

By: Senator(s) Hewes

To: Highways and
Transportation

SENATE BILL NO. 2770

1 AN ACT TO AMEND SECTIONS 65-1-8, 65-1-70, 65-1-175, 63-3-305,
2 77-9-252 AND 97-25-5, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT
3 THE COSTS OF INSTALLATION AND MAINTENANCE OF RAILROAD PAVEMENT
4 MARKINGS ARE TO BE BORNE BY THE ENTITY WITH JURISDICTION OVER THE
5 HIGHWAY OR ROAD; TO ALLOCATE SUCH COSTS PROPORTIONATELY BETWEEN
6 JURISDICTIONS IF A CROSSING IS ON A ROAD UNDER MULTIPLE
7 JURISDICTIONS; AND FOR RELATED PURPOSES.

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

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

11 65-1-8. (1) The * * * commission shall have the following
12 general powers, duties and responsibilities:

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

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

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

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

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

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

29 (2) In addition to the general powers, duties and
30 responsibilities listed in subsection (1) of this section,
31 the * * * commission shall have the following specific powers:

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

42 (b) To enforce by mandamus, or other proper legal
43 remedies, all legal rights or rights of action of the * * *
44 commission with other public bodies, corporations or persons;

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

61 supervisors, employees and the public may be issued under such
62 rules and regulations as the commission may determine;

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

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

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

92 (iii) Rural water districts, rural water systems,
93 nonprofit water associations and municipal public water systems in

94 municipalities with a population of ten thousand (10,000) or less,
95 according to the latest federal decennial census, shall not be
96 required to bear the cost and expense of removal and relocation of
97 water and sewer lines and facilities constructed or in place in
98 the rights-of-way of state highways. The cost and expense of such
99 removal and relocation, including any unpaid prior to July 1,
100 2002, shall be paid by the department * * *;

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

110 (f) To regulate and abandon grade crossings on any road
111 fixed as a part of the state highway system, and whenever the
112 commission, in order to avoid a grade crossing with the railroad,
113 locates or constructs said road on one side of the railroad, the
114 commission shall have the power to abandon and close such grade
115 crossing, and whenever an underpass or overhead bridge is
116 substituted for a grade crossing, the commission shall have power
117 to abandon such grade crossing and any other crossing adjacent
118 thereto. Included in the powers herein granted shall be the power
119 to require the railroad at grade crossings, where any road of the
120 state highway system crosses the same, to place and maintain
121 signal posts with lights or other warning devices, including
122 pavement markings and advance warning signs, at such crossings at
123 the expense of the railroad, and to regulate and abandon underpass
124 or overhead bridges and, where abandoned because of the
125 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 * * * 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 * * * 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

159 offices shall be set up, but a permanent status shall not be given
160 to any such offices until so provided by act of the Legislature
161 and in the meantime, all shops of the department shall be retained
162 at their present location. As many local or subdistrict offices,
163 shops or barns may be provided as is essential and proper to
164 economical maintenance of the state highway system;

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

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

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

187 (q) To cooperate with the Federal Highway
188 Administration in the matter of location, construction and
189 maintenance of the Great River Road, to expend such funds paid to
190 the commission by the Federal Highway Administration or other
191 federal agency, and to authorize the Transportation Department to

192 erect suitable signs marking this highway, the cost of such signs
193 to be paid from state highway funds other than earmarked
194 construction funds;

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

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

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

220 (u) To request and to accept the use of persons
221 convicted of an offense, whether a felony or a misdemeanor, for
222 work on any road construction, repair or other project of
223 the * * * department. The commission is also authorized to
224 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 * * * department. Such persons shall not be deemed agents, employees or involuntary servants of the * * * 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 * * * commission is further authorized, in its discretion, to expend funds for the purchase of service pins for employees of the * * * 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 * * * 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 * * * commission, in its discretion, may enter into agreements with any county, municipality, county

258 transportation commission, business, corporation, partnership,
259 association, individual or other legal entity, for the purpose of
260 accelerating the completion date of scheduled highway construction
261 projects.

