

By: Representative Warren

To: Public Utilities

HOUSE BILL NO. 567

1 AN ACT TO REENACT SECTIONS 77-1-1 THROUGH 77-1-6, 77-1-11,
2 77-1-15 THROUGH 77-1-21, 77-1-25 THROUGH 77-1-43, 77-1-47 AND
3 77-1-49, MISSISSIPPI CODE OF 1972, WHICH CREATE THE PUBLIC SERVICE
4 COMMISSION AND PRESCRIBE ITS POWERS AND DUTIES; TO AMEND SECTION
5 77-1-51, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL ON
6 THOSE SECTIONS ESTABLISHING THE PUBLIC SERVICE COMMISSION; AND FOR
7 RELATED PURPOSES.

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

9 **SECTION 1.** Section 77-1-1, Mississippi Code of 1972, is
10 reenacted as follows:

11 77-1-1. A public service commission, hereinafter referred to
12 in this chapter as the commission, is hereby created, consisting
13 of three (3) members, one (1) to be elected from each of the three
14 (3) Supreme Court districts by the qualified electors of such
15 district. Elections for such officers shall be held in the
16 general election in November, 1959, and every four (4) years
17 thereafter, and the terms of office of the three (3) commissioners
18 elected at the general election in November, 1959, shall expire on
19 December 31, 1963.

20 The commissioners shall each receive a yearly salary fixed by
21 the Legislature, payable monthly.

22 The commissioners shall each possess the qualifications
23 prescribed for the Secretary of State. The commissioners shall
24 not operate, own any stock in, or be in the employment of any
25 common or contract carrier by motor vehicle, telephone company,
26 gas or electric utility company, or any other public utility that
27 shall come under their jurisdiction or supervision.

28 **SECTION 2.** Section 77-1-3, Mississippi Code of 1972, is
29 reenacted as follows:

30 77-1-3. The commission shall have a seal, having around the
31 margin the words "Mississippi Public Service Commission," and in
32 the center such device as it may select. The acts of the
33 commission shall be authenticated by its seal.

34 **SECTION 3.** Section 77-1-5, Mississippi Code of 1972, is
35 reenacted as follows:

36 77-1-5. The commission shall keep an office in the City of
37 Jackson, which shall be kept open Monday through Friday of each
38 week for eight (8) hours each day. The commission shall meet at
39 its office on the first Tuesday of each month and at such other
40 times and places as its duties may require. The commission may
41 sit from day to day and from time to time, and any meeting may be
42 pretermitted not exceeding two (2) in any year.

43 The members of the commission shall devote their entire time
44 to the performance of their official duties on every business day,
45 except on the legal holidays enumerated in Section 3-3-7,
46 Mississippi Code of 1972. However, official acts of the
47 commission done on legal holidays shall be valid.

48 The commission shall keep regular minutes of its proceedings,
49 which shall be a public record, and all orders, findings and acts
50 of the commission shall be entered on the minutes.

51 Two (2) members of the commission shall be a quorum.

52 **SECTION 4.** Section 77-1-6, Mississippi Code of 1972, is
53 reenacted as follows:

54 77-1-6. There is hereby established in the State Treasury a
55 special fund to be known as the "Public Service Commission
56 Regulation Fund." Such fund shall be the sole fund of the
57 commission for all monies collected and deposited to the credit of
58 or appropriated to the commission. The fund shall be administered
59 as provided in this title and shall be audited annually by the
60 State Auditor.

61 **SECTION 5.** Section 77-1-11, Mississippi Code of 1972, is
62 reenacted as follows:

63 77-1-11. (1) It shall be unlawful for any Public Service
64 Commissioner, any candidate for Public Service Commissioner, or
65 any employee of the Public Service Commission or Public Utilities
66 Staff to knowingly accept any gift, pass, money, campaign
67 contribution or any emolument or other pecuniary benefit
68 whatsoever, either directly or indirectly, from any person
69 interested as owner, agent or representative, or from any person
70 acting in any respect for such owner, agent or representative of
71 any common or contract carrier by motor vehicle, telephone
72 company, gas or electric utility company, or any other public
73 utility that shall come under the jurisdiction or supervision of
74 the Public Service Commission. Any person found guilty of
75 violating the provisions of this subsection shall immediately
76 forfeit his or her office or position and shall be fined not less
77 than Five Thousand Dollars (\$5,000.00), imprisoned in the State
78 Penitentiary for not less than one (1) year, or both.

