

By: Senator(s) Gordon

To: Public Health and
Welfare; Fees, Salaries and
Administration

SENATE BILL NO. 2979

1 AN ACT TO BRING FORWARD SECTIONS 43-3-101, 43-3-103,
2 43-3-105, 43-3-107, 43-3-109, 43-3-111, 31-7-13 AND 31-7-15,
3 MISSISSIPPI CODE OF 1972, WHICH CREATE AND EMPOWER THE MISSISSIPPI
4 INDUSTRIES FOR THE BLIND AND PROVIDE CERTAIN BID REQUIREMENTS AND
5 PREFERENCES FOR PRODUCTS MANUFACTURED OR SOLD BY THE MISSISSIPPI
6 INDUSTRIES FOR THE BLIND; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 43-3-101, Mississippi Code of 1972, is
9 brought forward as follows:

10 43-3-101. There is hereby created and established an agency
11 of the State of Mississippi known as the Mississippi Industries
12 for the Blind, hereinafter referred to as the "MIB." The MIB
13 shall be a body politic and corporate, may acquire and hold real
14 and personal property, may receive, hold and disperse monies
15 appropriated to it by the Legislature of the State of Mississippi
16 received from the federal government, received from the sale of
17 products which it produces, and received from any other sources
18 whatsoever, and may sue and be sued in its name.

19 **SECTION 2.** Section 43-3-103, Mississippi Code of 1972, is
20 brought forward as follows:

21 43-3-103. (1) From and after July 1, 1997, the MIB shall be
22 governed by a board of directors hereby created, to consist of
23 four (4) persons appointed by the Governor, and three (3) by the
24 Lieutenant Governor, with the advice and consent of the Senate,
25 each of whom shall be a qualified elector of the State of
26 Mississippi. The members of the board of directors appointed by
27 the Governor shall include the following:

28 (a) One (1) legally blind individual;

29 (b) One (1) educator with expertise in rehabilitation
30 or the field of blindness;

31 (c) One (1) individual with at least five (5) years'
32 actual experience in finance or a related field;

33 (d) One (1) individual with at least five (5) years'
34 actual experience in manufacturing or a related field.

35 The members of the board of directors appointed by the
36 Lieutenant Governor shall include the following:

37 (a) One (1) legally blind individual;

38 (b) One (1) individual with at least five (5) years'
39 actual experience in marketing or a related field; and

40 (c) One (1) individual who is a licensed practicing
41 attorney.

42 Initial appointments shall be made within sixty (60) days of
43 enactment of this act. The Governor shall make initial
44 appointments of two (2) members for two (2) years, one (1) member
45 for three (3) years, and one (1) member for four (4) years to be
46 designated at the time of appointment. The Lieutenant Governor
47 shall make initial appointments of one (1) member for two (2)
48 years, one (1) member for three (3) years, and one (1) member for
49 four (4) years to be designated at the time of appointment.

50 Thereafter, the terms of the members shall be for four (4) years
51 and until their successors are appointed and qualified. In the
52 event of a vacancy during the term of office of an incumbent, the
53 appointing authority shall fill such vacancy, for the unexpired
54 portion of the term, by appointing an individual having the same
55 prerequisite qualifications as required for the vacancy being
56 filled.

57 (2) The board of directors shall organize by selecting
58 annually from its members a chairman and a vice chairman, and may
59 do all things necessary and convenient for carrying into effect
60 the provisions of this chapter. Each member of the board shall
61 receive a per diem as provided in Section 25-3-69, Mississippi

62 Code of 1972, plus travel and reasonable and necessary expenses
63 incidental to the attendance at each meeting as provided in
64 Section 25-3-41, including mileage.

65 (3) The Lieutenant Governor may designate the Chairman of
66 the Senate Committee on Public Health and Welfare and another
67 member of the Senate and the Speaker of the House of
68 Representatives may designate the Chairman of the House Committee
69 on Public Health and Welfare and another member of the House to
70 attend any meeting of the Board of Directors of the MIB. The
71 appointing authorities may designate alternate members from their
72 respective houses to serve when the regular designees are unable
73 to attend such meetings of the board. Such legislative designees
74 shall have no jurisdiction or vote on any matter within the
75 jurisdiction of the board. For attending meetings of the board,
76 such legislators shall receive per diem and expenses which shall
77 be paid from the contingent expense funds of their respective
78 houses in the same amounts as provided for committee meetings when
79 the Legislature is not in session; however, no per diem and
80 expenses for attending meetings of the board will be paid while
81 the Legislature is in session. No per diem and expenses will be
82 paid except for attending meetings of the board without prior
83 approval of the proper committee in their respective houses.

84 (4) It shall be the duty of the Board of Directors of MIB
85 to:

86 (a) Appoint and employ an executive director who shall
87 be the executive and administrative head of MIB and who shall
88 serve at the pleasure of the board of directors. The Board of
89 Directors of MIB shall set the compensation of the executive
90 director, subject to the approval of the State Personnel Board.

91 (b) Make and publish policies, rules and regulations,
92 not inconsistent with the terms of this chapter, as may be
93 necessary for the efficient administration and operation of MIB.

94 (c) Adopt and publish rules and regulations, in its
95 discretion, to establish a policy of sick leave with pay and
96 personal leave with pay for MIB employees and to require that MIB
97 offices be opened and staffed on legal holidays as determined
98 necessary by the board of directors.

