

By: Representative Watson

To: Municipalities;
Appropriations

HOUSE BILL NO. 1130

1 AN ACT TO AMEND SECTIONS 21-35-27 AND 31-7-13, MISSISSIPPI
2 CODE OF 1972, TO REINSTATE THE EXEMPTION FROM CERTAIN EXPENDITURE
3 PROHIBITIONS OF GOVERNING AUTHORITIES OF MUNICIPALITIES DURING THE
4 LAST YEAR OF THE TERMS OF OFFICE; AND FOR RELATED PURPOSES.

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

6 SECTION 1. Section 21-35-27, Mississippi Code of 1972, is
7 amended as follows:

8 21-35-27. No board of governing authorities of any
9 municipality shall expend from, or contract an obligation, against
10 the budget made and published by it during the last year of the
11 term of office of such governing authorities, between the first
12 day of April and the first Monday of the following July, a sum
13 exceeding one-fourth (1/4) of any item of the budget made and
14 published by it, except in cases of emergency provided for in
15 Section 21-35-19. The city clerk of any municipality is hereby
16 prohibited from issuing any warrant contrary to the provisions of
17 this section.

18 The provisions of this section shall not apply to a contract,
19 lease or lease-purchase contract entered into pursuant to Section
20 31-7-13.

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

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

28 (a) **Bidding procedure for purchases not over \$1,500.00.**
29 Purchases which do not involve an expenditure of more than One
30 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or
31 shipping charges, may be made without advertising or otherwise
32 requesting competitive bids. Provided, however, that nothing
33 contained in this paragraph (a) shall be construed to prohibit any
34 agency or governing authority from establishing procedures which
35 require competitive bids on purchases of One Thousand Five Hundred
36 Dollars (\$1,500.00) or less.

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

61 personnel representing the vendor, or a bid submitted on a
62 vendor's letterhead or identifiable bid form and signed by
63 authorized personnel representing the vendor. Bids may be
64 submitted by facsimile, electronic mail or other generally
65 accepted method of information distribution. Bids submitted by
66 electronic transmission shall not require the signature of the
67 vendor's representative unless required by agencies or governing
68 authorities.

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

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

94 consecutive weeks in some newspaper having a general circulation
95 in the county or municipality in the above provided manner. On
96 the same date that the notice is submitted to the newspaper for
97 publication, the agency or governing authority involved shall mail
98 written notice to, or provide electronic notification to the main
99 office of the Mississippi Contract Procurement Center that
100 contains the same information as that in the published notice.

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

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

126 (iv) **Specification restrictions.** Specifications
127 pertinent to such bidding shall be written so as not to exclude
128 comparable equipment of domestic manufacture. Provided, however,
129 that should valid justification be presented, the Department of
130 Finance and Administration or the board of a governing authority
131 may approve a request for specific equipment necessary to perform
132 a specific job. Further, such justification, when placed on the
133 minutes of the board of a governing authority, may serve as
134 authority for that governing authority to write specifications to
135 require a specific item of equipment needed to perform a specific
136 job. In addition to these requirements, from and after July 1,
137 1990, vendors of relocatable classrooms and the specifications for
138 the purchase of such relocatable classrooms published by local
139 school boards shall meet all pertinent regulations of the State
140 Board of Education, including prior approval of such bid by the
141 State Department of Education.

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

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

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

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

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

191 any equipment not covered by ADR guidelines. Any lease-purchase
192 agreement entered into pursuant to this paragraph (e) may contain
193 any of the terms and conditions which a master lease-purchase
194 agreement may contain under the provisions of Section 31-7-10(5),
195 and shall contain an annual allocation dependency clause
196 substantially similar to that set forth in Section 31-7-10(8).
197 Each agency or governing authority entering into a lease-purchase
198 transaction pursuant to this paragraph (e) shall maintain with
199 respect to each such lease-purchase transaction the same
200 information as required to be maintained by the Department of
201 Finance and Administration pursuant to Section 31-7-10(13).
202 However, nothing contained in this section shall be construed to
203 permit agencies to acquire items of equipment with a total
204 acquisition cost in the aggregate of less than Ten Thousand
205 Dollars (\$10,000.00) by a single lease-purchase transaction. All
206 equipment, and the purchase thereof by any lessor, acquired by
207 lease-purchase under this paragraph and all lease-purchase
208 payments with respect thereto shall be exempt from all Mississippi
209 sales, use and ad valorem taxes. Interest paid on any
210 lease-purchase agreement under this section shall be exempt from
211 State of Mississippi income taxation.

