

By: Senator(s) Nunnelee

To: Public Health and
Welfare; Appropriations

SENATE BILL NO. 2284

1 AN ACT TO ESTABLISH A MISSISSIPPI COUNCIL ON PURCHASING FROM
 2 PEOPLE WITH DISABILITIES; TO PROVIDE THAT A PRODUCT OR SERVICE
 3 MEETING APPLICABLE SPECIFICATIONS ESTABLISHED BY STATE AGENCIES,
 4 POLITICAL SUBDIVISIONS OR MUNICIPALITIES SHALL BE PROCURED FROM A
 5 COMMUNITY REHABILITATION PROGRAM AT A PRICE DETERMINED BY THE
 6 COUNCIL TO BE A FAIR MARKET PRICE; TO ESTABLISH A PREFERENCE FOR
 7 PRODUCTS MANUFACTURED OR PRODUCED BY THE MISSISSIPPI INDUSTRIES
 8 FOR THE BLIND; TO PROVIDE FOR THE MEMBERSHIP AND OPERATION OF THE
 9 COUNCIL; TO PROVIDE FOR ADMINISTRATIVE SUPPORT BY THE OFFICE OF
 10 PURCHASING OF THE MISSISSIPPI DEPARTMENT OF FINANCE AND
 11 ADMINISTRATION; TO PRESCRIBE FAIR MARKET PRICE AND PURCHASING
 12 PROCEDURES FOR PRODUCTS MADE BY SUCH COMMUNITY REHABILITATION
 13 PROGRAMS; TO PRESCRIBE THE DUTIES OF THE COUNCIL AND THE OFFICE OF
 14 PURCHASING; TO PROVIDE EXCEPTIONS; TO CLARIFY PROCUREMENT FOR
 15 POLITICAL SUBDIVISIONS OF THE STATE AND MUNICIPALITIES; TO
 16 AUTHORIZE A CENTRAL NONPROFIT AGENCY TO ADMINISTER THE PURCHASING
 17 PROGRAM; TO PROVIDE FOR CONSUMER INFORMATION AND COMPLAINTS; TO
 18 AUTHORIZE RULEMAKING BY THE COUNCIL AND THE OFFICE OF PURCHASING;
 19 TO PROVIDE FOR RECORD KEEPING AND REPORTS; TO PRESCRIBE A
 20 MANAGEMENT FEE TO SUPPORT THE COST OF THE PURCHASING PROGRAM; TO
 21 AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, IN CONFORMITY
 22 THERETO; AND FOR RELATED PURPOSES.

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

24 **SECTION 1.** The purpose of this act is to further the state's
 25 policy of encouraging and assisting persons with disabilities to
 26 achieve maximum personal independence by engaging in useful and
 27 productive employment activities and, in addition, to provide
 28 state agencies, departments, and institutions and political
 29 subdivisions of the state with a method for achieving conformity
 30 with requirements of nondiscrimination and affirmative action in
 31 employment matters related to persons with disabilities.

32 **SECTION 2.** As used in this act:

33 (a) "Central nonprofit agency" means an agency
 34 designated as a central nonprofit agency under contract under
 35 Section 20 of this act.

36 (b) "Community rehabilitation program" means a
 37 government or nonprofit private program operated under criteria

38 established by the council and under which persons with severe
39 disabilities produce products or perform services for
40 compensation.

41 (c) "Council" means the Mississippi Council on
42 Purchasing from People with Disabilities.

43 (d) "Disability" means a mental or physical impairment,
44 including blindness, that impedes a person who is seeking,
45 entering or maintaining gainful employment.

46 (e) "Office" means the Office of Purchasing of the
47 Mississippi Department of Finance and Administration.

48 **SECTION 3.** (1) The Mississippi Council on Purchasing from
49 People with Disabilities is hereby established, to be composed of
50 nine (9) members selected from the following categories who are
51 appointed by the Governor with the advice and consent of the
52 Senate:

53 (a) Private citizens conversant with the employment
54 needs of persons with disabilities, including blindness, and with
55 current experience in the pricing and marketing of goods and
56 services;

57 (b) Representatives of community rehabilitation
58 programs that represent different disability groups, including
59 person with blindness, and that provide or seek to provide
60 products produced or services performed by persons with
61 disabilities;

62 (c) Representatives of state agencies or political
63 subdivisions that purchase a significant amount of products
64 produced or services performed by persons with disabilities; and

65 (d) Persons with disabilities.

66 (2) The Governor shall select three (3) members from the
67 category prescribed by subsection (1)(a) and at least one (1)
68 member from the other three (3) categories prescribed by
69 subsection (1)(a). To the extent possible, the Governor shall
70 attempt to ensure that the categories prescribed by subsection

71 (1)(b), (c) and (d) are equally represented on the council.
72 Members of the council serve staggered terms of six (6) years with
73 the terms of three (3) members expiring on July 1 of each
74 odd-numbered year. Members may not receive compensation for their
75 service on the council, but they are entitled to reimbursement for
76 actual and necessary expenses incurred in performing their duties
77 as members.

78 (3) The Governor shall select one (1) of the council members
79 to serve as presiding officer.

80 (4) A person is not eligible for appointment as a member of
81 the council under subsection (1)(a) if the person or the person's
82 spouse:

83 (a) Is employed by or participates in the management of
84 a central nonprofit agency, a community rehabilitation program, or
85 another organization receiving funds from or doing business with
86 the council;

87 (b) Owns or controls, directly or indirectly, more than
88 a ten percent (10%) interest in a central nonprofit agency, a
89 community rehabilitation program, or another organization
90 receiving funds from or doing business with the council; or

91 (c) Uses or receives a substantial amount of tangible
92 goods, services or funds from the council, a central nonprofit
93 agency or a community rehabilitation program, other than
94 reimbursement authorized by law for council membership, attendance
95 or expenses.

96 (5) A person may not serve as a member of the council if the
97 person is required to register as a lobbyist because of the
98 person's activities for compensation on behalf of a profession
99 related to the operation of the council.

100 (6) Appointments to the council shall be made without regard
101 to the race, creed, sex, disability, age, religion or national
102 origin of the appointees.

103 (7) It is a ground for removal from the council if a member:

104 (a) Does not have at the time of appointment the
105 qualification required by subsection (1) of this section for
106 appointment to the council;

107 (b) Does not maintain during the service on the council
108 the qualifications required by subsection (1) of this section for
109 appointment to the council;

110 (c) Violates a prohibition established by subsection
111 (4) or (5) of this section;

112 (d) Cannot because of illness or disability discharge
113 the member's duties for a substantial part of the term for which
114 the member is appointed; or

115 (e) Is absent from more than half of the regularly
116 scheduled council meetings that the member is eligible to attend
117 during a calendar year unless the absence is excused by majority
118 vote of the council.

119 (8) The validity of an action of the council is not affected
120 by the fact that it was taken when a ground for removal of a
121 member of the council existed.

122 (9) If the executive director of the commission has
123 knowledge that a potential ground for removal exists, the
124 executive director shall notify the presiding officer of the
125 council of the potential ground. If the presiding officer is
126 notified under this section, or if the presiding officer has
127 knowledge that a potential ground for removal exists, the
128 presiding officer shall notify the Governor and the Attorney
129 General that a potential ground for removal exists. If the
130 potential ground for removal involves the presiding officer, the
131 executive director shall notify the next highest officer of the
132 council, who shall notify the Governor and the Attorney General
133 that a potential ground for removal exists.

134 (10) The council shall adopt rules establishing a formal
135 certification procedure for recognition and approval of community
136 rehabilitation programs. The procedure must include a committee

137 composed of three (3) council members appointed by the presiding
138 officer to review certification applications of community
139 rehabilitation programs and issue recommendations to the council.
140 The council may:

141 (a) Recognize a program that maintains accreditation by
142 a nationally accepted vocational rehabilitation accrediting
143 organization; and

144 (b) Approve community rehabilitation program services
145 that have been approved for purchase by a state habilitation or
146 rehabilitation agency.

147 (11) The council may delegate the administration of the
148 procedure established under subsection (10) to a central nonprofit
149 agency but may not delegate the authority to certify a community
150 rehabilitation program under this section.

