

By: Senator(s) Burton

To: Fees, Salaries and
Administration;
Appropriations

SENATE BILL NO. 2770

1 AN ACT TO CREATE THE DEPARTMENT OF PROCUREMENT AND TRAVEL AND
2 TO DECLARE ITS PURPOSE REGARDING THE REGULATION OF PUBLIC
3 PURCHASES OF COMMODITIES AND TRAVEL SERVICES; TO AMEND SECTION
4 31-7-3, MISSISSIPPI CODE OF 1972, TO CREATE THE PUBLIC PROCUREMENT
5 AND TRAVEL REVIEW BOARD AND TO PRESCRIBE ITS POWERS AND DUTIES; TO
6 AMEND SECTIONS 31-7-5, 31-7-7, 31-7-9, 31-7-10, 31-7-11, 31-7-12
7 AND 31-7-13, MISSISSIPPI CODE OF 1972, TO CONFORM THERETO; AND FOR
8 RELATED PURPOSES.

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

10 **SECTION 1.** (1) The Legislature hereby recognizes that in
11 order for the State of Mississippi to receive the maximum use and
12 benefit from the use of tax dollars it is imperative that a
13 uniform system of procurement and contracting shall be
14 established. Further, the Legislature recognizes the importance
15 of assuring that such a system is free of potential political
16 pressures. The Legislature, therefore, declares and determines
17 that for these and other related purposes there is hereby
18 established an agency of state government to be known as the
19 Mississippi Department of Procurement and Travel.

20 (2) Whenever the term "Office of Purchasing and Travel" or
21 the term "Department of Finance and Administration," when
22 referring to the procurement and contracting functions, is used in
23 any law, rule, regulation, document or elsewhere, it shall be
24 construed to mean the Mississippi Department of Procurement and
25 Travel.

26 (3) The purposes or aims of the Department of Procurement
27 and Travel in carrying out the provisions shall be to coordinate
28 and promote efficiency and economy in the purchase of commodities
29 and travel services by the agencies of the state, and to serve as



30 a resource in the area of public procurement for the governing
31 authorities of the state.

32 **SECTION 2.** Section 31-7-3, Mississippi Code of 1972, is
33 amended as follows:

34 31-7-3. (1) There is hereby created the Public Procurement
35 and Travel Review Board, which shall be composed of one (1)
36 representative chosen by the Governor, one (1) representative
37 chosen by the Lieutenant Governor, one (1) representative chosen
38 by the Auditor, one (1) representative chosen by the Attorney
39 General and one (1) representative chosen by the Treasurer. The
40 initial terms of the members shall be five (5) years for the
41 representative chosen by the Governor, four (4) years for the
42 representative chosen by the Lieutenant Governor, three (3) years
43 for the representative chosen by the Auditor, two (2) years for
44 the representative chosen by the Attorney General and one (1) year
45 for the representative chosen by the Treasurer. Thereafter, terms
46 will be for a period of five (5) years. The initial appointments
47 to the board shall be made no later than June 30, 2003, for terms
48 to begin on July 1, 2003. Vacancies shall be filled in the same
49 manner as original appointments for the unexpired portion of the
50 term vacated. Each member of the authority shall have a minimum
51 of four (4) years' experience in government contracting or private
52 sector contracting, either from the purchaser side or the provider
53 side. The board shall annually elect a vice chairman, who shall
54 serve in the absence of the chairman. No business shall be
55 transacted, including adoption of rules of procedure, without the
56 presence of a quorum of the board. Three (3) members shall be a
57 quorum. No action shall be valid unless approved by a majority of
58 those present and voting, entered upon the minutes of the board
59 and signed by the chairman. The board shall meet on a monthly
60 basis and at any other time when notified by the chairman.
61 Necessary clerical and administrative support for the board shall
62 be provided by the Department of Procurement and Travel. Minutes



63 shall be kept of the proceedings of each meeting, copies of which
64 shall be filed on a monthly basis with the Legislative Budget
65 Office.

66 (2) The Public Procurement and Travel Review Board shall
67 approve all purchasing regulations governing the purchase or lease
68 by any agency, as defined in Section 31-7-1, of commodities,
69 equipment and travel services, except computer equipment and
70 services acquired pursuant to Sections 25-53-1 through 25-53-29.

71 (3) No member of the Public Procurement and Travel Review
72 Board shall use his official authority or influence to coerce, by
73 threat of discharge from employment, or otherwise, the purchase of
74 commodities or the contracting for services or public construction
75 under this chapter.

76 (4) Each member of the board shall be required to furnish a
77 surety bond in the minimum amount of Fifty Thousand Dollars
78 (\$50,000.00) to be approved by the Secretary of State conditioned
79 according to law and payable to the State of Mississippi, before
80 entering upon his duties. The premiums on such bonds shall be
81 paid from any funds available to the authority for such purpose.

82 (5) No member of the board, nor its executive director,
83 shall, during his term as such member or director, have any
84 substantial beneficial interest in any corporation or other
85 organization engaged in the information technology business either
86 as manufacturer, supplier, lessor or otherwise. All members and
87 the executive director shall fully disclose in writing any such
88 beneficial interest, and such disclosure shall be entered on the
89 minutes of the authority.

90 (6) The Lieutenant Governor may designate one (1) Senator
91 and the Speaker of the House of Representatives may designate one
92 (1) Representative to attend any meeting of the board. The
93 appointing authorities may designate an alternate member from
94 their respective houses to serve when the regular designee is
95 unable to attend such meetings of the authority. Such legislative



96 designees shall have no jurisdiction or vote on any matter within
97 the jurisdiction of the board. For attending meetings of the
98 authority, such legislators shall receive per diem and expenses
99 which shall be paid from the contingent expense funds of their
100 respective houses in the same amounts as provided for committee
101 meetings when the Legislature is not in session; however, no per
102 diem and expenses for attending meetings of the authority will be
103 paid while the Legislature is in session. No per diem and
104 expenses will be paid except for attending meetings of the
105 authority without prior approval of the proper committee in their
106 respective houses.

107 (7) The members of the board shall be compensated by a per
108 diem as authorized by Section 25-3-69 for each day spent in actual
109 discharge of their duties, and shall be reimbursed for mileage and
110 actual expenses incurred in the performance of their duties as
111 provided in Section 25-3-41. No board member may incur per diem,
112 travel or other expenses unless previously authorized by vote at a
113 meeting of the board, which action shall be recorded in the
114 official minutes of said meeting.

115 (8) The board shall meet regularly at a place designated by
116 it once each calendar month and shall meet at such other times as
117 may be set upon call of the chairman or a majority of the members
118 of the board. At its first meeting, the board shall organize and
119 elect a chairman and vice chairman and, as soon as practicable
120 thereafter, the authority shall adopt such rules and regulations,
121 not contrary to the provisions of this chapter and the other laws
122 of the State of Mississippi, as shall be necessary and proper to
123 govern its proceedings. The board may either elect a secretary
124 from among its membership or delegate the executive director or
125 another employee of the department as its secretary.

126 (9) In order to have a quorum for a meeting of the board, at
127 least three (3) members of the board must be present.



128 (10) Any member of the board may have his vote on any
129 question before the board recorded on the minutes thereof at the
130 time of the vote, and a member of the board who votes against an
131 illegal or unauthorized expenditure of funds may not be held
132 liable therefor.

133 (11) The board shall keep full, complete, and permanent
134 minutes and records of all its proceedings, including the rules
135 and regulations adopted by it, and said minutes shall be signed by
136 the chairman, or vice chairman, and attested by the secretary.

137 (12) The board shall select a chief procurement officer,
138 with the advice and consent of the Senate, who shall be the
139 administrative officer of the board and shall perform such duties
140 as are required of him by law and such other duties as may be
141 assigned him by the board, and who shall receive such compensation
142 as may be fixed by the board, subject to the approval of the State
143 Personnel Board. In addition, he shall be entitled to
144 remuneration for his necessary traveling expenses consistent with
145 general law.

146 The chief procurement officer shall be a full-time public
147 official of the State of Mississippi appointed to serve a term of
148 ten (10) years and may be removed from office by the board only
149 upon a show of just cause. The chief procurement officer shall be
150 a graduate of an accredited university with a degree in business
151 administration, public administration or a related field, with at
152 least ten (10) years' experience in public procurement, or a
153 related field, of which at least five (5) years shall be in a
154 responsible high-level management position with a demonstrated
155 record of management expertise. In addition, the chief
156 procurement officer shall hold a purchasing certification from a
157 nationally recognized certification authority.

