

By: Representative Shows

To: Appropriations

## HOUSE BILL NO. 1160

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
2 DELETE THE REQUIREMENT THAT IN ORDER FOR PURCHASES OF MOTOR  
3 VEHICLES OR OTHER EQUIPMENT AT PUBLIC AUCTIONS TO BE EXEMPT FROM  
4 BID REQUIREMENTS UNDER THE PUBLIC PURCHASING LAWS THAT SUCH  
5 PURCHASES MUST BE MADE FROM A FEDERAL OR STATE AGENCY OR FROM A  
6 GOVERNING AUTHORITY; AND FOR RELATED PURPOSES.

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

8 SECTION 1. Section 31-7-13, Mississippi Code of 1972, is  
9 amended as follows:

10 31-7-13. All agencies and governing authorities shall  
11 purchase their commodities and printing; contract for fire  
12 insurance, automobile insurance, casualty insurance (other than  
13 workers' compensation) and liability insurance; contract for  
14 garbage collection or disposal; contract for solid waste  
15 collection or disposal; contract for sewage collection or  
16 disposal; and contract for public construction as herein provided.

17 (a) Purchases which do not involve an expenditure of  
18 more than One Thousand Five Hundred Dollars (\$1,500.00), exclusive  
19 of freight or shipping charges, may be made without advertising or  
20 otherwise requesting competitive bids. Provided, however, that  
21 nothing contained in this paragraph (a) shall be construed to  
22 prohibit any agency or governing authority from establishing  
23 procedures which require competitive bids on purchases of One  
24 Thousand Five Hundred Dollars (\$1,500.00) or less.

25 (b) Purchases which involve an expenditure of more than  
26 One Thousand Five Hundred Dollars (\$1,500.00) but not more than  
27 Ten Thousand Dollars (\$10,000.00), exclusive of freight and  
28 shipping charges may be made from the lowest and best bidder  
29 without publishing or posting advertisement for bids, provided at

30 least two (2) competitive written bids have been obtained. Any  
31 governing authority purchasing commodities pursuant to this  
32 paragraph (b) may authorize its purchasing agent, or his designee,  
33 with regard to governing authorities other than counties, or its  
34 purchase clerk, or his designee, with regard to counties, to  
35 accept the lowest and best competitive written bid. Such  
36 authorization shall be made in writing by the governing authority  
37 and shall be maintained on file in the primary office of the  
38 agency and recorded in the official minutes of the governing  
39 authority, as appropriate. The purchasing agent or the purchase  
40 clerk, or their designee, as the case may be, and not the  
41 governing authority, shall be liable for any penalties and/or  
42 damages as may be imposed by law for any act or omission of the  
43 purchasing agent or purchase clerk, or their designee,  
44 constituting a violation of law in accepting any bid without  
45 approval by the governing authority. The term "competitive  
46 written bid" shall mean a bid submitted on a bid form furnished by  
47 the buying agency or governing authority and signed by authorized  
48 personnel representing the vendor, or a bid submitted on a  
49 vendor's letterhead or identifiable bid form and signed by  
50 authorized personnel representing the vendor.

51 (c) Purchases which involve an expenditure of more than  
52 Ten Thousand Dollars (\$10,000.00), exclusive of freight and  
53 shipping charges may be made from the lowest and best bidder after  
54 advertising for competitive sealed bids once each week for two (2)  
55 consecutive weeks in a regular newspaper published in the county  
56 or municipality in which such agency or governing authority is  
57 located. The date as published for the bid opening shall not be  
58 less than seven (7) working days after the last published notice;  
59 however, if the purchase involves a construction project in which  
60 the estimated cost is in excess of Fifteen Thousand Dollars  
61 (\$15,000.00), such bids shall not be opened in less than fifteen  
62 (15) working days after the last notice is published and the  
63 notice for the purchase of such construction shall be published  
64 once each week for two (2) consecutive weeks. The notice of  
65 intention to let contracts or purchase equipment shall state the  
66 time and place at which bids shall be received, list the contracts  
67 to be made or types of equipment or supplies to be purchased, and,

