

Report To

# The Mississippi Legislature



## A Review of the Pearl River Valley Water Supply District's Use of Real Estate Consultants

July 21, 1993

The Pearl River Valley Water Supply District has used real estate consultants since 1963. PEER found that the district:

- has become unquestionably dependent on real estate consultants, while depriving management of expertise and proper controls of leased real estate;
- procured contracts without properly assessing its needs or receiving direction from strong district goals and objectives and without using competitive procurement;
- paid unreasonable commissions (based on inaccurate lease valuations) to consultants rather than direct hourly compensation;
- spent over \$1.6 million from April 1983 to July 1992 for a single contractor's services; and,
- spent \$1,011,516 more for the consultants than authorized by the State Personnel Director and than allowed per the contract terms.

In addition, without sufficient documentation and without explicit statutory authority, the State Personnel Director disapproved H. C. Bailey Management Company's contract on June 29, 1992, and then on March 24, 1993, approved Eastover Realty Corporation's contract for similar services.

## The PEER Committee

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The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A standing joint committee, the PEER Committee is composed of five members of the House of Representatives appointed by the Speaker and five members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of three Representatives and three Senators voting in the affirmative.

Mississippi's constitution gives the Legislature broad power to conduct examinations and investigations, PEER is authorized by law to review any public entity, including contractors supported in whole or in part by public funds, and to address any issues which may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

PEER provides a variety of services to the Legislature, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and the agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

**A Review of the Pearl River Valley Water Supply District's  
Use of Real Estate Consultants**

**July 21, 1993**

**The PEER Committee  
Mississippi Legislature**

The Mississippi Legislature  
**Joint Committee on Performance Evaluation and Expenditure Review**  
PEER Committee



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July 21, 1993

Honorable Kirk Fordice, Governor  
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Honorable Tim Ford, Speaker of the House  
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At its meeting of July 21, 1993, the PEER Committee authorized release of the report entitled **A Review of the Pearl River Valley Water Supply District's Use of Real Estate Consultants.**

  
Representative Cecil McCrory, Chairman

**This report does not recommend increased  
funding or additional staff.**

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# A Review of the Pearl River Valley Water Supply District's Use of Real Estate Consultants

## *Executive Summary*

July 21, 1993

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### **Introduction**

The PEER Committee performed this review of Pearl River Valley Water Supply District's (PRVWSD) contracting with real estate consultants in response to legislative inquiries concerning those activities. PEER's review focused on:

- amounts authorized by the State Personnel Board (SPB) and expended by PRVWSD;
- reasonableness of contract terms and fees;
- procurement methods used; and,
- the current need for real estate consultant services.

### **Background**

PRVWSD was authorized in 1958 by the Legislature and created that year by favorable referendum in the five counties of the district: Hinds, Leake, Madison, Rankin, and Scott, as upheld in the courts on January 12, 1959. The district was created primarily to provide adequate water supply for domestic, industrial, agricultural, recreational and other uses, and for water conservation, flood control, pollution abatement, timber conservation and irrigation work.

PRVWSD issued bonds to obtain the necessary financing for dam, spillway, and facilities construction and all other statutory actions, such as acquiring lands through eminent domain. During the life of the bonds, the district collected ad valorem taxes to fund repayment of the debt. The bonds were redeemed and repaid in June 1992.

To establish a continuing revenue flow after discontinuance of ad valorem taxes and to satisfy an agreement with the City of Jackson, PRVWSD began shoreline development and leasing of lands in 1964. The district has hired real estate consultants since 1963 to assist toward this development (see Exhibit A, page viii).

Because PRVWSD is a state agency, it must comply with the state's purchasing laws in the procurement of real estate consultants. Since 1985, state law has required the State Personnel Director of SPB to review and approve state agencies' use of personal services contracts.

The State Personnel Director approved PRVWSD's contracts with real estate consultants until 1992, when he disapproved the district's 1993 renewal of the contract with H. C. Bailey Management Company (David L. Lane, Consultant). However, the State Personnel Director reversed his ruling on March 24, 1993, by allowing PRVWSD to contract with another company, Eastover Realty Corporation, for similar real estate consulting services. SPB upheld and approved the director's actions.

### **Overview**

PRVWSD has utilized real estate consultants since 1963 to assist with the district's leasing and management of its real estate for residential and commercial purposes. PEER noted specific weaknesses related to these contracts, such as the district:

- procured contracts without properly assessing its needs or receiving direction from strong district goals and objectives;
- has become unquestionably dependent on the consultants, while depriving management of expertise and proper controls of leased real estate;
- did not utilize a competitive method of procuring real estate consultants;
- paid unreasonable compensation to real estate consultants by paying totally with commissions rather than direct hourly compensation and inappropriately basing those commissions on inaccurate lease valuations;

**Exhibit A**  
**Pearl River Valley Water Supply District**  
**Real Estate Consultant Contracts**

<b>Contract Sequence</b>	<b>Date/Term</b>	<b>Company</b>	<b>Stated Contact(s)</b>	<b>Contract Rates:</b>		
				<b>Capitalization- Lease Value</b> ①	<b>Commission</b>	
First	05/10/63 eight years	Wortman & Mann	Frank Fort	6%	5 % selling 2.5% managing	
First Amended	01/08/65	Wortman & Mann	W. Merle Mann	6%	5 % selling 2.5% managing	
First Extended five years	03/10/72	Wortman & Mann	W. Merle Mann	6%	5 % selling 2.5% managing	
First Amended	06/13/75	Wortman & Mann	W. Merle Mann and/or Jack K. Mann	6%	5 % selling 2.5% managing	
First Extended five years	07/08/77	Wortman & Mann	Jack K. Mann and/or Joseph A. Lusteck	6%	5 % selling 2.5% managing	
First Amended	03/14/80	Wortman & Mann	Jack K. Mann	6%	5 % selling 2.5% managing	
Second	04/08/83 two years	Wortman & Mann	David L. Lane	9%	7.5%	
Third	05/09/86 six months (then monthly)	H.C. Bailey Management Co.	David L. Lane	10%	\$1-100M	8%
					\$101-499M	7%
					\$500-1,000M	6%
					> \$1,000M	5%
Fourth	07/10/87 two years (then monthly)	H.C. Bailey Management Co.	David L. Lane	10%	Developed by: District 8% Developers 6%	
Fifth	03/12/93 (one year) (then monthly)	Eastover Realty Corporation	Not specified	10%	② \$1-1,000M	1.5%
					② >\$1,000M	1.0%

**NOTES:**

- ① **Wortman & Mann and H.C. Bailey Management Co. received commissions as sole compensation. Eastover Realty Corp. currently receives retainer, hourly fees, plus commissions.**
- ② **Eastover Realty Corp. commissions based on annual total lease values, rather than per lease.**

**SOURCE: PEER analysis of PRVWSD real estate consultant/broker contracts.**



- spent more for real estate consultants than authorized by the State Personnel Director and than allowed per the contracts; and,
- has executed a new real estate consultant contract that allows unreasonable compensation.

In addition, the State Personnel Director's June 29, 1992, disapproval of H. C. Bailey Management Company's contract followed by his March 24, 1993, approval of Eastover Realty Corporation's contract was performed without sufficient documentation and without explicit statutory authority.

## **Findings**

### ***PRVWSD's Need for Real Estate Consultants (page 10)***

PRVWSD has now been in the "land development business" for thirty years and has relied heavily on real estate consultants during that time to manage and market leases. PRVWSD used these consultants without assessment of the district's needs and without guidance from district goals or objectives.

The district's real property, in particular the shoreline, is substantially developed, providing a much more stable area than when development began in 1963. PRVWSD receives significant rental revenues from these leases (approximately \$1.5 million per year), and extinguished the original bonded indebtedness in 1992.

The time is past due for PRVWSD to assume all the necessary responsibilities to obtain complete and total management of the district properties. The district should reasonably be expected to satisfy its statutory obligations within its organizational structure and by utilizing qualified and reasonably compensated district employees, rather than highly compensated consultants.

### ***Prior Real Estate Consultant Contracts (page 11)***

Through fiscal year 1992, PRVWSD executed real estate consultant contracts without advertisement or any competitive process. Even though not required by state purchasing laws, competitive procurement of these professional service contracts would have helped to ensure efficient use of funds.

PRVWSD's lack of competition in the procurement of real estate consultants undoubtedly contributed to its payment of unreasonable commissions. For example, from April 8, 1983, until June 30, 1992, David L. Lane was the PRVWSD real estate contractor (through two separate companies). During this nine-year period, PRVWSD paid over \$1.6 million in consultant's commissions. Mr. Lane collected an average of \$179,289 per year, sufficient for the district to have employed professionals to perform the same responsibilities.

Another contributing factor to these large commissions is PRVWSD's inaccurate method of calculating "lease values." These values represent the sum of (1) capitalized rents and (2) "development funds." The district paid commissions on the sum of these two values even though the values do not relate directly to or are not invested in each tract/parcel of land leased.

It was also possible for Mr. Lane to split these commissions with land developers that hold brokers' licenses. Although not illegal, this practice, in general, has caused concerns with the Mississippi Real Estate Commission. PEER is forwarding a copy of this report to the Commission for further consideration.

In addition, the district has illegally spent \$1,011,516 more for real estate consultants than authorized by the State Personnel Director in six of the past eight years. PRVWSD's overexpenditure for these contract services demonstrates weaknesses in the state's monitoring of contract costs for state agencies outside the State Treasury. PEER further noted weaknesses in PRVWSD's own monitoring of the contracts, evidenced not only by amounts spent over the State Personnel Director's approval, but also from over \$139,000 in commissions paid but not specifically allowed per the contracts.

### ***Current Real Estate Consultant Contract (page 17)***

SPB's actions relative to PRVWSD's real estate consultant contracts have been inconsistent and contradictory. On June 29, 1992, the State Personnel Director disapproved the H. C. Bailey Management Company (David Lane) contract for the fiscal year beginning July 1, 1992, stating that "there are personnel available who could be assigned to provide the services to be rendered by Bailey Management Company as indicated in the contractual services agreement." After PRVWSD requested

appeal, SPB board members upheld the director's disapproval at their July 23, 1992, meeting.

However, on March 24, 1993, the State Personnel Director approved another contract between PRVWSD and Eastover Realty Corporation effective April 1, 1993, to perform real estate consulting services. SPB board members approved this action at their March 15, 1993, meeting.

SPB acted without satisfactory documentation to support such a reversal of opinion. The State Personnel Director's explanations for disapproval of the H. C. Bailey contract are (1) PRVWSD's past overexpenditure of approved amounts, and (2) the contractor's possible noncompetitive dealings with land developers. These reasons exceed the explicit statutory requirements of MISS. CODE ANN. Section 25-9-107(c)(x) (1972).

PRVWSD's new contract with Eastover Realty Corporation also has weaknesses that allow overexpenditure of funds. This contract differs from prior contracts in that, in addition to commissions, the real estate consultant is to receive a \$1,500 monthly retainer and hourly fees for time worked over specified amounts.

PRVWSD's contract with Eastover Realty Corporation allows computation of commissions based on calculated lease values, not representing the true present value of actual considerations for the lease. Comparable to prior contracts, the sum of the capitalized "stabilized" lease value added to the "initial payment" (development funds) represents the "lease value." Commissions calculated on these estimated lease values will in turn be overstated. Additionally, it is unreasonable for the consultant to receive commissions on the total "initial payments" because not all of these funds will be invested in, recoverable from, or associated with the subject tract or parcel of leased land.

Another significant weakness of the contract is the maintenance of a monthly \$1,500 retainer (\$18,000 per year). This retainer is held in the contract with no contractor's guarantee for services. The contract also requires PRVWSD to pay the consultant a rate of \$30 per hour for each hour in excess of fifty hours per month. However, there is no provision that the \$1,500 will be adjusted down for the lack of services (under the fifty hours per month).

## Recommendations (page 21)

### *Future Direction*

1. As soon as possible, the PRVWSD board should establish clear goals and objectives for the district. PRVWSD should base its decisions, notably the marketing, development, and management of district lands, on strong written direction from its board. These goals should include both short-term and long-term objectives and should be written to provide explicit direction in all areas of district management including, but not limited to:
  - residential and commercial real estate development and management;
  - recreational facilities;
  - control, storage and flow of reservoir waters; and,
  - emergency contingency plans.
2. Immediately following the board's adoption of written goals and objectives, PRVWSD's General Manager should provide detailed written policies and procedures to support the board's plan. These policies and procedures should represent the district's day-to-day operating duties and responsibilities and should provide district employees with specific guidance and step-by-step instructions to achieve well-defined tasks. All tasks should be linked to stated board goals and objectives.

### *Self-Reliance in Real Estate Management*

3. PRVWSD should work toward self-reliance in the management of the district, not depending so greatly on outside contractors. In particular, the district should strive to obtain complete control over the management of its real property within at least the next two years.

PRVWSD should implement the following essential elements in working toward this control by utilizing and redistributing existing district resources:

- a. *Establishing complete computerized inventory records of leased real property to*

*include historical and current status and activities of leased developments and individual parcels.* The district should maintain these records and files to provide controls of total leased lands reconcilable to individual details. These records should include pertinent and critical lease data for easy compilation and analysis in making planning, marketing, and management decisions.

- b. *Establishing and maintaining staffing levels necessary to provide appropriate full-time employees for the district's direct comprehensive management and maintenance of leased real property.* The district should submit the necessary requests and work with SPB for suitable staffing, such as professional planners and engineers. The district would benefit immensely from having a staff trained to research, analyze, cost, report and provide leasing and property management recommendations to the General Manager and the board. The district's decrease in dependence on real estate contractors and elimination of related contractual services expenditures will allow the expenditure of those funds toward employees' salaries and fringe benefits. The annual salaries of such employees should be at a cost significantly below what has been paid annually for real estate consultants.

#### ***Assessment of Needs Toward Self-Reliance***

4. PRVWSD's board, working through the General Manager, should immediately perform a thorough needs assessment of the continued use of real estate consultant contracts, similar to the current Eastover Realty Corporation contract. The board should perform needs assessments with the underlying intention to meet the goals and objectives of the district, while striving to become more self-reliant in real property management.

