MISSISSIPPI LEGISLATURE  
REGULAR SESSION 2020

To: Rules

By: Representatives Bennett, McCarty

HOUSE BILL NO. 1786  
(As Passed the House)

AN ACT TO CREATE THE "TECHNOLOGY INSTRUCTION AND DIGITAL ACCESS TO LEARNING (TIDAL) ACT," WHICH SHALL BE ADMINISTERED BY THE STATE DEPARTMENT OF EDUCATION TO PROVIDE STRUCTURED GUIDANCE, TECHNICAL AND FINANCIAL ASSISTANCE TO LOCAL SCHOOL DISTRICTS AND PUBLIC CHARTER SCHOOLS IN THE ABILITY TO PROVIDE DISTANCE LEARNING AND ONLINE INSTRUCTION; TO PRESCRIBE THE LEGISLATIVE FINDINGS AND STATEMENT OF INTENT; TO DEFINE TERMINOLOGY; TO REQUIRE THE DEPARTMENT TO SOLICIT REQUESTS FOR BID PROPOSALS FROM TECHNOLOGY VENDORS TO ESTABLISH AN EXPRESS PRODUCTS LIST (EPL), OR TO ALLOW THE DEPARTMENT TO USE THE EPLS COMPiled BY THE MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES (MDITS) FOR THE PURCHASE OF INFORMATION TECHNOLOGY, ELECTRONIC DEVICES, TELECOMMUNICATIONS EQUIPMENT AND SOFTWARE PROGRAMS; TO AUTHORIZE THE DEPARTMENT TO REVISE EPL CATEGORIES BASED UPON PURCHASING DEMANDS, WHICH ARE CONSISTENT TO PROVIDE SCHOOL DISTRICTS AND CHARTER SCHOOLS WITH STRUCTURED CHOICE IN THE SELECTION OF THE BRAND AND TYPE OF ELECTRONIC DEVICES AVAILABLE FOR PURCHASE; TO PERMIT SCHOOL DISTRICTS AND CHARTER SCHOOLS TO ACQUIRE DEVICES, EQUIPMENT AND/OR SOFTWARE OUTSIDE OF THE EPLS AND STRUCTURED CHOICE RECOMMENDATIONS OF THE DEPARTMENT UPON THE DISTRICT'S DEMONSTRATION THAT SUCH DEVICES, EQUIPMENT AND/OR SOFTWARE MEET OR EXCEED THE TECHNOLOGICAL SPECIFICATIONS AND FUNCTIONALITY REQUIRED BY THE DEPARTMENT AND CAN BE PURCHASED AT AN OPTIMAL PRICE POINT LESS THAN OFFERED ON THE DEPARTMENT'S EPLS; TO SPECIFY THE CRITERIA TO BE CONSIDERED BY THE DEPARTMENT IN ESTABLISHING ITS EPLS AND STRUCTURED CHOICE GUIDE IN ORDER TO ENSURE OPTIMAL ECONOMICAL PRICING AND LONGEVITY OF DEVICE USAGE; TO REQUIRE THAT THE STATE DEPARTMENT OF EDUCATION SHALL HAVE PROCURED ALL NECESSARY WI-FI AND LTE ENABLED DEVICES, PROGRAM COMPONENTS AND SYSTEMS OF PRODUCT SUPPORTS AND SERVICES FOR THE DELIVERY OF DIGITAL INSTRUCTION THROUGH DISTANCE LEARNING BY NOVEMBER 30, 2020; TO REQUIRE LOCAL SCHOOL DISTRICTS AND CHARTER SCHOOLS TO IMPLEMENT THE USE OF ITS APPROVED DIGITAL LEARNING PROGRAM AND ISSUE A WI-FI OR LTE ENABLED ELECTRONIC DEVICE TO EVERY PUBLIC
SCHOOL STUDENT; TO REQUIRE THE IMPLEMENTED DIGITAL LEARNING
PROGRAMS TO SUPPORT INDIVIDUALIZED PLANS FOR SCHOOL-TO-HOME
CONNECTIVITY TO PROVIDE STUDENTS WITH ACCESS TO THE SCHOOL
DISTRICT'S OR CHARTER SCHOOL'S LEARNING MANAGEMENT SYSTEM; TO
REQUIRE EACH SCHOOL BOARD TO IDENTIFY A DIGITAL INCLUSION
COORDINATOR FOR EACH SCHOOL FACILITY UNDER ITS GOVERNANCE, WHO
SHALL COORDINATE THE WORK AND REPORT THE RESULTS THEREOF TO THE
DISTRICT SUPERINTENDENT TO BE SUBMITTED TO THE STATE DEPARTMENT OF
EDUCATION FOR PURPOSE OF INCLUSION IN THE STATE SUPERINTENDENT OF
PUBLIC EDUCATION ANNUAL LEGISLATIVE REPORT; TO REQUIRE EVERY
PUBLIC SCHOOL INSTRUCTOR AND ADMINISTRATOR TO SIGN A PERSONAL
PROFESSIONAL DEVELOPMENT PLAN ACKNOWLEDGMENT THAT INCLUDES DIGITAL
INCLUSION, VIRTUAL LEARNING AND TRAINING; TO ALLOW THE USE OF
TECHNOLOGY-RELATED CONTINUING EDUCATION UNITS (CEUs) TO BE
ELIGIBLE TO SATISFY THE PROFESSIONAL DEVELOPMENT PLAN, SUBJECT TO
APPROVAL BY THE STATE BOARD OF EDUCATION; TO REQUIRE EACH LOCAL
SCHOOL DISTRICT AND CHARTER SCHOOL TO DEVELOP AND SUBMIT A
TECHNOLOGY SUSTAINABILITY PLAN TO THE DEPARTMENT AT THE TIME IT
SUBMITS ITS REQUEST FOR FINANCIAL ASSISTANCE; TO STIPULATE THAT
EACH SCHOOL DISTRICT AND CHARTER SCHOOL SHALL ASSUME THE CONTROL
OF OWNERSHIP AND LIABILITY FOR EACH ELECTRONIC DEVICES PURCHASED
AND RECEIVED FOR THE PURPOSE OF IMPLEMENTING DISTANCE LEARNING
UNTIL PROPER DISPOSAL OF SUCH DEVICES; TO PRESCRIBE THE MANNERS BY
WHICH A SCHOOL DISTRICT OR CHARTER SCHOOL MAY DISPOSE OF
ELECTRONIC DEVICES THAT BECOME OBSOLETE; TO PROVIDE SCHOOL
DISTRICTS AND CHARTER SCHOOLS WITH THE AUTHORITY TO DEVELOP ITS
OWN DISTANCE LEARNING POLICY GOVERNING THE MODALITY OF INSTRUCTION
AND DEPLOYMENT OF SERVICES; TO REQUIRE SUCH PLANS TO ALIGN WITH
THE GUIDELINES ESTABLISHED BY THE DEPARTMENT TO ENSURE CONTINUITY
OF SERVICE AND COMPLIANCE WITH THE COLLEGE AND CAREER READINESS
STANDARDS; TO REQUIRE SCHOOL DISTRICTS AND CHARTER SCHOOLS TO
COMPILE AND MAINTAIN AN INVENTORY CONTROL LIST OF ALL ELECTRONIC
DEVICES PURCHASED AND ISSUED TO STUDENTS, TEACHERS AND STAFF, AS
WELL AS ANY SUPPORTING TECHNOLOGY DEVICES USED IN DELIVERY OF
ONLINE INSTRUCTION; TO REQUIRE SCHOOL DISTRICTS AND CHARTER
SCHOOLS TO CONDUCT ANNUAL AUDITS OF EQUIPMENT UPON THE CONCLUSION
OF THE SCHOOL YEAR; TO AUTHORIZE SCHOOL DISTRICTS AND CHARTER
SCHOOLS TO ISSUE FINES TO STUDENTS FOR ANY DAMAGE CAUSED TO OR
DESTRUCTION OF ELECTRONIC DEVICES, OUTSIDE OF WEAR AND TEAR CAUSED
BY NORMAL USAGE; TO REQUIRE SCHOOL DISTRICTS TO ADOPT AND
IMPLEMENT A CYBERSECURITY POLICY TO PREVENT, PROTECT FROM,
MITIGATE THE EFFECTS OF, RESPOND TO AND RECOVER FROM CYBER
THREATS; TO PRESCRIBE THE MINIMUM STANDARDS FOR CYBERSECURITY
POLICIES; TO REQUIRE EACH SCHOOL DISTRICT AND CHARTER SCHOOL TO
CONTRIBUTE AN EQUIVALENT OF 20% OF ITS TOTAL ELEMENTARY AND
SECONDARY SCHOOL EMERGENCY RELIEF (ESSER) FUNDS ALLOCATION, OR AN
EQUIVALENT UP TO 20% OF ITS OVERALL COVID-19 RELATED DIGITAL
LEARNING TECHNOLOGY COST IF THE TOTAL COSTS EXCEEDS ITS EESSER FUND
ALLOCATION, WHICHER IS LESS, TO AID IN THE COST OF PURCHASING
ELECTRONIC DEVICES, TECHNOLOGY SUPPORT SERVICES AND SOFTWARE
PROGRAMS TO BE ELIGIBLE FOR PARTICIPATION IN THE GRANT PROGRAM; TO
PRESCRIBE THE METHOD BY WHICH THE DEPARTMENT SHALL ALLOCATE GRANT FUNDS TO SCHOOL DISTRICTS AND CHARTER SCHOOLS USING A FORMULA DEVELOPED BY THE DEPARTMENT; TO ENCOURAGE SCHOOL DISTRICTS AND CHARTER SCHOOLS TO RESERVE AND COMMIT A PORTION EQUIVALENT TO 20% OF ITS ESSEX FUNDS ALLOCATION OR THE EQUIVALENT OF THE MINIMUM PERCENTAGE OF ITS OVERALL COVID-19 RELATED DIGITAL LEARNING TECHNOLOGY COST AS SUPPLEMENTAL MATCHING FUNDS TO OFFSET THE TOTAL COST OF PROCURING THE PROPER ELECTRONIC DEVICES AND TECHNOLOGICAL SUPPORTS AND SYSTEMS OF SERVICE TO FACILITATE THE DELIVERY OF THE DISTRICT'S OR CHARTER SCHOOL'S DISTANCE LEARNING PROGRAM; TO PROVIDE THE STATE DEPARTMENT OF EDUCATION AND LOCAL SCHOOL DISTRICTS OR CHARTER SCHOOLS ACTING AS THEIR OWN PROCUREMENT AGENT WITH IMMUNITY FROM CIVIL LIABILITY FOR ANY DAMAGES ARISING FROM THE PUBLIC PROCUREMENT OF PERSONNEL, PROPERTY, SUPPLIES OR SERVICES NECESSARY TO ADMINISTER THE PROVISIONS OF THIS ACT; TO AMEND SECTION 37-67-1, MISSISSIPPI CODE OF 1972, WHICH ESTABLISHES THE DISTANCE LEARNING COLLABORATIVE, TO INCLUDE CHARTER SCHOOLS; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO EXEMPT STATE GOVERNMENTAL AGENCIES, LOCAL GOVERNING AUTHORITIES AND ANY POLITICAL SUBDIVISION THEREOF, INCLUDING LOCAL SCHOOL DISTRICTS, CHARTER SCHOOLS AND PUBLIC SPECIAL PURPOSE SCHOOLS, FROM THE PROCUREMENT AND COMPETITIVE BIDDING REQUIREMENTS FOR PURCHASES OF EQUIPMENT, TECHNOLOGICAL DEVICES, HARDWARE AND SOFTWARE FOR SUCH DEVICES, SUPPLIES AND SERVICES DIRECTLY ASSOCIATED WITH THE MITIGATION OF THE IMPACT OF COVID-19 FOR PURPOSES OF PROVIDING CONTINUOUS EDUCATION, HEALTH CARE, SOCIAL SERVICE AND UTILITY NEEDS; TO AMEND SECTION 37-7-459, MISSISSIPPI CODE OF 1972, TO PROVIDE CHARTER SCHOOLS WITH THE AUTHORITY TO SELL COMPUTER DEVICES TO STUDENTS OF ISSUE UPON GRADUATING HIGH SCHOOL, WITH PRICING CONDITIONS; TO PROVIDE THAT THE PROVISIONS OF THIS ACT ARE SEVERABLE; AND FOR RELATED PURPOSES.

