

By: Representative Weathersby

To: Appropriations

HOUSE BILL NO. 1242

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
2 REQUIRE ALL STATE AGENCIES TO PURCHASE NOT LESS THAN TEN PERCENT  
3 OF THEIR PURCHASES OF OFFICE SUPPLIES FROM THE MISSISSIPPI  
4 INDUSTRIES FOR THE BLIND; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 31-7-13, Mississippi Code of 1972, is  
7 amended as follows:

8 31-7-13. All agencies and governing authorities shall  
9 purchase their commodities and printing; contract for garbage  
10 collection or disposal; contract for solid waste collection or  
11 disposal; contract for sewage collection or disposal; contract for  
12 public construction; and contract for rentals as herein provided.

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

22 (b) **Bidding procedure for purchases over \$3,500.00 but**  
23 **not over \$15,000.00.** Purchases which involve an expenditure of  
24 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not  
25 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
26 freight and shipping charges may be made from the lowest and best  
27 bidder without publishing or posting advertisement for bids,  
28 provided at least two (2) competitive written bids have been

29 obtained. Any governing authority purchasing commodities pursuant  
30 to this paragraph (b) may authorize its purchasing agent, or his  
31 designee, with regard to governing authorities other than  
32 counties, or its purchase clerk, or his designee, with regard to  
33 counties, to accept the lowest and best competitive written bid.  
34 Such authorization shall be made in writing by the governing  
35 authority and shall be maintained on file in the primary office of  
36 the agency and recorded in the official minutes of the governing  
37 authority, as appropriate. The purchasing agent or the purchase  
38 clerk, or their designee, as the case may be, and not the  
39 governing authority, shall be liable for any penalties and/or  
40 damages as may be imposed by law for any act or omission of the  
41 purchasing agent or purchase clerk, or their designee,  
42 constituting a violation of law in accepting any bid without  
43 approval by the governing authority. The term "competitive  
44 written bid" shall mean a bid submitted on a bid form furnished by  
45 the buying agency or governing authority and signed by authorized  
46 personnel representing the vendor, or a bid submitted on a  
47 vendor's letterhead or identifiable bid form and signed by  
48 authorized personnel representing the vendor. "Competitive" shall  
49 mean that the bids are developed based upon comparable  
50 identification of the needs and are developed independently and  
51 without knowledge of other bids or prospective bids. Bids may be  
52 submitted by facsimile, electronic mail or other generally  
53 accepted method of information distribution. Bids submitted by  
54 electronic transmission shall not require the signature of the  
55 vendor's representative unless required by agencies or governing  
56 authorities.

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

58 (i) **Publication requirement.** Purchases which  
59 involve an expenditure of more than Fifteen Thousand Dollars  
60 (\$15,000.00), exclusive of freight and shipping charges, may be  
61 made from the lowest and best bidder after advertising for

62 competitive sealed bids once each week for two (2) consecutive  
63 weeks in a regular newspaper published in the county or  
64 municipality in which such agency or governing authority is  
65 located. The date as published for the bid opening shall not be  
66 less than seven (7) working days after the last published notice;  
67 however, if the purchase involves a construction project in which  
68 the estimated cost is in excess of Fifteen Thousand Dollars  
69 (\$15,000.00), such bids shall not be opened in less than fifteen  
70 (15) working days after the last notice is published and the  
71 notice for the purchase of such construction shall be published  
72 once each week for two (2) consecutive weeks. The notice of  
73 intention to let contracts or purchase equipment shall state the  
74 time and place at which bids shall be received, list the contracts  
75 to be made or types of equipment or supplies to be purchased, and,  
76 if all plans and/or specifications are not published, refer to the  
77 plans and/or specifications on file. If there is no newspaper  
78 published in the county or municipality, then such notice shall be  
79 given by posting same at the courthouse, or for municipalities at  
80 the city hall, and at two (2) other public places in the county or  
81 municipality, and also by publication once each week for two (2)  
82 consecutive weeks in some newspaper having a general circulation  
83 in the county or municipality in the above provided manner. On  
84 the same date that the notice is submitted to the newspaper for  
85 publication, the agency or governing authority involved shall mail  
86 written notice to, or provide electronic notification to the main  
87 office of the Mississippi Contract Procurement Center that  
88 contains the same information as that in the published notice.

