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Chapter No. 456
11/HR40/R644SG
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# *HOUSE BILL NO. 213*

Originated in House Don Richardson Clerk

HOUSE BILL NO. 213

AN ACT TO REENACT SECTIONS 77-1-1 THROUGH 77-1-6, 77-1-11, 77-1-15 THROUGH 77-1-21, 77-1-25 THROUGH 77-1-43, 77-1-47 AND 77-1-49, MISSISSIPPI CODE OF 1972, WHICH CREATE THE PUBLIC SERVICE COMMISSION AND PRESCRIBE ITS POWERS AND DUTIES; TO AMEND SECTION 77-1-51, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL ON THOSE REENACTED SECTIONS; AND FOR RELATED PURPOSES.

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

**SECTION 1.** Section 77-1-1, Mississippi Code of 1972, is reenacted as follows:

77-1-1. A public service commission, hereinafter referred to in this chapter as the commission, is hereby created, consisting of three (3) members, one (1) to be elected from each of the three (3) Supreme Court districts by the qualified electors of such district. Elections for such officers shall be held in the general election in November 1959, and every four (4) years thereafter, and the terms of office of the three (3) commissioners elected at the general election in November 1959 shall expire on December 31, 1963.

The commissioners shall each receive a yearly salary fixed by the Legislature, payable monthly.

The commissioners shall each possess the qualifications prescribed for the Secretary of State. The commissioners shall not operate, own any stock in, or be in the employment of any common or contract carrier by motor vehicle, telephone company, gas or electric utility company, or any other public utility that shall come under their jurisdiction or supervision.

**SECTION 2.** Section 77-1-3, Mississippi Code of 1972, is reenacted as follows:

77-1-3. The commission shall have a seal, having around the margin the words "Mississippi Public Service Commission," and in the center such device as it may select. The acts of the commission shall be authenticated by its seal.

**SECTION 3.** Section 77-1-5, Mississippi Code of 1972, is reenacted as follows:

77-1-5. The commission shall keep an office in the City of Jackson, which shall be kept open Monday through Friday of each week for eight (8) hours each day. The commission shall meet at its office on the first Tuesday of each month and at such other times and places as its duties may require. The commission may sit from day to day and from time to time, and any meeting may be pretermitted not exceeding two (2) in any year.

The members of the commission shall devote their entire time to the performance of their official duties on every business day, except on the legal holidays enumerated in Section 3-3-7, Mississippi Code of 1972. However, official acts of the commission done on legal holidays shall be valid.

The commission shall keep regular minutes of its proceedings, which shall be a public record, and all orders, findings and acts of the commission shall be entered on the minutes.

Two (2) members of the commission shall be a quorum.

**SECTION 4.** Section 77-1-6, Mississippi Code of 1972, is reenacted as follows:

77-1-6. There is hereby established in the State Treasury a special fund to be known as the "Public Service Commission Regulation Fund." Such fund shall be the sole fund of the commission for all monies collected and deposited to the credit of or appropriated to the commission. The fund shall be administered as provided in this title and shall be audited annually by the State Auditor.

**SECTION 5.** Section 77-1-11, Mississippi Code of 1972, is reenacted as follows:

77-1-11. (1) It shall be unlawful for any public service commissioner, any candidate for public service commissioner, or any employee of the Public Service Commission or Public Utilities Staff to knowingly accept any gift, pass, money, campaign contribution or any emolument or other pecuniary benefit whatsoever, either directly or indirectly, from any person interested as owner, agent or representative, or from any person acting in any respect for such owner, agent or representative of any common or contract carrier by motor vehicle, telephone company, gas or electric utility company, or any other public utility that shall come under the jurisdiction or supervision of the Public Service Commission. Any person found guilty of violating the provisions of this subsection shall immediately forfeit his or her office or position and shall be fined not less than Five Thousand Dollars ($5,000.00), imprisoned in the State Penitentiary for not less than one (1) year, or both.

