

By: Senator(s) Ferris

To: Education

SENATE BILL NO. 2188
(As Passed the Senate)

1 AN ACT TO AMEND SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO
2 EXEMPT PURCHASES OF STATE-ADOPTED TEXTBOOKS BY SCHOOL DISTRICTS
3 FROM PUBLIC BID REQUIREMENTS; AND FOR RELATED PURPOSES.

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

5 SECTION 1. Section 31-7-13, Mississippi Code of 1972, is
6 amended as follows:

7 31-7-13. All agencies and governing authorities shall
8 purchase their commodities and printing; contract for fire
9 insurance, automobile insurance, casualty insurance (other than
10 workers' compensation) and liability insurance; contract for
11 garbage collection or disposal; contract for solid waste
12 collection or disposal; contract for sewage collection or
13 disposal; and contract for public construction as herein provided.

14 (a) Purchases which do not involve an expenditure of
15 more than One Thousand Five Hundred Dollars (\$1,500.00), exclusive
16 of freight or shipping charges, may be made without advertising or
17 otherwise requesting competitive bids. Provided, however, that
18 nothing contained in this paragraph (a) shall be construed to
19 prohibit any agency or governing authority from establishing
20 procedures which require competitive bids on purchases of One
21 Thousand Five Hundred Dollars (\$1,500.00) or less.

22 (b) Purchases which involve an expenditure of more than
23 One Thousand Five Hundred Dollars (\$1,500.00) but not more than
24 Ten Thousand Dollars (\$10,000.00), exclusive of freight and
25 shipping charges may be made from the lowest and best bidder
26 without publishing or posting advertisement for bids, provided at
27 least two (2) competitive written bids have been obtained. Any

28 governing authority purchasing commodities pursuant to this
29 paragraph (b) may authorize its purchasing agent, or his designee,
30 with regard to governing authorities other than counties, or its
31 purchase clerk, or his designee, with regard to counties, to
32 accept the lowest and best competitive written bid. Such
33 authorization shall be made in writing by the governing authority
34 and shall be maintained on file in the primary office of the
35 agency and recorded in the official minutes of the governing
36 authority, as appropriate. The purchasing agent or the purchase
37 clerk, or their designee, as the case may be, and not the
38 governing authority, shall be liable for any penalties and/or
39 damages as may be imposed by law for any act or omission of the
40 purchasing agent or purchase clerk, or their designee,
41 constituting a violation of law in accepting any bid without
42 approval by the governing authority. The term "competitive
43 written bid" shall mean a bid submitted on a bid form furnished by
44 the buying agency or governing authority and signed by authorized
45 personnel representing the vendor, or a bid submitted on a
46 vendor's letterhead or identifiable bid form and signed by
47 authorized personnel representing the vendor.

48 (c) Purchases which involve an expenditure of more than
49 Ten Thousand Dollars (\$10,000.00), exclusive of freight and
50 shipping charges may be made from the lowest and best bidder after
51 advertising for competitive sealed bids once each week for two (2)
52 consecutive weeks in a regular newspaper published in the county
53 or municipality in which such agency or governing authority is
54 located. The date as published for the bid opening shall not be
55 less than seven (7) working days after the last published notice;
56 however, if the purchase involves a construction project in which
57 the estimated cost is in excess of Fifteen Thousand Dollars
58 (\$15,000.00), such bids shall not be opened in less than fifteen
59 (15) working days after the last notice is published and the
60 notice for the purchase of such construction shall be published
61 once each week for two (2) consecutive weeks. The notice of
62 intention to let contracts or purchase equipment shall state the
63 time and place at which bids shall be received, list the contracts
64 to be made or types of equipment or supplies to be purchased, and,
65 if all plans and/or specifications are not published, refer to the

