

1 SB194  
2 204296-2  
3 By Senators Chesteen, Elliott, Livingston and Jones  
4 RFD: Governmental Affairs  
5 First Read: 04-FEB-21

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8       SYNOPSIS:               Under current law, the Division of  
9                               Construction Management within the Department of  
10                              Finance is tasked with oversight of certain aspects  
11                              of state, municipal, and educational property  
12                              management that was previously delegated to the  
13                              Building Commission. Particularly, the Division of  
14                              Construction Management oversees the construction  
15                              and renovation of state, municipal, and certain  
16                              educational property, from the bidding process to  
17                              construction administration.

18                              This bill would provide that this authority  
19                              of the Division of Construction Management does not  
20                              extend to educational institutions or state  
21                              educational institutions. Instead, that authority  
22                              would be transferred to the Department of Education  
23                              as it relates to K-12 public schools, and the  
24                              governing board of each public postsecondary  
25                              institution and public institution of higher  
26                              education.

1 A BILL  
2 TO BE ENTITLED  
3 AN ACT  
4

5 Relating to state property; to amend Sections  
6 41-4-400 and 41-4-353, Code of Alabama 1975, to further  
7 provide for the authority of the Division of Construction  
8 Management; and to provide that the Department of Education  
9 has authority to manage the construction and renovation of  
10 state property that is part of a K-12 public school, and the  
11 governing board of each public postsecondary institution and  
12 public institution of higher education has authority to manage  
13 the construction and renovation of property as it relates to  
14 that institution.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. Sections 41-4-400 and 41-4-353, Code of  
17 Alabama 1975, are amended to read as follows:

18 "§41-4-400.

19 "(a) There shall be established within the  
20 Department of Finance the Division of Construction Management.  
21 The division shall have full power and authority for, and on  
22 behalf of, the State of Alabama to do any or all of the  
23 following:

24 "(1) To acquire lands by purchase, condemnation, or  
25 otherwise.

26 "(2) To plan for the construction, repair,  
27 remodeling, enlargement, renovation, furnishing, refurnishing,

1 improvement, or relocation of buildings, structures, and  
2 facilities for state departments, boards, bureaus,  
3 commissions, agencies, and offices.

4 "(3) To set policies, procedures, and guidelines for  
5 the design, construction, renovation, equipment, furnishing,  
6 maintenance, and improvement of all property now owned or  
7 hereafter acquired by the state or any institution or agency  
8 thereof.

9 "(4) To construct, repair, equip, remodel, enlarge,  
10 renovate, furnish, refurnish, improve, and locate buildings,  
11 structures, and facilities for the use of the State of Alabama  
12 or any of its departments, boards, bureaus, commissions,  
13 agencies, and offices as in its judgment shall be necessary  
14 for state, institutional, or agency purposes.

15 "(5) To enter into contract or consult with  
16 architects, engineers, contractors, suppliers, and others as  
17 needed to perform any of the functions provided for in this  
18 subsection.

19 "(6) To receive any ~~moneys~~ monies, land, or  
20 equipment donated, appropriated, or otherwise acquired by it  
21 for the purposes provided for in this subsection.

22 "(7) To charge and provide for collection of user  
23 fees for its services. The fees established shall take into  
24 consideration the costs of operating the division.

25 "(8) To make and adopt all necessary rules,  
26 regulations, and plans for its own guidance and for the proper  
27 conduct of the duties imposed upon it.

1           "(9) To review and approve or disapprove all  
2 proposed construction, renovation, or improvement projects for  
3 constructability, durability, and maintainability and to  
4 ensure the efficient use and availability of funds.

5           "(10) To ~~promulgate~~ adopt uniform standards for the  
6 construction and renovation of all state-owned facilities.

7           "(11) To review and administer all design and  
8 construction contracts for all state-owned facilities as  
9 provided for in this subsection.

10           "(12) To submit to the Director of Finance the  
11 priorities and recommendations for the repair, renovation,  
12 capital improvement and planning needs of state departments,  
13 boards, bureaus, commissions, agencies, and offices.

14           "(13) To review and approve or disapprove all state  
15 bond expenditures approved for construction.

16           "(14) To review all emergency project declarations  
17 and to aid in the timely execution of emergency projects.

18           "(b) The Division of Construction Management shall  
19 be headed by and under the supervision, direction, and control  
20 of an officer who shall be designated director of construction  
21 management. He or she shall be appointed, subject to the  
22 provisions of the state Merit Law, by the Director of Finance,  
23 with the approval of the Governor. The compensation of such  
24 officer shall be fixed in accordance with the pay plan of the  
25 state Merit System.