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

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

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

289 (aa) The * * * commission, in its discretion, may
290 purchase employment practices liability insurance, and may

291 purchase an excess policy to cover catastrophic losses incurred
292 under the commission's self-insured workers' compensation program
293 authorized under Section 71-3-5. Such policies shall be written
294 by the agent or agents of a company or companies authorized to do
295 business in the State of Mississippi. The deductibles shall be in
296 an amount deemed reasonable and prudent by the commission, and the
297 premiums thereon shall be paid from the State Highway Fund.

298 Purchase of insurance under this paragraph shall not serve as an
299 actual or implied waiver of sovereign immunity or of any
300 protection afforded the commission under the Mississippi Tort
301 Claims Act;

302 (bb) The * * * commission is further authorized, in its
303 discretion, to expend funds for the purchase of promotional
304 materials for safety purposes, highway beautification purposes and
305 recruitment purposes.

306 **SECTION 2.** Section 65-1-70, Mississippi Code of 1972, is
307 amended as follows:

308 65-1-70. (1) The * * * department is authorized to construct
309 protective devices and warning devices at or in the vicinity of
310 any railroad crossing of a public highway under the jurisdiction
311 of any county or incorporated municipality, based upon a showing
312 of need resulting from a multidisciplinary study, whenever federal
313 funds are available for such construction. The department is
314 further authorized to supply, out of any available funds in the
315 State Highway Fund, a maximum of one percent (1%) of the funds
316 required for such construction if the county or incorporated
317 municipality in which the construction will be performed complies
318 with the necessary conditions for receipt of the balance of
319 federal matching funds for such construction.

320 (2) Notwithstanding the requirements of this section, the
321 local jurisdiction shall be responsible for paying the costs of
322 materials, installation, and continued maintenance of pavement
323 markings and advance warning signs at railroad crossings of a

public highway under local jurisdiction. The department and the
railroad company shall have funding responsibility for such
devices for railroad crossings of roads under the jurisdiction of
the department as part of the state designated highway system.
The department, through the commission, shall have the power to
require the railroad company to place and maintain warning
devices, including pavement markings and advance warning signs, at
grade crossings where any road on the state highway system crosses
the railroad at the expense of the railroad company. Funding
responsibilities for materials, installation and continued
maintenance of such devices, if the particular railroad crossing
involves roads under different jurisdictions shall be allocated
proportionately among the respective jurisdictions.

SECTION 3. Section 65-1-175, Mississippi Code of 1972, is amended as follows:

65-1-175. The jurisdiction of the * * * department * * * shall be exclusive with respect to public roadway/railroad crossings either at grade or otherwise except to the extent that its jurisdiction is preempted by valid federal statute, regulation or order.

The * * * department * * * shall have power, upon its own motion or upon complaint filed, after having made proper investigation, and after notice and hearing, if requested, to abolish any public roadway/railroad crossing heretofore or hereafter established, to vacate and close that part of the roadway on such crossing abolished, and to erect barricades across the roadway in such a manner as to prevent the use of such crossing as a roadway, when, in the opinion of the department, the public convenience served by the crossing in question is not such as to justify the further retention thereof. In any event, if a roadway/railway crossing is the subject of closure proceedings, both the local governmental entity and the rail carrier shall be

356 given formal written notice by the department before any hearing
357 is conducted by the department.

358 The * * * department * * * shall have power, upon its own
359 motion, or upon complaint, and after having made proper
360 investigation and after notice and hearing, if requested, to
361 require the installation of adequate and appropriate luminous
362 reflective warning signs, luminous flashing signals, crossing
363 gates illuminated at night, or other warning devices in order to
364 promote the health and safety of the public. Luminous flashing
365 signals or crossing gate devices heretofore installed at grade
366 crossings and those installations hereafter approved by the
367 department shall be deemed adequate and appropriate. The
368 department shall have authority to determine the number, type and
369 location of such signs, signals, gates or other protective devices
370 which shall conform as near as may be with generally recognized
371 national standards, and the department shall have authority to
372 prescribe the division of the cost of the installation and
373 subsequent maintenance of such signs, signals, gates or other
374 warning devices between the rail carrier or carriers, the public
375 highway authority in interest and the * * * department. * * *

