

By: Robertson, Jennings, Mayo, Woods

To: County Affairs

HOUSE BILL NO. 366

1 AN ACT TO AMEND SECTIONS 65-7-95 AND 31-7-13, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE THAT BOARDS OF SUPERVISORS MAY LEASE
3 HEAVY ROAD MACHINERY UPON RECEIPT OF VENDOR QUOTES; AND FOR
4 RELATED PURPOSES.

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

6 SECTION 1. Section 65-7-95, Mississippi Code of 1972, is
7 amended as follows:

8 65-7-95. The methods of constructing, reconstructing and
9 maintaining the public roads and bridges in this state, other than
10 those under the actual charge of the State Highway Department,
11 shall be as follows:

12 Any county may purchase implements and material through its
13 central purchase system; may employ labor; may work, construct,
14 reconstruct and maintain the public roads; may build bridges; and
15 may do any and all things necessary to be done to work, construct,
16 reconstruct and maintain the public roads and to build bridges as
17 herein provided. If, in the opinion of the board of supervisors,
18 any part of the work necessary to be done in working,
19 constructing, reconstructing and maintaining the public roads and
20 in building bridges in such county, or any part or parts thereof,
21 can best be done by awarding contracts therefor, the board of
22 supervisors may advertise for bids and make contracts therefor in

23 accordance with the provisions of Section 31-7-13; and the board
24 of supervisors may, in its discretion, use any funds heretofore or
25 hereafter raised by bond issue or otherwise for working,
26 constructing, reconstructing, maintaining and improving the public
27 roads and for building bridges as herein provided. In no event
28 shall any contract provided above be awarded that shall extend
29 beyond thirty (30) days from the termination and end of the term
30 of office of the members of the boards of supervisors awarding
31 same.

32 Before any board of supervisors may hire, lease or rent any
33 heavy road machinery or equipment for use in the construction,
34 reconstruction or maintenance of any county road or bridge, such
35 board of supervisors shall first adopt an order adjudicating the
36 necessity for leasing or renting such machinery or equipment, the
37 purposes for which it is to be used, the type of such machinery or
38 equipment and the reasons why the leasing or renting thereof will
39 promote the public interest of the county. Such order shall also
40 direct the clerk of the board of supervisors to advertise for bids
41 for such machinery or equipment, which bids shall be returnable on
42 a day to be fixed by the board of supervisors, in accordance with
43 Section 31-7-13, or the order shall direct the clerk or road
44 manager to solicit vendor quotes and select the lowest of at least
45 two (2) vendor quotes subject to approval by the board.

46 All contracts for the leasing or renting of such machinery or
47 equipment shall be awarded to the lowest and best responsible
48 bidder whose bid price or rental consideration is not in excess of
49 the current rates and charges fixed and prescribed by the
50 Nielsen/Data Quest publication, which rates and charges fixed and
51 prescribed by the Nielsen/Data Quest publication shall be on file
52 with the Governor's Office of General Services at that time.

53 All invoices submitted for the leasing or renting of such

54 machinery or equipment shall identify the equipment by number and
55 name and shall include the number of hours of labor performed and
56 the dates thereof.

57 SECTION 2. Section 31-7-13, Mississippi Code of 1972, is
58 amended as follows:[JWB1]

59 31-7-13. All agencies and governing authorities shall
60 purchase their commodities and printing; contract for fire
61 insurance, automobile insurance, casualty insurance (other than
62 workers' compensation) and liability insurance; contract for
63 garbage collection or disposal; contract for solid waste
64 collection or disposal; contract for sewage collection or
65 disposal; and contract for public construction as herein provided.

66 (a) **Bidding procedure for purchases not over \$1,500.00.**

67 Purchases which do not involve an expenditure of more than One
68 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or
69 shipping charges, may be made without advertising or otherwise
70 requesting competitive bids. Provided, however, that nothing
71 contained in this paragraph (a) shall be construed to prohibit any
72 agency or governing authority from establishing procedures which
73 require competitive bids on purchases of One Thousand Five Hundred
74 Dollars (\$1,500.00) or less.

