

By: Hewes

To: Education;
Appropriations

SENATE BILL NO. 2902

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:[MS1]

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 nonminimum 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
185 amount of the lease contract shall apply to the school boards of
186 school districts acting jointly. Any lease contract executed by
187 two (2) or more school districts as joint lessees shall set out
188 the amount of the aggregate lease rental to be paid by each, which
189 may be agreed upon, but there shall be no right of occupancy by
190 any lessee unless the aggregate rental is paid as stipulated in
191 the 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:[RDD2]

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) **Bidding procedure for purchases not over \$1,500.00.**

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

311 (b) **Bidding procedure for purchases over \$1,500.00 but
312 not over \$10,000.00.** Purchases which involve an expenditure of

313 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
314 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
315 and shipping charges may be made from the lowest and best bidder
316 without publishing or posting advertisement for bids, provided at
317 least two (2) competitive written bids have been obtained. Any
318 governing authority purchasing commodities pursuant to this
319 paragraph (b) may authorize its purchasing agent, or his designee,
320 with regard to governing authorities other than counties, or its
321 purchase clerk, or his designee, with regard to counties, to
322 accept the lowest and best competitive written bid. Such
323 authorization shall be made in writing by the governing authority
324 and shall be maintained on file in the primary office of the
325 agency and recorded in the official minutes of the governing
326 authority, as appropriate. The purchasing agent or the purchase
327 clerk, or their designee, as the case may be, and not the
328 governing authority, shall be liable for any penalties and/or
329 damages as may be imposed by law for any act or omission of the

330 purchasing agent or purchase clerk, or their designee,
331 constituting a violation of law in accepting any bid without
332 approval by the governing authority. The term "competitive
333 written bid" shall mean a bid submitted on a bid form furnished by
334 the buying agency or governing authority and signed by authorized
335 personnel representing the vendor, or a bid submitted on a
336 vendor's letterhead or identifiable bid form and signed by
337 authorized personnel representing the vendor. Bids may be
338 submitted by facsimile, electronic mail or other generally
339 accepted method of information distribution. Bids submitted by
340 electronic transmission shall not require the signature of the
341 vendor's representative unless required by agencies or governing
342 authorities.

343 (c) **Bidding procedure for purchases over \$10,000.00.**

344 Purchases which involve an expenditure of more than Ten Thousand
345 Dollars (\$10,000.00), exclusive of freight and shipping charges
346 may be made from the lowest and best bidder after advertising for
347 competitive sealed bids once each week for two (2) consecutive
348 weeks in a regular newspaper published in the county or
349 municipality in which such agency or governing authority is
350 located. The date as published for the bid opening shall not be
351 less than seven (7) working days after the last published notice;
352 however, if the purchase involves a construction project in which
353 the estimated cost is in excess of Fifteen Thousand Dollars
354 (\$15,000.00), such bids shall not be opened in less than fifteen
355 (15) working days after the last notice is published and the
356 notice for the purchase of such construction shall be published
357 once each week for two (2) consecutive weeks. The notice of
358 intention to let contracts or purchase equipment shall state the
359 time and place at which bids shall be received, list the contracts
360 to be made or types of equipment or supplies to be purchased, and,
361 if all plans and/or specifications are not published, refer to the
362 plans and/or specifications on file. If all plans and/or