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

SECTION 1. This act shall be known, and may be cited as the "Technology Instruction and Digital Access to Learning (TIDAL) Act."

SECTION 2. (1) The Mississippi Legislature finds that:

(a) In the midst of the unexpected global COVID-19 pandemic, which requires the implementation of practical and safe social distancing measures, the method of providing quality instruction at the K-12 and postsecondary levels is of paramount
importance and must incorporate technological engagement and access to digital learning; and

(b) There exists of an overwhelming necessity for the development and implementation of an efficient and reliable infrastructure to support the systems and measures critical to sustained digital connectivity and delivery of educational resources and materials in a timely manner due to interruptions in learning as a result of the impact of COVID-19.

(2) (a) It is the intent of this Legislature to establish a digital learning program that provides for the development, implementation and evaluation of innovative strategies and methods to increase students' home access to the Internet or data connectivity and digital learning resources due to interruptions in learning as a result of the impact of COVID-19. This may include such practices as:

(i) Providing a targeted distribution of technology, such as Wi-Fi and LTE enabled devices, which are capable of connecting to the Internet, and which allow students to participate in instruction and other educational services from locations outside of the school;

(ii) Educating and training students, parents and educators regarding the appropriate use of that technology outside of the classroom; and

(iii) Evaluating the effectiveness of relevant strategies and methods.
(b) It is further the intent of this Legislature to improve out-of-school access to digital learning resources for eligible students in order to achieve the following educational goals:

(i) Increasing student participation in the ability to complete homework assignments and participate in innovative digital learning models;

(ii) Increasing the education technology and digital learning resource options available to educators to support student learning by ensuring methods and resources used during the school day remain accessible during out-of-school hours;

(iii) Increasing student, educator and parental engagement by facilitating greater communication and connection between school and home;

(iv) Increasing the identification and dissemination of strategies to support students lacking out-of-school access to digital learning resources and the Internet, including unserved and underserved student populations and students in rural and remote geographic areas;

(v) Ensuring equity in education, which requires that every pupil in Mississippi's public elementary and secondary schools has equal access to continual quality educational opportunities through digital instruction and distance learning, regardless of:
1. The location of his or her residence;
2. The size of the district or school the pupil is enrolled and attends; or
3. Whether, due to COVID-19, traditional in-person instruction is infeasible as a result of the closure of school facilities, which necessitates home-based learning for students through digital instruction and distance learning; and

   (vi) Ensuring quality in education, which would be enhanced through the creative application of telecommunications, as pupils are given the opportunity for continued interaction with their peers, as well as expanded opportunities to interact with pupils from other cultures and geographical locations, and with outstanding educators from other schools and districts.