151 **SECTION 4.** The presiding officer of the council or the
152 presiding officer's designee shall provide to members of the
153 council and to council employees, as often as necessary,
154 information regarding requirements for office or employment under
155 this act, including information regarding a person's
156 responsibilities under applicable laws relating to standards of
157 conduct for state officers or employees.

158 **SECTION 5.** (1) A person who is appointed to and qualifies
159 for office as a member of the council may not vote, deliberate, or
160 be counted as a member in attendance at a meeting of the council
161 until the person completes a training program that complies with
162 this section.

163 (2) The training program must provide the person with
164 information regarding:

165 (a) This act;

166 (b) The programs operated by the council;

167 (c) The role and functions of the council;

168 (d) The rules of the council with an emphasis on the
169 rules that relate to oversight and investigatory authority;

- 170 (e) The current budget for the council;
- 171 (f) The results of the most recent formal audit of the
172 council;
- 173 (g) The requirements of:
- 174 (i) The open meetings law;
- 175 (ii) The open records law; and
- 176 (iii) The administrative procedure law;
- 177 (h) Other laws relating to public officials, including,
178 conflict of interest laws; and
- 179 (i) Any applicable ethics policies adopted by the
180 council or the Mississippi Ethics Commission.

181 (3) A person appointed to the council is entitled to
182 reimbursement, as provided by law, for the travel expenses
183 incurred in attending the training program regardless of whether
184 the attendance at the program occurs before or after the personal
185 qualifies for office.

186 **SECTION 6.** (1) The Office of Purchasing of the Mississippi
187 Department of Finance and Administration may employ staff as
188 necessary to carry out the council's duties.

189 (2) The staff shall provide:

190 (a) Management oversight for the administration of this
191 act; and

192 (b) Policy guidance and administrative support to the
193 council.

194 (3) The council shall develop and implement policies that
195 clearly separate the policymaking responsibilities of the council
196 and management responsibilities of the staff of the council.

197 **SECTION 7.** (1) The council may establish an advisory
198 committee if the council considers the committee necessary. The
199 membership of the committee is determined by the council.

200 (2) The council shall specify the purpose and duties of the
201 advisory committee, which may include:

202 (a) Reviewing the effectiveness of the program
203 administered under this act; and
204 (b) Recommending procedures to create higher skilled
205 and higher paying employment opportunities.
206 (3) Members of an advisory committee serve at the will of
207 the council. The council may dissolve an advisory committee when
208 appropriate.
209 (4) The council shall make reasonable attempts to have
210 balanced representation on all advisory committees, including
211 attempting to seek representation from:
212 (a) The Mississippi Department of Mental Health;
213 (b) Other community rehabilitation programs;
214 (c) Representatives from central nonprofit agencies;
215 (d) Representatives of disability advocacy groups;
216 (e) Government purchasing agents with knowledge of this
217 act;
218 (f) Private industry representatives with knowledge of
219 this act; and
220 (g) Private citizens who have a disability and have
221 knowledge of the sale of products and services.

222 **SECTION 8.** (1) The council shall determine the fair market
223 price of all products and services manufactured or provided by
224 persons with disabilities and offered for sale to the various
225 agencies and departments of the state and its political
226 subdivisions by a community rehabilitation program. The council
227 shall ensure that the products and services offered for sale offer
228 the best value for the state or a political subdivision.

229 (2) A subcommittee composed of three (3) council members
230 appointed by the presiding officer shall review the data used to
231 determine fair market price and shall make recommendations to the
232 council concerning fair market price for the products and services
233 and offering the best value to customers.

234 (3) The council shall revise the prices periodically to
235 reflect changing market conditions.

236 (4) Before offering for sale products and services
237 manufactured or provided by persons with disabilities to state
238 agencies, political subdivisions and municipal governing
239 authorities, the council shall test the goods and services to the
240 extent necessary to ensure quality. The council may enter into a
241 contract with a private or public entity to assist with testing.

242 (5) The Office of Purchasing of the Mississippi Department
243 of Finance and Administration shall make awards under this section
244 based on proposed goods and services meeting formal state
245 specifications developed by the office or meeting commercial
246 specifications approved by the office.

247 (6) Requisitions for products and services required by state
248 agencies, political subdivisions and municipalities are processed
249 by the office according to rules established by the office.

250 **SECTION 9.** A suitable product or service that meets
251 applicable specifications established by state agencies, political
252 subdivisions or municipal governing authorities, and that is
253 available within the time specified shall procure from a community
254 rehabilitation program at the price determined by the council to
255 be the fair market price. Provided, however, that a preference
256 shall be given to the Mississippi Industries for the Blind when
257 purchases made by state agencies, political subdivisions or
258 municipal governing authorities involve any item that is
259 manufactured, processed or produced by Mississippi Industries for
260 the Blind, and the office shall by regulation establish reasonable
261 preferential policies for purchases from Mississippi Industries
262 for the Blind.

263 **SECTION 10.** (1) The records of the council and of a central
264 nonprofit agency shall, to the extent that the records pertain
265 specifically to state purchases of the products and services of
266 persons with disabilities, be made available upon request to the

267 inspection of representatives of the State Auditor. The
268 inspection of the records shall be conducted with due regard to
269 the privacy rights of persons with disabilities.

270 (2) The office is the depository for all records concerning
271 the council's operations.

272 **SECTION 11.** (1) Each state agency, political subdivision or
273 municipality that purchases products or services through a program
274 under this act shall:

275 (a) Designate an agency employee to ensure the agency
276 complies with this act; and

277 (b) Report to the office and the council the purchase
278 of products or services available from a general nonprofit agency
279 or community rehabilitation program under this act, but purchased
280 from another business that is not a central nonprofit agency or
281 community rehabilitation program under this act.

282 (2) A report under this section may be based on a sampling
283 of purchases by the agency in an audit conducted after the
284 purchases.

285 (3) The office shall post the reports required by this
286 section on its website.

287 (4) The council shall review the information contained in
288 the reports under this section. The office shall assist the
289 council in reviewing and analyzing the reports in order to improve
290 state agency compliance with this act.

291 **SECTION 12.** The council may cooperate with the Prison
292 Industries Program of the Mississippi Department of Corrections to
293 accomplish the purposes of this act and to contribute to the
294 economy of state government. The council and the department may
295 enter into contractual agreements, cooperative working
296 relationships or other arrangements necessary for effective
297 coordination and the realization of the objectives of both
298 entities.

299 **SECTION 13.** The council may adopt procedures, practices and
300 standards used for federal programs similar to the state program
301 established in this act.

302 **SECTION 14.** (1) The Office of Purchasing of the Department
303 of Finance and Administration shall provide legal and other
304 necessary support to the council in accordance with legislative
305 appropriation. The office shall assign an upper level management
306 employee to ensure that the office meets the requirements of this
307 act.

308 (2) State agencies, political subdivisions and municipal
309 governing authorities responsible for the provision of
310 rehabilitation and related services to persons with disabilities
311 shall cooperate with the council in the operation of the program.
312 The Mississippi Department of Rehabilitation Services, and other
313 state human services agencies responsible for assisting persons
314 with disabilities may, through written agreements or interagency
315 contracts, provide space, storage, logistical support,
316 consultation, expert services, communications services, or
317 financial assistance with respect to any function or
318 responsibility of the council.

319 (3) The office or a state agency may not assume the
320 marketing or fiscal responsibility for the expense of marketing
321 the products and services of persons with disabilities under the
322 program.

323 (4) The office shall include the programs administered under
324 this act in the commission's procurement policy manuals.

325 (5) After any audit or review the office conducts with
326 regard to state agency compliance with purchasing laws and
327 procedures, the office shall report to the council a state agency
328 that is not complying with this act.

329 **SECTION 15.** (1) The council shall adopt rules for the
330 implementation, extension, administration, or improvement of the
331 program authorized by this act.

332 (2) The office shall provide legal support to assist the
333 council in adopting rules under this section.

334 (3) The council shall adopt rules to:

335 (a) Address possible conflicts of interest for central
336 nonprofit agencies and community rehabilitation programs;

337 (b) Establish a process for the certification of
338 community rehabilitation programs;

339 (c) Establish a minimum percentage of disabled labor an
340 organization must employ to be considered a community
341 rehabilitation program under this act; and

342 (d) Define the terms "value-added" and "direct labor"
343 for products manufactured and services provided that are offered
344 for sale under this act.

