

By: Representative Franks

To: Judiciary B

HOUSE BILL NO. 1477

1 AN ACT TO AMEND SECTIONS 31-3-21 AND 31-7-13, MISSISSIPPI  
 2 CODE OF 1972, TO REQUIRE CONTRACTORS WHO SUBMIT A BID IN EXCESS OF  
 3 \$100,000.00 TO LIST SUBCONTRACTORS WHO WILL WORK UNDER THE  
 4 CONTRACT; TO PROHIBIT STATE AGENCIES AND GOVERNING AUTHORITIES  
 5 FROM ACCEPTING BIDS IN EXCESS OF \$100,000.00 WITHOUT A LIST OF  
 6 SUBCONTRACTORS WHO WILL WORK UNDER THE CONTRACT; TO PROHIBIT  
 7 CONTRACTORS FROM CHANGING THE LISTED SUBCONTRACTOR WITHOUT THE  
 8 APPROVAL OF THE AGENCY OR GOVERNING AUTHORITY; TO ALLOW STATE  
 9 AGENCIES AND GOVERNING AUTHORITIES TO USE PROJECT MANAGERS FOR  
 10 CERTAIN PROJECTS; TO AMEND SECTION 37-151-7, MISSISSIPPI CODE OF  
 11 1972, TO CONFORM TO THE PRECEDING SECTIONS; AND FOR RELATED  
 12 PURPOSES.

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

14 **SECTION 1.** Section 31-3-21, Mississippi Code of 1972, is  
 15 amended as follows:

16 31-3-21. (1) It shall be unlawful for any person who does  
 17 not hold a certificate of responsibility issued under this  
 18 chapter, or a similar certificate issued by another state  
 19 recognizing such certificate issued by the State of Mississippi,  
 20 to submit a bid, enter into a contract, or otherwise engage in or  
 21 continue in this state in the business of a contractor, as defined  
 22 in this chapter. Any bid which is submitted without a certificate  
 23 of responsibility number issued under this chapter and without  
 24 that number appearing on the exterior of the bid envelope, as and  
 25 if herein required, at the time designated for the opening of such  
 26 bid, shall not be considered further, and the person or public  
 27 agency soliciting bids shall not enter into a contract with a  
 28 contractor submitting a bid in violation of this section. In  
 29 addition, any person violating this section by knowingly and  
 30 willfully submitting a bid for projects without holding a  
 31 certificate of responsibility number issued under this chapter, as  
 32 and if herein required, at the time of the submission or opening

33 of such bid shall be guilty of a misdemeanor and, upon conviction,  
34 shall be punished by a fine of not more than One Thousand Dollars  
35 (\$1,000.00), or by imprisonment for not more than six (6) months,  
36 or by both such fine and imprisonment.

37 (2) (a) All bids submitted for public or private projects  
38 where said bid is in excess of Fifty Thousand Dollars (\$50,000.00)  
39 with respect to public projects and in excess of One Hundred  
40 Thousand Dollars (\$100,000.00) with respect to private projects  
41 shall contain on the outside or exterior of the envelope or  
42 container of such bid the contractor's current certificate number,  
43 and no bid shall be opened or considered unless such contractor's  
44 current certificate number appears on the outside or exterior of  
45 said envelope or container, or unless there appears a statement on  
46 the outside or exterior of such envelope or container to the  
47 effect that the bid enclosed therewith did not exceed Fifty  
48 Thousand Dollars (\$50,000.00) with respect to public projects or  
49 One Hundred Thousand Dollars (\$100,000.00) with respect to private  
50 projects. Any person violating the provisions of this subsection  
51 shall be guilty of a misdemeanor and, upon conviction, shall be  
52 punished by a fine of not more than One Thousand Dollars  
53 (\$1,000.00), or by imprisonment for not more than six (6) months,  
54 or by both such fine and imprisonment.

55 (b) All bids submitted for public projects where said  
56 bid is in excess of One Hundred Thousand Dollars (\$100,000.00)  
57 shall contain a list of subcontractors who will work under the  
58 contract. The subcontractors listed may not be changed by the  
59 contractor without the approval of the agency or governing  
60 authority for which the public project is being done. A civil  
61 penalty equal to three percent (3%) of the total value of the  
62 contract shall be assessed against a contractor who uses any  
63 subcontractor other than the subcontractors listed by the  
64 contractor during the bidding process. The civil penalty shall be  
65 collected by the agency or governing authority for which the work

66 is being done and shall be used by such agency or governing  
67 authority.

68 (3) In the letting of public contracts preference shall be  
69 given to resident contractors, and a nonresident bidder domiciled  
70 in a state having laws granting preference to local contractors  
71 shall be awarded Mississippi public contracts only on the same  
72 basis as the nonresident bidder's state awards contracts to  
73 Mississippi contractors bidding under similar circumstances; and  
74 resident contractors actually domiciled in Mississippi, be they  
75 corporate, individuals, or partnerships, are to be granted  
76 preference over nonresidents in awarding of contracts in the same  
77 manner and to the same extent as provided by the laws of the state  
78 of domicile of the nonresident. When a nonresident contractor  
79 submits a bid for a public project, he shall attach thereto a copy  
80 of his resident state's current law pertaining to such state's  
81 treatment of nonresident contractors. As used in this section,  
82 the term "resident contractors" includes a nonresident person,  
83 firm or corporation that has been qualified to do business in this  
84 state and has maintained a permanent full-time office in the State  
85 of Mississippi for two (2) years prior to January 1, 1986, and the  
86 subsidiaries and affiliates of such a person, firm or corporation.  
87 Any public agency awarding a contract shall promptly report to the  
88 State Tax Commission the following information:

89 (a) The amount of the contract.

90 (b) The name and address of the contractor reviewing  
91 the contract.

92 (c) The name and location of the project.

93 (4) In addition to any other penalties provided in this  
94 chapter, and upon a finding of a violation of this chapter, the  
95 State Board of Contractors may, after notice and hearing, issue an  
96 order of abatement directing the contractor to cease all actions  
97 constituting violations of this chapter until such time as the  
98 contractor complies with Mississippi state law, and to pay to the

99 board a civil penalty to be deposited into the State Board of  
100 Contractors' Fund, created in Section 31-3-17, of not more than  
101 three percent (3%) of the total contract being performed by the  
102 contractor. The funds collected from civil penalty payments shall  
103 be used by the State Board of Contractors for enforcement and  
104 education.

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

107 31-7-13. All agencies and governing authorities shall  
108 purchase their commodities and printing; contract for garbage  
109 collection or disposal; contract for solid waste collection or  
110 disposal; contract for sewage collection or disposal; contract for  
111 public construction; and contract for rentals as herein provided.

