

By: Senator(s) Tollison, Chamberlin

To: Universities and  
Colleges; Appropriations

SENATE BILL NO. 2059

1 AN ACT TO CODIFY SECTION 37-101-44, MISSISSIPPI CODE OF 1972,  
2 AND TO AMEND SECTIONS 37-101-41 AND 31-7-13, MISSISSIPPI CODE OF  
3 1972, TO AUTHORIZE THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF  
4 HIGHER LEARNING TO AWARD PUBLIC CONSTRUCTION CONTRACTS FOR THE  
5 DESIGN AND FOR THE CONSTRUCTION OF DORMITORY FACILITIES ON CAMPUS;  
6 AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** The following shall be codified as Section  
9 37-101-44, Mississippi Code of 1972:

10 37-101-44. (1) In lieu of Section 37-101-43 and prior to  
11 entering into or awarding any such lease under the provisions of  
12 Section 37-101-41, the Board of Trustees of State Institutions of  
13 Higher Learning may award contracts for privately financed design  
14 and construction of dormitory facilities or parking structures on  
15 the main campus of the university, provided that the entities  
16 receiving the contract or contracts and those entities to which  
17 work or services are subcontracted are duly licensed and are  
18 qualified in the state to perform the contract or contracts.

19 (2) Such a design-build delivery system may be authorized  
20 only when the Board of Trustees of State Institutions of Higher  
21 Learning makes a determination, entered on its minutes, with  
22 specific findings for each project demonstrating how it is in the  
23 best interest of the public to enter into a design-build contract.  
24 At a minimum, such determination shall give a detailed explanation  
25 of why a design-build approach for a particular project satisfies  
26 the public need better than the traditional design-bid-build  
27 approach.



28           (3) For each proposed design-build project, a two-phase  
29 procedure for awarding design-build contracts shall be adopted and  
30 shall include the following:

31           (a) During Phase One, and prior to solicitation of  
32 initial proposals, the board shall develop, with the assistance of  
33 a registered architect or engineer, a scope of work statement that  
34 provides prospective offerors with sufficient information  
35 regarding the board's requirements. The scope of work statement  
36 shall include floor plans showing spaces by name and number,  
37 actual net area of each space, structural module, fixed equipment,  
38 mechanical spaces, chases and circulation areas. Drawings shall  
39 show overall building dimensions and major lines of dimensions,  
40 and site plans which show topography, adjacent buildings and  
41 utilities. Drawings shall include information to adequately  
42 explain HVAC, electrical and structural requirements. Information  
43 concerning furnishings, miscellaneous equipment, layouts, lists  
44 and schedules necessary to explain the plans are to be indicated  
45 on floor plans. The registered architect or engineer engaged by  
46 the board shall also prepare preliminary specifications following  
47 the Construction Specifications Institute format and giving basic  
48 descriptions of essential building materials, finishes, components  
49 and all systems. The scope of work statement shall also include  
50 building elevations, sections and design details. Building  
51 elevations shall show fenestration and proposed exterior  
52 materials. The scope of work statement shall include general  
53 budget parameters, schedule or delivery requirements, relevant  
54 criteria for evaluation of proposals, and any other information  
55 necessary to enable the design-builders to submit proposals which  
56 meet the board's needs.

57           (b) The board shall cause to be published once a week  
58 for at least three (3) consecutive weeks and not less than  
59 twenty-one (21) days in at least one (1) newspaper having a  
60 general circulation in the county in which the interested



61 institution is located and in one (1) newspaper with a general  
62 statewide circulation, a notice inviting proposals for the  
63 leasing, design-build deconstruction and leasing back of said land  
64 and design-build constructed facility. Said notice shall inform  
65 potential offerors of how to obtain the scope of work statement  
66 developed for the project and the notice shall contain such other  
67 information to describe adequately the general nature and scope of  
68 the design-build project so as to promote full, equal and open  
69 competition.

