

REPORT OF CONFERENCE COMMITTEE

MADAM PRESIDENT AND MR. SPEAKER:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

S. B. No. 2328: State Auditor; file with Legislature report containing state agency emergency procedures.

We, therefore, respectfully submit the following report and recommendation:

1. That the House recede from its Amendment No. 1.
2. That the Senate and House adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

15 **SECTION 1.** Section 31-7-13, Mississippi Code of 1972, is
16 amended as follows:

17 31-7-13. All agencies and governing authorities shall
18 purchase their commodities and printing; contract for garbage
19 collection or disposal; contract for solid waste collection or
20 disposal; contract for sewage collection or disposal; contract for
21 public construction; and contract for rentals as herein provided.

22 (a) **Bidding procedure for purchases not over \$3,500.00.**

23 Purchases which do not involve an expenditure of more than Three
24 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
25 shipping charges, may be made without advertising or otherwise
26 requesting competitive bids. Provided, however, that nothing
27 contained in this paragraph (a) shall be construed to prohibit any
28 agency or governing authority from establishing procedures which
29 require competitive bids on purchases of Three Thousand Five
30 Hundred Dollars (\$3,500.00) or less.

31 (b) **Bidding procedure for purchases over \$3,500.00 but**

32 **not over \$15,000.00.** Purchases which involve an expenditure of
33 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
34 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
35 freight and shipping charges may be made from the lowest and best
36 bidder without publishing or posting advertisement for bids,

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

63 (c) **Bidding procedure for purchases over \$15,000.00.**

64 (i) **Publication requirement.** Purchases which
65 involve an expenditure of more than Fifteen Thousand Dollars
66 (\$15,000.00), exclusive of freight and shipping charges may be
67 made from the lowest and best bidder after advertising for
68 competitive sealed bids once each week for two (2) consecutive
69 weeks in a regular newspaper published in the county or
70 municipality in which such agency or governing authority is
71 located. The date as published for the bid opening shall not be
72 less than seven (7) working days after the last published notice;

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

95 (ii) **Bidding process amendment procedure.** If all
96 plans and/or specifications are published in the notification,
97 then the plans and/or specifications may not be amended. If all
98 plans and/or specifications are not published in the notification,
99 then amendments to the plans/specifications, bid opening date, bid
100 opening time and place may be made, provided that the agency or
101 governing authority maintains a list of all prospective bidders
102 who are known to have received a copy of the bid documents and all
103 such prospective bidders are sent copies of all amendments. This
104 notification of amendments may be made via mail, facsimile,
105 electronic mail or other generally accepted method of information
106 distribution. No addendum to bid specifications may be issued
107 within two (2) working days of the time established for the
108 receipt of bids unless such addendum also amends the bid opening

109 to a date not less than five (5) working days after the date of
110 the addendum.

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

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

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

137 (i) **Decision procedure.** Purchases may be made
138 from the lowest and best bidder. In determining the lowest and
139 best bid, freight and shipping charges shall be included.
140 Life-cycle costing, total cost bids, warranties, guaranteed
141 buy-back provisions and other relevant provisions may be included
142 in the best bid calculation. All best bid procedures for state
143 agencies must be in compliance with regulations established by the
144 Department of Finance and Administration. If any governing

145 authority accepts a bid other than the lowest bid actually
146 submitted, it shall place on its minutes detailed calculations and
147 narrative summary showing that the accepted bid was determined to
148 be the lowest and best bid, including the dollar amount of the
149 accepted bid and the dollar amount of the lowest bid. No agency
150 or governing authority shall accept a bid based on items not
151 included in the specifications.

