

By: Senator(s) Gordon

To: Highways and
Transportation

SENATE BILL NO. 2546

1 AN ACT TO REQUIRE CONTRACTORS WHO ARE AWARDED CONTRACTS BY
2 THE MISSISSIPPI TRANSPORTATION COMMISSION FOR CONSTRUCTION,
3 MAINTENANCE AND CERTAIN OTHER PUBLIC WORKS, TO PROVIDE SUFFICIENT
4 EQUIPMENT, MATERIALS AND LABOR TO COMPLETE THE CONTRACT IN
5 ACCORDANCE WITH THE PLANS AND SPECIFICATIONS WITHIN THE CONTRACT
6 TIME; TO REQUIRE A CONTRACTOR TO TAKE IMMEDIATE STEPS TO RESTORE
7 SATISFACTORY PROGRESS IF THE COMPLETED WORK IS BEHIND THE APPROVED
8 PROGRESS SCHEDULE; TO PROVIDE THAT IF THE COMPLETED WORK IS BEHIND
9 SCHEDULE THE CONTRACTOR SHALL NOT TRANSFER EQUIPMENT OR FORCES
10 FROM UNCOMPLETED WORK WITHOUT THE APPROVAL OF THE CHIEF ENGINEER
11 OF THE DEPARTMENT OF TRANSPORTATION; TO PROVIDE THAT IF WORK IS
12 DISCONTINUED FOR AN EXTENDED PERIOD OF TIME THE CHIEF ENGINEER
13 SHALL BE GIVEN NOTICE BEFORE OPERATIONS ARE RESUMED; TO PROVIDE
14 THAT IF A PROJECT FALLS A CERTAIN AMOUNT BEHIND SCHEDULE, THE
15 CONTRACTOR SHALL BE DISQUALIFIED FROM BIDDING ON CONTRACTS AND
16 SHALL NOT BE A SUBCONTRACTOR UNDER OTHER CONTRACTS UNTIL SUCH TIME
17 AS THE PROJECT IS BACK ON SCHEDULE OR COMPLETED; TO PROVIDE THAT
18 IN THE EVENT THAT THE CONTRACTOR IS DISQUALIFIED HE MAY APPEAL THE
19 DISQUALIFICATION TO THE DEPARTMENT OF TRANSPORTATION
20 DISQUALIFICATION REVIEW BOARD ESTABLISHED BY THIS ACT; TO AMEND
21 SECTION 65-1-85, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO;
22 AND FOR RELATED PURPOSES.

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

24 **SECTION 1.** (1) A contractor who is awarded a contract for
25 construction, maintenance or other public work pursuant to Section
26 65-1-85 shall provide sufficient materials, equipment and labor to
27 complete the project in accordance with the plans and
28 specifications within the contract time. If the completed work is
29 behind the approved progress schedule, the contractor shall take
30 immediate steps to restore satisfactory progress and shall not
31 transfer equipment or forces from uncompleted work without prior
32 notice to, and approval of, the chief engineer. Each item of work
33 shall be prosecuted to completion without delay. If the
34 prosecution of the work is discontinued for an extended period of
35 time, the contractor shall give the chief engineer written notice
36 at least twenty-four (24) hours before resuming operations.



37 (2) (a) The contractor's progress on a project shall be
38 determined monthly by the department. If the contractor's
39 progress is more than twenty percent (20%) behind the elapsed
40 contract time, the contractor shall be notified by the department
41 that he may be disqualified from bidding on contracts or from
42 being a subcontractor on contracts if progress becomes delinquent
43 by more than the percentages provided for in this section.
44 Additional notifications shall be made by the department as
45 considered necessary concerning the progress of the contractor.

46 (b) Prior to the elapsing of fifty-five percent (55%)
47 of the contract time, the contractor shall be disqualified if
48 progress is more than forty percent (40%) behind the elapsed
49 contract time. Disqualification shall be applied between
50 fifty-five percent (55%) and seventy percent (70%) of contract
51 time elapsed on a pro rata basis.

52 (c) During the period of disqualification, the
53 contractor shall not be permitted to bid on contracts and shall
54 not be a subcontractor on contracts. Any bid submitted by the
55 contractor during the period of disqualification shall not be
56 considered and shall be returned to the contractor. The period of
57 disqualification shall continue until the completed work on the
58 contract is within the percentages provided for in this section or
59 until all work on the contract has been satisfactorily completed.

