

By: Representative Janus

To: Transportation

HOUSE BILL NO. 465

1 AN ACT TO AMEND SECTION 65-1-8, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE THAT CONTRACTS BETWEEN THE MISSISSIPPI TRANSPORTATION
3 COMMISSION AND A CONTRACTOR FOR NEW CONSTRUCTION MUST CONTAIN A
4 PROVISION FOR LIQUIDATED DAMAGES FOR EACH DAY THAT THE CONTRACTOR
5 FAILS TIMELY TO COMPLETE THE CONTRACT; TO AUTHORIZE SUCH CONTRACTS
6 TO CONTAIN EXTRA COMPENSATION TO THE CONTRACTOR TO SERVE AS BONUS
7 IF THE CONTRACTOR COMPLETES THE CONTRACT EARLY; AND FOR RELATED
8 PURPOSES.

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

10 **SECTION 1.** Section 65-1-8, Mississippi Code of 1972, is
11 amended as follows:

12 65-1-8. (1) The Mississippi Transportation Commission shall
13 have the following general powers, duties and responsibilities:

14 (a) To coordinate and develop a comprehensive, balanced
15 transportation policy for the State of Mississippi;

16 (b) To promote the coordinated and efficient use of all
17 available and future modes of transportation;

18 (c) To make recommendations to the Legislature
19 regarding alterations or modifications in any existing
20 transportation policies;

21 (d) To study means of encouraging travel and
22 transportation of goods by the combination of motor vehicle and
23 other modes of transportation;

24 (e) To take such actions as are necessary and proper to
25 discharge its duties pursuant to the provisions of Laws, 1992,
26 Chapter 496, and any other provision of law;

27 (f) To receive and provide for the expenditure of any
28 funds made available to it by the Legislature, the federal
29 government or any other source.

30 (2) In addition to the general powers, duties and
31 responsibilities listed in subsection (1) of this section, the
32 Mississippi Transportation Commission shall have the following
33 specific powers:

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

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

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

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

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

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

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

96 (iii) Rural water districts, rural water systems,
97 nonprofit water associations and municipal public water systems in
98 municipalities with a population of ten thousand (10,000) or less,
99 according to the latest federal decennial census, shall not be
100 required to bear the cost and expense of removal and relocation of
101 water and sewer lines and facilities constructed or in place in
102 the rights-of-way of state highways. The cost and expense of such
103 removal and relocation, including any unpaid prior to July 1,
104 2002, shall be paid by the Department of Transportation;

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

114 (f) To regulate and abandon grade crossings on any road
115 fixed as a part of the state highway system, and whenever the
116 commission, in order to avoid a grade crossing with the railroad,
117 locates or constructs said road on one side of the railroad, the
118 commission shall have the power to abandon and close such grade
119 crossing, and whenever an underpass or overhead bridge is
120 substituted for a grade crossing, the commission shall have power
121 to abandon such grade crossing and any other crossing adjacent
122 thereto. Included in the powers herein granted shall be the power
123 to require the railroad at grade crossings, where any road of the
124 state highway system crosses the same, to place signal posts with
125 lights or other warning devices at such crossings at the expense
126 of the railroad, and to regulate and abandon underpass or overhead
127 bridges and, where abandoned because of the construction of a new
128 underpass or overhead bridge, to close such old underpass or

129 overhead bridge, or, in its discretion, to return the same to the
130 jurisdiction of the county board of supervisors;

131 (g) To make proper and reasonable rules and regulations
132 to control the cutting or opening of the road surfaces for
133 subsurface installations;

134 (h) To make proper and reasonable rules and regulations
135 for the removal from the public rights-of-way of any form of
136 obstruction, to cooperate in improving their appearance, and to
137 prescribe minimum clearance heights for seed conveyors, pipes,
138 passageways or other structure of private or other ownership above
139 the highways;

140 (i) To establish, and have the Transportation
141 Department maintain and operate, and to cooperate with the state
142 educational institutions in establishing, enlarging, maintaining
143 and operating a laboratory or laboratories for testing materials
144 and for other proper highway purposes;

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

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

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

153 (m) To provide for the purchase of necessary equipment
154 and vehicles and to provide for the repair and housing of same, to
155 acquire by gift, purchase, condemnation or otherwise, land or
156 lands and buildings in fee simple, and to authorize the
157 Transportation Department to construct, lease or otherwise provide
158 necessary and proper permanent district offices for the
159 construction and maintenance divisions of the department, and for
160 the repair and housing of the equipment and vehicles of the
161 department; however, in each Supreme Court district only two (2)

162 permanent district offices shall be set up, but a permanent status
163 shall not be given to any such offices until so provided by act of
164 the Legislature and in the meantime, all shops of the department
165 shall be retained at their present location. As many local or
166 subdistrict offices, shops or barns may be provided as is
167 essential and proper to economical maintenance of the state
168 highway system;

