

By: Representative Howell

To: Appropriations;
Judiciary A

HOUSE BILL NO. 1657

1 AN ACT TO CREATE THE PRIVATE ATTORNEY RETENTION SUNSHINE ACT;
2 TO SPECIFY CONTRACTS SUBJECT TO THE PROVISIONS OF THIS ACT; TO
3 PROVIDE FOR OVERSIGHT HEARINGS; TO REQUIRE FILING OF CONTRACTS
4 WITH THE LEGISLATURE AND AUTHORIZE HEARINGS ON CONTRACTS; TO
5 REQUIRE EXPENSE REPORTS; TO AMEND SECTION 31-7-13, MISSISSIPPI
6 CODE OF 1972, TO CONFORM WITH THE PROVISIONS OF THIS ACT; AND FOR
7 RELATED PURPOSES.

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

9 **SECTION 1.** This act may be known as the "Private Attorney
10 Retention Sunshine Act."

11 **SECTION 2.** For the purposes of this act, a contract in
12 excess of One Million Dollars (\$1,000,000.00) is one in which the
13 fee paid to an attorney or group of attorneys, either in the form
14 of a flat, hourly or contingent fee, and their expenses, exceeds
15 or can be reasonably expected to exceed One Million Dollars
16 (\$1,000,000.00).

17 **SECTION 3.** Any state agency or state agent that wishes to
18 retain a lawyer or law firm to perform legal services on behalf of
19 this state shall not do so until an open and competitive bidding
20 process has been undertaken and approval is made under Section
21 25-9-120.

22 **SECTION 4.** No state agency or state agent shall enter into a
23 contract for legal services exceeding One Million Dollars
24 (\$1,000,000.00) without the opportunity for at least one (1)
25 hearing in the Legislature on the terms of the legal contract in
26 accordance with Section 5 of this act.

27 **SECTION 5.** (1) As required by Section 4 of this act, any
28 state agency or state agent entering into a contract for legal
29 services in excess of One Million Dollars (\$1,000,000.00) shall



30 file a copy of said proposed contract with the Clerk of the House
31 of Representatives, who, with the approval of the President of the
32 Senate and the Speaker of the House of Representatives, shall
33 refer such contract to the appropriate committee.

34 (2) Within thirty (30) days after such referral, said
35 committee may hold a public hearing on said proposed contract and
36 shall issue a report to the referring state agency or agent. Said
37 report shall include any proposed changes to the proposed contract
38 voted upon by the committee. The state agency or state agent
39 shall review said report and adopt a final contract as deemed
40 appropriate in view of said report and shall file with the Clerk
41 of the House of Representatives its final contract.

42 (3) If the proposed contract does not contain the changes
43 proposed by said committee, the referring state agency or agent
44 shall send a letter to said clerk accompanying the final contract
45 stating the reasons why such proposed changes were not adopted.
46 Said clerk shall refer such letter and final regulations to the
47 appropriate committee. Not earlier than forty-five (45) days
48 after the filing of such letter and final contract with said
49 committee, the state agency or agent shall enter into the final
50 contract.

51 (4) If no proposed changes to the proposed contract are made
52 to the state agency or agent within sixty (60) days of the initial
53 filing of the proposed regulation or any amendment or repeal of
54 such regulation with the Clerk of the House of Representatives,
55 the state agency or agent may enter into the contract.

56 (5) Nothing in this act shall be construed to expand the
57 authority of any state agency or agent to enter into contracts
58 where no such authority previously existed.

59 (6) In the event that the Legislature is not in session and
60 the Attorney General wishes to execute a contract for legal
61 services, the Governor with the unanimous consent of the Speaker
62 of the House, and the President of the Senate, may establish a



63 five-member interim committee consisting of five state
64 legislators, one (1) to be appointed by the Governor, two (2) to
65 be appointed by the Speaker of the House, and two (2) to be
66 appointed by the President of the Senate to execute the oversight
67 duties as set forth in subsections (2) through (5) of this
68 section.

