

By: Senator(s) Harden

To: Finance

SENATE BILL NO. 2816

1 AN ACT TO ESTABLISH AN OFFICE OF MINORITY PARTICIPATION
2 COMPLIANCE WITHIN THE STATE DEPARTMENT OF AUDIT; TO PRESCRIBE ITS
3 DUTIES RELATIVE TO OVERSIGHT OF MINORITY PURCHASES BY STATE
4 AGENCIES AND LOCAL GOVERNING AUTHORITIES; TO AMEND SECTION
5 31-7-13, MISSISSIPPI CODE OF 1972, TO REQUIRE MINORITY SET-ASIDE
6 PURCHASES; AND FOR RELATED PURPOSES.

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

8 SECTION 1. (1) There is hereby established within the
9 Department of Audit an Office of Minority Participation
10 Compliance. The office shall be under the administrative
11 supervision of the State Auditor and shall be comprised of an
12 officer and necessary staff support provided by the Department of
13 Audit.

14 (2) The duties and responsibilities of the Office of
15 Minority Participation Compliance shall be:

16 (a) General oversight and monitoring of all minority
17 participation by state agencies, state institutions of higher
18 learning and local governing authorities pursuant to Section
19 31-7-13, Mississippi Code of 1972;

20 (b) Assistance in requesting federal funding and
21 developing consortial arrangements among state agencies, local
22 governing authorities and other institutions regarding minority
23 participation and compliance;

24 (c) Development and promulgation of a standard form on
25 minority participation compliance to be used by all state
26 agencies, institutions and local governing authorities;

27 (d) Preparation of annual written comprehensive status
28 reports on all facets of minority participation compliance efforts
29 in state and local government;

30 (e) General oversight and monitoring of all employment
31 practices in state government to ensure compliance with federal
32 employment anti-discrimination laws; and

33 (f) Thorough review of current activities in other
34 states to evaluate present efforts and identification of
35 opportunities for enhancement.

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

38 31-7-13. All agencies and governing authorities shall
39 purchase their commodities and printing; contract for fire
40 insurance, automobile insurance, casualty insurance (other than
41 workers' compensation) and liability insurance; contract for
42 garbage collection or disposal; contract for solid waste
43 collection or disposal; contract for sewage collection or
44 disposal; and contract for public construction as herein provided.

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

53 (b) Purchases which involve an expenditure of more than
54 One Thousand Five Hundred Dollars (\$1,500.00) but not more than
55 Ten Thousand Dollars (\$10,000.00), exclusive of freight and
56 shipping charges may be made from the lowest and best bidder
57 without publishing or posting advertisement for bids, provided at
58 least two (2) competitive written bids have been obtained. Any
59 governing authority purchasing commodities pursuant to this
60 paragraph (b) may authorize its purchasing agent, or his designee,
61 with regard to governing authorities other than counties, or its
62 purchase clerk, or his designee, with regard to counties, to
63 accept the lowest and best competitive written bid. Such

64 authorization shall be made in writing by the governing authority
65 and shall be maintained on file in the primary office of the
66 agency and recorded in the official minutes of the governing
67 authority, as appropriate. The purchasing agent or the purchase
68 clerk, or their designee, as the case may be, and not the
69 governing authority, shall be liable for any penalties and/or
70 damages as may be imposed by law for any act or omission of the
71 purchasing agent or purchase clerk, or their designee,
72 constituting a violation of law in accepting any bid without
73 approval by the governing authority. The term "competitive
74 written bid" shall mean a bid submitted on a bid form furnished by
75 the buying agency or governing authority and signed by authorized
76 personnel representing the vendor, or a bid submitted on a
77 vendor's letterhead or identifiable bid form and signed by
78 authorized personnel representing the vendor.

