

By: Representative Brown

To: Appropriations

HOUSE BILL NO. 989

1 AN ACT TO AMEND SECTION 25-53-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF CERTAIN TERMS AS USED IN THE CHAPTER OF
3 LAW THAT CREATES THE MISSISSIPPI DEPARTMENT OF INFORMATION
4 TECHNOLOGY SERVICES AND PRESCRIBES ITS POWERS AND DUTIES; TO AMEND
5 SECTIONS 25-53-5 AND 25-53-123, MISSISSIPPI CODE OF 1972, TO
6 REQUIRE ADVERTISEMENT AND RECEIPT OF COMPETITIVE BIDS BY THE
7 MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES FOR THE
8 ACQUISITION OR RENTAL OF COMPUTER EQUIPMENT AND SERVICES WHEN THE
9 EXPENDITURE OF FUNDS EXCEEDS A CERTAIN DOLLAR AMOUNT AS
10 ESTABLISHED IN THE PUBLIC PURCHASING LAW; TO AMEND SECTION
11 25-53-51, MISSISSIPPI CODE OF 1972, TO REQUIRE CERTAIN APPLICANTS
12 FOR EMPLOYMENT AT THE MISSISSIPPI DEPARTMENT OF INFORMATION
13 TECHNOLOGY SERVICES TO BE FINGERPRINTED AND TO PROVIDE THAT SUCH
14 FINGERPRINTS SHALL BE FORWARDED TO THE FEDERAL BUREAU OF
15 INVESTIGATION IF NO DISQUALIFYING RECORD OF THE APPLICANT IS
16 IDENTIFIED AT THE STATE LEVEL; TO REPEAL SECTION 25-53-103,
17 MISSISSIPPI CODE OF 1972, WHICH PRESCRIBES DEFINITIONS FOR CERTAIN
18 TERMS USED IN THE SECTIONS OF LAW THAT PLACE RESPONSIBILITY FOR
19 ACQUISITION, OPERATION AND MAINTENANCE OF TELECOMMUNICATION
20 SYSTEMS IN THE MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY
21 SERVICES; AND FOR RELATED PURPOSES.

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

23 SECTION 1. Section 25-53-3, Mississippi Code of 1972, is
24 amended as follows:

25 25-53-3. (1) Whenever the term "Central Data Processing
26 Authority" or the term "authority," when referring to the Central
27 Data Processing Authority, is used in any law, rule, regulation,
28 document or elsewhere, it shall be construed to mean the
29 Mississippi Department of Information Technology Services.

30 (2) For the purposes of this chapter the following terms
31 shall have the meanings ascribed in this section unless the
32 context otherwise requires:

33 (a) "Central Data Processing Authority" and
34 "CDPA" * * * mean "Mississippi Department of Information
35 Technology Services (MDITS)" and the term "authority" means "board

36 of the MDITS." * * *

37 **(b)** "Bureau of Systems Policy and Planning," "Bureau of
38 Telecommunications," * * * "Bureau of Central Data Processing" and
39 "bureau" mean "Mississippi Department of Information Technology
40 Services." * * *

41 **(c)** "Computer equipment or services" means any
42 information technology, computer or computer related
43 telecommunications equipment, electronic word processing and
44 office systems, or services utilized in connection therewith,
45 including, but not limited to, all phases of computer software and
46 consulting services, and insurance on all state-owned computer
47 equipment.

48 **(d)** "Acquisition" of computer or telecommunications
49 equipment or services means the purchase, lease, rental, or
50 acquisition in any other manner of any such computer or
51 telecommunications equipment or services.

52 **(e)** "Agency" means and includes all the various state
53 agencies, officers, departments, boards, commissions, offices and
54 institutions of the state but does not include any agency financed
55 entirely by federal funds.

56 **(f)** "Governing authority" means boards of supervisors,
57 governing boards of all school districts, all boards of directors
58 of public water supply districts, boards of directors of master
59 public water supply districts, municipal public utility
60 commissions, governing authorities of all municipalities, port
61 authorities, commissioners and boards of trustees of any public
62 hospitals and any political subdivision of the state supported
63 wholly or in part by public funds of the state or political
64 subdivisions thereof.

