

By: Representative Holland

To: Appropriations

HOUSE BILL NO. 1115

1 AN ACT TO CREATE NEW CODE SECTION 69-27-332, MISSISSIPPI CODE
2 OF 1972, TO AUTHORIZE THE STATE SOIL AND WATER CONSERVATION
3 COMMISSION TO PURCHASE CERTAIN USED EQUIPMENT THROUGH AN
4 AUTHORIZED PUBLIC AUCTION; TO AMEND SECTION 31-7-13, MISSISSIPPI
5 CODE OF 1972, TO EXEMPT CERTAIN USED HEAVY OR SPECIALIZED
6 MACHINERY OR EQUIPMENT FOR INSTALLATION OF SOIL AND WATER
7 CONSERVATION PRACTICES FROM BIDDING REQUIREMENTS; AND FOR RELATED
8 PURPOSES.

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

10 SECTION 1. The following section shall be codified as
11 Section 69-27-332, Mississippi Code of 1972:

12 69-27-332. The heavy or specialized machinery or equipment
13 purchased under Section 69-27-331 may be either new or used. The
14 Soil and Water Conservation Commission may purchase used equipment
15 through a duly licensed and authorized public auction of
16 agricultural, heavy or specialized equipment as authorized in
17 Section 31-7-13(m)(xxvii).

18 SECTION 2. Section 31-7-13, Mississippi Code of 1972, is
19 amended as follows:

20 31-7-13. All agencies and governing authorities shall
21 purchase their commodities and printing; contract for garbage
22 collection or disposal; contract for solid waste collection or
23 disposal; contract for sewage collection or disposal; contract for
24 public construction; and contract for rentals as herein provided.

25 (a) **Bidding procedure for purchases not over \$1,500.00.**
26 Purchases which do not involve an expenditure of more than One
27 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or
28 shipping charges, may be made without advertising or otherwise
29 requesting competitive bids. Provided, however, that nothing

30 contained in this paragraph (a) shall be construed to prohibit any
31 agency or governing authority from establishing procedures which
32 require competitive bids on purchases of One Thousand Five Hundred
33 Dollars (\$1,500.00) or less.

34 (b) **Bidding procedure for purchases over \$1,500.00 but**
35 **not over \$10,000.00.** Purchases which involve an expenditure of
36 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
37 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
38 and shipping charges may be made from the lowest and best bidder
39 without publishing or posting advertisement for bids, provided at
40 least two (2) competitive written bids have been obtained. Any
41 governing authority purchasing commodities pursuant to this
42 paragraph (b) may authorize its purchasing agent, or his designee,
43 with regard to governing authorities other than counties, or its
44 purchase clerk, or his designee, with regard to counties, to
45 accept the lowest and best competitive written bid. Such
46 authorization shall be made in writing by the governing authority
47 and shall be maintained on file in the primary office of the
48 agency and recorded in the official minutes of the governing
49 authority, as appropriate. The purchasing agent or the purchase
50 clerk, or their designee, as the case may be, and not the
51 governing authority, shall be liable for any penalties and/or
52 damages as may be imposed by law for any act or omission of the
53 purchasing agent or purchase clerk, or their designee,
54 constituting a violation of law in accepting any bid without
55 approval by the governing authority. The term "competitive
56 written bid" shall mean a bid submitted on a bid form furnished by
57 the buying agency or governing authority and signed by authorized
58 personnel representing the vendor, or a bid submitted on a
59 vendor's letterhead or identifiable bid form and signed by
60 authorized personnel representing the vendor. Bids may be
61 submitted by facsimile, electronic mail or other generally
62 accepted method of information distribution. Bids submitted by

63 electronic transmission shall not require the signature of the
64 vendor's representative unless required by agencies or governing
65 authorities.

