

**Adopted
COMMITTEE AMENDMENT NO 1 PROPOSED TO**

Senate Bill No. 3044

BY: Committee

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

27 **SECTION 1.** This act shall be known and may be cited as the
28 "Equity in Distance Learning Act."

29 **SECTION 2.** (1) Upon the effective date of this act, the
30 State Fiscal Officer shall transfer Three Hundred Thousand Dollars
31 (\$300,000.00) to the Equity in Distance Learning Fund, created in
32 Section 8 of this act, out of the Budget Contingency Fund. The
33 department shall spend the funds under this subsection (1) to
34 assist with technology upgrades to the Mississippi Student
35 Information System (MSIS) to support schools with the



36 implementation of their individual digital learning plans to
37 mitigate the impact of COVID-19.

38 (2) Upon the effective date of this act, the State Fiscal
39 Officer shall transfer One Hundred Twenty-nine Million Seven
40 Hundred Thousand Dollars (\$129,700,000.00) to the Equity in
41 Distance Learning Fund, created in Section 8 of this act, out of
42 the Budget Contingency Fund. The department shall allocate the
43 funds under this subsection (2) to the schools pursuant to Section
44 5(2) of this act.

45 (3) Upon the effective date of this act, the State Fiscal
46 Officer shall transfer Twenty Million Dollars (\$20,000,000.00) to
47 the Equity in Distance Learning Fund, created in Section 8 of this
48 act, out of the Budget Contingency Fund. The department shall
49 allocate the funds under this subsection (3) to the schools
50 according to the schools' needs assessment responses.

51 **SECTION 3.** (1) The Mississippi Legislature finds the
52 following:

53 (a) The State of Emergency and ongoing public health
54 crisis related to COVID-19 requires all schools to plan and
55 implement distance learning programs, and plan to facilitate safe
56 classroom and remote instruction;

57 (b) The availability of unprecedented federal funding
58 for distance learning has created a unique opportunity for schools
59 to provide all students and teachers with better access to
60 technology to enhance traditional classroom teaching; and



61 (c) In recognition that every school's technology needs
62 are different, this act establishes the Equity in Distance
63 Learning Grant Program to require the Mississippi Department of
64 Education and schools to expend funds on eligible expenses, within
65 the relevant statutory provisions of this act and the regulations
66 promulgated, in order to assist schools in expeditiously
67 implementing distance learning programs and facilitating safe
68 classroom and remote instruction.

69 (2) Therefore, the intent of the Mississippi Legislature is:

70 (a) To provide funding for devices and other
71 technology, including technology related to connectivity and
72 online access, sufficient for students, teachers, and
73 administrators and other staff to engage in grade-appropriate
74 distance learning aligned with the state's College and Career
75 Readiness Standards, and provide funding for safe classroom or
76 remote instruction; and

77 (b) To provide funding for technical support and
78 professional development to facilitate distance learning and safe
79 classroom or remote instruction.

80 **SECTION 4.** For purposes of this act, the following words
81 shall have the meanings ascribed herein unless the context
82 otherwise requires:

83 (a) "Grant program" means the Equity in Distance
84 Learning Grant Program established in this act.



85 (b) "Department" means the Mississippi Department of
86 Education.

87 (c) "School" means public school districts,
88 agricultural high schools, the Mississippi School for the Deaf and
89 Blind, the Mississippi School of the Arts and the Mississippi
90 School for Mathematics and Science and public charter schools.

91 (d) "COVID-19" means the Coronavirus Disease 2019.

92 (e) "State of Emergency" means the State of Emergency
93 declared by Executive Order of the Governor of the State of
94 Mississippi on March 14, 2020, and any amendments thereto or
95 subsequent orders or amendments thereto.

96 (f) "Express Product List" or "EPL" means the
97 compilation of vendors and products adopted by the department for
98 use by schools for the purchase of devices, software, online
99 tools, and other equipment and technology necessary to support
100 distance learning.

101 (g) "Learning management system" means a software
102 application for the administration, documentation, tracking,
103 reporting, automation and delivery of educational courses,
104 training programs, or learning and development programs.

105 (h) "Eligible expenses" means a cost incurred by a
106 school, pursuant to this act, to facilitate or enhance distance
107 learning capabilities under its distance learning plan, including:

108 (i) The purchase of laptop computers, tablets,
109 assisted learning devices or other devices which can be used



110 personally by a student or teacher in their home or in the
111 classroom;

112 (ii) The purchase of learning management systems,
113 software and other online tools;

114 (iii) The purchase and installation of hardware to
115 provide for or enhance the Internet connectivity of a school's
116 students, including the cost of establishing personal or centrally
117 located hotspots;

118 (iv) The enhancement of security related to
119 devices or connectivity to comply with state and federal law, and
120 to protect students, teachers and administrators and other staff
121 working within the school;

122 (v) The delivery of professional development
123 related to use of devices, connectivity and other relevant
124 components of distance learning for teachers, students and the
125 wider community, including parents or guardians of students
126 enrolled in the school; and

127 (vi) Materials or equipment necessary to increase
128 health and safety precautions in classrooms or other school
129 facilities.

130 **SECTION 5.** (1) There is established the Equity in Distance
131 Learning Grant Program which shall be administered by the
132 department for the purpose of reimbursing schools for eligible
133 expenses incurred in funding their distance learning plans, and in
134 facilitating safe classroom and remote instruction.



135 (2) Subject to appropriations by the Legislature,
136 allocations to schools shall be made based on average daily
137 attendance, as defined in Section 37-151-5 and as calculated in
138 the 2019-2020 school year. For any school not funded under the
139 Mississippi Adequate Education Program, the department shall
140 calculate the average-daily-attendance equivalent or fund the
141 school based on enrollment.

142 (3) Subject to the provisions of this act, and other
143 applicable federal law and regulations, schools shall have the
144 authority to use the funds provided in this grant program in a way
145 which best facilitates their distance learning plan, and safe
146 classroom or remote instruction.

147 (4) Schools are highly encouraged to commit a portion of
148 their federal ESSER funds, above the amount required by Section
149 7(b) of this act, as supplemental matching funds to offset the
150 total cost of purchasing sufficient electronic devices,
151 technological supports and systems of service for its distance
152 learning plan.

