

By: Senator(s) Stogner

To: Agriculture; Fees,
Salaries and Administration

SENATE BILL NO. 3010

1 AN ACT TO AMEND SECTION 69-27-331, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE THE SOIL AND WATER CONSERVATION COMMISSION TO
3 PURCHASE USED HEAVY MACHINERY AT PUBLIC AUCTION; TO AMEND SECTION
4 31-7-13, MISSISSIPPI CODE OF 1972, TO PROVIDE AN EXEMPTION TO
5 PURCHASING LAWS FOR SUCH EQUIPMENT PURCHASED AT PUBLIC AUCTION;
6 AND FOR RELATED PURPOSES.

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

8 SECTION 1. Section 69-27-331, Mississippi Code of 1972, is
9 amended as follows:

10 69-27-331. (1) (a) The State Soil and Water Conservation
11 Commission, subject to the restrictions provided in Sections
12 69-27-331 through 69-27-341, is authorized to acquire and to make
13 available, or to assist in acquiring or making available to soil
14 and water conservation districts, heavy or specialized machinery
15 or equipment deemed necessary for installation and implementation
16 of soil and water conservation practices or measures.

17 (b) The heavy or specialized machinery or equipment
18 purchased under this section may be either new or used. The
19 commission may purchase used equipment through a duly licensed and
20 authorized public auction of agricultural, heavy or specialized
21 equipment as authorized under Section 31-7-13.

22 (2) When the commission acquires or makes available to any
23 district the machinery or equipment referred to in subsection (1)
24 of this section, it shall require the district to fully amortize
25 to the commission any amount so expended by the commission for
26 such assistance. The amount and method of amortization for each
27 piece of heavy or specialized machinery or equipment shall be
28 determined by the commission in conjunction with the soil and

29 water conservation district. In making this determination, the
30 following shall be considered: (a) full amortization to the
31 commission of the capital outlay for the machinery or equipment
32 over the period of its reasonably anticipated full usefulness;
33 and, when necessary (b) (i) cover the cost of operation,
34 maintenance and repairs; (ii) pay the usual cost of providing an
35 operator; (iii) compensate the district for the usual costs of
36 transportation from one (1) job to another.

37 (3) In giving effect to all of the foregoing, the commission
38 shall estimate the amount of time such machinery or equipment
39 would ordinarily be idle.

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

42 31-7-13. All agencies and governing authorities shall
43 purchase their commodities and printing; contract for garbage
44 collection or disposal; contract for solid waste collection or
45 disposal; contract for sewage collection or disposal; contract for
46 public construction; and contract for rentals as herein provided.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

527 (xxvii) **Used heavy or specialized machinery or**
528 **equipment for installation of soil and water conservation**

529 **practices purchased at auction.** Used heavy or specialized

530 machinery or equipment used for the installation and

531 implementation of soil and water conservation practices or

532 measures purchased subject to the restrictions provided in

533 Sections 69-27-331 through 69-27-341. Any purchase by the State

534 Soil and Water Conservation Commission under the exemption

535 authorized by this subparagraph shall require advance

536 authorization spread upon the minutes of the commission to include

537 the listing of the item or items authorized to be purchased and

538 the maximum bid authorized to be paid for each item or items.

539 (n) **Term contract authorization.** All contracts for the
540 purchase of:

541 (i) All contracts for the purchase of commodities,

542 equipment and public construction (including, but not limited to,

543 repair and maintenance), may be let for periods of not more than

544 sixty (60) months in advance, subject to applicable statutory

545 provisions prohibiting the letting of contracts during specified

546 periods near the end of terms of office. Term contracts for a

547 period exceeding twenty-four (24) months shall also be subject to

548 ratification or cancellation by governing authority boards taking

549 office subsequent to the governing authority board entering the

550 contract.

551 (ii) Bid proposals and contracts may include price

552 adjustment clauses with relation to the cost to the contractor

553 based upon a nationally published industry-wide or nationally
554 published and recognized cost index. The cost index used in a
555 price adjustment clause shall be determined by the Department of
556 Finance and Administration for the state agencies and by the
557 governing board for governing authorities. The bid proposal and
558 contract documents utilizing a price adjustment clause shall
559 contain the basis and method of adjusting unit prices for the
560 change in the cost of such commodities, equipment and public
561 construction.