69 **SECTION 6.** (1) At the conclusion of any legal proceeding
70 for which a state agency or agent retained outside counsel on a
71 contingent fee basis, the state shall receive from counsel a
72 statement of the hours worked on the case, expenses incurred, the
73 aggregate fee amount, and a breakdown as to the hourly rate, based
74 on hours worked divided into fee recovered, less expenses.

75 (2) In no case shall the state incur fees and expenses in
76 excess of One Thousand Dollars (\$1,000.00) per hour for legal
77 services. In cases where a disclosure submitted in accordance
78 with paragraph (a) of this section indicates an hourly rate in
79 excess of One Thousand Dollars (\$1,000.00) per hour, the fee
80 amount shall be reduced to an amount equivalent to One Thousand
81 Dollars (\$1,000.00) per hour.

82 **SECTION 7.** Section 31-7-13, Mississippi Code of 1972, is
83 amended as follows:

84 31-7-13. All agencies and governing authorities shall
85 purchase their commodities and printing; contract for garbage
86 collection or disposal; contract for solid waste collection or
87 disposal; contract for sewage collection or disposal; contract for
88 public construction; and contract for rentals as herein provided.

89 (a) **Bidding procedure for purchases not over \$1,500.00.**
90 Purchases which do not involve an expenditure of more than One
91 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or
92 shipping charges, may be made without advertising or otherwise
93 requesting competitive bids. Provided, however, that nothing
94 contained in this paragraph (a) shall be construed to prohibit any
95 agency or governing authority from establishing procedures which



96 require competitive bids on purchases of One Thousand Five Hundred
97 Dollars (\$1,500.00) or less.

98 (b) **Bidding procedure for purchases over \$1,500.00 but**
99 **not over \$10,000.00.** Purchases which involve an expenditure of
100 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
101 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
102 and shipping charges may be made from the lowest and best bidder
103 without publishing or posting advertisement for bids, provided at
104 least two (2) competitive written bids have been obtained. Any
105 governing authority purchasing commodities pursuant to this
106 paragraph (b) may authorize its purchasing agent, or his designee,
107 with regard to governing authorities other than counties, or its
108 purchase clerk, or his designee, with regard to counties, to
109 accept the lowest and best competitive written bid. Such
110 authorization shall be made in writing by the governing authority
111 and shall be maintained on file in the primary office of the
112 agency and recorded in the official minutes of the governing
113 authority, as appropriate. The purchasing agent or the purchase
114 clerk, or their designee, as the case may be, and not the
115 governing authority, shall be liable for any penalties and/or
116 damages as may be imposed by law for any act or omission of the
117 purchasing agent or purchase clerk, or their designee,
118 constituting a violation of law in accepting any bid without
119 approval by the governing authority. The term "competitive
120 written bid" shall mean a bid submitted on a bid form furnished by
121 the buying agency or governing authority and signed by authorized
122 personnel representing the vendor, or a bid submitted on a
123 vendor's letterhead or identifiable bid form and signed by
124 authorized personnel representing the vendor. Bids may be
125 submitted by facsimile, electronic mail or other generally
126 accepted method of information distribution. Bids submitted by
127 electronic transmission shall not require the signature of the



128 vendor's representative unless required by agencies or governing
129 authorities.

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

131 (i) **Publication requirement.** Purchases which
132 involve an expenditure of more than Ten Thousand Dollars
133 (\$10,000.00), exclusive of freight and shipping charges may be
134 made from the lowest and best bidder after advertising for
135 competitive sealed bids once each week for two (2) consecutive
136 weeks in a regular newspaper published in the county or
137 municipality in which such agency or governing authority is
138 located. The date as published for the bid opening shall not be
139 less than seven (7) working days after the last published notice;
140 however, if the purchase involves a construction project in which
141 the estimated cost is in excess of Fifteen Thousand Dollars
142 (\$15,000.00), such bids shall not be opened in less than fifteen
143 (15) working days after the last notice is published and the
144 notice for the purchase of such construction shall be published
145 once each week for two (2) consecutive weeks. The notice of
146 intention to let contracts or purchase equipment shall state the
147 time and place at which bids shall be received, list the contracts
148 to be made or types of equipment or supplies to be purchased, and,
149 if all plans and/or specifications are not published, refer to the
150 plans and/or specifications on file. If there is no newspaper
151 published in the county or municipality, then such notice shall be
152 given by posting same at the courthouse, or for municipalities at
153 the city hall, and at two (2) other public places in the county or
154 municipality, and also by publication once each week for two (2)
155 consecutive weeks in some newspaper having a general circulation
156 in the county or municipality in the above provided manner. On
157 the same date that the notice is submitted to the newspaper for
158 publication, the agency or governing authority involved shall mail
159 written notice to, or provide electronic notification to the main



