

By: Senator(s) Hyde-Smith

To: Municipalities; County Affairs

SENATE BILL NO. 2174

1 AN ACT TO AUTHORIZE COUNTIES AND MUNICIPALITIES TO CONTRACT
2 FOR THE SALE OF ADVERTISING ON PUBLIC MOTOR VEHICLES; TO PLACE
3 RESTRICTIONS ON SUCH ADVERTISING; TO AUTHORIZE COUNTIES AND CITIES
4 TO CONTRACT FOR A SPONSOR PURCHASE PROGRAM FOR SUCH VEHICLES; TO
5 AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO PROVIDE AN
6 EXCEPTION TO BID REQUIREMENTS FOR THE PURCHASE OF SPONSOR
7 ADVERTISEMENT VEHICLES; AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** (1) Any county or municipality may authorize the
10 sale of advertising on any law enforcement, emergency or other
11 motor vehicle owned, operated, contracted or controlled by the
12 county or municipality.

13 (2) Advertisement shall not contain the promotion of any
14 substance or activity that is illegal for minors such as alcohol,
15 tobacco and gambling.

16 (3) A county or municipality may contract for a sponsor
17 purchase program for vehicles at a nominal sum for a term of use
18 not to exceed thirty-six (36) months.

19 (4) No more than twenty-five percent (25%) of the exterior
20 area of a motor vehicle shall contain advertising.

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

23 31-7-13. All agencies and governing authorities shall
24 purchase their commodities and printing; contract for garbage
25 collection or disposal; contract for solid waste collection or
26 disposal; contract for sewage collection or disposal; contract for
27 public construction; and contract for rentals as herein provided.

28 (a) **Bidding procedure for purchases not over \$3,500.00.**
29 Purchases which do not involve an expenditure of more than Three

30 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
31 shipping charges, may be made without advertising or otherwise
32 requesting competitive bids. However, nothing contained in this
33 paragraph (a) shall be construed to prohibit any agency or
34 governing authority from establishing procedures which require
35 competitive bids on purchases of Three Thousand Five Hundred
36 Dollars (\$3,500.00) or less.

37 (b) **Bidding procedure for purchases over \$3,500.00 but**
38 **not over \$15,000.00.** Purchases which involve an expenditure of
39 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
40 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
41 freight and shipping charges may be made from the lowest and best
42 bidder without publishing or posting advertisement for bids,
43 provided at least two (2) competitive written bids have been
44 obtained. Any governing authority purchasing commodities pursuant
45 to this paragraph (b) may authorize its purchasing agent, or his
46 designee, with regard to governing authorities other than
47 counties, or its purchase clerk, or his designee, with regard to
48 counties, to accept the lowest and best competitive written bid.
49 Such authorization shall be made in writing by the governing
50 authority and shall be maintained on file in the primary office of
51 the agency and recorded in the official minutes of the governing
52 authority, as appropriate. The purchasing agent or the purchase
53 clerk, or their designee, as the case may be, and not the
54 governing authority, shall be liable for any penalties and/or
55 damages as may be imposed by law for any act or omission of the
56 purchasing agent or purchase clerk, or their designee,
57 constituting a violation of law in accepting any bid without
58 approval by the governing authority. The term "competitive
59 written bid" shall mean a bid submitted on a bid form furnished by
60 the buying agency or governing authority and signed by authorized
61 personnel representing the vendor, or a bid submitted on a
62 vendor's letterhead or identifiable bid form and signed by

63 authorized personnel representing the vendor. "Competitive" shall
64 mean that the bids are developed based upon comparable
65 identification of the needs and are developed independently and
66 without knowledge of other bids or prospective bids. Bids may be
67 submitted by facsimile, electronic mail or other generally
68 accepted method of information distribution. Bids submitted by
69 electronic transmission shall not require the signature of the
70 vendor's representative unless required by agencies or governing
71 authorities.

