SENATE BILL NO. 2770

AN ACT TO CREATE THE DEPARTMENT OF PROCUREMENT AND TRAVEL AND TO DECLARE ITS PURPOSE REGARDING THE REGULATION OF PUBLIC PURCHASES OF COMMODITIES AND TRAVEL SERVICES; TO AMEND SECTION 31-7-3, MISSISSIPPI CODE OF 1972, TO CREATE THE PUBLIC PROCUREMENT AND TRAVEL REVIEW BOARD AND TO PRESCRIBE ITS POWERS AND DUTIES; TO AMEND SECTIONS 31-7-5, 31-7-7, 31-7-9, 31-7-10, 31-7-11, 31-7-12 AND 31-7-13, MISSISSIPPI CODE OF 1972, TO CONFORM THERETO; AND FOR RELATED PURPOSES.

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

SECTION 1. (1) The Legislature hereby recognizes that in order for the State of Mississippi to receive the maximum use and benefit from the use of tax dollars it is imperative that a uniform system of procurement and contracting shall be established. Further, the Legislature recognizes the importance of assuring that such a system is free of potential political pressures. The Legislature, therefore, declares and determines that for these and other related purposes there is hereby established an agency of state government to be known as the Mississippi Department of Procurement and Travel.

(2) Whenever the term "Office of Purchasing and Travel" or the term "Department of Finance and Administration," when referring to the procurement and contracting functions, is used in any law, rule, regulation, document or elsewhere, it shall be construed to mean the Mississippi Department of Procurement and Travel.

(3) The purposes or aims of the Department of Procurement and Travel in carrying out the provisions shall be to coordinate and promote efficiency and economy in the purchase of commodities and travel services by the agencies of the state, and to serve as
a resource in the area of public procurement for the governing
authorities of the state.

SECTION 2. Section 31-7-3, Mississippi Code of 1972, is
amended as follows:

31-7-3. (1) There is hereby created the Public Procurement
and Travel Review Board, which shall be composed of one (1)
representative chosen by the Governor, one (1) representative
chosen by the Lieutenant Governor, one (1) representative chosen
by the Auditor, one (1) representative chosen by the Attorney
General and one (1) representative chosen by the Treasurer. The
initial terms of the members shall be five (5) years for the
representative chosen by the Governor, four (4) years for the
representative chosen by the Lieutenant Governor, three (3) years
for the representative chosen by the Auditor, two (2) years for
the representative chosen by the Attorney General and one (1) year
for the representative chosen by the Treasurer. Thereafter, terms
will be for a period of five (5) years. The initial appointments
to the board shall be made no later than June 30, 2003, for terms
to begin on July 1, 2003. Vacancies shall be filled in the same
manner as original appointments for the unexpired portion of the
term vacated. Each member of the authority shall have a minimum
of four (4) years' experience in government contracting or private
sector contracting, either from the purchaser side or the provider
side. The board shall annually elect a vice chairman, who shall
serve in the absence of the chairman. No business shall be
transacted, including adoption of rules of procedure, without the
presence of a quorum of the board. Three (3) members shall be a
quorum. No action shall be valid unless approved by a majority of
those present and voting, entered upon the minutes of the board
and signed by the chairman. The board shall meet on a monthly
basis and at any other time when notified by the chairman.

Necessary clerical and administrative support for the board shall
be provided by the Department of Procurement and Travel. Minutes
shall be kept of the proceedings of each meeting, copies of which shall be filed on a monthly basis with the Legislative Budget Office.

(2) The Public Procurement and Travel Review Board shall approve all purchasing regulations governing the purchase or lease by any agency, as defined in Section 31-7-1, of commodities, equipment and travel services, except computer equipment and services acquired pursuant to Sections 25-53-1 through 25-53-29.

(3) No member of the Public Procurement and Travel Review Board shall use his official authority or influence to coerce, by threat of discharge from employment, or otherwise, the purchase of commodities or the contracting for services or public construction under this chapter.

(4) Each member of the board shall be required to furnish a surety bond in the minimum amount of Fifty Thousand Dollars ($50,000.00) to be approved by the Secretary of State conditioned according to law and payable to the State of Mississippi, before entering upon his duties. The premiums on such bonds shall be paid from any funds available to the authority for such purpose.