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

67 (i) **Publication requirement.** Purchases which
68 involve an expenditure of more than Ten Thousand Dollars
69 (\$10,000.00), exclusive of freight and shipping charges may be
70 made from the lowest and best bidder after advertising for
71 competitive sealed bids once each week for two (2) consecutive
72 weeks in a regular newspaper published in the county or
73 municipality in which such agency or governing authority is
74 located. The date as published for the bid opening shall not be
75 less than seven (7) working days after the last published notice;
76 however, if the purchase involves a construction project in which
77 the estimated cost is in excess of Fifteen Thousand Dollars
78 (\$15,000.00), such bids shall not be opened in less than fifteen
79 (15) working days after the last notice is published and the
80 notice for the purchase of such construction shall be published
81 once each week for two (2) consecutive weeks. The notice of
82 intention to let contracts or purchase equipment shall state the
83 time and place at which bids shall be received, list the contracts
84 to be made or types of equipment or supplies to be purchased, and,
85 if all plans and/or specifications are not published, refer to the
86 plans and/or specifications on file. If there is no newspaper
87 published in the county or municipality, then such notice shall be
88 given by posting same at the courthouse, or for municipalities at
89 the city hall, and at two (2) other public places in the county or
90 municipality, and also by publication once each week for two (2)
91 consecutive weeks in some newspaper having a general circulation
92 in the county or municipality in the above provided manner. On
93 the same date that the notice is submitted to the newspaper for
94 publication, the agency or governing authority involved shall mail
95 written notice to, or provide electronic notification to the main

96 office of the Mississippi Contract Procurement Center that
97 contains the same information as that in the published notice.

98 (ii) **Bidding process amendment procedure.** If all
99 plans and/or specifications are published in the notification,
100 then the plans and/or specifications may not be amended. If all
101 plans and/or specifications are not published in the notification,
102 then amendments to the plans/specifications, bid opening date, bid
103 opening time and place may be made, provided that the agency or
104 governing authority maintains a list of all prospective bidders
105 who are known to have received a copy of the bid documents and all
106 such prospective bidders are sent copies of all amendments. This
107 notification of amendments may be made via mail, facsimile,
108 electronic mail or other generally accepted method of information
109 distribution. No addendum to bid specifications may be issued
110 within forty-eight (48) working hours of the time established for
111 the receipt of bids unless such addendum also amends the bid
112 opening to a date not less than five (5) working days after the
113 date of the addendum.

114 (iii) **Filing requirement.** In all cases involving
115 governing authorities, before the notice shall be published or
116 posted, the plans or specifications for the construction or
117 equipment being sought shall be filed with the clerk of the board
118 of the governing authority. In addition to these requirements, a
119 bid file shall be established which shall indicate those vendors
120 to whom such solicitations and specifications were issued, and
121 such file shall also contain such information as is pertinent to
122 the bid.

123 (iv) **Specification restrictions.** Specifications
124 pertinent to such bidding shall be written so as not to exclude
125 comparable equipment of domestic manufacture. Provided, however,
126 that should valid justification be presented, the Department of
127 Finance and Administration or the board of a governing authority
128 may approve a request for specific equipment necessary to perform

129 a specific job. Further, such justification, when placed on the
130 minutes of the board of a governing authority, may serve as
131 authority for that governing authority to write specifications to
132 require a specific item of equipment needed to perform a specific
133 job. In addition to these requirements, from and after July 1,
134 1990, vendors of relocatable classrooms and the specifications for
135 the purchase of such relocatable classrooms published by local
136 school boards shall meet all pertinent regulations of the State
137 Board of Education, including prior approval of such bid by the
138 State Department of Education.

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

140 (i) **Decision procedure.** Purchases may be made
141 from the lowest and best bidder. In determining the lowest and
142 best bid, freight and shipping charges shall be included.
143 Life-cycle costing, total cost bids, warranties, guaranteed
144 buy-back provisions and other relevant provisions may be included
145 in the best bid calculation. All best bid procedures for state
146 agencies must be in compliance with regulations established by the
147 Department of Finance and Administration. If any governing
148 authority accepts a bid other than the lowest bid actually
149 submitted, it shall place on its minutes detailed calculations and
150 narrative summary showing that the accepted bid was determined to
151 be the lowest and best bid, including the dollar amount of the
152 accepted bid and the dollar amount of the lowest bid. No agency
153 or governing authority shall accept a bid based on items not
154 included in the specifications.

