

By: Senator(s) Hewes

To: Education

SENATE BILL NO. 2880

1 AN ACT TO AMEND SECTION 37-7-301, MISSISSIPPI CODE OF 1972,
2 TO AUTHORIZE SCHOOL BOARDS OF ALL SCHOOL DISTRICTS TO EXPEND FUNDS
3 FOR THE PURCHASE OF REVENUE-INTERRUPTION INSURANCE; TO AMEND
4 SECTION 31-7-13, MISSISSIPPI CODE OF 1972, TO EXEMPT THE PURCHASE
5 OF REVENUE-INTERRUPTION INSURANCE BY SCHOOL DISTRICTS FROM THE
6 PUBLIC PURCHASING LAWS; AND FOR RELATED PURPOSES.

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

8 SECTION 1. Section 37-7-301, Mississippi Code of 1972, is
9 amended as follows:

10 37-7-301. The school boards of all school districts shall
11 have the following powers, authority and duties in addition to all
12 others imposed or granted by law, to wit:

13 (a) To organize and operate the schools of the district
14 and to make such division between the high school grades and
15 elementary grades as, in their judgment, will serve the best
16 interests of the school;

17 (b) To introduce public school music, art, manual
18 training and other special subjects into either the elementary or
19 high school grades, as the board shall deem proper;

20 (c) To be the custodians of real and personal school
21 property and to manage, control and care for same, both during the
22 school term and during vacation;

23 (d) To have responsibility for the erection, repairing
24 and equipping of school facilities and the making of necessary
25 school improvements;

26 (e) To suspend or to expel a pupil for misconduct in
27 the school, upon school buses, on the road to and from school,
28 during recess or upon the school playgrounds, and to delegate such
29 authority to the appropriate officials of the school district;

30 (f) To visit schools in the district, in their
31 discretion, in a body for the purpose of determining what can be
32 done for the improvement of the school in a general way;

33 (g) To support, within reasonable limits, the
34 superintendent, administrative superintendent, principal and
35 teachers where necessary for the proper discipline of the school;

36 (h) To exclude from the schools students with what
37 appears to be infectious or contagious diseases; provided,
38 however, such student may be allowed to return to school upon
39 presenting a certificate from a public health officer duly
40 licensed physician or nurse practitioner that the student is free
41 from such disease;

42 (i) To require those vaccinations specified by the
43 State Health Officer as provided in Section 41-23-37, Mississippi
44 Code of 1972;

45 (j) To see that all necessary utilities and services
46 are provided in the schools at all times when same are needed;

47 (k) To authorize the use of the school buildings and
48 grounds for the holding of public meetings and gatherings of the
49 people under such regulations as may be prescribed by said board;

50 (l) To prescribe and enforce rules and regulations not
51 inconsistent with law or with the regulations of the State Board
52 of Education for their own government and for the government of
53 the schools, and to transact their business at regular and special
54 meetings called and held in the manner provided by law;

55 (m) To maintain and operate all of the schools under
56 their control for such length of time during the year as may be
57 required;

58 (n) To enforce in the schools the courses of study and
59 the use of the textbooks prescribed by the proper authorities;

60 (o) To make orders directed to the superintendent of
61 schools or administrative superintendent for the issuance of pay
62 certificates for lawful purposes on any available funds of the
63 district and to have full control of the receipt, distribution,

64 allotment and disbursement of all funds provided for the support
65 and operation of the schools of such school district whether such
66 funds be derived from state appropriations, local ad valorem tax
67 collections, or otherwise;

68 (p) To select all school district personnel in the
69 manner provided by law, and to provide for such employee fringe
70 benefit programs, including accident reimbursement plans, as may
71 be deemed necessary and appropriate by the board;

72 (q) To provide athletic programs and other school
73 activities and to regulate the establishment and operation of such
74 programs and activities;

75 (r) To join, in their discretion, any association of
76 school boards and other public school-related organizations, and
77 to pay from local funds other than minimum foundation funds, any
78 membership dues;

79 (s) To expend local school activity funds, or other
80 available school district funds, other than minimum education
81 program funds, for the purposes prescribed under this paragraph.
82 "Activity funds" shall mean all funds received by school officials
83 in all school districts paid or collected to participate in any
84 school activity, such activity being part of the school program
85 and partially financed with public funds or supplemented by public
86 funds. The term "activity funds" shall not include any funds
87 raised and/or expended by any organization unless commingled in a
88 bank account with existing activity funds, regardless of whether
89 the funds were raised by school employees or received by school
90 employees during school hours or using school facilities, and
91 regardless of whether a school employee exercises influence over
92 the expenditure or disposition of such funds. Organizations shall
93 not be required to make any payment to any school for the use of
94 any school facility if, in the discretion of the local school
95 governing board, the organization's function shall be deemed to be
96 beneficial to the official or extracurricular programs of the
97 school. For the purposes of this provision, the term