70 (c) The board shall accept initial proposals only from  
71 an entity able to provide, either in-house or through contractual  
72 arrangements, an experienced and qualified design-build team which  
73 shall include, at a minimum, an architect or engineer registered  
74 in Mississippi and a contractor properly licensed in Mississippi  
75 for the type of work required. From evaluation of initial  
76 proposals under Phase One, the board shall select a minimum of two  
77 (2) and a maximum of five (5) design-builders to submit proposals  
78 for Phase Two.

79 (d) During Phase Two, the shortlisted firms shall be  
80 invited to submit detailed designs, specific technical concepts or  
81 solutions, pricing, scheduling and other information deemed  
82 appropriate by the board as necessary to evaluate and rank  
83 acceptability of the Phase Two proposals. After evaluation of  
84 these Phase Two proposals, the board shall award a contract to the  
85 design-builder determined to offer the best value to the public in  
86 accordance with evaluation criteria set forth in the request for  
87 proposals, of which price must be one but not necessarily the only  
88 criterion.

89 (e) If the board accepts a proposal other than the  
90 lowest dollar proposal actually submitted, the board shall enter  
91 on its minutes detailed calculations and a narrative summary  
92 showing why the accepted proposal was determined to provide the



93 best value, and the board shall specifically state on its minutes  
94 the justification for its award.

95 (4) All facilities governed by this section shall be  
96 designed and constructed to equal or exceed the Southern Building  
97 Code Standards in force at the time of contracting. In addition,  
98 all private contracts or private entities contracting or  
99 performing pursuant to this section shall at all times comply with  
100 all applicable laws, codes and other legal requirements pertaining  
101 to the project.

102 (5) (a) No public official or an employee of a state agency  
103 who has duties or responsibilities related to the contracting,  
104 constructing, leasing, acquiring or operating said facility may  
105 become an employee, consultant or contract vendor to a private  
106 entity providing such design-build services to the board within  
107 one (1) year after the termination of his service or employment.

108 (b) Any person violating this section shall be guilty  
109 of a misdemeanor and punished by a fine of not less than Five  
110 Hundred Dollars (\$500.00) but not more than One Thousand Dollars  
111 (\$1,000.00).

112 (6) The board shall promulgate rules and regulations,  
113 consistent with this section, to ensure fair, uniform, clear and  
114 effective procedures for full, equal and open competition for  
115 design-build projects and for delivery of quality design-build  
116 projects on time, within budget, and in the public interest.

117 (7) The board shall report annually to the Legislature the  
118 following:

119 (a) The total number of design-build projects under  
120 contract, commenced and completed;

121 (b) The dollar amounts of each design-build contract,  
122 both as awarded and with any adjustments, and the total dollar  
123 volume of all design-build contracts awarded; and

124 (c) For each design-build project, a listing of all  
125 design-builders, architects, engineers, general contractors and



126 first-tier subcontractors, to include the principal office address  
127 of each such entity.

128 (8) This section shall stand repealed from and after June  
129 30, 2004.

130 **SECTION 2.** Section 37-101-41, Mississippi Code of 1972, is  
131 amended as follows:

132 37-101-41. The Board of Trustees of State Institutions of  
133 Higher Learning is hereby authorized and empowered to lease to  
134 private individuals or corporations, for a term not exceeding  
135 thirty-one (31) years, any land at any of the following  
136 state-supported institutions: University of Mississippi,  
137 Mississippi State University of Agriculture and Applied Science,  
138 Jackson State University, Mississippi Valley State University,  
139 Alcorn State University, University of Southern Mississippi,  
140 Mississippi University for Women and Delta State University, for  
141 the purpose of erecting thereon parking structures or dormitories  
142 on the main campus of the university for active faculty and  
143 students. Said dormitories or parking structures shall be  
144 constructed thereon by private financing, and shall be leased back  
145 to said board for use by the concerned state-supported institution  
146 of higher learning. The lease shall be for a fixed term of ten  
147 (10), fifteen (15) or twenty (20) years. The lease shall contain  
148 a provision permitting said board to purchase the building located  
149 thereon for the sum of One Dollar (\$1.00) after payment by said  
150 board of all sums of money due under said lease.

