

By: Representative Davis

To: Appropriations

HOUSE BILL NO. 327

1 AN ACT TO AMEND SECTIONS 19-13-111, 31-7-15 AND 31-7-47,
 2 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IN THE LETTING OF PUBLIC
 3 CONTRACTS PREFERENCE SHALL BE GIVEN TO RESIDENT BIDDERS WHENEVER
 4 ALL THINGS ARE EQUAL WITH REGARD TO QUALITY AND SERVICE BUT DIFFER
 5 ONLY AS TO PRICE; TO PROVIDE THAT A NONRESIDENT BIDDER DOMICILED
 6 IN A STATE HAVING LAWS GRANTING PREFERENCE TO RESIDENT BIDDERS
 7 SHALL BE AWARDED MISSISSIPPI CONTRACTS ONLY ON THE SAME BASIS AS
 8 THE NONRESIDENT BIDDER'S STATE AWARDS CONTRACTS TO MISSISSIPPI
 9 RESIDENTS BIDDING UNDER SIMILAR CIRCUMSTANCES; TO AMEND SECTION
 10 31-7-55, MISSISSIPPI CODE OF 1972, TO PRESCRIBE A PENALTY FOR
 11 PERSONS WHO INTENTIONALLY, WILLFULLY AND KNOWINGLY VIOLATE THE
 12 PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

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

16 19-13-111. All bids and contracts for stationery, blank
 17 books, office supplies and other things must be specific in
 18 stating the kinds or brands and qualities of all articles, as far
 19 as practicable; the weight per ream and material of all paper; the
 20 price per quire and the weight per ream of books and record books,
 21 with the style of binding and size of each kind of book duly
 22 classified; and, other things being substantially equal with
 23 respect to quality and service, but differing only as to price,
 24 the board of supervisors shall give preference to bids from
 25 citizens of this state, and a nonresident bidder domiciled in a
 26 state having laws granting preference to resident bidders shall be
 27 awarded Mississippi contracts only on the same basis as the
 28 nonresident bidder's state awards contracts to Mississippi
 29 residents bidding under similar circumstances; and resident
 30 bidders actually domiciled in Mississippi, be they corporate,
 31 individuals, or partnerships, are to be granted preference over
 32 nonresidents in awarding of contracts in the same manner and to



33 the same extent as provided by the laws of the state of domicile
34 of the nonresident. When a nonresident contractor submits a bid
35 for a contract, he shall attach thereto a copy of his resident
36 state's current law pertaining to such state's treatment of
37 nonresident bidders.

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

40 31-7-15. (1) Whenever two (2) or more competitive bids are
41 received, one or more of which relates to commodities grown,
42 processed or manufactured within this state, and whenever all
43 things stated in such received bids are substantially equal with
44 respect to * * * quality and service, but differ only with respect
45 to price, the commodities grown, processed or manufactured within
46 this state shall be given preference and a nonresident bidder
47 domiciled in a state having laws granting preference to resident
48 bidders shall be awarded Mississippi contracts only on the same
49 basis as the nonresident bidder's state awards contracts to
50 Mississippi residents bidding under similar circumstances; and
51 resident bidders actually domiciled in Mississippi, be they
52 corporate, individuals, or partnerships, are to be granted
53 preference over nonresidents in awarding of contracts in the same
54 manner and to the same extent as provided by the laws of the state
55 of domicile of the nonresident. When a nonresident contractor
56 submits a bid for a contract, he shall attach thereto a copy of
57 his resident state's current law pertaining to such state's
58 treatment of nonresident bidders. A similar preference shall be
59 given to commodities grown, processed or manufactured within this
60 state whenever purchases are made without competitive bids, and
61 when practical the Department of Finance and Administration may by
62 regulation establish reasonable preferential policies for other
63 commodities, giving preference to resident suppliers of this
64 state.



65 (2) Any foreign manufacturing company with a factory in the
66 state and with over fifty (50) employees working in the state
67 shall have preference over any other foreign company where both
68 price and quality are the same, regardless of where the product is
69 manufactured.

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

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

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

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

87 (c) Is not available at a competitive price.

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

90 31-7-47. In the letting of public contracts, whenever all
91 things stated in the bids are substantially equal with regard to
92 quality and service but differ only with respect to price,
93 preference shall be given to resident contractors, and a
94 nonresident bidder domiciled in a state, city, county, parish,
95 province, nation or political subdivision having laws granting
96 preference to local contractors shall be awarded Mississippi
97 public contracts only on the same basis as the nonresident



98 bidder's state, city, county, parish, province, nation or
99 political subdivision awards contracts to Mississippi contractors
100 bidding under similar circumstances. Resident contractors
101 actually domiciled in Mississippi, be they corporate, individuals
102 or partnerships, are to be granted preference over nonresidents in
103 awarding of contracts in the same manner and to the same extent as
104 provided by the laws of the state, city, county, parish, province,
105 nation or political subdivision of domicile of the nonresident.
106 When a nonresident contractor submits a bid for a contract, he
107 shall attach thereto a copy of his resident state's current law
108 pertaining to such state's treatment of nonresident bidders.