To accomplish this, the board should include in this assessment at least three areas for evaluation of needs and timing of services:

- a. Day-to-day lease management, including procedures, files, and records; use and other changes to current leases; con-

tacts with leaseholders; rental collections and normal lease maintenance;

- b. Planning functions, to include research and analysis of the maximum possible use of lands, current and forecast development absorption, projects feasibility, optimum lease values, timing of property transactions; and,
- c. Periodic promotion, marketing, and brokerage of leases of district lands for development.

If PRVWSD determines from its needs assessment that the above elements are needed to bring the district to a satisfactory level of expertise and/or to supplement those areas until the district can achieve solid attainment of expertise, the district should execute procurement separately for each through open and competitive methods. Compensation for each level should also be considered separately, and should be reasonable, compensating only for actual services rendered.

#### ***Real Estate Consultant Compensation***

5. PRVWSD should discontinue provisions for the payment of retainers in the current and future real estate consultant contracts (within terms of the present contract). PRVWSD should reimburse the contractor for only actual services rendered based on reasonable time-based rates.
6. PRVWSD should revise its current method of calculating real estate consultants' commissions on lease sales. As in the current Eastover Realty Corporation contract, commissions should be considered only for the marketing aspect of services. However, the district should base commissions solely on the valid costs and actual values associated and recoverable from the leased lands.

The district should calculate any commissions on the present values of the series of actual periodic lease payments. This method produces the actual current lease value, not an appraisal or estimate of the lease. In addition, the district should only calculate commissions on amounts received that directly relate to or are associated with the development of the tract/parcel of land.

**State Controls Over Personal Services Contracts**

7. The Legislature should review certain aspects of the State Personnel Director's and SPB's authority over state agencies' personal services contracts, such as discretion over such areas as:
  - a. Contract terms: Allowing review and disapproval of state agencies' contracts that violate general/specific state laws, contain illegal or unreasonable fees, maintain questionable activities, or contain fraudulent terms.
  - b. Need for contract: Authorizing evaluation of agencies' needs assessments, determining relationships between agencies' goals/objectives, or analyzing what agencies can do to perform work internally.
  - c. Fees: Verifying methods of computation, examining compliance with intent of state's fiscal controls, or analyzing prior year fees paid in accordance with State Personnel Director approvals.
  - d. Allow review and disapprovals based on agencies' results and outcome achieved under prior contracts.
  - e. Method of procurement: Determine agencies' compliance with state purchasing laws or verification of illegal or unethical actions.
8. SPB and the State Personnel Director should implement appropriate quality control proce-

dures to assure that all actions and decisions of the staff, whether ratified by board approval or not, are supported by complete and relevant documentation. SPB should develop the necessary quality controls and procedures, in particular related to agency review of personal services contracts, to assure that all workpapers are consistent, complete, and appropriate. SPB should assure that all related documents, personnel listings, analysis workpapers, communications (informal or formal), and conclusions be referenced and filed to support its opinions.

9. To strengthen controls over state agencies' funds maintained in accounts outside of the State Treasury (to include expenditures for contractual services), the Department of Finance and Administration should exercise its authority under MISS. CODE ANN. Section 7-7-17 (1972), requiring more frequent and specific reporting of agencies with active professional service contracts. This section states:

*Reports shall be filed with the State Fiscal Officer at the time and in the manner prescribed by the State Fiscal Officer by all state departments, institutions and agencies of all receipts of public funds, as defined in Section 7-7-1, which are not required by law to be deposited in the State Treasury but into banks bonded to be depositories of such funds, so that the State Fiscal Officer may keep comprehensive records and may make complete periodic reports concerning all public funds belonging to or for the use of the state and those agencies owned or controlled by the state.*

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# **A Review of the Pearl River Valley Water Supply District's Use of Real Estate Consultants**

## ***Introduction***

### **Authority**

The PEER Committee reviewed the Pearl River Valley Water Supply District's (PRVWSD) contracting with real estate consultants in the development of district lands. The Committee acted in accordance with MISS. CODE ANN. Section 5-3-57 (1972).

### **Scope and Purpose**

In response to a legislative request, PEER reviewed PRVWSD's procurement and use of contracts with real estate consultants to determine:

- amounts authorized and expended;
- reasonableness of contract terms and fees;
- procurement methods used; and,
- the current need for real estate consultant services.

### **Methodology**

In conducting this review, PEER performed the following tasks:

- reviewed applicable state statutes;
- interviewed appropriate staff/related parties and obtained information from:
  - Pearl River Valley Water Supply District (PRVWSD);
  - David L. Lane (prior real estate consultant);
  - State Personnel Board (SPB); and,
  - Mississippi Real Estate Commission;
- analyzed PRVWSD real estate consultant contracts (1963 to present);
- compiled and analyzed PRVWSD lease data (1983 to present);

- analyzed appropriate records and documents; and,
- reviewed published information related to real estate practices.

### Overview

The PRVWSD has utilized managing brokers/real estate consultants since 1963 to assist with the district's leasing and management of its real estate for residential and commercial purposes. Exhibit 1, page 7, summarizes the district's real estate consultant contract history.

Through fiscal year 1992, PRVWSD executed these contracts without advertisement or any competitive process. Even though not required by state purchasing laws, competitive procurement of these professional service contracts would have helped to ensure efficient use of funds.

PRVWSD's lack of competition in the procurement of real estate consultants undoubtedly contributed to its payment of unreasonable commissions. For example, from April 8, 1983, until June 30, 1992, David L. Lane was the PRVWSD real estate contractor (through two separate companies.) During this nine-year period, PRVWSD paid over \$1.6 million in consultant's commissions (see Exhibit 5, page 15). Mr. Lane collected an average of \$179,289 per year, sufficient for the district to have employed at least three professionals to perform the same responsibilities.

Another contributing factor to these large commissions is PRVWSD's method of calculating "lease values." These values represent the sum of (1) capitalized rents and (2) "development funds." The district paid commissions on the sum of these two values even though the values do not relate directly to or are not invested in each tract/parcel of land leased.

In addition, the district has illegally spent \$1,011,516 more for real estate consultants than authorized by SPB in six of the past eight years (see Exhibit 2, page 8). PRVWSD's overexpenditure for these contract services demonstrates weaknesses in the state's monitoring of contract costs for state agencies outside the State Treasury. PEER further noted weaknesses in PRVWSD's own monitoring of the contracts, evidenced not only by amounts spent over SPB approval, but also from over \$139,000 in commissions paid, but not specifically allowed per the contracts.

SPB's actions relative to PRVWSD's real estate consultant contracts have been inconsistent and contradictory. On June 29, 1992, the State Personnel Director disapproved the H. C. Bailey Management Company (David Lane) contract for fiscal year beginning July 1, 1992, stating that "there are personnel available who could be assigned to provide the services to be rendered by Bailey Management Company as indicated in the contractual services agreement." After PRVWSD requested appeal, SPB board members upheld the director's disapproval at their July 23, 1992, meeting. However, on March 24, 1993, the State Personnel Director approved another contract between PRVWSD and Eastover Realty

Corporation effective April 1, 1993, to perform real estate consulting services. SPB board members approved this action at their March 15, 1993 meeting.

SPB acted without satisfactory documentation to support such a profound reversal of opinion. The State Personnel Director's explanation for disapproval of the H. C. Bailey contract are (1) PRVWSD's past overexpenditure of approved amounts, and (2) the contractor's possible noncompetitive dealings with land developers. These reasons exceed the explicit statutory requirements of MISS. CODE ANN. Section 25-9-107(c)(x) (1972).

PRVWSD's new contract with Eastover Realty Corporation also has weaknesses that could allow overexpenditure of funds, such as a monthly \$1,500 retainer with no guarantee of services and calculation of commissions based on incorrect valuation of lease properties.

PRVWSD now manages a much more stable area than when development began in 1963. The district has a declining amount of land that is accessible and available for development. The district should reasonably be expected to satisfy its statutory obligations within its organizational structure and by utilizing qualified and reasonably compensated district employees, rather than highly compensated consultants.

## ***Background***

### **Creation of PRVWSD**

The Legislature authorized the creation of PRVWSD during the 1958 Regular Session through the *Pearl River Valley Water Supply District Act*, Chapter 197, Senate Bill 1724.

The Pearl River Industrial Commission, as defined at MISS. CODE ANN. Section 51-9-1, et. al., petitioned the Chancery Court of the First Judicial District of Hinds County to organize and establish the district, in accordance with the act. The petition proposed the inclusion of the counties of Hinds, Madison, Scott, Rankin, and Leake in the district. Hearings were held on July 24-25, 1958, and the Chancellor found that the district should be created, ordering a referendum in the five counties. Held on August 26, 1958, the referendum results were in favor of the proposal. After appeal through the Mississippi State Supreme Court, the validity of the act and the creation of the district were upheld on January 12, 1959.

### **Powers and Duties**

The primary purposes prompting the creation of the district were:

- to construct, own and operate reservoirs and dams to insure adequate water supply for domestic, municipal, commercial, industrial, agricultural and manufacturing purposes, and recreational uses; and
- to perform, assist and cooperate with the federal government, other state agencies, or political subdivisions thereof in performing water conservation, flood control, pollution abatement, timber conservation, and irrigation work.

MISS. CODE ANN. Section 51-9-101, et. al. (1972) defines the powers and duties of the district.

As required by CODE Section 51-9-107, the powers of the district are exercised by a board of directors. The district has fourteen board members, as follows:

- Five members of the Pearl River Industrial Commission appointed by the Governor (one from each county within the district);
- Five members appointed by surrounding counties' boards of supervisors (one from each county within the district); and,
- Four members, one from each of the following state agencies as appointed by the agency heads:



- Department of Environmental Quality,
- Forestry Commission,
- Department of Health, and
- Department of Wildlife, Fisheries and Parks.

### **Financing**

As authorized per the act and codified in statute, PRVWSD issued bonds to obtain the necessary financing for dam, spillway, and facilities construction and all other statutory actions, such as acquiring, through eminent domain, lands, roads, and other properties. The repayment of the principal and interest of the bonds came primarily from two mills ad valorem taxes due by related counties to the State of Mississippi (§ 51-9-131) supplemented by the five counties' ad valorem taxes up to two mills (§ 51-9-139 and 27-39-329). The statute allowed the district's receipt of ad valorem taxes only while the bonded indebtedness was outstanding. The bonds were redeemed and repaid in June 1992. (PEER's May 27, 1986, report entitled *A Review of the Pearl River Valley Water Supply District's Compliance with the Agreed Final Order of the Hinds County Chancery Court Entered February 25, 1985* addresses specific aspects of the district's use of tax revenues to fund the bonded indebtedness.)

The district also received \$500,000 per year from the City of Jackson over the life of the bonded indebtedness, per agreement dated November 18, 1959. The agreement itemizes specific district obligations to the City of Jackson to include, among other items: construction of the reservoir and spillway; sanitary quality and satisfactory flow of water; and installation of an intake structure.

The City of Jackson's agreement also required the district to perform a study of shoreline planning and development. The district was directed to obtain the maximum benefit from revenue from shoreline utilization working toward early retirement of the total bond issue.

### **Shoreline Development**

To satisfy this agreement and to establish a continuing revenue flow, PRVWSD began shoreline development during 1964 after the reservoir was filled from Pearl River waters.

PRVWSD hired Wortman & Mann, Realtors, in 1963 to act as a consultant and adviser for this development. The district has utilized managing brokers/real estate consultants since that time to assist with the district's leasing and management of its real estate for residential and

commercial purposes. Exhibit 1, page 7, summarizes the district's real estate consultant contract history.

The district first offered commercial sites for lease and development. In 1964 the district leased land for a private yacht club and two separate marina sites. Residential leases of the shoreline began during 1965, with the first offerings being individual home lots. PRVWSD handled the development aspects of the leases, such as division of parcels, installing utilities, streets, etc., until 1979. During 1979, the district began leasing tracts of land, rather than individual lots, to private land developers. The developers have since acquired access to tracts of land through bid processes, subdivided the tracts into lots, performed improvements, and assigned portions of total rental amounts to each developed lot in the development. Since 1979, all lands have been leased to and developed by private developers, except for the individual lots of Lake Harbor Parts III and IV, and Bay Park Extension which have been developed by the district. Appendix A, page 26, lists lease transactions since 1983, including these tracts developed and leased by the district.

### **Procurement of Real Estate Consultants**

Because PRVWSD is a state agency, it must comply with the state's purchasing laws in the procurement of real estate consultants. Since 1985, MISS. CODE ANN. Section 25-9-107(c)(x) (1972) has required the State Personnel Director to review and approve state agencies' use of personal services contracts.

SPB has five board members which, under direction of CODE Section 25-9-115, provide policies and rules for the state personnel system. The State Personnel Director serves at the will and pleasure of board and as executive secretary to the board.

Exhibit 2, page 8, presents the State Personnel Director's actions on PRVWSD's real estate consultant contracts since implementation began. The State Personnel Director approved PRVWSD's contracts with real estate consultants until 1992, when he disapproved the district's 1993 renewal of the contract with H. C. Bailey Management Company (David L. Lane, Consultant). SPB's memorandum outlining its policy and reasons for the disapproval is contained in Appendix B, page 38.

The State Personnel Director's stated authority for the June 29, 1992, disapproval is that the district has personnel available to perform real estate management and related services. However, SPB reversed the ruling on March 24, 1993, by allowing PRVWSD to contract with another company, Eastover Realty Corporation, for similar real estate consulting services. Exhibit 3, page 9, presents the major components of these two most recent contracts.