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

222 (g) **Construction contract change authorization.** In the
223 event a determination is made by an agency or governing authority

224 after a construction contract is let that changes or modifications
225 to the original contract are necessary or would better serve the
226 purpose of the agency or the governing authority, such agency or
227 governing authority may, in its discretion, order such changes
228 pertaining to the construction that are necessary under the
229 circumstances without the necessity of further public bids;
230 provided that such change shall be made in a commercially
231 reasonable manner and shall not be made to circumvent the public
232 purchasing statutes. In addition to any other authorized person,
233 the architect or engineer hired by an agency or governing
234 authority with respect to any public construction contract shall
235 have the authority, when granted by an agency or governing
236 authority, to authorize changes or modifications to the original
237 contract without the necessity of prior approval of the agency or
238 governing authority when any such change or modification is less
239 than one percent (1%) of the total contract amount. The agency or
240 governing authority may limit the number, manner or frequency of
241 such emergency changes or modifications.

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

257 lowest and best contract available for the purchase of such
258 commodities.

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

279 (j) **State agency emergency purchase procedure.** If the
280 executive head of any agency of the state shall determine that an
281 emergency exists in regard to the purchase of any commodities or
282 repair contracts, so that the delay incident to giving opportunity
283 for competitive bidding would be detrimental to the interests of
284 the state, then the provisions herein for competitive bidding
285 shall not apply and the head of such agency shall be authorized to
286 make the purchase or repair. Total purchases so made shall only
287 be for the purpose of meeting needs created by the emergency
288 situation. In the event such executive head is responsible to an
289 agency board, at the meeting next following the emergency

290 purchase, documentation of the purchase, including a description
291 of the commodity purchased, the purchase price thereof and the
292 nature of the emergency shall be presented to the board and placed
293 on the minutes of the board of such agency. The head of such
294 agency shall, at the earliest possible date following such
295 emergency purchase, file with the Department of Finance and
296 Administration (i) a statement under oath certifying the
297 conditions and circumstances of the emergency, and (ii) a
298 certified copy of the appropriate minutes of the board of such
299 agency, if applicable.

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

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

318 (l) **Hospital purchase or lease authorization.** The
319 commissioners or board of trustees of any hospital owned or owned
320 and operated separately or jointly by one or more counties,
321 cities, towns, supervisors districts or election districts, or
322 combinations thereof, may contract with such lowest and best

323 bidder for the purchase or lease of any commodity under a contract
324 of purchase or lease-purchase agreement whose obligatory terms do
325 not exceed five (5) years. In addition to the authority granted
326 herein, the commissioners or board of trustees are authorized to
327 enter into contracts for the lease of equipment or services, or
328 both, which it considers necessary for the proper care of patients
329 if, in its opinion, it is not financially feasible to purchase the
330 necessary equipment or services. Any such contract for the lease
331 of equipment or services executed by the commissioners or board
332 shall not exceed a maximum of five (5) years' duration and shall
333 include a cancellation clause based on unavailability of funds.
334 If such cancellation clause is exercised, there shall be no
335 further liability on the part of the lessee.

336 (m) **Exceptions from bidding requirements.** Excepted
337 from bid requirements are:

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

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

353 (iii) **In-house equipment repairs.** Purchases of
354 parts for repairs to equipment, when such repairs are made by
355 personnel of the agency or governing authority; however, entire

356 assemblies, such as engines or transmissions, shall not be
357 included in this exemption when the entire assembly is being
358 replaced instead of being repaired.

359 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
360 of gravel or fill dirt which are to be removed and transported by
361 the purchaser.

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

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

389 Finance and Administration, prior to releasing or taking
390 possession of the commodities.

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

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

409 (ix) **Waste disposal facility construction**
410 **contracts.** Construction of incinerators and other facilities for
411 disposal of solid wastes in which products either generated
412 therein, such as steam, or recovered therefrom, such as materials
413 for recycling, are to be sold or otherwise disposed of; provided,
414 however, in constructing such facilities a governing authority or
415 agency shall publicly issue requests for proposals, advertised for
416 in the same manner as provided herein for seeking bids for public
417 construction projects, concerning the design, construction,
418 ownership, operation and/or maintenance of such facilities,
419 wherein such requests for proposals when issued shall contain
420 terms and conditions relating to price, financial responsibility,
421 technology, environmental compatibility, legal responsibilities

422 and such other matters as are determined by the governing
423 authority or agency to be appropriate for inclusion; and after
424 responses to the request for proposals have been duly received,
425 the governing authority or agency may select the most qualified
426 proposal or proposals on the basis of price, technology and other
427 relevant factors and from such proposals, but not limited to the
428 terms thereof, negotiate and enter contracts with one or more of
429 the persons or firms submitting proposals.