153 **SECTION 6.** (1) The department shall:

154 (a) Inform each school of its portion of the funds
155 appropriated to this grant program as provided for in Section 5(2)
156 of this act;

157 (b) Develop regulations and procedures to govern the
158 administration of this grant program, to include:



159 (i) A reimbursement process for schools to submit
160 expenditures and receive reimbursement for eligible expenses from
161 the department up to the total amount allocated to each school in
162 Section 5 of this act;

163 (ii) Provide guidance to schools in the
164 development of a technology sustainability plan, addressing how
165 devices and other technology purchased and used by the school
166 district, and students, teachers and other administrators and
167 staff, will be maintained throughout their usage and replaced
168 before the expiration of the term of their expected useful life;

169 (iii) Provide guidance to schools in the
170 development of a responsible use policy for students, teachers and
171 administrators or other staff to govern the use of devices and
172 other technology purchased under this grant program;

173 (c) Provide guidance to schools on the development and
174 implementation of a distance learning plan;

175 (d) Solicit bid proposals from vendors to establish an
176 EPL; and

177 (e) Seek an emergency exemption from the procurement
178 laws and bidding procedures established in Section 31-7-13 to
179 expedite the compilation of an EPL and to minimize the cost of
180 relevant devices or other technology for school districts through
181 bulk purchasing.

182 (2) The department may:



183 (a) Revise the adopted EPL based upon purchasing
184 demands as needed to provide schools with choice in the selection
185 of the electronic devices; and

186 (b) Use the federal ESSER funds set aside for
187 administration of the program to administer this grant program, to
188 the extent permissible under federal law.

189 **SECTION 7.** To be eligible under this grant program, a school
190 shall:

191 (a) Prioritize first the purchase of products listed in
192 Section 4(h)(i) of this act. Schools shall equip every student
193 with a grade-appropriate device, as recommended by the department,
194 before incurring the other expenses listed in Section 4(h)(ii) or
195 (iii) of this act, which shall receive next priority after the
196 products listed in Section 4(h)(i) of this act;

197 (b) Match twenty percent (20%) of the funds received
198 under this grant program with monies received by the school from
199 the Elementary and Secondary School Emergency Relief Fund.

200 (c) Purchase products from vendors listed on the EPL,
201 if using funds under this grant program, unless the school can
202 demonstrate, to the department, that the products it purchases
203 from vendors not listed on the EPL:

204 (i) Meet or exceed the technological specification
205 and functionality required by the department; and

206 (ii) Can be purchased at a price that is less than
207 any of the prices listed on the EPL for a comparable product;



208 (d) Submit the original, itemized receipt of purchase
209 or an authentic copy of the receipt with its request for
210 reimbursement;

211 (e) Secure insurance and submit proof of insurance for
212 any items to be reimbursed under this program;

213 (f) Develop and submit to the department, by September
214 1, 2020:

215 (i) A distance learning plan, establishing an
216 appropriate and achievable plan by the school to develop,
217 implement and maintain distance learning capabilities with a focus
218 on device procurement and connectivity to the Internet for
219 students and teachers. A school's distance learning plan shall
220 make specific provision for its students with special needs,
221 including the purchase of appropriate devices and equipment;

222 (ii) With the understanding that this grant
223 program is being funded with one-time federal funds, a technology
224 sustainability plan addressing how devices and other technology
225 purchased and used by the school, and students, teachers and other
226 administrators and staff, will be maintained throughout their
227 usage and replaced before the expiration of the term of their
228 expected useful life without additional state funds; and

229 (iii) A responsible use policy, addressing the use
230 of devices and other technology purchased under this grant
231 program. The policy shall include a provision requiring students,
232 parents or guardians, teachers, administrators and other staff to



233 agree in writing to the provisions in the policy, and may include
234 fines for intentional loss or damage to devices. The policy shall
235 also include a provision acknowledging that the school shall
236 assume the control of ownership and liability for personal devices
237 and other equipment purchased under this grant program until the
238 personal device or other equipment:

239 1. No longer serves the school or related
240 school purposes for which it was acquired and is sold by public
241 auction under Section 17-25-25;

242 2. Is sold to students in Grade 12 under the
243 provisions of Section 37-7-459; or

244 3. Is traded in to a vendor as part of a
245 subsequent purchase; and

246 (g) Compile and maintain an inventory list of all
247 devices purchased and issued to students, teachers and
248 administrators and other staff, as well as any supporting
249 technology or equipment used to support the school's distance
250 learning plan.

251 **SECTION 8.** (1) There is created a special fund in the State
252 Treasury, to be known as the "Equity in Distance Learning Fund,"
253 from which the grants authorized by this act shall be disbursed by
254 the department. All monies shall be disbursed from the fund in
255 compliance with the guidelines, guidance, rules, regulations
256 and/or other criteria, as may be amended from time to time, by the
257 United States Department of the Treasury regarding the use of



258 monies from the Coronavirus Relief Fund established by the CARES
259 Act. If on November 1, 2020, there are unobligated monies in the
260 fund from either the department or schools, the department shall
261 have the discretion to distribute the monies for eligible
262 expenditures pursuant to the CARES Act to schools by application.

263 (2) The use of funds allocated under this grant program
264 shall be subject to audit by the United States Department of the
265 Treasury's Office of Inspector General and the Mississippi Office
266 of the State Auditor. Each school, or other entity or person
267 receiving funds under this grant program, found to be fully or
268 partially noncompliant with the requirements in this act, shall
269 return to the state all or a portion of the funds received.

270 **SECTION 9.** The department shall provide a comprehensive
271 report on the use of funds distributed under this grant program
272 and the effectiveness of distance learning plans adopted by
273 schools to the Governor, Lieutenant Governor, Speaker of the House
274 of Representatives, and Chairs of the Senate and House
275 Appropriation and Education Committees by October 1, 2020.

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

278 31-7-13. All agencies and governing authorities shall
279 purchase their commodities and printing; contract for garbage
280 collection or disposal; contract for solid waste collection or
281 disposal; contract for sewage collection or disposal; contract for
282 public construction; and contract for rentals as herein provided.



