SB418

110107-3

By Senators Preuitt, Means, Little (Z), French, Denton, Butler, and Orr

RFD: Finance and Taxation Education

First Read: 19-FEB-09
ENROLLED, An Act,

To add Chapter 13B to Title 16, consisting of Sections 16-13B-1 to 16-13B-11, inclusive, to the Code of Alabama 1975, relating to competitive bid laws for city and county boards of education; to amend Sections 41-16-50 and 41-16-51, Code of Alabama 1975, relating to competitive bid laws; to remove the city and county boards of education from the competitive bid laws in Title 41 and provide substantially the same provisions in Title 16; to provide penalties for certain violations; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. A new Chapter 13B, consisting of Sections 16-13B-1 to 16-13B-11, inclusive, is added to the Code of Alabama 1975, to read as follows:

Chapter 13B, Competitive Bidding for Certain Contracts of County and City Boards of Education.

§16-13B-1.
(a) This chapter shall apply to county boards of education and city boards of education, or any combination of city and county boards of education as herein provided for the competitive bidding of certain contracts. With the exception of contracts for public works whose competitive bidding requirements are governed exclusively by Title 39, all expenditure of funds of whatever nature for labor, services, work, or for the purchase of materials, equipment, supplies, or other personal property involving fifteen thousand dollars ($15,000) or more, and the lease of materials, equipment, supplies, or other personal property where the lessee is, or becomes legally and contractually, bound under the terms of the lease, to pay a total amount of fifteen thousand dollars ($15,000) or more, made by or on behalf of any city or county board of education, except as hereinafter provided, shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder. Prior to advertising for bids for an item of personal property, where a city or county board of education, thereof is the awarding authority, the awarding authority may establish a local preference zone consisting of either the legal boundaries or jurisdiction of the awarding authority, or the boundaries of the county in which the awarding authority is located, or the boundaries of the Core Based Statistical Area (CBSA) in which the awarding authority is located. If no
such action is taken by the awarding authority, the boundaries
of the local preference zone shall be deemed to be the same as
the legal boundaries or jurisdiction of the awarding
authority. In the event a bid is received for an item of
personal property to be purchased or contracted for from a
person, firm, or corporation deemed to be a responsible
bidder, having a place of business within the local preference
zone where a city or county board of education, thereof is the
awarding authority, and the bid is no more than three percent
greater than the bid of the lowest responsible bidder, the
awarding authority may award the contract to the resident
responsible bidder. In the event only one bidder responds to
the invitation to bid, the awarding authority may reject the
bid and negotiate the purchase or contract, providing the
negotiated price is lower than the bid price.

(b) The governing bodies of two or more city or
county boards of education, or any combination of two or more
city or county boards of education, counties, municipalities,
or instrumentalities thereof, may provide, by joint agreement,
for the purchase of labor, services, or work, or for the
purchase or lease of materials, equipment, supplies, or other
personal property for use by their respective agencies. The
agreement shall be entered into by official actions of the
contracting agencies adopted by each of the participating
governing bodies which shall set forth the categories of
labor, services, or work, or for the purchase or lease of materials, equipment, supplies, or other personal property to be purchased, the manner of advertising for bids and the awarding of contracts, the method of payment by each participating contracting agency, and other matters deemed necessary to carry out the purposes of the agreement. Each contracting agency's share of expenditures for purchases under any agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the contracting agency. The contracting agencies entering into a joint agreement, as herein permitted, may designate a joint purchasing or bidding agent, and the agent shall comply with this chapter. Purchases, contracts, or agreements made pursuant to a joint purchasing or bidding agreement shall be subject to all terms and conditions of this chapter. Any participation by counties and municipalities authorized in this section shall be subject to the provisions of section 41-16-50 (b), Code of Alabama 1975.

In the event that utility services are no longer exempt from competitive bidding under this chapter, non-adjointing boards of education may not purchase utility services by joint agreement under authority granted by this subsection.

(c) The awarding authority may require bidders to furnish a bid bond for a particular bid solicitation if the
bonding requirement applies to all bidders, is included in the
written bid specifications, and if bonding is available for
the services, equipment, or materials.

§16-13B-2.