65 **(g)** "Bid" means any of the valid source selection
66 techniques and competitive procurement methods appropriate to
67 information technology procurement in the public sector, including
68 but not limited to, competitive sealed bidding, competitive sealed
69 proposals, simplified small purchase procedures, sole source
70 procurements, and emergency procurements.

71 **(h)** "Telecommunications transmission facility" means
72 any transmission medium, switch, instrument, inside wiring system

73 or other facility which is used, in whole or part, to provide any
74 transmission.

75 (i) "Equipment support contract" means a contract which
76 covers a single, specific class or classes of telecommunications
77 equipment or service and all features associated with that class,
78 through which state agencies may purchase or lease the item of
79 equipment or service specified by issuing a purchase order under
80 the terms of the contract without the necessity of further
81 competitive bidding.

82 (j) "Inside wiring system" means any wiring which:

83 (i) Directly or indirectly, interconnects any
84 terminal equipment with any other terminal equipment or with any
85 regulated facility or common carrier services; and

86 (ii) Is located at the premises of the customer
87 and is not inside any terminal equipment.

88 (k) "Procurement" means the selling, buying,
89 purchasing, renting, leasing or otherwise obtaining
90 telecommunications equipment, system or related services, as well
91 as activities engaged in, resulting in or expected to result in
92 selling, buying, purchasing, renting, leasing or otherwise
93 obtaining telecommunications equipment.

94 (l) "Telecommunications equipment, systems, related
95 services" are limited to the equipment and means to provide:

96 (i) Telecommunications transmission facilities.

97 (ii) Telephone systems, including voice processing
98 systems.

99 (iii) Facsimile systems.

100 (iv) Radio paging services.

101 (v) Mobile telephone services, including cellular
102 mobile telephone service.

103 (vi) Intercom and paging systems.

104 (vii) Video conferencing systems.

105 (viii) Personal communications networks and

106 services.

107 (ix) Any and all systems based on emerging and
108 future telecommunications technologies relative to (i) through
109 (viii) above.

110 (m) "Telecommunications system lease contract" means a
111 contract between a supplier of telecommunications systems,
112 including equipment and related services, and the Mississippi
113 Department of Information Technology Services through which
114 telecommunications systems, including equipment and related
115 services, may be leased for a term which shall not exceed sixty
116 (60) months for a system lease valued less than One Million
117 Dollars (\$1,000,000.00) and shall not exceed one hundred twenty
118 (120) months for a system lease valued One Million Dollars
119 (\$1,000,000.00) or more.

120 (n) "Tariffed or regulated service" means
121 telecommunications service offered by common carriers and subject
122 to control by the Mississippi Public Service Commission or the
123 Federal Communications Commission.

124 SECTION 2. Section 25-53-5, Mississippi Code of 1972, is
125 amended as follows:

126 25-53-5. The authority shall have the following powers,
127 duties, and responsibilities:

128 (a) The authority shall provide for the development of
129 plans for the efficient acquisition and utilization of computer
130 equipment and services by all agencies of state government, and
131 provide for their implementation. In so doing, the authority may
132 use the MDITS staff, at the discretion of the executive director
133 of the authority, or the authority may contract for the services
134 of qualified consulting firms in the field of information
135 technology and utilize the service of such consultants as may be
136 necessary for such purposes.

137 (b) The authority shall immediately institute
138 procedures for carrying out the purposes of this chapter and

139 supervise the efficient execution of the powers and duties of the
140 office of executive director of the authority. In the execution
141 of its functions under this chapter, the authority shall maintain
142 as a paramount consideration the successful internal organization
143 and operation of the several agencies so that efficiency existing
144 therein shall not be adversely affected or impaired. In executing
145 its functions in relation to the institutions of higher learning
146 and junior colleges in the state, the authority shall take into
147 consideration the special needs of such institutions in relation
148 to the fields of teaching and scientific research.