66 plans and/or specifications on file. In all cases involving
67 governing authorities, before the notice shall be published or
68 posted, the plans or specifications for the construction or
69 equipment being sought shall be filed with the clerk of the board
70 of the governing authority, and there remain. If there is no
71 newspaper published in the county or municipality, then such
72 notice shall be given by posting same at the courthouse, or for
73 municipalities at the city hall, and at two (2) other public
74 places in the county or municipality, and also by publication once
75 each week for two (2) consecutive weeks in some newspaper having a
76 general circulation in the county or municipality in the above
77 provided manner. On the same date that the notice is submitted to
78 the newspaper for publication, the agency or governing authority
79 involved shall mail written notice to the main office of the
80 Mississippi Contract Procurement Center that contains the same
81 information as that in the published notice. In addition to these
82 requirements, agencies shall maintain a vendor file and vendors of
83 the equipment or commodities being sought may be mailed
84 solicitations and specifications, and a bid file shall be
85 established which shall indicate those vendors to whom such
86 solicitations and specifications were mailed, and such file shall
87 also contain such information as is pertinent to the bid.
88 Specifications pertinent to such bidding shall be written so as
89 not to exclude comparable equipment of domestic manufacture.
90 Provided, however, that should valid justification be presented,
91 the Department of Finance and Administration or the board of a
92 governing authority may approve a request for specific equipment
93 necessary to perform a specific job. Provided further, that a
94 registered professional engineer or architect may write
95 specifications for a governing authority to require a specific
96 item of equipment available only from limited sources or vendors
97 when such specifications conform with the rules and regulations
98 promulgated by an appropriate federal agency regulating such
99 matters under the federal procurement laws. Further, such

100 justification, when placed on the minutes of the board of a
101 governing authority, may serve as authority for that governing
102 authority to write specifications to require a specific item of
103 equipment needed to perform a specific job. In addition to these
104 requirements, from and after July 1, 1990, vendors of relocatable
105 classrooms and the specifications for the purchase of such
106 relocatable classrooms published by local school boards shall meet
107 all pertinent regulations of the State Board of Education,
108 including prior approval of such bid by the State Department of
109 Education. Nothing in this section shall prohibit any agency or
110 governing authority from writing specifications to include
111 life-cycle costing, total cost bids, extended warranties or
112 guaranteed buy-back provisions, provided that such bid
113 requirements shall be in compliance with regulations established
114 by the Department of Audit.

115 (d) (i) Purchases may be made from the lowest and best
116 bidder. In determining the lowest and best bid, freight and
117 shipping charges shall be included. If any governing authority
118 accepts a bid other than the lowest bid actually submitted, it
119 shall place on its minutes detailed calculations and narrative
120 summary showing that the accepted bid was determined to be the
121 lowest and best bid, including the dollar amount of the accepted
122 bid and the dollar amount of the lowest bid. No agency or
123 governing authority shall accept a bid based on items not included
124 in the specifications.

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

131 (iii) Whenever bids are solicited for a public
132 construction or renovation project and only one (1) bid is
133 received, the agency or the governing authority may accept such

134 bid if the bid is opened, it is within the funds allocated for the
135 project, it is responsive to the solicitation and the contractor
136 is capable of performing the contract in accordance with the
137 solicitation.

138 (iv) No addendum to bid specifications for such
139 projects may be issued by the agency or governing authority within
140 twelve (12) hours of the time established by the agency or
141 governing authority for the receipt of bids.

142 (e) Any lease-purchase of equipment which an agency is
143 not required to lease-purchase under the master lease-purchase
144 program pursuant to Section 31-7-10 and any lease-purchase of
145 equipment which a governing authority elects to lease-purchase may
146 be acquired by a lease-purchase agreement under this paragraph
147 (e). Lease-purchase financing may also be obtained from the
148 vendor or from a third-party source after having solicited and
149 obtained at least two (2) written competitive bids, as defined in
150 paragraph (b) of this section, for such financing without
151 advertising for such bids. Solicitation for the bids for
152 financing may occur before or after acceptance of bids for the
153 purchase of such equipment or, where no such bids for purchase are
154 required, at any time before the purchase thereof. No such
155 lease-purchase agreement shall be for an annual rate of interest
156 which is greater than the overall maximum interest rate to
157 maturity on general obligation indebtedness permitted under
158 Section 75-17-101, and the term of such lease-purchase agreement
159 shall not exceed the useful life of property covered thereby as
160 determined according to the upper limit of the asset depreciation
161 range (ADR) guidelines for the Class Life Asset Depreciation Range
162 System established by the Internal Revenue Service pursuant to the
163 United States Internal Revenue Code and regulations thereunder as
164 in effect on December 31, 1980, or comparable depreciation
165 guidelines with respect to any equipment not covered by ADR
166 guidelines. Any lease-purchase agreement entered into pursuant to
167 this paragraph (e) may contain any of the terms and conditions

