

By: Senator(s) Ross, Dawkins, Dearing,
Walley

To: Highways and
Transportation; Finance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2375

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 PROVIDE THAT TOLLS SHALL CEASE DURING A STATE OF EMERGENCY; TO
15 AMEND SECTIONS 11-46-9, 31-7-13, 65-1-85 AND 65-3-1, MISSISSIPPI
16 CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; TO
17 PROVIDE FOR THE REPEAL OF SECTIONS 65-23-101 THROUGH 65-23-121,
18 MISSISSIPPI CODE OF 1972, WHICH AUTHORIZE THE DEPARTMENT OF
19 TRANSPORTATION TO CONSTRUCT TOLL BRIDGES ACROSS BAYS AND RIVERS OF
20 THE GULF OF MEXICO; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** The Mississippi Transportation Commission, county
23 boards of supervisors and/or the governing authorities of
24 municipalities (hereinafter referred to as governmental entities),
25 in their discretion, may construct, operate and maintain,
26 individually or jointly with other governmental entities, one or
27 more new toll roads or toll bridges in the state for motor vehicle
28 traffic, including toll booths and related facilities, at and
29 along only those locations where an alternate untolled route
30 exists. An existing road or any segment of an existing road shall
31 not be part of a new toll road, and the reconstruction, relocation
32 or repair of an existing road shall not be tolled. To qualify as
33 an alternate untolled route, the route must meet or exceed the
34 same design, construction and maintenance standards established by
35 the Mississippi Transportation Commission for highways and bridges
36 on the state highway system. All such highways, pavement,

37 bridges, drainage-related structures and other infrastructure
38 comprising the projects shall be built and maintained in
39 accordance with not less than the minimum highway design,
40 construction and maintenance standards established by the
41 contracting governmental entity for such highways, infrastructure
42 and facilities.

43 **SECTION 2.** (1) In addition to and as an alternative to any
44 other authority granted by law, including, but not limited to,
45 Section 1 of this act, any governmental entities, as defined in
46 Section 1 of this act, in their discretion, may contract,
47 individually or jointly with other governmental entities, with any
48 persons, corporations, partnerships or other businesses licensed
49 to do business in the State of Mississippi (hereinafter referred
50 to as "companies" or "company") for the purpose of designing,
51 financing, constructing, operating and maintaining one or more new
52 toll roads or toll bridges in the state for motor vehicle traffic,
53 including toll booths and related facilities, at and along only
54 those locations where an alternate untolled route exists. An
55 existing road or any segment of an existing road shall not be part
56 of a new toll road, and the reconstruction, relocation or repair
57 of an existing road shall not be tolled. Such contracts shall
58 provide that land held by the governmental entities, whether in
59 fee simple, as an easement or other interest, shall be leased or
60 assigned to a company for design, construction, operation and
61 maintenance of roadways, highways or bridges for motor vehicle
62 traffic, toll booths and related facilities. All such highways,
63 pavement, bridges, drainage-related structures and other
64 infrastructure comprising the projects shall be built and
65 maintained in accordance with not less than the minimum highway
66 design, construction and maintenance standards established by the
67 contracting governmental entity for such highways, infrastructure
68 and facilities. The contracting governmental entity shall conduct
69 periodic inspections of any such project throughout the term of

70 the contract to ensure compliance by the company. Failure of a
71 company to comply with minimum standards established for the
72 project by the contracting governmental entity shall constitute a
73 breach and shall subject the company to liability on its bond or
74 security or to rescission of the contract in accordance with the
75 terms and provisions of the contract.

76 (2) (a) Every contract entered into by a governmental
77 entity under this section (except for contracts entered into with
78 another governmental entity), at a minimum, must provide for the
79 design and construction of a new toll road or toll bridge project
80 and may also provide for the financing, acquisition, lease,
81 maintenance, and/or operation of a new toll road or toll bridge
82 project.

83 (b) If a governmental entity enters into a contract
84 with a company as authorized by Section 2 of this act, such
85 governmental entity shall use a competitive procurement process
86 that provides the best value for the governmental entity. The
87 governmental entity may accept unsolicited proposals for a
88 proposed new toll road or solicit proposals in accordance with
89 this section.

90 (c) A governmental entity shall publish a request for
91 competing proposals and qualifications in a newspaper having a
92 general circulation within such governmental entity or, if the
93 governmental entity is the Mississippi Transportation Commission,
94 shall publish the request in a newspaper having a general
95 circulation at the seat of government and, if the governmental
96 entity has a Web site, shall post the request on such Web site.
97 Such request shall include the criteria used to evaluate the
98 proposals, the relative weight given to the criteria and a
99 deadline by which proposals must be received. At a minimum, a
100 proposal submitted in response to such request must contain:

101 (i) Information regarding the proposed project
102 location, scope and limits;

103 (ii) Information regarding the company's
104 qualifications, experience, technical competence, and capability
105 to develop the project; and

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

109 A governmental entity may interview a company submitting a
110 solicited or unsolicited proposal. In evaluating such proposals,
111 a governmental entity may solicit input from other sources
112 regarding such proposals.

113 (d) The governmental entity shall rank each proposal
114 based on the criteria described in the request for proposals and
115 select the company whose proposal offers the best value to the
116 governmental entity. The governmental entity may enter into
117 discussions with the company whose proposal offers the best value.
118 If at any point during the discussions it appears to the
119 governmental entity that the highest ranking proposal will not
120 provide the governmental entity with the overall best value, the
121 governmental entity may enter into discussions with the company
122 submitting the next-highest ranking proposal.

123 (e) The governmental entity may withdraw a request for
124 competing proposals and qualifications at any time and for any
125 reason and may reject any one or all proposals. In either case,
126 the governmental entity may then publish a new request for
127 competing proposals and qualifications. A governmental entity
128 shall not be required to pay any company for the costs of
129 preparing or submitting proposals.

130 (f) The governmental entity shall prescribe the general
131 form of a contract authorized by this section and may include any
132 matter the governmental entity considers advantageous to it. The
133 governmental entity and the company shall negotiate the specific
134 terms of the contract.

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

139 (h) The transportation commission shall evaluate each
140 proposal based on the criteria established by the commission. The
141 transportation commission shall approve or disapprove a proposal
142 within ninety (90) days after receipt of the proposal. If the
143 transportation commission needs additional information, it may
144 delay approval for an additional sixty (60) days.

145 (3) Every contract entered into by a governmental entity
146 under this section shall require a company to enter into bond and
147 provide such security as the governmental entity determines may be
148 necessary or advisable to ensure timely completion and proper
149 execution and performance of the contract. The term of the
150 contract shall not exceed the date of the retirement of the debt
151 for construction of the toll road and the tolls shall cease the
152 date the debt is retired. The governmental entities are
153 authorized to acquire such property or interests in property as
154 may be necessary, by gift, purchase or eminent domain, for
155 construction and maintenance of the highways or bridges built
156 pursuant to contracts entered into under this section. Upon
157 expiration, termination or rescission of the contract, or upon the
158 retirement of the debt for construction, whichever comes first,
159 all interests that the company may have in the land,
160 infrastructure, facilities or other improvements to the property
161 subject to contract shall terminate and automatically, by
162 operation of law, be returned or conveyed to and vested in the
163 State of Mississippi or the contracting governmental entity. Upon
164 termination, expiration or rescission of the contract, or upon the
165 retirement of the debt for construction, whichever comes first,
166 the collection of tolls shall cease.

167 (4) During the term of any contract entered into under this
168 section, the company may establish, charge and collect motor
169 vehicle operator tolls for use of the highway and its facilities.
170 The amount of such tolls, and any modification thereto, shall be
171 subject to approval by the contracting governmental entity;
172 however, all such contracts entered into with the Mississippi
173 Transportation Commission may require a company to pay a
174 percentage of all tolls collected to the Mississippi Department of
175 Transportation. All such tolls paid to the department shall be
176 deposited into the special bond sinking fund under Section 5 of
177 this act and may be expended only as authorized by the
178 Legislature.

179 (5) If a toll road is a designated evacuation route and a
180 declaration of a state of emergency is issued by the President of
181 the United States or by the Governor, the collection of tolls
182 shall cease until the termination of the state of emergency.

183 (6) All statutes of this state relating to traffic
184 regulation and control shall be applicable to motor vehicles
185 operated upon highways and bridges constructed under this section
186 and shall be enforceable by the Mississippi Department of Public
187 Safety, the Mississippi Highway Safety Patrol or any other law
188 enforcement agency having jurisdiction over such highways and
189 bridges.

190 (7) The State of Mississippi, the Mississippi Transportation
191 Commission, the Mississippi Department of Transportation,
192 counties, municipalities or any other agency or political
193 subdivision, or any officer or employee thereof, shall not be
194 liable for any tortious act or omission arising out of the
195 construction, maintenance or operation of any highway or bridge
196 project under the provisions of this section where the act or
197 omission occurs during the term of any such contract entered into
198 by the Mississippi Transportation Commission or other governmental
199 entity and a company.

200 (8) The powers conferred by this section shall be in
201 addition to the powers conferred by any other law, general,
202 special or local. This section shall be construed as an
203 additional and alternative method of funding all or any portion of
204 the purchasing, building, improving, owning or operating of
205 roadways, highways or bridges under the jurisdiction of the
206 Mississippi Transportation Commission, county boards of
207 supervisors or municipal governing authorities, any provision of
208 the laws of the state or any charter of any municipality to the
209 contrary notwithstanding.

210 **SECTION 3.** (1) For the purpose of providing funds to defray
211 the expenses of projects authorized pursuant to Sections 1 and 2
212 of this act, the board of supervisors of a county or the governing
213 authorities of a municipality shall have the right to borrow money
214 for the project, and to issue revenue bonds therefor in such
215 principal amounts as the board of supervisors or governing
216 authorities may determine to be necessary to provide sufficient
217 funds to defray the expenses of projects authorized pursuant to
218 Sections 1 and 2 of this act. The bonds shall be payable out of
219 any revenues derived from the project, including grants or
220 contributions from the federal government or other sources. Such
221 bonds may be sold at public or private sale at not less than par
222 and shall bear interest at a rate or rates not exceeding that
223 allowed in Section 75-17-103. Any such bonds so issued shall not
224 constitute a debt of the county, the municipality or any political
225 subdivision of the county or the city within the meaning of any
226 constitutional, statutory or charter restriction, limitation or
227 provision. It shall be plainly stated on the face of each bond in
228 substance that the bond has been issued pursuant to the authority
229 granted in this section and that the taxing power of the county or
230 municipality issuing the bond is not pledged to the payment of the
231 bond or the interest on it and that the bond and the interest on

232 it are payable solely from the revenues of the project for which
233 the bond is issued.