363 specifications are published in the notification, then the plans
364 and/or specifications may not be amended. If all plans and/or
365 specifications are not published in the notification, then
366 amendments to the plans/specifications, bid opening date, bid
367 opening time and place may be made, provided that the agency or
368 governing authority maintains a list of all prospective bidders
369 who are known to have received a copy of the bid documents and all
370 such prospective bidders are sent copies of all amendments. This
371 notification of amendments may be made via mail, facsimile,
372 electronic mail or other generally accepted method of information
373 distribution. In all cases involving governing authorities,
374 before the notice shall be published or posted, the plans or
375 specifications for the construction or equipment being sought
376 shall be filed with the clerk of the board of the governing
377 authority, and there remain. If there is no newspaper published
378 in the county or municipality, then such notice shall be given by
379 posting same at the courthouse, or for municipalities at the city
380 hall, and at two (2) other public places in the county or
381 municipality, and also by publication once each week for two (2)
382 consecutive weeks in some newspaper having a general circulation
383 in the county or municipality in the above provided manner. On
384 the same date that the notice is submitted to the newspaper for
385 publication, the agency or governing authority involved shall mail
386 written notice to the main office of the Mississippi Contract
387 Procurement Center that contains the same information as that in
388 the published notice. In addition to these requirements, agencies
389 shall maintain a vendor file and vendors of the equipment or
390 commodities being sought may be mailed solicitations and
391 specifications, and a bid file shall be established which shall
392 indicate those vendors to whom such solicitations and
393 specifications were mailed, and such file shall also contain such
394 information as is pertinent to the bid. Specifications pertinent
395 to such bidding shall be written so as not to exclude comparable

396 equipment of domestic manufacture. Provided, however, that should
397 valid justification be presented, the Department of Finance and
398 Administration or the board of a governing authority may approve a
399 request for specific equipment necessary to perform a specific
400 job. Provided further, that a registered professional engineer or
401 architect may write specifications for a governing authority to
402 require a specific item of equipment available only from limited
403 sources or vendors when such specifications conform with the rules
404 and regulations promulgated by an appropriate federal agency
405 regulating such matters under the federal procurement laws.
406 Further, such justification, when placed on the minutes of the
407 board of a governing authority, may serve as authority for that
408 governing authority to write specifications to require a specific
409 item of equipment needed to perform a specific job. In addition
410 to these requirements, from and after July 1, 1990, vendors of
411 relocatable classrooms and the specifications for the purchase of
412 such relocatable classrooms published by local school boards shall
413 meet all pertinent regulations of the State Board of Education,
414 including prior approval of such bid by the State Department of
415 Education. Nothing in this section shall prohibit any agency or
416 governing authority from writing specifications to include
417 life-cycle costing, total cost bids, extended warranties or
418 guaranteed buy-back provisions, provided that such bid
419 requirements shall be in compliance with regulations established
420 by the Department of Audit.

421 (d) **Lowest and best bid decision procedure.** (i)
422 Purchases may be made from the lowest and best bidder. In
423 determining the lowest and best bid, freight and shipping charges
424 shall be included. If any governing authority accepts a bid other
425 than the lowest bid actually submitted, it shall place on its
426 minutes detailed calculations and narrative summary showing that
427 the accepted bid was determined to be the lowest and best bid,
428 including the dollar amount of the accepted bid and the dollar

429 amount of the lowest bid. No agency or governing authority shall
430 accept a bid based on items not included in the specifications.

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

437 (iii) Whenever bids are solicited for a public
438 construction or renovation project and only one (1) bid is
439 received, the agency or the governing authority may accept such
440 bid if the bid is opened, it is within the funds allocated for the
441 project, it is responsive to the solicitation and the contractor
442 is capable of performing the contract in accordance with the
443 solicitation.

444 (iv) No addendum to bid specifications for such
445 projects may be issued by the agency or governing authority within
446 twelve (12) hours of the time established by the agency or
447 governing authority for the receipt of bids.

448 (e) **Lease-purchase authorization.** Any lease-purchase
449 of equipment which an agency is not required to lease-purchase
450 under the master lease-purchase program pursuant to Section
451 31-7-10 and any lease-purchase of equipment which a governing
452 authority elects to lease-purchase may be acquired by a
453 lease-purchase agreement under this paragraph (e). Lease-purchase
454 financing may also be obtained from the vendor or from a
455 third-party source after having solicited and obtained at least
456 two (2) written competitive bids, as defined in paragraph (b) of
457 this section, for such financing without advertising for such
458 bids. Solicitation for the bids for financing may occur before or
459 after acceptance of bids for the purchase of such equipment or,
460 where no such bids for purchase are required, at any time before
461 the purchase thereof. No such lease-purchase agreement shall be