158 The chief procurement officer shall have no vote in the
159 decisions of said board, but shall offer such professional or
160 technical advice and assistance to the authority as may be



161 required of him. Said chief procurement officer, in order to
162 qualify for his position, shall be required to make a good and
163 sufficient bond in some surety company qualified and doing
164 business in the State of Mississippi, in the minimum penal sum of
165 Fifty Thousand Dollars (\$50,000.00) conditioned upon the faithful
166 performance of his duties as required by law and the directives of
167 the authority. The premium on said bond shall be paid from any
168 funds available to the authority for such purpose.

169 The chief procurement officer, with the approval of the
170 board, shall employ such technical, professional and clerical help
171 as may be authorized by the authority; and the authority, upon the
172 recommendation of the board, shall define the duties and fix the
173 compensation of such employees.

174 (13) The chief procurement officer shall have the following
175 duties, responsibilities and authority:

176 (a) He shall conduct continuing studies of all
177 procurement and contracting activities carried out by all agencies
178 of the state and shall develop a long-range plan for the efficient
179 and economical performance of such activities in state government.
180 Such plan shall be submitted to the board for its approval and,
181 having been approved by the board, shall be implemented by the
182 chief procurement officer and all state agencies. Such plan shall
183 be continuously reviewed and modifications thereof shall be
184 proposed to the board by the chief procurement officer as
185 developments in the procurement field and changes in the
186 structure, activities and functions of state government may
187 require.

188 (b) He shall review the purchasing practices of all
189 state agencies in the area of the purchasing of commodities,
190 supplies and equipment and make recommendations to the board for
191 the institution of purchasing procedures which will insure the
192 most economical procurement of such with the efficient operation
193 of all departments and agencies of state government.



194 (c) He shall see that all reports required of all
195 agencies are promptly and accurately made in accordance with the
196 rules and regulations adopted by the board. Either in person or
197 through his authorized agents, he shall make such inspections of
198 procurement operations being conducted by any of the agencies of
199 the state as may be necessary for the performance of his duties.

200 (d) He shall suggest and cause to be brought about
201 cooperation between the several state agencies in order to provide
202 efficiency in procurement. He shall, together with the heads of
203 the agencies involved, reduce to writing and execute cooperative
204 plans for the acquisition and operation of applicable equipment,
205 and any such plan so adopted shall be carried out in accordance
206 with the provisions of such plan unless the same shall be amended
207 by the joint action of the chief procurement officer and the heads
208 of agencies involved. The chief procurement officer shall report
209 to the board the details of any plan so adopted and all amendments
210 or modifications thereof, and shall otherwise report to the board
211 any failure on the part of any agency to carry out the provisions
212 of such plan. In the event the head of any agency involved or the
213 chief procurement officer shall propose amendments to a plan so
214 adopted and such amendment is disapproved by the head of another
215 agency involved or the chief procurement officer, an appeal may be
216 taken to the board which may, after full consideration thereof,
217 order the adoption of the proposed amendment or any modification
218 thereof. The chief procurement officer shall make decisions on
219 all questions of the division of the cost of such equipment among
220 the several agencies, but his findings shall be subject to the
221 approval or modification by the board on appeal to it.

222 (e) He may review all contracts for acquisition of
223 equipment now or hereafter in force and may require the
224 renegotiation, termination, amendment or execution of any such
225 contracts in proper form and in accordance with the policies and
226 rules and regulations and subject to the direction of the board.



227 In the negotiation and execution of such contracts, the chief
228 procurement officer may negotiate a limitation on the liability to
229 the state of prospective contractors provided such limitation
230 affords the state reasonable protection.

231 (f) He shall act as the purchasing and contracting
232 agent for the State of Mississippi in the negotiation and
233 execution of all contracts for commodities and equipment except
234 for the acquisition of computer equipment or services. He shall
235 receive, review and promptly approve or disapprove all requests of
236 agencies of the state for the acquisition of equipment, which are
237 submitted in accordance with rules and regulations of the board.
238 The disapproval of any request by the chief procurement officer
239 may be appealed to the board in such manner as may be authorized
240 by such reasonable rules and regulations hereby authorized to be
241 adopted by the board. The chief procurement officer shall execute
242 any contracts only after complying with rules and regulations
243 which may be adopted by the board in relation thereto.

244 (g) He shall suggest and cause to be brought about
245 cooperation between the several state agencies, departments and
246 institutions in order that work may be done by one agency for
247 another agency, and equipment in one agency may be made available
248 to another agency, and suggest and cause to be brought about such
249 improvements as may be necessary in joint or cooperative
250 operations.

251 (14) The board shall act upon all appeals of decisions made
252 by the chief procurement officer thereof and shall, upon such
253 appeals, approve or disapprove such administrative actions as may
254 be taken by him. The form of an appeal to the full board from an
255 action or recommendation of the chief procurement officer thereof
256 shall be a written communication from the executive head of the
257 agency or agencies involved to the chairman of the board, stating
258 the objection and a request to appear before the full board to
259 present the case in point, on which appeal the authority shall



260 take such action as is indicated by the facts presented to or made
261 available to the board.

262 (15) The board may establish policies and procedures for the
263 purpose of delegating the bidding and contracting responsibilities
264 related to the procurement of commodities and equipment to the
265 purchasing agency. Nothing in this subsection shall be construed
266 to imply exemption from the Public Purchasing Law, being Section
267 31-7-1 et seq.

268 **SECTION 3.** Section 31-7-5, Mississippi Code of 1972, is
269 amended as follows:

270 31-7-5. The Department of Procurement and Travel shall
271 prescribe rules and regulations governing the manner in which the
272 authority and duties granted to it by law may be carried out. It
273 shall employ suitable and competent personnel, necessary to carry
274 out its purposes. The Department of Finance and Administration
275 may establish an Office of Purchasing and Travel and employ a
276 competent person as Director of the Office of Purchasing and
277 Travel.

278 **SECTION 4.** Section 31-7-7, Mississippi Code of 1972, is
279 amended as follows:

280 31-7-7. Through its director and other supervisory personnel
281 and, upon its request, through the agencies of the state, the
282 Department of Procurement and Travel shall supervise the
283 performance of the following duties imposed upon it by this
284 chapter:

285 (a) A study of the purchases of commodities by the
286 agencies of the state; the compilation, exchange and coordination
287 of information concerning same; and the distribution of such
288 information to the agencies and governing authorities requesting
289 same.

290 (b) The planning and coordination of purchases in
291 volume for the agencies in order to take advantage of and secure
292 the economies possible by volume purchasing; the arrangement of



293 agreements between agencies and between governing authorities
294 whereby one may make a purchase or purchases for the other or
295 whereby an agency may make a purchase for a governing authority;
296 the arrangement of agreements whereby purchases of commodities can
297 be made between an agency and another agency or governing
298 authority at a fair price, less depreciated value; the
299 negotiations and execution of purchasing agreements and contracts
300 through and under which the Department of Procurement and Travel
301 may require state agencies to purchase; and the obtaining or
302 establishment of methods for obtaining of competitive bid prices
303 upon which any agency of the state may purchase at the price
304 approved by the Department of Procurement and Travel.

305 (c) The arrangement of provisions in purchase contracts
306 of the state, or any agency, providing that the same price for
307 which a commodity is available to an agency, may also, during the
308 period of time provided therein, be available to any governing
309 authority.

310 **SECTION 5.** Section 31-7-9, Mississippi Code of 1972, is
311 amended as follows:

312 31-7-9. (1) (a) The Department of Procurement and Travel
313 shall adopt purchasing regulations governing the purchase by any
314 agency of any commodity or commodities and establishing standards
315 and specifications for a commodity or commodities and the maximum
316 fair prices of a commodity or commodities, subject to the approval
317 of the Public Procurement and Travel Review Board. It shall have
318 the power to amend, add to or eliminate purchasing regulations.
319 The adoption of, amendment, addition to or elimination of
320 purchasing regulations shall be based upon a determination by the
321 Department of Procurement and Travel with the approval of the
322 Public Procurement and Travel Review Board, that such action is
323 reasonable and practicable and advantageous to promote efficiency
324 and economy in the purchase of commodities by the agencies of the
325 state. Upon the adoption of any purchasing regulation, or an



326 amendment, addition or elimination therein, copies of same shall
327 be furnished to the State Auditor and to all agencies affected
328 thereby. Thereafter, and except as otherwise may be provided in
329 subsection (2) of this section, no agency of the state shall
330 purchase any commodities covered by existing purchasing
331 regulations unless such commodities be in conformity with the
332 standards and specifications set forth in the purchasing
333 regulations and unless the price thereof does not exceed the
334 maximum fair price established by such purchasing regulations.
335 The Department of Procurement and Travel shall furnish to any
336 county or municipality or other local public agency of the state
337 requesting same, copies of purchasing regulations adopted by the
338 Department of Procurement and Travel and any amendments, changes
339 or eliminations of same that may be made from time to time.