(5) No member of the board, nor its executive director, shall, during his term as such member or director, have any substantial beneficial interest in any corporation or other organization engaged in the information technology business either as manufacturer, supplier, lessor or otherwise. All members and the executive director shall fully disclose in writing any such beneficial interest, and such disclosure shall be entered on the minutes of the authority.

(6) The Lieutenant Governor may designate one (1) Senator and the Speaker of the House of Representatives may designate one (1) Representative to attend any meeting of the board. The appointing authorities may designate an alternate member from their respective houses to serve when the regular designee is unable to attend such meetings of the authority. Such legislative
designees shall have no jurisdiction or vote on any matter within
the jurisdiction of the board. For attending meetings of the
authority, such legislators shall receive per diem and expenses
which shall be paid from the contingent expense funds of their
respective houses in the same amounts as provided for committee
meetings when the Legislature is not in session; however, no per
diem and expenses for attending meetings of the authority will be
paid while the Legislature is in session. No per diem and
expenses will be paid except for attending meetings of the
authority without prior approval of the proper committee in their
respective houses.

(7) The members of the board shall be compensated by a per
diem as authorized by Section 25-3-69 for each day spent in actual
discharge of their duties, and shall be reimbursed for mileage and
actual expenses incurred in the performance of their duties as
provided in Section 25-3-41. No board member may incur per diem,
travel or other expenses unless previously authorized by vote at a
meeting of the board, which action shall be recorded in the
official minutes of said meeting.

(8) The board shall meet regularly at a place designated by
it once each calendar month and shall meet at such other times as
may be set upon call of the chairman or a majority of the members
of the board. At its first meeting, the board shall organize and
elect a chairman and vice chairman and, as soon as practicable
thereafter, the authority shall adopt such rules and regulations,
not contrary to the provisions of this chapter and the other laws
of the State of Mississippi, as shall be necessary and proper to
govern its proceedings. The board may either elect a secretary
from among its membership or delegate the executive director or
another employee of the department as its secretary.

(9) In order to have a quorum for a meeting of the board, at
least three (3) members of the board must be present.
(10) Any member of the board may have his vote on any question before the board recorded on the minutes thereof at the time of the vote, and a member of the board who votes against an illegal or unauthorized expenditure of funds may not be held liable therefor.

(11) The board shall keep full, complete, and permanent minutes and records of all its proceedings, including the rules and regulations adopted by it, and said minutes shall be signed by the chairman, or vice chairman, and attested by the secretary.

(12) The board shall select a chief procurement officer, with the advice and consent of the Senate, who shall be the administrative officer of the board and shall perform such duties as are required of him by law and such other duties as may be assigned him by the board, and who shall receive such compensation as may be fixed by the board, subject to the approval of the State Personnel Board. In addition, he shall be entitled to remuneration for his necessary traveling expenses consistent with general law.

The chief procurement officer shall be a full-time public official of the State of Mississippi appointed to serve a term of ten (10) years and may be removed from office by the board only upon a show of just cause. The chief procurement officer shall be a graduate of an accredited university with a degree in business administration, public administration or a related field, with at least ten (10) years' experience in public procurement, or a related field, of which at least five (5) years shall be in a responsible high-level management position with a demonstrated record of management expertise. In addition, the chief procurement officer shall hold a purchasing certification from a nationally recognized certification authority.

The chief procurement officer shall have no vote in the decisions of said board, but shall offer such professional or technical advice and assistance to the authority as may be
required of him. Said chief procurement officer, in order to
qualify for his position, shall be required to make a good and
sufficient bond in some surety company qualified and doing
business in the State of Mississippi, in the minimum penal sum of
Fifty Thousand Dollars ($50,000.00) conditioned upon the faithful
performance of his duties as required by law and the directives of
the authority. The premium on said bond shall be paid from any
funds available to the authority for such purpose.

The chief procurement officer, with the approval of the
board, shall employ such technical, professional and clerical help
as may be authorized by the authority; and the authority, upon the
recommendation of the board, shall define the duties and fix the
compensation of such employees.

(13) The chief procurement officer shall have the following
duties, responsibilities and authority:

(a) He shall conduct continuing studies of all
procurement and contracting activities carried out by all agencies
of the state and shall develop a long-range plan for the efficient
and economical performance of such activities in state government.
Such plan shall be submitted to the board for its approval and,
having been approved by the board, shall be implemented by the
chief procurement officer and all state agencies. Such plan shall
be continuously reviewed and modifications thereof shall be
proposed to the board by the chief procurement officer as
developments in the procurement field and changes in the
structure, activities and functions of state government may
require.

