

## House Amendments to Senate Bill No. 2734

TO THE SECRETARY OF THE SENATE:

THIS IS TO INFORM YOU THAT THE HOUSE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

### AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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  
12 the \* \* \* commission for construction, reconstruction or other  
13 public work authorized to be done under the provisions of this  
14 chapter, except maintenance, shall be made by the executive  
15 director, subject to the approval of the commission, only upon  
16 competitive bids after due advertisement as 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 with 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 \* \* \* commission or any officer of the state authorized in such  
71 cases, for double any amount in money or property the state may  
72 lose or be overcharged or otherwise defrauded of by reason of any  
73 wrongful or criminal act, if any, of the contractor, his agent or  
74 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  
98 the \* \* \* commission, shall have the right to reject any and all  
99 bids, whether such right is reserved in the notice or not.

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

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

115           (6) Any contract for construction or paving of any highway  
116 may be entered into for any cost which does not exceed the amount  
117 of funds that may be made available therefor through bond issues  
118 or from other sources of revenue, and the letting of contracts for  
119 such construction or paving shall not necessarily be delayed until  
120 the funds are actually on hand, provided authorization for the  
121 issuance of necessary bonds has been granted by law to supplement  
122 other anticipated revenue, or when the Mississippi Department of  
123 Transportation certifies to the Department of Finance and  
124 Administration and the Legislative Budget Office that projected  
125 receipts of funds by the department will be sufficient to pay such  
126 contracts as they become due and the Department of Finance and  
127 Administration determines that the projections are reasonable and  
128 receipts will be sufficient to pay the contracts as they become  
129 due. The Department of Finance and Administration shall spread  
130 such determination on its minutes prior to the letting of any  
131 contracts based on projected receipts. Nothing in this subsection  
132 shall prohibit the issuance of bonds, which have been authorized,  
133 at any time in the discretion of the State Bond Commission, nor to  
134 prevent investment of surplus funds in United States government

135 bonds or State of Mississippi bonds as presently authorized by  
136 Section 12, Chapter 312, Laws of 1956.

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

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

153 (9) The executive director, subject to the approval of  
154 the \* \* \* commission, is authorized to negotiate and make  
155 agreements with communities and/or civic organizations for  
156 landscaping, beautification and maintenance of highway  
157 rights-of-way; however, nothing in this subsection shall be  
158 construed as authorization for the executive director or  
159 commission to participate in such a project to an extent greater  
160 than the average cost for maintenance of shoulders, backslopes and  
161 median areas with respect thereto.

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

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

170 (i) Projects for the Mississippi Development  
171 Authority pursuant to agreements between both governmental  
172 entities;

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

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

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

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

187 (c) The commission shall maintain detailed records on  
188 projects separate and apart from its regular record keeping and  
189 shall compile a report to the Legislature evaluating the  
190 contracting method by comparing the design/build method to the  
191 "low bid" method of contracting. The commission shall submit the  
192 report to the Legislature no later than December 1, 2005. At a  
193 minimum, the report must include:

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

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

202 (iii) The accountability systems the  
203 Transportation Department established to monitor any design/build

204 project's compliance with specific goals and objectives for the  
205 project;

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

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

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

220 (e) All contracts let under the provisions of this  
221 subsection shall be subject to oversight and review by the State  
222 Auditor. The State Auditor shall file a report with the  
223 Legislature on or before January 1, 2005, and on or before January  
224 1 of each year thereafter, detailing his findings with regard to  
225 any contract let or project performed in violation of the  
226 provisions of this subsection. The actual and necessary expenses  
227 incurred by the State Auditor in complying with this paragraph (e)  
228 shall be paid for and reimbursed by the Mississippi Department of  
229 Transportation out of funds made available for the contract or  
230 contracts let and project or projects performed.

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

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

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.

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Don Richardson  
Clerk of the House of Representatives