

HB597 INTRODUCED



1 HB597
2 7BTI5E2-1
3 By Representative Clouse
4 RFD: Transportation, Utilities and Infrastructure
5 First Read: 17-Apr-25



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SYNOPSIS:

In existing law public owners are authorized to let public works projects through the design-bid-build project delivery method.

This bill would provide for new alternative means for procuring design and construction services for public contracts by authorizing the use of Construction Manager at Risk (CMAR), Design-Build, Design-Build-Finance-Operate-Maintain, Design-Build-Operate-Maintain, and Progressive Design-Build, project delivery methods and establish the criteria for project approval.

This bill would provide for the adoption of administrative rules to administer this law and establish a process to protest a contract award, and establish reporting requirements.

This bill would further provide for the establishment of a Public Works Advisory Council.

A BILL
TO BE ENTITLED
AN ACT

Relating to public works projects; to amend Sections



HB597 INTRODUCED

29 39-1-1, 39-2-1, 39-5-4, and 39-5-6, Code of Alabama 1975; to
30 provide for alternative delivery methods for public work
31 projects; to further provide for who can file a protest; to
32 clarify how these provisions will be construed by the court;
33 to add Section 39-2-1.1; to designate Sections 39-2-1 through
34 39-2-14, Code of Alabama as Article 1; to add Article 2 to
35 Chapter 2 of Title 39, Code of Alabama 1975, commencing with
36 Section 39-2-40; to authorize the use of alternative delivery
37 methods for public works projects; to provide for the adoption
38 of administrative rules to administer this chapter; to provide
39 for reporting requirements; and to create a public works
40 advisory council.

41 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

42 Section 1. Sections 39-1-1, 39-2-1, 39-5-4, and 39-5-6,
43 Code of Alabama 1975, are amended to read as follows:

44 "§39-1-1

45 (a) Any person entering into a contract with an
46 awarding authority in this state for the prosecution of any
47 public works, before commencing the work, shall execute and
48 deliver to the awarding authority the following bonds:

49 (1) For Design-Bid-Build Contracts issued under Section
50 39-2-2:

51 a. A performance bond, with penalty equal to 100
52 percent of the amount of the contract price. ~~In addition,~~
53 ~~another bond,~~

54 b. A payment bond, ~~payable to the awarding authority~~
55 ~~letting the contract, shall be executed~~ in an amount not less
56 than 50 percent of the contract price, with the obligation



HB597 INTRODUCED

57 that the contractor or contractors shall promptly make
58 payments to all persons supplying labor, materials, or
59 supplies for or in the prosecution of the work provided in the
60 contract and for the payment of reasonable attorney fees
61 incurred by successful claimants or plaintiffs in civil
62 actions on the bond.

63 (2) For alternative delivery methods awarded under this
64 chapter:

65 a. A performance bond in an amount equal to 100 percent
66 of the cost of the construction work. The amount of the bond
67 does not include the portion of the contract for the cost of
68 design, operation, maintenance, finance, costs of management
69 or administration, planning, performance of preliminary
70 studies, the acquisition of real property, professional
71 preconstruction services, and other nonconstruction work
72 costs.

73 b. A payment bond, in an amount equal to 100 percent of
74 the cost of the construction work, with the obligation that
75 the contractor or contractors shall promptly make payments to
76 all persons supplying labor, materials, or supplies for or in
77 the prosecution of the work provided in the contract and for
78 the payment of reasonable attorney fees incurred by successful
79 claimants or plaintiffs in civil actions on the bond. The
80 amount of the bond does not include that portion of the
81 contract for the cost of design, operation, maintenance,
82 finance, costs of management or administration, planning,
83 performance of preliminary studies, the acquisition of real
84 property, or professional preconstruction services, and other



HB597 INTRODUCED

85 nonconstruction work costs.

