

By: Representative Moore

To: Labor; Judiciary B

HOUSE BILL NO. 1524

1 AN ACT TO AUTHORIZE THE SECURE AND VERIFIABLE DOCUMENT; TO
2 PROHIBIT A PUBLIC ENTITY FROM ACCEPTING, RELYING OR UTILIZING ANY
3 IDENTIFICATION DOCUMENT THAT IS NOT SECURE AND VERIFIABLE; TO
4 PROVIDE PENALTIES FOR VIOLATION; TO AMEND SECTION 31-5-17,
5 MISSISSIPPI CODE OF 1972, TO PROHIBIT THE AWARDING OF STATE
6 CONTRACTS TO CONTRACTORS THAT HAVE PERSONS WHO ARE NOT AMERICAN
7 CITIZENS OR LEGAL ALIENS WHO WILL WORK UNDER THE STATE CONTRACT;
8 TO REQUIRE THAT EVERY PUBLIC OFFICER, CONTRACTOR, OR AGENT WHO
9 ENGAGES IN OR IS IN CHARGE OF THE CONSTRUCTION OF ANY STATE
10 BUILDING OR PUBLIC WORK FOR THE STATE EMPLOY ONLY WORKERS WHO ARE
11 AMERICAN CITIZENS OR LEGAL ALIENS OR WHO HAVE SOME SPECIALTY FOR
12 WHICH AMERICAN CITIZENS OR LEGAL ALIENS CANNOT BE FOUND; TO ASSESS
13 PENALTIES AGAINST THOSE CONTRACTORS WHO VIOLATE THIS REQUIREMENT;
14 TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO PROHIBIT
15 STATE AGENCIES AND GOVERNING AUTHORITIES FROM ACCEPTING BIDS FROM
16 OR ENTERING INTO A CONTRACT WITH A CONTRACTOR OR VENDOR THAT HAS
17 PERSONS WHO ARE NOT AMERICAN CITIZENS OR LEGAL ALIENS WHO WILL
18 WORK UNDER THE CONTRACT; TO ALLOW CONTRACTORS OR VENDORS ENTERING
19 INTO A CONTRACT WITH STATE AGENCIES TO HAVE PERSONS WHO WILL WORK
20 UNDER THE CONTRACT WHO HAVE SOME SPECIALTY FOR WHICH AMERICAN
21 CITIZENS OR LEGAL ALIENS CANNOT BE FOUND; TO ASSESS PENALTIES
22 AGAINST THOSE CONTRACTORS WHO VIOLATE THIS REQUIREMENT; TO AMEND
23 SECTION 45-1-3, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
24 COMMISSIONER OF PUBLIC SAFETY TO CREATE RULES TO DIRECT LAW
25 ENFORCEMENT OFFICERS TO ASSIST THE FEDERAL GOVERNMENT WITH
26 IMMIGRATION EFFORTS; AND FOR RELATED PURPOSES.

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

28 **SECTION 1.** (1) The following words and phrases shall have
29 the meanings ascribed in this section:

30 (a) "Children" means children as defined by 42 USCS
31 Section 1786(b).

32 (b) "Infants" means infants as defined by 42 USCS
33 Section 1786 (b).

34 (c) "Public entity" means an agency, department, board,
35 division, bureau, commission, council or political subdivision of
36 the state.

37 (d) "Public official" means an elected or appointed
38 official, an employee or an agent of a public entity.

39 (e) "Secure and verifiable document" means a document
40 issued by a state or federal jurisdiction or recognized by the
41 United States government and that is verifiable by federal or
42 state law enforcement, intelligence or homeland security agencies.

43 (2) (a) A public entity that provides services shall not
44 accept, rely upon or utilize an identification document to provide
45 services unless it is a secure and verifiable document.

46 (b) A public entity that is issuing an identification
47 card, license, permit or official document shall not authorize
48 acceptance of an identification document, nor shall a public
49 official acting in an official capacity accept an identification
50 document before issuing such documents, unless such identification
51 document is a secure and verifiable document.

52 (3) Information gathered pursuant to subsection (5) of this
53 section shall be a public record unless the subject of the
54 information is a juvenile or the information concerns an ongoing
55 criminal investigation. Such records shall be retained for three
56 (3) years, but may be disposed of after three (3) years.