75 (b) **Bidding procedure for purchases over \$1,500.00 but**

76 **not over \$10,000.00.** Purchases which involve an expenditure of
77 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
78 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
79 and shipping charges may be made from the lowest and best bidder
80 without publishing or posting advertisement for bids, provided at
81 least two (2) competitive written bids have been obtained. Any

82 governing authority purchasing commodities pursuant to this
83 paragraph (b) may authorize its purchasing agent, or his designee,
84 with regard to governing authorities other than counties, or its
85 purchase clerk, or his designee, with regard to counties, to
86 accept the lowest and best competitive written bid. Such
87 authorization shall be made in writing by the governing authority
88 and shall be maintained on file in the primary office of the
89 agency and recorded in the official minutes of the governing
90 authority, as appropriate. The purchasing agent or the purchase
91 clerk, or their designee, as the case may be, and not the
92 governing authority, shall be liable for any penalties and/or
93 damages as may be imposed by law for any act or omission of the
94 purchasing agent or purchase clerk, or their designee,
95 constituting a violation of law in accepting any bid without
96 approval by the governing authority. The term "competitive
97 written bid" shall mean a bid submitted on a bid form furnished by
98 the buying agency or governing authority and signed by authorized
99 personnel representing the vendor, or a bid submitted on a
100 vendor's letterhead or identifiable bid form and signed by
101 authorized personnel representing the vendor. Bids may be
102 submitted by facsimile, electronic mail or other generally
103 accepted method of information distribution. Bids submitted by
104 electronic transmission shall not require the signature of the
105 vendor's representative unless required by agencies or governing
106 authorities.

107 (c) **Bidding procedure for purchases over \$10,000.00.**
108 Purchases which involve an expenditure of more than Ten Thousand
109 Dollars (\$10,000.00), exclusive of freight and shipping charges

110 may be made from the lowest and best bidder after advertising for
111 competitive sealed bids once each week for two (2) consecutive
112 weeks in a regular newspaper published in the county or
113 municipality in which such agency or governing authority is
114 located. The date as published for the bid opening shall not be
115 less than seven (7) working days after the last published notice;
116 however, if the purchase involves a construction project in which
117 the estimated cost is in excess of Fifteen Thousand Dollars
118 (\$15,000.00), such bids shall not be opened in less than fifteen
119 (15) working days after the last notice is published and the
120 notice for the purchase of such construction shall be published
121 once each week for two (2) consecutive weeks. The notice of
122 intention to let contracts or purchase equipment shall state the
123 time and place at which bids shall be received, list the contracts
124 to be made or types of equipment or supplies to be purchased, and,
125 if all plans and/or specifications are not published, refer to the
126 plans and/or specifications on file. If all plans and/or
127 specifications are published in the notification, then the plans
128 and/or specifications may not be amended. If all plans and/or
129 specifications are not published in the notification, then
130 amendments to the plans/specifications, bid opening date, bid
131 opening time and place may be made, provided that the agency or
132 governing authority maintains a list of all prospective bidders
133 who are known to have received a copy of the bid documents and all
134 such prospective bidders are sent copies of all amendments. This
135 notification of amendments may be made via mail, facsimile,
136 electronic mail or other generally accepted method of information
137 distribution. In all cases involving governing authorities,

138 before the notice shall be published or posted, the plans or
139 specifications for the construction or equipment being sought
140 shall be filed with the clerk of the board of the governing
141 authority, and there remain. If there is no newspaper published
142 in the county or municipality, then such notice shall be given by
143 posting same at the courthouse, or for municipalities at the city
144 hall, and at two (2) other public places in the county or
145 municipality, and also by publication once each week for two (2)
146 consecutive weeks in some newspaper having a general circulation
147 in the county or municipality in the above provided manner. On
148 the same date that the notice is submitted to the newspaper for
149 publication, the agency or governing authority involved shall mail
150 written notice to the main office of the Mississippi Contract
151 Procurement Center that contains the same information as that in
152 the published notice. In addition to these requirements, agencies
153 shall maintain a vendor file and vendors of the equipment or
154 commodities being sought may be mailed solicitations and
155 specifications, and a bid file shall be established which shall
156 indicate those vendors to whom such solicitations and
157 specifications were mailed, and such file shall also contain such
158 information as is pertinent to the bid. Specifications pertinent
159 to such bidding shall be written so as not to exclude comparable
160 equipment of domestic manufacture. Provided, however, that should
161 valid justification be presented, the Department of Finance and
162 Administration or the board of a governing authority may approve a
163 request for specific equipment necessary to perform a specific
164 job. Provided further, that a registered professional engineer or
165 architect may write specifications for a governing authority to