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

98 governing authorities, before the notice shall be published or
99 posted, the plans or specifications for the construction or
100 equipment being sought shall be filed with the clerk of the board
101 of the governing authority, and there remain. If there is no
102 newspaper published in the county or municipality, then such
103 notice shall be given by posting same at the courthouse, or for
104 municipalities at the city hall, and at two (2) other public
105 places in the county or municipality, and also by publication once
106 each week for two (2) consecutive weeks in some newspaper having a
107 general circulation in the county or municipality in the above
108 provided manner. On the same date that the notice is submitted to
109 the newspaper for publication, the agency or governing authority
110 involved shall mail written notice to the main office of the
111 Mississippi Contract Procurement Center that contains the same
112 information as that in the published notice. In addition to these
113 requirements, agencies shall maintain a vendor file and vendors of
114 the equipment or commodities being sought may be mailed
115 solicitations and specifications, and a bid file shall be
116 established which shall indicate those vendors to whom such
117 solicitations and specifications were mailed, and such file shall
118 also contain such information as is pertinent to the bid.
119 Specifications pertinent to such bidding shall be written so as
120 not to exclude comparable equipment of domestic manufacture.
121 Provided, however, that should valid justification be presented,
122 the Department of Finance and Administration or the board of a
123 governing authority may approve a request for specific equipment
124 necessary to perform a specific job. Provided further, that a
125 registered professional engineer or architect may write
126 specifications for a governing authority to require a specific
127 item of equipment available only from limited sources or vendors
128 when such specifications conform with the rules and regulations
129 promulgated by an appropriate federal agency regulating such
130 matters under the federal procurement laws. Further, such
131 justification, when placed on the minutes of the board of a

132 governing authority, may serve as authority for that governing
133 authority to write specifications to require a specific item of
134 equipment needed to perform a specific job. In addition to these
135 requirements, from and after July 1, 1990, vendors of relocatable
136 classrooms and the specifications for the purchase of such
137 relocatable classrooms published by local school boards shall meet
138 all pertinent regulations of the State Board of Education,
139 including prior approval of such bid by the State Department of
140 Education. Nothing in this section shall prohibit any agency or
141 governing authority from writing specifications to include
142 life-cycle costing, total cost bids, extended warranties or
143 guaranteed buy-back provisions, provided that such bid
144 requirements shall be in compliance with regulations established
145 by the Department of Audit.

146 (d) (i) Purchases may be made from the lowest and best
147 bidder. In determining the lowest and best bid, freight and
148 shipping charges shall be included. If any governing authority
149 accepts a bid other than the lowest bid actually submitted, it
150 shall place on its minutes detailed calculations and narrative
151 summary showing that the accepted bid was determined to be the
152 lowest and best bid, including the dollar amount of the accepted
153 bid and the dollar amount of the lowest bid. No agency or
154 governing authority shall accept a bid based on items not included
155 in the specifications.

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

162 (iii) Whenever bids are solicited for a public
163 construction or renovation project and only one (1) bid is
164 received, the agency or the governing authority may accept such
165 bid if the bid is opened, it is within the funds allocated for the

166 project, it is responsive to the solicitation and the contractor
167 is capable of performing the contract in accordance with the
168 solicitation.

169 (iv) No addendum to bid specifications for such
170 projects may be issued by the agency or governing authority within
171 twelve (12) hours of the time established by the agency or
172 governing authority for the receipt of bids.

173 (e) Any lease-purchase of equipment which an agency is
174 not required to lease-purchase under the master lease-purchase
175 program pursuant to Section 31-7-10 and any lease-purchase of
176 equipment which a governing authority elects to lease-purchase may
177 be acquired by a lease-purchase agreement under this paragraph
178 (e). Lease-purchase financing may also be obtained from the
179 vendor or from a third-party source after having solicited and
180 obtained at least two (2) written competitive bids, as defined in
181 paragraph (b) of this section, for such financing without
182 advertising for such bids. Solicitation for the bids for
183 financing may occur before or after acceptance of bids for the
184 purchase of such equipment or, where no such bids for purchase are
185 required, at any time before the purchase thereof. No such
186 lease-purchase agreement shall be for an annual rate of interest
187 which is greater than the overall maximum interest rate to
188 maturity on general obligation indebtedness permitted under
189 Section 75-17-101, and the term of such lease-purchase agreement
190 shall not exceed the useful life of property covered thereby as
191 determined according to the upper limit of the asset depreciation
192 range (ADR) guidelines for the Class Life Asset Depreciation Range
193 System established by the Internal Revenue Service pursuant to the
194 United States Internal Revenue Code and regulations thereunder as
195 in effect on December 31, 1980, or comparable depreciation
196 guidelines with respect to any equipment not covered by ADR
197 guidelines. Any lease-purchase agreement entered into pursuant to
198 this paragraph (e) may contain any of the terms and conditions
199 which a master lease-purchase agreement may contain under the