89 (ii) **Bidding process amendment procedure.** If all  
90 plans and/or specifications are published in the notification,  
91 then the plans and/or specifications may not be amended. If all  
92 plans and/or specifications are not published in the notification,  
93 then amendments to the plans/specifications, bid opening date, bid  
94 opening time and place may be made, provided that the agency or

95 governing authority maintains a list of all prospective bidders  
96 who are known to have received a copy of the bid documents and all  
97 such prospective bidders are sent copies of all amendments. This  
98 notification of amendments may be made via mail, facsimile,  
99 electronic mail or other generally accepted method of information  
100 distribution. No addendum to bid specifications may be issued  
101 within two (2) working days of the time established for the  
102 receipt of bids unless such addendum also amends the bid opening  
103 to a date not less than five (5) working days after the date of  
104 the addendum.

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

114                   (iv) **Specification restrictions.** Specifications  
115 pertinent to such bidding shall be written so as not to exclude  
116 comparable equipment of domestic manufacture. However, if valid  
117 justification is presented, the Department of Finance and  
118 Administration or the board of a governing authority may approve a  
119 request for specific equipment necessary to perform a specific  
120 job. Further, such justification, when placed on the minutes of  
121 the board of a governing authority, may serve as authority for  
122 that governing authority to write specifications to require a  
123 specific item of equipment needed to perform a specific job. In  
124 addition to these requirements, from and after July 1, 1990,  
125 vendors of relocatable classrooms and the specifications for the  
126 purchase of such relocatable classrooms published by local school  
127 boards shall meet all pertinent regulations of the State Board of

128 Education, including prior approval of such bid by the State  
129 Department of Education.

130 (v) Agencies and governing authorities may  
131 establish secure procedures by which bids may be submitted via  
132 electronic means.

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

134 (i) **Decision procedure.** Purchases may be made  
135 from the lowest and best bidder. In determining the lowest and  
136 best bid, freight and shipping charges shall be included.  
137 Life-cycle costing, total cost bids, warranties, guaranteed  
138 buy-back provisions and other relevant provisions may be included  
139 in the best bid calculation. All best bid procedures for state  
140 agencies must be in compliance with regulations established by the  
141 Department of Finance and Administration. If any governing  
142 authority accepts a bid other than the lowest bid actually  
143 submitted, it shall place on its minutes detailed calculations and  
144 narrative summary showing that the accepted bid was determined to  
145 be the lowest and best bid, including the dollar amount of the  
146 accepted bid and the dollar amount of the lowest bid. No agency  
147 or governing authority shall accept a bid based on items not  
148 included in the specifications.

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

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

155 (e) **Lease-purchase authorization.** For the purposes of  
156 this section, the term "equipment" shall mean equipment, furniture  
157 and, if applicable, associated software and other applicable  
158 direct costs associated with the acquisition. Any lease-purchase  
159 of equipment which an agency is not required to lease-purchase  
160 under the master lease-purchase program pursuant to Section

161 31-7-10 and any lease-purchase of equipment which a governing  
162 authority elects to lease-purchase may be acquired by a  
163 lease-purchase agreement under this paragraph (e). Lease-purchase  
164 financing may also be obtained from the vendor or from a  
165 third-party source after having solicited and obtained at least  
166 two (2) written competitive bids, as defined in paragraph (b) of  
167 this section, for such financing without advertising for such  
168 bids. Solicitation for the bids for financing may occur before or  
169 after acceptance of bids for the purchase of such equipment or,  
170 where no such bids for purchase are required, at any time before  
171 the purchase thereof. No such lease-purchase agreement shall be  
172 for an annual rate of interest which is greater than the overall  
173 maximum interest rate to maturity on general obligation  
174 indebtedness permitted under Section 75-17-101, and the term of  
175 such lease-purchase agreement shall not exceed the useful life of  
176 equipment covered thereby as determined according to the upper  
177 limit of the asset depreciation range (ADR) guidelines for the  
178 Class Life Asset Depreciation Range System established by the  
179 Internal Revenue Service pursuant to the United States Internal  
180 Revenue Code and regulations thereunder as in effect on December  
181 31, 1980, or comparable depreciation guidelines with respect to  
182 any equipment not covered by ADR guidelines. Any lease-purchase  
183 agreement entered into pursuant to this paragraph (e) may contain  
184 any of the terms and conditions which a master lease-purchase  
185 agreement may contain under the provisions of Section 31-7-10(5),  
186 and shall contain an annual allocation dependency clause  
187 substantially similar to that set forth in Section 31-7-10(8).  
188 Each agency or governing authority entering into a lease-purchase  
189 transaction pursuant to this paragraph (e) shall maintain with  
190 respect to each such lease-purchase transaction the same  
191 information as required to be maintained by the Department of  
192 Finance and Administration pursuant to Section 31-7-10(13).  
193 However, nothing contained in this section shall be construed to