**Exhibit 1**

**Pearl River Valley Water Supply District  
Real Estate Consultant Contracts**

<b>Contract Sequence</b>	<b>Date/Term</b>	<b>Company</b>	<b>Stated Contact(s)</b>	<b>Contract Rates:</b>	
				<b>Capitalization- Lease Value</b> ①	<b>Commission</b>
First	05/10/63 eight years	Wortman & Mann	Frank Fort	6%	5 % selling 2.5% managing
First Amended	01/08/65	Wortman & Mann	W. Merle Mann	6%	5 % selling 2.5% managing
First Extended five years	03/10/72	Wortman & Mann	W. Merle Mann	6%	5 % selling 2.5% managing
First Amended	06/13/75	Wortman & Mann	W. Merle Mann and/or Jack K. Mann	6%	5 % selling 2.5% managing
First Extended five years	07/08/77	Wortman & Mann	Jack K. Mann and/or Joseph A. Lusteck	6%	5 % selling 2.5% managing
First Amended	03/14/80	Wortman & Mann	Jack K. Mann	6%	5 % selling 2.5% managing
Second	04/08/83 two years	Wortman & Mann	David L. Lane	9%	7.5%
Third	05/09/86 six months (then monthly)	H.C. Bailey Management Co.	David L. Lane	10%	\$1-100M 8% \$101-499M 7% \$500-1,000M 6% > \$1,000M 5%
Fourth	07/10/87 two years (then monthly)	H.C. Bailey Management Co.	David L. Lane	10%	Developed by: District 8% Developers 6%
Fifth	03/12/93 (one year) (then monthly)	Eastover Realty Corporation	Not specified	10%	② \$1-1,000M 1.5% ② >\$1,000M 1.0%

**NOTES:**

- ① **Wortman & Mann and H.C. Bailey Management Co. received commissions as sole compensation. Eastover Realty Corp. currently receives retainer, hourly fees, plus commissions.**
- ② **Eastover Realty Corp. commissions based on annual total lease values, rather than per lease.**

**SOURCE: PEER analysis of PRVWSD real estate consultant/broker contracts.**

**Exhibit 2**  
**Pearl River Valley Water Supply District**  
**State Personnel Director Actions - Real Estate Consultant Payments**  
**Fiscal Year 1985 to Present**

Period	Company	State Personnel Director			Expended by PRVWSD	Over/(Under) SPB Approval
		Action	Date	Approved		
07/01/84-06/30/85	Wortman & Mann	①	-	0	\$216,415.42	\$216,415.42
07/01/85-03/31/86	Wortman & Mann	①	-	0	193,250.00	193,250.00
04/01/86-06/30/86	H.C. Bailey Management Co.	Approval	04/29/86	\$7,500.00	9,864.00	2,364.00
07/01/86-06/30/87	H.C. Bailey Management Co.	①	-	0	319,859.80	319,859.80
07/10/87-06/30/88	H.C. Bailey Management Co.	Approval	08/13/87	500,000.00 ②	78,214.77	(421,785.23)
07/01/88-06/30/89	H.C. Bailey Management Co.	Approval	06/28/88	500,000.00 ②	124,762.69	(375,237.31)
07/01/89-06/30/90	H.C. Bailey Management Co.	Approval	05/17/90 ③	30,000.00	30,300.00	300.00
07/01/90-06/30/91	H.C. Bailey Management Co.	Approval	06/15/90	30,000.00	69,414.54	39,414.54
07/01/91-06/30/92	H.C. Bailey Management Co.	Approval	06/27/91	30,000.00	269,912.00	239,912.00
<b>TOTALS 07/01/84-06/30/92:</b>				<u>\$1,097,500.00</u>	<u>\$1,311,993.22</u>	<u>\$214,493.22</u>
<b>RECAP:</b>						
<b>PRVWSD costs over SPB approval</b>				<u>\$97,500.00</u>	<u>\$1,109,015.76</u>	<u>\$1,011,515.76</u>
<b>SPB approval over PRVWSD costs</b>				<u>\$1,000,000.00 ②</u>	<u>\$202,977.46</u>	<u>(\$797,022.54)</u>
<b>Fiscal Year 1993 Activity:</b>						
07/01/92-06/30/93	H.C. Bailey Management Co.	Disapproval	06/29/92	0	0	0
04/01/93-06/30/93	Eastover Realty Corporation	Approval	03/24/93	\$7,500.00	\$3,000.00	{as of 06/17/93}

**NOTES:**

- ① PRVWSD did not submit real estate consultant request to SPB for this period.
- ② Actual request \$30,000/year; PRVWSD's error in form caused SPB approval of \$500,000/year.
- ③ PRVWSD late in submitting FY 1990 request; SPB approved after-the-fact.

**SOURCE: PEER analysis/compilation of PRVWSD lease closing statements and SPB Request for Contract Personnel Services Approval forms.**

**Exhibit 3**  
**Major Terms of Most Recent**  
**Real Estate Consultant Contracts**

<b>H.C. Bailey Management Company</b> <b>Dated July 10, 1987</b>
<p><b>II.</b> Determine and make recommendations on need for additional development.</p> <p><b>II.</b> Assist in selecting specific locations for additional development.</p> <p><b>III.</b> Make recommendations to board as to residential subdivision developments: specific locations, number/size of lots, covenants, restrictions, lease provisions, income potential-prorata development fund escrow and annual rental.</p> <p><b>III.</b> Market subdivision lots in accordance with the approved plan working with registered brokers and responsible for payment of all commissions to brokers.</p> <p><b>IV.</b> Seek private developers, directing them to sites; recommend lease prices, prorata development fund escrows &amp; annual rentals, &amp; development criteria.</p> <p><b>IV.</b> Prepare invitation for proposals with minimum terms; furnish developers information &amp; cooperation in the preparation of formal proposals.</p> <p><b>IV.</b> Evaluate multiple proposals/recommend highest &amp; best bid; coordinate activities/monitor developers.</p> <p><b>VIII.</b> <b>SOLE AND EXCLUSIVE AGENT FOR THE LEASING OF ALL PROPERTY.</b></p> <p><b>IX.</b> <b>COMPENSATION:</b> (Commissions paid at closings from "development fund escrow" sums.)</p> <p>•Commission="Lease Value"x compensation rate.  "Lease Value" = Development funds + ("Stabilized Annual Rental" + 10%)  "Stabilized Annual Rental" = rental reached after development period rent waiver or reductions.</p> <p>Compensation rate = 8% district; 6% developers.</p>

<b>Eastover Realty Corporation</b> <b>Dated March 12, 1993</b>
<p><b>I.</b> <b>NOT AN AGENT OR EMPLOYEE OF THE DISTRICT; NO AUTHORITY TO OBLIGATE THE DISTRICT ON ANY CONTRACT OR AGREEMENT.</b></p> <p><b>II.</b> Obtain or develop information on all real properties for lease/development.</p> <p><b>II.</b> Supervise establishment and maintenance of property files.</p> <p><b>II.</b> Recommend property use restrictions.</p> <p><b>III.</b> Assist in development of economic model to forecast residential absorption.</p> <p><b>III.</b> Make recommendations on timing of marketing; assist development of pricing &amp; advertising policies and procedures.</p> <p><b>III.</b> Prepare feasibility analyses of any proposed developments.</p> <p><b>III.</b> Assist in the design and supervise the construction and marketing of proposed developments.</p> <p><b>IV.</b> Assist in marketing property in accordance with approved plan, working with registered brokers. Plan will include fees or commissions the district will pay to third party licensed brokers.</p> <p><b>VII.</b> <b>COMPENSATION:</b> (Retainer, overage payment + commissions paid at closings from "initial payments.")</p> <p>•Retainer = \$1,500 per month, \$18,000 per year.  •Overage payment = \$30.00 per hour for hours in excess of 50 hours per month.  •Commission="Lease Value"x compensation rate.  "Lease Value" = Initial payments + ("Stabilized Annual Rental" + 10%)  "Stabilized Annual Rental" = rental reached after development period rent waiver, prior to first rent increase.  Compensation rate= 1 1/2% up to \$1million/year AND 1% for above \$1 million/year lease values.</p>

**NOTES:** References are to the paragraph numbers of real estate consultant contracts.

Contracts do not define or explain terms: "development fund/cost escrow" or "initial payments."

**SOURCE:** PEER analysis of PRVWSD's last two real estate consultant contracts.

## *Findings*

### **PRVWSD's Need for Real Estate Consultants**

**PRVWSD has perpetually contracted with consultants for real estate services, using as justification the district's lack of expertise in the area, without assessing its needs or receiving direction from strong district goals and objectives.**

As discussed in the background, page 4, and shown at Exhibit 1, page 7, PRVWSD has used real estate consultants since 1963 when it first began shoreline development. The district used the first real estate consultants as managing brokers to recommend uses and zoning, protective covenants, survey and plan, lease terms, and provide promotions and marketing for the real property. The district then continued the use of real estate consultants, allowing their control as exclusive agents for leasing of lands.

PRVWSD has utilized these real estate consultants without needs assessments, continuing the contracts without documented evaluation of the costs versus benefits. Also, the district has not directed these contracts with strong policies and guidelines. Neither the PRVWSD board nor management have adopted or promulgated any policies, rules, and regulations to direct and guide this or any other aspect of the district.

PRVWSD has unquestionably become increasingly dependent on real estate consultants to steer its real property development. The district has relied heavily on consultants to plan, market, manage, and execute its land development, rather than performing these duties internally.

The results of PRVWSD relying so completely on these real estate consultants is that the district's capacity in this area and its related records are extremely weak. The district does not maintain sufficient records, ledgers, or controls over the tracts and parcels of leased property. As an example, the compilation of lease activity at Appendix A, page 26, was compiled by PEER staff because the district does not have such a record.

However, PRVWSD has now been in the "land development business" for thirty years. The district's real property, in particular the shoreline, is substantially developed. PRVWSD receives significant rental revenues from the leases (approximately \$1.5 million per year), and extinguished the original bonded indebtedness in 1992. The time is past due for PRVWSD to assume all the necessary responsibilities to obtain complete and total management of the district properties.

## **Prior Real Estate Consultant Contracts**

**PRVWSD utilized real estate consultant and broker professional services from May 10, 1963, until June 30, 1992, without utilizing a competitive method of procurement.**

As presented at Exhibit 1, page 7, PRVWSD has used contractors for real estate advice and management for the past thirty years. The district procured these contracts without advertising or competitive consideration.

The procurement of professional contract services by state agencies and governing authorities does not come under the bid requirements of state law. However, due to the nature and continuance of PRVWSD's use of consultants, the district should have advertised, obtained bids and utilized a competitive process in awarding contracts.

Prudence and sound management dictate that for efficient and economical use of funds, the practice of competitive procurement should be exercised. PRVWSD's failure to encourage competition in the procurement of such significant contracts for extended services allowed the substantial fees paid to contractors, as described at page 13.

PRVWSD's noncompetitive use of real estate consultants also contributed to the district's strong reliance and sustained dependence on such contractors. In utilizing these consultants to such extended degree, the district has not gained management proficiency nor familiarity with or controls over its real estate.

A manifestation of its dependence is represented by the district's continuance of contracts for over nine years specifying David L. Lane as the primary contractor. During that time, the district switched from Wortman & Mann, Inc. to H. C. Bailey Management Company to maintain David Lane as the main contact after he changed employment.

PRVWSD's reliance on real estate consultants has produced a situation wherein the consultants provide the predominant policy direction of district land development with limited input from district management. As noted in PEER's December 12, 1985, report, *Use of Consultants in FY 1985 by State Agencies, Institutions of Higher Learning, and Junior Colleges*:

*Habitual use of consultants...deprives top agency executives of valuable intellectual experience and causes the 'absence of expertise' problem often cited as justification for hiring consultants.*

**PRVWSD demonstrated a lack of prudence and efficient management by historically compensating real estate consultants totally with commissions rather than direct hourly compensation, and basing those commissions on unsuitable and questionable lease values.**

MISS. CODE ANN. Section 51-9-121(m) (1972) specifically mandates that the district pay reasonable compensation for services rendered. That statute states that the district is empowered:

*To employ engineers, attorneys, and all necessary agents and employees to properly finance, construct, operate, and maintain the project and the plants and facilities of the district and carry out the provisions of this article, and to pay reasonable compensation for such services. [emphasis added]*

### *Commissions as Consultants' Compensation*

Since the initial contract with Wortman & Mann in 1963, PRVWSD has paid real estate consultants entirely through commissions on leases of district land. The district has paid these commissions at negotiated contract rates applied to calculated "values" of the leased parcels or tracts of land. (See Exhibit 1, page 7, for contract rates.)

PEER concludes that PRVWSD has not paid reasonable compensation for real estate consultants because the district has failed to compensate through hourly fees, and as described below, unjustifiably bases the commissions paid on overstated lease values.

The origin of PRVWSD's historical payment of commissions for real estate consultants was presented to PEER as being rooted in the feelings of past boards of directors that commissions are the best method of compensation to provide incentives for consultants.

Regardless, the district's method of payments totally through commissions provides no consideration for the extent of contractors' actual time (or lack of time) spent to perform the consultant services. Therefore, the consultant is not being compensated for direct services rendered. Rather, the district pays stipulated commissions regardless of the level of services the consultant provides.

### *Methods of Calculating Commissions*

Furthermore, in calculating commissions, PRVWSD applies a contracted commission rate to contestable "estimated" lease values which include added "development funds." These so-called development funds are not costs that can consistently be associated with the land. Exhibit 3, page 9, summarizes the methods used in the two most recent contracts.



In actuality, these lease values have represented *appraisals* of value, not the actual present values of future lease payments. As stated above, PRVWSD has added development funds to the estimated lease values. These development funds are bid by the land developer and are referred to as the specific costs of developing the bounded tract of land and general costs of developing and maintaining the district. Therefore, amounts within the development funds category are not necessarily costs invested in the subject property and are not recoverable from the property. The district transfers the unassociated funds (monies not invested in or needed to cover the specific tract/land development) and uses them in the general operating fund of the district.

PRVWSD's method of calculating lease values is inappropriate and does not represent the actual present value of the executed leases. The district's method of estimating individual lease values overstates the true values of each executed lease. Consequently, commissions based on these overstated values have been in turn overstated. Exhibit 4, page 14, presents an example of an overstated lease valuation and consultant's commissions based on PRVWSD's calculation methods. The district has paid excessive and unreasonable consultant's commissions because of this overstatement.

For example, David L. Lane, as primary PRVWSD consultant from April 8, 1983, through June 30, 1992, received total compensation of over \$1.6 million on behalf of his companies. Exhibit 5, page 15, recaps the amount earned by Mr. Lane's companies during this time. Mr. Lane received an average of \$179,289 per year (for nine years) to "consult" with the district. PRVWSD could have hired at least three professional employees at annual pay, including benefits, of \$56,764 each to perform these same services. See Appendix A, page 26, for detail of lease transactions during this period.