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

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

291 (b) **Bidding procedure for purchases over \$5,000.00 but**
292 **not over \$50,000.00.** Purchases which involve an expenditure of
293 more than Five Thousand Dollars (\$5,000.00) but not more than
294 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and
295 shipping charges, may be made from the lowest and best bidder
296 without publishing or posting advertisement for bids, provided at
297 least two (2) competitive written bids have been obtained. Any
298 state agency or community/junior college purchasing commodities or
299 procuring construction pursuant to this paragraph (b) may
300 authorize its purchasing agent, or his designee, to accept the
301 lowest competitive written bid under Fifty Thousand Dollars
302 (\$50,000.00). Any governing authority purchasing commodities
303 pursuant to this paragraph (b) may authorize its purchasing agent,
304 or his designee, with regard to governing authorities other than
305 counties, or its purchase clerk, or his designee, with regard to
306 counties, to accept the lowest and best competitive written bid.
307 Such authorization shall be made in writing by the governing



308 authority and shall be maintained on file in the primary office of
309 the agency and recorded in the official minutes of the governing
310 authority, as appropriate. The purchasing agent or the purchase
311 clerk, or their designee, as the case may be, and not the
312 governing authority, shall be liable for any penalties and/or
313 damages as may be imposed by law for any act or omission of the
314 purchasing agent or purchase clerk, or their designee,
315 constituting a violation of law in accepting any bid without
316 approval by the governing authority. The term "competitive
317 written bid" shall mean a bid submitted on a bid form furnished by
318 the buying agency or governing authority and signed by authorized
319 personnel representing the vendor, or a bid submitted on a
320 vendor's letterhead or identifiable bid form and signed by
321 authorized personnel representing the vendor. "Competitive" shall
322 mean that the bids are developed based upon comparable
323 identification of the needs and are developed independently and
324 without knowledge of other bids or prospective bids. Any bid item
325 for construction in excess of Five Thousand Dollars (\$5,000.00)
326 shall be broken down by components to provide detail of component
327 description and pricing. These details shall be submitted with
328 the written bids and become part of the bid evaluation criteria.
329 Bids may be submitted by facsimile, electronic mail or other
330 generally accepted method of information distribution. Bids
331 submitted by electronic transmission shall not require the



332 signature of the vendor's representative unless required by
333 agencies or governing authorities.

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

335 (i) **Publication requirement.**

336 1. Purchases which involve an expenditure of
337 more than Fifty Thousand Dollars (\$50,000.00), exclusive of
338 freight and shipping charges, may be made from the lowest and best
339 bidder after advertising for competitive bids once each week for
340 two (2) consecutive weeks in a regular newspaper published in the
341 county or municipality in which such agency or governing authority
342 is located. However, all American Recovery and Reinvestment Act
343 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
344 shall be bid. All references to American Recovery and
345 Reinvestment Act projects in this section shall not apply to
346 programs identified in Division B of the American Recovery and
347 Reinvestment Act.

348 2. Reverse auctions shall be the primary
349 method for receiving bids during the bidding process. If a
350 purchasing entity determines that a reverse auction is not in the
351 best interest of the state, then that determination must be
352 approved by the Public Procurement Review Board. The purchasing
353 entity shall submit a detailed explanation of why a reverse
354 auction would not be in the best interest of the state and present
355 an alternative process to be approved by the Public Procurement
356 Review Board. If the Public Procurement Review Board authorizes



357 the purchasing entity to solicit bids with a method other than
358 reverse auction, then the purchasing entity may designate the
359 other methods by which the bids will be received, including, but
360 not limited to, bids sealed in an envelope, bids received
361 electronically in a secure system, or bids received by any other
362 method that promotes open competition and has been approved by the
363 Office of Purchasing and Travel. However, reverse auction shall
364 not be used for any public contract for design or construction of
365 public facilities, including buildings, roads and bridges. The
366 Public Procurement Review Board must approve any contract entered
367 into by alternative process. The provisions of this item 2 shall
368 not apply to the individual state institutions of higher learning.

369 3. The date as published for the bid opening
370 shall not be less than seven (7) working days after the last
371 published notice; however, if the purchase involves a construction
372 project in which the estimated cost is in excess of Fifty Thousand
373 Dollars (\$50,000.00), such bids shall not be opened in less than
374 fifteen (15) working days after the last notice is published and
375 the notice for the purchase of such construction shall be
376 published once each week for two (2) consecutive weeks. However,
377 all American Recovery and Reinvestment Act projects in excess of
378 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
379 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
380 under the American Recovery and Reinvestment Act, publication
381 shall be made one (1) time and the bid opening for construction



382 projects shall not be less than ten (10) working days after the
383 date of the published notice. The notice of intention to let
384 contracts or purchase equipment shall state the time and place at
385 which bids shall be received, list the contracts to be made or
386 types of equipment or supplies to be purchased, and, if all plans
387 and/or specifications are not published, refer to the plans and/or
388 specifications on file. If there is no newspaper published in the
389 county or municipality, then such notice shall be given by posting
390 same at the courthouse, or for municipalities at the city hall,
391 and at two (2) other public places in the county or municipality,
392 and also by publication once each week for two (2) consecutive
393 weeks in some newspaper having a general circulation in the county
394 or municipality in the above-provided manner. On the same date
395 that the notice is submitted to the newspaper for publication, the
396 agency or governing authority involved shall mail written notice
397 to, or provide electronic notification to the main office of the
398 Mississippi Procurement Technical Assistance Program under the
399 Mississippi Development Authority that contains the same
400 information as that in the published notice. Submissions received
401 by the Mississippi Procurement Technical Assistance Program for
402 projects funded by the American Recovery and Reinvestment Act
403 shall be displayed on a separate and unique Internet web page
404 accessible to the public and maintained by the Mississippi
405 Development Authority for the Mississippi Procurement Technical
406 Assistance Program. Those American Recovery and Reinvestment Act



407 related submissions shall be publicly posted within twenty-four
408 (24) hours of receipt by the Mississippi Development Authority and
409 the bid opening shall not occur until the submission has been
410 posted for ten (10) consecutive days. The Department of Finance
411 and Administration shall maintain information regarding contracts
412 and other expenditures from the American Recovery and Reinvestment
413 Act, on a unique Internet web page accessible to the public. The
414 Department of Finance and Administration shall promulgate rules
415 regarding format, content and deadlines, unless otherwise
416 specified by law, of the posting of award notices, contract
417 execution and subsequent amendments, links to the contract
418 documents, expenditures against the awarded contracts and general
419 expenditures of funds from the American Recovery and Reinvestment
420 Act. Within one (1) working day of the contract award, the agency
421 or governing authority shall post to the designated web page
422 maintained by the Department of Finance and Administration, notice
423 of the award, including the award recipient, the contract amount,
424 and a brief summary of the contract in accordance with rules
425 promulgated by the department. Within one (1) working day of the
426 contract execution, the agency or governing authority shall post
427 to the designated web page maintained by the Department of Finance
428 and Administration a summary of the executed contract and make a
429 copy of the appropriately redacted contract documents available
430 for linking to the designated web page in accordance with the
431 rules promulgated by the department. The information provided by



432 the agency or governing authority shall be posted to the web page
433 for the duration of the American Recovery and Reinvestment Act
434 funding or until the project is completed, whichever is longer.