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

162 (ii) **Bidding process amendment procedure.** If all
163 plans and/or specifications are published in the notification,
164 then the plans and/or specifications may not be amended. If all
165 plans and/or specifications are not published in the notification,
166 then amendments to the plans/specifications, bid opening date, bid
167 opening time and place may be made, provided that the agency or
168 governing authority maintains a list of all prospective bidders
169 who are known to have received a copy of the bid documents and all
170 such prospective bidders are sent copies of all amendments. This
171 notification of amendments may be made via mail, facsimile,
172 electronic mail or other generally accepted method of information
173 distribution. No addendum to bid specifications may be issued
174 within forty-eight (48) working hours of the time established for
175 the receipt of bids unless such addendum also amends the bid
176 opening to a date not less than five (5) working days after the
177 date of the addendum.

178 (iii) **Filing requirement.** In all cases involving
179 governing authorities, before the notice shall be published or
180 posted, the plans or specifications for the construction or
181 equipment being sought shall be filed with the clerk of the board
182 of the governing authority. In addition to these requirements, a
183 bid file shall be established which shall indicate those vendors
184 to whom such solicitations and specifications were issued, and
185 such file shall also contain such information as is pertinent to
186 the bid.

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



193 a specific job. Further, such justification, when placed on the
194 minutes of the board of a governing authority, may serve as
195 authority for that governing authority to write specifications to
196 require a specific item of equipment needed to perform a specific
197 job. In addition to these requirements, from and after July 1,
198 1990, vendors of relocatable classrooms and the specifications for
199 the purchase of such relocatable classrooms published by local
200 school boards shall meet all pertinent regulations of the State
201 Board of Education, including prior approval of such bid by the
202 State Department of Education.

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

204 (i) **Decision procedure.** Purchases may be made
205 from the lowest and best bidder. In determining the lowest and
206 best bid, freight and shipping charges shall be included.
207 Life-cycle costing, total cost bids, warranties, guaranteed
208 buy-back provisions and other relevant provisions may be included
209 in the best bid calculation. All best bid procedures for state
210 agencies must be in compliance with regulations established by the
211 Department of Finance and Administration. If any governing
212 authority accepts a bid other than the lowest bid actually
213 submitted, it shall place on its minutes detailed calculations and
214 narrative summary showing that the accepted bid was determined to
215 be the lowest and best bid, including the dollar amount of the
216 accepted bid and the dollar amount of the lowest bid. No agency
217 or governing authority shall accept a bid based on items not
218 included in the specifications.

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

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



225 (e) **Lease-purchase authorization.** For the purposes of
226 this section, the term "equipment" shall mean equipment, furniture
227 and, if applicable, associated software and other applicable
228 direct costs associated with the acquisition. Any lease-purchase
229 of equipment which an agency is not required to lease-purchase
230 under the master lease-purchase program pursuant to Section
231 31-7-10 and any lease-purchase of equipment which a governing
232 authority elects to lease-purchase may be acquired by a
233 lease-purchase agreement under this paragraph (e). Lease-purchase
234 financing may also be obtained from the vendor or from a
235 third-party source after having solicited and obtained at least
236 two (2) written competitive bids, as defined in paragraph (b) of
237 this section, for such financing without advertising for such
238 bids. Solicitation for the bids for financing may occur before or
239 after acceptance of bids for the purchase of such equipment or,
240 where no such bids for purchase are required, at any time before
241 the purchase thereof. No such lease-purchase agreement shall be
242 for an annual rate of interest which is greater than the overall
243 maximum interest rate to maturity on general obligation
244 indebtedness permitted under Section 75-17-101, and the term of
245 such lease-purchase agreement shall not exceed the useful life of
246 equipment covered thereby as determined according to the upper
247 limit of the asset depreciation range (ADR) guidelines for the
248 Class Life Asset Depreciation Range System established by the
249 Internal Revenue Service pursuant to the United States Internal
250 Revenue Code and regulations thereunder as in effect on December
251 31, 1980, or comparable depreciation guidelines with respect to
252 any equipment not covered by ADR guidelines. Any lease-purchase
253 agreement entered into pursuant to this paragraph (e) may contain
254 any of the terms and conditions which a master lease-purchase
255 agreement may contain under the provisions of Section 31-7-10(5),
256 and shall contain an annual allocation dependency clause
257 substantially similar to that set forth in Section 31-7-10(8).