(a) Competitive bids shall not be required for
utility services for county or city boards of education, the
rates for which are fixed by law, regulation, or ordinance,
and the competitive bidding requirements of this chapter shall
not apply to:

(1) The purchase of insurance.

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

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

(4) Contracts for fiscal or financial advice or
services.

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

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

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

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

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

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

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

(13) Purchases of goods made as a part of any purchasing cooperative sponsored by the National Association
of Counties, or its successor organization. This subdivision shall not apply to goods for which a service or service contract, whether subject to competitive bidding under this chapter or not, is necessary to utilize the goods. Such purchases may only be made if all of the following occur:

a. The goods being purchased are available as a result of a competitive bid process approved by the Alabama Department of Examiners of Public Accounts for each bid.

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

c. The purchase is made through a participating Alabama vendor holding an Alabama business license if such a vendor exists.

(b) This chapter shall not apply to:

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

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

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

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

§16-13B-3.

In case of emergency affecting public health, safety
or convenience, so declared in writing by the awarding
authority, setting forth the nature of the danger to public
health, safety or convenience involved in delay, contracts may
be let to the extent necessary to meet the emergency without
public advertisement. Such action and the reasons therefor
shall immediately be made public by the awarding authority.

§16-13B-4.

(a) All proposed purchases in excess of fifteen
thousand dollars ($15,000) shall be advertised by posting
notice thereof on a bulletin board maintained outside the
purchasing office and in any other manner and for any length
of time as may be determined. Sealed bids or bids to be
submitted by a reverse auction procedure shall also be
solicited by sending notice by mail or other electronic means
to all persons, firms, or corporations who have filed a
request in writing that they be listed for solicitation on
bids for the particular items that are set forth in the
request. If any person, firm, or corporation whose name is listed fails to respond to any solicitation for bids after the receipt of three solicitations, the listing may be cancelled.

(b) Except as provided in subsection (c), all bids shall be sealed when received and shall be opened in public at the hour stated in the notice.

(c) The awarding authority may make purchases or contracts through a reverse auction procedure; provided, however, that a reverse auction shall only be allowed where the item to be purchased at a reverse auction is either not at the time available on the state purchasing program under the same terms and conditions or, if available, the lowest price offered in the reverse auction is equal to or less than the price for which the item is available on the state purchasing program under the same terms and conditions. All of the purchases shall be subject to audit by the Examiners of Public Accounts. For purposes of this chapter, a reverse auction procedure includes either of the following:

(1) A real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple anonymous suppliers submit bids to provide the designated goods or services.

(2) a. A bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in
which multiple anonymous suppliers submit bids to provide the
designated goods or services.

(b) The Department of Examiners of Public Accounts
shall establish procedures for the use of reverse auction,
which shall be distributed to all contracting agencies and
shall be used in conducting any audits of the purchasing
agency.

(d) All original bids together with all documents
pertaining to the award of the contract shall be retained in
accordance with a retention period of at least seven years
established by the Local Government Records Commission and
shall be open to public inspection.

(e) No purchase or contract involving professional
services shall be subject to the requirements of this chapter
and no purchase or contract involving an amount in excess of
fifteen thousand dollars ($15,000) shall be divided into parts
involving amounts of fifteen thousand dollars ($15,000) or
less for the purpose of avoiding the requirements of this
chapter. All such partial contracts involving fifteen thousand
dollars ($15,000) or less shall be void.

§16-13B-5.

Any agreement or collusion among bidders or
prospective bidders in restraint of freedom of competition, by
agreement, to bid at a fixed price or to refrain from bidding
or otherwise shall render the bids of such bidders void and
shall cause such bidders to be disqualified from submitting
further bids to the awarding authority on future purchases.

Whoever knowingly participates in a collusive
agreement in violation of this section involving a bid or bids
of fifteen thousand dollars ($15,000) and under shall be
guilty of a Class A misdemeanor and, upon conviction, shall be
punished as prescribed by law.

Whoever knowingly and intentionally participates in
a collusive agreement in violation of this section involving a
bid or bids of over fifteen thousand dollars ($15,000) shall
be guilty of a Class C felony, and upon conviction shall be
punished as prescribed by law.