234 (2) All bonds issued under the authority of this section
235 shall bear such date or dates, shall be in such form or
236 denomination, shall bear such rate of interest, and shall mature
237 at such times as the county or municipality shall determine, but
238 no bonds issued under the authority of this section shall mature
239 more than twenty-five (25) years from the date of the issuance
240 thereof and none of the bonds shall be sold for less than par and
241 accrued interest. All bonds shall be sold in the manner now
242 provided by law for the sale of bonds without any restrictions,
243 limitations, requirements or conditions applicable to the
244 borrowing of such money and the issuance of such bonds which are
245 not herein contained. The denomination, form, place of payment
246 and other details of such bonds may be determined by resolution or
247 order of the board of supervisors of a county or the governing
248 authorities of a municipality, and shall be executed on behalf of
249 the county or municipality as is now provided by law.

250 (3) Before issuing any bonds under the provisions of this
251 section, the board of supervisors of the county or the governing
252 authorities of the municipality shall, by resolution spread upon
253 the minutes, declare its intention to issue such bonds for the
254 purposes authorized by this section and shall state in the
255 resolution the amount of bonds proposed to be issued and shall
256 likewise fix in the resolution the date upon which the board of
257 supervisors of the county or the governing authorities of the
258 municipality proposes to direct the issuance of the bonds. Notice
259 of such intention shall be published once a week for at least
260 three (3) consecutive weeks in a newspaper published or having a
261 general circulation in the county or the municipality, with the
262 first publication of the notice to be made not less than
263 twenty-one (21) days prior to the date fixed in the resolution for
264 the issuance of the bonds and the last publication to be made not

265 more than seven (7) days prior to such date. If, on or before the
266 date specified in the resolution, twenty percent (20%) or fifteen
267 hundred (1500), whichever is less, of the qualified electors of
268 the county or municipality shall file a written protest against
269 the issuance of the bonds, then an election upon the issuance of
270 the bonds shall be called, and held, as provided in this section.
271 If no such protest shall be filed, then the board of supervisors
272 of the county or the governing authorities of the municipality may
273 issue such bonds without an election on the question of the
274 issuance of the bonds at any time within a period of two (2) years
275 after the date specified in the resolution.

276 (4) If an election is called under the provisions of this
277 section on the question of the issuance of bonds, the election
278 shall be held, insofar as practicable, in the same manner as other
279 elections are held in the county or municipality. At the
280 election, all qualified electors of the county or municipality may
281 vote and the ballots used in the election shall have printed
282 thereon a brief statement of the amount and purposes of the
283 proposed bond issue and the words "FOR THE BOND ISSUE" and the
284 words "AGAINST THE BOND ISSUE," and the voters shall vote by
285 placing a cross (X) or check mark (√) opposite their choice on the
286 proposition.

287 (5) When the results of any election provided for in this
288 section shall have been canvassed by the election commissioners of
289 the county or municipality and certified by them to the proper
290 authorities, it shall be the duty of the board of supervisors of
291 the county or the governing authorities of the municipality to
292 determine and adjudicate whether or not a majority of the
293 qualified electors who voted in the election voted in favor of the
294 issuance of the bonds and unless a majority of the qualified
295 electors who voted in the election voted in favor of the issuance
296 of the bonds, then the bonds shall not be issued. Should a
297 majority of the qualified electors who vote in the election vote

298 in favor of the bonds, the board of supervisors of the county or
299 the governing authorities of the municipality may issue the bonds,
300 either in whole or in part, within two (2) years from the date of
301 such election, or within two (2) years after final favorable
302 determination of any litigation affecting the issuance of such
303 bonds at such time or times, and in such amount or amounts, not
304 exceeding that specified in the notice of the election, as shall
305 be deemed proper.

306 (6) This section, without reference to any other statute,
307 shall be deemed to be full and complete authority for the issuance
308 of bonds and borrowing of money as authorized in this section by
309 counties or municipalities, and shall be construed as an
310 additional and alternate method therefor. The bonds authorized by
311 this section shall not constitute an indebtedness within the
312 meaning of any constitutional or statutory limitation or
313 restriction.

314 **SECTION 4.** (1) (a) A special fund, to be designated as the
315 "Toll Road Revenue Bond Fund," is created within the State
316 Treasury. The fund shall be maintained by the State Treasurer as
317 a separate and special fund, separate and apart from the General
318 Fund of the state. Unexpended amounts remaining in the fund at
319 the end of a fiscal year shall not lapse into the State General
320 Fund, and any interest earned or investment earnings on amounts in
321 the fund shall be deposited into such fund.

322 (b) Monies deposited into the fund shall be disbursed,
323 in the discretion of the Mississippi Transportation Commission, to
324 pay the costs incurred in defraying the expenses of projects
325 authorized pursuant to Sections 1 and 2 of this act.

326 (2) Amounts deposited into such special fund shall be
327 disbursed to pay the expenses described in subsection (1) of this
328 section. If any monies in the special fund are not used within
329 six (6) years after the date the proceeds of the bonds authorized
330 under Sections 4 through 19 of this act are deposited into such

331 fund, then the Mississippi Transportation Commission shall provide
332 an accounting of such unused monies to the State Bond Commission.
333 Promptly after the State Bond Commission has certified, by
334 resolution duly adopted, that the projects for which the revenue
335 bonds have been issued shall have been completed, abandoned or
336 cannot be completed in a timely fashion, any amounts remaining in
337 such special fund shall be applied to pay debt service on the
338 bonds issued under Sections 4 through 19 of this act, in
339 accordance with the proceedings authorizing the issuance of such
340 bonds and as directed by the commission.

341 **SECTION 5.** For the purpose of providing for the payment of
342 the principal of and interest upon bonds issued under the
343 provisions of Sections 4 through 19 of this act, there is created
344 a special bond sinking fund in the State Treasury. The special
345 bond sinking fund shall consist of the monies required to be
346 deposited into the fund under Section 2 of this act and such other
347 amounts as the Legislature may direct to be paid into the fund by
348 appropriation or other authorization by the Legislature.
349 Unexpended amounts remaining in the special bond sinking fund at
350 the end of a fiscal year shall not lapse into the State General
351 Fund, and any interest earned or investment earnings on amounts in
352 the special bond sinking fund shall be deposited into such sinking
353 fund.

354 **SECTION 6.** The State Bond Commission, at one time or from
355 time to time, may declare by resolution the necessity for issuance
356 of revenue bonds of the State of Mississippi for the purpose of
357 providing funds to defray the expenses of projects authorized
358 pursuant to Sections 1 and 2 of this act. Upon the adoption of a
359 resolution by the Mississippi Transportation Commission, declaring
360 the necessity for the issuance of the revenue bonds authorized by
361 this section, the Mississippi Transportation Commission shall
362 deliver a certified copy of its resolution or resolutions to the
363 State Bond Commission. Upon receipt of such resolution, the State

364 Bond Commission, in its discretion, may act as the issuing agent,
365 prescribe the form of the bonds, advertise for and accept bids,
366 issue and sell, at public or private sale, the bonds so authorized
367 to be sold and do any and all other things necessary and advisable
368 in connection with the issuance and sale of such bonds. Revenue
369 bonds issued under this section shall be in such principal amounts
370 as the Mississippi Transportation Commission may determine to be
371 necessary to provide sufficient funds to defray the expenses of
372 projects authorized pursuant to Sections 1 and 2 of this act.

373 (2) Any investment earnings on amounts deposited into the
374 special fund created in Section 4 of this act shall be used to pay
375 debt service on bonds issued under Sections 4 through 19 of this
376 act, in accordance with the proceedings authorizing issuance of
377 such bonds.

378 **SECTION 7.** The principal of and interest on the bonds
379 authorized under Sections 4 through 19 of this act shall be
380 payable in the manner provided in this section. Such bonds shall
381 bear such date or dates, be in such denomination or denominations,
382 bear interest at such rate or rates (not to exceed the limits set
383 forth in Section 75-17-103, Mississippi Code of 1972), be payable
384 at such place or places within or without the State of
385 Mississippi, shall mature absolutely at such time or times not to
386 exceed twenty-five (25) years from date of issue, be redeemable
387 before maturity at such time or times and upon such terms, with or
388 without premium, shall bear such registration privileges, and
389 shall be substantially in such form, all as shall be determined by
390 resolution of the State Bond Commission.

391 **SECTION 8.** The bonds authorized by Sections 4 through 19 of
392 this act shall be signed by the Chairman of the State Bond
393 Commission, or by his facsimile signature, and the official seal
394 of the State Bond Commission shall be affixed thereto, attested by
395 the secretary of the commission. The interest coupons, if any, to
396 be attached to such bonds may be executed by the facsimile

397 signatures of such officers. Whenever any such bonds shall have
398 been signed by the officials designated to sign the bonds who were
399 in office at the time of such signing but who may have ceased to
400 be such officers before the sale and delivery of such bonds, or
401 who may not have been in office on the date such bonds may bear,
402 the signatures of such officers upon such bonds and coupons shall
403 nevertheless be valid and sufficient for all purposes and have the
404 same effect as if the person so officially signing such bonds had
405 remained in office until their delivery to the purchaser, or had
406 been in office on the date such bonds may bear. However,
407 notwithstanding anything herein to the contrary, such bonds may be
408 issued as provided in the Registered Bond Act of the State of
409 Mississippi.

410 **SECTION 9.** All bonds and interest coupons issued under the
411 provisions of Sections 4 through 19 of this act have all the
412 qualities and incidents of negotiable instruments under the
413 provisions of the Uniform Commercial Code, and in exercising the
414 powers granted by Sections 4 through 19 of this act, the State
415 Bond Commission shall not be required to and need not comply with
416 the provisions of the Uniform Commercial Code.

