

By: Senator(s) Robertson

To: Fees, Salaries and Administration

SENATE BILL NO. 2799

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
2 REMOVE THE PROVISION THAT REQUIRES GOVERNING AUTHORITIES TO ISSUE  
3 REQUESTS FOR PROPOSALS BEFORE ENTERING INTO ANY CONTRACT FOR  
4 GARBAGE COLLECTION OR DISPOSAL, CONTRACT FOR SOLID WASTE  
5 COLLECTION OR DISPOSAL OR CONTRACT FOR SEWAGE COLLECTION AND  
6 DISPOSAL WHICH INVOLVES AN EXPENDITURE OF MORE THAT \$50,000.00;  
7 AND FOR RELATED PURPOSES.

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

9 SECTION 1. Section 31-7-13, Mississippi Code of 1972, is  
10 amended as follows:

11 31-7-13. All agencies and governing authorities shall  
12 purchase their commodities and printing; contract for garbage  
13 collection or disposal; contract for solid waste collection or  
14 disposal; contract for sewage collection or disposal; contract for  
15 public construction; and contract for rentals as herein provided.

16 (a) **Bidding procedure for purchases not over \$1,500.00.**  
17 Purchases which do not involve an expenditure of more than One  
18 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or  
19 shipping charges, may be made without advertising or otherwise  
20 requesting competitive bids. Provided, however, that nothing  
21 contained in this paragraph (a) shall be construed to prohibit any  
22 agency or governing authority from establishing procedures which  
23 require competitive bids on purchases of One Thousand Five Hundred  
24 Dollars (\$1,500.00) or less.

25 (b) **Bidding procedure for purchases over \$1,500.00 but**  
26 **not over \$10,000.00.** Purchases which involve an expenditure of  
27 more than One Thousand Five Hundred Dollars (\$1,500.00) but not  
28 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight

29 and shipping charges may be made from the lowest and best bidder  
30 without publishing or posting advertisement for bids, provided at  
31 least two (2) competitive written bids have been obtained. Any  
32 governing authority purchasing commodities pursuant to this  
33 paragraph (b) may authorize its purchasing agent, or his designee,  
34 with regard to governing authorities other than counties, or its  
35 purchase clerk, or his designee, with regard to counties, to  
36 accept the lowest and best competitive written bid. Such  
37 authorization shall be made in writing by the governing authority  
38 and shall be maintained on file in the primary office of the  
39 agency and recorded in the official minutes of the governing  
40 authority, as appropriate. The purchasing agent or the purchase  
41 clerk, or their designee, as the case may be, and not the  
42 governing authority, shall be liable for any penalties and/or  
43 damages as may be imposed by law for any act or omission of the  
44 purchasing agent or purchase clerk, or their designee,  
45 constituting a violation of law in accepting any bid without  
46 approval by the governing authority. The term "competitive  
47 written bid" shall mean a bid submitted on a bid form furnished by  
48 the buying agency or governing authority and signed by authorized  
49 personnel representing the vendor, or a bid submitted on a  
50 vendor's letterhead or identifiable bid form and signed by  
51 authorized personnel representing the vendor. Bids may be  
52 submitted by facsimile, electronic mail or other generally  
53 accepted method of information distribution. Bids submitted by  
54 electronic transmission shall not require the signature of the  
55 vendor's representative unless required by agencies or governing  
56 authorities.

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

58 (i) **Publication requirement.** Purchases which  
59 involve an expenditure of more than Ten Thousand Dollars  
60 (\$10,000.00), exclusive of freight and shipping charges may be  
61 made from the lowest and best bidder after advertising for

