

By: Representative Woods

To: County Affairs

HOUSE BILL NO. 1199

1 AN ACT TO AMEND SECTIONS 19-11-27 AND 31-7-13, MISSISSIPPI
2 CODE OF 1972, TO REINSTATE THE EXEMPTION FROM CERTAIN EXPENDITURE
3 PROHIBITIONS OF BOARDS OF SUPERVISORS DURING THE LAST YEAR OF THE
4 TERMS OF OFFICE FOR MEMBERS OF THE BOARDS; AND FOR RELATED
5 PURPOSES.

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

7 SECTION 1. Section 19-11-27, Mississippi Code of 1972, is
8 amended as follows:

9 19-11-27. No board of supervisors of any county shall expend
10 from, or contract an obligation against, the budget estimates for
11 road and bridge construction, maintenance and equipment, made and
12 published by it during the last year of the term of office of such
13 board, between the first day of October and the first day of the
14 following January, a sum exceeding one-fourth (1/4) of such item
15 of the budget made and published by it, except in cases of
16 emergency. The clerk of any county is hereby prohibited from
17 issuing any warrant contrary to the provisions of this section.
18 No board of supervisors nor any member thereof shall buy any
19 machinery or equipment in the last six (6) months of their or his
20 term unless or until he has been elected at the general election
21 of that year.

22 The provisions of this section shall not apply to a contract,
23 lease or lease-purchase contract entered into pursuant to Section
24 31-7-13.

25 SECTION 2. Section 31-7-13, Mississippi Code of 1972, is
26 amended as follows:

27 31-7-13. All agencies and governing authorities shall
28 purchase their commodities and printing; contract for garbage

29 collection or disposal; contract for solid waste collection or
30 disposal; contract for sewage collection or disposal; contract for
31 public construction; and contract for rentals as herein provided.

32 (a) **Bidding procedure for purchases not over \$1,500.00.**
33 Purchases which do not involve an expenditure of more than One
34 Thousand Five Hundred Dollars (\$1,500.00), exclusive of freight or
35 shipping charges, may be made without advertising or otherwise
36 requesting competitive bids. Provided, however, that nothing
37 contained in this paragraph (a) shall be construed to prohibit any
38 agency or governing authority from establishing procedures which
39 require competitive bids on purchases of One Thousand Five Hundred
40 Dollars (\$1,500.00) or less.

41 (b) **Bidding procedure for purchases over \$1,500.00 but**
42 **not over \$10,000.00.** Purchases which involve an expenditure of
43 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
44 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
45 and shipping charges may be made from the lowest and best bidder
46 without publishing or posting advertisement for bids, provided at
47 least two (2) competitive written bids have been obtained. Any
48 governing authority purchasing commodities pursuant to this
49 paragraph (b) may authorize its purchasing agent, or his designee,
50 with regard to governing authorities other than counties, or its
51 purchase clerk, or his designee, with regard to counties, to
52 accept the lowest and best competitive written bid. Such
53 authorization shall be made in writing by the governing authority
54 and shall be maintained on file in the primary office of the
55 agency and recorded in the official minutes of the governing
56 authority, as appropriate. The purchasing agent or the purchase
57 clerk, or their designee, as the case may be, and not the
58 governing authority, shall be liable for any penalties and/or
59 damages as may be imposed by law for any act or omission of the
60 purchasing agent or purchase clerk, or their designee,
61 constituting a violation of law in accepting any bid without

62 approval by the governing authority. The term "competitive
63 written bid" shall mean a bid submitted on a bid form furnished by
64 the buying agency or governing authority and signed by authorized
65 personnel representing the vendor, or a bid submitted on a
66 vendor's letterhead or identifiable bid form and signed by
67 authorized personnel representing the vendor. Bids may be
68 submitted by facsimile, electronic mail or other generally
69 accepted method of information distribution. Bids submitted by
70 electronic transmission shall not require the signature of the
71 vendor's representative unless required by agencies or governing
72 authorities.

