retailer at the location
903 stated on the lottery retailer certificate.

904 (3) For the convenience of the public, all retailers may pay
905 winners up to Six Hundred Dollars (\$600.00) after performing
906 validation procedures appropriate to the lottery game involved.

907 **SECTION 30.** The corporation shall require each lottery
908 retailer to post a letter of credit or a bond with the corporation
909 using a surety acceptable to the corporation in an amount not to
910 exceed twice the average lottery ticket sales of the lottery
911 retailer for the period within which the lottery retailer is
912 required to remit lottery funds to the corporation. This section
913 does not apply to lottery tickets which are prepaid by the lottery
914 retailers. The corporation may facilitate the purchase of bonds
915 and letters of credit by establishing lottery retailer pools for
916 the purchase of bonds and letters of credit for lottery retailers.

917 **SECTION 31.** (1) Any contract executed by the corporation
918 with a lottery retailer pursuant to this section shall specify the
919 reasons for which any contract may be cancelled, denied, revoked,
920 suspended, renewal rejected or terminated by the corporation,
921 which reasons may include, but not be limited to:

922 (a) Commission of a violation of this act or
923 administrative rules and regulations adopted pursuant to this act.

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



926 (c) Commission of any fraud, deceit or
927 misrepresentation.

928 (d) Insufficient sale of tickets.

929 (e) Conduct prejudicial to public confidence in the
930 lottery.

931 (f) The lottery retailer filing for or being placed in
932 bankruptcy or receivership.

933 (g) Any material change in any matter considered by the
934 corporation in executing the contract with the lottery retailer.

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

937 (2) If, in the discretion of the president, cancellation,
938 denial, revocation, suspension, rejection of renewal or
939 termination of a lottery retailer contract is in the best interest
940 of the lottery, the public welfare, or the State of Mississippi,
941 the president may cancel, deny, revoke, suspend, reject the
942 renewal, or terminate, after notice and a hearing, any contract
943 issued pursuant to this act. Such contract may, however, be
944 temporarily suspended by the president without prior notice,
945 pending any prosecution, hearing or investigation, whether by a
946 third party or by the president. A contract may be cancelled,
947 denied, revoked, suspended, renewal rejected or terminated by the
948 president for any one or more of the reasons enumerated in this
949 section.



950 SECTION 32. (1) (a) All proceeds from the sale of lottery
951 tickets received by a lottery retailer shall constitute a trust
952 fund until paid to the corporation either directly or through the
953 corporation's authorized collection representative. A lottery
954 retailer shall have a fiduciary duty to preserve and account for
955 lottery proceeds, and lottery retailers shall be personally liable
956 for all proceeds. Proceeds shall include unsold instant tickets
957 received by a lottery retailer and cash proceeds of the sale of
958 any lottery products, net of allowable sales commissions and
959 credit for lottery prizes to winners by lottery retailers. Sales
960 proceeds and unused instant tickets shall be delivered to the
961 corporation or its authorized collection representative upon
962 demand.

963 (b) The corporation shall, by administrative rules and
964 regulations, require lottery retailers to place all lottery
965 proceeds due the corporation in accounts in institutions insured
966 by the Federal Deposit Insurance Corporation not later than the
967 close of the next banking day after the date of their collection
968 by the lottery retailer until the date they are paid over to the
969 corporation. Each lottery retailer shall establish a separate
970 bank account for lottery proceeds which shall be kept separate and
971 apart from all other funds and assets and shall not be commingled
972 with any other funds or assets.

973 (2) Whenever any person who receives proceeds from the sale
974 of lottery tickets in the capacity of a lottery retailer becomes



975 insolvent, or dies insolvent, the proceeds due the corporation
976 from such person or his or her estate shall have preference over
977 all debts or demands.

978 **SECTION 33.** (1) No person shall sell a ticket at a price
979 other than established by the corporation, unless authorized in
980 writing by the president. No person other than a duly certified
981 lottery retailer shall sell lottery tickets, but this shall not be
982 construed to prevent a person who may lawfully purchase tickets
983 from making a gift of lottery tickets to another. Nothing in this
984 act shall be construed to prohibit the corporation from
985 designating certain of its agents and employees to sell lottery
986 tickets directly to the public.

987 (2) Lottery tickets may be given by merchants as a means of
988 promoting goods or services to customers or prospective customers
989 subject to approval by the board.

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

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

994 **SECTION 34.** The corporation shall require the posting of one
995 or more signs on licensed premises at each point of entry into
996 areas where lottery tickets are sold to inform patrons of a
997 toll-free telephone number of any state or national organization
998 that provides information and referral services regarding
999 compulsive or problem gambling. Failure by the owner of the



1000 licensed premises to post and maintain such a sign or signs shall
1001 be cause for the imposition of a fine to be determined by the
1002 board.

1003 **SECTION 35.** (1) The corporation may purchase, lease or
1004 lease-purchase such goods or services as are necessary for
1005 effectuating the purposes of this act. The corporation shall not
1006 contract with any person or entity for the total operation and
1007 administration of the lottery, but it may make procurements which
1008 integrate such functions as lottery game design, lottery ticket
1009 distribution to retailers, supply of goods and services and
1010 advertising. In all procurement decisions, the corporation shall
1011 take into account the particularly sensitive nature of the lottery
1012 and shall act to promote and ensure security, honesty, fairness
1013 and integrity in the operation and administration of the lottery
1014 and the objectives of raising net proceeds for the benefit of the
1015 public.

1016 (2) The corporation shall investigate the financial
1017 responsibility, security and integrity of any lottery system
1018 vendor who submits a bid, proposal or offer. At the time of
1019 submitting such bid, proposal or offer to the corporation, the
1020 corporation shall require the following items:

1021 (a) A disclosure of the vendor's name and address and,
1022 as applicable, the name and address of the following:

1023 (i) If the vendor is a corporation, the officers,
1024 directors and each stockholder in such corporation; however, in



1025 the case of owners of equity securities of a publicly traded
1026 corporation, only the names and addresses of those known to the
1027 corporation to own five percent (5%) or more of such securities
1028 need be disclosed.

1029 (ii) If the vendor is a trust, the trustee and all
1030 persons entitled to receive income or benefits from the trust.

1031 (iii) If the vendor is an association, the
1032 members, officers and directors.

1033 (iv) If the vendor is a partnership or joint
1034 venture, all of the general partners, limited partners, or joint
1035 venturers.

1036 (b) A disclosure of all the states and jurisdictions in
1037 which the vendor does business, and the nature of the business for
1038 each such state or jurisdiction.

1039 (c) A disclosure of all the states and jurisdictions in
1040 which the vendor has contracts to supply gaming goods or services,
1041 including, but not limited to, lottery goods and services, and the
1042 nature of the goods or services involved for each such state or
1043 jurisdiction.

1044 (d) A disclosure of all the states and jurisdictions in
1045 which the vendor has applied for, has sought renewal of, has
1046 received, has been denied, has pending, or has had revoked a
1047 gaming license of any kind, or had fines or penalties assessed on
1048 their license, contract, or operation, and the disposition of such
1049 in each such state or jurisdiction. If any lottery license or



1050 contract has been revoked or has not been renewed or any lottery
1051 license or application has remained pending for more than six (6)
1052 months, then it shall be disclosed.

1053 (e) A disclosure of the details of any finding of a
1054 plea, conviction or adjudication for guilt, in a state or federal
1055 court, of the vendor for any felony or any other criminal offense
1056 other than a traffic violation.

1057 (f) A disclosure of the details of any bankruptcy,
1058 insolvency, reorganization, corporate or individual purchase or
1059 takeover of another corporation, including bonded indebtedness, or
1060 any pending litigation of the vendor.

1061 (g) Such additional disclosures and information as the
1062 corporation may determine to be appropriate for the procurement
1063 involved. If the vendor subcontracts any substantial portion of
1064 the work to be performed under the contract to a subcontractor,
1065 the vendor shall disclose all of the information required by this
1066 subsection for the subcontractor as if the subcontractor were
1067 itself a vendor.

1068 (3) In no case shall the corporation enter into a contract
1069 for a procurement of any video lottery or video lottery terminal
1070 or any other illegal lottery device, and shall only enter into a
1071 contract for a procurement for any lottery system with a vendor
1072 who has complied with the disclosures required by the corporation
1073 and described in subsection (2) of this section, and any contract
1074 with such a vendor is void and unenforceable. Any contract with a



1075 vendor who does not comply with such requirements for periodically
1076 updating such disclosures during the tenure of a contract as may
1077 be specified in such contract is voidable and may be terminated by
1078 the corporation. The provisions of this section shall be
1079 construed broadly and liberally to achieve the ends of full
1080 disclosure of all information necessary to allow for a full and
1081 complete evaluation by the corporation of the competence,
1082 integrity, background and character of vendors.

1083 (4) (a) A contract shall not be entered into with any
1084 vendor who has been found guilty of a felony related to the
1085 security or integrity of the lottery in this or any other
1086 jurisdiction or with any vendor who is found to be in possession
1087 of any illegal lottery device.

1088 (b) A contract shall not be entered into with any
1089 vendor who has not first obtained a signed tax clearance from the
1090 Commissioner of Revenue indicating that the vendor is current in
1091 filing all applicable tax returns and in payment of all taxes,
1092 interest and penalties owed to the State of Mississippi, excluding
1093 items under formal appeal pursuant to applicable statutes.

1094 (5) The corporation may require that each vendor shall, at
1095 the execution of the contract with the corporation, post a
1096 performance bond or letter of credit from a bank acceptable to the
1097 corporation, in an amount established by the corporation subject
1098 to the provisions of Section 31 of this act. In lieu of the bond,
1099 a vendor may, to assure the faithful performance of its



1100 obligations, deposit and maintain with the corporation securities
1101 that are interest-bearing or accruing and that are rated in one
1102 (1) of the three (3) highest classifications by an established
1103 nationally recognized investment rating service. Securities
1104 eligible under this subsection are limited to:

1105 (a) Certificates of deposit issued by solvent banks or
1106 savings associations approved by the corporation and which are
1107 organized and existing under the laws of this state or under the
1108 laws of the United States.

1109 (b) United States bonds, notes, and bills for which the
1110 full faith and credit of the government of the United States is
1111 pledged for the payment of principal and interest.

1112 (c) Corporate bonds approved by the corporation. The
1113 corporation which issued the bonds shall not be an affiliate or
1114 subsidiary of the depositor. Such securities shall be held in
1115 trust.

1116 (6) Every contract entered into by the corporation pursuant
1117 to this section shall contain a provision for payment of
1118 liquidated damages to the corporation for any breach of contract
1119 by the vendor.

1120 (7) Each vendor shall be qualified to do business in this
1121 state and shall file appropriate tax returns as provided by the
1122 laws of this state. All contracts under this section shall be
1123 governed by the laws of this state.



1124 **SECTION 36.** (1) The Mississippi Department of Public Safety
1125 shall perform full criminal background investigations on all
1126 potential vendors, including potential lottery retailers, and
1127 potential employees of the corporation at the level of division
1128 head and above, and at any level within a division handling
1129 security, and, as determined by the board, on any other employee
1130 of the corporation. The corporation shall reimburse the
1131 Department of Public Safety for the actual costs of such
1132 investigations.

1133 (2) The corporation or its division handling security shall:

1134 (a) Conduct criminal background investigations and
1135 credit investigations on all potential employees of the
1136 corporation not referred to in subsection (1) of this section or
1137 not investigated by the Department of Public Safety.

1138 (b) Supervise ticket validation and lottery drawings.

1139 (c) For just cause and subject to the terms of the
1140 vendor contract, inspect the facilities of any vendor in order to
1141 determine the integrity of the vendor's product and in order to
1142 determine whether the vendor is in compliance with its contract.

1143 (d) Report any suspected violations of this act to the
1144 appropriate district attorney, or the Attorney General, and law
1145 enforcement agencies.

1146 (e) Upon request, provide assistance to any district
1147 attorney, the Attorney General, or law enforcement agency
1148 investigating a violation of this act.



1149 SECTION 37. (1) (a) No lottery retailer and no agent,
1150 associate, employee, representative or servant of any such person
1151 shall allow any illegal lottery device to be on its premises, nor
1152 shall any lottery retailer, agent, associate, employee,
1153 representative or servant sell a lottery ticket to any person
1154 unless the person submits any one (1) of the following forms of
1155 identification which establish the age of the person as twenty-one
1156 (21) years or older:

1157 (i) A valid and current Mississippi driver's
1158 license which contains a photograph of the person presenting the
1159 driver's license.

1160 (ii) A valid and current driver's license of
1161 another state which contains a photograph of the person submitting
1162 the driver's license.

1163 (iii) A valid and current special identification
1164 card issued by the State of Mississippi containing a photograph of
1165 the person submitting the identification card.

1166 (iv) A valid and current passport or visa issued
1167 by the federal government or another country or nation that
1168 contains a permanently attached photograph of the person
1169 submitting the passport or visa.

1170 (v) A valid and current military or federal
1171 identification card issued by the federal government containing a
1172 photograph of the person submitting the identification card.



1173 (b) Each form of identification listed in paragraph (a)
1174 of this subsection must on its face establish the age of the
1175 person as twenty-one (21) years of age or older, and there must be
1176 no reason to doubt the authenticity or correctness of the
1177 identification. No form of identification mentioned in paragraph
1178 (a) of this subsection shall be accepted as proof of age if it is
1179 expired, defaced, mutilated or altered. If the driver's license,
1180 state special identification card or lawful identification
1181 submitted is a duplicate, the person shall submit additional
1182 identification which contains the name, date of birth and
1183 photograph of the person.

1184 (c) An educational institution identification card,
1185 check-cashing identification card, or employee identification card
1186 shall not be considered as lawful identification for the purposes
1187 of this subsection.

1188 (2) Any lottery retailer who knowingly sells a lottery
1189 ticket to a person under twenty-one (21) years of age will be
1190 fined not less than One Hundred Dollars (\$100.00) nor more than
1191 Five Hundred Dollars (\$500.00) for the first offense and, for each
1192 subsequent offense, not less than Two Hundred Dollars (\$200.00)
1193 nor more than One Thousand Dollars (\$1,000.00) and may be
1194 disqualified as a lottery retailer.

1195 (3) (a) It is unlawful for any person under twenty-one (21)
1196 years of age to purchase a lottery ticket.



1197 (b) Whoever violates the provisions of this subsection
1198 shall be fined not more than One Hundred Dollars (\$100.00).

1199 (c) Any person apprehended while violating the
1200 provisions of this subsection shall be issued a citation by the
1201 apprehending law enforcement officer, which shall be paid in the
1202 same manner as provided for the offenders of local traffic
1203 violations.

1204 **SECTION 38.** (1) Any person, with intent to defraud, who
1205 falsely makes, alters, forges, utters, passes or counterfeits a
1206 state lottery ticket shall be punished by imprisonment for not
1207 less than one (1) year and not more than twenty (20) years, by a
1208 fine of not more than Fifty Thousand Dollars (\$50,000.00), or by
1209 both such fine and imprisonment.

1210 (2) Any person who influences or attempts to influence the
1211 winning of a prize through the use of coercion, fraud, deception
1212 or tampering with lottery equipment or materials shall be punished
1213 by imprisonment for not less than one (1) year and not more than
1214 twenty (20) years, by a fine of not more than Fifty Thousand
1215 Dollars (\$50,000.00), or by both such fine and imprisonment.