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

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

158 (e) **Lease-purchase authorization.** For the purposes of
159 this section, the term "equipment" shall mean equipment, furniture
160 and, if applicable, associated software and other applicable
161 direct costs associated with the acquisition. Any lease-purchase
162 of equipment which an agency is not required to lease-purchase
163 under the master lease-purchase program pursuant to Section
164 31-7-10 and any lease-purchase of equipment which a governing
165 authority elects to lease-purchase may be acquired by a
166 lease-purchase agreement under this paragraph (e). Lease-purchase
167 financing may also be obtained from the vendor or from a
168 third-party source after having solicited and obtained at least
169 two (2) written competitive bids, as defined in paragraph (b) of
170 this section, for such financing without advertising for such
171 bids. Solicitation for the bids for financing may occur before or
172 after acceptance of bids for the purchase of such equipment or,
173 where no such bids for purchase are required, at anytime before
174 the purchase thereof. No such lease-purchase agreement shall be
175 for an annual rate of interest which is greater than the overall
176 maximum interest rate to maturity on general obligation
177 indebtedness permitted under Section 75-17-101, and the term of
178 such lease-purchase agreement shall not exceed the useful life of
179 equipment covered thereby as determined according to the upper
180 limit of the asset depreciation range (ADR) guidelines for the

181 Class Life Asset Depreciation Range System established by the
182 Internal Revenue Service pursuant to the United States Internal
183 Revenue Code and regulations thereunder as in effect on December
184 31, 1980, or comparable depreciation guidelines with respect to
185 any equipment not covered by ADR guidelines. Any lease-purchase
186 agreement entered into pursuant to this paragraph (e) may contain
187 any of the terms and conditions which a master lease-purchase
188 agreement may contain under the provisions of Section 31-7-10(5),
189 and shall contain an annual allocation dependency clause
190 substantially similar to that set forth in Section 31-7-10(8).
191 Each agency or governing authority entering into a lease-purchase
192 transaction pursuant to this paragraph (e) shall maintain with
193 respect to each such lease-purchase transaction the same
194 information as required to be maintained by the Department of
195 Finance and Administration pursuant to Section 31-7-10(13).
196 However, nothing contained in this section shall be construed to
197 permit agencies to acquire items of equipment with a total
198 acquisition cost in the aggregate of less than Ten Thousand
199 Dollars (\$10,000.00) by a single lease-purchase transaction. All
200 equipment, and the purchase thereof by any lessor, acquired by
201 lease-purchase under this paragraph and all lease-purchase
202 payments with respect thereto shall be exempt from all Mississippi
203 sales, use and ad valorem taxes. Interest paid on any
204 lease-purchase agreement under this section shall be exempt from
205 State of Mississippi income taxation.

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

216 (g) **Construction contract change authorization.** In the

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

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

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

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

289 emergency purchase, file with the Department of Finance and
290 Administration (i) a statement under oath certifying the
291 conditions and circumstances of the emergency, and (ii) a
292 certified copy of the appropriate minutes of the board of such
293 agency, if applicable. On or before September 1 of each year, the
294 State Auditor shall prepare and deliver to the Senate Fees,
295 Salaries and Administration Committee, the House Fees and Salaries
296 of Public Officers Committee and the Joint Legislative Budget
297 Committee a report containing a list of all state agency emergency
298 purchases and supporting documentation for each emergency
299 purchases.

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

318 (l) **Hospital purchase, lease-purchase and lease**
319 **authorization.** (i) The commissioners or board of trustees of any
320 public hospital * * * may contract with such lowest and best
321 bidder for the purchase or lease-purchase of any commodity under a
322 contract of purchase or lease-purchase agreement whose obligatory
323 payment terms do not exceed five (5) years.

324 (ii) In addition to the authority granted in

325 subparagraph (i) of this paragraph (1), the commissioners or board
326 of trustees is authorized to enter into contracts for the lease of
327 equipment or services, or both, which it considers necessary for
328 the proper care of patients if, in its opinion, it is not
329 financially feasible to purchase the necessary equipment or
330 services. Any such contract for the lease of equipment or
331 services executed by the commissioners or board shall not exceed a
332 maximum of five (5) years' duration and shall include a
333 cancellation clause based on unavailability of funds. If such
334 cancellation clause is exercised, there shall be no further
335 liability on the part of the lessee. Any such contract for the
336 lease of equipment or services executed on behalf of the
337 commissioners or board that complies with the provisions of this
338 subparagraph (ii) shall be excepted from the bid requirements set
339 forth in this section.

340 (m) **Exceptions from bidding requirements.** Excepted
341 from bid requirements are:

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

343 Purchasing agreements, contracts and maximum price regulations
344 executed or approved by the Department of Finance and
345 Administration.