86 (b) Notwithstanding subsection (a), if the awarding
87 authority determines the cost of construction work of the
88 public work exceeds one hundred million dollars (\$100,000,000)
89 and that the amounts established in subsection (a) are
90 impractical, or that it is less costly or more advantageous to
91 the awarding authority to reduce the amounts of the payment
92 and performance bonds to amounts that are adequate for the
93 protection of the state and persons supplying labor and
94 material to the contractor or its subcontractors, but less
95 than amounts of the performance and payment bonds established
96 in subsection (a), the awarding authority may reduce the
97 performance and payments bonds to such lower amounts. However,
98 in no event shall the awarding authority reduce the amount of
99 the performance and payment bonds to less than 50 percent of
100 the amounts established in subsection (a).

101 (c) Nothing in this section shall be construed to limit
102 the authority of an awarding authority to require a
103 performance bond or other security in addition to such bonds,
104 or in circumstances other than specified in this section.

105 ~~(b)~~ (d) Any person that has furnished labor, materials,
106 or supplies for or in the prosecution of a public work and
107 payment has not been made may institute a civil action upon
108 the payment bond and have their rights and claims adjudicated
109 in a civil action and judgment entered thereon.

110 Notwithstanding the foregoing, a civil action shall not be
111 instituted on the bond until 45 days after written notice to
112 the surety of the amount claimed to be due and the nature of



HB597 INTRODUCED

113 the claim. The civil action shall be commenced not later than
114 one year from the date of final settlement of the contract.
115 The giving of notice by registered or certified mail, postage
116 prepaid, addressed to the surety at any of its places of
117 business or offices shall be deemed sufficient under this
118 section. In the event the surety or contractor fails to pay
119 the claim in full within 45 days from the mailing of the
120 notice, then the person or persons may recover from the
121 contractor and surety, in addition to the amount of the claim,
122 a reasonable attorney fee based on the result, together with
123 interest on the claim from the date of the notice.

124 ~~(e)~~ (e) Every person having a right of action on the
125 last described bond as provided in this section, upon written
126 application to the authority under the direction of whom the
127 work has been prosecuted, indicating that labor, material,
128 foodstuffs, or supplies for the work have been supplied and
129 that payment has not been made, shall be promptly furnished a
130 certified copy of the additional bond and contract. The
131 claimant may bring a civil action in the claimant's name on
132 the bond against the contractor and the surety, or either of
133 them, in the county in which the work is to be or has been
134 performed or in any other county where venue is otherwise
135 allowed by law.

136 ~~(d)~~ (f) In the event a civil action is instituted on the
137 payment bond, at any time more than 15 days before the trial
138 begins, any party may serve upon the adverse party an offer to
139 accept judgment in favor of the offeror or to allow judgment
140 to be entered in favor of the offeree for the money or as



HB597 INTRODUCED

141 otherwise specified in the offer. If within 10 days after the
142 service of the offer, the adverse party serves written notice
143 that the offer is accepted, either party may then file the
144 offer and notice of acceptance together with proof of service
145 and the clerk of the court shall enter judgment. An offer not
146 accepted shall be deemed withdrawn and evidence of the offer
147 shall not be admissible. If the judgment finally obtained by
148 the offeree is less favorable than the offer, the offeree
149 shall pay the reasonable attorney fees and costs incurred by
150 the offeror after the making of the offer. An offer that is
151 made but not accepted does not preclude a subsequent offer.
152 When the liability of one party to another party has been
153 determined by verdict, order, or judgment, but the amount or
154 extent of the liability remains to be determined by further
155 proceedings, any party may make an offer of judgment, which
156 shall have the same effect as an offer made before trial if
157 the offer is made no less than 10 days prior to the
158 commencement of hearings to determine the amount or extent of
159 liability.

160 ~~(e)~~ (g) This section shall not require the taking of a
161 bond to secure contracts in an amount less than one hundred
162 thousand dollars (\$100,000).

