MISSISSIPPI LEGISLATURE  
REGULAR SESSION 2003  

By: Representative Horne  
To: Appropriations  

HOUSE BILL NO. 60  

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

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

SECTION 1. Any contract by the governing board of a public school district with any person or entity under which the person or entity agrees to provide items that are to be offered for sale or lease to students at schools under the board's jurisdiction may be made only after advertising for competitive sealed bids for the providing of such items, in the manner provided in Section 31-7-13(c), regardless of the amount of any expenditure involved under the contract. Any such contract shall be made with the lowest and best bidder as provided in Section 31-7-13(d). Items to which this section applies include, but are not limited to, class rings, graduation caps and gowns, graduation invitations, school pictures and school yearbooks. This section applies to all contracts made by governing boards of public school districts with any person or entity under which such person or entity agrees to provide items which are to be offered for sale or lease to students under the board's jurisdiction, regardless of whether the contract provides that such person or entity will sell or lease such items directly to the students or whether the contract provides that such person or entity will sell or lease such items to the school district and the governing board of the school.
district or the schools under the board's jurisdiction will in

turn sell or lease the items to the students.

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

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

(a) **Bidding procedure for purchases not over $3,500.00.**

Purchases which do not involve an expenditure of more than Three
Thousand Five Hundred Dollars ($3,500.00), exclusive of freight or
shipping charges, may be made without advertising or otherwise
requesting competitive bids. Provided, however, that nothing
contained in this paragraph (a) shall be construed to prohibit any
agency or governing authority from establishing procedures which
require competitive bids on purchases of Three Thousand Five
Hundred Dollars ($3,500.00) or less.

(b) **Bidding procedure for purchases over $3,500.00 but
not over $15,000.00.** Purchases which involve an expenditure of
more than Three Thousand Five Hundred Dollars ($3,500.00) but not
more than Fifteen Thousand Dollars ($15,000.00), exclusive of
freight and shipping charges may be made from the lowest and best
bidder without publishing or posting advertisement for bids,
provided at least two (2) competitive written bids have been
obtained. Any governing authority purchasing commodities pursuant
to this paragraph (b) may authorize its purchasing agent, or his
designee, with regard to governing authorities other than
counties, or its purchase clerk, or his designee, with regard to
counties, to accept the lowest and best competitive written bid.

Such authorization shall be made in writing by the governing
authority and shall be maintained on file in the primary office of
the agency and recorded in the official minutes of the governing
authority, as appropriate. The purchasing agent or the purchase clerk, or their designee, as the case may be, and not the governing authority, shall be liable for any penalties and/or damages as may be imposed by law for any act or omission of the purchasing agent or purchase clerk, or their designee, constituting a violation of law in accepting any bid without approval by the governing authority. The term "competitive written bid" shall mean a bid submitted on a bid form furnished by the buying agency or governing authority and signed by authorized personnel representing the vendor, or a bid submitted on a vendor's letterhead or identifiable bid form and signed by authorized personnel representing the vendor. Bids may be submitted by facsimile, electronic mail or other generally accepted method of information distribution. Bids submitted by electronic transmission shall not require the signature of the vendor's representative unless required by agencies or governing authorities.

(c) **Bidding procedure for purchases over $15,000.00.**

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

(ii) **Bidding process amendment procedure.** If all
plans and/or specifications are published in the notification,
then the plans and/or specifications may not be amended. If all
plans and/or specifications are not published in the notification,
then amendments to the plans/specifications, bid opening date, bid
opening time and place may be made, provided that the agency or
governing authority maintains a list of all prospective bidders
who are known to have received a copy of the bid documents and all
such prospective bidders are sent copies of all amendments. This
notification of amendments may be made via mail, facsimile,
electronic mail or other generally accepted method of information
distribution. No addendum to bid specifications may be issued
within two (2) working days of the time established for the
receipt of bids unless such addendum also amends the bid opening
to a date not less than five (5) working days after the date of
the addendum.
(iii) Filing requirement. In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board of the governing authority. In addition to these requirements, a bid file shall be established which shall indicate those vendors to whom such solicitations and specifications were issued, and such file shall also contain such information as is pertinent to the bid.

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

(d) Lowest and best bid decision procedure.

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

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

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

(e) **Lease-purchase authorization.** For the purposes of this section, the term "equipment" shall mean equipment, furniture and, if applicable, associated software and other applicable direct costs associated with the acquisition. Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-purchase program pursuant to Section 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by a lease-purchase agreement under this paragraph (e). Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least two (2) written competitive bids, as defined in paragraph (b) of this section, for such financing without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof. No such lease-purchase agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation bonds.
indebtedness permitted under Section 75-17-101, and the term of such lease-purchase agreement shall not exceed the useful life of equipment covered thereby as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to this paragraph (e) may contain any of the terms and conditions which a master lease-purchase agreement may contain under the provisions of Section 31-7-10(5), and shall contain an annual allocation dependency clause substantially similar to that set forth in Section 31-7-10(8). Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain with respect to each such lease-purchase transaction the same information as required to be maintained by the Department of Finance and Administration pursuant to Section 31-7-10(13). However, nothing contained in this section shall be construed to permit agencies to acquire items of equipment with a total acquisition cost in the aggregate of less than Ten Thousand Dollars ($10,000.00) by a single lease-purchase transaction. All equipment, and the purchase thereof by any lessor, acquired by lease-purchase under this paragraph and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes. Interest paid on any lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation.

