

By: Representative Horne

To: Appropriations

HOUSE BILL NO. 60

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 1.** Any contract by the governing board of a public
13 school district with any person or entity under which the person
14 or entity agrees to provide items that are to be offered for sale
15 or lease to students at schools under the board's jurisdiction may
16 be made only after advertising for competitive sealed bids for the
17 providing of such items, in the manner provided in Section
18 31-7-13(c), regardless of the amount of any expenditure involved
19 under the contract. Any such contract shall be made with the
20 lowest and best bidder as provided in Section 31-7-13(d). Items
21 to which this section applies include, but are not limited to,
22 class rings, graduation caps and gowns, graduation invitations,
23 school pictures and school yearbooks. This section applies to all
24 contracts made by governing boards of public school districts with
25 any person or entity under which such person or entity agrees to
26 provide items which are to be offered for sale or lease to
27 students under the board's jurisdiction, regardless of whether the
28 contract provides that such person or entity will sell or lease
29 such items directly to the students or whether the contract
30 provides that such person or entity will sell or lease such items
31 to the school district and the governing board of the school



32 district or the schools under the board's jurisdiction will in
33 turn sell or lease the items to the students.

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

36 31-7-13. All agencies and governing authorities shall
37 purchase their commodities and printing; contract for garbage
38 collection or disposal; contract for solid waste collection or
39 disposal; contract for sewage collection or disposal; contract for
40 public construction; and contract for rentals as herein provided.

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

50 (b) **Bidding procedure for purchases over \$3,500.00 but**
51 **not over \$15,000.00.** Purchases which involve an expenditure of
52 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
53 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
54 freight and shipping charges may be made from the lowest and best
55 bidder without publishing or posting advertisement for bids,
56 provided at least two (2) competitive written bids have been
57 obtained. Any governing authority purchasing commodities pursuant
58 to this paragraph (b) may authorize its purchasing agent, or his
59 designee, with regard to governing authorities other than
60 counties, or its purchase clerk, or his designee, with regard to
61 counties, to accept the lowest and best competitive written bid.
62 Such authorization shall be made in writing by the governing
63 authority and shall be maintained on file in the primary office of
64 the agency and recorded in the official minutes of the governing



65 authority, as appropriate. The purchasing agent or the purchase
66 clerk, or their designee, as the case may be, and not the
67 governing authority, shall be liable for any penalties and/or
68 damages as may be imposed by law for any act or omission of the
69 purchasing agent or purchase clerk, or their designee,
70 constituting a violation of law in accepting any bid without
71 approval by the governing authority. The term "competitive
72 written bid" shall mean a bid submitted on a bid form furnished by
73 the buying agency or governing authority and signed by authorized
74 personnel representing the vendor, or a bid submitted on a
75 vendor's letterhead or identifiable bid form and signed by
76 authorized personnel representing the vendor. Bids may be
77 submitted by facsimile, electronic mail or other generally
78 accepted method of information distribution. Bids submitted by
79 electronic transmission shall not require the signature of the
80 vendor's representative unless required by agencies or governing
81 authorities.

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

83 (i) **Publication requirement.** Purchases which
84 involve an expenditure of more than Fifteen Thousand Dollars
85 (\$15,000.00), exclusive of freight and shipping charges may be
86 made from the lowest and best bidder after advertising for
87 competitive sealed bids once each week for two (2) consecutive
88 weeks in a regular newspaper published in the county or
89 municipality in which such agency or governing authority is
90 located. The date as published for the bid opening shall not be
91 less than seven (7) working days after the last published notice;
92 however, if the purchase involves a construction project in which
93 the estimated cost is in excess of Fifteen Thousand Dollars
94 (\$15,000.00), such bids shall not be opened in less than fifteen
95 (15) working days after the last notice is published and the
96 notice for the purchase of such construction shall be published
97 once each week for two (2) consecutive weeks. The notice of



98 intention to let contracts or purchase equipment shall state the
99 time and place at which bids shall be received, list the contracts
100 to be made or types of equipment or supplies to be purchased, and,
101 if all plans and/or specifications are not published, refer to the
102 plans and/or specifications on file. If there is no newspaper
103 published in the county or municipality, then such notice shall be
104 given by posting same at the courthouse, or for municipalities at
105 the city hall, and at two (2) other public places in the county or
106 municipality, and also by publication once each week for two (2)
107 consecutive weeks in some newspaper having a general circulation
108 in the county or municipality in the above provided manner. On
109 the same date that the notice is submitted to the newspaper for
110 publication, the agency or governing authority involved shall mail
111 written notice to, or provide electronic notification to the main
112 office of the Mississippi Contract Procurement Center that
113 contains the same information as that in the published notice.

