

By: Representatives Miles, Clarke

To: Transportation

HOUSE BILL NO. 351  
(As Passed the House)

1 AN ACT TO AUTHORIZE THE MISSISSIPPI TRANSPORTATION  
2 COMMISSION, COUNTY BOARDS OF SUPERVISORS AND THE GOVERNING  
3 AUTHORITIES OF MUNICIPALITIES TO CONSTRUCT, INDIVIDUALLY OR  
4 JOINTLY WITH OTHER GOVERNMENTAL ENTITIES, TOLL ROAD OR TOLL BRIDGE  
5 PROJECTS WITHIN THE STATE; TO AUTHORIZE THE MISSISSIPPI  
6 TRANSPORTATION COMMISSION, COUNTY BOARDS OF SUPERVISORS AND THE  
7 GOVERNING AUTHORITIES OF MUNICIPALITIES TO CONTRACT WITH ANY  
8 PERSON, CORPORATION OR OTHER BUSINESS LICENSED TO DO BUSINESS IN  
9 THE STATE FOR THE PURPOSE OF CONSTRUCTING TOLL ROADS OR BRIDGES;  
10 TO PRESCRIBE THE TERMS AND CONDITIONS FOR THE LETTING OF SUCH  
11 CONTRACTS AND THE RIGHTS AND DUTIES OF THE PARTIES ENTERING INTO  
12 SUCH CONTRACTS; TO AUTHORIZE COUNTIES, CITIES AND THE STATE TO  
13 ISSUE REVENUE BONDS TO FINANCE TOLL ROAD AND TOLL BRIDGE PROJECTS;  
14 TO AMEND SECTIONS 65-3-1, 65-1-85, 31-7-13 AND 11-46-9,  
15 MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS  
16 ACT; AND FOR RELATED PURPOSES.

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

18 **SECTION 1.** The Mississippi Transportation Commission, county  
19 boards of supervisors and/or the governing authorities of  
20 municipalities (hereinafter referred to as governmental entities),  
21 in their discretion, may construct, operate and maintain one or  
22 more new toll roads or toll bridges in the state for motor vehicle  
23 traffic, including toll booths and related facilities, at and  
24 along such locations where an alternate untolled route exists.  
25 All such highways, pavement, bridges, drainage related structures  
26 and other infrastructure comprising the projects shall be built  
27 and maintained in accordance with not less than the minimum  
28 highway design, construction and maintenance standards established  
29 by the contracting governmental entity for such highways,  
30 infrastructure and facilities.

31 **SECTION 2.** (1) In addition to and as an alternative to any  
32 other authority granted by law including, but not limited to,  
33 Section 1 of this act, any governmental entities, as defined in  
34 Section 1 of this act, in their discretion, may contract,

35 individually or jointly with other governmental entities, with any  
36 persons, corporations, partnerships or other businesses licensed  
37 to do business in the State of Mississippi (hereinafter referred  
38 to as "companies" or "company") for the purpose of designing,  
39 financing, constructing, operating and maintaining one or more new  
40 toll roads or toll bridges in the state for motor vehicle traffic,  
41 including toll booths and related facilities, at and along such  
42 locations where an alternate untolled route exists. Such  
43 contracts shall provide that land held by the governmental  
44 entities, whether in fee simple, as an easement or other interest,  
45 shall be leased or assigned to a company for design, construction,  
46 operation and maintenance of roadways, highways or bridges for  
47 motor vehicle traffic, toll booths and related facilities. All  
48 such highways, pavement, bridges, drainage related structures and  
49 other infrastructure comprising the projects shall be built and  
50 maintained in accordance with not less than the minimum highway  
51 design, construction and maintenance standards established by the  
52 contracting governmental entity for such highways, infrastructure  
53 and facilities. The contracting governmental entity shall conduct  
54 periodic inspections of any such project throughout the term of  
55 the contract to ensure compliance by the company. Failure of a  
56 company to comply with minimum standards established for the  
57 project by the contracting governmental entity shall constitute a  
58 breach and shall subject the company to liability on its bond or  
59 security or to rescission of the contract in accordance with the  
60 terms and provisions of the contract.

61 (2) (a) Every contract entered into by a governmental  
62 entity under this section (except for contracts entered into with  
63 another governmental entity), at a minimum, must provide for the  
64 design and construction of a new toll road or toll bridge project  
65 and may also provide for the financing, acquisition, lease,  
66 maintenance, and/or operation of a new toll road or toll bridge  
67 project.

68           (b) If a governmental entity enters into a contract  
69 with a company as authorized by Section 2 of this act, such  
70 governmental entity shall use a competitive procurement process  
71 that provides the best value for the governmental entity. The  
72 governmental entity may accept unsolicited proposals for a  
73 proposed new toll road or solicit proposals in accordance with  
74 this section.

75           (c) A governmental entity shall publish a request for  
76 competing proposals and qualifications in a newspaper having a  
77 general circulation within such governmental entity or, if the  
78 governmental entity is the Mississippi Transportation Commission,  
79 shall publish the request in a newspaper having a general  
80 circulation at the seat of government and, if the governmental  
81 entity has a website, shall post the request on such website.  
82 Such request shall include the criteria used to evaluate the  
83 proposals, the relative weight given to the criteria and a  
84 deadline by which proposals must be received. At a minimum, a  
85 proposal submitted in response to such request must contain:

86                   (i) Information regarding the proposed project  
87 location, scope and limits;

88                   (ii) Information regarding the company's  
89 qualifications, experience, technical competence, and capability  
90 to develop the project; and

91                   (iii) A proposed financial plan for the proposed  
92 project that includes, at a minimum, the projected project costs,  
93 projected revenues and proposed sources of funds.

94           A governmental entity may interview a company submitting a  
95 solicited or unsolicited proposal. In evaluating such proposals,  
96 a governmental entity may solicit input from other sources  
97 regarding such proposals.

98           (d) The governmental entity shall rank each proposal  
99 based on the criteria described in the request for proposals and  
100 select the company whose proposal offers the best value to the

101 governmental entity. The governmental entity may enter into  
102 discussions with the company whose proposal offers the best value.  
103 If at any point during the discussions it appears to the  
104 governmental entity that the highest ranking proposal will not  
105 provide the governmental entity with the overall best value, the  
106 governmental entity may enter into discussions with the company  
107 submitting the next-highest ranking proposal.

108 (e) The governmental entity may withdraw a request for  
109 competing proposals and qualifications at any time and for any  
110 reason and may reject any one or all proposals. In either case,  
111 the governmental entity may then publish a new request for  
112 competing proposals and qualifications. A governmental entity  
113 shall not be required to pay any company for the costs of  
114 preparing or submitting proposals.

115 (f) The governmental entity shall prescribe the general  
116 form of a contract authorized by this section and may include any  
117 matter the governmental entity considers advantageous to it. The  
118 governmental entity and the company shall negotiate the specific  
119 terms of the contract.

120 (g) Except as provided under this subsection (2), no  
121 such contract entered into hereunder shall be subject to the  
122 provisions of Section 65-1-8, Section 31-7-13 or any other public  
123 bid or public procurement laws of this state.

124 (3) Every contract entered into by a governmental entity  
125 under this section shall require a company to enter into bond and  
126 provide such security as the governmental entity determines may be  
127 necessary or advisable to ensure timely completion and proper  
128 execution and performance of the contract. The governmental  
129 entities are authorized to acquire such property or interests in  
130 property as may be necessary, by gift, purchase or eminent domain,  
131 for construction and maintenance of the highways or bridges built  
132 pursuant to contracts entered into under this section.

133 Acquisition of all property pursuant to this section shall be, in

134 all respects, consistent to, and not in conflict with, the  
135 provisions of House Bill No. 300, 2007 Regular Session. Upon  
136 expiration, termination or rescission of the contract, all  
137 interests that the company may have in the land, infrastructure,  
138 facilities or other improvements to the property subject to  
139 contract shall terminate and automatically, by operation of law,  
140 be returned or conveyed to and vest title, ownership and  
141 possession in the contracting governmental entity. Upon  
142 termination, expiration or rescission of the contract, the  
143 collection of tolls shall cease after all associated debts have  
144 been retired or released.

145 (4) During the term of any contract entered into under this  
146 section, the company may establish, charge and collect motor  
147 vehicle operators tolls for use of the highway or bridge and its  
148 facilities. The amount of such tolls, and any modification  
149 thereto, shall be subject to approval by the contracting  
150 governmental entity after notice and public hearing; however, all  
151 such contracts entered into with the Mississippi Transportation  
152 Commission may require a company to pay a percentage of all tolls  
153 collected to the Mississippi Department of Transportation. All  
154 such tolls paid to the department shall be deposited into the  
155 special bond sinking fund under Section 6 of this act and may be  
156 expended only as authorized by the Legislature.

157 (5) All statutes of this state relating to traffic  
158 regulation and control shall be applicable to motor vehicles  
159 operated upon highways and bridges constructed under this section  
160 and shall be enforceable by the Mississippi Department of Public  
161 Safety, the Mississippi Highway Safety Patrol and any other law  
162 enforcement agency having jurisdiction over such highways and  
163 bridges.

164 (6) The State of Mississippi, the Mississippi Transportation  
165 Commission, the Mississippi Department of Transportation,  
166 counties, municipalities or any other agency or political

167 subdivision, or any officer or employee thereof, shall not be  
168 liable for any tortious act or omission arising out of the  
169 construction, maintenance or operation of any highway, bridge or  
170 roadway project under the provisions of this section where the act  
171 or omission occurs during the term of any such contract entered  
172 into by the Mississippi Transportation Commission or other  
173 governmental entity and a company.

174 **SECTION 3.** The powers conferred by Sections 1 and 2 of House  
175 Bill No. 351, 2007 Regular Session, shall be in addition to the  
176 powers conferred by any other law, general, special or local and  
177 shall be construed as an additional and alternative method of  
178 funding all or any portion of the purchasing, building, improving,  
179 owning or operating of roadways, highways or bridges under the  
180 jurisdiction of the Mississippi Transportation Commission, county  
181 boards of supervisors or municipal governing authorities, any  
182 provision of the laws of the state or any charter of any  
183 municipality to the contrary notwithstanding.