168 which a master lease-purchase agreement may contain under the
169 provisions of Section 31-7-10(5), and shall contain an annual
170 allocation dependency clause substantially similar to that set
171 forth in Section 31-7-10(8). Each agency or governing authority
172 entering into a lease-purchase transaction pursuant to this
173 paragraph (e) shall maintain with respect to each such
174 lease-purchase transaction the same information as required to be
175 maintained by the Department of Finance and Administration
176 pursuant to Section 31-7-10(13). However, nothing contained in
177 this section shall be construed to permit agencies to acquire
178 items of equipment with a total acquisition cost in the aggregate
179 of less than Ten Thousand Dollars (\$10,000.00) by a single
180 lease-purchase transaction. All equipment, and the purchase
181 thereof by any lessor, acquired by lease-purchase under this
182 paragraph and all lease-purchase payments with respect thereto
183 shall be exempt from all Mississippi sales, use and ad valorem
184 taxes. Interest paid on any lease-purchase agreement under this
185 section shall be exempt from State of Mississippi income taxation.

186 (f) When necessary to ensure ready availability of
187 commodities for public works and the timely completion of public
188 projects, no more than two (2) alternate bids may be accepted by a
189 governing authority for commodities. No purchases may be made
190 through use of such alternate bids procedure unless the lowest and
191 best bidder, for reasons beyond his control, cannot deliver the
192 commodities contained in his bid. In that event, purchases of
193 such commodities may be made from one (1) of the bidders whose bid
194 was accepted as an alternate.

195 (g) In the event a determination is made by an agency
196 or governing authority after a construction contract is let that
197 changes or modifications to the original contract are necessary or
198 would better serve the purpose of the agency or the governing
199 authority, such agency or governing authority may, in its
200 discretion, order such changes pertaining to the construction that
201 are necessary under the circumstances without the necessity of

202 further public bids; provided that such change shall be made in a
203 commercially reasonable manner and shall not be made to circumvent
204 the public purchasing statutes. In addition to any other
205 authorized person, the architect or engineer hired by an agency or
206 governing authority with respect to any public construction
207 contract shall have the authority, when granted by an agency or
208 governing authority, to authorize changes or modifications to the
209 original contract without the necessity of prior approval of the
210 agency or governing authority when any such change or modification
211 is less than one percent (1%) of the total contract amount. The
212 agency or governing authority may limit the number, manner or
213 frequency of such emergency changes or modifications.

214 (h) In the event any agency or governing authority
215 shall have advertised for bids for the purchase of gas, diesel
216 fuel, oils and other petroleum products and coal and no acceptable
217 bids can be obtained, such agency or governing authority is
218 authorized and directed to enter into any negotiations necessary
219 to secure the lowest and best contract available for the purchase
220 of such commodities.

221 (i) Any agency or governing authority authorized to
222 enter into contracts for the construction, maintenance, surfacing
223 or repair of highways, roads or streets, may include in its bid
224 proposal and contract documents a price adjustment clause with
225 relation to the cost to the contractor, including taxes, based
226 upon an industry-wide cost index, of petroleum products including
227 asphalt used in the performance or execution of the contract or in
228 the production or manufacture of materials for use in such
229 performance. Such industry-wide index shall be established and
230 published monthly by the State Department of Transportation with a
231 copy thereof to be mailed, upon request, to the clerks of the
232 governing authority of each municipality and the clerks of each
233 board of supervisors throughout the state. The price adjustment
234 clause shall be based on the cost of such petroleum products only
235 and shall not include any additional profit or overhead as part of

236 the adjustment. The bid proposals or document contract shall
237 contain the basis and methods of adjusting unit prices for the
238 change in the cost of such petroleum products.