163 ~~(f)~~ (h) (1) The contractor, immediately after the
164 completion of the contract, shall give notice of the
165 completion by publishing the notice for a minimum of three
166 weeks using one or more of the following methods:

167 a. In a newspaper of general circulation in the county
168 or counties in which the work, or some portion thereof, has



HB597 INTRODUCED

169 been done.

170 b. On a website that is maintained by a newspaper of
171 general circulation in the county or counties in which the
172 work, or some portion thereof, has been done.

173 c. On a website used by the awarding authority for
174 publishing notices.

175 (2) If no newspaper is published in the county in which
176 the work was done, and if the awarding authority does not
177 ~~utilize~~use a website for the purpose of publishing notices,
178 the notice may be given by posting at the courthouse for 30
179 days, and proof of the posting of the notice shall be given by
180 the awarding authority and the contractor.

181 (3) A final settlement shall not be made upon the
182 contract until the expiration of 30 days after the completion
183 of the notice. Proof of publication of the notice shall be
184 made by the contractor to the authority by whom the contract
185 was made by affidavit of the publisher or website owner and a
186 printed copy of the notice published.

187 (4) For contracts for road resurfacing materials that
188 are awarded on an annual basis, where the bid specifications
189 include options such as a unit price for materials, a unit
190 price for the delivery of materials, or a unit price for
191 materials to be laid in place by the bidder, notice of
192 completion pursuant to this subsection may be given on an
193 annual basis upon completion of the project as a whole, rather
194 than at the completion of each proceed order.

195 ~~(g)~~ (i) Subsection ~~(f)~~ (h) shall not apply to contractors
196 performing contracts of less than one hundred thousand dollars



HB597 INTRODUCED

197 (\$100,000) ~~in amount.~~"

198 "§39-2-1

199 As used in this title, the following ~~word~~terms have
200 the following meanings ~~ascribed to them as follows~~:

201 (1) ALTERNATIVE DELIVERY METHODS (ADM). Any of the
202 following project delivery methods: Construction Manager at
203 Risk; Design-Build; Design-Build-Finance-Operate-Maintain;
204 Design-Build-Operate-Maintain; and Progressive Design-Build.

205 ~~(1)~~ (2) AWARDING AUTHORITY. Any governmental board,
206 commission, agency, body, authority, instrumentality,
207 department, or subdivision of the state, its counties and
208 municipalities. This term includes, but ~~shall~~is not ~~be~~-limited
209 to, the Department of Transportation, the Division of Real
210 Property Management of the Department of Finance, the State
211 Board of Education, and any other entity contracting for
212 public works. This term shall exclude the ~~State Docks~~
213 ~~Department~~Alabama State Port Authority and any entity exempted
214 from the competitive bid laws of the state by statute.

215 (3) BEST VALUE. A competitive selection process, in
216 which proposals contain both pricing and qualitative
217 components and award, which is based upon a combination of
218 pricing and qualitative considerations to determine the offer
219 deemed most advantageous and of the greatest value to the
220 awarding authority.

221 (4) CONSTRUCTION MANAGER AT RISK (CMAR). A delivery
222 method which entails a commitment by the construction manager
223 to perform certain preconstruction services during the design
224 phase and then to construct the public works for an agreed



HB597 INTRODUCED

225 upon lump-sum amount or for certain allowable costs within an
226 agreed-upon guaranteed maximum price (GMP).

227 (5) DEPARTMENT. The Alabama Department of Finance.

228 (6) DESIGN-BID-BUILD. A project delivery method in
229 which the awarding authority sequentially awards separate
230 contracts, the first for architectural or engineering services
231 to design the project and the second for construction of the
232 public works project according to the design as provided in
233 Section 39-2-2.

234 (7) DESIGN-BUILD. A project delivery method in which
235 the awarding authority enters into a single contract for
236 design and construction of a public works project.

