

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.