200 provisions of Section 31-7-10(5), and shall contain an annual
201 allocation dependency clause substantially similar to that set
202 forth in Section 31-7-10(8). Each agency or governing authority
203 entering into a lease-purchase transaction pursuant to this
204 paragraph (e) shall maintain with respect to each such
205 lease-purchase transaction the same information as required to be
206 maintained by the Department of Finance and Administration
207 pursuant to Section 31-7-10(13). However, nothing contained in
208 this section shall be construed to permit agencies to acquire
209 items of equipment with a total acquisition cost in the aggregate
210 of less than Ten Thousand Dollars (\$10,000.00) by a single
211 lease-purchase transaction. All equipment, and the purchase
212 thereof by any lessor, acquired by lease-purchase under this
213 paragraph and all lease-purchase payments with respect thereto
214 shall be exempt from all Mississippi sales, use and ad valorem
215 taxes. Interest paid on any lease-purchase agreement under this
216 section shall be exempt from State of Mississippi income taxation.

217 (f) When necessary to ensure ready availability of
218 commodities for public works and the timely completion of public
219 projects, no more than two (2) alternate bids may be accepted by a
220 governing authority for commodities. No purchases may be made
221 through use of such alternate bids procedure unless the lowest and
222 best bidder, for reasons beyond his control, cannot deliver the
223 commodities contained in his bid. In that event, purchases of
224 such commodities may be made from one (1) of the bidders whose bid
225 was accepted as an alternate.

226 (g) In the event a determination is made by an agency
227 or governing authority after a construction contract is let that
228 changes or modifications to the original contract are necessary or
229 would better serve the purpose of the agency or the governing
230 authority, such agency or governing authority may, in its
231 discretion, order such changes pertaining to the construction that
232 are necessary under the circumstances without the necessity of
233 further public bids; provided that such change shall be made in a

234 commercially reasonable manner and shall not be made to circumvent
235 the public purchasing statutes. In addition to any other
236 authorized person, the architect or engineer hired by an agency or
237 governing authority with respect to any public construction
238 contract shall have the authority, when granted by an agency or
239 governing authority, to authorize changes or modifications to the
240 original contract without the necessity of prior approval of the
241 agency or governing authority when any such change or modification
242 is less than one percent (1%) of the total contract amount. The
243 agency or governing authority may limit the number, manner or
244 frequency of such emergency changes or modifications.

245 (h) In the event any agency or governing authority
246 shall have advertised for bids for the purchase of gas, diesel
247 fuel, oils and other petroleum products and coal and no acceptable
248 bids can be obtained, such agency or governing authority is
249 authorized and directed to enter into any negotiations necessary
250 to secure the lowest and best contract available for the purchase
251 of such commodities.

252 (i) Any agency or governing authority authorized to
253 enter into contracts for the construction, maintenance, surfacing
254 or repair of highways, roads or streets, may include in its bid
255 proposal and contract documents a price adjustment clause with
256 relation to the cost to the contractor, including taxes, based
257 upon an industry-wide cost index, of petroleum products including
258 asphalt used in the performance or execution of the contract or in
259 the production or manufacture of materials for use in such
260 performance. Such industry-wide index shall be established and
261 published monthly by the State Department of Transportation with a
262 copy thereof to be mailed, upon request, to the clerks of the
263 governing authority of each municipality and the clerks of each
264 board of supervisors throughout the state. The price adjustment
265 clause shall be based on the cost of such petroleum products only
266 and shall not include any additional profit or overhead as part of
267 the adjustment. The bid proposals or document contract shall

268 contain the basis and methods of adjusting unit prices for the
269 change in the cost of such petroleum products.