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

74 (i) **Publication requirement.** Purchases which
75 involve an expenditure of more than Ten Thousand Dollars
76 (\$10,000.00), exclusive of freight and shipping charges may be
77 made from the lowest and best bidder after advertising for
78 competitive sealed bids once each week for two (2) consecutive
79 weeks in a regular newspaper published in the county or
80 municipality in which such agency or governing authority is
81 located. The date as published for the bid opening shall not be
82 less than seven (7) working days after the last published notice;
83 however, if the purchase involves a construction project in which
84 the estimated cost is in excess of Fifteen Thousand Dollars
85 (\$15,000.00), such bids shall not be opened in less than fifteen
86 (15) working days after the last notice is published and the
87 notice for the purchase of such construction shall be published
88 once each week for two (2) consecutive weeks. The notice of
89 intention to let contracts or purchase equipment shall state the
90 time and place at which bids shall be received, list the contracts
91 to be made or types of equipment or supplies to be purchased, and,
92 if all plans and/or specifications are not published, refer to the
93 plans and/or specifications on file. If there is no newspaper
94 published in the county or municipality, then such notice shall be

95 given by posting same at the courthouse, or for municipalities at
96 the city hall, and at two (2) other public places in the county or
97 municipality, and also by publication once each week for two (2)
98 consecutive weeks in some newspaper having a general circulation
99 in the county or municipality in the above provided manner. On
100 the same date that the notice is submitted to the newspaper for
101 publication, the agency or governing authority involved shall mail
102 written notice to, or provide electronic notification to the main
103 office of the Mississippi Contract Procurement Center that
104 contains the same information as that in the published notice.

105 (ii) **Bidding process amendment procedure.** If all
106 plans and/or specifications are published in the notification,
107 then the plans and/or specifications may not be amended. If all
108 plans and/or specifications are not published in the notification,
109 then amendments to the plans/specifications, bid opening date, bid
110 opening time and place may be made, provided that the agency or
111 governing authority maintains a list of all prospective bidders
112 who are known to have received a copy of the bid documents and all
113 such prospective bidders are sent copies of all amendments. This
114 notification of amendments may be made via mail, facsimile,
115 electronic mail or other generally accepted method of information
116 distribution. No addendum to bid specifications may be issued
117 within forty-eight (48) working hours of the time established for
118 the receipt of bids unless such addendum also amends the bid
119 opening to a date not less than five (5) working days after the
120 date of the addendum.

121 (iii) **Filing requirement.** In all cases involving
122 governing authorities, before the notice shall be published or
123 posted, the plans or specifications for the construction or
124 equipment being sought shall be filed with the clerk of the board
125 of the governing authority. In addition to these requirements, a
126 bid file shall be established which shall indicate those vendors
127 to whom such solicitations and specifications were issued, and

128 such file shall also contain such information as is pertinent to
129 the bid.

130 (iv) **Specification restrictions.** Specifications
131 pertinent to such bidding shall be written so as not to exclude
132 comparable equipment of domestic manufacture. Provided, however,
133 that should valid justification be presented, the Department of
134 Finance and Administration or the board of a governing authority
135 may approve a request for specific equipment necessary to perform
136 a specific job. Further, such justification, when placed on the
137 minutes of the board of a governing authority, may serve as
138 authority for that governing authority to write specifications to
139 require a specific item of equipment needed to perform a specific
140 job. In addition to these requirements, from and after July 1,
141 1990, vendors of relocatable classrooms and the specifications for
142 the purchase of such relocatable classrooms published by local
143 school boards shall meet all pertinent regulations of the State
144 Board of Education, including prior approval of such bid by the
145 State Department of Education.

