

By: Senator(s) Burton

To: Fees, Salaries and Administration

SENATE BILL NO. 2344
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 19-11-27, MISSISSIPPI CODE OF 1972,
2 TO ALLOW COUNTY BOARDS OF SUPERVISORS TO MAKE PURCHASES IN THE
3 LAST SIX MONTHS OF THEIR TERM UNDER CERTAIN CONDITIONS; TO AMEND
4 SECTION 19-13-21, MISSISSIPPI CODE OF 1972, TO INCREASE THE
5 MAXIMUM ALLOWANCE FOR PROMPT REPAIRS OF ROAD EQUIPMENT DURING THE
6 LAST MONTHS OF THE COUNTY BOARDS OF SUPERVISORS TERM; TO AMEND
7 SECTION 31-7-1, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERM
8 "CERTIFIED PURCHASING OFFICE" AS IT RELATES TO THE PUBLIC
9 PURCHASING LAWS; TO AMEND SECTION 31-7-9, MISSISSIPPI CODE OF
10 1972, TO REQUIRE THE OFFICE OF PURCHASING AND TRAVEL TO ADOPT
11 REGULATIONS GOVERNING THE CERTIFICATION PROCESS FOR CERTIFIED
12 PURCHASING OFFICES; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF
13 1972, TO DEFINE THE TERM "COMPETITIVE" AS IT RELATES TO BIDDING
14 PROCEDURE FOR PURCHASES OVER \$3,500.00 BUT NOT OVER \$15,000.00; TO
15 ALLOW AGENCIES AND GOVERNING AUTHORITIES TO ESTABLISH PROCEDURES
16 BY WHICH BIDS MAY BE SUBMITTED VIA ELECTRONIC MEANS; TO REVISE THE
17 STATE AGENCY EMERGENCY PURCHASE PROCEDURE; TO EXEMPT FROM THE
18 PUBLIC PURCHASING LAWS PURCHASES AT GOVERNMENTAL EQUIPMENT
19 AUCTIONS IN OTHER STATES; TO EXEMPT FROM THE PUBLIC PURCHASING
20 LAWS INTERGOVERNMENTAL SALES AND TRANSFERS WITH GOVERNMENT
21 ENTITIES IN OTHER STATES; TO EXEMPT FROM THE PUBLIC PURCHASING
22 LAWS PURCHASES MADE UNDER COOPERATIVE PURCHASING AGREEMENTS; TO
23 AMEND SECTION 37-41-31, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT
24 SCHOOL TRANSPORTATION CONTRACTS SHALL BE ADVERTISED IN ACCORDANCE
25 WITH THE PUBLIC PURCHASING LAWS; TO CREATE A NEW SECTION TO
26 REQUIRE MUNICIPALITIES AND COUNTIES TO GRANT EXAMINATION
27 RECIPROCITY UNDER CERTAIN CIRCUMSTANCES; AND FOR RELATED PURPOSES.

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

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

31 19-11-27. No board of supervisors of any county shall expend
32 from, or contract an obligation against, the budget estimates for
33 road and bridge construction, maintenance and equipment, made and
34 published by it during the last year of the term of office of such
35 board, between the first day of October and the first day of the
36 following January, a sum exceeding one-fourth (1/4) of such item
37 of the budget made and published by it, except in cases of
38 emergency. The clerk of any county is * * * prohibited from
39 issuing any warrant contrary to the provisions of this section.



40 No board of supervisors nor any member thereof shall buy any
41 machinery or equipment in the last six (6) months of their or his
42 term unless or until he has been elected at the general election
43 of that year. The provisions of this section shall not apply to a
44 contract, lease or lease-purchase contract executed pursuant to
45 the bidding requirements in Section 31-7-13 and approved by a
46 unanimous vote of the board. Such unanimous vote shall include a
47 statement indicating the board's proclamation that the award of
48 the contract is essential to the efficiency and economy of the
49 operation of the county government.