Also, Mr. Lane was responsible for any payment of commissions to other real estate brokers in securing district leases, from commissions he earned pursuant to the contract. (See Exhibit 3, page 9, for contract requirements.) Because land developers may also hold broker's licenses, it is possible that developers leasing district lands shared in the commissions paid by PRVWSD to David Lane. According to the Mississippi Real Estate Commission Administrator, no state law prevents these commission payments to "buyer brokers;" however, this matter has caused concerns especially with the lenders and sellers of properties. PEER will forward a copy of this report to the Mississippi Real Estate Commission for further consideration.

**In six of the past eight years, PRVWSD has spent an aggregate \$1,011,516 more for real estate consultants than authorized by the State Personnel Director. Also, the district paid over \$139,000 in commissions not specifically allowed per the contracts.**

As discussed at page 6, MISS. CODE ANN. Section 25-9-107(c)(x) (1972) requires the State Personnel Director to review and approve state

**Exhibit 4**

**Pearl River Valley Water Supply District  
Example - Lease Value Calculations**

	<u>PRVWSD</u>	<u>PEER</u>	<u>Differences</u>
<b>LEASE VALUATION:</b>			
Capitalized Rents	\$1,600,000.00 ①	\$1,281,738.60 ②	\$318,261.40
Development Funds/Costs	1,463,000.00	917,968.00 ③	545,032.00
Interest Costs	<u>142,600.00</u>	<u>0.00 ④</u>	<u>142,600.00</u>
Lease Valuation	<u>\$3,205,600.00</u>	<u>\$2,199,706.60</u>	<u>\$1,005,893.40</u>
 <b>COMMISSIONS @ 6%</b>	 <u>\$192,336.00</u>	 <u>\$131,982.40</u>	 <u>\$60,353.60</u>

<b>ANNUAL RENTALS</b>					
(Paid November each year)					
1	1991	\$0	21-25	2011 - 2015	\$177,000
2	1992	50,000	22-25	2016 - 2020	195,000
3	1993	75,000	26-30	2021 - 2025	215,000
4	1994	85,000	31-35	2026 - 2030	237,000
5	1995	100,000	36-40	2031 - 2035	261,000
6	1996	110,000	41-45	2036 - 2040	288,000
7	1997	120,000	46-50	2041 - 2045	317,000
8-10	1998 - 2000	130,000	51-55	2046 - 2050	349,000
11-15	2001 - 2005	145,000			
16-20	2006 - 2010	160,000			

**NOTES:**

- ① Stabilized annual rental of \$160,000 + 10%.
- ② Total of series of annual rentals (from annual rentals schedule) calculated at the present value per year @ 10%.
- ③ PRVWSD included \$545,032 in development costs not related, either directly or indirectly, to leased land.
- ④ Interest costs are not specified as being allowed per contract.

**SOURCE: PEER analysis of PRVWSD's bid number 109, Area H, Northshore (Palisades) closing statement and lease documents.**

**Exhibit 5**  
**Compensation To David L. Lane**  
**As Named Real Estate Consultant**  
**April 8, 1983 to June 30, 1992**

	<u>Wortman &amp; Mann</u>			<u>H.C. Bailey Management Co.</u>			<u>Totals</u>		
	<u>(April 08, 1983 to March 31, 1986)</u>			<u>(*April 01, 1986 to June 30, 1992)</u>					
	<u>#</u>	<u>Total</u>	<u>Average</u>	<u>#</u>	<u>Total</u>	<u>Average</u>	<u>#</u>	<u>Total</u>	<u>Average</u>
<b>INDIVIDUAL LOTS:</b>									
Advertised/leased	<u>56</u>	<u>\$82,976.42</u>	<u>\$1,481.72</u>	<u>13</u>	<u>\$18,242.54</u>	<u>\$1,403.27</u>	<u>69</u>	<u>\$101,218.96</u>	<u>\$1,466.94</u>
<b>TRACTS/OTHER:</b>									
Advertised/leased	<u>17</u>	<u>\$594,089.70</u>	<u>\$34,946.45</u>	<u>23</u>	<u>\$778,333.80</u>	<u>\$33,840.60</u>	<u>40</u>	<u>\$1,372,423.50</u>	<u>\$34,310.59</u>
Advertised changes	<u>3</u>	<u>23,415.00</u>	<u>7,805.00</u>	<u>3</u>	<u>4,168.00</u>	<u>1,389.33</u>	<u>6</u>	<u>27,583.00</u>	<u>4,597.17</u>
Subtotals - Advertised & Completed	<u>20</u>	<u>617,504.70</u>	<u>30,875.24</u>	<u>26</u>	<u>782,501.80</u>	<u>30,096.22</u>	<u>46</u>	<u>1,400,006.50</u>	<u>30,434.92</u>
Not advertised/leased	<u>1</u>	<u>10,791.67</u>	<u>10,791.67</u>	<u>0</u>	<u>0.00</u>	<u>0.00</u>	<u>1</u>	<u>10,791.67</u>	<u>10,791.67</u>
Not advertised changes	<u>0</u>	<u>0.00</u>	<u>0.00</u>	<u>8</u>	<u>86,028.57</u>	<u>10,753.57</u>	<u>8</u>	<u>86,028.57</u>	<u>10,753.57</u>
Subtotals-Not advertised but Completed	<u>1</u>	<u>10,791.67</u>	<u>10,791.67</u>	<u>8</u>	<u>86,028.57</u>	<u>10,753.57</u>	<u>9</u>	<u>96,820.24</u>	<u>10,757.80</u>
Advertised/not leased but commission paid	<u>0</u>	<u>0.00</u>	<u>0.00</u>	<u>3</u>	<u>15,554.89</u>	<u>5,184.96</u>	<u>3</u>	<u>15,554.89</u>	<u>5,184.96</u>
Total Tracts/Other	<u>21</u>	<u>\$628,296.37</u>	<u>\$95,210.03</u>	<u>37</u>	<u>\$884,085.26</u>	<u>\$23,894.20</u>	<u>58</u>	<u>\$1,512,381.63</u>	<u>\$26,075.55</u>
<b>TOTALS ON WHICH COMMISSIONS WERE PAID</b>									
	<u>77</u>	<u>\$711,272.79</u>	<u>\$96,691.75</u>	<u>50</u>	<u>\$902,327.80</u>	<u>\$25,297.47</u>	<u>127</u>	<u>\$1,613,600.59</u>	<u>\$12,705.52</u>
<b>ADVERTISED/NO COMMISSIONS:</b>									
Advertised/not leased	<u>5</u>	<u>0.00</u>	<u>0.00</u>	<u>5</u>	<u>0.00</u>	<u>0.00</u>	<u>10</u>	<u>0.00</u>	<u>0.00</u>
Advertised/district handled	<u>2</u>	<u>0.00</u>	<u>0.00</u>	<u>3</u>	<u>0.00</u>	<u>0.00</u>	<u>5</u>	<u>0.00</u>	<u>0.00</u>
<b>ACTIVITY TOTALS</b>									
	<u>84</u>	<u>\$711,272.79</u>	<u>\$96,691.75</u>	<u>58</u>	<u>\$902,327.80</u>	<u>\$25,297.47</u>	<u>142</u>	<u>\$1,613,600.59</u>	<u>\$11,363.38</u>
<b>ANNUAL TOTALS</b>									
	<u>3</u>	<u>\$711,272.79</u>	<u>\$237,090.93</u>	<u>6</u>	<u>\$902,327.80</u>	<u>\$150,387.97</u>	<u>9</u>	<u>\$1,613,600.59</u>	<u>\$179,288.95</u>

\*Contract actually dated May 09, 1986, after State Personnel Board approval beginning April 01, 1986.

SOURCE: PEER compilation of data from PRVWSD lease closing statements and related documents.

agencies' contractual services prior to the disbursement of funds for that purpose. SPB policies require state agencies to submit such contracts for approval on forms specified by that agency.

### *Contractors' Compensation Above State Personnel Director Approvals*

Since the July 1, 1984, effective date of this law, PRVWSD has either neglected to submit real estate consultant contracts to the State Personnel Director for approval or received annual approvals but spent amounts above those approvals.

Exhibit 2, page 8, presents PRVWSD real estate consultant costs by year compared to State Personnel Director approvals. For fiscal years 1985 through 1987, and 1990 through 1992, PRVWSD illegally compensated real estate consultants \$1,011,516 above the total \$97,500 approved for those years.

In addition to PRVWSD's neglect in not consistently submitting complete and correct requests to SPB, significant factors that contributed to PRVWSD's overexpenditure of these costs are (1) lack of mandated continuous Department of Finance and Administration (DFA) review of funds outside the State Treasury, and (2) SPB's lack of statutory authority to perform extended contract reviews.

MISS. CODE ANN. Section 25-9-107(c)(x) requires that prior to paying any warrant for such contractual services, the auditor of public accounts (Department of Finance and Administration):

*. . . shall determine whether the contract involved was for personal or professional services, and, if so, shall determine whether it was properly submitted to the state personnel director and approved.*

Nevertheless, this law does not provide for state monitoring of contractual service costs of state agencies, such as PRVWSD, that maintain operating funds outside the State Treasury. This is because DFA does not pay the warrants on those accounts. The agencies issue checks and account for disbursements from separate bank accounts. PRVWSD receives direct statutory authority from MISS. CODE ANN. Section 51-9-149 to establish accounts separate from the State Treasury. (Other state agencies that maintain bank accounts outside the State Treasury receive authority for those accounts, as explained in Appendix C, page 46.)

In addition, MISS. CODE ANN. Section 7-7-33 mandates DFA's pre-audit of state agencies' disbursements from State Treasury accounts. That statute requires DFA to perform specific checks only before issuance of state warrants to determine that expenditures are proper.

Since DFA is not required to monitor disbursements of state agencies' accounts outside of State Treasury, the level of control, as

intended by the law, over PRVWSD and such agencies' contracting for professional services, is extremely weak.

Also, SPB's disapproval of state agencies' personal services contracts is limited by CODE Section 25-9-107(c)(x). Per that statute, there is only one direct justification that SPB may use for disapproval of contracts, as follows:

*The State Personnel Director shall disapprove such contracts where the services to be provided could reasonably be performed by an employee in an authorized employment position.*

There are no other stated references, direct guidelines nor expressed reasons that SPB may disapprove personal services contracts.

### *Contractors' Compensation Above Contract Terms*

PRVWSD has been weak in its own monitoring of real estate consultant contracts. PEER identified \$15,555 in commissions that the district paid since 1983 for incomplete lease transactions not in accordance with executed contracts. Also, PRVWSD paid the real estate consultant \$124,403 in commissions during the same period for subsequent changes related to previously bid and executed leases for which the consultant had already received commissions and for other lease transactions not specifically allowed per the contract. Appendix A, page 26, identifies each of the related leases.

Another problem at PRVWSD that has complicated the control of its compensation of real estate consultants is its payment method. In the past, PRVWSD has allowed real estate consultants to "take" their fees up front from gross lease proceeds before the consultant transferred funds to the district. The district uses this method rather than having the consultant reimburse all collected lease proceeds and in turn, the district reimbursing the contractor through a normal arm's-length transaction (issuance of a check).

### **Current Real Estate Consultant Contract**

**The State Personnel Director changed a previous ruling, which denied PRVWSD's real estate consultant contract, without sufficient documentation or explicit statutory authority.**

As discussed in the background, page 4, and presented at Exhibit 2, page 8, the State Personnel Director approved PRVWSD's real estate consultants' contracts until the district's request for 1993. On June 29, 1992, the State Personnel Director, Dr. Robert L. Robinson, disapproved the H. C. Bailey Management contract (David Lane, Consultant). Dr. Robinson's reasons for the disapproval were stated from SPB's Policy

Memorandum No. 3 - FY 1993, Sections C.3.(a) and (c). (See Appendix B, page 38, for a copy of this SPB policy.) SPB board members upheld the Director's decision at their July 23, 1992, meeting. Dr. Robinson's June 29, 1992, letter to PRVWSD stated:

*A review of job descriptions for positions within your agency indicates that there are personnel available who could be assigned to provide the services to be rendered by Bailey Management Company as indicated in the contractual services agreement.*

However, on March 24, 1993, Dr. Robinson approved PRVWSD's real estate consultant contract with Eastover Realty Corporation, reversing SPB's previous action. Dr. Robinson's approval of the contract is supported by SPB's March 15, 1993, approval of the contract.

Various differences exist between these two real estate consultant contracts. (Exhibit 3, page 9, summarizes the major components of each.) The Eastover Realty contract provides more specifically defined terms of what products and what activities the consultant is to provide the district. Also, the compensation method for the most recent contract is different (see finding, page 19).

Notwithstanding those contract differences, the State Personnel Director still had committed his ruling in writing that PRVWSD has positions to provide the related services. Moreover, the agency does not have sufficient documentation in its records to support and document the change from its previous opinion, although its April 23, 1993, letter to PEER, signed by Larry K. Gregory, Interim State Personnel Director, stated:

*Study of supporting documentation on the historical aspects of contractual agreements for the planning, marketing, leasing, and brokerage activities of the District continued after denial of the request on June 29, 199[2]. This continued exploration of the scope of services, the pending retirement on March 31, 1993, of Mr. Charles Moak, Appointed Official - Pearl River Valley Water Supply District, and the temporary assumption of those duties by the chief engineer brought us to the conclusion that the requested services were indeed beyond the capabilities of the District staff.*

The State Personnel Director actually denied the prior contract because of concerns about the consultant, David Lane. Dr. Bob Robinson, past SPB Director, stated that he disapproved the H. C. Bailey Management contract because:

1. it was not a truthful contract (PRVWSD had previously expended more than SPB approved), and

2. of the contractor's possible noncompetitive dealings with land developers.

The State Personnel Director's denial of the prior contract and reversal of this ruling by approving the succeeding contract, supported by the board's approval, caused SPB to "technically" act beyond its statutory authority related to personal services contracts.

**PRVWSD's most recent contract with Eastover Realty Corporation, similar to prior contracts, allows unreasonable and excessive compensation for real estate consulting services.**

Exhibit 3, page 9, summarizes the method of compensation for the Eastover Realty Corporation contract. This contract differs from prior contracts in that, in addition to commissions, the real estate consultant is to receive a \$1,500 monthly retainer and hourly fees for time worked over specified amounts. As presented at Exhibit 3, page 9, the commission rates for this contract are variable from 1 to 1 1/2 percent based on calendar lease values.

