

By: Representative Janus

To: Transportation

HOUSE BILL NO. 112

1 AN ACT TO AMEND SECTION 65-1-8, MISSISSIPPI CODE OF 1972, TO
 2 PROVIDE THAT CONTRACTS BETWEEN THE MISSISSIPPI TRANSPORTATION
 3 COMMISSION AND A CONTRACTOR FOR NEW CONSTRUCTION MUST CONTAIN A
 4 PROVISION FOR LIQUIDATED DAMAGES FOR EACH DAY THAT THE CONTRACTOR
 5 FAILS TIMELY TO COMPLETE THE CONTRACT; TO AUTHORIZE SUCH CONTRACTS
 6 TO CONTAIN EXTRA COMPENSATION TO THE CONTRACTOR TO SERVE AS BONUS
 7 IF THE CONTRACTOR COMPLETES THE CONTRACT EARLY; AND FOR RELATED
 8 PURPOSES.

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

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

12 65-1-8. (1) The Mississippi Transportation Commission shall
 13 have the following general powers, duties and responsibilities:

14 (a) To coordinate and develop a comprehensive, balanced
 15 transportation policy for the State of Mississippi;

16 (b) To promote the coordinated and efficient use of all
 17 available and future modes of transportation;

18 (c) To make recommendations to the Legislature
 19 regarding alterations or modifications in any existing
 20 transportation policies;

21 (d) To study means of encouraging travel and
 22 transportation of goods by the combination of motor vehicle and
 23 other modes of transportation;

24 (e) To take such actions as are necessary and proper to
 25 discharge its duties pursuant to the provisions of Laws, 1992,
 26 Chapter 496, and any other provision of law;

27 (f) To receive and provide for the expenditure of any
 28 funds made available to it by the Legislature, the federal
 29 government, or any other source.



30 (2) In addition to the general powers, duties and
31 responsibilities listed in subsection (1) of this section, the
32 Mississippi Transportation Commission shall have the following
33 specific powers:

34 (a) To make rules and regulations whereby the
35 transportation department shall change or relocate any and all
36 highways herein or hereafter fixed as constituting a part of the
37 state highway system, as may be deemed necessary or economical in
38 the construction or maintenance thereof; to acquire by gift,
39 purchase, condemnation, or otherwise, land or other property
40 whatsoever that may be necessary for a state highway system as
41 herein provided, with full consideration to be given to the
42 stimulation of local public and private investment when acquiring
43 such property in the vicinity of Mississippi towns, cities and
44 population centers;

45 (b) To enforce by mandamus, or other proper legal
46 remedies, all legal rights or rights of action of the Mississippi
47 Transportation Commission with other public bodies, corporations
48 or persons;

49 (c) To make and publish rules, regulations and
50 ordinances for the control of and the policing of the traffic on
51 the state highways, and to prevent their abuse by any or all
52 persons, natural or artificial, by trucks, tractors, trailers or
53 any other heavy or destructive vehicles or machines, or by any
54 other means whatsoever, by establishing weights of loads or of
55 vehicles, types of tires, width of tire surfaces, length and width
56 of vehicles, with reasonable variations to meet approximate
57 weather conditions, and all other proper police and protective
58 regulations, and to provide ample means for the enforcement of
59 same. The violation of any of the rules, regulations or
60 ordinances so prescribed by the commission shall constitute a
61 misdemeanor. No rule, regulation or ordinance shall be made that
62 conflicts with any statute now in force or which may hereafter be



63 enacted, or with any ordinance of municipalities. A monthly
64 publication giving general information to the boards of
65 supervisors, employees and the public may be issued under such
66 rules and regulations as the commission may determine;

67 (d) To give suitable numbers to highways and to change
68 the number of any highway that shall become a part of the state
69 highway system. However, nothing herein shall authorize the
70 number of any highway to be changed so as to conflict with any
71 designation thereof as a U.S. numbered highway. Where, by a
72 specific act of the Legislature, the commission has been directed
73 to give a certain number to a highway, the commission shall not
74 have the authority to change such number;

75 (e) To make proper and reasonable rules, regulations,
76 and ordinances for the placing, erection, removal or relocation of
77 telephone, telegraph or other poles, signboards, fences, gas,
78 water, sewerage, oil or other pipelines, and other obstructions
79 that may, in the opinion of the commission, contribute to the
80 hazards upon any of the state highways, or in any way interfere
81 with the ordinary travel upon such highways, or the construction,
82 reconstruction or maintenance thereof, and to make reasonable
83 rules and regulations for the proper control thereof. Any
84 violation of such rules or regulations or noncompliance with such
85 ordinances shall constitute a misdemeanor.