184 **SECTION 4.** (1) For the purpose of providing funds to defray  
185 the expenses of projects authorized pursuant to Sections 1 and 2  
186 of this act, the board of supervisors of a county or the governing  
187 authorities of a municipality shall have the right to borrow money  
188 for the project, and to issue revenue bonds therefor in such  
189 principal amounts as the board of supervisors or governing  
190 authorities may determine to be necessary to provide sufficient  
191 funds to defray the expenses of projects authorized pursuant to  
192 Sections 1 and 2 of this act. The bonds shall be payable out of  
193 any revenues derived from the project, including grants or  
194 contributions from the federal government or other sources. Such  
195 bonds may be sold at public or private sale at not less than par  
196 and shall bear interest at a rate or rates not exceeding that  
197 allowed in Section 75-17-103. Any such bonds so issued shall not  
198 constitute a debt of the county, the municipality or any political  
199 subdivision of the county or the city within the meaning of any

200 constitutional, statutory or charter restriction, limitation or  
201 provision. It shall be plainly stated on the face of each bond in  
202 substance that the bond has been issued pursuant to the authority  
203 granted in this section and that the taxing power of the county or  
204 municipality issuing the bond is not pledged to the payment of the  
205 bond or the interest on it and that the bond and the interest on  
206 it are payable solely from the revenues of the project for which  
207 the bond is issued.

208 (2) All bonds issued under the authority of this section  
209 shall bear such date or dates, shall be in such form or  
210 denomination, shall bear such rate of interest, and shall mature  
211 at such times as the county or municipality shall determine, but  
212 no bonds issued under the authority of this section shall mature  
213 more than thirty (30) years from the date of the issuance thereof  
214 and none of the bonds shall be sold for less than par and accrued  
215 interest. All bonds shall be sold in the manner now provided by  
216 law for the sale of bonds without any restrictions, limitations,  
217 requirements or conditions applicable to the borrowing of such  
218 money and the issuance of such bonds which are not herein  
219 contained. The denomination, form, place of payment and other  
220 details of such bonds may be determined by resolution or order of  
221 the board of supervisors of a county or the governing authorities  
222 of a municipality, and shall be executed on behalf of the county  
223 or municipality as is now provided by law.

224 (3) Before issuing any bonds under the provisions of this  
225 section, the board of supervisors of the county or the governing  
226 authorities of the municipality shall, by resolution spread upon  
227 the minutes, declare its intention to issue such bonds for the  
228 purposes authorized by this section and shall state in the  
229 resolution the amount of bonds proposed to be issued and shall  
230 likewise fix in the resolution the date upon which the board of  
231 supervisors of the county or the governing authorities of the  
232 municipality proposes to direct the issuance of the bonds. Notice

233 of such intention shall be published once a week for at least  
234 three (3) consecutive weeks in a newspaper published or having a  
235 general circulation in the county or the municipality, with the  
236 first publication of the notice to be made not less than  
237 twenty-one (21) days prior to the date fixed in the resolution for  
238 the issuance of the bonds and the last publication to be made not  
239 more than seven (7) days prior to such date. If, on or before the  
240 date specified in the resolution, twenty percent (20%) or fifteen  
241 hundred (1500), whichever is less, of the qualified electors of  
242 the county or municipality shall file a written protest against  
243 the issuance of the bonds, then an election upon the issuance of  
244 the bonds shall be called, and held, as provided in this section.  
245 If no such protest shall be filed, then the board of supervisors  
246 of the county or the governing authorities of the municipality may  
247 issue such bonds without an election on the question of the  
248 issuance of the bonds at any time within a period of two (2) years  
249 after the date specified in the resolution.

250 (4) If an election is called under the provisions of this  
251 section on the question of the issuance of bonds, the election  
252 shall be held, insofar as practicable, in the same manner as other  
253 elections are held in the county or municipality. At the  
254 election, all qualified electors of the county or municipality may  
255 vote and the ballots used in the election shall have printed  
256 thereon a brief statement of the amount and purposes of the  
257 proposed bond issue and the words "FOR THE BOND ISSUE" and the  
258 words "AGAINST THE BOND ISSUE," and the voters shall vote by  
259 placing a cross (X) or check mark (✓) opposite their choice on the  
260 proposition.

261 (5) When the results of any election provided for in this  
262 section shall have been canvassed by the election commissioners of  
263 the county or municipality and certified by them to the proper  
264 authorities, it shall be the duty of the board of supervisors of  
265 the county or the governing authorities of the municipality to



266 determine and adjudicate whether or not a majority of the  
267 qualified electors who voted in the election voted in favor of the  
268 issuance of the bonds, and unless a majority of the qualified  
269 electors who voted in the election voted in favor of the issuance  
270 of the bonds, then the bonds shall not be issued. Should a  
271 majority of the qualified electors who vote in the election vote  
272 in favor of the bonds, the board of supervisors of the county or  
273 the governing authorities of the municipality may issue the bonds,  
274 either in whole or in part, within two (2) years from the date of  
275 such election, or within two (2) years after final favorable  
276 determination of any litigation affecting the issuance of such  
277 bonds at such time or times, and in such amount or amounts, not  
278 exceeding that specified in the notice of the election, as shall  
279 be deemed proper.

280 (6) This section, without reference to any other statute,  
281 shall be deemed to be full and complete authority for the issuance  
282 of bonds and borrowing of money as authorized in this section by  
283 counties or municipalities, and shall be construed as an  
284 additional and alternate method therefor. The bonds authorized by  
285 this section shall not constitute an indebtedness within the  
286 meaning of any constitutional or statutory limitation or  
287 restriction.

288 **SECTION 5.** (1) (a) A special fund, to be designated as the  
289 "Toll Road Revenue Bond Fund," is created within the State  
290 Treasury. The fund shall be maintained by the State Treasurer as  
291 a separate and special fund, separate and apart from the General  
292 Fund of the state. Unexpended amounts remaining in the fund at  
293 the end of a fiscal year shall not lapse into the State General  
294 Fund, and any interest earned or investment earnings on amounts in  
295 the fund shall be deposited into such fund.

296 (b) Monies deposited into the fund shall be disbursed,  
297 in the discretion of the Mississippi Transportation Commission, to  
298 pay the costs incurred in defraying the expenses of projects

299 authorized by the Mississippi Transportation Commission pursuant  
300 to Sections 1 and 2 of this act.

301 (2) Amounts deposited into such special fund shall be  
302 disbursed to pay the expenses described in subsection (1) of this  
303 section. If any monies in the special fund are not used within  
304 six (6) years after the date the proceeds of the bonds authorized  
305 under Sections 5 through 20 of this act are deposited into such  
306 fund, then the Mississippi Transportation Commission shall provide  
307 an accounting of such unused monies to the State Bond Commission.  
308 Promptly after the State Bond Commission has certified, by  
309 resolution duly adopted, that the projects for which the revenue  
310 bonds have been issued shall have been completed, abandoned or  
311 cannot be completed in a timely fashion, any amounts remaining in  
312 such special fund shall be applied to pay debt service on the  
313 bonds issued under Sections 5 through 20 of this act, in  
314 accordance with the proceedings authorizing the issuance of such  
315 bonds and as directed by the State Bond Commission.

316 **SECTION 6.** For the purpose of providing for the payment of  
317 the principal of and interest upon bonds issued under the  
318 provisions of Sections 5 through 20 of this act, there is created  
319 a special bond sinking fund in the State Treasury. The special  
320 bond sinking fund shall consist of the monies required to be  
321 deposited into the fund under Section 2 of this act and such other  
322 amounts as the Legislature may direct to be paid into the fund by  
323 appropriation or other authorization by the Legislature.  
324 Unexpended amounts remaining in the special bond sinking fund at  
325 the end of a fiscal year shall not lapse into the State General  
326 Fund, and any interest earned or investment earnings on amounts in  
327 the special bond sinking fund shall be deposited into such sinking  
328 fund.

329 **SECTION 7.** (1) The State Bond Commission, at one time or  
330 from time to time, may declare by resolution the necessity for  
331 issuance of revenue bonds of the State of Mississippi for the

332 purpose of providing funds to defray the expenses of projects  
333 authorized by the Mississippi Transportation Commission pursuant  
334 to Sections 1 and 2 of this act. Upon the adoption of a  
335 resolution by the Mississippi Transportation Commission, declaring  
336 the necessity for the issuance of the revenue bonds authorized by  
337 this section, the Mississippi Transportation Commission shall  
338 deliver a certified copy of its resolution or resolutions to the  
339 State Bond Commission. Upon receipt of such resolution, the State  
340 Bond Commission, in its discretion, may act as the issuing agent,  
341 prescribe the form of the bonds, advertise for and accept bids,  
342 issue and sell, at public or private sale, the bonds so authorized  
343 to be sold and do any and all other things necessary and advisable  
344 in connection with the issuance and sale of such bonds. Revenue  
345 bonds issued under this section shall be in such principal amounts  
346 as the Mississippi Transportation Commission may determine to be  
347 necessary to provide sufficient funds to defray the expenses of  
348 projects authorized by the Mississippi Transportation Commission  
349 pursuant to Sections 1 and 2 of this act.

350 (2) Any investment earnings on amounts deposited into the  
351 special fund created in Section 5 of this act shall be used to pay  
352 debt service on bonds issued under Sections 5 through 20 of this  
353 act, in accordance with the proceedings authorizing issuance of  
354 such bonds.

355 **SECTION 8.** The principal of and interest on the bonds  
356 authorized under Sections 5 through 20 of this act shall be  
357 payable in the manner provided in this section. Such bonds shall  
358 bear such date or dates, be in such denomination or denominations,  
359 bear interest at such rate or rates (not to exceed the limits set  
360 forth in Section 75-17-103, Mississippi Code of 1972), be payable  
361 at such place or places within or without the State of  
362 Mississippi, shall mature absolutely at such time or times not to  
363 exceed thirty (30) years from date of issue, be redeemable before  
364 maturity at such time or times and upon such terms, with or

365 without premium, shall bear such registration privileges, and  
366 shall be substantially in such form, all as shall be determined by  
367 resolution of the State Bond Commission.

368       **SECTION 9.** The bonds authorized by Sections 5 through 20 of  
369 this act shall be signed by the Chairman of the State Bond  
370 Commission, or by his facsimile signature, and the official seal  
371 of the State Bond Commission shall be affixed thereto, attested by  
372 the secretary of the commission. The interest coupons, if any, to  
373 be attached to such bonds may be executed by the facsimile  
374 signatures of such officers. Whenever any such bonds shall have  
375 been signed by the officials designated to sign the bonds who were  
376 in office at the time of such signing but who may have ceased to  
377 be such officers before the sale and delivery of such bonds, or  
378 who may not have been in office on the date such bonds may bear,  
379 the signatures of such officers upon such bonds and coupons shall  
380 nevertheless be valid and sufficient for all purposes and have the  
381 same effect as if the person so officially signing such bonds had  
382 remained in office until their delivery to the purchaser, or had  
383 been in office on the date such bonds may bear. However,  
384 notwithstanding anything herein to the contrary, such bonds may be  
385 issued as provided in the Registered Bond Act of the State of  
386 Mississippi.

