

House Amendments to Senate Bill No. 2371

TO THE SECRETARY OF THE SENATE:

THIS IS TO INFORM YOU THAT THE HOUSE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

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

16 **SECTION 1.** Section 31-7-13, Mississippi Code of 1972, as
17 amended by Senate Bill No. 2806 and Senate Bill No. 2818, 2022
18 Regular Session, is amended as follows:

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

24 (a) **Bidding procedure for purchases not over \$5,000.00.**

25 Purchases which do not involve an expenditure of more than Five
26 Thousand Dollars (\$5,000.00), exclusive of freight or shipping
27 charges, may be made without advertising or otherwise requesting
28 competitive bids. However, nothing contained in this paragraph

29 (a) shall be construed to prohibit any agency or governing
30 authority from establishing procedures which require competitive
31 bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

32 (b) **Bidding procedure for purchases over \$5,000.00 but**
33 **not over * * * \$75,000.00.** Purchases which involve an expenditure
34 of more than Five Thousand Dollars (\$5,000.00) but not more
35 than * * * Seventy-five Thousand Dollars (\$75,000.00), exclusive
36 of freight and shipping charges, may be made from the lowest and
37 best bidder without publishing or posting advertisement for bids,
38 provided at least two (2) competitive written bids have been
39 obtained. Any state agency or community/junior college purchasing
40 commodities or procuring construction pursuant to this paragraph
41 (b) may authorize its purchasing agent, or his designee, to accept
42 the lowest competitive written bid under * * * Seventy-five
43 Thousand Dollars (\$75,000.00). Any governing authority purchasing
44 commodities pursuant to this paragraph (b) may authorize its
45 purchasing agent, or his designee, with regard to governing
46 authorities other than counties, or its purchase clerk, or his
47 designee, with regard to counties, to accept the lowest and best
48 competitive written bid. Such authorization shall be made in
49 writing by the governing authority and shall be maintained on file
50 in the primary office of the agency and recorded in the official
51 minutes of the governing authority, as appropriate. The
52 purchasing agent or the purchase clerk, or his designee, as the
53 case may be, and not the governing authority, shall be liable for
54 any penalties and/or damages as may be imposed by law for any act
55 or omission of the purchasing agent or purchase clerk, or his
56 designee, constituting a violation of law in accepting any bid
57 without approval by the governing authority. The term

58 "competitive written bid" shall mean a bid submitted on a bid form
59 furnished by the buying agency or governing authority and signed
60 by authorized personnel representing the vendor, or a bid
61 submitted on a vendor's letterhead or identifiable bid form and
62 signed by authorized personnel representing the vendor.

63 "Competitive" shall mean that the bids are developed based upon
64 comparable identification of the needs and are developed
65 independently and without knowledge of other bids or prospective
66 bids. Any bid item for construction in excess of Five Thousand
67 Dollars (\$5,000.00) shall be broken down by components to provide
68 detail of component description and pricing. These details shall
69 be submitted with the written bids and become part of the bid
70 evaluation criteria. Bids may be submitted by facsimile,
71 electronic mail or other generally accepted method of information
72 distribution. Bids submitted by electronic transmission shall not
73 require the signature of the vendor's representative unless
74 required by agencies or governing authorities.

75 (c) **Bidding procedure for purchases over * * ***
76 **\$75,000.00.**

77 (i) **Publication requirement.**

78 1. Purchases which involve an expenditure of
79 more than * * * Seventy-five Thousand Dollars (\$75,000.00),
80 exclusive of freight and shipping charges, may be made from the
81 lowest and best bidder after advertising for competitive bids once
82 each week for two (2) consecutive weeks in a regular newspaper
83 published in the county or municipality in which such agency or

84 governing authority is located. However, all American Recovery
85 and Reinvestment Act projects in excess of Twenty-five Thousand
86 Dollars (\$25,000.00) shall be bid. All references to American
87 Recovery and Reinvestment Act projects in this section shall not
88 apply to programs identified in Division B of the American
89 Recovery and Reinvestment Act.

90 2. Reverse auctions shall be the primary
91 method for receiving bids during the bidding process. If a
92 purchasing entity determines that a reverse auction is not in the
93 best interest of the state, then that determination must be
94 approved by the Public Procurement Review Board. The purchasing
95 entity shall submit a detailed explanation of why a reverse
96 auction would not be in the best interest of the state and present
97 an alternative process to be approved by the Public Procurement
98 Review Board. If the Public Procurement Review Board authorizes
99 the purchasing entity to solicit bids with a method other than
100 reverse auction, then the purchasing entity may designate the
101 other methods by which the bids will be received, including, but
102 not limited to, bids sealed in an envelope, bids received
103 electronically in a secure system, or bids received by any other
104 method that promotes open competition and has been approved by the
105 Office of Purchasing and Travel. However, reverse auction shall
106 not be used for any public contract for design * * *,
107 construction, improvement, repair or remodeling of any public
108 facilities, including the purchase of materials, supplies,
109 equipment or goods for same and including buildings, roads and

110 bridges * * *. The Public Procurement Review Board must approve
111 any contract entered into by alternative process. The provisions
112 of this item 2 shall not apply to the individual state
113 institutions of higher learning. The provisions of this item 2
114 requiring reverse auction as the primary method of receiving bids
115 shall not apply to term contract purchases as provided in
116 paragraph (n) of this section; however, a purchasing entity may,
117 in its discretion, utilize reverse auction for such purchases.