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

357 (iii) **In-house equipment repairs.** Purchases of
358 parts for repairs to equipment, when such repairs are made by
359 personnel of the agency or governing authority; however, entire
360 assemblies, such as engines or transmissions, shall not be

361 included in this exemption when the entire assembly is being
362 replaced instead of being repaired.

363 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
364 of gravel or fill dirt which are to be removed and transported by
365 the purchaser.

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

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

395 (vii) **Perishable supplies or food.** Perishable
396 supplies or foods purchased for use in connection with hospitals,

397 the school lunch programs, homemaking programs and for the feeding
398 of county or municipal prisoners.

399 (viii) **Single source items.** Noncompetitive items
400 available from one (1) source only. In connection with the
401 purchase of noncompetitive items only available from one (1)
402 source, a certification of the conditions and circumstances
403 requiring the purchase shall be filed by the agency with the
404 Department of Finance and Administration and by the governing
405 authority with the board of the governing authority. Upon receipt
406 of that certification the Department of Finance and Administration
407 or the board of the governing authority, as the case may be, may,
408 in writing, authorize the purchase, which authority shall be noted
409 on the minutes of the body at the next regular meeting thereafter.

410 In those situations, a governing authority is not required to
411 obtain the approval of the Department of Finance and
412 Administration.

413 (ix) **Waste disposal facility construction**
414 **contracts.** Construction of incinerators and other facilities for
415 disposal of solid wastes in which products either generated
416 therein, such as steam, or recovered therefrom, such as materials
417 for recycling, are to be sold or otherwise disposed of; provided,
418 however, in constructing such facilities a governing authority or
419 agency shall publicly issue requests for proposals, advertised for
420 in the same manner as provided herein for seeking bids for public
421 construction projects, concerning the design, construction,
422 ownership, operation and/or maintenance of such facilities,
423 wherein such requests for proposals when issued shall contain
424 terms and conditions relating to price, financial responsibility,
425 technology, environmental compatibility, legal responsibilities
426 and such other matters as are determined by the governing
427 authority or agency to be appropriate for inclusion; and after
428 responses to the request for proposals have been duly received,
429 the governing authority or agency may select the most qualified
430 proposal or proposals on the basis of price, technology and other
431 relevant factors and from such proposals, but not limited to the
432 terms thereof, negotiate and enter contracts with one or more of

433 the persons or firms submitting proposals.

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

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

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

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

453 (xiv) **Library books and other reference materials.**
454 Purchases by libraries or for libraries of books and periodicals;
455 processed film, video cassette tapes, filmstrips and slides;
456 recorded audio tapes, cassettes and diskettes; and any such items
457 as would be used for teaching, research or other information
458 distribution; however, equipment such as projectors, recorders,
459 audio or video equipment, and monitor televisions are not exempt
460 under this subparagraph.

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

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

467 (xvii) **Multichannel interactive video systems.**
468 From and after July 1, 1990, contracts by Mississippi Authority

469 for Educational Television with any private educational
470 institution or private nonprofit organization whose purposes are
471 educational in regard to the construction, purchase, lease or
472 lease-purchase of facilities and equipment and the employment of
473 personnel for providing multichannel interactive video systems
474 (ITSF) in the school districts of this state.

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

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

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

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

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

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

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

494 Contracts for garbage collection or disposal, contracts for solid
495 waste collection or disposal and contracts for sewage collection
496 or disposal.

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

498 **contracts.** Professional maintenance program contracts for the
499 repair or maintenance of municipal water tanks, which provide
500 professional services needed to maintain municipal water storage
501 tanks for a fixed annual fee for a duration of two (2) or more
502 years.

503 (xxiv) **Purchases of Mississippi Industries for the**
504 **Blind products.** Purchases made by state agencies or governing

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

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

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

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

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

512 (xxvii) **Used heavy or specialized machinery or**

513 **equipment for installation of soil and water conservation**

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

515 machinery or equipment used for the installation and

516 implementation of soil and water conservation practices or

517 measures purchased subject to the restrictions provided in

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

519 Soil and Water Conservation Commission under the exemption

520 authorized by this subparagraph shall require advance

521 authorization spread upon the minutes of the commission to include

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

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

524 (xxviii) **Hospital lease of equipment or services.**

525 Leases by hospitals of equipment or services if the leases are in

526 compliance with paragraph (1)(ii).

