

By: Representative Moody

To: County Affairs;
Municipalities

HOUSE BILL NO. 834

1 AN ACT TO AMEND SECTIONS 19-11-27, 21-35-27 AND 31-7-13,
2 MISSISSIPPI CODE OF 1972, TO REINSTATE 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 GOVERNING AUTHORITIES; AND
6 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 The provisions of this section shall not apply to a contract,
24 lease or lease-purchase contract entered into pursuant to Section
25 31-7-13.

26 SECTION 2. Section 21-35-27, Mississippi Code of 1972, is
27 amended as follows:

28 21-35-27. No board of governing authorities of any
29 municipality shall expend from, or contract an obligation, against



30 the budget made and published by it during the last year of the
31 term of office of such governing authorities, between the first
32 day of April and the first Monday of the following July, a sum
33 exceeding one-fourth (1/4) of any item of the budget made and
34 published by it, except in cases of emergency provided for in
35 Section 21-35-19. The city clerk of any municipality is hereby
36 prohibited from issuing any warrant contrary to the provisions of
37 this section.

38 The provisions of this section shall not apply to a contract,
39 lease or lease-purchase contract entered into pursuant to Section
40 31-7-13.

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

43 31-7-13. All agencies and governing authorities shall
44 purchase their commodities and printing; contract for garbage
45 collection or disposal; contract for solid waste collection or
46 disposal; contract for sewage collection or disposal; contract for
47 public construction; and contract for rentals as herein provided.

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

57 (b) **Bidding procedure for purchases over \$1,500.00 but**
58 **not over \$10,000.00.** Purchases which involve an expenditure of
59 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
60 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
61 and shipping charges may be made from the lowest and best bidder
62 without publishing or posting advertisement for bids, provided at



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

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

90 (i) **Publication requirement.** Purchases which
91 involve an expenditure of more than Ten Thousand Dollars
92 (\$10,000.00), exclusive of freight and shipping charges may be
93 made from the lowest and best bidder after advertising for
94 competitive sealed bids once each week for two (2) consecutive
95 weeks in a regular newspaper published in the county or



96 municipality in which such agency or governing authority is
97 located. The date as published for the bid opening shall not be
98 less than seven (7) working days after the last published notice;
99 however, if the purchase involves a construction project in which
100 the estimated cost is in excess of Fifteen Thousand Dollars
101 (\$15,000.00), such bids shall not be opened in less than fifteen
102 (15) working days after the last notice is published and the
103 notice for the purchase of such construction shall be published
104 once each week for two (2) consecutive weeks. The notice of
105 intention to let contracts or purchase equipment shall state the
106 time and place at which bids shall be received, list the contracts
107 to be made or types of equipment or supplies to be purchased, and,
108 if all plans and/or specifications are not published, refer to the
109 plans and/or specifications on file. If there is no newspaper
110 published in the county or municipality, then such notice shall be
111 given by posting same at the courthouse, or for municipalities at
112 the city hall, and at two (2) other public places in the county or
113 municipality, and also by publication once each week for two (2)
114 consecutive weeks in some newspaper having a general circulation
115 in the county or municipality in the above provided manner. On
116 the same date that the notice is submitted to the newspaper for
117 publication, the agency or governing authority involved shall mail
118 written notice to, or provide electronic notification to the main
119 office of the Mississippi Contract Procurement Center that
120 contains the same information as that in the published notice.

121 (ii) **Bidding process amendment procedure.** If all
122 plans and/or specifications are published in the notification,
123 then the plans and/or specifications may not be amended. If all
124 plans and/or specifications are not published in the notification,
125 then amendments to the plans/specifications, bid opening date, bid
126 opening time and place may be made, provided that the agency or
127 governing authority maintains a list of all prospective bidders
128 who are known to have received a copy of the bid documents and all



129 such prospective bidders are sent copies of all amendments. This
130 notification of amendments may be made via mail, facsimile,
131 electronic mail or other generally accepted method of information
132 distribution. No addendum to bid specifications may be issued
133 within forty-eight (48) working hours of the time established for
134 the receipt of bids unless such addendum also amends the bid
135 opening to a date not less than five (5) working days after the
136 date of the addendum.

137 (iii) **Filing requirement.** In all cases involving
138 governing authorities, before the notice shall be published or
139 posted, the plans or specifications for the construction or
140 equipment being sought shall be filed with the clerk of the board
141 of the governing authority. In addition to these requirements, a
142 bid file shall be established which shall indicate those vendors
143 to whom such solicitations and specifications were issued, and
144 such file shall also contain such information as is pertinent to
145 the bid.