SECTION 3. As used in this act, the following terms shall have the meaning ascribed in this section:

(a) "Board" means the State Board of Education.
(b) "Department" means the State Department of Education.
(c) "Digital learning" means the process by which school districts and charter schools, in accordance with regulations guidelines adopted by the board and administered by the department, provide structured distance learning and high quality online instruction to its student population to maintain continuation of educational services.
(d) "Digital learning components" mean:
(i) Electronic devices;
(ii) Connectivity/data plans;
(iii) CIPA compliant web filtering;
(iv) Learning Management Systems (LMS);
(v) Digital curriculum;
(vi) Social-Emotional learning with access to Telehealth and/or Teletherapy;
(vii) Training, support and professional development; and
(viii) Meta-data on system performance and student engagement/participation.

(e) "Electronic devices" means:
   (i) Computer devices that perform logical operations and processes data and, at a minimum, are composed of:
       1. A central processing unit (CPU) to perform operations;
       2. User input devices such as a keyboard, mouse or digitizer; and
       3. A computer display screen to output information.

Computers include both stationary and portable units, including desktop computers, integrated desktop computers, notebook computers, thin clients, and workstations;

(ii) Notebook computers designed specifically for portability and to be operated for extended periods of time either
with or without a direct connection to an external AC power source. Notebooks must:

1. Utilize an integrated computer display and be capable of operation off of an integrated battery or other portable power source;

2. Have a physical keyboard and pointing device that is connected to and compatible with the device;

3. Be designed to provide operation of software similar in functionality to that used in desktops;

   (iii) Tablet PCs, which may use touch-sensitive screens along with, or instead of, other input devices; and

   (iv) Computers devices, notebook computers and tablet PCs that are Wi-Fi or LTE enabled for purposes of connecting to the Internet.

(f) "Express Product List" or "EPL" means the compilation of proposals competitively solicited by the department, evaluated and awarded to multiple vendors, for the purchase of electronic devices and other system hardware and software products equipped with the ability to support wireless connectivity necessary for the delivery of online instruction by local school districts and charter schools.

(g) "Grant program" means the "Technology Instruction and Digital Access to Learning (TIDAL) Grant Program administered by the State Department of Education."
(h) "Learning management system" or "LMS" means a software application for the administration, documentation, tracking, reporting, automation and delivery of educational courses, training programs, or learning and development programs.

(i) "Local digital learning plans" mean plans developed and implemented by local school districts and charter schools which provide for:

   (i) Modality of Instruction;
   (ii) Needs Assessment Responses;
   (iii) Funding and sustainability plans;
   (iv) Licenses for software, textbooks and curriculum;
   (v) Assurances;
   (vi) Grant application process; and
   (vii) Monitoring and reporting based on meta-data.

(j) "School" means a public K-12 school whose operation falls under the authority of:

   (i) A local school board under the governing purview of the State Board Education;
   (ii) A public special purpose school under the governing purview of the State Board Education; or
   (iii) A public charter school that has been approved and whose operation falls under the authority of the Mississippi Charter School Authorizer Board.
(k) "School board" means the local governing body that oversees the administration and operation for a system of schools in a county or municipality. The term "school board" also means the governing board of a charter school authorized by the Mississippi Charter School Authorizer Board.

(1) "Structured choice" means the options provided to school districts and charter schools to choose the brand and type of electronic devices with assistive technology, approved by the State Department of Education from its Express Products Lists, which are age- and grade-appropriate, to support the digital curriculum and instructional material delivered by the district or charter school through its distance learning model.

SECTION 4. (1) (a) There is established the "Technology Instruction and Digital Access to Learning (TIDAL) Grant Program, which shall be administered by the State Department of Education. The purpose of the program is to:

(i) Provide structured guidance, technical and financial assistance to local school districts and charter schools in the ability to provide distance learning and online instruction, and the system of support necessary to maintain delivery of services, network configuration and data connectivity, maintenance and upkeep of devices in the district's or charter school's inventory, which shall be distributed to students enrolled in the state's public K-12 schools and charter schools; and
(ii) Ensure equity in education, by providing every pupil in Mississippi's public elementary and secondary schools with equal access to quality educational opportunities, regardless of:

1. The location of his or her residence;
2. The size of the district or school the pupil is enrolled and attends; or
3. Whether, due to COVID-19, traditional in-person instruction is infeasible as a result of the closure of school facilities, which necessitates home-based learning for students through digital instruction and distance learning.

(b) The program shall be funded with monies appropriated by the Legislature from the "Technology Instruction and Digital Access to Learning (TIDAL) Grant Program" Fund, created under subsection (5) of this section, any additional state funds made available by the Legislature in any manner and funds from any other source designated for deposit into such fund, and any other funds intended for deposit to credit of the grant program fund by any public or private entity.

(2) (a) The department shall solicit requests for bid proposals from technology vendors to establish an Express Products List (EPL), or the department, in its discretion, may use the EPLs compiled by the Mississippi Department of Information Technology Services (MDITS) to negotiate best pricing when making purchases
of all needed information technology, electronic devices, telecommunications equipment, software programs and services.

(b) When practical, the department must receive at least two (2) bids for all required products, services and equipment necessary for compliance with the provisions of this act, as such products, services and equipment are acquired to facilitate distance learning through the dissemination of digital instructional material and the issuance of Wi-Fi and LTE enabled electronic devices and mechanisms of connectivity. In the receipt and execution of contracts for products and services under the provisions of this act, the department, when practical, shall stipulate within the contractual agreement that all such products and services included in the purchase agreement shall meet all the requirements specified in the appropriate digital learning plan through the end of the 2022-2023 scholastic year.

(c) The department, local school districts and charters schools shall make every reasonable attempt to purchase, as quickly as possible, all devices, software licenses and curriculum licenses, to ensure availability and accessibility by the anticipated start date of the 2020-2021 scholastic year, or as soon as possible after the start of the 2020-2021 scholastic year, when expedited acquisition is unavoidable due to supply chain delays or force majeure that impede timely delivery of such devices, software licenses and curriculum licenses.
(d) When negotiating with vendors for best pricing for products and services for purposes of carrying out the provisions of this act, the department is authorized to enter into contracts with selected vendors for bundled products and suites of services which are aligned to a minimum lifecycle of three (3) years on all electronic devices, software licenses and curriculum license included in the purchase agreement, including training on proper usage of devices, support services and professional development.

