

By: Representative Patterson

To: Ways and Means

HOUSE BILL NO. 1060

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

(b) "Concession" means any lease, license, franchise, easement, rental, joint venture, memorandum of understanding, or other binding agreement transferring from a responsible public entity to a private partner rights for the use or control, in whole or in part, of a qualifying project for a definite term during which the private partner will provide services in return for the right to receive all or a portion of the revenues of the qualifying project.

(c) "Design-build agreement" means a contract between a responsible public entity and a private partner that combines the design and construction phases of a qualifying project into a



93 single contract and wherein the private partner is required to
94 satisfactorily perform, at a minimum, the design and construction
95 of the qualifying project.

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

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

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

116 (g) "Design-build-operate-maintain agreement" means a
117 contract between a responsible public entity and a private partner



that combines the design, construction, operation and maintenance phases of a qualifying project into a single contract and wherein the private partner is required to satisfactorily perform, at a minimum, the design, construction, operation and maintenance of the qualifying project.

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

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

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

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



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

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

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

(o) "Private partner" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, other private business entity or any combination thereof, who has entered into a public-private partnership agreement for the construction of a qualifying project using:

(i) Contractors who are licensed in Mississippi, but may be licensed in another state, and has satisfied the requirements of Sections 31-3-5, 31-3-21 and 31-5-51 for



certificates of responsibility, performance and payments of bonds,
and proof of insurance for public construction contracts; and

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

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

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

(r) "Public-private partnership agreement" means an
agreement between one or more private partners and one or more
responsible public entities contractually providing for and
allocating the responsibilities of and among all parties to
develop and/or operate a qualifying project in a public-private
partnership, which such agreement shall have a term not to exceed



fifty (50) years unless the P3 Review Board approves a longer term not to exceed seventy (70) years upon finding that the qualifying project is of such an extraordinary nature that the public benefit justifies the extended term.

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

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

(u) "Revenues" means all taxes, fees, charges, monies, profits, payments of principal of or interest on securities and



other investments, gifts, grants, contributions, appropriations
and all other income derived by a responsible public entity.

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

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

(x) "State" means the State of Mississippi.

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

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

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

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

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



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

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

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

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

At least one (1) of the appointed members of the board shall be a licensed member of the Mississippi Bar Association with expertise in representing responsible public entities in public works construction. Each appointed member of the board shall have subject matter experience in architecture, construction management, engineering, finance or real estate development. Appointed members of the board shall serve four-year terms and represent geographically diverse regions of the state to the extent practicable. Members of the board may be removed by the public official who appointed them upon written notice and shall appoint a successor as soon as reasonable thereafter.

(2) The board shall:

(a) Promulgate regulations by July 1, 2019, following a period of public review, setting forth a uniform process for the review, solicitation, evaluation, award, and delivery of public-private partnership agreements, including timeframes and requirements for public outreach prior to entering into a



public-private partnership agreement on a selected proposal. The timeframes and requirements shall provide for a reasonable period of public review and comment;

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

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

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

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

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

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



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

299 (5) The operations and activities of the board in carrying
300 out the purposes of this chapter shall be administered by the
301 Mississippi Department of Finance and Administration. The board
302 shall elect from its membership a chairman and a vice chairman,
303 each of whom shall perform the usual duties of such offices. The
304 initial and subsequent chairman of the board shall be the
305 Secretary of State. The initial chairman shall call the initial
306 meeting of the board and shall serve while the regulations
307 required to be promulgated by subsection (2)(a) of this section
308 are approved by the board. The Executive Director of the
309 Mississippi Department of Finance and Administration, or his or
310 her designee, shall serve as secretary of the board. Five (5)
311 members of the board shall constitute a quorum. The board may
312 adopt a seal. At the request of the board, the Mississippi
313 Department of Finance and Administration is authorized to employ
314 such personnel, including administrative and clerical staff, as



may be necessary for the board to comply with its duties and responsibilities pursuant to this chapter.

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

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

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

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



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

357 (3) For any selected proposal for a qualifying project, the
358 responsible public entity shall obtain an independent audit of the
359 proposed private-public partnership, including an assessment of
360 projected usage and public costs, before the public-private
361 partnership agreement is executed. The analysis shall be
362 disclosed to the public prior to execution of a public-private
363 partnership agreement. In addition to disclosing the independent



audit to the public, the responsible public entity shall provide a copy of the audit to the State Bond Commission, the chairmen of the House of Representatives Public Property, Ways and Means and Appropriations Committees, and to the chairmen of the Senate Public Property, Finance and Appropriations Committees prior to the execution of a public-private partnership agreement.

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

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

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

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

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



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

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

407 (7) When the time for receiving proposals expires, the P3
408 Review Board shall first rank the proposals in accordance with the
409 factors set forth in the request for proposals. The responsible
410 public entity shall not be required to select the proposal with
411 the lowest price offer, but it may consider price as one (1) of
412 various factors in evaluating the proposals received in response



to the request for proposals for a qualifying project. Factors that may be considered include:

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

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

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

(d) The proposed design of the qualifying project;

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

(f) Estimated benefits to the public;

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

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

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

(8) After ranking the proposals by the P3 Review Board, the responsible public entity shall begin simultaneous negotiations with all potentially eligible ranked private partners before requesting best and final offers from eligible private partners. If the responsible public entity and the potentially eligible ranked private partner submitting the best and final offer do not



reach a public-private partnership agreement or interim agreement, then the responsible public entity may conduct negotiations with another potentially eligible ranked private partner. This process shall continue until the responsible public entity either voluntarily abandons the process or executes a public-private partnership agreement or interim agreement with a private partner.

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

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

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

31-33-13. (1) The responsible public entity may enter into a public-private partnership agreement to develop a qualifying project only after the chief executive officer of the responsible public entity makes a finding of public interest and regional plan



compatibility. Such findings shall, at a minimum, consider the following:

- (a) Benefits to the public;
- (b) Advantages or disadvantages to develop the qualifying project as a public-private partnership versus a traditional procurement, including the anticipated cost over the project life-cycle, adjusted for risk and risk transfers;
- (c) Sources of funding and financing for the qualifying project;
- (d) The general reputation, qualifications, industry experience and financial capacity of the private partner or private partners;
- (e) The proposal's compatibility with regional infrastructure plans; and
- (f) Other criteria that the responsible public entity deems appropriate.

(2) The responsible public entity shall publicly disclose all findings of public interest and regional compatibility made pursuant to the requirements of subsection (1)(a) and (b) of this section in a public report which shall be available on the Department of Finance and Administration's website and, which shall include a detailed discussion of all considerations on which the findings are based followed by fourteen (14) days of public comment before execution of a public-private partnership agreement.



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

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

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

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

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

31-33-17. (1) Before or in connection with the negotiation
of a public-private partnership agreement, the responsible public
entity may enter into an interim agreement with the private
partner that submitted the selected proposal, provided that such
interim agreement has been first approved by the P3 Review Board.
An interim agreement shall not obligate the responsible public
entity to enter into a public-private partnership agreement. The
interim agreement is wholly discretionary; the responsible public



entity and the private partner may proceed directly to creating a public-private partnership agreement without creating an interim agreement. An interim agreement shall only:

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

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

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

(3) Prior to developing a qualifying project, the private partner that submitted the selected proposal shall enter into a public-private partnership agreement with the responsible public entity stipulating the obligations of and the allocation of responsibilities among the parties, which, in addition to other contract terms, must include:

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

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



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

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

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

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

(g) Performance standards and any damages for nonperformance;

(h) Any performance incentives;

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

(j) The responsibility for reconstruction or renovations required for a qualifying project to meet all applicable government standards upon reversion of the qualifying project to the responsible public entity at the termination of the public-private partnership agreement; and

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

(4) The public-private partnership agreement shall provide for such fees as may be established by agreement of the parties



and shall not be subject to Chapter 7, Title 31, Mississippi Code of 1972.

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

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

31-33-19. (1) Subject to the requirements of this chapter, the responsible public entity may utilize any project delivery method or agreement or combination of methods or agreements to develop a qualifying project including, but not limited to:

- (a) A design-build agreement;
- (b) A design-build-finance agreement;
- (c) A design-build-finance-operate agreement;
- (d) A design-build-finance-operate-maintain agreement;
- (e) A design-build-maintain agreement;



(f) A design-build-operate-maintain agreement;
(g) An operate-maintain agreement;
(h) A concession providing for the private partner to design, build, operate, maintain, manage, and/or lease a qualifying project; or

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

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

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

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

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

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



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

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

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

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

633 (vi) A comparison of the costs between the
634 selected public-private partnership agreement and the anticipated
635 cost of a traditional procurement process.



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

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

(a) Issuer debt, equity, or other securities or
obligations;

(b) Leases, concessions, and grant and loan agreements;

(c) Access to any designated state funds;

(d) Loans or grants from any state agency or state
infrastructure bank; and

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

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

(3) The responsible public entity may take any action to
obtain federal, state, and/or local assistance for a qualifying
project that serves the purpose of this chapter and may enter into



661 contracts required to receive such assistance. To the fullest
662 extent allowed by law, federal, state and local monies may be
663 combined with any private sector monies in connection with a
664 qualifying project.

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

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

673 (a) Withhold all or any part (as agreed by the
674 responsible public entity) of any monies that such private partner
675 is entitled to receive from time to time, pursuant to any law, and
676 that is in the possession of the Department of Revenue or any
677 state agency, department or commission created pursuant to state
678 law; and

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

683 If the private partner files a copy of such written
684 agreement, together with a statement of delinquency, with the
685 Department of Revenue or any state agency, department or



commission created pursuant to state law, then the Department of Revenue or any such state agency, department or commission created pursuant to state law shall immediately make the withholdings provided in such agreement from the amounts due the private partner and shall continue to pay the same over until all such delinquencies are satisfied.

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

31-33-23. (1) All public-private partnership agreements completed under the authority of this chapter shall be validated in the Chancery Court of the First Judicial District of Hinds County, Mississippi, with all public agencies involved in such approved qualifying project being parties to the validation proceedings, with the full right to any party in interest to file objections thereto, in the manner provided now by Chapter 13, Title 31, Mississippi Code of 1972, and the validation decree of the chancellor validating the conditions and obligations of the public-private partnership agreement and its approval shall carry the same force and effect therein. All objections to any matters relating to such public-private partnership agreement shall be adjudicated and determined by the chancery court in the validation proceedings and in no other manner, and all rights of the parties shall be preserved and not foreclosed, for the hearing before the chancery court or the chancellor in vacation.



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

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

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

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

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



734 31-33-27. If any section, subsection, paragraph, sentence,
735 clause or provision of this chapter shall be unconstitutional or
736 ineffective, in whole or in part, to the extent that it is not
737 unconstitutional or ineffective, it shall be valid and effective
738 and no other section, subdivision, paragraph, sentence, clause or
739 provision shall on account thereof be deemed invalid or
740 ineffective.

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

743 31-7-13. All agencies and governing authorities shall
744 purchase their commodities and printing; contract for garbage
745 collection or disposal; contract for solid waste collection or
746 disposal; contract for sewage collection or disposal; contract for
747 public construction; and contract for rentals as herein provided.

748 (a) **Bidding procedure for purchases not over \$5,000.00.**
749 Purchases which do not involve an expenditure of more than Five
750 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
751 charges, may be made without advertising or otherwise requesting
752 competitive bids. However, nothing contained in this paragraph
753 (a) shall be construed to prohibit any agency or governing
754 authority from establishing procedures which require competitive
755 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

756 (b) **Bidding procedure for purchases over \$5,000.00 but**
757 **not over \$50,000.00.** Purchases which involve an expenditure of
758 more than Five Thousand Dollars (\$5,000.00) but not more than



759 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and
760 shipping charges, may be made from the lowest and best bidder
761 without publishing or posting advertisement for bids, provided at
762 least two (2) competitive written bids have been obtained. Any
763 state agency or community/junior college purchasing commodities or
764 procuring construction pursuant to this paragraph (b) may
765 authorize its purchasing agent, or his designee, to accept the
766 lowest competitive written bid under Fifty Thousand Dollars
767 (\$50,000.00). Any governing authority purchasing commodities
768 pursuant to this paragraph (b) may authorize its purchasing agent,
769 or his designee, with regard to governing authorities other than
770 counties, or its purchase clerk, or his designee, with regard to
771 counties, to accept the lowest and best competitive written bid.
772 Such authorization shall be made in writing by the governing
773 authority and shall be maintained on file in the primary office of
774 the agency and recorded in the official minutes of the governing
775 authority, as appropriate. The purchasing agent or the purchase
776 clerk, or their designee, as the case may be, and not the
777 governing authority, shall be liable for any penalties and/or
778 damages as may be imposed by law for any act or omission of the
779 purchasing agent or purchase clerk, or their designee,
780 constituting a violation of law in accepting any bid without
781 approval by the governing authority. The term "competitive
782 written bid" shall mean a bid submitted on a bid form furnished by
783 the buying agency or governing authority and signed by authorized



784 personnel representing the vendor, or a bid submitted on a
785 vendor's letterhead or identifiable bid form and signed by
786 authorized personnel representing the vendor. "Competitive" shall
787 mean that the bids are developed based upon comparable
788 identification of the needs and are developed independently and
789 without knowledge of other bids or prospective bids. Any bid item
790 for construction in excess of Five Thousand Dollars (\$5,000.00)
791 shall be broken down by components to provide detail of component
792 description and pricing. These details shall be submitted with
793 the written bids and become part of the bid evaluation criteria.
794 Bids may be submitted by facsimile, electronic mail or other
795 generally accepted method of information distribution. Bids
796 submitted by electronic transmission shall not require the
797 signature of the vendor's representative unless required by
798 agencies or governing authorities.

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

800 (i) **Publication requirement.**

801 1. Purchases which involve an expenditure of
802 more than Fifty Thousand Dollars (\$50,000.00), exclusive of
803 freight and shipping charges, may be made from the lowest and best
804 bidder after advertising for competitive bids once each week for
805 two (2) consecutive weeks in a regular newspaper published in the
806 county or municipality in which such agency or governing authority
807 is located. However, all American Recovery and Reinvestment Act
808 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)



shall be bid. All references to American Recovery and Reinvestment Act projects in this section shall not apply to programs identified in Division B of the American Recovery and Reinvestment Act.

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



834 3. The date as published for the bid opening
835 shall not be less than seven (7) working days after the last
836 published notice; however, if the purchase involves a construction
837 project in which the estimated cost is in excess of Fifty Thousand
838 Dollars (\$50,000.00), such bids shall not be opened in less than
839 fifteen (15) working days after the last notice is published and
840 the notice for the purchase of such construction shall be
841 published once each week for two (2) consecutive weeks. However,
842 all American Recovery and Reinvestment Act projects in excess of
843 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
844 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
845 under the American Recovery and Reinvestment Act, publication
846 shall be made one (1) time and the bid opening for construction
847 projects shall not be less than ten (10) working days after the
848 date of the published notice. The notice of intention to let
849 contracts or purchase equipment shall state the time and place at
850 which bids shall be received, list the contracts to be made or
851 types of equipment or supplies to be purchased, and, if all plans
852 and/or specifications are not published, refer to the plans and/or
853 specifications on file. If there is no newspaper published in the
854 county or municipality, then such notice shall be given by posting
855 same at the courthouse, or for municipalities at the city hall,
856 and at two (2) other public places in the county or municipality,
857 and also by publication once each week for two (2) consecutive
858 weeks in some newspaper having a general circulation in the county



or municipality in the above-provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to, or provide electronic notification to the main office of the Mississippi Procurement Technical Assistance Program under the Mississippi Development Authority that contains the same information as that in the published notice. Submissions received by the Mississippi Procurement Technical Assistance Program for projects funded by the American Recovery and Reinvestment Act shall be displayed on a separate and unique Internet web page accessible to the public and maintained by the Mississippi Development Authority for the Mississippi Procurement Technical Assistance Program. Those American Recovery and Reinvestment Act related submissions shall be publicly posted within twenty-four (24) hours of receipt by the Mississippi Development Authority and the bid opening shall not occur until the submission has been posted for ten (10) consecutive days. The Department of Finance and Administration shall maintain information regarding contracts and other expenditures from the American Recovery and Reinvestment Act, on a unique Internet web page accessible to the public. The Department of Finance and Administration shall promulgate rules regarding format, content and deadlines, unless otherwise specified by law, of the posting of award notices, contract execution and subsequent amendments, links to the contract documents, expenditures against the awarded contracts and general



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

(ii) **Bidding process amendment procedure.** If all plans and/or specifications are published in the notification, then the plans and/or specifications may not be amended. If all plans and/or specifications are not published in the notification, then amendments to the plans/specifications, bid opening date, bid opening time and place may be made, provided that the agency or governing authority maintains a list of all prospective bidders who are known to have received a copy of the bid documents and all such prospective bidders are sent copies of all amendments. This



909 notification of amendments may be made via mail, facsimile,
910 electronic mail or other generally accepted method of information
911 distribution. No addendum to bid specifications may be issued
912 within two (2) working days of the time established for the
913 receipt of bids unless such addendum also amends the bid opening
914 to a date not less than five (5) working days after the date of
915 the addendum.

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

925 (iv) **Specification restrictions.**

926 1. Specifications pertinent to such bidding
927 shall be written so as not to exclude comparable equipment of
928 domestic manufacture. However, if valid justification is
929 presented, the Department of Finance and Administration or the
930 board of a governing authority may approve a request for specific
931 equipment necessary to perform a specific job. Further, such
932 justification, when placed on the minutes of the board of a
933 governing authority, may serve as authority for that governing



934 authority to write specifications to require a specific item of
935 equipment needed to perform a specific job. In addition to these
936 requirements, from and after July 1, 1990, vendors of relocatable
937 classrooms and the specifications for the purchase of such
938 relocatable classrooms published by local school boards shall meet
939 all pertinent regulations of the State Board of Education,
940 including prior approval of such bid by the State Department of
941 Education.

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

950 (v) **Electronic bids.** Agencies and governing
951 authorities shall provide a secure electronic interactive system
952 for the submittal of bids requiring competitive bidding that shall
953 be an additional bidding option for those bidders who choose to
954 submit their bids electronically. The Department of Finance and
955 Administration shall provide, by regulation, the standards that
956 agencies must follow when receiving electronic bids. Agencies and
957 governing authorities shall make the appropriate provisions
958 necessary to accept electronic bids from those bidders who choose



to submit their bids electronically for all purchases requiring competitive bidding under this section. Any special condition or requirement for the electronic bid submission shall be specified in the advertisement for bids required by this section. Agencies or governing authorities that are currently without available high speed Internet access shall be exempt from the requirement of this subparagraph (v) until such time that high speed Internet access becomes available. Any county having a population of less than twenty thousand (20,000) shall be exempt from the provisions of this subparagraph (v). Any municipality having a population of less than ten thousand (10,000) shall be exempt from the provisions of this subparagraph (v). The provisions of this subparagraph (v) shall not require any bidder to submit bids electronically. When construction bids are submitted electronically, the requirement for including a certificate of responsibility, or a statement that the bid enclosed does not exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the bid envelope as indicated in Section 31-3-21(1) and (2) shall be deemed in compliance with by including same as an attachment with the electronic bid submittal.

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

(i) **Decision procedure.** Purchases may be made from the lowest and best bidder. In determining the lowest and best bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed



buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

(ii) **Decision procedure for Certified Purchasing Offices.** In addition to the decision procedure set forth in subparagraph (i) of this paragraph (d), Certified Purchasing Offices may also use the following procedure: Purchases may be made from the bidder offering the best value. In determining the best value bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions, documented previous experience, training costs and other relevant provisions, including, but not limited to, a bidder having a local office and inventory located within the jurisdiction of the governing authority, may be included in the best value calculation. This provision shall authorize Certified Purchasing Offices to utilize a Request For Proposals (RFP) process when purchasing commodities. All best value



1009 procedures for state agencies must be in compliance with
1010 regulations established by the Department of Finance and
1011 Administration. No agency or governing authority shall accept a
1012 bid based on items or criteria not included in the specifications.