146 (iv) **Specification restrictions.** Specifications
147 pertinent to such bidding shall be written so as not to exclude
148 comparable equipment of domestic manufacture. Provided, however,
149 that should valid justification be presented, the Department of
150 Finance and Administration or the board of a governing authority
151 may approve a request for specific equipment necessary to perform
152 a specific job. Further, such justification, when placed on the
153 minutes of the board of a governing authority, may serve as
154 authority for that governing authority to write specifications to
155 require a specific item of equipment needed to perform a specific
156 job. In addition to these requirements, from and after July 1,
157 1990, vendors of relocatable classrooms and the specifications for
158 the purchase of such relocatable classrooms published by local
159 school boards shall meet all pertinent regulations of the State
160 Board of Education, including prior approval of such bid by the
161 State Department of Education.



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

163 (i) **Decision procedure.** Purchases may be made
164 from the lowest and best bidder. In determining the lowest and
165 best bid, freight and shipping charges shall be included.
166 Life-cycle costing, total cost bids, warranties, guaranteed
167 buy-back provisions and other relevant provisions may be included
168 in the best bid calculation. All best bid procedures for state
169 agencies must be in compliance with regulations established by the
170 Department of Finance and Administration. If any governing
171 authority accepts a bid other than the lowest bid actually
172 submitted, it shall place on its minutes detailed calculations and
173 narrative summary showing that the accepted bid was determined to
174 be the lowest and best bid, including the dollar amount of the
175 accepted bid and the dollar amount of the lowest bid. No agency
176 or governing authority shall accept a bid based on items not
177 included in the specifications.

178 (ii) **Construction project negotiations authority.**

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

184 (e) **Lease-purchase authorization.** For the purposes of
185 this section, the term "equipment" shall mean equipment, furniture
186 and, if applicable, associated software and other applicable
187 direct costs associated with the acquisition. Any lease-purchase
188 of equipment which an agency is not required to lease-purchase
189 under the master lease-purchase program pursuant to Section
190 31-7-10 and any lease-purchase of equipment which a governing
191 authority elects to lease-purchase may be acquired by a
192 lease-purchase agreement under this paragraph (e). Lease-purchase
193 financing may also be obtained from the vendor or from a
194 third-party source after having solicited and obtained at least



195 two (2) written competitive bids, as defined in paragraph (b) of
196 this section, for such financing without advertising for such
197 bids. Solicitation for the bids for financing may occur before or
198 after acceptance of bids for the purchase of such equipment or,
199 where no such bids for purchase are required, at any time before
200 the purchase thereof. No such lease-purchase agreement shall be
201 for an annual rate of interest which is greater than the overall
202 maximum interest rate to maturity on general obligation
203 indebtedness permitted under Section 75-17-101, and the term of
204 such lease-purchase agreement shall not exceed the useful life of
205 equipment covered thereby as determined according to the upper
206 limit of the asset depreciation range (ADR) guidelines for the
207 Class Life Asset Depreciation Range System established by the
208 Internal Revenue Service pursuant to the United States Internal
209 Revenue Code and regulations thereunder as in effect on December
210 31, 1980, or comparable depreciation guidelines with respect to
211 any equipment not covered by ADR guidelines. Any lease-purchase
212 agreement entered into pursuant to this paragraph (e) may contain
213 any of the terms and conditions which a master lease-purchase
214 agreement may contain under the provisions of Section 31-7-10(5),
215 and shall contain an annual allocation dependency clause
216 substantially similar to that set forth in Section 31-7-10(8).
217 Each agency or governing authority entering into a lease-purchase
218 transaction pursuant to this paragraph (e) shall maintain with
219 respect to each such lease-purchase transaction the same
220 information as required to be maintained by the Department of
221 Finance and Administration pursuant to Section 31-7-10(13).
222 However, nothing contained in this section shall be construed to
223 permit agencies to acquire items of equipment with a total
224 acquisition cost in the aggregate of less than Ten Thousand
225 Dollars (\$10,000.00) by a single lease-purchase transaction. All
226 equipment, and the purchase thereof by any lessor, acquired by
227 lease-purchase under this paragraph and all lease-purchase



228 payments with respect thereto shall be exempt from all Mississippi
229 sales, use and ad valorem taxes. Interest paid on any
230 lease-purchase agreement under this section shall be exempt from
231 State of Mississippi income taxation.

