

By: Senator(s) Thames

To: Fees, Salaries and Administration

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2660

1 AN ACT TO AMEND SECTION 31-7-1, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE DEFINITION OF THE TERM "EMERGENCY" UNDER THE PUBLIC
3 PURCHASING LAWS TO INCLUDE CIRCUMSTANCES CAUSED BY HURRICANES; TO
4 AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO AUTHORIZE
5 STATE AND LOCAL GOVERNMENT AUTHORITIES TO PURCHASE REPLACEMENT
6 CONTRACTS UNDER THE EMERGENCY PURCHASE PROCEDURE; AND FOR RELATED
7 PURPOSES.

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

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

11 31-7-1. The following terms are defined for the purposes of
12 this chapter to have the following meanings:

13 (a) "Agency" shall mean any state board, commission,
14 committee, council, university, department or unit thereof created
15 by the Constitution or statutes if such board, commission,
16 committee, council, university, department, unit or the head
17 thereof is authorized to appoint subordinate staff by the
18 Constitution or statute, except a legislative or judicial board,
19 commission, committee, council, department or unit thereof.

20 (b) "Governing authority" shall mean boards of
21 supervisors, governing boards of all school districts, all boards
22 of directors of public water supply districts, boards of directors
23 of master public water supply districts, municipal public utility
24 commissions, governing authorities of all municipalities, port
25 authorities, commissioners and boards of trustees of any public
26 hospitals, boards of trustees of public library systems, district
27 attorneys, school attendance officers and any political
28 subdivision of the state supported wholly or in part by public
29 funds of the state or political subdivisions thereof, including

30 commissions, boards and agencies created or operated under the
31 authority of any county or municipality of this state. The term
32 "governing authority" shall not include economic development
33 authorities supported in part by private funds, or commissions
34 appointed to hold title to and oversee the development and
35 management of lands and buildings which are donated by private
36 individuals to the public for the use and benefit of the community
37 and which are supported in part by private funds.

38 (c) "Purchasing agent" shall mean any administrator,
39 superintendent, purchase clerk or other chief officer so
40 designated having general or special authority to negotiate for
41 and make private contract for or purchase for any governing
42 authority or agency.

43 (d) "Public funds" shall mean and include any
44 appropriated funds, special funds, fees or any other emoluments
45 received by an agency or governing authority.

46 (e) "Commodities" shall mean and include the various
47 commodities, goods, merchandise, furniture, equipment, automotive
48 equipment of every kind, and other personal property purchased by
49 the agencies of the state and governing authorities, but not
50 commodities purchased for resale or raw materials converted into
51 products for resale.

52 (i) "Equipment" shall be construed to include:
53 automobiles, trucks, tractors, office appliances and all other
54 equipment of every kind and description.

55 (ii) "Furniture" shall be construed to include:
56 desks, chairs, tables, seats, filing cabinets, bookcases and all
57 other items of a similar nature as well as dormitory furniture,
58 appliances, carpets and all other items of personal property
59 generally referred to as home, office or school furniture.

60 (f) "Emergency" shall mean any circumstances caused by
61 fire, flood, explosion, storm, hurricane, earthquake, tornado or
62 any other act of God, epidemic, riot, insurrection or caused by

63 any inherent defect due to defective construction, or when the
64 immediate preservation of order or of public health is necessary
65 by reason of unforeseen emergency, or when the immediate
66 replacement or restoration, including construction, of a condition
67 of usefulness of any public building, equipment, road or bridge
68 appears advisable, or in the case of a public utility when there
69 is a failure of any machine or other thing used and useful in the
70 generation, production or distribution of electricity, water or
71 natural gas, or in the transportation or treatment of sewage; or
72 when the delay incident to obtaining competitive bids could cause
73 adverse impact upon the governing authorities or agency, its
74 employees or its citizens; or in the case of a public airport,
75 when the delay incident to publishing an advertisement for
76 competitive bids would endanger public safety in a specific (not
77 general) manner, result in or perpetuate a specific breach of
78 airport security, or prevent the airport from providing specific
79 air transportation services.

80 (g) "Construction" shall mean the process of building,
81 altering, improving, renovating or demolishing a public structure,
82 public building, or other public real property. It does not
83 include routine operation, routine repair or regularly scheduled
84 maintenance of existing public structures, public buildings or
85 other public real property.

86 (h) "Purchase" shall mean buying, renting, leasing or
87 otherwise acquiring.

88 (i) "Certified purchasing office" shall mean any
89 purchasing office wherein fifty percent (50%) or more of the
90 purchasing agents hold a certification from the Universal Public
91 Purchasing Certification Council or other nationally recognized
92 purchasing certification.

