

By: Representative Harness

To: Universities and
Colleges; Appropriations

HOUSE BILL NO. 1332

1 AN ACT TO AUTHORIZE THE BOARD OF TRUSTEES OF STATE
2 INSTITUTIONS OF HIGHER LEARNING, IN COLLABORATION WITH THE
3 MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES, TO
4 ESTABLISH A PROGRAM TO PROVIDE DEVICES AND CONNECTIVITY TECHNOLOGY
5 TO STUDENTS LACKING SUCH TECHNOLOGY WHENEVER AN INSTITUTION OF
6 HIGHER LEARNING TRANSITIONS IN-PERSON CLASSES TO REMOTE LEARNING
7 DUE TO A PUBLIC HEALTH EMERGENCY OR OTHER STATE OF EMERGENCY; TO
8 AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A
9 PURCHASE UNDER THE PROGRAM TO FULFILL TECHNOLOGY NEEDS
10 EXPEDITIOUSLY IS DEEMED AN EMERGENCY PURCHASE FOR PURPOSES OF THE
11 PROCUREMENT AND COMPETITIVE BIDDING LAW; TO BRING FORWARD SECTION
12 25-53-191, MISSISSIPPI CODE OF 1972, WHICH AUTHORIZES THE
13 DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES TO ISSUE WIRELESS
14 COMMUNICATION DEVICES TO STATE EMPLOYEES, FOR PURPOSES OF POSSIBLE
15 AMENDMENT; AND FOR RELATED PURPOSES.

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

17 **SECTION 1.** (1) The Board of Trustees of State Institutions
18 of Higher Learning, in collaboration with the Mississippi
19 Department of Information Technology Services, may establish a
20 program to provide devices and other technology, including
21 technology related to connectivity and online access, necessary
22 for students to engage in remote learning whenever a state
23 institution of higher learning suspends on-campus activities due
24 to a declared public health crisis or an emergency in which the



25 Governor has declared a disaster or state of emergency under the
26 laws of this state or the President of the United States has
27 declared an emergency or major disaster to exist in this state.

28 (2) If a state institution of higher learning, in its
29 determination or pursuant to a mandatory order issued by a public
30 official or governing body, transitions all in-person classes on
31 the institution's campuses to remote instruction in response to a
32 public health crisis or state of emergency, the institution may
33 expend such funds as may be necessary to procure devices and
34 related technology to ensure that any student who personally does
35 not have access to the necessary technology is able to continue
36 the student's classes during the period that instruction is
37 delivered via distance learning methods.

38 (3) A student desiring technology devices or connectivity
39 and online access under this section must demonstrate to the
40 satisfaction of the state institution of higher learning in which
41 the student is enrolled that the student does not possess the
42 requisite technology and that without assistance, the student will
43 not be able to continue in courses that have transitioned to
44 distance learning.

45 (4) The following are eligible expenses that may be incurred
46 by a state institution of higher learning under this section:

47 (a) Costs for laptop computers, tablets, assisted
48 learning devices or other devices that can be used personally by a
49 student in the student's home;



50 (b) Costs for the purchase and installation of hardware
51 to provide for or enhance the Internet connectivity of a student,
52 including the cost of establishing personal or centrally located
53 hotspots; and

54 (c) Costs associated with providing technical
55 assistance related to the use of devices, connectivity and other
56 relevant components of distance learning to students.

57 **SECTION 2.** Section 31-7-13, Mississippi Code of 1972, is
58 amended as follows:

59 31-7-13. All agencies and governing authorities shall
60 purchase their commodities and printing; contract for garbage
61 collection or disposal; contract for solid waste collection or
62 disposal; contract for sewage collection or disposal; contract for
63 public construction; and contract for rentals as herein provided.

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

65 Purchases which do not involve an expenditure of more than Five
66 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
67 charges, may be made without advertising or otherwise requesting
68 competitive bids. However, nothing contained in this paragraph

69 (a) shall be construed to prohibit any agency or governing
70 authority from establishing procedures which require competitive
71 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

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

73 **not over \$50,000.00.** Purchases which involve an expenditure of
74 more than Five Thousand Dollars (\$5,000.00) but not more than



75 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and
76 shipping charges, may be made from the lowest and best bidder
77 without publishing or posting advertisement for bids, provided at
78 least two (2) competitive written bids have been obtained. Any
79 state agency or community/junior college purchasing commodities or
80 procuring construction pursuant to this paragraph (b) may
81 authorize its purchasing agent, or his designee, to accept the
82 lowest competitive written bid under Fifty Thousand Dollars
83 (\$50,000.00). Any governing authority purchasing commodities
84 pursuant to this paragraph (b) may authorize its purchasing agent,
85 or his designee, with regard to governing authorities other than
86 counties, or its purchase clerk, or his designee, with regard to
87 counties, to accept the lowest and best competitive written bid.
88 Such authorization shall be made in writing by the governing
89 authority and shall be maintained on file in the primary office of
90 the agency and recorded in the official minutes of the governing
91 authority, as appropriate. The purchasing agent or the purchase
92 clerk, or his designee, as the case may be, and not the governing
93 authority, shall be liable for any penalties and/or damages as may
94 be imposed by law for any act or omission of the purchasing agent
95 or purchase clerk, or his designee, constituting a violation of
96 law in accepting any bid without approval by the governing
97 authority. The term "competitive written bid" shall mean a bid
98 submitted on a bid form furnished by the buying agency or
99 governing authority and signed by authorized personnel