417 **SECTION 10.** The State Bond Commission shall act as the
418 issuing agent for the bonds authorized under Sections 4 through 19
419 of this act, prescribe the form of the bonds, advertise for and
420 accept bids, issue and sell, at public or private sale, the bonds
421 so authorized to be sold, pay all fees and costs incurred in such
422 issuance and sale, and do any and all other things necessary and
423 advisable in connection with the issuance and sale of such bonds.
424 The State Bond Commission is authorized and empowered to pay the
425 costs that are incident to the sale, issuance and delivery of the
426 bonds authorized under Sections 4 through 19 of this act from the
427 proceeds derived from the sale of such bonds. The State Bond
428 Commission shall sell such bonds on sealed bids at public or
429 private sale, and for such price as it may determine to be for the

430 best interest of the State of Mississippi, but no such sale shall
431 be made at a price less than par plus accrued interest to the date
432 of delivery of the bonds to the purchaser. All interest accruing
433 on such bonds so issued shall be payable semiannually or annually;
434 however, the first interest payment may be for any period of not
435 more than one (1) year.

436 Notice of the sale of any such bonds shall be published at
437 least one time, not less than ten (10) days before the date of
438 sale, and shall be so published in one or more newspapers
439 published or having a general circulation in the City of Jackson,
440 Mississippi, and in one or more other newspapers or financial
441 journals with a national circulation, to be selected by the State
442 Bond Commission.

443 The State Bond Commission, when issuing any bonds under the
444 authority of Sections 4 through 19 of this act, may provide that
445 bonds, at the option of the State of Mississippi, may be called in
446 for payment and redemption at the call price named therein and
447 accrued interest on such date or dates named therein.

448 **SECTION 11.** Bonds issued under authority of Sections 4
449 through 19 of this act shall be revenue bonds of the state, the
450 principal of and interest on which shall be payable solely from
451 the revenue from projects authorized under Section 1 or 2 of this
452 act. The bonds shall never constitute an indebtedness of the
453 state within the meaning of any state constitutional provision or
454 statutory limitation, and shall never constitute or give rise to a
455 pecuniary liability of the state, or a charge against its general
456 credit or taxing powers, and such fact shall be plainly stated on
457 the face of each such bond. The bonds shall not be considered
458 when computing any limitation of indebtedness of the state. All
459 bonds issued under the authority of Sections 4 through 19 of this
460 act and all interest coupons applicable thereto shall be construed
461 to be negotiable instruments, despite the fact that they are
462 payable solely from a specified source.

463 **SECTION 12.** Upon the issuance and sale of bonds under the
464 provisions of Sections 4 through 19 of this act, the State Bond
465 Commission shall transfer the proceeds of any such sale or sales
466 to a special fund created in Section 4 of this act. The proceeds
467 of such bonds shall be disbursed solely upon the order of the
468 Mississippi Transportation Commission under such restrictions, if
469 any, as may be contained in the resolution providing for the
470 issuance of the bonds.

471 **SECTION 13.** The bonds authorized under Sections 4 through 19
472 of this act may be issued without any other proceedings or the
473 happening of any other conditions or things other than those
474 proceedings, conditions and things which are specified or required
475 by Sections 4 through 19 of this act. Any resolution providing
476 for the issuance of bonds under the provisions of Sections 4
477 through 19 of this act shall become effective immediately upon its
478 adoption by the commission, and any such resolution may be adopted
479 at any regular or special meeting of the commission by a majority
480 of its members.

481 **SECTION 14.** The bonds authorized under the authority of
482 Sections 4 through 19 of this act may be validated in the Chancery
483 Court of the First Judicial District of Hinds County, Mississippi,
484 in the manner and with the force and effect provided by Chapter
485 13, Title 31, Mississippi Code of 1972, for the validation of
486 county, municipal, school district and other bonds. The notice to
487 taxpayers required by such statutes shall be published in a
488 newspaper published or having a general circulation in the City of
489 Jackson, Mississippi.

490 **SECTION 15.** Any holder of bonds issued under the provisions
491 of Sections 4 through 19 of this act or of any of the interest
492 coupons pertaining thereto may, either at law or in equity, by
493 suit, action, mandamus or other proceeding, protect and enforce
494 any and all rights granted under Sections 4 through 19 of this
495 act, or under such resolution, and may enforce and compel

496 performance of all duties required by Sections 4 through 19 of
497 this act to be performed, in order to provide for the payment of
498 bonds and interest thereon.

499 **SECTION 16.** All bonds issued under the provisions of
500 Sections 4 through 19 of this act shall be legal investments for
501 trustees and other fiduciaries, and for savings banks, trust
502 companies and insurance companies organized under the laws of the
503 State of Mississippi, and such bonds shall be legal securities
504 which may be deposited with and shall be received by all public
505 officers and bodies of this state and all municipalities and
506 political subdivisions for the purpose of securing the deposit of
507 public funds.

508 **SECTION 17.** Bonds issued under the provisions of Sections 4
509 through 19 of this act and income therefrom shall be exempt from
510 all taxation in the State of Mississippi.

511 **SECTION 18.** The proceeds of the bonds issued under Sections
512 4 through 19 of this act shall be used solely for the purposes
513 provided in Sections 4 through 19 of this act, including the costs
514 incident to the issuance and sale of such bonds.

515 **SECTION 19.** The State Treasurer is authorized, without
516 further process of law, to certify to the Department of Finance
517 and Administration the necessity for warrants, and the Department
518 of Finance and Administration is authorized and directed to issue
519 such warrants, in such amounts as may be necessary to pay when due
520 the principal of, premium, if any, and interest on, or the
521 accreted value of, all bonds issued under Sections 4 through 19 of
522 this act; and the State Treasurer shall forward the necessary
523 amount to the designated place or places of payment of such bonds
524 in ample time to discharge such bonds, or the interest thereon, on
525 the due dates thereof.

526 **SECTION 20.** Section 11-46-9, Mississippi Code of 1972, is
527 amended as follows:

528 11-46-9. (1) A governmental entity and its employees acting
529 within the course and scope of their employment or duties shall
530 not be liable for any claim:

531 (a) Arising out of a legislative or judicial action or
532 inaction, or administrative action or inaction of a legislative or
533 judicial nature;

534 (b) Arising out of any act or omission of an employee
535 of a governmental entity exercising ordinary care in reliance
536 upon, or in the execution or performance of, or in the failure to
537 execute or perform, a statute, ordinance or regulation, whether or
538 not the statute, ordinance or regulation be valid;

539 (c) Arising out of any act or omission of an employee
540 of a governmental entity engaged in the performance or execution
541 of duties or activities relating to police or fire protection
542 unless the employee acted in reckless disregard of the safety and
543 well-being of any person not engaged in criminal activity at the
544 time of injury;

545 (d) Based upon the exercise or performance or the
546 failure to exercise or perform a discretionary function or duty on
547 the part of a governmental entity or employee thereof, whether or
548 not the discretion be abused;

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

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

553 (g) Arising out of the exercise of discretion in
554 determining whether or not to seek or provide the resources
555 necessary for the purchase of equipment, the construction or
556 maintenance of facilities, the hiring of personnel and, in
557 general, the provision of adequate governmental services;

558 (h) Arising out of the issuance, denial, suspension or
559 revocation of, or the failure or refusal to issue, deny, suspend
560 or revoke any privilege, ticket, pass, permit, license,

561 certificate, approval, order or similar authorization where the
562 governmental entity or its employee is authorized by law to
563 determine whether or not such authorization should be issued,
564 denied, suspended or revoked unless such issuance, denial,
565 suspension or revocation, or failure or refusal thereof, is of a
566 malicious or arbitrary and capricious nature;

567 (i) Arising out of the assessment or collection of any
568 tax or fee;

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

572 (k) Arising out of the imposition or establishment of a
573 quarantine, whether such quarantine relates to persons or
574 property;

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

579 (m) Of any claimant who at the time the claim arises is
580 an inmate of any detention center, jail, workhouse, penal farm,
581 penitentiary or other such institution, regardless of whether such
582 claimant is or is not an inmate of any detention center, jail,
583 workhouse, penal farm, penitentiary or other such institution when
584 the claim is filed;

585 (n) Arising out of any work performed by a person
586 convicted of a crime when the work is performed pursuant to any
587 sentence or order of any court or pursuant to laws of the State of
588 Mississippi authorizing or requiring such work;

589 (o) Under circumstances where liability has been or is
590 hereafter assumed by the United States, to the extent of such
591 assumption of liability, including, but not limited to, any claim
592 based on activities of the Mississippi National Guard when such
593 claim is cognizable under the National Guard Tort Claims Act of

594 the United States, 32 USCS 715 (32 USCS 715), or when such claim
595 accrues as a result of active federal service or state service at
596 the call of the Governor for quelling riots and civil
597 disturbances;

598 (p) Arising out of a plan or design for construction or
599 improvements to public property, including, but not limited to,
600 public buildings, highways, roads, streets, bridges, levees,
601 dikes, dams, impoundments, drainage channels, diversion channels,
602 harbors, ports, wharfs or docks, where such plan or design has
603 been approved in advance of the construction or improvement by the
604 legislative body or governing authority of a governmental entity
605 or by some other body or administrative agency, exercising
606 discretion by authority to give such approval, and where such plan
607 or design is in conformity with engineering or design standards in
608 effect at the time of preparation of the plan or design;

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

611 (r) Arising out of the lack of adequate personnel or
612 facilities at a state hospital or state corrections facility if
613 reasonable use of available appropriations has been made to
614 provide such personnel or facilities;

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

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

619 (u) Arising out of or resulting from riots, unlawful
620 assemblies, unlawful public demonstrations, mob violence or civil
621 disturbances;

622 (v) Arising out of an injury caused by a dangerous
623 condition on property of the governmental entity that was not
624 caused by the negligent or other wrongful conduct of an employee
625 of the governmental entity or of which the governmental entity did
626 not have notice, either actual or constructive, and adequate

627 opportunity to protect or warn against; provided, however, that a
628 governmental entity shall not be liable for the failure to warn of
629 a dangerous condition which is obvious to one exercising due care;

630 (w) Arising out of the absence, condition, malfunction
631 or removal by third parties of any sign, signal, warning device,
632 illumination device, guardrail or median barrier, unless the
633 absence, condition, malfunction or removal is not corrected by the
634 governmental entity responsible for its maintenance within a
635 reasonable time after actual or constructive notice; * * *

636 (x) Arising out of the administration of corporal
637 punishment or the taking of any action to maintain control and
638 discipline of students, as defined in Section 37-11-57, by a
639 teacher, assistant teacher, principal or assistant principal of a
640 public school district in the state unless the teacher, assistant
641 teacher, principal or assistant principal acted in bad faith or
642 with malicious purpose or in a manner exhibiting a wanton and
643 willful disregard of human rights or safety; or

644 (y) Arising out of the construction, maintenance or
645 operation of any highway, bridge or roadway project entered into
646 by the Mississippi Transportation Commission or other governmental
647 entity and a company under the provisions of Section 1 or 2 of
648 Senate Bill No. 2375, 2007 Regular Session, where the act or
649 omission occurs during the term of any such contract.

