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3 SENATE GOVERNMENTAL AFFAIRS COMMITTEE SUBSTITUTE FOR HB38
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8 SYNOPSIS: Under existing law, the competitive bid laws
9 apply to purchases of goods and services over
10 \$15,000 by city or county boards of education and
11 other governmental entities excluding public works.
12 Purchases of goods or services are excluded from
13 the laws if the purchases are made through a
14 purchasing cooperative sponsored by the National
15 Association of Counties or other governmental
16 cooperative purchasing programs if the goods or
17 services are purchased as a result of a competitive
18 bid process approved by the Department of Examiners
19 of Public Accounts. The law does not specifically
20 include in the exclusion goods or services
21 purchased pursuant to a lease or a lease/purchase
22 agreement.

23 This bill would amend the competitive bid
24 laws applicable to the purchase or leases of goods
25 and services by city and county boards of education
26 and other governmental entities to specifically
27 include leases and lease/purchase agreements within

1 the exclusions from the laws for purchases made
2 through national or regional cooperative purchasing
3 agreements.

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5 A BILL
6 TO BE ENTITLED
7 AN ACT
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9 Relating to competitive bids for certain contracts
10 with city or county boards of education and other governmental
11 entities; to amend Section 16-13B-2, Code of Alabama 1975,
12 relating to competitive bids on certain contracts by city and
13 county boards of education, and Section 41-16-51, Code of
14 Alabama 1975, relating to competitive bids on certain
15 contracts by state and local governmental agencies; to specify
16 that the exclusion for the purchases or lease of goods and
17 services made through national or regional cooperative
18 purchasing agreements includes leases and lease/purchase
19 agreements.

20 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

21 Section 1. Section 16-13B-2 and Section 41-16-51,
22 Code of Alabama 1975, are amended to read as follows:

23 "§16-13B-2.

24 "(a) Competitive bids shall not be required for
25 utility services for county or city boards of education, the
26 rates for which are fixed by law, regulation, or ordinance,

1 and the competitive bidding requirements of this chapter shall
2 not apply to:

3 "(1) The purchase of insurance.

4 "(2) Contracts for securing services of attorneys,
5 physicians, architects, teachers, superintendents of
6 construction, artists, appraisers, engineers, consultants,
7 certified public accountants, public accountants, or other
8 individuals possessing a high degree of professional skill
9 where the personality of the individual plays a decisive part.

10 "(3) Contracts of employment in the regular civil
11 service.

12 "(4) Contracts for fiscal or financial advice or
13 services.

14 "(5) Purchases of products made or manufactured by
15 the blind or visually handicapped under the direction or
16 supervision of the Alabama Institute for Deaf and Blind in
17 accordance with Sections 21-2-1 to 21-2-4, inclusive.

18 "(6) Purchases of maps or photographs from any
19 federal agency.

20 "(7) Purchases of manuscripts, books, maps,
21 pamphlets, or periodicals.

22 "(8) The selection of paying agents and trustees for
23 any security issued by a public body.

24 "(9) Existing contracts up for renewal for
25 sanitation or solid waste collection, recycling, or disposal
26 and those providing the service.

1 "(10) Purchases of computer and word processing
2 hardware when the hardware is the only type that is compatible
3 with hardware already owned by the entity taking bids and
4 custom software.

5 "(11) Contractual services and purchases of
6 commodities for which there is only one vendor or supplier and
7 contractual services and purchases of personal property which
8 by their very nature are impossible to award by competitive
9 bidding.

10 "(12) Contractual services and purchases of products
11 related to, or having an impact upon, security plans,
12 procedures, assessments, measures, or systems, or the security
13 or safety of persons, structures, facilities, or
14 infrastructures.

15 "(13) Purchases, leases, or lease/purchase of goods
16 or services, other than voice or data wireless communication
17 services, made as a part of any purchasing cooperative
18 sponsored by the National Association of Counties, its
19 successor organization, or any other national or regional
20 governmental cooperative purchasing program. ~~Such~~ The
21 purchases, leases, or lease/purchase may only be made if all
22 of the following occur:

23 "a. The goods or services being purchased, including
24 those purchased through a lease/purchase agreement, or leased
25 are available as a result of a competitive bid process
26 approved by the Department of Examiners of Public Accounts for
27 each bid.

1 "b. The goods or services are either not at the time
2 available to local boards of education on the state purchasing
3 program or are available at a price equal to or less than that
4 on the state purchasing program.