118 3. The date as published for the bid opening
119 shall not be less than seven (7) working days after the last
120 published notice; however, if the purchase involves a construction
121 project in which the estimated cost is in excess of * * *
122 Seventy-five Thousand Dollars (\$75,000.00), such bids shall not be
123 opened in less than fifteen (15) working days after the last
124 notice is published and the notice for the purchase of such
125 construction shall be published once each week for two (2)
126 consecutive weeks. However, all American Recovery and
127 Reinvestment Act projects in excess of Twenty-five Thousand
128 Dollars (\$25,000.00) shall be bid. For any projects in excess of
129 Twenty-five Thousand Dollars (\$25,000.00) under the American
130 Recovery and Reinvestment Act, publication shall be made one (1)
131 time and the bid opening for construction projects shall not be
132 less than ten (10) working days after the date of the published
133 notice. The notice of intention to let contracts or purchase
134 equipment shall state the time and place at which bids shall be
135 received, list the contracts to be made or types of equipment or

136 supplies to be purchased, and, if all plans and/or specifications
137 are not published, refer to the plans and/or specifications on
138 file. If there is no newspaper published in the county or
139 municipality, then such notice shall be given by posting same at
140 the courthouse, or for municipalities at the city hall, and at two
141 (2) other public places in the county or municipality, and also by
142 publication once each week for two (2) consecutive weeks in some
143 newspaper having a general circulation in the county or
144 municipality in the above-provided manner. On the same date that
145 the notice is submitted to the newspaper for publication, the
146 agency or governing authority involved shall mail written notice
147 to, or provide electronic notification to the main office of the
148 Mississippi Procurement Technical Assistance Program under the
149 Mississippi Development Authority that contains the same
150 information as that in the published notice. Submissions received
151 by the Mississippi Procurement Technical Assistance Program for
152 projects funded by the American Recovery and Reinvestment Act
153 shall be displayed on a separate and unique Internet web page
154 accessible to the public and maintained by the Mississippi
155 Development Authority for the Mississippi Procurement Technical
156 Assistance Program. Those American Recovery and Reinvestment Act
157 related submissions shall be publicly posted within twenty-four
158 (24) hours of receipt by the Mississippi Development Authority and
159 the bid opening shall not occur until the submission has been
160 posted for ten (10) consecutive days. The Department of Finance
161 and Administration shall maintain information regarding contracts

162 and other expenditures from the American Recovery and Reinvestment
163 Act, on a unique Internet web page accessible to the public. The
164 Department of Finance and Administration shall promulgate rules
165 regarding format, content and deadlines, unless otherwise
166 specified by law, of the posting of award notices, contract
167 execution and subsequent amendments, links to the contract
168 documents, expenditures against the awarded contracts and general
169 expenditures of funds from the American Recovery and Reinvestment
170 Act. Within one (1) working day of the contract award, the agency
171 or governing authority shall post to the designated web page
172 maintained by the Department of Finance and Administration, notice
173 of the award, including the award recipient, the contract amount,
174 and a brief summary of the contract in accordance with rules
175 promulgated by the department. Within one (1) working day of the
176 contract execution, the agency or governing authority shall post
177 to the designated web page maintained by the Department of Finance
178 and Administration a summary of the executed contract and make a
179 copy of the appropriately redacted contract documents available
180 for linking to the designated web page in accordance with the
181 rules promulgated by the department. The information provided by
182 the agency or governing authority shall be posted to the web page
183 for the duration of the American Recovery and Reinvestment Act
184 funding or until the project is completed, whichever is longer.

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) **Electronic bids.** Agencies and governing
236 authorities shall provide a secure electronic interactive system
237 for the submittal of bids requiring competitive bidding that shall
238 be an additional bidding option for those bidders who choose to
239 submit their bids electronically. The Department of Finance and

240 Administration shall provide, by regulation, the standards that
241 agencies must follow when receiving electronic bids. Agencies and
242 governing authorities shall make the appropriate provisions
243 necessary to accept electronic bids from those bidders who choose
244 to submit their bids electronically for all purchases requiring
245 competitive bidding under this section. Any special condition or
246 requirement for the electronic bid submission shall be specified
247 in the advertisement for bids required by this section. Agencies
248 or governing authorities that are currently without available high
249 speed Internet access shall be exempt from the requirement of this
250 subparagraph (v) until such time that high speed Internet access
251 becomes available. Any county having a population of less than
252 twenty thousand (20,000) shall be exempt from the provisions of
253 this subparagraph (v). Any municipality having a population of
254 less than ten thousand (10,000) shall be exempt from the
255 provisions of this subparagraph (v). The provisions of this
256 subparagraph (v) shall not require any bidder to submit bids
257 electronically. When construction bids are submitted
258 electronically, the requirement for including a certificate of
259 responsibility, or a statement that the bid enclosed does not
260 exceed Fifty Thousand Dollars (\$50,000.00), on the exterior of the
261 bid envelope as indicated in Section 31-3-21(1) and (2) shall be
262 deemed in compliance with by including same as an attachment with
263 the electronic bid submittal.

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

265 (i) **Decision procedure.** Purchases may be made
266 from the lowest and best bidder. In determining the lowest and
267 best bid, freight and shipping charges shall be included.
268 Life-cycle costing, total cost bids, warranties, guaranteed
269 buy-back provisions and other relevant provisions may be included
270 in the best bid calculation. All best bid procedures for state
271 agencies must be in compliance with regulations established by the
272 Department of Finance and Administration. If any governing
273 authority accepts a bid other than the lowest bid actually
274 submitted, it shall place on its minutes detailed calculations and
275 narrative summary showing that the accepted bid was determined to
276 be the lowest and best bid, including the dollar amount of the
277 accepted bid and the dollar amount of the lowest bid. No agency
278 or governing authority shall accept a bid based on items not
279 included in the specifications.