112 (a) **Bidding procedure for purchases not over \$3,500.00.**  
113 Purchases which do not involve an expenditure of more than Three  
114 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or  
115 shipping charges, may be made without advertising or otherwise  
116 requesting competitive bids. However, nothing contained in this  
117 paragraph (a) shall be construed to prohibit any agency or  
118 governing authority from establishing procedures which require  
119 competitive bids on purchases of Three Thousand Five Hundred  
120 Dollars (\$3,500.00) or less.

121 (b) **Bidding procedure for purchases over \$3,500.00 but**  
122 **not over \$15,000.00.** Purchases which involve an expenditure of  
123 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not  
124 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
125 freight and shipping charges may be made from the lowest and best  
126 bidder without publishing or posting advertisement for bids,  
127 provided at least two (2) competitive written bids have been  
128 obtained. Any governing authority purchasing commodities pursuant  
129 to this paragraph (b) may authorize its purchasing agent, or his  
130 designee, with regard to governing authorities other than  
131 counties, or its purchase clerk, or his designee, with regard to

132 counties, to accept the lowest and best competitive written bid.  
133 Such authorization shall be made in writing by the governing  
134 authority and shall be maintained on file in the primary office of  
135 the agency and recorded in the official minutes of the governing  
136 authority, as appropriate. The purchasing agent or the purchase  
137 clerk, or their designee, as the case may be, and not the  
138 governing authority, shall be liable for any penalties and/or  
139 damages as may be imposed by law for any act or omission of the  
140 purchasing agent or purchase clerk, or their designee,  
141 constituting a violation of law in accepting any bid without  
142 approval by the governing authority. The term "competitive  
143 written bid" shall mean a bid submitted on a bid form furnished by  
144 the buying agency or governing authority and signed by authorized  
145 personnel representing the vendor, or a bid submitted on a  
146 vendor's letterhead or identifiable bid form and signed by  
147 authorized personnel representing the vendor. "Competitive" shall  
148 mean that the bids are developed based upon comparable  
149 identification of the needs and are developed independently and  
150 without knowledge of other bids or prospective bids. Bids may be  
151 submitted by facsimile, electronic mail or other generally  
152 accepted method of information distribution. Bids submitted by  
153 electronic transmission shall not require the signature of the  
154 vendor's representative unless required by agencies or governing  
155 authorities.

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

157 (i) **Publication requirement.** Purchases which  
158 involve an expenditure of more than Fifteen Thousand Dollars  
159 (\$15,000.00), exclusive of freight and shipping charges, may be  
160 made from the lowest and best bidder after advertising for  
161 competitive sealed bids once each week for two (2) consecutive  
162 weeks in a regular newspaper published in the county or  
163 municipality in which such agency or governing authority is  
164 located. The date as published for the bid opening shall not be

165 less than seven (7) working days after the last published notice;  
166 however, if the purchase involves a construction project in which  
167 the estimated cost is in excess of Fifteen Thousand Dollars  
168 (\$15,000.00), such bids shall not be opened in less than fifteen  
169 (15) working days after the last notice is published and the  
170 notice for the purchase of such construction shall be published  
171 once each week for two (2) consecutive weeks. The notice of  
172 intention to let contracts or purchase equipment shall state the  
173 time and place at which bids shall be received, list the contracts  
174 to be made or types of equipment or supplies to be purchased, and,  
175 if all plans and/or specifications are not published, refer to the  
176 plans and/or specifications on file. If there is no newspaper  
177 published in the county or municipality, then such notice shall be  
178 given by posting same at the courthouse, or for municipalities at  
179 the city hall, and at two (2) other public places in the county or  
180 municipality, and also by publication once each week for two (2)  
181 consecutive weeks in some newspaper having a general circulation  
182 in the county or municipality in the above provided manner. On  
183 the same date that the notice is submitted to the newspaper for  
184 publication, the agency or governing authority involved shall mail  
185 written notice to, or provide electronic notification to the main  
186 office of the Mississippi Contract Procurement Center that  
187 contains the same information as that in the published notice.

188           (ii) **Bidding process amendment procedure.** If all  
189 plans and/or specifications are published in the notification,  
190 then the plans and/or specifications may not be amended. If all  
191 plans and/or specifications are not published in the notification,  
192 then amendments to the plans/specifications, bid opening date, bid  
193 opening time and place may be made, provided that the agency or  
194 governing authority maintains a list of all prospective bidders  
195 who are known to have received a copy of the bid documents and all  
196 such prospective bidders are sent copies of all amendments. This  
197 notification of amendments may be made via mail, facsimile,

198 electronic mail or other generally accepted method of information  
199 distribution. No addendum to bid specifications may be issued  
200 within two (2) working days of the time established for the  
201 receipt of bids unless such addendum also amends the bid opening  
202 to a date not less than five (5) working days after the date of  
203 the addendum.

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

213                   (iv) **Specification restrictions.** Specifications  
214 pertinent to such bidding shall be written so as not to exclude  
215 comparable equipment of domestic manufacture. However, if valid  
216 justification is presented, the Department of Finance and  
217 Administration or the board of a governing authority may approve a  
218 request for specific equipment necessary to perform a specific  
219 job. Further, such justification, when placed on the minutes of  
220 the board of a governing authority, may serve as authority for  
221 that governing authority to write specifications to require a  
222 specific item of equipment needed to perform a specific job. In  
223 addition to these requirements, from and after July 1, 1990,  
224 vendors of relocatable classrooms and the specifications for the  
225 purchase of such relocatable classrooms published by local school  
226 boards shall meet all pertinent regulations of the State Board of  
227 Education, including prior approval of such bid by the State  
228 Department of Education.

229 (v) Agencies and governing authorities may  
230 establish secure procedures by which bids may be submitted via  
231 electronic means.

232 (vi) **Bids in excess of One Hundred Thousand**  
233 **Dollars (\$100,000.00)**. In addition to other procedures for  
234 purchases over Fifteen Thousand Dollars (\$15,000.00), a contractor  
235 who submits a bid in excess of One Hundred Thousand Dollars  
236 (\$100,000.00) shall list the subcontractors who will work under  
237 the contract. No bid in excess of One Hundred Thousand Dollars  
238 (\$100,000.00) shall be accepted without a list of the  
239 subcontractors who will work under the contract. The  
240 subcontractors listed may not be changed by the contractor without  
241 the approval of the agency or governing authority for which the  
242 public project is being done. A civil penalty equal to three  
243 percent (3%) of the total value of the contract shall be assessed  
244 against a contractor who uses any subcontractor other than the  
245 subcontractors listed by the contractor during the bidding  
246 process. The civil penalty shall be collected by the agency or  
247 governing authority for which the work is being done and shall be  
248 used by such agency or governing authority.

