

By: Harden

To: Finance

SENATE BILL NO. 2319

1 AN ACT TO ESTABLISH AN OFFICE OF MINORITY PARTICIPATION  
2 COMPLIANCE WITHIN THE STATE DEPARTMENT OF AUDIT; TO PRESCRIBE ITS  
3 DUTIES RELATIVE TO OVERSIGHT OF MINORITY PURCHASES BY STATE  
4 AGENCIES AND LOCAL GOVERNING AUTHORITIES; TO AMEND SECTION  
5 31-7-13, MISSISSIPPI CODE OF 1972, TO REQUIRE MINORITY SET-ASIDE  
6 PURCHASES; AND FOR RELATED PURPOSES.

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

8 SECTION 1. (1) There is hereby established within the  
9 Department of Audit an Office of Minority Participation  
10 Compliance. The office shall be under the administrative  
11 supervision of the State Auditor and shall be comprised of an  
12 officer and necessary staff support provided by the Department of  
13 Audit.

14 (2) The duties and responsibilities of the Office of  
15 Minority Participation Compliance shall be:

16 (a) General oversight and monitoring of all minority  
17 participation by state agencies, state institutions of higher  
18 learning and local governing authorities pursuant to Section  
19 31-7-13, Mississippi Code of 1972;

20 (b) Assistance in requesting federal funding and  
21 developing consortial arrangements among state agencies, local  
22 governing authorities and other institutions regarding minority  
23 participation and compliance;

24 (c) Development and promulgation of a standard form on  
25 minority participation compliance to be used by all state  
26 agencies, institutions and local governing authorities;

27 (d) Preparation of annual written comprehensive status  
28 reports on all facets of minority participation compliance efforts  
29 in state and local government;

30 (e) General oversight and monitoring of all employment  
31 practices in state government to ensure compliance with federal  
32 employment anti-discrimination laws; and

33 (f) Thorough review of current activities in other  
34 states to evaluate present efforts and identification of  
35 opportunities for enhancement.

36 SECTION 2. Section 31-7-13, Mississippi Code of 1972, is  
37 amended as follows:[JMR1]

38 31-7-13. All agencies and governing authorities shall  
39 purchase their commodities and printing; contract for fire  
40 insurance, automobile insurance, casualty insurance (other than  
41 workers' compensation) and liability insurance; contract for  
42 garbage collection or disposal; contract for solid waste  
43 collection or disposal; contract for sewage collection or  
44 disposal; and contract for public construction as herein provided.

45 (a) **Bidding procedure for purchases not over \$1,500.00.**

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

54 (b) **Bidding procedure for purchases over \$1,500.00 but**

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

83 electronic transmission shall not require the signature of the  
84 vendor's representative unless required by agencies or governing  
85 authorities.

86 (c) **Bidding procedure for purchases over \$10,000.00.**

87 Purchases which involve an expenditure of more than Ten Thousand  
88 Dollars (\$10,000.00), exclusive of freight and shipping charges  
89 may be made from the lowest and best bidder after advertising for  
90 competitive sealed bids once each week for two (2) consecutive  
91 weeks in a regular newspaper published in the county or  
92 municipality in which such agency or governing authority is  
93 located. The date as published for the bid opening shall not be  
94 less than seven (7) working days after the last published notice;  
95 however, if the purchase involves a construction project in which  
96 the estimated cost is in excess of Fifteen Thousand Dollars  
97 (\$15,000.00), such bids shall not be opened in less than fifteen  
98 (15) working days after the last notice is published and the  
99 notice for the purchase of such construction shall be published  
100 once each week for two (2) consecutive weeks. The notice of  
101 intention to let contracts or purchase equipment shall state the  
102 time and place at which bids shall be received, list the contracts  
103 to be made or types of equipment or supplies to be purchased, and,  
104 if all plans and/or specifications are not published, refer to the  
105 plans and/or specifications on file. If all plans and/or  
106 specifications are published in the notification, then the plans  
107 and/or specifications may not be amended. If all plans and/or  
108 specifications are not published in the notification, then  
109 amendments to the plans/specifications, bid opening date, bid  
110 opening time and place may be made, provided that the agency or