114 (ii) **Bidding process amendment procedure.** If all
115 plans and/or specifications are published in the notification,
116 then the plans and/or specifications may not be amended. If all
117 plans and/or specifications are not published in the notification,
118 then amendments to the plans/specifications, bid opening date, bid
119 opening time and place may be made, provided that the agency or
120 governing authority maintains a list of all prospective bidders
121 who are known to have received a copy of the bid documents and all
122 such prospective bidders are sent copies of all amendments. This
123 notification of amendments may be made via mail, facsimile,
124 electronic mail or other generally accepted method of information
125 distribution. No addendum to bid specifications may be issued
126 within two (2) working days of the time established for the
127 receipt of bids unless such addendum also amends the bid opening
128 to a date not less than five (5) working days after the date of
129 the addendum.



130 (iii) **Filing requirement.** In all cases involving
131 governing authorities, before the notice shall be published or
132 posted, the plans or specifications for the construction or
133 equipment being sought shall be filed with the clerk of the board
134 of the governing authority. In addition to these requirements, a
135 bid file shall be established which shall indicate those vendors
136 to whom such solicitations and specifications were issued, and
137 such file shall also contain such information as is pertinent to
138 the bid.

139 (iv) **Specification restrictions.** Specifications
140 pertinent to such bidding shall be written so as not to exclude
141 comparable equipment of domestic manufacture. Provided, however,
142 that should valid justification be presented, the Department of
143 Finance and Administration or the board of a governing authority
144 may approve a request for specific equipment necessary to perform
145 a specific job. Further, such justification, when placed on the
146 minutes of the board of a governing authority, may serve as
147 authority for that governing authority to write specifications to
148 require a specific item of equipment needed to perform a specific
149 job. In addition to these requirements, from and after July 1,
150 1990, vendors of relocatable classrooms and the specifications for
151 the purchase of such relocatable classrooms published by local
152 school boards shall meet all pertinent regulations of the State
153 Board of Education, including prior approval of such bid by the
154 State Department of Education.

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

156 (i) **Decision procedure.** Purchases may be made
157 from the lowest and best bidder. In determining the lowest and
158 best bid, freight and shipping charges shall be included.
159 Life-cycle costing, total cost bids, warranties, guaranteed
160 buy-back provisions and other relevant provisions may be included
161 in the best bid calculation. All best bid procedures for state
162 agencies must be in compliance with regulations established by the



163 Department of Finance and Administration. If any governing
164 authority accepts a bid other than the lowest bid actually
165 submitted, it shall place on its minutes detailed calculations and
166 narrative summary showing that the accepted bid was determined to
167 be the lowest and best bid, including the dollar amount of the
168 accepted bid and the dollar amount of the lowest bid. No agency
169 or governing authority shall accept a bid based on items not
170 included in the specifications.

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

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

177 (e) **Lease-purchase authorization.** For the purposes of
178 this section, the term "equipment" shall mean equipment, furniture
179 and, if applicable, associated software and other applicable
180 direct costs associated with the acquisition. Any lease-purchase
181 of equipment which an agency is not required to lease-purchase
182 under the master lease-purchase program pursuant to Section
183 31-7-10 and any lease-purchase of equipment which a governing
184 authority elects to lease-purchase may be acquired by a
185 lease-purchase agreement under this paragraph (e). Lease-purchase
186 financing may also be obtained from the vendor or from a
187 third-party source after having solicited and obtained at least
188 two (2) written competitive bids, as defined in paragraph (b) of
189 this section, for such financing without advertising for such
190 bids. Solicitation for the bids for financing may occur before or
191 after acceptance of bids for the purchase of such equipment or,
192 where no such bids for purchase are required, at any time before
193 the purchase thereof. No such lease-purchase agreement shall be
194 for an annual rate of interest which is greater than the overall
195 maximum interest rate to maturity on general obligation