62 competitive sealed bids once each week for two (2) consecutive  
63 weeks in a regular newspaper published in the county or  
64 municipality in which such agency or governing authority is  
65 located. The date as published for the bid opening shall not be  
66 less than seven (7) working days after the last published notice;  
67 however, if the purchase involves a construction project in which  
68 the estimated cost is in excess of Fifteen Thousand Dollars  
69 (\$15,000.00), such bids shall not be opened in less than fifteen  
70 (15) working days after the last notice is published and the  
71 notice for the purchase of such construction shall be published  
72 once each week for two (2) consecutive weeks. The notice of  
73 intention to let contracts or purchase equipment shall state the  
74 time and place at which bids shall be received, list the contracts  
75 to be made or types of equipment or supplies to be purchased, and,  
76 if all plans and/or specifications are not published, refer to the  
77 plans and/or specifications on file. If there is no newspaper  
78 published in the county or municipality, then such notice shall be  
79 given by posting same at the courthouse, or for municipalities at  
80 the city hall, and at two (2) other public places in the county or  
81 municipality, and also by publication once each week for two (2)  
82 consecutive weeks in some newspaper having a general circulation  
83 in the county or municipality in the above provided manner. On  
84 the same date that the notice is submitted to the newspaper for  
85 publication, the agency or governing authority involved shall mail  
86 written notice to, or provide electronic notification to the main  
87 office of the Mississippi Contract Procurement Center that  
88 contains the same information as that in the published notice.

89 (ii) **Bidding Process Amendment Procedure.** If all  
90 plans and/or specifications are published in the notification,  
91 then the plans and/or specifications may not be amended. If all  
92 plans and/or specifications are not published in the notification,  
93 then amendments to the plans/specifications, bid opening date, bid  
94 opening time and place may be made, provided that the agency or

95 governing authority maintains a list of all prospective bidders  
96 who are known to have received a copy of the bid documents and all  
97 such prospective bidders are sent copies of all amendments. This  
98 notification of amendments may be made via mail, facsimile,  
99 electronic mail or other generally accepted method of information  
100 distribution. No addendum to bid specifications may be issued  
101 within forty-eight (48) working hours of the time established for  
102 the receipt of bids unless such addendum also amends the bid  
103 opening to a date not less than five (5) working days after the  
104 date of the addendum.

105                   (iii) **Filing Requirement.** In all cases involving  
106 governing authorities, before the notice shall be published or  
107 posted, the plans or specifications for the construction or  
108 equipment being sought shall be filed with the clerk of the board  
109 of the governing authority. In addition to these requirements, a  
110 bid file shall be established which shall indicate those vendors  
111 to whom such solicitations and specifications were issued, and  
112 such file shall also contain such information as is pertinent to  
113 the bid.

114                   (iv) **Specification Restrictions.** Specifications  
115 pertinent to such bidding shall be written so as not to exclude  
116 comparable equipment of domestic manufacture. Provided, however,  
117 that should valid justification be presented, the Department of  
118 Finance and Administration or the board of a governing authority  
119 may approve a request for specific equipment necessary to perform  
120 a specific job. Further, such justification, when placed on the  
121 minutes of the board of a governing authority, may serve as  
122 authority for that governing authority to write specifications to  
123 require a specific item of equipment needed to perform a specific  
124 job. In addition to these requirements, from and after July 1,  
125 1990, vendors of relocatable classrooms and the specifications for  
126 the purchase of such relocatable classrooms published by local  
127 school boards shall meet all pertinent regulations of the State

128 Board of Education, including prior approval of such bid by the  
129 State Department of Education.

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

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

146 (ii) **Construction Project Negotiations Authority.**

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

152 (e) **Lease-purchase authorization.** For the purposes of  
153 this section, the term "equipment" shall mean equipment, furniture  
154 and, if applicable, associated software and other applicable  
155 direct costs associated with the acquisition. Any lease-purchase  
156 of equipment which an agency is not required to lease-purchase  
157 under the master lease-purchase program pursuant to Section  
158 31-7-10 and any lease-purchase of equipment which a governing  
159 authority elects to lease-purchase may be acquired by a  
160 lease-purchase agreement under this paragraph (e). Lease-purchase