100 representing the vendor, or a bid submitted on a vendor's
101 letterhead or identifiable bid form and signed by authorized
102 personnel representing the vendor. "Competitive" shall mean that
103 the bids are developed based upon comparable identification of the
104 needs and are developed independently and without knowledge of
105 other bids or prospective bids. Any bid item for construction in
106 excess of Five Thousand Dollars (\$5,000.00) shall be broken down
107 by components to provide detail of component description and
108 pricing. These details shall be submitted with the written bids
109 and become part of the bid evaluation criteria. Bids may be
110 submitted by facsimile, electronic mail or other generally
111 accepted method of information distribution. Bids submitted by
112 electronic transmission shall not require the signature of the
113 vendor's representative unless required by agencies or governing
114 authorities.

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

116 (i) **Publication requirement.**

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



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

129 2. Reverse auctions shall be the primary
130 method for receiving bids during the bidding process. If a
131 purchasing entity determines that a reverse auction is not in the
132 best interest of the state, then that determination must be
133 approved by the Public Procurement Review Board. The purchasing
134 entity shall submit a detailed explanation of why a reverse
135 auction would not be in the best interest of the state and present
136 an alternative process to be approved by the Public Procurement
137 Review Board. If the Public Procurement Review Board authorizes
138 the purchasing entity to solicit bids with a method other than
139 reverse auction, then the purchasing entity may designate the
140 other methods by which the bids will be received, including, but
141 not limited to, bids sealed in an envelope, bids received
142 electronically in a secure system, or bids received by any other
143 method that promotes open competition and has been approved by the
144 Office of Purchasing and Travel. However, reverse auction shall
145 not be used for any public contract for design or construction of
146 public facilities, including buildings, roads and bridges and term
147 contracts as provided in paragraph (n) of this section. The
148 Public Procurement Review Board must approve any contract entered



149 into by alternative process. The provisions of this item 2 shall
150 not apply to the individual state institutions of higher learning.

151 3. The date as published for the bid opening
152 shall not be less than seven (7) working days after the last
153 published notice; however, if the purchase involves a construction
154 project in which the estimated cost is in excess of Fifty Thousand
155 Dollars (\$50,000.00), such bids shall not be opened in less than
156 fifteen (15) working days after the last notice is published and
157 the notice for the purchase of such construction shall be
158 published once each week for two (2) consecutive weeks. However,
159 all American Recovery and Reinvestment Act projects in excess of
160 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any
161 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)
162 under the American Recovery and Reinvestment Act, publication
163 shall be made one (1) time and the bid opening for construction
164 projects shall not be less than ten (10) working days after the
165 date of the published notice. The notice of intention to let
166 contracts or purchase equipment shall state the time and place at
167 which bids shall be received, list the contracts to be made or
168 types of equipment or supplies to be purchased, and, if all plans
169 and/or specifications are not published, refer to the plans and/or
170 specifications on file. If there is no newspaper published in the
171 county or municipality, then such notice shall be given by posting
172 same at the courthouse, or for municipalities at the city hall,
173 and at two (2) other public places in the county or municipality,



174 and also by publication once each week for two (2) consecutive
175 weeks in some newspaper having a general circulation in the county
176 or municipality in the above-provided manner. On the same date
177 that the notice is submitted to the newspaper for publication, the
178 agency or governing authority involved shall mail written notice
179 to, or provide electronic notification to the main office of the
180 Mississippi Procurement Technical Assistance Program under the
181 Mississippi Development Authority that contains the same
182 information as that in the published notice. Submissions received
183 by the Mississippi Procurement Technical Assistance Program for
184 projects funded by the American Recovery and Reinvestment Act
185 shall be displayed on a separate and unique Internet web page
186 accessible to the public and maintained by the Mississippi
187 Development Authority for the Mississippi Procurement Technical
188 Assistance Program. Those American Recovery and Reinvestment Act
189 related submissions shall be publicly posted within twenty-four
190 (24) hours of receipt by the Mississippi Development Authority and
191 the bid opening shall not occur until the submission has been
192 posted for ten (10) consecutive days. The Department of Finance
193 and Administration shall maintain information regarding contracts
194 and other expenditures from the American Recovery and Reinvestment
195 Act, on a unique Internet web page accessible to the public. The
196 Department of Finance and Administration shall promulgate rules
197 regarding format, content and deadlines, unless otherwise
198 specified by law, of the posting of award notices, contract



