

By: Representative Davis

To: Transportation;  
Appropriations

## HOUSE BILL NO. 1086

1 AN ACT TO AMEND SECTION 57-43-15, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE THAT THE LEGISLATURE SHALL APPROPRIATE ONE MILLION  
3 DOLLARS EACH MONTH TO THE MISSISSIPPI HIGHWAY-RAILROAD GRADE  
4 CROSSING SAFETY ACCOUNT WITHIN THE RAILROAD REVITALIZATION FUND  
5 AND TO PRESCRIBE CERTAIN ADDITIONAL PURPOSES FOR WHICH MONIES IN  
6 THE ACCOUNT MAY BE EXPENDED; TO AMEND SECTION 65-1-175,  
7 MISSISSIPPI CODE OF 1972, TO DELETE THE REQUIREMENT FOR A PUBLIC  
8 HEARING BY THE MISSISSIPPI DEPARTMENT OF TRANSPORTATION BEFORE  
9 ABOLISHMENT OF A ROADWAY/RAILWAY CROSSING WHEN THE PUBLIC ROADWAY  
10 AUTHORITY VACATES THE ROADWAY; TO AMEND SECTION 77-9-481,  
11 MISSISSIPPI CODE OF 1972, TO AUTHORIZE INSPECTORS EMPLOYED BY THE  
12 MISSISSIPPI DEPARTMENT OF TRANSPORTATION TO ENFORCE GRADE CROSSING  
13 LAWS; TO AMEND SECTIONS 77-9-249 AND 63-9-11, MISSISSIPPI CODE OF  
14 1972, TO PRESCRIBE A PROCEDURE FOR A PERSON CONVICTED OF CERTAIN  
15 ROADWAY/RAILWAY TRAFFIC REGULATIONS TO HAVE THE RECORDS OF SUCH  
16 CONVICTION EXPUNGED UPON COMPLETION OF AN OPERATION LIFESAVER  
17 COURSE APPROVED BY THE MISSISSIPPI TRANSPORTATION COMMISSION; TO  
18 AMEND SECTIONS 97-25-4, 97-25-5 AND 97-25-35, MISSISSIPPI CODE OF  
19 1972, TO INCREASE PENALTIES AND REQUIRE RESTITUTION FOR CERTAIN  
20 CRIMES RELATING TO RAILROAD PROPERTY; AND FOR RELATED PURPOSES.

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

22 **SECTION 1.** Section 57-43-15, Mississippi Code of 1972, is  
23 amended as follows:

24 57-43-15. (1) There is established within the Railroad  
25 Revitalization Fund a new account to be entitled the Mississippi  
26 Highway-Railroad Grade Crossing Safety Account. The account shall  
27 be administered by the Mississippi Department of Transportation  
28 and shall consist of (a) One Million Dollars (\$1,000,000.00) each  
29 month appropriated by the Legislature from the State General Fund;  
30 and (b) thirty-five percent (35%) of collections from the  
31 locomotive fuel tax imposed under Section 27-59-307 for the  
32 previous year. Unexpended amounts remaining in the account at the  
33 end of a fiscal year shall not lapse into the State General Fund;  
34 and any interest earned on amounts in the account shall be  
35 deposited to the credit of the account.

36           (2) The Mississippi Department of Transportation, in  
37 cooperation with the railroads operating in Mississippi, shall  
38 promulgate rules to ensure equitable allocation of the funds  
39 described in subsection (1) of this section to projects throughout  
40 the state, and shall consider the proportionate number of main  
41 line track miles of each railroad and the number of public  
42 roadway/railroad grade crossings on each railroad's main line.  
43 Expenditure of monies from the Mississippi Highway-Railroad Grade  
44 Crossing Safety Account shall be limited to the following  
45 purposes:

46           (a) Financial aid for closure of public  
47 roadway/railroad grade crossings;

48           (b) Realignment of construction costs of roadways being  
49 rerouted to facilitate a closure of a public roadway/railroad  
50 grade crossing;

51           (c) Monies to match federal or other funds for a grade  
52 separation eliminating an at-grade crossing of a public roadway  
53 and railroad; \* \* \*

54           (d) Installation, maintenance or upgrade of  
55 highway-railroad grade crossing signals, at the discretion of the  
56 Mississippi Transportation Commission, based upon the Federal  
57 Railroad Administration ranking of all Mississippi  
58 highway-railroad grade crossings. Not less than ten percent (10%)  
59 of the monies necessary to defray the costs of such installations  
60 must be federal funds;

61           (e) Installation of appropriate warning signs. Not  
62 less than ten percent (10%) of the monies necessary to defray the  
63 costs of such installations must be federal funds;

64           (f) Separation of grades of highway/railroad crossings;

65           (g) Improvement of any grade crossing including the  
66 necessary roadway approaches thereto of any railroad across a  
67 public road highway;

68           (h) Construction, reconstruction, repair or replacement  
69 of the grade crossing surface structure; and

70           (i) Installation of an automatic advance warning signal  
71 alerting a motorist that a grade crossing is ahead.

