

By: Representative Turner

To: Accountability,
Efficiency, Transparency

HOUSE BILL NO. 360

1 AN ACT TO PROHIBIT AN AGENCY OR GOVERNING AUTHORITY FROM
2 DIVIDING A CONTRACT INTO SEPARATE CONTRACTS IN ORDER TO AVOID
3 COMPETITIVE PURCHASING PROCEDURES; TO BRING FORWARD SECTIONS
4 31-7-55 AND 31-7-57, MISSISSIPPI CODE OF 1972, WHICH PROVIDE THE
5 PENALTIES FOR VIOLATING CERTAIN PURCHASING PROCEDURES, FOR THE
6 PURPOSE OF POSSIBLE AMENDMENT; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** An agency or governing authority shall not
9 attempt to avoid the competitive purchasing procedures provided in
10 Sections 31-7-13 and 27-104-7 by dividing a contract into several
11 contracts or separate work orders or by any other method. Any
12 violation of this section shall be subject to the penalties
13 provided in Section 31-7-55 and Section 31-7-57.

14 **SECTION 2.** Section 31-7-55, Mississippi Code of 1972, is
15 brought forward as follows:

16 31-7-55. **[For penalties applicable to violations occurring**
17 **between January 1, 1981, and August 15, 1988, the following**
18 **provisions govern.]**

19 (1) It is hereby declared to be unlawful and a violation of
20 public policy of the State of Mississippi for any elected or



21 appointed public officer of the state or the executive head of a
22 state board, commission, department, subdivision of the state
23 government or governing authority to make any purchases without
24 the full compliance with the provisions of Chapter 7, Title 31,
25 Mississippi Code of 1972. Any elected or appointed public officer
26 of the state or the executive head of a state board, commission,
27 department, subdivision of the state government or governing
28 authority who violates the provisions of Chapter 7, Title 31,
29 Mississippi Code of 1972, shall be deemed guilty of a misdemeanor
30 and, upon conviction therefor, shall be fined not less than One
31 Hundred Dollars (\$100.00) and not more than Five Hundred Dollars
32 (\$500.00) for each separate offense, or sentenced to the county
33 jail for not more than six (6) months, or both such fine and
34 imprisonment, and shall be removed from his office or position.

35 (2) Any person diverting the benefits of any article of
36 value tendered or received by any agency or governing authority to
37 his or her personal use, in violation of Section 31-7-23, shall be
38 guilty of a misdemeanor and, upon conviction, shall be punished by
39 a fine of not less than One Hundred Dollars (\$100.00) nor more
40 than Five Hundred Dollars (\$500.00), or sentenced to the county
41 jail for not more than six (6) months, or by both such fine and
42 imprisonment, and shall be required to return the money value of
43 the article unlawfully diverted to the agency involved.

44 **[The following provisions apply to violations which occur on**
45 **or after August 16, 1988.]**



46 (1) It is hereby declared to be unlawful and a violation of
47 public policy of the State of Mississippi for any elected or
48 appointed public officer of an agency or a governing authority, or
49 the executive head, any employee or agent of an agency or
50 governing authority to make any purchases without the full
51 compliance with the provisions of Chapter 7, Title 31, Mississippi
52 Code of 1972.

53 (2) Except as otherwise provided in subsection (4) of this
54 section, any person who intentionally, willfully and knowingly
55 violates the provisions of Chapter 7, Title 31, Mississippi Code
56 of 1972, shall be deemed guilty of a misdemeanor and, upon
57 conviction thereof, shall be fined not less than One Hundred
58 Dollars (\$100.00) and not more than Five Hundred Dollars (\$500.00)
59 for each separate offense, or sentenced to the county jail for not
60 more than six (6) months, or both such fine and imprisonment, and
61 shall be removed from his office or position.

62 (3) Any person who intentionally, willfully and knowingly
63 violates the provisions of subsection (1) of Section 31-7-57 shall
64 be guilty of a misdemeanor and, upon conviction thereof, shall be
65 fined not less than One Hundred Dollars (\$100.00) and not more
66 than Five Hundred Dollars (\$500.00), or sentenced to the county
67 jail for not more than six (6) months, or both such fine and
68 imprisonment, and shall be removed from his office or position.