345 **SECTION 16.** Except as otherwise provided by this section, a
346 product manufactured for sale through the office to any office,
347 department, institution, or agency of the state, political
348 subdivision or municipality under this act shall be manufactured
349 or produced according to specifications developed by the office.
350 If the office has not adopted specifications for a particular
351 product, the production shall be based on commercial or federal
352 specifications in current use by industry for the manufacture of
353 the product for sale to the state.

354 **SECTION 17.** (1) In determining the fair market value of
355 products or services offered for sale under this act, the
356 subcommittee established under Section 8 and the council shall
357 give due consideration to the following type of factors:

358 (a) To the extent applicable, the amounts being paid
359 for similar articles in similar quantities by federal agencies
360 purchasing the products or services under the authorized federal
361 program of like effect to the state program authorized by this
362 act;

363 (b) The amounts which private business would pay for
364 similar products or services in similar quantities if purchasing

365 from a reputable corporation engaged in the business of selling
366 similar products or services;

367 (c) To the extent applicable, the amount paid by the
368 state in any recent purchases of similar products or services in
369 similar quantities, making due allowance for general inflationary
370 or deflationary trends;

371 (d) The actual cost of manufacturing the product or
372 performing a service at a community rehabilitation program
373 offering employment services on or off premises to persons with
374 disabilities, with adequate weight to be given to legal and moral
375 imperatives to pay workers with disabilities equitable wages; and

376 (e) The usual, customary and reasonable costs of
377 manufacturing, marketing and distribution.

378 (2) The actual cost of manufacturing a product or performing
379 a service consists of costs directly associated with a contract
380 and includes costs for labor, raw materials used in the production
381 of the product, storage and delivery. Actual costs do not include
382 a cost associated with an individual's preparation to perform the
383 work activity.

384 (3) The fair market value of a product or service,
385 determined after consideration of relevant factors of the
386 foregoing type, may not be excessive or unreasonable.

387 **SECTION 18.** (1) Exceptions from the operation of the
388 mandatory provisions of Section 16 may be made in any case where:

389 (a) Under the rules of the Office of Purchasing of the
390 Department of Finance and Administration, the product or service
391 so produced or provided does not meet the reasonable requirements
392 of the office, department, institution or agency; or

393 (b) The requisitions made cannot be reasonably complied
394 with through provision of products or services produced by persons
395 with disabilities.

396 (2) Each month, the office shall provide the council with a
397 list of all items purchased under the exception provided by

398 subsection (1) of this section. The council shall adopt the form
399 in which the list is to be provided and may require the list to
400 include the date of requisition, the type of product or service
401 requested, the reason for purchase under the exception, and any
402 other information that the council considers relevant to a
403 determination of why the product or service was not purchased in
404 accordance with Section 16.

405 (3) No office, department, institution or agency may evade
406 the intent of this section by slight variations from standards
407 adopted by the office, when the products or services produced or
408 provided by persons with disabilities, in accordance with
409 established standards, are reasonably adapted to the actual needs
410 of the office, department, institution or agency.

411 **SECTION 19.** (1) A product manufactured for sale to a
412 political subdivision of this state, or a municipality, or an
413 office or department thereof shall be manufactured or produced
414 according to specifications developed by the purchaser. A
415 political subdivision of this state or a municipality may purchase
416 products or services for its use from private businesses through
417 its authorized purchasing procedures, but may substitute
418 equivalent products or services produced by persons with
419 disabilities under the provisions of this act. Nothing in this
420 act shall be construed to require a nonprofit agency for persons
421 with disabilities to engage in competitive bidding.

422 (2) There are excluded from the mandatory application of
423 this act the political subdivisions of the state that are not
424 covered by Title V of the Federal Rehabilitation Act of 1973, as
425 amended (29 U.S. Code Sections 790 through 794). This act does
426 not prohibit a political subdivision from acting as a willing
427 buyer outside a bid system.

428 **SECTION 20.** (1) The council may select and contract with
429 one or more central nonprofit agencies through a request for
430 proposals for a period not to exceed five (5) years. Once the

431 selection process is completed, the council shall contract with a
432 central nonprofit agency to:

433 (a) Recruit and assist community rehabilitation
434 programs in developing and submitting applications for the
435 selection of suitable products and services;

436 (b) Facilitate the distribution of orders among
437 community rehabilitation programs;

438 (c) Manage and coordinate the day-to-day operation of
439 the program, including the general administration of contracts
440 with community rehabilitation programs;

441 (d) Promote increased supported employment
442 opportunities for persons with disabilities; and

443 (e) Recruit and assist qualified nonprofit
444 organizations that are managed by members of racial minorities,
445 women, or persons with disabilities and that are in the process of
446 qualifying as community rehabilitation programs.

447 (2) The services of a central nonprofit agency may include
448 marketing and marketing support services, such as:

449 (a) Assistance to community rehabilitation programs
450 regarding solicitation and negotiation of contracts;

451 (b) Direct marketing of products and services to
452 consumers;

453 (c) Research and development of products and services;

454 (d) Public relations activities to promote the program;

455 (e) Customer relations;

456 (f) Education and training;

457 (g) Accounting services related to purchase orders,
458 invoices, and payments to community rehabilitation programs; and

459 (h) Other duties designated by the council.

460 (3) Each year, the council shall review services provided by
461 a central nonprofit agency and the revenues required to accomplish
462 the program to determine whether each agency's performance
463 complies with contractual specifications. Not later than the 60th

464 day before the review, the council shall publish a request for
465 comment on the services of a central nonprofit agency that
466 participates in community rehabilitation programs.

467 (4) At least once during each five-year period, the council
468 may review and renegotiate the contract with a central nonprofit
469 agency. Not later than the 60th day before the date the council
470 adopts or renews a contract, the council shall publish notice of
471 the proposed contract.

472 (5) The maximum management fee rate charged by a central
473 nonprofit agency for its services must be computed as a percentage
474 of the selling price of the product or the contract price of a
475 service, must be included in the selling price or contract price,
476 and must be paid at the time of sale. The management fee rate
477 must be approved by the council and must be reviewed on an annual
478 basis.

479 (6) A percentage of the management fee described by
480 subsection (5) shall be paid to the council. The percentage shall
481 be set by the council in the amount necessary to reimburse the
482 State General Fund for direct and reasonable costs incurred by the
483 office, the council, and the council staff in administering the
484 council's duties under this act.

485 (7) The council may terminate a contract with a central
486 nonprofit agency if:

487 (a) The council finds substantial evidence of the
488 central nonprofit agency's noncompliance with contractual
489 obligations; and

490 (b) The council has provided at least thirty (30) days'
491 notice to the central nonprofit agency of the termination of the
492 contract.

493 (8) The council may request an audit by the State Auditor
494 of:

495 (a) The management fee set by a central nonprofit
496 agency; or

497 (b) The financial condition of a central nonprofit
498 agency.

499 (9) A person may not operate a community rehabilitation
500 program and at the same time contract with the council as a
501 central nonprofit agency.

502 **SECTION 21.** (1) The council shall prepare information of
503 consumer interest describing the activities of the council and
504 describing the council's procedures by which consumer complaints
505 are filed with and resolved by the council. The council shall
506 make the information available to the general public and
507 appropriate state agencies.

508 (2) The council shall keep an information file about each
509 complaint filed with the council. The file must include:

510 (a) The name of the person who filed the complaint;

511 (b) The date the complaint is received by the council;

512 (c) The subject matter of the complaint;

513 (d) The name of each person contacted in relation to
514 the complaint;

515 (e) A summary of the results of the review or
516 investigation of the complaint; and

517 (f) An explanation of the reason the file was closed,
518 if the council closed the file without taking action other than to
519 investigate the complaint.

520 (3) If a written complaint is filed with the council, the
521 council, at least as frequently as quarterly and until final
522 disposition of the complaint, shall notify the parties to the
523 complaint of the status of the complaint unless the notice would
524 jeopardize an undercover investigation.