462 for an annual rate of interest which is greater than the overall
463 maximum interest rate to maturity on general obligation
464 indebtedness permitted under Section 75-17-101, and the term of
465 such lease-purchase agreement shall not exceed the useful life of
466 property covered thereby as determined according to the upper
467 limit of the asset depreciation range (ADR) guidelines for the
468 Class Life Asset Depreciation Range System established by the
469 Internal Revenue Service pursuant to the United States Internal
470 Revenue Code and regulations thereunder as in effect on December
471 31, 1980, or comparable depreciation guidelines with respect to
472 any equipment not covered by ADR guidelines. Any lease-purchase
473 agreement entered into pursuant to this paragraph (e) may contain
474 any of the terms and conditions which a master lease-purchase
475 agreement may contain under the provisions of Section 31-7-10(5),
476 and shall contain an annual allocation dependency clause
477 substantially similar to that set forth in Section 31-7-10(8).
478 Each agency or governing authority entering into a lease-purchase
479 transaction pursuant to this paragraph (e) shall maintain with
480 respect to each such lease-purchase transaction the same
481 information as required to be maintained by the Department of
482 Finance and Administration pursuant to Section 31-7-10(13).
483 However, nothing contained in this section shall be construed to
484 permit agencies to acquire items of equipment with a total
485 acquisition cost in the aggregate of less than Ten Thousand
486 Dollars (\$10,000.00) by a single lease-purchase transaction. All
487 equipment, and the purchase thereof by any lessor, acquired by
488 lease-purchase under this paragraph and all lease-purchase
489 payments with respect thereto shall be exempt from all Mississippi
490 sales, use and ad valorem taxes. Interest paid on any
491 lease-purchase agreement under this section shall be exempt from
492 State of Mississippi income taxation.

493 (f) **Alternate bid authorization.** When necessary to
494 ensure ready availability of commodities for public works and the

495 timely completion of public projects, no more than two (2)
496 alternate bids may be accepted by a governing authority for
497 commodities. No purchases may be made through use of such
498 alternate bids procedure unless the lowest and best bidder, for
499 reasons beyond his control, cannot deliver the commodities
500 contained in his bid. In that event, purchases of such
501 commodities may be made from one (1) of the bidders whose bid was
502 accepted as an alternate.

503 (g) **Construction contract change authorization.** In the
504 event a determination is made by an agency or governing authority
505 after a construction contract is let that changes or modifications
506 to the original contract are necessary or would better serve the
507 purpose of the agency or the governing authority, such agency or
508 governing authority may, in its discretion, order such changes
509 pertaining to the construction that are necessary under the
510 circumstances without the necessity of further public bids;
511 provided that such change shall be made in a commercially
512 reasonable manner and shall not be made to circumvent the public
513 purchasing statutes. In addition to any other authorized person,
514 the architect or engineer hired by an agency or governing
515 authority with respect to any public construction contract shall
516 have the authority, when granted by an agency or governing
517 authority, to authorize changes or modifications to the original
518 contract without the necessity of prior approval of the agency or
519 governing authority when any such change or modification is less
520 than one percent (1%) of the total contract amount. The agency or
521 governing authority may limit the number, manner or frequency of
522 such emergency changes or modifications.

523 (h) **Petroleum purchase alternative.** In the event any
524 agency or governing authority shall have advertised for bids for
525 the purchase of gas, diesel fuel, oils and other petroleum
526 products and coal and no acceptable bids can be obtained, such
527 agency or governing authority is authorized and directed to enter

528 into any negotiations necessary to secure the lowest and best
529 contract available for the purchase of such commodities.