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

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

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

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

449 (xiv) **Library books and other reference materials.**
450 Purchases by libraries or for libraries of books and periodicals;
451 processed film, video cassette tapes, filmstrips and slides;
452 recorded audio tapes, cassettes and diskettes; and any such items
453 as would be used for teaching, research or other information
454 distribution; however, equipment such as projectors, recorders,

455 audio or video equipment, and monitor televisions are not exempt
456 under this subparagraph.

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

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

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

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

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

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

484 (xxi) **Certain school district purchases.**
485 Purchases of commodities made by school districts from vendors
486 with which any levying authority of the school district, as

487 defined in Section 37-57-1, has contracted through competitive
488 bidding procedures for purchases of the same commodities.

489 (xxii) **Garbage, solid waste and sewage contracts.**
490 Contracts for garbage collection or disposal, contracts for solid
491 waste collection or disposal and contracts for sewage collection
492 or disposal.

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

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

503 (xxv) **Purchases of state-adopted textbooks.**
504 Purchases of state-adopted textbooks by public school districts.

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

508 (n) **Term contract authorization.** All contracts for the
509 purchase of:

510 (i) All contracts for the purchase of commodities,
511 equipment and public construction (including, but not limited to,
512 repair and maintenance), may be let for periods of not more than
513 sixty (60) months in advance, subject to applicable statutory
514 provisions prohibiting the letting of contracts during specified
515 periods near the end of terms of office. Term contracts for a
516 period exceeding twenty-four (24) months shall also be subject to
517 ratification or cancellation by governing authority boards taking
518 office subsequent to the governing authority board entering the
519 contract.

520 (ii) Bid proposals and contracts may include price
521 adjustment clauses with relation to the cost to the contractor
522 based upon a nationally published industry-wide or nationally
523 published and recognized cost index. The cost index used in a
524 price adjustment clause shall be determined by the Department of
525 Finance and Administration for the state agencies and by the
526 governing board for governing authorities. The bid proposal and
527 contract documents utilizing a price adjustment clause shall
528 contain the basis and method of adjusting unit prices for the
529 change in the cost of such commodities, equipment and public
530 construction.

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

546 (p) **Electrical utility petroleum-based equipment**
547 **purchase procedure.** When in response to a proper advertisement
548 therefor, no bid firm as to price is submitted to an electric
549 utility for power transformers, distribution transformers, power
550 breakers, reclosers or other articles containing a petroleum
551 product, the electric utility may accept the lowest and best bid
552 therefor although the price is not firm.

553 (q) Exception to municipal budget limitations. The
554 prohibitions and restrictions set forth in Sections 21-35-27 and
555 31-7-49 shall not apply to a contract, lease or lease-purchase
556 agreement entered pursuant to the requirements of this chapter.

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

579 (s) **Solid waste contract proposal procedure.** Before
580 entering into any contract for garbage collection or disposal,
581 contract for solid waste collection or disposal or contract for
582 sewage collection or disposal, which involves an expenditure of
583 more than Fifty Thousand Dollars (\$50,000.00), a governing
584 authority or agency shall issue publicly a request for proposals
585 concerning the specifications for such services which shall be

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

614 (t) **Minority set aside authorization.** Notwithstanding
615 any provision of this section to the contrary, any agency or
616 governing authority, by order placed on its minutes, may, in its
617 discretion, set aside not more than twenty percent (20%) of its
618 anticipated annual expenditures for the purchase of commodities

619 from minority businesses; however, all such set-aside purchases
620 shall comply with all purchasing regulations promulgated by the
621 Department of Finance and Administration and shall be subject to
622 bid requirements under this section. Set-aside purchases for
623 which competitive bids are required shall be made from the lowest
624 and best minority business bidder. For the purposes of this
625 paragraph, the term "minority business" means a business which is
626 owned by a majority of persons who are United States citizens or
627 permanent resident aliens (as defined by the Immigration and
628 Naturalization Service) of the United States, and who are Asian,
629 Black, Hispanic or Native American, according to the following
630 definitions:

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

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

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

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

642 (u) **Construction punch list restriction.** The
643 architect, engineer or other representative designated by the
644 agency or governing authority that is contracting for public
645 construction or renovation may prepare and submit to the
646 contractor only one (1) preliminary punch list of items that do
647 not meet the contract requirements at the time of substantial
648 completion and one (1) final list immediately before final
649 completion and final payment.

650 (v) **Purchase authorization clarification.** Nothing in
651 this section shall be construed as authorizing any purchase not
652 authorized by law.

653 SECTION 3. The provisions of the amendments to the code
654 sections contained in this act shall be applicable to contracts
655 entered into and purchases made from and after July 1, 2000,
656 through the effective date of this act as well as to contracts
657 entered into and purchases made from and after the effective date
658 of this act.

659 SECTION 4. This act shall take effect and be in force from
660 and after its passage.