(3) (a) In its administration of implementation, continued monitoring and evaluation of the grant program, the department is authorized to revise EPL categories based upon purchasing demands, which are consistent with its objective to provide school districts and charter schools with structured choice in the selection of the brand and type of electronic devices equipped with assistive technology for the efficient delivery of online instruction and instructional materials which align with the state's adopted College And Career Readiness Standards and any additional guidelines implemented by the department governing the minimum requirements for distance learning and data connectivity.

(b) Once established by the department, each school district or charter school shall select only from the structured choice list of products and services prescribed by the department unless the school district or charter school is granted permission under paragraph (c) of this subsection to acquire products and services outside of the department's designated EPLs and
structured choice guide. Each school district and charter school shall commit to its selections of devices, products and services, whether from the department approved EPLs and structured choice guide or an outside vendor, prior to the execution of any contracts for products and services required for the digital learning plan.

(c) The department may also grant school districts and charter schools the authority to acquire devices, equipment and/or software programs from vendors outside of those included in the EPLs and structured choice recommendations, provided that the school district and charter school can demonstrate to the department that the devices, equipment and/or software programs to be purchased from an unapproved vendor meet or exceed the technological specifications and functionality required by the department, and can be purchased at an optimal price point that is equivalent to or less than any of the vendors and products included on the department's approved EPLs and structured choice guide.

(4) In establishing its EPLs and structured choice guide, the department, in order to ensure optimal economical pricing and longevity of device usage, shall consider, the following:

(a) The use of Electronic Product Environmental Assessment Tool (EPEAT) registered products with positive environmental attributes;

(b) Technical merit of devices;
(c) Company resources of vendors to accommodate the technology needs of state;

d) Value-added, for the benefit conveyed to teachers and students within the local school district or charter school in the efficient delivery and receipt of instructional material, as well as the consideration given for such devices pursuant to a trade-in agreement as part of a subsequent purchase;

e) Initial purchase cost;

f) Total lifecycle cost computed from each vendor's cost proposal. Lifecycle cost includes all costs associated with obtaining the item and maintaining and operating it for its projected lifecycle, which includes:

  (i) All initial fees for hardware and software;

  (ii) Hardware and software maintenance and support costs over the projected life of the hardware and system software;

  (iii) All consulting fees, including initial development, implementation, training, data conversion, and other requested services; and

  (iv) Any applicable ongoing costs for support of the resulting application system.

(g) Standardizing device configurations (e.g., memory, processor speed, etc.); and

(h) Adopting uniform refresh cycles, which support the retirement of a portion of the laptops and desktops at the end of their useful life and need to be replaced each year, and which
allow school districts and charter schools to effectively plan for
device replacement, sanitization and final disposition.

(5) (a) There is hereby created in the State Treasury a
special fund to be designated as the "Technology Instruction and
Digital Access to Learning (TIDAL) Grant Program Fund," which
shall consist of funds made available by the Legislature in any
manner and funds from any other source designated for deposit into
such fund, and any other funds designated for deposit to the
credit of the grant program fund from any public or private
entity. Unexpended amounts of any federal Coronavirus Relief Fund
monies appropriated from the Budget Contingency Fund and remaining
in the grant program fund on December 1, 2020, shall lapse into
the Budget Contingency Fund for purpose prescribed in paragraph
(b) of this section. However, unexpended amounts of any monies
unrelated to the Coronavirus Relief Fund, whether appropriated by
the Legislature or donated by any public or private entity,
remaining in the fund at the end of a fiscal year shall not lapse
into the Budget Contingency Fund or the State General Fund, and
any investment earnings or interest earned on amounts in the grant
program fund shall be deposited to the credit of the grant program
fund. Monies in the fund shall be administered and disbursed by
the State Department of Education in compliance with the
guidelines, guidance, rules, regulations and/or other criteria, as
may be amended from time to time, of the United States Department
of the Treasury regarding the use of monies from the Coronavirus
Relief Fund established by the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

(b) If on December 1, 2020, there are unexpended Coronavirus Relief Fund monies remaining in the fund, those funds shall lapse into the Budget Contingency Fund, to be transferred, by the State Fiscal Officer, into the Unemployment Compensation Fund before December 30, 2020.

(6) (a) Monies in the grant program fund shall be utilized by local school districts and public charter schools, in conjunction with the required local match of Elementary and Secondary School Emergency Relief (ESSER) Funds, to cover the remaining balance of any technology purchases made pursuant to the requirements of this act under the grant program that is not covered by local district's or charter school's allocations under the CARES Act or other federal program funds.

(b) Monies from the grant program fund utilized for the purposes prescribed under this subsection shall be paid by the State Department of Education upon the receipt, review and approval of grant applications from local school districts or public charter schools. After the State Department of Education disburses grant fund payments, the monies shall be utilized by such local school district or public charter school to cover the remaining balance of any technology purchases made pursuant to the requirements of this act.
(7) The use of funds allocated under this grant program shall be subject to audit by the United States Department of Treasury's Office of Inspector General and the Mississippi Office of the State Auditor. Each school, or other entity or person receiving funds under this grant program, found to be fully or partially noncompliant with the requirements in this act, shall return to the state all or a portion of the funds received and used for unallowable expenditures.

SECTION 5. Upon the effective date of this act, the State Fiscal Officer shall transfer funds from the Budget Contingency Fund to the "Technology Instruction and Digital Access to Learning (TIDAL) Grant Program Fund," the amount of Two Hundred Million Dollars ($200,000,000.00) for the implementation and administration of the TIDAL Act.

SECTION 6. (1) (a) The State Board of Education shall develop requirements for participation by public school districts and public charter schools in the statewide digital learning program initiative. At a minimum, participation in the digital learning program initiative shall require school districts and charter schools to develop local digital learning plans that address:

(i) The design, implementation and operations of the local digital learning program, which such design must account for levels of Internet access for all students and teachers, to
ensure that the modality of instruction reflects the availability of Internet access;

(ii) The commitment of additional funds to complement the state funds under this act for the local digital learning program; and

(iii) Sustainability to continue the local digital learning program after June 30, 2023.

(b) The department shall review and approve the plans before a public school district and charter school may participate in the statewide digital learning initiative and receive state funds under this act.

(2) (a) By November 30, 2020, the State Department of Education shall have procured all necessary Wi-Fi and LTE enabled devices, program components and systems of product supports and services for the delivery of digital instruction through distance learning, which shall be distributed to public school districts and charter schools meeting the qualifications of Section 7 of this act.

