

By: Representatives Miles, Ward, Zuber

To: Transportation

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1243

1 AN ACT TO AMEND SECTION 65-1-85, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE THE MISSISSIPPI TRANSPORTATION COMMISSION TO USE THE
3 DESIGN/BUILD METHOD OF CONTRACTING FOR CERTAIN PROJECTS; AND FOR
4 RELATED PURPOSES.

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

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

8 65-1-85. (1) All contracts by or on behalf of the
9 Mississippi Transportation Commission for the purchase of
10 materials, equipment and supplies shall be made in compliance with
11 Section 31-7-1 et seq. All contracts by or on behalf of the
12 Mississippi Transportation Commission for construction,
13 reconstruction or other public work authorized to be done under
14 the provisions of this chapter, except maintenance, shall be made
15 by the executive director, subject to the approval of the
16 commission, only upon competitive bids after due advertisement as
17 follows, to wit:

18 (a) Advertisement for bids shall be in accordance with
19 such rules and regulations, in addition to those herein provided,
20 as may be adopted therefor by the Mississippi Transportation
21 Commission, and the commission is authorized and empowered to make
22 and promulgate such rules and regulations as it may deem proper,
23 to provide and adopt standard specifications for road and bridge
24 construction, and to amend such rules and regulations from time to
25 time.

26 (b) The advertisement shall be inserted twice, being
27 once a week for two (2) successive weeks in a newspaper published
28 at the seat of government in Jackson, Mississippi, having a

29 general circulation throughout the state, and no letting shall be
30 less than fourteen (14) days nor more than sixty (60) days after
31 the publication of the first notice of such letting, and notices
32 of such letting may be placed in a metropolitan paper or national
33 trade publication.

34 (c) Before advertising for such work, the executive
35 director shall cause to be prepared and filed in the Mississippi
36 Department of Transportation detailed plans and specifications
37 covering the work proposed to be done and copies of the plans and
38 specifications shall be subject to inspection by any citizen
39 during all office hours and made available to all prospective
40 bidders upon such reasonable terms and conditions as may be
41 required by the Mississippi Transportation Commission. A fee
42 shall be charged equal to the cost of producing a copy of any such
43 plans and specifications.

44 (d) All such contracts shall be let to a responsible
45 bidder with the lowest and best bid, and a record of all bids
46 received for construction and reconstruction shall be preserved.

47 (e) Each bid for such a construction and reconstruction
48 contract must be accompanied by a cashier's check, a certified
49 check or bidders bond executed by a surety company authorized to
50 do business in the State of Mississippi, in the principal amount
51 of not less than five percent (5%) of the bid, guaranteeing that
52 the bidder will give bond and enter into a contract for the
53 faithful performance of the contract according to plans and
54 specifications on file.

55 (f) Bonds shall be required of the successful bidder in
56 an amount equal to the contract price. The contract price shall
57 mean the entire cost of the particular contract let. In the event
58 change orders are made after the execution of a contract which
59 results in increasing the total contract price, additional bond in
60 the amount of the increased cost may be required. The surety or
61 sureties on such bonds shall be a surety company or surety

62 companies authorized to do business in the State of Mississippi,
63 all bonds to be payable to the State of Mississippi and to be
64 conditioned for the prompt, faithful and efficient performance of
65 the contract according to plans and specifications, and for the
66 prompt payment of all persons furnishing labor, material,
67 equipment and supplies therefor. Such bonds shall be subject to
68 the additional obligation that the principal and surety or
69 sureties executing the same shall be liable to the state in a
70 civil action instituted by the state at the instance of the
71 Mississippi Transportation Commission or any officer of the state
72 authorized in such cases, for double any amount in money or
73 property the state may lose or be overcharged or otherwise
74 defrauded of by reason of any wrongful or criminal act, if any, of
75 the contractor, his agent or employees.

76 (2) With respect to equipment used in the construction,
77 reconstruction or other public work authorized to be done under
78 the provisions of this chapter: the word "equipment," in addition
79 to all equipment incorporated into or fully consumed in connection
80 with such project, shall include the reasonable value of the use
81 of all equipment of every kind and character and all accessories
82 and attachments thereto which are reasonably necessary to be used
83 and which are used in carrying out the performance of the
84 contract, and the reasonable value of the use thereof, during the
85 period of time the same are used in carrying out the performance
86 of the contract, shall be the amount as agreed upon by the persons
87 furnishing the equipment and those using the same to be paid
88 therefor, which amount, however, shall not be in excess of the
89 maximum current rates and charges allowable for leasing or renting
90 as specified in Section 65-7-95; the word "labor" shall include
91 all work performed in repairing equipment used in carrying out the
92 performance of the contract, which repair labor is reasonably
93 necessary to the efficient operation of said equipment; and the
94 words "materials" and "supplies" shall include all repair parts

95 installed in or on equipment used in carrying out the performance
96 of the contract, which repair parts are reasonably necessary to
97 the efficient operation of said equipment.

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

102 (4) The Mississippi Transportation Commission may require
103 the pre-qualification of any and all bidders and the failure to
104 comply with pre-qualification requirements may be the basis for
105 the rejection of any bid by the commission. The Mississippi
106 Transportation Commission may require the pre-qualification of any
107 and all subcontractors before they are approved to participate in
108 any contract awarded under this section.

