

By: Representative Miles

To: Transportation

COMMITTEE SUBSTITUTE
FOR
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 BRING FORWARD SECTION 65-2-13,
16 MISSISSIPPI CODE OF 1972, FOR PURPOSES OF AMENDMENT; TO AMEND
17 SECTIONS 65-2-15, 65-1-89 AND 65-1-91, MISSISSIPPI CODE OF 1972,
18 IN CONFORMITY WITH THE PROVISIONS OF THIS ACT; AND FOR RELATED
19 PURPOSES.

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

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

23 65-2-1. It is hereby declared to be the public policy of the
24 State of Mississippi that it is necessary and essential in the
25 public interest to facilitate the prompt, peaceful, and just
26 settlement of conflicts and disputes arising out of contracts for
27 the construction of any building, highway or work, or the doing of
28 any repairs, between the Mississippi Transportation Department and
29 the various contractors with whom it transacts business, and to
30 that end the Legislature does hereby establish the State
31 Transportation Arbitration Board, hereinafter referred to as the
32 board.

33 **SECTION 2.** Section 65-2-3, Mississippi Code of 1972, is
34 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.

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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

68 (\$750,000.00). Absent agreement of the parties, the number of
69 arbitration proceedings regarding monetary issues shall be limited
70 to three (3) per contract.

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

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

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

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

91 **SECTION 6.** Section 65-2-13, Mississippi Code of 1972, is
92 brought forward as follows:

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

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

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

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

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

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

(b) The board exceeded its powers;

(c) The order is unreasonable in that it is not 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.

SECTION 9. Section 65-1-91, Mississippi Code of 1972, is 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. * * *

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