To: Education; Appropriations

MISSISSIPPI LEGISLATURE                        REGULAR SESSION 2001
By: Senator(s) Hewes, Gollott, Dawkins, Moffatt

SENATE BILL NO. 2528

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

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI

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

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

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

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

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

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

(e) To suspend or to expel a pupil or to change the placement of a pupil to the school district's alternative school or home-bound program for misconduct in the school or on school grounds.
property, as defined in Section 37-11-29, on the road to and from
school, or at any school-related activity or event, or for conduct
occurring on property other than school property or other than at a
school-related activity or event when such conduct by a pupil,
in the determination of the school superintendent or principal,
renders that pupil's presence in the classroom a disruption to the
educational environment of the school or a detriment to the best
interest and welfare of the pupils and teacher of such class as a
whole, and to delegate such authority to the appropriate officials
of the school district;

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

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

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

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

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

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

(l) To prescribe and enforce rules and regulations not
inconsistent with law or with the regulations of the State Board
of Education for their own government and for the government of

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the schools, and to transact their business at regular and special
meetings called and held in the manner provided by law;

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

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

(o) To make orders directed to the superintendent of
schools for the issuance of pay certificates for lawful purposes
on any available funds of the district and to have full control of
the receipt, distribution, allotment and disbursement of all funds
provided for the support and operation of the schools of such
school district whether such funds be derived from state
appropriations, local ad valorem tax collections, or otherwise;

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

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

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

(s) To expend local school activity funds, or other
available school district funds, other than minimum education
program funds, for the purposes prescribed under this paragraph.
"Activity funds" shall mean all funds received by school officials
in all school districts paid or collected to participate in any
school activity, such activity being part of the school program
and partially financed with public funds or supplemented by public
funds. The term "activity funds" shall not include any funds
raised and/or expended by any organization unless commingled in a bank account with existing activity funds, regardless of whether the funds were raised by school employees or received by school employees during school hours or using school facilities, and regardless of whether a school employee exercises influence over the expenditure or disposition of such funds. Organizations shall not be required to make any payment to any school for the use of any school facility if, in the discretion of the local school governing board, the organization's function shall be deemed to be beneficial to the official or extracurricular programs of the school. For the purposes of this provision, the term "organization" shall not include any organization subject to the control of the local school governing board. Activity funds may only be expended for any necessary expenses or travel costs, including advances, incurred by students and their chaperons in attending any in-state or out-of-state school-related programs, conventions or seminars and/or any commodities, equipment, travel expenses, purchased services or school supplies which the local school governing board, in its discretion, shall deem beneficial to the official or extracurricular programs of the district, including items which may subsequently become the personal property of individuals, including yearbooks, athletic apparel, book covers and trophies. Activity funds may be used to pay travel expenses of school district personnel. The local school governing board shall be authorized and empowered to promulgate rules and regulations specifically designating for what purposes school activity funds may be expended. The local school governing board shall provide (a) that such school activity funds shall be maintained and expended by the principal of the school generating the funds in individual bank accounts, or (b) that such school activity funds shall be maintained and expended by the superintendent of schools in a central depository approved by the board. The local school governing board shall provide that such
school activity funds be audited as part of the annual audit
required in Section 37-9-18. The State Auditor shall prescribe a
uniform system of accounting and financial reporting for all
school activity fund transactions;

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

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

(v) (i) To lease a school building from an individual,
partnership, nonprofit corporation or a private for-profit
corporation for the use of such school district, and to expend
funds therefor as may be available from any nonminimum program
sources. The school board of the school district desiring to
lease a school building shall declare by resolution that a need
exists for a school building and that the school district cannot
provide the necessary funds to pay the cost or its proportionate
share of the cost of a school building required to meet the
present needs. The resolution so adopted by the school board
shall be published once each week for three (3) consecutive weeks
in a newspaper having a general circulation in the school district
involved, with the first publication thereof to be made not less
than thirty (30) days prior to the date upon which the school
board is to act on the question of leasing a school building. If
no petition requesting an election is filed prior to such meeting
as hereinafter provided, then the school board may, by resolution
spread upon its minutes, proceed to lease a school building. If
at any time prior to said meeting a petition signed by not less
than twenty percent (20%) or fifteen hundred (1500), whichever is
less, of the qualified electors of the school district involved
shall be filed with the school board requesting that an election
be called on the question, then the school board shall, not later
than the next regular meeting, adopt a resolution calling an
election to be held within such school district upon the question
of authorizing the school board to lease a school building. Such
election shall be called and held, and notice thereof shall be
given, in the same manner for elections upon the questions of the
issuance of the bonds of school districts, and the results thereof
shall be certified to the school board. If at least three-fifths
(3/5) of the qualified electors of the school district who voted
in such election shall vote in favor of the leasing of a school
building, then the school board shall proceed to lease a school
building. The term of the lease contract shall not exceed twenty
(20) years, and the total cost of such lease shall be either the
amount of the lowest and best bid accepted by the school board
after advertisement for bids or an amount not to exceed the
current fair market value of the lease as determined by the
averaging of at least two (2) appraisals by certified general
appraisers licensed by the State of Mississippi. The term "school
building" as used in this item (v) shall be construed to mean any
building or buildings used for classroom purposes in connection
with the operation of schools and shall include the site therefor,
necessary support facilities, and the equipment thereof and
appurtenances thereto such as heating facilities, water supply,
sewage disposal, landscaping, walks, drives and playgrounds. The
term "lease" as used in this item (v)(i) may include a
lease/purchase contract;