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

73 (i) **Publication requirement.** Purchases which
74 involve an expenditure of more than Fifteen Thousand Dollars
75 (\$15,000.00), exclusive of freight and shipping charges, may be
76 made from the lowest and best bidder after advertising for
77 competitive sealed bids once each week for two (2) consecutive
78 weeks in a regular newspaper published in the county or
79 municipality in which such agency or governing authority is
80 located. The date as published for the bid opening shall not be
81 less than seven (7) working days after the last published notice;
82 however, if the purchase involves a construction project in which
83 the estimated cost is in excess of Fifteen Thousand Dollars
84 (\$15,000.00), such bids shall not be opened in less than fifteen
85 (15) working days after the last notice is published and the
86 notice for the purchase of such construction shall be published
87 once each week for two (2) consecutive weeks. The notice of
88 intention to let contracts or purchase equipment shall state the
89 time and place at which bids shall be received, list the contracts
90 to be made or types of equipment or supplies to be purchased, and,
91 if all plans and/or specifications are not published, refer to the
92 plans and/or specifications on file. If there is no newspaper
93 published in the county or municipality, then such notice shall be
94 given by posting same at the courthouse, or for municipalities at
95 the city hall, and at two (2) other public places in the county or

96 municipality, and also by publication once each week for two (2)
97 consecutive weeks in some newspaper having a general circulation
98 in the county or municipality in the above provided manner. On
99 the same date that the notice is submitted to the newspaper for
100 publication, the agency or governing authority involved shall mail
101 written notice to, or provide electronic notification to the main
102 office of the Mississippi Contract Procurement Center that
103 contains the same information as that in the published notice.

104 (ii) **Bidding process amendment procedure.** If all
105 plans and/or specifications are published in the notification,
106 then the plans and/or specifications may not be amended. If all
107 plans and/or specifications are not published in the notification,
108 then amendments to the plans/specifications, bid opening date, bid
109 opening time and place may be made, provided that the agency or
110 governing authority maintains a list of all prospective bidders
111 who are known to have received a copy of the bid documents and all
112 such prospective bidders are sent copies of all amendments. This
113 notification of amendments may be made via mail, facsimile,
114 electronic mail or other generally accepted method of information
115 distribution. No addendum to bid specifications may be issued
116 within two (2) working days of the time established for the
117 receipt of bids unless such addendum also amends the bid opening
118 to a date not less than five (5) working days after the date of
119 the addendum.

120 (iii) **Filing requirement.** In all cases involving
121 governing authorities, before the notice shall be published or
122 posted, the plans or specifications for the construction or
123 equipment being sought shall be filed with the clerk of the board
124 of the governing authority. In addition to these requirements, a
125 bid file shall be established which shall indicate those vendors
126 to whom such solicitations and specifications were issued, and
127 such file shall also contain such information as is pertinent to
128 the bid.

129 (iv) **Specification restrictions.**

130 1. Specifications pertinent to such bidding
131 shall be written so as not to exclude comparable equipment of
132 domestic manufacture. However, if valid justification is
133 presented, the Department of Finance and Administration or the
134 board of a governing authority may approve a request for specific
135 equipment necessary to perform a specific job. Further, such
136 justification, when placed on the minutes of the board of a
137 governing authority, may serve as authority for that governing
138 authority to write specifications to require a specific item of
139 equipment needed to perform a specific job. In addition to these
140 requirements, from and after July 1, 1990, vendors of relocatable
141 classrooms and the specifications for the purchase of such
142 relocatable classrooms published by local school boards shall meet
143 all pertinent regulations of the State Board of Education,
144 including prior approval of such bid by the State Department of
145 Education.

146 2. Specifications for construction projects
147 may include an allowance for commodities, equipment, furniture,
148 construction materials or systems in which prospective bidders are
149 instructed to include in their bids specified amounts for such
150 items so long as the allowance items are acquired by the vendor in
151 a commercially reasonable manner and approved by the
152 agency/governing authority. Such acquisitions shall not be made
153 to circumvent the public purchasing laws.

154 (v) Agencies and governing authorities may
155 establish secure procedures by which bids may be submitted via
156 electronic means.

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

158 (i) **Decision procedure.** Purchases may be made
159 from the lowest and best bidder. In determining the lowest and
160 best bid, freight and shipping charges shall be included.
161 Life-cycle costing, total cost bids, warranties, guaranteed

162 buy-back provisions and other relevant provisions may be included
163 in the best bid calculation. All best bid procedures for state
164 agencies must be in compliance with regulations established by the
165 Department of Finance and Administration. If any governing
166 authority accepts a bid other than the lowest bid actually
167 submitted, it shall place on its minutes detailed calculations and
168 narrative summary showing that the accepted bid was determined to
169 be the lowest and best bid, including the dollar amount of the
170 accepted bid and the dollar amount of the lowest bid. No agency
171 or governing authority shall accept a bid based on items not
172 included in the specifications.

