

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

HOUSE BILL NO. 1015
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 31-11-30, MISSISSIPPI CODE OF 1972,
2 TO INCREASE TO \$2,000,000.00 OR MORE THE COST OF CAPITAL
3 IMPROVEMENT PROJECTS THAT ARE REQUIRED TO BE FUNDED IN TWO PHASES
4 AND TO DEFINE THE TERMS "EMERGENCY" AND "CRITICAL NEED" FOR THE
5 PURPOSES OF EXEMPTION FROM THE REQUIREMENT OF FUNDING CAPITAL
6 IMPROVEMENTS PROJECTS INVOLVING STATE BUILDINGS IN TWO PHASES; TO
7 REQUIRE THAT CONSTRUCTION PROJECTS FUNDED WITH STATE BOND FUNDS OR
8 OTHER STATE FUNDS AUTHORIZED FOR COMMUNITY AND JUNIOR COLLEGES BE
9 ADMINISTERED THROUGH THE TWO-PHASE PLANNING PROCESS; TO AMEND
10 SECTION 31-11-3, MISSISSIPPI CODE OF 1972, AS AMENDED BY HOUSE
11 BILL NO. 784, 2006 REGULAR SESSION, TO AUTHORIZE THE DEPARTMENT OF
12 FINANCE AND ADMINISTRATION TO ALLOW STATE INSTITUTIONS OF HIGHER
13 LEARNING, COMMUNITY AND JUNIOR COLLEGES, AND OTHER STATE AGENCIES
14 TO MANAGE CONSTRUCTION PROJECTS WITH A VALUE OF \$250,000.00 OR
15 LESS PROVIDED THAT EACH AGENCY MEETS DEPARTMENTALLY DEVELOPED
16 CRITERIA AND MANAGEMENT REQUIREMENTS; TO REMOVE AUTHORITY OF THE
17 DEPARTMENT OF FINANCE AND ADMINISTRATION TO USE DESIGN-BUILD
18 METHOD OF CONTRACTING FOR CERTAIN CONSTRUCTION PROJECTS; TO
19 REQUIRE THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO ADOPT
20 BUILDING CODE STANDARDS FOR NEW CONSTRUCTION OF PUBLIC FACILITIES;
21 TO CREATE A NEW SECTION TO PROHIBIT CONSTRUCTION PROGRAM MANAGERS
22 AND/OR CONSTRUCTION MANAGERS AND BUILDING COMMISSIONING AGENTS AND
23 THEIR SUBSIDIARIES OR PARENTS FROM BIDDING ON ANY PUBLIC
24 CONSTRUCTION PROJECT FOR WHICH THEY ARE PROVIDING CONSTRUCTION
25 PROGRAM MANAGEMENT SERVICES AND/OR CONSTRUCTION MANAGEMENT
26 SERVICES OR BUILDING COMMISSIONING SERVICES; AND FOR RELATED
27 PURPOSES.

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

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

31 31-11-30. (1) Every capital improvements project for new
32 facilities, costing Two Million Dollars (\$2,000,000.00) or
33 more, * * * shall be funded by the Legislature in two (2) phases.
34 The two-phase funding requirement shall not apply to capital
35 improvements projects for a state-owned port or where the
36 Legislature finds that an emergency or critical need must be met
37 or a court order complied with. The two (2) phases shall not be
38 funded in the same regular session of the Legislature. Each phase
39 shall be funded in a separate session of the Legislature. Phase 1

40 shall be a preplanned capital improvements project budget
41 projection for the project and shall be funded first. Phase 2
42 shall be the actual * * * construction * * * of the state-owned
43 public building and the acquisition of furniture and equipment for
44 the capital improvements project and shall be funded second.

45 (2) For the purposes of this section:

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

49 (b) "Emergency" has the meaning as defined in Section
50 31-7-1.

51 (c) "Critical need" means necessary to meet
52 accreditation standards or necessary to respond to failures in
53 planning.