151 **SECTION 3.** Section 31-7-13, Mississippi Code of 1972, is  
152 amended as follows:

153 31-7-13. All agencies and governing authorities shall  
154 purchase their commodities and printing; contract for garbage  
155 collection or disposal; contract for solid waste collection or  
156 disposal; contract for sewage collection or disposal; contract for  
157 public construction; and contract for rentals as herein provided.



158           (a) **Bidding procedure for purchases not over \$3,500.00.**  
159 Purchases which do not involve an expenditure of more than Three  
160 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or  
161 shipping charges, may be made without advertising or otherwise  
162 requesting competitive bids. Provided, however, that nothing  
163 contained in this paragraph (a) shall be construed to prohibit any  
164 agency or governing authority from establishing procedures which  
165 require competitive bids on purchases of Three Thousand Five  
166 Hundred Dollars (\$3,500.00) or less.

167           (b) **Bidding procedure for purchases over \$3,500.00 but**  
168 **not over \$15,000.00.** Purchases which involve an expenditure of  
169 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not  
170 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
171 freight and shipping charges may be made from the lowest and best  
172 bidder without publishing or posting advertisement for bids,  
173 provided at least two (2) competitive written bids have been  
174 obtained. Any governing authority purchasing commodities pursuant  
175 to this paragraph (b) may authorize its purchasing agent, or his  
176 designee, with regard to governing authorities other than  
177 counties, or its purchase clerk, or his designee, with regard to  
178 counties, to accept the lowest and best competitive written bid.  
179 Such authorization shall be made in writing by the governing  
180 authority and shall be maintained on file in the primary office of  
181 the agency and recorded in the official minutes of the governing  
182 authority, as appropriate. The purchasing agent or the purchase  
183 clerk, or their designee, as the case may be, and not the  
184 governing authority, shall be liable for any penalties and/or  
185 damages as may be imposed by law for any act or omission of the  
186 purchasing agent or purchase clerk, or their designee,  
187 constituting a violation of law in accepting any bid without  
188 approval by the governing authority. The term "competitive  
189 written bid" shall mean a bid submitted on a bid form furnished by  
190 the buying agency or governing authority and signed by authorized



191 personnel representing the vendor, or a bid submitted on a  
192 vendor's letterhead or identifiable bid form and signed by  
193 authorized personnel representing the vendor. Bids may be  
194 submitted by facsimile, electronic mail or other generally  
195 accepted method of information distribution. Bids submitted by  
196 electronic transmission shall not require the signature of the  
197 vendor's representative unless required by agencies or governing  
198 authorities.

199 (c) **Bidding procedure for purchases over \$15,000.00.**

200 (i) **Publication requirement.** Purchases which  
201 involve an expenditure of more than Fifteen Thousand Dollars  
202 (\$15,000.00), exclusive of freight and shipping charges may be  
203 made from the lowest and best bidder after advertising for  
204 competitive sealed bids once each week for two (2) consecutive  
205 weeks in a regular newspaper published in the county or  
206 municipality in which such agency or governing authority is  
207 located. The date as published for the bid opening shall not be  
208 less than seven (7) working days after the last published notice;  
209 however, if the purchase involves a construction project in which  
210 the estimated cost is in excess of Fifteen Thousand Dollars  
211 (\$15,000.00), such bids shall not be opened in less than fifteen  
212 (15) working days after the last notice is published and the  
213 notice for the purchase of such construction shall be published  
214 once each week for two (2) consecutive weeks. The notice of  
215 intention to let contracts or purchase equipment shall state the  
216 time and place at which bids shall be received, list the contracts  
217 to be made or types of equipment or supplies to be purchased, and,  
218 if all plans and/or specifications are not published, refer to the  
219 plans and/or specifications on file. If there is no newspaper  
220 published in the county or municipality, then such notice shall be  
221 given by posting same at the courthouse, or for municipalities at  
222 the city hall, and at two (2) other public places in the county or  
223 municipality, and also by publication once each week for two (2)