530 (i) **Road construction petroleum products price**
531 **adjustment clause authorization.** Any agency or governing
532 authority authorized to enter into contracts for the construction,
533 maintenance, surfacing or repair of highways, roads or streets,
534 may include in its bid proposal and contract documents a price
535 adjustment clause with relation to the cost to the contractor,
536 including taxes, based upon an industry-wide cost index, of
537 petroleum products including asphalt used in the performance or
538 execution of the contract or in the production or manufacture of
539 materials for use in such performance. Such industry-wide index
540 shall be established and published monthly by the State Department
541 of Transportation with a copy thereof to be mailed, upon request,
542 to the clerks of the governing authority of each municipality and
543 the clerks of each board of supervisors throughout the state. The
544 price adjustment clause shall be based on the cost of such
545 petroleum products only and shall not include any additional
546 profit or overhead as part of the adjustment. The bid proposals
547 or document contract shall contain the basis and methods of
548 adjusting unit prices for the change in the cost of such petroleum
549 products.

550 (j) **State agency emergency purchase procedure.** If the
551 executive head of any agency of the state shall determine that an
552 emergency exists in regard to the purchase of any commodities or
553 repair contracts, so that the delay incident to giving opportunity
554 for competitive bidding would be detrimental to the interests of
555 the state, then the provisions herein for competitive bidding
556 shall not apply and the head of such agency shall be authorized to
557 make the purchase or repair. Total purchases so made shall only
558 be for the purpose of meeting needs created by the emergency
559 situation. In the event such executive head is responsible to an
560 agency board, at the meeting next following the emergency

561 purchase, documentation of the purchase, including a description
562 of the commodity purchased, the purchase price thereof and the
563 nature of the emergency shall be presented to the board and placed
564 on the minutes of the board of such agency. The head of such
565 agency shall, at the earliest possible date following such
566 emergency purchase, file with the Department of Finance and
567 Administration (i) a statement under oath certifying the
568 conditions and circumstances of the emergency, and (ii) a
569 certified copy of the appropriate minutes of the board of such
570 agency, if applicable.

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

572 If the governing authority, or the governing authority acting
573 through its designee, shall determine that an emergency exists in
574 regard to the purchase of any commodities or repair contracts, so
575 that the delay incident to giving opportunity for competitive
576 bidding would be detrimental to the interest of the governing
577 authority, then the provisions herein for competitive bidding
578 shall not apply and any officer or agent of such governing
579 authority having general or special authority therefor in making
580 such purchase or repair shall approve the bill presented therefor,
581 and he shall certify in writing thereon from whom such purchase
582 was made, or with whom such a repair contract was made. At the
583 board meeting next following the emergency purchase or repair
584 contract, documentation of the purchase or repair contract,
585 including a description of the commodity purchased, the price
586 thereof and the nature of the emergency shall be presented to the
587 board and shall be placed on the minutes of the board of such
588 governing authority.

589 (l) **Hospital purchase or lease authorization.** The
590 commissioners or board of trustees of any hospital owned or owned
591 and operated separately or jointly by one or more counties,
592 cities, towns, supervisors districts or election districts, or
593 combinations thereof, may contract with such lowest and best

594 bidder for the purchase or lease of any commodity under a contract
595 of purchase or lease-purchase agreement whose obligatory terms do
596 not exceed five (5) years. In addition to the authority granted
597 herein, the commissioners or board of trustees are authorized to
598 enter into contracts for the lease of equipment or services, or
599 both, which it considers necessary for the proper care of patients
600 if, in its opinion, it is not financially feasible to purchase the
601 necessary equipment or services. Any such contract for the lease
602 of equipment or services executed by the commissioners or board
603 shall not exceed a maximum of five (5) years' duration and shall
604 include a cancellation clause based on unavailability of funds.
605 If such cancellation clause is exercised, there shall be no
606 further liability on the part of the lessee.

607 (m) **Exceptions from bidding requirements.** Excepted
608 from bid requirements are:

609 (i) **Purchasing agreements approved by department.**
610 Purchasing agreements, contracts and maximum price regulations
611 executed or approved by the Department of Finance and
612 Administration.

613 (ii) **Outside equipment repairs.** Repairs to
614 equipment, when such repairs are made by repair facilities in the
615 private sector; however, engines, transmissions, rear axles and/or
616 other such components shall not be included in this exemption when
617 replaced as a complete unit instead of being repaired and the need
618 for such total component replacement is known before disassembly
619 of the component; provided, however, that invoices identifying the
620 equipment, specific repairs made, parts identified by number and
621 name, supplies used in such repairs, and the number of hours of
622 labor and costs therefor shall be required for the payment for
623 such repairs.