258 Each agency or governing authority entering into a lease-purchase
259 transaction pursuant to this paragraph (e) shall maintain with
260 respect to each such lease-purchase transaction the same
261 information as required to be maintained by the Department of
262 Finance and Administration pursuant to Section 31-7-10(13).
263 However, nothing contained in this section shall be construed to
264 permit agencies to acquire items of equipment with a total
265 acquisition cost in the aggregate of less than Ten Thousand
266 Dollars (\$10,000.00) by a single lease-purchase transaction. All
267 equipment, and the purchase thereof by any lessor, acquired by
268 lease-purchase under this paragraph and all lease-purchase
269 payments with respect thereto shall be exempt from all Mississippi
270 sales, use and ad valorem taxes. Interest paid on any
271 lease-purchase agreement under this section shall be exempt from
272 State of Mississippi income taxation.

273 (f) **Alternate bid authorization.** When necessary to
274 ensure ready availability of commodities for public works and the
275 timely completion of public projects, no more than two (2)
276 alternate bids may be accepted by a governing authority for
277 commodities. No purchases may be made through use of such
278 alternate bids procedure unless the lowest and best bidder, for
279 reasons beyond his control, cannot deliver the commodities
280 contained in his bid. In that event, purchases of such
281 commodities may be made from one (1) of the bidders whose bid was
282 accepted as an alternate.

283 (g) **Construction contract change authorization.** In the
284 event a determination is made by an agency or governing authority
285 after a construction contract is let that changes or modifications
286 to the original contract are necessary or would better serve the
287 purpose of the agency or the governing authority, such agency or
288 governing authority may, in its discretion, order such changes
289 pertaining to the construction that are necessary under the
290 circumstances without the necessity of further public bids;



291 provided that such change shall be made in a commercially
292 reasonable manner and shall not be made to circumvent the public
293 purchasing statutes. In addition to any other authorized person,
294 the architect or engineer hired by an agency or governing
295 authority with respect to any public construction contract shall
296 have the authority, when granted by an agency or governing
297 authority, to authorize changes or modifications to the original
298 contract without the necessity of prior approval of the agency or
299 governing authority when any such change or modification is less
300 than one percent (1%) of the total contract amount. The agency or
301 governing authority may limit the number, manner or frequency of
302 such emergency changes or modifications.

303 (h) **Petroleum purchase alternative.** In addition to
304 other methods of purchasing authorized in this chapter, when any
305 agency or governing authority shall have a need for gas, diesel
306 fuel, oils and/or other petroleum products in excess of the amount
307 set forth in paragraph (a) of this section, such agency or
308 governing authority may purchase the commodity after having
309 solicited and obtained at least two (2) competitive written bids,
310 as defined in paragraph (b) of this section. If two (2)
311 competitive written bids are not obtained the entity shall comply
312 with the procedures set forth in paragraph (c) of this section.
313 In the event any agency or governing authority shall have
314 advertised for bids for the purchase of gas, diesel fuel, oils and
315 other petroleum products and coal and no acceptable bids can be
316 obtained, such agency or governing authority is authorized and
317 directed to enter into any negotiations necessary to secure the
318 lowest and best contract available for the purchase of such
319 commodities.