98 "organization" shall not include any organization subject to the
99 control of the local school governing board. Activity funds may
100 only be expended for any necessary expenses or travel costs,
101 including advances, incurred by students and their chaperons in
102 attending any in-state or out-of-state school-related programs,
103 conventions or seminars and/or any commodities, equipment, travel
104 expenses, purchased services or school supplies which the local
105 school governing board, in its discretion, shall deem beneficial
106 to the official or extracurricular programs of the district,
107 including items which may subsequently become the personal
108 property of individuals, including yearbooks, athletic apparel,
109 book covers and trophies. Activity funds may be used to pay
110 travel expenses of school district personnel. The local school
111 governing board shall be authorized and empowered to promulgate
112 rules and regulations specifically designating for what purposes
113 school activity funds may be expended. The local school governing
114 board shall provide (a) that such school activity funds shall be
115 maintained and expended by the principal of the school generating
116 the funds in individual bank accounts, or (b) that such school
117 activity funds shall be maintained and expended by the
118 superintendent of schools in a central depository approved by the
119 board. The local school governing board shall provide that such
120 school activity funds be audited as part of the annual audit
121 required in Section 37-9-18. The State Auditor shall prescribe a
122 uniform system of accounting and financial reporting for all
123 school activity fund transactions;

124 (t) To contract, on a shared savings, lease or
125 lease-purchase basis, for energy efficiency services and/or
126 equipment as provided for in Section 31-7-14, not to exceed ten
127 (10) years;

128 (u) To maintain accounts and issue pay certificates on
129 school food service bank accounts;

130 (v) (i) To lease a school building from an individual,
131 partnership, nonprofit corporation or a private for-profit

132 corporation for the use of such school district, and to expend
133 funds therefor as may be available from any non-minimum program
134 sources. The school board of the school district desiring to
135 lease a school building shall declare by resolution that a need
136 exists for a school building and that the school district cannot
137 provide the necessary funds to pay the cost or its proportionate
138 share of the cost of a school building required to meet the
139 present needs. The resolution so adopted by the school board
140 shall be published once each week for three (3) consecutive weeks
141 in a newspaper having a general circulation in the school district
142 involved, with the first publication thereof to be made not less
143 than thirty (30) days prior to the date upon which the school
144 board is to act on the question of leasing a school building. If
145 no petition requesting an election is filed prior to such meeting
146 as hereinafter provided, then the school board may, by resolution
147 spread upon its minutes, proceed to lease a school building. If
148 at any time prior to said meeting a petition signed by not less
149 than twenty percent (20%) or fifteen hundred (1500), whichever is
150 less, of the qualified electors of the school district involved
151 shall be filed with the school board requesting that an election
152 be called on the question, then the school board shall, not later
153 than the next regular meeting, adopt a resolution calling an
154 election to be held within such school district upon the question
155 of authorizing the school board to lease a school building. Such
156 election shall be called and held, and notice thereof shall be
157 given, in the same manner for elections upon the questions of the
158 issuance of the bonds of school districts, and the results thereof
159 shall be certified to the school board. If at least three-fifths
160 (3/5) of the qualified electors of the school district who voted
161 in such election shall vote in favor of the leasing of a school
162 building, then the school board shall proceed to lease a school
163 building. The term of the lease contract shall not exceed twenty
164 (20) years, and the total cost of such lease shall be either the
165 amount of the lowest and best bid accepted by the school board

166 after advertisement for bids or an amount not to exceed the
167 current fair market value of the lease as determined by the
168 averaging of at least two (2) appraisals by members of the
169 American Institute of Real Estate Appraisers or the Society of
170 Real Estate Appraisers. The term "school building" as used in
171 this item (v) shall be construed to mean any building or buildings
172 used for classroom purposes in connection with the operation of
173 schools and shall include the site therefor, necessary support
174 facilities, and the equipment thereof and appurtenances thereto
175 such as heating facilities, water supply, sewage disposal,
176 landscaping, walks, drives and playgrounds. The term "lease" as
177 used in this item (v)(i) may include a lease/purchase contract;

178 (ii) If two (2) or more school districts propose
179 to enter into a lease contract jointly, then joint meetings of the
180 school boards having control may be held but no action taken shall
181 be binding on any such school district unless the question of
182 leasing a school building is approved in each participating school
183 district under the procedure hereinabove set forth in item (v)(i).
184 All of the provisions of item (v)(i) regarding the term and amount
185 of the lease contract shall apply to the school boards of school
186 districts acting jointly. Any lease contract executed by two (2)
187 or more school districts as joint lessees shall set out the amount
188 of the aggregate lease rental to be paid by each, which may be
189 agreed upon, but there shall be no right of occupancy by any
190 lessee unless the aggregate rental is paid as stipulated in the
191 lease contract. All rights of joint lessees under the lease
192 contract shall be in proportion to the amount of lease rental paid
193 by each;

194 (w) To employ all noninstructional and noncertificated
195 employees and fix the duties and compensation of such personnel
196 deemed necessary pursuant to the recommendation of the
197 superintendent of schools or the administrative superintendent;

198 (x) To employ and fix the duties and compensation of
199 such legal counsel as deemed necessary;

200 (y) Subject to rules and regulations of the State Board
201 of Education, to purchase, own and operate trucks, vans and other
202 motor vehicles, which shall bear the proper identification
203 required by law;

204 (z) To expend funds for the payment of substitute
205 teachers and to adopt reasonable regulations for the employment
206 and compensation of such substitute teachers;

