

By: Representatives Dedeaux, Bailey, Clarke, Hudson, Moss, Robinson (63rd), Rogers (61st) To: Public Property; Ways and Means

## 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 BUILDING COMMISSIONING AGENTS AND THEIR SUBSIDIARIES OR  
15 PARENTS FROM BIDDING ON ANY PUBLIC CONSTRUCTION PROJECT FOR WHICH  
16 THEY ARE PROVIDING CONSTRUCTION PROGRAM MANAGEMENT SERVICES OR  
17 BUILDING COMMISSIONING SERVICES; AND FOR RELATED PURPOSES.

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

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

21 31-11-30. (1) Every capital improvements project, costing  
22 One Million Dollars (\$1,000,000.00) or more, which is developed to  
23 repair, renovate, construct, remodel, add to or improve a  
24 state-owned public building shall be funded by the Legislature in  
25 two (2) phases. The two-phase funding requirement shall not apply  
26 to capital improvements projects for a state-owned port or where  
27 the Legislature finds that an emergency or critical need must be  
28 met or a court order complied with. The two (2) phases shall not  
29 be funded in the same regular session of the Legislature. Each  
30 phase shall be funded in a separate session of the Legislature.  
31 Phase 1 shall be a preplanned capital improvements project budget  
32 projection for the project and shall be funded first. Phase 2  
33 shall be the actual repair, renovation, construction, remodeling,  
34 addition to or improvement of the state-owned public building and

35 the acquisition of furniture and equipment for the capital  
36 improvements project and shall be funded second.

37 (2) For the purposes of this section:

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

41 (b) "Emergency" has the meaning as defined in Section  
42 31-7-1.

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

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

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

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

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

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

68           31-11-3. (1) The Department of Finance and Administration,  
69 for the purposes of carrying out the provisions of this chapter,  
70 in addition to all other rights and powers granted by law, shall  
71 have full power and authority to employ and compensate architects  
72 or other employees necessary for the purpose of making  
73 inspections, preparing plans and specifications, supervising the  
74 erection of any buildings, and making any repairs or additions as  
75 may be determined by the Department of Finance and Administration  
76 to be necessary, pursuant to the rules and regulations of the  
77 State Personnel Board. The department shall have entire control  
78 and supervision of, and determine what, if any, buildings,  
79 additions, repairs or improvements are to be made under the  
80 provisions of this chapter, subject to the approval of the Public  
81 Procurement Review Board.

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

90                   (a) Build a state office building;

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

95                   (c) Provide state aid for the construction of school  
96 buildings;

97                   (d) Promote and develop the training of returned  
98 veterans of the United States in all sorts of educational and  
99 vocational learning to be supplied by the proper educational  
100 institution of the State of Mississippi, and in so doing allocate

101 monies appropriated to it for these purposes to the Governor for  
102 use by him in setting up, maintaining and operating an office and  
103 employing a state director of on-the-job training for veterans and  
104 the personnel necessary in carrying out Public Law No. 346 of the  
105 United States;

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

108 (f) Build and equip additional buildings and wards at  
109 the Boswell Retardation Center;

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

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

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

119 (j) Build and equip a gymnasium at Columbia Training  
120 School;

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

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

126 (m) Sell and convey state lands when authorized by the  
127 Legislature, cause said lands to be properly surveyed and platted,  
128 execute all deeds or other legal instruments, and do any and all  
129 other things required to effectively carry out the purpose and  
130 intent of the Legislature. Any transaction which involves state  
131 lands under the provisions of this paragraph shall be done in a  
132 manner consistent with the provisions of Section 29-1-1;

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

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

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

149           (q) In consultation with and approval by the Chairmen  
150 of the Public Property Committees of the Senate and the House of  
151 Representatives, enter into contracts for the purpose of providing  
152 parking spaces for state employees who work in the Woolfolk  
153 Building, the Carroll Gartin Justice Building or the Walter  
154 Sillers Office Building. The provisions of this paragraph (q)  
155 shall stand repealed on July 1, 2006.

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

165 are at least as stringent as any applicable federal requirements  
166 and may consider:

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

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

174 (c) Design manuals;

175 (d) Applicable federal guidelines;

176 (e) Current literature in the field;

177 (f) Applicable safety standards; and

178 (g) Any applicable environmental impact statements.

179 (4) The department shall observe the provisions of Section  
180 31-5-23, in letting contracts and shall use Mississippi products,  
181 including paint, varnish and lacquer which contain as vehicles  
182 tung oil and either ester gum or modified resin (with rosin as the  
183 principal base of constituents), and turpentine shall be used as a  
184 solvent or thinner, where these products are available at a cost  
185 not to exceed the cost of products grown, produced, prepared, made  
186 or manufactured outside of the State of Mississippi.

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

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

194 (7) The department shall review and preapprove all  
195 architectural or engineering service contracts entered into by any  
196 state agency, institution, commission, board or authority  
197 regardless of the source of funding used to defray the costs of

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

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

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

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

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

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

228 (b) As used in this subsection:

229 (i) "Design-build method of contracting" means a  
230 contract that combines the design and construction phases of a

231 project into a single contract and the contractor is required to  
232 satisfactorily perform, at a minimum, both the design and  
233 construction of the project.

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

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

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

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

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



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

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

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

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

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

290 (a) Use standard departmentally approved contracts and  
291 project management procedures; and

292 (b) Conduct projects on a reimbursable basis and  
293 require documentation that the department deems appropriate for  
294 payment of claims.

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

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

299           (a) "Building commissioning agent" means a person who  
300 renders building commissioning services.

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

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

320           (d) "Construction program manager" means a person who  
321 performs construction program management services.

322           (e) "Public construction project" means any project for  
323 the construction of buildings for the state or for any local  
324 governing authority of the state.

325       (2) No construction program manager, or any subsidiary owned  
326 in whole or in part by the construction program manager, or any  
327 parent corporation or firm of the construction program manager,

328 shall be eligible to bid or otherwise participate in the  
329 construction, contracting, or subcontracting on any public  
330 construction project or part thereof for which the construction  
331 program manager has been hired to perform construction program  
332 management services. Any contract for public construction that  
333 violates this provision shall be void against the public policy of  
334 the state.

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

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