

By: Representative Weathersby

To: Public Property

HOUSE BILL NO. 1497

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 AMEND SECTION 31-11-3, MISSISSIPPI
 5 CODE 1972, TO CLARIFY THE DEPARTMENT OF FINANCE AND
 6 ADMINISTRATION'S AUTHORITY TO REVIEW AND PREAPPROVE ALL
 7 ARCHITECTURAL AND ENGINEERING SERVICE CONTRACTS ENTERED INTO BY
 8 STATE AGENCIES; TO BRING FORWARD SECTIONS 31-7-13.1 AND 37-101-41,
 9 MISSISSIPPI CODE OF 1972, FOR THE PURPOSES OF POSSIBLE AMENDMENT;
 10 AND FOR RELATED PURPOSES.

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

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

14 27-104-7. (1) There is created within the Department of
 15 Finance and Administration the Public Procurement Review Board,
 16 which shall be composed of the Executive Director of the
 17 Department of Finance and Administration, the head of the Office
 18 of Budget and Policy Development and an employee of the Office of
 19 General Services who is familiar with the purchasing laws of this
 20 state. The Executive Director of the Department of Finance and
 21 Administration shall be chairman and shall preside over the
 22 meetings of the board. The board shall annually elect a vice



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

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

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

42 (b) Adopt regulations governing the approval of
43 contracts let for the construction and maintenance of state
44 buildings and other state facilities as well as related contracts
45 for architectural and engineering services to ensure compliance
46 with purchasing regulations, to ensure fees are not excessive and
47 do not exceed the department's fee schedules and to confirm that



48 such contracts are procured by a competitive qualification-based
49 selection process except where such appointment is for an
50 emergency project or for a continuation of a previous appointment
51 for a directly related project;

52 (c) Adopt regulations governing any lease or rental
53 agreement by any state agency or department, including any state
54 agency financed entirely by federal funds, for space outside the
55 buildings under the jurisdiction of the Department of Finance and
56 Administration. These regulations shall require each agency
57 requesting to lease such space to provide the following
58 information that shall be published by the Department of Finance
59 and Administration on its website: the agency to lease the space;
60 the terms of the lease; the approximate square feet to be leased;
61 the use for the space; a description of a suitable space; the
62 general location desired for the leased space; the contact
63 information for a person from the agency; the deadline date for
64 the agency to have received a lease proposal; any other specific
65 terms or conditions of the agency; and any other information
66 deemed appropriate by the Division of Real Property Management or
67 the Public Procurement Review Board;

68 (d) Adopt, in its discretion, regulations to set aside
69 at least five percent (5%) of anticipated annual expenditures for
70 the purchase of commodities from minority businesses; however, all
71 such set-aside purchases shall comply with all purchasing
72 regulations promulgated by the department and shall be subject to



73 all bid requirements. Set-aside purchases for which competitive
74 bids are required shall be made from the lowest and best minority
75 business bidder; however, if no minority bid is available or if
76 the minority bid is more than two percent (2%) higher than the
77 lowest bid, then bids shall be accepted and awarded to the lowest
78 and best bidder. However, the provisions in this paragraph shall
79 not be construed to prohibit the rejection of a bid when only one
80 (1) bid is received. Such rejection shall be placed in the
81 minutes. For the purposes of this paragraph, the term "minority
82 business" means a business which is owned by a person who is a
83 citizen or lawful permanent resident of the United States and who
84 is:

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

87 (ii) Hispanic: of Mexican, Puerto Rican, Cuban,
88 Central or South American, or other Spanish or Portuguese culture
89 or origin regardless of race;

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

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

95 (v) Female;

96 (e) In consultation with and approval by the Chairmen
97 of the Senate and House Public Property Committees, approve



98 leases, for a term not to exceed eighteen (18) months, entered
99 into by state agencies for the purpose of providing parking
100 arrangements for state employees who work in the Woolfolk
101 Building, the Carroll Gartin Justice Building or the Walter
102 Sillers Office Building.

103 (3) No member of the Public Procurement Review Board shall
104 use his official authority or influence to coerce, by threat of
105 discharge from employment, or otherwise, the purchase of
106 commodities or the contracting for public construction under this
107 chapter.