207 (aa) To acquire in its own name by purchase all real
208 property which shall be necessary and desirable in connection with
209 the construction, renovation or improvement of any public school
210 building or structure. If the board shall be unable to agree with
211 the owner of any such real property in connection with any such
212 project, the board shall have the power and authority to acquire
213 any such real property by condemnation proceedings pursuant to
214 Section 11-27-1 et seq., Mississippi Code of 1972, and for such
215 purpose, the right of eminent domain is hereby conferred upon and
216 vested in said board. Provided further, that the local school
217 board is authorized to grant an easement for ingress and egress
218 over sixteenth section land or lieu land in exchange for a similar
219 easement upon adjoining land where the exchange of easements
220 affords substantial benefit to the sixteenth section land;
221 provided, however, the exchange must be based upon values as
222 determined by a competent appraiser, with any differential in
223 value to be adjusted by cash payment. Any easement rights granted
224 over sixteenth section land under such authority shall terminate
225 when the easement ceases to be used for its stated purpose. No
226 sixteenth section or lieu land which is subject to an existing
227 lease shall be burdened by any such easement except by consent of
228 the lessee or unless the school district shall acquire the
229 unexpired leasehold interest affected by the easement;

230 (bb) To charge reasonable fees related to the
231 educational programs of the district, in the manner prescribed in
232 Section 37-7-335;

233 (cc) Subject to rules and regulations of the State

234 Board of Education, to purchase relocatable classrooms for the use
235 of such school district, in the manner prescribed in Section
236 37-1-13;

237 (dd) Enter into contracts or agreements with other
238 school districts, political subdivisions or governmental entities
239 to carry out one or more of the powers or duties of the school
240 board, or to allow more efficient utilization of limited resources
241 for providing services to the public;

242 (ee) To provide for in-service training for employees
243 of the district. Until June 30, 1994, the school boards may
244 designate two (2) days of the minimum school term, as defined in
245 Section 37-19-1, for employee in-service training for
246 implementation of the new statewide testing system as developed by
247 the State Board of Education. Such designation shall be subject
248 to approval by the State Board of Education pursuant to uniform
249 rules and regulations;

250 (ff) The school boards of all school districts, as part
251 of their duties to prescribe the use of textbooks, may provide
252 that parents and legal guardians shall be responsible for the
253 textbooks and for the compensation to the school district for any
254 books which are not returned to the proper schools upon the
255 withdrawal of their dependent child. If a textbook is lost or not
256 returned by any student who drops out of the public school
257 district, the parent or legal guardian shall also compensate the
258 school district for the fair market value of the textbooks;

259 (gg) To conduct fund-raising activities on behalf of
260 the school district that the local school board, in its
261 discretion, deems appropriate or beneficial to the official or
262 extracurricular programs of the district; provided that:

263 (i) Any proceeds of the fund-raising activities
264 shall be treated as "activity funds" and shall be accounted for as
265 are other activity funds under this section; and

266 (ii) Fund-raising activities conducted or
267 authorized by the board for the sale of school pictures, the

268 rental of caps and gowns or the sale of graduation invitations for
269 which the school board receives a commission, rebate or fee shall
270 contain a disclosure statement advising that a portion of the
271 proceeds of the sales or rentals shall be contributed to the
272 student activity fund;

273 (hh) To allow individual lessons for music, art and
274 other curriculum-related activities for academic credit or
275 nonacademic credit during school hours and using school equipment
276 and facilities, subject to uniform rules and regulations adopted
277 by the school board;

278 (ii) To charge reasonable fees for participating in an
279 extracurricular activity for academic or nonacademic credit for
280 necessary and required equipment such as safety equipment, band
281 instruments and uniforms;

282 (jj) To conduct or participate in any fund-raising
283 activities on behalf of or in connection with a tax-exempt
284 charitable organization;

285 (kk) To exercise such powers as may be reasonably
286 necessary to carry out the provisions of this section; and

287 (ll) To expend funds for the services of nonprofit arts
288 organizations or other such nonprofit organizations who provide
289 performances or other services for the students of the school
290 district.

291 (mm) To expend funds for the purchases of contracts for
292 revenue-interruption insurance.

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

295 31-7-13. All agencies and governing authorities shall
296 purchase their commodities and printing; contract for fire
297 insurance, automobile insurance, casualty insurance (other than
298 workers' compensation) and liability insurance; contract for
299 garbage collection or disposal; contract for solid waste
300 collection or disposal; contract for sewage collection or
301 disposal; and contract for public construction as herein provided.

302 (a) Purchases which do not involve an expenditure of
303 more than One Thousand Five Hundred Dollars (\$1,500.00), exclusive
304 of freight or shipping charges, may be made without advertising or
305 otherwise requesting competitive bids. Provided, however, that
306 nothing contained in this paragraph (a) shall be construed to
307 prohibit any agency or governing authority from establishing
308 procedures which require competitive bids on purchases of One
309 Thousand Five Hundred Dollars (\$1,500.00) or less.