224 consecutive weeks in some newspaper having a general circulation  
225 in the county or municipality in the above provided manner. On  
226 the same date that the notice is submitted to the newspaper for  
227 publication, the agency or governing authority involved shall mail  
228 written notice to, or provide electronic notification to the main  
229 office of the Mississippi Contract Procurement Center that  
230 contains the same information as that in the published notice.

231           (ii) **Bidding process amendment procedure.** If all  
232 plans and/or specifications are published in the notification,  
233 then the plans and/or specifications may not be amended. If all  
234 plans and/or specifications are not published in the notification,  
235 then amendments to the plans/specifications, bid opening date, bid  
236 opening time and place may be made, provided that the agency or  
237 governing authority maintains a list of all prospective bidders  
238 who are known to have received a copy of the bid documents and all  
239 such prospective bidders are sent copies of all amendments. This  
240 notification of amendments may be made via mail, facsimile,  
241 electronic mail or other generally accepted method of information  
242 distribution. No addendum to bid specifications may be issued  
243 within two (2) working days of the time established for the  
244 receipt of bids unless such addendum also amends the bid opening  
245 to a date not less than five (5) working days after the date of  
246 the addendum.

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





256                   (iv) **Specification restrictions.** Specifications  
257 pertinent to such bidding shall be written so as not to exclude  
258 comparable equipment of domestic manufacture. Provided, however,  
259 that should valid justification be presented, the Department of  
260 Finance and Administration or the board of a governing authority  
261 may approve a request for specific equipment necessary to perform  
262 a specific job. Further, such justification, when placed on the  
263 minutes of the board of a governing authority, may serve as  
264 authority for that governing authority to write specifications to  
265 require a specific item of equipment needed to perform a specific  
266 job. In addition to these requirements, from and after July 1,  
267 1990, vendors of relocatable classrooms and the specifications for  
268 the purchase of such relocatable classrooms published by local  
269 school boards shall meet all pertinent regulations of the State  
270 Board of Education, including prior approval of such bid by the  
271 State Department of Education.

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

273                   (i) **Decision procedure.** Purchases may be made  
274 from the lowest and best bidder. In determining the lowest and  
275 best bid, freight and shipping charges shall be included.  
276 Life-cycle costing, total cost bids, warranties, guaranteed  
277 buy-back provisions and other relevant provisions may be included  
278 in the best bid calculation. All best bid procedures for state  
279 agencies must be in compliance with regulations established by the  
280 Department of Finance and Administration. If any governing  
281 authority accepts a bid other than the lowest bid actually  
282 submitted, it shall place on its minutes detailed calculations and  
283 narrative summary showing that the accepted bid was determined to  
284 be the lowest and best bid, including the dollar amount of the  
285 accepted bid and the dollar amount of the lowest bid. No agency  
286 or governing authority shall accept a bid based on items not  
287 included in the specifications.



