

By: Representative Guice

To: Transportation

HOUSE BILL NO. 373

1 AN ACT TO AMEND SECTION 65-1-85, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT CONTRACTS LET BY THE MISSISSIPPI TRANSPORTATION
3 COMMISSION FOR CONSTRUCTION, RECONSTRUCTION OR REPAIR TO HIGHWAYS,
4 ROADWAYS, BRIDGES, DRAINAGE STRUCTURES OR OTHER PROPERTY OR
5 INFRASTRUCTURE DAMAGED OR DESTROYED AS A RESULT OF A NATURAL OR
6 MAN-MADE DISASTER SHALL INCLUDE PROVISIONS SUBJECTING THE
7 CONTRACTOR TO CERTAIN PENALTIES FOR FAILING TO COMPLETE THE
8 CONTRACT IN ACCORDANCE WITH TIME SCHEDULES CONTAINED IN THE
9 CONTRACT; AND FOR RELATED PURPOSES.

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

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

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

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

29 (b) The advertisement shall be inserted twice, being
30 once a week for two (2) successive weeks in a newspaper published

31 at the seat of government in Jackson, Mississippi, having a
32 general circulation throughout the state, and no letting shall be
33 less than fourteen (14) days nor more than sixty (60) days after
34 the publication of the first notice of such letting, and notices
35 of such letting may be placed in a metropolitan paper or national
36 trade publication.

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

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

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

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

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

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

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

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

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

109 (5) The commission may adopt rules and regulations for the
110 termination of any previously awarded contract which is not timely
111 proceeding toward completion. The failure of a contractor to
112 comply with such rules and regulations shall be a lawful basis for
113 the commission to terminate the contract with such contractor. In
114 the event of a termination under such rules and regulations, the
115 contractor shall not be entitled to any payment, benefit or
116 damages beyond the cost of the work actually completed. Every
117 contract let for construction, reconstruction or repair to
118 highways, roadways, bridges, drainage structures or other property
119 or infrastructure damaged or destroyed as a result of a natural or
120 man-made disaster, shall include provisions subjecting the
121 contractor to penalties for failing to complete the contract in
122 accordance with time schedules contained in the contract. A
123 contractor who is thirty (30) days in default of a time schedule
124 in any such contract shall be liable on his bond for a penalty in
125 an amount equal to double the penalty ordinarily imposed by the
126 commission in other contracts. A contractor who is forty-five
127 (45) days in default of a time schedule in any such contract shall
128 be liable on his bond for a penalty in an amount equal to triple

129 the penalty ordinarily imposed by the commission in other
130 contracts and the contract shall be terminated and rebid.

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

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

156 (8) The commission shall not empower or authorize the
157 executive director, or any one or more of its members, or any
158 engineer or other person to let or make contracts for the
159 construction or repair of public roads, or building bridges, or
160 for the purchase of material, equipment or supplies contrary to
161 the provisions of this chapter as set forth in this section,

162 except in cases of flood or other cases of emergency where the
163 public interest requires that the work be done or the materials,
164 equipment or supplies be purchased without the delay incident to
165 advertising for competitive bids. Such emergency contracts may be
166 made without advertisement under such rules and regulations as the
167 commission may prescribe.

168 (9) The executive director, subject to the approval of the
169 commission, is authorized to negotiate and make agreements with
170 communities and/or civic organizations for landscaping,
171 beautification and maintenance of highway rights-of-way; however,
172 nothing in this subsection shall be construed as authorization for
173 the executive director or commission to participate in such a
174 project to an extent greater than the average cost for maintenance
175 of shoulders, backslopes and median areas with respect thereto.

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

180 (11) (a) As an alternative to the method of awarding
181 contracts as otherwise provided in this section, the commission
182 may use the design-build method of contracting for the following:

183 (i) Projects for the Mississippi Development
184 Authority pursuant to agreements between both governmental
185 entities;

186 (ii) Any project with an estimated cost of not
187 more than Ten Million Dollars (\$10,000,000.00), not to exceed two
188 (2) projects per fiscal year; and

189 (iii) Any project which has an estimated cost of
190 more than Fifty Million Dollars (\$50,000,000.00), not to exceed
191 one (1) project per fiscal year.

192 (b) As used in this subsection, the term "design-build"
193 method of contracting means a contract that combines the design
194 and construction phases of a project into a single contract and

195 the contractor is required to satisfactorily perform, at a
196 minimum, both the design and construction of the project.

197 (c) The commission shall establish detailed criteria
198 for the selection of the successful design-build contractor in
199 each request for design-build proposals. The evaluation of the
200 selection committee is a public record and shall be maintained for
201 a minimum of ten (10) years after project completion.

202 (d) The commission shall maintain detailed records on
203 projects separate and apart from its regular record keeping. The
204 commission shall file a report to the Legislature evaluating the
205 design-build method of contracting by comparing it to the low-bid
206 method of contracting. At a minimum, the report must include:

207 (i) The management goals and objectives for the
208 design-build system of management;

209 (ii) A complete description of the components of
210 the design-build management system, including a description of the
211 system the department put into place on all projects managed under
212 the system to insure that it has the complete information on
213 highway segment costs and to insure proper analysis of any
214 proposal the commission receives from a highway contractor;

215 (iii) The accountability systems the
216 Transportation Department established to monitor any design-build
217 project's compliance with specific goals and objectives for the
218 project;

219 (iv) The outcome of any project or any interim
220 report on an ongoing project let under a design-build management
221 system showing compliance with the goals, objectives, policies and
222 procedures the department set for the project; and

223 (v) The method used by the department to select
224 projects to be let under the design-build system of management and
225 all other systems, policies and procedures that the department
226 considered as necessary components to a design-build management
227 system.

228 (e) All contracts let under the provisions of this
229 subsection shall be subject to oversight and review by the State
230 Auditor. The State Auditor shall file a report with the
231 Legislature on or before January 1 of each year detailing his
232 findings with regard to any contract let or project performed in
233 violation of the provisions of this subsection. The actual and
234 necessary expenses incurred by the State Auditor in complying with
235 this paragraph (e) shall be paid for and reimbursed by the
236 Mississippi Department of Transportation out of funds made
237 available for the contract or contracts let and project or
238 projects performed.

239 **SECTION 2.** This act shall take effect and be in force from
240 and after July 1, 2007.