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



324 may include in its bid proposal and contract documents a price
325 adjustment clause with relation to the cost to the contractor,
326 including taxes, based upon an industry-wide cost index, of
327 petroleum products including asphalt used in the performance or
328 execution of the contract or in the production or manufacture of
329 materials for use in such performance. Such industry-wide index
330 shall be established and published monthly by the Mississippi
331 Department of Transportation with a copy thereof to be mailed,
332 upon request, to the clerks of the governing authority of each
333 municipality and the clerks of each board of supervisors
334 throughout the state. The price adjustment clause shall be based
335 on the cost of such petroleum products only and shall not include
336 any additional profit or overhead as part of the adjustment. The
337 bid proposals or document contract shall contain the basis and
338 methods of adjusting unit prices for the change in the cost of
339 such petroleum products.

340 (j) **State agency emergency purchase procedure.** If the
341 executive head of any agency of the state shall determine that an
342 emergency exists in regard to the purchase of any commodities or
343 repair contracts, so that the delay incident to giving opportunity
344 for competitive bidding would be detrimental to the interests of
345 the state, then the provisions herein for competitive bidding
346 shall not apply and the head of such agency shall be authorized to
347 make the purchase or repair. Total purchases so made shall only
348 be for the purpose of meeting needs created by the emergency
349 situation. In the event such executive head is responsible to an
350 agency board, at the meeting next following the emergency
351 purchase, documentation of the purchase, including a description
352 of the commodity purchased, the purchase price thereof and the
353 nature of the emergency shall be presented to the board and placed
354 on the minutes of the board of such agency. The head of such
355 agency shall, at the earliest possible date following such
356 emergency purchase, file with the Department of Finance and



357 Administration (i) a statement under oath certifying the
358 conditions and circumstances of the emergency, and (ii) a
359 certified copy of the appropriate minutes of the board of such
360 agency, if applicable.

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

362 If the governing authority, or the governing authority acting
363 through its designee, shall determine that an emergency exists in
364 regard to the purchase of any commodities or repair contracts, so
365 that the delay incident to giving opportunity for competitive
366 bidding would be detrimental to the interest of the governing
367 authority, then the provisions herein for competitive bidding
368 shall not apply and any officer or agent of such governing
369 authority having general or special authority therefor in making
370 such purchase or repair shall approve the bill presented therefor,
371 and he shall certify in writing thereon from whom such purchase
372 was made, or with whom such a repair contract was made. At the
373 board meeting next following the emergency purchase or repair
374 contract, documentation of the purchase or repair contract,
375 including a description of the commodity purchased, the price
376 thereof and the nature of the emergency shall be presented to the
377 board and shall be placed on the minutes of the board of such
378 governing authority.

379 (l) **Hospital purchase or lease authorization.** The
380 commissioners or board of trustees of any hospital owned or owned
381 and operated separately or jointly by one or more counties,
382 cities, towns, supervisors districts or election districts, or
383 combinations thereof, may contract with such lowest and best
384 bidder for the purchase or lease of any commodity under a contract
385 of purchase or lease-purchase agreement whose obligatory terms do
386 not exceed five (5) years. In addition to the authority granted
387 herein, the commissioners or board of trustees are authorized to
388 enter into contracts for the lease of equipment or services, or
389 both, which it considers necessary for the proper care of patients



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

397 (m) **Exceptions from bidding requirements.** Excepted
398 from bid requirements are:

399 (i) **Purchasing agreements approved by department.**
400 Purchasing agreements, contracts and maximum price regulations
401 executed or approved by the Department of Finance and
402 Administration.

403 (ii) **Outside equipment repairs.** Repairs to
404 equipment, when such repairs are made by repair facilities in the
405 private sector; however, engines, transmissions, rear axles and/or
406 other such components shall not be included in this exemption when
407 replaced as a complete unit instead of being repaired and the need
408 for such total component replacement is known before disassembly
409 of the component; provided, however, that invoices identifying the
410 equipment, specific repairs made, parts identified by number and
411 name, supplies used in such repairs, and the number of hours of
412 labor and costs therefor shall be required for the payment for
413 such repairs.

414 (iii) **In-house equipment repairs.** Purchases of
415 parts for repairs to equipment, when such repairs are made by
416 personnel of the agency or governing authority; however, entire
417 assemblies, such as engines or transmissions, shall not be
418 included in this exemption when the entire assembly is being
419 replaced instead of being repaired.