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

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

161 (e) **Lease-purchase authorization.** For the purposes of
162 this section, the term "equipment" shall mean equipment, furniture
163 and, if applicable, associated software and other applicable
164 direct costs associated with the acquisition. Any lease-purchase
165 of equipment which an agency is not required to lease-purchase
166 under the master lease-purchase program pursuant to Section
167 31-7-10 and any lease-purchase of equipment which a governing
168 authority elects to lease-purchase may be acquired by a
169 lease-purchase agreement under this paragraph (e). Lease-purchase
170 financing may also be obtained from the vendor or from a
171 third-party source after having solicited and obtained at least
172 two (2) written competitive bids, as defined in paragraph (b) of
173 this section, for such financing without advertising for such
174 bids. Solicitation for the bids for financing may occur before or
175 after acceptance of bids for the purchase of such equipment or,
176 where no such bids for purchase are required, at any time before
177 the purchase thereof. No such lease-purchase agreement shall be
178 for an annual rate of interest which is greater than the overall
179 maximum interest rate to maturity on general obligation
180 indebtedness permitted under Section 75-17-101, and the term of
181 such lease-purchase agreement shall not exceed the useful life of
182 equipment covered thereby as determined according to the upper
183 limit of the asset depreciation range (ADR) guidelines for the
184 Class Life Asset Depreciation Range System established by the
185 Internal Revenue Service pursuant to the United States Internal
186 Revenue Code and regulations thereunder as in effect on December
187 31, 1980, or comparable depreciation guidelines with respect to
188 any equipment not covered by ADR guidelines. Any lease-purchase
189 agreement entered into pursuant to this paragraph (e) may contain
190 any of the terms and conditions which a master lease-purchase
191 agreement may contain under the provisions of Section 31-7-10(5),
192 and shall contain an annual allocation dependency clause
193 substantially similar to that set forth in Section 31-7-10(8).

194 Each agency or governing authority entering into a lease-purchase
195 transaction pursuant to this paragraph (e) shall maintain with
196 respect to each such lease-purchase transaction the same
197 information as required to be maintained by the Department of
198 Finance and Administration pursuant to Section 31-7-10(13).
199 However, nothing contained in this section shall be construed to
200 permit agencies to acquire items of equipment with a total
201 acquisition cost in the aggregate of less than Ten Thousand
202 Dollars (\$10,000.00) by a single lease-purchase transaction. All
203 equipment, and the purchase thereof by any lessor, acquired by
204 lease-purchase under this paragraph and all lease-purchase
205 payments with respect thereto shall be exempt from all Mississippi
206 sales, use and ad valorem taxes. Interest paid on any
207 lease-purchase agreement under this section shall be exempt from
208 State of Mississippi income taxation.

209 (f) **Alternate bid authorization.** When necessary to
210 ensure ready availability of commodities for public works and the
211 timely completion of public projects, no more than two (2)
212 alternate bids may be accepted by a governing authority for
213 commodities. No purchases may be made through use of such
214 alternate bids procedure unless the lowest and best bidder, for
215 reasons beyond his control, cannot deliver the commodities
216 contained in his bid. In that event, purchases of such
217 commodities may be made from one (1) of the bidders whose bid was
218 accepted as an alternate.

219 (g) **Construction contract change authorization.** In the
220 event a determination is made by an agency or governing authority
221 after a construction contract is let that changes or modifications
222 to the original contract are necessary or would better serve the
223 purpose of the agency or the governing authority, such agency or
224 governing authority may, in its discretion, order such changes
225 pertaining to the construction that are necessary under the
226 circumstances without the necessity of further public bids;

227 provided that such change shall be made in a commercially
228 reasonable manner and shall not be made to circumvent the public
229 purchasing statutes. In addition to any other authorized person,
230 the architect or engineer hired by an agency or governing
231 authority with respect to any public construction contract shall
232 have the authority, when granted by an agency or governing
233 authority, to authorize changes or modifications to the original
234 contract without the necessity of prior approval of the agency or
235 governing authority when any such change or modification is less
236 than one percent (1%) of the total contract amount. The agency or
237 governing authority may limit the number, manner or frequency of
238 such emergency changes or modifications.

