

By: Horne

To: Appropriations

HOUSE BILL NO. 41

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE PUBLIC PURCHASING LAWS TO LOWER THE MAXIMUM AMOUNT OF A
3 PURCHASE THAT A GOVERNMENTAL ENTITY MAY MAKE WITHOUT ADVERTISING
4 FOR COMPETITIVE BIDS FROM \$10,000.00 TO \$5,000.00, WHICH WAS THE
5 MAXIMUM AMOUNT BEFORE IT WAS INCREASED DURING THE 1998 LEGISLATIVE
6 SESSION; AND FOR RELATED PURPOSES.

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

8 SECTION 1. Section 31-7-13, Mississippi Code of 1972, is
9 amended as follows:

10 31-7-13. All agencies and governing authorities shall
11 purchase their commodities and printing; contract for fire
12 insurance, automobile insurance, casualty insurance (other than
13 workers' compensation) and liability insurance; contract for
14 garbage collection or disposal; contract for solid waste
15 collection or disposal; contract for sewage collection or
16 disposal; and contract for public construction as herein provided.

17 (a) **Bidding procedure for purchases not over \$1,500.00.**
18 Purchases which do not involve an expenditure of more than One
19 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or
20 shipping charges, may be made without advertising or otherwise
21 requesting competitive bids. Provided, however, that nothing
22 contained in this paragraph (a) shall be construed to prohibit any
23 agency or governing authority from establishing procedures which

24 require competitive bids on purchases of One Thousand Five Hundred
25 Dollars (\$1,500.00) or less.

26 (b) **Bidding procedure for purchases over \$1,500.00 but**
27 **not over \$10,000.00.** Purchases which involve an expenditure of
28 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
29 more than Five Thousand Dollars (\$5,000.00), exclusive of freight
30 and shipping charges may be made from the lowest and best bidder
31 without publishing or posting advertisement for bids, provided at
32 least two (2) competitive written bids have been obtained. Any
33 governing authority purchasing commodities pursuant to this
34 paragraph (b) may authorize its purchasing agent, or his designee,
35 with regard to governing authorities other than counties, or its
36 purchase clerk, or his designee, with regard to counties, to
37 accept the lowest and best competitive written bid. Such
38 authorization shall be made in writing by the governing authority
39 and shall be maintained on file in the primary office of the
40 agency and recorded in the official minutes of the governing
41 authority, as appropriate. The purchasing agent or the purchase
42 clerk, or their designee, as the case may be, and not the
43 governing authority, shall be liable for any penalties and/or
44 damages as may be imposed by law for any act or omission of the
45 purchasing agent or purchase clerk, or their designee,
46 constituting a violation of law in accepting any bid without
47 approval by the governing authority. The term "competitive
48 written bid" shall mean a bid submitted on a bid form furnished by
49 the buying agency or governing authority and signed by authorized
50 personnel representing the vendor, or a bid submitted on a
51 vendor's letterhead or identifiable bid form and signed by
52 authorized personnel representing the vendor. Bids may be
53 submitted by facsimile, electronic mail or other generally
54 accepted method of information distribution. Bids submitted by

55 electronic transmission shall not require the signature of the
56 vendor's representative unless required by agencies or governing
57 authorities.

58 (c) **Bidding procedure for purchases over \$10,000.00.**

59 Purchases which involve an expenditure of more than Five Thousand
60 Dollars (\$5,000.00), exclusive of freight and shipping charges may
61 be made from the lowest and best bidder after advertising for
62 competitive sealed bids once each week for two (2) consecutive
63 weeks in a regular newspaper published in the county or
64 municipality in which such agency or governing authority is
65 located. The date as published for the bid opening shall not be
66 less than seven (7) working days after the last published notice;
67 however, if the purchase involves a construction project in which
68 the estimated cost is in excess of Ten Thousand Dollars
69 (\$10,000.00), such bids shall not be opened in less than fifteen
70 (15) working days after the last notice is published and the
71 notice for the purchase of such construction shall be published
72 once each week for two (2) consecutive weeks. The notice of
73 intention to let contracts or purchase equipment shall state the
74 time and place at which bids shall be received, list the contracts
75 to be made or types of equipment or supplies to be purchased, and,
76 if all plans and/or specifications are not published, refer to the
77 plans and/or specifications on file. If all plans and/or
78 specifications are published in the notification, then the plans
79 and/or specifications may not be amended. If all plans and/or
80 specifications are not published in the notification, then
81 amendments to the plans/specifications, bid opening date, bid
82 opening time and place may be made, provided that the agency or
83 governing authority maintains a list of all prospective bidders
84 who are known to have received a copy of the bid documents and all
85 such prospective bidders are sent copies of all amendments. This

