

By: Representatives Dedeaux, Bailey, Clarke, Hudson, Moss, Robinson (63rd), Rogers (61st)

To: Public Property; Ways and Means

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1015

1 AN ACT TO AMEND SECTION 31-11-30, MISSISSIPPI CODE OF 1972,
2 TO DEFINE THE TERMS "EMERGENCY" AND "CRITICAL NEED" FOR THE
3 PURPOSES OF EXEMPTION FROM THE REQUIREMENT OF FUNDING CAPITAL
4 IMPROVEMENTS PROJECTS INVOLVING STATE BUILDINGS IN TWO PHASES; TO
5 REQUIRE THAT CONSTRUCTION PROJECTS FUNDED WITH STATE BOND FUNDS OR
6 OTHER STATE FUNDS AUTHORIZED FOR COMMUNITY AND JUNIOR COLLEGES BE
7 ADMINISTERED THROUGH THE TWO-PHASE PLANNING PROCESS; TO AMEND
8 SECTION 31-11-3, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE
9 DEPARTMENT OF FINANCE AND ADMINISTRATION TO ALLOW STATE
10 INSTITUTIONS OF HIGHER LEARNING AND OTHER STATE AGENCIES TO MANAGE
11 CONSTRUCTION PROJECTS WITH A VALUE OF \$250,000.00 OR LESS PROVIDED
12 THAT EACH AGENCY MEETS DEPARTMENTALLY DEVELOPED CRITERIA AND
13 MANAGEMENT REQUIREMENTS; TO PROHIBIT CONSTRUCTION PROGRAM MANAGERS
14 AND/OR CONSTRUCTION MANAGERS AND BUILDING COMMISSIONING AGENTS AND
15 THEIR SUBSIDIARIES OR PARENTS FROM BIDDING ON ANY PUBLIC
16 CONSTRUCTION PROJECT FOR WHICH THEY ARE PROVIDING CONSTRUCTION
17 PROGRAM MANAGEMENT SERVICES AND/OR CONSTRUCTION MANAGEMENT
18 SERVICES OR BUILDING COMMISSIONING SERVICES; AND FOR RELATED
19 PURPOSES.

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

21 **SECTION 1.** Section 31-11-30, Mississippi Code of 1972, is
22 amended as follows:

23 31-11-30. (1) Every capital improvements project, costing
24 One Million Dollars (\$1,000,000.00) or more, which is developed to
25 repair, renovate, construct, remodel, add to or improve a
26 state-owned public building shall be funded by the Legislature in
27 two (2) phases. The two-phase funding requirement shall not apply
28 to capital improvements projects for a state-owned port or where
29 the Legislature finds that an emergency or critical need must be
30 met or a court order complied with. The two (2) phases shall not
31 be funded in the same regular session of the Legislature. Each
32 phase shall be funded in a separate session of the Legislature.
33 Phase 1 shall be a preplanned capital improvements project budget
34 projection for the project and shall be funded first. Phase 2
35 shall be the actual repair, renovation, construction, remodeling,

36 addition to or improvement of the state-owned public building and
37 the acquisition of furniture and equipment for the capital
38 improvements project and shall be funded second.

39 (2) For the purposes of this section:

40 (a) "Preplanned" or "preplanning" means the preliminary
41 planning that establishes the program, scope, design and budget
42 for a capital improvements project.

43 (b) "Emergency" has the meaning as defined in Section
44 31-7-1.

45 (c) "Critical need" means necessary to meet
46 accreditation standards or necessary to respond to failures in
47 planning.

48 (3) Every state agency that plans to repair, renovate,
49 construct, remodel, add to or improve a state-owned public
50 building shall submit a preplanned capital improvements project
51 budget projection to the Bureau of Building, Grounds and Real
52 Property Management for evaluation. The bureau shall assess the
53 need for all preplanned projects submitted and shall compile a
54 report on its findings. Any capital improvements project costing
55 less than One Million Dollars (\$1,000,000.00) shall not be
56 required to be preplanned.

57 (4) Upon the completion of any preplanning for a capital
58 improvements project, if such preplanning is funded with
59 self-generated funds by a state agency, the plan shall be
60 submitted to the bureau for evaluation.

61 (5) This section shall not apply to capital improvements
62 projects authorized by the Legislature before the 2001 Regular
63 Session of the Legislature.

64 (6) The provisions of this section also shall apply to any
65 community or junior college project funded in whole or in part by
66 either state bonds or funds appropriated for that construction by
67 the Legislature.

