

By: Senator(s) Hewes, Gollott, Dawkins,
Moffatt

To: Education;
Appropriations

SENATE BILL NO. 2528

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

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

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

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

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

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

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

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

26 (e) To suspend or to expel a pupil or to change the
27 placement of a pupil to the school district's alternative school
28 or home-bound program for misconduct in the school or on school

29 property, as defined in Section 37-11-29, on the road to and from
30 school, or at any school-related activity or event, or for conduct
31 occurring on property other than school property or other than at
32 a school-related activity or event when such conduct by a pupil,
33 in the determination of the school superintendent or principal,
34 renders that pupil's presence in the classroom a disruption to the
35 educational environment of the school or a detriment to the best
36 interest and welfare of the pupils and teacher of such class as a
37 whole, and to delegate such authority to the appropriate officials
38 of the school district;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

87 (s) To expend local school activity funds, or other
88 available school district funds, other than minimum education
89 program funds, for the purposes prescribed under this paragraph.
90 "Activity funds" shall mean all funds received by school officials
91 in all school districts paid or collected to participate in any
92 school activity, such activity being part of the school program
93 and partially financed with public funds or supplemented by public
94 funds. The term "activity funds" shall not include any funds

95 raised and/or expended by any organization unless commingled in a
96 bank account with existing activity funds, regardless of whether
97 the funds were raised by school employees or received by school
98 employees during school hours or using school facilities, and
99 regardless of whether a school employee exercises influence over
100 the expenditure or disposition of such funds. Organizations shall
101 not be required to make any payment to any school for the use of
102 any school facility if, in the discretion of the local school
103 governing board, the organization's function shall be deemed to be
104 beneficial to the official or extracurricular programs of the
105 school. For the purposes of this provision, the term
106 "organization" shall not include any organization subject to the
107 control of the local school governing board. Activity funds may
108 only be expended for any necessary expenses or travel costs,
109 including advances, incurred by students and their chaperons in
110 attending any in-state or out-of-state school-related programs,
111 conventions or seminars and/or any commodities, equipment, travel
112 expenses, purchased services or school supplies which the local
113 school governing board, in its discretion, shall deem beneficial
114 to the official or extracurricular programs of the district,
115 including items which may subsequently become the personal
116 property of individuals, including yearbooks, athletic apparel,
117 book covers and trophies. Activity funds may be used to pay
118 travel expenses of school district personnel. The local school
119 governing board shall be authorized and empowered to promulgate
120 rules and regulations specifically designating for what purposes
121 school activity funds may be expended. The local school governing
122 board shall provide (a) that such school activity funds shall be
123 maintained and expended by the principal of the school generating
124 the funds in individual bank accounts, or (b) that such school
125 activity funds shall be maintained and expended by the
126 superintendent of schools in a central depository approved by the
127 board. The local school governing board shall provide that such

128 school activity funds be audited as part of the annual audit
129 required in Section 37-9-18. The State Auditor shall prescribe a
130 uniform system of accounting and financial reporting for all
131 school activity fund transactions;

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

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

138 (v) (i) To lease a school building from an individual,
139 partnership, nonprofit corporation or a private for-profit
140 corporation for the use of such school district, and to expend
141 funds therefor as may be available from any nonminimum program
142 sources. The school board of the school district desiring to
143 lease a school building shall declare by resolution that a need
144 exists for a school building and that the school district cannot
145 provide the necessary funds to pay the cost or its proportionate
146 share of the cost of a school building required to meet the
147 present needs. The resolution so adopted by the school board
148 shall be published once each week for three (3) consecutive weeks
149 in a newspaper having a general circulation in the school district
150 involved, with the first publication thereof to be made not less
151 than thirty (30) days prior to the date upon which the school
152 board is to act on the question of leasing a school building. If
153 no petition requesting an election is filed prior to such meeting
154 as hereinafter provided, then the school board may, by resolution
155 spread upon its minutes, proceed to lease a school building. If
156 at any time prior to said meeting a petition signed by not less
157 than twenty percent (20%) or fifteen hundred (1500), whichever is
158 less, of the qualified electors of the school district involved
159 shall be filed with the school board requesting that an election
160 be called on the question, then the school board shall, not later

