

By: Senator(s) White, Flowers

To: Public Property;
Appropriations

SENATE BILL NO. 2564

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 CREATE A
8 NEW SECTION TO PROHIBIT CONSTRUCTION PROGRAM MANAGERS AND BUILDING
9 COMMISSIONING AGENTS AND THEIR SUBSIDIARIES OR PARENTS FROM
10 BIDDING ON ANY PUBLIC CONSTRUCTION PROJECT FOR WHICH THEY ARE
11 PROVIDING CONSTRUCTION PROGRAM MANAGEMENT SERVICES OR BUILDING
12 COMMISSIONING SERVICES; AND FOR RELATED PURPOSES.

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

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

16 31-11-30. (1) Every capital improvements project, costing
17 One Million Dollars (\$1,000,000.00) or more, which is developed to
18 repair, renovate, construct, remodel, add to or improve a
19 state-owned public building shall be funded by the Legislature in
20 two (2) phases. The two-phase funding requirement shall not apply
21 to capital improvements projects for a state-owned port or where
22 the Legislature finds that an emergency or critical need must be
23 met or a court order complied with. The two (2) phases shall not
24 be funded in the same regular session of the Legislature. Each
25 phase shall be funded in a separate session of the Legislature.
26 Phase 1 shall be a preplanned capital improvements project budget
27 projection for the project and shall be funded first. Phase 2
28 shall be the actual repair, renovation, construction, remodeling,
29 addition to or improvement of the state-owned public building and
30 the acquisition of furniture and equipment for the capital
31 improvements project and shall be funded second.

32 (2) For the purposes of this section:

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

36 (b) "Emergency" has the meaning as defined in Section
37 31-7-1.

38 (c) "Critical need" means necessary to meet
39 accreditation standards or necessary to respond to failures in
40 planning.

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) This section shall apply to any community or junior
58 college project funded in whole or in part by either state bonds
59 or funds appropriated for that construction by the Legislature.

60 **SECTION 2.** (1) For the purposes of this section:

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

63 (b) "Building commissioning services" include any
64 services rendered by an independent contractor to the state or a
65 local governing authority associated with the construction of

66 buildings that are intended to assist in the state or local
67 governing authority in reducing construction costs or enhancing
68 the long-term value of the construction project.

69 (c) "Construction program management services and/or
70 construction management services" means a set of management and
71 technical services rendered by a person or firm to a public sector
72 building owner during the predesign, design, construction or
73 post-construction phases of new construction, demolition,
74 alteration, repair or renovation projects. These services shall
75 include any one or more of the following: project planning,
76 budgeting, scheduling, coordination, design management,
77 construction administration or facility occupancy actions, but
78 shall not include any component of the actual construction work.
79 The term shall not include general contractors who are engaged to
80 actually perform the construction work. The term also shall not
81 include services customarily performed by licensed architects or
82 registered engineers.

83 (d) "Construction program manager and/or construction
84 manager" means a person or entity who performs construction
85 program management services and/or construction management
86 services.

87 (e) "Public construction project" means any project for
88 the construction of buildings for the state or for any local
89 governing authority of the state.

90 (2) No construction program manager and/or construction
91 manager, or any subsidiary owned in whole or in part by the
92 construction program manager and/or construction manager, or any
93 parent corporation or firm of the construction program manager
94 and/or construction manager, shall be eligible to bid or otherwise
95 participate in the construction, contracting or subcontracting on
96 any public construction project or part thereof for which the
97 construction program manager and/or construction manager has been
98 hired to perform construction program management services and/or

99 construction management services. Compensation for construction
100 program management services and/or construction management
101 services shall not exceed three percent (3%) of the cost of the
102 public construction project or part thereof for which the
103 construction program manager and/or construction manager has been
104 hired. Any contract for public construction that violates this
105 provision shall be void against the public policy of the state.

106 (3) No building commissioning agent, or any subsidiary owned
107 in whole or in part by the building commissioning agent, or any
108 parent corporation or firm of the building commissioning agent,
109 shall be eligible to bid or otherwise participate in the
110 construction, contracting or subcontracting on any public
111 construction project or part thereof for which the building
112 commissioning agent has been hired to perform construction
113 building commissioning services. Any contract for public
114 construction that violates this provision shall be void against
115 the public policy of the state.

116 **SECTION 3.** This act shall take effect and be in force from
117 and after July 1, 2007.