68 if all plans and/or specifications are not published, refer to the  
69 plans and/or specifications on file. In all cases involving  
70 governing authorities, before the notice shall be published or  
71 posted, the plans or specifications for the construction or  
72 equipment being sought shall be filed with the clerk of the board  
73 of the governing authority, and there remain. If there is no  
74 newspaper published in the county or municipality, then such  
75 notice shall be given by posting same at the courthouse, or for  
76 municipalities at the city hall, and at two (2) other public  
77 places in the county or municipality, and also by publication once  
78 each week for two (2) consecutive weeks in some newspaper having a  
79 general circulation in the county or municipality in the above  
80 provided manner. On the same date that the notice is submitted to  
81 the newspaper for publication, the agency or governing authority  
82 involved shall mail written notice to the main office of the  
83 Mississippi Contract Procurement Center that contains the same  
84 information as that in the published notice. In addition to these  
85 requirements, agencies shall maintain a vendor file and vendors of  
86 the equipment or commodities being sought may be mailed  
87 solicitations and specifications, and a bid file shall be  
88 established which shall indicate those vendors to whom such  
89 solicitations and specifications were mailed, and such file shall  
90 also contain such information as is pertinent to the bid.  
91 Specifications pertinent to such bidding shall be written so as  
92 not to exclude comparable equipment of domestic manufacture.  
93 Provided, however, that should valid justification be presented,  
94 the Department of Finance and Administration or the board of a  
95 governing authority may approve a request for specific equipment  
96 necessary to perform a specific job. Provided further, that a  
97 registered professional engineer or architect may write  
98 specifications for a governing authority to require a specific  
99 item of equipment available only from limited sources or vendors  
100 when such specifications conform with the rules and regulations  
101 promulgated by an appropriate federal agency regulating such

102 matters under the federal procurement laws. Further, such  
103 justification, when placed on the minutes of the board of a  
104 governing authority, may serve as authority for that governing  
105 authority to write specifications to require a specific item of  
106 equipment needed to perform a specific job. In addition to these  
107 requirements, from and after July 1, 1990, vendors of relocatable  
108 classrooms and the specifications for the purchase of such  
109 relocatable classrooms published by local school boards shall meet  
110 all pertinent regulations of the State Board of Education,  
111 including prior approval of such bid by the State Department of  
112 Education. Nothing in this section shall prohibit any agency or  
113 governing authority from writing specifications to include  
114 life-cycle costing, total cost bids, extended warranties or  
115 guaranteed buy-back provisions, provided that such bid  
116 requirements shall be in compliance with regulations established  
117 by the Department of Audit.

118           (d) (i) Purchases may be made from the lowest and best  
119 bidder. In determining the lowest and best bid, freight and  
120 shipping charges shall be included. If any governing authority  
121 accepts a bid other than the lowest bid actually submitted, it  
122 shall place on its minutes detailed calculations and narrative  
123 summary showing that the accepted bid was determined to be the  
124 lowest and best bid, including the dollar amount of the accepted  
125 bid and the dollar amount of the lowest bid. No agency or  
126 governing authority shall accept a bid based on items not included  
127 in the specifications.

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

134           (iii) Whenever bids are solicited for a public  
135 construction or renovation project and only one (1) bid is

136 received, the agency or the governing authority may accept such  
137 bid if the bid is opened, it is within the funds allocated for the  
138 project, it is responsive to the solicitation and the contractor  
139 is capable of performing the contract in accordance with the  
140 solicitation.

141 (iv) No addendum to bid specifications for such  
142 projects may be issued by the agency or governing authority within  
143 twelve (12) hours of the time established by the agency or  
144 governing authority for the receipt of bids.

