

By: Representative Brown

To: Appropriations

HOUSE BILL NO. 652

1 AN ACT TO AMEND SECTION 19-11-27, MISSISSIPPI CODE OF 1972,
2 TO ALLOW BOARDS OF SUPERVISORS TO MAKE PURCHASES IN THE LAST SIX
3 MONTHS OF THE MEMBERS' TERM OF OFFICE IF THE BOARD FOLLOWS THE
4 BIDDING LAWS, HAS A UNANIMOUS VOTE AND DECLARES THE PURCHASE TO BE
5 ESSENTIAL; TO AMEND SECTION 19-13-21, MISSISSIPPI CODE OF 1972, TO
6 INCREASE THE ALLOWANCE FOR PROMPT REPAIRS OF ROAD EQUIPMENT FROM
7 FIVE HUNDRED DOLLARS TO FIVE THOUSAND DOLLARS; TO AMEND SECTION
8 31-7-1, MISSISSIPPI CODE OF 1972, TO DEFINE CERTIFIED PURCHASING
9 OFFICE; TO AMEND SECTION 31-7-9, MISSISSIPPI CODE OF 1972, TO
10 ALLOW THE OFFICE OF PURCHASING AND TRAVEL TO ADOPT REGULATIONS
11 GOVERNING THE CERTIFICATION PROCESS FOR CERTIFIED PURCHASING
12 OFFICES; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
13 DEFINE "COMPETITIVE"; TO IDENTIFY TWO THRESHOLDS FOR ADVERTISED
14 BIDS, FIFTEEN THOUSAND FOR NON CERTIFIED OFFICES AND TWENTY
15 THOUSAND FOR CERTIFIED PURCHASING OFFICES; TO ALLOW AGENCIES AND
16 GOVERNING AUTHORITIES TO ESTABLISH ELECTRONIC BIDDING PROCEDURES;
17 TO CREATE AUTHORITY FOR CERTIFIED PURCHASING OFFICES TO USE THE
18 REQUEST FOR PROPOSAL PROCESS AND AWARD BASED ON THE BEST VALUE; TO
19 ALLOW THE EXECUTIVE HEAD OF A STATE AGENCY TO DESIGNATE SOMEONE
20 WITH THE AUTHORITY TO DECLARE AND MAKE EMERGENCY PURCHASES AND TO
21 DELETE THE OATH REQUIREMENT AND REQUIRE A DETAILED EXPLANATION OF
22 THE CONDITIONS AND CIRCUMSTANCES OF THE EMERGENCY; TO CREATE A
23 DESIGNATION OF "CERTIFIED PURCHASING OFFICE" FOR OFFICES WITH A
24 TRAINED PROFESSIONAL DOING THE PURCHASING; TO ALLOW FOR THE
25 PURCHASE AT AUCTIONS IN OTHER STATES; TO ALLOW FOR SALES OR
26 TRANSFERS WITH ALL GOVERNMENT ENTITIES IN OTHER STATES AS WELL AS
27 IN MISSISSIPPI; TO ALLOW CERTIFIED PURCHASING OFFICES TO PURCHASE
28 FROM COOPERATIVE PURCHASING AGREEMENTS SET UP BY OTHER
29 GOVERNMENTAL ENTITIES; TO AMEND SECTION 37-41-31, MISSISSIPPI CODE
30 OF 1972, TO CONFORM THE ADVERTISING REQUIREMENTS FOR SCHOOL
31 TRANSPORTATION CONTRACTS WITH OTHER PUBLIC PURCHASING
32 REQUIREMENTS; AND FOR RELATED PURPOSES.

