

**No Action
COMMITTEE AMENDMENT NO 1 PROPOSED TO**

House Bill No. 1107

BY: Committee

**Amend by striking all after the enacting clause and inserting
in lieu thereof the following:**

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

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

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

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

33 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
34 freight and shipping charges may be made from the lowest and best
35 bidder without publishing or posting advertisement for bids,
36 provided at least two (2) competitive written bids have been
37 obtained. Any governing authority purchasing commodities pursuant
38 to this paragraph (b) may authorize its purchasing agent, or his
39 designee, with regard to governing authorities other than
40 counties, or its purchase clerk, or his designee, with regard to
41 counties, to accept the lowest and best competitive written bid.
42 Such authorization shall be made in writing by the governing
43 authority and shall be maintained on file in the primary office of
44 the agency and recorded in the official minutes of the governing
45 authority, as appropriate. The purchasing agent or the purchase
46 clerk, or their designee, as the case may be, and not the
47 governing authority, shall be liable for any penalties and/or
48 damages as may be imposed by law for any act or omission of the
49 purchasing agent or purchase clerk, or their designee,
50 constituting a violation of law in accepting any bid without
51 approval by the governing authority. The term "competitive
52 written bid" shall mean a bid submitted on a bid form furnished by
53 the buying agency or governing authority and signed by authorized
54 personnel representing the vendor, or a bid submitted on a
55 vendor's letterhead or identifiable bid form and signed by
56 authorized personnel representing the vendor. "Competitive" shall
57 mean that the bids are developed based upon comparable
58 identification of the needs and are developed independently and
59 without knowledge of other bids or prospective bids. Bids may be
60 submitted by facsimile, electronic mail or other generally
61 accepted method of information distribution. Bids submitted by
62 electronic transmission shall not require the signature of the
63 vendor's representative unless required by agencies or governing
64 authorities.

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

66 (i) **Publication requirement.**

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

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

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

97 or for municipalities at the city hall, and at two (2) other
98 public places in the county or municipality, and also by
99 publication once each week for two (2) consecutive weeks in some
100 newspaper having a general circulation in the county or
101 municipality in the above provided manner. On the same date that
102 the notice is submitted to the newspaper for publication, the
103 agency or governing authority involved shall mail written notice
104 to, or provide electronic notification to the main office of the
105 Mississippi Procurement Technical Assistance Program under the
106 Mississippi Development Authority that contains the same
107 information as that in the published notice.

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

124 (iii) **Filing requirement.** In all cases involving
125 governing authorities, before the notice shall be published or
126 posted, the plans or specifications for the construction or
127 equipment being sought shall be filed with the clerk of the board
128 of the governing authority. In addition to these requirements, a

129 bid file shall be established which shall indicate those vendors
130 to whom such solicitations and specifications were issued, and
131 such file shall also contain such information as is pertinent to
132 the bid.

133 (iv) **Specification restrictions.**

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

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

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

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

162 (i) **Decision procedure.** Purchases may be made
163 from the lowest and best bidder. In determining the lowest and
164 best bid, freight and shipping charges shall be included.
165 Life-cycle costing, total cost bids, warranties, guaranteed
166 buy-back provisions and other relevant provisions may be included
167 in the best bid calculation. All best bid procedures for state
168 agencies must be in compliance with regulations established by the
169 Department of Finance and Administration. If any governing
170 authority accepts a bid other than the lowest bid actually
171 submitted, it shall place on its minutes detailed calculations and
172 narrative summary showing that the accepted bid was determined to
173 be the lowest and best bid, including the dollar amount of the
174 accepted bid and the dollar amount of the lowest bid. No agency
175 or governing authority shall accept a bid based on items not
176 included in the specifications.

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

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

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

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

225 31, 1980, or comparable depreciation guidelines with respect to
226 any equipment not covered by ADR guidelines. Any lease-purchase
227 agreement entered into pursuant to this paragraph (e) may contain
228 any of the terms and conditions which a master lease-purchase
229 agreement may contain under the provisions of Section 31-7-10(5),
230 and shall contain an annual allocation dependency clause
231 substantially similar to that set forth in Section 31-7-10(8).
232 Each agency or governing authority entering into a lease-purchase
233 transaction pursuant to this paragraph (e) shall maintain with
234 respect to each such lease-purchase transaction the same
235 information as required to be maintained by the Department of
236 Finance and Administration pursuant to Section 31-7-10(13).
237 However, nothing contained in this section shall be construed to
238 permit agencies to acquire items of equipment with a total
239 acquisition cost in the aggregate of less than Ten Thousand
240 Dollars (\$10,000.00) by a single lease-purchase transaction. All
241 equipment, and the purchase thereof by any lessor, acquired by
242 lease-purchase under this paragraph and all lease-purchase
243 payments with respect thereto shall be exempt from all Mississippi
244 sales, use and ad valorem taxes. Interest paid on any
245 lease-purchase agreement under this section shall be exempt from
246 State of Mississippi income taxation.

