

By: Senator(s) Kirby, Dearing

To: Highways and
Transportation; Insurance

SENATE BILL NO. 2689

1 AN ACT TO AMEND SECTION 65-1-8, MISSISSIPPI CODE OF 1972, TO
2 AUTHORIZE THE MISSISSIPPI TRANSPORTATION COMMISSION TO PURCHASE
3 EMPLOYMENT PRACTICES LIABILITY INSURANCE; TO AMEND SECTION
4 71-3-38, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE MISSISSIPPI
5 TRANSPORTATION COMMISSION TO PURCHASE AN EXCESS POLICY TO COVER
6 CATASTROPHIC LOSSES INCURRED WHILE ACTING AS A WORKERS'
7 COMPENSATION SELF-INSURER; 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) To make proper and reasonable rules, regulations,
75 and ordinances for the placing, erection, removal or relocation of
76 telephone, telegraph or other poles, signboards, fences, gas,
77 water, sewerage, oil or other pipelines, and other obstructions
78 that may, in the opinion of the commission, contribute to the
79 hazards upon any of the state highways, or in any way interfere
80 with the ordinary travel upon such highways, or the construction,
81 reconstruction or maintenance thereof, and to make reasonable
82 rules and regulations for the proper control thereof. Any
83 violation of such rules or regulations or noncompliance with such
84 ordinances shall constitute a misdemeanor.

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



94 (f) To regulate and abandon grade crossings on any road
95 fixed as a part of the state highway system, and whenever the
96 commission, in order to avoid a grade crossing with the railroad,
97 locates or constructs said road on one side of the railroad, the
98 commission shall have the power to abandon and close such grade
99 crossing, and whenever an underpass or overhead bridge is
100 substituted for a grade crossing, the commission shall have power
101 to abandon such grade crossing and any other crossing adjacent
102 thereto. Included in the powers herein granted shall be the power
103 to require the railroad at grade crossings, where any road of the
104 state highway system crosses the same, to place signal posts with
105 lights or other warning devices at such crossings at the expense
106 of the railroad, and to regulate and abandon underpass or overhead
107 bridges and, where abandoned because of the construction of a new
108 underpass or overhead bridge, to close such old underpass or
109 overhead bridge, or, in its discretion, to return the same to the
110 jurisdiction of the county board of supervisors;

111 (g) To make proper and reasonable rules and regulations
112 to control the cutting or opening of the road surfaces for
113 subsurface installations;

114 (h) To make proper and reasonable rules and regulations
115 for the removal from the public rights-of-way of any form of
116 obstruction, to cooperate in improving their appearance, and to
117 prescribe minimum clearance heights for seed conveyors, pipes,
118 passageways or other structure of private or other ownership above
119 the highways;

120 (i) To establish, and have the Transportation
121 Department maintain and operate, and to cooperate with the state
122 educational institutions in establishing, enlarging, maintaining
123 and operating a laboratory or laboratories for testing materials
124 and for other proper highway purposes;



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

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

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

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

(n) To cooperate with the Department of Archives and History in having placed and maintained suitable historical markers, including those which have been approved and purchased by the State Historical Commission, along state highways, and to have constructed and maintained roadside driveways for convenience and safety in viewing them when necessary; however, no highway or bridge shall ever be memorialized to a man while living;

(o) To cooperate, in its discretion, with the Mississippi Department of Wildlife, Fisheries and Parks in



158 planning and constructing roadside parks upon the right-of-way of
159 state highways, whether constructed, under construction, or
160 planned; said parks to utilize where practical barrow pits used in
161 construction of state highways for use as fishing ponds. Said
162 parks shall be named for abundant flora and fauna existing in the
163 area or for the first flora or fauna found on the site;

164 (p) To, unless otherwise prohibited by law, * * * make
165 such contracts and execute such instruments containing such
166 reasonable and necessary appropriate terms, provisions and
167 conditions as in its absolute discretion it may deem necessary,
168 proper or advisable, for the purpose of obtaining or securing
169 financial assistance, grants or loans from the United States of
170 America or any department or agency thereof, including contracts
171 with several counties of the state pertaining to the expenditure
172 of such funds;

173 (q) To cooperate with the Federal Highway
174 Administration in the matter of location, construction and
175 maintenance of the Great River Road, to expend such funds paid to
176 the commission by the Federal Highway Administration or other
177 federal agency, and to authorize the Transportation Department to
178 erect suitable signs marking this highway, the cost of such signs
179 to be paid from state highway funds other than earmarked
180 construction funds;

181 (r) To cooperate, in its discretion, with the
182 Mississippi Forestry Commission and the School of Forestry,
183 Mississippi State University, in a forestry management program,
184 including planting, thinning, cutting and selling, upon the
185 right-of-way of any highway, constructed, acquired or maintained
186 by the Transportation Department, and to sell and dispose of any
187 and all growing timber standing, lying or being on any
188 right-of-way acquired by the commission for highway purposes in
189 the future; such sale or sales to be made in accordance with the



190 sale of personal property which has become unnecessary for public
191 use as provided for in Section 65-1-123, Mississippi Code of 1972;

192 (s) To expend funds in cooperation with the Division of
193 Plant Industry, Mississippi Department of Agriculture and
194 Commerce, the United States government or any department or agency
195 thereof, or with any department or agency of this state, to
196 control, suppress or eradicate serious insect pests, rodents,
197 plant parasites and plant diseases on the state highway
198 rights-of-way;

