

By: Horne

To: Education;
Appropriations

HOUSE BILL NO. 47

1 AN ACT TO PROVIDE THAT CONTRACTS BY THE GOVERNING BOARD OF A
2 PUBLIC SCHOOL DISTRICT WITH ANY PERSON OR ENTITY UNDER WHICH THE
3 PERSON OR ENTITY AGREES TO PROVIDE ITEMS THAT ARE TO BE OFFERED
4 FOR SALE OR LEASE TO STUDENTS AT SCHOOLS UNDER THE BOARD'S
5 JURISDICTION MAY BE MADE ONLY AFTER ADVERTISING FOR COMPETITIVE
6 SEALED BIDS FOR THE PROVIDING OF SUCH ITEMS; TO PROVIDE THAT SUCH
7 CONTRACTS SHALL BE MADE WITH THE LOWEST AND BEST BIDDER; TO AMEND
8 SECTIONS 31-7-13 AND 37-7-301, MISSISSIPPI CODE OF 1972, IN
9 CONFORMITY WITH THE PROVISIONS OF THIS ACT; AND FOR RELATED
10 PURPOSES.

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

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

14 31-7-13. All agencies and governing authorities shall
15 purchase their commodities and printing; contract for fire
16 insurance, automobile insurance, casualty insurance (other than
17 workers' compensation) and liability insurance; contract for
18 garbage collection or disposal; contract for solid waste
19 collection or disposal; contract for sewage collection or
20 disposal; and contract for public construction as herein provided.

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

30 (b) **Bidding procedure for purchases over \$1,500.00 but**

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

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

63 Purchases which involve an expenditure of more than Ten Thousand

64 Dollars (\$10,000.00), exclusive of freight and shipping charges
65 may be made from the lowest and best bidder after advertising for
66 competitive sealed bids once each week for two (2) consecutive
67 weeks in a regular newspaper published in the county or
68 municipality in which such agency or governing authority is
69 located. The date as published for the bid opening shall not be
70 less than seven (7) working days after the last published notice;
71 however, if the purchase involves a construction project in which
72 the estimated cost is in excess of Fifteen Thousand Dollars
73 (\$15,000.00), such bids shall not be opened in less than fifteen
74 (15) working days after the last notice is published and the
75 notice for the purchase of such construction shall be published
76 once each week for two (2) consecutive weeks. The notice of
77 intention to let contracts or purchase equipment shall state the
78 time and place at which bids shall be received, list the contracts
79 to be made or types of equipment or supplies to be purchased, and,
80 if all plans and/or specifications are not published, refer to the
81 plans and/or specifications on file. If all plans and/or
82 specifications are published in the notification, then the plans
83 and/or specifications may not be amended. If all plans and/or
84 specifications are not published in the notification, then
85 amendments to the plans/specifications, bid opening date, bid
86 opening time and place may be made, provided that the agency or
87 governing authority maintains a list of all prospective bidders
88 who are known to have received a copy of the bid documents and all
89 such prospective bidders are sent copies of all amendments. This
90 notification of amendments may be made via mail, facsimile,
91 electronic mail or other generally accepted method of information
92 distribution. In all cases involving governing authorities,
93 before the notice shall be published or posted, the plans or
94 specifications for the construction or equipment being sought
95 shall be filed with the clerk of the board of the governing
96 authority, and there remain. If there is no newspaper published

