

By: Representatives Franks, Miles,
Montgomery, Ward

To: Municipalities;
Appropriations

HOUSE BILL NO. 839

1 AN ACT TO PROVIDE THAT THE GOVERNING AUTHORITIES OF ANY
2 MUNICIPALITY THAT OWNS AND OPERATES A GAS DISTRIBUTION SYSTEM MAY
3 CONTRACT FOR THE PURCHASE OF THE SUPPLY OF NATURAL GAS FROM ANY
4 PUBLIC NONPROFIT CORPORATION FOR UP TO 10 YEARS; TO AMEND SECTION
5 21-17-1, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; TO AMEND
6 SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE
7 PURCHASE OF THE SUPPLY OF NATURAL GAS WHICH IS PURCHASED BY
8 CERTAIN MUNICIPALITIES IS EXEMPT FROM THE PUBLIC BID REQUIREMENTS;
9 AND FOR RELATED PURPOSES.

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

11 **SECTION 1.** The governing authorities of any municipality
12 that owns and operates a gas distribution system, as defined in
13 Section 21-27-11 (b), is authorized to contract for the purchase
14 of the supply of natural gas for a term of up to ten (10) years
15 with any public nonprofit corporation, which is organized under
16 the laws of this state or any other state.

17 **SECTION 2.** Section 21-17-1, Mississippi Code of 1972, is
18 amended as follows:

19 21-17-1. (1) Every municipality of this state shall be a
20 municipal corporation and shall have power to sue and be sued; to
21 purchase and hold real estate, either within or without the
22 corporate limits, for all proper municipal purposes, including
23 parks, cemeteries, hospitals, schoolhouses, houses of correction,
24 waterworks, electric lights, sewers and other proper municipal
25 purposes; to purchase and hold personal property for all proper
26 municipal purposes; to acquire equipment and machinery by
27 lease-purchase agreement and to pay interest thereon, if
28 contracted, when needed for proper municipal purposes; to sell and
29 convey any real and personal property owned by it, and make such
30 order respecting the same as may be deemed conducive to the best

31 interest of the municipality, and exercise jurisdiction over the
32 same.

33 (2) In case any of the real property belonging to a
34 municipality shall cease to be used for municipal purposes, the
35 governing authorities of the municipality may sell, convey or
36 lease the same on such terms as the municipal authorities may
37 elect. In case of a sale on a credit, the municipality shall
38 charge appropriate interest as contracted and shall have a lien on
39 the same for the purchase money, as against all persons, until
40 paid and may enforce the lien as in such cases provided by law.
41 The deed of conveyance in such cases shall be executed in the name
42 of the municipality by the governing authorities of the
43 municipality pursuant to their order entered on the minutes of
44 their meetings. In any sale or conveyance of real property, the
45 municipality shall retain all mineral rights that it owns,
46 together with the right of ingress and egress to remove same.
47 Before any such lease, deed or conveyance is executed, the
48 governing authorities of the municipality shall publish at least
49 once each week for three (3) consecutive weeks, in a public
50 newspaper of the municipality in which the real property is
51 located, or if no newspaper be published as such, then in a
52 newspaper having general circulation therein, the intention to
53 lease or sell, as the case may be, the municipally owned real
54 property and to accept sealed competitive bids for the leasing or
55 sale. The governing authorities of the municipality shall
56 thereafter accept bids for the lease or sale and shall award the
57 lease or sale to the highest bidder in the manner provided by law.
58 However, whenever the governing authorities of the municipality
59 shall find and determine, by resolution duly and lawfully adopted
60 and spread upon its minutes (a) that any municipally owned real
61 property is no longer needed for municipal or related purposes and
62 is not to be used in the operation of the municipality, (b) that
63 the sale of such property in the manner otherwise provided by law

