

By: Representative Brown

To: Appropriations

HOUSE BILL NO. 1198

1 AN ACT TO AMEND SECTION 31-7-10, MISSISSIPPI CODE OF 1972, TO  
 2 PROVIDE THAT THE DEPARTMENT OF FINANCE AND ADMINISTRATION SHALL  
 3 WITHHOLD CERTAIN AMOUNTS DUE UNDER THE MASTER LEASE-PURCHASE  
 4 PROGRAM FROM A SCHOOL DISTRICT'S MINIMUM EDUCATION OR ADEQUATE  
 5 EDUCATION PROGRAM FUND ALLOTMENTS; TO PROVIDE THAT THE DEPARTMENT  
 6 OF FINANCE AND ADMINISTRATION SHALL WITHHOLD CERTAIN AMOUNTS DUE  
 7 UNDER THE MASTER LEASE-PURCHASE PROGRAM FROM ANY FUNDS ALLOCATED  
 8 FOR THAT COMMUNITY OR JUNIOR COLLEGE DISTRICT; AND FOR RELATED  
 9 PURPOSES.

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

11 **SECTION 1.** Section 31-7-10, Mississippi Code of 1972, is  
 12 amended as follows:

13 31-7-10. (1) For the purposes of this section, the term  
 14 "equipment" shall mean equipment, furniture, and if applicable,  
 15 associated software and other applicable direct costs associated  
 16 with the acquisition. In addition to its other powers and duties,  
 17 the Department of Finance and Administration shall have the  
 18 authority to develop a master lease-purchase program and, pursuant  
 19 to that program, shall have the authority to execute on behalf of  
 20 the state master lease-purchase agreements for equipment to be  
 21 used by an agency, as provided in this section. Each agency  
 22 electing to acquire equipment by a lease-purchase agreement shall  
 23 participate in the Department of Finance and Administration's  
 24 master lease-purchase program, unless the Department of Finance  
 25 and Administration makes a determination that such equipment  
 26 cannot be obtained under the program or unless the equipment can  
 27 be obtained elsewhere at an overall cost lower than that for which  
 28 the equipment can be obtained under the program. Such  
 29 lease-purchase agreements may include the refinancing or



30 consolidation, or both, of any state agency lease-purchase  
31 agreements entered into after June 30, 1990.

32 (2) All funds designated by agencies for procurement of  
33 equipment and financing thereof under the master lease-purchase  
34 program shall be paid into a special fund created in the State  
35 Treasury known as the "Master Lease-Purchase Program Fund," which  
36 shall be used by the Department of Finance and Administration for  
37 payment to the lessors for equipment acquired under master  
38 lease-purchase agreements.

39 (3) Upon final approval of an appropriation bill, each  
40 agency shall submit to the Public Procurement Review Board a  
41 schedule of proposed equipment acquisitions for the master  
42 lease-purchase program. Upon approval of an equipment schedule by  
43 the Public Procurement Review Board with the advice of the  
44 Department of Information Technology Services, the Office of  
45 Purchasing and Travel, and the Division of Energy and  
46 Transportation of the Mississippi Development Authority as it  
47 pertains to energy efficient climate control systems, the Public  
48 Procurement Review Board shall forward a copy of the equipment  
49 schedule to the Department of Finance and Administration.

50 (4) The level of lease-purchase debt recommended by the  
51 Department of Finance and Administration shall be subject to  
52 approval by the State Bond Commission. After such approval, the  
53 Department of Finance and Administration shall be authorized to  
54 advertise and solicit written competitive proposals for a lessor,  
55 who will purchase the equipment pursuant to bid awards made by the  
56 using agency under a given category and then transfer the  
57 equipment to the Department of Finance and Administration as  
58 lessee, pursuant to a master lease-purchase agreement.

59 The Department of Finance and Administration shall select the  
60 successful proposer for the financing of equipment under the  
61 master lease-purchase program with the approval of the State Bond  
62 Commission.



