

By: Representatives Denny, Gunn, Baker
(8th), Staples, Mims, Chism, Robinson (84th),
Beckett, Davis, Fillingane, Simpson, Barnett,
Ellington, Formby, Guice, Mayhall, Turner,
Moore, Snowden, Stevens, Wells-Smith, Lott,
Upshaw

To: Judiciary A;
Appropriations

HOUSE BILL NO. 213

1 AN ACT TO CREATE THE PRIVATE ATTORNEY RETENTION SUNSHINE ACT;
2 TO DEFINE CERTAIN TERMS; TO PROVIDE FOR THE PROCUREMENT OF LEGAL
3 SERVICES BY STATE AGENCIES; TO PROVIDE FOR OVERSIGHT; TO REQUIRE
4 HEARINGS AND APPROVAL OF CONTRACTS; TO CAP LEGAL FEES; TO AMEND
5 SECTION 31-7-13, MISSISSIPPI CODE OF 1972, IN CONFORMITY; AND FOR
6 RELATED PURPOSES.

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

8 **SECTION 1.** This act shall be known and may be cited as the
9 Private Attorney Retention Sunshine Act.

10 **SECTION 2.** For the purposes of this act, a contract in
11 excess of One Million Dollars (\$1,000,000.00) is one in which the
12 fee paid to an attorney or group of attorneys, either in the form
13 of a flat, hourly or contingent fee, and their expenses exceed, or
14 can be reasonably expected to exceed, One Million Dollars
15 (\$1,000,000.00).

16 **SECTION 3.** Any state agency or state agent that wishes to
17 retain a lawyer or law firm to perform legal services on behalf of
18 this state shall not do so until an open and competitive bidding
19 process has been undertaken.

20 **SECTION 4.** No state agency or state agent shall enter into a
21 contract for legal services exceeding One Million Dollars
22 (\$1,000,000.00) without the opportunity for at least one (1)
23 hearing in the Legislature on the terms of the legal contract in
24 accordance with Section 5 of this act.

25 **SECTION 5.** (1) As provided in the requirement of Section 4,
26 any state agency or state agent entering into a contract for legal
27 services in excess of One Million Dollars (\$1,000,000.00) shall
28 file a copy of said proposed contract with the Clerk of the House
29 of Representatives, who, with the approval of the President of the

30 Senate and the Speaker of the House of Representatives, shall
31 refer such contract to the appropriate committees.

32 (2) Within thirty (30) days after such referral, the
33 committees may hold a public hearing on the proposed contract and
34 shall issue a report to the referring state agency or agent. The
35 report shall include any proposed changes to the proposed contract
36 voted upon by the committee. The state agency or state agent
37 shall review the report and adopt a final contract as deemed
38 appropriate in view of the report and shall file with the Clerk of
39 the House of Representatives its final contract.

40 (3) If the proposed contract does not contain the changes
41 proposed by the committee, the referring state agency or agent
42 shall send a letter to the clerk accompanying the final contract
43 stating the reasons why such proposed changes were not adopted.
44 The clerk shall refer such letter and final regulations to the
45 appropriate committee. Not earlier than forty-five (45) days
46 after the filing of such letter and final contract with the
47 committee, the state agency or agent shall enter into the final
48 contract.

49 (4) If no proposed changes to the proposed contract are made
50 to the state agency or agent within sixty (60) days of the initial
51 filing of the proposed regulation or any amendment or repeal of
52 such regulation with the Clerk of the House of Representatives,
53 the state agency or agent may enter into the contract.

54 (5) Nothing in this act shall be construed to expand the
55 authority of any state agency or agent to enter into contracts
56 where no such authority previously existed.

57 (6) In the event that the Legislature is not in session and
58 the Attorney General wishes to execute a contract for legal
59 services the Governor, with the unanimous consent of the Speaker
60 of the House and the President of the Senate, may establish a
61 five-member interim committee consisting of five (5) state
62 legislators, one (1) to be appointed by the Governor, two (2) by

63 the Speaker of the House and two (2) by the President of the
64 Senate, to execute the oversight duties as set forth in
65 subsections (2) through (5).

66 **SECTION 6.** (1) At the conclusion of any legal proceeding
67 for which a state agency or agent retained outside counsel on a
68 contingent fee basis, the state shall receive from counsel a
69 statement of the hours worked on the case, expenses incurred, the
70 aggregate fee amount, and a breakdown as to the hourly rate, based
71 on hours worked divided into fee recovered, less expenses.

