

By: Senator(s) Hewes

To: Highways and
Transportation; Judiciary,
Division A

SENATE BILL NO. 2948

1 AN ACT TO AMEND SECTION 65-2-1, MISSISSIPPI CODE OF 1972, TO
 2 PRESCRIBE THE SPECIFIC TYPES OF CONTRACTS BETWEEN THE MISSISSIPPI
 3 TRANSPORTATION COMMISSION AND CONTRACTORS THAT ARE SUBJECT TO
 4 ARBITRATION PROCEEDINGS; TO AMEND SECTION 65-2-3, MISSISSIPPI CODE
 5 OF 1972, TO REVISE THE COMPOSITION, THE METHOD OF SELECTING
 6 MEMBERS, THE TERMS OF MEMBERS AND THE COMPENSATION OF MEMBERS OF
 7 THE STATE TRANSPORTATION ARBITRATION BOARD; TO AMEND SECTION
 8 65-2-5, MISSISSIPPI CODE OF 1972, TO INCREASE THE JURISDICTIONAL
 9 AMOUNT OF CONTRACTUAL MATTERS IN DISPUTE FOR WHICH ARBITRATION
 10 PROCEEDINGS ARE AVAILABLE; TO AMEND SECTION 65-2-7, MISSISSIPPI
 11 CODE OF 1972, TO INCREASE THE NUMBER OF BOARD MEMBERS NECESSARY TO
 12 BE PRESENT TO CONDUCT A MEETING OF THE BOARD; TO AMEND SECTION
 13 65-2-11, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE BOARD TO
 14 ASSESS PARTIES FOR RECORDING ARBITRATION HEARINGS IN AN AMOUNT AS
 15 DETERMINED BY THE BOARD; TO AMEND SECTION 65-2-13, MISSISSIPPI
 16 CODE OF 1972, TO REQUIRE THE BOARD TO MAKE WRITTEN FINDINGS OF ITS
 17 CONCLUSIONS OF LAW AS WELL AS WRITTEN FINDINGS OF ITS FINDINGS OF
 18 FACT; TO AMEND SECTIONS 65-2-15, 65-1-89 AND 65-1-91, MISSISSIPPI
 19 CODE OF 1972, IN CONFORMITY WITH THE PROVISIONS OF THIS ACT; AND
 20 FOR RELATED PURPOSES.

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

22 **SECTION 1.** Section 65-2-1, Mississippi Code of 1972, is
 23 amended as follows:

24 65-2-1. It is hereby declared to be the public policy of the
 25 State of Mississippi that it is necessary and essential in the
 26 public interest to facilitate the prompt, peaceful, and just
 27 settlement of conflicts and disputes arising out of contracts for
 28 the construction of any building, highway or work, or the doing of
 29 any repairs, between the Mississippi Transportation Department and
 30 the various contractors with whom it transacts business, and to
 31 that end the Legislature does hereby establish the State
 32 Transportation Arbitration Board, hereinafter referred to as the
 33 board.

34 **SECTION 2.** Section 65-2-3, Mississippi Code of 1972, is
 35 amended as follows:

36 65-2-3. The board shall be composed of three (3) members,
37 one (1) to be appointed by the Mississippi Transportation
38 Commission, and one (1) to be selected by the Mississippi Road
39 Builders' Association, Incorporated, or its successor organization
40 (hereinafter referred to as the contractors). * * * The third
41 member shall be chosen by agreement of the other two (2) members.

42 Each board member shall serve for a four-year term at the end
43 of which either the Mississippi Transportation Commission or the
44 contractors may either retain their representative or choose to
45 appoint or select another member.

46 The Mississippi Transportation Commission shall establish
47 appropriate fees for administering the arbitration process under
48 this chapter and for compensating arbitrators for their service.
49 These fees for each arbitration do not include the attorneys' fees
50 of the parties and shall be assessed to the parties to the
51 arbitration as determined by the board.

52 **SECTION 3.** Section 65-2-5, Mississippi Code of 1972, is
53 amended as follows:

54 65-2-5. The board shall elect a chairman and may adopt rules
55 of procedure. The board may be called into session by the
56 Mississippi Transportation Commission or by a contractor who has a
57 dispute with the Mississippi Department of Transportation which,
58 under the rules of the board, may be the subject of arbitration.
59 The party requesting the board's consideration shall give notice
60 of the same to each member.

61 Absent agreement of the parties, the board shall have
62 jurisdiction to hear matters concerning Seven Hundred Fifty
63 Thousand Dollars (\$750,000.00) or less per contract without regard
64 to the size of the contract. The parties by mutual written
65 agreement may submit to the board claims in excess of the
66 jurisdictional limit of Seven Hundred Fifty Thousand Dollars
67 (\$750,000.00). Absent agreement of the parties, the number of

68 arbitration proceedings regarding monetary issues shall be limited
69 to three (3) per contract.