239 (h) **Petroleum purchase alternative.** In addition to
240 other methods of purchasing authorized in this chapter, when any
241 agency or governing authority shall have a need for gas, diesel
242 fuel, oils and/or other petroleum products in excess of the amount
243 set forth in paragraph (a) of this section, such agency or
244 governing authority may purchase the commodity after having
245 solicited and obtained at least two (2) competitive written bids,
246 as defined in paragraph (b) of this section. If two (2)
247 competitive written bids are not obtained the entity shall comply
248 with the procedures set forth in paragraph (c) of this section.
249 In the event any agency or governing authority shall have
250 advertised for bids for the purchase of gas, diesel fuel, oils and
251 other petroleum products and coal and no acceptable bids can be
252 obtained, such agency or governing authority is authorized and
253 directed to enter into any negotiations necessary to secure the
254 lowest and best contract available for the purchase of such
255 commodities.

256 (i) **Road construction petroleum products price**
257 **adjustment clause authorization.** Any agency or governing
258 authority authorized to enter into contracts for the construction,
259 maintenance, surfacing or repair of highways, roads or streets,

260 may include in its bid proposal and contract documents a price
261 adjustment clause with relation to the cost to the contractor,
262 including taxes, based upon an industry-wide cost index, of
263 petroleum products including asphalt used in the performance or
264 execution of the contract or in the production or manufacture of
265 materials for use in such performance. Such industry-wide index
266 shall be established and published monthly by the Mississippi
267 Department of Transportation with a copy thereof to be mailed,
268 upon request, to the clerks of the governing authority of each
269 municipality and the clerks of each board of supervisors
270 throughout the state. The price adjustment clause shall be based
271 on the cost of such petroleum products only and shall not include
272 any additional profit or overhead as part of the adjustment. The
273 bid proposals or document contract shall contain the basis and
274 methods of adjusting unit prices for the change in the cost of
275 such petroleum products.

276 (j) **State agency emergency purchase procedure.** If the
277 executive head of any agency of the state shall determine that an
278 emergency exists in regard to the purchase of any commodities or
279 repair contracts, so that the delay incident to giving opportunity
280 for competitive bidding would be detrimental to the interests of
281 the state, then the provisions herein for competitive bidding
282 shall not apply and the head of such agency shall be authorized to
283 make the purchase or repair. Total purchases so made shall only
284 be for the purpose of meeting needs created by the emergency
285 situation. In the event such executive head is responsible to an
286 agency board, at the meeting next following the emergency
287 purchase, documentation of the purchase, including a description
288 of the commodity purchased, the purchase price thereof and the
289 nature of the emergency shall be presented to the board and placed
290 on the minutes of the board of such agency. The head of such
291 agency shall, at the earliest possible date following such
292 emergency purchase, file with the Department of Finance and

293 Administration (i) a statement under oath certifying the
294 conditions and circumstances of the emergency, and (ii) a
295 certified copy of the appropriate minutes of the board of such
296 agency, if applicable.

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

298 If the governing authority, or the governing authority acting
299 through its designee, shall determine that an emergency exists in
300 regard to the purchase of any commodities or repair contracts, so
301 that the delay incident to giving opportunity for competitive
302 bidding would be detrimental to the interest of the governing
303 authority, then the provisions herein for competitive bidding
304 shall not apply and any officer or agent of such governing
305 authority having general or special authority therefor in making
306 such purchase or repair shall approve the bill presented therefor,
307 and he shall certify in writing thereon from whom such purchase
308 was made, or with whom such a repair contract was made. At the
309 board meeting next following the emergency purchase or repair
310 contract, documentation of the purchase or repair contract,
311 including a description of the commodity purchased, the price
312 thereof and the nature of the emergency shall be presented to the
313 board and shall be placed on the minutes of the board of such
314 governing authority.