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

52 19-13-21. The board of supervisors of any county which owns
53 any tractor, truck, or other road machinery or equipment, or any
54 district of which owns any such machinery or equipment, may at any
55 time have the same repaired, or purchase necessary repair parts
56 therefor, where it is necessary to use the machinery or equipment
57 in constructing, reconstructing or maintaining the public roads,
58 whether or not there is then a sufficient amount in the fund out
59 of which the cost thereof must be paid to pay the same. The claim
60 for the repairs or repair parts shall be allowed in due course
61 when filed, and be paid in its proper order as other claims.
62 However, if any repairs herein permitted to be made after the
63 first day of July of the last year of the term of office of the
64 members of the board making such repairs shall exceed the sum of
65 Five Thousand Dollars (\$5,000.00), the repairs shall not be made
66 unless and until the board of supervisors, or a majority of the
67 members thereof, shall have authorized the making of the repairs
68 at a regular meeting of the board, or a special meeting called for
69 that purpose.

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



72 31-7-1. The following terms are defined for the purposes of
73 this chapter to have the following meanings:

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

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

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



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

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

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

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

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



137 in or perpetuate a specific breach of airport security, or prevent
138 the airport from providing specific air transportation services.

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

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

147 (i) "Certified purchasing office" shall mean any
148 purchasing office wherein fifty percent (50%) or more of the
149 purchasing agents hold a certification from the Universal Public
150 Purchasing Certification Council or other nationally recognized
151 purchasing certification.

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

154 31-7-9. (1) (a) The Office of Purchasing and Travel shall
155 adopt purchasing regulations governing the purchase by any agency
156 of any commodity or commodities and establishing standards and
157 specifications for a commodity or commodities and the maximum fair
158 prices of a commodity or commodities, subject to the approval of
159 the Public Procurement Review Board. It shall have the power to
160 amend, add to or eliminate purchasing regulations. The adoption
161 of, amendment, addition to or elimination of purchasing
162 regulations shall be based upon a determination by the Office of
163 Purchasing and Travel with the approval of the Public Procurement
164 Review Board, that such action is reasonable and practicable and
165 advantageous to promote efficiency and economy in the purchase of
166 commodities by the agencies of the state. Upon the adoption of
167 any purchasing regulation, or an amendment, addition or
168 elimination therein, copies of same shall be furnished to the
169 State Auditor and to all agencies affected thereby. Thereafter,



170 and except as otherwise may be provided in subsection (2) of this
171 section, no agency of the state shall purchase any commodities
172 covered by existing purchasing regulations unless such commodities
173 be in conformity with the standards and specifications set forth
174 in the purchasing regulations and unless the price thereof does
175 not exceed the maximum fair price established by such purchasing
176 regulations. The said Office of Purchasing and Travel shall
177 furnish to any county or municipality or other local public agency
178 of the state requesting same, copies of purchasing regulations
179 adopted by the Office of Purchasing and Travel and any amendments,
180 changes or eliminations of same that may be made from time to
181 time.

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

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

199 (3) The Office of Purchasing and Travel shall adopt, subject
200 to the approval of the Public Procurement Review Board,
201 regulations governing the certification process for certified
202 purchasing offices. Such regulations shall require entities



203 desiring to be classified as certified purchasing offices to
204 submit applications and applicable documents on an annual basis,
205 at which time the Office of Purchasing and Travel may provide the
206 governing entity with a certification valid for one (1) year from
207 the date of issuance.

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

210 31-7-13. All agencies and governing authorities shall
211 purchase their commodities and printing; contract for garbage
212 collection or disposal; contract for solid waste collection or
213 disposal; contract for sewage collection or disposal; contract for
214 public construction; and contract for rentals as herein provided.

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

224 (b) **Bidding procedure for purchases over \$3,500.00 but**
225 **not over \$15,000.00.** Purchases which involve an expenditure of
226 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
227 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
228 freight and shipping charges may be made from the lowest and best
229 bidder without publishing or posting advertisement for bids,
230 provided at least two (2) competitive written bids have been
231 obtained. Any governing authority purchasing commodities pursuant
232 to this paragraph (b) may authorize its purchasing agent, or his
233 designee, with regard to governing authorities other than
234 counties, or its purchase clerk, or his designee, with regard to
235 counties, to accept the lowest and best competitive written bid.



