

By: Representative Holland

To: Appropriations

HOUSE BILL NO. 743  
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 31-9-5, MISSISSIPPI CODE OF 1972, TO  
2 AUTHORIZE ANY STATE AGENCY TO DONATE GOODS AND SERVICES FOR THE  
3 SUPPORT OF THE LOCAL CHAPTER OF THE AMERICAN RED CROSS; TO AMEND  
4 SECTION 31-7-13, MISSISSIPPI CODE OF 1972, AS AMENDED BY SENATE  
5 BILL NO. 2299, 2004 REGULAR SESSION, TO EXEMPT THE PURCHASES OF  
6 SCHOOL YEARBOOKS BY STATE AGENCIES AND GOVERNING AUTHORITIES FROM  
7 THE PUBLIC PURCHASING LAW; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 31-9-5, Mississippi Code of 1972, is  
10 amended as follows:

11 31-9-5. (1) The Office of General Services with the  
12 approval of the Public Procurement Review Board shall negotiate  
13 and contract with any appropriate agency or commission of the  
14 United States government or of the State of Mississippi for the  
15 purpose of purchasing or otherwise securing surplus material or  
16 property in bulk lots or quantities, and for the purpose of  
17 assisting all agencies, departments, institutions and  
18 instrumentalities of the State of Mississippi, the boards of  
19 supervisors of the various counties, and the governing authorities  
20 of the various municipalities, drainage districts and other taxing  
21 units in purchasing, leasing or otherwise securing surplus  
22 material or property. After ascertaining the needs of the various  
23 state departments and institutions, counties, municipalities,  
24 drainage districts and other taxing units, the Office of General  
25 Services may enter into contracts with the governing authorities  
26 of such governmental entities as will enable them to carry out the  
27 provisions of this section.

28 (2) The Office of General Services also may acquire state or  
29 federal government surplus property for nonprofit and tax exempt

30 health and educational institutions, Boy Scouts, Girl Scouts, Camp  
31 Fire Girls, military academies, volunteer fire departments,  
32 nonprofit cooperative water associations, Boys Clubs of America  
33 and Girls Clubs of America; however, deliveries to these  
34 institutions shall be made only after they have established their  
35 eligibility by meeting the requirements of the federal government,  
36 have requested the Office of General Services to act for them in  
37 acquiring government surplus property, and have agreed to comply  
38 with both the state and federal laws pertaining to acquisition and  
39 utilization of the property.

40 (3) Any state agency, with the approval of the Office of  
41 General Services, is authorized and empowered, in the discretion  
42 of the governing board or authority of the state agency, to donate  
43 goods or services for the support of any local chapter of the  
44 American Red Cross. This subsection (3) shall stand repealed from  
45 and after July 1, 2005.

46 (4) The Office of General Services may do all other things  
47 which may be necessary to effectuate the purposes of this section.

48 **SECTION 2.** Section 31-7-13, Mississippi Code of 1972, as  
49 amended by Senate Bill No. 2299, 2004 Regular Session, is amended  
50 as follows:

51 31-7-13. All agencies and governing authorities shall  
52 purchase their commodities and printing; contract for garbage  
53 collection or disposal; contract for solid waste collection or  
54 disposal; contract for sewage collection or disposal; contract for  
55 public construction; and contract for rentals as herein provided.

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

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

65           (b) **Bidding procedure for purchases over \$3,500.00 but**  
66 **not over \$15,000.00.** Purchases which involve an expenditure of  
67 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not  
68 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
69 freight and shipping charges may be made from the lowest and best  
70 bidder without publishing or posting advertisement for bids,  
71 provided at least two (2) competitive written bids have been  
72 obtained. Any governing authority purchasing commodities pursuant  
73 to this paragraph (b) may authorize its purchasing agent, or his  
74 designee, with regard to governing authorities other than  
75 counties, or its purchase clerk, or his designee, with regard to  
76 counties, to accept the lowest and best competitive written bid.  
77 Such authorization shall be made in writing by the governing  
78 authority and shall be maintained on file in the primary office of  
79 the agency and recorded in the official minutes of the governing  
80 authority, as appropriate. The purchasing agent or the purchase  
81 clerk, or their designee, as the case may be, and not the  
82 governing authority, shall be liable for any penalties and/or  
83 damages as may be imposed by law for any act or omission of the  
84 purchasing agent or purchase clerk, or their designee,  
85 constituting a violation of law in accepting any bid without  
86 approval by the governing authority. The term "competitive  
87 written bid" shall mean a bid submitted on a bid form furnished by  
88 the buying agency or governing authority and signed by authorized  
89 personnel representing the vendor, or a bid submitted on a  
90 vendor's letterhead or identifiable bid form and signed by  
91 authorized personnel representing the vendor. "Competitive" shall  
92 mean that the bids are developed based upon comparable  
93 identification of the needs and are developed independently and  
94 without knowledge of other bids or prospective bids. Bids may be  
95 submitted by facsimile, electronic mail or other generally

