

By: Representative Smith (39th)

To: Public Utilities

HOUSE BILL NO. 365

1 AN ACT TO AUTHORIZE MUNICIPAL ELECTRIC UTILITIES AND ELECTRIC
 2 POWER ASSOCIATIONS TO ENTER INTO GROUP-PURCHASING PROGRAMS FOR THE
 3 PURCHASE OF EQUIPMENT, SUPPLIES AND SERVICES; TO AMEND SECTIONS
 4 21-27-17 AND 21-27-23, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO
 5 THE PROVISIONS OF THIS ACT; TO AMEND SECTIONS 31-7-12 AND 31-7-13,
 6 MISSISSIPPI CODE OF 1972, TO EXEMPT PURCHASES MADE BY MUNICIPAL
 7 UTILITIES THROUGH GROUP-PURCHASING PROGRAMS FROM THE STATE
 8 CONTRACT PRICE AND BID REQUIREMENTS; TO BRING FORWARD SECTION
 9 77-5-707, MISSISSIPPI CODE OF 1972, WHICH PRESCRIBES THE POWERS OF
 10 MUNICIPALITIES PARTICIPATING IN JOINT AGENCIES FOR THE GENERATION
 11 AND DISTRIBUTION OF ELECTRICITY; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** (1) As used in this section, the following words
 14 and phrases have the meanings ascribed in this subsection unless
 15 the context clearly indicates otherwise:

16 (a) "Association" means an entity or organization of
 17 which all of the members are electric utilities, and includes any
 18 subsidiary or affiliate organization or entity that an association
 19 may create.

20 (b) "Electric power association" means any electric
 21 power association incorporated under the Electric Power
 22 Association Law (Sections 77-5-201 through 77-5-255).

23 (c) "Electric utility" means any municipal utility
 24 operating an electric system under Chapter 27, Title 21,
 25 Mississippi Code of 1972, any county utility that includes in its
 26 operation an electric system operated under Sections 77-5-301
 27 through 77-5-315 or an electric power association.

28 (d) "Federal agency" means a federal agency, as defined
 29 in Section 77-5-403(h), which owns generation and transmission
 30 facilities for the sale of electric power on July 1, 2002.



31 (e) "Governing board" means the group of persons
32 designated as commissioners, directors, trustees or similar title
33 maintaining responsibility for establishing policy and having
34 ultimate authority for control of the management, operation and
35 finances of an electric utility.

36 (f) "Group-purchasing program" means any plan, program
37 or method of an association or federal agency which is intended to
38 provide one or more electric utilities with the opportunity to
39 purchase commodities, goods, materials, supplies, machinery,
40 equipment or services for the utility's separate use.

41 (2) The governing board of an electric utility may
42 authorize, by resolution, the utility's participation in a
43 group-purchasing program for the purchase of commodities, goods,
44 materials, supplies, machinery, equipment and services if the
45 governing board determines that the group-purchasing program will
46 affect economy or efficiency in the utility's operations.

47 **SECTION 2.** Section 21-27-17, Mississippi Code of 1972, is
48 amended as follows:

49 21-27-17. The commission provided for by Section 21-27-13 is
50 authorized to make such bylaws for the holding and conduct of its
51 meetings and such other regulations as it may deem necessary for
52 the safe, economic and efficient management and protection of the
53 system or systems, and such bylaws and regulations shall have the
54 same validity as an ordinance duly passed by the governing
55 authorities of any municipality.

56 It is authorized to elect such officers and appoint such
57 employees as may be necessary to operate the system or systems
58 efficiently, and it shall have the entire control and management
59 of such system or systems, together with all property connected or
60 appertaining in any manner to such system or systems. The
61 commission shall have the authority to employ a superintendent or
62 manager of the systems, who shall have actual charge of the
63 management and operation thereof and of the enforcement and



64 execution of all the rules, regulations, programs, plans and
65 decisions made and adopted by the commission in making purchases
66 for materials and supplies to be used in the operation of the
67 systems. In addition to any other purchasing authority granted by
68 law, the commission may: (a) purchase electric transmission line
69 materials, electric distribution system substation equipment,
70 transformer equipment, and all other appliances, apparatus,
71 machinery, equipment and appurtenances necessary for the sale of
72 electricity, such as utility vehicles and fencing, from contracts
73 or the surplus inventory of the Tennessee Valley Authority or any
74 other similar agency of the federal government and electric power
75 associations; and (b) enter into and participate in a
76 group-purchasing program, as authorized under Section 1 of House
77 Bill No. _____, 2002 Regular Session, and may acquire goods,
78 materials, supplies, machinery, equipment and services through
79 such program if it appears to the commission that the
80 group-purchasing program will affect economy or efficiency in the
81 system's operations. These purchases shall be exempt from the
82 public bid requirements prescribed in Sections 31-7-12 and
83 31-7-13. However, for all other purchases, the commission shall
84 advertise for competitive bids in the manner and form as is
85 required in accordance with Section 31-7-13. The superintendent
86 or manager shall make and keep full and proper books and records
87 of all purchases and shall submit them to the commission for its
88 approval and ratification before payment thereof is authorized to
89 be made. The commission may authorize the superintendent or
90 manager to immediately refund to a customer of the municipally
91 owned utility his or her deposit for municipal utility services
92 after the superintendent or manager has determined that payment
93 for all services and any other obligations which the customer may
94 have incurred in regard to the municipal utility has been made.
95 It shall have the right to fix the salaries and term of office of
96 all employees and to direct them in the discharge of their duties.