57 (4) (a) Actions taken in knowing violation of this article
58 shall not be protected by governmental immunity provided to public
59 employees.

60 (b) A peace officer who, in the performance of the
61 officer's duties, utilizes identification that is not secure and
62 verifiable shall not forfeit governmental immunity pursuant to
63 this section if such officer:

64 (i) Gathers all information from such
65 identification; and

66 (ii) If feasible, according to any applicable law
67 enforcement agency guidelines, gathers fingerprint information
68 from such person and stores such fingerprints for at least one (1)
69 year as a criminal justice record.

70 (5) This article shall not apply to a person reporting a
71 crime; a public entity or official accepting a crime report,

72 conducting a criminal investigation, accepting an application for
73 the provision of services or providing services to infants and
74 children born in the United States pursuant to 42 USCS Section
75 1786, or providing emergency medical service; a peace officer in
76 the performance of the officer's duties and within the scope of
77 the officer's employment if such officer complies with subsection
78 (2) of this section; or instances when a federal law mandates
79 acceptance of a document.

80 **SECTION 2.** Section 31-5-17, Mississippi Code of 1972, is
81 amended as follows:

82 31-5-17. (1) Every public officer, contractor,
83 superintendent or agent engaged in or in charge of the
84 construction of any state or public building or public work of any
85 kind for the State of Mississippi or for any board, city
86 commission, governmental agency or municipality of the State of
87 Mississippi shall employ only workmen and laborers who have
88 actually resided in Mississippi for two (2) years next preceding
89 such employment.

90 (2) No state contract shall be awarded to a contractor that
91 has persons who are not American citizens or legal aliens who will
92 work under the state contract. However, a state contract may be
93 awarded to a contractor that has persons who will work under the
94 state contract who have some specialty for which American citizens
95 or legal aliens cannot be found. Every public officer,
96 contractor, superintendent or agent engaged in or in charge of the
97 construction of any state building or public work of any kind for
98 the State of Mississippi shall employ only workmen and laborers
99 who are American citizens or legal aliens or who have some
100 specialty for which American citizens or legal aliens cannot be
101 found.

102 Any person who violates the provisions of this subsection
103 shall be assessed the following penalties: (a) For the first
104 offense, One Thousand Dollars (\$1,000.00) for every person who is

105 not an American citizen or legal alien as required, (b) For any
106 subsequent violation, a contractor shall pay a civil penalty equal
107 to three percent (3%) of the total contract being performed by the
108 contractor and such contractor's license shall be revoked.

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

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

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

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

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

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

161 (i) **Publication requirement.** Purchases which
162 involve an expenditure of more than Fifteen Thousand Dollars
163 (\$15,000.00), exclusive of freight and shipping charges, may be
164 made from the lowest and best bidder after advertising for
165 competitive sealed bids once each week for two (2) consecutive
166 weeks in a regular newspaper published in the county or
167 municipality in which such agency or governing authority is
168 located. The date as published for the bid opening shall not be
169 less than seven (7) working days after the last published notice;
170 however, if the purchase involves a construction project in which

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

192 (ii) **Bidding process amendment procedure.** If all
193 plans and/or specifications are published in the notification,
194 then the plans and/or specifications may not be amended. If all
195 plans and/or specifications are not published in the notification,
196 then amendments to the plans/specifications, bid opening date, bid
197 opening time and place may be made, provided that the agency or
198 governing authority maintains a list of all prospective bidders
199 who are known to have received a copy of the bid documents and all
200 such prospective bidders are sent copies of all amendments. This
201 notification of amendments may be made via mail, facsimile,
202 electronic mail or other generally accepted method of information
203 distribution. No addendum to bid specifications may be issued

204 within two (2) working days of the time established for the
205 receipt of bids unless such addendum also amends the bid opening
206 to a date not less than five (5) working days after the date of
207 the addendum.

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

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

233 (v) Agencies and governing authorities may
234 establish secure procedures by which bids may be submitted via
235 electronic means.