(2) It shall be unlawful for any person interested as owner, agent or representative, or any person acting in any respect for such owner, agent or representative of any common or contract carrier by motor vehicle, telephone company, gas or electric utility, or any other public utility that shall come under the jurisdiction or supervision of the Public Service Commission to offer any gift, pass, money, campaign contribution or any emolument or other pecuniary benefit whatsoever to any public service commissioner, any candidate for public service commissioner or any employee of the Public Service Commission or Public Utilities Staff. Any party found guilty of violating the provisions of this subsection shall be fined not less than Five Thousand Dollars ($5,000.00), or imprisoned in the State Penitentiary for not less than one (1) year, or both.

(3) For purposes of this section the term "emolument" shall include salary, donations, contributions, loans, stock tips, vacations, trips, honorarium, directorships or consulting posts.

Expenses associated with social occasions afforded public servants shall not be deemed a gift, emolument or other pecuniary benefit as defined in Section 25-4-103(k), Mississippi Code of 1972.

(4) For purposes of this section, a person who is a member of a water, gas, electric or other cooperative association regulated by the Public Service Commission shall not, by virtue of such membership, be deemed an owner, agent or representative of such association unless such person is acting in any respect for or as an owner, agent or representative of such association; nor shall a person who owns less than one-half of one percent (1/2 of 1%) in stock, the value thereof not to exceed Ten Thousand Dollars ($10,000.00), of any public utility that is regulated by the Public Service Commission, or of any holding company of such public utility, by virtue of such ownership, be deemed an owner, agent or representative of such public utility unless such person is acting in any respect for or as an owner, agent or representative of such public utility.

**SECTION 6.** Section 77-1-15, Mississippi Code of 1972, is reenacted as follows:

77-1-15. (1) There shall be an executive secretary of the commission, hereinafter referred to in this chapter as the secretary, to be appointed by the commission, by and with the advice and consent of the Senate, for the term of the commissioners. The secretary must have the same qualifications as the commissioners and shall be subject to the same disqualifications and to like penalties, except that he shall not be liable to impeachment. He shall receive a salary fixed by the Legislature. He shall take the oath of office and shall be removable at the pleasure of the commission, which may fill any vacancy until the Senate confirms a successor. The secretary shall make bond as provided for other state officers, in the sum of Ten Thousand Dollars ($10,000.00), conditioned upon the faithful performance of the duties of his office.

(2) The secretary shall collect all fees and penalties collected by or paid to the commission, and shall cover the same into the State Treasury; and all fees and penalties collected under the Mississippi Motor Carrier Regulatory Law of 1938 shall be covered into the Public Service Commission Regulation Fund.

(3) The secretary of the commission shall be the custodian of all records, documents, and the seal of the commission. He shall issue all citations, subpoenas and other rightful orders and documents, and perform all other duties usually required of such officer, and as required by the commission.

(4) It shall be the duty and responsibility of the secretary to supervise and manage the offices and staff of the Public Service Commission and formulate written policies and procedures for the effective and efficient operation of the office and present these policies and procedures to the board for promulgation.

**SECTION 7.** Section 77-1-17, Mississippi Code of 1972, is reenacted as follows:

77-1-17. The commission is hereby authorized to employ for the term of the commissioners a competent rate expert at a salary fixed by the commission, and an assistant rate expert at a salary fixed by the commission, for the collection of data and evidence for the use of the state in protecting the interest of the state involving duties and obligations of all common carriers, all common carriers by motor vehicle, all restricted common carriers by motor vehicle, and all contract carriers by motor vehicle, and for the establishment of proof in litigation now pending or which may hereafter be instituted.

The rate expert and his assistant shall make all needed investigations affecting rates and rate making and shall perform such other duties as the commission may find necessary for them to do in the interest of the state.

