

By: Green, Straughter

To: Appropriations

HOUSE BILL NO. 667

1 AN ACT TO AMEND SECTIONS 19-11-27, 21-35-27 AND 31-7-13,  
2 MISSISSIPPI CODE OF 1972, TO DELETE THE EXEMPTION FROM CERTAIN  
3 EXPENDITURE PROHIBITIONS OF BOARDS OF SUPERVISORS AND GOVERNING  
4 AUTHORITIES OF MUNICIPALITIES DURING THE LAST YEAR OF THE TERMS OF  
5 OFFICE FOR MEMBERS OF SUCH BOARDS AND GOVERNMENTAL AUTHORITIES;  
6 AND FOR RELATED PURPOSES.

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

8 SECTION 1. Section 19-11-27, Mississippi Code of 1972, is  
9 amended as follows:

10 19-11-27. No board of supervisors of any county shall expend  
11 from, or contract an obligation against, the budget estimates for  
12 road and bridge construction, maintenance and equipment, made and  
13 published by it during the last year of the term of office of such  
14 board, between the first day of October and the first day of the  
15 following January, a sum exceeding one-fourth (1/4) of such item  
16 of the budget made and published by it, except in cases of  
17 emergency. The clerk of any county is hereby prohibited from  
18 issuing any warrant contrary to the provisions of this section.  
19 No board of supervisors nor any member thereof shall buy any  
20 machinery or equipment in the last six (6) months of their or his  
21 term unless or until he has been elected at the general election  
22 of that year.

23 \* \* \*

24 SECTION 2. Section 21-35-27, Mississippi Code of 1972, is

25 amended as follows:

26       21-35-27. No board of governing authorities of any  
27 municipality shall expend from, or contract an obligation, against  
28 the budget made and published by it during the last year of the  
29 term of office of such governing authorities, between the first  
30 day of April and the first Monday of the following July, a sum  
31 exceeding one-fourth (1/4) of any item of the budget made and  
32 published by it, except in cases of emergency provided for in  
33 Section 21-35-19. The city clerk of any municipality is hereby  
34 prohibited from issuing any warrant contrary to the provisions of  
35 this section.

36       \* \* \*

37       SECTION 3. Section 31-7-13, Mississippi Code of 1972, is  
38 amended as follows:

39       31-7-13. All agencies and governing authorities shall  
40 purchase their commodities and printing; contract for fire  
41 insurance, automobile insurance, casualty insurance (other than  
42 workers' compensation) and liability insurance; contract for  
43 garbage collection or disposal; contract for solid waste  
44 collection or disposal; contract for sewage collection or  
45 disposal; and contract for public construction as herein provided.

46       (a) **Bidding procedure for purchases not over \$1,500.00.**  
47 Purchases which do not involve an expenditure of more than One  
48 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or  
49 shipping charges, may be made without advertising or otherwise  
50 requesting competitive bids. Provided, however, that nothing  
51 contained in this paragraph (a) shall be construed to prohibit any  
52 agency or governing authority from establishing procedures which  
53 require competitive bids on purchases of One Thousand Five Hundred  
54 Dollars (\$1,500.00) or less.

55       (b) **Bidding procedure for purchases over \$1,500.00 but**  
56 **not over \$10,000.00.** Purchases which involve an expenditure of

57 more than One Thousand Five Hundred Dollars (\$1,500.00) but not  
58 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight  
59 and shipping charges may be made from the lowest and best bidder  
60 without publishing or posting advertisement for bids, provided at  
61 least two (2) competitive written bids have been obtained. Any  
62 governing authority purchasing commodities pursuant to this  
63 paragraph (b) may authorize its purchasing agent, or his designee,  
64 with regard to governing authorities other than counties, or its  
65 purchase clerk, or his designee, with regard to counties, to  
66 accept the lowest and best competitive written bid. Such  
67 authorization shall be made in writing by the governing authority  
68 and shall be maintained on file in the primary office of the  
69 agency and recorded in the official minutes of the governing  
70 authority, as appropriate. The purchasing agent or the purchase  
71 clerk, or their designee, as the case may be, and not the  
72 governing authority, shall be liable for any penalties and/or  
73 damages as may be imposed by law for any act or omission of the  
74 purchasing agent or purchase clerk, or their designee,  
75 constituting a violation of law in accepting any bid without  
76 approval by the governing authority. The term "competitive  
77 written bid" shall mean a bid submitted on a bid form furnished by  
78 the buying agency or governing authority and signed by authorized  
79 personnel representing the vendor, or a bid submitted on a  
80 vendor's letterhead or identifiable bid form and signed by  
81 authorized personnel representing the vendor. Bids may be  
82 submitted by facsimile, electronic mail or other generally  
83 accepted method of information distribution. Bids submitted by  
84 electronic transmission shall not require the signature of the  
85 vendor's representative unless required by agencies or governing  
86 authorities.