280 (ii) **Decision procedure for Certified Purchasing**
281 **Offices.** In addition to the decision procedure set forth in
282 subparagraph (i) of this paragraph (d), Certified Purchasing
283 Offices may also use the following procedure: Purchases may be
284 made from the bidder offering the best value. In determining the
285 best value bid, freight and shipping charges shall be included.
286 Life-cycle costing, total cost bids, warranties, guaranteed
287 buy-back provisions, documented previous experience, training
288 costs and other relevant provisions, including, but not limited
289 to, a bidder having a local office and inventory located within
290 the jurisdiction of the governing authority, may be included in

291 the best value calculation. This provision shall authorize
292 Certified Purchasing Offices to utilize a Request For Proposals
293 (RFP) process when purchasing commodities. All best value
294 procedures for state agencies must be in compliance with
295 regulations established by the Department of Finance and
296 Administration. No agency or governing authority shall accept a
297 bid based on items or criteria not included in the specifications.

298 (iii) **Decision procedure for Mississippi**

299 **Landmarks.** In addition to the decision procedure set forth in
300 subparagraph (i) of this paragraph (d), where purchase involves
301 renovation, restoration, or both, of the State Capitol Building or
302 any other historical building designated for at least five (5)
303 years as a Mississippi Landmark by the Board of Trustees of the
304 Department of Archives and History under the authority of Sections
305 39-7-7 and 39-7-11, the agency or governing authority may use the
306 following procedure: Purchases may be made from the lowest and
307 best prequalified bidder. Prequalification of bidders shall be
308 determined not less than fifteen (15) working days before the
309 first published notice of bid opening. Prequalification criteria
310 shall be limited to bidder's knowledge and experience in
311 historical restoration, preservation and renovation. In
312 determining the lowest and best bid, freight and shipping charges
313 shall be included. Life-cycle costing, total cost bids,
314 warranties, guaranteed buy-back provisions and other relevant
315 provisions may be included in the best bid calculation. All best
316 bid and prequalification procedures for state agencies must be in

317 compliance with regulations established by the Department of
318 Finance and Administration. If any governing authority accepts a
319 bid other than the lowest bid actually submitted, it shall place
320 on its minutes detailed calculations and narrative summary showing
321 that the accepted bid was determined to be the lowest and best
322 bid, including the dollar amount of the accepted bid and the
323 dollar amount of the lowest bid. No agency or governing authority
324 shall accept a bid based on items not included in the
325 specifications.

326 (iv) **Construction project negotiations authority.**

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

332 (e) **Lease-purchase authorization.** For the purposes of
333 this section, the term "equipment" shall mean equipment, furniture
334 and, if applicable, associated software and other applicable
335 direct costs associated with the acquisition. Any lease-purchase
336 of equipment which an agency is not required to lease-purchase
337 under the master lease-purchase program pursuant to Section
338 31-7-10 and any lease-purchase of equipment which a governing
339 authority elects to lease-purchase may be acquired by a
340 lease-purchase agreement under this paragraph (e). Lease-purchase
341 financing may also be obtained from the vendor or from a
342 third-party source after having solicited and obtained at least

343 two (2) written competitive bids, as defined in paragraph (b) of
344 this section, for such financing without advertising for such
345 bids. Solicitation for the bids for financing may occur before or
346 after acceptance of bids for the purchase of such equipment or,
347 where no such bids for purchase are required, at any time before
348 the purchase thereof. No such lease-purchase agreement shall be
349 for an annual rate of interest which is greater than the overall
350 maximum interest rate to maturity on general obligation
351 indebtedness permitted under Section 75-17-101, and the term of
352 such lease-purchase agreement shall not exceed the useful life of
353 equipment covered thereby as determined according to the upper
354 limit of the asset depreciation range (ADR) guidelines for the
355 Class Life Asset Depreciation Range System established by the
356 Internal Revenue Service pursuant to the United States Internal
357 Revenue Code and regulations thereunder as in effect on December
358 31, 1980, or comparable depreciation guidelines with respect to
359 any equipment not covered by ADR guidelines. Any lease-purchase
360 agreement entered into pursuant to this paragraph (e) may contain
361 any of the terms and conditions which a master lease-purchase
362 agreement may contain under the provisions of Section 31-7-10(5),
363 and shall contain an annual allocation dependency clause
364 substantially similar to that set forth in Section 31-7-10(8).
365 Each agency or governing authority entering into a lease-purchase
366 transaction pursuant to this paragraph (e) shall maintain with
367 respect to each such lease-purchase transaction the same
368 information as required to be maintained by the Department of

369 Finance and Administration pursuant to Section 31-7-10(13).
370 However, nothing contained in this section shall be construed to
371 permit agencies to acquire items of equipment with a total
372 acquisition cost in the aggregate of less than Ten Thousand
373 Dollars (\$10,000.00) by a single lease-purchase transaction. All
374 equipment, and the purchase thereof by any lessor, acquired by
375 lease-purchase under this paragraph and all lease-purchase
376 payments with respect thereto shall be exempt from all Mississippi
377 sales, use and ad valorem taxes. Interest paid on any
378 lease-purchase agreement under this section shall be exempt from
379 State of Mississippi income taxation.