624 (iii) **In-house equipment repairs.** Purchases of
625 parts for repairs to equipment, when such repairs are made by
626 personnel of the agency or governing authority; however, entire

627 assemblies, such as engines or transmissions, shall not be
628 included in this exemption when the entire assembly is being
629 replaced instead of being repaired.

630 (iv) **Raw gravel or dirt.** Raw unprocessed deposits
631 of gravel or fill dirt which are to be removed and transported by
632 the purchaser.

633 (v) **Governmental equipment auctions.** Motor
634 vehicles or other equipment purchased from a federal or state
635 agency or a governing authority at a public auction held for the
636 purpose of disposing of such vehicles or other equipment. Any
637 purchase by a governing authority under the exemption authorized
638 by this paragraph (v) shall require advance authorization spread
639 upon the minutes of the governing authority to include the listing
640 of the item or items authorized to be purchased and the maximum
641 bid authorized to be paid for each item or items.

642 (vi) **Intergovernmental sales and transfers.**
643 Purchases, sales, transfers or trades by governing authorities or
644 state agencies when such purchases, sales, transfers or trades are
645 made by a private treaty agreement or through means of
646 negotiation, from any federal agency or authority, another
647 governing authority or state agency of the State of Mississippi,
648 or any state agency of another state. Nothing in this section
649 shall permit such purchases through public auction except as
650 provided for in paragraph (v) of this section. It is the intent
651 of this section to allow governmental entities to dispose of
652 and/or purchase commodities from other governmental entities at a
653 price that is agreed to by both parties. This shall allow for
654 purchases and/or sales at prices which may be determined to be
655 below the market value if the selling entity determines that the
656 sale at below market value is in the best interest of the
657 taxpayers of the state. Governing authorities shall place the
658 terms of the agreement and any justification on the minutes, and
659 state agencies shall obtain approval from the Department of

660 Finance and Administration, prior to releasing or taking
661 possession of the commodities.

662 (vii) **Perishable supplies or food.** Perishable
663 supplies or foods purchased for use in connection with hospitals,
664 the school lunch programs, homemaking programs and for the feeding
665 of county or municipal prisoners.

666 (viii) **Single source items.** Noncompetitive items
667 available from one (1) source only. In connection with the
668 purchase of noncompetitive items only available from one (1)
669 source, a certification of the conditions and circumstances
670 requiring the purchase shall be filed by the agency with the
671 Department of Finance and Administration and by the governing
672 authority with the board of the governing authority. Upon receipt
673 of that certification the Department of Finance and Administration
674 or the board of the governing authority, as the case may be, may,
675 in writing, authorize the purchase, which authority shall be noted
676 on the minutes of the body at the next regular meeting thereafter.

677 In those situations, a governing authority is not required to
678 obtain the approval of the Department of Finance and
679 Administration.

680 (ix) **Waste disposal facility construction**
681 **contracts.** Construction of incinerators and other facilities for
682 disposal of solid wastes in which products either generated
683 therein, such as steam, or recovered therefrom, such as materials
684 for recycling, are to be sold or otherwise disposed of; provided,
685 however, in constructing such facilities a governing authority or
686 agency shall publicly issue requests for proposals, advertised for
687 in the same manner as provided herein for seeking bids for public
688 construction projects, concerning the design, construction,
689 ownership, operation and/or maintenance of such facilities,
690 wherein such requests for proposals when issued shall contain
691 terms and conditions relating to price, financial responsibility,
692 technology, environmental compatibility, legal responsibilities

693 and such other matters as are determined by the governing
694 authority or agency to be appropriate for inclusion; and after
695 responses to the request for proposals have been duly received,
696 the governing authority or agency may select the most qualified
697 proposal or proposals on the basis of price, technology and other
698 relevant factors and from such proposals, but not limited to the
699 terms thereof, negotiate and enter contracts with one or more of
700 the persons or firms submitting proposals.