(b) He shall review the purchasing practices of all
state agencies in the area of the purchasing of commodities,
supplies and equipment and make recommendations to the board for
the institution of purchasing procedures which will insure the
most economical procurement of such with the efficient operation
of all departments and agencies of state government.
(c) He shall see that all reports required of all agencies are promptly and accurately made in accordance with the rules and regulations adopted by the board. Either in person or through his authorized agents, he shall make such inspections of procurement operations being conducted by any of the agencies of the state as may be necessary for the performance of his duties.

(d) He shall suggest and cause to be brought about cooperation between the several state agencies in order to provide efficiency in procurement. He shall, together with the heads of the agencies involved, reduce to writing and execute cooperative plans for the acquisition and operation of applicable equipment, and any such plan so adopted shall be carried out in accordance with the provisions of such plan unless the same shall be amended by the joint action of the chief procurement officer and the heads of agencies involved. The chief procurement officer shall report to the board the details of any plan so adopted and all amendments or modifications thereof, and shall otherwise report to the board any failure on the part of any agency to carry out the provisions of such plan. In the event the head of any agency involved or the chief procurement officer shall propose amendments to a plan so adopted and such amendment is disapproved by the head of another agency involved or the chief procurement officer, an appeal may be taken to the board which may, after full consideration thereof, order the adoption of the proposed amendment or any modification thereof. The chief procurement officer shall make decisions on all questions of the division of the cost of such equipment among the several agencies, but his findings shall be subject to the approval or modification by the board on appeal to it.

(e) He may review all contracts for acquisition of equipment now or hereafter in force and may require the renegotiation, termination, amendment or execution of any such contracts in proper form and in accordance with the policies and rules and regulations and subject to the direction of the board.
In the negotiation and execution of such contracts, the chief procurement officer may negotiate a limitation on the liability to the state of prospective contractors provided such limitation affords the state reasonable protection.

(f) He shall act as the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for commodities and equipment except for the acquisition of computer equipment or services. He shall receive, review and promptly approve or disapprove all requests of agencies of the state for the acquisition of equipment, which are submitted in accordance with rules and regulations of the board. The disapproval of any request by the chief procurement officer may be appealed to the board in such manner as may be authorized by such reasonable rules and regulations hereby authorized to be adopted by the board. The chief procurement officer shall execute any contracts only after complying with rules and regulations which may be adopted by the board in relation thereto.

(g) He shall suggest and cause to be brought about cooperation between the several state agencies, departments and institutions in order that work may be done by one agency for another agency, and equipment in one agency may be made available to another agency, and suggest and cause to be brought about such improvements as may be necessary in joint or cooperative operations.

(14) The board shall act upon all appeals of decisions made by the chief procurement officer thereof and shall, upon such appeals, approve or disapprove such administrative actions as may be taken by him. The form of an appeal to the full board from an action or recommendation of the chief procurement officer thereof shall be a written communication from the executive head of the agency or agencies involved to the chairman of the board, stating the objection and a request to appear before the full board to present the case in point, on which appeal the authority shall
take such action as is indicated by the facts presented to or made
available to the board.

(15) The board may establish policies and procedures for the
purpose of delegating the bidding and contracting responsibilities
related to the procurement of commodities and equipment to the
purchasing agency. Nothing in this subsection shall be construed
to imply exemption from the Public Purchasing Law, being Section
31-7-1 et seq.

SECTION 3. Section 31-7-5, Mississippi Code of 1972, is
amended as follows:

31-7-5. The Department of Procurement and Travel shall
prescribe rules and regulations governing the manner in which the
authority and duties granted to it by law may be carried out. It
shall employ suitable and competent personnel, necessary to carry
out its purposes. The Department of Finance and Administration
may establish an Office of Purchasing and Travel and employ a
competent person as Director of the Office of Purchasing and
Travel.

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

31-7-7. Through its director and other supervisory personnel
and, upon its request, through the agencies of the state, the
Department of Procurement and Travel shall supervise the
performance of the following duties imposed upon it by this
chapter:

(a) A study of the purchases of commodities by the
agencies of the state; the compilation, exchange and coordination
of information concerning same; and the distribution of such
information to the agencies and governing authorities requesting
same.

