

By: Representatives Miles, Ward, Zuber

To: Transportation

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; AND FOR RELATED PURPOSES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

176 (ii) Up to three (3) projects each fiscal year
177 where each project has an estimated cost of Ten Million Dollars
178 (\$10,000,000.00) or less; and

179 (iii) Projects with an estimated cost that exceeds
180 Fifty Million Dollars (\$50,000,000.00).

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.

196 (d) The authority to initiate new projects under the
197 provisions of this subsection (11) shall cease on June 30, 2014;
198 however, the provisions of this subsection shall otherwise remain
199 in effect for all projects for which a request for proposals has
200 been issued until the projects are finally completed.

201 (e) All contracts let under the provisions of this
202 subsection shall be subject to oversight and review by the State
203 Auditor. The State Auditor shall file a report with the
204 Legislature on or before January 1, 2005, and on or before January
205 1 of each year thereafter, detailing his findings with regard to
206 any contract let or project performed in violation of the
207 provisions of this subsection.

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