387       **SECTION 10.** All bonds and interest coupons issued under the  
388 provisions of Sections 5 through 20 of this act have all the  
389 qualities and incidents of negotiable instruments under the  
390 provisions of the Uniform Commercial Code, and in exercising the  
391 powers granted by Sections 5 through 20 of this act, the State  
392 Bond Commission shall not be required to and need not comply with  
393 the provisions of the Uniform Commercial Code.

394       **SECTION 11.** The State Bond Commission shall act as the  
395 issuing agent for the bonds authorized under Sections 5 through 20  
396 of this act, prescribe the form of the bonds, advertise for and  
397 accept bids, issue and sell, at public or private sale, the bonds

398 so authorized to be sold, pay all fees and costs incurred in such  
399 issuance and sale, and do any and all other things necessary and  
400 advisable in connection with the issuance and sale of such bonds.  
401 The State Bond Commission is authorized and empowered to pay the  
402 costs that are incident to the sale, issuance and delivery of the  
403 bonds authorized under Sections 5 through 20 of this act from the  
404 proceeds derived from the sale of such bonds. The State Bond  
405 Commission shall sell such bonds on sealed bids at public or  
406 private sale, and for such price as it may determine to be for the  
407 best interest of the State of Mississippi, but no such sale shall  
408 be made at a price less than par plus accrued interest to the date  
409 of delivery of the bonds to the purchaser. All interest accruing  
410 on such bonds so issued shall be payable semiannually or annually;  
411 however, the first interest payment may be for any period of not  
412 more than one (1) year.

413 Notice of the sale of any such bonds shall be published at  
414 least one time, not less than ten (10) days before the date of  
415 sale, and shall be so published in one or more newspapers  
416 published or having a general circulation in the City of Jackson,  
417 Mississippi, and in one or more other newspapers or financial  
418 journals with a national circulation, to be selected by the State  
419 Bond Commission.

420 The State Bond Commission, when issuing any bonds under the  
421 authority of Sections 5 through 20 of this act, may provide that  
422 bonds, at the option of the State of Mississippi, may be called in  
423 for payment and redemption at the call price named therein and  
424 accrued interest on such date or dates named therein.

425 **SECTION 12.** Bonds issued under authority of Sections 5  
426 through 20 of this act shall be revenue bonds of the state, the  
427 principal of and interest on which shall be payable solely from  
428 the revenue from projects authorized under Section 1 or 2 of this  
429 act. The bonds shall never constitute an indebtedness of the  
430 state within the meaning of any state constitutional provision or

431 statutory limitation, and shall never constitute or give rise to a  
432 pecuniary liability of the state, or a charge against its general  
433 credit or taxing powers, and such fact shall be plainly stated on  
434 the face of each such bond. The bonds shall not be considered  
435 when computing any limitation of indebtedness of the state. All  
436 bonds issued under the authority of Sections 5 through 20 of this  
437 act and all interest coupons applicable thereto shall be construed  
438 to be negotiable instruments, despite the fact that they are  
439 payable solely from a specified source.

440 **SECTION 13.** Upon the issuance and sale of bonds under the  
441 provisions of Sections 5 through 20 of this act, the State Bond  
442 Commission shall transfer the proceeds of any such sale or sales  
443 to a special fund created in Section 5 of this act. The proceeds  
444 of such bonds shall be disbursed solely upon the order of the  
445 Mississippi Transportation Commission under such restrictions, if  
446 any, as may be contained in the resolution providing for the  
447 issuance of the bonds.

448 **SECTION 14.** The bonds authorized under Sections 5 through 20  
449 of this act may be issued without any other proceedings or the  
450 happening of any other conditions or things other than those  
451 proceedings, conditions and things which are specified or required  
452 by Sections 5 through 20 of this act. Any resolution providing  
453 for the issuance of bonds under the provisions of Sections 5  
454 through 20 of this act shall become effective immediately upon its  
455 adoption by the commission, and any such resolution may be adopted  
456 at any regular or special meeting of the commission by a majority  
457 of its members.

458 **SECTION 15.** The bonds authorized under the authority of  
459 Sections 5 through 20 of this act may be validated in the Chancery  
460 Court of the First Judicial District of Hinds County, Mississippi,  
461 in the manner and with the force and effect provided by Chapter  
462 13, Title 31, Mississippi Code of 1972, for the validation of  
463 county, municipal, school district and other bonds. The notice to

464 taxpayers required by such statutes shall be published in a  
465 newspaper published or having a general circulation in the City of  
466 Jackson, Mississippi.

467       **SECTION 16.** Any holder of bonds issued under the provisions  
468 of Sections 5 through 20 of this act or of any of the interest  
469 coupons pertaining thereto may, either at law or in equity, by  
470 suit, action, mandamus or other proceeding, protect and enforce  
471 any and all rights granted under Sections 5 through 20 of this  
472 act, or under such resolution, and may enforce and compel  
473 performance of all duties required by Sections 5 through 20 of  
474 this act to be performed, in order to provide for the payment of  
475 bonds and interest thereon.

476       **SECTION 17.** All bonds issued under the provisions of  
477 Sections 5 through 20 of this act shall be legal investments for  
478 trustees and other fiduciaries, and for savings banks, trust  
479 companies and insurance companies organized under the laws of the  
480 State of Mississippi, and such bonds shall be legal securities  
481 which may be deposited with and shall be received by all public  
482 officers and bodies of this state and all municipalities and  
483 political subdivisions for the purpose of securing the deposit of  
484 public funds.

485       **SECTION 18.** Bonds issued under the provisions of Sections 5  
486 through 20 of this act and income therefrom shall be exempt from  
487 all taxation in the State of Mississippi.

488       **SECTION 19.** The proceeds of the bonds issued under Sections  
489 5 through 20 of this act shall be used solely for the purposes  
490 provided in Sections 5 through 20 of this act, including the costs  
491 incident to the issuance and sale of such bonds.

492       **SECTION 20.** The State Treasurer is authorized, without  
493 further process of law, to certify to the Department of Finance  
494 and Administration the necessity for warrants, and the Department  
495 of Finance and Administration is authorized and directed to issue  
496 such warrants, in such amounts as may be necessary to pay when due

497 the principal of, premium, if any, and interest on, or the  
498 accreted value of, all bonds issued under Sections 5 through 20 of  
499 this act; and the State Treasurer shall forward the necessary  
500 amount to the designated place or places of payment of such bonds  
501 in ample time to discharge such bonds, or the interest thereon, on  
502 the due dates thereof.

503 **SECTION 21.** Section 65-3-1, Mississippi Code of 1972, is  
504 amended as follows:

505 65-3-1. Subject only to the provisions hereinafter  
506 contained, it shall be unlawful for any person, acting privately  
507 or in any official capacity or as an employee of any subdivision  
508 of the state, to charge or collect any toll or other charge from  
509 any person for the privilege of traveling on any part of any  
510 highway which has been heretofore or may hereafter be designated  
511 as a state highway, and being a part of the state highway system,  
512 or on or across any bridge wholly within this state, which is a  
513 part of any such highway.

514 For a violation of this section, any judge or chancellor may,  
515 in termtime or vacation, grant an injunction upon complaint of the  
516 Mississippi Transportation Commission.

517 \* \* \*

518 The provisions of this section shall be inapplicable to any  
519 toll road or bridge built or operated under the authority of  
520 Section 1 or Section 2 of House Bill No. 351, 2007 Regular  
521 Session.

522 **SECTION 22.** Section 65-1-85, Mississippi Code of 1972, is  
523 amended as follows:

524 65-1-85. (1) All contracts by or on behalf of the  
525 commission for the purchase of materials, equipment and supplies  
526 shall be made in compliance with Section 31-7-1 et seq. All  
527 contracts by or on behalf of the commission for construction,  
528 reconstruction or other public work authorized to be done under  
529 the provisions of this chapter, except maintenance, shall be made



530 by the executive director, subject to the approval of the  
531 commission, only upon competitive bids after due advertisement as  
532 follows, to wit:

533           (a) Advertisement for bids shall be in accordance with  
534 such rules and regulations, in addition to those herein provided,  
535 as may be adopted therefor by the commission, and the commission  
536 is authorized and empowered to make and promulgate such rules and  
537 regulations as it may deem proper, to provide and adopt standard  
538 specifications for road and bridge construction, and to amend such  
539 rules and regulations from time to time.

540           (b) The advertisement shall be inserted twice, being  
541 once a week for two (2) successive weeks in a newspaper published  
542 at the seat of government in Jackson, Mississippi, having a  
543 general circulation throughout the state, and no letting shall be  
544 less than fourteen (14) days nor more than sixty (60) days after  
545 the publication of the first notice of such letting, and notices  
546 of such letting may be placed in a metropolitan paper or national  
547 trade publication.

548           (c) Before advertising for such work, the executive  
549 director shall cause to be prepared and filed in the department  
550 detailed plans and specifications covering the work proposed to be  
551 done and copies of the plans and specifications shall be subject  
552 to inspection by any citizen during all office hours and made  
553 available to all prospective bidders upon such reasonable terms  
554 and conditions as may be required by the commission. A fee shall  
555 be charged equal to the cost of producing a copy of any such plans  
556 and specifications.

557           (d) All such contracts shall be let to a responsible  
558 bidder with the lowest and best bid, and a record of all bids  
559 received for construction and reconstruction shall be preserved.

560           (e) Each bid for such a construction and reconstruction  
561 contract must be accompanied by a cashier's check, a certified  
562 check or bidders bond executed by a surety company authorized to

563 do business in the State of Mississippi, in the principal amount  
564 of not less than five percent (5%) of the bid, guaranteeing that  
565 the bidder will give bond and enter into a contract for the  
566 faithful performance of the contract according to plans and  
567 specifications on file.

568 (f) Bonds shall be required of the successful bidder in  
569 an amount equal to the contract price. The contract price shall  
570 mean the entire cost of the particular contract let. In the event  
571 change orders are made after the execution of a contract which  
572 results in increasing the total contract price, additional bond in  
573 the amount of the increased cost may be required. The surety or  
574 sureties on such bonds shall be a surety company or surety  
575 companies authorized to do business in the State of Mississippi,  
576 all bonds to be payable to the State of Mississippi and to be  
577 conditioned for the prompt, faithful and efficient performance of  
578 the contract according to plans and specifications, and for the  
579 prompt payment of all persons furnishing labor, material,  
580 equipment and supplies therefor. Such bonds shall be subject to  
581 the additional obligation that the principal and surety or  
582 sureties executing the same shall be liable to the state in a  
583 civil action instituted by the state at the instance of the  
584 commission or any officer of the state authorized in such cases,  
585 for double any amount in money or property the state may lose or  
586 be overcharged or otherwise defrauded of by reason of any wrongful  
587 or criminal act, if any, of the contractor, his agent or  
588 employees.