315 (l) **Hospital purchase or lease authorization.** The
316 commissioners or board of trustees of any hospital owned or owned
317 and operated separately or jointly by one or more counties,
318 cities, towns, supervisors districts or election districts, or
319 combinations thereof, may contract with such lowest and best
320 bidder for the purchase or lease of any commodity under a contract
321 of purchase or lease-purchase agreement whose obligatory terms do
322 not exceed five (5) years. In addition to the authority granted
323 herein, the commissioners or board of trustees are authorized to
324 enter into contracts for the lease of equipment or services, or
325 both, which it considers necessary for the proper care of patients

326 if, in its opinion, it is not financially feasible to purchase the
327 necessary equipment or services. Any such contract for the lease
328 of equipment or services executed by the commissioners or board
329 shall not exceed a maximum of five (5) years' duration and shall
330 include a cancellation clause based on unavailability of funds.
331 If such cancellation clause is exercised, there shall be no
332 further liability on the part of the lessee.

333 (m) **Exceptions from bidding requirements.** Excepted
334 from bid requirements are:

335 (i) **Purchasing agreements approved by department.**
336 Purchasing agreements, contracts and maximum price regulations
337 executed or approved by the Department of Finance and
338 Administration.

339 (ii) **Outside equipment repairs.** Repairs to
340 equipment, when such repairs are made by repair facilities in the
341 private sector; however, engines, transmissions, rear axles and/or
342 other such components shall not be included in this exemption when
343 replaced as a complete unit instead of being repaired and the need
344 for such total component replacement is known before disassembly
345 of the component; provided, however, that invoices identifying the
346 equipment, specific repairs made, parts identified by number and
347 name, supplies used in such repairs, and the number of hours of
348 labor and costs therefor shall be required for the payment for
349 such repairs.

350 (iii) **In-house equipment repairs.** Purchases of
351 parts for repairs to equipment, when such repairs are made by
352 personnel of the agency or governing authority; however, entire
353 assemblies, such as engines or transmissions, shall not be
354 included in this exemption when the entire assembly is being
355 replaced instead of being repaired.

356 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
357 of gravel or fill dirt which are to be removed and transported by
358 the purchaser.

359 (v) **Governmental equipment auctions.** Motor
360 vehicles or other equipment purchased from a federal or state
361 agency or a governing authority at a public auction held for the
362 purpose of disposing of such vehicles or other equipment. Any
363 purchase by a governing authority under the exemption authorized
364 by this subparagraph (v) shall require advance authorization
365 spread upon the minutes of the governing authority to include the
366 listing of the item or items authorized to be purchased and the
367 maximum bid authorized to be paid for each item or items.

368 (vi) **Intergovernmental sales and transfers.**
369 Purchases, sales, transfers or trades by governing authorities or
370 state agencies when such purchases, sales, transfers or trades are
371 made by a private treaty agreement or through means of
372 negotiation, from any federal agency or authority, another
373 governing authority or state agency of the State of Mississippi,
374 or any state agency of another state. Nothing in this section
375 shall permit such purchases through public auction except as
376 provided for in subparagraph (v) of this section. It is the
377 intent of this section to allow governmental entities to dispose
378 of and/or purchase commodities from other governmental entities at
379 a price that is agreed to by both parties. This shall allow for
380 purchases and/or sales at prices which may be determined to be
381 below the market value if the selling entity determines that the
382 sale at below market value is in the best interest of the
383 taxpayers of the state. Governing authorities shall place the
384 terms of the agreement and any justification on the minutes, and
385 state agencies shall obtain approval from the Department of
386 Finance and Administration, prior to releasing or taking
387 possession of the commodities.

388 (vii) **Perishable supplies or food.** Perishable
389 supplies or foods purchased for use in connection with hospitals,
390 the school lunch programs, homemaking programs and for the feeding
391 of county or municipal prisoners.