97 in the county or municipality, then such notice shall be given by
98 posting same at the courthouse, or for municipalities at the city
99 hall, and at two (2) other public places in the county or
100 municipality, and also by publication once each week for two (2)
101 consecutive weeks in some newspaper having a general circulation
102 in the county or municipality in the above provided manner. On
103 the same date that the notice is submitted to the newspaper for
104 publication, the agency or governing authority involved shall mail
105 written notice to the main office of the Mississippi Contract
106 Procurement Center that contains the same information as that in
107 the published notice. In addition to these requirements, agencies
108 shall maintain a vendor file and vendors of the equipment or
109 commodities being sought may be mailed solicitations and
110 specifications, and a bid file shall be established which shall
111 indicate those vendors to whom such solicitations and
112 specifications were mailed, and such file shall also contain such
113 information as is pertinent to the bid. Specifications pertinent
114 to such bidding shall be written so as not to exclude comparable
115 equipment of domestic manufacture. Provided, however, that should
116 valid justification be presented, the Department of Finance and
117 Administration or the board of a governing authority may approve a
118 request for specific equipment necessary to perform a specific
119 job. Provided further, that a registered professional engineer or
120 architect may write specifications for a governing authority to
121 require a specific item of equipment available only from limited
122 sources or vendors when such specifications conform with the rules
123 and regulations promulgated by an appropriate federal agency
124 regulating such matters under the federal procurement laws.
125 Further, such justification, when placed on the minutes of the
126 board of a governing authority, may serve as authority for that
127 governing authority to write specifications to require a specific
128 item of equipment needed to perform a specific job. In addition
129 to these requirements, from and after July 1, 1990, vendors of

130 relocatable classrooms and the specifications for the purchase of
131 such relocatable classrooms published by local school boards shall
132 meet all pertinent regulations of the State Board of Education,
133 including prior approval of such bid by the State Department of
134 Education. Nothing in this section shall prohibit any agency or
135 governing authority from writing specifications to include
136 life-cycle costing, total cost bids, extended warranties or
137 guaranteed buy-back provisions, provided that such bid
138 requirements shall be in compliance with regulations established
139 by the Department of Audit.

140 (d) **Lowest and best bid decision procedure.** (i)
141 Purchases may be made from the lowest and best bidder. In
142 determining the lowest and best bid, freight and shipping charges
143 shall be included. If any governing authority accepts a bid other
144 than the lowest bid actually submitted, it shall place on its
145 minutes detailed calculations and narrative summary showing that
146 the accepted bid was determined to be the lowest and best bid,
147 including the dollar amount of the accepted bid and the dollar
148 amount of the lowest bid. No agency or governing authority shall
149 accept a bid based on items not included in the specifications.

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

156 (iii) Whenever bids are solicited for a public
157 construction or renovation project and only one (1) bid is
158 received, the agency or the governing authority may accept such
159 bid if the bid is opened, it is within the funds allocated for the
160 project, it is responsive to the solicitation and the contractor
161 is capable of performing the contract in accordance with the
162 solicitation.

163 (iv) No addendum to bid specifications for such
164 projects may be issued by the agency or governing authority within
165 twelve (12) hours of the time established by the agency or
166 governing authority for the receipt of bids.

167 (e) **Lease-purchase authorization.** Any lease-purchase
168 of equipment which an agency is not required to lease-purchase
169 under the master lease-purchase program pursuant to Section
170 31-7-10 and any lease-purchase of equipment which a governing
171 authority elects to lease-purchase may be acquired by a
172 lease-purchase agreement under this paragraph (e). Lease-purchase
173 financing may also be obtained from the vendor or from a
174 third-party source after having solicited and obtained at least
175 two (2) written competitive bids, as defined in paragraph (b) of
176 this section, for such financing without advertising for such
177 bids. Solicitation for the bids for financing may occur before or
178 after acceptance of bids for the purchase of such equipment or,
179 where no such bids for purchase are required, at any time before
180 the purchase thereof. No such lease-purchase agreement shall be
181 for an annual rate of interest which is greater than the overall
182 maximum interest rate to maturity on general obligation
183 indebtedness permitted under Section 75-17-101, and the term of
184 such lease-purchase agreement shall not exceed the useful life of
185 property covered thereby as determined according to the upper
186 limit of the asset depreciation range (ADR) guidelines for the
187 Class Life Asset Depreciation Range System established by the
188 Internal Revenue Service pursuant to the United States Internal
189 Revenue Code and regulations thereunder as in effect on December
190 31, 1980, or comparable depreciation guidelines with respect to
191 any equipment not covered by ADR guidelines. Any lease-purchase
192 agreement entered into pursuant to this paragraph (e) may contain
193 any of the terms and conditions which a master lease-purchase
194 agreement may contain under the provisions of Section 31-7-10(5),
195 and shall contain an annual allocation dependency clause