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

- 652 (a) Is inactive and dormant;
- 653 (b) Receives no revenue;
- 654 (c) Has no employees; and
- 655 (d) Owns no property.

656 (3) If a governmental entity exempt from liability by
657 subsection (2) becomes active, receives income, hires employees or
658 acquires any property, such governmental entity shall no longer be

659 exempt from liability as provided in subsection (2) and shall be
660 subject to the provisions of this chapter.

661 **SECTION 21.** Section 31-7-13, Mississippi Code of 1972, is
662 amended as follows:

663 31-7-13. All agencies and governing authorities shall
664 purchase their commodities and printing; contract for garbage
665 collection or disposal; contract for solid waste collection or
666 disposal; contract for sewage collection or disposal; contract for
667 public construction; and contract for rentals as herein provided.

668 (a) **Bidding procedure for purchases not over \$3,500.00.**
669 Purchases which do not involve an expenditure of more than Three
670 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
671 shipping charges, may be made without advertising or otherwise
672 requesting competitive bids. However, nothing contained in this
673 paragraph (a) shall be construed to prohibit any agency or
674 governing authority from establishing procedures which require
675 competitive bids on purchases of Three Thousand Five Hundred
676 Dollars (\$3,500.00) or less.

677 (b) **Bidding procedure for purchases over \$3,500.00 but**
678 **not over \$15,000.00.** Purchases which involve an expenditure of
679 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
680 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
681 freight and shipping charges may be made from the lowest and best
682 bidder without publishing or posting advertisement for bids,
683 provided at least two (2) competitive written bids have been
684 obtained. Any governing authority purchasing commodities pursuant
685 to this paragraph (b) may authorize its purchasing agent, or his
686 designee, with regard to governing authorities other than
687 counties, or its purchase clerk, or his designee, with regard to
688 counties, to accept the lowest and best competitive written bid.
689 Such authorization shall be made in writing by the governing
690 authority and shall be maintained on file in the primary office of
691 the agency and recorded in the official minutes of the governing

692 authority, as appropriate. The purchasing agent or the purchase
693 clerk, or their designee, as the case may be, and not the
694 governing authority, shall be liable for any penalties and/or
695 damages as may be imposed by law for any act or omission of the
696 purchasing agent or purchase clerk, or their designee,
697 constituting a violation of law in accepting any bid without
698 approval by the governing authority. The term "competitive
699 written bid" shall mean a bid submitted on a bid form furnished by
700 the buying agency or governing authority and signed by authorized
701 personnel representing the vendor, or a bid submitted on a
702 vendor's letterhead or identifiable bid form and signed by
703 authorized personnel representing the vendor. "Competitive" shall
704 mean that the bids are developed based upon comparable
705 identification of the needs and are developed independently and
706 without knowledge of other bids or prospective bids. Bids may be
707 submitted by facsimile, electronic mail or other generally
708 accepted method of information distribution. Bids submitted by
709 electronic transmission shall not require the signature of the
710 vendor's representative unless required by agencies or governing
711 authorities.

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

713 (i) **Publication requirement.**

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

721 2. The purchasing entity may designate the
722 method by which the bids will be received, including, but not
723 limited to, bids sealed in an envelope, bids received
724 electronically in a secure system, bids received via a reverse

725 auction, or bids received by any other method that promotes open
726 competition and has been approved by the Office of Purchasing and
727 Travel. The provisions of this part 2 of subparagraph (i) shall
728 be repealed on July 1, 2008.

729 3. The date as published for the bid opening
730 shall not be less than seven (7) working days after the last
731 published notice; however, if the purchase involves a construction
732 project in which the estimated cost is in excess of Fifteen
733 Thousand Dollars (\$15,000.00), such bids shall not be opened in
734 less than fifteen (15) working days after the last notice is
735 published and the notice for the purchase of such construction
736 shall be published once each week for two (2) consecutive weeks.
737 The notice of intention to let contracts or purchase equipment
738 shall state the time and place at which bids shall be received,
739 list the contracts to be made or types of equipment or supplies to
740 be purchased, and, if all plans and/or specifications are not
741 published, refer to the plans and/or specifications on file. If
742 there is no newspaper published in the county or municipality,
743 then such notice shall be given by posting same at the courthouse,
744 or for municipalities at the city hall, and at two (2) other
745 public places in the county or municipality, and also by
746 publication once each week for two (2) consecutive weeks in some
747 newspaper having a general circulation in the county or
748 municipality in the above provided manner. On the same date that
749 the notice is submitted to the newspaper for publication, the
750 agency or governing authority involved shall mail written notice
751 to, or provide electronic notification to the main office of the
752 Mississippi Contract Procurement Center that contains the same
753 information as that in the published notice.

754 (ii) **Bidding process amendment procedure.** If all
755 plans and/or specifications are published in the notification,
756 then the plans and/or specifications may not be amended. If all
757 plans and/or specifications are not published in the notification,

758 then amendments to the plans/specifications, bid opening date, bid
759 opening time and place may be made, provided that the agency or
760 governing authority maintains a list of all prospective bidders
761 who are known to have received a copy of the bid documents and all
762 such prospective bidders are sent copies of all amendments. This
763 notification of amendments may be made via mail, facsimile,
764 electronic mail or other generally accepted method of information
765 distribution. No addendum to bid specifications may be issued
766 within two (2) working days of the time established for the
767 receipt of bids unless such addendum also amends the bid opening
768 to a date not less than five (5) working days after the date of
769 the addendum.

770 (iii) **Filing requirement.** In all cases involving
771 governing authorities, before the notice shall be published or
772 posted, the plans or specifications for the construction or
773 equipment being sought shall be filed with the clerk of the board
774 of the governing authority. In addition to these requirements, a
775 bid file shall be established which shall indicate those vendors
776 to whom such solicitations and specifications were issued, and
777 such file shall also contain such information as is pertinent to
778 the bid.

779 (iv) **Specification restrictions.**

780 1. Specifications pertinent to such bidding
781 shall be written so as not to exclude comparable equipment of
782 domestic manufacture. However, if valid justification is
783 presented, the Department of Finance and Administration or the
784 board of a governing authority may approve a request for specific
785 equipment necessary to perform a specific job. Further, such
786 justification, when placed on the minutes of the board of a
787 governing authority, may serve as authority for that governing
788 authority to write specifications to require a specific item of
789 equipment needed to perform a specific job. In addition to these
790 requirements, from and after July 1, 1990, vendors of relocatable

791 classrooms and the specifications for the purchase of such
792 relocatable classrooms published by local school boards shall meet
793 all pertinent regulations of the State Board of Education,
794 including prior approval of such bid by the State Department of
795 Education.

796 2. Specifications for construction projects
797 may include an allowance for commodities, equipment, furniture,
798 construction materials or systems in which prospective bidders are
799 instructed to include in their bids specified amounts for such
800 items so long as the allowance items are acquired by the vendor in
801 a commercially reasonable manner and approved by the
802 agency/governing authority. Such acquisitions shall not be made
803 to circumvent the public purchasing laws.

804 (v) Agencies and governing authorities may
805 establish secure procedures by which bids may be submitted via
806 electronic means.

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

808 (i) **Decision procedure.** Purchases may be made
809 from the lowest and best bidder. In determining the lowest and
810 best bid, freight and shipping charges shall be included.
811 Life-cycle costing, total cost bids, warranties, guaranteed
812 buy-back provisions and other relevant provisions may be included
813 in the best bid calculation. All best bid procedures for state
814 agencies must be in compliance with regulations established by the
815 Department of Finance and Administration. If any governing
816 authority accepts a bid other than the lowest bid actually
817 submitted, it shall place on its minutes detailed calculations and
818 narrative summary showing that the accepted bid was determined to
819 be the lowest and best bid, including the dollar amount of the
820 accepted bid and the dollar amount of the lowest bid. No agency
821 or governing authority shall accept a bid based on items not
822 included in the specifications.

823 (ii) **Decision procedure for Certified Purchasing**
824 **Offices.** In addition to the decision procedure set forth in
825 paragraph (d)(i), Certified Purchasing Offices may also use the
826 following procedure: Purchases may be made from the bidder
827 offering the best value. In determining the best value bid,
828 freight and shipping charges shall be included. Life-cycle
829 costing, total cost bids, warranties, guaranteed buy-back
830 provisions, documented previous experience, training costs and
831 other relevant provisions may be included in the best value
832 calculation. This provision shall authorize Certified Purchasing
833 Offices to utilize a Request For Proposals (RFP) process when
834 purchasing commodities. All best value procedures for state
835 agencies must be in compliance with regulations established by the
836 Department of Finance and Administration. No agency or governing
837 authority shall accept a bid based on items or criteria not
838 included in the specifications.