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

95 31-7-13. All agencies and governing authorities shall
96 purchase their commodities and printing; contract for garbage
97 collection or disposal; contract for solid waste collection or
98 disposal; contract for sewage collection or disposal; contract for
99 public construction; and contract for rentals as herein provided.

100 (a) **Bidding procedure for purchases not over \$3,500.00.**
101 Purchases which do not involve an expenditure of more than Three
102 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
103 shipping charges, may be made without advertising or otherwise
104 requesting competitive bids. However, nothing contained in this
105 paragraph (a) shall be construed to prohibit any agency or
106 governing authority from establishing procedures which require
107 competitive bids on purchases of Three Thousand Five Hundred
108 Dollars (\$3,500.00) or less.

109 (b) **Bidding procedure for purchases over \$3,500.00 but**
110 **not over \$15,000.00.** Purchases which involve an expenditure of
111 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
112 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
113 freight and shipping charges may be made from the lowest and best
114 bidder without publishing or posting advertisement for bids,
115 provided at least two (2) competitive written bids have been
116 obtained. Any governing authority purchasing commodities pursuant
117 to this paragraph (b) may authorize its purchasing agent, or his
118 designee, with regard to governing authorities other than
119 counties, or its purchase clerk, or his designee, with regard to
120 counties, to accept the lowest and best competitive written bid.
121 Such authorization shall be made in writing by the governing
122 authority and shall be maintained on file in the primary office of
123 the agency and recorded in the official minutes of the governing
124 authority, as appropriate. The purchasing agent or the purchase
125 clerk, or their designee, as the case may be, and not the
126 governing authority, shall be liable for any penalties and/or
127 damages as may be imposed by law for any act or omission of the

128 purchasing agent or purchase clerk, or their designee,
129 constituting a violation of law in accepting any bid without
130 approval by the governing authority. The term "competitive
131 written bid" shall mean a bid submitted on a bid form furnished by
132 the buying agency or governing authority and signed by authorized
133 personnel representing the vendor, or a bid submitted on a
134 vendor's letterhead or identifiable bid form and signed by
135 authorized personnel representing the vendor. "Competitive" shall
136 mean that the bids are developed based upon comparable
137 identification of the needs and are developed independently and
138 without knowledge of other bids or prospective bids. Bids may be
139 submitted by facsimile, electronic mail or other generally
140 accepted method of information distribution. Bids submitted by
141 electronic transmission shall not require the signature of the
142 vendor's representative unless required by agencies or governing
143 authorities.

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

145 (i) **Publication requirement.**

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

153 2. The purchasing entity may designate the
154 method by which the bids will be received, including, but not
155 limited to, bids sealed in an envelope, bids received
156 electronically in a secure system, bids received via a reverse
157 auction, or bids received by any other method that promotes open
158 competition and has been approved by the Office of Purchasing and
159 Travel. The provisions of this part 2 of subparagraph (i) shall
160 be repealed on July 1, 2008.

161 3. The date as published for the bid opening
162 shall not be less than seven (7) working days after the last
163 published notice; however, if the purchase involves a construction
164 project in which the estimated cost is in excess of Fifteen
165 Thousand Dollars (\$15,000.00), such bids shall not be opened in
166 less than fifteen (15) working days after the last notice is
167 published and the notice for the purchase of such construction
168 shall be published once each week for two (2) consecutive weeks.
169 The notice of intention to let contracts or purchase equipment
170 shall state the time and place at which bids shall be received,
171 list the contracts to be made or types of equipment or supplies to
172 be purchased, and, if all plans and/or specifications are not
173 published, refer to the plans and/or specifications on file. If
174 there is no newspaper published in the county or municipality,
175 then such notice shall be given by posting same at the courthouse,
176 or for municipalities at the city hall, and at two (2) other
177 public places in the county or municipality, and also by
178 publication once each week for two (2) consecutive weeks in some
179 newspaper having a general circulation in the county or
180 municipality in the above provided manner. On the same date that
181 the notice is submitted to the newspaper for publication, the
182 agency or governing authority involved shall mail written notice
183 to, or provide electronic notification to the main office of the
184 Mississippi Contract Procurement Center that contains the same
185 information as that in the published notice.