239 (j) If the executive head of any agency of the state
240 shall determine that an emergency exists in regard to the purchase
241 of any commodities or repair contracts, so that the delay incident
242 to giving opportunity for competitive bidding would be detrimental
243 to the interests of the state, then the provisions herein for
244 competitive bidding shall not apply and the head of such agency
245 shall be authorized to make the purchase or repair. Total
246 purchases so made shall only be for the purpose of meeting needs
247 created by the emergency situation. In the event such executive
248 head is responsible to an agency board, at the meeting next
249 following the emergency purchase, documentation of the purchase,
250 including a description of the commodity purchased, the purchase
251 price thereof and the nature of the emergency shall be presented
252 to the board and placed on the minutes of the board of such
253 agency. The head of such agency shall, at the earliest possible
254 date following such emergency purchase, file with the Department
255 of Finance and Administration (i) a statement under oath
256 certifying the conditions and circumstances of the emergency, and
257 (ii) a certified copy of the appropriate minutes of the board of
258 such agency, if applicable.

259 (k) If the governing authority, or the governing
260 authority acting through its designee, shall determine that an
261 emergency exists in regard to the purchase of any commodities or
262 repair contracts, so that the delay incident to giving opportunity
263 for competitive bidding would be detrimental to the interest of
264 the governing authority, then the provisions herein for
265 competitive bidding shall not apply and any officer or agent of
266 such governing authority having general or special authority
267 therefor in making such purchase or repair shall approve the bill
268 presented therefor, and he shall certify in writing thereon from
269 whom such purchase was made, or with whom such a repair contract

270 was made. At the board meeting next following the emergency
271 purchase or repair contract, documentation of the purchase or
272 repair contract, including a description of the commodity
273 purchased, the price thereof and the nature of the emergency shall
274 be presented to the board and shall be placed on the minutes of
275 the board of such governing authority.

276 (l) The commissioners or board of trustees of any
277 hospital owned or owned and operated separately or jointly by one
278 or more counties, cities, towns, supervisors districts or election
279 districts, or combinations thereof, may contract with such lowest
280 and best bidder for the purchase or lease of any commodity under a
281 contract of purchase or lease-purchase agreement whose obligatory
282 terms do not exceed five (5) years. In addition to the authority
283 granted herein, the commissioners or board of trustees are
284 authorized to enter into contracts for the lease of equipment or
285 services, or both, which it considers necessary for the proper
286 care of patients if, in its opinion, it is not financially
287 feasible to purchase the necessary equipment or services. Any
288 such contract for the lease of equipment or services executed by
289 the commissioners or board shall not exceed a maximum of five (5)
290 years' duration and shall include a cancellation clause based on
291 unavailability of funds. If such cancellation clause is
292 exercised, there shall be no further liability on the part of the
293 lessee.

294 (m) Excepted from bid requirements are:

295 (i) Purchasing agreements, contracts and maximum
296 price regulations executed or approved by the Department of
297 Finance and Administration.

298 (ii) Repairs to equipment, when such repairs are
299 made by repair facilities in the private sector; however, engines,
300 transmissions, rear axles and/or other such components shall not
301 be included in this exemption when replaced as a complete unit
302 instead of being repaired and the need for such total component
303 replacement is known before disassembly of the component;

304 provided, however, that invoices identifying the equipment,
305 specific repairs made, parts identified by number and name,
306 supplies used in such repairs, and the number of hours of labor
307 and costs therefor shall be required for the payment for such
308 repairs.

309 (iii) Purchases of parts for repairs to equipment,
310 when such repairs are made by personnel of the agency or governing
311 authority; however, entire assemblies, such as engines or
312 transmissions, shall not be included in this exemption when the
313 entire assembly is being replaced instead of being repaired.

314 (iv) Raw unprocessed deposits of gravel or fill
315 dirt which are to be removed and transported by the purchaser.

316 (v) Motor vehicles or other equipment purchased
317 from a federal or state agency or a governing authority at a
318 public auction held for the purpose of disposing of such vehicles
319 or other equipment. Any purchase by a governing authority under
320 the exemption authorized by this paragraph (v) shall require
321 advance authorization spread upon the minutes of the governing
322 authority to include the listing of the item or items authorized
323 to be purchased and the maximum bid authorized to be paid for each
324 item or items.

