

By: Burton

To: Fees, Salaries and
AdministrationSENATE BILL NO. 2900
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 19-7-5, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE METHOD BY WHICH COUNTIES MAY DISPOSE OF PERSONAL
3 PROPERTY WITH A FAIR MARKET VALUE OF ZERO; TO AMEND SECTION
4 31-7-1, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERMS
5 "CONSTRUCTION" AND "PURCHASE" AS THEY RELATE TO THE PUBLIC
6 PURCHASING LAWS; TO AMEND SECTIONS 31-7-3, 31-7-5, 31-7-9 AND
7 31-7-11, MISSISSIPPI CODE OF 1972, TO USE THE CORRECT NAME OF THE
8 AGENCY ADMINISTERING THE PUBLIC PURCHASING LAWS; TO AMEND SECTION
9 31-7-10, MISSISSIPPI CODE OF 1972, TO DEFINE THE TERM "EQUIPMENT";
10 TO AMEND SECTION 31-7-12, MISSISSIPPI CODE OF 1972, TO DELETE THE
11 PROVISION ALLOWING GOVERNING AUTHORITIES TO PURCHASE COMMODITIES
12 WITHOUT REGARD TO STATE CONTRACT PRICE WHEN THE EXPENDITURE IS
13 LESS THAN \$1500.00; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF
14 1972, TO CLARIFY THAT CONTRACTS FOR RENTALS ARE SUBJECT TO THE
15 PUBLIC PURCHASING LAWS AND TO DELETE THE EXEMPTION FROM CERTAIN
16 EXPENDITURE PROHIBITIONS OF BOARDS OF SUPERVISORS AND GOVERNING
17 AUTHORITIES OF MUNICIPALITIES DURING THE LAST YEAR OF THE TERMS OF
18 OFFICE FOR MEMBERS OF SUCH BOARDS AND GOVERNMENTAL AUTHORITIES; TO
19 PROVIDE THAT NO ADDENDUM TO BID SPECIFICATIONS MAY BE ISSUED
20 WITHIN 12 WORKING HOURS OF THE TIME ESTABLISHED FOR THE RECEIPT OF
21 BIDS UNLESS ADDENDUM ALSO AMENDS THE BID OPENING DATE; TO DELETE
22 THE PROVISION REQUIRING AN AGENCY TO MAINTAIN A VENDOR FILE; TO
23 REVISE THE PROCEDURE BY WHICH ENTITIES MAY PURCHASE PETROLEUM
24 PRODUCTS; TO DELETE CERTAIN EXEMPTIONS FROM THE PUBLIC PURCHASING
25 LAWS; TO INCREASE THE MAXIMUM TERM TO 60 MONTHS IN CERTAIN
26 PURCHASING CONTRACTS AND TO ALLOW PRICE ADJUSTMENT CLAUSES; TO
27 AMEND SECTION 31-7-455, MISSISSIPPI CODE OF 1972, TO REVISE THE
28 METHOD BY WHICH SCHOOL BOARDS MAY DISPOSE OF PERSONAL PROPERTY
29 WHICH NO LONGER HAVE USEFUL VALUE TO THE SCHOOL DISTRICT; AND FOR
30 RELATED PURPOSES.

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

32 SECTION 1. Section 19-7-5, Mississippi Code of 1972, is
33 amended as follows:[LR1]

34 19-7-5. The board of supervisors shall have the power to
35 sell and dispose of at public sale for cash, any personal property
36 belonging to the county or any subdivision thereof when the same
37 shall have ceased to be used for county purposes or when, in the
38 judgment of said board, a sale thereof would promote the best
39 interest of the county. Said sale shall be advertised by posting
40 notices at three (3) public places in the county, at least ten

41 (10) days prior to such sale, one (1) of which said notices shall
42 be posted at the courthouse. The proceeds of said sale shall be
43 placed in the county depository to the credit of the proper fund.

44 Where said property shall not exceed One Hundred Dollars
45 (\$100.00) in value the same may be sold and disposed of by the
46 boards of supervisors at a private sale by the unanimous vote of
47 the members of said board of supervisors and the proceeds thereof
48 disposed of as above provided. However, if the board of
49 supervisors find consistent with fact that the fair market value
50 of the personal property is zero and this finding is duly entered
51 on the minutes of the board, then the personal property in
52 question may be disposed of as deemed to be appropriate and in the
53 best interest of the county, provided that no county official or
54 employee derives any personal economic benefit from such disposal.

55 If any of such property may be of use or benefit to the United
56 States government in its national defense effort, the board of
57 supervisors is hereby authorized in its discretion to turn over
58 such property to the United States government by way of a donation
59 thereto.

60 SECTION 2. Section 31-7-1, Mississippi Code of 1972, is
61 amended as follows:[LR2]

62 31-7-1. The following terms are defined for the purposes of
63 this chapter to have the following meanings:

64 (a) "Agency" shall mean any state board, commission,
65 committee, council, university, department or unit thereof created
66 by the Constitution or statutes if such board, commission,
67 committee, council, university, department, unit or the head
68 thereof is authorized to appoint subordinate staff by the
69 Constitution or statute, except a legislative or judicial board,
70 commission, committee, council, department or unit thereof.

71 (b) "Governing authority" shall mean boards of
72 supervisors, governing boards of all school districts, all boards
73 of directors of public water supply districts, boards of directors
74 of master public water supply districts, municipal public utility
75 commissions, governing authorities of all municipalities, port
76 authorities, commissioners and boards of trustees of any public
77 hospitals, boards of trustees of public library systems, district

78 attorneys, school attendance officers and any political
79 subdivision of the state supported wholly or in part by public
80 funds of the state or political subdivisions thereof, including
81 commissions, boards and agencies created or operated under the
82 authority of any county or municipality of this state. The term
83 "governing authority" shall not include economic development
84 authorities supported in part by private funds, or commissions
85 appointed to hold title to and oversee the development and
86 management of lands and buildings which are donated by private
87 individuals to the public for the use and benefit of the community
88 and which are supported in part by private funds.

89 (c) "Purchasing agent" shall mean any administrator,
90 superintendent, purchase clerk or other chief officer so
91 designated having general or special authority to negotiate for
92 and make private contract for or purchase for any governing
93 authority.

94 (d) "Public funds" shall mean and include any
95 appropriated funds, special funds, fees or any other emoluments
96 received by an agency or governing authority.

97 (e) "Commodities" shall mean and include the various
98 commodities, goods, merchandise, furniture, equipment, automotive
99 equipment of every kind, and other personal property purchased by
100 the agencies of the state and governing authorities, but not
101 commodities purchased for resale or raw materials converted into
102 products for resale.

103 * * *

104 (i) "Equipment" shall be construed to include:
105 automobiles, trucks, tractors, office appliances and all other
106 equipment of every kind and description.

107 (ii) "Furniture" shall be construed to include:
108 desks, chairs, tables, seats, filing cabinets, bookcases and all
109 other items of a similar nature as well as dormitory furniture,
110 appliances, carpets and all other items of personal property

111 generally referred to as home, office or school furniture.