96 accepted method of information distribution. Bids submitted by  
97 electronic transmission shall not require the signature of the  
98 vendor's representative unless required by agencies or governing  
99 authorities.

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

101 (i) **Publication requirement.** Purchases which  
102 involve an expenditure of more than Fifteen Thousand Dollars  
103 (\$15,000.00), exclusive of freight and shipping charges, may be  
104 made from the lowest and best bidder after advertising for  
105 competitive sealed bids once each week for two (2) consecutive  
106 weeks in a regular newspaper published in the county or  
107 municipality in which such agency or governing authority is  
108 located. The date as published for the bid opening shall not be  
109 less than seven (7) working days after the last published notice;  
110 however, if the purchase involves a construction project in which  
111 the estimated cost is in excess of Fifteen Thousand Dollars  
112 (\$15,000.00), such bids shall not be opened in less than fifteen  
113 (15) working days after the last notice is published and the  
114 notice for the purchase of such construction shall be published  
115 once each week for two (2) consecutive weeks. The notice of  
116 intention to let contracts or purchase equipment shall state the  
117 time and place at which bids shall be received, list the contracts  
118 to be made or types of equipment or supplies to be purchased, and,  
119 if all plans and/or specifications are not published, refer to the  
120 plans and/or specifications on file. If there is no newspaper  
121 published in the county or municipality, then such notice shall be  
122 given by posting same at the courthouse, or for municipalities at  
123 the city hall, and at two (2) other public places in the county or  
124 municipality, and also by publication once each week for two (2)  
125 consecutive weeks in some newspaper having a general circulation  
126 in the county or municipality in the above provided manner. On  
127 the same date that the notice is submitted to the newspaper for  
128 publication, the agency or governing authority involved shall mail

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

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

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

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

162 request for specific equipment necessary to perform a specific  
163 job. Further, such justification, when placed on the minutes of  
164 the board of a governing authority, may serve as authority for  
165 that governing authority to write specifications to require a  
166 specific item of equipment needed to perform a specific job. In  
167 addition to these requirements, from and after July 1, 1990,  
168 vendors of relocatable classrooms and the specifications for the  
169 purchase of such relocatable classrooms published by local school  
170 boards shall meet all pertinent regulations of the State Board of  
171 Education, including prior approval of such bid by the State  
172 Department of Education.

173 (v) Agencies and governing authorities may  
174 establish secure procedures by which bids may be submitted via  
175 electronic means.

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

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

192 (ii) **Decision procedure for Certified Purchasing**  
193 **Offices.** In addition to the decision procedure set forth in  
194 paragraph (d)(i), Certified Purchasing Offices may also use the

195 following procedure: Purchases may be made from the bidder  
196 offering the best value. In determining the best value bid,  
197 freight and shipping charges shall be included. Life-cycle  
198 costing, total cost bids, warranties, guaranteed buy-back  
199 provisions, documented previous experience, training costs and  
200 other relevant provisions may be included in the best value  
201 calculation. This provision shall authorize Certified Purchasing  
202 Offices to utilize a Request For Proposals (RFP) process when  
203 purchasing commodities. All best value procedures for state  
204 agencies must be in compliance with regulations established by the  
205 Department of Finance and Administration. No agency or governing  
206 authority shall accept a bid based on items or criteria not  
207 included in the specifications.