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

237 (i) **Decision procedure.** Purchases may be made
238 from the lowest and best bidder. In determining the lowest and
239 best bid, freight and shipping charges shall be included.
240 Life-cycle costing, total cost bids, warranties, guaranteed
241 buy-back provisions and other relevant provisions may be included
242 in the best bid calculation. All best bid procedures for state
243 agencies must be in compliance with regulations established by the
244 Department of Finance and Administration. If any governing
245 authority accepts a bid other than the lowest bid actually
246 submitted, it shall place on its minutes detailed calculations and
247 narrative summary showing that the accepted bid was determined to
248 be the lowest and best bid, including the dollar amount of the
249 accepted bid and the dollar amount of the lowest bid. No agency
250 or governing authority shall accept a bid based on items not
251 included in the specifications.

252 (ii) **Decision procedure for Certified Purchasing**
253 **Offices.** In addition to the decision procedure set forth in
254 paragraph (d)(i), Certified Purchasing Offices may also use the
255 following procedure: Purchases may be made from the bidder
256 offering the best value. In determining the best value bid,
257 freight and shipping charges shall be included. Life-cycle
258 costing, total cost bids, warranties, guaranteed buy-back
259 provisions, documented previous experience, training costs and
260 other relevant provisions may be included in the best value
261 calculation. This provision shall authorize Certified Purchasing
262 Offices to utilize a Request For Proposals (RFP) process when
263 purchasing commodities. All best value procedures for state
264 agencies must be in compliance with regulations established by the
265 Department of Finance and Administration. No agency or governing
266 authority shall accept a bid based on items or criteria not
267 included in the specifications.

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

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

274 (e) **Lease-purchase authorization.** For the purposes of
275 this section, the term "equipment" shall mean equipment, furniture
276 and, if applicable, associated software and other applicable
277 direct costs associated with the acquisition. Any lease-purchase
278 of equipment which an agency is not required to lease-purchase
279 under the master lease-purchase program pursuant to Section
280 31-7-10 and any lease-purchase of equipment which a governing
281 authority elects to lease-purchase may be acquired by a
282 lease-purchase agreement under this paragraph (e). Lease-purchase
283 financing may also be obtained from the vendor or from a
284 third-party source after having solicited and obtained at least
285 two (2) written competitive bids, as defined in paragraph (b) of
286 this section, for such financing without advertising for such
287 bids. Solicitation for the bids for financing may occur before or
288 after acceptance of bids for the purchase of such equipment or,
289 where no such bids for purchase are required, at any time before
290 the purchase thereof. No such lease-purchase agreement shall be
291 for an annual rate of interest which is greater than the overall
292 maximum interest rate to maturity on general obligation
293 indebtedness permitted under Section 75-17-101, and the term of
294 such lease-purchase agreement shall not exceed the useful life of
295 equipment covered thereby as determined according to the upper
296 limit of the asset depreciation range (ADR) guidelines for the
297 Class Life Asset Depreciation Range System established by the
298 Internal Revenue Service pursuant to the United States Internal
299 Revenue Code and regulations thereunder as in effect on December
300 31, 1980, or comparable depreciation guidelines with respect to
301 any equipment not covered by ADR guidelines. Any lease-purchase
302 agreement entered into pursuant to this paragraph (e) may contain

303 any of the terms and conditions which a master lease-purchase
304 agreement may contain under the provisions of Section 31-7-10(5),
305 and shall contain an annual allocation dependency clause
306 substantially similar to that set forth in Section 31-7-10(8).
307 Each agency or governing authority entering into a lease-purchase
308 transaction pursuant to this paragraph (e) shall maintain with
309 respect to each such lease-purchase transaction the same
310 information as required to be maintained by the Department of
311 Finance and Administration pursuant to Section 31-7-10(13).
312 However, nothing contained in this section shall be construed to
313 permit agencies to acquire items of equipment with a total
314 acquisition cost in the aggregate of less than Ten Thousand
315 Dollars (\$10,000.00) by a single lease-purchase transaction. All
316 equipment, and the purchase thereof by any lessor, acquired by
317 lease-purchase under this paragraph and all lease-purchase
318 payments with respect thereto shall be exempt from all Mississippi
319 sales, use and ad valorem taxes. Interest paid on any
320 lease-purchase agreement under this section shall be exempt from
321 State of Mississippi income taxation.