26           "(c) Effective October 1, 2015, the Building  
27 Commission established in Section 41-9-140 is abolished. All

1 powers, authority, and jurisdiction of the Building  
2 Commission, including, but not limited to, those authorities  
3 currently established in Sections 16-1-.2.1 and 16-1-2.2,  
4 16-16-10-(o) (2) and (p), 34-14B-1 to 34-14B-10, 39-2-2(f) (1),  
5 41-9-160 to 41-9-165, 41-9-170 to 41-9-174, 41-9-243,  
6 41-9-542, 41-10-271, 41-10-364, and 41-16-72(3) (a) through (f)  
7 are hereby transferred to the Division of Construction  
8 Management within the Department of Finance.

9 "(d) (1) Notwithstanding any other provision of this  
10 article or any other provision of law to the contrary, the  
11 powers, authority, and jurisdiction granted to the Division of  
12 Construction Management within this section does not extend to  
13 property which is part of an educational institution or a  
14 state educational institution, both as defined by Section  
15 16-17-1, or any existing, planned, or future ancillary  
16 improvement on that property.

17 "(2)a. Any powers, authority, and jurisdiction  
18 granted to the Division of Construction Management within this  
19 section relating to K-12 public schools is hereby transferred  
20 to the Department of Education, as provided in Section 2 of  
21 the act adding this amendatory language.

22 "b. Any powers, authority, and jurisdiction granted  
23 to the Division of Construction Management within this section  
24 relating to a public postsecondary institution or public  
25 institutions of higher education is hereby transferred to the  
26 governing board of each institution, as provided in Section 2  
27 of the act adding this amendatory language.

1           "~~(d)~~ (e) Notwithstanding any other provisions of  
2 this article, all persons employed with the Building  
3 Commission on October 1, 2015, shall be transferred to the  
4 Department of Finance."

5           "§41-4-353.

6           "(a) All real property owned or leased by state  
7 departments, boards, bureaus, commissions, agencies, offices,  
8 and other instruments of the state is subject to the  
9 requirements of this article and in Sections 41-4-2, 41-4-3,  
10 41-4-261, and 41-9-141 except:

11           "(1) All educational facilities including K-12,  
12 postsecondary, and higher education facilities.

13           "(2) Facilities of the Legislative Branch of  
14 government.

15           "(3) Facilities of the Judicial Branch of  
16 government.

17           "(4) Facilities of the Retirement Systems of  
18 Alabama.

19           "(5) Facilities of the Alabama Port Authority.

20           "(6) Facilities of the State Military Department.

21           "(7) Lands managed by the Lands Division of the  
22 Department of Conservation and Natural Resources.

23           "(8) Right-of-way owned by the Department of  
24 Transportation.

25           "(9) Gulf State Park.

26           "(10) Facilities and real property owned or leased  
27 by departments, boards, bureaus, commissions, agencies,

1 offices, and other instruments of the state that do not  
2 receive any appropriation of state funds.

3 "(11) Any real property, building, improvement, or  
4 facility managed or controlled by a state agency, if adherence  
5 with any requirement of this article would violate Sections  
6 9-2-26 or 9-11-19, or any federal laws, regulations, or  
7 guidance, including, but not limited to, Title 50, Code of  
8 Federal Regulations, Part 80.

9 "(12) Any unimproved real property owned, leased or  
10 otherwise possessed or controlled by the state or any  
11 department, board, bureau, commission, agency, office, or  
12 other instrument of the state.

13 "(13) Real property owned or leased by the Alabama  
14 Home Builders Licensure Board, the Alabama Housing Finance  
15 Authority, the Alabama Plumbers and Gas Fitters Examining  
16 Board, the Alabama Board of Heating, Air Conditioning, and  
17 Refrigeration Contractors, the Alabama Real Estate Commission,  
18 and the State Licensing Board for General Contractors.

19 "(14) Other real property owned or leased by state  
20 departments, boards, bureaus, commissions, agencies, offices,  
21 and other instruments of the state if the exemption is agreed  
22 to by both the Director of Finance and the head of the state  
23 department, board, bureau, commission, agency, office, or  
24 other instrument of the state seeking the exemption and the  
25 exemption is found by them to be in the best interest of the  
26 State of Alabama.



1           "(15) Real property owned or leased by self-funded  
2           licensing and regulatory boards, commissions, and agencies.

3           "(b) Any entity that is provided an exception from  
4           the requirements of this article under subsection (a) may  
5           elect to waive that exception and have its real property and  
6           facilities become subject to the provisions of this article by  
7           providing written notice of that election to the Director of  
8           Finance. Once an entity waives its exception, the entity may  
9           not rescind that waiver with respect to any real property or  
10          facilities that become subject to the provisions of this  
11          article as a result of the entity's waiver.

12          "(c) The exceptions provided in subsection (a) do  
13          not alter or affect any of the provisions for compliance with  
14          a minimum building standards code or energy conservation  
15          building code as required by Sections 41-9-160 to 41-9-165 and  
16          Sections 41-9-171 to 41-9-174.