194 permit agencies to acquire items of equipment with a total  
195 acquisition cost in the aggregate of less than Ten Thousand  
196 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
197 equipment, and the purchase thereof by any lessor, acquired by  
198 lease-purchase under this paragraph and all lease-purchase  
199 payments with respect thereto shall be exempt from all Mississippi  
200 sales, use and ad valorem taxes. Interest paid on any  
201 lease-purchase agreement under this section shall be exempt from  
202 State of Mississippi income taxation.

203           (f) **Alternate bid authorization.** When necessary to  
204 ensure ready availability of commodities for public works and the  
205 timely completion of public projects, no more than two (2)  
206 alternate bids may be accepted by a governing authority for  
207 commodities. No purchases may be made through use of such  
208 alternate bids procedure unless the lowest and best bidder cannot  
209 deliver the commodities contained in his bid. In that event,  
210 purchases of such commodities may be made from one (1) of the  
211 bidders whose bid was accepted as an alternate.

212           (g) **Construction contract change authorization.** In the  
213 event a determination is made by an agency or governing authority  
214 after a construction contract is let that changes or modifications  
215 to the original contract are necessary or would better serve the  
216 purpose of the agency or the governing authority, such agency or  
217 governing authority may, in its discretion, order such changes  
218 pertaining to the construction that are necessary under the  
219 circumstances without the necessity of further public bids;  
220 provided that such change shall be made in a commercially  
221 reasonable manner and shall not be made to circumvent the public  
222 purchasing statutes. In addition to any other authorized person,  
223 the architect or engineer hired by an agency or governing  
224 authority with respect to any public construction contract shall  
225 have the authority, when granted by an agency or governing  
226 authority, to authorize changes or modifications to the original

227 contract without the necessity of prior approval of the agency or  
228 governing authority when any such change or modification is less  
229 than one percent (1%) of the total contract amount. The agency or  
230 governing authority may limit the number, manner or frequency of  
231 such emergency changes or modifications.

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

249 (i) **Road construction petroleum products price**  
250 **adjustment clause authorization.** Any agency or governing  
251 authority authorized to enter into contracts for the construction,  
252 maintenance, surfacing or repair of highways, roads or streets,  
253 may include in its bid proposal and contract documents a price  
254 adjustment clause with relation to the cost to the contractor,  
255 including taxes, based upon an industry-wide cost index, of  
256 petroleum products including asphalt used in the performance or  
257 execution of the contract or in the production or manufacture of  
258 materials for use in such performance. Such industry-wide index  
259 shall be established and published monthly by the Mississippi



260 Department of Transportation with a copy thereof to be mailed,  
261 upon request, to the clerks of the governing authority of each  
262 municipality and the clerks of each board of supervisors  
263 throughout the state. The price adjustment clause shall be based  
264 on the cost of such petroleum products only and shall not include  
265 any additional profit or overhead as part of the adjustment. The  
266 bid proposals or document contract shall contain the basis and  
267 methods of adjusting unit prices for the change in the cost of  
268 such petroleum products.

269           (j) **State agency emergency purchase procedure.** If the  
270 governing board or the executive head, or his designee, of any  
271 agency of the state shall determine that an emergency exists in  
272 regard to the purchase of any commodities or repair contracts, so  
273 that the delay incident to giving opportunity for competitive  
274 bidding would be detrimental to the interests of the state, then  
275 the provisions herein for competitive bidding shall not apply and  
276 the head of such agency shall be authorized to make the purchase  
277 or repair. Total purchases so made shall only be for the purpose  
278 of meeting needs created by the emergency situation. In the event  
279 such executive head is responsible to an agency board, at the  
280 meeting next following the emergency purchase, documentation of  
281 the purchase, including a description of the commodity purchased,  
282 the purchase price thereof and the nature of the emergency shall  
283 be presented to the board and placed on the minutes of the board  
284 of such agency. The head of such agency, or his designee, shall,  
285 at the earliest possible date following such emergency purchase,  
286 file with the Department of Finance and Administration (i) a  
287 statement explaining the conditions and circumstances of the  
288 emergency, which shall include a detailed description of the  
289 events leading up to the situation and the negative impact to the  
290 entity if the purchase is made following the statutory  
291 requirements set forth in paragraph (a), (b) or (c) of this  
292 section, and (ii) a certified copy of the appropriate minutes of