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

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

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

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

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

(aa) To acquire in its own name by purchase all real
property which shall be necessary and desirable in connection with
the construction, renovation or improvement of any public school
building or structure. Whenever the purchase price for such real
property is greater than Fifty Thousand Dollars ($50,000.00), the
school board shall not purchase the property for an amount
exceeding the fair market value of such property as determined by
the average of at least two (2) independent appraisals by
certified general appraisers licensed by the State of Mississippi.
If the board shall be unable to agree with the owner of any such
real property in connection with any such project, the board shall
have the power and authority to acquire any such real property by
condemnation proceedings pursuant to Section 11-27-1 et seq.,
Mississippi Code of 1972, and for such purpose, the right of
eminent domain is hereby conferred upon and vested in said board.
Provided further, that the local school board is authorized to
grant an easement for ingress and egress over sixteenth section
land or lieu land in exchange for a similar easement upon
adjoining land where the exchange of easements affords substantial
benefit to the sixteenth section land; provided, however, the
exchange must be based upon values as determined by a competent
appraiser, with any differential in value to be adjusted by cash
payment. Any easement rights granted over sixteenth section land
under such authority shall terminate when the easement ceases to
be used for its stated purpose. No sixteenth section or lieu land
which is subject to an existing lease shall be burdened by any
such easement except by consent of the lessee or unless the school
district shall acquire the unexpired leasehold interest affected
by the easement;

(bb) To charge reasonable fees related to the
educational programs of the district, in the manner prescribed in
Section 37-7-335;
(cc) Subject to rules and regulations of the State
Board of Education, to purchase relocatable classrooms for the use
of such school district, in the manner prescribed in Section
37-1-13;
(dd) Enter into contracts or agreements with other
school districts, political subdivisions or governmental entities
to carry out one or more of the powers or duties of the school
board, or to allow more efficient utilization of limited resources
for providing services to the public;
(ee) To provide for in-service training for employees
of the district. Until June 30, 1994, the school boards may
designate two (2) days of the minimum school term, as defined in
Section 37-19-1, for employee in-service training for
implementation of the new statewide testing system as developed by
the State Board of Education. Such designation shall be subject
to approval by the State Board of Education pursuant to uniform
rules and regulations;

(ff) As part of their duties to prescribe the use of
textbooks, to provide that parents and legal guardians shall be
responsible for the textbooks and for the compensation to the
school district for any books which are not returned to the proper
schools upon the withdrawal of their dependent child. If a
textbook is lost or not returned by any student who drops out of
the public school district, the parent or legal guardian shall
also compensate the school district for the fair market value of
the textbooks;

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

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

(ii) Fund-raising activities conducted or
authorized by the board for the sale of school pictures, the
rental of caps and gowns or the sale of graduation invitations for
which the school board receives a commission, rebate or fee shall
contain a disclosure statement advising that a portion of the
proceeds of the sales or rentals shall be contributed to the
student activity fund;

(hh) To allow individual lessons for music, art and
other curriculum-related activities for academic credit or
nonacademic credit during school hours and using school equipment
and facilities, subject to uniform rules and regulations adopted
by the school board;
(ii) To charge reasonable fees for participating in an extracurricular activity for academic or nonacademic credit for necessary and required equipment such as safety equipment, band instruments and uniforms;

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

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

(ll) To expend funds for the services of nonprofit arts organizations or other such nonprofit organizations who provide performances or other services for the students of the school district;

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

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

31-7-13. All agencies and governing authorities shall purchase their commodities and printing; contract for garbage collection or disposal; contract for solid waste collection or disposal; contract for sewage collection or disposal; contract for public construction; and contract for rentals as herein provided.

