

By: Senator(s) Gollott, Dawkins, Hewes

To: Highways and
Transportation

SENATE BILL NO. 2814
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 65-1-85, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE THE MISSISSIPPI TRANSPORTATION COMMISSION TO AWARD
3 CONTRACTS FOR CONSTRUCTION AND RECONSTRUCTION TO A RESPONSIBLE
4 BIDDER WITH THE LOWEST AND BEST BID; TO AUTHORIZE THE COMMISSION
5 TO REQUIRE PRE-QUALIFICATION OF BIDDERS ON SUCH CONTRACTS; TO
6 AUTHORIZE THE COMMISSION TO REQUIRE THE PRE-QUALIFICATION OF ANY
7 AND ALL SUBCONTRACTORS BEFORE THEY ARE APPROVED TO PARTICIPATE IN
8 A CONTRACT AWARDED BY THE COMMISSION; TO AUTHORIZE THE COMMISSION
9 TO ADOPT RULES AND REGULATIONS FOR THE TERMINATION OF ANY CONTRACT
10 WHICH IS NOT TIMELY PROCEEDING TO COMPLETION AND TO PROVIDE THAT
11 THE FAILURE TO COMPLY WITH SUCH RULES AND REGULATIONS SHALL BE A
12 LAWFUL BASIS FOR THE TERMINATION OF A CONTRACT; TO AMEND SECTION
13 65-1-8, MISSISSIPPI CODE OF 1972, TO CONFORM THE AMENDMENTS TO
14 THIS CODE SECTION BY SENATE BILL NO. 2066, 2003 REGULAR SESSION,
15 SENATE BILL NO. 2250, 2003 REGULAR SESSION AND SENATE BILL NO.
16 2533, 2003 REGULAR SESSION; AND FOR RELATED PURPOSES.

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

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

20 65-1-85. (1) All contracts by or on behalf of the
21 Mississippi Transportation Commission for the purchase of
22 materials, equipment and supplies shall be made in compliance with
23 Section 31-7-1 et seq. All contracts by or on behalf of the
24 Mississippi Transportation Commission for construction,
25 reconstruction or other public work authorized to be done under
26 the provisions of this chapter, except maintenance, shall be made
27 by the executive director, subject to the approval of the
28 commission, only upon competitive bids after due advertisement as
29 follows, to wit:

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



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

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

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

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

59 (e) * * * Each bid for such a construction and
60 reconstruction contract must be accompanied by a cashier's check,
61 a certified check or bidders bond executed by a surety company
62 authorized to do business in the State of Mississippi, in the
63 principal amount of not less than five percent (5%) of the bid,
64 guaranteeing that the bidder will give bond and enter into a
65 contract for the faithful performance of the contract according to
66 plans and specifications on file.



67 (f) Bonds shall be required of the successful bidder in
68 an amount equal to the contract price. The contract price shall
69 mean the entire cost of the particular contract let. In the event
70 change orders are made after the execution of a contract which
71 results in increasing the total contract price, additional bond in
72 the amount of the increased cost may be required. The surety or
73 sureties on such bonds shall be a surety company or surety
74 companies authorized to do business in the State of Mississippi,
75 all bonds to be payable to the State of Mississippi and to be
76 conditioned for the prompt, faithful and efficient performance of
77 the contract according to plans and specifications, and for the
78 prompt payment of all persons furnishing labor, material,
79 equipment and supplies therefor. Such bonds shall be subject to
80 the additional obligation that the principal and surety or
81 sureties executing the same shall be liable to the state in a
82 civil action instituted by the state at the instance of the
83 Mississippi Transportation Commission or any officer of the state
84 authorized in such cases, for double any amount in money or
85 property the state may lose or be overcharged or otherwise
86 defrauded of by reason of any wrongful or criminal act, if any, of
87 the contractor, his agent or employees.

