

By: Representative Janus

To: Transportation

HOUSE BILL NO. 106

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

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



96 (iii) Rural water districts, rural water systems,  
97 nonprofit water associations and municipal public water systems in  
98 municipalities with a population of ten thousand (10,000) or less,  
99 according to the latest federal decennial census, shall not be  
100 required to bear the cost and expense of removal and relocation of  
101 water and sewer lines and facilities constructed or in place in  
102 the rights-of-way of state highways. The cost and expense of such  
103 removal and relocation, including any unpaid prior to July 1,  
104 2002, shall be paid by the Department of Transportation;

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

122 (g) To make proper and reasonable rules and regulations  
123 to control the cutting or opening of the road surfaces for  
124 subsurface installations;

125 (h) To make proper and reasonable rules and regulations  
126 for the removal from the public rights-of-way of any form of  
127 obstruction, to cooperate in improving their appearance, and to  
128 prescribe minimum clearance heights for seed conveyors, pipes,



129 passageways or other structure of private or other ownership above  
130 the highways;

131 (i) To establish, and have the Transportation  
132 Department maintain and operate, and to cooperate with the state  
133 educational institutions in establishing, enlarging, maintaining  
134 and operating a laboratory or laboratories for testing materials  
135 and for other proper highway purposes;

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

139 (k) To establish and have enforced set-back  
140 regulations;

141 (l) To cooperate with proper state authorities in  
142 producing limerock for highway purposes and to purchase same at  
143 cost;

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

160 (n) To cooperate with the Department of Archives and  
161 History in having placed and maintained suitable historical



162 markers, including those which have been approved and purchased by  
163 the State Historical Commission, along state highways, and to have  
164 constructed and maintained roadside driveways for convenience and  
165 safety in viewing them when necessary;

166 (o) To cooperate, in its discretion, with the  
167 Mississippi Department of Wildlife, Fisheries and Parks in  
168 planning and constructing roadside parks upon the right-of-way of  
169 state highways, whether constructed, under construction, or  
170 planned; said parks to utilize where practical barrow pits used in  
171 construction of state highways for use as fishing ponds. Said  
172 parks shall be named for abundant flora and fauna existing in the  
173 area or for the first flora or fauna found on the site;

174 (p) Unless otherwise prohibited by law, to make such  
175 contracts and execute such instruments containing such reasonable  
176 and necessary appropriate terms, provisions and conditions as in  
177 its absolute discretion it may deem necessary, proper or  
178 advisable, for the purpose of obtaining or securing financial  
179 assistance, grants or loans from the United States of America or  
180 any department or agency thereof, including contracts with several  
181 counties of the state pertaining to the expenditure of such funds;

182 (q) To cooperate with the Federal Highway  
183 Administration in the matter of location, construction and  
184 maintenance of the Great River Road, to expend such funds paid to  
185 the commission by the Federal Highway Administration or other  
186 federal agency, and to authorize the Transportation Department to  
187 erect suitable signs marking this highway, the cost of such signs  
188 to be paid from state highway funds other than earmarked  
189 construction funds;

190 (r) To cooperate, in its discretion, with the  
191 Mississippi Forestry Commission and the School of Forestry,  
192 Mississippi State University, in a forestry management program,  
193 including planting, thinning, cutting and selling, upon the  
194 right-of-way of any highway, constructed, acquired or maintained



195 by the Transportation Department, and to sell and dispose of any  
196 and all growing timber standing, lying or being on any  
197 right-of-way acquired by the commission for highway purposes in  
198 the future; such sale or sales to be made in accordance with the  
199 sale of personal property which has become unnecessary for public  
200 use as provided for in Section 65-1-123, Mississippi Code of 1972;

201 (s) To expend funds in cooperation with the Division of  
202 Plant Industry, Mississippi Department of Agriculture and  
203 Commerce, the United States government or any department or agency  
204 thereof, or with any department or agency of this state, to  
205 control, suppress or eradicate serious insect pests, rodents,  
206 plant parasites and plant diseases on the state highway  
207 rights-of-way;

208 (t) To provide for the placement, erection and  
209 maintenance of motorist services business signs and supports  
210 within state highway rights-of-way in accordance with current  
211 state and federal laws and regulations governing the placement of  
212 traffic control devices on state highways, and to establish and  
213 collect reasonable fees from the businesses having information on  
214 such signs;