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

845 (e) **Lease-purchase authorization.** For the purposes of
846 this section, the term "equipment" shall mean equipment, furniture
847 and, if applicable, associated software and other applicable
848 direct costs associated with the acquisition. Any lease-purchase
849 of equipment which an agency is not required to lease-purchase
850 under the master lease-purchase program pursuant to Section
851 31-7-10 and any lease-purchase of equipment which a governing
852 authority elects to lease-purchase may be acquired by a
853 lease-purchase agreement under this paragraph (e). Lease-purchase
854 financing may also be obtained from the vendor or from a
855 third-party source after having solicited and obtained at least

856 two (2) written competitive bids, as defined in paragraph (b) of
857 this section, for such financing without advertising for such
858 bids. Solicitation for the bids for financing may occur before or
859 after acceptance of bids for the purchase of such equipment or,
860 where no such bids for purchase are required, at any time before
861 the purchase thereof. No such lease-purchase agreement shall be
862 for an annual rate of interest which is greater than the overall
863 maximum interest rate to maturity on general obligation
864 indebtedness permitted under Section 75-17-101, and the term of
865 such lease-purchase agreement shall not exceed the useful life of
866 equipment covered thereby as determined according to the upper
867 limit of the asset depreciation range (ADR) guidelines for the
868 Class Life Asset Depreciation Range System established by the
869 Internal Revenue Service pursuant to the United States Internal
870 Revenue Code and regulations thereunder as in effect on December
871 31, 1980, or comparable depreciation guidelines with respect to
872 any equipment not covered by ADR guidelines. Any lease-purchase
873 agreement entered into pursuant to this paragraph (e) may contain
874 any of the terms and conditions which a master lease-purchase
875 agreement may contain under the provisions of Section 31-7-10(5),
876 and shall contain an annual allocation dependency clause
877 substantially similar to that set forth in Section 31-7-10(8).
878 Each agency or governing authority entering into a lease-purchase
879 transaction pursuant to this paragraph (e) shall maintain with
880 respect to each such lease-purchase transaction the same
881 information as required to be maintained by the Department of
882 Finance and Administration pursuant to Section 31-7-10(13).
883 However, nothing contained in this section shall be construed to
884 permit agencies to acquire items of equipment with a total
885 acquisition cost in the aggregate of less than Ten Thousand
886 Dollars (\$10,000.00) by a single lease-purchase transaction. All
887 equipment, and the purchase thereof by any lessor, acquired by
888 lease-purchase under this paragraph and all lease-purchase

889 payments with respect thereto shall be exempt from all Mississippi
890 sales, use and ad valorem taxes. Interest paid on any
891 lease-purchase agreement under this section shall be exempt from
892 State of Mississippi income taxation.

893 (f) **Alternate bid authorization.** When necessary to
894 ensure ready availability of commodities for public works and the
895 timely completion of public projects, no more than two (2)
896 alternate bids may be accepted by a governing authority for
897 commodities. No purchases may be made through use of such
898 alternate bids procedure unless the lowest and best bidder cannot
899 deliver the commodities contained in his bid. In that event,
900 purchases of such commodities may be made from one (1) of the
901 bidders whose bid was accepted as an alternate.

902 (g) **Construction contract change authorization.** In the
903 event a determination is made by an agency or governing authority
904 after a construction contract is let that changes or modifications
905 to the original contract are necessary or would better serve the
906 purpose of the agency or the governing authority, such agency or
907 governing authority may, in its discretion, order such changes
908 pertaining to the construction that are necessary under the
909 circumstances without the necessity of further public bids;
910 provided that such change shall be made in a commercially
911 reasonable manner and shall not be made to circumvent the public
912 purchasing statutes. In addition to any other authorized person,
913 the architect or engineer hired by an agency or governing
914 authority with respect to any public construction contract shall
915 have the authority, when granted by an agency or governing
916 authority, to authorize changes or modifications to the original
917 contract without the necessity of prior approval of the agency or
918 governing authority when any such change or modification is less
919 than one percent (1%) of the total contract amount. The agency or
920 governing authority may limit the number, manner or frequency of
921 such emergency changes or modifications.

922 (h) **Petroleum purchase alternative.** In addition to
923 other methods of purchasing authorized in this chapter, when any
924 agency or governing authority shall have a need for gas, diesel
925 fuel, oils and/or other petroleum products in excess of the amount
926 set forth in paragraph (a) of this section, such agency or
927 governing authority may purchase the commodity after having
928 solicited and obtained at least two (2) competitive written bids,
929 as defined in paragraph (b) of this section. If two (2)
930 competitive written bids are not obtained, the entity shall comply
931 with the procedures set forth in paragraph (c) of this section.
932 In the event any agency or governing authority shall have
933 advertised for bids for the purchase of gas, diesel fuel, oils and
934 other petroleum products and coal and no acceptable bids can be
935 obtained, such agency or governing authority is authorized and
936 directed to enter into any negotiations necessary to secure the
937 lowest and best contract available for the purchase of such
938 commodities.

939 (i) **Road construction petroleum products price**
940 **adjustment clause authorization.** Any agency or governing
941 authority authorized to enter into contracts for the construction,
942 maintenance, surfacing or repair of highways, roads or streets,
943 may include in its bid proposal and contract documents a price
944 adjustment clause with relation to the cost to the contractor,
945 including taxes, based upon an industry-wide cost index, of
946 petroleum products including asphalt used in the performance or
947 execution of the contract or in the production or manufacture of
948 materials for use in such performance. Such industry-wide index
949 shall be established and published monthly by the Mississippi
950 Department of Transportation with a copy thereof to be mailed,
951 upon request, to the clerks of the governing authority of each
952 municipality and the clerks of each board of supervisors
953 throughout the state. The price adjustment clause shall be based
954 on the cost of such petroleum products only and shall not include

955 any additional profit or overhead as part of the adjustment. The
956 bid proposals or document contract shall contain the basis and
957 methods of adjusting unit prices for the change in the cost of
958 such petroleum products.

959 (j) **State agency emergency purchase procedure.** If the
960 governing board or the executive head, or his designee, of any
961 agency of the state shall determine that an emergency exists in
962 regard to the purchase of any commodities or repair contracts, so
963 that the delay incident to giving opportunity for competitive
964 bidding would be detrimental to the interests of the state, then
965 the provisions herein for competitive bidding shall not apply and
966 the head of such agency shall be authorized to make the purchase
967 or repair. Total purchases so made shall only be for the purpose
968 of meeting needs created by the emergency situation. In the event
969 such executive head is responsible to an agency board, at the
970 meeting next following the emergency purchase, documentation of
971 the purchase, including a description of the commodity purchased,
972 the purchase price thereof and the nature of the emergency shall
973 be presented to the board and placed on the minutes of the board
974 of such agency. The head of such agency, or his designee, shall,
975 at the earliest possible date following such emergency purchase,
976 file with the Department of Finance and Administration (i) a
977 statement explaining the conditions and circumstances of the
978 emergency, which shall include a detailed description of the
979 events leading up to the situation and the negative impact to the
980 entity if the purchase is made following the statutory
981 requirements set forth in paragraph (a), (b) or (c) of this
982 section, and (ii) a certified copy of the appropriate minutes of
983 the board of such agency, if applicable. On or before September 1
984 of each year, the State Auditor shall prepare and deliver to the
985 Senate Fees, Salaries and Administration Committee, the House Fees
986 and Salaries of Public Officers Committee and the Joint
987 Legislative Budget Committee a report containing a list of all

988 state agency emergency purchases and supporting documentation for
989 each emergency purchase.

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

991 If the governing authority, or the governing authority acting
992 through its designee, shall determine that an emergency exists in
993 regard to the purchase of any commodities or repair contracts, so
994 that the delay incident to giving opportunity for competitive
995 bidding would be detrimental to the interest of the governing
996 authority, then the provisions herein for competitive bidding
997 shall not apply and any officer or agent of such governing
998 authority having general or special authority therefor in making
999 such purchase or repair shall approve the bill presented therefor,
1000 and he shall certify in writing thereon from whom such purchase
1001 was made, or with whom such a repair contract was made. At the
1002 board meeting next following the emergency purchase or repair
1003 contract, documentation of the purchase or repair contract,
1004 including a description of the commodity purchased, the price
1005 thereof and the nature of the emergency shall be presented to the
1006 board and shall be placed on the minutes of the board of such
1007 governing authority.

1008 (l) **Hospital purchase, lease-purchase and lease**
1009 **authorization.**

1010 (i) The commissioners or board of trustees of any
1011 public hospital may contract with such lowest and best bidder for
1012 the purchase or lease-purchase of any commodity under a contract
1013 of purchase or lease-purchase agreement whose obligatory payment
1014 terms do not exceed five (5) years.

1015 (ii) In addition to the authority granted in
1016 subparagraph (i) of this paragraph (l), the commissioners or board
1017 of trustees is authorized to enter into contracts for the lease of
1018 equipment or services, or both, which it considers necessary for
1019 the proper care of patients if, in its opinion, it is not
1020 financially feasible to purchase the necessary equipment or

1021 services. Any such contract for the lease of equipment or
1022 services executed by the commissioners or board shall not exceed a
1023 maximum of five (5) years' duration and shall include a
1024 cancellation clause based on unavailability of funds. If such
1025 cancellation clause is exercised, there shall be no further
1026 liability on the part of the lessee. Any such contract for the
1027 lease of equipment or services executed on behalf of the
1028 commissioners or board that complies with the provisions of this
1029 subparagraph (ii) shall be excepted from the bid requirements set
1030 forth in this section.

1031 (m) **Exceptions from bidding requirements.** Excepted
1032 from bid requirements are:

1033 (i) **Purchasing agreements approved by department.**
1034 Purchasing agreements, contracts and maximum price regulations
1035 executed or approved by the Department of Finance and
1036 Administration.

1037 (ii) **Outside equipment repairs.** Repairs to
1038 equipment, when such repairs are made by repair facilities in the
1039 private sector; however, engines, transmissions, rear axles and/or
1040 other such components shall not be included in this exemption when
1041 replaced as a complete unit instead of being repaired and the need
1042 for such total component replacement is known before disassembly
1043 of the component; however, invoices identifying the equipment,
1044 specific repairs made, parts identified by number and name,
1045 supplies used in such repairs, and the number of hours of labor
1046 and costs therefor shall be required for the payment for such
1047 repairs.