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

147 (i) **Decision procedure.** Purchases may be made
148 from the lowest and best bidder. In determining the lowest and
149 best bid, freight and shipping charges shall be included.
150 Life-cycle costing, total cost bids, warranties, guaranteed
151 buy-back provisions and other relevant provisions may be included
152 in the best bid calculation. All best bid procedures for state
153 agencies must be in compliance with regulations established by the
154 Department of Finance and Administration. If any governing
155 authority accepts a bid other than the lowest bid actually
156 submitted, it shall place on its minutes detailed calculations and
157 narrative summary showing that the accepted bid was determined to
158 be the lowest and best bid, including the dollar amount of the
159 accepted bid and the dollar amount of the lowest bid. No agency

160 or governing authority shall accept a bid based on items not
161 included in the specifications.

162 (ii) **Construction project negotiations authority.**

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

168 (e) **Lease-purchase authorization.** For the purposes of
169 this section, the term "equipment" shall mean equipment, furniture
170 and, if applicable, associated software and other applicable
171 direct costs associated with the acquisition. Any lease-purchase
172 of equipment which an agency is not required to lease-purchase
173 under the master lease-purchase program pursuant to Section
174 31-7-10 and any lease-purchase of equipment which a governing
175 authority elects to lease-purchase may be acquired by a
176 lease-purchase agreement under this paragraph (e). Lease-purchase
177 financing may also be obtained from the vendor or from a
178 third-party source after having solicited and obtained at least
179 two (2) written competitive bids, as defined in paragraph (b) of
180 this section, for such financing without advertising for such
181 bids. Solicitation for the bids for financing may occur before or
182 after acceptance of bids for the purchase of such equipment or,
183 where no such bids for purchase are required, at any time before
184 the purchase thereof. No such lease-purchase agreement shall be
185 for an annual rate of interest which is greater than the overall
186 maximum interest rate to maturity on general obligation
187 indebtedness permitted under Section 75-17-101, and the term of
188 such lease-purchase agreement shall not exceed the useful life of
189 equipment covered thereby as determined according to the upper
190 limit of the asset depreciation range (ADR) guidelines for the
191 Class Life Asset Depreciation Range System established by the
192 Internal Revenue Service pursuant to the United States Internal

193 Revenue Code and regulations thereunder as in effect on December
194 31, 1980, or comparable depreciation guidelines with respect to
195 any equipment not covered by ADR guidelines. Any lease-purchase
196 agreement entered into pursuant to this paragraph (e) may contain
197 any of the terms and conditions which a master lease-purchase
198 agreement may contain under the provisions of Section 31-7-10(5),
199 and shall contain an annual allocation dependency clause
200 substantially similar to that set forth in Section 31-7-10(8).
201 Each agency or governing authority entering into a lease-purchase
202 transaction pursuant to this paragraph (e) shall maintain with
203 respect to each such lease-purchase transaction the same
204 information as required to be maintained by the Department of
205 Finance and Administration pursuant to Section 31-7-10(13).
206 However, nothing contained in this section shall be construed to
207 permit agencies to acquire items of equipment with a total
208 acquisition cost in the aggregate of less than Ten Thousand
209 Dollars (\$10,000.00) by a single lease-purchase transaction. All
210 equipment, and the purchase thereof by any lessor, acquired by
211 lease-purchase under this paragraph and all lease-purchase
212 payments with respect thereto shall be exempt from all Mississippi
213 sales, use and ad valorem taxes. Interest paid on any
214 lease-purchase agreement under this section shall be exempt from
215 State of Mississippi income taxation.

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

226 (g) **Construction contract change authorization.** In the
227 event a determination is made by an agency or governing authority
228 after a construction contract is let that changes or modifications
229 to the original contract are necessary or would better serve the
230 purpose of the agency or the governing authority, such agency or
231 governing authority may, in its discretion, order such changes
232 pertaining to the construction that are necessary under the
233 circumstances without the necessity of further public bids;
234 provided that such change shall be made in a commercially
235 reasonable manner and shall not be made to circumvent the public
236 purchasing statutes. In addition to any other authorized person,
237 the architect or engineer hired by an agency or governing
238 authority with respect to any public construction contract shall
239 have the authority, when granted by an agency or governing
240 authority, to authorize changes or modifications to the original
241 contract without the necessity of prior approval of the agency or
242 governing authority when any such change or modification is less
243 than one percent (1%) of the total contract amount. The agency or
244 governing authority may limit the number, manner or frequency of
245 such emergency changes or modifications.