237 (8) DESIGN-BUILD-FINANCE-OPERATE-MAINTAIN. A project
238 delivery method in which the awarding authority enters into a
239 single contract for design, construction, finance,
240 maintenance, and operation of a public work over a
241 contractually defined period.

242 (9) DESIGN-BUILD-OPERATE-MAINTAIN. A project delivery
243 method in which the awarding authority enters into a single
244 contract for design, construction, maintenance, and operation
245 of a public work over a contractually defined period.

246 (10) DESIGN REQUIREMENTS. The written description of
247 the public work or service to be procured under this article,
248 including required features, functions, characteristics,
249 qualities, and properties that are required by the awarding
250 authority; the anticipated schedule, including the preferred
251 completion date; and estimated budgets, as applicable to the
252 specific procurement, for design, construction, operation, and



HB597 INTRODUCED

253 maintenance.

254 ~~(2)~~ (11) FORCE ACCOUNT WORK. Work paid for by
255 reimbursing for the actual costs for labor, materials, and
256 equipment usage incurred in the performance of the work, as
257 directed, including a percentage for overhead and profit,
258 where appropriate.

259 ~~(3)~~ (12) LIFE CYCLE COSTS. The total cost of ownership
260 over the extended life of a public works project, taking into
261 consideration the costs of construction, operation, and
262 maintenance, less any value obtained from salvage and
263 quantifiable environmental benefits, or the sum of all
264 recurring and one-time, nonrecurring ~~(non-recurring)~~ costs
265 over the full life span or a specified period of a good,
266 service, structure, or system, including purchase price,
267 installation costs, operating costs, maintenance and upgrade
268 costs, and remaining ~~residual or salvage~~ value at the end of
269 ownership or its useful life.

270 ~~(4)~~ (13) PERSON. Natural persons, partnerships, limited
271 liability companies, corporations, and other legal entities.

272 (14) PROGRESSIVE DESIGN-BUILD. A project delivery
273 method in which the awarding authority enters into a single
274 contract for design and construction of the public works via
275 qualifications-based selection.

276 ~~(5)~~ (15) PUBLIC PROPERTY. Real property that the state,
277 county, municipality, or awarding authority thereof owns or
278 has a contractual right to own or purchase, including
279 easements, rights-of-way, or otherwise.

280 ~~(6)~~ (16) PUBLIC WORKS. The construction, installation,



HB597 INTRODUCED

281 repair, renovation, or maintenance of public buildings,
282 structures, sewers, waterworks, roads, curbs, gutters, side
283 walls, bridges, docks, underpasses, and viaducts, as well as
284 any other improvement to be constructed, installed, repaired,
285 renovated, or maintained on public property and to be paid, in
286 whole or in part, with public funds or with financing to be
287 retired with public funds in the form of lease payments or
288 otherwise.

289 (17) PUBLIC WORKS ADVISORY COUNCIL. The advisory body
290 established in this chapter."

291 "§39-5-4

292 (a) The Attorney General, a bona fide unsuccessful or
293 disqualified bidder or offeror, or any interested citizen may
294 maintain an action to enjoin the letting or execution of any
295 public works contract in violation of or contrary to the
296 provisions of this title or any other statute and may enjoin
297 payment of any public funds under any such contract. In the
298 case of a successful action brought by a bidder or offeror,
299 reasonable bid or proposal preparation costs shall be
300 recoverable by that bidder or offeror. The action shall be
301 commenced within 45 days of the contract award.

302 (b) Nothing in this section shall be construed to
303 limit, enlarge, or in any way alter the procedures for
304 protesting the approval of an alternative delivery method as
305 provided in this section."

306 "§39-5-6

307 The provisions of this title are mandatory, and shall
308 be strictly construed ~~to require strict competitive bidding on~~



HB597 INTRODUCED

309 ~~contracts for public works~~. The courts shall not invoke or
310 apply any principle of quantum meruit, estoppel, or any other
311 legal or equitable principle which would allow recovery for
312 work and labor done or materials furnished under any contract
313 let in violation of ~~competitive bidding requirements as~~
314 ~~prescribed by law~~ this title or any other provision of law."