97 It shall have the right to require good and sufficient bonds from
98 all officers and employees in such amounts as it may deem proper.
99 It shall have the right to discharge employees when found
100 inefficient or for other good cause. It shall have the power to
101 make and collect rates for services and facilities, and
102 appropriate funds for the maintenance and improvements of such
103 systems. It is authorized to borrow from the Mississippi
104 Development Bank in order to fund advance purchases of energy for
105 gas producing, generating, transmission or distribution system or
106 its electric generating, transmission or distribution system. It
107 is authorized to insure all property used in the operation of such
108 systems, including buildings, furniture, books and records,
109 against loss by fire and tornado, and to carry sufficient amount
110 of employers liability, steam boiler, plate glass and other
111 miscellaneous casualty insurance, as in the discretion of the
112 commission may be deemed proper, and to pay premiums therefor out
113 of the funds derived from the operation of the systems. It shall
114 report quarterly to the governing authorities of the municipality
115 of all its doings and transactions of every kind whatsoever and
116 shall make a complete statement of the financial condition of the
117 systems at the end of each quarter, and shall annually make a
118 detailed statement covering the entire management and operation of
119 the systems, with any recommendations which it may have for the
120 further development of the systems. At any time, the commission,
121 by order or resolution, may authorize the expansion of activities
122 of any component facility to include processing of materials on a
123 custom basis or the processing and marketing of materials acquired
124 to fully and efficiently utilize existing plant capacity. It
125 shall also provide copies of all such quarterly and annual reports
126 and statements to the Public Service Commission when so directed
127 under Section 77-3-6.

128 The commission provided for by Section 21-27-13 is also
129 authorized to allow a municipally owned utility to prepay the



130 utility's bills to those electricity suppliers which offer early
131 payment discounts to the municipally owned utility.

132 **SECTION 3.** Section 21-27-23, Mississippi Code of 1972, is
133 amended as follows:

134 21-27-23. Any municipality may:

135 (a) Borrow money and issue revenue bonds therefor
136 solely for the purposes specified in this section and by the
137 procedure provided in Sections 21-27-41 through 21-27-69.

138 Money may be borrowed and bonds issued by any municipality of
139 the State of Mississippi, as defined in Section 21-27-11, to
140 acquire or improve any waterworks system, water supply system,
141 sewerage system, sewage disposal system, garbage disposal system,
142 rubbish disposal system or incinerators, gas producing system, gas
143 generating system, gas transmission system, or gas distribution
144 system, electric generating, transmission or distribution system,
145 railroad transportation system for passengers and freight, or
146 motor vehicle transportation system, including any combination of
147 any or all of those systems into one (1) system, within or without
148 the corporate limits thereof, for the purpose of supplying the
149 municipality and the persons and corporations, both public and
150 private, whether within or without its corporate limits, with the
151 services and facilities afforded by the system, provided that
152 water, electric energy, or gas afforded by any system or systems
153 may be supplied to such ultimate consumers thereof by sale thereof
154 to the owners or operators of a distribution system for resale to
155 the public. Any municipality which shall borrow money and issue
156 revenue bonds to provide funds with which to acquire a gas
157 transmission system, if necessary in order to reach and obtain a
158 source of supply of gas for the municipality, may extend or
159 construct its gas transmission line into an adjoining state, and
160 may use and expend part of the proceeds of such issue of revenue
161 bonds for the purpose.



162 (b) * * * Assume all indebtedness for any system or
163 systems which may be acquired under the provisions of this section
164 as all or part of the consideration for the acquisition of such
165 system or systems and to issue its revenue bonds in exchange for
166 the bonds or notes evidencing the indebtedness.

167 (c) * * * Acquire or improve any system which it is
168 authorized to borrow money and issue revenue bonds under
169 subsection (a) of this section to acquire or improve; and may make
170 contracts in furtherance thereof or in connection therewith.

171 (d) * * * Own, operate and maintain any such system or
172 combination of any and all of said systems into one (1) system.

173 (e) * * * Establish, maintain and collect rates for the
174 facilities and services offered by any such system; however, if
175 there is a combination of systems into one or more systems, the
176 municipality establishing the same shall be and is empowered to
177 establish, maintain and collect rates for any and all of the
178 services or for any combination thereof, and the municipality may
179 discontinue any or all of the services upon any failure to
180 promptly pay the charges fixed for the services. The rates so
181 fixed for services rendered by any system or combination thereof
182 may be charged for all services rendered thereby, regardless of
183 whether the services may have been previously rendered without
184 rates or charges therefor by the previously existing waterworks
185 system, water supply system, sewerage system, sewage disposal
186 system, garbage disposal system, rubbish disposal system or
187 incinerators, gas producing system, gas generating system, gas
188 transmission system, or gas distribution system, electric
189 generating, transmission or distribution system, which shall have
190 been merged into the combined system. Any such municipality may
191 pledge for the payment of any bonds issued to acquire or improve
192 any such combined system, or to refund any bonds previously issued
193 to acquire or improve any such combined system or to acquire or
194 improve any system merged with such combined system, the revenues



195 to be derived from the operation of such combined system,
196 including the charges authorized to be imposed by this section.

197 A municipality may authorize a municipally owned utility to
198 make early payment of the utility's bills to its electricity
199 suppliers which offer early payment discounts to the municipally
200 owned utility. The municipality may immediately refund to a
201 customer of the municipally owned utility his or her deposit for
202 municipal utility services after the municipal utility has
203 determined that payment for all services and any other obligations
204 which the customer may have incurred in regard to the municipal
205 utility has been made.

