

By: Senator(s) Robertson

To: Fees, Salaries and Administration

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2572

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO  
2 CHANGE THE NAME OF THE OFFICE TO WHICH AN AGENCY OR GOVERNING  
3 AUTHORITY MUST PROVIDE NOTICE OF PURCHASES WHICH INVOLVE AN  
4 EXPENDITURE OF MORE THAN \$15,000.00 FROM THE MISSISSIPPI CONTRACT  
5 PROCUREMENT CENTER TO THE MISSISSIPPI PROCUREMENT TECHNICAL  
6 ASSISTANCE PROGRAM; TO AMEND SECTION 31-7-14, MISSISSIPPI CODE OF  
7 1972, TO AUTHORIZE PUBLIC ENTITIES TO AMEND OR SUPPLEMENT ENERGY  
8 SERVICES CONTRACTS WITHOUT FURTHER ISSUANCE OF REQUESTS FOR  
9 PROPOSALS IF ADDITIONAL ENERGY SERVICES WILL RESULT IN ACTUAL COST  
10 SAVINGS; AND FOR RELATED PURPOSES.

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

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

14 31-7-13. All agencies and governing authorities shall  
15 purchase their commodities and printing; contract for garbage  
16 collection or disposal; contract for solid waste collection or  
17 disposal; contract for sewage collection or disposal; contract for  
18 public construction; and contract for rentals as herein provided.

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

28 (b) **Bidding procedure for purchases over \$3,500.00 but**  
29 **not over \$15,000.00.** Purchases which involve an expenditure of  
30 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not  
31 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of

32 freight and shipping charges may be made from the lowest and best  
33 bidder without publishing or posting advertisement for bids,  
34 provided at least two (2) competitive written bids have been  
35 obtained. Any governing authority purchasing commodities pursuant  
36 to this paragraph (b) may authorize its purchasing agent, or his  
37 designee, with regard to governing authorities other than  
38 counties, or its purchase clerk, or his designee, with regard to  
39 counties, to accept the lowest and best competitive written bid.  
40 Such authorization shall be made in writing by the governing  
41 authority and shall be maintained on file in the primary office of  
42 the agency and recorded in the official minutes of the governing  
43 authority, as appropriate. The purchasing agent or the purchase  
44 clerk, or their designee, as the case may be, and not the  
45 governing authority, shall be liable for any penalties and/or  
46 damages as may be imposed by law for any act or omission of the  
47 purchasing agent or purchase clerk, or their designee,  
48 constituting a violation of law in accepting any bid without  
49 approval by the governing authority. The term "competitive  
50 written bid" shall mean a bid submitted on a bid form furnished by  
51 the buying agency or governing authority and signed by authorized  
52 personnel representing the vendor, or a bid submitted on a  
53 vendor's letterhead or identifiable bid form and signed by  
54 authorized personnel representing the vendor. "Competitive" shall  
55 mean that the bids are developed based upon comparable  
56 identification of the needs and are developed independently and  
57 without knowledge of other bids or prospective bids. Bids may be  
58 submitted by facsimile, electronic mail or other generally  
59 accepted method of information distribution. Bids submitted by  
60 electronic transmission shall not require the signature of the  
61 vendor's representative unless required by agencies or governing  
62 authorities.

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

64 (i) **Publication requirement.**

65                   1. Purchases which involve an expenditure of  
66 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of  
67 freight and shipping charges, may be made from the lowest and best  
68 bidder after advertising for competitive bids once each week for  
69 two (2) consecutive weeks in a regular newspaper published in the  
70 county or municipality in which such agency or governing authority  
71 is located.

72                   2. The purchasing entity may designate the  
73 method by which the bids will be received, including, but not  
74 limited to, bids sealed in an envelope, bids received  
75 electronically in a secure system, bids received via a reverse  
76 auction, or bids received by any other method that promotes open  
77 competition and has been approved by the Office of Purchasing and  
78 Travel. The provisions of this part 2 of subparagraph (i) shall  
79 be repealed on July 1, 2008.