435 (ii) **Bidding process amendment procedure.** If all
436 plans and/or specifications are published in the notification,
437 then the plans and/or specifications may not be amended. If all
438 plans and/or specifications are not published in the notification,
439 then amendments to the plans/specifications, bid opening date, bid
440 opening time and place may be made, provided that the agency or
441 governing authority maintains a list of all prospective bidders
442 who are known to have received a copy of the bid documents and all
443 such prospective bidders are sent copies of all amendments. This
444 notification of amendments may be made via mail, facsimile,
445 electronic mail or other generally accepted method of information
446 distribution. No addendum to bid specifications may be issued
447 within two (2) working days of the time established for the
448 receipt of bids unless such addendum also amends the bid opening
449 to a date not less than five (5) working days after the date of
450 the addendum.

451 (iii) **Filing requirement.** In all cases involving
452 governing authorities, before the notice shall be published or
453 posted, the plans or specifications for the construction or
454 equipment being sought shall be filed with the clerk of the board
455 of the governing authority. In addition to these requirements, a
456 bid file shall be established which shall indicate those vendors



457 to whom such solicitations and specifications were issued, and
458 such file shall also contain such information as is pertinent to
459 the bid.

460 (iv) **Specification restrictions.**

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

477 2. Specifications for construction projects
478 may include an allowance for commodities, equipment, furniture,
479 construction materials or systems in which prospective bidders are
480 instructed to include in their bids specified amounts for such
481 items so long as the allowance items are acquired by the vendor in



482 a commercially reasonable manner and approved by the
483 agency/governing authority. Such acquisitions shall not be made
484 to circumvent the public purchasing laws.

485 (v) **Electronic bids.** Agencies and governing
486 authorities shall provide a secure electronic interactive system
487 for the submittal of bids requiring competitive bidding that shall
488 be an additional bidding option for those bidders who choose to
489 submit their bids electronically. The Department of Finance and
490 Administration shall provide, by regulation, the standards that
491 agencies must follow when receiving electronic bids. Agencies and
492 governing authorities shall make the appropriate provisions
493 necessary to accept electronic bids from those bidders who choose
494 to submit their bids electronically for all purchases requiring
495 competitive bidding under this section. Any special condition or
496 requirement for the electronic bid submission shall be specified
497 in the advertisement for bids required by this section. Agencies
498 or governing authorities that are currently without available high
499 speed Internet access shall be exempt from the requirement of this
500 subparagraph (v) until such time that high speed Internet access
501 becomes available. Any county having a population of less than
502 twenty thousand (20,000) shall be exempt from the provisions of
503 this subparagraph (v). Any municipality having a population of
504 less than ten thousand (10,000) shall be exempt from the
505 provisions of this subparagraph (v). The provisions of this
506 subparagraph (v) shall not require any bidder to submit bids



507 electronically. When construction bids are submitted
508 electronically, the requirement for including a certificate of
509 responsibility, or a statement that the bid enclosed does not
510 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
511 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
512 deemed in compliance with by including same as an attachment with
513 the electronic bid submittal.

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

515 (i) **Decision procedure.** Purchases may be made
516 from the lowest and best bidder. In determining the lowest and
517 best bid, freight and shipping charges shall be included.
518 Life-cycle costing, total cost bids, warranties, guaranteed
519 buy-back provisions and other relevant provisions may be included
520 in the best bid calculation. All best bid procedures for state
521 agencies must be in compliance with regulations established by the
522 Department of Finance and Administration. If any governing
523 authority accepts a bid other than the lowest bid actually
524 submitted, it shall place on its minutes detailed calculations and
525 narrative summary showing that the accepted bid was determined to
526 be the lowest and best bid, including the dollar amount of the
527 accepted bid and the dollar amount of the lowest bid. No agency
528 or governing authority shall accept a bid based on items not
529 included in the specifications.

530 (ii) **Decision procedure for Certified Purchasing**
531 **Offices.** In addition to the decision procedure set forth in



532 subparagraph (i) of this paragraph (d), Certified Purchasing
533 Offices may also use the following procedure: Purchases may be
534 made from the bidder offering the best value. In determining the
535 best value bid, freight and shipping charges shall be included.
536 Life-cycle costing, total cost bids, warranties, guaranteed
537 buy-back provisions, documented previous experience, training
538 costs and other relevant provisions, including, but not limited
539 to, a bidder having a local office and inventory located within
540 the jurisdiction of the governing authority, may be included in
541 the best value calculation. This provision shall authorize
542 Certified Purchasing Offices to utilize a Request For Proposals
543 (RFP) process when purchasing commodities. All best value
544 procedures for state agencies must be in compliance with
545 regulations established by the Department of Finance and
546 Administration. No agency or governing authority shall accept a
547 bid based on items or criteria not included in the specifications.

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

549 **Landmarks.** In addition to the decision procedure set forth in
550 subparagraph (i) of this paragraph (d), where purchase involves
551 renovation, restoration, or both, of the State Capitol Building or
552 any other historical building designated for at least five (5)
553 years as a Mississippi Landmark by the Board of Trustees of the
554 Department of Archives and History under the authority of Sections
555 39-7-7 and 39-7-11, the agency or governing authority may use the
556 following procedure: Purchases may be made from the lowest and



557 best prequalified bidder. Prequalification of bidders shall be
558 determined not less than fifteen (15) working days before the
559 first published notice of bid opening. Prequalification criteria
560 shall be limited to bidder's knowledge and experience in
561 historical restoration, preservation and renovation. In
562 determining the lowest and best bid, freight and shipping charges
563 shall be included. Life-cycle costing, total cost bids,
564 warranties, guaranteed buy-back provisions and other relevant
565 provisions may be included in the best bid calculation. All best
566 bid and prequalification procedures for state agencies must be in
567 compliance with regulations established by the Department of
568 Finance and Administration. If any governing authority accepts a
569 bid other than the lowest bid actually submitted, it shall place
570 on its minutes detailed calculations and narrative summary showing
571 that the accepted bid was determined to be the lowest and best
572 bid, including the dollar amount of the accepted bid and the
573 dollar amount of the lowest bid. No agency or governing authority
574 shall accept a bid based on items not included in the
575 specifications.