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

256 (g) **Construction contract change authorization.** In the
257 event a determination is made by an agency or governing authority
258 after a construction contract is let that changes or modifications
259 to the original contract are necessary or would better serve the
260 purpose of the agency or the governing authority, such agency or
261 governing authority may, in its discretion, order such changes
262 pertaining to the construction that are necessary under the
263 circumstances without the necessity of further public bids;
264 provided that such change shall be made in a commercially
265 reasonable manner and shall not be made to circumvent the public
266 purchasing statutes. In addition to any other authorized person,
267 the architect or engineer hired by an agency or governing
268 authority with respect to any public construction contract shall
269 have the authority, when granted by an agency or governing
270 authority, to authorize changes or modifications to the original
271 contract without the necessity of prior approval of the agency or
272 governing authority when any such change or modification is less
273 than one percent (1%) of the total contract amount. The agency or
274 governing authority may limit the number, manner or frequency of
275 such emergency changes or modifications.

276 (h) **Petroleum purchase alternative.** In addition to
277 other methods of purchasing authorized in this chapter, when any
278 agency or governing authority shall have a need for gas, diesel
279 fuel, oils and/or other petroleum products in excess of the amount
280 set forth in paragraph (a) of this section, such agency or
281 governing authority may purchase the commodity after having
282 solicited and obtained at least two (2) competitive written bids,
283 as defined in paragraph (b) of this section. If two (2)
284 competitive written bids are not obtained, the entity shall comply
285 with the procedures set forth in paragraph (c) of this section.
286 In the event any agency or governing authority shall have
287 advertised for bids for the purchase of gas, diesel fuel, oils and

288 other petroleum products and coal and no acceptable bids can be
289 obtained, such agency or governing authority is authorized and
290 directed to enter into any negotiations necessary to secure the
291 lowest and best contract available for the purchase of such
292 commodities.

293 (i) **Road construction petroleum products price**
294 **adjustment clause authorization.** Any agency or governing
295 authority authorized to enter into contracts for the construction,
296 maintenance, surfacing or repair of highways, roads or streets,
297 may include in its bid proposal and contract documents a price
298 adjustment clause with relation to the cost to the contractor,
299 including taxes, based upon an industry-wide cost index, of
300 petroleum products including asphalt used in the performance or
301 execution of the contract or in the production or manufacture of
302 materials for use in such performance. Such industry-wide index
303 shall be established and published monthly by the Mississippi
304 Department of Transportation with a copy thereof to be mailed,
305 upon request, to the clerks of the governing authority of each
306 municipality and the clerks of each board of supervisors
307 throughout the state. The price adjustment clause shall be based
308 on the cost of such petroleum products only and shall not include
309 any additional profit or overhead as part of the adjustment. The
310 bid proposals or document contract shall contain the basis and
311 methods of adjusting unit prices for the change in the cost of
312 such petroleum products.

313 (j) **State agency emergency purchase procedure.** If the
314 governing board or the executive head, or his designee, of any
315 agency of the state shall determine that an emergency exists in
316 regard to the purchase of any commodities or repair/replacement
317 contracts, so that the delay incident to giving opportunity for
318 competitive bidding would be detrimental to the interests of the
319 state, then the provisions herein for competitive bidding shall