86 notification of amendments may be made via mail, facsimile,
87 electronic mail or other generally accepted method of information
88 distribution. In all cases involving governing authorities,
89 before the notice shall be published or posted, the plans or
90 specifications for the construction or equipment being sought
91 shall be filed with the clerk of the board of the governing
92 authority, and there remain. If there is no newspaper published
93 in the county or municipality, then such notice shall be given by
94 posting same at the courthouse, or for municipalities at the city
95 hall, and at two (2) other public places in the county or
96 municipality, and also by publication once each week for two (2)
97 consecutive weeks in some newspaper having a general circulation
98 in the county or municipality in the above provided manner. On
99 the same date that the notice is submitted to the newspaper for
100 publication, the agency or governing authority involved shall mail
101 written notice to the main office of the Mississippi Contract
102 Procurement Center that contains the same information as that in
103 the published notice. In addition to these requirements, agencies
104 shall maintain a vendor file and vendors of the equipment or
105 commodities being sought may be mailed solicitations and
106 specifications, and a bid file shall be established which shall
107 indicate those vendors to whom such solicitations and
108 specifications were mailed, and such file shall also contain such
109 information as is pertinent to the bid. Specifications pertinent
110 to such bidding shall be written so as not to exclude comparable
111 equipment of domestic manufacture. Provided, however, that should
112 valid justification be presented, the Department of Finance and
113 Administration or the board of a governing authority may approve a

114 request for specific equipment necessary to perform a specific
115 job. Provided further, that a registered professional engineer or
116 architect may write specifications for a governing authority to
117 require a specific item of equipment available only from limited
118 sources or vendors when such specifications conform with the rules
119 and regulations promulgated by an appropriate federal agency
120 regulating such matters under the federal procurement laws.
121 Further, such justification, when placed on the minutes of the
122 board of a governing authority, may serve as authority for that
123 governing authority to write specifications to require a specific
124 item of equipment needed to perform a specific job. In addition
125 to these requirements, from and after July 1, 1990, vendors of
126 relocatable classrooms and the specifications for the purchase of
127 such relocatable classrooms published by local school boards shall
128 meet all pertinent regulations of the State Board of Education,
129 including prior approval of such bid by the State Department of
130 Education. Nothing in this section shall prohibit any agency or
131 governing authority from writing specifications to include
132 life-cycle costing, total cost bids, extended warranties or
133 guaranteed buy-back provisions, provided that such bid
134 requirements shall be in compliance with regulations established
135 by the Department of Audit.

136 (d) **Lowest and best bid decision procedure.** (i)
137 Purchases may be made from the lowest and best bidder. In
138 determining the lowest and best bid, freight and shipping charges
139 shall be included. If any governing authority accepts a bid other
140 than the lowest bid actually submitted, it shall place on its
141 minutes detailed calculations and narrative summary showing that

142 the accepted bid was determined to be the lowest and best bid,
143 including the dollar amount of the accepted bid and the dollar
144 amount of the lowest bid. No agency or governing authority shall
145 accept a bid based on items not included in the specifications.

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

152 (iii) Whenever bids are solicited for a public
153 construction or renovation project and only one (1) bid is
154 received, the agency or the governing authority may accept such
155 bid if the bid is opened, it is within the funds allocated for the
156 project, it is responsive to the solicitation and the contractor
157 is capable of performing the contract in accordance with the
158 solicitation.

159 (iv) No addendum to bid specifications for such
160 projects may be issued by the agency or governing authority within
161 twelve (12) hours of the time established by the agency or
162 governing authority for the receipt of bids.