270 (j) If the executive head of any agency of the state
271 shall determine that an emergency exists in regard to the purchase
272 of any commodities or repair contracts, so that the delay incident
273 to giving opportunity for competitive bidding would be detrimental
274 to the interests of the state, then the provisions herein for
275 competitive bidding shall not apply and the head of such agency
276 shall be authorized to make the purchase or repair. Total
277 purchases so made shall only be for the purpose of meeting needs
278 created by the emergency situation. In the event such executive
279 head is responsible to an agency board, at the meeting next
280 following the emergency purchase, documentation of the purchase,
281 including a description of the commodity purchased, the purchase
282 price thereof and the nature of the emergency shall be presented
283 to the board and placed on the minutes of the board of such
284 agency. The head of such agency shall, at the earliest possible
285 date following such emergency purchase, file with the Department
286 of Finance and Administration (i) a statement under oath
287 certifying the conditions and circumstances of the emergency, and
288 (ii) a certified copy of the appropriate minutes of the board of
289 such agency, if applicable.

290 (k) If the governing authority, or the governing
291 authority acting through its designee, shall determine that an
292 emergency exists in regard to the purchase of any commodities or
293 repair contracts, so that the delay incident to giving opportunity
294 for competitive bidding would be detrimental to the interest of
295 the governing authority, then the provisions herein for
296 competitive bidding shall not apply and any officer or agent of
297 such governing authority having general or special authority
298 therefor in making such purchase or repair shall approve the bill
299 presented therefor, and he shall certify in writing thereon from
300 whom such purchase was made, or with whom such a repair contract
301 was made. At the board meeting next following the emergency

302 purchase or repair contract, documentation of the purchase or
303 repair contract, including a description of the commodity
304 purchased, the price thereof and the nature of the emergency shall
305 be presented to the board and shall be placed on the minutes of
306 the board of such governing authority.

307 (1) The commissioners or board of trustees of any
308 hospital owned or owned and operated separately or jointly by one
309 or more counties, cities, towns, supervisors districts or election
310 districts, or combinations thereof, may contract with such lowest
311 and best bidder for the purchase or lease of any commodity under a
312 contract of purchase or lease-purchase agreement whose obligatory
313 terms do not exceed five (5) years. In addition to the authority
314 granted herein, the commissioners or board of trustees are
315 authorized to enter into contracts for the lease of equipment or
316 services, or both, which it considers necessary for the proper
317 care of patients if, in its opinion, it is not financially
318 feasible to purchase the necessary equipment or services. Any
319 such contract for the lease of equipment or services executed by
320 the commissioners or board shall not exceed a maximum of five (5)
321 years' duration and shall include a cancellation clause based on
322 unavailability of funds. If such cancellation clause is
323 exercised, there shall be no further liability on the part of the
324 lessee.

325 (m) Excepted from bid requirements are:

326 (i) Purchasing agreements, contracts and maximum
327 price regulations executed or approved by the Department of
328 Finance and Administration.

329 (ii) Repairs to equipment, when such repairs are
330 made by repair facilities in the private sector; however, engines,
331 transmissions, rear axles and/or other such components shall not
332 be included in this exemption when replaced as a complete unit
333 instead of being repaired and the need for such total component
334 replacement is known before disassembly of the component;
335 provided, however, that invoices identifying the equipment,

336 specific repairs made, parts identified by number and name,
337 supplies used in such repairs, and the number of hours of labor
338 and costs therefor shall be required for the payment for such
339 repairs.