1013 (iii) **Decision procedure for Mississippi**

1014 **Landmarks.** In addition to the decision procedure set forth in
1015 subparagraph (i) of this paragraph (d), where purchase involves
1016 renovation, restoration, or both, of the State Capitol Building or
1017 any other historical building designated for at least five (5)
1018 years as a Mississippi Landmark by the Board of Trustees of the
1019 Department of Archives and History under the authority of Sections
1020 39-7-7 and 39-7-11, the agency or governing authority may use the
1021 following procedure: Purchases may be made from the lowest and
1022 best prequalified bidder. Prequalification of bidders shall be
1023 determined not less than fifteen (15) working days before the
1024 first published notice of bid opening. Prequalification criteria
1025 shall be limited to bidder's knowledge and experience in
1026 historical restoration, preservation and renovation. In
1027 determining the lowest and best bid, freight and shipping charges
1028 shall be included. Life-cycle costing, total cost bids,
1029 warranties, guaranteed buy-back provisions and other relevant
1030 provisions may be included in the best bid calculation. All best
1031 bid and prequalification procedures for state agencies must be in
1032 compliance with regulations established by the Department of
1033 Finance and Administration. If any governing authority accepts a



1034 bid other than the lowest bid actually submitted, it shall place
1035 on its minutes detailed calculations and narrative summary showing
1036 that the accepted bid was determined to be the lowest and best
1037 bid, including the dollar amount of the accepted bid and the
1038 dollar amount of the lowest bid. No agency or governing authority
1039 shall accept a bid based on items not included in the
1040 specifications.

1041 (iv) **Construction project negotiations authority.**

1042 If the lowest and best bid is not more than ten percent (10%)
1043 above the amount of funds allocated for a public construction or
1044 renovation project, then the agency or governing authority shall
1045 be permitted to negotiate with the lowest bidder in order to enter
1046 into a contract for an amount not to exceed the funds allocated.

1047 (e) **Lease-purchase authorization.** For the purposes of
1048 this section, the term "equipment" shall mean equipment, furniture
1049 and, if applicable, associated software and other applicable
1050 direct costs associated with the acquisition. Any lease-purchase
1051 of equipment which an agency is not required to lease-purchase
1052 under the master lease-purchase program pursuant to Section
1053 31-7-10 and any lease-purchase of equipment which a governing
1054 authority elects to lease-purchase may be acquired by a
1055 lease-purchase agreement under this paragraph (e). Lease-purchase
1056 financing may also be obtained from the vendor or from a
1057 third-party source after having solicited and obtained at least
1058 two (2) written competitive bids, as defined in paragraph (b) of



1059 this section, for such financing without advertising for such
1060 bids. Solicitation for the bids for financing may occur before or
1061 after acceptance of bids for the purchase of such equipment or,
1062 where no such bids for purchase are required, at any time before
1063 the purchase thereof. No such lease-purchase agreement shall be
1064 for an annual rate of interest which is greater than the overall
1065 maximum interest rate to maturity on general obligation
1066 indebtedness permitted under Section 75-17-101, and the term of
1067 such lease-purchase agreement shall not exceed the useful life of
1068 equipment covered thereby as determined according to the upper
1069 limit of the asset depreciation range (ADR) guidelines for the
1070 Class Life Asset Depreciation Range System established by the
1071 Internal Revenue Service pursuant to the United States Internal
1072 Revenue Code and regulations thereunder as in effect on December
1073 31, 1980, or comparable depreciation guidelines with respect to
1074 any equipment not covered by ADR guidelines. Any lease-purchase
1075 agreement entered into pursuant to this paragraph (e) may contain
1076 any of the terms and conditions which a master lease-purchase
1077 agreement may contain under the provisions of Section 31-7-10(5),
1078 and shall contain an annual allocation dependency clause
1079 substantially similar to that set forth in Section 31-7-10(8).
1080 Each agency or governing authority entering into a lease-purchase
1081 transaction pursuant to this paragraph (e) shall maintain with
1082 respect to each such lease-purchase transaction the same
1083 information as required to be maintained by the Department of



1084 Finance and Administration pursuant to Section 31-7-10(13).
1085 However, nothing contained in this section shall be construed to
1086 permit agencies to acquire items of equipment with a total
1087 acquisition cost in the aggregate of less than Ten Thousand
1088 Dollars (\$10,000.00) by a single lease-purchase transaction. All
1089 equipment, and the purchase thereof by any lessor, acquired by
1090 lease-purchase under this paragraph and all lease-purchase
1091 payments with respect thereto shall be exempt from all Mississippi
1092 sales, use and ad valorem taxes. Interest paid on any
1093 lease-purchase agreement under this section shall be exempt from
1094 State of Mississippi income taxation.

1095 (f) **Alternate bid authorization.** When necessary to
1096 ensure ready availability of commodities for public works and the
1097 timely completion of public projects, no more than two (2)
1098 alternate bids may be accepted by a governing authority for
1099 commodities. No purchases may be made through use of such
1100 alternate bids procedure unless the lowest and best bidder cannot
1101 deliver the commodities contained in his bid. In that event,
1102 purchases of such commodities may be made from one (1) of the
1103 bidders whose bid was accepted as an alternate.

1104 (g) **Construction contract change authorization.** In the
1105 event a determination is made by an agency or governing authority
1106 after a construction contract is let that changes or modifications
1107 to the original contract are necessary or would better serve the
1108 purpose of the agency or the governing authority, such agency or



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

1124 (h) **Petroleum purchase alternative.** In addition to
1125 other methods of purchasing authorized in this chapter, when any
1126 agency or governing authority shall have a need for gas, diesel
1127 fuel, oils and/or other petroleum products in excess of the amount
1128 set forth in paragraph (a) of this section, such agency or
1129 governing authority may purchase the commodity after having
1130 solicited and obtained at least two (2) competitive written bids,
1131 as defined in paragraph (b) of this section. If two (2)
1132 competitive written bids are not obtained, the entity shall comply
1133 with the procedures set forth in paragraph (c) of this section.



1134 In the event any agency or governing authority shall have
1135 advertised for bids for the purchase of gas, diesel fuel, oils and
1136 other petroleum products and coal and no acceptable bids can be
1137 obtained, such agency or governing authority is authorized and
1138 directed to enter into any negotiations necessary to secure the
1139 lowest and best contract available for the purchase of such
1140 commodities.

1141 (i) **Road construction petroleum products price**
1142 **adjustment clause authorization.** Any agency or governing
1143 authority authorized to enter into contracts for the construction,
1144 maintenance, surfacing or repair of highways, roads or streets,
1145 may include in its bid proposal and contract documents a price
1146 adjustment clause with relation to the cost to the contractor,
1147 including taxes, based upon an industry-wide cost index, of
1148 petroleum products including asphalt used in the performance or
1149 execution of the contract or in the production or manufacture of
1150 materials for use in such performance. Such industry-wide index
1151 shall be established and published monthly by the Mississippi
1152 Department of Transportation with a copy thereof to be mailed,
1153 upon request, to the clerks of the governing authority of each
1154 municipality and the clerks of each board of supervisors
1155 throughout the state. The price adjustment clause shall be based
1156 on the cost of such petroleum products only and shall not include
1157 any additional profit or overhead as part of the adjustment. The
1158 bid proposals or document contract shall contain the basis and



1159 methods of adjusting unit prices for the change in the cost of
1160 such petroleum products.

1161 (j) **State agency emergency purchase procedure.** If the
1162 governing board or the executive head, or his designees, of any
1163 agency of the state shall determine that an emergency exists in
1164 regard to the purchase of any commodities or repair contracts, so
1165 that the delay incident to giving opportunity for competitive
1166 bidding would be detrimental to the interests of the state, then
1167 the head of such agency, or his designees, shall file with the
1168 Department of Finance and Administration (i) a statement
1169 explaining the conditions and circumstances of the emergency,
1170 which shall include a detailed description of the events leading
1171 up to the situation and the negative impact to the entity if the
1172 purchase is made following the statutory requirements set forth in
1173 paragraph (a), (b) or (c) of this section, and (ii) a certified
1174 copy of the appropriate minutes of the board of such agency
1175 requesting the emergency purchase, if applicable. Upon receipt of
1176 the statement and applicable board certification, the State Fiscal
1177 Officer, or his designees, may, in writing, authorize the purchase
1178 or repair without having to comply with competitive bidding
1179 requirements.

1180 If the governing board or the executive head, or his
1181 designees, of any agency determines that an emergency exists in
1182 regard to the purchase of any commodities or repair contracts, so
1183 that the delay incident to giving opportunity for competitive



1184 bidding would threaten the health or safety of any person, or the
1185 preservation or protection of property, then the provisions in
1186 this section for competitive bidding shall not apply, and any
1187 officer or agent of the agency having general or specific
1188 authority for making the purchase or repair contract shall approve
1189 the bill presented for payment, and he shall certify in writing
1190 from whom the purchase was made, or with whom the repair contract
1191 was made.

1192 Total purchases made under this paragraph (j) shall only be
1193 for the purpose of meeting needs created by the emergency
1194 situation. Following the emergency purchase, documentation of the
1195 purchase, including a description of the commodity purchased, the
1196 purchase price thereof and the nature of the emergency shall be
1197 filed with the Department of Finance and Administration. Any
1198 contract awarded pursuant to this paragraph (j) shall not exceed a
1199 term of one (1) year.

1200 (k) **Governing authority emergency purchase procedure.**

1201 If the governing authority, or the governing authority acting
1202 through its designee, shall determine that an emergency exists in
1203 regard to the purchase of any commodities or repair contracts, so
1204 that the delay incident to giving opportunity for competitive
1205 bidding would be detrimental to the interest of the governing
1206 authority, then the provisions herein for competitive bidding
1207 shall not apply and any officer or agent of such governing
1208 authority having general or special authority therefor in making



1209 such purchase or repair shall approve the bill presented therefor,
1210 and he shall certify in writing thereon from whom such purchase
1211 was made, or with whom such a repair contract was made. At the
1212 board meeting next following the emergency purchase or repair
1213 contract, documentation of the purchase or repair contract,
1214 including a description of the commodity purchased, the price
1215 thereof and the nature of the emergency shall be presented to the
1216 board and shall be placed on the minutes of the board of such
1217 governing authority.

1218 (1) **Hospital purchase, lease-purchase and lease**
1219 **authorization.**

1220 (i) The commissioners or board of trustees of any
1221 public hospital may contract with such lowest and best bidder for
1222 the purchase or lease-purchase of any commodity under a contract
1223 of purchase or lease-purchase agreement whose obligatory payment
1224 terms do not exceed five (5) years.

1225 (ii) In addition to the authority granted in
1226 subparagraph (i) of this paragraph (1), the commissioners or board
1227 of trustees is authorized to enter into contracts for the lease of
1228 equipment or services, or both, which it considers necessary for
1229 the proper care of patients if, in its opinion, it is not
1230 financially feasible to purchase the necessary equipment or
1231 services. Any such contract for the lease of equipment or
1232 services executed by the commissioners or board shall not exceed a
1233 maximum of five (5) years' duration and shall include a



1234 cancellation clause based on unavailability of funds. If such
1235 cancellation clause is exercised, there shall be no further
1236 liability on the part of the lessee. Any such contract for the
1237 lease of equipment or services executed on behalf of the
1238 commissioners or board that complies with the provisions of this
1239 subparagraph (ii) shall be excepted from the bid requirements set
1240 forth in this section.

1241 (m) **Exceptions from bidding requirements.** Excepted
1242 from bid requirements are:

1243 (i) **Purchasing agreements approved by department.**

1244 Purchasing agreements, contracts and maximum price regulations
1245 executed or approved by the Department of Finance and
1246 Administration.

1247 (ii) **Outside equipment repairs.** Repairs to
1248 equipment, when such repairs are made by repair facilities in the
1249 private sector; however, engines, transmissions, rear axles and/or
1250 other such components shall not be included in this exemption when
1251 replaced as a complete unit instead of being repaired and the need
1252 for such total component replacement is known before disassembly
1253 of the component; however, invoices identifying the equipment,
1254 specific repairs made, parts identified by number and name,
1255 supplies used in such repairs, and the number of hours of labor
1256 and costs therefor shall be required for the payment for such
1257 repairs.



1258 (iii) **In-house equipment repairs.** Purchases of
1259 parts for repairs to equipment, when such repairs are made by
1260 personnel of the agency or governing authority; however, entire
1261 assemblies, such as engines or transmissions, shall not be
1262 included in this exemption when the entire assembly is being
1263 replaced instead of being repaired.

1264 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
1265 of gravel or fill dirt which are to be removed and transported by
1266 the purchaser.

1267 (v) **Governmental equipment auctions.** Motor
1268 vehicles or other equipment purchased from a federal agency or
1269 authority, another governing authority or state agency of the
1270 State of Mississippi, or any governing authority or state agency
1271 of another state at a public auction held for the purpose of
1272 disposing of such vehicles or other equipment. Any purchase by a
1273 governing authority under the exemption authorized by this
1274 subparagraph (v) shall require advance authorization spread upon
1275 the minutes of the governing authority to include the listing of
1276 the item or items authorized to be purchased and the maximum bid
1277 authorized to be paid for each item or items.

1278 (vi) **Intergovernmental sales and transfers.**
1279 Purchases, sales, transfers or trades by governing authorities or
1280 state agencies when such purchases, sales, transfers or trades are
1281 made by a private treaty agreement or through means of
1282 negotiation, from any federal agency or authority, another



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

1298 (vii) **Perishable supplies or food.** Perishable
1299 supplies or food purchased for use in connection with hospitals,
1300 the school lunch programs, homemaking programs and for the feeding
1301 of county or municipal prisoners.

1302 (viii) **Single source items.** Noncompetitive items
1303 available from one (1) source only. In connection with the
1304 purchase of noncompetitive items only available from one (1)
1305 source, a certification of the conditions and circumstances
1306 requiring the purchase shall be filed by the agency with the
1307 Department of Finance and Administration and by the governing



1308 authority with the board of the governing authority. Upon receipt
1309 of that certification the Department of Finance and Administration
1310 or the board of the governing authority, as the case may be, may,
1311 in writing, authorize the purchase, which authority shall be noted
1312 on the minutes of the body at the next regular meeting thereafter.
1313 In those situations, a governing authority is not required to
1314 obtain the approval of the Department of Finance and
1315 Administration. Following the purchase, the executive head of the
1316 state agency, or his designees, shall file with the Department of
1317 Finance and Administration, documentation of the purchase,
1318 including a description of the commodity purchased, the purchase
1319 price thereof and the source from whom it was purchased.

1320 (ix) **Waste disposal facility construction**
1321 **contracts.** Construction of incinerators and other facilities for
1322 disposal of solid wastes in which products either generated
1323 therein, such as steam, or recovered therefrom, such as materials
1324 for recycling, are to be sold or otherwise disposed of; however,
1325 in constructing such facilities, a governing authority or agency
1326 shall publicly issue requests for proposals, advertised for in the
1327 same manner as provided herein for seeking bids for public
1328 construction projects, concerning the design, construction,
1329 ownership, operation and/or maintenance of such facilities,
1330 wherein such requests for proposals when issued shall contain
1331 terms and conditions relating to price, financial responsibility,
1332 technology, environmental compatibility, legal responsibilities



1333 and such other matters as are determined by the governing
1334 authority or agency to be appropriate for inclusion; and after
1335 responses to the request for proposals have been duly received,
1336 the governing authority or agency may select the most qualified
1337 proposal or proposals on the basis of price, technology and other
1338 relevant factors and from such proposals, but not limited to the
1339 terms thereof, negotiate and enter contracts with one or more of
1340 the persons or firms submitting proposals.

1341 (x) **Hospital group purchase contracts.** Supplies,
1342 commodities and equipment purchased by hospitals through group
1343 purchase programs pursuant to Section 31-7-38.

1344 (xi) **Information technology products.** Purchases
1345 of information technology products made by governing authorities
1346 under the provisions of purchase schedules, or contracts executed
1347 or approved by the Mississippi Department of Information
1348 Technology Services and designated for use by governing
1349 authorities.

1350 (xii) **Energy efficiency services and equipment.**
1351 Energy efficiency services and equipment acquired by school
1352 districts, community and junior colleges, institutions of higher
1353 learning and state agencies or other applicable governmental
1354 entities on a shared-savings, lease or lease-purchase basis
1355 pursuant to Section 31-7-14.

1356 (xiii) **Municipal electrical utility system fuel.**
1357 Purchases of coal and/or natural gas by municipally owned electric



1358 power generating systems that have the capacity to use both coal
1359 and natural gas for the generation of electric power.

1360 (xiv) **Library books and other reference materials.**

1361 Purchases by libraries or for libraries of books and periodicals;
1362 processed film, videocassette tapes, filmstrips and slides;
1363 recorded audiotapes, cassettes and diskettes; and any such items
1364 as would be used for teaching, research or other information
1365 distribution; however, equipment such as projectors, recorders,
1366 audio or video equipment, and monitor televisions are not exempt
1367 under this subparagraph.

1368 (xv) **Unmarked vehicles.** Purchases of unmarked
1369 vehicles when such purchases are made in accordance with
1370 purchasing regulations adopted by the Department of Finance and
1371 Administration pursuant to Section 31-7-9(2).

1372 (xvi) **Election ballots.** Purchases of ballots
1373 printed pursuant to Section 23-15-351.

1374 (xvii) **Multichannel interactive video systems.**
1375 From and after July 1, 1990, contracts by Mississippi Authority
1376 for Educational Television with any private educational
1377 institution or private nonprofit organization whose purposes are
1378 educational in regard to the construction, purchase, lease or
1379 lease-purchase of facilities and equipment and the employment of
1380 personnel for providing multichannel interactive video systems
1381 (ITSF) in the school districts of this state.



1382 (xviii) **Purchases of prison industry products by**
1383 **the Department of Corrections, regional correctional facilities or**
1384 **privately owned prisons.** Purchases made by the Mississippi
1385 Department of Corrections, regional correctional facilities or
1386 privately owned prisons involving any item that is manufactured,
1387 processed, grown or produced from the state's prison industries.

1388 (xix) **Undercover operations equipment.** Purchases
1389 of surveillance equipment or any other high-tech equipment to be
1390 used by law enforcement agents in undercover operations, provided
1391 that any such purchase shall be in compliance with regulations
1392 established by the Department of Finance and Administration.

1393 (xx) **Junior college books for rent.** Purchases by
1394 community or junior colleges of textbooks which are obtained for
1395 the purpose of renting such books to students as part of a book
1396 service system.

1397 (xxi) **Certain school district purchases.**
1398 Purchases of commodities made by school districts from vendors
1399 with which any levying authority of the school district, as
1400 defined in Section 37-57-1, has contracted through competitive
1401 bidding procedures for purchases of the same commodities.

1402 (xxii) **Garbage, solid waste and sewage contracts.**
1403 Contracts for garbage collection or disposal, contracts for solid
1404 waste collection or disposal and contracts for sewage collection
1405 or disposal.



1406 (xxiii) **Municipal water tank maintenance**
1407 **contracts.** Professional maintenance program contracts for the
1408 repair or maintenance of municipal water tanks, which provide
1409 professional services needed to maintain municipal water storage
1410 tanks for a fixed annual fee for a duration of two (2) or more
1411 years.

1412 (xxiv) **Purchases of Mississippi Industries for the**
1413 **Blind products.** Purchases made by state agencies or governing
1414 authorities involving any item that is manufactured, processed or
1415 produced by the Mississippi Industries for the Blind.

1416 (xxv) **Purchases of state-adopted textbooks.**
1417 Purchases of state-adopted textbooks by public school districts.

1418 (xxvi) **Certain purchases under the Mississippi**
1419 **Major Economic Impact Act.** Contracts entered into pursuant to the
1420 provisions of Section 57-75-9(2), (3) and (4).

1421 (xxvii) **Used heavy or specialized machinery or**
1422 **equipment for installation of soil and water conservation**
1423 **practices purchased at auction.** Used heavy or specialized
1424 machinery or equipment used for the installation and
1425 implementation of soil and water conservation practices or
1426 measures purchased subject to the restrictions provided in
1427 Sections 69-27-331 through 69-27-341. Any purchase by the State
1428 Soil and Water Conservation Commission under the exemption
1429 authorized by this subparagraph shall require advance
1430 authorization spread upon the minutes of the commission to include



1431 the listing of the item or items authorized to be purchased and
1432 the maximum bid authorized to be paid for each item or items.