589 (2) With respect to equipment used in the construction,  
590 reconstruction or other public work authorized to be done under  
591 the provisions of this chapter: the word "equipment," in addition  
592 to all equipment incorporated into or fully consumed in connection  
593 with such project, shall include the reasonable value of the use  
594 of all equipment of every kind and character and all accessories  
595 and attachments thereto which are reasonably necessary to be used

596 and which are used in carrying out the performance of the  
597 contract, and the reasonable value of the use thereof, during the  
598 period of time the same are used in carrying out the performance  
599 of the contract, shall be the amount as agreed upon by the persons  
600 furnishing the equipment and those using the same to be paid  
601 therefor, which amount, however, shall not be in excess of the  
602 maximum current rates and charges allowable for leasing or renting  
603 as specified in Section 65-7-95; the word "labor" shall include  
604 all work performed in repairing equipment used in carrying out the  
605 performance of the contract, which repair labor is reasonably  
606 necessary to the efficient operation of said equipment; and the  
607 words "materials" and "supplies" shall include all repair parts  
608 installed in or on equipment used in carrying out the performance  
609 of the contract, which repair parts are reasonably necessary to  
610 the efficient operation of said equipment.

611 (3) The executive director, subject to the approval of the  
612 commission, shall have the right to reject any and all bids,  
613 whether such right is reserved in the notice or not.

614 (4) The commission may require the pre-qualification of any  
615 and all bidders and the failure to comply with pre-qualification  
616 requirements may be the basis for the rejection of any bid by the  
617 commission. The commission may require the pre-qualification of  
618 any and all subcontractors before they are approved to participate  
619 in any contract awarded under this section.

620 (5) The commission may adopt rules and regulations for the  
621 termination of any previously awarded contract which is not timely  
622 proceeding toward completion. The failure of a contractor to  
623 comply with such rules and regulations shall be a lawful basis for  
624 the commission to terminate the contract with such contractor. In  
625 the event of a termination under such rules and regulations, the  
626 contractor shall not be entitled to any payment, benefit or  
627 damages beyond the cost of the work actually completed.

628           (6) Any contract for construction or paving of any highway  
629 may be entered into for any cost which does not exceed the amount  
630 of funds that may be made available therefor through bond issues  
631 or from other sources of revenue, and the letting of contracts for  
632 such construction or paving shall not necessarily be delayed until  
633 the funds are actually on hand, provided authorization for the  
634 issuance of necessary bonds has been granted by law to supplement  
635 other anticipated revenue, or when the department certifies to the  
636 Department of Finance and Administration and the Legislative  
637 Budget Office that projected receipts of funds by the department  
638 will be sufficient to pay such contracts as they become due and  
639 the Department of Finance and Administration determines that the  
640 projections are reasonable and receipts will be sufficient to pay  
641 the contracts as they become due. The Department of Finance and  
642 Administration shall spread such determination on its minutes  
643 prior to the letting of any contracts based on projected receipts.  
644 Nothing in this subsection shall prohibit the issuance of bonds,  
645 which have been authorized, at any time in the discretion of the  
646 State Bond Commission, nor to prevent investment of surplus funds  
647 in United States government bonds or State of Mississippi bonds as  
648 presently authorized by Section 12, Chapter 312, Laws of 1956.

649           (7) All other contracts for work to be done under the  
650 provisions of this chapter and for the purchase of materials,  
651 equipment and supplies to be used as provided for in this chapter  
652 shall be made in compliance with Section 31-7-1 et seq.

653           (8) The commission shall not empower or authorize the  
654 executive director, or any one or more of its members, or any  
655 engineer or other person to let or make contracts for the  
656 construction or repair of public roads, or building bridges, or  
657 for the purchase of material, equipment or supplies contrary to  
658 the provisions of this chapter as set forth in this section,  
659 except in cases of flood or other cases of emergency where the  
660 public interest requires that the work be done or the materials,

661 equipment or supplies be purchased without the delay incident to  
662 advertising for competitive bids. Such emergency contracts may be  
663 made without advertisement under such rules and regulations as the  
664 commission may prescribe.

665 (9) The executive director, subject to the approval of the  
666 commission, is authorized to negotiate and make agreements with  
667 communities and/or civic organizations for landscaping,  
668 beautification and maintenance of highway rights-of-way; however,  
669 nothing in this subsection shall be construed as authorization for  
670 the executive director or commission to participate in such a  
671 project to an extent greater than the average cost for maintenance  
672 of shoulders, backslopes and median areas with respect thereto.

673 (10) The executive director may negotiate and enter into  
674 contracts with private parties for the mowing of grass and  
675 trimming of vegetation on the rights-of-way of state highways  
676 whenever such practice is possible and cost effective.

677 (11) (a) As an alternative to the method of awarding  
678 contracts as otherwise provided in this section, the commission  
679 may use the design-build method of contracting for the following:

680 (i) Projects for the Mississippi Development  
681 Authority pursuant to agreements between both governmental  
682 entities;

683 (ii) Any project with an estimated cost of not  
684 more than Ten Million Dollars (\$10,000,000.00), not to exceed two  
685 (2) projects per fiscal year; and

686 (iii) Any project which has an estimated cost of  
687 more than Fifty Million Dollars (\$50,000,000.00), not to exceed  
688 one (1) project per fiscal year.

689 (b) As used in this subsection, the term "design-build"  
690 method of contracting means a contract that combines the design  
691 and construction phases of a project into a single contract and  
692 the contractor is required to satisfactorily perform, at a  
693 minimum, both the design and construction of the project.

694 (c) The commission shall establish detailed criteria  
695 for the selection of the successful design-build contractor in  
696 each request for design-build proposals. The evaluation of the  
697 selection committee is a public record and shall be maintained for  
698 a minimum of ten (10) years after project completion.

699 (d) The commission shall maintain detailed records on  
700 projects separate and apart from its regular record keeping. The  
701 commission shall file a report to the Legislature evaluating the  
702 design-build method of contracting by comparing it to the low-bid  
703 method of contracting. At a minimum, the report must include:

704 (i) The management goals and objectives for the  
705 design-build system of management;

706 (ii) A complete description of the components of  
707 the design-build management system, including a description of the  
708 system the department put into place on all projects managed under  
709 the system to insure that it has the complete information on  
710 highway segment costs and to insure proper analysis of any  
711 proposal the commission receives from a highway contractor;

712 (iii) The accountability systems the  
713 Transportation Department established to monitor any design-build  
714 project's compliance with specific goals and objectives for the  
715 project;

716 (iv) The outcome of any project or any interim  
717 report on an ongoing project let under a design-build management  
718 system showing compliance with the goals, objectives, policies and  
719 procedures the department set for the project; and

720 (v) The method used by the department to select  
721 projects to be let under the design-build system of management and  
722 all other systems, policies and procedures that the department  
723 considered as necessary components to a design-build management  
724 system.

725 (e) All contracts let under the provisions of this  
726 subsection shall be subject to oversight and review by the State

727 Auditor. The State Auditor shall file a report with the  
728 Legislature on or before January 1 of each year detailing his  
729 findings with regard to any contract let or project performed in  
730 violation of the provisions of this subsection. The actual and  
731 necessary expenses incurred by the State Auditor in complying with  
732 this paragraph (e) shall be paid for and reimbursed by the  
733 Mississippi Department of Transportation out of funds made  
734 available for the contract or contracts let and project or  
735 projects performed.

736 (12) The provisions of this section shall not be construed  
737 to prohibit the commission from awarding or entering into  
738 contracts for the design, construction and financing of toll  
739 roads, highways and bridge projects as provided under Sections 1  
740 and 2 of House Bill No. 351, 2007 Regular Session.

741 **SECTION 23.** Section 31-7-13, Mississippi Code of 1972, is  
742 amended as follows:

743 31-7-13. All agencies and governing authorities shall  
744 purchase their commodities and printing; contract for garbage  
745 collection or disposal; contract for solid waste collection or  
746 disposal; contract for sewage collection or disposal; contract for  
747 public construction; and contract for rentals as herein provided.

748 (a) **Bidding procedure for purchases not over \$3,500.00.**  
749 Purchases which do not involve an expenditure of more than Three  
750 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or  
751 shipping charges, may be made without advertising or otherwise  
752 requesting competitive bids. However, nothing contained in this  
753 paragraph (a) shall be construed to prohibit any agency or  
754 governing authority from establishing procedures which require  
755 competitive bids on purchases of Three Thousand Five Hundred  
756 Dollars (\$3,500.00) or less.

757 (b) **Bidding procedure for purchases over \$3,500.00 but**  
758 **not over \$15,000.00.** Purchases which involve an expenditure of  
759 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not

760 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
761 freight and shipping charges may be made from the lowest and best  
762 bidder without publishing or posting advertisement for bids,  
763 provided at least two (2) competitive written bids have been  
764 obtained. Any governing authority purchasing commodities pursuant  
765 to this paragraph (b) may authorize its purchasing agent, or his  
766 designee, with regard to governing authorities other than  
767 counties, or its purchase clerk, or his designee, with regard to  
768 counties, to accept the lowest and best competitive written bid.  
769 Such authorization shall be made in writing by the governing  
770 authority and shall be maintained on file in the primary office of  
771 the agency and recorded in the official minutes of the governing  
772 authority, as appropriate. The purchasing agent or the purchase  
773 clerk, or their designee, as the case may be, and not the  
774 governing authority, shall be liable for any penalties and/or  
775 damages as may be imposed by law for any act or omission of the  
776 purchasing agent or purchase clerk, or their designee,  
777 constituting a violation of law in accepting any bid without  
778 approval by the governing authority. The term "competitive  
779 written bid" shall mean a bid submitted on a bid form furnished by  
780 the buying agency or governing authority and signed by authorized  
781 personnel representing the vendor, or a bid submitted on a  
782 vendor's letterhead or identifiable bid form and signed by  
783 authorized personnel representing the vendor. "Competitive" shall  
784 mean that the bids are developed based upon comparable  
785 identification of the needs and are developed independently and  
786 without knowledge of other bids or prospective bids. Bids may be  
787 submitted by facsimile, electronic mail or other generally  
788 accepted method of information distribution. Bids submitted by  
789 electronic transmission shall not require the signature of the  
790 vendor's representative unless required by agencies or governing  
791 authorities.

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



793 (i) **Publication requirement.**

794 1. Purchases which involve an expenditure of  
795 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
796 freight and shipping charges, may be made from the lowest and best  
797 bidder after advertising for competitive bids once each week for  
798 two (2) consecutive weeks in a regular newspaper published in the  
799 county or municipality in which such agency or governing authority  
800 is located.

801 2. The purchasing entity may designate the  
802 method by which the bids will be received, including, but not  
803 limited to, bids sealed in an envelope, bids received  
804 electronically in a secure system, bids received via a reverse  
805 auction, or bids received by any other method that promotes open  
806 competition and has been approved by the Office of Purchasing and  
807 Travel. The provisions of this part 2 of subparagraph (i) shall  
808 be repealed on July 1, 2008.