166 require a specific item of equipment available only from limited
167 sources or vendors when such specifications conform with the rules
168 and regulations promulgated by an appropriate federal agency
169 regulating such matters under the federal procurement laws.
170 Further, such justification, when placed on the minutes of the
171 board of a governing authority, may serve as authority for that
172 governing authority to write specifications to require a specific
173 item of equipment needed to perform a specific job. In addition
174 to these requirements, from and after July 1, 1990, vendors of
175 relocatable classrooms and the specifications for the purchase of
176 such relocatable classrooms published by local school boards shall
177 meet all pertinent regulations of the State Board of Education,
178 including prior approval of such bid by the State Department of
179 Education. Nothing in this section shall prohibit any agency or
180 governing authority from writing specifications to include
181 life-cycle costing, total cost bids, extended warranties or
182 guaranteed buy-back provisions, provided that such bid
183 requirements shall be in compliance with regulations established
184 by the Department of Audit.

185 (d) **Lowest and best bid decision procedure.** (i)
186 Purchases may be made from the lowest and best bidder. In
187 determining the lowest and best bid, freight and shipping charges
188 shall be included. If any governing authority accepts a bid other
189 than the lowest bid actually submitted, it shall place on its
190 minutes detailed calculations and narrative summary showing that
191 the accepted bid was determined to be the lowest and best bid,
192 including the dollar amount of the accepted bid and the dollar
193 amount of the lowest bid. No agency or governing authority shall

194 accept a bid based on items not included in the specifications.

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

201 (iii) Whenever bids are solicited for a public
202 construction or renovation project and only one (1) bid is
203 received, the agency or the governing authority may accept such
204 bid if the bid is opened, it is within the funds allocated for the
205 project, it is responsive to the solicitation and the contractor
206 is capable of performing the contract in accordance with the
207 solicitation.

208 (iv) No addendum to bid specifications for such
209 projects may be issued by the agency or governing authority within
210 twelve (12) hours of the time established by the agency or
211 governing authority for the receipt of bids.

212 (e) **Lease-purchase authorization.** Any lease-purchase
213 of equipment which an agency is not required to lease-purchase
214 under the master lease-purchase program pursuant to Section
215 31-7-10 and any lease-purchase of equipment which a governing
216 authority elects to lease-purchase may be acquired by a
217 lease-purchase agreement under this paragraph (e). Lease-purchase
218 financing may also be obtained from the vendor or from a
219 third-party source after having solicited and obtained at least
220 two (2) written competitive bids, as defined in paragraph (b) of
221 this section, for such financing without advertising for such

222 bids. Solicitation for the bids for financing may occur before or
223 after acceptance of bids for the purchase of such equipment or,
224 where no such bids for purchase are required, at any time before
225 the purchase thereof. No such lease-purchase agreement shall be
226 for an annual rate of interest which is greater than the overall
227 maximum interest rate to maturity on general obligation
228 indebtedness permitted under Section 75-17-101, and the term of
229 such lease-purchase agreement shall not exceed the useful life of
230 property covered thereby as determined according to the upper
231 limit of the asset depreciation range (ADR) guidelines for the
232 Class Life Asset Depreciation Range System established by the
233 Internal Revenue Service pursuant to the United States Internal
234 Revenue Code and regulations thereunder as in effect on December
235 31, 1980, or comparable depreciation guidelines with respect to
236 any equipment not covered by ADR guidelines. Any lease-purchase
237 agreement entered into pursuant to this paragraph (e) may contain
238 any of the terms and conditions which a master lease-purchase
239 agreement may contain under the provisions of Section 31-7-10(5),
240 and shall contain an annual allocation dependency clause
241 substantially similar to that set forth in Section 31-7-10(8).
242 Each agency or governing authority entering into a lease-purchase
243 transaction pursuant to this paragraph (e) shall maintain with
244 respect to each such lease-purchase transaction the same
245 information as required to be maintained by the Department of
246 Finance and Administration pursuant to Section 31-7-10(13).
247 However, nothing contained in this section shall be construed to
248 permit agencies to acquire items of equipment with a total
249 acquisition cost in the aggregate of less than Ten Thousand

250 Dollars (\$10,000.00) by a single lease-purchase transaction. All
251 equipment, and the purchase thereof by any lessor, acquired by
252 lease-purchase under this paragraph and all lease-purchase
253 payments with respect thereto shall be exempt from all Mississippi
254 sales, use and ad valorem taxes. Interest paid on any
255 lease-purchase agreement under this section shall be exempt from
256 State of Mississippi income taxation.