161 financing may also be obtained from the vendor or from a  
162 third-party source after having solicited and obtained at least  
163 two (2) written competitive bids, as defined in paragraph (b) of  
164 this section, for such financing without advertising for such  
165 bids. Solicitation for the bids for financing may occur before or  
166 after acceptance of bids for the purchase of such equipment or,  
167 where no such bids for purchase are required, at any time before  
168 the purchase thereof. No such lease-purchase agreement shall be  
169 for an annual rate of interest which is greater than the overall  
170 maximum interest rate to maturity on general obligation  
171 indebtedness permitted under Section 75-17-101, and the term of  
172 such lease-purchase agreement shall not exceed the useful life of  
173 equipment covered thereby as determined according to the upper  
174 limit of the asset depreciation range (ADR) guidelines for the  
175 Class Life Asset Depreciation Range System established by the  
176 Internal Revenue Service pursuant to the United States Internal  
177 Revenue Code and regulations thereunder as in effect on December  
178 31, 1980, or comparable depreciation guidelines with respect to  
179 any equipment not covered by ADR guidelines. Any lease-purchase  
180 agreement entered into pursuant to this paragraph (e) may contain  
181 any of the terms and conditions which a master lease-purchase  
182 agreement may contain under the provisions of Section 31-7-10(5),  
183 and shall contain an annual allocation dependency clause  
184 substantially similar to that set forth in Section 31-7-10(8).  
185 Each agency or governing authority entering into a lease-purchase  
186 transaction pursuant to this paragraph (e) shall maintain with  
187 respect to each such lease-purchase transaction the same  
188 information as required to be maintained by the Department of  
189 Finance and Administration pursuant to Section 31-7-10(13).  
190 However, nothing contained in this section shall be construed to  
191 permit agencies to acquire items of equipment with a total  
192 acquisition cost in the aggregate of less than Ten Thousand  
193 Dollars (\$10,000.00) by a single lease-purchase transaction. All

194 equipment, and the purchase thereof by any lessor, acquired by  
195 lease-purchase under this paragraph and all lease-purchase  
196 payments with respect thereto shall be exempt from all Mississippi  
197 sales, use and ad valorem taxes. Interest paid on any  
198 lease-purchase agreement under this section shall be exempt from  
199 State of Mississippi income taxation.

200 (f) **Alternate bid authorization.** When necessary to  
201 ensure ready availability of commodities for public works and the  
202 timely completion of public projects, no more than two (2)  
203 alternate bids may be accepted by a governing authority for  
204 commodities. No purchases may be made through use of such  
205 alternate bids procedure unless the lowest and best bidder, for  
206 reasons beyond his control, cannot deliver the commodities  
207 contained in his bid. In that event, purchases of such  
208 commodities may be made from one (1) of the bidders whose bid was  
209 accepted as an alternate.

210 (g) **Construction contract change authorization.** In the  
211 event a determination is made by an agency or governing authority  
212 after a construction contract is let that changes or modifications  
213 to the original contract are necessary or would better serve the  
214 purpose of the agency or the governing authority, such agency or  
215 governing authority may, in its discretion, order such changes  
216 pertaining to the construction that are necessary under the  
217 circumstances without the necessity of further public bids;  
218 provided that such change shall be made in a commercially  
219 reasonable manner and shall not be made to circumvent the public  
220 purchasing statutes. In addition to any other authorized person,  
221 the architect or engineer hired by an agency or governing  
222 authority with respect to any public construction contract shall  
223 have the authority, when granted by an agency or governing  
224 authority, to authorize changes or modifications to the original  
225 contract without the necessity of prior approval of the agency or  
226 governing authority when any such change or modification is less

227 than one percent (1%) of the total contract amount. The agency or  
228 governing authority may limit the number, manner or frequency of  
229 such emergency changes or modifications.

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

247 (i) **Road construction petroleum products price**  
248 **adjustment clause authorization.** Any agency or governing  
249 authority authorized to enter into contracts for the construction,  
250 maintenance, surfacing or repair of highways, roads or streets,  
251 may include in its bid proposal and contract documents a price  
252 adjustment clause with relation to the cost to the contractor,  
253 including taxes, based upon an industry-wide cost index, of  
254 petroleum products including asphalt used in the performance or  
255 execution of the contract or in the production or manufacture of  
256 materials for use in such performance. Such industry-wide index  
257 shall be established and published monthly by the Mississippi  
258 Department of Transportation with a copy thereof to be mailed,  
259 upon request, to the clerks of the governing authority of each



260 municipality and the clerks of each board of supervisors  
261 throughout the state. The price adjustment clause shall be based  
262 on the cost of such petroleum products only and shall not include  
263 any additional profit or overhead as part of the adjustment. The  
264 bid proposals or document contract shall contain the basis and  
265 methods of adjusting unit prices for the change in the cost of  
266 such petroleum products.