87 (c) **Bidding procedure for purchases over \$10,000.00.**  
88 Purchases which involve an expenditure of more than Ten Thousand

89 Dollars (\$10,000.00), exclusive of freight and shipping charges  
90 may be made from the lowest and best bidder after advertising for  
91 competitive sealed bids once each week for two (2) consecutive  
92 weeks in a regular newspaper published in the county or  
93 municipality in which such agency or governing authority is  
94 located. The date as published for the bid opening shall not be  
95 less than seven (7) working days after the last published notice;  
96 however, if the purchase involves a construction project in which  
97 the estimated cost is in excess of Fifteen Thousand Dollars  
98 (\$15,000.00), such bids shall not be opened in less than fifteen  
99 (15) working days after the last notice is published and the  
100 notice for the purchase of such construction shall be published  
101 once each week for two (2) consecutive weeks. The notice of  
102 intention to let contracts or purchase equipment shall state the  
103 time and place at which bids shall be received, list the contracts  
104 to be made or types of equipment or supplies to be purchased, and,  
105 if all plans and/or specifications are not published, refer to the  
106 plans and/or specifications on file. If all plans and/or  
107 specifications are published in the notification, then the plans  
108 and/or specifications may not be amended. If all plans and/or  
109 specifications are not published in the notification, then  
110 amendments to the plans/specifications, bid opening date, bid  
111 opening time and place may be made, provided that the agency or  
112 governing authority maintains a list of all prospective bidders  
113 who are known to have received a copy of the bid documents and all  
114 such prospective bidders are sent copies of all amendments. This  
115 notification of amendments may be made via mail, facsimile,  
116 electronic mail or other generally accepted method of information  
117 distribution. In all cases involving governing authorities,  
118 before the notice shall be published or posted, the plans or  
119 specifications for the construction or equipment being sought  
120 shall be filed with the clerk of the board of the governing

121 authority, and there remain. If there is no newspaper published  
122 in the county or municipality, then such notice shall be given by  
123 posting same at the courthouse, or for municipalities at the city  
124 hall, and at two (2) other public places in the county or  
125 municipality, and also by publication once each week for two (2)  
126 consecutive weeks in some newspaper having a general circulation  
127 in the county or municipality in the above provided manner. On  
128 the same date that the notice is submitted to the newspaper for  
129 publication, the agency or governing authority involved shall mail  
130 written notice to the main office of the Mississippi Contract  
131 Procurement Center that contains the same information as that in  
132 the published notice. In addition to these requirements, agencies  
133 shall maintain a vendor file and vendors of the equipment or  
134 commodities being sought may be mailed solicitations and  
135 specifications, and a bid file shall be established which shall  
136 indicate those vendors to whom such solicitations and  
137 specifications were mailed, and such file shall also contain such  
138 information as is pertinent to the bid. Specifications pertinent  
139 to such bidding shall be written so as not to exclude comparable  
140 equipment of domestic manufacture. Provided, however, that should  
141 valid justification be presented, the Department of Finance and  
142 Administration or the board of a governing authority may approve a  
143 request for specific equipment necessary to perform a specific  
144 job. Provided further, that a registered professional engineer or  
145 architect may write specifications for a governing authority to  
146 require a specific item of equipment available only from limited  
147 sources or vendors when such specifications conform with the rules  
148 and regulations promulgated by an appropriate federal agency  
149 regulating such matters under the federal procurement laws.  
150 Further, such justification, when placed on the minutes of the  
151 board of a governing authority, may serve as authority for that  
152 governing authority to write specifications to require a specific

153 item of equipment needed to perform a specific job. In addition  
154 to these requirements, from and after July 1, 1990, vendors of  
155 relocatable classrooms and the specifications for the purchase of  
156 such relocatable classrooms published by local school boards shall  
157 meet all pertinent regulations of the State Board of Education,  
158 including prior approval of such bid by the State Department of  
159 Education. Nothing in this section shall prohibit any agency or  
160 governing authority from writing specifications to include  
161 life-cycle costing, total cost bids, extended warranties or  
162 guaranteed buy-back provisions, provided that such bid  
163 requirements shall be in compliance with regulations established  
164 by the Department of Audit.