809 3. The date as published for the bid opening  
810 shall not be less than seven (7) working days after the last  
811 published notice; however, if the purchase involves a construction  
812 project in which the estimated cost is in excess of Fifteen  
813 Thousand Dollars (\$15,000.00), such bids shall not be opened in  
814 less than fifteen (15) working days after the last notice is  
815 published and the notice for the purchase of such construction  
816 shall be published once each week for two (2) consecutive weeks.  
817 The notice of intention to let contracts or purchase equipment  
818 shall state the time and place at which bids shall be received,  
819 list the contracts to be made or types of equipment or supplies to  
820 be purchased, and, if all plans and/or specifications are not  
821 published, refer to the plans and/or specifications on file. If  
822 there is no newspaper published in the county or municipality,  
823 then such notice shall be given by posting same at the courthouse,  
824 or for municipalities at the city hall, and at two (2) other  
825 public places in the county or municipality, and also by

826 publication once each week for two (2) consecutive weeks in some  
827 newspaper having a general circulation in the county or  
828 municipality in the above provided manner. On the same date that  
829 the notice is submitted to the newspaper for publication, the  
830 agency or governing authority involved shall mail written notice  
831 to, or provide electronic notification to the main office of the  
832 Mississippi Contract Procurement Center that contains the same  
833 information as that in the published notice.

834           (ii) **Bidding process amendment procedure.** If all  
835 plans and/or specifications are published in the notification,  
836 then the plans and/or specifications may not be amended. If all  
837 plans and/or specifications are not published in the notification,  
838 then amendments to the plans/specifications, bid opening date, bid  
839 opening time and place may be made, provided that the agency or  
840 governing authority maintains a list of all prospective bidders  
841 who are known to have received a copy of the bid documents and all  
842 such prospective bidders are sent copies of all amendments. This  
843 notification of amendments may be made via mail, facsimile,  
844 electronic mail or other generally accepted method of information  
845 distribution. No addendum to bid specifications may be issued  
846 within two (2) working days of the time established for the  
847 receipt of bids unless such addendum also amends the bid opening  
848 to a date not less than five (5) working days after the date of  
849 the addendum.

850           (iii) **Filing requirement.** In all cases involving  
851 governing authorities, before the notice shall be published or  
852 posted, the plans or specifications for the construction or  
853 equipment being sought shall be filed with the clerk of the board  
854 of the governing authority. In addition to these requirements, a  
855 bid file shall be established which shall indicate those vendors  
856 to whom such solicitations and specifications were issued, and  
857 such file shall also contain such information as is pertinent to  
858 the bid.

859 (iv) **Specification restrictions.**

860 1. Specifications pertinent to such bidding  
861 shall be written so as not to exclude comparable equipment of  
862 domestic manufacture. However, if valid justification is  
863 presented, the Department of Finance and Administration or the  
864 board of a governing authority may approve a request for specific  
865 equipment necessary to perform a specific job. Further, such  
866 justification, when placed on the minutes of the board of a  
867 governing authority, may serve as authority for that governing  
868 authority to write specifications to require a specific item of  
869 equipment needed to perform a specific job. In addition to these  
870 requirements, from and after July 1, 1990, vendors of relocatable  
871 classrooms and the specifications for the purchase of such  
872 relocatable classrooms published by local school boards shall meet  
873 all pertinent regulations of the State Board of Education,  
874 including prior approval of such bid by the State Department of  
875 Education.

876 2. Specifications for construction projects  
877 may include an allowance for commodities, equipment, furniture,  
878 construction materials or systems in which prospective bidders are  
879 instructed to include in their bids specified amounts for such  
880 items so long as the allowance items are acquired by the vendor in  
881 a commercially reasonable manner and approved by the  
882 agency/governing authority. Such acquisitions shall not be made  
883 to circumvent the public purchasing laws.

884 (v) Agencies and governing authorities may  
885 establish secure procedures by which bids may be submitted via  
886 electronic means.

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

888 (i) **Decision procedure.** Purchases may be made  
889 from the lowest and best bidder. In determining the lowest and  
890 best bid, freight and shipping charges shall be included.

891 Life-cycle costing, total cost bids, warranties, guaranteed

892 buy-back provisions and other relevant provisions may be included  
893 in the best bid calculation. All best bid procedures for state  
894 agencies must be in compliance with regulations established by the  
895 Department of Finance and Administration. If any governing  
896 authority accepts a bid other than the lowest bid actually  
897 submitted, it shall place on its minutes detailed calculations and  
898 narrative summary showing that the accepted bid was determined to  
899 be the lowest and best bid, including the dollar amount of the  
900 accepted bid and the dollar amount of the lowest bid. No agency  
901 or governing authority shall accept a bid based on items not  
902 included in the specifications.

903                   (ii) **Decision procedure for Certified Purchasing**  
904 **Offices.** In addition to the decision procedure set forth in  
905 paragraph (d)(i), Certified Purchasing Offices may also use the  
906 following procedure: Purchases may be made from the bidder  
907 offering the best value. In determining the best value bid,  
908 freight and shipping charges shall be included. Life-cycle  
909 costing, total cost bids, warranties, guaranteed buy-back  
910 provisions, documented previous experience, training costs and  
911 other relevant provisions may be included in the best value  
912 calculation. This provision shall authorize Certified Purchasing  
913 Offices to utilize a Request For Proposals (RFP) process when  
914 purchasing commodities. All best value procedures for state  
915 agencies must be in compliance with regulations established by the  
916 Department of Finance and Administration. No agency or governing  
917 authority shall accept a bid based on items or criteria not  
918 included in the specifications.

919                   (iii) **Construction project negotiations authority.**  
920 If the lowest and best bid is not more than ten percent (10%)  
921 above the amount of funds allocated for a public construction or  
922 renovation project, then the agency or governing authority shall  
923 be permitted to negotiate with the lowest bidder in order to enter  
924 into a contract for an amount not to exceed the funds allocated.

925           (e) **Lease-purchase authorization.** For the purposes of  
926 this section, the term "equipment" shall mean equipment, furniture  
927 and, if applicable, associated software and other applicable  
928 direct costs associated with the acquisition. Any lease-purchase  
929 of equipment which an agency is not required to lease-purchase  
930 under the master lease-purchase program pursuant to Section  
931 31-7-10 and any lease-purchase of equipment which a governing  
932 authority elects to lease-purchase may be acquired by a  
933 lease-purchase agreement under this paragraph (e). Lease-purchase  
934 financing may also be obtained from the vendor or from a  
935 third-party source after having solicited and obtained at least  
936 two (2) written competitive bids, as defined in paragraph (b) of  
937 this section, for such financing without advertising for such  
938 bids. Solicitation for the bids for financing may occur before or  
939 after acceptance of bids for the purchase of such equipment or,  
940 where no such bids for purchase are required, at any time before  
941 the purchase thereof. No such lease-purchase agreement shall be  
942 for an annual rate of interest which is greater than the overall  
943 maximum interest rate to maturity on general obligation  
944 indebtedness permitted under Section 75-17-101, and the term of  
945 such lease-purchase agreement shall not exceed the useful life of  
946 equipment covered thereby as determined according to the upper  
947 limit of the asset depreciation range (ADR) guidelines for the  
948 Class Life Asset Depreciation Range System established by the  
949 Internal Revenue Service pursuant to the United States Internal  
950 Revenue Code and regulations thereunder as in effect on December  
951 31, 1980, or comparable depreciation guidelines with respect to  
952 any equipment not covered by ADR guidelines. Any lease-purchase  
953 agreement entered into pursuant to this paragraph (e) may contain  
954 any of the terms and conditions which a master lease-purchase  
955 agreement may contain under the provisions of Section 31-7-10(5),  
956 and shall contain an annual allocation dependency clause  
957 substantially similar to that set forth in Section 31-7-10(8).

958 Each agency or governing authority entering into a lease-purchase  
959 transaction pursuant to this paragraph (e) shall maintain with  
960 respect to each such lease-purchase transaction the same  
961 information as required to be maintained by the Department of  
962 Finance and Administration pursuant to Section 31-7-10(13).  
963 However, nothing contained in this section shall be construed to  
964 permit agencies to acquire items of equipment with a total  
965 acquisition cost in the aggregate of less than Ten Thousand  
966 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
967 equipment, and the purchase thereof by any lessor, acquired by  
968 lease-purchase under this paragraph and all lease-purchase  
969 payments with respect thereto shall be exempt from all Mississippi  
970 sales, use and ad valorem taxes. Interest paid on any  
971 lease-purchase agreement under this section shall be exempt from  
972 State of Mississippi income taxation.

973 (f) **Alternate bid authorization.** When necessary to  
974 ensure ready availability of commodities for public works and the  
975 timely completion of public projects, no more than two (2)  
976 alternate bids may be accepted by a governing authority for  
977 commodities. No purchases may be made through use of such  
978 alternate bids procedure unless the lowest and best bidder cannot  
979 deliver the commodities contained in his bid. In that event,  
980 purchases of such commodities may be made from one (1) of the  
981 bidders whose bid was accepted as an alternate.

982 (g) **Construction contract change authorization.** In the  
983 event a determination is made by an agency or governing authority  
984 after a construction contract is let that changes or modifications  
985 to the original contract are necessary or would better serve the  
986 purpose of the agency or the governing authority, such agency or  
987 governing authority may, in its discretion, order such changes  
988 pertaining to the construction that are necessary under the  
989 circumstances without the necessity of further public bids;  
990 provided that such change shall be made in a commercially

991 reasonable manner and shall not be made to circumvent the public  
992 purchasing statutes. In addition to any other authorized person,  
993 the architect or engineer hired by an agency or governing  
994 authority with respect to any public construction contract shall  
995 have the authority, when granted by an agency or governing  
996 authority, to authorize changes or modifications to the original  
997 contract without the necessity of prior approval of the agency or  
998 governing authority when any such change or modification is less  
999 than one percent (1%) of the total contract amount. The agency or  
1000 governing authority may limit the number, manner or frequency of  
1001 such emergency changes or modifications.

1002           (h) **Petroleum purchase alternative.** In addition to  
1003 other methods of purchasing authorized in this chapter, when any  
1004 agency or governing authority shall have a need for gas, diesel  
1005 fuel, oils and/or other petroleum products in excess of the amount  
1006 set forth in paragraph (a) of this section, such agency or  
1007 governing authority may purchase the commodity after having  
1008 solicited and obtained at least two (2) competitive written bids,  
1009 as defined in paragraph (b) of this section. If two (2)  
1010 competitive written bids are not obtained, the entity shall comply  
1011 with the procedures set forth in paragraph (c) of this section.  
1012 In the event any agency or governing authority shall have  
1013 advertised for bids for the purchase of gas, diesel fuel, oils and  
1014 other petroleum products and coal and no acceptable bids can be  
1015 obtained, such agency or governing authority is authorized and  
1016 directed to enter into any negotiations necessary to secure the  
1017 lowest and best contract available for the purchase of such  
1018 commodities.