267           (j) **State agency emergency purchase procedure.** If the  
268 executive head of any agency of the state shall determine that an  
269 emergency exists in regard to the purchase of any commodities or  
270 repair contracts, so that the delay incident to giving opportunity  
271 for competitive bidding would be detrimental to the interests of  
272 the state, then the provisions herein for competitive bidding  
273 shall not apply and the head of such agency shall be authorized to  
274 make the purchase or repair. Total purchases so made shall only  
275 be for the purpose of meeting needs created by the emergency  
276 situation. In the event such executive head is responsible to an  
277 agency board, at the meeting next following the emergency  
278 purchase, documentation of the purchase, including a description  
279 of the commodity purchased, the purchase price thereof and the  
280 nature of the emergency shall be presented to the board and placed  
281 on the minutes of the board of such agency. The head of such  
282 agency shall, at the earliest possible date following such  
283 emergency purchase, file with the Department of Finance and  
284 Administration (i) a statement under oath certifying the  
285 conditions and circumstances of the emergency, and (ii) a  
286 certified copy of the appropriate minutes of the board of such  
287 agency, if applicable.

288           (k) **Governing authority emergency purchase procedure.**  
289 If the governing authority, or the governing authority acting  
290 through its designee, shall determine that an emergency exists in  
291 regard to the purchase of any commodities or repair contracts, so  
292 that the delay incident to giving opportunity for competitive

293 bidding would be detrimental to the interest of the governing  
294 authority, then the provisions herein for competitive bidding  
295 shall not apply and any officer or agent of such governing  
296 authority having general or special authority therefor in making  
297 such purchase or repair shall approve the bill presented therefor,  
298 and he shall certify in writing thereon from whom such purchase  
299 was made, or with whom such a repair contract was made. At the  
300 board meeting next following the emergency purchase or repair  
301 contract, documentation of the purchase or repair contract,  
302 including a description of the commodity purchased, the price  
303 thereof and the nature of the emergency shall be presented to the  
304 board and shall be placed on the minutes of the board of such  
305 governing authority.

306           (1) **Hospital purchase or lease authorization.** The  
307 commissioners or board of trustees of any hospital owned or owned  
308 and operated separately or jointly by one or more counties,  
309 cities, towns, supervisors districts or election districts, or  
310 combinations thereof, may contract with such lowest and best  
311 bidder for the purchase or lease of any commodity under a contract  
312 of purchase or lease-purchase agreement whose obligatory terms do  
313 not exceed five (5) years. In addition to the authority granted  
314 herein, the commissioners or board of trustees are authorized to  
315 enter into contracts for the lease of equipment or services, or  
316 both, which it considers necessary for the proper care of patients  
317 if, in its opinion, it is not financially feasible to purchase the  
318 necessary equipment or services. Any such contract for the lease  
319 of equipment or services executed by the commissioners or board  
320 shall not exceed a maximum of five (5) years' duration and shall  
321 include a cancellation clause based on unavailability of funds.  
322 If such cancellation clause is exercised, there shall be no  
323 further liability on the part of the lessee.

324           (m) **Exceptions from bidding requirements.** Excepted  
325 from bid requirements are:

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

327 Purchasing agreements, contracts and maximum price regulations  
328 executed or approved by the Department of Finance and  
329 Administration.

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

341 (iii) **In-house equipment repairs.** Purchases of  
342 parts for repairs to equipment, when such repairs are made by  
343 personnel of the agency or governing authority; however, entire  
344 assemblies, such as engines or transmissions, shall not be  
345 included in this exemption when the entire assembly is being  
346 replaced instead of being repaired.

347 (iv) **Raw gravel or dirt.** Raw unprocessed deposits  
348 of gravel or fill dirt which are to be removed and transported by  
349 the purchaser.