17          "(d) The exceptions provided in subsection (a) (1)  
18          do not alter or affect the compliance of educational  
19          facilities with the contract forms and procedures of the  
20          ~~Division of Construction Management~~ Department of Education or  
21          the governing board of the postsecondary institution or public  
22          institution of higher education, as provided in Section  
23          41-4-400."

24          Section 2. (a) Notwithstanding any provision of law  
25          to the contrary, the Department of Education shall have full  
26          power and authority for, and on behalf of, the State of  
27          Alabama to do any or all of the following in relation to a

1 K-12 public school, and the governing board of each public  
2 postsecondary institution and public institution of higher  
3 education shall have full power authority for, and on behalf  
4 of, the State of Alabama to do any or all of the following in  
5 relation to that educational institution:

6 (1) To acquire lands by purchase, condemnation, or  
7 otherwise.

8 (2) To plan for the construction, repair,  
9 remodeling, enlargement, renovation, furnishing, refurnishing,  
10 improvement, or relocation of buildings, structures, and  
11 facilities.

12 (3) To set policies, procedures, and guidelines for  
13 the design, construction, renovation, equipment, furnishing,  
14 maintenance, and improvement of all property now owned or  
15 hereafter acquired.

16 (4) To construct, repair, equip, remodel, enlarge,  
17 renovate, furnish, refurnish, improve, and locate buildings,  
18 structures, and facilities.

19 (5) To enter into contracts or consult with  
20 architects, engineers, contractors, suppliers, and others as  
21 needed to perform any of the functions provided for in this  
22 subsection.

23 (6) To receive any monies, land, or equipment  
24 donated, appropriated, or otherwise acquired by it for the  
25 purposes provided for in this subsection.

26 (7) To charge and provide for collection of user  
27 fees for its services. The fees established shall take into

1 consideration the costs of the department or governing board  
2 incurred under this section.

3 (8) To make and adopt all necessary rules,  
4 regulations, and plans for its own guidance and for the proper  
5 conduct of the duties imposed upon it.

6 (9) To review and approve or disapprove all proposed  
7 construction, renovation, or improvement projects for  
8 constructability, durability, and maintainability and to  
9 ensure the efficient use and availability of funds.

10 (10) With regard to K-12 public schools, the  
11 department may adopt uniform standards for the construction  
12 and renovation of K-12 public schools; with regard to any  
13 public postsecondary institution or public institution of  
14 higher education, the governing board of that institution may  
15 adopt uniform standards for construction and renovation of  
16 facilities on property belonging to that state educational  
17 institution.

18 (11) To review and administer all design and  
19 construction contracts for facilities as provided for in this  
20 subsection.

21 (12) To review all emergency project declarations  
22 and to aid in the timely execution of emergency projects.

23 (13) To hire architects, inspectors, and any other  
24 personnel necessary for the purposes provided for in this  
25 subsection or the duties assigned under this section.

26 (b) (1) Any repair or maintenance project with an  
27 estimated cost certified by a licensed architect or licensed

1 engineer to be no more than five hundred thousand dollars  
2 (\$500,000); any repair or maintenance of heating, ventilation,  
3 and air conditioning systems; and any roofing repair or  
4 maintenance shall not be subject to approval by the  
5 department.

6 (2) Any repair or maintenance project with an  
7 estimated cost certified by a licensed architect or licensed  
8 engineer to be no more than five hundred thousand dollars  
9 (\$500,000); any repair or maintenance of heating, ventilation,  
10 and air conditioning systems; and any roofing repair or  
11 maintenance shall not be subject to approval by the governing  
12 board of each public postsecondary institution and public  
13 institution of higher education.

14 (c) (1) All powers, authority, and jurisdiction of  
15 the former Building Commission relating to K-12 public  
16 schools, including, but not limited to, those authorities  
17 currently established in Sections 16-1-.2.1, 16-16-10(o) (2)  
18 and (p), 39-2-2(f) (1), 41-9-160 to 41-9-165, 41-9-170 to  
19 41-9-174, 41-9-243, and 41-16-72(3) (a) through (f), Code of  
20 Alabama 1975, which were previously transferred to the  
21 Division of Construction Management within the Department of  
22 Finance, are transferred to the Department of Education.

23 (2) All powers, authority, and jurisdiction of the  
24 former Building Commission relating to any public  
25 postsecondary institution or public institution of higher  
26 education, including, but not limited to, those authorities  
27 currently established in Sections 16-1-2.2, 16-16-10(o) (2) and

1 (p), 39-2-2(f)(1), 41-9-160 to 41-9-165, 41-9-170 to 41-9-174,  
2 41-9-243, and 41-16-72(3)(a) through (f), Code of Alabama  
3 1975, which were previously transferred to the Division of  
4 Construction Management within the Department of Finance, are  
5 transferred to the governing board of that institution.

6 Section 3. This act shall become effective on the  
7 first day of the third month following its passage and  
8 approval by the Governor, or its otherwise becoming law.