99 (5) There is created a revolving fund in the State Treasury,
100 which shall be used by the Mississippi Industries for the Blind
101 for the purpose of taking advantage of contractual opportunities
102 that would not be available to MIB without those funds and for the
103 purpose of meeting the obligations of those types of contracts.
104 The fund shall consist of monies that are specifically made
105 available by the Legislature for the purpose of the fund. MIB
106 shall not be authorized to expend any monies in the fund until it
107 has received the prior written approval of the Executive Director
108 of the Department of Finance and Administration and the State
109 Treasurer. MIB shall repay to the fund all monies that it expends
110 from the fund, which monies then may be used by MIB for future
111 contractual opportunities and obligations. Monies in the fund at
112 the end of a fiscal year shall not lapse into the State General
113 Fund, and all interest earned on monies in the fund shall be
114 credited to the fund.

115 (6) There is hereby created a joint study committee of the
116 Senate and House of Representatives which shall develop a report
117 to the Legislature and the Governor, with recommendations relating
118 to the creation of a nonprofit corporation for the operation of
119 MIB and its programs, including any matter relating to the future
120 operation of the MIB. The joint committee shall report its
121 findings and recommendations to the Legislature and the Governor
122 on or before January 1, 1998, and upon the presentation of such
123 report the joint committee shall be dissolved. The committee
124 shall consist of the Chairman of the Senate Public Health and
125 Welfare Committee; the Chairman of the House Public Health and
126 Welfare Committee; four (4) members of the Senate appointed by the

127 President of the Senate, one (1) of whom shall be the member of
128 the oversight committee appointed under subsection (3); and four
129 (4) members of the House of Representatives appointed by the
130 Speaker of the House, one (1) of whom shall be the member of the
131 oversight committee appointed under subsection (3). Appointments
132 shall be made within thirty (30) days after the enactment of this
133 act; and, within fifteen (15) days thereafter on a day to be
134 designated jointly by the President of the Senate and the Speaker
135 of the House, the committee shall meet and organize by selecting
136 from its membership a chairman and a vice chairman. The vice
137 chairman shall also serve as secretary and shall be responsible
138 for keeping all records of the committee. A majority of the
139 members of the committee shall constitute a quorum. In the
140 selection of its officers and the adoption of rules, resolutions
141 and reports, an affirmative vote of a majority of the members of
142 the joint committee from each house shall be required. All
143 members shall be notified in writing of all meetings, such notices
144 to be mailed at least five (5) days prior to the date on which a
145 meeting is to be held. Members of the committee shall be paid
146 from the contingent expense funds of their respective houses in
147 the same manner as provided for committee meetings when the
148 Legislature is not in session. The joint committee may meet with
149 and utilize the services of the Board of Directors of MIB in
150 developing its recommendations.

151 **SECTION 3.** Section 43-3-105, Mississippi Code of 1972, is
152 brought forward as follows:

153 43-3-105. The Executive Director of the MIB shall:

- 154 (a) Employ all necessary employees at MIB and dismiss
155 them as is necessary;
- 156 (b) Administer the daily operations at MIB;
- 157 (c) Execute any contracts on behalf of MIB; and
- 158 (d) Take any further actions which are necessary and
159 proper toward the achievement of MIB's purposes.

160 **SECTION 4.** Section 43-3-107, Mississippi Code of 1972, is
161 brought forward as follows:

162 43-3-107. The purposes of MIB are as follows:

163 (a) To establish industries, businesses, shops and
164 workshops primarily for the employment of blind persons and other
165 persons;

166 (b) To employ blind persons whose training is not
167 otherwise provided for and to market their products; and

168 (c) To furnish materials, tools and books for use in
169 rehabilitating blind persons for employment, and to do any and all
170 other things for blind persons as it deems advisable.

171 **SECTION 5.** Section 43-3-109, Mississippi Code of 1972, is
172 brought forward as follows:

173 43-3-109. Notwithstanding any other law to the contrary, the
174 Executive Director of the MIB is hereby empowered to maintain
175 sufficient funds to cover disbursements for current operations.
176 The executive director shall deposit any excess funds with any
177 official depository of the state and invest such excess funds as
178 he deems appropriate.

179 **SECTION 6.** Section 43-3-111, Mississippi Code of 1972, is
180 brought forward as follows:

181 43-3-111. Any funds obtained by MIB as a result of a sale of
182 goods manufactured by it shall be accounted for separate and apart
183 from any funds received by MIB through appropriation from the
184 State Legislature. All nonappropriated funds generated by MIB
185 shall not be subject to appropriation by the State Legislature.

186 **SECTION 7.** Section 31-7-13, Mississippi Code of 1972, is
187 brought forward as follows:

188 31-7-13. All agencies and governing authorities shall
189 purchase their commodities and printing; contract for garbage
190 collection or disposal; contract for solid waste collection or
191 disposal; contract for sewage collection or disposal; contract for
192 public construction; and contract for rentals as herein provided.

193 (a) **Bidding procedure for purchases not over \$3,500.00.**
194 Purchases which do not involve an expenditure of more than Three
195 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
196 shipping charges, may be made without advertising or otherwise
197 requesting competitive bids. However, nothing contained in this
198 paragraph (a) shall be construed to prohibit any agency or
199 governing authority from establishing procedures which require
200 competitive bids on purchases of Three Thousand Five Hundred
201 Dollars (\$3,500.00) or less.