149 (c) Title of whatever nature of all computer equipment
150 now vested in any agency of the State of Mississippi is hereby
151 vested in the authority, and no such equipment shall be disposed
152 of in any manner except in accordance with the direction of the
153 authority or under the provisions of such rules and regulations as
154 may hereafter be adopted by the authority in relation thereto.

155 (d) The authority shall adopt rules, regulations, and
156 procedures governing the acquisition of computer and
157 telecommunications equipment and services which shall, to the
158 fullest extent practicable, insure the maximum of competition
159 between all manufacturers of supplies or equipment or services.
160 In the writing of specifications, in the making of contracts
161 relating to the acquisition of such equipment and services, and in
162 the performance of its other duties the authority shall provide
163 for the maximum compatibility of all information systems hereafter
164 installed or utilized by all state agencies and may require the
165 use of common computer languages where necessary to accomplish the
166 purposes of this chapter. The authority may establish by
167 regulation and charge reasonable fees on a nondiscriminatory basis
168 for the furnishing to bidders of copies of bid specifications and
169 other documents issued by the authority.

170 (e) The authority shall adopt rules and regulations
171 governing the sharing with, or the sale or lease of information

172 technology services to any nonstate agency or person. Such
173 regulations shall provide that any such sharing, sale, or lease
174 shall be restricted in that same shall be accomplished only where
175 such services are not readily available otherwise within the
176 state, and then only at a charge to the user not less than the
177 prevailing rate of charge for similar services by private
178 enterprise within this state.

179 (f) The authority may, in its discretion, establish a
180 special technical advisory committee or committees to study and
181 make recommendations on technology matters within the competence
182 of the authority as the authority may see fit. Persons serving on
183 the Information Resource Council, its task forces, or any such
184 technical advisory committees shall be entitled to receive their
185 actual and necessary expenses actually incurred in the performance
186 of such duties, together with mileage as provided by law for state
187 employees, provided the same has been authorized by a resolution
188 duly adopted by the authority and entered on its minutes prior to
189 the performance of such duties.

190 (g) The authority may provide for the development and
191 require the adoption of standardized computer programs and may
192 provide for the dissemination of information to and the
193 establishment of training programs for the personnel of the
194 various information technology centers of state agencies and
195 personnel of the agencies utilizing the services thereof.

196 (h) The authority shall adopt reasonable rules and
197 regulations requiring the reporting to the authority through the
198 office of executive director of such information as may be
199 required for carrying out the purposes of this chapter and may
200 also establish such reasonable procedures to be followed in the
201 presentation of bills for payment under the terms of all contracts
202 for the acquisition of computer equipment and services now or
203 hereafter in force as may be required by the authority or by the
204 executive director in the execution of their powers and duties.

205 (i) The authority shall require such adequate
206 documentation of information technology procedures utilized by the
207 various state agencies and may require the establishment of such
208 organizational structures within state agencies relating to
209 information technology operations as may be necessary to
210 effectuate the purposes of this chapter.

211 (j) The authority may adopt such further reasonable
212 rules and regulations as may be necessary to fully implement the
213 purposes of this chapter. All rules and regulations adopted by
214 the authority shall be published and disseminated in readily
215 accessible form to all affected state agencies, and to all current
216 suppliers of computer equipment and services to the state, and to
217 all prospective suppliers requesting the same. Such rules and
218 regulations shall be kept current, be periodically revised, and
219 copies thereof shall be available at all times for inspection by
220 the public at reasonable hours in the offices of the authority.
221 Whenever possible no rule, regulation or any proposed amendment to
222 such rules and regulations shall be finally adopted or enforced
223 until copies of said proposed rules and regulations have been
224 furnished to all interested parties for their comment and
225 suggestions.

226 (k) The authority shall establish rules and regulations
227 which shall provide for the submission of all contracts proposed
228 to be executed by the executive director for computer equipment or
229 services to the authority for approval before final execution, and
230 the authority may provide that such contracts involving the
231 expenditure of less than such specified amount as may be
232 established by the authority may be finally executed by the
233 executive director without first obtaining such approval by the
234 authority.

