To: Appropriations

MISSISSIPPI LEGISLATURE          REGULAR SESSION 2003
By: Representative Brown

HOUSE BILL NO. 652

AN ACT TO AMEND SECTION 19-11-27, MISSISSIPPI CODE OF 1972, 
TO ALLOW BOARDS OF SUPERVISORS TO MAKE PURCHASES IN THE LAST SIX 
MONTHS OF THE MEMBERS' TERM OF OFFICE IF THE BOARD FOLLOWS THE 
BIDDING LAWS, HAS A UNANIMOUS VOTE AND DECLARES THE PURCHASE TO BE 
esential; TO AMEND SECTION 19-13-21, MISSISSIPPI CODE OF 1972, TO 
INCREASE THE ALLOWANCE FOR PROMPT REPAIRS OF ROAD EQUIPMENT FROM 
five hundred dollars to five thousand dollars; TO AMEND SECTION 
31-7-1, MISSISSIPPI CODE OF 1972, TO DEFINE CERTIFIED PURCHASING 
OFFICE; TO AMEND SECTION 31-7-9, MISSISSIPPI CODE OF 1972, TO 
ALLOW THE OFFICE OF PURCHASING AND TRAVEL TO ADOPT REGULATIONS 
GOVERNING THE CERTIFICATION PROCESS FOR CERTIFIED PURCHASING 
OFFICES; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO 
DEFINE "COMPETITIVE"; TO IDENTIFY TWO THRESHOLDS FOR ADVERTISED 
BIDS, FIFTEEN THOUSAND FOR NON CERTIFIED OFFICES AND TWENTY 
THOUSAND FOR CERTIFIED PURCHASING OFFICES; TO ALLOW AGENCIES AND 
GOVERNING AUTHORITIES TO ESTABLISH ELECTRONIC BIDDING PROCEDURES; 
TO CREATE AUTHORITY FOR CERTIFIED PURCHASING OFFICES TO USE THE 
REQUEST FOR PROPOSAL PROCESS AND AWARD BASED ON THE BEST VALUE; TO 
ALLOW THE EXECUTIVE HEAD OF A STATE AGENCY TO DESIGNATE SOMEONE 
WITH THE AUTHORITY TO DECLARE AND MAKE EMERGENCY PURCHASES AND TO 
delete the oath requirement and require a detailed explanation of 
the conditions and circumstances of the emergency; TO CREATE A 
DESIGNATION OF "CERTIFIED PURCHASING OFFICE" FOR OFFICES WITH A 
TRAINED PROFESSIONAL DOING THE PURCHASING; TO ALLOW FOR THE 
PURCHASE AT AUCTIONS IN OTHER STATES; TO ALLOW FOR SALES OR 
TRANSFERS WITH ALL GOVERNMENT ENTITIES IN OTHER STATES AS WELL AS 
IN MISSISSIPPI; TO ALLOW CERTIFIED PURCHASING OFFICES TO PURCHASE 
FROM COOPERATIVE PURCHASING AGREEMENTS SET UP BY OTHER 
GOVERNMENTAL ENTITIES; TO AMEND SECTION 37-41-31, MISSISSIPPI CODE 
OF 1972, TO CONFORM THE ADVERTISING REQUIREMENTS FOR SCHOOL 
TRANSPORTATION CONTRACTS WITH OTHER PUBLIC PURCHASING 
REQUIREMENTS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 19-11-27, Mississippi Code of 1972, is 
amended as follows:

19-11-27. No board of supervisors of any county shall expend 
from, or contract an obligation against, the budget estimates for 
road and bridge construction, maintenance and equipment, made and 
published by it during the last year of the term of office of such 
board, between the first day of October and the first day of the 
following January, a sum exceeding one-fourth (1/4) of such item 
of the budget made and published by it, except in cases of
emergency. The clerk of any county is hereby prohibited from
issuing any warrant contrary to the provisions of this section.
No board of supervisors nor any member thereof shall buy any
machinery or equipment in the last six (6) months of their or his
term unless or until he has been elected at the general election
of that year. The provisions of this section shall not apply to
the contract, lease or lease purchase contract entered into
pursuant to the bidding requirements set forth in Section 31-7-13
and provided the contract is approved by a unanimous vote of the
board. The unanimous vote shall include a statement indicating
the board's proclamation that the award of the contract is
essential to the efficiency and economy of the operation of the
county government.

