

By: Representative Young

To: Universities and
Colleges; Appropriations

HOUSE BILL NO. 1187

1 AN ACT TO AMEND SECTION 31-7-1, MISSISSIPPI CODE OF 1972, TO
2 REMOVE THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER
3 LEARNING AND THE STATE INSTITUTIONS FROM THE PURVIEW OF THE PUBLIC
4 PURCHASING LAWS; TO AMEND SECTION 31-7-10, MISSISSIPPI CODE OF
5 1972, TO CONFORM TO THE PRECEDING PROVISION; TO REQUIRE THE BOARD
6 OF TRUSTEES TO PRESCRIBE RULES AND REGULATIONS GOVERNING PURCHASES
7 BY THE STATE INSTITUTIONS; AND FOR RELATED PURPOSES.

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

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

11 31-7-1. The following terms are defined for the purposes of
12 this chapter to have the following meanings:

13 (a) "Agency" shall mean any state board, commission,
14 committee, council, * * * department or unit thereof created by
15 the Constitution or statutes if such board, commission, committee,
16 council, * * * department, unit or the head thereof is authorized
17 to appoint subordinate staff by the Constitution or statute,
18 except the term "agency" does not include a legislative or
19 judicial board, commission, committee, council, department or unit
20 thereof, the Board of Trustees of State Institutions of Higher
21 Learning or any state institution of higher learning.

22 (b) "Governing authority" shall mean boards of
23 supervisors, governing boards of all school districts, all boards
24 of directors of public water supply districts, boards of directors
25 of master public water supply districts, municipal public utility
26 commissions, governing authorities of all municipalities, port
27 authorities, commissioners and boards of trustees of any public
28 hospitals, boards of trustees of public library systems, district
29 attorneys, school attendance officers and any political

30 subdivision of the state supported wholly or in part by public
31 funds of the state or political subdivisions thereof, including
32 commissions, boards and agencies created or operated under the
33 authority of any county or municipality of this state. The term
34 "governing authority" shall not include economic development
35 authorities supported in part by private funds, or commissions
36 appointed to hold title to and oversee the development and
37 management of lands and buildings which are donated by private
38 individuals to the public for the use and benefit of the community
39 and which are supported in part by private funds.

40 (c) "Purchasing agent" shall mean any administrator,
41 superintendent, purchase clerk or other chief officer so
42 designated having general or special authority to negotiate for
43 and make private contract for or purchase for any governing
44 authority or agency.

45 (d) "Public funds" shall mean and include any
46 appropriated funds, special funds, fees or any other emoluments
47 received by an agency or governing authority.

48 (e) "Commodities" shall mean and include the various
49 commodities, goods, merchandise, furniture, equipment, automotive
50 equipment of every kind, and other personal property purchased by
51 the agencies of the state and governing authorities, but not
52 commodities purchased for resale or raw materials converted into
53 products for resale.

54 (i) "Equipment" shall be construed to include:
55 automobiles, trucks, tractors, office appliances and all other
56 equipment of every kind and description.

57 (ii) "Furniture" shall be construed to include:
58 desks, chairs, tables, seats, filing cabinets, bookcases and all
59 other items of a similar nature * * *, appliances, carpets and all
60 other items of personal property generally referred to as home,
61 office or school furniture.

62 (f) "Emergency" shall mean any circumstances caused by
63 fire, flood, explosion, storm, earthquake, epidemic, riot,
64 insurrection or caused by any inherent defect due to defective
65 construction, or when the immediate preservation of order or of
66 public health is necessary by reason of unforeseen emergency, or
67 when the immediate restoration of a condition of usefulness of any
68 public building, equipment, road or bridge appears advisable, or
69 in the case of a public utility when there is a failure of any
70 machine or other thing used and useful in the generation,
71 production or distribution of electricity, water or natural gas,
72 or in the transportation or treatment of sewage; or when the delay
73 incident to obtaining competitive bids could cause adverse impact
74 upon the governing authorities or agency, its employees or its
75 citizens; or in the case of a public airport, when the delay
76 incident to publishing an advertisement for competitive bids would
77 endanger public safety in a specific (not general) manner, result
78 in or perpetuate a specific breach of airport security, or prevent
79 the airport from providing specific air transportation services.