64 is not necessary or desirable for the financial welfare of the
65 municipality, and (c) that the use of such property for the
66 purpose for which it is to be sold, conveyed or leased will
67 promote and foster the development and improvement of the
68 community in which it is located and the civic, social,
69 educational, cultural, moral, economic or industrial welfare
70 thereof, the governing authorities of the municipality shall be
71 authorized and empowered, in their discretion, to sell, convey or
72 lease same for any of the purposes set forth herein without having
73 to advertise for and accept competitive bids. In any case in
74 which a municipality proposes to sell, convey or lease real
75 property under the provisions of this section without advertising
76 for and accepting competitive bids, consideration for the
77 purchase, conveyance or lease of the property shall be not less
78 than the average of the fair-market price for such property as
79 determined by three (3) professional property appraisers selected
80 by the municipality and approved by the purchaser or lessee.
81 Appraisal fees shall be shared equally by the municipality and the
82 purchaser or lessee.

83 (3) Whenever the governing authorities of the municipality
84 shall find and determine by resolution duly and lawfully adopted
85 and spread upon the minutes that municipally owned real property
86 is not used for municipal purposes and therefore surplus as set
87 forth hereinabove:

88 (a) The governing authority may donate such lands to a
89 bona fide not-for-profit civic or eleemosynary corporation
90 organized and existing under the laws of the State of Mississippi
91 and granted tax exempt status by the Internal Revenue Service and
92 may donate such lands and necessary funds related thereto to the
93 public school district in which the land is situated for the
94 purposes set forth herein. Any deed or conveyance executed
95 pursuant hereto shall contain a clause of reverter providing that
96 the bona fide not-for-profit corporation or public school district

97 may hold title to such lands only so long as they are continued to
98 be used for the civic, social, educational, cultural, moral,
99 economic or industrial welfare of the community, and that title
100 shall revert to the municipality in the event of the cessation of
101 such use for a period of two (2) years. In any such deed or
102 conveyance, the municipality shall retain all mineral rights that
103 it owns, together with the right of ingress and egress to remove
104 same;

105 (b) The governing authority may donate such lands to a
106 bona fide not-for-profit corporation (such as Habitat for
107 Humanity) which is primarily engaged in the construction of
108 housing for persons who otherwise can afford to live only in
109 substandard housing. In any such deed or conveyance, the
110 municipality shall retain all mineral rights that it owns,
111 together with the right of ingress and egress to remove same;

112 (c) In the event the governing authority does not wish
113 to donate title to such lands to the bona fide not-for-profit
114 civic or eleemosynary corporation, but wishes to retain title to
115 the lands, the governing authority may lease the lands to a bona
116 fide not-for-profit corporation described in paragraph (a) or (b)
117 for less than fair-market value;

118 (d) Nothing contained in this subsection (3) shall be
119 construed to prohibit, restrict or to prescribe conditions with
120 regard to the authority granted under Section 17-25-3.

121 (4) Every municipality shall also be authorized and
122 empowered to loan to private persons or entities, whether
123 organized for profit or nonprofit, funds received from the United
124 States Department of Housing and Urban Development (HUD) under an
125 urban development action grant or a community development block
126 grant under the Housing and Community Development Act of 1974
127 (Public Law 93-383), as amended, and to charge interest thereon if
128 contracted, provided that no such loan shall include any funds
129 from any revenues other than the funds from the United States

130 Department of Housing and Urban Development; to make all contracts
131 and do all other acts in relation to the property and affairs of
132 the municipality necessary to the exercise of its governmental,
133 corporate and administrative powers; and to exercise such other or
134 further powers as are otherwise conferred by law.