1216 **SECTION 39.** (1) No former board member or officer of the
1217 corporation, or a corporation or other entity owned, in whole or
1218 in part, by a former board member or officer of the corporation,
1219 shall solicit or accept employment or enter into a contract for
1220 compensation of any kind with a vendor of the corporation within
1221 one (1) year after termination of service with the corporation.



1222 (2) The name of any individual who is a board member or an
1223 officer or employee of the corporation shall not appear upon any
1224 lottery ticket, lottery game, lottery form or paper used in
1225 playing any lottery game.

1226 (3) Violation of any provision of this section by a board
1227 member, officer or employee of the corporation shall constitute
1228 cause for removal from office or dismissal from employment.

1229 (4) The provisions of subsections (1) and (3) of this
1230 section shall not apply to ex officio members of the board.

1231 (5) The State Ethics Commission shall administer and enforce
1232 the provisions of this section. The procedures and penalties
1233 provided for in Section 25-4-101 et seq. shall apply to the
1234 administration and enforcement of the provisions of this section.

1235 **SECTION 40.** (1) Skimming of lottery proceeds is the
1236 intentional excluding, or the taking of any action in an attempt
1237 to exclude, of anything or its value from the deposit, counting,
1238 collection or computation of gross revenues or net proceeds from
1239 lottery activities.

1240 (2) Whoever commits the crime of skimming of lottery
1241 proceeds when the amount skimmed or to be skimmed is less than One
1242 Thousand Dollars (\$1,000.00) may be imprisoned for not more than
1243 five (5) years, or may be fined not more than Five Thousand
1244 Dollars (\$5,000.00), or both.

1245 (3) Whoever commits the crime of skimming of lottery
1246 proceeds when the amount skimmed or to be skimmed is One Thousand



1247 Dollars (\$1,000.00) or more but less than Ten Thousand Dollars
1248 (\$10,000.00), shall be imprisoned for not less than three (3)
1249 years nor more than ten (10) years without benefit of probation,
1250 parole, or suspension of sentence, and may be fined not more than
1251 Twenty-five Thousand Dollars (\$25,000.00), or both.

1252 (4) Whoever commits the crime of skimming of lottery
1253 proceeds when the amount skimmed or to be skimmed is Ten Thousand
1254 Dollars (\$10,000.00) or more shall be imprisoned for not less than
1255 ten (10) years nor more than twenty-five (25) years without
1256 benefit of probation, parole, or suspension of sentence, and may
1257 be fined not more than Fifty Thousand Dollars (\$50,000.00), or
1258 both imprisonment and fine.

1259 **SECTION 41.** No person shall knowingly or intentionally use
1260 or possess an illegal lottery device or make a material false
1261 statement in any application for a license or proposal to conduct
1262 lottery activities or make a material false entry in any book or
1263 record which is compiled or maintained or submitted to the
1264 corporation pursuant to the provisions of this act. Any person
1265 who violates the provisions of this section shall be imprisoned
1266 for not less than five (5) years nor more than ten (10) years
1267 without benefit of probation, parole or suspension of sentence,
1268 and may be fined an amount not to exceed Twenty-five Thousand
1269 Dollars (\$25,000.00) or the dollar amount of the false entry or
1270 statement, whichever is greater, or both such fine and
1271 imprisonment.



1272 **SECTION 42.** (1) Illegal lottery devices as described in
1273 this section are considered gambling devices and contraband.

1274 (2) As used in this section, the term "illegal lottery
1275 device" means:

1276 (a) Forged, counterfeit, or stolen, or improperly
1277 issued or illegally possessed lottery tickets.

1278 (b) Any device or equipment that is in itself or is
1279 being used as part of any sort of a video lottery terminal.

1280 (c) Any tickets, payouts, receipts or the like which
1281 are generated by, taken from or are related to any sort of a video
1282 lottery terminal.

1283 (3) All law enforcement officers of municipal police forces,
1284 sheriff's departments, and the state shall confiscate and preserve
1285 all illegal lottery devices that come to their attention for
1286 evidence in the prosecution of those individuals in possession of
1287 same. Any such illegal lottery device will be subject to
1288 confiscation and destruction.

1289 (4) Neither the state nor any political subdivision, agency,
1290 agent, or enforcement officer thereof shall be liable civilly or
1291 criminally for the destruction of any illegal lottery device.

1292 **SECTION 43.** Until June 30, 2028, net proceeds generated by
1293 the Alyce G. Clarke Mississippi Lottery Law, created pursuant to
1294 Sections 1 through 46 of this act and deposited into the Lottery
1295 Proceeds Fund under Section 26(2) of this act, except as otherwise
1296 provided in this section, shall be paid into the State Highway



1297 Fund by warrant issued by the State Fiscal Officer upon
1298 requisition of the State Transportation Commission as needed to
1299 provide funds to repair, renovate and maintain highways and
1300 bridges of the state; however, funds paid into the State Highway
1301 Fund under this section shall be first used for matching federal
1302 funds authorized to the state pursuant to any federal highway
1303 infrastructure program implemented after September 1, 2018.
1304 However, all such monies deposited into the Lottery Proceeds Fund
1305 over Eighty Million Dollars (\$80,000,000.00) in a fiscal year
1306 shall be transferred into the Education Enhancement Fund for the
1307 purposes of funding the Early Childhood Learning Collaborative,
1308 the Classroom Supply Fund and/or other educational purposes. From
1309 and after July 1, 2028, the net proceeds shall be deposited into
1310 the Lottery Proceeds Fund and shall be transferred to the State
1311 General Fund, except for the amounts over Eighty Million Dollars
1312 (\$80,000,000.00) which shall continue to be deposited in the
1313 Education Enhancement Fund as provided above.

1314 **SECTION 44.** All division heads, officers and employees of
1315 the corporation shall be considered public servants as defined in
1316 Section 25-4-103. All division heads and officers of the
1317 corporation are subject to Section 25-4-25 and shall be required
1318 to file a Statement of Economic Interest with the Mississippi
1319 Ethics Commission.

1320 **SECTION 45.** To ensure the financial integrity of the
1321 lottery, the corporation through its board shall:



1322 (a) Compile and submit quarterly and annual reports and
1323 financial statements, in compliance with Section 10(3)(b) and
1324 Section 21 of this act;

1325 (b) Contract with an independent auditor who is a
1326 certified public accountant or firm to conduct an annual financial
1327 audit of the books and records of the corporation. The cost of
1328 this annual financial audit shall be an operating expense of the
1329 corporation:

1330 (i) Such independent auditor shall have no
1331 financial interest in any vendor with whom the corporation is
1332 under contract;

1333 (ii) All contracts for independent auditors shall
1334 be reviewed by and subject to the approval of the State Auditor to
1335 ensure that the independent auditor is qualified to perform the
1336 audit;

1337 (iii) The audit shall be completed within ninety
1338 (90) days after the close of the corporation's fiscal year; and

1339 (iv) Contracts may be entered into for audit
1340 services for a period not to exceed five (5) years and the same
1341 firm shall not receive two (2) consecutive audit contracts.

1342 **SECTION 46.** For informational purposes only, the corporation
1343 shall submit to the Joint Legislative Budget Committee a copy of
1344 the corporation's annual operating budget for the upcoming fiscal
1345 year. The budget shall include an estimate of net proceeds to be



1346 deposited into the State Highway Fund during the succeeding fiscal
1347 year.

1348 **SECTION 47.** Section 7-7-211, Mississippi Code of 1972, is
1349 amended as follows:

1350 7-7-211. The department shall have the power and it shall be
1351 its duty:

1352 (a) To identify and define for all public offices of
1353 the state and its subdivisions generally accepted accounting
1354 principles or other accounting principles as promulgated by
1355 nationally recognized professional organizations and to consult
1356 with the State Fiscal Officer in the prescription and
1357 implementation of accounting rules and regulations;

1358 (b) To provide best practices, for all public offices
1359 of regional and local subdivisions of the state, systems of
1360 accounting, budgeting and reporting financial facts relating to
1361 said offices in conformity with legal requirements and with
1362 generally accepted accounting principles or other accounting
1363 principles as promulgated by nationally recognized professional
1364 organizations; to assist such subdivisions in need of assistance
1365 in the installation of such systems; to revise such systems when
1366 deemed necessary, and to report to the Legislature at periodic
1367 times the extent to which each office is maintaining such systems,
1368 along with such recommendations to the Legislature for improvement
1369 as seem desirable;



1370 (c) To study and analyze existing managerial policies,
1371 methods, procedures, duties and services of the various state
1372 departments and institutions upon written request of the Governor,
1373 the Legislature or any committee or other body empowered by the
1374 Legislature to make such request to determine whether and where
1375 operations can be eliminated, combined, simplified and improved;

1376 (d) To postaudit each year and, when deemed necessary,
1377 preaudit and investigate the financial affairs of the departments,
1378 institutions, boards, commissions, or other agencies of state
1379 government, as part of the publication of a comprehensive annual
1380 financial report for the State of Mississippi, or as deemed
1381 necessary by the State Auditor. In complying with the
1382 requirements of this paragraph, the department shall have the
1383 authority to conduct all necessary audit procedures on an interim
1384 and year-end basis;

1385 (e) To postaudit and, when deemed necessary, preaudit
1386 and investigate separately the financial affairs of (i) the
1387 offices, boards and commissions of county governments and any
1388 departments and institutions thereof and therein; (ii) public
1389 school districts, departments of education and junior college
1390 districts; and (iii) any other local offices or agencies which
1391 share revenues derived from taxes or fees imposed by the State
1392 Legislature or receive grants from revenues collected by
1393 governmental divisions of the state; the cost of such audits,
1394 investigations or other services to be paid as follows: Such part



1395 shall be paid by the state from appropriations made by the
1396 Legislature for the operation of the State Department of Audit as
1397 may exceed the sum of Thirty-five Dollars (\$35.00) per man-hour
1398 for the services of each staff person engaged in performing the
1399 audit or other service plus the actual cost of any independent
1400 specialist firm contracted by the State Auditor to assist in the
1401 performance of the audit, which sum shall be paid by the county,
1402 district, department, institution or other agency audited out of
1403 its general fund or any other available funds from which such
1404 payment is not prohibited by law. Costs paid for independent
1405 specialists or firms contracted by the State Auditor shall be paid
1406 by the audited entity through the State Auditor to the specialist
1407 or firm conducting the postaudit.

1408 Each school district in the state shall have its financial
1409 records audited annually, at the end of each fiscal year, either
1410 by the State Auditor or by a certified public accountant approved
1411 by the State Auditor. Beginning with the audits of fiscal year
1412 2010 activity, no certified public accountant shall be selected to
1413 perform the annual audit of a school district who has audited that
1414 district for three (3) or more consecutive years previously.
1415 Certified public accountants shall be selected in a manner
1416 determined by the State Auditor. The school district shall have
1417 the responsibility to pay for the audit, including the review by
1418 the State Auditor of audits performed by certified public
1419 accountants;



1420 (f) To postaudit and, when deemed necessary, preaudit
1421 and investigate the financial affairs of the levee boards;
1422 agencies created by the Legislature or by executive order of the
1423 Governor; profit or nonprofit business entities administering
1424 programs financed by funds flowing through the State Treasury or
1425 through any of the agencies of the state, or its subdivisions; and
1426 all other public bodies supported by funds derived in part or
1427 wholly from public funds, except municipalities which annually
1428 submit an audit prepared by a qualified certified public
1429 accountant using methods and procedures prescribed by the
1430 department;

1431 (g) To make written demand, when necessary, for the
1432 recovery of any amounts representing public funds improperly
1433 withheld, misappropriated and/or otherwise illegally expended by
1434 an officer, employee or administrative body of any state, county
1435 or other public office, and/or for the recovery of the value of
1436 any public property disposed of in an unlawful manner by a public
1437 officer, employee or administrative body, such demands to be made
1438 (i) upon the person or persons liable for such amounts and upon
1439 the surety on official bond thereof, and/or (ii) upon any
1440 individual, partnership, corporation or association to whom the
1441 illegal expenditure was made or with whom the unlawful disposition
1442 of public property was made, if such individual, partnership,
1443 corporation or association knew or had reason to know through the
1444 exercising of reasonable diligence that the expenditure was



1445 illegal or the disposition unlawful. Such demand shall be
1446 premised on competent evidence, which shall include at least one
1447 (1) of the following: (i) sworn statements, (ii) written
1448 documentation, (iii) physical evidence, or (iv) reports and
1449 findings of government or other law enforcement agencies. Other
1450 provisions notwithstanding, a demand letter issued pursuant to
1451 this paragraph shall remain confidential by the State Auditor
1452 until the individual against whom the demand letter is being filed
1453 has been served with a copy of such demand letter. If, however,
1454 such individual cannot be notified within fifteen (15) days using
1455 reasonable means and due diligence, such notification shall be
1456 made to the individual's bonding company, if he or she is bonded.
1457 Each such demand shall be paid into the proper treasury of the
1458 state, county or other public body through the office of the
1459 department in the amount demanded within thirty (30) days from the
1460 date thereof, together with interest thereon in the sum of one
1461 percent (1%) per month from the date such amount or amounts were
1462 improperly withheld, misappropriated and/or otherwise illegally
1463 expended. In the event, however, such person or persons or such
1464 surety shall refuse, neglect or otherwise fail to pay the amount
1465 demanded and the interest due thereon within the allotted thirty
1466 (30) days, the State Auditor shall have the authority and it shall
1467 be his duty to institute suit, and the Attorney General shall
1468 prosecute the same in any court of the state to the end that there
1469 shall be recovered the total of such amounts from the person or



1470 persons and surety on official bond named therein; and the amounts
1471 so recovered shall be paid into the proper treasury of the state,
1472 county or other public body through the State Auditor. In any
1473 case where written demand is issued to a surety on the official
1474 bond of such person or persons and the surety refuses, neglects or
1475 otherwise fails within one hundred twenty (120) days to either pay
1476 the amount demanded and the interest due thereon or to give the
1477 State Auditor a written response with specific reasons for
1478 nonpayment, then the surety shall be subject to a civil penalty in
1479 an amount of twelve percent (12%) of the bond, not to exceed Ten
1480 Thousand Dollars (\$10,000.00), to be deposited into the State
1481 General Fund;

1482 (h) To investigate any alleged or suspected violation
1483 of the laws of the state by any officer or employee of the state,
1484 county or other public office in the purchase, sale or the use of
1485 any supplies, services, equipment or other property belonging
1486 thereto; and in such investigation to do any and all things
1487 necessary to procure evidence sufficient either to prove or
1488 disprove the existence of such alleged or suspected violations.
1489 The Department of Investigation of the State Department of Audit
1490 may investigate, for the purpose of prosecution, any suspected
1491 criminal violation of the provisions of this chapter. For the
1492 purpose of administration and enforcement of this chapter, the
1493 enforcement employees of the Department of Investigation of the
1494 State Department of Audit have the powers of a law enforcement



1495 officer of this state, and shall be empowered to make arrests and
1496 to serve and execute search warrants and other valid legal process
1497 anywhere within the State of Mississippi. All enforcement
1498 employees of the Department of Investigation of the State
1499 Department of Audit hired on or after July 1, 1993, shall be
1500 required to complete the Law Enforcement Officers Training Program
1501 and shall meet the standards of the program;

