

By: Representatives Brown, Eads, Frierson,
Mayo, Whittington

To: Appropriations

HOUSE BILL NO. 1389

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 COMMUNITY
4 AND JUNIOR COLLEGE 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:

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

27 (2) All funds designated by agencies for procurement of
28 equipment and financing thereof under the master lease-purchase



29 program shall be paid into a special fund * * * created in the
30 State Treasury known as the "Master Lease-Purchase Program Fund,"
31 which shall be used by the Department of Finance and
32 Administration for payment to the lessors for equipment acquired
33 under master lease-purchase agreements.

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

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

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

58 (5) Each master lease-purchase agreement, and any subsequent
59 amendments, shall include such terms and conditions as the State
60 Bond Commission shall determine to be appropriate and in the
61 public interest, and may include any covenants deemed necessary or



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

83 A master lease-purchase agreement may provide for payment by
84 the lessor to the lessee of the purchase price of the equipment to
85 be acquired pursuant thereto prior to the date on which payment is
86 due to the vendor for such equipment and that the lease payments
87 by the lessee shall commence as though the equipment had been
88 provided on the date of payment. If the lessee, or lessee's
89 escrow agent, has sufficient funds for payment of equipment
90 purchases prior to payment due date to vendor of equipment, such
91 funds shall be held or utilized on an as-needed basis for payment
92 of equipment purchases either by the State Treasurer (in which
93 event the master lease-purchase agreement may include provisions
94 concerning the holding of such funds, the creation of a security



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

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

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



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

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



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

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

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

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

187 (14) Lease-purchase agreements entered into by the Board of
188 Trustees of State Institutions of Higher Learning pursuant to the
189 authority of Section 37-101-413 or by any other agency which has
190 specific statutory authority other than pursuant to Section
191 31-7-13(e) to acquire equipment by lease-purchase shall not be
192 made pursuant to the master lease-purchase program under this



193 section, unless the Board of Trustees of State Institutions of
194 Higher Learning or such other agency elects to participate as to
195 part or all of its lease-purchase acquisitions in the master
196 lease-purchase program pursuant to this section.

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

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



226 **SECTION 2.** This act shall take effect and be in force from
227 and after July 1, 2002.