1433 (xxviii) **Hospital lease of equipment or services.**

1434 Leases by hospitals of equipment or services if the leases are in
1435 compliance with paragraph (1)(ii).

1436 (xxix) **Purchases made pursuant to qualified**

1437 **cooperative purchasing agreements.** Purchases made by certified
1438 purchasing offices of state agencies or governing authorities
1439 under cooperative purchasing agreements previously approved by the
1440 Office of Purchasing and Travel and established by or for any
1441 municipality, county, parish or state government or the federal
1442 government, provided that the notification to potential
1443 contractors includes a clause that sets forth the availability of
1444 the cooperative purchasing agreement to other governmental
1445 entities. Such purchases shall only be made if the use of the
1446 cooperative purchasing agreements is determined to be in the best
1447 interest of the governmental entity.

1448 (xxx) **School yearbooks.** Purchases of school

1449 yearbooks by state agencies or governing authorities; provided,
1450 however, that state agencies and governing authorities shall use
1451 for these purchases the RFP process as set forth in the
1452 Mississippi Procurement Manual adopted by the Office of Purchasing
1453 and Travel.



1454 (xxxi) **Design-build method and dual-phase**
1455 **design-build method of contracting.** Contracts entered into under
1456 the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

1457 (xxxii) **Toll roads and bridge construction**
1458 **projects.** Contracts entered into under the provisions of Section
1459 65-43-1 or 65-43-3.

1460 (xxxiii) **Certain purchases under Section 57-1-221.**
1461 Contracts entered into pursuant to the provisions of Section
1462 57-1-221.

1463 (xxxiv) **Certain transfers made pursuant to the**
1464 **provisions of Section 57-105-1(7).** Transfers of public property
1465 or facilities under Section 57-105-1(7) and construction related
1466 to such public property or facilities.

1467 (xxxv) **Certain purchases or transfers entered into**
1468 **with local electrical power associations.** Contracts or agreements
1469 entered into under the provisions of Section 55-3-33.

1470 (xxxvi) **Certain purchases by an academic medical**
1471 **center or health sciences school.** Purchases by an academic
1472 medical center or health sciences school, as defined in Section
1473 37-115-50, of commodities that are used for clinical purposes and
1474 1. intended for use in the diagnosis of disease or other
1475 conditions or in the cure, mitigation, treatment or prevention of
1476 disease, and 2. medical devices, biological, drugs and
1477 radiation-emitting devices as defined by the United States Food
1478 and Drug Administration.



1479 (xxxvii) **Certain purchases made under the Alyce G.**
1480 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi
1481 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
1482 Lottery Law.

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

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

1488 (i) All contracts for the purchase of commodities,
1489 equipment and public construction (including, but not limited to,
1490 repair and maintenance), may be let for periods of not more than
1491 sixty (60) months in advance, subject to applicable statutory
1492 provisions prohibiting the letting of contracts during specified
1493 periods near the end of terms of office. Term contracts for a
1494 period exceeding twenty-four (24) months shall also be subject to
1495 ratification or cancellation by governing authority boards taking
1496 office subsequent to the governing authority board entering the
1497 contract.

1498 (ii) Bid proposals and contracts may include price
1499 adjustment clauses with relation to the cost to the contractor
1500 based upon a nationally published industry-wide or nationally
1501 published and recognized cost index. The cost index used in a
1502 price adjustment clause shall be determined by the Department of
1503 Finance and Administration for the state agencies and by the



1504 governing board for governing authorities. The bid proposal and
1505 contract documents utilizing a price adjustment clause shall
1506 contain the basis and method of adjusting unit prices for the
1507 change in the cost of such commodities, equipment and public
1508 construction.

1509 (o) **Purchase law violation prohibition and vendor**
1510 **penalty.** No contract or purchase as herein authorized shall be
1511 made for the purpose of circumventing the provisions of this
1512 section requiring competitive bids, nor shall it be lawful for any
1513 person or concern to submit individual invoices for amounts within
1514 those authorized for a contract or purchase where the actual value
1515 of the contract or commodity purchased exceeds the authorized
1516 amount and the invoices therefor are split so as to appear to be
1517 authorized as purchases for which competitive bids are not
1518 required. Submission of such invoices shall constitute a
1519 misdemeanor punishable by a fine of not less than Five Hundred
1520 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1521 or by imprisonment for thirty (30) days in the county jail, or
1522 both such fine and imprisonment. In addition, the claim or claims
1523 submitted shall be forfeited.

1524 (p) **Electrical utility petroleum-based equipment**
1525 **purchase procedure.** When in response to a proper advertisement
1526 therefor, no bid firm as to price is submitted to an electric
1527 utility for power transformers, distribution transformers, power
1528 breakers, reclosers or other articles containing a petroleum



1529 product, the electric utility may accept the lowest and best bid
1530 therefor although the price is not firm.

1531 (q) **Fuel management system bidding procedure.** Any
1532 governing authority or agency of the state shall, before
1533 contracting for the services and products of a fuel management or
1534 fuel access system, enter into negotiations with not fewer than
1535 two (2) sellers of fuel management or fuel access systems for
1536 competitive written bids to provide the services and products for
1537 the systems. In the event that the governing authority or agency
1538 cannot locate two (2) sellers of such systems or cannot obtain
1539 bids from two (2) sellers of such systems, it shall show proof
1540 that it made a diligent, good-faith effort to locate and negotiate
1541 with two (2) sellers of such systems. Such proof shall include,
1542 but not be limited to, publications of a request for proposals and
1543 letters soliciting negotiations and bids. For purposes of this
1544 paragraph (q), a fuel management or fuel access system is an
1545 automated system of acquiring fuel for vehicles as well as
1546 management reports detailing fuel use by vehicles and drivers, and
1547 the term "competitive written bid" shall have the meaning as
1548 defined in paragraph (b) of this section. Governing authorities
1549 and agencies shall be exempt from this process when contracting
1550 for the services and products of fuel management or fuel access
1551 systems under the terms of a state contract established by the
1552 Office of Purchasing and Travel.



1553 (r) **Solid waste contract proposal procedure.** Before
1554 entering into any contract for garbage collection or disposal,
1555 contract for solid waste collection or disposal or contract for
1556 sewage collection or disposal, which involves an expenditure of
1557 more than Fifty Thousand Dollars (\$50,000.00), a governing
1558 authority or agency shall issue publicly a request for proposals
1559 concerning the specifications for such services which shall be
1560 advertised for in the same manner as provided in this section for
1561 seeking bids for purchases which involve an expenditure of more
1562 than the amount provided in paragraph (c) of this section. Any
1563 request for proposals when issued shall contain terms and
1564 conditions relating to price, financial responsibility,
1565 technology, legal responsibilities and other relevant factors as
1566 are determined by the governing authority or agency to be
1567 appropriate for inclusion; all factors determined relevant by the
1568 governing authority or agency or required by this paragraph (r)
1569 shall be duly included in the advertisement to elicit proposals.
1570 After responses to the request for proposals have been duly
1571 received, the governing authority or agency shall select the most
1572 qualified proposal or proposals on the basis of price, technology
1573 and other relevant factors and from such proposals, but not
1574 limited to the terms thereof, negotiate and enter into contracts
1575 with one or more of the persons or firms submitting proposals. If
1576 the governing authority or agency deems none of the proposals to
1577 be qualified or otherwise acceptable, the request for proposals



1578 process may be reinitiated. Notwithstanding any other provisions
1579 of this paragraph, where a county with at least thirty-five
1580 thousand (35,000) nor more than forty thousand (40,000)
1581 population, according to the 1990 federal decennial census, owns
1582 or operates a solid waste landfill, the governing authorities of
1583 any other county or municipality may contract with the governing
1584 authorities of the county owning or operating the landfill,
1585 pursuant to a resolution duly adopted and spread upon the minutes
1586 of each governing authority involved, for garbage or solid waste
1587 collection or disposal services through contract negotiations.

1588 (s) **Minority set-aside authorization.** Notwithstanding
1589 any provision of this section to the contrary, any agency or
1590 governing authority, by order placed on its minutes, may, in its
1591 discretion, set aside not more than twenty percent (20%) of its
1592 anticipated annual expenditures for the purchase of commodities
1593 from minority businesses; however, all such set-aside purchases
1594 shall comply with all purchasing regulations promulgated by the
1595 Department of Finance and Administration and shall be subject to
1596 bid requirements under this section. Set-aside purchases for
1597 which competitive bids are required shall be made from the lowest
1598 and best minority business bidder. For the purposes of this
1599 paragraph, the term "minority business" means a business which is
1600 owned by a majority of persons who are United States citizens or
1601 permanent resident aliens (as defined by the Immigration and
1602 Naturalization Service) of the United States, and who are Asian,



1603 Black, Hispanic or Native American, according to the following
1604 definitions:

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

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

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

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

1616 (t) **Construction punch list restriction.** The
1617 architect, engineer or other representative designated by the
1618 agency or governing authority that is contracting for public
1619 construction or renovation may prepare and submit to the
1620 contractor only one (1) preliminary punch list of items that do
1621 not meet the contract requirements at the time of substantial
1622 completion and one (1) final list immediately before final
1623 completion and final payment.

1624 (u) **Procurement of construction services by state**
1625 **institutions of higher learning.** Contracts for privately financed
1626 construction of auxiliary facilities on the campus of a state
1627 institution of higher learning may be awarded by the Board of



1628 Trustees of State Institutions of Higher Learning to the lowest
1629 and best bidder, where sealed bids are solicited, or to the
1630 offeror whose proposal is determined to represent the best value
1631 to the citizens of the State of Mississippi, where requests for
1632 proposals are solicited.

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

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

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

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



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

1669 (b) "Governing authority" means boards of supervisors,
1670 governing boards of all school districts, all boards of directors
1671 of public water supply districts, boards of directors of master
1672 public water supply districts, municipal public utility
1673 commissions, governing authorities of all municipalities, port
1674 authorities, Mississippi State Port Authority, commissioners and
1675 boards of trustees of any public hospitals, boards of trustees of
1676 public library systems, district attorneys, school attendance



1677 officers and any political subdivision of the state supported
1678 wholly or in part by public funds of the state or political
1679 subdivisions thereof, including commissions, boards and agencies
1680 created or operated under the authority of any county or
1681 municipality of this state. The term "governing authority" shall
1682 not include economic development authorities supported in part by
1683 private funds, or commissions appointed to hold title to and
1684 oversee the development and management of lands and buildings
1685 which are donated by private individuals to the public for the use
1686 and benefit of the community and which are supported in part by
1687 private funds. The term "governing authority" also shall not
1688 include the governing board of a charter school.

1689 (c) "Purchasing agent" means any administrator,
1690 superintendent, purchase clerk or other chief officer so
1691 designated having general or special authority to negotiate for
1692 and make private contract for or purchase for any governing
1693 authority or agency, including issue purchase orders, invitations
1694 for bid, requests for proposals, and receive and accept bids.

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

1698 (e) "Commodities" means and includes the various
1699 commodities, goods, merchandise, furniture, equipment, automotive
1700 equipment of every kind, and other personal property purchased by
1701 the agencies of the state and governing authorities, but not



1702 commodities purchased for resale or raw materials converted into
1703 products for resale.

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

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

1712 (f) "Emergency" means any circumstances caused by fire,
1713 flood, explosion, storm, earthquake, epidemic, riot, insurrection
1714 or caused by any inherent defect due to defective construction, or
1715 when the immediate preservation of order or of public health is
1716 necessary by reason of unforeseen emergency, or when the immediate
1717 restoration of a condition of usefulness of any public building,
1718 equipment, road or bridge appears advisable, or in the case of a
1719 public utility when there is a failure of any machine or other
1720 thing used and useful in the generation, production or
1721 distribution of electricity, water or natural gas, or in the
1722 transportation or treatment of sewage; or when the delay incident
1723 to obtaining competitive bids could cause adverse impact upon the
1724 governing authorities or agency, its employees or its citizens; or
1725 in the case of a public airport, when the delay incident to
1726 publishing an advertisement for competitive bids would endanger



1727 public safety in a specific (not general) manner, result in or
1728 perpetuate a specific breach of airport security, or prevent the
1729 airport from providing specific air transportation services.

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

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

1738 (i) "Certified purchasing office" means any purchasing
1739 office in which fifty percent (50%) or more of the purchasing
1740 agents hold a certification from the Universal Public Purchasing
1741 Certification Council or other nationally recognized purchasing
1742 certification, and in which, in the case of a state agency
1743 purchasing office, in addition to the national certification, one
1744 hundred percent (100%) of the purchasing officials hold a
1745 certification from the State of Mississippi's Basic or Advanced
1746 Purchasing Certification Program.

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



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

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

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

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

1775 (b) The advertisement shall be inserted twice, being
1776 once a week for two (2) successive weeks in a newspaper published



1777 at the seat of government in Jackson, Mississippi, having a
1778 general circulation throughout the state, and no letting shall be
1779 less than fourteen (14) days nor more than sixty (60) days after
1780 the publication of the first notice of such letting, and notices
1781 of such letting may be placed in a metropolitan paper or national
1782 trade publication.

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

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

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



1801 faithful performance of the contract according to plans and
1802 specifications on file.

1803 (f) Bonds shall be required of the successful bidder in
1804 an amount equal to the contract price. The contract price shall
1805 mean the entire cost of the particular contract let. In the event
1806 change orders are made after the execution of a contract which
1807 results in increasing the total contract price, additional bond in
1808 the amount of the increased cost may be required. The surety or
1809 sureties on such bonds shall be a surety company or surety
1810 companies authorized to do business in the State of Mississippi,
1811 all bonds to be payable to the State of Mississippi and to be
1812 conditioned for the prompt, faithful and efficient performance of
1813 the contract according to plans and specifications, and for the
1814 prompt payment of all persons furnishing labor, material,
1815 equipment and supplies therefor. Such bonds shall be subject to
1816 the additional obligation that the principal and surety or
1817 sureties executing the same shall be liable to the state in a
1818 civil action instituted by the state at the instance of the
1819 commission or any officer of the state authorized in such cases,
1820 for double any amount in money or property the state may lose or
1821 be overcharged or otherwise defrauded of by reason of any wrongful
1822 or criminal act, if any, of the contractor, his agent or
1823 employees.

1824 (2) With respect to equipment used in the construction,
1825 reconstruction or other public work authorized to be done under



the provisions of this chapter: the word "equipment," in addition to all equipment incorporated into or fully consumed in connection with such project, shall include the reasonable value of the use of all equipment of every kind and character and all accessories and attachments thereto which are reasonably necessary to be used and which are used in carrying out the performance of the contract, and the reasonable value of the use thereof, during the period of time the same are used in carrying out the performance of the contract, shall be the amount as agreed upon by the persons furnishing the equipment and those using the same to be paid therefor, which amount, however, shall not be in excess of the maximum current rates and charges allowable for leasing or renting as specified in Section 65-7-95; the word "labor" shall include all work performed in repairing equipment used in carrying out the performance of the contract, which repair labor is reasonably necessary to the efficient operation of said equipment; and the words "materials" and "supplies" shall include all repair parts installed in or on equipment used in carrying out the performance of the contract, which repair parts are reasonably necessary to the efficient operation of said equipment.

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

(4) The commission may require the prequalification of any and all bidders and the failure to comply with prequalification



1851 requirements may be the basis for the rejection of any bid by the
1852 commission. The commission may require the prequalification of
1853 any and all subcontractors before they are approved to participate
1854 in any contract awarded under this section.

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

1863 (6) Any contract for construction or paving of any highway
1864 may be entered into for any cost which does not exceed the amount
1865 of funds that may be made available therefor through bond issues
1866 or from other sources of revenue, and the letting of contracts for
1867 such construction or paving shall not necessarily be delayed until
1868 the funds are actually on hand, provided authorization for the
1869 issuance of necessary bonds has been granted by law to supplement
1870 other anticipated revenue, or when the department certifies to the
1871 Department of Finance and Administration and the Legislative
1872 Budget Office that projected receipts of funds by the department
1873 will be sufficient to pay such contracts as they become due and
1874 the Department of Finance and Administration determines that the
1875 projections are reasonable and receipts will be sufficient to pay



1876 the contracts as they become due. The Department of Finance and
1877 Administration shall spread such determination on its minutes
1878 prior to the letting of any contracts based on projected receipts.
1879 Nothing in this subsection shall prohibit the issuance of bonds,
1880 which have been authorized, at any time in the discretion of the
1881 State Bond Commission, nor to prevent investment of surplus funds
1882 in United States government bonds or State of Mississippi bonds as
1883 presently authorized by Section 12, Chapter 312, Laws of 1956.

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

1888 (8) The commission shall not empower or authorize the
1889 executive director, or any one or more of its members, or any
1890 engineer or other person to let or make contracts for the
1891 construction or repair of public roads, or building bridges, or
1892 for the purchase of material, equipment or supplies contrary to
1893 the provisions of this chapter as set forth in this section,
1894 except in cases of flood or other cases of emergency where the
1895 public interest requires that the work be done or the materials,
1896 equipment or supplies be purchased without the delay incident to
1897 advertising for competitive bids. Such emergency contracts may be
1898 made without advertisement under such rules and regulations as the
1899 commission may prescribe.



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

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

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

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

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

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



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

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

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

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

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

(iii) The accountability systems the Transportation Department established to monitor any design-build



1949 project's compliance with specific goals and objectives for the
1950 project;

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

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

1960 (e) All contracts let under the provisions of this
1961 subsection shall be subject to oversight and review by the State
1962 Auditor. The State Auditor shall file a report with the
1963 Legislature on or before January 1 of each year detailing his
1964 findings with regard to any contract let or project performed in
1965 violation of the provisions of this subsection. The actual and
1966 necessary expenses incurred by the State Auditor in complying with
1967 this paragraph (e) shall be paid for and reimbursed by the
1968 Mississippi Department of Transportation out of funds made
1969 available for the contract or contracts let and project or
1970 projects performed.

1971 (12) The provisions of this section shall not be construed
1972 to prohibit the commission from awarding or entering into
1973 contracts for the design, construction and financing of toll



1974 roads, highways and bridge projects as provided under Sections
1975 65-43-1 and 65-43-3.

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

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

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

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

1985 (b) All property, real or personal, belonging to the
1986 State of Mississippi or any of its political subdivisions, except
1987 property of a municipality not being used for a proper municipal
1988 purpose and located outside the county or counties in which such
1989 municipality is located. A proper municipal purpose within the
1990 meaning of this section shall be any authorized governmental or
1991 corporate function of a municipality.

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

1997 (d) All property, real or personal, belonging to any
1998 religious society, or ecclesiastical body, or any congregation



1999 thereof, or to any charitable society, or to any historical or
2000 patriotic association or society, or to any garden or pilgrimage
2001 club or association and used exclusively for such society or
2002 association and not for profit; not exceeding, however, the amount
2003 of land which such association or society may own as provided in
2004 Section 79-11-33. All property, real or personal, belonging to
2005 any rural waterworks system or rural sewage disposal system
2006 incorporated under the provisions of Section 79-11-1. All
2007 property, real or personal, belonging to any college or
2008 institution for the education of youths, used directly and
2009 exclusively for such purposes, provided that no such college or
2010 institution for the education of youths shall have exempt from
2011 taxation more than six hundred forty (640) acres of land;
2012 provided, however, this exemption shall not apply to commercial
2013 schools and colleges or trade institutions or schools where the
2014 profits of same inure to individuals, associations or
2015 corporations. All property, real or personal, belonging to an
2016 individual, institution or corporation and used for the operation
2017 of a grammar school, junior high school, high school or military
2018 school. All property, real or personal, owned and occupied by a
2019 fraternal and benevolent organization, when used by such
2020 organization, and from which no rentals or other profits accrue to
2021 the organization, but any part rented or from which revenue is
2022 received shall be taxed.



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

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

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

2041 (h) Provisions on hand for family consumption.

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



2048 soybeans, oats, rice and wheat for one (1) year regardless of
2049 ownership.

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

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

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

2057 (m) All cattle and oxen.

2058 (n) All sheep, goats and hogs.

2059 (o) All horses, mules and asses.

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

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

2065 (r) The libraries of all persons.

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

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

2070 (u) All state, county, municipal, levee, drainage and
2071 all school bonds or other governmental obligations, and all bonds
2072 and/or evidences of debts issued by any church or church



2073 organization in this state, and all notes and evidences of
2074 indebtedness which bear a rate of interest not greater than the
2075 maximum rate per annum applicable under the law; and all money
2076 loaned at a rate of interest not exceeding the maximum rate per
2077 annum applicable under the law; and all stock in or bonds of
2078 foreign corporations or associations shall be exempt from all ad
2079 valorem taxes.