165           (d) **Lowest and best bid decision procedure.** (i)  
166 Purchases may be made from the lowest and best bidder. In  
167 determining the lowest and best bid, freight and shipping charges  
168 shall be included. If any governing authority accepts a bid other  
169 than the lowest bid actually submitted, it shall place on its  
170 minutes detailed calculations and narrative summary showing that  
171 the accepted bid was determined to be the lowest and best bid,  
172 including the dollar amount of the accepted bid and the dollar  
173 amount of the lowest bid. No agency or governing authority shall  
174 accept a bid based on items not included in the specifications.

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

181           (iii) Whenever bids are solicited for a public  
182 construction or renovation project and only one (1) bid is  
183 received, the agency or the governing authority may accept such  
184 bid if the bid is opened, it is within the funds allocated for the

185 project, it is responsive to the solicitation and the contractor  
186 is capable of performing the contract in accordance with the  
187 solicitation.

188 (iv) No addendum to bid specifications for such  
189 projects may be issued by the agency or governing authority within  
190 twelve (12) hours of the time established by the agency or  
191 governing authority for the receipt of bids.

192 (e) **Lease-purchase authorization.** Any lease-purchase  
193 of equipment which an agency is not required to lease-purchase  
194 under the master lease-purchase program pursuant to Section  
195 31-7-10 and any lease-purchase of equipment which a governing  
196 authority elects to lease-purchase may be acquired by a  
197 lease-purchase agreement under this paragraph (e). Lease-purchase  
198 financing may also be obtained from the vendor or from a  
199 third-party source after having solicited and obtained at least  
200 two (2) written competitive bids, as defined in paragraph (b) of  
201 this section, for such financing without advertising for such  
202 bids. Solicitation for the bids for financing may occur before or  
203 after acceptance of bids for the purchase of such equipment or,  
204 where no such bids for purchase are required, at any time before  
205 the purchase thereof. No such lease-purchase agreement shall be  
206 for an annual rate of interest which is greater than the overall  
207 maximum interest rate to maturity on general obligation  
208 indebtedness permitted under Section 75-17-101, and the term of  
209 such lease-purchase agreement shall not exceed the useful life of  
210 property covered thereby as determined according to the upper  
211 limit of the asset depreciation range (ADR) guidelines for the  
212 Class Life Asset Depreciation Range System established by the  
213 Internal Revenue Service pursuant to the United States Internal  
214 Revenue Code and regulations thereunder as in effect on December  
215 31, 1980, or comparable depreciation guidelines with respect to  
216 any equipment not covered by ADR guidelines. Any lease-purchase

217 agreement entered into pursuant to this paragraph (e) may contain  
218 any of the terms and conditions which a master lease-purchase  
219 agreement may contain under the provisions of Section 31-7-10(5),  
220 and shall contain an annual allocation dependency clause  
221 substantially similar to that set forth in Section 31-7-10(8).  
222 Each agency or governing authority entering into a lease-purchase  
223 transaction pursuant to this paragraph (e) shall maintain with  
224 respect to each such lease-purchase transaction the same  
225 information as required to be maintained by the Department of  
226 Finance and Administration pursuant to Section 31-7-10(13).  
227 However, nothing contained in this section shall be construed to  
228 permit agencies to acquire items of equipment with a total  
229 acquisition cost in the aggregate of less than Ten Thousand  
230 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
231 equipment, and the purchase thereof by any lessor, acquired by  
232 lease-purchase under this paragraph and all lease-purchase  
233 payments with respect thereto shall be exempt from all Mississippi  
234 sales, use and ad valorem taxes. Interest paid on any  
235 lease-purchase agreement under this section shall be exempt from  
236 State of Mississippi income taxation.

237           (f) **Alternate bid authorization.** When necessary to  
238 ensure ready availability of commodities for public works and the  
239 timely completion of public projects, no more than two (2)  
240 alternate bids may be accepted by a governing authority for  
241 commodities. No purchases may be made through use of such  
242 alternate bids procedure unless the lowest and best bidder, for  
243 reasons beyond his control, cannot deliver the commodities  
244 contained in his bid. In that event, purchases of such  
245 commodities may be made from one (1) of the bidders whose bid was  
246 accepted as an alternate.

