

By: Senator(s) Dearing (By Request)

To: Highways and
Transportation

SENATE BILL NO. 2416

1 AN ACT TO AUTHORIZE THE MISSISSIPPI TRANSPORTATION COMMISSION
 2 TO ADOPT RULES, REGULATIONS AND ORDINANCES ALLOWING AND GOVERNING
 3 THE INSTALLATION OF UNDERGROUND FIBER OPTIC TRANSMISSION LINES ON
 4 THE RIGHTS-OF-WAY OF FREEWAYS IN THIS STATE; TO ALLOW THE RULES TO
 5 AUTHORIZE THE COMMISSION TO CHARGE A PERMIT FEE FOR SUCH
 6 RIGHTS-OF-WAY; TO PROVIDE THAT SUCH PERMIT FEE MAY BE PAID IN CASH
 7 OR BY THE PERMITTEE PROVIDING TO THE STATE SERVICES OR EQUIPMENT;
 8 TO PROVIDE THAT ALL SUCH PERMIT FEES COLLECTED IN THE FORM OF CASH
 9 SHALL BE DEPOSITED INTO THE STATE HIGHWAY FUND TO BE USED
 10 EXCLUSIVELY FOR THE RECONSTRUCTION AND MAINTENANCE OF STATE
 11 HIGHWAYS; TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
 12 EXEMPT FROM BID REQUIREMENTS EQUIPMENT OR SERVICES PROVIDED TO THE
 13 STATE IN PAYMENT OF PERMIT FEES FOR FIBER OPTIC RIGHTS-OF-WAY; AND
 14 FOR RELATED PURPOSES.

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

16 SECTION 1. (1) The Mississippi Transportation Commission
 17 may enact rules, regulations and ordinances allowing and governing
 18 the installation and operation of fiber optic transmission lines
 19 on the rights-of-way of the freeways in this state. The rules may
 20 authorize the commission to charge initial and annual permit fees
 21 for the use of such rights-of-way. The permit fee may be paid in
 22 cash, negotiable instruments or, upon a finding by the commission
 23 spread upon its minutes that it would be to the benefit of the
 24 state, by the permittee providing to the state services or
 25 equipment.

26 (2) All permit fees collected in the form of cash or
 27 negotiable instrument, shall be deposited into the State Highway
 28 Fund to be used exclusively for the reconstruction and maintenance
 29 of state highways.

30 (3) As used in this section, the term "freeway" shall have
 31 the same meaning ascribed to such term in Section 65-5-3.

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

34 31-7-13. All agencies and governing authorities shall
35 purchase their commodities and printing; contract for garbage
36 collection or disposal; contract for solid waste collection or
37 disposal; contract for sewage collection or disposal; contract for
38 public construction; and contract for rentals as herein provided.

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

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

65 governing authority, shall be liable for any penalties and/or
66 damages as may be imposed by law for any act or omission of the
67 purchasing agent or purchase clerk, or their designee,
68 constituting a violation of law in accepting any bid without
69 approval by the governing authority. The term "competitive
70 written bid" shall mean a bid submitted on a bid form furnished by
71 the buying agency or governing authority and signed by authorized
72 personnel representing the vendor, or a bid submitted on a
73 vendor's letterhead or identifiable bid form and signed by
74 authorized personnel representing the vendor. Bids may be
75 submitted by facsimile, electronic mail or other generally
76 accepted method of information distribution. Bids submitted by
77 electronic transmission shall not require the signature of the
78 vendor's representative unless required by agencies or governing
79 authorities.