310 (b) Purchases which involve an expenditure of more than
311 One Thousand Five Hundred Dollars (\$1,500.00) but not more than
312 Ten Thousand Dollars (\$10,000.00), exclusive of freight and
313 shipping charges may be made from the lowest and best bidder
314 without publishing or posting advertisement for bids, provided at
315 least two (2) competitive written bids have been obtained. Any
316 governing authority purchasing commodities pursuant to this
317 paragraph (b) may authorize its purchasing agent, or his designee,
318 with regard to governing authorities other than counties, or its
319 purchase clerk, or his designee, with regard to counties, to
320 accept the lowest and best competitive written bid. Such
321 authorization shall be made in writing by the governing authority
322 and shall be maintained on file in the primary office of the
323 agency and recorded in the official minutes of the governing
324 authority, as appropriate. The purchasing agent or the purchase
325 clerk, or their designee, as the case may be, and not the
326 governing authority, shall be liable for any penalties and/or
327 damages as may be imposed by law for any act or omission of the
328 purchasing agent or purchase clerk, or their designee,
329 constituting a violation of law in accepting any bid without
330 approval by the governing authority. The term "competitive
331 written bid" shall mean a bid submitted on a bid form furnished by
332 the buying agency or governing authority and signed by authorized
333 personnel representing the vendor, or a bid submitted on a
334 vendor's letterhead or identifiable bid form and signed by
335 authorized personnel representing the vendor.

336 (c) Purchases which involve an expenditure of more than
337 Ten Thousand Dollars (\$10,000.00), exclusive of freight and
338 shipping charges may be made from the lowest and best bidder after
339 advertising for competitive sealed bids once each week for two (2)
340 consecutive weeks in a regular newspaper published in the county
341 or municipality in which such agency or governing authority is
342 located. The date as published for the bid opening shall not be
343 less than seven (7) working days after the last published notice;
344 however, if the purchase involves a construction project in which
345 the estimated cost is in excess of Fifteen Thousand Dollars
346 (\$15,000.00), such bids shall not be opened in less than fifteen
347 (15) working days after the last notice is published and the
348 notice for the purchase of such construction shall be published
349 once each week for two (2) consecutive weeks. The notice of
350 intention to let contracts or purchase equipment shall state the
351 time and place at which bids shall be received, list the contracts
352 to be made or types of equipment or supplies to be purchased, and,
353 if all plans and/or specifications are not published, refer to the
354 plans and/or specifications on file. In all cases involving
355 governing authorities, before the notice shall be published or
356 posted, the plans or specifications for the construction or
357 equipment being sought shall be filed with the clerk of the board
358 of the governing authority, and there remain. If there is no
359 newspaper published in the county or municipality, then such
360 notice shall be given by posting same at the courthouse, or for
361 municipalities at the city hall, and at two (2) other public
362 places in the county or municipality, and also by publication once
363 each week for two (2) consecutive weeks in some newspaper having a
364 general circulation in the county or municipality in the above
365 provided manner. On the same date that the notice is submitted to
366 the newspaper for publication, the agency or governing authority
367 involved shall mail written notice to the main office of the
368 Mississippi Contract Procurement Center that contains the same
369 information as that in the published notice. In addition to these

370 requirements, agencies shall maintain a vendor file and vendors of
371 the equipment or commodities being sought may be mailed
372 solicitations and specifications, and a bid file shall be
373 established which shall indicate those vendors to whom such
374 solicitations and specifications were mailed, and such file shall
375 also contain such information as is pertinent to the bid.
376 Specifications pertinent to such bidding shall be written so as
377 not to exclude comparable equipment of domestic manufacture.
378 Provided, however, that should valid justification be presented,
379 the Department of Finance and Administration or the board of a
380 governing authority may approve a request for specific equipment
381 necessary to perform a specific job. Provided further, that a
382 registered professional engineer or architect may write
383 specifications for a governing authority to require a specific
384 item of equipment available only from limited sources or vendors
385 when such specifications conform with the rules and regulations
386 promulgated by an appropriate federal agency regulating such
387 matters under the federal procurement laws. Further, such
388 justification, when placed on the minutes of the board of a
389 governing authority, may serve as authority for that governing
390 authority to write specifications to require a specific item of
391 equipment needed to perform a specific job. In addition to these
392 requirements, from and after July 1, 1990, vendors of relocatable
393 classrooms and the specifications for the purchase of such
394 relocatable classrooms published by local school boards shall meet
395 all pertinent regulations of the State Board of Education,
396 including prior approval of such bid by the State Department of
397 Education. Nothing in this section shall prohibit any agency or
398 governing authority from writing specifications to include
399 life-cycle costing, total cost bids, extended warranties or
400 guaranteed buy-back provisions, provided that such bid
401 requirements shall be in compliance with regulations established
402 by the Department of Audit.

403 (d) (i) Purchases may be made from the lowest and best

404 bidder. In determining the lowest and best bid, freight and
405 shipping charges shall be included. If any governing authority
406 accepts a bid other than the lowest bid actually submitted, it
407 shall place on its minutes detailed calculations and narrative
408 summary showing that the accepted bid was determined to be the
409 lowest and best bid, including the dollar amount of the accepted
410 bid and the dollar amount of the lowest bid. No agency or
411 governing authority shall accept a bid based on items not included
412 in the specifications.