1019           (i) **Road construction petroleum products price**  
1020 **adjustment clause authorization.** Any agency or governing  
1021 authority authorized to enter into contracts for the construction,  
1022 maintenance, surfacing or repair of highways, roads or streets,  
1023 may include in its bid proposal and contract documents a price

1024 adjustment clause with relation to the cost to the contractor,  
1025 including taxes, based upon an industry-wide cost index, of  
1026 petroleum products including asphalt used in the performance or  
1027 execution of the contract or in the production or manufacture of  
1028 materials for use in such performance. Such industry-wide index  
1029 shall be established and published monthly by the Mississippi  
1030 Department of Transportation with a copy thereof to be mailed,  
1031 upon request, to the clerks of the governing authority of each  
1032 municipality and the clerks of each board of supervisors  
1033 throughout the state. The price adjustment clause shall be based  
1034 on the cost of such petroleum products only and shall not include  
1035 any additional profit or overhead as part of the adjustment. The  
1036 bid proposals or document contract shall contain the basis and  
1037 methods of adjusting unit prices for the change in the cost of  
1038 such petroleum products.

1039           (j) **State agency emergency purchase procedure.** If the  
1040 governing board or the executive head, or his designee, of any  
1041 agency of the state shall determine that an emergency exists in  
1042 regard to the purchase of any commodities or repair contracts, so  
1043 that the delay incident to giving opportunity for competitive  
1044 bidding would be detrimental to the interests of the state, then  
1045 the provisions herein for competitive bidding shall not apply and  
1046 the head of such agency shall be authorized to make the purchase  
1047 or repair. Total purchases so made shall only be for the purpose  
1048 of meeting needs created by the emergency situation. In the event  
1049 such executive head is responsible to an agency board, at the  
1050 meeting next following the emergency purchase, documentation of  
1051 the purchase, including a description of the commodity purchased,  
1052 the purchase price thereof and the nature of the emergency shall  
1053 be presented to the board and placed on the minutes of the board  
1054 of such agency. The head of such agency, or his designee, shall,  
1055 at the earliest possible date following such emergency purchase,  
1056 file with the Department of Finance and Administration (i) a



1057 statement explaining the conditions and circumstances of the  
1058 emergency, which shall include a detailed description of the  
1059 events leading up to the situation and the negative impact to the  
1060 entity if the purchase is made following the statutory  
1061 requirements set forth in paragraph (a), (b) or (c) of this  
1062 section, and (ii) a certified copy of the appropriate minutes of  
1063 the board of such agency, if applicable. On or before September 1  
1064 of each year, the State Auditor shall prepare and deliver to the  
1065 Senate Fees, Salaries and Administration Committee, the House Fees  
1066 and Salaries of Public Officers Committee and the Joint  
1067 Legislative Budget Committee a report containing a list of all  
1068 state agency emergency purchases and supporting documentation for  
1069 each emergency purchase.

1070 (k) **Governing authority emergency purchase procedure.**

1071 If the governing authority, or the governing authority acting  
1072 through its designee, shall determine that an emergency exists in  
1073 regard to the purchase of any commodities or repair contracts, so  
1074 that the delay incident to giving opportunity for competitive  
1075 bidding would be detrimental to the interest of the governing  
1076 authority, then the provisions herein for competitive bidding  
1077 shall not apply and any officer or agent of such governing  
1078 authority having general or special authority therefor in making  
1079 such purchase or repair shall approve the bill presented therefor,  
1080 and he shall certify in writing thereon from whom such purchase  
1081 was made, or with whom such a repair contract was made. At the  
1082 board meeting next following the emergency purchase or repair  
1083 contract, documentation of the purchase or repair contract,  
1084 including a description of the commodity purchased, the price  
1085 thereof and the nature of the emergency shall be presented to the  
1086 board and shall be placed on the minutes of the board of such  
1087 governing authority.

1088 (l) **Hospital purchase, lease-purchase and lease**  
1089 **authorization.**

1090                   (i) The commissioners or board of trustees of any  
1091 public hospital may contract with such lowest and best bidder for  
1092 the purchase or lease-purchase of any commodity under a contract  
1093 of purchase or lease-purchase agreement whose obligatory payment  
1094 terms do not exceed five (5) years.

1095                   (ii) In addition to the authority granted in  
1096 subparagraph (i) of this paragraph (1), the commissioners or board  
1097 of trustees is authorized to enter into contracts for the lease of  
1098 equipment or services, or both, which it considers necessary for  
1099 the proper care of patients if, in its opinion, it is not  
1100 financially feasible to purchase the necessary equipment or  
1101 services. Any such contract for the lease of equipment or  
1102 services executed by the commissioners or board shall not exceed a  
1103 maximum of five (5) years' duration and shall include a  
1104 cancellation clause based on unavailability of funds. If such  
1105 cancellation clause is exercised, there shall be no further  
1106 liability on the part of the lessee. Any such contract for the  
1107 lease of equipment or services executed on behalf of the  
1108 commissioners or board that complies with the provisions of this  
1109 subparagraph (ii) shall be excepted from the bid requirements set  
1110 forth in this section.

1111                   (m) **Exceptions from bidding requirements.** Excepted  
1112 from bid requirements are:

1113                   (i) **Purchasing agreements approved by department.**  
1114 Purchasing agreements, contracts and maximum price regulations  
1115 executed or approved by the Department of Finance and  
1116 Administration.

1117                   (ii) **Outside equipment repairs.** Repairs to  
1118 equipment, when such repairs are made by repair facilities in the  
1119 private sector; however, engines, transmissions, rear axles and/or  
1120 other such components shall not be included in this exemption when  
1121 replaced as a complete unit instead of being repaired and the need  
1122 for such total component replacement is known before disassembly

1123 of the component; however, invoices identifying the equipment,  
1124 specific repairs made, parts identified by number and name,  
1125 supplies used in such repairs, and the number of hours of labor  
1126 and costs therefor shall be required for the payment for such  
1127 repairs.

1128 (iii) **In-house equipment repairs.** Purchases of  
1129 parts for repairs to equipment, when such repairs are made by  
1130 personnel of the agency or governing authority; however, entire  
1131 assemblies, such as engines or transmissions, shall not be  
1132 included in this exemption when the entire assembly is being  
1133 replaced instead of being repaired.

1134 (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
1135 of gravel or fill dirt which are to be removed and transported by  
1136 the purchaser.

1137 (v) **Governmental equipment auctions.** Motor  
1138 vehicles or other equipment purchased from a federal agency or  
1139 authority, another governing authority or state agency of the  
1140 State of Mississippi, or any governing authority or state agency  
1141 of another state at a public auction held for the purpose of  
1142 disposing of such vehicles or other equipment. Any purchase by a  
1143 governing authority under the exemption authorized by this  
1144 subparagraph (v) shall require advance authorization spread upon  
1145 the minutes of the governing authority to include the listing of  
1146 the item or items authorized to be purchased and the maximum bid  
1147 authorized to be paid for each item or items.

1148 (vi) **Intergovernmental sales and transfers.**  
1149 Purchases, sales, transfers or trades by governing authorities or  
1150 state agencies when such purchases, sales, transfers or trades are  
1151 made by a private treaty agreement or through means of  
1152 negotiation, from any federal agency or authority, another  
1153 governing authority or state agency of the State of Mississippi,  
1154 or any state agency or governing authority of another state.  
1155 Nothing in this section shall permit such purchases through public

1156 auction except as provided for in subparagraph (v) of this  
1157 section. It is the intent of this section to allow governmental  
1158 entities to dispose of and/or purchase commodities from other  
1159 governmental entities at a price that is agreed to by both  
1160 parties. This shall allow for purchases and/or sales at prices  
1161 which may be determined to be below the market value if the  
1162 selling entity determines that the sale at below market value is  
1163 in the best interest of the taxpayers of the state. Governing  
1164 authorities shall place the terms of the agreement and any  
1165 justification on the minutes, and state agencies shall obtain  
1166 approval from the Department of Finance and Administration, prior  
1167 to releasing or taking possession of the commodities.

1168 (vii) **Perishable supplies or food.** Perishable  
1169 supplies or food purchased for use in connection with hospitals,  
1170 the school lunch programs, homemaking programs and for the feeding  
1171 of county or municipal prisoners.

1172 (viii) **Single source items.** Noncompetitive items  
1173 available from one (1) source only. In connection with the  
1174 purchase of noncompetitive items only available from one (1)  
1175 source, a certification of the conditions and circumstances  
1176 requiring the purchase shall be filed by the agency with the  
1177 Department of Finance and Administration and by the governing  
1178 authority with the board of the governing authority. Upon receipt  
1179 of that certification the Department of Finance and Administration  
1180 or the board of the governing authority, as the case may be, may,  
1181 in writing, authorize the purchase, which authority shall be noted  
1182 on the minutes of the body at the next regular meeting thereafter.  
1183 In those situations, a governing authority is not required to  
1184 obtain the approval of the Department of Finance and  
1185 Administration.

1186 (ix) **Waste disposal facility construction**  
1187 **contracts.** Construction of incinerators and other facilities for  
1188 disposal of solid wastes in which products either generated

1189 therein, such as steam, or recovered therefrom, such as materials  
1190 for recycling, are to be sold or otherwise disposed of; however,  
1191 in constructing such facilities, a governing authority or agency  
1192 shall publicly issue requests for proposals, advertised for in the  
1193 same manner as provided herein for seeking bids for public  
1194 construction projects, concerning the design, construction,  
1195 ownership, operation and/or maintenance of such facilities,  
1196 wherein such requests for proposals when issued shall contain  
1197 terms and conditions relating to price, financial responsibility,  
1198 technology, environmental compatibility, legal responsibilities  
1199 and such other matters as are determined by the governing  
1200 authority or agency to be appropriate for inclusion; and after  
1201 responses to the request for proposals have been duly received,  
1202 the governing authority or agency may select the most qualified  
1203 proposal or proposals on the basis of price, technology and other  
1204 relevant factors and from such proposals, but not limited to the  
1205 terms thereof, negotiate and enter contracts with one or more of  
1206 the persons or firms submitting proposals.

1207                   (x) **Hospital group purchase contracts.** Supplies,  
1208 commodities and equipment purchased by hospitals through group  
1209 purchase programs pursuant to Section 31-7-38.

