

AMENDMENT PROPOSED TO

Am #3

HOUSE BILL NO. 1123

By Davis

Amend ~~at~~ ^{after} Line 10 by inserting the following: (see attached)

Amend further on Line 11 by renumbering the section.

Amend further after Line 580 by inserting the following:

(xxxii) Procurement of design and construction services by state institutions of higher learning. Privately financed contracts awarded by the Board of Trustees of State Institutions of Higher Learning for the design and construction of parking structures on the campus of a state institution of higher learning, as provided in Section 37-101-44.

AMEND TITLE (to conform) (as follows):

By: Representatives Davis, Fillingane,
Ishee, Peranich, Reynolds

To: Universities and
Colleges; Appropriations

COPY

Proposed
COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1250

1 AN ACT TO CREATE A NEW SECTION TO BE CODIFIED AS SECTION
2 37-101-44, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD OF
3 TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING TO CONTRACT WITH
4 A SINGLE ENTITY FOR THE DESIGN AND CONSTRUCTION OF PARKING
5 STRUCTURES; TO AMEND SECTION 37-101-43, MISSISSIPPI CODE OF 1972,
6 IN CONFORMITY THERETO; TO AMEND SECTION 37-101-41, MISSISSIPPI
7 CODE OF 1972, TO AUTHORIZE THE BOARD OF TRUSTEES TO LEASE LAND AT
8 CERTAIN STATE INSTITUTIONS OF HIGHER LEARNING FOR THE CONSTRUCTION
9 OF PARKING STRUCTURES BY PRIVATE FINANCING; TO AMEND SECTION
10 31-7-13, MISSISSIPPI CODE OF 1972, TO EXEMPT FROM STATE BID
11 REQUIREMENTS CONTRACTS FOR THE DESIGN AND CONSTRUCTION OF PARKING
12 STRUCTURES ENTERED INTO WITH A SINGLE ENTITY BY THE BOARD OF
13 TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING; AND FOR RELATED
14 PURPOSES.

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

16 SECTION 1. The following shall be codified as Section
17 37-101-44, Mississippi Code of 1972:

18 37-101-44. (1) In lieu of exercising the authority set
19 forth in Section 37-101-43 and before entering into or awarding
20 any lease under Section 37-101-41, the Board of Trustees of State
21 Institutions of Higher Learning may award contracts to a single
22 entity for privately financed design and construction of parking
23 structures if the entities receiving the contract or contracts and
24 those entities to which work or services are subcontracted are
25 duly licensed and qualified in the state to perform the contract
26 or contracts. State General Fund appropriations or bonds backed
27 by the state may not be used to finance the construction or
28 maintenance of any such building or facility or parking structure.

29 (2) The design-build delivery system described under
30 subsection (1) of this section may be authorized only when the
31 Board of Trustees of State Institutions of Higher Learning makes a
32 determination, entered on its minutes, with specific findings for
33 the project demonstrating how it is in the best interest of the

public to enter into a design-build contract. At a minimum, the determination must include a detailed explanation of why a design-build approach for a particular project satisfies the public need better than the traditional design-bid-build approach.

(3) For each proposed design-build project, a two-phase procedure for awarding design-build contracts must be adopted and must include the following:

(a) During Phase One, and before solicitation of initial proposals, the board shall develop, with the assistance of a registered architect or engineer, a scope of work statement that provides prospective offerors with sufficient information regarding the board's requirements. The scope of work statement must include floor plans showing spaces by name and number, actual net area of each space, structural module, fixed equipment, mechanical spaces, chases and circulation areas. Drawings must show overall building dimensions and major lines of dimensions, and site plans which show topography, adjacent buildings and utilities. Drawings must include information to adequately explain HVAC, electrical and structural requirements. Information concerning furnishings, miscellaneous equipment, layouts, lists and schedules necessary to explain the plans must be indicated on floor plans. The registered architect or engineer engaged by the board also shall prepare preliminary specifications following the Construction Specifications Institute format and giving basic descriptions of essential building materials, finishes, components and all systems. The scope of work statement also must include building elevations, sections and design details. Building elevations must show fenestration and proposed exterior materials. The scope of work statement must include general budget parameters, schedule or delivery requirements, relevant criteria for evaluation of proposals, and any other information necessary to enable the design-builders to submit proposals that meet the board's needs.