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

2139 (bb) All growing nursery stock.

2140 (cc) A semitrailer used in interstate commerce.

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



2147 confirmed by a religious society or ecclesiastical body or any
2148 congregation thereof.

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

2155 (ff) All property, real or personal, owned by a
2156 nonprofit organization that: (i) is qualified as tax exempt under
2157 Section 501(c)(4) of the Internal Revenue Code of 1986, as
2158 amended; (ii) assists in the implementation of the national
2159 contingency plan or area contingency plan, and which is created in
2160 response to the requirements of Title IV, Subtitle B of the Oil
2161 Pollution Act of 1990, Public Law 101-380; (iii) engages primarily
2162 in programs to contain, clean up and otherwise mitigate spills of
2163 oil or other substances occurring in the United States coastal or
2164 tidal waters; and (iv) is used for the purposes of the
2165 organization.

2166 (gg) If a municipality changes its boundaries so as to
2167 include within the boundaries of such municipality the project
2168 site of any project as defined in Section 57-75-5(f)(iv)1, Section
2169 57-75-5(f)(xxi) or Section 57-75-5(f)(xxviii) or Section
2170 57-75-5(f)(xxix), all real and personal property located on the
2171 project site within the boundaries of such municipality that is



2172 owned by a business enterprise operating such project, shall be
2173 exempt from ad valorem taxation for a period of time not to exceed
2174 thirty (30) years upon receiving approval for such exemption by
2175 the Mississippi Major Economic Impact Authority. The provisions
2176 of this paragraph shall not be construed to authorize a breach of
2177 any agreement entered into pursuant to Section 21-1-59.

2178 (hh) All leases, lease contracts or lease agreements
2179 (including, but not limited to, subleases, sublease contracts and
2180 sublease agreements), and leaseholds or leasehold interests
2181 (including, but not limited to, subleaseholds and subleasehold
2182 interests), of or with respect to any and all property (real,
2183 personal or mixed) constituting all or any part of a facility for
2184 the manufacture, production, generation, transmission and/or
2185 distribution of electricity, and any real property related
2186 thereto, shall be exempt from ad valorem taxation during the
2187 period as the United States is both the title owner of the
2188 property and a sublessee of or with respect to the property;
2189 however, the exemption authorized by this paragraph (hh) shall not
2190 apply to any entity to whom the United States sub-subleases its
2191 interest in the property nor to any entity to whom the United
2192 States assigns its sublease interest in the property. As used in
2193 this paragraph, the term "United States" includes an agency or
2194 instrumentality of the United States of America. This paragraph
2195 (hh) shall apply to all assessments for ad valorem taxation for
2196 the 2003 calendar year and each calendar year thereafter.



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

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

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



2221 (11) Equipment brought into the state temporarily for
2222 use during a disaster response period as provided in Sections
2223 27-113-1 through 27-113-9 and subsequently removed from the state
2224 on or before the end of the disaster response period as defined in
2225 Section 27-113-5.

2226 (mm) For any lease or contractual arrangement to which
2227 the Department of Finance and Administration and a nonprofit
2228 corporation are a party to as provided in Section 39-25-1(5), the
2229 nonprofit corporation shall, along with the possessory and
2230 leasehold interests and/or real and personal property of the
2231 corporation, be exempt from all ad valorem taxation, including,
2232 but not limited to, school, city and county ad valorem taxes, for
2233 the term or period of time stated in the lease or contractual
2234 arrangement.

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

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



2245 this state, or hereafter organized, created or established, under
2246 and by virtue of the laws of the State of Mississippi, equal to:

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

2253 (ii) For tax years beginning on or after January
2254 1, 2018, but before January 1, 2019, Two Dollars and Fifty Cents
2255 (\$2.50) for each One Thousand Dollars (\$1,000.00), or fraction
2256 thereof, in excess of One Hundred Thousand Dollars (\$100,000.00),
2257 of the value of the capital used, invested or employed in the
2258 exercise of any power, privilege or right enjoyed by such
2259 organization within this state, except as hereinafter provided.

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

2268 (iv) For tax years beginning on or after January
2269 1, 2020, but before January 1, 2021, Two Dollars (\$2.00) for each



2270 One Thousand Dollars (\$1,000.00), or fraction thereof, in excess
2271 of One Hundred Thousand Dollars (\$100,000.00), of the value of the
2272 capital used, invested or employed in the exercise of any power,
2273 privilege or right enjoyed by such organization within this state,
2274 except as hereinafter provided.

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

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

2290 (vii) For tax years beginning on or after January
2291 1, 2023, but before January 1, 2024, One Dollar and Twenty-five
2292 Cents (\$1.25) for each One Thousand Dollars (\$1,000.00), or
2293 fraction thereof, in excess of One Hundred Thousand Dollars
2294 (\$100,000.00), of the value of the capital used, invested or



2295 employed in the exercise of any power, privilege or right enjoyed
2296 by such organization within this state, except as hereinafter
2297 provided.

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

2305 (ix) For tax years beginning on or after January
2306 1, 2025, but before January 1, 2026, Seventy-five Cents (75¢) for
2307 each One Thousand Dollars (\$1,000.00), or fraction thereof, in
2308 excess of One Hundred Thousand Dollars (\$100,000.00), of the value
2309 of the capital used, invested or employed in the exercise of any
2310 power, privilege or right enjoyed by such organization within this
2311 state, except as hereinafter provided.

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



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

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

2328 (c) It is the purpose of this section to require the
2329 payment to the State of Mississippi of this tax for the right
2330 granted by the laws of this state to exist as such organization,
2331 and to enjoy, under the protection of the laws of this state, the
2332 powers, rights, privileges and immunities derived from the state
2333 by the form of such existence.

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

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

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



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

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

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

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

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



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

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

2380 (5) A business enterprise operating a project as defined in
2381 Section 57-64-33, in a county that is a member of a regional
2382 economic development alliance created under the Regional Economic
2383 Development Act shall not be subject to the tax levied by this
2384 section on the value of capital used, invested or employed by the
2385 business enterprise in such a county as provided in Section
2386 57-64-33.

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



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

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

2398 27-7-15. (1) For the purposes of this article, except as
2399 otherwise provided, the term "gross income" means and includes the
2400 income of a taxpayer derived from salaries, wages, fees or
2401 compensation for service, of whatever kind and in whatever form
2402 paid, including income from governmental agencies and subdivisions
2403 thereof; or from professions, vocations, trades, businesses,
2404 commerce or sales, or renting or dealing in property, or
2405 reacquired property; also from annuities, interest, rents,
2406 dividends, securities, insurance premiums, reinsurance premiums,
2407 considerations for supplemental insurance contracts, or the
2408 transaction of any business carried on for gain or profit, or
2409 gains, or profits, and income derived from any source whatever and
2410 in whatever form paid. The amount of all such items of income
2411 shall be included in the gross income for the taxable year in
2412 which received by the taxpayer. The amount by which an eligible
2413 employee's salary is reduced pursuant to a salary reduction
2414 agreement authorized under Section 25-17-5 shall be excluded from
2415 the term "gross income" within the meaning of this article.



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

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

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

(i) Prior to January 1, 2001, federal rules, regulations and revenue procedures shall be followed with respect to installment sales except they shall be applied and administered as if H.R. 3594, the Installment Tax Correction Act of 2000 of the 106th Congress, had not been enacted. This provision will generally affect taxpayers, reporting on the accrual method of accounting, entering into installment note agreements on or after December 17, 1999. Any gain or profit resulting from the casual sale of property will be recognized in the year of sale.

(ii) From and after January 1, 2001, federal rules, regulations and revenue procedures shall be followed with respect to installment sales except as provided in this subparagraph (ii). Gain or profit from the casual sale of property shall be recognized in the year of sale. When a taxpayer recognizes gain on the casual sale of property in which the gain is deferred for federal income tax purposes, a taxpayer may elect to defer the payment of tax resulting from the gain as allowed and



2441 to the extent provided under regulations prescribed by the
2442 commissioner. If the payment of the tax is made on a deferred
2443 basis, the tax shall be computed based on the applicable rate for
2444 the income reported in the year the payment is made. Except as
2445 otherwise provided in subparagraph (iii) of this paragraph (b),
2446 deferring the payment of the tax shall not affect the liability
2447 for the tax. If at any time the installment note is sold,
2448 contributed, transferred or disposed of in any manner and for any
2449 purpose by the original note holder, or the original note holder
2450 is merged, liquidated, dissolved or withdrawn from this state,
2451 then all deferred tax payments under this section shall
2452 immediately become due and payable.

2453 (iii) If the selling price of the property is
2454 reduced by any alteration in the terms of an installment note,
2455 including default by the purchaser, the gain to be recognized is
2456 recomputed based on the adjusted selling price in the same manner
2457 as for federal income tax purposes. The tax on this amount, less
2458 the previously paid tax on the recognized gain, is payable over
2459 the period of the remaining installments. If the tax on the
2460 previously recognized gain has been paid in full to this state,
2461 the return on which the payment was made may be amended for this
2462 purpose only. The statute of limitations in Section 27-7-49 shall
2463 not bar an amended return for this purpose.



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

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

2478 (e) **Alimony and separate maintenance payments.** The
2479 federal rules, regulations and revenue procedures in determining
2480 the deductibility and taxability of alimony payments shall be
2481 followed in this state.

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



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

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

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

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

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

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

2509 (e) The amounts received through accident or health
2510 insurance as compensation for personal injuries or sickness, plus
2511 the amount of any damages received for such injuries or such
2512 sickness or injuries, or through the War Risk Insurance Act, or



2513 any law for the benefit or relief of injured or disabled members
2514 of the military or naval forces of the United States.

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

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

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

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



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

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

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



2562 to the spouse or other beneficiary at the death of the primary
2563 retiree.

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

2569 (n) Compensation received for active service as a
2570 member below the grade of commissioned officer and so much of the
2571 compensation as does not exceed the maximum enlisted amount
2572 received for active service as a commissioned officer in the Armed
2573 Forces of the United States for any month during any part of which
2574 such members of the Armed Forces (i) served in a combat zone as
2575 designated by Executive Order of the President of the United
2576 States or a qualified hazardous duty area as defined by federal
2577 law, or both; or (ii) was hospitalized as a result of wounds,
2578 disease or injury incurred while serving in such combat zone. For
2579 the purposes of this paragraph (n), the term "maximum enlisted
2580 amount" means and has the same definition as that term has in 26
2581 USCS 112.

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

2584 (p) The amount representing the difference between the
2585 increase of gross income derived from sales for export outside the
2586 United States as compared to the preceding tax year wherein gross



2587 income from export sales was highest, and the net increase in
2588 expenses attributable to such increased exports. In the absence
2589 of direct accounting, the ratio of net profits to total sales may
2590 be applied to the increase in export sales. This paragraph (p)
2591 shall only apply to businesses located in this state engaging in
2592 the international export of Mississippi goods and services. Such
2593 goods or services shall have at least fifty percent (50%) of value
2594 added at a location in Mississippi.

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

2598 (r) The amount deposited in a medical savings account,
2599 and any interest accrued thereon, that is a part of a medical
2600 savings account program as specified in the Medical Savings
2601 Account Act under Sections 71-9-1 through 71-9-9; provided,
2602 however, that any amount withdrawn from such account for purposes
2603 other than paying eligible medical expense or to procure health
2604 coverage shall be included in gross income.

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

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



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

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

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

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

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

2635 (z) Interest, dividends, gains or income of any kind on
2636 any account in a qualified tuition program and amounts received as



2637 distributions under a qualified tuition program shall be treated
2638 in the same manner as provided under the United States Internal
2639 Revenue Code, as amended. For the purposes of this paragraph (z),
2640 the term "qualified tuition program" means and has the same
2641 definition as that term has in 26 USCS 529.

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

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

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

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

2659 (ee) Amounts received by a qualified individual,
2660 directly or indirectly, from an employer or nonprofit housing
2661 organization that are qualified housing expenses associated with



2662 an employer-assisted housing program. For purposes of this
2663 paragraph (ee):

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

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

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

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

2683 (iv) "Qualified housing expenses" means:

2684 1. With respect to rental assistance, an
2685 amount not to exceed Two Thousand Dollars (\$2,000.00) paid for the



2686 purpose of assisting employees with security deposits and rental
2687 subsidies; and

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

2697 (ff) For the 2010 taxable year and any taxable year
2698 thereafter, amounts converted in accordance with the United States
2699 Internal Revenue Code, as amended, from a traditional Individual
2700 Retirement Account to a Roth Individual Retirement Account. The
2701 exemption allowed under this paragraph (ff) shall be available to
2702 the spouse or other beneficiary at the death of the primary
2703 retiree.

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

2706 (hh) The amount deposited in a catastrophe savings
2707 account established under Sections 27-7-1001 through 27-7-1007,
2708 interest income earned on the catastrophe savings account, and
2709 distributions from the catastrophe savings account; however, any
2710 amount withdrawn from a catastrophe savings account for purposes



2711 other than paying qualified catastrophe expenses shall be included
2712 in gross income, except as otherwise provided by Sections
2713 27-7-1001 through 27-7-1007.

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

2720 (jj) Subject to the limitations provided under Section
2721 27-7-1103, amounts deposited into a first-time homebuyer savings
2722 account and any interest or other income earned attributable to an
2723 account and monies or funds withdrawn or distributed from an
2724 account for the payment of eligible costs by or on behalf of a
2725 qualified beneficiary; however, any monies or funds withdrawn or
2726 distributed from a first-time homebuyer savings account for any
2727 purpose other than the payment of eligible costs by or on behalf
2728 of a qualified beneficiary shall be included in gross income. For
2729 the purpose of this paragraph (jj), the terms "first-time
2730 homebuyer savings account," "eligible costs" and "qualified
2731 beneficiary" mean and have the same definitions as such terms have
2732 in Section 27-7-1101.

2733 (kk) Amounts paid by an agricultural disaster program
2734 as compensation to an agricultural producer, cattle farmer or
2735 cattle rancher who has suffered a loss as the result of a disaster



2736 or emergency, including, but not limited to, the following United
2737 States Department of Agriculture programs:

- 2738 (i) Livestock Forage Disaster Program;
- 2739 (ii) Livestock Indemnity Program;
- 2740 (iii) Emergency Assistance for Livestock, Honey
2741 Bees and Farm-raised Fish Program;
- 2742 (iv) Emergency Conservation Program;
- 2743 (v) Noninsured Crop Disaster Assistance Program;
- 2744 (vi) Pasture, Rangeland, Forage Pilot Insurance
2745 Program;
- 2746 (vii) Annual Forage Pilot Program;
- 2747 (viii) Livestock Risk Protection Insurance
2748 Program; and
- 2749 (ix) Livestock Gross Margin Insurance Plan.

2750 (5) Prisoners of war, missing in action-taxable status.

2751 (a) **Members of the Armed Forces.** Gross income does not
2752 include compensation received for active service as a member of
2753 the Armed Forces of the United States for any month during any
2754 part of which such member is in a missing status, as defined in
2755 paragraph (d) of this subsection, during the Vietnam Conflict as a
2756 result of such conflict.

2757 (b) **Civilian employees.** Gross income does not include
2758 compensation received for active service as an employee for any
2759 month during any part of which such employee is in a missing
2760 status during the Vietnam Conflict as a result of such conflict.



2761 (c) **Period of conflict.** For the purpose of this
2762 subsection, the Vietnam Conflict began February 28, 1961, and ends
2763 on the date designated by the President by Executive Order as the
2764 date of the termination of combatant activities in Vietnam. For
2765 the purpose of this subsection, an individual is in a missing
2766 status as a result of the Vietnam Conflict if immediately before
2767 such status began he was performing service in Vietnam or was
2768 performing service in Southeast Asia in direct support of military
2769 operations in Vietnam. "Southeast Asia," as used in this
2770 paragraph, is defined to include Cambodia, Laos, Thailand and
2771 waters adjacent thereto.

2772 (d) "Missing status" means the status of an employee or
2773 member of the Armed Forces who is in active service and is
2774 officially carried or determined to be absent in a status of (i)
2775 missing; (ii) missing in action; (iii) interned in a foreign
2776 country; (iv) captured, beleaguered or besieged by a hostile
2777 force; or (v) detained in a foreign country against his will; but
2778 does not include the status of an employee or member of the Armed
2779 Forces for a period during which he is officially determined to be
2780 absent from his post of duty without authority.

2781 (e) "Active service" means active federal service by an
2782 employee or member of the Armed Forces of the United States in an
2783 active duty status.

2784 (f) "Employee" means one who is a citizen or national
2785 of the United States or an alien admitted to the United States for



2786 permanent residence and is a resident of the State of Mississippi
2787 and is employed in or under a federal executive agency or
2788 department of the Armed Forces.

2789 (g) "Compensation" means (i) basic pay; (ii) special
2790 pay; (iii) incentive pay; (iv) basic allowance for quarters; (v)
2791 basic allowance for subsistence; and (vi) station per diem
2792 allowances for not more than ninety (90) days.

2793 (h) If refund or credit of any overpayment of tax for
2794 any taxable year resulting from the application of this subsection
2795 (5) is prevented by the operation of any law or rule of law, such
2796 refund or credit of such overpayment of tax may, nevertheless, be
2797 made or allowed if claim therefor is filed with the Department of
2798 Revenue within three (3) years after the date of the enactment of
2799 this subsection.

2800 (i) The provisions of this subsection shall be
2801 effective for taxable years ending on or after February 28, 1961.

2802 (6) A shareholder of an S corporation, as defined in Section
2803 27-8-3(1)(g), shall take into account the income, loss, deduction
2804 or credit of the S corporation only to the extent provided in
2805 Section 27-8-7(2).

2806 **SECTION 21.** Section 31-7-3, Mississippi Code of 1972, is
2807 brought forward as follows:

2808 31-7-3. The Department of Finance and Administration shall
2809 administer the provisions of this chapter.



2810 The purposes or aims of the Department of Finance and
2811 Administration in carrying out said provisions shall be to
2812 coordinate and promote efficiency and economy in the purchase of
2813 commodities by the agencies of the state.

2814 **SECTION 22.** Section 31-7-5, Mississippi Code of 1972, is
2815 brought forward as follows:

2816 31-7-5. The Department of Finance and Administration shall
2817 prescribe rules and regulations governing the manner in which the
2818 authority and duties granted to it by law may be carried out. It
2819 shall employ suitable and competent personnel, necessary to carry
2820 out its purposes. The Department of Finance and Administration
2821 may establish an Office of Purchasing, Travel and Fleet Management
2822 and employ a competent person as Director of the Office of
2823 Purchasing, Travel and Fleet Management who shall be nonstate
2824 service and paid a salary as determined by the Executive Director
2825 of the Department of Finance and Administration with the approval
2826 of the State Personnel Board.

2827 **SECTION 23.** Section 31-7-7, Mississippi Code of 1972, is
2828 brought forward as follows:

2829 31-7-7. Through its director and other supervisory personnel
2830 and, upon its request, through the agencies of the state, the
2831 Office of General Services shall supervise the performance of the
2832 following duties imposed upon it by this chapter:

2833 (a) A study of the purchases of commodities by the
2834 agencies of the state; the compilation, exchange and coordination



2835 of information concerning same; and the distribution of such
2836 information to the agencies and governing authorities requesting
2837 same.

2838 (b) The planning and coordination of purchases in
2839 volume for the agencies in order to take advantage of and secure
2840 the economies possible by volume purchasing; the arrangement of
2841 agreements between agencies and between governing authorities
2842 whereby one may make a purchase or purchases for the other or
2843 whereby an agency may make a purchase for a governing authority;
2844 the arrangement of agreements whereby purchases of commodities can
2845 be made between an agency and another agency or governing
2846 authority at a fair price, less depreciated value; the
2847 negotiations and execution of purchasing agreements and contracts
2848 through and under which the Office of General Services may require
2849 state agencies to purchase; and the obtaining or establishment of
2850 methods for obtaining of competitive bid prices upon which any
2851 agency of the state may purchase at the price approved by the
2852 Office of General Services.

2853 (c) The arrangement of provisions in purchase contracts
2854 of the state, or any agency, providing that the same price for
2855 which a commodity is available to an agency, may also, during the
2856 period of time provided therein, be available to any governing
2857 authority.