562 (o) **Purchase law violation prohibition and vendor**
563 **penalty.** No contract or purchase as herein authorized shall be
564 made for the purpose of circumventing the provisions of this
565 section requiring competitive bids, nor shall it be lawful for any
566 person or concern to submit individual invoices for amounts within
567 those authorized for a contract or purchase where the actual value
568 of the contract or commodity purchased exceeds the authorized
569 amount and the invoices therefor are split so as to appear to be
570 authorized as purchases for which competitive bids are not
571 required. Submission of such invoices shall constitute a
572 misdemeanor punishable by a fine of not less than Five Hundred
573 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
574 or by imprisonment for thirty (30) days in the county jail, or
575 both such fine and imprisonment. In addition, the claim or claims
576 submitted shall be forfeited.

577 (p) **Electrical utility petroleum-based equipment**
578 **purchase procedure.** When in response to a proper advertisement
579 therefor, no bid firm as to price is submitted to an electric
580 utility for power transformers, distribution transformers, power
581 breakers, reclosers or other articles containing a petroleum
582 product, the electric utility may accept the lowest and best bid
583 therefor although the price is not firm.

584 (q) **Fuel management system bidding procedure.** Any
585 governing authority or agency of the state shall, before

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

606 (r) **Solid waste contract proposal procedure.** Before
607 entering into any contract for garbage collection or disposal,
608 contract for solid waste collection or disposal or contract for
609 sewage collection or disposal, which involves an expenditure of
610 more than Fifty Thousand Dollars (\$50,000.00), a governing
611 authority or agency shall issue publicly a request for proposals
612 concerning the specifications for such services which shall be
613 advertised for in the same manner as provided in this section for
614 seeking bids for purchases which involve an expenditure of more
615 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
616 when issued shall contain terms and conditions relating to price,
617 financial responsibility, technology, legal responsibilities and
618 other relevant factors as are determined by the governing

619 authority or agency to be appropriate for inclusion; all factors
620 determined relevant by the governing authority or agency or
621 required by this paragraph (r) shall be duly included in the
622 advertisement to elicit proposals. After responses to the request
623 for proposals have been duly received, the governing authority or
624 agency shall select the most qualified proposal or proposals on
625 the basis of price, technology and other relevant factors and from
626 such proposals, but not limited to the terms thereof, negotiate
627 and enter contracts with one or more of the persons or firms
628 submitting proposals. If the governing authority or agency deems
629 none of the proposals to be qualified or otherwise acceptable, the
630 request for proposals process may be reinitiated. Notwithstanding
631 any other provisions of this paragraph, where a county with at
632 least thirty-five thousand (35,000) nor more than forty thousand
633 (40,000) population, according to the 1990 federal decennial
634 census, owns or operates a solid waste landfill, the governing
635 authorities of any other county or municipality may contract with
636 the governing authorities of the county owning or operating the
637 landfill, pursuant to a resolution duly adopted and spread upon
638 the minutes of each governing authority involved, for garbage or
639 solid waste collection or disposal services through contract
640 negotiations.

641 (s) **Minority set aside authorization.** Notwithstanding
642 any provision of this section to the contrary, any agency or
643 governing authority, by order placed on its minutes, may, in its
644 discretion, set aside not more than twenty percent (20%) of its
645 anticipated annual expenditures for the purchase of commodities
646 from minority businesses; however, all such set-aside purchases
647 shall comply with all purchasing regulations promulgated by the
648 Department of Finance and Administration and shall be subject to
649 bid requirements under this section. Set-aside purchases for
650 which competitive bids are required shall be made from the lowest
651 and best minority business bidder. For the purposes of this

652 paragraph, the term "minority business" means a business which is
653 owned by a majority of persons who are United States citizens or
654 permanent resident aliens (as defined by the Immigration and
655 Naturalization Service) of the United States, and who are Asian,
656 Black, Hispanic or Native American, according to the following
657 definitions:

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

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

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

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

669 (t) **Construction punch list restriction.** The
670 architect, engineer or other representative designated by the
671 agency or governing authority that is contracting for public
672 construction or renovation may prepare and submit to the
673 contractor only one (1) preliminary punch list of items that do
674 not meet the contract requirements at the time of substantial
675 completion and one (1) final list immediately before final
676 completion and final payment.

677 (u) **Purchase authorization clarification.** Nothing in
678 this section shall be construed as authorizing any purchase not
679 authorized by law.

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