

By: Representative Davis

To: Appropriations

HOUSE BILL NO. 1322

1 AN ACT TO AMEND SECTIONS 19-13-111, 31-7-15 AND 31-7-47,
 2 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT IN THE LETTING OF PUBLIC
 3 CONTRACTS PREFERENCE SHALL BE GIVEN TO RESIDENT BIDDERS WHENEVER
 4 ALL THINGS ARE EQUAL WITH REGARD TO QUALITY AND SERVICE BUT DIFFER
 5 ONLY AS TO PRICE; TO PROVIDE THAT A NONRESIDENT BIDDER DOMICILED
 6 IN A STATE HAVING LAWS GRANTING PREFERENCE TO RESIDENT BIDDERS
 7 SHALL BE AWARDED MISSISSIPPI CONTRACTS ONLY ON THE SAME BASIS AS
 8 THE NONRESIDENT BIDDER'S STATE AWARDS CONTRACTS TO MISSISSIPPI
 9 RESIDENTS BIDDING UNDER SIMILAR CIRCUMSTANCES; TO AMEND SECTION
 10 31-7-55, MISSISSIPPI CODE OF 1972, TO PRESCRIBE A PENALTY FOR
 11 PERSONS WHO INTENTIONALLY, WILLFULLY AND KNOWINGLY VIOLATE THE
 12 PROVISIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

14 **SECTION 1.** Section 19-13-111, Mississippi Code of 1972, is
 15 amended as follows:

16 19-13-111. All bids and contracts for stationery, blank
 17 books, office supplies and other things must be specific in
 18 stating the kinds or brands and qualities of all articles, as far
 19 as practicable; the weight per ream and material of all paper; the
 20 price per quire and the weight per ream of books and record books,
 21 with the style of binding and size of each kind of book duly
 22 classified; and, other things being substantially equal with
 23 respect to quality and service, but differing only as to price,
 24 the board of supervisors shall give preference to bids from
 25 citizens of this state, and a nonresident bidder domiciled in a
 26 state having laws granting preference to resident bidders shall be
 27 awarded Mississippi contracts only on the same basis as the
 28 nonresident bidder's state awards contracts to Mississippi
 29 residents bidding under similar circumstances; and resident
 30 bidders actually domiciled in Mississippi, be they corporate,
 31 individuals, or partnerships, are to be granted preference over
 32 nonresidents in awarding of contracts in the same manner and to



33 the same extent as provided by the laws of the state of domicile
34 of the nonresident. When a nonresident contractor submits a bid
35 for a contract, he shall attach thereto a copy of his resident
36 state's current law pertaining to such state's treatment of
37 nonresident bidders.

38 **SECTION 2.** Section 31-7-15, Mississippi Code of 1972, is
39 amended as follows:

40 31-7-15. (1) Whenever two (2) or more competitive bids are
41 received, one or more of which relates to commodities grown,
42 processed or manufactured within this state, and whenever all
43 things stated in such received bids are substantially equal with
44 respect to * * * quality and service, but differ only with respect
45 to price, the commodities grown, processed or manufactured within
46 this state shall be given preference and a nonresident bidder
47 domiciled in a state having laws granting preference to resident
48 bidders shall be awarded Mississippi contracts only on the same
49 basis as the nonresident bidder's state awards contracts to
50 Mississippi residents bidding under similar circumstances; and
51 resident bidders actually domiciled in Mississippi, be they
52 corporate, individuals, or partnerships, are to be granted
53 preference over nonresidents in awarding of contracts in the same
54 manner and to the same extent as provided by the laws of the state
55 of domicile of the nonresident. When a nonresident contractor
56 submits a bid for a contract, he shall attach thereto a copy of
57 his resident state's current law pertaining to such state's
58 treatment of nonresident bidders. A similar preference shall be
59 given to commodities grown, processed or manufactured within this
60 state whenever purchases are made without competitive bids, and
61 when practical the Department of Finance and Administration may by
62 regulation establish reasonable preferential policies for other
63 commodities, giving preference to resident suppliers of this
64 state.



65 (2) Any foreign manufacturing company with a factory in the
66 state and with over fifty (50) employees working in the state
67 shall have preference over any other foreign company where both
68 price and quality are the same, regardless of where the product is
69 manufactured.

70 (3) On or before January 1, 1991, the Department of Finance
71 and Administration shall adopt bid and product specifications to
72 be utilized by all state agencies that encourage the procurement
73 of commodities made from recovered materials. Preference in
74 awarding contracts for commodities shall be given to commodities
75 offered at a competitive price.

