

By: Representative Weathersby

To: Public Property

HOUSE BILL NO. 1471

1 AN ACT TO AMEND SECTION 27-104-7, MISSISSIPPI CODE OF 1972,  
 2 TO AUTHORIZE THE PUBLIC PROCUREMENT REVIEW BOARD TO ADOPT  
 3 REGULATIONS GOVERNING THE APPROVAL OF CONTRACTS FOR ARCHITECTURAL  
 4 AND ENGINEERING SERVICES; TO BRING FORWARD SECTIONS 31-7-13.1 AND  
 5 37-101-41, MISSISSIPPI CODE OF 1972, FOR THE PURPOSES OF POSSIBLE  
 6 AMENDMENT; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 27-104-7, Mississippi Code of 1972, is  
 9 amended as follows:

10 27-104-7. (1) There is created within the Department of  
 11 Finance and Administration the Public Procurement Review Board,  
 12 which shall be composed of the Executive Director of the  
 13 Department of Finance and Administration, the head of the Office  
 14 of Budget and Policy Development and an employee of the Office of  
 15 General Services who is familiar with the purchasing laws of this  
 16 state. The Executive Director of the Department of Finance and  
 17 Administration shall be chairman and shall preside over the  
 18 meetings of the board. The board shall annually elect a vice  
 19 chairman, who shall serve in the absence of the chairman. No  
 20 business shall be transacted, including adoption of rules of



21 procedure, without the presence of a quorum of the board. Two (2)  
22 members shall be a quorum. No action shall be valid unless  
23 approved by the chairman and one (1) other of those members  
24 present and voting, entered upon the minutes of the board and  
25 signed by the chairman. The board shall meet on a monthly basis  
26 and at any other time when notified by the chairman. Necessary  
27 clerical and administrative support for the board shall be  
28 provided by the Department of Finance and Administration. Minutes  
29 shall be kept of the proceedings of each meeting, copies of which  
30 shall be filed on a monthly basis with the Legislative Budget  
31 Office.

32 (2) The Public Procurement Review Board shall have the  
33 following powers and responsibilities:

34 (a) Approve all purchasing regulations governing the  
35 purchase or lease by any agency, as defined in Section 31-7-1, of  
36 commodities and equipment, except computer equipment acquired  
37 pursuant to Sections 25-53-1 through 25-53-29;

38 (b) Adopt regulations governing the approval of  
39 contracts let for the construction and maintenance of state  
40 buildings and other state facilities;

41 (c) Adopt regulations governing any lease or rental  
42 agreement by any state agency or department, including any state  
43 agency financed entirely by federal funds, for space outside the  
44 buildings under the jurisdiction of the Department of Finance and  
45 Administration. These regulations shall require each agency



46 requesting to lease such space to provide the following  
47 information that shall be published by the Department of Finance  
48 and Administration on its website: the agency to lease the space;  
49 the terms of the lease; the approximate square feet to be leased;  
50 the use for the space; a description of a suitable space; the  
51 general location desired for the leased space; the contact  
52 information for a person from the agency; the deadline date for  
53 the agency to have received a lease proposal; any other specific  
54 terms or conditions of the agency; and any other information  
55 deemed appropriate by the Division of Real Property Management of  
56 the Department of Finance and Administration or the Public  
57 Procurement Review Board \* \* \*. The information shall be provided  
58 sufficiently in advance of the time the space is needed to allow  
59 the Division of Real Property Management of the Department of  
60 Finance and Administration to review and preapprove the lease  
61 before the time for advertisement begins;

62 (d) Adopt, in its discretion, regulations to set aside  
63 at least five percent (5%) of anticipated annual expenditures for  
64 the purchase of commodities from minority businesses; however, all  
65 such set-aside purchases shall comply with all purchasing  
66 regulations promulgated by the department and shall be subject to  
67 all bid requirements. Set-aside purchases for which competitive  
68 bids are required shall be made from the lowest and best minority  
69 business bidder; however, if no minority bid is available or if  
70 the minority bid is more than two percent (2%) higher than the