(b) The planning and coordination of purchases in
volume for the agencies in order to take advantage of and secure
the economies possible by volume purchasing; the arrangement of
agreements between agencies and between governing authorities
whereby one may make a purchase or purchases for the other or
whereby an agency may make a purchase for a governing authority;
the arrangement of agreements whereby purchases of commodities can
be made between an agency and another agency or governing
authority at a fair price, less depreciated value; the
negotiations and execution of purchasing agreements and contracts
through and under which the Department of Procurement and Travel
may require state agencies to purchase; and the obtaining or
establishment of methods for obtaining of competitive bid prices
upon which any agency of the state may purchase at the price
approved by the Department of Procurement and Travel.

(c) The arrangement of provisions in purchase contracts
of the state, or any agency, providing that the same price for
which a commodity is available to an agency, may also, during the
period of time provided therein, be available to any governing
authority.

SECTION 5. Section 31-7-9, Mississippi Code of 1972, is
amended as follows:

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

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

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

SECTION 6. Section 31-7-10, Mississippi Code of 1972, is
amended as follows:
31-7-10. (1) For the purposes of this section, the term "equipment" shall mean equipment, furniture, and if applicable, associated software and other applicable direct costs associated with the acquisition. In addition to its other powers and duties, the Department of Finance and Administration shall have the authority to develop a master lease-purchase program and, pursuant to that program, shall have the authority to execute on behalf of the state master lease-purchase agreements for equipment to be used by an agency, as provided in this section. Each agency electing to acquire equipment by a lease-purchase agreement shall participate in the Department of Finance and Administration's master lease-purchase program, unless the Department of Finance and Administration makes a determination that such equipment cannot be obtained under the program or unless the equipment can be obtained elsewhere at an overall cost lower than that for which the equipment can be obtained under the program. Such lease-purchase agreements may include the refinancing or consolidation, or both, of any state agency lease-purchase agreements entered into after June 30, 1990.

(2) All funds designated by agencies for procurement of equipment and financing thereof under the master lease-purchase program shall be paid into a special fund created in the State Treasury known as the "Master Lease-Purchase Program Fund," which shall be used by the Department of Finance and Administration for payment to the lessors for equipment acquired under master lease-purchase agreements.

(3) Upon final approval of an appropriation bill, each agency shall submit to the Public Procurement and Travel Review Board a schedule of proposed equipment acquisitions for the master lease-purchase program. Upon approval of an equipment schedule by the Public Procurement and Travel Review Board with the advice of the Department of Information Technology Services, the Office of Purchasing and Travel, and the Division of Energy and
Transportation of the Mississippi Development Authority as it pertains to energy efficient climate control systems, the Public Procurement Review Board shall forward a copy of the equipment schedule to the Department of Finance and Administration.

(4) The level of lease-purchase debt recommended by the Department of Finance and Administration shall be subject to approval by the State Bond Commission. After such approval, the Department of Finance and Administration shall be authorized to advertise and solicit written competitive proposals for a lessor, who will purchase the equipment pursuant to bid awards made by the using agency under a given category and then transfer the equipment to the Department of Finance and Administration as lessee, pursuant to a master lease-purchase agreement.

The Department of Finance and Administration shall select the successful proposer for the financing of equipment under the master lease-purchase program with the approval of the State Bond Commission.

(5) Each master lease-purchase agreement, and any subsequent amendments, shall include such terms and conditions as the State Bond Commission shall determine to be appropriate and in the public interest, and may include any covenants deemed necessary or desirable to protect the interests of the lessor, including, but not limited to, provisions setting forth the interest rate (or method for computing interest rates) for financing pursuant to such agreement, covenants concerning application of payments and funds held in the Master Lease-Purchase Program Fund, covenants to maintain casualty insurance with respect to equipment subject to the master lease-purchase agreement (and all state agencies are specifically authorized to purchase any insurance required by a master lease-purchase agreement) and covenants precluding or limiting the right of the lessee or user to acquire equipment within a specified time (not to exceed five (5) years) after cancellation on the basis of a failure to appropriate funds for
payment of amounts due under a lease-purchase agreement covering comparable equipment. The State Bond Commission shall transmit copies of each such master lease-purchase agreement and each such amendment to the Joint Legislative Budget Committee. To the extent provided in any master lease-purchase agreement, title to equipment leased pursuant thereto shall be deemed to be vested in the state or the user of the equipment (as specified in such master lease-purchase agreement), subject to default under or termination of such master lease-purchase agreement.

