SB291 ENGROSSED



- 1 2B4VKS-2
- 2 By Senator Coleman
- 3 RFD: Fiscal Responsibility and Economic Development
- 4 First Read: 03-May-23
- 5 2023 Regular Session



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

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

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TO BE ENTITLED

AN ACT

Relating to public contracts; to amend Section 41-16-51, Code of Alabama 1975, to further provide for contracts for which competitive bidding is not required; and

A BILL



- 29 in connection therewith would have as its purpose or effect
- 30 the requirement of a new or increased expenditure of local
- 31 funds within the meaning of Section 111.05 of the Constitution
- 32 of Alabama of 2022.
- 33 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:
- 34 Section 1. Section 41-16-51, Code of Alabama 1975, is
- 35 amended to read as follows:
- 36 "\$41-16-51
- 37 (a) Competitive bids for entities subject to this
- 38 article shall not be required for utility services, the rates
- 39 for which are fixed by law, regulation, or ordinance, and the
- 40 competitive bidding requirements of this article shall not
- 41 apply to:
- 42 (1) The purchase of insurance.
- 43 (2) The purchase of ballots and supplies for conducting
- 44 any primary, general, special, or municipal election.
- 45 (3) Contracts for securing services of attorneys,
- 46 physicians, architects, teachers, superintendents of
- 47 construction, artists, appraisers, engineers, consultants,
- 48 certified public accountants, public accountants, or other
- 49 individuals possessing a high degree of professional skill
- 50 where the personality of the individual plays a decisive part.
- 51 (4) Contracts of employment in the regular civil
- 52 service.
- 53 (5) Contracts for fiscal or financial advice or
- 54 services.
- 55 (6) Purchases of products made or manufactured by blind
- or visually impaired individuals 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 federalagency.
- (8) Purchases of <u>computer programs</u>, <u>software</u>

 applications, manuscripts, books, maps, pamphlets,

 periodicals, and <u>library/research</u>library or research

 electronic data bases of manuscripts, books, maps, pamphlets,

 or periodicals.
- 66 (9) The selection of paying agents and trustees for any 67 security issued by a public body.

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- (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.
- 72 (11) Purchases of computer and word processing hardware 73 when the hardware is the only type that is compatible with 74 hardware already owned by the entity taking bids and custom 75 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 individuals, structures, facilities, or
 infrastructures.

- (16) Subject to the limitations in this subdivision, purchases, leases, or lease/purchases of goods or services, other than voice or data wireless communication services, made as a part of the purchasing cooperative sponsored by the National Association of Counties, its successor organization, or any other national or regional governmental cooperative purchasing program. The purchases, leases, or lease/purchases may only be made if all of the following occur:
 - a. The goods or services being purchased, including those purchased through a lease/purchase agreement, or leased are available as a result of a competitive bid process conducted by a governmental entity and approved by the Alabama Department of Examiners of Public Accounts for each bid.
 - b. The goods or services 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.
- 111 c. The purchase, lease, or lease/purchase is made 112 through a participating Alabama vendor holding an Alabama



113 business license if such a vendor exists.

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- d. The entity purchasing, leasing, or lease/purchasing goods or services under this subdivision has been notified by the Department of Examiners of Public Accounts that the competitive bid process utilized by the cooperative program offering the goods complies with this subdivision. In addition, upon request, a vendor shall provide the entity purchasing, leasing, or lease/purchasing items that exceed fifteen thousand dollars (\$15,000) made under this exception during the previous 12 months a report of the sales, leases, and lease/purchases which includes a general description of the goods or services; the number of units sold, leased, and leased/purchased per entity; and the price of units purchased, leased, or leased/purchased.
- 127 (17) Purchase The purchase of goods or services, other than wireless communication services, whether voice or data, 128 129 from vendors that have been awarded a current and valid 130 Government Services Administration contract. Any purchase made 131 pursuant to this subdivision shall be under the same terms and 132 conditions as provided in the Government Services 133 Administration contract. Prices paid for such goods and 134 services, other than wireless communication services, whether 135 voice or data, may not exceed the amount provided in the 136 Government Services Administration contract.
 - (b) This article shall not apply to:
- 138 (1) Any purchases of products where the price of the 139 products is already regulated and established by state law.
 - (2) Purchases made by individual schools of the county



141 or municipal public school systems from monies other than 142 those raised by taxation or received through appropriations

from state or county sources.

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- 144 (3) The purchase, lease, sale, construction, 145 installation, acquisition, improvement, enlargement, or 146 expansion of any building or structure or other facility 147 designed or intended for lease or sale by a medical clinic 148 board organized under Sections 11-58-1 to 11-58-14, inclusive.
- 149 (4) The purchase, lease, or other acquisition of 150 machinery, equipment, supplies, and other personal property or 151 services by a medical clinic board organized under Sections 11-58-1 to 11-58-14, inclusive. 152
- 153 (5) Purchases for public hospitals and nursing homes 154 operated by the governing boards of instrumentalities of the 155 state, counties, and municipalities.
- (6) Contracts for the purchase, lease, sale, 156 157 construction, installation, acquisition, improvement, 158 enlargement, or extension of any plant, building, structure, 159 or other facility or any machinery, equipment, furniture, or 160 furnishings therefor designed or intended for lease or sale 161 for industrial development, other than public utilities, under 162 Sections 11-54-80 to 11-54-99, inclusive, or Sections 11-54-20163 to 11-54-28, inclusive, or any other law or amendment to the 164 Constitution of Alabama of 2022 authorizing the construction 165 of plants or other facilities for industrial development or for the construction and equipment of buildings for public 166 building authorities under Sections 11-56-1 to 11-56-22, 167 inclusive.



- 169 (7) The purchase of equipment, supplies, or materials 170 needed, used, and consumed in the normal and routine operation 171 of any waterworks system, sanitary sewer system, gas system, 172 or electric system, or any two or more thereof, that are owned 173 by municipalities, counties, or public corporations, boards, 174 or authorities that are agencies, departments, or 175 instrumentalities of municipalities or counties and no part of 176 the operating expenses of which system or systems, during the 177 then current fiscal year, have been paid from revenues derived from taxes or from appropriations of the state, a county, or a 178 179 municipality.
- 180 (8) Purchases made by local housing authorities,

 181 organized and existing under Chapter 1 of Title 24, from

 182 monies other than those raised by state, county, or city

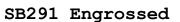
 183 taxation or received through appropriations from state,

 184 county, or city sources.

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- (9) The purchase of services to aid in the prevention and detection of criminal activity by law enforcement agencies and community-oriented policing programs.
- 188 (c) The state trade schools, state junior colleges, 189 state colleges, and universities under the supervision and 190 control of the State Board of Education, the district boards 191 of education of independent school districts, the county 192 commissions, and the governing bodies of the municipalities of 193 the state shall establish and maintain such purchasing 194 facilities and procedures as may be necessary to carry out the intent and purpose of this article by complying with the 195 196 requirements for competitive bidding in the operation and



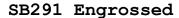


management of each state trade school, state junior college, state college, or university under the supervision and control of the State Board of Education, the district boards of education of independent school districts, the county commissions, and the governing bodies of the municipalities of the 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 any personindividual who violates the provisions of this article shall be guilty of a Class C felony."

Section 2. 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 Section 111.05 of the Constitution of Alabama of 2022, because the bill defines a new crime or amends the definition of an existing crime.

Section 3. 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.





Senate to the Senate committee on Fiscal Responsibility and Economic Development on the calendar: 0 amendments Read for the third time and passed24-May-23 as amended Yeas 33 Nays 0 Abstains 0 Patrick Harris, Secretary.