293 the board of such agency, if applicable. On or before September 1  
294 of each year, the State Auditor shall prepare and deliver to the  
295 Senate Fees, Salaries and Administration Committee, the House Fees  
296 and Salaries of Public Officers Committee and the Joint  
297 Legislative Budget Committee a report containing a list of all  
298 state agency emergency purchases and supporting documentation for  
299 each emergency purchases.

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

301 If the governing authority, or the governing authority acting  
302 through its designee, shall determine that an emergency exists in  
303 regard to the purchase of any commodities or repair contracts, so  
304 that the delay incident to giving opportunity for competitive  
305 bidding would be detrimental to the interest of the governing  
306 authority, then the provisions herein for competitive bidding  
307 shall not apply and any officer or agent of such governing  
308 authority having general or special authority therefor in making  
309 such purchase or repair shall approve the bill presented therefor,  
310 and he shall certify in writing thereon from whom such purchase  
311 was made, or with whom such a repair contract was made. At the  
312 board meeting next following the emergency purchase or repair  
313 contract, documentation of the purchase or repair contract,  
314 including a description of the commodity purchased, the price  
315 thereof and the nature of the emergency shall be presented to the  
316 board and shall be placed on the minutes of the board of such  
317 governing authority.

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

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

325                   (ii) In addition to the authority granted in  
326 subparagraph (i) of this paragraph (1), the commissioners or board  
327 of trustees is authorized to enter into contracts for the lease of  
328 equipment or services, or both, which it considers necessary for  
329 the proper care of patients if, in its opinion, it is not  
330 financially feasible to purchase the necessary equipment or  
331 services. Any such contract for the lease of equipment or  
332 services executed by the commissioners or board shall not exceed a  
333 maximum of five (5) years' duration and shall include a  
334 cancellation clause based on unavailability of funds. If such  
335 cancellation clause is exercised, there shall be no further  
336 liability on the part of the lessee. Any such contract for the  
337 lease of equipment or services executed on behalf of the  
338 commissioners or board that complies with the provisions of this  
339 subparagraph (ii) shall be excepted from the bid requirements set  
340 forth in this section.

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

343                   (i) **Purchasing agreements approved by department.**  
344 Purchasing agreements, contracts and maximum price regulations  
345 executed or approved by the Department of Finance and  
346 Administration.

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

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

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

367                   (v) **Governmental equipment auctions.** Motor  
368 vehicles or other equipment purchased from a federal agency or  
369 authority, another governing authority or state agency of the  
370 State of Mississippi, or any governing authority or state agency  
371 of another state at a public auction held for the purpose of  
372 disposing of such vehicles or other equipment. Any purchase by a  
373 governing authority under the exemption authorized by this  
374 subparagraph (v) shall require advance authorization spread upon  
375 the minutes of the governing authority to include the listing of  
376 the item or items authorized to be purchased and the maximum bid  
377 authorized to be paid for each item or items.

378                   (vi) **Intergovernmental sales and transfers.**  
379 Purchases, sales, transfers or trades by governing authorities or  
380 state agencies when such purchases, sales, transfers or trades are  
381 made by a private treaty agreement or through means of  
382 negotiation, from any federal agency or authority, another  
383 governing authority or state agency of the State of Mississippi,  
384 or any state agency or governing authority of another state.  
385 Nothing in this section shall permit such purchases through public  
386 auction except as provided for in subparagraph (v) of this  
387 section. It is the intent of this section to allow governmental  
388 entities to dispose of and/or purchase commodities from other  
389 governmental entities at a price that is agreed to by both  
390 parties. This shall allow for purchases and/or sales at prices

391 which may be determined to be below the market value if the  
392 selling entity determines that the sale at below market value is  
393 in the best interest of the taxpayers of the state. Governing  
394 authorities shall place the terms of the agreement and any  
395 justification on the minutes, and state agencies shall obtain  
396 approval from the Department of Finance and Administration, prior  
397 to releasing or taking possession of the commodities.