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

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

36 19-11-27. No board of supervisors of any county shall expend
37 from, or contract an obligation against, the budget estimates for
38 road and bridge construction, maintenance and equipment, made and
39 published by it during the last year of the term of office of such
40 board, between the first day of October and the first day of the
41 following January, a sum exceeding one-fourth (1/4) of such item
42 of the budget made and published by it, except in cases of



43 emergency. The clerk of any county is hereby prohibited from
44 issuing any warrant contrary to the provisions of this section.
45 No board of supervisors nor any member thereof shall buy any
46 machinery or equipment in the last six (6) months of their or his
47 term unless or until he has been elected at the general election
48 of that year. The provisions of this section shall not apply to
49 the contract, lease or lease purchase contract entered into
50 pursuant to the bidding requirements set forth in Section 31-7-13
51 and provided the contract is approved by a unanimous vote of the
52 board. The unanimous vote shall include a statement indicating
53 the board's proclamation that the award of the contract is
54 essential to the efficiency and economy of the operation of the
55 county government.

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

58 19-13-21. The board of supervisors of any county which owns
59 any tractor, truck, or other road machinery or equipment, or any
60 district of which owns any such machinery or equipment, may at any
61 time have the same repaired, or purchase necessary repair parts
62 therefor, where it is necessary to use such machinery or equipment
63 in constructing, reconstructing, or maintaining the public roads,
64 whether or not there is then a sufficient amount in the fund out
65 of which the cost thereof must be paid to pay the same. The claim
66 for such repairs or repair parts shall be allowed in due course
67 when filed, and be paid in its proper order as other claims.
68 However, if any repairs herein permitted to be made after the
69 first day of July of the last year of the term of office of the
70 members of the board making such repairs shall exceed the sum of
71 Five Thousand Dollars (\$5,000.00), such repairs shall not be made
72 unless and until the board of supervisors, or a majority of the
73 members thereof, shall have authorized the making of such repairs
74 at a regular meeting of such board, or a special meeting called
75 for that purpose.



76 **SECTION 3.** Section 31-7-1, Mississippi Code of 1972, is
77 amended as follows:

78 31-7-1. The following terms are defined for the purposes of
79 this chapter to have the following meanings:

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

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

105 (c) "Purchasing agent" shall mean any administrator,
106 superintendent, purchase clerk or other chief officer so
107 designated having general or special authority to negotiate for



108 and make private contract for or purchase for any governing
109 authority.

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

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

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

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

127 (f) "Emergency" shall mean any circumstances caused by
128 fire, flood, explosion, storm, earthquake, epidemic, riot,
129 insurrection or caused by any inherent defect due to defective
130 construction, or when the immediate preservation of order or of
131 public health is necessary by reason of unforeseen emergency, or
132 when the immediate restoration of a condition of usefulness of any
133 public building, equipment, road or bridge appears advisable, or
134 in the case of a public utility when there is a failure of any
135 machine or other thing used and useful in the generation,
136 production or distribution of electricity, water or natural gas,
137 or in the transportation or treatment of sewage; or when the delay
138 incident to obtaining competitive bids could cause adverse impact
139 upon the governing authorities or agency, its employees or its
140 citizens; or in the case of a public airport, when the delay



141 incident to publishing an advertisement for competitive bids would
142 endanger public safety in a specific (not general) manner, result
143 in or perpetuate a specific breach of airport security, or prevent
144 the airport from providing specific air transportation services.

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

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

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

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

161 31-7-9. (1) (a) The Office of Purchasing and Travel shall
162 adopt purchasing regulations governing the purchase by any agency
163 of any commodity or commodities and establishing standards and
164 specifications for a commodity or commodities and the maximum fair
165 prices of a commodity or commodities, subject to the approval of
166 the Public Procurement Review Board. It shall have the power to
167 amend, add to or eliminate purchasing regulations. The adoption
168 of, amendment, addition to or elimination of purchasing
169 regulations shall be based upon a determination by the Office of
170 Purchasing and Travel with the approval of the Public Procurement
171 Review Board, that such action is reasonable and practicable and
172 advantageous to promote efficiency and economy in the purchase of
173 commodities by the agencies of the state. Upon the adoption of