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

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



582 (e) **Lease-purchase authorization.** For the purposes of
583 this section, the term "equipment" shall mean equipment, furniture
584 and, if applicable, associated software and other applicable
585 direct costs associated with the acquisition. Any lease-purchase
586 of equipment which an agency is not required to lease-purchase
587 under the master lease-purchase program pursuant to Section
588 31-7-10 and any lease-purchase of equipment which a governing
589 authority elects to lease-purchase may be acquired by a
590 lease-purchase agreement under this paragraph (e). Lease-purchase
591 financing may also be obtained from the vendor or from a
592 third-party source after having solicited and obtained at least
593 two (2) written competitive bids, as defined in paragraph (b) of
594 this section, for such financing without advertising for such
595 bids. Solicitation for the bids for financing may occur before or
596 after acceptance of bids for the purchase of such equipment or,
597 where no such bids for purchase are required, at any time before
598 the purchase thereof. No such lease-purchase agreement shall be
599 for an annual rate of interest which is greater than the overall
600 maximum interest rate to maturity on general obligation
601 indebtedness permitted under Section 75-17-101, and the term of
602 such lease-purchase agreement shall not exceed the useful life of
603 equipment covered thereby as determined according to the upper
604 limit of the asset depreciation range (ADR) guidelines for the
605 Class Life Asset Depreciation Range System established by the
606 Internal Revenue Service pursuant to the United States Internal



607 Revenue Code and regulations thereunder as in effect on December
608 31, 1980, or comparable depreciation guidelines with respect to
609 any equipment not covered by ADR guidelines. Any lease-purchase
610 agreement entered into pursuant to this paragraph (e) may contain
611 any of the terms and conditions which a master lease-purchase
612 agreement may contain under the provisions of Section 31-7-10(5),
613 and shall contain an annual allocation dependency clause
614 substantially similar to that set forth in Section 31-7-10(8).
615 Each agency or governing authority entering into a lease-purchase
616 transaction pursuant to this paragraph (e) shall maintain with
617 respect to each such lease-purchase transaction the same
618 information as required to be maintained by the Department of
619 Finance and Administration pursuant to Section 31-7-10(13).
620 However, nothing contained in this section shall be construed to
621 permit agencies to acquire items of equipment with a total
622 acquisition cost in the aggregate of less than Ten Thousand
623 Dollars (\$10,000.00) by a single lease-purchase transaction. All
624 equipment, and the purchase thereof by any lessor, acquired by
625 lease-purchase under this paragraph and all lease-purchase
626 payments with respect thereto shall be exempt from all Mississippi
627 sales, use and ad valorem taxes. Interest paid on any
628 lease-purchase agreement under this section shall be exempt from
629 State of Mississippi income taxation.

630 (f) **Alternate bid authorization.** When necessary to
631 ensure ready availability of commodities for public works and the



632 timely completion of public projects, no more than two (2)
633 alternate bids may be accepted by a governing authority for
634 commodities. No purchases may be made through use of such
635 alternate bids procedure unless the lowest and best bidder cannot
636 deliver the commodities contained in his bid. In that event,
637 purchases of such commodities may be made from one (1) of the
638 bidders whose bid was accepted as an alternate.

639 (g) **Construction contract change authorization.** In the
640 event a determination is made by an agency or governing authority
641 after a construction contract is let that changes or modifications
642 to the original contract are necessary or would better serve the
643 purpose of the agency or the governing authority, such agency or
644 governing authority may, in its discretion, order such changes
645 pertaining to the construction that are necessary under the
646 circumstances without the necessity of further public bids;
647 provided that such change shall be made in a commercially
648 reasonable manner and shall not be made to circumvent the public
649 purchasing statutes. In addition to any other authorized person,
650 the architect or engineer hired by an agency or governing
651 authority with respect to any public construction contract shall
652 have the authority, when granted by an agency or governing
653 authority, to authorize changes or modifications to the original
654 contract without the necessity of prior approval of the agency or
655 governing authority when any such change or modification is less
656 than one percent (1%) of the total contract amount. The agency or



657 governing authority may limit the number, manner or frequency of
658 such emergency changes or modifications.

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

676 (i) **Road construction petroleum products price**
677 **adjustment clause authorization.** Any agency or governing
678 authority authorized to enter into contracts for the construction,
679 maintenance, surfacing or repair of highways, roads or streets,
680 may include in its bid proposal and contract documents a price
681 adjustment clause with relation to the cost to the contractor,



682 including taxes, based upon an industry-wide cost index, of
683 petroleum products including asphalt used in the performance or
684 execution of the contract or in the production or manufacture of
685 materials for use in such performance. Such industry-wide index
686 shall be established and published monthly by the Mississippi
687 Department of Transportation with a copy thereof to be mailed,
688 upon request, to the clerks of the governing authority of each
689 municipality and the clerks of each board of supervisors
690 throughout the state. The price adjustment clause shall be based
691 on the cost of such petroleum products only and shall not include
692 any additional profit or overhead as part of the adjustment. The
693 bid proposals or document contract shall contain the basis and
694 methods of adjusting unit prices for the change in the cost of
695 such petroleum products.

696 (j) **State agency emergency purchase procedure.** If the
697 governing board or the executive head, or his designees, of any
698 agency of the state shall determine that an emergency exists in
699 regard to the purchase of any commodities or repair contracts, so
700 that the delay incident to giving opportunity for competitive
701 bidding would be detrimental to the interests of the state, then
702 the head of such agency, or his designees, shall file with the
703 Department of Finance and Administration (i) a statement
704 explaining the conditions and circumstances of the emergency,
705 which shall include a detailed description of the events leading
706 up to the situation and the negative impact to the entity if the



707 purchase is made following the statutory requirements set forth in
708 paragraph (a), (b) or (c) of this section, and (ii) a certified
709 copy of the appropriate minutes of the board of such agency
710 requesting the emergency purchase, if applicable. Upon receipt of
711 the statement and applicable board certification, the State Fiscal
712 Officer, or his designees, may, in writing, authorize the purchase
713 or repair without having to comply with competitive bidding
714 requirements.

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

727 Total purchases made under this paragraph (j) shall only be
728 for the purpose of meeting needs created by the emergency
729 situation. Following the emergency purchase, documentation of the
730 purchase, including a description of the commodity purchased, the
731 purchase price thereof and the nature of the emergency shall be



732 filed with the Department of Finance and Administration. Any
733 contract awarded pursuant to this paragraph (j) shall not exceed a
734 term of one (1) year.

735 Purchases under the grant program established under this act
736 in response to COVID-19 and the directive that school districts
737 create a distance learning plan and fulfill technology needs
738 expeditiously shall be deemed an emergency purchase for purposes
739 of this paragraph (j).