88 (2) With respect to equipment used in the construction,
89 reconstruction or other public work authorized to be done under
90 the provisions of this chapter: the word "equipment," in addition
91 to all equipment incorporated into or fully consumed in connection
92 with such project, shall include the reasonable value of the use
93 of all equipment of every kind and character and all accessories
94 and attachments thereto which are reasonably necessary to be used
95 and which are used in carrying out the performance of the
96 contract, and the reasonable value of the use thereof, during the
97 period of time the same are used in carrying out the performance
98 of the contract, shall be the amount as agreed upon by the persons
99 furnishing the equipment and those using the same to be paid



100 therefor, which amount, however, shall not be in excess of the
101 maximum current rates and charges allowable for leasing or renting
102 as specified in Section 65-7-95; the word "labor" shall include
103 all work performed in repairing equipment used in carrying out the
104 performance of the contract, which repair labor is reasonably
105 necessary to the efficient operation of said equipment; and the
106 words "materials" and "supplies" shall include all repair parts
107 installed in or on equipment used in carrying out the performance
108 of the contract, which repair parts are reasonably necessary to
109 the efficient operation of said equipment.

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

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

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

130 (6) Any contract for construction or paving of any highway
131 may be entered into for any cost which does not exceed the amount
132 of funds that may be made available therefor through bond issues



133 or from other sources of revenue, and the letting of contracts for
134 such construction or paving shall not necessarily be delayed until
135 the funds are actually on hand, provided authorization for the
136 issuance of necessary bonds has been granted by law to supplement
137 other anticipated revenue, or when the Mississippi Department of
138 Transportation certifies to the Department of Finance and
139 Administration and the Legislative Budget Office that projected
140 receipts of funds by the department will be sufficient to pay such
141 contracts as they become due and the Department of Finance and
142 Administration determines that the projections are reasonable and
143 receipts will be sufficient to pay the contracts as they become
144 due. The Department of Finance and Administration shall spread
145 such determination on its minutes prior to the letting of any
146 contracts based on projected receipts. Nothing in this subsection
147 shall prohibit the issuance of bonds, which have been authorized,
148 at any time in the discretion of the State Bond Commission, nor to
149 prevent investment of surplus funds in United States government
150 bonds or State of Mississippi bonds as presently authorized by
151 Section 12, Chapter 312, Laws of 1956.

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

156 (8) The Mississippi Transportation Commission shall not
157 empower or authorize the executive director, or any one or more of
158 its members, or any engineer or other person to let or make
159 contracts for the construction or repair of public roads, or
160 building bridges, or for the purchase of material, equipment or
161 supplies contrary to the provisions of this chapter as * * * set
162 forth in this section, except in cases of flood or other cases of
163 emergency where the public interest requires that the work be done
164 or the materials, equipment or supplies be purchased without the
165 delay incident to advertising for competitive bids. Such



166 emergency contracts may be made without advertisement under such
167 rules and regulations as the Mississippi Transportation Commission
168 may prescribe.

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

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

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

186 **[Until July 1, 2003, this section shall read as follows:]**

187 65-1-8. (1) The Mississippi Transportation Commission shall
188 have the following general powers, duties and responsibilities:

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

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

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

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



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

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

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

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

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

224 (c) To make and publish rules, regulations and
225 ordinances for the control of and the policing of the traffic on
226 the state highways, and to prevent their abuse by any or all
227 persons, natural or artificial, by trucks, tractors, trailers or
228 any other heavy or destructive vehicles or machines, or by any
229 other means whatsoever, by establishing weights of loads or of
230 vehicles, types of tires, width of tire surfaces, length and width
231 of vehicles, with reasonable variations to meet approximate



232 weather conditions, and all other proper police and protective
233 regulations, and to provide ample means for the enforcement of
234 same. The violation of any of the rules, regulations or
235 ordinances so prescribed by the commission shall constitute a
236 misdemeanor. No rule, regulation or ordinance shall be made that
237 conflicts with any statute now in force or which may hereafter be
238 enacted, or with any ordinance of municipalities. A monthly
239 publication giving general information to the boards of
240 supervisors, employees and the public may be issued under such
241 rules and regulations as the commission may determine;

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

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

261 (ii) Except as otherwise provided for in this
262 paragraph, whenever the order of the commission shall require the
263 removal of, or other changes in the location of telephone,
264 telegraph or other poles, signboards, gas, water, sewerage, oil or



265 other pipelines; or other similar obstructions on the right-of-way
266 or such other places where removal is required by law, the owners
267 thereof shall at their own expense move or change the same to
268 conform to the order of the commission. Any violation of such
269 rules or regulations or noncompliance with such orders shall
270 constitute a misdemeanor;