380 (f) **Alternate bid authorization.** When necessary to
381 ensure ready availability of commodities for public works and the
382 timely completion of public projects, no more than two (2)
383 alternate bids may be accepted by a governing authority for
384 commodities. No purchases may be made through use of such
385 alternate bids procedure unless the lowest and best bidder cannot
386 deliver the commodities contained in his bid. In that event,
387 purchases of such commodities may be made from one (1) of the
388 bidders whose bid was accepted as an alternate.

389 (g) **Construction contract change authorization.** In the
390 event a determination is made by an agency or governing authority
391 after a construction contract is let that changes or modifications
392 to the original contract are necessary or would better serve the
393 purpose of the agency or the governing authority, such agency or
394 governing authority may, in its discretion, order such changes

395 pertaining to the construction that are necessary under the
396 circumstances without the necessity of further public bids;
397 provided that such change shall be made in a commercially
398 reasonable manner and shall not be made to circumvent the public
399 purchasing statutes. In addition to any other authorized person,
400 the architect or engineer hired by an agency or governing
401 authority with respect to any public construction contract shall
402 have the authority, when granted by an agency or governing
403 authority, to authorize changes or modifications to the original
404 contract without the necessity of prior approval of the agency or
405 governing authority when any such change or modification is less
406 than one percent (1%) of the total contract amount. The agency or
407 governing authority may limit the number, manner or frequency of
408 such emergency changes or modifications.

409 (h) **Petroleum purchase alternative.** In addition to
410 other methods of purchasing authorized in this chapter, when any
411 agency or governing authority shall have a need for gas, diesel
412 fuel, oils and/or other petroleum products in excess of the amount
413 set forth in paragraph (a) of this section, such agency or
414 governing authority may purchase the commodity after having
415 solicited and obtained at least two (2) competitive written bids,
416 as defined in paragraph (b) of this section. If two (2)
417 competitive written bids are not obtained, the entity shall comply
418 with the procedures set forth in paragraph (c) of this section.
419 In the event any agency or governing authority shall have
420 advertised for bids for the purchase of gas, diesel fuel, oils and

421 other petroleum products and coal and no acceptable bids can be
422 obtained, such agency or governing authority is authorized and
423 directed to enter into any negotiations necessary to secure the
424 lowest and best contract available for the purchase of such
425 commodities.

426 (i) **Road construction petroleum products price**
427 **adjustment clause authorization.** Any agency or governing
428 authority authorized to enter into contracts for the construction,
429 maintenance, surfacing or repair of highways, roads or streets,
430 may include in its bid proposal and contract documents a price
431 adjustment clause with relation to the cost to the contractor,
432 including taxes, based upon an industry-wide cost index, of
433 petroleum products including asphalt used in the performance or
434 execution of the contract or in the production or manufacture of
435 materials for use in such performance. Such industry-wide index
436 shall be established and published monthly by the Mississippi
437 Department of Transportation with a copy thereof to be mailed,
438 upon request, to the clerks of the governing authority of each
439 municipality and the clerks of each board of supervisors
440 throughout the state. The price adjustment clause shall be based
441 on the cost of such petroleum products only and shall not include
442 any additional profit or overhead as part of the adjustment. The
443 bid proposals or document contract shall contain the basis and
444 methods of adjusting unit prices for the change in the cost of
445 such petroleum products.

446 (j) **State agency emergency purchase procedure.** If the
447 governing board or the executive head, or his designees, of any
448 agency of the state shall determine that an emergency exists in
449 regard to the purchase of any commodities or repair contracts, so
450 that the delay incident to giving opportunity for competitive
451 bidding would be detrimental to the interests of the state, then
452 the head of such agency, or his designees, shall file with the
453 Department of Finance and Administration (i) a statement
454 explaining the conditions and circumstances of the emergency,
455 which shall include a detailed description of the events leading
456 up to the situation and the negative impact to the entity if the
457 purchase is made following the statutory requirements set forth in
458 paragraph (a), (b) or (c) of this section, and (ii) a certified
459 copy of the appropriate minutes of the board of such agency
460 requesting the emergency purchase, if applicable. Upon receipt of
461 the statement and applicable board certification, the State Fiscal
462 Officer, or his designees, may, in writing, authorize the purchase
463 or repair without having to comply with competitive bidding
464 requirements.

465 If the governing board or the executive head, or his
466 designees, of any agency determines that an emergency exists in
467 regard to the purchase of any commodities or repair contracts, so
468 that the delay incident to giving opportunity for competitive
469 bidding would threaten the health or safety of any person, or the
470 preservation or protection of property, then the provisions in
471 this section for competitive bidding shall not apply, and any

472 officer or agent of the agency having general or specific
473 authority for making the purchase or repair contract shall approve
474 the bill presented for payment, and he shall certify in writing
475 from whom the purchase was made, or with whom the repair contract
476 was made.

477 Total purchases made under this paragraph (j) shall only be
478 for the purpose of meeting needs created by the emergency
479 situation. Following the emergency purchase, documentation of the
480 purchase, including a description of the commodity purchased, the
481 purchase price thereof and the nature of the emergency shall be
482 filed with the Department of Finance and Administration. Any
483 contract awarded pursuant to this paragraph (j) shall not exceed a
484 term of one (1) year.

485 Purchases under the grant program established under Section
486 37-68-7 in response to COVID-19 and the directive that school
487 districts create a distance learning plan and fulfill technology
488 needs expeditiously shall be deemed an emergency purchase for
489 purposes of this paragraph (j).