A master lease-purchase agreement may provide for payment by the lessor to the lessee of the purchase price of the equipment to be acquired pursuant thereto prior to the date on which payment is due to the vendor for such equipment and that the lease payments by the lessee shall commence as though the equipment had been provided on the date of payment. If the lessee, or lessee's escrow agent, has sufficient funds for payment of equipment purchases prior to payment due date to vendor of equipment, such funds shall be held or utilized on an as-needed basis for payment of equipment purchases either by the State Treasurer (in which event the master lease-purchase agreement may include provisions concerning the holding of such funds, the creation of a security interest for the benefit of the lessor in such funds until disbursed and other appropriate provisions approved by the Bond Commission) or by a corporate trustee selected by the Department of Finance and Administration (in which event the Department of Finance and Administration shall have the authority to enter into an agreement with such a corporate trustee containing terms and conditions approved by the Bond Commission). Earnings on any amount paid by the lessor prior to the acquisition of the equipment may be used to make lease payments under the master lease-purchase agreement or applied to pay costs and expenses incurred in connection with such lease-purchase agreement. In such event, the equipment use agreements with the user agency may
provide for lease payments to commence upon the date of payment by
the lessor and may also provide for a credit against such payments
to the extent that investment receipts from investment of the
purchase price are to be used to make lease-purchase payments.

(6) The annual rate of interest paid under any
lease-purchase agreement authorized under this section shall not
exceed the maximum interest rate to maturity on general obligation
indebtedness permitted under Section 75-17-101.

(7) The Department of Finance and Administration shall
furnish the equipment to the various agencies, also known as the
user, pursuant to an equipment-use agreement developed by the
Department of Finance and Administration. Such agreements shall
require that all monthly payments due from such agency be paid,
transferred or allocated into the Master Lease-Purchase Program
Fund pursuant to a schedule established by the Department of
Finance and Administration. In the event such sums are not paid
by the defined payment period, the Executive Director of the
Department of Finance and Administration shall issue a requisition
for a warrant to draw such amount as may be due from any funds
appropriated for the use of the agency which has failed to make
the payment as agreed.

(8) All master lease-purchase agreements executed under the
authority of this section shall contain the following annual
allocation dependency clause or an annual allocation dependency
clause which is substantially equivalent thereto: "The
continuation of each equipment schedule to this agreement is
contingent in whole or in part upon the appropriation of funds by
the Legislature to make the lease-purchase payments required under
such equipment schedule. If the Legislature fails to appropriate
sufficient funds to provide for the continuation of the
lease-purchase payments under any such equipment schedule, then
the obligations of the lessee and of the agency to make such
lease-purchase payments and the corresponding provisions of any
such equipment schedule to this agreement shall terminate on the
last day of the fiscal year for which appropriations were made."

(9) The maximum lease term for any equipment acquired under
the master lease-purchase program shall not exceed the useful life
of such equipment as determined according to the upper limit of
the asset depreciation range (ADR) guidelines for the Class Life
Asset Depreciation Range System established by the Internal
Revenue Service pursuant to the United States Internal Revenue
Code and Regulations thereunder as in effect on December 31, 1980,
or comparable depreciation guidelines with respect to any
equipment not covered by ADR guidelines. The Department of
Finance and Administration shall be deemed to have met the
requirements of this subsection if the term of a master
lease-purchase agreement does not exceed the weighted average
useful life of all equipment covered by such agreement and the
schedules thereto as determined by the Department of Finance and
Administration. For purposes of this subsection, the "term of a
master lease-purchase agreement" shall be the weighted average
maturity of all principal payments to be made under such master
lease-purchase agreement and all schedules thereto.

(10) Interest paid on any master lease-purchase agreement
under this section shall be exempt from State of Mississippi
income taxation. All equipment, and the purchase thereof by any
lessor, acquired under the master lease-purchase program and all
lease-purchase payments with respect thereto shall be exempt from
all Mississippi sales, use and ad valorem taxes.

(11) The Governor, in his annual executive budget to the
Legislature, shall recommend appropriations sufficient to provide
funds to pay all amounts due and payable during the applicable
fiscal year under master lease-purchase agreements entered into
pursuant to this section.