72 (2) In no case shall the state incur fees and expenses in
73 excess of One Thousand Dollars (\$1,000.00) per hour for legal
74 services. In cases where a disclosure submitted in accordance
75 with paragraph (1) of this section indicates an hourly rate in
76 excess of One Thousand Dollars (\$1,000.00) per hour, the fee
77 amount shall be reduced to an amount equivalent to One Thousand
78 Dollars (\$1,000.00) per hour.

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

81 31-7-13. Except as otherwise provided by Sections 1 through
82 6 of House Bill No. _____, 2005 Regular Session, all agencies and
83 governing authorities shall purchase their commodities and
84 printing; contract for garbage collection or disposal; contract
85 for solid waste collection or disposal; contract for sewage
86 collection or disposal; contract for public construction; and
87 contract for rentals as herein provided.

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

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

97 (b) **Bidding procedure for purchases over \$3,500.00 but**
98 **not over \$15,000.00.** Purchases which involve an expenditure of
99 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
100 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
101 freight and shipping charges may be made from the lowest and best
102 bidder without publishing or posting advertisement for bids,
103 provided at least two (2) competitive written bids have been
104 obtained. Any governing authority purchasing commodities pursuant
105 to this paragraph (b) may authorize its purchasing agent, or his
106 designee, with regard to governing authorities other than
107 counties, or its purchase clerk, or his designee, with regard to
108 counties, to accept the lowest and best competitive written bid.
109 Such authorization shall be made in writing by the governing
110 authority and shall be maintained on file in the primary office of
111 the agency and recorded in the official minutes of the governing
112 authority, as appropriate. The purchasing agent or the purchase
113 clerk, or their designee, as the case may be, and not the
114 governing authority, shall be liable for any penalties and/or
115 damages as may be imposed by law for any act or omission of the
116 purchasing agent or purchase clerk, or their designee,
117 constituting a violation of law in accepting any bid without
118 approval by the governing authority. The term "competitive
119 written bid" shall mean a bid submitted on a bid form furnished by
120 the buying agency or governing authority and signed by authorized
121 personnel representing the vendor, or a bid submitted on a
122 vendor's letterhead or identifiable bid form and signed by
123 authorized personnel representing the vendor. "Competitive" shall
124 mean that the bids are developed based upon comparable
125 identification of the needs and are developed independently and
126 without knowledge of other bids or prospective bids. Bids may be
127 submitted by facsimile, electronic mail or other generally

128 accepted method of information distribution. Bids submitted by
129 electronic transmission shall not require the signature of the
130 vendor's representative unless required by agencies or governing
131 authorities.

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

133 (i) **Publication requirement.** Purchases which
134 involve an expenditure of more than Fifteen Thousand Dollars
135 (\$15,000.00), exclusive of freight and shipping charges, may be
136 made from the lowest and best bidder after advertising for
137 competitive sealed bids once each week for two (2) consecutive
138 weeks in a regular newspaper published in the county or
139 municipality in which such agency or governing authority is
140 located. The date as published for the bid opening shall not be
141 less than seven (7) working days after the last published notice;
142 however, if the purchase involves a construction project in which
143 the estimated cost is in excess of Fifteen Thousand Dollars
144 (\$15,000.00), such bids shall not be opened in less than fifteen
145 (15) working days after the last notice is published and the
146 notice for the purchase of such construction shall be published
147 once each week for two (2) consecutive weeks. The notice of
148 intention to let contracts or purchase equipment shall state the
149 time and place at which bids shall be received, list the contracts
150 to be made or types of equipment or supplies to be purchased, and,
151 if all plans and/or specifications are not published, refer to the
152 plans and/or specifications on file. If there is no newspaper
153 published in the county or municipality, then such notice shall be
154 given by posting same at the courthouse, or for municipalities at
155 the city hall, and at two (2) other public places in the county or
156 municipality, and also by publication once each week for two (2)
157 consecutive weeks in some newspaper having a general circulation
158 in the county or municipality in the above provided manner. On
159 the same date that the notice is submitted to the newspaper for
160 publication, the agency or governing authority involved shall mail

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

164 (ii) **Bidding process amendment procedure.** If all
165 plans and/or specifications are published in the notification,
166 then the plans and/or specifications may not be amended. If all
167 plans and/or specifications are not published in the notification,
168 then amendments to the plans/specifications, bid opening date, bid
169 opening time and place may be made, provided that the agency or
170 governing authority maintains a list of all prospective bidders
171 who are known to have received a copy of the bid documents and all
172 such prospective bidders are sent copies of all amendments. This
173 notification of amendments may be made via mail, facsimile,
174 electronic mail or other generally accepted method of information
175 distribution. No addendum to bid specifications may be issued
176 within two (2) working days of the time established for the
177 receipt of bids unless such addendum also amends the bid opening
178 to a date not less than five (5) working days after the date of
179 the addendum.