72           (3) The Mississippi Department of Transportation shall  
73 consider all requests from the state's diagnostic review of public  
74 roadway/railroad grade crossings and from individual railroads for  
75 expenditure of funds for the purposes described in subsection (2)  
76 of this section, and shall establish uniform criteria and  
77 guidelines relating to such crossings and the expenditure of  
78 funds.

79           **SECTION 2.** Section 65-1-175, Mississippi Code of 1972,  
80 is amended as follows:

81           65-1-175. (1) The jurisdiction of the Mississippi  
82 Department of Transportation shall be exclusive with respect to  
83 public roadway/railroad crossings either at grade or otherwise  
84 except to the extent that its jurisdiction is preempted by valid  
85 federal statute, regulation or order.

86           (2) The Mississippi Department of Transportation shall have  
87 power, upon its own motion or upon complaint filed, after having  
88 made proper investigation, and after notice and hearing, if  
89 requested, to abolish any public roadway/railroad crossing  
90 heretofore or hereafter established, to vacate and close that part  
91 of the roadway on such crossing abolished, and to erect barricades  
92 across the roadway in such a manner as to prevent the use of such  
93 crossing as a roadway, when, in the opinion of the department, the  
94 public necessity served by the crossing in question is not such as  
95 to justify the further retention thereof. In any event, if a  
96 roadway/railway crossing is the subject of closure proceedings,  
97 both the local governmental entity and the rail carrier shall be  
98 given formal written notice by the department before any hearing  
99 is conducted by the department. However, a public hearing by the  
100 department to abolish a crossing shall not be required when the

101 public roadway authority in interest vacates the roadway. In such  
102 instances, the rail carrier, following notification to the  
103 department and roadway authority, shall remove any grade crossing  
104 warning devices and the grade crossing surface.

105       (3) The Mississippi Department of Transportation shall have  
106 power, upon its own motion, or upon complaint, and after having  
107 made proper investigation and after notice and hearing, if  
108 requested, to require the installation of adequate and appropriate  
109 luminous reflective warning signs, luminous flashing signals,  
110 crossing gates illuminated at night, or other warning devices in  
111 order to promote the health and safety of the public. Luminous  
112 flashing signals or crossing gate devices heretofore installed at  
113 grade crossings and those installations hereafter approved by the  
114 department shall be deemed adequate and appropriate. The  
115 department shall have authority to determine the number, type and  
116 location of such signs, signals, gates or other protective devices  
117 which shall conform as near as may be with generally recognized  
118 national standards, and the department shall have authority to  
119 prescribe the division of the cost of the installation and  
120 subsequent maintenance of such signs, signals, gates or other  
121 warning devices between the rail carrier or carriers, the public  
122 highway authority in interest and the Mississippi Department of  
123 Transportation. In no event shall any costs assessed against  
124 either the public highway authority in interest or the rail  
125 carrier exceed ten percent (10%) of the costs of the materials and  
126 installation.

127       (4) Nothing in this section shall be construed as amending,  
128 repealing or modifying any duty or responsibility that railroads  
129 had, if any, immediately before the effective date of this act  
130 with regard to any applicable state or federal laws, statutes,  
131 regulations or orders pertaining to the maintenance of signals,  
132 signs and warning devices at roadway/railroad crossings.

133           **SECTION 3.** Section 77-9-481, Mississippi Code of 1972, is  
134 amended as follows:

135           77-9-481. The inspectors, employed pursuant to the authority  
136 granted in Section 65-1-173, shall be responsible for enforcing  
137 and investigating all violations of the railroad laws, and the  
138 rules, regulations and general orders of the Mississippi  
139 Transportation Commission promulgated thereunder. In the  
140 performance of their duties such employees shall give particular  
141 attention to the enforcement of the commission's safety rules and  
142 regulations; blocking of rights-of-way; enforcement of grade  
143 crossing laws; the inspection of all equipment, rights-of-way,  
144 roadbed and tracks; and the requirement respecting certificate of  
145 public convenience and necessity, permits or other laws affecting  
146 the operation of the railroad.

