

By: Representatives White, Gibbs (72nd),  
Reynolds

To: Public Health and Human  
Services; Ways and Means

HOUSE BILL NO. 926  
(As Passed the House)

1 AN ACT TO BE KNOWN AS THE HEALTH CARE COLLABORATION ACT OF  
2 2017; TO DEFINE CERTAIN TERMS; TO AUTHORIZE THE BOARD OF TRUSTEES  
3 OF STATE INSTITUTIONS OF HIGHER LEARNING AND THE UNIVERSITY OF  
4 MISSISSIPPI MEDICAL CENTER TO INCORPORATE HEALTH CARE  
5 COLLABORATIVES AND TO SPECIFY THE PROCEDURE FOR INCORPORATION  
6 UNDER THE MISSISSIPPI NONPROFIT CORPORATION ACT; TO SPECIFY THE  
7 POWERS OF HEALTH CARE COLLABORATIVES; TO AUTHORIZE HEALTH CARE  
8 COLLABORATIVES TO BORROW MONEY OR INCUR INDEBTEDNESS AND ISSUE  
9 BONDS, NOTES OR OTHER EVIDENCE OF INDEBTEDNESS; TO EXEMPT THE  
10 PROPERTY AND CERTAIN ACTIVITIES OF HEALTH CARE COLLABORATIVES FROM  
11 SALES TAX, AD VALOREM TAX AND FRANCHISE TAX; TO AUTHORIZE THE  
12 STATE, ANY GOVERNMENTAL ENTITY, ANY UNIVERSITY OR ANY PUBLIC  
13 CORPORATION TO PLEDGE ITS FULL FAITH AND CREDIT TO OR FOR THE  
14 BENEFIT OF A HEALTH CARE COLLABORATIVE OR PLEDGE ANY REVENUES THAT  
15 IT IS LEGALLY ENTITLED TO PLEDGE TO OR FOR THE BENEFIT OF A HEALTH  
16 CARE COLLABORATIVE; TO PROVIDE THAT HEALTH CARE COLLABORATIVES  
17 SHALL BE IMMUNIZED FROM LIABILITY UNDER THE FEDERAL AND STATE  
18 ANTITRUST OR COMPETITION LAWS TO THE FULLEST EXTENT ALLOWED BY  
19 LAW; TO EXEMPT HEALTH CARE COLLABORATIVES FROM THE ETHICS IN  
20 GOVERNMENT LAWS, THE STATE PERSONNEL SYSTEM LAWS, THE OPEN  
21 MEETINGS ACT, THE ADMINISTRATIVE PROCEDURES LAW, THE INFORMATION  
22 TECHNOLOGY SERVICES LAWS, THE MISSISSIPPI PUBLIC RECORDS ACT, THE  
23 MISSISSIPPI ACCOUNTABILITY AND TRANSPARENCY ACT AND THE PUBLIC  
24 PURCHASING LAWS; TO PROVIDE THAT HEALTH CARE COLLABORATIVES SHALL  
25 NOT HAVE THE RIGHT TO ACQUIRE ANY REAL PROPERTY BY THE EXERCISE OF  
26 THE POWER OF EMINENT DOMAIN; TO SPECIFY THE PROCEDURE FOR  
27 DISSOLVING A HEALTH CARE COLLABORATIVE; TO ESTABLISH WITHIN THE  
28 BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING THE  
29 UNIVERSITY OF MISSISSIPPI MEDICAL CENTER RELATED HEALTH CARE  
30 COMMISSION TO ASSIST THE TRUSTEES IN THEIR MANAGEMENT AND CONTROL  
31 OF THE UNIVERSITY OF MISSISSIPPI MEDICAL CENTER; TO AMEND SECTIONS  
32 41-13-15, 41-13-35, 11-46-1, 25-4-103, 25-9-107, 25-41-3,  
33 25-43-1.102, 25-53-3, 25-61-3, 27-7-15, 27-13-5, 27-31-1,  
34 27-65-19, 27-65-105, 27-104-153, 31-7-1 AND 41-7-205, MISSISSIPPI



35 CODE OF 1972, TO CONFORM TO THE PRECEDING PROVISIONS; TO AMEND  
36 SECTION 31-7-13, MISSISSIPPI CODE OF 1972, MAKE SOME MINOR  
37 NONSUBSTANTIVE CHANGES; AND FOR RELATED PURPOSES.

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

39 **SECTION 1.** This act shall be known and may be cited as the  
40 "Health Care Collaboration Act of 2017."

41 **SECTION 2.** For purposes of this act, the following terms  
42 shall have the following meanings:

43 (a) "Academic medical center" means the teaching,  
44 research, and clinical facilities and services provided,  
45 established, or operated by a public university under Chapter 115,  
46 Title 37, Mississippi Code of 1972.

47 (b) "Board" means the board of directors of a health  
48 care collaborative.

49 (c) "Commission" means the University of Mississippi  
50 Medical Center Related Health Care Commission, authorized under  
51 this act by the Board of Trustees of State Institutions of Higher  
52 Learning.

53 (d) "Director" means a member of the board of a health  
54 care collaborative.

55 (e) "Governmental entity" means the state, a county, a  
56 municipality, or any agency, department, board or commission of  
57 the state, a county or a municipality.

58 (f) "Heath care collaborative" means a public  
59 corporation organized under the provisions of this act.

60 (g) "Health care facility" means all property or rights  
61 in property, real or personal, tangible or intangible, useful to a



62 health care collaborative in its operations, including without  
63 limitation, the following:

64 (i) Facilities, sites of service or functions  
65 necessary or desirable to the operation of an academic medical  
66 center, one or more health sciences schools, hospitals, public  
67 health care clinics, treatment centers, emergency facilities,  
68 outpatient facilities, laboratories, service or support  
69 facilities, and any other facilities or sites of service or  
70 functions related to the operation of any of the foregoing or any  
71 networks with which a health collaborative is associated or any  
72 collaborative relationships among providers involving a health  
73 care collaborative.

74 (ii) Biomedical or public health research  
75 establishments of any type.

76 (iii) Ambulance, helicopter and other similar  
77 facilities and services for the transportation of sick or injured  
78 persons.

79 (iv) Land necessary or desirable to any of the  
80 foregoing, whether presently or in the future.

81 (v) Machinery, equipment, furniture, and fixtures  
82 useful or desirable in the operation of any of the foregoing.

83 Health care facilities may serve or address physical or mental  
84 health. A determination by a board that an asset constitutes a  
85 health care facility shall be conclusive, absent manifest error.



86 (h) "Health sciences school" means any school of  
87 medicine, dentistry, nursing, pharmacy and any other health care  
88 related educational program operated or provided by an academic  
89 medical center in this state.

90 (i) "Indebtedness" means bonds, notes, certificates of  
91 indebtedness, debt securities, capital lease agreements or any  
92 other evidence of indebtedness, including but not limited to  
93 indebtedness incurred to refund or refinance other outstanding  
94 indebtedness.

95 (j) "Nonprofit organization" means any nonprofit  
96 corporation, limited liability company, partnership, or other form  
97 of business organization in which no part of the income or profit  
98 is distributable to any individual or entity other than a  
99 university, a health care collaborative, a governmental entity, a  
100 public corporation, or a nonprofit corporation that is an  
101 organization described in Section 501(c)(3) of the Internal  
102 Revenue Code.

103 (k) "Public corporation" means a (i) nonmember,  
104 nonprofit corporation organized under the Mississippi Nonprofit  
105 Corporation Act, Section 101 et seq. of Chapter 11, Title 79,  
106 Mississippi Code of 1972, that is subject to the limitations on  
107 distributions set forth in Section 79-11-336(c), or (ii) a  
108 nonstock corporation organized for public purposes under any other  
109 statutory authority created by the Legislature of the State of  
110 Mississippi, which, in either case, is organized by the state, a



111 county, a municipality or any political subdivision of any of the  
112 foregoing, or any public board, bureau, commission or authority  
113 created by the Legislature, whether acting alone or jointly, under  
114 state law. Except to the extent set forth in this act or  
115 otherwise set forth in a public corporation's authorizing  
116 legislation, a public corporation that is a health care  
117 collaborative shall be subject to and governed by the Mississippi  
118 Nonprofit Corporation Act, Section 101 et seq. of Chapter 11,  
119 Title 79, Mississippi Code of 1972.

120           (1) "Security document" means a trust indenture, loan  
121 agreement, lease agreement, mortgage, security instrument or  
122 agreement, or other document securing any indebtedness or other  
123 obligation of a health care collaborative or by which its assets  
124 or revenues are pledged or encumbered in favor of the holder or  
125 holders of any such indebtedness or other obligation or a trustee  
126 for such holders, and which may include such security documents or  
127 resolutions that obligate an obligated group as provided in this  
128 paragraph.

129           (m) "Sponsoring university" or "university" means the  
130 University of Mississippi Medical Center, a department of the  
131 University of Mississippi under the management and control of the  
132 Board of Trustees of State Institutions of Higher Learning.

133           (n) "Trustees" or "board of trustees" means the Board  
134 of Trustees of State Institutions of Higher Learning, as provided  
135 for in Article 8, Section 213-A of the Mississippi Constitution.



136 Any reference to "board of trustees" or "trustees" in this act  
137 also means the commission established by the trustees under this  
138 act to the extent that the board of trustees delegates its  
139 authority to the commission.

140 **SECTION 3.** (1) The Legislature finds that the promotion of  
141 education, research and health care by the academic medical center  
142 for the benefit of the State of Mississippi requires that the  
143 academic medical center, in addition to all of its other  
144 responsibilities, consider and where prudent and approved by the  
145 trustees, establish linkages, networks and service arrangements  
146 and health care facilities pursuant to joint ventures or other  
147 collaborative delivery systems with other providers, to better  
148 serve the state, improve the quality of health care available  
149 across the state, lower the cost of health care and further the  
150 educational and research purposes of the academic medical center.

151 (2) In order to incorporate a health care collaborative, the  
152 trustees shall adopt a resolution containing at least the  
153 following provisions:

154 (a) A finding that it is necessary, desirable and in  
155 the best interests of the sponsoring university that the proposed  
156 collaborative be incorporated.

157 (b) Approval of the form of articles of incorporation,  
158 which shall comply with the provisions of Section 4 of this act.

159 (c) Approval of bylaws.



160 (d) Approval of the members of the initial board of  
161 directors.

162 (e) Authorization to proceed to form the proposed  
163 collaborative by executing the articles of incorporation approved  
164 by the institutional executive officer of the sponsoring  
165 university and filing the same with the Secretary of State,  
166 appointing the initial directors, and requiring the directors to  
167 adopt the approved bylaws.

168 (3) The trustees may incorporate more than one (1)  
169 collaborative if it determines that each collaborative promotes  
170 the health care mission of the university.

171 **SECTION 4.** (1) In addition to the contents of the articles  
172 of incorporation required or permitted under Section 79-11-137,  
173 other applicable requirements of the Mississippi Nonprofit  
174 Corporation Act, Section 101 et seq. of Chapter 11, Title 79,  
175 Mississippi Code of 1972, and other matters relating to the health  
176 care collaborative that the sponsoring university recommends and  
177 the trustees choose to insert and that are not inconsistent with  
178 state law, the articles of incorporation of a health care  
179 collaborative shall include the following provisions:

180 (a) The name of the collaborative shall include the  
181 word "collaborative" and shall include words identifying the  
182 sponsoring university.

183 (b) A statement that the health care collaborative is  
184 organized under the provisions of this act.



185           (c) If not specified in the collaborative's bylaws as  
186 approved by the trustees, the number of directors, which shall be  
187 an odd number not less than three (3), and the duration of their  
188 respective terms of office, each of which shall not be in excess  
189 of three (3) years. Directors may serve multiple terms,  
190 consecutive or otherwise, if duly appointed or reappointed in  
191 accordance with this act.

192           (d) If not specified in the collaborative's bylaws as  
193 approved by the trustees, provisions for appointing or removing  
194 directors of the health care collaborative, subject to the  
195 provisions of Section 6 of this act. In addition, and  
196 notwithstanding any provision in this section to the contrary, the  
197 initial directors of a health care collaborative shall be selected  
198 by the sponsoring university and listed in the initial articles of  
199 incorporation submitted to the trustees for its consideration as  
200 provided in Section 3 of this act. That list shall expressly  
201 classify the directors into three (3) groups, one (1) of which  
202 shall serve an initial term of one (1) year, one (1) of which  
203 shall serve an initial term of two (2) years and one (1) of which  
204 shall serve an initial term of three (3) years.

205           (2) Consistent with the provisions of Section 79-11-139,  
206 upon the filing for record of the articles of incorporation with  
207 the Secretary of State, the health care collaborative shall come  
208 into existence and, subject to the requirements of this act, it  
209 shall constitute a public corporation under the name set forth in





210 its articles of incorporation. The sponsoring university shall  
211 provide a copy of the articles of incorporation and bylaws to the  
212 trustees within thirty (30) days of the filing of the articles of  
213 incorporation with the Secretary of State.

214         **SECTION 5.** (1) In addition to the applicable requirements  
215 for amendment of the articles of incorporation set forth in the  
216 Mississippi Nonprofit Corporation Act, Section 101 et seq. of  
217 Chapter 11, Title 79, Mississippi Code of 1972, the articles of  
218 incorporation of any health care collaborative may be amended by  
219 filing articles of amendment with the Secretary of State, but  
220 neither the articles of incorporation nor the bylaws may be  
221 amended without the approval of the board of the health care  
222 collaborative, the sponsoring university and the trustees in the  
223 manner provided in this section.

224         (2) In order to amend the articles of incorporation or the  
225 bylaws, the following steps shall be completed:

226                 (a) The board of the health care collaborative shall  
227 first adopt a resolution approving articles of amendment or  
228 amendment of the bylaws and recommending approval thereof by the  
229 sponsoring university.

230                 (b) After adoption of a resolution approving articles  
231 of amendment or amendment of the bylaws by the board of the health  
232 care collaborative, the collaborative shall file a written request  
233 for approval of the articles of amendment or amendment of the  
234 bylaws by the sponsoring university.



235 (c) As soon as may be practicable after receipt of the  
236 request from the health care collaborative, the sponsoring  
237 university shall review the application and shall either approve  
238 or reject the articles of amendment or amendment of the bylaws as  
239 approved and recommended to it by the health care collaborative.

240 (d) If the proposed articles of amendment or amendment  
241 of the bylaws are approved by the sponsoring university, then as  
242 soon as may be practicable after the approval of the articles of  
243 amendment, the sponsoring university shall submit the articles of  
244 amendment or amendment of the bylaws to the Commissioner of Higher  
245 Education for his review. The Commissioner of Higher Education  
246 shall submit the articles of amendment or amendment of the bylaws  
247 to the trustees for further action.

248 (3) If the trustees grant approval, the president or vice  
249 president of the health care collaborative shall file for record  
250 in the Office of the Secretary of State the articles of amendment.  
251 When approved, the amendments to the bylaws shall be appropriately  
252 documented in the corporate records of the health care  
253 collaborative.

254 (4) Upon the filing for record of the articles of amendment  
255 in accordance with the foregoing procedures, the articles of  
256 amendment or amended bylaws shall become effective.

257 (5) In addition to the applicable requirements for the  
258 amendment and restatement of the articles of incorporation set  
259 forth in the Mississippi Nonprofit Corporation Act, Section 101 et



260 seq. of Chapter 11, Title 79, Mississippi Code of 1972, the  
261 articles of amendment of a health care collaborative may amend and  
262 restate the articles of incorporation of a health care  
263 collaborative if approved in accordance with this section.

264 (6) Notwithstanding the provisions of this section, the name  
265 and address of the registered agent of a health care collaborative  
266 may be changed by the board of a health care collaborative without  
267 following the procedure set forth in this section. A health care  
268 collaborative shall use any appropriate form promulgated by the  
269 Secretary of State for this purpose.

270 **SECTION 6.** (1) Subject to the requirements of Section  
271 4(1)(c) of this act, each health care collaborative shall have a  
272 board of directors composed of the number of director positions  
273 provided in the articles of incorporation or bylaws of the health  
274 care collaborative, as applicable.

275 (2) Consistent with the Mississippi Nonprofit Corporation  
276 Act, Section 101 et seq. of Chapter 11, Title 79, Mississippi Code  
277 of 1972, all powers of a health care collaborative shall be  
278 exercised by or under the direction of its board of directors;  
279 however, except for (a) duly appointed officers exercising  
280 authority delegated to them in the collaborative's bylaws, and (b)  
281 duly constituted committees of the board meeting the requirements  
282 of Section 79-11-265 and consisting of no less than three (3)  
283 directors, a majority of which were appointed (without nomination  
284 by any other person) by the sponsoring university, the board shall



285 not be permitted to authorize any person or persons to exercise  
286 some or all of its powers under Section 79-11-231(3).

287 (3) Except for ex-officio directors specified in the  
288 articles of incorporation, or bylaws, all directors of a health  
289 care collaborative shall be appointed by the sponsoring  
290 university, subject to the approval of the trustees. The articles  
291 of incorporation or bylaws may provide that specified officers or  
292 employees of the sponsoring university shall be ex-officio  
293 directors of a health care collaborative, so long as a majority of  
294 the directors are appointed by the sponsoring university and  
295 approved by the trustees.

296 (4) The articles of incorporation may provide that a  
297 business organization, governmental entity, public corporation, or  
298 nonprofit organization may nominate one or more directors of a  
299 health care collaborative, provided that the number of directors  
300 appointed by the sponsoring university and approved by the  
301 trustees without nomination may never be less than a majority of  
302 the directors, and the sponsoring university shall not be required  
303 to appoint any such nominee and the trustees shall not be required  
304 to approve any such nominee. If the sponsoring university does  
305 not appoint a nominee or if a nominee is not approved by the  
306 trustees, the nominating entity shall provide an alternate nominee  
307 for consideration by the sponsoring university.



308 (5) All directors appointed by the sponsoring university may  
309 be removed by the sponsoring university or the trustees at any  
310 time, with or without cause.

311 (6) If, at the expiration of any term of office of any  
312 director, a successor has not been appointed as provided in the  
313 articles of incorporation or the bylaws, then the director whose  
314 term of office has expired shall continue to hold office until his  
315 or her successor is appointed.

316 (7) Each director shall serve without compensation but may  
317 be reimbursed for expenses actually incurred by him or her in  
318 connection with the performance of his or her duties.

319 (8) No vacancy in the membership of the board shall impair  
320 the right of a quorum to exercise all the powers and perform all  
321 the duties of the board.

322 (9) The composition of the board of directors of a health  
323 care collaborative shall be presumed valid absent a final  
324 determination by a court of competent jurisdiction that the board  
325 is not constituted in good faith by the sponsoring university.

326 **SECTION 7.** A health care collaborative may duly constitute  
327 offices of the collaborative and appoint officers to hold such  
328 positions so created, in the manner and for any purpose provided  
329 in the Mississippi Nonprofit Corporation Act, Section 101 et seq.  
330 of Chapter 11, Title 79, Mississippi Code of 1972.

331 **SECTION 8.** (1) In its approval of the sponsoring  
332 university's request to establish a health care collaborative, the



333 board of trustees shall, by regulation or otherwise, specify the  
334 powers and scope of authority that the health care collaborative  
335 will have and may exercise, which may include any power granted to  
336 nonprofit corporations under the Mississippi Nonprofit Corporation  
337 Act, Section 101 et seq. of Chapter 11, Title 79, Mississippi Code  
338 of 1972, together with all powers incidental thereto or necessary  
339 or desirable to the discharge thereof, including, without  
340 limitation, the following specific powers:

341           (a) To adopt, maintain, and amend bylaws and a  
342 corporate seal.

343           (b) To sue and, subject to the limitations in this  
344 paragraph, be sued; however, any action against a health care  
345 collaborative, or a person acting in his or her capacity as a  
346 board member, officer or employee of the health care collaborative  
347 to recover damages for any injury shall be subject to the  
348 provisions of Chapter 46, Title 11, Mississippi Code of 1972.

349           (c) To acquire, construct, equip, lease, manage,  
350 operate, engage in a joint venture or joint operating agreement  
351 regarding, or otherwise deal in those health care facilities it  
352 considers necessary or desirable.

353           (d) To enter into contracts and agreements, with  
354 contractual terms or respect to such periods of time as the health  
355 care collaborative deems necessary or advisable without regard to  
356 restrictions associated with terms of public officials or members  
357 of public bodies, including contracts or agreements to guarantee



358 the obligations of another party, to indemnify another party, to  
359 borrow money, incur indebtedness, and issue bonds, notes, debt  
360 securities, or any other evidence of indebtedness.

361 (e) To pledge the general credit of the health care  
362 collaborative or any revenues or income of the health care  
363 collaborative to repayment of any of its indebtedness.

364 (f) To mortgage or pledge its health care facilities or  
365 its other assets or any part thereof, whether then owned or  
366 thereafter acquired, as security for its indebtedness.

367 (g) To lend money to, to assume the indebtedness of, or  
368 to guarantee the indebtedness of any other health care  
369 collaborative, governmental entity, public corporation or  
370 nonprofit organization.

371 (h) To create, establish, acquire, operate or support  
372 subsidiaries, networks, joint ventures, and affiliates, either  
373 for-profit or nonprofit, to assist a health care collaborative in  
374 fulfilling its purposes.

375 (i) To participate in joint ventures, affiliations,  
376 management agreements, or similar endeavors that provide health  
377 care or engage in activities related thereto.

378 (j) To make and arrange for loans, contributions to  
379 capital, and other debt and equity financing for the activities of  
380 any lawful form of business organization of which the health care  
381 collaborative is a member, and to guarantee loans and any other  
382 obligations for such purpose.



383 (k) To enter into any derivative agreement.

384 (l) To provide for and support the educational programs  
385 of any university or any other two-year college or four-year  
386 college or university in the state.

387 (m) To establish, collect, and alter charges for  
388 services rendered and supplies furnished by it.

389 (n) To contract for or to accept any gifts, grants,  
390 endowments, or any other aid in any form from the federal  
391 government, a governmental entity, or any public corporation, or  
392 any other source, or any combination thereof, and to comply with  
393 the terms and conditions thereof.

394 (o) To invest its funds in any investment authorized by  
395 the sponsoring university for investment of its own funds or in  
396 any investment permitted or authorized for state-regulated  
397 insurance companies, including, without limitation, investments  
398 permitted for domestic insurers and health maintenance  
399 organizations under Section 83-19-51.

400 (p) To seek protection of the federal bankruptcy laws  
401 by filing a petition in any United States Bankruptcy Court located  
402 in the state.

403 (q) To organize, or to own an interest in, any other  
404 corporation, partnership, limited liability company, joint  
405 venture, or other form of business organization, whether  
406 for-profit or nonprofit, in furtherance of its health, education,  
407 or research mission.





408 (r) To engage in arrangements, contracts, information  
409 sharing, and other collaborative activities with public or private  
410 entities and individuals, including, without limitation: joint  
411 ventures, joint purchasing arrangements, joint negotiations with  
412 physicians, hospitals and payors (whether those negotiations  
413 result in separate or combined agreements), leases and agreements  
414 that involve delivery system network creation or operation.

415 (s) To provide such insurance, retirement, and other  
416 benefits to employees and other servants as it determines  
417 necessary or desirable.

418 (t) To purchase, sell, exchange, lease, accept, receive  
419 or hold title or leasehold interest in real, personal and mixed  
420 property from any source whatsoever or to otherwise deal with any  
421 such property to the extent reasonable or necessary to accomplish  
422 the purposes of the collaborative.

423 (2) Nothing in this section shall be construed as granting  
424 to a health care collaborative the power to levy any taxes.

425 (3) Nothing in this section shall be construed as  
426 authorizing a health care collaborative to sell, lease, exchange  
427 or dispose of all or substantially all of its property outside the  
428 ordinary course of business in a single transaction or series of  
429 transactions without authorization from the sponsoring university  
430 and trustees.

431 (4) Any of the powers granted under this section may be  
432 exercised by a health care collaborative in such manner as it may



433 determine to be consistent with the purposes of this act,  
434 notwithstanding that, as a consequence of the exercise of powers  
435 it engages in, activities (a) may be deemed anticompetitive, or  
436 (b) may result in the acquisition or maintenance of monopoly power  
437 in some relevant market, in either case within the meaning of  
438 state or federal antitrust or competition laws and notwithstanding  
439 that these activities may have the effect of displacing  
440 competition in the provision of hospital, physician or other  
441 health care or financing related services.

442       **SECTION 9.** (1) With approval of the sponsoring university  
443 and the trustees, a health care collaborative from time to time  
444 may borrow money or incur indebtedness and issue bonds, notes or  
445 other evidence of indebtedness in such principal amounts as the  
446 board determines by resolution to be necessary, desirable and in  
447 the best interests of the health care collaborative in order to  
448 provide funds to carry out its corporate powers. Indebtedness may  
449 be incurred for any lawful purpose of the health care  
450 collaborative, including, without limitation, any of the  
451 following:

452               (a) Indebtedness to finance the acquisition,  
453 construction, expansion, renovation, furnishing and equipping of  
454 health care facilities and related improvements thereto.

455               (b) Indebtedness to provide working capital or funds  
456 for operating expenses.



457 (c) Indebtedness to refund, extend, refinance or  
458 restructure any indebtedness of the health care collaborative or  
459 any indebtedness assumed or guaranteed by the health care  
460 collaborative.

461 (2) Indebtedness may be in the form of and secured by any of  
462 the following or any combination thereof, or any similar financing  
463 structures or instruments common in the market at the time that  
464 the indebtedness is incurred, issued, modified, renewed or  
465 considered:

466 (a) A general obligation of the health care  
467 collaborative to the payment of which its full faith and credit is  
468 pledged.

469 (b) Payable solely out of one or more general or  
470 specific revenues of the health care collaborative or any of its  
471 facilities.

472 (c) Secured by any one or combination of a guaranty  
473 from or pledge of any available funds of or any tax levied by a  
474 governmental entity that has been made available to a health care  
475 collaborative or any of its facilities.

476 (3) Indebtedness may provide for any of the following or any  
477 combination thereof:

478 (a) Provide for no interest.

479 (b) Provide for current interest.

480 (c) Provide for capitalized interest.



481 (d) Provide for accretion or other increase in  
482 principal amount in lieu of interest.

483 (4) Any properly approved resolution authorizing the  
484 issuance of any indebtedness shall create a contract with the  
485 holders of the indebtedness issued by the resolution.

486 (5) Evidence of indebtedness shall be executed and delivered  
487 as provided in the resolution of the board authorizing the same.

488 (6) Indebtedness may be sold at public or private sale or in  
489 exchange for indebtedness of the health care collaborative at such  
490 price or on such terms as the board may determine.

491 (7) All indebtedness of a health care collaborative may be  
492 subject to redemption or prepayment on such terms as the board may  
493 determine.

494 (8) No indebtedness of a health care collaborative shall  
495 mature more than forty (40) years from the date of issuance,  
496 without regard to whether the indebtedness is refunding,  
497 extending, refinancing or restructuring existing indebtedness.

498 (9) The health care collaborative may, subject to security  
499 documents or other agreements with holders as may then exist,  
500 purchase its indebtedness in the open market, through  
501 intermediaries or directly from the holder of an obligation, with  
502 any funds available for that purpose. Any obligation so purchased  
503 may be cancelled by the health care collaborative or may be  
504 resold, as authorized by the board.



505           **SECTION 10.** (1) With approval of the sponsoring university  
506 and the trustees, any pledge of any revenues of a health care  
507 collaborative including, without limitation, tax revenues made  
508 available to a health care collaborative, shall be valid and  
509 binding from the time that the pledge is made, and the revenues or  
510 taxes so pledged and thereafter received by the health care  
511 collaborative shall immediately become subject to the lien of that  
512 pledge without any physical delivery thereof or further act. The  
513 lien of that pledge shall be valid and binding against all parties  
514 having claims of any kind against the health care collaborative,  
515 irrespective of whether the parties have actual notice thereof.  
516 The resolution or security document establishing a pledge of  
517 revenues or taxes may provide that the lien established extends,  
518 on a pari passu (equal footing) basis, to any additional  
519 indebtedness issued as a parity obligation in accordance with the  
520 terms of the financing document.

521           (2) Any security document relating to any real property,  
522 personal property, fixtures, or other tangible property of a  
523 health care collaborative shall be subject to the applicable  
524 requirements of state law regarding creation, perfection and  
525 priority with respect to any liens thereon, including without  
526 limitation, Chapter 9, Title 75, Mississippi Code of 1972.

527           **SECTION 11.** (1) With approval of the sponsoring university  
528 and the trustees, all agreements and covenants undertaken, and all  
529 indebtedness issued, by a health care collaborative shall be



530 solely and exclusively an obligation of the health care  
531 collaborative and, except as otherwise provided in a written  
532 agreement in accordance with Sections 9 and 16 of this act, shall  
533 not create a debt of or obligate the state, the sponsoring  
534 university or any other governmental entity within the meaning of  
535 any constitutional or statutory provision.