174 any purchasing regulation, or an amendment, addition or
175 elimination therein, copies of same shall be furnished to the
176 State Auditor and to all agencies affected thereby. Thereafter,
177 and except as otherwise may be provided in subsection (2) of this
178 section, no agency of the state shall purchase any commodities
179 covered by existing purchasing regulations unless such commodities
180 be in conformity with the standards and specifications set forth
181 in the purchasing regulations and unless the price thereof does
182 not exceed the maximum fair price established by such purchasing
183 regulations. The said Office of Purchasing and Travel shall
184 furnish to any county or municipality or other local public agency
185 of the state requesting same, copies of purchasing regulations
186 adopted by the Office of Purchasing and Travel and any amendments,
187 changes or eliminations of same that may be made from time to
188 time.

189 (b) The Office of Purchasing and Travel may adopt
190 purchasing regulations governing the use of credit cards,
191 procurement cards and purchasing club membership cards to be used
192 by state agencies and governing authorities of counties and
193 municipalities. Use of the cards shall be in strict compliance
194 with the regulations promulgated by the office. Any amounts due
195 on the cards shall incur interest charges as set forth in Section
196 31-7-305 and shall not be considered debt.

197 (2) The Office of Purchasing and Travel shall adopt, subject
198 to the approval of the Public Procurement Review Board, purchasing
199 regulations governing the purchase of unmarked vehicles to be used
200 by the Bureau of Narcotics and Department of Public Safety in
201 official investigations pursuant to Section 25-1-87. Such
202 regulations shall ensure that purchases of such vehicles shall be
203 at a fair price and shall take into consideration the peculiar
204 needs of the Bureau of Narcotics and Department of Public Safety
205 in undercover operations.



206 (3) The Office of Purchasing and Travel shall adopt, subject
207 to the approval of the Public Procurement Review Board,
208 regulations governing the certification process for certified
209 purchasing offices. The regulations shall govern entities
210 desiring to be classified as certified purchasing offices to
211 submit an application and applicable documents on an annual basis
212 at which time the Office of Purchasing and Travel may provide the
213 governing entity with a certification which shall be valid for one
214 year from the date of issuance.

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

217 31-7-13. All agencies and governing authorities shall
218 purchase their commodities and printing; contract for garbage
219 collection or disposal; contract for solid waste collection or
220 disposal; contract for sewage collection or disposal; contract for
221 public construction; and contract for rentals as herein provided.

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

231 (b) **Bidding procedure for purchases over \$3,500.00 but**
232 **not over \$15,000.00.** Purchases which involve an expenditure of
233 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
234 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
235 freight and shipping charges may be made from the lowest and best
236 bidder without publishing or posting advertisement for bids,
237 provided at least two (2) competitive written bids have been
238 obtained. Any governing authority purchasing commodities pursuant



239 to this paragraph (b) may authorize its purchasing agent, or his
240 designee, with regard to governing authorities other than
241 counties, or its purchase clerk, or his designee, with regard to
242 counties, to accept the lowest and best competitive written bid.
243 Such authorization shall be made in writing by the governing
244 authority and shall be maintained on file in the primary office of
245 the agency and recorded in the official minutes of the governing
246 authority, as appropriate. The purchasing agent or the purchase
247 clerk, or their designee, as the case may be, and not the
248 governing authority, shall be liable for any penalties and/or
249 damages as may be imposed by law for any act or omission of the
250 purchasing agent or purchase clerk, or their designee,
251 constituting a violation of law in accepting any bid without
252 approval by the governing authority. The term "competitive
253 written bid" shall mean a bid submitted on a bid form furnished by
254 the buying agency or governing authority and signed by authorized
255 personnel representing the vendor, or a bid submitted on a
256 vendor's letterhead or identifiable bid form and signed by
257 authorized personnel representing the vendor. "Competitive" shall
258 mean that bids are developed based upon comparable identification
259 of the needs and are developed independently and without knowledge
260 of other bids or prospective bids. Bids may be submitted by
261 facsimile, electronic mail or other generally accepted method of
262 information distribution. Bids submitted by electronic
263 transmission shall not require the signature of the vendor's
264 representative unless required by agencies or governing
265 authorities.