196 substantially similar to that set forth in Section 31-7-10(8).
197 Each agency or governing authority entering into a lease-purchase
198 transaction pursuant to this paragraph (e) shall maintain with
199 respect to each such lease-purchase transaction the same
200 information as required to be maintained by the Department of
201 Finance and Administration pursuant to Section 31-7-10(13).
202 However, nothing contained in this section shall be construed to
203 permit agencies to acquire items of equipment with a total
204 acquisition cost in the aggregate of less than Ten Thousand
205 Dollars (\$10,000.00) by a single lease-purchase transaction. All
206 equipment, and the purchase thereof by any lessor, acquired by
207 lease-purchase under this paragraph and all lease-purchase
208 payments with respect thereto shall be exempt from all Mississippi
209 sales, use and ad valorem taxes. Interest paid on any
210 lease-purchase agreement under this section shall be exempt from
211 State of Mississippi income taxation.

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

222 (g) **Construction contract change authorization.** In the
223 event a determination is made by an agency or governing authority
224 after a construction contract is let that changes or modifications
225 to the original contract are necessary or would better serve the
226 purpose of the agency or the governing authority, such agency or
227 governing authority may, in its discretion, order such changes
228 pertaining to the construction that are necessary under the

229 circumstances without the necessity of further public bids;
230 provided that such change shall be made in a commercially
231 reasonable manner and shall not be made to circumvent the public
232 purchasing statutes. In addition to any other authorized person,
233 the architect or engineer hired by an agency or governing
234 authority with respect to any public construction contract shall
235 have the authority, when granted by an agency or governing
236 authority, to authorize changes or modifications to the original
237 contract without the necessity of prior approval of the agency or
238 governing authority when any such change or modification is less
239 than one percent (1%) of the total contract amount. The agency or
240 governing authority may limit the number, manner or frequency of
241 such emergency changes or modifications.

242 (h) **Petroleum purchase alternative.** In the event any
243 agency or governing authority shall have advertised for bids for
244 the purchase of gas, diesel fuel, oils and other petroleum
245 products and coal and no acceptable bids can be obtained, such
246 agency or governing authority is authorized and directed to enter
247 into any negotiations necessary to secure the lowest and best
248 contract available for the purchase of such commodities.

249 (i) **Road construction petroleum products price**
250 **adjustment clause authorization.** Any agency or governing
251 authority authorized to enter into contracts for the construction,
252 maintenance, surfacing or repair of highways, roads or streets,
253 may include in its bid proposal and contract documents a price
254 adjustment clause with relation to the cost to the contractor,
255 including taxes, based upon an industry-wide cost index, of
256 petroleum products including asphalt used in the performance or
257 execution of the contract or in the production or manufacture of
258 materials for use in such performance. Such industry-wide index
259 shall be established and published monthly by the State Department
260 of Transportation with a copy thereof to be mailed, upon request,
261 to the clerks of the governing authority of each municipality and

262 the clerks of each board of supervisors throughout the state. The
263 price adjustment clause shall be based on the cost of such
264 petroleum products only and shall not include any additional
265 profit or overhead as part of the adjustment. The bid proposals
266 or document contract shall contain the basis and methods of
267 adjusting unit prices for the change in the cost of such petroleum
268 products.