§16-13B-6.

Any disclosure in advance of the terms of a bid
submitted in response to an advertisement for bids shall
render the proceedings void and require advertisement and
award anew.

§16-13B-7.

(a) When purchases are required to be made through
competitive bidding, awards shall be made to the lowest
responsible bidder taking into consideration the qualities of
the commodities proposed to be supplied, their conformity with
specifications, the purposes for which required, the terms of
delivery, transportation charges, and the dates of delivery.
If at any time after the award has been made the lowest
responsible bidder notifies the awarding authority in writing that the bidder will no longer comply with the terms of the award to provide the goods or services to the awarding authority under the terms and conditions of the original award, or the awarding authority documents that the lowest responsible bidder defaults under the terms of the original award, the awarding authority may terminate the award to the defaulting bidder and make an award to the second lowest responsible bidder for the remainder of the award period without rebidding, provided the award to the second lowest responsible bidder is in all respects made under the terms and conditions contained in the original bid specifications and is for the same or a lower price than the bid originally submitted to the awarding authority by the second lowest responsible bidder.

(b) The awarding authority in the purchase of or contract for personal property or contractual services shall give preference, provided there is no sacrifice or loss in price or quality, to commodities produced in Alabama or sold by Alabama persons, firms, or corporations. Notwithstanding the foregoing, no county or city board of education charged with the letting of contracts or purchase of materials for the construction, modification, alteration, or repair of any publicly owned facility may specify the use of materials or systems by a sole source, unless:
(1) The board of education can document to the satisfaction of the State of Alabama Building Commission that the "sole source" product or service is of an "indispensable" nature, all other viable alternatives have been explored, and it has been determined that only this product or service will fulfill the function for which the product is needed. Frivolous features will not be considered.

(2) The sole source specification has been recommended by the architect or engineer of record and who also documents that there is no other product available and that the use of the requirement is of an indispensable nature and why.

(3) All information substantiating the use of a sole source specification is documented in writing and is filed into the project file.

(c)(1) For purchases of personal property in instances where the awarding authority determines that the total cost of ownership over the expected life of the item or items, including acquisition costs plus sustaining costs or life cycle costs, can be reasonably ascertained from industry recognized and accepted sources, the lowest responsible bid may be determined to be the bid offering the lowest life cycle costs and otherwise meeting all of the conditions and specifications contained in the invitation to bid. To utilize this subdivision to determine the lowest responsible bidder,
the awarding authority shall include a notice in the
invitation to bid that the lowest responsible bid may be
determined by using life cycle costs and identify the industry
recognized and accepted sources that will be applicable to
such an evaluation.

(2) The Department of Examiners of Public Accounts
shall establish procedures for the use of life cycle costs,
which shall be distributed to all contracting agencies and
shall be used in conducting any audits of the purchasing
agency.

(d) The awarding authority or requisitioning agency
may reject any bid if the price is deemed excessive or quality
of product inferior.

(e) Each record, with the successful bid indicated
thereon, and with the reasons for the award if not awarded to
the lowest bidder, shall, after award of the order or
contract, be open to public inspection.

(f) Contracts for the purchase of personal property
or contractual services shall be let for periods not greater
than three years. "Lease-purchase" contracts for capital
improvements and repairs to real property shall be let for
periods not greater than 10 years and all other lease-purchase
contracts shall be let for periods not greater than 10 years.

§16-13B-8.
Bond in a responsible sum for faithful performance of the contract, with adequate surety, may be required in an amount specified in the advertisement for bids.

§16-13B-9.

No contract awarded to the lowest responsible bidder shall be assignable by the successful bidder without written consent of the awarding authority, and in no event shall a contract be assigned to an unsuccessful bidder whose bid was rejected because he was not a responsible bidder.

§16-13B-10.

No member or officer of the city and county boards of education shall be financially interested or have any personal beneficial interest, either directly or indirectly, in the purchase of or contract for any personal property or contractual service, nor shall any person willfully make any purchase or award any contract in violation of the provisions of this chapter.