325 (vi) Purchases, sales, transfers or trades by
326 governing authorities or state agencies when such purchases,
327 sales, transfers or trades are made by a private treaty agreement
328 or through means of negotiation, from any federal agency or
329 authority, another governing authority or state agency of the
330 State of Mississippi, or any state agency of another state.
331 Nothing in this section shall permit such purchases through public
332 auction except as provided for in paragraph (v) of this section.
333 It is the intent of this section to allow governmental entities to
334 dispose of and/or purchase commodities from other governmental
335 entities at a price that is agreed to by both parties. This shall
336 allow for purchases and/or sales at prices which may be determined
337 to be below the market value if the selling entity determines that

338 the sale at below market value is in the best interest of the
339 taxpayers of the state. Governing authorities shall place the
340 terms of the agreement and any justification on the minutes, and
341 state agencies shall obtain approval from the Department of
342 Finance and Administration, prior to releasing or taking
343 possession of the commodities.

344 (vii) Perishable supplies or foods purchased for
345 use in connection with hospitals, the school lunch programs,
346 homemaking programs and for the feeding of county or municipal
347 prisoners.

348 (viii) Noncompetitive items available from one (1)
349 source only.

350 (ix) Construction of incinerators and other
351 facilities for disposal of solid wastes in which products either
352 generated therein, such as steam, or recovered therefrom, such as
353 materials for recycling, are to be sold or otherwise disposed of;
354 provided, however, in constructing such facilities a governing
355 authority or agency shall publicly issue requests for proposals,
356 advertised for in the same manner as provided herein for seeking
357 bids for public construction projects, concerning the design,
358 construction, ownership, operation and/or maintenance of such
359 facilities, wherein such requests for proposals when issued shall
360 contain terms and conditions relating to price, financial
361 responsibility, technology, environmental compatibility, legal
362 responsibilities and such other matters as are determined by the
363 governing authority or agency to be appropriate for inclusion; and
364 after responses to the request for proposals have been duly
365 received, the governing authority or agency may select the most
366 qualified proposal or proposals on the basis of price, technology
367 and other relevant factors and from such proposals, but not
368 limited to the terms thereof, negotiate and enter contracts with
369 one or more of the persons or firms submitting proposals.

370 (x) Supplies, commodities and equipment purchased
371 by hospitals through group purchase programs pursuant to Section

372 31-7-38.

373 (xi) Purchases of data processing equipment made
374 by governing authorities under the provisions of purchase
375 agreements, contracts or maximum price regulations executed or
376 approved by the Mississippi Department of Information Technology
377 Services.

378 (xii) Energy efficiency services and equipment
379 acquired by school districts, junior colleges, institutions of
380 higher learning and state agencies or other applicable
381 governmental entities on a shared-savings, lease or lease-purchase
382 basis pursuant to Section 31-7-14.

383 (xiii) Purchases of contracts for fire insurance,
384 automobile insurance, casualty insurance, health insurance and
385 liability insurance by governing authorities or agencies.

386 (xiv) Purchases of coal and/or natural gas by
387 municipally-owned electric power generating systems that have the
388 capacity to use both coal and natural gas for the generation of
389 electric power.

390 (xv) Purchases by libraries or for libraries of
391 books and periodicals; processed film, video cassette tapes,
392 filmstrips and slides; recorded audio tapes, cassettes and
393 diskettes; and any such items as would be used for teaching,
394 research or other information distribution; however, equipment
395 such as projectors, recorders, audio or video equipment, and
396 monitor televisions are not exempt under this paragraph.

397 (xvi) Purchases of unmarked vehicles when such
398 purchases are made in accordance with purchasing regulations
399 adopted by the Department of Finance and Administration pursuant
400 to Section 31-7-9(2).

401 (xvii) Sales, transfers or trades of any personal
402 property between governing authorities within a county or any such
403 transaction involving governing authorities of two (2) or more
404 counties.

405 (xviii) Purchases of ballots printed pursuant to

406 Section 23-15-351.

407 (xix) From and after July 1, 1990, contracts by
408 Mississippi Authority for Educational Television with any private
409 educational institution or private nonprofit organization whose
410 purposes are educational in regard to the construction, purchase,
411 lease or lease-purchase of facilities and equipment and the
412 employment of personnel for providing multichannel interactive
413 video systems (ITSF) in the school districts of this state.

414 (xx) From and after January 1, 1991, purchases
415 made by state agencies involving any item that is manufactured,
416 processed, grown or produced from the state's prison industries.

417 (xxii) Purchases of surveillance equipment or any
418 other high-tech equipment to be used by narcotics agents in
419 undercover operations, provided that any such purchase shall be in
420 compliance with regulations established by the Department of
421 Finance and Administration.