527 (n) **Term contract authorization.** All contracts for the
528 purchase of:

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

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

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

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

533 provisions prohibiting the letting of contracts during specified

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

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

536 ratification or cancellation by governing authority boards taking

537 office subsequent to the governing authority board entering the

538 contract.

539 (ii) Bid proposals and contracts may include price

540 adjustment clauses with relation to the cost to the contractor

541 based upon a nationally published industry-wide or nationally
542 published and recognized cost index. The cost index used in a
543 price adjustment clause shall be determined by the Department of
544 Finance and Administration for the state agencies and by the
545 governing board for governing authorities. The bid proposal and
546 contract documents utilizing a price adjustment clause shall
547 contain the basis and method of adjusting unit prices for the
548 change in the cost of such commodities, equipment and public
549 construction.

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

565 (p) **Electrical utility petroleum-based equipment**
566 **purchase procedure.** When in response to a proper advertisement
567 therefor, no bid firm as to price is submitted to an electric
568 utility for power transformers, distribution transformers, power
569 breakers, reclosers or other articles containing a petroleum
570 product, the electric utility may accept the lowest and best bid
571 therefor although the price is not firm.

572 (q) **Fuel management system bidding procedure.** Any
573 governing authority or agency of the state shall, before
574 contracting for the services and products of a fuel management or
575 fuel access system, enter into negotiations with not fewer than
576 two (2) sellers of fuel management or fuel access systems for

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

594 (r) **Solid waste contract proposal procedure.** Before
595 entering into any contract for garbage collection or disposal,
596 contract for solid waste collection or disposal or contract for
597 sewage collection or disposal, which involves an expenditure of
598 more than Fifty Thousand Dollars (\$50,000.00), a governing
599 authority or agency shall issue publicly a request for proposals
600 concerning the specifications for such services which shall be
601 advertised for in the same manner as provided in this section for
602 seeking bids for purchases which involve an expenditure of more
603 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
604 when issued shall contain terms and conditions relating to price,
605 financial responsibility, technology, legal responsibilities and
606 other relevant factors as are determined by the governing
607 authority or agency to be appropriate for inclusion; all factors
608 determined relevant by the governing authority or agency or
609 required by this paragraph (r) shall be duly included in the
610 advertisement to elicit proposals. After responses to the request
611 for proposals have been duly received, the governing authority or
612 agency shall select the most qualified proposal or proposals on

613 the basis of price, technology and other relevant factors and from
614 such proposals, but not limited to the terms thereof, negotiate
615 and enter contracts with one or more of the persons or firms
616 submitting proposals. If the governing authority or agency deems
617 none of the proposals to be qualified or otherwise acceptable, the
618 request for proposals process may be reinitiated. Notwithstanding
619 any other provisions of this paragraph, where a county with at
620 least thirty-five thousand (35,000) nor more than forty thousand
621 (40,000) population, according to the 1990 federal decennial
622 census, owns or operates a solid waste landfill, the governing
623 authorities of any other county or municipality may contract with
624 the governing authorities of the county owning or operating the
625 landfill, pursuant to a resolution duly adopted and spread upon
626 the minutes of each governing authority involved, for garbage or
627 solid waste collection or disposal services through contract
628 negotiations.

629 (s) **Minority set aside authorization.** Notwithstanding
630 any provision of this section to the contrary, any agency or
631 governing authority, by order placed on its minutes, may, in its
632 discretion, set aside not more than twenty percent (20%) of its
633 anticipated annual expenditures for the purchase of commodities
634 from minority businesses; however, all such set-aside purchases
635 shall comply with all purchasing regulations promulgated by the
636 Department of Finance and Administration and shall be subject to
637 bid requirements under this section. Set-aside purchases for
638 which competitive bids are required shall be made from the lowest
639 and best minority business bidder. For the purposes of this
640 paragraph, the term "minority business" means a business which is
641 owned by a majority of persons who are United States citizens or
642 permanent resident aliens (as defined by the Immigration and
643 Naturalization Service) of the United States, and who are Asian,
644 Black, Hispanic or Native American, according to the following
645 definitions:

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

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

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

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

657 (t) **Construction punch list restriction.** The
658 architect, engineer or other representative designated by the
659 agency or governing authority that is contracting for public
660 construction or renovation may prepare and submit to the
661 contractor only one (1) preliminary punch list of items that do
662 not meet the contract requirements at the time of substantial
663 completion and one (1) final list immediately before final
664 completion and final payment.