111 governing authority maintains a list of all prospective bidders  
112 who are known to have received a copy of the bid documents and all  
113 such prospective bidders are sent copies of all amendments. This  
114 notification of amendments may be made via mail, facsimile,  
115 electronic mail or other generally accepted method of information  
116 distribution. In all cases involving governing authorities,  
117 before the notice shall be published or posted, the plans or  
118 specifications for the construction or equipment being sought  
119 shall be filed with the clerk of the board of the governing  
120 authority, and there remain. If there is no newspaper published  
121 in the county or municipality, then such notice shall be given by  
122 posting same at the courthouse, or for municipalities at the city  
123 hall, and at two (2) other public places in the county or  
124 municipality, and also by publication once each week for two (2)  
125 consecutive weeks in some newspaper having a general circulation  
126 in the county or municipality in the above provided manner. On  
127 the same date that the notice is submitted to the newspaper for  
128 publication, the agency or governing authority involved shall mail  
129 written notice to the main office of the Mississippi Contract  
130 Procurement Center that contains the same information as that in  
131 the published notice. In addition to these requirements, agencies  
132 shall maintain a vendor file and vendors of the equipment or  
133 commodities being sought may be mailed solicitations and  
134 specifications, and a bid file shall be established which shall  
135 indicate those vendors to whom such solicitations and  
136 specifications were mailed, and such file shall also contain such  
137 information as is pertinent to the bid. Specifications pertinent  
138 to such bidding shall be written so as not to exclude comparable

139 equipment of domestic manufacture. Provided, however, that should  
140 valid justification be presented, the Department of Finance and  
141 Administration or the board of a governing authority may approve a  
142 request for specific equipment necessary to perform a specific  
143 job. Provided further, that a registered professional engineer or  
144 architect may write specifications for a governing authority to  
145 require a specific item of equipment available only from limited  
146 sources or vendors when such specifications conform with the rules  
147 and regulations promulgated by an appropriate federal agency  
148 regulating such matters under the federal procurement laws.  
149 Further, such justification, when placed on the minutes of the  
150 board of a governing authority, may serve as authority for that  
151 governing authority to write specifications to require a specific  
152 item of equipment needed to perform a specific job. In addition  
153 to these requirements, from and after July 1, 1990, vendors of  
154 relocatable classrooms and the specifications for the purchase of  
155 such relocatable classrooms published by local school boards shall  
156 meet all pertinent regulations of the State Board of Education,  
157 including prior approval of such bid by the State Department of  
158 Education. Nothing in this section shall prohibit any agency or  
159 governing authority from writing specifications to include  
160 life-cycle costing, total cost bids, extended warranties or  
161 guaranteed buy-back provisions, provided that such bid  
162 requirements shall be in compliance with regulations established  
163 by the Department of Audit.

164           (d) **Lowest and best bid decision procedure.** (i)  
165 Purchases may be made from the lowest and best bidder. In  
166 determining the lowest and best bid, freight and shipping charges

167 shall be included. If any governing authority accepts a bid other  
168 than the lowest bid actually submitted, it shall place on its  
169 minutes detailed calculations and narrative summary showing that  
170 the accepted bid was determined to be the lowest and best bid,  
171 including the dollar amount of the accepted bid and the dollar  
172 amount of the lowest bid. No agency or governing authority shall  
173 accept a bid based on items not included in the specifications.

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

180 (iii) Whenever bids are solicited for a public  
181 construction or renovation project and only one (1) bid is  
182 received, the agency or the governing authority may accept such  
183 bid if the bid is opened, it is within the funds allocated for the  
184 project, it is responsive to the solicitation and the contractor  
185 is capable of performing the contract in accordance with the  
186 solicitation.