199 execution and subsequent amendments, links to the contract
200 documents, expenditures against the awarded contracts and general
201 expenditures of funds from the American Recovery and Reinvestment
202 Act. Within one (1) working day of the contract award, the agency
203 or governing authority shall post to the designated web page
204 maintained by the Department of Finance and Administration, notice
205 of the award, including the award recipient, the contract amount,
206 and a brief summary of the contract in accordance with rules
207 promulgated by the department. Within one (1) working day of the
208 contract execution, the agency or governing authority shall post
209 to the designated web page maintained by the Department of Finance
210 and Administration a summary of the executed contract and make a
211 copy of the appropriately redacted contract documents available
212 for linking to the designated web page in accordance with the
213 rules promulgated by the department. The information provided by
214 the agency or governing authority shall be posted to the web page
215 for the duration of the American Recovery and Reinvestment Act
216 funding or until the project is completed, whichever is longer.

217 (ii) **Bidding process amendment procedure.** If all
218 plans and/or specifications are published in the notification,
219 then the plans and/or specifications may not be amended. If all
220 plans and/or specifications are not published in the notification,
221 then amendments to the plans/specifications, bid opening date, bid
222 opening time and place may be made, provided that the agency or
223 governing authority maintains a list of all prospective bidders



224 who are known to have received a copy of the bid documents and all
225 such prospective bidders are sent copies of all amendments. This
226 notification of amendments may be made via mail, facsimile,
227 electronic mail or other generally accepted method of information
228 distribution. No addendum to bid specifications may be issued
229 within two (2) working days of the time established for the
230 receipt of bids unless such addendum also amends the bid opening
231 to a date not less than five (5) working days after the date of
232 the addendum.

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

242 (iv) **Specification restrictions.**

243 1. Specifications pertinent to such bidding
244 shall be written so as not to exclude comparable equipment of
245 domestic manufacture. However, if valid justification is
246 presented, the Department of Finance and Administration or the
247 board of a governing authority may approve a request for specific
248 equipment necessary to perform a specific job. Further, such



249 justification, when placed on the minutes of the board of a
250 governing authority, may serve as authority for that governing
251 authority to write specifications to require a specific item of
252 equipment needed to perform a specific job. In addition to these
253 requirements, from and after July 1, 1990, vendors of relocatable
254 classrooms and the specifications for the purchase of such
255 relocatable classrooms published by local school boards shall meet
256 all pertinent regulations of the State Board of Education,
257 including prior approval of such bid by the State Department of
258 Education.

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

267 (v) **Electronic bids.** Agencies and governing
268 authorities shall provide a secure electronic interactive system
269 for the submittal of bids requiring competitive bidding that shall
270 be an additional bidding option for those bidders who choose to
271 submit their bids electronically. The Department of Finance and
272 Administration shall provide, by regulation, the standards that
273 agencies must follow when receiving electronic bids. Agencies and



274 governing authorities shall make the appropriate provisions
275 necessary to accept electronic bids from those bidders who choose
276 to submit their bids electronically for all purchases requiring
277 competitive bidding under this section. Any special condition or
278 requirement for the electronic bid submission shall be specified
279 in the advertisement for bids required by this section. Agencies
280 or governing authorities that are currently without available high
281 speed Internet access shall be exempt from the requirement of this
282 subparagraph (v) until such time that high speed Internet access
283 becomes available. Any county having a population of less than
284 twenty thousand (20,000) shall be exempt from the provisions of
285 this subparagraph (v). Any municipality having a population of
286 less than ten thousand (10,000) shall be exempt from the
287 provisions of this subparagraph (v). The provisions of this
288 subparagraph (v) shall not require any bidder to submit bids
289 electronically. When construction bids are submitted
290 electronically, the requirement for including a certificate of
291 responsibility, or a statement that the bid enclosed does not
292 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
293 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
294 deemed in compliance with by including same as an attachment with
295 the electronic bid submittal.

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

297 (i) **Decision procedure.** Purchases may be made
298 from the lowest and best bidder. In determining the lowest and



299 best bid, freight and shipping charges shall be included.
300 Life-cycle costing, total cost bids, warranties, guaranteed
301 buy-back provisions and other relevant provisions may be included
302 in the best bid calculation. All best bid procedures for state
303 agencies must be in compliance with regulations established by the
304 Department of Finance and Administration. If any governing
305 authority accepts a bid other than the lowest bid actually
306 submitted, it shall place on its minutes detailed calculations and
307 narrative summary showing that the accepted bid was determined to
308 be the lowest and best bid, including the dollar amount of the
309 accepted bid and the dollar amount of the lowest bid. No agency
310 or governing authority shall accept a bid based on items not
311 included in the specifications.