79 (2) It shall be unlawful for any person interested as owner,
80 agent or representative, or any person acting in any respect for
81 such owner, agent or representative of any common or contract
82 carrier by motor vehicle, telephone company, gas or electric
83 utility, or any other public utility that shall come under the
84 jurisdiction or supervision of the Public Service Commission to
85 offer any gift, pass, money, campaign contribution or any
86 emolument or other pecuniary benefit whatsoever to any Public
87 Service Commissioner, any candidate for Public Service
88 Commissioner or any employee of the Public Service Commission or
89 Public Utilities Staff. Any party found guilty of violating the
90 provisions of this subsection shall be fined not less than Five
91 Thousand Dollars (\$5,000.00), or imprisoned in the State
92 Penitentiary for not less than one (1) year, or both.

93 (3) For purposes of this section the term "emolument" shall
94 include salary, donations, contributions, loans, stock tips,
95 vacations, trips, honorarium, directorships or consulting posts.

96 Expenses associated with social occasions afforded public servants
97 shall not be deemed a gift, emolument or other pecuniary benefit
98 as defined in Section 25-4-103(k), Mississippi Code of 1972.

99 (4) For purposes of this section, a person who is a member
100 of a water, gas, electric or other cooperative association
101 regulated by the Public Service Commission shall not, by virtue of
102 such membership, be deemed an owner, agent or representative of
103 such association unless such person is acting in any respect for
104 or as an owner, agent or representative of such association; nor
105 shall a person who owns less than one-half of one percent (1/2 of
106 1%) in stock, the value thereof not to exceed Ten Thousand Dollars
107 (\$10,000.00), of any public utility that is regulated by the
108 Public Service Commission, or of any holding company of such
109 public utility, by virtue of such ownership, be deemed an owner,
110 agent or representative of such public utility unless such person
111 is acting in any respect for or as an owner, agent or
112 representative of such public utility.

113 **SECTION 6.** Section 77-1-15, Mississippi Code of 1972, is
114 reenacted as follows:

115 77-1-15. (1) There shall be an executive secretary of the
116 commission, hereinafter referred to in this chapter as the
117 secretary, to be appointed by the commission, by and with the
118 advice and consent of the Senate, for the term of the
119 commissioners. The secretary must have the same qualifications as
120 the commissioners and shall be subject to the same
121 disqualifications and to like penalties, except that he shall not
122 be liable to impeachment. He shall receive a salary fixed by the
123 Legislature. He shall take the oath of office and shall be
124 removable at the pleasure of the commission, which may fill any
125 vacancy until the Senate confirms a successor. The secretary
126 shall make bond as provided for other state officers, in the sum
127 of Ten Thousand Dollars (\$10,000.00), conditioned upon the
128 faithful performance of the duties of his office.

129 (2) The secretary shall collect all fees and penalties
130 collected by or paid to the commission, and shall cover the same
131 into the State Treasury; and all fees and penalties collected
132 under the Mississippi Motor Carrier Regulatory Law of 1938 shall
133 be covered into the Public Service Commission Regulation Fund.

134 (3) The secretary of the commission shall be the custodian
135 of all records, documents, and the seal of the commission. He
136 shall issue all citations, subpoenas and other rightful orders and
137 documents, and perform all other duties usually required of such
138 officer, and as required by the commission.

139 (4) It shall be the duty and responsibility of the secretary
140 to supervise and manage the offices and staff of the Public
141 Service Commission and formulate written policies and procedures
142 for the effective and efficient operation of the office and
143 present these policies and procedures to the board for
144 promulgation.

145 **SECTION 7.** Section 77-1-17, Mississippi Code of 1972, is
146 reenacted as follows:

147 77-1-17. The commission is hereby authorized to employ for
148 the term of the commissioners a competent rate expert at a salary
149 fixed by the commission, and an assistant rate expert at a salary
150 fixed by the commission, for the collection of data and evidence
151 for the use of the state in protecting the interest of the state
152 involving duties and obligations of all common carriers, all
153 common carriers by motor vehicle, all restricted common carriers
154 by motor vehicle, and all contract carriers by motor vehicle, and
155 for the establishment of proof in litigation now pending or which
156 may hereafter be instituted.

157 The rate expert and his assistant shall make all needed
158 investigations affecting rates and rate making and shall perform
159 such other duties as the commission may find necessary for them to
160 do in the interest of the state.

161 Said duties shall also include the checking and investigating
162 of the filing of rate schedules with the commission, and making of
163 reports to the commission respecting tariffs filed by any of the
164 above-mentioned carriers with the commission involving the
165 increase of any rates for movements within the State of
166 Mississippi, and the general checking and reports to the
167 commission affecting any rates increased from points without the
168 State of Mississippi to points within the State of Mississippi,
169 and from points in the State of Mississippi to points without the
170 State of Mississippi. Said rate experts may be discharged by the
171 commission for incompetency or other good cause, but they shall
172 have notice and an opportunity to be heard in respect to any
173 charge for removal.