525 (4) The council shall provide to the person filing the
526 complaint and to each person who is a subject of the complaint a
527 copy of the council's policies and procedures relating to
528 complaint investigation and resolution.

529 **SECTION 22.** (1) A dispute between the council and a central
530 nonprofit agency or a community rehabilitation program shall first
531 be submitted to alternative dispute resolution.

532 (2) This section does not constitute authorization to sue
533 and does not modify the remedies available under other law.

534 (3) This section does not limit the council's ability to
535 request opinions from the attorney general.

536 **SECTION 23.** (1) The council shall develop and implement
537 policies that provide the public with a reasonable opportunity to
538 appear before the council and to speak on any issue under the
539 jurisdiction of the council.

540 (2) The council shall comply with federal and state laws
541 related to program and facility accessibility. The council shall
542 also prepare and maintain a written plan that describes how a
543 person who does not speak English can be provided reasonable
544 access to the council's programs and services.

545 **SECTION 24.** (1) The council and the council's staff may
546 access financial or other information and records from a central
547 nonprofit agency or a community rehabilitation program if the
548 council determines the information and records are necessary for
549 the effective administration of this act and rules adopted under
550 this act.

551 (2) Information and records must be obtained under
552 subsection (1) in recognition of the privacy interest of persons
553 employed by central nonprofit agencies or community rehabilitation
554 programs. The information and records may not be released or made
555 public on subpoena or otherwise, except that release may be made:

556 (a) For statistical purposes, but only if a person is
557 not identified;

558 (b) With the consent of each person identified in the
559 information released; or

560 (c) Regarding a compensation package of any central
561 nonprofit agency employee or subcontractor if determined by the
562 council to be relevant to the administration of this act.

563 (3) The council shall adopt rules establishing procedures to
564 ensure that the information and records maintained by the council
565 under this act are kept confidential and protected from release to
566 unauthorized persons.

567 (4) The council or a central nonprofit agency at the
568 council's direction may inspect a community rehabilitation program
569 for compliance with certification criteria established under this
570 act.

571 **SECTION 25.** (1) On or before November 1 of each year, the
572 council shall file with the Governor and the Legislature a
573 complete and detailed written report accounting for all funds
574 received and disbursed by the council during the preceding year.

575 (2) The report submitted under this section must include:

576 (a) The number of persons with disabilities, according
577 to their type of disability, who are employed in community
578 rehabilitation programs participating in the programs established
579 by this act or who are employed by businesses or workshops that
580 receive supportive employment from community rehabilitation
581 programs;

582 (b) The amount of annual wages paid to a person
583 participating in the program;

584 (c) A summary of the sale of products offered by a
585 community rehabilitation program;

586 (d) A list of products and services offered by a
587 community rehabilitation program;

588 (e) The geographic distribution of the community
589 rehabilitation programs;

590 (f) The number of nondisabled workers who are employed
591 in community rehabilitation programs under this act; and

592 (g) The average and range of weekly earnings for
593 disabled and nondisabled workers who are employed in community
594 rehabilitation programs under this act.

595 **SECTION 26.** (1) The council shall develop and implement a
596 policy requiring the staff of the council or a central nonprofit
597 agency to research and propose appropriate technological solutions
598 to improve the council's ability to perform its functions. The
599 technological solutions must:

600 (a) Ensure that the public is able to easily find
601 information about the council on the Internet;

602 (b) Ensure that persons who want to use the council's
603 services are able to:

604 (i) Interact with the council through the
605 Internet; and

606 (ii) Access any service that can be provided
607 effectively through the Internet; and

608 (c) Be cost-effective and developed through the
609 council's planning processes.

610 (2) The council shall establish procedures for the promotion
611 of the program administered under this act.

612 **SECTION 27.** (1) As part of an audit of a state agency
613 authorized by law, the State Auditor shall:

614 (a) Conduct an audit of a state agency for compliance
615 with this act; and

616 (b) Report to the council a state agency that is not
617 complying with this act.

618 (2) If the State Auditor reports to the council that a state
619 agency is not complying with this act, the council shall assist
620 the agency in complying.

621 **SECTION 28.** Section 31-7-13, Mississippi Code of 1972, is
622 amended as follows:

623 31-7-13. All agencies and governing authorities shall
624 purchase their commodities and printing; contract for garbage

625 collection or disposal; contract for solid waste collection or
626 disposal; contract for sewage collection or disposal; contract for
627 public construction; and contract for rentals as herein provided.

628 (a) **Bidding procedure for purchases not over \$3,500.00.**

629 Purchases which do not involve an expenditure of more than Three
630 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
631 shipping charges, may be made without advertising or otherwise
632 requesting competitive bids. However, nothing contained in this
633 paragraph (a) shall be construed to prohibit any agency or
634 governing authority from establishing procedures which require
635 competitive bids on purchases of Three Thousand Five Hundred
636 Dollars (\$3,500.00) or less.

637 (b) **Bidding procedure for purchases over \$3,500.00 but**

638 **not over \$15,000.00.** Purchases which involve an expenditure of
639 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
640 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
641 freight and shipping charges may be made from the lowest and best
642 bidder without publishing or posting advertisement for bids,
643 provided at least two (2) competitive written bids have been
644 obtained. Any governing authority purchasing commodities pursuant
645 to this paragraph (b) may authorize its purchasing agent, or his
646 designee, with regard to governing authorities other than
647 counties, or its purchase clerk, or his designee, with regard to
648 counties, to accept the lowest and best competitive written bid.
649 Such authorization shall be made in writing by the governing
650 authority and shall be maintained on file in the primary office of
651 the agency and recorded in the official minutes of the governing
652 authority, as appropriate. The purchasing agent or the purchase
653 clerk, or their designee, as the case may be, and not the
654 governing authority, shall be liable for any penalties and/or
655 damages as may be imposed by law for any act or omission of the
656 purchasing agent or purchase clerk, or their designee,
657 constituting a violation of law in accepting any bid without

658 approval by the governing authority. The term "competitive
659 written bid" shall mean a bid submitted on a bid form furnished by
660 the buying agency or governing authority and signed by authorized
661 personnel representing the vendor, or a bid submitted on a
662 vendor's letterhead or identifiable bid form and signed by
663 authorized personnel representing the vendor. "Competitive" shall
664 mean that the bids are developed based upon comparable
665 identification of the needs and are developed independently and
666 without knowledge of other bids or prospective bids. Bids may be
667 submitted by facsimile, electronic mail or other generally
668 accepted method of information distribution. Bids submitted by
669 electronic transmission shall not require the signature of the
670 vendor's representative unless required by agencies or governing
671 authorities.

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

673 (i) **Publication requirement.** Purchases which
674 involve an expenditure of more than Fifteen Thousand Dollars
675 (\$15,000.00), exclusive of freight and shipping charges, may be
676 made from the lowest and best bidder after advertising for
677 competitive sealed bids once each week for two (2) consecutive
678 weeks in a regular newspaper published in the county or
679 municipality in which such agency or governing authority is
680 located. The date as published for the bid opening shall not be
681 less than seven (7) working days after the last published notice;
682 however, if the purchase involves a construction project in which
683 the estimated cost is in excess of Fifteen Thousand Dollars
684 (\$15,000.00), such bids shall not be opened in less than fifteen
685 (15) working days after the last notice is published and the
686 notice for the purchase of such construction shall be published
687 once each week for two (2) consecutive weeks. The notice of
688 intention to let contracts or purchase equipment shall state the
689 time and place at which bids shall be received, list the contracts
690 to be made or types of equipment or supplies to be purchased, and,

691 if all plans and/or specifications are not published, refer to the
692 plans and/or specifications on file. If there is no newspaper
693 published in the county or municipality, then such notice shall be
694 given by posting same at the courthouse, or for municipalities at
695 the city hall, and at two (2) other public places in the county or
696 municipality, and also by publication once each week for two (2)
697 consecutive weeks in some newspaper having a general circulation
698 in the county or municipality in the above provided manner. On
699 the same date that the notice is submitted to the newspaper for
700 publication, the agency or governing authority involved shall mail
701 written notice to, or provide electronic notification to the main
702 office of the Mississippi Contract Procurement Center that
703 contains the same information as that in the published notice.

