

By: Representative Dedeaux

To: Appropriations

## HOUSE BILL NO. 1022

1 AN ACT TO AMEND SECTION 31-3-21, MISSISSIPPI CODE OF 1972, TO  
2 REQUIRE PERSONS SUBMITTING BIDS ON PUBLIC CONSTRUCTION PROJECTS  
3 OVER \$100,000.00 TO USE THE BIDS OF SUBCONTRACTORS WHO PAY THE  
4 PERSONS WHO WILL WORK UNDER THE CONTRACT HEALTH INSURANCE,  
5 RETIREMENT BENEFITS AND THE MOST RECENT AVERAGE ANNUAL WAGE; TO  
6 AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO REQUIRE  
7 PERSONS SUBMITTING BIDS ON PUBLIC CONSTRUCTION PROJECTS OVER  
8 \$100,000.00 TO USE THE BIDS OF SUBCONTRACTORS WHO PAY THE PERSONS  
9 WHO WILL WORK UNDER THE CONTRACT HEALTH INSURANCE, RETIREMENT  
10 BENEFITS AND THE MOST RECENT AVERAGE ANNUAL WAGE; TO REQUIRE THE  
11 CONTRACTORS TO FILE A MONTHLY CERTIFIED PAYROLL; TO PROVIDE  
12 PENALTIES FOR FAILURE TO FILE A CERTIFIED PAYROLL AS REQUIRED; TO  
13 ALLOW THE AGENCY OR GOVERNING AUTHORITY TO USE THE COLLECTED CIVIL  
14 PENALTIES FOR ENFORCEMENT; AND FOR RELATED PURPOSES.

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

16 **SECTION 1.** Section 31-3-21, Mississippi Code of 1972, is  
17 amended as follows:

18 31-3-21. (1) It shall be unlawful for any person who does  
19 not hold a certificate of responsibility issued under this  
20 chapter, or a similar certificate issued by another state  
21 recognizing such certificate issued by the State of Mississippi,  
22 to submit a bid, enter into a contract, or otherwise engage in or  
23 continue in this state in the business of a contractor, as defined  
24 in this chapter. Any bid which is submitted without a certificate  
25 of responsibility number issued under this chapter and without  
26 that number appearing on the exterior of the bid envelope, as and  
27 if herein required, at the time designated for the opening of such  
28 bid, shall not be considered further, and the person or public  
29 agency soliciting bids shall not enter into a contract with a  
30 contractor submitting a bid in violation of this section. In  
31 addition, any person violating this section by knowingly and  
32 willfully submitting a bid for projects without holding a  
33 certificate of responsibility number issued under this chapter, as

34 and if herein required, at the time of the submission or opening  
35 of such bid shall be guilty of a misdemeanor and, upon conviction,  
36 shall be punished by a fine of not more than One Thousand Dollars  
37 (\$1,000.00), or by imprisonment for not more than six (6) months,  
38 or by both such fine and imprisonment.

39 (2) (a) All bids submitted for public or private projects  
40 where said bid is in excess of Fifty Thousand Dollars (\$50,000.00)  
41 with respect to public projects and in excess of One Hundred  
42 Thousand Dollars (\$100,000.00) with respect to private projects  
43 shall contain on the outside or exterior of the envelope or  
44 container of such bid the contractor's current certificate number,  
45 and no bid shall be opened or considered unless such contractor's  
46 current certificate number appears on the outside or exterior of  
47 said envelope or container, or unless there appears a statement on  
48 the outside or exterior of such envelope or container to the  
49 effect that the bid enclosed therewith did not exceed Fifty  
50 Thousand Dollars (\$50,000.00) with respect to public projects or  
51 One Hundred Thousand Dollars (\$100,000.00) with respect to private  
52 projects. Any person violating the provisions of this subsection  
53 shall be guilty of a misdemeanor and, upon conviction, shall be  
54 punished by a fine of not more than One Thousand Dollars  
55 (\$1,000.00), or by imprisonment for not more than six (6) months,  
56 or by both such fine and imprisonment.

57 (b) All bids submitted for public construction projects  
58 in excess of One Hundred Thousand Dollars (\$100,000.00) shall  
59 include bids that use subcontractors who pay to the persons who  
60 will work under the contract (a) health insurance and retirement,  
61 and (b) the most recently published average annual wage of the  
62 state or the most recently published average annual wage of the  
63 county in which the project is located as determined by the  
64 Mississippi Employment Security Commission.