340 (b) The Department of Procurement and Travel may adopt
341 purchasing regulations governing the use of credit cards,
342 procurement cards and purchasing club membership cards to be used
343 by state agencies and governing authorities of counties and
344 municipalities. Use of the cards shall be in strict compliance
345 with the regulations promulgated by the office. Any amounts due
346 on the cards shall incur interest charges as set forth in Section
347 31-7-305 and shall not be considered debt.

348 (2) The Department of Procurement and Travel shall adopt,
349 subject to the approval of the Public Procurement and Travel
350 Review Board, purchasing regulations governing the purchase of
351 unmarked vehicles to be used by the Bureau of Narcotics and
352 Department of Public Safety in official investigations pursuant to
353 Section 25-1-87. Such regulations shall ensure that purchases of
354 such vehicles shall be at a fair price and shall take into
355 consideration the peculiar needs of the Bureau of Narcotics and
356 Department of Public Safety in undercover operations.

357 **SECTION 6.** Section 31-7-10, Mississippi Code of 1972, is
358 amended as follows:



359 31-7-10. (1) For the purposes of this section, the term
360 "equipment" shall mean equipment, furniture, and if applicable,
361 associated software and other applicable direct costs associated
362 with the acquisition. In addition to its other powers and duties,
363 the Department of Finance and Administration shall have the
364 authority to develop a master lease-purchase program and, pursuant
365 to that program, shall have the authority to execute on behalf of
366 the state master lease-purchase agreements for equipment to be
367 used by an agency, as provided in this section. Each agency
368 electing to acquire equipment by a lease-purchase agreement shall
369 participate in the Department of Finance and Administration's
370 master lease-purchase program, unless the Department of Finance
371 and Administration makes a determination that such equipment
372 cannot be obtained under the program or unless the equipment can
373 be obtained elsewhere at an overall cost lower than that for which
374 the equipment can be obtained under the program. Such
375 lease-purchase agreements may include the refinancing or
376 consolidation, or both, of any state agency lease-purchase
377 agreements entered into after June 30, 1990.

378 (2) All funds designated by agencies for procurement of
379 equipment and financing thereof under the master lease-purchase
380 program shall be paid into a special fund created in the State
381 Treasury known as the "Master Lease-Purchase Program Fund," which
382 shall be used by the Department of Finance and Administration for
383 payment to the lessors for equipment acquired under master
384 lease-purchase agreements.

385 (3) Upon final approval of an appropriation bill, each
386 agency shall submit to the Public Procurement and Travel Review
387 Board a schedule of proposed equipment acquisitions for the master
388 lease-purchase program. Upon approval of an equipment schedule by
389 the Public Procurement and Travel Review Board with the advice of
390 the Department of Information Technology Services, the Office of
391 Purchasing and Travel, and the Division of Energy and



392 Transportation of the Mississippi Development Authority as it
393 pertains to energy efficient climate control systems, the Public
394 Procurement Review Board shall forward a copy of the equipment
395 schedule to the Department of Finance and Administration.

396 (4) The level of lease-purchase debt recommended by the
397 Department of Finance and Administration shall be subject to
398 approval by the State Bond Commission. After such approval, the
399 Department of Finance and Administration shall be authorized to
400 advertise and solicit written competitive proposals for a lessor,
401 who will purchase the equipment pursuant to bid awards made by the
402 using agency under a given category and then transfer the
403 equipment to the Department of Finance and Administration as
404 lessee, pursuant to a master lease-purchase agreement.

405 The Department of Finance and Administration shall select the
406 successful proposer for the financing of equipment under the
407 master lease-purchase program with the approval of the State Bond
408 Commission.

409 (5) Each master lease-purchase agreement, and any subsequent
410 amendments, shall include such terms and conditions as the State
411 Bond Commission shall determine to be appropriate and in the
412 public interest, and may include any covenants deemed necessary or
413 desirable to protect the interests of the lessor, including, but
414 not limited to, provisions setting forth the interest rate (or
415 method for computing interest rates) for financing pursuant to
416 such agreement, covenants concerning application of payments and
417 funds held in the Master Lease-Purchase Program Fund, covenants to
418 maintain casualty insurance with respect to equipment subject to
419 the master lease-purchase agreement (and all state agencies are
420 specifically authorized to purchase any insurance required by a
421 master lease-purchase agreement) and covenants precluding or
422 limiting the right of the lessee or user to acquire equipment
423 within a specified time (not to exceed five (5) years) after
424 cancellation on the basis of a failure to appropriate funds for



425 payment of amounts due under a lease-purchase agreement covering
426 comparable equipment. The State Bond Commission shall transmit
427 copies of each such master lease-purchase agreement and each such
428 amendment to the Joint Legislative Budget Committee. To the
429 extent provided in any master lease-purchase agreement, title to
430 equipment leased pursuant thereto shall be deemed to be vested in
431 the state or the user of the equipment (as specified in such
432 master lease-purchase agreement), subject to default under or
433 termination of such master lease-purchase agreement.

434 A master lease-purchase agreement may provide for payment by
435 the lessor to the lessee of the purchase price of the equipment to
436 be acquired pursuant thereto prior to the date on which payment is
437 due to the vendor for such equipment and that the lease payments
438 by the lessee shall commence as though the equipment had been
439 provided on the date of payment. If the lessee, or lessee's
440 escrow agent, has sufficient funds for payment of equipment
441 purchases prior to payment due date to vendor of equipment, such
442 funds shall be held or utilized on an as-needed basis for payment
443 of equipment purchases either by the State Treasurer (in which
444 event the master lease-purchase agreement may include provisions
445 concerning the holding of such funds, the creation of a security
446 interest for the benefit of the lessor in such funds until
447 disbursed and other appropriate provisions approved by the Bond
448 Commission) or by a corporate trustee selected by the Department
449 of Finance and Administration (in which event the Department of
450 Finance and Administration shall have the authority to enter into
451 an agreement with such a corporate trustee containing terms and
452 conditions approved by the Bond Commission). Earnings on any
453 amount paid by the lessor prior to the acquisition of the
454 equipment may be used to make lease payments under the master
455 lease-purchase agreement or applied to pay costs and expenses
456 incurred in connection with such lease-purchase agreement. In
457 such event, the equipment use agreements with the user agency may



458 provide for lease payments to commence upon the date of payment by
459 the lessor and may also provide for a credit against such payments
460 to the extent that investment receipts from investment of the
461 purchase price are to be used to make lease-purchase payments.

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

466 (7) The Department of Finance and Administration shall
467 furnish the equipment to the various agencies, also known as the
468 user, pursuant to an equipment-use agreement developed by the
469 Department of Finance and Administration. Such agreements shall
470 require that all monthly payments due from such agency be paid,
471 transferred or allocated into the Master Lease-Purchase Program
472 Fund pursuant to a schedule established by the Department of
473 Finance and Administration. In the event such sums are not paid
474 by the defined payment period, the Executive Director of the
475 Department of Finance and Administration shall issue a requisition
476 for a warrant to draw such amount as may be due from any funds
477 appropriated for the use of the agency which has failed to make
478 the payment as agreed.

479 (8) All master lease-purchase agreements executed under the
480 authority of this section shall contain the following annual
481 allocation dependency clause or an annual allocation dependency
482 clause which is substantially equivalent thereto: "The
483 continuation of each equipment schedule to this agreement is
484 contingent in whole or in part upon the appropriation of funds by
485 the Legislature to make the lease-purchase payments required under
486 such equipment schedule. If the Legislature fails to appropriate
487 sufficient funds to provide for the continuation of the
488 lease-purchase payments under any such equipment schedule, then
489 the obligations of the lessee and of the agency to make such
490 lease-purchase payments and the corresponding provisions of any



491 such equipment schedule to this agreement shall terminate on the
492 last day of the fiscal year for which appropriations were made."