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

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

260 (i) **Publication requirement.** Purchases which
261 involve an expenditure of more than Fifteen Thousand Dollars
262 (\$15,000.00), exclusive of freight and shipping charges, may be
263 made from the lowest and best bidder after advertising for
264 competitive sealed bids once each week for two (2) consecutive
265 weeks in a regular newspaper published in the county or
266 municipality in which such agency or governing authority is
267 located. The date as published for the bid opening shall not be
268 less than seven (7) working days after the last published notice;



269 however, if the purchase involves a construction project in which
270 the estimated cost is in excess of Fifteen Thousand Dollars
271 (\$15,000.00), such bids shall not be opened in less than fifteen
272 (15) working days after the last notice is published and the
273 notice for the purchase of such construction shall be published
274 once each week for two (2) consecutive weeks. The notice of
275 intention to let contracts or purchase equipment shall state the
276 time and place at which bids shall be received, list the contracts
277 to be made or types of equipment or supplies to be purchased, and,
278 if all plans and/or specifications are not published, refer to the
279 plans and/or specifications on file. If there is no newspaper
280 published in the county or municipality, then such notice shall be
281 given by posting same at the courthouse, or for municipalities at
282 the city hall, and at two (2) other public places in the county or
283 municipality, and also by publication once each week for two (2)
284 consecutive weeks in some newspaper having a general circulation
285 in the county or municipality in the above provided manner. On
286 the same date that the notice is submitted to the newspaper for
287 publication, the agency or governing authority involved shall mail
288 written notice to, or provide electronic notification to the main
289 office of the Mississippi Contract Procurement Center that
290 contains the same information as that in the published notice.

291 (ii) **Bidding process amendment procedure.** If all
292 plans and/or specifications are published in the notification,
293 then the plans and/or specifications may not be amended. If all
294 plans and/or specifications are not published in the notification,
295 then amendments to the plans/specifications, bid opening date, bid
296 opening time and place may be made, provided that the agency or
297 governing authority maintains a list of all prospective bidders
298 who are known to have received a copy of the bid documents and all
299 such prospective bidders are sent copies of all amendments. This
300 notification of amendments may be made via mail, facsimile,
301 electronic mail or other generally accepted method of information



302 distribution. No addendum to bid specifications may be issued
303 within two (2) working days of the time established for the
304 receipt of bids unless such addendum also amends the bid opening
305 to a date not less than five (5) working days after the date of
306 the addendum.

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

316 (iv) **Specification restrictions.** Specifications
317 pertinent to such bidding shall be written so as not to exclude
318 comparable equipment of domestic manufacture. * * * However, if
319 valid justification is presented, the Department of Finance and
320 Administration or the board of a governing authority may approve a
321 request for specific equipment necessary to perform a specific
322 job. Further, such justification, when placed on the minutes of
323 the board of a governing authority, may serve as authority for
324 that governing authority to write specifications to require a
325 specific item of equipment needed to perform a specific job. In
326 addition to these requirements, from and after July 1, 1990,
327 vendors of relocatable classrooms and the specifications for the
328 purchase of such relocatable classrooms published by local school
329 boards shall meet all pertinent regulations of the State Board of
330 Education, including prior approval of such bid by the State
331 Department of Education.

332 (v) Agencies and governing authorities may
333 establish secure procedures by which bids may be submitted via
334 electronic means.



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

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

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

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

357 (e) **Lease-purchase authorization.** For the purposes of
358 this section, the term "equipment" shall mean equipment, furniture
359 and, if applicable, associated software and other applicable
360 direct costs associated with the acquisition. Any lease-purchase
361 of equipment which an agency is not required to lease-purchase
362 under the master lease-purchase program pursuant to Section
363 31-7-10 and any lease-purchase of equipment which a governing
364 authority elects to lease-purchase may be acquired by a
365 lease-purchase agreement under this paragraph (e). Lease-purchase
366 financing may also be obtained from the vendor or from a
367 third-party source after having solicited and obtained at least