65 (3) In the letting of public contracts preference shall be  
66 given to resident contractors, and a nonresident bidder domiciled

67 in a state having laws granting preference to local contractors  
68 shall be awarded Mississippi public contracts only on the same  
69 basis as the nonresident bidder's state awards contracts to  
70 Mississippi contractors bidding under similar circumstances; and  
71 resident contractors actually domiciled in Mississippi, be they  
72 corporate, individuals, or partnerships, are to be granted  
73 preference over nonresidents in awarding of contracts in the same  
74 manner and to the same extent as provided by the laws of the state  
75 of domicile of the nonresident. When a nonresident contractor  
76 submits a bid for a public project, he shall attach thereto a copy  
77 of his resident state's current law pertaining to such state's  
78 treatment of nonresident contractors. As used in this section,  
79 the term "resident contractors" includes a nonresident person,  
80 firm or corporation that has been qualified to do business in this  
81 state and has maintained a permanent full-time office in the State  
82 of Mississippi for two (2) years prior to January 1, 1986, and the  
83 subsidiaries and affiliates of such a person, firm or corporation.  
84 Any public agency awarding a contract shall promptly report to the  
85 State Tax Commission the following information:

86 (a) The amount of the contract.

87 (b) The name and address of the contractor reviewing  
88 the contract.

89 (c) The name and location of the project.

90 (4) In addition to any other penalties provided in this  
91 chapter, and upon a finding of a violation of this chapter, the  
92 State Board of Contractors may, after notice and hearing, issue an  
93 order of abatement directing the contractor to cease all actions  
94 constituting violations of this chapter until such time as the  
95 contractor complies with Mississippi state law, and to pay to the  
96 board a civil penalty to be deposited into the State Board of  
97 Contractors' Fund, created in Section 31-3-17, of not more than  
98 three percent (3%) of the total contract being performed by the  
99 contractor. The funds collected from civil penalty payments shall

100 be used by the State Board of Contractors for enforcement and  
101 education.

102 **SECTION 2.** Section 31-7-13, Mississippi Code of 1972, is  
103 amended as follows:

104 31-7-13. All agencies and governing authorities shall  
105 purchase their commodities and printing; contract for garbage  
106 collection or disposal; contract for solid waste collection or  
107 disposal; contract for sewage collection or disposal; contract for  
108 public construction; and contract for rentals as herein provided.

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

118 (b) **Bidding procedure for purchases over \$3,500.00 but**  
119 **not over \$15,000.00.** Purchases which involve an expenditure of  
120 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not  
121 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
122 freight and shipping charges may be made from the lowest and best  
123 bidder without publishing or posting advertisement for bids,  
124 provided at least two (2) competitive written bids have been  
125 obtained. Any governing authority purchasing commodities pursuant  
126 to this paragraph (b) may authorize its purchasing agent, or his  
127 designee, with regard to governing authorities other than  
128 counties, or its purchase clerk, or his designee, with regard to  
129 counties, to accept the lowest and best competitive written bid.  
130 Such authorization shall be made in writing by the governing  
131 authority and shall be maintained on file in the primary office of  
132 the agency and recorded in the official minutes of the governing

133 authority, as appropriate. The purchasing agent or the purchase  
134 clerk, or their designee, as the case may be, and not the  
135 governing authority, shall be liable for any penalties and/or  
136 damages as may be imposed by law for any act or omission of the  
137 purchasing agent or purchase clerk, or their designee,  
138 constituting a violation of law in accepting any bid without  
139 approval by the governing authority. The term "competitive  
140 written bid" shall mean a bid submitted on a bid form furnished by  
141 the buying agency or governing authority and signed by authorized  
142 personnel representing the vendor, or a bid submitted on a  
143 vendor's letterhead or identifiable bid form and signed by  
144 authorized personnel representing the vendor. "Competitive" shall  
145 mean that the bids are developed based upon comparable  
146 identification of the needs and are developed independently and  
147 without knowledge of other bids or prospective bids. Bids may be  
148 submitted by facsimile, electronic mail or other generally  
149 accepted method of information distribution. Bids submitted by  
150 electronic transmission shall not require the signature of the  
151 vendor's representative unless required by agencies or governing  
152 authorities.