422 (xxiii) Purchases by community or junior colleges
423 of textbooks which are obtained for the purpose of renting such
424 books to students as part of a book service system.

425 (xxiiii) Purchases of commodities made by school
426 districts from vendors with which any levying authority of the
427 school district, as defined in Section 37-57-1, has contracted
428 through competitive bidding procedures for purchases of the same
429 commodities.

430 (xxv) Emergency purchases made by the Public
431 Employees' Retirement System pursuant to Section 25-11-15(7).

432 (xxvi) Repealed.

433 (xxvii) Contracts for garbage collection or
434 disposal, contracts for solid waste collection or disposal and
435 contracts for sewage collection or disposal.

436 (xxviii) Professional maintenance program contracts
437 for the repair or maintenance of municipal water tanks, which
438 provide professional services needed to maintain municipal water
439 storage tanks for a fixed annual fee for a duration of two (2) or

440 more years.

441 (xxviii) Purchases made by state agencies
442 involving any item that is manufactured, processed or produced by
443 the Mississippi Industries for the Blind.

444 (xxix) Purchases of state-adopted textbooks by
445 public school districts.

446 In connection with the purchase of noncompetitive items only
447 available from one (1) source, a certification of the conditions
448 and circumstances requiring the purchase shall be filed by the
449 agency with the Department of Finance and Administration and by
450 the governing authority with the board of the governing authority.

451 Upon receipt of such certification the Department of Finance and
452 Administration or the board of the governing authority, as the
453 case may be, may, in writing, authorize the purchase, which
454 authority shall be noted on the minutes of the body at the next
455 regular meeting thereafter. In such situations, a governing
456 authority is not required to obtain the approval of the Department
457 of Finance and Administration.

458 (n) (i) All contracts for the purchase of:

459 (A) Commodities, equipment and public
460 construction (including, but not limited to, repair and
461 maintenance), and

462 (B) Water lines, sewer lines, storm drains,
463 drainage ditches, asphalt milling, traffic striping, asphalt
464 overlay of streets, and curb and gutter (not to exceed One Hundred
465 Fifty Thousand Dollars (\$150,000.00) per project listed in this
466 item B) may be let for periods of not more than twenty-four (24)
467 months in advance, subject to applicable statutory provisions
468 prohibiting the letting of contracts during specified periods near
469 the end of terms of office.

470 (ii) All purchases made by governing authorities,
471 including purchases made pursuant to the provisions of
472 subparagraph (i) of this paragraph (n), may be made upon one (1)
473 purchase order issued per month to each individual vendor prior to

474 delivery of such commodities provided that each individual
475 delivery, load or shipment purchased is properly requisitioned and
476 is properly received and receipted by signed ticket, receipt or
477 invoice, indicating thereon the point of delivery, and provided
478 that, with respect to counties, such commodities are properly
479 accounted for by the receiving clerk or an assistant receiving
480 clerk as provided by Section 31-7-109. Such purchase order shall
481 be invalid on the first calendar day of the month immediately
482 following the month in which it was issued. Purchases in such
483 month immediately following may be made only if a purchase order
484 is issued for such month. Each monthly purchase order shall be
485 retained in the records of the governing authority. Agencies may
486 make purchases as authorized under this subparagraph (ii) in
487 accordance with such regulations, policies and procedures as are
488 promulgated by the Department of Finance and Administration.

489 (o) No contract or purchase as herein authorized shall
490 be made for the purpose of circumventing the provisions of this
491 section requiring competitive bids, nor shall it be lawful for any
492 person or concern to submit individual invoices for amounts within
493 those authorized for a contract or purchase where the actual value
494 of the contract or commodity purchased exceeds the authorized
495 amount and the invoices therefor are split so as to appear to be
496 authorized as purchases for which competitive bids are not
497 required. Submission of such invoices shall constitute a
498 misdemeanor punishable by a fine of not less than Five Hundred
499 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
500 or by imprisonment for thirty (30) days in the county jail, or
501 both such fine and imprisonment. In addition, the claim or claims
502 submitted shall be forfeited.