Any violation of this section shall be deemed a misdemeanor, and any person who violates this section shall, upon conviction, be imprisoned for not more than 12 months or fined not more than five hundred dollars ($500), or both. Upon conviction thereof, any person who willfully makes any purchase or awards any contract in violation of the provisions of this chapter shall be removed from office.

§16-13B-11.
Any taxpayer of the area within the jurisdiction of the awarding authority and any bona fide unsuccessful bidder on a particular contract shall be empowered to bring a civil action in the appropriate court to enjoin execution of any contract entered into in violation of the provisions of this chapter.

Section 2. Sections 41-16-50 and 41-16-51, Code of Alabama 1975, are amended to read as follows:

"§41-16-50.

"(a) With the exception of contracts for public works whose competitive bidding requirements are governed exclusively by Title 39, all expenditure of funds of whatever nature for labor, services, work, or for the purchase of materials, equipment, supplies, or other personal property involving fifteen thousand dollars ($15,000) or more, and the lease of materials, equipment, supplies, or other personal property where the lessee is, or becomes legally and contractually, bound under the terms of the lease, to pay a total amount of fifteen thousand dollars ($15,000) or more, made by or on behalf of any state trade school, state junior college, state college, or university under the supervision and control of the State Board of Education, the district boards of education of independent school districts, the county commissions, the governing bodies of the municipalities of the state, and the governing boards of instrumentalities of
counties and municipalities, including waterworks boards, sewer boards, gas boards, and other like utility boards and commissions, except as hereinafter provided, shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder. Prior to advertising for bids for an item of personal property, where a county, a municipality, or an instrumentality thereof is the awarding authority, the awarding authority may establish a local preference zone consisting of either the legal boundaries or jurisdiction of the awarding authority, or the boundaries of the county in which the awarding authority is located, or the boundaries of the Core Based Statistical Area (CBSA) in which the awarding authority is located. If no such action is taken by the awarding authority, the boundaries of the local preference zone shall be deemed to be the same as the legal boundaries or jurisdiction of the awarding authority. In the event a bid is received for an item of personal property to be purchased or contracted for from a person, firm, or corporation deemed to be a responsible bidder, having a place of business within the local preference zone where the county, a municipality, or an instrumentality thereof is the awarding authority, and the bid is no more than three percent greater than the bid of the lowest responsible bidder, the awarding authority may award the contract to the resident responsible bidder. In the event
only one bidder responds to the invitation to bid, the
awarding authority may reject the bid and negotiate the
purchase or contract, providing the negotiated price is lower
than the bid price.

"(b) The governing bodies of two or more contracting
agencies, as enumerated in subsection (a), or the governing
bodies of two or more counties, or the governing bodies of two
or more city or county boards of education, may provide, by
joint agreement, for the purchase of labor, services, or work,
or for the purchase or lease of materials, equipment,
supplies, or other personal property for use by their
respective agencies. The agreement shall be entered into by
similar ordinances, in the case of municipalities, or
resolutions, in the case of other contracting agencies,
adopted by each of the participating governing bodies, which
shall set forth the categories of labor, services, or work, or
for the purchase or lease of materials, equipment, supplies,
or other personal property to be purchased, the manner of
advertising for bids and the awarding of contracts, the method
of payment by each participating contracting agency, and other
matters deemed necessary to carry out the purposes of the
agreement. Each contracting agency's share of expenditures for
purchases under any agreement shall be appropriated and paid
in the manner set forth in the agreement and in the same
manner as for other expenses of the contracting agency. The
contracting agencies entering into a joint agreement, as
herein permitted, may designate a joint purchasing or bidding
agent, and the agent shall comply with this article.
Purchases, contracts, or agreements made pursuant to a joint
purchasing or bidding agreement shall be subject to all terms
and conditions of this article.

"In the event that utility services are no longer
exempt from competitive bidding under this article,
non-adjoining counties may not purchase utility services by
joint agreement under authority granted by this subsection.

"(c) The awarding authority may require bidders to
furnish a bid bond for a particular bid solicitation if the
bonding requirement applies to all bidders, is included in the
written bid specifications, and if bonding is available for
the services, equipment, or materials.

"§41-16-51.

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

"(1) The purchase of insurance.