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

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

113 31-11-3. (1) The Department of Finance and Administration,
114 for the purposes of carrying out the provisions of this chapter,
115 in addition to all other rights and powers granted by law, shall
116 have full power and authority to employ and compensate architects
117 or other employees necessary for the purpose of making
118 inspections, preparing plans and specifications, supervising the
119 erection of any buildings, and making any repairs or additions as
120 may be determined by the Department of Finance and Administration
121 to be necessary, pursuant to the rules and regulations of the
122 State Personnel Board. The department shall have entire control



123 and supervision of, and determine what, if any, buildings,
124 additions, repairs, demolitions or improvements are to be made
125 under the provisions of this chapter, subject to the regulations
126 adopted by the Public Procurement Review Board.

127 (2) The department shall have full power to erect buildings,
128 make repairs, additions or improvements, demolitions, to grant or
129 acquire easements or rights-of-way, and to buy materials, supplies
130 and equipment for any of the institutions or departments of the
131 state subject to the regulations adopted by the Public Procurement
132 Review Board. In addition to other powers conferred, the
133 department shall have full power and authority as directed by the
134 Legislature, or when funds have been appropriated for its use for
135 these purposes, to:

136 (a) Build a state office building;

137 (b) Build suitable plants or buildings for the use and
138 housing of any state schools or institutions, including the
139 building of plants or buildings for new state schools or
140 institutions, as provided for by the Legislature;

141 (c) Provide state aid for the construction of school
142 buildings;

143 (d) Promote and develop the training of returned
144 veterans of the United States in all sorts of educational and
145 vocational learning to be supplied by the proper educational
146 institution of the State of Mississippi, and in so doing allocate
147 monies appropriated to it for these purposes to the Governor for



148 use by him in setting up, maintaining and operating an office and
149 employing a state director of on-the-job training for veterans and
150 the personnel necessary in carrying out Public Law No. 346 of the
151 United States;

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

154 (f) Build and equip additional buildings and wards at
155 the Boswell Retardation Center;

156 (g) Construct a sewage disposal and treatment plant at
157 the Mississippi State Hospital, and in so doing acquire additional
158 land as may be necessary, and to exercise the right of eminent
159 domain in the acquisition of this land;

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

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

165 (j) Build and equip a gymnasium at Columbia Training
166 School;

167 (k) Approve or disapprove the expenditure of any money
168 appropriated by the Legislature when authorized by the bill making
169 the appropriation;

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



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

179 (n) Collect and receive from educational institutions
180 of the State of Mississippi monies required to be paid by these
181 institutions to the state in carrying out any veterans'
182 educational programs;

183 (o) Purchase lands for building sites, or as additions
184 to building sites, for the erection of buildings and other
185 facilities which the department is authorized to erect, and
186 demolish and dispose of old buildings, when necessary for the
187 proper construction of new buildings. Any transaction which
188 involves state lands under the provisions of this paragraph shall
189 be done in a manner consistent with the provisions of Section
190 29-1-1;

191 (p) Obtain business property insurance with a
192 deductible of not less than One Hundred Thousand Dollars
193 (\$100,000.00) on state-owned buildings under the management and
194 control of the department; and

195 (q) In consultation with and approval by the Chairmen
196 of the Public Property Committees of the Senate and the House of



197 Representatives, enter into contracts for the purpose of providing
198 parking spaces for state employees who work in the Woolfolk
199 Building, the Carroll Gartin Justice Building or the Walter
200 Sillers Office Building.

201 (3) The department shall survey state-owned and
202 state-utilized buildings to establish an estimate of the costs of
203 architectural alterations, pursuant to the Americans With
204 Disabilities Act of 1990, 42 USCS, Section 12111 et seq. The
205 department shall establish priorities for making the identified
206 architectural alterations and shall make known to the Legislative
207 Budget Office and to the Legislature the required cost to
208 effectuate such alterations. To meet the requirements of this
209 section, the department shall use standards of accessibility that
210 are at least as stringent as any applicable federal requirements
211 and may consider:

212 (a) Federal minimum guidelines and requirements issued
213 by the United States Architectural and Transportation Barriers
214 Compliance Board and standards issued by other federal agencies;

215 (b) The criteria contained in the American Standard
216 Specifications for Making Buildings Accessible and Usable by the
217 Physically Handicapped and any amendments thereto as approved by
218 the American Standards Association, Incorporated (ANSI Standards);

219 (c) Design manuals;

220 (d) Applicable federal guidelines;

221 (e) Current literature in the field;



222 (f) Applicable safety standards; and
223 (g) Any applicable environmental impact statements.