235 (l) The authority is authorized to purchase, lease, or
236 rent computer equipment or services and to operate said equipment
237 and utilize said services in providing services to one or more

238 state agencies when in its opinion such operation will provide
239 maximum efficiency and economy in the functions of any such agency
240 or agencies.

241 (m) The authority shall assist political subdivisions
242 and instrumentalities in their development of plans for the
243 efficient acquisition and utilization of computer equipment and
244 services. An appropriate fee shall be charged the political
245 subdivision by the authority for such assistance.

246 (n) The authority shall adopt rules and regulations
247 governing the protest procedures to be followed by any actual or
248 prospective bidder, offerer or contractor who is aggrieved in
249 connection with the solicitation or award of a contract for the
250 acquisition of computer equipment or services. Such rules and
251 regulations shall prescribe the manner, time and procedure for
252 making protests and may provide that a protest not timely filed
253 shall be summarily denied. The authority may require the
254 protesting party, at the time of filing the protest, to post a
255 bond, payable to the state, in an amount that the authority
256 determines sufficient to cover any expense or loss incurred by the
257 state, the authority or any state agency as a result of the
258 protest if the protest subsequently is determined by a court of
259 competent jurisdiction to have been filed without any substantial
260 basis or reasonable expectation to believe that the protest was
261 meritorious; however, in no event may the amount of the bond
262 required exceed a reasonable estimate of the total project cost.
263 The authority, in its discretion, also may prohibit any
264 prospective bidder, offerer or contractor who is a party to any
265 litigation involving any such contract with the state, the
266 authority or any agency of the state to participate in any other
267 such bid, offer or contract, or to be awarded any such contract,
268 during the pendency of the litigation.

269 (o) The authority shall make a report in writing to the
270 Legislature each year in the month of January. Such report shall

271 contain a full and detailed account of the work of the authority
272 for the preceding year as specified in Section 25-53-29(3).

273 All acquisitions of computer equipment and services involving
274 the expenditure of funds in excess of the dollar amount
275 established in Section 31-7-13(c), or rentals or leases in excess
276 of the dollar amount established in Section 31-7-13(c) for the
277 term of the contract, shall be based upon competitive and open
278 specifications, and contracts therefor shall be entered into only
279 after advertisements for bids are published in one or more daily
280 newspapers having a general circulation in the state not less than
281 fourteen (14) days prior to receiving sealed bids therefor. The
282 authority may reserve the right to reject any or all bids, and if
283 all bids are rejected, the authority may negotiate a contract
284 within the limitations of the specifications so long as the terms
285 of any such negotiated contract are equal to or better than the
286 comparable terms submitted by the lowest and best bidder, and so
287 long as the total cost to the State of Mississippi does not exceed
288 the lowest bid. If the authority accepts one (1) of such bids, it
289 shall be that which is the lowest and best.

290 (p) When applicable, the authority may procure
291 equipment, systems and related services in accordance with the law
292 or regulations, or both, which govern the Bureau of Purchasing of
293 the Office of General Services or which govern the Mississippi
294 Department of Information Technology Services procurement of
295 telecommunications equipment, software and services.

296 (q) The authority is authorized to purchase, lease, or
297 rent information technology and services for the purpose of
298 establishing pilot projects to investigate emerging technologies.

299 These acquisitions shall be limited to new technologies and shall
300 be limited to an amount set by annual appropriation of the
301 Legislature. These acquisitions shall be exempt from the
302 advertising and bidding requirement.

303 (r) All fees collected by the Mississippi Department of

304 Information Technology Services shall be deposited into the
305 Mississippi Department of Information Technology Services
306 Revolving Fund unless otherwise specified by the Legislature.

307 SECTION 3. Section 25-53-51, Mississippi Code of 1972, is
308 amended as follows:

309 25-53-51. To qualify for the position of information
310 confidentiality officer a person must:

311 (a) Be an employee of a state agency or institution in
312 a position such that his duties require him to handle or process
313 or supervise the handling or processing of data in conjunction
314 with the use of automated information technology equipment for an
315 agency or institution other than that for whom he is regularly
316 employed.