"(2) The purchase of ballots and supplies for
conducting any primary, general, special, or municipal
election.
"(3) Contracts for securing services of attorneys, physicians, architects, teachers, superintendents of construction, artists, appraisers, engineers, consultants, certified public accountants, public accountants, or other individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part.

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

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

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

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

"(8) Purchases of manuscripts, books, maps, pamphlets, or periodicals.

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

"(10) Existing contracts up for renewal for sanitation or solid waste collection, recycling, and disposal between municipalities or counties, or both, and those providing the service.
"(11) Purchases of computer and word processing hardware when the hardware is the only type that is compatible with hardware already owned by the entity taking bids and custom software.

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

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

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

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

"(16) Subject to the limitations in this subdivision, purchases of goods made as a part of the
purchasing cooperative sponsored by the National Association of Counties, or its successor organization. This subdivision shall not apply to goods for which a service or service contract, whether subject to competitive bidding under this article or not, is necessary to utilize the goods. Such purchases may only be made if all of the following occur:

"a. The goods being purchased are available as a result of a competitive bid process approved by the Alabama Department of Examiners of Public Accounts for each bid.

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

"c. The purchase is made through a participating Alabama vendor holding an Alabama business license if such a vendor exists.

"(b) This article shall not apply to:

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

"(2) Purchases made by individual schools of the county or municipal public school systems from moneys other than those raised by taxation or received through appropriations from state or county sources.
"(3) The purchase, lease, sale, construction, installation, acquisition, improvement, enlargement, or expansion of any building or structure or other facility designed or intended for lease or sale by a medical clinic board organized under Sections 11-58-1 to 11-58-14, inclusive.

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

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

"(6) Contracts for the purchase, lease, sale, construction, installation, acquisition, improvement, enlargement, or extension of any plant, building, structure, or other facility or any machinery, equipment, furniture, or furnishings therefor designed or intended for lease or sale for industrial development, other than public utilities, under Sections 11-54-80 to 11-54-99, inclusive, or Sections 11-54-20 to 11-54-28, inclusive, or any other statute or amendment to the Constitution of Alabama authorizing the construction of plants or other facilities for industrial development or for the construction and equipment of buildings for public building authorities under Sections 11-56-1 to 11-56-22, inclusive.
"(7) The purchase of equipment, supplies, or materials needed, used, and consumed in the normal and routine operation of any waterworks system, sanitary sewer system, gas system, or electric system, or any two or more thereof, that are owned by municipalities, counties, or public corporations, boards, or authorities that are agencies, departments, or instrumentalities of municipalities or counties and no part of the operating expenses of which system or systems have, during the then current fiscal year, been paid from revenues derived from taxes or from appropriations of the state, a county, or a municipality.

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

"(c) The state trade schools, state junior colleges, state colleges, and universities under the supervision and control of the State Board of Education, the district boards of education of independent school districts, the county commissions, and the governing bodies of the municipalities of the state shall establish and maintain such purchasing facilities and procedures as may be necessary to carry out the intent and purpose of this article by complying with the requirements for competitive bidding in the operation and
management of each state trade school, state junior college,
state college, or university under the supervision and control
of the State Board of Education, the district boards of
education of independent school districts, the county
commissions, and the governing bodies of the municipalities of
the state and the governing boards of instrumentalities of
counties and municipalities, including waterworks boards,
sewer boards, gas boards, and other like utility boards and
commissions.

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

Section 3. Although this bill would have as its
purpose or effect the requirement of a new or increased
expenditure of local funds, the bill is excluded from further
requirements and application under Amendment 621, now
appearing as Section 111.05 of the Official Recompilation of
the Constitution of Alabama of 1901, as amended, because the
bill defines a new crime or amends the definition of an
existing crime.

Section 4. This act shall become effective on the
first day of the third month following its passage and
approval by the Governor, or its otherwise becoming law.
SB418

Senate 10-MAR-09
I hereby certify that the within Act originated in and passed the Senate, as amended.

McDowell Lee
Secretary

House of Representatives
Amended and passed 07-MAY-09

Senate concurred in House amendment 15-MAY-09

By: Senators Preuitt and Means

APPROVED May 22, 2009
TIME 9:35 a.m.

Bob Riley
GOVERNOR