

By: Senator(s) Huggins

To: Public Property; Finance

SENATE BILL NO. 2603

1 AN ACT TO AMEND SECTION 31-11-30, MISSISSIPPI CODE OF 1972,
 2 TO DEFINE THE TERMS "EMERGENCY" AND "CRITICAL NEED" FOR PURPOSES
 3 OF CAPITAL IMPROVEMENT PROJECTS, AND TO REQUIRE THAT CONSTRUCTION
 4 PROJECTS FUNDED WITH STATE BOND FUNDS OR OTHER STATE FUNDS
 5 AUTHORIZED FOR COMMUNITY AND JUNIOR COLLEGES BE ADMINISTERED
 6 THROUGH THE TWO-PHASE PLANNING PROCESS OF THE BUREAU OF BUILDING,
 7 GROUNDS AND REAL PROPERTY MANAGEMENT; TO AMEND SECTION 31-11-3,
 8 MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE DEPARTMENT OF FINANCE
 9 AND ADMINISTRATION TO ALLOW INSTITUTIONS OF HIGHER LEARNING AND
 10 OTHER STATE AGENCIES TO MANAGE CONSTRUCTION PROJECTS WITH A VALUE
 11 OF \$250,000.00 OR LESS, PROVIDED THAT EACH AGENCY OR INSTITUTION
 12 MEETS DEPARTMENTALLY DEVELOPED CRITERIA AND MANAGEMENT
 13 REQUIREMENTS; TO PROHIBIT CONSTRUCTION MANAGEMENT FIRMS AND
 14 BUILDING COMMISSIONING FIRMS OR THEIR SUBSIDIARIES OR PARENTS FROM
 15 BIDDING ON ANY PUBLIC CONSTRUCTION PROJECT FOR WHICH THEY ARE
 16 PROVIDING CONSTRUCTION MANAGEMENT OR COMMISSIONING SERVICES; AND
 17 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, the term "preplanned"
38 or "preplanning" means the preliminary planning that establishes
39 the program, scope, design and budget for a capital improvements
40 project.

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

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

54 (5) This section shall not apply to capital improvements
55 projects authorized by the Legislature before the 2001 Regular
56 Session of the Legislature.

57 (6) For purposes of this section, the term "emergency" shall
58 have ascribed to it the meaning found in Section 31-7-1. The term
59 "critical need" shall mean necessary to meet accreditation
60 standards or necessary to respond to failures in planning.

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

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

67 31-11-3. (1) The Department of Finance and Administration,
68 for the purposes of carrying out the provisions of this chapter,
69 in addition to all other rights and powers granted by law, shall
70 have full power and authority to employ and compensate architects
71 or other employees necessary for the purpose of making
72 inspections, preparing plans and specifications, supervising the
73 erection of any buildings, and making any repairs or additions as
74 may be determined by the Department of Finance and Administration
75 to be necessary, pursuant to the rules and regulations of the
76 State Personnel Board. The department shall have entire control
77 and supervision of, and determine what, if any, buildings,
78 additions, repairs or improvements are to be made under the
79 provisions of this chapter, subject to the approval of the Public
80 Procurement Review Board.

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

89 (a) Build a state office building;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

173 (c) Design manuals;

174 (d) Applicable federal guidelines;

175 (e) Current literature in the field;

176 (f) Applicable safety standards; and

177 (g) Any applicable environmental impact statements.

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

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

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

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

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

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

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

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

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

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

227 (b) As used in this subsection:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

299 **SECTION 3.** (1) No construction program manager, or any
300 subsidiary owned in whole or in part by the construction program
301 manager, or any parent corporation or firm of the construction
302 program manager, shall be eligible to bid or otherwise participate
303 in the construction, contracting or subcontracting on any public
304 construction project or part thereof for which the construction
305 program manager has been hired to perform construction program
306 management services. Any contract for public construction that
307 violates this provision shall be void against the public policy of
308 the state.

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

323 (3) A "construction program manager" shall mean a person who
324 performs construction program management.

325 (4) No building commissioning agent, or any subsidiary owned
326 in whole or in part by the building commissioning agent, or any
327 parent corporation or firm of the building commissioning agent,

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 building
331 commissioning agent has been hired to perform construction
332 building commissioning services. Any contract for public
333 construction that violates this provision shall be void against
334 the public policy of the state. Building commissioning services
335 shall include any services rendered by an independent contractor
336 to the state or a local governing authority associated with the
337 construction of buildings which are intended to assist in the
338 state or local governing authority in reducing construction costs
339 or enhancing the long-term value of the construction project.

340 (5) A "building commissioning agent" shall mean a person who
341 renders building commissioning services.

342 (6) The term "public construction project" shall mean any
343 project for the construction of buildings for the state or for any
344 local governing authority of the state.

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