112 (f) "Emergency" shall mean any circumstances caused by
113 fire, flood, explosion, storm, earthquake, epidemic, riot,
114 insurrection or caused by any inherent defect due to defective
115 construction, or when the immediate preservation of order or of
116 public health is necessary by reason of unforeseen emergency, or
117 when the immediate restoration of a condition of usefulness of any
118 public building, equipment, road or bridge appears advisable, or
119 in the case of a public utility when there is a failure of any
120 machine or other thing used and useful in the generation,
121 production or distribution of electricity, water or natural gas,
122 or in the transportation or treatment of sewage; or when the delay
123 incident to obtaining competitive bids could cause adverse impact
124 upon the governing authorities or agency, its employees or its
125 citizens; or in the case of a public airport, when the delay
126 incident to publishing an advertisement for competitive bids would
127 endanger public safety in a specific (not general) manner, result
128 in or perpetuate a specific breach of airport security, or prevent
129 the airport from providing specific air transportation services.

130 (g) "Construction" shall mean the process of building,
131 altering, improving, renovating or demolishing a public structure,
132 public building, or other public real property. It does not
133 include routine operation, routine repair or regularly scheduled
134 maintenance of existing public structures, public buildings or
135 other public real property.

136 (h) "Purchase" shall mean buying, renting, leasing or
137 otherwise acquiring.

138 SECTION 3. Section 31-7-3, Mississippi Code of 1972, is
139 amended as follows:[LR3]

140 31-7-3. The Department of Finance and Administration shall
141 administer the provisions of this chapter.

142 The purposes or aims of the Department of Finance and
143 Administration in carrying out said provisions shall be to

144 coordinate and promote efficiency and economy in the purchase of
145 commodities by the agencies of the state.

146 SECTION 4. Section 31-7-5, Mississippi Code of 1972, is
147 amended as follows:[LR4]

148 31-7-5. The Department of Finance and Administration shall
149 prescribe rules and regulations governing the manner in which the
150 authority and duties granted to it by law may be carried out. It
151 shall employ suitable and competent personnel, necessary to carry
152 out its purposes. The Department of Finance and Administration
153 may establish an Office of Purchasing and Travel and employ a
154 competent person as Director of the Office of Purchasing and
155 Travel.

156 SECTION 5. Section 31-7-9, Mississippi Code of 1972, is
157 amended as follows:[LR5]

158 31-7-9. (1) The Office of Purchasing and Travel shall adopt
159 purchasing regulations governing the purchase by any agency of any
160 commodity or commodities and establishing standards and
161 specifications for a commodity or commodities and the maximum fair
162 prices of a commodity or commodities, subject to the approval of
163 the Public Procurement Review Board. It shall have the power to
164 amend, add to or eliminate purchasing regulations. The adoption
165 of, amendment, addition to or elimination of purchasing
166 regulations shall be based upon a determination by the Office of
167 Purchasing and Travel with the approval of the Public Procurement
168 Review Board, that such action is reasonable and practicable and
169 advantageous to promote efficiency and economy in the purchase of
170 commodities by the agencies of the state. Upon the adoption of
171 any purchasing regulation, or an amendment, addition or
172 elimination therein, copies of same shall be furnished to the
173 State Auditor and to all agencies affected thereby. Thereafter,
174 and except as otherwise may be provided in subsection (2) of this
175 section, no agency of the state shall purchase any commodities
176 covered by existing purchasing regulations unless such commodities

177 be in conformity with the standards and specifications set forth
178 in the purchasing regulations and unless the price thereof does
179 not exceed the maximum fair price established by such purchasing
180 regulations. The said Office of Purchasing and Travel shall
181 furnish to any county or municipality or other local public agency
182 of the state requesting same, copies of purchasing regulations
183 adopted by the Office of Purchasing and Travel and any amendments,
184 changes or eliminations of same that may be made from time to
185 time.

186 (2) The Office of Purchasing and Travel shall adopt, subject
187 to the approval of the Public Procurement Review Board, purchasing
188 regulations governing the purchase of unmarked vehicles to be used
189 by the Bureau of Narcotics and Department of Public Safety in
190 official investigations pursuant to Section 25-1-87. Such
191 regulations shall ensure that purchases of such vehicles shall be
192 at a fair price and shall take into consideration the peculiar
193 needs of the Bureau of Narcotics and Department of Public Safety
194 in undercover operations.

195 SECTION 6. Section 31-7-10, Mississippi Code of 1972, is
196 amended as follows:[LR6]

197 31-7-10. (1) For the purposes of this section, the term
198 "equipment" shall mean equipment, furniture, and if applicable,
199 associated software and other applicable direct costs associated
200 with the acquisition. In addition to its other powers and duties,
201 the Department of Finance and Administration shall have the
202 authority to develop a master lease-purchase program and, pursuant
203 to that program, shall have the authority to execute on behalf of
204 the state master lease-purchase agreements for equipment to be
205 used by an agency, as herein provided. Each agency electing to
206 acquire equipment by a lease-purchase agreement shall participate
207 in the Department of Finance and Administration's master
208 lease-purchase program, unless the Department of Finance and
209 Administration makes a determination that such equipment cannot be

210 obtained under the program or unless the equipment can be obtained
211 elsewhere at an overall cost lower than that for which the
212 equipment can be obtained under the program. Such lease-purchase
213 agreements may include the refinancing and/or consolidation of any
214 state agency lease-purchase agreements entered into after June 30,
215 1990.

216 (2) All funds designated by agencies for procurement of
217 equipment and financing thereof under the master lease-purchase
218 program shall be paid into a special fund hereby created in the
219 State Treasury known as the "Master Lease-Purchase Program Fund"
220 which shall be used by the Department of Finance and
221 Administration for payment to the lessors for equipment acquired
222 under master lease-purchase agreements.

223 (3) Upon final approval of an appropriation bill, each
224 agency shall submit to the Public Procurement Review Board a
225 schedule of proposed equipment acquisitions for the master
226 lease-purchase program. Upon approval of an equipment schedule by
227 the Public Procurement Review Board with the advice of the
228 Department of Information Technology Services, the Office of
229 Purchasing and Travel, and the Division of Energy and
230 Transportation of the Department of Economic Development as it
231 pertains to energy efficient climate control systems, the Public
232 Procurement Review Board shall forward a copy of the equipment
233 schedule to the Department of Finance and Administration.

234 (4) The level of lease-purchase debt recommended by the
235 Department of Finance and Administration shall be subject to
236 approval by the State Bond Commission. After such approval, the
237 Department of Finance and Administration shall be authorized to
238 advertise and solicit written competitive proposals for a lessor,
239 who will purchase the equipment pursuant to bid awards made by the
240 using agency under a given category and then transfer the
241 equipment to the Department of Finance and Administration as
242 lessee, pursuant to a master lease-purchase agreement.

243 The Department of Finance and Administration shall select the
244 successful proposer for the financing of equipment under the
245 master lease-purchase program with the approval of the State Bond
246 Commission.

247 (5) Each master lease-purchase agreement, and any subsequent
248 amendments, shall include such terms and conditions as the State
249 Bond Commission shall determine to be appropriate and in the
250 public interest, and may include any covenants deemed necessary or
251 desirable to protect the interests of the lessor, including, but
252 not limited to, provisions setting forth the interest rate (or
253 method for computing interest rates) for financing pursuant to
254 such agreement, covenants concerning application of payments and
255 funds held in the Master Lease-Purchase Program Fund, covenants to
256 maintain casualty insurance with respect to equipment subject to
257 the master lease-purchase agreement (and all state agencies are
258 specifically authorized to purchase any insurance required by a
259 master lease-purchase agreement) and covenants precluding or
260 limiting the right of the lessee or user to acquire equipment
261 within a specified time (not to exceed five (5) years) after
262 cancellation on the basis of a failure to appropriate funds for
263 payment of amounts due under a lease-purchase agreement covering
264 comparable equipment. The State Bond Commission shall transmit
265 copies of each such master lease-purchase agreement and each such
266 amendment to the Joint Legislative Budget Committee. To the
267 extent provided in any master lease-purchase agreement, title to
268 equipment leased pursuant thereto shall be deemed to be vested in
269 the state or the user of the equipment (as specified in such
270 master lease-purchase agreement), subject to default under or
271 termination of such master lease-purchase agreement.