(12) Any master lease-purchase agreement reciting in
substance that such agreement has been entered into pursuant to
this section shall be conclusively deemed to have been entered
into in accordance with all of the provisions and conditions set
forth in this section. Any defect or irregularity arising with
respect to procedures applicable to the acquisition of any
equipment shall not invalidate or otherwise limit the obligation
of the Department of Finance and Administration, or the state or
any agency of the state, under any master lease-purchase agreement
or any equipment-use agreement.

(13) There shall be maintained by the Department of Finance
and Administration, with respect to each master lease-purchase
agreement, an itemized statement of the cash price, interest
rates, interest costs, commissions, debt service schedules and all
other costs and expenses paid by the state incident to the
lease-purchase of equipment under such agreement.

(14) Lease-purchase agreements entered into by the Board of
Trustees of State Institutions of Higher Learning pursuant to the
authority of Section 37-101-413 or by any other agency which has
specific statutory authority other than pursuant to Section
31-7-13(e) to acquire equipment by lease-purchase shall not be
made pursuant to the master lease-purchase program under this
section, unless the Board of Trustees of State Institutions of
Higher Learning or such other agency elects to participate as to
part or all of its lease-purchase acquisitions in the master
lease-purchase program pursuant to this section.

(15) The Department of Finance and Administration may
develop a master lease-purchase program for school districts and,
pursuant to that program, may execute on behalf of the school
districts master lease-purchase agreements for equipment to be
used by the school districts. The form and structure of this
program shall be substantially the same as set forth in this
section for the master lease-purchase program for state agencies.
If sums due from a school district under the master lease-purchase
program are not paid by the expiration of the defined payment
period, the Executive Director of the Department of Finance and Administration may withhold such amount that is due from the school district's minimum education or adequate education program fund allotments.

(16) The Department of Finance and Administration may develop a master lease-purchase program for community and junior college districts and, pursuant to that program, may execute on behalf of the community and junior college districts master lease-purchase agreements for equipment to be used by the community and junior college districts. The form and structure of this program must be substantially the same as set forth in this section for the master lease-purchase program for state agencies.

If sums due from a community or junior college district under the master lease-purchase program are not paid by the expiration of the defined payment period, the Executive Director of the Department of Finance and Administration may withhold an amount equal to the amount due under the program from any funds allocated for that community or junior college district in the state appropriations for the use and support of the community and junior colleges.

SECTION 7. Section 31-7-11, Mississippi Code of 1972, is amended as follows:

31-7-11. Each agency of the state shall furnish information relative to its purchase of commodities, and as to its method of purchasing such commodities, to the Department of Procurement and Travel annually and at such other times as the Department of Procurement and Travel may request.

The Department of Procurement and Travel shall have supervision over the purchasing and purchasing practices of each state agency and may by regulation or order correct any practice that appears contrary to the provisions of this chapter or to the best interests of the state. If it shall appear that any agency is not practicing economy in its purchasing or is permitting
favoritism or any improper purchasing practice, the Department of Procurement and Travel shall require that the agency immediately cease such improper activity, with full and complete authority in the Department of Procurement and Travel to carry into effect its directions in such regard.

All purchases, trade-ins, sales or transfer of personal property made by any officer, board, agency, department or branch of the state government except the Legislature shall be subject to the approval of the Department of Procurement and Travel. Such transaction shall be made in accordance with rules and regulations of the Department of Procurement and Travel relating to the purchase of state-owned motor vehicles and all other personal property. The title of such property shall remain in the name of the state.

SECTION 8. Section 31-7-12, Mississippi Code of 1972, is amended as follows:

31-7-12. (1) Except in regard to purchases of unmarked vehicles made in accordance with purchasing regulations adopted by the Department of Procurement and Travel pursuant to Section 31-7-9(2), all agencies shall purchase commodities at the state contract price from the approved source, unless approval is granted by the Department of Procurement and Travel to solicit purchases outside the terms of the contracts. However, prices accepted by an agency shall be less than the prices set by the state contract. Prices accepted by an agency shall be obtained in compliance with paragraph (a), (b) or (c) of Section 31-7-13. It shall be the responsibility of the Department of Procurement and Travel to ascertain that the resulting prices shall provide a cost effective alternative to the established state contract.