SECTION 2. Section 19-13-21, Mississippi Code of 1972, is
amended as follows:

19-13-21. The board of supervisors of any county which owns
any tractor, truck, or other road machinery or equipment, or any
district of which owns any such machinery or equipment, may at any
time have the same repaired, or purchase necessary repair parts
therefor, where it is necessary to use such machinery or equipment
in constructing, reconstructing, or maintaining the public roads,
whether or not there is then a sufficient amount in the fund out
of which the cost thereof must be paid to pay the same. The claim
for such repairs or repair parts shall be allowed in due course
when filed, and be paid in its proper order as other claims.
However, if any repairs herein permitted to be made after the
first day of July of the last year of the term of office of the
members of the board making such repairs shall exceed the sum of
Five Thousand Dollars ($5,000.00), such repairs shall not be made
unless and until the board of supervisors, or a majority of the
members thereof, shall have authorized the making of such repairs
at a regular meeting of such board, or a special meeting called
for that purpose.
SECTION 3. Section 31-7-1, Mississippi Code of 1972, is amended as follows:

31-7-1. The following terms are defined for the purposes of this chapter to have the following meanings:

(a) "Agency" shall mean any state board, commission, committee, council, university, department or unit thereof created by the Constitution or statutes if such board, commission, committee, council, university, department, unit or the head thereof is authorized to appoint subordinate staff by the Constitution or statute, except a legislative or judicial board, commission, committee, council, department or unit thereof.

(b) "Governing authority" shall mean boards of supervisors, governing boards of all school districts, all boards of directors of public water supply districts, boards of directors of master public water supply districts, municipal public utility commissions, governing authorities of all municipalities, port authorities, commissioners and boards of trustees of any public hospitals, boards of trustees of public library systems, district attorneys, school attendance officers and any political subdivision of the state supported wholly or in part by public funds of the state or political subdivisions thereof, including commissions, boards and agencies created or operated under the authority of any county or municipality of this state. The term "governing authority" shall not include economic development authorities supported in part by private funds, or commissions appointed to hold title to and oversee the development and management of lands and buildings which are donated by private individuals to the public for the use and benefit of the community and which are supported in part by private funds.

(c) "Purchasing agent" shall mean any administrator, superintendent, purchase clerk or other chief officer so designated having general or special authority to negotiate for...
and make private contract for or purchase for any governing authority.

(d) "Public funds" shall mean and include any appropriated funds, special funds, fees or any other emoluments received by an agency or governing authority.

(e) "Commodities" shall mean and include the various commodities, goods, merchandise, furniture, equipment, automotive equipment of every kind, and other personal property purchased by the agencies of the state and governing authorities, but not commodities purchased for resale or raw materials converted into products for resale.

(i) "Equipment" shall be construed to include: automobiles, trucks, tractors, office appliances and all other equipment of every kind and description.

(ii) "Furniture" shall be construed to include: desks, chairs, tables, seats, filing cabinets, bookcases and all other items of a similar nature as well as dormitory furniture, appliances, carpets and all other items of personal property generally referred to as home, office or school furniture.

(f) "Emergency" shall mean any circumstances caused by fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection or caused by any inherent defect due to defective construction, or when the immediate preservation of order or of public health is necessary by reason of unforeseen emergency, or when the immediate restoration of a condition of usefulness of any public building, equipment, road or bridge appears advisable, or in the case of a public utility when there is a failure of any machine or other thing used and useful in the generation, production or distribution of electricity, water or natural gas, or in the transportation or treatment of sewage; or when the delay incident to obtaining competitive bids could cause adverse impact upon the governing authorities or agency, its employees or its citizens; or in the case of a public airport, when the delay
incident to publishing an advertisement for competitive bids would endanger public safety in a specific (not general) manner, result in or perpetuate a specific breach of airport security, or prevent the airport from providing specific air transportation services.

(g) "Construction" shall mean the process of building, altering, improving, renovating or demolishing a public structure, public building, or other public real property. It does not include routine operation, routine repair or regularly scheduled maintenance of existing public structures, public buildings or other public real property.

(h) "Purchase" shall mean buying, renting, leasing or otherwise acquiring.