67 (b) The board shall cause to be published once a week,
68 for at least three (3) consecutive weeks and not less than
69 twenty-one (21) days in at least one (1) newspaper having a
70 general circulation in the county in which the interested
71 institution is located and in one (1) newspaper with a general
72 statewide circulation, a notice inviting proposals for the
73 leasing, design-build deconstruction and leasing back of the land
74 and design-build constructed facility. The notice must inform
75 potential offerors of how to obtain the scope of work statement
76 developed for the project, and the notice must contain such other
77 information to describe adequately the general nature and scope of
78 the design-build project so as to promote full, equal and open
79 competition.

80 (c) The board shall accept initial proposals only from
81 entities able to provide, either in-house or through contractual
82 arrangements, an experienced and qualified design-build team that
83 includes, at a minimum, an architect or engineer registered in
84 Mississippi and a contractor properly licensed in Mississippi for
85 the type of work required. From evaluation of initial proposals
86 under Phase One, the board shall select a minimum of two (2) and a
87 maximum of five (5) design-builders to submit proposals for Phase
88 Two.

89 (d) During Phase Two, the shortlisted firms will be
90 invited to submit detailed designs, specific technical concepts or
91 solutions, pricing, scheduling and other information deemed
92 appropriate by the board as necessary to evaluate and rank
93 acceptability of the Phase Two proposals. After evaluation of
94 these Phase Two proposals, the board shall award a contract to the
95 design-builder determined to offer the best value to the public in
96 accordance with evaluation criteria set forth in the request for
97 proposals, of which price must be one, but not necessarily the
98 only, criterion.



99 (e) If the board accepts a proposal other than the
100 lowest dollar proposal actually submitted, the board shall enter
101 on its minutes detailed calculations and a narrative summary
102 showing why the accepted proposal was determined to provide the
103 best value, and the board shall state specifically on its minutes
104 the justification for its award.

105 (4) All facilities that are governed by this section must be
106 designed and constructed to equal or exceed the Southern Building
107 Code Standards in force at the time of contracting. All private
108 contractors or private entities contracting or performing under
109 this section must comply at all times with all applicable laws,
110 codes and other legal requirements pertaining to the project.

111 (5) (a) A public official or employee of a state agency who
112 has duties or responsibilities related to the contracting,
113 constructing, leasing, acquiring or operating of a facility under
114 this section may not become an employee, consultant or contract
115 vendor to a private entity providing such facility or services to
116 the state for a period of one (1) year after the date of
117 termination of the person's public service or state employment.

118 (b) Any person violating this subsection shall be
119 guilty of a misdemeanor and punished by a fine of not less than
120 Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars
121 (\$1,000.00).

122 SECTION 2. Section 37-101-43, Mississippi Code of 1972, is
123 amended as follows:

124 37-101-43. As an alternative to the authority granted under
125 Section 37-101-44, before entering into or awarding any such lease
126 contract under the provisions of Section 37-101-41, the Board of
127 Trustees of State Institutions of Higher Learning, in its
128 discretion, may cause the interested state-supported institution
129 upon which a facility is proposed to be constructed to select and
130 submit three (3) architects to the board. Thereupon, the board
131 may approve and employ an architect, who shall be paid by the



132 interested institution from any funds available to the interested
133 institution. The architect, under the direction of the interested
134 institution, shall prepare complete plans and specifications for
135 the facility desired to be constructed on the leased property.

136 Upon completion of the plans and specifications and the
137 approval thereof by the board, and before entering into any lease
138 contract, the board shall cause to be published once a week for at
139 least three (3) consecutive weeks and not less than twenty-one
140 (21) days in at least one (1) newspaper having a general
141 circulation in the county in which the interested institution is
142 located and in one (1) newspaper with a general statewide
143 circulation, a notice inviting bids or proposals for the leasing,
144 construction and leasing back of the land and constructed
145 facility, which facility must be constructed in accordance with
146 the plans and specifications. The notice shall distinctly state
147 the thing to be done, and invite sealed proposals, to be filed
148 with the board, to do the thing to be done. The notice shall
149 contain the following specific provisions, together with such
150 others as the board, in its discretion, deems appropriate, to wit:
151 bids shall be accompanied by a bid security evidenced by a
152 certified or cashier's check or bid-bond payable to the board in a
153 sum of not less than five percent (5%) of the gross construction
154 cost of the facility to be constructed, as estimated by the board,
155 and the bids shall contain proof satisfactory to the board of
156 interim and permanent financing. The board shall state in the
157 notice when construction shall commence. The bid shall contain
158 the proposed contractor's certificate of responsibility number and
159 bidder's license. In all cases, before the notice shall be
160 published, the plans and specifications shall be filed with the
161 board and also in the office of the president of the interested
162 institution, there to remain.