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

704 (xi) **Data processing equipment.** Purchases of data
705 processing equipment made by governing authorities under the
706 provisions of purchase agreements, contracts or maximum price
707 regulations executed or approved by the Mississippi Department of
708 Information Technology Services.

709 (xii) **Energy efficiency services and equipment.**
710 Energy efficiency services and equipment acquired by school
711 districts, junior colleges, institutions of higher learning and
712 state agencies or other applicable governmental entities on a
713 shared-savings, lease or lease-purchase basis pursuant to Section
714 31-7-14.

715 (xiii) **Insurance contracts.** Purchases of
716 contracts for fire insurance, automobile insurance, casualty
717 insurance, health insurance and liability insurance by governing
718 authorities or agencies.

719 (xiv) **Municipal electrical utility system fuel.**
720 Purchases of coal and/or natural gas by municipally-owned electric
721 power generating systems that have the capacity to use both coal
722 and natural gas for the generation of electric power.

723 (xv) **Library books and other reference materials.**
724 Purchases by libraries or for libraries of books and periodicals;
725 processed film, video cassette tapes, filmstrips and slides;

726 recorded audio tapes, cassettes and diskettes; and any such items
727 as would be used for teaching, research or other information
728 distribution; however, equipment such as projectors, recorders,
729 audio or video equipment, and monitor televisions are not exempt
730 under this paragraph.

731 (xvi) **Unmarked vehicles.** Purchases of unmarked
732 vehicles when such purchases are made in accordance with
733 purchasing regulations adopted by the Department of Finance and
734 Administration pursuant to Section 31-7-9(2).

735 (xvii) **Sales and transfers between governing**
736 **authorities.** Sales, transfers or trades of any personal property
737 between governing authorities within a county or any such
738 transaction involving governing authorities of two (2) or more
739 counties.

740 (xviii) **Election ballots.** Purchases of ballots
741 printed pursuant to Section 23-15-351.

742 (xix) **Educational television contracts.** From and
743 after July 1, 1990, contracts by Mississippi Authority for
744 Educational Television with any private educational institution or
745 private nonprofit organization whose purposes are educational in
746 regard to the construction, purchase, lease or lease-purchase of
747 facilities and equipment and the employment of personnel for
748 providing multichannel interactive video systems (ITSF) in the
749 school districts of this state.

750 (xx) **Prison industry products.** From and after
751 January 1, 1991, purchases made by state agencies involving any
752 item that is manufactured, processed, grown or produced from the
753 state's prison industries.

754 (xxi) **Undercover operations equipment.** Purchases
755 of surveillance equipment or any other high-tech equipment to be
756 used by narcotics agents in undercover operations, provided that
757 any such purchase shall be in compliance with regulations
758 established by the Department of Finance and Administration.

759 (xxii) **Junior college books for rent.** Purchases
760 by community or junior colleges of textbooks which are obtained
761 for the purpose of renting such books to students as part of a
762 book service system.

763 (xxiii) **School purchases from county/municipal**
764 **contracts.** Purchases of commodities made by school districts from
765 vendors with which any levying authority of the school district,
766 as defined in Section 37-57-1, has contracted through competitive
767 bidding procedures for purchases of the same commodities.

768 (xxiv) **Emergency purchases by retirement system.**
769 Emergency purchases made by the Public Employees' Retirement
770 System pursuant to Section 25-11-15(7).

771 (xxv) Repealed.

772 (xxvi) **Garbage, solid waste and sewage contracts.**
773 Contracts for garbage collection or disposal, contracts for solid
774 waste collection or disposal and contracts for sewage collection
775 or disposal.

776 (xxvii) **Municipal water tank maintenance**
777 **contracts.** Professional maintenance program contracts for the
778 repair or maintenance of municipal water tanks, which provide
779 professional services needed to maintain municipal water storage
780 tanks for a fixed annual fee for a duration of two (2) or more
781 years.