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

290 (k) **Governing authority emergency purchase procedure.**
291 If the governing authority, or the governing authority acting
292 through its designee, shall determine that an emergency exists in
293 regard to the purchase of any commodities or repair contracts, so
294 that the delay incident to giving opportunity for competitive

295 bidding would be detrimental to the interest of the governing
296 authority, then the provisions herein for competitive bidding
297 shall not apply and any officer or agent of such governing
298 authority having general or special authority therefor in making
299 such purchase or repair shall approve the bill presented therefor,
300 and he shall certify in writing thereon from whom such purchase
301 was made, or with whom such a repair contract was made. At the
302 board meeting next following the emergency purchase or repair
303 contract, documentation of the purchase or repair contract,
304 including a description of the commodity purchased, the price
305 thereof and the nature of the emergency shall be presented to the
306 board and shall be placed on the minutes of the board of such
307 governing authority.

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

326 (m) **Exceptions from bidding requirements.** Excepted
327 from bid requirements are:

328 (i) **Purchasing agreements approved by department.**

329 Purchasing agreements, contracts and maximum price regulations
330 executed or approved by the Department of Finance and
331 Administration.

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

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

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

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

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

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

385 (viii) **Single source items.** Noncompetitive items
386 available from one (1) source only. In connection with the
387 purchase of noncompetitive items only available from one (1)
388 source, a certification of the conditions and circumstances
389 requiring the purchase shall be filed by the agency with the
390 Department of Finance and Administration and by the governing
391 authority with the board of the governing authority. Upon receipt
392 of that certification the Department of Finance and Administration
393 or the board of the governing authority, as the case may be, may,

394 in writing, authorize the purchase, which authority shall be noted
395 on the minutes of the body at the next regular meeting thereafter.

396 In those situations, a governing authority is not required to
397 obtain the approval of the Department of Finance and
398 Administration.

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

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

423 (xi) **Data processing equipment.** Purchases of data
424 processing equipment made by governing authorities under the
425 provisions of purchase agreements, contracts or maximum price
426 regulations executed or approved by the Mississippi Department of

427 Information Technology Services.

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

429 Energy efficiency services and equipment acquired by school
430 districts, junior colleges, institutions of higher learning and
431 state agencies or other applicable governmental entities on a
432 shared-savings, lease or lease-purchase basis pursuant to Section
433 31-7-14.

434 (xiii) **Insurance contracts.** Purchases of
435 contracts for fire insurance, automobile insurance, casualty
436 insurance, health insurance and liability insurance by governing
437 authorities or agencies.

438 (xiv) **Municipal electrical utility system fuel.**

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

442 (xv) **Library books and other reference materials.**

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

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

454 (xvii) **Sales and transfers between governing**
455 **authorities.** Sales, transfers or trades of any personal property
456 between governing authorities within a county or any such
457 transaction involving governing authorities of two (2) or more
458 counties.

459 (xviii) **Election ballots.** Purchases of ballots

460 printed pursuant to Section 23-15-351.

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

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

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

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

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

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

490 (xxv) Repealed.

491 (xxvi) **Garbage, solid waste and sewage contracts.**

492 Contracts for garbage collection or disposal, contracts for solid

493 waste collection or disposal and contracts for sewage collection
494 or disposal.

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

501 (xxviii) **Industries for the Blind products.**
502 Purchases made by state agencies involving any item that is
503 manufactured, processed or produced by the Mississippi Industries
504 for the Blind.

505 (xxix) **Purchases of state-adopted textbooks.**
506 Purchases of state-adopted textbooks by public school districts.