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

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



757 governing authority. Purchases under the grant program
758 established under this act in response to COVID-19 and the
759 directive that school districts create a distance learning plan
760 and fulfill technology needs expeditiously shall be deemed an
761 emergency purchase for purposes of this paragraph (k).

762 (1) **Hospital purchase, lease-purchase and lease**
763 **authorization.**

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

769 (ii) In addition to the authority granted in
770 subparagraph (i) of this paragraph (1), the commissioners or board
771 of trustees is authorized to enter into contracts for the lease of
772 equipment or services, or both, which it considers necessary for
773 the proper care of patients if, in its opinion, it is not
774 financially feasible to purchase the necessary equipment or
775 services. Any such contract for the lease of equipment or
776 services executed by the commissioners or board shall not exceed a
777 maximum of five (5) years' duration and shall include a
778 cancellation clause based on unavailability of funds. If such
779 cancellation clause is exercised, there shall be no further
780 liability on the part of the lessee. Any such contract for the
781 lease of equipment or services executed on behalf of the



782 commissioners or board that complies with the provisions of this
783 subparagraph (ii) shall be excepted from the bid requirements set
784 forth in this section.

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

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

788 Purchasing agreements, contracts and maximum price regulations
789 executed or approved by the Department of Finance and
790 Administration.

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

802 (iii) **In-house equipment repairs.** Purchases of
803 parts for repairs to equipment, when such repairs are made by
804 personnel of the agency or governing authority; however, entire
805 assemblies, such as engines or transmissions, shall not be



806 included in this exemption when the entire assembly is being
807 replaced instead of being repaired.

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

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

822 (vi) **Intergovernmental sales and transfers.**
823 Purchases, sales, transfers or trades by governing authorities or
824 state agencies when such purchases, sales, transfers or trades are
825 made by a private treaty agreement or through means of
826 negotiation, from any federal agency or authority, another
827 governing authority or state agency of the State of Mississippi,
828 or any state agency or governing authority of another state.
829 Nothing in this section shall permit such purchases through public
830 auction except as provided for in subparagraph (v) of this



831 paragraph (m). It is the intent of this section to allow
832 governmental entities to dispose of and/or purchase commodities
833 from other governmental entities at a price that is agreed to by
834 both parties. This shall allow for purchases and/or sales at
835 prices which may be determined to be below the market value if the
836 selling entity determines that the sale at below market value is
837 in the best interest of the taxpayers of the state. Governing
838 authorities shall place the terms of the agreement and any
839 justification on the minutes, and state agencies shall obtain
840 approval from the Department of Finance and Administration, prior
841 to releasing or taking possession of the commodities.

842 (vii) **Perishable supplies or food.** Perishable
843 supplies or food purchased for use in connection with hospitals,
844 the school lunch programs, homemaking programs and for the feeding
845 of county or municipal prisoners.

846 (viii) **Single source items.** Noncompetitive items
847 available from one (1) source only. In connection with the
848 purchase of noncompetitive items only available from one (1)
849 source, a certification of the conditions and circumstances
850 requiring the purchase shall be filed by the agency with the
851 Department of Finance and Administration and by the governing
852 authority with the board of the governing authority. Upon receipt
853 of that certification the Department of Finance and Administration
854 or the board of the governing authority, as the case may be, may,
855 in writing, authorize the purchase, which authority shall be noted



856 on the minutes of the body at the next regular meeting thereafter.
857 In those situations, a governing authority is not required to
858 obtain the approval of the Department of Finance and
859 Administration. Following the purchase, the executive head of the
860 state agency, or his designees, shall file with the Department of
861 Finance and Administration, documentation of the purchase,
862 including a description of the commodity purchased, the purchase
863 price thereof and the source from whom it was purchased.

864 (ix) **Waste disposal facility construction**
865 **contracts.** Construction of incinerators and other facilities for
866 disposal of solid wastes in which products either generated
867 therein, such as steam, or recovered therefrom, such as materials
868 for recycling, are to be sold or otherwise disposed of; however,
869 in constructing such facilities, a governing authority or agency
870 shall publicly issue requests for proposals, advertised for in the
871 same manner as provided herein for seeking bids for public
872 construction projects, concerning the design, construction,
873 ownership, operation and/or maintenance of such facilities,
874 wherein such requests for proposals when issued shall contain
875 terms and conditions relating to price, financial responsibility,
876 technology, environmental compatibility, legal responsibilities
877 and such other matters as are determined by the governing
878 authority or agency to be appropriate for inclusion; and after
879 responses to the request for proposals have been duly received,
880 the governing authority or agency may select the most qualified



881 proposal or proposals on the basis of price, technology and other
882 relevant factors and from such proposals, but not limited to the
883 terms thereof, negotiate and enter contracts with one or more of
884 the persons or firms submitting proposals.

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

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

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

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

904 (xiv) **Library books and other reference materials.**
905 Purchases by libraries or for libraries of books and periodicals;



906 processed film, videocassette tapes, filmstrips and slides;
907 recorded audiotapes, cassettes and diskettes; and any such items
908 as would be used for teaching, research or other information
909 distribution; however, equipment such as projectors, recorders,
910 audio or video equipment, and monitor televisions are not exempt
911 under this subparagraph.

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

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

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

926 (xviii) **Purchases of prison industry products by**
927 **the Department of Corrections, regional correctional facilities or**
928 **privately owned prisons.** Purchases made by the Mississippi
929 Department of Corrections, regional correctional facilities or



930 privately owned prisons involving any item that is manufactured,
931 processed, grown or produced from the state's prison industries.

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

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

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

946 (xxii) **Garbage, solid waste and sewage contracts.**
947 Contracts for garbage collection or disposal, contracts for solid
948 waste collection or disposal and contracts for sewage collection
949 or disposal.

950 (xxiii) **Municipal water tank maintenance**
951 **contracts.** Professional maintenance program contracts for the
952 repair or maintenance of municipal water tanks, which provide
953 professional services needed to maintain municipal water storage



954 tanks for a fixed annual fee for a duration of two (2) or more
955 years.

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

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

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

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



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

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

992 (xxx) **School yearbooks.** Purchases of school
993 yearbooks by state agencies or governing authorities; provided,
994 however, that state agencies and governing authorities shall use
995 for these purchases the RFP process as set forth in the
996 Mississippi Procurement Manual adopted by the Office of Purchasing
997 and Travel.

998 (xxxi) **Design-build method and dual-phase**
999 **design-build method of contracting.** Contracts entered into under
1000 the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.