206 If the revenues of any previously existing system being
207 merged into a combined system are subject to a prior lien, the
208 revenues and the expenses of any previously existing system shall
209 be accounted for separately to the extent necessary to satisfy the
210 covenants relating to the prior lien for so long as the
211 indebtedness secured by the revenues shall remain outstanding.
212 Only surplus revenues remaining after the satisfaction of all
213 covenants relating to the outstanding indebtedness may be pledged
214 to the retirement of any indebtedness to be secured by the
215 revenues of a combined system. The existence of the outstanding
216 indebtedness shall not, in and of itself, prevent the combining of
217 systems as herein provided, so long as the prior lien on the
218 revenues of any previously existing system is fully satisfied from
219 the revenues of the previously existing system.

220 (f) * * * Acquire property, real or personal, which may
221 be necessary to effectuate the powers conferred by this section.
222 The municipality may: (i) purchase electric transmission line
223 materials, electric distribution system substation equipment,
224 transformer equipment, and all other appliances, apparatus,
225 machinery, equipment and appurtenances necessary for the sale of
226 electricity, such as utility vehicles and fencing, from contracts
227 or the surplus inventory of the Tennessee Valley Authority or any



228 other similar agency of the federal government and electric power
229 associations; and (ii) enter into and participate in a
230 group-purchasing program, as authorized under Section 1 of House
231 Bill No. _____, 2002 Regular Session, and may acquire goods,
232 materials, supplies, machinery, equipment and services through
233 such program if it appears to the municipality that the
234 group-purchasing program will affect economy or efficiency in the
235 system's operations. These purchases by the municipality shall be
236 exempt from the public bid requirements prescribed in Sections
237 31-7-12 and 31-7-13. If the power of eminent domain is exercised,
238 it shall be exercised in the manner provided by Sections 11-27-1
239 through 11-27-51.

240 (g) * * * Enter into contract with the United States of
241 America or any agency thereof, under the provisions of acts of the
242 Congress of the United States, to aid or encourage public works
243 and the regulations made in pursuance thereof, for the sale of
244 bonds issued in accordance with the provisions of Sections
245 21-27-41 through 21-27-69 or for the acceptance of a grant to aid
246 such municipality in acquiring or improving any such system; and
247 the contracts may contain terms and conditions as may be agreed
248 upon by and between the municipality and the United States of
249 America or any agency thereof, or any purchaser of the bonds.

250 (h) * * * Adopt the ordinances and resolutions and to
251 do all things and perform all acts necessary, proper or desirable
252 to effectuate the full intent and purpose of Sections 21-27-11
253 through 21-27-69, including processing, marketing, custom
254 processing, sale and resale of materials processed through any
255 facility under its jurisdiction.

256 (i) * * * Borrow from the Mississippi Development Bank
257 in order to fund the advance purchase of energy for its gas
258 producing, generating, transmission or distribution system or its
259 electric generating, transmission or distribution system.



260 **SECTION 4.** Section 31-7-12, Mississippi Code of 1972, is
261 amended as follows:

262 31-7-12. (1) Except in regard to purchases of unmarked
263 vehicles made in accordance with purchasing regulations adopted by
264 the Department of Finance and Administration pursuant to Section
265 31-7-9(2), all agencies shall purchase commodities at the state
266 contract price from the approved source, unless approval is
267 granted by the Department of Finance and Administration to solicit
268 purchases outside the terms of the contracts. However, prices
269 accepted by an agency shall be less than the prices set by the
270 state contract. Prices accepted by an agency shall be obtained in
271 compliance with paragraph (a), (b) or (c) of Section 31-7-13. It
272 shall be the responsibility of the Department of Finance and
273 Administration to ascertain that the resulting prices shall
274 provide a cost effective alternative to the established state
275 contract.

276 (2) Governing authorities may purchase commodities approved
277 by the Department of Finance and Administration from the state
278 contract vendor, or from any source offering the identical
279 commodity, at a price not exceeding the state contract price
280 established by the Department of Finance and Administration for
281 such commodity, without obtaining or advertising for competitive
282 bids. Governing authorities that do not exercise the option to
283 purchase such commodities from the state contract vendor or from
284 another source offering the identical commodity at a price not
285 exceeding the state contract price established by the Department
286 of Finance and Administration shall make such purchases pursuant
287 to the provisions of Section 31-7-13 without regard to state
288 contract prices established by the Department of Finance and
289 Administration, unless such purchases are authorized to be made
290 under subsection (5) of this section.

291 (3) Nothing in this section shall prohibit governing
292 authorities from purchasing, pursuant to subsection (2) of this



293 section, commodities approved by the Department of Finance and
294 Administration at a price not exceeding the state contract price
295 established by the Department of Finance and Administration.

296 (4) The Department of Finance and Administration shall
297 ensure that the prices of all commodities on the state contract
298 are the lowest and best prices available from any source offering
299 that commodity at the same level of quality or service, utilizing
300 the reasonable standards established therefor by the Department of
301 Finance and Administration. If the Department of Finance and
302 Administration does not list an approved price for the particular
303 item involved, purchase shall be made according to statutory
304 bidding and licensing requirements. To encourage prudent
305 purchasing practices, the Department of Finance and Administration
306 shall be authorized and empowered to exempt certain commodities
307 from the requirement that the lowest and best price be approved by
308 order placed on its minutes.