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

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

114 31-7-55. (1) It is hereby declared to be unlawful and a
115 violation of public policy of the State of Mississippi for any
116 elected or appointed public officer of the state or the executive
117 head of a state board, commission, department, subdivision of the
118 state government or governing authority to make any purchases
119 without the full compliance with the provisions of this section.
120 Any elected or appointed public officer of the state or the
121 executive head of a state board, commission, department,
122 subdivision of the state government or governing authority who
123 violates the provisions of this section shall be deemed guilty of
124 a misdemeanor and, upon conviction therefor, shall be fined not
125 less than One Hundred Dollars (\$100.00) and not more than Five
126 Hundred Dollars (\$500.00) for each separate offense, or sentenced
127 to the county jail for not more than six (6) months, or both such
128 fine and imprisonment, and shall be removed from his office or
129 position.



130 (2) Any person diverting the benefits of any article of
131 value tendered or received by any agency or governing authority to
132 his or her personal use, in violation of Section 31-7-23, shall be
133 guilty of a misdemeanor and, upon conviction, shall be punished by
134 a fine of not less than One Hundred Dollars (\$100.00) nor more
135 than Five Hundred Dollars (\$500.00), or sentenced to the county
136 jail for not more than six (6) months, or by both such fine and
137 imprisonment, and shall be required to return the money value of
138 the article unlawfully diverted to the agency involved.

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

141 31-7-55. (1) It is hereby declared to be unlawful and a
142 violation of public policy of the State of Mississippi for any
143 elected or appointed public officer of an agency or a governing
144 authority, or the executive head, any employee or agent of an
145 agency or governing authority to make any purchases without the
146 full compliance with the provisions of Chapter 7, Title 31,
147 Mississippi Code of 1972.

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

157 (3) Any person who intentionally, willfully and knowingly
158 violates the provisions of subsection (1) of Section 31-7-57 shall
159 be guilty of a misdemeanor and, upon conviction thereof, shall be
160 fined not less than One Hundred Dollars (\$100.00) and not more
161 than Five Hundred Dollars (\$500.00), or sentenced to the county



162 jail for not more than six (6) months, or both such fine and
163 imprisonment, and shall be removed from his office or position.

164 (4) Any person diverting the benefits of any article of
165 value tendered or received by any agency or governing authority to
166 his or her personal use, in violation of Section 31-7-23, if the
167 value of such article be less than Five Hundred Dollars (\$500.00),
168 shall be guilty of a misdemeanor and, upon conviction, shall be
169 punished by a fine of not less than One Hundred Dollars (\$100.00)
170 nor more than Five Hundred Dollars (\$500.00), or sentenced to the
171 county jail for not more than six (6) months, or by both such fine
172 and imprisonment, shall be removed from his office or position,
173 and shall be required to return the money value of the article
174 unlawfully diverted to the agency or governing authority involved.
175 If the value of the article be Five Hundred Dollars (\$500.00) or
176 more, such person shall be guilty of a felony and, upon
177 conviction, shall be punished by a fine of not less than One
178 Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars
179 (\$5,000.00), or sentenced to the Department of Corrections for not
180 less than one (1) year nor more than five (5) years, or by both
181 such fine and imprisonment, shall be removed from his office or
182 position, and shall be required to return the money value of the
183 article unlawfully diverted to the agency or governing authority
184 involved.

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

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

189 31-7-55. (1) It is hereby declared to be unlawful and a
190 violation of public policy of the State of Mississippi for any
191 elected or appointed public officer of an agency or a governing
192 authority, or the executive head, any employee or agent of an
193 agency or governing authority to make any purchases without the



194 full compliance with the provisions of Chapter 7, Title 31,
195 Mississippi Code of 1972.

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

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

212 (4) Any person diverting the benefits of any article of
213 value tendered or received by any agency or governing authority to
214 his or her personal use, in violation of Section 31-7-23, if the
215 value of such article be less than Five Hundred Dollars (\$500.00),
216 shall be guilty of a misdemeanor and, upon conviction, shall be
217 punished by a fine of not less than One Hundred Dollars (\$100.00)
218 nor more than Five Hundred Dollars (\$500.00), or sentenced to the
219 county jail for not more than six (6) months, or by both such fine
220 and imprisonment, shall be removed from his office or position,
221 and shall be required to return the money value of the article
222 unlawfully diverted to the agency or governing authority involved.
223 If the value of the article be Five Hundred Dollars (\$500.00) or
224 more, such person shall be guilty of a felony and, upon
225 conviction, shall be punished by a fine of not less than One
226 Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars



227 (\$5,000.00), or sentenced to the Department of Corrections for not
228 less than one (1) year nor more than five (5) years, or by both
229 such fine and imprisonment, shall be removed from his office or
230 position, and shall be required to return the money value of the
231 article unlawfully diverted to the agency or governing authority
232 involved.

233 (5) Any person who intentionally, willfully and knowingly
234 violates the provisions of Section 19-13-111, subsection (3) of
235 Section 31-3-21, subsection (1) of Section 31-7-15 or Section
236 31-7-47 shall be guilty of a misdemeanor and, upon conviction
237 thereof, shall be fined not less than Five Hundred Dollars
238 (\$500.00) and not more than One Thousand Dollars (\$1,000.00), or
239 sentenced to the county jail for not more than six (6) months, or
240 both such fine and imprisonment, and shall be removed from his
241 office or position.

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

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