1502 (i) To issue subpoenas, with the approval of, and
1503 returnable to, a judge of a chancery or circuit court, in termtime
1504 or in vacation, to examine the records, documents or other
1505 evidence of persons, firms, corporations or any other entities
1506 insofar as such records, documents or other evidence relate to
1507 dealings with any state, county or other public entity. The
1508 circuit or chancery judge must serve the county in which the
1509 records, documents or other evidence is located; or where all or
1510 part of the transaction or transactions occurred which are the
1511 subject of the subpoena;

1512 (j) In any instances in which the State Auditor is or
1513 shall be authorized or required to examine or audit, whether
1514 preaudit or postaudit, any books, ledgers, accounts or other
1515 records of the affairs of any public hospital owned or owned and
1516 operated by one or more political subdivisions or parts thereof or
1517 any combination thereof, or any school district, including
1518 activity funds thereof, it shall be sufficient compliance
1519 therewith, in the discretion of the State Auditor, that such



1520 examination or audit be made from the report of any audit or other
1521 examination certified by a certified public accountant and
1522 prepared by or under the supervision of such certified public
1523 accountant. Such audits shall be made in accordance with
1524 generally accepted standards of auditing, with the use of an audit
1525 program prepared by the State Auditor, and final reports of such
1526 audits shall conform to the format prescribed by the State
1527 Auditor. All files, working papers, notes, correspondence and all
1528 other data compiled during the course of the audit shall be
1529 available, without cost, to the State Auditor for examination and
1530 abstracting during the normal business hours of any business day.
1531 The expense of such certified reports shall be borne by the
1532 respective hospital, or any available school district funds other
1533 than minimum program funds, subject to examination or audit. The
1534 State Auditor shall not be bound by such certified reports and
1535 may, in his or their discretion, conduct such examination or audit
1536 from the books, ledgers, accounts or other records involved as may
1537 be appropriate and authorized by law;

1538 (k) The State Auditor shall have the authority to
1539 contract with qualified public accounting firms to perform
1540 selected audits required in paragraphs (d), (e), (f) and (j) of
1541 this section, if funds are made available for such contracts by
1542 the Legislature, or if funds are available from the governmental
1543 entity covered by paragraphs (d), (e), (f) and (j). Such audits
1544 shall be made in accordance with generally accepted standards of



1545 auditing. All files, working papers, notes, correspondence and
1546 all other data compiled during the course of the audit shall be
1547 available, without cost, to the State Auditor for examination and
1548 abstracting during the normal business hours of any business day;

1549 (l) The State Auditor shall have the authority to
1550 establish training courses and programs for the personnel of the
1551 various state and local governmental entities under the
1552 jurisdiction of the Office of the State Auditor. The training
1553 courses and programs shall include, but not be limited to, topics
1554 on internal control of funds, property and equipment control and
1555 inventory, governmental accounting and financial reporting, and
1556 internal auditing. The State Auditor is authorized to charge a
1557 fee from the participants of these courses and programs, which fee
1558 shall be deposited into the Department of Audit Special Fund.
1559 State and local governmental entities are authorized to pay such
1560 fee and any travel expenses out of their general funds or any
1561 other available funds from which such payment is not prohibited by
1562 law;

1563 (m) Upon written request by the Governor or any member
1564 of the State Legislature, the State Auditor may audit any state
1565 funds and/or state and federal funds received by any nonprofit
1566 corporation incorporated under the laws of this state;

1567 (n) To conduct performance audits of personal or
1568 professional service contracts by state agencies on a random



1569 sampling basis, or upon request of the State Personal Service
1570 Contract Review Board under Section 25-9-120(3); * * *

1571 (o) At the discretion of the State Auditor, the Auditor
1572 may conduct risk assessments, as well as performance and
1573 compliance audits based on Generally Accepted Government Auditing
1574 Standards (GAGAS) of any state-funded economic development program
1575 authorized under Title 57, Mississippi Code of 1972. After risk
1576 assessments or program audits, the State Auditor may conduct
1577 audits of those projects deemed high-risk, specifically as they
1578 identify any potential wrongdoing or noncompliance based on
1579 objectives of the economic development program. The Auditor is
1580 granted authority to gather, audit and review data and information
1581 from the Mississippi Development Authority or any of its agents,
1582 the Department of Revenue, and when necessary under this
1583 paragraph, the recipient business or businesses or any other
1584 private, public or nonprofit entity with information relevant to
1585 the audit project. The maximum amount the State Auditor may bill
1586 the oversight agency under this paragraph in any fiscal year is
1587 One Hundred Thousand Dollars (\$100,000.00), based on reasonable
1588 and necessary expenses * * *;

1589 (p) To review and approve any independent auditor
1590 selected by the Mississippi Lottery Corporation in accordance with
1591 Section 45 of this act, to conduct an annual audit of the
1592 corporation; and



1593 (q) To conduct audits or investigations of the
1594 Mississippi Lottery Corporation if in the opinion of the State
1595 Auditor conditions justify such audits or investigations.

1596 **SECTION 48.** Section 25-9-107, Mississippi Code of 1972, is
1597 amended as follows:

1598 25-9-107. The following terms, when used in this chapter,
1599 unless a different meaning is plainly required by the context,
1600 shall have the following meanings:

1601 (a) "Board" means the State Personnel Board created
1602 under the provisions of this chapter.

1603 (b) "State service" means all employees of state
1604 departments, agencies and institutions as defined herein, except
1605 those officers and employees excluded by this chapter.

1606 (c) "Nonstate service" means the following officers and
1607 employees excluded from the state service by this chapter. The
1608 following are excluded from the state service:

1609 (i) Members of the State Legislature, their staff
1610 and other employees of the legislative branch;

1611 (ii) The Governor and staff members of the
1612 immediate Office of the Governor;

1613 (iii) Justices and judges of the judicial branch
1614 or members of appeals boards on a per diem basis;

1615 (iv) The Lieutenant Governor, staff members of the
1616 immediate Office of the Lieutenant Governor and officers and
1617 employees directly appointed by the Lieutenant Governor;



1618 (v) Officers and officials elected by popular vote
1619 and persons appointed to fill vacancies in elective offices;

1620 (vi) Members of boards and commissioners appointed
1621 by the Governor, Lieutenant Governor or the State Legislature;

1622 (vii) All academic officials, members of the
1623 teaching staffs and employees of the state institutions of higher
1624 learning, the Mississippi Community College Board, and community
1625 and junior colleges;

1626 (viii) Officers and enlisted members of the
1627 National Guard of the state;

1628 (ix) Prisoners, inmates, student or patient help
1629 working in or about institutions;

1630 (x) Contract personnel; provided * * * that any
1631 agency which employs state service employees may enter into
1632 contracts for personal and professional services only if such
1633 contracts are approved in compliance with the rules and
1634 regulations promulgated by the State Personal Service Contract
1635 Review Board under Section 25-9-120(3). Before paying any warrant
1636 for such contractual services in excess of One Hundred Thousand
1637 Dollars (\$100,000.00), the Auditor of Public Accounts, or the
1638 successor to those duties, shall determine whether the contract
1639 involved was for personal or professional services, and, if so,
1640 was approved by the State Personal Service Contract Review Board;

1641 (xi) Part-time employees; provided, however,
1642 part-time employees shall only be hired into authorized employment



1643 positions classified by the board, shall meet minimum
1644 qualifications as set by the board, and shall be paid in
1645 accordance with the Variable Compensation Plan as certified by the
1646 board;

1647 (xii) Persons appointed on an emergency basis for
1648 the duration of the emergency; the effective date of the emergency
1649 appointments shall not be earlier than the date approved by the
1650 State Personnel Director, and shall be limited to thirty (30)
1651 working days. Emergency appointments may be extended to sixty
1652 (60) working days by the State Personnel Board;

1653 (xiii) Physicians, dentists, veterinarians, nurse
1654 practitioners and attorneys, while serving in their professional
1655 capacities in authorized employment positions who are required by
1656 statute to be licensed, registered or otherwise certified as such,
1657 provided that the State Personnel Director shall verify that the
1658 statutory qualifications are met prior to issuance of a payroll
1659 warrant by the Auditor;

1660 (xiv) Personnel who are employed and paid from
1661 funds received from a federal grant program which has been
1662 approved by the Legislature or the Department of Finance and
1663 Administration whose length of employment has been determined to
1664 be time-limited in nature. This subparagraph shall apply to
1665 personnel employed under the provisions of the Comprehensive
1666 Employment and Training Act of 1973, as amended, and other special
1667 federal grant programs which are not a part of regular federally



1668 funded programs wherein appropriations and employment positions
1669 are appropriated by the Legislature. Such employees shall be paid
1670 in accordance with the Variable Compensation Plan and shall meet
1671 all qualifications required by federal statutes or by the
1672 Mississippi Classification Plan;

1673 (xv) The administrative head who is in charge of
1674 any state department, agency, institution, board or commission,
1675 wherein the statute specifically authorizes the Governor, board,
1676 commission or other authority to appoint said administrative head;
1677 provided, however, that the salary of such administrative head
1678 shall be determined by the State Personnel Board in accordance
1679 with the Variable Compensation Plan unless otherwise fixed by
1680 statute;

1681 (xvi) The State Personnel Board shall exclude
1682 top-level positions if the incumbents determine and publicly
1683 advocate substantive program policy and report directly to the
1684 agency head, or the incumbents are required to maintain a direct
1685 confidential working relationship with a key excluded official.
1686 Provided further, a written job classification shall be approved
1687 by the board for each such position, and positions so excluded
1688 shall be paid in conformity with the Variable Compensation Plan;

1689 (xvii) Employees whose employment is solely in
1690 connection with an agency's contract to produce, store or
1691 transport goods, and whose compensation is derived therefrom;

1692 (xviii) Repealed;



1693 (xix) The associate director, deputy directors and
1694 bureau directors within the Department of Agriculture and
1695 Commerce;

1696 (xx) Personnel employed by the Mississippi
1697 Industries for the Blind; provided * * * that any agency may enter
1698 into contracts for the personal services of MIB employees without
1699 the prior approval of the State Personnel Board or the State
1700 Personal Service Contract Review Board; however, any agency
1701 contracting for the personal services of an MIB employee shall
1702 provide the MIB employee with not less than the entry-level
1703 compensation and benefits that the agency would provide to a
1704 full-time employee of the agency who performs the same services;

1705 (xxi) Personnel employed by the Mississippi
1706 Department of Wildlife, Fisheries and Parks and the Mississippi
1707 Department of Marine Resources as law enforcement trainees
1708 (cadets); such personnel shall be paid in accordance with the
1709 Colonel Guy Groff State Variable Compensation Plan * * *;

1710 (xxii) The President of the Mississippi Lottery
1711 Corporation and personnel employed by the Mississippi Lottery
1712 Corporation.

1713 (d) "Agency" means any state board, commission,
1714 committee, council, department or unit thereof created by the
1715 Constitution or statutes if such board, commission, committee,
1716 council, department, unit or the head thereof, is authorized to
1717 appoint subordinate staff by the Constitution or statute, except a



1718 legislative or judicial board, commission, committee, council,
1719 department or unit thereof.

1720 **SECTION 49.** Section 25-11-103, Mississippi Code of 1972, is
1721 amended as follows:

1722 25-11-103. (1) The following words and phrases as used in
1723 Articles 1 and 3, unless a different meaning is plainly required
1724 by the context, have the following meanings:

1725 (a) "Accumulated contributions" means the sum of all
1726 the amounts deducted from the compensation of a member and
1727 credited to his or her individual account in the annuity savings
1728 account, together with regular interest as provided in Section
1729 25-11-123.

1730 (b) "Actuarial cost" means the amount of funds
1731 presently required to provide future benefits as determined by the
1732 board based on applicable tables and formulas provided by the
1733 actuary.

1734 (c) "Actuarial equivalent" means a benefit of equal
1735 value to the accumulated contributions, annuity or benefit, as the
1736 case may be, when computed upon the basis of such mortality tables
1737 as adopted by the board of trustees, and regular interest.

1738 (d) "Actuarial tables" * * * mean such tables of
1739 mortality and rates of interest as adopted by the board in
1740 accordance with the recommendation of the actuary.

1741 (e) "Agency" means any governmental body employing
1742 persons in the state service.



1743 (f) "Average compensation" means the average of the
1744 four (4) highest years of earned compensation reported for an
1745 employee in a fiscal or calendar year period, or combination
1746 thereof that do not overlap, or the last forty-eight (48)
1747 consecutive months of earned compensation reported for an
1748 employee. The four (4) years need not be successive or joined
1749 years of service. In computing the average compensation for
1750 retirement, disability or survivor benefits, any amount lawfully
1751 paid in a lump sum for personal leave or major medical leave shall
1752 be included in the calculation to the extent that the amount does
1753 not exceed an amount that is equal to thirty (30) days of earned
1754 compensation and to the extent that it does not cause the
1755 employee's earned compensation to exceed the maximum reportable
1756 amount specified in paragraph (k) of this section; however, this
1757 thirty-day limitation shall not prevent the inclusion in the
1758 calculation of leave earned under federal regulations before July
1759 1, 1976, and frozen as of that date as referred to in Section
1760 25-3-99. In computing the average compensation, no amounts shall
1761 be used that are in excess of the amount on which contributions
1762 were required and paid, and no nontaxable amounts paid by the
1763 employer for health or life insurance premiums for the employee
1764 shall be used. If any member who is or has been granted any
1765 increase in annual salary or compensation of more than eight
1766 percent (8%) retires within twenty-four (24) months from the date
1767 that the increase becomes effective, then the board shall exclude



1768 that part of the increase in salary or compensation that exceeds
1769 eight percent (8%) in calculating that member's average
1770 compensation for retirement purposes. The board may enforce this
1771 provision by rule or regulation. However, increases in
1772 compensation in excess of eight percent (8%) per year granted
1773 within twenty-four (24) months of the date of retirement may be
1774 included in the calculation of average compensation if
1775 satisfactory proof is presented to the board showing that the
1776 increase in compensation was the result of an actual change in the
1777 position held or services rendered, or that the compensation
1778 increase was authorized by the State Personnel Board or was
1779 increased as a result of statutory enactment, and the employer
1780 furnishes an affidavit stating that the increase granted within
1781 the last twenty-four (24) months was not contingent on a promise
1782 or agreement of the employee to retire. Nothing in Section
1783 25-3-31 shall affect the calculation of the average compensation
1784 of any member for the purposes of this article. The average
1785 compensation of any member who retires before July 1, 1992, shall
1786 not exceed the annual salary of the Governor.