224 (4) The department shall observe the provisions of Section
225 31-5-23, in letting contracts and shall use Mississippi products,
226 including paint, varnish and lacquer which contain as vehicles
227 tung oil and either ester gum or modified resin (with rosin as the
228 principal base of constituents), and turpentine shall be used as a
229 solvent or thinner, where these products are available at a cost
230 not to exceed the cost of products grown, produced, prepared, made
231 or manufactured outside of the State of Mississippi.

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

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

239 (7) The department shall review and preapprove all
240 architectural or engineering service contracts entered into by any
241 state agency, institution, commission, board or authority
242 regardless of the source of funding used to defray the costs of
243 the construction or renovation project for which services are to
244 be obtained to ensure compliance with purchasing regulations and
245 to confirm that the contracts are procured by a competitive
246 qualification-based selection process except where such



247 appointment is for an emergency project or for a continuation of a
248 previous appointment for a directly related project. The
249 provisions of this subsection (7) shall not apply to any
250 architectural or engineering contract fully paid for by
251 self-generated funds of any of the state institutions of higher
252 learning, nor shall they apply to community college projects that
253 are fully funded from local funds or other nonstate sources which
254 are outside the Department of Finance and Administration's
255 appropriations or as directed by the Legislature. The provisions
256 of this subsection (7) shall not apply to any construction or
257 design projects of the State Military Department that are fully or
258 partially funded from federal funds or other nonstate sources, nor
259 shall they apply to any highway, bridge or ferry project of the
260 State Department of Transportation.

261 (8) The department shall have the authority to obtain
262 annually from the state institutions of higher learning
263 information on all building, construction and renovation projects
264 including duties, responsibilities and costs of any architect or
265 engineer hired by any such institutions.

266 (9) As an alternative to other methods of awarding contracts
267 as prescribed by law, the department may elect to use the method
268 of contracting for construction projects set out in Sections
269 31-7-13.1 and 31-7-13.2; however, the dual-phase design-build
270 method of construction contracting authorized under Section
271 31-7-13.1 may be used only when the Legislature has specifically



272 required or authorized the use of this method in the legislation
273 authorizing a project.

274 (10) The department shall have the authority, for the
275 purposes of carrying out the provisions of this chapter, and in
276 addition to all other rights and powers granted by law, to create
277 and maintain a list of suspended and debarred contractors and
278 subcontractors. Consistent with this authority, the department
279 may adopt regulations governing the suspension or debarment of
280 contractors and subcontractors, which regulations shall be subject
281 to the approval of the Public Procurement Review Board. A
282 suspended or debarred contractor or subcontractor shall be
283 disqualified from consideration for contracts with the department
284 during the suspension or debarment period in accordance with the
285 department's regulations.

286 (11) This section shall not apply to the Mississippi State
287 Port Authority.

288 **SECTION 3.** Section 31-7-13.1, Mississippi Code of 1972, is
289 brought forward as follows:

290 31-7-13.1. (1) The method of contracting for construction
291 described in this section shall be known as the "dual-phase
292 design-build method" of construction contracting. This method of
293 construction contracting may be used only when the Legislature has
294 specifically required or authorized the use of this method in the
295 legislation authorizing a project. At a minimum, the
296 determination must include a detailed explanation of why using the



297 dual-phase design-build method for a particular project satisfies
298 the public need better than the traditional design-bid-build
299 method based on the following criteria:

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

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

304 (2) For each proposed dual-phase design-build project, a
305 two-phase procedure for awarding a contract must be adopted.
306 During Phase One, and before solicitation of initial proposals,
307 the agency or governing authority shall develop, with the
308 assistance of an architectural or engineering firm, a scope of
309 work statement that provides prospective offerors with sufficient
310 information regarding the requirements of the agency or governing
311 authority. The scope of work statement must include, but is not
312 limited to, the following information:

313 (a) Drawings must show overall building dimensions and
314 major lines of dimensions, and site plans that show topography,
315 adjacent buildings and utilities;

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

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

320 (d) The scope of work statement must include general
321 budget parameters, schedule or delivery requirements, relevant



322 criteria for evaluation of proposals, and any other information
323 necessary to enable the design-builders to submit proposals that
324 meet the needs of the agency or governing authority.