704 (ii) **Bidding process amendment procedure.** If all
705 plans and/or specifications are published in the notification,
706 then the plans and/or specifications may not be amended. If all
707 plans and/or specifications are not published in the notification,
708 then amendments to the plans/specifications, bid opening date, bid
709 opening time and place may be made, provided that the agency or
710 governing authority maintains a list of all prospective bidders
711 who are known to have received a copy of the bid documents and all
712 such prospective bidders are sent copies of all amendments. This
713 notification of amendments may be made via mail, facsimile,
714 electronic mail or other generally accepted method of information
715 distribution. No addendum to bid specifications may be issued
716 within two (2) working days of the time established for the
717 receipt of bids unless such addendum also amends the bid opening
718 to a date not less than five (5) working days after the date of
719 the addendum.

720 (iii) **Filing requirement.** In all cases involving
721 governing authorities, before the notice shall be published or
722 posted, the plans or specifications for the construction or
723 equipment being sought shall be filed with the clerk of the board

724 of the governing authority. In addition to these requirements, a
725 bid file shall be established which shall indicate those vendors
726 to whom such solicitations and specifications were issued, and
727 such file shall also contain such information as is pertinent to
728 the bid.

729 (iv) **Specification restrictions.** Specifications
730 pertinent to such bidding shall be written so as not to exclude
731 comparable equipment of domestic manufacture. However, if valid
732 justification is presented, the Department of Finance and
733 Administration or the board of a governing authority may approve a
734 request for specific equipment necessary to perform a specific
735 job. Further, such justification, when placed on the minutes of
736 the board of a governing authority, may serve as authority for
737 that governing authority to write specifications to require a
738 specific item of equipment needed to perform a specific job. In
739 addition to these requirements, from and after July 1, 1990,
740 vendors of relocatable classrooms and the specifications for the
741 purchase of such relocatable classrooms published by local school
742 boards shall meet all pertinent regulations of the State Board of
743 Education, including prior approval of such bid by the State
744 Department of Education.

745 (v) Agencies and governing authorities may
746 establish secure procedures by which bids may be submitted via
747 electronic means.

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

749 (i) **Decision procedure.** Purchases may be made
750 from the lowest and best bidder. In determining the lowest and
751 best bid, freight and shipping charges shall be included.
752 Life-cycle costing, total cost bids, warranties, guaranteed
753 buy-back provisions and other relevant provisions may be included
754 in the best bid calculation. All best bid procedures for state
755 agencies must be in compliance with regulations established by the
756 Department of Finance and Administration. If any governing

757 authority accepts a bid other than the lowest bid actually
758 submitted, it shall place on its minutes detailed calculations and
759 narrative summary showing that the accepted bid was determined to
760 be the lowest and best bid, including the dollar amount of the
761 accepted bid and the dollar amount of the lowest bid. No agency
762 or governing authority shall accept a bid based on items not
763 included in the specifications.

764 (ii) **Decision procedure for Certified Purchasing**
765 **Offices.** In addition to the decision procedure set forth in
766 paragraph (d)(i), Certified Purchasing Offices may also use the
767 following procedure: Purchases may be made from the bidder
768 offering the best value. In determining the best value bid,
769 freight and shipping charges shall be included. Life-cycle
770 costing, total cost bids, warranties, guaranteed buy-back
771 provisions, documented previous experience, training costs and
772 other relevant provisions may be included in the best value
773 calculation. This provision shall authorize Certified Purchasing
774 Offices to utilize a Request For Proposals (RFP) process when
775 purchasing commodities. All best value procedures for state
776 agencies must be in compliance with regulations established by the
777 Department of Finance and Administration. No agency or governing
778 authority shall accept a bid based on items or criteria not
779 included in the specifications.

780 (iii) **Construction project negotiations authority.**
781 If the lowest and best bid is not more than ten percent (10%)
782 above the amount of funds allocated for a public construction or
783 renovation project, then the agency or governing authority shall
784 be permitted to negotiate with the lowest bidder in order to enter
785 into a contract for an amount not to exceed the funds allocated.

786 (e) **Lease-purchase authorization.** For the purposes of
787 this section, the term "equipment" shall mean equipment, furniture
788 and, if applicable, associated software and other applicable
789 direct costs associated with the acquisition. Any lease-purchase

790 of equipment which an agency is not required to lease-purchase
791 under the master lease-purchase program pursuant to Section
792 31-7-10 and any lease-purchase of equipment which a governing
793 authority elects to lease-purchase may be acquired by a
794 lease-purchase agreement under this paragraph (e). Lease-purchase
795 financing may also be obtained from the vendor or from a
796 third-party source after having solicited and obtained at least
797 two (2) written competitive bids, as defined in paragraph (b) of
798 this section, for such financing without advertising for such
799 bids. Solicitation for the bids for financing may occur before or
800 after acceptance of bids for the purchase of such equipment or,
801 where no such bids for purchase are required, at any time before
802 the purchase thereof. No such lease-purchase agreement shall be
803 for an annual rate of interest which is greater than the overall
804 maximum interest rate to maturity on general obligation
805 indebtedness permitted under Section 75-17-101, and the term of
806 such lease-purchase agreement shall not exceed the useful life of
807 equipment covered thereby as determined according to the upper
808 limit of the asset depreciation range (ADR) guidelines for the
809 Class Life Asset Depreciation Range System established by the
810 Internal Revenue Service pursuant to the United States Internal
811 Revenue Code and regulations thereunder as in effect on December
812 31, 1980, or comparable depreciation guidelines with respect to
813 any equipment not covered by ADR guidelines. Any lease-purchase
814 agreement entered into pursuant to this paragraph (e) may contain
815 any of the terms and conditions which a master lease-purchase
816 agreement may contain under the provisions of Section 31-7-10(5),
817 and shall contain an annual allocation dependency clause
818 substantially similar to that set forth in Section 31-7-10(8).
819 Each agency or governing authority entering into a lease-purchase
820 transaction pursuant to this paragraph (e) shall maintain with
821 respect to each such lease-purchase transaction the same
822 information as required to be maintained by the Department of

823 Finance and Administration pursuant to Section 31-7-10(13).
824 However, nothing contained in this section shall be construed to
825 permit agencies to acquire items of equipment with a total
826 acquisition cost in the aggregate of less than Ten Thousand
827 Dollars (\$10,000.00) by a single lease-purchase transaction. All
828 equipment, and the purchase thereof by any lessor, acquired by
829 lease-purchase under this paragraph and all lease-purchase
830 payments with respect thereto shall be exempt from all Mississippi
831 sales, use and ad valorem taxes. Interest paid on any
832 lease-purchase agreement under this section shall be exempt from
833 State of Mississippi income taxation.

834 (f) **Alternate bid authorization.** When necessary to
835 ensure ready availability of commodities for public works and the
836 timely completion of public projects, no more than two (2)
837 alternate bids may be accepted by a governing authority for
838 commodities. No purchases may be made through use of such
839 alternate bids procedure unless the lowest and best bidder cannot
840 deliver the commodities contained in his bid. In that event,
841 purchases of such commodities may be made from one (1) of the
842 bidders whose bid was accepted as an alternate.

843 (g) **Construction contract change authorization.** In the
844 event a determination is made by an agency or governing authority
845 after a construction contract is let that changes or modifications
846 to the original contract are necessary or would better serve the
847 purpose of the agency or the governing authority, such agency or
848 governing authority may, in its discretion, order such changes
849 pertaining to the construction that are necessary under the
850 circumstances without the necessity of further public bids;
851 provided that such change shall be made in a commercially
852 reasonable manner and shall not be made to circumvent the public
853 purchasing statutes. In addition to any other authorized person,
854 the architect or engineer hired by an agency or governing
855 authority with respect to any public construction contract shall

856 have the authority, when granted by an agency or governing
857 authority, to authorize changes or modifications to the original
858 contract without the necessity of prior approval of the agency or
859 governing authority when any such change or modification is less
860 than one percent (1%) of the total contract amount. The agency or
861 governing authority may limit the number, manner or frequency of
862 such emergency changes or modifications.