80                   3. The date as published for the bid opening  
81 shall not be less than seven (7) working days after the last  
82 published notice; however, if the purchase involves a construction  
83 project in which the estimated cost is in excess of Fifteen  
84 Thousand Dollars (\$15,000.00), such bids shall not be opened in  
85 less than fifteen (15) working days after the last notice is  
86 published and the notice for the purchase of such construction  
87 shall be published once each week for two (2) consecutive weeks.  
88 The notice of intention to let contracts or purchase equipment  
89 shall state the time and place at which bids shall be received,  
90 list the contracts to be made or types of equipment or supplies to  
91 be purchased, and, if all plans and/or specifications are not  
92 published, refer to the plans and/or specifications on file. If  
93 there is no newspaper published in the county or municipality,  
94 then such notice shall be given by posting same at the courthouse,  
95 or for municipalities at the city hall, and at two (2) other  
96 public places in the county or municipality, and also by  
97 publication once each week for two (2) consecutive weeks in some

98 newspaper having a general circulation in the county or  
99 municipality in the above provided manner. On the same date that  
100 the notice is submitted to the newspaper for publication, the  
101 agency or governing authority involved shall mail written notice  
102 to, or provide electronic notification to the main office of the  
103 Mississippi Procurement Technical Assistance Program under the  
104 Mississippi Development Authority that contains the same  
105 information as that in the published notice.

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

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

131 (iv) **Specification restrictions.**

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

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

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

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

160 (i) **Decision procedure.** Purchases may be made  
161 from the lowest and best bidder. In determining the lowest and  
162 best bid, freight and shipping charges shall be included.

163 Life-cycle costing, total cost bids, warranties, guaranteed

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

360 (l) **Hospital purchase, lease-purchase and lease**  
361 **authorization.**

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

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

383 (m) **Exceptions from bidding requirements.** Excepted  
384 from bid requirements are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

552 (xxv) **Purchases of state-adopted textbooks.**  
553 Purchases of state-adopted textbooks by public school districts.

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

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

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

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

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

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

590                   (xxxi) **Design-build method or the design-build**  
591 **bridging method of contracting.** Contracts entered into under the  
592 provisions of Section 31-11-3(9).

593                   (n) **Term contract authorization.** All contracts for the  
594 purchase of:

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

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

616                   (o) **Purchase law violation prohibition and vendor**  
617 **penalty.** No contract or purchase as herein authorized shall be  
618 made for the purpose of circumventing the provisions of this  
619 section requiring competitive bids, nor shall it be lawful for any  
620 person or concern to submit individual invoices for amounts within  
621 those authorized for a contract or purchase where the actual value  
622 of the contract or commodity purchased exceeds the authorized  
623 amount and the invoices therefor are split so as to appear to be  
624 authorized as purchases for which competitive bids are not  
625 required. Submission of such invoices shall constitute a

626 misdemeanor punishable by a fine of not less than Five Hundred  
627 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),  
628 or by imprisonment for thirty (30) days in the county jail, or  
629 both such fine and imprisonment. In addition, the claim or claims  
630 submitted shall be forfeited.

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

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

658 systems under the terms of a state contract established by the  
659 Office of Purchasing and Travel.