312 (ii) **Decision procedure for Certified Purchasing**
313 **Offices.** In addition to the decision procedure set forth in
314 subparagraph (i) of this paragraph (d), Certified Purchasing
315 Offices may also use the following procedure: Purchases may be
316 made from the bidder offering the best value. In determining the
317 best value bid, freight and shipping charges shall be included.
318 Life-cycle costing, total cost bids, warranties, guaranteed
319 buy-back provisions, documented previous experience, training
320 costs and other relevant provisions, including, but not limited
321 to, a bidder having a local office and inventory located within
322 the jurisdiction of the governing authority, may be included in
323 the best value calculation. This provision shall authorize



324 Certified Purchasing Offices to utilize a Request For Proposals
325 (RFP) process when purchasing commodities. All best value
326 procedures for state agencies must be in compliance with
327 regulations established by the Department of Finance and
328 Administration. No agency or governing authority shall accept a
329 bid based on items or criteria not included in the specifications.

330 (iii) *Decision procedure for Mississippi*
331 *Landmarks.* In addition to the decision procedure set forth in
332 subparagraph (i) of this paragraph (d), where purchase involves
333 renovation, restoration, or both, of the State Capitol Building or
334 any other historical building designated for at least five (5)
335 years as a Mississippi Landmark by the Board of Trustees of the
336 Department of Archives and History under the authority of Sections
337 39-7-7 and 39-7-11, the agency or governing authority may use the
338 following procedure: Purchases may be made from the lowest and
339 best prequalified bidder. Prequalification of bidders shall be
340 determined not less than fifteen (15) working days before the
341 first published notice of bid opening. Prequalification criteria
342 shall be limited to bidder's knowledge and experience in
343 historical restoration, preservation and renovation. In
344 determining the lowest and best bid, freight and shipping charges
345 shall be included. Life-cycle costing, total cost bids,
346 warranties, guaranteed buy-back provisions and other relevant
347 provisions may be included in the best bid calculation. All best
348 bid and prequalification procedures for state agencies must be in



349 compliance with regulations established by the Department of
350 Finance and Administration. If any governing authority accepts a
351 bid other than the lowest bid actually submitted, it shall place
352 on its minutes detailed calculations and narrative summary showing
353 that the accepted bid was determined to be the lowest and best
354 bid, including the dollar amount of the accepted bid and the
355 dollar amount of the lowest bid. No agency or governing authority
356 shall accept a bid based on items not included in the
357 specifications.

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

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

364 (e) **Lease-purchase authorization.** For the purposes of
365 this section, the term "equipment" shall mean equipment, furniture
366 and, if applicable, associated software and other applicable
367 direct costs associated with the acquisition. Any lease-purchase
368 of equipment which an agency is not required to lease-purchase
369 under the master lease-purchase program pursuant to Section
370 31-7-10 and any lease-purchase of equipment which a governing
371 authority elects to lease-purchase may be acquired by a
372 lease-purchase agreement under this paragraph (e). Lease-purchase
373 financing may also be obtained from the vendor or from a



374 third-party source after having solicited and obtained at least
375 two (2) written competitive bids, as defined in paragraph (b) of
376 this section, for such financing without advertising for such
377 bids. Solicitation for the bids for financing may occur before or
378 after acceptance of bids for the purchase of such equipment or,
379 where no such bids for purchase are required, at any time before
380 the purchase thereof. No such lease-purchase agreement shall be
381 for an annual rate of interest which is greater than the overall
382 maximum interest rate to maturity on general obligation
383 indebtedness permitted under Section 75-17-101, and the term of
384 such lease-purchase agreement shall not exceed the useful life of
385 equipment covered thereby as determined according to the upper
386 limit of the asset depreciation range (ADR) guidelines for the
387 Class Life Asset Depreciation Range System established by the
388 Internal Revenue Service pursuant to the United States Internal
389 Revenue Code and regulations thereunder as in effect on December
390 31, 1980, or comparable depreciation guidelines with respect to
391 any equipment not covered by ADR guidelines. Any lease-purchase
392 agreement entered into pursuant to this paragraph (e) may contain
393 any of the terms and conditions which a master lease-purchase
394 agreement may contain under the provisions of Section 31-7-10(5),
395 and shall contain an annual allocation dependency clause
396 substantially similar to that set forth in Section 31-7-10(8).
397 Each agency or governing authority entering into a lease-purchase
398 transaction pursuant to this paragraph (e) shall maintain with



399 respect to each such lease-purchase transaction the same
400 information as required to be maintained by the Department of
401 Finance and Administration pursuant to Section 31-7-10(13).
402 However, nothing contained in this section shall be construed to
403 permit agencies to acquire items of equipment with a total
404 acquisition cost in the aggregate of less than Ten Thousand
405 Dollars (\$10,000.00) by a single lease-purchase transaction. All
406 equipment, and the purchase thereof by any lessor, acquired by
407 lease-purchase under this paragraph and all lease-purchase
408 payments with respect thereto shall be exempt from all Mississippi
409 sales, use and ad valorem taxes. Interest paid on any
410 lease-purchase agreement under this section shall be exempt from
411 State of Mississippi income taxation.