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

(b) **Bidding procedure for purchases over $1,500.00 but not over $10,000.00.** Purchases which involve an expenditure of...
more than One Thousand Five Hundred Dollars ($1,500.00) but not more than Ten Thousand Dollars ($10,000.00), exclusive of freight and shipping charges may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two (2) competitive written bids have been obtained. Any governing authority purchasing commodities pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, with regard to governing authorities other than counties, or its purchase clerk, or his designee, with regard to counties, to accept the lowest and best competitive written bid. Such authorization shall be made in writing by the governing authority and shall be maintained on file in the primary office of the agency and recorded in the official minutes of the governing authority, as appropriate. The purchasing agent or the purchase clerk, or their designee, as the case may be, and not the governing authority, shall be liable for any penalties and/or damages as may be imposed by law for any act or omission of the purchasing agent or purchase clerk, or their designee, constituting a violation of law in accepting any bid without approval by the governing authority. The term "competitive written bid" shall mean a bid submitted on a bid form furnished by the buying agency or governing authority and signed by authorized personnel representing the vendor, or a bid submitted on a vendor's letterhead or identifiable bid form and signed by authorized personnel representing the vendor. Bids may be submitted by facsimile, electronic mail or other generally accepted method of information distribution. Bids submitted by electronic transmission shall not require the signature of the vendor's representative unless required by agencies or governing authorities.

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

(i) **Publication requirement.** Purchases which involve an expenditure of more than Ten Thousand Dollars
($10,000.00), exclusive of freight and shipping charges may be made from the lowest and best bidder after advertising for competitive sealed bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice; however, if the purchase involves a construction project in which the estimated cost is in excess of Fifteen Thousand Dollars ($15,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file. If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or municipality in the above provided manner. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to, or provide electronic notification to the main office of the Mississippi Contract Procurement Center that contains the same information as that in the published notice.

(ii) **Bidding process amendment procedure.** If all plans and/or specifications are published in the notification, then the plans and/or specifications may not be amended. If all plans and/or specifications are not published in the notification,
then amendments to the plans/specifications, bid opening date, bid opening
time and place may be made, provided that the agency or governing authority maintains a list of all prospective bidders who are known to have received a copy of the bid documents and all such prospective bidders are sent copies of all amendments. This notification of amendments may be made via mail, facsimile, electronic mail or other generally accepted method of information distribution. No addendum to bid specifications may be issued within forty-eight (48) working hours of the time established for the receipt of bids unless such addendum also amends the bid opening to a date not less than five (5) working days after the date of the addendum.

(iii) **Filing requirement.** In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board of the governing authority. In addition to these requirements, a bid file shall be established which shall indicate those vendors to whom such solicitations and specifications were issued, and such file shall also contain such information as is pertinent to the bid.

(iv) **Specification restrictions.** Specifications pertinent to such bidding shall be written so as not to exclude comparable equipment of domestic manufacture. Provided, however, that should valid justification be presented, the Department of Finance and Administration or the board of a governing authority may approve a request for specific equipment necessary to perform a specific job. Further, such justification, when placed on the minutes of the board of a governing authority, may serve as authority for that governing authority to write specifications to require a specific item of equipment needed to perform a specific job. In addition to these requirements, from and after July 1, 1990, vendors of relocatable classrooms and the specifications for
the purchase of such relocatable classrooms published by local
school boards shall meet all pertinent regulations of the State
Board of Education, including prior approval of such bid by the
State Department of Education.

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

(i) **Decision procedure.** Purchases may be made
from the lowest and best bidder. In determining the lowest and
best bid, freight and shipping charges shall be included.
Life-cycle costing, total cost bids, warranties, guaranteed
buy-back provisions and other relevant provisions may be included
in the best bid calculation. All best bid procedures for state
agencies must be in compliance with regulations established by the
Department of Finance and Administration. If any governing
authority accepts a bid other than the lowest bid actually
submitted, it shall place on its minutes detailed calculations and
narrative summary showing that the accepted bid was determined to
be the lowest and best bid, including the dollar amount of the
accepted bid and the dollar amount of the lowest bid. No agency
or governing authority shall accept a bid based on items not
included in the specifications.