202 (b) **Bidding procedure for purchases over \$3,500.00 but**
203 **not over \$15,000.00.** Purchases which involve an expenditure of
204 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
205 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
206 freight and shipping charges may be made from the lowest and best
207 bidder without publishing or posting advertisement for bids,
208 provided at least two (2) competitive written bids have been
209 obtained. Any governing authority purchasing commodities pursuant
210 to this paragraph (b) may authorize its purchasing agent, or his
211 designee, with regard to governing authorities other than
212 counties, or its purchase clerk, or his designee, with regard to
213 counties, to accept the lowest and best competitive written bid.
214 Such authorization shall be made in writing by the governing
215 authority and shall be maintained on file in the primary office of
216 the agency and recorded in the official minutes of the governing
217 authority, as appropriate. The purchasing agent or the purchase
218 clerk, or their designee, as the case may be, and not the
219 governing authority, shall be liable for any penalties and/or
220 damages as may be imposed by law for any act or omission of the
221 purchasing agent or purchase clerk, or their designee,
222 constituting a violation of law in accepting any bid without
223 approval by the governing authority. The term "competitive
224 written bid" shall mean a bid submitted on a bid form furnished by
225 the buying agency or governing authority and signed by authorized

226 personnel representing the vendor, or a bid submitted on a
227 vendor's letterhead or identifiable bid form and signed by
228 authorized personnel representing the vendor. "Competitive" shall
229 mean that the bids are developed based upon comparable
230 identification of the needs and are developed independently and
231 without knowledge of other bids or prospective bids. Bids may be
232 submitted by facsimile, electronic mail or other generally
233 accepted method of information distribution. Bids submitted by
234 electronic transmission shall not require the signature of the
235 vendor's representative unless required by agencies or governing
236 authorities.

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

238 (i) **Publication requirement.** Purchases which
239 involve an expenditure of more than Fifteen Thousand Dollars
240 (\$15,000.00), exclusive of freight and shipping charges, may be
241 made from the lowest and best bidder after advertising for
242 competitive sealed bids once each week for two (2) consecutive
243 weeks in a regular newspaper published in the county or
244 municipality in which such agency or governing authority is
245 located. The date as published for the bid opening shall not be
246 less than seven (7) working days after the last published notice;
247 however, if the purchase involves a construction project in which
248 the estimated cost is in excess of Fifteen Thousand Dollars
249 (\$15,000.00), such bids shall not be opened in less than fifteen
250 (15) working days after the last notice is published and the
251 notice for the purchase of such construction shall be published
252 once each week for two (2) consecutive weeks. The notice of
253 intention to let contracts or purchase equipment shall state the
254 time and place at which bids shall be received, list the contracts
255 to be made or types of equipment or supplies to be purchased, and,
256 if all plans and/or specifications are not published, refer to the
257 plans and/or specifications on file. If there is no newspaper
258 published in the county or municipality, then such notice shall be

259 given by posting same at the courthouse, or for municipalities at
260 the city hall, and at two (2) other public places in the county or
261 municipality, and also by publication once each week for two (2)
262 consecutive weeks in some newspaper having a general circulation
263 in the county or municipality in the above provided manner. On
264 the same date that the notice is submitted to the newspaper for
265 publication, the agency or governing authority involved shall mail
266 written notice to, or provide electronic notification to the main
267 office of the Mississippi Contract Procurement Center that
268 contains the same information as that in the published notice.

269 (ii) **Bidding process amendment procedure.** If all
270 plans and/or specifications are published in the notification,
271 then the plans and/or specifications may not be amended. If all
272 plans and/or specifications are not published in the notification,
273 then amendments to the plans/specifications, bid opening date, bid
274 opening time and place may be made, provided that the agency or
275 governing authority maintains a list of all prospective bidders
276 who are known to have received a copy of the bid documents and all
277 such prospective bidders are sent copies of all amendments. This
278 notification of amendments may be made via mail, facsimile,
279 electronic mail or other generally accepted method of information
280 distribution. No addendum to bid specifications may be issued
281 within two (2) working days of the time established for the
282 receipt of bids unless such addendum also amends the bid opening
283 to a date not less than five (5) working days after the date of
284 the addendum.

285 (iii) **Filing requirement.** In all cases involving
286 governing authorities, before the notice shall be published or
287 posted, the plans or specifications for the construction or
288 equipment being sought shall be filed with the clerk of the board
289 of the governing authority. In addition to these requirements, a
290 bid file shall be established which shall indicate those vendors
291 to whom such solicitations and specifications were issued, and

292 such file shall also contain such information as is pertinent to
293 the bid.

294 (iv) **Specification restrictions.**

295 1. Specifications pertinent to such bidding
296 shall be written so as not to exclude comparable equipment of
297 domestic manufacture. However, if valid justification is
298 presented, the Department of Finance and Administration or the
299 board of a governing authority may approve a request for specific
300 equipment necessary to perform a specific job. Further, such
301 justification, when placed on the minutes of the board of a
302 governing authority, may serve as authority for that governing
303 authority to write specifications to require a specific item of
304 equipment needed to perform a specific job. In addition to these
305 requirements, from and after July 1, 1990, vendors of relocatable
306 classrooms and the specifications for the purchase of such
307 relocatable classrooms published by local school boards shall meet
308 all pertinent regulations of the State Board of Education,
309 including prior approval of such bid by the State Department of
310 Education.

311 2. Specifications for construction projects
312 may include an allowance for commodities, equipment, furniture,
313 construction materials or systems in which prospective bidders are
314 instructed to include in their bids specified amounts for such
315 items so long as the allowance items are acquired by the vendor in
316 a commercially reasonable manner and approved by the
317 agency/governing authority. Such acquisitions shall not be made
318 to circumvent the public purchasing laws.

319 (v) Agencies and governing authorities may
320 establish secure procedures by which bids may be submitted via
321 electronic means.