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

154 (i) **Publication requirement.** Purchases which  
155 involve an expenditure of more than Fifteen Thousand Dollars  
156 (\$15,000.00), exclusive of freight and shipping charges, may be  
157 made from the lowest and best bidder after advertising for  
158 competitive sealed bids once each week for two (2) consecutive  
159 weeks in a regular newspaper published in the county or  
160 municipality in which such agency or governing authority is  
161 located. The date as published for the bid opening shall not be  
162 less than seven (7) working days after the last published notice;  
163 however, if the purchase involves a construction project in which  
164 the estimated cost is in excess of Fifteen Thousand Dollars  
165 (\$15,000.00), such bids shall not be opened in less than fifteen

166 (15) working days after the last notice is published and the  
167 notice for the purchase of such construction shall be published  
168 once each week for two (2) consecutive weeks. The notice of  
169 intention to let contracts or purchase equipment shall state the  
170 time and place at which bids shall be received, list the contracts  
171 to be made or types of equipment or supplies to be purchased, and,  
172 if all plans and/or specifications are not published, refer to the  
173 plans and/or specifications on file. If there is no newspaper  
174 published in the county or municipality, then such notice shall be  
175 given by posting same at the courthouse, or for municipalities at  
176 the city hall, and at two (2) other public places in the county or  
177 municipality, and also by publication once each week for two (2)  
178 consecutive weeks in some newspaper having a general circulation  
179 in the county or municipality in the above provided manner. On  
180 the same date that the notice is submitted to the newspaper for  
181 publication, the agency or governing authority involved shall mail  
182 written notice to, or provide electronic notification to the main  
183 office of the Mississippi Contract Procurement Center that  
184 contains the same information as that in the published notice.

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

199 to a date not less than five (5) working days after the date of  
200 the addendum.

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

210                   (iv) **Specification restrictions.** Specifications  
211 pertinent to such bidding shall be written so as not to exclude  
212 comparable equipment of domestic manufacture. However, if valid  
213 justification is presented, the Department of Finance and  
214 Administration or the board of a governing authority may approve a  
215 request for specific equipment necessary to perform a specific  
216 job. Further, such justification, when placed on the minutes of  
217 the board of a governing authority, may serve as authority for  
218 that governing authority to write specifications to require a  
219 specific item of equipment needed to perform a specific job. In  
220 addition to these requirements, from and after July 1, 1990,  
221 vendors of relocatable classrooms and the specifications for the  
222 purchase of such relocatable classrooms published by local school  
223 boards shall meet all pertinent regulations of the State Board of  
224 Education, including prior approval of such bid by the State  
225 Department of Education.

226                   (v) Agencies and governing authorities may  
227 establish secure procedures by which bids may be submitted via  
228 electronic means.

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

230                   (i) **Decision procedure.** Purchases may be made  
231 from the lowest and best bidder. In determining the lowest and

232 best bid, freight and shipping charges shall be included.  
233 Life-cycle costing, total cost bids, warranties, guaranteed  
234 buy-back provisions and other relevant provisions may be included  
235 in the best bid calculation. All best bid procedures for state  
236 agencies must be in compliance with regulations established by the  
237 Department of Finance and Administration. If any governing  
238 authority accepts a bid other than the lowest bid actually  
239 submitted, it shall place on its minutes detailed calculations and  
240 narrative summary showing that the accepted bid was determined to  
241 be the lowest and best bid, including the dollar amount of the  
242 accepted bid and the dollar amount of the lowest bid. No agency  
243 or governing authority shall accept a bid based on items not  
244 included in the specifications.

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

251 (iii) Construction projects over \$100,000.00. The  
252 lowest and best bid for construction projects over One Hundred  
253 Thousand Dollars (\$100,000.00) shall include bids of which  
254 contractors, in calculating the bid submitted to the agency or  
255 governing authority, use subcontractors who pay to the persons who  
256 will work under the contract (a) health insurance and retirement,  
257 and (b) the most recently published average annual wage of the  
258 state or the most recently published average annual wage of the  
259 county in which the project is located as determined by the  
260 Mississippi Employment Security Commission. The agency or  
261 governing authority shall reject bids from contractors who do not  
262 submit bids or hire subcontractors as required in this  
263 subparagraph.



