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MISSISSIPPI LEGISLATURE 
REGULAR SESSION 2002

By: Representative Smith (39th) 

To: Public Utilities

HOUSE BILL NO. 365

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

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

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

(a) "Association" means an entity or organization of

which all of the members are electric utilities, and includes any

subsidiary or affiliate organization or entity that an association

may create.

(b) "Electric power association" means any electric

power association incorporated under the Electric Power

Association Law (Sections 77-5-201 through 77-5-255).

(c) "Electric utility" means any municipal utility

operating an electric system under Chapter 27, Title 21,

Mississippi Code of 1972, any county utility that includes in its

operation an electric system operated under Sections 77-5-301

through 77-5-315 or an electric power association.

(d) "Federal agency" means a federal agency, as defined

in Section 77-5-403(h), which owns generation and transmission

facilities for the sale of electric power on July 1, 2002.
(e) "Governing board" means the group of persons designated as commissioners, directors, trustees or similar title maintaining responsibility for establishing policy and having ultimate authority for control of the management, operation and finances of an electric utility.

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

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

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

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

It is authorized to elect such officers and appoint such employees as may be necessary to operate the system or systems efficiently, and it shall have the entire control and management of such system or systems, together with all property connected or appertaining in any manner to such system or systems. The commission shall have the authority to employ a superintendent or manager of the systems, who shall have actual charge of the management and operation thereof and of the enforcement and
execution of all the rules, regulations, programs, plans and
decisions made and adopted by the commission in making purchases
for materials and supplies to be used in the operation of the
systems. In addition to any other purchasing authority granted by
law, the commission may: (a) purchase electric transmission line
materials, electric distribution system substation equipment,
transformer equipment, and all other appliances, apparatus,
machinery, equipment and appurtenances necessary for the sale of
electricity, such as utility vehicles and fencing, from contracts
or the surplus inventory of the Tennessee Valley Authority or any
other similar agency of the federal government and electric power
associations; and (b) enter into and participate in a
group-purchasing program, as authorized under Section 1 of House
Bill No.____, 2002 Regular Session, and may acquire goods,
materials, supplies, machinery, equipment and services through
such program if it appears to the commission that the
group-purchasing program will affect economy or efficiency in the
system's operations. These purchases shall be exempt from the
public bid requirements prescribed in Sections 31-7-12 and
31-7-13. However, for all other purchases, the commission shall
advertise for competitive bids in the manner and form as is
required in accordance with Section 31-7-13. The superintendent
or manager shall make and keep full and proper books and records
of all purchases and shall submit them to the commission for its
approval and ratification before payment thereof is authorized to
be made. The commission may authorize the superintendent or
manager to immediately refund to a customer of the municipally
owned utility his or her deposit for municipal utility services
after the superintendent or manager has determined that payment
for all services and any other obligations which the customer may
have incurred in regard to the municipal utility has been made.
It shall have the right to fix the salaries and term of office of
all employees and to direct them in the discharge of their duties.
It shall have the right to require good and sufficient bonds from
all officers and employees in such amounts as it may deem proper.
It shall have the right to discharge employees when found
inefficient or for other good cause. It shall have the power to
make and collect rates for services and facilities, and
appropriate funds for the maintenance and improvements of such
systems. It is authorized to borrow from the Mississippi
Development Bank in order to fund advance purchases of energy for
gas producing, generating, transmission or distribution system or
its electric generating, transmission or distribution system. It
is authorized to insure all property used in the operation of such
systems, including buildings, furniture, books and records,
against loss by fire and tornado, and to carry sufficient amount
of employers liability, steam boiler, plate glass and other
miscellaneous casualty insurance, as in the discretion of the
commission may be deemed proper, and to pay premiums therefor out
of the funds derived from the operation of the systems. It shall
report quarterly to the governing authorities of the municipality
of all its doings and transactions of every kind whatsoever and
shall make a complete statement of the financial condition of the
systems at the end of each quarter, and shall annually make a
detailed statement covering the entire management and operation of
the systems, with any recommendations which it may have for the
further development of the systems. At any time, the commission,
by order or resolution, may authorize the expansion of activities
of any component facility to include processing of materials on a
custom basis or the processing and marketing of materials acquired
to fully and efficiently utilize existing plant capacity. It
shall also provide copies of all such quarterly and annual reports
and statements to the Public Service Commission when so directed
under Section 77-3-6.

The commission provided for by Section 21-27-13 is also
authorized to allow a municipally owned utility to prepay the
utility's bills to those electricity suppliers which offer early
payment discounts to the municipally owned utility.

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

21-27-23. Any municipality may:

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

Money may be borrowed and bonds issued by any municipality of
the State of Mississippi, as defined in Section 21-27-11, to
acquire or improve any waterworks system, water supply system,
sewerage system, sewage disposal system, garbage disposal system,
rubbish disposal system or incinerators, gas producing system, gas
generating system, gas transmission system, or gas distribution
system, electric generating, transmission or distribution system,
railroad transportation system for passengers and freight, or
motor vehicle transportation system, including any combination of
any or all of those systems into one (1) system, within or without
the corporate limits thereof, for the purpose of supplying the
municipality and the persons and corporations, both public and
private, whether within or without its corporate limits, with the
services and facilities afforded by the system, provided that
water, electric energy, or gas afforded by any system or systems
may be supplied to such ultimate consumers thereof by sale thereof
to the owners or operators of a distribution system for resale to
the public. Any municipality which shall borrow money and issue
revenue bonds to provide funds with which to acquire a gas
transmission system, if necessary in order to reach and obtain a
source of supply of gas for the municipality, may extend or
construct its gas transmission line into an adjoining state, and
may use and expend part of the proceeds of such issue of revenue
bonds for the purpose.
(b) Assume all indebtedness for any system or systems which may be acquired under the provisions of this section as all or part of the consideration for the acquisition of such system or systems and to issue its revenue bonds in exchange for the bonds or notes evidencing the indebtedness.