412 (f) **Alternate bid authorization.** When necessary to
413 ensure ready availability of commodities for public works and the
414 timely completion of public projects, no more than two (2)
415 alternate bids may be accepted by a governing authority for
416 commodities. No purchases may be made through use of such
417 alternate bids procedure unless the lowest and best bidder cannot
418 deliver the commodities contained in his bid. In that event,
419 purchases of such commodities may be made from one (1) of the
420 bidders whose bid was accepted as an alternate.

421 (g) **Construction contract change authorization.** In the
422 event a determination is made by an agency or governing authority
423 after a construction contract is let that changes or modifications



424 to the original contract are necessary or would better serve the
425 purpose of the agency or the governing authority, such agency or
426 governing authority may, in its discretion, order such changes
427 pertaining to the construction that are necessary under the
428 circumstances without the necessity of further public bids;
429 provided that such change shall be made in a commercially
430 reasonable manner and shall not be made to circumvent the public
431 purchasing statutes. In addition to any other authorized person,
432 the architect or engineer hired by an agency or governing
433 authority with respect to any public construction contract shall
434 have the authority, when granted by an agency or governing
435 authority, to authorize changes or modifications to the original
436 contract without the necessity of prior approval of the agency or
437 governing authority when any such change or modification is less
438 than one percent (1%) of the total contract amount. The agency or
439 governing authority may limit the number, manner or frequency of
440 such emergency changes or modifications.

441 (h) **Petroleum purchase alternative.** In addition to
442 other methods of purchasing authorized in this chapter, when any
443 agency or governing authority shall have a need for gas, diesel
444 fuel, oils and/or other petroleum products in excess of the amount
445 set forth in paragraph (a) of this section, such agency or
446 governing authority may purchase the commodity after having
447 solicited and obtained at least two (2) competitive written bids,
448 as defined in paragraph (b) of this section. If two (2)



449 competitive written bids are not obtained, the entity shall comply
450 with the procedures set forth in paragraph (c) of this section.
451 In the event any agency or governing authority shall have
452 advertised for bids for the purchase of gas, diesel fuel, oils and
453 other petroleum products and coal and no acceptable bids can be
454 obtained, such agency or governing authority is authorized and
455 directed to enter into any negotiations necessary to secure the
456 lowest and best contract available for the purchase of such
457 commodities.

458 (i) **Road construction petroleum products price**
459 **adjustment clause authorization.** Any agency or governing
460 authority authorized to enter into contracts for the construction,
461 maintenance, surfacing or repair of highways, roads or streets,
462 may include in its bid proposal and contract documents a price
463 adjustment clause with relation to the cost to the contractor,
464 including taxes, based upon an industry-wide cost index, of
465 petroleum products including asphalt used in the performance or
466 execution of the contract or in the production or manufacture of
467 materials for use in such performance. Such industry-wide index
468 shall be established and published monthly by the Mississippi
469 Department of Transportation with a copy thereof to be mailed,
470 upon request, to the clerks of the governing authority of each
471 municipality and the clerks of each board of supervisors
472 throughout the state. The price adjustment clause shall be based
473 on the cost of such petroleum products only and shall not include



474 any additional profit or overhead as part of the adjustment. The
475 bid proposals or document contract shall contain the basis and
476 methods of adjusting unit prices for the change in the cost of
477 such petroleum products.

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

497 If the governing board or the executive head, or his
498 designees, of any agency determines that an emergency exists in



499 regard to the purchase of any commodities or repair contracts, so
500 that the delay incident to giving opportunity for competitive
501 bidding would threaten the health or safety of any person, or the
502 preservation or protection of property, then the provisions in
503 this section for competitive bidding shall not apply, and any
504 officer or agent of the agency having general or specific
505 authority for making the purchase or repair contract shall approve
506 the bill presented for payment, and he shall certify in writing
507 from whom the purchase was made, or with whom the repair contract
508 was made.

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

517 Purchases under the grant program established under Section
518 37-68-7 in response to COVID-19 and the directive that school
519 districts create a distance learning plan and fulfill technology
520 needs expeditiously and purchases under Section 1 of House Bill
521 No. 1332, 2022 Regular Session, by a state institution of higher
522 learning in response to COVID-19 in order to provide devices and
523 other technology necessary to assist students in engaging in



524 distance learning shall be deemed an emergency purchase for
525 purposes of this paragraph (j).

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

527 If the governing authority, or the governing authority acting
528 through its designee, shall determine that an emergency exists in
529 regard to the purchase of any commodities or repair contracts, so
530 that the delay incident to giving opportunity for competitive
531 bidding would be detrimental to the interest of the governing
532 authority, then the provisions herein for competitive bidding
533 shall not apply and any officer or agent of such governing
534 authority having general or special authority therefor in making
535 such purchase or repair shall approve the bill presented therefor,
536 and he shall certify in writing thereon from whom such purchase
537 was made, or with whom such a repair contract was made. At the
538 board meeting next following the emergency purchase or repair
539 contract, documentation of the purchase or repair contract,
540 including a description of the commodity purchased, the price
541 thereof and the nature of the emergency shall be presented to the
542 board and shall be placed on the minutes of the board of such
543 governing authority. Purchases under the grant program
544 established under Section 37-68-7 in response to COVID-19 and the
545 directive that school districts create a distance learning plan
546 and fulfill technology needs expeditiously and purchases under
547 Section 1 of House Bill No. 1332, 2022 Regular Session, by a state
548 institution of higher learning in response to COVID-19 in order to



549 provide devices and other technology necessary to assist students
550 in engaging in distance learning shall be deemed an emergency
551 purchase for purposes of this paragraph (k).