(b) Every public school district and charter school must begin the implementation of their local digital learning program plan, which was submitted to the State Department of Education for approval, by the beginning of their individual 2020-2021 school start date, but no later than November 30, 2020, in to provide for the seamless transition of issuing a Wi-Fi or LTE enabled electronic learning device and providing digital
instruction to every compulsory-school-aged student enrolled in a school under the authority of the respective local school board or charter school governing board. The implemented program shall support individualized plans for school-to-home connectivity, to provide students with access to the school district's or charter school's Learning Management System for:

(i) The receipt of real-time digital instruction, subject to the availability of Internet or data connectivity and the corresponding instructional modality;

(ii) The support of streaming school-approved media and multi-media material related to the course offerings aligned with the school's curriculum; and

(iii) The ability to download instructional materials and upload completed assignments from the students' homes or other mobile hotspots or Wi-Fi substations centrally located throughout the school district.

(3) Each local school district and charter school governing board shall designate a digital inclusion coordinator for each school facility under its authority, who shall be responsible for coordinating work and reporting the results thereof to the local school superintendent and local school board to be included in the annual report submitted to the Legislature by the State Superintendent of Public Education.

(4) Each local school district and charter school shall require each individual employed who serves in an instructional or
administrative capacity to sign a personal professional development plan acknowledgment, in which the employee commits to participating in professional development training for the minimum number of hours prescribed by the State Board of Education, and which shall be supported by the State Department of Education on a regional basis. The department, in its discretion, may also allow school employees' completion of necessary continuing education units (CEUs) in technological delivery of instruction and other courses related to digital learning as satisfactory to the professional development plan requirement, subject to approval by the State Board of Education.

(5) Each school district and charter school shall have the authority to develop its own distance learning policy governing the modality of instruction and deployment of services, provided that such plan aligns with the guidelines established by the department, including access to Learning Management Systems and an age- and grade-appropriate K-12 digital curriculum approved by the department to ensure continuity of service and compliance with the College and Career Readiness Standards or any subsequent state curriculum standards adopted by the State Board of Education.

(6) (a) Each local school district and charter school shall develop and submit a long-term technology sustainability plan to the department at the time it submits its application request for grant funds under Section 7 of this act for electronic devices and software to be used in its distance learning program, which
demonstrates the local school district's or charter school's ability to integrate the cost of sustaining the operation of its digital learning plan and system of devices and services as part of its regular budgetary expenses beyond June 30, 2023.

(b) Each local school district and charter school shall adopt and implement a technology refresh cycle plan, which supports the effective retirement and cost-feasible replacement of devices at the end of their useful life cycles, and continued ability to maintain a sufficient inventory of devices and adequate education technology services beyond the year of implementation and the availability of any federal or state funds for such purposes, as the funds may be related to COVID-19 or any other national disaster, pandemic or other national or state declared state of emergency.

(7) Upon the purchase and/or receipt of electronic devices for the purpose of implementing distance learning, each school district and charter school shall assume the control of ownership and liability for each device in its possession until such time that said devices:

(a) Become obsolete, no longer serve the school or related school purposes for which they were acquired, and are not needed in the operation of the schools, and, in the school board's discretion, are sold by public auction according to the procedure prescribed in Section 17-25-25;
(b) Are sold to the students in Grade 12, who are in possession of a district-issued electronic device or equipment, and who have satisfied all the requirements for graduation, as established by the school district or charter school, in compliance with the provisions of Section 37-7-459, with the revenue generated therefrom being deposited into the school maintenance fund as provided under Section 37-7-457; or

(c) Are retrieved from students of issue at the expiration of term established by the department of typical life expectancy of such devices to be disposed of pursuant to a trade-in agreement as part of a subsequent purchase.

(8) (a) Each school district and charter school shall compile and maintain an inventory control list of all electronic devices purchased and issued to students, teachers and staff, as well as any supporting technology devices used in delivery of online instruction. The district or charter school shall conduct an annual audit of equipment upon the conclusion of the school year, within the time specified in its distance learning policy.

(b) Districts and charter schools are authorized to issue fines to students for any damage caused to or destruction of electronic devices, outside of wear and tear caused by normal usage.

(9) School districts and charter schools shall adopt and implement a cybersecurity policy to prevent, protect from,
mitigate the effects of, respond to and recover from cyber threats. The policy shall establish procedures to:

(a) Inform students, teachers and staff of any policies, rules or laws regarding their use of and access to the school's or school district's networks and systems before access to the system is granted;

(b) Require students, teachers and staff to accept a Responsible Use Policy;

(c) Ensure that IT staff is aware of local, state and federal regulations about information security, privacy and storage of personally identifiable information;

(d) Ensure the secure and private storage of data in compliance with the Family Educational Rights and Privacy Act (FERPA);

(e) Ensure ease of access to and use of cloud-based software technology, which allows teachers and staff members to easily store and share students' personal information;

(f) Regularly back up their data in case of accidental or deliberate corruption or destruction of data;

(g) Create firewalls and an approved list of individuals who have access to the school's or school district's networks and systems. The list should be regularly reviewed to ensure that only those individuals who have permission to access the systems can do so;
(h) Monitor networks continually to assess the risk from cyber threats;

(i) Consider the purchase of cyber insurance for the district and a requirement for any contractors to purchase cyber insurance as well;

(j) Provide teachers and staff with a list of contacts to whom a cybersecurity incident, such as a data breach, is to be reported;

(k) Measures to limit damage and preserve sensitive information resulting from the breach, including decisions about whether to request external assistance and from whom, such as:

   (i) The school district or charter school;

   (ii) A local, state or federal government computer incident response team; or

   (iii) A private vendor; and

(l) Notify law enforcement after an incident, as well as any individuals whose personal information may have been compromised.

SECTION 7. (1) (a) Subject to the availability of sufficient funds appropriated by the Legislature to the State Department of Education for the purpose implementing and administering the provisions of this act, to be eligible for participation in the grant program, each school district and charter school shall:
(i) Contribute an equivalent of twenty percent (20%) of its total Elementary and Secondary School Emergency Relief (ESSER) Fund allocation received for the mitigation of the impact of COVID-19 related learning interruption through technological accessibility and connectivity if the cost of the district's or charter school's COVID-19 related digital learning technology is less than its ESSER Fund allocation; or

(ii) Contribute an equivalent of up to twenty percent (20%) of its overall COVID-19 related digital learning technology cost, using its Elementary and Secondary School Emergency Relief (ESSER) Fund allocation received for the mitigation of the impact of COVID-19 related learning interruption through technological accessibility and connectivity, if the total cost of the district's or charter school's COVID-19 related digital learning technology exceeds the amount of its ESSER Fund allocation.

The department shall make a determination of whichever percentage equivalency of a district's or charter school's ESSER Fund allocation is less, in actual dollar amount, when awarding grant funds to districts and charter schools to aid in the cost of purchasing Wi-Fi or LTE enabled electronic devices, technology support services and software programs.

(b) The department shall develop the methodology to be used in determining the amount of each TIDAL grant awarded, and how such grant funds shall be distributed to school districts and
charter schools according to levels of need, as determined by a formula developed by the department.

c) As public special purpose schools, which are ineligible for receipt of ESSER funds, the Mississippi School for Mathematics and Science (MSMS), the Mississippi School of the Arts (MSA) and the Mississippi Schools for the Blind and Deaf (MSBD) shall be eligible for participation in the TIDAL Grant Program, and may use any available funds approved by the State Board of Education, in its capacity as the school board for such schools, as matching funds.