80 (g) "Construction" shall mean the process of building,
81 altering, improving, renovating or demolishing a public structure,
82 public building, or other public real property. It does not
83 include routine operation, routine repair or regularly scheduled
84 maintenance of existing public structures, public buildings or
85 other public real property.

86 (h) "Purchase" shall mean buying, renting, leasing or
87 otherwise acquiring.

88 (i) "Certified purchasing office" shall mean any
89 purchasing office wherein fifty percent (50%) or more of the
90 purchasing agents hold a certification from the Universal Public
91 Purchasing Certification Council or other nationally recognized
92 purchasing certification.

93 **SECTION 2.** Section 31-7-10, Mississippi Code of 1972, is
94 amended as follows:

95 31-7-10. (1) For the purposes of this section, the term
96 "equipment" shall mean equipment, furniture, and if applicable,
97 associated software and other applicable direct costs associated
98 with the acquisition. In addition to its other powers and duties,
99 the Department of Finance and Administration shall have the
100 authority to develop a master lease-purchase program and, pursuant
101 to that program, shall have the authority to execute on behalf of
102 the state master lease-purchase agreements for equipment to be
103 used by an agency, as provided in this section. Each agency
104 electing to acquire equipment by a lease-purchase agreement shall
105 participate in the Department of Finance and Administration's
106 master lease-purchase program, unless the Department of Finance
107 and Administration makes a determination that such equipment
108 cannot be obtained under the program or unless the equipment can
109 be obtained elsewhere at an overall cost lower than that for which
110 the equipment can be obtained under the program. Such
111 lease-purchase agreements may include the refinancing or
112 consolidation, or both, of any state agency lease-purchase
113 agreements entered into after June 30, 1990.

114 (2) All funds designated by agencies for procurement of
115 equipment and financing thereof under the master lease-purchase
116 program shall be paid into a special fund created in the State
117 Treasury known as the "Master Lease-Purchase Program Fund," which
118 shall be used by the Department of Finance and Administration for
119 payment to the lessors for equipment acquired under master
120 lease-purchase agreements.

121 (3) Upon final approval of an appropriation bill, each
122 agency shall submit to the Public Procurement Review Board a
123 schedule of proposed equipment acquisitions for the master
124 lease-purchase program. Upon approval of an equipment schedule by
125 the Public Procurement Review Board with the advice of the
126 Department of Information Technology Services, the Office of
127 Purchasing, Travel and Fleet Management, and the Division of

128 Energy and Transportation of the Mississippi Development Authority
129 as it pertains to energy efficient climate control systems, the
130 Public Procurement Review Board shall forward a copy of the
131 equipment schedule to the Department of Finance and
132 Administration.

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

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

146 (5) Each master lease-purchase agreement, and any subsequent
147 amendments, shall include such terms and conditions as the State
148 Bond Commission shall determine to be appropriate and in the
149 public interest, and may include any covenants deemed necessary or
150 desirable to protect the interests of the lessor, including, but
151 not limited to, provisions setting forth the interest rate (or
152 method for computing interest rates) for financing pursuant to
153 such agreement, covenants concerning application of payments and
154 funds held in the Master Lease-Purchase Program Fund, covenants to
155 maintain casualty insurance with respect to equipment subject to
156 the master lease-purchase agreement (and all state agencies are
157 specifically authorized to purchase any insurance required by a
158 master lease-purchase agreement) and covenants precluding or
159 limiting the right of the lessee or user to acquire equipment
160 within a specified time (not to exceed five (5) years) after

161 cancellation on the basis of a failure to appropriate funds for
162 payment of amounts due under a lease-purchase agreement covering
163 comparable equipment. The State Bond Commission shall transmit
164 copies of each such master lease-purchase agreement and each such
165 amendment to the Joint Legislative Budget Committee. To the
166 extent provided in any master lease-purchase agreement, title to
167 equipment leased pursuant thereto shall be deemed to be vested in
168 the state or the user of the equipment (as specified in such
169 master lease-purchase agreement), subject to default under or
170 termination of such master lease-purchase agreement.