186 (ii) **Bidding process amendment procedure.** If all
187 plans and/or specifications are published in the notification,
188 then the plans and/or specifications may not be amended. If all
189 plans and/or specifications are not published in the notification,
190 then amendments to the plans/specifications, bid opening date, bid
191 opening time and place may be made, provided that the agency or
192 governing authority maintains a list of all prospective bidders
193 who are known to have received a copy of the bid documents and all

194 such prospective bidders are sent copies of all amendments. This
195 notification of amendments may be made via mail, facsimile,
196 electronic mail or other generally accepted method of information
197 distribution. No addendum to bid specifications may be issued
198 within two (2) working days of the time established for the
199 receipt of bids unless such addendum also amends the bid opening
200 to a date not less than five (5) working days after the date of
201 the addendum.

202 (iii) **Filing requirement.** In all cases involving
203 governing authorities, before the notice shall be published or
204 posted, the plans or specifications for the construction or
205 equipment being sought shall be filed with the clerk of the board
206 of the governing authority. In addition to these requirements, a
207 bid file shall be established which shall indicate those vendors
208 to whom such solicitations and specifications were issued, and
209 such file shall also contain such information as is pertinent to
210 the bid.

211 (iv) **Specification restrictions.**

212 1. Specifications pertinent to such bidding
213 shall be written so as not to exclude comparable equipment of
214 domestic manufacture. However, if valid justification is
215 presented, the Department of Finance and Administration or the
216 board of a governing authority may approve a request for specific
217 equipment necessary to perform a specific job. Further, such
218 justification, when placed on the minutes of the board of a
219 governing authority, may serve as authority for that governing
220 authority to write specifications to require a specific item of
221 equipment needed to perform a specific job. In addition to these
222 requirements, from and after July 1, 1990, vendors of relocatable
223 classrooms and the specifications for the purchase of such
224 relocatable classrooms published by local school boards shall meet
225 all pertinent regulations of the State Board of Education,

226 including prior approval of such bid by the State Department of
227 Education.

228 2. Specifications for construction projects
229 may include an allowance for commodities, equipment, furniture,
230 construction materials or systems in which prospective bidders are
231 instructed to include in their bids specified amounts for such
232 items so long as the allowance items are acquired by the vendor in
233 a commercially reasonable manner and approved by the
234 agency/governing authority. Such acquisitions shall not be made
235 to circumvent the public purchasing laws.

236 (v) Agencies and governing authorities may
237 establish secure procedures by which bids may be submitted via
238 electronic means.

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

240 (i) **Decision procedure.** Purchases may be made
241 from the lowest and best bidder. In determining the lowest and
242 best bid, freight and shipping charges shall be included.
243 Life-cycle costing, total cost bids, warranties, guaranteed
244 buy-back provisions and other relevant provisions may be included
245 in the best bid calculation. All best bid procedures for state
246 agencies must be in compliance with regulations established by the
247 Department of Finance and Administration. If any governing
248 authority accepts a bid other than the lowest bid actually
249 submitted, it shall place on its minutes detailed calculations and
250 narrative summary showing that the accepted bid was determined to
251 be the lowest and best bid, including the dollar amount of the
252 accepted bid and the dollar amount of the lowest bid. No agency
253 or governing authority shall accept a bid based on items not
254 included in the specifications.

255 (ii) **Decision procedure for Certified Purchasing**
256 **Offices.** In addition to the decision procedure set forth in
257 paragraph (d)(i), Certified Purchasing Offices may also use the
258 following procedure: Purchases may be made from the bidder

259 offering the best value. In determining the best value bid,
260 freight and shipping charges shall be included. Life-cycle
261 costing, total cost bids, warranties, guaranteed buy-back
262 provisions, documented previous experience, training costs and
263 other relevant provisions may be included in the best value
264 calculation. This provision shall authorize Certified Purchasing
265 Offices to utilize a Request For Proposals (RFP) process when
266 purchasing commodities. All best value procedures for state
267 agencies must be in compliance with regulations established by the
268 Department of Finance and Administration. No agency or governing
269 authority shall accept a bid based on items or criteria not
270 included in the specifications.

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

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

277 (e) **Lease-purchase authorization.** For the purposes of
278 this section, the term "equipment" shall mean equipment, furniture
279 and, if applicable, associated software and other applicable
280 direct costs associated with the acquisition. Any lease-purchase
281 of equipment which an agency is not required to lease-purchase
282 under the master lease-purchase program pursuant to Section
283 31-7-10 and any lease-purchase of equipment which a governing
284 authority elects to lease-purchase may be acquired by a
285 lease-purchase agreement under this paragraph (e). Lease-purchase
286 financing may also be obtained from the vendor or from a
287 third-party source after having solicited and obtained at least
288 two (2) written competitive bids, as defined in paragraph (b) of
289 this section, for such financing without advertising for such
290 bids. Solicitation for the bids for financing may occur before or
291 after acceptance of bids for the purchase of such equipment or,