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

491 If the governing authority, or the governing authority acting
492 through its designee, shall determine that an emergency exists in
493 regard to the purchase of any commodities or repair contracts, so
494 that the delay incident to giving opportunity for competitive
495 bidding would be detrimental to the interest of the governing
496 authority, then the provisions herein for competitive bidding
497 shall not apply and any officer or agent of such governing

498 authority having general or special authority therefor in making
499 such purchase or repair shall approve the bill presented therefor,
500 and he shall certify in writing thereon from whom such purchase
501 was made, or with whom such a repair contract was made. At the
502 board meeting next following the emergency purchase or repair
503 contract, documentation of the purchase or repair contract,
504 including a description of the commodity purchased, the price
505 thereof and the nature of the emergency shall be presented to the
506 board and shall be placed on the minutes of the board of such
507 governing authority. Purchases under the grant program
508 established under Section 37-68-7 in response to COVID-19 and the
509 directive that school districts create a distance learning plan
510 and fulfill technology needs expeditiously shall be deemed an
511 emergency purchase for purposes of this paragraph (k).

512 (1) **Hospital purchase, lease-purchase and lease**
513 **authorization.**

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

519 (ii) In addition to the authority granted in
520 subparagraph (i) of this paragraph (1), the commissioners or board
521 of trustees is authorized to enter into contracts for the lease of
522 equipment or services, or both, which it considers necessary for
523 the proper care of patients if, in its opinion, it is not

524 financially feasible to purchase the necessary equipment or
525 services. Any such contract for the lease of equipment or
526 services executed by the commissioners or board shall not exceed a
527 maximum of five (5) years' duration and shall include a
528 cancellation clause based on unavailability of funds. If such
529 cancellation clause is exercised, there shall be no further
530 liability on the part of the lessee. Any such contract for the
531 lease of equipment or services executed on behalf of the
532 commissioners or board that complies with the provisions of this
533 subparagraph (ii) shall be excepted from the bid requirements set
534 forth in this section.

535 (m) **Exceptions from bidding requirements.** Excepted
536 from bid requirements are:

537 (i) **Purchasing agreements approved by department.**
538 Purchasing agreements, contracts and maximum price regulations
539 executed or approved by the Department of Finance and
540 Administration.

541 (ii) **Outside equipment repairs.** Repairs to
542 equipment, when such repairs are made by repair facilities in the
543 private sector; however, engines, transmissions, rear axles and/or
544 other such components shall not be included in this exemption when
545 replaced as a complete unit instead of being repaired and the need
546 for such total component replacement is known before disassembly
547 of the component; however, invoices identifying the equipment,
548 specific repairs made, parts identified by number and name,
549 supplies used in such repairs, and the number of hours of labor

550 and costs therefor shall be required for the payment for such
551 repairs.

552 (iii) **In-house equipment repairs.** Purchases of
553 parts for repairs to equipment, when such repairs are made by
554 personnel of the agency or governing authority; however, entire
555 assemblies, such as engines or transmissions, shall not be
556 included in this exemption when the entire assembly is being
557 replaced instead of being repaired.

558 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
559 of gravel or fill dirt which are to be removed and transported by
560 the purchaser.

561 (v) **Governmental equipment auctions.** Motor
562 vehicles or other equipment purchased from a federal agency or
563 authority, another governing authority or state agency of the
564 State of Mississippi, or any governing authority or state agency
565 of another state at a public auction held for the purpose of
566 disposing of such vehicles or other equipment. Any purchase by a
567 governing authority under the exemption authorized by this
568 subparagraph (v) shall require advance authorization spread upon
569 the minutes of the governing authority to include the listing of
570 the item or items authorized to be purchased and the maximum bid
571 authorized to be paid for each item or items.

572 (vi) **Intergovernmental sales and transfers.**
573 Purchases, sales, transfers or trades by governing authorities or
574 state agencies when such purchases, sales, transfers or trades are
575 made by a private treaty agreement or through means of

576 negotiation, from any federal agency or authority, another
577 governing authority or state agency of the State of Mississippi,
578 or any state agency or governing authority of another state.
579 Nothing in this section shall permit such purchases through public
580 auction except as provided for in subparagraph (v) of this
581 paragraph (m). It is the intent of this section to allow
582 governmental entities to dispose of and/or purchase commodities
583 from other governmental entities at a price that is agreed to by
584 both parties. This shall allow for purchases and/or sales at
585 prices which may be determined to be below the market value if the
586 selling entity determines that the sale at below market value is
587 in the best interest of the taxpayers of the state. Governing
588 authorities shall place the terms of the agreement and any
589 justification on the minutes, and state agencies shall obtain
590 approval from the Department of Finance and Administration, prior
591 to releasing or taking possession of the commodities.

592 (vii) **Perishable supplies or food.** Perishable
593 supplies or food purchased for use in connection with hospitals,
594 the school lunch programs, homemaking programs and for the feeding
595 of county or municipal prisoners.

596 (viii) **Single-source items.** Noncompetitive items
597 available from one (1) source only. In connection with the
598 purchase of noncompetitive items only available from one (1)
599 source, a certification of the conditions and circumstances
600 requiring the purchase shall be filed by the agency with the
601 Department of Finance and Administration and by the governing

602 authority with the board of the governing authority. Upon receipt
603 of that certification the Department of Finance and Administration
604 or the board of the governing authority, as the case may be, may,
605 in writing, authorize the purchase, which authority shall be noted
606 on the minutes of the body at the next regular meeting thereafter.
607 In those situations, a governing authority is not required to
608 obtain the approval of the Department of Finance and
609 Administration. Following the purchase, the executive head of the
610 state agency, or his designees, shall file with the Department of
611 Finance and Administration, documentation of the purchase,
612 including a description of the commodity purchased, the purchase
613 price thereof and the source from whom it was purchased.