5 "c. The purchase, lease, or lease/purchase is made
6 through a participating Alabama vendor holding an Alabama
7 business license if such a vendor exists.

8 "(14) Purchases of unprocessed agricultural products
9 as defined in subsection (b) of Section 16-1-46 and the cost
10 of the food purchased is equal to or less than the federal
11 simplified acquisition threshold set in 2 C.F.R. §200.88.

12 "(15) Purchase of goods or services, other than
13 voice or data wireless communication services, from vendors
14 that have been awarded a current and valid general services
15 administration contract. Prices paid for the goods or services
16 may not exceed the lowest competitively bid price for these
17 goods or services, other than voice or data wireless
18 communication services, and may not exceed the price on an
19 existing state purchasing program.

20 "(b) This chapter shall not apply to:

21 "(1) Any purchases of products where the price of
22 the products is already regulated and established by state
23 law.

24 "(2) Purchases made by individual schools of the
25 county or municipal public school systems from moneys other
26 than those raised by taxation or received through
27 appropriations from state or county sources.

1 "(c) The city and county boards of education shall
2 establish and maintain such purchasing facilities and
3 procedures as may be necessary to carry out the intent and
4 purpose of this chapter by complying with the requirements for
5 competitive bidding in the operation and management of each
6 city and county board of education.

7 "(d) Contracts entered into in violation of this
8 chapter shall be void, and anyone who violates this chapter
9 shall be guilty of a Class C felony.

10 "§41-16-51.

11 "(a) Competitive bids for entities subject to this
12 article shall not be required for utility services, the rates
13 for which are fixed by law, regulation, or ordinance, and the
14 competitive bidding requirements of this article shall not
15 apply to:

16 "(1) The purchase of insurance.

17 "(2) The purchase of ballots and supplies for
18 conducting any primary, general, special, or municipal
19 election.

20 "(3) Contracts for securing services of attorneys,
21 physicians, architects, teachers, superintendents of
22 construction, artists, appraisers, engineers, consultants,
23 certified public accountants, public accountants, or other
24 individuals possessing a high degree of professional skill
25 where the personality of the individual plays a decisive part.

26 "(4) Contracts of employment in the regular civil
27 service.

1 "(5) Contracts for fiscal or financial advice or
2 services.

3 "(6) Purchases of products made or manufactured by
4 the blind or visually handicapped under the direction or
5 supervision of the Alabama Institute for Deaf and Blind in
6 accordance with Sections 21-2-1 to 21-2-4, inclusive.

7 "(7) Purchases of maps or photographs from any
8 federal agency.

9 "(8) Purchases of manuscripts, books, maps,
10 pamphlets, periodicals, and library/research electronic data
11 bases of manuscripts, books, maps, pamphlets, or periodicals.

12 "(9) The selection of paying agents and trustees for
13 any security issued by a public body.

14 "(10) Existing contracts up for renewal for
15 sanitation or solid waste collection, recycling, and disposal
16 between municipalities or counties, or both, and those
17 providing the service.

18 "(11) Purchases of computer and word processing
19 hardware when the hardware is the only type that is compatible
20 with hardware already owned by the entity taking bids and
21 custom software.

22 "(12) Professional services contracts for
23 codification and publication of the laws and ordinances of
24 municipalities and counties.

25 "(13) Contractual services and purchases of
26 commodities for which there is only one vendor or supplier and
27 contractual services and purchases of personal property which

1 by their very nature are impossible to award by competitive
2 bidding.

3 "(14) Purchases of dirt, sand, or gravel by a county
4 governing body from in-county property owners in order to
5 supply a county road or bridge project in which the materials
6 will be used. The material shall be delivered to the project
7 site by county employees and equipment used only on projects
8 conducted exclusively by county employees.

9 "(15) Contractual services and purchases of products
10 related to, or having an impact upon, security plans,
11 procedures, assessments, measures, or systems, or the security
12 or safety of persons, structures, facilities, or
13 infrastructures.

14 "(16) Subject to the limitations in this
15 subdivision, purchases, leases, or lease/purchases of goods or
16 services, other than voice or data wireless communication
17 services, made as a part of the purchasing cooperative
18 sponsored by the National Association of Counties, its
19 successor organization, or any other national or regional
20 governmental cooperative purchasing program. ~~Such~~ The
21 purchases, leases, or lease/purchases may only be made if all
22 of the following occur:

23 "a. The goods or services being purchased, including
24 those purchased through a lease/purchase agreement, or leased
25 are available as a result of a competitive bid process
26 conducted by a governmental entity and approved by the Alabama
27 Department of Examiners of Public Accounts for each bid.