174 **SECTION 8.** Section 77-1-19, Mississippi Code of 1972, is
175 reenacted as follows:

176 77-1-19. The commission is authorized to employ the
177 following additional employees to carry out and enforce the
178 provisions of the Motor Carrier Regulatory Law of 1938:

179 (a) An assistant secretary and two (2)
180 stenographer-clerks;

181 (b) One (1) combined bookkeeper and stenographer;

182 (c) One (1) stenographer competent to serve as a
183 reporter of evidence taken before the commission; and

184 (d) Twelve (12) additional employees, which includes
185 seven (7) employees to be transferred from the utility department
186 to the motor carrier department to perform the duties of the
187 commission imposed upon it by the provisions of said Motor Carrier
188 Regulatory Law.

189 **SECTION 9.** Section 77-1-21, Mississippi Code of 1972, is
190 reenacted as follows:

191 77-1-21. (1) For the purpose of enforcing the provisions of
192 the Mississippi Motor Carrier Regulatory Law of 1938, the
193 Mississippi Department of Transportation is authorized to employ,

194 in addition to personnel already employed by the department, one
195 (1) chief enforcement officer and twenty-one (21) inspectors, who
196 shall be under the management of the department. The chief
197 enforcement officer and the inspectors shall devote their full
198 time to the performance of their duties and shall take an oath
199 faithfully to perform the duties of their position. The
200 department shall require bonds to be carried on such employees as
201 the department may deem necessary, the cost thereof to be paid by
202 the department. The chief enforcement officer and inspectors
203 shall be qualified by experience and training in law enforcement
204 or investigative work, and shall attend and satisfactorily
205 complete an appropriate course of instruction established by the
206 Commissioner of Public Safety at the Law Enforcement Officers
207 Training Academy. The chief enforcement officer and the
208 inspectors referred to in this section shall be selected after an
209 examination as to physical and mental fitness. Such employees
210 shall be citizens of the United States and the State of
211 Mississippi, and of good moral character. All such members of
212 staff shall be appointed by the Mississippi Department of
213 Transportation and shall be subject to removal at any time by the
214 department.

215 (2) The Public Service Commission shall transfer all
216 employees, equipment, inventory and resources of the commission
217 employed and used to enforce the Motor Carrier Regulatory Law of
218 1938 to the Mississippi Department of Transportation on July 1,
219 2004. The transfer of personnel shall be commensurate with the
220 number and classification of positions allocated to that law
221 enforcement. The transfer also shall include direct support,
222 clerical, data processing and communications positions allocated
223 to that law enforcement.

224 (3) The Public Service Commission shall transfer to the
225 Mississippi Department of Transportation each year the amount of
226 funds necessary to support the law enforcement functions being

227 performed for the commission by the department, as specified in
228 the appropriation bill for the Public Service Commission.

229 (4) Any reference in any statute, rule or regulation to law
230 enforcement duties being performed by the Public Service
231 Commission shall be construed to mean law enforcement duties being
232 performed for the commission by the Mississippi Department of
233 Transportation.

234 **SECTION 10.** Section 77-1-25, Mississippi Code of 1972, is
235 reenacted as follows:

236 77-1-25. No member of the staff of the commission, or any
237 other person, shall use uniforms, material, or equipment of the
238 commission for private or political purposes. Members of the
239 staff of the commission may be candidates for political office but
240 must take a leave of absence to do so. Members of the staff of
241 the commission may take part in political campaigns other than
242 campaigns for Public Service Commission but may not solicit or
243 receive campaign contributions from regulated utilities. Anyone
244 violating the provisions of this section shall be guilty of a
245 misdemeanor and, upon conviction, shall be punished as provided by
246 law and shall be dismissed from the staff of the commission.

247 **SECTION 11.** Section 77-1-27, Mississippi Code of 1972, is
248 reenacted as follows:

249 77-1-27. All commission employees provided for in this
250 chapter, and the reasonable and necessary expenses of the
251 administration of the duties imposed on the commission by the
252 Motor Carrier Regulatory Law of 1938, shall be paid out of the
253 appropriations made to defray the expenses of the commission, upon
254 requisitions and warrants in the same manner provided by law for
255 the disbursements of appropriations for the commission. An
256 itemized account shall be kept of all receipts and expenditures
257 and shall be reported to the Legislature by the commission.

