

By: Miles, Ward

To: Transportation

HOUSE BILL NO. 1364

1 AN ACT TO AUTHORIZE THE MISSISSIPPI TRANSPORTATION COMMISSION
2 TO CONTRACT WITH ANY PERSON, CORPORATION OR OTHER BUSINESS
3 LICENSED TO DO BUSINESS IN THE STATE FOR THE PURPOSE OF
4 CONSTRUCTING TOLL ROADS; TO PRESCRIBE THE TERMS AND CONDITIONS FOR
5 THE LETTING OF SUCH CONTRACTS AND THE RIGHTS AND DUTIES OF THE
6 PARTIES ENTERING INTO SUCH CONTRACTS; TO AMEND SECTIONS 65-3-1 AND
7 11-46-9, MISSISSIPPI CODE OF 1972, IN CONFORMITY TO THE PROVISIONS
8 OF THIS ACT; AND FOR RELATED PURPOSES.

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

10 SECTION 1. (1) The Mississippi Transportation Commission,
11 in its discretion, is authorized to enter into contract with any
12 persons, corporations, partnerships or other businesses licensed
13 to do business in the State of Mississippi (hereinafter referred
14 to as "companies" or "company") for the purpose of leasing highway
15 property upon which shall be constructed one or more toll roads in
16 the state. Such contracts shall provide that land held by the
17 Mississippi Department of Transportation, whether in fee simple,
18 as an easement or other interest, shall be leased or assigned to a
19 company for a term of years, during which time the company, at its
20 own expense and without use of any public monies provided by the
21 State of Mississippi, the Mississippi Department of
22 Transportation, the Mississippi Legislature or any other state
23 agency or political subdivision of the state, shall construct,
24 operate and maintain limited access or controlled access highways,
25 having not less than four (4) lanes for motor vehicle traffic,
26 toll booths and related facilities. All such highways, pavement,
27 bridges, drainage related structures and other infrastructure
28 comprising the projects shall be built and maintained in
29 accordance with not less than the minimum highway design,

30 construction and maintenance standards established for such
31 highways, infrastructure and facilities by the commission. The
32 Transportation Department shall conduct periodic inspections of
33 any such project throughout the term of the contract to ensure
34 compliance by the company. Failure of a company to comply with
35 minimum standards established for the project by the commission
36 shall constitute a breach and shall subject the company to
37 liability on its bond or security or to rescission of the contract
38 in accordance with the terms and provisions of the contract.

39 (2) Every contract entered into by the commission under this
40 section shall be advertised, bid and let in the same manner and
41 procedure as provided by law for other highway projects. The
42 commission shall require a company that is awarded a bid to enter
43 into bond and provide such security as the commission determines
44 may be necessary or advisable to ensure timely completion and
45 proper execution and performance of the contract. The Mississippi
46 Department of Transportation is authorized to acquire such
47 property or interests in property as may be necessary, by gift,
48 purchase or eminent domain, for construction and maintenance of
49 the highways built pursuant to contracts entered into under this
50 section. Upon expiration of the term of the contract, all
51 interests that the company may have in the land, infrastructure,
52 facilities or other improvements to the property subject to
53 contract shall terminate and automatically, by operation of law,
54 be returned or conveyed to and vest in the State of Mississippi
55 and the Mississippi Transportation Commission.

56 (3) During the term of any contract entered into under this
57 section, the company may establish, charge and collect motor
58 vehicle operators tolls for use of the highway and its facilities.
59 The amount of such tolls, and any modification thereto, shall be
60 subject to approval by the Mississippi Transportation Commission;
61 however, all such contracts shall require a company to pay not
62 less than five percent (5%) of all tolls collected to the
63 Mississippi Department of Transportation. All such monies paid to
64 the department shall be deposited into the State Highway Fund and
65 may be expended, upon appropriation by the Legislature, only for
66 maintenance of state highways.

67 (4) All statutes of this state relating to traffic
68 regulation and control shall be applicable to motor vehicles
69 operated upon highways constructed under this section and shall be
70 enforceable by the Mississippi Department of Public Safety and the
71 Mississippi Highway Safety Patrol.