86 Whenever the order of the commission shall require the
87 removal of, or other changes in the location of telephone,
88 telegraph, or other poles, signboards, gas, water, sewerage, oil
89 or other pipelines; or other similar obstructions on the
90 right-of-way or such other places where removal is required by
91 law, the owners thereof shall at their own expense move or change
92 the same to conform to the order of the commission. Any violation
93 of such rules or regulations or noncompliance with such orders
94 shall constitute a misdemeanor;



95 (f) To regulate and abandon grade crossings on any road
96 fixed as a part of the state highway system, and whenever the
97 commission, in order to avoid a grade crossing with the railroad,
98 locates or constructs said road on one side of the railroad, the
99 commission shall have the power to abandon and close such grade
100 crossing, and whenever an underpass or overhead bridge is
101 substituted for a grade crossing, the commission shall have power
102 to abandon such grade crossing and any other crossing adjacent
103 thereto. Included in the powers herein granted shall be the power
104 to require the railroad at grade crossings, where any road of the
105 state highway system crosses the same, to place signal posts with
106 lights or other warning devices at such crossings at the expense
107 of the railroad, and to regulate and abandon underpass or overhead
108 bridges and, where abandoned because of the construction of a new
109 underpass or overhead bridge, to close such old underpass or
110 overhead bridge, or, in its discretion, to return the same to the
111 jurisdiction of the county board of supervisors;

112 (g) To make proper and reasonable rules and regulations
113 to control the cutting or opening of the road surfaces for
114 subsurface installations;

115 (h) To make proper and reasonable rules and regulations
116 for the removal from the public rights-of-way of any form of
117 obstruction, to cooperate in improving their appearance, and to
118 prescribe minimum clearance heights for seed conveyors, pipes,
119 passageways or other structure of private or other ownership above
120 the highways;

121 (i) To establish, and have the transportation
122 department maintain and operate, and to cooperate with the state
123 educational institutions in establishing, enlarging, maintaining
124 and operating a laboratory or laboratories for testing materials
125 and for other proper highway purposes;



126 (j) To provide, under the direction and with the
127 approval of the Department of Finance and Administration, suitable
128 offices, shops and barns in the City of Jackson;

129 (k) To establish and have enforced set-back
130 regulations;

131 (l) To cooperate with proper state authorities in
132 producing limerock for highway purposes and to purchase same at
133 cost;

134 (m) To provide for the purchase of necessary equipment
135 and vehicles and to provide for the repair and housing of same, to
136 acquire by gift, purchase, condemnation or otherwise, land or
137 lands and buildings in fee simple, and to authorize the
138 Transportation Department to construct, lease or otherwise provide
139 necessary and proper permanent district offices for the
140 construction and maintenance divisions of the department, and for
141 the repair and housing of the equipment and vehicles of the
142 department; however, in each Supreme Court district only two (2)
143 permanent district offices shall be set up, but a permanent status
144 shall not be given to any such offices until so provided by act of
145 the Legislature and in the meantime, all shops of the department
146 shall be retained at their present location. As many local or
147 subdistrict offices, shops or barns may be provided as is
148 essential and proper to economical maintenance of the state
149 highway system;

150 (n) To cooperate with the Department of Archives and
151 History in having placed and maintained suitable historical
152 markers, including those which have been approved and purchased by
153 the State Historical Commission, along state highways, and to have
154 constructed and maintained roadside driveways for convenience and
155 safety in viewing them when necessary; however, no highway or
156 bridge shall ever be memorialized to a man while living;

157 (o) To cooperate, in its discretion, with the
158 Mississippi Department of Wildlife, Fisheries and Parks in



159 planning and constructing roadside parks upon the right-of-way of
160 state highways, whether constructed, under construction, or
161 planned; said parks to utilize where practical barrow pits used in
162 construction of state highways for use as fishing ponds. Said
163 parks shall be named for abundant flora and fauna existing in the
164 area or for the first flora or fauna found on the site;

165 (p) Unless otherwise prohibited by law, to make such
166 contracts and execute such instruments containing such reasonable
167 and necessary appropriate terms, provisions and conditions as in
168 its absolute discretion it may deem necessary, proper or
169 advisable, for the purpose of obtaining or securing financial
170 assistance, grants or loans from the United States of America or
171 any department or agency thereof, including contracts with several
172 counties of the state pertaining to the expenditure of such funds;

173 (q) To cooperate with the Federal Highway
174 Administration in the matter of location, construction and
175 maintenance of the Great River Road, to expend such funds paid to
176 the commission by the Federal Highway Administration or other
177 federal agency, and to authorize the Transportation Department to
178 erect suitable signs marking this highway, the cost of such signs
179 to be paid from state highway funds other than earmarked
180 construction funds;

181 (r) To cooperate, in its discretion, with the
182 Mississippi Forestry Commission and the School of Forestry,
183 Mississippi State University, in a forestry management program,
184 including planting, thinning, cutting and selling, upon the
185 right-of-way of any highway, constructed, acquired or maintained
186 by the Transportation Department, and to sell and dispose of any
187 and all growing timber standing, lying or being on any
188 right-of-way acquired by the commission for highway purposes in
189 the future; such sale or sales to be made in accordance with the
190 sale of personal property which has become unnecessary for public
191 use as provided for in Section 65-1-123;