145 (e) Any lease-purchase of equipment which an agency is  
146 not required to lease-purchase under the master lease-purchase  
147 program pursuant to Section 31-7-10 and any lease-purchase of  
148 equipment which a governing authority elects to lease-purchase may  
149 be acquired by a lease-purchase agreement under this paragraph  
150 (e). Lease-purchase financing may also be obtained from the  
151 vendor or from a third-party source after having solicited and  
152 obtained at least two (2) written competitive bids, as defined in  
153 paragraph (b) of this section, for such financing without  
154 advertising for such bids. Solicitation for the bids for  
155 financing may occur before or after acceptance of bids for the  
156 purchase of such equipment or, where no such bids for purchase are  
157 required, at any time before the purchase thereof. No such  
158 lease-purchase agreement shall be for an annual rate of interest  
159 which is greater than the overall maximum interest rate to  
160 maturity on general obligation indebtedness permitted under  
161 Section 75-17-101, and the term of such lease-purchase agreement  
162 shall not exceed the useful life of property covered thereby as  
163 determined according to the upper limit of the asset depreciation  
164 range (ADR) guidelines for the Class Life Asset Depreciation Range  
165 System established by the Internal Revenue Service pursuant to the  
166 United States Internal Revenue Code and regulations thereunder as  
167 in effect on December 31, 1980, or comparable depreciation  
168 guidelines with respect to any equipment not covered by ADR  
169 guidelines. Any lease-purchase agreement entered into pursuant to

170 this paragraph (e) may contain any of the terms and conditions  
171 which a master lease-purchase agreement may contain under the  
172 provisions of Section 31-7-10(5), and shall contain an annual  
173 allocation dependency clause substantially similar to that set  
174 forth in Section 31-7-10(8). Each agency or governing authority  
175 entering into a lease-purchase transaction pursuant to this  
176 paragraph (e) shall maintain with respect to each such  
177 lease-purchase transaction the same information as required to be  
178 maintained by the Department of Finance and Administration  
179 pursuant to Section 31-7-10(13). However, nothing contained in  
180 this section shall be construed to permit agencies to acquire  
181 items of equipment with a total acquisition cost in the aggregate  
182 of less than Ten Thousand Dollars (\$10,000.00) by a single  
183 lease-purchase transaction. All equipment, and the purchase  
184 thereof by any lessor, acquired by lease-purchase under this  
185 paragraph and all lease-purchase payments with respect thereto  
186 shall be exempt from all Mississippi sales, use and ad valorem  
187 taxes. Interest paid on any lease-purchase agreement under this  
188 section shall be exempt from State of Mississippi income taxation.

189 (f) When necessary to ensure ready availability of  
190 commodities for public works and the timely completion of public  
191 projects, no more than two (2) alternate bids may be accepted by a  
192 governing authority for commodities. No purchases may be made  
193 through use of such alternate bids procedure unless the lowest and  
194 best bidder, for reasons beyond his control, cannot deliver the  
195 commodities contained in his bid. In that event, purchases of  
196 such commodities may be made from one (1) of the bidders whose bid  
197 was accepted as an alternate.

198 (g) In the event a determination is made by an agency  
199 or governing authority after a construction contract is let that  
200 changes or modifications to the original contract are necessary or  
201 would better serve the purpose of the agency or the governing  
202 authority, such agency or governing authority may, in its  
203 discretion, order such changes pertaining to the construction that

204 are necessary under the circumstances without the necessity of  
205 further public bids; provided that such change shall be made in a  
206 commercially reasonable manner and shall not be made to circumvent  
207 the public purchasing statutes. In addition to any other  
208 authorized person, the architect or engineer hired by an agency or  
209 governing authority with respect to any public construction  
210 contract shall have the authority, when granted by an agency or  
211 governing authority, to authorize changes or modifications to the  
212 original contract without the necessity of prior approval of the  
213 agency or governing authority when any such change or modification  
214 is less than one percent (1%) of the total contract amount. The  
215 agency or governing authority may limit the number, manner or  
216 frequency of such emergency changes or modifications.