257 (f) **Alternate bid authorization.** When necessary to
258 ensure ready availability of commodities for public works and the
259 timely completion of public projects, no more than two (2)
260 alternate bids may be accepted by a governing authority for
261 commodities. No purchases may be made through use of such
262 alternate bids procedure unless the lowest and best bidder, for
263 reasons beyond his control, cannot deliver the commodities
264 contained in his bid. In that event, purchases of such
265 commodities may be made from one (1) of the bidders whose bid was
266 accepted as an alternate.

267 (g) **Construction contract change authorization.** In the
268 event a determination is made by an agency or governing authority
269 after a construction contract is let that changes or modifications
270 to the original contract are necessary or would better serve the
271 purpose of the agency or the governing authority, such agency or
272 governing authority may, in its discretion, order such changes
273 pertaining to the construction that are necessary under the
274 circumstances without the necessity of further public bids;
275 provided that such change shall be made in a commercially
276 reasonable manner and shall not be made to circumvent the public
277 purchasing statutes. In addition to any other authorized person,

278 the architect or engineer hired by an agency or governing
279 authority with respect to any public construction contract shall
280 have the authority, when granted by an agency or governing
281 authority, to authorize changes or modifications to the original
282 contract without the necessity of prior approval of the agency or
283 governing authority when any such change or modification is less
284 than one percent (1%) of the total contract amount. The agency or
285 governing authority may limit the number, manner or frequency of
286 such emergency changes or modifications.

287 (h) **Petroleum purchase alternative.** In the event any
288 agency or governing authority shall have advertised for bids for
289 the purchase of gas, diesel fuel, oils and other petroleum
290 products and coal and no acceptable bids can be obtained, such
291 agency or governing authority is authorized and directed to enter
292 into any negotiations necessary to secure the lowest and best
293 contract available for the purchase of such commodities.

294 (i) **Road construction petroleum products price**
295 **adjustment clause authorization.** Any agency or governing
296 authority authorized to enter into contracts for the construction,
297 maintenance, surfacing or repair of highways, roads or streets,
298 may include in its bid proposal and contract documents a price
299 adjustment clause with relation to the cost to the contractor,
300 including taxes, based upon an industry-wide cost index, of
301 petroleum products including asphalt used in the performance or
302 execution of the contract or in the production or manufacture of
303 materials for use in such performance. Such industry-wide index
304 shall be established and published monthly by the State Department
305 of Transportation with a copy thereof to be mailed, upon request,

306 to the clerks of the governing authority of each municipality and
307 the clerks of each board of supervisors throughout the state. The
308 price adjustment clause shall be based on the cost of such
309 petroleum products only and shall not include any additional
310 profit or overhead as part of the adjustment. The bid proposals
311 or document contract shall contain the basis and methods of
312 adjusting unit prices for the change in the cost of such petroleum
313 products.

314 (j) **State agency emergency purchase procedure.** If the
315 executive head of any agency of the state shall determine that an
316 emergency exists in regard to the purchase of any commodities or
317 repair contracts, so that the delay incident to giving opportunity
318 for competitive bidding would be detrimental to the interests of
319 the state, then the provisions herein for competitive bidding
320 shall not apply and the head of such agency shall be authorized to
321 make the purchase or repair. Total purchases so made shall only
322 be for the purpose of meeting needs created by the emergency
323 situation. In the event such executive head is responsible to an
324 agency board, at the meeting next following the emergency
325 purchase, documentation of the purchase, including a description
326 of the commodity purchased, the purchase price thereof and the
327 nature of the emergency shall be presented to the board and placed
328 on the minutes of the board of such agency. The head of such
329 agency shall, at the earliest possible date following such
330 emergency purchase, file with the Department of Finance and
331 Administration (i) a statement under oath certifying the
332 conditions and circumstances of the emergency, and (ii) a
333 certified copy of the appropriate minutes of the board of such

334 agency, if applicable.