135 (5) The governing authorities of any municipality may
136 contract with a private attorney or private collection agent or
137 agency to collect any type of delinquent payment owed to the
138 municipality, including, but not limited to, past due fees and
139 fines. Any such contract debt may provide for payment contingent
140 upon successful collection efforts or payment based upon a
141 percentage of the delinquent amount collected; however, the entire
142 amount of all delinquent payments collected shall be remitted to
143 the municipality and shall not be reduced by any collection costs
144 or fees. Any private attorney or private collection agent or
145 agency contracting with the municipality under the provisions of
146 this subsection shall give bond or other surety payable to the
147 municipality in such amount as the governing authorities of the
148 municipality deem sufficient. Any private attorney with whom the
149 municipality contracts under the provisions of this subsection
150 must be a member in good standing of The Mississippi Bar. Any
151 private collection agent or agency with whom the municipality
152 contracts under the provisions of this subsection must meet all
153 licensing requirements for doing business in the State of
154 Mississippi. Neither the municipality nor any officer or employee
155 of the municipality shall be liable, civilly or criminally, for
156 any wrongful or unlawful act or omission of any person or business
157 with whom the municipality has contracted under the provisions of
158 this subsection. The Mississippi Department of Audit shall
159 establish rules and regulations for use by municipalities in
160 contracting with persons or businesses under the provisions of
161 this subsection. If a municipality uses its own employees to
162 collect any type of delinquent payment owed to the municipality,

163 then from and after July 1, 2000, the municipality may charge an
164 additional fee for collection of the delinquent payment provided
165 the payment has been delinquent for ninety (90) days. The
166 collection fee may not exceed fifteen percent (15%) of the
167 delinquent payment if the collection is made within this state and
168 may not exceed twenty-five percent (25%) of the delinquent payment
169 if the collection is made outside this state. In conducting
170 collection of delinquent payments, the municipality may utilize
171 credit cards or electronic fund transfers. The municipality may
172 pay any service fees for the use of such methods of collection
173 from the collection fee, but not from the delinquent payment.
174 There shall be due to the municipality from any person whose
175 delinquent payment is collected under a contract executed as
176 provided in this subsection an amount, in addition to the
177 delinquent payment, of not to exceed twenty-five percent (25%) of
178 the delinquent payment for collections made within this state, and
179 not to exceed fifty percent (50%) of the delinquent payment for
180 collections made outside of this state.

181 (6) In addition to such authority as is otherwise granted
182 under this section, the governing authorities of any municipality
183 may expend funds necessary to maintain and repair, and to purchase
184 liability insurance, tags and decals for, any personal property
185 acquired under the Federal Excess Personal Property Program that
186 is used by the local volunteer fire department.

187 (7) The governing authorities of any municipality may, in
188 its discretion, donate personal property or funds to the public
189 school district or districts located in the municipality for the
190 promotion of educational programs of the district or districts
191 within the municipality.

192 (8) In addition to the authority to expend matching funds
193 under Section 21-19-65, the governing authorities of any
194 municipality, in their discretion, may expend municipal funds to
195 match any state, federal or private funding for any program

196 administered by the State of Mississippi, the United States
197 government or any nonprofit organization that is exempt under 26
198 USCS Section 501(c)(3) from paying federal income tax.

199 (9) The governing authorities of any municipality that owns
200 and operates a gas distribution system, as defined in Section
201 21-27-11 (b), is authorized to contract for the purchase of the
202 supply of natural gas for a term of up to ten (10) years with any
203 public nonprofit corporation, which is organized under the laws of
204 this state or any other state.

205 (10) The powers conferred by this section shall be in
206 addition and supplemental to the powers conferred by any other
207 law, and nothing contained in this section shall be construed to
208 prohibit, or to prescribe conditions concerning, any practice or
209 practices authorized under any other law.