163 (e) **Lease-purchase authorization.** Any lease-purchase
164 of equipment which an agency is not required to lease-purchase
165 under the master lease-purchase program pursuant to Section
166 31-7-10 and any lease-purchase of equipment which a governing
167 authority elects to lease-purchase may be acquired by a
168 lease-purchase agreement under this paragraph (e). Lease-purchase
169 financing may also be obtained from the vendor or from a

170 third-party source after having solicited and obtained at least
171 two (2) written competitive bids, as defined in paragraph (b) of
172 this section, for such financing without advertising for such
173 bids. Solicitation for the bids for financing may occur before or
174 after acceptance of bids for the purchase of such equipment or,
175 where no such bids for purchase are required, at any time before
176 the purchase thereof. No such lease-purchase agreement shall be
177 for an annual rate of interest which is greater than the overall
178 maximum interest rate to maturity on general obligation
179 indebtedness permitted under Section 75-17-101, and the term of
180 such lease-purchase agreement shall not exceed the useful life of
181 property covered thereby as determined according to the upper
182 limit of the asset depreciation range (ADR) guidelines for the
183 Class Life Asset Depreciation Range System established by the
184 Internal Revenue Service pursuant to the United States Internal
185 Revenue Code and regulations thereunder as in effect on December
186 31, 1980, or comparable depreciation guidelines with respect to
187 any equipment not covered by ADR guidelines. Any lease-purchase
188 agreement entered into pursuant to this paragraph (e) may contain
189 any of the terms and conditions which a master lease-purchase
190 agreement may contain under the provisions of Section 31-7-10(5),
191 and shall contain an annual allocation dependency clause
192 substantially similar to that set forth in Section 31-7-10(8).
193 Each agency or governing authority entering into a lease-purchase
194 transaction pursuant to this paragraph (e) shall maintain with
195 respect to each such lease-purchase transaction the same
196 information as required to be maintained by the Department of
197 Finance and Administration pursuant to Section 31-7-10(13).

198 However, nothing contained in this section shall be construed to
199 permit agencies to acquire items of equipment with a total
200 acquisition cost in the aggregate of less than Ten Thousand
201 Dollars (\$10,000.00) by a single lease-purchase transaction. All
202 equipment, and the purchase thereof by any lessor, acquired by
203 lease-purchase under this paragraph and all lease-purchase
204 payments with respect thereto shall be exempt from all Mississippi
205 sales, use and ad valorem taxes. Interest paid on any
206 lease-purchase agreement under this section shall be exempt from
207 State of Mississippi income taxation.

208 (f) **Alternate bid authorization.** When necessary to
209 ensure ready availability of commodities for public works and the
210 timely completion of public projects, no more than two (2)
211 alternate bids may be accepted by a governing authority for
212 commodities. No purchases may be made through use of such
213 alternate bids procedure unless the lowest and best bidder, for
214 reasons beyond his control, cannot deliver the commodities
215 contained in his bid. In that event, purchases of such
216 commodities may be made from one (1) of the bidders whose bid was
217 accepted as an alternate.

218 (g) **Construction contract change authorization.** In the
219 event a determination is made by an agency or governing authority
220 after a construction contract is let that changes or modifications
221 to the original contract are necessary or would better serve the
222 purpose of the agency or the governing authority, such agency or
223 governing authority may, in its discretion, order such changes
224 pertaining to the construction that are necessary under the
225 circumstances without the necessity of further public bids;

226 provided that such change shall be made in a commercially
227 reasonable manner and shall not be made to circumvent the public
228 purchasing statutes. In addition to any other authorized person,
229 the architect or engineer hired by an agency or governing
230 authority with respect to any public construction contract shall
231 have the authority, when granted by an agency or governing
232 authority, to authorize changes or modifications to the original
233 contract without the necessity of prior approval of the agency or
234 governing authority when any such change or modification is less
235 than one percent (1%) of the total contract amount. The agency or
236 governing authority may limit the number, manner or frequency of
237 such emergency changes or modifications.