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

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

347 (v) Motor vehicles or other equipment purchased
348 from a federal or state agency or a governing authority at a
349 public auction held for the purpose of disposing of such vehicles
350 or other equipment. Any purchase by a governing authority under
351 the exemption authorized by this paragraph (v) shall require
352 advance authorization spread upon the minutes of the governing
353 authority to include the listing of the item or items authorized
354 to be purchased and the maximum bid authorized to be paid for each
355 item or items.

356 (vi) Purchases, sales, transfers or trades by
357 governing authorities or state agencies when such purchases,
358 sales, transfers or trades are made by a private treaty agreement
359 or through means of negotiation, from any federal agency or
360 authority, another governing authority or state agency of the
361 State of Mississippi, or any state agency of another state.
362 Nothing in this section shall permit such purchases through public
363 auction except as provided for in paragraph (v) of this section.
364 It is the intent of this section to allow governmental entities to
365 dispose of and/or purchase commodities from other governmental
366 entities at a price that is agreed to by both parties. This shall
367 allow for purchases and/or sales at prices which may be determined
368 to be below the market value if the selling entity determines that
369 the sale at below market value is in the best interest of the

370 taxpayers of the state. Governing authorities shall place the
371 terms of the agreement and any justification on the minutes, and
372 state agencies shall obtain approval from the Department of
373 Finance and Administration, prior to releasing or taking
374 possession of the commodities.

375 (vii) Perishable supplies or foods purchased for
376 use in connection with hospitals, the school lunch programs,
377 homemaking programs and for the feeding of county or municipal
378 prisoners.

379 (viii) Noncompetitive items available from one (1)
380 source only.

381 (ix) Construction of incinerators and other
382 facilities for disposal of solid wastes in which products either
383 generated therein, such as steam, or recovered therefrom, such as
384 materials for recycling, are to be sold or otherwise disposed of;
385 provided, however, in constructing such facilities a governing
386 authority or agency shall publicly issue requests for proposals,
387 advertised for in the same manner as provided herein for seeking
388 bids for public construction projects, concerning the design,
389 construction, ownership, operation and/or maintenance of such
390 facilities, wherein such requests for proposals when issued shall
391 contain terms and conditions relating to price, financial
392 responsibility, technology, environmental compatibility, legal
393 responsibilities and such other matters as are determined by the
394 governing authority or agency to be appropriate for inclusion; and
395 after responses to the request for proposals have been duly
396 received, the governing authority or agency may select the most
397 qualified proposal or proposals on the basis of price, technology
398 and other relevant factors and from such proposals, but not
399 limited to the terms thereof, negotiate and enter contracts with
400 one or more of the persons or firms submitting proposals.

401 (x) Supplies, commodities and equipment purchased
402 by hospitals through group purchase programs pursuant to Section
403 31-7-38.

404 (xi) Purchases of data processing equipment made
405 by governing authorities under the provisions of purchase
406 agreements, contracts or maximum price regulations executed or
407 approved by the Mississippi Department of Information Technology
408 Services.

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

414 (xiii) Purchases of contracts for fire insurance,
415 automobile insurance, casualty insurance, health insurance and
416 liability insurance by governing authorities or agencies.

417 (xiv) Purchases of coal and/or natural gas by
418 municipally-owned electric power generating systems that have the
419 capacity to use both coal and natural gas for the generation of
420 electric power.

421 (xv) Purchases by libraries or for libraries of
422 books and periodicals; processed film, video cassette tapes,
423 filmstrips and slides; recorded audio tapes, cassettes and
424 diskettes; and any such items as would be used for teaching,
425 research or other information distribution; however, equipment
426 such as projectors, recorders, audio or video equipment, and
427 monitor televisions are not exempt under this paragraph.

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

432 (xvii) Sales, transfers or trades of any personal
433 property between governing authorities within a county or any such
434 transaction involving governing authorities of two (2) or more
435 counties.

436 (xviii) Purchases of ballots printed pursuant to
437 Section 23-15-351.