192 (s) To expend funds in cooperation with the Division of
193 Plant Industry, Mississippi Department of Agriculture and
194 Commerce, the United States government or any department or agency
195 thereof, or with any department or agency of this state, to
196 control, suppress or eradicate serious insect pests, rodents,
197 plant parasites and plant diseases on the state highway
198 rights-of-way;

199 (t) To provide for the placement, erection and
200 maintenance of motorist services business signs and supports
201 within state highway rights-of-way in accordance with current
202 state and federal laws and regulations governing the placement of
203 traffic control devices on state highways, and to establish and
204 collect reasonable fees from the businesses having information on
205 such signs;

206 (u) To request and to accept the use of persons
207 convicted of an offense, whether a felony or a misdemeanor, for
208 work on any road construction, repair or other project of the
209 Transportation Department. The commission is also authorized to
210 request and to accept the use of persons who have not been
211 convicted of an offense but who are required to fulfill certain
212 court-imposed conditions pursuant to Section 41-29-150(d)(1) or
213 99-15-26, or the Pretrial Intervention Act, being Sections
214 99-15-101 through 99-15-127. The commission is authorized to
215 enter into any agreements with the Department of Corrections, the
216 State Parole Board, any criminal court of this state, and any
217 other proper official regarding the working, guarding,
218 safekeeping, clothing and subsistence of such persons performing
219 work for the Transportation Department. Such persons shall not be
220 deemed agents, employees or involuntary servants of the
221 Transportation Department while performing such work or while
222 going to and from work or other specified areas;

223 (v) To provide for the administration of the railroad
224 revitalization program pursuant to Section 57-43-1 et seq.;



225 (w) The Mississippi Transportation Commission is
226 further authorized, in its discretion, to expend funds for the
227 purchase of service pins for employees of the Mississippi
228 Transportation Department;

229 (x) To cooperate with the State Tax Commission by
230 providing for weight enforcement field personnel to collect and
231 assess taxes, fees and penalties and to perform all duties as
232 required pursuant to Section 27-55-501 et seq., Sections 27-19-1
233 et seq., 27-55-1 et seq., 27-59-1 et seq. and 27-61-1 et seq.,
234 with regard to vehicles subject to the jurisdiction of the Office
235 of Weight Enforcement. All collections and assessments shall be
236 transferred daily to the State Tax Commission;

237 (y) The Mississippi Transportation Commission may
238 delegate the authority to enter into a supplemental agreement to a
239 contract previously approved by the commission if the supplemental
240 agreement involves an additional expenditure not to exceed One
241 Hundred Thousand Dollars (\$100,000.00);

242 (z) (i) The Mississippi Transportation Commission, in
243 its discretion, may enter into agreements with any county,
244 municipality, county transportation commission, business,
245 corporation, partnership, association, individual or other legal
246 entity, for the purpose of accelerating the completion date of
247 scheduled highway construction projects.

248 (ii) Such an agreement may permit the cost of a
249 highway construction project to be advanced to the commission by a
250 county, municipality, county transportation commission, business,
251 corporation, partnership, association, individual or other legal
252 entity, and repaid to such entity by the commission when highway
253 construction funds become available; provided, however, that
254 repayment of funds advanced to the Mississippi Transportation
255 Commission shall be made no sooner than the commission's
256 identified projected revenue schedule for funding of that
257 particular construction project, and no other scheduled highway



258 construction project established by statute or by the commission
259 may be delayed by an advanced funding project authorized under
260 this paragraph (z). Repayments to an entity that advances funds
261 to the Mississippi Transportation Commission under this paragraph
262 (z) may not include interest or other fees or charges, and the
263 total amount repaid shall not exceed the total amount of funds
264 advanced to the commission by the entity.

265 (iii) In considering whether to enter into such an
266 agreement, the commission shall consider the availability of
267 financial resources, the effect of such agreement on other ongoing
268 highway construction, the urgency of the public's need for swift
269 completion of the project and any other relevant factors.

270 (iv) Such an agreement shall be executed only upon
271 a finding by the commission, spread upon its minutes, that the
272 acceleration of the scheduled project is both feasible and
273 beneficial. The commission shall also spread upon its minutes its
274 findings with regard to the factors required to be considered
275 pursuant to item (iii) of this paragraph (z);

276 (aa) Every contract between the Mississippi
277 Transportation Commission and a contractor that is executed from
278 and after July 1, 2002, shall contain a provision in regard to the
279 time when the whole or any specified portion of the work
280 contemplated shall be completed, and shall provide that for each
281 day completion is delayed beyond the specified time, the
282 contractor shall forfeit and pay to the state a specified sum of
283 money to be deducted from any payments due or to become due to the
284 contractor. The sum so specified is valid as liquidated damages
285 unless manifestly unreasonable under the circumstances existing at
286 the time the contract was made. A contract for a road project
287 also may provide for the payment of extra compensation to the
288 contract, as a bonus for completion before the specified time.
289 This provision shall be included in the specification and shall
290 clearly set forth the basis for the payment. The bonus for early



291 completion shall not be on maintenance projects but only on new
292 construction projects.

293 **SECTION 2.** This act shall take effect and be in force from
294 and after July 1, 2002.