(2) Each local school district and charter school is authorized to expend its allocated ESSER Fund monies, allotted under the Education Stabilization Fund through the CARES Act, in any manner it may deem necessary consistent with the federal guidelines for allowable expenditures of such funds for the mitigation of the impact of COVID-19 related educational purposes. However, any districts or charter schools failing to contribute the equivalent of the minimum percentage of its allocation, or the equivalent of the minimum percentage of its overall costs, whichever is less, as authorized under subsection (1)(a) of this section as supplemental matching funds to offset the total cost of procuring the proper electronic devices and technological supports and systems of services to facilitate the delivery of the district's or charter school's adopted distance learning program, shall be ineligible for participation in the grant program.
SECTION 8. The State Department of Education, in administering the provisions of this act, as well as a local school district or charter school acting as its own procurement agent, shall be immune from liability for any damages which may arise out of the public procurement provisions of Section 31-7-13, from which it is exempt, with regard to acquisition of personnel, property, supplies or services for purposes authorized under this act.

SECTION 9. Section 37-67-1, Mississippi Code of 1972, is amended as follows:

37-67-1. (1) This section shall be known and may be cited as the "Distance Learning Collaborative Act of 2016."

(2) As used in this section:

(a) "Distance learning" means a method of delivering education and instruction on an individual basis to students who are not physically present in a traditional setting such as a classroom. Distance learning provides access to learning when the source of information and the learners are separated by time and distance, or both. Distance learning courses that require a physical on-site presence for any reason other than taking examinations may be referred to as hybrid or blended courses of study.

(b) "Department" means the Mississippi Department of Education.
(c) A "distance learning collaborative" means a school or schools that write and submit an application to participate in the voluntary distance learning program. A distance learning collaborative is comprised, at a minimum, of a public school district or a charter school, and may include an agency or other nonprofit organization approved by the State Department of Education to provide distance learning resources.

(d) A "lead partner" is a public school district, charter school or other nonprofit entity with the instructional expertise and operational capacity to manage the Distance Learning Collaborative Program as described in the approved application for funds. The lead partner serves as the fiscal agent for the collaborative and shall disburse awarded funds in accordance with the collaborative's approved application. The lead partner ensures that the collaborative adopts and implements the Distance Learning Collaborative Program consistent with the standards adopted by the State Board of Education. The public school district or charter school shall be the lead partner if no other qualifying lead partner is selected.

(3) Effective with the 2016-2017 school year, the Mississippi State Department of Education shall establish a voluntary distance learning grant program which shall be a collaboration among the entities providing distance learning services for students. The Distance Learning Collaborative Program shall provide financial assistance to encourage and
improve distance learning education services in rural areas through the use of telecommunications, computer networks and related advanced technologies to be used by students, teachers and rural residents. Grants are for projects where the benefit is primarily delivered to end users who are not at the same location as the source of the education service.

(4) Distance Learning Collaborative Grants may be used to:

(a) Acquire the following types of equipment: (i) computer hardware and software; (ii) audio and video equipment; (iii) computer network components; (iv) terminal equipment; (v) data terminal equipment; (vi) inside wiring; (vii) interactive video equipment; and (viii) other facilities that further distance learning technology services.

(b) Acquire instructional programming for distance learning programs.

(c) Acquire technical assistance and instruction for using eligible equipment.

(d) The cost of tuition and fees for students to participate over and above the available federal Perkins Loans or Stafford Loans which are loaned directly to qualifying students to assist in covering the cost of distance learning funding.

(e) Any interest charges that accumulate during a student's degree program for the utilization of distance learning services.
(5) Subject to the availability of funds appropriated therefor, the State Department of Education shall administer the implementation, monitoring and evaluation of the voluntary Distance Learning Collaborative Program, including awards and the application process. The department shall establish a rigorous and transparent application process for the awarding of funds. Lead partners shall submit the application on behalf of their distance learning collaborative. The department will establish monitoring policies and procedures that shall include at least one (1) site visit per year. The department will provide technical assistance to collaboratives and their providers to improve the quality of distance learning services. The department will evaluate the effectiveness of each distance learning collaborative.

(6) Distance Learning Collaborative Program funds shall be awarded to distance learning collaboratives whose proposed programs meet the program criteria established by the State Board of Education which shall include the following:

(a) Distance learning programs shall be approved and registered with the State Department of Education and course content must be aligned with state standards.

(b) Distance learning instructors shall complete professional development training in online methodology and technical aspects of web-based instruction, and may be
credentialed by the National Board for Professional Teaching Standards (NBPTS).

(c) Transcript equivalency of grades between online and traditional classes. Student enrollment and credits awarded shall be made in accordance with regulations jointly approved by the State Board of Education, the Mississippi Community College Board and the Board of Trustees of State Institutions of Higher Learning.

(d) Curriculum standards for online courses.

(e) Classroom "seat time" requirements for online courses.

(f) Accountability for student achievement, including methods to assess online course completion rates.

(7) A teacher, assistant teacher or other employee whose salary and fringe benefits are paid from state funds allocated for the Distance Learning Collaborative Program shall only be classified as a state or local school district or charter school employee eligible for state health insurance benefits or membership in the Public Employees' Retirement System, if the person's employer is already a public school district, charter school or an agency or instrumentality of the state, and the employee would be eligible for such benefits in the normal course of business.

(8) Funding shall be provided for the Distance Learning Collaborative Program beginning with the 2016-2017 fiscal year
subject to appropriation by the Legislature, and the Legislature may appropriate funds to implement the program on a phased-in basis. The State Department of Education may receive and expend contributions and funding from private sources for the administration and implementation of the Distance Learning Collaborative Program. In the initial phase of implementation, the State Department of Education shall award state funds based on a community's capacity, commitment and need in order to encourage and improve distance learning services in rural areas. The department shall make an annual report to the Legislature and the Governor regarding the effectiveness of the Distance Learning Collaborative Program, and the PEER Committee shall review those reports and other program data and submit an independent evaluation of the program operation and effectiveness to the Legislature and the Governor on or before October 1 of the calendar year before the beginning of the next phased-in period of funding. The State Department of Education shall reserve no more than five percent (5%) of the appropriation in any year for administrative costs. Funds remaining after awards to distance learning collaboratives may be carried over in the following year.

(9) The lead partner of a distance learning collaborative and the local school district or charter school shall compile information about online learning programs for high school students to earn college credit and place the information on its website. Examples of information to be compiled and placed on the
website include links to providers of approved online learning programs, comparisons among various types of online programs regarding awarding of credit, advantages and disadvantages of online learning programs, and other general assistance and guidance for students, teachers and counselors in selecting and considering online learning programs. Public high schools shall ensure that teachers and counselors have information about online learning programs for high school students to earn college or university credit and are able to assist parents and students in accessing the information. Distance learning collaboratives shall ensure that parents and students have opportunities to learn about online learning programs under this section.