163 The board shall award the lease contract to the lowest and
164 best bidder, who will comply with the terms imposed by the



165 contract documents. At the time of the awarding of the lease
166 contract, the successful bidder shall enter into bond with
167 sufficient sureties, to be approved by the board, in such penalty
168 as may be fixed by the board, but in no case to be less than the
169 estimated gross construction cost of the facility to be
170 constructed as estimated by the board, conditioned for the prompt,
171 proper and efficient performance of the contract. The bond shall
172 be made by an authorized corporate surety bonding company.
173 The * * * bid security herein provided for shall be forfeited if
174 the successful bidder fails to enter into lease contract and
175 commence construction within the time limitation set forth in the
176 notice. At such time, and simultaneously with the signing of the
177 contract, the successful bidder shall deposit a sum of money, in
178 cash or certified or cashier's check, not less than the bid
179 security previously deposited as bid security to reimburse the
180 interested institution for all sums expended by it for
181 architectural services and other expenditures of the board and
182 interested institution connected with the bidded lease contract,
183 of which such other anticipated expenditures notice is to be given
184 to bidder in the notice. The bid security posted by an
185 unsuccessful bidder shall be refunded to him.

186 **SECTION 3.** Section 37-101-41, Mississippi Code of 1972, is
187 amended as follows:

188 37-101-41. The Board of Trustees of State Institutions of
189 Higher Learning may lease to private individuals or corporations,
190 for a term not exceeding thirty-one (31) years, any land at any of
191 the following state-supported institutions: the University of
192 Mississippi, Mississippi State University of Agriculture and
193 Applied Science, Jackson State University, Mississippi Valley
194 State University, Alcorn State University, University of Southern
195 Mississippi, Mississippi University for Women and Delta State
196 University, for the purpose of erecting housing and dormitory
197 facilities thereon for active faculty and students. The housing



198 facilities or parking structures shall be constructed thereon by
199 private financing, and shall be leased back to the board for use
200 by the concerned state-supported institution of higher learning.
201 The lease shall contain a provision permitting the board to
202 purchase the building or parking structures located thereon for
203 the sum of One Dollar (\$1.00) after payment by the board of all
204 sums of money due under said lease.

205 **SECTION 4.** Section 31-7-13, Mississippi Code of 1972, is
206 amended as follows:

207 31-7-13. All agencies and governing authorities shall
208 purchase their commodities and printing; contract for garbage
209 collection or disposal; contract for solid waste collection or
210 disposal; contract for sewage collection or disposal; contract for
211 public construction; and contract for rentals as herein provided.

212 (a) **Bidding procedure for purchases not over \$3,500.00.**
213 Purchases which do not involve an expenditure of more than Three
214 Thousand Five Hundred Dollars (\$3,500.00), exclusive of freight or
215 shipping charges, may be made without advertising or otherwise
216 requesting competitive bids. However, nothing contained in this
217 paragraph (a) shall be construed to prohibit any agency or
218 governing authority from establishing procedures which require
219 competitive bids on purchases of Three Thousand Five Hundred
220 Dollars (\$3,500.00) or less.

221 (b) **Bidding procedure for purchases over \$3,500.00 but**
222 **not over \$15,000.00.** Purchases which involve an expenditure of
223 more than Three Thousand Five Hundred Dollars (\$3,500.00) but not
224 more than Fifteen Thousand Dollars (\$15,000.00), exclusive of
225 freight and shipping charges may be made from the lowest and best
226 bidder without publishing or posting advertisement for bids,
227 provided at least two (2) competitive written bids have been
228 obtained. Any governing authority purchasing commodities pursuant
229 to this paragraph (b) may authorize its purchasing agent, or his
230 designee, with regard to governing authorities other than