

By: Senator(s) Gollott, Dawkins, Hewes

To: Highways and
Transportation

SENATE BILL NO. 2814

1 AN ACT TO AMEND SECTION 65-1-85, MISSISSIPPI CODE OF 1972, TO
 2 REQUIRE THE MISSISSIPPI TRANSPORTATION COMMISSION TO AWARD
 3 CONTRACTS FOR CONSTRUCTION AND RECONSTRUCTION TO THE LOWEST AND
 4 BEST RESPONSIBLE BIDDER; TO PROVIDE THAT NO CONTRACT SHALL BE
 5 AWARDED TO A BIDDER THAT HAS TWO OR MORE CONTRACTS WITH THE
 6 COMMISSION THAT HAVE NOT BEEN COMPLETED BY THE SPECIFIED
 7 COMPLETION DATE; TO AUTHORIZE THE COMMISSION TO REQUIRE
 8 PRE-QUALIFICATION OF BIDDERS ON SUCH CONTRACTS; TO AUTHORIZE THE
 9 COMMISSION TO REQUIRE THE PRE-QUALIFICATION OF ANY AND ALL
 10 SUBCONTRACTORS BEFORE THEY ARE APPROVED TO PARTICIPATE IN A
 11 CONTRACT AWARDED BY THE COMMISSION; TO AUTHORIZE THE COMMISSION TO
 12 ADOPT RULES AND REGULATIONS FOR THE TERMINATION OF ANY CONTRACT
 13 WHICH IS NOT TIMELY PROCEEDING TO COMPLETION AND TO PROVIDE THAT
 14 THE FAILURE TO COMPLY WITH SUCH RULES AND REGULATIONS SHALL BE A
 15 LAWFUL BASIS FOR THE TERMINATION OF A CONTRACT; AND FOR RELATED
 16 PURPOSES.

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

18 **SECTION 1.** Section 65-1-85, Mississippi Code of 1972, is
 19 amended as follows:

20 65-1-85. (1) All contracts by or on behalf of the
 21 Mississippi Transportation Commission for the purchase of
 22 materials, equipment and supplies shall be made in compliance with
 23 Section 31-7-1 et seq. All contracts by or on behalf of the
 24 Mississippi Transportation Commission for construction,
 25 reconstruction or other public work authorized to be done under
 26 the provisions of this chapter, except maintenance, shall be made
 27 by the executive director, subject to the approval of the
 28 commission, only upon competitive bids after due advertisement as
 29 follows, to wit:

30 (a) * * * Advertisement for bids shall be in accordance
 31 with such rules and regulations, in addition to those herein
 32 provided, as may be adopted therefor by the Mississippi
 33 Transportation Commission, and the commission is * * * authorized
 34 and empowered to make and promulgate such rules and regulations as



35 it may deem proper, to provide and adopt standard specifications
36 for road and bridge construction, and to amend such rules and
37 regulations from time to time.

38 (b) The advertisement shall be inserted twice, being
39 once a week for two (2) successive weeks in a newspaper published
40 at the seat of government in Jackson, Mississippi, having a
41 general circulation throughout the state, and no letting shall be
42 less than fourteen (14) days nor more than sixty (60) days after
43 the publication of the first notice of such letting, and notices
44 of such letting may be placed in a metropolitan paper or national
45 trade publication.

46 (c) Before advertising for such work, the executive
47 director shall cause to be prepared and filed in the Mississippi
48 Department of Transportation detailed plans and specifications
49 covering the work proposed to be done and copies of the plans and
50 specifications shall be subject to inspection by any citizen
51 during all office hours and made available to all prospective
52 bidders upon such reasonable terms and conditions as may be
53 required by the Mississippi Transportation Commission. * * * A
54 fee shall be charged equal to the cost of producing a copy of any
55 such plans and specifications.

56 (d) All such contracts shall be let to the lowest and
57 best responsible bidder, and a record of all bids received for
58 construction and reconstruction shall be preserved; however, no
59 contract shall be awarded to a bidder who has two (2) or more
60 contracts with the Mississippi Transportation Commission that have
61 not been completed by the original completion date in the contract
62 or the completion date as amended by a supplemental agreement
63 approved by the Mississippi Transportation Commission.

64 (e) * * * Each bid for such a construction and
65 reconstruction contract must be accompanied by a cashier's check,
66 a certified check or bidders bond executed by a surety company
67 authorized to do business in the State of Mississippi, in the



68 principal amount of not less than five percent (5%) of the bid,
69 guaranteeing that the bidder will give bond and enter into a
70 contract for the faithful performance of the contract according to
71 plans and specifications on file.

72 (f) Bonds shall be required of the successful bidder in
73 an amount equal to the contract price. The contract price shall
74 mean the entire cost of the particular contract let. In the event
75 change orders are made after the execution of a contract which
76 results in increasing the total contract price, additional bond in
77 the amount of the increased cost may be required. The surety or
78 sureties on such bonds shall be a surety company or surety
79 companies authorized to do business in the State of Mississippi,
80 all bonds to be payable to the State of Mississippi and to be
81 conditioned for the prompt, faithful and efficient performance of
82 the contract according to plans and specifications, and for the
83 prompt payment of all persons furnishing labor, material,
84 equipment and supplies therefor. Such bonds shall be subject to
85 the additional obligation that the principal and surety or
86 sureties executing the same shall be liable to the state in a
87 civil action instituted by the state at the instance of the
88 Mississippi Transportation Commission or any officer of the state
89 authorized in such cases, for double any amount in money or
90 property the state may lose or be overcharged or otherwise
91 defrauded of by reason of any wrongful or criminal act, if any, of
92 the contractor, his agent or employees.