247           (g) **Construction contract change authorization.** In the  
248 event a determination is made by an agency or governing authority



249 after a construction contract is let that changes or modifications  
250 to the original contract are necessary or would better serve the  
251 purpose of the agency or the governing authority, such agency or  
252 governing authority may, in its discretion, order such changes  
253 pertaining to the construction that are necessary under the  
254 circumstances without the necessity of further public bids;  
255 provided that such change shall be made in a commercially  
256 reasonable manner and shall not be made to circumvent the public  
257 purchasing statutes. In addition to any other authorized person,  
258 the architect or engineer hired by an agency or governing  
259 authority with respect to any public construction contract shall  
260 have the authority, when granted by an agency or governing  
261 authority, to authorize changes or modifications to the original  
262 contract without the necessity of prior approval of the agency or  
263 governing authority when any such change or modification is less  
264 than one percent (1%) of the total contract amount. The agency or  
265 governing authority may limit the number, manner or frequency of  
266 such emergency changes or modifications.

267           (h) **Petroleum purchase alternative.** In the event any  
268 agency or governing authority shall have advertised for bids for  
269 the purchase of gas, diesel fuel, oils and other petroleum  
270 products and coal and no acceptable bids can be obtained, such  
271 agency or governing authority is authorized and directed to enter  
272 into any negotiations necessary to secure the lowest and best  
273 contract available for the purchase of such commodities.

274           (i) **Road construction petroleum products price**  
275 **adjustment clause authorization.** Any agency or governing  
276 authority authorized to enter into contracts for the construction,  
277 maintenance, surfacing or repair of highways, roads or streets,  
278 may include in its bid proposal and contract documents a price  
279 adjustment clause with relation to the cost to the contractor,  
280 including taxes, based upon an industry-wide cost index, of

281 petroleum products including asphalt used in the performance or  
282 execution of the contract or in the production or manufacture of  
283 materials for use in such performance. Such industry-wide index  
284 shall be established and published monthly by the State Department  
285 of Transportation with a copy thereof to be mailed, upon request,  
286 to the clerks of the governing authority of each municipality and  
287 the clerks of each board of supervisors throughout the state. The  
288 price adjustment clause shall be based on the cost of such  
289 petroleum products only and shall not include any additional  
290 profit or overhead as part of the adjustment. The bid proposals  
291 or document contract shall contain the basis and methods of  
292 adjusting unit prices for the change in the cost of such petroleum  
293 products.

294 (j) **State agency emergency purchase procedure.** If the  
295 executive head of any agency of the state shall determine that an  
296 emergency exists in regard to the purchase of any commodities or  
297 repair contracts, so that the delay incident to giving opportunity  
298 for competitive bidding would be detrimental to the interests of  
299 the state, then the provisions herein for competitive bidding  
300 shall not apply and the head of such agency shall be authorized to  
301 make the purchase or repair. Total purchases so made shall only  
302 be for the purpose of meeting needs created by the emergency  
303 situation. In the event such executive head is responsible to an  
304 agency board, at the meeting next following the emergency  
305 purchase, documentation of the purchase, including a description  
306 of the commodity purchased, the purchase price thereof and the  
307 nature of the emergency shall be presented to the board and placed  
308 on the minutes of the board of such agency. The head of such  
309 agency shall, at the earliest possible date following such  
310 emergency purchase, file with the Department of Finance and  
311 Administration (i) a statement under oath certifying the  
312 conditions and circumstances of the emergency, and (ii) a

313 certified copy of the appropriate minutes of the board of such  
314 agency, if applicable.

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

316 If the governing authority, or the governing authority acting  
317 through its designee, shall determine that an emergency exists in  
318 regard to the purchase of any commodities or repair contracts, so  
319 that the delay incident to giving opportunity for competitive  
320 bidding would be detrimental to the interest of the governing  
321 authority, then the provisions herein for competitive bidding  
322 shall not apply and any officer or agent of such governing  
323 authority having general or special authority therefor in making  
324 such purchase or repair shall approve the bill presented therefor,  
325 and he shall certify in writing thereon from whom such purchase  
326 was made, or with whom such a repair contract was made. At the  
327 board meeting next following the emergency purchase or repair  
328 contract, documentation of the purchase or repair contract,  
329 including a description of the commodity purchased, the price  
330 thereof and the nature of the emergency shall be presented to the  
331 board and shall be placed on the minutes of the board of such  
332 governing authority.