249 (vii) **Project management.** Any public project with  
250 an estimated project cost of more than Twenty-Five Million Dollars  
251 (\$25,000,000.00) may be done with program management of the  
252 process with respect to design and construction. No project  
253 management of the process with respect to design and construction  
254 shall be used for any project with an estimated project cost of  
255 less than Twenty-five Million Dollars (\$25,000,000.00). Any  
256 individuals, partnerships, companies or other entities acting as a  
257 program manager on behalf of an agency or governing authority and  
258 performing program management services for projects covered under  
259 this paragraph shall be approved by the State Department of  
260 Education.

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



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

277 (ii) **Decision procedure for Certified Purchasing**  
278 **Offices.** In addition to the decision procedure set forth in  
279 paragraph (d)(i), Certified Purchasing Offices may also use the  
280 following procedure: Purchases may be made from the bidder  
281 offering the best value. In determining the best value bid,  
282 freight and shipping charges shall be included. Life-cycle  
283 costing, total cost bids, warranties, guaranteed buy-back  
284 provisions, documented previous experience, training costs and  
285 other relevant provisions may be included in the best value  
286 calculation. This provision shall authorize Certified Purchasing  
287 Offices to utilize a Request For Proposals (RFP) process when  
288 purchasing commodities. All best value procedures for state  
289 agencies must be in compliance with regulations established by the  
290 Department of Finance and Administration. No agency or governing  
291 authority shall accept a bid based on items or criteria not  
292 included in the specifications.

293 (iii) **Construction project negotiations authority.**  
294 If the lowest and best bid is not more than ten percent (10%)

295 above the amount of funds allocated for a public construction or  
296 renovation project, then the agency or governing authority shall  
297 be permitted to negotiate with the lowest bidder in order to enter  
298 into a contract for an amount not to exceed the funds allocated.

299           (e) **Lease-purchase authorization.** For the purposes of  
300 this section, the term "equipment" shall mean equipment, furniture  
301 and, if applicable, associated software and other applicable  
302 direct costs associated with the acquisition. Any lease-purchase  
303 of equipment which an agency is not required to lease-purchase  
304 under the master lease-purchase program pursuant to Section  
305 31-7-10 and any lease-purchase of equipment which a governing  
306 authority elects to lease-purchase may be acquired by a  
307 lease-purchase agreement under this paragraph (e). Lease-purchase  
308 financing may also be obtained from the vendor or from a  
309 third-party source after having solicited and obtained at least  
310 two (2) written competitive bids, as defined in paragraph (b) of  
311 this section, for such financing without advertising for such  
312 bids. Solicitation for the bids for financing may occur before or  
313 after acceptance of bids for the purchase of such equipment or,  
314 where no such bids for purchase are required, at any time before  
315 the purchase thereof. No such lease-purchase agreement shall be  
316 for an annual rate of interest which is greater than the overall  
317 maximum interest rate to maturity on general obligation  
318 indebtedness permitted under Section 75-17-101, and the term of  
319 such lease-purchase agreement shall not exceed the useful life of  
320 equipment covered thereby as determined according to the upper  
321 limit of the asset depreciation range (ADR) guidelines for the  
322 Class Life Asset Depreciation Range System established by the  
323 Internal Revenue Service pursuant to the United States Internal  
324 Revenue Code and regulations thereunder as in effect on December  
325 31, 1980, or comparable depreciation guidelines with respect to  
326 any equipment not covered by ADR guidelines. Any lease-purchase  
327 agreement entered into pursuant to this paragraph (e) may contain

328 any of the terms and conditions which a master lease-purchase  
329 agreement may contain under the provisions of Section 31-7-10(5),  
330 and shall contain an annual allocation dependency clause  
331 substantially similar to that set forth in Section 31-7-10(8).  
332 Each agency or governing authority entering into a lease-purchase  
333 transaction pursuant to this paragraph (e) shall maintain with  
334 respect to each such lease-purchase transaction the same  
335 information as required to be maintained by the Department of  
336 Finance and Administration pursuant to Section 31-7-10(13).  
337 However, nothing contained in this section shall be construed to  
338 permit agencies to acquire items of equipment with a total  
339 acquisition cost in the aggregate of less than Ten Thousand  
340 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
341 equipment, and the purchase thereof by any lessor, acquired by  
342 lease-purchase under this paragraph and all lease-purchase  
343 payments with respect thereto shall be exempt from all Mississippi  
344 sales, use and ad valorem taxes. Interest paid on any  
345 lease-purchase agreement under this section shall be exempt from  
346 State of Mississippi income taxation.

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

356           (g) **Construction contract change authorization.** In the  
357 event a determination is made by an agency or governing authority  
358 after a construction contract is let that changes or modifications  
359 to the original contract are necessary or would better serve the  
360 purpose of the agency or the governing authority, such agency or

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

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

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

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

426 the purchase price thereof and the nature of the emergency shall  
427 be presented to the board and placed on the minutes of the board  
428 of such agency. The head of such agency, or his designee, shall,  
429 at the earliest possible date following such emergency purchase,  
430 file with the Department of Finance and Administration (i) a  
431 statement explaining the conditions and circumstances of the  
432 emergency, which shall include a detailed description of the  
433 events leading up to the situation and the negative impact to the  
434 entity if the purchase is made following the statutory  
435 requirements set forth in paragraph (a), (b) or (c) of this  
436 section, and (ii) a certified copy of the appropriate minutes of  
437 the board of such agency, if applicable. On or before September 1  
438 of each year, the State Auditor shall prepare and deliver to the  
439 Senate Fees, Salaries and Administration Committee, the House Fees  
440 and Salaries of Public Officers Committee and the Joint  
441 Legislative Budget Committee a report containing a list of all  
442 state agency emergency purchases and supporting documentation for  
443 each emergency purchase.

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

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

459 thereof and the nature of the emergency shall be presented to the  
460 board and shall be placed on the minutes of the board of such  
461 governing authority.

462           (1) **Hospital purchase, lease-purchase and lease**  
463 **authorization.**

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

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

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

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

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

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

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

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

522                   (vi) **Intergovernmental sales and transfers.**  
523 Purchases, sales, transfers or trades by governing authorities or



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

542 (vii) **Perishable supplies or food.** Perishable  
543 supplies or foods purchased for use in connection with hospitals,  
544 the school lunch programs, homemaking programs and for the feeding  
545 of county or municipal prisoners.