315 Section 2. Sections 39-2-1 through 39-2-14 are
316 designated as Article 1 of Chapter 2 of Title 39, Code of
317 Alabama 1972.

318 Section 3. Article 2 is added to Chapter 2 of Title 39,
319 Code of Alabama 1975 commencing with Section 39-2-40, to read
320 as follows:

321 §39-2-40

322 (a) The Design-Bid-Build project delivery method
323 authorized in Section 39-2-2 is the traditional and primary
324 method of contracting for public works in the state. Subject
325 to the limitations in this section, an awarding authority may
326 use an alternative project delivery method for public works
327 projects of a complex, time sensitive, specialized, or
328 technical nature when it determines that the delivery method
329 is in the best interest of the state.

330 (b) In addition to Design-Bid-Build authorized in
331 Section 39-2-2, all of the following alternative project
332 delivery methods are authorized for public works projects in
333 this state:

334 (1) Construction Manager at Risk projects which base
335 the agreed upon lump-sum amount and Guaranteed Maximum Price
336 (GMP) on the construction documents and specifications. The



HB597 INTRODUCED

337 GMP shall include all items and tasks necessary to deliver the
338 public works.

339 (2) Design-Build.

340 (3) Design-Build-Finance-Operate-Maintain.

341 (4) Design-Build-Operate-Maintain projects which
342 include a 70 percent complete set of construction documents
343 for the design in accordance with the awarding authority's
344 program requirements.

345 (5) Progressive Design-Build projects which include a
346 70 percent complete set of construction documents for the
347 design in accordance with the awarding authority's program
348 requirements.

349 (c) (1) An awarding authority must receive prior
350 approval from the department in order to execute a project via
351 alternative delivery methods. No such approval shall be
352 required for an awarding authority to execute a project via
353 Design-Bid-Build as provided in Section 39-2-2.

354 (2) An awarding authority seeking approval must notify
355 the department of each project using alternative delivery
356 methods no less than 30 days prior to release of the
357 solicitation. The request for approval must include, but is
358 not limited to, the following:

359 a. A written statement setting forth the facts that led
360 to the selection of a particular alternative delivery method
361 for the project.

362 b. Any procedures the awarding authority has developed
363 pursuant to this chapter.

364 (3) Prior to approving a project for which an



HB597 INTRODUCED

365 alternative delivery method will be used, the department shall
366 publicly post the proposed project for no less than five
367 calendar days. The posted project shall be subject to the
368 protest procedures in this chapter.

369 (d) An awarding authority, educational institution, or
370 state educational institution as defined by Section
371 41-4-400(d) may enter into a contract using alternative
372 delivery methods as follows:

373 (1) If the awarding authority or institution undertakes
374 five or fewer public works projects above the bid threshold
375 listed in Section 39-2-2(a)(1) during a fiscal year, it may
376 enter into no more than one contract per fiscal year using
377 alternative delivery methods.

378 (2) If the awarding authority or institution undertakes
379 more than five public works projects above the bid threshold
380 in Section 39-2-2(a)(1) during a fiscal year, it may only
381 enter into a contract using alternative delivery methods for
382 not more than two of its public works projects each fiscal
383 year, or 10 percent of the total number of its public works
384 projects each fiscal year, whichever is greater.

385 (e) The head of an awarding authority shall require
386 offerors to provide errors and omissions insurance in an
387 amount and duration consistent with rules adopted under this
388 chapter to cover architectural and engineering services for
389 alternative delivery method projects.

390 (f) For projects using construction manager at risk,
391 the general contractor or the general contractor's affiliated
392 entities shall not self-perform more than 25 percent of the



HB597 INTRODUCED

393 work.

