

By: Senator(s) Browning

To: Municipalities; Highways
and Transportation

SENATE BILL NO. 2776

1 AN ACT TO AMEND SECTION 65-1-8, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT MUNICIPAL PUBLIC ELECTRICAL SYSTEMS IN MUNICIPALITIES
3 WITH A POPULATION OF 10,000 OR LESS SHALL NOT BE REQUIRED TO BEAR
4 THE COST AND EXPENSE OF REMOVAL AND RELOCATION OF THEIR FACILITIES
5 FROM THE RIGHTS-OF-WAY OF STATE HIGHWAYS; TO PROVIDE THAT THE COST
6 AND EXPENSE OF SUCH REMOVAL SHALL BE PAID BY THE MISSISSIPPI
7 DEPARTMENT OF TRANSPORTATION; 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 Mississippi Transportation Commission shall
12 have the following 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, the
31 Mississippi Transportation Commission shall have the following
32 specific powers:

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

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

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

62 enacted, or with any ordinance of municipalities. A monthly
63 publication giving general information to the boards of
64 supervisors, employees and the public may be issued under such
65 rules and regulations as the commission may determine;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

190 (p) Unless otherwise prohibited by law, to make such
191 contracts and execute such instruments containing such reasonable
192 and necessary appropriate terms, provisions and conditions as in

193 its absolute discretion it may deem necessary, proper or
194 advisable, for the purpose of obtaining or securing financial
195 assistance, grants or loans from the United States of America or
196 any department or agency thereof, including contracts with several
197 counties of the state pertaining to the expenditure of such funds;

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

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

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

224 (t) To provide for the placement, erection and
225 maintenance of motorist services business signs and supports

226 within state highway rights-of-way in accordance with current
227 state and federal laws and regulations governing the placement of
228 traffic control devices on state highways, and to establish and
229 collect reasonable fees from the businesses having information on
230 such signs;

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

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

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

255 (x) To cooperate with the State Tax Commission by
256 providing for weight enforcement field personnel to collect and
257 assess taxes, fees and penalties and to perform all duties as
258 required pursuant to Section 27-55-501 et seq., Sections 27-19-1

259 et seq., 27-55-1 et seq., 27-59-1 et seq. and 27-61-1 et seq.,
260 Mississippi Code of 1972, with regard to vehicles subject to the
261 jurisdiction of the Office of Weight Enforcement. All collections
262 and assessments shall be transferred daily to the State Tax
263 Commission;

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

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

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

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

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

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

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

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