264       The agency or governing authority shall require contractors  
265 who will work under the contract to file a monthly payroll to the  
266 agency or governing authority with an affidavit signed under oath  
267 certifying the correctness and authenticity of the payroll. The  
268 agency or governing authority may randomly inspect the correctness  
269 of the payroll.

270       Failure by a contractor to file a payroll as required in this  
271 subparagraph shall result in the following penalties: (a) the  
272 agency or governing authority may not pay the contractor for the  
273 month following the month in which a payroll was not filed, (b)  
274 the contractor shall pay civil penalty equal to ten percent (10%)  
275 of the total contract being performed by the contractor. The  
276 penalties collected may be used by the agency or governing  
277 authority to enforce the requirements of this subparagraph.

278       The requirements in this subparagraph shall be in addition to  
279 any other requirements for construction projects.

280           (e) **Lease-purchase authorization.** For the purposes of  
281 this section, the term "equipment" shall mean equipment, furniture  
282 and, if applicable, associated software and other applicable  
283 direct costs associated with the acquisition. Any lease-purchase  
284 of equipment which an agency is not required to lease-purchase  
285 under the master lease-purchase program pursuant to Section  
286 31-7-10 and any lease-purchase of equipment which a governing  
287 authority elects to lease-purchase may be acquired by a  
288 lease-purchase agreement under this paragraph (e). Lease-purchase  
289 financing may also be obtained from the vendor or from a  
290 third-party source after having solicited and obtained at least  
291 two (2) written competitive bids, as defined in paragraph (b) of  
292 this section, for such financing without advertising for such  
293 bids. Solicitation for the bids for financing may occur before or  
294 after acceptance of bids for the purchase of such equipment or,  
295 where no such bids for purchase are required, at any time before  
296 the purchase thereof. No such lease-purchase agreement shall be

297 for an annual rate of interest which is greater than the overall  
298 maximum interest rate to maturity on general obligation  
299 indebtedness permitted under Section 75-17-101, and the term of  
300 such lease-purchase agreement shall not exceed the useful life of  
301 equipment covered thereby as determined according to the upper  
302 limit of the asset depreciation range (ADR) guidelines for the  
303 Class Life Asset Depreciation Range System established by the  
304 Internal Revenue Service pursuant to the United States Internal  
305 Revenue Code and regulations thereunder as in effect on December  
306 31, 1980, or comparable depreciation guidelines with respect to  
307 any equipment not covered by ADR guidelines. Any lease-purchase  
308 agreement entered into pursuant to this paragraph (e) may contain  
309 any of the terms and conditions which a master lease-purchase  
310 agreement may contain under the provisions of Section 31-7-10(5),  
311 and shall contain an annual allocation dependency clause  
312 substantially similar to that set forth in Section 31-7-10(8).  
313 Each agency or governing authority entering into a lease-purchase  
314 transaction pursuant to this paragraph (e) shall maintain with  
315 respect to each such lease-purchase transaction the same  
316 information as required to be maintained by the Department of  
317 Finance and Administration pursuant to Section 31-7-10(13).  
318 However, nothing contained in this section shall be construed to  
319 permit agencies to acquire items of equipment with a total  
320 acquisition cost in the aggregate of less than Ten Thousand  
321 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
322 equipment, and the purchase thereof by any lessor, acquired by  
323 lease-purchase under this paragraph and all lease-purchase  
324 payments with respect thereto shall be exempt from all Mississippi  
325 sales, use and ad valorem taxes. Interest paid on any  
326 lease-purchase agreement under this section shall be exempt from  
327 State of Mississippi income taxation.

328 (f) **Alternate bid authorization.** When necessary to  
329 ensure ready availability of commodities for public works and the

330 timely completion of public projects, no more than two (2)  
331 alternate bids may be accepted by a governing authority for  
332 commodities. No purchases may be made through use of such  
333 alternate bids procedure unless the lowest and best bidder cannot  
334 deliver the commodities contained in his bid. In that event,  
335 purchases of such commodities may be made from one (1) of the  
336 bidders whose bid was accepted as an alternate.