208 (iii) **Construction project negotiations authority.**

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

214 (e) **Lease-purchase authorization.** For the purposes of  
215 this section, the term "equipment" shall mean equipment, furniture  
216 and, if applicable, associated software and other applicable  
217 direct costs associated with the acquisition. Any lease-purchase  
218 of equipment which an agency is not required to lease-purchase  
219 under the master lease-purchase program pursuant to Section  
220 31-7-10 and any lease-purchase of equipment which a governing  
221 authority elects to lease-purchase may be acquired by a  
222 lease-purchase agreement under this paragraph (e). Lease-purchase  
223 financing may also be obtained from the vendor or from a  
224 third-party source after having solicited and obtained at least  
225 two (2) written competitive bids, as defined in paragraph (b) of  
226 this section, for such financing without advertising for such  
227 bids. Solicitation for the bids for financing may occur before or

228 after acceptance of bids for the purchase of such equipment or,  
229 where no such bids for purchase are required, at any time before  
230 the purchase thereof. No such lease-purchase agreement shall be  
231 for an annual rate of interest which is greater than the overall  
232 maximum interest rate to maturity on general obligation  
233 indebtedness permitted under Section 75-17-101, and the term of  
234 such lease-purchase agreement shall not exceed the useful life of  
235 equipment covered thereby as determined according to the upper  
236 limit of the asset depreciation range (ADR) guidelines for the  
237 Class Life Asset Depreciation Range System established by the  
238 Internal Revenue Service pursuant to the United States Internal  
239 Revenue Code and regulations thereunder as in effect on December  
240 31, 1980, or comparable depreciation guidelines with respect to  
241 any equipment not covered by ADR guidelines. Any lease-purchase  
242 agreement entered into pursuant to this paragraph (e) may contain  
243 any of the terms and conditions which a master lease-purchase  
244 agreement may contain under the provisions of Section 31-7-10(5),  
245 and shall contain an annual allocation dependency clause  
246 substantially similar to that set forth in Section 31-7-10(8).  
247 Each agency or governing authority entering into a lease-purchase  
248 transaction pursuant to this paragraph (e) shall maintain with  
249 respect to each such lease-purchase transaction the same  
250 information as required to be maintained by the Department of  
251 Finance and Administration pursuant to Section 31-7-10(13).  
252 However, nothing contained in this section shall be construed to  
253 permit agencies to acquire items of equipment with a total  
254 acquisition cost in the aggregate of less than Ten Thousand  
255 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
256 equipment, and the purchase thereof by any lessor, acquired by  
257 lease-purchase under this paragraph and all lease-purchase  
258 payments with respect thereto shall be exempt from all Mississippi  
259 sales, use and ad valorem taxes. Interest paid on any



260 lease-purchase agreement under this section shall be exempt from  
261 State of Mississippi income taxation.

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

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

291           (h) **Petroleum purchase alternative.** In addition to  
292 other methods of purchasing authorized in this chapter, when any

293 agency or governing authority shall have a need for gas, diesel  
294 fuel, oils and/or other petroleum products in excess of the amount  
295 set forth in paragraph (a) of this section, such agency or  
296 governing authority may purchase the commodity after having  
297 solicited and obtained at least two (2) competitive written bids,  
298 as defined in paragraph (b) of this section. If two (2)  
299 competitive written bids are not obtained, the entity shall comply  
300 with the procedures set forth in paragraph (c) of this section.  
301 In the event any agency or governing authority shall have  
302 advertised for bids for the purchase of gas, diesel fuel, oils and  
303 other petroleum products and coal and no acceptable bids can be  
304 obtained, such agency or governing authority is authorized and  
305 directed to enter into any negotiations necessary to secure the  
306 lowest and best contract available for the purchase of such  
307 commodities.

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

326 methods of adjusting unit prices for the change in the cost of  
327 such petroleum products.

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

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

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

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

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

384 (ii) In addition to the authority granted in  
385 subparagraph (i) of this paragraph (l), the commissioners or board  
386 of trustees is authorized to enter into contracts for the lease of  
387 equipment or services, or both, which it considers necessary for  
388 the proper care of patients if, in its opinion, it is not  
389 financially feasible to purchase the necessary equipment or  
390 services. Any such contract for the lease of equipment or  
391 services executed by the commissioners or board shall not exceed a

392 maximum of five (5) years' duration and shall include a  
393 cancellation clause based on unavailability of funds. If such  
394 cancellation clause is exercised, there shall be no further  
395 liability on the part of the lessee. Any such contract for the  
396 lease of equipment or services executed on behalf of the  
397 commissioners or board that complies with the provisions of this  
398 subparagraph (ii) shall be excepted from the bid requirements set  
399 forth in this section.