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

242 (g) **Construction contract change authorization.** In the
243 event a determination is made by an agency or governing authority
244 after a construction contract is let that changes or modifications
245 to the original contract are necessary or would better serve the
246 purpose of the agency or the governing authority, such agency or
247 governing authority may, in its discretion, order such changes
248 pertaining to the construction that are necessary under the
249 circumstances without the necessity of further public bids;
250 provided that such change shall be made in a commercially
251 reasonable manner and shall not be made to circumvent the public
252 purchasing statutes. In addition to any other authorized person,
253 the architect or engineer hired by an agency or governing
254 authority with respect to any public construction contract shall
255 have the authority, when granted by an agency or governing
256 authority, to authorize changes or modifications to the original
257 contract without the necessity of prior approval of the agency or
258 governing authority when any such change or modification is less
259 than one percent (1%) of the total contract amount. The agency or



260 governing authority may limit the number, manner or frequency of
261 such emergency changes or modifications.

262 (h) **Petroleum purchase alternative.** In addition to
263 other methods of purchasing authorized in this chapter, when any
264 agency or governing authority shall have a need for gas, diesel
265 fuel, oils and/or other petroleum products in excess of the amount
266 set forth in paragraph (a) of this section, such agency or
267 governing authority may purchase the commodity after having
268 solicited and obtained at least two (2) competitive written bids,
269 as defined in paragraph (b) of this section. If two (2)
270 competitive written bids are not obtained the entity shall comply
271 with the procedures set forth in paragraph (c) of this section.
272 In the event any agency or governing authority shall have
273 advertised for bids for the purchase of gas, diesel fuel, oils and
274 other petroleum products and coal and no acceptable bids can be
275 obtained, such agency or governing authority is authorized and
276 directed to enter into any negotiations necessary to secure the
277 lowest and best contract available for the purchase of such
278 commodities.

279 (i) **Road construction petroleum products price**
280 **adjustment clause authorization.** Any agency or governing
281 authority authorized to enter into contracts for the construction,
282 maintenance, surfacing or repair of highways, roads or streets,
283 may include in its bid proposal and contract documents a price
284 adjustment clause with relation to the cost to the contractor,
285 including taxes, based upon an industry-wide cost index, of
286 petroleum products including asphalt used in the performance or
287 execution of the contract or in the production or manufacture of
288 materials for use in such performance. Such industry-wide index
289 shall be established and published monthly by the Mississippi
290 Department of Transportation with a copy thereof to be mailed,
291 upon request, to the clerks of the governing authority of each
292 municipality and the clerks of each board of supervisors



293 throughout the state. The price adjustment clause shall be based
294 on the cost of such petroleum products only and shall not include
295 any additional profit or overhead as part of the adjustment. The
296 bid proposals or document contract shall contain the basis and
297 methods of adjusting unit prices for the change in the cost of
298 such petroleum products.

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

320 (k) **Governing authority emergency purchase procedure.**
321 If the governing authority, or the governing authority acting
322 through its designee, shall determine that an emergency exists in
323 regard to the purchase of any commodities or repair contracts, so
324 that the delay incident to giving opportunity for competitive
325 bidding would be detrimental to the interest of the governing



326 authority, then the provisions herein for competitive bidding
327 shall not apply and any officer or agent of such governing
328 authority having general or special authority therefor in making
329 such purchase or repair shall approve the bill presented therefor,
330 and he shall certify in writing thereon from whom such purchase
331 was made, or with whom such a repair contract was made. At the
332 board meeting next following the emergency purchase or repair
333 contract, documentation of the purchase or repair contract,
334 including a description of the commodity purchased, the price
335 thereof and the nature of the emergency shall be presented to the
336 board and shall be placed on the minutes of the board of such
337 governing authority.

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

356 (m) **Exceptions from bidding requirements.** Excepted
357 from bid requirements are:



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

359 Purchasing agreements, contracts and maximum price regulations
360 executed or approved by the Department of Finance and
361 Administration.

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

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

379 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
380 of gravel or fill dirt which are to be removed and transported by
381 the purchaser.

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



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

411 (vii) **Perishable supplies or food.** Perishable
412 supplies or foods purchased for use in connection with hospitals,
413 the school lunch programs, homemaking programs and for the feeding
414 of county or municipal prisoners.

415 (viii) **Single source items.** Noncompetitive items
416 available from one (1) source only. In connection with the
417 purchase of noncompetitive items only available from one (1)
418 source, a certification of the conditions and circumstances
419 requiring the purchase shall be filed by the agency with the
420 Department of Finance and Administration and by the governing
421 authority with the board of the governing authority. Upon receipt
422 of that certification the Department of Finance and Administration
423 or the board of the governing authority, as the case may be, may,



424 in writing, authorize the purchase, which authority shall be noted
425 on the minutes of the body at the next regular meeting thereafter.
426 In those situations, a governing authority is not required to
427 obtain the approval of the Department of Finance and
428 Administration.