68 **SECTION 2.** Section 31-11-3, Mississippi Code of 1972, is
69 amended as follows:

70 31-11-3. (1) The Department of Finance and Administration,
71 for the purposes of carrying out the provisions of this chapter,
72 in addition to all other rights and powers granted by law, shall
73 have full power and authority to employ and compensate architects
74 or other employees necessary for the purpose of making
75 inspections, preparing plans and specifications, supervising the
76 erection of any buildings, and making any repairs or additions as
77 may be determined by the Department of Finance and Administration
78 to be necessary, pursuant to the rules and regulations of the
79 State Personnel Board. The department shall have entire control
80 and supervision of, and determine what, if any, buildings,
81 additions, repairs or improvements are to be made under the
82 provisions of this chapter, subject to the approval of the Public
83 Procurement Review Board.

84 (2) The department shall have full power to erect buildings,
85 make repairs, additions or improvements, and buy materials,
86 supplies and equipment for any of the institutions or departments
87 of the state subject to the approval of the Public Procurement
88 Review Board. In addition to other powers conferred, the
89 department shall have full power and authority as directed by the
90 Legislature, or when funds have been appropriated for its use for
91 these purposes, to:

92 (a) Build a state office building;

93 (b) Build suitable plants or buildings for the use and
94 housing of any state schools or institutions, including the
95 building of plants or buildings for new state schools or
96 institutions, as provided for by the Legislature;

97 (c) Provide state aid for the construction of school
98 buildings;

99 (d) Promote and develop the training of returned
100 veterans of the United States in all sorts of educational and

101 vocational learning to be supplied by the proper educational
102 institution of the State of Mississippi, and in so doing allocate
103 monies appropriated to it for these purposes to the Governor for
104 use by him in setting up, maintaining and operating an office and
105 employing a state director of on-the-job training for veterans and
106 the personnel necessary in carrying out Public Law No. 346 of the
107 United States;

108 (e) Build and equip a hospital and administration
109 building at the Mississippi State Penitentiary;

110 (f) Build and equip additional buildings and wards at
111 the Boswell Retardation Center;

112 (g) Construct a sewage disposal and treatment plant at
113 the state insane hospital, and in so doing acquire additional land
114 as may be necessary, and to exercise the right of eminent domain
115 in the acquisition of this land;

116 (h) Build and equip the Mississippi central market and
117 purchase or acquire by eminent domain, if necessary, any lands
118 needed for this purpose;

119 (i) Build and equip suitable facilities for a training
120 and employing center for the blind;

121 (j) Build and equip a gymnasium at Columbia Training
122 School;

123 (k) Approve or disapprove the expenditure of any money
124 appropriated by the Legislature when authorized by the bill making
125 the appropriation;

126 (l) Expend monies appropriated to it in paying the
127 state's part of the cost of any street paving;

128 (m) Sell and convey state lands when authorized by the
129 Legislature, cause said lands to be properly surveyed and platted,
130 execute all deeds or other legal instruments, and do any and all
131 other things required to effectively carry out the purpose and
132 intent of the Legislature. Any transaction which involves state

133 lands under the provisions of this paragraph shall be done in a
134 manner consistent with the provisions of Section 29-1-1;

135 (n) Collect and receive from educational institutions
136 of the State of Mississippi monies required to be paid by these
137 institutions to the state in carrying out any veterans'
138 educational programs;

139 (o) Purchase lands for building sites, or as additions
140 to building sites, for the erection of buildings and other
141 facilities which the department is authorized to erect, and
142 demolish and dispose of old buildings, when necessary for the
143 proper construction of new buildings. Any transaction which
144 involves state lands under the provisions of this paragraph shall
145 be done in a manner consistent with the provisions of Section
146 29-1-1;

147 (p) Obtain business property insurance with a
148 deductible of not less than One Hundred Thousand Dollars
149 (\$100,000.00) on state-owned buildings under the management and
150 control of the department; and

151 (q) In consultation with and approval by the Chairmen
152 of the Public Property Committees of the Senate and the House of
153 Representatives, enter into contracts for the purpose of providing
154 parking spaces for state employees who work in the Woolfolk
155 Building, the Carroll Gartin Justice Building or the Walter
156 Sillers Office Building. The provisions of this paragraph (q)
157 shall stand repealed on July 1, 2008.