196 indebtedness permitted under Section 75-17-101, and the term of
197 such lease-purchase agreement shall not exceed the useful life of
198 equipment covered thereby as determined according to the upper
199 limit of the asset depreciation range (ADR) guidelines for the
200 Class Life Asset Depreciation Range System established by the
201 Internal Revenue Service pursuant to the United States Internal
202 Revenue Code and regulations thereunder as in effect on December
203 31, 1980, or comparable depreciation guidelines with respect to
204 any equipment not covered by ADR guidelines. Any lease-purchase
205 agreement entered into pursuant to this paragraph (e) may contain
206 any of the terms and conditions which a master lease-purchase
207 agreement may contain under the provisions of Section 31-7-10(5),
208 and shall contain an annual allocation dependency clause
209 substantially similar to that set forth in Section 31-7-10(8).
210 Each agency or governing authority entering into a lease-purchase
211 transaction pursuant to this paragraph (e) shall maintain with
212 respect to each such lease-purchase transaction the same
213 information as required to be maintained by the Department of
214 Finance and Administration pursuant to Section 31-7-10(13).
215 However, nothing contained in this section shall be construed to
216 permit agencies to acquire items of equipment with a total
217 acquisition cost in the aggregate of less than Ten Thousand
218 Dollars (\$10,000.00) by a single lease-purchase transaction. All
219 equipment, and the purchase thereof by any lessor, acquired by
220 lease-purchase under this paragraph and all lease-purchase
221 payments with respect thereto shall be exempt from all Mississippi
222 sales, use and ad valorem taxes. Interest paid on any
223 lease-purchase agreement under this section shall be exempt from
224 State of Mississippi income taxation.

225 (f) **Alternate bid authorization.** When necessary to
226 ensure ready availability of commodities for public works and the
227 timely completion of public projects, no more than two (2)
228 alternate bids may be accepted by a governing authority for



229 commodities. No purchases may be made through use of such
230 alternate bids procedure unless the lowest and best bidder, for
231 reasons beyond his control, cannot deliver the commodities
232 contained in his bid. In that event, purchases of such
233 commodities may be made from one (1) of the bidders whose bid was
234 accepted as an alternate.

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

255 (h) **Petroleum purchase alternative.** In addition to
256 other methods of purchasing authorized in this chapter, when any
257 agency or governing authority shall have a need for gas, diesel
258 fuel, oils and/or other petroleum products in excess of the amount
259 set forth in paragraph (a) of this section, such agency or
260 governing authority may purchase the commodity after having
261 solicited and obtained at least two (2) competitive written bids,



262 as defined in paragraph (b) of this section. If two (2)
263 competitive written bids are not obtained the entity shall comply
264 with the procedures set forth in paragraph (c) of this section.
265 In the event any agency or governing authority shall have
266 advertised for bids for the purchase of gas, diesel fuel, oils and
267 other petroleum products and coal and no acceptable bids can be
268 obtained, such agency or governing authority is authorized and
269 directed to enter into any negotiations necessary to secure the
270 lowest and best contract available for the purchase of such
271 commodities.

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

292 (j) **State agency emergency purchase procedure.** If the
293 executive head of any agency of the state shall determine that an
294 emergency exists in regard to the purchase of any commodities or



295 repair contracts, so that the delay incident to giving opportunity
296 for competitive bidding would be detrimental to the interests of
297 the state, then the provisions herein for competitive bidding
298 shall not apply and the head of such agency shall be authorized to
299 make the purchase or repair. Total purchases so made shall only
300 be for the purpose of meeting needs created by the emergency
301 situation. In the event such executive head is responsible to an
302 agency board, at the meeting next following the emergency
303 purchase, documentation of the purchase, including a description
304 of the commodity purchased, the purchase price thereof and the
305 nature of the emergency shall be presented to the board and placed
306 on the minutes of the board of such agency. The head of such
307 agency shall, at the earliest possible date following such
308 emergency purchase, file with the Department of Finance and
309 Administration (i) a statement under oath certifying the
310 conditions and circumstances of the emergency, and (ii) a
311 certified copy of the appropriate minutes of the board of such
312 agency, if applicable. On or before September 1 of each year, the
313 State Auditor shall prepare and deliver to the Senate Fees,
314 Salaries and Administration Committee, the House Fees and Salaries
315 of Public Officers Committee and the Joint Legislative Budget
316 Committee a report containing a list of all state agency emergency
317 purchases and supporting documentation for each emergency
318 purchases.

