

By: Representative Busby

To: Transportation;
Judiciary A

HOUSE BILL NO. 1263

1 AN ACT TO REQUIRE THE DEPARTMENT OF TRANSPORTATION, CERTAIN
 2 LOCAL AGENCIES AND RAILROADS TO ACCOMMODATE EACH OTHER WHEN A
 3 PUBLIC IMPROVEMENT PROJECT CONFLICTS WITH RAILROAD OPERATIONS OR
 4 FACILITIES; TO REQUIRE A PUBLIC ENTITY OR RAILROAD TO ISSUE
 5 NECESSARY EASEMENTS, WORK PERMITS AND LICENSES WITHIN 60 DAYS OF
 6 ENGINEERING DATA SUBMISSION; TO REQUIRE RAILROADS AND PUBLIC
 7 ENTITIES TO COMPLY WITH THE TERMS OF A PERMIT UNLESS 30 DAYS
 8 NOTICE IS PROVIDED; TO PROVIDE PROCEDURES FOR SEEKING RELIEF DUE
 9 TO DELAY OR BREACH OF A PERMIT; TO AMEND SECTION 65-1-69,
 10 MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS
 11 ACT; AND FOR RELATED PURPOSES.

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

13 **SECTION 1.** (1) The following words and phrases shall have
 14 the meanings ascribed in this section unless the context clearly
 15 indicates otherwise:

16 (a) "Public entity" means the Mississippi
 17 Transportation Commission, Mississippi Department of
 18 Transportation or a local governmental entity engaged in a project
 19 that is under the oversight of the Mississippi Department of
 20 Transportation.

21 (b) "Public improvement project" means any
 22 construction, reconstruction, repair, renovation or any other



23 improvement project by the Mississippi Transportation Commission
24 or the Mississippi Department of Transportation, or any such local
25 governmental project that is under the oversight of the
26 Mississippi Department of Transportation.

27 (c) "Railroad improvement project" means any
28 construction, reconstruction, repair, renovation or any other
29 improvement project by a railroad authorized to operate within the
30 State of Mississippi.

31 (2) Whenever any proposed public improvement project
32 conflicts with railroad operations, facilities or property, the
33 railroad and the public entity, including a contractor of any
34 listed party, shall reasonably accommodate one another, by timely
35 issuing such necessary easements, work permits and licenses as
36 soon as practicable to prevent unnecessary delays to the schedule
37 of the public improvement project. In no event shall the railroad
38 delay the issuance of a necessary easement, work permit or license
39 for more than sixty (60) days after the submission of the
40 requisite engineering documentation and data by the Mississippi
41 Department of Transportation. Additionally, whenever any proposed
42 railroad improvement project conflicts with public operations,
43 facilities or property, the public entity shall issue necessary
44 permits and licenses to the railroad within sixty (60) days after
45 the submission of the requisite documentation and data. Failure
46 to respond within sixty (60) days as provided shall constitute
47 prima facie evidence of unreasonable delay and the aggrieved party



48 shall be permitted to pursue an action for injunctive relief for
49 such unnecessary delay.

50 (3) Once a public entity or a railroad has issued a permit
51 for work along or across its property to the other, or to a
52 contractor for either party, both parties shall fully comply with
53 the terms of the permit, unless the party provides a minimum of
54 thirty (30) days advance notice to the other party or contractor
55 of any change to the timing or duration of the permit or of its
56 cancellation. Failure to comply with the terms of the permit, or
57 failure to give the minimum notice required shall constitute prima
58 facie evidence of unreasonable delay and the aggrieved party or
59 the contractor, as may be appropriate, shall be permitted to
60 pursue an action for injunctive relief for such unnecessary delay.

61 (4) The following procedures shall apply to a cause of
62 action accruing under subsections (2) or (3) of this section:

63 (a) Venue shall be located in the circuit court of the
64 county where the public or railroad improvement project in
65 question is located, and if the project is located in more than
66 one county, venue shall be proper in any of those applicable
67 counties.

68 (b) A court of competent jurisdiction shall hold an
69 initial hearing within five (5) days of the filing of a complaint
70 and determine whether the delay is unreasonable, and if so, render
71 the appropriate relief. The court shall render its decision
72 within ten (10) days after the conclusion of any final hearing.



73 (c) Upon finding that either party has unnecessarily
74 delayed the issuance of an easement, work permit or license, or
75 has not complied with the terms of a work permit, the court may:

76 (i) require the timely issuance of an easement,
77 work permit or license;

78 (ii) enforce the terms of the work permit;

79 (iii) award attorney's fees and costs, including
80 expert witness costs and other related litigation costs; and

81 (iv) enter such orders as it deems appropriate
82 under the circumstances.

83 **SECTION 2.** Section 65-1-69, Mississippi Code of 1972, is
84 amended as follows:

85 65-1-69. Whenever any railroad and state highway or part
86 thereof shall cross each other at the same level and, in the
87 opinion of the * * * Mississippi Transportation Commission, such
88 crossing is dangerous to public safety or traffic is unreasonably
89 impeded thereby and such crossing should be removed, the * * *
90 Mississippi Transportation Commission may order such crossing
91 eliminated either by having the * * * Mississippi Department of
92 Transportation carry such state highway under or over the tracks
93 of such railroad.

94 The plans covering such proposed changes may be made either
95 by the Director of the * * * Mississippi Department of
96 Transportation, subject to the approval of the * * *
97 Transportation Commission or the railroad company affected, but



98 shall in either event be approved by both the * * * Transportation
99 Commission and the railroad company before contract is awarded;
100 but such provision shall not be used to unreasonably delay the
101 construction of any proposed structure. When plans have been
102 approved, such proposed work shall be advertised and contract
103 awarded as elsewhere provided in this chapter for the advertising
104 and awarding of contracts. Joint supervision of construction may
105 be had by both the * * * Mississippi Department of Transportation
106 and the railroad company. The * * * Mississippi Transportation
107 Commission and the railroad company shall pay equal parts of the
108 cost of any underpass or overpass across the right-of-way of the
109 railroad company. Such work shall be so planned and prosecuted as
110 to allow the safe and regular operations of trains at every stage
111 of the work. Any work undertaken in accordance with this section
112 shall comply with the provisions set forth in Section 1 of this
113 act, if applicable.

114 Appeals from decisions or determinations of the * * *
115 Mississippi Transportation Commission may be made by any party
116 affected under this section, and the procedure for such appeal
117 shall be the same as is provided by law for appeals from decisions
118 and determinations of the boards of supervisors.

119 **SECTION 3.** This act shall take effect and be in force from
120 and after its passage.