Said duties shall also include the checking and investigating of the filing of rate schedules with the commission, and making of reports to the commission respecting tariffs filed by any of the above-mentioned carriers with the commission involving the increase of any rates for movements within the State of Mississippi, and the general checking and reports to the commission affecting any rates increased from points without the State of Mississippi to points within the State of Mississippi, and from points in the State of Mississippi to points without the State of Mississippi. Said rate experts may be discharged by the commission for incompetency or other good cause, but they shall have notice and an opportunity to be heard in respect to any charge for removal.

**SECTION 8.** Section 77-1-19, Mississippi Code of 1972, is reenacted as follows:

77-1-19. The commission is authorized to employ the following additional employees to carry out and enforce the provisions of the Motor Carrier Regulatory Law of 1938:

(a) An assistant secretary and two (2) stenographer-clerks;

(b) One (1) combined bookkeeper and stenographer;

(c) One (1) stenographer competent to serve as a reporter of evidence taken before the commission; and

(d) Twelve (12) additional employees, which includes seven (7) employees to be transferred from the utility department to the motor carrier department to perform the duties of the commission imposed upon it by the provisions of said Motor Carrier Regulatory Law.

**SECTION 9.** Section 77-1-21, Mississippi Code of 1972, is reenacted as follows:

77-1-21. (1) For the purpose of enforcing the provisions of the Mississippi Motor Carrier Regulatory Law of 1938, the Mississippi Department of Transportation is authorized to employ,

in addition to personnel already employed by the department, one (1) chief enforcement officer and twenty-one (21) inspectors, who shall be under the management of the department. The chief enforcement officer and the inspectors shall devote their full time to the performance of their duties and shall take an oath faithfully to perform the duties of their position. The department shall require bonds to be carried on such employees as the department may deem necessary, the cost thereof to be paid by the department. The chief enforcement officer and inspectors shall be qualified by experience and training in law enforcement or investigative work, and shall attend and satisfactorily complete an appropriate course of instruction established by the Commissioner of Public Safety at the Law Enforcement Officers Training Academy. The chief enforcement officer and the inspectors referred to in this section shall be selected after an examination as to physical and mental fitness. Such employees shall be citizens of the United States and the State of Mississippi, and of good moral character. All such members of staff shall be appointed by the Mississippi Department of Transportation and shall be subject to removal at any time by the department.

(2) The Public Service Commission shall transfer all employees, equipment, inventory and resources of the commission employed and used to enforce the Motor Carrier Regulatory Law of 1938 to the Mississippi Department of Transportation on July 1, 2004. The transfer of personnel shall be commensurate with the number and classification of positions allocated to that law enforcement. The transfer also shall include direct support, clerical, data processing and communications positions allocated to that law enforcement.

(3) The Public Service Commission shall transfer to the Mississippi Department of Transportation each year the amount of funds necessary to support the law enforcement functions being

performed for the commission by the department, as specified in the appropriation bill for the Public Service Commission.

(4) Any reference in any statute, rule or regulation to law enforcement duties being performed by the Public Service Commission shall be construed to mean law enforcement duties being performed for the commission by the Mississippi Department of Transportation.

**SECTION 10.** Section 77-1-25, Mississippi Code of 1972, is reenacted as follows:

77-1-25. No member of the staff of the commission, or any other person, shall use uniforms, material, or equipment of the commission for private or political purposes. Members of the staff of the commission may be candidates for political office but must take a leave of absence to do so. Members of the staff of the commission may take part in political campaigns other than campaigns for Public Service Commission but may not solicit or receive campaign contributions from regulated utilities. Anyone violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction, shall be punished as provided by law and shall be dismissed from the staff of the commission.

**SECTION 11.** Section 77-1-27, Mississippi Code of 1972, is reenacted as follows:

77-1-27. All commission employees provided for in this chapter, and the reasonable and necessary expenses of the administration of the duties imposed on the commission by the Motor Carrier Regulatory Law of 1938, shall be paid out of the appropriations made to defray the expenses of the commission, upon requisitions and warrants in the same manner provided by law for the disbursements of appropriations for the commission. An itemized account shall be kept of all receipts and expenditures and shall be reported to the Legislature by the commission.