210 **SECTION 3.** Section 31-7-13, Mississippi Code of 1972, is
211 amended as follows:

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

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

226 (b) **Bidding procedure for purchases over \$3,500.00 but**
227 **not over \$15,000.00.** Purchases which involve an expenditure of
228 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not

229 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
230 freight and shipping charges may be made from the lowest and best
231 bidder without publishing or posting advertisement for bids,
232 provided at least two (2) competitive written bids have been
233 obtained. Any governing authority purchasing commodities pursuant
234 to this paragraph (b) may authorize its purchasing agent, or his
235 designee, with regard to governing authorities other than
236 counties, or its purchase clerk, or his designee, with regard to
237 counties, to accept the lowest and best competitive written bid.
238 Such authorization shall be made in writing by the governing
239 authority and shall be maintained on file in the primary office of
240 the agency and recorded in the official minutes of the governing
241 authority, as appropriate. The purchasing agent or the purchase
242 clerk, or their designee, as the case may be, and not the
243 governing authority, shall be liable for any penalties and/or
244 damages as may be imposed by law for any act or omission of the
245 purchasing agent or purchase clerk, or their designee,
246 constituting a violation of law in accepting any bid without
247 approval by the governing authority. The term "competitive
248 written bid" shall mean a bid submitted on a bid form furnished by
249 the buying agency or governing authority and signed by authorized
250 personnel representing the vendor, or a bid submitted on a
251 vendor's letterhead or identifiable bid form and signed by
252 authorized personnel representing the vendor. "Competitive" shall
253 mean that the bids are developed based upon comparable
254 identification of the needs and are developed independently and
255 without knowledge of other bids or prospective bids. Bids may be
256 submitted by facsimile, electronic mail or other generally
257 accepted method of information distribution. Bids submitted by
258 electronic transmission shall not require the signature of the
259 vendor's representative unless required by agencies or governing
260 authorities.

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

262 (i) **Publication requirement.** Purchases which
263 involve an expenditure of more than Fifteen Thousand Dollars
264 (\$15,000.00), exclusive of freight and shipping charges, may be
265 made from the lowest and best bidder after advertising for
266 competitive sealed bids once each week for two (2) consecutive
267 weeks in a regular newspaper published in the county or
268 municipality in which such agency or governing authority is
269 located. The date as published for the bid opening shall not be
270 less than seven (7) working days after the last published notice;
271 however, if the purchase involves a construction project in which
272 the estimated cost is in excess of Fifteen Thousand Dollars
273 (\$15,000.00), such bids shall not be opened in less than fifteen
274 (15) working days after the last notice is published and the
275 notice for the purchase of such construction shall be published
276 once each week for two (2) consecutive weeks. The notice of
277 intention to let contracts or purchase equipment shall state the
278 time and place at which bids shall be received, list the contracts
279 to be made or types of equipment or supplies to be purchased, and,
280 if all plans and/or specifications are not published, refer to the
281 plans and/or specifications on file. If there is no newspaper
282 published in the county or municipality, then such notice shall be
283 given by posting same at the courthouse, or for municipalities at
284 the city hall, and at two (2) other public places in the county or
285 municipality, and also by publication once each week for two (2)
286 consecutive weeks in some newspaper having a general circulation
287 in the county or municipality in the above provided manner. On
288 the same date that the notice is submitted to the newspaper for
289 publication, the agency or governing authority involved shall mail
290 written notice to, or provide electronic notification to the main
291 office of the Mississippi Contract Procurement Center that
292 contains the same information as that in the published notice.

293 (ii) **Bidding process amendment procedure.** If all
294 plans and/or specifications are published in the notification,

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

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

318 (iv) **Specification restrictions.** Specifications
319 pertinent to such bidding shall be written so as not to exclude
320 comparable equipment of domestic manufacture. However, if valid
321 justification is presented, the Department of Finance and
322 Administration or the board of a governing authority may approve a
323 request for specific equipment necessary to perform a specific
324 job. Further, such justification, when placed on the minutes of
325 the board of a governing authority, may serve as authority for
326 that governing authority to write specifications to require a
327 specific item of equipment needed to perform a specific job. In

328 addition to these requirements, from and after July 1, 1990,
329 vendors of relocatable classrooms and the specifications for the
330 purchase of such relocatable classrooms published by local school
331 boards shall meet all pertinent regulations of the State Board of
332 Education, including prior approval of such bid by the State
333 Department of Education.