258 **SECTION 12.** Section 77-1-29, Mississippi Code of 1972, is
259 reenacted as follows:

260 77-1-29. On or before the twentieth day of each calendar
261 month, the commission shall pay into the State Treasury to the
262 account of the "Public Service Commission Regulation Fund" all
263 monies collected by it during the preceding calendar month,
264 showing from whom collected, when collected and for what purposes
265 collected. All disbursements made by the commission or from the
266 regulation fund for any purposes, other than for salaries provided
267 by law, shall be supported by a detailed and itemized statement
268 approved by the commission for commission disbursements. The
269 commission shall not expend funds from the "Public Service
270 Commission Regulation Fund" to employ personnel whose services
271 would duplicate services provided by any employee of the Public
272 Utilities Staff.

273 **SECTION 13.** Section 77-1-31, Mississippi Code of 1972, is
274 reenacted as follows:

275 77-1-31. The commission shall keep a docket of petitions and
276 complaints, which shall be entered in regular order. The docket
277 shall be called at each regular meeting of the board, and the
278 cases thereon disposed of, or, if necessary, continued until the
279 next meeting.

280 **SECTION 14.** Section 77-1-33, Mississippi Code of 1972, is
281 reenacted as follows:

282 77-1-33. In any matter of inquiry pending before the
283 commission or any member thereof, subpoenas for witnesses, and
284 subpoenas duces tecum, may be issued by the secretary, under seal,
285 or by any member without the seal, and shall be executed and
286 returned by any sheriff, constable, or marshal, under the like
287 penalties of law for failure to execute and return the process of
288 the circuit court. If any person duly summoned to appear and
289 testify before the commission, or before any one or more of the
290 commissioners, shall fail or refuse to appear and testify, or to
291 bring and produce, as commanded, any book, paper, or document,
292 without a lawful excuse, or shall refuse to answer any proper

293 question propounded to him by the commission or any of the
294 commissioners, or if any person shall obstruct the commission, or
295 one or more of the commissioners in the discharge of duty, or
296 shall conduct himself in a rude, disrespectful, or disorderly
297 manner before the commission deliberating in the discharge of
298 duty, such witness or person shall be guilty of a misdemeanor,
299 and, upon conviction, shall be fined not more than One Thousand
300 Dollars (\$1,000.00), or be imprisoned in the county jail for a
301 period not exceeding six (6) months, or both.

302 **SECTION 15.** Section 77-1-35, Mississippi Code of 1972, is
303 reenacted as follows:

304 77-1-35. The several members of the commission and the
305 secretary may, in the discharge of their duties, administer oaths
306 and take affidavits. The commission and each member thereof may
307 examine witnesses under oath in all matters coming before them.
308 If any person shall testify falsely, or make any false affidavit
309 or oath before the commission, or before any of the commissioners,
310 or before any officer, to any matter coming before the commission,
311 he shall be guilty of perjury, and, upon conviction, shall be
312 punished according to law.

313 **SECTION 16.** Section 77-1-37, Mississippi Code of 1972, is
314 reenacted as follows:

315 77-1-37. Witnesses summoned to appear before the commission
316 shall be entitled to the same per diem and mileage as witnesses
317 attending the circuit court. Witnesses summoned by the commission
318 on its behalf shall be paid as are other expenditures of the
319 commission, upon the certificate of the commission showing the
320 amount to which such witness may be entitled. Witnesses summoned
321 for any carrier shall be paid by it.

322 **SECTION 17.** Section 77-1-39, Mississippi Code of 1972, is
323 reenacted as follows:

324 77-1-39. In all cases where the testimony of witnesses is
325 given orally before the commission any interested party or the

326 commission shall have the right to have said testimony taken down
327 and transcribed by a stenographer or court reporter, who is not an
328 employee of the commission, to be agreed upon by the parties or
329 appointed by the commission. The stenographer or court reporter
330 so employed shall be duly sworn and his or her certificate that
331 the transcript of such evidence is correct together with the
332 official certificate of any one (1) of the commissioners that he
333 has read the same and that it is in his opinion correct shall
334 entitle such transcript or a certified copy thereof to be received
335 in evidence on any appeal or in any court in this state subject
336 only to any objection that the same is not relevant or material.
337 The stenographer or court reporter shall be paid in accordance
338 with the provisions of Section 9-13-33. The commission shall have
339 the right to require any party demanding an official stenographer
340 to guarantee or prepay the costs thereof in all proper cases.