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

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

325 best bid, freight and shipping charges shall be included.
326 Life-cycle costing, total cost bids, warranties, guaranteed
327 buy-back provisions and other relevant provisions may be included
328 in the best bid calculation. All best bid procedures for state
329 agencies must be in compliance with regulations established by the
330 Department of Finance and Administration. If any governing
331 authority accepts a bid other than the lowest bid actually
332 submitted, it shall place on its minutes detailed calculations and
333 narrative summary showing that the accepted bid was determined to
334 be the lowest and best bid, including the dollar amount of the
335 accepted bid and the dollar amount of the lowest bid. No agency
336 or governing authority shall accept a bid based on items not
337 included in the specifications.

338 (ii) **Decision procedure for Certified Purchasing**
339 **Offices.** In addition to the decision procedure set forth in
340 paragraph (d)(i), Certified Purchasing Offices may also use the
341 following procedure: Purchases may be made from the bidder
342 offering the best value. In determining the best value bid,
343 freight and shipping charges shall be included. Life-cycle
344 costing, total cost bids, warranties, guaranteed buy-back
345 provisions, documented previous experience, training costs and
346 other relevant provisions may be included in the best value
347 calculation. This provision shall authorize Certified Purchasing
348 Offices to utilize a Request For Proposals (RFP) process when
349 purchasing commodities. All best value procedures for state
350 agencies must be in compliance with regulations established by the
351 Department of Finance and Administration. No agency or governing
352 authority shall accept a bid based on items or criteria not
353 included in the specifications.

354 (iii) **Construction project negotiations authority.**
355 If the lowest and best bid is not more than ten percent (10%)
356 above the amount of funds allocated for a public construction or
357 renovation project, then the agency or governing authority shall

358 be permitted to negotiate with the lowest bidder in order to enter
359 into a contract for an amount not to exceed the funds allocated.

360 (e) **Lease-purchase authorization.** For the purposes of
361 this section, the term "equipment" shall mean equipment, furniture
362 and, if applicable, associated software and other applicable
363 direct costs associated with the acquisition. Any lease-purchase
364 of equipment which an agency is not required to lease-purchase
365 under the master lease-purchase program pursuant to Section
366 31-7-10 and any lease-purchase of equipment which a governing
367 authority elects to lease-purchase may be acquired by a
368 lease-purchase agreement under this paragraph (e). Lease-purchase
369 financing may also be obtained from the vendor or from a
370 third-party source after having solicited and obtained at least
371 two (2) written competitive bids, as defined in paragraph (b) of
372 this section, for such financing without advertising for such
373 bids. Solicitation for the bids for financing may occur before or
374 after acceptance of bids for the purchase of such equipment or,
375 where no such bids for purchase are required, at any time before
376 the purchase thereof. No such lease-purchase agreement shall be
377 for an annual rate of interest which is greater than the overall
378 maximum interest rate to maturity on general obligation
379 indebtedness permitted under Section 75-17-101, and the term of
380 such lease-purchase agreement shall not exceed the useful life of
381 equipment covered thereby as determined according to the upper
382 limit of the asset depreciation range (ADR) guidelines for the
383 Class Life Asset Depreciation Range System established by the
384 Internal Revenue Service pursuant to the United States Internal
385 Revenue Code and regulations thereunder as in effect on December
386 31, 1980, or comparable depreciation guidelines with respect to
387 any equipment not covered by ADR guidelines. Any lease-purchase
388 agreement entered into pursuant to this paragraph (e) may contain
389 any of the terms and conditions which a master lease-purchase
390 agreement may contain under the provisions of Section 31-7-10(5),

391 and shall contain an annual allocation dependency clause
392 substantially similar to that set forth in Section 31-7-10(8).
393 Each agency or governing authority entering into a lease-purchase
394 transaction pursuant to this paragraph (e) shall maintain with
395 respect to each such lease-purchase transaction the same
396 information as required to be maintained by the Department of
397 Finance and Administration pursuant to Section 31-7-10(13).
398 However, nothing contained in this section shall be construed to
399 permit agencies to acquire items of equipment with a total
400 acquisition cost in the aggregate of less than Ten Thousand
401 Dollars (\$10,000.00) by a single lease-purchase transaction. All
402 equipment, and the purchase thereof by any lessor, acquired by
403 lease-purchase under this paragraph and all lease-purchase
404 payments with respect thereto shall be exempt from all Mississippi
405 sales, use and ad valorem taxes. Interest paid on any
406 lease-purchase agreement under this section shall be exempt from
407 State of Mississippi income taxation.

408 (f) **Alternate bid authorization.** When necessary to
409 ensure ready availability of commodities for public works and the
410 timely completion of public projects, no more than two (2)
411 alternate bids may be accepted by a governing authority for
412 commodities. No purchases may be made through use of such
413 alternate bids procedure unless the lowest and best bidder cannot
414 deliver the commodities contained in his bid. In that event,
415 purchases of such commodities may be made from one (1) of the
416 bidders whose bid was accepted as an alternate.

417 (g) **Construction contract change authorization.** In the
418 event a determination is made by an agency or governing authority
419 after a construction contract is let that changes or modifications
420 to the original contract are necessary or would better serve the
421 purpose of the agency or the governing authority, such agency or
422 governing authority may, in its discretion, order such changes
423 pertaining to the construction that are necessary under the

424 circumstances without the necessity of further public bids;
425 provided that such change shall be made in a commercially
426 reasonable manner and shall not be made to circumvent the public
427 purchasing statutes. In addition to any other authorized person,
428 the architect or engineer hired by an agency or governing
429 authority with respect to any public construction contract shall
430 have the authority, when granted by an agency or governing
431 authority, to authorize changes or modifications to the original
432 contract without the necessity of prior approval of the agency or
433 governing authority when any such change or modification is less
434 than one percent (1%) of the total contract amount. The agency or
435 governing authority may limit the number, manner or frequency of
436 such emergency changes or modifications.