158 (3) The department shall survey state-owned and
159 state-utilized buildings to establish an estimate of the costs of
160 architectural alterations, pursuant to the Americans With
161 Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The
162 department shall establish priorities for making the identified
163 architectural alterations and shall make known to the Legislative
164 Budget Office and to the Legislature the required cost to
165 effectuate such alterations. To meet the requirements of this

166 section, the department shall use standards of accessibility that
167 are at least as stringent as any applicable federal requirements
168 and may consider:

169 (a) Federal minimum guidelines and requirements issued
170 by the United States Architectural and Transportation Barriers
171 Compliance Board and standards issued by other federal agencies;

172 (b) The criteria contained in the American Standard
173 Specifications for Making Buildings Accessible and Usable by the
174 Physically Handicapped and any amendments thereto as approved by
175 the American Standards Association, Incorporated (ANSI Standards);

176 (c) Design manuals;

177 (d) Applicable federal guidelines;

178 (e) Current literature in the field;

179 (f) Applicable safety standards; and

180 (g) Any applicable environmental impact statements.

181 (4) The department shall observe the provisions of Section
182 31-5-23, in letting contracts and shall use Mississippi products,
183 including paint, varnish and lacquer which contain as vehicles
184 tung oil and either ester gum or modified resin (with rosin as the
185 principal base of constituents), and turpentine shall be used as a
186 solvent or thinner, where these products are available at a cost
187 not to exceed the cost of products grown, produced, prepared, made
188 or manufactured outside of the State of Mississippi.

189 (5) The department shall have authority to accept grants,
190 loans or donations from the United States government or from any
191 other sources for the purpose of matching funds in carrying out
192 the provisions of this chapter.

193 (6) The department shall build a wheelchair ramp at the War
194 Memorial Building which complies with all applicable federal laws,
195 regulations and specifications regarding wheelchair ramps.

196 (7) The department shall review and preapprove all
197 architectural or engineering service contracts entered into by any
198 state agency, institution, commission, board or authority

199 regardless of the source of funding used to defray the costs of
200 the construction or renovation project for which services are to
201 be obtained. The provisions of this subsection (7) shall not
202 apply to any architectural or engineering contract paid for by
203 self-generated funds of any of the state institutions of higher
204 learning, nor shall they apply to community college projects that
205 are funded from local funds or other nonstate sources which are
206 outside the Department of Finance and Administration's
207 appropriations or as directed by the Legislature. The provisions
208 of this subsection (7) shall not apply to any construction or
209 design projects of the State Military Department that are funded
210 from federal funds or other nonstate sources.

211 (8) The department shall have the authority to obtain
212 annually from the state institutions of higher learning
213 information on all building, construction and renovation projects
214 including duties, responsibilities and costs of any architect or
215 engineer hired by any such institutions.

216 (9) (a) As an alternative to other methods of awarding
217 contracts as prescribed by law, the department may use the
218 design-build method or the design-build bridging method of
219 contracting for new capital construction projects to be used as a
220 pilot program for the following projects:

221 (i) Projects for the Mississippi Development
222 Authority pursuant to agreements between both governmental
223 entities;

224 (ii) Any project with an estimated cost of not
225 more than Ten Million Dollars (\$10,000,000.00), not to exceed two
226 (2) projects per fiscal year; and

227 (iii) Any project which has an estimated cost of
228 more than Fifty Million Dollars (\$50,000,000.00), not to exceed
229 one (1) project per fiscal year.

230 (b) As used in this subsection:

231 (i) "Design-build method of contracting" means a
232 contract that combines the design and construction phases of a
233 project into a single contract and the contractor is required to
234 satisfactorily perform, at a minimum, both the design and
235 construction of the project.

236 (ii) "Design-build bridging method of contracting"
237 means a contract that requires design through the design
238 development phase by a professional designer, after which a
239 request for qualifications for design completion and construction
240 is required for the completion of the project from a single
241 contractor that combines the balance of design and construction
242 phases of a project into a single contract. The contractor is
243 required to satisfactorily perform, at a minimum, both the balance
244 of design and construction of the project.

245 (c) The department shall establish detailed criteria
246 for the selection of the successful design-build/design-build
247 bridging contractor in each request for design-build/design-build
248 bridging proposals. The request for qualifications evaluation of
249 the selection committee is a public record and shall be maintained
250 for a minimum of three (3) years after project completion.