320 not apply and the head of such agency shall be authorized to make
321 the purchase or repair/replacement. For emergency replacement of
322 buildings, roads, bridges or other public structures, the head of
323 the agency shall be authorized to make such replacement upon
324 concurrence by the Public Procurement Review Board. Total
325 purchases so made shall only be for the purpose of meeting needs
326 created by the emergency situation. In the event such executive
327 head is responsible to an agency board, at the meeting next
328 following the emergency purchase, documentation of the purchase,
329 including a description of the commodity purchased, the purchase
330 price thereof and the nature of the emergency shall be presented
331 to the board and placed on the minutes of the board of such
332 agency. The head of such agency, or his designee, shall, at the
333 earliest possible date following such emergency purchase, file
334 with the Department of Finance and Administration (i) a statement
335 explaining the conditions and circumstances of the emergency,
336 which shall include a detailed description of the events leading
337 up to the situation and the negative impact to the entity if the
338 purchase is made following the statutory requirements set forth in
339 paragraph (a), (b) or (c) of this section, and (ii) a certified
340 copy of the appropriate minutes of the board of such agency, if
341 applicable. On or before September 1 of each year, the State
342 Auditor shall prepare and deliver to the Senate Fees, Salaries and
343 Administration Committee, the House Fees and Salaries of Public
344 Officers Committee and the Joint Legislative Budget Committee a
345 report containing a list of all state agency emergency purchases
346 and supporting documentation for each emergency purchase.

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

348 If the governing authority, or the governing authority acting
349 through its designee, shall determine that an emergency exists in
350 regard to the purchase of any commodities or repair/replacement
351 contracts, so that the delay incident to giving opportunity for

352 competitive bidding would be detrimental to the interest of the
353 governing authority, then the provisions herein for competitive
354 bidding shall not apply and any officer or agent of such governing
355 authority having general or special authority therefor in making
356 such purchase or repair shall approve the bill presented therefor,
357 and he shall certify in writing thereon from whom such purchase
358 was made, or with whom such a repair contract was made. At the
359 board meeting next following the emergency purchase or repair
360 contract, documentation of the purchase or repair contract,
361 including a description of the commodity purchased, the price
362 thereof and the nature of the emergency shall be presented to the
363 board and shall be placed on the minutes of the board of such
364 governing authority.

365 (1) **Hospital purchase, lease-purchase and lease**
366 **authorization.**

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

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

384 lease of equipment or services executed on behalf of the
385 commissioners or board that complies with the provisions of this
386 subparagraph (ii) shall be excepted from the bid requirements set
387 forth in this section.

388 (m) **Exceptions from bidding requirements.** Excepted
389 from bid requirements are:

390 (i) **Purchasing agreements approved by department.**

391 Purchasing agreements, contracts and maximum price regulations
392 executed or approved by the Department of Finance and
393 Administration.

394 (ii) **Outside equipment repairs.** Repairs to
395 equipment, when such repairs are made by repair facilities in the
396 private sector; however, engines, transmissions, rear axles and/or
397 other such components shall not be included in this exemption when
398 replaced as a complete unit instead of being repaired and the need
399 for such total component replacement is known before disassembly
400 of the component; however, invoices identifying the equipment,
401 specific repairs made, parts identified by number and name,
402 supplies used in such repairs, and the number of hours of labor
403 and costs therefor shall be required for the payment for such
404 repairs.

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

411 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
412 of gravel or fill dirt which are to be removed and transported by
413 the purchaser.

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

416 authority, another governing authority or state agency of the
417 State of Mississippi, or any governing authority or state agency
418 of another state at a public auction held for the purpose of
419 disposing of such vehicles or other equipment. Any purchase by a
420 governing authority under the exemption authorized by this
421 subparagraph (v) shall require advance authorization spread upon
422 the minutes of the governing authority to include the listing of
423 the item or items authorized to be purchased and the maximum bid
424 authorized to be paid for each item or items.

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

426 Purchases, sales, transfers or trades by governing authorities or
427 state agencies when such purchases, sales, transfers or trades are
428 made by a private treaty agreement or through means of
429 negotiation, from any federal agency or authority, another
430 governing authority or state agency of the State of Mississippi,
431 or any state agency or governing authority of another state.
432 Nothing in this section shall permit such purchases through public
433 auction except as provided for in subparagraph (v) of this
434 section. It is the intent of this section to allow governmental
435 entities to dispose of and/or purchase commodities from other
436 governmental entities at a price that is agreed to by both
437 parties. This shall allow for purchases and/or sales at prices
438 which may be determined to be below the market value if the
439 selling entity determines that the sale at below market value is
440 in the best interest of the taxpayers of the state. Governing
441 authorities shall place the terms of the agreement and any
442 justification on the minutes, and state agencies shall obtain
443 approval from the Department of Finance and Administration, prior
444 to releasing or taking possession of the commodities.

445 (vii) **Perishable supplies or food.** Perishable
446 supplies or food purchased for use in connection with hospitals,

447 the school lunch programs, homemaking programs and for the feeding
448 of county or municipal prisoners.