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

320 If the governing authority, or the governing authority acting
321 through its designee, shall determine that an emergency exists in
322 regard to the purchase of any commodities or repair contracts, so
323 that the delay incident to giving opportunity for competitive
324 bidding would be detrimental to the interest of the governing
325 authority, then the provisions herein for competitive bidding
326 shall not apply and any officer or agent of such governing
327 authority having general or special authority therefor in making



328 such purchase or repair shall approve the bill presented therefor,
329 and he shall certify in writing thereon from whom such purchase
330 was made, or with whom such a repair contract was made. At the
331 board meeting next following the emergency purchase or repair
332 contract, documentation of the purchase or repair contract,
333 including a description of the commodity purchased, the price
334 thereof and the nature of the emergency shall be presented to the
335 board and shall be placed on the minutes of the board of such
336 governing authority.

337 (1) **Hospital purchase, lease-purchase and lease**
338 **authorization.**

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

344 (ii) In addition to the authority granted in
345 subparagraph (i) of this paragraph (1), the commissioners or board
346 of trustees is authorized to enter into contracts for the lease of
347 equipment or services, or both, which it considers necessary for
348 the proper care of patients if, in its opinion, it is not
349 financially feasible to purchase the necessary equipment or
350 services. Any such contract for the lease of equipment or
351 services executed by the commissioners or board shall not exceed a
352 maximum of five (5) years' duration and shall include a
353 cancellation clause based on unavailability of funds. If such
354 cancellation clause is exercised, there shall be no further
355 liability on the part of the lessee. Any such contract for the
356 lease of equipment or services executed on behalf of the
357 commissioners or board that complies with the provisions of this
358 subparagraph (ii) shall be excepted from the bid requirements set
359 forth in this section.



360 (m) **Exceptions from bidding requirements.** Excepted
361 from bid requirements are:

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

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

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

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

386 (v) **Governmental equipment auctions.** Motor
387 vehicles or other equipment purchased from a federal or state
388 agency or a governing authority at a public auction held for the
389 purpose of disposing of such vehicles or other equipment. Any
390 purchase by a governing authority under the exemption authorized
391 by this subparagraph (v) shall require advance authorization
392 spread upon the minutes of the governing authority to include the



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

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

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

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

419 (viii) **Single source items.** Noncompetitive items
420 available from one (1) source only. In connection with the
421 purchase of noncompetitive items only available from one (1)
422 source, a certification of the conditions and circumstances
423 requiring the purchase shall be filed by the agency with the
424 Department of Finance and Administration and by the governing
425 authority with the board of the governing authority. Upon receipt



426 of that certification the Department of Finance and Administration
427 or the board of the governing authority, as the case may be, may,
428 in writing, authorize the purchase, which authority shall be noted
429 on the minutes of the body at the next regular meeting thereafter.
430 In those situations, a governing authority is not required to
431 obtain the approval of the Department of Finance and
432 Administration.

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

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

457 (xi) **Information technology products.** Purchases
458 of information technology products made by governing authorities



459 under the provisions of purchase schedules, or contracts executed
460 or approved by the Mississippi Department of Information
461 Technology Services and designated for use by governing
462 authorities.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

532 (xxvii) **Used heavy or specialized machinery or**
533 **equipment for installation of soil and water conservation**

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

535 machinery or equipment used for the installation and

536 implementation of soil and water conservation practices or

537 measures purchased subject to the restrictions provided in

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

539 Soil and Water Conservation Commission under the exemption

540 authorized by this subparagraph shall require advance

541 authorization spread upon the minutes of the commission to include

542 the listing of the item or items authorized to be purchased and

543 the maximum bid authorized to be paid for each item or items.

544 (xxviii) **Hospital lease of equipment or services.**

545 Leases by hospitals of equipment or services if the leases are in

546 compliance with paragraph (1)(ii).