63           (5) Each master lease-purchase agreement, and any subsequent  
64 amendments, shall include such terms and conditions as the State  
65 Bond Commission shall determine to be appropriate and in the  
66 public interest, and may include any covenants deemed necessary or  
67 desirable to protect the interests of the lessor, including, but  
68 not limited to, provisions setting forth the interest rate (or  
69 method for computing interest rates) for financing pursuant to  
70 such agreement, covenants concerning application of payments and  
71 funds held in the Master Lease-Purchase Program Fund, covenants to  
72 maintain casualty insurance with respect to equipment subject to  
73 the master lease-purchase agreement (and all state agencies are  
74 specifically authorized to purchase any insurance required by a  
75 master lease-purchase agreement) and covenants precluding or  
76 limiting the right of the lessee or user to acquire equipment  
77 within a specified time (not to exceed five (5) years) after  
78 cancellation on the basis of a failure to appropriate funds for  
79 payment of amounts due under a lease-purchase agreement covering  
80 comparable equipment. The State Bond Commission shall transmit  
81 copies of each such master lease-purchase agreement and each such  
82 amendment to the Joint Legislative Budget Committee. To the  
83 extent provided in any master lease-purchase agreement, title to  
84 equipment leased pursuant thereto shall be deemed to be vested in  
85 the state or the user of the equipment (as specified in such  
86 master lease-purchase agreement), subject to default under or  
87 termination of such master lease-purchase agreement.

88           A master lease-purchase agreement may provide for payment by  
89 the lessor to the lessee of the purchase price of the equipment to  
90 be acquired pursuant thereto prior to the date on which payment is  
91 due to the vendor for such equipment and that the lease payments  
92 by the lessee shall commence as though the equipment had been  
93 provided on the date of payment. If the lessee, or lessee's  
94 escrow agent, has sufficient funds for payment of equipment  
95 purchases prior to payment due date to vendor of equipment, such



96 funds shall be held or utilized on an as-needed basis for payment  
97 of equipment purchases either by the State Treasurer (in which  
98 event the master lease-purchase agreement may include provisions  
99 concerning the holding of such funds, the creation of a security  
100 interest for the benefit of the lessor in such funds until  
101 disbursed and other appropriate provisions approved by the Bond  
102 Commission) or by a corporate trustee selected by the Department  
103 of Finance and Administration (in which event the Department of  
104 Finance and Administration shall have the authority to enter into  
105 an agreement with such a corporate trustee containing terms and  
106 conditions approved by the Bond Commission). Earnings on any  
107 amount paid by the lessor prior to the acquisition of the  
108 equipment may be used to make lease payments under the master  
109 lease-purchase agreement or applied to pay costs and expenses  
110 incurred in connection with such lease-purchase agreement. In  
111 such event, the equipment use agreements with the user agency may  
112 provide for lease payments to commence upon the date of payment by  
113 the lessor and may also provide for a credit against such payments  
114 to the extent that investment receipts from investment of the  
115 purchase price are to be used to make lease-purchase payments.

116 (6) The annual rate of interest paid under any  
117 lease-purchase agreement authorized under this section shall not  
118 exceed the maximum interest rate to maturity on general obligation  
119 indebtedness permitted under Section 75-17-101.

120 (7) The Department of Finance and Administration shall  
121 furnish the equipment to the various agencies, also known as the  
122 user, pursuant to an equipment-use agreement developed by the  
123 Department of Finance and Administration. Such agreements shall  
124 require that all monthly payments due from such agency be paid,  
125 transferred or allocated into the Master Lease-Purchase Program  
126 Fund pursuant to a schedule established by the Department of  
127 Finance and Administration. In the event such sums are not paid  
128 by the defined payment period, the Executive Director of the



129 Department of Finance and Administration shall issue a requisition  
130 for a warrant to draw such amount as may be due from any funds  
131 appropriated for the use of the agency which has failed to make  
132 the payment as agreed.

133 (8) All master lease-purchase agreements executed under the  
134 authority of this section shall contain the following annual  
135 allocation dependency clause or an annual allocation dependency  
136 clause which is substantially equivalent thereto: "The  
137 continuation of each equipment schedule to this agreement is  
138 contingent in whole or in part upon the appropriation of funds by  
139 the Legislature to make the lease-purchase payments required under  
140 such equipment schedule. If the Legislature fails to appropriate  
141 sufficient funds to provide for the continuation of the  
142 lease-purchase payments under any such equipment schedule, then  
143 the obligations of the lessee and of the agency to make such  
144 lease-purchase payments and the corresponding provisions of any  
145 such equipment schedule to this agreement shall terminate on the  
146 last day of the fiscal year for which appropriations were made."