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

336 If the governing authority, or the governing authority acting
337 through its designee, shall determine that an emergency exists in
338 regard to the purchase of any commodities or repair contracts, so
339 that the delay incident to giving opportunity for competitive
340 bidding would be detrimental to the interest of the governing
341 authority, then the provisions herein for competitive bidding
342 shall not apply and any officer or agent of such governing
343 authority having general or special authority therefor in making
344 such purchase or repair shall approve the bill presented therefor,
345 and he shall certify in writing thereon from whom such purchase
346 was made, or with whom such a repair contract was made. At the
347 board meeting next following the emergency purchase or repair
348 contract, documentation of the purchase or repair contract,
349 including a description of the commodity purchased, the price
350 thereof and the nature of the emergency shall be presented to the
351 board and shall be placed on the minutes of the board of such
352 governing authority.

353 (l) **Hospital purchase or lease authorization.** The
354 commissioners or board of trustees of any hospital owned or owned
355 and operated separately or jointly by one or more counties,
356 cities, towns, supervisors districts or election districts, or
357 combinations thereof, may contract with such lowest and best
358 bidder for the purchase or lease of any commodity under a contract
359 of purchase or lease-purchase agreement whose obligatory terms do
360 not exceed five (5) years. In addition to the authority granted
361 herein, the commissioners or board of trustees are authorized to

362 enter into contracts for the lease of equipment or services, or
363 both, which it considers necessary for the proper care of patients
364 if, in its opinion, it is not financially feasible to purchase the
365 necessary equipment or services. Any such contract for the lease
366 of equipment or services executed by the commissioners or board
367 shall not exceed a maximum of five (5) years' duration and shall
368 include a cancellation clause based on unavailability of funds.
369 If such cancellation clause is exercised, there shall be no
370 further liability on the part of the lessee.

371 (m) **Exceptions from bidding requirements.** Excepted
372 from bid requirements are:

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

374 Purchasing agreements, contracts and maximum price regulations
375 executed or approved by the Department of Finance and
376 Administration.

377 (ii) **Outside equipment repairs.** Repairs to
378 equipment, when such repairs are made by repair facilities in the
379 private sector; however, engines, transmissions, rear axles and/or
380 other such components shall not be included in this exemption when
381 replaced as a complete unit instead of being repaired and the need
382 for such total component replacement is known before disassembly
383 of the component; provided, however, that invoices identifying the
384 equipment, specific repairs made, parts identified by number and
385 name, supplies used in such repairs, and the number of hours of
386 labor and costs therefor shall be required for the payment for
387 such repairs.

388 (iii) **In-house equipment repairs.** Purchases of
389 parts for repairs to equipment, when such repairs are made by

390 personnel of the agency or governing authority; however, entire
391 assemblies, such as engines or transmissions, shall not be
392 included in this exemption when the entire assembly is being
393 replaced instead of being repaired.

394 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
395 of gravel or fill dirt which are to be removed and transported by
396 the purchaser.

397 (v) **Governmental equipment auctions.** Motor
398 vehicles or other equipment purchased from a federal or state
399 agency or a governing authority at a public auction held for the
400 purpose of disposing of such vehicles or other equipment. Any
401 purchase by a governing authority under the exemption authorized
402 by this paragraph (v) shall require advance authorization spread
403 upon the minutes of the governing authority to include the listing
404 of the item or items authorized to be purchased and the maximum
405 bid authorized to be paid for each item or items.