180 (iii) **Filing requirement.** In all cases involving
181 governing authorities, before the notice shall be published or
182 posted, the plans or specifications for the construction or
183 equipment being sought shall be filed with the clerk of the board
184 of the governing authority. In addition to these requirements, a
185 bid file shall be established which shall indicate those vendors
186 to whom such solicitations and specifications were issued, and
187 such file shall also contain such information as is pertinent to
188 the bid.

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

194 request for specific equipment necessary to perform a specific
195 job. Further, such justification, when placed on the minutes of
196 the board of a governing authority, may serve as authority for
197 that governing authority to write specifications to require a
198 specific item of equipment needed to perform a specific job. In
199 addition to these requirements, from and after July 1, 1990,
200 vendors of relocatable classrooms and the specifications for the
201 purchase of such relocatable classrooms published by local school
202 boards shall meet all pertinent regulations of the State Board of
203 Education, including prior approval of such bid by the State
204 Department of Education.

205 (v) Agencies and governing authorities may
206 establish secure procedures by which bids may be submitted via
207 electronic means.

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

209 (i) **Decision procedure.** Purchases may be made
210 from the lowest and best bidder. In determining the lowest and
211 best bid, freight and shipping charges shall be included.
212 Life-cycle costing, total cost bids, warranties, guaranteed
213 buy-back provisions and other relevant provisions may be included
214 in the best bid calculation. All best bid procedures for state
215 agencies must be in compliance with regulations established by the
216 Department of Finance and Administration. If any governing
217 authority accepts a bid other than the lowest bid actually
218 submitted, it shall place on its minutes detailed calculations and
219 narrative summary showing that the accepted bid was determined to
220 be the lowest and best bid, including the dollar amount of the
221 accepted bid and the dollar amount of the lowest bid. No agency
222 or governing authority shall accept a bid based on items not
223 included in the specifications.

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

227 following procedure: Purchases may be made from the bidder
228 offering the best value. In determining the best value bid,
229 freight and shipping charges shall be included. Life-cycle
230 costing, total cost bids, warranties, guaranteed buy-back
231 provisions, documented previous experience, training costs and
232 other relevant provisions may be included in the best value
233 calculation. This provision shall authorize Certified Purchasing
234 Offices to utilize a Request For Proposals (RFP) process when
235 purchasing commodities. All best value procedures for state
236 agencies must be in compliance with regulations established by the
237 Department of Finance and Administration. No agency or governing
238 authority shall accept a bid based on items or criteria not
239 included in the specifications.

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

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

246 (e) **Lease-purchase authorization.** For the purposes of
247 this section, the term "equipment" shall mean equipment, furniture
248 and, if applicable, associated software and other applicable
249 direct costs associated with the acquisition. Any lease-purchase
250 of equipment which an agency is not required to lease-purchase
251 under the master lease-purchase program pursuant to Section
252 31-7-10 and any lease-purchase of equipment which a governing
253 authority elects to lease-purchase may be acquired by a
254 lease-purchase agreement under this paragraph (e). Lease-purchase
255 financing may also be obtained from the vendor or from a
256 third-party source after having solicited and obtained at least
257 two (2) written competitive bids, as defined in paragraph (b) of
258 this section, for such financing without advertising for such
259 bids. Solicitation for the bids for financing may occur before or

260 after acceptance of bids for the purchase of such equipment or,
261 where no such bids for purchase are required, at any time before
262 the purchase thereof. No such lease-purchase agreement shall be
263 for an annual rate of interest which is greater than the overall
264 maximum interest rate to maturity on general obligation
265 indebtedness permitted under Section 75-17-101, and the term of
266 such lease-purchase agreement shall not exceed the useful life of
267 equipment covered thereby as determined according to the upper
268 limit of the asset depreciation range (ADR) guidelines for the
269 Class Life Asset Depreciation Range System established by the
270 Internal Revenue Service pursuant to the United States Internal
271 Revenue Code and regulations thereunder as in effect on December
272 31, 1980, or comparable depreciation guidelines with respect to
273 any equipment not covered by ADR guidelines. Any lease-purchase
274 agreement entered into pursuant to this paragraph (e) may contain
275 any of the terms and conditions which a master lease-purchase
276 agreement may contain under the provisions of Section 31-7-10(5),
277 and shall contain an annual allocation dependency clause
278 substantially similar to that set forth in Section 31-7-10(8).
279 Each agency or governing authority entering into a lease-purchase
280 transaction pursuant to this paragraph (e) shall maintain with
281 respect to each such lease-purchase transaction the same
282 information as required to be maintained by the Department of
283 Finance and Administration pursuant to Section 31-7-10(13).
284 However, nothing contained in this section shall be construed to
285 permit agencies to acquire items of equipment with a total
286 acquisition cost in the aggregate of less than Ten Thousand
287 Dollars (\$10,000.00) by a single lease-purchase transaction. All
288 equipment, and the purchase thereof by any lessor, acquired by
289 lease-purchase under this paragraph and all lease-purchase
290 payments with respect thereto shall be exempt from all Mississippi
291 sales, use and ad valorem taxes. Interest paid on any