1 "b. The goods or services are either not at the time
2 available to counties on the state purchasing program or are
3 available at a price equal to or less than that on the state
4 purchasing program.

5 "c. The purchase, lease, or lease/purchase is made
6 through a participating Alabama vendor holding an Alabama
7 business license if such a vendor exists.

8 "d. The entity purchasing, leasing, or
9 lease/purchasing goods or services under this subdivision has
10 been notified by the Department of Examiners of Public
11 Accounts that the competitive bid process utilized by the
12 cooperative program offering the goods complies with this
13 subdivision.

14 "(17) Purchase of goods or services, other than
15 wireless communication services, whether voice or data, from
16 vendors that have been awarded a current and valid Government
17 Services Administration contract. Any purchase made pursuant
18 to this subdivision shall be under the same terms and
19 conditions as provided in the Government Services
20 Administration contract. Prices paid for such goods and
21 services, other than wireless communication services, whether
22 voice or data, may not exceed the amount provided in the
23 Government Services Administration contract.

24 "(b) This article shall not apply to:

25 "(1) Any purchases of products where the price of
26 the products is already regulated and established by state
27 law.

1 "(2) Purchases made by individual schools of the
2 county or municipal public school systems from moneys other
3 than those raised by taxation or received through
4 appropriations from state or county sources.

5 "(3) The purchase, lease, sale, construction,
6 installation, acquisition, improvement, enlargement, or
7 expansion of any building or structure or other facility
8 designed or intended for lease or sale by a medical clinic
9 board organized under Sections 11-58-1 to 11-58-14, inclusive.

10 "(4) The purchase, lease, or other acquisition of
11 machinery, equipment, supplies, and other personal property or
12 services by a medical clinic board organized under Sections
13 11-58-1 to 11-58-14, inclusive.

14 "(5) Purchases for public hospitals and nursing
15 homes operated by the governing boards of instrumentalities of
16 the state, counties, and municipalities.

17 "(6) Contracts for the purchase, lease, sale,
18 construction, installation, acquisition, improvement,
19 enlargement, or extension of any plant, building, structure,
20 or other facility or any machinery, equipment, furniture, or
21 furnishings therefor designed or intended for lease or sale
22 for industrial development, other than public utilities, under
23 Sections 11-54-80 to 11-54-99, inclusive, or Sections 11-54-20
24 to 11-54-28, inclusive, or any other statute or amendment to
25 the Constitution of Alabama authorizing the construction of
26 plants or other facilities for industrial development or for
27 the construction and equipment of buildings for public

1 building authorities under Sections 11-56-1 to 11-56-22,
2 inclusive.

3 "(7) The purchase of equipment, supplies, or
4 materials needed, used, and consumed in the normal and routine
5 operation of any waterworks system, sanitary sewer system, gas
6 system, or electric system, or any two or more thereof, that
7 are owned by municipalities, counties, or public corporations,
8 boards, or authorities that are agencies, departments, or
9 instrumentalities of municipalities or counties and no part of
10 the operating expenses of which system or systems have, during
11 the then current fiscal year, been paid from revenues derived
12 from taxes or from appropriations of the state, a county, or a
13 municipality.

14 "(8) Purchases made by local housing authorities,
15 organized and existing under Chapter 1 of Title 24, from
16 moneys other than those raised by state, county, or city
17 taxation or received through appropriations from state,
18 county, or city sources.

19 "(c) The state trade schools, state junior colleges,
20 state colleges, and universities under the supervision and
21 control of the State Board of Education, the district boards
22 of education of independent school districts, the county
23 commissions, and the governing bodies of the municipalities of
24 the state shall establish and maintain such purchasing
25 facilities and procedures as may be necessary to carry out the
26 intent and purpose of this article by complying with the
27 requirements for competitive bidding in the operation and

1 management of each state trade school, state junior college,
2 state college, or university under the supervision and control
3 of the State Board of Education, the district boards of
4 education of independent school districts, the county
5 commissions, and the governing bodies of the municipalities of
6 the state and the governing boards of instrumentalities of
7 counties and municipalities, including waterworks boards,
8 sewer boards, gas boards, and other like utility boards and
9 commissions.

10 "(d) Contracts entered into in violation of this
11 article shall be void and anyone who violates the provisions
12 of this article shall be guilty of a Class C felony."

13 Section 2. This act shall become effective
14 immediately following its passage and approval by the
15 Governor, or its otherwise becoming law.