292 where no such bids for purchase are required, at any time before
293 the purchase thereof. No such lease-purchase agreement shall be
294 for an annual rate of interest which is greater than the overall
295 maximum interest rate to maturity on general obligation
296 indebtedness permitted under Section 75-17-101, and the term of
297 such lease-purchase agreement shall not exceed the useful life of
298 equipment covered thereby as determined according to the upper
299 limit of the asset depreciation range (ADR) guidelines for the
300 Class Life Asset Depreciation Range System established by the
301 Internal Revenue Service pursuant to the United States Internal
302 Revenue Code and regulations thereunder as in effect on December
303 31, 1980, or comparable depreciation guidelines with respect to
304 any equipment not covered by ADR guidelines. Any lease-purchase
305 agreement entered into pursuant to this paragraph (e) may contain
306 any of the terms and conditions which a master lease-purchase
307 agreement may contain under the provisions of Section 31-7-10(5),
308 and shall contain an annual allocation dependency clause
309 substantially similar to that set forth in Section 31-7-10(8).
310 Each agency or governing authority entering into a lease-purchase
311 transaction pursuant to this paragraph (e) shall maintain with
312 respect to each such lease-purchase transaction the same
313 information as required to be maintained by the Department of
314 Finance and Administration pursuant to Section 31-7-10(13).
315 However, nothing contained in this section shall be construed to
316 permit agencies to acquire items of equipment with a total
317 acquisition cost in the aggregate of less than Ten Thousand
318 Dollars (\$10,000.00) by a single lease-purchase transaction. All
319 equipment, and the purchase thereof by any lessor, acquired by
320 lease-purchase under this paragraph and all lease-purchase
321 payments with respect thereto shall be exempt from all Mississippi
322 sales, use and ad valorem taxes. Interest paid on any
323 lease-purchase agreement under this section shall be exempt from
324 State of Mississippi income taxation.

325 (f) **Alternate bid authorization.** When necessary to
326 ensure ready availability of commodities for public works and the
327 timely completion of public projects, no more than two (2)
328 alternate bids may be accepted by a governing authority for
329 commodities. No purchases may be made through use of such
330 alternate bids procedure unless the lowest and best bidder cannot
331 deliver the commodities contained in his bid. In that event,
332 purchases of such commodities may be made from one (1) of the
333 bidders whose bid was accepted as an alternate.

334 (g) **Construction contract change authorization.** In the
335 event a determination is made by an agency or governing authority
336 after a construction contract is let that changes or modifications
337 to the original contract are necessary or would better serve the
338 purpose of the agency or the governing authority, such agency or
339 governing authority may, in its discretion, order such changes
340 pertaining to the construction that are necessary under the
341 circumstances without the necessity of further public bids;
342 provided that such change shall be made in a commercially
343 reasonable manner and shall not be made to circumvent the public
344 purchasing statutes. In addition to any other authorized person,
345 the architect or engineer hired by an agency or governing
346 authority with respect to any public construction contract shall
347 have the authority, when granted by an agency or governing
348 authority, to authorize changes or modifications to the original
349 contract without the necessity of prior approval of the agency or
350 governing authority when any such change or modification is less
351 than one percent (1%) of the total contract amount. The agency or
352 governing authority may limit the number, manner or frequency of
353 such emergency changes or modifications.

354 (h) **Petroleum purchase alternative.** In addition to
355 other methods of purchasing authorized in this chapter, when any
356 agency or governing authority shall have a need for gas, diesel
357 fuel, oils and/or other petroleum products in excess of the amount

358 set forth in paragraph (a) of this section, such agency or
359 governing authority may purchase the commodity after having
360 solicited and obtained at least two (2) competitive written bids,
361 as defined in paragraph (b) of this section. If two (2)
362 competitive written bids are not obtained, the entity shall comply
363 with the procedures set forth in paragraph (c) of this section.
364 In the event any agency or governing authority shall have
365 advertised for bids for the purchase of gas, diesel fuel, oils and
366 other petroleum products and coal and no acceptable bids can be
367 obtained, such agency or governing authority is authorized and
368 directed to enter into any negotiations necessary to secure the
369 lowest and best contract available for the purchase of such
370 commodities.