76 (4) Each state agency is required to procure products made
77 from recovered materials when those products are available at a
78 competitive price. For purposes of this subsection, "competitive
79 price" means a price not greater than ten percent (10%) above the
80 lowest and best bidder. A decision not to procure products made
81 from recovered materials must be based on a determination that
82 such procurement:

83 (a) Is not available within a reasonable period of
84 time; or

85 (b) Fails to meet the performance standards set forth
86 in the applicable specifications; or

87 (c) Is not available at a competitive price.

88 **SECTION 3.** Section 31-7-47, Mississippi Code of 1972, is
89 amended as follows:

90 31-7-47. In the letting of public contracts, whenever all
91 things stated in the bids are substantially equal with regard to
92 quality and service but differ only with respect to price,
93 preference shall be given to resident contractors, and a
94 nonresident bidder domiciled in a state, city, county, parish,
95 province, nation or political subdivision having laws granting
96 preference to local contractors shall be awarded Mississippi
97 public contracts only on the same basis as the nonresident



98 bidder's state, city, county, parish, province, nation or
99 political subdivision awards contracts to Mississippi contractors
100 bidding under similar circumstances. Resident contractors
101 actually domiciled in Mississippi, be they corporate, individuals
102 or partnerships, are to be granted preference over nonresidents in
103 awarding of contracts in the same manner and to the same extent as
104 provided by the laws of the state, city, county, parish, province,
105 nation or political subdivision of domicile of the nonresident.
106 When a nonresident contractor submits a bid for a contract, he
107 shall attach thereto a copy of his resident state's current law
108 pertaining to such state's treatment of nonresident bidders.

109 **SECTION 4.** Section 31-7-55, Mississippi Code of 1972, is
110 amended as follows:

111 **[For penalties applicable to violations occurring between**
112 **January 1, 1981, and August 15, 1988, the following provisions**
113 **govern.]**

114 31-7-55. (1) It is hereby declared to be unlawful and a
115 violation of public policy of the State of Mississippi for any
116 elected or appointed public officer of the state or the executive
117 head of a state board, commission, department, subdivision of the
118 state government or governing authority to make any purchases
119 without the full compliance with the provisions of this act. Any
120 elected or appointed public officer of the state or the executive
121 head of a state board, commission, department, subdivision of the
122 state government or governing authority who violates the
123 provisions of this act shall be deemed guilty of a misdemeanor
124 and, upon conviction therefor, shall be fined not less than One
125 Hundred Dollars (\$100.00) and not more than Five Hundred Dollars
126 (\$500.00) for each separate offense, or sentenced to the county
127 jail for not more than six (6) months, or both such fine and
128 imprisonment, and shall be removed from his office or position.

129 (2) Any person diverting the benefits of any article of
130 value tendered or received by any agency or governing authority to



131 his or her personal use, in violation of Section 31-7-23, shall be
132 guilty of a misdemeanor and, upon conviction, shall be punished by
133 a fine of not less than One Hundred Dollars (\$100.00) nor more
134 than Five Hundred Dollars (\$500.00), or sentenced to the county
135 jail for not more than six (6) months, or by both such fine and
136 imprisonment, and shall be required to return the money value of
137 the article unlawfully diverted to the agency involved.

138 **[The following provisions apply to violations which occur on**
139 **or after August 16, 1988, and until July 1, 2002.]**

140 31-7-55. (1) It is hereby declared to be unlawful and a
141 violation of public policy of the State of Mississippi for any
142 elected or appointed public officer of an agency or a governing
143 authority, or the executive head, any employee or agent of an
144 agency or governing authority to make any purchases without the
145 full compliance with the provisions of Chapter 7, Title 31,
146 Mississippi Code of 1972.

147 (2) Except as otherwise provided in subsection (4) of this
148 section, any person who intentionally, willfully and knowingly
149 violates the provisions of Chapter 7, Title 31, Mississippi Code
150 of 1972, shall be deemed guilty of a misdemeanor and, upon
151 conviction thereof, shall be fined not less than One Hundred
152 Dollars (\$100.00) and not more than Five Hundred Dollars (\$500.00)
153 for each separate offense, or sentenced to the county jail for not
154 more than six (6) months, or both such fine and imprisonment, and
155 shall be removed from his office or position.

156 (3) Any person who intentionally, willfully and knowingly
157 violates the provisions of subsection (1) of Section 31-7-57 shall
158 be guilty of a misdemeanor and, upon conviction thereof, shall be
159 fined not less than One Hundred Dollars (\$100.00) and not more
160 than Five Hundred Dollars (\$500.00), or sentenced to the county
161 jail for not more than six (6) months, or both such fine and
162 imprisonment, and shall be removed from his office or position.