272 A master lease-purchase agreement may provide for payment by
273 the lessor to the lessee of the purchase price of the equipment to
274 be acquired pursuant thereto prior to the date on which payment is
275 due to the vendor for such equipment and that the lease payments

276 by the lessee shall commence as though the equipment had been
277 provided on the date of payment. If the lessee, or lessee's
278 escrow agent, has sufficient funds for payment of equipment
279 purchases prior to payment due date to vendor of equipment, such
280 funds shall be held or utilized on an as needed basis for payment
281 of equipment purchases either by the State Treasurer (in which
282 event the master lease-purchase agreement may include provisions
283 concerning the holding of such funds, the creation of a security
284 interest for the benefit of the lessor in such funds until
285 disbursed and other appropriate provisions approved by the Bond
286 Commission) or by a corporate trustee selected by the Department
287 of Finance and Administration (in which event the Department of
288 Finance and Administration shall have the authority to enter into
289 an agreement with such a corporate trustee containing terms and
290 conditions approved by the bond commission). Earnings on any
291 amount paid by the lessor prior to the acquisition of the
292 equipment may be used to make lease payments under the master
293 lease-purchase agreement or applied to pay costs and expenses
294 incurred in connection with such lease-purchase agreement. In
295 such event, the equipment use agreements with the user agency may
296 provide for lease payments to commence upon the date of payment by
297 the lessor and may also provide for a credit against such payments
298 to the extent that investment receipts from investment of the
299 purchase price are to be used to make lease-purchase payments.

300 (6) The annual rate of interest paid under any
301 lease-purchase agreement authorized under this section shall not
302 exceed the maximum interest rate to maturity on general obligation
303 indebtedness permitted under Section 75-17-101.

304 (7) The Department of Finance and Administration shall
305 furnish the equipment to the various agencies, also known as the
306 user, pursuant to an equipment-use agreement developed by the
307 Department of Finance and Administration. Such agreements shall
308 require that all monthly payments due from such agency be paid,

309 transferred or allocated into the Master Lease-Purchase Program
310 Fund pursuant to a schedule established by the Department of
311 Finance and Administration. In the event such sums are not paid
312 by the defined payment period, the Executive Director of the
313 Department of Finance and Administration shall issue a requisition
314 for a warrant to draw such amount as may be due from any funds
315 appropriated for the use of the agency which has failed to make
316 the payment as agreed.

317 (8) All master lease-purchase agreements executed under the
318 authority of this section shall contain the following annual
319 allocation dependency clause or an annual allocation dependency
320 clause which is substantially equivalent thereto: "The
321 continuation of each equipment schedule to this agreement is
322 contingent in whole or in part upon the appropriation of funds by
323 the Legislature to make the lease-purchase payments required under
324 such equipment schedule. If the Legislature fails to appropriate
325 sufficient funds to provide for the continuation of the
326 lease-purchase payments under any such equipment schedule, then
327 the obligations of the lessee and of the agency to make such
328 lease-purchase payments and the corresponding provisions of any
329 such equipment schedule to this agreement shall terminate on the
330 last day of the fiscal year for which appropriations were made."

331 (9) The maximum lease term for any equipment acquired under
332 the master lease-purchase program shall not exceed the useful life
333 of such equipment as determined according to the upper limit of
334 the asset depreciation range (ADR) guidelines for the Class Life
335 Asset Depreciation Range System established by the Internal
336 Revenue Service pursuant to the United States Internal Revenue
337 Code and regulations thereunder as in effect on December 31, 1980,
338 or comparable depreciation guidelines with respect to any
339 equipment not covered by ADR guidelines. The Department of
340 Finance and Administration shall be deemed to have met the
341 requirements of this subsection if the term of a master

342 lease-purchase agreement does not exceed the weighted average
343 useful life of all equipment covered by such agreement and the
344 schedules thereto as determined by the Department of Finance and
345 Administration. For purposes of this subsection (9), the "term of
346 a master lease-purchase agreement" shall be the weighted average
347 maturity of all principal payments to be made under such master
348 lease-purchase agreement and all schedules thereto.

349 (10) Interest paid on any master lease-purchase agreement
350 under this section shall be exempt from State of Mississippi
351 income taxation. All equipment, and the purchase thereof by any
352 lessor, acquired under the master lease-purchase program and all
353 lease-purchase payments with respect thereto shall be exempt from
354 all Mississippi sales, use and ad valorem taxes.

355 (11) The Governor, in his annual executive budget to the
356 Legislature, shall recommend appropriations sufficient to provide
357 funds to pay all amounts due and payable during the applicable
358 fiscal year under master lease-purchase agreements entered into
359 pursuant to this section.

360 (12) Any master lease-purchase agreement reciting in
361 substance that such agreement has been entered into pursuant to
362 this section shall be conclusively deemed to have been entered
363 into in accordance with all of the provisions and conditions set
364 forth in this section. Any defect or irregularity arising with
365 respect to procedures applicable to the acquisition of any
366 equipment shall not invalidate or otherwise limit the obligation
367 of the Department of Finance and Administration, or the state or
368 any agency of the state, under any master lease-purchase agreement
369 or any equipment-use agreement.

370 (13) There shall be maintained by the Department of Finance
371 and Administration with respect to each master lease-purchase
372 agreement an itemized statement of the cash price, interest rates,
373 interest costs, commissions, debt service schedules and all other
374 costs and expenses paid by the state incident to the

375 lease-purchase of equipment under such agreement.

376 (14) Lease-purchase agreements entered into by the Board of
377 Trustees of State Institutions of Higher Learning pursuant to the
378 authority of Section 37-101-413 or by any other agency which has
379 specific statutory authority other than pursuant to Section
380 31-7-13(e) to acquire equipment by lease-purchase shall not be
381 made pursuant to the master lease-purchase program under this
382 section, unless the Board of Trustees of State Institutions of
383 Higher Learning or such other agency elects to participate as to
384 part or all of its lease-purchase acquisitions in the master
385 lease-purchase program pursuant to this section.

386 SECTION 7. Section 31-7-11, Mississippi Code of 1972, is
387 amended as follows:[LR7]

388 31-7-11. Each agency of the state shall furnish information
389 relative to its purchase of commodities, and as to its method of
390 purchasing such commodities, to the Department of Finance and
391 Administration annually and at such other times as the Department
392 of Finance and Administration may request.

393 The Department of Finance and Administration shall have
394 supervision over the purchasing and purchasing practices of each
395 state agency and may by regulation or order correct any practice
396 that appears contrary to the provisions of this chapter or to the
397 best interests of the state. If it shall appear that any agency
398 is not practicing economy in its purchasing or is permitting
399 favoritism or any improper purchasing practice, the Department of
400 Finance and Administration shall require that the agency
401 immediately cease such improper activity, with full and complete
402 authority in the Department of Finance and Administration to carry
403 into effect its directions in such regard.

404 All purchases, trade-ins, sales or transfer of personal
405 property made by any officer, board, agency, department or branch
406 of the state government except the Legislature shall be subject to
407 the approval of the Department of Finance and Administration.