536 (2) Neither the directors nor any officer of a health care  
537 collaborative executing indebtedness issued under this act shall  
538 be personally liable for that indebtedness by reason of the  
539 execution or issuance thereof.

540 (3) The state and the sponsoring university pledge to and  
541 agree with the holders of any indebtedness issued under this act  
542 that neither the state nor the sponsoring university will limit or  
543 alter the rights vested in the health care collaborative to  
544 fulfill the terms of any indebtedness or related security  
545 documents made with the holders thereof or in any way impair the  
546 rights and remedies of the holders until such indebtedness,  
547 together with the interest thereon, and all costs and expenses in  
548 connection with any action or proceeding by or on behalf of the  
549 holders, are fully met and discharged. A health care  
550 collaborative is authorized to include this pledge and agreement  
551 of this state or sponsoring university in any agreement with the  
552 holders of its indebtedness.

553 **SECTION 12.** With approval of the sponsoring university and  
554 the trustees, indebtedness issued under the provisions of this act



555 is made a legal investment for savings banks and insurance  
556 companies organized under state law and for trustees, executors,  
557 administrators, guardians, persons or organizations acting in a  
558 fiduciary capacity, unless otherwise directed by a court having  
559 jurisdiction or by a document providing fiduciary health care  
560 collaborative. Any governmental entity or public corporation is  
561 authorized, in its discretion, to invest any available funds in  
562 securities of the health care collaborative.

563       **SECTION 13.** (1) If there is any default in the payment of  
564 the principal of, or interest on, any indebtedness issued under  
565 this act or of any agreements contained in any security document,  
566 and the period for cure of the default has passed, then the holder  
567 of the indebtedness and the trustee under any security document,  
568 or any one or more of them, subject to the terms of the financing  
569 documents authorizing the indebtedness or any security document  
570 applicable thereto:

571           (a) May, by mandamus, injunction or other proceedings,  
572 compel performance of any covenant or agreement of the health care  
573 collaborative contained in any applicable resolution or security  
574 document by its board or its officers.

575           (b) May be entitled to a judgment against the health  
576 care collaborative for the principal of and interest on the  
577 indebtedness so in default, together with all reasonable costs of  
578 collection.



579 (c) May, if the indebtedness is secured by a mortgage  
580 on, or security interest in, any physical properties of the health  
581 care collaborative, foreclose the mortgage or pledge, exercise any  
582 powers of sale contained in the security documents, or exercise  
583 any possessory or other similar rights as are provided for in the  
584 financing documents or security document applicable to the  
585 indebtedness.

586 (d) Regardless of the sufficiency of the security for  
587 the obligation in default, may be entitled to the appointment of a  
588 receiver upon order of a court of competent jurisdiction who  
589 shall, upon that appointment, assume all powers granted in the  
590 applicable financing documents or security document applicable to  
591 the obligation in default, provided that the income derived from  
592 any activity undertaken by a receiver under this section shall be  
593 expended solely in accordance with the applicable provisions of  
594 any orders of the court by which such receiver is appointed, and  
595 absent judicial direction, of the applicable financing documents  
596 or security document applicable to the obligation in default.

597 (2) The remedies specified in this section shall be  
598 cumulative to all other remedies that may otherwise be available,  
599 by law or contract, for the benefit of the holders of indebtedness  
600 of a health care collaborative.

601 **SECTION 14.** (1) Notwithstanding any provision of law to the  
602 contrary:





603           (a) Any indebtedness issued by a health care  
604 collaborative or any entity controlled by a health care  
605 collaborative and the income derived therefrom, including any  
606 profit from the sale thereof, shall be exempt from taxation by the  
607 state or by any political subdivision, agency or other  
608 governmental unit of or within the state.

609           (b) All properties of a health care collaborative or  
610 any entity controlled by a health care collaborative, including  
611 all leases, leaseholds or leasehold interests of or with respect  
612 to any such properties, whether real, personal, or mixed, and the  
613 derived income therefrom, shall be exempt from any and all  
614 taxation by the state or by any political subdivision, agency or  
615 other governmental unit of or within the state.

616           (c) The sales and use taxes, franchise taxes, provider  
617 taxes or other taxes of similar type levied by this state, or any  
618 political subdivision of this state, shall not apply to sales or  
619 leases to a health care collaborative or any entity controlled by  
620 a health care collaborative of the following when acquired for or  
621 used in establishing or operating a health care facility or  
622 otherwise carrying on the business and activities of a health care  
623 collaborative or any entity controlled by a health care  
624 collaborative:

625           (i) Any personal property or fixtures, including  
626 without limitation, sales or leases to such entities of:



627                   1. Furniture, fixtures and equipment  
628 (inclusive of all communications, computer, server, software and  
629 other hardware equipment);

630                   2. All replacements of, repair parts for or  
631 services to repair items described in item 1 of this subparagraph  
632 (i);

633                   3. Office and operating materials and  
634 supplies;

635                   4. Electricity, current, power, natural gas,  
636 liquefied petroleum gas or other fuel for heating, lighting or  
637 other use, and potable water; and

638                   5. All services taxable under Section  
639 27-65-23 required to establish, support, operate and/or maintain a  
640 health care facility or otherwise operate or carry on the business  
641 and activities of a health care collaborative or any entity  
642 controlled by a health care collaborative; or

643                   (ii) Any component building materials, machinery  
644 and equipment used:

645                   1. In the construction of a health care  
646 facility building or other building owned by a health care  
647 collaborative or any entity controlled by a health care  
648 collaborative; or

649                   2. In making any additions or improvements to  
650 such properties.



651 (2) Notwithstanding the foregoing, no exemption provided in  
652 this section shall apply to taxes levied by Section 27-65-21.

653 (3) The sponsoring university's health care collaborative  
654 shall not be financially combined with the sponsoring university  
655 for financial reporting or accounting purposes.

656 **SECTION 15.** (1) Each health care collaborative shall engage  
657 a firm or firms of certified public accountants to conduct an  
658 annual audit of the financial statement of the health care  
659 collaborative. Each audit shall be conducted in accordance with  
660 generally accepted auditing standards applied to governmental  
661 entities.

662 (2) The board shall submit all audits required by subsection  
663 (1) of this section to the sponsoring university and the trustees  
664 as promptly as practicable after the end of each fiscal year of  
665 the health care collaborative. Health care collaboratives shall  
666 observe the same fiscal year as the sponsoring university.

667 **SECTION 16.** (1) With approval of the sponsoring university  
668 and the trustees, notwithstanding anything to the contrary  
669 contained in Chapter 13, Title 41, Mississippi Code of 1972, the  
670 state, any university, any governmental entity, any governmental  
671 subdivision, any community hospital and any public corporation is  
672 authorized to give, transfer, convey, lease or sell to any health  
673 care collaborative, on terms and conditions that are fair, just  
674 and reasonable to the health care collaborative and the party or  
675 parties involved:



676 (a) Any of its health care facilities, community  
677 hospitals and other properties, real or personal, and any funds  
678 and assets, tangible or intangible, relative to the ownership or  
679 operation of any such health care facilities or community  
680 hospitals, including any certificates of need, licenses, or other  
681 similar rights appertaining or ancillary thereto, irrespective of  
682 whether they have been exercised; and

683 (b) Any taxes, revenues, or funds owned or controlled  
684 by it.

685 (2) The state, any governmental entity, any university, or  
686 any public corporation, with approval of the trustees, may pledge  
687 its full faith and credit to or for the benefit of a health care  
688 collaborative or may pledge any revenues that it is legally  
689 entitled to pledge to or for the benefit of a health care  
690 collaborative.

691 (3) With approval of the trustees, the sponsoring university  
692 may enter into agreements with its health care collaborative for  
693 the provision of goods or services, lease of property, risk  
694 sharing, group purchasing or other operational matters, provided  
695 that any such agreement requires a fair market value payment.

696 **SECTION 17.** In support of and in furtherance of the powers  
697 granted in Section 8 of this act, the Legislature finds and  
698 declares all of the following:

699 (a) Health care collaboratives organized under this act  
700 are performing essential public functions on behalf of the state,



701 the sponsoring university, and other governmental entities in the  
702 state.

703 (b) Any of the powers granted under this act may be  
704 exercised, and activities may be engaged in, by a health care  
705 collaborative in such manner as it may determine to be consistent  
706 with the purposes of this act, notwithstanding that, as a  
707 consequence of that exercise of powers and those activities, its  
708 conduct (i) may be deemed anticompetitive or as resulting in an  
709 unreasonable restraint of trade, or (ii) may result in the  
710 acquisition, maintenance or exercise of monopoly power in a  
711 relevant geographic or product market, or (iii) have spillover  
712 effects that are anticompetitive in some other market, within the  
713 meaning of state or federal antitrust or competition laws, and  
714 notwithstanding the fact that those activities may have the effect  
715 of displacing competition in the provision of hospital, physician,  
716 clinic, freestanding health facility, health care administration,  
717 health care financing or any related activities, markets or lines  
718 of business. It is the intention of the Legislature that such  
719 conduct be exempt from scrutiny under federal and state antitrust  
720 laws.

721 (c) In addition, any such activities of a health care  
722 collaborative shall be subject to active supervision by the board  
723 of trustees to the extent required by applicable judicial  
724 decisions made to ensure that those activities are exempt from  
725 federal and state antitrust laws, or the policy of the trustees,



726 whichever is greater. That active supervision shall include,  
727 without limitation (i) submission to the trustees reasonably in  
728 advance of the commencement of a health care collaborative of a  
729 description of the scope of its activities and its participants,  
730 the principal terms of the proposed venture, the effect on health  
731 care delivery, and the effects on competition (to the extent  
732 readily discernible); (ii) review by the trustees; (iii) comments  
733 on the proposal by the trustees, including any required changes to  
734 terms; (iv) approval by the trustees to proceed; and (v) an annual  
735 report to the trustees by the health care collaborative on its  
736 activities and results.

737 (d) In carrying out its public health mission through  
738 the exercise of the powers granted by this act, including, without  
739 limitation, the collaborative activities expressly authorized by  
740 this act, a health care collaborative, as well as the public or  
741 private entities and individuals with which they collaborate,  
742 shall be immunized from liability under the federal and state  
743 antitrust or competition laws to the fullest extent allowed by  
744 law.

745 **SECTION 18.** Notwithstanding any other provision of law to  
746 the contrary:

747 (a) All members of boards of directors of health care  
748 collaboratives shall be subject to the provisions of the  
749 Mississippi Nonprofit Corporation Act, Section 101 et seq. of  
750 Chapter 11, Title 79, Mississippi Code of 1972, governing



751 fiduciary obligations of directors, including, but not limited to,  
752 Section 79-11-269. Health care collaboratives, members of the  
753 governing bodies of health care collaboratives, and officers and  
754 employees of health care collaboratives shall not be subject to  
755 state ethics laws that apply to public employees, public officials  
756 and public servants, including, without limitation, the provisions  
757 of Chapter 4, Title 25, Mississippi Code of 1972 [Ethics in  
758 Government].

759 (b) All health care collaboratives shall provide copies  
760 of all minutes of meetings of the board of directors to the  
761 sponsoring university as soon as practical, but not more than  
762 thirty (30) days after adoption, and all records of health care  
763 collaboratives shall be subject to inspection by the sponsoring  
764 university and the trustees. Notwithstanding the foregoing, a  
765 health care collaborative shall not be considered a public body  
766 for purposes of Chapter 61, Title 25, Mississippi Code of 1972  
767 [Mississippi Public Records Act], including, but not limited to,  
768 Section 25-61-3, and Chapter 41, Title 25, Mississippi Code of  
769 1972 [Open Meetings], including, but not limited to, Section  
770 25-41-3.

771 (c) Deposits of health care collaboratives, supported  
772 wholly or in part by the state, shall be made in conformity with  
773 Section 7-9-41 [Treasury Withdrawals by Warrant] and Section  
774 7-9-43 [Contracts With Selected State Depositories].



775           (d) Health care collaboratives shall not be subject to  
776 the procurement laws of the state, including, without limitation,  
777 the provisions of Chapter 7, Title 31, Mississippi Code of 1972  
778 [Public Purchases]; Chapter 9, Title 25, Mississippi Code of 1972  
779 [Statewide Personnel System]; and Chapter 53, Title 25,  
780 Mississippi Code of 1972 [Mississippi Department of Information  
781 Technology Services]. However, erection of all buildings,  
782 additions, or repairs by a health care collaborative using funds  
783 provided by legislative appropriation shall be subject to Chapter  
784 11, Title 31, Mississippi Code of 1972 [State Construction  
785 Projects]. Notwithstanding the foregoing, the provisions of this  
786 paragraph (d) shall not apply to any architectural or engineering  
787 service contract fully paid for by self-generated funds of any of  
788 the state institutions of higher learning or funds generated by  
789 the health care collaborative, nor shall they apply to health care  
790 collaborative projects that are fully funded from local funds or  
791 other nonstate sources that are outside the Department of Finance  
792 and Administration's appropriations or as directed by the  
793 Legislature.

794           (e) Health care collaboratives shall have the authority  
795 to secure accounting, legal and all such personal and professional  
796 services on such terms as the board of the health care  
797 collaborative deems appropriate; however, all contracts for those  
798 services shall be submitted to the sponsoring university within  
799 thirty (30) days of approval by the board. Notwithstanding the





800 foregoing, health care collaboratives shall not be subject to the  
801 provisions of Chapter 104, Title 27, Mississippi Code of 1972  
802 [Mississippi Accountability and Transparency Act].

803 (f) All requests for copies of minutes, contracts,  
804 audits, or other records of a health care collaborative made to a  
805 public body under the Mississippi Public Records Act of 1983 shall  
806 be handled in the manner provide for in Section 25-61-9.

807 (g) No expenditure authorized or permitted by the  
808 provisions of this act shall be considered to be a donation,  
809 lending of credit or a granting of public money or thing of value  
810 to or in aid of any individual, association, or corporation within  
811 the meaning of any constitutional or statutory provision.

812 (h) Nothing in this act shall be construed as allowing  
813 a health care collaborative to be exempt from compliance with all  
814 applicable laws and regulations of the State Department of Health  
815 as they pertain to licensure and the Mississippi Health Care  
816 Certificate of Need Law of 1979, Section 171 et seq. of Chapter 7,  
817 Title 41, Mississippi Code of 1972; however, the department may  
818 determine that no certificate of need is required if the activity,  
819 otherwise subject to regulation, is justified by the sponsoring  
820 university or health care collaborative's teaching or research  
821 mission.

822 (i) Health care collaboratives shall not be subject to  
823 the provisions of Chapter 43, Title 25, Mississippi Code of 1972  
824 [Administrative Procedures Law].



825 (j) Health care collaboratives shall not have the right  
826 to acquire any real property by the exercise of the power of  
827 eminent domain, including, but not limited to, those powers  
828 conferred by Chapter 27, Title 11, Mississippi Code of 1972  
829 [Eminent Domain].

830 **SECTION 19.** No part of the net earnings of a health care  
831 collaborative remaining after payment of its expenses shall inure  
832 to the benefit of any person other than a university, a  
833 governmental entity, or any nonprofit corporation that is an  
834 organization described in Section 501(c)(3) of the Internal  
835 Revenue Code.

836 **SECTION 20.** (1) A health care collaborative may be  
837 dissolved in accordance with the applicable provisions and  
838 requirements of the Mississippi Nonprofit Corporation Act, Section  
839 101 et seq. of Chapter 11, Title 79, Mississippi Code of 1972, but  
840 only with the approval of the board of the health care  
841 collaborative, the sponsoring university, and the trustees in the  
842 manner provided in this section.

843 (2) In addition to the requirements for dissolution as set  
844 forth in the Mississippi Nonprofit Corporation Act, Section 101 et  
845 seq. of Chapter 11, Title 79, Mississippi Code of 1972, in order  
846 to dissolve a health care collaborative, the following steps shall  
847 be completed:



848           (a) The board shall first adopt a resolution approving  
849 proposed articles of dissolution and a related plan of dissolution  
850 of the health care collaborative.

851           (b) After the adoption by the board of a resolution  
852 approving articles of dissolution and the related plan of  
853 dissolution, the health care collaborative shall file a written  
854 request to the sponsoring university that it approve the articles  
855 of dissolution and related plan of dissolution of the health care  
856 collaborative.

857           (c) As soon as may be practicable after the receipt of  
858 the application from the health care collaborative, the sponsoring  
859 university shall review the application, and it shall either  
860 approve or reject the proposed articles of dissolution and related  
861 plan of dissolution of the health care collaborative as approved  
862 and recommended to it by the health care collaborative.

863           (d) As soon as may be practicable after the sponsoring  
864 university approves the proposed articles of dissolution and  
865 related plan of dissolution of the health care collaborative the  
866 trustees shall review the application, and it shall either approve  
867 or reject the proposed articles of dissolution and related plan of  
868 dissolution of the health care collaborative as approved and  
869 recommended to it by the sponsoring university.

870           (3) Within thirty (30) days following the approval of  
871 dissolution of a health care collaborative by the sponsoring  
872 university and the trustees, an authorized representative of the



873 health care collaborative shall file for record in the Office of  
874 Secretary of State the articles of dissolution (including the plan  
875 of dissolution).

876 (4) Upon the filing for record of the articles of  
877 dissolution (including the plan of dissolution) approved in  
878 accordance with the procedures contained in this section, the  
879 articles of dissolution shall become effective.

880 (5) Upon dissolution of the health care collaborative,  
881 subject to any contractual obligation the health care  
882 collaborative may have entered into for fair disposition of assets  
883 and liabilities upon dissolution, title to all assets after  
884 provision for liabilities of the health care collaborative shall  
885 vest in the sponsoring university.

886 (6) If the trustees determine that it is in the best  
887 interest of the sponsoring university that a health care  
888 collaborative be dissolved, the trustees may dissolve the health  
889 care collaborative without permission from the board of the health  
890 care collaborative or the sponsoring university, and in that  
891 event, the trustees are deemed to be acting on behalf of the board  
892 of directors in proceeding with that dissolution under Section  
893 79-11-101 et seq. of the Mississippi Code of 1972.

894 **SECTION 21.** (1) If and at such time as the board of  
895 trustees determines on its minutes that it is appropriate and in  
896 the best interests of the University of Mississippi Medical Center  
897 and the State of Mississippi, the board of trustees is legally



898 authorized to create and establish a commission to be known as the  
899 University of Mississippi Medical Center Related Health Care  
900 Commission. The board of trustees may delegate to the commission  
901 such of its powers as determined appropriate by the trustees as  
902 will allow the commission to assist the board of trustees in its  
903 management and control of the University of Mississippi Medical  
904 Center and with respect to powers of the trustees related to  
905 health care collaboratives or other entities associated with the  
906 University of Mississippi Medical Center.

907 (2) The commission shall be composed of such number of  
908 members as shall be appointed by the board of trustees, to serve  
909 at the will and pleasure of the trustees, for such terms as the  
910 trustees may determine. Members of the commission may be  
911 appointed to an unlimited number of successive terms at the  
912 pleasure of the trustees. Members of the commission may be  
913 removed by the trustees with or without cause. In case of a  
914 vacancy among the membership of the commission for any reason, the  
915 trustees shall appoint a successor to serve for the remainder of  
916 the unexpired term or may reduce the size of the commission.  
917 Trustees or employees of the board of trustees shall not be  
918 disqualified for membership solely because of their office or  
919 employment status. The board of trustees is provided explicit  
920 legal authority to appoint employees, trustees, nonemployees  
921 and/or nontrustees as members of the commission.



922           (3) Commission members shall receive per diem and  
923 reimbursement of travel expenses commensurate with that provided  
924 for members of the trustees in Section 37-101-9. All expenses of  
925 the commission shall be paid from the appropriations or other  
926 revenues of the University of Mississippi Medical Center.

927           (4) The board of trustees may authorize the employment of  
928 such other personnel as may be required from time to time to carry  
929 out the functions of the commission and may assign to the  
930 personnel so employed such functions and duties and such powers of  
931 the trustees as may be necessary to accomplish the purposes for  
932 which the commission was established. All such personnel shall be  
933 employed by the Commissioner of Higher Education with the approval  
934 of the trustees and shall hold office at the pleasure of the  
935 Commissioner of Higher Education and the board of trustees. The  
936 board of trustees, or the Commissioner of Higher Education with  
937 the approval of the trustees, shall also have the power to employ  
938 on a fee basis such technical and professional assistance as may  
939 be necessary to carry out the powers, duties and purposes of the  
940 commission. The board of trustees may determine that expenses of  
941 those personnel or consultants shall be paid from the  
942 appropriations or other revenues of the University of Mississippi  
943 Medical Center.

944           (5) The board of trustees, in its discretion, may from time  
945 to time delegate to the commission such powers of the board of  
946 trustees as determined appropriate by the board of trustees for



947 the management and control of the University of Mississippi  
948 Medical Center and to accomplish the purposes of this act, and may  
949 limit, restrict or withdraw that delegation at any time. The  
950 board of trustees may promulgate regulations or policies defining  
951 the duties and responsibilities of the commission, and may  
952 delineate matters that are reserved to the board of trustees for  
953 decision.

954 **SECTION 22.** The board of trustees, by adoption of a  
955 resolution, may elect to exercise all of the sponsoring  
956 university's rights and authority under this act. If the board of  
957 trustees passes such a resolution, all references in this act to  
958 the sponsoring institution shall mean the trustees until such time  
959 as the trustees adopt another resolution terminating and revoking  
960 the initial resolution. The trustees may elect to exercise their  
961 rights under this section with respect to some or all of the  
962 sponsoring university's health care collaboratives.

963 **SECTION 23.** The board of trustees may adopt rules and  
964 regulations necessary to carry out the intent and purpose of  
965 this act, including, without limitation, rules and regulations  
966 that reserve to the board of trustees certain powers and approvals  
967 required to authorize a health care collaborative to take certain  
968 action.

969 **SECTION 24.** With the approval of the trustees, the academic  
970 medical center is authorized to directly or indirectly enter into  
971 joint purchasing arrangements, however structured, on terms



972 customary in the market or required by the organization and to  
973 enter into joint ventures, joint operating agreements or similar  
974 arrangements with community hospitals or other public or private  
975 health-related organizations, or with for-profit or nonprofit  
976 corporations or other organizations, either directly or through a  
977 health care collaborative, to establish arrangements for the  
978 academic medical center to participate in financial integration  
979 and/or clinical integration or clinically integrated networks with  
980 a joint venture, with community hospitals or other public or  
981 private health-related organizations, or with other for-profit or  
982 nonprofit corporations or other organizations, or through a joint  
983 operating agreement, and to provide for contracts of employment or  
984 contracts for services and ownership of property on terms that  
985 will protect the public interest.

986       **SECTION 25.** Section 41-13-15, Mississippi Code of 1972, is  
987 amended as follows:

988       41-13-15. (1) Any county and/or any political or judicial  
989 subdivision of a county and/or any municipality of the State of  
990 Mississippi, acting individually or jointly, may acquire and hold  
991 real estate for a community hospital either recognized and/or  
992 licensed as such by either the State of Mississippi or the United  
993 States government, and may, after complying with applicable health  
994 planning and licensure statutes, construct a community hospital  
995 thereon and/or appropriate funds according to the provisions of  
996 this chapter for the construction, remodeling, maintaining,





997 equipping, furnishing and expansion of such facilities by the  
998 board of trustees upon such real estate.

999 (2) Where joint ownership of a community hospital is  
1000 involved, the owners are hereby authorized to contract with each  
1001 other for determining the pro rata ownership of such community  
1002 hospital, the proportionate cost of maintenance and operation, and  
1003 the proportionate financing that each will contribute to the  
1004 community hospital.

1005 (3) The owners may likewise contract with each other, or on  
1006 behalf of any subordinate political or judicial subdivision, or  
1007 with the board of trustees of a community hospital, and/or any  
1008 agency of the State of Mississippi or the United States  
1009 government, or any health care collaborative as defined in Section  
1010 2 of this act, for necessary purposes related to the  
1011 establishment, operation or maintenance of community hospitals and  
1012 related programs wherever located, and may either accept from,  
1013 sell or contribute to the other entities, monies, personal  
1014 property or existing health facilities. The owners or the board  
1015 of trustees may also receive monies, property or any other  
1016 valuables of any kind through gifts, donations, devises or other  
1017 recognized means from any source for the purpose of hospital use.

1018 (4) Owners and boards of trustees, acting jointly or  
1019 severally, may acquire and hold real estate for offices for  
1020 physicians and other health care practitioners and related health  
1021 care or support facilities, provided that any contract for the



1022 purchase of real property must be ratified by the owner, and may  
1023 thereon construct and equip, maintain and remodel or expand such  
1024 offices and related facilities, and the board of trustees may  
1025 lease same to members of the hospital staff or others at a rate  
1026 deemed to be in the best interest of the community hospital.

1027 (5) If any political or judicial subdivision of a county is  
1028 obligated hereunder, the boundaries of such district shall not be  
1029 altered in such a manner as to relieve any portion thereof of its  
1030 obligation hereunder.

1031 (6) Owners may convey to any other owner, or any health care  
1032 collaborative as defined in Section 2 of this act, any or all  
1033 property, real or personal, comprising any existing community  
1034 hospital, including related facilities, wherever located, owned by  
1035 such conveying owner. Such conveyance shall be upon such terms  
1036 and conditions as may be agreed upon and may make such provisions  
1037 for transfers of operating funds and/or for the assumption of  
1038 liabilities of the community hospital as may be deemed appropriate  
1039 by the respective owners.

1040 (7) (a) Except as provided for in subsection (11) of this  
1041 section, owners may lease all or part of the property, real or  
1042 personal, comprising a community hospital, including any related  
1043 facilities, wherever located, and/or assets of such community  
1044 hospital, to any individual, partnership or corporation, whether  
1045 operating on a nonprofit basis or on a profit basis, or to the  
1046 board of trustees of such community hospital or any other owner or



1047 board of trustees, subject to the applicable provisions of  
1048 subsections (8), (9) and (10) of this section. The term of such  
1049 lease shall not exceed fifty (50) years. Such lease shall be  
1050 conditioned upon (i) the leased facility continuing to operate in  
1051 a manner safeguarding community health interests; (ii) the  
1052 proceeds from the lease being first applied against such bonds,  
1053 notes or other evidence of indebtedness as are issued pursuant to  
1054 Section 41-13-19 as and when they are due, provided that the terms  
1055 of the lease shall cover any indebtedness pursuant to Section  
1056 41-13-19; and (iii) any surplus proceeds from the lease being  
1057 deposited in the general fund of the owner, which proceeds may be  
1058 used for any lawful purpose. Such lease shall be subject to the  
1059 express approval of the board of trustees of the community  
1060 hospital, except in the case where the board of trustees of the  
1061 community hospital will be the lessee. However, owners may not  
1062 lease any community hospital to the University of Mississippi  
1063 Medical Center unless first the University of Mississippi Medical  
1064 Center has obtained authority to lease such hospital under  
1065 specific terms and conditions from the Board of Trustees of State  
1066 Institutions of Higher Learning.

1067       If the owner wishes to lease a community hospital without an  
1068 option to sell it and the approval of the board of trustees of the  
1069 community hospital is required but is not given within thirty (30)  
1070 days of the request for its approval by the owner, then the owner  
1071 may enter such lease as described herein on the following



1072 conditions: A resolution by the owner describing its intention to  
1073 enter such lease shall be published once a week for at least three  
1074 (3) consecutive weeks in at least one (1) newspaper published in  
1075 the county or city, as the case may be, or if none be so  
1076 published, in a newspaper having a general circulation therein.  
1077 The first publication of such notice shall be made not less than  
1078 twenty-one (21) days prior to the date fixed in such resolution  
1079 for the lease of the community hospital and the last publication  
1080 shall be made not more than seven (7) days prior to such date.  
1081 If, on or prior to the date fixed in such resolution for the lease  
1082 of the community hospital, there shall be filed with the clerk of  
1083 the owner a petition signed by twenty percent (20%) or fifteen  
1084 hundred (1500), whichever is less, of the qualified voters of such  
1085 owner, requesting that an election be called and held on the  
1086 question of the lease of the community hospital, then it shall be  
1087 the duty of the owner to call and provide for the holding of an  
1088 election as petitioned for. In such case, no such lease shall be  
1089 entered into unless authorized by the affirmative vote of the  
1090 majority of the qualified voters of such owner who vote on the  
1091 proposition at such election. Notice of such election shall be  
1092 given by publication in like manner as hereinabove provided for  
1093 the publication of the initial resolution. Such election shall be  
1094 conducted and the return thereof made, canvassed and declared as  
1095 nearly as may be in like manner as is now or may hereafter be  
1096 provided by law in the case of general elections in such owner.



