

By: Representative Miles

To: Transportation

HOUSE BILL NO. 1368

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:

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

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

* * *

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

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

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

* * *

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

69 (\$750,000.00). Absent agreement of the parties, the number of
70 arbitration proceedings regarding monetary issues shall be limited
71 to three (3) per contract.

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

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

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

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

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

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

102 application of the contract provisions which are involved. Any
103 investigation made by less than the whole membership of the board
104 shall be by authority of a written directive by the chairman and
105 such investigation shall be summarized in writing and considered
106 by the board in reporting its findings and making its
107 recommendation.

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

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

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

129 (a) The parties were not given reasonable opportunity
130 to be heard;

131 (b) The board exceeded its powers;

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

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

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

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

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

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

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

168 65-1-91. Upon demand for arbitration by any party to a
169 contract with the Mississippi Transportation Commission for the
170 construction of any building, highway or work, or the doing of any
171 repairs, such arbitration shall proceed in all respects and shall
172 have the same effect as authorized and provided by Sections
173 11-15-1 through 11-15-37. Any arbitration decision shall be
174 binding * * *.

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