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

81 (i) **Publication requirement.** Purchases which
82 involve an expenditure of more than Ten Thousand Dollars
83 (\$10,000.00), exclusive of freight and shipping charges may be
84 made from the lowest and best bidder after advertising for
85 competitive sealed bids once each week for two (2) consecutive
86 weeks in a regular newspaper published in the county or
87 municipality in which such agency or governing authority is
88 located. The date as published for the bid opening shall not be
89 less than seven (7) working days after the last published notice;
90 however, if the purchase involves a construction project in which
91 the estimated cost is in excess of Fifteen Thousand Dollars
92 (\$15,000.00), such bids shall not be opened in less than fifteen
93 (15) working days after the last notice is published and the
94 notice for the purchase of such construction shall be published
95 once each week for two (2) consecutive weeks. The notice of
96 intention to let contracts or purchase equipment shall state the
97 time and place at which bids shall be received, list the contracts

98 to be made or types of equipment or supplies to be purchased, and,
99 if all plans and/or specifications are not published, refer to the
100 plans and/or specifications on file. If there is no newspaper
101 published in the county or municipality, then such notice shall be
102 given by posting same at the courthouse, or for municipalities at
103 the city hall, and at two (2) other public places in the county or
104 municipality, and also by publication once each week for two (2)
105 consecutive weeks in some newspaper having a general circulation
106 in the county or municipality in the above provided manner. On
107 the same date that the notice is submitted to the newspaper for
108 publication, the agency or governing authority involved shall mail
109 written notice to, or provide electronic notification to the main
110 office of the Mississippi Contract Procurement Center that
111 contains the same information as that in the published notice.

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

128 (iii) **Filing requirement.** In all cases involving
129 governing authorities, before the notice shall be published or
130 posted, the plans or specifications for the construction or

131 equipment being sought shall be filed with the clerk of the board
132 of the governing authority. In addition to these requirements, a
133 bid file shall be established which shall indicate those vendors
134 to whom such solicitations and specifications were issued, and
135 such file shall also contain such information as is pertinent to
136 the bid.

137 (iv) **Specification restrictions.** Specifications
138 pertinent to such bidding shall be written so as not to exclude
139 comparable equipment of domestic manufacture. Provided, however,
140 that should valid justification be presented, the Department of
141 Finance and Administration or the board of a governing authority
142 may approve a request for specific equipment necessary to perform
143 a specific job. Further, such justification, when placed on the
144 minutes of the board of a governing authority, may serve as
145 authority for that governing authority to write specifications to
146 require a specific item of equipment needed to perform a specific
147 job. In addition to these requirements, from and after July 1,
148 1990, vendors of relocatable classrooms and the specifications for
149 the purchase of such relocatable classrooms published by local
150 school boards shall meet all pertinent regulations of the State
151 Board of Education, including prior approval of such bid by the
152 State Department of Education.

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

154 (i) **Decision procedure.** Purchases may be made
155 from the lowest and best bidder. In determining the lowest and
156 best bid, freight and shipping charges shall be included.
157 Life-cycle costing, total cost bids, warranties, guaranteed
158 buy-back provisions and other relevant provisions may be included
159 in the best bid calculation. All best bid procedures for state
160 agencies must be in compliance with regulations established by the
161 Department of Finance and Administration. If any governing
162 authority accepts a bid other than the lowest bid actually
163 submitted, it shall place on its minutes detailed calculations and

164 narrative summary showing that the accepted bid was determined to
165 be the lowest and best bid, including the dollar amount of the
166 accepted bid and the dollar amount of the lowest bid. No agency
167 or governing authority shall accept a bid based on items not
168 included in the specifications.

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

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

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

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

223 (f) **Alternate bid authorization.** When necessary to
224 ensure ready availability of commodities for public works and the
225 timely completion of public projects, no more than two (2)
226 alternate bids may be accepted by a governing authority for
227 commodities. No purchases may be made through use of such
228 alternate bids procedure unless the lowest and best bidder, for
229 reasons beyond his control, cannot deliver the commodities

230 contained in his bid. In that event, purchases of such
231 commodities may be made from one (1) of the bidders whose bid was
232 accepted as an alternate.