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

402 (viii) **Single source items.** Noncompetitive items  
403 available from one (1) source only. In connection with the  
404 purchase of noncompetitive items only available from one (1)  
405 source, a certification of the conditions and circumstances  
406 requiring the purchase shall be filed by the agency with the  
407 Department of Finance and Administration and by the governing  
408 authority with the board of the governing authority. Upon receipt  
409 of that certification the Department of Finance and Administration  
410 or the board of the governing authority, as the case may be, may,  
411 in writing, authorize the purchase, which authority shall be noted  
412 on the minutes of the body at the next regular meeting thereafter.  
413 In those situations, a governing authority is not required to  
414 obtain the approval of the Department of Finance and  
415 Administration.

416 (ix) **Waste disposal facility construction**  
417 **contracts.** Construction of incinerators and other facilities for  
418 disposal of solid wastes in which products either generated  
419 therein, such as steam, or recovered therefrom, such as materials  
420 for recycling, are to be sold or otherwise disposed of; however,  
421 in constructing such facilities, a governing authority or agency  
422 shall publicly issue requests for proposals, advertised for in the  
423 same manner as provided herein for seeking bids for public

424 construction projects, concerning the design, construction,  
425 ownership, operation and/or maintenance of such facilities,  
426 wherein such requests for proposals when issued shall contain  
427 terms and conditions relating to price, financial responsibility,  
428 technology, environmental compatibility, legal responsibilities  
429 and such other matters as are determined by the governing  
430 authority or agency to be appropriate for inclusion; and after  
431 responses to the request for proposals have been duly received,  
432 the governing authority or agency may select the most qualified  
433 proposal or proposals on the basis of price, technology and other  
434 relevant factors and from such proposals, but not limited to the  
435 terms thereof, negotiate and enter contracts with one or more of  
436 the persons or firms submitting proposals.

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

440           (xi) **Information technology products.** Purchases  
441 of information technology products made by governing authorities  
442 under the provisions of purchase schedules, or contracts executed  
443 or approved by the Mississippi Department of Information  
444 Technology Services and designated for use by governing  
445 authorities.

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

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

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

457 Purchases by libraries or for libraries of books and periodicals;  
458 processed film, video cassette tapes, filmstrips and slides;  
459 recorded audio tapes, cassettes and diskettes; and any such items  
460 as would be used for teaching, research or other information  
461 distribution; however, equipment such as projectors, recorders,  
462 audio or video equipment, and monitor televisions are not exempt  
463 under this subparagraph.

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

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

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

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

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

487 (xx) **Junior college books for rent.** Purchases by  
488 community or junior colleges of textbooks which are obtained for

489 the purpose of renting such books to students as part of a book  
490 service system.

491 (xxi) **Certain school district purchases.**

492 Purchases of commodities made by school districts from vendors  
493 with which any levying authority of the school district, as  
494 defined in Section 37-57-1, has contracted through competitive  
495 bidding procedures for purchases of the same commodities.

496 (xxii) **Garbage, solid waste and sewage contracts.**

497 Contracts for garbage collection or disposal, contracts for solid  
498 waste collection or disposal and contracts for sewage collection  
499 or disposal.

500 (xxiii) **Municipal water tank maintenance**

501 **contracts.** Professional maintenance program contracts for the  
502 repair or maintenance of municipal water tanks, which provide  
503 professional services needed to maintain municipal water storage  
504 tanks for a fixed annual fee for a duration of two (2) or more  
505 years.

506 (xxiv) **Purchases of Mississippi Industries for the**

507 **Blind products.** Purchases made by state agencies or governing  
508 authorities involving any item that is manufactured, processed or  
509 produced by the Mississippi Industries for the Blind.

510 (xxv) **Purchases of state-adopted textbooks.**

511 Purchases of state-adopted textbooks by public school districts.

512 (xxvi) **Certain purchases under the Mississippi**

513 **Major Economic Impact Act.** Contracts entered into pursuant to the  
514 provisions of Section 57-75-9(2) and (3).