60 (3) (a) There is created the Department of Transportation
61 Disqualification Review Board which shall consist of the chief
62 engineer and five (5) members appointed by the executive director.
63 The chief engineer and two (2) other members shall constitute a
64 quorum.

65 (b) After disqualification the contractor may submit a
66 written appeal to the chief engineer for review by the Department
67 of Transportation Disqualification Review Board. The written
68 appeal shall be submitted within seven (7) days, excluding
69 weekends and holidays, after issuance of written notice of



70 disqualification and may request a meeting with the board or may
71 request the board to consider a written appeal only. A meeting of
72 the board shall be scheduled within five (5) days, excluding
73 weekends and holidays after receipt of the appeal.

74 (c) After all pertinent information has been
75 considered, the contractor shall be notified of the decision of
76 the board within five (5) days after the scheduled meetings,
77 weekends and holidays excluded.

78 **SECTION 2.** Section 65-1-85, Mississippi Code of 1972, is
79 amended as follows:

80 65-1-85. (1) All contracts by or on behalf of the
81 Mississippi Transportation Commission for the purchase of
82 materials, equipment and supplies shall be made in compliance with
83 Section 31-7-1 et seq. All contracts by or on behalf of the
84 Mississippi Transportation Commission for construction,
85 reconstruction or other public work authorized to be done under
86 the provisions of this chapter, except maintenance, shall be made
87 by the executive director, subject to the approval of the
88 commission, only upon competitive bids after due advertisement as
89 follows, to wit:

90 (a) * * * Advertisement for bids shall be in accordance
91 with * * * rules and regulations, in addition to those herein
92 provided, as may be adopted therefor by the Mississippi
93 Transportation Commission, and the commission is * * * authorized
94 and empowered to make and promulgate such rules and regulations as
95 it may deem proper, to provide and adopt standard specifications
96 for road and bridge construction, and to amend the such rules and
97 regulations from time to time.

98 (b) The advertisement shall be inserted twice, being
99 once a week for two (2) successive weeks in a newspaper published
100 at the seat of government in Jackson, Mississippi, having a
101 general circulation throughout the state, and no letting shall be
102 less than fourteen (14) days nor more than sixty (60) days after



103 the publication of the first notice thereof, and notices of the
104 letting may be placed in a metropolitan paper or national trade
105 publication. Before advertising for such work, the executive
106 director shall cause to be prepared and filed in the Mississippi
107 Department of Transportation detailed plans and specifications
108 covering the work proposed to be done, copies of the plans and
109 specifications shall be subject to inspection by any citizen
110 during all office hours and made available to all prospective
111 bidders upon such reasonable terms and conditions as may be
112 required by the Mississippi Transportation Commission. * * * A
113 fee equal to the cost of producing a copy of any such plans and
114 specifications shall be charged for copies of such plans and
115 specifications.

116 (c) All such contracts shall be let to the lowest
117 responsible bidder, and a record of all bids received for
118 construction and reconstruction shall be preserved.

119 (d) * * * Each bid for construction and reconstruction
120 must be accompanied by a cashier's check, a certified check or
121 bidders bond executed by a surety company authorized to do
122 business in the State of Mississippi, in the principal amount of
123 not less than five percent (5%) of the bid, guaranteeing that the
124 bidder will give bond and enter into a contract for the faithful
125 performance of the contract according to plans and specifications
126 on file.

127 (d) Bonds shall be required of the successful bidder in
128 an amount equal to the contract price. The contract price shall
129 mean the entire cost of the particular contract let. In the event
130 change orders are made after the execution of a contract which
131 results in increasing the total contract price, additional bond in
132 the amount of the increased cost may be required. The surety or
133 sureties on such bonds shall be a surety company or surety
134 companies authorized to do business in the State of Mississippi,
135 all bonds to be payable to the State of Mississippi and to be



136 conditioned for the prompt, faithful and efficient performance of
137 the contract according to plans and specifications, and for the
138 prompt payment of all persons furnishing labor, material,
139 equipment and supplies therefor. Such bonds shall be subject to
140 the additional obligation that the principal and surety or
141 sureties executing the bond shall be liable to the state in a
142 civil action instituted by the state at the instance of the
143 Mississippi Transportation Commission or any officer of the state
144 authorized in such cases, for double any amount in money or
145 property the state may lose or be overcharged or otherwise
146 defrauded of by reason of any wrongful or criminal act, if any, of
147 the contractor, his agent or employees.