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

267 (i) **Publication requirement.** Purchases which
268 involve an expenditure of more than Fifteen Thousand Dollars
269 (\$15,000.00) for noncertified purchasing offices or Twenty
270 Thousand Dollars (\$20,000.00) for certified purchasing offices,
271 exclusive of freight and shipping charges may be made from the



272 lowest and best bidder after advertising for competitive sealed
273 bids once each week for two (2) consecutive weeks in a regular
274 newspaper published in the county or municipality in which such
275 agency or governing authority is located. The date as published
276 for the bid opening shall not be less than seven (7) working days
277 after the last published notice; however, if the purchase involves
278 a construction project in which the estimated cost is in excess of
279 Fifteen Thousand Dollars (\$15,000.00) for noncertified purchasing
280 offices or Twenty Thousand Dollars (\$20,000.00) for certified
281 purchasing offices, such bids shall not be opened in less than
282 fifteen (15) working days after the last notice is published and
283 the notice for the purchase of such construction shall be
284 published once each week for two (2) consecutive weeks. The
285 notice of intention to let contracts or purchase equipment shall
286 state the time and place at which bids shall be received, list the
287 contracts to be made or types of equipment or supplies to be
288 purchased, and, if all plans and/or specifications are not
289 published, refer to the plans and/or specifications on file. If
290 there is no newspaper published in the county or municipality,
291 then such notice shall be given by posting same at the courthouse,
292 or for municipalities at the city hall, and at two (2) other
293 public places in the county or municipality, and also by
294 publication once each week for two (2) consecutive weeks in some
295 newspaper having a general circulation in the county or
296 municipality in the above provided manner. On the same date that
297 the notice is submitted to the newspaper for publication, the
298 agency or governing authority involved shall mail written notice
299 to, or provide electronic notification to the main office of the
300 Mississippi Contract Procurement Center that contains the same
301 information as that in the published notice.

302 (ii) **Bidding process amendment procedure.** If all
303 plans and/or specifications are published in the notification,
304 then the plans and/or specifications may not be amended. If all



305 plans and/or specifications are not published in the notification,
306 then amendments to the plans/specifications, bid opening date, bid
307 opening time and place may be made, provided that the agency or
308 governing authority maintains a list of all prospective bidders
309 who are known to have received a copy of the bid documents and all
310 such prospective bidders are sent copies of all amendments. This
311 notification of amendments may be made via mail, facsimile,
312 electronic mail or other generally accepted method of information
313 distribution. No addendum to bid specifications may be issued
314 within two (2) working days of the time established for the
315 receipt of bids unless such addendum also amends the bid opening
316 to a date not less than five (5) working days after the date of
317 the addendum.

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

327 (iv) **Specification restrictions.** Specifications
328 pertinent to such bidding shall be written so as not to exclude
329 comparable equipment of domestic manufacture. Provided, however,
330 that should valid justification be presented, the Department of
331 Finance and Administration or the board of a governing authority
332 may approve a request for specific equipment necessary to perform
333 a specific job. Further, such justification, when placed on the
334 minutes of the board of a governing authority, may serve as
335 authority for that governing authority to write specifications to
336 require a specific item of equipment needed to perform a specific
337 job. In addition to these requirements, from and after July 1,



338 1990, vendors of relocatable classrooms and the specifications for
339 the purchase of such relocatable classrooms published by local
340 school boards shall meet all pertinent regulations of the State
341 Board of Education, including prior approval of such bid by the
342 State Department of Education.

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

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

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

362 (ii) Decision procedure for certified purchasing
363 offices. Purchases may be made from the bidder offering the best
364 value. In determining the best value bid, freight and shipping
365 charges shall be included. Life-cycle costing, total cost bids,
366 warranties, guaranteed buy-back provisions, documented previous
367 experience, training costs and other relevant provisions may be
368 included in the best value calculation. This provision may allow
369 certified purchasing offices to utilize a Request for Proposals
370 process when purchasing commodities. All best value procedures



371 for state agencies must be in compliance with regulations
372 established by the Department of Finance and Administration. No
373 agency or governing authority shall accept a bid based on items or
374 criteria not included in the specifications.

