

*****Adopted*****

AMENDMENT No. 1 PROPOSED TO

House Bill NO. 5

By Senator(s) Committee

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

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

16 31-7-13. All agencies and governing authorities shall
17 purchase their commodities and printing; contract for garbage
18 collection or disposal; contract for solid waste collection or
19 disposal; contract for sewage collection or disposal; contract for
20 public construction; and contract for rentals as herein provided.

21 (a) **Bidding procedure for purchases not over \$3,000.00.**

22 Purchases which do not involve an expenditure of more than Three
23 Thousand Dollars (\$3,000.00), exclusive of freight or shipping
24 charges, may be made without advertising or otherwise requesting
25 competitive bids. Provided, however, that nothing contained in
26 this paragraph (a) shall be construed to prohibit any agency or
27 governing authority from establishing procedures which require
28 competitive bids on purchases of Three Thousand Dollars
29 (\$3,000.00) or less.

30 (b) **Bidding procedure for purchases over \$3,000.00 but**
31 **not over \$15,000.00.** Purchases which involve an expenditure of
32 more than Three Thousand Dollars (\$3,000.00) but not more than
33 Fifteen Thousand Dollars (\$15,000.00), exclusive of freight and

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

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

63 (i) **Publication requirement.** Purchases which
64 involve an expenditure of more than Ten Thousand Dollars
65 (\$10,000.00), exclusive of freight and shipping charges may be
66 made from the lowest and best bidder after advertising for
67 competitive sealed bids once each week for two (2) consecutive
68 weeks in a regular newspaper published in the county or

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

94 (ii) **Bidding process amendment procedure.** If all
95 plans and/or specifications are published in the notification,
96 then the plans and/or specifications may not be amended. If all
97 plans and/or specifications are not published in the notification,
98 then amendments to the plans/specifications, bid opening date, bid
99 opening time and place may be made, provided that the agency or
100 governing authority maintains a list of all prospective bidders
101 who are known to have received a copy of the bid documents and all
102 such prospective bidders are sent copies of all amendments. This
103 notification of amendments may be made via mail, facsimile,

104 electronic mail or other generally accepted method of information
105 distribution. No addendum to bid specifications may be issued
106 within two (2) working days of the time established for the
107 receipt of bids unless such addendum also amends the bid opening
108 to a date not less than five (5) working days after the date of
109 the addendum.

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

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

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

136 (i) **Decision procedure.** Purchases may be made
137 from the lowest and best bidder; provided, however, that the
138 agency or governing authority may at anytime within thirty (30)

139 business days after the bids are opened negotiate and award the
140 contract to, and only to, a company that is 1. organized and
141 existing under the laws of the State of Mississippi, and 2. has
142 its principal place of business in the State of Mississippi,
143 provided that the agency or governing authority secures a price of
144 at least two percent (2%) under the low acceptable bid. In
145 determining the lowest and best bid, freight and shipping charges
146 shall be included. Life-cycle costing, total cost bids,
147 warranties, guaranteed buy-back provisions and other relevant
148 provisions may be included in the best bid calculation. All best
149 bid procedures for state agencies must be in compliance with
150 regulations established by the Department of Finance and
151 Administration. If any governing authority accepts a bid other
152 than the lowest bid actually submitted, it shall place on its
153 minutes detailed calculations and narrative summary showing that
154 the accepted bid was determined to be the lowest and best bid,
155 including the dollar amount of the accepted bid and the dollar
156 amount of the lowest bid. No agency or governing authority shall
157 accept a bid based on items not included in the specifications.

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

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

164 (e) **Lease-purchase authorization.** For the purposes of
165 this section, the term "equipment" shall mean equipment, furniture
166 and, if applicable, associated software and other applicable
167 direct costs associated with the acquisition. Any lease-purchase
168 of equipment which an agency is not required to lease-purchase
169 under the master lease-purchase program pursuant to Section
170 31-7-10 and any lease-purchase of equipment which a governing
171 authority elects to lease-purchase may be acquired by a
172 lease-purchase agreement under this paragraph (e). Lease-purchase
173 financing may also be obtained from the vendor or from a

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

209 sales, use and ad valorem taxes. Interest paid on any
210 lease-purchase agreement under this section shall be exempt from
211 State of Mississippi income taxation.

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

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

242 (h) **Petroleum purchase alternative.** In addition to
243 other methods of purchasing authorized in this chapter, when any

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

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

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

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

314 including a description of the commodity purchased, the price
315 thereof and the nature of the emergency shall be presented to the
316 board and shall be placed on the minutes of the board of such
317 governing authority.

318 (1) **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.** This act shall take effect and be in force from
669 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 ALLOW
4 STATE AGENCIES AND GOVERNING AUTHORITIES, AFTER THE BIDS ARE
5 OPENED, TO NEGOTIATE AND AWARD A PURCHASING CONTRACT TO A
6 MISSISSIPPI COMPANY UPON SECURING A PRICE THAT IS A CERTAIN
7 PERCENTAGE BELOW THE LOWEST BID; TO PROHIBIT ANY ADDENDUMS TO BID
8 SPECIFICATIONS WITHIN TWO WORKING DAYS OF THE RECEIPT OF BIDS; TO
9 EXEMPT FROM THE BIDDING REQUIREMENTS CERTAIN CONTRACTS BY PUBLIC
10 HOSPITALS FOR THE LEASE OR PURCHASE OF EQUIPMENT OR SERVICES AND
11 PURCHASES BY LOCAL GOVERNING AUTHORITIES OF CERTAIN INSURANCE
12 CONTRACTS; AND FOR RELATED PURPOSES.