246 (h) **Petroleum purchase alternative.** In addition to
247 other methods of purchasing authorized in this chapter, when any
248 agency or governing authority shall have a need for gas, diesel
249 fuel, oils and/or other petroleum products in excess of the amount
250 set forth in paragraph (a) of this section, such agency or
251 governing authority may purchase the commodity after having
252 solicited and obtained at least two (2) competitive written bids,
253 as defined in paragraph (b) of this section. If two (2)
254 competitive written bids are not obtained the entity shall comply
255 with the procedures set forth in paragraph (c) of this section.
256 In the event any agency or governing authority shall have
257 advertised for bids for the purchase of gas, diesel fuel, oils and
258 other petroleum products and coal and no acceptable bids can be

259 obtained, such agency or governing authority is authorized and
260 directed to enter into any negotiations necessary to secure the
261 lowest and best contract available for the purchase of such
262 commodities.

263 (i) **Road construction petroleum products price**
264 **adjustment clause authorization.** Any agency or governing
265 authority authorized to enter into contracts for the construction,
266 maintenance, surfacing or repair of highways, roads or streets,
267 may include in its bid proposal and contract documents a price
268 adjustment clause with relation to the cost to the contractor,
269 including taxes, based upon an industry-wide cost index, of
270 petroleum products including asphalt used in the performance or
271 execution of the contract or in the production or manufacture of
272 materials for use in such performance. Such industry-wide index
273 shall be established and published monthly by the Mississippi
274 Department of Transportation with a copy thereof to be mailed,
275 upon request, to the clerks of the governing authority of each
276 municipality and the clerks of each board of supervisors
277 throughout the state. The price adjustment clause shall be based
278 on the cost of such petroleum products only and shall not include
279 any additional profit or overhead as part of the adjustment. The
280 bid proposals or document contract shall contain the basis and
281 methods of adjusting unit prices for the change in the cost of
282 such petroleum products.

283 (j) **State agency emergency purchase procedure.** If the
284 executive head of any agency of the state shall determine that an
285 emergency exists in regard to the purchase of any commodities or
286 repair contracts, so that the delay incident to giving opportunity
287 for competitive bidding would be detrimental to the interests of
288 the state, then the provisions herein for competitive bidding
289 shall not apply and the head of such agency shall be authorized to
290 make the purchase or repair. Total purchases so made shall only
291 be for the purpose of meeting needs created by the emergency

292 situation. In the event such executive head is responsible to an
293 agency board, at the meeting next following the emergency
294 purchase, documentation of the purchase, including a description
295 of the commodity purchased, the purchase price thereof and the
296 nature of the emergency shall be presented to the board and placed
297 on the minutes of the board of such agency. The head of such
298 agency shall, at the earliest possible date following such
299 emergency purchase, file with the Department of Finance and
300 Administration (i) a statement under oath certifying the
301 conditions and circumstances of the emergency, and (ii) a
302 certified copy of the appropriate minutes of the board of such
303 agency, if applicable.

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

305 If the governing authority, or the governing authority acting
306 through its designee, shall determine that an emergency exists in
307 regard to the purchase of any commodities or repair contracts, so
308 that the delay incident to giving opportunity for competitive
309 bidding would be detrimental to the interest of the governing
310 authority, then the provisions herein for competitive bidding
311 shall not apply and any officer or agent of such governing
312 authority having general or special authority therefor in making
313 such purchase or repair shall approve the bill presented therefor,
314 and he shall certify in writing thereon from whom such purchase
315 was made, or with whom such a repair contract was made. At the
316 board meeting next following the emergency purchase or repair
317 contract, documentation of the purchase or repair contract,
318 including a description of the commodity purchased, the price
319 thereof and the nature of the emergency shall be presented to the
320 board and shall be placed on the minutes of the board of such
321 governing authority.