217 (h) In the event any agency or governing authority  
218 shall have advertised for bids for the purchase of gas, diesel  
219 fuel, oils and other petroleum products and coal and no acceptable  
220 bids can be obtained, such agency or governing authority is  
221 authorized and directed to enter into any negotiations necessary  
222 to secure the lowest and best contract available for the purchase  
223 of such commodities.

224 (i) Any agency or governing authority authorized to  
225 enter into contracts for the construction, maintenance, surfacing  
226 or repair of highways, roads or streets, may include in its bid  
227 proposal and contract documents a price adjustment clause with  
228 relation to the cost to the contractor, including taxes, based  
229 upon an industry-wide cost index, of petroleum products including  
230 asphalt used in the performance or execution of the contract or in  
231 the production or manufacture of materials for use in such  
232 performance. Such industry-wide index shall be established and  
233 published monthly by the State Department of Transportation with a  
234 copy thereof to be mailed, upon request, to the clerks of the  
235 governing authority of each municipality and the clerks of each  
236 board of supervisors throughout the state. The price adjustment  
237 clause shall be based on the cost of such petroleum products only

238 and shall not include any additional profit or overhead as part of  
239 the adjustment. The bid proposals or document contract shall  
240 contain the basis and methods of adjusting unit prices for the  
241 change in the cost of such petroleum products.

242 (j) If the executive head of any agency of the state  
243 shall determine that an emergency exists in regard to the purchase  
244 of any commodities or repair contracts, so that the delay incident  
245 to giving opportunity for competitive bidding would be detrimental  
246 to the interests of the state, then the provisions herein for  
247 competitive bidding shall not apply and the head of such agency  
248 shall be authorized to make the purchase or repair. Total  
249 purchases so made shall only be for the purpose of meeting needs  
250 created by the emergency situation. In the event such executive  
251 head is responsible to an agency board, at the meeting next  
252 following the emergency purchase, documentation of the purchase,  
253 including a description of the commodity purchased, the purchase  
254 price thereof and the nature of the emergency shall be presented  
255 to the board and placed on the minutes of the board of such  
256 agency. The head of such agency shall, at the earliest possible  
257 date following such emergency purchase, file with the Department  
258 of Finance and Administration (i) a statement under oath  
259 certifying the conditions and circumstances of the emergency, and  
260 (ii) a certified copy of the appropriate minutes of the board of  
261 such agency, if applicable.

262 (k) If the governing authority, or the governing  
263 authority acting through its designee, shall determine that an  
264 emergency exists in regard to the purchase of any commodities or  
265 repair contracts, so that the delay incident to giving opportunity  
266 for competitive bidding would be detrimental to the interest of  
267 the governing authority, then the provisions herein for  
268 competitive bidding shall not apply and any officer or agent of  
269 such governing authority having general or special authority  
270 therefor in making such purchase or repair shall approve the bill  
271 presented therefor, and he shall certify in writing thereon from



272 whom such purchase was made, or with whom such a repair contract  
273 was made. At the board meeting next following the emergency  
274 purchase or repair contract, documentation of the purchase or  
275 repair contract, including a description of the commodity  
276 purchased, the price thereof and the nature of the emergency shall  
277 be presented to the board and shall be placed on the minutes of  
278 the board of such governing authority.

279 (l) The commissioners or board of trustees of any  
280 hospital owned or owned and operated separately or jointly by one  
281 or more counties, cities, towns, supervisors districts or election  
282 districts, or combinations thereof, may contract with such lowest  
283 and best bidder for the purchase or lease of any commodity under a  
284 contract of purchase or lease-purchase agreement whose obligatory  
285 terms do not exceed five (5) years. In addition to the authority  
286 granted herein, the commissioners or board of trustees are  
287 authorized to enter into contracts for the lease of equipment or  
288 services, or both, which it considers necessary for the proper  
289 care of patients if, in its opinion, it is not financially  
290 feasible to purchase the necessary equipment or services. Any  
291 such contract for the lease of equipment or services executed by  
292 the commissioners or board shall not exceed a maximum of five (5)  
293 years' duration and shall include a cancellation clause based on  
294 unavailability of funds. If such cancellation clause is  
295 exercised, there shall be no further liability on the part of the  
296 lessee.