660 (r) **Solid waste contract proposal procedure.** Before  
661 entering into any contract for garbage collection or disposal,  
662 contract for solid waste collection or disposal or contract for  
663 sewage collection or disposal, which involves an expenditure of  
664 more than Fifty Thousand Dollars (\$50,000.00), a governing  
665 authority or agency shall issue publicly a request for proposals  
666 concerning the specifications for such services which shall be  
667 advertised for in the same manner as provided in this section for  
668 seeking bids for purchases which involve an expenditure of more  
669 than the amount provided in paragraph (c) of this section. Any  
670 request for proposals when issued shall contain terms and  
671 conditions relating to price, financial responsibility,  
672 technology, legal responsibilities and other relevant factors as  
673 are determined by the governing authority or agency to be  
674 appropriate for inclusion; all factors determined relevant by the  
675 governing authority or agency or required by this paragraph (r)  
676 shall be duly included in the advertisement to elicit proposals.  
677 After responses to the request for proposals have been duly  
678 received, the governing authority or agency shall select the most  
679 qualified proposal or proposals on the basis of price, technology  
680 and other relevant factors and from such proposals, but not  
681 limited to the terms thereof, negotiate and enter contracts with  
682 one or more of the persons or firms submitting proposals. If the  
683 governing authority or agency deems none of the proposals to be  
684 qualified or otherwise acceptable, the request for proposals  
685 process may be reinitiated. Notwithstanding any other provisions  
686 of this paragraph, where a county with at least thirty-five  
687 thousand (35,000) nor more than forty thousand (40,000)  
688 population, according to the 1990 federal decennial census, owns  
689 or operates a solid waste landfill, the governing authorities of  
690 any other county or municipality may contract with the governing

691 authorities of the county owning or operating the landfill,  
692 pursuant to a resolution duly adopted and spread upon the minutes  
693 of each governing authority involved, for garbage or solid waste  
694 collection or disposal services through contract negotiations.

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

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

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

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

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

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

731           (u) **Purchase authorization clarification.** Nothing in  
732 this section shall be construed as authorizing any purchase not  
733 authorized by law.

734           **SECTION 2.** Section 31-7-14, Mississippi Code of 1972, is  
735 amended as follows:

736           31-7-14. (1) (a) For purposes of this section, the  
737 following words and phrases shall have the meaning ascribed  
738 herein, unless the context clearly indicates otherwise:

739                   (i) "Division" means the Energy Division of the  
740 Mississippi Development Authority.

741                   (ii) "Energy services" or "energy efficient  
742 services" means energy efficiency equipment, services relating to  
743 the installation, operation and maintenance of equipment and  
744 improvements reasonably required to existing or new equipment and  
745 existing or new improvements and facilities including, but not  
746 limited to, heating, ventilation and air conditioning systems,  
747 lighting, windows, insulation and energy management controls, life  
748 safety measures that provide long-term, operating-cost reductions,  
749 building operation programs that reduce operating costs, other  
750 energy-conservation-related improvements, including improvements  
751 or equipment related to renewable energy, water and other natural  
752 resources conservation, including accuracy and measurement of  
753 water distribution and/or consumption, and other equipment,  
754 services and improvements providing energy efficiency as  
755 determined by the division.

756 (iii) "Energy performance contract" means an  
757 agreement to provide energy services which include, but are not  
758 limited to, the design, installation, financing and maintenance or  
759 management of the energy systems or equipment in order to improve  
760 its energy efficiency. The energy savings are guaranteed by the  
761 performance contractor and savings from energy, operations,  
762 maintenance and other cost-avoidance measures can be used to repay  
763 the cost of the project.

764 (iv) "Energy services contract" means an agreement  
765 to provide energy services which include, but are not limited to,  
766 the design, installation, financing and maintenance or management  
767 of the energy systems or equipment in order to improve its energy  
768 efficiency. Payments for the contract are not contingent upon the  
769 actual savings realized from the equipment.

770 (v) "Entity" means the board of trustees of any  
771 public school district, junior college, institution of higher  
772 learning, publicly-owned hospital, state agency or governing  
773 authority of this chapter.

774 (vi) "Shared savings contract" means an agreement  
775 where the contractor and the entity each receive a preagreed  
776 percentage or dollar value of the energy cost savings over the  
777 life of the contract.

778 (vii) "Reduce operating costs" means elimination  
779 of future expenses or avoidance of future replacement expenditures  
780 as a result of new equipment installed or services performed. A  
781 contract that otherwise satisfies the requirements of this section  
782 shall satisfy the requirements allowing use of an energy  
783 performance or shared savings contract even if the sole expense  
784 being eliminated is maintenance expense.