SECTION 10. Section 31-7-13, Mississippi Code of 1972, is amended as follows:

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

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

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

(b) **Bidding procedure for purchases over $5,000.00 but not over $50,000.00.** Purchases which involve an expenditure of more than Five Thousand Dollars ($5,000.00) but not more than Fifty Thousand Dollars ($50,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two (2) competitive written bids have been obtained. Any state agency or community/junior college purchasing commodities or procuring construction pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, to accept the lowest competitive written bid under Fifty Thousand Dollars ($50,000.00). Any governing authority purchasing commodities pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, with regard to governing authorities other than counties, or its purchase clerk, or his designee, with regard to counties, to accept the lowest and best competitive written bid. Such authorization shall be made in writing by the governing authority and shall be maintained on file in the primary office of the agency and recorded in the official minutes of the governing authority, as appropriate. The purchasing agent or the purchase clerk, or their designee, as the case may be, and not the governing authority, shall be liable for any penalties and/or damages as may be imposed by law for any act or omission of the
purchasing agent or purchase clerk, or their designee, constituting a violation of law in accepting any bid without approval by the governing authority. The term "competitive written bid" shall mean a bid submitted on a bid form furnished by the buying agency or governing authority and signed by authorized personnel representing the vendor, or a bid submitted on a vendor's letterhead or identifiable bid form and signed by authorized personnel representing the vendor. "Competitive" shall mean that the bids are developed based upon comparable identification of the needs and are developed independently and without knowledge of other bids or prospective bids. Any bid item for construction in excess of Five Thousand Dollars ($5,000.00) shall be broken down by components to provide detail of component description and pricing. These details shall be submitted with the written bids and become part of the bid evaluation criteria. Bids may be submitted by facsimile, electronic mail or other generally accepted method of information distribution. Bids submitted by electronic transmission shall not require the signature of the vendor's representative unless required by agencies or governing authorities.

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

(i) **Publication requirement.**

1. Purchases which involve an expenditure of more than Fifty Thousand Dollars ($50,000.00), exclusive of freight and shipping charges, may be made from the lowest and best
bids after advertising for competitive bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located. However, all American Recovery and Reinvestment Act 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.

3. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Fifty Thousand Dollars ($50,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars ($25,000.00) shall be bid. For any projects in excess of Twenty-five Thousand Dollars ($25,000.00) under the American Recovery and Reinvestment Act, publication shall be made one (1) time and the bid opening for construction projects shall not be less than ten (10) working days after the date of the published notice. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file. If there is no newspaper published in the
county or municipality, then such notice shall be given by posting the same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive 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
notification of amendments may be made via mail, facsimile,
electronic mail or other generally accepted method of information
distribution. No addendum to bid specifications may be issued
within two (2) working days of the time established for the
receipt of bids unless such addendum also amends the bid opening
to a date not less than five (5) working days after the date of
the addendum.

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

(iv) **Specification restrictions.**

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

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

(v) **Electronic bids.** Agencies and governing authorities shall provide a secure electronic interactive system for the submittal of bids requiring competitive bidding that shall be an additional bidding option for those bidders who choose to
submit their bids electronically. The Department of Finance and Administration shall provide, by regulation, the standards that agencies must follow when receiving electronic bids. Agencies and governing authorities shall make the appropriate provisions 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 procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration. No agency or governing authority shall accept a bid based on items or criteria not included in the specifications.

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

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

(e) **Lease-purchase authorization.** For the purposes of this section, the term "equipment" shall mean equipment, furniture and, if applicable, associated software and other applicable direct costs associated with the acquisition. Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing
authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof. No such lease-purchase agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101, and the term of such lease-purchase agreement shall not exceed the useful life of equipment covered thereby as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to this paragraph (e) may contain any of the terms and conditions which a master lease-purchase agreement may contain under the provisions of Section 31-7-10(5), and shall contain an annual allocation dependency clause.
substantially similar to that set forth in Section 31-7-10(8).

Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain with respect to each such lease-purchase transaction the same information as required to be maintained by the Department of Finance and Administration pursuant to Section 31-7-10(13).

However, nothing contained in this section shall be construed to permit agencies to acquire items of equipment with a total acquisition cost in the aggregate of less than Ten Thousand Dollars ($10,000.00) by a single lease-purchase transaction. All equipment, and the purchase thereof by any lessor, acquired by lease-purchase under this paragraph and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes. Interest paid on any lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation.

(f) **Alternate bid authorization.** When necessary to ensure ready availability of commodities for public works and the timely completion of public projects, no more than two (2) alternate bids may be accepted by a governing authority for commodities. No purchases may be made through use of such alternate bids procedure unless the lowest and best bidder cannot deliver the commodities contained in his bid. In that event, purchases of such commodities may be made from one (1) of the bidders whose bid was accepted as an alternate.
(g) **Construction contract change authorization.** In the event a determination is made by an agency or governing authority after a construction contract is let that changes or modifications to the original contract are necessary or would better serve the purpose of the agency or the governing authority, such agency or governing authority may, in its discretion, order such changes pertaining to the construction that are necessary under the circumstances without the necessity of further public bids; provided that such change shall be made in a commercially reasonable manner and shall not be made to circumvent the public purchasing statutes. In addition to any other authorized person, the architect or engineer hired by an agency or governing authority with respect to any public construction contract shall have the authority, when granted by an agency or governing authority, to authorize changes or modifications to the original contract without the necessity of prior approval of the agency or governing authority when any such change or modification is less than one percent (1%) of the total contract amount. The agency or governing authority may limit the number, manner or frequency of such emergency changes or modifications.

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

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

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

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

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

(k) Governing authority emergency purchase procedure.

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

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

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

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

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

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

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

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

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

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

Purchases, sales, transfers or trades by governing authorities or state agencies when such purchases, sales, transfers or trades are made by a private treaty agreement or through means of negotiation, from any federal agency or authority, another governing authority or state agency of the State of Mississippi, or any state agency or governing authority of another state. Nothing in this section shall permit such purchases through public auction except as provided for in subparagraph (v) of this paragraph (m). It is the intent of this section to allow governmental entities to dispose of and/or purchase commodities from other governmental entities at a price that is agreed to by both parties. This shall allow for purchases and/or sales at prices which may be determined to be below the market value if the selling entity determines that the sale at below market value is in the best interest of the taxpayers of the state. Governing authorities shall place the terms of the agreement and any justification on the minutes, and state agencies shall obtain approval from the Department of Finance and Administration, prior to releasing or taking possession of the commodities.

(vii) **Perishable supplies or food.** Perishable supplies or food purchased for use in connection with hospitals, the school lunch programs, homemaking programs and for the feeding of county or municipal prisoners.
(viii) **Single source items.** Noncompetitive items available from one (1) source only. In connection with the purchase of noncompetitive items only available from one (1) source, a certification of the conditions and circumstances requiring the purchase shall be filed by the agency with the Department of Finance and Administration and by the governing authority with the board of the governing authority. Upon receipt of that certification the Department of Finance and Administration or the board of the governing authority, as the case may be, may, in writing, authorize the purchase, which authority shall be noted on the minutes of the body at the next regular meeting thereafter. In those situations, a governing authority is not required to obtain the approval of the Department of Finance and Administration. Following the purchase, the executive head of the state agency, or his designee, shall file with the Department of Finance and Administration, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the source from whom it was purchased.

