

By: Representative Davis

To: Appropriations

## HOUSE BILL NO. 1476

1 AN ACT TO AMEND SECTIONS 19-13-111, 31-7-15 AND 31-7-47,  
2 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IN THE LETTING OF PUBLIC  
3 CONTRACTS PREFERENCE SHALL BE GIVEN TO RESIDENT BIDDERS WHENEVER  
4 ALL THINGS ARE EQUAL WITH REGARD TO QUALITY AND SERVICE BUT DIFFER  
5 ONLY AS TO PRICE; TO PROVIDE THAT A NONRESIDENT BIDDER DOMICILED  
6 IN A STATE HAVING LAWS GRANTING PREFERENCE TO RESIDENT BIDDERS  
7 SHALL BE AWARDED MISSISSIPPI CONTRACTS ONLY ON THE SAME BASIS AS  
8 THE NONRESIDENT BIDDER'S STATE AWARDS CONTRACTS TO MISSISSIPPI  
9 RESIDENTS BIDDING UNDER SIMILAR CIRCUMSTANCES; TO AMEND SECTION  
10 31-7-55, MISSISSIPPI CODE OF 1972, TO PRESCRIBE A PENALTY FOR  
11 PERSONS WHO INTENTIONALLY, WILLFULLY AND KNOWINGLY VIOLATE THE  
12 PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** Section 19-13-111, Mississippi Code of 1972, is  
15 amended as follows:

16 19-13-111. All bids and contracts for stationery, blank  
17 books, office supplies and other things must be specific in  
18 stating the kinds or brands and qualities of all articles, as far  
19 as practicable; the weight per ream and material of all paper; the  
20 price per quire and the weight per ream of books and record books,  
21 with the style of binding and size of each kind of book duly  
22 classified; and, other things being substantially equal with  
23 respect to quality and service, but differing only as to price,  
24 the board of supervisors shall give preference to bids from  
25 citizens of this state, and a nonresident bidder domiciled in a  
26 state having laws granting preference to resident bidders shall be  
27 awarded Mississippi contracts only on the same basis as the  
28 nonresident bidder's state awards contracts to Mississippi  
29 residents bidding under similar circumstances; and resident  
30 bidders actually domiciled in Mississippi, whether corporate,  
31 individuals, or partnerships, are to be granted preference over  
32 nonresidents in awarding of contracts in the same manner and to

33 the same extent as provided by the laws of the state of domicile  
34 of the nonresident. When a nonresident contractor submits a bid  
35 for a contract, he shall attach thereto a copy of his resident  
36 state's current law pertaining to such state's treatment of  
37 nonresident bidders.

38 **SECTION 2.** Section 31-7-15, Mississippi Code of 1972, is  
39 amended as follows:

40 31-7-15. (1) Whenever two (2) or more competitive bids are  
41 received, one or more of which relates to commodities grown,  
42 processed or manufactured within this state, and whenever all  
43 things stated in such received bids are substantially equal with  
44 respect to \* \* \* quality and service, but differ only with respect  
45 to price, the commodities grown, processed or manufactured within  
46 this state shall be given preference and a nonresident bidder  
47 domiciled in a state having laws granting preference to resident  
48 bidders shall be awarded Mississippi contracts only on the same  
49 basis as the nonresident bidder's state awards contracts to  
50 Mississippi residents bidding under similar circumstances; and  
51 resident bidders actually domiciled in Mississippi, whether  
52 corporate, individuals, or partnerships, are to be granted  
53 preference over nonresidents in awarding of contracts in the same  
54 manner and to the same extent as provided by the laws of the state  
55 of domicile of the nonresident. When a nonresident contractor  
56 submits a bid for a contract, he shall attach thereto a copy of  
57 his resident state's current law pertaining to such state's  
58 treatment of nonresident bidders. A similar preference shall be  
59 given to commodities grown, processed or manufactured within this  
60 state whenever purchases are made without competitive bids, and  
61 when practical the Department of Finance and Administration may by  
62 regulation establish reasonable preferential policies for other  
63 commodities, giving preference to resident suppliers of this  
64 state.

65 (2) Any foreign manufacturing company with a factory in the  
66 state and with over fifty (50) employees working in the state  
67 shall have preference over any other foreign company where both  
68 price and quality are the same, regardless of where the product is  
69 manufactured.

70 (3) On or before January 1, 1991, the Department of Finance  
71 and Administration shall adopt bid and product specifications to  
72 be utilized by all state agencies that encourage the procurement  
73 of commodities made from recovered materials. Preference in  
74 awarding contracts for commodities shall be given to commodities  
75 offered at a competitive price.