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

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

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

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

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

359 (e) **Lease-purchase authorization.** For the purposes of
360 this section, the term "equipment" shall mean equipment, furniture

361 and, if applicable, associated software and other applicable
362 direct costs associated with the acquisition. Any lease-purchase
363 of equipment which an agency is not required to lease-purchase
364 under the master lease-purchase program pursuant to Section
365 31-7-10 and any lease-purchase of equipment which a governing
366 authority elects to lease-purchase may be acquired by a
367 lease-purchase agreement under this paragraph (e). Lease-purchase
368 financing may also be obtained from the vendor or from a
369 third-party source after having solicited and obtained at least
370 two (2) written competitive bids, as defined in paragraph (b) of
371 this section, for such financing without advertising for such
372 bids. Solicitation for the bids for financing may occur before or
373 after acceptance of bids for the purchase of such equipment or,
374 where no such bids for purchase are required, at any time before
375 the purchase thereof. No such lease-purchase agreement shall be
376 for an annual rate of interest which is greater than the overall
377 maximum interest rate to maturity on general obligation
378 indebtedness permitted under Section 75-17-101, and the term of
379 such lease-purchase agreement shall not exceed the useful life of
380 equipment covered thereby as determined according to the upper
381 limit of the asset depreciation range (ADR) guidelines for the
382 Class Life Asset Depreciation Range System established by the
383 Internal Revenue Service pursuant to the United States Internal
384 Revenue Code and regulations thereunder as in effect on December
385 31, 1980, or comparable depreciation guidelines with respect to
386 any equipment not covered by ADR guidelines. Any lease-purchase
387 agreement entered into pursuant to this paragraph (e) may contain
388 any of the terms and conditions which a master lease-purchase
389 agreement may contain under the provisions of Section 31-7-10(5),
390 and shall contain an annual allocation dependency clause
391 substantially similar to that set forth in Section 31-7-10(8).
392 Each agency or governing authority entering into a lease-purchase
393 transaction pursuant to this paragraph (e) shall maintain with

394 respect to each such lease-purchase transaction the same
395 information as required to be maintained by the Department of
396 Finance and Administration pursuant to Section 31-7-10(13).
397 However, nothing contained in this section shall be construed to
398 permit agencies to acquire items of equipment with a total
399 acquisition cost in the aggregate of less than Ten Thousand
400 Dollars (\$10,000.00) by a single lease-purchase transaction. All
401 equipment, and the purchase thereof by any lessor, acquired by
402 lease-purchase under this paragraph and all lease-purchase
403 payments with respect thereto shall be exempt from all Mississippi
404 sales, use and ad valorem taxes. Interest paid on any
405 lease-purchase agreement under this section shall be exempt from
406 State of Mississippi income taxation.

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

416 (g) **Construction contract change authorization.** In the
417 event a determination is made by an agency or governing authority
418 after a construction contract is let that changes or modifications
419 to the original contract are necessary or would better serve the
420 purpose of the agency or the governing authority, such agency or
421 governing authority may, in its discretion, order such changes
422 pertaining to the construction that are necessary under the
423 circumstances without the necessity of further public bids;
424 provided that such change shall be made in a commercially
425 reasonable manner and shall not be made to circumvent the public
426 purchasing statutes. In addition to any other authorized person,

427 the architect or engineer hired by an agency or governing
428 authority with respect to any public construction contract shall
429 have the authority, when granted by an agency or governing
430 authority, to authorize changes or modifications to the original
431 contract without the necessity of prior approval of the agency or
432 governing authority when any such change or modification is less
433 than one percent (1%) of the total contract amount. The agency or
434 governing authority may limit the number, manner or frequency of
435 such emergency changes or modifications.