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

(e) **Lease-purchase authorization.** For the purposes of
this section, the term "equipment" shall mean equipment, furniture
and, if applicable, associated software and other applicable
direct costs associated with the acquisition. Any lease-purchase
of equipment which an agency is not required to lease-purchase
under the master lease-purchase program pursuant to Section
31-7-10 and any lease-purchase of equipment which a governing
authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof. No such lease-purchase agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation indebtedness permitted under Section 75-17-101, and the term of such lease-purchase agreement shall not exceed the useful life of equipment covered thereby as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to this paragraph (e) may contain any of the terms and conditions which a master lease-purchase agreement may contain under the provisions of Section 31-7-10(5), and shall contain an annual allocation dependency clause substantially similar to that set forth in Section 31-7-10(8).

Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain with respect to each such lease-purchase transaction the same information as required to be maintained by the Department of Finance and Administration pursuant to Section 31-7-10(13). However, nothing contained in this section shall be construed to permit agencies to acquire items of equipment with a total...
acquisition cost in the aggregate of less than Ten Thousand Dollars ($10,000.00) by a single lease-purchase transaction. All equipment, and the purchase thereof by any lessor, acquired by lease-purchase under this paragraph and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes. Interest paid on any lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation.

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

(g) Construction contract change authorization. In the event a determination is made by an agency or governing authority after a construction contract is let that changes or modifications to the original contract are necessary or would better serve the purpose of the agency or the governing authority, such agency or governing authority may, in its discretion, order such changes pertaining to the construction that are necessary under the circumstances without the necessity of further public bids; provided that such change shall be made in a commercially reasonable manner and shall not be made to circumvent the public purchasing statutes. In addition to any other authorized person, the architect or engineer hired by an agency or governing authority with respect to any public construction contract shall have the authority, when granted by an agency or governing authority, to authorize changes or modifications to the original
contract without the necessity of prior approval of the agency or

governing authority when any such change or modification is less

than one percent (1%) of the total contract amount. The agency or

governing authority may limit the number, manner or frequency of

such emergency changes or modifications.

(h) Petroleum purchase alternative. In addition to

other methods of purchasing authorized in this chapter, when any
agency or governing authority shall have a need for gas, diesel
fuel, oils and/or other petroleum products in excess of the amount
set forth in paragraph (a) of this section, such agency or

governing authority may purchase the commodity after having

solicited and obtained at least two (2) competitive written bids,
as defined in paragraph (b) of this section. If two (2)

competitive written bids are not obtained the entity shall comply

with the procedures set forth in paragraph (c) of this section.

In the event any agency or governing authority shall have

advertised for bids for the purchase of gas, diesel fuel, oils and

other petroleum products and coal and no acceptable bids can be

obtained, such agency or governing authority is authorized and
directed to enter into any negotiations necessary to secure the

lowest and best contract available for the purchase of such

commodities.

(i) Road construction petroleum products price

adjustment clause authorization. Any agency or governing

authority authorized to enter into contracts for the construction,
maintenance, surfacing or repair of highways, roads or streets,

may include in its bid proposal and contract documents a price

adjustment clause with relation to the cost to the contractor,

including taxes, based upon an industry-wide cost index, of

petroleum products including asphalt used in the performance or

execution of the contract or in the production or manufacture of

materials for use in such performance. Such industry-wide index

shall be established and published monthly by the Mississippi
Department of Transportation with a copy thereof to be mailed, upon request, to the clerks of the governing authority of each municipality and the clerks of each board of supervisors throughout the state. The price adjustment clause shall be based on the cost of such petroleum products only and shall not include any additional profit or overhead as part of the adjustment. The bid proposals or document contract shall contain the basis and methods of adjusting unit prices for the change in the cost of such petroleum products.

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

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

(1) **Hospital purchase or lease authorization.** The commissioners or board of trustees of any hospital owned or owned and operated separately or jointly by one or more counties, cities, towns, supervisors districts or election districts, or combinations thereof, may contract with such lowest and best bidder for the purchase or lease of any commodity under a contract of purchase or lease-purchase agreement whose obligatory terms do not exceed five (5) years. In addition to the authority granted herein, the commissioners or board of trustees are authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services. Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further liability on the part of the lessee.
(m) **Exceptions from bidding requirements.** Excepted from bid requirements are:

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

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

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

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

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

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

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

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

(ix) **Waste disposal facility construction**

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

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

(xi) **Information technology products.** Purchases
of information technology products made by governing authorities

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under the provisions of purchase schedules, or contracts executed or approved by the Mississippi Department of Information Technology Services and designated for use by governing authorities.