394 (g) (1) No more than 30 days following the final
395 completion of a public works project using an alternative
396 delivery method, the awarding authority shall submit a report
397 to the department. The report shall include, but not be
398 limited to, the following:

399 a. A description of the project.

400 b. The contractor that was awarded the project.

401 c. The estimated and actual cost of the project.

402 d. The estimated and actual schedule for project
403 completion.

404 e. A description of any changes to the project scope
405 and how the changes impacted the schedule and costs.

406 f. An assessment of the prequalification process and
407 criteria used.

408 g. A description of the method used to evaluate the bid
409 or proposal, including the weighting of each factor and an
410 assessment of the effectiveness of the selected methodology.

411 At the discretion of the awarding authority, estimated budgets
412 may be excluded from the proposal documents but the awarding
413 authority must account for it in writing on internal
414 documents. The design requirements may include the drawings
415 and other documents illustrating the scale and relationship of
416 the features, functions, and characteristics of the project.

417 h. A description of any written protests concerning any
418 aspect of the solicitation, bid, proposal, or award of the
419 project.

420 i. A description of any challenges or unexpected



HB597 INTRODUCED

421 problems that arose during the project and the solutions that
422 were considered, and ultimately implemented, to address those
423 challenges and problems.

424 j. Recommendations to improve the alternative delivery
425 method used for the project.

426 (2) The information gathered through the reporting
427 process shall be used by the Public Works Advisory Council to
428 formulate summary findings on, and recommendations for future
429 changes to, alternative delivery methods in the state. Such
430 findings and recommendations shall be reported to the
431 Legislature.

432 (3) Failure to complete a report as required under this
433 section shall preclude an awarding authority from using
434 alternative delivery methods during the next fiscal year.

435 (4) An awarding authority utilizing alternative
436 delivery methods shall also file a report for any similar
437 project for which it used Design-Bid-Build.

438 (h) This section is repealed on October 1, 2031.

439 §39-2-41

440 (a) For the purposes of implementing the terms of this
441 chapter, the department shall adopt administrative rules for
442 public works projects in the state using alternative delivery
443 methods. In adopting the administrative rules, the department
444 shall consult with the Public Works Advisory Council. The
445 administrative rules shall include, but are not limited to,
446 the following:

447 (1) Criteria for all alternative delivery methods
448 authorized by law to aid awarding authorities in determining



HB597 INTRODUCED

449 which alternative delivery method should be used for a
450 particular public works project.

451 (2) Authorization for an awarding authority within his
452 or her discretion, to select an appropriate alternative
453 delivery method for a particular public works project
454 consistent with this chapter.

455 (3) Descriptions of the bond, insurance, and other
456 security provisions that apply to each alternative delivery
457 method.

458 (4) Descriptions of the appropriate solicitation
459 provisions, required content of requests for proposals,
460 evaluation factors, contract clauses, and fiscal
461 responsibility requirements that apply to each alternative
462 delivery method.

463 (5) A requirement that the awarding authority, or
464 designee, shall execute and include in the contract file a
465 written statement setting forth the facts that led to the
466 selection of a particular alternative delivery method for each
467 public works project.

468 (6) Descriptions of how an awarding authority shall
469 evaluate proposals using the qualifications of participants,
470 best value, or both, pursuant to this chapter.

471 (7) Timelines to which the department must adhere in
472 returning an approval to the awarding authority under this
473 chapter.

474 (8) The process awarding authorities must use to
475 determine whether stipend payments may be paid to finalists
476 submitting responsive proposals for an alternative delivery



HB597 INTRODUCED

477 methods contract, and under what terms and conditions such
478 payments may be made.

479 (9) Protest procedures required under this chapter and
480 for bona fide prospective bidders who are aggrieved by the
481 solicitation or award of a contract.

482 (b) Consistent with the administrative rules adopted
483 under subsection (a), an awarding authority, except for a
484 county commission or an instrumentality of a county
485 commission, may develop procedures for the procurement of
486 alternative delivery method contracts.