1001 (xxxii) **Toll roads and bridge construction**
1002 **projects.** Contracts entered into under the provisions of Section
1003 65-43-1 or 65-43-3.

1004 (xxxiii) **Certain purchases under Section 57-1-221.**
1005 Contracts entered into pursuant to the provisions of Section
1006 57-1-221.

1007 (xxxiv) **Certain transfers made pursuant to the**
1008 **provisions of Section 57-105-1(7).** Transfers of public property
1009 or facilities under Section 57-105-1(7) and construction related
1010 to such public property or facilities.

1011 (xxxv) **Certain purchases or transfers entered into**
1012 **with local electrical power associations.** Contracts or agreements
1013 entered into under the provisions of Section 55-3-33.

1014 (xxxvi) **Certain purchases by an academic medical**
1015 **center or health sciences school.** Purchases by an academic
1016 medical center or health sciences school, as defined in Section
1017 37-115-50, of commodities that are used for clinical purposes and
1018 1. intended for use in the diagnosis of disease or other
1019 conditions or in the cure, mitigation, treatment or prevention of
1020 disease, and 2. medical devices, biological, drugs and
1021 radiation-emitting devices as defined by the United States Food
1022 and Drug Administration.

1023 (xxxvii) **Certain purchases made under the Alyce G.**
1024 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi



1025 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
1026 Lottery Law.

1027 (n) **Term contract authorization.** All contracts for the
1028 purchase of:

1029 (i) All contracts for the purchase of commodities,
1030 equipment and public construction (including, but not limited to,
1031 repair and maintenance), may be let for periods of not more than
1032 sixty (60) months in advance, subject to applicable statutory
1033 provisions prohibiting the letting of contracts during specified
1034 periods near the end of terms of office. Term contracts for a
1035 period exceeding twenty-four (24) months shall also be subject to
1036 ratification or cancellation by governing authority boards taking
1037 office subsequent to the governing authority board entering the
1038 contract.

1039 (ii) Bid proposals and contracts may include price
1040 adjustment clauses with relation to the cost to the contractor
1041 based upon a nationally published industry-wide or nationally
1042 published and recognized cost index. The cost index used in a
1043 price adjustment clause shall be determined by the Department of
1044 Finance and Administration for the state agencies and by the
1045 governing board for governing authorities. The bid proposal and
1046 contract documents utilizing a price adjustment clause shall
1047 contain the basis and method of adjusting unit prices for the
1048 change in the cost of such commodities, equipment and public
1049 construction.



1050 (o) **Purchase law violation prohibition and vendor**
1051 **penalty.** No contract or purchase as herein authorized shall be
1052 made for the purpose of circumventing the provisions of this
1053 section requiring competitive bids, nor shall it be lawful for any
1054 person or concern to submit individual invoices for amounts within
1055 those authorized for a contract or purchase where the actual value
1056 of the contract or commodity purchased exceeds the authorized
1057 amount and the invoices therefor are split so as to appear to be
1058 authorized as purchases for which competitive bids are not
1059 required. Submission of such invoices shall constitute a
1060 misdemeanor punishable by a fine of not less than Five Hundred
1061 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1062 or by imprisonment for thirty (30) days in the county jail, or
1063 both such fine and imprisonment. In addition, the claim or claims
1064 submitted shall be forfeited.

1065 (p) **Electrical utility petroleum-based equipment**
1066 **purchase procedure.** When in response to a proper advertisement
1067 therefor, no bid firm as to price is submitted to an electric
1068 utility for power transformers, distribution transformers, power
1069 breakers, reclosers or other articles containing a petroleum
1070 product, the electric utility may accept the lowest and best bid
1071 therefor although the price is not firm.

1072 (q) **Fuel management system bidding procedure.** Any
1073 governing authority or agency of the state shall, before
1074 contracting for the services and products of a fuel management or



1075 fuel access system, enter into negotiations with not fewer than
1076 two (2) sellers of fuel management or fuel access systems for
1077 competitive written bids to provide the services and products for
1078 the systems. In the event that the governing authority or agency
1079 cannot locate two (2) sellers of such systems or cannot obtain
1080 bids from two (2) sellers of such systems, it shall show proof
1081 that it made a diligent, good-faith effort to locate and negotiate
1082 with two (2) sellers of such systems. Such proof shall include,
1083 but not be limited to, publications of a request for proposals and
1084 letters soliciting negotiations and bids. For purposes of this
1085 paragraph (q), a fuel management or fuel access system is an
1086 automated system of acquiring fuel for vehicles as well as
1087 management reports detailing fuel use by vehicles and drivers, and
1088 the term "competitive written bid" shall have the meaning as
1089 defined in paragraph (b) of this section. Governing authorities
1090 and agencies shall be exempt from this process when contracting
1091 for the services and products of fuel management or fuel access
1092 systems under the terms of a state contract established by the
1093 Office of Purchasing and Travel.

1094 (r) **Solid waste contract proposal procedure.** Before
1095 entering into any contract for garbage collection or disposal,
1096 contract for solid waste collection or disposal or contract for
1097 sewage collection or disposal, which involves an expenditure of
1098 more than Fifty Thousand Dollars (\$50,000.00), a governing
1099 authority or agency shall issue publicly a request for proposals



1100 concerning the specifications for such services which shall be
1101 advertised for in the same manner as provided in this section for
1102 seeking bids for purchases which involve an expenditure of more
1103 than the amount provided in paragraph (c) of this section. Any
1104 request for proposals when issued shall contain terms and
1105 conditions relating to price, financial responsibility,
1106 technology, legal responsibilities and other relevant factors as
1107 are determined by the governing authority or agency to be
1108 appropriate for inclusion; all factors determined relevant by the
1109 governing authority or agency or required by this paragraph (r)
1110 shall be duly included in the advertisement to elicit proposals.
1111 After responses to the request for proposals have been duly
1112 received, the governing authority or agency shall select the most
1113 qualified proposal or proposals on the basis of price, technology
1114 and other relevant factors and from such proposals, but not
1115 limited to the terms thereof, negotiate and enter into contracts
1116 with one or more of the persons or firms submitting proposals. If
1117 the governing authority or agency deems none of the proposals to
1118 be qualified or otherwise acceptable, the request for proposals
1119 process may be reinitiated. Notwithstanding any other provisions
1120 of this paragraph, where a county with at least thirty-five
1121 thousand (35,000) nor more than forty thousand (40,000)
1122 population, according to the 1990 federal decennial census, owns
1123 or operates a solid waste landfill, the governing authorities of
1124 any other county or municipality may contract with the governing



1125 authorities of the county owning or operating the landfill,
1126 pursuant to a resolution duly adopted and spread upon the minutes
1127 of each governing authority involved, for garbage or solid waste
1128 collection or disposal services through contract negotiations.