392 (viii) **Single source items.** Noncompetitive items
393 available from one (1) source only. In connection with the
394 purchase of noncompetitive items only available from one (1)
395 source, a certification of the conditions and circumstances
396 requiring the purchase shall be filed by the agency with the
397 Department of Finance and Administration and by the governing
398 authority with the board of the governing authority. Upon receipt
399 of that certification the Department of Finance and Administration
400 or the board of the governing authority, as the case may be, may,
401 in writing, authorize the purchase, which authority shall be noted
402 on the minutes of the body at the next regular meeting thereafter.
403 In those situations, a governing authority is not required to
404 obtain the approval of the Department of Finance and
405 Administration.

406 (ix) **Waste disposal facility construction**
407 **contracts.** Construction of incinerators and other facilities for
408 disposal of solid wastes in which products either generated
409 therein, such as steam, or recovered therefrom, such as materials
410 for recycling, are to be sold or otherwise disposed of; provided,
411 however, in constructing such facilities a governing authority or
412 agency shall publicly issue requests for proposals, advertised for
413 in the same manner as provided herein for seeking bids for public
414 construction projects, concerning the design, construction,
415 ownership, operation and/or maintenance of such facilities,
416 wherein such requests for proposals when issued shall contain
417 terms and conditions relating to price, financial responsibility,
418 technology, environmental compatibility, legal responsibilities
419 and such other matters as are determined by the governing
420 authority or agency to be appropriate for inclusion; and after
421 responses to the request for proposals have been duly received,
422 the governing authority or agency may select the most qualified
423 proposal or proposals on the basis of price, technology and other
424 relevant factors and from such proposals, but not limited to the

425 terms thereof, negotiate and enter contracts with one or more of
426 the persons or firms submitting proposals.

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

430 (xi) **Information technology products.** Purchases
431 of information technology products made by governing authorities
432 under the provisions of purchase schedules, or contracts executed
433 or approved by the Mississippi Department of Information
434 Technology Services and designated for use by governing
435 authorities.

436 (xii) **Energy efficiency services and equipment.**
437 Energy efficiency services and equipment acquired by school
438 districts, community and junior colleges, institutions of higher
439 learning and state agencies or other applicable governmental
440 entities on a shared-savings, lease or lease-purchase basis
441 pursuant to Section 31-7-14.

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

446 (xiv) **Library books and other reference materials.**
447 Purchases by libraries or for libraries of books and periodicals;
448 processed film, video cassette tapes, filmstrips and slides;
449 recorded audio tapes, cassettes and diskettes; and any such items
450 as would be used for teaching, research or other information
451 distribution; however, equipment such as projectors, recorders,
452 audio or video equipment, and monitor televisions are not exempt
453 under this subparagraph.

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

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

460 (xvii) **Multichannel interactive video systems.**
461 From and after July 1, 1990, contracts by Mississippi Authority
462 for Educational Television with any private educational
463 institution or private nonprofit organization whose purposes are
464 educational in regard to the construction, purchase, lease or
465 lease-purchase of facilities and equipment and the employment of
466 personnel for providing multichannel interactive video systems
467 (ITSF) in the school districts of this state.

468 (xviii) **Purchases of prison industry products.**
469 From and after January 1, 1991, purchases made by state agencies
470 or governing authorities involving any item that is manufactured,
471 processed, grown or produced from the state's prison industries.

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

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

481 (xxi) **Certain school district purchases.**
482 Purchases of commodities made by school districts from vendors
483 with which any levying authority of the school district, as
484 defined in Section 37-57-1, has contracted through competitive
485 bidding procedures for purchases of the same commodities.

486 (xxii) **Garbage, solid waste and sewage contracts.**
487 Contracts for garbage collection or disposal, contracts for solid
488 waste collection or disposal and contracts for sewage collection
489 or disposal.