322 (l) **Hospital purchase or lease authorization.** The
323 commissioners or board of trustees of any hospital owned or owned
324 and operated separately or jointly by one or more counties,

325 cities, towns, supervisors districts or election districts, or
326 combinations thereof, may contract with such lowest and best
327 bidder for the purchase or lease of any commodity under a contract
328 of purchase or lease-purchase agreement whose obligatory terms do
329 not exceed five (5) years. In addition to the authority granted
330 herein, the commissioners or board of trustees are authorized to
331 enter into contracts for the lease of equipment or services, or
332 both, which it considers necessary for the proper care of patients
333 if, in its opinion, it is not financially feasible to purchase the
334 necessary equipment or services. Any such contract for the lease
335 of equipment or services executed by the commissioners or board
336 shall not exceed a maximum of five (5) years' duration and shall
337 include a cancellation clause based on unavailability of funds.
338 If such cancellation clause is exercised, there shall be no
339 further liability on the part of the lessee.

340 (m) **Exceptions from bidding requirements.** Excepted
341 from bid requirements are:

342 (i) **Purchasing agreements approved by department.**
343 Purchasing agreements, contracts and maximum price regulations
344 executed or approved by the Department of Finance and
345 Administration.

346 (ii) **Outside equipment repairs.** Repairs to
347 equipment, when such repairs are made by repair facilities in the
348 private sector; however, engines, transmissions, rear axles and/or
349 other such components shall not be included in this exemption when
350 replaced as a complete unit instead of being repaired and the need
351 for such total component replacement is known before disassembly
352 of the component; provided, however, that invoices identifying the
353 equipment, specific repairs made, parts identified by number and
354 name, supplies used in such repairs, and the number of hours of
355 labor and costs therefor shall be required for the payment for
356 such repairs.

357 (iii) **In-house equipment repairs.** Purchases of
358 parts for repairs to equipment, when such repairs are made by
359 personnel of the agency or governing authority; however, entire
360 assemblies, such as engines or transmissions, shall not be
361 included in this exemption when the entire assembly is being
362 replaced instead of being repaired.

363 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
364 of gravel or fill dirt which are to be removed and transported by
365 the purchaser.

366 (v) **Governmental equipment auctions.** Motor
367 vehicles or other equipment purchased from a federal or state
368 agency or a governing authority at a public auction held for the
369 purpose of disposing of such vehicles or other equipment. Any
370 purchase by a governing authority under the exemption authorized
371 by this subparagraph (v) shall require advance authorization
372 spread upon the minutes of the governing authority to include the
373 listing of the item or items authorized to be purchased and the
374 maximum bid authorized to be paid for each item or items.

375 (vi) **Intergovernmental sales and transfers.**
376 Purchases, sales, transfers or trades by governing authorities or
377 state agencies when such purchases, sales, transfers or trades are
378 made by a private treaty agreement or through means of
379 negotiation, from any federal agency or authority, another
380 governing authority or state agency of the State of Mississippi,
381 or any state agency of another state. Nothing in this section
382 shall permit such purchases through public auction except as
383 provided for in subparagraph (v) of this section. It is the
384 intent of this section to allow governmental entities to dispose
385 of and/or purchase commodities from other governmental entities at
386 a price that is agreed to by both parties. This shall allow for
387 purchases and/or sales at prices which may be determined to be
388 below the market value if the selling entity determines that the
389 sale at below market value is in the best interest of the

390 taxpayers of the state. Governing authorities shall place the
391 terms of the agreement and any justification on the minutes, and
392 state agencies shall obtain approval from the Department of
393 Finance and Administration, prior to releasing or taking
394 possession of the commodities.

395 (vii) **Perishable supplies or food.** Perishable
396 supplies or foods purchased for use in connection with hospitals,
397 the school lunch programs, homemaking programs and for the feeding
398 of county or municipal prisoners.