(i) "Certified purchasing office" shall mean any purchasing office where fifty percent (50%) or more of the purchasing agents hold a certification from the Universal Public Purchasing Certification Council or other nationally recognized purchasing certification or have ten (10) or more years of public purchasing experience as of July 1, 2003.

SECTION 4. Section 31-7-9, Mississippi Code of 1972, is amended as follows:

31-7-9. (1) (a) The Office of Purchasing and Travel shall adopt purchasing regulations governing the purchase by any agency of any commodity or commodities and establishing standards and specifications for a commodity or commodities and the maximum fair prices of a commodity or commodities, subject to the approval of the Public Procurement Review Board. It shall have the power to amend, add to or eliminate purchasing regulations. The adoption of, amendment, addition to or elimination of purchasing regulations shall be based upon a determination by the Office of Purchasing and Travel with the approval of the Public Procurement Review Board, that such action is reasonable and practicable and advantageous to promote efficiency and economy in the purchase of commodities by the agencies of the state. Upon the adoption of
any purchasing regulation, or an amendment, addition or elimination therein, copies of same shall be furnished to the State Auditor and to all agencies affected thereby. Thereafter, and except as otherwise may be provided in subsection (2) of this section, no agency of the state shall purchase any commodities covered by existing purchasing regulations unless such commodities be in conformity with the standards and specifications set forth in the purchasing regulations and unless the price thereof does not exceed the maximum fair price established by such purchasing regulations. The said Office of Purchasing and Travel shall furnish to any county or municipality or other local public agency of the state requesting same, copies of purchasing regulations adopted by the Office of Purchasing and Travel and any amendments, changes or eliminations of same that may be made from time to time.

(b) The Office of Purchasing and Travel may adopt purchasing regulations governing the use of credit cards, procurement cards and purchasing club membership cards to be used by state agencies and governing authorities of counties and municipalities. Use of the cards shall be in strict compliance with the regulations promulgated by the office. Any amounts due on the cards shall incur interest charges as set forth in Section 31-7-305 and shall not be considered debt.

(2) The Office of Purchasing and Travel shall adopt, subject to the approval of the Public Procurement Review Board, purchasing regulations governing the purchase of unmarked vehicles to be used by the Bureau of Narcotics and Department of Public Safety in official investigations pursuant to Section 25-1-87. Such regulations shall ensure that purchases of such vehicles shall be at a fair price and shall take into consideration the peculiar needs of the Bureau of Narcotics and Department of Public Safety in undercover operations.
(3) The Office of Purchasing and Travel shall adopt, subject to the approval of the Public Procurement Review Board, regulations governing the certification process for certified purchasing offices. The regulations shall govern entities desiring to be classified as certified purchasing offices to submit an application and applicable documents on an annual basis at which time the Office of Purchasing and Travel may provide the governing entity with a certification which shall be valid for one year from the date of issuance.

SECTION 5. Section 31-7-13, Mississippi Code of 1972, is amended as follows:

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

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

(b) Bidding procedure for purchases over $3,500.00 but not over $15,000.00. Purchases which involve an expenditure of more than Three Thousand Five Hundred Dollars ($3,500.00) but not more than Fifteen Thousand Dollars ($15,000.00), exclusive of freight and shipping charges may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two (2) competitive written bids have been obtained. Any governing authority purchasing commodities pursuant
to this paragraph (b) may authorize its purchasing agent, or his
designee, with regard to governing authorities other than
counties, or its purchase clerk, or his designee, with regard to
counties, to accept the lowest and best competitive written bid.
Such authorization shall be made in writing by the governing
authority and shall be maintained on file in the primary office of
the agency and recorded in the official minutes of the governing
authority, as appropriate. The purchasing agent or the purchase
clerk, or their designee, as the case may be, and not the
governing authority, shall be liable for any penalties and/or
damages as may be imposed by law for any act or omission of the
purchasing agent or purchase clerk, or their designee,
constituting a violation of law in accepting any bid without
approval by the governing authority. The term "competitive
written bid" shall mean a bid submitted on a bid form furnished by
the buying agency or governing authority and signed by authorized
personnel representing the vendor, or a bid submitted on a
vendor's letterhead or identifiable bid form and signed by
authorized personnel representing the vendor. "Competitive" shall
mean that bids are developed based upon comparable identification
of the needs and are developed independently and without knowledge
of other bids or prospective bids. Bids may be submitted by
facsimile, electronic mail or other generally accepted method of
information distribution. Bids submitted by electronic
transmission shall not require the signature of the vendor's
representative unless required by agencies or governing
authorities.

