

By: Representatives Denny, Akins, Aldridge,  
Beckett, Bentz, Chism, Davis, Fillingane,  
Hamilton (6th), Lott, Mayhall, Moore, Reeves,  
Snowden, Staples, Turner

To: Appropriations

## HOUSE BILL NO. 607

1 AN ACT TO CREATE THE PRIVATE ATTORNEY RETENTION SUNSHINE ACT;  
2 TO DEFINE CERTAIN TERMS; TO PROVIDE FOR THE PROCUREMENT OF LEGAL  
3 SERVICES BY STATE AGENCIES; TO PROVIDE FOR OVERSIGHT; TO REQUIRE  
4 HEARINGS AND APPROVAL OF CONTRACTS; TO CAP LEGAL FEES; TO AMEND  
5 SECTION 31-7-13, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR  
6 RELATED PURPOSES.

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

8 **SECTION 1.** This act shall be known and may be cited as the  
9 Private Attorney Retention Sunshine Act.

10 **SECTION 2.** For the purposes of this act, a contract in  
11 excess of One Million Dollars (\$1,000,000.00) is one in which the  
12 fee paid to an attorney or group of attorneys, either in the form  
13 of a flat, hourly or contingent fee, and their expenses exceed, or  
14 can be reasonably expected to exceed, One Million Dollars  
15 (\$1,000,000.00).

16 **SECTION 3.** Any state agency or state agent that wishes to  
17 retain a lawyer or law firm to perform legal services on behalf of  
18 this state shall not do so until an open and competitive bidding  
19 process has been undertaken.

20 **SECTION 4.** No state agency or state agent shall enter into a  
21 contract for legal services exceeding One Million Dollars  
22 (\$1,000,000.00) without the opportunity for at least one (1)  
23 hearing in the Legislature on the terms of the legal contract in  
24 accordance with Section 5 of this act.

25 **SECTION 5.** (1) As provided in the requirement of Section 4,  
26 any state agency or state agent entering into a contract for legal  
27 services in excess of One Million Dollars (\$1,000,000.00) shall  
28 file a copy of said proposed contract with the Clerk of the House  
29 of Representatives, who, with the approval of the President of the

30 Senate and the Speaker of the House of Representatives, shall  
31 refer such contract to the appropriate committees.

32 (2) Within thirty (30) days after such referral, the  
33 committees may hold a public hearing on the proposed contract and  
34 shall issue a report to the referring state agency or agent. The  
35 report shall include any proposed changes to the proposed contract  
36 voted upon by the committee. The state agency or state agent  
37 shall review the report and adopt a final contract as deemed  
38 appropriate in view of the report and shall file with the Clerk of  
39 the House of Representatives its final contract.

40 (3) If the proposed contract does not contain the changes  
41 proposed by the committee, the referring state agency or agent  
42 shall send a letter to the clerk accompanying the final contract  
43 stating the reasons why such proposed changes were not adopted.  
44 The clerk shall refer such letter and final regulations to the  
45 appropriate committee. Not earlier than forty-five (45) days  
46 after the filing of such letter and final contract with the  
47 committee, the state agency or agent shall enter into the final  
48 contract.

49 (4) If no proposed changes to the proposed contract are made  
50 to the state agency or agent within sixty (60) days of the initial  
51 filing of the proposed regulation or any amendment or repeal of  
52 such regulation with the Clerk of the House of Representatives,  
53 the state agency or agent may enter into the contract.

54 (5) Nothing in this act shall be construed to expand the  
55 authority of any state agency or agent to enter into contracts  
56 where no such authority previously existed.

57 (6) In the event that the Legislature is not in session and  
58 the Attorney General wishes to execute a contract for legal  
59 services the Governor, with the unanimous consent of the Speaker  
60 of the House and the President of the Senate, may establish a  
61 five-member interim committee consisting of five (5) state  
62 legislators, one (1) to be appointed by the Governor, two (2) by

63 the Speaker of the House and two (2) by the President of the  
64 Senate, to execute the oversight duties as set forth in  
65 subsections (2) through (5).

66 **SECTION 6.** (1) At the conclusion of any legal proceeding  
67 for which a state agency or agent retained outside counsel on a  
68 contingent fee basis, the state shall receive from counsel a  
69 statement of the hours worked on the case, expenses incurred, the  
70 aggregate fee amount, and a breakdown as to the hourly rate, based  
71 on hours worked divided into fee recovered, less expenses.