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

419 (iii) Whenever bids are solicited for a public
420 construction or renovation project and only one (1) bid is
421 received, the agency or the governing authority may accept such
422 bid if the bid is opened, it is within the funds allocated for the
423 project, it is responsive to the solicitation and the contractor
424 is capable of performing the contract in accordance with the
425 solicitation.

426 (iv) No addendum to bid specifications for such
427 projects may be issued by the agency or governing authority within
428 twelve (12) hours of the time established by the agency or
429 governing authority for the receipt of bids.

430 (e) Any lease-purchase of equipment which an agency is
431 not required to lease-purchase under the master lease-purchase
432 program pursuant to Section 31-7-10 and any lease-purchase of
433 equipment which a governing authority elects to lease-purchase may
434 be acquired by a lease-purchase agreement under this paragraph
435 (e). Lease-purchase financing may also be obtained from the
436 vendor or from a third-party source after having solicited and
437 obtained at least two (2) written competitive bids, as defined in

438 paragraph (b) of this section, for such financing without
439 advertising for such bids. Solicitation for the bids for
440 financing may occur before or after acceptance of bids for the
441 purchase of such equipment or, where no such bids for purchase are
442 required, at any time before the purchase thereof. No such
443 lease-purchase agreement shall be for an annual rate of interest
444 which is greater than the overall maximum interest rate to
445 maturity on general obligation indebtedness permitted under
446 Section 75-17-101, and the term of such lease-purchase agreement
447 shall not exceed the useful life of property covered thereby as
448 determined according to the upper limit of the asset depreciation
449 range (ADR) guidelines for the Class Life Asset Depreciation Range
450 System established by the Internal Revenue Service pursuant to the
451 United States Internal Revenue Code and regulations thereunder as
452 in effect on December 31, 1980, or comparable depreciation
453 guidelines with respect to any equipment not covered by ADR
454 guidelines. Any lease-purchase agreement entered into pursuant to
455 this paragraph (e) may contain any of the terms and conditions
456 which a master lease-purchase agreement may contain under the
457 provisions of Section 31-7-10(5), and shall contain an annual
458 allocation dependency clause substantially similar to that set
459 forth in Section 31-7-10(8). Each agency or governing authority
460 entering into a lease-purchase transaction pursuant to this
461 paragraph (e) shall maintain with respect to each such
462 lease-purchase transaction the same information as required to be
463 maintained by the Department of Finance and Administration
464 pursuant to Section 31-7-10(13). However, nothing contained in
465 this section shall be construed to permit agencies to acquire
466 items of equipment with a total acquisition cost in the aggregate
467 of less than Ten Thousand Dollars (\$10,000.00) by a single
468 lease-purchase transaction. All equipment, and the purchase
469 thereof by any lessor, acquired by lease-purchase under this
470 paragraph and all lease-purchase payments with respect thereto
471 shall be exempt from all Mississippi sales, use and ad valorem

472 taxes. Interest paid on any lease-purchase agreement under this
473 section shall be exempt from State of Mississippi income taxation.

474 (f) When necessary to ensure ready availability of
475 commodities for public works and the timely completion of public
476 projects, no more than two (2) alternate bids may be accepted by a
477 governing authority for commodities. No purchases may be made
478 through use of such alternate bids procedure unless the lowest and
479 best bidder, for reasons beyond his control, cannot deliver the
480 commodities contained in his bid. In that event, purchases of
481 such commodities may be made from one (1) of the bidders whose bid
482 was accepted as an alternate.

483 (g) In the event a determination is made by an agency
484 or governing authority after a construction contract is let that
485 changes or modifications to the original contract are necessary or
486 would better serve the purpose of the agency or the governing
487 authority, such agency or governing authority may, in its
488 discretion, order such changes pertaining to the construction that
489 are necessary under the circumstances without the necessity of
490 further public bids; provided that such change shall be made in a
491 commercially reasonable manner and shall not be made to circumvent
492 the public purchasing statutes. In addition to any other
493 authorized person, the architect or engineer hired by an agency or
494 governing authority with respect to any public construction
495 contract shall have the authority, when granted by an agency or
496 governing authority, to authorize changes or modifications to the
497 original contract without the necessity of prior approval of the
498 agency or governing authority when any such change or modification
499 is less than one percent (1%) of the total contract amount. The
500 agency or governing authority may limit the number, manner or
501 frequency of such emergency changes or modifications.

502 (h) In the event any agency or governing authority
503 shall have advertised for bids for the purchase of gas, diesel
504 fuel, oils and other petroleum products and coal and no acceptable
505 bids can be obtained, such agency or governing authority is

506 authorized and directed to enter into any negotiations necessary
507 to secure the lowest and best contract available for the purchase
508 of such commodities.