109 (5) The Mississippi Transportation Commission may adopt
110 rules and regulations for the termination of any previously
111 awarded contract which is not timely proceeding toward completion.
112 The failure of a contractor to comply with such rules and
113 regulations shall be a lawful basis for the Mississippi
114 Transportation Commission to terminate the contract with such
115 contractor. In the event of a termination under such rules and
116 regulations, the contractor shall not be entitled to any payment,
117 benefit or damages beyond the cost of the work actually completed.

118 (6) Any contract for construction or paving of any highway
119 may be entered into for any cost which does not exceed the amount
120 of funds that may be made available therefor through bond issues
121 or from other sources of revenue, and the letting of contracts for
122 such construction or paving shall not necessarily be delayed until
123 the funds are actually on hand, provided authorization for the
124 issuance of necessary bonds has been granted by law to supplement
125 other anticipated revenue, or when the Mississippi Department of
126 Transportation certifies to the Department of Finance and
127 Administration and the Legislative Budget Office that projected

128 receipts of funds by the department will be sufficient to pay such
129 contracts as they become due and the Department of Finance and
130 Administration determines that the projections are reasonable and
131 receipts will be sufficient to pay the contracts as they become
132 due. The Department of Finance and Administration shall spread
133 such determination on its minutes prior to the letting of any
134 contracts based on projected receipts. Nothing in this subsection
135 shall prohibit the issuance of bonds, which have been authorized,
136 at any time in the discretion of the State Bond Commission, nor to
137 prevent investment of surplus funds in United States government
138 bonds or State of Mississippi bonds as presently authorized by
139 Section 12, Chapter 312, Laws of 1956.

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

144 (8) The Mississippi Transportation Commission shall not
145 empower or authorize the executive director, or any one or more of
146 its members, or any engineer or other person to let or make
147 contracts for the construction or repair of public roads, or
148 building bridges, or for the purchase of material, equipment or
149 supplies contrary to the provisions of this chapter as set forth
150 in this section, except in cases of flood or other cases of
151 emergency where the public interest requires that the work be done
152 or the materials, equipment or supplies be purchased without the
153 delay incident to advertising for competitive bids. Such
154 emergency contracts may be made without advertisement under such
155 rules and regulations as the Mississippi Transportation Commission
156 may prescribe.

157 (9) The executive director, subject to the approval of the
158 Mississippi Transportation Commission, is authorized to negotiate
159 and make agreements with communities and/or civic organizations
160 for landscaping, beautification and maintenance of highway

161 rights-of-way; however, nothing in this subsection shall be
162 construed as authorization for the executive director or
163 commission to participate in such a project to an extent greater
164 than the average cost for maintenance of shoulders, backslopes and
165 median areas with respect thereto.

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

170 (11) (a) As an alternative to the method of awarding
171 contracts as otherwise provided in this section, the Mississippi
172 Transportation Commission may use the design/build method of
173 contracting for the following:

174 (i) Projects for the Mississippi Development
175 Authority pursuant to agreements between both governmental
176 entities;

177 (ii) One (1) project that has an estimated cost of
178 Ten Million Dollars (\$10,000,000.00) or less; and

179 (iii) One (1) project which has an estimated cost
180 of over Ten Million Dollars (\$10,000,000.00).

181 As used in this subsection, the term "design/build" method of
182 contracting means that the contractor responding to a request for
183 proposals is required to satisfactorily perform, at a minimum,
184 both the design and actual construction of the project.

185 (b) Detailed criteria for the selection of the
186 successful design/build contractor shall be set forth in each
187 request for proposals issued by the commission. The scoring of
188 the selection committee shall be public records and shall be
189 maintained for a minimum of ten (10) years after project
190 completion.

191 (c) The commission shall maintain detailed records on
192 projects separate and apart from its regular record keeping and
193 shall compile a report to the Legislature evaluating the

194 contracting method by comparing the design/build method to the
195 "low bid" method of contracting. The commission shall submit the
196 report to the Legislature no later than December 1, 2005. At a
197 minimum, the report must include:

198 (i) The management goals and objectives for the
199 design/build system of management;

200 (ii) A complete description of the components of
201 the design/build management system, including a description of the
202 system the department put into place on all projects managed under
203 the system to insure that it has the complete information on
204 highway segment costing and to insure proper analysis of any
205 proposal the commission receives from a highway contractor;

206 (iii) The accountability systems the
207 Transportation Department established to monitor any design/build
208 project's compliance with specific goals and objectives for the
209 project;

210 (iv) The outcome of any project or any interim
211 report on an ongoing project let under a design/build management
212 system showing compliance with the goals, objectives, policies and
213 procedures the department set for the project; and

214 (v) The method used by the department to select
215 projects to be let under the design/build system of management and
216 all other systems, policies and procedures that the department
217 considered as necessary components to a design/build management
218 system.

219 (d) The authority to initiate new projects under the
220 provisions of this subsection (11) shall cease on June 30, 2008;
221 however, the provisions of this subsection shall otherwise remain
222 in effect for all projects for which a request for proposals has
223 been issued until the projects are finally completed.

224 (e) All contracts let under the provisions of this
225 subsection shall be subject to oversight and review by the State
226 Auditor. The State Auditor shall file a report with the

227 Legislature on or before January 1, 2005, and on or before January
228 1 of each year thereafter, detailing his findings with regard to
229 any contract let or project performed in violation of the
230 provisions of this subsection.

231 **SECTION 2.** This act shall take effect and be in force from
232 and after July 1, 2004.