

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.