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

(i) **Publication requirement.** Purchases which

involve an expenditure of more than Fifteen Thousand Dollars
($15,000.00) for noncertified purchasing offices or Twenty

Thousand Dollars ($20,000.00) for certified purchasing offices,

exclusive of freight and shipping charges may be made from the
lowest and best bidder after advertising for competitive sealed
bids once each week for two (2) consecutive weeks in a regular
newspaper published in the county or municipality in which such
agency or governing authority is located. The date as published
for the bid opening shall not be less than seven (7) working days
after the last published notice; however, if the purchase involves
a construction project in which the estimated cost is in excess of
Fifteen Thousand Dollars ($15,000.00) for noncertified purchasing
offices or Twenty Thousand Dollars ($20,000.00) for certified
purchasing offices, such bids shall not be opened in less than
fifteen (15) working days after the last notice is published and
the notice for the purchase of such construction shall be
published once each week for two (2) consecutive weeks. The
notice of intention to let contracts or purchase equipment shall
state the time and place at which bids shall be received, list the
contracts to be made or types of equipment or supplies to be
purchased, and, if all plans and/or specifications are not
published, refer to the plans and/or specifications on file. If
there is no newspaper published in the county or municipality,
then such notice shall be given by posting same at the courthouse,
or for municipalities at the city hall, and at two (2) other
public places in the county or municipality, and also by
publication once each week for two (2) consecutive weeks in some
newspaper having a general circulation in the county or
municipality in the above provided manner. On the same date that
the notice is submitted to the newspaper for publication, the
agency or governing authority involved shall mail written notice
to, or provide electronic notification to the main office of the
Mississippi Contract Procurement Center that contains the same
information as that in the published notice.

(ii) **Bidding process amendment procedure.** If all
plans and/or specifications are published in the notification,
then the plans and/or specifications may not be amended. If all
plans and/or specifications are not published in the notification, then amendments to the plans/specifications, bid opening date, bid opening time and place may be made, provided that the agency or governing authority maintains a list of all prospective bidders who are known to have received a copy of the bid documents and all such prospective bidders are sent copies of all amendments. This notification of amendments may be made via mail, facsimile, electronic mail or other generally accepted method of information distribution. No addendum to bid specifications may be issued within two (2) working days of the time established for the receipt of bids unless such addendum also amends the bid opening to a date not less than five (5) working days after the date of the addendum.

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

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

(v) Agencies and governing authorities may establish secure procedures whereby bids may be submitted via electronic means.

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

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

(ii) **Decision procedure for certified purchasing offices.** Purchases may be made from the bidder offering the best value. In determining the best value bid, freight and shipping charges shall be included. Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions, documented previous experience, training costs and other relevant provisions may be included in the best value calculation. This provision may allow certified purchasing offices to utilize a Request for Proposals process when purchasing commodities. All best value procedures...
for state agencies must be in compliance with regulations established by the Department of Finance and Administration. No agency or governing authority shall accept a bid based on items or criteria not included in the specifications.

(iii) Construction project negotiations authority.

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

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

Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain with respect to each such lease-purchase transaction the same information as required to be maintained by the Department of Finance and Administration pursuant to Section 31-7-10(13).

However, nothing contained in this section shall be construed to permit agencies to acquire items of equipment with a total acquisition cost in the aggregate of less than Ten Thousand Dollars ($10,000.00) by a single lease-purchase transaction. All equipment, and the purchase thereof by any lessor, acquired by lease-purchase under this paragraph and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes. Interest paid on any lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation.