509 (i) Any agency or governing authority authorized to
510 enter into contracts for the construction, maintenance, surfacing
511 or repair of highways, roads or streets, may include in its bid
512 proposal and contract documents a price adjustment clause with
513 relation to the cost to the contractor, including taxes, based
514 upon an industry-wide cost index, of petroleum products including
515 asphalt used in the performance or execution of the contract or in
516 the production or manufacture of materials for use in such
517 performance. Such industry-wide index shall be established and
518 published monthly by the State Department of Transportation with a
519 copy thereof to be mailed, upon request, to the clerks of the
520 governing authority of each municipality and the clerks of each
521 board of supervisors throughout the state. The price adjustment
522 clause shall be based on the cost of such petroleum products only
523 and shall not include any additional profit or overhead as part of
524 the adjustment. The bid proposals or document contract shall
525 contain the basis and methods of adjusting unit prices for the
526 change in the cost of such petroleum products.

527 (j) If the executive head of any agency of the state
528 shall determine that an emergency exists in regard to the purchase
529 of any commodities or repair contracts, so that the delay incident
530 to giving opportunity for competitive bidding would be detrimental
531 to the interests of the state, then the provisions herein for
532 competitive bidding shall not apply and the head of such agency
533 shall be authorized to make the purchase or repair. Total
534 purchases so made shall only be for the purpose of meeting needs
535 created by the emergency situation. In the event such executive
536 head is responsible to an agency board, at the meeting next
537 following the emergency purchase, documentation of the purchase,
538 including a description of the commodity purchased, the purchase
539 price thereof and the nature of the emergency shall be presented

540 to the board and placed on the minutes of the board of such
541 agency. The head of such agency shall, at the earliest possible
542 date following such emergency purchase, file with the Department
543 of Finance and Administration (i) a statement under oath
544 certifying the conditions and circumstances of the emergency, and
545 (ii) a certified copy of the appropriate minutes of the board of
546 such agency, if applicable.

547 (k) If the governing authority, or the governing
548 authority acting through its designee, shall determine that an
549 emergency exists in regard to the purchase of any commodities or
550 repair contracts, so that the delay incident to giving opportunity
551 for competitive bidding would be detrimental to the interest of
552 the governing authority, then the provisions herein for
553 competitive bidding shall not apply and any officer or agent of
554 such governing authority having general or special authority
555 therefor in making such purchase or repair shall approve the bill
556 presented therefor, and he shall certify in writing thereon from
557 whom such purchase was made, or with whom such a repair contract
558 was made. At the board meeting next following the emergency
559 purchase or repair contract, documentation of the purchase or
560 repair contract, including a description of the commodity
561 purchased, the price thereof and the nature of the emergency shall
562 be presented to the board and shall be placed on the minutes of
563 the board of such governing authority.

564 (l) The commissioners or board of trustees of any
565 hospital owned or owned and operated separately or jointly by one
566 or more counties, cities, towns, supervisors districts or election
567 districts, or combinations thereof, may contract with such lowest
568 and best bidder for the purchase or lease of any commodity under a
569 contract of purchase or lease-purchase agreement whose obligatory
570 terms do not exceed five (5) years. In addition to the authority
571 granted herein, the commissioners or board of trustees are
572 authorized to enter into contracts for the lease of equipment or
573 services, or both, which it considers necessary for the proper

574 care of patients if, in its opinion, it is not financially
575 feasible to purchase the necessary equipment or services. Any
576 such contract for the lease of equipment or services executed by
577 the commissioners or board shall not exceed a maximum of five (5)
578 years' duration and shall include a cancellation clause based on
579 unavailability of funds. If such cancellation clause is
580 exercised, there shall be no further liability on the part of the
581 lessee.

582 (m) Excepted from bid requirements are:

583 (i) Purchasing agreements, contracts and maximum
584 price regulations executed or approved by the Department of
585 Finance and Administration.

586 (ii) Repairs to equipment, when such repairs are
587 made by repair facilities in the private sector; however, engines,
588 transmissions, rear axles and/or other such components shall not
589 be included in this exemption when replaced as a complete unit
590 instead of being repaired and the need for such total component
591 replacement is known before disassembly of the component;
592 provided, however, that invoices identifying the equipment,
593 specific repairs made, parts identified by number and name,
594 supplies used in such repairs, and the number of hours of labor
595 and costs therefor shall be required for the payment for such
596 repairs.

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

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

604 (v) Motor vehicles or other equipment purchased
605 from a federal or state agency or a governing authority at a
606 public auction held for the purpose of disposing of such vehicles
607 or other equipment. Any purchase by a governing authority under

608 the exemption authorized by this paragraph (v) shall require
609 advance authorization spread upon the minutes of the governing
610 authority to include the listing of the item or items authorized
611 to be purchased and the maximum bid authorized to be paid for each
612 item or items.

613 (vi) Purchases, sales, transfers or trades by
614 governing authorities or state agencies when such purchases,
615 sales, transfers or trades are made by a private treaty agreement
616 or through means of negotiation, from any federal agency or
617 authority, another governing authority or state agency of the
618 State of Mississippi, or any state agency of another state.
619 Nothing in this section shall permit such purchases through public
620 auction except as provided for in paragraph (v) of this section.
621 It is the intent of this section to allow governmental entities to
622 dispose of and/or purchase commodities from other governmental
623 entities at a price that is agreed to by both parties. This shall
624 allow for purchases and/or sales at prices which may be determined
625 to be below the market value if the selling entity determines that
626 the sale at below market value is in the best interest of the
627 taxpayers of the state. Governing authorities shall place the
628 terms of the agreement and any justification on the minutes, and
629 state agencies shall obtain approval from the Department of
630 Finance and Administration, prior to releasing or taking
631 possession of the commodities.