552 (1) **Hospital purchase, lease-purchase and lease**
553 **authorization.**

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

559 (ii) In addition to the authority granted in
560 subparagraph (i) of this paragraph (1), the commissioners or board
561 of trustees is authorized to enter into contracts for the lease of
562 equipment or services, or both, which it considers necessary for
563 the proper care of patients if, in its opinion, it is not
564 financially feasible to purchase the necessary equipment or
565 services. Any such contract for the lease of equipment or
566 services executed by the commissioners or board shall not exceed a
567 maximum of five (5) years' duration and shall include a
568 cancellation clause based on unavailability of funds. If such
569 cancellation clause is exercised, there shall be no further
570 liability on the part of the lessee. Any such contract for the
571 lease of equipment or services executed on behalf of the
572 commissioners or board that complies with the provisions of this



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

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

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

578 Purchasing agreements, contracts and maximum price regulations
579 executed or approved by the Department of Finance and
580 Administration.

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

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



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

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

612 (vi) **Intergovernmental sales and transfers.**
613 Purchases, sales, transfers or trades by governing authorities or
614 state agencies when such purchases, sales, transfers or trades are
615 made by a private treaty agreement or through means of
616 negotiation, from any federal agency or authority, another
617 governing authority or state agency of the State of Mississippi,
618 or any state agency or governing authority of another state.
619 Nothing in this section shall permit such purchases through public
620 auction except as provided for in subparagraph (v) of this
621 paragraph (m). It is the intent of this section to allow
622 governmental entities to dispose of and/or purchase commodities



623 from other governmental entities at a price that is agreed to by
624 both parties. This shall allow for purchases and/or sales at
625 prices which may be determined to be below the market value if the
626 selling entity determines that the sale at below market value is
627 in the best interest of the taxpayers of the state. Governing
628 authorities shall place the terms of the agreement and any
629 justification on the minutes, and state agencies shall obtain
630 approval from the Department of Finance and Administration, prior
631 to releasing or taking possession of the commodities.

632 (vii) **Perishable supplies or food.** Perishable
633 supplies or food purchased for use in connection with hospitals,
634 the school lunch programs, homemaking programs and for the feeding
635 of county or municipal prisoners.

636 (viii) **Single-source items.** Noncompetitive items
637 available from one (1) source only. In connection with the
638 purchase of noncompetitive items only available from one (1)
639 source, a certification of the conditions and circumstances
640 requiring the purchase shall be filed by the agency with the
641 Department of Finance and Administration and by the governing
642 authority with the board of the governing authority. Upon receipt
643 of that certification the Department of Finance and Administration
644 or the board of the governing authority, as the case may be, may,
645 in writing, authorize the purchase, which authority shall be noted
646 on the minutes of the body at the next regular meeting thereafter.
647 In those situations, a governing authority is not required to



648 obtain the approval of the Department of Finance and
649 Administration. Following the purchase, the executive head of the
650 state agency, or his designees, shall file with the Department of
651 Finance and Administration, documentation of the purchase,
652 including a description of the commodity purchased, the purchase
653 price thereof and the source from whom it was purchased.

654 (ix) **Waste disposal facility construction**

655 **contracts.** Construction of incinerators and other facilities for
656 disposal of solid wastes in which products either generated
657 therein, such as steam, or recovered therefrom, such as materials
658 for recycling, are to be sold or otherwise disposed of; however,
659 in constructing such facilities, a governing authority or agency
660 shall publicly issue requests for proposals, advertised for in the
661 same manner as provided herein for seeking bids for public
662 construction projects, concerning the design, construction,
663 ownership, operation and/or maintenance of such facilities,
664 wherein such requests for proposals when issued shall contain
665 terms and conditions relating to price, financial responsibility,
666 technology, environmental compatibility, legal responsibilities
667 and such other matters as are determined by the governing
668 authority or agency to be appropriate for inclusion; and after
669 responses to the request for proposals have been duly received,
670 the governing authority or agency may select the most qualified
671 proposal or proposals on the basis of price, technology and other
672 relevant factors and from such proposals, but not limited to the



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

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

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

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

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

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



698 as would be used for teaching, research or other information
699 distribution; however, equipment such as projectors, recorders,
700 audio or video equipment, and monitor televisions are not exempt
701 under this subparagraph.

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

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

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

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



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

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

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

736 (xxii) **Garbage, solid waste and sewage contracts.**
737 Contracts for garbage collection or disposal, contracts for solid
738 waste collection or disposal and contracts for sewage collection
739 or disposal.