297 (m) Excepted from bid requirements are:

298 (i) Purchasing agreements, contracts and maximum  
299 price regulations executed or approved by the Department of  
300 Finance and Administration.

301 (ii) Repairs to equipment, when such repairs are  
302 made by repair facilities in the private sector; however, engines,  
303 transmissions, rear axles and/or other such components shall not  
304 be included in this exemption when replaced as a complete unit  
305 instead of being repaired and the need for such total component

306 replacement is known before disassembly of the component;  
307 provided, however, that invoices identifying the equipment,  
308 specific repairs made, parts identified by number and name,  
309 supplies used in such repairs, and the number of hours of labor  
310 and costs therefor shall be required for the payment for such  
311 repairs.

312 (iii) Purchases of parts for repairs to equipment,  
313 when such repairs are made by personnel of the agency or governing  
314 authority; however, entire assemblies, such as engines or  
315 transmissions, shall not be included in this exemption when the  
316 entire assembly is being replaced instead of being repaired.

317 (iv) Raw unprocessed deposits of gravel or fill  
318 dirt which are to be removed and transported by the purchaser.

319 (v) Motor vehicles or other equipment  
320 purchased \* \* \* at a public auction held for the purpose of  
321 disposing of such vehicles or other equipment. Any purchase by a  
322 governing authority under the exemption authorized by this  
323 paragraph (v) shall require advance authorization spread upon the  
324 minutes of the governing authority to include the listing of the  
325 item or items authorized to be purchased and the maximum bid  
326 authorized to be paid for each item or items.

327 (vi) Purchases, sales, transfers or trades by  
328 governing authorities or state agencies when such purchases,  
329 sales, transfers or trades are made by a private treaty agreement  
330 or through means of negotiation, from any federal agency or  
331 authority, another governing authority or state agency of the  
332 State of Mississippi, or any state agency of another state. \* \* \*

333 It is the intent of this section to allow governmental entities  
334 to dispose of and/or purchase commodities from other governmental  
335 entities at a price that is agreed to by both parties. This shall  
336 allow for purchases and/or sales at prices which may be determined  
337 to be below the market value if the selling entity determines that  
338 the sale at below market value is in the best interest of the  
339 taxpayers of the state. Governing authorities shall place the

340 terms of the agreement and any justification on the minutes, and  
341 state agencies shall obtain approval from the Department of  
342 Finance and Administration, prior to releasing or taking  
343 possession of the commodities.

344 (vii) Perishable supplies or foods purchased for  
345 use in connection with hospitals, the school lunch programs,  
346 homemaking programs and for the feeding of county or municipal  
347 prisoners.

348 (viii) Noncompetitive items available from one (1)  
349 source only.

350 (ix) Construction of incinerators and other  
351 facilities for disposal of solid wastes in which products either  
352 generated therein, such as steam, or recovered therefrom, such as  
353 materials for recycling, are to be sold or otherwise disposed of;  
354 provided, however, in constructing such facilities a governing  
355 authority or agency shall publicly issue requests for proposals,  
356 advertised for in the same manner as provided herein for seeking  
357 bids for public construction projects, concerning the design,  
358 construction, ownership, operation and/or maintenance of such  
359 facilities, wherein such requests for proposals when issued shall  
360 contain terms and conditions relating to price, financial  
361 responsibility, technology, environmental compatibility, legal  
362 responsibilities and such other matters as are determined by the  
363 governing authority or agency to be appropriate for inclusion; and  
364 after responses to the request for proposals have been duly  
365 received, the governing authority or agency may select the most  
366 qualified proposal or proposals on the basis of price, technology  
367 and other relevant factors and from such proposals, but not  
368 limited to the terms thereof, negotiate and enter contracts with  
369 one or more of the persons or firms submitting proposals.