1210                   (xi) **Information technology products.** Purchases  
1211 of information technology products made by governing authorities  
1212 under the provisions of purchase schedules, or contracts executed  
1213 or approved by the Mississippi Department of Information  
1214 Technology Services and designated for use by governing  
1215 authorities.

1216                   (xii) **Energy efficiency services and equipment.**  
1217 Energy efficiency services and equipment acquired by school  
1218 districts, community and junior colleges, institutions of higher  
1219 learning and state agencies or other applicable governmental  
1220 entities on a shared-savings, lease or lease-purchase basis  
1221 pursuant to Section 31-7-14.

1222                   (xiii) **Municipal electrical utility system fuel.**  
1223 Purchases of coal and/or natural gas by municipally-owned electric  
1224 power generating systems that have the capacity to use both coal  
1225 and natural gas for the generation of electric power.

1226                   (xiv) **Library books and other reference materials.**  
1227 Purchases by libraries or for libraries of books and periodicals;  
1228 processed film, video cassette tapes, filmstrips and slides;  
1229 recorded audio tapes, cassettes and diskettes; and any such items  
1230 as would be used for teaching, research or other information  
1231 distribution; however, equipment such as projectors, recorders,  
1232 audio or video equipment, and monitor televisions are not exempt  
1233 under this subparagraph.

1234                   (xv) **Unmarked vehicles.** Purchases of unmarked  
1235 vehicles when such purchases are made in accordance with  
1236 purchasing regulations adopted by the Department of Finance and  
1237 Administration pursuant to Section 31-7-9(2).

1238                   (xvi) **Election ballots.** Purchases of ballots  
1239 printed pursuant to Section 23-15-351.

1240                   (xvii) **Multichannel interactive video systems.**  
1241 From and after July 1, 1990, contracts by Mississippi Authority  
1242 for Educational Television with any private educational  
1243 institution or private nonprofit organization whose purposes are  
1244 educational in regard to the construction, purchase, lease or  
1245 lease-purchase of facilities and equipment and the employment of  
1246 personnel for providing multichannel interactive video systems  
1247 (ITSF) in the school districts of this state.

1248                   (xviii) **Purchases of prison industry products.**  
1249 From and after January 1, 1991, purchases made by state agencies  
1250 or governing authorities involving any item that is manufactured,  
1251 processed, grown or produced from the state's prison industries.

1252                   (xix) **Undercover operations equipment.** Purchases  
1253 of surveillance equipment or any other high-tech equipment to be  
1254 used by law enforcement agents in undercover operations, provided

1255 that any such purchase shall be in compliance with regulations  
1256 established by the Department of Finance and Administration.

1257 (xx) **Junior college books for rent.** Purchases by  
1258 community or junior colleges of textbooks which are obtained for  
1259 the purpose of renting such books to students as part of a book  
1260 service system.

1261 (xxi) **Certain school district purchases.**  
1262 Purchases of commodities made by school districts from vendors  
1263 with which any levying authority of the school district, as  
1264 defined in Section 37-57-1, has contracted through competitive  
1265 bidding procedures for purchases of the same commodities.

1266 (xxii) **Garbage, solid waste and sewage contracts.**  
1267 Contracts for garbage collection or disposal, contracts for solid  
1268 waste collection or disposal and contracts for sewage collection  
1269 or disposal.

1270 (xxiii) **Municipal water tank maintenance**  
1271 **contracts.** Professional maintenance program contracts for the  
1272 repair or maintenance of municipal water tanks, which provide  
1273 professional services needed to maintain municipal water storage  
1274 tanks for a fixed annual fee for a duration of two (2) or more  
1275 years.

1276 (xxiv) **Purchases of Mississippi Industries for the**  
1277 **Blind products.** Purchases made by state agencies or governing  
1278 authorities involving any item that is manufactured, processed or  
1279 produced by the Mississippi Industries for the Blind.

1280 (xxv) **Purchases of state-adopted textbooks.**  
1281 Purchases of state-adopted textbooks by public school districts.

1282 (xxvi) **Certain purchases under the Mississippi**  
1283 **Major Economic Impact Act.** Contracts entered into pursuant to the  
1284 provisions of Section 57-75-9(2) and (3).

1285 (xxvii) **Used heavy or specialized machinery or**  
1286 **equipment for installation of soil and water conservation**  
1287 **practices purchased at auction.** Used heavy or specialized

1288 machinery or equipment used for the installation and  
1289 implementation of soil and water conservation practices or  
1290 measures purchased subject to the restrictions provided in  
1291 Sections 69-27-331 through 69-27-341. Any purchase by the State  
1292 Soil and Water Conservation Commission under the exemption  
1293 authorized by this subparagraph shall require advance  
1294 authorization spread upon the minutes of the commission to include  
1295 the listing of the item or items authorized to be purchased and  
1296 the maximum bid authorized to be paid for each item or items.

1297 (xxviii) **Hospital lease of equipment or services.**  
1298 Leases by hospitals of equipment or services if the leases are in  
1299 compliance with paragraph (1)(ii).

1300 (xxix) **Purchases made pursuant to qualified**  
1301 **cooperative purchasing agreements.** Purchases made by certified  
1302 purchasing offices of state agencies or governing authorities  
1303 under cooperative purchasing agreements previously approved by the  
1304 Office of Purchasing and Travel and established by or for any  
1305 municipality, county, parish or state government or the federal  
1306 government, provided that the notification to potential  
1307 contractors includes a clause that sets forth the availability of  
1308 the cooperative purchasing agreement to other governmental  
1309 entities. Such purchases shall only be made if the use of the  
1310 cooperative purchasing agreements is determined to be in the best  
1311 interest of the governmental entity.

1312 (xxx) **School yearbooks.** Purchases of school  
1313 yearbooks by state agencies or governing authorities; provided,  
1314 however, that state agencies and governing authorities shall use  
1315 for these purchases the RFP process as set forth in the  
1316 Mississippi Procurement Manual adopted by the Office of Purchasing  
1317 and Travel.

1318 (xxxii) **Toll roads and bridge construction**  
1319 **projects.** Contracts entered into under the provisions of Section  
1320 1 or 2 of House Bill No. 351, 2007 Regular Session.



1321           (n) **Term contract authorization.** All contracts for the  
1322 purchase of:

1323           (i) All contracts for the purchase of commodities,  
1324 equipment and public construction (including, but not limited to,  
1325 repair and maintenance), may be let for periods of not more than  
1326 sixty (60) months in advance, subject to applicable statutory  
1327 provisions prohibiting the letting of contracts during specified  
1328 periods near the end of terms of office. Term contracts for a  
1329 period exceeding twenty-four (24) months shall also be subject to  
1330 ratification or cancellation by governing authority boards taking  
1331 office subsequent to the governing authority board entering the  
1332 contract.

1333           (ii) Bid proposals and contracts may include price  
1334 adjustment clauses with relation to the cost to the contractor  
1335 based upon a nationally published industry-wide or nationally  
1336 published and recognized cost index. The cost index used in a  
1337 price adjustment clause shall be determined by the Department of  
1338 Finance and Administration for the state agencies and by the  
1339 governing board for governing authorities. The bid proposal and  
1340 contract documents utilizing a price adjustment clause shall  
1341 contain the basis and method of adjusting unit prices for the  
1342 change in the cost of such commodities, equipment and public  
1343 construction.

1344           (o) **Purchase law violation prohibition and vendor**  
1345 **penalty.** No contract or purchase as herein authorized shall be  
1346 made for the purpose of circumventing the provisions of this  
1347 section requiring competitive bids, nor shall it be lawful for any  
1348 person or concern to submit individual invoices for amounts within  
1349 those authorized for a contract or purchase where the actual value  
1350 of the contract or commodity purchased exceeds the authorized  
1351 amount and the invoices therefor are split so as to appear to be  
1352 authorized as purchases for which competitive bids are not  
1353 required. Submission of such invoices shall constitute a

1354 misdemeanor punishable by a fine of not less than Five Hundred  
1355 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
1356 or by imprisonment for thirty (30) days in the county jail, or  
1357 both such fine and imprisonment. In addition, the claim or claims  
1358 submitted shall be forfeited.

1359           (p) **Electrical utility petroleum-based equipment**  
1360 **purchase procedure.** When in response to a proper advertisement  
1361 therefor, no bid firm as to price is submitted to an electric  
1362 utility for power transformers, distribution transformers, power  
1363 breakers, reclosers or other articles containing a petroleum  
1364 product, the electric utility may accept the lowest and best bid  
1365 therefor although the price is not firm.

1366           (q) **Fuel management system bidding procedure.** Any  
1367 governing authority or agency of the state shall, before  
1368 contracting for the services and products of a fuel management or  
1369 fuel access system, enter into negotiations with not fewer than  
1370 two (2) sellers of fuel management or fuel access systems for  
1371 competitive written bids to provide the services and products for  
1372 the systems. In the event that the governing authority or agency  
1373 cannot locate two (2) sellers of such systems or cannot obtain  
1374 bids from two (2) sellers of such systems, it shall show proof  
1375 that it made a diligent, good-faith effort to locate and negotiate  
1376 with two (2) sellers of such systems. Such proof shall include,  
1377 but not be limited to, publications of a request for proposals and  
1378 letters soliciting negotiations and bids. For purposes of this  
1379 paragraph (q), a fuel management or fuel access system is an  
1380 automated system of acquiring fuel for vehicles as well as  
1381 management reports detailing fuel use by vehicles and drivers, and  
1382 the term "competitive written bid" shall have the meaning as  
1383 defined in paragraph (b) of this section. Governing authorities  
1384 and agencies shall be exempt from this process when contracting  
1385 for the services and products of a fuel management or fuel access

1386 systems under the terms of a state contract established by the  
1387 Office of Purchasing and Travel.

1388           (r) **Solid waste contract proposal procedure.** Before  
1389 entering into any contract for garbage collection or disposal,  
1390 contract for solid waste collection or disposal or contract for  
1391 sewage collection or disposal, which involves an expenditure of  
1392 more than Fifty Thousand Dollars (\$50,000.00), a governing  
1393 authority or agency shall issue publicly a request for proposals  
1394 concerning the specifications for such services which shall be  
1395 advertised for in the same manner as provided in this section for  
1396 seeking bids for purchases which involve an expenditure of more  
1397 than the amount provided in paragraph (c) of this section. Any  
1398 request for proposals when issued shall contain terms and  
1399 conditions relating to price, financial responsibility,  
1400 technology, legal responsibilities and other relevant factors as  
1401 are determined by the governing authority or agency to be  
1402 appropriate for inclusion; all factors determined relevant by the  
1403 governing authority or agency or required by this paragraph (r)  
1404 shall be duly included in the advertisement to elicit proposals.  
1405 After responses to the request for proposals have been duly  
1406 received, the governing authority or agency shall select the most  
1407 qualified proposal or proposals on the basis of price, technology  
1408 and other relevant factors and from such proposals, but not  
1409 limited to the terms thereof, negotiate and enter contracts with  
1410 one or more of the persons or firms submitting proposals. If the  
1411 governing authority or agency deems none of the proposals to be  
1412 qualified or otherwise acceptable, the request for proposals  
1413 process may be reinitiated. Notwithstanding any other provisions  
1414 of this paragraph, where a county with at least thirty-five  
1415 thousand (35,000) nor more than forty thousand (40,000)  
1416 population, according to the 1990 federal decennial census, owns  
1417 or operates a solid waste landfill, the governing authorities of  
1418 any other county or municipality may contract with the governing

1419 authorities of the county owning or operating the landfill,  
1420 pursuant to a resolution duly adopted and spread upon the minutes  
1421 of each governing authority involved, for garbage or solid waste  
1422 collection or disposal services through contract negotiations.