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

453 (i) **Road construction petroleum products price**
454 **adjustment clause authorization.** Any agency or governing
455 authority authorized to enter into contracts for the construction,
456 maintenance, surfacing or repair of highways, roads or streets,
457 may include in its bid proposal and contract documents a price
458 adjustment clause with relation to the cost to the contractor,
459 including taxes, based upon an industry-wide cost index, of

460 petroleum products including asphalt used in the performance or
461 execution of the contract or in the production or manufacture of
462 materials for use in such performance. Such industry-wide index
463 shall be established and published monthly by the Mississippi
464 Department of Transportation with a copy thereof to be mailed,
465 upon request, to the clerks of the governing authority of each
466 municipality and the clerks of each board of supervisors
467 throughout the state. The price adjustment clause shall be based
468 on the cost of such petroleum products only and shall not include
469 any additional profit or overhead as part of the adjustment. The
470 bid proposals or document contract shall contain the basis and
471 methods of adjusting unit prices for the change in the cost of
472 such petroleum products.

473 (j) **State agency emergency purchase procedure.** If the
474 governing board or the executive head, or his designee, of any
475 agency of the state shall determine that an emergency exists in
476 regard to the purchase of any commodities or repair contracts, so
477 that the delay incident to giving opportunity for competitive
478 bidding would be detrimental to the interests of the state, then
479 the provisions herein for competitive bidding shall not apply and
480 the head of such agency shall be authorized to make the purchase
481 or repair. Total purchases so made shall only be for the purpose
482 of meeting needs created by the emergency situation. In the event
483 such executive head is responsible to an agency board, at the
484 meeting next following the emergency purchase, documentation of
485 the purchase, including a description of the commodity purchased,
486 the purchase price thereof and the nature of the emergency shall
487 be presented to the board and placed on the minutes of the board
488 of such agency. The head of such agency, or his designee, shall,
489 at the earliest possible date following such emergency purchase,
490 file with the Department of Finance and Administration (i) a
491 statement explaining the conditions and circumstances of the
492 emergency, which shall include a detailed description of the

493 events leading up to the situation and the negative impact to the
494 entity if the purchase is made following the statutory
495 requirements set forth in paragraph (a), (b) or (c) of this
496 section, and (ii) a certified copy of the appropriate minutes of
497 the board of such agency, if applicable. On or before September 1
498 of each year, the State Auditor shall prepare and deliver to the
499 Senate Fees, Salaries and Administration Committee, the House Fees
500 and Salaries of Public Officers Committee and the Joint
501 Legislative Budget Committee a report containing a list of all
502 state agency emergency purchases and supporting documentation for
503 each emergency purchases.

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

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

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

524 (i) The commissioners or board of trustees of any
525 public hospital may contract with such lowest and best bidder for

526 the purchase or lease-purchase of any commodity under a contract
527 of purchase or lease-purchase agreement whose obligatory payment
528 terms do not exceed five (5) years.

529 (ii) In addition to the authority granted in
530 subparagraph (i) of this paragraph (1), the commissioners or board
531 of trustees is authorized to enter into contracts for the lease of
532 equipment or services, or both, which it considers necessary for
533 the proper care of patients if, in its opinion, it is not
534 financially feasible to purchase the necessary equipment or
535 services. Any such contract for the lease of equipment or
536 services executed by the commissioners or board shall not exceed a
537 maximum of five (5) years' duration and shall include a
538 cancellation clause based on unavailability of funds. If such
539 cancellation clause is exercised, there shall be no further
540 liability on the part of the lessee. Any such contract for the
541 lease of equipment or services executed on behalf of the
542 commissioners or board that complies with the provisions of this
543 subparagraph (ii) shall be excepted from the bid requirements set
544 forth in this section.

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

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

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

559 supplies used in such repairs, and the number of hours of labor
560 and costs therefor shall be required for the payment for such
561 repairs.