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

191 (e) **Lease-purchase authorization.** Any lease-purchase  
192 of equipment which an agency is not required to lease-purchase  
193 under the master lease-purchase program pursuant to Section  
194 31-7-10 and any lease-purchase of equipment which a governing

195 authority elects to lease-purchase may be acquired by a  
196 lease-purchase agreement under this paragraph (e). Lease-purchase  
197 financing may also be obtained from the vendor or from a  
198 third-party source after having solicited and obtained at least  
199 two (2) written competitive bids, as defined in paragraph (b) of  
200 this section, for such financing without advertising for such  
201 bids. Solicitation for the bids for financing may occur before or  
202 after acceptance of bids for the purchase of such equipment or,  
203 where no such bids for purchase are required, at any time before  
204 the purchase thereof. No such lease-purchase agreement shall be  
205 for an annual rate of interest which is greater than the overall  
206 maximum interest rate to maturity on general obligation  
207 indebtedness permitted under Section 75-17-101, and the term of  
208 such lease-purchase agreement shall not exceed the useful life of  
209 property covered thereby as determined according to the upper  
210 limit of the asset depreciation range (ADR) guidelines for the  
211 Class Life Asset Depreciation Range System established by the  
212 Internal Revenue Service pursuant to the United States Internal  
213 Revenue Code and regulations thereunder as in effect on December  
214 31, 1980, or comparable depreciation guidelines with respect to  
215 any equipment not covered by ADR guidelines. Any lease-purchase  
216 agreement entered into pursuant to this paragraph (e) may contain  
217 any of the terms and conditions which a master lease-purchase  
218 agreement may contain under the provisions of Section 31-7-10(5),  
219 and shall contain an annual allocation dependency clause  
220 substantially similar to that set forth in Section 31-7-10(8).  
221 Each agency or governing authority entering into a lease-purchase  
222 transaction pursuant to this paragraph (e) shall maintain with



223 respect to each such lease-purchase transaction the same  
224 information as required to be maintained by the Department of  
225 Finance and Administration pursuant to Section 31-7-10(13).  
226 However, nothing contained in this section shall be construed to  
227 permit agencies to acquire items of equipment with a total  
228 acquisition cost in the aggregate of less than Ten Thousand  
229 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
230 equipment, and the purchase thereof by any lessor, acquired by  
231 lease-purchase under this paragraph and all lease-purchase  
232 payments with respect thereto shall be exempt from all Mississippi  
233 sales, use and ad valorem taxes. Interest paid on any  
234 lease-purchase agreement under this section shall be exempt from  
235 State of Mississippi income taxation.

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

246           (g) **Construction contract change authorization.** In the  
247 event a determination is made by an agency or governing authority  
248 after a construction contract is let that changes or modifications  
249 to the original contract are necessary or would better serve the  
250 purpose of the agency or the governing authority, such agency or

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

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

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

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

293           (j) **State agency emergency purchase procedure.** If the  
294 executive head of any agency of the state shall determine that an  
295 emergency exists in regard to the purchase of any commodities or  
296 repair contracts, so that the delay incident to giving opportunity  
297 for competitive bidding would be detrimental to the interests of  
298 the state, then the provisions herein for competitive bidding  
299 shall not apply and the head of such agency shall be authorized to  
300 make the purchase or repair. Total purchases so made shall only  
301 be for the purpose of meeting needs created by the emergency  
302 situation. In the event such executive head is responsible to an  
303 agency board, at the meeting next following the emergency  
304 purchase, documentation of the purchase, including a description  
305 of the commodity purchased, the purchase price thereof and the  
306 nature of the emergency shall be presented to the board and placed

307 on the minutes of the board of such agency. The head of such  
308 agency shall, at the earliest possible date following such  
309 emergency purchase, file with the Department of Finance and  
310 Administration (i) a statement under oath certifying the  
311 conditions and circumstances of the emergency, and (ii) a  
312 certified copy of the appropriate minutes of the board of such  
313 agency, if applicable.

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

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

332 (l) **Hospital purchase or lease authorization.** The  
333 commissioners or board of trustees of any hospital owned or owned  
334 and operated separately or jointly by one or more counties,

335 cities, towns, supervisors districts or election districts, or  
336 combinations thereof, may contract with such lowest and best  
337 bidder for the purchase or lease of any commodity under a contract  
338 of purchase or lease-purchase agreement whose obligatory terms do  
339 not exceed five (5) years. In addition to the authority granted  
340 herein, the commissioners or board of trustees are authorized to  
341 enter into contracts for the lease of equipment or services, or  
342 both, which it considers necessary for the proper care of patients  
343 if, in its opinion, it is not financially feasible to purchase the  
344 necessary equipment or services. Any such contract for the lease  
345 of equipment or services executed by the commissioners or board  
346 shall not exceed a maximum of five (5) years' duration and shall  
347 include a cancellation clause based on unavailability of funds.  
348 If such cancellation clause is exercised, there shall be no  
349 further liability on the part of the lessee.