341 **SECTION 18.** Section 77-1-41, Mississippi Code of 1972, is
342 reenacted as follows:

343 77-1-41. All findings of the commission and the
344 determination of every matter by it shall be made in writing and
345 placed upon its minutes. Proof thereof shall be made by a copy of
346 the same duly certified by the secretary under the seal of the
347 commission. Whenever any matter has been determined by the
348 commission, in the course of any proceeding before it the fact of
349 such determination, duly certified, shall be received in all
350 courts and by every officer in civil cases as prima facie evidence
351 that such determination was right and proper. The record of the
352 proceedings of the commission shall be deemed a public record, and
353 shall at all reasonable times be subject to the inspection of the
354 public.

355 **SECTION 19.** Section 77-1-43, Mississippi Code of 1972, is
356 reenacted as follows:

357 77-1-43. (1) The commission may apply to the circuit or
358 chancery court, by proper proceeding, for aid in the enforcement

359 of obedience to its process, and to compel compliance with the law
360 and its lawful orders, decisions, and determinations. Said courts
361 shall have jurisdiction to grant aid and relief in such cases,
362 subject to the right of appeal to the Supreme Court by the party
363 aggrieved. The Attorney General, or district attorney in his
364 district, shall institute such proceedings in the name of the
365 commission.

366 (2) Any action for violation of the law, or for the
367 violation of any lawful rule, regulation or order of the
368 commission may be instituted by the commission or by the Attorney
369 General in any court of competent jurisdiction.

370 (3) The remedies given by this chapter against all carriers
371 under the supervision of the commission, are cumulative to those
372 now in existence by law.

373 **SECTION 20.** Section 77-1-47, Mississippi Code of 1972, is
374 reenacted as follows:

375 77-1-47. Appeals from any final finding, order or judgment
376 of the commission shall be taken and perfected by the filing of a
377 bond in the sum of Five Hundred Dollars (\$500.00) with two (2)
378 sureties, or with a surety company qualified to do business in
379 Mississippi as the surety, conditioned to pay the cost of such
380 appeal. Said bond shall be approved by the chairman or secretary
381 of the commission, or by the judge of the court to which such
382 appeal is taken in case the chairman or secretary of the
383 commission refuses to approve a proper bond tendered to them
384 within the time limited for taking appeals. The commission may
385 grant a supersedeas bond on any appeal, in such penalty and with
386 such surety thereon as it may deem sufficient, and may, during the
387 pendency of any appeal, at any time, require the increase of any
388 such supersedeas bond or additional securities thereon. The judge
389 of the circuit court of Hinds County may on petition therefor by
390 any party entitled to an appeal, presented to him within six (6)
391 months of the date of the final finding, order, or judgment of the

392 commission appealed from, award a writ of supersedeas to any such
393 final finding, order, or judgment of the commission, upon the
394 filing of a supersedeas bond in an amount to be fixed by said
395 judge. All appeal bonds for the payment of costs, and all
396 supersedeas bonds, shall be made payable to the state and may be
397 enforced in the name of the state by motion or other legal
398 proceedings or remedy in any circuit court of this state having
399 jurisdiction of a motion or action on such bond, and the process
400 and proceedings thereon shall be as provided by law upon bonds of
401 like character required and taken by any court of this state.
402 Such circuit court may render and enter like judgments upon such
403 bonds as may, by law, be rendered and entered upon bonds of like
404 character, and process of execution shall issue upon such
405 judgments, and may be levied and executed as provided by law in
406 other cases.

407 **SECTION 21.** Section 77-1-49, Mississippi Code of 1972, is
408 reenacted as follows:

409 77-1-49. The commission shall make a report every year to
410 the Legislature of all its acts and doings for the preceding
411 fiscal year.

412 **SECTION 22.** Section 77-1-51, Mississippi Code of 1972, is
413 amended as follows:

414 77-1-51. Sections 77-1-1 through 77-1-49, Mississippi Code
415 of 1972, which create the Public Service Commission and prescribe
416 its powers and duties, shall stand repealed as of December 31,
417 2008.

418 **SECTION 23.** The Attorney General of the State of Mississippi
419 shall submit this act, immediately upon approval by the Governor,
420 or upon approval by the Legislature subsequent to a veto, to the
421 Attorney General of the United States or to the United States
422 District Court for the District of Columbia in accordance with the
423 provisions of the Voting Rights Act of 1965, as amended and
424 extended.

425 **SECTION 24.** This act shall take effect and be in force from
426 and after July 1, 2006, if it is effectuated on or before that
427 date under Section 5 of the Voting Rights Act of 1965, as amended
428 and extended. If it is effectuated under Section 5 of the Voting
429 Rights Act of 1965, as amended and extended, after July 1, 2006,
430 this act shall take effect and be in force from and after the date
431 it is effectuated under Section 5 of the Voting Rights Act of
432 1965, as amended and extended.