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

294 (f) **Alternate bid authorization.** When necessary to
295 ensure ready availability of commodities for public works and the
296 timely completion of public projects, no more than two (2)
297 alternate bids may be accepted by a governing authority for
298 commodities. No purchases may be made through use of such
299 alternate bids procedure unless the lowest and best bidder cannot
300 deliver the commodities contained in his bid. In that event,
301 purchases of such commodities may be made from one (1) of the
302 bidders whose bid was accepted as an alternate.

303 (g) **Construction contract change authorization.** In the
304 event a determination is made by an agency or governing authority
305 after a construction contract is let that changes or modifications
306 to the original contract are necessary or would better serve the
307 purpose of the agency or the governing authority, such agency or
308 governing authority may, in its discretion, order such changes
309 pertaining to the construction that are necessary under the
310 circumstances without the necessity of further public bids;
311 provided that such change shall be made in a commercially
312 reasonable manner and shall not be made to circumvent the public
313 purchasing statutes. In addition to any other authorized person,
314 the architect or engineer hired by an agency or governing
315 authority with respect to any public construction contract shall
316 have the authority, when granted by an agency or governing
317 authority, to authorize changes or modifications to the original
318 contract without the necessity of prior approval of the agency or
319 governing authority when any such change or modification is less
320 than one percent (1%) of the total contract amount. The agency or
321 governing authority may limit the number, manner or frequency of
322 such emergency changes or modifications.

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

325 agency or governing authority shall have a need for gas, diesel
326 fuel, oils and/or other petroleum products in excess of the amount
327 set forth in paragraph (a) of this section, such agency or
328 governing authority may purchase the commodity after having
329 solicited and obtained at least two (2) competitive written bids,
330 as defined in paragraph (b) of this section. If two (2)
331 competitive written bids are not obtained, the entity shall comply
332 with the procedures set forth in paragraph (c) of this section.
333 In the event any agency or governing authority shall have
334 advertised for bids for the purchase of gas, diesel fuel, oils and
335 other petroleum products and coal and no acceptable bids can be
336 obtained, such agency or governing authority is authorized and
337 directed to enter into any negotiations necessary to secure the
338 lowest and best contract available for the purchase of such
339 commodities.

340 (i) **Road construction petroleum products price**
341 **adjustment clause authorization.** Any agency or governing
342 authority authorized to enter into contracts for the construction,
343 maintenance, surfacing or repair of highways, roads or streets,
344 may include in its bid proposal and contract documents a price
345 adjustment clause with relation to the cost to the contractor,
346 including taxes, based upon an industry-wide cost index, of
347 petroleum products including asphalt used in the performance or
348 execution of the contract or in the production or manufacture of
349 materials for use in such performance. Such industry-wide index
350 shall be established and published monthly by the Mississippi
351 Department of Transportation with a copy thereof to be mailed,
352 upon request, to the clerks of the governing authority of each
353 municipality and the clerks of each board of supervisors
354 throughout the state. The price adjustment clause shall be based
355 on the cost of such petroleum products only and shall not include
356 any additional profit or overhead as part of the adjustment. The
357 bid proposals or document contract shall contain the basis and

358 methods of adjusting unit prices for the change in the cost of
359 such petroleum products.

