

REPORT OF CONFERENCE COMMITTEE

MR. SPEAKER AND MADAM PRESIDENT:

We, the undersigned conferees, have had under consideration the amendments to the following entitled BILL:

H. B. No. 1252: Roadway/railway crossings; revise duties of railroad corporations and motorists.

We, therefore, respectfully submit the following report and recommendation:

1. That the Senate recede from its Amendment No. 1.
2. That the House and Senate adopt the following amendment:

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

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

15 57-43-15. (1) There is established within the Railroad
16 Revitalization Fund a new account to be entitled the Mississippi
17 Highway-Railroad Grade Crossing Safety Account. The account shall
18 be administered by the Mississippi Department of Transportation
19 and shall consist of (a) such monies as are transferred to it on
20 July 1, 2001, from the Mississippi Grade Crossing Closure Account;
21 and (b) thirty-five percent (35%) of collections from the
22 locomotive fuel tax imposed under Section 27-59-307 for the
23 previous year. Unexpended amounts remaining in the account at the
24 end of a fiscal year shall not lapse into the State General Fund;
25 and any interest earned on amounts in the account shall be
26 deposited to the credit of the account.

27 (2) The Mississippi Department of Transportation, in
28 cooperation with the railroads operating in Mississippi, shall
29 promulgate rules to ensure equitable allocation of the funds
30 described in subsection (1) of this section to projects throughout
31 the state, and shall consider the proportionate number of main
32 line track miles of each railroad and the number of public
33 roadway/railroad grade crossings on each railroad's main line.

34 Expenditure of monies from the Mississippi Highway-Railroad Grade
35 Crossing Safety Account shall be limited to the following
36 purposes:

37 (a) Financial aid for closure of public
38 roadway/railroad grade crossings;

39 (b) Realignment of construction costs of roadways being
40 rerouted to facilitate a closure of a public roadway/railroad
41 grade crossing;

42 (c) Monies to match federal or other funds for a grade
43 separation eliminating an at-grade crossing of a public roadway
44 and railroad; * * *

45 (d) Installation, maintenance or upgrade of
46 highway-railroad grade crossing signals, at the discretion of the
47 Mississippi Transportation Commission, based upon the Federal
48 Railroad Administration ranking of all Mississippi
49 highway-railroad grade crossings. Not less than ten percent (10%)
50 of the monies necessary to defray the costs of such installations
51 must be federal funds;

52 (e) Separation of grades of highway/railroad crossings;

53 (f) Improvement of any grade crossing including the
54 necessary roadway approaches thereto of any railroad across a
55 public road highway;

56 (g) Construction, reconstruction, repair or replacement
57 of the grade crossing surface structure; and

58 (h) Installation of an automatic advance warning signal
59 alerting a motorist that a grade crossing is ahead.

60 (3) The Mississippi Department of Transportation shall
61 consider all requests from the state's diagnostic review of public
62 roadway/railroad grade crossings and from individual railroads for
63 expenditure of funds for the purposes described in subsection (2)
64 of this section, and shall establish uniform criteria and

65 guidelines relating to such crossings and the expenditure of
66 funds.

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

69 65-1-175. (1) The jurisdiction of the Mississippi
70 Department of Transportation shall be exclusive with respect to
71 public roadway/railroad crossings either at grade or otherwise
72 except to the extent that its jurisdiction is preempted by valid
73 federal statute, regulation or order.

74 (2) The Mississippi Department of Transportation shall have
75 power, upon its own motion or upon complaint filed, after having
76 made proper investigation, and after notice and hearing, if
77 requested, to abolish any public roadway/railroad crossing
78 heretofore or hereafter established, to vacate and close that part
79 of the roadway on such crossing abolished, and to erect barricades
80 across the roadway in such a manner as to prevent the use of such
81 crossing as a roadway, when, in the opinion of the department, the
82 public necessity served by the crossing in question is not such as
83 to justify the further retention thereof. In any event, if a
84 roadway/railway crossing is the subject of closure proceedings,
85 both the local governmental entity and the rail carrier shall be
86 given formal written notice by the department before any hearing
87 is conducted by the department. However, a public hearing by the
88 department to abolish a crossing shall not be required when the
89 public roadway authority in interest vacates the roadway. In such
90 instances, the rail carrier, following notification to the
91 department and roadway authority, shall remove any grade crossing
92 warning devices and the grade crossing surface.

93 (3) The Mississippi Department of Transportation shall have
94 power, upon its own motion, or upon complaint, and after having
95 made proper investigation and after notice and hearing, if
96 requested, to require the installation of adequate and appropriate

97 luminous reflective warning signs, luminous flashing signals,
98 crossing gates illuminated at night, or other warning devices in
99 order to promote the health and safety of the public. Luminous
100 flashing signals or crossing gate devices heretofore installed at
101 grade crossings and those installations hereafter approved by the
102 department shall be deemed adequate and appropriate. The
103 department shall have authority to determine the number, type and
104 location of such signs, signals, gates or other protective devices
105 which shall conform as near as may be with generally recognized
106 national standards, and the department shall have authority to
107 prescribe the division of the cost of the installation and
108 subsequent maintenance of such signs, signals, gates or other
109 warning devices between the rail carrier or carriers, the public
110 highway authority in interest and the Mississippi Department of
111 Transportation. In no event shall any costs assessed against
112 either the public highway authority in interest or the rail
113 carrier exceed ten percent (10%) of the costs of the materials and
114 installation.