368 two (2) written competitive bids, as defined in paragraph (b) of
369 this section, for such financing without advertising for such
370 bids. Solicitation for the bids for financing may occur before or
371 after acceptance of bids for the purchase of such equipment or,
372 where no such bids for purchase are required, at any time before
373 the purchase thereof. No such lease-purchase agreement shall be
374 for an annual rate of interest which is greater than the overall
375 maximum interest rate to maturity on general obligation
376 indebtedness permitted under Section 75-17-101, and the term of
377 such lease-purchase agreement shall not exceed the useful life of
378 equipment covered thereby as determined according to the upper
379 limit of the asset depreciation range (ADR) guidelines for the
380 Class Life Asset Depreciation Range System established by the
381 Internal Revenue Service pursuant to the United States Internal
382 Revenue Code and regulations thereunder as in effect on December
383 31, 1980, or comparable depreciation guidelines with respect to
384 any equipment not covered by ADR guidelines. Any lease-purchase
385 agreement entered into pursuant to this paragraph (e) may contain
386 any of the terms and conditions which a master lease-purchase
387 agreement may contain under the provisions of Section 31-7-10(5),
388 and shall contain an annual allocation dependency clause
389 substantially similar to that set forth in Section 31-7-10(8).
390 Each agency or governing authority entering into a lease-purchase
391 transaction pursuant to this paragraph (e) shall maintain with
392 respect to each such lease-purchase transaction the same
393 information as required to be maintained by the Department of
394 Finance and Administration pursuant to Section 31-7-10(13).
395 However, nothing contained in this section shall be construed to
396 permit agencies to acquire items of equipment with a total
397 acquisition cost in the aggregate of less than Ten Thousand
398 Dollars (\$10,000.00) by a single lease-purchase transaction. All
399 equipment, and the purchase thereof by any lessor, acquired by
400 lease-purchase under this paragraph and all lease-purchase



401 payments with respect thereto shall be exempt from all Mississippi
402 sales, use and ad valorem taxes. Interest paid on any
403 lease-purchase agreement under this section shall be exempt from
404 State of Mississippi income taxation.

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

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



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

451 (i) **Road construction petroleum products price**
452 **adjustment clause authorization.** Any agency or governing
453 authority authorized to enter into contracts for the construction,
454 maintenance, surfacing or repair of highways, roads or streets,
455 may include in its bid proposal and contract documents a price
456 adjustment clause with relation to the cost to the contractor,
457 including taxes, based upon an industry-wide cost index, of
458 petroleum products including asphalt used in the performance or
459 execution of the contract or in the production or manufacture of
460 materials for use in such performance. Such industry-wide index
461 shall be established and published monthly by the Mississippi
462 Department of Transportation with a copy thereof to be mailed,
463 upon request, to the clerks of the governing authority of each
464 municipality and the clerks of each board of supervisors
465 throughout the state. The price adjustment clause shall be based
466 on the cost of such petroleum products only and shall not include



467 any additional profit or overhead as part of the adjustment. The
468 bid proposals or document contract shall contain the basis and
469 methods of adjusting unit prices for the change in the cost of
470 such petroleum products.

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



500 state agency emergency purchases and supporting documentation for
501 each emergency purchases.

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

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

520 (l) **Hospital purchase, lease-purchase and lease**
521 **authorization.**

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

527 (ii) In addition to the authority granted in
528 subparagraph (i) of this paragraph (l), the commissioners or board
529 of trustees is authorized to enter into contracts for the lease of
530 equipment or services, or both, which it considers necessary for
531 the proper care of patients if, in its opinion, it is not
532 financially feasible to purchase the necessary equipment or



533 services. Any such contract for the lease of equipment or
534 services executed by the commissioners or board shall not exceed a
535 maximum of five (5) years' duration and shall include a
536 cancellation clause based on unavailability of funds. If such
537 cancellation clause is exercised, there shall be no further
538 liability on the part of the lessee. Any such contract for the
539 lease of equipment or services executed on behalf of the
540 commissioners or board that complies with the provisions of this
541 subparagraph (ii) shall be excepted from the bid requirements set
542 forth in this section.