370 (x) Supplies, commodities and equipment purchased  
371 by hospitals through group purchase programs pursuant to Section  
372 31-7-38.

373 (xi) Purchases of data processing equipment made

374 by governing authorities under the provisions of purchase  
375 agreements, contracts or maximum price regulations executed or  
376 approved by the Mississippi Department of Information Technology  
377 Services.

378 (xii) Energy efficiency services and equipment  
379 acquired by school districts, junior colleges, institutions of  
380 higher learning and state agencies or other applicable  
381 governmental entities on a shared-savings, lease or lease-purchase  
382 basis pursuant to Section 31-7-14.

383 (xiii) Purchases of contracts for fire insurance,  
384 automobile insurance, casualty insurance, health insurance and  
385 liability insurance by governing authorities or agencies.

386 (xiv) Purchases of coal and/or natural gas by  
387 municipally-owned electric power generating systems that have the  
388 capacity to use both coal and natural gas for the generation of  
389 electric power.

390 (xv) Purchases by libraries or for libraries of  
391 books and periodicals; processed film, video cassette tapes,  
392 filmstrips and slides; recorded audio tapes, cassettes and  
393 diskettes; and any such items as would be used for teaching,  
394 research or other information distribution; however, equipment  
395 such as projectors, recorders, audio or video equipment, and  
396 monitor televisions are not exempt under this paragraph.

397 (xvi) Purchases of unmarked vehicles when such  
398 purchases are made in accordance with purchasing regulations  
399 adopted by the Department of Finance and Administration pursuant  
400 to Section 31-7-9(2).

401 (xvii) Sales, transfers or trades of any personal  
402 property between governing authorities within a county or any such  
403 transaction involving governing authorities of two (2) or more  
404 counties.

405 (xviii) Purchases of ballots printed pursuant to  
406 Section 23-15-351.

407 (xix) From and after July 1, 1990, contracts by

408 Mississippi Authority for Educational Television with any private  
409 educational institution or private nonprofit organization whose  
410 purposes are educational in regard to the construction, purchase,  
411 lease or lease-purchase of facilities and equipment and the  
412 employment of personnel for providing multichannel interactive  
413 video systems (ITSF) in the school districts of this state.

414 (xx) From and after January 1, 1991, purchases  
415 made by state agencies involving any item that is manufactured,  
416 processed, grown or produced from the state's prison industries.

417 (xxi) Purchases of surveillance equipment or any  
418 other high-tech equipment to be used by narcotics agents in  
419 undercover operations, provided that any such purchase shall be in  
420 compliance with regulations established by the Department of  
421 Finance and Administration.

422 (xxii) Purchases by community or junior colleges  
423 of textbooks which are obtained for the purpose of renting such  
424 books to students as part of a book service system.

425 (xxiii) Purchases of commodities made by school  
426 districts from vendors with which any levying authority of the  
427 school district, as defined in Section 37-57-1, has contracted  
428 through competitive bidding procedures for purchases of the same  
429 commodities.

430 (xxiv) Emergency purchases made by the Public  
431 Employees' Retirement System pursuant to Section 25-11-15(7).

432 (xxv) Repealed.

433 (xxvi) Contracts for garbage collection or  
434 disposal, contracts for solid waste collection or disposal and  
435 contracts for sewage collection or disposal.

436 (xxvii) Professional maintenance program contracts  
437 for the repair or maintenance of municipal water tanks, which  
438 provide professional services needed to maintain municipal water  
439 storage tanks for a fixed annual fee for a duration of two (2) or  
440 more years.

