

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.