515 (xxvii) **Used heavy or specialized machinery or**

516 **equipment for installation of soil and water conservation**

517 **practices purchased at auction.** Used heavy or specialized

518 machinery or equipment used for the installation and

519 implementation of soil and water conservation practices or

520 measures purchased subject to the restrictions provided in

521 Sections 69-27-331 through 69-27-341. Any purchase by the State



522 Soil and Water Conservation Commission under the exemption  
523 authorized by this subparagraph shall require advance  
524 authorization spread upon the minutes of the commission to include  
525 the listing of the item or items authorized to be purchased and  
526 the maximum bid authorized to be paid for each item or items.

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

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

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

531 **cooperative purchasing agreements.** Purchases made by certified  
532 purchasing offices of state agencies or governing authorities  
533 under cooperative purchasing agreements previously approved by the  
534 Office of Purchasing and Travel and established by or for any  
535 municipality, county, parish or state government or the federal  
536 government, provided that the notification to potential  
537 contractors includes a clause that sets forth the availability of  
538 the cooperative purchasing agreement to other governmental  
539 entities. Such purchases shall only be made if the use of the  
540 cooperative purchasing agreements is determined to be in the best  
541 interest of the government entity.

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

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

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

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

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

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

609           (r) **Solid waste contract proposal procedure.** Before  
610 entering into any contract for garbage collection or disposal,  
611 contract for solid waste collection or disposal or contract for  
612 sewage collection or disposal, which involves an expenditure of  
613 more than Fifty Thousand Dollars (\$50,000.00), a governing  
614 authority or agency shall issue publicly a request for proposals  
615 concerning the specifications for such services which shall be  
616 advertised for in the same manner as provided in this section for  
617 seeking bids for purchases which involve an expenditure of more  
618 than the amount provided in paragraph (c) of this section. Any  
619 request for proposals when issued shall contain terms and

620 conditions relating to price, financial responsibility,  
621 technology, legal responsibilities and other relevant factors as  
622 are determined by the governing authority or agency to be  
623 appropriate for inclusion; all factors determined relevant by the  
624 governing authority or agency or required by this paragraph (r)  
625 shall be duly included in the advertisement to elicit proposals.  
626 After responses to the request for proposals have been duly  
627 received, the governing authority or agency shall select the most  
628 qualified proposal or proposals on the basis of price, technology  
629 and other relevant factors and from such proposals, but not  
630 limited to the terms thereof, negotiate and enter contracts with  
631 one or more of the persons or firms submitting proposals. If the  
632 governing authority or agency deems none of the proposals to be  
633 qualified or otherwise acceptable, the request for proposals  
634 process may be reinitiated. Notwithstanding any other provisions  
635 of this paragraph, where a county with at least thirty-five  
636 thousand (35,000) nor more than forty thousand (40,000)  
637 population, according to the 1990 federal decennial census, owns  
638 or operates a solid waste landfill, the governing authorities of  
639 any other county or municipality may contract with the governing  
640 authorities of the county owning or operating the landfill,  
641 pursuant to a resolution duly adopted and spread upon the minutes  
642 of each governing authority involved, for garbage or solid waste  
643 collection or disposal services through contract negotiations.

644           (s) **Minority set aside authorization.** Notwithstanding  
645 any provision of this section to the contrary, any agency or  
646 governing authority, by order placed on its minutes, may, in its  
647 discretion, set aside not more than twenty percent (20%) of its  
648 anticipated annual expenditures for the purchase of commodities  
649 from minority businesses; however, all such set-aside purchases  
650 shall comply with all purchasing regulations promulgated by the  
651 Department of Finance and Administration and shall be subject to  
652 bid requirements under this section. Set-aside purchases for

653 which competitive bids are required shall be made from the lowest  
654 and best minority business bidder. For the purposes of this  
655 paragraph, the term "minority business" means a business which is  
656 owned by a majority of persons who are United States citizens or  
657 permanent resident aliens (as defined by the Immigration and  
658 Naturalization Service) of the United States, and who are Asian,  
659 Black, Hispanic or Native American, according to the following  
660 definitions:

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

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

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

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

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

680 (u) All agencies shall purchase not less than ten  
681 percent (10%) of their purchases of office supplies from the  
682 Mississippi Industries for the Blind.

683 (v) **Purchase authorization clarification.** Nothing in  
684 this section shall be construed as authorizing any purchase not  
685 authorized by law.

686           **SECTION 2.** This act shall take effect and be in force from  
687 and after July 1, 2004.