2858 **SECTION 24.** Section 31-7-9, Mississippi Code of 1972, is
2859 brought forward as follows:



2860 31-7-9. (1) (a) The Office of Purchasing, Travel and Fleet
2861 Management shall adopt purchasing regulations governing the
2862 purchase by any agency of any commodity or commodities and
2863 establishing standards and specifications for a commodity or
2864 commodities and the maximum fair prices of a commodity or
2865 commodities, subject to the approval of the Public Procurement
2866 Review Board. It shall have the power to amend, add to or
2867 eliminate purchasing regulations. The adoption of, amendment,
2868 addition to or elimination of purchasing regulations shall be
2869 based upon a determination by the Office of Purchasing, Travel and
2870 Fleet Management with the approval of the Public Procurement
2871 Review Board, that such action is reasonable and practicable and
2872 advantageous to promote efficiency and economy in the purchase of
2873 commodities by the agencies of the state. Upon the adoption of
2874 any purchasing regulation, or an amendment, addition or
2875 elimination therein, copies of same shall be furnished to the
2876 State Auditor and to all agencies affected thereby. Thereafter,
2877 and except as otherwise may be provided in subsection (2) of this
2878 section, no agency of the state shall purchase any commodities
2879 covered by existing purchasing regulations unless such commodities
2880 be in conformity with the standards and specifications set forth
2881 in the purchasing regulations and unless the price thereof does
2882 not exceed the maximum fair price established by such purchasing
2883 regulations. The Office of Purchasing, Travel and Fleet
2884 Management shall furnish to any county or municipality or other



2885 local public agency of the state requesting same, copies of
2886 purchasing regulations adopted by the Office of Purchasing, Travel
2887 and Fleet Management and any amendments, changes or eliminations
2888 of same that may be made from time to time.

2889 (b) The Office of Purchasing, Travel and Fleet
2890 Management may adopt purchasing regulations governing the use of
2891 credit cards, procurement cards and purchasing club membership
2892 cards to be used by state agencies, governing authorities of
2893 counties and municipalities, school districts and the Chickasawhay
2894 Natural Gas District. Use of the cards shall be in strict
2895 compliance with the regulations promulgated by the office. Any
2896 amounts due on the cards shall incur interest charges as set forth
2897 in Section 31-7-305 and shall not be considered debt.

2898 (c) Pursuant to the provision of Section 37-61-33(3),
2899 the Office of Purchasing, Travel and Fleet Management of the
2900 Department of Finance and Administration is authorized to issue
2901 procurement cards to all public school district classroom teachers
2902 and other necessary direct support personnel at the beginning of
2903 the school year for the purchase of instructional supplies using
2904 Educational Enhancement Funds. The cards will be issued in equal
2905 amounts per teacher determined by the total number of qualifying
2906 personnel and the then current state appropriation for classroom
2907 instructional supplies under the Education Enhancement Fund. All
2908 purchases shall be in accordance with state law and teachers are
2909 responsible for verification of capital asset requirements when



2910 pooling monies to purchase equipment. The cards will expire on a
2911 predetermined date at the end of each school year. All unexpended
2912 amounts will be carried forward, to be combined with the following
2913 year's instructional supply fund allocation, and reallocated for
2914 the following year. The Department of Finance and Administration
2915 is authorized to loan any start-up funds at the beginning of the
2916 school year to fund this procurement system for instructional
2917 supplies with loan repayment being made from sales tax receipts
2918 earmarked for the Education Enhancement Fund.

2919 (d) In a sale of goods or services, the seller shall
2920 not impose a surcharge on a buyer who uses a state-issued credit
2921 card, procurement card, travel card, or fuel card. The Department
2922 of Finance and Administration shall have exclusive jurisdiction to
2923 enforce and adopt rules relating to this paragraph. Any rules
2924 adopted under this paragraph shall be consistent with federal laws
2925 and regulations governing credit card transactions described by
2926 this paragraph. This paragraph does not create a cause of action
2927 against an individual for a violation of this paragraph.

2928 (2) The Office of Purchasing, Travel and Fleet Management
2929 shall adopt, subject to the approval of the Public Procurement
2930 Review Board, purchasing regulations governing the purchase of
2931 unmarked vehicles to be used by the Bureau of Narcotics and
2932 Department of Public Safety in official investigations pursuant to
2933 Section 25-1-87. Such regulations shall ensure that purchases of
2934 such vehicles shall be at a fair price and shall take into



2935 consideration the peculiar needs of the Bureau of Narcotics and
2936 Department of Public Safety in undercover operations.

2937 (3) The Office of Purchasing, Travel and Fleet Management
2938 shall adopt, subject to the approval of the Public Procurement
2939 Review Board, regulations governing the certification process for
2940 certified purchasing offices, including the Mississippi Purchasing
2941 Certification Program, which shall be required of all purchasing
2942 agents at state agencies. Such regulations shall require entities
2943 desiring to be classified as certified purchasing offices to
2944 submit applications and applicable documents on an annual basis,
2945 and in the case of a state agency purchasing office, to have one
2946 hundred percent (100%) participation and completion by purchasing
2947 agents in the Mississippi Purchasing Certification Program, at
2948 which time the Office of Purchasing, Travel and Fleet Management
2949 may provide the governing entity with a certification valid for
2950 one (1) year from the date of issuance. The Office of Purchasing,
2951 Travel and Fleet Management shall set a fee in an amount that
2952 recovers its costs to administer the Mississippi Purchasing
2953 Certification Program, which shall be assessed to the
2954 participating state agencies.

2955 **SECTION 25.** Section 31-7-10, Mississippi Code of 1972, is
2956 brought forward as follows:

2957 31-7-10. (1) For the purposes of this section, the term
2958 "equipment" shall mean equipment, furniture, and if applicable,
2959 associated software and other applicable direct costs associated



2960 with the acquisition. In addition to its other powers and duties,
2961 the Department of Finance and Administration shall have the
2962 authority to develop a master lease-purchase program and, pursuant
2963 to that program, shall have the authority to execute on behalf of
2964 the state master lease-purchase agreements for equipment to be
2965 used by an agency, as provided in this section. Each agency
2966 electing to acquire equipment by a lease-purchase agreement shall
2967 participate in the Department of Finance and Administration's
2968 master lease-purchase program, unless the Department of Finance
2969 and Administration makes a determination that such equipment
2970 cannot be obtained under the program or unless the equipment can
2971 be obtained elsewhere at an overall cost lower than that for which
2972 the equipment can be obtained under the program. Such
2973 lease-purchase agreements may include the refinancing or
2974 consolidation, or both, of any state agency lease-purchase
2975 agreements entered into after June 30, 1990.

2976 (2) All funds designated by agencies for procurement of
2977 equipment and financing thereof under the master lease-purchase
2978 program shall be paid into a special fund created in the State
2979 Treasury known as the "Master Lease-Purchase Program Fund," which
2980 shall be used by the Department of Finance and Administration for
2981 payment to the lessors for equipment acquired under master
2982 lease-purchase agreements.

2983 (3) Upon final approval of an appropriation bill, each
2984 agency shall submit to the Public Procurement Review Board a



2985 schedule of proposed equipment acquisitions for the master
2986 lease-purchase program. Upon approval of an equipment schedule by
2987 the Public Procurement Review Board with the advice of the
2988 Department of Information Technology Services, the Office of
2989 Purchasing, Travel and Fleet Management, and the Division of
2990 Energy and Transportation of the Mississippi Development Authority
2991 as it pertains to energy efficient climate control systems, the
2992 Public Procurement Review Board shall forward a copy of the
2993 equipment schedule to the Department of Finance and
2994 Administration.

2995 (4) The level of lease-purchase debt recommended by the
2996 Department of Finance and Administration shall be subject to
2997 approval by the State Bond Commission. After such approval, the
2998 Department of Finance and Administration shall be authorized to
2999 advertise and solicit written competitive proposals for a lessor,
3000 who will purchase the equipment pursuant to bid awards made by the
3001 using agency under a given category and then transfer the
3002 equipment to the Department of Finance and Administration as
3003 lessee, pursuant to a master lease-purchase agreement.

3004 The Department of Finance and Administration shall select the
3005 successful proposer for the financing of equipment under the
3006 master lease-purchase program with the approval of the State Bond
3007 Commission.

3008 (5) Each master lease-purchase agreement, and any subsequent
3009 amendments, shall include such terms and conditions as the State



3010 Bond Commission shall determine to be appropriate and in the
3011 public interest, and may include any covenants deemed necessary or
3012 desirable to protect the interests of the lessor, including, but
3013 not limited to, provisions setting forth the interest rate (or
3014 method for computing interest rates) for financing pursuant to
3015 such agreement, covenants concerning application of payments and
3016 funds held in the Master Lease-Purchase Program Fund, covenants to
3017 maintain casualty insurance with respect to equipment subject to
3018 the master lease-purchase agreement (and all state agencies are
3019 specifically authorized to purchase any insurance required by a
3020 master lease-purchase agreement) and covenants precluding or
3021 limiting the right of the lessee or user to acquire equipment
3022 within a specified time (not to exceed five (5) years) after
3023 cancellation on the basis of a failure to appropriate funds for
3024 payment of amounts due under a lease-purchase agreement covering
3025 comparable equipment. The State Bond Commission shall transmit
3026 copies of each such master lease-purchase agreement and each such
3027 amendment to the Joint Legislative Budget Committee. To the
3028 extent provided in any master lease-purchase agreement, title to
3029 equipment leased pursuant thereto shall be deemed to be vested in
3030 the state or the user of the equipment (as specified in such
3031 master lease-purchase agreement), subject to default under or
3032 termination of such master lease-purchase agreement.

3033 A master lease-purchase agreement may provide for payment by
3034 the lessor to the lessee of the purchase price of the equipment to



3035 be acquired pursuant thereto prior to the date on which payment is
3036 due to the vendor for such equipment and that the lease payments
3037 by the lessee shall commence as though the equipment had been
3038 provided on the date of payment. If the lessee, or lessee's
3039 escrow agent, has sufficient funds for payment of equipment
3040 purchases prior to payment due date to vendor of equipment, such
3041 funds shall be held or utilized on an as-needed basis for payment
3042 of equipment purchases either by the State Treasurer (in which
3043 event the master lease-purchase agreement may include provisions
3044 concerning the holding of such funds, the creation of a security
3045 interest for the benefit of the lessor in such funds until
3046 disbursed and other appropriate provisions approved by the Bond
3047 Commission) or by a corporate trustee selected by the Department
3048 of Finance and Administration (in which event the Department of
3049 Finance and Administration shall have the authority to enter into
3050 an agreement with such a corporate trustee containing terms and
3051 conditions approved by the Bond Commission). Earnings on any
3052 amount paid by the lessor prior to the acquisition of the
3053 equipment may be used to make lease payments under the master
3054 lease-purchase agreement or applied to pay costs and expenses
3055 incurred in connection with such lease-purchase agreement. In
3056 such event, the equipment-use agreements with the user agency may
3057 provide for lease payments to commence upon the date of payment by
3058 the lessor and may also provide for a credit against such payments



3059 to the extent that investment receipts from investment of the
3060 purchase price are to be used to make lease-purchase payments.

3061 (6) The annual rate of interest paid under any
3062 lease-purchase agreement authorized under this section shall not
3063 exceed the maximum interest rate to maturity on general obligation
3064 indebtedness permitted under Section 75-17-101.

3065 (7) The Department of Finance and Administration shall
3066 furnish the equipment to the various agencies, also known as the
3067 user, pursuant to an equipment-use agreement developed by the
3068 Department of Finance and Administration. Such agreements shall
3069 require that all monthly payments due from such agency be paid,
3070 transferred or allocated into the Master Lease-Purchase Program
3071 Fund pursuant to a schedule established by the Department of
3072 Finance and Administration. In the event such sums are not paid
3073 by the defined payment period, the Executive Director of the
3074 Department of Finance and Administration shall issue a requisition
3075 for a warrant to draw such amount as may be due from any funds
3076 appropriated for the use of the agency which has failed to make
3077 the payment as agreed.

3078 (8) All master lease-purchase agreements executed under the
3079 authority of this section shall contain the following annual
3080 allocation dependency clause or an annual allocation dependency
3081 clause which is substantially equivalent thereto: "The
3082 continuation of each equipment schedule to this agreement is
3083 contingent in whole or in part upon the appropriation of funds by



3084 the Legislature to make the lease-purchase payments required under
3085 such equipment schedule. If the Legislature fails to appropriate
3086 sufficient funds to provide for the continuation of the
3087 lease-purchase payments under any such equipment schedule, then
3088 the obligations of the lessee and of the agency to make such
3089 lease-purchase payments and the corresponding provisions of any
3090 such equipment schedule to this agreement shall terminate on the
3091 last day of the fiscal year for which appropriations were made."

3092 (9) The maximum lease term for any equipment acquired under
3093 the master lease-purchase program shall not exceed the useful life
3094 of such equipment as determined according to the upper limit of
3095 the asset depreciation range (ADR) guidelines for the Class Life
3096 Asset Depreciation Range System established by the Internal
3097 Revenue Service pursuant to the United States Internal Revenue
3098 Code and Regulations thereunder as in effect on December 31, 1980,
3099 or comparable depreciation guidelines with respect to any
3100 equipment not covered by ADR guidelines. The Department of
3101 Finance and Administration shall be deemed to have met the
3102 requirements of this subsection if the term of a master
3103 lease-purchase agreement does not exceed the weighted average
3104 useful life of all equipment covered by such agreement and the
3105 schedules thereto as determined by the Department of Finance and
3106 Administration. For purposes of this subsection, the "term of a
3107 master lease-purchase agreement" shall be the weighted average



3108 maturity of all principal payments to be made under such master
3109 lease-purchase agreement and all schedules thereto.

3110 (10) Interest paid on any master lease-purchase agreement
3111 under this section shall be exempt from State of Mississippi
3112 income taxation. All equipment, and the purchase thereof by any
3113 lessor, acquired under the master lease-purchase program and all
3114 lease-purchase payments with respect thereto shall be exempt from
3115 all Mississippi sales, use and ad valorem taxes.

3116 (11) The Governor, in his annual executive budget to the
3117 Legislature, shall recommend appropriations sufficient to provide
3118 funds to pay all amounts due and payable during the applicable
3119 fiscal year under master lease-purchase agreements entered into
3120 pursuant to this section.

3121 (12) Any master lease-purchase agreement reciting in
3122 substance that such agreement has been entered into pursuant to
3123 this section shall be conclusively deemed to have been entered
3124 into in accordance with all of the provisions and conditions set
3125 forth in this section. Any defect or irregularity arising with
3126 respect to procedures applicable to the acquisition of any
3127 equipment shall not invalidate or otherwise limit the obligation
3128 of the Department of Finance and Administration, or the state or
3129 any agency of the state, under any master lease-purchase agreement
3130 or any equipment-use agreement.

3131 (13) There shall be maintained by the Department of Finance
3132 and Administration, with respect to each master lease-purchase



3133 agreement, an itemized statement of the cash price, interest
3134 rates, interest costs, commissions, debt service schedules and all
3135 other costs and expenses paid by the state incident to the
3136 lease-purchase of equipment under such agreement.

3137 (14) Lease-purchase agreements entered into by the Board of
3138 Trustees of State Institutions of Higher Learning pursuant to the
3139 authority of Section 37-101-413 or by any other agency which has
3140 specific statutory authority other than pursuant to Section
3141 31-7-13(e) to acquire equipment by lease-purchase shall not be
3142 made pursuant to the master lease-purchase program under this
3143 section, unless the Board of Trustees of State Institutions of
3144 Higher Learning or such other agency elects to participate as to
3145 part or all of its lease-purchase acquisitions in the master
3146 lease-purchase program pursuant to this section.

3147 (15) The Department of Finance and Administration may
3148 develop a master lease-purchase program for school districts and,
3149 pursuant to that program, may execute on behalf of the school
3150 districts master lease-purchase agreements for equipment to be
3151 used by the school districts. The form and structure of this
3152 program shall be substantially the same as set forth in this
3153 section for the master lease-purchase program for state agencies.
3154 If sums due from a school district under the master lease-purchase
3155 program are not paid by the expiration of the defined payment
3156 period, the Executive Director of the Department of Finance and
3157 Administration may withhold such amount that is due from the



3158 school district's minimum education or adequate education program
3159 fund allotments.

3160 (16) The Department of Finance and Administration may
3161 develop a master lease-purchase program for community and junior
3162 college districts and, pursuant to that program, may execute on
3163 behalf of the community and junior college districts master
3164 lease-purchase agreements for equipment to be used by the
3165 community and junior college districts. The form and structure of
3166 this program must be substantially the same as set forth in this
3167 section for the master lease-purchase program for state agencies.
3168 If sums due from a community or junior college district under the
3169 master lease-purchase program are not paid by the expiration of
3170 the defined payment period, the Executive Director of the
3171 Department of Finance and Administration may withhold an amount
3172 equal to the amount due under the program from any funds allocated
3173 for that community or junior college district in the state
3174 appropriations for the use and support of the community and junior
3175 colleges.

3176 (17) From and after July 1, 2016, the expenses of this
3177 agency shall be defrayed by appropriation from the State General
3178 Fund and all user charges and fees authorized under this section
3179 shall be deposited into the State General Fund as authorized by
3180 law.

3181 (18) From and after July 1, 2016, no state agency shall
3182 charge another state agency a fee, assessment, rent or other



3183 charge for services or resources received by authority of this
3184 section.

3185 **SECTION 26.** Section 31-7-11, Mississippi Code of 1972, is
3186 brought forward as follows:

3187 31-7-11. Each agency of the state shall furnish information
3188 relative to its purchase of commodities, and as to its method of
3189 purchasing such commodities, to the Department of Finance and
3190 Administration annually and at such other times as the Department
3191 of Finance and Administration may request.

3192 The Department of Finance and Administration shall have
3193 supervision over the purchasing and purchasing practices of each
3194 state agency and may by regulation or order correct any practice
3195 that appears contrary to the provisions of this chapter or to the
3196 best interests of the state. If it shall appear that any agency
3197 is not practicing economy in its purchasing or is permitting
3198 favoritism or any improper purchasing practice, the Department of
3199 Finance and Administration shall require that the agency
3200 immediately cease such improper activity, with full and complete
3201 authority in the Department of Finance and Administration to carry
3202 into effect its directions in such regard.

3203 All purchases, trade-ins, sales or transfer of personal
3204 property made by any officer, board, agency, department or branch
3205 of the state government except the Legislature shall be subject to
3206 the approval of the Department of Finance and Administration.
3207 Such transaction shall be made in accordance with rules and



3208 regulations of the Department of Finance and Administration
3209 relating to the purchase of state-owned motor vehicles and all
3210 other personal property. The title of such property shall remain
3211 in the name of the state.

3212 **SECTION 27.** Section 31-7-12, Mississippi Code of 1972, is
3213 brought forward as follows:

3214 31-7-12. (1) Except in regard to purchases of unmarked
3215 vehicles made in accordance with purchasing regulations adopted by
3216 the Department of Finance and Administration pursuant to Section
3217 31-7-9(2), all agencies shall purchase commodities at the state
3218 contract price from the approved source, unless approval is
3219 granted by the Department of Finance and Administration to solicit
3220 purchases outside the terms of the contracts. However, prices
3221 accepted by an agency shall be less than the prices set by the
3222 state contract. Prices accepted by an agency shall be obtained in
3223 compliance with paragraph (a), (b) or (c) of Section 31-7-13. It
3224 shall be the responsibility of the Department of Finance and
3225 Administration to ascertain that the resulting prices shall
3226 provide a cost effective alternative to the established state
3227 contract.

3228 (2) Governing authorities may purchase commodities approved
3229 by the Department of Finance and Administration from the state
3230 contract vendor, or from any source offering the identical
3231 commodity, at a price not exceeding the state contract price
3232 established by the Department of Finance and Administration for



3233 such commodity, without obtaining or advertising for competitive
3234 bids. Governing authorities that do not exercise the option to
3235 purchase such commodities from the state contract vendor or from
3236 another source offering the identical commodity at a price not
3237 exceeding the state contract price established by the Department
3238 of Finance and Administration shall make such purchases pursuant
3239 to the provisions of Section 31-7-13 without regard to state
3240 contract prices established by the Department of Finance and
3241 Administration, unless such purchases are authorized to be made
3242 under subsection (5) of this section.