199 (t) To provide for the placement, erection and
200 maintenance of motorist services business signs and supports
201 within state highway rights-of-way in accordance with current
202 state and federal laws and regulations governing the placement of
203 traffic control devices on state highways, and to establish and
204 collect reasonable fees from the businesses having information on
205 such signs;

206 (u) To request and to accept the use of persons
207 convicted of an offense, whether a felony or a misdemeanor, for
208 work on any road construction, repair or other project of the
209 Transportation Department. The commission is also authorized to
210 request and to accept the use of persons who have not been
211 convicted of an offense but who are required to fulfill certain
212 court-imposed conditions pursuant to Section 41-29-150(d)(1) or
213 99-15-26, Mississippi Code of 1972, or the Pretrial Intervention
214 Act, being Sections 99-15-101 through 99-15-127, Mississippi Code
215 of 1972. The commission is authorized to enter into any
216 agreements with the Department of Corrections, the State Parole
217 Board, any criminal court of this state, and any other proper
218 official regarding the working, guarding, safekeeping, clothing
219 and subsistence of such persons performing work for the
220 Transportation Department. Such persons shall not be deemed
221 agents, employees or involuntary servants of the Transportation



222 Department while performing such work or while going to and from
223 work or other specified areas;

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

226 (w) * * * To, in its discretion, * * * expend funds for
227 the purchase of service pins for employees of the Mississippi
228 Transportation Department;

229 (x) To cooperate with the State Tax Commission by
230 providing for weight enforcement field personnel to collect and
231 assess taxes, fees and penalties and to perform all duties as
232 required pursuant to Section 27-55-501 et seq., Sections 27-19-1
233 et seq., 27-55-1 et seq., 27-59-1 et seq. and 27-61-1 et seq.,
234 Mississippi Code of 1972, with regard to vehicles subject to the
235 jurisdiction of the Office of Weight Enforcement. All collections
236 and assessments shall be transferred daily to the State Tax
237 Commission;

238 (y) * * * To delegate the authority to enter into a
239 supplemental agreement to a contract previously approved by the
240 commission if the supplemental agreement involves an additional
241 expenditure not to exceed One Hundred Thousand Dollars
242 (\$100,000.00);

243 (z) (i) * * * To, in its discretion, * * * enter into
244 agreements with any county, municipality, county transportation
245 commission, business, corporation, partnership, association,
246 individual or other legal entity, for the purpose of accelerating
247 the completion date of scheduled highway construction projects.

248 (ii) Such an agreement may permit the cost of a
249 highway construction project to be advanced to the commission by a
250 county, municipality, county transportation commission, business,
251 corporation, partnership, association, individual or other legal
252 entity, and repaid to such entity by the commission when highway
253 construction funds become available; provided, however, that
254 repayment of funds advanced to the Mississippi Transportation



Commission shall be made no sooner than the commission's identified projected revenue schedule for funding of that particular construction project, and no other scheduled highway construction project established by statute or by the commission may be delayed by an advanced funding project authorized under this paragraph (z). Repayments to an entity that advances funds to the Mississippi Transportation Commission under this paragraph (z) may not include interest or other fees or charges, and the total amount repaid shall not exceed the total amount of funds advanced to the commission by the entity.

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

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

(aa) To, in its discretion, obtain and pay for employment practices liability insurance. Such policy shall be purchased from companies authorized to do business in this state. The amount of the deductibles under such a policy shall be in such an amount as may be considered reasonable and prudent by the commission. The commission may pay for the costs of such policy out of any available funds in the State Highway Fund. The purchase of insurance under this paragraph (aa) shall not constitute a waiver of sovereign immunity or any protection afforded the commission or the department under Sections 11-46-1 through 11-46-23.



287 **SECTION 2.** Section 71-3-38, Mississippi Code of 1972, is
288 amended as follows:

289 71-3-38. (1) While acting as a self-insurer as authorized
290 by Section 71-3-5, the Mississippi Transportation Commission is
291 authorized and empowered to establish and maintain, from funds
292 made available upon requisition from the State Treasury, a special
293 workers' compensation account, and to deposit such funds therein,
294 and to pay therefrom the workers' compensation benefits as
295 authorized by Section 71-3-37, and to pay such awards as may be
296 entered and such other costs, expenses and benefits as may be
297 incidental to the settlement of such workers' compensation claims.
298 Disbursement from such special account shall be by check properly
299 drawn against such account and signed by such personnel as may be
300 duly authorized by the Mississippi Transportation Commission.
301 Payment from the special account shall be deemed payments of and
302 from the State of Mississippi.

303 (2) The Mississippi Transportation Commission is authorized
304 and empowered, in its discretion, to obtain and pay for an excess
305 policy to cover catastrophic losses incurred while acting as a
306 self-insurer as authorized by Section 71-3-5. Such policy shall
307 be purchased from companies authorized to do business in this
308 state. The amount of the deductibles under such a policy shall be
309 in such an amount as may be considered reasonable and prudent by
310 the Mississippi Transportation Commission. The Mississippi
311 Transportation Commission may pay for the costs of such policy out
312 of any available funds in the State Highway Fund.

313 **SECTION 3.** This act shall take effect and be in force from
314 and after July 1, 2002.