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



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

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

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

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

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



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

782 (xxx) **School yearbooks.** Purchases of school
783 yearbooks by state agencies or governing authorities; provided,
784 however, that state agencies and governing authorities shall use
785 for these purchases the RFP process as set forth in the
786 Mississippi Procurement Manual adopted by the Office of Purchasing
787 and Travel.

788 (xxxi) **Design-build method of contracting and**
789 **certain other contracts.** Contracts entered into under the
790 provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

791 (xxxii) **Toll roads and bridge construction**
792 **projects.** Contracts entered into under the provisions of Section
793 65-43-1 or 65-43-3.



794 (xxxiii) **Certain purchases under Section 57-1-221.**
795 Contracts entered into pursuant to the provisions of Section
796 57-1-221.

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

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

804 (xxxvi) **Certain purchases by an academic medical**
805 **center or health sciences school.** Purchases by an academic
806 medical center or health sciences school, as defined in Section
807 37-115-50, of commodities that are used for clinical purposes and
808 1. intended for use in the diagnosis of disease or other
809 conditions or in the cure, mitigation, treatment or prevention of
810 disease, and 2. medical devices, biological, drugs and
811 radiation-emitting devices as defined by the United States Food
812 and Drug Administration.

813 (xxxvii) **Certain purchases made under the Alyce G.**
814 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi
815 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
816 Lottery Law.

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



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

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

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



844 person or concern to submit individual invoices for amounts within
845 those authorized for a contract or purchase where the actual value
846 of the contract or commodity purchased exceeds the authorized
847 amount and the invoices therefor are split so as to appear to be
848 authorized as purchases for which competitive bids are not
849 required. Submission of such invoices shall constitute a
850 misdemeanor punishable by a fine of not less than Five Hundred
851 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
852 or by imprisonment for thirty (30) days in the county jail, or
853 both such fine and imprisonment. In addition, the claim or claims
854 submitted shall be forfeited.

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

862 (q) **Fuel management system bidding procedure.** Any
863 governing authority or agency of the state shall, before
864 contracting for the services and products of a fuel management or
865 fuel access system, enter into negotiations with not fewer than
866 two (2) sellers of fuel management or fuel access systems for
867 competitive written bids to provide the services and products for
868 the systems. In the event that the governing authority or agency



869 cannot locate two (2) sellers of such systems or cannot obtain
870 bids from two (2) sellers of such systems, it shall show proof
871 that it made a diligent, good-faith effort to locate and negotiate
872 with two (2) sellers of such systems. Such proof shall include,
873 but not be limited to, publications of a request for proposals and
874 letters soliciting negotiations and bids. For purposes of this
875 paragraph (q), a fuel management or fuel access system is an
876 automated system of acquiring fuel for vehicles as well as
877 management reports detailing fuel use by vehicles and drivers, and
878 the term "competitive written bid" shall have the meaning as
879 defined in paragraph (b) of this section. Governing authorities
880 and agencies shall be exempt from this process when contracting
881 for the services and products of fuel management or fuel access
882 systems under the terms of a state contract established by the
883 Office of Purchasing and Travel.

884 (r) **Solid waste contract proposal procedure.** Before
885 entering into any contract for garbage collection or disposal,
886 contract for solid waste collection or disposal or contract for
887 sewage collection or disposal, which involves an expenditure of
888 more than Fifty Thousand Dollars (\$50,000.00), a governing
889 authority or agency shall issue publicly a request for proposals
890 concerning the specifications for such services which shall be
891 advertised for in the same manner as provided in this section for
892 seeking bids for purchases which involve an expenditure of more
893 than the amount provided in paragraph (c) of this section. Any



894 request for proposals when issued shall contain terms and
895 conditions relating to price, financial responsibility,
896 technology, legal responsibilities and other relevant factors as
897 are determined by the governing authority or agency to be
898 appropriate for inclusion; all factors determined relevant by the
899 governing authority or agency or required by this paragraph (r)
900 shall be duly included in the advertisement to elicit proposals.
901 After responses to the request for proposals have been duly
902 received, the governing authority or agency shall select the most
903 qualified proposal or proposals on the basis of price, technology
904 and other relevant factors and from such proposals, but not
905 limited to the terms thereof, negotiate and enter into contracts
906 with one or more of the persons or firms submitting proposals. If
907 the governing authority or agency deems none of the proposals to
908 be qualified or otherwise acceptable, the request for proposals
909 process may be reinitiated. Notwithstanding any other provisions
910 of this paragraph, where a county with at least thirty-five
911 thousand (35,000) nor more than forty thousand (40,000)
912 population, according to the 1990 federal decennial census, owns
913 or operates a solid waste landfill, the governing authorities of
914 any other county or municipality may contract with the governing
915 authorities of the county owning or operating the landfill,
916 pursuant to a resolution duly adopted and spread upon the minutes
917 of each governing authority involved, for garbage or solid waste
918 collection or disposal services through contract negotiations.