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

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

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

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

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

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

437                   (vi) **Intergovernmental sales and transfers.**  
438 Purchases, sales, transfers or trades by governing authorities or  
439 state agencies when such purchases, sales, transfers or trades are  
440 made by a private treaty agreement or through means of  
441 negotiation, from any federal agency or authority, another  
442 governing authority or state agency of the State of Mississippi,  
443 or any state agency or governing authority of another state.  
444 Nothing in this section shall permit such purchases through public  
445 auction except as provided for in subparagraph (v) of this  
446 section. It is the intent of this section to allow governmental  
447 entities to dispose of and/or purchase commodities from other  
448 governmental entities at a price that is agreed to by both  
449 parties. This shall allow for purchases and/or sales at prices  
450 which may be determined to be below the market value if the  
451 selling entity determines that the sale at below market value is  
452 in the best interest of the taxpayers of the state. Governing  
453 authorities shall place the terms of the agreement and any  
454 justification on the minutes, and state agencies shall obtain

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

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

461 (viii) **Single source items.** Noncompetitive items  
462 available from one (1) source only. In connection with the  
463 purchase of noncompetitive items only available from one (1)  
464 source, a certification of the conditions and circumstances  
465 requiring the purchase shall be filed by the agency with the  
466 Department of Finance and Administration and by the governing  
467 authority with the board of the governing authority. Upon receipt  
468 of that certification the Department of Finance and Administration  
469 or the board of the governing authority, as the case may be, may,  
470 in writing, authorize the purchase, which authority shall be noted  
471 on the minutes of the body at the next regular meeting thereafter.  
472 In those situations, a governing authority is not required to  
473 obtain the approval of the Department of Finance and  
474 Administration.

475 (ix) **Waste disposal facility construction**  
476 **contracts.** Construction of incinerators and other facilities for  
477 disposal of solid wastes in which products either generated  
478 therein, such as steam, or recovered therefrom, such as materials  
479 for recycling, are to be sold or otherwise disposed of; however,  
480 in constructing such facilities, a governing authority or agency  
481 shall publicly issue requests for proposals, advertised for in the  
482 same manner as provided herein for seeking bids for public  
483 construction projects, concerning the design, construction,  
484 ownership, operation and/or maintenance of such facilities,  
485 wherein such requests for proposals when issued shall contain  
486 terms and conditions relating to price, financial responsibility,  
487 technology, environmental compatibility, legal responsibilities

488 and such other matters as are determined by the governing  
489 authority or agency to be appropriate for inclusion; and after  
490 responses to the request for proposals have been duly received,  
491 the governing authority or agency may select the most qualified  
492 proposal or proposals on the basis of price, technology and other  
493 relevant factors and from such proposals, but not limited to the  
494 terms thereof, negotiate and enter contracts with one or more of  
495 the persons or firms submitting proposals.

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

499           (xi) **Information technology products.** Purchases  
500 of information technology products made by governing authorities  
501 under the provisions of purchase schedules, or contracts executed  
502 or approved by the Mississippi Department of Information  
503 Technology Services and designated for use by governing  
504 authorities.

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

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

515           (xiv) **Library books and other reference materials.**  
516 Purchases by libraries or for libraries of books and periodicals;  
517 processed film, video cassette tapes, filmstrips and slides;  
518 recorded audio tapes, cassettes and diskettes; and any such items  
519 as would be used for teaching, research or other information  
520 distribution; however, equipment such as projectors, recorders,



521 audio or video equipment, and monitor televisions are not exempt  
522 under this subparagraph.

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

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

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

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

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

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

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

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

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

559                   (xxiii) **Municipal water tank maintenance**  
560 **contracts.** Professional maintenance program contracts for the  
561 repair or maintenance of municipal water tanks, which provide  
562 professional services needed to maintain municipal water storage  
563 tanks for a fixed annual fee for a duration of two (2) or more  
564 years.