(2) Governing authorities may purchase commodities approved by the Department of Procurement and Travel from the state contract vendor, or from any source offering the identical commodity, at a price not exceeding the state contract price.
established by the Department of **Procurement and Travel** for such commodity, without obtaining or advertising for competitive bids. Governing authorities that do not exercise the option to purchase such commodities from the state contract vendor or from another source offering the identical commodity at a price not exceeding the state contract price established by the Department of **Procurement and Travel** shall make such purchases pursuant to the provisions of Section 31-7-13 without regard to state contract prices established by the Department of **Procurement and Travel**, unless such purchases are authorized to be made under subsection (5) of this section.

(3) Nothing in this section shall prohibit governing authorities from purchasing, pursuant to subsection (2) of this section, commodities approved by the Department of **Procurement and Travel** at a price not exceeding the state contract price established by the Department of **Procurement and Travel**.

(4) The Department of **Procurement and Travel** shall ensure that the prices of all commodities on the state contract are the lowest and best prices available from any source offering that commodity at the same level of quality or service, utilizing the reasonable standards established therefor by the Department of **Procurement and Travel**. If the Department of **Procurement and Travel** does not list an approved price for the particular item involved, purchase shall be made according to statutory bidding and licensing requirements. To encourage prudent purchasing practices, the Department of **Procurement and Travel** shall be authorized and empowered to exempt certain commodities from the requirement that the lowest and best price be approved by order placed on its minutes.

(5) Any school district may purchase commodities from vendors with which any levying authority of the school district, as defined in Section 37-57-1, has contracted through competitive bidding procedures pursuant to Section 31-7-13 for purchases of
the same commodities. Purchases authorized by this subsection may be made by a school district without obtaining or advertising for competitive bids, and such purchases shall be made at the same prices and under the same conditions as purchases of the same commodities are to be made by the levying authority of the school district under the contract with the vendor.

**SECTION 9.** Section 31-7-13, Mississippi Code of 1972, is amended as follows:

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

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

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

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

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

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

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

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

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

(i) **Decision procedure.** Purchases may be made
from the lowest and best bidder. In determining the lowest and
best bid, freight and shipping charges shall be included.

Life-cycle costing, total cost bids, warranties, guaranteed
buy-back provisions and other relevant provisions may be included in the best bid calculation. All best bid procedures for state agencies must be in compliance with regulations established by the Department of Procurement and Travel. If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid. No agency or governing authority shall accept a bid based on items not included in the specifications.

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

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

(e) **Lease-purchase authorization.** For the purposes of this section, the term "equipment" shall mean equipment, furniture and, if applicable, associated software and other applicable direct costs associated with the acquisition. Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before...
the purchase thereof. No such lease-purchase agreement shall be
for an annual rate of interest which is greater than the overall
maximum interest rate to maturity on general obligation
indebtedness permitted under Section 75-17-101, and the term of
such lease-purchase agreement shall not exceed the useful life of
equipment covered thereby as determined according to the upper
limit of the asset depreciation range (ADR) guidelines for the
Class Life Asset Depreciation Range System established by the
Internal Revenue Service pursuant to the United States Internal
Revenue Code and regulations thereunder as in effect on December
31, 1980, or comparable depreciation guidelines with respect to
any equipment not covered by ADR guidelines. Any lease-purchase
agreement entered into pursuant to this paragraph (e) may contain
any of the terms and conditions which a master lease-purchase
agreement may contain under the provisions of Section 31-7-10(5),
and shall contain an annual allocation dependency clause
substantially similar to that set forth in Section 31-7-10(8).
Each agency or governing authority entering into a lease-purchase
transaction pursuant to this paragraph (e) shall maintain with
respect to each such lease-purchase transaction the same
information as required to be maintained by the Department of
Finance and Administration pursuant to Section 31-7-10(13).
However, nothing contained in this section shall be construed to
permit agencies to acquire items of equipment with a total
acquisition cost in the aggregate of less than Ten Thousand
Dollars ($10,000.00) by a single lease-purchase transaction. All
equipment, and the purchase thereof by any lessor, acquired by
lease-purchase under this paragraph and all lease-purchase
payments with respect thereto shall be exempt from all Mississippi
sales, use and ad valorem taxes. Interest paid on any
lease-purchase agreement under this section shall be exempt from
State of Mississippi income taxation.
(f) **Alternate bid authorization.** When necessary to ensure ready availability of commodities for public works and the timely completion of public projects, no more than two (2) alternate bids may be accepted by a governing authority for commodities. No purchases may be made through use of such alternate bids procedure unless the lowest and best bidder, for reasons beyond his control, cannot deliver the commodities contained in his bid. In that event, purchases of such commodities may be made from one (1) of the bidders whose bid was accepted as an alternate.