546 (viii) **Single source items.** Noncompetitive items  
547 available from one (1) source only. In connection with the  
548 purchase of noncompetitive items only available from one (1)  
549 source, a certification of the conditions and circumstances  
550 requiring the purchase shall be filed by the agency with the  
551 Department of Finance and Administration and by the governing  
552 authority with the board of the governing authority. Upon receipt  
553 of that certification the Department of Finance and Administration  
554 or the board of the governing authority, as the case may be, may,  
555 in writing, authorize the purchase, which authority shall be noted  
556 on the minutes of the body at the next regular meeting thereafter.

557 In those situations, a governing authority is not required to  
558 obtain the approval of the Department of Finance and  
559 Administration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

640 (xxii) **Garbage, solid waste and sewage contracts.**  
641 Contracts for garbage collection or disposal, contracts for solid  
642 waste collection or disposal and contracts for sewage collection  
643 or disposal.

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

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

654                    (xxv)    **Purchases of state-adopted textbooks.**  
655 Purchases of state-adopted textbooks by public school districts.  
656                    (xxvi)    **Certain purchases under the Mississippi**  
657 **Major Economic Impact Act.** Contracts entered into pursuant to the  
658 provisions of Section 57-75-9(2) and (3).  
659                    (xxvii)    **Used heavy or specialized machinery or**  
660 **equipment for installation of soil and water conservation**  
661 **practices purchased at auction.** Used heavy or specialized  
662 machinery or equipment used for the installation and  
663 implementation of soil and water conservation practices or  
664 measures purchased subject to the restrictions provided in  
665 Sections 69-27-331 through 69-27-341. Any purchase by the State  
666 Soil and Water Conservation Commission under the exemption  
667 authorized by this subparagraph shall require advance  
668 authorization spread upon the minutes of the commission to include  
669 the listing of the item or items authorized to be purchased and  
670 the maximum bid authorized to be paid for each item or items.  
671                    (xxviii)    **Hospital lease of equipment or services.**  
672 Leases by hospitals of equipment or services if the leases are in  
673 compliance with paragraph (1)(ii).  
674                    (xxix)    **Purchases made pursuant to qualified**  
675 **cooperative purchasing agreements.** Purchases made by certified  
676 purchasing offices of state agencies or governing authorities  
677 under cooperative purchasing agreements previously approved by the  
678 Office of Purchasing and Travel and established by or for any  
679 municipality, county, parish or state government or the federal  
680 government, provided that the notification to potential  
681 contractors includes a clause that sets forth the availability of  
682 the cooperative purchasing agreement to other governmental  
683 entities. Such purchases shall only be made if the use of the  
684 cooperative purchasing agreements is determined to be in the best  
685 interest of the government entity.

686                    (xxx) **School yearbooks.** Purchases of school  
687 yearbooks by state agencies or governing authorities; provided,  
688 however, that state agencies and governing authorities shall use  
689 for these purchases the RFP process as set forth in the  
690 Mississippi Procurement Manual adopted by the Office of Purchasing  
691 and Travel.

692                    (xxxii) **Design-build method or the design-build**  
693 **bridging method of contracting.** Contracts entered into the  
694 provisions of Section 31-11-3(9).

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

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

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

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

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

740                   (q) **Fuel management system bidding procedure.** Any  
741 governing authority or agency of the state shall, before  
742 contracting for the services and products of a fuel management or  
743 fuel access system, enter into negotiations with not fewer than  
744 two (2) sellers of fuel management or fuel access systems for  
745 competitive written bids to provide the services and products for  
746 the systems. In the event that the governing authority or agency  
747 cannot locate two (2) sellers of such systems or cannot obtain  
748 bids from two (2) sellers of such systems, it shall show proof  
749 that it made a diligent, good-faith effort to locate and negotiate  
750 with two (2) sellers of such systems. Such proof shall include,

751 but not be limited to, publications of a request for proposals and  
752 letters soliciting negotiations and bids. For purposes of this  
753 paragraph (q), a fuel management or fuel access system is an  
754 automated system of acquiring fuel for vehicles as well as  
755 management reports detailing fuel use by vehicles and drivers, and  
756 the term "competitive written bid" shall have the meaning as  
757 defined in paragraph (b) of this section. Governing authorities  
758 and agencies shall be exempt from this process when contracting  
759 for the services and products of a fuel management or fuel access  
760 systems under the terms of a state contract established by the  
761 Office of Purchasing and Travel.

762 (r) **Solid waste contract proposal procedure.** Before  
763 entering into any contract for garbage collection or disposal,  
764 contract for solid waste collection or disposal or contract for  
765 sewage collection or disposal, which involves an expenditure of  
766 more than Fifty Thousand Dollars (\$50,000.00), a governing  
767 authority or agency shall issue publicly a request for proposals  
768 concerning the specifications for such services which shall be  
769 advertised for in the same manner as provided in this section for  
770 seeking bids for purchases which involve an expenditure of more  
771 than the amount provided in paragraph (c) of this section. Any  
772 request for proposals when issued shall contain terms and  
773 conditions relating to price, financial responsibility,  
774 technology, legal responsibilities and other relevant factors as  
775 are determined by the governing authority or agency to be  
776 appropriate for inclusion; all factors determined relevant by the  
777 governing authority or agency or required by this paragraph (r)  
778 shall be duly included in the advertisement to elicit proposals.  
779 After responses to the request for proposals have been duly  
780 received, the governing authority or agency shall select the most  
781 qualified proposal or proposals on the basis of price, technology  
782 and other relevant factors and from such proposals, but not  
783 limited to the terms thereof, negotiate and enter contracts with



784 one or more of the persons or firms submitting proposals. If the  
785 governing authority or agency deems none of the proposals to be  
786 qualified or otherwise acceptable, the request for proposals  
787 process may be reinitiated. Notwithstanding any other provisions  
788 of this paragraph, where a county with at least thirty-five  
789 thousand (35,000) nor more than forty thousand (40,000)  
790 population, according to the 1990 federal decennial census, owns  
791 or operates a solid waste landfill, the governing authorities of  
792 any other county or municipality may contract with the governing  
793 authorities of the county owning or operating the landfill,  
794 pursuant to a resolution duly adopted and spread upon the minutes  
795 of each governing authority involved, for garbage or solid waste  
796 collection or disposal services through contract negotiations.

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

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

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

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

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

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

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

836 **SECTION 3.** Section 37-151-7, Mississippi Code of 1972, is  
837 amended as follows:

838 37-151-7. The annual allocation to each school district for  
839 the operation of the adequate education program shall be  
840 determined as follows:

841 (1) **Computation of the basic amount to be included for**  
842 **current operation in the adequate education program.** The  
843 following procedure shall be followed in determining the annual  
844 allocation to each school district:

845 (a) **Determination of average daily attendance.** During  
846 months two (2) and three (3) of the current school year, the  
847 average daily attendance of a school district shall be computed,  
848 or the average daily attendance for the prior school year shall be  
849 used, whichever is greater. The district's average daily

850 attendance shall be computed and currently maintained in  
851 accordance with regulations promulgated by the State Board of  
852 Education.