1097 If, on or prior to the date fixed in the owner's resolution for  
1098 the lease of the community hospital, no such petition as described  
1099 above is filed with the clerk of the owner, then the owner may  
1100 proceed with the lease subject to the other requirements of this  
1101 section. Subject to the above conditions, the lease agreement  
1102 shall be upon such terms and conditions as may be agreed upon and  
1103 may make such provision for transfers of tangible and intangible  
1104 personal property and operating funds and/or for the assumption of  
1105 liabilities of the community hospital and for such lease payments,  
1106 all as may be deemed appropriate by the owners.

1107 (b) Owners may sell and convey all or part of the  
1108 property, real or personal, comprising a community hospital,  
1109 including any related facilities, wherever located, and/or assets  
1110 of such community hospital, to any individual, partnership or  
1111 corporation, whether operating on a nonprofit basis or on a profit  
1112 basis, or to the board of trustees of such community hospital or  
1113 any other owner or board of trustees, subject to the applicable  
1114 provisions of subsections (8) and (10) of this section. Such sale  
1115 and conveyance shall be upon such terms and conditions as may be  
1116 agreed upon by the owner and the purchaser that are consistent  
1117 with the requirements of this section, and the parties may make  
1118 such provisions for the transfer of operating funds or for the  
1119 assumption of liabilities of the facility, or both, as they deem  
1120 appropriate. However, such sale and conveyance shall be  
1121 conditioned upon (i) the facility continuing to operate in a



1122 manner safeguarding community health interests; (ii) the proceeds  
1123 from such sale being first applied against such bonds, notes or  
1124 other evidence of indebtedness as are issued pursuant to Section  
1125 41-13-19 as and when they are due, provided that the terms of the  
1126 sale shall cover any indebtedness pursuant to Section 41-13-19;  
1127 and (iii) any surplus proceeds from the sale being deposited in  
1128 the general fund of the owner, which proceeds may be used for any  
1129 lawful purpose. However, owners may not sell or convey any  
1130 community hospital to the University of Mississippi Medical Center  
1131 unless first the University of Mississippi Medical Center has  
1132 obtained authority to purchase such hospital under specific terms  
1133 and conditions from the Board of Trustees of State Institutions of  
1134 Higher Learning.

1135 (8) Whenever any owner decides that it may be in its best  
1136 interests to sell or lease a community hospital as provided for  
1137 under subsection (7) of this section, the owner shall first  
1138 contract with a certified public accounting firm, a law firm or  
1139 competent professional health care or management consultants to  
1140 review the current operating condition of the community hospital.  
1141 The review shall consist of, at minimum, the following:

1142 (a) A review of the community's inpatient facility  
1143 needs based on current workload, historical trends and  
1144 projections, based on demographic data, of future needs.



1145 (b) A review of the competitive market for services,  
1146 including other hospitals which serve the same area, the services  
1147 provided and the market perception of the competitive hospitals.

1148 (c) A review of the hospital's strengths relative to  
1149 the competition and its capacity to compete in light of projected  
1150 trends and competition.

1151 (d) An analysis of the hospital's options, including  
1152 service mix and pricing strategies. If the study concludes that a  
1153 sale or lease should occur, the study shall include an analysis of  
1154 which option would be best for the community and how much revenues  
1155 should be derived from the lease or sale.

1156 (9) After the review and analysis under subsection (8) of  
1157 this section, an owner may choose to sell or lease the community  
1158 hospital. If an owner chooses to sell such hospital or lease the  
1159 hospital with an option to sell it, the owner shall follow the  
1160 procedure specified in subsection (10) of this section. If an  
1161 owner chooses to lease the hospital without an option to sell it,  
1162 it shall first spread upon its minutes why such a lease is in the  
1163 best interests of the persons living in the area served by the  
1164 facility to be leased, and it shall make public any and all  
1165 findings and recommendations made in the review required under  
1166 proposals for the lease, which shall state clearly the minimum  
1167 required terms of all respondents and the evaluation process that  
1168 will be used when the owner reviews the proposals. The owner  
1169 shall lease to the respondent submitting the highest and best



1170 proposal. In no case may the owner deviate from the process  
1171 provided for in the request for proposals.

1172 (10) If an owner wishes to sell such community hospital or  
1173 lease the hospital with an option to sell it, the owner first  
1174 shall conduct a public hearing on the issue of the proposed sale  
1175 or lease with an option to sell the hospital. Notice of the date,  
1176 time, location and purpose of the public hearing shall be  
1177 published once a week for at least three (3) consecutive weeks in  
1178 at least one (1) newspaper published in the county or city, as the  
1179 case may be, or if none be so published, in a newspaper having a  
1180 general circulation therein. The first publication of the notice  
1181 shall be made not less than twenty-one (21) days before the date  
1182 of the public hearing and the last publication shall be made not  
1183 more than seven (7) days before that date. If, after the public  
1184 hearing, the owner chooses to sell or lease with an option to sell  
1185 the hospital, the owner shall adopt a resolution describing its  
1186 intention to sell or lease with an option to sell the hospital,  
1187 which shall include the owner's reasons why such a sale or lease  
1188 is in the best interests of the persons living in the area served  
1189 by the facility to be sold or leased. The owner then shall  
1190 publish a copy of the resolution; the requirements for proposals  
1191 for the sale or lease with an option to sell the hospital, which  
1192 shall state clearly the minimum required terms of all respondents  
1193 and the evaluation process that will be used when the owner  
1194 reviews the proposals; and the date proposed by the owner for the





1195 sale or lease with an option to sell the hospital. Such  
1196 publication shall be made once a week for at least three (3)  
1197 consecutive weeks in at least one (1) newspaper published in the  
1198 county or city, as the case may be, or if none be so published, in  
1199 a newspaper having a general circulation therein. The first  
1200 publication of the notice shall be made not less than twenty-one  
1201 (21) days before the date proposed for the sale or lease with an  
1202 option to sell the hospital and the last publication shall be made  
1203 not more than seven (7) days before that date. If, on or before  
1204 the date proposed for the sale or lease of the hospital, there is  
1205 filed with the clerk of the owner a petition signed by twenty  
1206 percent (20%) or fifteen hundred (1500), whichever is less, of the  
1207 qualified voters of the owner, requesting that an election be  
1208 called and held on the question of the sale or lease with an  
1209 option to sell the hospital, then it shall be the duty of the  
1210 owner to call and provide for the holding of an election as  
1211 petitioned for. In that case, no such sale or lease shall be  
1212 entered into unless authorized by the affirmative vote of the  
1213 majority of the qualified voters of the owner who vote on the  
1214 proposition at such election. Notice of the election shall be  
1215 given by publication in the same manner as provided for the  
1216 publication of the initial resolution. The election shall be  
1217 conducted and the return thereof made, canvassed and declared in  
1218 the same manner as provided by law in the case of general  
1219 elections in the owner. If, on or before the date proposed for



1220 the sale or lease of the hospital, no such petition is filed with  
1221 the clerk of the owner, then the owner may sell or lease with an  
1222 option to sell the hospital. Such sale or lease shall be made to  
1223 the respondent submitting the highest and best proposal. In no  
1224 case may the owner deviate from the process provided for in the  
1225 request for proposals.

1226 (11) A lessee of a community hospital, under a lease entered  
1227 into under the authority of Section 41-13-15, in effect prior to  
1228 July 15, 1993, or an affiliate thereof, may extend or renew such  
1229 lease whether or not an option to renew or extend the lease is  
1230 contained in the lease, for a term not to exceed fifteen (15)  
1231 years, conditioned upon (a) the leased facility continuing to  
1232 operate in a manner safeguarding community health interest; (b)  
1233 proceeds from the lease being first applied against such bonds,  
1234 notes or other evidence of indebtedness as are issued pursuant to  
1235 Section 41-13-19; (c) surplus proceeds from the lease being used  
1236 for health related purposes; (d) subject to the express approval  
1237 of the board of trustees of the community hospital; and (e)  
1238 subject to the express approval of the owner. If no board of  
1239 trustees is then existing, the owner shall have the right to enter  
1240 into a lease upon such terms and conditions as agreed upon by the  
1241 parties. Any lease entered into under this subsection (11) may  
1242 contain an option to purchase the hospital, on such terms as the  
1243 parties shall agree.



1244           **SECTION 26.** Section 41-13-35, Mississippi Code of 1972, is  
1245 amended as follows:

1246           41-13-35. (1) The board of trustees of any community  
1247 hospital shall have full authority to appoint an administrator,  
1248 who shall not be a member of the board of trustees, and to  
1249 delegate reasonable authority to such administrator for the  
1250 operation and maintenance of such hospital and all property and  
1251 facilities otherwise appertaining thereto.

1252           (2) The board of trustees shall have full authority to  
1253 select from its members, officers and committees and, by  
1254 resolution or through the board bylaws, to delegate to such  
1255 officers and committees reasonable authority to carry out and  
1256 enforce the powers and duties of the board of trustees during the  
1257 interim periods between regular meetings of the board of trustees;  
1258 provided, however, that any such action taken by an officer or  
1259 committee shall be subject to review by the board, and actions may  
1260 be withdrawn or nullified at the next subsequent meeting of the  
1261 board of trustees if the action is in excess of delegated  
1262 authority.

1263           (3) The board of trustees shall be responsible for governing  
1264 the community hospital under its control and shall make and  
1265 enforce staff and hospital bylaws and/or rules and regulations  
1266 necessary for the administration, government, maintenance and/or  
1267 expansion of such hospitals. The board of trustees shall keep



1268 minutes of its official business and shall comply with Section  
1269 41-9-68.

1270 (4) The decisions of said board of trustees of the community  
1271 hospital shall be valid and binding unless expressly prohibited by  
1272 applicable statutory or constitutional provisions.

1273 (5) The power of the board of trustees shall specifically  
1274 include, but not be limited to, the following authority:

1275 (a) To deposit and invest funds of the community  
1276 hospital in accordance with Section 27-105-365;

1277 (b) To establish such equitable wage and salary  
1278 programs and other employment benefits as may be deemed expedient  
1279 or proper, and in so doing, to expend reasonable funds for such  
1280 employee salary and benefits. Allowable employee programs shall  
1281 specifically include, but not be limited to, medical benefit,  
1282 life, accidental death and dismemberment, disability, retirement  
1283 and other employee coverage plans. The hospital may offer and  
1284 fund such programs directly or by contract with any third party  
1285 and shall be authorized to take all actions necessary to  
1286 implement, administer and operate such plans, including payroll  
1287 deductions for such plans;

1288 (c) To authorize employees to attend and to pay actual  
1289 expenses incurred by employees while engaged in hospital business  
1290 or in attending recognized educational or professional meetings;

1291 (d) To enter into loan or scholarship agreements with  
1292 employees or students to provide educational assistance where such



1293 student or employee agrees to work for a stipulated period of time  
1294 for the hospital;

1295 (e) To devise and implement employee incentive  
1296 programs;

1297 (f) To recruit and financially assist physicians and  
1298 other health care practitioners in establishing, or relocating  
1299 practices within the service area of the community hospital  
1300 including, without limitation, direct and indirect financial  
1301 assistance, loan agreements, agreements guaranteeing minimum  
1302 incomes for a stipulated period from opening of the practice and  
1303 providing free office space or reduced rental rates for office  
1304 space where such recruitment would directly benefit the community  
1305 hospital and/or the health and welfare of the citizens of the  
1306 service area;

1307 (g) To contract by way of lease, lease-purchase or  
1308 otherwise, with any agency, department or other office of  
1309 government or any individual, partnership, corporation, owner,  
1310 other board of trustees, or other health care facility, for the  
1311 providing of property, equipment or services by or to the  
1312 community hospital or other entity or regarding any facet of the  
1313 construction, management, funding or operation of the community  
1314 hospital or any division or department thereof, or any related  
1315 activity, including, without limitation, shared management  
1316 expertise or employee insurance and retirement programs, and to



1317 terminate said contracts when deemed in the best interests of the  
1318 community hospital;

1319 (h) To file suit on behalf of the community hospital to  
1320 enforce any right or claims accruing to the hospital and to defend  
1321 and/or settle claims against the community hospital and/or its  
1322 board of trustees;

1323 (i) To sell or otherwise dispose of any chattel  
1324 property of the community hospital by any method deemed  
1325 appropriate by the board where such disposition is consistent with  
1326 the hospital purposes or where such property is deemed by the  
1327 board to be surplus or otherwise unneeded;

1328 (j) To let contracts for the construction, remodeling,  
1329 expansion or acquisition, by lease or purchase, of hospital or  
1330 health care facilities, including real property, within the  
1331 service area for community hospital purposes where such may be  
1332 done with operational funds without encumbrancing the general  
1333 funds of the county or municipality, provided that any contract  
1334 for the purchase of real property must be ratified by the owner;

1335 (k) To borrow money and enter other financing  
1336 arrangements for community hospital and related purposes and to  
1337 grant security interests in hospital equipment and other hospital  
1338 assets and to pledge a percentage of hospital revenues as security  
1339 for such financings where needed; provided that the owner shall  
1340 specify by resolution the maximum borrowing authority and maximum



1341 percent of revenue which may be pledged by the board of trustees  
1342 during any given fiscal year;

1343 (l) To expend hospital funds for public relations or  
1344 advertising programs;

1345 (m) To offer the following inpatient and outpatient  
1346 services, after complying with applicable health planning,  
1347 licensure statutes and regulations, whether or not heretofore  
1348 offered by such hospital or other similar hospitals in this state  
1349 and whether or not heretofore authorized to be offered, long-term  
1350 care, extended care, home care, after-hours clinic services,  
1351 ambulatory surgical clinic services, preventative health care  
1352 services including wellness services, health education,  
1353 rehabilitation and diagnostic and treatment services; to promote,  
1354 develop, operate and maintain a center providing care or  
1355 residential facilities for the aged, convalescent or handicapped;  
1356 and to promote, develop and institute any other services having an  
1357 appropriate place in the operation of a hospital offering complete  
1358 community health care;

1359 (n) To promote, develop, acquire, operate and maintain  
1360 on a nonprofit basis, or on a profit basis if the community  
1361 hospital's share of profits is used solely for community hospital  
1362 and related purposes in accordance with this chapter, either  
1363 separately or jointly with one or more other hospitals or  
1364 health-related organizations, facilities and equipment for  
1365 providing goods, services and programs for hospitals, other health



1366 care providers, and other persons or entities in need of such  
1367 goods, services and programs and, in doing so, to provide for  
1368 contracts of employment or contracts for services and ownership of  
1369 property on terms that will protect the public interest;

1370 (o) To establish and operate medical offices, child  
1371 care centers, wellness or fitness centers and other facilities and  
1372 programs which the board determines are appropriate in the  
1373 operation of a community hospital for the benefit of its  
1374 employees, personnel and/or medical staff which shall be operated  
1375 as an integral part of the hospital and which may, in the  
1376 direction of the board of trustees, be offered to the general  
1377 public. If such programs are not established in existing  
1378 facilities or constructed on real estate previously acquired by  
1379 the owners, the board of trustees shall also have authority to  
1380 acquire, by lease or purchase, such facilities and real property  
1381 within the service area, whether or not adjacent to existing  
1382 facilities, provided that any contract for the purchase of real  
1383 property shall be ratified by the owner. The trustees shall lease  
1384 any such medical offices to members of the medical staff at rates  
1385 deemed appropriate and may, in its discretion, establish rates to  
1386 be paid for the use of other facilities or programs by its  
1387 employees or personnel or members of the public whom the trustees  
1388 may determine may properly use such other facilities or programs;





1389 (p) Provide, at its discretion, ambulance service  
1390 and/or to contract with any third party, public or private, for  
1391 the providing of such service;

1392 (q) Establish a fair and equitable system for the  
1393 billing of patients for care or users of services received through  
1394 the community hospital, which in the exercise of the board of  
1395 trustees' prudent fiscal discretion, may allow for rates to be  
1396 classified according to the potential usage by an identified group  
1397 or groups of patients of the community hospital's services and may  
1398 allow for standard discounts where the discount is designed to  
1399 reduce the operating costs or increase the revenues of the  
1400 community hospital. Such billing system may also allow for the  
1401 payment of charges by means of a credit card or similar device and  
1402 allow for payment of administrative fees as may be regularly  
1403 imposed by a banking institution or other credit service  
1404 organization for the use of such cards;

1405 (r) To establish as an organizational part of the  
1406 hospital or to aid in establishing as a separate entity from the  
1407 hospital, hospital auxiliaries designed to aid the hospital, its  
1408 patients, and/or families and visitors of patients, and when the  
1409 auxiliary is established as a separate entity from the hospital,  
1410 the board of trustees may cooperate with the auxiliary in its  
1411 operations as the board of trustees deems appropriate; \* \* \*

1412 (s) To make any agreements or contracts with the  
1413 federal government or any agency thereof, the State of Mississippi



1414 or any agency thereof, and any county, city, town, supervisors  
1415 district or election district within this state, jointly or  
1416 separately, for the maintenance of charity facilities \* \* \*;

1417 (t) To negotiate and enter into contracts and  
1418 agreements on behalf of the community hospital for the community  
1419 hospital to become a member of a limited liability company, a  
1420 joint venturer in a joint venture, or a member in a nonprofit  
1421 corporation, in furtherance of providing health care services to  
1422 the public; and

1423 (u) To enter into joint ventures, joint operating  
1424 agreements, or similar arrangements with other public or private  
1425 health-related organizations, or with for-profit or nonprofit  
1426 corporations or other organizations, either directly or through a  
1427 nonprofit corporation formed by the community hospital, for the  
1428 joint operation of all or part of the community hospital, or the  
1429 joint operation of any services or facilities of the community  
1430 hospital, and in doing so, to agree to an allocation of revenue,  
1431 income and/or expenses, to convey any community hospital assets,  
1432 services lines or facilities to the joint venture or to any other  
1433 organization or entity for fair market value, to establish  
1434 arrangements for the community hospital to participate in  
1435 financial integration and/or clinical integration or clinically  
1436 integrated networks with a joint venture, with other public or  
1437 private health-related organizations, or with other for-profit or  
1438 nonprofit corporations or other organizations, or through a joint



1439 operating agreement, and to provide for contracts of employment or  
1440 contracts for services and ownership of property on terms that  
1441 will protect the public interest.

1442 (6) No board of trustees of any community hospital may  
1443 accept any grant of money or other thing of value from any  
1444 not-for-profit or for-profit organization established for the  
1445 purpose of supporting health care in the area served by the  
1446 facility unless two-thirds (2/3) of the trustees vote to accept  
1447 the grant.

1448 (7) No board of trustees, individual trustee or any other  
1449 person who is an agent or servant of the trustees of any community  
1450 hospital shall have any personal financial interest in any  
1451 not-for-profit or for-profit organization which, regardless of its  
1452 stated purpose of incorporation, provides assistance in the form  
1453 of grants of money or property to community hospitals or provides  
1454 services to community hospitals in the form of performance of  
1455 functions normally associated with the operations of a hospital.

1456 **SECTION 27.** Section 11-46-1, Mississippi Code of 1972, is  
1457 amended as follows:

1458 11-46-1. As used in this chapter, the following terms shall  
1459 have the meanings ascribed unless the context otherwise requires:

1460 (a) "Claim" means any demand to recover damages from a  
1461 governmental entity as compensation for injuries.



1462 (b) "Claimant" means any person seeking compensation  
1463 under the provisions of this chapter, whether by administrative  
1464 remedy or through the courts.

1465 (c) "Board" means the Mississippi Tort Claims Board.

1466 (d) "Department" means the Department of Finance and  
1467 Administration.

1468 (e) "Director" means the executive director of the  
1469 department who is also the executive director of the board.

1470 (f) "Employee" means any officer, employee or servant  
1471 of the State of Mississippi or a political subdivision of the  
1472 state, including elected or appointed officials and persons acting  
1473 on behalf of the state or a political subdivision in any official  
1474 capacity, temporarily or permanently, in the service of the state  
1475 or a political subdivision whether with or without compensation,  
1476 including firefighters who are members of a volunteer fire  
1477 department that is a political subdivision. The term "employee"  
1478 shall not mean a person or other legal entity while acting in the  
1479 capacity of an independent contractor under contract to the state  
1480 or a political subdivision; and

1481 (i) For purposes of the limits of liability  
1482 provided for in Section 11-46-15, the term "employee" shall  
1483 include:

1484 1. Physicians under contract to provide  
1485 health services with the State Board of Health, the State Board of



1486 Mental Health or any county or municipal jail facility while  
1487 rendering services under the contract;

1488                   2. Any physician, dentist or other health  
1489 care practitioner employed by the University of Mississippi  
1490 Medical Center (UMMC) and its departmental practice plans who is a  
1491 faculty member and provides health care services only for patients  
1492 at UMMC or its affiliated practice sites;

1493                   3. Any physician, dentist or other health  
1494 care practitioner employed by any university under the control of  
1495 the Board of Trustees of State Institutions of Higher Learning who  
1496 practices only on the campus of any university under the control  
1497 of the Board of Trustees of State Institutions of Higher Learning;

1498                   4. Any physician, dentist or other health  
1499 care practitioner employed by the State Veterans Affairs Board and  
1500 who provides health care services for patients for the State  
1501 Veterans Affairs Board;

1502                   (ii) The term "employee" shall also include  
1503 Mississippi Department of Human Services licensed foster parents  
1504 for the limited purposes of coverage under the Tort Claims Act as  
1505 provided in Section 11-46-8; and

1506                   (iii) The term "employee" also shall include any  
1507 employee or member of the governing board of a charter school but  
1508 shall not include any person or entity acting in the capacity of  
1509 an independent contractor to provide goods or services under a  
1510 contract with a charter school.



1511 (g) "Governmental entity" means the state and political  
1512 subdivisions.

1513 (h) "Injury" means death, injury to a person, damage to  
1514 or loss of property or any other injury that a person may suffer  
1515 that is actionable at law or in equity.

1516 (i) "Political subdivision" means any body politic or  
1517 body corporate other than the state responsible for governmental  
1518 activities only in geographic areas smaller than that of the  
1519 state, including, but not limited to, any county, municipality,  
1520 school district, charter school, volunteer fire department that is  
1521 a chartered nonprofit corporation providing emergency services  
1522 under contract with a county or municipality, community hospital  
1523 as defined in Section 41-13-10, airport authority, or other  
1524 instrumentality of the state, whether or not the body or  
1525 instrumentality has the authority to levy taxes or to sue or be  
1526 sued in its own name.

1527 (j) "State" means the State of Mississippi and any  
1528 office, department, agency, division, bureau, commission, board,  
1529 institution, hospital, college, university, airport authority,  
1530 health care collaborative as defined in Section 2 of this act or  
1531 other instrumentality thereof, whether or not the body or  
1532 instrumentality has the authority to levy taxes or to sue or be  
1533 sued in its own name.

1534 (k) "Law" means all species of law, including, but not  
1535 limited to, any and all constitutions, statutes, case law, common



1536 law, customary law, court order, court rule, court decision, court  
1537 opinion, court judgment or mandate, administrative rule or  
1538 regulation, executive order, or principle or rule of equity.

1539         **SECTION 28.** Section 25-4-103, Mississippi Code of 1972, is  
1540 amended as follows:

1541             25-4-103. The following definitions apply in this article  
1542 unless the context otherwise requires:

1543             (a) "Authority" means any component unit of a  
1544 governmental entity.

1545             (b) "Benefit" means any gain or advantage to the  
1546 beneficiary, including any gain or advantage to a third person  
1547 pursuant to the desire or consent of the beneficiary.

1548             (c) "Business" means any corporation, partnership, sole  
1549 proprietorship, firm, enterprise, franchise, association,  
1550 organization, holding company, self-employed individual,  
1551 joint-stock company, receivership, trust or other legal entity or  
1552 undertaking organized for economic gain, a nonprofit corporation  
1553 or other such entity, association or organization receiving public  
1554 funds.

1555             (d) "Business with which he is associated" means any  
1556 business of which a public servant or his relative is an officer,  
1557 director, owner, partner, employee or is a holder of more than ten  
1558 percent (10%) of the fair market value or from which he or his  
1559 relative derives more than Two Thousand Five Hundred Dollars



1560 (\$2,500.00) in annual income or over which such public servant or  
1561 his relative exercises control.

1562 (e) "Compensation" means money or thing of value  
1563 received, or to be received, from any person for services  
1564 rendered.

1565 (f) "Contract" means:

1566 (i) Any agreement to which the government is a  
1567 party; or

1568 (ii) Any agreement on behalf of the government  
1569 which involves the payment of public funds.

1570 (g) "Government" means the state and all political  
1571 entities thereof, both collectively and separately, including, but  
1572 not limited to:

1573 (i) Counties;

1574 (ii) Municipalities;

1575 (iii) All school districts;

1576 (iv) All courts; and

1577 (v) Any department, agency, board, commission,  
1578 institution, instrumentality, or legislative or administrative  
1579 body of the state, counties or municipalities created by statute,  
1580 ordinance or executive order including all units that expend  
1581 public funds.

1582 (h) "Governmental entity" means the state, a county, a  
1583 municipality or any other separate political subdivision  
1584 authorized by law to exercise a part of the sovereign power of the





1585 state. However, this term does not include a health care  
1586 collaborative as defined in Section 2 of this act.

1587 (i) "Income" means money or thing of value received, or  
1588 to be received, from any source derived, including, but not  
1589 limited to, any salary, wage, advance, payment, dividend,  
1590 interest, rent, forgiveness of debt, fee, royalty, commission or  
1591 any combination thereof.

1592 (j) "Intellectual property" means any formula, pattern,  
1593 compilation, program, device, method, technique or process created  
1594 primarily as a result of the research effort of an employee or  
1595 employees of an institution of higher learning of the State of  
1596 Mississippi.

1597 (k) "Material financial interest" means a personal and  
1598 pecuniary interest, direct or indirect, accruing to a public  
1599 servant or spouse, either individually or in combination with each  
1600 other. Notwithstanding the foregoing, the following shall not be  
1601 deemed to be a material financial interest with respect to a  
1602 business with which a public servant may be associated:

1603 (i) Ownership of any interest of less than ten  
1604 percent (10%) in a business where the aggregate annual net income  
1605 to the public servant therefrom is less than One Thousand Dollars  
1606 (\$1,000.00);

1607 (ii) Ownership of any interest of less than two  
1608 percent (2%) in a business where the aggregate annual net income



1609 to the public servant therefrom is less than Five Thousand Dollars  
1610 (\$5,000.00);

1611 (iii) The income as an employee of a relative if  
1612 neither the public servant or relative is an officer, director or  
1613 partner in the business and any ownership interest would not be  
1614 deemed material pursuant to subparagraph (i) or (ii) herein; or

1615 (iv) The income of the spouse of a public servant  
1616 when such spouse is a contractor, subcontractor or vendor with the  
1617 governmental entity that employs the public servant and the public  
1618 servant exercises no control, direct or indirect, over the  
1619 contract between the spouse and such governmental entity.

1620 (l) "Pecuniary benefit" means benefit in the form of  
1621 money, property, commercial interests or anything else the primary  
1622 significance of which is economic gain. Expenses associated with  
1623 social occasions afforded public servants shall not be deemed a  
1624 pecuniary benefit.

1625 (m) "Person" means any individual, firm, business,  
1626 corporation, association, partnership, union or other legal  
1627 entity, and where appropriate a governmental entity.

1628 (n) "Property" means all real or personal property.

1629 (o) "Public funds" means money belonging to the  
1630 government.

1631 (p) "Public servant" means:

1632 (i) Any elected or appointed official of the  
1633 government;



1634 (ii) Any officer, director, commissioner,  
1635 supervisor, chief, head, agent or employee of the government or  
1636 any agency thereof, or of any public entity created by or under  
1637 the laws of the State of Mississippi or created by an agency or  
1638 governmental entity thereof, any of which is funded by public  
1639 funds or which expends, authorizes or recommends the use of public  
1640 funds; or

1641 (iii) Any individual who receives a salary, per  
1642 diem or expenses paid in whole or in part out of funds authorized  
1643 to be expended by the government.

1644 The term "public servant" does not include a member of the  
1645 board of directors of or an officer or employee of a health care  
1646 collaborative as defined in Section 2 of this act.

1647 (q) "Relative" means:

1648 (i) The spouse of the public servant;

1649 (ii) The child of the public servant;

1650 (iii) The parent of the public servant;

1651 (iv) The sibling of the public servant; and

1652 (v) The spouse of any of the relatives of the

1653 public servant specified in subparagraphs (ii) through (iv).

1654 (r) "Securities" means stocks, bonds, notes,  
1655 convertible debentures, warrants, evidences of debts or property  
1656 or other such documents.