173 (ii) **Decision procedure for Certified Purchasing**
174 **Offices.** In addition to the decision procedure set forth in
175 paragraph (d)(i), Certified Purchasing Offices may also use the
176 following procedure: Purchases may be made from the bidder
177 offering the best value. In determining the best value bid,
178 freight and shipping charges shall be included. Life-cycle
179 costing, total cost bids, warranties, guaranteed buy-back
180 provisions, documented previous experience, training costs and
181 other relevant provisions may be included in the best value
182 calculation. This provision shall authorize Certified Purchasing
183 Offices to utilize a Request For Proposals (RFP) process when
184 purchasing commodities. All best value procedures for state
185 agencies must be in compliance with regulations established by the
186 Department of Finance and Administration. No agency or governing
187 authority shall accept a bid based on items or criteria not
188 included in the specifications.

189 (iii) **Construction project negotiations authority.**
190 If the lowest and best bid is not more than ten percent (10%)
191 above the amount of funds allocated for a public construction or
192 renovation project, then the agency or governing authority shall
193 be permitted to negotiate with the lowest bidder in order to enter
194 into a contract for an amount not to exceed the funds allocated.

195 (e) **Lease-purchase authorization.** For the purposes of
196 this section, the term "equipment" shall mean equipment, furniture
197 and, if applicable, associated software and other applicable
198 direct costs associated with the acquisition. Any lease-purchase
199 of equipment which an agency is not required to lease-purchase
200 under the master lease-purchase program pursuant to Section
201 31-7-10 and any lease-purchase of equipment which a governing
202 authority elects to lease-purchase may be acquired by a
203 lease-purchase agreement under this paragraph (e). Lease-purchase
204 financing may also be obtained from the vendor or from a
205 third-party source after having solicited and obtained at least
206 two (2) written competitive bids, as defined in paragraph (b) of
207 this section, for such financing without advertising for such
208 bids. Solicitation for the bids for financing may occur before or
209 after acceptance of bids for the purchase of such equipment or,
210 where no such bids for purchase are required, at any time before
211 the purchase thereof. No such lease-purchase agreement shall be
212 for an annual rate of interest which is greater than the overall
213 maximum interest rate to maturity on general obligation
214 indebtedness permitted under Section 75-17-101, and the term of
215 such lease-purchase agreement shall not exceed the useful life of
216 equipment covered thereby as determined according to the upper
217 limit of the asset depreciation range (ADR) guidelines for the
218 Class Life Asset Depreciation Range System established by the
219 Internal Revenue Service pursuant to the United States Internal
220 Revenue Code and regulations thereunder as in effect on December
221 31, 1980, or comparable depreciation guidelines with respect to
222 any equipment not covered by ADR guidelines. Any lease-purchase
223 agreement entered into pursuant to this paragraph (e) may contain
224 any of the terms and conditions which a master lease-purchase
225 agreement may contain under the provisions of Section 31-7-10(5),
226 and shall contain an annual allocation dependency clause
227 substantially similar to that set forth in Section 31-7-10(8).

228 Each agency or governing authority entering into a lease-purchase
229 transaction pursuant to this paragraph (e) shall maintain with
230 respect to each such lease-purchase transaction the same
231 information as required to be maintained by the Department of
232 Finance and Administration pursuant to Section 31-7-10(13).
233 However, nothing contained in this section shall be construed to
234 permit agencies to acquire items of equipment with a total
235 acquisition cost in the aggregate of less than Ten Thousand
236 Dollars (\$10,000.00) by a single lease-purchase transaction. All
237 equipment, and the purchase thereof by any lessor, acquired by
238 lease-purchase under this paragraph and all lease-purchase
239 payments with respect thereto shall be exempt from all Mississippi
240 sales, use and ad valorem taxes. Interest paid on any
241 lease-purchase agreement under this section shall be exempt from
242 State of Mississippi income taxation.

243 (f) **Alternate bid authorization.** When necessary to
244 ensure ready availability of commodities for public works and the
245 timely completion of public projects, no more than two (2)
246 alternate bids may be accepted by a governing authority for
247 commodities. No purchases may be made through use of such
248 alternate bids procedure unless the lowest and best bidder cannot
249 deliver the commodities contained in his bid. In that event,
250 purchases of such commodities may be made from one (1) of the
251 bidders whose bid was accepted as an alternate.