503 (p) When in response to a proper advertisement
504 therefor, no bid firm as to price is submitted to an electric
505 utility for power transformers, distribution transformers, power
506 breakers, reclosers or other articles containing a petroleum
507 product, the electric utility may accept the lowest and best bid

508 therefor although the price is not firm.

509 (q) The prohibitions and restrictions set forth in
510 Sections 19-11-27, 21-35-27 and 31-7-49 shall not apply to a
511 contract, lease or lease-purchase agreement entered pursuant to
512 the requirements of this chapter.

513 (r) For the purposes of this section, the term
514 "purchase" shall mean the total amount of money encumbered by a
515 single purchase order.

516 (s) Any governing authority or agency of the state
517 shall, before contracting for the services and products of a fuel
518 management or fuel access system, enter into negotiations with not
519 fewer than two (2) sellers of fuel management or fuel access
520 systems for competitive written bids to provide the services and
521 products for the systems. In the event that the governing
522 authority or agency cannot locate two (2) sellers of such systems
523 or cannot obtain bids from two (2) sellers of such systems, it
524 shall show proof that it made a diligent, good-faith effort to
525 locate and negotiate with two (2) sellers of such systems. Such
526 proof shall include, but not be limited to, publications of a
527 request for proposals and letters soliciting negotiations and
528 bids. For purposes of this paragraph (s), a fuel management or
529 fuel access system is an automated system of acquiring fuel for
530 vehicles as well as management reports detailing fuel use by
531 vehicles and drivers, and the term "competitive written bid" shall
532 have the meaning as defined in paragraph (b) of this section.

533 (t) Before entering into any contract for garbage
534 collection or disposal, contract for solid waste collection or
535 disposal or contract for sewage collection or disposal, which
536 involves an expenditure of more than Fifty Thousand Dollars
537 (\$50,000.00), a governing authority or agency shall issue publicly
538 a request for proposals concerning the specifications for such
539 services which shall be advertised for in the same manner as
540 provided in this section for seeking bids for purchases which
541 involve an expenditure of more than Ten Thousand Dollars

542 (\$10,000.00). Any request for proposals when issued shall contain
543 terms and conditions relating to price, financial responsibility,
544 technology, legal responsibilities and other relevant factors as
545 are determined by the governing authority or agency to be
546 appropriate for inclusion; all factors determined relevant by the
547 governing authority or agency or required by this paragraph (t)
548 shall be duly included in the advertisement to elicit proposals.
549 After responses to the request for proposals have been duly
550 received, the governing authority or agency shall select the most
551 qualified proposal or proposals on the basis of price, technology
552 and other relevant factors and from such proposals, but not
553 limited to the terms thereof, negotiate and enter contracts with
554 one or more of the persons or firms submitting proposals. If the
555 governing authority or agency deems none of the proposals to be
556 qualified or otherwise acceptable, the request for proposals
557 process may be reinitiated.

558 (u) Notwithstanding any provision of this section to
559 the contrary, any agency or governing authority, by order placed
560 on its minutes, may, in its discretion, set aside not more than
561 twenty percent (20%) of its anticipated annual expenditures for
562 the purchase of commodities from minority businesses; however, all
563 such set-aside purchases shall comply with all purchasing
564 regulations promulgated by the Department of Finance and
565 Administration and shall be subject to bid requirements under this
566 section. Set-aside purchases for which competitive bids are
567 required shall be made from the lowest and best minority business
568 bidder. For the purposes of this paragraph, the term "minority
569 business" means a business which is owned by a majority of persons
570 who are United States citizens or permanent resident aliens (as
571 defined by the Immigration and Naturalization Service) of the
572 United States, and who are Asian, Black, Hispanic or Native
573 American, according to the following definitions:

574 (i) "Asian" means persons having origins in any of
575 the original people of the Far East, Southeast Asia, the Indian

576 subcontinent, or the Pacific Islands.

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

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

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

585 (v) The architect, engineer or other
586 representative designated by the agency or governing authority
587 that is contracting for public construction or renovation may
588 prepare and submit to the contractor only one (1) preliminary
589 punch list of items that do not meet the contract requirements at
590 the time of substantial completion and one (1) final list
591 immediately before final completion and final payment.

592 (w) Nothing in this section shall be construed as
593 authorizing any purchase not authorized by law.

594 SECTION 2. This act shall take effect and be in force from
595 and after July 1, 1999.