438 (xix) From and after July 1, 1990, contracts by
439 Mississippi Authority for Educational Television with any private
440 educational institution or private nonprofit organization whose
441 purposes are educational in regard to the construction, purchase,
442 lease or lease-purchase of facilities and equipment and the
443 employment of personnel for providing multichannel interactive
444 video systems (ITSF) in the school districts of this state.

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

448 (xxi) Purchases of surveillance equipment or any
449 other high-tech equipment to be used by narcotics agents in
450 undercover operations, provided that any such purchase shall be in
451 compliance with regulations established by the Department of
452 Finance and Administration.

453 (xxii) Purchases by community or junior colleges
454 of textbooks which are obtained for the purpose of renting such
455 books to students as part of a book service system.

456 (xxiii) Purchases of commodities made by school
457 districts from vendors with which any levying authority of the
458 school district, as defined in Section 37-57-1, has contracted
459 through competitive bidding procedures for purchases of the same
460 commodities.

461 (xxiv) Emergency purchases made by the Public
462 Employees' Retirement System pursuant to Section 25-11-15(7).

463 (xxv) Repealed.

464 (xxvi) Contracts for garbage collection or
465 disposal, contracts for solid waste collection or disposal and
466 contracts for sewage collection or disposal.

467 (xxvii) Professional maintenance program contracts
468 for the repair or maintenance of municipal water tanks, which
469 provide professional services needed to maintain municipal water
470 storage tanks for a fixed annual fee for a duration of two (2) or
471 more years.

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

475 In connection with the purchase of noncompetitive items only
476 available from one (1) source, a certification of the conditions
477 and circumstances requiring the purchase shall be filed by the
478 agency with the Department of Finance and Administration and by
479 the governing authority with the board of the governing authority.

480 Upon receipt of such certification the Department of Finance and
481 Administration or the board of the governing authority, as the
482 case may be, may, in writing, authorize the purchase, which
483 authority shall be noted on the minutes of the body at the next
484 regular meeting thereafter. In such situations, a governing
485 authority is not required to obtain the approval of the Department
486 of Finance and Administration.

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

488 (A) Commodities, equipment and public
489 construction (including, but not limited to, repair and
490 maintenance), and

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

499 (ii) All purchases made by governing authorities,
500 including purchases made pursuant to the provisions of
501 subparagraph (i) of this paragraph (n), may be made upon one (1)
502 purchase order issued per month to each individual vendor prior to
503 delivery of such commodities provided that each individual
504 delivery, load or shipment purchased is properly requisitioned and
505 is properly received and receipted by signed ticket, receipt or

506 invoice, indicating thereon the point of delivery, and provided
507 that, with respect to counties, such commodities are properly
508 accounted for by the receiving clerk or an assistant receiving
509 clerk as provided by Section 31-7-109. Such purchase order shall
510 be invalid on the first calendar day of the month immediately
511 following the month in which it was issued. Purchases in such
512 month immediately following may be made only if a purchase order
513 is issued for such month. Each monthly purchase order shall be
514 retained in the records of the governing authority. Agencies may
515 make purchases as authorized under this subparagraph (ii) in
516 accordance with such regulations, policies and procedures as are
517 promulgated by the Department of Finance and Administration.

518 (o) No contract or purchase as herein authorized shall
519 be made for the purpose of circumventing the provisions of this
520 section requiring competitive bids, nor shall it be lawful for any
521 person or concern to submit individual invoices for amounts within
522 those authorized for a contract or purchase where the actual value
523 of the contract or commodity purchased exceeds the authorized
524 amount and the invoices therefor are split so as to appear to be
525 authorized as purchases for which competitive bids are not
526 required. Submission of such invoices shall constitute a
527 misdemeanor punishable by a fine of not less than Five Hundred
528 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
529 or by imprisonment for thirty (30) days in the county jail, or
530 both such fine and imprisonment. In addition, the claim or claims
531 submitted shall be forfeited.

532 (p) When in response to a proper advertisement
533 therefor, no bid firm as to price is submitted to an electric
534 utility for power transformers, distribution transformers, power
535 breakers, reclosers or other articles containing a petroleum
536 product, the electric utility may accept the lowest and best bid
537 therefor although the price is not firm.