853           (b) **Determination of base student cost.** The State  
854 Board of Education, on or before August 1, with adjusted estimate  
855 no later than January 2, shall annually submit to the Legislative  
856 Budget Office and the Governor a proposed base student cost  
857 adequate to provide the following cost components of educating a  
858 pupil in an average school district meeting Level III  
859 accreditation standards required by the Commission on School  
860 Accreditation: (i) Instructional Cost; (ii) Administrative Cost;  
861 (iii) Operation and Maintenance of Plant; and (iv) Ancillary  
862 Support Cost. The department shall utilize a statistical  
863 methodology which considers such factors as, but not limited to,  
864 (i) school size; (ii) assessed valuation per pupil; (iii) the  
865 percentage of students receiving free lunch; (iv) the local  
866 district maintenance tax levy; (v) other local school district  
867 revenues; and (vi) the district's accreditation level, in the  
868 selection of the representative Mississippi school districts for  
869 which cost information shall be obtained for each of the above  
870 listed cost areas.

871           For the instructional cost component, the department shall  
872 determine the instructional cost of each of the representative  
873 school districts selected above, excluding instructional cost of  
874 self-contained special education programs and vocational education  
875 programs, and the average daily attendance in the selected school  
876 districts. The instructional cost is then totaled and divided by  
877 the total average daily attendance for the selected school  
878 districts to yield the instructional cost component. For the  
879 administrative cost component, the department shall determine the  
880 administrative cost of each of the representative school districts  
881 selected above, excluding administrative cost of self-contained  
882 special education programs and vocational education programs, and

883 the average daily attendance in the selected school districts.  
884 The administrative cost is then totaled and divided by the total  
885 average daily attendance for the selected school districts to  
886 yield the administrative cost component. For the plant and  
887 maintenance cost component, the department shall determine the  
888 plant and maintenance cost of each of the representative school  
889 districts selected above, excluding plant and maintenance cost of  
890 self-contained special education programs and vocational education  
891 programs, and the average daily attendance in the selected school  
892 districts. The plant and maintenance cost is then totaled and  
893 divided by the total average daily attendance for the selected  
894 school districts to yield the plant and maintenance cost  
895 component. For the ancillary support cost component, the  
896 department shall determine the ancillary support cost of each of  
897 the representative school districts selected above, excluding  
898 ancillary support cost of self-contained special education  
899 programs and vocational education programs, and the average daily  
900 attendance in the selected school districts. The ancillary  
901 support cost is then totaled and divided by the total average  
902 daily attendance for the selected school districts to yield the  
903 ancillary support cost component. The total base cost for each  
904 year shall be the sum of the instructional cost component,  
905 administrative cost component, plant and maintenance cost  
906 component and ancillary support cost component, and any estimated  
907 adjustments for additional state requirements as determined by the  
908 State Board of Education. Provided, however, that the base  
909 student cost in fiscal year 1998 shall be Two Thousand Six Hundred  
910 Sixty-four Dollars (\$2,664.00).

911 (c) **Determination of the basic adequate education**  
912 **program cost.** The basic amount for current operation to be  
913 included in the Mississippi Adequate Education Program for each  
914 school district shall be computed as follows:

915 Multiply the average daily attendance of the district by the  
916 base student cost as established by the Legislature, which yields  
917 the total base program cost for each school district.

918 (d) **Adjustment to the base student cost for at-risk**  
919 **pupils.** The amount to be included for at-risk pupil programs for  
920 each school district shall be computed as follows: Multiply the  
921 base student cost for the appropriate fiscal year as determined  
922 under paragraph (b) by five percent (5%), and multiply that  
923 product by the number of pupils participating in the federal free  
924 school lunch program in such school district, which yields the  
925 total adjustment for at-risk pupil programs for such school  
926 district.

927 (e) **Add-on program cost.** The amount to be allocated to  
928 school districts in addition to the adequate education program  
929 cost for add-on programs for each school district shall be  
930 computed as follows:

931 (i) Transportation cost shall be the amount  
932 allocated to such school district for the operational support of  
933 the district transportation system from state funds.

934 (ii) Vocational or technical education program  
935 cost shall be the amount allocated to such school district from  
936 state funds for the operational support of such programs.

937 (iii) Special education program cost shall be the  
938 amount allocated to such school district from state funds for the  
939 operational support of such programs.

940 (iv) Gifted education program cost shall be the  
941 amount allocated to such school district from state funds for the  
942 operational support of such programs.

943 (v) Alternative school program cost shall be the  
944 amount allocated to such school district from state funds for the  
945 operational support of such programs.

946 (vi) Extended school year programs shall be the  
947 amount allocated to school districts for those programs authorized  
948 by law which extend beyond the normal school year.

949 (vii) University-based programs shall be the  
950 amount allocated to school districts for those university-based  
951 programs for handicapped children as defined and provided for in  
952 Section 37-23-131 et seq., Mississippi Code of 1972.

953 (viii) Bus driver training programs shall be the  
954 amount provided for those driver training programs as provided for  
955 in Section 37-41-1, Mississippi Code of 1972.

956 The sum of the items listed above (i) transportation, (ii)  
957 vocational or technical education, (iii) special education, (iv)  
958 gifted education, (v) alternative school, (vi) extended school  
959 year, (vii) university-based, and (viii) bus driver training shall  
960 yield the add-on cost for each school district.

961 (f) **Total projected adequate education program cost.**  
962 The total Mississippi Adequate Education Program Cost shall be the  
963 sum of the total basic adequate education program cost (paragraph  
964 (c)), and the adjustment to the base student cost for at-risk  
965 pupils (paragraph (d)) for each school district.

966 (g) **Supplemental grant to school districts.** In  
967 addition to the adequate education program grant, the State  
968 Department of Education shall annually distribute an additional  
969 amount as follows: Multiply the base student cost for the  
970 appropriate fiscal year as determined under paragraph (b) by  
971 thirteen one-hundredths percent (.13%) and multiply that product  
972 by the average daily attendance of each school district. Such  
973 grant shall not be subject to the local revenue requirement  
974 provided in subsection (2).