Similar to prior real estate consultant contracts, PRVWSD's contract with Eastover Realty Corp. allows computation of commissions based on calculated lease values, not representing the true present value of actual considerations for the lease. The method of estimating lease values at the ten percent capitalization rate applied to a "stabilized" lease value produces an overstated appraisal of value, not actual value.

The current contract also allows the contractor to add to that estimated value the "initial payment" from the lessee. Under prior contracts, this "initial payment" has been called "development funds." These payments received from the lessees have not consistently represented actual costs of developing the land.

Comparable to prior contracts, the sum of the capitalized "stabilized" lease value added to the "initial payment" represents the "lease value." Real estate consultants receive commissions on these lease values. Commissions calculated on these estimated lease values will in turn be overstated. Additionally, it is unreasonable for the consultant to receive commissions on the total "initial payments" because not all of these funds will be invested in, recoverable from, or associated with the subject tract or parcel of leased land.

PEER concludes that another significant weakness of the contract is the maintenance of a monthly \$1,500 retainer (\$18,000 per year.) This retainer is held in the contract with no contractor's guarantee for services. The contract also requires PRVWSD to pay the consultant a rate of \$30 per hour for each hour in excess of fifty hours per month. However, there is no provision that the \$1,500 will be adjusted down for the lack of services (under the fifty hours per month).

PRVWSD's payment of retainers to this real estate consultant violates the intent of the laws directing fiscal controls of the state. In paying the \$1,500 monthly retainer without contractor's proof of services rendered, the district pays extra compensation above what is authorized by law.

As discussed at page 12, MISS. CODE ANN. Section 51-9-121(m) mandates the district's payment of reasonable compensation for services rendered. In addition, MISS. CODE ANN. Section 7-7-1 et. al. requires that specific fiscal controls be implemented by the Department of Finance and Administration to assure that state agencies' goods and services are received before State Treasury warrants are issued toward the payment of vendors.

Even though PRVWSD maintains its funds outside the State Treasury, the intent of the law still applies. As a state agency, the district is obligated to assure that before public funds are expended, claims are regular, legal, correct; goods have been received or services rendered; and that it has not been previously paid.

Because SPB is statutorily limited to denying contracts based on state agencies' abilities to perform requested services with authorized employment positions, and DFA does not review disbursements of agency accounts outside State Treasury, ineffective management or even abuse can occur with personal services contracts.



## ***Recommendations***

### **Future Direction**

1. As soon as possible, the PRVWSD board should establish clear goals and objectives for the district. PRVWSD should base its decisions, notably the marketing, development, and management of district lands, on strong written direction from its board. These goals should include both short-term and long-term objectives and should be written to provide explicit direction in all areas of district management including, but not limited to:
  - residential and commercial real estate development and management;
  - recreational facilities;
  - control, storage and flow of reservoir waters; and,
  - emergency contingency plans.
2. Immediately following the board's adoption of written goals and objectives, PRVWSD's General Manager should provide detailed written policies and procedures to support the board's plan. These policies and procedures should represent the district's day-to-day operating duties and responsibilities and should provide district employees with specific guidance and step-by-step instructions to achieve well-defined tasks. All tasks should be linked to stated board goals and objectives.

### **Self-Reliance in Real Estate Management**

3. PRVWSD should work toward self-reliance in the management of the district, not depending so greatly on outside contractors. In particular, the district should strive to obtain complete control over the management of its real property within at least the next two years.

PRVWSD should implement the following essential elements in working toward this control by utilizing and redistributing existing district resources:

- a. *Establishing complete computerized inventory records of leased real property to include historical and current status and activities of leased developments and individual parcels.* The district should maintain these records and files to provide controls of total leased lands reconcilable to individual details. These records should include pertinent and critical lease data for easy compilation and analysis in making planning, marketing, and management decisions.

- b. *Establishing and maintaining staffing levels necessary to provide appropriate full-time employees for the district's direct comprehensive management and maintenance of leased real property.* PRVWSD should submit the necessary requests and work with SPB for the suitable staffing, such as professional planners and engineers. The district would benefit immensely from having a staff trained to research, analyze, cost, report and provide leasing and property management recommendations to the General Manager and the board. The district's decrease in dependence on real estate contractors and elimination of related contractual services expenditures will allow the expenditure of those funds toward employees' salaries and fringe benefits. The annual salaries of such employees should be at a cost significantly below what has been paid annually for real estate consultants.

#### **Assessment of Needs Toward Self-Reliance**

4. PRVWSD's board, working through the General Manager, should immediately perform a thorough needs assessment of the continued use of real estate consultant contracts, similar to the current Eastover Realty Corporation contract. The board should perform needs assessments with the underlying intention to meet the goals and objectives of the district, while striving to become more self-reliant in real property management. To accomplish this, the board should include in this assessment at least three areas for evaluation of needs and timing of services:
  - a. Day-to-day lease management, including procedures, files, and records; use and other changes to current leases; contacts with leaseholders; rental collections and normal lease maintenance;
  - b. Planning functions, to include research and analysis of the maximum possible use of lands, current and forecast development absorption, projects feasibility, optimum lease values, timing of property transactions; and,
  - c. Periodic promotion, marketing, and brokerage of leases of district lands for development.

If PRVWSD determines from its needs assessment that the above elements are needed to bring the district to a satisfactory level of expertise and/or to supplement those areas until the district can achieve solid attainment of expertise, the district should execute procurement separately for each through open and competitive purchasing methods. Compensation for each level should also be considered separately, and should be reasonable, compensating only for actual services rendered.

## Real Estate Consultant Compensation

5. PRVWSD should discontinue provisions for the payment of retainers in the current and future real estate consultant contracts (within terms of the present contract). PRVWSD should reimburse the contractor for only actual services rendered based on reasonable time-based rates.
6. PRVWSD should revise its current method of calculating real estate consultants' commissions on lease sales. As in the current Eastover Realty Corporation contract, commissions should be considered only for the marketing aspect of services. However, the district should base commissions solely on the valid costs and actual values associated and recoverable from the leased lands.

The district should calculate any commissions on the present values of the series of actual periodic lease payments. This method produces the actual current lease value, not an appraisal or estimate of the lease. In addition, the district should only calculate commissions on amounts received that directly relate to or are associated with the development of the tract/parcel of land.

## State Controls Over Personal Services Contracts

7. The Legislature should review certain aspects of the State Personnel Director's and SPB's authority over state agencies' personal services contracts, such as discretion over such areas as:
  - a. *Contract terms*: Allowing review and disapproval of state agencies' contracts that violate general/specific state laws, contain illegal or unreasonable fees, maintain questionable activities, or contain fraudulent terms.
  - b. *Need for contract*: Authorizing evaluation of agencies' needs assessments, determining relationships between agency's goals/objectives, or analyzing what agencies can do to perform work internally.
  - c. *Fees*: Verifying methods of computation, examining compliance with intent of state's fiscal controls, or analyzing prior year fees paid in accordance with State Personnel Director approvals.
  - d. *Allow review and disapprovals based on agencies' results and outcome achieved under prior contracts*.
  - e. *Method of procurement*: Determine agencies' compliance with state purchasing laws or verification of illegal or unethical actions.
8. SPB and the State Personnel Director should implement appropriate quality control procedures to assure that all actions and decisions of

the staff, whether ratified by board approval or not, are supported by complete and relevant documentation. SPB should develop the necessary quality controls and procedures, in particular related to agency review of personal services contracts, to assure that all workpapers are consistent, complete, and appropriate. SPB should assure that all related documents, personnel listings, analysis workpapers, communications (informal or formal), and conclusions be referenced and filed to support its opinions.

9. To strengthen controls over state agencies' funds maintained in accounts outside of the State Treasury (to include expenditures for contractual services), the Department of Finance and Administration should exercise its authority under MISS. CODE ANN. Section 7-7-17 (1972), requiring more frequent and specific reporting of agencies with active professional service contracts. This section states:

*Reports shall be filed with the State Fiscal Officer at the time and in the manner prescribed by the State Fiscal Officer by all state departments, institutions and agencies of all receipts of public funds, as defined in Section 7-7-1, which are not required by law to be deposited into the State Treasury but into banks bonded to be depositories of such funds, so that the State Fiscal Officer may keep comprehensive records and may make complete periodic reports concerning all public funds belonging to or for the use of the state and those agencies owned or controlled by the state.*

**Appendix A**  
**PRVWSD Real Estate Transactions**  
**Fiscal Years 1983 - 1992**

<b>Closing Date</b>	<b>Location/# parcels</b>	<b>Developer/Lessee</b>	<b>Bid</b>	<b>Type</b>
<b>INDIVIDUAL LOTS:</b>				
1983-92	Lake Harbor, Part III	PRVWSD/Various (21 lots)	Var.	Res. single family lots
1983-92	Lake Harbor, Part IV	PRVWSD/Various (5 lots)	Var.	Res. single family lots
1984-85	Bay Park Extension	PRVWSD/Various (43 lots)	Var.	Res. single family lots
<b>TRACTS/OTHER DEVELOPMENTS:</b>				
01/17/82	Madison Co./acres unknown North Main Harbor Area (North Harbor Condo.)	Dewitt Deweese	50	Com. small craft marina & Res. multifamily
--	5.85+- acres Rankin Co.	BIDS REJECTED	51	Res. multifamily
03/07/83	5.85+- acres Rankin Co. Arrowhead/Glen Cove (Bear Run)	Rayford R. Hudson III	52	Res. single family subd.
06/30/83	22.79+- acres Rankin Co. Spillway Rd/Lakeshore Cp (Lakeshore Pointe Apartments)	Lakeshore Pointe, Inc.	53	Res. multifamily
11/29/83	25+- acres Rankin Co. Emerg. spillway area (Rapids on the Reservoir Ph1)	Emile Joseph Lacoste III	54	Com. water recreational park
07/30/84	① 18.1+- acres Rankin Co. ③ (Lakeview Marina)	Dixie Marine, Inc. (Reassigned 09/20/90)	55	<b>Change lease use:</b> Com. marina/restaurant & Res. development
05/26/87	③ 5.5459 acres Madison Co. Next to Breakers (Flagship) (Advertised 11/8/83)	Emile Joseph Lacoste III (Default/cancelled 1989)	56	Res. multifamily

**NOTES** ① \$124,403.24 commissions on lease changes or transactions not meeting contract terms.  
 ② \$15,554.89 commissions on incomplete (not executed) leases.  
 ③ Subsequent action has occurred on subject lease as noted, changing status of this transaction.

**SOURCE:** PEER analysis of PRVWSD 1983 - 1992 disclosed lease documents.

**Lease Valuation**

<b>Term</b>	<b>Stabilized Annual Rental</b>	<b>Capitalization Rate/ Value</b>	<b>Development Funds</b>	<b>Total</b>	<b>Consultant Fees</b>		<b>Consultant</b>
Various	\$8,944.15	@ 9 & 10% \$95,179.46	\$311,000.00	\$406,179.46	\$15,759.69 15,684.00	7.50% 8.00%	Wortman & Mann H.C. Bailey Mgt. Co.
Various	2,215.83	@ 9 & 10% 23,420.34	72,050.00	95,470.34	4,891.73 2,558.54	7.50% 8.00%	Wortman & Mann H.C. Bailey Mgt. Co.
Various	15,480.00	@ 9 % 172,000.00	659,000.00	831,000.00	62,325.00	7.50%	Wortman & Mann
01/01/83-12/31/43 60 years	14,351.67	@ 6 % 239,194.50	48,000.00	287,194.50	21,539.59	7.50%	Wortman & Mann (Does not include separate fees @ \$1,061.25/unit x 12 = \$12,735)
--	--	--	--	--	--	--	--
02/01/83-01/31/43 60 years	19,393.75	@ 6 % 323,229.17	90,000.00	413,229.17	30,992.19	7.50%	Rayford R. Hudson/ Wortman & Mann
07/01/83-06/30/43 60 years	92,021.00	@ 9 % 1,022,455.56	280,000.00	1,302,455.56	97,684.17	7.50%	Gordon Oates RE/ Wortman & Mann
12/01/83-11/30/43 60 years	28,770.00	@ 9 % 319,666.67	75,000.00	394,666.67	29,600.00	7.50%	Wortman & Mann
08/01/84-07/31/44 60 years	5,400.00 (increase)	@ 9 % 60,000.00	10,000.00 *	70,000.00	5,250.00	7.50%	Wortman & Mann *Payable \$1,000/month
03/01/87-02/28/47 60 years	25,600.00	@ 10 % 256,000.00	100,000.00	356,000.00	25,920.00	7 - 8 %	H.C. Bailey Mgt Co.

- ④ Transaction was executed with the preceding action of same date, even though not related.
- ⑤ Transaction handled by PRVWSD, not real estate consultant.
- ⑥ Lease not executed; however, consultant received as fee - 50% of earnest funds less expenses .