399 (viii) **Single source items.** Noncompetitive items
400 available from one (1) source only. In connection with the
401 purchase of noncompetitive items only available from one (1)
402 source, a certification of the conditions and circumstances
403 requiring the purchase shall be filed by the agency with the
404 Department of Finance and Administration and by the governing
405 authority with the board of the governing authority. Upon receipt
406 of that certification the Department of Finance and Administration
407 or the board of the governing authority, as the case may be, may,
408 in writing, authorize the purchase, which authority shall be noted
409 on the minutes of the body at the next regular meeting thereafter.
410 In those situations, a governing authority is not required to
411 obtain the approval of the Department of Finance and
412 Administration.

413 (ix) **Waste disposal facility construction**
414 **contracts.** Construction of incinerators and other facilities for
415 disposal of solid wastes in which products either generated
416 therein, such as steam, or recovered therefrom, such as materials
417 for recycling, are to be sold or otherwise disposed of; provided,
418 however, in constructing such facilities a governing authority or
419 agency shall publicly issue requests for proposals, advertised for
420 in the same manner as provided herein for seeking bids for public
421 construction projects, concerning the design, construction,
422 ownership, operation and/or maintenance of such facilities,

423 wherein such requests for proposals when issued shall contain
424 terms and conditions relating to price, financial responsibility,
425 technology, environmental compatibility, legal responsibilities
426 and such other matters as are determined by the governing
427 authority or agency to be appropriate for inclusion; and after
428 responses to the request for proposals have been duly received,
429 the governing authority or agency may select the most qualified
430 proposal or proposals on the basis of price, technology and other
431 relevant factors and from such proposals, but not limited to the
432 terms thereof, negotiate and enter contracts with one or more of
433 the persons or firms submitting proposals.

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

437 (xi) **Information technology products.** Purchases
438 of information technology products made by governing authorities
439 under the provisions of purchase schedules, or contracts executed
440 or approved by the Mississippi Department of Information
441 Technology Services and designated for use by governing
442 authorities.

443 (xii) **Energy efficiency services and equipment.**
444 Energy efficiency services and equipment acquired by school
445 districts, community and junior colleges, institutions of higher
446 learning and state agencies or other applicable governmental
447 entities on a shared-savings, lease or lease-purchase basis
448 pursuant to Section 31-7-14.

449 (xiii) **Municipal electrical utility system fuel.**
450 Purchases of coal and/or natural gas by municipally-owned electric
451 power generating systems that have the capacity to use both coal
452 and natural gas for the generation of electric power.

453 (xiv) **Library books and other reference materials.**
454 Purchases by libraries or for libraries of books and periodicals;
455 processed film, video cassette tapes, filmstrips and slides;

456 recorded audio tapes, cassettes and diskettes; and any such items
457 as would be used for teaching, research or other information
458 distribution; however, equipment such as projectors, recorders,
459 audio or video equipment, and monitor televisions are not exempt
460 under this subparagraph.

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

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

467 (xvii) **Multichannel interactive video systems.**
468 From and after July 1, 1990, contracts by Mississippi Authority
469 for Educational Television with any private educational
470 institution or private nonprofit organization whose purposes are
471 educational in regard to the construction, purchase, lease or
472 lease-purchase of facilities and equipment and the employment of
473 personnel for providing multichannel interactive video systems
474 (ITSF) in the school districts of this state.

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

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

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

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

493 (xxii) **Garbage, solid waste and sewage contracts.**
494 Contracts for garbage collection or disposal, contracts for solid
495 waste collection or disposal and contracts for sewage collection
496 or disposal.

497 (xxiii) **Municipal water tank maintenance**
498 **contracts.** Professional maintenance program contracts for the
499 repair or maintenance of municipal water tanks, which provide
500 professional services needed to maintain municipal water storage
501 tanks for a fixed annual fee for a duration of two (2) or more
502 years.

503 (xxiv) **Purchases of Mississippi Industries for the**
504 **Blind products.** Purchases made by state agencies or governing
505 authorities involving any item that is manufactured, processed or
506 produced by the Mississippi Industries for the Blind.

507 (xxv) **Purchases of state-adopted textbooks.**
508 Purchases of state-adopted textbooks by public school districts.