71 lowest bid, then bids shall be accepted and awarded to the lowest  
72 and best bidder. However, the provisions in this paragraph shall  
73 not be construed to prohibit the rejection of a bid when only one  
74 (1) bid is received. Such rejection shall be placed in the  
75 minutes. For the purposes of this paragraph, the term "minority  
76 business" means a business which is owned by a person who is a  
77 citizen or lawful permanent resident of the United States and who  
78 is:

79 (i) Black: having origins in any of the black  
80 racial groups of Africa;

81 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,  
82 Central or South American, or other Spanish or Portuguese culture  
83 or origin regardless of race;

84 (iii) Asian-American: having origins in any of  
85 the original peoples of the Far East, Southeast Asia, the Indian  
86 subcontinent, or the Pacific Islands;

87 (iv) American Indian or Alaskan Native: having  
88 origins in any of the original peoples of North America; or

89 (v) Female;

90 (e) In consultation with and approval by the Chairmen  
91 of the Senate and House Public Property Committees, approve  
92 leases, for a term not to exceed eighteen (18) months, entered  
93 into by state agencies for the purpose of providing parking  
94 arrangements for state employees who work in the Woolfolk



95 Building, the Carroll Gartin Justice Building or the Walter  
96 Sillers Office Building.

97 (3) No member of the Public Procurement Review Board shall  
98 use his official authority or influence to coerce, by threat of  
99 discharge from employment, or otherwise, the purchase of  
100 commodities or the contracting for public construction under this  
101 chapter.

102 (4) Notwithstanding any other laws or rules to the contrary,  
103 the provisions of subsection (2) of this section shall not be  
104 applicable to the Mississippi State Port Authority at Gulfport.

105 **SECTION 2.** Section 31-7-13.1, Mississippi Code of 1972, is  
106 brought forward as follows:

107 31-7-13.1. (1) The method of contracting for construction  
108 described in this section shall be known as the "dual-phase  
109 design-build method" of construction contracting. This method of  
110 construction contracting may be used only when the Legislature has  
111 specifically required or authorized the use of this method in the  
112 legislation authorizing a project. At a minimum, the  
113 determination must include a detailed explanation of why using the  
114 dual-phase design-build method for a particular project satisfies  
115 the public need better than the traditional design-bid-build  
116 method based on the following criteria:

117 (a) The project provides a savings in time or cost over  
118 traditional methods; and



119 (b) The size and type of the project is suitable for  
120 design-build.

121 (2) For each proposed dual-phase design-build project, a  
122 two-phase procedure for awarding a contract must be adopted.  
123 During Phase One, and before solicitation of initial proposals,  
124 the agency or governing authority shall develop, with the  
125 assistance of an architectural or engineering firm, a scope of  
126 work statement that provides prospective offerors with sufficient  
127 information regarding the requirements of the agency or governing  
128 authority. The scope of work statement must include, but is not  
129 limited to, the following information:

130 (a) Drawings must show overall building dimensions and  
131 major lines of dimensions, and site plans that show topography,  
132 adjacent buildings and utilities;

133 (b) Drawings must include information to adequately  
134 explain HVAC, electrical and structural requirements;

135 (c) The scope of work statement also must include  
136 building elevations, sections and design details; and

137 (d) The scope of work statement must include general  
138 budget parameters, schedule or delivery requirements, relevant  
139 criteria for evaluation of proposals, and any other information  
140 necessary to enable the design-builders to submit proposals that  
141 meet the needs of the agency or governing authority.

142 (3) The agency or governing authority shall cause to be  
143 published once a week, for at least two (2) consecutive weeks in a



144 regular newspaper published in the county in which the project is  
145 to be located, or a newspaper with statewide circulation, a notice  
146 inviting proposals for the dual-phase design-build construction  
147 project. The proposals shall not be opened in less than fifteen  
148 (15) working days after the last notice is published. The notice  
149 must inform potential offerors of how to obtain the scope of work  
150 statement developed for the project, and the notice must contain  
151 such other information to describe adequately the general nature  
152 and scope of the project so as to promote full, equal and open  
153 competition.