325 (3) The agency or governing authority shall cause to be
326 published once a week, for at least two (2) consecutive weeks in a
327 regular newspaper published in the county in which the project is
328 to be located, or a newspaper with statewide circulation, a notice
329 inviting proposals for the dual-phase design-build construction
330 project. The proposals shall not be opened in less than fifteen
331 (15) working days after the last notice is published. The notice
332 must inform potential offerors of how to obtain the scope of work
333 statement developed for the project, and the notice must contain
334 such other information to describe adequately the general nature
335 and scope of the project so as to promote full, equal and open
336 competition.

337 (4) The agency or governing authority shall accept initial
338 proposals only from entities able to provide an experienced and
339 qualified design-build team that includes, at a minimum, an
340 architectural or engineering firm registered in Mississippi and a
341 contractor properly licensed and domiciled in Mississippi for the
342 type of work required. From evaluation of initial proposals under
343 Phase One, the agency or governing authority shall select a
344 minimum of two (2) and a maximum of five (5) design-builders as
345 "short-listed firms" to submit proposals for Phase Two.



346 (5) During Phase Two, the short-listed firms will be invited
347 to submit detailed designs, specific technical concepts or
348 solutions, pricing, scheduling and other information deemed
349 appropriate by the agency or governing authority as necessary to
350 evaluate and rank acceptability of the Phase Two proposals. After
351 evaluation of these Phase Two proposals, the agency or governing
352 authority shall award a contract to the design-builder determined
353 to offer the best value to the public in accordance with
354 evaluation criteria set forth in the request for proposals, of
355 which price must be one, but not necessarily the only, criterion.

356 (6) If the agency or governing authority accepts a proposal
357 other than the lowest dollar proposal actually submitted, the
358 agency or governing authority shall enter on its minutes detailed
359 calculations and a narrative summary showing why the accepted
360 proposal was determined to provide the best value, and the agency
361 or governing authority shall state specifically on its minutes the
362 justification for its award.

363 (7) All facilities that are governed by this section shall
364 be designed and constructed to comply with standards equal to or
365 exceeding the minimum building code standards employed by the
366 state as required under Section 31-11-33 in force at the time of
367 contracting. All private contractors or private entities
368 contracting or performing under this section must comply at all
369 times with all applicable laws, codes and other legal requirements
370 pertaining to the project.



371 (8) At its discretion, the agency or governing authority may
372 award a stipulated fee equal to a percentage, as prescribed in the
373 request for proposals, of the project's final design and
374 construction budget, as prescribed in the request for proposals,
375 but not less than two-tenths of one percent (2/10 of 1%) of the
376 project's final design and construction budget, to each short-list
377 offeror who provides a responsive, but unsuccessful, proposal. If
378 the agency or governing authority does not award a contract, all
379 responsive final list offerors shall receive the stipulated fee
380 based on the owner's estimate of the project final design and
381 construction budget as included in the request for proposals. The
382 agency or governing authority shall pay the stipulated fee to each
383 offeror within ninety (90) days after the award of the initial
384 contract or the decision not to award a contract. In
385 consideration for paying the stipulated fee, the agency or
386 governing authority may use any ideas or information contained in
387 the proposals in connection with any contract awarded for the
388 project, or in connection with a subsequent procurement, without
389 any obligation to pay any additional compensation to the
390 unsuccessful offerors. Notwithstanding the other provisions of
391 this subsection, an unsuccessful short-list offeror may elect to
392 waive the stipulated fee. If an unsuccessful short-list offeror
393 elects to waive the stipulated fee, the agency or governing
394 authority may not use ideas and information contained in the
395 offeror's proposal, except that this restriction does not prevent



396 the agency or governing authority from using any idea or
397 information if the idea or information is also included in a
398 proposal of an offeror that accepts the stipulated fee.

399 (9) This section shall not authorize the awarding of
400 construction contracts according to any contracting method that
401 does not require the contractor to satisfactorily perform, at a
402 minimum, both any balance of design, using an independent
403 professional licensed in Mississippi, and construction of the
404 project for which the contract is awarded.

