

By: Warren

To: Appropriations

HOUSE BILL NO. 1031

1 AN ACT TO AMEND SECTION 31-7-10, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO DEVELOP
3 A MASTER LEASE-PURCHASE PROGRAM FOR EQUIPMENT USED BY SCHOOL
4 DISTRICTS; AND FOR RELATED PURPOSES.

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

6 SECTION 1. Section 31-7-10, Mississippi Code of 1972, is
7 amended as follows:[BD1]

8 31-7-10. (1) In addition to its other powers and duties,
9 the Department of Finance and Administration shall have the
10 authority to develop a master lease-purchase program and, pursuant
11 to that program, shall have the authority to execute on behalf of
12 the state master lease-purchase agreements for equipment to be
13 used by an agency, as herein provided. Each agency electing to
14 acquire equipment by a lease-purchase agreement shall participate
15 in the Department of Finance and Administration's master
16 lease-purchase program, unless the Department of Finance and
17 Administration makes a determination that such equipment cannot be
18 obtained under the program or unless the equipment can be obtained
19 elsewhere at an overall cost lower than that for which the
20 equipment can be obtained under the program. Such lease-purchase
21 agreements may include the refinancing and/or consolidation of any
22 state agency lease-purchase agreements entered into after June 30,
23 1990.

24 (2) All funds designated by agencies for procurement of
25 equipment and financing thereof under the master lease-purchase
26 program shall be paid into a special fund hereby created in the
27 State Treasury known as the "Master Lease-Purchase Program Fund"

which shall be used by the Department of Finance and Administration for payment to the lessors for equipment acquired under master lease-purchase agreements.

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

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

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

(5) Each master lease-purchase agreement, and any subsequent amendments, shall include such terms and conditions as the State Bond Commission shall determine to be appropriate and in the public interest, and may include any covenants deemed necessary or desirable to protect the interests of the lessor, including, but not limited to, provisions setting forth the interest rate (or method for computing interest rates) for financing pursuant to such agreement, covenants concerning application of payments and funds held in the Master Lease-Purchase Program Fund, covenants to

65 maintain casualty insurance with respect to equipment subject to
66 the master lease-purchase agreement (and all state agencies are
67 specifically authorized to purchase any insurance required by a
68 master lease-purchase agreement) and covenants precluding or
69 limiting the right of the lessee or user to acquire equipment
70 within a specified time (not to exceed five (5) years) after
71 cancellation on the basis of a failure to appropriate funds for
72 payment of amounts due under a lease-purchase agreement covering
73 comparable equipment. The State Bond Commission shall transmit
74 copies of each such master lease-purchase agreement and each such
75 amendment to the Joint Legislative Budget Committee. To the
76 extent provided in any master lease-purchase agreement, title to
77 equipment leased pursuant thereto shall be deemed to be vested in
78 the state or the user of the equipment (as specified in such
79 master lease-purchase agreement), subject to default under or
80 termination of such master lease-purchase agreement.

81 A master lease-purchase agreement may provide for payment by
82 the lessor to the lessee of the purchase price of the equipment to
83 be acquired pursuant thereto prior to the date on which payment is
84 due to the vendor for such equipment and that the lease payments
85 by the lessee shall commence as though the equipment had been
86 provided on the date of payment. If the lessee, or lessee's
87 escrow agent, has sufficient funds for payment of equipment
88 purchases prior to payment due date to vendor of equipment, such
89 funds shall be held or utilized on an as needed basis for payment
90 of equipment purchases either by the State Treasurer (in which
91 event the master lease-purchase agreement may include provisions
92 concerning the holding of such funds, the creation of a security
93 interest for the benefit of the lessor in such funds until
94 disbursed and other appropriate provisions approved by the Bond
95 Commission) or by a corporate trustee selected by the Department
96 of Finance and Administration (in which event the Department of
97 Finance and Administration shall have the authority to enter into

98 an agreement with such a corporate trustee containing terms and
99 conditions approved by the bond commission). Earnings on any
100 amount paid by the lessor prior to the acquisition of the
101 equipment may be used to make lease payments under the master
102 lease-purchase agreement or applied to pay costs and expenses
103 incurred in connection with such lease-purchase agreement. In
104 such event, the equipment use agreements with the user agency may
105 provide for lease payments to commence upon the date of payment by
106 the lessor and may also provide for a credit against such payments
107 to the extent that investment receipts from investment of the
108 purchase price are to be used to make lease-purchase payments.

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

113 (7) The Department of Finance and Administration shall
114 furnish the equipment to the various agencies, also known as the
115 user, pursuant to an equipment-use agreement developed by the
116 Department of Finance and Administration. Such agreements shall
117 require that all monthly payments due from such agency be paid,
118 transferred or allocated into the Master Lease-Purchase Program
119 Fund pursuant to a schedule established by the Department of
120 Finance and Administration. In the event such sums are not paid
121 by the defined payment period, the Executive Director of the
122 Department of Finance and Administration shall issue a requisition
123 for a warrant to draw such amount as may be due from any funds
124 appropriated for the use of the agency which has failed to make
125 the payment as agreed.

126 (8) All master lease-purchase agreements executed under the
127 authority of this section shall contain the following annual
128 allocation dependency clause or an annual allocation dependency
129 clause which is substantially equivalent thereto: "The
130 continuation of each equipment schedule to this agreement is

contingent in whole or in part upon the appropriation of funds by the Legislature to make the lease-purchase payments required under such equipment schedule. If the Legislature fails to appropriate sufficient funds to provide for the continuation of the lease-purchase payments under any such equipment schedule, then the obligations of the lessee and of the agency to make such lease-purchase payments and the corresponding provisions of any such equipment schedule to this agreement shall terminate on the last day of the fiscal year for which appropriations were made."

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

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

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

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

179 (13) There shall be maintained by the Department of Finance
180 and Administration with respect to each master lease-purchase
181 agreement an itemized statement of the cash price, interest rates,
182 interest costs, commissions, debt service schedules and all other
183 costs and expenses paid by the state incident to the
184 lease-purchase of equipment under such agreement.

185 (14) Lease-purchase agreements entered into by the Board of
186 Trustees of State Institutions of Higher Learning pursuant to the
187 authority of Section 37-101-413 or by any other agency which has
188 specific statutory authority other than pursuant to Section
189 31-7-13(e) to acquire equipment by lease-purchase shall not be
190 made pursuant to the master lease-purchase program under this
191 section, unless the Board of Trustees of State Institutions of
192 Higher Learning or such other agency elects to participate as to
193 part or all of its lease-purchase acquisitions in the master
194 lease-purchase program pursuant to this section.

195 (15) The Department of Finance and Administration may
196 develop a master lease-purchase program for school districts and,

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

SECTION 2. This act shall take effect and be in force from
and after July 1, 2000.