1129 (s) **Minority set-aside authorization.** Notwithstanding
1130 any provision of this section to the contrary, any agency or
1131 governing authority, by order placed on its minutes, may, in its
1132 discretion, set aside not more than twenty percent (20%) of its
1133 anticipated annual expenditures for the purchase of commodities
1134 from minority businesses; however, all such set-aside purchases
1135 shall comply with all purchasing regulations promulgated by the
1136 Department of Finance and Administration and shall be subject to
1137 bid requirements under this section. Set-aside purchases for
1138 which competitive bids are required shall be made from the lowest
1139 and best minority business bidder. For the purposes of this
1140 paragraph, the term "minority business" means a business which is
1141 owned by a majority of persons who are United States citizens or
1142 permanent resident aliens (as defined by the Immigration and
1143 Naturalization Service) of the United States, and who are Asian,
1144 Black, Hispanic or Native American, according to the following
1145 definitions:

1146 (i) "Asian" means persons having origins in any of
1147 the original people of the Far East, Southeast Asia, the Indian
1148 subcontinent, or the Pacific Islands.



1149 (ii) "Black" means persons having origins in any
1150 black racial group of Africa.

1151 (iii) "Hispanic" means persons of Spanish or
1152 Portuguese culture with origins in Mexico, South or Central
1153 America, or the Caribbean Islands, regardless of race.

1154 (iv) "Native American" means persons having
1155 origins in any of the original people of North America, including
1156 American Indians, Eskimos and Aleuts.

1157 (t) **Construction punch list restriction.** The
1158 architect, engineer or other representative designated by the
1159 agency or governing authority that is contracting for public
1160 construction or renovation may prepare and submit to the
1161 contractor only one (1) preliminary punch list of items that do
1162 not meet the contract requirements at the time of substantial
1163 completion and one (1) final list immediately before final
1164 completion and final payment.

1165 (u) **Procurement of construction services by state**
1166 **institutions of higher learning.** Contracts for privately financed
1167 construction of auxiliary facilities on the campus of a state
1168 institution of higher learning may be awarded by the Board of
1169 Trustees of State Institutions of Higher Learning to the lowest
1170 and best bidder, where sealed bids are solicited, or to the
1171 offeror whose proposal is determined to represent the best value
1172 to the citizens of the State of Mississippi, where requests for
1173 proposals are solicited.



1174 (v) **Insurability of bidders for public construction or**
1175 **other public contracts.** In any solicitation for bids to perform
1176 public construction or other public contracts to which this
1177 section applies including, but not limited to, contracts for
1178 repair and maintenance, for which the contract will require
1179 insurance coverage in an amount of not less than One Million
1180 Dollars (\$1,000,000.00), bidders shall be permitted to either
1181 submit proof of current insurance coverage in the specified amount
1182 or demonstrate ability to obtain the required coverage amount of
1183 insurance if the contract is awarded to the bidder. Proof of
1184 insurance coverage shall be submitted within five (5) business
1185 days from bid acceptance.

1186 (w) **Purchase authorization clarification.** Nothing in
1187 this section shall be construed as authorizing any purchase not
1188 authorized by law.

1189 **SECTION 11.** If any section, paragraph, sentence, clause,
1190 phrase, or any part of this act is declared to be in conflict with
1191 federal law, or if for any reason is declared to be invalid or of
1192 no effect, the remaining sections, paragraphs, sentences, clauses,
1193 phrases or parts thereof shall be in no matter affected thereby
1194 but shall remain in full force and effect.

1195 **SECTION 12.** This act shall take effect and be in force from
1196 and after its passage.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**



1 AN ACT TO ESTABLISH THE "EQUITY IN DISTANCE LEARNING ACT" TO
2 BE ADMINISTERED BY THE MISSISSIPPI DEPARTMENT OF EDUCATION TO
3 PROVIDE GUIDANCE, TECHNICAL SUPPORT AND FINANCIAL REIMBURSEMENT TO
4 SCHOOLS TO PROVIDE DISTANCE LEARNING AND ONLINE SERVICES; TO
5 PROVIDE FOR CERTAIN TRANSFERS BY THE STATE FISCAL OFFICER; TO
6 STATE LEGISLATIVE FINDINGS AND INTENT; TO DEFINE TERMS; TO
7 ESTABLISH THE "EQUITY IN DISTANCE LEARNING GRANT PROGRAM"; TO
8 PROVIDE THAT ALLOCATIONS UNDER THE PROGRAM SHALL BE MADE BASED ON
9 AVERAGE DAILY ATTENDANCE; TO HIGHLY ENCOURAGE EACH SCHOOL TO
10 COMMIT A PORTION OF ITS FEDERAL ELEMENTARY AND SECONDARY SCHOOL
11 EMERGENCY RELIEF (ESSER) FUNDS TO PURCHASE EQUIPMENT FOR ITS
12 DISTANCE LEARNING PLAN; TO REQUIRE THE DEPARTMENT TO INFORM EACH
13 SCHOOL OF ITS PORTION OF AVAILABLE FUNDS, TO DEVELOP REGULATIONS
14 AND PROCEDURES TO GOVERN THE GRANT PROGRAM AND TO COMPILE AN
15 EXPRESS PRODUCTS LIST; TO PRESCRIBE THE ELIGIBILITY REQUIREMENTS
16 FOR SCHOOLS TO BE REIMBURSED UNDER THE GRANT PROGRAM; TO CREATE A
17 SPECIAL FUND IN THE STATE TREASURY TO BE KNOWN AS THE "EQUITY IN
18 DISTANCE LEARNING FUND"; TO AMEND SECTION 31-7-13, MISSISSIPPI
19 CODE OF 1972, TO PROVIDE THAT PURCHASES UNDER THE GRANT PROGRAM
20 CREATED UNDER THIS ACT AND THE DIRECTIVE THAT SCHOOL DISTRICTS
21 CREATE A DISTANCE LEARNING PLAN AND FULFILL TECHNOLOGY NEEDS
22 EXPEDITIOUSLY SHALL BE DEEMED AN EMERGENCY PURCHASE FOR PURPOSES
23 OF THE PROCUREMENT AND COMPETITIVE BIDDING LAW; TO PROVIDE THAT
24 THE PROVISIONS OF THIS ACT ARE SEVERABLE; AND FOR RELATED
25 PURPOSES.