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

253 (h) **Petroleum purchase alternative.** In addition to
254 other methods of purchasing authorized in this chapter, when any
255 agency or governing authority shall have a need for gas, diesel
256 fuel, oils and/or other petroleum products in excess of the amount
257 set forth in paragraph (a) of this section, such agency or
258 governing authority may purchase the commodity after having
259 solicited and obtained at least two (2) competitive written bids,
260 as defined in paragraph (b) of this section. If two (2)
261 competitive written bids are not obtained the entity shall comply
262 with the procedures set forth in paragraph (c) of this section.

263 In the event any agency or governing authority shall have
264 advertised for bids for the purchase of gas, diesel fuel, oils and
265 other petroleum products and coal and no acceptable bids can be
266 obtained, such agency or governing authority is authorized and
267 directed to enter into any negotiations necessary to secure the
268 lowest and best contract available for the purchase of such
269 commodities.

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

290 (j) **State agency emergency purchase procedure.** If the
291 executive head of any agency of the state shall determine that an
292 emergency exists in regard to the purchase of any commodities or
293 repair contracts, so that the delay incident to giving opportunity
294 for competitive bidding would be detrimental to the interests of
295 the state, then the provisions herein for competitive bidding

296 shall not apply and the head of such agency shall be authorized to
297 make the purchase or repair. Total purchases so made shall only
298 be for the purpose of meeting needs created by the emergency
299 situation. In the event such executive head is responsible to an
300 agency board, at the meeting next following the emergency
301 purchase, documentation of the purchase, including a description
302 of the commodity purchased, the purchase price thereof and the
303 nature of the emergency shall be presented to the board and placed
304 on the minutes of the board of such agency. The head of such
305 agency shall, at the earliest possible date following such
306 emergency purchase, file with the Department of Finance and
307 Administration (i) a statement under oath certifying the
308 conditions and circumstances of the emergency, and (ii) a
309 certified copy of the appropriate minutes of the board of such
310 agency, if applicable.

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

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

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

347 (m) **Exceptions from bidding requirements.** Excepted
348 from bid requirements are:

349 (i) **Purchasing agreements approved by department.**
350 Purchasing agreements, contracts and maximum price regulations
351 executed or approved by the Department of Finance and
352 Administration.

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

362 labor and costs therefor shall be required for the payment for
363 such repairs.

364 (iii) **In-house equipment repairs.** Purchases of
365 parts for repairs to equipment, when such repairs are made by
366 personnel of the agency or governing authority; however, entire
367 assemblies, such as engines or transmissions, shall not be
368 included in this exemption when the entire assembly is being
369 replaced instead of being repaired.

370 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
371 of gravel or fill dirt which are to be removed and transported by
372 the purchaser.

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

382 (vi) **Intergovernmental sales and transfers.**
383 Purchases, sales, transfers or trades by governing authorities or
384 state agencies when such purchases, sales, transfers or trades are
385 made by a private treaty agreement or through means of
386 negotiation, from any federal agency or authority, another
387 governing authority or state agency of the State of Mississippi,
388 or any state agency of another state. Nothing in this section
389 shall permit such purchases through public auction except as
390 provided for in subparagraph (v) of this section. It is the
391 intent of this section to allow governmental entities to dispose
392 of and/or purchase commodities from other governmental entities at
393 a price that is agreed to by both parties. This shall allow for
394 purchases and/or sales at prices which may be determined to be

395 below the market value if the selling entity determines that the
396 sale at below market value is in the best interest of the
397 taxpayers of the state. Governing authorities shall place the
398 terms of the agreement and any justification on the minutes, and
399 state agencies shall obtain approval from the Department of
400 Finance and Administration, prior to releasing or taking
401 possession of the commodities.

402 (vii) **Perishable supplies or food.** Perishable
403 supplies or foods purchased for use in connection with hospitals,
404 the school lunch programs, homemaking programs and for the feeding
405 of county or municipal prisoners.