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

121 **SECTION 3.** Section 97-25-4, Mississippi Code of 1972, is
122 amended as follows:

123 97-25-4. (1) Except as otherwise provided in subsection (2)
124 of this section, it shall be unlawful for any person to do any of
125 the following acts without first having obtained written
126 permission from the owner or operator of the railroad line:

127 (a) To attempt to board or disembark from a moving
128 freight train;

129 (b) To damage or deface, or attempt to damage or
130 deface, railroad track, signals, switches, buildings, structures,
131 bridges, right-of-way, wire lines, motive power, rolling stock or
132 other property; or

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

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

138 (a) Railroad employees engaged in the performance of
139 their duties; or

140 (b) Representatives of utilities or other agencies with
141 easements across or along the railroad in the performance of their
142 duties.

143 (3) Any person who violates the provisions of this section
144 shall be guilty of a misdemeanor, and upon conviction thereof, be
145 punished by imprisonment for not more than thirty (30) days or by
146 a fine of not less than One Hundred Dollars (\$100.00) but not more
147 than Four Hundred Dollars (\$400.00), or both, and may be required
148 to pay any clean-up costs. In addition, any person who is
149 convicted for a violation of subsection (1)(b) or subsection
150 (1)(c) of this section shall be ordered by the court to make
151 restitution to the owners or operators of the railroad line or
152 property in an amount determined by the court to compensate for
153 all damages caused by such person and all costs related to cleanup
154 necessitated as a result of such person's unlawful conduct.

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

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

161 **SECTION 4.** Section 97-25-5, Mississippi Code of 1972, is
162 amended as follows:

163 97-25-5. If any person shall willfully obliterate, injure or
164 destroy any railroad-gate, warning-signals, cattle-gap or any
165 board or sign erected or maintained by a railroad company in
166 pursuance of law, he shall be fined not less than One Hundred
167 Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or
168 be imprisoned in the county jail not exceeding three (3) months,
169 or both. In addition, any person who is convicted for a violation
170 of this section shall be ordered by the court to make restitution
171 to the owners or operators of the railroad line or property in an
172 amount determined by the court to compensate for all damages
173 caused by such person and all costs related to cleanup
174 necessitated as a result of such person's unlawful conduct.

175 **SECTION 5.** Section 97-25-35, Mississippi Code of 1972, is
176 amended as follows:

177 97-25-35. If any person shall maliciously remove, take,
178 steal, change or in any manner interfere with any railroad
179 transmission line, signaling device, microwave tower or any of the
180 parts or attachments belonging to any communication or signaling
181 device owned, leased or used by any railroad or transportation
182 company, he shall, on conviction, be fined not more than Three
183 Thousand Dollars (\$3,000.00), or shall be imprisoned not more than
184 five (5) years, or both. In addition, any person who is convicted
185 for a violation of this section shall be ordered by the court to
186 make restitution to the owners or operators of the railroad line
187 or property in an amount determined by the court to compensate for
188 all damages caused by such person and all costs related to cleanup
189 necessitated as a result of such person's unlawful conduct.

190 **SECTION 6.** This act shall take effect and be in force from
191 and after July 1, 2007.

Further, amend by striking the title in its entirety and inserting in lieu thereof the following:

1 AN ACT TO AMEND SECTION 57-43-15, MISSISSIPPI CODE OF 1972,
2 TO PRESCRIBE CERTAIN ADDITIONAL PURPOSES FOR WHICH MONIES IN THE
3 MISSISSIPPI HIGHWAY-RAILROAD GRADE CROSSING SAFETY ACCOUNT WITHIN
4 THE RAILROAD REVITALIZATION FUND MAY BE EXPENDED; TO AMEND SECTION
5 65-1-175, MISSISSIPPI CODE OF 1972, TO DELETE THE REQUIREMENT FOR
6 A PUBLIC HEARING BY THE MISSISSIPPI DEPARTMENT OF TRANSPORTATION
7 BEFORE ABOLISHMENT OF A ROADWAY/RAILWAY CROSSING WHEN THE PUBLIC
8 ROADWAY AUTHORITY VACATES THE ROADWAY; TO AMEND SECTIONS 97-25-4,
9 97-25-5 AND 97-25-35, MISSISSIPPI CODE OF 1972, TO INCREASE
10 PENALTIES AND REQUIRE RESTITUTION FOR CERTAIN CRIMES RELATING TO
11 RAILROAD PROPERTY; AND FOR RELATED PURPOSES.

CONFEREES FOR THE HOUSE

CONFEREES FOR THE SENATE

X (SIGNED)
Miles

X (SIGNED)
Lee (35th)

X (SIGNED)
Davis

X (SIGNED)
Gordon

X (SIGNED)
Walley

X (SIGNED)
Hewes