493 (9) The maximum lease term for any equipment acquired under
494 the master lease-purchase program shall not exceed the useful life
495 of such equipment as determined according to the upper limit of
496 the asset depreciation range (ADR) guidelines for the Class Life
497 Asset Depreciation Range System established by the Internal
498 Revenue Service pursuant to the United States Internal Revenue
499 Code and Regulations thereunder as in effect on December 31, 1980,
500 or comparable depreciation guidelines with respect to any
501 equipment not covered by ADR guidelines. The Department of
502 Finance and Administration shall be deemed to have met the
503 requirements of this subsection if the term of a master
504 lease-purchase agreement does not exceed the weighted average
505 useful life of all equipment covered by such agreement and the
506 schedules thereto as determined by the Department of Finance and
507 Administration. For purposes of this subsection, the "term of a
508 master lease-purchase agreement" shall be the weighted average
509 maturity of all principal payments to be made under such master
510 lease-purchase agreement and all schedules thereto.

511 (10) Interest paid on any master lease-purchase agreement
512 under this section shall be exempt from State of Mississippi
513 income taxation. All equipment, and the purchase thereof by any
514 lessor, acquired under the master lease-purchase program and all
515 lease-purchase payments with respect thereto shall be exempt from
516 all Mississippi sales, use and ad valorem taxes.

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

522 (12) Any master lease-purchase agreement reciting in
523 substance that such agreement has been entered into pursuant to



524 this section shall be conclusively deemed to have been entered
525 into in accordance with all of the provisions and conditions set
526 forth in this section. Any defect or irregularity arising with
527 respect to procedures applicable to the acquisition of any
528 equipment shall not invalidate or otherwise limit the obligation
529 of the Department of Finance and Administration, or the state or
530 any agency of the state, under any master lease-purchase agreement
531 or any equipment-use agreement.

532 (13) There shall be maintained by the Department of Finance
533 and Administration, with respect to each master lease-purchase
534 agreement, an itemized statement of the cash price, interest
535 rates, interest costs, commissions, debt service schedules and all
536 other costs and expenses paid by the state incident to the
537 lease-purchase of equipment under such agreement.

538 (14) Lease-purchase agreements entered into by the Board of
539 Trustees of State Institutions of Higher Learning pursuant to the
540 authority of Section 37-101-413 or by any other agency which has
541 specific statutory authority other than pursuant to Section
542 31-7-13(e) to acquire equipment by lease-purchase shall not be
543 made pursuant to the master lease-purchase program under this
544 section, unless the Board of Trustees of State Institutions of
545 Higher Learning or such other agency elects to participate as to
546 part or all of its lease-purchase acquisitions in the master
547 lease-purchase program pursuant to this section.

548 (15) The Department of Finance and Administration may
549 develop a master lease-purchase program for school districts and,
550 pursuant to that program, may execute on behalf of the school
551 districts master lease-purchase agreements for equipment to be
552 used by the school districts. The form and structure of this
553 program shall be substantially the same as set forth in this
554 section for the master lease-purchase program for state agencies.
555 If sums due from a school district under the master lease-purchase
556 program are not paid by the expiration of the defined payment



557 period, the Executive Director of the Department of Finance and
558 Administration may withhold such amount that is due from the
559 school district's minimum education or adequate education program
560 fund allotments.

561 (16) The Department of Finance and Administration may
562 develop a master lease-purchase program for community and junior
563 college districts and, pursuant to that program, may execute on
564 behalf of the community and junior college districts master
565 lease-purchase agreements for equipment to be used by the
566 community and junior college districts. The form and structure of
567 this program must be substantially the same as set forth in this
568 section for the master lease-purchase program for state agencies.
569 If sums due from a community or junior college district under the
570 master lease-purchase program are not paid by the expiration of
571 the defined payment period, the Executive Director of the
572 Department of Finance and Administration may withhold an amount
573 equal to the amount due under the program from any funds allocated
574 for that community or junior college district in the state
575 appropriations for the use and support of the community and junior
576 colleges.

577 **SECTION 7.** Section 31-7-11, Mississippi Code of 1972, is
578 amended as follows:

579 31-7-11. Each agency of the state shall furnish information
580 relative to its purchase of commodities, and as to its method of
581 purchasing such commodities, to the Department of Procurement and
582 Travel annually and at such other times as the Department of
583 Procurement and Travel may request.

584 The Department of Procurement and Travel shall have
585 supervision over the purchasing and purchasing practices of each
586 state agency and may by regulation or order correct any practice
587 that appears contrary to the provisions of this chapter or to the
588 best interests of the state. If it shall appear that any agency
589 is not practicing economy in its purchasing or is permitting



590 favoritism or any improper purchasing practice, the Department of
591 Procurement and Travel shall require that the agency immediately
592 cease such improper activity, with full and complete authority in
593 the Department of Procurement and Travel to carry into effect its
594 directions in such regard.

595 All purchases, trade-ins, sales or transfer of personal
596 property made by any officer, board, agency, department or branch
597 of the state government except the Legislature shall be subject to
598 the approval of the Department of Procurement and Travel. Such
599 transaction shall be made in accordance with rules and regulations
600 of the Department of Procurement and Travel relating to the
601 purchase of state-owned motor vehicles and all other personal
602 property. The title of such property shall remain in the name of
603 the state.

604 **SECTION 8.** Section 31-7-12, Mississippi Code of 1972, is
605 amended as follows:

606 31-7-12. (1) Except in regard to purchases of unmarked
607 vehicles made in accordance with purchasing regulations adopted by
608 the Department of Procurement and Travel pursuant to Section
609 31-7-9(2), all agencies shall purchase commodities at the state
610 contract price from the approved source, unless approval is
611 granted by the Department of Procurement and Travel to solicit
612 purchases outside the terms of the contracts. However, prices
613 accepted by an agency shall be less than the prices set by the
614 state contract. Prices accepted by an agency shall be obtained in
615 compliance with paragraph (a), (b) or (c) of Section 31-7-13. It
616 shall be the responsibility of the Department of Procurement and
617 Travel to ascertain that the resulting prices shall provide a cost
618 effective alternative to the established state contract.

619 (2) Governing authorities may purchase commodities approved
620 by the Department of Procurement and Travel from the state
621 contract vendor, or from any source offering the identical
622 commodity, at a price not exceeding the state contract price



623 established by the Department of Procurement and Travel for such
624 commodity, without obtaining or advertising for competitive bids.
625 Governing authorities that do not exercise the option to purchase
626 such commodities from the state contract vendor or from another
627 source offering the identical commodity at a price not exceeding
628 the state contract price established by the Department of
629 Procurement and Travel shall make such purchases pursuant to the
630 provisions of Section 31-7-13 without regard to state contract
631 prices established by the Department of Procurement and Travel,
632 unless such purchases are authorized to be made under subsection
633 (5) of this section.

634 (3) Nothing in this section shall prohibit governing
635 authorities from purchasing, pursuant to subsection (2) of this
636 section, commodities approved by the Department of Procurement and
637 Travel at a price not exceeding the state contract price
638 established by the Department of Procurement and Travel.

639 (4) The Department of Procurement and Travel shall ensure
640 that the prices of all commodities on the state contract are the
641 lowest and best prices available from any source offering that
642 commodity at the same level of quality or service, utilizing the
643 reasonable standards established therefor by the Department of
644 Procurement and Travel. If the Department of Procurement and
645 Travel does not list an approved price for the particular item
646 involved, purchase shall be made according to statutory bidding
647 and licensing requirements. To encourage prudent purchasing
648 practices, the Department of Procurement and Travel shall be
649 authorized and empowered to exempt certain commodities from the
650 requirement that the lowest and best price be approved by order
651 placed on its minutes.

652 (5) Any school district may purchase commodities from
653 vendors with which any levying authority of the school district,
654 as defined in Section 37-57-1, has contracted through competitive
655 bidding procedures pursuant to Section 31-7-13 for purchases of



656 the same commodities. Purchases authorized by this subsection may
657 be made by a school district without obtaining or advertising for
658 competitive bids, and such purchases shall be made at the same
659 prices and under the same conditions as purchases of the same
660 commodities are to be made by the levying authority of the school
661 district under the contract with the vendor.