632 (vii) Perishable supplies or foods purchased for
633 use in connection with hospitals, the school lunch programs,
634 homemaking programs and for the feeding of county or municipal
635 prisoners.

636 (viii) Noncompetitive items available from one (1)
637 source only.

638 (ix) Construction of incinerators and other
639 facilities for disposal of solid wastes in which products either
640 generated therein, such as steam, or recovered therefrom, such as
641 materials for recycling, are to be sold or otherwise disposed of;

642 provided, however, in constructing such facilities a governing
643 authority or agency shall publicly issue requests for proposals,
644 advertised for in the same manner as provided herein for seeking
645 bids for public construction projects, concerning the design,
646 construction, ownership, operation and/or maintenance of such
647 facilities, wherein such requests for proposals when issued shall
648 contain terms and conditions relating to price, financial
649 responsibility, technology, environmental compatibility, legal
650 responsibilities and such other matters as are determined by the
651 governing authority or agency to be appropriate for inclusion; and
652 after responses to the request for proposals have been duly
653 received, the governing authority or agency may select the most
654 qualified proposal or proposals on the basis of price, technology
655 and other relevant factors and from such proposals, but not
656 limited to the terms thereof, negotiate and enter contracts with
657 one or more of the persons or firms submitting proposals.

658 (x) Supplies, commodities and equipment purchased
659 by hospitals through group purchase programs pursuant to Section
660 31-7-38.

661 (xi) Purchases of data processing equipment made
662 by governing authorities under the provisions of purchase
663 agreements, contracts or maximum price regulations executed or
664 approved by the Mississippi Department of Information Technology
665 Services.

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

671 (xiii) Purchases of contracts for fire insurance,
672 automobile insurance, casualty insurance, health insurance and
673 liability insurance by governing authorities or agencies.

674 (xiv) Purchases of coal and/or natural gas by
675 municipally-owned electric power generating systems that have the

676 capacity to use both coal and natural gas for the generation of
677 electric power.

678 (xv) Purchases by libraries or for libraries of
679 books and periodicals; processed film, video cassette tapes,
680 filmstrips and slides; recorded audio tapes, cassettes and
681 diskettes; and any such items as would be used for teaching,
682 research or other information distribution; however, equipment
683 such as projectors, recorders, audio or video equipment, and
684 monitor televisions are not exempt under this paragraph.

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

689 (xvii) Sales, transfers or trades of any personal
690 property between governing authorities within a county or any such
691 transaction involving governing authorities of two (2) or more
692 counties.

693 (xviii) Purchases of ballots printed pursuant to
694 Section 23-15-351.

695 (xix) From and after July 1, 1990, contracts by
696 Mississippi Authority for Educational Television with any private
697 educational institution or private nonprofit organization whose
698 purposes are educational in regard to the construction, purchase,
699 lease or lease-purchase of facilities and equipment and the
700 employment of personnel for providing multichannel interactive
701 video systems (ITSF) in the school districts of this state.

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

705 (xxi) Purchases of surveillance equipment or any
706 other high-tech equipment to be used by narcotics agents in
707 undercover operations, provided that any such purchase shall be in
708 compliance with regulations established by the Department of
709 Finance and Administration.

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

713 (xxiii) Purchases of commodities made by school
714 districts from vendors with which any levying authority of the
715 school district, as defined in Section 37-57-1, has contracted
716 through competitive bidding procedures for purchases of the same
717 commodities.

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

720 (xxv) Repealed.

721 (xxvi) Contracts for garbage collection or
722 disposal, contracts for solid waste collection or disposal and
723 contracts for sewage collection or disposal.

724 (xxvii) Professional maintenance program contracts
725 for the repair or maintenance of municipal water tanks, which
726 provide professional services needed to maintain municipal water
727 storage tanks for a fixed annual fee for a duration of two (2) or
728 more years.

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

732 (xxix) Purchases of contracts for
733 revenue-interruption insurance by school districts.

734 In connection with the purchase of noncompetitive items only
735 available from one (1) source, a certification of the conditions
736 and circumstances requiring the purchase shall be filed by the
737 agency with the Department of Finance and Administration and by
738 the governing authority with the board of the governing authority.

739 Upon receipt of such certification the Department of Finance and
740 Administration or the board of the governing authority, as the
741 case may be, may, in writing, authorize the purchase, which
742 authority shall be noted on the minutes of the body at the next
743 regular meeting thereafter. In such situations, a governing

744 authority is not required to obtain the approval of the Department
745 of Finance and Administration.