1787 (g) "Beneficiary" means any person entitled to receive
1788 a retirement allowance, an annuity or other benefit as provided by
1789 Articles 1 and 3. The term "beneficiary" may also include an
1790 organization, estate, trust or entity; however, a beneficiary
1791 designated or entitled to receive monthly payments under an
1792 optional settlement based on life contingency or under a statutory



1793 monthly benefit may only be a natural person. In the event of the
1794 death before retirement of any member who became a member of the
1795 system before July 1, 2007, and whose spouse and/or children are
1796 not entitled to a retirement allowance on the basis that the
1797 member has less than four (4) years of membership service credit,
1798 or who became a member of the system on or after July 1, 2007, and
1799 whose spouse and/or children are not entitled to a retirement
1800 allowance on the basis that the member has less than eight (8)
1801 years of membership service credit, and/or has not been married
1802 for a minimum of one (1) year or the spouse has waived his or her
1803 entitlement to a retirement allowance under Section 25-11-114, the
1804 lawful spouse of a member at the time of the death of the member
1805 shall be the beneficiary of the member unless the member has
1806 designated another beneficiary after the date of marriage in
1807 writing, and filed that writing in the office of the executive
1808 director of the board of trustees. No designation or change of
1809 beneficiary shall be made in any other manner.

1810 (h) "Board" means the board of trustees provided in
1811 Section 25-11-15 to administer the retirement system created under
1812 this article.

1813 (i) "Creditable service" means "prior service,"
1814 "retroactive service" and all lawfully credited unused leave not
1815 exceeding the accrual rates and limitations provided in Section
1816 25-3-91 et seq., as of the date of withdrawal from service plus
1817 "membership service" and other service for which credit is



1818 allowable as provided in Section 25-11-109. Except to limit
1819 creditable service reported to the system for the purpose of
1820 computing an employee's retirement allowance or annuity or
1821 benefits provided in this article, nothing in this paragraph shall
1822 limit or otherwise restrict the power of the governing authority
1823 of a municipality or other political subdivision of the state to
1824 adopt such vacation and sick leave policies as it deems necessary.

1825 (j) "Child" means either a natural child of the member,
1826 a child that has been made a child of the member by applicable
1827 court action before the death of the member, or a child under the
1828 permanent care of the member at the time of the latter's death,
1829 which permanent care status shall be determined by evidence
1830 satisfactory to the board. For purposes of this paragraph, a
1831 natural child of the member is a child of the member that is
1832 conceived before the death of the member.

1833 (k) "Earned compensation" means the full amount earned
1834 during a fiscal year by an employee not to exceed the employee
1835 compensation limit set pursuant to Section 401(a)(17) of the
1836 Internal Revenue Code for the calendar year in which the fiscal
1837 year begins and proportionately for less than one (1) year of
1838 service. Except as otherwise provided in this paragraph, the
1839 value of maintenance furnished to an employee shall not be
1840 included in earned compensation. Earned compensation shall not
1841 include any amounts paid by the employer for health or life
1842 insurance premiums for an employee. Earned compensation shall be



1843 limited to the regular periodic compensation paid, exclusive of
1844 litigation fees, bond fees, performance-based incentive payments,
1845 and other similar extraordinary nonrecurring payments. In
1846 addition, any member in a covered position, as defined by Public
1847 Employees' Retirement System laws and regulations, who is also
1848 employed by another covered agency or political subdivision shall
1849 have the earnings of that additional employment reported to the
1850 Public Employees' Retirement System regardless of whether the
1851 additional employment is sufficient in itself to be a covered
1852 position. In addition, computation of earned compensation shall
1853 be governed by the following:

1854 (i) In the case of constables, the net earnings
1855 from their office after deduction of expenses shall apply, except
1856 that in no case shall earned compensation be less than the total
1857 direct payments made by the state or governmental subdivisions to
1858 the official.

1859 (ii) In the case of chancery or circuit clerks,
1860 the net earnings from their office after deduction of expenses
1861 shall apply as expressed in Section 25-11-123(f) (4).

1862 (iii) In the case of members of the State
1863 Legislature, all remuneration or amounts paid, except mileage
1864 allowance, shall apply.

1865 (iv) The amount by which an eligible employee's
1866 salary is reduced under a salary reduction agreement authorized
1867 under Section 25-17-5 shall be included as earned compensation



1868 under this paragraph, provided this inclusion does not conflict
1869 with federal law, including federal regulations and federal
1870 administrative interpretations under the federal law, pertaining
1871 to the Federal Insurance Contributions Act or to Internal Revenue
1872 Code Section 125 cafeteria plans.

1873 (v) Compensation in addition to an employee's base
1874 salary that is paid to the employee under the vacation and sick
1875 leave policies of a municipality or other political subdivision of
1876 the state that employs him or her that exceeds the maximums
1877 authorized by Section 25-3-91 et seq. shall be excluded from the
1878 calculation of earned compensation under this article.

1879 (vi) The maximum salary applicable for retirement
1880 purposes before July 1, 1992, shall be the salary of the Governor.

1881 (vii) Nothing in Section 25-3-31 shall affect the
1882 determination of the earned compensation of any member for the
1883 purposes of this article.

1884 (viii) The value of maintenance furnished to an
1885 employee before July 1, 2013, for which the proper amount of
1886 employer and employee contributions have been paid, shall be
1887 included in earned compensation. From and after July 1, 2013, the
1888 value of maintenance furnished to an employee shall be reported as
1889 earned compensation only if the proper amount of employer and
1890 employee contributions have been paid on the maintenance and the
1891 employee was receiving maintenance and having maintenance reported
1892 to the system as of June 30, 2013. The value of maintenance when



1893 not paid in money shall be fixed by the employing state agency,
1894 and, in case of doubt, by the board of trustees as defined in
1895 Section 25-11-15.

1896 (ix) Except as otherwise provided in this
1897 paragraph, the value of any in-kind benefits provided by the
1898 employer shall not be included in earned compensation. As used in
1899 this subparagraph, "in-kind benefits" shall include, but not be
1900 limited to, group life insurance premiums, health or dental
1901 insurance premiums, nonpaid major medical and personal leave,
1902 employer contributions for social security and retirement, tuition
1903 reimbursement or educational funding, day care or transportation
1904 benefits.

1905 (l) "Employee" means any person legally occupying a
1906 position in the state service, and shall include the employees of
1907 the retirement system created under this article.

1908 (m) "Employer" means the State of Mississippi or any of
1909 its departments, agencies or subdivisions from which any employee
1910 receives his or her compensation.

1911 (n) "Executive director" means the secretary to the
1912 board of trustees, as provided in Section 25-11-15(9), and the
1913 administrator of the Public Employees' Retirement System and all
1914 systems under the management of the board of trustees. Wherever
1915 the term "Executive Secretary of the Public Employees' Retirement
1916 System" or "executive secretary" appears in this article or in any



1917 other provision of law, it shall be construed to mean the
1918 Executive Director of the Public Employees' Retirement System.

1919 (o) "Fiscal year" means the period beginning on July 1
1920 of any year and ending on June 30 of the next succeeding year.

1921 (p) "Medical board" means the board of physicians or
1922 any governmental or nongovernmental disability determination
1923 service designated by the board of trustees that is qualified to
1924 make disability determinations as provided for in Section
1925 25-11-119.

1926 (q) "Member" means any person included in the
1927 membership of the system as provided in Section 25-11-105. For
1928 purposes of Sections 25-11-103, 25-11-105, 25-11-109, 25-11-111,
1929 25-11-113, 25-11-114, 25-11-115 and 25-11-117, if a member of the
1930 system withdrew from state service and received a refund of the
1931 amount of the accumulated contributions to the credit of the
1932 member in the annuity savings account before July 1, 2007, and the
1933 person reenters state service and becomes a member of the system
1934 again on or after July 1, 2007, and repays all or part of the
1935 amount received as a refund and interest in order to receive
1936 creditable service for service rendered before July 1, 2007, the
1937 member shall be considered to have become a member of the system
1938 on or after July 1, 2007, subject to the eight-year membership
1939 service requirement, as applicable in those sections. For
1940 purposes of Sections 25-11-103, 25-11-111, 25-11-114 and
1941 25-11-115, if a member of the system withdrew from state service



1942 and received a refund of the amount of the accumulated
1943 contributions to the credit of the member in the annuity savings
1944 account before July 1, 2011, and the person reenters state service
1945 and becomes a member of the system again on or after July 1, 2011,
1946 and repays all or part of the amount received as a refund and
1947 interest in order to receive creditable service for service
1948 rendered before July 1, 2011, the member shall be considered to
1949 have become a member of the system on or after July 1, 2011.

1950 (r) "Membership service" means service as an employee
1951 in a covered position rendered while a contributing member of the
1952 retirement system.

1953 (s) "Position" means any office or any employment in
1954 the state service, or two (2) or more of them, the duties of which
1955 call for services to be rendered by one (1) person, including
1956 positions jointly employed by federal and state agencies
1957 administering federal and state funds. The employer shall
1958 determine upon initial employment and during the course of
1959 employment of an employee who does not meet the criteria for
1960 coverage in the Public Employees' Retirement System based on the
1961 position held, whether the employee is or becomes eligible for
1962 coverage in the Public Employees' Retirement System based upon any
1963 other employment in a covered agency or political subdivision. If
1964 or when the employee meets the eligibility criteria for coverage
1965 in the other position, then the employer must withhold
1966 contributions and report wages from the noncovered position in



1967 accordance with the provisions for reporting of earned
1968 compensation. Failure to deduct and report those contributions
1969 shall not relieve the employee or employer of liability thereof.
1970 The board shall adopt such rules and regulations as necessary to
1971 implement and enforce this provision.

1972 (t) "Prior service" means:

1973 (i) For persons who became members of the system
1974 before July 1, 2007, service rendered before February 1, 1953, for
1975 which credit is allowable under Sections 25-11-105 and 25-11-109,
1976 and which shall allow prior service for any person who is now or
1977 becomes a member of the Public Employees' Retirement System and
1978 who does contribute to the system for a minimum period of four (4)
1979 years.

1980 (ii) For persons who became members of the system
1981 on or after July 1, 2007, service rendered before February 1,
1982 1953, for which credit is allowable under Sections 25-11-105 and
1983 25-11-109, and which shall allow prior service for any person who
1984 is now or becomes a member of the Public Employees' Retirement
1985 System and who does contribute to the system for a minimum period
1986 of eight (8) years.

1987 (u) "Regular interest" means interest compounded
1988 annually at such a rate as determined by the board in accordance
1989 with Section 25-11-121.

1990 (v) "Retirement allowance" means an annuity for life as
1991 provided in this article, payable each year in twelve (12) equal



1992 monthly installments beginning as of the date fixed by the board.
1993 The retirement allowance shall be calculated in accordance with
1994 Section 25-11-111. However, any spouse who received a spouse
1995 retirement benefit in accordance with Section 25-11-111(d) before
1996 March 31, 1971, and those benefits were terminated because of
1997 eligibility for a social security benefit, may again receive his
1998 or her spouse retirement benefit from and after making application
1999 with the board of trustees to reinstate the spouse retirement
2000 benefit.

2001 (w) "Retroactive service" means service rendered after
2002 February 1, 1953, for which credit is allowable under Section
2003 25-11-105(b) and Section 25-11-105(k).

2004 (x) "System" means the Public Employees' Retirement
2005 System of Mississippi established and described in Section
2006 25-11-101.

2007 (y) "State" means the State of Mississippi or any
2008 political subdivision thereof or instrumentality of the state.

2009 (z) "State service" means all offices and positions of
2010 trust or employment in the employ of the state, or any political
2011 subdivision or instrumentality of the state, that elect to
2012 participate as provided by Section 25-11-105(f), including the
2013 position of elected or fee officials of the counties and their
2014 deputies and employees performing public services or any
2015 department, independent agency, board or commission thereof, and
2016 also includes all offices and positions of trust or employment in



2017 the employ of joint state and federal agencies administering state
2018 and federal funds and service rendered by employees of the public
2019 schools. Effective July 1, 1973, all nonprofessional public
2020 school employees, such as bus drivers, janitors, maids,
2021 maintenance workers and cafeteria employees, shall have the option
2022 to become members in accordance with Section 25-11-105(b), and
2023 shall be eligible to receive credit for services before July 1,
2024 1973, provided that the contributions and interest are paid by the
2025 employee in accordance with that section; in addition, the county
2026 or municipal separate school district may pay the employer
2027 contribution and pro rata share of interest of the retroactive
2028 service from available funds. "State service" shall not include
2029 the President of the Mississippi Lottery Corporation and personnel
2030 employed by the Mississippi Lottery Corporation. From and after
2031 July 1, 1998, retroactive service credit shall be purchased at the
2032 actuarial cost in accordance with Section 25-11-105(b).

2033 (aa) "Withdrawal from service" or "termination from
2034 service" means complete severance of employment in the state
2035 service of any member by resignation, dismissal or discharge.

2036 (bb) The masculine pronoun, wherever used, includes the
2037 feminine pronoun.

2038 (2) For purposes of this article, the term "political
2039 subdivision" shall have the meaning ascribed to such term in
2040 Section 25-11-5 and shall also include public charter schools.

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

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

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

- (i) The judiciary, including all jury deliberations;
- (ii) Law enforcement officials;
- (iii) The military;
- (iv) The State Probation and Parole Board;
- (v) The Workers' Compensation Commission;



2067 (vi) Legislative subcommittees and legislative
2068 conference committees;
2069 (vii) The arbitration council established in
2070 Section 69-3-19;
2071 (viii) License revocation, suspension and
2072 disciplinary proceedings held by the Mississippi State Board of
2073 Dental Examiners; and
2074 (ix) Hearings and meetings of the Board of Tax
2075 Appeals and of the hearing officers and the board of review of the
2076 Department of Revenue as provided in Section 27-77-15.

2077 (b) "Meeting" means an assemblage of members of a
2078 public body at which official acts may be taken upon a matter over
2079 which the public body has supervision, control, jurisdiction or
2080 advisory power, including an assemblage through the use of video
2081 or teleconference devices that conforms to Section 25-41-5.

2082 **SECTION 51.** Section 31-7-13, Mississippi Code of 1972, is
2083 amended as follows:

2084 31-7-13. All agencies and governing authorities shall
2085 purchase their commodities and printing; contract for garbage
2086 collection or disposal; contract for solid waste collection or
2087 disposal; contract for sewage collection or disposal; contract for
2088 public construction; and contract for rentals as herein provided.