3243 (3) Nothing in this section shall prohibit governing
3244 authorities from purchasing, pursuant to subsection (2) of this
3245 section, commodities approved by the Department of Finance and
3246 Administration at a price not exceeding the state contract price
3247 established by the Department of Finance and Administration.

3248 (4) The Department of Finance and Administration shall
3249 ensure that the prices of all commodities on the state contract
3250 are the lowest and best prices available from any source offering
3251 that commodity at the same level of quality or service, utilizing
3252 the reasonable standards established therefor by the Department of
3253 Finance and Administration. If the Department of Finance and
3254 Administration does not list an approved price for the particular
3255 item involved, purchase shall be made according to statutory
3256 bidding and licensing requirements. To encourage prudent
3257 purchasing practices, the Department of Finance and Administration



3258 shall be authorized and empowered to exempt certain commodities
3259 from the requirement that the lowest and best price be approved by
3260 order placed on its minutes.

3261 (5) Any school district may purchase commodities from
3262 vendors with which any levying authority of the school district,
3263 as defined in Section 37-57-1, has contracted through competitive
3264 bidding procedures pursuant to Section 31-7-13 for purchases of
3265 the same commodities. Purchases authorized by this subsection may
3266 be made by a school district without obtaining or advertising for
3267 competitive bids, and such purchases shall be made at the same
3268 prices and under the same conditions as purchases of the same
3269 commodities are to be made by the levying authority of the school
3270 district under the contract with the vendor.

3271 **SECTION 28.** Section 31-7-13.1, Mississippi Code of 1972, is
3272 brought forward as follows:

3273 31-7-13.1. (1) The method of contracting for construction
3274 described in this section shall be known as the "dual-phase
3275 design-build method" of construction contracting. This method of
3276 construction contracting may be used only when the Legislature has
3277 specifically required or authorized the use of this method in the
3278 legislation authorizing a project. At a minimum, the
3279 determination must include a detailed explanation of why using the
3280 dual-phase design-build method for a particular project satisfies
3281 the public need better than the traditional design-bid-build
3282 method based on the following criteria:



3283 (a) The project provides a savings in time or cost over
3284 traditional methods; and

3285 (b) The size and type of the project is suitable for
3286 design-build.

3287 (2) For each proposed dual-phase design-build project, a
3288 two-phase procedure for awarding a contract must be adopted.
3289 During Phase One, and before solicitation of initial proposals,
3290 the agency or governing authority shall develop, with the
3291 assistance of an architectural or engineering firm, a scope of
3292 work statement that provides prospective offerors with sufficient
3293 information regarding the requirements of the agency or governing
3294 authority. The scope of work statement must include, but is not
3295 limited to, the following information:

3296 (a) Drawings must show overall building dimensions and
3297 major lines of dimensions, and site plans that show topography,
3298 adjacent buildings and utilities;

3299 (b) Drawings must include information to adequately
3300 explain HVAC, electrical and structural requirements;

3301 (c) The scope of work statement also must include
3302 building elevations, sections and design details; and

3303 (d) The scope of work statement must include general
3304 budget parameters, schedule or delivery requirements, relevant
3305 criteria for evaluation of proposals, and any other information
3306 necessary to enable the design-builders to submit proposals that
3307 meet the needs of the agency or governing authority.



3308 (3) The agency or governing authority shall cause to be
3309 published once a week, for at least two (2) consecutive weeks in a
3310 regular newspaper published in the county in which the project is
3311 to be located, or a newspaper with statewide circulation, a notice
3312 inviting proposals for the dual-phase design-build construction
3313 project. The proposals shall not be opened in less than fifteen
3314 (15) working days after the last notice is published. The notice
3315 must inform potential offerors of how to obtain the scope of work
3316 statement developed for the project, and the notice must contain
3317 such other information to describe adequately the general nature
3318 and scope of the project so as to promote full, equal and open
3319 competition.

3320 (4) The agency or governing authority shall accept initial
3321 proposals only from entities able to provide an experienced and
3322 qualified design-build team that includes, at a minimum, an
3323 architectural or engineering firm registered in Mississippi and a
3324 contractor properly licensed and domiciled in Mississippi for the
3325 type of work required. From evaluation of initial proposals under
3326 Phase One, the agency or governing authority shall select a
3327 minimum of two (2) and a maximum of five (5) design-builders as
3328 "short-listed firms" to submit proposals for Phase Two.

3329 (5) During Phase Two, the short-listed firms will be invited
3330 to submit detailed designs, specific technical concepts or
3331 solutions, pricing, scheduling and other information deemed
3332 appropriate by the agency or governing authority as necessary to



3333 evaluate and rank acceptability of the Phase Two proposals. After
3334 evaluation of these Phase Two proposals, the agency or governing
3335 authority shall award a contract to the design-builder determined
3336 to offer the best value to the public in accordance with
3337 evaluation criteria set forth in the request for proposals, of
3338 which price must be one, but not necessarily the only, criterion.

3339 (6) If the agency or governing authority accepts a proposal
3340 other than the lowest dollar proposal actually submitted, the
3341 agency or governing authority shall enter on its minutes detailed
3342 calculations and a narrative summary showing why the accepted
3343 proposal was determined to provide the best value, and the agency
3344 or governing authority shall state specifically on its minutes the
3345 justification for its award.

3346 (7) All facilities that are governed by this section shall
3347 be designed and constructed to comply with standards equal to or
3348 exceeding the minimum building code standards employed by the
3349 state as required under Section 31-11-33 in force at the time of
3350 contracting. All private contractors or private entities
3351 contracting or performing under this section must comply at all
3352 times with all applicable laws, codes and other legal requirements
3353 pertaining to the project.

3354 (8) At its discretion, the agency or governing authority may
3355 award a stipulated fee equal to a percentage, as prescribed in the
3356 request for proposals, of the project's final design and
3357 construction budget, as prescribed in the request for proposals,



3358 but not less than two-tenths of one percent (2/10 of 1%) of the
3359 project's final design and construction budget, to each short-list
3360 offeror who provides a responsive, but unsuccessful, proposal. If
3361 the agency or governing authority does not award a contract, all
3362 responsive final list offerors shall receive the stipulated fee
3363 based on the owner's estimate of the project final design and
3364 construction budget as included in the request for proposals. The
3365 agency or governing authority shall pay the stipulated fee to each
3366 offeror within ninety (90) days after the award of the initial
3367 contract or the decision not to award a contract. In
3368 consideration for paying the stipulated fee, the agency or
3369 governing authority may use any ideas or information contained in
3370 the proposals in connection with any contract awarded for the
3371 project, or in connection with a subsequent procurement, without
3372 any obligation to pay any additional compensation to the
3373 unsuccessful offerors. Notwithstanding the other provisions of
3374 this subsection, an unsuccessful short-list offeror may elect to
3375 waive the stipulated fee. If an unsuccessful short-list offeror
3376 elects to waive the stipulated fee, the agency or governing
3377 authority may not use ideas and information contained in the
3378 offeror's proposal, except that this restriction does not prevent
3379 the agency or governing authority from using any idea or
3380 information if the idea or information is also included in a
3381 proposal of an offeror that accepts the stipulated fee.



3382 (9) This section shall not authorize the awarding of
3383 construction contracts according to any contracting method that
3384 does not require the contractor to satisfactorily perform, at a
3385 minimum, both any balance of design, using an independent
3386 professional licensed in Mississippi, and construction of the
3387 project for which the contract is awarded.

3388 (10) The provisions of this section shall not affect any
3389 procurement by the Mississippi Transportation Commission.

3390 (11) The provisions of this section shall not apply to
3391 procurement authorized in Section 59-5-37(3).

3392 **SECTION 29.** Section 31-7-13.2, Mississippi Code of 1972, is
3393 brought forward as follows:

3394 31-7-13.2 (1) When used in this section, "construction
3395 manager at risk" means a method of project delivery in which a
3396 construction manager guarantees a maximum price for the
3397 construction of a project and in which the governing authority or
3398 board, before using this method of project delivery, shall include
3399 a detailed explanation of why using the construction manager at
3400 risk method of project delivery for a particular project satisfies
3401 the public need better than that traditional design-bid-build
3402 method based on the following criteria:

3403 (a) The use of construction manager at risk for the
3404 project provides a savings in time or cost over traditional
3405 methods; and



3406 (b) The size and type of the project is suitable for
3407 use of the construction management at risk method of project
3408 delivery.

3409 (2) When the construction manager at risk method of project
3410 delivery is used:

3411 (a) There may be a separate contract for design
3412 services and a separate contract for construction services;

3413 (b) The contract for construction services may be
3414 entered into at the same time as a contract for the design
3415 services or later;

3416 (c) Design and construction of the project may be in
3417 sequential or concurrent phases; and

3418 (d) Finance, maintenance, operation, reconstruction or
3419 other related services may be included for a guaranteed maximum
3420 price.

3421 (3) When procuring design professional services under a
3422 construction manager at risk project delivery method, the agency
3423 or governing authority shall procure the services of a design
3424 professional pursuant to qualifications-based selection
3425 procedures.

3426 (4) Before the substantial completion of the design
3427 documents, the agency or governing authority may elect to hire a
3428 construction manager.

3429 (5) When procuring construction management services, the
3430 agency or governing authority shall follow the



3431 qualifications-based selection procedures as outlined in
3432 subsection (10) of this section or the competitive sealed proposal
3433 procedures as outlined in Section 31-17-13.

3434 (6) The agency or governing authority may require the
3435 architect or engineer and the construction manager, by contract,
3436 to cooperate in the design, planning and scheduling, and
3437 construction process. The contract shall not make the primary
3438 designer or construction manager a subcontractor or joint-venture
3439 partner to the other or limit the primary designer's or
3440 construction manager's independent obligations to the agency or
3441 governing authority.

3442 (7) Notwithstanding anything to the contrary in this
3443 chapter:

3444 (a) Each project for construction under a construction
3445 manager at risk contract shall be a specific, single project with
3446 a minimum construction cost of Twenty-five Million Dollars
3447 (\$25,000,000.00).

3448 (b) Each project under a construction manager at risk
3449 contract shall be a specific, single project. For the purposes of
3450 this paragraph, "specific, single project" means a project that is
3451 constructed at a single location, at a common location or for a
3452 common purpose.

3453 (8) Agencies shall retain an independent architectural or
3454 engineering firm to provide guidance and administration of the
3455 professional engineering or professional architecture aspects of



3456 the project throughout the development of the scope, design, and
3457 construction of the project.

3458 (9) The state shall, on an annual basis, compile and make
3459 public all proceedings, records, contracts and other public
3460 records relating to procurement transactions authorized under this
3461 section.

3462 (10) For purposes of this section, the "qualifications-based
3463 selection procedure" shall include:

3464 (a) Publicly announcing all requirements for
3465 architectural, engineering, and land surveying services, to
3466 procure these services on the basis of demonstrated competence and
3467 qualifications, and to negotiate contracts at fair and reasonable
3468 prices after the most qualified firm has been selected.

3469 (b) Agencies or governing authorities shall establish
3470 procedures to prequalify firms seeking to provide architectural,
3471 engineering, and land surveying services or may use
3472 prequalification lists from other state agencies or governing
3473 authorities to meet the requirements of this section.

3474 (c) Whenever a project requiring architectural,
3475 engineering, or land surveying services is proposed for an agency
3476 or governing authority, the agency or governing authority shall
3477 provide advance notice published in a professional services
3478 bulletin or advertised within the official state newspaper setting
3479 forth the projects and services to be procured for not less than
3480 fourteen (14) days. The professional services bulletin shall be



3481 mailed to each firm that has requested the information or is
3482 prequalified under Section 31-7-13. The professional services
3483 bulletin shall include a description of each project and shall
3484 state the time and place for interested firms to submit a letter
3485 of interest and, if required by the public notice, a statement of
3486 qualifications.

3487 (d) The agency or governing authority shall evaluate
3488 the firms submitting letters of interest and other prequalified
3489 firms, taking into account qualifications. The agency or
3490 governing authority may consider, but shall not be limited to,
3491 considering:

3492 (i) Ability of professional personnel;
3493 (ii) Past record and experience;
3494 (iii) Performance data on file;
3495 (iv) Willingness to meet time requirements;
3496 (v) Location;
3497 (vi) Workload of the firm; and
3498 (vii) Any other qualifications-based factors as
3499 the agency or governing authority may determine in writing are
3500 applicable.

3501 The agency or governing authority may conduct discussions
3502 with and require public presentations by firms deemed to be the
3503 most qualified regarding their qualifications, approach to the
3504 project and ability to furnish the required services.



3505 (e) The agency or governing authority shall establish a
3506 committee to select firms to provide architectural, engineering,
3507 and land surveying services. A selection committee may include at
3508 least one (1) public member nominated by a statewide association
3509 of the profession affected. The public member may not be employed
3510 or associated with any firm holding a contract with the agency or
3511 governing authority nor may the public member's firm be considered
3512 for a contract with that agency or governing authority while
3513 serving as a public member of the committee. In no case shall the
3514 agency or governing authority, before selecting a firm for
3515 negotiation under paragraph (f) of this section, seek formal or
3516 informal submission of verbal or written estimates of costs or
3517 proposals in terms of dollars, hours required, percentage of
3518 construction cost, or any other measure of compensation.

3519 (f) On the basis of evaluations, discussions, and any
3520 presentations, the agency or governing authority shall select no
3521 less than three (3) firms that it determines to be qualified to
3522 provide services for the project and rank them in order of
3523 qualifications to provide services regarding the specific project.
3524 The agency or governing authority shall then contact the firm
3525 ranked most preferred to negotiate a contract at a fair and
3526 reasonable compensation. If fewer than three (3) firms submit
3527 letters of interest and the agency or governing authority
3528 determines that one (1) or both of those firms are so qualified,



3529 the agency or governing authority may proceed to negotiate a
3530 contract under paragraph (g) of this section.

3531 (g) The agency or governing authority shall prepare a
3532 written description of the scope of the proposed services to be
3533 used as a basis for negotiations and shall negotiate a contract
3534 with the highest qualified firm at compensation that the agency or
3535 governing authority determines in writing to be fair and
3536 reasonable. In making this decision, the agency or governing
3537 authority shall take into account the estimated value, scope,
3538 complexity, and professional nature of the services to be
3539 rendered. In no case may the agency or governing authority
3540 establish a maximum overhead rate or other payment formula
3541 designed to eliminate firms from contention or restrict
3542 competition or negotiation of fees. If the agency or governing
3543 authority is unable to negotiate a satisfactory contract with the
3544 firm that is most preferred, negotiations with that firm shall be
3545 terminated. The agency or governing authority shall then begin
3546 negotiations with the firm that is next preferred. If the agency
3547 or governing authority is unable to negotiate a satisfactory
3548 contract with that firm, negotiations with that firm shall be
3549 terminated. The agency or governing authority shall then begin
3550 negotiations with the firm that is next preferred. If the agency
3551 or governing authority is unable to negotiate a satisfactory
3552 contract with any of the selected firms, the agency or governing
3553 authority shall reevaluate the architectural, engineering, or land



3554 surveying services requested, including the estimated value,
3555 scope, complexity, and fee requirements. The agency or governing
3556 authority shall then compile a second list of not less than three
3557 (3) qualified firms and proceed in accordance with the provisions
3558 of this section. A firm negotiating a contract with an agency or
3559 governing authority shall negotiate subcontracts for
3560 architectural, engineering, and land surveying services at
3561 compensation that the firm determines in writing to be fair and
3562 reasonable based upon a written description of the scope of the
3563 proposed services.

3564 (11) The provisions of this section shall not affect any
3565 procurement by the Mississippi Transportation Commission.

3566 **SECTION 30.** Section 31-7-14, Mississippi Code of 1972, is
3567 brought forward as follows:

3568 31-7-14. (1) (a) For purposes of this section, the
3569 following words and phrases shall have the meaning ascribed
3570 herein, unless the context clearly indicates otherwise:

3571 (i) "Division" means the Energy Division of the
3572 Mississippi Development Authority.

3573 (ii) "Energy services" or "energy efficient
3574 services" means energy efficiency equipment, services relating to
3575 the installation, operation and maintenance of equipment and
3576 improvements reasonably required to existing or new equipment and
3577 existing or new improvements and facilities including, but not
3578 limited to, heating, ventilation and air-conditioning systems,



3579 lighting, windows, insulation and energy management controls, life
3580 safety measures that provide long-term, operating-cost reductions,
3581 building operation programs that reduce operating costs,
3582 alternative fuel motor vehicles including vehicles that have been
3583 converted to such and ancillary equipment related to or associated
3584 with the fueling of alternative fuel motor vehicles, or other
3585 energy-conservation-related improvements, including improvements
3586 or equipment related to renewable energy, water and other natural
3587 resources conservation, including accuracy and measurement of
3588 water distribution and/or consumption, and other equipment,
3589 services and improvements providing verifiable cost savings.

3590 (iii) "Energy services provider" means a person or
3591 business with a successful record of documented energy savings
3592 projects that is experienced in the design, implementation and
3593 installation of energy conservation measures; has the technical
3594 capabilities to verify that such measures generate energy and
3595 operational cost savings or enhanced revenues; has the ability to
3596 guarantee the savings; has the ability to secure or arrange the
3597 financing necessary to support the implementation of the energy
3598 conservation measures; and is approved by the division.

3599 Approval by the division of an energy services provider shall
3600 be granted in a prequalification process.

3601 Such energy services providers may petition the division to
3602 review their qualifications and deem them to be qualified for



3603 inclusion on a prequalification list if they meet the
3604 qualifications set forth by the division.

3605 Any energy services project that has been competitively bid
3606 and awarded prior to any change in law shall be allowed to
3607 continue under the laws current at the time the project was
3608 awarded.

3609 The division shall ensure that small businesses are not
3610 disadvantaged in the determination of a qualified energy services
3611 provider.

3612 (iv) "Entity" means the board of trustees of any
3613 public school district, junior college, institution of higher
3614 learning, publicly owned hospital, state agency or governmental
3615 authority under this chapter.

3616 (v) "Energy services contract" means an agreement
3617 to provide energy services which include, but are not limited to,
3618 the design, installation, financing and maintenance or management
3619 of the energy systems or equipment in order to improve its energy
3620 efficiency. Payments for the contract are not contingent upon the
3621 actual savings realized from the equipment.

3622 (vi) "Energy performance contract" means an
3623 agreement to provide energy services which includes, but is not
3624 limited to, the design, installation, financing and maintenance or
3625 management of the energy systems or equipment in order to improve
3626 its energy efficiency.



3627 (vii) "Shared-savings contract" means an agreement
3628 where the contractor and the entity each receive a preagreed
3629 percentage or dollar value of the energy cost savings over the
3630 life of the contract.

3631 (viii) "Reduce operating costs" means elimination
3632 of future expenses or avoidance of future replacement expenditures
3633 as a result of new equipment installed or services performed.
3634 Material savings, labor savings, cancelled maintenance contracts,
3635 et cetera, shall be considered as being viable to reduce operating
3636 costs. Reduce operating costs may be included in the performance
3637 contract or energy services agreement solely at the discretion of
3638 the entity. A contract that otherwise satisfies the requirements
3639 of this section shall satisfy the requirements allowing use of an
3640 energy performance, energy services or shared-savings contract
3641 even if the sole expense being eliminated is maintenance expense.

3642 (ix) "Capital cost avoidance" means planned
3643 capital improvement expenditures that will be avoided through
3644 implementation of the energy services project. Capital cost
3645 avoidance may be included in an energy services contract or an
3646 energy performance contract solely at the discretion of the
3647 entity. Capital cost avoidance may be claimed as an annual
3648 avoidance or as a one-time avoidance in a specific year of the
3649 contract term, depending upon the nature of the avoided capital
3650 cost.



3651 (x) "Alternative fuel motor vehicle" means a motor
3652 vehicle propelled by alternative fuel either as a dedicated
3653 alternative fuel vehicle, as a bi-fuel vehicle using alternative
3654 fuel as one of its fuels, or as a dual fuel vehicle using
3655 alternative fuel as one of its fuels.

3656 (xi) "Energy conservation measure" means the
3657 individual items or components of a large energy services or
3658 energy efficient services program.

3659 (xii) "Simple payback period" means the amount of
3660 time for the recuperation of the initial investment. The simple
3661 payback period is calculated by dividing the initial investment by
3662 the annual savings. The simple payback period for any contract
3663 shall not exceed twenty (20) years. The simple payback period of
3664 an individual energy conservation measure shall not be considered
3665 in any evaluation provided the simple payback period for the
3666 contract does not exceed twenty (20) years.