360 (j) **State agency emergency purchase procedure.** If the
361 governing board or the executive head, or his designee, of any
362 agency of the state shall determine that an emergency exists in
363 regard to the purchase of any commodities or repair contracts, so
364 that the delay incident to giving opportunity for competitive
365 bidding would be detrimental to the interests of the state, then
366 the provisions herein for competitive bidding shall not apply and
367 the head of such agency shall be authorized to make the purchase
368 or repair. Total purchases so made shall only be for the purpose
369 of meeting needs created by the emergency situation. In the event
370 such executive head is responsible to an agency board, at the
371 meeting next following the emergency purchase, documentation of
372 the purchase, including a description of the commodity purchased,
373 the purchase price thereof and the nature of the emergency shall
374 be presented to the board and placed on the minutes of the board
375 of such agency. The head of such agency, or his designee, shall,
376 at the earliest possible date following such emergency purchase,
377 file with the Department of Finance and Administration (i) a
378 statement explaining the conditions and circumstances of the
379 emergency, which shall include a detailed description of the
380 events leading up to the situation and the negative impact to the
381 entity if the purchase is made following the statutory
382 requirements set forth in paragraph (a), (b) or (c) of this
383 section, and (ii) a certified copy of the appropriate minutes of
384 the board of such agency, if applicable. On or before September 1
385 of each year, the State Auditor shall prepare and deliver to the
386 Senate Fees, Salaries and Administration Committee, the House Fees
387 and Salaries of Public Officers Committee and the Joint
388 Legislative Budget Committee a report containing a list of all
389 state agency emergency purchases and supporting documentation for
390 each emergency purchase.

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

392 If the governing authority, or the governing authority acting
393 through its designee, shall determine that an emergency exists in
394 regard to the purchase of any commodities or repair contracts, so
395 that the delay incident to giving opportunity for competitive
396 bidding would be detrimental to the interest of the governing
397 authority, then the provisions herein for competitive bidding
398 shall not apply and any officer or agent of such governing
399 authority having general or special authority therefor in making
400 such purchase or repair shall approve the bill presented therefor,
401 and he shall certify in writing thereon from whom such purchase
402 was made, or with whom such a repair contract was made. At the
403 board meeting next following the emergency purchase or repair
404 contract, documentation of the purchase or repair contract,
405 including a description of the commodity purchased, the price
406 thereof and the nature of the emergency shall be presented to the
407 board and shall be placed on the minutes of the board of such
408 governing authority.

409 (l) **Hospital purchase, lease-purchase and lease**
410 **authorization.**

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

416 (ii) In addition to the authority granted in
417 subparagraph (i) of this paragraph (l), the commissioners or board
418 of trustees is authorized to enter into contracts for the lease of
419 equipment or services, or both, which it considers necessary for
420 the proper care of patients if, in its opinion, it is not
421 financially feasible to purchase the necessary equipment or
422 services. Any such contract for the lease of equipment or
423 services executed by the commissioners or board shall not exceed a

424 maximum of five (5) years' duration and shall include a
425 cancellation clause based on unavailability of funds. If such
426 cancellation clause is exercised, there shall be no further
427 liability on the part of the lessee. Any such contract for the
428 lease of equipment or services executed on behalf of the
429 commissioners or board that complies with the provisions of this
430 subparagraph (ii) shall be excepted from the bid requirements set
431 forth in this section.

432 (m) **Exceptions from bidding requirements.** Excepted
433 from bid requirements are:

434 (i) **Purchasing agreements approved by department.**

435 Purchasing agreements, contracts and maximum price regulations
436 executed or approved by the Department of Finance and
437 Administration.

438 (ii) **Outside equipment repairs.** Repairs to
439 equipment, when such repairs are made by repair facilities in the
440 private sector; however, engines, transmissions, rear axles and/or
441 other such components shall not be included in this exemption when
442 replaced as a complete unit instead of being repaired and the need
443 for such total component replacement is known before disassembly
444 of the component; however, invoices identifying the equipment,
445 specific repairs made, parts identified by number and name,
446 supplies used in such repairs, and the number of hours of labor
447 and costs therefor shall be required for the payment for such
448 repairs.

449 (iii) **In-house equipment repairs.** Purchases of
450 parts for repairs to equipment, when such repairs are made by
451 personnel of the agency or governing authority; however, entire
452 assemblies, such as engines or transmissions, shall not be
453 included in this exemption when the entire assembly is being
454 replaced instead of being repaired.

455 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
456 of gravel or fill dirt which are to be removed and transported by
457 the purchaser.

458 (v) **Governmental equipment auctions.** Motor
459 vehicles or other equipment purchased from a federal agency or
460 authority, another governing authority or state agency of the
461 State of Mississippi, or any governing authority or state agency
462 of another state at a public auction held for the purpose of
463 disposing of such vehicles or other equipment. Any purchase by a
464 governing authority under the exemption authorized by this
465 subparagraph (v) shall require advance authorization spread upon
466 the minutes of the governing authority to include the listing of
467 the item or items authorized to be purchased and the maximum bid
468 authorized to be paid for each item or items.

