HOUSE BILL NO. 327

AN ACT TO AMEND SECTIONS 19-13-111, 31-7-15 AND 31-7-47, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IN THE LETTING OF PUBLIC CONTRACTS PREFERENCE SHALL BE GIVEN TO RESIDENT BIDDERS WHENEVER ALL THINGS ARE EQUAL WITH REGARD TO QUALITY AND SERVICE BUT DIFFER ONLY AS TO PRICE; TO PROVIDE THAT A NONRESIDENT BIDDER DOMICILED IN A STATE HAVING LAWS GRANTING PREFERENCE TO RESIDENT BIDDERS SHALL BE AWARDED MISSISSIPPI CONTRACTS ONLY ON THE SAME BASIS AS THE NONRESIDENT BIDDER’S STATE AWARDS CONTRACTS TO MISSISSIPPI RESIDENTS BIDDING UNDER SIMILAR CIRCUMSTANCES; TO AMEND SECTION 31-7-55, MISSISSIPPI CODE OF 1972, TO PRESCRIBE A PENALTY FOR PERSONS WHO INTENTIONALLY, WILLFULLY AND KNOWINGLY VIOLATE THE PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 19-13-111, Mississippi Code of 1972, is amended as follows:

19-13-111. All bids and contracts for stationery, blank books, office supplies and other things must be specific in stating the kinds or brands and qualities of all articles, as far as practicable; the weight per ream and material of all paper; the price per quire and the weight per ream of books and record books, with the style of binding and size of each kind of book duly classified; and, other things being substantially equal with respect to quality and service, but differing only as to price, the board of supervisors shall give preference to bids from citizens of this state, and a nonresident bidder domiciled in a state having laws granting preference to resident bidders shall be awarded Mississippi contracts only on the same basis as the nonresident bidder’s state awards contracts to Mississippi residents bidding under similar circumstances; and resident bidders actually domiciled in Mississippi, be they corporate, individuals, or partnerships, are to be granted preference over nonresidents in awarding of contracts in the same manner and to
the same extent as provided by the laws of the state of domicile
of the nonresident. When a nonresident contractor submits a bid
for a contract, he shall attach thereto a copy of his resident
state's current law pertaining to such state's treatment of
nonresident bidders.

SECTION 2. Section 31-7-15, Mississippi Code of 1972, is
amended as follows:

31-7-15. (1) Whenever two (2) or more competitive bids are
received, one or more of which relates to commodities grown,
processed or manufactured within this state, and whenever all
things stated in such received bids are substantially equal with
respect to * * * quality and service, but differ only with respect
to price, the commodities grown, processed or manufactured within
this state shall be given preference and a nonresident bidder
domiciled in a state having laws granting preference to resident
bidders shall be awarded Mississippi contracts only on the same
basis as the nonresident bidder's state awards contracts to
Mississippi residents bidding under similar circumstances; and
resident bidders actually domiciled in Mississippi, be they
corporate, individuals, or partnerships, are to be granted
preference over nonresidents in awarding of contracts in the same
manner and to the same extent as provided by the laws of the state
of domicile of the nonresident. When a nonresident contractor
submits a bid for a contract, he shall attach thereto a copy of
his resident state's current law pertaining to such state's
treatment of nonresident bidders. A similar preference shall be
given to commodities grown, processed or manufactured within this
state whenever purchases are made without competitive bids, and
when practical the Department of Finance and Administration may by
regulation establish reasonable preferential policies for other
commodities, giving preference to resident suppliers of this
state.
(2) Any foreign manufacturing company with a factory in the state and with over fifty (50) employees working in the state shall have preference over any other foreign company where both price and quality are the same, regardless of where the product is manufactured.

(3) On or before January 1, 1991, the Department of Finance and Administration shall adopt bid and product specifications to be utilized by all state agencies that encourage the procurement of commodities made from recovered materials. Preference in awarding contracts for commodities shall be given to commodities offered at a competitive price.

(4) Each state agency is required to procure products made from recovered materials when those products are available at a competitive price. For purposes of this subsection, "competitive price" means a price not greater than ten percent (10%) above the lowest and best bidder. A decision not to procure products made from recovered materials must be based on a determination that such procurement:

(a) Is not available within a reasonable period of time; or

(b) Fails to meet the performance standards set forth in the applicable specifications; or

(c) Is not available at a competitive price.

SECTION 3. Section 31-7-47, Mississippi Code of 1972, is amended as follows:

31-7-47. In the letting of public contracts, whenever all things stated in the bids are substantially equal with regard to quality and service but differ only with respect to price, preference shall be given to resident contractors, and a nonresident bidder domiciled in a state, city, county, parish, province, nation or political subdivision having laws granting preference to local contractors shall be awarded Mississippi public contracts only on the same basis as the nonresident
bider's state, city, county, parish, province, nation or political subdivision awards contracts to Mississippi contractors bidding under similar circumstances. Resident contractors actually domiciled in Mississippi, be they corporate, individuals or partnerships, are to be granted preference over nonresidents in awarding of contracts in the same manner and to the same extent as provided by the laws of the state, city, county, parish, province, nation or political subdivision of domicile of the nonresident.

When a nonresident contractor submits a bid for a contract, he shall attach thereto a copy of his resident state's current law pertaining to such state's treatment of nonresident bidders.