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

509 (A) Commodities, equipment and public
510 construction (including, but not limited to, repair and
511 maintenance); and

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

520 (ii) All purchases made by governing authorities,
521 including purchases made pursuant to the provisions of
522 subparagraph (i) of this paragraph (n), may be made upon one (1)
523 purchase order issued per month to each individual vendor prior to
524 delivery of such commodities provided that each individual
525 delivery, load or shipment purchased is properly requisitioned and

526 is properly received and receipted by signed ticket, receipt or
527 invoice, indicating thereon the point of delivery, and provided
528 that, with respect to counties, such commodities are properly
529 accounted for by the receiving clerk or an assistant receiving
530 clerk as provided by Section 31-7-109. Such purchase order shall
531 be invalid on the first calendar day of the month immediately
532 following the month in which it was issued. Purchases in such
533 month immediately following may be made only if a purchase order
534 is issued for such month. Each monthly purchase order shall be
535 retained in the records of the governing authority. Agencies may
536 make purchases as authorized under this subparagraph (ii) in
537 accordance with such regulations, policies and procedures as are
538 promulgated by the Department of Finance and Administration.

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

554 (p) **Electrical utility petroleum-based equipment**
555 **purchase procedure.** When in response to a proper advertisement
556 therefor, no bid firm as to price is submitted to an electric
557 utility for power transformers, distribution transformers, power
558 breakers, reclosers or other articles containing a petroleum

559 product, the electric utility may accept the lowest and best bid
560 therefor although the price is not firm.

561 (q) **Exception to county/municipal budget limitations.**

562 The prohibitions and restrictions set forth in Sections 19-11-27,
563 21-35-27 and 31-7-49 shall not apply to a contract, lease or
564 lease-purchase agreement entered pursuant to the requirements of
565 this chapter.

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

569 (s) **Fuel management system bidding procedure.** Any
570 governing authority or agency of the state shall, before
571 contracting for the services and products of a fuel management or
572 fuel access system, enter into negotiations with not fewer than
573 two (2) sellers of fuel management or fuel access systems for
574 competitive written bids to provide the services and products for
575 the systems. In the event that the governing authority or agency
576 cannot locate two (2) sellers of such systems or cannot obtain
577 bids from two (2) sellers of such systems, it shall show proof
578 that it made a diligent, good-faith effort to locate and negotiate
579 with two (2) sellers of such systems. Such proof shall include,
580 but not be limited to, publications of a request for proposals and
581 letters soliciting negotiations and bids. For purposes of this
582 paragraph (s), a fuel management or fuel access system is an
583 automated system of acquiring fuel for vehicles as well as
584 management reports detailing fuel use by vehicles and drivers, and
585 the term "competitive written bid" shall have the meaning as
586 defined in paragraph (b) of this section.

587 (t) **Solid waste contract proposal procedure.** Before
588 entering into any contract for garbage collection or disposal,
589 contract for solid waste collection or disposal or contract for
590 sewage collection or disposal, which involves an expenditure of
591 more than Fifty Thousand Dollars (\$50,000.00), a governing

592 authority or agency shall issue publicly a request for proposals
593 concerning the specifications for such services which shall be
594 advertised for in the same manner as provided in this section for
595 seeking bids for purchases which involve an expenditure of more
596 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
597 when issued shall contain terms and conditions relating to price,
598 financial responsibility, technology, legal responsibilities and
599 other relevant factors as are determined by the governing
600 authority or agency to be appropriate for inclusion; all factors
601 determined relevant by the governing authority or agency or
602 required by this paragraph (t) shall be duly included in the
603 advertisement to elicit proposals. After responses to the request
604 for proposals have been duly received, the governing authority or
605 agency shall select the most qualified proposal or proposals on
606 the basis of price, technology and other relevant factors and from
607 such proposals, but not limited to the terms thereof, negotiate
608 and enter contracts with one or more of the persons or firms
609 submitting proposals. If the governing authority or agency deems
610 none of the proposals to be qualified or otherwise acceptable, the
611 request for proposals process may be reinitiated. Notwithstanding
612 any other provisions of this paragraph, where a county with at
613 least thirty-five thousand (35,000) nor more than forty thousand
614 (40,000) population, according to the 1990 federal decennial
615 census, owns or operates a solid waste landfill, the governing
616 authorities of any other county or municipality may contract with
617 the governing authorities of the county owning or operating the
618 landfill, pursuant to a resolution duly adopted and spread upon
619 the minutes of each governing authority involved, for garbage or
620 solid waste collection or disposal services through contract
621 negotiations.