441 (xxviii) Purchases made by state agencies

442 involving any item that is manufactured, processed or produced by  
443 the Mississippi Industries for the Blind.

444 In connection with the purchase of noncompetitive items only  
445 available from one (1) source, a certification of the conditions  
446 and circumstances requiring the purchase shall be filed by the  
447 agency with the Department of Finance and Administration and by  
448 the governing authority with the board of the governing authority.

449 Upon receipt of such certification the Department of Finance and  
450 Administration or the board of the governing authority, as the  
451 case may be, may, in writing, authorize the purchase, which  
452 authority shall be noted on the minutes of the body at the next  
453 regular meeting thereafter. In such situations, a governing  
454 authority is not required to obtain the approval of the Department  
455 of Finance and Administration.

456 (n) (i) All contracts for the purchase of:

457 (A) Commodities, equipment and public  
458 construction (including, but not limited to, repair and  
459 maintenance), and

460 (B) Water lines, sewer lines, storm drains,  
461 drainage ditches, asphalt milling, traffic striping, asphalt  
462 overlay of streets, and curb and gutter (not to exceed One Hundred  
463 Fifty Thousand Dollars (\$150,000.00) per project listed in this  
464 item B) may be let for periods of not more than twenty-four (24)  
465 months in advance, subject to applicable statutory provisions  
466 prohibiting the letting of contracts during specified periods near  
467 the end of terms of office.

468 (ii) All purchases made by governing authorities,  
469 including purchases made pursuant to the provisions of  
470 subparagraph (i) of this paragraph (n), may be made upon one (1)  
471 purchase order issued per month to each individual vendor prior to  
472 delivery of such commodities provided that each individual  
473 delivery, load or shipment purchased is properly requisitioned and  
474 is properly received and receipted by signed ticket, receipt or  
475 invoice, indicating thereon the point of delivery, and provided

476 that, with respect to counties, such commodities are properly  
477 accounted for by the receiving clerk or an assistant receiving  
478 clerk as provided by Section 31-7-109. Such purchase order shall  
479 be invalid on the first calendar day of the month immediately  
480 following the month in which it was issued. Purchases in such  
481 month immediately following may be made only if a purchase order  
482 is issued for such month. Each monthly purchase order shall be  
483 retained in the records of the governing authority. Agencies may  
484 make purchases as authorized under this subparagraph (ii) in  
485 accordance with such regulations, policies and procedures as are  
486 promulgated by the Department of Finance and Administration.

487 (o) No contract or purchase as herein authorized shall  
488 be made for the purpose of circumventing the provisions of this  
489 section requiring competitive bids, nor shall it be lawful for any  
490 person or concern to submit individual invoices for amounts within  
491 those authorized for a contract or purchase where the actual value  
492 of the contract or commodity purchased exceeds the authorized  
493 amount and the invoices therefor are split so as to appear to be  
494 authorized as purchases for which competitive bids are not  
495 required. Submission of such invoices shall constitute a  
496 misdemeanor punishable by a fine of not less than Five Hundred  
497 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
498 or by imprisonment for thirty (30) days in the county jail, or  
499 both such fine and imprisonment. In addition, the claim or claims  
500 submitted shall be forfeited.

501 (p) When in response to a proper advertisement  
502 therefor, no bid firm as to price is submitted to an electric  
503 utility for power transformers, distribution transformers, power  
504 breakers, reclosers or other articles containing a petroleum  
505 product, the electric utility may accept the lowest and best bid  
506 therefor although the price is not firm.

507 (q) The prohibitions and restrictions set forth in  
508 Sections 19-11-27, 21-35-27 and 31-7-49 shall not apply to a  
509 contract, lease or lease-purchase agreement entered pursuant to

510 the requirements of this chapter.

511 (r) For the purposes of this section, the term  
512 "purchase" shall mean the total amount of money encumbered by a  
513 single purchase order.