93 (2) With respect to equipment used in the construction,
94 reconstruction or other public work authorized to be done under
95 the provisions of this chapter: the word "equipment," in addition
96 to all equipment incorporated into or fully consumed in connection
97 with such project, shall include the reasonable value of the use
98 of all equipment of every kind and character and all accessories
99 and attachments thereto which are reasonably necessary to be used
100 and which are used in carrying out the performance of the



101 contract, and the reasonable value of the use thereof, during the
102 period of time the same are used in carrying out the performance
103 of the contract, shall be the amount as agreed upon by the persons
104 furnishing the equipment and those using the same to be paid
105 therefor, which amount, however, shall not be in excess of the
106 maximum current rates and charges allowable for leasing or renting
107 as specified in Section 65-7-95; the word "labor" shall include
108 all work performed in repairing equipment used in carrying out the
109 performance of the contract, which repair labor is reasonably
110 necessary to the efficient operation of said equipment; and the
111 words "materials" and "supplies" shall include all repair parts
112 installed in or on equipment used in carrying out the performance
113 of the contract, which repair parts are reasonably necessary to
114 the efficient operation of said equipment.

115 (3) The executive director, subject to the approval of the
116 Mississippi Transportation Commission, shall have the right to
117 reject any and all bids, whether such right is reserved in the
118 notice or not.

119 (4) The Mississippi Transportation Commission may require
120 the pre-qualification of any and all bidders and the failure to
121 comply with pre-qualification requirements may be the basis for
122 the rejection of any bid by the commission. The Mississippi
123 Transportation Commission may require the pre-qualification of any
124 and all subcontractors before they are approved to participate in
125 any contract awarded under this section.

126 (5) The Mississippi Transportation Commission may adopt
127 rules and regulations for the termination of any previously
128 awarded contract which is not timely proceeding toward completion.
129 The failure of a contractor to comply with such rules and
130 regulations shall be a lawful basis for the Mississippi
131 Transportation Commission to terminate the contract with such
132 contractor. In the event of a termination under such rules and



133 regulations, the contractor shall not be entitled to any payment,
134 benefit or damages beyond the cost of the work actually completed.

135 (6) Any contract for construction or paving of any highway
136 may be entered into for any cost which does not exceed the amount
137 of funds that may be made available therefor through bond issues
138 or from other sources of revenue, and the letting of contracts for
139 such construction or paving shall not necessarily be delayed until
140 the funds are actually on hand, provided authorization for the
141 issuance of necessary bonds has been granted by law to supplement
142 other anticipated revenue, or when the Mississippi Department of
143 Transportation certifies to the Department of Finance and
144 Administration and the Legislative Budget Office that projected
145 receipts of funds by the department will be sufficient to pay such
146 contracts as they become due and the Department of Finance and
147 Administration determines that the projections are reasonable and
148 receipts will be sufficient to pay the contracts as they become
149 due. The Department of Finance and Administration shall spread
150 such determination on its minutes prior to the letting of any
151 contracts based on projected receipts. Nothing in this subsection
152 shall prohibit the issuance of bonds, which have been authorized,
153 at any time in the discretion of the State Bond Commission, nor to
154 prevent investment of surplus funds in United States government
155 bonds or State of Mississippi bonds as presently authorized by
156 Section 12, Chapter 312, Laws of 1956.

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

161 (8) The Mississippi Transportation Commission shall not
162 empower or authorize the executive director, or any one or more of
163 its members, or any engineer or other person to let or make
164 contracts for the construction or repair of public roads, or
165 building bridges, or for the purchase of material, equipment or



166 supplies contrary to the provisions of this chapter as * * * set
167 forth in this section, except in cases of flood or other cases of
168 emergency where the public interest requires that the work be done
169 or the materials, equipment or supplies be purchased without the
170 delay incident to advertising for competitive bids. Such
171 emergency contracts may be made without advertisement under such
172 rules and regulations as the Mississippi Transportation Commission
173 may prescribe.

174 (9) The executive director, subject to the approval of the
175 Mississippi Transportation Commission, is authorized to negotiate
176 and make agreements with communities and/or civic organizations
177 for landscaping, beautification and maintenance of highway
178 rights-of-way; * * * however, * * * nothing in this subsection
179 shall be construed as authorization for the executive director or
180 commission to participate in such a project to an extent greater
181 than the average cost for maintenance of shoulders, backslopes and
182 median areas with respect thereto.

183 (10) The executive director may negotiate and enter into
184 contracts with private parties for the mowing of grass and
185 trimming of vegetation on the rights-of-way of state highways
186 whenever such practice is possible and cost effective.

187 **SECTION 2.** This act shall take effect and be in force from
188 and after July 1, 2003.