785 (b) An entity may enter into a lease, energy services  
786 contract or lease-purchase contracts for energy efficiency  
787 equipment, services relating to the installation, operation and  
788 maintenance of equipment or improvements reasonably required to



789 existing or new equipment and existing or new improvements and  
790 facilities and shall contract in accordance with the following  
791 provisions:

792 (i) An entity shall publicly issue requests for  
793 proposals, advertised in the same manner as provided in Section  
794 31-7-13 for seeking competitive sealed bids, concerning the  
795 provision of energy efficiency services relating to the  
796 installation, operation and maintenance of equipment, improvements  
797 reasonably required to existing or new equipment and existing or  
798 new improvements and facilities or the design, installation,  
799 ownership, operation and maintenance of energy efficiency  
800 equipment. Those requests for proposals shall contain terms and  
801 conditions relating to submission of proposals, evaluation and  
802 selection of proposals, financial terms, legal responsibilities,  
803 and any other matters as the entity determines to be appropriate  
804 for inclusion.

805 (ii) Upon receiving responses to the request for  
806 proposals, the entity may select the most qualified proposal or  
807 proposals on the basis of experience and qualifications of the  
808 proposers, the technical approach, the financial arrangements, the  
809 overall benefits to the entity and any other relevant factors  
810 determined to be appropriate.

811 (iii) An entity shall negotiate and enter into  
812 contracts with the person, persons, firm or firms submitting the  
813 proposal selected as the most qualified under this section.

814 (iv) All contracts must contain the following  
815 annual allocation dependency clause: The continuation of this  
816 contract is contingent upon the appropriation of funds to fulfill  
817 the requirements of the contract by the Legislature or other  
818 budgeting authority. If the Legislature or other budgeting  
819 authority fails to appropriate sufficient monies to provide for  
820 the continuation of the contract, the contract shall terminate on  
821 the last day of the fiscal year for which appropriations were

822 made. The termination shall be without penalty or expense to the  
823 entity of any kind whatsoever, except as to the portions of  
824 payments for which funds were appropriated.

825 (v) The annual rate of interest paid under any  
826 lease-purchase agreement authorized by this section shall not  
827 exceed the maximum interest rate to maturity on general obligation  
828 indebtedness permitted under Section 75-17-101.

829 (vi) The maximum lease-purchase term for any  
830 equipment acquired under this section shall not exceed the useful  
831 life of that equipment as determined according to the upper limit  
832 of the asset depreciation range (ADR) guidelines for the Class  
833 Life Asset Depreciation Range System established by the Internal  
834 Revenue Service under the United States Internal Revenue Code and  
835 the regulations thereunder as in effect on December 31, 1980, or  
836 comparable depreciation guidelines with respect to any equipment  
837 not covered by ADR guidelines.

838 (vii) This subsection shall, with respect to the  
839 procurement of energy efficiency services and/or equipment,  
840 supersede any contradictory or conflicting provisions of Chapter  
841 7, Title 31, Mississippi Code of 1972, and other laws with respect  
842 to awarding public contracts.

843 (2) (a) The division may contract with a party selected  
844 under this subsection to provide financing to entities and private  
845 "nonprofit" hospitals, to purchase energy efficiency equipment,  
846 services relating to the installation, operation and maintenance  
847 of equipment or improvements reasonably required to existing or  
848 new equipment and existing or new improvements and facilities or  
849 an energy saving performance contract, energy services contract,  
850 or lease-purchase basis. Any energy efficiency lease financing  
851 contract entered into by the division before May 15, 1992, shall  
852 be valid and binding when the contract was entered into under this  
853 subsection.

854           (b) The entities and private "nonprofit" hospitals that  
855 decide to contract for energy efficiency equipment, services  
856 relating to the installation, operation and maintenance of  
857 equipment or improvements reasonably required to existing or new  
858 equipment and existing or new improvements and facilities on a  
859 lease, energy services contract or lease-purchase basis, may  
860 request financial assistance from the division.