72 (2) In no case shall the state incur fees and expenses in  
73 excess of One Thousand Dollars (\$1,000.00) per hour for legal  
74 services. In cases where a disclosure submitted in accordance  
75 with paragraph (1) of this section indicates an hourly rate in  
76 excess of One Thousand Dollars (\$1,000.00) per hour, the fee  
77 amount shall be reduced to an amount equivalent to One Thousand  
78 Dollars (\$1,000.00) per hour.

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

81 31-7-13. Except as otherwise provided by Sections 1 through  
82 6 of House Bill No. \_\_\_\_\_, 2004 Regular Session, all agencies and  
83 governing authorities shall purchase their commodities and  
84 printing; contract for garbage collection or disposal; contract  
85 for solid waste collection or disposal; contract for sewage  
86 collection or disposal; contract for public construction; and  
87 contract for rentals as herein provided.

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

95 competitive bids on purchases of Three Thousand Five Hundred  
96 Dollars (\$3,500.00) or less.

97           (b) **Bidding procedure for purchases over \$3,500.00 but**  
98 **not over \$15,000.00.** Purchases which involve an expenditure of  
99 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not  
100 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
101 freight and shipping charges may be made from the lowest and best  
102 bidder without publishing or posting advertisement for bids,  
103 provided at least two (2) competitive written bids have been  
104 obtained. Any governing authority purchasing commodities pursuant  
105 to this paragraph (b) may authorize its purchasing agent, or his  
106 designee, with regard to governing authorities other than  
107 counties, or its purchase clerk, or his designee, with regard to  
108 counties, to accept the lowest and best competitive written bid.  
109 Such authorization shall be made in writing by the governing  
110 authority and shall be maintained on file in the primary office of  
111 the agency and recorded in the official minutes of the governing  
112 authority, as appropriate. The purchasing agent or the purchase  
113 clerk, or their designee, as the case may be, and not the  
114 governing authority, shall be liable for any penalties and/or  
115 damages as may be imposed by law for any act or omission of the  
116 purchasing agent or purchase clerk, or their designee,  
117 constituting a violation of law in accepting any bid without  
118 approval by the governing authority. The term "competitive  
119 written bid" shall mean a bid submitted on a bid form furnished by  
120 the buying agency or governing authority and signed by authorized  
121 personnel representing the vendor, or a bid submitted on a  
122 vendor's letterhead or identifiable bid form and signed by  
123 authorized personnel representing the vendor. "Competitive" shall  
124 mean that the bids are developed based upon comparable  
125 identification of the needs and are developed independently and  
126 without knowledge of other bids or prospective bids. Bids may be  
127 submitted by facsimile, electronic mail or other generally

128 accepted method of information distribution. Bids submitted by  
129 electronic transmission shall not require the signature of the  
130 vendor's representative unless required by agencies or governing  
131 authorities.

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

133 (i) **Publication requirement.** Purchases which  
134 involve an expenditure of more than Fifteen Thousand Dollars  
135 (\$15,000.00), exclusive of freight and shipping charges, may be  
136 made from the lowest and best bidder after advertising for  
137 competitive sealed bids once each week for two (2) consecutive  
138 weeks in a regular newspaper published in the county or  
139 municipality in which such agency or governing authority is  
140 located. The date as published for the bid opening shall not be  
141 less than seven (7) working days after the last published notice;  
142 however, if the purchase involves a construction project in which  
143 the estimated cost is in excess of Fifteen Thousand Dollars  
144 (\$15,000.00), such bids shall not be opened in less than fifteen  
145 (15) working days after the last notice is published and the  
146 notice for the purchase of such construction shall be published  
147 once each week for two (2) consecutive weeks. The notice of  
148 intention to let contracts or purchase equipment shall state the  
149 time and place at which bids shall be received, list the contracts  
150 to be made or types of equipment or supplies to be purchased, and,  
151 if all plans and/or specifications are not published, refer to the  
152 plans and/or specifications on file. If there is no newspaper  
153 published in the county or municipality, then such notice shall be  
154 given by posting same at the courthouse, or for municipalities at  
155 the city hall, and at two (2) other public places in the county or  
156 municipality, and also by publication once each week for two (2)  
157 consecutive weeks in some newspaper having a general circulation  
158 in the county or municipality in the above provided manner. On  
159 the same date that the notice is submitted to the newspaper for  
160 publication, the agency or governing authority involved shall mail

161 written notice to, or provide electronic notification to the main  
162 office of the Mississippi Contract Procurement Center that  
163 contains the same information as that in the published notice.