406 (vi) **Intergovernmental sales and transfers.**
407 Purchases, sales, transfers or trades by governing authorities or
408 state agencies when such purchases, sales, transfers or trades are
409 made by a private treaty agreement or through means of
410 negotiation, from any federal agency or authority, another
411 governing authority or state agency of the State of Mississippi,
412 or any state agency of another state. Nothing in this section
413 shall permit such purchases through public auction except as
414 provided for in paragraph (v) of this section. It is the intent
415 of this section to allow governmental entities to dispose of
416 and/or purchase commodities from other governmental entities at a
417 price that is agreed to by both parties. This shall allow for

418 purchases and/or sales at prices which may be determined to be
419 below the market value if the selling entity determines that the
420 sale at below market value is in the best interest of the
421 taxpayers of the state. Governing authorities shall place the
422 terms of the agreement and any justification on the minutes, and
423 state agencies shall obtain approval from the Department of
424 Finance and Administration, prior to releasing or taking
425 possession of the commodities.

426 (vii) **Perishable supplies or food.** Perishable
427 supplies or foods purchased for use in connection with hospitals,
428 the school lunch programs, homemaking programs and for the feeding
429 of county or municipal prisoners.

430 (viii) **Single source items.** Noncompetitive items
431 available from one (1) source only. In connection with the
432 purchase of noncompetitive items only available from one (1)
433 source, a certification of the conditions and circumstances
434 requiring the purchase shall be filed by the agency with the
435 Department of Finance and Administration and by the governing
436 authority with the board of the governing authority. Upon receipt
437 of that certification the Department of Finance and Administration
438 or the board of the governing authority, as the case may be, may,
439 in writing, authorize the purchase, which authority shall be noted
440 on the minutes of the body at the next regular meeting thereafter.

441 In those situations, a governing authority is not required to
442 obtain the approval of the Department of Finance and
443 Administration.

444 (ix) **Waste disposal facility construction**
445 **contracts.** Construction of incinerators and other facilities for

446 disposal of solid wastes in which products either generated
447 therein, such as steam, or recovered therefrom, such as materials
448 for recycling, are to be sold or otherwise disposed of; provided,
449 however, in constructing such facilities a governing authority or
450 agency shall publicly issue requests for proposals, advertised for
451 in the same manner as provided herein for seeking bids for public
452 construction projects, concerning the design, construction,
453 ownership, operation and/or maintenance of such facilities,
454 wherein such requests for proposals when issued shall contain
455 terms and conditions relating to price, financial responsibility,
456 technology, environmental compatibility, legal responsibilities
457 and such other matters as are determined by the governing
458 authority or agency to be appropriate for inclusion; and after
459 responses to the request for proposals have been duly received,
460 the governing authority or agency may select the most qualified
461 proposal or proposals on the basis of price, technology and other
462 relevant factors and from such proposals, but not limited to the
463 terms thereof, negotiate and enter contracts with one or more of
464 the persons or firms submitting proposals.

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

468 (xi) **Data processing equipment.** Purchases of data
469 processing equipment made by governing authorities under the
470 provisions of purchase agreements, contracts or maximum price
471 regulations executed or approved by the Mississippi Department of
472 Information Technology Services.

473 (xii) **Energy efficiency services and equipment.**

474 Energy efficiency services and equipment acquired by school
475 districts, junior colleges, institutions of higher learning and
476 state agencies or other applicable governmental entities on a
477 shared-savings, lease or lease-purchase basis pursuant to Section
478 31-7-14.

479 (xiii) **Insurance contracts.** Purchases of
480 contracts for fire insurance, automobile insurance, casualty
481 insurance, health insurance and liability insurance by governing
482 authorities or agencies.

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

487 (xv) **Library books and other reference materials.**
488 Purchases by libraries or for libraries of books and periodicals;
489 processed film, video cassette tapes, filmstrips and slides;
490 recorded audio tapes, cassettes and diskettes; and any such items
491 as would be used for teaching, research or other information
492 distribution; however, equipment such as projectors, recorders,
493 audio or video equipment, and monitor televisions are not exempt
494 under this paragraph.

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

499 (xvii) **Sales and transfers between governing**
500 **authorities.** Sales, transfers or trades of any personal property
501 between governing authorities within a county or any such

502 transaction involving governing authorities of two (2) or more
503 counties.

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

506 (xix) **Educational television contracts.** From and
507 after July 1, 1990, contracts by Mississippi Authority for
508 Educational Television with any private educational institution or
509 private nonprofit organization whose purposes are educational in
510 regard to the construction, purchase, lease or lease-purchase of
511 facilities and equipment and the employment of personnel for
512 providing multichannel interactive video systems (ITSF) in the
513 school districts of this state.