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

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

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

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

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

553 provisions prohibiting the letting of contracts during specified

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

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

556 ratification or cancellation by governing authority boards taking



557 office subsequent to the governing authority board entering the
558 contract.

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

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

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



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

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

614 (r) **Solid waste contract proposal procedure.** Before
615 entering into any contract for garbage collection or disposal,
616 contract for solid waste collection or disposal or contract for
617 sewage collection or disposal, which involves an expenditure of
618 more than Fifty Thousand Dollars (\$50,000.00), a governing
619 authority or agency shall issue publicly a request for proposals
620 concerning the specifications for such services which shall be
621 advertised for in the same manner as provided in this section for
622 seeking bids for purchases which involve an expenditure of more



623 than Ten Thousand Dollars (\$10,000.00). Any request for proposals
624 when issued shall contain terms and conditions relating to price,
625 financial responsibility, technology, legal responsibilities and
626 other relevant factors as are determined by the governing
627 authority or agency to be appropriate for inclusion; all factors
628 determined relevant by the governing authority or agency or
629 required by this paragraph (r) shall be duly included in the
630 advertisement to elicit proposals. After responses to the request
631 for proposals have been duly received, the governing authority or
632 agency shall select the most qualified proposal or proposals on
633 the basis of price, technology and other relevant factors and from
634 such proposals, but not limited to the terms thereof, negotiate
635 and enter contracts with one or more of the persons or firms
636 submitting proposals. If the governing authority or agency deems
637 none of the proposals to be qualified or otherwise acceptable, the
638 request for proposals process may be reinitiated. Notwithstanding
639 any other provisions of this paragraph, where a county with at
640 least thirty-five thousand (35,000) nor more than forty thousand
641 (40,000) population, according to the 1990 federal decennial
642 census, owns or operates a solid waste landfill, the governing
643 authorities of any other county or municipality may contract with
644 the governing authorities of the county owning or operating the
645 landfill, pursuant to a resolution duly adopted and spread upon
646 the minutes of each governing authority involved, for garbage or
647 solid waste collection or disposal services through contract
648 negotiations.

649 (s) **Minority set aside authorization.** Notwithstanding
650 any provision of this section to the contrary, any agency or
651 governing authority, by order placed on its minutes, may, in its
652 discretion, set aside not more than twenty percent (20%) of its
653 anticipated annual expenditures for the purchase of commodities
654 from minority businesses; however, all such set-aside purchases
655 shall comply with all purchasing regulations promulgated by the



656 Department of Finance and Administration and shall be subject to
657 bid requirements under this section. Set-aside purchases for
658 which competitive bids are required shall be made from the lowest
659 and best minority business bidder. For the purposes of this
660 paragraph, the term "minority business" means a business which is
661 owned by a majority of persons who are United States citizens or
662 permanent resident aliens (as defined by the Immigration and
663 Naturalization Service) of the United States, and who are Asian,
664 Black, Hispanic or Native American, according to the following
665 definitions:

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

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

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

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

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

685 (u) Contracts made by governing boards of public school
686 districts with any person or entity under which such person or
687 entity agrees to provide items which are to be offered for sale or
688 lease to students under the board's jurisdiction shall be governed



689 by the provisions of Section 1 of House Bill No. , 2003 Regular
690 Session.

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

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

696 37-7-301. The school boards of all school districts shall
697 have the following powers, authority and duties in addition to all
698 others imposed or granted by law, to wit:

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

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

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

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

712 (e) To suspend or to expel a pupil or to change the
713 placement of a pupil to the school district's alternative school
714 or home-bound program for misconduct in the school or on school
715 property, as defined in Section 37-11-29, on the road to and from
716 school, or at any school-related activity or event, or for conduct
717 occurring on property other than school property or other than at
718 a school-related activity or event when such conduct by a pupil,
719 in the determination of the school superintendent or principal,
720 renders that pupil's presence in the classroom a disruption to the
721 educational environment of the school or a detriment to the best



722 interest and welfare of the pupils and teacher of such class as a
723 whole, and to delegate such authority to the appropriate officials
724 of the school district;

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

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

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

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

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

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

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

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

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



755 (o) To make orders directed to the superintendent of
756 schools for the issuance of pay certificates for lawful purposes
757 on any available funds of the district and to have full control of
758 the receipt, distribution, allotment and disbursement of all funds
759 provided for the support and operation of the schools of such
760 school district whether such funds be derived from state
761 appropriations, local ad valorem tax collections, or otherwise;