76 (4) Each state agency is required to procure products made  
77 from recovered materials when those products are available at a  
78 competitive price. For purposes of this subsection, "competitive  
79 price" means a price not greater than ten percent (10%) above the  
80 lowest and best bidder. A decision not to procure products made  
81 from recovered materials must be based on a determination that  
82 such procurement:

83 (a) Is not available within a reasonable period of  
84 time; or

85 (b) Fails to meet the performance standards set forth  
86 in the applicable specifications; or

87 (c) Is not available at a competitive price.

88 **SECTION 3.** Section 31-7-47, Mississippi Code of 1972, is  
89 amended as follows:

90 31-7-47. In the letting of public contracts, whenever all  
91 things stated in the bids are substantially equal with regard to  
92 quality and service but differ only with respect to price,  
93 preference shall be given to resident contractors, and a  
94 nonresident bidder domiciled in a state, city, county, parish,  
95 province, nation or political subdivision having laws granting  
96 preference to local contractors shall be awarded Mississippi  
97 public contracts only on the same basis as the nonresident

98 bidder's state, city, county, parish, province, nation or  
99 political subdivision awards contracts to Mississippi contractors  
100 bidding under similar circumstances. Resident contractors  
101 actually domiciled in Mississippi, be they corporate, individuals  
102 or partnerships, are to be granted preference over nonresidents in  
103 awarding of contracts in the same manner and to the same extent as  
104 provided by the laws of the state, city, county, parish, province,  
105 nation or political subdivision of domicile of the nonresident.  
106 When a nonresident contractor submits a bid for a contract, he  
107 shall attach thereto a copy of his resident state's current law  
108 pertaining to such state's treatment of nonresident bidders.

109       **SECTION 4.** Section 31-7-55, Mississippi Code of 1972, is  
110 amended as follows:

111       **[For penalties applicable to violations occurring between**  
112 **January 1, 1981, and August 15, 1988, the following provisions**  
113 **govern.]**

114       31-7-55. (1) It is hereby declared to be unlawful and a  
115 violation of public policy of the State of Mississippi for any  
116 elected or appointed public officer of the state or the executive  
117 head of a state board, commission, department, subdivision of the  
118 state government or governing authority to make any purchases  
119 without the full compliance with the provisions of this section.  
120 Any elected or appointed public officer of the state or the  
121 executive head of a state board, commission, department,  
122 subdivision of the state government or governing authority who  
123 violates the provisions of this section shall be deemed guilty of  
124 a misdemeanor and, upon conviction therefor, shall be fined not  
125 less than One Hundred Dollars (\$100.00) and not more than Five  
126 Hundred Dollars (\$500.00) for each separate offense, or sentenced  
127 to the county jail for not more than six (6) months, or both such  
128 fine and imprisonment, and shall be removed from his office or  
129 position.

130           (2) Any person diverting the benefits of any article of  
131 value tendered or received by any agency or governing authority to  
132 his or her personal use, in violation of Section 31-7-23, shall be  
133 guilty of a misdemeanor and, upon conviction, shall be punished by  
134 a fine of not less than One Hundred Dollars (\$100.00) nor more  
135 than Five Hundred Dollars (\$500.00), or sentenced to the county  
136 jail for not more than six (6) months, or by both such fine and  
137 imprisonment, and shall be required to return the money value of  
138 the article unlawfully diverted to the agency involved.

139           **[The following provisions apply to violations which occur on**  
140 **or after August 16, 1988, and until July 1, 2004.]**

141           31-7-55. (1) It is hereby declared to be unlawful and a  
142 violation of public policy of the State of Mississippi for any  
143 elected or appointed public officer of an agency or a governing  
144 authority, or the executive head, any employee or agent of an  
145 agency or governing authority to make any purchases without the  
146 full compliance with the provisions of Chapter 7, Title 31,  
147 Mississippi Code of 1972.

148           (2) Except as otherwise provided in subsection (4) of this  
149 section, any person who intentionally, willfully and knowingly  
150 violates the provisions of Chapter 7, Title 31, Mississippi Code  
151 of 1972, shall be deemed guilty of a misdemeanor and, upon  
152 conviction thereof, shall be fined not less than One Hundred  
153 Dollars (\$100.00) and not more than Five Hundred Dollars (\$500.00)  
154 for each separate offense, or sentenced to the county jail for not  
155 more than six (6) months, or both such fine and imprisonment, and  
156 shall be removed from his office or position.

157           (3) Any person who intentionally, willfully and knowingly  
158 violates the provisions of subsection (1) of Section 31-7-57 shall  
159 be guilty of a misdemeanor and, upon conviction thereof, shall be  
160 fined not less than One Hundred Dollars (\$100.00) and not more  
161 than Five Hundred Dollars (\$500.00), or sentenced to the county

162 jail for not more than six (6) months, or both such fine and  
163 imprisonment, and shall be removed from his office or position.