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

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

189           (iv) **Specification restrictions.** Specifications  
190 pertinent to such bidding shall be written so as not to exclude  
191 comparable equipment of domestic manufacture. However, if valid  
192 justification is presented, the Department of Finance and  
193 Administration or the board of a governing authority may approve a

194 request for specific equipment necessary to perform a specific  
195 job. Further, such justification, when placed on the minutes of  
196 the board of a governing authority, may serve as authority for  
197 that governing authority to write specifications to require a  
198 specific item of equipment needed to perform a specific job. In  
199 addition to these requirements, from and after July 1, 1990,  
200 vendors of relocatable classrooms and the specifications for the  
201 purchase of such relocatable classrooms published by local school  
202 boards shall meet all pertinent regulations of the State Board of  
203 Education, including prior approval of such bid by the State  
204 Department of Education.

205 (v) Agencies and governing authorities may  
206 establish secure procedures by which bids may be submitted via  
207 electronic means.

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

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

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

225 If the lowest and best bid is not more than ten percent (10%)  
226 above the amount of funds allocated for a public construction or

227 renovation project, then the agency or governing authority shall  
228 be permitted to negotiate with the lowest bidder in order to enter  
229 into a contract for an amount not to exceed the funds allocated.

230           (e) **Lease-purchase authorization.** For the purposes of  
231 this section, the term "equipment" shall mean equipment, furniture  
232 and, if applicable, associated software and other applicable  
233 direct costs associated with the acquisition. Any lease-purchase  
234 of equipment which an agency is not required to lease-purchase  
235 under the master lease-purchase program pursuant to Section  
236 31-7-10 and any lease-purchase of equipment which a governing  
237 authority elects to lease-purchase may be acquired by a  
238 lease-purchase agreement under this paragraph (e). Lease-purchase  
239 financing may also be obtained from the vendor or from a  
240 third-party source after having solicited and obtained at least  
241 two (2) written competitive bids, as defined in paragraph (b) of  
242 this section, for such financing without advertising for such  
243 bids. Solicitation for the bids for financing may occur before or  
244 after acceptance of bids for the purchase of such equipment or,  
245 where no such bids for purchase are required, at any time before  
246 the purchase thereof. No such lease-purchase agreement shall be  
247 for an annual rate of interest which is greater than the overall  
248 maximum interest rate to maturity on general obligation  
249 indebtedness permitted under Section 75-17-101, and the term of  
250 such lease-purchase agreement shall not exceed the useful life of  
251 equipment covered thereby as determined according to the upper  
252 limit of the asset depreciation range (ADR) guidelines for the  
253 Class Life Asset Depreciation Range System established by the  
254 Internal Revenue Service pursuant to the United States Internal  
255 Revenue Code and regulations thereunder as in effect on December  
256 31, 1980, or comparable depreciation guidelines with respect to  
257 any equipment not covered by ADR guidelines. Any lease-purchase  
258 agreement entered into pursuant to this paragraph (e) may contain  
259 any of the terms and conditions which a master lease-purchase

260 agreement may contain under the provisions of Section 31-7-10(5),  
261 and shall contain an annual allocation dependency clause  
262 substantially similar to that set forth in Section 31-7-10(8).  
263 Each agency or governing authority entering into a lease-purchase  
264 transaction pursuant to this paragraph (e) shall maintain with  
265 respect to each such lease-purchase transaction the same  
266 information as required to be maintained by the Department of  
267 Finance and Administration pursuant to Section 31-7-10(13).  
268 However, nothing contained in this section shall be construed to  
269 permit agencies to acquire items of equipment with a total  
270 acquisition cost in the aggregate of less than Ten Thousand  
271 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
272 equipment, and the purchase thereof by any lessor, acquired by  
273 lease-purchase under this paragraph and all lease-purchase  
274 payments with respect thereto shall be exempt from all Mississippi  
275 sales, use and ad valorem taxes. Interest paid on any  
276 lease-purchase agreement under this section shall be exempt from  
277 State of Mississippi income taxation.

