

By: Representatives Massengill, Remak

To: Transportation

HOUSE BILL NO. 940

1 AN ACT TO AMEND SECTION 65-1-85, MISSISSIPPI CODE OF 1972, TO  
 2 UPDATE CERTAIN PUBLICATION AND BID AWARD REQUIREMENTS TO REQUIRE  
 3 THE ADVERTISEMENT TO BE POSTED ON A WEBSITE DESIGNATED BY THE  
 4 COMMISSION FOR TWO SUCCESSIVE WEEKS INSTEAD OF A PUBLICATION  
 5 WITHIN THE SEAT OF STATE GOVERNMENT IN JACKSON, MISSISSIPPI; TO  
 6 REVISE THE REQUIREMENTS FOR DESIGN-BUILD PROJECTS OF THE  
 7 MISSISSIPPI TRANSPORTATION COMMISSION; TO ALLOW THE MISSISSIPPI  
 8 TRANSPORTATION COMMISSION TO UTILIZE FEDERALLY APPROVED  
 9 ALTERNATIVE CONTRACTING METHODS; 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 \* \* \* period for two (2)  
30 successive weeks \* \* \* on a website designated by the commission,  
31 and no letting shall be less than fourteen (14) days nor more than  
32 sixty (60) days after \* \* \* notice of such letting \* \* \* is first  
33 posted. Notices of such letting may be placed in a metropolitan  
34 paper \* \* \*, national trade publication or any other location that  
35 may increase competitive bidding.

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

45 (d) All such contracts shall be let to a responsible  
46 bidder with the lowest \* \* \* responsive bid, and a record of all



47 bids received for construction and reconstruction shall be  
48 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 prequalification of any  
104 and all bidders and the failure to comply with prequalification  
105 requirements may be the basis for the rejection of any bid by the  
106 commission. The commission may require the prequalification 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.

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

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

142 (8) The commission shall not empower or authorize the  
143 executive director, or any one or more of its members, or any  
144 engineer or other person to let or make contracts for the  
145 construction or repair of public roads, or building bridges, or  
146 for the purchase of material, equipment or supplies contrary to



147 the provisions of this chapter as set forth in this section,  
148 except in cases of flood or other cases of emergency where the  
149 public interest requires that the work be done or the materials,  
150 equipment or supplies be purchased without the delay incident to  
151 advertising for competitive bids. Such emergency contracts may be  
152 made without advertisement under such rules and regulations as the  
153 commission may prescribe.

154 (9) The executive director, subject to the approval of the  
155 commission, is authorized to negotiate and make agreements with  
156 communities and/or civic organizations for landscaping,  
157 beautification and maintenance of highway rights-of-way; however,  
158 nothing in this subsection shall be construed as authorization for  
159 the executive director or commission to participate in such a  
160 project to an extent greater than the average cost for maintenance  
161 of shoulders, backslopes and 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 commission  
168 may \* \* \*, in accordance with the applicable federal regulations,  
169 guidelines and requirement, any Non-experimental Alternative  
170 Contracting Method approved by the United States Department of  
171 Transportation, including:



- 172 (i) \* \* \* Design-Build;
- 173 (ii) \* \* \* Progressive Design-Build;
- 174 (iii) \* \* \* Construction Manager/General  
175 Contractor;
- 176 (iv) Any hybrid, combination or derivative of the  
177 Non-experimental Alternative Contracting Methods as may be allowed  
178 by the United States Department of Transportation; and
- 179 (v) Any additional Non-experimental Alternative  
180 Contracting Methods as may become approved by the United States  
181 Department of Transportation.

182 (b) As used in this subsection, the term "design-build"  
183 method of contracting means a contract that combines the design  
184 and construction phases of a project into a single contract and  
185 the contractor is required to satisfactorily perform, at a  
186 minimum, both the design and construction of the project.

187 (c) \* \* \*. As used in this subsection, the term  
188 "Progressive Design-Build" method of contracting means a contract  
189 that combines the design and construction phases of a project, in  
190 which the contract allows the commission and contractor to  
191 progress toward a final design, scope, schedule and contract price  
192 for project or portions thereof.

193 (d) \* \* \* As used in this subsection, the term  
194 "Construction Manager/General Contractor" method of contracting  
195 means that a construction manager engaged during the design phase  
196 to provide input on scheduling, pricing, phasing and other





197 information that assists or informs the commission on issues  
198 related to constructability. If the commission and construction  
199 manager are able to negotiate a reasonable guaranteed maximum  
200 price for construction based on a defined scope and schedule, then  
201 the construction manager becomes the general contractor for the  
202 construction on the project or portions thereof.

203 (e) \* \* \* The commission shall have all powers  
204 necessary to implement and administer this subsection and shall  
205 promulgate rules and regulations as necessary for such  
206 implementation and administration.

207 (12) The provisions of this section shall not be construed  
208 to prohibit the commission from awarding or entering into  
209 contracts for the design, construction and financing of toll  
210 roads, highways and bridge projects as provided under Sections  
211 65-43-1 and 65-43-3.

212 (13) Contracts entered into pursuant to the provisions of  
213 Section 57-75-9(4) in connection with a project defined in Section  
214 57-75-5(f)(xxxii) shall be exempt from this section; provided  
215 that, with respect to any such contract that is anticipated to be  
216 federally funded, in whole or in part, the commission may  
217 nonetheless comply with the provisions of this section for  
218 purposes of compliance with any applicable federal funding  
219 requirements.

220 (14) The provisions of this section shall not be construed  
221 to prohibit the commission from applying for any special



222 experimental project as may be authorized by the United States  
223 Department of Transportation, when the commission determines that  
224 it is in the best interest of the public, and is otherwise in  
225 accordance with state law.

226         **SECTION 2.** This act shall take effect and be in force from  
227 and after July 1, 2024.