322 (f) **Alternate bid authorization.** When necessary to
323 ensure ready availability of commodities for public works and the
324 timely completion of public projects, no more than two (2)
325 alternate bids may be accepted by a governing authority for
326 commodities. No purchases may be made through use of such
327 alternate bids procedure unless the lowest and best bidder cannot
328 deliver the commodities contained in his bid. In that event,
329 purchases of such commodities may be made from one (1) of the
330 bidders whose bid was accepted as an alternate.

331 (g) **Construction contract change authorization.** In the
332 event a determination is made by an agency or governing authority
333 after a construction contract is let that changes or modifications
334 to the original contract are necessary or would better serve the
335 purpose of the agency or the governing authority, such agency or

336 governing authority may, in its discretion, order such changes
337 pertaining to the construction that are necessary under the
338 circumstances without the necessity of further public bids;
339 provided that such change shall be made in a commercially
340 reasonable manner and shall not be made to circumvent the public
341 purchasing statutes. In addition to any other authorized person,
342 the architect or engineer hired by an agency or governing
343 authority with respect to any public construction contract shall
344 have the authority, when granted by an agency or governing
345 authority, to authorize changes or modifications to the original
346 contract without the necessity of prior approval of the agency or
347 governing authority when any such change or modification is less
348 than one percent (1%) of the total contract amount. The agency or
349 governing authority may limit the number, manner or frequency of
350 such emergency changes or modifications.

351 (h) **Petroleum purchase alternative.** In addition to
352 other methods of purchasing authorized in this chapter, when any
353 agency or governing authority shall have a need for gas, diesel
354 fuel, oils and/or other petroleum products in excess of the amount
355 set forth in paragraph (a) of this section, such agency or
356 governing authority may purchase the commodity after having
357 solicited and obtained at least two (2) competitive written bids,
358 as defined in paragraph (b) of this section. If two (2)
359 competitive written bids are not obtained, the entity shall comply
360 with the procedures set forth in paragraph (c) of this section.
361 In the event any agency or governing authority shall have
362 advertised for bids for the purchase of gas, diesel fuel, oils and
363 other petroleum products and coal and no acceptable bids can be
364 obtained, such agency or governing authority is authorized and
365 directed to enter into any negotiations necessary to secure the
366 lowest and best contract available for the purchase of such
367 commodities.

368 (i) **Road construction petroleum products price**
369 **adjustment clause authorization.** Any agency or governing
370 authority authorized to enter into contracts for the construction,
371 maintenance, surfacing or repair of highways, roads or streets,
372 may include in its bid proposal and contract documents a price
373 adjustment clause with relation to the cost to the contractor,
374 including taxes, based upon an industry-wide cost index, of
375 petroleum products including asphalt used in the performance or
376 execution of the contract or in the production or manufacture of
377 materials for use in such performance. Such industry-wide index
378 shall be established and published monthly by the Mississippi
379 Department of Transportation with a copy thereof to be mailed,
380 upon request, to the clerks of the governing authority of each
381 municipality and the clerks of each board of supervisors
382 throughout the state. The price adjustment clause shall be based
383 on the cost of such petroleum products only and shall not include
384 any additional profit or overhead as part of the adjustment. The
385 bid proposals or document contract shall contain the basis and
386 methods of adjusting unit prices for the change in the cost of
387 such petroleum products.

388 (j) **State agency emergency purchase procedure.** If the
389 governing board or the executive head, or his designee, of any
390 agency of the state shall determine that an emergency exists in
391 regard to the purchase of any commodities or repair contracts, so
392 that the delay incident to giving opportunity for competitive
393 bidding would be detrimental to the interests of the state, then
394 the provisions herein for competitive bidding shall not apply and
395 the head of such agency shall be authorized to make the purchase
396 or repair. Total purchases so made shall only be for the purpose
397 of meeting needs created by the emergency situation. In the event
398 such executive head is responsible to an agency board, at the
399 meeting next following the emergency purchase, documentation of
400 the purchase, including a description of the commodity purchased,