238 (h) **Petroleum purchase alternative.** In the event any
239 agency or governing authority shall have advertised for bids for
240 the purchase of gas, diesel fuel, oils and other petroleum
241 products and coal and no acceptable bids can be obtained, such
242 agency or governing authority is authorized and directed to enter
243 into any negotiations necessary to secure the lowest and best
244 contract available for the purchase of such commodities.

245 (i) **Road construction petroleum products price**
246 **adjustment clause authorization.** Any agency or governing
247 authority authorized to enter into contracts for the construction,
248 maintenance, surfacing or repair of highways, roads or streets,
249 may include in its bid proposal and contract documents a price
250 adjustment clause with relation to the cost to the contractor,
251 including taxes, based upon an industry-wide cost index, of
252 petroleum products including asphalt used in the performance or
253 execution of the contract or in the production or manufacture of

254 materials for use in such performance. Such industry-wide index
255 shall be established and published monthly by the State Department
256 of Transportation with a copy thereof to be mailed, upon request,
257 to the clerks of the governing authority of each municipality and
258 the clerks of each board of supervisors throughout the state. The
259 price adjustment clause shall be based on the cost of such
260 petroleum products only and shall not include any additional
261 profit or overhead as part of the adjustment. The bid proposals
262 or document contract shall contain the basis and methods of
263 adjusting unit prices for the change in the cost of such petroleum
264 products.

265 (j) **State agency emergency purchase procedure.** If the
266 executive head of any agency of the state shall determine that an
267 emergency exists in regard to the purchase of any commodities or
268 repair contracts, so that the delay incident to giving opportunity
269 for competitive bidding would be detrimental to the interests of
270 the state, then the provisions herein for competitive bidding
271 shall not apply and the head of such agency shall be authorized to
272 make the purchase or repair. Total purchases so made shall only
273 be for the purpose of meeting needs created by the emergency
274 situation. In the event such executive head is responsible to an
275 agency board, at the meeting next following the emergency
276 purchase, documentation of the purchase, including a description
277 of the commodity purchased, the purchase price thereof and the
278 nature of the emergency shall be presented to the board and placed
279 on the minutes of the board of such agency. The head of such
280 agency shall, at the earliest possible date following such
281 emergency purchase, file with the Department of Finance and

282 Administration (i) a statement under oath certifying the
283 conditions and circumstances of the emergency, and (ii) a
284 certified copy of the appropriate minutes of the board of such
285 agency, if applicable.

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

287 If the governing authority, or the governing authority acting
288 through its designee, shall determine that an emergency exists in
289 regard to the purchase of any commodities or repair contracts, so
290 that the delay incident to giving opportunity for competitive
291 bidding would be detrimental to the interest of the governing
292 authority, then the provisions herein for competitive bidding
293 shall not apply and any officer or agent of such governing
294 authority having general or special authority therefor in making
295 such purchase or repair shall approve the bill presented therefor,
296 and he shall certify in writing thereon from whom such purchase
297 was made, or with whom such a repair contract was made. At the
298 board meeting next following the emergency purchase or repair
299 contract, documentation of the purchase or repair contract,
300 including a description of the commodity purchased, the price
301 thereof and the nature of the emergency shall be presented to the
302 board and shall be placed on the minutes of the board of such
303 governing authority.

304 (l) **Hospital purchase or lease authorization.** The
305 commissioners or board of trustees of any hospital owned or owned
306 and operated separately or jointly by one or more counties,
307 cities, towns, supervisors districts or election districts, or
308 combinations thereof, may contract with such lowest and best
309 bidder for the purchase or lease of any commodity under a contract

310 of purchase or lease-purchase agreement whose obligatory terms do
311 not exceed five (5) years. In addition to the authority granted
312 herein, the commissioners or board of trustees are authorized to
313 enter into contracts for the lease of equipment or services, or
314 both, which it considers necessary for the proper care of patients
315 if, in its opinion, it is not financially feasible to purchase the
316 necessary equipment or services. Any such contract for the lease
317 of equipment or services executed by the commissioners or board
318 shall not exceed a maximum of five (5) years' duration and shall
319 include a cancellation clause based on unavailability of funds.
320 If such cancellation clause is exercised, there shall be no
321 further liability on the part of the lessee.