1048 (iii) **In-house equipment repairs.** Purchases of
1049 parts for repairs to equipment, when such repairs are made by
1050 personnel of the agency or governing authority; however, entire
1051 assemblies, such as engines or transmissions, shall not be
1052 included in this exemption when the entire assembly is being
1053 replaced instead of being repaired.

1054 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
1055 of gravel or fill dirt which are to be removed and transported by
1056 the purchaser.

1057 (v) **Governmental equipment auctions.** Motor
1058 vehicles or other equipment purchased from a federal agency or
1059 authority, another governing authority or state agency of the
1060 State of Mississippi, or any governing authority or state agency
1061 of another state at a public auction held for the purpose of
1062 disposing of such vehicles or other equipment. Any purchase by a
1063 governing authority under the exemption authorized by this
1064 subparagraph (v) shall require advance authorization spread upon
1065 the minutes of the governing authority to include the listing of
1066 the item or items authorized to be purchased and the maximum bid
1067 authorized to be paid for each item or items.

1068 (vi) **Intergovernmental sales and transfers.**
1069 Purchases, sales, transfers or trades by governing authorities or
1070 state agencies when such purchases, sales, transfers or trades are
1071 made by a private treaty agreement or through means of
1072 negotiation, from any federal agency or authority, another
1073 governing authority or state agency of the State of Mississippi,
1074 or any state agency or governing authority of another state.
1075 Nothing in this section shall permit such purchases through public
1076 auction except as provided for in subparagraph (v) of this
1077 section. It is the intent of this section to allow governmental
1078 entities to dispose of and/or purchase commodities from other
1079 governmental entities at a price that is agreed to by both
1080 parties. This shall allow for purchases and/or sales at prices
1081 which may be determined to be below the market value if the
1082 selling entity determines that the sale at below market value is
1083 in the best interest of the taxpayers of the state. Governing
1084 authorities shall place the terms of the agreement and any
1085 justification on the minutes, and state agencies shall obtain

1086 approval from the Department of Finance and Administration, prior
1087 to releasing or taking possession of the commodities.

1088 (vii) **Perishable supplies or food.** Perishable
1089 supplies or food purchased for use in connection with hospitals,
1090 the school lunch programs, homemaking programs and for the feeding
1091 of county or municipal prisoners.

1092 (viii) **Single source items.** Noncompetitive items
1093 available from one (1) source only. In connection with the
1094 purchase of noncompetitive items only available from one (1)
1095 source, a certification of the conditions and circumstances
1096 requiring the purchase shall be filed by the agency with the
1097 Department of Finance and Administration and by the governing
1098 authority with the board of the governing authority. Upon receipt
1099 of that certification the Department of Finance and Administration
1100 or the board of the governing authority, as the case may be, may,
1101 in writing, authorize the purchase, which authority shall be noted
1102 on the minutes of the body at the next regular meeting thereafter.
1103 In those situations, a governing authority is not required to
1104 obtain the approval of the Department of Finance and
1105 Administration.

1106 (ix) **Waste disposal facility construction**
1107 **contracts.** Construction of incinerators and other facilities for
1108 disposal of solid wastes in which products either generated
1109 therein, such as steam, or recovered therefrom, such as materials
1110 for recycling, are to be sold or otherwise disposed of; however,
1111 in constructing such facilities, a governing authority or agency
1112 shall publicly issue requests for proposals, advertised for in the
1113 same manner as provided herein for seeking bids for public
1114 construction projects, concerning the design, construction,
1115 ownership, operation and/or maintenance of such facilities,
1116 wherein such requests for proposals when issued shall contain
1117 terms and conditions relating to price, financial responsibility,
1118 technology, environmental compatibility, legal responsibilities

1119 and such other matters as are determined by the governing
1120 authority or agency to be appropriate for inclusion; and after
1121 responses to the request for proposals have been duly received,
1122 the governing authority or agency may select the most qualified
1123 proposal or proposals on the basis of price, technology and other
1124 relevant factors and from such proposals, but not limited to the
1125 terms thereof, negotiate and enter contracts with one or more of
1126 the persons or firms submitting proposals.

1127 (x) **Hospital group purchase contracts.** Supplies,
1128 commodities and equipment purchased by hospitals through group
1129 purchase programs pursuant to Section 31-7-38.

1130 (xi) **Information technology products.** Purchases
1131 of information technology products made by governing authorities
1132 under the provisions of purchase schedules, or contracts executed
1133 or approved by the Mississippi Department of Information
1134 Technology Services and designated for use by governing
1135 authorities.

1136 (xii) **Energy efficiency services and equipment.**
1137 Energy efficiency services and equipment acquired by school
1138 districts, community and junior colleges, institutions of higher
1139 learning and state agencies or other applicable governmental
1140 entities on a shared-savings, lease or lease-purchase basis
1141 pursuant to Section 31-7-14.

1142 (xiii) **Municipal electrical utility system fuel.**
1143 Purchases of coal and/or natural gas by municipally-owned electric
1144 power generating systems that have the capacity to use both coal
1145 and natural gas for the generation of electric power.

1146 (xiv) **Library books and other reference materials.**
1147 Purchases by libraries or for libraries of books and periodicals;
1148 processed film, video cassette tapes, filmstrips and slides;
1149 recorded audio tapes, cassettes and diskettes; and any such items
1150 as would be used for teaching, research or other information
1151 distribution; however, equipment such as projectors, recorders,

1152 audio or video equipment, and monitor televisions are not exempt
1153 under this subparagraph.

1154 (xv) **Unmarked vehicles.** Purchases of unmarked
1155 vehicles when such purchases are made in accordance with
1156 purchasing regulations adopted by the Department of Finance and
1157 Administration pursuant to Section 31-7-9(2).

1158 (xvi) **Election ballots.** Purchases of ballots
1159 printed pursuant to Section 23-15-351.

1160 (xvii) **Multichannel interactive video systems.**
1161 From and after July 1, 1990, contracts by Mississippi Authority
1162 for Educational Television with any private educational
1163 institution or private nonprofit organization whose purposes are
1164 educational in regard to the construction, purchase, lease or
1165 lease-purchase of facilities and equipment and the employment of
1166 personnel for providing multichannel interactive video systems
1167 (ITSF) in the school districts of this state.

1168 (xviii) **Purchases of prison industry products.**
1169 From and after January 1, 1991, purchases made by state agencies
1170 or governing authorities involving any item that is manufactured,
1171 processed, grown or produced from the state's prison industries.

1172 (xix) **Undercover operations equipment.** Purchases
1173 of surveillance equipment or any other high-tech equipment to be
1174 used by law enforcement agents in undercover operations, provided
1175 that any such purchase shall be in compliance with regulations
1176 established by the Department of Finance and Administration.

1177 (xx) **Junior college books for rent.** Purchases by
1178 community or junior colleges of textbooks which are obtained for
1179 the purpose of renting such books to students as part of a book
1180 service system.

1181 (xxi) **Certain school district purchases.**
1182 Purchases of commodities made by school districts from vendors
1183 with which any levying authority of the school district, as

1184 defined in Section 37-57-1, has contracted through competitive
1185 bidding procedures for purchases of the same commodities.

1186 (xxii) **Garbage, solid waste and sewage contracts.**
1187 Contracts for garbage collection or disposal, contracts for solid
1188 waste collection or disposal and contracts for sewage collection
1189 or disposal.

1190 (xxiii) **Municipal water tank maintenance**
1191 **contracts.** Professional maintenance program contracts for the
1192 repair or maintenance of municipal water tanks, which provide
1193 professional services needed to maintain municipal water storage
1194 tanks for a fixed annual fee for a duration of two (2) or more
1195 years.

1196 (xxiv) **Purchases of Mississippi Industries for the**
1197 **Blind products.** Purchases made by state agencies or governing
1198 authorities involving any item that is manufactured, processed or
1199 produced by the Mississippi Industries for the Blind.

1200 (xxv) **Purchases of state-adopted textbooks.**
1201 Purchases of state-adopted textbooks by public school districts.

1202 (xxvi) **Certain purchases under the Mississippi**
1203 **Major Economic Impact Act.** Contracts entered into pursuant to the
1204 provisions of Section 57-75-9(2) and (3).

1205 (xxvii) **Used heavy or specialized machinery or**
1206 **equipment for installation of soil and water conservation**
1207 **practices purchased at auction.** Used heavy or specialized
1208 machinery or equipment used for the installation and
1209 implementation of soil and water conservation practices or
1210 measures purchased subject to the restrictions provided in
1211 Sections 69-27-331 through 69-27-341. Any purchase by the State
1212 Soil and Water Conservation Commission under the exemption
1213 authorized by this subparagraph shall require advance
1214 authorization spread upon the minutes of the commission to include
1215 the listing of the item or items authorized to be purchased and
1216 the maximum bid authorized to be paid for each item or items.

1217 (xxviii) **Hospital lease of equipment or services.**
1218 Leases by hospitals of equipment or services if the leases are in
1219 compliance with paragraph (1)(ii).

1220 (xxix) **Purchases made pursuant to qualified**
1221 **cooperative purchasing agreements.** Purchases made by certified
1222 purchasing offices of state agencies or governing authorities
1223 under cooperative purchasing agreements previously approved by the
1224 Office of Purchasing and Travel and established by or for any
1225 municipality, county, parish or state government or the federal
1226 government, provided that the notification to potential
1227 contractors includes a clause that sets forth the availability of
1228 the cooperative purchasing agreement to other governmental
1229 entities. Such purchases shall only be made if the use of the
1230 cooperative purchasing agreements is determined to be in the best
1231 interest of the governmental entity.

1232 (xxx) **School yearbooks.** Purchases of school
1233 yearbooks by state agencies or governing authorities; provided,
1234 however, that state agencies and governing authorities shall use
1235 for these purchases the RFP process as set forth in the
1236 Mississippi Procurement Manual adopted by the Office of Purchasing
1237 and Travel.

1238 (xxxii) **Toll roads and bridge construction**
1239 **projects.** Contracts entered into under the provisions of Section
1240 1 or 2 of Senate Bill No. 2375, 2007 Regular Session.