408 Such transaction shall be made in accordance with rules and
409 regulations of the Department of Finance and Administration
410 relating to the purchase of state-owned motor vehicles and all
411 other personal property. The title of such property shall remain
412 in the name of the state.

413 SECTION 8. Section 31-7-12, Mississippi Code of 1972, is
414 amended as follows:[LR8]

415 31-7-12. (1) Except in regard to purchases of unmarked
416 vehicles made in accordance with purchasing regulations adopted by
417 the Department of Finance and Administration pursuant to Section
418 31-7-9(2), all agencies shall purchase commodities at the state
419 contract price from the approved source, unless approval is
420 granted by the Department of Finance and Administration to solicit
421 purchases outside the terms of the contracts. However, prices
422 accepted by an agency shall be less than the prices set by the
423 state contract. Prices accepted by an agency shall be obtained in
424 compliance with paragraph (a), (b) or (c) of Section 31-7-13. It
425 shall be the responsibility of the Department of Finance and
426 Administration to ascertain that the resulting prices shall
427 provide a cost effective alternative to the established state
428 contract.

429 * * *

430 (2) Governing authorities may purchase commodities approved
431 by the Department of Finance and Administration from the state
432 contract vendor, or from any source offering the identical
433 commodity, at a price not exceeding the state contract price
434 established by the Department of Finance and Administration for
435 such commodity, without obtaining or advertising for competitive
436 bids * * *. Governing authorities that do not exercise the option
437 to purchase such commodities from the state contract vendor or
438 from another source offering the identical commodity at a price
439 not exceeding the state contract price established by the
440 Department of Finance and Administration shall make such purchases

441 pursuant to the provisions of Section 31-7-13 without regard to
442 state contract prices established by the Department of Finance and
443 Administration, unless such purchases are authorized to be made
444 under subsection (6) of this section.

445 (3) Nothing in this section shall prohibit governing
446 authorities from purchasing, pursuant to subsections (1) and (2)
447 of this section, commodities approved by the Department of Finance
448 and Administration at a price not exceeding the state contract
449 price established by the Department of Finance and Administration.

450 (4) The Department of Finance and Administration shall
451 ensure that the prices of all commodities on the state contract
452 are the lowest and best prices available from any source offering
453 that commodity at the same level of quality or service, utilizing
454 the reasonable standards established therefor by the Department of
455 Finance and Administration. If the Department of Finance and
456 Administration does not list an approved price for the particular
457 item involved, purchase shall be made according to statutory
458 bidding and licensing requirements. To encourage prudent
459 purchasing practices, the Department of Finance and Administration
460 shall be authorized and empowered to exempt certain commodities
461 from the requirement that the lowest and best price be approved by
462 order placed on its minutes.

463 (5) Any school district may purchase commodities from
464 vendors with which any levying authority of the school district,
465 as defined in Section 37-57-1, has contracted through competitive
466 bidding procedures pursuant to Section 31-7-13 for purchases of
467 the same commodities. Purchases authorized by this subsection may
468 be made by a school district without obtaining or advertising for
469 competitive bids, and such purchases shall be made at the same
470 prices and under the same conditions as purchases of the same
471 commodities are to be made by the levying authority of the school
472 district under the contract with the vendor.

473 SECTION 9. Section 31-7-13, Mississippi Code of 1972, is

474 amended as follows:[LR9]

475 31-7-13. All agencies and governing authorities shall
476 purchase their commodities and printing; * * * contract for
477 garbage collection or disposal; contract for solid waste
478 collection or disposal; contract for sewage collection or
479 disposal; * * * contract for public construction; and contract for
480 rentals as herein provided.

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

482 Purchases which do not involve an expenditure of more than One
483 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or
484 shipping charges, may be made without advertising or otherwise
485 requesting competitive bids. Provided, however, that nothing
486 contained in this paragraph (a) shall be construed to prohibit any
487 agency or governing authority from establishing procedures which
488 require competitive bids on purchases of One Thousand Five Hundred
489 Dollars (\$1,500.00) or less.

490 (b) **Bidding procedure for purchases over \$1,500.00 but**
491 **not over \$10,000.00.** Purchases which involve an expenditure of

492 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
493 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
494 and shipping charges may be made from the lowest and best bidder
495 without publishing or posting advertisement for bids, provided at
496 least two (2) competitive written bids have been obtained. Any
497 governing authority purchasing commodities pursuant to this
498 paragraph (b) may authorize its purchasing agent, or his designee,
499 with regard to governing authorities other than counties, or its
500 purchase clerk, or his designee, with regard to counties, to
501 accept the lowest and best competitive written bid. Such
502 authorization shall be made in writing by the governing authority
503 and shall be maintained on file in the primary office of the
504 agency and recorded in the official minutes of the governing
505 authority, as appropriate. The purchasing agent or the purchase
506 clerk, or their designee, as the case may be, and not the

507 governing authority, shall be liable for any penalties and/or
508 damages as may be imposed by law for any act or omission of the
509 purchasing agent or purchase clerk, or their designee,
510 constituting a violation of law in accepting any bid without
511 approval by the governing authority. The term "competitive
512 written bid" shall mean a bid submitted on a bid form furnished by
513 the buying agency or governing authority and signed by authorized
514 personnel representing the vendor, or a bid submitted on a
515 vendor's letterhead or identifiable bid form and signed by
516 authorized personnel representing the vendor. Bids may be
517 submitted by facsimile, electronic mail or other generally
518 accepted method of information distribution. Bids submitted by
519 electronic transmission shall not require the signature of the
520 vendor's representative unless required by agencies or governing
521 authorities.

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

523 (i) Publication requirement. Purchases which
524 involve an expenditure of more than Ten Thousand Dollars
525 (\$10,000.00), exclusive of freight and shipping charges may be
526 made from the lowest and best bidder after advertising for
527 competitive sealed bids once each week for two (2) consecutive
528 weeks in a regular newspaper published in the county or
529 municipality in which such agency or governing authority is
530 located. The date as published for the bid opening shall not be
531 less than seven (7) working days after the last published notice;
532 however, if the purchase involves a construction project in which
533 the estimated cost is in excess of Fifteen Thousand Dollars
534 (\$15,000.00), such bids shall not be opened in less than fifteen
535 (15) working days after the last notice is published and the
536 notice for the purchase of such construction shall be published
537 once each week for two (2) consecutive weeks. The notice of
538 intention to let contracts or purchase equipment shall state the
539 time and place at which bids shall be received, list the contracts

540 to be made or types of equipment or supplies to be purchased, and,
541 if all plans and/or specifications are not published, refer to the
542 plans and/or specifications on file. If there is no newspaper
543 published in the county or municipality, then such notice shall be
544 given by posting same at the courthouse, or for municipalities at
545 the city hall, and at two (2) other public places in the county or
546 municipality, and also by publication once each week for two (2)
547 consecutive weeks in some newspaper having a general circulation
548 in the county or municipality in the above provided manner. On
549 the same date that the notice is submitted to the newspaper for
550 publication, the agency or governing authority involved shall mail
551 written notice to, or provide electronic notification to the main
552 office of the Mississippi Contract Procurement Center that
553 contains the same information as that in the published notice.