662 **SECTION 9.** Section 31-7-13, Mississippi Code of 1972, is
663 amended as follows:

664 31-7-13. All agencies and governing authorities shall
665 purchase their commodities and printing; contract for garbage
666 collection or disposal; contract for solid waste collection or
667 disposal; contract for sewage collection or disposal; contract for
668 public construction; and contract for rentals as herein provided.

669 (a) **Bidding procedure for purchases not over \$3,500.00.**
670 Purchases which do not involve an expenditure of more than Three
671 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
672 shipping charges, may be made without advertising or otherwise
673 requesting competitive bids. Provided, however, that nothing
674 contained in this paragraph (a) shall be construed to prohibit any
675 agency or governing authority from establishing procedures which
676 require competitive bids on purchases of Three Thousand Five
677 Hundred Dollars (\$3,500.00) or less.

678 (b) **Bidding procedure for purchases over \$3,500.00 but**
679 **not over \$15,000.00.** Purchases which involve an expenditure of
680 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
681 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
682 freight and shipping charges may be made from the lowest and best
683 bidder without publishing or posting advertisement for bids,
684 provided at least two (2) competitive written bids have been
685 obtained. Any governing authority purchasing commodities pursuant
686 to this paragraph (b) may authorize its purchasing agent, or his
687 designee, with regard to governing authorities other than
688 counties, or its purchase clerk, or his designee, with regard to



689 counties, to accept the lowest and best competitive written bid.
690 Such authorization shall be made in writing by the governing
691 authority and shall be maintained on file in the primary office of
692 the agency and recorded in the official minutes of the governing
693 authority, as appropriate. The purchasing agent or the purchase
694 clerk, or their designee, as the case may be, and not the
695 governing authority, shall be liable for any penalties and/or
696 damages as may be imposed by law for any act or omission of the
697 purchasing agent or purchase clerk, or their designee,
698 constituting a violation of law in accepting any bid without
699 approval by the governing authority. The term "competitive
700 written bid" shall mean a bid submitted on a bid form furnished by
701 the buying agency or governing authority and signed by authorized
702 personnel representing the vendor, or a bid submitted on a
703 vendor's letterhead or identifiable bid form and signed by
704 authorized personnel representing the vendor. Bids may be
705 submitted by facsimile, electronic mail or other generally
706 accepted method of information distribution. Bids submitted by
707 electronic transmission shall not require the signature of the
708 vendor's representative unless required by agencies or governing
709 authorities.

710 (c) **Bidding procedure for purchases over \$15,000.00.**

711 (i) **Publication requirement.** Purchases which
712 involve an expenditure of more than Fifteen Thousand Dollars
713 (\$15,000.00), exclusive of freight and shipping charges may be
714 made from the lowest and best bidder after advertising for
715 competitive sealed bids once each week for two (2) consecutive
716 weeks in a regular newspaper published in the county or
717 municipality in which such agency or governing authority is
718 located. The date as published for the bid opening shall not be
719 less than seven (7) working days after the last published notice;
720 however, if the purchase involves a construction project in which
721 the estimated cost is in excess of Fifteen Thousand Dollars



722 (\$15,000.00), such bids shall not be opened in less than fifteen
723 (15) working days after the last notice is published and the
724 notice for the purchase of such construction shall be published
725 once each week for two (2) consecutive weeks. The notice of
726 intention to let contracts or purchase equipment shall state the
727 time and place at which bids shall be received, list the contracts
728 to be made or types of equipment or supplies to be purchased, and,
729 if all plans and/or specifications are not published, refer to the
730 plans and/or specifications on file. If there is no newspaper
731 published in the county or municipality, then such notice shall be
732 given by posting same at the courthouse, or for municipalities at
733 the city hall, and at two (2) other public places in the county or
734 municipality, and also by publication once each week for two (2)
735 consecutive weeks in some newspaper having a general circulation
736 in the county or municipality in the above provided manner. On
737 the same date that the notice is submitted to the newspaper for
738 publication, the agency or governing authority involved shall mail
739 written notice to, or provide electronic notification to the main
740 office of the Mississippi Contract Procurement Center that
741 contains the same information as that in the published notice.

742 (ii) **Bidding process amendment procedure.** If all
743 plans and/or specifications are published in the notification,
744 then the plans and/or specifications may not be amended. If all
745 plans and/or specifications are not published in the notification,
746 then amendments to the plans/specifications, bid opening date, bid
747 opening time and place may be made, provided that the agency or
748 governing authority maintains a list of all prospective bidders
749 who are known to have received a copy of the bid documents and all
750 such prospective bidders are sent copies of all amendments. This
751 notification of amendments may be made via mail, facsimile,
752 electronic mail or other generally accepted method of information
753 distribution. No addendum to bid specifications may be issued
754 within two (2) working days of the time established for the



755 receipt of bids unless such addendum also amends the bid opening
756 to a date not less than five (5) working days after the date of
757 the addendum.

758 (iii) **Filing requirement.** In all cases involving
759 governing authorities, before the notice shall be published or
760 posted, the plans or specifications for the construction or
761 equipment being sought shall be filed with the clerk of the board
762 of the governing authority. In addition to these requirements, a
763 bid file shall be established which shall indicate those vendors
764 to whom such solicitations and specifications were issued, and
765 such file shall also contain such information as is pertinent to
766 the bid.

767 (iv) **Specification restrictions.** Specifications
768 pertinent to such bidding shall be written so as not to exclude
769 comparable equipment of domestic manufacture. Provided, however,
770 that should valid justification be presented, the Department of
771 Procurement and Travel or the board of a governing authority may
772 approve a request for specific equipment necessary to perform a
773 specific job. Further, such justification, when placed on the
774 minutes of the board of a governing authority, may serve as
775 authority for that governing authority to write specifications to
776 require a specific item of equipment needed to perform a specific
777 job. In addition to these requirements, from and after July 1,
778 1990, vendors of relocatable classrooms and the specifications for
779 the purchase of such relocatable classrooms published by local
780 school boards shall meet all pertinent regulations of the State
781 Board of Education, including prior approval of such bid by the
782 State Department of Education.

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

784 (i) **Decision procedure.** Purchases may be made
785 from the lowest and best bidder. In determining the lowest and
786 best bid, freight and shipping charges shall be included.

787 Life-cycle costing, total cost bids, warranties, guaranteed



788 buy-back provisions and other relevant provisions may be included
789 in the best bid calculation. All best bid procedures for state
790 agencies must be in compliance with regulations established by the
791 Department of Procurement and Travel. If any governing authority
792 accepts a bid other than the lowest bid actually submitted, it
793 shall place on its minutes detailed calculations and narrative
794 summary showing that the accepted bid was determined to be the
795 lowest and best bid, including the dollar amount of the accepted
796 bid and the dollar amount of the lowest bid. No agency or
797 governing authority shall accept a bid based on items not included
798 in the specifications.

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

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

805 (e) **Lease-purchase authorization.** For the purposes of
806 this section, the term "equipment" shall mean equipment, furniture
807 and, if applicable, associated software and other applicable
808 direct costs associated with the acquisition. Any lease-purchase
809 of equipment which an agency is not required to lease-purchase
810 under the master lease-purchase program pursuant to Section
811 31-7-10 and any lease-purchase of equipment which a governing
812 authority elects to lease-purchase may be acquired by a
813 lease-purchase agreement under this paragraph (e). Lease-purchase
814 financing may also be obtained from the vendor or from a
815 third-party source after having solicited and obtained at least
816 two (2) written competitive bids, as defined in paragraph (b) of
817 this section, for such financing without advertising for such
818 bids. Solicitation for the bids for financing may occur before or
819 after acceptance of bids for the purchase of such equipment or,
820 where no such bids for purchase are required, at any time before



821 the purchase thereof. No such lease-purchase agreement shall be
822 for an annual rate of interest which is greater than the overall
823 maximum interest rate to maturity on general obligation
824 indebtedness permitted under Section 75-17-101, and the term of
825 such lease-purchase agreement shall not exceed the useful life of
826 equipment covered thereby as determined according to the upper
827 limit of the asset depreciation range (ADR) guidelines for the
828 Class Life Asset Depreciation Range System established by the
829 Internal Revenue Service pursuant to the United States Internal
830 Revenue Code and regulations thereunder as in effect on December
831 31, 1980, or comparable depreciation guidelines with respect to
832 any equipment not covered by ADR guidelines. Any lease-purchase
833 agreement entered into pursuant to this paragraph (e) may contain
834 any of the terms and conditions which a master lease-purchase
835 agreement may contain under the provisions of Section 31-7-10(5),
836 and shall contain an annual allocation dependency clause
837 substantially similar to that set forth in Section 31-7-10(8).
838 Each agency or governing authority entering into a lease-purchase
839 transaction pursuant to this paragraph (e) shall maintain with
840 respect to each such lease-purchase transaction the same
841 information as required to be maintained by the Department of
842 Finance and Administration pursuant to Section 31-7-10(13).
843 However, nothing contained in this section shall be construed to
844 permit agencies to acquire items of equipment with a total
845 acquisition cost in the aggregate of less than Ten Thousand
846 Dollars (\$10,000.00) by a single lease-purchase transaction. All
847 equipment, and the purchase thereof by any lessor, acquired by
848 lease-purchase under this paragraph and all lease-purchase
849 payments with respect thereto shall be exempt from all Mississippi
850 sales, use and ad valorem taxes. Interest paid on any
851 lease-purchase agreement under this section shall be exempt from
852 State of Mississippi income taxation.