622 (u) **Minority set aside authorization.** Notwithstanding
623 any provision of this section to the contrary, any agency or
624 governing authority, by order placed on its minutes, may, in its

625 discretion, set aside not more than twenty percent (20%) of its
626 anticipated annual expenditures for the purchase of commodities
627 from minority businesses; however, all such set-aside purchases
628 shall comply with all purchasing regulations promulgated by the
629 Department of Finance and Administration and shall be subject to
630 bid requirements under this section. Set-aside purchases for
631 which competitive bids are required shall be made from the lowest
632 and best minority business bidder. For the purposes of this
633 paragraph, the term "minority business" means a business which is
634 owned by a majority of persons who are United States citizens or
635 permanent resident aliens (as defined by the Immigration and
636 Naturalization Service) of the United States, and who are Asian,
637 Black, Hispanic or Native American, according to the following
638 definitions:

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

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

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

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

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

658 (w) Contracts made by governing boards of public school
659 districts with any person or entity under which such person or
660 entity agrees to provide items which are to be offered for sale or
661 lease to students under the board's jurisdiction shall be governed
662 by the provisions of Section 1 of this act.

663 (x) **Purchase authorization clarification.** Nothing in
664 this section shall be construed as authorizing any purchase not
665 authorized by law.

666 SECTION 3. Section 37-7-301, Mississippi Code of 1972, is
667 amended as follows:

668 37-7-301. The school boards of all school districts shall
669 have the following powers, authority and duties in addition to all
670 others imposed or granted by law, to wit:

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

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

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

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

684 (e) To suspend or to expel a pupil for misconduct in
685 the school, upon school buses, on the road to and from school,
686 during recess or upon the school playgrounds, and to delegate such
687 authority to the appropriate officials of the school district;

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

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

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

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

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

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

708 (l) To prescribe and enforce rules and regulations not
709 inconsistent with law or with the regulations of the State Board
710 of Education for their own government and for the government of
711 the schools, and to transact their business at regular and special
712 meetings called and held in the manner provided by law;

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

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

718 (o) To make orders directed to the superintendent of
719 schools or administrative superintendent for the issuance of pay
720 certificates for lawful purposes on any available funds of the
721 district and to have full control of the receipt, distribution,
722 allotment and disbursement of all funds provided for the support
723 and operation of the schools of such school district whether such

724 funds be derived from state appropriations, local ad valorem tax
725 collections, or otherwise;

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

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

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

737 (s) To expend local school activity funds, or other
738 available school district funds, other than minimum education
739 program funds, for the purposes prescribed under this paragraph.
740 "Activity funds" shall mean all funds received by school officials
741 in all school districts paid or collected to participate in any
742 school activity, such activity being part of the school program
743 and partially financed with public funds or supplemented by public
744 funds. The term "activity funds" shall not include any funds
745 raised and/or expended by any organization unless commingled in a
746 bank account with existing activity funds, regardless of whether
747 the funds were raised by school employees or received by school
748 employees during school hours or using school facilities, and
749 regardless of whether a school employee exercises influence over
750 the expenditure or disposition of such funds. Organizations shall
751 not be required to make any payment to any school for the use of
752 any school facility if, in the discretion of the local school
753 governing board, the organization's function shall be deemed to be
754 beneficial to the official or extracurricular programs of the
755 school. For the purposes of this provision, the term
756 "organization" shall not include any organization subject to the