72 (5) The State of Mississippi, the Mississippi Transportation
73 Commission, the Mississippi Department of Transportation or any
74 other agency or political subdivision, or any officer or employee
75 thereof, shall not be liable for any tortious act or omission
76 arising out of the construction, maintenance or operation of any
77 highway or highway project under the provisions of this section
78 where the act or omission occurs during the term of any such
79 contract entered into by the Mississippi Transportation Commission
80 and a company.

81 SECTION 2. Section 65-3-1, Mississippi Code of 1972, is
82 amended as follows:[JWB1]

83 65-3-1. Subject only to the provisions hereinafter
84 contained, it shall be unlawful for any person, acting privately
85 or in any official capacity or as an employee of any subdivision
86 of the state, to charge or collect any toll or other charge from
87 any person for the privilege of traveling on any part of any
88 highway which has been heretofore or may hereafter be designated
89 as a state highway, and being a part of the state highway system,
90 or on or across any bridge wholly within this state, which is a
91 part of any such highway.

92 For a violation of this section, any judge or chancellor may,
93 in term time or vacation, grant an injunction upon complaint of
94 the Mississippi Transportation Commission.

95 However, none of the provisions of this section shall
96 prohibit the collection of any toll or other charge for the
97 privilege of traveling on, or the use of, any causeway, bridge,
98 tunnel, toll bridge, or any combination of such facility
99 constructed under the provisions of Sections 65-23-101 through

100 65-23-119, forming a part of U.S. Highway * * * 90 across the Bay
101 of St. Louis, or across or under the East Pascagoula River or the
102 West Pascagoula River on * * * U.S. Highway 90.

103 The provisions of this section shall be inapplicable to any
104 toll road built or operated under the authority of Section 2 of
105 House Bill No. _____, 2000 Regular Session.

106 SECTION 3. Section 11-46-9, Mississippi Code of 1972, is
107 amended as follows:[JWB2]

108 11-46-9. (1) A governmental entity and its employees acting
109 within the course and scope of their employment or duties shall
110 not be liable for any claim:

111 (a) Arising out of a legislative or judicial action or
112 inaction, or administrative action or inaction of a legislative or
113 judicial nature;

114 (b) Arising out of any act or omission of an employee
115 of a governmental entity exercising ordinary care in reliance
116 upon, or in the execution or performance of, or in the failure to
117 execute or perform, a statute, ordinance or regulation, whether or
118 not the statute, ordinance or regulation be valid;

119 (c) Arising out of any act or omission of an employee
120 of a governmental entity engaged in the performance or execution
121 of duties or activities relating to police or fire protection
122 unless the employee acted in reckless disregard of the safety and
123 well-being of any person not engaged in criminal activity at the
124 time of injury;

125 (d) Based upon the exercise or performance or the
126 failure to exercise or perform a discretionary function or duty on
127 the part of a governmental entity or employee thereof, whether or
128 not the discretion be abused;

129 (e) Arising out of an injury caused by adopting or
130 failing to adopt a statute, ordinance or regulation;

131 (f) Which is limited or barred by the provisions of any
132 other law;

133 (g) Arising out of the exercise of discretion in
134 determining whether or not to seek or provide the resources
135 necessary for the purchase of equipment, the construction or
136 maintenance of facilities, the hiring of personnel and, in
137 general, the provision of adequate governmental services;

138 (h) Arising out of the issuance, denial, suspension or
139 revocation of, or the failure or refusal to issue, deny, suspend
140 or revoke any privilege, ticket, pass, permit, license,
141 certificate, approval, order or similar authorization where the
142 governmental entity or its employee is authorized by law to
143 determine whether or not such authorization should be issued,
144 denied, suspended or revoked unless such issuance, denial,
145 suspension or revocation, or failure or refusal thereof, is of a
146 malicious or arbitrary and capricious nature;

147 (i) Arising out of the assessment or collection of any
148 tax or fee;

149 (j) Arising out of the detention of any goods or
150 merchandise by any law enforcement officer, unless such detention
151 is of a malicious or arbitrary and capricious nature;

152 (k) Arising out of the imposition or establishment of a
153 quarantine, whether such quarantine relates to persons or
154 property;