782 (xxviii) **Industries for the Blind products.**
783 Purchases made by state agencies involving any item that is
784 manufactured, processed or produced by the Mississippi Industries
785 for the Blind.

786 (xxix) **Purchases of state-adopted textbooks.**
787 Purchases of state-adopted textbooks by public school districts.

788 (xxx) Purchases of contracts for
789 revenue-interruption insurance by school districts. In connection
790 with the purchase of noncompetitive items only available from one
791 (1) source, a certification of the conditions and circumstances

792 requiring the purchase shall be filed by the agency with the
793 Department of Finance and Administration and by the governing
794 authority with the board of the governing authority. Upon receipt
795 of such certification the Department of Finance and Administration
796 or the board of the governing authority, as the case may be, may,
797 in writing, authorize the purchase, which authority shall be noted
798 on the minutes of the body at the next regular meeting thereafter.
799 In such situations, a governing authority is not required to
800 obtain the approval of the Department of Finance and
801 Administration.

802 (n) (i) **Term contract authorization.** All contracts
803 for the purchase of:

804 (A) Commodities, equipment and public
805 construction (including, but not limited to, repair and
806 maintenance), and

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

815 (ii) All purchases made by governing authorities,
816 including purchases made pursuant to the provisions of
817 subparagraph (i) of this paragraph (n), may be made upon one (1)
818 purchase order issued per month to each individual vendor prior to
819 delivery of such commodities provided that each individual
820 delivery, load or shipment purchased is properly requisitioned and
821 is properly received and receipted by signed ticket, receipt or
822 invoice, indicating thereon the point of delivery, and provided
823 that, with respect to counties, such commodities are properly
824 accounted for by the receiving clerk or an assistant receiving

825 clerk as provided by Section 31-7-109. Such purchase order shall
826 be invalid on the first calendar day of the month immediately
827 following the month in which it was issued. Purchases in such
828 month immediately following may be made only if a purchase order
829 is issued for such month. Each monthly purchase order shall be
830 retained in the records of the governing authority. Agencies may
831 make purchases as authorized under this subparagraph (ii) in
832 accordance with such regulations, policies and procedures as are
833 promulgated by the Department of Finance and Administration.

834 (o) **Purchase law violation prohibition and vendor**
835 **penalty.** No contract or purchase as herein authorized shall be
836 made for the purpose of circumventing the provisions of this
837 section requiring competitive bids, nor shall it be lawful for any
838 person or concern to submit individual invoices for amounts within
839 those authorized for a contract or purchase where the actual value
840 of the contract or commodity purchased exceeds the authorized
841 amount and the invoices therefor are split so as to appear to be
842 authorized as purchases for which competitive bids are not
843 required. Submission of such invoices shall constitute a
844 misdemeanor punishable by a fine of not less than Five Hundred
845 Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00),
846 or by imprisonment for thirty (30) days in the county jail, or
847 both such fine and imprisonment. In addition, the claim or claims
848 submitted shall be forfeited.

849 (p) **Electrical utility petroleum-based equipment**
850 **purchase procedure.** When in response to a proper advertisement
851 therefor, no bid firm as to price is submitted to an electric
852 utility for power transformers, distribution transformers, power
853 breakers, reclosers or other articles containing a petroleum
854 product, the electric utility may accept the lowest and best bid
855 therefor although the price is not firm.

856 (q) **Exception to county/municipal budget limitations.**
857 The prohibitions and restrictions set forth in Sections 19-11-27,

858 21-35-27 and 31-7-49 shall not apply to a contract, lease or
859 lease-purchase agreement entered pursuant to the requirements of
860 this chapter.

861 (r) **Definition of purchase.** For the purposes of this
862 section, the term "purchase" shall mean the total amount of money
863 encumbered by a single purchase order.