757 control of the local school governing board. Activity funds may
758 only be expended for any necessary expenses or travel costs,
759 including advances, incurred by students and their chaperons in
760 attending any in-state or out-of-state school-related programs,
761 conventions or seminars and/or any commodities, equipment, travel
762 expenses, purchased services or school supplies which the local
763 school governing board, in its discretion, shall deem beneficial
764 to the official or extracurricular programs of the district,
765 including items which may subsequently become the personal
766 property of individuals, including yearbooks, athletic apparel,
767 book covers and trophies. Activity funds may be used to pay
768 travel expenses of school district personnel. The local school
769 governing board shall be authorized and empowered to promulgate
770 rules and regulations specifically designating for what purposes
771 school activity funds may be expended. The local school governing
772 board shall provide (a) that such school activity funds shall be
773 maintained and expended by the principal of the school generating
774 the funds in individual bank accounts, or (b) that such school
775 activity funds shall be maintained and expended by the
776 superintendent of schools in a central depository approved by the
777 board. The local school governing board shall provide that such
778 school activity funds be audited as part of the annual audit
779 required in Section 37-9-18. The State Auditor shall prescribe a
780 uniform system of accounting and financial reporting for all
781 school activity fund transactions. Any contract made by the local
782 school governing board under which the governing board will expend
783 local school activity funds for items that are to be offered for
784 sale or lease to students at schools under the board's
785 jurisdiction shall be subject to the provisions of Section 1 of
786 this act;

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

790 (10) years;

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

793 (v) (i) To lease a school building from an individual,
794 partnership, nonprofit corporation or a private for-profit
795 corporation for the use of such school district, and to expend
796 funds therefor as may be available from any nonminimum program
797 sources. The school board of the school district desiring to
798 lease a school building shall declare by resolution that a need
799 exists for a school building and that the school district cannot
800 provide the necessary funds to pay the cost or its proportionate
801 share of the cost of a school building required to meet the
802 present needs. The resolution so adopted by the school board
803 shall be published once each week for three (3) consecutive weeks
804 in a newspaper having a general circulation in the school district
805 involved, with the first publication thereof to be made not less
806 than thirty (30) days prior to the date upon which the school
807 board is to act on the question of leasing a school building. If
808 no petition requesting an election is filed prior to such meeting
809 as hereinafter provided, then the school board may, by resolution
810 spread upon its minutes, proceed to lease a school building. If
811 at any time prior to said meeting a petition signed by not less
812 than twenty percent (20%) or fifteen hundred (1500), whichever is
813 less, of the qualified electors of the school district involved
814 shall be filed with the school board requesting that an election
815 be called on the question, then the school board shall, not later
816 than the next regular meeting, adopt a resolution calling an
817 election to be held within such school district upon the question
818 of authorizing the school board to lease a school building. Such
819 election shall be called and held, and notice thereof shall be
820 given, in the same manner for elections upon the questions of the
821 issuance of the bonds of school districts, and the results thereof
822 shall be certified to the school board. If at least three-fifths

823 (3/5) of the qualified electors of the school district who voted
824 in such election shall vote in favor of the leasing of a school
825 building, then the school board shall proceed to lease a school
826 building. The term of the lease contract shall not exceed twenty
827 (20) years, and the total cost of such lease shall be either the
828 amount of the lowest and best bid accepted by the school board
829 after advertisement for bids or an amount not to exceed the
830 current fair market value of the lease as determined by the
831 averaging of at least two (2) appraisals by members of the
832 American Institute of Real Estate Appraisers or the Society of
833 Real Estate Appraisers. The term "school building" as used in
834 this item (v) shall be construed to mean any building or buildings
835 used for classroom purposes in connection with the operation of
836 schools and shall include the site therefor, necessary support
837 facilities, and the equipment thereof and appurtenances thereto
838 such as heating facilities, water supply, sewage disposal,
839 landscaping, walks, drives and playgrounds. The term "lease" as
840 used in this item (v)(i) may include a lease/purchase contract;
841 (ii) If two (2) or more school districts propose
842 to enter into a lease contract jointly, then joint meetings of the
843 school boards having control may be held but no action taken shall
844 be binding on any such school district unless the question of
845 leasing a school building is approved in each participating school
846 district under the procedure hereinabove set forth in item (v)(i).
847 All of the provisions of item (v)(i) regarding the term and amount
848 of the lease contract shall apply to the school boards of school
849 districts acting jointly. Any lease contract executed by two (2)
850 or more school districts as joint lessees shall set out the amount
851 of the aggregate lease rental to be paid by each, which may be
852 agreed upon, but there shall be no right of occupancy by any
853 lessee unless the aggregate rental is paid as stipulated in the
854 lease contract. All rights of joint lessees under the lease
855 contract shall be in proportion to the amount of lease rental paid