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

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

(e) Establish, maintain and collect rates for the facilities and services offered by any such system; however, if there is a combination of systems into one or more systems, the municipality establishing the same shall be and is empowered to establish, maintain and collect rates for any and all of the services or for any combination thereof, and the municipality may discontinue any or all of the services upon any failure to promptly pay the charges fixed for the services. The rates so fixed for services rendered by any system or combination thereof may be charged for all services rendered thereby, regardless of whether the services may have been previously rendered without rates or charges therefor by the previously existing waterworks system, water supply system, sewerage system, sewage disposal system, garbage disposal system, rubbish disposal system or incinerators, gas producing system, gas generating system, gas transmission system, or gas distribution system, electric generating, transmission or distribution system, which shall have been merged into the combined system. Any such municipality may pledge for the payment of any bonds issued to acquire or improve any such combined system, or to refund any bonds previously issued to acquire or improve any such combined system or to acquire or improve any system merged with such combined system, the revenues...
to be derived from the operation of such combined system, including the charges authorized to be imposed by this section. A municipality may authorize a municipally owned utility to make early payment of the utility's bills to its electricity suppliers which offer early payment discounts to the municipally owned utility. The municipality may immediately refund to a customer of the municipally owned utility his or her deposit for municipal utility services after the municipal utility has determined that payment for all services and any other obligations which the customer may have incurred in regard to the municipal utility has been made.

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

(f) *** Acquire property, real or personal, which may be necessary to effectuate the powers conferred by this section. The municipality may: (i) purchase electric transmission line materials, electric distribution system substation equipment, transformer equipment, and all other appliances, apparatus, machinery, equipment and appurtenances necessary for the sale of electricity, such as utility vehicles and fencing, from contracts or the surplus inventory of the Tennessee Valley Authority or any
other similar agency of the federal government and electric power associations; and (ii) enter into and participate in a group-purchasing program, as authorized under Section 1 of House Bill No.____, 2002 Regular Session, and may acquire goods, materials, supplies, machinery, equipment and services through such program if it appears to the municipality that the group-purchasing program will affect economy or efficiency in the system's operations. These purchases by the municipality shall be exempt from the public bid requirements prescribed in Sections 31-7-12 and 31-7-13. If the power of eminent domain is exercised, it shall be exercised in the manner provided by Sections 11-27-1 through 11-27-51.

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

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

(i) ** Borrow from the Mississippi Development Bank in order to fund the advance purchase of energy for its gas producing, generating, transmission or distribution system or its electric generating, transmission or distribution system.
SECTION 4. Section 31-7-12, Mississippi Code of 1972, is amended as follows:

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

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

(3) Nothing in this section shall prohibit governing authorities from purchasing, pursuant to subsection (2) of this...
section, commodities approved by the Department of Finance and Administration at a price not exceeding the state contract price established by the Department of Finance and Administration.

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

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

(6) The governing body of a municipal utility participating in a group-purchasing program, as authorized under Section 1 of House Bill No. , 2002, Regular Session, may purchase goods, materials, supplies, machinery, equipment and services through such group-purchasing program without regard to the state contract price and vendor and without obtaining approval from the Department of Finance and Administration.
SECTION 5. 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.
(l) 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 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.
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.

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).

Election ballots.

Purchases of ballots printed pursuant to Section 23-15-351.

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.

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.

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.

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.

(xi) 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.

(xii) 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.

(xiii) 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.

(xiv) 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.

(xv) Purchases of state-adopted textbooks.
Purchases of state-adopted textbooks by public school districts.

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

(xvii) Used heavy or specialized machinery or
equipment for installation of soil and water conservation
practices purchased at auction. Used heavy or specialized
machinery or equipment used for the installation and
implementation of soil and water conservation practices or
measures purchased subject to the restrictions provided in
Sections 69-27-331 through 69-27-341. Any purchase by the State
Soil and Water Conservation Commission under the exemption authorized by this subparagraph shall require advance authorization spread upon the minutes of the commission 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.

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

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

77-5-707. In addition and supplemental to the powers otherwise conferred on municipalities by the laws of the state, and in order to accomplish the purposes of this article and to obtain a supply of electric power and energy for the present and future needs of its inhabitants and customers, a municipality may plan, finance, develop, construct, reconstruct, acquire, improve, enlarge, better, own, operate and maintain an undivided interest as a tenant in common in a project situated within or without the state jointly with one or more other municipalities, or with a
joint agency created pursuant to this article, or with municipal
corporations or political subdivisions of other states (to the
extent permitted by the laws of such other states), or with any
other federal, state or municipal agency which owns electric
generation, transmission or distribution facilities or with any
person, firm, association or corporation, public or private,
engaged in the generation, transmission or distribution of
electric power and energy either within or without this state, and
may make such plans and enter into such contracts in connection
therewith, not inconsistent with the provisions of this article,
as are necessary or appropriate.

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

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

(b) The municipality's estimated requirements for power
and energy from the project and for reserve capacity and to meet
obligations under pooling and reserve sharing agreements
reasonably related to its needs for power and energy to which it
is or may become a party; and
ST: Electric utilities; authorize municipalities and cooperatives to participate in group-purchase programs.

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

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

Nothing herein contained shall prevent a municipality or municipalities from undertaking studies to determine whether there is a need for a project or whether such project is feasible. For the purposes of this section, the terms "municipality" and "utility commission" shall not include a joint agency or the board of commissioners thereof.

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