864 (s) **Fuel management system bidding procedure.** Any
865 governing authority or agency of the state shall, before
866 contracting for the services and products of a fuel management or
867 fuel access system, enter into negotiations with not fewer than
868 two (2) sellers of fuel management or fuel access systems for
869 competitive written bids to provide the services and products for
870 the systems. In the event that the governing authority or agency
871 cannot locate two (2) sellers of such systems or cannot obtain
872 bids from two (2) sellers of such systems, it shall show proof
873 that it made a diligent, good-faith effort to locate and negotiate
874 with two (2) sellers of such systems. Such proof shall include,
875 but not be limited to, publications of a request for proposals and
876 letters soliciting negotiations and bids. For purposes of this
877 paragraph (s), a fuel management or fuel access system is an
878 automated system of acquiring fuel for vehicles as well as
879 management reports detailing fuel use by vehicles and drivers, and
880 the term "competitive written bid" shall have the meaning as
881 defined in paragraph (b) of this section.

882 (t) **Solid waste contract proposal procedure.** Before
883 entering into any contract for garbage collection or disposal,
884 contract for solid waste collection or disposal or contract for
885 sewage collection or disposal, which involves an expenditure of
886 more than Fifty Thousand Dollars (\$50,000.00), a governing
887 authority or agency shall issue publicly a request for proposals
888 concerning the specifications for such services which shall be
889 advertised for in the same manner as provided in this section for
890 seeking bids for purchases which involve an expenditure of more

891 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
892 when issued shall contain terms and conditions relating to price,
893 financial responsibility, technology, legal responsibilities and
894 other relevant factors as are determined by the governing
895 authority or agency to be appropriate for inclusion; all factors
896 determined relevant by the governing authority or agency or
897 required by this paragraph (t) shall be duly included in the
898 advertisement to elicit proposals. After responses to the request
899 for proposals have been duly received, the governing authority or
900 agency shall select the most qualified proposal or proposals on
901 the basis of price, technology and other relevant factors and from
902 such proposals, but not limited to the terms thereof, negotiate
903 and enter contracts with one or more of the persons or firms
904 submitting proposals. If the governing authority or agency deems
905 none of the proposals to be qualified or otherwise acceptable, the
906 request for proposals process may be reinitiated. Notwithstanding
907 any other provisions of this paragraph, where a county with at
908 least thirty-five thousand (35,000) nor more than forty thousand
909 (40,000) population, according to the 1990 federal decennial
910 census, owns or operates a solid waste landfill, the governing
911 authorities of any other county or municipality may contract with
912 the governing authorities of the county owning or operating the
913 landfill, pursuant to a resolution duly adopted and spread upon
914 the minutes of each governing authority involved, for garbage or
915 solid waste collection or disposal services through contract
916 negotiations.

917 (u) **Minority set aside authorization.** Notwithstanding
918 any provision of this section to the contrary, any agency or
919 governing authority, by order placed on its minutes, may, in its
920 discretion, set aside not more than twenty percent (20%) of its
921 anticipated annual expenditures for the purchase of commodities
922 from minority businesses; however, all such set-aside purchases
923 shall comply with all purchasing regulations promulgated by the

924 Department of Finance and Administration and shall be subject to
925 bid requirements under this section. Set-aside purchases for
926 which competitive bids are required shall be made from the lowest
927 and best minority business bidder. For the purposes of this
928 paragraph, the term "minority business" means a business which is
929 owned by a majority of persons who are United States citizens or
930 permanent resident aliens (as defined by the Immigration and
931 Naturalization Service) of the United States, and who are Asian,
932 Black, Hispanic or Native American, according to the following
933 definitions:

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

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

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

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

945 (v) **Construction punch list restriction.** The
946 architect, engineer or other representative designated by the
947 agency or governing authority that is contracting for public
948 construction or renovation may prepare and submit to the
949 contractor only one (1) preliminary punch list of items that do
950 not meet the contract requirements at the time of substantial
951 completion and one (1) final list immediately before final
952 completion and final payment.

953 (w) **Purchase authorization clarification.** Nothing in
954 this section shall be construed as authorizing any purchase not
955 authorized by law.

956 SECTION 3. This act shall take effect and be in force from

957 and after July 1, 2000.