2089 (a) **Bidding procedure for purchases not over \$5,000.00.**
2090 Purchases which do not involve an expenditure of more than Five
2091 Thousand Dollars (\$5,000.00), exclusive of freight or shipping



2092 charges, may be made without advertising or otherwise requesting
2093 competitive bids. However, nothing contained in this paragraph
2094 (a) shall be construed to prohibit any agency or governing
2095 authority from establishing procedures which require competitive
2096 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

2097 (b) **Bidding procedure for purchases over \$5,000.00 but**
2098 **not over \$50,000.00.** Purchases which involve an expenditure of
2099 more than Five Thousand Dollars (\$5,000.00) but not more than
2100 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and
2101 shipping charges, may be made from the lowest and best bidder
2102 without publishing or posting advertisement for bids, provided at
2103 least two (2) competitive written bids have been obtained. Any
2104 state agency or community/junior college purchasing commodities or
2105 procuring construction pursuant to this paragraph (b) may
2106 authorize its purchasing agent, or his designee, to accept the
2107 lowest competitive written bid under Fifty Thousand Dollars
2108 (\$50,000.00). Any governing authority purchasing commodities
2109 pursuant to this paragraph (b) may authorize its purchasing agent,
2110 or his designee, with regard to governing authorities other than
2111 counties, or its purchase clerk, or his designee, with regard to
2112 counties, to accept the lowest and best competitive written bid.
2113 Such authorization shall be made in writing by the governing
2114 authority and shall be maintained on file in the primary office of
2115 the agency and recorded in the official minutes of the governing
2116 authority, as appropriate. The purchasing agent or the purchase



2117 clerk, or their designee, as the case may be, and not the
2118 governing authority, shall be liable for any penalties and/or
2119 damages as may be imposed by law for any act or omission of the
2120 purchasing agent or purchase clerk, or their designee,
2121 constituting a violation of law in accepting any bid without
2122 approval by the governing authority. The term "competitive
2123 written bid" shall mean a bid submitted on a bid form furnished by
2124 the buying agency or governing authority and signed by authorized
2125 personnel representing the vendor, or a bid submitted on a
2126 vendor's letterhead or identifiable bid form and signed by
2127 authorized personnel representing the vendor. "Competitive" shall
2128 mean that the bids are developed based upon comparable
2129 identification of the needs and are developed independently and
2130 without knowledge of other bids or prospective bids. Any bid item
2131 for construction in excess of Five Thousand Dollars (\$5,000.00)
2132 shall be broken down by components to provide detail of component
2133 description and pricing. These details shall be submitted with
2134 the written bids and become part of the bid evaluation criteria.
2135 Bids may be submitted by facsimile, electronic mail or other
2136 generally accepted method of information distribution. Bids
2137 submitted by electronic transmission shall not require the
2138 signature of the vendor's representative unless required by
2139 agencies or governing authorities.

2140 (c) **Bidding procedure for purchases over \$50,000.00.**

2141 (i) **Publication requirement.**



2142 1. Purchases which involve an expenditure of
2143 more than Fifty Thousand Dollars (\$50,000.00), exclusive of
2144 freight and shipping charges, may be made from the lowest and best
2145 bidder after advertising for competitive bids once each week for
2146 two (2) consecutive weeks in a regular newspaper published in the
2147 county or municipality in which such agency or governing authority
2148 is located. However, all American Recovery and Reinvestment Act
2149 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
2150 shall be bid. All references to American Recovery and
2151 Reinvestment Act projects in this section shall not apply to
2152 programs identified in Division B of the American Recovery and
2153 Reinvestment Act.

2154 2. Reverse auctions shall be the primary
2155 method for receiving bids during the bidding process. If a
2156 purchasing entity determines that a reverse auction is not in the
2157 best interest of the state, then that determination must be
2158 approved by the Public Procurement Review Board. The purchasing
2159 entity shall submit a detailed explanation of why a reverse
2160 auction would not be in the best interest of the state and present
2161 an alternative process to be approved by the Public Procurement
2162 Review Board. If the Public Procurement Review Board authorizes
2163 the purchasing entity to solicit bids with a method other than
2164 reverse auction, then the purchasing entity may designate the
2165 other methods by which the bids will be received, including, but
2166 not limited to, bids sealed in an envelope, bids received



2167 electronically in a secure system, or bids received by any other
2168 method that promotes open competition and has been approved by the
2169 Office of Purchasing and Travel. However, reverse auction shall
2170 not be used for any public contract for design or construction of
2171 public facilities, including buildings, roads and bridges. The
2172 Public Procurement Review Board must approve any contract entered
2173 into by alternative process. The provisions of this item 2 shall
2174 not apply to the individual state institutions of higher learning.

2175 3. The date as published for the bid opening
2176 shall not be less than seven (7) working days after the last
2177 published notice; however, if the purchase involves a construction
2178 project in which the estimated cost is in excess of Fifty Thousand
2179 Dollars (\$50,000.00), such bids shall not be opened in less than
2180 fifteen (15) working days after the last notice is published and
2181 the notice for the purchase of such construction shall be
2182 published once each week for two (2) consecutive weeks. However,
2183 all American Recovery and Reinvestment Act projects in excess of
2184 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
2185 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
2186 under the American Recovery and Reinvestment Act, publication
2187 shall be made one (1) time and the bid opening for construction
2188 projects shall not be less than ten (10) working days after the
2189 date of the published notice. The notice of intention to let
2190 contracts or purchase equipment shall state the time and place at
2191 which bids shall be received, list the contracts to be made or



2192 types of equipment or supplies to be purchased, and, if all plans
2193 and/or specifications are not published, refer to the plans and/or
2194 specifications on file. If there is no newspaper published in the
2195 county or municipality, then such notice shall be given by posting
2196 same at the courthouse, or for municipalities at the city hall,
2197 and at two (2) other public places in the county or municipality,
2198 and also by publication once each week for two (2) consecutive
2199 weeks in some newspaper having a general circulation in the county
2200 or municipality in the above-provided manner. On the same date
2201 that the notice is submitted to the newspaper for publication, the
2202 agency or governing authority involved shall mail written notice
2203 to, or provide electronic notification to the main office of the
2204 Mississippi Procurement Technical Assistance Program under the
2205 Mississippi Development Authority that contains the same
2206 information as that in the published notice. Submissions received
2207 by the Mississippi Procurement Technical Assistance Program for
2208 projects funded by the American Recovery and Reinvestment Act
2209 shall be displayed on a separate and unique Internet web page
2210 accessible to the public and maintained by the Mississippi
2211 Development Authority for the Mississippi Procurement Technical
2212 Assistance Program. Those American Recovery and Reinvestment Act
2213 related submissions shall be publicly posted within twenty-four
2214 (24) hours of receipt by the Mississippi Development Authority and
2215 the bid opening shall not occur until the submission has been
2216 posted for ten (10) consecutive days. The Department of Finance



2217 and Administration shall maintain information regarding contracts
2218 and other expenditures from the American Recovery and Reinvestment
2219 Act, on a unique Internet web page accessible to the public. The
2220 Department of Finance and Administration shall promulgate rules
2221 regarding format, content and deadlines, unless otherwise
2222 specified by law, of the posting of award notices, contract
2223 execution and subsequent amendments, links to the contract
2224 documents, expenditures against the awarded contracts and general
2225 expenditures of funds from the American Recovery and Reinvestment
2226 Act. Within one (1) working day of the contract award, the agency
2227 or governing authority shall post to the designated web page
2228 maintained by the Department of Finance and Administration, notice
2229 of the award, including the award recipient, the contract amount,
2230 and a brief summary of the contract in accordance with rules
2231 promulgated by the department. Within one (1) working day of the
2232 contract execution, the agency or governing authority shall post
2233 to the designated web page maintained by the Department of Finance
2234 and Administration a summary of the executed contract and make a
2235 copy of the appropriately redacted contract documents available
2236 for linking to the designated web page in accordance with the
2237 rules promulgated by the department. The information provided by
2238 the agency or governing authority shall be posted to the web page
2239 for the duration of the American Recovery and Reinvestment Act
2240 funding or until the project is completed, whichever is longer.



2241 (ii) **Bidding process amendment procedure.** If all
2242 plans and/or specifications are published in the notification,
2243 then the plans and/or specifications may not be amended. If all
2244 plans and/or specifications are not published in the notification,
2245 then amendments to the plans/specifications, bid opening date, bid
2246 opening time and place may be made, provided that the agency or
2247 governing authority maintains a list of all prospective bidders
2248 who are known to have received a copy of the bid documents and all
2249 such prospective bidders are sent copies of all amendments. This
2250 notification of amendments may be made via mail, facsimile,
2251 electronic mail or other generally accepted method of information
2252 distribution. No addendum to bid specifications may be issued
2253 within two (2) working days of the time established for the
2254 receipt of bids unless such addendum also amends the bid opening
2255 to a date not less than five (5) working days after the date of
2256 the addendum.

2257 (iii) **Filing requirement.** In all cases involving
2258 governing authorities, before the notice shall be published or
2259 posted, the plans or specifications for the construction or
2260 equipment being sought shall be filed with the clerk of the board
2261 of the governing authority. In addition to these requirements, a
2262 bid file shall be established which shall indicate those vendors
2263 to whom such solicitations and specifications were issued, and
2264 such file shall also contain such information as is pertinent to
2265 the bid.



2266 (iv) **Specification restrictions.**

2267 1. Specifications pertinent to such bidding
2268 shall be written so as not to exclude comparable equipment of
2269 domestic manufacture. However, if valid justification is
2270 presented, the Department of Finance and Administration or the
2271 board of a governing authority may approve a request for specific
2272 equipment necessary to perform a specific job. Further, such
2273 justification, when placed on the minutes of the board of a
2274 governing authority, may serve as authority for that governing
2275 authority to write specifications to require a specific item of
2276 equipment needed to perform a specific job. In addition to these
2277 requirements, from and after July 1, 1990, vendors of relocatable
2278 classrooms and the specifications for the purchase of such
2279 relocatable classrooms published by local school boards shall meet
2280 all pertinent regulations of the State Board of Education,
2281 including prior approval of such bid by the State Department of
2282 Education.

2283 2. Specifications for construction projects
2284 may include an allowance for commodities, equipment, furniture,
2285 construction materials or systems in which prospective bidders are
2286 instructed to include in their bids specified amounts for such
2287 items so long as the allowance items are acquired by the vendor in
2288 a commercially reasonable manner and approved by the
2289 agency/governing authority. Such acquisitions shall not be made
2290 to circumvent the public purchasing laws.



2291 (v) **Electronic bids.** Agencies and governing
2292 authorities shall provide a secure electronic interactive system
2293 for the submittal of bids requiring competitive bidding that shall
2294 be an additional bidding option for those bidders who choose to
2295 submit their bids electronically. The Department of Finance and
2296 Administration shall provide, by regulation, the standards that
2297 agencies must follow when receiving electronic bids. Agencies and
2298 governing authorities shall make the appropriate provisions
2299 necessary to accept electronic bids from those bidders who choose
2300 to submit their bids electronically for all purchases requiring
2301 competitive bidding under this section. Any special condition or
2302 requirement for the electronic bid submission shall be specified
2303 in the advertisement for bids required by this section. Agencies
2304 or governing authorities that are currently without available high
2305 speed Internet access shall be exempt from the requirement of this
2306 subparagraph (v) until such time that high speed Internet access
2307 becomes available. Any county having a population of less than
2308 twenty thousand (20,000) shall be exempt from the provisions of
2309 this subparagraph (v). Any municipality having a population of
2310 less than ten thousand (10,000) shall be exempt from the
2311 provisions of this subparagraph (v). The provisions of this
2312 subparagraph (v) shall not require any bidder to submit bids
2313 electronically. When construction bids are submitted
2314 electronically, the requirement for including a certificate of
2315 responsibility, or a statement that the bid enclosed does not



2316 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
2317 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
2318 deemed in compliance with by including same as an attachment with
2319 the electronic bid submittal.

2320 (d) **Lowest and best bid decision procedure.**

2321 (i) **Decision procedure.** Purchases may be made
2322 from the lowest and best bidder. In determining the lowest and
2323 best bid, freight and shipping charges shall be included.
2324 Life-cycle costing, total cost bids, warranties, guaranteed
2325 buy-back provisions and other relevant provisions may be included
2326 in the best bid calculation. All best bid procedures for state
2327 agencies must be in compliance with regulations established by the
2328 Department of Finance and Administration. If any governing
2329 authority accepts a bid other than the lowest bid actually
2330 submitted, it shall place on its minutes detailed calculations and
2331 narrative summary showing that the accepted bid was determined to
2332 be the lowest and best bid, including the dollar amount of the
2333 accepted bid and the dollar amount of the lowest bid. No agency
2334 or governing authority shall accept a bid based on items not
2335 included in the specifications.

2336 (ii) **Decision procedure for Certified Purchasing**
2337 **Offices.** In addition to the decision procedure set forth in
2338 subparagraph (i) of this paragraph (d), Certified Purchasing
2339 Offices may also use the following procedure: Purchases may be
2340 made from the bidder offering the best value. In determining the



2341 best value bid, freight and shipping charges shall be included.
2342 Life-cycle costing, total cost bids, warranties, guaranteed
2343 buy-back provisions, documented previous experience, training
2344 costs and other relevant provisions, including, but not limited
2345 to, a bidder having a local office and inventory located within
2346 the jurisdiction of the governing authority, may be included in
2347 the best value calculation. This provision shall authorize
2348 Certified Purchasing Offices to utilize a Request For Proposals
2349 (RFP) process when purchasing commodities. All best value
2350 procedures for state agencies must be in compliance with
2351 regulations established by the Department of Finance and
2352 Administration. No agency or governing authority shall accept a
2353 bid based on items or criteria not included in the specifications.

2354 (iii) **Decision procedure for Mississippi**

2355 **Landmarks.** In addition to the decision procedure set forth in
2356 subparagraph (i) of this paragraph (d), where purchase involves
2357 renovation, restoration, or both, of the State Capitol Building or
2358 any other historical building designated for at least five (5)
2359 years as a Mississippi Landmark by the Board of Trustees of the
2360 Department of Archives and History under the authority of Sections
2361 39-7-7 and 39-7-11, the agency or governing authority may use the
2362 following procedure: Purchases may be made from the lowest and
2363 best prequalified bidder. Prequalification of bidders shall be
2364 determined not less than fifteen (15) working days before the
2365 first published notice of bid opening. Prequalification criteria



2366 shall be limited to bidder's knowledge and experience in
2367 historical restoration, preservation and renovation. In
2368 determining the lowest and best bid, freight and shipping charges
2369 shall be included. Life-cycle costing, total cost bids,
2370 warranties, guaranteed buy-back provisions and other relevant
2371 provisions may be included in the best bid calculation. All best
2372 bid and prequalification procedures for state agencies must be in
2373 compliance with regulations established by the Department of
2374 Finance and Administration. If any governing authority accepts a
2375 bid other than the lowest bid actually submitted, it shall place
2376 on its minutes detailed calculations and narrative summary showing
2377 that the accepted bid was determined to be the lowest and best
2378 bid, including the dollar amount of the accepted bid and the
2379 dollar amount of the lowest bid. No agency or governing authority
2380 shall accept a bid based on items not included in the
2381 specifications.

2382 (iv) **Construction project negotiations authority.**

2383 If the lowest and best bid is not more than ten percent (10%)
2384 above the amount of funds allocated for a public construction or
2385 renovation project, then the agency or governing authority shall
2386 be permitted to negotiate with the lowest bidder in order to enter
2387 into a contract for an amount not to exceed the funds allocated.