333 (l) **Hospital purchase or lease authorization.** The  
334 commissioners or board of trustees of any hospital owned or owned  
335 and operated separately or jointly by one or more counties,  
336 cities, towns, supervisors districts or election districts, or  
337 combinations thereof, may contract with such lowest and best  
338 bidder for the purchase or lease of any commodity under a contract  
339 of purchase or lease-purchase agreement whose obligatory terms do  
340 not exceed five (5) years. In addition to the authority granted  
341 herein, the commissioners or board of trustees are authorized to  
342 enter into contracts for the lease of equipment or services, or  
343 both, which it considers necessary for the proper care of patients  
344 if, in its opinion, it is not financially feasible to purchase the

345 necessary equipment or services. Any such contract for the lease  
346 of equipment or services executed by the commissioners or board  
347 shall not exceed a maximum of five (5) years' duration and shall  
348 include a cancellation clause based on unavailability of funds.  
349 If such cancellation clause is exercised, there shall be no  
350 further liability on the part of the lessee.

351 (m) **Exceptions from bidding requirements.** Excepted  
352 from bid requirements are:

353 (i) **Purchasing agreements approved by department.**  
354 Purchasing agreements, contracts and maximum price regulations  
355 executed or approved by the Department of Finance and  
356 Administration.

357 (ii) **Outside equipment repairs.** Repairs to  
358 equipment, when such repairs are made by repair facilities in the  
359 private sector; however, engines, transmissions, rear axles and/or  
360 other such components shall not be included in this exemption when  
361 replaced as a complete unit instead of being repaired and the need  
362 for such total component replacement is known before disassembly  
363 of the component; provided, however, that invoices identifying the  
364 equipment, specific repairs made, parts identified by number and  
365 name, supplies used in such repairs, and the number of hours of  
366 labor and costs therefor shall be required for the payment for  
367 such repairs.

368 (iii) **In-house equipment repairs.** Purchases of  
369 parts for repairs to equipment, when such repairs are made by  
370 personnel of the agency or governing authority; however, entire  
371 assemblies, such as engines or transmissions, shall not be  
372 included in this exemption when the entire assembly is being  
373 replaced instead of being repaired.

374 (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
375 of gravel or fill dirt which are to be removed and transported by  
376 the purchaser.

377                   (v) **Governmental equipment auctions.** Motor  
378 vehicles or other equipment purchased from a federal or state  
379 agency or a governing authority at a public auction held for the  
380 purpose of disposing of such vehicles or other equipment. Any  
381 purchase by a governing authority under the exemption authorized  
382 by this paragraph (v) shall require advance authorization spread  
383 upon the minutes of the governing authority to include the listing  
384 of the item or items authorized to be purchased and the maximum  
385 bid authorized to be paid for each item or items.

386                   (vi) **Intergovernmental sales and transfers.**  
387 Purchases, sales, transfers or trades by governing authorities or  
388 state agencies when such purchases, sales, transfers or trades are  
389 made by a private treaty agreement or through means of  
390 negotiation, from any federal agency or authority, another  
391 governing authority or state agency of the State of Mississippi,  
392 or any state agency of another state. Nothing in this section  
393 shall permit such purchases through public auction except as  
394 provided for in paragraph (v) of this section. It is the intent  
395 of this section to allow governmental entities to dispose of  
396 and/or purchase commodities from other governmental entities at a  
397 price that is agreed to by both parties. This shall allow for  
398 purchases and/or sales at prices which may be determined to be  
399 below the market value if the selling entity determines that the  
400 sale at below market value is in the best interest of the  
401 taxpayers of the state. Governing authorities shall place the  
402 terms of the agreement and any justification on the minutes, and  
403 state agencies shall obtain approval from the Department of  
404 Finance and Administration, prior to releasing or taking  
405 possession of the commodities.

406                   (vii) **Perishable supplies or food.** Perishable  
407 supplies or foods purchased for use in connection with hospitals,  
408 the school lunch programs, homemaking programs and for the feeding

409 of county or municipal prisoners.