371 (i) **Road construction petroleum products price**
372 **adjustment clause authorization.** Any agency or governing
373 authority authorized to enter into contracts for the construction,
374 maintenance, surfacing or repair of highways, roads or streets,
375 may include in its bid proposal and contract documents a price
376 adjustment clause with relation to the cost to the contractor,
377 including taxes, based upon an industry-wide cost index, of
378 petroleum products including asphalt used in the performance or
379 execution of the contract or in the production or manufacture of
380 materials for use in such performance. Such industry-wide index
381 shall be established and published monthly by the Mississippi
382 Department of Transportation with a copy thereof to be mailed,
383 upon request, to the clerks of the governing authority of each
384 municipality and the clerks of each board of supervisors
385 throughout the state. The price adjustment clause shall be based
386 on the cost of such petroleum products only and shall not include
387 any additional profit or overhead as part of the adjustment. The
388 bid proposals or document contract shall contain the basis and
389 methods of adjusting unit prices for the change in the cost of
390 such petroleum products.

391 (j) **State agency emergency purchase procedure.** If the
392 governing board or the executive head, or his designee, of any
393 agency of the state shall determine that an emergency exists in
394 regard to the purchase of any commodities or repair/replacement
395 contracts, so that the delay incident to giving opportunity for
396 competitive bidding would be detrimental to the interests of the
397 state, then the provisions herein for competitive bidding shall
398 not apply and the head of such agency shall be authorized, upon
399 concurrence by the Public Procurement Review Board, to make the
400 purchase or repair/replacement. Total purchases so made shall
401 only be for the purpose of meeting needs created by the emergency
402 situation. In the event such executive head is responsible to an
403 agency board, at the meeting next following the emergency
404 purchase, documentation of the purchase, including a description
405 of the commodity purchased, the purchase price thereof and the
406 nature of the emergency shall be presented to the board and placed
407 on the minutes of the board of such agency. The head of such
408 agency, or his designee, shall, at the earliest possible date
409 following such emergency purchase, file with the Department of
410 Finance and Administration (i) a statement explaining the
411 conditions and circumstances of the emergency, which shall include
412 a detailed description of the events leading up to the situation
413 and the negative impact to the entity if the purchase is made
414 following the statutory requirements set forth in paragraph (a),
415 (b) or (c) of this section, and (ii) a certified copy of the
416 appropriate minutes of the board of such agency, if applicable.
417 On or before September 1 of each year, the State Auditor shall
418 prepare and deliver to the Senate Fees, Salaries and
419 Administration Committee, the House Fees and Salaries of Public
420 Officers Committee and the Joint Legislative Budget Committee a
421 report containing a list of all state agency emergency purchases
422 and supporting documentation for each emergency purchase.

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

424 If the governing authority, or the governing authority acting
425 through its designee, shall determine that an emergency exists in
426 regard to the purchase of any commodities or repair/replacement
427 contracts, so that the delay incident to giving opportunity for
428 competitive bidding would be detrimental to the interest of the
429 governing authority, then the provisions herein for competitive
430 bidding shall not apply and any officer or agent of such governing
431 authority having general or special authority therefor in making
432 such purchase or repair shall approve, with the concurrence of the
433 Public Procurement Review Board, the bill presented therefor, and
434 he shall certify in writing thereon from whom such purchase was
435 made, or with whom such a repair contract was made. At the board
436 meeting next following the emergency purchase or repair contract,
437 documentation of the purchase or repair contract, including a
438 description of the commodity purchased, the price thereof and the
439 nature of the emergency shall be presented to the board and shall
440 be placed on the minutes of the board of such governing authority.

441 (l) **Hospital purchase, lease-purchase and lease**
442 **authorization.**

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

448 (ii) In addition to the authority granted in
449 subparagraph (i) of this paragraph (l), the commissioners or board
450 of trustees is authorized to enter into contracts for the lease of
451 equipment or services, or both, which it considers necessary for
452 the proper care of patients if, in its opinion, it is not
453 financially feasible to purchase the necessary equipment or
454 services. Any such contract for the lease of equipment or
455 services executed by the commissioners or board shall not exceed a

456 maximum of five (5) years' duration and shall include a
457 cancellation clause based on unavailability of funds. If such
458 cancellation clause is exercised, there shall be no further
459 liability on the part of the lessee. Any such contract for the
460 lease of equipment or services executed on behalf of the
461 commissioners or board that complies with the provisions of this
462 subparagraph (ii) shall be excepted from the bid requirements set
463 forth in this section.

464 (m) **Exceptions from bidding requirements.** Excepted
465 from bid requirements are:

466 (i) **Purchasing agreements approved by department.**
467 Purchasing agreements, contracts and maximum price regulations
468 executed or approved by the Department of Finance and
469 Administration.