975 (2) **Computation of the required local revenue in support of**  
976 **the adequate education program.** The amount that each district  
977 shall provide toward the cost of the adequate education program  
978 shall be calculated as follows:

979           (a) The State Board of Education shall certify to each  
980 school district that twenty-eight (28) mills, less the estimated  
981 amount of the yield of the School Ad Valorem Tax Reduction Fund  
982 grants as determined by the State Department of Education, is the  
983 millage rate required to provide the district required local  
984 effort for that year, or twenty-seven percent (27%) of the basic  
985 adequate education program cost for such school district as  
986 determined under subsection (c), whichever is a lesser amount. In  
987 the case of an agricultural high school the millage requirement  
988 shall be set at a level which generates an equitable amount per  
989 pupil to be determined by the State Board of Education.

990           (b) The State Board of Education shall determine (i)  
991 the total assessed valuation of nonexempt property for school  
992 purposes in each school district; (ii) assessed value of exempt  
993 property owned by homeowners aged sixty-five (65) or older or  
994 disabled as defined in Section 27-33-67(2), Mississippi Code of  
995 1972; (iii) the school district's tax loss from exemptions  
996 provided to applicants under the age of sixty-five (65) and not  
997 disabled as defined in Section 27-33-67(1), Mississippi Code of  
998 1972; and (iv) the school district's homestead reimbursement  
999 revenues.

1000           (c) The amount of the total adequate education program  
1001 funding which shall be contributed by each school district shall  
1002 be the sum of the ad valorem receipts generated by the millage  
1003 required under this subsection plus the following local revenue  
1004 sources for the appropriate fiscal year which are or may be  
1005 available for current expenditure by the school district:

1006           One hundred percent (100%) of Grand Gulf income as prescribed  
1007 in Section 27-35-309.

1008           **(3) Computation of the required state effort in support of**  
1009 **the adequate education program.**

1010           (a) The required state effort in support of the  
1011 adequate education program shall be determined by subtracting the

1012 sum of the required local tax effort as set forth in subsection  
1013 (2)(a) of this section and the other local revenue sources as set  
1014 forth in subsection (2)(c) of this section in an amount not to  
1015 exceed twenty-seven percent (27%) of the total projected adequate  
1016 education program cost as set forth in subsection (1)(f) of this  
1017 section from the total projected adequate education program cost  
1018 as set forth in subsection (1)(f) of this section.

1019 (b) Provided, however, that in fiscal year 1998 and in  
1020 the fiscal year in which the adequate education program is fully  
1021 funded by the Legislature, any increase in the said state  
1022 contribution, including the supplemental grant to school districts  
1023 provided under subsection (1)(g), to any district calculated under  
1024 this section shall be not less than eight percent (8%) in excess  
1025 of the amount received by said district from state funds for the  
1026 fiscal year immediately preceding. For purposes of this paragraph  
1027 (b), state funds shall include minimum program funds less the  
1028 add-on programs, State Uniform Millage Assistance Grant Funds,  
1029 Education Enhancement Funds appropriated for Uniform Millage  
1030 Assistance Grants and state textbook allocations, and State  
1031 General Funds allocated for textbooks.

1032 (c) If the appropriation is less than full funding for  
1033 fiscal year 2003, allocations for state contributions to school  
1034 districts in support of the adequate education program will be  
1035 determined by the State Department of Education in the following  
1036 manner:

1037 (i) Calculation of the full funding amount under  
1038 this chapter, with proportionate reductions as required by the  
1039 appropriation level.

1040 (ii) Calculation of the amount equal to the state  
1041 funds allocated to school districts for fiscal year 2002 plus the  
1042 estimated amount to fund the adequate education program salary  
1043 schedule for fiscal year 2003. For purposes of this item (ii),  
1044 state funds shall be those described in paragraph (b) and an



1045 amount equal to the allocation for the adequate education program  
1046 in fiscal year 2002, plus any additional amount required to  
1047 satisfy fiscal year 2003 pledges in accordance with paragraphs  
1048 (d), (e) and (f) of subsection (5) of this section. If a school  
1049 district's fiscal year 2003 pledge is different than the pledge  
1050 amount for fiscal year 2002, the district shall receive an amount  
1051 equal to the fiscal year 2003 pledge or the amount of funds  
1052 calculated under the adequate education formula for fiscal year  
1053 2002 before any pledge guarantee for fiscal year 2002, whichever  
1054 is greater. If the pledge is no longer in effect, the district  
1055 shall receive the amount of funds calculated under the formula for  
1056 fiscal year 2002 before any pledge guarantee for fiscal year 2002.

1057 (iii) The portion of any district's allocation  
1058 calculated in item (i) of this paragraph which exceeds amounts as  
1059 calculated in item (ii) shall be reduced by an amount not to  
1060 exceed twenty-one percent (21%). The amount of funds generated by  
1061 this reduction of funds shall be redistributed proportionately  
1062 among those districts receiving insufficient funds to meet the  
1063 amount calculated in item (ii). In no case may any district  
1064 receive funds in an amount greater than the amount that the  
1065 district would have received under full funding of the program for  
1066 fiscal year 2003.

1067 (d) If the school board of any school district shall  
1068 determine that it is not economically feasible or practicable to  
1069 operate any school within the district for the full one hundred  
1070 eighty (180) days required for a school term of a scholastic year  
1071 as required in Section 37-13-63, Mississippi Code of 1972, due to  
1072 an enemy attack, a man-made, technological or natural disaster in  
1073 which the Governor has declared a disaster emergency under the  
1074 laws of this state or the President of the United States has  
1075 declared an emergency or major disaster to exist in this state,  
1076 said school board may notify the State Department of Education of  
1077 such disaster and submit a plan for altering the school term. If

1078 the State Board of Education finds such disaster to be the cause  
1079 of the school not operating for the contemplated school term and  
1080 that such school was in a school district covered by the  
1081 Governor's or President's disaster declaration, it may permit said  
1082 school board to operate the schools in its district for less than  
1083 one hundred eighty (180) days and, in such case, the State  
1084 Department of Education shall not reduce the state contributions  
1085 to the adequate education program allotment for such district,  
1086 because of the failure to operate said schools for one hundred  
1087 eighty (180) days.

1088 (4) If during the year for which adequate education program  
1089 funds are appropriated, any school district experiences a three  
1090 percent (3%) or greater increase in average daily attendance  
1091 during the second and third month over the preceding year's second  
1092 and third month and the school district has requested a minimum  
1093 increase of four percent (4%) in local ad valorem revenues over  
1094 the previous year as authorized in Sections 37-57-104 and  
1095 37-57-105, an additional allocation of adequate education program  
1096 funds calculated in the following manner shall be granted to that  
1097 district, using any additional funds available to the Department  
1098 of Education that exceed the amount of funds due to the school  
1099 districts under the basic adequate education program distribution  
1100 as provided for in this chapter:

1101 (a) Determine the percentage increase in average daily  
1102 attendance for the second and third months of the year for which  
1103 adequate education program funds are appropriated over the  
1104 preceding year's second and third month average daily attendance.

