

**SB291 INTRODUCED**



1 2B4VKS-1

2 By Senator Coleman

3 RFD: Fiscal Responsibility and Economic Development

4 First Read: 03-May-23

5

6 2023 Regular Session



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4       SYNOPSIS:

5               Under existing law, public contracts for the  
6       purchase of materials, equipment, supplies, or other  
7       personal property involving \$15,000 or more are  
8       required to be made under contractual agreement by free  
9       and open competitive bidding, on sealed bids, to the  
10      lowest responsible bidder.

11              Also under existing law, certain contracts are  
12      exempt from the competitive bidding requirements.

13              This bill would further provide for the  
14      exemption from the competitive bidding requirements, by  
15      including within the exemption contracts for the  
16      purchase of computer programs and software applications  
17      and contracts for the purchase of equipment and  
18      services to aid in the prevention and detection of  
19      criminal activity by law enforcement agencies and  
20      community-oriented policing programs.

21              Section 111.05 of the Constitution of Alabama of  
22      2022, prohibits a general law whose purpose or effect  
23      would be to require a new or increased expenditure of  
24      local funds from becoming effective with regard to a  
25      local governmental entity without enactment by a 2/3  
26      vote unless: it comes within one of a number of  
27      specified exceptions; it is approved by the affected  
28      entity; or the Legislature appropriates funds, or

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29 provides a local source of revenue, to the entity for  
30 the purpose.

31 The purpose or effect of this bill would be to  
32 require a new or increased expenditure of local funds  
33 within the meaning of the amendment. However, the bill  
34 does not require approval of a local governmental  
35 entity or enactment by a 2/3 vote to become effective  
36 because it comes within one of the specified exceptions  
37 contained in the amendment.

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40 A BILL

41 TO BE ENTITLED

42 AN ACT

43

44 Relating to public contracts; to amend Section  
45 41-16-51, Code of Alabama 1975, to further provide for  
46 contracts for which competitive bidding is not required; and  
47 in connection therewith would have as its purpose or effect  
48 the requirement of a new or increased expenditure of local  
49 funds within the meaning of Section 111.05 of the Constitution  
50 of Alabama of 2022.

51 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

52 Section 1. Section 41-16-51, Code of Alabama 1975, is  
53 amended to read as follows:

54 "§41-16-51

55 (a) Competitive bids for entities subject to this  
56 article shall not be required for utility services, the rates

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57 for which are fixed by law, regulation, or ordinance, and the  
58 competitive bidding requirements of this article shall not  
59 apply to:

60 (1) The purchase of insurance.

61 (2) The purchase of ballots and supplies for conducting  
62 any primary, general, special, or municipal election.

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

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

71 (5) Contracts for fiscal or financial advice or  
72 services.

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

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

79 (8) Purchases of computer programs, software  
80 applications, manuscripts, books, maps, pamphlets,  
81 periodicals, and library/researchlibrary or research  
82 electronic data bases of manuscripts, books, maps, pamphlets,  
83 or periodicals.

84 (9) The selection of paying agents and trustees for any

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85 security issued by a public body.

86 (10) Existing contracts up for renewal for sanitation  
87 or solid waste collection, recycling, and disposal between  
88 municipalities or counties, or both, and those providing the  
89 service.

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

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

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

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

107 (15) Contractual services and purchases of products  
108 related to, or having an impact upon, security plans,  
109 procedures, assessments, measures, or systems, or the security  
110 or safety of ~~persons~~individuals, structures, facilities, or  
111 infrastructures.

112 (16) Subject to the limitations in this subdivision,



113 purchases, leases, or lease/purchases of goods or services,  
114 other than voice or data wireless communication services, made  
115 as a part of the purchasing cooperative sponsored by the  
116 National Association of Counties, its successor organization,  
117 or any other national or regional governmental cooperative  
118 purchasing program. The purchases, leases, or lease/purchases  
119 may only be made if all of the following occur:

120 a. The goods or services being purchased, including  
121 those purchased through a lease/purchase agreement, or leased  
122 are available as a result of a competitive bid process  
123 conducted by a governmental entity and approved by the ~~Alabama~~  
124 Department of Examiners of Public Accounts for each bid.

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

129 c. The purchase, lease, or lease/purchase is made  
130 through a participating Alabama vendor holding an Alabama  
131 business license if such a vendor exists.