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

287           (g) **Construction contract change authorization.** In the  
288 event a determination is made by an agency or governing authority  
289 after a construction contract is let that changes or modifications  
290 to the original contract are necessary or would better serve the  
291 purpose of the agency or the governing authority, such agency or  
292 governing authority may, in its discretion, order such changes

293 pertaining to the construction that are necessary under the  
294 circumstances without the necessity of further public bids;  
295 provided that such change shall be made in a commercially  
296 reasonable manner and shall not be made to circumvent the public  
297 purchasing statutes. In addition to any other authorized person,  
298 the architect or engineer hired by an agency or governing  
299 authority with respect to any public construction contract shall  
300 have the authority, when granted by an agency or governing  
301 authority, to authorize changes or modifications to the original  
302 contract without the necessity of prior approval of the agency or  
303 governing authority when any such change or modification is less  
304 than one percent (1%) of the total contract amount. The agency or  
305 governing authority may limit the number, manner or frequency of  
306 such emergency changes or modifications.

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

324           (i) **Road construction petroleum products price**  
325 **adjustment clause authorization.** Any agency or governing

326 authority authorized to enter into contracts for the construction,  
327 maintenance, surfacing or repair of highways, roads or streets,  
328 may include in its bid proposal and contract documents a price  
329 adjustment clause with relation to the cost to the contractor,  
330 including taxes, based upon an industry-wide cost index, of  
331 petroleum products including asphalt used in the performance or  
332 execution of the contract or in the production or manufacture of  
333 materials for use in such performance. Such industry-wide index  
334 shall be established and published monthly by the Mississippi  
335 Department of Transportation with a copy thereof to be mailed,  
336 upon request, to the clerks of the governing authority of each  
337 municipality and the clerks of each board of supervisors  
338 throughout the state. The price adjustment clause shall be based  
339 on the cost of such petroleum products only and shall not include  
340 any additional profit or overhead as part of the adjustment. The  
341 bid proposals or document contract shall contain the basis and  
342 methods of adjusting unit prices for the change in the cost of  
343 such petroleum products.

344           (j) **State agency emergency purchase procedure.** If the  
345 governing board or the executive head, or his designee, of any  
346 agency of the state shall determine that an emergency exists in  
347 regard to the purchase of any commodities or repair contracts, so  
348 that the delay incident to giving opportunity for competitive  
349 bidding would be detrimental to the interests of the state, then  
350 the provisions herein for competitive bidding shall not apply and  
351 the head of such agency shall be authorized to make the purchase  
352 or repair. Total purchases so made shall only be for the purpose  
353 of meeting needs created by the emergency situation. In the event  
354 such executive head is responsible to an agency board, at the  
355 meeting next following the emergency purchase, documentation of  
356 the purchase, including a description of the commodity purchased,  
357 the purchase price thereof and the nature of the emergency shall  
358 be presented to the board and placed on the minutes of the board

359 of such agency. The head of such agency, or his designee, shall,  
360 at the earliest possible date following such emergency purchase,  
361 file with the Department of Finance and Administration (i) a  
362 statement explaining the conditions and circumstances of the  
363 emergency, which shall include a detailed description of the  
364 events leading up to the situation and the negative impact to the  
365 entity if the purchase is made following the statutory  
366 requirements set forth in paragraph (a), (b) or (c) of this  
367 section, and (ii) a certified copy of the appropriate minutes of  
368 the board of such agency, if applicable. On or before September 1  
369 of each year, the State Auditor shall prepare and deliver to the  
370 Senate Fees, Salaries and Administration Committee, the House Fees  
371 and Salaries of Public Officers Committee and the Joint  
372 Legislative Budget Committee a report containing a list of all  
373 state agency emergency purchases and supporting documentation for  
374 each emergency purchases.

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

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

391 board and shall be placed on the minutes of the board of such  
392 governing authority.

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

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

400           (ii) In addition to the authority granted in  
401 subparagraph (i) of this paragraph (1), the commissioners or board  
402 of trustees is authorized to enter into contracts for the lease of  
403 equipment or services, or both, which it considers necessary for  
404 the proper care of patients if, in its opinion, it is not  
405 financially feasible to purchase the necessary equipment or  
406 services. Any such contract for the lease of equipment or  
407 services executed by the commissioners or board shall not exceed a  
408 maximum of five (5) years' duration and shall include a  
409 cancellation clause based on unavailability of funds. If such  
410 cancellation clause is exercised, there shall be no further  
411 liability on the part of the lessee. Any such contract for the  
412 lease of equipment or services executed on behalf of the  
413 commissioners or board that complies with the provisions of this  
414 subparagraph (ii) shall be excepted from the bid requirements set  
415 forth in this section.

