

**Adopted
COMMITTEE AMENDMENT NO 1 PROPOSED TO**

Senate Bill No. 2734

BY: Committee

**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.