469 (vi) **Intergovernmental sales and transfers.**
470 Purchases, sales, transfers or trades by governing authorities or
471 state agencies when such purchases, sales, transfers or trades are
472 made by a private treaty agreement or through means of
473 negotiation, from any federal agency or authority, another
474 governing authority or state agency of the State of Mississippi,
475 or any state agency or governing authority of another state.
476 Nothing in this section shall permit such purchases through public
477 auction except as provided for in subparagraph (v) of this
478 section. It is the intent of this section to allow governmental
479 entities to dispose of and/or purchase commodities from other
480 governmental entities at a price that is agreed to by both
481 parties. This shall allow for purchases and/or sales at prices
482 which may be determined to be below the market value if the
483 selling entity determines that the sale at below market value is
484 in the best interest of the taxpayers of the state. Governing
485 authorities shall place the terms of the agreement and any
486 justification on the minutes, and state agencies shall obtain

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

489 (vii) **Perishable supplies or food.** Perishable
490 supplies or foods purchased for use in connection with hospitals,
491 the school lunch programs, homemaking programs and for the feeding
492 of county or municipal prisoners.

493 (viii) **Single source items.** Noncompetitive items
494 available from one (1) source only. In connection with the
495 purchase of noncompetitive items only available from one (1)
496 source, a certification of the conditions and circumstances
497 requiring the purchase shall be filed by the agency with the
498 Department of Finance and Administration and by the governing
499 authority with the board of the governing authority. Upon receipt
500 of that certification the Department of Finance and Administration
501 or the board of the governing authority, as the case may be, may,
502 in writing, authorize the purchase, which authority shall be noted
503 on the minutes of the body at the next regular meeting thereafter.
504 In those situations, a governing authority is not required to
505 obtain the approval of the Department of Finance and
506 Administration.

507 (ix) **Waste disposal facility construction**
508 **contracts.** Construction of incinerators and other facilities for
509 disposal of solid wastes in which products either generated
510 therein, such as steam, or recovered therefrom, such as materials
511 for recycling, are to be sold or otherwise disposed of; however,
512 in constructing such facilities, a governing authority or agency
513 shall publicly issue requests for proposals, advertised for in the
514 same manner as provided herein for seeking bids for public
515 construction projects, concerning the design, construction,
516 ownership, operation and/or maintenance of such facilities,
517 wherein such requests for proposals when issued shall contain
518 terms and conditions relating to price, financial responsibility,
519 technology, environmental compatibility, legal responsibilities

520 and such other matters as are determined by the governing
521 authority or agency to be appropriate for inclusion; and after
522 responses to the request for proposals have been duly received,
523 the governing authority or agency may select the most qualified
524 proposal or proposals on the basis of price, technology and other
525 relevant factors and from such proposals, but not limited to the
526 terms thereof, negotiate and enter contracts with one or more of
527 the persons or firms submitting proposals.

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

531 (xi) **Information technology products.** Purchases
532 of information technology products made by governing authorities
533 under the provisions of purchase schedules, or contracts executed
534 or approved by the Mississippi Department of Information
535 Technology Services and designated for use by governing
536 authorities.

537 (xii) **Energy efficiency services and equipment.**
538 Energy efficiency services and equipment acquired by school
539 districts, community and junior colleges, institutions of higher
540 learning and state agencies or other applicable governmental
541 entities on a shared-savings, lease or lease-purchase basis
542 pursuant to Section 31-7-14.

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

547 (xiv) **Library books and other reference materials.**
548 Purchases by libraries or for libraries of books and periodicals;
549 processed film, video cassette tapes, filmstrips and slides;
550 recorded audio tapes, cassettes and diskettes; and any such items
551 as would be used for teaching, research or other information
552 distribution; however, equipment such as projectors, recorders,

553 audio or video equipment, and monitor televisions are not exempt
554 under this subparagraph.

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

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

561 (xvii) **Multichannel interactive video systems.**
562 From and after July 1, 1990, contracts by Mississippi Authority
563 for Educational Television with any private educational
564 institution or private nonprofit organization whose purposes are
565 educational in regard to the construction, purchase, lease or
566 lease-purchase of facilities and equipment and the employment of
567 personnel for providing multichannel interactive video systems
568 (ITSF) in the school districts of this state.

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

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

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

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

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

587 (xxii) **Garbage, solid waste and sewage contracts.**
588 Contracts for garbage collection or disposal, contracts for solid
589 waste collection or disposal and contracts for sewage collection
590 or disposal.