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

747 (A) Commodities, equipment and public
748 construction (including, but not limited to, repair and
749 maintenance), and

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

758 (ii) All purchases made by governing authorities,
759 including purchases made pursuant to the provisions of
760 subparagraph (i) of this paragraph (n), may be made upon one (1)
761 purchase order issued per month to each individual vendor prior to
762 delivery of such commodities provided that each individual
763 delivery, load or shipment purchased is properly requisitioned and
764 is properly received and receipted by signed ticket, receipt or
765 invoice, indicating thereon the point of delivery, and provided
766 that, with respect to counties, such commodities are properly
767 accounted for by the receiving clerk or an assistant receiving
768 clerk as provided by Section 31-7-109. Such purchase order shall
769 be invalid on the first calendar day of the month immediately
770 following the month in which it was issued. Purchases in such
771 month immediately following may be made only if a purchase order
772 is issued for such month. Each monthly purchase order shall be
773 retained in the records of the governing authority. Agencies may
774 make purchases as authorized under this subparagraph (ii) in
775 accordance with such regulations, policies and procedures as are
776 promulgated by the Department of Finance and Administration.

777 (o) No contract or purchase as herein authorized shall

778 be made for the purpose of circumventing the provisions of this
779 section requiring competitive bids, nor shall it be lawful for any
780 person or concern to submit individual invoices for amounts within
781 those authorized for a contract or purchase where the actual value
782 of the contract or commodity purchased exceeds the authorized
783 amount and the invoices therefor are split so as to appear to be
784 authorized as purchases for which competitive bids are not
785 required. Submission of such invoices shall constitute a
786 misdemeanor punishable by a fine of not less than Five Hundred
787 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
788 or by imprisonment for thirty (30) days in the county jail, or
789 both such fine and imprisonment. In addition, the claim or claims
790 submitted shall be forfeited.

791 (p) When in response to a proper advertisement
792 therefor, no bid firm as to price is submitted to an electric
793 utility for power transformers, distribution transformers, power
794 breakers, reclosers or other articles containing a petroleum
795 product, the electric utility may accept the lowest and best bid
796 therefor although the price is not firm.

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

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

804 (s) Any governing authority or agency of the state
805 shall, before contracting for the services and products of a fuel
806 management or fuel access system, enter into negotiations with not
807 fewer than two (2) sellers of fuel management or fuel access
808 systems for competitive written bids to provide the services and
809 products for the systems. In the event that the governing
810 authority or agency cannot locate two (2) sellers of such systems
811 or cannot obtain bids from two (2) sellers of such systems, it

812 shall show proof that it made a diligent, good-faith effort to
813 locate and negotiate with two (2) sellers of such systems. Such
814 proof shall include, but not be limited to, publications of a
815 request for proposals and letters soliciting negotiations and
816 bids. For purposes of this paragraph (s), a fuel management or
817 fuel access system is an automated system of acquiring fuel for
818 vehicles as well as management reports detailing fuel use by
819 vehicles and drivers, and the term "competitive written bid" shall
820 have the meaning as defined in paragraph (b) of this section.

821 (t) Before entering into any contract for garbage
822 collection or disposal, contract for solid waste collection or
823 disposal or contract for sewage collection or disposal, which
824 involves an expenditure of more than Fifty Thousand Dollars
825 (\$50,000.00), a governing authority or agency shall issue publicly
826 a request for proposals concerning the specifications for such
827 services which shall be advertised for in the same manner as
828 provided in this section for seeking bids for purchases which
829 involve an expenditure of more than Ten Thousand Dollars
830 (\$10,000.00). Any request for proposals when issued shall contain
831 terms and conditions relating to price, financial responsibility,
832 technology, legal responsibilities and other relevant factors as
833 are determined by the governing authority or agency to be
834 appropriate for inclusion; all factors determined relevant by the
835 governing authority or agency or required by this paragraph (t)
836 shall be duly included in the advertisement to elicit proposals.
837 After responses to the request for proposals have been duly
838 received, the governing authority or agency shall select the most
839 qualified proposal or proposals on the basis of price, technology
840 and other relevant factors and from such proposals, but not
841 limited to the terms thereof, negotiate and enter contracts with
842 one or more of the persons or firms submitting proposals. If the
843 governing authority or agency deems none of the proposals to be
844 qualified or otherwise acceptable, the request for proposals
845 process may be reinitiated.

846 (u) Notwithstanding any provision of this section to
847 the contrary, any agency or governing authority, by order placed
848 on its minutes, may, in its discretion, set aside not more than
849 twenty percent (20%) of its anticipated annual expenditures for
850 the purchase of commodities from minority businesses; however, all
851 such set-aside purchases shall comply with all purchasing
852 regulations promulgated by the Department of Finance and
853 Administration and shall be subject to bid requirements under this
854 section. Set-aside purchases for which competitive bids are
855 required shall be made from the lowest and best minority business
856 bidder. For the purposes of this paragraph, the term "minority
857 business" means a business which is owned by a majority of persons
858 who are United States citizens or permanent resident aliens (as
859 defined by the Immigration and Naturalization Service) of the
860 United States, and who are Asian, Black, Hispanic or Native
861 American, according to the following definitions:

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

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

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

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

873 (v) The architect, engineer or other
874 representative designated by the agency or governing authority
875 that is contracting for public construction or renovation may
876 prepare and submit to the contractor only one (1) preliminary
877 punch list of items that do not meet the contract requirements at
878 the time of substantial completion and one (1) final list
879 immediately before final completion and final payment.

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

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