288 (ii) **Construction project negotiations authority.**

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

294 (e) **Lease-purchase authorization.** For the purposes of  
295 this section, the term "equipment" shall mean equipment, furniture  
296 and, if applicable, associated software and other applicable  
297 direct costs associated with the acquisition. Any lease-purchase  
298 of equipment which an agency is not required to lease-purchase  
299 under the master lease-purchase program pursuant to Section  
300 31-7-10 and any lease-purchase of equipment which a governing  
301 authority elects to lease-purchase may be acquired by a  
302 lease-purchase agreement under this paragraph (e). Lease-purchase  
303 financing may also be obtained from the vendor or from a  
304 third-party source after having solicited and obtained at least  
305 two (2) written competitive bids, as defined in paragraph (b) of  
306 this section, for such financing without advertising for such  
307 bids. Solicitation for the bids for financing may occur before or  
308 after acceptance of bids for the purchase of such equipment or,  
309 where no such bids for purchase are required, at any time before  
310 the purchase thereof. No such lease-purchase agreement shall be  
311 for an annual rate of interest which is greater than the overall  
312 maximum interest rate to maturity on general obligation  
313 indebtedness permitted under Section 75-17-101, and the term of  
314 such lease-purchase agreement shall not exceed the useful life of  
315 equipment covered thereby as determined according to the upper  
316 limit of the asset depreciation range (ADR) guidelines for the  
317 Class Life Asset Depreciation Range System established by the  
318 Internal Revenue Service pursuant to the United States Internal  
319 Revenue Code and regulations thereunder as in effect on December  
320 31, 1980, or comparable depreciation guidelines with respect to



321 any equipment not covered by ADR guidelines. Any lease-purchase  
322 agreement entered into pursuant to this paragraph (e) may contain  
323 any of the terms and conditions which a master lease-purchase  
324 agreement may contain under the provisions of Section 31-7-10(5),  
325 and shall contain an annual allocation dependency clause  
326 substantially similar to that set forth in Section 31-7-10(8).  
327 Each agency or governing authority entering into a lease-purchase  
328 transaction pursuant to this paragraph (e) shall maintain with  
329 respect to each such lease-purchase transaction the same  
330 information as required to be maintained by the Department of  
331 Finance and Administration pursuant to Section 31-7-10(13).  
332 However, nothing contained in this section shall be construed to  
333 permit agencies to acquire items of equipment with a total  
334 acquisition cost in the aggregate of less than Ten Thousand  
335 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
336 equipment, and the purchase thereof by any lessor, acquired by  
337 lease-purchase under this paragraph and all lease-purchase  
338 payments with respect thereto shall be exempt from all Mississippi  
339 sales, use and ad valorem taxes. Interest paid on any  
340 lease-purchase agreement under this section shall be exempt from  
341 State of Mississippi income taxation.

342           (f) **Alternate bid authorization.** When necessary to  
343 ensure ready availability of commodities for public works and the  
344 timely completion of public projects, no more than two (2)  
345 alternate bids may be accepted by a governing authority for  
346 commodities. No purchases may be made through use of such  
347 alternate bids procedure unless the lowest and best bidder, for  
348 reasons beyond his control, cannot deliver the commodities  
349 contained in his bid. In that event, purchases of such  
350 commodities may be made from one (1) of the bidders whose bid was  
351 accepted as an alternate.

352           (g) **Construction contract change authorization.** In the  
353 event a determination is made by an agency or governing authority



354 after a construction contract is let that changes or modifications  
355 to the original contract are necessary or would better serve the  
356 purpose of the agency or the governing authority, such agency or  
357 governing authority may, in its discretion, order such changes  
358 pertaining to the construction that are necessary under the  
359 circumstances without the necessity of further public bids;  
360 provided that such change shall be made in a commercially  
361 reasonable manner and shall not be made to circumvent the public  
362 purchasing statutes. In addition to any other authorized person,  
363 the architect or engineer hired by an agency or governing  
364 authority with respect to any public construction contract shall  
365 have the authority, when granted by an agency or governing  
366 authority, to authorize changes or modifications to the original  
367 contract without the necessity of prior approval of the agency or  
368 governing authority when any such change or modification is less  
369 than one percent (1%) of the total contract amount. The agency or  
370 governing authority may limit the number, manner or frequency of  
371 such emergency changes or modifications.

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



387 lowest and best contract available for the purchase of such  
388 commodities.