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

463 (ix) **Waste disposal facility construction**
464 **contracts.** Construction of incinerators and other facilities for
465 disposal of solid wastes in which products either generated
466 therein, such as steam, or recovered therefrom, such as materials
467 for recycling, are to be sold or otherwise disposed of; however,
468 in constructing such facilities, a governing authority or agency
469 shall publicly issue requests for proposals, advertised for in the
470 same manner as provided herein for seeking bids for public
471 construction projects, concerning the design, construction,
472 ownership, operation and/or maintenance of such facilities,
473 wherein such requests for proposals when issued shall contain
474 terms and conditions relating to price, financial responsibility,
475 technology, environmental compatibility, legal responsibilities
476 and such other matters as are determined by the governing
477 authority or agency to be appropriate for inclusion; and after
478 responses to the request for proposals have been duly received,

479 the governing authority or agency may select the most qualified
480 proposal or proposals on the basis of price, technology and other
481 relevant factors and from such proposals, but not limited to the
482 terms thereof, negotiate and enter contracts with one or more of
483 the persons or firms submitting proposals.

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

487 (xi) **Information technology products.** Purchases
488 of information technology products made by governing authorities
489 under the provisions of purchase schedules, or contracts executed
490 or approved by the Mississippi Department of Information
491 Technology Services and designated for use by governing
492 authorities.

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

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

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

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

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

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

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

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

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

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

543 (xxii) **Garbage, solid waste and sewage contracts.**
544 Contracts for garbage collection or disposal, contracts for solid
545 waste collection or disposal and contracts for sewage collection
546 or disposal.

547 (xxiii) **Municipal water tank maintenance**
548 **contracts.** Professional maintenance program contracts for the
549 repair or maintenance of municipal water tanks, which provide
550 professional services needed to maintain municipal water storage
551 tanks for a fixed annual fee for a duration of two (2) or more
552 years.

553 (xxiv) **Purchases of Mississippi Industries for the**
554 **Blind products.** Purchases made by state agencies or governing
555 authorities involving any item that is manufactured, processed or
556 produced by the Mississippi Industries for the Blind.

557 (xxv) **Purchases of state-adopted textbooks.**
558 Purchases of state-adopted textbooks by public school districts.

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

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

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

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

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

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

598 (n) **Term contract authorization.** All contracts for the
599 purchase of:

600 (i) All contracts for the purchase of commodities,
601 equipment and public construction (including, but not limited to,
602 repair and maintenance), may be let for periods of not more than
603 sixty (60) months in advance, subject to applicable statutory
604 provisions prohibiting the letting of contracts during specified
605 periods near the end of terms of office. Term contracts for a

606 period exceeding twenty-four (24) months shall also be subject to
607 ratification or cancellation by governing authority boards taking
608 office subsequent to the governing authority board entering the
609 contract.

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

621 (o) **Purchase law violation prohibition and vendor**
622 **penalty.** No contract or purchase as herein authorized shall be
623 made for the purpose of circumventing the provisions of this
624 section requiring competitive bids, nor shall it be lawful for any
625 person or concern to submit individual invoices for amounts within
626 those authorized for a contract or purchase where the actual value
627 of the contract or commodity purchased exceeds the authorized
628 amount and the invoices therefor are split so as to appear to be
629 authorized as purchases for which competitive bids are not
630 required. Submission of such invoices shall constitute a
631 misdemeanor punishable by a fine of not less than Five Hundred
632 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
633 or by imprisonment for thirty (30) days in the county jail, or
634 both such fine and imprisonment. In addition, the claim or claims
635 submitted shall be forfeited.

636 (p) **Electrical utility petroleum-based equipment**
637 **purchase procedure.** When in response to a proper advertisement

638 therefor, no bid firm as to price is submitted to an electric
639 utility for power transformers, distribution transformers, power
640 breakers, reclosers or other articles containing a petroleum
641 product, the electric utility may accept the lowest and best bid
642 therefor although the price is not firm.