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

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

353 Purchasing agreements, contracts and maximum price regulations  
354 executed or approved by the Department of Finance and  
355 Administration.

356 (ii) **Outside equipment repairs.** Repairs to  
357 equipment, when such repairs are made by repair facilities in the  
358 private sector; however, engines, transmissions, rear axles and/or  
359 other such components shall not be included in this exemption when  
360 replaced as a complete unit instead of being repaired and the need  
361 for such total component replacement is known before disassembly  
362 of the component; provided, however, that invoices identifying the

363 equipment, specific repairs made, parts identified by number and  
364 name, supplies used in such repairs, and the number of hours of  
365 labor and costs therefor shall be required for the payment for  
366 such repairs.

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

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

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

385                   (vi) **Intergovernmental sales and transfers.**  
386 Purchases, sales, transfers or trades by governing authorities or  
387 state agencies when such purchases, sales, transfers or trades are  
388 made by a private treaty agreement or through means of  
389 negotiation, from any federal agency or authority, another  
390 governing authority or state agency of the State of Mississippi,

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

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

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

419 on the minutes of the body at the next regular meeting thereafter.

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

423 (ix) **Waste disposal facility construction**  
424 **contracts.** Construction of incinerators and other facilities for  
425 disposal of solid wastes in which products either generated  
426 therein, such as steam, or recovered therefrom, such as materials  
427 for recycling, are to be sold or otherwise disposed of; provided,  
428 however, in constructing such facilities a governing authority or  
429 agency shall publicly issue requests for proposals, advertised for  
430 in the same manner as provided herein for seeking bids for public  
431 construction projects, concerning the design, construction,  
432 ownership, operation and/or maintenance of such facilities,  
433 wherein such requests for proposals when issued shall contain  
434 terms and conditions relating to price, financial responsibility,  
435 technology, environmental compatibility, legal responsibilities  
436 and such other matters as are determined by the governing  
437 authority or agency to be appropriate for inclusion; and after  
438 responses to the request for proposals have been duly received,  
439 the governing authority or agency may select the most qualified  
440 proposal or proposals on the basis of price, technology and other  
441 relevant factors and from such proposals, but not limited to the  
442 terms thereof, negotiate and enter contracts with one or more of  
443 the persons or firms submitting proposals.

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



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

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

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

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

466                   (xv) **Library books and other reference materials.**  
467 Purchases by libraries or for libraries of books and periodicals;  
468 processed film, video cassette tapes, filmstrips and slides;  
469 recorded audio tapes, cassettes and diskettes; and any such items  
470 as would be used for teaching, research or other information  
471 distribution; however, equipment such as projectors, recorders,  
472 audio or video equipment, and monitor televisions are not exempt  
473 under this paragraph.

474                   (xvi) **Unmarked vehicles.** Purchases of unmarked

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

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

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

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

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

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

502                   (xxii) **Junior college books for rent.** Purchases

503 by community or junior colleges of textbooks which are obtained  
504 for the purpose of renting such books to students as part of a  
505 book service system.

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

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

514 (xxv) Repealed.

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

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

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

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

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

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

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

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

559 retained in the records of the governing authority. Agencies may  
560 make purchases as authorized under this subparagraph (ii) in  
561 accordance with such regulations, policies and procedures as are  
562 promulgated by the Department of Finance and Administration.

563           (o) **Purchase law violation prohibition and vendor**  
564 **penalty.** No contract or purchase as herein authorized shall be  
565 made for the purpose of circumventing the provisions of this  
566 section requiring competitive bids, nor shall it be lawful for any  
567 person or concern to submit individual invoices for amounts within  
568 those authorized for a contract or purchase where the actual value  
569 of the contract or commodity purchased exceeds the authorized  
570 amount and the invoices therefor are split so as to appear to be  
571 authorized as purchases for which competitive bids are not  
572 required. Submission of such invoices shall constitute a  
573 misdemeanor punishable by a fine of not less than Five Hundred  
574 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
575 or by imprisonment for thirty (30) days in the county jail, or  
576 both such fine and imprisonment. In addition, the claim or claims  
577 submitted shall be forfeited.