437 (h) **Petroleum purchase alternative.** In addition to
438 other methods of purchasing authorized in this chapter, when any
439 agency or governing authority shall have a need for gas, diesel
440 fuel, oils and/or other petroleum products in excess of the amount
441 set forth in paragraph (a) of this section, such agency or
442 governing authority may purchase the commodity after having
443 solicited and obtained at least two (2) competitive written bids,
444 as defined in paragraph (b) of this section. If two (2)
445 competitive written bids are not obtained, the entity shall comply
446 with the procedures set forth in paragraph (c) of this section.
447 In the event any agency or governing authority shall have
448 advertised for bids for the purchase of gas, diesel fuel, oils and
449 other petroleum products and coal and no acceptable bids can be
450 obtained, such agency or governing authority is authorized and
451 directed to enter into any negotiations necessary to secure the
452 lowest and best contract available for the purchase of such
453 commodities.

454 (i) **Road construction petroleum products price**
455 **adjustment clause authorization.** Any agency or governing
456 authority authorized to enter into contracts for the construction,

457 maintenance, surfacing or repair of highways, roads or streets,
458 may include in its bid proposal and contract documents a price
459 adjustment clause with relation to the cost to the contractor,
460 including taxes, based upon an industry-wide cost index, of
461 petroleum products including asphalt used in the performance or
462 execution of the contract or in the production or manufacture of
463 materials for use in such performance. Such industry-wide index
464 shall be established and published monthly by the Mississippi
465 Department of Transportation with a copy thereof to be mailed,
466 upon request, to the clerks of the governing authority of each
467 municipality and the clerks of each board of supervisors
468 throughout the state. The price adjustment clause shall be based
469 on the cost of such petroleum products only and shall not include
470 any additional profit or overhead as part of the adjustment. The
471 bid proposals or document contract shall contain the basis and
472 methods of adjusting unit prices for the change in the cost of
473 such petroleum products.

474 (j) **State agency emergency purchase procedure.** If the
475 governing board or the executive head, or his designee, of any
476 agency of the state shall determine that an emergency exists in
477 regard to the purchase of any commodities or repair contracts, so
478 that the delay incident to giving opportunity for competitive
479 bidding would be detrimental to the interests of the state, then
480 the provisions herein for competitive bidding shall not apply and
481 the head of such agency shall be authorized to make the purchase
482 or repair. Total purchases so made shall only be for the purpose
483 of meeting needs created by the emergency situation. In the event
484 such executive head is responsible to an agency board, at the
485 meeting next following the emergency purchase, documentation of
486 the purchase, including a description of the commodity purchased,
487 the purchase price thereof and the nature of the emergency shall
488 be presented to the board and placed on the minutes of the board
489 of such agency. The head of such agency, or his designee, shall,

490 at the earliest possible date following such emergency purchase,
491 file with the Department of Finance and Administration (i) a
492 statement explaining the conditions and circumstances of the
493 emergency, which shall include a detailed description of the
494 events leading up to the situation and the negative impact to the
495 entity if the purchase is made following the statutory
496 requirements set forth in paragraph (a), (b) or (c) of this
497 section, and (ii) a certified copy of the appropriate minutes of
498 the board of such agency, if applicable. On or before September 1
499 of each year, the State Auditor shall prepare and deliver to the
500 Senate Fees, Salaries and Administration Committee, the House Fees
501 and Salaries of Public Officers Committee and the Joint
502 Legislative Budget Committee a report containing a list of all
503 state agency emergency purchases and supporting documentation for
504 each emergency purchase.

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

506 If the governing authority, or the governing authority acting
507 through its designee, shall determine that an emergency exists in
508 regard to the purchase of any commodities or repair contracts, so
509 that the delay incident to giving opportunity for competitive
510 bidding would be detrimental to the interest of the governing
511 authority, then the provisions herein for competitive bidding
512 shall not apply and any officer or agent of such governing
513 authority having general or special authority therefor in making
514 such purchase or repair shall approve the bill presented therefor,
515 and he shall certify in writing thereon from whom such purchase
516 was made, or with whom such a repair contract was made. At the
517 board meeting next following the emergency purchase or repair
518 contract, documentation of the purchase or repair contract,
519 including a description of the commodity purchased, the price
520 thereof and the nature of the emergency shall be presented to the
521 board and shall be placed on the minutes of the board of such
522 governing authority.

523 (1) **Hospital purchase, lease-purchase and lease**
524 **authorization.**

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

530 (ii) In addition to the authority granted in
531 subparagraph (i) of this paragraph (1), the commissioners or board
532 of trustees is authorized to enter into contracts for the lease of
533 equipment or services, or both, which it considers necessary for
534 the proper care of patients if, in its opinion, it is not
535 financially feasible to purchase the necessary equipment or
536 services. Any such contract for the lease of equipment or
537 services executed by the commissioners or board shall not exceed a
538 maximum of five (5) years' duration and shall include a
539 cancellation clause based on unavailability of funds. If such
540 cancellation clause is exercised, there shall be no further
541 liability on the part of the lessee. Any such contract for the
542 lease of equipment or services executed on behalf of the
543 commissioners or board that complies with the provisions of this
544 subparagraph (ii) shall be excepted from the bid requirements set
545 forth in this section.

