MISSISSIPPI LEGISLATURE
REGULAR SESSION 2003

To: Highways and Transportation

By: Senator(s) Gollott, Dawkins, Hewes

SENATE BILL NO. 2814
(As Sent to Governor)

AN ACT TO AMEND SECTION 65-1-85, MISSISSIPPI CODE OF 1972, TO REQUIRE THE MISSISSIPPI TRANSPORTATION COMMISSION TO AWARD CONTRACTS FOR CONSTRUCTION AND RECONSTRUCTION TO A RESPONSIBLE BIDDER WITH THE LOWEST AND BEST BID; TO AUTHORIZE THE COMMISSION TO REQUIRE PRE-QUALIFICATION OF BIDDERS ON SUCH CONTRACTS; TO AUTHORIZE THE COMMISSION TO REQUIRE THE PRE-QUALIFICATION OF ANY AND ALL SUBCONTRACTORS BEFORE THEY ARE APPROVED TO PARTICIPATE IN A CONTRACT AWARDED BY THE COMMISSION; TO AUTHORIZE THE COMMISSION TO ADOPT RULES AND REGULATIONS FOR THE TERMINATION OF ANY CONTRACT WHICH IS NOT TIMELY PROCEEDING TO COMPLETION AND TO PROVIDE THAT THE FAILURE TO COMPLY WITH SUCH RULES AND REGULATIONS SHALL BE A LAWFUL BASIS FOR THE TERMINATION OF A CONTRACT; TO AMEND SECTION 65-1-8, MISSISSIPPI CODE OF 1972, TO CONFORM THE AMENDMENTS TO THIS CODE SECTION BY SENATE BILL NO. 2066, 2003 REGULAR SESSION, SENATE BILL NO. 2250, 2003 REGULAR SESSION AND SENATE BILL NO. 2533, 2003 REGULAR SESSION; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 65-1-85, Mississippi Code of 1972, is amended as follows:

65-1-85. (1) All contracts by or on behalf of the Mississippi Transportation Commission for the purchase of materials, equipment and supplies shall be made in compliance with Section 31-7-1 et seq. All contracts by or on behalf of the Mississippi Transportation Commission for construction, reconstruction or other public work authorized to be done under the provisions of this chapter, except maintenance, shall be made by the executive director, subject to the approval of the commission, only upon competitive bids after due advertisement as follows, to wit:

(a) Advertisement for bids shall be in accordance with such rules and regulations, in addition to those herein provided, as may be adopted therefor by the Mississippi Transportation Commission, and the commission is authorized and empowered to make and promulgate such rules and regulations as

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it may deem proper, to provide and adopt standard specifications for road and bridge construction, and to amend such rules and regulations from time to time.

(b) The advertisement shall be inserted twice, being once a week for two (2) successive weeks in a newspaper published at the seat of government in Jackson, Mississippi, having a general circulation throughout the state, and no letting shall be less than fourteen (14) days nor more than sixty (60) days after the publication of the first notice of such letting, and notices of such letting may be placed in a metropolitan paper or national trade publication.

(c) Before advertising for such work, the executive director shall cause to be prepared and filed in the Mississippi Department of Transportation detailed plans and specifications covering the work proposed to be done and copies of the plans and specifications shall be subject to inspection by any citizen during all office hours and made available to all prospective bidders upon such reasonable terms and conditions as may be required by the Mississippi Transportation Commission. A fee shall be charged equal to the cost of producing a copy of any such plans and specifications.

(d) All such contracts shall be let to a responsible bidder with the lowest and best bid, and a record of all bids received for construction and reconstruction shall be preserved.

(e) Each bid for such a construction and reconstruction contract must be accompanied by a cashier's check, a certified check or bidders bond executed by a surety company authorized to do business in the State of Mississippi, in the principal amount of not less than five percent (5%) of the bid, guaranteeing that the bidder will give bond and enter into a contract for the faithful performance of the contract according to plans and specifications on file.
(f) Bonds shall be required of the successful bidder in an amount equal to the contract price. The contract price shall mean the entire cost of the particular contract let. In the event change orders are made after the execution of a contract which results in increasing the total contract price, additional bond in the amount of the increased cost may be required. The surety or sureties on such bonds shall be a surety company or surety companies authorized to do business in the State of Mississippi, all bonds to be payable to the State of Mississippi and to be conditioned for the prompt, faithful and efficient performance of the contract according to plans and specifications, and for the prompt payment of all persons furnishing labor, material, equipment and supplies therefor. Such bonds shall be subject to the additional obligation that the principal and surety or sureties executing the same shall be liable to the state in a civil action instituted by the state at the instance of the Mississippi Transportation Commission or any officer of the state authorized in such cases, for double any amount in money or property the state may lose or be overcharged or otherwise defrauded of by reason of any wrongful or criminal act, if any, of the contractor, his agent or employees.

