

By: Senator(s) Branning

To: Highways and  
Transportation

SENATE BILL NO. 2645

1 AN ACT TO AMEND SECTION 65-1-85, MISSISSIPPI CODE OF 1972, TO  
2 UPDATE CERTAIN PUBLICATION AND BID AWARD REQUIREMENTS; TO REVISE  
3 THE REQUIREMENTS FOR DESIGN-BUILD PROJECTS OF THE MISSISSIPPI  
4 TRANSPORTATION COMMISSION; TO ALLOW THE MISSISSIPPI TRANSPORTATION  
5 COMMISSION TO UTILIZE FEDERALLY APPROVED ALTERNATIVE CONTRACTING  
6 METHODS; AND FOR RELATED PURPOSES.

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

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

10 65-1-85. (1) All contracts by or on behalf of the  
11 commission for the purchase of materials, equipment and supplies  
12 shall be made in compliance with Section 31-7-1 et seq. All  
13 contracts by or on behalf of the commission for construction,  
14 reconstruction or other public work authorized to be done under  
15 the provisions of this chapter, except maintenance, shall be made  
16 by the executive director, subject to the approval of the  
17 commission, only upon competitive bids after due advertisement as  
18 follows, to wit:

19 (a) Advertisement for bids shall be in accordance with  
20 such rules and regulations, in addition to those herein provided,



21 as may be adopted therefor by the commission, and the commission  
22 is authorized and empowered to make and promulgate such rules and  
23 regulations as it may deem proper, to provide and adopt standard  
24 specifications for road and bridge construction, and to amend such  
25 rules and regulations from time to time.

26 (b) The advertisement shall be \* \* \* posted for two (2)  
27 successive weeks \* \* \* on a website designated by the commission,  
28 and no letting shall be less than fourteen (14) days nor more than  
29 sixty (60) days after the \* \* \* notice of such letting \* \* \* is  
30 first posted. Notices of such letting may be placed in a  
31 metropolitan paper \* \* \* , national trade publication or any other  
32 location that may increase competitive bidding.

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

42 (d) All such contracts shall be let to a responsible  
43 bidder with the lowest \* \* \* responsive bid, and a record of all  
44 bids received for construction and reconstruction shall be  
45 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, an additional bond  
59 in the amount of the increased cost may be required. The surety  
60 or 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 cases,



71 for double any amount in money or property the state may lose or  
72 be overcharged or otherwise defrauded of by reason of any wrongful  
73 or criminal act, if any, of the contractor, his or her 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: \* \* \*

78 (a) "Equipment," in addition to all equipment  
79 incorporated into or fully consumed in connection with such  
80 project, shall also include the reasonable value of the use of all  
81 equipment of every kind and character and all accessories and  
82 attachments thereto which are reasonably necessary to be used and  
83 which are used in carrying out the performance of the contract,  
84 and the reasonable value of the use thereof, during the period of  
85 time the same are used in carrying out the performance of the  
86 contract, shall be the amount as agreed upon by the persons  
87 furnishing the equipment and those using the same to be paid  
88 therefor, which amount, however, shall not be in excess of the  
89 maximum current rates and charges allowable for leasing or renting  
90 as specified in Section 65-7-95; \* \* \*

91 (b) "Labor" shall include all work performed in  
92 repairing equipment used in carrying out the performance of the  
93 contract, which repair labor is reasonably necessary to the  
94 efficient operation of said equipment; and \* \* \*



95           (c) "Materials" and "supplies" shall include all repair  
96 parts installed in or on equipment used in carrying out the  
97 performance of the contract, which repair parts are reasonably  
98 necessary to the efficient operation of said equipment.

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

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

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

116           (6) Any contract for construction or paving of any highway  
117 may be entered into for any cost which does not exceed the amount  
118 of funds that may be made available therefor through bond issues  
119 or from other sources of revenue, and the letting of contracts for



120 such construction or paving shall not necessarily be delayed until  
121 the funds are actually on hand, provided authorization for the  
122 issuance of necessary bonds has been granted by law to supplement  
123 other anticipated revenue, or when the department certifies to the  
124 Department of Finance and Administration and the Legislative  
125 Budget Office that projected receipts of funds by the department  
126 will be sufficient to pay such contracts as they become due and  
127 the Department of Finance and Administration determines that the  
128 projections are reasonable and receipts will be sufficient to pay  
129 the contracts as they become due. The Department of Finance and  
130 Administration shall spread such determination on its minutes  
131 prior to the letting of any contracts based on projected receipts.  
132 Nothing in this subsection shall prohibit the issuance of bonds,  
133 which have been authorized, at any time in the discretion of the  
134 State Bond Commission, nor to prevent investment of surplus funds  
135 in United States government bonds or State of Mississippi bonds as  
136 presently authorized by 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 the  
152 commission may prescribe.

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

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

165 (11) (a) As an alternative to the method of awarding  
166 contracts as otherwise provided in this section, the commission  
167 may use \* \* \*, in accordance with the applicable federal  
168 regulations, guidelines and requirements, any Nonexperimental



169 Alternative Contracting Method approved by the United States

170 Department of Transportation, including:

171 (i) \* \* \* Design-build;

172 (ii) \* \* \* Progressive design-build;

173 (iii) \* \* \* Construction manager/general

174 contractor;

175 (iv) Any hybrid, combination or derivative of the

176 Nonexperimental Alternative Contracting Methods as may be allowed

177 by the United States Department of Transportation; and

178 (v) Any additional Nonexperimental Alternative

179 Contracting Method as may become approved and operational by the

180 United States Department of Transportation.

181 (b) As used in this subsection, the term "design-build"

182 method of contracting means a contract that combines the design

183 and construction phases of a project into a single contract and

184 the contractor is required to satisfactorily perform, at a

185 minimum, both the design and construction of the project.

186 (c) \* \* \* As used in this subsection, the term

187 "progressive design-build" method of contracting means a contract

188 that combines the design and construction phase of a project, in

189 which the contract allows the commission and contractor to

190 progress toward a final design, scope, schedule and contract price

191 for the project or portions thereof.

192 (d) \* \* \* As used in this subsection, the term

193 "construction manager/general contractor" method of contracting





194 means that a construction manager is engaged during the design  
195 phase to provide input on scheduling, pricing, phasing and other  
196 information that assists or informs the commission on issues  
197 related to constructability. If the commission and construction  
198 manager are able to negotiate a reasonable guaranteed maximum  
199 price for construction based on a defined scope and schedule, then  
200 the construction manager becomes the general contractor for the  
201 construction of the project or portions thereof.

202 (e) \* \* \* The commission shall have all powers  
203 necessary to implement and administer this subsection and shall  
204 promulgate rules and regulations as necessary to implement and  
205 administer the provisions of this subsection.

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

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



219       (14) The provisions of this section shall not be construed  
220 to prohibit the commission from applying for any special  
221 experimental project as may be authorized by the United States  
222 Department of Transportation, when the commission determines that  
223 it is in the best interests of the public and is otherwise in  
224 accordance with state law.

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