54 (3) Every state agency that plans to * * * construct * * * a
55 state-owned public building shall submit a preplanned capital
56 improvements project budget projection to the Bureau of Building,
57 Grounds and Real Property Management for evaluation. The bureau
58 shall assess the need for all preplanned projects submitted and
59 shall compile a report on its findings. Any capital improvements
60 project for new facilities costing less than Two Million Dollars
61 (\$2,000,000.00) shall not be required to be preplanned.

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

66 (5) This section shall not apply to capital improvements
67 projects authorized by the Legislature before the 2001 Regular
68 Session of the Legislature.

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

73 **SECTION 2.** Section 31-11-3, Mississippi Code of 1972, as
74 amended by House Bill No. 784, 2006 Regular Session, is amended as
75 follows:

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

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

98 (a) Build a state office building;

99 (b) Build suitable plants or buildings for the use and
100 housing of any state schools or institutions, including the
101 building of plants or buildings for new state schools or
102 institutions, as provided for by the Legislature;

103 (c) Provide state aid for the construction of school
104 buildings;

105 (d) Promote and develop the training of returned
106 veterans of the United States in all sorts of educational and
107 vocational learning to be supplied by the proper educational
108 institution of the State of Mississippi, and in so doing allocate
109 monies appropriated to it for these purposes to the Governor for
110 use by him in setting up, maintaining and operating an office and
111 employing a state director of on-the-job training for veterans and
112 the personnel necessary in carrying out Public Law No. 346 of the
113 United States;

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

116 (f) Build and equip additional buildings and wards at
117 the Boswell Retardation Center;

118 (g) Construct a sewage disposal and treatment plant at
119 the Mississippi State * * * Hospital at Whitfield and in so doing
120 acquire additional land as may be necessary, and to exercise the
121 right of eminent domain in the acquisition of this land;

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

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

127 (j) Build and equip a gymnasium at Columbia Training
128 School;

129 (k) Approve or disapprove the expenditure of any money
130 appropriated by the Legislature when authorized by the bill making
131 the appropriation;

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

134 (m) Sell and convey state lands when authorized by the
135 Legislature, cause said lands to be properly surveyed and platted,
136 execute all deeds or other legal instruments, and do any and all
137 other things required to effectively carry out the purpose and

138 intent of the Legislature. Any transaction which involves state
139 lands under the provisions of this paragraph shall be done in a
140 manner consistent with the provisions of Section 29-1-1;

141 (n) Collect and receive from educational institutions
142 of the State of Mississippi monies required to be paid by these
143 institutions to the state in carrying out any veterans'
144 educational programs;

145 (o) Purchase lands for building sites, or as additions
146 to building sites, for the erection of buildings and other
147 facilities which the department is authorized to erect, and
148 demolish and dispose of old buildings, when necessary for the
149 proper construction of new buildings. Any transaction which
150 involves state lands under the provisions of this paragraph shall
151 be done in a manner consistent with the provisions of Section
152 29-1-1;

153 (p) Obtain business property insurance with a
154 deductible of not less than One Hundred Thousand Dollars
155 (\$100,000.00) on state-owned buildings under the management and
156 control of the department; and

157 (q) In consultation with and approval by the Chairmen
158 of the Public Property Committees of the Senate and the House of
159 Representatives, enter into contracts for the purpose of providing
160 parking spaces for state employees who work in the Woolfolk
161 Building, the Carroll Gartin Justice Building or the Walter
162 Sillers Office Building. The provisions of this paragraph (q)
163 shall stand repealed on July 1, 2010.

164 (3) The department shall survey state-owned and
165 state-utilized buildings to establish an estimate of the costs of
166 architectural alterations, pursuant to the Americans With
167 Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The
168 department shall establish priorities for making the identified
169 architectural alterations and shall make known to the Legislative
170 Budget Office and to the Legislature the required cost to

171 effectuate such alterations. To meet the requirements of this
172 section, the department shall use standards of accessibility that
173 are at least as stringent as any applicable federal requirements
174 and may consider:

175 (a) Federal minimum guidelines and requirements issued
176 by the United States Architectural and Transportation Barriers
177 Compliance Board and standards issued by other federal agencies;

178 (b) The criteria contained in the American Standard
179 Specifications for Making Buildings Accessible and Usable by the
180 Physically Handicapped and any amendments thereto as approved by
181 the American Standards Association, Incorporated (ANSI Standards);

182 (c) Design manuals;

183 (d) Applicable federal guidelines;

184 (e) Current literature in the field;

185 (f) Applicable safety standards; and

186 (g) Any applicable environmental impact statements.