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

409           (j) **State agency emergency purchase procedure.** If the  
410 executive head of any agency of the state shall determine that an  
411 emergency exists in regard to the purchase of any commodities or  
412 repair contracts, so that the delay incident to giving opportunity  
413 for competitive bidding would be detrimental to the interests of  
414 the state, then the provisions herein for competitive bidding  
415 shall not apply and the head of such agency shall be authorized to  
416 make the purchase or repair. Total purchases so made shall only  
417 be for the purpose of meeting needs created by the emergency  
418 situation. In the event such executive head is responsible to an  
419 agency board, at the meeting next following the emergency



420 purchase, documentation of the purchase, including a description  
421 of the commodity purchased, the purchase price thereof and the  
422 nature of the emergency shall be presented to the board and placed  
423 on the minutes of the board of such agency. The head of such  
424 agency shall, at the earliest possible date following such  
425 emergency purchase, file with the Department of Finance and  
426 Administration (i) a statement under oath certifying the  
427 conditions and circumstances of the emergency, and (ii) a  
428 certified copy of the appropriate minutes of the board of such  
429 agency, if applicable. On or before September 1 of each year, the  
430 State Auditor shall prepare and deliver to the Senate Fees,  
431 Salaries and Administration Committee, the House Fees and Salaries  
432 of Public Officers Committee and the Joint Legislative Budget  
433 Committee a report containing a list of all state agency emergency  
434 purchases and supporting documentation for each emergency  
435 purchases.

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

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



452 board and shall be placed on the minutes of the board of such  
453 governing authority.

454           (1) **Hospital purchase, lease-purchase and lease**  
455 **authorization.**

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

461           (ii) In addition to the authority granted in  
462 subparagraph (i) of this paragraph (1), the commissioners or board  
463 of trustees is authorized to enter into contracts for the lease of  
464 equipment or services, or both, which it considers necessary for  
465 the proper care of patients if, in its opinion, it is not  
466 financially feasible to purchase the necessary equipment or  
467 services. Any such contract for the lease of equipment or  
468 services executed by the commissioners or board shall not exceed a  
469 maximum of five (5) years' duration and shall include a  
470 cancellation clause based on unavailability of funds. If such  
471 cancellation clause is exercised, there shall be no further  
472 liability on the part of the lessee. Any such contract for the  
473 lease of equipment or services executed on behalf of the  
474 commissioners or board that complies with the provisions of this  
475 subparagraph (ii) shall be excepted from the bid requirements set  
476 forth in this section.

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

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

483           (ii) **Outside equipment repairs.** Repairs to  
484 equipment, when such repairs are made by repair facilities in the



485 private sector; however, engines, transmissions, rear axles and/or  
486 other such components shall not be included in this exemption when  
487 replaced as a complete unit instead of being repaired and the need  
488 for such total component replacement is known before disassembly  
489 of the component; provided, however, that invoices identifying the  
490 equipment, specific repairs made, parts identified by number and  
491 name, supplies used in such repairs, and the number of hours of  
492 labor and costs therefor shall be required for the payment for  
493 such repairs.

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

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

503                   (v) **Governmental equipment auctions.** Motor  
504 vehicles or other equipment purchased from a federal or state  
505 agency or a governing authority at a public auction held for the  
506 purpose of disposing of such vehicles or other equipment. Any  
507 purchase by a governing authority under the exemption authorized  
508 by this subparagraph (v) shall require advance authorization  
509 spread upon the minutes of the governing authority to include the  
510 listing of the item or items authorized to be purchased and the  
511 maximum bid authorized to be paid for each item or items.