1423           (s) **Minority set-aside authorization.** Notwithstanding  
1424 any provision of this section to the contrary, any agency or  
1425 governing authority, by order placed on its minutes, may, in its  
1426 discretion, set aside not more than twenty percent (20%) of its  
1427 anticipated annual expenditures for the purchase of commodities  
1428 from minority businesses; however, all such set-aside purchases  
1429 shall comply with all purchasing regulations promulgated by the  
1430 Department of Finance and Administration and shall be subject to  
1431 bid requirements under this section. Set-aside purchases for  
1432 which competitive bids are required shall be made from the lowest  
1433 and best minority business bidder. For the purposes of this  
1434 paragraph, the term "minority business" means a business which is  
1435 owned by a majority of persons who are United States citizens or  
1436 permanent resident aliens (as defined by the Immigration and  
1437 Naturalization Service) of the United States, and who are Asian,  
1438 Black, Hispanic or Native American, according to the following  
1439 definitions:

1440                   (i) "Asian" means persons having origins in any of  
1441 the original people of the Far East, Southeast Asia, the Indian  
1442 subcontinent, or the Pacific Islands.

1443                   (ii) "Black" means persons having origins in any  
1444 black racial group of Africa.

1445                   (iii) "Hispanic" means persons of Spanish or  
1446 Portuguese culture with origins in Mexico, South or Central  
1447 America, or the Caribbean Islands, regardless of race.

1448                   (iv) "Native American" means persons having  
1449 origins in any of the original people of North America, including  
1450 American Indians, Eskimos and Aleuts.

1451           (t) **Construction punch list restriction.** The  
1452 architect, engineer or other representative designated by the  
1453 agency or governing authority that is contracting for public  
1454 construction or renovation may prepare and submit to the  
1455 contractor only one (1) preliminary punch list of items that do  
1456 not meet the contract requirements at the time of substantial  
1457 completion and one (1) final list immediately before final  
1458 completion and final payment.

1459           (u) **Purchase authorization clarification.** Nothing in  
1460 this section shall be construed as authorizing any purchase not  
1461 authorized by law.

1462           **SECTION 24.** Section 11-46-9, Mississippi Code of 1972, is  
1463 amended as follows:

1464           11-46-9. (1) A governmental entity and its employees acting  
1465 within the course and scope of their employment or duties shall  
1466 not be liable for any claim:

1467           (a) Arising out of a legislative or judicial action or  
1468 inaction, or administrative action or inaction of a legislative or  
1469 judicial nature;

1470           (b) Arising out of any act or omission of an employee  
1471 of a governmental entity exercising ordinary care in reliance  
1472 upon, or in the execution or performance of, or in the failure to  
1473 execute or perform, a statute, ordinance or regulation, whether or  
1474 not the statute, ordinance or regulation be valid;

1475           (c) Arising out of any act or omission of an employee  
1476 of a governmental entity engaged in the performance or execution  
1477 of duties or activities relating to police or fire protection  
1478 unless the employee acted in reckless disregard of the safety and  
1479 well-being of any person not engaged in criminal activity at the  
1480 time of injury;

1481           (d) Based upon the exercise or performance or the  
1482 failure to exercise or perform a discretionary function or duty on

1483 the part of a governmental entity or employee thereof, whether or  
1484 not the discretion be abused;

1485 (e) Arising out of an injury caused by adopting or  
1486 failing to adopt a statute, ordinance or regulation;

1487 (f) Which is limited or barred by the provisions of any  
1488 other law;

1489 (g) Arising out of the exercise of discretion in  
1490 determining whether or not to seek or provide the resources  
1491 necessary for the purchase of equipment, the construction or  
1492 maintenance of facilities, the hiring of personnel and, in  
1493 general, the provision of adequate governmental services;

1494 (h) Arising out of the issuance, denial, suspension or  
1495 revocation of, or the failure or refusal to issue, deny, suspend  
1496 or revoke any privilege, ticket, pass, permit, license,  
1497 certificate, approval, order or similar authorization where the  
1498 governmental entity or its employee is authorized by law to  
1499 determine whether or not such authorization should be issued,  
1500 denied, suspended or revoked unless such issuance, denial,  
1501 suspension or revocation, or failure or refusal thereof, is of a  
1502 malicious or arbitrary and capricious nature;

1503 (i) Arising out of the assessment or collection of any  
1504 tax or fee;

1505 (j) Arising out of the detention of any goods or  
1506 merchandise by any law enforcement officer, unless such detention  
1507 is of a malicious or arbitrary and capricious nature;

1508 (k) Arising out of the imposition or establishment of a  
1509 quarantine, whether such quarantine relates to persons or  
1510 property;

1511 (l) Of any claimant who is an employee of a  
1512 governmental entity and whose injury is covered by the Workers'  
1513 Compensation Law of this state by benefits furnished by the  
1514 governmental entity by which he is employed;

1515           (m) Of any claimant who at the time the claim arises is  
1516 an inmate of any detention center, jail, workhouse, penal farm,  
1517 penitentiary or other such institution, regardless of whether such  
1518 claimant is or is not an inmate of any detention center, jail,  
1519 workhouse, penal farm, penitentiary or other such institution when  
1520 the claim is filed;

1521           (n) Arising out of any work performed by a person  
1522 convicted of a crime when the work is performed pursuant to any  
1523 sentence or order of any court or pursuant to laws of the State of  
1524 Mississippi authorizing or requiring such work;

1525           (o) Under circumstances where liability has been or is  
1526 hereafter assumed by the United States, to the extent of such  
1527 assumption of liability, including, but not limited to, any claim  
1528 based on activities of the Mississippi National Guard when such  
1529 claim is cognizable under the National Guard Tort Claims Act of  
1530 the United States, 32 USCS 715 (32 USCS 715), or when such claim  
1531 accrues as a result of active federal service or state service at  
1532 the call of the Governor for quelling riots and civil  
1533 disturbances;

1534           (p) Arising out of a plan or design for construction or  
1535 improvements to public property, including, but not limited to,  
1536 public buildings, highways, roads, streets, bridges, levees,  
1537 dikes, dams, impoundments, drainage channels, diversion channels,  
1538 harbors, ports, wharfs or docks, where such plan or design has  
1539 been approved in advance of the construction or improvement by the  
1540 legislative body or governing authority of a governmental entity  
1541 or by some other body or administrative agency, exercising  
1542 discretion by authority to give such approval, and where such plan  
1543 or design is in conformity with engineering or design standards in  
1544 effect at the time of preparation of the plan or design;

1545           (q) Arising out of an injury caused solely by the  
1546 effect of weather conditions on the use of streets and highways;

1547           (r) Arising out of the lack of adequate personnel or  
1548 facilities at a state hospital or state corrections facility if  
1549 reasonable use of available appropriations has been made to  
1550 provide such personnel or facilities;

1551           (s) Arising out of loss, damage or destruction of  
1552 property of a patient or inmate of a state institution;

1553           (t) Arising out of any loss of benefits or compensation  
1554 due under a program of public assistance or public welfare;

1555           (u) Arising out of or resulting from riots, unlawful  
1556 assemblies, unlawful public demonstrations, mob violence or civil  
1557 disturbances;

1558           (v) Arising out of an injury caused by a dangerous  
1559 condition on property of the governmental entity that was not  
1560 caused by the negligent or other wrongful conduct of an employee  
1561 of the governmental entity or of which the governmental entity did  
1562 not have notice, either actual or constructive, and adequate  
1563 opportunity to protect or warn against; provided, however, that a  
1564 governmental entity shall not be liable for the failure to warn of  
1565 a dangerous condition which is obvious to one exercising due care;

1566           (w) Arising out of the absence, condition, malfunction  
1567 or removal by third parties of any sign, signal, warning device,  
1568 illumination device, guardrail or median barrier, unless the  
1569 absence, condition, malfunction or removal is not corrected by the  
1570 governmental entity responsible for its maintenance within a  
1571 reasonable time after actual or constructive notice; \* \* \*

1572           (x) Arising out of the administration of corporal  
1573 punishment or the taking of any action to maintain control and  
1574 discipline of students, as defined in Section 37-11-57, by a  
1575 teacher, assistant teacher, principal or assistant principal of a  
1576 public school district in the state unless the teacher, assistant  
1577 teacher, principal or assistant principal acted in bad faith or  
1578 with malicious purpose or in a manner exhibiting a wanton and  
1579 willful disregard of human rights or safety; or



1580           (y) Arising out of the construction, maintenance or  
1581 operation of any highway, bridge or roadway project entered into  
1582 by the Mississippi Transportation Commission or other governmental  
1583 entity and a company under the provisions of Section 1 or 2 of  
1584 House Bill No. 351, 2007 Regular Session, where the act or  
1585 omission occurs during the term of any such contract.

1586           (2) A governmental entity shall also not be liable for any  
1587 claim where the governmental entity:

- 1588                 (a) Is inactive and dormant;
- 1589                 (b) Receives no revenue;
- 1590                 (c) Has no employees; and
- 1591                 (d) Owns no property.

1592           (3) If a governmental entity exempt from liability by  
1593 subsection (2) becomes active, receives income, hires employees or  
1594 acquires any property, such governmental entity shall no longer be  
1595 exempt from liability as provided in subsection (2) and shall be  
1596 subject to the provisions of this chapter.

1597           **SECTION 25.** The Attorney General of the State of Mississippi  
1598 shall submit this act, immediately upon approval by the Governor,  
1599 or upon approval by the Legislature subsequent to a veto, to the  
1600 Attorney General of the United States or to the United States  
1601 District Court for the District of Columbia in accordance with the  
1602 provisions of the Voting Rights Act of 1965, as amended and  
1603 extended.

1604           **SECTION 26.** This act shall take effect and be in force from  
1605 and after the date it is effectuated under Section 5 of the Voting  
1606 Rights Act of 1965, as amended and extended.