309 (5) Any school district may purchase commodities from
310 vendors with which any levying authority of the school district,
311 as defined in Section 37-57-1, has contracted through competitive
312 bidding procedures pursuant to Section 31-7-13 for purchases of
313 the same commodities. Purchases authorized by this subsection may
314 be made by a school district without obtaining or advertising for
315 competitive bids, and such purchases shall be made at the same
316 prices and under the same conditions as purchases of the same
317 commodities are to be made by the levying authority of the school
318 district under the contract with the vendor.

319 (6) The governing body of a municipal utility participating
320 in a group-purchasing program, as authorized under Section 1 of
321 House Bill No. , 2002, Regular Session, may purchase goods,
322 materials, supplies, machinery, equipment and services through
323 such group-purchasing program without regard to the state contract
324 price and vendor and without obtaining approval from the
325 Department of Finance and Administration.



326 **SECTION 5.** Section 31-7-13, Mississippi Code of 1972, is
327 amended as follows:

328 31-7-13. All agencies and governing authorities shall
329 purchase their commodities and printing; contract for garbage
330 collection or disposal; contract for solid waste collection or
331 disposal; contract for sewage collection or disposal; contract for
332 public construction; and contract for rentals as herein provided.

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

342 (b) **Bidding procedure for purchases over \$1,500.00 but**
343 **not over \$10,000.00.** Purchases which involve an expenditure of
344 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
345 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
346 and shipping charges may be made from the lowest and best bidder
347 without publishing or posting advertisement for bids, provided at
348 least two (2) competitive written bids have been obtained. Any
349 governing authority purchasing commodities pursuant to this
350 paragraph (b) may authorize its purchasing agent, or his designee,
351 with regard to governing authorities other than counties, or its
352 purchase clerk, or his designee, with regard to counties, to
353 accept the lowest and best competitive written bid. Such
354 authorization shall be made in writing by the governing authority
355 and shall be maintained on file in the primary office of the
356 agency and recorded in the official minutes of the governing
357 authority, as appropriate. The purchasing agent or the purchase
358 clerk, or their designee, as the case may be, and not the



359 governing authority, shall be liable for any penalties and/or
360 damages as may be imposed by law for any act or omission of the
361 purchasing agent or purchase clerk, or their designee,
362 constituting a violation of law in accepting any bid without
363 approval by the governing authority. The term "competitive
364 written bid" shall mean a bid submitted on a bid form furnished by
365 the buying agency or governing authority and signed by authorized
366 personnel representing the vendor, or a bid submitted on a
367 vendor's letterhead or identifiable bid form and signed by
368 authorized personnel representing the vendor. Bids may be
369 submitted by facsimile, electronic mail or other generally
370 accepted method of information distribution. Bids submitted by
371 electronic transmission shall not require the signature of the
372 vendor's representative unless required by agencies or governing
373 authorities.

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

375 (i) **Publication requirement.** Purchases which
376 involve an expenditure of more than Ten Thousand Dollars
377 (\$10,000.00), exclusive of freight and shipping charges may be
378 made from the lowest and best bidder after advertising for
379 competitive sealed bids once each week for two (2) consecutive
380 weeks in a regular newspaper published in the county or
381 municipality in which such agency or governing authority is
382 located. The date as published for the bid opening shall not be
383 less than seven (7) working days after the last published notice;
384 however, if the purchase involves a construction project in which
385 the estimated cost is in excess of Fifteen Thousand Dollars
386 (\$15,000.00), such bids shall not be opened in less than fifteen
387 (15) working days after the last notice is published and the
388 notice for the purchase of such construction shall be published
389 once each week for two (2) consecutive weeks. The notice of
390 intention to let contracts or purchase equipment shall state the
391 time and place at which bids shall be received, list the contracts



392 to be made or types of equipment or supplies to be purchased, and,
393 if all plans and/or specifications are not published, refer to the
394 plans and/or specifications on file. If there is no newspaper
395 published in the county or municipality, then such notice shall be
396 given by posting same at the courthouse, or for municipalities at
397 the city hall, and at two (2) other public places in the county or
398 municipality, and also by publication once each week for two (2)
399 consecutive weeks in some newspaper having a general circulation
400 in the county or municipality in the above provided manner. On
401 the same date that the notice is submitted to the newspaper for
402 publication, the agency or governing authority involved shall mail
403 written notice to, or provide electronic notification to the main
404 office of the Mississippi Contract Procurement Center that
405 contains the same information as that in the published notice.

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

422 (iii) **Filing requirement.** In all cases involving
423 governing authorities, before the notice shall be published or
424 posted, the plans or specifications for the construction or



425 equipment being sought shall be filed with the clerk of the board
426 of the governing authority. In addition to these requirements, a
427 bid file shall be established which shall indicate those vendors
428 to whom such solicitations and specifications were issued, and
429 such file shall also contain such information as is pertinent to
430 the bid.

431 (iv) **Specification restrictions.** Specifications
432 pertinent to such bidding shall be written so as not to exclude
433 comparable equipment of domestic manufacture. Provided, however,
434 that should valid justification be presented, the Department of
435 Finance and Administration or the board of a governing authority
436 may approve a request for specific equipment necessary to perform
437 a specific job. Further, such justification, when placed on the
438 minutes of the board of a governing authority, may serve as
439 authority for that governing authority to write specifications to
440 require a specific item of equipment needed to perform a specific
441 job. In addition to these requirements, from and after July 1,
442 1990, vendors of relocatable classrooms and the specifications for
443 the purchase of such relocatable classrooms published by local
444 school boards shall meet all pertinent regulations of the State
445 Board of Education, including prior approval of such bid by the
446 State Department of Education.