554 (ii) **Bidding Process Amendment Procedure.** If all
555 plans and/or specifications are published in the notification,
556 then the plans and/or specifications may not be amended. If all
557 plans and/or specifications are not published in the notification,
558 then amendments to the plans/specifications, bid opening date, bid
559 opening time and place may be made, provided that the agency or
560 governing authority maintains a list of all prospective bidders
561 who are known to have received a copy of the bid documents and all
562 such prospective bidders are sent copies of all amendments. This
563 notification of amendments may be made via mail, facsimile,
564 electronic mail or other generally accepted method of information
565 distribution. No addendum to bid specifications may be issued
566 within forty-eight (48) working hours of the time established for
567 the receipt of bids unless such addendum also amends the bid
568 opening to a date not less than five (5) working days after the
569 date of the addendum.

570 (iii) **Filing Requirement.** In all cases involving
571 governing authorities, before the notice shall be published or
572 posted, the plans or specifications for the construction or

573 equipment being sought shall be filed with the clerk of the board
574 of the governing authority. * * * In addition to these
575 requirements, * * * a bid file shall be established which shall
576 indicate those vendors to whom such solicitations and
577 specifications were issued, and such file shall also contain such
578 information as is pertinent to the bid.

579 (iv) **Specification Restrictions.** Specifications
580 pertinent to such bidding shall be written so as not to exclude
581 comparable equipment of domestic manufacture. Provided, however,
582 that should valid justification be presented, the Department of
583 Finance and Administration or the board of a governing authority
584 may approve a request for specific equipment necessary to perform
585 a specific job. * * * Further, such justification, when placed on
586 the minutes of the board of a governing authority, may serve as
587 authority for that governing authority to write specifications to
588 require a specific item of equipment needed to perform a specific
589 job. In addition to these requirements, from and after July 1,
590 1990, vendors of relocatable classrooms and the specifications for
591 the purchase of such relocatable classrooms published by local
592 school boards shall meet all pertinent regulations of the State
593 Board of Education, including prior approval of such bid by the
594 State Department of Education. * * *

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

596 (i) **Decision Procedure.** Purchases may be made
597 from the lowest and best bidder. In determining the lowest and
598 best bid, freight and shipping charges shall be included.
599 Life-cycle costing, total cost bids, warranties, guaranteed
600 buy-back provisions and other relevant provisions may be included
601 in the best bid calculation. All best bid procedures for state
602 agencies must be in compliance with regulations established by the
603 Department of Finance and Administration. If any governing
604 authority accepts a bid other than the lowest bid actually
605 submitted, it shall place on its minutes detailed calculations and

606 narrative summary showing that the accepted bid was determined to
607 be the lowest and best bid, including the dollar amount of the
608 accepted bid and the dollar amount of the lowest bid. No agency
609 or governing authority shall accept a bid based on items not
610 included in the specifications.

611 (ii) **Construction Project Negotiations Authority.**

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

617 * * *

618 (e) **Lease-purchase authorization.** For the purposes of
619 this section, the term "equipment" shall mean equipment, furniture
620 and, if applicable, associated software and other applicable
621 direct costs associated with the acquisition. Any lease-purchase
622 of equipment which an agency is not required to lease-purchase
623 under the master lease-purchase program pursuant to Section
624 31-7-10 and any lease-purchase of equipment which a governing
625 authority elects to lease-purchase may be acquired by a
626 lease-purchase agreement under this paragraph (e). Lease-purchase
627 financing may also be obtained from the vendor or from a
628 third-party source after having solicited and obtained at least
629 two (2) written competitive bids, as defined in paragraph (b) of
630 this section, for such financing without advertising for such
631 bids. Solicitation for the bids for financing may occur before or
632 after acceptance of bids for the purchase of such equipment or,
633 where no such bids for purchase are required, at any time before
634 the purchase thereof. No such lease-purchase agreement shall be
635 for an annual rate of interest which is greater than the overall
636 maximum interest rate to maturity on general obligation
637 indebtedness permitted under Section 75-17-101, and the term of
638 such lease-purchase agreement shall not exceed the useful life of

639 equipment covered thereby as determined according to the upper
640 limit of the asset depreciation range (ADR) guidelines for the
641 Class Life Asset Depreciation Range System established by the
642 Internal Revenue Service pursuant to the United States Internal
643 Revenue Code and regulations thereunder as in effect on December
644 31, 1980, or comparable depreciation guidelines with respect to
645 any equipment not covered by ADR guidelines. Any lease-purchase
646 agreement entered into pursuant to this paragraph (e) may contain
647 any of the terms and conditions which a master lease-purchase
648 agreement may contain under the provisions of Section 31-7-10(5),
649 and shall contain an annual allocation dependency clause
650 substantially similar to that set forth in Section 31-7-10(8).
651 Each agency or governing authority entering into a lease-purchase
652 transaction pursuant to this paragraph (e) shall maintain with
653 respect to each such lease-purchase transaction the same
654 information as required to be maintained by the Department of
655 Finance and Administration pursuant to Section 31-7-10(13).
656 However, nothing contained in this section shall be construed to
657 permit agencies to acquire items of equipment with a total
658 acquisition cost in the aggregate of less than Ten Thousand
659 Dollars (\$10,000.00) by a single lease-purchase transaction. All
660 equipment, and the purchase thereof by any lessor, acquired by
661 lease-purchase under this paragraph and all lease-purchase
662 payments with respect thereto shall be exempt from all Mississippi
663 sales, use and ad valorem taxes. Interest paid on any
664 lease-purchase agreement under this section shall be exempt from
665 State of Mississippi income taxation.

666 (f) **Alternate bid authorization.** When necessary to
667 ensure ready availability of commodities for public works and the
668 timely completion of public projects, no more than two (2)
669 alternate bids may be accepted by a governing authority for
670 commodities. No purchases may be made through use of such
671 alternate bids procedure unless the lowest and best bidder, for

672 reasons beyond his control, cannot deliver the commodities
673 contained in his bid. In that event, purchases of such
674 commodities may be made from one (1) of the bidders whose bid was
675 accepted as an alternate.

676 (g) **Construction contract change authorization.** In the
677 event a determination is made by an agency or governing authority
678 after a construction contract is let that changes or modifications
679 to the original contract are necessary or would better serve the
680 purpose of the agency or the governing authority, such agency or
681 governing authority may, in its discretion, order such changes
682 pertaining to the construction that are necessary under the
683 circumstances without the necessity of further public bids;
684 provided that such change shall be made in a commercially
685 reasonable manner and shall not be made to circumvent the public
686 purchasing statutes. In addition to any other authorized person,
687 the architect or engineer hired by an agency or governing
688 authority with respect to any public construction contract shall
689 have the authority, when granted by an agency or governing
690 authority, to authorize changes or modifications to the original
691 contract without the necessity of prior approval of the agency or
692 governing authority when any such change or modification is less
693 than one percent (1%) of the total contract amount. The agency or
694 governing authority may limit the number, manner or frequency of
695 such emergency changes or modifications.

696 (h) **Petroleum purchase alternative.** In addition to
697 other methods of purchasing authorized in this chapter, when any
698 agency or governing authority shall have a need for gas, diesel
699 fuel, oils and/or other petroleum products in excess of the amount
700 set forth in paragraph (a) of this section, such agency or
701 governing authority may purchase the commodity after having
702 solicited and obtained at least two (2) competitive written bids,
703 as defined in paragraph (b) of this section. If two (2)
704 competitive written bids are not obtained the entity shall comply

705 with the procedures set forth in paragraph (c) of this section.