543 (m) **Exceptions from bidding requirements.** Excepted
544 from bid requirements are:

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

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

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



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

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

580 (vi) **Intergovernmental sales and transfers.**
581 Purchases, sales, transfers or trades by governing authorities or
582 state agencies when such purchases, sales, transfers or trades are
583 made by a private treaty agreement or through means of
584 negotiation, from any federal agency or authority, another
585 governing authority or state agency of the State of Mississippi,
586 or any state agency or governing authority of another state.
587 Nothing in this section shall permit such purchases through public
588 auction except as provided for in subparagraph (v) of this
589 section. It is the intent of this section to allow governmental
590 entities to dispose of and/or purchase commodities from other
591 governmental entities at a price that is agreed to by both
592 parties. This shall allow for purchases and/or sales at prices
593 which may be determined to be below the market value if the
594 selling entity determines that the sale at below market value is
595 in the best interest of the taxpayers of the state. Governing
596 authorities shall place the terms of the agreement and any
597 justification on the minutes, and state agencies shall obtain



598 approval from the Department of Finance and Administration, prior
599 to releasing or taking possession of the commodities.

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

604 (viii) **Single source items.** Noncompetitive items
605 available from one (1) source only. In connection with the
606 purchase of noncompetitive items only available from one (1)
607 source, a certification of the conditions and circumstances
608 requiring the purchase shall be filed by the agency with the
609 Department of Finance and Administration and by the governing
610 authority with the board of the governing authority. Upon receipt
611 of that certification the Department of Finance and Administration
612 or the board of the governing authority, as the case may be, may,
613 in writing, authorize the purchase, which authority shall be noted
614 on the minutes of the body at the next regular meeting thereafter.
615 In those situations, a governing authority is not required to
616 obtain the approval of the Department of Finance and
617 Administration.

618 (ix) **Waste disposal facility construction**
619 **contracts.** Construction of incinerators and other facilities for
620 disposal of solid wastes in which products either generated
621 therein, such as steam, or recovered therefrom, such as materials
622 for recycling, are to be sold or otherwise disposed of; * * *
623 however, in constructing such facilities, a governing authority or
624 agency shall publicly issue requests for proposals, advertised for
625 in the same manner as provided herein for seeking bids for public
626 construction projects, concerning the design, construction,
627 ownership, operation and/or maintenance of such facilities,
628 wherein such requests for proposals when issued shall contain
629 terms and conditions relating to price, financial responsibility,
630 technology, environmental compatibility, legal responsibilities



631 and such other matters as are determined by the governing
632 authority or agency to be appropriate for inclusion; and after
633 responses to the request for proposals have been duly received,
634 the governing authority or agency may select the most qualified
635 proposal or proposals on the basis of price, technology and other
636 relevant factors and from such proposals, but not limited to the
637 terms thereof, negotiate and enter contracts with one or more of
638 the persons or firms submitting proposals.

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

642 (xi) **Information technology products.** Purchases
643 of information technology products made by governing authorities
644 under the provisions of purchase schedules, or contracts executed
645 or approved by the Mississippi Department of Information
646 Technology Services and designated for use by governing
647 authorities.

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

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

658 (xiv) **Library books and other reference materials.**
659 Purchases by libraries or for libraries of books and periodicals;
660 processed film, video cassette tapes, filmstrips and slides;
661 recorded audio tapes, cassettes and diskettes; and any such items
662 as would be used for teaching, research or other information
663 distribution; however, equipment such as projectors, recorders,



664 audio or video equipment, and monitor televisions are not exempt
665 under this subparagraph.

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

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

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

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

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

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

693 (xxi) **Certain school district purchases.**
694 Purchases of commodities made by school districts from vendors
695 with which any levying authority of the school district, as



696 defined in Section 37-57-1, has contracted through competitive
697 bidding procedures for purchases of the same commodities.

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

702 (xxiii) **Municipal water tank maintenance**
703 **contracts.** Professional maintenance program contracts for the
704 repair or maintenance of municipal water tanks, which provide
705 professional services needed to maintain municipal water storage
706 tanks for a fixed annual fee for a duration of two (2) or more
707 years.

708 (xxiv) **Purchases of Mississippi Industries for the**
709 **Blind products.** Purchases made by state agencies or governing
710 authorities involving any item that is manufactured, processed or
711 produced by the Mississippi Industries for the Blind.