1241 (n) **Term contract authorization.** All contracts for the
1242 purchase of:

1243 (i) All contracts for the purchase of commodities,
1244 equipment and public construction (including, but not limited to,
1245 repair and maintenance), may be let for periods of not more than
1246 sixty (60) months in advance, subject to applicable statutory
1247 provisions prohibiting the letting of contracts during specified
1248 periods near the end of terms of office. Term contracts for a
1249 period exceeding twenty-four (24) months shall also be subject to

1250 ratification or cancellation by governing authority boards taking
1251 office subsequent to the governing authority board entering the
1252 contract.

1253 (ii) Bid proposals and contracts may include price
1254 adjustment clauses with relation to the cost to the contractor
1255 based upon a nationally published industry-wide or nationally
1256 published and recognized cost index. The cost index used in a
1257 price adjustment clause shall be determined by the Department of
1258 Finance and Administration for the state agencies and by the
1259 governing board for governing authorities. The bid proposal and
1260 contract documents utilizing a price adjustment clause shall
1261 contain the basis and method of adjusting unit prices for the
1262 change in the cost of such commodities, equipment and public
1263 construction.

1264 (o) **Purchase law violation prohibition and vendor**
1265 **penalty.** No contract or purchase as herein authorized shall be
1266 made for the purpose of circumventing the provisions of this
1267 section requiring competitive bids, nor shall it be lawful for any
1268 person or concern to submit individual invoices for amounts within
1269 those authorized for a contract or purchase where the actual value
1270 of the contract or commodity purchased exceeds the authorized
1271 amount and the invoices therefor are split so as to appear to be
1272 authorized as purchases for which competitive bids are not
1273 required. Submission of such invoices shall constitute a
1274 misdemeanor punishable by a fine of not less than Five Hundred
1275 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1276 or by imprisonment for thirty (30) days in the county jail, or
1277 both such fine and imprisonment. In addition, the claim or claims
1278 submitted shall be forfeited.

1279 (p) **Electrical utility petroleum-based equipment**
1280 **purchase procedure.** When in response to a proper advertisement
1281 therefor, no bid firm as to price is submitted to an electric
1282 utility for power transformers, distribution transformers, power

1283 breakers, reclosers or other articles containing a petroleum
1284 product, the electric utility may accept the lowest and best bid
1285 therefor although the price is not firm.

1286 (q) **Fuel management system bidding procedure.** Any
1287 governing authority or agency of the state shall, before
1288 contracting for the services and products of a fuel management or
1289 fuel access system, enter into negotiations with not fewer than
1290 two (2) sellers of fuel management or fuel access systems for
1291 competitive written bids to provide the services and products for
1292 the systems. In the event that the governing authority or agency
1293 cannot locate two (2) sellers of such systems or cannot obtain
1294 bids from two (2) sellers of such systems, it shall show proof
1295 that it made a diligent, good-faith effort to locate and negotiate
1296 with two (2) sellers of such systems. Such proof shall include,
1297 but not be limited to, publications of a request for proposals and
1298 letters soliciting negotiations and bids. For purposes of this
1299 paragraph (q), a fuel management or fuel access system is an
1300 automated system of acquiring fuel for vehicles as well as
1301 management reports detailing fuel use by vehicles and drivers, and
1302 the term "competitive written bid" shall have the meaning as
1303 defined in paragraph (b) of this section. Governing authorities
1304 and agencies shall be exempt from this process when contracting
1305 for the services and products of a fuel management or fuel access
1306 systems under the terms of a state contract established by the
1307 Office of Purchasing and Travel.

1308 (r) **Solid waste contract proposal procedure.** Before
1309 entering into any contract for garbage collection or disposal,
1310 contract for solid waste collection or disposal or contract for
1311 sewage collection or disposal, which involves an expenditure of
1312 more than Fifty Thousand Dollars (\$50,000.00), a governing
1313 authority or agency shall issue publicly a request for proposals
1314 concerning the specifications for such services which shall be
1315 advertised for in the same manner as provided in this section for

1316 seeking bids for purchases which involve an expenditure of more
1317 than the amount provided in paragraph (c) of this section. Any
1318 request for proposals when issued shall contain terms and
1319 conditions relating to price, financial responsibility,
1320 technology, legal responsibilities and other relevant factors as
1321 are determined by the governing authority or agency to be
1322 appropriate for inclusion; all factors determined relevant by the
1323 governing authority or agency or required by this paragraph (r)
1324 shall be duly included in the advertisement to elicit proposals.
1325 After responses to the request for proposals have been duly
1326 received, the governing authority or agency shall select the most
1327 qualified proposal or proposals on the basis of price, technology
1328 and other relevant factors and from such proposals, but not
1329 limited to the terms thereof, negotiate and enter contracts with
1330 one or more of the persons or firms submitting proposals. If the
1331 governing authority or agency deems none of the proposals to be
1332 qualified or otherwise acceptable, the request for proposals
1333 process may be reinitiated. Notwithstanding any other provisions
1334 of this paragraph, where a county with at least thirty-five
1335 thousand (35,000) nor more than forty thousand (40,000)
1336 population, according to the 1990 federal decennial census, owns
1337 or operates a solid waste landfill, the governing authorities of
1338 any other county or municipality may contract with the governing
1339 authorities of the county owning or operating the landfill,
1340 pursuant to a resolution duly adopted and spread upon the minutes
1341 of each governing authority involved, for garbage or solid waste
1342 collection or disposal services through contract negotiations.

1343 (s) **Minority set-aside authorization.** Notwithstanding
1344 any provision of this section to the contrary, any agency or
1345 governing authority, by order placed on its minutes, may, in its
1346 discretion, set aside not more than twenty percent (20%) of its
1347 anticipated annual expenditures for the purchase of commodities
1348 from minority businesses; however, all such set-aside purchases

1349 shall comply with all purchasing regulations promulgated by the
1350 Department of Finance and Administration and shall be subject to
1351 bid requirements under this section. Set-aside purchases for
1352 which competitive bids are required shall be made from the lowest
1353 and best minority business bidder. For the purposes of this
1354 paragraph, the term "minority business" means a business which is
1355 owned by a majority of persons who are United States citizens or
1356 permanent resident aliens (as defined by the Immigration and
1357 Naturalization Service) of the United States, and who are Asian,
1358 Black, Hispanic or Native American, according to the following
1359 definitions:

1360 (i) "Asian" means persons having origins in any of
1361 the original people of the Far East, Southeast Asia, the Indian
1362 subcontinent, or the Pacific Islands.

1363 (ii) "Black" means persons having origins in any
1364 black racial group of Africa.

1365 (iii) "Hispanic" means persons of Spanish or
1366 Portuguese culture with origins in Mexico, South or Central
1367 America, or the Caribbean Islands, regardless of race.

1368 (iv) "Native American" means persons having
1369 origins in any of the original people of North America, including
1370 American Indians, Eskimos and Aleuts.

1371 (t) **Construction punch list restriction.** The
1372 architect, engineer or other representative designated by the
1373 agency or governing authority that is contracting for public
1374 construction or renovation may prepare and submit to the
1375 contractor only one (1) preliminary punch list of items that do
1376 not meet the contract requirements at the time of substantial
1377 completion and one (1) final list immediately before final
1378 completion and final payment.

1379 (u) **Purchase authorization clarification.** Nothing in
1380 this section shall be construed as authorizing any purchase not
1381 authorized by law.

1382 **SECTION 22.** Section 65-1-85, Mississippi Code of 1972, is
1383 amended as follows:

1384 65-1-85. (1) All contracts by or on behalf of the
1385 commission for the purchase of materials, equipment and supplies
1386 shall be made in compliance with Section 31-7-1 et seq. All
1387 contracts by or on behalf of the commission for construction,
1388 reconstruction or other public work authorized to be done under
1389 the provisions of this chapter, except maintenance, shall be made
1390 by the executive director, subject to the approval of the
1391 commission, only upon competitive bids after due advertisement as
1392 follows, to wit:

1393 (a) Advertisement for bids shall be in accordance with
1394 such rules and regulations, in addition to those herein provided,
1395 as may be adopted therefor by the commission, and the commission
1396 is authorized and empowered to make and promulgate such rules and
1397 regulations as it may deem proper, to provide and adopt standard
1398 specifications for road and bridge construction, and to amend such
1399 rules and regulations from time to time.

1400 (b) The advertisement shall be inserted twice, being
1401 once a week for two (2) successive weeks in a newspaper published
1402 at the seat of government in Jackson, Mississippi, having a
1403 general circulation throughout the state, and no letting shall be
1404 less than fourteen (14) days nor more than sixty (60) days after
1405 the publication of the first notice of such letting, and notices
1406 of such letting may be placed in a metropolitan paper or national
1407 trade publication.

1408 (c) Before advertising for such work, the executive
1409 director shall cause to be prepared and filed in the department
1410 detailed plans and specifications covering the work proposed to be
1411 done and copies of the plans and specifications shall be subject
1412 to inspection by any citizen during all office hours and made
1413 available to all prospective bidders upon such reasonable terms
1414 and conditions as may be required by the commission. A fee shall

1415 be charged equal to the cost of producing a copy of any such plans
1416 and specifications.

1417 (d) All such contracts shall be let to a responsible
1418 bidder with the lowest and best bid, and a record of all bids
1419 received for construction and reconstruction shall be preserved.

1420 (e) Each bid for such a construction and reconstruction
1421 contract must be accompanied by a cashier's check, a certified
1422 check or bidders bond executed by a surety company authorized to
1423 do business in the State of Mississippi, in the principal amount
1424 of not less than five percent (5%) of the bid, guaranteeing that
1425 the bidder will give bond and enter into a contract for the
1426 faithful performance of the contract according to plans and
1427 specifications on file.

1428 (f) Bonds shall be required of the successful bidder in
1429 an amount equal to the contract price. The contract price shall
1430 mean the entire cost of the particular contract let. In the event
1431 change orders are made after the execution of a contract which
1432 results in increasing the total contract price, additional bond in
1433 the amount of the increased cost may be required. The surety or
1434 sureties on such bonds shall be a surety company or surety
1435 companies authorized to do business in the State of Mississippi,
1436 all bonds to be payable to the State of Mississippi and to be
1437 conditioned for the prompt, faithful and efficient performance of
1438 the contract according to plans and specifications, and for the
1439 prompt payment of all persons furnishing labor, material,
1440 equipment and supplies therefor. Such bonds shall be subject to
1441 the additional obligation that the principal and surety or
1442 sureties executing the same shall be liable to the state in a
1443 civil action instituted by the state at the instance of the
1444 commission or any officer of the state authorized in such cases,
1445 for double any amount in money or property the state may lose or
1446 be overcharged or otherwise defrauded of by reason of any wrongful

1447 or criminal act, if any, of the contractor, his agent or
1448 employees.