490 (xxiii) **Municipal water tank maintenance**
491 **contracts.** Professional maintenance program contracts for the
492 repair or maintenance of municipal water tanks, which provide
493 professional services needed to maintain municipal water storage
494 tanks for a fixed annual fee for a duration of two (2) or more
495 years.

496 (xxiv) **Purchases of Mississippi Industries for the**
497 **Blind products.** Purchases made by state agencies or governing
498 authorities involving any item that is manufactured, processed or
499 produced by the Mississippi Industries for the Blind.

500 (xxv) **Purchases of state-adopted textbooks.**
501 Purchases of state-adopted textbooks by public school districts.

502 (xxvi) **Certain purchases under the Mississippi**
503 **Major Economic Impact Act.** Contracts entered into pursuant to the
504 provisions of Section 57-75-9(2) and (3).

505 (xxvii) **Used heavy or specialized machinery or**
506 **equipment for installation of soil and water conservation**
507 **practices purchased at auction.** Used heavy or specialized
508 machinery or equipment used for the installation and
509 implementation of soil and water conservation practices or
510 measures purchased subject to the restrictions provided in
511 Sections 69-27-331 through 69-27-341. Any purchase by the State
512 Soil and Water Conservation Commission under the exemption
513 authorized by this paragraph (xxvii) shall require advance
514 authorization spread upon the minutes of the commission to include
515 the listing of the item or items authorized to be purchased and
516 the maximum bid authorized to be paid for each item or items.

517 (n) **Term contract authorization.** All contracts for the
518 purchase of:

519 (i) All contracts for the purchase of commodities,
520 equipment and public construction (including, but not limited to,
521 repair and maintenance), may be let for periods of not more than
522 sixty (60) months in advance, subject to applicable statutory

523 provisions prohibiting the letting of contracts during specified
524 periods near the end of terms of office. Term contracts for a
525 period exceeding twenty-four (24) months shall also be subject to
526 ratification or cancellation by governing authority boards taking
527 office subsequent to the governing authority board entering the
528 contract.

529 (ii) Bid proposals and contracts may include price
530 adjustment clauses with relation to the cost to the contractor
531 based upon a nationally published industry-wide or nationally
532 published and recognized cost index. The cost index used in a
533 price adjustment clause shall be determined by the Department of
534 Finance and Administration for the state agencies and by the
535 governing board for governing authorities. The bid proposal and
536 contract documents utilizing a price adjustment clause shall
537 contain the basis and method of adjusting unit prices for the
538 change in the cost of such commodities, equipment and public
539 construction.

540 (o) **Purchase law violation prohibition and vendor**
541 **penalty.** No contract or purchase as herein authorized shall be
542 made for the purpose of circumventing the provisions of this
543 section requiring competitive bids, nor shall it be lawful for any
544 person or concern to submit individual invoices for amounts within
545 those authorized for a contract or purchase where the actual value
546 of the contract or commodity purchased exceeds the authorized
547 amount and the invoices therefor are split so as to appear to be
548 authorized as purchases for which competitive bids are not
549 required. Submission of such invoices shall constitute a
550 misdemeanor punishable by a fine of not less than Five Hundred
551 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
552 or by imprisonment for thirty (30) days in the county jail, or
553 both such fine and imprisonment. In addition, the claim or claims
554 submitted shall be forfeited.

555 (p) **Electrical utility petroleum-based equipment**
556 **purchase procedure.** When in response to a proper advertisement
557 therefor, no bid firm as to price is submitted to an electric
558 utility for power transformers, distribution transformers, power
559 breakers, reclosers or other articles containing a petroleum
560 product, the electric utility may accept the lowest and best bid
561 therefor although the price is not firm.