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

357           (h) **Petroleum purchase alternative.** In addition to  
358 other methods of purchasing authorized in this chapter, when any  
359 agency or governing authority shall have a need for gas, diesel  
360 fuel, oils and/or other petroleum products in excess of the amount  
361 set forth in paragraph (a) of this section, such agency or  
362 governing authority may purchase the commodity after having

363 solicited and obtained at least two (2) competitive written bids,  
364 as defined in paragraph (b) of this section. If two (2)  
365 competitive written bids are not obtained, the entity shall comply  
366 with the procedures set forth in paragraph (c) of this section.  
367 In the event any agency or governing authority shall have  
368 advertised for bids for the purchase of gas, diesel fuel, oils and  
369 other petroleum products and coal and no acceptable bids can be  
370 obtained, such agency or governing authority is authorized and  
371 directed to enter into any negotiations necessary to secure the  
372 lowest and best contract available for the purchase of such  
373 commodities.

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

394           (j) **State agency emergency purchase procedure.** If the  
395 governing board or the executive head, or his designee, of any

396 agency of the state shall determine that an emergency exists in  
397 regard to the purchase of any commodities or repair contracts, so  
398 that the delay incident to giving opportunity for competitive  
399 bidding would be detrimental to the interests of the state, then  
400 the provisions herein for competitive bidding shall not apply and  
401 the head of such agency shall be authorized to make the purchase  
402 or repair. Total purchases so made shall only be for the purpose  
403 of meeting needs created by the emergency situation. In the event  
404 such executive head is responsible to an agency board, at the  
405 meeting next following the emergency purchase, documentation of  
406 the purchase, including a description of the commodity purchased,  
407 the purchase price thereof and the nature of the emergency shall  
408 be presented to the board and placed on the minutes of the board  
409 of such agency. The head of such agency, or his designee, shall,  
410 at the earliest possible date following such emergency purchase,  
411 file with the Department of Finance and Administration (i) a  
412 statement explaining the conditions and circumstances of the  
413 emergency, which shall include a detailed description of the  
414 events leading up to the situation and the negative impact to the  
415 entity if the purchase is made following the statutory  
416 requirements set forth in paragraph (a), (b) or (c) of this  
417 section, and (ii) a certified copy of the appropriate minutes of  
418 the board of such agency, if applicable. On or before September 1  
419 of each year, the State Auditor shall prepare and deliver to the  
420 Senate Fees, Salaries and Administration Committee, the House Fees  
421 and Salaries of Public Officers Committee and the Joint  
422 Legislative Budget Committee a report containing a list of all  
423 state agency emergency purchases and supporting documentation for  
424 each emergency purchases.

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

426 If the governing authority, or the governing authority acting  
427 through its designee, shall determine that an emergency exists in  
428 regard to the purchase of any commodities or repair contracts, so

429 that the delay incident to giving opportunity for competitive  
430 bidding would be detrimental to the interest of the governing  
431 authority, then the provisions herein for competitive bidding  
432 shall not apply and any officer or agent of such governing  
433 authority having general or special authority therefor in making  
434 such purchase or repair shall approve the bill presented therefor,  
435 and he shall certify in writing thereon from whom such purchase  
436 was made, or with whom such a repair contract was made. At the  
437 board meeting next following the emergency purchase or repair  
438 contract, documentation of the purchase or repair contract,  
439 including a description of the commodity purchased, the price  
440 thereof and the nature of the emergency shall be presented to the  
441 board and shall be placed on the minutes of the board of such  
442 governing authority.

443           (1) **Hospital purchase, lease-purchase and lease**  
444 **authorization.**

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

450           (ii) In addition to the authority granted in  
451 subparagraph (i) of this paragraph (1), the commissioners or board  
452 of trustees is authorized to enter into contracts for the lease of  
453 equipment or services, or both, which it considers necessary for  
454 the proper care of patients if, in its opinion, it is not  
455 financially feasible to purchase the necessary equipment or  
456 services. Any such contract for the lease of equipment or  
457 services executed by the commissioners or board shall not exceed a  
458 maximum of five (5) years' duration and shall include a  
459 cancellation clause based on unavailability of funds. If such  
460 cancellation clause is exercised, there shall be no further  
461 liability on the part of the lessee. Any such contract for the

462 lease of equipment or services executed on behalf of the  
463 commissioners or board that complies with the provisions of this  
464 subparagraph (ii) shall be excepted from the bid requirements set  
465 forth in this section.