271 (iii) Rural water districts, rural water systems,
272 nonprofit water associations and municipal public water systems in
273 municipalities with a population of ten thousand (10,000) or less,
274 according to the latest federal decennial census, shall not be
275 required to bear the cost and expense of removal and relocation of
276 water and sewer lines and facilities constructed or in place in
277 the rights-of-way of state highways. The cost and expense of such
278 removal and relocation, including any unpaid prior to July 1,
279 2002, shall be paid by the Department of Transportation;

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



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

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

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

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

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

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

319 (m) To provide for the purchase of necessary equipment
320 and vehicles and to provide for the repair and housing of same, to
321 acquire by gift, purchase, condemnation or otherwise, land or
322 lands and buildings in fee simple, and to authorize the
323 Transportation Department to construct, lease or otherwise provide
324 necessary and proper permanent district offices for the
325 construction and maintenance divisions of the department, and for
326 the repair and housing of the equipment and vehicles of the
327 department; however, in each Supreme Court district only two (2)
328 permanent district offices shall be set up, but a permanent status
329 shall not be given to any such offices until so provided by act of



330 the Legislature and in the meantime, all shops of the department
331 shall be retained at their present location. As many local or
332 subdistrict offices, shops or barns may be provided as is
333 essential and proper to economical maintenance of the state
334 highway system;

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

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

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

357 (q) To cooperate with the Federal Highway
358 Administration in the matter of location, construction and
359 maintenance of the Great River Road, to expend such funds paid to
360 the commission by the Federal Highway Administration or other
361 federal agency, and to authorize the Transportation Department to
362 erect suitable signs marking this highway, the cost of such signs



363 to be paid from state highway funds other than earmarked
364 construction funds;

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

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

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

390 (u) To request and to accept the use of persons
391 convicted of an offense, whether a felony or a misdemeanor, for
392 work on any road construction, repair or other project of the
393 Transportation Department. The commission is also authorized to
394 request and to accept the use of persons who have not been
395 convicted of an offense but who are required to fulfill certain



396 court-imposed conditions pursuant to Section 41-29-150(d)(1) or
397 99-15-26, Mississippi Code of 1972, or the Pretrial Intervention
398 Act, being Sections 99-15-101 through 99-15-127, Mississippi Code
399 of 1972. The commission is authorized to enter into any
400 agreements with the Department of Corrections, the State Parole
401 Board, any criminal court of this state, and any other proper
402 official regarding the working, guarding, safekeeping, clothing
403 and subsistence of such persons performing work for the
404 Transportation Department. Such persons shall not be deemed
405 agents, employees or involuntary servants of the Transportation
406 Department while performing such work or while going to and from
407 work or other specified areas;

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

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

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

423 (y) The Mississippi Transportation Commission may
424 delegate the authority to enter into a supplemental agreement to a
425 contract previously approved by the commission if the supplemental
426 agreement involves an additional expenditure not to exceed One
427 Hundred Thousand Dollars (\$100,000.00);



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

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

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

456 (iv) Such an agreement shall be executed only upon
457 a finding by the commission, spread upon its minutes, that the
458 acceleration of the scheduled project is both feasible and
459 beneficial. The commission shall also spread upon its minutes its



460 findings with regard to the factors required to be considered
461 pursuant to item (iii) of this paragraph (z);

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

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

477 65-1-8. (1) The Mississippi Transportation Commission shall
478 have the following general powers, duties and responsibilities:

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

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

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

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

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



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

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

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

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

514 (c) To make and publish rules, regulations and
515 ordinances for the control of and the policing of the traffic on
516 the state highways, and to prevent their abuse by any or all
517 persons, natural or artificial, by trucks, tractors, trailers or
518 any other heavy or destructive vehicles or machines, or by any
519 other means whatsoever, by establishing weights of loads or of
520 vehicles, types of tires, width of tire surfaces, length and width
521 of vehicles, with reasonable variations to meet approximate
522 weather conditions, and all other proper police and protective
523 regulations, and to provide ample means for the enforcement of
524 same. The violation of any of the rules, regulations or



525 ordinances so prescribed by the commission shall constitute a
526 misdemeanor. No rule, regulation or ordinance shall be made that
527 conflicts with any statute now in force or which may hereafter be
528 enacted, or with any ordinance of municipalities. A monthly
529 publication giving general information to the boards of
530 supervisors, employees and the public may be issued under such
531 rules and regulations as the commission may determine;

