

By: Representative Dedeaux

To: Public Property; Ways  
and Means

## HOUSE BILL NO. 189

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 USE THE DESIGN-BUILD  
10 METHOD OF CONTRACTING FOR CERTAIN CONSTRUCTION PROJECTS; TO  
11 AUTHORIZE THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO ALLOW  
12 STATE INSTITUTIONS OF HIGHER LEARNING AND OTHER STATE AGENCIES TO  
13 MANAGE CONSTRUCTION PROJECTS WITH A VALUE OF \$250,000.00 OR LESS  
14 PROVIDED THAT EACH AGENCY MEETS DEPARTMENTALLY DEVELOPED CRITERIA  
15 AND MANAGEMENT REQUIREMENTS; TO REMOVE THE REQUIREMENT THAT THE  
16 DEPARTMENT OF FINANCE AND ADMINISTRATION ADOPT BUILDING CODE  
17 STANDARDS FOR NEW CONSTRUCTION OF PUBLIC FACILITIES; TO PROHIBIT  
18 CONSTRUCTION PROGRAM MANAGERS AND/OR CONSTRUCTION MANAGERS AND  
19 BUILDING COMMISSIONING AGENTS AND THEIR SUBSIDIARIES OR PARENTS  
20 FROM BIDDING ON ANY PUBLIC CONSTRUCTION PROJECT FOR WHICH THEY ARE  
21 PROVIDING CONSTRUCTION PROGRAM MANAGEMENT SERVICES AND/OR  
22 CONSTRUCTION MANAGEMENT SERVICES OR BUILDING COMMISSIONING  
23 SERVICES; AND FOR RELATED PURPOSES.

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

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

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

38 projection for the project and shall be funded first. Phase 2  
39 shall be the actual repair, renovation, construction, remodeling,  
40 addition to or improvement of the state-owned public building and  
41 the acquisition of furniture and equipment for the capital  
42 improvements project and shall be funded second.

43 (2) For the purposes of this section:

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

47 (b) "Emergency" has the meaning as defined in Section  
48 31-7-1.

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

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

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

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

68 (6) The provisions of this section also shall apply to any  
69 community or junior college project funded in whole or in part by

70 either state bonds or funds appropriated for that construction by  
71 the Legislature.

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

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

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

96 (a) Build a state office building;

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

101 (c) Provide state aid for the construction of school  
102 buildings;

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

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

114           (f) Build and equip additional buildings and wards at  
115 the Boswell Retardation Center;

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

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

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

125           (j) Build and equip a gymnasium at Columbia Training  
126 School;

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

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

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

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

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

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

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

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

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

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

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

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

180 (c) Design manuals;

181 (d) Applicable federal guidelines;

182 (e) Current literature in the field;

183 (f) Applicable safety standards; and

184 (g) Any applicable environmental impact statements.

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

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

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

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

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

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

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

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

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

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

234 (b) As used in this subsection:

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

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

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

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

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

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

268 insure proper analysis of any proposal the department receives  
269 from a contractor;

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

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

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

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

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

297 (a) Use standard departmentally approved contracts and  
298 project management procedures; and

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

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

303 The department shall revoke the authority of any agency to  
304 perform \* \* \* management functions if, in its opinion, an agency  
305 has not followed the department's requirements for managing  
306 projects. \* \* \*

307 \* \* \*

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

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

311 (b) "Building commissioning services" includes any  
312 services rendered by an independent contractor to the state or a  
313 local governing authority associated with the construction of  
314 buildings that are intended to assist the state or local governing  
315 authority in reducing construction costs or enhancing the  
316 long-term value of the construction project.

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

331 (d) "Construction program manager and/or construction  
332 manager" means a person or entity who performs construction

333 program management services and/or construction management  
334 services.

335 (e) "Public construction project" means any project for  
336 the construction of buildings for the state or for any local  
337 governing authority of the state.

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

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

360 **SECTION 4.** This act shall take effect and be in force from  
361 and after July 1, 2007.