410                   (viii) **Single source items.** Noncompetitive items  
411 available from one (1) source only. In connection with the  
412 purchase of noncompetitive items only available from one (1)  
413 source, a certification of the conditions and circumstances  
414 requiring the purchase shall be filed by the agency with the  
415 Department of Finance and Administration and by the governing  
416 authority with the board of the governing authority. Upon receipt  
417 of that certification the Department of Finance and Administration  
418 or the board of the governing authority, as the case may be, may,  
419 in writing, authorize the purchase, which authority shall be noted  
420 on the minutes of the body at the next regular meeting thereafter.

421 In those situations, a governing authority is not required to  
422 obtain the approval of the Department of Finance and  
423 Administration.

424                   (ix) **Waste disposal facility construction**  
425 **contracts.** Construction of incinerators and other facilities for  
426 disposal of solid wastes in which products either generated  
427 therein, such as steam, or recovered therefrom, such as materials  
428 for recycling, are to be sold or otherwise disposed of; provided,  
429 however, in constructing such facilities a governing authority or  
430 agency shall publicly issue requests for proposals, advertised for  
431 in the same manner as provided herein for seeking bids for public  
432 construction projects, concerning the design, construction,  
433 ownership, operation and/or maintenance of such facilities,  
434 wherein such requests for proposals when issued shall contain  
435 terms and conditions relating to price, financial responsibility,  
436 technology, environmental compatibility, legal responsibilities  
437 and such other matters as are determined by the governing  
438 authority or agency to be appropriate for inclusion; and after  
439 responses to the request for proposals have been duly received,  
440 the governing authority or agency may select the most qualified

441 proposal or proposals on the basis of price, technology and other  
442 relevant factors and from such proposals, but not limited to the  
443 terms thereof, negotiate and enter contracts with one or more of  
444 the persons or firms submitting proposals.

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

448           (xi) **Data processing equipment.** Purchases of data  
449 processing equipment made by governing authorities under the  
450 provisions of purchase agreements, contracts or maximum price  
451 regulations executed or approved by the Mississippi Department of  
452 Information Technology Services.

453           (xii) **Energy efficiency services and equipment.**  
454 Energy efficiency services and equipment acquired by school  
455 districts, junior colleges, institutions of higher learning and  
456 state agencies or other applicable governmental entities on a  
457 shared-savings, lease or lease-purchase basis pursuant to Section  
458 31-7-14.

459           (xiii) **Insurance contracts.** Purchases of  
460 contracts for fire insurance, automobile insurance, casualty  
461 insurance, health insurance and liability insurance by governing  
462 authorities or agencies.

463           (xiv) **Municipal electrical utility system fuel.**  
464 Purchases of coal and/or natural gas by municipally-owned electric  
465 power generating systems that have the capacity to use both coal  
466 and natural gas for the generation of electric power.

467           (xv) **Library books and other reference materials.**  
468 Purchases by libraries or for libraries of books and periodicals;  
469 processed film, video cassette tapes, filmstrips and slides;  
470 recorded audio tapes, cassettes and diskettes; and any such items  
471 as would be used for teaching, research or other information  
472 distribution; however, equipment such as projectors, recorders,

473 audio or video equipment, and monitor televisions are not exempt  
474 under this paragraph.

475                   (xvi) **Unmarked vehicles.** Purchases of unmarked  
476 vehicles when such purchases are made in accordance with  
477 purchasing regulations adopted by the Department of Finance and  
478 Administration pursuant to Section 31-7-9(2).

479                   (xvii) **Sales and transfers between governing**  
480 **authorities.** Sales, transfers or trades of any personal property  
481 between governing authorities within a county or any such  
482 transaction involving governing authorities of two (2) or more  
483 counties.

484                   (xviii) **Election ballots.** Purchases of ballots  
485 printed pursuant to Section 23-15-351.

486                   (xix) **Educational television contracts.** From and  
487 after July 1, 1990, contracts by Mississippi Authority for  
488 Educational Television with any private educational institution or  
489 private nonprofit organization whose purposes are educational in  
490 regard to the construction, purchase, lease or lease-purchase of  
491 facilities and equipment and the employment of personnel for  
492 providing multichannel interactive video systems (ITSF) in the  
493 school districts of this state.

494                   (xx) **Prison industry products.** From and after  
495 January 1, 1991, purchases made by state agencies involving any  
496 item that is manufactured, processed, grown or produced from the  
497 state's prison industries.

