

By: Senator(s) Huggins

To: Public Property; Finance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2603

1 AN ACT TO AMEND SECTION 31-11-30, MISSISSIPPI CODE OF 1972,
2 TO INCREASE TO \$5,000,000.00 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, TO AUTHORIZE THE
11 DEPARTMENT OF FINANCE AND ADMINISTRATION TO ALLOW STATE
12 INSTITUTIONS OF HIGHER LEARNING AND OTHER STATE AGENCIES TO MANAGE
13 CONSTRUCTION PROJECTS WITH A VALUE OF \$250,000.00 OR LESS PROVIDED
14 THAT EACH AGENCY MEETS DEPARTMENTALLY DEVELOPED CRITERIA AND
15 MANAGEMENT REQUIREMENTS; TO PROHIBIT CONSTRUCTION PROGRAM MANAGERS
16 AND/OR CONSTRUCTION MANAGERS AND BUILDING COMMISSIONING AGENTS AND
17 THEIR SUBSIDIARIES OR PARENTS FROM BIDDING ON ANY PUBLIC
18 CONSTRUCTION PROJECT FOR WHICH THEY ARE PROVIDING CONSTRUCTION
19 PROGRAM MANAGEMENT SERVICES AND/OR CONSTRUCTION MANAGEMENT
20 SERVICES OR BUILDING COMMISSIONING SERVICES; AND FOR RELATED
21 PURPOSES.

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

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

25 31-11-30. (1) Every capital improvements project, costing
26 Five Million Dollars (\$5,000,000.00) or more, which is developed
27 to repair, renovate, construct, remodel, add to or improve a
28 state-owned public building shall be funded by the Legislature in
29 two (2) phases. The two-phase funding requirement shall not apply
30 to capital improvements projects for a state-owned port or where
31 the Legislature finds that an emergency or critical need must be
32 met or a court order complied with. The two (2) phases shall not
33 be funded in the same regular session of the Legislature. Each
34 phase shall be funded in a separate session of the Legislature.
35 Phase 1 shall be a preplanned capital improvements project budget
36 projection for the project and shall be funded first. Phase 2

37 shall be the actual repair, renovation, construction, remodeling,
38 addition to or improvement of the state-owned public building and
39 the acquisition of furniture and equipment for the capital
40 improvements project and shall be funded second.

41 (2) For the purposes of this section:

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

45 (b) "Emergency" has the meaning as defined in Section
46 31-7-1.

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

50 (3) Every state agency that plans to repair, renovate,
51 construct, remodel, add to or improve a state-owned public
52 building shall submit a preplanned capital improvements project
53 budget projection to the Bureau of Building, Grounds and Real
54 Property Management for evaluation. The bureau shall assess the
55 need for all preplanned projects submitted and shall compile a
56 report on its findings. Any capital improvements project costing
57 less than Five Million Dollars (\$5,000,000.00) shall not be
58 required to be preplanned.

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

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

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

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

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

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

94 (a) Build a state office building;

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

99 (c) Provide state aid for the construction of school
100 buildings;

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

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

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

112 (f) Build and equip additional buildings and wards at
113 the Boswell Retardation Center;

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

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

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

123 (j) Build and equip a gymnasium at Columbia Training
124 School;

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

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

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

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

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

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

149 (p) Obtain business property insurance with a
150 deductible of not less than One Hundred Thousand Dollars
151 (\$100,000.00) on state-owned buildings under the management and
152 control of the department; and

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

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

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

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

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

178 (c) Design manuals;

179 (d) Applicable federal guidelines;

180 (e) Current literature in the field;

181 (f) Applicable safety standards; and

182 (g) Any applicable environmental impact statements.

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

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

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

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

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

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

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

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

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

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

232 (b) As used in this subsection:

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

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

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

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

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

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

266 insure proper analysis of any proposal the department receives
267 from a contractor;

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

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

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

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

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

294 (a) Use standard departmentally approved contracts and
295 project management procedures; and

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

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

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

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

304 (a) "Building commissioning agent" means a person who
305 renders building commissioning services.

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

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

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

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

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

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

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