

By: Representative Mayo

To: Transportation

HOUSE BILL NO. 839

1 AN ACT TO AMEND SECTION 65-1-8, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION SHALL PAY FOR THE  
3 REQUIRED REMOVAL AND RELOCATION OF UTILITY POLES OWNED BY  
4 MUNICIPALITIES WITH A POPULATION OF TEN THOUSAND OR LESS; AND FOR  
5 RELATED PURPOSES.

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

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

9 65-1-8. (1) The Mississippi Transportation Commission shall  
10 have the following general powers, duties and responsibilities:

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

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

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

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

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

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

27 (2) In addition to the general powers, duties and  
28 responsibilities listed in subsection (1) of this section, the

29 Mississippi Transportation Commission shall have the following  
30 specific powers:

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

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

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

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

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

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

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

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

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

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

111 (v) Utility poles owned by municipalities with a  
112 population of ten thousand (10,000) or less, according to the  
113 latest federal decennial census, shall not be required to bear the  
114 cost and expense of removal and relocation of utility poles  
115 constructed or in place in the rights-of-way of state highways.  
116 The cost and expense of such removal and relocation, including any  
117 unpaid costs prior to July 1, 2005, shall be paid by the  
118 Department of Transportation;

119 (f) To regulate and abandon grade crossings on any road  
120 fixed as a part of the state highway system, and whenever the  
121 commission, in order to avoid a grade crossing with the railroad,  
122 locates or constructs said road on one side of the railroad, the  
123 commission shall have the power to abandon and close such grade  
124 crossing, and whenever an underpass or overhead bridge is  
125 substituted for a grade crossing, the commission shall have power  
126 to abandon such grade crossing and any other crossing adjacent  
127 thereto. Included in the powers herein granted shall be the power

128 to require the railroad at grade crossings, where any road of the  
129 state highway system crosses the same, to place signal posts with  
130 lights or other warning devices at such crossings at the expense  
131 of the railroad, and to regulate and abandon underpass or overhead  
132 bridges and, where abandoned because of the construction of a new  
133 underpass or overhead bridge, to close such old underpass or  
134 overhead bridge, or, in its discretion, to return the same to the  
135 jurisdiction of the county board of supervisors;

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

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

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

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

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

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

158 (m) To provide for the purchase of necessary equipment  
159 and vehicles and to provide for the repair and housing of same, to  
160 acquire by gift, purchase, condemnation or otherwise, land or

161 lands and buildings in fee simple, and to authorize the  
162 Transportation Department to construct, lease or otherwise provide  
163 necessary and proper permanent district offices for the  
164 construction and maintenance divisions of the department, and for  
165 the repair and housing of the equipment and vehicles of the  
166 department; however, in each Supreme Court district only two (2)  
167 permanent district offices shall be set up, but a permanent status  
168 shall not be given to any such offices until so provided by act of  
169 the Legislature and in the meantime, all shops of the department  
170 shall be retained at their present location. As many local or  
171 subdistrict offices, shops or barns may be provided as is  
172 essential and proper to economical maintenance of the state  
173 highway system;

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

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

188           (p) Unless otherwise prohibited by law, to make such  
189 contracts and execute such instruments containing such reasonable  
190 and necessary appropriate terms, provisions and conditions as in  
191 its absolute discretion it may deem necessary, proper or  
192 advisable, for the purpose of obtaining or securing financial  
193 assistance, grants or loans from the United States of America or

194 any department or agency thereof, including contracts with several  
195 counties of the state pertaining to the expenditure of such funds;

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

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

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

222 (t) To provide for the placement, erection and  
223 maintenance of motorist services business signs and supports  
224 within state highway rights-of-way in accordance with current  
225 state and federal laws and regulations governing the placement of  
226 traffic control devices on state highways, and to establish and

227 collect reasonable fees from the businesses having information on  
228 such signs;

229           (u) To request and to accept the use of persons  
230 convicted of an offense, whether a felony or a misdemeanor, for  
231 work on any road construction, repair or other project of the  
232 Transportation Department. The commission is also authorized to  
233 request and to accept the use of persons who have not been  
234 convicted of an offense but who are required to fulfill certain  
235 court-imposed conditions pursuant to Section 41-29-150(d)(1) or  
236 99-15-26, Mississippi Code of 1972, or the Pretrial Intervention  
237 Act, being Sections 99-15-101 through 99-15-127, Mississippi Code  
238 of 1972. The commission is authorized to enter into any  
239 agreements with the Department of Corrections, the State Parole  
240 Board, any criminal court of this state, and any other proper  
241 official regarding the working, guarding, safekeeping, clothing  
242 and subsistence of such persons performing work for the  
243 Transportation Department. Such persons shall not be deemed  
244 agents, employees or involuntary servants of the Transportation  
245 Department while performing such work or while going to and from  
246 work or other specified areas;

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

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

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



260 and assessments shall be transferred daily to the State Tax  
261 Commission;

262 (y) The Mississippi Transportation Commission may  
263 delegate the authority to enter into a supplemental agreement to a  
264 contract previously approved by the commission if the supplemental  
265 agreement involves an additional expenditure not to exceed One  
266 Hundred Thousand Dollars (\$100,000.00);

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

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

290 (iii) In considering whether to enter into such an  
291 agreement, the commission shall consider the availability of  
292 financial resources, the effect of such agreement on other ongoing

293 highway construction, the urgency of the public's need for swift  
294 completion of the project and any other relevant factors.

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

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

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

318 **SECTION 2.** This act shall take effect and be in force from  
319 and after July 1, 2005.