514 (s) Any governing authority or agency of the state  
515 shall, before contracting for the services and products of a fuel  
516 management or fuel access system, enter into negotiations with not  
517 fewer than two (2) sellers of fuel management or fuel access  
518 systems for competitive written bids to provide the services and  
519 products for the systems. In the event that the governing  
520 authority or agency cannot locate two (2) sellers of such systems  
521 or cannot obtain bids from two (2) sellers of such systems, it  
522 shall show proof that it made a diligent, good-faith effort to  
523 locate and negotiate with two (2) sellers of such systems. Such  
524 proof shall include, but not be limited to, publications of a  
525 request for proposals and letters soliciting negotiations and  
526 bids. For purposes of this paragraph (s), a fuel management or  
527 fuel access system is an automated system of acquiring fuel for  
528 vehicles as well as management reports detailing fuel use by  
529 vehicles and drivers, and the term "competitive written bid" shall  
530 have the meaning as defined in paragraph (b) of this section.

531 (t) Before entering into any contract for garbage  
532 collection or disposal, contract for solid waste collection or  
533 disposal or contract for sewage collection or disposal, which  
534 involves an expenditure of more than Fifty Thousand Dollars  
535 (\$50,000.00), a governing authority or agency shall issue publicly  
536 a request for proposals concerning the specifications for such  
537 services which shall be advertised for in the same manner as  
538 provided in this section for seeking bids for purchases which  
539 involve an expenditure of more than Ten Thousand Dollars  
540 (\$10,000.00). Any request for proposals when issued shall contain  
541 terms and conditions relating to price, financial responsibility,  
542 technology, legal responsibilities and other relevant factors as  
543 are determined by the governing authority or agency to be



544 appropriate for inclusion; all factors determined relevant by the  
545 governing authority or agency or required by this paragraph (t)  
546 shall be duly included in the advertisement to elicit proposals.  
547 After responses to the request for proposals have been duly  
548 received, the governing authority or agency shall select the most  
549 qualified proposal or proposals on the basis of price, technology  
550 and other relevant factors and from such proposals, but not  
551 limited to the terms thereof, negotiate and enter contracts with  
552 one or more of the persons or firms submitting proposals. If the  
553 governing authority or agency deems none of the proposals to be  
554 qualified or otherwise acceptable, the request for proposals  
555 process may be reinitiated.

556           (u) Notwithstanding any provision of this section to  
557 the contrary, any agency or governing authority, by order placed  
558 on its minutes, may, in its discretion, set aside not more than  
559 twenty percent (20%) of its anticipated annual expenditures for  
560 the purchase of commodities from minority businesses; however, all  
561 such set-aside purchases shall comply with all purchasing  
562 regulations promulgated by the Department of Finance and  
563 Administration and shall be subject to bid requirements under this  
564 section. Set-aside purchases for which competitive bids are  
565 required shall be made from the lowest and best minority business  
566 bidder. For the purposes of this paragraph, the term "minority  
567 business" means a business which is owned by a majority of persons  
568 who are United States citizens or permanent resident aliens (as  
569 defined by the Immigration and Naturalization Service) of the  
570 United States, and who are Asian, Black, Hispanic or Native  
571 American, according to the following definitions:

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

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

577           (iii) "Hispanic" means persons of Spanish or

578 Portuguese culture with origins in Mexico, South or Central  
579 America, or the Caribbean Islands, regardless of race.

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

583 (v) The architect, engineer or other representative  
584 designated by the agency or governing authority that is  
585 contracting for public construction or renovation may prepare and  
586 submit to the contractor only one (1) preliminary punch list of  
587 items that do not meet the contract requirements at the time of  
588 substantial completion and one (1) final list immediately before  
589 final completion and final payment.

590 (w) Nothing in this section shall be construed as  
591 authorizing any purchase not authorized by law.

592 SECTION 2. This act shall take effect and be in force from  
593 and after July 1, 1999.