322 (m) **Exceptions from bidding requirements.** Excepted
323 from bid requirements are:

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

325 Purchasing agreements, contracts and maximum price regulations
326 executed or approved by the Department of Finance and
327 Administration.

328 (ii) **Outside equipment repairs.** Repairs to
329 equipment, when such repairs are made by repair facilities in the
330 private sector; however, engines, transmissions, rear axles and/or
331 other such components shall not be included in this exemption when
332 replaced as a complete unit instead of being repaired and the need
333 for such total component replacement is known before disassembly
334 of the component; provided, however, that invoices identifying the
335 equipment, specific repairs made, parts identified by number and
336 name, supplies used in such repairs, and the number of hours of
337 labor and costs therefor shall be required for the payment for

338 such repairs.

339 (iii) **In-house equipment repairs.** Purchases of
340 parts for repairs to equipment, when such repairs are made by
341 personnel of the agency or governing authority; however, entire
342 assemblies, such as engines or transmissions, shall not be
343 included in this exemption when the entire assembly is being
344 replaced instead of being repaired.

345 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
346 of gravel or fill dirt which are to be removed and transported by
347 the purchaser.

348 (v) **Governmental equipment auctions.** Motor
349 vehicles or other equipment purchased from a federal or state
350 agency or a governing authority at a public auction held for the
351 purpose of disposing of such vehicles or other equipment. Any
352 purchase by a governing authority under the exemption authorized
353 by this paragraph (v) shall require advance authorization spread
354 upon the minutes of the governing authority to include the listing
355 of the item or items authorized to be purchased and the maximum
356 bid authorized to be paid for each item or items.

357 (vi) **Intergovernmental sales and transfers.**
358 Purchases, sales, transfers or trades by governing authorities or
359 state agencies when such purchases, sales, transfers or trades are
360 made by a private treaty agreement or through means of
361 negotiation, from any federal agency or authority, another
362 governing authority or state agency of the State of Mississippi,
363 or any state agency of another state. Nothing in this section
364 shall permit such purchases through public auction except as
365 provided for in paragraph (v) of this section. It is the intent

366 of this section to allow governmental entities to dispose of
367 and/or purchase commodities from other governmental entities at a
368 price that is agreed to by both parties. This shall allow for
369 purchases and/or sales at prices which may be determined to be
370 below the market value if the selling entity determines that the
371 sale at below market value is in the best interest of the
372 taxpayers of the state. Governing authorities shall place the
373 terms of the agreement and any justification on the minutes, and
374 state agencies shall obtain approval from the Department of
375 Finance and Administration, prior to releasing or taking
376 possession of the commodities.

377 (vii) **Perishable supplies or food.** Perishable
378 supplies or foods purchased for use in connection with hospitals,
379 the school lunch programs, homemaking programs and for the feeding
380 of county or municipal prisoners.

381 (viii) **Single source items.** Noncompetitive items
382 available from one (1) source only. In connection with the
383 purchase of noncompetitive items only available from one (1)
384 source, a certification of the conditions and circumstances
385 requiring the purchase shall be filed by the agency with the
386 Department of finance and Administration and by the governing
387 authority with the board of the governing authority. Upon receipt
388 of that certification the Department of Finance and Administration
389 or the board of the governing authority, as the case may be, may,
390 in writing, authorize the purchase, which authority shall be noted
391 on the minutes of the body at the next regular meeting thereafter.