70 **SECTION 4.** Section 65-2-7, Mississippi Code of 1972, is
71 amended as follows:

72 65-2-7. Attendance of all three (3) members shall be
73 necessary to conduct a meeting. If a member is recused from an
74 arbitration or is unable to serve, that member shall be replaced
75 in the manner originally appointed. Upon being called into
76 session the board shall promptly hold hearings and shall have the
77 power to administer oaths and to compel the attendance of
78 witnesses and the furnishing by the parties of such information as
79 may be necessary to a determination of the issue or issues in
80 dispute. Both parties to the dispute shall have the opportunity
81 to be present at the hearing, both personally and by counsel, and
82 to present such oral and documentary evidence as the board shall
83 deem relevant to the issue or issues in controversy.

84 **SECTION 5.** Section 65-2-11, Mississippi Code of 1972, is
85 amended as follows:

86 65-2-11. The board shall have the authority to hire
87 personnel for the purpose of recording the hearings provided for
88 herein, and the costs for such personnel shall be assessed as
89 determined by the board.

90 **SECTION 6.** Section 65-2-13, Mississippi Code of 1972, is
91 amended as follows:

92 65-2-13. It shall be the duty of the board to make written
93 findings of fact and conclusions of law and to promulgate a
94 written decision and order upon the issue or issues presented in
95 each case. In making such findings the board shall consider only,
96 and be bound only, by the evidence submitted. When a valid
97 contract is in effect defining the rights, duties and liabilities
98 of the parties with respect to any matter in dispute, the board
99 shall have power only to determine the proper interpretation and
100 application of the contract provisions which are involved. Any

101 investigation made by less than the whole membership of the board
102 shall be by authority of a written directive by the chairman and
103 such investigation shall be summarized in writing and considered
104 by the board in reporting its findings and making its
105 recommendation.

106 The board shall hand down its findings, decision and order
107 (hereinafter referred to as its order) within sixty (60) days
108 after it is called into session. If all three (3) members of the
109 board do not agree, the order of the majority shall constitute the
110 order of the board. The board shall furnish to each of the
111 parties a copy of its order and a certified copy thereof shall be
112 filed in the office of the clerk of the circuit court. Unless
113 such order is reversed upon a petition for review filed pursuant
114 to the provisions of Section 65-2-15, such order, together with
115 such agreements as the parties may themselves have reached, shall
116 become binding upon and shall control the relationship between the
117 parties from the date such order is filed with the clerk of the
118 circuit court, as aforesaid. However, such order may be changed
119 by mutual consent or agreement of the parties.

120 **SECTION 7.** Section 65-2-15, Mississippi Code of 1972, is
121 amended as follows:

122 65-2-15. (1) Either party to the dispute may, within
123 fifteen (15) days from the date such order is filed with the clerk
124 of the court, petition the circuit court of any county in which
125 the contractor operates or has an office or place of business, for
126 a review of such order on the ground that:

127 (a) The parties were not given reasonable opportunity
128 to be heard;

129 (b) The board exceeded its powers;

130 (c) The order is unreasonable in that it is not
131 supported by the evidence; and

132 (d) The order was procured by fraud, collusion, or
133 other unlawful means or methods.

134 (2) Upon the filing of an appeal from the decision of the
135 State Transportation Arbitration Board, the decision of that board
136 shall be suspended until it is reinstated or reversed by the
137 circuit judge. The party bringing the appeal shall be required to
138 place a supercedeas bond in an amount to be determined by the
139 circuit judge.

140 (3) A summons to the other party to the dispute shall be
141 issued as provided by law in other civil cases. Either party
142 shall have the same rights to a change of venue from the county,
143 or to a change of judge, as provided by law in other civil cases.
144 The judge of the circuit court, without the intervention of a
145 jury, shall hear the evidence adduced by both parties with respect
146 to the issue raised by such petition and may reverse said order
147 only if he affirmatively finds that one of the grounds set forth
148 in subsection (1) was in fact present to such a degree that the
149 decision of the board should not be allowed to stand. The
150 decision of the judge of the circuit court shall be final, unless
151 an appeal is taken to the Supreme Court as hereinafter provided.
152 If the court reverses said order for one of the reasons stated
153 herein, and no appeal is taken to the supreme court, the decision
154 of the board shall no longer be binding on either party.

155 **SECTION 8.** Section 65-1-89, Mississippi Code of 1972, is
156 amended as follows:

157 65-1-89. Every formal contract made by or on behalf of the
158 Mississippi Transportation Commission for the construction of any
159 building, highway, or work, or the doing of any repairs shall
160 contain and include a provision for settlement by arbitration, if
161 requested by either party to the contract, of all claims and
162 disputes and other matters arising out of such contract, or the
163 failure or refusal to perform the whole or any part thereof.

164 **SECTION 9.** Section 65-1-91, Mississippi Code of 1972, is
165 amended as follows:

166 65-1-91. Upon demand for arbitration by any party to a
167 contract with the Mississippi Transportation Commission for the
168 construction of any building, highway or work, or the doing of any
169 repairs, such arbitration shall proceed in all respects and shall
170 have the same effect as authorized and provided by Sections
171 11-15-1 through 11-15-37 * * *. Any arbitration decision shall be
172 binding * * *.

173 **SECTION 10.** This act shall take effect and be in force from
174 and after July 1, 2007.