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

420 (ix) **Waste disposal facility construction**
421 **contracts.** Construction of incinerators and other facilities for
422 disposal of solid wastes in which products either generated
423 therein, such as steam, or recovered therefrom, such as materials
424 for recycling, are to be sold or otherwise disposed of; provided,
425 however, in constructing such facilities a governing authority or
426 agency shall publicly issue requests for proposals, advertised for
427 in the same manner as provided herein for seeking bids for public

428 construction projects, concerning the design, construction,
429 ownership, operation and/or maintenance of such facilities,
430 wherein such requests for proposals when issued shall contain
431 terms and conditions relating to price, financial responsibility,
432 technology, environmental compatibility, legal responsibilities
433 and such other matters as are determined by the governing
434 authority or agency to be appropriate for inclusion; and after
435 responses to the request for proposals have been duly received,
436 the governing authority or agency may select the most qualified
437 proposal or proposals on the basis of price, technology and other
438 relevant factors and from such proposals, but not limited to the
439 terms thereof, negotiate and enter contracts with one or more of
440 the persons or firms submitting proposals.

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

444 (xi) **Information technology products.** Purchases
445 of information technology products made by governing authorities
446 under the provisions of purchase schedules, or contracts executed
447 or approved by the Mississippi Department of Information
448 Technology Services and designated for use by governing
449 authorities.

450 (xii) **Energy efficiency services and equipment.**
451 Energy efficiency services and equipment acquired by school
452 districts, community and junior colleges, institutions of higher
453 learning and state agencies or other applicable governmental
454 entities on a shared-savings, lease or lease-purchase basis
455 pursuant to Section 31-7-14.

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

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

461 Purchases by libraries or for libraries of books and periodicals;
462 processed film, video cassette tapes, filmstrips and slides;
463 recorded audio tapes, cassettes and diskettes; and any such items
464 as would be used for teaching, research or other information
465 distribution; however, equipment such as projectors, recorders,
466 audio or video equipment, and monitor televisions are not exempt
467 under this subparagraph.

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

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

474 (xvii) **Multichannel interactive video systems.**
475 From and after July 1, 1990, contracts by Mississippi Authority
476 for Educational Television with any private educational
477 institution or private nonprofit organization whose purposes are
478 educational in regard to the construction, purchase, lease or
479 lease-purchase of facilities and equipment and the employment of
480 personnel for providing multichannel interactive video systems
481 (ITSF) in the school districts of this state.

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

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

491 (xx) **Junior college books for rent.** Purchases by
492 community or junior colleges of textbooks which are obtained for

493 the purpose of renting such books to students as part of a book
494 service system.

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

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

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

501 Contracts for garbage collection or disposal, contracts for solid
502 waste collection or disposal and contracts for sewage collection
503 or disposal.

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

505 **contracts.** Professional maintenance program contracts for the
506 repair or maintenance of municipal water tanks, which provide
507 professional services needed to maintain municipal water storage
508 tanks for a fixed annual fee for a duration of two (2) or more
509 years.

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

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

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

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

516 (xxvi) **Certain purchases under the Mississippi**

517 **Major Economic Impact Act.** Contracts entered into pursuant to the
518 provisions of Section 57-75-9(2) and (3).

519 (xxvii) **Fiber optic right-of-way permit fees paid**

520 **by providing equipment or services in lieu of cash or negotiable**

521 **instrument.** Permit fees paid by providing equipment or services

522 **pursuant to Section 1 of Senate Bill No. 2416, 2001 Regular**

523 **Session.**

524 (n) **Term contract authorization.** All contracts for the
525 purchase of:

526 (i) All contracts for the purchase of commodities,
527 equipment and public construction (including, but not limited to,
528 repair and maintenance), may be let for periods of not more than
529 sixty (60) months in advance, subject to applicable statutory
530 provisions prohibiting the letting of contracts during specified
531 periods near the end of terms of office. Term contracts for a
532 period exceeding twenty-four (24) months shall also be subject to
533 ratification or cancellation by governing authority boards taking
534 office subsequent to the governing authority board entering the
535 contract.