147           **SECTION 4.** Section 77-9-249, Mississippi Code of 1972, is  
148 amended as follows:

149           77-9-249. (1) Whenever any person driving a vehicle  
150 approaches a railroad grade crossing under any of the  
151 circumstances stated in this subsection, the driver of such  
152 vehicle shall stop within fifty (50) feet but not less than  
153 fifteen (15) feet from the nearest rail of such railroad, and  
154 shall not proceed until he can do so safely. The foregoing  
155 requirements shall apply when one or more of the following  
156 circumstances exists:

157           (a) A clearly visible electric or mechanical signal  
158 device gives warning of the immediate approach of a railroad  
159 train; or

160           (b) A crossing gate is lowered or when a human flagman  
161 gives or continues to give a signal of the approach or passage of  
162 a railroad train; or

163           (c) A railroad train approaching within approximately  
164 nine hundred (900) feet of the highway crossing emits a signal in  
165 accordance with Section 77-9-225, and such railroad train, by

166 reason of its speed or nearness to such crossing, is an immediate  
167 hazard; or

168 (d) An approaching railroad train is plainly visible  
169 and is in hazardous proximity to such crossing.

170 (2) No person shall drive any vehicle through, around or  
171 under any crossing gate or barrier at a railroad crossing while  
172 such gate or barrier is closed or is being opened or closed.

173 (3) In the trial of all actions to recover personal injury  
174 or property damages, sustained by any driver of such vehicles for  
175 collision of said vehicle and train in which action it may appear  
176 that the said driver may have violated any of the provisions  
177 hereof, the question of whether or not the said violation was the  
178 sole or approximate cause of the accident and injury shall be for  
179 the jury to determine. The violation of this section shall not of  
180 itself defeat recovery, and the question of negligence or the  
181 violation aforesaid shall be left to the jury; and the comparative  
182 negligence statutes and prima facie statute of this state shall  
183 apply in these cases as in other cases of negligence.

184 (4) At any railroad grade crossing provided with visible  
185 railroad crossbuck signs without automatic electric or mechanical  
186 signal devices, crossing gates or a human flagman giving a signal  
187 of the approach or passage of a train, the driver of a vehicle  
188 shall, in obedience to such railroad crossbuck sign, yield the  
189 right-of-way and slow to a speed reasonable for the existing  
190 conditions, and shall stop if required for safety at a clearly  
191 marked stop line, or if no stop line, within fifty (50) feet, but  
192 not less than fifteen (15) feet, from the nearest rail of the  
193 railroad, and shall not proceed until he can do so safely.

194 (5) Every person, company or corporation violating the  
195 provisions of this section shall be guilty of a misdemeanor and,  
196 upon conviction, shall be fined not less than Two Hundred Fifty  
197 Dollars (\$250.00) nor more than Five Hundred Dollars (\$500.00), or

198 imprisoned not more than thirty (30) days, or both such fine and  
199 imprisonment, in the discretion of the court.

200 (6) A person convicted for a violation of this section may  
201 have the records of his conviction expunged upon satisfactory  
202 completion of an Operation Lifesaver course as provided under  
203 Section 63-9-11.

204 **SECTION 5.** Section 63-9-11, Mississippi Code of 1972, is  
205 amended as follows:

206 63-9-11. (1) It is a misdemeanor for any person to violate  
207 any of the provisions of Chapter 3, 5 or 7 of this title, unless  
208 such violation is by such chapters or other law of this state  
209 declared to be a felony.

210 (2) Every person convicted of a misdemeanor for a violation  
211 of any of the provisions of such chapters for which another  
212 penalty is not provided shall for first conviction thereof be  
213 punished by a fine of not more than One Hundred Dollars (\$100.00)  
214 or by imprisonment for not more than ten (10) days; for a second  
215 such conviction within one (1) year thereafter such person shall  
216 be punished by a fine of not more than Two Hundred Dollars  
217 (\$200.00) or by imprisonment for not more than twenty (20) days or  
218 by both such fine and imprisonment; upon a third or subsequent  
219 conviction within one (1) year after the first conviction such  
220 person shall be punished by a fine of not more than Five Hundred  
221 Dollars (\$500.00) or by imprisonment for not more than six (6)  
222 months or by both such fine and imprisonment.

223 (3) (a) Whenever a person not covered under Section 63-1-55  
224 is charged with a misdemeanor violation of any of the provisions  
225 of Chapter 3, 5 or 7 of this title or of Section 77-9-249, the  
226 person shall be eligible to participate in not less than four (4)  
227 hours of a traffic safety violator course and thereby have no  
228 record of the violation on the person's driving record if the  
229 person meets all the following conditions:

230 (i) The defendant has a valid Mississippi driver's  
231 license or permit.