470 (ii) **Outside equipment repairs.** Repairs to
471 equipment, when such repairs are made by repair facilities in the
472 private sector; however, engines, transmissions, rear axles and/or
473 other such components shall not be included in this exemption when
474 replaced as a complete unit instead of being repaired and the need
475 for such total component replacement is known before disassembly
476 of the component; however, invoices identifying the equipment,
477 specific repairs made, parts identified by number and name,
478 supplies used in such repairs, and the number of hours of labor
479 and costs therefor shall be required for the payment for such
480 repairs.

481 (iii) **In-house equipment repairs.** Purchases of
482 parts for repairs to equipment, when such repairs are made by
483 personnel of the agency or governing authority; however, entire
484 assemblies, such as engines or transmissions, shall not be
485 included in this exemption when the entire assembly is being
486 replaced instead of being repaired.

487 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
488 of gravel or fill dirt which are to be removed and transported by
489 the purchaser.

490 (v) **Governmental equipment auctions.** Motor
491 vehicles or other equipment purchased from a federal agency or
492 authority, another governing authority or state agency of the
493 State of Mississippi, or any governing authority or state agency
494 of another state at a public auction held for the purpose of
495 disposing of such vehicles or other equipment. Any purchase by a
496 governing authority under the exemption authorized by this
497 subparagraph (v) shall require advance authorization spread upon
498 the minutes of the governing authority to include the listing of
499 the item or items authorized to be purchased and the maximum bid
500 authorized to be paid for each item or items.

501 (vi) **Intergovernmental sales and transfers.**
502 Purchases, sales, transfers or trades by governing authorities or
503 state agencies when such purchases, sales, transfers or trades are
504 made by a private treaty agreement or through means of
505 negotiation, from any federal agency or authority, another
506 governing authority or state agency of the State of Mississippi,
507 or any state agency or governing authority of another state.
508 Nothing in this section shall permit such purchases through public
509 auction except as provided for in subparagraph (v) of this
510 section. It is the intent of this section to allow governmental
511 entities to dispose of and/or purchase commodities from other
512 governmental entities at a price that is agreed to by both
513 parties. This shall allow for purchases and/or sales at prices
514 which may be determined to be below the market value if the
515 selling entity determines that the sale at below market value is
516 in the best interest of the taxpayers of the state. Governing
517 authorities shall place the terms of the agreement and any
518 justification on the minutes, and state agencies shall obtain

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

521 (vii) **Perishable supplies or food.** Perishable
522 supplies or food purchased for use in connection with hospitals,
523 the school lunch programs, homemaking programs and for the feeding
524 of county or municipal prisoners.

525 (viii) **Single source items.** Noncompetitive items
526 available from one (1) source only. In connection with the
527 purchase of noncompetitive items only available from one (1)
528 source, a certification of the conditions and circumstances
529 requiring the purchase shall be filed by the agency with the
530 Department of Finance and Administration and by the governing
531 authority with the board of the governing authority. Upon receipt
532 of that certification the Department of Finance and Administration
533 or the board of the governing authority, as the case may be, may,
534 in writing, authorize the purchase, which authority shall be noted
535 on the minutes of the body at the next regular meeting thereafter.
536 In those situations, a governing authority is not required to
537 obtain the approval of the Department of Finance and
538 Administration.

539 (ix) **Waste disposal facility construction**
540 **contracts.** Construction of incinerators and other facilities for
541 disposal of solid wastes in which products either generated
542 therein, such as steam, or recovered therefrom, such as materials
543 for recycling, are to be sold or otherwise disposed of; however,
544 in constructing such facilities, a governing authority or agency
545 shall publicly issue requests for proposals, advertised for in the
546 same manner as provided herein for seeking bids for public
547 construction projects, concerning the design, construction,
548 ownership, operation and/or maintenance of such facilities,
549 wherein such requests for proposals when issued shall contain
550 terms and conditions relating to price, financial responsibility,
551 technology, environmental compatibility, legal responsibilities

552 and such other matters as are determined by the governing
553 authority or agency to be appropriate for inclusion; and after
554 responses to the request for proposals have been duly received,
555 the governing authority or agency may select the most qualified
556 proposal or proposals on the basis of price, technology and other
557 relevant factors and from such proposals, but not limited to the
558 terms thereof, negotiate and enter contracts with one or more of
559 the persons or firms submitting proposals.

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

563 (xi) **Information technology products.** Purchases
564 of information technology products made by governing authorities
565 under the provisions of purchase schedules, or contracts executed
566 or approved by the Mississippi Department of Information
567 Technology Services and designated for use by governing
568 authorities.