536 (ii) Bid proposals and contracts may include price
537 adjustment clauses with relation to the cost to the contractor
538 based upon a nationally published industry-wide or nationally
539 published and recognized cost index. The cost index used in a
540 price adjustment clause shall be determined by the Department of
541 Finance and Administration for the state agencies and by the
542 governing board for governing authorities. The bid proposal and
543 contract documents utilizing a price adjustment clause shall
544 contain the basis and method of adjusting unit prices for the
545 change in the cost of such commodities, equipment and public
546 construction.

547 (o) **Purchase law violation prohibition and vendor**
548 **penalty.** No contract or purchase as herein authorized shall be
549 made for the purpose of circumventing the provisions of this
550 section requiring competitive bids, nor shall it be lawful for any
551 person or concern to submit individual invoices for amounts within
552 those authorized for a contract or purchase where the actual value
553 of the contract or commodity purchased exceeds the authorized
554 amount and the invoices therefor are split so as to appear to be
555 authorized as purchases for which competitive bids are not
556 required. Submission of such invoices shall constitute a
557 misdemeanor punishable by a fine of not less than Five Hundred
558 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),

559 or by imprisonment for thirty (30) days in the county jail, or
560 both such fine and imprisonment. In addition, the claim or claims
561 submitted shall be forfeited.

562 (p) **Electrical utility petroleum-based equipment**
563 **purchase procedure.** When in response to a proper advertisement
564 therefor, no bid firm as to price is submitted to an electric
565 utility for power transformers, distribution transformers, power
566 breakers, reclosers or other articles containing a petroleum
567 product, the electric utility may accept the lowest and best bid
568 therefor although the price is not firm.

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

591 (r) **Solid waste contract proposal procedure.** Before
592 entering into any contract for garbage collection or disposal,
593 contract for solid waste collection or disposal or contract for
594 sewage collection or disposal, which involves an expenditure of
595 more than Fifty Thousand Dollars (\$50,000.00), a governing
596 authority or agency shall issue publicly a request for proposals
597 concerning the specifications for such services which shall be
598 advertised for in the same manner as provided in this section for
599 seeking bids for purchases which involve an expenditure of more
600 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
601 when issued shall contain terms and conditions relating to price,
602 financial responsibility, technology, legal responsibilities and
603 other relevant factors as are determined by the governing
604 authority or agency to be appropriate for inclusion; all factors
605 determined relevant by the governing authority or agency or
606 required by this paragraph (r) shall be duly included in the
607 advertisement to elicit proposals. After responses to the request
608 for proposals have been duly received, the governing authority or
609 agency shall select the most qualified proposal or proposals on
610 the basis of price, technology and other relevant factors and from
611 such proposals, but not limited to the terms thereof, negotiate
612 and enter contracts with one or more of the persons or firms
613 submitting proposals. If the governing authority or agency deems
614 none of the proposals to be qualified or otherwise acceptable, the
615 request for proposals process may be reinitiated. Notwithstanding
616 any other provisions of this paragraph, where a county with at
617 least thirty-five thousand (35,000) nor more than forty thousand
618 (40,000) population, according to the 1990 federal decennial
619 census, owns or operates a solid waste landfill, the governing
620 authorities of any other county or municipality may contract with
621 the governing authorities of the county owning or operating the
622 landfill, pursuant to a resolution duly adopted and spread upon
623 the minutes of each governing authority involved, for garbage or

624 solid waste collection or disposal services through contract
625 negotiations.

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

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

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

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

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

654 (t) **Construction punch list restriction.** The
655 architect, engineer or other representative designated by the
656 agency or governing authority that is contracting for public

657 construction or renovation may prepare and submit to the
658 contractor only one (1) preliminary punch list of items that do
659 not meet the contract requirements at the time of substantial
660 completion and one (1) final list immediately before final
661 completion and final payment.

662 (u) **Purchase authorization clarification.** Nothing in
663 this section shall be construed as authorizing any purchase not
664 authorized by law.

665 SECTION 3. This act shall take effect and be in force from
666 and after July 1, 2001.