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

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

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

202 (7) The department shall review and preapprove all
203 architectural or engineering service contracts entered into by any

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

217 (8) The department shall have the authority to obtain
218 annually from the state institutions of higher learning
219 information on all building, construction and renovation projects
220 including duties, responsibilities and costs of any architect or
221 engineer hired by any such institutions.

222 (9) * * * When funding is provided through the Bureau of
223 Building, Grounds and Real Property Management, the department may
224 authorize the state institutions of higher learning, community and
225 junior colleges, and other state agencies to manage any
226 construction or renovation project with a value not exceeding Two
227 Hundred Fifty Thousand Dollars (\$250,000.00). The department
228 shall develop criteria for management of such projects that each
229 agency must follow in order to manage the projects. Only agencies
230 that the department deems capable of managing by the criteria may
231 manage these projects. Additionally, the department shall require
232 agencies managing these projects to do the following:

233 (a) Use standard departmentally approved contracts and
234 project management procedures; and

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

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

239 The department shall revoke the authority of any agency to
240 perform these project management functions if, in its opinion, an
241 agency has not followed the department's requirements for managing
242 projects. The authority granted to the department in this section
243 shall not apply to projects funded directly to the institutions of
244 higher learning, community and junior colleges, or other state
245 agencies through separate appropriation or other means.

246 (10) The department shall adopt building code standards for
247 the new construction of public facilities in a manner consistent
248 with the provisions of Section 31-11-33.

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

250 (a) "Building commissioning agent" means a person or
251 entity who renders building commissioning services.

252 (b) "Building commissioning services" include any
253 services rendered by an independent contractor to the state or a
254 local governing authority associated with the construction of
255 buildings that are intended to assist in the state or local
256 governing authority in reducing construction costs or enhancing
257 the long-term value of the construction project.

258 (c) "Construction program management services and/or
259 construction management services" means a set of management and
260 technical services rendered by a person or firm to a public sector
261 building owner during the predesign, design, construction or
262 post-construction phases of new construction, demolition,
263 alteration, repair or renovation projects. These services shall
264 include any one or more of the following: project planning,
265 budgeting, scheduling, coordination, design management,
266 construction administration or facility occupancy actions, but
267 shall not include any component of the actual construction work.
268 The term shall not include general contractors who are engaged to
269 actually perform the construction work. The term also shall not

270 include services customarily performed by licensed architects or
271 registered engineers.

272 (d) "Construction program manager and/or construction
273 manager" means a person or entity who performs construction
274 program management services and/or construction management
275 services.

276 (e) "Public construction project" means any project for
277 the construction of buildings for the state or for any local
278 governing authority of the state.

279 (2) No construction program manager and/or construction
280 manager, or any subsidiary owned in whole or in part by the
281 construction program manager and/or construction manager, or any
282 parent corporation or firm of the construction program manager
283 and/or construction manager, shall be eligible to bid or otherwise
284 participate in the construction, contracting or subcontracting on
285 any public construction project or part thereof for which the
286 construction program manager and/or construction manager has been
287 hired to perform construction program management services and/or
288 construction management services. Compensation for construction
289 program management services and/or construction management
290 services shall not exceed three percent (3%) of the cost of the
291 public construction project or part thereof for which the
292 construction program manager and/or construction manager has been
293 hired. Any contract for public construction that violates this
294 provision shall be void against the public policy of the state.

295 (3) No building commissioning agent, or any subsidiary owned
296 in whole or in part by the building commissioning agent, or any
297 parent corporation or firm of the building commissioning agent,
298 shall be eligible to bid or otherwise participate in the
299 construction, contracting or subcontracting on any public
300 construction project or part thereof for which the building
301 commissioning agent has been hired to perform construction
302 building commissioning services. Any contract for public

303 construction that violates this provision shall be void against
304 the public policy of the state.

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