498                   (xxi) **Undercover operations equipment.** Purchases  
499 of surveillance equipment or any other high-tech equipment to be  
500 used by narcotics agents in undercover operations, provided that  
501 any such purchase shall be in compliance with regulations  
502 established by the Department of Finance and Administration.

503                   (xxii) **Junior college books for rent.** Purchases  
504 by community or junior colleges of textbooks which are obtained



505 for the purpose of renting such books to students as part of a  
506 book service system.

507                   (xxiii) **School purchases from county/municipal**  
508 **contracts.** Purchases of commodities made by school districts from  
509 vendors with which any levying authority of the school district,  
510 as defined in Section 37-57-1, has contracted through competitive  
511 bidding procedures for purchases of the same commodities.

512                   (xxiv) **Emergency purchases by retirement system.**  
513 Emergency purchases made by the Public Employees' Retirement  
514 System pursuant to Section 25-11-15(7).

515                   (xxv) Repealed.

516                   (xxvi) **Garbage, solid waste and sewage contracts.**  
517 Contracts for garbage collection or disposal, contracts for solid  
518 waste collection or disposal and contracts for sewage collection  
519 or disposal.

520                   (xxvii) **Municipal water tank maintenance**  
521 **contracts.** Professional maintenance program contracts for the  
522 repair or maintenance of municipal water tanks, which provide  
523 professional services needed to maintain municipal water storage  
524 tanks for a fixed annual fee for a duration of two (2) or more  
525 years.

526                   (xxviii) **Industries for the Blind products.**  
527 Purchases made by state agencies involving any item that is  
528 manufactured, processed or produced by the Mississippi Industries  
529 for the Blind.

530                   (xxix) **Purchases of state-adopted textbooks.**  
531 Purchases of state-adopted textbooks by public school districts.

532                   (n) (i) **Term contract authorization.** All contracts  
533 for the purchase of:

534                               (A) Commodities, equipment and public  
535 construction (including, but not limited to, repair and  
536 maintenance), and

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

545 (ii) All purchases made by governing authorities,  
546 including purchases made pursuant to the provisions of  
547 subparagraph (i) of this paragraph (n), may be made upon one (1)  
548 purchase order issued per month to each individual vendor prior to  
549 delivery of such commodities provided that each individual  
550 delivery, load or shipment purchased is properly requisitioned and  
551 is properly received and receipted by signed ticket, receipt or  
552 invoice, indicating thereon the point of delivery, and provided  
553 that, with respect to counties, such commodities are properly  
554 accounted for by the receiving clerk or an assistant receiving  
555 clerk as provided by Section 31-7-109. Such purchase order shall  
556 be invalid on the first calendar day of the month immediately  
557 following the month in which it was issued. Purchases in such  
558 month immediately following may be made only if a purchase order  
559 is issued for such month. Each monthly purchase order shall be  
560 retained in the records of the governing authority. Agencies may  
561 make purchases as authorized under this subparagraph (ii) in  
562 accordance with such regulations, policies and procedures as are  
563 promulgated by the Department of Finance and Administration.

564 (o) **Purchase law violation prohibition and vendor**  
565 **penalty.** No contract or purchase as herein authorized shall be  
566 made for the purpose of circumventing the provisions of this  
567 section requiring competitive bids, nor shall it be lawful for any  
568 person or concern to submit individual invoices for amounts within

569 those authorized for a contract or purchase where the actual value  
570 of the contract or commodity purchased exceeds the authorized  
571 amount and the invoices therefor are split so as to appear to be  
572 authorized as purchases for which competitive bids are not  
573 required. Submission of such invoices shall constitute a  
574 misdemeanor punishable by a fine of not less than Five Hundred  
575 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
576 or by imprisonment for thirty (30) days in the county jail, or  
577 both such fine and imprisonment. In addition, the claim or claims  
578 submitted shall be forfeited.

579           (p) **Electrical utility petroleum-based equipment**  
580 **purchase procedure.** When in response to a proper advertisement  
581 therefor, no bid firm as to price is submitted to an electric  
582 utility for power transformers, distribution transformers, power  
583 breakers, reclosers or other articles containing a petroleum  
584 product, the electric utility may accept the lowest and best bid  
585 therefor although the price is not firm.

586           (q) **Definition of purchase.** For the purposes of this  
587 section, the term "purchase" shall mean the total amount of money  
588 encumbered by a single purchase order.