350 (v) **Governmental equipment auctions.** Motor  
351 vehicles or other equipment purchased from a federal or state  
352 agency or a governing authority at a public auction held for the  
353 purpose of disposing of such vehicles or other equipment. Any  
354 purchase by a governing authority under the exemption authorized  
355 by this subparagraph (v) shall require advance authorization  
356 spread upon the minutes of the governing authority to include the  
357 listing of the item or items authorized to be purchased and the  
358 maximum bid authorized to be paid for each item or items.

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

379                   (vii) **Perishable supplies or food.** Perishable  
380 supplies or foods purchased for use in connection with hospitals,  
381 the school lunch programs, homemaking programs and for the feeding  
382 of county or municipal prisoners.

383                   (viii) **Single source items.** Noncompetitive items  
384 available from one (1) source only. In connection with the  
385 purchase of noncompetitive items only available from one (1)  
386 source, a certification of the conditions and circumstances  
387 requiring the purchase shall be filed by the agency with the  
388 Department of Finance and Administration and by the governing  
389 authority with the board of the governing authority. Upon receipt  
390 of that certification the Department of Finance and Administration  
391 or the board of the governing authority, as the case may be, may,

392 in writing, authorize the purchase, which authority shall be noted  
393 on the minutes of the body at the next regular meeting thereafter.  
394 In those situations, a governing authority is not required to  
395 obtain the approval of the Department of Finance and  
396 Administration.

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

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

421                   (xi) **Information Technology Products.** Purchases  
422 of information technology products made by governing authorities  
423 under the provisions of purchase schedules, or contracts executed  
424 or approved by the Mississippi Department of Information

425 Technology Services and designated for use by governing  
426 authorities.

427                   (xiii) **Energy efficiency services and equipment.**  
428 Energy efficiency services and equipment acquired by school  
429 districts, community and junior colleges, institutions of higher  
430 learning and state agencies or other applicable governmental  
431 entities on a shared-savings, lease or lease-purchase basis  
432 pursuant to Section 31-7-14.

433                   (xiiii) **Municipal electrical utility system fuel.**  
434 Purchases of coal and/or natural gas by municipally-owned electric  
435 power generating systems that have the capacity to use both coal  
436 and natural gas for the generation of electric power.

437                   (xiv) **Library books and other reference materials.**  
438 Purchases by libraries or for libraries of books and periodicals;  
439 processed film, video cassette tapes, filmstrips and slides;  
440 recorded audio tapes, cassettes and diskettes; and any such items  
441 as would be used for teaching, research or other information  
442 distribution; however, equipment such as projectors, recorders,  
443 audio or video equipment, and monitor televisions are not exempt  
444 under this subparagraph.

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

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

451                   (xvii) **Multichannel interactive video systems.**  
452 From and after July 1, 1990, contracts by Mississippi Authority  
453 for Educational Television with any private educational  
454 institution or private nonprofit organization whose purposes are  
455 educational in regard to the construction, purchase, lease or  
456 lease-purchase of facilities and equipment and the employment of

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

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

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

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

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

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

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

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

478 Contracts for garbage collection or disposal, contracts for solid  
479 waste collection or disposal and contracts for sewage collection  
480 or disposal.

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

482 **contracts.** Professional maintenance program contracts for the  
483 repair or maintenance of municipal water tanks, which provide  
484 professional services needed to maintain municipal water storage  
485 tanks for a fixed annual fee for a duration of two (2) or more  
486 years.

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

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

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

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

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

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

494 **Major Economic Impact Act.** Purchases made pursuant to the  
495 provisions of Section 57-75-9(2).

496 (n) **Term contract authorization.** All contracts for the  
497 purchase of:

498 (i) All contracts for the purchase of commodities,  
499 equipment and public construction (including, but not limited to,  
500 repair and maintenance), may be let for periods of not more than  
501 sixty (60) months in advance, subject to applicable statutory  
502 provisions prohibiting the letting of contracts during specified  
503 periods near the end of terms of office. Term contracts for a  
504 period exceeding twenty-four (24) months shall also be subject to  
505 ratification or cancellation by governing authority boards taking  
506 office subsequent to the governing authority board entering the  
507 contract.