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

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

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



729 (xxviii) **Hospital lease of equipment or services.**
730 Leases by hospitals of equipment or services if the leases are in
731 compliance with subparagraph (1)(ii).

732 (xxix) **Purchases made pursuant to qualified**
733 **cooperative purchasing agreements.** Purchases made by certified
734 purchasing offices of state agencies or governing authorities
735 under cooperative purchasing agreements previously approved by the
736 Office of Purchasing and Travel and established by or for any
737 municipality, county, parish or state government or the federal
738 government, provided that the notification to potential
739 contractors includes a clause that sets forth the availability of
740 the cooperative purchasing agreement to other governmental
741 entities. Such purchases shall only be made if the use of the
742 cooperative purchasing agreements is determined to be in the best
743 interest of the government entity.

744 (n) **Term contract authorization.** All contracts for the
745 purchase of:

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

756 (ii) Bid proposals and contracts may include price
757 adjustment clauses with relation to the cost to the contractor
758 based upon a nationally published industry-wide or nationally
759 published and recognized cost index. The cost index used in a
760 price adjustment clause shall be determined by the Department of
761 Finance and Administration for the state agencies and by the



762 governing board for governing authorities. The bid proposal and
763 contract documents utilizing a price adjustment clause shall
764 contain the basis and method of adjusting unit prices for the
765 change in the cost of such commodities, equipment and public
766 construction.

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

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

789 (q) **Fuel management system bidding procedure.** Any
790 governing authority or agency of the state shall, before
791 contracting for the services and products of a fuel management or
792 fuel access system, enter into negotiations with not fewer than
793 two (2) sellers of fuel management or fuel access systems for
794 competitive written bids to provide the services and products for



795 the systems. In the event that the governing authority or agency
796 cannot locate two (2) sellers of such systems or cannot obtain
797 bids from two (2) sellers of such systems, it shall show proof
798 that it made a diligent, good-faith effort to locate and negotiate
799 with two (2) sellers of such systems. Such proof shall include,
800 but not be limited to, publications of a request for proposals and
801 letters soliciting negotiations and bids. For purposes of this
802 paragraph (q), a fuel management or fuel access system is an
803 automated system of acquiring fuel for vehicles as well as
804 management reports detailing fuel use by vehicles and drivers, and
805 the term "competitive written bid" shall have the meaning as
806 defined in paragraph (b) of this section. Governing authorities
807 and agencies shall be exempt from this process when contracting
808 for the services and products of a fuel management or fuel access
809 systems under the terms of a state contract established by the
810 Office of Purchasing and Travel.

811 (r) **Solid waste contract proposal procedure.** Before
812 entering into any contract for garbage collection or disposal,
813 contract for solid waste collection or disposal or contract for
814 sewage collection or disposal, which involves an expenditure of
815 more than Fifty Thousand Dollars (\$50,000.00), a governing
816 authority or agency shall issue publicly a request for proposals
817 concerning the specifications for such services which shall be
818 advertised for in the same manner as provided in this section for
819 seeking bids for purchases which involve an expenditure of more
820 than the amount provided in paragraph (c) of this section. Any
821 request for proposals when issued shall contain terms and
822 conditions relating to price, financial responsibility,
823 technology, legal responsibilities and other relevant factors as
824 are determined by the governing authority or agency to be
825 appropriate for inclusion; all factors determined relevant by the
826 governing authority or agency or required by this paragraph (r)
827 shall be duly included in the advertisement to elicit proposals.



828 After responses to the request for proposals have been duly
829 received, the governing authority or agency shall select the most
830 qualified proposal or proposals on the basis of price, technology
831 and other relevant factors and from such proposals, but not
832 limited to the terms thereof, negotiate and enter contracts with
833 one or more of the persons or firms submitting proposals. If the
834 governing authority or agency deems none of the proposals to be
835 qualified or otherwise acceptable, the request for proposals
836 process may be reinitiated. Notwithstanding any other provisions
837 of this paragraph, where a county with at least thirty-five
838 thousand (35,000) nor more than forty thousand (40,000)
839 population, according to the 1990 federal decennial census, owns
840 or operates a solid waste landfill, the governing authorities of
841 any other county or municipality may contract with the governing
842 authorities of the county owning or operating the landfill,
843 pursuant to a resolution duly adopted and spread upon the minutes
844 of each governing authority involved, for garbage or solid waste
845 collection or disposal services through contract negotiations.