589           (r) **Fuel management system bidding procedure.** Any  
590 governing authority or agency of the state shall, before  
591 contracting for the services and products of a fuel management or  
592 fuel access system, enter into negotiations with not fewer than  
593 two (2) sellers of fuel management or fuel access systems for  
594 competitive written bids to provide the services and products for  
595 the systems. In the event that the governing authority or agency  
596 cannot locate two (2) sellers of such systems or cannot obtain  
597 bids from two (2) sellers of such systems, it shall show proof  
598 that it made a diligent, good-faith effort to locate and negotiate  
599 with two (2) sellers of such systems. Such proof shall include,  
600 but not be limited to, publications of a request for proposals and

601 letters soliciting negotiations and bids. For purposes of this  
602 paragraph (r), a fuel management or fuel access system is an  
603 automated system of acquiring fuel for vehicles as well as  
604 management reports detailing fuel use by vehicles and drivers, and  
605 the term "competitive written bid" shall have the meaning as  
606 defined in paragraph (b) of this section.

607 (s) **Solid waste contract proposal procedure.** Before  
608 entering into any contract for garbage collection or disposal,  
609 contract for solid waste collection or disposal or contract for  
610 sewage collection or disposal, which involves an expenditure of  
611 more than Fifty Thousand Dollars (\$50,000.00), a governing  
612 authority or agency shall issue publicly a request for proposals  
613 concerning the specifications for such services which shall be  
614 advertised for in the same manner as provided in this section for  
615 seeking bids for purchases which involve an expenditure of more  
616 than Ten Thousand Dollars (\$10,000.00). Any request for proposals  
617 when issued shall contain terms and conditions relating to price,  
618 financial responsibility, technology, legal responsibilities and  
619 other relevant factors as are determined by the governing  
620 authority or agency to be appropriate for inclusion; all factors  
621 determined relevant by the governing authority or agency or  
622 required by this paragraph (s) shall be duly included in the  
623 advertisement to elicit proposals. After responses to the request  
624 for proposals have been duly received, the governing authority or  
625 agency shall select the most qualified proposal or proposals on  
626 the basis of price, technology and other relevant factors and from  
627 such proposals, but not limited to the terms thereof, negotiate  
628 and enter contracts with one or more of the persons or firms  
629 submitting proposals. If the governing authority or agency deems  
630 none of the proposals to be qualified or otherwise acceptable, the  
631 request for proposals process may be reinitiated. Notwithstanding  
632 any other provisions of this paragraph, where a county with at

633 least thirty-five thousand (35,000) nor more than forty thousand  
634 (40,000) population, according to the 1990 federal decennial  
635 census, owns or operates a solid waste landfill, the governing  
636 authorities of any other county or municipality may contract with  
637 the governing authorities of the county owning or operating the  
638 landfill, pursuant to a resolution duly adopted and spread upon  
639 the minutes of each governing authority involved, for garbage or  
640 solid waste collection or disposal services through contract  
641 negotiations.

642         (t) **Minority set aside authorization.** Notwithstanding  
643 any provision of this section to the contrary, any agency or  
644 governing authority, by order placed on its minutes, may, in its  
645 discretion, set aside not more than twenty percent (20%) of its  
646 anticipated annual expenditures for the purchase of commodities  
647 from minority businesses; however, all such set-aside purchases  
648 shall comply with all purchasing regulations promulgated by the  
649 Department of Finance and Administration and shall be subject to  
650 bid requirements under this section. Set-aside purchases for  
651 which competitive bids are required shall be made from the lowest  
652 and best minority business bidder. For the purposes of this  
653 paragraph, the term "minority business" means a business which is  
654 owned by a majority of persons who are United States citizens or  
655 permanent resident aliens (as defined by the Immigration and  
656 Naturalization Service) of the United States, and who are Asian,  
657 Black, Hispanic or Native American, according to the following  
658 definitions:

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

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

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

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

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

670 (u) **Construction punch list restriction.** The  
671 architect, engineer or other representative designated by the  
672 agency or governing authority that is contracting for public  
673 construction or renovation may prepare and submit to the  
674 contractor only one (1) preliminary punch list of items that do  
675 not meet the contract requirements at the time of substantial  
676 completion and one (1) final list immediately before final  
677 completion and final payment.

678 (v) **Purchase authorization clarification.** Nothing in  
679 this section shall be construed as authorizing any purchase not  
680 authorized by law.

681 SECTION 4. This act shall take effect and be in force from  
682 and after July 1, 2000.