420 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
421 of gravel or fill dirt which are to be removed and transported by
422 the purchaser.



423 (v) **Governmental equipment auctions.** Motor
424 vehicles or other equipment purchased from a federal or state
425 agency or a governing authority at a public auction held for the
426 purpose of disposing of such vehicles or other equipment. Any
427 purchase by a governing authority under the exemption authorized
428 by this subparagraph (v) shall require advance authorization
429 spread upon the minutes of the governing authority to include the
430 listing of the item or items authorized to be purchased and the
431 maximum bid authorized to be paid for each item or items.

432 (vi) **Intergovernmental sales and transfers.**
433 Purchases, sales, transfers or trades by governing authorities or
434 state agencies when such purchases, sales, transfers or trades are
435 made by a private treaty agreement or through means of
436 negotiation, from any federal agency or authority, another
437 governing authority or state agency of the State of Mississippi,
438 or any state agency of another state. Nothing in this section
439 shall permit such purchases through public auction except as
440 provided for in subparagraph (v) of this section. It is the
441 intent of this section to allow governmental entities to dispose
442 of and/or purchase commodities from other governmental entities at
443 a price that is agreed to by both parties. This shall allow for
444 purchases and/or sales at prices which may be determined to be
445 below the market value if the selling entity determines that the
446 sale at below market value is in the best interest of the
447 taxpayers of the state. Governing authorities shall place the
448 terms of the agreement and any justification on the minutes, and
449 state agencies shall obtain approval from the Department of
450 Finance and Administration, prior to releasing or taking
451 possession of the commodities.

452 (vii) **Perishable supplies or food.** Perishable
453 supplies or foods purchased for use in connection with hospitals,
454 the school lunch programs, homemaking programs and for the feeding
455 of county or municipal prisoners.



456 (viii) **Single source items.** Noncompetitive items
457 available from one (1) source only. In connection with the
458 purchase of noncompetitive items only available from one (1)
459 source, a certification of the conditions and circumstances
460 requiring the purchase shall be filed by the agency with the
461 Department of Finance and Administration and by the governing
462 authority with the board of the governing authority. Upon receipt
463 of that certification the Department of Finance and Administration
464 or the board of the governing authority, as the case may be, may,
465 in writing, authorize the purchase, which authority shall be noted
466 on the minutes of the body at the next regular meeting thereafter.
467 In those situations, a governing authority is not required to
468 obtain the approval of the Department of Finance and
469 Administration.

470 (ix) **Waste disposal facility construction**
471 **contracts.** Construction of incinerators and other facilities for
472 disposal of solid wastes in which products either generated
473 therein, such as steam, or recovered therefrom, such as materials
474 for recycling, are to be sold or otherwise disposed of; provided,
475 however, in constructing such facilities a governing authority or
476 agency shall publicly issue requests for proposals, advertised for
477 in the same manner as provided herein for seeking bids for public
478 construction projects, concerning the design, construction,
479 ownership, operation and/or maintenance of such facilities,
480 wherein such requests for proposals when issued shall contain
481 terms and conditions relating to price, financial responsibility,
482 technology, environmental compatibility, legal responsibilities
483 and such other matters as are determined by the governing
484 authority or agency to be appropriate for inclusion; and after
485 responses to the request for proposals have been duly received,
486 the governing authority or agency may select the most qualified
487 proposal or proposals on the basis of price, technology and other
488 relevant factors and from such proposals, but not limited to the



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

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

494 (xi) **Information technology products.** Purchases
495 of information technology products made by governing authorities
496 under the provisions of purchase schedules, or contracts executed
497 or approved by the Mississippi Department of Information
498 Technology Services and designated for use by governing
499 authorities.

500 (xii) **Energy efficiency services and equipment.**
501 Energy efficiency services and equipment acquired by school
502 districts, community and junior colleges, institutions of higher
503 learning and state agencies or other applicable governmental
504 entities on a shared-savings, lease or lease-purchase basis
505 pursuant to Section 31-7-14.