252 (g) **Construction contract change authorization.** In the
253 event a determination is made by an agency or governing authority
254 after a construction contract is let that changes or modifications
255 to the original contract are necessary or would better serve the
256 purpose of the agency or the governing authority, such agency or
257 governing authority may, in its discretion, order such changes
258 pertaining to the construction that are necessary under the
259 circumstances without the necessity of further public bids;
260 provided that such change shall be made in a commercially

261 reasonable manner and shall not be made to circumvent the public
262 purchasing statutes. In addition to any other authorized person,
263 the architect or engineer hired by an agency or governing
264 authority with respect to any public construction contract shall
265 have the authority, when granted by an agency or governing
266 authority, to authorize changes or modifications to the original
267 contract without the necessity of prior approval of the agency or
268 governing authority when any such change or modification is less
269 than one percent (1%) of the total contract amount. The agency or
270 governing authority may limit the number, manner or frequency of
271 such emergency changes or modifications.

272 (h) **Petroleum purchase alternative.** In addition to
273 other methods of purchasing authorized in this chapter, when any
274 agency or governing authority shall have a need for gas, diesel
275 fuel, oils and/or other petroleum products in excess of the amount
276 set forth in paragraph (a) of this section, such agency or
277 governing authority may purchase the commodity after having
278 solicited and obtained at least two (2) competitive written bids,
279 as defined in paragraph (b) of this section. If two (2)
280 competitive written bids are not obtained, the entity shall comply
281 with the procedures set forth in paragraph (c) of this section.
282 In the event any agency or governing authority shall have
283 advertised for bids for the purchase of gas, diesel fuel, oils and
284 other petroleum products and coal and no acceptable bids can be
285 obtained, such agency or governing authority is authorized and
286 directed to enter into any negotiations necessary to secure the
287 lowest and best contract available for the purchase of such
288 commodities.

289 (i) **Road construction petroleum products price**
290 **adjustment clause authorization.** Any agency or governing
291 authority authorized to enter into contracts for the construction,
292 maintenance, surfacing or repair of highways, roads or streets,
293 may include in its bid proposal and contract documents a price

294 adjustment clause with relation to the cost to the contractor,
295 including taxes, based upon an industry-wide cost index, of
296 petroleum products including asphalt used in the performance or
297 execution of the contract or in the production or manufacture of
298 materials for use in such performance. Such industry-wide index
299 shall be established and published monthly by the Mississippi
300 Department of Transportation with a copy thereof to be mailed,
301 upon request, to the clerks of the governing authority of each
302 municipality and the clerks of each board of supervisors
303 throughout the state. The price adjustment clause shall be based
304 on the cost of such petroleum products only and shall not include
305 any additional profit or overhead as part of the adjustment. The
306 bid proposals or document contract shall contain the basis and
307 methods of adjusting unit prices for the change in the cost of
308 such petroleum products.

309 (j) **State agency emergency purchase procedure.** If the
310 governing board or the executive head, or his designee, of any
311 agency of the state shall determine that an emergency exists in
312 regard to the purchase of any commodities or repair contracts, so
313 that the delay incident to giving opportunity for competitive
314 bidding would be detrimental to the interests of the state, then
315 the provisions herein for competitive bidding shall not apply and
316 the head of such agency shall be authorized to make the purchase
317 or repair. Total purchases so made shall only be for the purpose
318 of meeting needs created by the emergency situation. In the event
319 such executive head is responsible to an agency board, at the
320 meeting next following the emergency purchase, documentation of
321 the purchase, including a description of the commodity purchased,
322 the purchase price thereof and the nature of the emergency shall
323 be presented to the board and placed on the minutes of the board
324 of such agency. The head of such agency, or his designee, shall,
325 at the earliest possible date following such emergency purchase,
326 file with the Department of Finance and Administration (i) a

327 statement explaining the conditions and circumstances of the
328 emergency, which shall include a detailed description of the
329 events leading up to the situation and the negative impact to the
330 entity if the purchase is made following the statutory
331 requirements set forth in paragraph (a), (b) or (c) of this
332 section, and (ii) a certified copy of the appropriate minutes of
333 the board of such agency, if applicable. On or before September 1
334 of each year, the State Auditor shall prepare and deliver to the
335 Senate Fees, Salaries and Administration Committee, the House Fees
336 and Salaries of Public Officers Committee and the Joint
337 Legislative Budget Committee a report containing a list of all
338 state agency emergency purchases and supporting documentation for
339 each emergency purchase.