614 (ix) **Waste disposal facility construction**
615 **contracts.** Construction of incinerators and other facilities for
616 disposal of solid wastes in which products either generated
617 therein, such as steam, or recovered therefrom, such as materials
618 for recycling, are to be sold or otherwise disposed of; however,
619 in constructing such facilities, a governing authority or agency
620 shall publicly issue requests for proposals, advertised for in the
621 same manner as provided herein for seeking bids for public
622 construction projects, concerning the design, construction,
623 ownership, operation and/or maintenance of such facilities,
624 wherein such requests for proposals when issued shall contain
625 terms and conditions relating to price, financial responsibility,
626 technology, environmental compatibility, legal responsibilities
627 and such other matters as are determined by the governing

628 authority or agency to be appropriate for inclusion; and after
629 responses to the request for proposals have been duly received,
630 the governing authority or agency may select the most qualified
631 proposal or proposals on the basis of price, technology and other
632 relevant factors and from such proposals, but not limited to the
633 terms thereof, negotiate and enter contracts with one or more of
634 the persons or firms submitting proposals.

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

638 (xi) **Information technology products.** Purchases
639 of information technology products made by governing authorities
640 under the provisions of purchase schedules, or contracts executed
641 or approved by the Mississippi Department of Information
642 Technology Services and designated for use by governing
643 authorities.

644 (xii) **Energy efficiency services and equipment.**
645 Energy efficiency services and equipment acquired by school
646 districts, community and junior colleges, institutions of higher
647 learning and state agencies or other applicable governmental
648 entities on a shared-savings, lease or lease-purchase basis
649 pursuant to Section 31-7-14.

650 (xiii) **Municipal electrical utility system fuel.**
651 Purchases of coal and/or natural gas by municipally owned electric
652 power generating systems that have the capacity to use both coal
653 and natural gas for the generation of electric power.

654 (xiv) **Library books and other reference materials.**

655 Purchases by libraries or for libraries of books and periodicals;
656 processed film, videocassette tapes, filmstrips and slides;
657 recorded audiotapes, cassettes and diskettes; and any such items
658 as would be used for teaching, research or other information
659 distribution; however, equipment such as projectors, recorders,
660 audio or video equipment, and monitor televisions are not exempt
661 under this subparagraph.

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

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

668 (xvii) **Multichannel interactive video systems.**
669 From and after July 1, 1990, contracts by Mississippi Authority
670 for Educational Television with any private educational
671 institution or private nonprofit organization whose purposes are
672 educational in regard to the construction, purchase, lease or
673 lease-purchase of facilities and equipment and the employment of
674 personnel for providing multichannel interactive video systems
675 (ITSF) in the school districts of this state.

676 (xviii) **Purchases of prison industry products by**
677 **the Department of Corrections, regional correctional facilities or**
678 **privately owned prisons.** Purchases made by the Mississippi
679 Department of Corrections, regional correctional facilities or

680 privately owned prisons involving any item that is manufactured,
681 processed, grown or produced from the state's prison industries.

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

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

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

696 (xxii) **Garbage, solid waste and sewage contracts.**
697 Contracts for garbage collection or disposal, contracts for solid
698 waste collection or disposal and contracts for sewage collection
699 or disposal.

700 (xxiii) **Municipal water tank maintenance**
701 **contracts.** Professional maintenance program contracts for the
702 repair or maintenance of municipal water tanks, which provide
703 professional services needed to maintain municipal water storage
704 tanks for a fixed annual fee for a duration of two (2) or more
705 years.

706 (xxiv) **Purchases of Mississippi Industries for the**
707 **Blind products.** Purchases made by state agencies or governing
708 authorities involving any item that is manufactured, processed or
709 produced by the Mississippi Industries for the Blind.

710 (xxv) **Purchases of state-adopted textbooks.**
711 Purchases of state-adopted textbooks by public school districts.

712 (xxvi) **Certain purchases under the Mississippi**
713 **Major Economic Impact Act.** Contracts entered into pursuant to the
714 provisions of Section 57-75-9(2), (3) and (4).

715 (xxvii) **Used heavy or specialized machinery or**
716 **equipment for installation of soil and water conservation**
717 **practices purchased at auction.** Used heavy or specialized
718 machinery or equipment used for the installation and
719 implementation of soil and water conservation practices or
720 measures purchased subject to the restrictions provided in
721 Sections 69-27-331 through 69-27-341. Any purchase by the State
722 Soil and Water Conservation Commission under the exemption
723 authorized by this subparagraph shall require advance
724 authorization spread upon the minutes of the commission to include
725 the listing of the item or items authorized to be purchased and
726 the maximum bid authorized to be paid for each item or items.

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

730 (xxix) **Purchases made pursuant to qualified**
731 **cooperative purchasing agreements.** Purchases made by certified

732 purchasing offices of state agencies or governing authorities
733 under cooperative purchasing agreements previously approved by the
734 Office of Purchasing and Travel and established by or for any
735 municipality, county, parish or state government or the federal
736 government, provided that the notification to potential
737 contractors includes a clause that sets forth the availability of
738 the cooperative purchasing agreement to other governmental
739 entities. Such purchases shall only be made if the use of the
740 cooperative purchasing agreements is determined to be in the best
741 interest of the governmental entity.

742 (xxx) **School yearbooks.** Purchases of school
743 yearbooks by state agencies or governing authorities; provided,
744 however, that state agencies and governing authorities shall use
745 for these purchases the RFP process as set forth in the
746 Mississippi Procurement Manual adopted by the Office of Purchasing
747 and Travel.