562 (q) **Fuel management system bidding procedure.** Any
563 governing authority or agency of the state shall, before
564 contracting for the services and products of a fuel management or
565 fuel access system, enter into negotiations with not fewer than
566 two (2) sellers of fuel management or fuel access systems for
567 competitive written bids to provide the services and products for
568 the systems. In the event that the governing authority or agency
569 cannot locate two (2) sellers of such systems or cannot obtain
570 bids from two (2) sellers of such systems, it shall show proof
571 that it made a diligent, good-faith effort to locate and negotiate
572 with two (2) sellers of such systems. Such proof shall include,
573 but not be limited to, publications of a request for proposals and
574 letters soliciting negotiations and bids. For purposes of this
575 paragraph (q), a fuel management or fuel access system is an
576 automated system of acquiring fuel for vehicles as well as
577 management reports detailing fuel use by vehicles and drivers, and
578 the term "competitive written bid" shall have the meaning as
579 defined in paragraph (b) of this section. Governing authorities
580 and agencies shall be exempt from this process when contracting
581 for the services and products of a fuel management or fuel access
582 systems under the terms of a state contract established by the
583 Office of Purchasing and Travel.

584 (r) **Solid waste contract proposal procedure.** Before
585 entering into any contract for garbage collection or disposal,
586 contract for solid waste collection or disposal or contract for
587 sewage collection or disposal, which involves an expenditure of

588 more than Fifty Thousand Dollars (\$50,000.00), a governing
589 authority or agency shall issue publicly a request for proposals
590 concerning the specifications for such services which shall be
591 advertised for in the same manner as provided in this section for
592 seeking bids for purchases which involve an expenditure of more
593 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
594 when issued shall contain terms and conditions relating to price,
595 financial responsibility, technology, legal responsibilities and
596 other relevant factors as are determined by the governing
597 authority or agency to be appropriate for inclusion; all factors
598 determined relevant by the governing authority or agency or
599 required by this paragraph (r) shall be duly included in the
600 advertisement to elicit proposals. After responses to the request
601 for proposals have been duly received, the governing authority or
602 agency shall select the most qualified proposal or proposals on
603 the basis of price, technology and other relevant factors and from
604 such proposals, but not limited to the terms thereof, negotiate
605 and enter contracts with one or more of the persons or firms
606 submitting proposals. If the governing authority or agency deems
607 none of the proposals to be qualified or otherwise acceptable, the
608 request for proposals process may be reinitiated. Notwithstanding
609 any other provisions of this paragraph, where a county with at
610 least thirty-five thousand (35,000) nor more than forty thousand
611 (40,000) population, according to the 1990 federal decennial
612 census, owns or operates a solid waste landfill, the governing
613 authorities of any other county or municipality may contract with
614 the governing authorities of the county owning or operating the
615 landfill, pursuant to a resolution duly adopted and spread upon
616 the minutes of each governing authority involved, for garbage or
617 solid waste collection or disposal services through contract
618 negotiations.

619 (s) **Minority set aside authorization.** Notwithstanding
620 any provision of this section to the contrary, any agency or

621 governing authority, by order placed on its minutes, may, in its
622 discretion, set aside not more than twenty percent (20%) of its
623 anticipated annual expenditures for the purchase of commodities
624 from minority businesses; however, all such set-aside purchases
625 shall comply with all purchasing regulations promulgated by the
626 Department of Finance and Administration and shall be subject to
627 bid requirements under this section. Set-aside purchases for
628 which competitive bids are required shall be made from the lowest
629 and best minority business bidder. For the purposes of this
630 paragraph, the term "minority business" means a business which is
631 owned by a majority of persons who are United States citizens or
632 permanent resident aliens (as defined by the Immigration and
633 Naturalization Service) of the United States, and who are Asian,
634 Black, Hispanic or Native American, according to the following
635 definitions:

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

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

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

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

647 (t) **Construction punch list restriction.** The
648 architect, engineer or other representative designated by the
649 agency or governing authority that is contracting for public
650 construction or renovation may prepare and submit to the
651 contractor only one (1) preliminary punch list of items that do
652 not meet the contract requirements at the time of substantial

653 completion and one (1) final list immediately before final
654 completion and final payment.

655 (u) **Purchase authorization clarification.** Nothing in
656 this section shall be construed as authorizing any purchase not
657 authorized by law.

658 SECTION 3. This act shall take effect and be in force from
659 and after July 1, 2001.