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

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

422           (ii) **Outside equipment repairs.** Repairs to  
423 equipment, when such repairs are made by repair facilities in the

424 private sector; however, engines, transmissions, rear axles and/or  
425 other such components shall not be included in this exemption when  
426 replaced as a complete unit instead of being repaired and the need  
427 for such total component replacement is known before disassembly  
428 of the component; however, invoices identifying the equipment,  
429 specific repairs made, parts identified by number and name,  
430 supplies used in such repairs, and the number of hours of labor  
431 and costs therefor shall be required for the payment for such  
432 repairs.

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

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

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

453                   (vi) **Intergovernmental sales and transfers.**  
454 Purchases, sales, transfers or trades by governing authorities or  
455 state agencies when such purchases, sales, transfers or trades are  
456 made by a private treaty agreement or through means of

457 negotiation, from any federal agency or authority, another  
458 governing authority or state agency of the State of Mississippi,  
459 or any state agency or governing authority of another state.  
460 Nothing in this section shall permit such purchases through public  
461 auction except as provided for in subparagraph (v) of this  
462 section. It is the intent of this section to allow governmental  
463 entities to dispose of and/or purchase commodities from other  
464 governmental entities at a price that is agreed to by both  
465 parties. This shall allow for purchases and/or sales at prices  
466 which may be determined to be below the market value if the  
467 selling entity determines that the sale at below market value is  
468 in the best interest of the taxpayers of the state. Governing  
469 authorities shall place the terms of the agreement and any  
470 justification on the minutes, and state agencies shall obtain  
471 approval from the Department of Finance and Administration, prior  
472 to releasing or taking possession of the commodities.

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

477           (viii) **Single source items.** Noncompetitive items  
478 available from one (1) source only. In connection with the  
479 purchase of noncompetitive items only available from one (1)  
480 source, a certification of the conditions and circumstances  
481 requiring the purchase shall be filed by the agency with the  
482 Department of Finance and Administration and by the governing  
483 authority with the board of the governing authority. Upon receipt  
484 of that certification the Department of Finance and Administration  
485 or the board of the governing authority, as the case may be, may,  
486 in writing, authorize the purchase, which authority shall be noted  
487 on the minutes of the body at the next regular meeting thereafter.  
488 In those situations, a governing authority is not required to

489 obtain the approval of the Department of Finance and  
490 Administration.

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

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

515                   (xi) **Information technology products.** Purchases  
516 of information technology products made by governing authorities  
517 under the provisions of purchase schedules, or contracts executed  
518 or approved by the Mississippi Department of Information  
519 Technology Services and designated for use by governing  
520 authorities.

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

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

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

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

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

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

553 (xviii) **Purchases of prison industry products.**

554 From and after January 1, 1991, purchases made by state agencies  
555 or governing authorities involving any item that is manufactured,  
556 processed, grown or produced from the state's prison industries.

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

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

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

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

575 (xxiii) **Municipal water tank maintenance**  
576 **contracts.** Professional maintenance program contracts for the  
577 repair or maintenance of municipal water tanks, which provide  
578 professional services needed to maintain municipal water storage  
579 tanks for a fixed annual fee for a duration of two (2) or more  
580 years.

581 (xxiv) **Purchases of Mississippi Industries for the**  
582 **Blind products.** Purchases made by state agencies or governing  
583 authorities involving any item that is manufactured, processed or  
584 produced by the Mississippi Industries for the Blind.

585                    (xxv)    **Purchases of state-adopted textbooks.**  
586 Purchases of state-adopted textbooks by public school districts.  
587                    (xxvi)    **Certain purchases under the Mississippi**  
588 **Major Economic Impact Act.** Contracts entered into pursuant to the  
589 provisions of Section 57-75-9(2) and (3).