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

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

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

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



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

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

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

964 (v) **Insurability of bidders for public construction or**
965 **other public contracts.** In any solicitation for bids to perform
966 public construction or other public contracts to which this
967 section applies, including, but not limited to, contracts for
968 repair and maintenance, for which the contract will require



969 insurance coverage in an amount of not less than One Million
970 Dollars (\$1,000,000.00), bidders shall be permitted to either
971 submit proof of current insurance coverage in the specified amount
972 or demonstrate ability to obtain the required coverage amount of
973 insurance if the contract is awarded to the bidder. Proof of
974 insurance coverage shall be submitted within five (5) business
975 days from bid acceptance.

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

979 **SECTION 3.** Section 25-53-191, Mississippi Code of 1972, is
980 brought forward as follows:

981 25-53-191. (1) For the purposes of this section, the
982 following terms shall have the meanings ascribed to them in this
983 section unless the context otherwise clearly requires:

984 (a) "Department" means the Mississippi Department of
985 Information Technology.

986 (b) "State agency" means any agency, department,
987 commission, board, bureau, institution or other instrumentality of
988 the state.

989 (c) "Wireless communication device" means a cellular
990 telephone, pager or a personal digital assistant device having
991 wireless communication capability.

992 (2) Before a wireless communication device may be assigned,
993 issued or made available to an agency officer or employee, the



994 agency head, or his designee, shall sign a statement certifying
995 the need or reason for issuing the device. No officer or employee
996 of any state agency, except for an officer or employee of the
997 Mississippi Emergency Management Agency, shall be assigned or
998 issued more than one (1) such wireless communication device. No
999 officer or employee of any state agency to whom has been assigned,
1000 issued or made available the use of a wireless communication
1001 device, the cost of which is paid through the use of public funds,
1002 shall use such device for personal use.

1003 (3) A state agency shall not reimburse any officer or
1004 employee for use of his or her personal wireless communication
1005 device.

1006 (4) Every state agency that, at the expense of the state
1007 agency, assigns, issues or makes available to any of its officers
1008 or employees a wireless communication device shall obtain and
1009 maintain detailed billing for every wireless communication device
1010 account. A list of approved vendors for the procurement of
1011 wireless communication devices and the delivery of wireless
1012 communication device services shall be developed for all state
1013 agencies by the Mississippi Department of Information Technology
1014 Services in conjunction with the Wireless Communication Commission
1015 created in Section 25-53-171. The department, in conjunction with
1016 the Wireless Communication Commission, shall exercise the option
1017 of selecting one (1) vendor from which to procure wireless
1018 communication devices and to provide wireless communication device



1019 services, or if it deems such to be most advantageous to the state
1020 agencies, it may select multiple vendors. The department, in
1021 conjunction with the Wireless Communication Commission, shall
1022 select a vendor or vendors on the basis of lowest and best bid
1023 proposals. A state agency may not procure a wireless
1024 communication device from any vendor or contract for wireless
1025 communication device services with any vendor unless the vendor
1026 appears on the list approved by the department, in conjunction
1027 with the Wireless Communication Commission. A contract entered
1028 into in violation of this section shall be void and unenforceable.

1029 (5) The department shall promulgate a model acceptable use
1030 policy defining the appropriate use of all wireless communication
1031 devices. The acceptable use policy should specify that these
1032 resources, including both devices and services, are provided at
1033 the state agency's expense as tools for accomplishing the business
1034 missions of the state agency; that all those resources are for
1035 business use; and that more than incidental personal use of those
1036 resources is prohibited. The acceptable use policy should require
1037 that each official and employee issued one (1) of the above
1038 devices or authorized to access one (1) of the above services sign
1039 the policy and that the signed copy be placed in the personnel
1040 file of the official or employee. The acceptable use policy
1041 should also require that the use of these resources be tracked,
1042 verified and signed by the official or employee and the supervisor
1043 of the official or employee at each billing cycle or other



1044 appropriate interval. All state agencies shall adopt the model
1045 policy or adopt a policy that is, at minimum, as stringent as the
1046 model policy and shall provide a copy of the policy to the
1047 department.

1048 (6) All state agencies shall purchase or acquire only the
1049 lowest cost cellular telephone, pager or personal digital
1050 assistance device which will carry out its intended use.

1051 (7) The University of Mississippi Medical Center and its
1052 employees, the Mississippi State University Extension Service and
1053 its agents and faculty members, the Mississippi State University
1054 Agricultural and Forestry Experiment Station and its faculty
1055 members, the Mississippi State University Forestry and Wildlife
1056 Research Center and its faculty members, and the Mississippi State
1057 University College of Veterinary Medicine and its faculty members
1058 shall be exempt from the application of this section.

1059 (8) The State Auditor shall conduct necessary audits to
1060 ensure compliance with the provisions of this section.

1061 **SECTION 4.** This act shall take effect and be in force from
1062 and after July 1, 2022.