132 d. The entity purchasing, leasing, or lease/purchasing  
133 goods or services under this subdivision has been notified by  
134 the Department of Examiners of Public Accounts that the  
135 competitive bid process utilized by the cooperative program  
136 offering the goods complies with this subdivision. In  
137 addition, upon request, a vendor shall provide the entity  
138 purchasing, leasing, or lease/purchasing items that exceed  
139 fifteen thousand dollars (\$15,000) made under this exception  
140 during the previous 12 months a report of the sales, leases,



141 and lease/purchases which includes a general description of  
142 the goods or services; the number of units sold, leased, and  
143 leased/purchased per entity; and the price of units purchased,  
144 leased, or leased/purchased.

145 (17) ~~Purchase~~ The purchase of goods or services, other  
146 than wireless communication services, whether voice or data,  
147 from vendors that have been awarded a current and valid  
148 Government Services Administration contract. Any purchase made  
149 pursuant to this subdivision shall be under the same terms and  
150 conditions as provided in the Government Services  
151 Administration contract. Prices paid for such goods and  
152 services, other than wireless communication services, whether  
153 voice or data, may not exceed the amount provided in the  
154 Government Services Administration contract.

155 (b) This article shall not apply to:

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

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

162 (3) The purchase, lease, sale, construction,  
163 installation, acquisition, improvement, enlargement, or  
164 expansion of any building or structure or other facility  
165 designed or intended for lease or sale by a medical clinic  
166 board organized under Sections 11-58-1 to 11-58-14, inclusive.

167 (4) The purchase, lease, or other acquisition of  
168 machinery, equipment, supplies, and other personal property or



169 services by a medical clinic board organized under Sections  
170 11-58-1 to 11-58-14, inclusive.

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

174 (6) Contracts for the purchase, lease, sale,  
175 construction, installation, acquisition, improvement,  
176 enlargement, or extension of any plant, building, structure,  
177 or other facility or any machinery, equipment, furniture, or  
178 furnishings therefor designed or intended for lease or sale  
179 for industrial development, other than public utilities, under  
180 Sections 11-54-80 to 11-54-99, inclusive, or Sections 11-54-20  
181 to 11-54-28, inclusive, or any other law or amendment to the  
182 Constitution of Alabama of 2022 authorizing the construction  
183 of plants or other facilities for industrial development or  
184 for the construction and equipment of buildings for public  
185 building authorities under Sections 11-56-1 to 11-56-22,  
186 inclusive.

187 (7) The purchase of equipment, supplies, or materials  
188 needed, used, and consumed in the normal and routine operation  
189 of any waterworks system, sanitary sewer system, gas system,  
190 or electric system, or any two or more thereof, that are owned  
191 by municipalities, counties, or public corporations, boards,  
192 or authorities that are agencies, departments, or  
193 instrumentalities of municipalities or counties and no part of  
194 the operating expenses of which system or systems, during the  
195 then current fiscal year, have been paid from revenues derived  
196 from taxes or from appropriations of the state, a county, or a



197 municipality.

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

203 (9) The purchase of equipment and services to aid in  
204 the prevention and detection of criminal activity by law  
205 enforcement agencies and community-oriented policing programs.

206 (c) The state trade schools, state junior colleges,  
207 state colleges, and universities under the supervision and  
208 control of the State Board of Education, the district boards  
209 of education of independent school districts, the county  
210 commissions, and the governing bodies of the municipalities of  
211 the state shall establish and maintain ~~such~~ purchasing  
212 facilities and procedures as may be necessary to carry out the  
213 intent and purpose of this article by complying with the  
214 requirements for competitive bidding in the operation and  
215 management of each state trade school, state junior college,  
216 state college, or university under the supervision and control  
217 of the State Board of Education, the district boards of  
218 education of independent school districts, the county  
219 commissions, and the governing bodies of the municipalities of  
220 the state and the governing boards of instrumentalities of  
221 counties and municipalities, including waterworks boards,  
222 sewer boards, gas boards, and other like utility boards and  
223 commissions.

224 (d) Contracts entered into in violation of this article

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225 shall be void and any ~~person~~individual who violates~~the~~  
226 ~~provisions of~~ this article shall be guilty of a Class C  
227 felony."

228 Section 2. Although this bill would have as its purpose  
229 or effect the requirement of a new or increased expenditure of  
230 local funds, the bill is excluded from further requirements  
231 and application under Section 111.05 of the Constitution of  
232 Alabama of 2022, because the bill defines a new crime or  
233 amends the definition of an existing crime.

234 Section 3. This act shall become effective on the first  
235 day of the third month following its passage and approval by  
236 the Governor, or its otherwise becoming law.