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

665 (r) **Solid waste contract proposal procedure.** Before
666 entering into any contract for garbage collection or disposal,
667 contract for solid waste collection or disposal or contract for
668 sewage collection or disposal, which involves an expenditure of
669 more than Fifty Thousand Dollars (\$50,000.00), a governing

670 authority or agency shall issue publicly a request for proposals
671 concerning the specifications for such services which shall be
672 advertised for in the same manner as provided in this section for
673 seeking bids for purchases which involve an expenditure of more
674 than the amount provided in paragraph (c) of this section. Any
675 request for proposals when issued shall contain terms and
676 conditions relating to price, financial responsibility,
677 technology, legal responsibilities and other relevant factors as
678 are determined by the governing authority or agency to be
679 appropriate for inclusion; all factors determined relevant by the
680 governing authority or agency or required by this paragraph (r)
681 shall be duly included in the advertisement to elicit proposals.
682 After responses to the request for proposals have been duly
683 received, the governing authority or agency shall select the most
684 qualified proposal or proposals on the basis of price, technology
685 and other relevant factors and from such proposals, but not
686 limited to the terms thereof, negotiate and enter contracts with
687 one or more of the persons or firms submitting proposals. If the
688 governing authority or agency deems none of the proposals to be
689 qualified or otherwise acceptable, the request for proposals
690 process may be reinitiated. Notwithstanding any other provisions
691 of this paragraph, where a county with at least thirty-five
692 thousand (35,000) nor more than forty thousand (40,000)
693 population, according to the 1990 federal decennial census, owns
694 or operates a solid waste landfill, the governing authorities of
695 any other county or municipality may contract with the governing
696 authorities of the county owning or operating the landfill,
697 pursuant to a resolution duly adopted and spread upon the minutes
698 of each governing authority involved, for garbage or solid waste
699 collection or disposal services through contract negotiations.

700 (s) **Minority set-aside authorization.** Notwithstanding
701 any provision of this section to the contrary, any agency or

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

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

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

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

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

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

734 completion and one (1) final list immediately before final
735 completion and final payment.

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

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

741 31-7-14. (1) (a) For purposes of this section, the
742 following words and phrases shall have the meaning ascribed
743 herein, unless the context clearly indicates otherwise:

744 (i) "Division" means the Energy Division of the
745 Mississippi Development Authority.

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

761 (iii) "Energy performance contract" means an
762 agreement to provide energy services which include, but are not
763 limited to, the design, installation, financing and maintenance or
764 management of the energy systems or equipment in order to improve
765 its energy efficiency. The energy savings are guaranteed by the

766 performance contractor and savings from energy, operations,
767 maintenance and other cost-avoidance measures can be used to repay
768 the cost of the project.

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

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

779 (vi) "Shared savings contract" means an agreement
780 where the contractor and the entity each receive a preagreed
781 percentage or dollar value of the energy cost savings over the
782 life of the contract.

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

790 (b) An entity may enter into a lease, energy services
791 contract or lease-purchase contracts for energy efficiency
792 equipment, services relating to the installation, operation and
793 maintenance of equipment or improvements reasonably required to
794 existing or new equipment and existing or new improvements and
795 facilities and shall contract in accordance with the following
796 provisions:

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

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

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

819 (iv) All contracts must contain the following
820 annual allocation dependency clause: The continuation of this
821 contract is contingent upon the appropriation of funds to fulfill
822 the requirements of the contract by the Legislature or other
823 budgeting authority. If the Legislature or other budgeting
824 authority fails to appropriate sufficient monies to provide for
825 the continuation of the contract, the contract shall terminate on
826 the last day of the fiscal year for which appropriations were
827 made. The termination shall be without penalty or expense to the

828 entity of any kind whatsoever, except as to the portions of
829 payments for which funds were appropriated.

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

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

843 (vii) This subsection shall, with respect to the
844 procurement of energy efficiency services and/or equipment,
845 supersede any contradictory or conflicting provisions of Chapter
846 7, Title 31, Mississippi Code of 1972, and other laws with respect
847 to awarding public contracts.

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

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

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

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

890 division, and accepted by the borrowing entity, under subsection
891 (2)(b) of this section.

892 (e) This subsection (2) shall, with respect to the
893 procurement of energy efficiency services and/or equipment,
894 supersede the provisions of any contradictory or conflicting
895 provisions of Chapter 7, Title 31, Mississippi Code of 1972, and
896 other laws with respect to awarding public contracts.

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

901 (4) (a) An entity may contract for energy efficiency
902 equipment services relating to the installation, operation or
903 maintenance of equipment or improvements reasonably required to
904 existing or new equipment and existing or new improvements and
905 facilities on a shared savings basis or performance basis.

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

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

919 (d) The terms of any shared savings or performance
920 contract entered into under this section must contain a guarantee
921 of savings clause from the company providing energy efficiency

922 equipment services relating to the installation, operation and
923 maintenance of equipment or improvements reasonably required to
924 existing or new equipment and existing or new improvements and
925 facilities.

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

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

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

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

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

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