546 (m) **Exceptions from bidding requirements.** Excepted
547 from bid requirements are:

548 (i) **Purchasing agreements approved by department.**
549 Purchasing agreements, contracts and maximum price regulations
550 executed or approved by the Department of Finance and
551 Administration.

552 (ii) **Outside equipment repairs.** Repairs to
553 equipment, when such repairs are made by repair facilities in the
554 private sector; however, engines, transmissions, rear axles and/or
555 other such components shall not be included in this exemption when

556 replaced as a complete unit instead of being repaired and the need
557 for such total component replacement is known before disassembly
558 of the component; however, invoices identifying the equipment,
559 specific repairs made, parts identified by number and name,
560 supplies used in such repairs, and the number of hours of labor
561 and costs therefor shall be required for the payment for such
562 repairs.

563 (iii) **In-house equipment repairs.** Purchases of
564 parts for repairs to equipment, when such repairs are made by
565 personnel of the agency or governing authority; however, entire
566 assemblies, such as engines or transmissions, shall not be
567 included in this exemption when the entire assembly is being
568 replaced instead of being repaired.

569 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
570 of gravel or fill dirt which are to be removed and transported by
571 the purchaser.

572 (v) **Governmental equipment auctions.** Motor
573 vehicles or other equipment purchased from a federal agency or
574 authority, another governing authority or state agency of the
575 State of Mississippi, or any governing authority or state agency
576 of another state at a public auction held for the purpose of
577 disposing of such vehicles or other equipment. Any purchase by a
578 governing authority under the exemption authorized by this
579 subparagraph (v) shall require advance authorization spread upon
580 the minutes of the governing authority to include the listing of
581 the item or items authorized to be purchased and the maximum bid
582 authorized to be paid for each item or items.

583 (vi) **Intergovernmental sales and transfers.**
584 Purchases, sales, transfers or trades by governing authorities or
585 state agencies when such purchases, sales, transfers or trades are
586 made by a private treaty agreement or through means of
587 negotiation, from any federal agency or authority, another
588 governing authority or state agency of the State of Mississippi,

589 or any state agency or governing authority of another state.
590 Nothing in this section shall permit such purchases through public
591 auction except as provided for in subparagraph (v) of this
592 section. It is the intent of this section to allow governmental
593 entities to dispose of and/or purchase commodities from other
594 governmental entities at a price that is agreed to by both
595 parties. This shall allow for purchases and/or sales at prices
596 which may be determined to be below the market value if the
597 selling entity determines that the sale at below market value is
598 in the best interest of the taxpayers of the state. Governing
599 authorities shall place the terms of the agreement and any
600 justification on the minutes, and state agencies shall obtain
601 approval from the Department of Finance and Administration, prior
602 to releasing or taking possession of the commodities.

603 (vii) **Perishable supplies or food.** Perishable
604 supplies or food purchased for use in connection with hospitals,
605 the school lunch programs, homemaking programs and for the feeding
606 of county or municipal prisoners.

607 (viii) **Single source items.** Noncompetitive items
608 available from one (1) source only. In connection with the
609 purchase of noncompetitive items only available from one (1)
610 source, a certification of the conditions and circumstances
611 requiring the purchase shall be filed by the agency with the
612 Department of Finance and Administration and by the governing
613 authority with the board of the governing authority. Upon receipt
614 of that certification the Department of Finance and Administration
615 or the board of the governing authority, as the case may be, may,
616 in writing, authorize the purchase, which authority shall be noted
617 on the minutes of the body at the next regular meeting thereafter.
618 In those situations, a governing authority is not required to
619 obtain the approval of the Department of Finance and
620 Administration.

621 (ix) **Waste disposal facility construction**
622 **contracts.** Construction of incinerators and other facilities for
623 disposal of solid wastes in which products either generated
624 therein, such as steam, or recovered therefrom, such as materials
625 for recycling, are to be sold or otherwise disposed of; however,
626 in constructing such facilities, a governing authority or agency
627 shall publicly issue requests for proposals, advertised for in the
628 same manner as provided herein for seeking bids for public
629 construction projects, concerning the design, construction,
630 ownership, operation and/or maintenance of such facilities,
631 wherein such requests for proposals when issued shall contain
632 terms and conditions relating to price, financial responsibility,
633 technology, environmental compatibility, legal responsibilities
634 and such other matters as are determined by the governing
635 authority or agency to be appropriate for inclusion; and after
636 responses to the request for proposals have been duly received,
637 the governing authority or agency may select the most qualified
638 proposal or proposals on the basis of price, technology and other
639 relevant factors and from such proposals, but not limited to the
640 terms thereof, negotiate and enter contracts with one or more of
641 the persons or firms submitting proposals.

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

645 (xi) **Information technology products.** Purchases
646 of information technology products made by governing authorities
647 under the provisions of purchase schedules, or contracts executed
648 or approved by the Mississippi Department of Information
649 Technology Services and designated for use by governing
650 authorities.

651 (xii) **Energy efficiency services and equipment.**
652 Energy efficiency services and equipment acquired by school
653 districts, community and junior colleges, institutions of higher

654 learning and state agencies or other applicable governmental
655 entities on a shared-savings, lease or lease-purchase basis
656 pursuant to Section 31-7-14.