392 In those situations, a governing authority is not required to
393 obtain the approval of the Department of Finance and

394 Administration.

395 (ix) **Waste disposal facility construction**

396 **contracts.** Construction of incinerators and other facilities for
397 disposal of solid wastes in which products either generated
398 therein, such as steam, or recovered therefrom, such as materials
399 for recycling, are to be sold or otherwise disposed of; provided,
400 however, in constructing such facilities a governing authority or
401 agency shall publicly issue requests for proposals, advertised for
402 in the same manner as provided herein for seeking bids for public
403 construction projects, concerning the design, construction,
404 ownership, operation and/or maintenance of such facilities,
405 wherein such requests for proposals when issued shall contain
406 terms and conditions relating to price, financial responsibility,
407 technology, environmental compatibility, legal responsibilities
408 and such other matters as are determined by the governing
409 authority or agency to be appropriate for inclusion; and after
410 responses to the request for proposals have been duly received,
411 the governing authority or agency may select the most qualified
412 proposal or proposals on the basis of price, technology and other
413 relevant factors and from such proposals, but not limited to the
414 terms thereof, negotiate and enter contracts with one or more of
415 the persons or firms submitting proposals.

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

419 (xi) **Data processing equipment.** Purchases of data
420 processing equipment made by governing authorities under the
421 provisions of purchase agreements, contracts or maximum price

422 regulations executed or approved by the Mississippi Department of
423 Information Technology Services.

424 (xii) **Energy efficiency services and equipment.**
425 Energy efficiency services and equipment acquired by school
426 districts, junior colleges, institutions of higher learning and
427 state agencies or other applicable governmental entities on a
428 shared-savings, lease or lease-purchase basis pursuant to Section
429 31-7-14.

430 (xiii) **Insurance contracts.** Purchases of
431 contracts for fire insurance, automobile insurance, casualty
432 insurance, health insurance and liability insurance by governing
433 authorities or agencies.

434 (xiv) **Municipal electrical utility system fuel.**
435 Purchases of coal and/or natural gas by municipally-owned electric
436 power generating systems that have the capacity to use both coal
437 and natural gas for the generation of electric power.

438 (xv) **Library books and other reference materials.**
439 Purchases by libraries or for libraries of books and periodicals;
440 processed film, video cassette tapes, filmstrips and slides;
441 recorded audio tapes, cassettes and diskettes; and any such items
442 as would be used for teaching, research or other information
443 distribution; however, equipment such as projectors, recorders,
444 audio or video equipment, and monitor televisions are not exempt
445 under this paragraph.

446 (xvi) **Unmarked vehicles.** Purchases of unmarked
447 vehicles when such purchases are made in accordance with
448 purchasing regulations adopted by the Department of Finance and
449 Administration pursuant to Section 31-7-9(2).

450 (xvii) **Sales and transfers between governing**
451 **authorities.** Sales, transfers or trades of any personal property
452 between governing authorities within a county or any such
453 transaction involving governing authorities of two (2) or more
454 counties.

455 (xviii) **Election ballots.** Purchases of ballots
456 printed pursuant to Section 23-15-351.

457 (xix) **Educational television contracts.** From and
458 after July 1, 1990, contracts by Mississippi Authority for
459 Educational Television with any private educational institution or
460 private nonprofit organization whose purposes are educational in
461 regard to the construction, purchase, lease or lease-purchase of
462 facilities and equipment and the employment of personnel for
463 providing multichannel interactive video systems (ITSF) in the
464 school districts of this state.

465 (xx) **Prison industry products.** From and after
466 January 1, 1991, purchases made by state agencies involving any
467 item that is manufactured, processed, grown or produced from the
468 state's prison industries.

469 (xxi) **Undercover operations equipment.** Purchases
470 of surveillance equipment or any other high-tech equipment to be
471 used by narcotics agents in undercover operations, provided that
472 any such purchase shall be in compliance with regulations
473 established by the Department of Finance and Administration.

474 (xxii) **Junior college books for rent.** Purchases
475 by community or junior colleges of textbooks which are obtained
476 for the purpose of renting such books to students as part of a
477 book service system.

478 (xxiii) **School purchases from county/municipal**
479 **contracts.** Purchases of commodities made by school districts from
480 vendors with which any levying authority of the school district,
481 as defined in Section 37-57-1, has contracted through competitive
482 bidding procedures for purchases of the same commodities.

483 (xxiv) **Emergency purchases by retirement system.**
484 Emergency purchases made by the Public Employees' Retirement
485 System pursuant to Section 25-11-15(7).

486 (xxv) Repealed.