2388 (e) **Lease-purchase authorization.** For the purposes of
2389 this section, the term "equipment" shall mean equipment, furniture
2390 and, if applicable, associated software and other applicable



2391 direct costs associated with the acquisition. Any lease-purchase
2392 of equipment which an agency is not required to lease-purchase
2393 under the master lease-purchase program pursuant to Section
2394 31-7-10 and any lease-purchase of equipment which a governing
2395 authority elects to lease-purchase may be acquired by a
2396 lease-purchase agreement under this paragraph (e). Lease-purchase
2397 financing may also be obtained from the vendor or from a
2398 third-party source after having solicited and obtained at least
2399 two (2) written competitive bids, as defined in paragraph (b) of
2400 this section, for such financing without advertising for such
2401 bids. Solicitation for the bids for financing may occur before or
2402 after acceptance of bids for the purchase of such equipment or,
2403 where no such bids for purchase are required, at any time before
2404 the purchase thereof. No such lease-purchase agreement shall be
2405 for an annual rate of interest which is greater than the overall
2406 maximum interest rate to maturity on general obligation
2407 indebtedness permitted under Section 75-17-101, and the term of
2408 such lease-purchase agreement shall not exceed the useful life of
2409 equipment covered thereby as determined according to the upper
2410 limit of the asset depreciation range (ADR) guidelines for the
2411 Class Life Asset Depreciation Range System established by the
2412 Internal Revenue Service pursuant to the United States Internal
2413 Revenue Code and regulations thereunder as in effect on December
2414 31, 1980, or comparable depreciation guidelines with respect to
2415 any equipment not covered by ADR guidelines. Any lease-purchase



2416 agreement entered into pursuant to this paragraph (e) may contain
2417 any of the terms and conditions which a master lease-purchase
2418 agreement may contain under the provisions of Section 31-7-10(5),
2419 and shall contain an annual allocation dependency clause
2420 substantially similar to that set forth in Section 31-7-10(8).
2421 Each agency or governing authority entering into a lease-purchase
2422 transaction pursuant to this paragraph (e) shall maintain with
2423 respect to each such lease-purchase transaction the same
2424 information as required to be maintained by the Department of
2425 Finance and Administration pursuant to Section 31-7-10(13).
2426 However, nothing contained in this section shall be construed to
2427 permit agencies to acquire items of equipment with a total
2428 acquisition cost in the aggregate of less than Ten Thousand
2429 Dollars (\$10,000.00) by a single lease-purchase transaction. All
2430 equipment, and the purchase thereof by any lessor, acquired by
2431 lease-purchase under this paragraph and all lease-purchase
2432 payments with respect thereto shall be exempt from all Mississippi
2433 sales, use and ad valorem taxes. Interest paid on any
2434 lease-purchase agreement under this section shall be exempt from
2435 State of Mississippi income taxation.

2436 (f) **Alternate bid authorization.** When necessary to
2437 ensure ready availability of commodities for public works and the
2438 timely completion of public projects, no more than two (2)
2439 alternate bids may be accepted by a governing authority for
2440 commodities. No purchases may be made through use of such



2441 alternate bids procedure unless the lowest and best bidder cannot
2442 deliver the commodities contained in his bid. In that event,
2443 purchases of such commodities may be made from one (1) of the
2444 bidders whose bid was accepted as an alternate.

2445 (g) **Construction contract change authorization.** In the
2446 event a determination is made by an agency or governing authority
2447 after a construction contract is let that changes or modifications
2448 to the original contract are necessary or would better serve the
2449 purpose of the agency or the governing authority, such agency or
2450 governing authority may, in its discretion, order such changes
2451 pertaining to the construction that are necessary under the
2452 circumstances without the necessity of further public bids;
2453 provided that such change shall be made in a commercially
2454 reasonable manner and shall not be made to circumvent the public
2455 purchasing statutes. In addition to any other authorized person,
2456 the architect or engineer hired by an agency or governing
2457 authority with respect to any public construction contract shall
2458 have the authority, when granted by an agency or governing
2459 authority, to authorize changes or modifications to the original
2460 contract without the necessity of prior approval of the agency or
2461 governing authority when any such change or modification is less
2462 than one percent (1%) of the total contract amount. The agency or
2463 governing authority may limit the number, manner or frequency of
2464 such emergency changes or modifications.



2465 (h) **Petroleum purchase alternative.** In addition to
2466 other methods of purchasing authorized in this chapter, when any
2467 agency or governing authority shall have a need for gas, diesel
2468 fuel, oils and/or other petroleum products in excess of the amount
2469 set forth in paragraph (a) of this section, such agency or
2470 governing authority may purchase the commodity after having
2471 solicited and obtained at least two (2) competitive written bids,
2472 as defined in paragraph (b) of this section. If two (2)
2473 competitive written bids are not obtained, the entity shall comply
2474 with the procedures set forth in paragraph (c) of this section.
2475 In the event any agency or governing authority shall have
2476 advertised for bids for the purchase of gas, diesel fuel, oils and
2477 other petroleum products and coal and no acceptable bids can be
2478 obtained, such agency or governing authority is authorized and
2479 directed to enter into any negotiations necessary to secure the
2480 lowest and best contract available for the purchase of such
2481 commodities.

2482 (i) **Road construction petroleum products price**
2483 **adjustment clause authorization.** Any agency or governing
2484 authority authorized to enter into contracts for the construction,
2485 maintenance, surfacing or repair of highways, roads or streets,
2486 may include in its bid proposal and contract documents a price
2487 adjustment clause with relation to the cost to the contractor,
2488 including taxes, based upon an industry-wide cost index, of
2489 petroleum products including asphalt used in the performance or



2490 execution of the contract or in the production or manufacture of
2491 materials for use in such performance. Such industry-wide index
2492 shall be established and published monthly by the Mississippi
2493 Department of Transportation with a copy thereof to be mailed,
2494 upon request, to the clerks of the governing authority of each
2495 municipality and the clerks of each board of supervisors
2496 throughout the state. The price adjustment clause shall be based
2497 on the cost of such petroleum products only and shall not include
2498 any additional profit or overhead as part of the adjustment. The
2499 bid proposals or document contract shall contain the basis and
2500 methods of adjusting unit prices for the change in the cost of
2501 such petroleum products.

2502 (j) **State agency emergency purchase procedure.** If the
2503 governing board or the executive head, or his designees, of any
2504 agency of the state shall determine that an emergency exists in
2505 regard to the purchase of any commodities or repair contracts, so
2506 that the delay incident to giving opportunity for competitive
2507 bidding would be detrimental to the interests of the state, then
2508 the head of such agency, or his designees, shall file with the
2509 Department of Finance and Administration (i) a statement
2510 explaining the conditions and circumstances of the emergency,
2511 which shall include a detailed description of the events leading
2512 up to the situation and the negative impact to the entity if the
2513 purchase is made following the statutory requirements set forth in
2514 paragraph (a), (b) or (c) of this section, and (ii) a certified



2515 copy of the appropriate minutes of the board of such agency
2516 requesting the emergency purchase, if applicable. Upon receipt of
2517 the statement and applicable board certification, the State Fiscal
2518 Officer, or his designees, may, in writing, authorize the purchase
2519 or repair without having to comply with competitive bidding
2520 requirements.

2521 If the governing board or the executive head, or his
2522 designees, of any agency determines that an emergency exists in
2523 regard to the purchase of any commodities or repair contracts, so
2524 that the delay incident to giving opportunity for competitive
2525 bidding would threaten the health or safety of any person, or the
2526 preservation or protection of property, then the provisions in
2527 this section for competitive bidding shall not apply, and any
2528 officer or agent of the agency having general or specific
2529 authority for making the purchase or repair contract shall approve
2530 the bill presented for payment, and he shall certify in writing
2531 from whom the purchase was made, or with whom the repair contract
2532 was made.

2533 Total purchases made under this paragraph (j) shall only be
2534 for the purpose of meeting needs created by the emergency
2535 situation. Following the emergency purchase, documentation of the
2536 purchase, including a description of the commodity purchased, the
2537 purchase price thereof and the nature of the emergency shall be
2538 filed with the Department of Finance and Administration. Any



2539 contract awarded pursuant to this paragraph (j) shall not exceed a
2540 term of one (1) year.

2541 (k) **Governing authority emergency purchase procedure.**

2542 If the governing authority, or the governing authority acting
2543 through its designee, shall determine that an emergency exists in
2544 regard to the purchase of any commodities or repair contracts, so
2545 that the delay incident to giving opportunity for competitive
2546 bidding would be detrimental to the interest of the governing
2547 authority, then the provisions herein for competitive bidding
2548 shall not apply and any officer or agent of such governing
2549 authority having general or special authority therefor in making
2550 such purchase or repair shall approve the bill presented therefor,
2551 and he shall certify in writing thereon from whom such purchase
2552 was made, or with whom such a repair contract was made. At the
2553 board meeting next following the emergency purchase or repair
2554 contract, documentation of the purchase or repair contract,
2555 including a description of the commodity purchased, the price
2556 thereof and the nature of the emergency shall be presented to the
2557 board and shall be placed on the minutes of the board of such
2558 governing authority.

2559 (l) **Hospital purchase, lease-purchase and lease**
2560 **authorization.**

2561 (i) The commissioners or board of trustees of any
2562 public hospital may contract with such lowest and best bidder for
2563 the purchase or lease-purchase of any commodity under a contract



2564 of purchase or lease-purchase agreement whose obligatory payment
2565 terms do not exceed five (5) years.

2566 (ii) In addition to the authority granted in
2567 subparagraph (i) of this paragraph (1), the commissioners or board
2568 of trustees is authorized to enter into contracts for the lease of
2569 equipment or services, or both, which it considers necessary for
2570 the proper care of patients if, in its opinion, it is not
2571 financially feasible to purchase the necessary equipment or
2572 services. Any such contract for the lease of equipment or
2573 services executed by the commissioners or board shall not exceed a
2574 maximum of five (5) years' duration and shall include a
2575 cancellation clause based on unavailability of funds. If such
2576 cancellation clause is exercised, there shall be no further
2577 liability on the part of the lessee. Any such contract for the
2578 lease of equipment or services executed on behalf of the
2579 commissioners or board that complies with the provisions of this
2580 subparagraph (ii) shall be excepted from the bid requirements set
2581 forth in this section.

2582 (m) **Exceptions from bidding requirements.** Excepted
2583 from bid requirements are:

2584 (i) **Purchasing agreements approved by department.**
2585 Purchasing agreements, contracts and maximum price regulations
2586 executed or approved by the Department of Finance and
2587 Administration.



2588 (ii) **Outside equipment repairs.** Repairs to
2589 equipment, when such repairs are made by repair facilities in the
2590 private sector; however, engines, transmissions, rear axles and/or
2591 other such components shall not be included in this exemption when
2592 replaced as a complete unit instead of being repaired and the need
2593 for such total component replacement is known before disassembly
2594 of the component; however, invoices identifying the equipment,
2595 specific repairs made, parts identified by number and name,
2596 supplies used in such repairs, and the number of hours of labor
2597 and costs therefor shall be required for the payment for such
2598 repairs.

2599 (iii) **In-house equipment repairs.** Purchases of
2600 parts for repairs to equipment, when such repairs are made by
2601 personnel of the agency or governing authority; however, entire
2602 assemblies, such as engines or transmissions, shall not be
2603 included in this exemption when the entire assembly is being
2604 replaced instead of being repaired.

2605 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
2606 of gravel or fill dirt which are to be removed and transported by
2607 the purchaser.

2608 (v) **Governmental equipment auctions.** Motor
2609 vehicles or other equipment purchased from a federal agency or
2610 authority, another governing authority or state agency of the
2611 State of Mississippi, or any governing authority or state agency
2612 of another state at a public auction held for the purpose of



2613 disposing of such vehicles or other equipment. Any purchase by a
2614 governing authority under the exemption authorized by this
2615 subparagraph (v) shall require advance authorization spread upon
2616 the minutes of the governing authority to include the listing of
2617 the item or items authorized to be purchased and the maximum bid
2618 authorized to be paid for each item or items.

2619 (vi) **Intergovernmental sales and transfers.**

2620 Purchases, sales, transfers or trades by governing authorities or
2621 state agencies when such purchases, sales, transfers or trades are
2622 made by a private treaty agreement or through means of
2623 negotiation, from any federal agency or authority, another
2624 governing authority or state agency of the State of Mississippi,
2625 or any state agency or governing authority of another state.
2626 Nothing in this section shall permit such purchases through public
2627 auction except as provided for in subparagraph (v) of this
2628 paragraph (m). It is the intent of this section to allow
2629 governmental entities to dispose of and/or purchase commodities
2630 from other governmental entities at a price that is agreed to by
2631 both parties. This shall allow for purchases and/or sales at
2632 prices which may be determined to be below the market value if the
2633 selling entity determines that the sale at below market value is
2634 in the best interest of the taxpayers of the state. Governing
2635 authorities shall place the terms of the agreement and any
2636 justification on the minutes, and state agencies shall obtain



2637 approval from the Department of Finance and Administration, prior
2638 to releasing or taking possession of the commodities.

2639 (vii) **Perishable supplies or food.** Perishable
2640 supplies or food purchased for use in connection with hospitals,
2641 the school lunch programs, homemaking programs and for the feeding
2642 of county or municipal prisoners.

2643 (viii) **Single source items.** Noncompetitive items
2644 available from one (1) source only. In connection with the
2645 purchase of noncompetitive items only available from one (1)
2646 source, a certification of the conditions and circumstances
2647 requiring the purchase shall be filed by the agency with the
2648 Department of Finance and Administration and by the governing
2649 authority with the board of the governing authority. Upon receipt
2650 of that certification the Department of Finance and Administration
2651 or the board of the governing authority, as the case may be, may,
2652 in writing, authorize the purchase, which authority shall be noted
2653 on the minutes of the body at the next regular meeting thereafter.
2654 In those situations, a governing authority is not required to
2655 obtain the approval of the Department of Finance and
2656 Administration. Following the purchase, the executive head of the
2657 state agency, or his designees, shall file with the Department of
2658 Finance and Administration, documentation of the purchase,
2659 including a description of the commodity purchased, the purchase
2660 price thereof and the source from whom it was purchased.



2661 (ix) **Waste disposal facility construction**
2662 **contracts.** Construction of incinerators and other facilities for
2663 disposal of solid wastes in which products either generated
2664 therein, such as steam, or recovered therefrom, such as materials
2665 for recycling, are to be sold or otherwise disposed of; however,
2666 in constructing such facilities, a governing authority or agency
2667 shall publicly issue requests for proposals, advertised for in the
2668 same manner as provided herein for seeking bids for public
2669 construction projects, concerning the design, construction,
2670 ownership, operation and/or maintenance of such facilities,
2671 wherein such requests for proposals when issued shall contain
2672 terms and conditions relating to price, financial responsibility,
2673 technology, environmental compatibility, legal responsibilities
2674 and such other matters as are determined by the governing
2675 authority or agency to be appropriate for inclusion; and after
2676 responses to the request for proposals have been duly received,
2677 the governing authority or agency may select the most qualified
2678 proposal or proposals on the basis of price, technology and other
2679 relevant factors and from such proposals, but not limited to the
2680 terms thereof, negotiate and enter contracts with one or more of
2681 the persons or firms submitting proposals.

2682 (x) **Hospital group purchase contracts.** Supplies,
2683 commodities and equipment purchased by hospitals through group
2684 purchase programs pursuant to Section 31-7-38.



2685 (xi) **Information technology products.** Purchases
2686 of information technology products made by governing authorities
2687 under the provisions of purchase schedules, or contracts executed
2688 or approved by the Mississippi Department of Information
2689 Technology Services and designated for use by governing
2690 authorities.

2691 (xii) **Energy efficiency services and equipment.**
2692 Energy efficiency services and equipment acquired by school
2693 districts, community and junior colleges, institutions of higher
2694 learning and state agencies or other applicable governmental
2695 entities on a shared-savings, lease or lease-purchase basis
2696 pursuant to Section 31-7-14.

2697 (xiii) **Municipal electrical utility system fuel.**
2698 Purchases of coal and/or natural gas by municipally owned electric
2699 power generating systems that have the capacity to use both coal
2700 and natural gas for the generation of electric power.