863 (h) **Petroleum purchase alternative.** In addition to
864 other methods of purchasing authorized in this chapter, when any
865 agency or governing authority shall have a need for gas, diesel
866 fuel, oils and/or other petroleum products in excess of the amount
867 set forth in paragraph (a) of this section, such agency or
868 governing authority may purchase the commodity after having
869 solicited and obtained at least two (2) competitive written bids,
870 as defined in paragraph (b) of this section. If two (2)
871 competitive written bids are not obtained, the entity shall comply
872 with the procedures set forth in paragraph (c) of this section.
873 In the event any agency or governing authority shall have
874 advertised for bids for the purchase of gas, diesel fuel, oils and
875 other petroleum products and coal and no acceptable bids can be
876 obtained, such agency or governing authority is authorized and
877 directed to enter into any negotiations necessary to secure the
878 lowest and best contract available for the purchase of such
879 commodities.

880 (i) **Road construction petroleum products price**
881 **adjustment clause authorization.** Any agency or governing
882 authority authorized to enter into contracts for the construction,
883 maintenance, surfacing or repair of highways, roads or streets,
884 may include in its bid proposal and contract documents a price
885 adjustment clause with relation to the cost to the contractor,
886 including taxes, based upon an industry-wide cost index, of
887 petroleum products including asphalt used in the performance or
888 execution of the contract or in the production or manufacture of

889 materials for use in such performance. Such industry-wide index
890 shall be established and published monthly by the Mississippi
891 Department of Transportation with a copy thereof to be mailed,
892 upon request, to the clerks of the governing authority of each
893 municipality and the clerks of each board of supervisors
894 throughout the state. The price adjustment clause shall be based
895 on the cost of such petroleum products only and shall not include
896 any additional profit or overhead as part of the adjustment. The
897 bid proposals or document contract shall contain the basis and
898 methods of adjusting unit prices for the change in the cost of
899 such petroleum products.

900 (j) **State agency emergency purchase procedure.** If the
901 governing board or the executive head, or his designee, of any
902 agency of the state shall determine that an emergency exists in
903 regard to the purchase of any commodities or repair contracts, so
904 that the delay incident to giving opportunity for competitive
905 bidding would be detrimental to the interests of the state, then
906 the provisions herein for competitive bidding shall not apply and
907 the head of such agency shall be authorized to make the purchase
908 or repair. Total purchases so made shall only be for the purpose
909 of meeting needs created by the emergency situation. In the event
910 such executive head is responsible to an agency board, at the
911 meeting next following the emergency purchase, documentation of
912 the purchase, including a description of the commodity purchased,
913 the purchase price thereof and the nature of the emergency shall
914 be presented to the board and placed on the minutes of the board
915 of such agency. The head of such agency, or his designee, shall,
916 at the earliest possible date following such emergency purchase,
917 file with the Department of Finance and Administration (i) a
918 statement explaining the conditions and circumstances of the
919 emergency, which shall include a detailed description of the
920 events leading up to the situation and the negative impact to the
921 entity if the purchase is made following the statutory

922 requirements set forth in paragraph (a), (b) or (c) of this
923 section, and (ii) a certified copy of the appropriate minutes of
924 the board of such agency, if applicable. On or before September 1
925 of each year, the State Auditor shall prepare and deliver to the
926 Senate Fees, Salaries and Administration Committee, the House Fees
927 and Salaries of Public Officers Committee and the Joint
928 Legislative Budget Committee a report containing a list of all
929 state agency emergency purchases and supporting documentation for
930 each emergency purchase.

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

932 If the governing authority, or the governing authority acting
933 through its designee, shall determine that an emergency exists in
934 regard to the purchase of any commodities or repair contracts, so
935 that the delay incident to giving opportunity for competitive
936 bidding would be detrimental to the interest of the governing
937 authority, then the provisions herein for competitive bidding
938 shall not apply and any officer or agent of such governing
939 authority having general or special authority therefor in making
940 such purchase or repair shall approve the bill presented therefor,
941 and he shall certify in writing thereon from whom such purchase
942 was made, or with whom such a repair contract was made. At the
943 board meeting next following the emergency purchase or repair
944 contract, documentation of the purchase or repair contract,
945 including a description of the commodity purchased, the price
946 thereof and the nature of the emergency shall be presented to the
947 board and shall be placed on the minutes of the board of such
948 governing authority.

949 (l) **Hospital purchase, lease-purchase and lease**
950 **authorization.**

951 (i) The commissioners or board of trustees of any
952 public hospital may contract with such lowest and best bidder for
953 the purchase or lease-purchase of any commodity under a contract

954 of purchase or lease-purchase agreement whose obligatory payment
955 terms do not exceed five (5) years.

956 (ii) In addition to the authority granted in
957 subparagraph (i) of this paragraph (1), the commissioners or board
958 of trustees is authorized to enter into contracts for the lease of
959 equipment or services, or both, which it considers necessary for
960 the proper care of patients if, in its opinion, it is not
961 financially feasible to purchase the necessary equipment or
962 services. Any such contract for the lease of equipment or
963 services executed by the commissioners or board shall not exceed a
964 maximum of five (5) years' duration and shall include a
965 cancellation clause based on unavailability of funds. If such
966 cancellation clause is exercised, there shall be no further
967 liability on the part of the lessee. Any such contract for the
968 lease of equipment or services executed on behalf of the
969 commissioners or board that complies with the provisions of this
970 subparagraph (ii) shall be excepted from the bid requirements set
971 forth in this section.

972 (m) **Exceptions from bidding requirements.** Excepted
973 from bid requirements are:

974 (i) **Purchasing agreements approved by department.**
975 Purchasing agreements, contracts and maximum price regulations
976 executed or approved by the Department of Finance and
977 Administration.

978 (ii) **Outside equipment repairs.** Repairs to
979 equipment, when such repairs are made by repair facilities in the
980 private sector; however, engines, transmissions, rear axles and/or
981 other such components shall not be included in this exemption when
982 replaced as a complete unit instead of being repaired and the need
983 for such total component replacement is known before disassembly
984 of the component; however, invoices identifying the equipment,
985 specific repairs made, parts identified by number and name,
986 supplies used in such repairs, and the number of hours of labor

987 and costs therefor shall be required for the payment for such
988 repairs.

989 (iii) **In-house equipment repairs.** Purchases of
990 parts for repairs to equipment, when such repairs are made by
991 personnel of the agency or governing authority; however, entire
992 assemblies, such as engines or transmissions, shall not be
993 included in this exemption when the entire assembly is being
994 replaced instead of being repaired.

995 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
996 of gravel or fill dirt which are to be removed and transported by
997 the purchaser.

998 (v) **Governmental equipment auctions.** Motor
999 vehicles or other equipment purchased from a federal agency or
1000 authority, another governing authority or state agency of the
1001 State of Mississippi, or any governing authority or state agency
1002 of another state at a public auction held for the purpose of
1003 disposing of such vehicles or other equipment. Any purchase by a
1004 governing authority under the exemption authorized by this
1005 subparagraph (v) shall require advance authorization spread upon
1006 the minutes of the governing authority to include the listing of
1007 the item or items authorized to be purchased and the maximum bid
1008 authorized to be paid for each item or items.

1009 (vi) **Intergovernmental sales and transfers.**
1010 Purchases, sales, transfers or trades by governing authorities or
1011 state agencies when such purchases, sales, transfers or trades are
1012 made by a private treaty agreement or through means of
1013 negotiation, from any federal agency or authority, another
1014 governing authority or state agency of the State of Mississippi,
1015 or any state agency or governing authority of another state.
1016 Nothing in this section shall permit such purchases through public
1017 auction except as provided for in subparagraph (v) of this
1018 section. It is the intent of this section to allow governmental
1019 entities to dispose of and/or purchase commodities from other

1020 governmental entities at a price that is agreed to by both
1021 parties. This shall allow for purchases and/or sales at prices
1022 which may be determined to be below the market value if the
1023 selling entity determines that the sale at below market value is
1024 in the best interest of the taxpayers of the state. Governing
1025 authorities shall place the terms of the agreement and any
1026 justification on the minutes, and state agencies shall obtain
1027 approval from the Department of Finance and Administration, prior
1028 to releasing or taking possession of the commodities.

