

By: Representative Compretta

To: Transportation

HOUSE BILL NO. 304

1 AN ACT TO AMEND SECTION 65-1-8, MISSISSIPPI CODE OF 1972, TO  
2 PROVIDE THAT BEFORE THE MISSISSIPPI TRANSPORTATION COMMISSION MAY  
3 ABANDON OR CLOSE A PUBLIC ROADWAY/RAILROAD GRADE CROSSING, THE  
4 COMMISSION MUST FIRST OBTAIN FROM THE GOVERNING AUTHORITIES OF THE  
5 COUNTY OR MUNICIPALITY WHERE THE GRADE CROSSING IS LOCATED A  
6 RESOLUTION REQUESTING OR APPROVING THE ABANDONMENT OR CLOSING AND  
7 HOLD A PUBLIC HEARING CONCERNING THE MATTER IN SUCH COUNTY OR  
8 MUNICIPALITY; AND FOR RELATED 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. However, before the commission may abandon or close a  
123 public roadway/railroad grade crossing, the commission must first  
124 obtain from the governing authorities of the county or  
125 municipality where the grade crossing is located a resolution  
126 requesting or approving the abandonment or closing and hold a  
127 public hearing concerning the matter in such county or  
128 municipality. Included in the powers herein granted shall be the

129 power to require the railroad at grade crossings, where any road  
130 of the state highway system crosses the same, to place signal  
131 posts with lights or other warning devices at such crossings at  
132 the expense of the railroad, and to regulate and abandon underpass  
133 or overhead bridges and, where abandoned because of the  
134 construction of a new underpass or overhead bridge, to close such  
135 old underpass or overhead bridge, or, in its discretion, to return  
136 the same to the jurisdiction of the county board of supervisors;

137 (g) To make proper and reasonable rules and regulations  
138 to control the cutting or opening of the road surfaces for  
139 subsurface installations;

140 (h) To make proper and reasonable rules and regulations  
141 for the removal from the public rights-of-way of any form of  
142 obstruction, to cooperate in improving their appearance, and to  
143 prescribe minimum clearance heights for seed conveyors, pipes,  
144 passageways or other structure of private or other ownership above  
145 the highways;

146 (i) To establish, and have the Transportation  
147 Department maintain and operate, and to cooperate with the state  
148 educational institutions in establishing, enlarging, maintaining  
149 and operating a laboratory or laboratories for testing materials  
150 and for other proper highway purposes;

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

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

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

159 (m) To provide for the purchase of necessary equipment  
160 and vehicles and to provide for the repair and housing of same, to  
161 acquire by gift, purchase, condemnation or otherwise, land or

162 lands and buildings in fee simple, and to authorize the  
163 Transportation Department to construct, lease or otherwise provide  
164 necessary and proper permanent district offices for the  
165 construction and maintenance divisions of the department, and for  
166 the repair and housing of the equipment and vehicles of the  
167 department; however, in each Supreme Court district only two (2)  
168 permanent district offices shall be set up, but a permanent status  
169 shall not be given to any such offices until so provided by act of  
170 the Legislature and in the meantime, all shops of the department  
171 shall be retained at their present location. As many local or  
172 subdistrict offices, shops or barns may be provided as is  
173 essential and proper to economical maintenance of the state  
174 highway system;

175           (n) To cooperate with the Department of Archives and  
176 History in having placed and maintained suitable historical  
177 markers, including those which have been approved and purchased by  
178 the State Historical Commission, along state highways, and to have  
179 constructed and maintained roadside driveways for convenience and  
180 safety in viewing them when necessary;

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

189           (p) Unless otherwise prohibited by law, to make such  
190 contracts and execute such instruments containing such reasonable  
191 and necessary appropriate terms, provisions and conditions as in  
192 its absolute discretion it may deem necessary, proper or  
193 advisable, for the purpose of obtaining or securing financial  
194 assistance, grants or loans from the United States of America or

195 any department or agency thereof, including contracts with several  
196 counties of the state pertaining to the expenditure of such funds;

197 (q) To cooperate with the Federal Highway  
198 Administration in the matter of location, construction and  
199 maintenance of the Great River Road, to expend such funds paid to  
200 the commission by the Federal Highway Administration or other  
201 federal agency, and to authorize the Transportation Department to  
202 erect suitable signs marking this highway, the cost of such signs  
203 to be paid from state highway funds other than earmarked  
204 construction funds;

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

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

223 (t) To provide for the placement, erection and  
224 maintenance of motorist services business signs and supports  
225 within state highway rights-of-way in accordance with current  
226 state and federal laws and regulations governing the placement of  
227 traffic control devices on state highways, and to establish and

228 collect reasonable fees from the businesses having information on  
229 such signs;

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

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

249 (w) The Mississippi Transportation Commission is  
250 further authorized, in its discretion, to expend funds for the  
251 purchase of service pins for employees of the Mississippi  
252 Transportation Department;

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



261           (y) The Mississippi Transportation Commission may  
262 delegate the authority to enter into a supplemental agreement to a  
263 contract previously approved by the commission if the supplemental  
264 agreement involves an additional expenditure not to exceed One  
265 Hundred Thousand Dollars (\$100,000.00);

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

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

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

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

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

313                   (bb) The Mississippi Transportation Commission is  
314 further authorized, in its discretion, to expend funds for the  
315 purchase of promotional materials for safety purposes, highway  
316 beautification purposes and recruitment purposes.

317                   **SECTION 2.** This act shall take effect and be in force from  
318 and after July 1, 2005.