171 A master lease-purchase agreement may provide for payment by
172 the lessor to the lessee of the purchase price of the equipment to
173 be acquired pursuant thereto prior to the date on which payment is
174 due to the vendor for such equipment and that the lease payments
175 by the lessee shall commence as though the equipment had been
176 provided on the date of payment. If the lessee, or lessee's
177 escrow agent, has sufficient funds for payment of equipment
178 purchases prior to payment due date to vendor of equipment, such
179 funds shall be held or utilized on an as-needed basis for payment
180 of equipment purchases either by the State Treasurer (in which
181 event the master lease-purchase agreement may include provisions
182 concerning the holding of such funds, the creation of a security
183 interest for the benefit of the lessor in such funds until
184 disbursed and other appropriate provisions approved by the Bond
185 Commission) or by a corporate trustee selected by the Department
186 of Finance and Administration (in which event the Department of
187 Finance and Administration shall have the authority to enter into
188 an agreement with such a corporate trustee containing terms and
189 conditions approved by the Bond Commission). Earnings on any
190 amount paid by the lessor prior to the acquisition of the
191 equipment may be used to make lease payments under the master
192 lease-purchase agreement or applied to pay costs and expenses
193 incurred in connection with such lease-purchase agreement. In

194 such event, the equipment-use agreements with the user agency may
195 provide for lease payments to commence upon the date of payment by
196 the lessor and may also provide for a credit against such payments
197 to the extent that investment receipts from investment of the
198 purchase price are to be used to make lease-purchase payments.

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

203 (7) The Department of Finance and Administration shall
204 furnish the equipment to the various agencies, also known as the
205 user, pursuant to an equipment-use agreement developed by the
206 Department of Finance and Administration. Such agreements shall
207 require that all monthly payments due from such agency be paid,
208 transferred or allocated into the Master Lease-Purchase Program
209 Fund pursuant to a schedule established by the Department of
210 Finance and Administration. In the event such sums are not paid
211 by the defined payment period, the Executive Director of the
212 Department of Finance and Administration shall issue a requisition
213 for a warrant to draw such amount as may be due from any funds
214 appropriated for the use of the agency which has failed to make
215 the payment as agreed.

216 (8) All master lease-purchase agreements executed under the
217 authority of this section shall contain the following annual
218 allocation dependency clause or an annual allocation dependency
219 clause which is substantially equivalent thereto: "The
220 continuation of each equipment schedule to this agreement is
221 contingent in whole or in part upon the appropriation of funds by
222 the Legislature to make the lease-purchase payments required under
223 such equipment schedule. If the Legislature fails to appropriate
224 sufficient funds to provide for the continuation of the
225 lease-purchase payments under any such equipment schedule, then
226 the obligations of the lessee and of the agency to make such

227 lease-purchase payments and the corresponding provisions of any
228 such equipment schedule to this agreement shall terminate on the
229 last day of the fiscal year for which appropriations were made."

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

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

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

259 (12) Any master lease-purchase agreement reciting in
260 substance that such agreement has been entered into pursuant to
261 this section shall be conclusively deemed to have been entered
262 into in accordance with all of the provisions and conditions set
263 forth in this section. Any defect or irregularity arising with
264 respect to procedures applicable to the acquisition of any
265 equipment shall not invalidate or otherwise limit the obligation
266 of the Department of Finance and Administration, or the state or
267 any agency of the state, under any master lease-purchase agreement
268 or any equipment-use agreement.

269 (13) There shall be maintained by the Department of Finance
270 and Administration, with respect to each master lease-purchase
271 agreement, an itemized statement of the cash price, interest
272 rates, interest costs, commissions, debt service schedules and all
273 other costs and expenses paid by the state incident to the
274 lease-purchase of equipment under such agreement.