1029 (vii) **Perishable supplies or food.** Perishable
1030 supplies or foods purchased for use in connection with hospitals,
1031 the school lunch programs, homemaking programs and for the feeding
1032 of county or municipal prisoners.

1033 (viii) **Single source items.** Noncompetitive items
1034 available from one (1) source only. In connection with the
1035 purchase of noncompetitive items only available from one (1)
1036 source, a certification of the conditions and circumstances
1037 requiring the purchase shall be filed by the agency with the
1038 Department of Finance and Administration and by the governing
1039 authority with the board of the governing authority. Upon receipt
1040 of that certification the Department of Finance and Administration
1041 or the board of the governing authority, as the case may be, may,
1042 in writing, authorize the purchase, which authority shall be noted
1043 on the minutes of the body at the next regular meeting thereafter.
1044 In those situations, a governing authority is not required to
1045 obtain the approval of the Department of Finance and
1046 Administration.

1047 (ix) **Waste disposal facility construction**
1048 **contracts.** Construction of incinerators and other facilities for
1049 disposal of solid wastes in which products either generated
1050 therein, such as steam, or recovered therefrom, such as materials
1051 for recycling, are to be sold or otherwise disposed of; however,
1052 in constructing such facilities, a governing authority or agency

1053 shall publicly issue requests for proposals, advertised for in the
1054 same manner as provided herein for seeking bids for public
1055 construction projects, concerning the design, construction,
1056 ownership, operation and/or maintenance of such facilities,
1057 wherein such requests for proposals when issued shall contain
1058 terms and conditions relating to price, financial responsibility,
1059 technology, environmental compatibility, legal responsibilities
1060 and such other matters as are determined by the governing
1061 authority or agency to be appropriate for inclusion; and after
1062 responses to the request for proposals have been duly received,
1063 the governing authority or agency may select the most qualified
1064 proposal or proposals on the basis of price, technology and other
1065 relevant factors and from such proposals, but not limited to the
1066 terms thereof, negotiate and enter contracts with one or more of
1067 the persons or firms submitting proposals.

1068 (x) **Hospital group purchase contracts.** Supplies,
1069 commodities and equipment purchased by hospitals through group
1070 purchase programs pursuant to Section 31-7-38.

1071 (xi) **Information technology products.** Purchases
1072 of information technology products made by governing authorities
1073 under the provisions of purchase schedules, or contracts executed
1074 or approved by the Mississippi Department of Information
1075 Technology Services and designated for use by governing
1076 authorities.

1077 (xii) **Energy efficiency services and equipment.**
1078 Energy efficiency services and equipment acquired by school
1079 districts, community and junior colleges, institutions of higher
1080 learning and state agencies or other applicable governmental
1081 entities on a shared-savings, lease or lease-purchase basis
1082 pursuant to Section 31-7-14.

1083 (xiii) **Municipal electrical utility system fuel.**
1084 Purchases of coal and/or natural gas by municipally-owned electric

1085 power generating systems that have the capacity to use both coal
1086 and natural gas for the generation of electric power.

1087 (xiv) **Library books and other reference materials.**

1088 Purchases by libraries or for libraries of books and periodicals;
1089 processed film, video cassette tapes, filmstrips and slides;
1090 recorded audio tapes, cassettes and diskettes; and any such items
1091 as would be used for teaching, research or other information
1092 distribution; however, equipment such as projectors, recorders,
1093 audio or video equipment, and monitor televisions are not exempt
1094 under this subparagraph.

1095 (xv) **Unmarked vehicles.** Purchases of unmarked
1096 vehicles when such purchases are made in accordance with
1097 purchasing regulations adopted by the Department of Finance and
1098 Administration pursuant to Section 31-7-9(2).

1099 (xvi) **Election ballots.** Purchases of ballots
1100 printed pursuant to Section 23-15-351.

1101 (xvii) **Multichannel interactive video systems.**
1102 From and after July 1, 1990, contracts by Mississippi Authority
1103 for Educational Television with any private educational
1104 institution or private nonprofit organization whose purposes are
1105 educational in regard to the construction, purchase, lease or
1106 lease-purchase of facilities and equipment and the employment of
1107 personnel for providing multichannel interactive video systems
1108 (ITSF) in the school districts of this state.

1109 (xviii) **Purchases of prison industry products.**
1110 From and after January 1, 1991, purchases made by state agencies
1111 or governing authorities involving any item that is manufactured,
1112 processed, grown or produced from the state's prison industries.

1113 (xix) **Undercover operations equipment.** Purchases
1114 of surveillance equipment or any other high-tech equipment to be
1115 used by law enforcement agents in undercover operations, provided
1116 that any such purchase shall be in compliance with regulations
1117 established by the Department of Finance and Administration.

1118 (xx) **Junior college books for rent.** Purchases by
1119 community or junior colleges of textbooks which are obtained for
1120 the purpose of renting such books to students as part of a book
1121 service system.

1122 (xxi) **Certain school district purchases.**
1123 Purchases of commodities made by school districts from vendors
1124 with which any levying authority of the school district, as
1125 defined in Section 37-57-1, has contracted through competitive
1126 bidding procedures for purchases of the same commodities.

1127 (xxii) **Garbage, solid waste and sewage contracts.**
1128 Contracts for garbage collection or disposal, contracts for solid
1129 waste collection or disposal and contracts for sewage collection
1130 or disposal.

1131 (xxiii) **Municipal water tank maintenance**
1132 **contracts.** Professional maintenance program contracts for the
1133 repair or maintenance of municipal water tanks, which provide
1134 professional services needed to maintain municipal water storage
1135 tanks for a fixed annual fee for a duration of two (2) or more
1136 years.

1137 (xxiv) **Purchases of Mississippi Industries for the**
1138 **Blind products.** Purchases made by state agencies or governing
1139 authorities involving any item that is manufactured, processed or
1140 produced by the Mississippi Industries for the Blind.

1141 (xxv) **Purchases of state-adopted textbooks.**
1142 Purchases of state-adopted textbooks by public school districts.

1143 (xxvi) **Certain purchases under the Mississippi**
1144 **Major Economic Impact Act.** Contracts entered into pursuant to the
1145 provisions of Section 57-75-9(2) and (3).

1146 (xxvii) **Used heavy or specialized machinery or**
1147 **equipment for installation of soil and water conservation**
1148 **practices purchased at auction.** Used heavy or specialized
1149 machinery or equipment used for the installation and
1150 implementation of soil and water conservation practices or

1151 measures purchased subject to the restrictions provided in
1152 Sections 69-27-331 through 69-27-341. Any purchase by the State
1153 Soil and Water Conservation Commission under the exemption
1154 authorized by this subparagraph shall require advance
1155 authorization spread upon the minutes of the commission to include
1156 the listing of the item or items authorized to be purchased and
1157 the maximum bid authorized to be paid for each item or items.

1158 (xxviii) **Hospital lease of equipment or services.**
1159 Leases by hospitals of equipment or services if the leases are in
1160 compliance with paragraph (1)(ii).

1161 (xxix) **Purchases made pursuant to qualified**
1162 **cooperative purchasing agreements.** Purchases made by certified
1163 purchasing offices of state agencies or governing authorities
1164 under cooperative purchasing agreements previously approved by the
1165 Office of Purchasing and Travel and established by or for any
1166 municipality, county, parish or state government or the federal
1167 government, provided that the notification to potential
1168 contractors includes a clause that sets forth the availability of
1169 the cooperative purchasing agreement to other governmental
1170 entities. Such purchases shall only be made if the use of the
1171 cooperative purchasing agreements is determined to be in the best
1172 interest of the government entity.

1173 (xxx) **School yearbooks.** Purchases of school
1174 yearbooks by state agencies or governing authorities; provided,
1175 however, that state agencies and governing authorities shall use
1176 for these purchases the RFP process as set forth in the
1177 Mississippi Procurement Manual adopted by the Office of Purchasing
1178 and Travel.

1179 (xxxi) **Design-build method or the design-build**
1180 **bridging method of contracting.** Contracts entered into the
1181 provisions of Section 31-11-3(9).

