

By: Senator(s) Thames

To: Fees, Salaries and Administration

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, epidemic,  
62 riot, insurrection or caused by any inherent defect due to

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

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

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

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

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

94 31-7-13. All agencies and governing authorities shall  
95 purchase their commodities and printing; contract for garbage

96 collection or disposal; contract for solid waste collection or  
97 disposal; contract for sewage collection or disposal; contract for  
98 public construction; and contract for rentals as herein provided.

99 (a) **Bidding procedure for purchases not over \$3,500.00.**

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

108 (b) **Bidding procedure for purchases over \$3,500.00 but**

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

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

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

144 (i) **Publication requirement.**

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

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

160 3. The date as published for the bid opening  
161 shall not be less than seven (7) working days after the last

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

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

195 electronic mail or other generally accepted method of information  
196 distribution. No addendum to bid specifications may be issued  
197 within two (2) working days of the time established for the  
198 receipt of bids unless such addendum also amends the bid opening  
199 to a date not less than five (5) working days after the date of  
200 the addendum.

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

210 (iv) **Specification restrictions.**

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

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

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

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

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

254                                   (ii) **Decision procedure for Certified Purchasing**  
255 **Offices.** In addition to the decision procedure set forth in  
256 paragraph (d)(i), Certified Purchasing Offices may also use the  
257 following procedure: Purchases may be made from the bidder  
258 offering the best value. In determining the best value bid,  
259 freight and shipping charges shall be included. Life-cycle



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

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

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

276 (e) **Lease-purchase authorization.** For the purposes of  
277 this section, the term "equipment" shall mean equipment, furniture  
278 and, if applicable, associated software and other applicable  
279 direct costs associated with the acquisition. Any lease-purchase  
280 of equipment which an agency is not required to lease-purchase  
281 under the master lease-purchase program pursuant to Section  
282 31-7-10 and any lease-purchase of equipment which a governing  
283 authority elects to lease-purchase may be acquired by a  
284 lease-purchase agreement under this paragraph (e). Lease-purchase  
285 financing may also be obtained from the vendor or from a  
286 third-party source after having solicited and obtained at least  
287 two (2) written competitive bids, as defined in paragraph (b) of  
288 this section, for such financing without advertising for such  
289 bids. Solicitation for the bids for financing may occur before or  
290 after acceptance of bids for the purchase of such equipment or,  
291 where no such bids for purchase are required, at any time before  
292 the purchase thereof. No such lease-purchase agreement shall be

293 for an annual rate of interest which is greater than the overall  
294 maximum interest rate to maturity on general obligation  
295 indebtedness permitted under Section 75-17-101, and the term of  
296 such lease-purchase agreement shall not exceed the useful life of  
297 equipment covered thereby as determined according to the upper  
298 limit of the asset depreciation range (ADR) guidelines for the  
299 Class Life Asset Depreciation Range System established by the  
300 Internal Revenue Service pursuant to the United States Internal  
301 Revenue Code and regulations thereunder as in effect on December  
302 31, 1980, or comparable depreciation guidelines with respect to  
303 any equipment not covered by ADR guidelines. Any lease-purchase  
304 agreement entered into pursuant to this paragraph (e) may contain  
305 any of the terms and conditions which a master lease-purchase  
306 agreement may contain under the provisions of Section 31-7-10(5),  
307 and shall contain an annual allocation dependency clause  
308 substantially similar to that set forth in Section 31-7-10(8).  
309 Each agency or governing authority entering into a lease-purchase  
310 transaction pursuant to this paragraph (e) shall maintain with  
311 respect to each such lease-purchase transaction the same  
312 information as required to be maintained by the Department of  
313 Finance and Administration pursuant to Section 31-7-10(13).  
314 However, nothing contained in this section shall be construed to  
315 permit agencies to acquire items of equipment with a total  
316 acquisition cost in the aggregate of less than Ten Thousand  
317 Dollars (\$10,000.00) by a single lease-purchase transaction. All  
318 equipment, and the purchase thereof by any lessor, acquired by  
319 lease-purchase under this paragraph and all lease-purchase  
320 payments with respect thereto shall be exempt from all Mississippi  
321 sales, use and ad valorem taxes. Interest paid on any  
322 lease-purchase agreement under this section shall be exempt from  
323 State of Mississippi income taxation.

324 (f) **Alternate bid authorization.** When necessary to  
325 ensure ready availability of commodities for public works and the

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

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

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

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

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

390           (j) **State agency emergency purchase procedure.** If the  
391 governing board or the executive head, or his designee, of any

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

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

423 If the governing authority, or the governing authority acting  
424 through its designee, shall determine that an emergency exists in

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

440 (1) **Hospital purchase, lease-purchase and lease**  
441 **authorization.**

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

447 (ii) In addition to the authority granted in  
448 subparagraph (i) of this paragraph (1), the commissioners or board  
449 of trustees is authorized to enter into contracts for the lease of  
450 equipment or services, or both, which it considers necessary for  
451 the proper care of patients if, in its opinion, it is not  
452 financially feasible to purchase the necessary equipment or  
453 services. Any such contract for the lease of equipment or  
454 services executed by the commissioners or board shall not exceed a  
455 maximum of five (5) years' duration and shall include a  
456 cancellation clause based on unavailability of funds. If such  
457 cancellation clause is exercised, there shall be no further

458 liability on the part of the lessee. Any such contract for the  
459 lease of equipment or services executed on behalf of the  
460 commissioners or board that complies with the provisions of this  
461 subparagraph (ii) shall be excepted from the bid requirements set  
462 forth in this section.