251 (d) The department shall maintain detailed records on
252 projects separate and apart from its regular record keeping. The
253 department shall file a report to the Legislature evaluating the
254 design-build/design-build bridging method of contracting by
255 comparing it to the low-bid method of contracting. At a minimum,
256 the report must include:

257 (i) The management goals and objectives for the
258 design-build/design-build bridging system of management;

259 (ii) A complete description of the components of
260 the design-build/design-build bridging management system,
261 including a description of the system the department put into
262 place on all projects managed under the system to insure that it
263 has the complete information on building segment costs and to

264 insure proper analysis of any proposal the department receives
265 from a contractor;

266 (iii) The accountability systems the department
267 established to monitor any design-build/design-build bridging
268 project's compliance with specific goals and objectives for the
269 project;

270 (iv) The outcome of any project or any interim
271 report on an ongoing project let under a design-build/design-build
272 bridging management system showing compliance with the goals,
273 objectives, policies and procedures the department set for the
274 project; and

275 (v) The method used by the department to select
276 projects to be let under the design-build/design-build bridging
277 system of management and all other systems, policies and
278 procedures that the department considered as necessary components
279 to a design-build/design-build bridging management system.

280 (e) All contracts let under the provisions of this
281 subsection shall be subject to oversight and review by the State
282 Auditor.

283 (10) The department may authorize the state institutions of
284 higher learning and other state agencies to manage any
285 construction or renovation project with a value not exceeding Two
286 Hundred Fifty Thousand Dollars (\$250,000.00). The department
287 shall develop criteria for management of projects that each agency
288 must follow in order to manage projects. Only agencies that the
289 department deems capable of managing by the criteria may manage
290 their own projects. Additionally, the department shall require
291 agencies managing their own projects to do the following:

292 (a) Use standard departmentally approved contracts and
293 project management procedures; and

294 (b) Conduct projects on a reimbursable basis and
295 require documentation that the department deems appropriate for

296 payment of claims. Reimbursement shall be on a one-time basis at
297 completion and approval of project documentation submittals.

298 The department shall revoke the authority of any agency to
299 perform management functions if, in its opinion, an agency has not
300 followed the department's requirements for managing projects.

301 **SECTION 3.** (1) For the purposes of this section:

302 (a) "Building commissioning agent" means a person who
303 renders building commissioning services.

304 (b) "Building commissioning services" include any
305 services rendered by an independent contractor to the state or a
306 local governing authority associated with the construction of
307 buildings that are intended to assist in the state or local
308 governing authority in reducing construction costs or enhancing
309 the long-term value of the construction project.

310 (c) "Construction program management services and/or
311 construction management services" means a set of management and
312 technical services rendered by a person or firm to a public sector
313 building owner during the predesign, design, construction, or post
314 construction phases of new construction, demolition, alteration,
315 repair, or renovation projects. These services shall include any
316 one or more of the following: project planning, budgeting,
317 scheduling, coordination, design management, construction
318 administration, or facility occupancy actions, but shall not
319 include any component of the actual construction work. The term
320 shall not include general contractors who are engaged to actually
321 perform the construction work. The term also shall not include
322 services customarily performed by licensed architects or
323 registered engineers.

324 (d) "Construction program manager and/or construction
325 manager" means a person who performs construction program
326 management services and/or construction management services.

327 (e) "Public construction project" means any project for
328 the construction of buildings for the state or for any local
329 governing authority of the state.

330 (2) No construction program manager and/or construction
331 manager, or any subsidiary owned in whole or in part by the
332 construction program manager and/or construction manager, or any
333 parent corporation or firm of the construction program manager
334 and/or construction manager, shall be eligible to bid or otherwise
335 participate in the construction, contracting, or subcontracting on
336 any public construction project or part thereof for which the
337 construction program manager and/or construction manager has been
338 hired to perform construction program management services and/or
339 construction management services. Any contract for public
340 construction that violates this provision shall be void against
341 the public policy of the state.

342 (3) No building commissioning agent, or any subsidiary owned
343 in whole or in part by the building commissioning agent, or any
344 parent corporation or firm of the building commissioning agent,
345 shall be eligible to bid or otherwise participate in the
346 construction, contracting or subcontracting on any public
347 construction project or part thereof for which the building
348 commissioning agent has been hired to perform construction
349 building commissioning services. Any contract for public
350 construction that violates this provision shall be void against
351 the public policy of the state.

352 **SECTION 4.** This act shall take effect and be in force from
353 and after July 1, 2006.