<b>Closing Date</b>	<b>Location/# parcels</b>	<b>Developer/Lessee</b>	<b>Bid</b>	<b>Type</b>
04/25/84	15.52 acres Madison Co. Near diversion ditch (Cooper Ridge)	Habitat, Inc.	57	Res. planned unit dev.
04/26/84	16.93+- acres Rankin Co. Behind Res. Sq. Shop. Ctr (The Commonwealth)	Bailey Mortgage Co.	58	Res. planned unit development
06/07/84	5.86 acres Madison Co. West side of Rice Road (Mallard Pointe)	JPS Building Supplies	59	Res. development
07/18/84	12.1 acres Rankin Co. Near shopping center (Brendalwood)	Brendalwood, Inc.	60	Res. multifamily
07/13/84	6.7216 acres Rankin Co. Bend of Lakeshore Drive (Harbor View Townhomes Ph1)	Harbor View Townhomes, Inc.	61	Res. multifamily condo.
10/11/84	③ Madison Co./acres unknown Near district & boat ramp (Lighthouse Restaurant)	Gaynel Billups (Readvertised 1989)	62	Com. restaurant
--	24.79+- acres Rankin Co.	NO BIDS RECEIVED	63	Res. planned unit development
04/25/85	24.79+- acres Rankin Co. Near Pelahatchie Woods (Hanover)	Bellegrove Development	64	Res. single family
--	180+- acres north of Pelahatchie Creek near Hwy 25 Rankin Co.	NO BIDS RECEIVED	65	Com. golf course & Res. dev.
04/85	⑤ Tenant for Fireman's Lodge	Rankin Co. YMCA	66	Com. lodge two-year lease (\$200/month; no fees)
05/14/85	① Madison Co./acres unknown (Main Harbor Marina)	Main Harbor, Inc.	67	<b>Change lease use:</b> Com. marina/Residential
06/25/85	Madison Co./acres unknown 80 lots (Twin Harbors Part II)	Stoddard Enterprises, Inc.	68	Res. single family
08/01/85	11.5+- acres Rankin Co. Along Pelahatchie Shore Dr. (Brenhaven)	Brendalwood, Inc.	69	Res. planned unit development

**Lease Valuation**

<b>Term</b>	<b>Stabilized Annual Rental</b>	<b>Capitalization Rate/ Value</b>	<b>Development Funds</b>	<b>Total</b>	<b>Consultant Fees</b>	<b>Consultant</b>
05/01/84-04/30/44 60 years	27,000.00	@ 9 % 300,000.00	180,000.00	480,000.00	36,000.00	7.50% Wortman & Mann
04/01/84-03/31/44 60 years	48,000.00	@ 9 % 533,333.33	150,000.00	683,333.33	51,250.00	7.50% Wortman & Mann
06/01/84-05/31/44 60 years	18,000.00	@ 9 % 200,000.00	65,000.00	265,000.00	19,875.00	7.50% Wortman & Mann
07/17/84-07/16/44 60 years	31,500.00	@ 9 % 350,000.00	120,000.00	470,000.00	35,250.00	7.50% Wortman & Mann
07/1/84-06/30/44 60 years	24,000.00	@ 9 % 266,666.67	80,000.00	346,666.67	26,000.00	7.50% Wortman & Mann
10/01/84-09/30/44 60 years	9,000.00	@ 9 % 100,000.00	55,000.00	155,000.00	11,625.00	7.50% Wortman & Mann
--	--	--	--	--	--	--
04/01/85-03/31/45 60 years	31,200.00	@ 9 % 346,666.67	123,950.00	470,616.67	35,296.25	7.50% Wortman & Mann
--	--	--	--	--	--	--
04/85-03/87 2 years	--	--	--	--	--	--
05/01/85-04/30/45 60 years	16,548.00 (increase)	@ 9 % 183,866.67	20,000.00 **	203,866.67	15,290.00	7.50% Wortman & Mann **Payable initial \$8,000
05/24/85-05/23/45 60 years	13,230.00	@ 9 % 147,000.00	84,000.00	231,000.00	17,325.00	7.50% Wortman & Mann
08/01/85-07/31/45 60 years	33,200.00	@ 9 % 368,888.89	115,000.00	483,888.89	36,291.67	7.50% Wortman & Mann



<b>Closing Date</b>	<b>Location/# parcels</b>	<b>Developer/Lessee</b>	<b>Bid</b>	<b>Type</b>
--	180+- acres north of Pelahatchie Creek near Hwy 25 Rankin Co.	NO BIDS RECEIVED	70	Com. golf course & Res. dev.
06/25/85	① 3.77 acres Madison Co. ③ Area C Main Harbor Note: Board minutes stated area was set aside for high-density development, so did not have to advertise for bids.	Stoddard Enterprises, Inc. (Default/cancelled 1991)	See note <<	Res. multifamily (high density)
08/20/85	③ 2.42+- acres Madison Co. Area C Main Harbor	Stoddard Enterprises, Inc. (Default/cancelled 1991)	71	Res. multifamily (high density)
02/12/86	55+- acres Rankin Co. North side Fannin Road (Riverchase)	R. Smith, L. Cheramie, W. Quinn, R. Murphree	72	Res. development
10/85	⑤ 9.643 acres railroad right-of-way (even trade of land)	C.Burnham, V.Smith, J.King	73	Surplus property traded with warranty deed only
12/23/85	27.55 acres Rankin Co. Spillway Rd,East-Hanover Subd.	Reservoir Land Joint Venture	74	Res. single family
01/29/86	14.55+- acres Rankin Co. Hwy 471, Pelahatchie Creek area	NW Rankin Athletic Association	75	Com. recreational development
01/21/86	① Rankin Co./acres unknown Spillway Road (Junior Food)	Morris Oil Co. (Assigned from Jitney Jungle, Inc.)	76	<b>Transfer of lease:</b> Com. convenience store
--	180+- acres north of Pelahatchie Creek near Hwy 25 Rankin Co.	NO BIDS RECEIVED	77	Com. golf course & Res. dev.
04/09/86	③ .46 acres Madison Co. (Suds Shop)	Suds Shop, Inc. (Returned 1991)	78	Com. restaurant
08/01/86	175.58 acres Rankin Co. (Bay Pointe)	Turnberry, Inc.	79	Com. golf course & Res. development
10/31/86	151.86+- acres Madison Co Hearn Creek Property (Northbay)	S.Horn, W.Quin, L. Cheramie (Assigned to Northbay, Ltd.)	80	Res. planned unit development
06/16/87	Area A Northshore Rankin Co. (Northshore Village)	L.Cheramie, S. Horn	81	Res. development
04/06/87	① Highway 43 Rankin Co. (Safe Harbor Marina)	Safe Harbor Marina, Inc. (Assigned from Greg Stevens)	82	<b>Transfer of lease:</b> Com. marina

**Lease Valuation**

<b>Term</b>	<b>Stabilized Annual Rental</b>	<b>Capitalization Rate/ Value</b>	<b>Development Funds</b>	<b>Total</b>	<b>Consultant Fees</b>	<b>Consultant</b>
--	--	--	--	--	--	--
07/01/85-06/30/45 60 years	12,500.00	@ 9 % 138,888.89	5,000.00	143,888.89	10,791.67	7.50% Wortman & Mann
08/20/85-06/30/45 60 years	20,100.00	@ 9 % 223,333.33	34,200.00	257,533.33	19,315.00	7.50% Wortman & Mann
02/15/86-02/14/46 60 years	72,000.00	@ 9 % 800,000.00	286,000.00	1,086,000.00	81,450.00	7.50% Wortman & Mann
--	--	--	--	--	--	--
12/23/85-12/22/45 60 years	33,600.00	@ 9 % 373,333.33	191,000.00 ***	564,333.33	42,325.00	7.50% Wortman & Mann ***Includes \$30,000 for option on adjacent land
02/01/86-01/31/16 30 years	2,050.00	@ 9 % 22,777.78	7,500.00	30,277.78	2,270.83	7.50% Wortman & Mann
02/01/86-01/31/01 15 years	3,000.00 (increase)	@ 9 % 33,333.33	5,000.00	38,333.33	2,875.00	7.50% Wortman & Mann
--	--	--	--	--	--	--
04/01/86-03/31/46 60 years	5,400.00	@10% 54,000.00	30,000.00	84,000.00	6,720.00	8.00% H.C. Bailey Mgt Co.
08/01/86-07/31/46 60 years	85,020.00	@10% 850,200.00	280,000.00	1,130,200.00	72,510.00 1,600.00	5 - 8% H.C. Bailey Mgt Co. 8.00% (On option area)
11/01/86-10/31/46 60 years	160,000.00	@10% 1,600,000.00	825,000.00	2,425,000.00	68,625.00 72,750.00 See Note >>	5 - 8% H.C. Bailey Mgt Co. 6.00% Fee split even 1986/88; calculated diff. in 1988.
06/15/87-06/14/47 60 years	32,000.00	@10% 320,000.00	360,000.00	680,000.00	23,400.00 23,400.00	6 - 8% H.C. Bailey Mgt Co. Fee split 1987/subsq.
08/15/86-08/14/46 60 years	3,960.00 (increase)	@10% 39,600.00	5,000.00	44,600.00	3,568.00	8.00% H.C. Bailey Mgt Co.

<b>Closing Date</b>	<b>Location/# parcels</b>	<b>Developer/Lessee</b>	<b>Bid</b>	<b>Type</b>
04/06/87	NE intersection Spillway Road & Causeway Blvd Rankin Co. (Chevron)	Johnny Bailey	83	Com. conv. store/auto center
04/87	⑤ Fireman's Lodge (Teen Entertainment Center)	Reservoir Area Youth Center	84	Com. teen/youth center two-year lease (\$200/month; no fees)
⑥ (see Bid #93)	16+- acres Spillway Road near The Breakers Rankin Co.	FORFEITED/NOT SIGNED (Emile Joseph Lacoste III)	85	Res. planned unit development
⑥	② On water in front of Lighthouse Restaurant Madison Co.	FORFEITED/NOT SIGNED (D. Thoren, M. Barnes)	86	Com. restaurant on water
10/31/87	North side Spillway Road, east of Causeway Rankin Co. (Dairy Queen)	SRB, Inc.	87	Com. fast food restaurant
06/13/88	Lot 3 Village Square Rankin Co.	Dion Thornton	88	Com. office building
07/14/88	2.22 acres east of Waterwood sub. Rankin Co. (Cliffview by the Bay)	Reservoir Land Joint Venture	89	Res. subdivision
08/02/88	.06 acres sand pit next to water tank Rankin Co.	MCTA	90	Com. mobile telephone tower
05/05/88	① 55 acres Area O Northshore Rankin Co. (Fox Bay)	Turnberry, Inc.	Option on 79	<b>Subsequent to original lease:</b> Res. planned unit development (Board approved as "large lot residential")
05/05/88	① Rankin Co. ④ (Lakeshore Townhomes)	Lakeshore Townhomes (Assigned from Water's Edge and Sail Cove Apartements)	--	<b>Transfer &amp; change lease use:</b> Res. multifamily
not dated	① Intersection Fannin Landing Rd & Northshore Parkway Rankin Co.	Houston C. Primos	--	Access easement
12/10/87	① 5.7+- acres western boundary Natchez Trace Madison Co.	Cardox Corporation	--	Pipeline easement
06/22/88	① 2.37 acres Area O Northshore Rankin Co.	Jae-Lu, Inc. (Assigned from Turnberry)	--	<b>Transfer of lease:</b> Res. subdivision
--	1+- acres @ Circle K Spillway Road Rankin Co.	NO BIDS RECEIVED	91	Com. shopping center site
08/12/88	Area B Northshore Rankin Co. (Windward Oaks)	Thomas M. Underwood	92	Res. subdivision

**Lease Valuation**

<b>Term</b>	<b>Stabilized Annual Rental</b>	<b>Capitalization Rate/ Value</b>	<b>Development Funds</b>	<b>Total</b>	<b>Consultant Fees</b>	<b>Consultant</b>
04/01/87-03/31/47 60 years	20,004.00	@10% 200,040.00	100,000.00	300,040.00	22,002.80	7 - 8 % H.C. Bailey Mgt Co.
04/87-03/89 2 years	--	--	--	--	--	--
--	--	--	--	--	(paid with Bid 93)	--
--	--	--	--	--	2,396.20	50% of forfeited earnest money H.C. Bailey Mgt Co.
11/01/87-10/31/47 60 years	15,900.00	@10% 159,000.00	40,000.00	199,000.00	11,940.00	6.00% H.C. Bailey Mgt Co.
06/01/88-05/31/48 60 years	4,200.00	@10% 42,000.00	25,000.00	67,000.00	4,020.00	6.00% H.C. Bailey Mgt Co.
07/01/88-06/30/48 60 years	3,750.00	@10% 37,500.00	30,000.00	67,500.00	4,050.00	6.00% H.C. Bailey Mgt Co.
07/22/88-07/21/48 60 years	900.00	@10% 9,000.00	2,500.00	11,500.00	690.00	6.00% H.C. Bailey Mgt Co.
04/01/88-03/31/48 60 years	66,200.00	@10% 662,000.00	220,640.00	882,640.00	52,958.40	8.00% H.C. Bailey Mgt Co.
not given	1,567.50 (increase)	@ 6 % 26,125.00	0.00	26,125.00	1,959.37	6.00% H.C. Bailey Mgt Co.
11/15/87- Perpetual	0.00	0.00	3,500.00	3,500.00	210.00	6.00% H.C. Bailey Mgt Co.
11/15/87- Perpetual	0.00	0.00	17,100.00	17,100.00	1,026.00	6.00% H.C. Bailey Mgt Co.
01/01/88-12/31/88 1 year	2,760.00 (increase)	@10% 27,600.00	9,480.00	37,080.00	2,224.80	6.00% H.C. Bailey Mgt Co.
--	--	--	--	--	--	--
08/01/88-07/31/48 60 years	55,000.00	@10% 550,000.00	632,000.00	1,182,000.00	70,920.00	6.00% H.C. Bailey Mgt Co.