591 (xxiii) **Municipal water tank maintenance**
592 **contracts.** Professional maintenance program contracts for the
593 repair or maintenance of municipal water tanks, which provide
594 professional services needed to maintain municipal water storage
595 tanks for a fixed annual fee for a duration of two (2) or more
596 years.

597 (xxiv) **Purchases of Mississippi Industries for the**
598 **Blind products.** Purchases made by state agencies or governing
599 authorities involving any item that is manufactured, processed or
600 produced by the Mississippi Industries for the Blind.

601 (xxv) **Purchases of state-adopted textbooks.**
602 Purchases of state-adopted textbooks by public school districts.

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

606 (xxvii) **Used heavy or specialized machinery or**
607 **equipment for installation of soil and water conservation**
608 **practices purchased at auction.** Used heavy or specialized
609 machinery or equipment used for the installation and
610 implementation of soil and water conservation practices or
611 measures purchased subject to the restrictions provided in
612 Sections 69-27-331 through 69-27-341. Any purchase by the State
613 Soil and Water Conservation Commission under the exemption
614 authorized by this subparagraph shall require advance
615 authorization spread upon the minutes of the commission to include
616 the listing of the item or items authorized to be purchased and
617 the maximum bid authorized to be paid for each item or items.

618 (xxviii) **Hospital lease of equipment or services.**
619 Leases by hospitals of equipment or services if the leases are in
620 compliance with paragraph (1)(ii).

621 (xxix) **Purchases made pursuant to qualified**
622 **cooperative purchasing agreements.** Purchases made by certified
623 purchasing offices of state agencies or governing authorities
624 under cooperative purchasing agreements previously approved by the
625 Office of Purchasing and Travel and established by or for any
626 municipality, county, parish or state government or the federal
627 government, provided that the notification to potential
628 contractors includes a clause that sets forth the availability of
629 the cooperative purchasing agreement to other governmental
630 entities. Such purchases shall only be made if the use of the
631 cooperative purchasing agreements is determined to be in the best
632 interest of the government entity.

633 (xxx) **School yearbooks.** Purchases of school
634 yearbooks by state agencies or governing authorities; provided,
635 however, that state agencies and governing authorities shall use
636 for these purchases the RFP process as set forth in the
637 Mississippi Procurement Manual adopted by the Office of Purchasing
638 and Travel.

639 (xxxi) **Design-build method or the design-build**
640 **bridging method of contracting.** Contracts entered into the
641 provisions of Section 31-11-3(9).

642 (n) **Term contract authorization.** All contracts for the
643 purchase of:

644 (i) All contracts for the purchase of commodities,
645 equipment and public construction (including, but not limited to,
646 repair and maintenance), may be let for periods of not more than
647 sixty (60) months in advance, subject to applicable statutory
648 provisions prohibiting the letting of contracts during specified
649 periods near the end of terms of office. Term contracts for a
650 period exceeding twenty-four (24) months shall also be subject to

651 ratification or cancellation by governing authority boards taking
652 office subsequent to the governing authority board entering the
653 contract.

654 (ii) Bid proposals and contracts may include price
655 adjustment clauses with relation to the cost to the contractor
656 based upon a nationally published industry-wide or nationally
657 published and recognized cost index. The cost index used in a
658 price adjustment clause shall be determined by the Department of
659 Finance and Administration for the state agencies and by the
660 governing board for governing authorities. The bid proposal and
661 contract documents utilizing a price adjustment clause shall
662 contain the basis and method of adjusting unit prices for the
663 change in the cost of such commodities, equipment and public
664 construction.

665 (o) **Purchase law violation prohibition and vendor**
666 **penalty.** No contract or purchase as herein authorized shall be
667 made for the purpose of circumventing the provisions of this
668 section requiring competitive bids, nor shall it be lawful for any
669 person or concern to submit individual invoices for amounts within
670 those authorized for a contract or purchase where the actual value
671 of the contract or commodity purchased exceeds the authorized
672 amount and the invoices therefor are split so as to appear to be
673 authorized as purchases for which competitive bids are not
674 required. Submission of such invoices shall constitute a
675 misdemeanor punishable by a fine of not less than Five Hundred
676 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
677 or by imprisonment for thirty (30) days in the county jail, or
678 both such fine and imprisonment. In addition, the claim or claims
679 submitted shall be forfeited.

680 (p) **Electrical utility petroleum-based equipment**
681 **purchase procedure.** When in response to a proper advertisement
682 therefor, no bid firm as to price is submitted to an electric
683 utility for power transformers, distribution transformers, power

684 breakers, reclosers or other articles containing a petroleum
685 product, the electric utility may accept the lowest and best bid
686 therefor although the price is not firm.