161 than the next regular meeting, adopt a resolution calling an
162 election to be held within such school district upon the question
163 of authorizing the school board to lease a school building. Such
164 election shall be called and held, and notice thereof shall be
165 given, in the same manner for elections upon the questions of the
166 issuance of the bonds of school districts, and the results thereof
167 shall be certified to the school board. If at least three-fifths
168 (3/5) of the qualified electors of the school district who voted
169 in such election shall vote in favor of the leasing of a school
170 building, then the school board shall proceed to lease a school
171 building. The term of the lease contract shall not exceed twenty
172 (20) years, and the total cost of such lease shall be either the
173 amount of the lowest and best bid accepted by the school board
174 after advertisement for bids or an amount not to exceed the
175 current fair market value of the lease as determined by the
176 averaging of at least two (2) appraisals by certified general
177 appraisers licensed by the State of Mississippi. The term "school
178 building" as used in this item (v) shall be construed to mean any
179 building or buildings used for classroom purposes in connection
180 with the operation of schools and shall include the site therefor,
181 necessary support facilities, and the equipment thereof and
182 appurtenances thereto such as heating facilities, water supply,
183 sewage disposal, landscaping, walks, drives and playgrounds. The
184 term "lease" as used in this item (v)(i) may include a
185 lease/purchase contract;

186 (ii) If two (2) or more school districts propose
187 to enter into a lease contract jointly, then joint meetings of the
188 school boards having control may be held but no action taken shall
189 be binding on any such school district unless the question of
190 leasing a school building is approved in each participating school
191 district under the procedure hereinabove set forth in item (v)(i).
192 All of the provisions of item (v)(i) regarding the term and amount
193 of the lease contract shall apply to the school boards of school

194 districts acting jointly. Any lease contract executed by two (2)
195 or more school districts as joint lessees shall set out the amount
196 of the aggregate lease rental to be paid by each, which may be
197 agreed upon, but there shall be no right of occupancy by any
198 lessee unless the aggregate rental is paid as stipulated in the
199 lease contract. All rights of joint lessees under the lease
200 contract shall be in proportion to the amount of lease rental paid
201 by each;

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

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

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

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

215 (aa) To acquire in its own name by purchase all real
216 property which shall be necessary and desirable in connection with
217 the construction, renovation or improvement of any public school
218 building or structure. Whenever the purchase price for such real
219 property is greater than Fifty Thousand Dollars (\$50,000.00), the
220 school board shall not purchase the property for an amount
221 exceeding the fair market value of such property as determined by
222 the average of at least two (2) independent appraisals by
223 certified general appraisers licensed by the State of Mississippi.
224 If the board shall be unable to agree with the owner of any such
225 real property in connection with any such project, the board shall
226 have the power and authority to acquire any such real property by

227 condemnation proceedings pursuant to Section 11-27-1 et seq.,
228 Mississippi Code of 1972, and for such purpose, the right of
229 eminent domain is hereby conferred upon and vested in said board.
230 Provided further, that the local school board is authorized to
231 grant an easement for ingress and egress over sixteenth section
232 land or lieu land in exchange for a similar easement upon
233 adjoining land where the exchange of easements affords substantial
234 benefit to the sixteenth section land; provided, however, the
235 exchange must be based upon values as determined by a competent
236 appraiser, with any differential in value to be adjusted by cash
237 payment. Any easement rights granted over sixteenth section land
238 under such authority shall terminate when the easement ceases to
239 be used for its stated purpose. No sixteenth section or lieu land
240 which is subject to an existing lease shall be burdened by any
241 such easement except by consent of the lessee or unless the school
242 district shall acquire the unexpired leasehold interest affected
243 by the easement;

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

247 (cc) Subject to rules and regulations of the State
248 Board of Education, to purchase relocatable classrooms for the use
249 of such school district, in the manner prescribed in Section
250 37-1-13;

251 (dd) Enter into contracts or agreements with other
252 school districts, political subdivisions or governmental entities
253 to carry out one or more of the powers or duties of the school
254 board, or to allow more efficient utilization of limited resources
255 for providing services to the public;

256 (ee) To provide for in-service training for employees
257 of the district. Until June 30, 1994, the school boards may
258 designate two (2) days of the minimum school term, as defined in
259 Section 37-19-1, for employee in-service training for

260 implementation of the new statewide testing system as developed by
261 the State Board of Education. Such designation shall be subject
262 to approval by the State Board of Education pursuant to uniform
263 rules and regulations;

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

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

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

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

287 (hh) To allow individual lessons for music, art and
288 other curriculum-related activities for academic credit or
289 nonacademic credit during school hours and using school equipment
290 and facilities, subject to uniform rules and regulations adopted
291 by the school board;

292 (ii) To charge reasonable fees for participating in an
293 extracurricular activity for academic or nonacademic credit for
294 necessary and required equipment such as safety equipment, band
295 instruments and uniforms;

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

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

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

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

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

309 31-7-13. All agencies and governing authorities shall
310 purchase their commodities and printing; contract for garbage
311 collection or disposal; contract for solid waste collection or
312 disposal; contract for sewage collection or disposal; contract for
313 public construction; and contract for rentals as herein provided.