(2) With respect to equipment used in the construction, reconstruction or other public work authorized to be done under the provisions of this chapter: the word "equipment," in addition to all equipment incorporated into or fully consumed in connection with such project, shall include the reasonable value of the use of all equipment of every kind and character and all accessories and attachments thereto which are reasonably necessary to be used and which are used in carrying out the performance of the contract, and the reasonable value of the use thereof, during the period of time the same are used in carrying out the performance of the contract, shall be the amount as agreed upon by the persons furnishing the equipment and those using the same to be paid.
therefor, which amount, however, shall not be in excess of the
maximum current rates and charges allowable for leasing or renting
as specified in Section 65-7-95; the word "labor" shall include
all work performed in repairing equipment used in carrying out the
performance of the contract, which repair labor is reasonably
necessary to the efficient operation of said equipment; and the
words "materials" and "supplies" shall include all repair parts
installed in or on equipment used in carrying out the performance
of the contract, which repair parts are reasonably necessary to
the efficient operation of said equipment.

(3) The executive director, subject to the approval of the
Mississippi Transportation Commission, shall have the right to
reject any and all bids, whether such right is reserved in the
notice or not.

(4) The Mississippi Transportation Commission may require
the pre-qualification of any and all bidders and the failure to
comply with pre-qualification requirements may be the basis for
the rejection of any bid by the commission. The Mississippi
Transportation Commission may require the pre-qualification of any
and all subcontractors before they are approved to participate in
any contract awarded under this section.

(5) The Mississippi Transportation Commission may adopt
rules and regulations for the termination of any previously
awarded contract which is not timely proceeding toward completion.
The failure of a contractor to comply with such rules and
regulations shall be a lawful basis for the Mississippi
Transportation Commission to terminate the contract with such
contractor. In the event of a termination under such rules and
regulations, the contractor shall not be entitled to any payment,
benefit or damages beyond the cost of the work actually completed.

(6) Any contract for construction or paving of any highway
may be entered into for any cost which does not exceed the amount
of funds that may be made available therefor through bond issues
or from other sources of revenue, and the letting of contracts for
such construction or paving shall not necessarily be delayed until
the funds are actually on hand, provided authorization for the
issuance of necessary bonds has been granted by law to supplement
other anticipated revenue, or when the Mississippi Department of
Transportation certifies to the Department of Finance and
Administration and the Legislative Budget Office that projected
receipts of funds by the department will be sufficient to pay such
contracts as they become due and the Department of Finance and
Administration determines that the projections are reasonable and
receipts will be sufficient to pay the contracts as they become
due. The Department of Finance and Administration shall spread
such determination on its minutes prior to the letting of any
contracts based on projected receipts. Nothing in this subsection
shall prohibit the issuance of bonds, which have been authorized,
at any time in the discretion of the State Bond Commission, nor to
prevent investment of surplus funds in United States government
bonds or State of Mississippi bonds as presently authorized by
Section 12, Chapter 312, Laws of 1956.

(7) All other contracts for work to be done under the
provisions of this chapter and for the purchase of materials,
equipment and supplies to be used as provided for in this chapter
shall be made in compliance with Section 31-7-1 et seq.

(8) The Mississippi Transportation Commission shall not
empower or authorize the executive director, or any one or more of
its members, or any engineer or other person to let or make
contracts for the construction or repair of public roads, or
building bridges, or for the purchase of material, equipment or
supplies contrary to the provisions of this chapter as set
forth in this section, except in cases of flood or other cases of
emergency where the public interest requires that the work be done
or the materials, equipment or supplies be purchased without the
delay incident to advertising for competitive bids. Such
emergency contracts may be made without advertisement under such
rules and regulations as the Mississippi Transportation Commission
may prescribe.

(9) The executive director, subject to the approval of the
Mississippi Transportation Commission, is authorized to negotiate
and make agreements with communities and/or civic organizations
for landscaping, beautification and maintenance of highway
rights-of-way; *** however, *** nothing in this subsection
shall be construed as authorization for the executive director or
commission to participate in such a project to an extent greater
than the average cost for maintenance of shoulders, backslopes and
median areas with respect thereto.

