

By: Green, Straughter

To: Appropriations

HOUSE BILL NO. 667
(As Passed the House)

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.