1105 (b) For those districts that have a three percent (3%)  
1106 or greater increase as calculated in paragraph (a) of this  
1107 subsection, multiply the total increase in students in average  
1108 daily attendance for the second and third months of the year for  
1109 which adequate education program funds are appropriated over the

1110 preceding year's second and third month average daily attendance  
1111 times the base student cost used in the appropriation.

1112 (c) Subtract the percentage of the district's local  
1113 contribution arrived at in subsection (2) of this section from the  
1114 amount calculated in paragraph (b) of this subsection. The  
1115 remainder is the additional allocation in adequate education  
1116 program funds for that district.

1117 If the funds available to the Department of Education are not  
1118 sufficient to fully fund the additional allocations to school  
1119 districts eligible for those allocations, then the department  
1120 shall prorate the available funds among the eligible school  
1121 districts, using the same percentage of the total funds that the  
1122 school district would have received if the allocations were fully  
1123 funded. The State Department of Education shall study and develop  
1124 a report to the Chairmen of the Senate and House Committees on  
1125 Education by January 1, 2005, with options for legislative  
1126 consideration that will insure that the Mississippi Adequate  
1127 Education funds are distributed to school districts based on  
1128 current year student attendance or enrollment.

1129 This subsection (4) shall stand repealed on July 1, 2006.

1130 (5) The Interim School District Capital Expenditure Fund is  
1131 hereby established in the State Treasury which shall be used to  
1132 distribute any funds specifically appropriated by the Legislature  
1133 to such fund to school districts entitled to increased allocations  
1134 of state funds under the adequate education program funding  
1135 formula prescribed in Sections 37-151-3 through 37-151-7,  
1136 Mississippi Code of 1972, until such time as the said adequate  
1137 education program is fully funded by the Legislature. The  
1138 following percentages of the total state cost of increased  
1139 allocations of funds under the adequate education program funding  
1140 formula shall be appropriated by the Legislature into the Interim  
1141 School District Capital Expenditure Fund to be distributed to all  
1142 school districts under the formula: Nine and two-tenths percent

1143 (9.2%) shall be appropriated in fiscal year 1998, twenty percent  
1144 (20%) shall be appropriated in fiscal year 1999, forty percent  
1145 (40%) shall be appropriated in fiscal year 2000, sixty percent  
1146 (60%) shall be appropriated in fiscal year 2001, eighty percent  
1147 (80%) shall be appropriated in fiscal year 2002, and one hundred  
1148 percent (100%) shall be appropriated in fiscal year 2003 into the  
1149 State Adequate Education Program Fund created in subsection (4).  
1150 Until July 1, 2002, such money shall be used by school districts  
1151 for the following purposes:

1152 (a) Purchasing, erecting, repairing, equipping,  
1153 remodeling and enlarging school buildings and related facilities,  
1154 including gymnasiums, auditoriums, lunchrooms, vocational training  
1155 buildings, libraries, school barns and garages for transportation  
1156 vehicles, school athletic fields and necessary facilities  
1157 connected therewith, and purchasing land therefor. Any such  
1158 capital improvement project by a school district shall be approved  
1159 by the State Board of Education, and based on an approved  
1160 long-range plan. The State Board of Education shall promulgate  
1161 minimum requirements for the approval of school district capital  
1162 expenditure plans.

1163 (b) Providing necessary water, light, heating, air  
1164 conditioning, and sewerage facilities for school buildings, and  
1165 purchasing land therefor.

1166 (c) Paying debt service on existing capital improvement  
1167 debt of the district or refinancing outstanding debt of a district  
1168 if such refinancing will result in an interest cost savings to the  
1169 district.

1170 (d) From and after October 1, 1997, through June 30,  
1171 1998, pursuant to a school district capital expenditure plan  
1172 approved by the State Department of Education, a school district  
1173 may pledge such funds until July 1, 2002, plus funds provided for  
1174 in paragraph (e) of this subsection (5) that are not otherwise  
1175 permanently pledged under such paragraph (e) to pay all or a

1176 portion of the debt service on debt issued by the school district  
1177 under Sections 37-59-1 through 37-59-45, 37-59-101 through  
1178 37-59-115, 37-7-351 through 37-7-359, 37-41-89 through 37-41-99,  
1179 37-7-301, 37-7-302 and 37-41-81, Mississippi Code of 1972, or debt  
1180 issued by boards of supervisors for agricultural high schools  
1181 pursuant to Section 37-27-65, Mississippi Code of 1972, or  
1182 lease-purchase contracts entered into pursuant to Section 31-7-13,  
1183 Mississippi Code of 1972, or to retire or refinance outstanding  
1184 debt of a district, if such pledge is accomplished pursuant to a  
1185 written contract or resolution approved and spread upon the  
1186 minutes of an official meeting of the district's school board or  
1187 board of supervisors. It is the intent of this provision to allow  
1188 school districts to irrevocably pledge their Interim School  
1189 District Capital Expenditure Fund allotments as a constant stream  
1190 of revenue to secure a debt issued under the foregoing code  
1191 sections. To allow school districts to make such an irrevocable  
1192 pledge, the state shall take all action necessary to ensure that  
1193 the amount of a district's Interim School District Capital  
1194 Expenditure Fund allotments shall not be reduced below the amount  
1195 certified by the department or the district's total allotment  
1196 under the Interim Capital Expenditure Fund if fully funded, so  
1197 long as such debt remains outstanding.

1198 (e) From and after October 1, 1997, through June 30,  
1199 1998, in addition to any other authority a school district may  
1200 have, any school district may issue State Aid Capital Improvement  
1201 Bonds secured in whole by a continuing annual pledge of any  
1202 Mississippi Adequate Education Program funds available to the  
1203 district, in an amount not to exceed One Hundred Sixty Dollars  
1204 (\$160.00) per pupil based on the latest completed average daily  
1205 attendance count certified by the department prior to the issuance  
1206 of the bonds. Such State Aid Capital Improvement Bonds may be  
1207 issued for the purposes enumerated in paragraphs (a), (b), (c) and  
1208 (g) of this section. Prior to issuing such bonds, the school

1209 board of the district shall adopt a resolution declaring the  
1210 necessity for and its intention of issuing such bonds and  
1211 borrowing such money, specifying the approximate amount to be so  
1212 borrowed, how such money is to be used and how such indebtedness  
1213 is to be evidenced. Any capital improvement project financed with  
1214 State Aid Capital Improvement Bonds shall be approved by the  
1215 department, and based on an approved long-range plan. The State  
1216 Board of Education shall promulgate minimum requirements for the  
1217 approval of such school district capital expenditure plans. The  
1218 State Board of Education shall not approve any capital expenditure  
1219 plan for a pledge of funds under this paragraph unless it  
1220 determines (i) that the quality of instruction in such district  
1221 will not be reduced as a result of this pledge, and (ii) the  
1222 district has other revenue available to attain and maintain at  
1223 least Level III accreditation.