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

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

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

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

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

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

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

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

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

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

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

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

(xxii) Certain school district purchases. Purchases of commodities made by school districts from vendors with which any levying authority of the school district, as defined in Section 37-57-1, has contracted through competitive bidding procedures for purchases of the same commodities.
(xxii) **Garbage, solid waste and sewage contracts.** Contracts for garbage collection or disposal, contracts for solid waste collection or disposal and contracts for sewage collection or disposal.

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

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

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

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

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

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

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

(xx) **School yearbooks.** Purchases of school yearbooks by state agencies or governing authorities; provided, however, that state agencies and governing authorities shall use for these purchases the RFP process as set forth in the

Toll roads and bridge construction projects. Contracts entered into under the provisions of Section 65-43-1 or 65-43-3.

Certain purchases under Section 57-1-221. Contracts entered into pursuant to the provisions of Section 57-1-221.

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

Certain purchases or transfers entered into with local electrical power associations. Contracts or agreements entered into under the provisions of Section 55-3-33.

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

(37) Certain purchases made under the Alyce G. Clarke Mississippi Lottery Law. Contracts made by the Mississippi Lottery Corporation pursuant to the Alyce G. Clarke Mississippi Lottery Law.

(38) Certain purchases made by state governmental agencies, local governing authorities and any political subdivision thereof, including local school districts, charter schools and public special purpose schools directly associated with the mitigation of the impact of COVID-19.

Contracts and purchases by state governmental agencies, local governing authorities and any political subdivision thereof, including local school districts, charter schools and public special purpose schools for purchases of equipment, technological devices, hardware and software for such devices, supplies and services directly associated with the mitigation of the impact of COVID-19 for purposes of providing:

1. Continual education services at both the K-12 and postsecondary levels, including, but not limited to:
   a. Providing services to school K-12 administrators with necessary resources for the operation of schools;
   b. Training and professional development of local school staff regarding measures to decrease the spread of
COVID-19 and familiarity with technology programs and devices to facilitate distance learning to provide quality online age- and grade-appropriate instruction to students and families;

c. Purchase of facility sanitization supplies;

d. Providing technology programs and devices to students for the transition to and administration of online distance learning;

e. Providing summer learning activities;

f. Developing, implementing and maintaining Learning Management Systems to be used by school districts and charter schools to provide course content consistent with the curriculum guidelines adopted by the State Board of Education;

g. Purchasing necessary equipment and accommodations and providing adequate services for students with disabilities enrolled within the school district or charter school in a manner consistent with the student's IEP or 504 Plan under IDEA;

h. Providing appropriate mental health services to students; and

i. Purchasing personal protection equipment (PPE);

2. Healthcare services for the purchase of testing equipment, personal protection equipment (PPE) and
equipment and medication necessary for the treatment of patients diagnosed with COVID-19;

3. Social and mental health service; and

4. Transportation and public utilities for the development of transit infrastructure and expanding infrastructure for digital network access and purchase of Internet access and provide technical support to citizens for digital inclusion through broadband access.

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

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

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

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

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

(q) **Fuel management system bidding procedure.** Any
governing authority or agency of the state shall, before
contracting for the services and products of a fuel management or
fuel access system, enter into negotiations with not fewer than
two (2) sellers of fuel management or fuel access systems for
competitive written bids to provide the services and products for
the systems. In the event that the governing authority or agency
cannot locate two (2) sellers of such systems or cannot obtain
bids from two (2) sellers of such systems, it shall show proof
that it made a diligent, good-faith effort to locate and negotiate
with two (2) sellers of such systems. Such proof shall include,
but not be limited to, publications of a request for proposals and
letters soliciting negotiations and bids. For purposes of this
paragraph (q), a fuel management or fuel access system is an
automated system of acquiring fuel for vehicles as well as
management reports detailing fuel use by vehicles and drivers, and
the term "competitive written bid" shall have the meaning as
defined in paragraph (b) of this section. Governing authorities
and agencies shall be exempt from this process when contracting
for the services and products of fuel management or fuel access
systems under the terms of a state contract established by the
Office of Purchasing and Travel.
(r) **Solid waste contract proposal procedure.** Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars ($50,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than the amount provided in paragraph (c) of this section. Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors determined relevant by the governing authority or agency or required by this paragraph (r) shall be duly included in the advertisement to elicit proposals. After responses to the request for proposals have been duly received, the governing authority or agency shall select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter into contracts with one or more of the persons or firms submitting proposals. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the request for proposals
process may be reinitiated. Notwithstanding any other provisions of this paragraph, where a county with at least thirty-five thousand (35,000) nor more than forty thousand (40,000) population, according to the 1990 federal decennial census, owns or operates a solid waste landfill, the governing authorities of any other county or municipality may contract with the governing authorities of the county owning or operating the landfill, pursuant to a resolution duly adopted and spread upon the minutes of each governing authority involved, for garbage or solid waste collection or disposal services through contract negotiations.

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

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

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

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

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

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

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

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

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

**SECTION 11.** Section 37-7-459, Mississippi Code of 1972, is
amended as follows:

37-7-459. (1) Upon a resolution duly adopted by a majority
of its members, the board of trustees of local public school
districts or charter school governing board may adopt a policy
authorizing the sale of computers, peripheral equipment and
adaptive devices to students to whom such devices and equipment
have been issued during the course of an academic school year.
However, the sale of computers by a public school district or
charter school shall be limited to those students enrolled in
Grade 12, who are in possession of a district-issued computer
device or equipment, and who have satisfied all the requirements
for graduation, as established by the school district or charter
school. Students meeting the criteria established in this
paragraph who verify to the school of enrollment before graduation
an official document of acceptance to any Mississippi two-year or
four-year college or university, whether public or private, shall
be required to pay One Dollar ($1.00) for the cost of the
district-issued computer device or peripheral equipment or
adaptive device. Students meeting the requirements of this
section who cannot sufficiently verify acceptance to a Mississippi
two-year or four-year college or university shall be required to
pay Seventy-five Dollars ($75.00) for the cost of the
district-issued computer device or peripheral equipment.
Verification of college acceptance must be submitted before the
deadline for finalizing graduation eligibility established by each
school district or charter school adopting a policy authorizing
the sale of such devices to students.

(2) All sales shall be final and without warranty of
merchantability, given the prior and extended use of the computer,
equipment or adaptive device by the purchasing student. All proceeds received from the sale of property authorized under paragraph (1) of this section shall be deposited into the school maintenance fund as provided under Section 37-7-457.

(3) For purposes of this section the term "school board" also means the governing board of a charter school authorized by the Mississippi Charter School Authorizer Board. As used in this section, the term "school of enrollment" also means a charter school.

SECTION 12. If any section, paragraph, sentence, clause, phrase, or any part of this act is declared to be in conflict with federal law, or if for any reason is declared to be invalid or of no effect, the remaining sections, paragraphs, sentences, clauses, phrases or parts thereof shall be in no matter affected thereby but shall remain in full force and effect.

SECTION 13. This act shall take effect and be in force from and after its passage.