1657 **SECTION 29.** Section 25-9-107, Mississippi Code of 1972, is  
1658 amended as follows:



1659           25-9-107. The following terms, when used in this chapter,  
1660 unless a different meaning is plainly required by the context,  
1661 shall have the following meanings:

1662           (a) "Board" means the State Personnel Board created  
1663 under the provisions of this chapter.

1664           (b) "State service" means all employees of state  
1665 departments, agencies and institutions as defined herein, except  
1666 those officers and employees excluded by this chapter.

1667           (c) "Nonstate service" means the following officers and  
1668 employees excluded from the state service by this chapter. The  
1669 following are excluded from the state service:

1670           (i) Members of the State Legislature, their staff  
1671 and other employees of the legislative branch;

1672           (ii) The Governor and staff members of the  
1673 immediate Office of the Governor;

1674           (iii) Justices and judges of the judicial branch  
1675 or members of appeals boards on a per diem basis;

1676           (iv) The Lieutenant Governor, staff members of the  
1677 immediate Office of the Lieutenant Governor and officers and  
1678 employees directly appointed by the Lieutenant Governor;

1679           (v) Officers and officials elected by popular vote  
1680 and persons appointed to fill vacancies in elective offices;

1681           (vi) Members of boards and commissioners appointed  
1682 by the Governor, Lieutenant Governor or the State Legislature;



1683 (vii) All academic officials, members of the  
1684 teaching staffs and employees of the state institutions of higher  
1685 learning, the Mississippi Community College Board, and community  
1686 and junior colleges;

1687 (viii) Officers and enlisted members of the  
1688 National Guard of the state;

1689 (ix) Prisoners, inmates, student or patient help  
1690 working in or about institutions;

1691 (x) Contract personnel; provided, that any agency  
1692 which employs state service employees may enter into contracts for  
1693 personal and professional services only if such contracts are  
1694 approved in compliance with the rules and regulations promulgated  
1695 by the State Personal Service Contract Review Board under Section  
1696 25-9-120(3). Before paying any warrant for such contractual  
1697 services in excess of One Hundred Thousand Dollars (\$100,000.00),  
1698 the Auditor of Public Accounts, or the successor to those duties,  
1699 shall determine whether the contract involved was for personal or  
1700 professional services, and, if so, was approved by the State  
1701 Personal Service Contract Review Board;

1702 (xi) Part-time employees; provided, however,  
1703 part-time employees shall only be hired into authorized employment  
1704 positions classified by the board, shall meet minimum  
1705 qualifications as set by the board, and shall be paid in  
1706 accordance with the Variable Compensation Plan as certified by the  
1707 board;



1708                   (xii) Persons appointed on an emergency basis for  
1709 the duration of the emergency; the effective date of the emergency  
1710 appointments shall not be earlier than the date approved by the  
1711 State Personnel Director, and shall be limited to thirty (30)  
1712 working days. Emergency appointments may be extended to sixty  
1713 (60) working days by the State Personnel Board;

1714                   (xiii) Physicians, dentists, veterinarians, nurse  
1715 practitioners and attorneys, while serving in their professional  
1716 capacities in authorized employment positions who are required by  
1717 statute to be licensed, registered or otherwise certified as such,  
1718 provided that the State Personnel Director shall verify that the  
1719 statutory qualifications are met prior to issuance of a payroll  
1720 warrant by the Auditor;

1721                   (xiv) Personnel who are employed and paid from  
1722 funds received from a federal grant program which has been  
1723 approved by the Legislature or the Department of Finance and  
1724 Administration whose length of employment has been determined to  
1725 be time-limited in nature. This subparagraph shall apply to  
1726 personnel employed under the provisions of the Comprehensive  
1727 Employment and Training Act of 1973, as amended, and other special  
1728 federal grant programs which are not a part of regular federally  
1729 funded programs wherein appropriations and employment positions  
1730 are appropriated by the Legislature. Such employees shall be paid  
1731 in accordance with the Variable Compensation Plan and shall meet



1732 all qualifications required by federal statutes or by the  
1733 Mississippi Classification Plan;

1734 (xv) The administrative head who is in charge of  
1735 any state department, agency, institution, board or commission,  
1736 wherein the statute specifically authorizes the Governor, board,  
1737 commission or other authority to appoint said administrative head;  
1738 provided, however, that the salary of such administrative head  
1739 shall be determined by the State Personnel Board in accordance  
1740 with the Variable Compensation Plan unless otherwise fixed by  
1741 statute;

1742 (xvi) The State Personnel Board shall exclude  
1743 top-level positions if the incumbents determine and publicly  
1744 advocate substantive program policy and report directly to the  
1745 agency head, or the incumbents are required to maintain a direct  
1746 confidential working relationship with a key excluded official.  
1747 Provided further, a written job classification shall be approved  
1748 by the board for each such position, and positions so excluded  
1749 shall be paid in conformity with the Variable Compensation Plan;

1750 (xvii) Employees whose employment is solely in  
1751 connection with an agency's contract to produce, store or  
1752 transport goods, and whose compensation is derived therefrom;

1753 (xviii) Repealed;

1754 (xix) The associate director, deputy directors and  
1755 bureau directors within the Department of Agriculture and  
1756 Commerce;



1757 (xx) Personnel employed by the Mississippi  
1758 Industries for the Blind; provided, that any agency may enter into  
1759 contracts for the personal services of MIB employees without the  
1760 prior approval of the State Personnel Board or the State Personal  
1761 Service Contract Review Board; however, any agency contracting for  
1762 the personal services of an MIB employee shall provide the MIB  
1763 employee with not less than the entry-level compensation and  
1764 benefits that the agency would provide to a full-time employee of  
1765 the agency who performs the same services;

1766 (xxi) Personnel employed by the Mississippi  
1767 Department of Wildlife, Fisheries and Parks and the Mississippi  
1768 Department of Marine Resources as law enforcement trainees  
1769 (cadets); such personnel shall be paid in accordance with the  
1770 Colonel Guy Groff State Variable Compensation Plan.

1771 (d) "Agency" means any state board, commission,  
1772 committee, council, department or unit thereof created by the  
1773 Constitution or statutes if such board, commission, committee,  
1774 council, department, unit or the head thereof, is authorized to  
1775 appoint subordinate staff by the Constitution or statute, except a  
1776 legislative or judicial board, commission, committee, council,  
1777 department or unit thereof. The term "agency" does not include a  
1778 health care collaborative as defined by Section 2 of this act.

1779 **SECTION 30.** Section 25-41-3, Mississippi Code of 1972, is  
1780 amended as follows:





1781           25-41-3. For purposes of this chapter, the following words  
1782 shall have the meaning ascribed herein, to wit:

1783           (a) "Public body" means any executive or administrative  
1784 board, commission, authority, council, department, agency, bureau  
1785 or any other policymaking entity, or committee thereof, of the  
1786 State of Mississippi, or any political subdivision or municipal  
1787 corporation of the state, whether the entity be created by statute  
1788 or executive order, which is supported wholly or in part by public  
1789 funds or expends public funds, and any standing, interim or  
1790 special committee of the Mississippi Legislature. The term  
1791 "public body" includes the governing board of a charter school  
1792 authorized by the Mississippi Charter School Authorizer Board and  
1793 the board of trustees of a community hospital as defined in  
1794 Section 41-13-10. There shall be exempted from the provisions of  
1795 this chapter:

- 1796           (i) The judiciary, including all jury  
1797 deliberations;
- 1798           (ii) Law enforcement officials;
- 1799           (iii) The military;
- 1800           (iv) The State Probation and Parole Board;
- 1801           (v) The Workers' Compensation Commission;
- 1802           (vi) Legislative subcommittees and legislative  
1803 conference committees;
- 1804           (vii) The arbitration council established in  
1805 Section 69-3-19;



1806 (viii) License revocation, suspension and  
1807 disciplinary proceedings held by the Mississippi State Board of  
1808 Dental Examiners; \* \* \*

1809 (ix) Hearings and meetings of the Board of Tax  
1810 Appeals and of the hearing officers and the board of review of the  
1811 Department of Revenue as provided in Section 27-77-15 \* \* \*;

1812 (x) Any health care collaborative as defined in  
1813 Section 2 of this act.

1814 (b) "Meeting" means an assemblage of members of a  
1815 public body at which official acts may be taken upon a matter over  
1816 which the public body has supervision, control, jurisdiction or  
1817 advisory power, including an assemblage through the use of video  
1818 or teleconference devices that conforms to Section 25-41-5.

1819 **SECTION 31.** Section 25-43-1.102, Mississippi Code of 1972,  
1820 is amended as follows:

1821 25-43-1.102. As used in this chapter, the following terms  
1822 shall have the meanings ascribed to them in this section unless  
1823 the context otherwise requires:

1824 (a) "Agency" means a board, commission, department,  
1825 officer or other administrative unit of this state, including the  
1826 agency head, and one or more members of the agency head or agency  
1827 employees directly or indirectly purporting to act on behalf or  
1828 under the authority of the agency head. The term does not include  
1829 the Legislature or any of its component units, the judiciary or  
1830 any of its component units or the Governor. The term does not



1831 include a political subdivision of the state or any of the  
1832 administrative units of a political subdivision. The term does  
1833 not include a health care collaborative as defined in Section 2 of  
1834 this act. To the extent it purports to exercise authority subject  
1835 to any provision of this chapter, an administrative unit otherwise  
1836 qualifying as an "agency" must be treated as a separate agency  
1837 even if the unit is located within or subordinate to another  
1838 agency.

1839 (b) "Agency head" or "head of the agency" means an  
1840 individual or body of individuals in whom the ultimate legal  
1841 authority of the agency is vested by any provision of law.

1842 (c) "Agency proceeding" or "proceeding" means the  
1843 process by which an agency considers:

1844 (i) A declaratory opinion pursuant to Section  
1845 25-43-2.103, or

1846 (ii) A rule pursuant to Article III of this  
1847 chapter.

1848 (d) "Agency record" means the official rule-making  
1849 record of an agency pursuant to Section 25-43-3.112.

1850 (e) "Declaratory opinion" means an agency opinion  
1851 rendered in accordance with the provisions of Section 25-43-2.103.

1852 (f) "Order" means an agency action of particular  
1853 applicability that determines the legal rights, duties,  
1854 privileges, immunities or other legal interests of one or more  
1855 specific persons. An order shall be in writing signed by a person



1856 with authority to render the order, or if more than one (1) person  
1857 has such authority by at least that number of such persons as  
1858 jointly have the authority to render the order, or by a person  
1859 authorized to render the order on behalf of all such persons. The  
1860 term does not include an executive order issued by the Governor  
1861 pursuant to Section 25-43-1.104, an opinion issued by the Attorney  
1862 General pursuant to Section 7-5-25, an opinion issued by the  
1863 Ethics Commission pursuant to Section 25-4-17, or a declaratory  
1864 opinion rendered in accordance with Section 25-43-2.103.

1865 (g) "Person" means an individual, partnership,  
1866 corporation, association, governmental subdivision or unit  
1867 thereof, or public or private organization or entity of any  
1868 character, and includes another agency.

1869 (h) "Provision of law" or "law" means the whole or a  
1870 part of the federal or state Constitution, or of any federal or  
1871 state (i) statute, (ii) case law or common law, (iii) rule of  
1872 court, (iv) executive order, or (v) rule or order of an  
1873 administrative agency.

1874 (i) "Rule" means the whole or a part of an agency  
1875 regulation or other statement of general applicability that  
1876 implements, interprets or prescribes:

1877 (i) Law or policy, or

1878 (ii) The organization, procedure or practice  
1879 requirements of an agency. The term includes the amendment,



1880 repeal or suspension of an existing rule. "Rule" does not  
1881 include:

1882                   1. A regulation or statement concerning only  
1883 the internal management of an agency which does not directly and  
1884 substantially affect the procedural or substantive rights or  
1885 duties of any segment of the public;

1886                   2. A regulation or statement that establishes  
1887 criteria or guidelines to be used by the staff of an agency in  
1888 performing audits, investigations or inspections, settling  
1889 commercial disputes, negotiating commercial arrangements or in the  
1890 defense, prosecution or settlement of cases, if disclosure of the  
1891 criteria or guidelines would:

1892                               a. Enable law violators to avoid  
1893 detection;

1894                               b. Facilitate disregard of requirements  
1895 imposed by law; or

1896                               c. Give a clearly improper advantage to  
1897 persons who are in an adverse position to the state;

1898                   3. A regulation or statement that only  
1899 establishes specific prices to be charged for particular goods or  
1900 services sold by an agency;

1901                   4. A regulation or statement concerning only  
1902 the physical servicing, maintenance or care of agency owned or  
1903 operated facilities or property;



1904                   5. A regulation or statement relating only to  
1905 the use of a particular facility or property owned, operated or  
1906 maintained by the state or any of its subdivisions, if the  
1907 substance of the regulation or statement is adequately indicated  
1908 by means of signs or signals to persons who use the facility or  
1909 property;

1910                   6. A regulation or statement directly related  
1911 only to inmates of a correctional or detention facility, students  
1912 enrolled in an educational institution or patients admitted to a  
1913 hospital, if adopted by that facility, institution or hospital;

1914                   7. A form whose contents or substantive  
1915 requirements are prescribed by rule or statute, and instructions  
1916 for the execution or use of the form;

1917                   8. An agency budget;

1918                   9. A compact or agreement between an agency  
1919 of this state and one or more agencies of another state or states;  
1920 or

1921                   10. An opinion of the Attorney General  
1922 pursuant to Section 7-5-25, an opinion of the Ethics Commission  
1923 pursuant to Section 25-4-17, or an Executive Order of the  
1924 Governor.

1925                   (j) "Rule-making" means the process for formulation and  
1926 adoption of a rule.

1927                   **SECTION 32.** Section 25-53-3, Mississippi Code of 1972, is  
1928 amended as follows:



1929           25-53-3. (1) Whenever the term "Central Data Processing  
1930 Authority" or the term "authority," when referring to the Central  
1931 Data Processing Authority, is used in any law, rule, regulation,  
1932 document or elsewhere, it shall be construed to mean the  
1933 Mississippi Department of Information Technology Services.

1934           (2) For the purposes of this chapter the following terms  
1935 shall have the meanings ascribed in this section unless the  
1936 context otherwise requires:

1937                   (a) "Central Data Processing Authority" and "CDPA" mean  
1938 "Mississippi Department of Information Technology Services  
1939 (MDITS)" and the term "authority" means "board of the MDITS."

1940                   (b) "Bureau of Systems Policy and Planning," "Bureau of  
1941 Telecommunications," "Bureau of Central Data Processing" and  
1942 "bureau" mean "Mississippi Department of Information Technology  
1943 Services."

1944                   (c) "Computer equipment or services" means any  
1945 information technology, computer or computer related  
1946 telecommunications equipment, electronic word processing and  
1947 office systems, or services utilized in connection therewith,  
1948 including, but not limited to, all phases of computer software and  
1949 consulting services, and insurance on all state-owned computer  
1950 equipment.

1951                   (d) "Acquisition" of computer or telecommunications  
1952 equipment or services means the purchase, lease, rental, or



1953 acquisition in any other manner of any such computer or  
1954 telecommunications equipment or services.

1955 (e) "Agency" means and includes all the various state  
1956 agencies, officers, departments, boards, commissions, offices and  
1957 institutions of the state. The term "agency" does not include a  
1958 health care collaborative as defined under Section 2 of this act.

1959 (f) "Governing authority" means boards of supervisors,  
1960 governing boards of all school districts, all boards of directors  
1961 of public water supply districts, boards of directors of master  
1962 public water supply districts, municipal public utility  
1963 commissions, governing authorities of all municipalities, port  
1964 authorities, commissioners and boards of trustees of any public  
1965 hospitals and any political subdivision of the state supported,  
1966 wholly or in part, by public funds of the state or political  
1967 subdivisions thereof.

1968 (g) "Bid" means any of the valid source selection  
1969 techniques and competitive procurement methods appropriate to  
1970 information technology procurement in the public sector,  
1971 including, but not limited to, competitive sealed bidding,  
1972 competitive sealed proposals, simplified small purchase  
1973 procedures, sole source procurements, and emergency procurements.

1974 (h) "Telecommunications transmission facility" means  
1975 any transmission medium, switch, instrument, inside wiring system  
1976 or other facility which is used, in whole or in part, to provide  
1977 any transmission.





1978           (i) "Equipment support contract" means a contract which  
1979 covers a single, specific class or classes of telecommunications  
1980 equipment or service and all features associated with that class,  
1981 through which state agencies may purchase or lease the item of  
1982 equipment or service specified by issuing a purchase order under  
1983 the terms of the contract without the necessity of further  
1984 competitive bidding.

1985           (j) "Inside wiring system" means any wiring which:

1986                 (i) Directly or indirectly, interconnects any  
1987 terminal equipment with any other terminal equipment or with any  
1988 regulated facility or common carrier services; and

1989                 (ii) Is located at the premises of the customer  
1990 and is not inside any terminal equipment.

1991           (k) "Procurement" means the selling, buying,  
1992 purchasing, renting, leasing or otherwise obtaining  
1993 telecommunications equipment, system or related services, as well  
1994 as activities engaged in, resulting in or expected to result in  
1995 selling, buying, purchasing, renting, leasing or otherwise  
1996 obtaining telecommunications equipment.

1997           (l) "Telecommunications equipment, systems, related  
1998 services" are limited to the equipment and means to provide:

1999                 (i) Telecommunications transmission facilities.

2000                 (ii) Telephone systems, including voice processing  
2001 systems.

2002                 (iii) Facsimile systems.



2003 (iv) Radio paging services.

2004 (v) Mobile telephone services, including cellular  
2005 mobile telephone service.

2006 (vi) Intercom and paging systems.

2007 (vii) Video teleconferencing systems.

2008 (viii) Personal communications networks and  
2009 services.

2010 (ix) Any and all systems based on emerging and  
2011 future telecommunications technologies relative to (i) through  
2012 (viii) above.

2013 (m) "Telecommunications system lease contract" means a  
2014 contract between a supplier of telecommunications systems,  
2015 including equipment and related services, and the Mississippi  
2016 Department of Information Technology Services through which  
2017 telecommunications systems, including equipment and related  
2018 services, may be leased for a term which shall not exceed sixty  
2019 (60) months for a system lease valued less than One Million  
2020 Dollars (\$1,000,000.00) and shall not exceed one hundred twenty  
2021 (120) months for a system lease valued One Million Dollars  
2022 (\$1,000,000.00) or more.

2023 (n) "Tariffed or regulated service" means  
2024 telecommunications service offered by common carriers and subject  
2025 to control by the Mississippi Public Service Commission or the  
2026 Federal Communications Commission.



2027 (o) "State Data Center" means one or more facilities  
2028 operated by the Mississippi Department of Information Technology  
2029 Services to provide information technology resources requiring  
2030 enterprise computing resources or any other centrally managed  
2031 information resources.

2032 **SECTION 33.** Section 25-61-3, Mississippi Code of 1972, is  
2033 amended as follows:

2034 25-61-3. The following words shall have the meanings  
2035 ascribed herein unless the context clearly requires otherwise:

2036 (a) "Public body" shall mean any department, bureau,  
2037 division, council, commission, committee, subcommittee, board,  
2038 agency and any other entity of the state or a political  
2039 subdivision thereof, and any municipal corporation and any other  
2040 entity created by the Constitution or by law, executive order,  
2041 ordinance or resolution. The term "public body" includes the  
2042 governing board of a charter school authorized by the Mississippi  
2043 Charter School Authorizer Board. Within the meaning of this  
2044 chapter, the term "entity" shall not be construed to include  
2045 individuals employed by a public body or any appointed or elected  
2046 public official. The term "public body" does not include a health  
2047 care collaborative as defined in Section 2 of this act.

2048 (b) "Public records" shall mean all books, records,  
2049 papers, accounts, letters, maps, photographs, films, cards, tapes,  
2050 recordings or reproductions thereof, and any other documentary  
2051 materials, regardless of physical form or characteristics, having



2052 been used, being in use, or prepared, possessed or retained for  
2053 use in the conduct, transaction or performance of any business,  
2054 transaction, work, duty or function of any public body, or  
2055 required to be maintained by any public body.

2056 (c) "Data processing software" means the programs and  
2057 routines used to employ and control the capabilities of data  
2058 processing hardware, including, but not limited to, operating  
2059 systems, compilers, assemblers, utilities, library routines,  
2060 maintenance routines, applications and computer networking  
2061 programs.

2062 (d) "Proprietary software" means data processing  
2063 software that is obtained under a licensing agreement and is  
2064 protected by copyright or trade secret laws.

2065 (e) "Incident report" means a narrative description, if  
2066 such narrative description exists and if such narrative  
2067 description does not contain investigative information, of an  
2068 alleged offense, and at a minimum shall include the name and  
2069 identification of each person charged with and arrested for the  
2070 alleged offense, the time, date and location of the alleged  
2071 offense, and the property involved, to the extent this information  
2072 is known.

2073 (f) "Investigative report" means records of a law  
2074 enforcement agency containing information beyond the scope of the  
2075 matters contained in an incident report, and generally will



2076 include, but not be limited to, the following matters if beyond  
2077 the scope of the matters contained in an incident report:

2078 (i) Records that are compiled in the process of  
2079 detecting and investigating any unlawful activity or alleged  
2080 unlawful activity, the disclosure of which would harm the  
2081 investigation which may include crime scene reports and  
2082 demonstrative evidence;

2083 (ii) Records that would reveal the identity of  
2084 informants and/or witnesses;

2085 (iii) Records that would prematurely release  
2086 information that would impede the public body's enforcement,  
2087 investigative or detection efforts;

2088 (iv) Records that would disclose investigatory  
2089 techniques and/or results of investigative techniques;

2090 (v) Records that would deprive a person of a right  
2091 to a fair trial or an impartial adjudication;

2092 (vi) Records that would endanger the life or  
2093 safety of a public official or law enforcement personnel, or  
2094 confidential informants or witnesses;

2095 (vii) Records pertaining to quality control or  
2096 PEER review activities; or

2097 (viii) Records that would impede or jeopardize a  
2098 prosecutor's ability to prosecute the alleged offense.

2099 (g) "Law enforcement agency" means a public body that  
2100 performs as one (1) of its principal functions activities



2101 pertaining to the enforcement of criminal laws, the apprehension  
2102 and investigation of criminal offenders, or the investigation of  
2103 criminal activities.

2104         **SECTION 34.** Section 27-7-15, Mississippi Code of 1972, is  
2105 amended as follows:

2106         27-7-15. (1) For the purposes of this article, except as  
2107 otherwise provided, the term "gross income" means and includes the  
2108 income of a taxpayer derived from salaries, wages, fees or  
2109 compensation for service, of whatever kind and in whatever form  
2110 paid, including income from governmental agencies and subdivisions  
2111 thereof; or from professions, vocations, trades, businesses,  
2112 commerce or sales, or renting or dealing in property, or  
2113 reacquired property; also from annuities, interest, rents,  
2114 dividends, securities, insurance premiums, reinsurance premiums,  
2115 considerations for supplemental insurance contracts, or the  
2116 transaction of any business carried on for gain or profit, or  
2117 gains, or profits, and income derived from any source whatever and  
2118 in whatever form paid. The amount of all such items of income  
2119 shall be included in the gross income for the taxable year in  
2120 which received by the taxpayer. The amount by which an eligible  
2121 employee's salary is reduced pursuant to a salary reduction  
2122 agreement authorized under Section 25-17-5 shall be excluded from  
2123 the term "gross income" within the meaning of this article.



2124 (2) In determining gross income for the purpose of this  
2125 section, the following, under regulations prescribed by the  
2126 commissioner, shall be applicable:

2127 (a) **Dealers in property.** Federal rules, regulations  
2128 and revenue procedures shall be followed with respect to  
2129 installment sales unless a transaction results in the shifting of  
2130 income from inside the state to outside the state.

2131 (b) **Casual sales of property.**

2132 (i) Prior to January 1, 2001, federal rules,  
2133 regulations and revenue procedures shall be followed with respect  
2134 to installment sales except they shall be applied and administered  
2135 as if H.R. 3594, the Installment Tax Correction Act of 2000 of the  
2136 106th Congress, had not been enacted. This provision will  
2137 generally affect taxpayers, reporting on the accrual method of  
2138 accounting, entering into installment note agreements on or after  
2139 December 17, 1999. Any gain or profit resulting from the casual  
2140 sale of property will be recognized in the year of sale.

2141 (ii) From and after January 1, 2001, federal  
2142 rules, regulations and revenue procedures shall be followed with  
2143 respect to installment sales except as provided in this  
2144 subparagraph (ii). Gain or profit from the casual sale of  
2145 property shall be recognized in the year of sale. When a taxpayer  
2146 recognizes gain on the casual sale of property in which the gain  
2147 is deferred for federal income tax purposes, a taxpayer may elect  
2148 to defer the payment of tax resulting from the gain as allowed and



2149 to the extent provided under regulations prescribed by the  
2150 commissioner. If the payment of the tax is made on a deferred  
2151 basis, the tax shall be computed based on the applicable rate for  
2152 the income reported in the year the payment is made. Except as  
2153 otherwise provided in subparagraph (iii) of this paragraph (b),  
2154 deferring the payment of the tax shall not affect the liability  
2155 for the tax. If at any time the installment note is sold,  
2156 contributed, transferred or disposed of in any manner and for any  
2157 purpose by the original note holder, or the original note holder  
2158 is merged, liquidated, dissolved or withdrawn from this state,  
2159 then all deferred tax payments under this section shall  
2160 immediately become due and payable.

2161 (iii) If the selling price of the property is  
2162 reduced by any alteration in the terms of an installment note,  
2163 including default by the purchaser, the gain to be recognized is  
2164 recomputed based on the adjusted selling price in the same manner  
2165 as for federal income tax purposes. The tax on this amount, less  
2166 the previously paid tax on the recognized gain, is payable over  
2167 the period of the remaining installments. If the tax on the  
2168 previously recognized gain has been paid in full to this state,  
2169 the return on which the payment was made may be amended for this  
2170 purpose only. The statute of limitations in Section 27-7-49 shall  
2171 not bar an amended return for this purpose.





2172 (c) **Reserves of insurance companies.** In the case of  
2173 insurance companies, any amounts in excess of the legally required  
2174 reserves shall be included as gross income.

2175 (d) **Affiliated companies or persons.** As regards sales,  
2176 exchanges or payments for services from one to another of  
2177 affiliated companies or persons or under other circumstances where  
2178 the relation between the buyer and seller is such that gross  
2179 proceeds from the sale or the value of the exchange or the payment  
2180 for services are not indicative of the true value of the subject  
2181 matter of the sale, exchange or payment for services, the  
2182 commissioner shall prescribe uniform and equitable rules for  
2183 determining the true value of the gross income, gross sales,  
2184 exchanges or payment for services, or require consolidated returns  
2185 of affiliates.

2186 (e) **Alimony and separate maintenance payments.** The  
2187 federal rules, regulations and revenue procedures in determining  
2188 the deductibility and taxability of alimony payments shall be  
2189 followed in this state.

2190 (f) **Reimbursement for expenses of moving.** There shall  
2191 be included in gross income (as compensation for services) any  
2192 amount received or accrued, directly or indirectly, by an  
2193 individual as a payment for or reimbursement of expenses of moving  
2194 from one residence to another residence which is attributable to  
2195 employment or self-employment.



2196 (3) In the case of taxpayers other than residents, gross  
2197 income includes gross income from sources within this state.

2198 (4) The words "gross income" do not include the following  
2199 items of income which shall be exempt from taxation under this  
2200 article:

2201 (a) The proceeds of life insurance policies and  
2202 contracts paid upon the death of the insured. However, the income  
2203 from the proceeds of such policies or contracts shall be included  
2204 in the gross income.

2205 (b) The amount received by the insured as a return of  
2206 premium or premiums paid by him under life insurance policies,  
2207 endowment, or annuity contracts, either during the term or at  
2208 maturity or upon surrender of the contract.

2209 (c) The value of property acquired by gift, bequest,  
2210 devise or descent, but the income from such property shall be  
2211 included in the gross income.

2212 (d) Interest upon the obligations of the United States  
2213 or its possessions, or securities issued under the provisions of  
2214 the Federal Farm Loan Act of 1916, or bonds issued by the War  
2215 Finance Corporation, or obligations of the State of Mississippi or  
2216 political subdivisions thereof.

2217 (e) The amounts received through accident or health  
2218 insurance as compensation for personal injuries or sickness, plus  
2219 the amount of any damages received for such injuries or such  
2220 sickness or injuries, or through the War Risk Insurance Act, or



2221 any law for the benefit or relief of injured or disabled members  
2222 of the military or naval forces of the United States.