512                   (vi) **Intergovernmental sales and transfers.**  
513 Purchases, sales, transfers or trades by governing authorities or  
514 state agencies when such purchases, sales, transfers or trades are  
515 made by a private treaty agreement or through means of  
516 negotiation, from any federal agency or authority, another  
517 governing authority or state agency of the State of Mississippi,





518 or any state agency of another state. Nothing in this section  
519 shall permit such purchases through public auction except as  
520 provided for in subparagraph (v) of this section. It is the  
521 intent of this section to allow governmental entities to dispose  
522 of and/or purchase commodities from other governmental entities at  
523 a price that is agreed to by both parties. This shall allow for  
524 purchases and/or sales at prices which may be determined to be  
525 below the market value if the selling entity determines that the  
526 sale at below market value is in the best interest of the  
527 taxpayers of the state. Governing authorities shall place the  
528 terms of the agreement and any justification on the minutes, and  
529 state agencies shall obtain approval from the Department of  
530 Finance and Administration, prior to releasing or taking  
531 possession of the commodities.

532 (vii) **Perishable supplies or food.** Perishable  
533 supplies or foods purchased for use in connection with hospitals,  
534 the school lunch programs, homemaking programs and for the feeding  
535 of county or municipal prisoners.

536 (viii) **Single source items.** Noncompetitive items  
537 available from one (1) source only. In connection with the  
538 purchase of noncompetitive items only available from one (1)  
539 source, a certification of the conditions and circumstances  
540 requiring the purchase shall be filed by the agency with the  
541 Department of Finance and Administration and by the governing  
542 authority with the board of the governing authority. Upon receipt  
543 of that certification the Department of Finance and Administration  
544 or the board of the governing authority, as the case may be, may,  
545 in writing, authorize the purchase, which authority shall be noted  
546 on the minutes of the body at the next regular meeting thereafter.  
547 In those situations, a governing authority is not required to  
548 obtain the approval of the Department of Finance and  
549 Administration.



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

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

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

580                   (xii) **Energy efficiency services and equipment.**  
581 Energy efficiency services and equipment acquired by school  
582 districts, community and junior colleges, institutions of higher



583 learning and state agencies or other applicable governmental  
584 entities on a shared-savings, lease or lease-purchase basis  
585 pursuant to Section 31-7-14.

586 (xiii) **Municipal electrical utility system fuel.**

587 Purchases of coal and/or natural gas by municipally-owned electric  
588 power generating systems that have the capacity to use both coal  
589 and natural gas for the generation of electric power.

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

591 Purchases by libraries or for libraries of books and periodicals;  
592 processed film, video cassette tapes, filmstrips and slides;  
593 recorded audio tapes, cassettes and diskettes; and any such items  
594 as would be used for teaching, research or other information  
595 distribution; however, equipment such as projectors, recorders,  
596 audio or video equipment, and monitor televisions are not exempt  
597 under this subparagraph.

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

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

604 (xvii) **Multichannel interactive video systems.**

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

612 (xviii) **Purchases of prison industry products.**

613 From and after January 1, 1991, purchases made by state agencies  
614 or governing authorities involving any item that is manufactured,  
615 processed, grown or produced from the state's prison industries.



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

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

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

630                   (xxii)  **Garbage, solid waste and sewage contracts.**  
631 Contracts for garbage collection or disposal, contracts for solid  
632 waste collection or disposal and contracts for sewage collection  
633 or disposal.

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

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

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

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



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

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

664                   (xxix) **Procurement of design and construction**  
665 **services by universities.** Nothing in this section restricts the  
666 right of the Board of Trustees of State Institutions of Higher  
667 Learning to award privately financed contracts for the design and  
668 for the construction of dormitories or parking structures on the  
669 main campus of the university, as provided in Section 37-101-44.

670                   This subparagraph (xxix) shall stand repealed from  
671 and after June 30, 2005.

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

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



682 office subsequent to the governing authority board entering the  
683 contract.