(10) The executive director may negotiate and enter into
contracts with private parties for the mowing of grass and
trimming of vegetation on the rights-of-way of state highways
whenever such practice is possible and cost effective.

SECTION 2. Section 65-1-8, Mississippi Code of 1972, as
amended by Senate Bill No. 2066, 2003 Regular Session, Senate Bill
No. 2250, 2003 Regular Session and Senate Bill No. 2533, 2003
Regular Session, is amended as follows:

[Uuntil July 1, 2003, this section shall read as follows:]

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

(a) To coordinate and develop a comprehensive, balanced
transportation policy for the State of Mississippi;
(b) To promote the coordinated and efficient use of all
available and future modes of transportation;
(c) To make recommendations to the Legislature
regarding alterations or modifications in any existing
transportation policies;
(d) To study means of encouraging travel and
transportation of goods by the combination of motor vehicle and
other modes of transportation;
(e) To take such actions as are necessary and proper to discharge its duties pursuant to the provisions of Laws, 1992, Chapter 496, and any other provision of law;

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

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

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

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

(c) To make and publish rules, regulations and ordinances for the control of and the policing of the traffic on the state highways, and to prevent their abuse by any or all persons, natural or artificial, by trucks, tractors, trailers or any other heavy or destructive vehicles or machines, or by any other means whatsoever, by establishing weights of loads or of vehicles, types of tires, width of tire surfaces, length and width of vehicles, with reasonable variations to meet approximate
weather conditions, and all other proper police and protective
regulations, and to provide ample means for the enforcement of
same. The violation of any of the rules, regulations or
ordinances so prescribed by the commission shall constitute a
misdemeanor. No rule, regulation or ordinance shall be made that
conflicts with any statute now in force or which may hereafter be
enacted, or with any ordinance of municipalities. A monthly
publication giving general information to the boards of
supervisors, employees and the public may be issued under such
rules and regulations as the commission may determine;

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

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

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

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

(f) To regulate and abandon grade crossings on any road fixed as a part of the state highway system, and whenever the commission, in order to avoid a grade crossing with the railroad, locates or constructs said road on one side of the railroad, the commission shall have the power to abandon and close such grade crossing, and whenever an underpass or overhead bridge is substituted for a grade crossing, the commission shall have power to abandon such grade crossing and any other crossing adjacent thereto. Included in the powers herein granted shall be the power to require the railroad at grade crossings, where any road of the state highway system crosses the same, to place signal posts with lights or other warning devices at such crossings at the expense of the railroad, and to regulate and abandon underpass or overhead bridges and, where abandoned because of the construction of a new underpass or overhead bridge, to close such old underpass or overhead bridge, or, in its discretion, to return the same to the jurisdiction of the county board of supervisors;
(g) To make proper and reasonable rules and regulations to control the cutting or opening of the road surfaces for subsurface installations;

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

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

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

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

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

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

(n) To cooperate with the Department of Archives and History in having placed and maintained suitable historical markers, including those which have been approved and purchased by the State Historical Commission, along state highways, and to have constructed and maintained roadside driveways for convenience and safety in viewing them when necessary;

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

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

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

construction funds;

(r) To cooperate, in its discretion, with the Mississippi Forestry Commission and the School of Forestry, Mississippi State University, in a forestry management program, including planting, thinning, cutting and selling, upon the right-of-way of any highway, constructed, acquired or maintained by the Transportation Department, and to sell and dispose of any and all growing timber standing, lying or being on any right-of-way acquired by the commission for highway purposes in the future; such sale or sales to be made in accordance with the sale of personal property which has become unnecessary for public use as provided for in Section 65-1-123, Mississippi Code of 1972;

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

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

(u) To request and to accept the use of persons convicted of an offense, whether a felony or a misdemeanor, for work on any road construction, repair or other project of the Transportation Department. The commission is also authorized to request and to accept the use of persons who have not been convicted of an offense but who are required to fulfill certain
court-imposed conditions pursuant to Section 41-29-150(d)(1) or 99-15-26, Mississippi Code of 1972, or the Pretrial Intervention Act, being Sections 99-15-101 through 99-15-127, Mississippi Code of 1972. The commission is authorized to enter into any agreements with the Department of Corrections, the State Parole Board, any criminal court of this state, and any other proper official regarding the working, guarding, safekeeping, clothing and subsistence of such persons performing work for the Transportation Department. Such persons shall not be deemed agents, employees or involuntary servants of the Transportation Department while performing such work or while going to and from work or other specified areas;

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

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

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

(y) The Mississippi Transportation Commission may delegate the authority to enter into a supplemental agreement to a contract previously approved by the commission if the supplemental agreement involves an additional expenditure not to exceed One Hundred Thousand Dollars ($100,000.00);
(z) (i) The Mississippi Transportation Commission, in its discretion, may enter into agreements with any county, municipality, county transportation commission, business, corporation, partnership, association, individual or other legal entity, for the purpose of accelerating the completion date of scheduled highway construction projects.