215 (u) To request and to accept the use of persons  
216 convicted of an offense, whether a felony or a misdemeanor, for  
217 work on any road construction, repair or other project of the  
218 Transportation Department. The commission is also authorized to  
219 request and to accept the use of persons who have not been  
220 convicted of an offense but who are required to fulfill certain  
221 court-imposed conditions pursuant to Section 41-29-150(d)(1) or  
222 99-15-26, Mississippi Code of 1972, or the Pretrial Intervention  
223 Act, being Sections 99-15-101 through 99-15-127, Mississippi Code  
224 of 1972. The commission is authorized to enter into any  
225 agreements with the Department of Corrections, the State Parole  
226 Board, any criminal court of this state, and any other proper  
227 official regarding the working, guarding, safekeeping, clothing



228 and subsistence of such persons performing work for the  
229 Transportation Department. Such persons shall not be deemed  
230 agents, employees or involuntary servants of the Transportation  
231 Department while performing such work or while going to and from  
232 work or other specified areas;

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

235 (w) The Mississippi Transportation Commission is  
236 further authorized, in its discretion, to expend funds for the  
237 purchase of service pins for employees of the Mississippi  
238 Transportation Department;

239 (x) To cooperate with the State Tax Commission by  
240 providing for weight enforcement field personnel to collect and  
241 assess taxes, fees and penalties and to perform all duties as  
242 required pursuant to Section 27-55-501 et seq., Sections 27-19-1  
243 et seq., 27-55-1 et seq., 27-59-1 et seq. and 27-61-1 et seq.,  
244 Mississippi Code of 1972, with regard to vehicles subject to the  
245 jurisdiction of the Office of Weight Enforcement. All collections  
246 and assessments shall be transferred daily to the State Tax  
247 Commission;

248 (y) The Mississippi Transportation Commission may  
249 delegate the authority to enter into a supplemental agreement to a  
250 contract previously approved by the commission if the supplemental  
251 agreement involves an additional expenditure not to exceed One  
252 Hundred Thousand Dollars (\$100,000.00);

253 (z) (i) The Mississippi Transportation Commission, in  
254 its discretion, may enter into agreements with any county,  
255 municipality, county transportation commission, business,  
256 corporation, partnership, association, individual or other legal  
257 entity, for the purpose of accelerating the completion date of  
258 scheduled highway construction projects;

259 (ii) Such an agreement may permit the cost of a  
260 highway construction project to be advanced to the commission by a





261 county, municipality, county transportation commission, business,  
262 corporation, partnership, association, individual or other legal  
263 entity, and repaid to such entity by the commission when highway  
264 construction funds become available; provided, however, that  
265 repayment of funds advanced to the Mississippi Transportation  
266 Commission shall be made no sooner than the commission's  
267 identified projected revenue schedule for funding of that  
268 particular construction project, and no other scheduled highway  
269 construction project established by statute or by the commission  
270 may be delayed by an advanced funding project authorized under  
271 this paragraph (z). Repayments to an entity that advances funds  
272 to the Mississippi Transportation Commission under this paragraph  
273 (z) may not include interest or other fees or charges, and the  
274 total amount repaid shall not exceed the total amount of funds  
275 advanced to the commission by the entity;

276 (iii) In considering whether to enter into such an  
277 agreement, the commission shall consider the availability of  
278 financial resources, the effect of such agreement on other ongoing  
279 highway construction, the urgency of the public's need for swift  
280 completion of the project and any other relevant factors;

281 (iv) Such an agreement shall be executed only upon  
282 a finding by the commission, spread upon its minutes, that the  
283 acceleration of the scheduled project is both feasible and  
284 beneficial. The commission shall also spread upon its minutes its  
285 findings with regard to the factors required to be considered  
286 pursuant to item (iii) of this paragraph (z);

287 (aa) Every contract between the Mississippi  
288 Transportation Commission and a contractor that is executed from  
289 and after July 1, 2003, shall contain a provision in regard to the  
290 time when the whole or any specified portion of the work  
291 contemplated shall be completed, and shall provide that for each  
292 day completion is delayed beyond the specified time, the  
293 contractor shall forfeit and pay to the state a specified sum of



294 money to be deducted from any payments due or to become due to the  
295 contractor. The sum so specified is valid as liquidated damages  
296 unless manifestly unreasonable under the circumstances existing at  
297 the time the contract was made. A contract for a road project  
298 also may provide for the payment of extra compensation to the  
299 contract, as a bonus for completion before the specified time.  
300 This provision shall be included in the specification and shall  
301 clearly set forth the basis for the payment. The bonus for early  
302 completion shall not be on maintenance projects but only on new  
303 construction projects.

304       **SECTION 2.** This act shall take effect and be in force from  
305 and after July 1, 2003.