232 (ii) The defendant has not had a conviction of a  
233 violation under Chapter 3, 5 or 7 of this title or of Section  
234 77-9-249 within three (3) years before the current offense; any  
235 conviction entered before October 1, 2002, for a violation under  
236 Chapter 3, 5 or 7 of this title, or before July 1, 2007, for a  
237 violation of Section 77-9-249, does not constitute a prior offense  
238 for the purposes of this subsection (3).

239 (iii) The defendant's public and nonpublic driving  
240 record as maintained by the Department of Public Safety does not  
241 indicate successful completion of a traffic safety violator course  
242 under this section in the three-year period before the offense.

243 (iv) The defendant files an affidavit with the  
244 court stating that he is not disqualified under paragraph (a)(ii)  
245 of this subsection (3); the defendant is not in the process of  
246 taking a course under this section; and the defendant has not  
247 completed a course under this section that is not yet reflected on  
248 the defendant's public or nonpublic driving record.

249 (v) The offense charged is for a misdemeanor  
250 offense under Chapter 3, 5 or 7 of this title or of Section  
251 77-9-249.

252 (vi) The defendant pays the applicable fine, costs  
253 and any assessments required by law to be paid upon conviction of  
254 such an offense.

255 (vii) The defendant pays to the court an  
256 additional fee of Ten Dollars (\$10.00) to elect to proceed under  
257 the provisions of this subsection (3).

258 (b) (i) 1. An eligible defendant may enter a plea of  
259 nolo contendere or guilty in person or in writing and present to  
260 the court, in person or by mail postmarked on or before the  
261 appearance date on the citation, an oral or written request to  
262 participate in a course under this subsection (3).



263                   2. The court shall withhold acceptance of the  
264 plea and defer sentencing in order to allow the eligible defendant  
265 ninety (90) days to successfully complete not less than four (4)  
266 hours of a court-approved traffic safety violator course at the  
267 cost of the defendant. Upon proof of successful completion  
268 entered with the court, the court shall dismiss the prosecution  
269 and direct that the case be closed. The only record maintained  
270 thereafter shall be the nonpublic record required under Section  
271 63-9-17 solely for use by the courts in determining eligibility  
272 under this subsection (3).

273                   (ii) If a person pleads not guilty to a  
274 misdemeanor offense under any of the provisions of Chapter 3, 5 or  
275 7 of this title or of Section 77-9-249 but is convicted, and the  
276 person meets all the requirements under paragraph (a) of this  
277 subsection, upon request of the defendant the court shall suspend  
278 the sentence for such offense to allow the defendant forty-five  
279 (45) days to successfully complete not less than four (4) hours of  
280 a court-approved traffic safety violator course at his own cost.  
281 Upon successful completion by the defendant of the course, the  
282 court shall set the conviction aside, dismiss the prosecution and  
283 direct that the case be closed. The court on its own motion shall  
284 expunge the record of the conviction, and the only record  
285 maintained thereafter shall be the nonpublic record required under  
286 Section 63-9-17 solely for use by the courts in determining an  
287 offender's eligibility under this subsection (3).

288                   (c) An out-of-state resident shall be allowed to  
289 complete a substantially similar program in his home state,  
290 province or country provided the requirements of this subsection  
291 (3) are met, except that the necessary valid driver's license or  
292 permit shall be one issued by the home jurisdiction.

293                   (d) A court shall not approve a traffic safety violator  
294 course under this subsection (3) that does not supply at least  
295 four (4) hours of instruction, an instructor's manual setting

296 forth an appropriate curriculum, student workbooks, some  
297 scientifically verifiable analysis of the effectiveness of the  
298 curriculum and provide minimum qualifications for instructors.  
299 However, the curriculum for a traffic violator course for a person  
300 convicted of a violation of Section 77-9-249, 63-3-1007,  
301 63-3-1009, 63-3-1011 or 63-3-1013 shall be prepared and presented  
302 by an Operation Lifesaver instructor approved by the Mississippi  
303 Transportation Commission.

304 (e) A court shall inform a defendant making inquiry or  
305 entering a personal appearance of the provisions of this  
306 subsection (3).

307 (f) The Department of Public Safety shall cause notice  
308 of the provisions of this subsection (3) to be available on its  
309 official web site.

310 (g) Failure of a defendant to elect to come under the  
311 provisions of this subsection (3) for whatever reason, in and of  
312 itself, shall not invalidate a conviction.

313 (h) No employee of the sentencing court shall  
314 personally benefit from a defendant's attendance of a traffic  
315 safety violator course. Violation of this prohibition shall  
316 result in termination of employment.