(xii) **Energy efficiency services and equipment.**

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

(xiii) **Municipal electrical utility system fuel.**

Purchases of coal and/or natural gas by municipally-owned electric power generating systems that have the capacity to use both coal and natural gas for the generation of electric power.

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

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

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

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

(xvii) **Multichannel interactive video systems.**

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

(xviii) **Purchases of prison industry products.**

From and after January 1, 1991, purchases made by state agencies or governing authorities involving any item that is manufactured, processed, grown or produced from the state's prison industries.

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

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

(xxi) **Certain school district purchases.**

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

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

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

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

(xxv) Purchases of state-adopted textbooks.

Purchases of state-adopted textbooks by public school districts.

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

(xxvii) Purchases of contracts for
revenue-interruption insurance by school districts. In connection
with the purchase of noncompetitive items only available from one
(source, a certification of the conditions and circumstances
requiring the purchase shall be filed by the agency with the
Department of Finance and Administration and by the governing
authority with the board of the governing authority. Upon receipt
of such certification the Department of Finance and Administration
or the board of the governing authority, as the case may be, may,
in writing, authorize the purchase, which authority shall be noted
on the minutes of the body at the next regular meeting thereafter.
In such situations, a governing authority is not required to
obtain the approval of the Department of Finance and
Administration.

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

(i) All contracts for the purchase of commodities,
equipment and public construction (including, but not limited to,
repair and maintenance), may be let for periods of not more than
sixty (60) months in advance, subject to applicable statutory
provisions prohibiting the letting of contracts during specified
periods near the end of terms of office. Term contracts for a
period exceeding twenty-four (24) months shall also be subject to
ratification or cancellation by governing authority boards taking
office subsequent to the governing authority board entering the
contract.
(ii) Bid proposals and contracts may include price adjustment clauses with relation to the cost to the contractor based upon a nationally published industry-wide or nationally published and recognized cost index. The cost index used in a price adjustment clause shall be determined by the Department of Finance and Administration for the state agencies and by the governing board for governing authorities. The bid proposal and contract documents utilizing a price adjustment clause shall contain the basis and method of adjusting unit prices for the change in the cost of such commodities, equipment and public construction.

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

(p) **Electrical utility petroleum-based equipment purchase procedure.** When in response to a proper advertisement therefor, no bid firm as to price is submitted to an electric utility for power transformers, distribution transformers, power breakers, reclosers or other articles containing a petroleum product, the electric utility may accept the lowest and best bid therefor although the price is not firm.
(q) Fuel management system bidding procedure. Any governing authority or agency of the state shall, before contracting for the services and products of a fuel management or fuel access system, enter into negotiations with not fewer than two (2) sellers of fuel management or fuel access systems for competitive written bids to provide the services and products for the systems. In the event that the governing authority or agency cannot locate two (2) sellers of such systems or cannot obtain bids from two (2) sellers of such systems, it shall show proof that it made a diligent, good-faith effort to locate and negotiate with two (2) sellers of such systems. Such proof shall include, but not be limited to, publications of a request for proposals and letters soliciting negotiations and bids. For purposes of this paragraph (q), a fuel management or fuel access system is an automated system of acquiring fuel for vehicles as well as management reports detailing fuel use by vehicles and drivers, and the term "competitive written bid" shall have the meaning as defined in paragraph (b) of this section. Governing authorities and agencies shall be exempt from this process when contracting for the services and products of a fuel management or fuel access systems under the terms of a state contract established by the Office of Purchasing and Travel.

(r) Solid waste contract proposal procedure. Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars ($50,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than Ten Thousand Dollars ($10,000.00). Any request for proposals when issued shall contain terms and conditions relating to price,
financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors determined relevant by the governing authority or agency or required by this paragraph (r) shall be duly included in the advertisement to elicit proposals. After responses to the request for proposals have been duly received, the governing authority or agency shall select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinitiated. Notwithstanding any other provisions of this paragraph, where a county with at least thirty-five thousand (35,000) nor more than forty thousand (40,000) population, according to the 1990 federal decennial census, owns or operates a solid waste landfill, the governing authorities of any other county or municipality may contract with the governing authorities of the county owning or operating the landfill, pursuant to a resolution duly adopted and spread upon the minutes of each governing authority involved, for garbage or solid waste collection or disposal services through contract negotiations.

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

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

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

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

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

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

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

SECTION 3. This act shall take effect and be in force from and after July 1, 2001.