<b>Closing Date</b>	<b>Location/# parcels</b>	<b>Developer/Lessee</b>	<b>Bid</b>	<b>Type</b>
02/23/89	10+- acres Rice Rd. Madison Co. (w/half as option, total 23+- acres)	Lakeview Marina Properties	93	Res. planned unit development
02/23/89	② 1987 cancelled proposal 21.42+- ④ Madison Co. (Flagship Phase 2)	FORFEITED/NOT SIGNED (E.J. Lacoste III)	85 (Paid with 93)	Res. multifamily
	⑥ ② Lot at Village Square Rankin Co.	FORFEITED/NOT SIGNED	94	Com. automotive service
05/10/89	① Lighthouse Restaurant	DEBAR, Inc. (Assigned from D.Thoren/M.Barnes)	95	<b>Transfer &amp; change lease use:</b> Com. restaurant
12/08/88	.63 acres-Lot 12 Village Square Rankin Co.	Dion Thornton	96	Com. office building/light retail facility
09/20/90	Twin Harbors, Part III B Madison Co.	THV, Inc.	97	Res. subdivision
09/20/90	① 18.1+- acres Rankin Co. ④ (Lakeview Marina)	Marine South, Inc. (Assigned from Dixie Marine)	--	<b>Transfer of lease:</b> Com. marina/restaurant & Res. development
07/31/89	17.77+- acres Old Rice Road adjacent to Twin Harbors I Madison Co. (Haley Creek)	Habitat, Inc.	98	Res. subdivision
08/03/89	Lakeshore park area Rankin Co. (YMCA)	YMCA - Metropolitan Jackson (Returned to District 1992)	99	Com. recreation facility
--	Parcel near The Breakers	NO BIDS RECEIVED	100	Res. planned unit development
08/89	⑤ Boat beaching area Madison Co. (next to Old Trace Park)	Reservoir Sailing Club	101	Com. beach ten-year lease (\$2,800/year; no fees)
09/89	⑤ 850-900 acres north of Sand Hill for hunting Rankin Co.	Not identified	102	Com. hunting five-year lease (\$6,001/year; no fees)
08/15/90	① Rapids on the Reservoir Rankin Co.	Rapids, Inc.	103	<b>Change lease use:</b> Com. water recreational park
--	Parcel near The Breakers	NO BIDS RECEIVED	104	Res. planned unit development
--	8+- acres at current maintenance shop	NO BIDS RECEIVED	105	Com. planned development
10/31/90	20.1+- acres Madison Co. (Overlook Pointe)	Overlook Pointe Partnership	106	Res. planned unit development

**Lease Valuation**

<b>Term</b>	<b>Stabilized Annual Rental</b>	<b>Capitalization Rate/ Value</b>	<b>Development Funds</b>	<b>Total</b>	<b>Consultant Fees</b>		<b>Consultant</b>
		@10%					
09/01/88-08/31/48 60 years	32,000.00	320,000.00	180,000.00	500,000.00	30,000.00	6.00%	H.C. Bailey Mgt Co.
--	--	--	--	--	12,096.99		50% of forfeited earnest money H.C. Bailey Mgt Co.
--	--	--	--	--	1,061.70		50% of forfeited earnest money H.C. Bailey Mgt Co.
12/01/88-09/30/44 56 years	(no increase)	--	5,000.00	5,000.00	300.00	6.00%	H.C. Bailey Mgt Co.
		@10%					
12/01/88-11/30/48 60 years	4,200.00	42,000.00	25,000.00	67,000.00	4,020.00	6.00%	H.C. Bailey Mgt Co.
		@10%					
10/01/90-09/30/50 60 years	17,800.00	178,000.00	104,500.00	282,500.00	16,950.00	6.00%	H.C. Bailey Mgt Co.
		@ 9%					
08/01/84-07/31/44 60 years	17,700.00 (increase)	196,666.67	0.00	196,666.67	14,750.00	7.50%	H.C. Bailey Mgt Co.
		@ 10%					
07/28/89-07/27/49 60 years	33,250.00	332,500.00	100,000.00	432,500.00	25,950.00 150.00	6.00% 6.00%	H.C. Bailey Mgt Co. (On option area)
		@ 10%					
08/01/89-07/31/49 60 years	6,000.00	60,000.00	10,000.00	70,000.00	4,200.00	6.00%	H.C. Bailey Mgt Co.
--	--	--	--	--	--	--	--
08/89-07/99 10 years	--	--	--	--	--	--	--
09/89-08/94 5 years	--	--	--	--	--	--	--
09/15/89-09/14/49 60 years	(no increase)	--	5,000.00	5,000.00	300.00	6.00%	H.C. Bailey Mgt Co.
--	--	--	--	--	--	--	--
--	--	--	--	--	--	--	--
		@ 10%					
11/01/90-10/31/50 60 years	45,000.00	450,000.00	40,000.00	490,000.00	29,400.00	6.00%	H.C. Bailey Mgt Co.

<b>Closing Date</b>	<b>Location/# parcels</b>	<b>Developer/Lessee</b>	<b>Bid</b>	<b>Type</b>
03/08/91	200'x150'parcel west side Old Trace Park lot Madison Co. (Overlook Pointe Lodge)	Overlook Pointe Partnership	107	Com. lodge facility
08/12/91	Parcel Spillway at Spann Road Rankin Co. (Polk's Discount Drugs)	Polk's Crossgates Discount Drugs, Inc.	108	Com. retail drug facility
08/12/91	① Fannin Road Rankin Co. ④ (River Chase)	Fannin Road Dev. Inc.	--	Res. increasing rents
08/12/91	① North Bay Subdivision ④ Madison Co. (North Bay Golf Course)	North Bay Country Club, Inc.	--	Com. golf course
11/13/91	84.8 +- acres Area H Northshore Rankin Co. (Palisades)	Bellegrave Development Co.	109	Res. planned unit development
03/26/92	Phase 1, Area G Northshore Rankin Co. (Marblehead)	THV, Inc.	110	Res. single family subdivision
--	Spillway & Old Fannin Roads	BIDS REJECTED	111	Com. planned unit development
01/23/92	Ratliff Ferry area Madison Co.	Billy Wayne Parker	112	Com. public camping facility
03/12/92	2.51+- acres Spillway & Old Fannin Roads Rankin Co.	North Shore Properties	113	Com. planned unit development
--	Area M North Shore Rankin Co.	NO BIDS RECEIVED	114	Res. single family subdivision

**TOTALS**

**RECAP BY CONSULTANT:**

**Wortman & Mann  
H.C. Bailey Management Co.**

**TOTALS**

**Lease Valuation**

<b>Term</b>	<b>Stabilized Annual Rental</b>	<b>Capitalization Rate/ Value</b>	<b>Development Funds</b>	<b>Total</b>	<b>Consultant Fees</b>	<b>Consultant</b>
03/01/91-02/28/51 60 years	6,500.00	@ 10% 65,000.00	25,000.00	90,000.00	5,400.00	6.00% H.C. Bailey Mgt Co.
08/01/91-07/31/51 60 years	15,000.00	@ 10% 150,000.00	45,000.00	195,000.00	11,700.00	6.00% H.C. Bailey Mgt Co.
not given	14,000.00	@ 10% 140,000.00	0.00	140,000.00	8,400.00	6.00% H.C. Bailey Mgt Co.
08/01/91-07/31/51 60 years	7,500.00	@ 10% 75,000.00	0.00	75,000.00	4,500.00	6.00% H.C. Bailey Mgt Co.
11/01/91-10/31/51 60 years	160,000.00	@ 10% 1,600,000.00	1,463,000.00 142,600.00 (Interest)	3,205,600.00	98,668.37 93,667.63	6.00% 11/91 H.C. Bailey 6.00% 11/93 Mgt Co.
02/01/92-01/31/52 60 years	16,600.00	@ 10% 166,000.00	83,000.00	249,000.00	14,940.00	6.00% H.C. Bailey Mgt Co.
--	--	--	--	--	--	--
01/01/92-06/30/98 5 1/2 years	2,400.00	@ 10% 24,000.00	5,000.00	29,000.00	1,740.00	6.00% H.C. Bailey Mgt Co.
01/15/92-01/14/52 60 years	40,000.00	@ 10% 400,000.00	150,000.00	550,000.00	33,000.00	6.00% H.C. Bailey Mgt Co.
--	--	--	--	--	--	--
	<u>\$1,481,715.90</u>	<u>\$15,675,466.26</u>	<u>\$8,130,020.00</u>	<u>\$23,805,486.26</u>	<u>\$1,613,600.59</u>	
	<u>\$581,504.40</u>	<u>\$6,643,234.59</u>	<u>\$3,066,700.00</u>	<u>\$9,709,934.59</u>	<u>\$711,272.79</u>	
	<u>900,211.50</u>	<u>9,032,231.67</u>	<u>5,063,320.00</u>	<u>14,095,551.67</u>	<u>902,327.80</u>	
	<u>\$1,481,715.90</u>	<u>\$15,675,466.26</u>	<u>\$8,130,020.00</u>	<u>\$23,805,486.26</u>	<u>\$1,613,600.59</u>	



## Appendix B

### **SPB Policy Memorandum on Personal Services Contracts Policies and Administrative Procedures**

Policy Memorandum No. 3 - FY 1993

**TO:** Elected Officials, Agency Directors and Personnel Officers  
State Service Agencies

**FROM:** Robert L. Robinson *RLR*  
State Personnel Director

**DATE:** April 30, 1992

**SUBJECT:** CONTRACT PERSONNEL SERVICES POLICIES AND ADMINISTRATIVE PROCEDURES

This memorandum provides the policies and administrative procedures for submitting required documentation to implement Fiscal Year 1993 contract requests for personnel services within state service agencies. These policies and procedures have been promulgated in accordance with Sections 25-9-133 and 25-9-107(c)(x), Mississippi Code Annotated (1972). All policy memoranda governing the administration of requests for contract personnel services for preceding fiscal years are hereby cancelled effective close of business June 30, 1992.

#### A. Policy Statements

1. No person shall be employed by any agency for any period for any purpose except in an employment position authorized by legislative appropriation or by the body authorized by law to escalate budgets and approve employment positions under the guidelines established by the Legislature except those authorized to be employed under the provisions of Section 25-9-107(c)(x), Mississippi Code Annotated (1972), as contract personnel for personal and professional services. [Reference, Section 25-9-133 (2), Mississippi Code Annotated (1972)]
2. Any agency which employs state service employees may enter into contracts for personal and professional services only with the prior written approval of the State Personnel Director. The State Personnel Director shall disapprove such contracts where the services to be provided could reasonably be performed by an employee in an authorized employment position. [Reference, Section 25-9-107(c)(x), Mississippi Code Annotated (1972)]
3. Prior to paying any warrant for contractual services, the auditor of public accounts shall determine whether the contract involved was for personal or professional services, and, if so, shall determine whether it was properly submitted to the state personnel director and approved; provided, however, that physicians,

A. Policy Statements (continued)

dentists, architects, engineers, veterinarians, attorneys and utility rate experts who are employed for the purposes of professional services, and other specialized technical services related to facilities maintenance, shall be excluded from the provisions of this paragraph. [Reference, Section 25-9-107(c)(x), Mississippi Code Annotated (1972)]

Note: Section 27-104-105, Mississippi Code Annotated (1972), states that the Department of Finance and Administration shall not process any warrant requested by any state agency for payment for legal services without first determining that the services and contract were approved by the Attorney General and the State Personnel Board. [Reference, Policy Memorandum No. 12 - FY 1993]

B. Coverage and Scope of the Policies

1. These policies shall govern personal and professional contract services which cannot reasonably be expected to be performed by current or future employees in authorized employment positions within state service agencies. Non-state service agencies (including time-limited agencies) are not required to comply with the policies of this memorandum.
2. Except as provided for in Section 27-104-105, Mississippi Code Annotated (1972), the employment of physicians, dentists, architects, engineers, veterinarians, attorneys and utility rate experts who are employed for the purposes of professional services, and other specialized technical services related to facilities maintenance, shall be excluded from the provisions of this policy. (Refer to Attachment I.) Further, the Department of Finance and Administration has determined certain other services to be excluded in their letter dated April 28, 1992, (Attachment II).
3. Contracts between agencies under the State Personnel Board system wherein the contract involves transfer of funds, pass-through funds, allocation of block grants, and assessments are excluded from contract approval requirements.
4. Contracts entered into by agencies under the State Personnel Board system wherein the service to be performed is microfilming/copying which is priced per unit, or the service is a subscription to a clipping service may be executed without the approval of the State Personnel Director.
5. Section 25-4-105(3)(a), Mississippi Code Annotated (1972), cited below, prohibits an employee from rendering personal and professional services on a contractual basis to the agency by which employed:

B. Coverage and Scope of the Policies (continued)

(3) No public servant shall:

(a) Be a contractor, subcontractor or vendor with the governmental entity of which he is a member, other than in his contract of employment, or have a material financial interest in any business which is a contractor, subcontractor or vendor with the governmental entity of which he is a member.

6. State Personnel Director authority under Sections 25-9-133 and 25-9-107(c)(x), Mississippi Code Annotated (1972), does not negate the bid, purchase, review or approval policies and procedures established by statutory authority of any other regulatory agency.
- a. Requests for personnel services or the purchase of equipment or commodities related to data processing policies and procedures must comply with the current CDPA Procurement Policies and Procedures Handbook and shall be previously approved in the appropriate block on "Request for Contract Personnel Services Approval" (Form SPB-620-88 (Rev 6/91)) by the Central Data Processing Authority prior to submission to the State Personnel Director. [Reference, Section 25-53-1 through Section 25-53-59, Mississippi Code Annotated (1972)]
- b. Requests for the purchase of equipment or commodities, physical improvements and printing, binding, engraving, and lithographing included in personal services contracts must comply with the current Procurement Manual and shall be previously approved in the appropriate block on "Request for Contract Personnel Services Approval" (Form SPB-620-88 (Rev 6/91)) by the Department of Finance and Administration, Division of Financial Management, prior to submission to the State Personnel Director. [Reference, Section 31-7-7 through Section 31-7-13, Mississippi Code Annotated (1972)]
- c. Requests for personal services related to GAAP requirements, accounting services, accounting systems design, cost allocation bases, and pre-audit functions shall be previously approved in the appropriate block on "Request for Contract Personnel Services Approval" (Form SPB-620-88 (Rev 6/91)) by the Department of Finance and Administration, Division of Fiscal Management, prior to submission to the State Personnel Director. [Reference, Mississippi Agency Policy and Procedure Manual]
- d. Requests for personal services related to post-auditing functions shall be previously approved in the appropriate block on "Request for Contract Personnel Services Approval" (Form SPB-620-88 (Rev 6/91)) by the State Auditor prior to submission to the State Personnel Director. [Reference, Section 7-7-211, Mississippi Code Annotated (1972)]

B. Coverage and Scope of the Policies (continued)

7. State Personnel Director approval of personal and professional contract services DOES NOT PROVIDE APPROVAL AUTHORITY FOR TRAVEL AND SUBSISTENCE, COMMODITIES, CAPITAL OUTLAY (INCLUDING EQUIPMENT) OR SUBSIDIES, LOANS AND GRANTS.
8. State Personnel Director approval to enter into, renew, or modify contracts for personnel services shall be limited to the fiscal year ending June 30.