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

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

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

662 Purchases by libraries or for libraries of books and periodicals;
663 processed film, video cassette tapes, filmstrips and slides;
664 recorded audio tapes, cassettes and diskettes; and any such items
665 as would be used for teaching, research or other information
666 distribution; however, equipment such as projectors, recorders,
667 audio or video equipment, and monitor televisions are not exempt
668 under this subparagraph.

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

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

675 (xvii) **Multichannel interactive video systems.**

676 From and after July 1, 1990, contracts by Mississippi Authority
677 for Educational Television with any private educational
678 institution or private nonprofit organization whose purposes are
679 educational in regard to the construction, purchase, lease or
680 lease-purchase of facilities and equipment and the employment of
681 personnel for providing multichannel interactive video systems
682 (ITSF) in the school districts of this state.

683 (xviii) **Purchases of prison industry products.**

684 From and after January 1, 1991, purchases made by state agencies
685 or governing authorities involving any item that is manufactured,
686 processed, grown or produced from the state's prison industries.

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

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

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

701 (xxii) **Garbage, solid waste and sewage contracts.**
702 Contracts for garbage collection or disposal, contracts for solid
703 waste collection or disposal and contracts for sewage collection
704 or disposal.

705 (xxiii) **Municipal water tank maintenance**
706 **contracts.** Professional maintenance program contracts for the
707 repair or maintenance of municipal water tanks, which provide
708 professional services needed to maintain municipal water storage
709 tanks for a fixed annual fee for a duration of two (2) or more
710 years.

711 (xxiv) **Purchases of Mississippi Industries for the**
712 **Blind products.** Purchases made by state agencies or governing
713 authorities involving any item that is manufactured, processed or
714 produced by the Mississippi Industries for the Blind.

715 (xxv) **Purchases of state-adopted textbooks.**
716 Purchases of state-adopted textbooks by public school districts.

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

720 (xxvii) **Used heavy or specialized machinery or**
721 **equipment for installation of soil and water conservation**
722 **practices purchased at auction.** Used heavy or specialized
723 machinery or equipment used for the installation and
724 implementation of soil and water conservation practices or
725 measures purchased subject to the restrictions provided in
726 Sections 69-27-331 through 69-27-341. Any purchase by the State
727 Soil and Water Conservation Commission under the exemption
728 authorized by this subparagraph shall require advance
729 authorization spread upon the minutes of the commission to include
730 the listing of the item or items authorized to be purchased and
731 the maximum bid authorized to be paid for each item or items.

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

735 (xxix) **Purchases made pursuant to qualified**
736 **cooperative purchasing agreements.** Purchases made by certified
737 purchasing offices of state agencies or governing authorities
738 under cooperative purchasing agreements previously approved by the
739 Office of Purchasing and Travel and established by or for any
740 municipality, county, parish or state government or the federal
741 government, provided that the notification to potential
742 contractors includes a clause that sets forth the availability of
743 the cooperative purchasing agreement to other governmental
744 entities. Such purchases shall only be made if the use of the
745 cooperative purchasing agreements is determined to be in the best
746 interest of the governmental entity.

747 (xxx) **School yearbooks.** Purchases of school
748 yearbooks by state agencies or governing authorities; provided,
749 however, that state agencies and governing authorities shall use
750 for these purchases the RFP process as set forth in the
751 Mississippi Procurement Manual adopted by the Office of Purchasing
752 and Travel.

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

756 (n) **Term contract authorization.** All contracts for the
757 purchase of:

758 (i) All contracts for the purchase of commodities,
759 equipment and public construction (including, but not limited to,
760 repair and maintenance), may be let for periods of not more than
761 sixty (60) months in advance, subject to applicable statutory
762 provisions prohibiting the letting of contracts during specified
763 periods near the end of terms of office. Term contracts for a
764 period exceeding twenty-four (24) months shall also be subject to
765 ratification or cancellation by governing authority boards taking
766 office subsequent to the governing authority board entering the
767 contract.

768 (ii) Bid proposals and contracts may include price
769 adjustment clauses with relation to the cost to the contractor
770 based upon a nationally published industry-wide or nationally
771 published and recognized cost index. The cost index used in a
772 price adjustment clause shall be determined by the Department of
773 Finance and Administration for the state agencies and by the
774 governing board for governing authorities. The bid proposal and
775 contract documents utilizing a price adjustment clause shall
776 contain the basis and method of adjusting unit prices for the
777 change in the cost of such commodities, equipment and public
778 construction.

779 (o) **Purchase law violation prohibition and vendor**
780 **penalty.** No contract or purchase as herein authorized shall be
781 made for the purpose of circumventing the provisions of this
782 section requiring competitive bids, nor shall it be lawful for any
783 person or concern to submit individual invoices for amounts within
784 those authorized for a contract or purchase where the actual value
785 of the contract or commodity purchased exceeds the authorized

786 amount and the invoices therefor are split so as to appear to be
787 authorized as purchases for which competitive bids are not
788 required. Submission of such invoices shall constitute a
789 misdemeanor punishable by a fine of not less than Five Hundred
790 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
791 or by imprisonment for thirty (30) days in the county jail, or
792 both such fine and imprisonment. In addition, the claim or claims
793 submitted shall be forfeited.

794 (p) **Electrical utility petroleum-based equipment**
795 **purchase procedure.** When in response to a proper advertisement
796 therefor, no bid firm as to price is submitted to an electric
797 utility for power transformers, distribution transformers, power
798 breakers, reclosers or other articles containing a petroleum
799 product, the electric utility may accept the lowest and best bid
800 therefor although the price is not firm.