509 (xxvi) **Certain purchases under the Mississippi**
510 **Major Economic Impact Act.** Contracts entered into pursuant to the
511 provisions of Section 57-75-9(2) and (3).

512 (n) **Term contract authorization.** All contracts for the
513 purchase of:

514 (i) All contracts for the purchase of commodities,
515 equipment and public construction (including, but not limited to,
516 repair and maintenance), may be let for periods of not more than
517 sixty (60) months in advance, subject to applicable statutory
518 provisions prohibiting the letting of contracts during specified
519 periods near the end of terms of office. Term contracts for a
520 period exceeding twenty-four (24) months shall also be subject to

521 ratification or cancellation by governing authority boards taking
522 office subsequent to the governing authority board entering the
523 contract.

524 (ii) Bid proposals and contracts may include price
525 adjustment clauses with relation to the cost to the contractor
526 based upon a nationally published industry-wide or nationally
527 published and recognized cost index. The cost index used in a
528 price adjustment clause shall be determined by the Department of
529 Finance and Administration for the state agencies and by the
530 governing board for governing authorities. The bid proposal and
531 contract documents utilizing a price adjustment clause shall
532 contain the basis and method of adjusting unit prices for the
533 change in the cost of such commodities, equipment and public
534 construction.

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

550 (p) **Electrical utility petroleum-based equipment**
551 **purchase procedure.** When in response to a proper advertisement
552 therefor, no bid firm as to price is submitted to an electric
553 utility for power transformers, distribution transformers, power

554 breakers, reclosers or other articles containing a petroleum
555 product, the electric utility may accept the lowest and best bid
556 therefor although the price is not firm.

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

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

583 (s) **Solid waste contract proposal procedure.** Before
584 entering into any contract for garbage collection or disposal,
585 contract for solid waste collection or disposal or contract for
586 sewage collection or disposal, which involves an expenditure of

587 more than Fifty Thousand Dollars (\$50,000.00), a governing
588 authority or agency shall issue publicly a request for proposals
589 concerning the specifications for such services which shall be
590 advertised for in the same manner as provided in this section for
591 seeking bids for purchases which involve an expenditure of more
592 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
593 when issued shall contain terms and conditions relating to price,
594 financial responsibility, technology, legal responsibilities and
595 other relevant factors as are determined by the governing
596 authority or agency to be appropriate for inclusion; all factors
597 determined relevant by the governing authority or agency or
598 required by this paragraph (s) shall be duly included in the
599 advertisement to elicit proposals. After responses to the request
600 for proposals have been duly received, the governing authority or
601 agency shall select the most qualified proposal or proposals on
602 the basis of price, technology and other relevant factors and from
603 such proposals, but not limited to the terms thereof, negotiate
604 and enter contracts with one or more of the persons or firms
605 submitting proposals. If the governing authority or agency deems
606 none of the proposals to be qualified or otherwise acceptable, the
607 request for proposals process may be reinitiated. Notwithstanding
608 any other provisions of this paragraph, where a county with at
609 least thirty-five thousand (35,000) nor more than forty thousand
610 (40,000) population, according to the 1990 federal decennial
611 census, owns or operates a solid waste landfill, the governing
612 authorities of any other county or municipality may contract with
613 the governing authorities of the county owning or operating the
614 landfill, pursuant to a resolution duly adopted and spread upon
615 the minutes of each governing authority involved, for garbage or
616 solid waste collection or disposal services through contract
617 negotiations.

618 (t) **Minority set aside authorization.** Notwithstanding
619 any provision of this section to the contrary, any agency or

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

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

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

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

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

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

652 completion and one (1) final list immediately before final
653 completion and final payment.

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

657 SECTION 3. The provisions of the amendments to the code
658 sections contained in this act shall be applicable to contracts
659 entered into and purchases made from and after July 1, 2000,
660 through the effective date of this act as well as to contracts
661 entered into and purchases made from and after the effective date
662 of this act.

663 SECTION 4. This act shall take effect and be in force from
664 and after its passage.