853 (f) **Alternate bid authorization.** When necessary to
854 ensure ready availability of commodities for public works and the
855 timely completion of public projects, no more than two (2)
856 alternate bids may be accepted by a governing authority for
857 commodities. No purchases may be made through use of such
858 alternate bids procedure unless the lowest and best bidder, for
859 reasons beyond his control, cannot deliver the commodities
860 contained in his bid. In that event, purchases of such
861 commodities may be made from one (1) of the bidders whose bid was
862 accepted as an alternate.

863 (g) **Construction contract change authorization.** In the
864 event a determination is made by an agency or governing authority
865 after a construction contract is let that changes or modifications
866 to the original contract are necessary or would better serve the
867 purpose of the agency or the governing authority, such agency or
868 governing authority may, in its discretion, order such changes
869 pertaining to the construction that are necessary under the
870 circumstances without the necessity of further public bids;
871 provided that such change shall be made in a commercially
872 reasonable manner and shall not be made to circumvent the public
873 purchasing statutes. In addition to any other authorized person,
874 the architect or engineer hired by an agency or governing
875 authority with respect to any public construction contract shall
876 have the authority, when granted by an agency or governing
877 authority, to authorize changes or modifications to the original
878 contract without the necessity of prior approval of the agency or
879 governing authority when any such change or modification is less
880 than one percent (1%) of the total contract amount. The agency or
881 governing authority may limit the number, manner or frequency of
882 such emergency changes or modifications.

883 (h) **Petroleum purchase alternative.** In addition to
884 other methods of purchasing authorized in this chapter, when any
885 agency or governing authority shall have a need for gas, diesel



886 fuel, oils and/or other petroleum products in excess of the amount
887 set forth in paragraph (a) of this section, such agency or
888 governing authority may purchase the commodity after having
889 solicited and obtained at least two (2) competitive written bids,
890 as defined in paragraph (b) of this section. If two (2)
891 competitive written bids are not obtained the entity shall comply
892 with the procedures set forth in paragraph (c) of this section.
893 In the event any agency or governing authority shall have
894 advertised for bids for the purchase of gas, diesel fuel, oils and
895 other petroleum products and coal and no acceptable bids can be
896 obtained, such agency or governing authority is authorized and
897 directed to enter into any negotiations necessary to secure the
898 lowest and best contract available for the purchase of such
899 commodities.

900 (i) **Road construction petroleum products price**
901 **adjustment clause authorization.** Any agency or governing
902 authority authorized to enter into contracts for the construction,
903 maintenance, surfacing or repair of highways, roads or streets,
904 may include in its bid proposal and contract documents a price
905 adjustment clause with relation to the cost to the contractor,
906 including taxes, based upon an industry-wide cost index, of
907 petroleum products including asphalt used in the performance or
908 execution of the contract or in the production or manufacture of
909 materials for use in such performance. Such industry-wide index
910 shall be established and published monthly by the Mississippi
911 Department of Transportation with a copy thereof to be mailed,
912 upon request, to the clerks of the governing authority of each
913 municipality and the clerks of each board of supervisors
914 throughout the state. The price adjustment clause shall be based
915 on the cost of such petroleum products only and shall not include
916 any additional profit or overhead as part of the adjustment. The
917 bid proposals or document contract shall contain the basis and



918 methods of adjusting unit prices for the change in the cost of
919 such petroleum products.

920 (j) **State agency emergency purchase procedure.** If the
921 executive head of any agency of the state shall determine that an
922 emergency exists in regard to the purchase of any commodities or
923 repair contracts, so that the delay incident to giving opportunity
924 for competitive bidding would be detrimental to the interests of
925 the state, then the provisions herein for competitive bidding
926 shall not apply and the head of such agency shall be authorized to
927 make the purchase or repair. Total purchases so made shall only
928 be for the purpose of meeting needs created by the emergency
929 situation. In the event such executive head is responsible to an
930 agency board, at the meeting next following the emergency
931 purchase, documentation of the purchase, including a description
932 of the commodity purchased, the purchase price thereof and the
933 nature of the emergency shall be presented to the board and placed
934 on the minutes of the board of such agency. The head of such
935 agency shall, at the earliest possible date following such
936 emergency purchase, file with the Department of Procurement and
937 Travel (i) a statement under oath certifying the conditions and
938 circumstances of the emergency, and (ii) a certified copy of the
939 appropriate minutes of the board of such agency, if applicable.
940 On or before September 1 of each year, the State Auditor shall
941 prepare and deliver to the Senate Fees, Salaries and
942 Administration Committee, the House Fees and Salaries of Public
943 Officers Committee and the Joint Legislative Budget Committee a
944 report containing a list of all state agency emergency purchases
945 and supporting documentation for each emergency purchases.

946 (k) **Governing authority emergency purchase procedure.**
947 If the governing authority, or the governing authority acting
948 through its designee, shall determine that an emergency exists in
949 regard to the purchase of any commodities or repair contracts, so
950 that the delay incident to giving opportunity for competitive



951 bidding would be detrimental to the interest of the governing
952 authority, then the provisions herein for competitive bidding
953 shall not apply and any officer or agent of such governing
954 authority having general or special authority therefor in making
955 such purchase or repair shall approve the bill presented therefor,
956 and he shall certify in writing thereon from whom such purchase
957 was made, or with whom such a repair contract was made. At the
958 board meeting next following the emergency purchase or repair
959 contract, documentation of the purchase or repair contract,
960 including a description of the commodity purchased, the price
961 thereof and the nature of the emergency shall be presented to the
962 board and shall be placed on the minutes of the board of such
963 governing authority.

964 (1) **Hospital purchase, lease-purchase and lease**
965 **authorization.**

966 (i) The commissioners or board of trustees of any
967 public hospital may contract with such lowest and best bidder for
968 the purchase or lease-purchase of any commodity under a contract
969 of purchase or lease-purchase agreement whose obligatory payment
970 terms do not exceed five (5) years.

971 (ii) In addition to the authority granted in
972 subparagraph (i) of this paragraph (1), the commissioners or board
973 of trustees is authorized to enter into contracts for the lease of
974 equipment or services, or both, which it considers necessary for
975 the proper care of patients if, in its opinion, it is not
976 financially feasible to purchase the necessary equipment or
977 services. Any such contract for the lease of equipment or
978 services executed by the commissioners or board shall not exceed a
979 maximum of five (5) years' duration and shall include a
980 cancellation clause based on unavailability of funds. If such
981 cancellation clause is exercised, there shall be no further
982 liability on the part of the lessee. Any such contract for the
983 lease of equipment or services executed on behalf of the



984 commissioners or board that complies with the provisions of this
985 subparagraph (ii) shall be excepted from the bid requirements set
986 forth in this section.

987 (m) **Exceptions from bidding requirements.** Excepted
988 from bid requirements are:

989 (i) **Purchasing agreements approved by department.**
990 Purchasing agreements, contracts and maximum price regulations
991 executed or approved by the Department of Procurement and Travel.