375 (iii) Construction project negotiations authority.

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

381 (e) **Lease-purchase authorization.** For the purposes of
382 this section, the term "equipment" shall mean equipment, furniture
383 and, if applicable, associated software and other applicable
384 direct costs associated with the acquisition. Any lease-purchase
385 of equipment which an agency is not required to lease-purchase
386 under the master lease-purchase program pursuant to Section
387 31-7-10 and any lease-purchase of equipment which a governing
388 authority elects to lease-purchase may be acquired by a
389 lease-purchase agreement under this paragraph (e). Lease-purchase
390 financing may also be obtained from the vendor or from a
391 third-party source after having solicited and obtained at least
392 two (2) written competitive bids, as defined in paragraph (b) of
393 this section, for such financing without advertising for such
394 bids. Solicitation for the bids for financing may occur before or
395 after acceptance of bids for the purchase of such equipment or,
396 where no such bids for purchase are required, at any time before
397 the purchase thereof. No such lease-purchase agreement shall be
398 for an annual rate of interest which is greater than the overall
399 maximum interest rate to maturity on general obligation
400 indebtedness permitted under Section 75-17-101, and the term of
401 such lease-purchase agreement shall not exceed the useful life of
402 equipment covered thereby as determined according to the upper
403 limit of the asset depreciation range (ADR) guidelines for the



404 Class Life Asset Depreciation Range System established by the
405 Internal Revenue Service pursuant to the United States Internal
406 Revenue Code and regulations thereunder as in effect on December
407 31, 1980, or comparable depreciation guidelines with respect to
408 any equipment not covered by ADR guidelines. Any lease-purchase
409 agreement entered into pursuant to this paragraph (e) may contain
410 any of the terms and conditions which a master lease-purchase
411 agreement may contain under the provisions of Section 31-7-10(5),
412 and shall contain an annual allocation dependency clause
413 substantially similar to that set forth in Section 31-7-10(8).
414 Each agency or governing authority entering into a lease-purchase
415 transaction pursuant to this paragraph (e) shall maintain with
416 respect to each such lease-purchase transaction the same
417 information as required to be maintained by the Department of
418 Finance and Administration pursuant to Section 31-7-10(13).
419 However, nothing contained in this section shall be construed to
420 permit agencies to acquire items of equipment with a total
421 acquisition cost in the aggregate of less than Ten Thousand
422 Dollars (\$10,000.00) by a single lease-purchase transaction. All
423 equipment, and the purchase thereof by any lessor, acquired by
424 lease-purchase under this paragraph and all lease-purchase
425 payments with respect thereto shall be exempt from all Mississippi
426 sales, use and ad valorem taxes. Interest paid on any
427 lease-purchase agreement under this section shall be exempt from
428 State of Mississippi income taxation.

429 (f) **Alternate bid authorization.** When necessary to
430 ensure ready availability of commodities for public works and the
431 timely completion of public projects, no more than two (2)
432 alternate bids may be accepted by a governing authority for
433 commodities. No purchases may be made through use of such
434 alternate bids procedure unless the lowest and best bidder * * *
435 cannot deliver the commodities contained in his bid. In that



436 event, purchases of such commodities may be made from one (1) of
437 the bidders whose bid was accepted as an alternate.

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

458 (h) **Petroleum purchase alternative.** In addition to
459 other methods of purchasing authorized in this chapter, when any
460 agency or governing authority shall have a need for gas, diesel
461 fuel, oils and/or other petroleum products in excess of the amount
462 set forth in paragraph (a) of this section, such agency or
463 governing authority may purchase the commodity after having
464 solicited and obtained at least two (2) competitive written bids,
465 as defined in paragraph (b) of this section. If two (2)
466 competitive written bids are not obtained the entity shall comply
467 with the procedures set forth in paragraph (c) of this section.
468 In the event any agency or governing authority shall have



469 advertised for bids for the purchase of gas, diesel fuel, oils and
470 other petroleum products and coal and no acceptable bids can be
471 obtained, such agency or governing authority is authorized and
472 directed to enter into any negotiations necessary to secure the
473 lowest and best contract available for the purchase of such
474 commodities.