69 (4) Any person diverting the benefits of any article of
70 value tendered or received by any agency or governing authority to



71 his or her personal use, in violation of Section 31-7-23, if the
72 value of such article be less than Five Hundred Dollars (\$500.00),
73 shall be guilty of a misdemeanor and, upon conviction, shall be
74 punished by a fine of not less than One Hundred Dollars (\$100.00)
75 nor more than Five Hundred Dollars (\$500.00), or sentenced to the
76 county jail for not more than six (6) months, or by both such fine
77 and imprisonment, shall be removed from his office or position,
78 and shall be required to return the money value of the article
79 unlawfully diverted to the agency or governing authority involved.
80 If the value of the article be Five Hundred Dollars (\$500.00) or
81 more, such person shall be guilty of a felony and, upon
82 conviction, shall be punished by a fine of not less than One
83 Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars
84 (\$5,000.00), or sentenced to the Department of Corrections for not
85 less than one (1) year nor more than five (5) years, or by both
86 such fine and imprisonment, shall be removed from his office or
87 position, and shall be required to return the money value of the
88 article unlawfully diverted to the agency or governing authority
89 involved.

90 (5) The provisions of this section are supplemental to any
91 other criminal statutes of this state.

92 **SECTION 3.** Section 31-7-57, Mississippi Code of 1972, is
93 brought forward as follows:

94 31-7-57. (1) Any elected or appointed public officer of an
95 agency or a governing authority, or the executive head, any



96 employee or agent of an agency or governing authority, who
97 appropriates or authorizes the expenditure of any money to an
98 object not authorized by law, shall be liable personally for up to
99 the full amount of the appropriation or expenditure as will fully
100 and completely compensate and repay such public funds for any
101 actual loss caused by such appropriation or expenditure, to be
102 recovered by suit in the name of the governmental entity involved,
103 or in the name of any person who is a taxpayer suing for the use
104 of the governmental entity involved, and such taxpayer shall be
105 liable for costs in such case. In the case of a governing board
106 of an agency or governing authority, only the individual members
107 of the governing board who voted for the appropriation or
108 authorization for expenditure shall be liable under this
109 subsection.

110 (2) No individual member, officer, employee or agent of any
111 agency or board of a governing authority shall let contracts or
112 purchase commodities or equipment except in the manner provided by
113 law, including the provisions of Section 25-9-120(3), Mississippi
114 Code of 1972, relating to personal and professional service
115 contracts by state agencies; nor shall any such agency or board of
116 a governing authority ratify any such contract or purchase made by
117 any individual member, officer, employee or agent thereof, or pay
118 for the same out of public funds unless such contract or purchase
119 was made in the manner provided by law; provided, however, that
120 any vendor who, in good faith, delivers commodities or printing or



121 performs any services under a contract to or for the agency or
122 governing authority, shall be entitled to recover the fair market
123 value of such commodities, printing or services, notwithstanding
124 some error or failure by the agency or governing authority to
125 follow the law, if the contract was for an object authorized by
126 law and the vendor had no control of, participation in, or actual
127 knowledge of the error or failure by the agency or governing
128 authority.

129 (3) The individual members, officers, employees or agents of
130 any agency or governing authority as defined in Section 31-7-1
131 causing any public funds to be expended, any contract made or let,
132 any payment made on any contract or any purchase made, or any
133 payment made, in any manner whatsoever, contrary to or without
134 complying with any statute of the State of Mississippi, regulating
135 or prescribing the manner in which such contracts shall be let,
136 payment on any contract made, purchase made, or any other payment
137 or expenditure made, shall be liable, individually, and upon their
138 official bond, for compensatory damages, in such sum up to the
139 full amount of such contract, purchase, expenditure or payment as
140 will fully and completely compensate and repay such public funds
141 for any actual loss caused by such unlawful expenditure.

142 (4) In addition to the foregoing provision, for any
143 violation of any statute of the State of Mississippi prescribing
144 the manner in which contracts shall be let, purchases made,
145 expenditure or payment made, any individual member, officer,



146 employee or agent of any agency or governing authority who shall
147 substantially depart from the statutory method of letting
148 contracts, making payments thereon, making purchases or expending
149 public funds shall be liable, individually and on his official
150 bond, for penal damages in such amount as may be assessed by any
151 court of competent jurisdiction, up to three (3) times the amount
152 of the contract, purchase, expenditure or payment. The person so
153 charged may offer mitigating circumstances to be considered by the
154 court in the assessment of any penal damages.

155 (5) Any sum recovered under the provisions hereof shall be
156 credited to the account from which such unlawful expenditure was
157 made.

158 (6) Except as otherwise provided in subsection (1) of this
159 section, any individual member of an agency or governing authority
160 as defined in Section 31-7-1 shall not be individually liable
161 under this section if he voted against payment for contracts let
162 or purchases made contrary to law and had his vote recorded in the
163 official minutes of the board or governing authority at the time
164 of such vote, or was absent at the time of such vote.

165 **SECTION 4.** Section 1 of this act shall be codified as a new
166 section in Chapter 7, Title 31, Mississippi Code of 1972.

167 **SECTION 5.** This act shall take effect and be in force from
168 and after July 1, 2018.