2223 (f) Income received by any religious denomination or by  
2224 any institution or trust for moral or mental improvements,  
2225 religious, Bible, tract, charitable, benevolent, fraternal,  
2226 missionary, hospital, infirmary, educational, scientific,  
2227 literary, library, patriotic, historical or cemetery purposes or  
2228 for two (2) or more of such purposes, if such income be used  
2229 exclusively for carrying out one or more of such purposes.

2230 (g) Income received by a domestic corporation which is  
2231 "taxable in another state" as this term is defined in this  
2232 article, derived from business activity conducted outside this  
2233 state. Domestic corporations taxable both within and without the  
2234 state shall determine Mississippi income on the same basis as  
2235 provided for foreign corporations under the provisions of this  
2236 article.

2237 (h) In case of insurance companies, there shall be  
2238 excluded from gross income such portion of actual premiums  
2239 received from an individual policyholder as is paid back or  
2240 credited to or treated as an abatement of premiums of such  
2241 policyholder within the taxable year.

2242 (i) Income from dividends that has already borne a tax  
2243 as dividend income under the provisions of this article, when such  
2244 dividends may be specifically identified in the possession of the  
2245 recipient.



2246 (j) Amounts paid by the United States to a person as  
2247 added compensation for hazardous duty pay as a member of the Armed  
2248 Forces of the United States in a combat zone designated by  
2249 Executive Order of the President of the United States.

2250 (k) Amounts received as retirement allowances,  
2251 pensions, annuities or optional retirement allowances paid under  
2252 the federal Social Security Act, the Railroad Retirement Act, the  
2253 Federal Civil Service Retirement Act, or any other retirement  
2254 system of the United States government, retirement allowances paid  
2255 under the Mississippi Public Employees' Retirement System,  
2256 Mississippi Highway Safety Patrol Retirement System or any other  
2257 retirement system of the State of Mississippi or any political  
2258 subdivision thereof. The exemption allowed under this paragraph  
2259 (k) shall be available to the spouse or other beneficiary at the  
2260 death of the primary retiree.

2261 (l) Amounts received as retirement allowances,  
2262 pensions, annuities or optional retirement allowances paid by any  
2263 public or governmental retirement system not designated in  
2264 paragraph (k) or any private retirement system or plan of which  
2265 the recipient was a member at any time during the period of his  
2266 employment. Amounts received as a distribution under a Roth  
2267 Individual Retirement Account shall be treated in the same manner  
2268 as provided under the Internal Revenue Code of 1986, as amended.  
2269 The exemption allowed under this paragraph (l) shall be available



2270 to the spouse or other beneficiary at the death of the primary  
2271 retiree.

2272 (m) National Guard or Reserve Forces of the United  
2273 States compensation not to exceed the aggregate sum of Five  
2274 Thousand Dollars (\$5,000.00) for any taxable year through the 2005  
2275 taxable year, and not to exceed the aggregate sum of Fifteen  
2276 Thousand Dollars (\$15,000.00) for any taxable year thereafter.

2277 (n) Compensation received for active service as a  
2278 member below the grade of commissioned officer and so much of the  
2279 compensation as does not exceed the maximum enlisted amount  
2280 received for active service as a commissioned officer in the Armed  
2281 Forces of the United States for any month during any part of which  
2282 such members of the Armed Forces (i) served in a combat zone as  
2283 designated by Executive Order of the President of the United  
2284 States or a qualified hazardous duty area as defined by federal  
2285 law, or both; or (ii) was hospitalized as a result of wounds,  
2286 disease or injury incurred while serving in such combat zone. For  
2287 the purposes of this paragraph (n), the term "maximum enlisted  
2288 amount" means and has the same definition as that term has in 26  
2289 USCS 112.

2290 (o) The proceeds received from federal and state  
2291 forestry incentive programs.

2292 (p) The amount representing the difference between the  
2293 increase of gross income derived from sales for export outside the  
2294 United States as compared to the preceding tax year wherein gross



2295 income from export sales was highest, and the net increase in  
2296 expenses attributable to such increased exports. In the absence  
2297 of direct accounting, the ratio of net profits to total sales may  
2298 be applied to the increase in export sales. This paragraph (p)  
2299 shall only apply to businesses located in this state engaging in  
2300 the international export of Mississippi goods and services. Such  
2301 goods or services shall have at least fifty percent (50%) of value  
2302 added at a location in Mississippi.

2303 (q) Amounts paid by the federal government for the  
2304 construction of soil conservation systems as required by a  
2305 conservation plan adopted pursuant to 16 USCS 3801 et seq.

2306 (r) The amount deposited in a medical savings account,  
2307 and any interest accrued thereon, that is a part of a medical  
2308 savings account program as specified in the Medical Savings  
2309 Account Act under Sections 71-9-1 through 71-9-9; provided,  
2310 however, that any amount withdrawn from such account for purposes  
2311 other than paying eligible medical expense or to procure health  
2312 coverage shall be included in gross income.

2313 (s) Amounts paid by the Mississippi Soil and Water  
2314 Conservation Commission from the Mississippi Soil and Water  
2315 Cost-Share Program for the installation of water quality best  
2316 management practices.

2317 (t) Dividends received by a holding corporation, as  
2318 defined in Section 27-13-1, from a subsidiary corporation, as  
2319 defined in Section 27-13-1.



2320 (u) Interest, dividends, gains or income of any kind on  
2321 any account in the Mississippi Affordable College Savings Trust  
2322 Fund, as established in Sections 37-155-101 through 37-155-125, to  
2323 the extent that such amounts remain on deposit in the MACS Trust  
2324 Fund or are withdrawn pursuant to a qualified withdrawal, as  
2325 defined in Section 37-155-105.

2326 (v) Interest, dividends or gains accruing on the  
2327 payments made pursuant to a prepaid tuition contract, as provided  
2328 for in Section 37-155-17.

2329 (w) Income resulting from transactions with a related  
2330 member where the related member subject to tax under this chapter  
2331 was required to, and did in fact, add back the expense of such  
2332 transactions as required by Section 27-7-17(2). Under no  
2333 circumstances may the exclusion from income exceed the deduction  
2334 add-back of the related member, nor shall the exclusion apply to  
2335 any income otherwise excluded under this chapter.

2336 (x) Amounts that are subject to the tax levied pursuant  
2337 to Section 27-7-901, and are paid to patrons by gaming  
2338 establishments licensed under the Mississippi Gaming Control Act.

2339 (y) Amounts that are subject to the tax levied pursuant  
2340 to Section 27-7-903, and are paid to patrons by gaming  
2341 establishments not licensed under the Mississippi Gaming Control  
2342 Act.

2343 (z) Interest, dividends, gains or income of any kind on  
2344 any account in a qualified tuition program and amounts received as



2345 distributions under a qualified tuition program shall be treated  
2346 in the same manner as provided under the United States Internal  
2347 Revenue Code, as amended. For the purposes of this paragraph (z),  
2348 the term "qualified tuition program" means and has the same  
2349 definition as that term has in 26 USCS 529.

2350 (aa) The amount deposited in a health savings account,  
2351 and any interest accrued thereon, that is a part of a health  
2352 savings account program as specified in the Health Savings  
2353 Accounts Act created in Sections 83-62-1 through 83-62-9; however,  
2354 any amount withdrawn from such account for purposes other than  
2355 paying qualified medical expenses or to procure health coverage  
2356 shall be included in gross income, except as otherwise provided by  
2357 Sections 83-62-7 and 83-62-9.

2358 (bb) Amounts received as qualified disaster relief  
2359 payments shall be treated in the same manner as provided under the  
2360 United States Internal Revenue Code, as amended.

2361 (cc) Amounts received as a "qualified Hurricane Katrina  
2362 distribution" as defined in the United States Internal Revenue  
2363 Code, as amended.

2364 (dd) Amounts received by an individual which may be  
2365 excluded from income as foreign earned income for federal income  
2366 tax purposes.

2367 (ee) Amounts received by a qualified individual,  
2368 directly or indirectly, from an employer or nonprofit housing  
2369 organization that are qualified housing expenses associated with





2370 an employer-assisted housing program. For purposes of this  
2371 paragraph (ee):

2372 (i) "Qualified individual" means any individual  
2373 whose household income does not exceed one hundred twenty percent  
2374 (120%) of the area median gross income (as defined by the United  
2375 States Department of Housing and Urban Development), adjusted for  
2376 household size, for the area in which the housing is located.

2377 (ii) "Nonprofit housing organization" means an  
2378 organization that is organized as a not-for-profit organization  
2379 under the laws of this state or another state and has as one of  
2380 its purposes:

2381 1. Homeownership education or counseling;  
2382 2. The development of affordable housing; or  
2383 3. The development or administration of  
2384 employer-assisted housing programs.

2385 (iii) "Employer-assisted housing program" means a  
2386 separate written plan of any employer (including, without  
2387 limitation, tax-exempt organizations and public employers) for the  
2388 exclusive benefit of the employer's employees to pay qualified  
2389 housing expenses to assist the employer's employees in securing  
2390 affordable housing.

2391 (iv) "Qualified housing expenses" means:

2392 1. With respect to rental assistance, an  
2393 amount not to exceed Two Thousand Dollars (\$2,000.00) paid for the



2394 purpose of assisting employees with security deposits and rental  
2395 subsidies; and

2396                   2. With respect to homeownership assistance,  
2397 an amount not to exceed the lesser of Ten Thousand Dollars  
2398 (\$10,000.00) or six percent (6%) of the purchase price of the  
2399 employee's principal residence that is paid for the purpose of  
2400 assisting employees with down payments, payment of closing costs,  
2401 reduced interest mortgages, mortgage guarantee programs, mortgage  
2402 forgiveness programs, equity contribution programs, or  
2403 contributions to home buyer education and/or homeownership  
2404 counseling of eligible employees.

2405                   (ff) For the 2010 taxable year and any taxable year  
2406 thereafter, amounts converted in accordance with the United States  
2407 Internal Revenue Code, as amended, from a traditional Individual  
2408 Retirement Account to a Roth Individual Retirement Account. The  
2409 exemption allowed under this paragraph (ff) shall be available to  
2410 the spouse or other beneficiary at the death of the primary  
2411 retiree.

2412                   (gg) Amounts received for the performance of disaster  
2413 or emergency-related work as defined in Section 27-113-5.

2414                   (hh) The amount deposited in a catastrophe savings  
2415 account established under Sections 27-7-1001 through 27-7-1007,  
2416 interest income earned on the catastrophe savings account, and  
2417 distributions from the catastrophe savings account; however, any  
2418 amount withdrawn from a catastrophe savings account for purposes



2419 other than paying qualified catastrophe expenses shall be included  
2420 in gross income, except as otherwise provided by Sections  
2421 27-7-1001 through 27-7-1007.

2422 (ii) Amounts received from the activities described in  
2423 Section 14(1)(a) and (b) of this act by a health care  
2424 collaborative as defined in Section 2 of this act or an entity  
2425 controlled by a health care collaborative, except amounts that are  
2426 subject to the tax levied under Section 27-65-21.

2427 (5) Prisoners of war, missing in action-taxable status.

2428 (a) **Members of the Armed Forces.** Gross income does not  
2429 include compensation received for active service as a member of  
2430 the Armed Forces of the United States for any month during any  
2431 part of which such member is in a missing status, as defined in  
2432 paragraph (d) of this subsection, during the Vietnam Conflict as a  
2433 result of such conflict.

2434 (b) **Civilian employees.** Gross income does not include  
2435 compensation received for active service as an employee for any  
2436 month during any part of which such employee is in a missing  
2437 status during the Vietnam Conflict as a result of such conflict.

2438 (c) **Period of conflict.** For the purpose of this  
2439 subsection, the Vietnam Conflict began February 28, 1961, and ends  
2440 on the date designated by the President by Executive Order as the  
2441 date of the termination of combatant activities in Vietnam. For  
2442 the purpose of this subsection, an individual is in a missing  
2443 status as a result of the Vietnam Conflict if immediately before



2444 such status began he was performing service in Vietnam or was  
2445 performing service in Southeast Asia in direct support of military  
2446 operations in Vietnam. "Southeast Asia," as used in this  
2447 paragraph, is defined to include Cambodia, Laos, Thailand and  
2448 waters adjacent thereto.

2449 (d) "Missing status" means the status of an employee or  
2450 member of the Armed Forces who is in active service and is  
2451 officially carried or determined to be absent in a status of (i)  
2452 missing; (ii) missing in action; (iii) interned in a foreign  
2453 country; (iv) captured, beleaguered or besieged by a hostile  
2454 force; or (v) detained in a foreign country against his will; but  
2455 does not include the status of an employee or member of the Armed  
2456 Forces for a period during which he is officially determined to be  
2457 absent from his post of duty without authority.

2458 (e) "Active service" means active federal service by an  
2459 employee or member of the Armed Forces of the United States in an  
2460 active duty status.

2461 (f) "Employee" means one who is a citizen or national  
2462 of the United States or an alien admitted to the United States for  
2463 permanent residence and is a resident of the State of Mississippi  
2464 and is employed in or under a federal executive agency or  
2465 department of the Armed Forces.

2466 (g) "Compensation" means (i) basic pay; (ii) special  
2467 pay; (iii) incentive pay; (iv) basic allowance for quarters; (v)



2468 basic allowance for subsistence; and (vi) station per diem  
2469 allowances for not more than ninety (90) days.

2470 (h) If refund or credit of any overpayment of tax for  
2471 any taxable year resulting from the application of this subsection  
2472 (5) is prevented by the operation of any law or rule of law, such  
2473 refund or credit of such overpayment of tax may, nevertheless, be  
2474 made or allowed if claim therefor is filed with the Department of  
2475 Revenue within three (3) years after the date of the enactment of  
2476 this subsection.

2477 (i) The provisions of this subsection shall be  
2478 effective for taxable years ending on or after February 28, 1961.

2479 (6) A shareholder of an S corporation, as defined in Section  
2480 27-8-3(1)(g), shall take into account the income, loss, deduction  
2481 or credit of the S corporation only to the extent provided in  
2482 Section 27-8-7(2).

2483 **SECTION 35.** Section 27-13-5, Mississippi Code of 1972, is  
2484 amended as follows:

2485 27-13-5. (1) (a) **Franchise tax levy.** Except as otherwise  
2486 provided in subsections (3), (4), (5), \* \* \* (7) and (8) of this  
2487 section, there is hereby imposed, to be paid and collected as  
2488 hereinafter provided, a franchise or excise tax upon every  
2489 corporation, association or joint-stock company or partnership  
2490 treated as a corporation under the income tax laws or regulations,  
2491 organized or created for pecuniary gain, having privileges not  
2492 possessed by individuals, and having authorized capital stock now



2493 existing in this state, or hereafter organized, created or  
2494 established, under and by virtue of the laws of the State of  
2495 Mississippi, equal to:

2496 (i) For tax years beginning before January 1,  
2497 2018, Two Dollars and Fifty Cents (\$2.50) for each One Thousand  
2498 Dollars (\$1,000.00), or fraction thereof, of the value of the  
2499 capital used, invested or employed in the exercise of any power,  
2500 privilege or right enjoyed by such organization within this state,  
2501 except as hereinafter provided.

2502 (ii) For tax years beginning on or after January  
2503 1, 2018, but before January 1, 2019, Two Dollars and Fifty Cents  
2504 (\$2.50) for each One Thousand Dollars (\$1,000.00), or fraction  
2505 thereof, in excess of One Hundred Thousand Dollars (\$100,000.00),  
2506 of the value of the capital used, invested or employed in the  
2507 exercise of any power, privilege or right enjoyed by such  
2508 organization within this state, except as hereinafter provided.

2509 (iii) For tax years beginning on or after January  
2510 1, 2019, but before January 1, 2020, Two Dollars and Twenty-five  
2511 Cents (\$2.25) for each One Thousand Dollars (\$1,000.00), or  
2512 fraction thereof, in excess of One Hundred Thousand Dollars  
2513 (\$100,000.00), of the value of the capital used, invested or  
2514 employed in the exercise of any power, privilege or right enjoyed  
2515 by such organization within this state, except as hereinafter  
2516 provided.



2517 (iv) For tax years beginning on or after January  
2518 1, 2020, but before January 1, 2021, Two Dollars (\$2.00) for each  
2519 One Thousand Dollars (\$1,000.00), or fraction thereof, in excess  
2520 of One Hundred Thousand Dollars (\$100,000.00), of the value of the  
2521 capital used, invested or employed in the exercise of any power,  
2522 privilege or right enjoyed by such organization within this state,  
2523 except as hereinafter provided.

2524 (v) For tax years beginning on or after January 1,  
2525 2021, but before January 1, 2022, One Dollar and Seventy-five  
2526 Cents (\$1.75) for each One Thousand Dollars (\$1,000.00), or  
2527 fraction thereof, in excess of One Hundred Thousand Dollars  
2528 (\$100,000.00), of the value of the capital used, invested or  
2529 employed in the exercise of any power, privilege or right enjoyed  
2530 by such organization within this state, except as hereinafter  
2531 provided.

2532 (vi) For tax years beginning on or after January  
2533 1, 2022, but before January 1, 2023, One Dollar and Fifty Cents  
2534 (\$1.50) for each One Thousand Dollars (\$1,000.00), or fraction  
2535 thereof, in excess of One Hundred Thousand Dollars (\$100,000.00),  
2536 of the value of the capital used, invested or employed in the  
2537 exercise of any power, privilege or right enjoyed by such  
2538 organization within this state, except as hereinafter provided.

2539 (vii) For tax years beginning on or after January  
2540 1, 2023, but before January 1, 2024, One Dollar and Twenty-five  
2541 Cents (\$1.25) for each One Thousand Dollars (\$1,000.00), or



2542 fraction thereof, in excess of One Hundred Thousand Dollars  
2543 (\$100,000.00), of the value of the capital used, invested or  
2544 employed in the exercise of any power, privilege or right enjoyed  
2545 by such organization within this state, except as hereinafter  
2546 provided.

2547 (viii) For tax years beginning on or after January  
2548 1, 2024, but before January 1, 2025, One Dollar (\$1.00) for each  
2549 One Thousand Dollars (\$1,000.00), or fraction thereof, in excess  
2550 of One Hundred Thousand Dollars (\$100,000.00), of the value of the  
2551 capital used, invested or employed in the exercise of any power,  
2552 privilege or right enjoyed by such organization within this state,  
2553 except as hereinafter provided.

2554 (ix) For tax years beginning on or after January  
2555 1, 2025, but before January 1, 2026, Seventy-five Cents (75¢) for  
2556 each One Thousand Dollars (\$1,000.00), or fraction thereof, in  
2557 excess of One Hundred Thousand Dollars (\$100,000.00), of the value  
2558 of the capital used, invested or employed in the exercise of any  
2559 power, privilege or right enjoyed by such organization within this  
2560 state, except as hereinafter provided.

2561 (x) For tax years beginning on or after January 1,  
2562 2026, but before January 1, 2027, Fifty Cents (50¢) for each One  
2563 Thousand Dollars (\$1,000.00), or fraction thereof, in excess of  
2564 One Hundred Thousand Dollars (\$100,000.00), of the value of the  
2565 capital used, invested or employed in the exercise of any power,





2566 privilege or right enjoyed by such organization within this state,  
2567 except as hereinafter provided.

2568 (xi) For tax years beginning on or after January  
2569 1, 2027, but before January 1, 2028, Twenty-five Cents (25¢) for  
2570 each One Thousand Dollars (\$1,000.00), or fraction thereof, in  
2571 excess of One Hundred Thousand Dollars (\$100,000.00), of the value  
2572 of the capital used, invested or employed in the exercise of any  
2573 power, privilege or right enjoyed by such organization within this  
2574 state, except as hereinafter provided.

2575 (b) In no case shall the franchise tax due for the  
2576 accounting period be less than Twenty-five Dollars (\$25.00).

2577 (c) It is the purpose of this section to require the  
2578 payment to the State of Mississippi of this tax for the right  
2579 granted by the laws of this state to exist as such organization,  
2580 and to enjoy, under the protection of the laws of this state, the  
2581 powers, rights, privileges and immunities derived from the state  
2582 by the form of such existence.

2583 (2) **Annual report of domestic corporations.** Each domestic  
2584 corporation shall file an annual report as required by the  
2585 provisions of Section 79-4-16.22.

2586 (3) (a) A corporation that has negotiated a fee-in-lieu as  
2587 defined in Section 57-75-5 shall not be subject to the tax levied  
2588 by this section on such project; however, the fee-in-lieu payment  
2589 shall be otherwise treated in the same manner as the payment of  
2590 franchise taxes.



2591 (b) (i) As used in this paragraph:

2592 1. "Authority" shall have the meaning  
2593 ascribed to such term in Section 57-75-5(b);

2594 2. "Project" shall have the meaning ascribed  
2595 to such term in Section 57-75-5(f)(xxix); and

2596 3. "Enterprise" shall mean the corporation  
2597 authorized for the project pursuant to Section 57-75-5(f)(xxix).

2598 (ii) The term of the franchise tax fee-in-lieu  
2599 agreement negotiated under this subsection and authorized by  
2600 Section 57-75-5(j), between the authority and the enterprise for  
2601 the project shall not exceed twenty-five (25) years. The  
2602 franchise tax fee-in-lieu agreement shall apply only to new  
2603 franchise tax liability attributable to the project, and shall not  
2604 apply to any existing franchise tax liability of the enterprise in  
2605 connection with any current operations in this state.

2606 (iii) In the event that the annual number of  
2607 full-time jobs maintained by the enterprise falls below the  
2608 minimum annual number of full-time jobs required by the authority  
2609 pursuant to a written agreement between the authority and the  
2610 enterprise for two (2) consecutive years, the franchise tax  
2611 fee-in-lieu for the project shall be suspended until the first tax  
2612 year during which the annual number of full-time jobs maintained  
2613 by the enterprise reaches the minimum annual number of full-time  
2614 jobs required by the authority pursuant to a written agreement  
2615 between the authority and the enterprise.



2616 (iv) The enterprise shall be entitled to utilize a  
2617 single sales apportionment factor in the calculation of its  
2618 liability for franchise tax imposed by this chapter which is  
2619 attributable to the project for any year for which it files a  
2620 Mississippi franchise tax return. The enterprise shall be  
2621 entitled to continue to utilize such single sales apportionment  
2622 factor notwithstanding a suspension of the franchise tax  
2623 fee-in-lieu pursuant to subparagraph (iii) of this paragraph.

2624 (4) An approved business enterprise as defined in the Growth  
2625 and Prosperity Act shall not be subject to the tax levied by this  
2626 section on the value of capital used, invested or employed by the  
2627 approved business enterprise in a growth and prosperity county or  
2628 supervisors district as provided in the Growth and Prosperity Act.

2629 (5) A business enterprise operating a project as defined in  
2630 Section 57-64-33, in a county that is a member of a regional  
2631 economic development alliance created under the Regional Economic  
2632 Development Act shall not be subject to the tax levied by this  
2633 section on the value of capital used, invested or employed by the  
2634 business enterprise in such a county as provided in Section  
2635 57-64-33.

2636 (6) The tax levied by this chapter and paid by a business  
2637 enterprise located in a redevelopment project area under Sections  
2638 57-91-1 through 57-91-11 shall be deposited into the Redevelopment  
2639 Project Incentive Fund created in Section 57-91-9.



2640 (7) A business enterprise as defined in Section 57-113-1  
2641 that is exempt from certain state taxes under Section 57-113-5  
2642 shall not be subject to the tax levied by this section on the  
2643 value of capital used, invested or employed by the business  
2644 enterprise.

2645 (8) A health care collaborative as defined in Section 2 of  
2646 this act or an entity controlled by a health care collaborative  
2647 shall not be subject to the tax levied by this section on the  
2648 value of capital used, invested or employed by the health care  
2649 collaborative or entity in establishing, operating or otherwise  
2650 carrying on the business and activities of the health care  
2651 collaborative or entity.

2652 **SECTION 36.** Section 27-31-1, Mississippi Code of 1972, is  
2653 amended as follows:

2654 27-31-1. The following shall be exempt from taxation:

2655 (a) All cemeteries used exclusively for burial  
2656 purposes.

2657 (b) All property, real or personal, belonging to the  
2658 State of Mississippi or any of its political subdivisions, except  
2659 property of a municipality not being used for a proper municipal  
2660 purpose and located outside the county or counties in which such  
2661 municipality is located. A proper municipal purpose within the  
2662 meaning of this section shall be any authorized governmental or  
2663 corporate function of a municipality.



2664 (c) All property, real or personal, owned by units of  
2665 the Mississippi National Guard, or title to which is vested in  
2666 trustees for the benefit of any unit of the Mississippi National  
2667 Guard; provided such property is used exclusively for such unit,  
2668 or for public purposes, and not for profit.

2669 (d) All property, real or personal, belonging to any  
2670 religious society, or ecclesiastical body, or any congregation  
2671 thereof, or to any charitable society, or to any historical or  
2672 patriotic association or society, or to any garden or pilgrimage  
2673 club or association and used exclusively for such society or  
2674 association and not for profit; not exceeding, however, the amount  
2675 of land which such association or society may own as provided in  
2676 Section 79-11-33. All property, real or personal, belonging to  
2677 any rural waterworks system or rural sewage disposal system  
2678 incorporated under the provisions of Section 79-11-1. All  
2679 property, real or personal, belonging to any college or  
2680 institution for the education of youths, used directly and  
2681 exclusively for such purposes, provided that no such college or  
2682 institution for the education of youths shall have exempt from  
2683 taxation more than six hundred forty (640) acres of land;  
2684 provided, however, this exemption shall not apply to commercial  
2685 schools and colleges or trade institutions or schools where the  
2686 profits of same inure to individuals, associations or  
2687 corporations. All property, real or personal, belonging to an  
2688 individual, institution or corporation and used for the operation



2689 of a grammar school, junior high school, high school or military  
2690 school. All property, real or personal, owned and occupied by a  
2691 fraternal and benevolent organization, when used by such  
2692 organization, and from which no rentals or other profits accrue to  
2693 the organization, but any part rented or from which revenue is  
2694 received shall be taxed.

2695 (e) All property, real or personal, held and occupied  
2696 by trustees of public schools, and school lands of the respective  
2697 townships for the use of public schools, and all property kept in  
2698 storage for the convenience and benefit of the State of  
2699 Mississippi in warehouses owned or leased by the State of  
2700 Mississippi, wherein said property is to be sold by the Alcoholic  
2701 Beverage Control Division of the Department of Revenue of the  
2702 State of Mississippi.

2703 (f) All property, real or personal, whether belonging  
2704 to religious or charitable or benevolent organizations, which is  
2705 used for hospital purposes, and nurses' homes where a part  
2706 thereof, and which maintain one or more charity wards that are for  
2707 charity patients, and where all the income from said hospitals and  
2708 nurses' homes is used entirely for the purposes thereof and no  
2709 part of the same for profit.

2710 (g) The wearing apparel of every person; and also  
2711 jewelry and watches kept by the owner for personal use to the  
2712 extent of One Hundred Dollars (\$100.00) in value for each owner.

2713 (h) Provisions on hand for family consumption.



2714 (i) All farm products grown in this state for a period  
2715 of two (2) years after they are harvested, when in the possession  
2716 of or the title to which is in the producer, except the tax of  
2717 one-fifth of one percent (1/5 of 1%) per pound on lint cotton now  
2718 levied by the Board of Commissioners of the Mississippi Levee  
2719 District; and lint cotton for five (5) years, and cottonseed,  
2720 soybeans, oats, rice and wheat for one (1) year regardless of  
2721 ownership.

2722 (j) All guns and pistols kept by the owner for private  
2723 use.

2724 (k) All poultry in the hands of the producer.

2725 (l) Household furniture, including all articles kept in  
2726 the home by the owner for his own personal or family use; but this  
2727 shall not apply to hotels, rooming houses or rented or leased  
2728 apartments.

2729 (m) All cattle and oxen.

2730 (n) All sheep, goats and hogs.

2731 (o) All horses, mules and asses.

2732 (p) Farming tools, implements and machinery, when used  
2733 exclusively in the cultivation or harvesting of crops or timber.

2734 (q) All property of agricultural and mechanical  
2735 associations and fairs used for promoting their objects, and where  
2736 no part of the proceeds is used for profit.

2737 (r) The libraries of all persons.



2738 (s) All pictures and works of art, not kept for or  
2739 offered for sale as merchandise.

2740 (t) The tools of any mechanic necessary for carrying on  
2741 his trade.

2742 (u) All state, county, municipal, levee, drainage and  
2743 all school bonds or other governmental obligations, and all bonds  
2744 and/or evidences of debts issued by any church or church  
2745 organization in this state, and all notes and evidences of  
2746 indebtedness which bear a rate of interest not greater than the  
2747 maximum rate per annum applicable under the law; and all money  
2748 loaned at a rate of interest not exceeding the maximum rate per  
2749 annum applicable under the law; and all stock in or bonds of  
2750 foreign corporations or associations shall be exempt from all ad  
2751 valorem taxes.