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

495 (j) **State agency emergency purchase procedure.** If the
496 governing board or the executive head, or his designee, of any
497 agency of the state shall determine that an emergency exists in
498 regard to the purchase of any commodities or repair contracts, so
499 that the delay incident to giving opportunity for competitive
500 bidding would be detrimental to the interests of the state, then
501 the provisions herein for competitive bidding shall not apply and



502 the head of such agency shall be authorized to make the purchase
503 or repair. Total purchases so made shall only be for the purpose
504 of meeting needs created by the emergency situation. In the event
505 such executive head is responsible to an agency board, at the
506 meeting next following the emergency purchase, documentation of
507 the purchase, including a description of the commodity purchased,
508 the purchase price thereof and the nature of the emergency shall
509 be presented to the board and placed on the minutes of the board
510 of such agency. The head of the agency, or his designee, shall,
511 at the earliest possible date following such emergency purchase,
512 file with the Department of Finance and Administration (i) a
513 statement explaining the conditions and circumstances of the
514 emergency, which shall include a detailed description of the
515 events leading up to the situation and the negative impact to the
516 entity if the purchase were made following the statutory
517 requirements set forth in (a), (b) or (c) of this section, and
518 (ii) a certified copy of the appropriate minutes of the board of
519 such agency, if applicable. On or before September 1 of each
520 year, the State Auditor shall prepare and deliver to the Senate
521 Fees, Salaries and Administration Committee, the House Fees and
522 Salaries of Public Officers Committee and the Joint Legislative
523 Budget Committee a report containing a list of all state agency
524 emergency purchases and supporting documentation for each
525 emergency purchases.

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

527 If the governing authority, or the governing authority acting
528 through its designee, shall determine that an emergency exists in
529 regard to the purchase of any commodities or repair contracts, so
530 that the delay incident to giving opportunity for competitive
531 bidding would be detrimental to the interest of the governing
532 authority, then the provisions herein for competitive bidding
533 shall not apply and any officer or agent of such governing
534 authority having general or special authority therefor in making



535 such purchase or repair shall approve the bill presented therefor,
536 and he shall certify in writing thereon from whom such purchase
537 was made, or with whom such a repair contract was made. At the
538 board meeting next following the emergency purchase or repair
539 contract, documentation of the purchase or repair contract,
540 including a description of the commodity purchased, the price
541 thereof and the nature of the emergency shall be presented to the
542 board and shall be placed on the minutes of the board of such
543 governing authority.

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

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

551 (ii) In addition to the authority granted in
552 subparagraph (i) of this paragraph (1), the commissioners or board
553 of trustees is authorized to enter into contracts for the lease of
554 equipment or services, or both, which it considers necessary for
555 the proper care of patients if, in its opinion, it is not
556 financially feasible to purchase the necessary equipment or
557 services. Any such contract for the lease of equipment or
558 services executed by the commissioners or board shall not exceed a
559 maximum of five (5) years' duration and shall include a
560 cancellation clause based on unavailability of funds. If such
561 cancellation clause is exercised, there shall be no further
562 liability on the part of the lessee. Any such contract for the
563 lease of equipment or services executed on behalf of the
564 commissioners or board that complies with the provisions of this
565 subparagraph (ii) shall be excepted from the bid requirements set
566 forth in this section.