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

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

325 more than One Thousand Five Hundred Dollars (\$1,500.00) but not
326 more than Ten Thousand Dollars (\$10,000.00), exclusive of freight
327 and shipping charges may be made from the lowest and best bidder
328 without publishing or posting advertisement for bids, provided at
329 least two (2) competitive written bids have been obtained. Any
330 governing authority purchasing commodities pursuant to this
331 paragraph (b) may authorize its purchasing agent, or his designee,
332 with regard to governing authorities other than counties, or its
333 purchase clerk, or his designee, with regard to counties, to
334 accept the lowest and best competitive written bid. Such
335 authorization shall be made in writing by the governing authority
336 and shall be maintained on file in the primary office of the
337 agency and recorded in the official minutes of the governing
338 authority, as appropriate. The purchasing agent or the purchase
339 clerk, or their designee, as the case may be, and not the
340 governing authority, shall be liable for any penalties and/or
341 damages as may be imposed by law for any act or omission of the
342 purchasing agent or purchase clerk, or their designee,
343 constituting a violation of law in accepting any bid without
344 approval by the governing authority. The term "competitive
345 written bid" shall mean a bid submitted on a bid form furnished by
346 the buying agency or governing authority and signed by authorized
347 personnel representing the vendor, or a bid submitted on a
348 vendor's letterhead or identifiable bid form and signed by
349 authorized personnel representing the vendor. Bids may be
350 submitted by facsimile, electronic mail or other generally
351 accepted method of information distribution. Bids submitted by
352 electronic transmission shall not require the signature of the
353 vendor's representative unless required by agencies or governing
354 authorities.

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

356 (i) **Publication requirement.** Purchases which
357 involve an expenditure of more than Ten Thousand Dollars

358 (\$10,000.00), exclusive of freight and shipping charges may be
359 made from the lowest and best bidder after advertising for
360 competitive sealed bids once each week for two (2) consecutive
361 weeks in a regular newspaper published in the county or
362 municipality in which such agency or governing authority is
363 located. The date as published for the bid opening shall not be
364 less than seven (7) working days after the last published notice;
365 however, if the purchase involves a construction project in which
366 the estimated cost is in excess of Fifteen Thousand Dollars
367 (\$15,000.00), such bids shall not be opened in less than fifteen
368 (15) working days after the last notice is published and the
369 notice for the purchase of such construction shall be published
370 once each week for two (2) consecutive weeks. The notice of
371 intention to let contracts or purchase equipment shall state the
372 time and place at which bids shall be received, list the contracts
373 to be made or types of equipment or supplies to be purchased, and,
374 if all plans and/or specifications are not published, refer to the
375 plans and/or specifications on file. If there is no newspaper
376 published in the county or municipality, then such notice shall be
377 given by posting same at the courthouse, or for municipalities at
378 the city hall, and at two (2) other public places in the county or
379 municipality, and also by publication once each week for two (2)
380 consecutive weeks in some newspaper having a general circulation
381 in the county or municipality in the above provided manner. On
382 the same date that the notice is submitted to the newspaper for
383 publication, the agency or governing authority involved shall mail
384 written notice to, or provide electronic notification to the main
385 office of the Mississippi Contract Procurement Center that
386 contains the same information as that in the published notice.

387 (ii) **Bidding process amendment procedure.** If all
388 plans and/or specifications are published in the notification,
389 then the plans and/or specifications may not be amended. If all
390 plans and/or specifications are not published in the notification,

391 then amendments to the plans/specifications, bid opening date, bid
392 opening time and place may be made, provided that the agency or
393 governing authority maintains a list of all prospective bidders
394 who are known to have received a copy of the bid documents and all
395 such prospective bidders are sent copies of all amendments. This
396 notification of amendments may be made via mail, facsimile,
397 electronic mail or other generally accepted method of information
398 distribution. No addendum to bid specifications may be issued
399 within forty-eight (48) working hours of the time established for
400 the receipt of bids unless such addendum also amends the bid
401 opening to a date not less than five (5) working days after the
402 date of the addendum.