992 (ii) **Outside equipment repairs.** Repairs to
993 equipment, when such repairs are made by repair facilities in the
994 private sector; however, engines, transmissions, rear axles and/or
995 other such components shall not be included in this exemption when
996 replaced as a complete unit instead of being repaired and the need
997 for such total component replacement is known before disassembly
998 of the component; provided, however, that invoices identifying the
999 equipment, specific repairs made, parts identified by number and
1000 name, supplies used in such repairs, and the number of hours of
1001 labor and costs therefor shall be required for the payment for
1002 such repairs.

1003 (iii) **In-house equipment repairs.** Purchases of
1004 parts for repairs to equipment, when such repairs are made by
1005 personnel of the agency or governing authority; however, entire
1006 assemblies, such as engines or transmissions, shall not be
1007 included in this exemption when the entire assembly is being
1008 replaced instead of being repaired.

1009 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
1010 of gravel or fill dirt which are to be removed and transported by
1011 the purchaser.

1012 (v) **Governmental equipment auctions.** Motor
1013 vehicles or other equipment purchased from a federal or state
1014 agency or a governing authority at a public auction held for the
1015 purpose of disposing of such vehicles or other equipment. Any
1016 purchase by a governing authority under the exemption authorized



1017 by this subparagraph (v) shall require advance authorization
1018 spread upon the minutes of the governing authority to include the
1019 listing of the item or items authorized to be purchased and the
1020 maximum bid authorized to be paid for each item or items.

1021 (vi) **Intergovernmental sales and transfers.**
1022 Purchases, sales, transfers or trades by governing authorities or
1023 state agencies when such purchases, sales, transfers or trades are
1024 made by a private treaty agreement or through means of
1025 negotiation, from any federal agency or authority, another
1026 governing authority or state agency of the State of Mississippi,
1027 or any state agency of another state. Nothing in this section
1028 shall permit such purchases through public auction except as
1029 provided for in subparagraph (v) of this section. It is the
1030 intent of this section to allow governmental entities to dispose
1031 of and/or purchase commodities from other governmental entities at
1032 a price that is agreed to by both parties. This shall allow for
1033 purchases and/or sales at prices which may be determined to be
1034 below the market value if the selling entity determines that the
1035 sale at below market value is in the best interest of the
1036 taxpayers of the state. Governing authorities shall place the
1037 terms of the agreement and any justification on the minutes, and
1038 state agencies shall obtain approval from the Department of
1039 Procurement and Travel, prior to releasing or taking possession of
1040 the commodities.

1041 (vii) **Perishable supplies or food.** Perishable
1042 supplies or foods purchased for use in connection with hospitals,
1043 the school lunch programs, homemaking programs and for the feeding
1044 of county or municipal prisoners.

1045 (viii) **Single source items.** Noncompetitive items
1046 available from one (1) source only. In connection with the
1047 purchase of noncompetitive items only available from one (1)
1048 source, a certification of the conditions and circumstances
1049 requiring the purchase shall be filed by the agency with the



1050 Department of Procurement and Travel and by the governing
1051 authority with the board of the governing authority. Upon receipt
1052 of that certification the Department of Procurement and Travel or
1053 the board of the governing authority, as the case may be, may, in
1054 writing, authorize the purchase, which authority shall be noted on
1055 the minutes of the body at the next regular meeting thereafter.
1056 In those situations, a governing authority is not required to
1057 obtain the approval of the Department of Procurement and Travel.

1058 (ix) **Waste disposal facility construction**
1059 **contracts.** Construction of incinerators and other facilities for
1060 disposal of solid wastes in which products either generated
1061 therein, such as steam, or recovered therefrom, such as materials
1062 for recycling, are to be sold or otherwise disposed of; provided,
1063 however, in constructing such facilities a governing authority or
1064 agency shall publicly issue requests for proposals, advertised for
1065 in the same manner as provided herein for seeking bids for public
1066 construction projects, concerning the design, construction,
1067 ownership, operation and/or maintenance of such facilities,
1068 wherein such requests for proposals when issued shall contain
1069 terms and conditions relating to price, financial responsibility,
1070 technology, environmental compatibility, legal responsibilities
1071 and such other matters as are determined by the governing
1072 authority or agency to be appropriate for inclusion; and after
1073 responses to the request for proposals have been duly received,
1074 the governing authority or agency may select the most qualified
1075 proposal or proposals on the basis of price, technology and other
1076 relevant factors and from such proposals, but not limited to the
1077 terms thereof, negotiate and enter contracts with one or more of
1078 the persons or firms submitting proposals.

1079 (x) **Hospital group purchase contracts.** Supplies,
1080 commodities and equipment purchased by hospitals through group
1081 purchase programs pursuant to Section 31-7-38.



1082 (xi) **Information technology products.** Purchases
1083 of information technology products made by governing authorities
1084 under the provisions of purchase schedules, or contracts executed
1085 or approved by the Mississippi Department of Information
1086 Technology Services and designated for use by governing
1087 authorities.

1088 (xii) **Energy efficiency services and equipment.**
1089 Energy efficiency services and equipment acquired by school
1090 districts, community and junior colleges, institutions of higher
1091 learning and state agencies or other applicable governmental
1092 entities on a shared-savings, lease or lease-purchase basis
1093 pursuant to Section 31-7-14.

1094 (xiii) **Municipal electrical utility system fuel.**
1095 Purchases of coal and/or natural gas by municipally-owned electric
1096 power generating systems that have the capacity to use both coal
1097 and natural gas for the generation of electric power.

1098 (xiv) **Library books and other reference materials.**
1099 Purchases by libraries or for libraries of books and periodicals;
1100 processed film, video cassette tapes, filmstrips and slides;
1101 recorded audio tapes, cassettes and diskettes; and any such items
1102 as would be used for teaching, research or other information
1103 distribution; however, equipment such as projectors, recorders,
1104 audio or video equipment, and monitor televisions are not exempt
1105 under this subparagraph.

1106 (xv) **Unmarked vehicles.** Purchases of unmarked
1107 vehicles when such purchases are made in accordance with
1108 purchasing regulations adopted by the Department of Procurement
1109 and Travel pursuant to Section 31-7-9(2).

1110 (xvi) **Election ballots.** Purchases of ballots
1111 printed pursuant to Section 23-15-351.

1112 (xvii) **Multichannel interactive video systems.**
1113 From and after July 1, 1990, contracts by Mississippi Authority
1114 for Educational Television with any private educational



1115 institution or private nonprofit organization whose purposes are
1116 educational in regard to the construction, purchase, lease or
1117 lease-purchase of facilities and equipment and the employment of
1118 personnel for providing multichannel interactive video systems
1119 (ITSF) in the school districts of this state.

1120 (xviii) **Purchases of prison industry products.**

1121 From and after January 1, 1991, purchases made by state agencies
1122 or governing authorities involving any item that is manufactured,
1123 processed, grown or produced from the state's prison industries.

1124 (xix) **Undercover operations equipment.** Purchases
1125 of surveillance equipment or any other high-tech equipment to be
1126 used by law enforcement agents in undercover operations, provided
1127 that any such purchase shall be in compliance with regulations
1128 established by the Department of Procurement and Travel.

1129 (xx) **Junior college books for rent.** Purchases by
1130 community or junior colleges of textbooks which are obtained for
1131 the purpose of renting such books to students as part of a book
1132 service system.

1133 (xxi) **Certain school district purchases.**

1134 Purchases of commodities made by school districts from vendors
1135 with which any levying authority of the school district, as
1136 defined in Section 37-57-1, has contracted through competitive
1137 bidding procedures for purchases of the same commodities.

1138 (xxii) **Garbage, solid waste and sewage contracts.**

1139 Contracts for garbage collection or disposal, contracts for solid
1140 waste collection or disposal and contracts for sewage collection
1141 or disposal.

1142 (xxiii) **Municipal water tank maintenance**

1143 **contracts.** Professional maintenance program contracts for the
1144 repair or maintenance of municipal water tanks, which provide
1145 professional services needed to maintain municipal water storage
1146 tanks for a fixed annual fee for a duration of two (2) or more
1147 years.



1148 (xxiv) **Purchases of Mississippi Industries for the**
1149 **Blind products.** Purchases made by state agencies or governing
1150 authorities involving any item that is manufactured, processed or
1151 produced by the Mississippi Industries for the Blind.

1152 (xxv) **Purchases of state-adopted textbooks.**
1153 Purchases of state-adopted textbooks by public school districts.