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

341 If the governing authority, or the governing authority acting
342 through its designee, shall determine that an emergency exists in
343 regard to the purchase of any commodities or repair contracts, so
344 that the delay incident to giving opportunity for competitive
345 bidding would be detrimental to the interest of the governing
346 authority, then the provisions herein for competitive bidding
347 shall not apply and any officer or agent of such governing
348 authority having general or special authority therefor in making
349 such purchase or repair shall approve the bill presented therefor,
350 and he shall certify in writing thereon from whom such purchase
351 was made, or with whom such a repair contract was made. At the
352 board meeting next following the emergency purchase or repair
353 contract, documentation of the purchase or repair contract,
354 including a description of the commodity purchased, the price
355 thereof and the nature of the emergency shall be presented to the
356 board and shall be placed on the minutes of the board of such
357 governing authority.

358 (l) **Hospital purchase, lease-purchase and lease**
359 **authorization.**

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

365 (ii) In addition to the authority granted in
366 subparagraph (i) of this paragraph (1), the commissioners or board
367 of trustees is authorized to enter into contracts for the lease of
368 equipment or services, or both, which it considers necessary for
369 the proper care of patients if, in its opinion, it is not
370 financially feasible to purchase the necessary equipment or
371 services. Any such contract for the lease of equipment or
372 services executed by the commissioners or board shall not exceed a
373 maximum of five (5) years' duration and shall include a
374 cancellation clause based on unavailability of funds. If such
375 cancellation clause is exercised, there shall be no further
376 liability on the part of the lessee. Any such contract for the
377 lease of equipment or services executed on behalf of the
378 commissioners or board that complies with the provisions of this
379 subparagraph (ii) shall be excepted from the bid requirements set
380 forth in this section.

381 (m) **Exceptions from bidding requirements.** Excepted
382 from bid requirements are:

383 (i) **Purchasing agreements approved by department.**
384 Purchasing agreements, contracts and maximum price regulations
385 executed or approved by the Department of Finance and
386 Administration.

387 (ii) **Outside equipment repairs.** Repairs to
388 equipment, when such repairs are made by repair facilities in the
389 private sector; however, engines, transmissions, rear axles and/or
390 other such components shall not be included in this exemption when
391 replaced as a complete unit instead of being repaired and the need
392 for such total component replacement is known before disassembly

393 of the component; however, invoices identifying the equipment,
394 specific repairs made, parts identified by number and name,
395 supplies used in such repairs, and the number of hours of labor
396 and costs therefor shall be required for the payment for such
397 repairs.

398 (iii) **In-house equipment repairs.** Purchases of
399 parts for repairs to equipment, when such repairs are made by
400 personnel of the agency or governing authority; however, entire
401 assemblies, such as engines or transmissions, shall not be
402 included in this exemption when the entire assembly is being
403 replaced instead of being repaired.

404 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
405 of gravel or fill dirt which are to be removed and transported by
406 the purchaser.

407 (v) **Governmental equipment auctions.** Motor
408 vehicles or other equipment purchased from a federal agency or
409 authority, another governing authority or state agency of the
410 State of Mississippi, or any governing authority or state agency
411 of another state at a public auction held for the purpose of
412 disposing of such vehicles or other equipment. Any purchase by a
413 governing authority under the exemption authorized by this
414 subparagraph (v) shall require advance authorization spread upon
415 the minutes of the governing authority to include the listing of
416 the item or items authorized to be purchased and the maximum bid
417 authorized to be paid for each item or items.

418 (vi) **Intergovernmental sales and transfers.**
419 Purchases, sales, transfers or trades by governing authorities or
420 state agencies when such purchases, sales, transfers or trades are
421 made by a private treaty agreement or through means of
422 negotiation, from any federal agency or authority, another
423 governing authority or state agency of the State of Mississippi,
424 or any state agency or governing authority of another state.
425 Nothing in this section shall permit such purchases through public

426 auction except as provided for in subparagraph (v) of this
427 section. It is the intent of this section to allow governmental
428 entities to dispose of and/or purchase commodities from other
429 governmental entities at a price that is agreed to by both
430 parties. This shall allow for purchases and/or sales at prices
431 which may be determined to be below the market value if the
432 selling entity determines that the sale at below market value is
433 in the best interest of the taxpayers of the state. Governing
434 authorities shall place the terms of the agreement and any
435 justification on the minutes, and state agencies shall obtain
436 approval from the Department of Finance and Administration, prior
437 to releasing or taking possession of the commodities.