567 (m) **Exceptions from bidding requirements.** Excepted
568 from bid requirements are:

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

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

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

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

593 (v) **Governmental equipment auctions.** Motor
594 vehicles or other equipment purchased from a federal agency or
595 authority, another governing authority or state agency of the
596 State of Mississippi, any governing authority or state agency of
597 another state at a public auction held for the purpose of
598 disposing of such vehicles or other equipment. Any purchase by a
599 governing authority under the exemption authorized by this



600 subparagraph (v) shall require advance authorization spread upon
601 the minutes of the governing authority to include the listing of
602 the item or items authorized to be purchased and the maximum bid
603 authorized to be paid for each item or items.

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

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

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

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

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



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

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

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



666 (xi) **Information technology products.** Purchases
667 of information technology products made by governing authorities
668 under the provisions of purchase schedules, or contracts executed
669 or approved by the Mississippi Department of Information
670 Technology Services and designated for use by governing
671 authorities.

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

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

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

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

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

696 (xvii) **Multichannel interactive video systems.**
697 From and after July 1, 1990, contracts by Mississippi Authority
698 for Educational Television with any private educational



699 institution or private nonprofit organization whose purposes are
700 educational in regard to the construction, purchase, lease or
701 lease-purchase of facilities and equipment and the employment of
702 personnel for providing multichannel interactive video systems
703 (ITSF) in the school districts of this state.

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

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

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

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

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

726 (xxiii) **Municipal water tank maintenance**
727 **contracts.** Professional maintenance program contracts for the
728 repair or maintenance of municipal water tanks, which provide
729 professional services needed to maintain municipal water storage
730 tanks for a fixed annual fee for a duration of two (2) or more
731 years.



732 (xxiv) **Purchases of Mississippi Industries for the**
733 **Blind products.** Purchases made by state agencies or governing
734 authorities involving any item that is manufactured, processed or
735 produced by the Mississippi Industries for the Blind.

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

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

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

753 (xxviii) **Hospital lease of equipment or services.**
754 Leases by hospitals of equipment or services if the leases are in
755 compliance with paragraph (1)(ii).

756 (xxix) Purchases made by certified purchasing
757 offices of state agencies or governing authorities from
758 cooperative purchasing agreements established by or for any city,
759 county, state government or federal government provided that the
760 notification to potential contractors included a clause which set
761 forth the availability of the contract to other governmental
762 entities. Such purchases shall only be made if the use of the
763 contract is determined to be in the best interest of the
764 government entity.



765 (n) **Term contract authorization.** All contracts for the
766 purchase of:

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

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

788 (o) **Purchase law violation prohibition and vendor**
789 **penalty.** No contract or purchase as herein authorized shall be
790 made for the purpose of circumventing the provisions of this
791 section requiring competitive bids, nor shall it be lawful for any
792 person or concern to submit individual invoices for amounts within
793 those authorized for a contract or purchase where the actual value
794 of the contract or commodity purchased exceeds the authorized
795 amount and the invoices therefor are split so as to appear to be
796 authorized as purchases for which competitive bids are not
797 required. Submission of such invoices shall constitute a



798 misdemeanor punishable by a fine of not less than Five Hundred
799 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
800 or by imprisonment for thirty (30) days in the county jail, or
801 both such fine and imprisonment. In addition, the claim or claims
802 submitted shall be forfeited.

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

810 (q) **Fuel management system bidding procedure.** Any
811 governing authority or agency of the state shall, before
812 contracting for the services and products of a fuel management or
813 fuel access system, enter into negotiations with not fewer than
814 two (2) sellers of fuel management or fuel access systems for
815 competitive written bids to provide the services and products for
816 the systems. In the event that the governing authority or agency
817 cannot locate two (2) sellers of such systems or cannot obtain
818 bids from two (2) sellers of such systems, it shall show proof
819 that it made a diligent, good-faith effort to locate and negotiate
820 with two (2) sellers of such systems. Such proof shall include,
821 but not be limited to, publications of a request for proposals and
822 letters soliciting negotiations and bids. For purposes of this
823 paragraph (q), a fuel management or fuel access system is an
824 automated system of acquiring fuel for vehicles as well as
825 management reports detailing fuel use by vehicles and drivers, and
826 the term "competitive written bid" shall have the meaning as
827 defined in paragraph (b) of this section. Governing authorities
828 and agencies shall be exempt from this process when contracting
829 for the services and products of a fuel management or fuel access



830 systems under the terms of a state contract established by the
831 Office of Purchasing and Travel.