163 (4) Any person diverting the benefits of any article of
164 value tendered or received by any agency or governing authority to
165 his or her personal use, in violation of Section 31-7-23, if the
166 value of such article be less than Five Hundred Dollars (\$500.00),
167 shall be guilty of a misdemeanor and, upon conviction, shall be
168 punished by a fine of not less than One Hundred Dollars (\$100.00)
169 nor more than Five Hundred Dollars (\$500.00), or sentenced to the
170 county jail for not more than six (6) months, or by both such fine
171 and imprisonment, shall be removed from his office or position,
172 and shall be required to return the money value of the article
173 unlawfully diverted to the agency or governing authority involved.
174 If the value of the article be Five Hundred Dollars (\$500.00) or
175 more, such person shall be guilty of a felony and, upon
176 conviction, shall be punished by a fine of not less than One
177 Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars
178 (\$5,000.00), or sentenced to the Department of Corrections for not
179 less than one (1) year nor more than five (5) years, or by both
180 such fine and imprisonment, shall be removed from his office or
181 position, and shall be required to return the money value of the
182 article unlawfully diverted to the agency or governing authority
183 involved.

184 (5) The provisions of this section are supplemental to any
185 other criminal statutes of this state.

186 **[The following provisions apply to violations which occur on**
187 **or after July 1, 2002.]**

188 31-7-55. (1) It is hereby declared to be unlawful and a
189 violation of public policy of the State of Mississippi for any
190 elected or appointed public officer of an agency or a governing
191 authority, or the executive head, any employee or agent of an
192 agency or governing authority to make any purchases without the
193 full compliance with the provisions of Chapter 7, Title 31,
194 Mississippi Code of 1972.



195 (2) Except as otherwise provided in this section, any person
196 who intentionally, willfully and knowingly violates the provisions
197 of Chapter 7, Title 31, Mississippi Code of 1972, shall be deemed
198 guilty of a misdemeanor and, upon conviction thereof, shall be
199 fined not less than One Hundred Dollars (\$100.00) and not more
200 than Five Hundred Dollars (\$500.00) for each separate offense, or
201 sentenced to the county jail for not more than six (6) months, or
202 both such fine and imprisonment, and shall be removed from his
203 office or position.

204 (3) Any person who intentionally, willfully and knowingly
205 violates the provisions of subsection (1) of Section 31-7-57 shall
206 be guilty of a misdemeanor and, upon conviction thereof, shall be
207 fined not less than One Hundred Dollars (\$100.00) and not more
208 than Five Hundred Dollars (\$500.00), or sentenced to the county
209 jail for not more than six (6) months, or both such fine and
210 imprisonment, and shall be removed from his office or position.

211 (4) Any person diverting the benefits of any article of
212 value tendered or received by any agency or governing authority to
213 his or her personal use, in violation of Section 31-7-23, if the
214 value of such article be less than Five Hundred Dollars (\$500.00),
215 shall be guilty of a misdemeanor and, upon conviction, shall be
216 punished by a fine of not less than One Hundred Dollars (\$100.00)
217 nor more than Five Hundred Dollars (\$500.00), or sentenced to the
218 county jail for not more than six (6) months, or by both such fine
219 and imprisonment, shall be removed from his office or position,
220 and shall be required to return the money value of the article
221 unlawfully diverted to the agency or governing authority involved.
222 If the value of the article be Five Hundred Dollars (\$500.00) or
223 more, such person shall be guilty of a felony and, upon
224 conviction, shall be punished by a fine of not less than One
225 Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars
226 (\$5,000.00), or sentenced to the Department of Corrections for not
227 less than one (1) year nor more than five (5) years, or by both



228 such fine and imprisonment, shall be removed from his office or
229 position, and shall be required to return the money value of the
230 article unlawfully diverted to the agency or governing authority
231 involved.

232 (5) Any person who intentionally, willfully and knowingly
233 violates the provisions of Section 19-13-111, subsection (3) of
234 Section 31-3-21, subsection (1) of Section 31-7-15 or Section
235 31-7-47 shall be guilty of a misdemeanor and, upon conviction
236 thereof, shall be fined not less than Five Hundred Dollars
237 (\$500.00) and not more than One Thousand Dollars (\$1,000.00), or
238 sentenced to the county jail for not more than six (6) months, or
239 both such fine and imprisonment, and shall be removed from his
240 office or position.

241 (6) The provisions of this section are supplemental to any
242 other criminal statutes of this state.

243 **SECTION 5.** This act shall take effect and be in force from
244 and after July 1, 2002.