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

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

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

582 (vi) **Intergovernmental sales and transfers.**
583 Purchases, sales, transfers or trades by governing authorities or
584 state agencies when such purchases, sales, transfers or trades are
585 made by a private treaty agreement or through means of
586 negotiation, from any federal agency or authority, another
587 governing authority or state agency of the State of Mississippi,
588 or any state agency or governing authority of another state.
589 Nothing in this section shall permit such purchases through public
590 auction except as provided for in subparagraph (v) of this
591 section. It is the intent of this section to allow governmental

592 entities to dispose of and/or purchase commodities from other
593 governmental entities at a price that is agreed to by both
594 parties. This shall allow for purchases and/or sales at prices
595 which may be determined to be below the market value if the
596 selling entity determines that the sale at below market value is
597 in the best interest of the taxpayers of the state. Governing
598 authorities shall place the terms of the agreement and any
599 justification on the minutes, and state agencies shall obtain
600 approval from the Department of Finance and Administration, prior
601 to releasing or taking possession of the commodities.

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

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

620 (ix) **Waste disposal facility construction**
621 **contracts.** Construction of incinerators and other facilities for
622 disposal of solid wastes in which products either generated
623 therein, such as steam, or recovered therefrom, such as materials
624 for recycling, are to be sold or otherwise disposed of; however,

625 in constructing such facilities, a governing authority or agency
626 shall publicly issue requests for proposals, advertised for in the
627 same manner as provided herein for seeking bids for public
628 construction projects, concerning the design, construction,
629 ownership, operation and/or maintenance of such facilities,
630 wherein such requests for proposals when issued shall contain
631 terms and conditions relating to price, financial responsibility,
632 technology, environmental compatibility, legal responsibilities
633 and such other matters as are determined by the governing
634 authority or agency to be appropriate for inclusion; and after
635 responses to the request for proposals have been duly received,
636 the governing authority or agency may select the most qualified
637 proposal or proposals on the basis of price, technology and other
638 relevant factors and from such proposals, but not limited to the
639 terms thereof, negotiate and enter contracts with one or more of
640 the persons or firms submitting proposals.

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

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

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

656 (xiii) **Municipal electrical utility system fuel.**
657 Purchases of coal and/or natural gas by municipally-owned electric

658 power generating systems that have the capacity to use both coal
659 and natural gas for the generation of electric power.

660 (xiv) **Library books and other reference materials.**

661 Purchases by libraries or for libraries of books and periodicals;
662 processed film, video cassette tapes, filmstrips and slides;
663 recorded audio tapes, cassettes and diskettes; and any such items
664 as would be used for teaching, research or other information
665 distribution; however, equipment such as projectors, recorders,
666 audio or video equipment, and monitor televisions are not exempt
667 under this subparagraph.

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

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

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

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

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

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

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

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

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

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

714 (xxv) **Purchases of state-adopted textbooks.**
715 Purchases of state-adopted textbooks by public school districts.

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

719 (xxvii) **Used heavy or specialized machinery or**
720 **equipment for installation of soil and water conservation**
721 **practices purchased at auction.** Used heavy or specialized
722 machinery or equipment used for the installation and
723 implementation of soil and water conservation practices or

724 measures purchased subject to the restrictions provided in
725 Sections 69-27-331 through 69-27-341. Any purchase by the State
726 Soil and Water Conservation Commission under the exemption
727 authorized by this subparagraph shall require advance
728 authorization spread upon the minutes of the commission to include
729 the listing of the item or items authorized to be purchased and
730 the maximum bid authorized to be paid for each item or items.

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

732 Leases by hospitals of equipment or services if the leases are in
733 compliance with subparagraph (1)(ii).

734 (xxix) **Purchases made pursuant to qualified**

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

746 (xxx) **Purchases for the supply of natural gas for**
747 **certain municipalities.** Purchases for the supply of natural gas
748 **made by any municipality that owns and operates a gas distribution**
749 **system as authorized in Section 21-17-1 (9).**

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

752 (i) All contracts for the purchase of commodities,
753 equipment and public construction (including, but not limited to,
754 repair and maintenance), may be let for periods of not more than
755 sixty (60) months in advance, subject to applicable statutory
756 provisions prohibiting the letting of contracts during specified

757 periods near the end of terms of office. Term contracts for a
758 period exceeding twenty-four (24) months shall also be subject to
759 ratification or cancellation by governing authority boards taking
760 office subsequent to the governing authority board entering the
761 contract.