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

468 (i) **Purchasing agreements approved by department.**  
469 Purchasing agreements, contracts and maximum price regulations  
470 executed or approved by the Department of Finance and  
471 Administration.

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

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

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

492 (v) **Governmental equipment auctions.** Motor  
493 vehicles or other equipment purchased from a federal agency or  
494 authority, another governing authority or state agency of the

495 State of Mississippi, or any governing authority or state agency  
496 of another state at a public auction held for the purpose of  
497 disposing of such vehicles or other equipment. Any purchase by a  
498 governing authority under the exemption authorized by this  
499 subparagraph (v) shall require advance authorization spread upon  
500 the minutes of the governing authority to include the listing of  
501 the item or items authorized to be purchased and the maximum bid  
502 authorized to be paid for each item or items.

503                   (vi) **Intergovernmental sales and transfers.**  
504 Purchases, sales, transfers or trades by governing authorities or  
505 state agencies when such purchases, sales, transfers or trades are  
506 made by a private treaty agreement or through means of  
507 negotiation, from any federal agency or authority, another  
508 governing authority or state agency of the State of Mississippi,  
509 or any state agency or governing authority of another state.  
510 Nothing in this section shall permit such purchases through public  
511 auction except as provided for in subparagraph (v) of this  
512 section. It is the intent of this section to allow governmental  
513 entities to dispose of and/or purchase commodities from other  
514 governmental entities at a price that is agreed to by both  
515 parties. This shall allow for purchases and/or sales at prices  
516 which may be determined to be below the market value if the  
517 selling entity determines that the sale at below market value is  
518 in the best interest of the taxpayers of the state. Governing  
519 authorities shall place the terms of the agreement and any  
520 justification on the minutes, and state agencies shall obtain  
521 approval from the Department of Finance and Administration, prior  
522 to releasing or taking possession of the commodities.

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



527                   (viii) **Single source items.** Noncompetitive items  
528 available from one (1) source only. In connection with the  
529 purchase of noncompetitive items only available from one (1)  
530 source, a certification of the conditions and circumstances  
531 requiring the purchase shall be filed by the agency with the  
532 Department of Finance and Administration and by the governing  
533 authority with the board of the governing authority. Upon receipt  
534 of that certification the Department of Finance and Administration  
535 or the board of the governing authority, as the case may be, may,  
536 in writing, authorize the purchase, which authority shall be noted  
537 on the minutes of the body at the next regular meeting thereafter.  
538 In those situations, a governing authority is not required to  
539 obtain the approval of the Department of Finance and  
540 Administration.

541                   (ix) **Waste disposal facility construction**  
542 **contracts.** Construction of incinerators and other facilities for  
543 disposal of solid wastes in which products either generated  
544 therein, such as steam, or recovered therefrom, such as materials  
545 for recycling, are to be sold or otherwise disposed of; however,  
546 in constructing such facilities, a governing authority or agency  
547 shall publicly issue requests for proposals, advertised for in the  
548 same manner as provided herein for seeking bids for public  
549 construction projects, concerning the design, construction,  
550 ownership, operation and/or maintenance of such facilities,  
551 wherein such requests for proposals when issued shall contain  
552 terms and conditions relating to price, financial responsibility,  
553 technology, environmental compatibility, legal responsibilities  
554 and such other matters as are determined by the governing  
555 authority or agency to be appropriate for inclusion; and after  
556 responses to the request for proposals have been duly received,  
557 the governing authority or agency may select the most qualified  
558 proposal or proposals on the basis of price, technology and other  
559 relevant factors and from such proposals, but not limited to the

560 terms thereof, negotiate and enter contracts with one or more of  
561 the persons or firms submitting proposals.

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

565           (xi) **Information technology products.** Purchases  
566 of information technology products made by governing authorities  
567 under the provisions of purchase schedules, or contracts executed  
568 or approved by the Mississippi Department of Information  
569 Technology Services and designated for use by governing  
570 authorities.

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

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

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

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

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

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

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

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

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

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

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

625                   (xxiii) **Municipal water tank maintenance**  
626 **contracts.** Professional maintenance program contracts for the  
627 repair or maintenance of municipal water tanks, which provide  
628 professional services needed to maintain municipal water storage  
629 tanks for a fixed annual fee for a duration of two (2) or more  
630 years.