(ii) Such an agreement may permit the cost of a highway construction project to be advanced to the commission by a county, municipality, county transportation commission, business, corporation, partnership, association, individual or other legal entity, and repaid to such entity by the commission when highway construction funds become available; provided, however, that repayment of funds advanced to the Mississippi Transportation Commission shall be made no sooner than the commission's identified projected revenue schedule for funding of that particular construction project, and no other scheduled highway construction project established by statute or by the commission may be delayed by an advanced funding project authorized under this paragraph (z). Repayments to an entity that advances funds to the Mississippi Transportation Commission under this paragraph (z) may not include interest or other fees or charges, and the total amount repaid shall not exceed the total amount of funds advanced to the commission by the entity.

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

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

(aa) The Mississippi Transportation Commission, in its discretion, may purchase employment practices liability insurance, and may purchase an excess policy to cover catastrophic losses incurred under the commission's self-insured workers' compensation program authorized under Section 71-3-5. Such policies shall be written by the agent or agents of a company or companies authorized to do business in the State of Mississippi. The deductibles shall be in an amount deemed reasonable and prudent by the commission, and the premiums thereon shall be paid from the State Highway Fund. Purchase of insurance under this paragraph shall not serve as an actual or implied waiver of sovereign immunity or of any protection afforded the commission under the Mississippi Tort Claims Act.

[From and after July 1, 2003, this section shall read as follows:]

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

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

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

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

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

(e) To take such actions as are necessary and proper to discharge its duties pursuant to the provisions of Laws, 1992, Chapter 496, and any other provision of law;
(f) To receive and provide for the expenditure of any funds made available to it by the Legislature, the federal government or any other source.

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

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

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

(c) To make and publish rules, regulations and ordinances for the control of and the policing of the traffic on the state highways, and to prevent their abuse by any or all persons, natural or artificial, by trucks, tractors, trailers or any other heavy or destructive vehicles or machines, or by any other means whatsoever, by establishing weights of loads or of vehicles, types of tires, width of tire surfaces, length and width of vehicles, with reasonable variations to meet approximate weather conditions, and all other proper police and protective regulations, and to provide ample means for the enforcement of same. The violation of any of the rules, regulations or
ordinances so prescribed by the commission shall constitute a misdemeanor. No rule, regulation or ordinance shall be made that conflicts with any statute now in force or which may hereafter be enacted, or with any ordinance of municipalities. A monthly publication giving general information to the boards of supervisors, employees and the public may be issued under such rules and regulations as the commission may determine;

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

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

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

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

(iv) Municipal public sewer systems and municipal
gas systems owned by municipalities with a population of ten
thousand (10,000) or less, according to the latest federal
decennial census, shall not be required to bear the cost and
expense of removal and relocation of lines and facilities
constructed or in place in the rights-of-way of state highways.
The cost and expense of such removal and relocation, including any
unpaid prior to July 1, 2003, shall be paid by the Department of
Transportation;

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

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

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

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

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

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

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

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

(n) To cooperate with the Department of Archives and
History in having placed and maintained suitable historical
markers, including those which have been approved and purchased by
the State Historical Commission, along state highways, and to have
constructed and maintained roadside driveways for convenience and
safety in viewing them when necessary;

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

(p) Unless otherwise prohibited by law, to make such
contracts and execute such instruments containing such reasonable
and necessary appropriate terms, provisions and conditions as in
its absolute discretion it may deem necessary, proper or
advisable, for the purpose of obtaining or securing financial
assistance, grants or loans from the United States of America or
any department or agency thereof, including contracts with several
counties of the state pertaining to the expenditure of such funds;
(q) To cooperate with the Federal Highway Administration in the matter of location, construction and maintenance of the Great River Road, to expend such funds paid to the commission by the Federal Highway Administration or other federal agency, and to authorize the Transportation Department to erect suitable signs marking this highway, the cost of such signs to be paid from state highway funds other than earmarked construction funds;