SECTION 4. Section 31-7-55, Mississippi Code of 1972, is amended as follows:

[For penalties applicable to violations occurring between January 1, 1981, and August 15, 1988, the following provisions govern.]

31-7-55. (1) It is hereby declared to be unlawful and a violation of public policy of the State of Mississippi for any elected or appointed public officer of the state or the executive head of a state board, commission, department, subdivision of the state government or governing authority to make any purchases without the full compliance with the provisions of this section. Any elected or appointed public officer of the state or the executive head of a state board, commission, department, subdivision of the state government or governing authority who violates the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction therefor, shall be fined not less than One Hundred Dollars ($100.00) and not more than Five Hundred Dollars ($500.00) for each separate offense, or sentenced to the county jail for not more than six (6) months, or both such fine and imprisonment, and shall be removed from his office or position.
(2) Any person diverting the benefits of any article of value tendered or received by any agency or governing authority to his or her personal use, in violation of Section 31-7-23, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or sentenced to the county jail for not more than six (6) months, or by both such fine and imprisonment, and shall be required to return the money value of the article unlawfully diverted to the agency involved.

[The following provisions apply to violations which occur on or after August 16, 1988, and until July 1, 2003.]

31-7-55. (1) It is hereby declared to be unlawful and a violation of public policy of the State of Mississippi for any elected or appointed public officer of an agency or a governing authority, or the executive head, any employee or agent of an agency or governing authority to make any purchases without the full compliance with the provisions of Chapter 7, Title 31, Mississippi Code of 1972.

(2) Except as otherwise provided in subsection (4) of this section, any person who intentionally, willfully and knowingly violates the provisions of Chapter 7, Title 31, Mississippi Code of 1972, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than One Hundred Dollars ($100.00) and not more than Five Hundred Dollars ($500.00) for each separate offense, or sentenced to the county jail for not more than six (6) months, or both such fine and imprisonment, and shall be removed from his office or position.

(3) Any person who intentionally, willfully and knowingly violates the provisions of subsection (1) of Section 31-7-57 shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than One Hundred Dollars ($100.00) and not more than Five Hundred Dollars ($500.00), or sentenced to the county jail for not more than six (6) months.
(4) Any person diverting the benefits of any article of value tendered or received by any agency or governing authority to his or her personal use, in violation of Section 31-7-23, if the value of such article be less than Five Hundred Dollars ($500.00), shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or sentenced to the county jail for not more than six (6) months, or by both such fine and imprisonment, shall be removed from his office or position, and shall be required to return the money value of the article unlawfully diverted to the agency or governing authority involved. If the value of the article be Five Hundred Dollars ($500.00) or more, such person shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00), or sentenced to the Department of Corrections for not less than one (1) year nor more than five (5) years, or by both such fine and imprisonment, shall be removed from his office or position, and shall be required to return the money value of the article unlawfully diverted to the agency or governing authority involved.

(5) The provisions of this section are supplemental to any other criminal statutes of this state.

[The following provisions apply to violations which occur on or after July 1, 2003.]

31-7-55. (1) It is hereby declared to be unlawful and a violation of public policy of the State of Mississippi for any elected or appointed public officer of an agency or a governing authority, or the executive head, any employee or agent of an agency or governing authority to make any purchases without the
full compliance with the provisions of Chapter 7, Title 31, Mississippi Code of 1972.

(2) Except as otherwise provided in this section, any person who intentionally, willfully and knowingly violates the provisions of Chapter 7, Title 31, Mississippi Code of 1972, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than One Hundred Dollars ($100.00) and not more than Five Hundred Dollars ($500.00) for each separate offense, or sentenced to the county jail for not more than six (6) months, or both such fine and imprisonment, and shall be removed from his office or position.

(3) Any person who intentionally, willfully and knowingly violates the provisions of subsection (1) of Section 31-7-57 shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than One Hundred Dollars ($100.00) and not more than Five Hundred Dollars ($500.00), or sentenced to the county jail for not more than six (6) months, or both such fine and imprisonment, and shall be removed from his office or position.

(4) Any person diverting the benefits of any article of value tendered or received by any agency or governing authority to his or her personal use, in violation of Section 31-7-23, if the value of such article be less than Five Hundred Dollars ($500.00), shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or sentenced to the county jail for not more than six (6) months, or by both such fine and imprisonment, shall be removed from his office or position, and shall be required to return the money value of the article unlawfully diverted to the agency or governing authority involved. If the value of the article be Five Hundred Dollars ($500.00) or more, such person shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars
($5,000.00), or sentenced to the Department of Corrections for not
less than one (1) year nor more than five (5) years, or by both
such fine and imprisonment, shall be removed from his office or
position, and shall be required to return the money value of the
article unlawfully diverted to the agency or governing authority
involved.

(5) Any person who intentionally, willfully and knowingly
violates the provisions of Section 19-13-111, subsection (3) of
Section 31-3-21, subsection (1) of Section 31-7-15 or Section
31-7-47 shall be guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than Five Hundred Dollars
($500.00) and not more than One Thousand Dollars ($1,000.00), or
sentenced to the county jail for not more than six (6) months, or
both such fine and imprisonment, and shall be removed from his
office or position.

(6) The provisions of this section are supplemental to any
other criminal statutes of this state.

SECTION 5. This act shall take effect and be in force from
and after July 1, 2003.