148 (2) With respect to equipment used in the construction,
149 reconstruction or other public work authorized to be done under
150 the provisions of this chapter: the word "equipment," in addition
151 to all equipment incorporated into or fully consumed in connection
152 with such project, shall include the reasonable value of the use
153 of all equipment of every kind and character and all accessories
154 and attachments thereto which are reasonably necessary to be used
155 and which are used in carrying out the performance of the
156 contract, and the reasonable value of the use thereof, during the
157 period of time the same are used in carrying out the performance
158 of the contract, shall be the amount as agreed upon by the persons
159 furnishing the equipment and those using the same to be paid
160 therefor, which amount, however, shall not be in excess of the
161 maximum current rates and charges allowable for leasing or renting
162 as specified in Section 65-7-95; the word "labor" shall include
163 all work performed in repairing equipment used in carrying out the
164 performance of the contract, which repair labor is reasonably
165 necessary to the efficient operation of said equipment; and the
166 words "materials" and "supplies" shall include all repair parts
167 installed in or on equipment used in carrying out the performance



168 of the contract, which repair parts are reasonably necessary to
169 the efficient operation of said equipment.

170 (3) The executive director, subject to the approval of the
171 Mississippi Transportation Commission, shall have the right to
172 reject any and all bids, whether such right is reserved in the
173 notice or not. Any contract for construction or paving of any
174 highway may be entered into for any cost which does not exceed the
175 amount of funds that may be made available therefor through bond
176 issues or from other sources of revenue, and the letting of
177 contracts for such construction or paving shall not necessarily be
178 delayed until the funds are actually on hand, provided
179 authorization for the issuance of necessary bonds has been granted
180 by law to supplement other anticipated revenue or when the
181 Mississippi Department of Transportation certifies to the
182 Department of Finance and Administration and the Legislative
183 Budget Office that projected receipts of funds by the department
184 will be sufficient to pay such contracts as they become due and
185 the Department of Finance and Administration determines that the
186 projections are reasonable and receipts will be sufficient to pay
187 the contracts as they become due. The Department of Finance and
188 Administration shall spread such determination on its minutes
189 prior to the letting of any contracts based on projected receipts.
190 Nothing herein shall prohibit the issuance of bonds, which have
191 been authorized, at any time in the discretion of the State Bond
192 Commission, nor to prevent investment of surplus funds in United
193 States government bonds or State of Mississippi bonds as presently
194 authorized by Section 12, Chapter 312, Laws of 1956.

195 (4) All other contracts for work to be done under the
196 provisions of this chapter and for the purchase of materials,
197 equipment and supplies to be used as provided for in this chapter
198 shall be made in compliance with Section 31-7-1 et seq.

199 (5) The Mississippi Transportation Commission shall not
200 empower or authorize the executive director, or any one or more of



201 its members, or any engineer or other person to let or make
202 contracts for the construction or repair of public roads, or
203 building bridges, or for the purchase of material, equipment or
204 supplies contrary to the provisions of this chapter as above set
205 forth, except in cases of flood or other cases of emergency where
206 the public interest requires that the work be done or the
207 materials, equipment or supplies be purchased without the delay
208 incident to advertising for competitive bids. Such emergency
209 contracts may be made without advertisement under such rules and
210 regulations as the Mississippi Transportation Commission may
211 prescribe.

212 (6) The executive director, subject to the approval of the
213 Mississippi Transportation Commission, is authorized to negotiate
214 and make agreements with communities and/or civic organizations
215 for landscaping, beautification and maintenance of highway
216 rights-of-way; provided, however, that nothing herein shall be
217 construed as authorization for the executive director or
218 commission to participate in such a project to an extent greater
219 than the average cost for maintenance of shoulders, backslopes and
220 median areas with respect thereto. The executive director may
221 negotiate and enter into contracts with private parties for the
222 mowing of grass and trimming of vegetation on the rights-of-way of
223 state highways whenever such practice is possible and cost
224 effective.

225 (7) In addition to any other reason, a contractor may be
226 disqualified from bidding under this section pursuant to the
227 provisions of Section 1 of Senate Bill No. 2546, 2003 Regular
228 Session.

229 **SECTION 3.** The provisions of Section 1 of this act shall be
230 codified in Chapter 1, Title 65, Mississippi Code of 1972.

231 **SECTION 4.** This act shall take effect and be in force from
232 and after July 1, 2003.