706 In the event any agency or governing authority shall have
707 advertised for bids for the purchase of gas, diesel fuel, oils and
708 other petroleum products and coal and no acceptable bids can be
709 obtained, such agency or governing authority is authorized and
710 directed to enter into any negotiations necessary to secure the
711 lowest and best contract available for the purchase of such
712 commodities.

713 (i) **Road construction petroleum products price**
714 **adjustment clause authorization.** Any agency or governing
715 authority authorized to enter into contracts for the construction,
716 maintenance, surfacing or repair of highways, roads or streets,
717 may include in its bid proposal and contract documents a price
718 adjustment clause with relation to the cost to the contractor,
719 including taxes, based upon an industry-wide cost index, of
720 petroleum products including asphalt used in the performance or
721 execution of the contract or in the production or manufacture of
722 materials for use in such performance. Such industry-wide index
723 shall be established and published monthly by the Mississippi
724 Department of Transportation with a copy thereof to be mailed,
725 upon request, to the clerks of the governing authority of each
726 municipality and the clerks of each board of supervisors
727 throughout the state. The price adjustment clause shall be based
728 on the cost of such petroleum products only and shall not include
729 any additional profit or overhead as part of the adjustment. The
730 bid proposals or document contract shall contain the basis and
731 methods of adjusting unit prices for the change in the cost of
732 such petroleum products.

733 (j) **State agency emergency purchase procedure.** If the
734 executive head of any agency of the state shall determine that an
735 emergency exists in regard to the purchase of any commodities or
736 repair contracts, so that the delay incident to giving opportunity
737 for competitive bidding would be detrimental to the interests of

738 the state, then the provisions herein for competitive bidding
739 shall not apply and the head of such agency shall be authorized to
740 make the purchase or repair. Total purchases so made shall only
741 be for the purpose of meeting needs created by the emergency
742 situation. In the event such executive head is responsible to an
743 agency board, at the meeting next following the emergency
744 purchase, documentation of the purchase, including a description
745 of the commodity purchased, the purchase price thereof and the
746 nature of the emergency shall be presented to the board and placed
747 on the minutes of the board of such agency. The head of such
748 agency shall, at the earliest possible date following such
749 emergency purchase, file with the Department of Finance and
750 Administration (i) a statement under oath certifying the
751 conditions and circumstances of the emergency, and (ii) a
752 certified copy of the appropriate minutes of the board of such
753 agency, if applicable.

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

755 If the governing authority, or the governing authority acting
756 through its designee, shall determine that an emergency exists in
757 regard to the purchase of any commodities or repair contracts, so
758 that the delay incident to giving opportunity for competitive
759 bidding would be detrimental to the interest of the governing
760 authority, then the provisions herein for competitive bidding
761 shall not apply and any officer or agent of such governing
762 authority having general or special authority therefor in making
763 such purchase or repair shall approve the bill presented therefor,
764 and he shall certify in writing thereon from whom such purchase
765 was made, or with whom such a repair contract was made. At the
766 board meeting next following the emergency purchase or repair
767 contract, documentation of the purchase or repair contract,
768 including a description of the commodity purchased, the price
769 thereof and the nature of the emergency shall be presented to the
770 board and shall be placed on the minutes of the board of such

771 governing authority.

772 (1) **Hospital purchase or lease authorization.** The
773 commissioners or board of trustees of any hospital owned or owned
774 and operated separately or jointly by one or more counties,
775 cities, towns, supervisors districts or election districts, or
776 combinations thereof, may contract with such lowest and best
777 bidder for the purchase or lease of any commodity under a contract
778 of purchase or lease-purchase agreement whose obligatory terms do
779 not exceed five (5) years. In addition to the authority granted
780 herein, the commissioners or board of trustees are authorized to
781 enter into contracts for the lease of equipment or services, or
782 both, which it considers necessary for the proper care of patients
783 if, in its opinion, it is not financially feasible to purchase the
784 necessary equipment or services. Any such contract for the lease
785 of equipment or services executed by the commissioners or board
786 shall not exceed a maximum of five (5) years' duration and shall
787 include a cancellation clause based on unavailability of funds.
788 If such cancellation clause is exercised, there shall be no
789 further liability on the part of the lessee.

790 (m) **Exceptions from bidding requirements.** Excepted
791 from bid requirements are:

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

793 Purchasing agreements, contracts and maximum price regulations
794 executed or approved by the Department of Finance and
795 Administration.

796 (ii) **Outside equipment repairs.** Repairs to
797 equipment, when such repairs are made by repair facilities in the
798 private sector; however, engines, transmissions, rear axles and/or
799 other such components shall not be included in this exemption when
800 replaced as a complete unit instead of being repaired and the need
801 for such total component replacement is known before disassembly
802 of the component; provided, however, that invoices identifying the
803 equipment, specific repairs made, parts identified by number and

804 name, supplies used in such repairs, and the number of hours of
805 labor and costs therefor shall be required for the payment for
806 such repairs.

807 (iii) **In-house equipment repairs.** Purchases of
808 parts for repairs to equipment, when such repairs are made by
809 personnel of the agency or governing authority; however, entire
810 assemblies, such as engines or transmissions, shall not be
811 included in this exemption when the entire assembly is being
812 replaced instead of being repaired.

813 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
814 of gravel or fill dirt which are to be removed and transported by
815 the purchaser.

816 (v) **Governmental equipment auctions.** Motor
817 vehicles or other equipment purchased from a federal or state
818 agency or a governing authority at a public auction held for the
819 purpose of disposing of such vehicles or other equipment. Any
820 purchase by a governing authority under the exemption authorized
821 by this paragraph (v) shall require advance authorization spread
822 upon the minutes of the governing authority to include the listing
823 of the item or items authorized to be purchased and the maximum
824 bid authorized to be paid for each item or items.

825 (vi) **Intergovernmental sales and transfers.**
826 Purchases, sales, transfers or trades by governing authorities or
827 state agencies when such purchases, sales, transfers or trades are
828 made by a private treaty agreement or through means of
829 negotiation, from any federal agency or authority, another
830 governing authority or state agency of the State of Mississippi,
831 or any state agency of another state. Nothing in this section
832 shall permit such purchases through public auction except as
833 provided for in paragraph (v) of this section. It is the intent
834 of this section to allow governmental entities to dispose of
835 and/or purchase commodities from other governmental entities at a
836 price that is agreed to by both parties. This shall allow for

837 purchases and/or sales at prices which may be determined to be
838 below the market value if the selling entity determines that the
839 sale at below market value is in the best interest of the
840 taxpayers of the state. Governing authorities shall place the
841 terms of the agreement and any justification on the minutes, and
842 state agencies shall obtain approval from the Department of
843 Finance and Administration, prior to releasing or taking
844 possession of the commodities.

845 (vii) **Perishable supplies or food.** Perishable
846 supplies or foods purchased for use in connection with hospitals,
847 the school lunch programs, homemaking programs and for the feeding
848 of county or municipal prisoners.

849 (viii) **Single source items.** Noncompetitive items
850 available from one (1) source only. In connection with the
851 purchase of noncompetitive items only available from one (1)
852 source, a certification of the conditions and circumstances
853 requiring the purchase shall be filed by the agency with the
854 Department of Finance and Administration and by the governing
855 authority with the board of the governing authority. Upon receipt
856 of that certification the Department of Finance and Administration
857 or the board of the governing authority, as the case may be, may,
858 in writing, authorize the purchase, which authority shall be noted
859 on the minutes of the body at the next regular meeting thereafter.