C. Administrative Procedures

1. "Request for Contract Personnel Services Approval" (Form SPB-620-88 (Rev 6/91)) shall be submitted to the State Personnel Director ten (10) working days prior to the proposed effective date of the contract to provide sufficient time for staff review and Director action. (Refer to C.4.a. exception to this requirement.) A letter of justification outlining the agency's need for the contractual service must also be submitted.
2. A completed "Request for Contract Personnel Services Approval" (Form SPB-620-88 (Rev 6/91)) submitted to the appropriate regulatory agency (if applicable) and the State Personnel Director is required PRIOR TO AUTHORIZATION TO ENTER INTO, RENEW, OR MODIFY CONTRACTS FOR PERSONAL AND PROFESSIONAL SERVICES. Requests for contract personnel services approval received by the State Personnel Director subsequent to entering into the contract and the performance of services shall be considered not in compliance with the foregoing policy statements.
  - a. Requests to enter into contracts for personnel services for Fiscal Year 1993 are to be submitted to the appropriate regulatory agency (if applicable) prior to submission to the State Personnel Director specifying the type of request on Form SPB-620-88 (Rev 6/91). Relevant supporting documentation, including the contractual agreement proposed to be executed and a letter of justification, shall be attached to the request. A new request shall be defined as the initial execution of a contract for the performance of specified contractual services at either the start of the Fiscal Year (July 1) or during the Fiscal Year or the re-execution of a contract for the performance of specified contractual services within the same Fiscal Year.
  - b. Requests to renew contracts for personnel services for Fiscal Year 1993 which have been previously approved by the State Personnel Director for implementation through June 30, 1992, and are to be executed July 1, 1992, are to be resubmitted to the appropriate regulatory agency (if applicable) prior to submission to the

C. Administrative Procedures (continued)

State Personnel Director specifying the type of request on Form SPB-620-88 (Rev 6/91). A copy of the previously approved request and other relevant supporting documentation, including the contractual agreement proposed to be executed and a letter of justification, shall be attached to the request and submitted by June 1, 1992.

- c. Requests to modify the terms of previously approved contracts for personnel services during Fiscal Year 1993 are to be resubmitted to the appropriate regulatory agency (if applicable) prior to submission to the State Personnel Director specifying the type of modification requested and completing the "Justification of Modification Request" section on the previously approved Form SPB-620-88 (Rev 6/91) prior to the end date of the contract. Other relevant supporting documentation, including a letter of justification, shall be revised accordingly. The extension of a contract is considered a modification wherein the specified contractual services have not been completed by the end date stipulated in the original terms of the contract.
3. The State Personnel Director's authorization to employ contract personnel for personal and professional services shall be based on the following criteria:
    - a. The services required cannot reasonably be expected to be performed by a current or future employee of the agency in an authorized employment position as properly classified; or
    - b. The services required cannot reasonably be expected to be performed by filling an existing vacant position in the same or related classification. Note: A request for a Certificate of Eligibles or other notification of recruitment must be attached if the agency has the same or related classification of vacancies; or
    - c. The services required represent a verifiable need for a specified duration that exceeds the capability or level of expertise of the authorized work force, when fully staffed.
    - d. Contracts for personnel services shall not be used in lieu of authorized employment positions or to offset the reduction of authorized positions or personal services funds.
  4. Fiscal Year 1993 implementation of requests to enter into, renew, or modify contracts for personal and professional services shall be in accordance with the following provisions:

C. Administrative Procedures (continued)

- a. The original and one complete copy of the "Request for Contract Personnel Services Approval" (Form SPB-620-88 (Rev 6/91)) shall be submitted to the State Personnel Director ten (10) working days prior to the proposed effective date of the contract to provide sufficient time for staff review and Director action.

The requirement for the performance of verifiable emergency services shall be considered the only exception to the prior approval clause. CAVEAT: Agency authorization for a contractor to perform contractual services other than verifiable emergency services without the prior approval of the State Personnel Director may result in individual liability for payment of the contract services performed.

- b. Two complete copies of relevant supporting documentation, i.e., contractual agreement proposed to be executed, additional background information, etc., shall be attached to the "Request for Contract Personnel Services Approval" (Form SPB-620-88 (Rev 6/91)). Social security numbers of individual contractors shall be listed or included as an attachment to the request. Note: Agencies which request contract personnel services for a particular event (i.e., workshop, program, etc.), shall list all contractors requested for that particular event on or as an attachment to the SPB-620-88 (Rev 6/91) with the personnel costs for each noted. Other costs for each shall be noted as required. Supporting documentation shall be included with the request as required by Section C-2 of this memorandum.
- c. The original "Request for Contract Personnel Services Approval" will be returned to the requesting agency after action has been taken by the State Personnel Director.
- d. Form SPB-620-88 (Rev 6/91) supersedes all previous "Request for Contract Personnel Services Approval" forms. Submission of Fiscal Year 1993 requests which are incomplete, submitted on unauthorized forms, or submitted without a valid agency authorized signature shall be returned without action.
- e. "Request for Contract Personnel Services Approval" (Form SPB-620-88 (Rev 6/91)) submitted to the State Personnel Director must have all Vendor and Commodity Codes listed on, or as an attachment to, the form. Submission of FY 1993 requests which do not contain this information will be returned without action. Note: This requirement applies only to those agencies currently under the Statewide Automated Accounting System (SAAS) and will apply to other agencies as they come under SAAS.

C. Administrative Procedures (continued)

5. The agency shall notify the State Personnel Director upon termination of previously approved contracts for personnel services or the completion of the performance of services prior to the original terms of the contract (expiration date) in accordance with the following provisions:
  - a. The original and one copy of the approved "Request for Contract Personnel Services Approval" (Form SPB-620-88 (Rev 6/91)) shall be submitted to the State Personnel Director specifying the termination of services and effective date.
  - b. The State Personnel Director shall acknowledge the termination of services submitted and return the original processed "Request for Contract Personnel Services Approval" (Form SPB-620-88 (Rev 6/91)) to the agency.
  - c. The Department of Finance and Administration shall be notified of this action.

Should you require assistance or have any questions concerning this Policy Memorandum, please contact the Office of Classification and Compensation at 359-2764.

## ATTACHMENT I

Clarification of Policy Statement A.3. Policy Memorandum No. 3 - FY 1993 (Dated April 30, 1992) "Contract Personnel Services Policies and Administrative Procedures."

### A. Policy Statements

3. . . . physicians, dentists, architects, engineers, veterinarians, attorneys, and utility rate experts who are employed for the purposes of professional services, and other specialized technical services related to facilities maintenance, shall be excluded from the provisions of this paragraph. [Reference, Section 25-9-107(c)(x), Mississippi Code Annotated (1972)]  
(Note: Except as provided for in Section 27-104-105, Mississippi Code Annotated (1972))

Excluded functions or services related to facilities maintenance may include the following examples:

Personnel required to maintain physical facilities and grounds (i.e., interior and exterior cleaning and restoration, janitorial, refuse collection, extermination services, mowing, landscaping/chemical applications).

Preventative maintenance, repair, replacement, relocation or installation contract personnel service agreements for equipment and major appliances (i.e., heating, air conditioning, ventilation equipment, humidity control, water sprinkler systems, septic systems, electrical, plumbing, burglar/fire alarm systems, laundry appliances/kitchen appliances, communications, sound and lighting equipment, printing and reproduction equipment, equipment used for health care facilities).

Preventative maintenance, repair, replacement, relocation, transport or installation of special equipment (i.e., generators, welders, air compressors, forklifts, front end loaders, wheeled and track vehicles, warehousing equipment, furniture, office equipment/records, measurement and weighing equipment).

Preventative maintenance, repair, replacement, relocation or installation contract personnel service agreements for special safety, security, or electronic equipment (i.e., transmitter/receiver towerlights, receiver antennae, cable, audio and visual).

Improvements (i.e., electrical, plumbing, painting, carpentering) are not excluded and must comply with the Procurement Manual. (See Section B.6.b.)



## Appendix C

### *Authority for State Agency Bank Accounts*

PRVWSD receives direct statutory authority to maintain bank accounts (depositories) separate from the State Treasury from MISS. CODE ANN. Section 51-9-149, subsection 1, which states:

*The board of directors shall designate one or more qualified state depositories within the district to serve as depositories for the funds of the district, and all funds of the district other than funds required by any trust agreement to be deposited, from time to time, with the trustee or any paying agent for outstanding bonds of the district shall be deposited in such depository or depositories. Any such designated depository shall be eligible to hold funds of the district to the extent that it is qualified as a depository for state funds.*

Other state agencies that do not receive direct authority to maintain funds outside of the State Treasury must receive authorization from the State Treasury and the Department of Finance and Administration to open bank accounts.

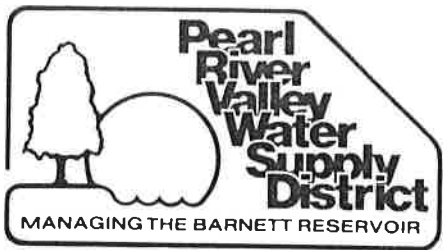
There are two general laws that address state agency establishment of bank accounts:

- (1) MISS. CODE ANN. Section 7-7-59 (1972) allows bank accounts for:
  - petty cash funds, and
  - depositories for self-generated or custodial funds not required by law to be deposited in the State Treasury.
- (2) MISS. CODE ANN. Section 7-9-21 (1972) allows bank accounts for collection and clearing accounts.

CODE Section 7-7-59 states:

*The State Fiscal Officer [DFA] may by regulation provide for the establishment of commercial bank accounts by any state agency, which shall serve as the depository for self-generated funds and custodial funds not required by law to be deposited in the State Treasury. The regulations may provide for such accounts to be used for disbursements not required to be made by warrants on the State Treasury.*

## Agency Responses



AN AGENCY OF THE STATE OF MISSISSIPPI  
P. O. Box 12750 Jackson, Mississippi 39236  
Phone: 856-6574      Fax: 856-6639  
354-3448  
~~Charles E. Wood, General Manager~~  
Benny French, Acting General Manager

July 16, 1993

HAND DELIVERY

Performance Evaluation Expenditure  
Review Committee  
222 North President Street  
Jackson, Mississippi 39201

Attention: Susan McAllister Harris, CPA

Dear Members:

Thank you for the opportunity to discuss with your staff the review of Pearl River Valley Water Supply District's use of real estate consultants. The Board of Directors of PRVWSD offers the following comments with regard to proposed recommendations set out in the draft Executive Summary:

Future Direction. The PRVWSD Board concurs in recommendations numbered 1. and 2. A new General Manager will be on board August 15, and significant progress in these areas should be evident by June 30, 1994.

Self-Reliance in Real Estate Management and Assessment of Needs Toward Self-Reliance. The PRVWSD Board agrees that it should strive to obtain better control over the management of its real property within the next two years, however, the PRVWSD Board believes that its 1992 contract with Eastover Realty Corporation, or some similar contract with an outside consultant, will be needed over the next two years to assist with planning, promotion, marketing and brokerage of leases of PRVWSD lands.

Real Estate Consultant Compensation. The PRVWSD Board believes that the compensation schedules under its contract with Eastover Realty Corporation are realistic and should be given a chance to operate, subject to re-evaluation and adjustment if necessary.

State Controls Over Personnel Service Contracts. The PRVWSD budget is approved by the Legislature in an appropriation bill, after recommendations from the Legislative Budget Committee. The PRVWSD presently receives no funds from any county or municipality and no

PEER Committee  
July 16, 1993  
Page Two

appropriation from general funds of the State of diversion of any State revenues.

State Personnel Board statutes are applicable; the State Auditor has audit jurisdiction. The Boards of Supervisors of the five counties comprising the District have input to PRVWSD Board decisions. Five of the 14-member Board of Directors are appointed by the Governor from nominees by member county Board of Supervisors; five are appointed directly by member county Board of Supervisors; and one is designated by the Commission on Environmental Quality, the Mississippi Forestry Commission, the State Board of Health, and the Commissioner of Wildlife, Fisheries and Parks. The City of Jackson is consulted on water quality and water flow decisions.

Your courteous staff gave helpful insights.

Yours very truly,

PEARL RIVER VALLEY WATER  
SUPPLY DISTRICT

By Earl Walker, Jr.  
Earl Walker, Jr., President

cc: James M. Barnett  
Charles Branch  
Robert Dotson  
P. L. Hughes  
Erle Johnston  
Mark S. Jordan  
Vernard Murrell

Richard Ridgway  
Bill Stevens  
James L. Sledge, Jr.  
Larry Temple  
Bob Tyler  
Sam Valentine  
Benny French, Acting General Manager

BOARD MEMBERS  
Johnny Johnson, Columbus - Chairman  
Billy R. Powell, Brandon - Vice-Chairman  
Tom Hall, Oxford



BOARD MEMBERS  
Jon S. Levingston, Clarksdale  
Mary S. Pyle, Gulfport

STATE PERSONNEL DIRECTOR  
J.K. Stringer, Jr.

## MISSISSIPPI STATE PERSONNEL BOARD

July 19, 1993

Mrs. Susan Harris  
PEER Committee  
P. O. Box 1204  
Jackson, Mississippi 39201

Dear Mrs. Harris

I would like to express my appreciation for the opportunity to respond to the recommendations contained in your confidential draft concerning "A Review of the Pearl River Valley Water Supply District's Use of Real Estate Consultants." Additionally, I would like to thank you and Mr. Ted Booth for taking the time to discuss the findings with Mr. Mike Lucius and me on July 6, 1993.

Your report recommends that the Legislature review certain aspects of the State Personnel Director's and SPB's authority over state agencies' personnel service contracts. I agree with your recommendation, and toward this end my staff and I are currently developing proposed legislation needed to carry out the increase in responsibility.

Your report also recommends that "appropriate quality control procedures" be put in place. As of this writing, the policies relating to the submission and review of contracts are under review to insure that proper documentation is provided, and a clear audit trail is established.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "J. K. Stringer, Jr." followed by a double slash.

J. K. Stringer, Jr.  
State Personnel Director

301 NORTH LAMAR STREET, SUITE 100, JACKSON, MISSISSIPPI 39201-1495  
PHONE (601) 359-1406 • FAX (601) 359-2729

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## PEER Staff

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### Director

John W. Turcotte  
Janet Moore, Administrative  
Assistant

### Administrative Division

Steve Miller, General Counsel  
and Controller

Betty Heggy  
Ann Hutcherson  
Mary McNeill

### Planning and Support Division

Max Arinder, Chief  
Analyst

Sam Dawkins  
Patty Hassinger  
Larry Landrum  
Kathleen Sullivan  
Linda Triplett  
Ava Welborn

### Operations Division

James Barber, Chief  
Analyst

Ted Booth  
Barbara Hamilton  
Susan Harris  
Wayne Hegwood  
Kevin Humphreys  
Kelly Lockhart  
Helen McFall  
Joyce McCants  
Danny Miller  
Katherine Stark  
Larry Whiting

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