569 (xii) **Energy efficiency services and equipment.**
570 Energy efficiency services and equipment acquired by school
571 districts, community and junior colleges, institutions of higher
572 learning and state agencies or other applicable governmental
573 entities on a shared-savings, lease or lease-purchase basis
574 pursuant to Section 31-7-14.

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

579 (xiv) **Library books and other reference materials.**
580 Purchases by libraries or for libraries of books and periodicals;
581 processed film, video cassette tapes, filmstrips and slides;
582 recorded audio tapes, cassettes and diskettes; and any such items
583 as would be used for teaching, research or other information
584 distribution; however, equipment such as projectors, recorders,

585 audio or video equipment, and monitor televisions are not exempt
586 under this subparagraph.

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

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

593 (xvii) **Multichannel interactive video systems.**
594 From and after July 1, 1990, contracts by Mississippi Authority
595 for Educational Television with any private educational
596 institution or private nonprofit organization whose purposes are
597 educational in regard to the construction, purchase, lease or
598 lease-purchase of facilities and equipment and the employment of
599 personnel for providing multichannel interactive video systems
600 (ITSF) in the school districts of this state.

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

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

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

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

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

619 (xxii) **Garbage, solid waste and sewage contracts.**
620 Contracts for garbage collection or disposal, contracts for solid
621 waste collection or disposal and contracts for sewage collection
622 or disposal.

623 (xxiii) **Municipal water tank maintenance**
624 **contracts.** Professional maintenance program contracts for the
625 repair or maintenance of municipal water tanks, which provide
626 professional services needed to maintain municipal water storage
627 tanks for a fixed annual fee for a duration of two (2) or more
628 years.

629 (xxiv) **Purchases of Mississippi Industries for the**
630 **Blind products.** Purchases made by state agencies or governing
631 authorities involving any item that is manufactured, processed or
632 produced by the Mississippi Industries for the Blind.

633 (xxv) **Purchases of state-adopted textbooks.**
634 Purchases of state-adopted textbooks by public school districts.

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

638 (xxvii) **Used heavy or specialized machinery or**
639 **equipment for installation of soil and water conservation**
640 **practices purchased at auction.** Used heavy or specialized
641 machinery or equipment used for the installation and
642 implementation of soil and water conservation practices or
643 measures purchased subject to the restrictions provided in
644 Sections 69-27-331 through 69-27-341. Any purchase by the State
645 Soil and Water Conservation Commission under the exemption
646 authorized by this subparagraph shall require advance
647 authorization spread upon the minutes of the commission to include
648 the listing of the item or items authorized to be purchased and
649 the maximum bid authorized to be paid for each item or items.

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

653 (xxix) **Purchases made pursuant to qualified**
654 **cooperative purchasing agreements.** Purchases made by certified
655 purchasing offices of state agencies or governing authorities
656 under cooperative purchasing agreements previously approved by the
657 Office of Purchasing and Travel and established by or for any
658 municipality, county, parish or state government or the federal
659 government, provided that the notification to potential
660 contractors includes a clause that sets forth the availability of
661 the cooperative purchasing agreement to other governmental
662 entities. Such purchases shall only be made if the use of the
663 cooperative purchasing agreements is determined to be in the best
664 interest of the governmental entity.

665 (xxx) **School yearbooks.** Purchases of school
666 yearbooks by state agencies or governing authorities; provided,
667 however, that state agencies and governing authorities shall use
668 for these purchases the RFP process as set forth in the
669 Mississippi Procurement Manual adopted by the Office of Purchasing
670 and Travel.

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

674 (n) **Term contract authorization.** All contracts for the
675 purchase of:

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

683 ratification or cancellation by governing authority boards taking
684 office subsequent to the governing authority board entering the
685 contract.

686 (ii) Bid proposals and contracts may include price
687 adjustment clauses with relation to the cost to the contractor
688 based upon a nationally published industry-wide or nationally
689 published and recognized cost index. The cost index used in a
690 price adjustment clause shall be determined by the Department of
691 Finance and Administration for the state agencies and by the
692 governing board for governing authorities. The bid proposal and
693 contract documents utilizing a price adjustment clause shall
694 contain the basis and method of adjusting unit prices for the
695 change in the cost of such commodities, equipment and public
696 construction.

