

By: Representative Miles

To: Transportation

HOUSE BILL NO. 1368  
(As Sent to Governor)

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 (1) of the grounds set  
148 forth in subsection (1) was in fact present to such a degree that  
149 the 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 (1) 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.