487 (xxvi) **Garbage, solid waste and sewage contracts.**
488 Contracts for garbage collection or disposal, contracts for solid
489 waste collection or disposal and contracts for sewage collection
490 or disposal.

491 (xxvii) **Municipal water tank maintenance**
492 **contracts.** Professional maintenance program contracts for the
493 repair or maintenance of municipal water tanks, which provide
494 professional services needed to maintain municipal water storage
495 tanks for a fixed annual fee for a duration of two (2) or more
496 years.

497 (xxviii) **Industries for the Blind products.**
498 Purchases made by state agencies involving any item that is
499 manufactured, processed or produced by the Mississippi Industries
500 for the Blind.

501 (xxix) **Purchases of state-adopted textbooks.**
502 Purchases of state-adopted textbooks by public school districts.

503 (n) (i) **Term contract authorization.** All contracts
504 for the purchase of:

505 (A) Commodities, equipment and public

506 construction (including, but not limited to, repair and
507 maintenance), and

508 (B) Water lines, sewer lines, storm drains,
509 drainage ditches, asphalt milling, traffic striping, asphalt
510 overlay of streets, and curb and gutter (not to exceed One Hundred
511 Fifty Thousand Dollars (\$150,000.00) per project listed in this
512 item B) may be let for periods of not more than twenty-four (24)
513 months in advance, subject to applicable statutory provisions
514 prohibiting the letting of contracts during specified periods near
515 the end of terms of office.

516 (ii) All purchases made by governing authorities,
517 including purchases made pursuant to the provisions of
518 subparagraph (i) of this paragraph (n), may be made upon one (1)
519 purchase order issued per month to each individual vendor prior to
520 delivery of such commodities provided that each individual
521 delivery, load or shipment purchased is properly requisitioned and
522 is properly received and receipted by signed ticket, receipt or
523 invoice, indicating thereon the point of delivery, and provided
524 that, with respect to counties, such commodities are properly
525 accounted for by the receiving clerk or an assistant receiving
526 clerk as provided by Section 31-7-109. Such purchase order shall
527 be invalid on the first calendar day of the month immediately
528 following the month in which it was issued. Purchases in such
529 month immediately following may be made only if a purchase order
530 is issued for such month. Each monthly purchase order shall be
531 retained in the records of the governing authority. Agencies may
532 make purchases as authorized under this subparagraph (ii) in
533 accordance with such regulations, policies and procedures as are

534 promulgated by the Department of Finance and Administration.

535 (o) **Purchase law violation prohibition and vendor**
536 **penalty.** No contract or purchase as herein authorized shall be
537 made for the purpose of circumventing the provisions of this
538 section requiring competitive bids, nor shall it be lawful for any
539 person or concern to submit individual invoices for amounts within
540 those authorized for a contract or purchase where the actual value
541 of the contract or commodity purchased exceeds the authorized
542 amount and the invoices therefor are split so as to appear to be
543 authorized as purchases for which competitive bids are not
544 required. Submission of such invoices shall constitute a
545 misdemeanor punishable by a fine of not less than Five Hundred
546 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
547 or by imprisonment for thirty (30) days in the county jail, or
548 both such fine and imprisonment. In addition, the claim or claims
549 submitted shall be forfeited.

550 (p) **Electrical utility petroleum-based equipment**
551 **purchase procedure.** When in response to a proper advertisement
552 therefor, no bid firm as to price is submitted to an electric
553 utility for power transformers, distribution transformers, power
554 breakers, reclosers or other articles containing a petroleum
555 product, the electric utility may accept the lowest and best bid
556 therefor although the price is not firm.

557 (q) **Exception to county/municipal budget limitations.**
558 The prohibitions and restrictions set forth in Sections 19-11-27,
559 21-35-27 and 31-7-49 shall not apply to a contract, lease or
560 lease-purchase agreement entered pursuant to the requirements of
561 this chapter.

562 (r) **Definition of purchase.** For the purposes of this
563 section, the term "purchase" shall mean the total amount of money
564 encumbered by a single purchase order.