487 (c) The Association of County Commissions of Alabama
488 shall develop the procedures that county commissions and their
489 instrumentalities shall follow for the procurement of
490 alternative delivery method contracts. The procedures shall be
491 consistent with the rules adopted under subsection (a).

492 (d) Notwithstanding any provision of law to the
493 contrary, proposals to perform work submitted under this
494 chapter through alternative delivery methods may be evaluated
495 and awarded by the awarding authority based on the
496 qualifications of participants, best value, or both, and
497 consideration of the best interest of the awarding authority.

498 (e) This section is repealed on October 1, 2031.

499 §39-2-42

500 (a) The awarding authority may include in a request for
501 proposals one or more of the following forms of security to
502 assure the timely, faithful, and uninterrupted provision of
503 operations and maintenance services procured separately, or as
504 one element of design-build-operate-maintain or



HB597 INTRODUCED

505 design-build-finance-operate-maintain services:

506 (1) Operations period surety bonds that secure the
507 performance of the contractor's operations and maintenance
508 obligations.

509 (2) Letters of credit in an amount appropriate to cover
510 the cost to the awarding authority preventing infrastructure
511 service interruptions for a period up to 12 months.

512 (3) Appropriate written guarantees from the contractor,
513 or depending upon the circumstances, from parent corporations
514 to secure the recovery of the awarding authorities'
515 procurement cost in the event of a default in performance by
516 the contractor.

517 (b) This section is repealed on October 1, 2031.

518 §39-2-43

519 (a) (1) During the time period that notice of a proposed
520 project is posted publicly pursuant to this chapter, a bona
521 fide prospective bidder or offeror may protest the approval of
522 an alternative delivery method. The protest shall be filed
523 with the Division of Construction Management, in writing, and
524 set forth the grounds of the protest and the relief requested
525 with enough particularity to give notice of the issues to be
526 decided. Grounds for a protest are limited to noncompliance
527 with law, the rules authorized by this chapter, or a perceived
528 substantial cost differential between the proposed project
529 utilizing an alternative delivery method versus traditional
530 Design-Bid-Build.

531 (2) The Director of the department's Division of
532 Construction Management shall review the protest and issue a



HB597 INTRODUCED

533 decision on the protest, in writing, within five calendar
534 days. The response shall include a decision to deny or sustain
535 the protest, and if sustained, the actions the awarding
536 authority must take to modify or cancel the proposed project.
537 A copy of the response shall be furnished immediately to the
538 protester and awarding authority.

539 (3) The Director of the Division of Construction
540 Management's decision regarding a protest shall be final and
541 conclusive, unless fraudulent, or a party adversely affected
542 by the decision appeals administratively to the Director of
543 Finance as provided herein.

544 (b) (1) A party that receives an adverse decision from
545 the Director of the Division of Construction Management under
546 subsection (a) may appeal the decision to the Director of
547 Finance. An appeal to the Director of Finance shall be made in
548 writing within five calendar days of receipt of the adverse
549 decision from the Director of the Division of Construction
550 Management.

551 (2) Before making a decision on a protest, the Director
552 of Finance shall consult with and consider any advice provided
553 by the Public Works Advisory Council, but a final decision on
554 a protest is within the sole discretion of the Director of
555 Finance. The Director of Finance shall hold unlawful and set
556 aside any decision issued by the Director of the Division of
557 Construction Management that the Director of Finance finds to
558 be arbitrary, capricious, an abuse of discretion, or otherwise
559 not in accordance with law.

560 (3) The Director of Finance shall issue a written



HB597 INTRODUCED

561 decision within five calendar days of receipt of the appeal
562 and immediately provide a copy to the protester and awarding
563 authority.

564 (4) A decision under this section shall be final and
565 conclusive unless fraudulent.

566 (c) The protest procedures and remedies provided in
567 this chapter shall not be construed as a contested case under
568 the Alabama Administrative Procedure Act.