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

448 (i) **Decision procedure.** Purchases may be made
449 from the lowest and best bidder. In determining the lowest and
450 best bid, freight and shipping charges shall be included.
451 Life-cycle costing, total cost bids, warranties, guaranteed
452 buy-back provisions and other relevant provisions may be included
453 in the best bid calculation. All best bid procedures for state
454 agencies must be in compliance with regulations established by the
455 Department of Finance and Administration. If any governing
456 authority accepts a bid other than the lowest bid actually
457 submitted, it shall place on its minutes detailed calculations and



458 narrative summary showing that the accepted bid was determined to
459 be the lowest and best bid, including the dollar amount of the
460 accepted bid and the dollar amount of the lowest bid. No agency
461 or governing authority shall accept a bid based on items not
462 included in the specifications.

463 (ii) **Construction project negotiations authority.**

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

469 (e) **Lease-purchase authorization.** For the purposes of
470 this section, the term "equipment" shall mean equipment, furniture
471 and, if applicable, associated software and other applicable
472 direct costs associated with the acquisition. Any lease-purchase
473 of equipment which an agency is not required to lease-purchase
474 under the master lease-purchase program pursuant to Section
475 31-7-10 and any lease-purchase of equipment which a governing
476 authority elects to lease-purchase may be acquired by a
477 lease-purchase agreement under this paragraph (e). Lease-purchase
478 financing may also be obtained from the vendor or from a
479 third-party source after having solicited and obtained at least
480 two (2) written competitive bids, as defined in paragraph (b) of
481 this section, for such financing without advertising for such
482 bids. Solicitation for the bids for financing may occur before or
483 after acceptance of bids for the purchase of such equipment or,
484 where no such bids for purchase are required, at any time before
485 the purchase thereof. No such lease-purchase agreement shall be
486 for an annual rate of interest which is greater than the overall
487 maximum interest rate to maturity on general obligation
488 indebtedness permitted under Section 75-17-101, and the term of
489 such lease-purchase agreement shall not exceed the useful life of
490 equipment covered thereby as determined according to the upper



491 limit of the asset depreciation range (ADR) guidelines for the
492 Class Life Asset Depreciation Range System established by the
493 Internal Revenue Service pursuant to the United States Internal
494 Revenue Code and regulations thereunder as in effect on December
495 31, 1980, or comparable depreciation guidelines with respect to
496 any equipment not covered by ADR guidelines. Any lease-purchase
497 agreement entered into pursuant to this paragraph (e) may contain
498 any of the terms and conditions which a master lease-purchase
499 agreement may contain under the provisions of Section 31-7-10(5),
500 and shall contain an annual allocation dependency clause
501 substantially similar to that set forth in Section 31-7-10(8).
502 Each agency or governing authority entering into a lease-purchase
503 transaction pursuant to this paragraph (e) shall maintain with
504 respect to each such lease-purchase transaction the same
505 information as required to be maintained by the Department of
506 Finance and Administration pursuant to Section 31-7-10(13).
507 However, nothing contained in this section shall be construed to
508 permit agencies to acquire items of equipment with a total
509 acquisition cost in the aggregate of less than Ten Thousand
510 Dollars (\$10,000.00) by a single lease-purchase transaction. All
511 equipment, and the purchase thereof by any lessor, acquired by
512 lease-purchase under this paragraph and all lease-purchase
513 payments with respect thereto shall be exempt from all Mississippi
514 sales, use and ad valorem taxes. Interest paid on any
515 lease-purchase agreement under this section shall be exempt from
516 State of Mississippi income taxation.

517 (f) **Alternate bid authorization.** When necessary to
518 ensure ready availability of commodities for public works and the
519 timely completion of public projects, no more than two (2)
520 alternate bids may be accepted by a governing authority for
521 commodities. No purchases may be made through use of such
522 alternate bids procedure unless the lowest and best bidder, for
523 reasons beyond his control, cannot deliver the commodities



524 contained in his bid. In that event, purchases of such
525 commodities may be made from one (1) of the bidders whose bid was
526 accepted as an alternate.

527 (g) **Construction contract change authorization.** In the
528 event a determination is made by an agency or governing authority
529 after a construction contract is let that changes or modifications
530 to the original contract are necessary or would better serve the
531 purpose of the agency or the governing authority, such agency or
532 governing authority may, in its discretion, order such changes
533 pertaining to the construction that are necessary under the
534 circumstances without the necessity of further public bids;
535 provided that such change shall be made in a commercially
536 reasonable manner and shall not be made to circumvent the public
537 purchasing statutes. In addition to any other authorized person,
538 the architect or engineer hired by an agency or governing
539 authority with respect to any public construction contract shall
540 have the authority, when granted by an agency or governing
541 authority, to authorize changes or modifications to the original
542 contract without the necessity of prior approval of the agency or
543 governing authority when any such change or modification is less
544 than one percent (1%) of the total contract amount. The agency or
545 governing authority may limit the number, manner or frequency of
546 such emergency changes or modifications.

547 (h) **Petroleum purchase alternative.** In addition to
548 other methods of purchasing authorized in this chapter, when any
549 agency or governing authority shall have a need for gas, diesel
550 fuel, oils and/or other petroleum products in excess of the amount
551 set forth in paragraph (a) of this section, such agency or
552 governing authority may purchase the commodity after having
553 solicited and obtained at least two (2) competitive written bids,
554 as defined in paragraph (b) of this section. If two (2)
555 competitive written bids are not obtained the entity shall comply
556 with the procedures set forth in paragraph (c) of this section.