401 the purchase price thereof and the nature of the emergency shall
402 be presented to the board and placed on the minutes of the board
403 of such agency. The head of such agency, or his designee, shall,
404 at the earliest possible date following such emergency purchase,
405 file with the Department of Finance and Administration (i) a
406 statement explaining the conditions and circumstances of the
407 emergency, which shall include a detailed description of the
408 events leading up to the situation and the negative impact to the
409 entity if the purchase is made following the statutory
410 requirements set forth in paragraph (a), (b) or (c) of this
411 section, and (ii) a certified copy of the appropriate minutes of
412 the board of such agency, if applicable. On or before September 1
413 of each year, the State Auditor shall prepare and deliver to the
414 Senate Fees, Salaries and Administration Committee, the House Fees
415 and Salaries of Public Officers Committee and the Joint
416 Legislative Budget Committee a report containing a list of all
417 state agency emergency purchases and supporting documentation for
418 each emergency purchase.

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

420 If the governing authority, or the governing authority acting
421 through its designee, shall determine that an emergency exists in
422 regard to the purchase of any commodities or repair contracts, so
423 that the delay incident to giving opportunity for competitive
424 bidding would be detrimental to the interest of the governing
425 authority, then the provisions herein for competitive bidding
426 shall not apply and any officer or agent of such governing
427 authority having general or special authority therefor in making
428 such purchase or repair shall approve the bill presented therefor,
429 and he shall certify in writing thereon from whom such purchase
430 was made, or with whom such a repair contract was made. At the
431 board meeting next following the emergency purchase or repair
432 contract, documentation of the purchase or repair contract,
433 including a description of the commodity purchased, the price

434 thereof and the nature of the emergency shall be presented to the
435 board and shall be placed on the minutes of the board of such
436 governing authority.

437 (1) **Hospital purchase, lease-purchase and lease**
438 **authorization.**

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

444 (ii) In addition to the authority granted in
445 subparagraph (i) of this paragraph (1), the commissioners or board
446 of trustees is authorized to enter into contracts for the lease of
447 equipment or services, or both, which it considers necessary for
448 the proper care of patients if, in its opinion, it is not
449 financially feasible to purchase the necessary equipment or
450 services. Any such contract for the lease of equipment or
451 services executed by the commissioners or board shall not exceed a
452 maximum of five (5) years' duration and shall include a
453 cancellation clause based on unavailability of funds. If such
454 cancellation clause is exercised, there shall be no further
455 liability on the part of the lessee. Any such contract for the
456 lease of equipment or services executed on behalf of the
457 commissioners or board that complies with the provisions of this
458 subparagraph (ii) shall be excepted from the bid requirements set
459 forth in this section.

460 (m) **Exceptions from bidding requirements.** Excepted
461 from bid requirements are:

462 (i) **Purchasing agreements approved by department.**
463 Purchasing agreements, contracts and maximum price regulations
464 executed or approved by the Department of Finance and
465 Administration.

466 (ii) **Outside equipment repairs.** Repairs to
467 equipment, when such repairs are made by repair facilities in the
468 private sector; however, engines, transmissions, rear axles and/or
469 other such components shall not be included in this exemption when
470 replaced as a complete unit instead of being repaired and the need
471 for such total component replacement is known before disassembly
472 of the component; however, invoices identifying the equipment,
473 specific repairs made, parts identified by number and name,
474 supplies used in such repairs, and the number of hours of labor
475 and costs therefor shall be required for the payment for such
476 repairs.

477 (iii) **In-house equipment repairs.** Purchases of
478 parts for repairs to equipment, when such repairs are made by
479 personnel of the agency or governing authority; however, entire
480 assemblies, such as engines or transmissions, shall not be
481 included in this exemption when the entire assembly is being
482 replaced instead of being repaired.

483 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
484 of gravel or fill dirt which are to be removed and transported by
485 the purchaser.

486 (v) **Governmental equipment auctions.** Motor
487 vehicles or other equipment purchased from a federal agency or
488 authority, another governing authority or state agency of the
489 State of Mississippi, or any governing authority or state agency
490 of another state at a public auction held for the purpose of
491 disposing of such vehicles or other equipment. Any purchase by a
492 governing authority under the exemption authorized by this
493 subparagraph (v) shall require advance authorization spread upon
494 the minutes of the governing authority to include the listing of
495 the item or items authorized to be purchased and the maximum bid
496 authorized to be paid for each item or items.