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

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

788 (p) **Electrical utility petroleum-based equipment**
789 **purchase procedure.** When in response to a proper advertisement

790 therefor, no bid firm as to price is submitted to an electric
791 utility for power transformers, distribution transformers, power
792 breakers, reclosers or other articles containing a petroleum
793 product, the electric utility may accept the lowest and best bid
794 therefor although the price is not firm.

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

817 (r) **Solid waste contract proposal procedure.** Before
818 entering into any contract for garbage collection or disposal,
819 contract for solid waste collection or disposal or contract for
820 sewage collection or disposal, which involves an expenditure of
821 more than Fifty Thousand Dollars (\$50,000.00), a governing
822 authority or agency shall issue publicly a request for proposals

823 concerning the specifications for such services which shall be
824 advertised for in the same manner as provided in this section for
825 seeking bids for purchases which involve an expenditure of more
826 than the amount provided in paragraph (c) of this section. Any
827 request for proposals when issued shall contain terms and
828 conditions relating to price, financial responsibility,
829 technology, legal responsibilities and other relevant factors as
830 are determined by the governing authority or agency to be
831 appropriate for inclusion; all factors determined relevant by the
832 governing authority or agency or required by this paragraph (r)
833 shall be duly included in the advertisement to elicit proposals.
834 After responses to the request for proposals have been duly
835 received, the governing authority or agency shall select the most
836 qualified proposal or proposals on the basis of price, technology
837 and other relevant factors and from such proposals, but not
838 limited to the terms thereof, negotiate and enter contracts with
839 one or more of the persons or firms submitting proposals. If the
840 governing authority or agency deems none of the proposals to be
841 qualified or otherwise acceptable, the request for proposals
842 process may be reinitiated. Notwithstanding any other provisions
843 of this paragraph, where a county with at least thirty-five
844 thousand (35,000) nor more than forty thousand (40,000)
845 population, according to the 1990 federal decennial census, owns
846 or operates a solid waste landfill, the governing authorities of
847 any other county or municipality may contract with the governing
848 authorities of the county owning or operating the landfill,
849 pursuant to a resolution duly adopted and spread upon the minutes
850 of each governing authority involved, for garbage or solid waste
851 collection or disposal services through contract negotiations.

852 (s) **Minority set aside authorization.** Notwithstanding
853 any provision of this section to the contrary, any agency or
854 governing authority, by order placed on its minutes, may, in its
855 discretion, set aside not more than twenty percent (20%) of its

856 anticipated annual expenditures for the purchase of commodities
857 from minority businesses; however, all such set-aside purchases
858 shall comply with all purchasing regulations promulgated by the
859 Department of Finance and Administration and shall be subject to
860 bid requirements under this section. Set-aside purchases for
861 which competitive bids are required shall be made from the lowest
862 and best minority business bidder. For the purposes of this
863 paragraph, the term "minority business" means a business which is
864 owned by a majority of persons who are United States citizens or
865 permanent resident aliens (as defined by the Immigration and
866 Naturalization Service) of the United States, and who are Asian,
867 Black, Hispanic or Native American, according to the following
868 definitions:

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

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

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

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

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

888 (u) **Purchase authorization clarification.** Nothing in
889 this section shall be construed as authorizing any purchase not
890 authorized by law.

891 **SECTION 4.** Section 1 of this act shall be codified as a
892 separate code section in Title 21, Chapter 27, Mississippi Code of
893 1972.

894 **SECTION 5.** This act shall take effect and be in force from
895 and after July 1, 2004.