438 (vii) **Perishable supplies or food.** Perishable
439 supplies or food purchased for use in connection with hospitals,
440 the school lunch programs, homemaking programs and for the feeding
441 of county or municipal prisoners.

442 (viii) **Single source items.** Noncompetitive items
443 available from one (1) source only. In connection with the
444 purchase of noncompetitive items only available from one (1)
445 source, a certification of the conditions and circumstances
446 requiring the purchase shall be filed by the agency with the
447 Department of Finance and Administration and by the governing
448 authority with the board of the governing authority. Upon receipt
449 of that certification the Department of Finance and Administration
450 or the board of the governing authority, as the case may be, may,
451 in writing, authorize the purchase, which authority shall be noted
452 on the minutes of the body at the next regular meeting thereafter.
453 In those situations, a governing authority is not required to
454 obtain the approval of the Department of Finance and
455 Administration.

456 (ix) **Waste disposal facility construction**
457 **contracts.** Construction of incinerators and other facilities for
458 disposal of solid wastes in which products either generated

459 therein, such as steam, or recovered therefrom, such as materials
460 for recycling, are to be sold or otherwise disposed of; however,
461 in constructing such facilities, a governing authority or agency
462 shall publicly issue requests for proposals, advertised for in the
463 same manner as provided herein for seeking bids for public
464 construction projects, concerning the design, construction,
465 ownership, operation and/or maintenance of such facilities,
466 wherein such requests for proposals when issued shall contain
467 terms and conditions relating to price, financial responsibility,
468 technology, environmental compatibility, legal responsibilities
469 and such other matters as are determined by the governing
470 authority or agency to be appropriate for inclusion; and after
471 responses to the request for proposals have been duly received,
472 the governing authority or agency may select the most qualified
473 proposal or proposals on the basis of price, technology and other
474 relevant factors and from such proposals, but not limited to the
475 terms thereof, negotiate and enter contracts with one or more of
476 the persons or firms submitting proposals.

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

480 (xi) **Information technology products.** Purchases
481 of information technology products made by governing authorities
482 under the provisions of purchase schedules, or contracts executed
483 or approved by the Mississippi Department of Information
484 Technology Services and designated for use by governing
485 authorities.

486 (xii) **Energy efficiency services and equipment.**
487 Energy efficiency services and equipment acquired by school
488 districts, community and junior colleges, institutions of higher
489 learning and state agencies or other applicable governmental
490 entities on a shared-savings, lease or lease-purchase basis
491 pursuant to Section 31-7-14.

492 (xiii) **Municipal electrical utility system fuel.**

493 Purchases of coal and/or natural gas by municipally-owned electric
494 power generating systems that have the capacity to use both coal
495 and natural gas for the generation of electric power.

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

497 Purchases by libraries or for libraries of books and periodicals;
498 processed film, video cassette tapes, filmstrips and slides;
499 recorded audio tapes, cassettes and diskettes; and any such items
500 as would be used for teaching, research or other information
501 distribution; however, equipment such as projectors, recorders,
502 audio or video equipment, and monitor televisions are not exempt
503 under this subparagraph.

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

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

510 (xvii) **Multichannel interactive video systems.**
511 From and after July 1, 1990, contracts by Mississippi Authority
512 for Educational Television with any private educational
513 institution or private nonprofit organization whose purposes are
514 educational in regard to the construction, purchase, lease or
515 lease-purchase of facilities and equipment and the employment of
516 personnel for providing multichannel interactive video systems
517 (ITSF) in the school districts of this state.

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

522 (xix) **Undercover operations equipment.** Purchases
523 of surveillance equipment or any other high-tech equipment to be
524 used by law enforcement agents in undercover operations, provided

525 that any such purchase shall be in compliance with regulations
526 established by the Department of Finance and Administration.

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

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

536 (xxii) **Garbage, solid waste and sewage contracts.**
537 Contracts for garbage collection or disposal, contracts for solid
538 waste collection or disposal and contracts for sewage collection
539 or disposal.

540 (xxiii) **Municipal water tank maintenance**
541 **contracts.** Professional maintenance program contracts for the
542 repair or maintenance of municipal water tanks, which provide
543 professional services needed to maintain municipal water storage
544 tanks for a fixed annual fee for a duration of two (2) or more
545 years.

546 (xxiv) **Purchases of Mississippi Industries for the**
547 **Blind products.** Purchases made by state agencies or governing
548 authorities involving any item that is manufactured, processed or
549 produced by the Mississippi Industries for the Blind.