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

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

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

(j) **State agency emergency purchase procedure.** If the executive head of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the provisions herein for competitive bidding shall not apply and the head of such agency shall be authorized to make the purchase or repair. Total purchases so made shall only be for the purpose of meeting needs created by the emergency situation. In the event such executive head is responsible to an agency board, at the meeting next following the emergency purchase, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the nature of the emergency shall be presented to the board and placed on the minutes of the board of such agency. The head of such agency shall, at the earliest possible date following such emergency purchase, file with the Department of Procurement and Travel (i) a statement under oath certifying the conditions and circumstances of the emergency, and (ii) a certified copy of the appropriate minutes of the board of such agency, if applicable.

On or before September 1 of each year, the State Auditor shall prepare and deliver to the Senate Fees, Salaries and Administration Committee, the House Fees and Salaries of Public Officers Committee and the Joint Legislative Budget Committee a report containing a list of all state agency emergency purchases and supporting documentation for each emergency purchases.

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

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

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

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

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

(i) **Purchasing agreements approved by department.**

Purchasing agreements, contracts and maximum price regulations
executed or approved by the Department of Procurement and Travel.

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

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

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

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

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

Purchases, sales, transfers or trades by governing authorities or
state agencies when such purchases, sales, transfers or trades are
made by a private treaty agreement or through means of
negotiation, from any federal agency or authority, another
governing authority or state agency of the State of Mississippi,
or any state agency of another state. Nothing in this section
shall permit such purchases through public auction except as
provided for in subparagraph (v) of this section. It is the
intent of this section to allow governmental entities to dispose
of and/or purchase commodities from other governmental entities at
a price that is agreed to by both parties. This shall allow for
purchases and/or sales at prices which may be determined to be
below the market value if the selling entity determines that the
sale at below market value is in the best interest of the
taxpayers of the state. Governing authorities shall place the
terms of the agreement and any justification on the minutes, and
state agencies shall obtain approval from the Department of
Procurement and Travel, prior to releasing or taking possession of
the commodities.

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

(viii) **Single source items.** Noncompetitive items
available from one (1) source only. In connection with the
purchase of noncompetitive items only available from one (1)
source, a certification of the conditions and circumstances
requiring the purchase shall be filed by the agency with the
Department of Procurement and Travel and by the governing authority with the board of the governing authority. Upon receipt of that certification the Department of Procurement and Travel or the board of the governing authority, as the case may be, may, in writing, authorize the purchase, which authority shall be noted on the minutes of the body at the next regular meeting thereafter.

In those situations, a governing authority is not required to obtain the approval of the Department of Procurement and Travel.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(XXV) **Purchases of state-adopted textbooks.**

Purchases of state-adopted textbooks by public school districts.

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

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

(xxviii) **Hospital lease of equipment or services.**

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

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

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

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

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

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

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

(r) Solid waste contract proposal procedure. Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars ($50,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more
than Ten Thousand Dollars ($10,000.00). Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors determined relevant by the governing authority or agency or required by this paragraph (r) shall be duly included in the advertisement to elicit proposals. After responses to the request for proposals have been duly received, the governing authority or agency shall select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinitiated. Notwithstanding any other provisions of this paragraph, where a county with at least thirty-five thousand (35,000) nor more than forty thousand (40,000) population, according to the 1990 federal decennial census, owns or operates a solid waste landfill, the governing authorities of any other county or municipality may contract with the governing authorities of the county owning or operating the landfill, pursuant to a resolution duly adopted and spread upon the minutes of each governing authority involved, for garbage or solid waste collection or disposal services through contract negotiations.

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

- (i) "Asian" means persons having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.
- (ii) "Black" means persons having origins in any black racial group of Africa.
- (iii) "Hispanic" means persons of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race.
- (iv) "Native American" means persons having origins in any of the original people of North America, including American Indians, Eskimos and Aleuts.

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

(u) **Purchase authorization clarification.** Nothing in this section shall be construed as authorizing any purchase not authorized by law.
SECTION 10. This act shall take effect and be in force from July 1, 2003.