697 (o) **Purchase law violation prohibition and vendor**
698 **penalty.** No contract or purchase as herein authorized shall be
699 made for the purpose of circumventing the provisions of this
700 section requiring competitive bids, nor shall it be lawful for any
701 person or concern to submit individual invoices for amounts within
702 those authorized for a contract or purchase where the actual value
703 of the contract or commodity purchased exceeds the authorized
704 amount and the invoices therefor are split so as to appear to be
705 authorized as purchases for which competitive bids are not
706 required. Submission of such invoices shall constitute a
707 misdemeanor punishable by a fine of not less than Five Hundred
708 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
709 or by imprisonment for thirty (30) days in the county jail, or
710 both such fine and imprisonment. In addition, the claim or claims
711 submitted shall be forfeited.

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

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

719 (q) **Fuel management system bidding procedure.** Any
720 governing authority or agency of the state shall, before
721 contracting for the services and products of a fuel management or
722 fuel access system, enter into negotiations with not fewer than
723 two (2) sellers of fuel management or fuel access systems for
724 competitive written bids to provide the services and products for
725 the systems. In the event that the governing authority or agency
726 cannot locate two (2) sellers of such systems or cannot obtain
727 bids from two (2) sellers of such systems, it shall show proof
728 that it made a diligent, good-faith effort to locate and negotiate
729 with two (2) sellers of such systems. Such proof shall include,
730 but not be limited to, publications of a request for proposals and
731 letters soliciting negotiations and bids. For purposes of this
732 paragraph (q), a fuel management or fuel access system is an
733 automated system of acquiring fuel for vehicles as well as
734 management reports detailing fuel use by vehicles and drivers, and
735 the term "competitive written bid" shall have the meaning as
736 defined in paragraph (b) of this section. Governing authorities
737 and agencies shall be exempt from this process when contracting
738 for the services and products of a fuel management or fuel access
739 systems under the terms of a state contract established by the
740 Office of Purchasing and Travel.

741 (r) **Solid waste contract proposal procedure.** Before
742 entering into any contract for garbage collection or disposal,
743 contract for solid waste collection or disposal or contract for
744 sewage collection or disposal, which involves an expenditure of
745 more than Fifty Thousand Dollars (\$50,000.00), a governing
746 authority or agency shall issue publicly a request for proposals
747 concerning the specifications for such services which shall be
748 advertised for in the same manner as provided in this section for

749 seeking bids for purchases which involve an expenditure of more
750 than the amount provided in paragraph (c) of this section. Any
751 request for proposals when issued shall contain terms and
752 conditions relating to price, financial responsibility,
753 technology, legal responsibilities and other relevant factors as
754 are determined by the governing authority or agency to be
755 appropriate for inclusion; all factors determined relevant by the
756 governing authority or agency or required by this paragraph (r)
757 shall be duly included in the advertisement to elicit proposals.
758 After responses to the request for proposals have been duly
759 received, the governing authority or agency shall select the most
760 qualified proposal or proposals on the basis of price, technology
761 and other relevant factors and from such proposals, but not
762 limited to the terms thereof, negotiate and enter contracts with
763 one or more of the persons or firms submitting proposals. If the
764 governing authority or agency deems none of the proposals to be
765 qualified or otherwise acceptable, the request for proposals
766 process may be reinitiated. Notwithstanding any other provisions
767 of this paragraph, where a county with at least thirty-five
768 thousand (35,000) nor more than forty thousand (40,000)
769 population, according to the 1990 federal decennial census, owns
770 or operates a solid waste landfill, the governing authorities of
771 any other county or municipality may contract with the governing
772 authorities of the county owning or operating the landfill,
773 pursuant to a resolution duly adopted and spread upon the minutes
774 of each governing authority involved, for garbage or solid waste
775 collection or disposal services through contract negotiations.

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

782 shall comply with all purchasing regulations promulgated by the
783 Department of Finance and Administration and shall be subject to
784 bid requirements under this section. Set-aside purchases for
785 which competitive bids are required shall be made from the lowest
786 and best minority business bidder. For the purposes of this
787 paragraph, the term "minority business" means a business which is
788 owned by a majority of persons who are United States citizens or
789 permanent resident aliens (as defined by the Immigration and
790 Naturalization Service) of the United States, and who are Asian,
791 Black, Hispanic or Native American, according to the following
792 definitions:

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

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

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

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

804 (t) **Construction punch list restriction.** The
805 architect, engineer or other representative designated by the
806 agency or governing authority that is contracting for public
807 construction or renovation may prepare and submit to the
808 contractor only one (1) preliminary punch list of items that do
809 not meet the contract requirements at the time of substantial
810 completion and one (1) final list immediately before final
811 completion and final payment.

812 (u) **Purchase authorization clarification.** Nothing in
813 this section shall be construed as authorizing any purchase not
814 authorized by law.

815 **SECTION 3.** This act shall take effect and be in force from
816 and after July 1, 2007.