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

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

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

773 (s) To expend local school activity funds, or other
774 available school district funds, other than minimum education
775 program funds, for the purposes prescribed under this paragraph.
776 "Activity funds" shall mean all funds received by school officials
777 in all school districts paid or collected to participate in any
778 school activity, such activity being part of the school program
779 and partially financed with public funds or supplemented by public
780 funds. The term "activity funds" shall not include any funds
781 raised and/or expended by any organization unless commingled in a
782 bank account with existing activity funds, regardless of whether
783 the funds were raised by school employees or received by school
784 employees during school hours or using school facilities, and
785 regardless of whether a school employee exercises influence over
786 the expenditure or disposition of such funds. Organizations shall
787 not be required to make any payment to any school for the use of



788 any school facility if, in the discretion of the local school
789 governing board, the organization's function shall be deemed to be
790 beneficial to the official or extracurricular programs of the
791 school. For the purposes of this provision, the term
792 "organization" shall not include any organization subject to the
793 control of the local school governing board. Activity funds may
794 only be expended for any necessary expenses or travel costs,
795 including advances, incurred by students and their chaperons in
796 attending any in-state or out-of-state school-related programs,
797 conventions or seminars and/or any commodities, equipment, travel
798 expenses, purchased services or school supplies which the local
799 school governing board, in its discretion, shall deem beneficial
800 to the official or extracurricular programs of the district,
801 including items which may subsequently become the personal
802 property of individuals, including yearbooks, athletic apparel,
803 book covers and trophies. Activity funds may be used to pay
804 travel expenses of school district personnel. The local school
805 governing board shall be authorized and empowered to promulgate
806 rules and regulations specifically designating for what purposes
807 school activity funds may be expended. The local school governing
808 board shall provide (i) that such school activity funds shall be
809 maintained and expended by the principal of the school generating
810 the funds in individual bank accounts, or (ii) that such school
811 activity funds shall be maintained and expended by the
812 superintendent of schools in a central depository approved by the
813 board. The local school governing board shall provide that such
814 school activity funds be audited as part of the annual audit
815 required in Section 37-9-18. The State Auditor shall prescribe a
816 uniform system of accounting and financial reporting for all
817 school activity fund transactions. Any contract made by the local
818 school governing board under which the governing board will expend
819 local school activity funds for items that are to be offered for
820 sale or lease to students at schools under the board's



821 jurisdiction shall be subject to the provisions of Section 1 of
822 House Bill No. _____, 2003 Regular Session;

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

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

829 (v) (i) To lease a school building from an individual,
830 partnership, nonprofit corporation or a private for-profit
831 corporation for the use of such school district, and to expend
832 funds therefor as may be available from any nonminimum program
833 sources. The school board of the school district desiring to
834 lease a school building shall declare by resolution that a need
835 exists for a school building and that the school district cannot
836 provide the necessary funds to pay the cost or its proportionate
837 share of the cost of a school building required to meet the
838 present needs. The resolution so adopted by the school board
839 shall be published once each week for three (3) consecutive weeks
840 in a newspaper having a general circulation in the school district
841 involved, with the first publication thereof to be made not less
842 than thirty (30) days prior to the date upon which the school
843 board is to act on the question of leasing a school building. If
844 no petition requesting an election is filed prior to such meeting
845 as hereinafter provided, then the school board may, by resolution
846 spread upon its minutes, proceed to lease a school building. If
847 at any time prior to said meeting a petition signed by not less
848 than twenty percent (20%) or fifteen hundred (1500), whichever is
849 less, of the qualified electors of the school district involved
850 shall be filed with the school board requesting that an election
851 be called on the question, then the school board shall, not later
852 than the next regular meeting, adopt a resolution calling an
853 election to be held within such school district upon the question