169 (n) To cooperate with the Department of Archives and
170 History in having placed and maintained suitable historical
171 markers, including those which have been approved and purchased by
172 the State Historical Commission, along state highways, and to have
173 constructed and maintained roadside driveways for convenience and
174 safety in viewing them when necessary;

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

183 (p) Unless otherwise prohibited by law, to make such
184 contracts and execute such instruments containing such reasonable
185 and necessary appropriate terms, provisions and conditions as in
186 its absolute discretion it may deem necessary, proper or
187 advisable, for the purpose of obtaining or securing financial
188 assistance, grants or loans from the United States of America or
189 any department or agency thereof, including contracts with several
190 counties of the state pertaining to the expenditure of such funds;

191 (q) To cooperate with the Federal Highway
192 Administration in the matter of location, construction and
193 maintenance of the Great River Road, to expend such funds paid to
194 the commission by the Federal Highway Administration or other

195 federal agency, and to authorize the Transportation Department to
196 erect suitable signs marking this highway, the cost of such signs
197 to be paid from state highway funds other than earmarked
198 construction funds;

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

210 (s) To expend funds in cooperation with the Division of
211 Plant Industry, Mississippi Department of Agriculture and
212 Commerce, the United States government or any department or agency
213 thereof, or with any department or agency of this state, to
214 control, suppress or eradicate serious insect pests, rodents,
215 plant parasites and plant diseases on the state highway
216 rights-of-way;

217 (t) To provide for the placement, erection and
218 maintenance of motorist services business signs and supports
219 within state highway rights-of-way in accordance with current
220 state and federal laws and regulations governing the placement of
221 traffic control devices on state highways, and to establish and
222 collect reasonable fees from the businesses having information on
223 such signs;

224 (u) To request and to accept the use of persons
225 convicted of an offense, whether a felony or a misdemeanor, for
226 work on any road construction, repair or other project of the
227 Transportation Department. The commission is also authorized to

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

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

244 (w) The Mississippi Transportation Commission is
245 further authorized, in its discretion, to expend funds for the
246 purchase of service pins for employees of the Mississippi
247 Transportation Department;

248 (x) To cooperate with the State Tax Commission by
249 providing for weight enforcement field personnel to collect and
250 assess taxes, fees and penalties and to perform all duties as
251 required pursuant to Section 27-55-501 et seq., Sections 27-19-1
252 et seq., 27-55-1 et seq., 27-59-1 et seq. and 27-61-1 et seq.,
253 Mississippi Code of 1972, with regard to vehicles subject to the
254 jurisdiction of the Office of Weight Enforcement. All collections
255 and assessments shall be transferred daily to the State Tax
256 Commission;

257 (y) The Mississippi Transportation Commission may
258 delegate the authority to enter into a supplemental agreement to a
259 contract previously approved by the commission if the supplemental

260 agreement involves an additional expenditure not to exceed One
261 Hundred Thousand Dollars (\$100,000.00);

262 (z) (i) The Mississippi Transportation Commission, in
263 its discretion, may enter into agreements with any county,
264 municipality, county transportation commission, business,
265 corporation, partnership, association, individual or other legal
266 entity, for the purpose of accelerating the completion date of
267 scheduled highway construction projects.

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

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

290 (iv) Such an agreement shall be executed only upon
291 a finding by the commission, spread upon its minutes, that the
292 acceleration of the scheduled project is both feasible and

293 beneficial. The commission shall also spread upon its minutes its
294 findings with regard to the factors required to be considered
295 pursuant to item (iii) of this paragraph (z);

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

309 (bb) The Mississippi Transportation Commission is
310 further authorized, in its discretion, to expend funds for the
311 purchase of promotional materials for safety purposes, highway
312 beautification purposes and recruitment purposes.

313 (3) Every contract between the Mississippi Transportation
314 Commission and a contractor that is executed from and after July
315 1, 2004, shall contain a provision in regard to the time when the
316 whole or any specified portion of the work contemplated shall be
317 completed, and shall provide that for each day completion is
318 delayed beyond the specified time, the contractor shall forfeit
319 and pay to the state a specified sum of money to be deducted from
320 any payments due or to become due to the contractor. The sum so
321 specified is valid as liquidated damages unless manifestly
322 unreasonable under the circumstances existing at the time the
323 contract was made. A contract for a road project also may provide
324 for the payment of extra compensation to the contractor, as a bonus
325 for completion before the specified time. This provision shall be

326 included in the specification and shall clearly set forth the
327 basis for the payment. The bonus for early completion shall not
328 be on maintenance projects but only on new construction projects.

329 **SECTION 2.** This act shall take effect and be in force from
330 and after July 1, 2004.