2752 (v) All lands and other property situated or located  
2753 between the Mississippi River and the levee shall be exempt from  
2754 the payment of any and all road taxes levied or assessed under any  
2755 road laws of this state.

2756 (w) Any and all money on deposit in either national  
2757 banks, state banks or trust companies, on open account, savings  
2758 account or time deposit.

2759 (x) All wagons, carts, drays, carriages and other  
2760 horse-drawn vehicles, kept for the use of the owner.





2761 (y) (i) Boats, seines and fishing equipment used in  
2762 fishing and shrimping operations and in the taking or catching of  
2763 oysters.

2764 (ii) All towboats, tugboats and barges documented  
2765 under the laws of the United States, except watercraft of every  
2766 kind and character used in connection with gaming operations.

2767 (z) All materials used in the construction and/or  
2768 conversion of vessels in this state; vessels while under  
2769 construction and/or conversion; vessels while in the possession of  
2770 the manufacturer, builder or converter, for a period of twelve  
2771 (12) months after completion of construction and/or conversion,  
2772 and as used herein the term "vessel" shall include ships, offshore  
2773 drilling equipment, dry docks, boats and barges, except watercraft  
2774 of every kind and character used in connection with gaming  
2775 operations.

2776 (aa) Sixty-six and two-thirds percent (66-2/3%) of  
2777 nuclear fuel and reprocessed, recycled or residual nuclear fuel  
2778 by-products, fissionable or otherwise, used or to be used in  
2779 generation of electricity by persons defined as public utilities  
2780 in Section 77-3-3.

2781 (bb) All growing nursery stock.

2782 (cc) A semitrailer used in interstate commerce.

2783 (dd) All property, real or personal, used exclusively  
2784 for the housing of and provision of services to elderly persons,  
2785 disabled persons, mentally impaired persons or as a nursing home,



2786 which is owned, operated and managed by a not-for-profit  
2787 corporation, qualified under Section 501(c)(3) of the Internal  
2788 Revenue Code, whose membership or governing body is appointed or  
2789 confirmed by a religious society or ecclesiastical body or any  
2790 congregation thereof.

2791 (ee) All vessels while in the hands of bona fide  
2792 dealers as merchandise and which are not being operated upon the  
2793 waters of this state shall be exempt from ad valorem taxes. As  
2794 used in this paragraph, the terms "vessel" and "waters of this  
2795 state" shall have the meaning ascribed to such terms in Section  
2796 59-21-3.

2797 (ff) All property, real or personal, owned by a  
2798 nonprofit organization that: (i) is qualified as tax exempt under  
2799 Section 501(c)(4) of the Internal Revenue Code of 1986, as  
2800 amended; (ii) assists in the implementation of the national  
2801 contingency plan or area contingency plan, and which is created in  
2802 response to the requirements of Title IV, Subtitle B of the Oil  
2803 Pollution Act of 1990, Public Law 101-380; (iii) engages primarily  
2804 in programs to contain, clean up and otherwise mitigate spills of  
2805 oil or other substances occurring in the United States coastal or  
2806 tidal waters; and (iv) is used for the purposes of the  
2807 organization.

2808 (gg) If a municipality changes its boundaries so as to  
2809 include within the boundaries of such municipality the project  
2810 site of any project as defined in Section 57-75-5(f)(iv)1, Section



2811 57-75-5(f) (xxi) or Section 57-75-5(f) (xxviii) or Section  
2812 57-75-5(f) (xxix), all real and personal property located on the  
2813 project site within the boundaries of such municipality that is  
2814 owned by a business enterprise operating such project, shall be  
2815 exempt from ad valorem taxation for a period of time not to exceed  
2816 thirty (30) years upon receiving approval for such exemption by  
2817 the Mississippi Major Economic Impact Authority. The provisions  
2818 of this paragraph shall not be construed to authorize a breach of  
2819 any agreement entered into pursuant to Section 21-1-59.

2820 (hh) All leases, lease contracts or lease agreements  
2821 (including, but not limited to, subleases, sublease contracts and  
2822 sublease agreements), and leaseholds or leasehold interests  
2823 (including, but not limited to, subleaseholds and subleasehold  
2824 interests), of or with respect to any and all property (real,  
2825 personal or mixed) constituting all or any part of a facility for  
2826 the manufacture, production, generation, transmission and/or  
2827 distribution of electricity, and any real property related  
2828 thereto, shall be exempt from ad valorem taxation during the  
2829 period as the United States is both the title owner of the  
2830 property and a sublessee of or with respect to the property;  
2831 however, the exemption authorized by this paragraph (hh) shall not  
2832 apply to any entity to whom the United States sub-leases its  
2833 interest in the property nor to any entity to whom the United  
2834 States assigns its sublease interest in the property. As used in  
2835 this paragraph, the term "United States" includes an agency or



2836 instrumentality of the United States of America. This paragraph  
2837 (hh) shall apply to all assessments for ad valorem taxation for  
2838 the 2003 calendar year and each calendar year thereafter.

2839 (ii) All property, real, personal or mixed, including  
2840 fixtures and leaseholds, used by Mississippi nonprofit entities  
2841 qualified, on or before January 1, 2005, under Section 501(c)(3)  
2842 of the Internal Revenue Code to provide support and operate  
2843 technology incubators for research and development start-up  
2844 companies, telecommunication start-up companies and/or other  
2845 technology start-up companies, utilizing technology spun-off from  
2846 research and development activities of the public colleges and  
2847 universities of this state, State of Mississippi governmental  
2848 research or development activities resulting therefrom located  
2849 within the State of Mississippi.

2850 (jj) All property, real, personal or mixed, including  
2851 fixtures and leaseholds, of start-up companies (as described in  
2852 paragraph (ii) of this section) for the period of time, not to  
2853 exceed five (5) years, that the start-up company remains a tenant  
2854 of a technology incubator (as described in paragraph (ii) of this  
2855 section).

2856 (kk) All leases, lease contracts or lease agreements  
2857 (including, but not limited to, subleases, sublease contracts and  
2858 sublease agreements), and leaseholds or leasehold interests, of or  
2859 with respect to any and all property (real, personal or mixed)  
2860 constituting all or any part of an auxiliary facility, and any



2861 real property related thereto, constructed or renovated pursuant  
2862 to Section 37-101-41, Mississippi Code of 1972.

2863 (ll) Equipment brought into the state temporarily for  
2864 use during a disaster response period as provided in Sections  
2865 27-113-1 through 27-113-9 and subsequently removed from the state  
2866 on or before the end of the disaster response period as defined in  
2867 Section 27-113-5.

2868 (mm) All property of a health care collaborative as  
2869 defined in Section 2 of this act or an entity controlled by a  
2870 health care collaborative, as provided in Section 14(1)(b) of this  
2871 act.

2872 **SECTION 37.** Section 27-65-19, Mississippi Code of 1972, is  
2873 amended as follows:

2874 27-65-19. (1) (a) (i) Except as otherwise provided in  
2875 this subsection, upon every person selling to consumers,  
2876 electricity, current, power, potable water, steam, coal, natural  
2877 gas, liquefied petroleum gas or other fuel, there is hereby  
2878 levied, assessed and shall be collected a tax equal to seven  
2879 percent (7%) of the gross income of the business. Provided, gross  
2880 income from sales to consumers of electricity, current, power,  
2881 natural gas, liquefied petroleum gas or other fuel for residential  
2882 heating, lighting or other residential noncommercial or  
2883 nonagricultural use, and sales of potable water for residential,  
2884 noncommercial or nonagricultural use shall be excluded from  
2885 taxable gross income of the business. Provided further, upon



2886 every such seller using electricity, current, power, potable  
2887 water, steam, coal, natural gas, liquefied petroleum gas or other  
2888 fuel for nonindustrial purposes, there is hereby levied, assessed  
2889 and shall be collected a tax equal to seven percent (7%) of the  
2890 cost or value of the product or service used.

2891 (ii) Gross income from sales to a church that is  
2892 exempt from federal income taxation under 26 USCS Section  
2893 501(c)(3) of electricity, current, power, natural gas, liquefied  
2894 petroleum gas or other fuel for heating, lighting or other use,  
2895 and sales of potable water to such a church shall be excluded from  
2896 taxable gross income of the business if the electricity, current,  
2897 power, natural gas, liquefied petroleum gas or potable water is  
2898 utilized on property that is primarily used for religious or  
2899 educational purposes.

2900 (iii) Gross income from sales of electricity,  
2901 current, power, natural gas, liquefied petroleum gas or other fuel  
2902 for heating, lighting or other use, and sales of potable water to  
2903 a health care collaborative as defined in Section 2 of this act or  
2904 an entity controlled by a health care collaborative, as provided  
2905 in Section 14(1)(c) of this act.

2906 (b) (i) There is hereby levied, assessed and shall be  
2907 collected a tax equal to one and one-half percent (1-1/2%) of the  
2908 gross income of the business from the sale of naturally occurring  
2909 carbon dioxide and anthropogenic carbon dioxide lawfully injected  
2910 into the earth for:



2911                   1. Use in an enhanced oil recovery project,  
2912 including, but not limited to, use for cycling, repressuring or  
2913 lifting of oil; or

2914                   2. Permanent sequestration in a geological  
2915 formation.

2916                   (ii) The one and one-half percent (1-1/2%) rate  
2917 provided for in this subsection shall apply to electricity,  
2918 current, power, steam, coal, natural gas, liquefied petroleum gas  
2919 or other fuel that is sold to a producer of oil and gas for use  
2920 directly in enhanced oil recovery using carbon dioxide and/or the  
2921 permanent sequestration of carbon dioxide in a geological  
2922 formation.

2923                   (c) The one and one-half percent (1-1/2%) rate provided  
2924 for in this subsection shall not apply to sales of fuel for  
2925 automobiles, trucks, truck-tractors, buses, farm tractors or  
2926 airplanes.

2927                   (d) (i) Upon every person providing services in this  
2928 state, there is hereby levied, assessed and shall be collected:

2929                   1. A tax equal to seven percent (7%) of the  
2930 gross income received from all charges for intrastate  
2931 telecommunications services.

2932                   2. A tax equal to seven percent (7%) of the  
2933 gross income received from all charges for interstate  
2934 telecommunications services.



2935                   3. A tax equal to seven percent (7%) of the  
2936 gross income received from all charges for international  
2937 telecommunications services.

2938                   4. A tax equal to seven percent (7%) of the  
2939 gross income received from all charges for ancillary services.

2940                   5. A tax equal to seven percent (7%) of the  
2941 gross income received from all charges for products delivered  
2942 electronically, including, but not limited to, software, music,  
2943 games, reading materials or ring tones.

2944                   (ii) A person, upon proof that he has paid a tax  
2945 in another state on an event described in subparagraph (i) of this  
2946 paragraph (d), shall be allowed a credit against the tax imposed  
2947 in this paragraph (d) on interstate telecommunications service  
2948 charges to the extent that the amount of such tax is properly due  
2949 and actually paid in such other state and to the extent that the  
2950 rate of sales tax imposed by and paid in such other state does not  
2951 exceed the rate of sales tax imposed by this paragraph (d).

2952                   (iii) Charges by one (1) telecommunications  
2953 provider to another telecommunications provider holding a permit  
2954 issued under Section 27-65-27 for services that are resold by such  
2955 other telecommunications provider, including, but not limited to,  
2956 access charges, shall not be subject to the tax levied pursuant to  
2957 this paragraph (d).

2958                   (iv) For purposes of this paragraph (d):





2959                   1. "Telecommunications service" means the  
2960 electronic transmission, conveyance or routing of voice, data,  
2961 audio, video or any other information or signals to a point, or  
2962 between points. The term "telecommunications service" includes  
2963 such transmission, conveyance or routing in which computer  
2964 processing applications are used to act on the form, code or  
2965 protocol of the content for purposes of transmission, conveyance  
2966 or routing without regard to whether such service is referred to  
2967 as voice over Internet protocol services or is classified by the  
2968 Federal Communications Commission as enhanced or value added. The  
2969 term "telecommunications service" shall not include:

2970                   a. Data processing and information  
2971 services that allow data to be generated, acquired, stored,  
2972 processed or retrieved and delivered by an electronic transmission  
2973 to a purchaser where such purchaser's primary purpose for the  
2974 underlying transaction is the processed data or information;

2975                   b. Installation or maintenance of wiring  
2976 or equipment on a customer's premises;

2977                   c. Tangible personal property;

2978                   d. Advertising, including, but not  
2979 limited to, directory advertising;

2980                   e. Billing and collection services  
2981 provided to third parties;

2982                   f. Internet access service;



2983 g. Radio and television audio and video  
2984 programming services regardless of the medium, including the  
2985 furnishing of transmission, conveyance and routing of such  
2986 services by the programming service provider. Radio and  
2987 television audio and video programming services shall include, but  
2988 not be limited to, cable service as defined in 47 USCS 522(6) and  
2989 audio and video programming services delivered by commercial  
2990 mobile radio service providers, as defined in 47 CFR 20.3;

2991 h. Ancillary services; or

2992 i. Digital products delivered  
2993 electronically, including, but not limited to, software, music,  
2994 video, reading materials or ring tones.

2995 2. "Ancillary services" means services that  
2996 are associated with or incidental to the provision of  
2997 telecommunications services, including, but not limited to,  
2998 detailed telecommunications billing, directory assistance,  
2999 vertical service and voice mail service.

3000 a. "Conference bridging" means an  
3001 ancillary service that links two (2) or more participants of an  
3002 audio or video conference call and may include the provision of a  
3003 telephone number. Conference bridging does not include the  
3004 telecommunications services used to reach the conference bridge.

3005 b. "Detailed telecommunications billing  
3006 service" means an ancillary service of separately stating



3007 information pertaining to individual calls on a customer's billing  
3008 statement.

3009 c. "Directory assistance" means an  
3010 ancillary service of providing telephone number information and/or  
3011 address information.

3012 d. "Vertical service" means an ancillary  
3013 service that is offered in connection with one or more  
3014 telecommunications services, which offers advanced calling  
3015 features that allow customers to identify callers and to manage  
3016 multiple calls and call connections, including conference bridging  
3017 services.

3018 e. "Voice mail service" means an  
3019 ancillary service that enables the customer to store, send or  
3020 receive recorded messages. Voice mail service does not include  
3021 any vertical services that the customer may be required to have in  
3022 order to utilize the voice mail service.

3023 3. "Intrastate" means telecommunications  
3024 service that originates in one (1) United States state or United  
3025 States territory or possession, and terminates in the same United  
3026 States state or United States territory or possession.

3027 4. "Interstate" means a telecommunications  
3028 service that originates in one (1) United States state or United  
3029 States territory or possession, and terminates in a different  
3030 United States state or United States territory or possession.



3031                   5. "International" means a telecommunications  
3032 service that originates or terminates in the United States and  
3033 terminates or originates outside the United States, respectively.

3034                   (v) For purposes of paragraph (d), the following  
3035 sourcing rules shall apply:

3036                   1. Except for the defined telecommunications  
3037 services in item 3 of this subparagraph, the sales of  
3038 telecommunications services sold on a call-by-call basis shall be  
3039 sourced to:

3040                   a. Each level of taxing jurisdiction  
3041 where the call originates and terminates in that jurisdiction, or

3042                   b. Each level of taxing jurisdiction  
3043 where the call either originates or terminates and in which the  
3044 service address is also located.

3045                   2. Except for the defined telecommunications  
3046 services in item 3 of this subparagraph, a sale of  
3047 telecommunications services sold on a basis other than a  
3048 call-by-call basis, is sourced to the customer's place of primary  
3049 use.

3050                   3. The sale of the following  
3051 telecommunications services shall be sourced to each level of  
3052 taxing jurisdiction as follows:

3053                   a. A sale of mobile telecommunications  
3054 services other than air-to-ground radiotelephone service and  
3055 prepaid calling service is sourced to the customer's place of



3056 primary use as required by the Mobile Telecommunication Sourcing  
3057 Act.

3058                   A. A home service provider shall be  
3059 responsible for obtaining and maintaining the customer's place of  
3060 primary use. The home service provider shall be entitled to rely  
3061 on the applicable residential or business street address supplied  
3062 by such customer, if the home service provider's reliance is in  
3063 good faith; and the home service provider shall be held harmless  
3064 from liability for any additional taxes based on a different  
3065 determination of the place of primary use for taxes that are  
3066 customarily passed on to the customer as a separate itemized  
3067 charge. A home service provider shall be allowed to treat the  
3068 address used for purposes of the tax levied by this chapter for  
3069 any customer under a service contract in effect on August 1, 2002,  
3070 as that customer's place of primary use for the remaining term of  
3071 such service contract or agreement, excluding any extension or  
3072 renewal of such service contract or agreement. Month-to-month  
3073 services provided after the expiration of a contract shall be  
3074 treated as an extension or renewal of such contract or agreement.

3075                   B. If the commissioner determines  
3076 that the address used by a home service provider as a customer's  
3077 place of primary use does not meet the definition of the term  
3078 "place of primary use" as defined in subitem a.A. of this item 3,  
3079 the commissioner shall give binding notice to the home service  
3080 provider to change the place of primary use on a prospective basis



3081 from the date of notice of determination; however, the customer  
3082 shall have the opportunity, prior to such notice of determination,  
3083 to demonstrate that such address satisfies the definition.

3084 C. The department has the right to  
3085 collect any taxes due directly from the home service provider's  
3086 customer that has failed to provide an address that meets the  
3087 definition of the term "place of primary use" which resulted in a  
3088 failure of tax otherwise due being remitted.

3089 b. A sale of postpaid calling service is  
3090 sourced to the origination point of the telecommunications signal  
3091 as first identified by either:

3092 A. The seller's telecommunications  
3093 system; or

3094 B. Information received by the  
3095 seller from its service provider, where the system used to  
3096 transport such signals is not that of the seller.

3097 c. A sale of a prepaid calling service  
3098 or prepaid wireless calling service shall be subject to the tax  
3099 imposed by this paragraph if the sale takes place in this state.  
3100 If the customer physically purchases a prepaid calling service or  
3101 prepaid wireless calling service at the vendor's place of  
3102 business, the sale is deemed to take place at the vendor's place  
3103 of business. If the customer does not physically purchase the  
3104 service at the vendor's place of business, the sale of a prepaid  
3105 calling card or prepaid wireless calling card is deemed to take



3106 place at the first of the following locations that applies to the  
3107 sale:

3108                   A. The customer's shipping address,  
3109 if the sale involves a shipment;

3110                   B. The customer's billing address;

3111                   C. Any other address of the  
3112 customer that is known by the vendor; or

3113                   D. The address of the vendor, or  
3114 alternatively, in the case of a prepaid wireless calling service,  
3115 the location associated with the mobile telephone number.

3116                   4. A sale of a private communication service  
3117 is sourced as follows:

3118                   a. Service for a separate charge related  
3119 to a customer channel termination point is sourced to each level  
3120 of jurisdiction in which such customer channel termination point  
3121 is located.

3122                   b. Service where all customer  
3123 termination points are located entirely within one (1)  
3124 jurisdiction or levels of jurisdiction is sourced in such  
3125 jurisdiction in which the customer channel termination points are  
3126 located.

3127                   c. Service for segments of a channel  
3128 between two (2) customer channel termination points located in  
3129 different jurisdictions and which segments of a channel are  
3130 separately charged is sourced fifty percent (50%) in each level of



3131 jurisdiction in which the customer channel termination points are  
3132 located.

3133                   d. Service for segments of a channel  
3134 located in more than one (1) jurisdiction or levels of  
3135 jurisdiction and which segments are not separately billed is  
3136 sourced in each jurisdiction based on the percentage determined by  
3137 dividing the number of customer channel termination points in such  
3138 jurisdiction by the total number of customer channel termination  
3139 points.

3140                   5. A sale of ancillary services is sourced to  
3141 the customer's place of primary use.

3142                   (vi) For purposes of subparagraph (v) of this  
3143 paragraph (d):

3144                   1. "Air-to-ground radiotelephone service"  
3145 means a radio service, as that term is defined in 47 CFR 22.99, in  
3146 which common carriers are authorized to offer and provide radio  
3147 telecommunications service for hire to subscribers in aircraft.

3148                   2. "Call-by-call basis" means any method of  
3149 charging for telecommunications services where the price is  
3150 measured by individual calls.

3151                   3. "Communications channel" means a physical  
3152 or virtual path of communications over which signals are  
3153 transmitted between or among customer channel termination points.

3154                   4. "Customer" means the person or entity that  
3155 contracts with the seller of telecommunications services. If the





3156 end user of telecommunications services is not the contracting  
3157 party, the end user of the telecommunications service is the  
3158 customer of the telecommunications service. Customer does not  
3159 include a reseller of telecommunications service or for mobile  
3160 telecommunications service of a serving carrier under an agreement  
3161 to serve the customer outside the home service provider's licensed  
3162 service area.

3163                   5. "Customer channel termination point" means  
3164 the location where the customer either inputs or receives the  
3165 communications.

3166                   6. "End user" means the person who utilizes  
3167 the telecommunications service. In the case of an entity, "end  
3168 user" means the individual who utilizes the service on behalf of  
3169 the entity.

3170                   7. "Home service provider" has the meaning  
3171 ascribed to such term in Section 124(5) of Public Law 106-252  
3172 (Mobile Telecommunications Sourcing Act).

3173                   8. "Mobile telecommunications service" has  
3174 the meaning ascribed to such term in Section 124(7) of Public Law  
3175 106-252 (Mobile Telecommunications Sourcing Act).

3176                   9. "Place of primary use" means the street  
3177 address representative of where the customer's use of the  
3178 telecommunications service primarily occurs, which must be the  
3179 residential street address or the primary business street address  
3180 of the customer. In the case of mobile telecommunications



3181 services, the place of primary use must be within the licensed  
3182 service area of the home service provider.

3183                   10. "Post-paid calling service" means the  
3184 telecommunications service obtained by making a payment on a  
3185 call-by-call basis either through the use of a credit card or  
3186 payment mechanism such as a bank card, travel card, credit card or  
3187 debit card, or by charge made to a telephone number which is not  
3188 associated with the origination or termination of the  
3189 telecommunications service. A post-paid calling service includes  
3190 a telecommunications service, except a prepaid wireless calling  
3191 service that would be a prepaid calling service except it is not  
3192 exclusively a telecommunications service.

3193                   11. "Prepaid calling service" means the right  
3194 to access exclusively telecommunications services, which must be  
3195 paid for in advance and which enables the origination of calls  
3196 using an access number or authorization code, whether manually or  
3197 electronically dialed, and that is sold in predetermined units or  
3198 dollars of which the number declines with use in a known amount.

3199                   12. "Prepaid wireless calling service" means  
3200 a telecommunications service that provides the right to utilize  
3201 mobile wireless service as well as other nontelecommunications  
3202 services, including the download of digital products delivered  
3203 electronically, content and ancillary service, which must be paid  
3204 for in advance that is sold in predetermined units or dollars of  
3205 which the number declines with use in a known amount.



3206                   13. "Private communication service" means a  
3207 telecommunications service that entitles the customer to exclusive  
3208 or priority use of a communications channel or group of channels  
3209 between or among termination points, regardless of the manner in  
3210 which such channel or channels are connected, and includes  
3211 switching capacity, extension lines, stations and any other  
3212 associated services that are provided in connection with the use  
3213 of such channel or channels.

3214                   14. "Service address" means:

3215                   a. The location of the  
3216 telecommunications equipment to which a customer's call is charged  
3217 and from which the call originates or terminates, regardless of  
3218 where the call is billed or paid.

3219                   b. If the location in subitem a of this  
3220 item 14 is not known, the origination point of the signal of the  
3221 telecommunications services first identified by either the  
3222 seller's telecommunications system or in information received by  
3223 the seller from its service provider, where the system used to  
3224 transport such signals is not that of the seller.

3225                   c. If the location in subitems a and b  
3226 of this item 14 are not known, the location of the customer's  
3227 place of primary use.

3228                   (vii) 1. For purposes of this subparagraph (vii),  
3229 "bundled transaction" means a transaction that consists of  
3230 distinct and identifiable properties or services which are sold



3231 for a single nonitemized price but which are treated differently  
3232 for tax purposes.

3233                   2. In the case of a bundled transaction that  
3234 includes telecommunications services, ancillary services, Internet  
3235 access, or audio or video programming services taxed under this  
3236 chapter in which the price of the bundled transaction is  
3237 attributable to properties or services that are taxable and  
3238 nontaxable, the portion of the price that is attributable to any  
3239 nontaxable property or service shall be subject to the tax unless  
3240 the provider can reasonably identify that portion from its books  
3241 and records kept in the regular course of business.

3242                   3. In the case of a bundled transaction that  
3243 includes telecommunications services, ancillary services, Internet  
3244 access, audio or video programming services subject to tax under  
3245 this chapter in which the price is attributable to properties or  
3246 services that are subject to the tax but the tax revenue from the  
3247 different properties or services are dedicated to different funds  
3248 or purposes, the provider shall allocate the price among the  
3249 properties or services:

3250                   a. By reasonably identifying the portion  
3251 of the price attributable to each of the properties and services  
3252 from its books and records kept in the regular course of business;  
3253 or

3254                   b. Based on a reasonable allocation  
3255 methodology approved by the department.



3256                   4. This subparagraph (vii) shall not create a  
3257 right of action for a customer to require that the provider or the  
3258 department, for purposes of determining the amount of tax  
3259 applicable to a bundled transaction, allocate the price to the  
3260 different portions of the transaction in order to minimize the  
3261 amount of tax charged to the customer. A customer shall not be  
3262 entitled to rely on the fact that a portion of the price is  
3263 attributable to properties or services not subject to tax unless  
3264 the provider elects, after receiving a written request from the  
3265 customer in the form required by the provider, to provide  
3266 verifiable data based upon the provider's books and records that  
3267 are kept in the regular course of business that reasonably  
3268 identifies the portion of the price attributable to the properties  
3269 or services not subject to the tax.

3270           (2) Persons making sales to consumers of electricity,  
3271 current, power, natural gas, liquefied petroleum gas or other fuel  
3272 for residential heating, lighting or other residential  
3273 noncommercial or nonagricultural use or sales of potable water for  
3274 residential, noncommercial or nonagricultural use shall indicate  
3275 on each statement rendered to customers that such charges are  
3276 exempt from sales taxes.

3277           (3) There is hereby levied, assessed and shall be paid on  
3278 transportation charges on shipments moving between points within  
3279 this state when paid directly by the consumer, a tax equal to the  
3280 rate applicable to the sale of the property being transported.



3281 Such tax shall be reported and paid directly to the Department of  
3282 Revenue by the consumer.

3283         **SECTION 38.** Section 27-65-105, Mississippi Code of 1972, is  
3284 amended as follows:

3285         27-65-105. The exemption from the provisions of this chapter  
3286 which are of a governmental nature or which are more properly  
3287 classified as governmental exemptions than any other exemption  
3288 classification of this chapter shall be confined to those persons  
3289 or property exempted by this section or by provisions of the  
3290 Constitutions of the United States or the State of Mississippi.  
3291 No governmental exemption as now provided by any other section  
3292 shall be valid as against the tax herein levied. Any subsequent  
3293 governmental exemption from the tax levied hereunder shall be  
3294 provided by amendment to this section.

3295         No exemption provided in this section shall apply to taxes  
3296 levied by Section 27-65-15 or 27-65-21, Mississippi Code of 1972,  
3297 except as provided by paragraph (f) of this section.

3298         The tax levied by this chapter shall not apply to the  
3299 following:

3300                 (a) Sales of property, labor, services or products  
3301 taxable under Sections 27-65-17, 27-65-19, 27-65-23 and 27-19-26,  
3302 when sold to and billed directly to and payment therefor is made  
3303 directly by the United States government, the State of Mississippi  
3304 and its departments, institutions, counties and municipalities or



3305 departments or school districts of said counties and  
3306 municipalities.

3307         The exemption from the tax imposed under this chapter shall  
3308 not apply to sales of tangible personal property or specified  
3309 digital products, labor or services to contractors purchasing in  
3310 the performance of contracts with the United States, the State of  
3311 Mississippi, counties and municipalities.

3312             (b) Sales to schools, when such schools are supported  
3313 wholly or in part by funds provided by the State of Mississippi,  
3314 provided that this exemption does not apply to sales of property  
3315 which is not to be used in the ordinary operation of the school,  
3316 or which is to be resold to the students or the public.

3317             (c) Amounts received from the sale of school textbooks  
3318 to students.

3319             (d) Sales to the Mississippi Band of Choctaw Indians,  
3320 but not to Indians individually.

3321             (e) Sales of firefighting equipment to governmental  
3322 fire departments or volunteer fire departments for their use.