550 (xxv) **Purchases of state-adopted textbooks.**
551 Purchases of state-adopted textbooks by public school districts.

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

555 (xxvii) **Used heavy or specialized machinery or**
556 **equipment for installation of soil and water conservation**
557 **practices purchased at auction.** Used heavy or specialized

558 machinery or equipment used for the installation and
559 implementation of soil and water conservation practices or
560 measures purchased subject to the restrictions provided in
561 Sections 69-27-331 through 69-27-341. Any purchase by the State
562 Soil and Water Conservation Commission under the exemption
563 authorized by this subparagraph shall require advance
564 authorization spread upon the minutes of the commission to include
565 the listing of the item or items authorized to be purchased and
566 the maximum bid authorized to be paid for each item or items.

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

570 (xxix) **Purchases made pursuant to qualified**
571 **cooperative purchasing agreements.** Purchases made by certified
572 purchasing offices of state agencies or governing authorities
573 under cooperative purchasing agreements previously approved by the
574 Office of Purchasing and Travel and established by or for any
575 municipality, county, parish or state government or the federal
576 government, provided that the notification to potential
577 contractors includes a clause that sets forth the availability of
578 the cooperative purchasing agreement to other governmental
579 entities. Such purchases shall only be made if the use of the
580 cooperative purchasing agreements is determined to be in the best
581 interest of the governmental entity.

582 (xxx) **School yearbooks.** Purchases of school
583 yearbooks by state agencies or governing authorities; provided,
584 however, that state agencies and governing authorities shall use
585 for these purchases the RFP process as set forth in the
586 Mississippi Procurement Manual adopted by the Office of Purchasing
587 and Travel.

588 (xxxii) **Design-build method or the design-build**
589 **bridging method of contracting.** Contracts entered into the
590 provisions of Section 31-11-3(9).

591 (xxxii) Purchases of vehicles through sponsor
592 advertisement program. Purchases of vehicles through a sponsor
593 advertisement program in which the vehicles are purchased for a
594 nominal sum for a term of advertisement program not to exceed
595 thirty-six (36) months.

596 (n) **Term contract authorization.** All contracts for the
597 purchase of:

598 (i) All contracts for the purchase of commodities,
599 equipment and public construction (including, but not limited to,
600 repair and maintenance), may be let for periods of not more than
601 sixty (60) months in advance, subject to applicable statutory
602 provisions prohibiting the letting of contracts during specified
603 periods near the end of terms of office. Term contracts for a
604 period exceeding twenty-four (24) months shall also be subject to
605 ratification or cancellation by governing authority boards taking
606 office subsequent to the governing authority board entering the
607 contract.

608 (ii) Bid proposals and contracts may include price
609 adjustment clauses with relation to the cost to the contractor
610 based upon a nationally published industry-wide or nationally
611 published and recognized cost index. The cost index used in a
612 price adjustment clause shall be determined by the Department of
613 Finance and Administration for the state agencies and by the
614 governing board for governing authorities. The bid proposal and
615 contract documents utilizing a price adjustment clause shall
616 contain the basis and method of adjusting unit prices for the
617 change in the cost of such commodities, equipment and public
618 construction.

619 (o) **Purchase law violation prohibition and vendor**
620 **penalty.** No contract or purchase as herein authorized shall be
621 made for the purpose of circumventing the provisions of this
622 section requiring competitive bids, nor shall it be lawful for any
623 person or concern to submit individual invoices for amounts within

624 those authorized for a contract or purchase where the actual value
625 of the contract or commodity purchased exceeds the authorized
626 amount and the invoices therefor are split so as to appear to be
627 authorized as purchases for which competitive bids are not
628 required. Submission of such invoices shall constitute a
629 misdemeanor punishable by a fine of not less than Five Hundred
630 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
631 or by imprisonment for thirty (30) days in the county jail, or
632 both such fine and imprisonment. In addition, the claim or claims
633 submitted shall be forfeited.

634 (p) **Electrical utility petroleum-based equipment**
635 **purchase procedure.** When in response to a proper advertisement
636 therefor, no bid firm as to price is submitted to an electric
637 utility for power transformers, distribution transformers, power
638 breakers, reclosers or other articles containing a petroleum
639 product, the electric utility may accept the lowest and best bid
640 therefor although the price is not firm.