3667 (b) An entity may enter into an energy services
3668 contract, energy performance contract, shared-savings contract,
3669 any of which may contain a lease, or lease-purchase contract for
3670 energy efficiency equipment, services relating to the
3671 installation, operation and maintenance of equipment or
3672 improvements reasonably required to existing or new equipment and
3673 existing or new improvements and facilities and shall contract in
3674 accordance with the following provisions:



3675 (i) The division may assemble a list of
3676 prequalified energy services providers. The division shall use
3677 objective criteria in the selection process. The criteria for
3678 evaluation shall include, but shall not be limited to, the
3679 following factors: to assess the capability of the qualified
3680 energy services provider in the area of design engineering,
3681 installation, maintenance and repairs associated with energy
3682 services or guaranteed energy performance contracts;
3683 qualifications including engineering depth and experience,
3684 post-installation project monitoring, data collection, and
3685 verification of and reporting of savings; overall project
3686 experience and qualifications; management capability; ability to
3687 access long-term sources of project financing; financial health
3688 and stability, litigation history with customers and other factors
3689 determined by the division to be relevant and appropriate and
3690 related to the ability to perform the project. The division shall
3691 either accept or reject an application for prequalification from
3692 an energy services provider within sixty (60) days after receipt.
3693 If the division fails to act within sixty (60) days from the date
3694 of receiving an application, then the application shall
3695 automatically be accepted and the energy services provider shall
3696 be added to the prequalified list.

3697 (ii) An entity shall publicly issue requests for
3698 proposals, advertised in the same manner as provided in Section
3699 31-7-13 for seeking competitive sealed bids, concerning the



3700 provision of energy efficiency services relating to the
3701 installation, operation and maintenance of equipment, improvements
3702 reasonably required to existing or new equipment and existing or
3703 new improvements and facilities or the design, installation,
3704 ownership, operation and maintenance of energy efficiency
3705 equipment. Those requests for proposals shall contain terms and
3706 conditions relating to submission of proposals, evaluation and
3707 selection of proposals, financial terms, legal responsibilities,
3708 and any other matters as the entity determines to be appropriate
3709 for inclusion.

3710 (iii) Upon receiving responses to the request for
3711 proposals, the entity may select the most qualified proposal or
3712 proposals on the basis of experience and qualifications of the
3713 proposers, the technical approach, the financial arrangements, the
3714 overall benefits to the entity and any other relevant factors
3715 determined to be appropriate.

3716 (iv) An entity shall negotiate and enter into
3717 contracts with the person, persons, firm or firms submitting the
3718 proposal selected as the most qualified under this section.

3719 (v) The annual rate of interest paid under any
3720 lease-purchase agreement authorized by this section shall not
3721 exceed the maximum interest rate to maturity on general obligation
3722 indebtedness permitted under Section 75-17-101.

3723 (vi) The maximum lease-purchase term for any
3724 equipment acquired under this section shall not exceed the lesser



3725 of twenty (20) years or the average useful life of the energy
3726 conservation measures from the date the energy conservation
3727 measures have been completed and accepted by the governmental
3728 unit.

3729 (vii) This subsection shall, with respect to the
3730 procurement of energy efficiency services and/or equipment,
3731 supersede any contradictory or conflicting provisions of Chapter
3732 7, Title 31, Mississippi Code of 1972, and other laws with respect
3733 to awarding public contracts.

3734 (2) (a) The division may contract with a party selected
3735 under this subsection to provide financing to entities and private
3736 "nonprofit" hospitals, to purchase energy efficiency equipment,
3737 services relating to the installation, operation and maintenance
3738 of equipment or improvements reasonably required to existing or
3739 new equipment and existing or new improvements and facilities or
3740 an energy saving performance contract, energy services contract,
3741 or lease-purchase basis. Any energy efficiency lease financing
3742 contract entered into by the division before May 15, 1992, shall
3743 be valid and binding when the contract was entered into under this
3744 subsection.

3745 (b) The entities and private "nonprofit" hospitals that
3746 decide to contract for energy efficiency equipment, services
3747 relating to the installation, operation and maintenance of
3748 equipment or improvements reasonably required to existing or new
3749 equipment and existing or new improvements and facilities on a



3750 lease, energy services contract or lease-purchase basis, may
3751 request financial assistance from the division.

3752 (c) The provisions of any energy efficiency
3753 lease-purchase agreements authorized under this subsection (2)
3754 shall comply with the requirements of subsection (1)(b)(v) of this
3755 section. The term of any lease or lease-purchase agreement for
3756 energy efficiency services and/or equipment entered into under
3757 this section shall not exceed twenty (20) years, commencing on the
3758 completion of the installation of equipment or improvements under
3759 the contract.

3760 (d) Any entity or private "nonprofit" hospital having
3761 approval of the division may borrow money in anticipation of
3762 entering into a lease-purchase agreement pursuant to subsection
3763 (2)(b) of this section. Any borrowing may be upon terms and
3764 conditions as may be agreed upon by the borrowing entity and the
3765 party advancing interim funds; however, the principal on any
3766 borrowing shall be repaid within a period of time not to exceed
3767 one hundred eighty (180) days. In borrowing money under this
3768 paragraph (d), it is not necessary to publish notice of intention
3769 to do so or to secure the consent of the qualified electors,
3770 either by election or otherwise. Any borrowing may be negotiated
3771 between the parties and is not required to be publicly bid, may be
3772 evidenced by negotiable notes or lease and shall not be considered
3773 when computing any limitation of indebtedness of the borrowing
3774 entity established by law. The principal, interest and costs of



3775 incurring any borrowing shall not exceed the principal amount of
3776 the final contract or agreement approved by the division, and
3777 accepted by the borrowing entity, under subsection (2)(b) of this
3778 section.

3779 (e) This subsection (2) shall, with respect to the
3780 procurement of energy efficiency services and/or equipment,
3781 supersede the provisions of any contradictory or conflicting
3782 provisions of Chapter 7, Title 31, Mississippi Code of 1972, and
3783 other laws with respect to awarding public contracts.

3784 (3) All lease-purchase agreements authorized by this section
3785 and the income from those agreements shall be exempt from all
3786 taxation within the State of Mississippi, except gift, transfer
3787 and inheritance taxes.

3788 (4) (a) An entity may contract for energy efficiency
3789 equipment services relating to the installation, operation or
3790 maintenance of equipment or improvements reasonably required to
3791 existing or new equipment and existing or new improvements and
3792 facilities on a shared-savings basis or performance basis.

3793 (b) If an entity decides to enter into a contract for
3794 energy efficiency equipment, services relating to the
3795 installation, operation or maintenance of equipment or
3796 improvements reasonably required to existing or new equipment and
3797 existing or new improvements and facilities on a shared-savings
3798 basis or performance basis, the entity shall issue a request for
3799 proposals or a request for qualifications, as determined necessary



3800 by the division, in the same manner as prescribed under subsection
3801 (1)(b) of this section. The entity shall notify the division in
3802 writing of its intention to issue a request for proposals or a
3803 request for qualifications.

3804 (c) The terms of any shared-savings contract, energy
3805 services contract, or energy performance contract entered into
3806 under this section may not exceed twenty (20) years, commencing on
3807 the completion of the installation of equipment or improvements
3808 under the contract.

3809 (d) The terms of any shared savings or energy
3810 performance contract entered into under this section must contain
3811 a guarantee of savings clause from the company providing energy
3812 efficiency equipment services relating to the installation,
3813 operation and maintenance of equipment or improvements reasonably
3814 required to existing or new equipment and existing or new
3815 improvements and facilities.

3816 (5) (a) By March 1 and September 1 of each year, each
3817 entity that enters into an energy performance contract or
3818 shared-savings contract shall report to the division its energy
3819 usage by meter in dollars and consumption by fuel type for the
3820 previous six-month period determined by the division.

3821 (b) The division shall remove qualified status of an
3822 energy services provider that fails to meet the reporting
3823 requirements of paragraph (a) of this subsection after two (2)
3824 such violations.



3825 (c) Any costs associated with the reporting made under
3826 this subsection (5) shall be paid by the energy services provider.

3827 (6) The contract may be construed to provide flexibility to
3828 public agencies in structuring agreements entered into hereunder
3829 so that economic benefits may be maximized.

3830 (7) This section shall stand repealed on July 1, 2019.

3831 **SECTION 31.** Section 31-7-15, Mississippi Code of 1972, is
3832 brought forward as follows:

3833 31-7-15. (1) Whenever two (2) or more competitive bids are
3834 received, one or more of which relates to commodities grown,
3835 processed or manufactured within this state, and whenever all
3836 things stated in such received bids are equal with respect to
3837 price, quality and service, the commodities grown, processed or
3838 manufactured within this state shall be given preference. A
3839 similar preference shall be given to commodities grown, processed
3840 or manufactured within this state whenever purchases are made
3841 without competitive bids, and when practical the Department of
3842 Finance and Administration may by regulation establish reasonable
3843 preferential policies for other commodities, giving preference to
3844 resident suppliers of this state.

3845 (2) Any foreign manufacturing company with a factory in the
3846 state and with over fifty (50) employees working in the state
3847 shall have preference over any other foreign company where both
3848 price and quality are the same, regardless of where the product is
3849 manufactured.



3850 (3) On or before January 1, 1991, the Department of Finance
3851 and Administration shall adopt bid and product specifications to
3852 be utilized by all state agencies that encourage the procurement
3853 of commodities made from recovered materials. Preference in
3854 awarding contracts for commodities shall be given to commodities
3855 offered at a competitive price.

3856 (4) Each state agency is required to procure products made
3857 from recovered materials when those products are available at a
3858 competitive price. For purposes of this subsection, "competitive
3859 price" means a price not greater than ten percent (10%) above the
3860 lowest and best bidder. A decision not to procure products made
3861 from recovered materials must be based on a determination that
3862 such procurement:

3863 (a) Is not available within a reasonable period of
3864 time; or

3865 (b) Fails to meet the performance standards set forth
3866 in the applicable specifications; or

3867 (c) Is not available at a competitive price.

3868 (5) Whenever economically feasible, each state agency is
3869 required to purchase products manufactured or sold by the
3870 Mississippi Industries for the Blind.

3871 **SECTION 32.** Section 31-7-16, Mississippi Code of 1972, is
3872 brought forward as follows:

3873 31-7-16. In the event equipment is required which is capable
3874 of being manufactured or assembled in separate units such as



3875 school bus chassis and bodies or other bodies of equipment
3876 installed upon chassis, and there is a manufacturer of such bodies
3877 located within the State of Mississippi, a public purchase may be
3878 made of such chassis and such body or equipment as separate items.

3879 **SECTION 33.** Section 31-7-18, Mississippi Code of 1972, is
3880 brought forward as follows:

3881 31-7-18. In addition to the method of purchasing authorized
3882 in this chapter, said governing authorities are hereby authorized
3883 to accept the lowest bid received from a motor vehicle dealer
3884 domiciled within the county of the governing authority for the
3885 purchase of any motor vehicle having a gross vehicle weight rating
3886 of less than twenty-six thousand (26,000) pounds that shall not
3887 exceed a sum equal to three percent (3%) greater than the price or
3888 cost which the dealer pays the manufacturer, as evidenced by the
3889 factory invoice for the motor vehicle. In the event said county
3890 does not have an authorized motor vehicle dealer, said board or
3891 governing authority may, in like manner, receive bids from motor
3892 vehicle dealers in any adjoining county.

3893 No purchase of a motor vehicle under the provisions of this
3894 section shall be valid unless the purchase is made according to
3895 statutory bidding and licensing requirements. Provided, however,
3896 that the governing authorities may choose to purchase a motor
3897 vehicle from the authorized state contract dealer without having
3898 to advertise and receive bids therefor.



3899 No purchase shall be made in excess of the approved state
3900 contract price by any of the aforementioned governing authorities
3901 when such authorities are situated wholly or in part in the county
3902 wherein the authorized state contract dealer for a particular item
3903 is domiciled.

3904 **SECTION 34.** Section 31-7-21, Mississippi Code of 1972, is
3905 brought forward as follows:

3906 31-7-21. The provisions of this chapter shall neither repeal
3907 nor modify the functions of the Governor's Office of General
3908 Services as set forth in Sections 31-11-1 through 31-11-89.

3909 **SECTION 35.** Section 31-7-23, Mississippi Code of 1972, is
3910 brought forward as follows:

3911 31-7-23. Any rebates, refunds, coupons, merit points,
3912 gratuities or any article of value tendered or received by any
3913 agency or governing authority from any vendor of material,
3914 supplies, equipment or other articles shall inure to the benefit
3915 of the agency or governing authority making the purchase. The
3916 agency or governing authority may, in accordance with its best
3917 interest, either take delivery of the article of value tendered
3918 and use the same or convert it to cash by selling it for its fair
3919 and reasonable value, making use of the proceeds from such sale
3920 for the exclusive benefit of the agency or governing authority.

3921 **SECTION 36.** Section 31-7-38, Mississippi Code of 1972, is
3922 brought forward as follows:



3923 31-7-38. The board of trustees or governing board of any
3924 hospital or regional mental health center owned or owned and
3925 operated separately or jointly by the State of Mississippi or any
3926 of its branches, agencies, departments or subdivisions, or by one
3927 or more counties, cities, towns, supervisors districts or election
3928 districts, or combinations thereof, may authorize by resolution
3929 the organization and operation of, or the participation in, a
3930 group purchasing program with other hospitals or regional mental
3931 health centers, for the purchase of supplies, commodities and
3932 equipment when it appears to the board of trustees or governing
3933 board that such a group purchasing program could or would affect
3934 economy or efficiency in their operations. Purchases by hospitals
3935 or regional mental health centers participating in group
3936 purchasing programs of supplies, commodities and equipment through
3937 such programs shall be exempt from the provisions of Sections
3938 31-7-9, 31-7-10, 31-7-11, 31-7-12 and 31-7-13.

3939 **SECTION 37.** Section 31-7-47, Mississippi Code of 1972, is
3940 brought forward as follows:

3941 31-7-47. In the letting of public contracts, preference
3942 shall be given to resident contractors, and a nonresident bidder
3943 domiciled in a state, city, county, parish, province, nation or
3944 political subdivision having laws granting preference to local
3945 contractors shall be awarded Mississippi public contracts only on
3946 the same basis as the nonresident bidder's state, city, county,
3947 parish, province, nation or political subdivision awards contracts



3948 to Mississippi contractors bidding under similar circumstances.
3949 Resident contractors actually domiciled in Mississippi, be they
3950 corporate, individuals or partnerships, are to be granted
3951 preference over nonresidents in awarding of contracts in the same
3952 manner and to the same extent as provided by the laws of the
3953 state, city, county, parish, province, nation or political
3954 subdivision of domicile of the nonresident.

3955 **SECTION 38.** Section 31-7-49, Mississippi Code of 1972, is
3956 brought forward as follows:

3957 31-7-49. In placing orders for purchases under bids received
3958 and contracts awarded under the provisions of this chapter, the
3959 governing authority, by orders entered on its minutes, may
3960 authorize its members, or agents designated by its order, to place
3961 orders for the purchase of such supplies and materials from time
3962 to time during the period covered by the contract, as such
3963 supplies and materials are needed. Claims for such supplies so
3964 ordered by an individual board member or other duly authorized
3965 agent shall not be allowed and paid by the board until such claims
3966 shall have been approved in writing by the individual board member
3967 or agent who ordered such supplies or the successor to such member
3968 or agent.

3969 **SECTION 39.** Section 31-7-53, Mississippi Code of 1972, is
3970 brought forward as follows:

3971 31-7-53. In making any and all purchases of fertilizer for
3972 all state institutions and agencies, the board, officer, or



3973 employee given the authority to make such purchases shall take
3974 into consideration the chemical analysis and percentage of plant
3975 food unit value in such fertilizer in determining the lowest and
3976 best bid. No awards of contracts shall be made until the best
3977 price is determined on the basis of the chemical analysis as to
3978 the plant food unit value of the product, and the contract shall
3979 be awarded on the basis of such an analysis of the plant food unit
3980 value.

3981 This section does not apply for the purchase of material by
3982 research agencies of the state for use in experimental projects.

3983 The State Penitentiary Board, the Board of Trustees of the
3984 State Institutions of Higher Learning, and any other agency,
3985 department, or board of trustees of the State of Mississippi are
3986 hereby authorized to purchase all needed quantities of anhydrous
3987 ammonia and ammonium nitrate fertilizers available through the
3988 facilities of Mississippi State University of Agriculture and
3989 Applied Science. Such purchase may be at public or private sale,
3990 provided that such fertilizers can be obtained for not more than
3991 the price that the same are then available to such board, agency,
3992 or department from any other source.

3993 **SECTION 40.** Section 31-7-55, Mississippi Code of 1972, is
3994 brought forward as follows:

3995 31-7-55. **[For penalties applicable to violations occurring**
3996 **between January 1, 1981, and August 15, 1988, the following**
3997 **provisions govern.]**



3998 (1) It is hereby declared to be unlawful and a violation of
3999 public policy of the State of Mississippi for any elected or
4000 appointed public officer of the state or the executive head of a
4001 state board, commission, department, subdivision of the state
4002 government or governing authority to make any purchases without
4003 the full compliance with the provisions of Chapter 7, Title 31,
4004 Mississippi Code of 1972. Any elected or appointed public officer
4005 of the state or the executive head of a state board, commission,
4006 department, subdivision of the state government or governing
4007 authority who violates the provisions of Chapter 7, Title 31,
4008 Mississippi Code of 1972, shall be deemed guilty of a misdemeanor
4009 and, upon conviction therefor, shall be fined not less than One
4010 Hundred Dollars (\$100.00) and not more than Five Hundred Dollars
4011 (\$500.00) for each separate offense, or sentenced to the county
4012 jail for not more than six (6) months, or both such fine and
4013 imprisonment, and shall be removed from his office or position.

4014 (2) Any person diverting the benefits of any article of
4015 value tendered or received by any agency or governing authority to
4016 his or her personal use, in violation of Section 31-7-23, shall be
4017 guilty of a misdemeanor and, upon conviction, shall be punished by
4018 a fine of not less than One Hundred Dollars (\$100.00) nor more
4019 than Five Hundred Dollars (\$500.00), or sentenced to the county
4020 jail for not more than six (6) months, or by both such fine and
4021 imprisonment, and shall be required to return the money value of
4022 the article unlawfully diverted to the agency involved.



4023 **[The following provisions apply to violations which occur on**
4024 **or after August 16, 1988.]**

4025 (1) It is hereby declared to be unlawful and a violation of
4026 public policy of the State of Mississippi for any elected or
4027 appointed public officer of an agency or a governing authority, or
4028 the executive head, any employee or agent of an agency or
4029 governing authority to make any purchases without the full
4030 compliance with the provisions of Chapter 7, Title 31, Mississippi
4031 Code of 1972.

4032 (2) Except as otherwise provided in subsection (4) of this
4033 section, any person who intentionally, willfully and knowingly
4034 violates the provisions of Chapter 7, Title 31, Mississippi Code
4035 of 1972, shall be deemed guilty of a misdemeanor and, upon
4036 conviction thereof, shall be fined not less than One Hundred
4037 Dollars (\$100.00) and not more than Five Hundred Dollars (\$500.00)
4038 for each separate offense, or sentenced to the county jail for not
4039 more than six (6) months, or both such fine and imprisonment, and
4040 shall be removed from his office or position.

4041 (3) Any person who intentionally, willfully and knowingly
4042 violates the provisions of subsection (1) of Section 31-7-57 shall
4043 be guilty of a misdemeanor and, upon conviction thereof, shall be
4044 fined not less than One Hundred Dollars (\$100.00) and not more
4045 than Five Hundred Dollars (\$500.00), or sentenced to the county
4046 jail for not more than six (6) months, or both such fine and
4047 imprisonment, and shall be removed from his office or position.



(4) Any person diverting the benefits of any article of value tendered or received by any agency or governing authority to his or her personal use, in violation of Section 31-7-23, if the value of such article be less than Five Hundred Dollars (\$500.00), shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or sentenced to the county jail for not more than six (6) months, or by both such fine and imprisonment, shall be removed from his office or position, and shall be required to return the money value of the article unlawfully diverted to the agency or governing authority involved. If the value of the article be Five Hundred Dollars (\$500.00) or more, such person shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or sentenced to the Department of Corrections for not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment, shall be removed from his office or position, and shall be required to return the money value of the article unlawfully diverted to the agency or governing authority involved.