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

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

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

527 (xxiii) **School purchases from county/municipal**
528 **contracts.** Purchases of commodities made by school districts from
529 vendors with which any levying authority of the school district,

530 as defined in Section 37-57-1, has contracted through competitive
531 bidding procedures for purchases of the same commodities.

532 (xxiv) **Emergency purchases by retirement system.**

533 Emergency purchases made by the Public Employees' Retirement
534 System pursuant to Section 25-11-15(7).

535 (xxv) Repealed.

536 (xxvi) **Garbage, solid waste and sewage contracts.**

537 Contracts for garbage collection or disposal, contracts for solid
538 waste collection or disposal and contracts for sewage collection
539 or disposal.

540 (xxvii) **Municipal water tank maintenance**

541 **contracts.** Professional maintenance program contracts for the
542 repair or maintenance of municipal water tanks, which provide
543 professional services needed to maintain municipal water storage
544 tanks for a fixed annual fee for a duration of two (2) or more
545 years.

546 (xxviii) **Industries for the Blind products.**

547 Purchases made by state agencies involving any item that is
548 manufactured, processed or produced by the Mississippi Industries
549 for the Blind.

550 (xxix) **Purchases of state-adopted textbooks.**

551 Purchases of state-adopted textbooks by public school districts.

552 (xxx) County leases of heavy road equipment.

553 Contracts for the leasing of heavy road equipment for county road
554 construction or maintenance awarded by order of a board of
555 supervisors pursuant to vendor quotes under Section 65-7-95.

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

558 (A) Commodities, equipment and public
559 construction (including, but not limited to, repair and
560 maintenance), and

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

569 (ii) All purchases made by governing authorities,
570 including purchases made pursuant to the provisions of
571 subparagraph (i) of this paragraph (n), may be made upon one (1)
572 purchase order issued per month to each individual vendor prior to
573 delivery of such commodities provided that each individual
574 delivery, load or shipment purchased is properly requisitioned and
575 is properly received and receipted by signed ticket, receipt or
576 invoice, indicating thereon the point of delivery, and provided
577 that, with respect to counties, such commodities are properly
578 accounted for by the receiving clerk or an assistant receiving
579 clerk as provided by Section 31-7-109. Such purchase order shall
580 be invalid on the first calendar day of the month immediately
581 following the month in which it was issued. Purchases in such
582 month immediately following may be made only if a purchase order
583 is issued for such month. Each monthly purchase order shall be
584 retained in the records of the governing authority. Agencies may
585 make purchases as authorized under this subparagraph (ii) in

586 accordance with such regulations, policies and procedures as are
587 promulgated by the Department of Finance and Administration.

588 (o) **Purchase law violation prohibition and vendor**
589 **penalty.** No contract or purchase as herein authorized shall be
590 made for the purpose of circumventing the provisions of this
591 section requiring competitive bids, nor shall it be lawful for any
592 person or concern to submit individual invoices for amounts within
593 those authorized for a contract or purchase where the actual value
594 of the contract or commodity purchased exceeds the authorized
595 amount and the invoices therefor are split so as to appear to be
596 authorized as purchases for which competitive bids are not
597 required. Submission of such invoices shall constitute a
598 misdemeanor punishable by a fine of not less than Five Hundred
599 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
600 or by imprisonment for thirty (30) days in the county jail, or
601 both such fine and imprisonment. In addition, the claim or claims
602 submitted shall be forfeited.

603 (p) **Electrical utility petroleum-based equipment**
604 **purchase procedure.** When in response to a proper advertisement
605 therefor, no bid firm as to price is submitted to an electric
606 utility for power transformers, distribution transformers, power
607 breakers, reclosers or other articles containing a petroleum
608 product, the electric utility may accept the lowest and best bid
609 therefor although the price is not firm.

610 (q) **Exception to county/municipal budget limitations.**
611 The prohibitions and restrictions set forth in Sections 19-11-27,
612 21-35-27 and 31-7-49 shall not apply to a contract, lease or
613 lease-purchase agreement entered pursuant to the requirements of

614 this chapter.