748 (xxxi) **Design-build method of contracting and**
749 **certain other contracts.** Contracts entered into under the
750 provisions of Section 31-7-13.1, 37-101-44 or 65-1-85.

751 (xxxii) **Toll roads and bridge construction**
752 **projects.** Contracts entered into under the provisions of Section
753 65-43-1 or 65-43-3.

754 (xxxiii) **Certain purchases under Section 57-1-221.**
755 Contracts entered into pursuant to the provisions of Section
756 57-1-221.

757 (xxxiv) **Certain transfers made pursuant to the**
758 **provisions of Section 57-105-1(7).** Transfers of public property
759 or facilities under Section 57-105-1(7) and construction related
760 to such public property or facilities.

761 (xxxv) **Certain purchases or transfers entered into**
762 **with local electrical power associations.** Contracts or agreements
763 entered into under the provisions of Section 55-3-33.

764 (xxxvi) **Certain purchases by an academic medical**
765 **center or health sciences school.** Purchases by an academic
766 medical center or health sciences school, as defined in Section
767 37-115-50, of commodities that are used for clinical purposes and
768 1. intended for use in the diagnosis of disease or other
769 conditions or in the cure, mitigation, treatment or prevention of
770 disease, and 2. medical devices, biological, drugs and
771 radiation-emitting devices as defined by the United States Food
772 and Drug Administration.

773 (xxxvii) **Certain purchases made under the Alyce G.**
774 **Clarke Mississippi Lottery Law.** Contracts made by the Mississippi
775 Lottery Corporation pursuant to the Alyce G. Clarke Mississippi
776 Lottery Law.

777 (xxxviii) **Certain purchases made by the Department**
778 **of Health and the Department of Revenue.** Purchases made by the
779 Department of Health and/or the Department of Revenue solely for
780 the purpose of fulfilling their respective responsibilities under
781 the Mississippi Medical Cannabis Act. This subparagraph shall
782 stand repealed on June 30, 2023.

783 (n) **Term contract authorization.** All contracts for the
784 purchase of:

785 (i) All contracts for the purchase of commodities,
786 equipment and public construction (including, but not limited to,
787 repair and maintenance), may be let for periods of not more than
788 sixty (60) months in advance, subject to applicable statutory
789 provisions prohibiting the letting of contracts during specified
790 periods near the end of terms of office. Term contracts for a
791 period exceeding twenty-four (24) months shall also be subject to
792 ratification or cancellation by governing authority boards taking
793 office subsequent to the governing authority board entering the
794 contract.

795 (ii) Bid proposals and contracts may include price
796 adjustment clauses with relation to the cost to the contractor
797 based upon a nationally published industry-wide or nationally
798 published and recognized cost index. The cost index used in a
799 price adjustment clause shall be determined by the Department of
800 Finance and Administration for the state agencies and by the
801 governing board for governing authorities. The bid proposal and
802 contract documents utilizing a price adjustment clause shall
803 contain the basis and method of adjusting unit prices for the
804 change in the cost of such commodities, equipment and public
805 construction.

806 (o) **Purchase law violation prohibition and vendor**
807 **penalty.** No contract or purchase as herein authorized shall be
808 made for the purpose of circumventing the provisions of this

809 section requiring competitive bids, nor shall it be lawful for any
810 person or concern to submit individual invoices for amounts within
811 those authorized for a contract or purchase where the actual value
812 of the contract or commodity purchased exceeds the authorized
813 amount and the invoices therefor are split so as to appear to be
814 authorized as purchases for which competitive bids are not
815 required. Submission of such invoices shall constitute a
816 misdemeanor punishable by a fine of not less than Five Hundred
817 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
818 or by imprisonment for thirty (30) days in the county jail, or
819 both such fine and imprisonment. In addition, the claim or claims
820 submitted shall be forfeited.

821 (p) **Electrical utility petroleum-based equipment**
822 **purchase procedure.** When in response to a proper advertisement
823 therefor, no bid firm as to price is submitted to an electric
824 utility for power transformers, distribution transformers, power
825 breakers, reclosers or other articles containing a petroleum
826 product, the electric utility may accept the lowest and best bid
827 therefor although the price is not firm.

828 (q) **Fuel management system bidding procedure.** Any
829 governing authority or agency of the state shall, before
830 contracting for the services and products of a fuel management or
831 fuel access system, enter into negotiations with not fewer than
832 two (2) sellers of fuel management or fuel access systems for
833 competitive written bids to provide the services and products for
834 the systems. In the event that the governing authority or agency

835 cannot locate two (2) sellers of such systems or cannot obtain
836 bids from two (2) sellers of such systems, it shall show proof
837 that it made a diligent, good-faith effort to locate and negotiate
838 with two (2) sellers of such systems. Such proof shall include,
839 but not be limited to, publications of a request for proposals and
840 letters soliciting negotiations and bids. For purposes of this
841 paragraph (q), a fuel management or fuel access system is an
842 automated system of acquiring fuel for vehicles as well as
843 management reports detailing fuel use by vehicles and drivers, and
844 the term "competitive written bid" shall have the meaning as
845 defined in paragraph (b) of this section. Governing authorities
846 and agencies shall be exempt from this process when contracting
847 for the services and products of fuel management or fuel access
848 systems under the terms of a state contract established by the
849 Office of Purchasing and Travel.