376 Nothing in this section shall be construed as amending,
377 repealing or modifying any duty or responsibility that railroads
378 had, if any, immediately before the effective date of this act
379 with regard to any applicable state or federal laws, statutes,
380 regulations or orders pertaining to the maintenance of signals,
381 signs and warning devices at roadway/railroad crossings.

382 **SECTION 4.** Section 63-3-305, Mississippi Code of 1972, is
383 amended as follows:

384 63-3-305. Local authorities in their respective
385 jurisdictions shall place and maintain such traffic control
386 devices upon highways under their jurisdiction as they may deem
387 necessary to indicate and to carry out the provisions of this
388 chapter or provisions of local traffic ordinances or to regulate,

389 warn or guide traffic, including pavement markings and advance
390 warning signs at public railroad crossings. All such
391 traffic-control devices hereafter erected shall conform to the
392 state manual and specifications, including the current Manual on
393 Uniform Traffic Control Devices.

394 Local authorities in exercising those functions referred to
395 in the preceding paragraph shall be subject to the direction and
396 control of the Mississippi Transportation Commission.

397 **SECTION 5.** Section 77-9-252, Mississippi Code of 1972, is
398 amended as follows:

399 77-9-252. (1) Any developer, corporation, individual or
400 other private entity requesting or applying for a new public
401 railroad grade crossing shall be responsible for all costs for
402 installing and maintaining appropriate warning devices, for
403 installing and maintaining appropriate crossing surfaces and
404 approaches, for establishing appropriate crossing profiles and for
405 obtaining easements to maintain sight distance as deemed necessary
406 for such crossing by a diagnostic survey team comprised of the
407 Mississippi Department of Transportation Rails Engineer, a
408 representative from the Federal Highway Administration, a
409 representative of the affected railroad company and a
410 representative of the affected local governmental jurisdiction.

411 (2) When an existing private railroad grade crossing
412 maintained for or by a private party is requested to become a
413 publicly maintained railroad grade crossing, or when an existing
414 private railroad grade crossing maintained for or by a private
415 party is permitted by that party to be used as a public railroad
416 grade crossing, the private party shall be responsible for all
417 costs for installing and maintaining warning devices, for
418 replacing or modifying crossing surfaces and approaches as
419 appropriate, for establishing appropriate crossing profiles and
420 for obtaining easements to maintain sight distances as deemed
421 necessary by the diagnostic survey team described in subsection

422 (1) of this section for safety of the traveling public at such
423 crossing before opening such crossing to the public. As used in
424 this section, the term "private railroad grade crossing" means any
425 privately maintained road or street not under the jurisdiction of
426 a public entity that crosses a railroad, and which is permitted by
427 a private railroad company or by other agreement, deed or law to
428 cross its railroad tracks and right-of-way.

429 (3) Any developer, corporation, individual or other private
430 entity requesting or applying for a new public railroad grade
431 crossing or for conversion of an existing private railroad grade
432 crossing to a public railroad grade crossing, at the time of the
433 request or application, shall notify the local roadway authority
434 and the Mississippi Department of Transportation of such request
435 or application.

436 **SECTION 6.** Section 97-25-5, Mississippi Code of 1972, is
437 amended as follows:

438 97-25-5. If any person shall willfully obliterate, injure or
439 destroy any railroad-gate, warning-strings, cattle-gap or any
440 board or sign erected or maintained by a railroad company or
441 public highway authority in pursuance of law, he shall be fined
442 not less than One Hundred Dollars (\$100.00) nor more than Five
443 Hundred Dollars (\$500.00), or be imprisoned in the county jail not
444 exceeding three (3) months, or both.

445 **SECTION 7.** This act shall take effect and be in force from
446 and after its passage.