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

412 (iv) **Specification restrictions.** Specifications
413 pertinent to such bidding shall be written so as not to exclude
414 comparable equipment of domestic manufacture. Provided, however,
415 that should valid justification be presented, the Department of
416 Finance and Administration or the board of a governing authority
417 may approve a request for specific equipment necessary to perform
418 a specific job. Further, such justification, when placed on the
419 minutes of the board of a governing authority, may serve as
420 authority for that governing authority to write specifications to
421 require a specific item of equipment needed to perform a specific
422 job. In addition to these requirements, from and after July 1,
423 1990, vendors of relocatable classrooms and the specifications for

424 the purchase of such relocatable classrooms published by local
425 school boards shall meet all pertinent regulations of the State
426 Board of Education, including prior approval of such bid by the
427 State Department of Education.

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

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

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

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

450 (e) **Lease-purchase authorization.** For the purposes of
451 this section, the term "equipment" shall mean equipment, furniture
452 and, if applicable, associated software and other applicable
453 direct costs associated with the acquisition. Any lease-purchase
454 of equipment which an agency is not required to lease-purchase
455 under the master lease-purchase program pursuant to Section
456 31-7-10 and any lease-purchase of equipment which a governing

457 authority elects to lease-purchase may be acquired by a
458 lease-purchase agreement under this paragraph (e). Lease-purchase
459 financing may also be obtained from the vendor or from a
460 third-party source after having solicited and obtained at least
461 two (2) written competitive bids, as defined in paragraph (b) of
462 this section, for such financing without advertising for such
463 bids. Solicitation for the bids for financing may occur before or
464 after acceptance of bids for the purchase of such equipment or,
465 where no such bids for purchase are required, at any time before
466 the purchase thereof. No such lease-purchase agreement shall be
467 for an annual rate of interest which is greater than the overall
468 maximum interest rate to maturity on general obligation
469 indebtedness permitted under Section 75-17-101, and the term of
470 such lease-purchase agreement shall not exceed the useful life of
471 equipment covered thereby as determined according to the upper
472 limit of the asset depreciation range (ADR) guidelines for the
473 Class Life Asset Depreciation Range System established by the
474 Internal Revenue Service pursuant to the United States Internal
475 Revenue Code and regulations thereunder as in effect on December
476 31, 1980, or comparable depreciation guidelines with respect to
477 any equipment not covered by ADR guidelines. Any lease-purchase
478 agreement entered into pursuant to this paragraph (e) may contain
479 any of the terms and conditions which a master lease-purchase
480 agreement may contain under the provisions of Section 31-7-10(5),
481 and shall contain an annual allocation dependency clause
482 substantially similar to that set forth in Section 31-7-10(8).
483 Each agency or governing authority entering into a lease-purchase
484 transaction pursuant to this paragraph (e) shall maintain with
485 respect to each such lease-purchase transaction the same
486 information as required to be maintained by the Department of
487 Finance and Administration pursuant to Section 31-7-10(13).
488 However, nothing contained in this section shall be construed to
489 permit agencies to acquire items of equipment with a total

490 acquisition cost in the aggregate of less than Ten Thousand
491 Dollars (\$10,000.00) by a single lease-purchase transaction. All
492 equipment, and the purchase thereof by any lessor, acquired by
493 lease-purchase under this paragraph and all lease-purchase
494 payments with respect thereto shall be exempt from all Mississippi
495 sales, use and ad valorem taxes. Interest paid on any
496 lease-purchase agreement under this section shall be exempt from
497 State of Mississippi income taxation.

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

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

523 contract without the necessity of prior approval of the agency or
524 governing authority when any such change or modification is less
525 than one percent (1%) of the total contract amount. The agency or
526 governing authority may limit the number, manner or frequency of
527 such emergency changes or modifications.

528 (h) **Petroleum purchase alternative.** In addition to
529 other methods of purchasing authorized in this chapter, when any
530 agency or governing authority shall have a need for gas, diesel
531 fuel, oils and/or other petroleum products in excess of the amount
532 set forth in paragraph (a) of this section, such agency or
533 governing authority may purchase the commodity after having
534 solicited and obtained at least two (2) competitive written bids,
535 as defined in paragraph (b) of this section. If two (2)
536 competitive written bids are not obtained the entity shall comply
537 with the procedures set forth in paragraph (c) of this section.
538 In the event any agency or governing authority shall have
539 advertised for bids for the purchase of gas, diesel fuel, oils and
540 other petroleum products and coal and no acceptable bids can be
541 obtained, such agency or governing authority is authorized and
542 directed to enter into any negotiations necessary to secure the
543 lowest and best contract available for the purchase of such
544 commodities.