1182 (n) **Term contract authorization.** All contracts for the
1183 purchase of:

1184 (i) All contracts for the purchase of commodities,
1185 equipment and public construction (including, but not limited to,
1186 repair and maintenance), may be let for periods of not more than
1187 sixty (60) months in advance, subject to applicable statutory
1188 provisions prohibiting the letting of contracts during specified
1189 periods near the end of terms of office. Term contracts for a
1190 period exceeding twenty-four (24) months shall also be subject to
1191 ratification or cancellation by governing authority boards taking
1192 office subsequent to the governing authority board entering the
1193 contract.

1194 (ii) Bid proposals and contracts may include price
1195 adjustment clauses with relation to the cost to the contractor
1196 based upon a nationally published industry-wide or nationally
1197 published and recognized cost index. The cost index used in a
1198 price adjustment clause shall be determined by the Department of
1199 Finance and Administration for the state agencies and by the
1200 governing board for governing authorities. The bid proposal and
1201 contract documents utilizing a price adjustment clause shall
1202 contain the basis and method of adjusting unit prices for the
1203 change in the cost of such commodities, equipment and public
1204 construction.

1205 (o) **Purchase law violation prohibition and vendor**
1206 **penalty.** No contract or purchase as herein authorized shall be
1207 made for the purpose of circumventing the provisions of this
1208 section requiring competitive bids, nor shall it be lawful for any
1209 person or concern to submit individual invoices for amounts within
1210 those authorized for a contract or purchase where the actual value
1211 of the contract or commodity purchased exceeds the authorized
1212 amount and the invoices therefor are split so as to appear to be
1213 authorized as purchases for which competitive bids are not
1214 required. Submission of such invoices shall constitute a
1215 misdemeanor punishable by a fine of not less than Five Hundred
1216 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),

1217 or by imprisonment for thirty (30) days in the county jail, or
1218 both such fine and imprisonment. In addition, the claim or claims
1219 submitted shall be forfeited.

1220 (p) **Electrical utility petroleum-based equipment**
1221 **purchase procedure.** When in response to a proper advertisement
1222 therefor, no bid firm as to price is submitted to an electric
1223 utility for power transformers, distribution transformers, power
1224 breakers, reclosers or other articles containing a petroleum
1225 product, the electric utility may accept the lowest and best bid
1226 therefor although the price is not firm.

1227 (q) **Fuel management system bidding procedure.** Any
1228 governing authority or agency of the state shall, before
1229 contracting for the services and products of a fuel management or
1230 fuel access system, enter into negotiations with not fewer than
1231 two (2) sellers of fuel management or fuel access systems for
1232 competitive written bids to provide the services and products for
1233 the systems. In the event that the governing authority or agency
1234 cannot locate two (2) sellers of such systems or cannot obtain
1235 bids from two (2) sellers of such systems, it shall show proof
1236 that it made a diligent, good-faith effort to locate and negotiate
1237 with two (2) sellers of such systems. Such proof shall include,
1238 but not be limited to, publications of a request for proposals and
1239 letters soliciting negotiations and bids. For purposes of this
1240 paragraph (q), a fuel management or fuel access system is an
1241 automated system of acquiring fuel for vehicles as well as
1242 management reports detailing fuel use by vehicles and drivers, and
1243 the term "competitive written bid" shall have the meaning as
1244 defined in paragraph (b) of this section. Governing authorities
1245 and agencies shall be exempt from this process when contracting
1246 for the services and products of a fuel management or fuel access
1247 systems under the terms of a state contract established by the
1248 Office of Purchasing and Travel.

1249 (r) **Solid waste contract proposal procedure.** Before
1250 entering into any contract for garbage collection or disposal,
1251 contract for solid waste collection or disposal or contract for
1252 sewage collection or disposal, which involves an expenditure of
1253 more than Fifty Thousand Dollars (\$50,000.00), a governing
1254 authority or agency shall issue publicly a request for proposals
1255 concerning the specifications for such services which shall be
1256 advertised for in the same manner as provided in this section for
1257 seeking bids for purchases which involve an expenditure of more
1258 than the amount provided in paragraph (c) of this section. Any
1259 request for proposals when issued shall contain terms and
1260 conditions relating to price, financial responsibility,
1261 technology, legal responsibilities and other relevant factors as
1262 are determined by the governing authority or agency to be
1263 appropriate for inclusion; all factors determined relevant by the
1264 governing authority or agency or required by this paragraph (r)
1265 shall be duly included in the advertisement to elicit proposals.
1266 After responses to the request for proposals have been duly
1267 received, the governing authority or agency shall select the most
1268 qualified proposal or proposals on the basis of price, technology
1269 and other relevant factors and from such proposals, but not
1270 limited to the terms thereof, negotiate and enter contracts with
1271 one or more of the persons or firms submitting proposals. If the
1272 governing authority or agency deems none of the proposals to be
1273 qualified or otherwise acceptable, the request for proposals
1274 process may be reinitiated. Notwithstanding any other provisions
1275 of this paragraph, where a county with at least thirty-five
1276 thousand (35,000) nor more than forty thousand (40,000)
1277 population, according to the 1990 federal decennial census, owns
1278 or operates a solid waste landfill, the governing authorities of
1279 any other county or municipality may contract with the governing
1280 authorities of the county owning or operating the landfill,
1281 pursuant to a resolution duly adopted and spread upon the minutes

1282 of each governing authority involved, for garbage or solid waste
1283 collection or disposal services through contract negotiations.

1284 (s) **Minority set-aside authorization.** Notwithstanding
1285 any provision of this section to the contrary, any agency or
1286 governing authority, by order placed on its minutes, may, in its
1287 discretion, set aside not more than twenty percent (20%) of its
1288 anticipated annual expenditures for the purchase of commodities
1289 from minority businesses; however, all such set-aside purchases
1290 shall comply with all purchasing regulations promulgated by the
1291 Department of Finance and Administration and shall be subject to
1292 bid requirements under this section. Set-aside purchases for
1293 which competitive bids are required shall be made from the lowest
1294 and best minority business bidder. For the purposes of this
1295 paragraph, the term "minority business" means a business which is
1296 owned by a majority of persons who are United States citizens or
1297 permanent resident aliens (as defined by the Immigration and
1298 Naturalization Service) of the United States, and who are Asian,
1299 Black, Hispanic or Native American, according to the following
1300 definitions:

1301 (i) "Asian" means persons having origins in any of
1302 the original people of the Far East, Southeast Asia, the Indian
1303 subcontinent, or the Pacific Islands.

1304 (ii) "Black" means persons having origins in any
1305 black racial group of Africa.

1306 (iii) "Hispanic" means persons of Spanish or
1307 Portuguese culture with origins in Mexico, South or Central
1308 America, or the Caribbean Islands, regardless of race.

1309 (iv) "Native American" means persons having
1310 origins in any of the original people of North America, including
1311 American Indians, Eskimos and Aleuts.

1312 (t) **Construction punch list restriction.** The
1313 architect, engineer or other representative designated by the
1314 agency or governing authority that is contracting for public

1315 construction or renovation may prepare and submit to the
1316 contractor only one (1) preliminary punch list of items that do
1317 not meet the contract requirements at the time of substantial
1318 completion and one (1) final list immediately before final
1319 completion and final payment.

1320 (u) **Purchase authorization clarification.** Nothing in
1321 this section shall be construed as authorizing any purchase not
1322 authorized by law.

1323 (v) **Procurement from People with Disabilities.** A
1324 suitable product or service that meets applicable specifications
1325 established by a state agency, political subdivision or
1326 municipality and that is available within the time specified,
1327 shall be procured from a community rehabilitation program at the
1328 price determined by the Mississippi Council on Purchasing from
1329 People with Disabilities to be the fair market price, according to
1330 the provisions of Senate Bill No. _____, 2005 Regular Session.
1331 Preference shall be given to products manufactured or produced by
1332 the Mississippi Industries for the Blind as provided in Section 9
1333 of said act.

1334 **SECTION 29.** This act shall take effect and be in force from
1335 and after July 1, 2005; provided however, that Sections 1 through
1336 27 of this act, which establish and empower a Mississippi Council
1337 on Purchasing from People with Disabilities, shall stand repealed
1338 on July 1, 2009.