3323             (f) Sales of any gas from any project, as defined in  
3324 the Municipal Gas Authority of Mississippi Law, to any  
3325 municipality shall not be subject to sales, use or other tax.

3326             (g) Sales of home medical equipment and home medical  
3327 supplies listed as eligible for payment under Title XVIII of the  
3328 Social Security Act or under the state plan for medical assistance  
3329 under Title XIX of the Social Security Act, prosthetics,



3330 orthotics, hearing aids, hearing devices, prescription eyeglasses,  
3331 oxygen and oxygen equipment, when ordered or prescribed by a  
3332 licensed physician for medical purposes of a patient, and when  
3333 payment for such equipment or supplies, or both, is made, in part  
3334 or in whole, under the provisions of the Medicare or Medicaid  
3335 program, then the entire sale shall be exempt from the taxes  
3336 imposed by this chapter. Payment does not have to be made, in  
3337 whole or in part, by any particular person to be eligible for this  
3338 exemption. Purchases of home medical equipment and supplies by a  
3339 provider of home health services or a provider of hospice services  
3340 are eligible for this exemption if the purchases otherwise meet  
3341 the requirements of this paragraph.

3342 (h) Sales to regional educational service agencies  
3343 established under Section 37-7-345.

3344 (i) Sales of buses and other motor vehicles, and parts  
3345 and labor used to maintain and/or repair such buses and motor  
3346 vehicles, to an entity that (a) has entered into a contract with a  
3347 school board under Section 37-41-31 for the purpose of  
3348 transporting students to and from schools and (b) uses or will use  
3349 the buses and other motor vehicles for such transportation  
3350 purposes. This paragraph (i) shall apply to contracts entered  
3351 into or renewed on or after July 1, 2010.

3352 (j) Parking at events held solely for religious or  
3353 charitable purposes at livestock facilities, agriculture  
3354 facilities or other facilities constructed, renovated or expanded





3355 with funds for the grant program authorized under Section 18,  
3356 Chapter 530, Laws of 1995.

3357 (k) Sales of tangible personal property, labor,  
3358 services or products to schools and school districts under a  
3359 program that is administered by or coordinated with an agency,  
3360 commission, department or other instrumentality of the United  
3361 States government when payment for the tangible personal property,  
3362 labor, services or products is made by or through a nonprofit  
3363 organization or other entity established by or for the benefit of  
3364 the agency, commission, department or other instrumentality of the  
3365 United States government administering or coordinating such  
3366 program.

3367 (l) Sales to a health care collaborative as defined in  
3368 Section 2 of this act or an entity controlled by a health care  
3369 collaborative, as provided in Section 14(1)(c) of this act.

3370 **SECTION 39.** Section 27-104-153, Mississippi Code of 1972, is  
3371 amended as follows:

3372 27-104-153. As used in Sections 27-104-151 through  
3373 27-104-159:

3374 (a) "Searchable website" means an Internet site that:

3375 (i) Allows the public to access information  
3376 identified in Sections 27-104-151 through 27-104-159 without any  
3377 fee or charge to the public for that access;

3378 (ii) Provides keyword or other efficient search  
3379 capability to support the public's ability to find, aggregate and



3380 display that information with reasonable ease by accessing a  
3381 single website; and

3382 (iii) Allows the public to programmatically search  
3383 and access all data in a serialized machine readable format, such  
3384 as XML, via a Web-services application programming interface.

3385 (b) "Agency" means a state agency, department,  
3386 institution, board, commission, council, office, bureau, division,  
3387 committee or subcommittee of the state. The term "agency"  
3388 includes individual agencies and programs as well as multiple  
3389 agencies whenever programs and activities involve more than one  
3390 (1) agency. The term "agency" includes all elective offices in  
3391 the executive, legislative and judicial branches of state  
3392 government. The term "agency" does not include counties or  
3393 municipalities, and does not include a health care collaborative  
3394 as defined in Section 2 of this act.

3395 (c) "Entity" or "recipient" means a corporation,  
3396 association, union, limited liability company, limited liability  
3397 partnership, grantee, contractor, county, municipality or other  
3398 local government entity, or any other legal business entity,  
3399 including a nonprofit entity. The term "entity" or "recipient"  
3400 does not include an individual recipient of state public  
3401 assistance.

3402 (d) "Expenditure of state funds" means the disbursement  
3403 or transfer of any funds, from any source or funds, whether  
3404 appropriated or nonappropriated, from any agency. The term



3405 "expenditure of state funds" includes the expenditures from bond  
3406 proceeds.

3407 (e) "Funding action" means the transfer of funds from a  
3408 state agency to another entity for a specific purpose. These  
3409 would include subgranting of funds for specific purposes or the  
3410 funding through bonds or other authority specific projects and  
3411 actions.

3412 (f) "Funding source" means the state account against  
3413 which an expenditure is recorded.

3414 (g) "State audit or report" means any audit or report  
3415 issued by the State Auditor, Joint Legislative Committee on  
3416 Performance Evaluation and Expenditure Review (PEER) or an  
3417 executive body relating to the entity or recipient of funds or to  
3418 the budget program or activity or agency.

3419 **SECTION 40.** Section 31-7-1, Mississippi Code of 1972, is  
3420 amended as follows:

3421 31-7-1. The following terms are defined for the purposes of  
3422 this chapter to have the following meanings:

3423 (a) "Agency" means any state board, commission,  
3424 committee, council, university, department or unit thereof created  
3425 by the Constitution or statutes if such board, commission,  
3426 committee, council, university, department, unit or the head  
3427 thereof is authorized to appoint subordinate staff by the  
3428 Constitution or statute, except a legislative or judicial board,  
3429 commission, committee, council, department or unit thereof; except



3430 a charter school authorized by the Mississippi Charter School  
3431 Authorizer Board; and except the Mississippi State Port Authority.  
3432 The term "agency" does not include a health care collaborative as  
3433 defined in Section 2 of this act.

3434 (b) "Governing authority" means boards of supervisors,  
3435 governing boards of all school districts, all boards of directors  
3436 of public water supply districts, boards of directors of master  
3437 public water supply districts, municipal public utility  
3438 commissions, governing authorities of all municipalities, port  
3439 authorities, Mississippi State Port Authority, commissioners and  
3440 boards of trustees of any public hospitals, boards of trustees of  
3441 public library systems, district attorneys, school attendance  
3442 officers and any political subdivision of the state supported  
3443 wholly or in part by public funds of the state or political  
3444 subdivisions thereof, including commissions, boards and agencies  
3445 created or operated under the authority of any county or  
3446 municipality of this state. The term "governing authority" shall  
3447 not include economic development authorities supported in part by  
3448 private funds, or commissions appointed to hold title to and  
3449 oversee the development and management of lands and buildings  
3450 which are donated by private individuals to the public for the use  
3451 and benefit of the community and which are supported in part by  
3452 private funds. The term "governing authority" also shall not  
3453 include the governing board of a charter school.



3454 (c) "Purchasing agent" means any administrator,  
3455 superintendent, purchase clerk or other chief officer so  
3456 designated having general or special authority to negotiate for  
3457 and make private contract for or purchase for any governing  
3458 authority or agency, including issue purchase orders, invitations  
3459 for bid, requests for proposals, and receive and accept bids.

3460 (d) "Public funds" means and includes any appropriated  
3461 funds, special funds, fees or any other emoluments received by an  
3462 agency or governing authority.

3463 (e) "Commodities" means and includes the various  
3464 commodities, goods, merchandise, furniture, equipment, automotive  
3465 equipment of every kind, and other personal property purchased by  
3466 the agencies of the state and governing authorities, but not  
3467 commodities purchased for resale or raw materials converted into  
3468 products for resale.

3469 (i) "Equipment" shall be construed to include:  
3470 automobiles, trucks, tractors, office appliances and all other  
3471 equipment of every kind and description.

3472 (ii) "Furniture" shall be construed to include:  
3473 desks, chairs, tables, seats, filing cabinets, bookcases and all  
3474 other items of a similar nature as well as dormitory furniture,  
3475 appliances, carpets and all other items of personal property  
3476 generally referred to as home, office or school furniture.

3477 (f) "Emergency" means any circumstances caused by fire,  
3478 flood, explosion, storm, earthquake, epidemic, riot, insurrection



3479 or caused by any inherent defect due to defective construction, or  
3480 when the immediate preservation of order or of public health is  
3481 necessary by reason of unforeseen emergency, or when the immediate  
3482 restoration of a condition of usefulness of any public building,  
3483 equipment, road or bridge appears advisable, or in the case of a  
3484 public utility when there is a failure of any machine or other  
3485 thing used and useful in the generation, production or  
3486 distribution of electricity, water or natural gas, or in the  
3487 transportation or treatment of sewage; or when the delay incident  
3488 to obtaining competitive bids could cause adverse impact upon the  
3489 governing authorities or agency, its employees or its citizens; or  
3490 in the case of a public airport, when the delay incident to  
3491 publishing an advertisement for competitive bids would endanger  
3492 public safety in a specific (not general) manner, result in or  
3493 perpetuate a specific breach of airport security, or prevent the  
3494 airport from providing specific air transportation services.

3495 (g) "Construction" means the process of building,  
3496 altering, improving, renovating or demolishing a public structure,  
3497 public building, or other public real property. It does not  
3498 include routine operation, routine repair or regularly scheduled  
3499 maintenance of existing public structures, public buildings or  
3500 other public real property.

3501 (h) "Purchase" means buying, renting, leasing or  
3502 otherwise acquiring.



3503           (i) "Certified purchasing office" means any purchasing  
3504 office in which fifty percent (50%) or more of the purchasing  
3505 agents hold a certification from the Universal Public Purchasing  
3506 Certification Council or other nationally recognized purchasing  
3507 certification, and in which, in the case of a state agency  
3508 purchasing office, in addition to the national certification, one  
3509 hundred percent (100%) of the purchasing officials hold a  
3510 certification from the State of Mississippi's Basic or Advanced  
3511 Purchasing Certification Program.

3512           (j) "Certified Mississippi Purchasing Agent" means a  
3513 state agency purchasing official who holds a certification from  
3514 the Mississippi Basic Purchasing Certification Program as  
3515 established by the Office of Purchasing, Travel and Fleet  
3516 Management.

3517           (k) "Certified Mississippi Procurement Manager" means a  
3518 state agency purchasing official who holds a certification from  
3519 the Mississippi Advanced Purchasing Certification Program as  
3520 established by the Office of Purchasing, Travel and Fleet  
3521 Management.

3522           **SECTION 41.** Section 31-7-13, Mississippi Code of 1972, is  
3523 amended as follows:

3524           31-7-13. All agencies and governing authorities shall  
3525 purchase their commodities and printing; contract for garbage  
3526 collection or disposal; contract for solid waste collection or



3527 disposal; contract for sewage collection or disposal; contract for  
3528 public construction; and contract for rentals as herein provided.

3529 (a) **Bidding procedure for purchases not over \$5,000.00.**

3530 Purchases which do not involve an expenditure of more than Five  
3531 Thousand Dollars (\$5,000.00), exclusive of freight or shipping  
3532 charges, may be made without advertising or otherwise requesting  
3533 competitive bids. However, nothing contained in this paragraph

3534 (a) shall be construed to prohibit any agency or governing  
3535 authority from establishing procedures which require competitive  
3536 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

3537 (b) **Bidding procedure for purchases over \$5,000.00 but**

3538 **not over \$50,000.00.** Purchases which involve an expenditure of  
3539 more than Five Thousand Dollars (\$5,000.00) but not more than  
3540 Fifty Thousand Dollars (\$50,000.00), exclusive of freight and  
3541 shipping charges may be made from the lowest and best bidder  
3542 without publishing or posting advertisement for bids, provided at  
3543 least two (2) competitive written bids have been obtained. Any  
3544 state agency or community/junior college purchasing commodities or  
3545 procuring construction pursuant to this paragraph (b) may  
3546 authorize its purchasing agent, or his designee, to accept the  
3547 lowest competitive written bid under Fifty Thousand Dollars  
3548 (\$50,000.00). Any governing authority purchasing commodities  
3549 pursuant to this paragraph (b) may authorize its purchasing agent,  
3550 or his designee, with regard to governing authorities other than  
3551 counties, or its purchase clerk, or his designee, with regard to





3552 counties, to accept the lowest and best competitive written bid.  
3553 Such authorization shall be made in writing by the governing  
3554 authority and shall be maintained on file in the primary office of  
3555 the agency and recorded in the official minutes of the governing  
3556 authority, as appropriate. The purchasing agent or the purchase  
3557 clerk, or their designee, as the case may be, and not the  
3558 governing authority, shall be liable for any penalties and/or  
3559 damages as may be imposed by law for any act or omission of the  
3560 purchasing agent or purchase clerk, or their designee,  
3561 constituting a violation of law in accepting any bid without  
3562 approval by the governing authority. The term "competitive  
3563 written bid" shall mean a bid submitted on a bid form furnished by  
3564 the buying agency or governing authority and signed by authorized  
3565 personnel representing the vendor, or a bid submitted on a  
3566 vendor's letterhead or identifiable bid form and signed by  
3567 authorized personnel representing the vendor. "Competitive" shall  
3568 mean that the bids are developed based upon comparable  
3569 identification of the needs and are developed independently and  
3570 without knowledge of other bids or prospective bids. Any bid item  
3571 for construction in excess of Five Thousand Dollars (\$5,000.00)  
3572 shall be broken down by components to provide detail of component  
3573 description and pricing. These details shall be submitted with  
3574 the written bids and become part of the bid evaluation criteria.  
3575 Bids may be submitted by facsimile, electronic mail or other  
3576 generally accepted method of information distribution. Bids



3577 submitted by electronic transmission shall not require the  
3578 signature of the vendor's representative unless required by  
3579 agencies or governing authorities.

3580 (c) **Bidding procedure for purchases over \$50,000.00.**

3581 (i) **Publication requirement.**

3582 1. Purchases which involve an expenditure of  
3583 more than Fifty Thousand Dollars (\$50,000.00), exclusive of  
3584 freight and shipping charges, may be made from the lowest and best  
3585 bidder after advertising for competitive bids once each week for  
3586 two (2) consecutive weeks in a regular newspaper published in the  
3587 county or municipality in which such agency or governing authority  
3588 is located. However, all American Recovery and Reinvestment Act  
3589 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)  
3590 shall be bid. All references to American Recovery and  
3591 Reinvestment Act projects in this section shall not apply to  
3592 programs identified in Division B of the American Recovery and  
3593 Reinvestment Act.

3594 2. The purchasing entity may designate the  
3595 method by which the bids will be received, including, but not  
3596 limited to, bids sealed in an envelope, bids received  
3597 electronically in a secure system, bids received via a reverse  
3598 auction, or bids received by any other method that promotes open  
3599 competition and has been approved by the Office of Purchasing and  
3600 Travel. However, reverse auction shall not be used for any public



3601 contract for design or construction of public facilities,  
3602 including buildings, roads and bridges.

3603                   3. The date as published for the bid opening  
3604 shall not be less than seven (7) working days after the last  
3605 published notice; however, if the purchase involves a construction  
3606 project in which the estimated cost is in excess of Fifty Thousand  
3607 Dollars (\$50,000.00), such bids shall not be opened in less than  
3608 fifteen (15) working days after the last notice is published and  
3609 the notice for the purchase of such construction shall be  
3610 published once each week for two (2) consecutive weeks. However,  
3611 all American Recovery and Reinvestment Act projects in excess of  
3612 Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any  
3613 projects in excess of Twenty-five Thousand Dollars (\$25,000.00)  
3614 under the American Recovery and Reinvestment Act, publication  
3615 shall be made one (1) time and the bid opening for construction  
3616 projects shall not be less than ten (10) working days after the  
3617 date of the published notice. The notice of intention to let  
3618 contracts or purchase equipment shall state the time and place at  
3619 which bids shall be received, list the contracts to be made or  
3620 types of equipment or supplies to be purchased, and, if all plans  
3621 and/or specifications are not published, refer to the plans and/or  
3622 specifications on file. If there is no newspaper published in the  
3623 county or municipality, then such notice shall be given by posting  
3624 same at the courthouse, or for municipalities at the city hall,  
3625 and at two (2) other public places in the county or municipality,



3626 and also by publication once each week for two (2) consecutive  
3627 weeks in some newspaper having a general circulation in the county  
3628 or municipality in the above-provided manner. On the same date  
3629 that the notice is submitted to the newspaper for publication, the  
3630 agency or governing authority involved shall mail written notice  
3631 to, or provide electronic notification to the main office of the  
3632 Mississippi Procurement Technical Assistance Program under the  
3633 Mississippi Development Authority that contains the same  
3634 information as that in the published notice. Submissions received  
3635 by the Mississippi Procurement Technical Assistance Program for  
3636 projects funded by the American Recovery and Reinvestment Act  
3637 shall be displayed on a separate and unique Internet web page  
3638 accessible to the public and maintained by the Mississippi  
3639 Development Authority for the Mississippi Procurement Technical  
3640 Assistance Program. Those American Recovery and Reinvestment Act  
3641 related submissions shall be publicly posted within twenty-four  
3642 (24) hours of receipt by the Mississippi Development Authority and  
3643 the bid opening shall not occur until the submission has been  
3644 posted for ten (10) consecutive days. The Department of Finance  
3645 and Administration shall maintain information regarding contracts  
3646 and other expenditures from the American Recovery and Reinvestment  
3647 Act, on a unique Internet web page accessible to the public. The  
3648 Department of Finance and Administration shall promulgate rules  
3649 regarding format, content and deadlines, unless otherwise  
3650 specified by law, of the posting of award notices, contract



3651 execution and subsequent amendments, links to the contract  
3652 documents, expenditures against the awarded contracts and general  
3653 expenditures of funds from the American Recovery and Reinvestment  
3654 Act. Within one (1) working day of the contract award, the agency  
3655 or governing authority shall post to the designated web page  
3656 maintained by the Department of Finance and Administration, notice  
3657 of the award, including the award recipient, the contract amount,  
3658 and a brief summary of the contract in accordance with rules  
3659 promulgated by the department. Within one (1) working day of the  
3660 contract execution, the agency or governing authority shall post  
3661 to the designated web page maintained by the Department of Finance  
3662 and Administration a summary of the executed contract and make a  
3663 copy of the appropriately redacted contract documents available  
3664 for linking to the designated web page in accordance with the  
3665 rules promulgated by the department. The information provided by  
3666 the agency or governing authority shall be posted to the web page  
3667 for the duration of the American Recovery and Reinvestment Act  
3668 funding or until the project is completed, whichever is longer.

3669 (ii) **Bidding process amendment procedure.** If all  
3670 plans and/or specifications are published in the notification,  
3671 then the plans and/or specifications may not be amended. If all  
3672 plans and/or specifications are not published in the notification,  
3673 then amendments to the plans/specifications, bid opening date, bid  
3674 opening time and place may be made, provided that the agency or  
3675 governing authority maintains a list of all prospective bidders



3676 who are known to have received a copy of the bid documents and all  
3677 such prospective bidders are sent copies of all amendments. This  
3678 notification of amendments may be made via mail, facsimile,  
3679 electronic mail or other generally accepted method of information  
3680 distribution. No addendum to bid specifications may be issued  
3681 within two (2) working days of the time established for the  
3682 receipt of bids unless such addendum also amends the bid opening  
3683 to a date not less than five (5) working days after the date of  
3684 the addendum.

3685                   (iii) **Filing requirement.** In all cases involving  
3686 governing authorities, before the notice shall be published or  
3687 posted, the plans or specifications for the construction or  
3688 equipment being sought shall be filed with the clerk of the board  
3689 of the governing authority. In addition to these requirements, a  
3690 bid file shall be established which shall indicate those vendors  
3691 to whom such solicitations and specifications were issued, and  
3692 such file shall also contain such information as is pertinent to  
3693 the bid.

3694                   (iv) **Specification restrictions.**

3695                   1. Specifications pertinent to such bidding  
3696 shall be written so as not to exclude comparable equipment of  
3697 domestic manufacture. However, if valid justification is  
3698 presented, the Department of Finance and Administration or the  
3699 board of a governing authority may approve a request for specific  
3700 equipment necessary to perform a specific job. Further, such



3701 justification, when placed on the minutes of the board of a  
3702 governing authority, may serve as authority for that governing  
3703 authority to write specifications to require a specific item of  
3704 equipment needed to perform a specific job. In addition to these  
3705 requirements, from and after July 1, 1990, vendors of relocatable  
3706 classrooms and the specifications for the purchase of such  
3707 relocatable classrooms published by local school boards shall meet  
3708 all pertinent regulations of the State Board of Education,  
3709 including prior approval of such bid by the State Department of  
3710 Education.

3711                   2. Specifications for construction projects  
3712 may include an allowance for commodities, equipment, furniture,  
3713 construction materials or systems in which prospective bidders are  
3714 instructed to include in their bids specified amounts for such  
3715 items so long as the allowance items are acquired by the vendor in  
3716 a commercially reasonable manner and approved by the  
3717 agency/governing authority. Such acquisitions shall not be made  
3718 to circumvent the public purchasing laws.

3719                   (v) Agencies and governing authorities may  
3720 establish secure procedures by which bids may be submitted via  
3721 electronic means.

3722                   (d) **Lowest and best bid decision procedure.**

3723                   (i) **Decision procedure.** Purchases may be made  
3724 from the lowest and best bidder. In determining the lowest and  
3725 best bid, freight and shipping charges shall be included.



3726 Life-cycle costing, total cost bids, warranties, guaranteed  
3727 buy-back provisions and other relevant provisions may be included  
3728 in the best bid calculation. All best bid procedures for state  
3729 agencies must be in compliance with regulations established by the  
3730 Department of Finance and Administration. If any governing  
3731 authority accepts a bid other than the lowest bid actually  
3732 submitted, it shall place on its minutes detailed calculations and  
3733 narrative summary showing that the accepted bid was determined to  
3734 be the lowest and best bid, including the dollar amount of the  
3735 accepted bid and the dollar amount of the lowest bid. No agency  
3736 or governing authority shall accept a bid based on items not  
3737 included in the specifications.

3738 (ii) **Decision procedure for Certified Purchasing**  
3739 **Offices.** In addition to the decision procedure set forth in \* \* \*  
3740 subparagraph (i) of this paragraph (d), Certified Purchasing  
3741 Offices may also use the following procedure: Purchases may be  
3742 made from the bidder offering the best value. In determining the  
3743 best value bid, freight and shipping charges shall be included.  
3744 Life-cycle costing, total cost bids, warranties, guaranteed  
3745 buy-back provisions, documented previous experience, training  
3746 costs and other relevant provisions, including, but not limited  
3747 to, a bidder having a local office and inventory located within  
3748 the jurisdiction of the governing authority, may be included in  
3749 the best value calculation. This provision shall authorize  
3750 Certified Purchasing Offices to utilize a Request For Proposals





3751 (RFP) process when purchasing commodities. All best value  
3752 procedures for state agencies must be in compliance with  
3753 regulations established by the Department of Finance and  
3754 Administration. No agency or governing authority shall accept a  
3755 bid based on items or criteria not included in the specifications.

3756 (iii) **Decision procedure for Mississippi**

3757 **Landmarks.** In addition to the decision procedure set forth  
3758 in \* \* \* subparagraph (i) of this paragraph (d), where purchase  
3759 involves renovation, restoration, or both, of the State Capitol  
3760 Building or any other historical building designated for at least  
3761 five (5) years as a Mississippi Landmark by the Board of Trustees  
3762 of the Department of Archives and History under the authority of  
3763 Sections 39-7-7 and 39-7-11, the agency or governing authority may  
3764 use the following procedure: Purchases may be made from the  
3765 lowest and best prequalified bidder. Prequalification of bidders  
3766 shall be determined not less than fifteen (15) working days before  
3767 the first published notice of bid opening. Prequalification  
3768 criteria shall be limited to bidder's knowledge and experience in  
3769 historical restoration, preservation and renovation. In  
3770 determining the lowest and best bid, freight and shipping charges  
3771 shall be included. Life-cycle costing, total cost bids,  
3772 warranties, guaranteed buy-back provisions and other relevant  
3773 provisions may be included in the best bid calculation. All best  
3774 bid and prequalification procedures for state agencies must be in  
3775 compliance with regulations established by the Department of



3776 Finance and Administration. If any governing authority accepts a  
3777 bid other than the lowest bid actually submitted, it shall place  
3778 on its minutes detailed calculations and narrative summary showing  
3779 that the accepted bid was determined to be the lowest and best  
3780 bid, including the dollar amount of the accepted bid and the  
3781 dollar amount of the lowest bid. No agency or governing authority  
3782 shall accept a bid based on items not included in the  
3783 specifications.

3784 (iv) **Construction project negotiations authority.**

3785 If the lowest and best bid is not more than ten percent (10%)  
3786 above the amount of funds allocated for a public construction or  
3787 renovation project, then the agency or governing authority shall  
3788 be permitted to negotiate with the lowest bidder in order to enter  
3789 into a contract for an amount not to exceed the funds allocated.

3790 (e) **Lease-purchase authorization.** For the purposes of  
3791 this section, the term "equipment" shall mean equipment, furniture  
3792 and, if applicable, associated software and other applicable  
3793 direct costs associated with the acquisition. Any lease-purchase  
3794 of equipment which an agency is not required to lease-purchase  
3795 under the master lease-purchase program pursuant to Section  
3796 31-7-10 and any lease-purchase of equipment which a governing  
3797 authority elects to lease-purchase may be acquired by a  
3798 lease-purchase agreement under this paragraph (e). Lease-purchase  
3799 financing may also be obtained from the vendor or from a  
3800 third-party source after having solicited and obtained at least



3801 two (2) written competitive bids, as defined in paragraph (b) of  
3802 this section, for such financing without advertising for such  
3803 bids. Solicitation for the bids for financing may occur before or  
3804 after acceptance of bids for the purchase of such equipment or,  
3805 where no such bids for purchase are required, at any time before  
3806 the purchase thereof. No such lease-purchase agreement shall be  
3807 for an annual rate of interest which is greater than the overall  
3808 maximum interest rate to maturity on general obligation  
3809 indebtedness permitted under Section 75-17-101, and the term of  
3810 such lease-purchase agreement shall not exceed the useful life of  
3811 equipment covered thereby as determined according to the upper  
3812 limit of the asset depreciation range (ADR) guidelines for the  
3813 Class Life Asset Depreciation Range System established by the  
3814 Internal Revenue Service pursuant to the United States Internal  
3815 Revenue Code and regulations thereunder as in effect on December  
3816 31, 1980, or comparable depreciation guidelines with respect to  
3817 any equipment not covered by ADR guidelines. Any lease-purchase  
3818 agreement entered into pursuant to this paragraph (e) may contain  
3819 any of the terms and conditions which a master lease-purchase  
3820 agreement may contain under the provisions of Section 31-7-10(5),  
3821 and shall contain an annual allocation dependency clause  
3822 substantially similar to that set forth in Section 31-7-10(8).  
3823 Each agency or governing authority entering into a lease-purchase  
3824 transaction pursuant to this paragraph (e) shall maintain with  
3825 respect to each such lease-purchase transaction the same



3826 information as required to be maintained by the Department of  
3827 Finance and Administration pursuant to Section 31-7-10(13).  
3828 However, nothing contained in this section shall be construed to  
3829 permit agencies to acquire items of equipment with a total  
3830 acquisition cost in the aggregate of less than Ten Thousand  
3831 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
3832 equipment, and the purchase thereof by any lessor, acquired by  
3833 lease-purchase under this paragraph and all lease-purchase  
3834 payments with respect thereto shall be exempt from all Mississippi  
3835 sales, use and ad valorem taxes. Interest paid on any  
3836 lease-purchase agreement under this section shall be exempt from  
3837 State of Mississippi income taxation.

3838           (f) **Alternate bid authorization.** When necessary to  
3839 ensure ready availability of commodities for public works and the  
3840 timely completion of public projects, no more than two (2)  
3841 alternate bids may be accepted by a governing authority for  
3842 commodities. No purchases may be made through use of such  
3843 alternate bids procedure unless the lowest and best bidder cannot  
3844 deliver the commodities contained in his bid. In that event,  
3845 purchases of such commodities may be made from one (1) of the  
3846 bidders whose bid was accepted as an alternate.