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

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

453 (xi) **Information technology products.** Purchases
454 of information technology products made by governing authorities
455 under the provisions of purchase schedules, or contracts executed
456 or approved by the Mississippi Department of Information



457 Technology Services and designated for use by governing
458 authorities.

459 (xiii) **Energy efficiency services and equipment.**
460 Energy efficiency services and equipment acquired by school
461 districts, community and junior colleges, institutions of higher
462 learning and state agencies or other applicable governmental
463 entities on a shared-savings, lease or lease-purchase basis
464 pursuant to Section 31-7-14.

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

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

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

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

483 (xvii) **Multichannel interactive video systems.**
484 From and after July 1, 1990, contracts by Mississippi Authority
485 for Educational Television with any private educational
486 institution or private nonprofit organization whose purposes are
487 educational in regard to the construction, purchase, lease or
488 lease-purchase of facilities and equipment and the employment of



489 personnel for providing multichannel interactive video systems
490 (ITSF) in the school districts of this state.

491 (xviii) **Purchases of prison industry products.**

492 From and after January 1, 1991, purchases made by state agencies
493 or governing authorities involving any item that is manufactured,
494 processed, grown or produced from the state's prison industries.

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

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

504 (xxi) **Certain school district purchases.**

505 Purchases of commodities made by school districts from vendors
506 with which any levying authority of the school district, as
507 defined in Section 37-57-1, has contracted through competitive
508 bidding procedures for purchases of the same commodities.

509 (xxii) **Garbage, solid waste and sewage contracts.**

510 Contracts for garbage collection or disposal, contracts for solid
511 waste collection or disposal and contracts for sewage collection
512 or disposal.

513 (xxiii) **Municipal water tank maintenance**

514 **contracts.** Professional maintenance program contracts for the
515 repair or maintenance of municipal water tanks, which provide
516 professional services needed to maintain municipal water storage
517 tanks for a fixed annual fee for a duration of two (2) or more
518 years.

519 (xxiv) **Purchases of Mississippi Industries for the**

520 **Blind products.** Purchases made by state agencies or governing



521 authorities involving any item that is manufactured, processed or
522 produced by the Mississippi Industries for the Blind.

523 (xxv) **Purchases of state-adopted textbooks.**

524 Purchases of state-adopted textbooks by public school districts.

525 (xxvi) **Certain purchases under the Mississippi**

526 **Major Economic Impact Act.** Contracts entered into pursuant to the
527 provisions of Section 57-75-9(2) and (3).

528 (n) **Term contract authorization.** All contracts for the
529 purchase of:

530 (i) All contracts for the purchase of commodities,
531 equipment and public construction (including, but not limited to,
532 repair and maintenance), may be let for periods of not more than
533 sixty (60) months in advance, subject to applicable statutory
534 provisions prohibiting the letting of contracts during specified
535 periods near the end of terms of office. Term contracts for a
536 period exceeding twenty-four (24) months shall also be subject to
537 ratification or cancellation by governing authority boards taking
538 office subsequent to the governing authority board entering the
539 contract.

540 (ii) Bid proposals and contracts may include price
541 adjustment clauses with relation to the cost to the contractor
542 based upon a nationally published industry-wide or nationally
543 published and recognized cost index. The cost index used in a
544 price adjustment clause shall be determined by the Department of
545 Finance and Administration for the state agencies and by the
546 governing board for governing authorities. The bid proposal and
547 contract documents utilizing a price adjustment clause shall
548 contain the basis and method of adjusting unit prices for the
549 change in the cost of such commodities, equipment and public
550 construction.

551 (o) **Purchase law violation prohibition and vendor**
552 **penalty.** No contract or purchase as herein authorized shall be
553 made for the purpose of circumventing the provisions of this



554 section requiring competitive bids, nor shall it be lawful for any
555 person or concern to submit individual invoices for amounts within
556 those authorized for a contract or purchase where the actual value
557 of the contract or commodity purchased exceeds the authorized
558 amount and the invoices therefor are split so as to appear to be
559 authorized as purchases for which competitive bids are not
560 required. Submission of such invoices shall constitute a
561 misdemeanor punishable by a fine of not less than Five Hundred
562 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
563 or by imprisonment for thirty (30) days in the county jail, or
564 both such fine and imprisonment. In addition, the claim or claims
565 submitted shall be forfeited.