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

585           (q) **Exception to county/municipal budget limitations.**  
586 The prohibitions and restrictions set forth in Sections 19-11-27,

587 21-35-27 and 31-7-49 shall not apply to a contract, lease or  
588 lease-purchase agreement entered pursuant to the requirements of  
589 this chapter.

590 (r) **Definition of purchase.** For the purposes of this  
591 section, the term "purchase" shall mean the total amount of money  
592 encumbered by a single purchase order.

593 (s) **Fuel management system bidding procedure.** Any  
594 governing authority or agency of the state shall, before  
595 contracting for the services and products of a fuel management or  
596 fuel access system, enter into negotiations with not fewer than  
597 two (2) sellers of fuel management or fuel access systems for  
598 competitive written bids to provide the services and products for  
599 the systems. In the event that the governing authority or agency  
600 cannot locate two (2) sellers of such systems or cannot obtain  
601 bids from two (2) sellers of such systems, it shall show proof  
602 that it made a diligent, good-faith effort to locate and negotiate  
603 with two (2) sellers of such systems. Such proof shall include,  
604 but not be limited to, publications of a request for proposals and  
605 letters soliciting negotiations and bids. For purposes of this  
606 paragraph (s), a fuel management or fuel access system is an  
607 automated system of acquiring fuel for vehicles as well as  
608 management reports detailing fuel use by vehicles and drivers, and  
609 the term "competitive written bid" shall have the meaning as  
610 defined in paragraph (b) of this section.

611 (t) **Solid waste contract proposal procedure.** Before  
612 entering into any contract for garbage collection or disposal,  
613 contract for solid waste collection or disposal or contract for  
614 sewage collection or disposal, which involves an expenditure of

615 more than Fifty Thousand Dollars (\$50,000.00), a governing  
616 authority or agency shall issue publicly a request for proposals  
617 concerning the specifications for such services which shall be  
618 advertised for in the same manner as provided in this section for  
619 seeking bids for purchases which involve an expenditure of more  
620 than Ten Thousand Dollars (\$10,000.00). Any request for proposals  
621 when issued shall contain terms and conditions relating to price,  
622 financial responsibility, technology, legal responsibilities and  
623 other relevant factors as are determined by the governing  
624 authority or agency to be appropriate for inclusion; all factors  
625 determined relevant by the governing authority or agency or  
626 required by this paragraph (t) shall be duly included in the  
627 advertisement to elicit proposals. After responses to the request  
628 for proposals have been duly received, the governing authority or  
629 agency shall select the most qualified proposal or proposals on  
630 the basis of price, technology and other relevant factors and from  
631 such proposals, but not limited to the terms thereof, negotiate  
632 and enter contracts with one or more of the persons or firms  
633 submitting proposals. If the governing authority or agency deems  
634 none of the proposals to be qualified or otherwise acceptable, the  
635 request for proposals process may be reinitiated. Notwithstanding  
636 any other provisions of this paragraph, where a county with at  
637 least thirty-five thousand (35,000) nor more than forty thousand  
638 (40,000) population, according to the 1990 federal decennial  
639 census, owns or operates a solid waste landfill, the governing  
640 authorities of any other county or municipality may contract with  
641 the governing authorities of the county owning or operating the  
642 landfill, pursuant to a resolution duly adopted and spread upon

643 the minutes of each governing authority involved, for garbage or  
644 solid waste collection or disposal services through contract  
645 negotiations.

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

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

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

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



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

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

676 (v) **Construction punch list restriction.** The  
677 architect, engineer or other representative designated by the  
678 agency or governing authority that is contracting for public  
679 construction or renovation may prepare and submit to the  
680 contractor only one (1) preliminary punch list of items that do  
681 not meet the contract requirements at the time of substantial  
682 completion and one (1) final list immediately before final  
683 completion and final payment.

684 (w) **Purchase authorization clarification.** Nothing in  
685 this section shall be construed as authorizing any purchase not  
686 authorized by law.

687 SECTION 3. This act shall take effect and be in force from  
688 and after July 1, 2000.