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

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

409 **SECTION 4.** Section 37-101-41, Mississippi Code of 1972, is
410 brought forward as follows:

411 37-101-41. (1) (a) Except as otherwise provided in
412 paragraph (b) of this section, and subject to the provisions of
413 Section 37-101-42, the Board of Trustees of State Institutions of
414 Higher Learning (the "board") is authorized and empowered to lease
415 to private individuals or corporations for a term not exceeding
416 thirty-five (35) years any land or land with existing auxiliary
417 facilities at any of the following state-supported institutions:
418 Mississippi State University of Agriculture and Applied Science,
419 Jackson State University, Mississippi Valley State University,
420 University of Mississippi, Alcorn State University, University of



421 Southern Mississippi, Mississippi University for Women and Delta
422 State University, for the purpose of erecting or renovating,
423 furnishing, maintaining and equipping auxiliary facilities thereon
424 for active faculty, staff and/or students. The auxiliary
425 facilities shall be constructed or renovated, and may be
426 furnished, maintained and equipped thereon by private financing,
427 and may be leased back to the board for use by the concerned
428 state-supported institution of higher learning. The lease shall
429 contain a provision permitting the board to purchase the building
430 located thereon, including any furnishings and equipment therein,
431 for the sum of One Dollar (\$1.00) after payment by the board of
432 all sums of money due under said lease.

433 (b) The Board of Trustees of State Institutions of
434 Higher Learning may grant authority to universities to lease to
435 private individuals or corporations for a period not exceeding
436 thirty-five (35) years, any land or land with existing auxiliary
437 facilities at the university, for the purpose of erecting or
438 renovating, furnishing, maintaining and equipping auxiliary
439 facilities thereon for active faculty, staff and/or students. The
440 auxiliary facilities shall be constructed or renovated, and may be
441 furnished, maintained and equipped thereon by private financing,
442 and may be leased back to the board for use by the university.
443 The lease shall contain a provision permitting the board to
444 purchase the auxiliary facilities located thereon, including any
445 furnishings and equipment therein, for the sum of One Dollar



446 (\$1.00) after payment by the board of all sums of money due under
447 the lease.

448 (2) Upon there being an agreement reached between the Board
449 of Trustees of State Institutions of Higher Learning and a
450 university upon whose land the auxiliary facility will be
451 constructed or renovated and a private individual(s) or
452 corporation(s) to enter into such lease agreement as described in
453 subsection (1), it shall be stipulated in the agreement that all
454 newly constructed or renovated auxiliary facilities shall be in
455 compliance with the minimum building code standards employed by
456 the state as required under Section 31-11-33.

457 (3) The board, in conjunction with the university, shall
458 have sole discretion to decide the placement of new auxiliary
459 facilities upon the university's campus. However, the scope of
460 any such construction or renovation by private entities shall be
461 limited to two (2) leases entered into pursuant to this Section
462 37-101-41 per year for each university, and shall not exceed in
463 the aggregate twenty-five percent (25%) of the university's total
464 main campus or satellite campus property under the original lease
465 period. In addition, the scope of any such renovation by private
466 entities shall be limited to one (1) project per fiscal year for
467 each university.

468 (4) No contractual lease agreement for the construction or
469 renovation, furnishing, maintaining and equipping of privately
470 financed auxiliary facilities shall be entered into by a



471 university without prior approval of the Board of Trustees of
472 State Institutions of Higher Learning. An auxiliary facility is a
473 facility that is described by the current Postsecondary Education
474 Facilities Inventory and Classification Manual (FICM) as within
475 categories 500/600/700/800/900.

476 Before entering into contractual lease agreements for the
477 construction or renovation, furnishing, maintaining and equipping
478 of privately financed auxiliary facilities, the Board of Trustees
479 of State Institutions of Higher Learning shall establish rules and
480 procedures to ensure adequate public advertisement of any
481 requirement for the construction or renovation, furnishing,
482 maintaining and equipping of privately financed auxiliary
483 facilities at a university in order to promote full and open
484 competition and which set forth the requirements for evaluation of
485 offers and award of the contract lease agreement to the private
486 entity.

487 (5) In addition to the above stated authority, the
488 university, with the permission of the board, is authorized to
489 enter into such marketing, support, management, operating,
490 cooperating or other similar agreements as the university and
491 board may deem advisable or prudent in connection with the ongoing
492 operations of such auxiliary facilities for a period not to exceed
493 the term of the lease relating to such auxiliary facilities.

494 **SECTION 5.** This act shall take effect and be in force from
495 and after July 1, 2016.