565 (s) **Fuel management system bidding procedure.** Any
566 governing authority or agency of the state shall, before
567 contracting for the services and products of a fuel management or
568 fuel access system, enter into negotiations with not fewer than
569 two (2) sellers of fuel management or fuel access systems for
570 competitive written bids to provide the services and products for
571 the systems. In the event that the governing authority or agency
572 cannot locate two (2) sellers of such systems or cannot obtain
573 bids from two (2) sellers of such systems, it shall show proof
574 that it made a diligent, good-faith effort to locate and negotiate
575 with two (2) sellers of such systems. Such proof shall include,
576 but not be limited to, publications of a request for proposals and
577 letters soliciting negotiations and bids. For purposes of this
578 paragraph (s), a fuel management or fuel access system is an
579 automated system of acquiring fuel for vehicles as well as
580 management reports detailing fuel use by vehicles and drivers, and
581 the term "competitive written bid" shall have the meaning as
582 defined in paragraph (b) of this section.

583 (t) **Solid waste contract proposal procedure.** Before
584 entering into any contract for garbage collection or disposal,
585 contract for solid waste collection or disposal or contract for
586 sewage collection or disposal, which involves an expenditure of
587 more than Fifty Thousand Dollars (\$50,000.00), a governing
588 authority or agency shall issue publicly a request for proposals
589 concerning the specifications for such services which shall be

590 advertised for in the same manner as provided in this section for
591 seeking bids for purchases which involve an expenditure of more
592 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
593 when issued shall contain terms and conditions relating to price,
594 financial responsibility, technology, legal responsibilities and
595 other relevant factors as are determined by the governing
596 authority or agency to be appropriate for inclusion; all factors
597 determined relevant by the governing authority or agency or
598 required by this paragraph (t) shall be duly included in the
599 advertisement to elicit proposals. After responses to the request
600 for proposals have been duly received, the governing authority or
601 agency shall select the most qualified proposal or proposals on
602 the basis of price, technology and other relevant factors and from
603 such proposals, but not limited to the terms thereof, negotiate
604 and enter contracts with one or more of the persons or firms
605 submitting proposals. If the governing authority or agency deems
606 none of the proposals to be qualified or otherwise acceptable, the
607 request for proposals process may be reinitiated. Notwithstanding
608 any other provisions of this paragraph, where a county with at
609 least thirty-five thousand (35,000) nor more than forty thousand
610 (40,000) population, according to the 1990 federal decennial
611 census, owns or operates a solid waste landfill, the governing
612 authorities of any other county or municipality may contract with
613 the governing authorities of the county owning or operating the
614 landfill, pursuant to a resolution duly adopted and spread upon
615 the minutes of each governing authority involved, for garbage or
616 solid waste collection or disposal services through contract
617 negotiations.

618 (u) **Minority set aside authorization.** Notwithstanding
619 any provision of this section to the contrary, any agency or
620 governing authority, by order placed on its minutes, may, in its
621 discretion, set aside not more than twenty percent (20%) of its
622 anticipated annual expenditures for the purchase of commodities
623 from minority businesses; however, all such set-aside purchases
624 shall comply with all purchasing regulations promulgated by the
625 Department of Finance and Administration and shall be subject to
626 bid requirements under this section. Set-aside purchases for
627 which competitive bids are required shall be made from the lowest
628 and best minority business bidder. For the purposes of this
629 paragraph, the term "minority business" means a business which is
630 owned by a majority of persons who are United States citizens or
631 permanent resident aliens (as defined by the Immigration and
632 Naturalization Service) of the United States, and who are Asian,
633 Black, Hispanic or Native American, according to the following
634 definitions:

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

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

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

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

646 (v) **Construction punch list restriction.** The
647 architect, engineer or other representative designated by the
648 agency or governing authority that is contracting for public
649 construction or renovation may prepare and submit to the
650 contractor only one (1) preliminary punch list of items that do
651 not meet the contract requirements at the time of substantial
652 completion and one (1) final list immediately before final
653 completion and final payment.

654 (w) **Purchase authorization clarification.** Nothing in
655 this section shall be construed as authorizing any purchase not
656 authorized by law.

657 SECTION 2. This act shall take effect and be in force from
658 and after July 1, 2000.