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

618 (s) **Fuel management system bidding procedure.** Any
619 governing authority or agency of the state shall, before
620 contracting for the services and products of a fuel management or
621 fuel access system, enter into negotiations with not fewer than
622 two (2) sellers of fuel management or fuel access systems for
623 competitive written bids to provide the services and products for
624 the systems. In the event that the governing authority or agency
625 cannot locate two (2) sellers of such systems or cannot obtain
626 bids from two (2) sellers of such systems, it shall show proof
627 that it made a diligent, good-faith effort to locate and negotiate
628 with two (2) sellers of such systems. Such proof shall include,
629 but not be limited to, publications of a request for proposals and
630 letters soliciting negotiations and bids. For purposes of this
631 paragraph (s), a fuel management or fuel access system is an
632 automated system of acquiring fuel for vehicles as well as
633 management reports detailing fuel use by vehicles and drivers, and
634 the term "competitive written bid" shall have the meaning as
635 defined in paragraph (b) of this section.

636 (t) **Solid waste contract proposal procedure.** Before
637 entering into any contract for garbage collection or disposal,
638 contract for solid waste collection or disposal or contract for
639 sewage collection or disposal, which involves an expenditure of
640 more than Fifty Thousand Dollars (\$50,000.00), a governing
641 authority or agency shall issue publicly a request for proposals

642 concerning the specifications for such services which shall be
643 advertised for in the same manner as provided in this section for
644 seeking bids for purchases which involve an expenditure of more
645 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
646 when issued shall contain terms and conditions relating to price,
647 financial responsibility, technology, legal responsibilities and
648 other relevant factors as are determined by the governing
649 authority or agency to be appropriate for inclusion; all factors
650 determined relevant by the governing authority or agency or
651 required by this paragraph (t) shall be duly included in the
652 advertisement to elicit proposals. After responses to the request
653 for proposals have been duly received, the governing authority or
654 agency shall select the most qualified proposal or proposals on
655 the basis of price, technology and other relevant factors and from
656 such proposals, but not limited to the terms thereof, negotiate
657 and enter contracts with one or more of the persons or firms
658 submitting proposals. If the governing authority or agency deems
659 none of the proposals to be qualified or otherwise acceptable, the
660 request for proposals process may be reinitiated. Notwithstanding
661 any other provisions of this paragraph, where a county with at
662 least thirty-five thousand (35,000) nor more than forty thousand
663 (40,000) population, according to the 1990 federal decennial
664 census, owns or operates a solid waste landfill, the governing
665 authorities of any other county or municipality may contract with
666 the governing authorities of the county owning or operating the
667 landfill, pursuant to a resolution duly adopted and spread upon
668 the minutes of each governing authority involved, for garbage or
669 solid waste collection or disposal services through contract

670 negotiations.

671 (u) **Minority set aside authorization.** Notwithstanding
672 any provision of this section to the contrary, any agency or
673 governing authority, by order placed on its minutes, may, in its
674 discretion, set aside not more than twenty percent (20%) of its
675 anticipated annual expenditures for the purchase of commodities
676 from minority businesses; however, all such set-aside purchases
677 shall comply with all purchasing regulations promulgated by the
678 Department of Finance and Administration and shall be subject to
679 bid requirements under this section. Set-aside purchases for
680 which competitive bids are required shall be made from the lowest
681 and best minority business bidder. For the purposes of this
682 paragraph, the term "minority business" means a business which is
683 owned by a majority of persons who are United States citizens or
684 permanent resident aliens (as defined by the Immigration and
685 Naturalization Service) of the United States, and who are Asian,
686 Black, Hispanic or Native American, according to the following
687 definitions:

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

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

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

696 (iv) "Native American" means persons having
697 origins in any of the original people of North America, including

698 American Indians, Eskimos and Aleuts.

699 (v) **Construction punch list restriction.** The
700 architect, engineer or other representative designated by the
701 agency or governing authority that is contracting for public
702 construction or renovation may prepare and submit to the
703 contractor only one (1) preliminary punch list of items that do
704 not meet the contract requirements at the time of substantial
705 completion and one (1) final list immediately before final
706 completion and final payment.

707 (w) **Purchase authorization clarification.** Nothing in
708 this section shall be construed as authorizing any purchase not
709 authorized by law.

710 SECTION 3. This act shall take effect and be in force from
711 and after its passage.