545 (i) **Road construction petroleum products price**
546 **adjustment clause authorization.** Any agency or governing
547 authority authorized to enter into contracts for the construction,
548 maintenance, surfacing or repair of highways, roads or streets,
549 may include in its bid proposal and contract documents a price
550 adjustment clause with relation to the cost to the contractor,
551 including taxes, based upon an industry-wide cost index, of
552 petroleum products including asphalt used in the performance or
553 execution of the contract or in the production or manufacture of
554 materials for use in such performance. Such industry-wide index
555 shall be established and published monthly by the Mississippi

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

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

586 (k) **Governing authority emergency purchase procedure.**
587 If the governing authority, or the governing authority acting
588 through its designee, shall determine that an emergency exists in

589 regard to the purchase of any commodities or repair contracts, so
590 that the delay incident to giving opportunity for competitive
591 bidding would be detrimental to the interest of the governing
592 authority, then the provisions herein for competitive bidding
593 shall not apply and any officer or agent of such governing
594 authority having general or special authority therefor in making
595 such purchase or repair shall approve the bill presented therefor,
596 and he shall certify in writing thereon from whom such purchase
597 was made, or with whom such a repair contract was made. At the
598 board meeting next following the emergency purchase or repair
599 contract, documentation of the purchase or repair contract,
600 including a description of the commodity purchased, the price
601 thereof and the nature of the emergency shall be presented to the
602 board and shall be placed on the minutes of the board of such
603 governing authority.

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

622 (m) **Exceptions from bidding requirements.** Excepted
623 from bid requirements are:

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

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

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

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

648 (v) **Governmental equipment auctions.** Motor
649 vehicles or other equipment purchased from a federal or state
650 agency or a governing authority at a public auction held for the
651 purpose of disposing of such vehicles or other equipment. Any
652 purchase by a governing authority under the exemption authorized
653 by this subparagraph (v) shall require advance authorization
654 spread upon the minutes of the governing authority to include the

655 listing of the item or items authorized to be purchased and the
656 maximum bid authorized to be paid for each item or items.

657 (vi) **Intergovernmental sales and transfers.**

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

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

681 (viii) **Single source items.** Noncompetitive items
682 available from one (1) source only. In connection with the
683 purchase of noncompetitive items only available from one (1)
684 source, a certification of the conditions and circumstances
685 requiring the purchase shall be filed by the agency with the
686 Department of Finance and Administration and by the governing
687 authority with the board of the governing authority. Upon receipt

688 of that certification the Department of Finance and Administration
689 or the board of the governing authority, as the case may be, may,
690 in writing, authorize the purchase, which authority shall be noted
691 on the minutes of the body at the next regular meeting thereafter.
692 In those situations, a governing authority is not required to
693 obtain the approval of the Department of Finance and
694 Administration.

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

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

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

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

725 (xii) **Energy efficiency services and equipment.**
726 Energy efficiency services and equipment acquired by school
727 districts, community and junior colleges, institutions of higher
728 learning and state agencies or other applicable governmental
729 entities on a shared-savings, lease or lease-purchase basis
730 pursuant to Section 31-7-14.

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

735 (xiv) **Library books and other reference materials.**
736 Purchases by libraries or for libraries of books and periodicals;
737 processed film, video cassette tapes, filmstrips and slides;
738 recorded audio tapes, cassettes and diskettes; and any such items
739 as would be used for teaching, research or other information
740 distribution; however, equipment such as projectors, recorders,
741 audio or video equipment, and monitor televisions are not exempt
742 under this subparagraph.

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

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

749 (xvii) **Multichannel interactive video systems.**
750 From and after July 1, 1990, contracts by Mississippi Authority
751 for Educational Television with any private educational
752 institution or private nonprofit organization whose purposes are
753 educational in regard to the construction, purchase, lease or

754 lease-purchase of facilities and equipment and the employment of
755 personnel for providing multichannel interactive video systems
756 (ITSF) in the school districts of this state.

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

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

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

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

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

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

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

776 Contracts for garbage collection or disposal, contracts for solid
777 waste collection or disposal and contracts for sewage collection
778 or disposal.