3847           (g) **Construction contract change authorization.** In the  
3848 event a determination is made by an agency or governing authority  
3849 after a construction contract is let that changes or modifications  
3850 to the original contract are necessary or would better serve the



3851 purpose of the agency or the governing authority, such agency or  
3852 governing authority may, in its discretion, order such changes  
3853 pertaining to the construction that are necessary under the  
3854 circumstances without the necessity of further public bids;  
3855 provided that such change shall be made in a commercially  
3856 reasonable manner and shall not be made to circumvent the public  
3857 purchasing statutes. In addition to any other authorized person,  
3858 the architect or engineer hired by an agency or governing  
3859 authority with respect to any public construction contract shall  
3860 have the authority, when granted by an agency or governing  
3861 authority, to authorize changes or modifications to the original  
3862 contract without the necessity of prior approval of the agency or  
3863 governing authority when any such change or modification is less  
3864 than one percent (1%) of the total contract amount. The agency or  
3865 governing authority may limit the number, manner or frequency of  
3866 such emergency changes or modifications.

3867 (h) **Petroleum purchase alternative.** In addition to  
3868 other methods of purchasing authorized in this chapter, when any  
3869 agency or governing authority shall have a need for gas, diesel  
3870 fuel, oils and/or other petroleum products in excess of the amount  
3871 set forth in paragraph (a) of this section, such agency or  
3872 governing authority may purchase the commodity after having  
3873 solicited and obtained at least two (2) competitive written bids,  
3874 as defined in paragraph (b) of this section. If two (2)  
3875 competitive written bids are not obtained, the entity shall comply



3876 with the procedures set forth in paragraph (c) of this section.  
3877 In the event any agency or governing authority shall have  
3878 advertised for bids for the purchase of gas, diesel fuel, oils and  
3879 other petroleum products and coal and no acceptable bids can be  
3880 obtained, such agency or governing authority is authorized and  
3881 directed to enter into any negotiations necessary to secure the  
3882 lowest and best contract available for the purchase of such  
3883 commodities.

3884           (i) **Road construction petroleum products price**  
3885 **adjustment clause authorization.** Any agency or governing  
3886 authority authorized to enter into contracts for the construction,  
3887 maintenance, surfacing or repair of highways, roads or streets,  
3888 may include in its bid proposal and contract documents a price  
3889 adjustment clause with relation to the cost to the contractor,  
3890 including taxes, based upon an industry-wide cost index, of  
3891 petroleum products including asphalt used in the performance or  
3892 execution of the contract or in the production or manufacture of  
3893 materials for use in such performance. Such industry-wide index  
3894 shall be established and published monthly by the Mississippi  
3895 Department of Transportation with a copy thereof to be mailed,  
3896 upon request, to the clerks of the governing authority of each  
3897 municipality and the clerks of each board of supervisors  
3898 throughout the state. The price adjustment clause shall be based  
3899 on the cost of such petroleum products only and shall not include  
3900 any additional profit or overhead as part of the adjustment. The



3901 bid proposals or document contract shall contain the basis and  
3902 methods of adjusting unit prices for the change in the cost of  
3903 such petroleum products.

3904           (j) **State agency emergency purchase procedure.** If the  
3905 governing board or the executive head, or his designees, of any  
3906 agency of the state shall determine that an emergency exists in  
3907 regard to the purchase of any commodities or repair contracts, so  
3908 that the delay incident to giving opportunity for competitive  
3909 bidding would be detrimental to the interests of the state, then  
3910 the head of such agency, or his designees, shall file with the  
3911 Department of Finance and Administration (i) a statement  
3912 explaining the conditions and circumstances of the emergency,  
3913 which shall include a detailed description of the events leading  
3914 up to the situation and the negative impact to the entity if the  
3915 purchase is made following the statutory requirements set forth in  
3916 paragraph (a), (b) or (c) of this section, and (ii) a certified  
3917 copy of the appropriate minutes of the board of such agency  
3918 requesting the emergency purchase, if applicable. Upon receipt of  
3919 the statement and applicable board certification, the State Fiscal  
3920 Officer, or his designees, may, in writing, authorize the purchase  
3921 or repair without having to comply with competitive bidding  
3922 requirements.

3923           If the governing board or the executive head, or his  
3924 designees, of any agency determines that an emergency exists in  
3925 regard to the purchase of any commodities or repair contracts, so



3926 that the delay incident to giving opportunity for competitive  
3927 bidding would threaten the health or safety of any person, or the  
3928 preservation or protection of property, then the provisions in  
3929 this section for competitive bidding shall not apply, and any  
3930 officer or agent of the agency having general or specific  
3931 authority for making the purchase or repair contract shall approve  
3932 the bill presented for payment, and he shall certify in writing  
3933 from whom the purchase was made, or with whom the repair contract  
3934 was made.

3935 Total purchases made under this paragraph (j) shall only be  
3936 for the purpose of meeting needs created by the emergency  
3937 situation. Following the emergency purchase, documentation of the  
3938 purchase, including a description of the commodity purchased, the  
3939 purchase price thereof and the nature of the emergency shall be  
3940 filed with the Department of Finance and Administration.

3941 (k) **Governing authority emergency purchase procedure.**

3942 If the governing authority, or the governing authority acting  
3943 through its designee, shall determine that an emergency exists in  
3944 regard to the purchase of any commodities or repair contracts, so  
3945 that the delay incident to giving opportunity for competitive  
3946 bidding would be detrimental to the interest of the governing  
3947 authority, then the provisions herein for competitive bidding  
3948 shall not apply and any officer or agent of such governing  
3949 authority having general or special authority therefor in making  
3950 such purchase or repair shall approve the bill presented therefor,





3951 and he shall certify in writing thereon from whom such purchase  
3952 was made, or with whom such a repair contract was made. At the  
3953 board meeting next following the emergency purchase or repair  
3954 contract, documentation of the purchase or repair contract,  
3955 including a description of the commodity purchased, the price  
3956 thereof and the nature of the emergency shall be presented to the  
3957 board and shall be placed on the minutes of the board of such  
3958 governing authority.

3959 (1) **Hospital purchase, lease-purchase and lease**  
3960 **authorization.**

3961 (i) The commissioners or board of trustees of any  
3962 public hospital may contract with such lowest and best bidder for  
3963 the purchase or lease-purchase of any commodity under a contract  
3964 of purchase or lease-purchase agreement whose obligatory payment  
3965 terms do not exceed five (5) years.

3966 (ii) In addition to the authority granted in  
3967 subparagraph (i) of this paragraph (1), the commissioners or board  
3968 of trustees is authorized to enter into contracts for the lease of  
3969 equipment or services, or both, which it considers necessary for  
3970 the proper care of patients if, in its opinion, it is not  
3971 financially feasible to purchase the necessary equipment or  
3972 services. Any such contract for the lease of equipment or  
3973 services executed by the commissioners or board shall not exceed a  
3974 maximum of five (5) years' duration and shall include a  
3975 cancellation clause based on unavailability of funds. If such



3976 cancellation clause is exercised, there shall be no further  
3977 liability on the part of the lessee. Any such contract for the  
3978 lease of equipment or services executed on behalf of the  
3979 commissioners or board that complies with the provisions of this  
3980 subparagraph (ii) shall be excepted from the bid requirements set  
3981 forth in this section.

3982 (m) **Exceptions from bidding requirements.** Excepted  
3983 from bid requirements are:

3984 (i) **Purchasing agreements approved by department.**

3985 Purchasing agreements, contracts and maximum price regulations  
3986 executed or approved by the Department of Finance and  
3987 Administration.

3988 (ii) **Outside equipment repairs.** Repairs to  
3989 equipment, when such repairs are made by repair facilities in the  
3990 private sector; however, engines, transmissions, rear axles and/or  
3991 other such components shall not be included in this exemption when  
3992 replaced as a complete unit instead of being repaired and the need  
3993 for such total component replacement is known before disassembly  
3994 of the component; however, invoices identifying the equipment,  
3995 specific repairs made, parts identified by number and name,  
3996 supplies used in such repairs, and the number of hours of labor  
3997 and costs therefor shall be required for the payment for such  
3998 repairs.

3999 (iii) **In-house equipment repairs.** Purchases of  
4000 parts for repairs to equipment, when such repairs are made by



4001 personnel of the agency or governing authority; however, entire  
4002 assemblies, such as engines or transmissions, shall not be  
4003 included in this exemption when the entire assembly is being  
4004 replaced instead of being repaired.

4005                   (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
4006 of gravel or fill dirt which are to be removed and transported by  
4007 the purchaser.

4008                   (v) **Governmental equipment auctions.** Motor  
4009 vehicles or other equipment purchased from a federal agency or  
4010 authority, another governing authority or state agency of the  
4011 State of Mississippi, or any governing authority or state agency  
4012 of another state at a public auction held for the purpose of  
4013 disposing of such vehicles or other equipment. Any purchase by a  
4014 governing authority under the exemption authorized by this  
4015 subparagraph (v) shall require advance authorization spread upon  
4016 the minutes of the governing authority to include the listing of  
4017 the item or items authorized to be purchased and the maximum bid  
4018 authorized to be paid for each item or items.

4019                   (vi) **Intergovernmental sales and transfers.**  
4020 Purchases, sales, transfers or trades by governing authorities or  
4021 state agencies when such purchases, sales, transfers or trades are  
4022 made by a private treaty agreement or through means of  
4023 negotiation, from any federal agency or authority, another  
4024 governing authority or state agency of the State of Mississippi,  
4025 or any state agency or governing authority of another state.



4026 Nothing in this section shall permit such purchases through public  
4027 auction except as provided for in subparagraph (v) of this \* \* \*  
4028 paragraph (m). It is the intent of this section to allow  
4029 governmental entities to dispose of and/or purchase commodities  
4030 from other governmental entities at a price that is agreed to by  
4031 both parties. This shall allow for purchases and/or sales at  
4032 prices which may be determined to be below the market value if the  
4033 selling entity determines that the sale at below market value is  
4034 in the best interest of the taxpayers of the state. Governing  
4035 authorities shall place the terms of the agreement and any  
4036 justification on the minutes, and state agencies shall obtain  
4037 approval from the Department of Finance and Administration, prior  
4038 to releasing or taking possession of the commodities.

4039 (vii) **Perishable supplies or food.** Perishable  
4040 supplies or food purchased for use in connection with hospitals,  
4041 the school lunch programs, homemaking programs and for the feeding  
4042 of county or municipal prisoners.

4043 (viii) **Single source items.** Noncompetitive items  
4044 available from one (1) source only. In connection with the  
4045 purchase of noncompetitive items only available from one (1)  
4046 source, a certification of the conditions and circumstances  
4047 requiring the purchase shall be filed by the agency with the  
4048 Department of Finance and Administration and by the governing  
4049 authority with the board of the governing authority. Upon receipt  
4050 of that certification the Department of Finance and Administration



4051 or the board of the governing authority, as the case may be, may,  
4052 in writing, authorize the purchase, which authority shall be noted  
4053 on the minutes of the body at the next regular meeting thereafter.  
4054 In those situations, a governing authority is not required to  
4055 obtain the approval of the Department of Finance and  
4056 Administration. Following the purchase, the executive head of the  
4057 state agency, or his designees, shall file with the Department of  
4058 Finance and Administration, documentation of the purchase,  
4059 including a description of the commodity purchased, the purchase  
4060 price thereof and the source from whom it was purchased.

4061 (ix) **Waste disposal facility construction**  
4062 **contracts.** Construction of incinerators and other facilities for  
4063 disposal of solid wastes in which products either generated  
4064 therein, such as steam, or recovered therefrom, such as materials  
4065 for recycling, are to be sold or otherwise disposed of; however,  
4066 in constructing such facilities, a governing authority or agency  
4067 shall publicly issue requests for proposals, advertised for in the  
4068 same manner as provided herein for seeking bids for public  
4069 construction projects, concerning the design, construction,  
4070 ownership, operation and/or maintenance of such facilities,  
4071 wherein such requests for proposals when issued shall contain  
4072 terms and conditions relating to price, financial responsibility,  
4073 technology, environmental compatibility, legal responsibilities  
4074 and such other matters as are determined by the governing  
4075 authority or agency to be appropriate for inclusion; and after



4076 responses to the request for proposals have been duly received,  
4077 the governing authority or agency may select the most qualified  
4078 proposal or proposals on the basis of price, technology and other  
4079 relevant factors and from such proposals, but not limited to the  
4080 terms thereof, negotiate and enter contracts with one or more of  
4081 the persons or firms submitting proposals.

4082                   (x) **Hospital group purchase contracts.** Supplies,  
4083 commodities and equipment purchased by hospitals through group  
4084 purchase programs pursuant to Section 31-7-38.

4085                   (xi) **Information technology products.** Purchases  
4086 of information technology products made by governing authorities  
4087 under the provisions of purchase schedules, or contracts executed  
4088 or approved by the Mississippi Department of Information  
4089 Technology Services and designated for use by governing  
4090 authorities.

4091                   (xii) **Energy efficiency services and equipment.**  
4092 Energy efficiency services and equipment acquired by school  
4093 districts, community and junior colleges, institutions of higher  
4094 learning and state agencies or other applicable governmental  
4095 entities on a shared-savings, lease or lease-purchase basis  
4096 pursuant to Section 31-7-14.

4097                   (xiii) **Municipal electrical utility system fuel.**  
4098 Purchases of coal and/or natural gas by municipally owned electric  
4099 power generating systems that have the capacity to use both coal  
4100 and natural gas for the generation of electric power.



4101 (xiv) **Library books and other reference materials.**

4102 Purchases by libraries or for libraries of books and periodicals;  
4103 processed film, videocassette tapes, filmstrips and slides;  
4104 recorded audiotapes, cassettes and diskettes; and any such items  
4105 as would be used for teaching, research or other information  
4106 distribution; however, equipment such as projectors, recorders,  
4107 audio or video equipment, and monitor televisions are not exempt  
4108 under this subparagraph.

4109 (xv) **Unmarked vehicles.** Purchases of unmarked  
4110 vehicles when such purchases are made in accordance with  
4111 purchasing regulations adopted by the Department of Finance and  
4112 Administration pursuant to Section 31-7-9(2).

4113 (xvi) **Election ballots.** Purchases of ballots  
4114 printed pursuant to Section 23-15-351.

4115 (xvii) **Multichannel interactive video systems.**  
4116 From and after July 1, 1990, contracts by Mississippi Authority  
4117 for Educational Television with any private educational  
4118 institution or private nonprofit organization whose purposes are  
4119 educational in regard to the construction, purchase, lease or  
4120 lease-purchase of facilities and equipment and the employment of  
4121 personnel for providing multichannel interactive video systems  
4122 (ITSF) in the school districts of this state.

4123 (xviii) **Purchases of prison industry products by**  
4124 **the Department of Corrections, regional correctional facilities or**  
4125 **privately owned prisons.** Purchases made by the Mississippi



4126 Department of Corrections, regional correctional facilities or  
4127 privately owned prisons involving any item that is manufactured,  
4128 processed, grown or produced from the state's prison industries.

4129 (xix) **Undercover operations equipment.** Purchases  
4130 of surveillance equipment or any other high-tech equipment to be  
4131 used by law enforcement agents in undercover operations, provided  
4132 that any such purchase shall be in compliance with regulations  
4133 established by the Department of Finance and Administration.

4134 (xx) **Junior college books for rent.** Purchases by  
4135 community or junior colleges of textbooks which are obtained for  
4136 the purpose of renting such books to students as part of a book  
4137 service system.

4138 (xxi) **Certain school district purchases.**  
4139 Purchases of commodities made by school districts from vendors  
4140 with which any levying authority of the school district, as  
4141 defined in Section 37-57-1, has contracted through competitive  
4142 bidding procedures for purchases of the same commodities.

4143 (xxii) **Garbage, solid waste and sewage contracts.**  
4144 Contracts for garbage collection or disposal, contracts for solid  
4145 waste collection or disposal and contracts for sewage collection  
4146 or disposal.

4147 (xxiii) **Municipal water tank maintenance**  
4148 **contracts.** Professional maintenance program contracts for the  
4149 repair or maintenance of municipal water tanks, which provide  
4150 professional services needed to maintain municipal water storage





4151 tanks for a fixed annual fee for a duration of two (2) or more  
4152 years.

4153 (xxiv) **Purchases of Mississippi Industries for the**  
4154 **Blind products.** Purchases made by state agencies or governing  
4155 authorities involving any item that is manufactured, processed or  
4156 produced by the Mississippi Industries for the Blind.

4157 (xxv) **Purchases of state-adopted textbooks.**  
4158 Purchases of state-adopted textbooks by public school districts.

4159 (xxvi) **Certain purchases under the Mississippi**  
4160 **Major Economic Impact Act.** Contracts entered into pursuant to the  
4161 provisions of Section 57-75-9(2), (3) and (4).

4162 (xxvii) **Used heavy or specialized machinery or**  
4163 **equipment for installation of soil and water conservation**  
4164 **practices purchased at auction.** Used heavy or specialized  
4165 machinery or equipment used for the installation and  
4166 implementation of soil and water conservation practices or  
4167 measures purchased subject to the restrictions provided in  
4168 Sections 69-27-331 through 69-27-341. Any purchase by the State  
4169 Soil and Water Conservation Commission under the exemption  
4170 authorized by this subparagraph shall require advance  
4171 authorization spread upon the minutes of the commission to include  
4172 the listing of the item or items authorized to be purchased and  
4173 the maximum bid authorized to be paid for each item or items.



4174 (xxviii) **Hospital lease of equipment or services.**  
4175 Leases by hospitals of equipment or services if the leases are in  
4176 compliance with paragraph (1)(ii).

4177 (xxix) **Purchases made pursuant to qualified**  
4178 **cooperative purchasing agreements.** Purchases made by certified  
4179 purchasing offices of state agencies or governing authorities  
4180 under cooperative purchasing agreements previously approved by the  
4181 Office of Purchasing and Travel and established by or for any  
4182 municipality, county, parish or state government or the federal  
4183 government, provided that the notification to potential  
4184 contractors includes a clause that sets forth the availability of  
4185 the cooperative purchasing agreement to other governmental  
4186 entities. Such purchases shall only be made if the use of the  
4187 cooperative purchasing agreements is determined to be in the best  
4188 interest of the governmental entity.

4189 (xxx) **School yearbooks.** Purchases of school  
4190 yearbooks by state agencies or governing authorities; provided,  
4191 however, that state agencies and governing authorities shall use  
4192 for these purchases the RFP process as set forth in the  
4193 Mississippi Procurement Manual adopted by the Office of Purchasing  
4194 and Travel.

4195 (xxxii) **Design-build method and dual-phase**  
4196 **design-build method of contracting.** Contracts entered into under  
4197 the provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.



4198 (xxxii) **Toll roads and bridge construction**  
4199 **projects.** Contracts entered into under the provisions of Section  
4200 65-43-1 or 65-43-3.

4201 (xxxiii) **Certain purchases under Section 57-1-221.**  
4202 Contracts entered into pursuant to the provisions of Section  
4203 57-1-221.

4204 (xxxiv) **Certain transfers made pursuant to the**  
4205 **provisions of Section 57-105-1(7).** Transfers of public property  
4206 or facilities under Section 57-105-1(7) and construction related  
4207 to such public property or facilities.

4208 (xxxv) **Certain purchases or transfers entered into**  
4209 **with local electrical power associations.** Contracts or agreements  
4210 entered into under the provisions of Section 55-3-33.

4211 (n) **Term contract authorization.** All contracts for the  
4212 purchase of:

4213 (i) All contracts for the purchase of commodities,  
4214 equipment and public construction (including, but not limited to,  
4215 repair and maintenance), may be let for periods of not more than  
4216 sixty (60) months in advance, subject to applicable statutory  
4217 provisions prohibiting the letting of contracts during specified  
4218 periods near the end of terms of office. Term contracts for a  
4219 period exceeding twenty-four (24) months shall also be subject to  
4220 ratification or cancellation by governing authority boards taking  
4221 office subsequent to the governing authority board entering the  
4222 contract.



4223                   (ii) Bid proposals and contracts may include price  
4224 adjustment clauses with relation to the cost to the contractor  
4225 based upon a nationally published industry-wide or nationally  
4226 published and recognized cost index. The cost index used in a  
4227 price adjustment clause shall be determined by the Department of  
4228 Finance and Administration for the state agencies and by the  
4229 governing board for governing authorities. The bid proposal and  
4230 contract documents utilizing a price adjustment clause shall  
4231 contain the basis and method of adjusting unit prices for the  
4232 change in the cost of such commodities, equipment and public  
4233 construction.

4234                   (o) **Purchase law violation prohibition and vendor**  
4235 **penalty.** No contract or purchase as herein authorized shall be  
4236 made for the purpose of circumventing the provisions of this  
4237 section requiring competitive bids, nor shall it be lawful for any  
4238 person or concern to submit individual invoices for amounts within  
4239 those authorized for a contract or purchase where the actual value  
4240 of the contract or commodity purchased exceeds the authorized  
4241 amount and the invoices therefor are split so as to appear to be  
4242 authorized as purchases for which competitive bids are not  
4243 required. Submission of such invoices shall constitute a  
4244 misdemeanor punishable by a fine of not less than Five Hundred  
4245 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
4246 or by imprisonment for thirty (30) days in the county jail, or



4247 both such fine and imprisonment. In addition, the claim or claims  
4248 submitted shall be forfeited.

4249 (p) **Electrical utility petroleum-based equipment**  
4250 **purchase procedure.** When in response to a proper advertisement  
4251 therefor, no bid firm as to price is submitted to an electric  
4252 utility for power transformers, distribution transformers, power  
4253 breakers, reclosers or other articles containing a petroleum  
4254 product, the electric utility may accept the lowest and best bid  
4255 therefor although the price is not firm.

4256 (q) **Fuel management system bidding procedure.** Any  
4257 governing authority or agency of the state shall, before  
4258 contracting for the services and products of a fuel management or  
4259 fuel access system, enter into negotiations with not fewer than  
4260 two (2) sellers of fuel management or fuel access systems for  
4261 competitive written bids to provide the services and products for  
4262 the systems. In the event that the governing authority or agency  
4263 cannot locate two (2) sellers of such systems or cannot obtain  
4264 bids from two (2) sellers of such systems, it shall show proof  
4265 that it made a diligent, good-faith effort to locate and negotiate  
4266 with two (2) sellers of such systems. Such proof shall include,  
4267 but not be limited to, publications of a request for proposals and  
4268 letters soliciting negotiations and bids. For purposes of this  
4269 paragraph (q), a fuel management or fuel access system is an  
4270 automated system of acquiring fuel for vehicles as well as  
4271 management reports detailing fuel use by vehicles and drivers, and



4272 the term "competitive written bid" shall have the meaning as  
4273 defined in paragraph (b) of this section. Governing authorities  
4274 and agencies shall be exempt from this process when contracting  
4275 for the services and products of fuel management or fuel access  
4276 systems under the terms of a state contract established by the  
4277 Office of Purchasing and Travel.

4278 (r) **Solid waste contract proposal procedure.** Before  
4279 entering into any contract for garbage collection or disposal,  
4280 contract for solid waste collection or disposal or contract for  
4281 sewage collection or disposal, which involves an expenditure of  
4282 more than Fifty Thousand Dollars (\$50,000.00), a governing  
4283 authority or agency shall issue publicly a request for proposals  
4284 concerning the specifications for such services which shall be  
4285 advertised for in the same manner as provided in this section for  
4286 seeking bids for purchases which involve an expenditure of more  
4287 than the amount provided in paragraph (c) of this section. Any  
4288 request for proposals when issued shall contain terms and  
4289 conditions relating to price, financial responsibility,  
4290 technology, legal responsibilities and other relevant factors as  
4291 are determined by the governing authority or agency to be  
4292 appropriate for inclusion; all factors determined relevant by the  
4293 governing authority or agency or required by this paragraph (r)  
4294 shall be duly included in the advertisement to elicit proposals.  
4295 After responses to the request for proposals have been duly  
4296 received, the governing authority or agency shall select the most



4297 qualified proposal or proposals on the basis of price, technology  
4298 and other relevant factors and from such proposals, but not  
4299 limited to the terms thereof, negotiate and enter into contracts  
4300 with one or more of the persons or firms submitting proposals. If  
4301 the governing authority or agency deems none of the proposals to  
4302 be qualified or otherwise acceptable, the request for proposals  
4303 process may be reinitiated. Notwithstanding any other provisions  
4304 of this paragraph, where a county with at least thirty-five  
4305 thousand (35,000) nor more than forty thousand (40,000)  
4306 population, according to the 1990 federal decennial census, owns  
4307 or operates a solid waste landfill, the governing authorities of  
4308 any other county or municipality may contract with the governing  
4309 authorities of the county owning or operating the landfill,  
4310 pursuant to a resolution duly adopted and spread upon the minutes  
4311 of each governing authority involved, for garbage or solid waste  
4312 collection or disposal services through contract negotiations.

4313 (s) **Minority set-aside authorization.** Notwithstanding  
4314 any provision of this section to the contrary, any agency or  
4315 governing authority, by order placed on its minutes, may, in its  
4316 discretion, set aside not more than twenty percent (20%) of its  
4317 anticipated annual expenditures for the purchase of commodities  
4318 from minority businesses; however, all such set-aside purchases  
4319 shall comply with all purchasing regulations promulgated by the  
4320 Department of Finance and Administration and shall be subject to  
4321 bid requirements under this section. Set-aside purchases for



4322 which competitive bids are required shall be made from the lowest  
4323 and best minority business bidder. For the purposes of this  
4324 paragraph, the term "minority business" means a business which is  
4325 owned by a majority of persons who are United States citizens or  
4326 permanent resident aliens (as defined by the Immigration and  
4327 Naturalization Service) of the United States, and who are Asian,  
4328 Black, Hispanic or Native American, according to the following  
4329 definitions:

4330 (i) "Asian" means persons having origins in any of  
4331 the original people of the Far East, Southeast Asia, the Indian  
4332 subcontinent, or the Pacific Islands.

4333 (ii) "Black" means persons having origins in any  
4334 black racial group of Africa.

4335 (iii) "Hispanic" means persons of Spanish or  
4336 Portuguese culture with origins in Mexico, South or Central  
4337 America, or the Caribbean Islands, regardless of race.

4338 (iv) "Native American" means persons having  
4339 origins in any of the original people of North America, including  
4340 American Indians, Eskimos and Aleuts.

4341 (t) **Construction punch list restriction.** The  
4342 architect, engineer or other representative designated by the  
4343 agency or governing authority that is contracting for public  
4344 construction or renovation may prepare and submit to the  
4345 contractor only one (1) preliminary punch list of items that do  
4346 not meet the contract requirements at the time of substantial





4347 completion and one (1) final list immediately before final  
4348 completion and final payment.

4349           (u) **Procurement of construction services by state**  
4350 **institutions of higher learning.** Contracts for privately financed  
4351 construction of auxiliary facilities on the campus of a state  
4352 institution of higher learning may be awarded by the Board of  
4353 Trustees of State Institutions of Higher Learning to the lowest  
4354 and best bidder, where sealed bids are solicited, or to the  
4355 offeror whose proposal is determined to represent the best value  
4356 to the citizens of the State of Mississippi, where requests for  
4357 proposals are solicited.

4358           (v) **Insurability of bidders for public construction or**  
4359 **other public contracts.** In any solicitation for bids to perform  
4360 public construction or other public contracts to which this  
4361 section applies including, but not limited to, contracts for  
4362 repair and maintenance, for which the contract will require  
4363 insurance coverage in an amount of not less than One Million  
4364 Dollars (\$1,000,000.00), bidders shall be permitted to either  
4365 submit proof of current insurance coverage in the specified amount  
4366 or demonstrate ability to obtain the required coverage amount of  
4367 insurance if the contract is awarded to the bidder. Proof of  
4368 insurance coverage shall be submitted within five (5) business  
4369 days from bid acceptance.



4370 (w) **Purchase authorization clarification.** Nothing in  
4371 this section shall be construed as authorizing any purchase not  
4372 authorized by law.

4373 **SECTION 42.** Section 41-7-205, Mississippi Code of 1972, is  
4374 amended as follows:

4375 41-7-205. An applicant proposing a project which may be  
4376 governed by the provisions of Section 41-7-171 et seq. may submit  
4377 a determination of reviewability request to obtain a written  
4378 declaratory opinion regarding the reviewability of the proposed  
4379 project. If such opinion is sought, the requestor and department  
4380 shall abide by the provisions of Section 25-43-2.103 as they are  
4381 effective on July 1, 2016, except that the department's response  
4382 shall be provided within forty-five (45) days of the request. A  
4383 health care collaborative as defined in Section 2 of this act may  
4384 seek an opinion from the department about whether a certificate of  
4385 need is not required for a project of the health care  
4386 collaborative because of the sponsoring university or health care  
4387 collaborative's teaching or research mission, as provided in  
4388 Section 18(h) of this act.

4389 **SECTION 43.** The provisions of this act are cumulative and  
4390 shall not be deemed to repeal existing laws, except to the extent  
4391 such laws are clearly inconsistent with the provisions of this  
4392 act.



4393           **SECTION 44.** This act shall take effect and be in force from  
4394 and after July 1, 2017, and shall stand repealed from and after  
4395 June 30, 2017.