1449 (2) With respect to equipment used in the construction,
1450 reconstruction or other public work authorized to be done under
1451 the provisions of this chapter: the word "equipment," in addition
1452 to all equipment incorporated into or fully consumed in connection
1453 with such project, shall include the reasonable value of the use
1454 of all equipment of every kind and character and all accessories
1455 and attachments thereto which are reasonably necessary to be used
1456 and which are used in carrying out the performance of the
1457 contract, and the reasonable value of the use thereof, during the
1458 period of time the same are used in carrying out the performance
1459 of the contract, shall be the amount as agreed upon by the persons
1460 furnishing the equipment and those using the same to be paid
1461 therefor, which amount, however, shall not be in excess of the
1462 maximum current rates and charges allowable for leasing or renting
1463 as specified in Section 65-7-95; the word "labor" shall include
1464 all work performed in repairing equipment used in carrying out the
1465 performance of the contract, which repair labor is reasonably
1466 necessary to the efficient operation of said equipment; and the
1467 words "materials" and "supplies" shall include all repair parts
1468 installed in or on equipment used in carrying out the performance
1469 of the contract, which repair parts are reasonably necessary to
1470 the efficient operation of said equipment.

1471 (3) The executive director, subject to the approval of the
1472 commission, shall have the right to reject any and all bids,
1473 whether such right is reserved in the notice or not.

1474 (4) The commission may require the pre-qualification of any
1475 and all bidders and the failure to comply with pre-qualification
1476 requirements may be the basis for the rejection of any bid by the
1477 commission. The commission may require the pre-qualification of
1478 any and all subcontractors before they are approved to participate
1479 in any contract awarded under this section.

1480 (5) The commission may adopt rules and regulations for the
1481 termination of any previously awarded contract which is not timely
1482 proceeding toward completion. The failure of a contractor to
1483 comply with such rules and regulations shall be a lawful basis for
1484 the commission to terminate the contract with such contractor. In
1485 the event of a termination under such rules and regulations, the
1486 contractor shall not be entitled to any payment, benefit or
1487 damages beyond the cost of the work actually completed.

1488 (6) Any contract for construction or paving of any highway
1489 may be entered into for any cost which does not exceed the amount
1490 of funds that may be made available therefor through bond issues
1491 or from other sources of revenue, and the letting of contracts for
1492 such construction or paving shall not necessarily be delayed until
1493 the funds are actually on hand, provided authorization for the
1494 issuance of necessary bonds has been granted by law to supplement
1495 other anticipated revenue, or when the department certifies to the
1496 Department of Finance and Administration and the Legislative
1497 Budget Office that projected receipts of funds by the department
1498 will be sufficient to pay such contracts as they become due and
1499 the Department of Finance and Administration determines that the
1500 projections are reasonable and receipts will be sufficient to pay
1501 the contracts as they become due. The Department of Finance and
1502 Administration shall spread such determination on its minutes
1503 prior to the letting of any contracts based on projected receipts.
1504 Nothing in this subsection shall prohibit the issuance of bonds,
1505 which have been authorized, at any time in the discretion of the
1506 State Bond Commission, nor to prevent investment of surplus funds
1507 in United States government bonds or State of Mississippi bonds as
1508 presently authorized by Section 12, Chapter 312, Laws of 1956.

1509 (7) All other contracts for work to be done under the
1510 provisions of this chapter and for the purchase of materials,
1511 equipment and supplies to be used as provided for in this chapter
1512 shall be made in compliance with Section 31-7-1 et seq.

1513 (8) The commission shall not empower or authorize the
1514 executive director, or any one or more of its members, or any
1515 engineer or other person to let or make contracts for the
1516 construction or repair of public roads, or building bridges, or
1517 for the purchase of material, equipment or supplies contrary to
1518 the provisions of this chapter as set forth in this section,
1519 except in cases of flood or other cases of emergency where the
1520 public interest requires that the work be done or the materials,
1521 equipment or supplies be purchased without the delay incident to
1522 advertising for competitive bids. Such emergency contracts may be
1523 made without advertisement under such rules and regulations as the
1524 commission may prescribe.

1525 (9) The executive director, subject to the approval of the
1526 commission, is authorized to negotiate and make agreements with
1527 communities and/or civic organizations for landscaping,
1528 beautification and maintenance of highway rights-of-way; however,
1529 nothing in this subsection shall be construed as authorization for
1530 the executive director or commission to participate in such a
1531 project to an extent greater than the average cost for maintenance
1532 of shoulders, backslopes and median areas with respect thereto.

1533 (10) The executive director may negotiate and enter into
1534 contracts with private parties for the mowing of grass and
1535 trimming of vegetation on the rights-of-way of state highways
1536 whenever such practice is possible and cost effective.

1537 (11) (a) As an alternative to the method of awarding
1538 contracts as otherwise provided in this section, the commission
1539 may use the design-build method of contracting for the following:

1540 (i) Projects for the Mississippi Development
1541 Authority pursuant to agreements between both governmental
1542 entities;

1543 (ii) Any project with an estimated cost of not
1544 more than Ten Million Dollars (\$10,000,000.00), not to exceed two

1545 (2) projects per fiscal year; and

1546 (iii) Any project which has an estimated cost of
1547 more than Fifty Million Dollars (\$50,000,000.00), not to exceed
1548 one (1) project per fiscal year.

1549 (b) As used in this subsection, the term "design-build"
1550 method of contracting means a contract that combines the design
1551 and construction phases of a project into a single contract and
1552 the contractor is required to satisfactorily perform, at a
1553 minimum, both the design and construction of the project.

1554 (c) The commission shall establish detailed criteria
1555 for the selection of the successful design-build contractor in
1556 each request for design-build proposals. The evaluation of the
1557 selection committee is a public record and shall be maintained for
1558 a minimum of ten (10) years after project completion.

1559 (d) The commission shall maintain detailed records on
1560 projects separate and apart from its regular record keeping. The
1561 commission shall file a report to the Legislature evaluating the
1562 design-build method of contracting by comparing it to the low-bid
1563 method of contracting. At a minimum, the report must include:

1564 (i) The management goals and objectives for the
1565 design-build system of management;

1566 (ii) A complete description of the components of
1567 the design-build management system, including a description of the
1568 system the department put into place on all projects managed under
1569 the system to insure that it has the complete information on
1570 highway segment costs and to insure proper analysis of any
1571 proposal the commission receives from a highway contractor;

1572 (iii) The accountability systems the
1573 Transportation Department established to monitor any design-build
1574 project's compliance with specific goals and objectives for the
1575 project;

1576 (iv) The outcome of any project or any interim
1577 report on an ongoing project let under a design-build management

1578 system showing compliance with the goals, objectives, policies and
1579 procedures the department set for the project; and

1580 (v) The method used by the department to select
1581 projects to be let under the design-build system of management and
1582 all other systems, policies and procedures that the department
1583 considered as necessary components to a design-build management
1584 system.

1585 (e) All contracts let under the provisions of this
1586 subsection shall be subject to oversight and review by the State
1587 Auditor. The State Auditor shall file a report with the
1588 Legislature on or before January 1 of each year detailing his
1589 findings with regard to any contract let or project performed in
1590 violation of the provisions of this subsection. The actual and
1591 necessary expenses incurred by the State Auditor in complying with
1592 this paragraph (e) shall be paid for and reimbursed by the
1593 Mississippi Department of Transportation out of funds made
1594 available for the contract or contracts let and project or
1595 projects performed.

1596 (12) The provisions of this section shall not be construed
1597 to prohibit the commission from awarding or entering into
1598 contracts for the design, construction and financing of toll
1599 roads, highways and bridge projects as provided under Sections 1
1600 and 2 of Senate Bill No. 2375, 2007 Regular Session.

1601 **SECTION 23.** Section 65-3-1, Mississippi Code of 1972, is
1602 amended as follows:

1603 65-3-1. Subject only to the provisions hereinafter
1604 contained, it shall be unlawful for any person, acting privately
1605 or in any official capacity or as an employee of any subdivision
1606 of the state, to charge or collect any toll or other charge from
1607 any person for the privilege of traveling on any part of any
1608 highway which has been heretofore or may hereafter be designated
1609 as a state highway, and being a part of the state highway system,

1610 or on or across any bridge wholly within this state, which is a
1611 part of any such highway.

1612 For a violation of this section, any judge or chancellor may,
1613 in termtime or vacation, grant an injunction upon complaint of the
1614 Mississippi Transportation Commission.

1615 * * *

1616 The provisions of this section shall be inapplicable to any
1617 toll road or bridge built or operated under the authority of
1618 Section 1 or Section 2 of Senate Bill No. 2375, 2007 Regular
1619 Session.

1620 **SECTION 24.** Sections 65-23-101, 65-23-103, 65-23-105,
1621 65-23-107, 65-23-109, 65-23-111, 65-23-113, 65-23-115, 65-23-117,
1622 65-23-119 and 65-23-121, Mississippi Code of 1972, which authorize
1623 the Department of Transportation to construct toll bridges across
1624 bays and rivers of the Gulf of Mexico, are hereby repealed.

1625 **SECTION 25.** The Attorney General of the State of Mississippi
1626 shall submit this act, immediately upon approval by the Governor,
1627 or upon approval by the Legislature subsequent to a veto, to the
1628 Attorney General of the United States or to the United States
1629 District Court for the District of Columbia in accordance with the
1630 provisions of the Voting Rights Act of 1965, as amended and
1631 extended.

1632 **SECTION 26.** This act shall take effect and be in force from
1633 and after the date it is effectuated under Section 5 of the Voting
1634 Rights Act of 1965, as amended and extended.