538 (q) The prohibitions and restrictions set forth in
539 Sections 19-11-27, 21-35-27 and 31-7-49 shall not apply to a

540 contract, lease or lease-purchase agreement entered pursuant to
541 the requirements of this chapter.

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

545 (s) Any governing authority or agency of the state
546 shall, before contracting for the services and products of a fuel
547 management or fuel access system, enter into negotiations with not
548 fewer than two (2) sellers of fuel management or fuel access
549 systems for competitive written bids to provide the services and
550 products for the systems. In the event that the governing
551 authority or agency cannot locate two (2) sellers of such systems
552 or cannot obtain bids from two (2) sellers of such systems, it
553 shall show proof that it made a diligent, good-faith effort to
554 locate and negotiate with two (2) sellers of such systems. Such
555 proof shall include, but not be limited to, publications of a
556 request for proposals and letters soliciting negotiations and
557 bids. For purposes of this paragraph (s), a fuel management or
558 fuel access system is an automated system of acquiring fuel for
559 vehicles as well as management reports detailing fuel use by
560 vehicles and drivers, and the term "competitive written bid" shall
561 have the meaning as defined in paragraph (b) of this section.

562 (t) Before entering into any contract for garbage
563 collection or disposal, contract for solid waste collection or
564 disposal or contract for sewage collection or disposal, which
565 involves an expenditure of more than Fifty Thousand Dollars
566 (\$50,000.00), a governing authority or agency shall issue publicly
567 a request for proposals concerning the specifications for such
568 services which shall be advertised for in the same manner as
569 provided in this section for seeking bids for purchases which
570 involve an expenditure of more than Ten Thousand Dollars
571 (\$10,000.00). Any request for proposals when issued shall contain
572 terms and conditions relating to price, financial responsibility,
573 technology, legal responsibilities and other relevant factors as

574 are determined by the governing authority or agency to be
575 appropriate for inclusion; all factors determined relevant by the
576 governing authority or agency or required by this paragraph (t)
577 shall be duly included in the advertisement to elicit proposals.
578 After responses to the request for proposals have been duly
579 received, the governing authority or agency shall select the most
580 qualified proposal or proposals on the basis of price, technology
581 and other relevant factors and from such proposals, but not
582 limited to the terms thereof, negotiate and enter contracts with
583 one or more of the persons or firms submitting proposals. If the
584 governing authority or agency deems none of the proposals to be
585 qualified or otherwise acceptable, the request for proposals
586 process may be reinitiated.

587 (u) Notwithstanding any provision of this section to
588 the contrary, any agency or governing authority, by order placed
589 on its minutes, shall * * * set aside not more than twenty percent
590 (20%) of its anticipated annual expenditures for the purchase of
591 commodities from minority businesses; however, all such set-aside
592 purchases shall comply with all purchasing regulations promulgated
593 by the Department of Finance and Administration and shall be
594 subject to bid requirements under this section. Set-aside
595 purchases for which competitive bids are required shall be made
596 from the lowest and best minority business bidder. All such
597 minority set-aside purchases shall be reviewed by the Office of
598 Minority Participation Compliance established within the
599 Department of Audit. For the purposes of this paragraph, the term
600 "minority business" means a business which is owned by a majority
601 of persons who are United States citizens or permanent resident
602 aliens (as defined by the Immigration and Naturalization Service)
603 of the United States, and who are Asian, Black, Hispanic or Native
604 American, according to the following definitions:

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

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

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

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

616 (v) The architect, engineer or other
617 representative designated by the agency or governing authority
618 that is contracting for public construction or renovation may
619 prepare and submit to the contractor only one (1) preliminary
620 punch list of items that do not meet the contract requirements at
621 the time of substantial completion and one (1) final list
622 immediately before final completion and final payment.

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

625 SECTION 3. This act shall take effect and be in force from
626 and after July 1, 1999.