**SECTION 12.** Section 77-1-29, Mississippi Code of 1972, is reenacted as follows:

77-1-29. On or before the twentieth day of each calendar month, the commission shall pay into the State Treasury to the account of the "Public Service Commission Regulation Fund" all monies collected by it during the preceding calendar month, showing from whom collected, when collected and for what purposes collected. All disbursements made by the commission or from the regulation fund for any purposes, other than for salaries provided by law, shall be supported by a detailed and itemized statement approved by the commission for commission disbursements. The commission shall not expend funds from the "Public Service Commission Regulation Fund" to employ personnel whose services would duplicate services provided by any employee of the Public Utilities Staff.

**SECTION 13.** Section 77-1-31, Mississippi Code of 1972, is reenacted as follows:

77-1-31. The commission shall keep a docket of petitions and complaints, which shall be entered in regular order. The docket shall be called at each regular meeting of the board, and the cases thereon disposed of, or, if necessary, continued until the next meeting.

**SECTION 14.** Section 77-1-33, Mississippi Code of 1972, is reenacted as follows:

77-1-33. In any matter of inquiry pending before the commission or any member thereof, subpoenas for witnesses, and subpoenas duces tecum, may be issued by the secretary, under seal, or by any member without the seal, and shall be executed and returned by any sheriff, constable, or marshal, under the like penalties of law for failure to execute and return the process of the circuit court. If any person duly summoned to appear and testify before the commission, or before any one or more of the commissioners, shall fail or refuse to appear and testify, or to bring and produce, as commanded, any book, paper, or document, without a lawful excuse, or shall refuse to answer any proper

question propounded to him by the commission or any of the commissioners, or if any person shall obstruct the commission, or one or more of the commissioners in the discharge of duty, or shall conduct himself in a rude, disrespectful, or disorderly manner before the commission deliberating in the discharge of duty, such witness or person shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than One Thousand Dollars ($1,000.00), or be imprisoned in the county jail for a period not exceeding six (6) months, or both.

**SECTION 15.** Section 77-1-35, Mississippi Code of 1972, is reenacted as follows:

77-1-35. The several members of the commission and the secretary may, in the discharge of their duties, administer oaths and take affidavits. The commission and each member thereof may examine witnesses under oath in all matters coming before them. If any person shall testify falsely, or make any false affidavit or oath before the commission, or before any of the commissioners, or before any officer, to any matter coming before the commission, he shall be guilty of perjury, and, upon conviction, shall be punished according to law.

**SECTION 16.** Section 77-1-37, Mississippi Code of 1972, is reenacted as follows:

77-1-37. Witnesses summoned to appear before the commission shall be entitled to the same per diem and mileage as witnesses attending the circuit court. Witnesses summoned by the commission on its behalf shall be paid as are other expenditures of the commission, upon the certificate of the commission showing the amount to which such witness may be entitled. Witnesses summoned for any carrier shall be paid by it.

**SECTION 17.** Section 77-1-39, Mississippi Code of 1972, is reenacted as follows:

77-1-39. In all cases where the testimony of witnesses is given orally before the commission any interested party or the

commission shall have the right to have said testimony taken down and transcribed by a stenographer or court reporter, who is not an employee of the commission, to be agreed upon by the parties or appointed by the commission. The stenographer or court reporter so employed shall be duly sworn and his or her certificate that the transcript of such evidence is correct together with the official certificate of any one (1) of the commissioners that he has read the same and that it is in his opinion correct shall entitle such transcript or a certified copy thereof to be received in evidence on any appeal or in any court in this state subject only to any objection that the same is not relevant or material. The stenographer or court reporter shall be paid in accordance with the provisions of Section 9-13-33. The commission shall have the right to require any party demanding an official stenographer to guarantee or prepay the costs thereof in all proper cases.