(r) To cooperate, in its discretion, with the Mississippi Forestry Commission and the School of Forestry, Mississippi State University, in a forestry management program, including planting, thinning, cutting and selling, upon the right-of-way of any highway, constructed, acquired or maintained by the Transportation Department, and to sell and dispose of any and all growing timber standing, lying or being on any right-of-way acquired by the commission for highway purposes in the future; such sale or sales to be made in accordance with the sale of personal property which has become unnecessary for public use as provided for in Section 65-1-123, Mississippi Code of 1972;

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

(t) To provide for the placement, erection and maintenance of motorist services business signs and supports within state highway rights-of-way in accordance with current state and federal laws and regulations governing the placement of traffic control devices on state highways, and to establish and collect reasonable fees from the businesses having information on such signs;
(u) To request and to accept the use of persons convicted of an offense, whether a felony or a misdemeanor, for work on any road construction, repair or other project of the Transportation Department. The commission is also authorized to request and to accept the use of persons who have not been convicted of an offense but who are required to fulfill certain court-imposed conditions pursuant to Section 41-29-150(d)(1) or 99-15-26, Mississippi Code of 1972, or the Pretrial Intervention Act, being Sections 99-15-101 through 99-15-127, Mississippi Code of 1972. The commission is authorized to enter into any agreements with the Department of Corrections, the State Parole Board, any criminal court of this state, and any other proper official regarding the working, guarding, safekeeping, clothing and subsistence of such persons performing work for the Transportation Department. Such persons shall not be deemed agents, employees or involuntary servants of the Transportation Department while performing such work or while going to and from work or other specified areas;

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

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

(x) To cooperate with the State Tax Commission by providing for weight enforcement field personnel to collect and assess taxes, fees and penalties and to perform all duties as required pursuant to Section 27-55-501 et seq., Sections 27-19-1 et seq., 27-55-1 et seq., 27-59-1 et seq. and 27-61-1 et seq., Mississippi Code of 1972, with regard to vehicles subject to the jurisdiction of the Office of Weight Enforcement. All collections and assessments shall be transferred daily to the State Tax Commission;
(y) The Mississippi Transportation Commission may delegate the authority to enter into a supplemental agreement to a contract previously approved by the commission if the supplemental agreement involves an additional expenditure not to exceed One Hundred Thousand Dollars ($100,000.00);

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

(ii) Such an agreement may permit the cost of a highway construction project to be advanced to the commission by a county, municipality, county transportation commission, business, corporation, partnership, association, individual or other legal entity, and repaid to such entity by the commission when highway construction funds become available; provided, however, that repayment of funds advanced to the Mississippi Transportation Commission shall be made no sooner than the commission's identified projected revenue schedule for funding of that particular construction project, and no other scheduled highway construction project established by statute or by the commission may be delayed by an advanced funding project authorized under this paragraph (z). Repayments to an entity that advances funds to the Mississippi Transportation Commission under this paragraph (z) may not include interest or other fees or charges, and the total amount repaid shall not exceed the total amount of funds advanced to the commission by the entity.

(iii) In considering whether to enter into such an agreement, the commission shall consider the availability of financial resources, the effect of such agreement on other ongoing highway construction, the urgency of the public's need for swift completion of the project and any other relevant factors.
(iv) Such an agreement shall be executed only upon a finding by the commission, spread upon its minutes, that the acceleration of the scheduled project is both feasible and beneficial. The commission shall also spread upon its minutes its findings with regard to the factors required to be considered pursuant to item (iii) of this paragraph (z).

(aa) The Mississippi Transportation Commission, in its discretion, may purchase employment practices liability insurance, and may purchase an excess policy to cover catastrophic losses incurred under the commission's self-insured workers' compensation program authorized under Section 71-3-5. Such policies shall be written by the agent or agents of a company or companies authorized to do business in the State of Mississippi. The deductibles shall be in an amount deemed reasonable and prudent by the commission, and the premiums thereon shall be paid from the State Highway Fund. Purchase of insurance under this paragraph shall not serve as an actual or implied waiver of sovereign immunity or of any protection afforded the commission under the Mississippi Tort Claims Act.

(bb) The Mississippi Transportation Commission is further authorized, in its discretion, to expend funds for the purchase of promotional materials for safety purposes, highway beautification purposes and recruitment purposes.

SECTION 3. This act shall take effect and be in force from and after its passage.