557 In the event any agency or governing authority shall have
558 advertised for bids for the purchase of gas, diesel fuel, oils and
559 other petroleum products and coal and no acceptable bids can be
560 obtained, such agency or governing authority is authorized and
561 directed to enter into any negotiations necessary to secure the
562 lowest and best contract available for the purchase of such
563 commodities.

564 (i) **Road construction petroleum products price**
565 **adjustment clause authorization.** Any agency or governing
566 authority authorized to enter into contracts for the construction,
567 maintenance, surfacing or repair of highways, roads or streets,
568 may include in its bid proposal and contract documents a price
569 adjustment clause with relation to the cost to the contractor,
570 including taxes, based upon an industry-wide cost index, of
571 petroleum products including asphalt used in the performance or
572 execution of the contract or in the production or manufacture of
573 materials for use in such performance. Such industry-wide index
574 shall be established and published monthly by the Mississippi
575 Department of Transportation with a copy thereof to be mailed,
576 upon request, to the clerks of the governing authority of each
577 municipality and the clerks of each board of supervisors
578 throughout the state. The price adjustment clause shall be based
579 on the cost of such petroleum products only and shall not include
580 any additional profit or overhead as part of the adjustment. The
581 bid proposals or document contract shall contain the basis and
582 methods of adjusting unit prices for the change in the cost of
583 such petroleum products.

584 (j) **State agency emergency purchase procedure.** If the
585 executive head of any agency of the state shall determine that an
586 emergency exists in regard to the purchase of any commodities or
587 repair contracts, so that the delay incident to giving opportunity
588 for competitive bidding would be detrimental to the interests of
589 the state, then the provisions herein for competitive bidding



590 shall not apply and the head of such agency shall be authorized to
591 make the purchase or repair. Total purchases so made shall only
592 be for the purpose of meeting needs created by the emergency
593 situation. In the event such executive head is responsible to an
594 agency board, at the meeting next following the emergency
595 purchase, documentation of the purchase, including a description
596 of the commodity purchased, the purchase price thereof and the
597 nature of the emergency shall be presented to the board and placed
598 on the minutes of the board of such agency. The head of such
599 agency shall, at the earliest possible date following such
600 emergency purchase, file with the Department of Finance and
601 Administration (i) a statement under oath certifying the
602 conditions and circumstances of the emergency, and (ii) a
603 certified copy of the appropriate minutes of the board of such
604 agency, if applicable.

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

606 If the governing authority, or the governing authority acting
607 through its designee, shall determine that an emergency exists in
608 regard to the purchase of any commodities or repair contracts, so
609 that the delay incident to giving opportunity for competitive
610 bidding would be detrimental to the interest of the governing
611 authority, then the provisions herein for competitive bidding
612 shall not apply and any officer or agent of such governing
613 authority having general or special authority therefor in making
614 such purchase or repair shall approve the bill presented therefor,
615 and he shall certify in writing thereon from whom such purchase
616 was made, or with whom such a repair contract was made. At the
617 board meeting next following the emergency purchase or repair
618 contract, documentation of the purchase or repair contract,
619 including a description of the commodity purchased, the price
620 thereof and the nature of the emergency shall be presented to the
621 board and shall be placed on the minutes of the board of such
622 governing authority.



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

641 (m) **Exceptions from bidding requirements.** Excepted
642 from bid requirements are:

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

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



656 labor and costs therefor shall be required for the payment for
657 such repairs.

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

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

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

676 (vi) **Intergovernmental sales and transfers.**
677 Purchases, sales, transfers or trades by governing authorities or
678 state agencies when such purchases, sales, transfers or trades are
679 made by a private treaty agreement or through means of
680 negotiation, from any federal agency or authority, another
681 governing authority or state agency of the State of Mississippi,
682 or any state agency of another state. Nothing in this section
683 shall permit such purchases through public auction except as
684 provided for in subparagraph (v) of this section. It is the
685 intent of this section to allow governmental entities to dispose
686 of and/or purchase commodities from other governmental entities at
687 a price that is agreed to by both parties. This shall allow for
688 purchases and/or sales at prices which may be determined to be



689 below the market value if the selling entity determines that the
690 sale at below market value is in the best interest of the
691 taxpayers of the state. Governing authorities shall place the
692 terms of the agreement and any justification on the minutes, and
693 state agencies shall obtain approval from the Department of
694 Finance and Administration, prior to releasing or taking
695 possession of the commodities.

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

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

714 (ix) **Waste disposal facility construction**
715 **contracts.** Construction of incinerators and other facilities for
716 disposal of solid wastes in which products either generated
717 therein, such as steam, or recovered therefrom, such as materials
718 for recycling, are to be sold or otherwise disposed of; provided,
719 however, in constructing such facilities a governing authority or
720 agency shall publicly issue requests for proposals, advertised for
721 in the same manner as provided herein for seeking bids for public



722 construction projects, concerning the design, construction,
723 ownership, operation and/or maintenance of such facilities,
724 wherein such requests for proposals when issued shall contain
725 terms and conditions relating to price, financial responsibility,
726 technology, environmental compatibility, legal responsibilities
727 and such other matters as are determined by the governing
728 authority or agency to be appropriate for inclusion; and after
729 responses to the request for proposals have been duly received,
730 the governing authority or agency may select the most qualified
731 proposal or proposals on the basis of price, technology and other
732 relevant factors and from such proposals, but not limited to the
733 terms thereof, negotiate and enter contracts with one or more of
734 the persons or firms submitting proposals.

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

738 (xi) **Information technology products.** Purchases
739 of information technology products made by governing authorities
740 under the provisions of purchase schedules, or contracts executed
741 or approved by the Mississippi Department of Information
742 Technology Services and designated for use by governing
743 authorities.