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

499 state agencies when such purchases, sales, transfers or trades are
500 made by a private treaty agreement or through means of
501 negotiation, from any federal agency or authority, another
502 governing authority or state agency of the State of Mississippi,
503 or any state agency or governing authority of another state.
504 Nothing in this section shall permit such purchases through public
505 auction except as provided for in subparagraph (v) of this
506 section. It is the intent of this section to allow governmental
507 entities to dispose of and/or purchase commodities from other
508 governmental entities at a price that is agreed to by both
509 parties. This shall allow for purchases and/or sales at prices
510 which may be determined to be below the market value if the
511 selling entity determines that the sale at below market value is
512 in the best interest of the taxpayers of the state. Governing
513 authorities shall place the terms of the agreement and any
514 justification on the minutes, and state agencies shall obtain
515 approval from the Department of Finance and Administration, prior
516 to releasing or taking possession of the commodities.

517 (vii) **Perishable supplies or food.** Perishable
518 supplies or foods purchased for use in connection with hospitals,
519 the school lunch programs, homemaking programs and for the feeding
520 of county or municipal prisoners.

521 (viii) **Single source items.** Noncompetitive items
522 available from one (1) source only. In connection with the
523 purchase of noncompetitive items only available from one (1)
524 source, a certification of the conditions and circumstances
525 requiring the purchase shall be filed by the agency with the
526 Department of Finance and Administration and by the governing
527 authority with the board of the governing authority. Upon receipt
528 of that certification the Department of Finance and Administration
529 or the board of the governing authority, as the case may be, may,
530 in writing, authorize the purchase, which authority shall be noted
531 on the minutes of the body at the next regular meeting thereafter.

532 In those situations, a governing authority is not required to
533 obtain the approval of the Department of Finance and
534 Administration.

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

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

559 (xi) **Information technology products.** Purchases
560 of information technology products made by governing authorities
561 under the provisions of purchase schedules, or contracts executed
562 or approved by the Mississippi Department of Information
563 Technology Services and designated for use by governing
564 authorities.

565 (xii) **Energy efficiency services and equipment.**
566 Energy efficiency services and equipment acquired by school
567 districts, community and junior colleges, institutions of higher
568 learning and state agencies or other applicable governmental
569 entities on a shared-savings, lease or lease-purchase basis
570 pursuant to Section 31-7-14.

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

575 (xiv) **Library books and other reference materials.**
576 Purchases by libraries or for libraries of books and periodicals;
577 processed film, video cassette tapes, filmstrips and slides;
578 recorded audio tapes, cassettes and diskettes; and any such items
579 as would be used for teaching, research or other information
580 distribution; however, equipment such as projectors, recorders,
581 audio or video equipment, and monitor televisions are not exempt
582 under this subparagraph.

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

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

589 (xvii) **Multichannel interactive video systems.**
590 From and after July 1, 1990, contracts by Mississippi Authority
591 for Educational Television with any private educational
592 institution or private nonprofit organization whose purposes are
593 educational in regard to the construction, purchase, lease or
594 lease-purchase of facilities and equipment and the employment of
595 personnel for providing multichannel interactive video systems
596 (ITSF) in the school districts of this state.

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

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

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

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

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

615 (xxii) **Garbage, solid waste and sewage contracts.**
616 Contracts for garbage collection or disposal, contracts for solid
617 waste collection or disposal and contracts for sewage collection
618 or disposal.

619 (xxiii) **Municipal water tank maintenance**
620 **contracts.** Professional maintenance program contracts for the
621 repair or maintenance of municipal water tanks, which provide
622 professional services needed to maintain municipal water storage
623 tanks for a fixed annual fee for a duration of two (2) or more
624 years.

625 (xxiv) **Purchases of Mississippi Industries for the**
626 **Blind products.** Purchases made by state agencies or governing
627 authorities involving any item that is manufactured, processed or
628 produced by the Mississippi Industries for the Blind.