832 (r) **Solid waste contract proposal procedure.** Before
833 entering into any contract for garbage collection or disposal,
834 contract for solid waste collection or disposal or contract for
835 sewage collection or disposal, which involves an expenditure of
836 more than Fifty Thousand Dollars (\$50,000.00), a governing
837 authority or agency shall issue publicly a request for proposals
838 concerning the specifications for such services which shall be
839 advertised for in the same manner as provided in this section for
840 seeking bids for purchases which involve an expenditure of more
841 than the amount set forth in Section 31-7-13(c). Any request for
842 proposals when issued shall contain terms and conditions relating
843 to price, financial responsibility, technology, legal
844 responsibilities and other relevant factors as are determined by
845 the governing authority or agency to be appropriate for inclusion;
846 all factors determined relevant by the governing authority or
847 agency or required by this paragraph (r) shall be duly included in
848 the advertisement to elicit proposals. After responses to the
849 request for proposals have been duly received, the governing
850 authority or agency shall select the most qualified proposal or
851 proposals on the basis of price, technology and other relevant
852 factors and from such proposals, but not limited to the terms
853 thereof, negotiate and enter contracts with one or more of the
854 persons or firms submitting proposals. If the governing authority
855 or agency deems none of the proposals to be qualified or otherwise
856 acceptable, the request for proposals process may be reinitiated.
857 Notwithstanding any other provisions of this paragraph, where a
858 county with at least thirty-five thousand (35,000) nor more than
859 forty thousand (40,000) population, according to the 1990 federal
860 decennial census, owns or operates a solid waste landfill, the
861 governing authorities of any other county or municipality may
862 contract with the governing authorities of the county owning or



863 operating the landfill, pursuant to a resolution duly adopted and
864 spread upon the minutes of each governing authority involved, for
865 garbage or solid waste collection or disposal services through
866 contract negotiations.

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

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

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

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

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



895 (t) **Construction punch list restriction.** The
896 architect, engineer or other representative designated by the
897 agency or governing authority that is contracting for public
898 construction or renovation may prepare and submit to the
899 contractor only one (1) preliminary punch list of items that do
900 not meet the contract requirements at the time of substantial
901 completion and one (1) final list immediately before final
902 completion and final payment.

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

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

908 37-41-31. In each case where pupils are transported to and
909 from the public schools in this state in privately owned vehicles,
910 the contract for such transportation shall be let to the lowest
911 responsible bidder who is able to furnish a solvent bond for the
912 faithful performance of his contract. This shall be done after
913 each route over which such pupils are to be transported has been
914 laid out and established as provided in this chapter. Such
915 contracts shall be awarded upon receipt of sealed bids or
916 proposals after the time and place of letting such contracts and
917 the manner of bidding shall have been duly advertised in some
918 newspaper published in said county in accordance with the
919 procedures set forth in Section 31-7-13(c). If no newspaper be
920 published in such county, then said advertisement shall be made by
921 publication for the required time in some newspaper having a
922 general circulation therein, and, in addition, by posting a copy
923 thereof for said time in at least three (3) public places in said
924 county, one (1) of which shall be at the county courthouse in each
925 judicial district of the county. The awarding of all such
926 contracts shall, however, in all respects be subject to the
927 provisions of Section 37-41-29.



928 Private contracts for the transportation of exceptional
929 children, as defined in Section 37-23-3, may be negotiated by the
930 local school board without the necessity of the advertising for or
931 taking of bids. The same may apply under extraordinary
932 circumstances where regular transportation is considered to be
933 impractical, with prior approval of the State Department of
934 Education. The local school board may negotiate and contract for
935 the transportation described in this paragraph so long as the
936 local school board complies with the school transportation
937 regulations promulgated by the State Board of Education.

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

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