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

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

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

786 **Blind products.** Purchases made by state agencies or governing

787 authorities involving any item that is manufactured, processed or
788 produced by the Mississippi Industries for the Blind.

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

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

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

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

794 (xxvii) **Purchases of contracts for**

795 **revenue-interruption insurance by school districts.** In connection

796 with the purchase of noncompetitive items only available from one

797 (1) source, a certification of the conditions and circumstances

798 requiring the purchase shall be filed by the agency with the

799 Department of Finance and Administration and by the governing

800 authority with the board of the governing authority. Upon receipt

801 of such certification the Department of Finance and Administration

802 or the board of the governing authority, as the case may be, may,

803 in writing, authorize the purchase, which authority shall be noted

804 on the minutes of the body at the next regular meeting thereafter.

805 In such situations, a governing authority is not required to

806 obtain the approval of the Department of Finance and

807 Administration.

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

810 (i) All contracts for the purchase of commodities,

811 equipment and public construction (including, but not limited to,

812 repair and maintenance), may be let for periods of not more than

813 sixty (60) months in advance, subject to applicable statutory

814 provisions prohibiting the letting of contracts during specified

815 periods near the end of terms of office. Term contracts for a

816 period exceeding twenty-four (24) months shall also be subject to

817 ratification or cancellation by governing authority boards taking

818 office subsequent to the governing authority board entering the

819 contract.

820 (ii) Bid proposals and contracts may include price
821 adjustment clauses with relation to the cost to the contractor
822 based upon a nationally published industry-wide or nationally
823 published and recognized cost index. The cost index used in a
824 price adjustment clause shall be determined by the Department of
825 Finance and Administration for the state agencies and by the
826 governing board for governing authorities. The bid proposal and
827 contract documents utilizing a price adjustment clause shall
828 contain the basis and method of adjusting unit prices for the
829 change in the cost of such commodities, equipment and public
830 construction.

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

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

853 (q) **Fuel management system bidding procedure.** Any
854 governing authority or agency of the state shall, before
855 contracting for the services and products of a fuel management or
856 fuel access system, enter into negotiations with not fewer than
857 two (2) sellers of fuel management or fuel access systems for
858 competitive written bids to provide the services and products for
859 the systems. In the event that the governing authority or agency
860 cannot locate two (2) sellers of such systems or cannot obtain
861 bids from two (2) sellers of such systems, it shall show proof
862 that it made a diligent, good-faith effort to locate and negotiate
863 with two (2) sellers of such systems. Such proof shall include,
864 but not be limited to, publications of a request for proposals and
865 letters soliciting negotiations and bids. For purposes of this
866 paragraph (q), a fuel management or fuel access system is an
867 automated system of acquiring fuel for vehicles as well as
868 management reports detailing fuel use by vehicles and drivers, and
869 the term "competitive written bid" shall have the meaning as
870 defined in paragraph (b) of this section. Governing authorities
871 and agencies shall be exempt from this process when contracting
872 for the services and products of a fuel management or fuel access
873 systems under the terms of a state contract established by the
874 Office of Purchasing and Travel.

875 (r) **Solid waste contract proposal procedure.** Before
876 entering into any contract for garbage collection or disposal,
877 contract for solid waste collection or disposal or contract for
878 sewage collection or disposal, which involves an expenditure of
879 more than Fifty Thousand Dollars (\$50,000.00), a governing
880 authority or agency shall issue publicly a request for proposals
881 concerning the specifications for such services which shall be
882 advertised for in the same manner as provided in this section for
883 seeking bids for purchases which involve an expenditure of more
884 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
885 when issued shall contain terms and conditions relating to price,

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

910 (s) **Minority set aside authorization.** Notwithstanding
911 any provision of this section to the contrary, any agency or
912 governing authority, by order placed on its minutes, may, in its
913 discretion, set aside not more than twenty percent (20%) of its
914 anticipated annual expenditures for the purchase of commodities
915 from minority businesses; however, all such set-aside purchases
916 shall comply with all purchasing regulations promulgated by the
917 Department of Finance and Administration and shall be subject to
918 bid requirements under this section. Set-aside purchases for

919 which competitive bids are required shall be made from the lowest
920 and best minority business bidder. For the purposes of this
921 paragraph, the term "minority business" means a business which is
922 owned by a majority of persons who are United States citizens or
923 permanent resident aliens (as defined by the Immigration and
924 Naturalization Service) of the United States, and who are Asian,
925 Black, Hispanic or Native American, according to the following
926 definitions:

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

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

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

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

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

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

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