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



861 Black, Hispanic or Native American, according to the following
862 definitions:

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

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

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

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

874 (t) **Construction punch list restriction.** The
875 architect, engineer or other representative designated by the
876 agency or governing authority that is contracting for public
877 construction or renovation may prepare and submit to the
878 contractor only one (1) preliminary punch list of items that do
879 not meet the contract requirements at the time of substantial
880 completion and one (1) final list immediately before final
881 completion and final payment.

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

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

887 37-41-31. In each case where pupils are transported to and
888 from the public schools in this state in privately owned vehicles,
889 the contract for such transportation shall be let to the lowest
890 responsible bidder who is able to furnish a solvent bond for the
891 faithful performance of his contract. This shall be done after
892 each route over which such pupils are to be transported has been
893 laid out and established as provided in this chapter. Such



894 contracts shall be awarded upon receipt of sealed bids or
895 proposals after the time and place of letting such contracts and
896 the manner of bidding * * * have been duly advertised in some
897 newspaper published in the county in accordance with the
898 procedures provided in Section 31-7-13(c). If no newspaper is
899 published in the county, then the advertisement shall be made by
900 publication for the required time in some newspaper having a
901 general circulation therein, and, in addition, by posting a copy
902 thereof for that time in at least three (3) public places in the
903 county, one (1) of which shall be at the county courthouse in each
904 judicial district of the county. The awarding of all such
905 contracts shall, however, in all respects be subject to the
906 provisions of Section 37-41-29.

907 Private contracts for the transportation of exceptional
908 children, as defined in Section 37-23-3, may be negotiated by the
909 local school board without the necessity of the advertising for or
910 taking of bids. The same may apply under extraordinary
911 circumstances where regular transportation is considered to be
912 impractical, with prior approval of the State Department of
913 Education. The local school board may negotiate and contract for
914 the transportation described in this paragraph so long as the
915 local school board complies with the school transportation
916 regulations promulgated by the State Board of Education.

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

925 **SECTION 7.** (1) Every municipality and county of the State
926 of Mississippi shall grant competency examination reciprocity to



927 any contractor, including, but not limited to, any electrical,
928 plumbing, heating and air conditioning, water and sewer, roofing
929 or mechanical contractor, who is licensed by another municipality
930 or county of this state without imposing any further competency
931 examination requirements provided:

932 (a) That the contractor furnishes evidence that he has
933 a license issued on the basis of a competency examination
934 administered in one (1) municipality or county of the State of
935 Mississippi which has an examining board that regularly gives a
936 written examination which has been approved by the State Board of
937 Public Contractors or the Building Officials Association of
938 Mississippi;

939 (b) That he furnishes evidence that he actually took
940 and passed the written examination which qualified him for such
941 license; however, in lieu thereof, he may furnish evidence that
942 he was issued a license prior to May 1, 1972, and prior to the
943 existence of a written examination by a county or municipality
944 which has an examining board that requires written examination to
945 qualify for a license;

946 (c) That he has been actively engaged in the business
947 for which he is licensed for two (2) years or more;

948 (d) That he has held a license for his business for one
949 (1) year or more; and

950 (e) That he pays the license fee to the municipality or
951 county to which application is made for a license unless he holds
952 a current certificate of responsibility issued by the State Board
953 of Public Contractors, in which case no license fee shall be
954 collected.

955 (2) (a) Any contractor who operates more than one (1)
956 separate place of business within the state must obtain the
957 appropriate privilege license and pay the privilege license fee
958 for each location if required by the local jurisdiction.



959 (b) Every jurisdiction in which a contractor does
960 business may impose its own separate bonding requirements on the
961 contractor desiring to do business there.

962 **SECTION 8.** This act shall take effect and be in force from
963 and after July 1, 2003.