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

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

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

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

(j) **State agency emergency purchase procedure.** If the governing board or the executive head, or his designee, of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the provisions herein for competitive bidding shall not apply and
the head of such agency shall be authorized to make the purchase
or repair. Total purchases so made shall only be for the purpose
of meeting needs created by the emergency situation. In the event
such executive head is responsible to an agency board, at the
meeting next following the emergency purchase, documentation of
the purchase, including a description of the commodity purchased,
the purchase price thereof and the nature of the emergency shall
be presented to the board and placed on the minutes of the board
of such agency. The head of the agency, or his designee, shall,
at the earliest possible date following such emergency purchase,
file with the Department of Finance and Administration (i) a
statement explaining the conditions and circumstances of the
emergency, which shall include a detailed description of the
events leading up to the situation and the negative impact to the
requirements set forth in (a), (b) or (c) of this section, and
(ii) a certified copy of the appropriate minutes of the board of
such agency, if applicable. On or before September 1 of each
year, the State Auditor shall prepare and deliver to the Senate
Fees, Salaries and Administration Committee, the House Fees and
Salaries of Public Officers Committee and the Joint Legislative
Budget Committee a report containing a list of all state agency
emergency purchases and supporting documentation for each
emergency purchases.

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

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

(1) **Hospital purchase, lease-purchase and lease authorization.**

- The commissioners or board of trustees of any public hospital may contract with such lowest and best bidder for the purchase or lease-purchase of any commodity under a contract of purchase or lease-purchase agreement whose obligatory payment terms do not exceed five (5) years.

- In addition to the authority granted in subparagraph (i) of this paragraph (l), the commissioners or board of trustees is authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services. Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further liability on the part of the lessee. Any such contract for the lease of equipment or services executed on behalf of the commissioners or board that complies with the provisions of this subparagraph (ii) shall be excepted from the bid requirements set forth in this section.
(m) **Exceptions from bidding requirements.** Excepted from bid requirements are:

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

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

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

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

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

(vi) **Intergovernmental sales and transfers.**

Purchases, sales, transfers or trades by governing authorities or
state agencies when such purchases, sales, transfers or trades are
made by a private treaty agreement or through means of
negotiation, from any federal agency or authority, another
governing authority or state agency of the State of Mississippi,
or any state agency or governing authority of another state.

Nothing in this section shall permit such purchases through public
auction except as provided for in subparagraph (v) of this
section. It is the intent of this section to allow governmental
entities to dispose of and/or purchase commodities from other
governmental entities at a price that is agreed to by both
parties. This shall allow for purchases and/or sales at prices
which may be determined to be below the market value if the
selling entity determines that the sale at below market value is
in the best interest of the taxpayers of the state. Governing
authorities shall place the terms of the agreement and any
justification on the minutes, and state agencies shall obtain
approval from the Department of Finance and Administration, prior
to releasing or taking possession of the commodities.

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

(viii) **Single source items.** Noncompetitive items
available from one (1) source only. In connection with the
purchase of noncompetitive items only available from one (1)
source, a certification of the conditions and circumstances
requiring the purchase shall be filed by the agency with the

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Department of Finance and Administration and by the governing authority with the board of the governing authority. Upon receipt of that certification the Department of Finance and Administration or the board of the governing authority, as the case may be, may, in writing, authorize the purchase, which authority shall be noted on the minutes of the body at the next regular meeting thereafter. In those situations, a governing authority is not required to obtain the approval of the Department of Finance and Administration.

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

(x) **Hospital group purchase contracts.** Supplies, commodities and equipment purchased by hospitals through group purchase programs pursuant to Section 31-7-38.
(xi) **Information technology products.** Purchases of information technology products made by governing authorities under the provisions of purchase schedules, or contracts executed or approved by the Mississippi Department of Information Technology Services and designated for use by governing authorities.

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

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

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

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

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

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

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

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

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

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

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

(xxiii) **Municipal water tank maintenance contracts.** Professional maintenance program contracts for the repair or maintenance of municipal water tanks, which provide professional services needed to maintain municipal water storage tanks for a fixed annual fee for a duration of two (2) or more years.
(xxiv) Purchases of Mississippi Industries for the Blind products. Purchases made by state agencies or governing authorities involving any item that is manufactured, processed or produced by the Mississippi Industries for the Blind.

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

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

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

(xxviii) Hospital lease of equipment or services. Leases by hospitals of equipment or services if the leases are in compliance with paragraph (l)(ii).

(xxix) Purchases made by certified purchasing offices of state agencies or governing authorities from cooperative purchasing agreements established by or for any city, county, state government or federal government provided that the notification to potential contractors included a clause which set forth the availability of the contract to other governmental entities. Such purchases shall only be made if the use of the contract is determined to be in the best interest of the government entity.
(n) **Term contract authorization.** All contracts for the purchase of:

(i) All contracts for the purchase of commodities, equipment and public construction (including, but not limited to, repair and maintenance), may be let for periods of not more than sixty (60) months in advance, subject to applicable statutory provisions prohibiting the letting of contracts during specified periods near the end of terms of office. Term contracts for a period exceeding twenty-four (24) months shall also be subject to ratification or cancellation by governing authority boards taking office subsequent to the governing authority board entering the contract.