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

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

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



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

717           (q) **Fuel management system bidding procedure.** Any  
718 governing authority or agency of the state shall, before  
719 contracting for the services and products of a fuel management or  
720 fuel access system, enter into negotiations with not fewer than  
721 two (2) sellers of fuel management or fuel access systems for  
722 competitive written bids to provide the services and products for  
723 the systems. In the event that the governing authority or agency  
724 cannot locate two (2) sellers of such systems or cannot obtain  
725 bids from two (2) sellers of such systems, it shall show proof  
726 that it made a diligent, good-faith effort to locate and negotiate  
727 with two (2) sellers of such systems. Such proof shall include,  
728 but not be limited to, publications of a request for proposals and  
729 letters soliciting negotiations and bids. For purposes of this  
730 paragraph (q), a fuel management or fuel access system is an  
731 automated system of acquiring fuel for vehicles as well as  
732 management reports detailing fuel use by vehicles and drivers, and  
733 the term "competitive written bid" shall have the meaning as  
734 defined in paragraph (b) of this section. Governing authorities  
735 and agencies shall be exempt from this process when contracting  
736 for the services and products of a fuel management or fuel access  
737 systems under the terms of a state contract established by the  
738 Office of Purchasing and Travel.

739           (r) **Solid waste contract proposal procedure.** Before  
740 entering into any contract for garbage collection or disposal,  
741 contract for solid waste collection or disposal or contract for  
742 sewage collection or disposal, which involves an expenditure of  
743 more than Fifty Thousand Dollars (\$50,000.00), a governing  
744 authority or agency shall issue publicly a request for proposals  
745 concerning the specifications for such services which shall be  
746 advertised for in the same manner as provided in this section for  
747 seeking bids for purchases which involve an expenditure of more



748 than Ten Thousand Dollars (\$10,000.00). Any request for proposals  
749 when issued shall contain terms and conditions relating to price,  
750 financial responsibility, technology, legal responsibilities and  
751 other relevant factors as are determined by the governing  
752 authority or agency to be appropriate for inclusion; all factors  
753 determined relevant by the governing authority or agency or  
754 required by this paragraph (r) shall be duly included in the  
755 advertisement to elicit proposals. After responses to the request  
756 for proposals have been duly received, the governing authority or  
757 agency shall select the most qualified proposal or proposals on  
758 the basis of price, technology and other relevant factors and from  
759 such proposals, but not limited to the terms thereof, negotiate  
760 and enter contracts with one or more of the persons or firms  
761 submitting proposals. If the governing authority or agency deems  
762 none of the proposals to be qualified or otherwise acceptable, the  
763 request for proposals process may be reinitiated. Notwithstanding  
764 any other provisions of this paragraph, where a county with at  
765 least thirty-five thousand (35,000) nor more than forty thousand  
766 (40,000) population, according to the 1990 federal decennial  
767 census, owns or operates a solid waste landfill, the governing  
768 authorities of any other county or municipality may contract with  
769 the governing authorities of the county owning or operating the  
770 landfill, pursuant to a resolution duly adopted and spread upon  
771 the minutes of each governing authority involved, for garbage or  
772 solid waste collection or disposal services through contract  
773 negotiations.

774 (s) **Minority set aside authorization.** Notwithstanding  
775 any provision of this section to the contrary, any agency or  
776 governing authority, by order placed on its minutes, may, in its  
777 discretion, set aside not more than twenty percent (20%) of its  
778 anticipated annual expenditures for the purchase of commodities  
779 from minority businesses; however, all such set-aside purchases  
780 shall comply with all purchasing regulations promulgated by the





781 Department of Finance and Administration and shall be subject to  
782 bid requirements under this section. Set-aside purchases for  
783 which competitive bids are required shall be made from the lowest  
784 and best minority business bidder. For the purposes of this  
785 paragraph, the term "minority business" means a business which is  
786 owned by a majority of persons who are United States citizens or  
787 permanent resident aliens (as defined by the Immigration and  
788 Naturalization Service) of the United States, and who are Asian,  
789 Black, Hispanic or Native American, according to the following  
790 definitions:

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

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

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

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

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

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



813           **SECTION 4.** This act shall take effect and be in force from  
814 and after its passage.