566 (p) **Electrical utility petroleum-based equipment**
567 **purchase procedure.** When in response to a proper advertisement
568 therefor, no bid firm as to price is submitted to an electric
569 utility for power transformers, distribution transformers, power
570 breakers, reclosers or other articles containing a petroleum
571 product, the electric utility may accept the lowest and best bid
572 therefor although the price is not firm.

573 (q) Exception to county/municipal budget limitations.
574 The prohibitions and restrictions set forth in Sections 19-11-27,
575 21-35-27 and 31-7-49 shall not apply to a contract, lease or
576 lease-purchase agreement entered pursuant to the requirements of
577 this chapter.

578 (r) **Fuel management system bidding procedure.** Any
579 governing authority or agency of the state shall, before
580 contracting for the services and products of a fuel management or
581 fuel access system, enter into negotiations with not fewer than
582 two (2) sellers of fuel management or fuel access systems for
583 competitive written bids to provide the services and products for
584 the systems. In the event that the governing authority or agency
585 cannot locate two (2) sellers of such systems or cannot obtain
586 bids from two (2) sellers of such systems, it shall show proof



587 that it made a diligent, good-faith effort to locate and negotiate
588 with two (2) sellers of such systems. Such proof shall include,
589 but not be limited to, publications of a request for proposals and
590 letters soliciting negotiations and bids. For purposes of this
591 paragraph (r), a fuel management or fuel access system is an
592 automated system of acquiring fuel for vehicles as well as
593 management reports detailing fuel use by vehicles and drivers, and
594 the term "competitive written bid" shall have the meaning as
595 defined in paragraph (b) of this section. Governing authorities
596 and agencies shall be exempt from this process when contracting
597 for the services and products of a fuel management or fuel access
598 systems under the terms of a state contract established by the
599 Office of Purchasing and Travel.

600 (s) **Solid waste contract proposal procedure.** Before
601 entering into any contract for garbage collection or disposal,
602 contract for solid waste collection or disposal or contract for
603 sewage collection or disposal, which involves an expenditure of
604 more than Fifty Thousand Dollars (\$50,000.00), a governing
605 authority or agency shall issue publicly a request for proposals
606 concerning the specifications for such services which shall be
607 advertised for in the same manner as provided in this section for
608 seeking bids for purchases which involve an expenditure of more
609 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
610 when issued shall contain terms and conditions relating to price,
611 financial responsibility, technology, legal responsibilities and
612 other relevant factors as are determined by the governing
613 authority or agency to be appropriate for inclusion; all factors
614 determined relevant by the governing authority or agency or
615 required by this paragraph (s) shall be duly included in the
616 advertisement to elicit proposals. After responses to the request
617 for proposals have been duly received, the governing authority or
618 agency shall select the most qualified proposal or proposals on
619 the basis of price, technology and other relevant factors and from



620 such proposals, but not limited to the terms thereof, negotiate
621 and enter contracts with one or more of the persons or firms
622 submitting proposals. If the governing authority or agency deems
623 none of the proposals to be qualified or otherwise acceptable, the
624 request for proposals process may be reinitiated. Notwithstanding
625 any other provisions of this paragraph, where a county with at
626 least thirty-five thousand (35,000) nor more than forty thousand
627 (40,000) population, according to the 1990 federal decennial
628 census, owns or operates a solid waste landfill, the governing
629 authorities of any other county or municipality may contract with
630 the governing authorities of the county owning or operating the
631 landfill, pursuant to a resolution duly adopted and spread upon
632 the minutes of each governing authority involved, for garbage or
633 solid waste collection or disposal services through contract
634 negotiations.

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



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

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

657 (iii) "Hispanic" means persons of Spanish or
658 Portuguese culture with origins in Mexico, South or Central
659 America, or the Caribbean Islands, regardless of race.

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

663 (u) **Construction punch list restriction.** The
664 architect, engineer or other representative designated by the
665 agency or governing authority that is contracting for public
666 construction or renovation may prepare and submit to the
667 contractor only one (1) preliminary punch list of items that do
668 not meet the contract requirements at the time of substantial
669 completion and one (1) final list immediately before final
670 completion and final payment.

671 (v) **Purchase authorization clarification.** Nothing in
672 this section shall be construed as authorizing any purchase not
673 authorized by law.

674 SECTION 4. The provisions of the amendments to the code
675 sections contained in this act shall be applicable to contracts
676 entered into and purchases made from and after July 1, 2000,
677 through the effective date of this act as well as to contracts
678 entered into and purchases made from and after the effective date
679 of this act.

680 SECTION 5. This act shall take effect and be in force from
681 and after its passage.