629 (xxv) **Purchases of state-adopted textbooks.**
630 Purchases of state-adopted textbooks by public school districts.
631 (xxvi) **Certain purchases under the Mississippi**
632 **Major Economic Impact Act.** Contracts entered into pursuant to the
633 provisions of Section 57-75-9(2) and (3).

634 (xxvii) **Used heavy or specialized machinery or**
635 **equipment for installation of soil and water conservation**
636 **practices purchased at auction.** Used heavy or specialized
637 machinery or equipment used for the installation and
638 implementation of soil and water conservation practices or
639 measures purchased subject to the restrictions provided in
640 Sections 69-27-331 through 69-27-341. Any purchase by the State
641 Soil and Water Conservation Commission under the exemption
642 authorized by this subparagraph shall require advance
643 authorization spread upon the minutes of the commission to include
644 the listing of the item or items authorized to be purchased and
645 the maximum bid authorized to be paid for each item or items.

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

649 (xxix) **Purchases made pursuant to qualified**
650 **cooperative purchasing agreements.** Purchases made by certified
651 purchasing offices of state agencies or governing authorities
652 under cooperative purchasing agreements previously approved by the
653 Office of Purchasing and Travel and established by or for any
654 municipality, county, parish or state government or the federal
655 government, provided that the notification to potential
656 contractors includes a clause that sets forth the availability of
657 the cooperative purchasing agreement to other governmental
658 entities. Such purchases shall only be made if the use of the
659 cooperative purchasing agreements is determined to be in the best
660 interest of the government entity.

661 (xxx) **School yearbooks.** Purchases of school
662 yearbooks by state agencies or governing authorities; provided,
663 however, that state agencies and governing authorities shall use
664 for these purchases the RFP process as set forth in the
665 Mississippi Procurement Manual adopted by the Office of Purchasing
666 and Travel.

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

670 (n) **Term contract authorization.** All contracts for the
671 purchase of:

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

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

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

708 (p) **Electrical utility petroleum-based equipment**
709 **purchase procedure.** When in response to a proper advertisement
710 therefor, no bid firm as to price is submitted to an electric
711 utility for power transformers, distribution transformers, power
712 breakers, reclosers or other articles containing a petroleum
713 product, the electric utility may accept the lowest and best bid
714 therefor although the price is not firm.

715 (q) **Fuel management system bidding procedure.** Any
716 governing authority or agency of the state shall, before
717 contracting for the services and products of a fuel management or
718 fuel access system, enter into negotiations with not fewer than
719 two (2) sellers of fuel management or fuel access systems for
720 competitive written bids to provide the services and products for
721 the systems. In the event that the governing authority or agency
722 cannot locate two (2) sellers of such systems or cannot obtain
723 bids from two (2) sellers of such systems, it shall show proof
724 that it made a diligent, good-faith effort to locate and negotiate
725 with two (2) sellers of such systems. Such proof shall include,

726 but not be limited to, publications of a request for proposals and
727 letters soliciting negotiations and bids. For purposes of this
728 paragraph (q), a fuel management or fuel access system is an
729 automated system of acquiring fuel for vehicles as well as
730 management reports detailing fuel use by vehicles and drivers, and
731 the term "competitive written bid" shall have the meaning as
732 defined in paragraph (b) of this section. Governing authorities
733 and agencies shall be exempt from this process when contracting
734 for the services and products of a fuel management or fuel access
735 systems under the terms of a state contract established by the
736 Office of Purchasing and Travel.

737 (r) **Solid waste contract proposal procedure.** Before
738 entering into any contract for garbage collection or disposal,
739 contract for solid waste collection or disposal or contract for
740 sewage collection or disposal, which involves an expenditure of
741 more than Fifty Thousand Dollars (\$50,000.00), a governing
742 authority or agency shall issue publicly a request for proposals
743 concerning the specifications for such services which shall be
744 advertised for in the same manner as provided in this section for
745 seeking bids for purchases which involve an expenditure of more
746 than the amount provided in paragraph (c) of this section. Any
747 request for proposals when issued shall contain terms and
748 conditions relating to price, financial responsibility,
749 technology, legal responsibilities and other relevant factors as
750 are determined by the governing authority or agency to be
751 appropriate for inclusion; all factors determined relevant by the
752 governing authority or agency or required by this paragraph (r)
753 shall be duly included in the advertisement to elicit proposals.
754 After responses to the request for proposals have been duly
755 received, the governing authority or agency shall select the most
756 qualified proposal or proposals on the basis of price, technology
757 and other relevant factors and from such proposals, but not
758 limited to the terms thereof, negotiate and enter contracts with