2701 (xiv) **Library books and other reference materials.**
2702 Purchases by libraries or for libraries of books and periodicals;
2703 processed film, videocassette tapes, filmstrips and slides;
2704 recorded audiotapes, cassettes and diskettes; and any such items
2705 as would be used for teaching, research or other information
2706 distribution; however, equipment such as projectors, recorders,
2707 audio or video equipment, and monitor televisions are not exempt
2708 under this subparagraph.



2709 (xv) **Unmarked vehicles.** Purchases of unmarked
2710 vehicles when such purchases are made in accordance with
2711 purchasing regulations adopted by the Department of Finance and
2712 Administration pursuant to Section 31-7-9(2).

2713 (xvi) **Election ballots.** Purchases of ballots
2714 printed pursuant to Section 23-15-351.

2715 (xvii) **Multichannel interactive video systems.**
2716 From and after July 1, 1990, contracts by Mississippi Authority
2717 for Educational Television with any private educational
2718 institution or private nonprofit organization whose purposes are
2719 educational in regard to the construction, purchase, lease or
2720 lease-purchase of facilities and equipment and the employment of
2721 personnel for providing multichannel interactive video systems
2722 (ITSF) in the school districts of this state.

2723 (xviii) **Purchases of prison industry products by**
2724 **the Department of Corrections, regional correctional facilities or**
2725 **privately owned prisons.** Purchases made by the Mississippi
2726 Department of Corrections, regional correctional facilities or
2727 privately owned prisons involving any item that is manufactured,
2728 processed, grown or produced from the state's prison industries.

2729 (xix) **Undercover operations equipment.** Purchases
2730 of surveillance equipment or any other high-tech equipment to be
2731 used by law enforcement agents in undercover operations, provided
2732 that any such purchase shall be in compliance with regulations
2733 established by the Department of Finance and Administration.



2734 (xx) **Junior college books for rent.** Purchases by
2735 community or junior colleges of textbooks which are obtained for
2736 the purpose of renting such books to students as part of a book
2737 service system.

2738 (xxi) **Certain school district purchases.**
2739 Purchases of commodities made by school districts from vendors
2740 with which any levying authority of the school district, as
2741 defined in Section 37-57-1, has contracted through competitive
2742 bidding procedures for purchases of the same commodities.

2743 (xxii) **Garbage, solid waste and sewage contracts.**
2744 Contracts for garbage collection or disposal, contracts for solid
2745 waste collection or disposal and contracts for sewage collection
2746 or disposal.

2747 (xxiii) **Municipal water tank maintenance**
2748 **contracts.** Professional maintenance program contracts for the
2749 repair or maintenance of municipal water tanks, which provide
2750 professional services needed to maintain municipal water storage
2751 tanks for a fixed annual fee for a duration of two (2) or more
2752 years.

2753 (xxiv) **Purchases of Mississippi Industries for the**
2754 **Blind products.** Purchases made by state agencies or governing
2755 authorities involving any item that is manufactured, processed or
2756 produced by the Mississippi Industries for the Blind.

2757 (xxv) **Purchases of state-adopted textbooks.**
2758 Purchases of state-adopted textbooks by public school districts.



2759 (xxvi) **Certain purchases under the Mississippi**
2760 **Major Economic Impact Act.** Contracts entered into pursuant to the
2761 provisions of Section 57-75-9(2), (3) and (4).

2762 (xxvii) **Used heavy or specialized machinery or**
2763 **equipment for installation of soil and water conservation**
2764 **practices purchased at auction.** Used heavy or specialized
2765 machinery or equipment used for the installation and
2766 implementation of soil and water conservation practices or
2767 measures purchased subject to the restrictions provided in
2768 Sections 69-27-331 through 69-27-341. Any purchase by the State
2769 Soil and Water Conservation Commission under the exemption
2770 authorized by this subparagraph shall require advance
2771 authorization spread upon the minutes of the commission to include
2772 the listing of the item or items authorized to be purchased and
2773 the maximum bid authorized to be paid for each item or items.

2774 (xxviii) **Hospital lease of equipment or services.**
2775 Leases by hospitals of equipment or services if the leases are in
2776 compliance with paragraph (1)(ii).

2777 (xxix) **Purchases made pursuant to qualified**
2778 **cooperative purchasing agreements.** Purchases made by certified
2779 purchasing offices of state agencies or governing authorities
2780 under cooperative purchasing agreements previously approved by the
2781 Office of Purchasing and Travel and established by or for any
2782 municipality, county, parish or state government or the federal
2783 government, provided that the notification to potential



2784 contractors includes a clause that sets forth the availability of
2785 the cooperative purchasing agreement to other governmental
2786 entities. Such purchases shall only be made if the use of the
2787 cooperative purchasing agreements is determined to be in the best
2788 interest of the governmental entity.

2789 (xxx) **School yearbooks.** Purchases of school
2790 yearbooks by state agencies or governing authorities; provided,
2791 however, that state agencies and governing authorities shall use
2792 for these purchases the RFP process as set forth in the
2793 Mississippi Procurement Manual adopted by the Office of Purchasing
2794 and Travel.

2795 (xxxi) **Design-build method and dual-phase**
2796 **design-build method of contracting.** Contracts entered into under
2797 the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

2798 (xxxii) **Toll roads and bridge construction**
2799 **projects.** Contracts entered into under the provisions of Section
2800 65-43-1 or 65-43-3.

2801 (xxxiii) **Certain purchases under Section 57-1-221.**
2802 Contracts entered into pursuant to the provisions of Section
2803 57-1-221.

2804 (xxxiv) **Certain transfers made pursuant to the**
2805 **provisions of Section 57-105-1(7).** Transfers of public property
2806 or facilities under Section 57-105-1(7) and construction related
2807 to such public property or facilities.



2808 (xxxv) **Certain purchases or transfers entered into**
2809 **with local electrical power associations.** Contracts or agreements
2810 entered into under the provisions of Section 55-3-33.

2811 (xxxvi) **Certain purchases by an academic medical**
2812 **center or health sciences school.** Purchases by an academic
2813 medical center or health sciences school, as defined in Section
2814 37-115-50, of commodities that are used for clinical purposes and
2815 1. intended for use in the diagnosis of disease or other
2816 conditions or in the cure, mitigation, treatment or prevention of
2817 disease, and 2. medical devices, biological, drugs and
2818 radiation-emitting devices as defined by the United States Food
2819 and Drug Administration.

2820 (xxxvii) **Certain purchases made under the Alyce G.**
2821 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi
2822 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
2823 Lottery Law.

2824 (n) **Term contract authorization.** All contracts for the
2825 purchase of:

2826 (i) All contracts for the purchase of commodities,
2827 equipment and public construction (including, but not limited to,
2828 repair and maintenance), may be let for periods of not more than
2829 sixty (60) months in advance, subject to applicable statutory
2830 provisions prohibiting the letting of contracts during specified
2831 periods near the end of terms of office. Term contracts for a
2832 period exceeding twenty-four (24) months shall also be subject to



2833 ratification or cancellation by governing authority boards taking
2834 office subsequent to the governing authority board entering the
2835 contract.

2836 (ii) Bid proposals and contracts may include price
2837 adjustment clauses with relation to the cost to the contractor
2838 based upon a nationally published industry-wide or nationally
2839 published and recognized cost index. The cost index used in a
2840 price adjustment clause shall be determined by the Department of
2841 Finance and Administration for the state agencies and by the
2842 governing board for governing authorities. The bid proposal and
2843 contract documents utilizing a price adjustment clause shall
2844 contain the basis and method of adjusting unit prices for the
2845 change in the cost of such commodities, equipment and public
2846 construction.

2847 (o) **Purchase law violation prohibition and vendor**
2848 **penalty.** No contract or purchase as herein authorized shall be
2849 made for the purpose of circumventing the provisions of this
2850 section requiring competitive bids, nor shall it be lawful for any
2851 person or concern to submit individual invoices for amounts within
2852 those authorized for a contract or purchase where the actual value
2853 of the contract or commodity purchased exceeds the authorized
2854 amount and the invoices therefor are split so as to appear to be
2855 authorized as purchases for which competitive bids are not
2856 required. Submission of such invoices shall constitute a
2857 misdemeanor punishable by a fine of not less than Five Hundred



2858 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
2859 or by imprisonment for thirty (30) days in the county jail, or
2860 both such fine and imprisonment. In addition, the claim or claims
2861 submitted shall be forfeited.

2862 (p) **Electrical utility petroleum-based equipment**
2863 **purchase procedure.** When in response to a proper advertisement
2864 therefor, no bid firm as to price is submitted to an electric
2865 utility for power transformers, distribution transformers, power
2866 breakers, reclosers or other articles containing a petroleum
2867 product, the electric utility may accept the lowest and best bid
2868 therefor although the price is not firm.

2869 (q) **Fuel management system bidding procedure.** Any
2870 governing authority or agency of the state shall, before
2871 contracting for the services and products of a fuel management or
2872 fuel access system, enter into negotiations with not fewer than
2873 two (2) sellers of fuel management or fuel access systems for
2874 competitive written bids to provide the services and products for
2875 the systems. In the event that the governing authority or agency
2876 cannot locate two (2) sellers of such systems or cannot obtain
2877 bids from two (2) sellers of such systems, it shall show proof
2878 that it made a diligent, good-faith effort to locate and negotiate
2879 with two (2) sellers of such systems. Such proof shall include,
2880 but not be limited to, publications of a request for proposals and
2881 letters soliciting negotiations and bids. For purposes of this
2882 paragraph (q), a fuel management or fuel access system is an



2883 automated system of acquiring fuel for vehicles as well as
2884 management reports detailing fuel use by vehicles and drivers, and
2885 the term "competitive written bid" shall have the meaning as
2886 defined in paragraph (b) of this section. Governing authorities
2887 and agencies shall be exempt from this process when contracting
2888 for the services and products of fuel management or fuel access
2889 systems under the terms of a state contract established by the
2890 Office of Purchasing and Travel.

2891 (r) **Solid waste contract proposal procedure.** Before
2892 entering into any contract for garbage collection or disposal,
2893 contract for solid waste collection or disposal or contract for
2894 sewage collection or disposal, which involves an expenditure of
2895 more than Fifty Thousand Dollars (\$50,000.00), a governing
2896 authority or agency shall issue publicly a request for proposals
2897 concerning the specifications for such services which shall be
2898 advertised for in the same manner as provided in this section for
2899 seeking bids for purchases which involve an expenditure of more
2900 than the amount provided in paragraph (c) of this section. Any
2901 request for proposals when issued shall contain terms and
2902 conditions relating to price, financial responsibility,
2903 technology, legal responsibilities and other relevant factors as
2904 are determined by the governing authority or agency to be
2905 appropriate for inclusion; all factors determined relevant by the
2906 governing authority or agency or required by this paragraph (r)
2907 shall be duly included in the advertisement to elicit proposals.



2908 After responses to the request for proposals have been duly
2909 received, the governing authority or agency shall select the most
2910 qualified proposal or proposals on the basis of price, technology
2911 and other relevant factors and from such proposals, but not
2912 limited to the terms thereof, negotiate and enter into contracts
2913 with one or more of the persons or firms submitting proposals. If
2914 the governing authority or agency deems none of the proposals to
2915 be qualified or otherwise acceptable, the request for proposals
2916 process may be reinitiated. Notwithstanding any other provisions
2917 of this paragraph, where a county with at least thirty-five
2918 thousand (35,000) nor more than forty thousand (40,000)
2919 population, according to the 1990 federal decennial census, owns
2920 or operates a solid waste landfill, the governing authorities of
2921 any other county or municipality may contract with the governing
2922 authorities of the county owning or operating the landfill,
2923 pursuant to a resolution duly adopted and spread upon the minutes
2924 of each governing authority involved, for garbage or solid waste
2925 collection or disposal services through contract negotiations.

2926 (s) **Minority set-aside authorization.** Notwithstanding
2927 any provision of this section to the contrary, any agency or
2928 governing authority, by order placed on its minutes, may, in its
2929 discretion, set aside not more than twenty percent (20%) of its
2930 anticipated annual expenditures for the purchase of commodities
2931 from minority businesses; however, all such set-aside purchases
2932 shall comply with all purchasing regulations promulgated by the



2933 Department of Finance and Administration and shall be subject to
2934 bid requirements under this section. Set-aside purchases for
2935 which competitive bids are required shall be made from the lowest
2936 and best minority business bidder. For the purposes of this
2937 paragraph, the term "minority business" means a business which is
2938 owned by a majority of persons who are United States citizens or
2939 permanent resident aliens (as defined by the Immigration and
2940 Naturalization Service) of the United States, and who are Asian,
2941 Black, Hispanic or Native American, according to the following
2942 definitions:

2943 (i) "Asian" means persons having origins in any of
2944 the original people of the Far East, Southeast Asia, the Indian
2945 subcontinent, or the Pacific Islands.

2946 (ii) "Black" means persons having origins in any
2947 black racial group of Africa.

2948 (iii) "Hispanic" means persons of Spanish or
2949 Portuguese culture with origins in Mexico, South or Central
2950 America, or the Caribbean Islands, regardless of race.

2951 (iv) "Native American" means persons having
2952 origins in any of the original people of North America, including
2953 American Indians, Eskimos and Aleuts.

2954 (t) **Construction punch list restriction.** The
2955 architect, engineer or other representative designated by the
2956 agency or governing authority that is contracting for public
2957 construction or renovation may prepare and submit to the



2958 contractor only one (1) preliminary punch list of items that do
2959 not meet the contract requirements at the time of substantial
2960 completion and one (1) final list immediately before final
2961 completion and final payment.

2962 (u) **Procurement of construction services by state**
2963 **institutions of higher learning.** Contracts for privately financed
2964 construction of auxiliary facilities on the campus of a state
2965 institution of higher learning may be awarded by the Board of
2966 Trustees of State Institutions of Higher Learning to the lowest
2967 and best bidder, where sealed bids are solicited, or to the
2968 offeror whose proposal is determined to represent the best value
2969 to the citizens of the State of Mississippi, where requests for
2970 proposals are solicited.

2971 (v) **Insurability of bidders for public construction or**
2972 **other public contracts.** In any solicitation for bids to perform
2973 public construction or other public contracts to which this
2974 section applies including, but not limited to, contracts for
2975 repair and maintenance, for which the contract will require
2976 insurance coverage in an amount of not less than One Million
2977 Dollars (\$1,000,000.00), bidders shall be permitted to either
2978 submit proof of current insurance coverage in the specified amount
2979 or demonstrate ability to obtain the required coverage amount of
2980 insurance if the contract is awarded to the bidder. Proof of
2981 insurance coverage shall be submitted within five (5) business
2982 days from bid acceptance.



2983 (w) **Purchase authorization clarification.** Nothing in
2984 this section shall be construed as authorizing any purchase not
2985 authorized by law.

2986 **SECTION 52.** Section 67-1-71, Mississippi Code of 1972, is
2987 amended as follows:

2988 67-1-71. The department may revoke or suspend any permit
2989 issued by it for a violation by the permittee of any of the
2990 provisions of this chapter or of the regulations promulgated under
2991 it by the department.