801 (q) **Fuel management system bidding procedure.** Any
802 governing authority or agency of the state shall, before
803 contracting for the services and products of a fuel management or
804 fuel access system, enter into negotiations with not fewer than
805 two (2) sellers of fuel management or fuel access systems for
806 competitive written bids to provide the services and products for
807 the systems. In the event that the governing authority or agency
808 cannot locate two (2) sellers of such systems or cannot obtain
809 bids from two (2) sellers of such systems, it shall show proof
810 that it made a diligent, good-faith effort to locate and negotiate
811 with two (2) sellers of such systems. Such proof shall include,
812 but not be limited to, publications of a request for proposals and
813 letters soliciting negotiations and bids. For purposes of this
814 paragraph (q), a fuel management or fuel access system is an
815 automated system of acquiring fuel for vehicles as well as
816 management reports detailing fuel use by vehicles and drivers, and
817 the term "competitive written bid" shall have the meaning as
818 defined in paragraph (b) of this section. Governing authorities

819 and agencies shall be exempt from this process when contracting
820 for the services and products of a fuel management or fuel access
821 systems under the terms of a state contract established by the
822 Office of Purchasing and Travel.

823 (r) **Solid waste contract proposal procedure.** Before
824 entering into any contract for garbage collection or disposal,
825 contract for solid waste collection or disposal or contract for
826 sewage collection or disposal, which involves an expenditure of
827 more than Fifty Thousand Dollars (\$50,000.00), a governing
828 authority or agency shall issue publicly a request for proposals
829 concerning the specifications for such services which shall be
830 advertised for in the same manner as provided in this section for
831 seeking bids for purchases which involve an expenditure of more
832 than the amount provided in paragraph (c) of this section. Any
833 request for proposals when issued shall contain terms and
834 conditions relating to price, financial responsibility,
835 technology, legal responsibilities and other relevant factors as
836 are determined by the governing authority or agency to be
837 appropriate for inclusion; all factors determined relevant by the
838 governing authority or agency or required by this paragraph (r)
839 shall be duly included in the advertisement to elicit proposals.
840 After responses to the request for proposals have been duly
841 received, the governing authority or agency shall select the most
842 qualified proposal or proposals on the basis of price, technology
843 and other relevant factors and from such proposals, but not
844 limited to the terms thereof, negotiate and enter contracts with
845 one or more of the persons or firms submitting proposals. If the
846 governing authority or agency deems none of the proposals to be
847 qualified or otherwise acceptable, the request for proposals
848 process may be reinitiated. Notwithstanding any other provisions
849 of this paragraph, where a county with at least thirty-five
850 thousand (35,000) nor more than forty thousand (40,000)
851 population, according to the 1990 federal decennial census, owns

852 or operates a solid waste landfill, the governing authorities of
853 any other county or municipality may contract with the governing
854 authorities of the county owning or operating the landfill,
855 pursuant to a resolution duly adopted and spread upon the minutes
856 of each governing authority involved, for garbage or solid waste
857 collection or disposal services through contract negotiations.

858 (s) **Minority set-aside authorization.** Notwithstanding
859 any provision of this section to the contrary, any agency or
860 governing authority, by order placed on its minutes, may, in its
861 discretion, set aside not more than twenty percent (20%) of its
862 anticipated annual expenditures for the purchase of commodities
863 from minority businesses; however, all such set-aside purchases
864 shall comply with all purchasing regulations promulgated by the
865 Department of Finance and Administration and shall be subject to
866 bid requirements under this section. Set-aside purchases for
867 which competitive bids are required shall be made from the lowest
868 and best minority business bidder. For the purposes of this
869 paragraph, the term "minority business" means a business which is
870 owned by a majority of persons who are United States citizens or
871 permanent resident aliens (as defined by the Immigration and
872 Naturalization Service) of the United States, and who are Asian,
873 Black, Hispanic or Native American, according to the following
874 definitions:

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

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

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

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

886 (t) **Construction punch list restriction.** The
887 architect, engineer or other representative designated by the
888 agency or governing authority that is contracting for public
889 construction or renovation may prepare and submit to the
890 contractor only one (1) preliminary punch list of items that do
891 not meet the contract requirements at the time of substantial
892 completion and one (1) final list immediately before final
893 completion and final payment.

894 (u) **Purchase authorization clarification.** Nothing in
895 this section shall be construed as authorizing any purchase not
896 authorized by law.

897 **SECTION 8.** Section 31-7-15, Mississippi Code of 1972, is
898 brought forward as follows:

899 31-7-15. (1) Whenever two (2) or more competitive bids are
900 received, one or more of which relates to commodities grown,
901 processed or manufactured within this state, and whenever all
902 things stated in such received bids are equal with respect to
903 price, quality and service, the commodities grown, processed or
904 manufactured within this state shall be given preference. A
905 similar preference shall be given to commodities grown, processed
906 or manufactured within this state whenever purchases are made
907 without competitive bids, and when practical the Department of
908 Finance and Administration may by regulation establish reasonable
909 preferential policies for other commodities, giving preference to
910 resident suppliers of this state.

911 (2) Any foreign manufacturing company with a factory in the
912 state and with over fifty (50) employees working in the state
913 shall have preference over any other foreign company where both
914 price and quality are the same, regardless of where the product is
915 manufactured.

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

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

929 (a) Is not available within a reasonable period of
930 time; or

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

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

934 (5) Whenever economically feasible, each state agency is
935 required to purchase products manufactured or sold by the
936 Mississippi Industries for the Blind.

937 **SECTION 9.** This act shall take effect and be in force from
938 and after July 1, 2006.