854 of authorizing the school board to lease a school building. Such
855 election shall be called and held, and notice thereof shall be
856 given, in the same manner for elections upon the questions of the
857 issuance of the bonds of school districts, and the results thereof
858 shall be certified to the school board. If at least three-fifths
859 (3/5) of the qualified electors of the school district who voted
860 in such election shall vote in favor of the leasing of a school
861 building, then the school board shall proceed to lease a school
862 building. The term of the lease contract shall not exceed twenty
863 (20) years, and the total cost of such lease shall be either the
864 amount of the lowest and best bid accepted by the school board
865 after advertisement for bids or an amount not to exceed the
866 current fair market value of the lease as determined by the
867 averaging of at least two (2) appraisals by certified general
868 appraisers licensed by the State of Mississippi. The term "school
869 building" as used in this item (v) shall be construed to mean any
870 building or buildings used for classroom purposes in connection
871 with the operation of schools and shall include the site therefor,
872 necessary support facilities, and the equipment thereof and
873 appurtenances thereto such as heating facilities, water supply,
874 sewage disposal, landscaping, walks, drives and playgrounds. The
875 term "lease" as used in this item (v)(i) may include a
876 lease/purchase contract;

877 (ii) If two (2) or more school districts propose
878 to enter into a lease contract jointly, then joint meetings of the
879 school boards having control may be held but no action taken shall
880 be binding on any such school district unless the question of
881 leasing a school building is approved in each participating school
882 district under the procedure hereinabove set forth in item (v)(i).
883 All of the provisions of item (v)(i) regarding the term and amount
884 of the lease contract shall apply to the school boards of school
885 districts acting jointly. Any lease contract executed by two (2)
886 or more school districts as joint lessees shall set out the amount



887 of the aggregate lease rental to be paid by each, which may be
888 agreed upon, but there shall be no right of occupancy by any
889 lessee unless the aggregate rental is paid as stipulated in the
890 lease contract. All rights of joint lessees under the lease
891 contract shall be in proportion to the amount of lease rental paid
892 by each;

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

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

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

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

906 (aa) To acquire in its own name by purchase all real
907 property which shall be necessary and desirable in connection with
908 the construction, renovation or improvement of any public school
909 building or structure. Whenever the purchase price for such real
910 property is greater than Fifty Thousand Dollars (\$50,000.00), the
911 school board shall not purchase the property for an amount
912 exceeding the fair market value of such property as determined by
913 the average of at least two (2) independent appraisals by
914 certified general appraisers licensed by the State of Mississippi.
915 If the board shall be unable to agree with the owner of any such
916 real property in connection with any such project, the board shall
917 have the power and authority to acquire any such real property by
918 condemnation proceedings pursuant to Section 11-27-1 et seq.,
919 Mississippi Code of 1972, and for such purpose, the right of



920 eminent domain is hereby conferred upon and vested in said board.
921 Provided further, that the local school board is authorized to
922 grant an easement for ingress and egress over sixteenth section
923 land or lieu land in exchange for a similar easement upon
924 adjoining land where the exchange of easements affords substantial
925 benefit to the sixteenth section land; provided, however, the
926 exchange must be based upon values as determined by a competent
927 appraiser, with any differential in value to be adjusted by cash
928 payment. Any easement rights granted over sixteenth section land
929 under such authority shall terminate when the easement ceases to
930 be used for its stated purpose. No sixteenth section or lieu land
931 which is subject to an existing lease shall be burdened by any
932 such easement except by consent of the lessee or unless the school
933 district shall acquire the unexpired leasehold interest affected
934 by the easement;

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

938 (cc) Subject to rules and regulations of the State
939 Board of Education, to purchase relocatable classrooms for the use
940 of such school district, in the manner prescribed in Section
941 37-1-13;

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

947 (ee) To provide for in-service training for employees
948 of the district. Until June 30, 1994, the school boards may
949 designate two (2) days of the minimum school term, as defined in
950 Section 37-19-1, for employee in-service training for
951 implementation of the new statewide testing system as developed by
952 the State Board of Education. Such designation shall be subject



953 to approval by the State Board of Education pursuant to uniform
954 rules and regulations;

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

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

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

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

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

983 (ii) To charge reasonable fees for participating in an
984 extracurricular activity for academic or nonacademic credit for



985 necessary and required equipment such as safety equipment, band
986 instruments and uniforms;

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

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

992 (ll) To expend funds for the services of nonprofit arts
993 organizations or other such nonprofit organizations who provide
994 performances or other services for the students of the school
995 district.

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