317 (i) The additional fee of Ten Dollars (\$10.00) imposed  
318 under this subsection (3) shall be forwarded by the court clerk to  
319 the State Treasurer for deposit into a special fund created in the  
320 State Treasury. Monies in the special fund may be expended by the  
321 Department of Public Safety, upon legislative appropriation, to  
322 defray the costs incurred by the department in maintaining the  
323 nonpublic record of persons who are eligible for participation  
324 under the provisions of this subsection (3).

325 (4) The provisions of subsection (3) of this section shall  
326 not be applicable to violation of any of the provisions of Chapter  
327 3, 5 or 7 of this title committed by the holder of a commercial  
328 driver's license issued under the Mississippi Commercial Driver's

329 License Law, regardless of whether the violation occurred while  
330 operating a commercial motor vehicle or some other motor vehicle.

331 **SECTION 6.** Section 97-25-4, Mississippi Code of 1972, is  
332 amended as follows:

333 97-25-4. (1) Except as otherwise provided in subsection (2)  
334 of this section, it shall be unlawful for any person to do any of  
335 the following acts without first having obtained written  
336 permission from the owner or operator of the railroad line:

337 (a) To attempt to board or disembark from a moving  
338 freight train;

339 (b) To damage or deface, or attempt to damage or  
340 deface, railroad track, signals, switches, buildings, structures,  
341 bridges, right-of-way, wire lines, motive power, rolling stock or  
342 other property; or

343 (c) To dump, or cause to be dumped, upon railroad  
344 right-of-way any paper, ashes, sweepings, household wastes, glass,  
345 metal, tires, mattresses, furniture, dangerous substances or any  
346 other refuse or substance of any kind.

347 (2) Subsection (1) of this section shall not apply to:

348 (a) Railroad employees engaged in the performance of  
349 their duties; or

350 (b) Representatives of utilities or other agencies with  
351 easements across or along the railroad in the performance of their  
352 duties.

353 (3) Any person who violates the provisions of this section  
354 shall be guilty of a misdemeanor, and upon conviction thereof, be  
355 punished by imprisonment for not more than thirty (30) days or by  
356 a fine of not less than One Hundred Dollars (\$100.00) but not more  
357 than Four Hundred Dollars (\$400.00), or both, and may be required  
358 to pay any clean-up costs. In addition, any person who is  
359 convicted for a violation of subsection (1)(b) or subsection  
360 (1)(c) of this section shall be ordered by the court to make  
361 restitution to the owners or operators of the railroad line or

362 property in an amount determined by the court to compensate for  
363 all damages caused by such person and all costs related to cleanup  
364 necessitated as a result of such person's unlawful conduct.

365 (4) The penalties provided for in this section shall be in  
366 addition to any other penalties provided by law for the same or  
367 similar acts.

368 (5) As used in this section the term "right-of-way" means  
369 track, roadbed and adjacent property which would be readily  
370 recognizable to a reasonable person as railroad property.

371 **SECTION 7.** Section 97-25-5, Mississippi Code of 1972, is  
372 amended as follows:

373 97-25-5. If any person shall willfully obliterate, injure or  
374 destroy any railroad-gate, warning-signals, cattle-gap or any  
375 board or sign erected or maintained by a railroad company in  
376 pursuance of law, he shall be fined not less than One Hundred  
377 Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or  
378 be imprisoned in the county jail not exceeding three (3) months,  
379 or both. In addition, any person who is convicted for a violation  
380 of this section shall be ordered by the court to make restitution  
381 to the owners or operators of the railroad line or property in an  
382 amount determined by the court to compensate for all damages  
383 caused by such person and all costs related to cleanup  
384 necessitated as a result of such person's unlawful conduct.

385 **SECTION 8.** Section 97-25-35, Mississippi Code of 1972, is  
386 amended as follows:

387 97-25-35. If any person shall maliciously remove, take,  
388 steal, change or in any manner interfere with any railroad  
389 transmission line, signaling device, microwave tower or any of the  
390 parts or attachments belonging to any communication or signaling  
391 device owned, leased or used by any railroad or transportation  
392 company, he shall, on conviction, be fined not more than Three  
393 Thousand Dollars (\$3,000.00), or shall be imprisoned not more than  
394 five (5) years, or both. In addition, any person who is convicted

395 for a violation of this section shall be ordered by the court to  
396 make restitution to the owners or operators of the railroad line  
397 or property in an amount determined by the court to compensate for  
398 all damages caused by such person and all costs related to cleanup  
399 necessitated as a result of such person's unlawful conduct.

400       **SECTION 9.** This act shall take effect and be in force from  
401 and after July 1, 2007.