860 In those situations, a governing authority is not required to
861 obtain the approval of the Department of Finance and
862 Administration.

863 (ix) **Waste disposal facility construction**
864 **contracts.** Construction of incinerators and other facilities for
865 disposal of solid wastes in which products either generated
866 therein, such as steam, or recovered therefrom, such as materials
867 for recycling, are to be sold or otherwise disposed of; provided,
868 however, in constructing such facilities a governing authority or
869 agency shall publicly issue requests for proposals, advertised for

870 in the same manner as provided herein for seeking bids for public
871 construction projects, concerning the design, construction,
872 ownership, operation and/or maintenance of such facilities,
873 wherein such requests for proposals when issued shall contain
874 terms and conditions relating to price, financial responsibility,
875 technology, environmental compatibility, legal responsibilities
876 and such other matters as are determined by the governing
877 authority or agency to be appropriate for inclusion; and after
878 responses to the request for proposals have been duly received,
879 the governing authority or agency may select the most qualified
880 proposal or proposals on the basis of price, technology and other
881 relevant factors and from such proposals, but not limited to the
882 terms thereof, negotiate and enter contracts with one or more of
883 the persons or firms submitting proposals.

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

887 (xi) **Information Technology Products.** Purchases
888 of information technology products made by governing authorities
889 under the provisions of purchase schedules, or contracts * * *
890 executed or approved by the Mississippi Department of Information
891 Technology Services and designated for use by governing
892 authorities.

893 (xii) **Energy efficiency services and equipment.**
894 Energy efficiency services and equipment acquired by school
895 districts, community and junior colleges, institutions of higher
896 learning and state agencies or other applicable governmental
897 entities on a shared-savings, lease or lease-purchase basis
898 pursuant to Section 31-7-14.

899 * * *

900 (xiii) **Municipal electrical utility system fuel.**
901 Purchases of coal and/or natural gas by municipally-owned electric
902 power generating systems that have the capacity to use both coal

903 and natural gas for the generation of electric power.

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

905 Purchases by libraries or for libraries of books and periodicals;
906 processed film, video cassette tapes, filmstrips and slides;
907 recorded audio tapes, cassettes and diskettes; and any such items
908 as would be used for teaching, research or other information
909 distribution; however, equipment such as projectors, recorders,
910 audio or video equipment, and monitor televisions are not exempt
911 under this paragraph.

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

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

918 (xvii) **Multichannel interactive video systems.**
919 From and after July 1, 1990, contracts by Mississippi Authority
920 for Educational Television with any private educational
921 institution or private nonprofit organization whose purposes are
922 educational in regard to the construction, purchase, lease or
923 lease-purchase of facilities and equipment and the employment of
924 personnel for providing multichannel interactive video systems
925 (ITSF) in the school districts of this state.

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

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

935 (xx) **Junior college books for rent.** Purchases by

936 community or junior colleges of textbooks which are obtained for
937 the purpose of renting such books to students as part of a book
938 service system.

939 (xxi) **Certain school district purchases.**

940 Purchases of commodities made by school districts from vendors
941 with which any levying authority of the school district, as
942 defined in Section 37-57-1, has contracted through competitive
943 bidding procedures for purchases of the same commodities.

944 * * *

945 (xxii) **Garbage, solid waste and sewage contracts.**

946 Contracts for garbage collection or disposal, contracts for solid
947 waste collection or disposal and contracts for sewage collection
948 or disposal.

949 (xxiii) **Municipal water tank maintenance**

950 **contracts.** Professional maintenance program contracts for the
951 repair or maintenance of municipal water tanks, which provide
952 professional services needed to maintain municipal water storage
953 tanks for a fixed annual fee for a duration of two (2) or more
954 years.

955 (xxiv) **Purchases of Mississippi Industries for the**

956 **Blind products.** Purchases made by state agencies or governing
957 authorities involving any item that is manufactured, processed or
958 produced by the Mississippi Industries for the Blind.

959 (xxv) **Purchases of state-adopted textbooks.**

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

961 (n) * * * **Term contract authorization.** All contracts
962 for the purchase of:

963 (i) All contracts for the purchase of commodities,
964 equipment and public construction (including, but not limited to,
965 repair and maintenance), * * * may be let for periods of not more
966 than sixty (60) months in advance, subject to applicable statutory
967 provisions prohibiting the letting of contracts during specified
968 periods near the end of terms of office. Term contracts for a

969 period exceeding twenty-four (24) months shall also be subject to
970 ratification or cancellation by governing authority boards taking
971 office subsequent to the governing authority board entering the
972 contract.

973 (ii) Bid proposals and contracts may include price
974 adjustment clauses with relation to the cost to the contractor
975 based upon a nationally published industry-wide or nationally
976 published and recognized cost index. The cost index used in a
977 price adjustment clause shall be determined by the Department of
978 Finance and Administration for the state agencies and by the
979 governing board for governing authorities. The bid proposal and
980 contract documents utilizing a price adjustment clause shall
981 contain the basis and method of adjusting unit prices for the
982 change in the cost of such commodities, equipment and public
983 construction.

984 (o) **Purchase law violation prohibition and vendor**
985 **penalty.** No contract or purchase as herein authorized shall be
986 made for the purpose of circumventing the provisions of this
987 section requiring competitive bids, nor shall it be lawful for any
988 person or concern to submit individual invoices for amounts within
989 those authorized for a contract or purchase where the actual value
990 of the contract or commodity purchased exceeds the authorized
991 amount and the invoices therefor are split so as to appear to be
992 authorized as purchases for which competitive bids are not
993 required. Submission of such invoices shall constitute a
994 misdemeanor punishable by a fine of not less than Five Hundred
995 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
996 or by imprisonment for thirty (30) days in the county jail, or
997 both such fine and imprisonment. In addition, the claim or claims
998 submitted shall be forfeited.

999 (p) **Electrical utility petroleum-based equipment**
1000 **purchase procedure.** When in response to a proper advertisement
1001 therefor, no bid firm as to price is submitted to an electric

1002 utility for power transformers, distribution transformers, power
1003 breakers, reclosers or other articles containing a petroleum
1004 product, the electric utility may accept the lowest and best bid
1005 therefor although the price is not firm.

1006 * * *

1007 (g) **Fuel management system bidding procedure.** Any
1008 governing authority or agency of the state shall, before
1009 contracting for the services and products of a fuel management or
1010 fuel access system, enter into negotiations with not fewer than
1011 two (2) sellers of fuel management or fuel access systems for
1012 competitive written bids to provide the services and products for
1013 the systems. In the event that the governing authority or agency
1014 cannot locate two (2) sellers of such systems or cannot obtain
1015 bids from two (2) sellers of such systems, it shall show proof
1016 that it made a diligent, good-faith effort to locate and negotiate
1017 with two (2) sellers of such systems. Such proof shall include,
1018 but not be limited to, publications of a request for proposals and
1019 letters soliciting negotiations and bids. For purposes of this
1020 paragraph (g), a fuel management or fuel access system is an
1021 automated system of acquiring fuel for vehicles as well as
1022 management reports detailing fuel use by vehicles and drivers, and
1023 the term "competitive written bid" shall have the meaning as
1024 defined in paragraph (b) of this section. Governing authorities
1025 and agencies shall be exempt from this process when contracting
1026 for the services and products of a fuel management or fuel access
1027 systems under the terms of a state contract established by the
1028 Office of Purchasing and Travel.