687 (q) **Fuel management system bidding procedure.** Any
688 governing authority or agency of the state shall, before
689 contracting for the services and products of a fuel management or
690 fuel access system, enter into negotiations with not fewer than
691 two (2) sellers of fuel management or fuel access systems for
692 competitive written bids to provide the services and products for
693 the systems. In the event that the governing authority or agency
694 cannot locate two (2) sellers of such systems or cannot obtain
695 bids from two (2) sellers of such systems, it shall show proof
696 that it made a diligent, good-faith effort to locate and negotiate
697 with two (2) sellers of such systems. Such proof shall include,
698 but not be limited to, publications of a request for proposals and
699 letters soliciting negotiations and bids. For purposes of this
700 paragraph (q), a fuel management or fuel access system is an
701 automated system of acquiring fuel for vehicles as well as
702 management reports detailing fuel use by vehicles and drivers, and
703 the term "competitive written bid" shall have the meaning as
704 defined in paragraph (b) of this section. Governing authorities
705 and agencies shall be exempt from this process when contracting
706 for the services and products of a fuel management or fuel access
707 systems under the terms of a state contract established by the
708 Office of Purchasing and Travel.

709 (r) **Solid waste contract proposal procedure.** Before
710 entering into any contract for garbage collection or disposal,
711 contract for solid waste collection or disposal or contract for
712 sewage collection or disposal, which involves an expenditure of
713 more than Fifty Thousand Dollars (\$50,000.00), a governing
714 authority or agency shall issue publicly a request for proposals
715 concerning the specifications for such services which shall be
716 advertised for in the same manner as provided in this section for

717 seeking bids for purchases which involve an expenditure of more
718 than the amount provided in paragraph (c) of this section. Any
719 request for proposals when issued shall contain terms and
720 conditions relating to price, financial responsibility,
721 technology, legal responsibilities and other relevant factors as
722 are determined by the governing authority or agency to be
723 appropriate for inclusion; all factors determined relevant by the
724 governing authority or agency or required by this paragraph (r)
725 shall be duly included in the advertisement to elicit proposals.
726 After responses to the request for proposals have been duly
727 received, the governing authority or agency shall select the most
728 qualified proposal or proposals on the basis of price, technology
729 and other relevant factors and from such proposals, but not
730 limited to the terms thereof, negotiate and enter contracts with
731 one or more of the persons or firms submitting proposals. If the
732 governing authority or agency deems none of the proposals to be
733 qualified or otherwise acceptable, the request for proposals
734 process may be reinitiated. Notwithstanding any other provisions
735 of this paragraph, where a county with at least thirty-five
736 thousand (35,000) nor more than forty thousand (40,000)
737 population, according to the 1990 federal decennial census, owns
738 or operates a solid waste landfill, the governing authorities of
739 any other county or municipality may contract with the governing
740 authorities of the county owning or operating the landfill,
741 pursuant to a resolution duly adopted and spread upon the minutes
742 of each governing authority involved, for garbage or solid waste
743 collection or disposal services through contract negotiations.

744 (s) **Minority set aside authorization.** Notwithstanding
745 any provision of this section to the contrary, any agency or
746 governing authority, by order placed on its minutes, may, in its
747 discretion, set aside not more than twenty percent (20%) of its
748 anticipated annual expenditures for the purchase of commodities
749 from minority businesses; however, all such set-aside purchases

750 shall comply with all purchasing regulations promulgated by the
751 Department of Finance and Administration and shall be subject to
752 bid requirements under this section. Set-aside purchases for
753 which competitive bids are required shall be made from the lowest
754 and best minority business bidder. For the purposes of this
755 paragraph, the term "minority business" means a business which is
756 owned by a majority of persons who are United States citizens or
757 permanent resident aliens (as defined by the Immigration and
758 Naturalization Service) of the United States, and who are Asian,
759 Black, Hispanic or Native American, according to the following
760 definitions:

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

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

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

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

772 (t) **Construction punch list restriction.** The
773 architect, engineer or other representative designated by the
774 agency or governing authority that is contracting for public
775 construction or renovation may prepare and submit to the
776 contractor only one (1) preliminary punch list of items that do
777 not meet the contract requirements at the time of substantial
778 completion and one (1) final list immediately before final
779 completion and final payment.

780 (u) **Purchase authorization clarification.** Nothing in
781 this section shall be construed as authorizing any purchase not
782 authorized by law.

783 **SECTION 8.** This act shall take effect and be in force from
784 and after July 1, 2005.