641 (q) **Fuel management system bidding procedure.** Any
642 governing authority or agency of the state shall, before
643 contracting for the services and products of a fuel management or
644 fuel access system, enter into negotiations with not fewer than
645 two (2) sellers of fuel management or fuel access systems for
646 competitive written bids to provide the services and products for
647 the systems. In the event that the governing authority or agency
648 cannot locate two (2) sellers of such systems or cannot obtain
649 bids from two (2) sellers of such systems, it shall show proof
650 that it made a diligent, good-faith effort to locate and negotiate
651 with two (2) sellers of such systems. Such proof shall include,
652 but not be limited to, publications of a request for proposals and
653 letters soliciting negotiations and bids. For purposes of this
654 paragraph (q), a fuel management or fuel access system is an
655 automated system of acquiring fuel for vehicles as well as
656 management reports detailing fuel use by vehicles and drivers, and

657 the term "competitive written bid" shall have the meaning as
658 defined in paragraph (b) of this section. Governing authorities
659 and agencies shall be exempt from this process when contracting
660 for the services and products of a fuel management or fuel access
661 systems under the terms of a state contract established by the
662 Office of Purchasing and Travel.

663 (r) **Solid waste contract proposal procedure.** Before
664 entering into any contract for garbage collection or disposal,
665 contract for solid waste collection or disposal or contract for
666 sewage collection or disposal, which involves an expenditure of
667 more than Fifty Thousand Dollars (\$50,000.00), a governing
668 authority or agency shall issue publicly a request for proposals
669 concerning the specifications for such services which shall be
670 advertised for in the same manner as provided in this section for
671 seeking bids for purchases which involve an expenditure of more
672 than the amount provided in paragraph (c) of this section. Any
673 request for proposals when issued shall contain terms and
674 conditions relating to price, financial responsibility,
675 technology, legal responsibilities and other relevant factors as
676 are determined by the governing authority or agency to be
677 appropriate for inclusion; all factors determined relevant by the
678 governing authority or agency or required by this paragraph (r)
679 shall be duly included in the advertisement to elicit proposals.
680 After responses to the request for proposals have been duly
681 received, the governing authority or agency shall select the most
682 qualified proposal or proposals on the basis of price, technology
683 and other relevant factors and from such proposals, but not
684 limited to the terms thereof, negotiate and enter contracts with
685 one or more of the persons or firms submitting proposals. If the
686 governing authority or agency deems none of the proposals to be
687 qualified or otherwise acceptable, the request for proposals
688 process may be reinitiated. Notwithstanding any other provisions
689 of this paragraph, where a county with at least thirty-five

690 thousand (35,000) nor more than forty thousand (40,000)
691 population, according to the 1990 federal decennial census, owns
692 or operates a solid waste landfill, the governing authorities of
693 any other county or municipality may contract with the governing
694 authorities of the county owning or operating the landfill,
695 pursuant to a resolution duly adopted and spread upon the minutes
696 of each governing authority involved, for garbage or solid waste
697 collection or disposal services through contract negotiations.

698 (s) **Minority set-aside authorization.** Notwithstanding
699 any provision of this section to the contrary, any agency or
700 governing authority, by order placed on its minutes, may, in its
701 discretion, set aside not more than twenty percent (20%) of its
702 anticipated annual expenditures for the purchase of commodities
703 from minority businesses; however, all such set-aside purchases
704 shall comply with all purchasing regulations promulgated by the
705 Department of Finance and Administration and shall be subject to
706 bid requirements under this section. Set-aside purchases for
707 which competitive bids are required shall be made from the lowest
708 and best minority business bidder. For the purposes of this
709 paragraph, the term "minority business" means a business which is
710 owned by a majority of persons who are United States citizens or
711 permanent resident aliens (as defined by the Immigration and
712 Naturalization Service) of the United States, and who are Asian,
713 Black, Hispanic or Native American, according to the following
714 definitions:

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

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

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

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

726 (t) **Construction punch list restriction.** The
727 architect, engineer or other representative designated by the
728 agency or governing authority that is contracting for public
729 construction or renovation may prepare and submit to the
730 contractor only one (1) preliminary punch list of items that do
731 not meet the contract requirements at the time of substantial
732 completion and one (1) final list immediately before final
733 completion and final payment.

734 (u) **Purchase authorization clarification.** Nothing in
735 this section shall be construed as authorizing any purchase not
736 authorized by law.

737 **SECTION 3.** This act shall take effect and be in force from
738 and after July 1, 2006.