1224 A district issuing State Aid Capital Improvement Bonds may  
1225 pledge for the repayment of such bonds all funds received by the  
1226 district from the state, in an amount not to exceed One Hundred  
1227 Sixty Dollars (\$160.00) per pupil in average daily attendance in  
1228 the school district as set forth above, and not otherwise  
1229 permanently pledged under paragraph (d) of this subsection or  
1230 under Section 37-61-33(2)(d), Mississippi Code of 1972. The  
1231 district's school board shall specify by resolution the amount of  
1232 state funds, which are being pledged by the district for the  
1233 repayment of the State Aid Capital Improvement Bonds. Once such a  
1234 pledge is made to secure the bonds, the district shall notify the  
1235 department of such pledge. Upon making such a pledge, the school  
1236 district may request the department which may agree to irrevocably  
1237 transfer a specified amount or percentage of the district's state  
1238 revenue pledged to repay the district's State Aid Capital  
1239 Improvement Bonds directly to a state or federally chartered bank  
1240 serving as a trustee or paying agent on such bonds for the payment  
1241 of all or portion of such State Aid Capital Improvement Bonds.

1242 Such instructions shall be incorporated into a resolution by the  
1243 school board for the benefit of holders of the bonds and may  
1244 provide that such withholding and transfer of such other available  
1245 funds shall be made only upon notification by a trustee or paying  
1246 agent on such bonds that the amounts available to pay such bonds  
1247 on any payment date will not be sufficient. It is the intent of  
1248 this provision to allow school districts to irrevocably pledge a  
1249 certain, constant stream of revenue as security for State Aid  
1250 Capital Improvement Bonds issued hereunder. To allow school  
1251 districts to make such an irrevocable pledge, the state shall take  
1252 all action necessary to ensure that the amount of a district's  
1253 state revenues up to an amount equal to One Hundred Sixty Dollars  
1254 (\$160.00) per pupil as set forth above which have been pledged to  
1255 repay debt as set forth herein shall not be reduced so long as any  
1256 State Aid Capital Improvement Bonds are outstanding.

1257 Any such State Aid Capital Improvement Bonds shall mature as  
1258 determined by the district's school bond over a period not to  
1259 exceed twenty (20) years. Such bonds shall not bear a greater  
1260 overall maximum interest rate to maturity than that allowed in  
1261 Section 75-17-101, Mississippi Code of 1972. The further details  
1262 and terms of such bonds shall be as determined by the school board  
1263 of the district.

1264 The provisions of this subsection shall be cumulative and  
1265 supplemental to any existing funding programs or other authority  
1266 conferred upon school districts or school boards. Debt of a  
1267 school district secured in whole by a pledge of revenue pursuant  
1268 to this section shall not be subject to any debt limitation.

1269 For purposes of this paragraph (e), "State Aid Capital  
1270 Improvement Bond" shall mean any bond, note, or other certificate  
1271 of indebtedness issued by a school district under the provisions  
1272 hereof.

1273 This paragraph (e) shall stand repealed from and after June  
1274 30, 1998.

1275           (f) As an alternative to the authority granted under  
1276 paragraph (e), a school district, in its discretion, may authorize  
1277 the State Board of Education to withhold an amount of the  
1278 district's adequate education program allotment equal to up to One  
1279 Hundred Sixty Dollars (\$160.00) per student in average daily  
1280 attendance in the district to be allocated to the State Public  
1281 School Building Fund to the credit of such school district. A  
1282 school district may choose the option provided under this  
1283 paragraph (e) or paragraph (f), but not both. In addition to the  
1284 grants made by the state pursuant to Section 37-47-9, a school  
1285 district shall be entitled to grants based on the allotments to  
1286 the State Public School Building Fund credited to such school  
1287 district under this paragraph. This paragraph (f) shall stand  
1288 repealed from and after June 30, 1998.

1289           (g) The State Board of Education may authorize the  
1290 school district to expend not more than twenty percent (20%) of  
1291 its annual allotment of such funds or Twenty Thousand Dollars  
1292 (\$20,000.00), whichever is greater, for technology needs of the  
1293 school district, including computers, software,  
1294 telecommunications, cable television, interactive video, film  
1295 low-power television, satellite communications, microwave  
1296 communications, technology-based equipment installation and  
1297 maintenance, and the training of staff in the use of such  
1298 technology-based instruction. Any such technology expenditure  
1299 shall be reflected in the local district technology plan approved  
1300 by the State Board of Education under Section 37-151-17,  
1301 Mississippi Code of 1972.

1302           (h) To the extent a school district has not utilized  
1303 twenty percent (20%) of its annual allotment for technology  
1304 purposes under paragraph (g), a school district may expend not  
1305 more than twenty percent (20%) of its annual allotment or Twenty  
1306 Thousand Dollars (\$20,000.00), whichever is greater, for  
1307 instructional purposes. The State Board of Education may



1308 authorize a school district to expend more than said twenty  
1309 percent (20%) of its annual allotment for instructional purposes  
1310 if it determines that such expenditures are needed for  
1311 accreditation purposes.

1312 (i) The State Department of Education or the State  
1313 Board of Education may require that any project commenced under  
1314 this section with an estimated project cost of more than  
1315 Twenty-five Million Dollars (\$25,000,000.00) shall be done \* \* \*  
1316 pursuant to program management of the process with respect to  
1317 design and construction. No project management of the process  
1318 with respect to design and construction shall be used for any  
1319 project with an estimated project cost of less than Twenty-five  
1320 Million Dollars (\$25,000,000.00). Any individuals, partnerships,  
1321 companies or other entities acting as a program manager on behalf  
1322 of a local school district and performing program management  
1323 services for projects covered under this subsection shall be  
1324 approved by the State Department of Education.

1325 Any interest accruing on any unexpended balance in the  
1326 Interim School District Capital Expenditure Fund shall be invested  
1327 by the State Treasurer and placed to the credit of each school  
1328 district participating in such fund in its proportionate share.

1329 The provisions of this subsection (5) shall be cumulative and  
1330 supplemental to any existing funding programs or other authority  
1331 conferred upon school districts or school boards.

1332 **SECTION 4.** This act shall take effect and be in force from  
1333 and after July 1, 2005.