164 (4) Any person diverting the benefits of any article of  
165 value tendered or received by any agency or governing authority to  
166 his or her personal use, in violation of Section 31-7-23, if the  
167 value of such article be less than Five Hundred Dollars (\$500.00),  
168 shall be guilty of a misdemeanor and, upon conviction, shall be  
169 punished by a fine of not less than One Hundred Dollars (\$100.00)  
170 nor more than Five Hundred Dollars (\$500.00), or sentenced to the  
171 county jail for not more than six (6) months, or by both such fine  
172 and imprisonment, shall be removed from his office or position,  
173 and shall be required to return the money value of the article  
174 unlawfully diverted to the agency or governing authority involved.  
175 If the value of the article be Five Hundred Dollars (\$500.00) or  
176 more, such person shall be guilty of a felony and, upon  
177 conviction, shall be punished by a fine of not less than One  
178 Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars  
179 (\$5,000.00), or sentenced to the Department of Corrections for not  
180 less than one (1) year nor more than five (5) years, or by both  
181 such fine and imprisonment, shall be removed from his office or  
182 position, and shall be required to return the money value of the  
183 article unlawfully diverted to the agency or governing authority  
184 involved.

185 (5) The provisions of this section are supplemental to any  
186 other criminal statutes of this state.

187 **[The following provisions apply to violations which occur on**  
188 **or after July 1, 2004.]**

189 31-7-55. (1) It is hereby declared to be unlawful and a  
190 violation of public policy of the State of Mississippi for any  
191 elected or appointed public officer of an agency or a governing  
192 authority, or the executive head, any employee or agent of an  
193 agency or governing authority to make any purchases without the

194 full compliance with the provisions of Chapter 7, Title 31,  
195 Mississippi Code of 1972.

196 (2) Except as otherwise provided in this section, any person  
197 who intentionally, willfully and knowingly violates the provisions  
198 of Chapter 7, Title 31, Mississippi Code of 1972, shall be deemed  
199 guilty of a misdemeanor and, upon conviction thereof, shall be  
200 fined not less than One Hundred Dollars (\$100.00) and not more  
201 than Five Hundred Dollars (\$500.00) for each separate offense, or  
202 sentenced to the county jail for not more than six (6) months, or  
203 both such fine and imprisonment, and shall be removed from his  
204 office or position.

205 (3) Any person who intentionally, willfully and knowingly  
206 violates the provisions of subsection (1) of Section 31-7-57 shall  
207 be guilty of a misdemeanor and, upon conviction thereof, shall be  
208 fined not less than One Hundred Dollars (\$100.00) and not more  
209 than Five Hundred Dollars (\$500.00), or sentenced to the county  
210 jail for not more than six (6) months, or both such fine and  
211 imprisonment, and shall be removed from his office or position.

212 (4) Any person diverting the benefits of any article of  
213 value tendered or received by any agency or governing authority to  
214 his or her personal use, in violation of Section 31-7-23, if the  
215 value of such article is less than Five Hundred Dollars (\$500.00),  
216 shall be guilty of a misdemeanor and, upon conviction, shall be  
217 punished by a fine of not less than One Hundred Dollars (\$100.00)  
218 nor more than Five Hundred Dollars (\$500.00), or sentenced to the  
219 county jail for not more than six (6) months, or by both such fine  
220 and imprisonment, shall be removed from his office or position and  
221 shall be required to return the money value of the article  
222 unlawfully diverted to the agency or governing authority involved.  
223 If the value of the article is Five Hundred Dollars (\$500.00) or  
224 more, such person shall be guilty of a felony and, upon  
225 conviction, shall be punished by a fine of not less than One  
226 Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars

227 (\$5,000.00), or sentenced to the Department of Corrections for not  
228 less than one (1) year nor more than five (5) years, or by both  
229 such fine and imprisonment, shall be removed from his office or  
230 position and shall be required to return the money value of the  
231 article unlawfully diverted to the agency or governing authority  
232 involved.

233 (5) Any person who intentionally, willfully and knowingly  
234 violates the provisions of Section 19-13-111, subsection (3) of  
235 Section 31-3-21, subsection (1) of Section 31-7-15 or Section  
236 31-7-47 shall be guilty of a misdemeanor and, upon conviction  
237 thereof, shall be fined not less than Five Hundred Dollars  
238 (\$500.00) and not more than One Thousand Dollars (\$1,000.00), or  
239 sentenced to the county jail for not more than six (6) months, or  
240 both such fine and imprisonment, and shall be removed from his  
241 office or position.

242 (6) The provisions of this section are supplemental to any  
243 other criminal statutes of this state.

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