861           (c) The provisions of any energy efficiency  
862 lease-purchase agreements authorized under this subsection (2)  
863 shall comply with the requirements of subsection (1)(b)(iv) and  
864 (v) of this section. The term of any energy services performance  
865 contract, energy services contract, lease or lease-purchase  
866 agreement for energy efficiency services and/or equipment entered  
867 into under this section shall not exceed fifteen (15) years.

868           (d) Any entity or private "nonprofit" hospital having  
869 approval of the division may borrow money in anticipation of  
870 entering into a lease-purchase agreement pursuant to subsection  
871 (2)(b) of this section. Any borrowing may be upon terms and  
872 conditions as may be agreed upon by the borrowing entity and the  
873 party advancing interim funds; however, the principal on any  
874 borrowing shall be repaid within a period of time not to exceed  
875 one hundred eighty (180) days. In borrowing money under this  
876 subparagraph (d), it is not necessary to publish notice of  
877 intention to do so or to secure the consent of the qualified  
878 electors, either by election or otherwise. Any borrowing may be  
879 negotiated between the parties and is not required to be publicly  
880 bid, may be evidenced by negotiable notes or lease and shall not  
881 be considered when computing any limitation of indebtedness of the  
882 borrowing entity established by law. The principal, interest and  
883 costs of incurring any borrowing shall not exceed the principal  
884 amount of the final contract or agreement approved by the  
885 division, and accepted by the borrowing entity, under subsection  
886 (2)(b) of this section.

887           (e) This subsection (2) shall, with respect to the  
888 procurement of energy efficiency services and/or equipment,  
889 supersede the provisions of any contradictory or conflicting  
890 provisions of Chapter 7, Title 31, Mississippi Code of 1972, and  
891 other laws with respect to awarding public contracts.

892           (3) All lease-purchase agreements authorized by this section  
893 and the income from those agreements shall be exempt from all  
894 taxation within the State of Mississippi, except gift, transfer  
895 and inheritance taxes.

896           (4) (a) An entity may contract for energy efficiency  
897 equipment services relating to the installation, operation or  
898 maintenance of equipment or improvements reasonably required to  
899 existing or new equipment and existing or new improvements and  
900 facilities on a shared savings basis or performance basis.

901           (b) If an entity decides to enter into a contract for  
902 energy efficiency equipment, services relating to the  
903 installation, operation or maintenance of equipment or  
904 improvements reasonably required to existing or new equipment and  
905 existing or new improvements and facilities on a shared savings  
906 basis or performance basis, the entity shall issue a request for  
907 proposals or a request for qualifications, as determined necessary  
908 by the division, in the same manner as prescribed under subsection  
909 (1)(b) of this section. The entity shall notify the division in  
910 writing. The final contract shall be approved by the division.

911           (c) The terms of any shared savings or performance  
912 contract for efficiency services and/or equipment entered into  
913 under this section may not exceed fifteen (15) years.

914           (d) The terms of any shared savings or performance  
915 contract entered into under this section must contain a guarantee  
916 of savings clause from the company providing energy efficiency  
917 equipment services relating to the installation, operation and  
918 maintenance of equipment or improvements reasonably required to

919 existing or new equipment and existing or new improvements and  
920 facilities.

921 (5) By September 1 of each year, each entity that receives  
922 financial assistance through the energy efficiency lease program  
923 shall annually report to the division its energy usage by meter in  
924 dollars and consumption by fuel type for the previous fiscal year.

925 (6) The contract may be construed to provide flexibility to  
926 public agencies in structuring agreements entered into hereunder  
927 so that economic benefits may be maximized.

928 (7) If an entity determines after a contract is entered  
929 under this section that additional energy services will result in  
930 actual cost savings for the entity, then the entity, in its sole  
931 discretion, may amend or supplement the contract to obtain such  
932 services without further issuance of requests for proposals or  
933 other requirements of subsection (1)(b) of this section.

934 **SECTION 3.** This act shall take effect and be in force from  
935 and after its passage.