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

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

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

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

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

489 (v) **Governmental equipment auctions.** Motor  
490 vehicles or other equipment purchased from a federal agency or

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

500 (vi) **Intergovernmental sales and transfers.**

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

520 (vii) **Perishable supplies or food.** Perishable

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



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

538                   (ix) **Waste disposal facility construction**  
539 **contracts.** Construction of incinerators and other facilities for  
540 disposal of solid wastes in which products either generated  
541 therein, such as steam, or recovered therefrom, such as materials  
542 for recycling, are to be sold or otherwise disposed of; however,  
543 in constructing such facilities, a governing authority or agency  
544 shall publicly issue requests for proposals, advertised for in the  
545 same manner as provided herein for seeking bids for public  
546 construction projects, concerning the design, construction,  
547 ownership, operation and/or maintenance of such facilities,  
548 wherein such requests for proposals when issued shall contain  
549 terms and conditions relating to price, financial responsibility,  
550 technology, environmental compatibility, legal responsibilities  
551 and such other matters as are determined by the governing  
552 authority or agency to be appropriate for inclusion; and after  
553 responses to the request for proposals have been duly received,  
554 the governing authority or agency may select the most qualified  
555 proposal or proposals on the basis of price, technology and other  
556 relevant factors and from such proposals, but not limited to the

557 terms thereof, negotiate and enter contracts with one or more of  
558 the persons or firms submitting proposals.

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

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

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

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

578           (xiv) **Library books and other reference materials.**  
579 Purchases by libraries or for libraries of books and periodicals;  
580 processed film, video cassette tapes, filmstrips and slides;  
581 recorded audio tapes, cassettes and diskettes; and any such items  
582 as would be used for teaching, research or other information  
583 distribution; however, equipment such as projectors, recorders,  
584 audio or video equipment, and monitor televisions are not exempt  
585 under this subparagraph.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

652                   (xxix) **Purchases made pursuant to qualified**  
653 **cooperative purchasing agreements.** Purchases made by certified  
654 purchasing offices of state agencies or governing authorities

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

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

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

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

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

685 (ii) Bid proposals and contracts may include price  
686 adjustment clauses with relation to the cost to the contractor  
687 based upon a nationally published industry-wide or nationally

688 published and recognized cost index. The cost index used in a  
689 price adjustment clause shall be determined by the Department of  
690 Finance and Administration for the state agencies and by the  
691 governing board for governing authorities. The bid proposal and  
692 contract documents utilizing a price adjustment clause shall  
693 contain the basis and method of adjusting unit prices for the  
694 change in the cost of such commodities, equipment and public  
695 construction.

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

711           (p) **Electrical utility petroleum-based equipment**  
712 **purchase procedure.** When in response to a proper advertisement  
713 therefor, no bid firm as to price is submitted to an electric  
714 utility for power transformers, distribution transformers, power  
715 breakers, reclosers or other articles containing a petroleum  
716 product, the electric utility may accept the lowest and best bid  
717 therefor although the price is not firm.

718           (q) **Fuel management system bidding procedure.** Any  
719 governing authority or agency of the state shall, before  
720 contracting for the services and products of a fuel management or

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

740 (r) **Solid waste contract proposal procedure.** Before  
741 entering into any contract for garbage collection or disposal,  
742 contract for solid waste collection or disposal or contract for  
743 sewage collection or disposal, which involves an expenditure of  
744 more than Fifty Thousand Dollars (\$50,000.00), a governing  
745 authority or agency shall issue publicly a request for proposals  
746 concerning the specifications for such services which shall be  
747 advertised for in the same manner as provided in this section for  
748 seeking bids for purchases which involve an expenditure of more  
749 than the amount provided in paragraph (c) of this section. Any  
750 request for proposals when issued shall contain terms and  
751 conditions relating to price, financial responsibility,  
752 technology, legal responsibilities and other relevant factors as  
753 are determined by the governing authority or agency to be

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

775           (s) **Minority set-aside authorization.** Notwithstanding  
776 any provision of this section to the contrary, any agency or  
777 governing authority, by order placed on its minutes, may, in its  
778 discretion, set aside not more than twenty percent (20%) of its  
779 anticipated annual expenditures for the purchase of commodities  
780 from minority businesses; however, all such set-aside purchases  
781 shall comply with all purchasing regulations promulgated by the  
782 Department of Finance and Administration and shall be subject to  
783 bid requirements under this section. Set-aside purchases for  
784 which competitive bids are required shall be made from the lowest  
785 and best minority business bidder. For the purposes of this  
786 paragraph, the term "minority business" means a business which is



787 owned by a majority of persons who are United States citizens or  
788 permanent resident aliens (as defined by the Immigration and  
789 Naturalization Service) of the United States, and who are Asian,  
790 Black, Hispanic or Native American, according to the following  
791 definitions:

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

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

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

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

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

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

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