154 (4) The agency or governing authority shall accept initial  
155 proposals only from entities able to provide an experienced and  
156 qualified design-build team that includes, at a minimum, an  
157 architectural or engineering firm registered in Mississippi and a  
158 contractor properly licensed and domiciled in Mississippi for the  
159 type of work required. From evaluation of initial proposals under  
160 Phase One, the agency or governing authority shall select a  
161 minimum of two (2) and a maximum of five (5) design-builders as  
162 "short-listed firms" to submit proposals for Phase Two.

163 (5) During Phase Two, the short-listed firms will be invited  
164 to submit detailed designs, specific technical concepts or  
165 solutions, pricing, scheduling and other information deemed  
166 appropriate by the agency or governing authority as necessary to  
167 evaluate and rank acceptability of the Phase Two proposals. After  
168 evaluation of these Phase Two proposals, the agency or governing



169 authority shall award a contract to the design-builder determined  
170 to offer the best value to the public in accordance with  
171 evaluation criteria set forth in the request for proposals, of  
172 which price must be one, but not necessarily the only, criterion.

173 (6) If the agency or governing authority accepts a proposal  
174 other than the lowest dollar proposal actually submitted, the  
175 agency or governing authority shall enter on its minutes detailed  
176 calculations and a narrative summary showing why the accepted  
177 proposal was determined to provide the best value, and the agency  
178 or governing authority shall state specifically on its minutes the  
179 justification for its award.

180 (7) All facilities that are governed by this section shall  
181 be designed and constructed to comply with standards equal to or  
182 exceeding the minimum building code standards employed by the  
183 state as required under Section 31-11-33 in force at the time of  
184 contracting. All private contractors or private entities  
185 contracting or performing under this section must comply at all  
186 times with all applicable laws, codes and other legal requirements  
187 pertaining to the project.

188 (8) At its discretion, the agency or governing authority may  
189 award a stipulated fee equal to a percentage, as prescribed in the  
190 request for proposals, of the project's final design and  
191 construction budget, as prescribed in the request for proposals,  
192 but not less than two-tenths of one percent (2/10 of 1%) of the  
193 project's final design and construction budget, to each short-list





194 offeror who provides a responsive, but unsuccessful, proposal. If  
195 the agency or governing authority does not award a contract, all  
196 responsive final list offerors shall receive the stipulated fee  
197 based on the owner's estimate of the project final design and  
198 construction budget as included in the request for proposals. The  
199 agency or governing authority shall pay the stipulated fee to each  
200 offeror within ninety (90) days after the award of the initial  
201 contract or the decision not to award a contract. In  
202 consideration for paying the stipulated fee, the agency or  
203 governing authority may use any ideas or information contained in  
204 the proposals in connection with any contract awarded for the  
205 project, or in connection with a subsequent procurement, without  
206 any obligation to pay any additional compensation to the  
207 unsuccessful offerors. Notwithstanding the other provisions of  
208 this subsection, an unsuccessful short-list offeror may elect to  
209 waive the stipulated fee. If an unsuccessful short-list offeror  
210 elects to waive the stipulated fee, the agency or governing  
211 authority may not use ideas and information contained in the  
212 offeror's proposal, except that this restriction does not prevent  
213 the agency or governing authority from using any idea or  
214 information if the idea or information is also included in a  
215 proposal of an offeror that accepts the stipulated fee.

216 (9) This section shall not authorize the awarding of  
217 construction contracts according to any contracting method that  
218 does not require the contractor to satisfactorily perform, at a



219 minimum, both any balance of design, using an independent  
220 professional licensed in Mississippi, and construction of the  
221 project for which the contract is awarded.

222 (10) The provisions of this section shall not affect any  
223 procurement by the Mississippi Transportation Commission.

224 (11) The provisions of this section shall not apply to  
225 procurement authorized in Section 59-5-37(3).