2992 Permits must be revoked or suspended for the following
2993 causes:

2994 (a) Conviction of the permittee for the violation of
2995 any of the provisions of this chapter;

2996 (b) Willful failure or refusal by any permittee to
2997 comply with any of the provisions of this chapter or of any rule
2998 or regulation adopted pursuant thereto;

2999 (c) The making of any materially false statement in any
3000 application for a permit;

3001 (d) Conviction of one or more of the clerks, agents or
3002 employees of the permittee, of any violation of this chapter upon
3003 the premises covered by such permit within a period of time as
3004 designated by the rules or regulations of the department;

3005 (e) The possession on the premises of any retail
3006 permittee of any alcoholic beverages upon which the tax has not
3007 been paid;



3008 (f) The willful failure of any permittee to keep the
3009 records or make the reports required by this chapter, or to allow
3010 an inspection of such records by any duly authorized person;

3011 (g) The suspension or revocation of a permit issued to
3012 the permittee by the federal government, or conviction of
3013 violating any federal law relating to alcoholic beverages;

3014 (h) The failure to furnish any bond required by Section
3015 27-71-21 within fifteen (15) days after notice from the
3016 department; and

3017 (i) The conducting of any form of illegal gambling on
3018 the premises of any permittee or on any premises connected
3019 therewith or the presence on any such premises of any gambling
3020 device with the knowledge of the permittee.

3021 The provisions of paragraph (i) of this section shall not
3022 apply to gambling or the presence of any gambling devices, with
3023 knowledge of the permittee, on board a cruise vessel in the waters
3024 within the State of Mississippi, which lie adjacent to the State
3025 of Mississippi south of the three (3) most southern counties in
3026 the State of Mississippi, or on any vessel as defined in Section
3027 27-109-1 whenever such vessel is on the Mississippi River or
3028 navigable waters within any county bordering on the Mississippi
3029 River. The department may, in its discretion, issue on-premises
3030 retailer's permits to a common carrier of the nature described in
3031 this paragraph.



3032 The provisions of paragraph (i) of this section shall not
3033 apply to the operation of any game or lottery authorized by
3034 Sections 1 through 46 of this act.

3035 No permit shall be suspended or revoked until after the
3036 permittee has been provided reasonable notice of the charges
3037 against him for which suspension or revocation is sought and the
3038 opportunity to a hearing before the Board of Tax Appeals to
3039 contest such charges and the suspension or revocation proposed.
3040 Opportunity to a hearing is provided without an actual hearing if
3041 the permittee, after receiving reasonable notice, including notice
3042 of his right to a hearing, fails to timely request a hearing. The
3043 permittee may also at any time waive his rights to reasonable
3044 notice and/or to the opportunity to a hearing by agreeing to a
3045 suspension or revocation offered by the department.

3046 Notwithstanding the requirement above that a permit may not be
3047 suspended without notice and opportunity to a hearing, sales of
3048 alcoholic beverages by a permittee under a permit for which the
3049 bond under Section 27-71-21 has been cancelled shall be suspended
3050 from and after issuance of the notice provided in * * * paragraph
3051 (h) above and shall continue to be suspended until the bond is
3052 reinstated, a new bond is posted or sufficient cash or securities
3053 as provided under Section 27-71-21 are deposited with the State
3054 Treasurer for this permit.

3055 In addition to the causes specified in this section and other
3056 provisions of this chapter, the department shall be authorized to



3057 suspend the permit of any permit holder for being out of
3058 compliance with an order for support, as defined in Section
3059 93-11-153. The procedure for suspension of a permit for being out
3060 of compliance with an order for support, and the procedure for the
3061 reissuance or reinstatement of a permit suspended for that
3062 purpose, and the payment of any fees for the reissuance or
3063 reinstatement of a permit suspended for that purpose, shall be
3064 governed by Section 93-11-157 or 93-11-163, as the case may be.
3065 If there is any conflict between any provision of Section
3066 93-11-157 or 93-11-163 and any provision of this chapter, the
3067 provisions of Section 93-11-157 or 93-11-163, as the case may be,
3068 shall control.

3069 **SECTION 53.** Section 97-33-9, Mississippi Code of 1972, is
3070 amended as follows:

3071 97-33-9. Except as otherwise provided in Section 97-33-8, if
3072 any person shall be guilty of keeping or exhibiting any game or
3073 gaming table commonly called A.B.C. or E.O. roulette or
3074 rowley-powley, or rouge et noir, roredo, keno, monte, or any
3075 faro-bank, or other game, gaming table, or bank of the same or
3076 like kind or any other kind or description under any other name
3077 whatever, or shall be in any manner either directly or indirectly
3078 interested or concerned in any gaming tables, banks, or games,
3079 either by furnishing money or articles for the purpose of carrying
3080 on the same, being interested in the loss or gain of said table,
3081 bank or games, or employed in any manner in conducting, carrying



3082 on, or exhibiting said gaming tables, games, or banks, every
3083 person so offending and being thereof convicted, shall be fined
3084 not less than Twenty-five Dollars (\$25.00) nor more than Two
3085 Thousand Dollars (\$2,000.00), or be imprisoned in the county jail
3086 not longer than two (2) months, or by both such fine and
3087 imprisonment, in the discretion of the court. Nothing in this
3088 section shall apply to any person who owns, possesses, controls,
3089 installs, procures, repairs or transports any gambling device,
3090 machine or equipment in accordance with subsection (4) of Section
3091 97-33-7 or Section 75-76-34.

3092 This section shall not apply to the operation of any game or
3093 lottery authorized by Sections 1 through 46 of this act.

3094 **SECTION 54.** Section 97-33-11, Mississippi Code of 1972, is
3095 amended as follows:

3096 97-33-11. It shall not be lawful for any association of
3097 persons of the character commonly known as a "club," whether such
3098 association be incorporated or not, in any manner, either directly
3099 or indirectly, to have any interest or concern in any gambling
3100 tables, banks, or games, by means of what is sometimes called a
3101 "rake-off" or "take-out," or by means of an assessment upon
3102 certain combinations, or hands at cards, or by means of a
3103 percentage extracted from players, or an assessment made upon, or
3104 a contribution from them, or by any other means, device or
3105 contrivance whatsoever. It shall not be lawful for such an
3106 association to lend or advance money or any other valuable thing



3107 to any person engaged or about to engage in playing any game of
3108 chance prohibited by law, or to become responsible directly or
3109 indirectly for any money or other valuable thing lost, or which
3110 may be lost, by any player in any such game. If any such
3111 association shall violate any of the provisions of this section
3112 each and every member thereof shall be guilty of a misdemeanor
3113 and, upon conviction thereof, shall be fined in a sum not more
3114 than Five Hundred Dollars (\$500.00); and unless such fine and
3115 costs be immediately paid, shall be imprisoned in the county jail
3116 for not less than five (5) nor more than twenty (20) days. Each
3117 grand jury shall cause such of the members of such an association
3118 as it may choose to appear before them and submit to examination
3119 touching the observance or nonobservance by such association of
3120 the provisions hereof.

3121 This section shall not apply to the operation of any game or
3122 lottery authorized by Sections 1 through 46 of this act.

3123 **SECTION 55.** Section 97-33-13, Mississippi Code of 1972, is
3124 amended as follows:

3125 97-33-13. Any owner, lessee, or occupant of any outhouse or
3126 other building, who shall knowingly permit or suffer any of the
3127 before mentioned tables, banks, or games, or any other game
3128 prohibited by law, to be carried on, kept, or exhibited in his
3129 said house or other building, or on his lot or premises, being
3130 thereof convicted, shall be fined not less than One Hundred
3131 Dollars (\$100.00) nor more than Two Thousand Dollars (\$2,000.00).



3132 This section shall not apply to the operation of any game or
3133 lottery authorized by Sections 1 through 46 of this act.

3134 **SECTION 56.** Section 97-33-21, Mississippi Code of 1972, is
3135 amended as follows:

3136 97-33-21. Any person of full age who shall bet any money or
3137 thing of any value with a minor, or allow a minor to bet at any
3138 game or gaming-table exhibited by him, or in which he is
3139 interested or in any manner concerned, on conviction thereof,
3140 shall be fined not less than Three Hundred Dollars (\$300.00) and
3141 imprisoned not less than three (3) months.

3142 This section shall apply to minors under the age of
3143 twenty-one (21) as it might apply to the operation of any game or
3144 lottery authorized by Sections 1 through 46 of this act.

3145 **SECTION 57.** Section 97-33-23, Mississippi Code of 1972, is
3146 amended as follows:

3147 97-33-23. Any person of full age who shall bet any money or
3148 thing of value with a minor, knowing such minor to be under the
3149 age of twenty-one (21) years, or allowing any such minor to bet at
3150 any game or games, or at any gaming table exhibited by him, or in
3151 which he is interested or in any manner concerned, on conviction
3152 thereof, shall be punished by imprisonment in the Penitentiary not
3153 exceeding two (2) years.

3154 This section shall apply to minors under the age of
3155 twenty-one (21) as it might apply to the operation of any game or
3156 lottery authorized by Sections 1 through 46 of this act.



3157 **SECTION 58.** Section 97-33-31, Mississippi Code of 1972, is
3158 amended as follows:

3159 97-33-31. If any person, in order to raise money for himself
3160 or another, or for any purpose whatever, shall publicly or
3161 privately put up a lottery to be drawn or adventured for, he
3162 shall, on conviction, be imprisoned in the Penitentiary not
3163 exceeding five (5) years.

3164 This section shall not apply to the operation of any game or
3165 lottery authorized by Sections 1 through 46 of this act.

3166 **SECTION 59.** Section 97-33-33, Mississippi Code of 1972, is
3167 amended as follows:

3168 97-33-33. If any person shall in any way advertise any
3169 lottery whatever, no matter where located, or shall knowingly have
3170 in his possession any posters or other lottery advertisements of
3171 any kind * * *, save a regularly issued newspaper containing such
3172 an advertisement without intent to circulate the same as an
3173 advertisement * * *, he shall, on conviction, be fined not less
3174 than Twenty-five Dollars (\$25.00) nor more than One Hundred
3175 Dollars (\$100.00), or be imprisoned in the county jail not
3176 exceeding three (3) months, or both.

3177 This section shall not apply to the operation of any game or
3178 lottery authorized by Sections 1 through 46 of this act.

3179 **SECTION 60.** Section 97-33-35, Mississippi Code of 1972, is
3180 amended as follows:



3181 97-33-35. If any newspaper published or circulated in this
3182 state shall contain an advertisement of any lottery whatever, or
3183 any matter intended to advertise a lottery, no matter where
3184 located, the editor or editors, publisher or publishers, and the
3185 owner or owners thereof permitting the same, shall be guilty of a
3186 misdemeanor and, on conviction, shall be fined not less than One
3187 Hundred Dollars (\$100.00) nor more than One Thousand Dollars
3188 (\$1,000.00), and be imprisoned in the county jail not less than
3189 ten (10) days nor more than three (3) months, for each offense.
3190 The issuance of each separate daily or weekly edition of the
3191 newspaper that shall contain such an advertisement shall be
3192 considered a separate offense.

3193 This section shall not apply to the operation of any game or
3194 lottery authorized by Sections 1 through 46 of this act.

3195 **SECTION 61.** Section 97-33-37, Mississippi Code of 1972, is
3196 amended as follows:

3197 97-33-37. If any newsdealer or other person shall, directly
3198 or indirectly, sell or offer for sale any newspaper or other
3199 publication containing a lottery advertisement, he shall be guilty
3200 of a misdemeanor and, upon conviction, shall be fined not less
3201 than Ten Dollars (\$10.00) or imprisoned not less than ten (10)
3202 days, or both.

3203 This section shall not apply to the operation of any game or
3204 lottery authorized by Sections 1 through 46 of this act.



3205 **SECTION 62.** Section 97-33-39, Mississippi Code of 1972, is
3206 amended as follows:

3207 97-33-39. If any person shall sell, or offer or expose for
3208 sale, any lottery ticket, whether the lottery be in or out of this
3209 state, or for or in any other state, territory, district, or
3210 country, he shall, on conviction, be fined not less than
3211 Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars
3212 (\$100.00), or imprisoned in the county jail not less than ten (10)
3213 days nor more than sixty (60) days, or both.

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 63.** Section 97-33-41, Mississippi Code of 1972, is
3217 amended as follows:

3218 97-33-41. If any person shall buy in this state any lottery
3219 ticket, whether the lottery be in or out of this state, or of or
3220 in any other state, territory, district, or country, he shall, on
3221 conviction, be fined not less than Five Dollars (\$5.00) nor more
3222 than Twenty-five Dollars (\$25.00), or be imprisoned in the county
3223 jail not exceeding ten (10) days, or both.

3224 This section shall not apply to the operation of any game or
3225 lottery authorized by Sections 1 through 46 of this act.

3226 **SECTION 64.** Section 97-33-43, Mississippi Code of 1972, is
3227 amended as follows:

3228 97-33-43. If any railroad company shall suffer or permit the
3229 sale of a lottery ticket of any kind on its cars, or at its depots



3230 or depot grounds, or by its employees, no matter where the lottery
3231 is located, it shall be guilty of a misdemeanor and, on
3232 conviction, shall be fined not less than Twenty Dollars (\$20.00)
3233 nor more than One Hundred Dollars (\$100.00) for every such ticket
3234 so sold.

3235 This section shall not apply to the operation of any game or
3236 lottery authorized by Sections 1 through 46 of this act.

3237 **SECTION 65.** Section 97-33-45, Mississippi Code of 1972, is
3238 amended as follows:

3239 97-33-45. If the owner or owners of any steamboat shall
3240 suffer or permit the sale of a lottery ticket of any kind on his
3241 or their boat, or by his or their employees, no matter where the
3242 lottery is located, he or they shall be guilty of a misdemeanor
3243 and shall, on conviction, be punished as prescribed in Section
3244 97-33-43.

3245 This section shall not apply to the operation of any game or
3246 lottery authorized by Sections 1 through 46 of this act.

3247 **SECTION 66.** Section 97-33-47, Mississippi Code of 1972, is
3248 amended as follows:

3249 97-33-47. If any person shall act as agent for any lottery
3250 or lottery company, no matter where domiciled or located, or if he
3251 shall assume to so act as agent, or if he receive any money or
3252 other thing for any such lottery or lottery company, or deliver to
3253 any person any ticket or tickets, prize or prizes, or other thing
3254 from such lottery or lottery company, he shall, on conviction, be



3255 fined not less than One Hundred Dollars (\$100.00), nor more than
3256 Five Hundred Dollars (\$500.00), and be imprisoned in the county
3257 jail not less than three (3) months nor more than six (6) months.

3258 This section shall not apply to the operation of any game or
3259 lottery authorized by Sections 1 through 46 of this act.

3260 **SECTION 67.** Section 97-33-49, Mississippi Code of 1972, is
3261 amended as follows:

3262 97-33-49. Except as otherwise provided in Section 97-33-51,
3263 if any person, in order to raise money for himself or another,
3264 shall publicly or privately put up or in any way offer any prize
3265 or thing to be raffled or played for, he shall, on conviction, be
3266 fined not more than Twenty Dollars (\$20.00), or be imprisoned not
3267 more than one (1) month in the county jail.

3268 This section shall not apply to the operation of any game or
3269 lottery authorized by Sections 1 through 46 of this act.

3270 **SECTION 68.** This act shall take effect and be in force from
3271 and after September 1, 2018.