850 (r) **Solid waste contract proposal procedure.** Before
851 entering into any contract for garbage collection or disposal,
852 contract for solid waste collection or disposal or contract for
853 sewage collection or disposal, which involves an expenditure of
854 more than * * * Seventy-five Thousand Dollars (\$75,000.00), a
855 governing authority or agency shall issue publicly a request for
856 proposals concerning the specifications for such services which
857 shall be advertised for in the same manner as provided in this
858 section for seeking bids for purchases which involve an
859 expenditure of more than the amount provided in paragraph (c) of
860 this section. Any request for proposals when issued shall contain

861 terms and conditions relating to price, financial responsibility,
862 technology, legal responsibilities and other relevant factors as
863 are determined by the governing authority or agency to be
864 appropriate for inclusion; all factors determined relevant by the
865 governing authority or agency or required by this paragraph (r)
866 shall be duly included in the advertisement to elicit proposals.
867 After responses to the request for proposals have been duly
868 received, the governing authority or agency shall select the most
869 qualified proposal or proposals on the basis of price, technology
870 and other relevant factors and from such proposals, but not
871 limited to the terms thereof, negotiate and enter into contracts
872 with one or more of the persons or firms submitting proposals. If
873 the governing authority or agency deems none of the proposals to
874 be qualified or otherwise acceptable, the request for proposals
875 process may be reinitiated. Notwithstanding any other provisions
876 of this paragraph, where a county with at least thirty-five
877 thousand (35,000) nor more than forty thousand (40,000)
878 population, according to the 1990 federal decennial census, owns
879 or operates a solid waste landfill, the governing authorities of
880 any other county or municipality may contract with the governing
881 authorities of the county owning or operating the landfill,
882 pursuant to a resolution duly adopted and spread upon the minutes
883 of each governing authority involved, for garbage or solid waste
884 collection or disposal services through contract negotiations.

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

887 governing authority, by order placed on its minutes, may, in its
888 discretion, set aside not more than twenty percent (20%) of its
889 anticipated annual expenditures for the purchase of commodities
890 from minority businesses; however, all such set-aside purchases
891 shall comply with all purchasing regulations promulgated by the
892 Department of Finance and Administration and shall be subject to
893 bid requirements under this section. Set-aside purchases for
894 which competitive bids are required shall be made from the lowest
895 and best minority business bidder. For the purposes of this
896 paragraph, the term "minority business" means a business which is
897 owned by a majority of persons who are United States citizens or
898 permanent resident aliens (as defined by the Immigration and
899 Naturalization Service) of the United States, and who are Asian,
900 Black, Hispanic or Native American, according to the following
901 definitions:

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

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

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

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

913 (t) **Construction punch list restriction.** The
914 architect, engineer or other representative designated by the
915 agency or governing authority that is contracting for public
916 construction or renovation may prepare and submit to the
917 contractor only one (1) preliminary punch list of items that do
918 not meet the contract requirements at the time of substantial
919 completion and one (1) final list immediately before final
920 completion and final payment.

921 (u) **Procurement of construction services by state**
922 **institutions of higher learning.** Contracts for privately financed
923 construction of auxiliary facilities on the campus of a state
924 institution of higher learning may be awarded by the Board of
925 Trustees of State Institutions of Higher Learning to the lowest
926 and best bidder, where sealed bids are solicited, or to the
927 offeror whose proposal is determined to represent the best value
928 to the citizens of the State of Mississippi, where requests for
929 proposals are solicited.

930 (v) **Insurability of bidders for public construction or**
931 **other public contracts.** In any solicitation for bids to perform
932 public construction or other public contracts to which this
933 section applies, including, but not limited to, contracts for
934 repair and maintenance, for which the contract will require
935 insurance coverage in an amount of not less than One Million
936 Dollars (\$1,000,000.00), bidders shall be permitted to either
937 submit proof of current insurance coverage in the specified amount
938 or demonstrate ability to obtain the required coverage amount of

939 insurance if the contract is awarded to the bidder. Proof of
940 insurance coverage shall be submitted within five (5) business
941 days from bid acceptance.

942 (w) **Purchase authorization clarification.** Nothing in
943 this section shall be construed as authorizing any purchase not
944 authorized by law.

945 **SECTION 2.** This act shall take effect and be in force from
946 and after July 1, 2022, and shall stand repealed on June 30, 2022.

**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, AS
2 AMENDED BY SENATE BILL NO. 2806 AND SENATE BILL NO. 2818, 2022
3 REGULAR SESSION, TO INCREASE THE THRESHOLD FOR BID REQUIREMENT
4 UNDER THE PUBLIC PURCHASING LAW; TO CLARIFY THAT A PURCHASING
5 ENTITY MAY, IN ITS DISCRETION, USE REVERSE AUCTION FOR TERM
6 CONTRACT PURCHASES; TO CLARIFY UNDER THE PUBLIC PURCHASING LAW
7 THAT REVERSE AUCTION SHALL NOT BE USED FOR THE IMPROVEMENT, REPAIR
8 OR REMODELING OF ANY PUBLIC FACILITIES, INCLUDING THE PURCHASE OF
9 MATERIALS, SUPPLIES, EQUIPMENT OR GOODS FOR SAME; TO PROVIDE THAT
10 CERTAIN PURCHASES MADE BY THE DEPARTMENT OF HEALTH AND/OR THE
11 DEPARTMENT OF REVENUE SOLELY FOR THE PURPOSE OF FULFILLING THEIR
12 RESPECTIVE RESPONSIBILITIES UNDER THE MISSISSIPPI MEDICAL CANNABIS
13 ACT TO BE EXEMPT FROM CERTAIN BIDDING REQUIREMENTS; AND FOR
14 RELATED PURPOSES.

HR26\SB2371A.J

Andrew Ketchings
Clerk of the House of Representatives