226 **SECTION 3.** Section 37-101-41, Mississippi Code of 1972, is  
227 brought forward as follows:

228 37-101-41. (1) (a) Except as otherwise provided in  
229 paragraph (b) of this section, and subject to the provisions of  
230 Section 37-101-42, the Board of Trustees of State Institutions of  
231 Higher Learning (the "board") is authorized and empowered to lease  
232 to private individuals or corporations for a term not exceeding  
233 thirty-five (35) years any land or land with existing auxiliary  
234 facilities at any of the following state-supported institutions:  
235 Mississippi State University of Agriculture and Applied Science,  
236 Jackson State University, Mississippi Valley State University,  
237 University of Mississippi, Alcorn State University, University of  
238 Southern Mississippi, Mississippi University for Women and Delta  
239 State University, for the purpose of erecting or renovating,  
240 furnishing, maintaining and equipping auxiliary facilities thereon  
241 for active faculty, staff and/or students. The auxiliary  
242 facilities shall be constructed or renovated, and may be  
243 furnished, maintained and equipped thereon by private financing,



244 and may be leased back to the board for use by the concerned  
245 state-supported institution of higher learning. The lease shall  
246 contain a provision permitting the board to purchase the building  
247 located thereon, including any furnishings and equipment therein,  
248 for the sum of One Dollar (\$1.00) after payment by the board of  
249 all sums of money due under said lease.

250 (b) The Board of Trustees of State Institutions of  
251 Higher Learning may grant authority to universities to lease to  
252 private individuals or corporations for a period not exceeding  
253 thirty-five (35) years, any land or land with existing auxiliary  
254 facilities at the university, for the purpose of erecting or  
255 renovating, furnishing, maintaining and equipping auxiliary  
256 facilities thereon for active faculty, staff and/or students. The  
257 auxiliary facilities shall be constructed or renovated, and may be  
258 furnished, maintained and equipped thereon by private financing,  
259 and may be leased back to the board for use by the university.  
260 The lease shall contain a provision permitting the board to  
261 purchase the auxiliary facilities located thereon, including any  
262 furnishings and equipment therein, for the sum of One Dollar  
263 (\$1.00) after payment by the board of all sums of money due under  
264 the lease.

265 (2) Upon there being an agreement reached between the Board  
266 of Trustees of State Institutions of Higher Learning and a  
267 university upon whose land the auxiliary facility will be  
268 constructed or renovated and a private individual(s) or



269 corporation(s) to enter into such lease agreement as described in  
270 subsection (1), it shall be stipulated in the agreement that all  
271 newly constructed or renovated auxiliary facilities shall be in  
272 compliance with the minimum building code standards employed by  
273 the state as required under Section 31-11-33.

274 (3) The board, in conjunction with the university, shall  
275 have sole discretion to decide the placement of new auxiliary  
276 facilities upon the university's campus. However, the scope of  
277 any such construction or renovation by private entities shall be  
278 limited to two (2) leases entered into pursuant to this Section  
279 37-101-41 per year for each university, and shall not exceed in  
280 the aggregate twenty-five percent (25%) of the university's total  
281 main campus or satellite campus property under the original lease  
282 period. In addition, the scope of any such renovation by private  
283 entities shall be limited to one (1) project per fiscal year for  
284 each university.

285 (4) No contractual lease agreement for the construction or  
286 renovation, furnishing, maintaining and equipping of privately  
287 financed auxiliary facilities shall be entered into by a  
288 university without prior approval of the Board of Trustees of  
289 State Institutions of Higher Learning. An auxiliary facility is a  
290 facility that is described by the current Postsecondary Education  
291 Facilities Inventory and Classification Manual (FICM) as within  
292 categories 500/600/700/800/900.



293           Before entering into contractual lease agreements for the  
294 construction or renovation, furnishing, maintaining and equipping  
295 of privately financed auxiliary facilities, the Board of Trustees  
296 of State Institutions of Higher Learning shall establish rules and  
297 procedures to ensure adequate public advertisement of any  
298 requirement for the construction or renovation, furnishing,  
299 maintaining and equipping of privately financed auxiliary  
300 facilities at a university in order to promote full and open  
301 competition and which set forth the requirements for evaluation of  
302 offers and award of the contract lease agreement to the private  
303 entity.

304           (5) In addition to the above stated authority, the  
305 university, with the permission of the board, is authorized to  
306 enter into such marketing, support, management, operating,  
307 cooperating or other similar agreements as the university and  
308 board may deem advisable or prudent in connection with the ongoing  
309 operations of such auxiliary facilities for a period not to exceed  
310 the term of the lease relating to such auxiliary facilities.

311           **SECTION 4.** This act shall take effect and be in force from  
312 and after July 1, 2016.