856 by each;

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

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

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

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

870 (aa) To acquire in its own name by purchase all real
871 property which shall be necessary and desirable in connection with
872 the construction, renovation or improvement of any public school
873 building or structure. If the board shall be unable to agree with
874 the owner of any such real property in connection with any such
875 project, the board shall have the power and authority to acquire
876 any such real property by condemnation proceedings pursuant to
877 Section 11-27-1 et seq., Mississippi Code of 1972, and for such
878 purpose, the right of eminent domain is hereby conferred upon and
879 vested in said board. Provided further, that the local school
880 board is authorized to grant an easement for ingress and egress
881 over sixteenth section land or lieu land in exchange for a similar
882 easement upon adjoining land where the exchange of easements
883 affords substantial benefit to the sixteenth section land;
884 provided, however, the exchange must be based upon values as
885 determined by a competent appraiser, with any differential in
886 value to be adjusted by cash payment. Any easement rights granted
887 over sixteenth section land under such authority shall terminate
888 when the easement ceases to be used for its stated purpose. No

889 sixteenth section or lieu land which is subject to an existing
890 lease shall be burdened by any such easement except by consent of
891 the lessee or unless the school district shall acquire the
892 unexpired leasehold interest affected by the easement;

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

896 (cc) Subject to rules and regulations of the State
897 Board of Education, to purchase relocatable classrooms for the use
898 of such school district, in the manner prescribed in Section
899 37-1-13;

900 (dd) Enter into contracts or agreements with other
901 school districts, political subdivisions or governmental entities
902 to carry out one or more of the powers or duties of the school
903 board, or to allow more efficient utilization of limited resources
904 for providing services to the public;

905 (ee) To provide for in-service training for employees
906 of the district. Until June 30, 1994, the school boards may
907 designate two (2) days of the minimum school term, as defined in
908 Section 37-19-1, for employee in-service training for
909 implementation of the new statewide testing system as developed by
910 the State Board of Education. Such designation shall be subject
911 to approval by the State Board of Education pursuant to uniform
912 rules and regulations;

913 (ff) The school boards of all school districts, as part
914 of their duties to prescribe the use of textbooks, may provide
915 that parents and legal guardians shall be responsible for the
916 textbooks and for the compensation to the school district for any
917 books which are not returned to the proper schools upon the
918 withdrawal of their dependent child. If a textbook is lost or not
919 returned by any student who drops out of the public school
920 district, the parent or legal guardian shall also compensate the
921 school district for the fair market value of the textbooks;

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

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

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

936 (hh) To allow individual lessons for music, art and
937 other curriculum-related activities for academic credit or
938 nonacademic credit during school hours and using school equipment
939 and facilities, subject to uniform rules and regulations adopted
940 by the school board;

941 (ii) To charge reasonable fees for participating in an
942 extracurricular activity for academic or nonacademic credit for
943 necessary and required equipment such as safety equipment, band
944 instruments and uniforms;

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

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

950 (ll) To expend funds for the services of nonprofit arts
951 organizations or other such nonprofit organizations who provide
952 performances or other services for the students of the school
953 district.

954 SECTION 4. This act shall take effect and be in force from

955 and after July 1, 2000.