744 (xii) **Energy efficiency services and equipment.**
745 Energy efficiency services and equipment acquired by school
746 districts, community and junior colleges, institutions of higher
747 learning and state agencies or other applicable governmental
748 entities on a shared-savings, lease or lease-purchase basis
749 pursuant to Section 31-7-14.

750 (xiii) **Municipal electrical utility system fuel.**
751 Purchases of coal and/or natural gas by municipally-owned electric
752 power generating systems that have the capacity to use both coal
753 and natural gas for the generation of electric power.



754 (xiv) **Library books and other reference materials.**
755 Purchases by libraries or for libraries of books and periodicals;
756 processed film, video cassette tapes, filmstrips and slides;
757 recorded audio tapes, cassettes and diskettes; and any such items
758 as would be used for teaching, research or other information
759 distribution; however, equipment such as projectors, recorders,
760 audio or video equipment, and monitor televisions are not exempt
761 under this subparagraph.

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

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

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

776 (xviii) **Purchases of prison industry products.**
777 From and after January 1, 1991, purchases made by state agencies
778 or governing authorities involving any item that is manufactured,
779 processed, grown or produced from the state's prison industries.

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

785 (xx) **Junior college books for rent.** Purchases by
786 community or junior colleges of textbooks which are obtained for



787 the purpose of renting such books to students as part of a book
788 service system.

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

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

794 (xxii) **Garbage, solid waste and sewage contracts.**

795 Contracts for garbage collection or disposal, contracts for solid
796 waste collection or disposal and contracts for sewage collection
797 or disposal.

798 (xxiii) **Municipal water tank maintenance**

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

804 (xxiv) **Purchases of Mississippi Industries for the**

805 **Blind products.** Purchases made by state agencies or governing
806 authorities involving any item that is manufactured, processed or
807 produced by the Mississippi Industries for the Blind.

808 (xxv) **Purchases of state-adopted textbooks.**

809 Purchases of state-adopted textbooks by public school districts.

810 (xxvi) **Certain purchases under the Mississippi**

811 **Major Economic Impact Act.** Contracts entered into pursuant to the
812 provisions of Section 57-75-9(2) and (3).

813 (xxvii) **Used heavy or specialized machinery or**

814 **equipment for installation of soil and water conservation**

815 **practices purchased at auction.** Used heavy or specialized

816 machinery or equipment used for the installation and

817 implementation of soil and water conservation practices or

818 measures purchased subject to the restrictions provided in

819 Sections 69-27-331 through 69-27-341. Any purchase by the State



820 Soil and Water Conservation Commission under the exemption
821 authorized by this subparagraph shall require advance
822 authorization spread upon the minutes of the commission to include
823 the listing of the item or items authorized to be purchased and
824 the maximum bid authorized to be paid for each item or items.

825 (xxviii) **Municipal utility purchases through**
826 **group-purchasing programs.** Purchase of goods, materials,
827 supplies, machinery, equipment and services through a
828 group-purchasing program authorized under Section 1 of House Bill
829 No. _____, 2002 Regular Session, by a municipal utility
830 participating in such group-purchasing program.

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

833 (i) All contracts for the purchase of commodities,
834 equipment and public construction (including, but not limited to,
835 repair and maintenance), may be let for periods of not more than
836 sixty (60) months in advance, subject to applicable statutory
837 provisions prohibiting the letting of contracts during specified
838 periods near the end of terms of office. Term contracts for a
839 period exceeding twenty-four (24) months shall also be subject to
840 ratification or cancellation by governing authority boards taking
841 office subsequent to the governing authority board entering the
842 contract.

843 (ii) Bid proposals and contracts may include price
844 adjustment clauses with relation to the cost to the contractor
845 based upon a nationally published industry-wide or nationally
846 published and recognized cost index. The cost index used in a
847 price adjustment clause shall be determined by the Department of
848 Finance and Administration for the state agencies and by the
849 governing board for governing authorities. The bid proposal and
850 contract documents utilizing a price adjustment clause shall
851 contain the basis and method of adjusting unit prices for the



852 change in the cost of such commodities, equipment and public
853 construction.

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

869 (p) **Electrical utility petroleum-based equipment**
870 **purchase procedure.** When in response to a proper advertisement
871 therefor, no bid firm as to price is submitted to an electric
872 utility for power transformers, distribution transformers, power
873 breakers, reclosers or other articles containing a petroleum
874 product, the electric utility may accept the lowest and best bid
875 therefor although the price is not firm.

876 (q) **Fuel management system bidding procedure.** Any
877 governing authority or agency of the state shall, before
878 contracting for the services and products of a fuel management or
879 fuel access system, enter into negotiations with not fewer than
880 two (2) sellers of fuel management or fuel access systems for
881 competitive written bids to provide the services and products for
882 the systems. In the event that the governing authority or agency
883 cannot locate two (2) sellers of such systems or cannot obtain
884 bids from two (2) sellers of such systems, it shall show proof



885 that it made a diligent, good-faith effort to locate and negotiate
886 with two (2) sellers of such systems. Such proof shall include,
887 but not be limited to, publications of a request for proposals and
888 letters soliciting negotiations and bids. For purposes of this
889 paragraph (q), a fuel management or fuel access system is an
890 automated system of acquiring fuel for vehicles as well as
891 management reports detailing fuel use by vehicles and drivers, and
892 the term "competitive written bid" shall have the meaning as
893 defined in paragraph (b) of this section. Governing authorities
894 and agencies shall be exempt from this process when contracting
895 for the services and products of a fuel management or fuel access
896 systems under the terms of a state contract established by the
897 Office of Purchasing and Travel.