275 (14) Lease-purchase agreements entered into by the Board of
276 Trustees of State Institutions of Higher Learning * * * or by any
277 other agency which has specific statutory authority other than
278 pursuant to Section 31-7-13(e) to acquire equipment by
279 lease-purchase shall not be made pursuant to the master
280 lease-purchase program under this section, unless the Board of
281 Trustees of State Institutions of Higher Learning or such other
282 agency elects to participate as to part or all of its
283 lease-purchase acquisitions in the master lease-purchase program
284 pursuant to this section.

285 (15) The Department of Finance and Administration may
286 develop a master lease-purchase program for school districts and,
287 pursuant to that program, may execute on behalf of the school
288 districts master lease-purchase agreements for equipment to be
289 used by the school districts. The form and structure of this
290 program shall be substantially the same as set forth in this
291 section for the master lease-purchase program for state agencies.

292 If sums due from a school district under the master lease-purchase
293 program are not paid by the expiration of the defined payment
294 period, the Executive Director of the Department of Finance and
295 Administration may withhold such amount that is due from the
296 school district's minimum education or adequate education program
297 fund allotments.

298 (16) The Department of Finance and Administration may
299 develop a master lease-purchase program for community and junior
300 college districts and, pursuant to that program, may execute on
301 behalf of the community and junior college districts master
302 lease-purchase agreements for equipment to be used by the
303 community and junior college districts. The form and structure of
304 this program must be substantially the same as set forth in this
305 section for the master lease-purchase program for state agencies.
306 If sums due from a community or junior college district under the
307 master lease-purchase program are not paid by the expiration of
308 the defined payment period, the Executive Director of the
309 Department of Finance and Administration may withhold an amount
310 equal to the amount due under the program from any funds allocated
311 for that community or junior college district in the state
312 appropriations for the use and support of the community and junior
313 colleges.

314 **SECTION 3.** (1) The Board of Trustees of State Institutions
315 of Higher Learning and the state institutions of higher learning
316 are exempt from the rules and regulations prescribed by the
317 Department of Finance and Administration for the administration of
318 the public purchasing laws of the state. The board shall
319 prescribe rules and regulations to coordinate and promote
320 efficiency and economy in the purchase of commodities by the state
321 institutions of higher learning.

322 (2) The Board of Trustees of State Institutions of Higher
323 Learning shall develop administrative procedures to supervise the

324 state institutions through its director and other supervisory
325 personnel in the performance of the following duties:

326 (a) A study of the purchases of commodities by the
327 state institutions, the compilation, exchange and coordination of
328 information concerning those purchases, and the distribution of
329 information to state institutions that request such information;
330 and

331 (b) The planning and coordination of purchases in
332 volume for the state institutions in order to take advantage of
333 and secure the economies possible by volume purchasing; the
334 arrangement of agreements between state institutions whereby one
335 may make a purchase or purchases for the other; the arrangement of
336 agreements whereby purchases of commodities can be at a fair
337 price, less depreciated value; the negotiations and execution of
338 purchasing agreements and contracts through and under which the
339 board of trustees may require state institutions to purchase; and
340 the obtaining or establishment of methods for obtaining of
341 competitive bid prices upon which any state institutions may
342 purchase at the price approved by the board of trustees.

343 (3) The Board of Trustees of State Institutions of Higher
344 Learning shall adopt purchasing regulations governing the purchase
345 by any state institution of higher learning of any commodity or
346 commodities and establish standards and specifications for a
347 commodity or commodities and establish the maximum fair prices of
348 a commodity or commodities. The board may amend, add to or
349 eliminate purchasing regulations. Upon the adoption of any
350 purchasing regulation or amendment to or elimination of a
351 regulation, copies of the regulation must be furnished to the
352 State Auditor.

353 **SECTION 4.** This act shall take effect and be in force from
354 and after July 1, 2007.