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

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

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

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

(r) **Solid waste contract proposal procedure.** Before
entering into any contract for garbage collection or disposal,
contract for solid waste collection or disposal or contract for
sewage collection or disposal, which involves an expenditure of
more than Fifty Thousand Dollars ($50,000.00), a governing
authority or agency shall issue publicly a request for proposals
concerning the specifications for such services which shall be
advertised for in the same manner as provided in this section for
seeking bids for purchases which involve an expenditure of more
than the amount set forth in Section 31-7-13(c). Any request for
proposals when issued shall contain terms and conditions relating
to price, financial responsibility, technology, legal
responsible and other relevant factors as are determined by
the governing authority or agency to be appropriate for inclusion;
all factors determined relevant by the governing authority or
agency or required by this paragraph (r) shall be duly included in
the advertisement to elicit proposals. After responses to the
request for proposals have been duly received, the governing
authority or agency shall select the most qualified proposal or
proposals on the basis of price, technology and other relevant
factors and from such proposals, but not limited to the terms
thereof, negotiate and enter contracts with one or more of the
persons or firms submitting proposals. If the governing authority
or agency deems none of the proposals to be qualified or otherwise
acceptable, the request for proposals process may be reinitiated.

Notwithstanding any other provisions of this paragraph, where a
county with at least thirty-five thousand (35,000) nor more than
forty thousand (40,000) population, according to the 1990 federal
decennial census, owns or operates a solid waste landfill, the
governing authorities of any other county or municipality may
contract with the governing authorities of the county owning or
operating the landfill, pursuant to a resolution duly adopted and
spread upon the minutes of each governing authority involved, for
garbage or solid waste collection or disposal services through
contract negotiations.

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

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

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

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

(iv) "Native American" means persons having
origins in any of the original people of North America, including
American Indians, Eskimos and Aleuts.
(t) **Construction punch list restriction.** The architect, engineer or other representative designated by the agency or governing authority that is contracting for public construction or renovation may prepare and submit to the contractor only one (1) preliminary punch list of items that do not meet the contract requirements at the time of substantial completion and one (1) final list immediately before final completion and final payment.

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

**SECTION 6.** Section 37-41-31, Mississippi Code of 1972, is amended as follows:

37-41-31. In each case where pupils are transported to and from the public schools in this state in privately owned vehicles, the contract for such transportation shall be let to the lowest responsible bidder who is able to furnish a solvent bond for the faithful performance of his contract. This shall be done after each route over which such pupils are to be transported has been laid out and established as provided in this chapter. Such contracts shall be awarded upon receipt of sealed bids or proposals after the time and place of letting such contracts and the manner of bidding shall have been duly advertised in some newspaper published in said county in accordance with the procedures set forth in Section 31-7-13(c). If no newspaper be published in such county, then said advertisement shall be made by publication for the required time in some newspaper having a general circulation therein, and, in addition, by posting a copy thereof for said time in at least three (3) public places in said county, one (1) of which shall be at the county courthouse in each judicial district of the county. The awarding of all such contracts shall, however, in all respects be subject to the provisions of Section 37-41-29.
Private contracts for the transportation of exceptional children, as defined in Section 37-23-3, may be negotiated by the local school board without the necessity of the advertising for or taking of bids. The same may apply under extraordinary circumstances where regular transportation is considered to be impractical, with prior approval of the State Department of Education. The local school board may negotiate and contract for the transportation described in this paragraph so long as the local school board complies with the school transportation regulations promulgated by the State Board of Education.

Contracts shall be made for four (4) years, at the discretion of the local school board. Any and all bids may be rejected. At the expiration of any transportation contract, if the school board believes a route should remain substantially as established and finds that the carrier thereon has rendered efficient and satisfactory services it may, with the approval of the State Board of Education, extend the contract for not more than four (4) years, subject, however, to the provisions of Section 37-41-29.

SECTION 7. This act shall take effect and be in force from and after July 1, 2003.