569 (d) This section is repealed on October 1, 2031.

570 §39-2-44

571 (a) There is established the State Public Works
572 Advisory Council. The Public Works Advisory Council shall be
573 appointed by the director of the department and at a minimum,
574 must include the following individuals:

575 (1) A representative of the county commissions,
576 selected in consultation with the Association of County
577 Commissions of Alabama.

578 (2) A representative of municipalities, selected in
579 consultation with the Alabama League of Municipalities.

580 (3) Two representatives of public K-12 schools,
581 selected in consultation with School Superintendents of
582 Alabama and the Alabama Association of School Boards.

583 (4) A representative of the Alabama Community College
584 System, selected in consultation with the Chancellor of the
585 Alabama Community College System.

586 (5) A representative of a public four-year institution
587 of higher education, selected in consultation with the Alabama
588 Higher Education Partnership, Inc.



HB597 INTRODUCED

589 (6) A representative from each of the following public
590 entities:

- 591 a. The Alabama Department of Examiners of Public
592 Accounts.
- 593 b. The Alabama Department of Finance.
- 594 c. The Alabama Department of Transportation.
- 595 d. Additional state or local governmental entities with
596 frequent construction projects.

597 (7) A representative from each of the following private
598 entities:

- 599 a. The Alabama Associated General Contractors.
- 600 b. The Associated Builders and Contractors of Alabama.
- 601 c. The Alabama Contractors Association.
- 602 d. The Alabama Council of the American Institute of
603 Architects.
- 604 e. The American Council of Engineering Companies of
605 Alabama.
- 606 f. The Alabama Road Builders Association.
- 607 g. The Subcontractors Association of Alabama.
- 608 h. The Design-Build Institute of America, Alabama
609 Chapter.
- 610 i. The Alabama Surety Association.

611 (b) Members of the advisory council shall serve without
612 compensation but may be reimbursed for necessary expenses
613 associated with attending meetings of the advisory council
614 pursuant to the policies of their respective appointing
615 authority.

616 (c) The State Public Works Advisory Council, upon



HB597 INTRODUCED

617 adequate public notice, shall meet at least once a year to
618 discuss issues and recommendations for improvements to the
619 public works process. When requested by the Department of
620 Finance, the council shall conduct studies, research,
621 analyses, and make reports and recommendations regarding
622 public works. The council may conduct hearings and request
623 records in order to further its purposes.

624 (d) The State Public Works Advisory Council shall be
625 administered by the Alabama Department of Finance.

626 (e) This section is repealed on October 1, 2031.

627 §39-2-45

628 (a) Any person may request and obtain from the awarding
629 authority a certified copy of a bond furnished under this
630 chapter, upon payment of the cost of reproduction of the bond
631 and postage, if any. A certified copy of a bond shall be prima
632 facie evidence of the contents, execution, and delivery of the
633 original bond.

634 (b) This section is repealed on October 1, 2031.

635 §39-2-1.1

636 (a) Nothing in this chapter is intended to repeal,
637 modify, expand, define, add, amend, change, or limit any
638 provision of Section 23-1-40 and Sections 23-2-140 through
639 23-2-175, Code of Alabama 1975. The Alabama Department of
640 Transportation, Alabama Toll Road, Bridge and Tunnel Authority
641 is not subject to this chapter. Further, Article 2 is not
642 intended to add any new obligations, duties, or
643 responsibilities not set out in Section 23-1-40 and Sections
644 23-2-140 through 23-2-175.



HB597 INTRODUCED

645 (b) Nothing in this chapter is intended to repeal,
646 modify, amend, change, or limit Sections 41-4-353 and
647 41-4-400, with respect to the powers, authority, and
648 jurisdiction granted to the governing boards of educational
649 institutions.

650 (c) This section is repealed on October 1, 2031.
651 Section 4. This act shall become effective on October
652 1, 2025.