508 (ii) Bid proposals and contracts may include price  
509 adjustment clauses with relation to the cost to the contractor  
510 based upon a nationally published industry-wide or nationally  
511 published and recognized cost index. The cost index used in a  
512 price adjustment clause shall be determined by the Department of  
513 Finance and Administration for the state agencies and by the  
514 governing board for governing authorities. The bid proposal and  
515 contract documents utilizing a price adjustment clause shall  
516 contain the basis and method of adjusting unit prices for the  
517 change in the cost of such commodities, equipment and public  
518 construction.

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



522 section requiring competitive bids, nor shall it be lawful for any  
523 person or concern to submit individual invoices for amounts within  
524 those authorized for a contract or purchase where the actual value  
525 of the contract or commodity purchased exceeds the authorized  
526 amount and the invoices therefor are split so as to appear to be  
527 authorized as purchases for which competitive bids are not  
528 required. Submission of such invoices shall constitute a  
529 misdemeanor punishable by a fine of not less than Five Hundred  
530 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
531 or by imprisonment for thirty (30) days in the county jail, or  
532 both such fine and imprisonment. In addition, the claim or claims  
533 submitted shall be forfeited.

534           (p) **Electrical utility petroleum-based equipment**  
535 **purchase procedure.** When in response to a proper advertisement  
536 therefor, no bid firm as to price is submitted to an electric  
537 utility for power transformers, distribution transformers, power  
538 breakers, reclosers or other articles containing a petroleum  
539 product, the electric utility may accept the lowest and best bid  
540 therefor although the price is not firm.

541           (q) **Fuel management system bidding procedure.** Any  
542 governing authority or agency of the state shall, before  
543 contracting for the services and products of a fuel management or  
544 fuel access system, enter into negotiations with not fewer than  
545 two (2) sellers of fuel management or fuel access systems for  
546 competitive written bids to provide the services and products for  
547 the systems. In the event that the governing authority or agency  
548 cannot locate two (2) sellers of such systems or cannot obtain  
549 bids from two (2) sellers of such systems, it shall show proof  
550 that it made a diligent, good-faith effort to locate and negotiate  
551 with two (2) sellers of such systems. Such proof shall include,  
552 but not be limited to, publications of a request for proposals and  
553 letters soliciting negotiations and bids. For purposes of this  
554 paragraph (q), a fuel management or fuel access system is an

555 automated system of acquiring fuel for vehicles as well as  
556 management reports detailing fuel use by vehicles and drivers, and  
557 the term "competitive written bid" shall have the meaning as  
558 defined in paragraph (b) of this section. Governing authorities  
559 and agencies shall be exempt from this process when contracting  
560 for the services and products of a fuel management or fuel access  
561 systems under the terms of a state contract established by the  
562 Office of Purchasing and Travel.

563 \* \* \*

564 (r) **Minority set aside authorization.** Notwithstanding  
565 any provision of this section to the contrary, any agency or  
566 governing authority, by order placed on its minutes, may, in its  
567 discretion, set aside not more than twenty percent (20%) of its  
568 anticipated annual expenditures for the purchase of commodities  
569 from minority businesses; however, all such set-aside purchases  
570 shall comply with all purchasing regulations promulgated by the  
571 Department of Finance and Administration and shall be subject to  
572 bid requirements under this section. Set-aside purchases for  
573 which competitive bids are required shall be made from the lowest  
574 and best minority business bidder. For the purposes of this  
575 paragraph, the term "minority business" means a business which is  
576 owned by a majority of persons who are United States citizens or  
577 permanent resident aliens (as defined by the Immigration and  
578 Naturalization Service) of the United States, and who are Asian,  
579 Black, Hispanic or Native American, according to the following  
580 definitions:

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

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

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

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

592 (s) **Construction punch list restriction.** The  
593 architect, engineer or other representative designated by the  
594 agency or governing authority that is contracting for public  
595 construction or renovation may prepare and submit to the  
596 contractor only one (1) preliminary punch list of items that do  
597 not meet the contract requirements at the time of substantial  
598 completion and one (1) final list immediately before final  
599 completion and final payment.

600 (t) **Purchase authorization clarification.** Nothing in  
601 this section shall be construed as authorizing any purchase not  
602 authorized by law.

603 SECTION 2. This act shall take effect and be in force from  
604 and after its passage.