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

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



4073 31-7-57. (1) Any elected or appointed public officer of an
4074 agency or a governing authority, or the executive head, any
4075 employee or agent of an agency or governing authority, who
4076 appropriates or authorizes the expenditure of any money to an
4077 object not authorized by law, shall be liable personally for up to
4078 the full amount of the appropriation or expenditure as will fully
4079 and completely compensate and repay such public funds for any
4080 actual loss caused by such appropriation or expenditure, to be
4081 recovered by suit in the name of the governmental entity involved,
4082 or in the name of any person who is a taxpayer suing for the use
4083 of the governmental entity involved, and such taxpayer shall be
4084 liable for costs in such case. In the case of a governing board
4085 of an agency or governing authority, only the individual members
4086 of the governing board who voted for the appropriation or
4087 authorization for expenditure shall be liable under this
4088 subsection.

4089 (2) No individual member, officer, employee or agent of any
4090 agency or board of a governing authority shall let contracts or
4091 purchase commodities or equipment except in the manner provided by
4092 law, including the provisions of Section 25-9-120(3), Mississippi
4093 Code of 1972, relating to personal and professional service
4094 contracts by state agencies; nor shall any such agency or board of
4095 a governing authority ratify any such contract or purchase made by
4096 any individual member, officer, employee or agent thereof, or pay
4097 for the same out of public funds unless such contract or purchase



4098 was made in the manner provided by law; provided, however, that
4099 any vendor who, in good faith, delivers commodities or printing or
4100 performs any services under a contract to or for the agency or
4101 governing authority, shall be entitled to recover the fair market
4102 value of such commodities, printing or services, notwithstanding
4103 some error or failure by the agency or governing authority to
4104 follow the law, if the contract was for an object authorized by
4105 law and the vendor had no control of, participation in, or actual
4106 knowledge of the error or failure by the agency or governing
4107 authority.

4108 (3) The individual members, officers, employees or agents of
4109 any agency or governing authority as defined in Section 31-7-1
4110 causing any public funds to be expended, any contract made or let,
4111 any payment made on any contract or any purchase made, or any
4112 payment made, in any manner whatsoever, contrary to or without
4113 complying with any statute of the State of Mississippi, regulating
4114 or prescribing the manner in which such contracts shall be let,
4115 payment on any contract made, purchase made, or any other payment
4116 or expenditure made, shall be liable, individually, and upon their
4117 official bond, for compensatory damages, in such sum up to the
4118 full amount of such contract, purchase, expenditure or payment as
4119 will fully and completely compensate and repay such public funds
4120 for any actual loss caused by such unlawful expenditure.

4121 (4) In addition to the foregoing provision, for any
4122 violation of any statute of the State of Mississippi prescribing



4123 the manner in which contracts shall be let, purchases made,
4124 expenditure or payment made, any individual member, officer,
4125 employee or agent of any agency or governing authority who shall
4126 substantially depart from the statutory method of letting
4127 contracts, making payments thereon, making purchases or expending
4128 public funds shall be liable, individually and on his official
4129 bond, for penal damages in such amount as may be assessed by any
4130 court of competent jurisdiction, up to three (3) times the amount
4131 of the contract, purchase, expenditure or payment. The person so
4132 charged may offer mitigating circumstances to be considered by the
4133 court in the assessment of any penal damages.

4134 (5) Any sum recovered under the provisions hereof shall be
4135 credited to the account from which such unlawful expenditure was
4136 made.

4137 (6) Except as otherwise provided in subsection (1) of this
4138 section, any individual member of an agency or governing authority
4139 as defined in Section 31-7-1 shall not be individually liable
4140 under this section if he voted against payment for contracts let
4141 or purchases made contrary to law and had his vote recorded in the
4142 official minutes of the board or governing authority at the time
4143 of such vote, or was absent at the time of such vote.

4144 **SECTION 42.** Section 31-7-59, Mississippi Code of 1972, is
4145 brought forward as follows:

4146 31-7-59. (1) Any municipality of over one hundred thousand
4147 (100,000) population, according to the latest decennial census and



4148 qualified to do so, is hereby empowered to purchase from the
4149 General Services Administration of the United States of America,
4150 without advertising for bids, any and all articles of supplies and
4151 equipment necessary for the operation of said municipality so long
4152 as the purchase price of such articles is below the purchase price
4153 of similar articles on a state contract accepted by the Office of
4154 General Services.

4155 (2) The aforesaid supplies and equipment may likewise be
4156 purchased from the General Services Administration without
4157 advertising for bids even though the Office of General Services
4158 does not have same listed on statewide contracts so long as the
4159 purchase price thereof is ten percent (10%) below the latest
4160 purchase price of comparable supplies and equipment.

4161 **SECTION 43.** Section 31-7-61, Mississippi Code of 1972, is
4162 brought forward as follows:

4163 31-7-61. It shall be unlawful for any person knowingly to
4164 purchase or to authorize or requisition the purchase of beef other
4165 than beef raised and produced within the United States when such
4166 purchase is to be paid by the state government or any of its
4167 political subdivisions out of public funds of any nature.
4168 However, all canned meats not available which are processed in the
4169 United States shall be exempt from Sections 31-7-61 through
4170 31-7-65.

4171 **SECTION 44.** Section 31-7-63, Mississippi Code of 1972, is
4172 brought forward as follows:



4173 31-7-63. Any person who violates the provisions of Section
4174 31-7-61 shall be guilty of a misdemeanor and upon conviction shall
4175 be punished by imprisonment for not more than thirty (30) days or
4176 by a fine of not less than One Hundred Dollars (\$100.00) nor more
4177 than Five Hundred Dollars (\$500.00). In addition to any criminal
4178 sanction authorized herein, a civil proceeding may be brought by a
4179 district attorney or county prosecuting attorney for recovery of
4180 funds paid out in violation of this section.

4181 **SECTION 45.** Section 31-7-65, Mississippi Code of 1972, is
4182 brought forward as follows:

4183 31-7-65. The Commissioner of Agriculture and Commerce of the
4184 State of Mississippi shall notify all state agencies, political
4185 subdivisions or public institutions within the State of
4186 Mississippi as to the provisions of Sections 31-7-61 through
4187 31-7-65.

4188 **SECTION 46.** Section 31-7-73, Mississippi Code of 1972, is
4189 brought forward as follows:

4190 31-7-73. Any state agency, as defined in Section 31-7-1,
4191 Mississippi Code of 1972, shall be authorized and empowered, in
4192 its discretion, to enter into an energy performance contract,
4193 energy services contract, on a shared-savings, lease or
4194 lease-purchase basis, for energy efficiency services and/or
4195 equipment as provided for in Section 31-7-14.

4196 **SECTION 47.** Section 31-7-301, Mississippi Code of 1972, is
4197 brought forward as follows:



4198 31-7-301. (1) The Legislature hereby declares that it is
4199 essential to the efficient operation of public bodies of this
4200 state that adequate supplies of goods and services continue to be
4201 available from private sources; that the good name and credit of
4202 the state may be promoted by timely and responsible payment of
4203 just claims; and that fair compensation be awarded suppliers when
4204 payments of their claims are delayed without justification.

4205 (2) The term "public bodies" shall mean all state agencies,
4206 political subdivisions, school districts, municipalities and
4207 public corporations, whether created by charter, statute or
4208 executive order, whether supported wholly or in part by public
4209 funds, or which expend public funds.

4210 **SECTION 48.** Section 31-7-303, Mississippi Code of 1972, is
4211 brought forward as follows:

4212 31-7-303. (1) The requisition for payment of an invoice
4213 submitted to a public body and required by law to be filed with
4214 the State Fiscal Management Board shall be filed with the State
4215 Fiscal Management Board not later than thirty (30) days after
4216 receipt of the invoice and receipt, inspection and approval of the
4217 goods or services, except that in the case of a bona fide dispute
4218 the requisition for payment shall contain a statement of the
4219 dispute and authorize payment only in the amount not disputed. If
4220 a requisition for payment filed within the thirty-day period is
4221 returned by the State Fiscal Management Board because of an error,
4222 it shall nevertheless be deemed timely filed. The thirty-day



4223 filing requirement may be waived by the State Fiscal Management
4224 Board on a showing of exceptional circumstances in accordance with
4225 rules and regulations established by the State Fiscal Management
4226 Board.

4227 (2) The warrant, in payment of an invoice submitted to a
4228 public body of the state, shall be mailed or otherwise delivered
4229 by the public body not later than fifteen (15) days after filing
4230 of the requisition for payment; however, this requirement may be
4231 waived by the State Fiscal Management Board on a showing of
4232 exceptional circumstances in accordance with rules and regulations
4233 of the State Fiscal Management Board or as otherwise provided in
4234 Section 7-7-35, Mississippi Code of 1972.

4235 **SECTION 49.** Section 31-7-305, Mississippi Code of 1972, is
4236 brought forward as follows:

4237 31-7-305. (1) All public bodies of the state, including
4238 those which issue checks and those which file requisitions for
4239 payment with the State Fiscal Management Board, shall keep a
4240 record of the date of receipt of the invoice, dates of receipt,
4241 inspection and approval of the goods or services, date of issuing
4242 the check or date of filing the requisition for payment, as the
4243 case may be, and date of mailing or otherwise delivering the
4244 warrant or check in payment thereof. In the event that the State
4245 Fiscal Management Board mails or otherwise delivers the warrant
4246 directly to the claimant, pursuant to Section 7-7-35, Mississippi
4247 Code of 1972, the State Fiscal Management Board shall notify the



4248 public body of the date thereof. The provisions of this section
4249 are supplemental to the requirements of Sections 19-13-29,
4250 21-39-7, 21-39-13 and 37-5-93, Mississippi Code of 1972.

4251 (2) All public bodies that are authorized to issue checks in
4252 payment of goods and services and are not required to issue
4253 requisitions for payment to the State Fiscal Management Board
4254 shall mail or otherwise deliver such checks no later than
4255 forty-five (45) days after receipt of the invoice and receipt,
4256 inspection and approval of the goods or services; however, in the
4257 event of a bona fide dispute, the public body shall pay only the
4258 amount not disputed.

4259 (3) If a warrant or check, as the case may be, in payment of
4260 an invoice is not mailed or otherwise delivered within forty-five
4261 (45) days after receipt of the invoice and receipt, inspection and
4262 approval of the goods and services, the public body shall be
4263 liable to the vendor, in addition to the amount of the invoice,
4264 for interest at a rate of one and one-half percent (1-1/2%) per
4265 month or portion thereof on the unpaid balance from the expiration
4266 of such forty-five-day period until such time as the warrant or
4267 check is mailed or otherwise delivered to the vendor. The
4268 provisions of this paragraph shall apply only to undisputed
4269 amounts for which payment has been authorized. In the case of an
4270 error on the part of the vendor, the forty-five-day period shall
4271 begin to run upon receipt of a corrected invoice by the public
4272 body and upon compliance with the other provisions of this



4273 section. The various public bodies shall be responsible for
4274 initiating the penalty payments required by this subsection and
4275 shall use this subsection as authority to make such payments.
4276 Also, at the time of initiating such penalty payment, the public
4277 body shall specify in writing an explanation of the delay and
4278 shall attach such explanation to the requisition for payment of
4279 the penalty or to the file copy of the check issued by the public
4280 body, as the case may be.

4281 (4) (a) In the event of a bona fide dispute as to an
4282 invoice, or any portion thereof, the dispute shall be settled
4283 within thirty (30) days after interest penalties could begin to be
4284 assessed, if it were not for the dispute.

4285 (b) If a warrant or check, as the case may be, in
4286 payment of an invoice, subject to a prior dispute, is not mailed
4287 or otherwise delivered within thirty (30) days after settlement of
4288 the dispute, the public body shall be liable to the vendor, in
4289 addition to the amount of the invoice, for interest at a rate of
4290 one and one-half percent (1-1/2%) per month or portion thereof on
4291 the unpaid balance from the expiration of said thirty-day period
4292 until such time as the warrant or check is mailed or otherwise
4293 delivered to the vendor. At the time of initiating such penalty
4294 payment, the public body shall specify in writing an explanation
4295 of the delay and shall attach such explanation to the requisition
4296 for payment of the penalty or to the file copy of the check issued
4297 by the public body, as the case may be. The interest penalty



4298 prescribed in this paragraph shall be in lieu of the penalty
4299 provided in subsection (3).

4300 **SECTION 50.** Section 31-7-307, Mississippi Code of 1972, is
4301 brought forward as follows:

4302 31-7-307. (1) The budget request submitted by a public body
4303 to the Legislature shall specifically disclose the amount of any
4304 interest paid by any public body pursuant to Sections 31-7-301
4305 through 31-7-317. However, no provision of Sections 31-7-301
4306 through 31-7-317 authorizes a new appropriation to cover such
4307 interest penalties, and public bodies shall not seek to increase
4308 appropriations for the purpose of obtaining funds to pay any
4309 interest penalties.

4310 (2) All public bodies of the state, including those which
4311 issue checks and those which file requisitions for payment with
4312 the State Fiscal Management Board, shall monthly notify the State
4313 Fiscal Management Board of the number and dollar amount of late
4314 payments by the public body along with the amounts of interest
4315 paid and the specific steps being taken to reduce the incidence of
4316 late payments.

4317 (3) If the terms of the invoice provide a discount for
4318 payment in less than forty-five (45) days, public bodies shall
4319 preferentially process it and use all diligence to obtain the
4320 savings by compliance with the invoice terms, if it would be cost
4321 effective.



4322 **SECTION 51.** Section 31-7-309, Mississippi Code of 1972, is
4323 brought forward as follows:

4324 31-7-309. Whenever a vendor brings formal administrative or
4325 judicial action to collect interest due under Sections 31-7-301
4326 through 31-7-317, the public body shall be required to pay any
4327 reasonable attorney's fees if the vendor prevails.

4328 **SECTION 52.** Section 31-7-311, Mississippi Code of 1972, is
4329 brought forward as follows:

4330 31-7-311. The State Fiscal Management Board shall submit to
4331 the Appropriations Committee of each house of the Legislature by
4332 January 15 of each year a report summarizing the payment record
4333 for the preceding fiscal year. The report shall include the
4334 number and dollar amount of late payments by each public body
4335 along with the amounts of interest paid and the specific steps
4336 being taken to reduce the incidence of late payments.

4337 **SECTION 53.** Section 31-7-313, Mississippi Code of 1972, is
4338 brought forward as follows:

4339 31-7-313. The State Fiscal Management Board is authorized
4340 and directed to adopt and promulgate rules and regulations
4341 necessary to implement this section.

4342 **SECTION 54.** Section 31-7-315, Mississippi Code of 1972, is
4343 brought forward as follows:

4344 31-7-315. Sections 31-7-301 through 31-7-317 shall not
4345 affect payment under public works contracts as provided in
4346 Sections 31-5-25 and 31-5-27, Mississippi Code of 1972.



4347 **SECTION 55.** Section 31-7-317, Mississippi Code of 1972, is
4348 brought forward as follows:

4349 31-7-317. (1) The Governor's Office of General Services
4350 shall study the feasibility of:

4351 (a) Requiring the Bureau of Purchasing to act as
4352 purchasing agent for state agencies;

4353 (b) Requiring the Bureau of Purchasing to purchase
4354 frequently used products and supplies and warehouse them for state
4355 agencies, especially in the Jackson metropolitan area; and

4356 (c) A small business/minority set-aside program.

4357 (2) On or before January 15, 1987, the Governor's Office of
4358 General Services shall transmit its written report of the
4359 feasibility studies to the Legislature, along with its
4360 recommendations and an estimate of the fiscal impact of the
4361 recommendations. If the Governor's Office of General Services
4362 recommends that the bureau should be required to act as purchasing
4363 agent for smaller state agencies, the report shall include a list
4364 of state agencies to be included.

4365 **SECTION 56.** Section 31-17-3, Mississippi Code of 1972, is
4366 brought forward as follows:

4367 31-17-3. The State Bond Commission, with the approval and
4368 consent of the State Auditor of Public Accounts and the Chairman
4369 of the State Tax Commission, is hereby authorized to purchase
4370 outstanding bonds of the State of Mississippi, retire such bonds,
4371 and pay the purchase price thereof out of any surplus remaining in



4372 the State Treasury at the end of any fiscal year, all in accord
4373 with the provisions of Sections 31-17-21 through 31-17-25. The
4374 State Bond Commission, with the consent and approval of the State
4375 Auditor of Public Accounts and the Chairman of the State Tax
4376 Commission, shall determine the amount of bonds to be purchased,
4377 the maximum price to be paid therefor not to exceed par and
4378 accrued interest, and the date upon which it will receive
4379 proposals to purchase such bonds, all in accord with the
4380 provisions of Sections 31-17-21 through 31-17-25.

4381 **SECTION 57.** Section 57-62-13, Mississippi Code of 1972, is
4382 brought forward as follows:

4383 57-62-13. (1) As soon as practicable after the end of a
4384 calendar quarter for which a qualified business or industry has
4385 qualified to receive an incentive payment, the qualified business
4386 or industry shall file a claim for the payment with the Department
4387 of Revenue and shall specify the actual number of new direct jobs
4388 created and maintained by the business or industry for the
4389 calendar quarter and the gross payroll thereof. The Department of
4390 Revenue shall verify the actual number of new direct jobs created
4391 and maintained by the business or industry and compliance with the
4392 average annual wage requirements for such business or industry
4393 under this chapter. If the qualified business or industry files a
4394 claim for an incentive payment during an additional incentive
4395 period provided under Section 57-62-9(2), the Department of
4396 Revenue shall verify the actual number of new direct jobs created



4397 and maintained by the business or industry and compliance with the
4398 average annual wage requirements for such business or industry
4399 under this chapter. If the Department of Revenue is not able to
4400 provide such verification utilizing all available resources, the
4401 Department of Revenue may request such additional information from
4402 the business or industry as may be necessary.

4403 (2) (a) Except as otherwise provided in this chapter, the
4404 business or industry must meet the salary and job requirements of
4405 this chapter for four (4) consecutive calendar quarters prior to
4406 payment of the first incentive payment. Except as otherwise
4407 provided in Section 57-62-9, if the business or industry does not
4408 maintain the salary or job requirements of this chapter at any
4409 other time during the ten-year period after the date the first
4410 payment was made, the incentive payments shall not be made and
4411 shall not be resumed until such time as the actual verified number
4412 of new direct jobs created and maintained by the business or
4413 industry equals or exceeds the requirements of this chapter for
4414 one (1) calendar quarter.

4415 (b) If the business or industry is qualified to receive
4416 incentive payments for an additional period provided under Section
4417 57-62-9(2), the business or industry must meet the wage and job
4418 requirements of Section 57-62-9(2), for four (4) consecutive
4419 calendar quarters prior to payment of the first incentive payment.
4420 If the business or industry does not maintain the wage or job
4421 requirements of Section 57-62-9(2), at any other time during the



4422 appropriate additional period after the date the first payment was
4423 made, the incentive payments shall not be made and shall not be
4424 resumed until such time as the actual verified number of new
4425 direct jobs created and maintained by the business or industry
4426 equals or exceeds the amounts specified in Section 57-62-9(2), for
4427 one (1) calendar quarter.

4428 (3) An establishment that has qualified pursuant to this
4429 chapter may receive payments only in accordance with the provision
4430 under which it initially applied and was approved. If an
4431 establishment that is receiving incentive payments expands, it may
4432 apply for additional incentive payments based on the new gross
4433 payroll for new direct jobs anticipated from the expansion only,
4434 pursuant to this chapter.

4435 (4) As soon as practicable after verification of the
4436 qualified business or industry meeting the requirements of this
4437 chapter and all rules and regulations, the Department of Finance
4438 and Administration, upon requisition of the Department of Revenue,
4439 shall issue a warrant drawn on the Mississippi Advantage Jobs
4440 Incentive Payment Fund to the establishment in the amount of the
4441 incentive payment as determined pursuant to subsection (1) of this
4442 section for the calendar quarter.

4443 **SECTION 58.** This act shall take effect and be in force from
4444 and after July 1, 2019.