759 one or more of the persons or firms submitting proposals. If the
760 governing authority or agency deems none of the proposals to be
761 qualified or otherwise acceptable, the request for proposals
762 process may be reinitiated. Notwithstanding any other provisions
763 of this paragraph, where a county with at least thirty-five
764 thousand (35,000) nor more than forty thousand (40,000)
765 population, according to the 1990 federal decennial census, owns
766 or operates a solid waste landfill, the governing authorities of
767 any other county or municipality may contract with the governing
768 authorities of the county owning or operating the landfill,
769 pursuant to a resolution duly adopted and spread upon the minutes
770 of each governing authority involved, for garbage or solid waste
771 collection or disposal services through contract negotiations.

772 (s) **Minority set-aside authorization.** Notwithstanding
773 any provision of this section to the contrary, any agency or
774 governing authority, by order placed on its minutes, may, in its
775 discretion, set aside not more than twenty percent (20%) of its
776 anticipated annual expenditures for the purchase of commodities
777 from minority businesses; however, all such set-aside purchases
778 shall comply with all purchasing regulations promulgated by the
779 Department of Finance and Administration and shall be subject to
780 bid requirements under this section. Set-aside purchases for
781 which competitive bids are required shall be made from the lowest
782 and best minority business bidder. For the purposes of this
783 paragraph, the term "minority business" means a business which is
784 owned by a majority of persons who are United States citizens or
785 permanent resident aliens (as defined by the Immigration and
786 Naturalization Service) of the United States, and who are Asian,
787 Black, Hispanic or Native American, according to the following
788 definitions:

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

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

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

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

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

808 (u) **Contract restrictions.** No agency or governing
809 authority shall accept a bid from or enter into a contract with a
810 contractor or vendor that has persons who are not American
811 citizens or legal aliens who will work under the contract.
812 However, an agency or governing authority may accept a bid from or
813 enter into a contract with a contractor or vendor that has persons
814 who will work under the contract who have some specialty for which
815 American citizens or legal aliens cannot be found. The agency or
816 governing authority shall require contractors and vendors
817 submitting bids to attach an affidavit stating that all persons
818 who will work under the contract are American citizens or legal
819 aliens or have some specialty for which American citizens or legal
820 aliens cannot be found.

821 Any contractor who attaches an affidavit without true
822 information about the persons who will work under the contract, or
823 has persons working under the contract in violation of the
824 requirements of the provisions of this subsection, shall be

825 assessed the following penalties: (a) For the first violation, a
826 contractor shall pay One Thousand Dollars (\$1,000.00) for every
827 person who is not an American citizen or legal alien as provided
828 in this subsection, (b) For any subsequent violation, a contractor
829 shall pay a civil penalty equal to three percent (3%) of the total
830 contract being performed by the contractor and such contractor's
831 license shall be revoked.

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

835 **SECTION 4.** Section 45-1-3, Mississippi Code of 1972, is
836 amended as follows:

837 45-1-3. (1) When not otherwise specifically provided, the
838 commissioner is authorized to make and promulgate reasonable rules
839 and regulations to be coordinated and carry out the general
840 provisions of the Highway Safety Patrol and Driver's License Law
841 of 1938.

842 (2) The commissioner is authorized to make and promulgate
843 reasonable rules and regulations to receive intelligence from
844 federal authorities relating to homeland security and ensure that,
845 to the extent allowed by law, all appropriate and necessary
846 intelligence and law enforcement of this state assist the federal
847 government relating to immigration and efforts to improve the
848 security of the borders, territorial waters and ports of the
849 United States.

850 **SECTION 5.** This act shall take effect and be in force from
851 and after July 1, 2005.