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

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

605                    (xxix)    **Purchases made pursuant to qualified**  
606 **cooperative purchasing agreements.** Purchases made by certified  
607 purchasing offices of state agencies or governing authorities  
608 under cooperative purchasing agreements previously approved by the  
609 Office of Purchasing and Travel and established by or for any  
610 municipality, county, parish or state government or the federal  
611 government, provided that the notification to potential  
612 contractors includes a clause that sets forth the availability of  
613 the cooperative purchasing agreement to other governmental  
614 entities. Such purchases shall only be made if the use of the  
615 cooperative purchasing agreements is determined to be in the best  
616 interest of the government entity.

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

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

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

640           (o) **Purchase law violation prohibition and vendor**  
641 **penalty.** No contract or purchase as herein authorized shall be  
642 made for the purpose of circumventing the provisions of this  
643 section requiring competitive bids, nor shall it be lawful for any  
644 person or concern to submit individual invoices for amounts within  
645 those authorized for a contract or purchase where the actual value  
646 of the contract or commodity purchased exceeds the authorized  
647 amount and the invoices therefor are split so as to appear to be  
648 authorized as purchases for which competitive bids are not  
649 required. Submission of such invoices shall constitute a

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

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

662           (q) **Fuel management system bidding procedure.** Any  
663 governing authority or agency of the state shall, before  
664 contracting for the services and products of a fuel management or  
665 fuel access system, enter into negotiations with not fewer than  
666 two (2) sellers of fuel management or fuel access systems for  
667 competitive written bids to provide the services and products for  
668 the systems. In the event that the governing authority or agency  
669 cannot locate two (2) sellers of such systems or cannot obtain  
670 bids from two (2) sellers of such systems, it shall show proof  
671 that it made a diligent, good-faith effort to locate and negotiate  
672 with two (2) sellers of such systems. Such proof shall include,  
673 but not be limited to, publications of a request for proposals and  
674 letters soliciting negotiations and bids. For purposes of this  
675 paragraph (q), a fuel management or fuel access system is an  
676 automated system of acquiring fuel for vehicles as well as  
677 management reports detailing fuel use by vehicles and drivers, and  
678 the term "competitive written bid" shall have the meaning as  
679 defined in paragraph (b) of this section. Governing authorities  
680 and agencies shall be exempt from this process when contracting  
681 for the services and products of a fuel management or fuel access

682 systems under the terms of a state contract established by the  
683 Office of Purchasing and Travel.

684 (r) **Solid waste contract proposal procedure.** Before  
685 entering into any contract for garbage collection or disposal,  
686 contract for solid waste collection or disposal or contract for  
687 sewage collection or disposal, which involves an expenditure of  
688 more than Fifty Thousand Dollars (\$50,000.00), a governing  
689 authority or agency shall issue publicly a request for proposals  
690 concerning the specifications for such services which shall be  
691 advertised for in the same manner as provided in this section for  
692 seeking bids for purchases which involve an expenditure of more  
693 than the amount provided in paragraph (c) of this section. Any  
694 request for proposals when issued shall contain terms and  
695 conditions relating to price, financial responsibility,  
696 technology, legal responsibilities and other relevant factors as  
697 are determined by the governing authority or agency to be  
698 appropriate for inclusion; all factors determined relevant by the  
699 governing authority or agency or required by this paragraph (r)  
700 shall be duly included in the advertisement to elicit proposals.  
701 After responses to the request for proposals have been duly  
702 received, the governing authority or agency shall select the most  
703 qualified proposal or proposals on the basis of price, technology  
704 and other relevant factors and from such proposals, but not  
705 limited to the terms thereof, negotiate and enter contracts with  
706 one or more of the persons or firms submitting proposals. If the  
707 governing authority or agency deems none of the proposals to be  
708 qualified or otherwise acceptable, the request for proposals  
709 process may be reinitiated. Notwithstanding any other provisions  
710 of this paragraph, where a county with at least thirty-five  
711 thousand (35,000) nor more than forty thousand (40,000)  
712 population, according to the 1990 federal decennial census, owns  
713 or operates a solid waste landfill, the governing authorities of  
714 any other county or municipality may contract with the governing

715 authorities of the county owning or operating the landfill,  
716 pursuant to a resolution duly adopted and spread upon the minutes  
717 of each governing authority involved, for garbage or solid waste  
718 collection or disposal services through contract negotiations.

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

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

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

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

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

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

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

758                   **SECTION 8.** This act shall take effect and be in force from  
759 and after July 1, 2004.