898 (r) **Solid waste contract proposal procedure.** Before
899 entering into any contract for garbage collection or disposal,
900 contract for solid waste collection or disposal or contract for
901 sewage collection or disposal, which involves an expenditure of
902 more than Fifty Thousand Dollars (\$50,000.00), a governing
903 authority or agency shall issue publicly a request for proposals
904 concerning the specifications for such services which shall be
905 advertised for in the same manner as provided in this section for
906 seeking bids for purchases which involve an expenditure of more
907 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
908 when issued shall contain terms and conditions relating to price,
909 financial responsibility, technology, legal responsibilities and
910 other relevant factors as are determined by the governing
911 authority or agency to be appropriate for inclusion; all factors
912 determined relevant by the governing authority or agency or
913 required by this paragraph (r) shall be duly included in the
914 advertisement to elicit proposals. After responses to the request
915 for proposals have been duly received, the governing authority or
916 agency shall select the most qualified proposal or proposals on
917 the basis of price, technology and other relevant factors and from



918 such proposals, but not limited to the terms thereof, negotiate
919 and enter contracts with one or more of the persons or firms
920 submitting proposals. If the governing authority or agency deems
921 none of the proposals to be qualified or otherwise acceptable, the
922 request for proposals process may be reinitiated. Notwithstanding
923 any other provisions of this paragraph, where a county with at
924 least thirty-five thousand (35,000) nor more than forty thousand
925 (40,000) population, according to the 1990 federal decennial
926 census, owns or operates a solid waste landfill, the governing
927 authorities of any other county or municipality may contract with
928 the governing authorities of the county owning or operating the
929 landfill, pursuant to a resolution duly adopted and spread upon
930 the minutes of each governing authority involved, for garbage or
931 solid waste collection or disposal services through contract
932 negotiations.

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



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

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

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

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

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

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

972 **SECTION 6.** Section 77-5-707, Mississippi Code of 1972, is
973 brought forward as follows:

974 77-5-707. In addition and supplemental to the powers
975 otherwise conferred on municipalities by the laws of the state,
976 and in order to accomplish the purposes of this article and to
977 obtain a supply of electric power and energy for the present and
978 future needs of its inhabitants and customers, a municipality may
979 plan, finance, develop, construct, reconstruct, acquire, improve,
980 enlarge, better, own, operate and maintain an undivided interest
981 as a tenant in common in a project situated within or without the
982 state jointly with one or more other municipalities, or with a



983 joint agency created pursuant to this article, or with municipal
984 corporations or political subdivisions of other states (to the
985 extent permitted by the laws of such other states), or with any
986 other federal, state or municipal agency which owns electric
987 generation, transmission or distribution facilities or with any
988 person, firm, association or corporation, public or private,
989 engaged in the generation, transmission or distribution of
990 electric power and energy either within or without this state, and
991 may make such plans and enter into such contracts in connection
992 therewith, not inconsistent with the provisions of this article,
993 as are necessary or appropriate.

994 Prior to acquiring any such undivided interest, the utility
995 commission shall determine the needs of the municipality for power
996 and energy based upon engineering studies and reports, and shall
997 not acquire an undivided interest as a tenant in common in a
998 project in excess of that amount of capacity and the energy
999 associated therewith required to provide for its projected needs
1000 for power and energy from and after the date the project is
1001 estimated to be placed in normal continuous operation and for such
1002 reasonable period of time thereafter as shall be determined by the
1003 utility commission. In determining the future power requirements
1004 of a municipality, there shall be taken into account the
1005 following:

1006 (a) The economies and efficiencies estimated to be
1007 achieved in acquiring, constructing and operating the proposed
1008 facilities for the generation and transmission of electric power
1009 and energy;

1010 (b) The municipality's estimated requirements for power
1011 and energy from the project and for reserve capacity and to meet
1012 obligations under pooling and reserve sharing agreements
1013 reasonably related to its needs for power and energy to which it
1014 is or may become a party; and



1015 (c) The cost of existing or alternative power supply
1016 sources.

1017 A determination by such utility commission approved by the
1018 governing authorities as herein provided, based upon appropriate
1019 findings of the foregoing matters, shall be conclusive as to the
1020 quantity of the interest which a municipality may acquire in a
1021 project. Any determination by the utilities commission shall be
1022 filed with the governing authorities of the municipality and
1023 recorded in the official minutes of the governing authorities.
1024 Notice of the filing of such determination shall be published one
1025 (1) time in a newspaper having a general circulation in the
1026 municipality, and shall specify a date, not less than ten (10)
1027 days after the publication of such notice at which the governing
1028 authorities of such municipality shall meet to hear any objections
1029 or remonstrances that may be made. At said meeting, the governing
1030 authorities shall consider the objections or protests, if any, and
1031 shall at said meeting or at any adjourned meeting, ratify or
1032 reject the determination of the utility commission. Any person or
1033 party objecting or protesting the determination at said meeting,
1034 who is aggrieved by the ratification thereof, shall file an appeal
1035 pursuant to section 11-51-75.

1036 Nothing herein contained shall prevent a municipality or
1037 municipalities from undertaking studies to determine whether there
1038 is a need for a project or whether such project is feasible.

1039 For the purposes of this section, the terms "municipality"
1040 and "utility commission" shall not include a joint agency or the
1041 board of commissioners thereof.

1042 **SECTION 7.** This act shall take effect and be in force from
1043 and after July 1, 2002.