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

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

551 (ii) Except as otherwise provided for in this
552 paragraph, whenever the order of the commission shall require the
553 removal of, or other changes in the location of telephone,
554 telegraph or other poles, signboards, gas, water, sewerage, oil or
555 other pipelines; or other similar obstructions on the right-of-way
556 or such other places where removal is required by law, the owners
557 thereof shall at their own expense move or change the same to



558 conform to the order of the commission. Any violation of such
559 rules or regulations or noncompliance with such orders shall
560 constitute a misdemeanor;

561 (iii) Rural water districts, rural water systems,
562 nonprofit water associations and municipal public water systems in
563 municipalities with a population of ten thousand (10,000) or less,
564 according to the latest federal decennial census, shall not be
565 required to bear the cost and expense of removal and relocation of
566 water and sewer lines and facilities constructed or in place in
567 the rights-of-way of state highways. The cost and expense of such
568 removal and relocation, including any unpaid prior to July 1,
569 2002, shall be paid by the Department of Transportation;

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

579 (f) To regulate and abandon grade crossings on any road
580 fixed as a part of the state highway system, and whenever the
581 commission, in order to avoid a grade crossing with the railroad,
582 locates or constructs said road on one side of the railroad, the
583 commission shall have the power to abandon and close such grade
584 crossing, and whenever an underpass or overhead bridge is
585 substituted for a grade crossing, the commission shall have power
586 to abandon such grade crossing and any other crossing adjacent
587 thereto. Included in the powers herein granted shall be the power
588 to require the railroad at grade crossings, where any road of the
589 state highway system crosses the same, to place signal posts with
590 lights or other warning devices at such crossings at the expense



591 of the railroad, and to regulate and abandon underpass or overhead
592 bridges and, where abandoned because of the construction of a new
593 underpass or overhead bridge, to close such old underpass or
594 overhead bridge, or, in its discretion, to return the same to the
595 jurisdiction of the county board of supervisors;

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

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

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

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

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

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

618 (m) To provide for the purchase of necessary equipment
619 and vehicles and to provide for the repair and housing of same, to
620 acquire by gift, purchase, condemnation or otherwise, land or
621 lands and buildings in fee simple, and to authorize the
622 Transportation Department to construct, lease or otherwise provide
623 necessary and proper permanent district offices for the



624 construction and maintenance divisions of the department, and for
625 the repair and housing of the equipment and vehicles of the
626 department; however, in each Supreme Court district only two (2)
627 permanent district offices shall be set up, but a permanent status
628 shall not be given to any such offices until so provided by act of
629 the Legislature and in the meantime, all shops of the department
630 shall be retained at their present location. As many local or
631 subdistrict offices, shops or barns may be provided as is
632 essential and proper to economical maintenance of the state
633 highway system;

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

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

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



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

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

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

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



689 (u) To request and to accept the use of persons
690 convicted of an offense, whether a felony or a misdemeanor, for
691 work on any road construction, repair or other project of the
692 Transportation Department. The commission is also authorized to
693 request and to accept the use of persons who have not been
694 convicted of an offense but who are required to fulfill certain
695 court-imposed conditions pursuant to Section 41-29-150(d)(1) or
696 99-15-26, Mississippi Code of 1972, or the Pretrial Intervention
697 Act, being Sections 99-15-101 through 99-15-127, Mississippi Code
698 of 1972. The commission is authorized to enter into any
699 agreements with the Department of Corrections, the State Parole
700 Board, any criminal court of this state, and any other proper
701 official regarding the working, guarding, safekeeping, clothing
702 and subsistence of such persons performing work for the
703 Transportation Department. Such persons shall not be deemed
704 agents, employees or involuntary servants of the Transportation
705 Department while performing such work or while going to and from
706 work or other specified areas;

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

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

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



722 (y) The Mississippi Transportation Commission may
723 delegate the authority to enter into a supplemental agreement to a
724 contract previously approved by the commission if the supplemental
725 agreement involves an additional expenditure not to exceed One
726 Hundred Thousand Dollars (\$100,000.00);

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

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

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



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

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

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

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