631                   (xxiv) **Purchases of Mississippi Industries for the**  
632 **Blind products.** Purchases made by state agencies or governing  
633 authorities involving any item that is manufactured, processed or  
634 produced by the Mississippi Industries for the Blind.

635                   (xxv) **Purchases of state-adopted textbooks.**  
636 Purchases of state-adopted textbooks by public school districts.

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

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

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

655                   (xxix) **Purchases made pursuant to qualified**  
656 **cooperative purchasing agreements.** Purchases made by certified  
657 purchasing offices of state agencies or governing authorities

658 under cooperative purchasing agreements previously approved by the  
659 Office of Purchasing and Travel and established by or for any  
660 municipality, county, parish or state government or the federal  
661 government, provided that the notification to potential  
662 contractors includes a clause that sets forth the availability of  
663 the cooperative purchasing agreement to other governmental  
664 entities. Such purchases shall only be made if the use of the  
665 cooperative purchasing agreements is determined to be in the best  
666 interest of the government entity.

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

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

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

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

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

712           (q) **Fuel management system bidding procedure.** Any  
713 governing authority or agency of the state shall, before  
714 contracting for the services and products of a fuel management or  
715 fuel access system, enter into negotiations with not fewer than  
716 two (2) sellers of fuel management or fuel access systems for  
717 competitive written bids to provide the services and products for  
718 the systems. In the event that the governing authority or agency  
719 cannot locate two (2) sellers of such systems or cannot obtain  
720 bids from two (2) sellers of such systems, it shall show proof  
721 that it made a diligent, good-faith effort to locate and negotiate  
722 with two (2) sellers of such systems. Such proof shall include,

723 but not be limited to, publications of a request for proposals and  
724 letters soliciting negotiations and bids. For purposes of this  
725 paragraph (q), a fuel management or fuel access system is an  
726 automated system of acquiring fuel for vehicles as well as  
727 management reports detailing fuel use by vehicles and drivers, and  
728 the term "competitive written bid" shall have the meaning as  
729 defined in paragraph (b) of this section. Governing authorities  
730 and agencies shall be exempt from this process when contracting  
731 for the services and products of a fuel management or fuel access  
732 systems under the terms of a state contract established by the  
733 Office of Purchasing and Travel.

734 (r) **Solid waste contract proposal procedure.** Before  
735 entering into any contract for garbage collection or disposal,  
736 contract for solid waste collection or disposal or contract for  
737 sewage collection or disposal, which involves an expenditure of  
738 more than Fifty Thousand Dollars (\$50,000.00), a governing  
739 authority or agency shall issue publicly a request for proposals  
740 concerning the specifications for such services which shall be  
741 advertised for in the same manner as provided in this section for  
742 seeking bids for purchases which involve an expenditure of more  
743 than the amount provided in paragraph (c) of this section. Any  
744 request for proposals when issued shall contain terms and  
745 conditions relating to price, financial responsibility,  
746 technology, legal responsibilities and other relevant factors as  
747 are determined by the governing authority or agency to be  
748 appropriate for inclusion; all factors determined relevant by the  
749 governing authority or agency or required by this paragraph (r)  
750 shall be duly included in the advertisement to elicit proposals.  
751 After responses to the request for proposals have been duly  
752 received, the governing authority or agency shall select the most  
753 qualified proposal or proposals on the basis of price, technology  
754 and other relevant factors and from such proposals, but not  
755 limited to the terms thereof, negotiate and enter contracts with

756 one or more of the persons or firms submitting proposals. If the  
757 governing authority or agency deems none of the proposals to be  
758 qualified or otherwise acceptable, the request for proposals  
759 process may be reinitiated. Notwithstanding any other provisions  
760 of this paragraph, where a county with at least thirty-five  
761 thousand (35,000) nor more than forty thousand (40,000)  
762 population, according to the 1990 federal decennial census, owns  
763 or operates a solid waste landfill, the governing authorities of  
764 any other county or municipality may contract with the governing  
765 authorities of the county owning or operating the landfill,  
766 pursuant to a resolution duly adopted and spread upon the minutes  
767 of each governing authority involved, for garbage or solid waste  
768 collection or disposal services through contract negotiations.

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

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



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

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

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

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

805 (u) **Purchase authorization clarification.** Nothing in  
806 this section shall be construed as authorizing any purchase not  
807 authorized by law.

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