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

510 (xiv) **Library books and other reference materials.**
511 Purchases by libraries or for libraries of books and periodicals;
512 processed film, video cassette tapes, filmstrips and slides;
513 recorded audio tapes, cassettes and diskettes; and any such items
514 as would be used for teaching, research or other information
515 distribution; however, equipment such as projectors, recorders,
516 audio or video equipment, and monitor televisions are not exempt
517 under this subparagraph.

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



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

524 (xvii) **Multichannel interactive video systems.**
525 From and after July 1, 1990, contracts by Mississippi Authority
526 for Educational Television with any private educational
527 institution or private nonprofit organization whose purposes are
528 educational in regard to the construction, purchase, lease or
529 lease-purchase of facilities and equipment and the employment of
530 personnel for providing multichannel interactive video systems
531 (ITSF) in the school districts of this state.

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

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

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

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

550 (xxii) **Garbage, solid waste and sewage contracts.**
551 Contracts for garbage collection or disposal, contracts for solid
552 waste collection or disposal and contracts for sewage collection
553 or disposal.



554 (xxiii) **Municipal water tank maintenance**
555 **contracts.** Professional maintenance program contracts for the
556 repair or maintenance of municipal water tanks, which provide
557 professional services needed to maintain municipal water storage
558 tanks for a fixed annual fee for a duration of two (2) or more
559 years.

560 (xxiv) **Purchases of Mississippi Industries for the**
561 **Blind products.** Purchases made by state agencies or governing
562 authorities involving any item that is manufactured, processed or
563 produced by the Mississippi Industries for the Blind.

564 (xxv) **Purchases of state-adopted textbooks.**
565 Purchases of state-adopted textbooks by public school districts.

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

569 (xxvii) **Used heavy or specialized machinery or**
570 **equipment for installation of soil and water conservation**
571 **practices purchased at auction.** Used heavy or specialized
572 machinery or equipment used for the installation and
573 implementation of soil and water conservation practices or
574 measures purchased subject to the restrictions provided in
575 Sections 69-27-331 through 69-27-341. Any purchase by the State
576 Soil and Water Conservation Commission under the exemption
577 authorized by this subparagraph shall require advance
578 authorization spread upon the minutes of the commission to include
579 the listing of the item or items authorized to be purchased and
580 the maximum bid authorized to be paid for each item or items.

581 (n) **Term contract authorization.** All contracts for the
582 purchase of:

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



587 provisions prohibiting the letting of contracts during specified
588 periods near the end of terms of office. Term contracts for a
589 period exceeding twenty-four (24) months shall also be subject to
590 ratification or cancellation by governing authority boards taking
591 office subsequent to the governing authority board entering the
592 contract.

593 (ii) Bid proposals and contracts may include price
594 adjustment clauses with relation to the cost to the contractor
595 based upon a nationally published industry-wide or nationally
596 published and recognized cost index. The cost index used in a
597 price adjustment clause shall be determined by the Department of
598 Finance and Administration for the state agencies and by the
599 governing board for governing authorities. The bid proposal and
600 contract documents utilizing a price adjustment clause shall
601 contain the basis and method of adjusting unit prices for the
602 change in the cost of such commodities, equipment and public
603 construction.

604 (o) **Purchase law violation prohibition and vendor**
605 **penalty.** No contract or purchase as herein authorized shall be
606 made for the purpose of circumventing the provisions of this
607 section requiring competitive bids, nor shall it be lawful for any
608 person or concern to submit individual invoices for amounts within
609 those authorized for a contract or purchase where the actual value
610 of the contract or commodity purchased exceeds the authorized
611 amount and the invoices therefor are split so as to appear to be
612 authorized as purchases for which competitive bids are not
613 required. Submission of such invoices shall constitute a
614 misdemeanor punishable by a fine of not less than Five Hundred
615 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
616 or by imprisonment for thirty (30) days in the county jail, or
617 both such fine and imprisonment. In addition, the claim or claims
618 submitted shall be forfeited.



619 (p) **Electrical utility petroleum-based equipment**
620 **purchase procedure.** When in response to a proper advertisement
621 therefor, no bid firm as to price is submitted to an electric
622 utility for power transformers, distribution transformers, power
623 breakers, reclosers or other articles containing a petroleum
624 product, the electric utility may accept the lowest and best bid
625 therefor although the price is not firm.