**SECTION 18.** Section 77-1-41, Mississippi Code of 1972, is reenacted as follows:

77-1-41. All findings of the commission and the determination of every matter by it shall be made in writing and placed upon its minutes. Proof thereof shall be made by a copy of the same duly certified by the secretary under the seal of the commission. Whenever any matter has been determined by the commission, in the course of any proceeding before it the fact of such determination, duly certified, shall be received in all courts and by every officer in civil cases as prima facie evidence that such determination was right and proper. The record of the proceedings of the commission shall be deemed a public record, and shall at all reasonable times be subject to the inspection of the public.

**SECTION 19.** Section 77-1-43, Mississippi Code of 1972, is reenacted as follows:

77-1-43. (1) The commission may apply to the circuit or chancery court, by proper proceeding, for aid in the enforcement

of obedience to its process, and to compel compliance with the law and its lawful orders, decisions, and determinations. Said courts shall have jurisdiction to grant aid and relief in such cases, subject to the right of appeal to the Supreme Court by the party aggrieved. The Attorney General, or district attorney in his district, shall institute such proceedings in the name of the commission.

(2) Any action for violation of the law, or for the violation of any lawful rule, regulation or order of the commission may be instituted by the commission or by the Attorney General in any court of competent jurisdiction.

(3) The remedies given by this chapter against all carriers under the supervision of the commission, are cumulative to those now in existence by law.

**SECTION 20.** Section 77-1-47, Mississippi Code of 1972, is reenacted as follows:

77-1-47. Appeals from any final finding, order or judgment of the commission shall be taken and perfected by the filing of a bond in the sum of Five Hundred Dollars ($500.00) with two (2) sureties, or with a surety company qualified to do business in Mississippi as the surety, conditioned to pay the cost of such appeal. Said bond shall be approved by the chairman or secretary of the commission, or by the judge of the court to which such appeal is taken in case the chairman or secretary of the commission refuses to approve a proper bond tendered to them within the time limited for taking appeals. The commission may grant a supersedeas bond on any appeal, in such penalty and with such surety thereon as it may deem sufficient, and may, during the pendency of any appeal, at any time, require the increase of any such supersedeas bond or additional securities thereon. The judge of the Circuit Court of Hinds County may on petition therefor by any party entitled to an appeal, presented to him within six (6) months of the date of the final finding, order, or judgment of the

commission appealed from, award a writ of supersedeas to any such final finding, order, or judgment of the commission, upon the filing of a supersedeas bond in an amount to be fixed by said judge. All appeal bonds for the payment of costs, and all supersedeas bonds, shall be made payable to the state and may be enforced in the name of the state by motion or other legal proceedings or remedy in any circuit court of this state having jurisdiction of a motion or action on such bond, and the process and proceedings thereon shall be as provided by law upon bonds of like character required and taken by any court of this state. Such circuit court may render and enter like judgments upon such bonds as may, by law, be rendered and entered upon bonds of like character, and process of execution shall issue upon such judgments, and may be levied and executed as provided by law in other cases.

**SECTION 21.** Section 77-1-49, Mississippi Code of 1972, is reenacted as follows:

77-1-49. The commission shall make a report every year to the Legislature of all its acts and doings for the preceding fiscal year.

**SECTION 22.** Section 77-1-51, Mississippi Code of 1972, is amended as follows:

77-1-51. Sections 77-1-1 through 77-1-49, Mississippi Code of 1972, which create the Public Service Commission and prescribe its powers and duties, shall stand repealed as of December 31, 2012.

**SECTION 23.** The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the Attorney General of the United States or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as reenacted and extended.

**SECTION 24.** This act shall take effect and be in force from and after December 31, 2011, if it is effectuated on or before that date under Section 5 of the Voting Rights Act of 1965, as amended and extended. If it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended after December 31, 2011, this act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 8, 2011

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 8, 2011

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

GOVERNOR

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