665 (u) **Purchase authorization clarification.** Nothing in
666 this section shall be construed as authorizing any purchase not
667 authorized by law.

668 **SECTION 2.** Section 27-19-155, Mississippi Code of 1972, is
669 amended as follows:

670 27-19-155. The license or number tag herein provided for
671 shall be purchased by the License Tag Commission, composed of the
672 Governor, Commissioner of Revenue, Attorney General, and the State
673 Treasurer, upon competitive bids, after having given three (3)
674 weeks' notice of the time and place of purchase, by publishing
675 said notice in at least three (3) newspapers, at least one (1) of
676 which shall be published in the State of Mississippi, for a period
677 of three (3) weeks prior to the date of purchase. If the
678 nonprofit corporation created under the Mississippi Prison
679 Industries Act of 1990 submits a competitive bid that is not
680 greater than five percent (5%) above the lowest and best bid, then
681 the contract shall be awarded to that nonprofit corporation for an
682 initial term of three (3) years. The successful bidder shall
683 enter into a bond with some surety company, authorized to do
684 business in the state, as surety thereon, payable to the State of

685 Mississippi, in a sum equal to the amount of his contract,
686 conditioned for the faithful and prompt carrying out of the bid,
687 and, in the event of the failure to comply with the terms of the
688 contract, the amount of the bond shall be forfeited as liquidated
689 damages and may be recovered by the Attorney General in any
690 appropriate action. The License Tag Commission is hereby
691 authorized and empowered to renegotiate any contract entered into
692 for the purchase of license tags in order to obtain any other or
693 additional tags necessitated by the passage of this article.

694 All license tags and numbered plates purchased under the
695 provisions of this article, shall be paid for pursuant to an
696 appropriation to be made for such purposes. All monies received
697 by the State Tax Commission as registration or tag fees, either
698 from the tax collectors, or from licenses issued by the State Tax
699 Commission, shall be paid into the State Treasury on the same day
700 in which such funds are collected by the State Tax Commission.

701 **SECTION 3.** This act shall take effect and be in force from
702 and after July 1, 2002.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE PUBLIC PURCHASING LAWS TO INCREASE THE MINIMUM AMOUNT
3 OF EXPENDITURES FOR WHICH COMPETITIVE BIDS ARE REQUIRED; TO
4 PROHIBIT ANY ADDENDUMS TO BID SPECIFICATIONS WITHIN TWO WORKING
5 DAYS OF THE RECEIPT OF BIDS; TO EXEMPT FROM THE BIDDING
6 REQUIREMENTS CERTAIN CONTRACTS BY PUBLIC HOSPITALS FOR THE LEASE
7 OR PURCHASE OF EQUIPMENT OR SERVICES; TO REQUIRE THE STATE AUDITOR
8 TO FILE WITH CERTAIN LEGISLATIVE COMMITTEES A REPORT CONTAINING A
9 LIST OF ALL STATE AGENCY EMERGENCY PURCHASES; TO AMEND SECTION
10 27-19-155, MISSISSIPPI CODE OF 1972, TO GRANT A PREFERENCE FOR
11 AWARDED CONTRACT FOR MANUFACTURE OF STATE TAGS TO MISSISSIPPI
12 PRISON INDUSTRIES IF THE BID IS COMPETITIVE; AND FOR RELATED
13 PURPOSES.

CONFEREES FOR THE SENATE

X

Billy Thames

X

Jack Gordon

X

Rob H. Smith

CONFEREES FOR THE HOUSE

X

Charlie Capps, Jr.

X

John Read

X

Cecil Brown