626 (q) **Fuel management system bidding procedure.** Any
627 governing authority or agency of the state shall, before
628 contracting for the services and products of a fuel management or
629 fuel access system, enter into negotiations with not fewer than
630 two (2) sellers of fuel management or fuel access systems for
631 competitive written bids to provide the services and products for
632 the systems. In the event that the governing authority or agency
633 cannot locate two (2) sellers of such systems or cannot obtain
634 bids from two (2) sellers of such systems, it shall show proof
635 that it made a diligent, good-faith effort to locate and negotiate
636 with two (2) sellers of such systems. Such proof shall include,
637 but not be limited to, publications of a request for proposals and
638 letters soliciting negotiations and bids. For purposes of this
639 paragraph (q), a fuel management or fuel access system is an
640 automated system of acquiring fuel for vehicles as well as
641 management reports detailing fuel use by vehicles and drivers, and
642 the term "competitive written bid" shall have the meaning as
643 defined in paragraph (b) of this section. Governing authorities
644 and agencies shall be exempt from this process when contracting
645 for the services and products of a fuel management or fuel access
646 systems under the terms of a state contract established by the
647 Office of Purchasing and Travel.

648 (r) **Solid waste contract proposal procedure.** Before
649 entering into any contract for garbage collection or disposal,
650 contract for solid waste collection or disposal or contract for
651 sewage collection or disposal, which involves an expenditure of



652 more than Fifty Thousand Dollars (\$50,000.00), a governing
653 authority or agency shall issue publicly a request for proposals
654 concerning the specifications for such services which shall be
655 advertised for in the same manner as provided in this section for
656 seeking bids for purchases which involve an expenditure of more
657 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
658 when issued shall contain terms and conditions relating to price,
659 financial responsibility, technology, legal responsibilities and
660 other relevant factors as are determined by the governing
661 authority or agency to be appropriate for inclusion; all factors
662 determined relevant by the governing authority or agency or
663 required by this paragraph (r) shall be duly included in the
664 advertisement to elicit proposals. After responses to the request
665 for proposals have been duly received, the governing authority or
666 agency shall select the most qualified proposal or proposals on
667 the basis of price, technology and other relevant factors and from
668 such proposals, but not limited to the terms thereof, negotiate
669 and enter contracts with one or more of the persons or firms
670 submitting proposals. If the governing authority or agency deems
671 none of the proposals to be qualified or otherwise acceptable, the
672 request for proposals process may be reinitiated. Notwithstanding
673 any other provisions of this paragraph, where a county with at
674 least thirty-five thousand (35,000) nor more than forty thousand
675 (40,000) population, according to the 1990 federal decennial
676 census, owns or operates a solid waste landfill, the governing
677 authorities of any other county or municipality may contract with
678 the governing authorities of the county owning or operating the
679 landfill, pursuant to a resolution duly adopted and spread upon
680 the minutes of each governing authority involved, for garbage or
681 solid waste collection or disposal services through contract
682 negotiations.

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



685 governing authority, by order placed on its minutes, may, in its
686 discretion, set aside not more than twenty percent (20%) of its
687 anticipated annual expenditures for the purchase of commodities
688 from minority businesses; however, all such set-aside purchases
689 shall comply with all purchasing regulations promulgated by the
690 Department of Finance and Administration and shall be subject to
691 bid requirements under this section. Set-aside purchases for
692 which competitive bids are required shall be made from the lowest
693 and best minority business bidder. For the purposes of this
694 paragraph, the term "minority business" means a business which is
695 owned by a majority of persons who are United States citizens or
696 permanent resident aliens (as defined by the Immigration and
697 Naturalization Service) of the United States, and who are Asian,
698 Black, Hispanic or Native American, according to the following
699 definitions:

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

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

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

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

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



717 completion and one (1) final list immediately before final
718 completion and final payment.

719 (u) **Purchase authorization clarification.** Nothing in
720 this section shall be construed as authorizing any purchase not
721 authorized by law.

722 (v) Contracts under the Private Attorney Retention
723 Sunshine Act shall be subject to the bid requirements of this
724 section.

725 **SECTION 8.** This act shall take effect and be in force from
726 and after July 1, 2002.