565                   (xxiv) **Purchases of Mississippi Industries for the**  
566 **Blind products.** Purchases made by state agencies or governing  
567 authorities involving any item that is manufactured, processed or  
568 produced by the Mississippi Industries for the Blind.

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

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

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

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

589 (xxix) **Purchases made pursuant to qualified**  
590 **cooperative purchasing agreements.** Purchases made by certified  
591 purchasing offices of state agencies or governing authorities  
592 under cooperative purchasing agreements previously approved by the  
593 Office of Purchasing and Travel and established by or for any  
594 municipality, county, parish or state government or the federal  
595 government, provided that the notification to potential  
596 contractors includes a clause that sets forth the availability of  
597 the cooperative purchasing agreement to other governmental  
598 entities. Such purchases shall only be made if the use of the  
599 cooperative purchasing agreements is determined to be in the best  
600 interest of the government entity.

601 (xxx) **School yearbooks.** Purchases of school  
602 yearbooks by state agencies or governing authorities; provided,  
603 however, that state agencies and governing authorities shall use  
604 for these purchases the RFP process as set forth in the  
605 Mississippi Procurement Manual adopted by the Office of Purchase  
606 and Travel.

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

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

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

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

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

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

674           (r) **Solid waste contract proposal procedure.** Before  
675 entering into any contract for garbage collection or disposal,  
676 contract for solid waste collection or disposal or contract for  
677 sewage collection or disposal, which involves an expenditure of  
678 more than Fifty Thousand Dollars (\$50,000.00), a governing  
679 authority or agency shall issue publicly a request for proposals  
680 concerning the specifications for such services which shall be  
681 advertised for in the same manner as provided in this section for  
682 seeking bids for purchases which involve an expenditure of more  
683 than the amount provided in paragraph (c) of this section. Any  
684 request for proposals when issued shall contain terms and

685 conditions relating to price, financial responsibility,  
686 technology, legal responsibilities and other relevant factors as  
687 are determined by the governing authority or agency to be  
688 appropriate for inclusion; all factors determined relevant by the  
689 governing authority or agency or required by this paragraph (r)  
690 shall be duly included in the advertisement to elicit proposals.  
691 After responses to the request for proposals have been duly  
692 received, the governing authority or agency shall select the most  
693 qualified proposal or proposals on the basis of price, technology  
694 and other relevant factors and from such proposals, but not  
695 limited to the terms thereof, negotiate and enter contracts with  
696 one or more of the persons or firms submitting proposals. If the  
697 governing authority or agency deems none of the proposals to be  
698 qualified or otherwise acceptable, the request for proposals  
699 process may be reinitiated. Notwithstanding any other provisions  
700 of this paragraph, where a county with at least thirty-five  
701 thousand (35,000) nor more than forty thousand (40,000)  
702 population, according to the 1990 federal decennial census, owns  
703 or operates a solid waste landfill, the governing authorities of  
704 any other county or municipality may contract with the governing  
705 authorities of the county owning or operating the landfill,  
706 pursuant to a resolution duly adopted and spread upon the minutes  
707 of each governing authority involved, for garbage or solid waste  
708 collection or disposal services through contract negotiations.

709           (s) **Minority set aside authorization.** Notwithstanding  
710 any provision of this section to the contrary, any agency or  
711 governing authority, by order placed on its minutes, may, in its  
712 discretion, set aside not more than twenty percent (20%) of its  
713 anticipated annual expenditures for the purchase of commodities  
714 from minority businesses; however, all such set-aside purchases  
715 shall comply with all purchasing regulations promulgated by the  
716 Department of Finance and Administration and shall be subject to  
717 bid requirements under this section. Set-aside purchases for

718 which competitive bids are required shall be made from the lowest  
719 and best minority business bidder. For the purposes of this  
720 paragraph, the term "minority business" means a business which is  
721 owned by a majority of persons who are United States citizens or  
722 permanent resident aliens (as defined by the Immigration and  
723 Naturalization Service) of the United States, and who are Asian,  
724 Black, Hispanic or Native American, according to the following  
725 definitions:

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

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

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

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

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

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

748 **SECTION 3.** This act shall take effect and be in force from  
749 and after July 1, 2004.