1029 (r) **Solid waste contract proposal procedure.** Before
1030 entering into any contract for garbage collection or disposal,
1031 contract for solid waste collection or disposal or contract for
1032 sewage collection or disposal, which involves an expenditure of
1033 more than Fifty Thousand Dollars (\$50,000.00), a governing
1034 authority or agency shall issue publicly a request for proposals

1035 concerning the specifications for such services which shall be
1036 advertised for in the same manner as provided in this section for
1037 seeking bids for purchases which involve an expenditure of more
1038 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
1039 when issued shall contain terms and conditions relating to price,
1040 financial responsibility, technology, legal responsibilities and
1041 other relevant factors as are determined by the governing
1042 authority or agency to be appropriate for inclusion; all factors
1043 determined relevant by the governing authority or agency or
1044 required by this paragraph (r) shall be duly included in the
1045 advertisement to elicit proposals. After responses to the request
1046 for proposals have been duly received, the governing authority or
1047 agency shall select the most qualified proposal or proposals on
1048 the basis of price, technology and other relevant factors and from
1049 such proposals, but not limited to the terms thereof, negotiate
1050 and enter contracts with one or more of the persons or firms
1051 submitting proposals. If the governing authority or agency deems
1052 none of the proposals to be qualified or otherwise acceptable, the
1053 request for proposals process may be reinitiated. Notwithstanding
1054 any other provisions of this paragraph, where a county with at
1055 least thirty-five thousand (35,000) nor more than forty thousand
1056 (40,000) population, according to the 1990 federal decennial
1057 census, owns or operates a solid waste landfill, the governing
1058 authorities of any other county or municipality may contract with
1059 the governing authorities of the county owning or operating the
1060 landfill, pursuant to a resolution duly adopted and spread upon
1061 the minutes of each governing authority involved, for garbage or
1062 solid waste collection or disposal services through contract
1063 negotiations.

1064 (s) **Minority set aside authorization.** Notwithstanding
1065 any provision of this section to the contrary, any agency or
1066 governing authority, by order placed on its minutes, may, in its
1067 discretion, set aside not more than twenty percent (20%) of its

1068 anticipated annual expenditures for the purchase of commodities
1069 from minority businesses; however, all such set-aside purchases
1070 shall comply with all purchasing regulations promulgated by the
1071 Department of Finance and Administration and shall be subject to
1072 bid requirements under this section. Set-aside purchases for
1073 which competitive bids are required shall be made from the lowest
1074 and best minority business bidder. For the purposes of this
1075 paragraph, the term "minority business" means a business which is
1076 owned by a majority of persons who are United States citizens or
1077 permanent resident aliens (as defined by the Immigration and
1078 Naturalization Service) of the United States, and who are Asian,
1079 Black, Hispanic or Native American, according to the following
1080 definitions:

1081 (i) "Asian" means persons having origins in any of
1082 the original people of the Far East, Southeast Asia, the Indian
1083 subcontinent, or the Pacific Islands.

1084 (ii) "Black" means persons having origins in any
1085 black racial group of Africa.

1086 (iii) "Hispanic" means persons of Spanish or
1087 Portuguese culture with origins in Mexico, South or Central
1088 America, or the Caribbean Islands, regardless of race.

1089 (iv) "Native American" means persons having
1090 origins in any of the original people of North America, including
1091 American Indians, Eskimos and Aleuts.

1092 (t) **Construction punch list restriction.** The
1093 architect, engineer or other representative designated by the
1094 agency or governing authority that is contracting for public
1095 construction or renovation may prepare and submit to the
1096 contractor only one (1) preliminary punch list of items that do
1097 not meet the contract requirements at the time of substantial
1098 completion and one (1) final list immediately before final
1099 completion and final payment.

1100 (u) **Purchase authorization clarification.** Nothing in

1101 this section shall be construed as authorizing any purchase not
1102 authorized by law.

1103 SECTION 10. Section 37-7-455, Mississippi Code of 1972, is
1104 amended as follows:[LR10]

1105 **Advertising of sale; conduct of sale, execution of**
1106 **conveyance; reservation of certain interests; disposal of personal**
1107 **property.**

1108 37-7-455. (1) Except as otherwise provided in subsection
1109 (2) of this section, all such land, buildings or other property
1110 shall be sold only after the receipt of sealed bids therefor after
1111 the time and place of making such sale has been duly advertised in
1112 some newspaper having a general circulation in the county in which
1113 the property is located once each week for three (3) consecutive
1114 weeks with the first publication to be made not less than fifteen
1115 (15) days prior to the date upon which such bids are to be
1116 received and opened. The property shall be sold to the highest
1117 and best bidder for cash, but the school board shall have the
1118 right to reject any and all bids. If the property is not sold
1119 pursuant to such advertisement, the school board * * *, by
1120 resolution, may set a date for an open meeting of the school board
1121 to be held within sixty (60) days after the date upon which the
1122 bids were opened. At the meeting held pursuant to such
1123 resolution, the school board may sell by auction the * * *
1124 property for a consideration not less than the highest sealed bid
1125 previously received pursuant to the advertisement. At the
1126 meeting, * * * any interested party may bid for cash, and the
1127 property shall be sold to the highest and best bidder for cash,
1128 but the school board shall have the right to reject any and all
1129 bids. The school board may require a written confirmation of bids
1130 received at such called meeting before selling the property at
1131 auction, but it shall not be necessary that sealed bids be
1132 received before conducting the auction.

1133 (2) As an alternative to the procedures established under

1134 subsection (1) of this section, the school board of a school
1135 district may elect, in its discretion, to sell by public auction
1136 any property, other than real property or buildings of the school
1137 district, which is not used for school or related school purposes
1138 and not needed in the operation of the schools. Before such
1139 auction, the school board shall adopt a resolution calling for the
1140 auction and shall advertise the auction in some newspaper having a
1141 general circulation in the county in which the property is located
1142 once each week for two (2) consecutive weeks, with the first
1143 publication to be made not less than fifteen (15) days before the
1144 date upon which the auction shall be held. The advertisement
1145 shall include a general description of the property to be sold at
1146 the auction and the date, time and place that such auction shall
1147 be held. At the auction, any interested party may bid for cash.
1148 The property shall be sold to the highest and best bidder;
1149 however, the school board may reject any and all bids. When
1150 selling property under this subsection, a school board is not
1151 required to advertise for or receive competitive bids in
1152 connection with the sale of the property. Any items not sold at
1153 such auctions or any other property, other than real property or
1154 buildings of the district, not classified as fixed assets for
1155 school purposes pursuant to regulations of the State Department of
1156 Audit, which no longer have useful value to the school district,
1157 in the discretion of the school board or its designated
1158 representative, may be destroyed or disposed of in any manner
1159 whatsoever, provided that no school official or employee derives
1160 any personal economic benefit from such disposal.

1161 (3) When the sale of such property is authorized and
1162 approved by the school board, the president of the school board
1163 shall be authorized and empowered to execute a conveyance of the
1164 property upon the terms and for the consideration fixed by the
1165 board. The school board shall reserve unto the district at least
1166 an undivided one-half (1/2) nonparticipating royalty interest in

1167 all oil, gas and minerals in, on or under the land, and all
1168 proceeds derived from royalties upon the reserved mineral
1169 interests shall be used as provided by Section 37-7-457; if the
1170 mineral interests of the district are less than the full and
1171 undivided ownership, the undivided royalty interest reserved by
1172 the district shall be reduced proportionately.

1173 SECTION 11. This act shall take effect and be in force from
1174 and after its passage.