1154 (xxvi) **Certain purchases under the Mississippi**
1155 **Major Economic Impact Act.** Contracts entered into pursuant to the
1156 provisions of Section 57-75-9(2) and (3).

1157 (xxvii) **Used heavy or specialized machinery or**
1158 **equipment for installation of soil and water conservation**
1159 **practices purchased at auction.** Used heavy or specialized
1160 machinery or equipment used for the installation and
1161 implementation of soil and water conservation practices or
1162 measures purchased subject to the restrictions provided in
1163 Sections 69-27-331 through 69-27-341. Any purchase by the State
1164 Soil and Water Conservation Commission under the exemption
1165 authorized by this subparagraph shall require advance
1166 authorization spread upon the minutes of the commission to include
1167 the listing of the item or items authorized to be purchased and
1168 the maximum bid authorized to be paid for each item or items.

1169 (xxviii) **Hospital lease of equipment or services.**
1170 Leases by hospitals of equipment or services if the leases are in
1171 compliance with paragraph (1)(ii).

1172 (n) **Term contract authorization.** All contracts for the
1173 purchase of:

1174 (i) All contracts for the purchase of commodities,
1175 equipment and public construction (including, but not limited to,
1176 repair and maintenance), may be let for periods of not more than
1177 sixty (60) months in advance, subject to applicable statutory
1178 provisions prohibiting the letting of contracts during specified
1179 periods near the end of terms of office. Term contracts for a
1180 period exceeding twenty-four (24) months shall also be subject to



1181 ratification or cancellation by governing authority boards taking
1182 office subsequent to the governing authority board entering the
1183 contract.

1184 (ii) Bid proposals and contracts may include price
1185 adjustment clauses with relation to the cost to the contractor
1186 based upon a nationally published industry-wide or nationally
1187 published and recognized cost index. The cost index used in a
1188 price adjustment clause shall be determined by the Department of
1189 Procurement and Travel for the state agencies and by the governing
1190 board for governing authorities. The bid proposal and contract
1191 documents utilizing a price adjustment clause shall contain the
1192 basis and method of adjusting unit prices for the change in the
1193 cost of such commodities, equipment and public construction.

1194 (o) **Purchase law violation prohibition and vendor**
1195 **penalty.** No contract or purchase as herein authorized shall be
1196 made for the purpose of circumventing the provisions of this
1197 section requiring competitive bids, nor shall it be lawful for any
1198 person or concern to submit individual invoices for amounts within
1199 those authorized for a contract or purchase where the actual value
1200 of the contract or commodity purchased exceeds the authorized
1201 amount and the invoices therefor are split so as to appear to be
1202 authorized as purchases for which competitive bids are not
1203 required. Submission of such invoices shall constitute a
1204 misdemeanor punishable by a fine of not less than Five Hundred
1205 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
1206 or by imprisonment for thirty (30) days in the county jail, or
1207 both such fine and imprisonment. In addition, the claim or claims
1208 submitted shall be forfeited.

1209 (p) **Electrical utility petroleum-based equipment**
1210 **purchase procedure.** When in response to a proper advertisement
1211 therefor, no bid firm as to price is submitted to an electric
1212 utility for power transformers, distribution transformers, power
1213 breakers, reclosers or other articles containing a petroleum



1214 product, the electric utility may accept the lowest and best bid
1215 therefor although the price is not firm.

1216 (q) **Fuel management system bidding procedure.** Any
1217 governing authority or agency of the state shall, before
1218 contracting for the services and products of a fuel management or
1219 fuel access system, enter into negotiations with not fewer than
1220 two (2) sellers of fuel management or fuel access systems for
1221 competitive written bids to provide the services and products for
1222 the systems. In the event that the governing authority or agency
1223 cannot locate two (2) sellers of such systems or cannot obtain
1224 bids from two (2) sellers of such systems, it shall show proof
1225 that it made a diligent, good-faith effort to locate and negotiate
1226 with two (2) sellers of such systems. Such proof shall include,
1227 but not be limited to, publications of a request for proposals and
1228 letters soliciting negotiations and bids. For purposes of this
1229 paragraph (q), a fuel management or fuel access system is an
1230 automated system of acquiring fuel for vehicles as well as
1231 management reports detailing fuel use by vehicles and drivers, and
1232 the term "competitive written bid" shall have the meaning as
1233 defined in paragraph (b) of this section. Governing authorities
1234 and agencies shall be exempt from this process when contracting
1235 for the services and products of a fuel management or fuel access
1236 systems under the terms of a state contract established by the
1237 Department of Procurement and Travel.

1238 (r) **Solid waste contract proposal procedure.** Before
1239 entering into any contract for garbage collection or disposal,
1240 contract for solid waste collection or disposal or contract for
1241 sewage collection or disposal, which involves an expenditure of
1242 more than Fifty Thousand Dollars (\$50,000.00), a governing
1243 authority or agency shall issue publicly a request for proposals
1244 concerning the specifications for such services which shall be
1245 advertised for in the same manner as provided in this section for
1246 seeking bids for purchases which involve an expenditure of more



1247 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
1248 when issued shall contain terms and conditions relating to price,
1249 financial responsibility, technology, legal responsibilities and
1250 other relevant factors as are determined by the governing
1251 authority or agency to be appropriate for inclusion; all factors
1252 determined relevant by the governing authority or agency or
1253 required by this paragraph (r) shall be duly included in the
1254 advertisement to elicit proposals. After responses to the request
1255 for proposals have been duly received, the governing authority or
1256 agency shall select the most qualified proposal or proposals on
1257 the basis of price, technology and other relevant factors and from
1258 such proposals, but not limited to the terms thereof, negotiate
1259 and enter contracts with one or more of the persons or firms
1260 submitting proposals. If the governing authority or agency deems
1261 none of the proposals to be qualified or otherwise acceptable, the
1262 request for proposals process may be reinitiated. Notwithstanding
1263 any other provisions of this paragraph, where a county with at
1264 least thirty-five thousand (35,000) nor more than forty thousand
1265 (40,000) population, according to the 1990 federal decennial
1266 census, owns or operates a solid waste landfill, the governing
1267 authorities of any other county or municipality may contract with
1268 the governing authorities of the county owning or operating the
1269 landfill, pursuant to a resolution duly adopted and spread upon
1270 the minutes of each governing authority involved, for garbage or
1271 solid waste collection or disposal services through contract
1272 negotiations.

1273 (s) **Minority set aside authorization.** Notwithstanding
1274 any provision of this section to the contrary, any agency or
1275 governing authority, by order placed on its minutes, may, in its
1276 discretion, set aside not more than twenty percent (20%) of its
1277 anticipated annual expenditures for the purchase of commodities
1278 from minority businesses; however, all such set-aside purchases
1279 shall comply with all purchasing regulations promulgated by the



1280 Department of Procurement and Travel and shall be subject to bid
1281 requirements under this section. Set-aside purchases for which
1282 competitive bids are required shall be made from the lowest and
1283 best minority business bidder. For the purposes of this
1284 paragraph, the term "minority business" means a business which is
1285 owned by a majority of persons who are United States citizens or
1286 permanent resident aliens (as defined by the Immigration and
1287 Naturalization Service) of the United States, and who are Asian,
1288 Black, Hispanic or Native American, according to the following
1289 definitions:

1290 (i) "Asian" means persons having origins in any of
1291 the original people of the Far East, Southeast Asia, the Indian
1292 subcontinent, or the Pacific Islands.

1293 (ii) "Black" means persons having origins in any
1294 black racial group of Africa.

1295 (iii) "Hispanic" means persons of Spanish or
1296 Portuguese culture with origins in Mexico, South or Central
1297 America, or the Caribbean Islands, regardless of race.

1298 (iv) "Native American" means persons having
1299 origins in any of the original people of North America, including
1300 American Indians, Eskimos and Aleuts.

1301 (t) **Construction punch list restriction.** The
1302 architect, engineer or other representative designated by the
1303 agency or governing authority that is contracting for public
1304 construction or renovation may prepare and submit to the
1305 contractor only one (1) preliminary punch list of items that do
1306 not meet the contract requirements at the time of substantial
1307 completion and one (1) final list immediately before final
1308 completion and final payment.

1309 (u) **Purchase authorization clarification.** Nothing in
1310 this section shall be construed as authorizing any purchase not
1311 authorized by law.



1312 **SECTION 10.** This act shall take effect and be in force from
1313 and after July 1, 2003.