317 (b) Have been continuously employed for a period of at
318 least one hundred eighty (180) days by such agency or institution
319 or have successfully been cleared for employment through an
320 investigation that shall consist of a determination as to good
321 moral character and that the prospective employee has not been
322 convicted of a felony. In order to determine the applicant's
323 suitability for employment at the Mississippi Department of
324 Information Technology Services, the applicant shall be
325 fingerprinted. If no disqualifying record is identified at the
326 state level, the fingerprints shall be forwarded by the
327 Mississippi Department of Public Safety to the Federal Bureau of
328 Investigation for a national criminal history record check. A
329 prospective employee may be provisionally employed based on a
330 reference check by the employing agency pending final receipt of
331 the results of a national criminal history record check for a
332 period not to exceed one hundred eighty (180) days.

333 (c) Successfully complete a suitable instructional
334 course on the subjects of information security, privacy and
335 confidentiality and protection, to be developed and taught under
336 the supervision of the executive director. An employee may work

337 in a provisional capacity under the direct supervision of an
338 information confidentiality officer as part of an on-the-job
339 training program while completing instructional requirements, for
340 a period not to exceed ninety (90) days.

341 (d) Be duly sworn to the following oath: "I, _____,
342 do solemnly swear to protect and uphold the confidentiality of all
343 information that may come to my knowledge that is designated as
344 'confidential information' by another state agency or institution
345 for which I may handle or process in the normal course of my
346 duties. I swear to exercise reasonable care in the handling and
347 processing of all such designated data and further that I will not
348 reveal or otherwise divulge information from such data obtained.
349 I understand that proven violation of this oath will subject me to
350 forfeiture of my bond and dismissal from employment."

351 (e) Enter into bond in the minimum amount of Five
352 Thousand Dollars (\$5,000.00) with a surety company authorized to
353 do business in the state, and conditioned to pay the full amount
354 thereof as liquidated damages to any person about whom
355 confidential information is disclosed in violation of his oath.

356 (f) Be identified by a wallet-sized identification card
357 with a picture of the person to be carried at all times while on
358 duty.

359 SECTION 4. Section 25-53-123, Mississippi Code of 1972, is
360 amended as follows:

361 25-53-123. (1) The only method of procurement permitted for
362 the acquisition of nonregulated telecommunications systems,
363 including equipment and related services, shall be in conformity
364 with the following requirements: All acquisitions of
365 telecommunications equipment, systems and related services
366 involving the expenditures of funds in excess of the dollar amount
367 established in Section 31-7-13(c), or rentals or leases in excess
368 of the dollar amount established in Section 31-7-13(c), for the
369 term of the contract, shall be based upon competitive and open

370 specifications, and contracts therefor shall be entered into only
371 after advertisements for bids are published in one or more daily
372 newspapers having a general circulation in the state not less than
373 fourteen (14) days prior to receiving sealed bids therefor. The
374 authority may reserve the right to reject any or all bids, and if
375 all bids are rejected, the authority may negotiate a contract
376 within the limitations of the specifications so long as the terms
377 of any such negotiated contract are equal to or better than the
378 comparable terms submitted by the lowest and best bidder, and so
379 long as the total cost to the State of Mississippi does not exceed
380 the lowest bid. If the authority accepts one (1) of such bids, it
381 shall be that which is the lowest and best.

382 (2) When applicable, the bureau may procure equipment,
383 systems and related services in accordance with the law or
384 regulations, or both, which govern the Bureau of Purchasing of the
385 Governor's Office of General Services or which govern the
386 Mississippi Department of Information Technology Services
387 procurement of computer equipment, software and services.

388 SECTION 5. Section 25-53-103, Mississippi Code of 1972,
389 which prescribes definitions for certain terms used in the
390 sections of law that place responsibility for acquisition,
391 operation and maintenance of telecommunication systems in the
392 Mississippi Department of Information Technology Services, is
393 repealed.

394 SECTION 6. This act shall take effect and be in force from
395 and after its passage.