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

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

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

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

(j) State agency emergency purchase procedure. If the
executive head of any agency of the state shall determine that an
emergency exists in regard to the purchase of any commodities or
repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the provisions herein for competitive bidding shall not apply and the head of such agency shall be authorized to make the purchase or repair. Total purchases so made shall only be for the purpose of meeting needs created by the emergency situation. In the event such executive head is responsible to an agency board, at the meeting next following the emergency purchase, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the nature of the emergency shall be presented to the board and placed on the minutes of the board of such agency. The head of such agency shall, at the earliest possible date following such emergency purchase, file with the Department of Finance and Administration (i) a statement under oath certifying the conditions and circumstances of the emergency, and (ii) a certified copy of the appropriate minutes of the board of such agency, if applicable. On or before September 1 of each year, the State Auditor shall prepare and deliver to the Senate Fees, Salaries and Administration Committee, the House Fees and Salaries of Public Officers Committee and the Joint Legislative Budget Committee a report containing a list of all state agency emergency purchases and supporting documentation for each emergency purchase.

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

(1) Hospital purchase, lease-purchase and lease authorization.

(i) The commissioners or board of trustees of any public hospital may contract with such lowest and best bidder for the purchase or lease-purchase of any commodity under a contract of purchase or lease-purchase agreement whose obligatory payment terms do not exceed five (5) years.

(ii) In addition to the authority granted in subparagraph (i) of this paragraph (l), the commissioners or board of trustees is authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services. Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further liability on the part of the lessee. Any such contract for the lease of equipment or services executed on behalf of the commissioners or board that complies with the provisions of this subparagraph (ii) shall be excepted from the bid requirements set forth in this section.
(m) **Exceptions from bidding requirements.** Excepted from bid requirements are:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Purchases of state-adopted textbooks by public school districts.

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

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

(xxviii) **Hospital lease of equipment or services.** Leases by hospitals of equipment or services if the leases are in compliance with paragraph (l)(ii).

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

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

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

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

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

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

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

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

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

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

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

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

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

(u) **Contracts made by governing boards of public school districts with any person or entity under which such person or entity agrees to provide items which are to be offered for sale or lease to students under the board’s jurisdiction shall be governed**
by the provisions of Section 1 of House Bill No. 689, 2003 Regular Session.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(s) To expend local school activity funds, or other available school district funds, other than minimum education program funds, for the purposes prescribed under this paragraph.

"Activity funds" shall mean all funds received by school officials in all school districts paid or collected to participate in any school activity, such activity being part of the school program and partially financed with public funds or supplemented by public funds. The term "activity funds" shall not include any funds raised and/or expended by any organization unless commingled in a bank account with existing activity funds, regardless of whether the funds were raised by school employees or received by school employees during school hours or using school facilities, and regardless of whether a school employee exercises influence over the expenditure or disposition of such funds. Organizations shall not be required to make any payment to any school for the use of
any school facility if, in the discretion of the local school
governing board, the organization's function shall be deemed to be
beneficial to the official or extracurricular programs of the
school. For the purposes of this provision, the term
"organization" shall not include any organization subject to the
control of the local school governing board. Activity funds may
only be expended for any necessary expenses or travel costs,
including advances, incurred by students and their chaperons in
attending any in-state or out-of-state school-related programs,
conventions or seminars and/or any commodities, equipment, travel
expenses, purchased services or school supplies which the local
school governing board, in its discretion, shall deem beneficial
to the official or extracurricular programs of the district,
including items which may subsequently become the personal
property of individuals, including yearbooks, athletic apparel,
book covers and trophies. Activity funds may be used to pay
travel expenses of school district personnel. The local school
governing board shall be authorized and empowered to promulgate
rules and regulations specifically designating for what purposes
school activity funds may be expended. The local school governing
board shall provide (i) that such school activity funds shall be
maintained and expended by the principal of the school generating
the funds in individual bank accounts, or (ii) that such school
activity funds shall be maintained and expended by the
superintendent of schools in a central depository approved by the
board. The local school governing board shall provide that such
school activity funds be audited as part of the annual audit
required in Section 37-9-18. The State Auditor shall prescribe a
uniform system of accounting and financial reporting for all
school activity fund transactions. Any contract made by the local
school governing board under which the governing board will expend
local school activity funds for items that are to be offered for
sale or lease to students at schools under the board's
jurisdiction shall be subject to the provisions of Section 1 of House Bill No.____, 2003 Regular Session;

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

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

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

(ii) If two (2) or more school districts propose to enter into a lease contract jointly, then joint meetings of the school boards having control may be held but no action taken shall be binding on any such school district unless the question of leasing a school building is approved in each participating school district under the procedure hereinabove set forth in item (v)(i).

All of the provisions of item (v)(i) regarding the term and amount of the lease contract shall apply to the school boards of school districts acting jointly. Any lease contract executed by two (2) or more school districts as joint lessees shall set out the amount
of the aggregate lease rental to be paid by each, which may be
agreed upon, but there shall be no right of occupancy by any
lessee unless the aggregate rental is paid as stipulated in the
lease contract. All rights of joint lessees under the lease
contract shall be in proportion to the amount of lease rental paid
by each;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4. This act shall take effect and be in force from
and after July 1, 2003.