147 (9) The maximum lease term for any equipment acquired under  
148 the master lease-purchase program shall not exceed the useful life  
149 of such equipment as determined according to the upper limit of  
150 the asset depreciation range (ADR) guidelines for the Class Life  
151 Asset Depreciation Range System established by the Internal  
152 Revenue Service pursuant to the United States Internal Revenue  
153 Code and Regulations thereunder as in effect on December 31, 1980,  
154 or comparable depreciation guidelines with respect to any  
155 equipment not covered by ADR guidelines. The Department of  
156 Finance and Administration shall be deemed to have met the  
157 requirements of this subsection if the term of a master  
158 lease-purchase agreement does not exceed the weighted average  
159 useful life of all equipment covered by such agreement and the  
160 schedules thereto as determined by the Department of Finance and  
161 Administration. For purposes of this subsection, the "term of a



162 master lease-purchase agreement" shall be the weighted average  
163 maturity of all principal payments to be made under such master  
164 lease-purchase agreement and all schedules thereto.

165 (10) Interest paid on any master lease-purchase agreement  
166 under this section shall be exempt from State of Mississippi  
167 income taxation. All equipment, and the purchase thereof by any  
168 lessor, acquired under the master lease-purchase program and all  
169 lease-purchase payments with respect thereto shall be exempt from  
170 all Mississippi sales, use and ad valorem taxes.

171 (11) The Governor, in his annual executive budget to the  
172 Legislature, shall recommend appropriations sufficient to provide  
173 funds to pay all amounts due and payable during the applicable  
174 fiscal year under master lease-purchase agreements entered into  
175 pursuant to this section.

176 (12) Any master lease-purchase agreement reciting in  
177 substance that such agreement has been entered into pursuant to  
178 this section shall be conclusively deemed to have been entered  
179 into in accordance with all of the provisions and conditions set  
180 forth in this section. Any defect or irregularity arising with  
181 respect to procedures applicable to the acquisition of any  
182 equipment shall not invalidate or otherwise limit the obligation  
183 of the Department of Finance and Administration, or the state or  
184 any agency of the state, under any master lease-purchase agreement  
185 or any equipment-use agreement.

186 (13) There shall be maintained by the Department of Finance  
187 and Administration, with respect to each master lease-purchase  
188 agreement, an itemized statement of the cash price, interest  
189 rates, interest costs, commissions, debt service schedules and all  
190 other costs and expenses paid by the state incident to the  
191 lease-purchase of equipment under such agreement.

192 (14) Lease-purchase agreements entered into by the Board of  
193 Trustees of State Institutions of Higher Learning pursuant to the  
194 authority of Section 37-101-413 or by any other agency which has



195 specific statutory authority other than pursuant to Section  
196 31-7-13(e) to acquire equipment by lease-purchase shall not be  
197 made pursuant to the master lease-purchase program under this  
198 section, unless the Board of Trustees of State Institutions of  
199 Higher Learning or such other agency elects to participate as to  
200 part or all of its lease-purchase acquisitions in the master  
201 lease-purchase program pursuant to this section.

202 (15) The Department of Finance and Administration may  
203 develop a master lease-purchase program for school districts and,  
204 pursuant to that program, may execute on behalf of the school  
205 districts master lease-purchase agreements for equipment to be  
206 used by the school districts. The form and structure of this  
207 program shall be substantially the same as set forth in this  
208 section for the master lease-purchase program for state agencies.  
209 If sums due from a school district under the master lease-purchase  
210 program are not paid by the expiration of the defined payment  
211 period, the Executive Director of the Department of Finance and  
212 Administration shall withhold such amount that is due from the  
213 school district's minimum education or adequate education program  
214 fund allotments.

215 (16) The Department of Finance and Administration may  
216 develop a master lease-purchase program for community and junior  
217 college districts and, pursuant to that program, may execute on  
218 behalf of the community and junior college districts master  
219 lease-purchase agreements for equipment to be used by the  
220 community and junior college districts. The form and structure of  
221 this program must be substantially the same as set forth in this  
222 section for the master lease-purchase program for state agencies.  
223 If sums due from a community or junior college district under the  
224 master lease-purchase program are not paid by the expiration of  
225 the defined payment period, the Executive Director of the  
226 Department of Finance and Administration shall withhold an amount  
227 equal to the amount due under the program from any funds allocated



228 for that community or junior college district in the state  
229 appropriations for the use and support of the community and junior  
230 colleges.

231         **SECTION 2.** This act shall take effect and be in force from  
232 and after July 1, 2003.