155 (l) Of any claimant who is an employee of a
156 governmental entity and whose injury is covered by the Workers'
157 Compensation Law of this state by benefits furnished by the
158 governmental entity by which he is employed;

159 (m) Of any claimant who at the time the claim arises is
160 an inmate of any detention center, jail, workhouse, penal farm,
161 penitentiary or other such institution, regardless of whether such
162 claimant is or is not an inmate of any detention center, jail,
163 workhouse, penal farm, penitentiary or other such institution when
164 the claim is filed;

165 (n) Arising out of any work performed by a person

166 convicted of a crime when the work is performed pursuant to any
167 sentence or order of any court or pursuant to laws of the State of
168 Mississippi authorizing or requiring such work;

169 (o) Under circumstances where liability has been or is
170 hereafter assumed by the United States, to the extent of such
171 assumption of liability, including but not limited to any claim
172 based on activities of the Mississippi National Guard when such
173 claim is cognizable under the National Guard Tort Claims Act of
174 the United States, 32 USCS 715 (32 USCS 715), or when such claim
175 accrues as a result of active federal service or state service at
176 the call of the Governor for quelling riots and civil
177 disturbances;

178 (p) Arising out of a plan or design for construction or
179 improvements to public property, including but not limited to,
180 public buildings, highways, roads, streets, bridges, levees,
181 dikes, dams, impoundments, drainage channels, diversion channels,
182 harbors, ports, wharfs or docks, where such plan or design has
183 been approved in advance of the construction or improvement by the
184 legislative body or governing authority of a governmental entity
185 or by some other body or administrative agency, exercising
186 discretion by authority to give such approval, and where such plan
187 or design is in conformity with engineering or design standards in
188 effect at the time of preparation of the plan or design;

189 (q) Arising out of an injury caused solely by the
190 effect of weather conditions on the use of streets and highways;

191 (r) Arising out of the lack of adequate personnel or
192 facilities at a state hospital or state corrections facility if
193 reasonable use of available appropriations has been made to
194 provide such personnel or facilities;

195 (s) Arising out of loss, damage or destruction of
196 property of a patient or inmate of a state institution;

197 (t) Arising out of any loss of benefits or compensation
198 due under a program of public assistance or public welfare;

199 (u) Arising out of or resulting from riots, unlawful
200 assemblies, unlawful public demonstrations, mob violence or civil
201 disturbances;

202 (v) Arising out of an injury caused by a dangerous
203 condition on property of the governmental entity that was not
204 caused by the negligent or other wrongful conduct of an employee
205 of the governmental entity or of which the governmental entity did
206 not have notice, either actual or constructive, and adequate
207 opportunity to protect or warn against; provided, however, that a
208 governmental entity shall not be liable for the failure to warn of
209 a dangerous condition which is obvious to one exercising due care;

210 (w) Arising out of the absence, condition, malfunction
211 or removal by third parties of any sign, signal, warning device,
212 illumination device, guardrail or median barrier, unless the
213 absence, condition, malfunction or removal is not corrected by the
214 governmental entity responsible for its maintenance within a
215 reasonable time after actual or constructive notice; or

216 (x) Arising out of the administration of corporal
217 punishment or the taking of any action to maintain control and
218 discipline of students, as defined in Section 37-11-57, by a
219 teacher, assistant teacher, principal or assistant principal of a
220 public school district in the state unless the teacher, assistant
221 teacher, principal or assistant principal acted in bad faith or
222 with malicious purpose or in a manner exhibiting a wanton and
223 willful disregard of human rights or safety.

224 (y) Arising out of any act or omission relating to a
225 highway project under a contract entered into under Section 1 of
226 House Bill No. _____, 2000 Regular Session.

227 (2) A governmental entity shall also not be liable for any
228 claim where the governmental entity:

229 (a) Is inactive and dormant;

230 (b) Receives no revenue;

231 (c) Has no employees; and

232 (d) Owns no property.

233 (3) If a governmental entity exempt from liability by
234 subsection (2) becomes active, receives income, hires employees or
235 acquires any property, such governmental entity shall no longer be
236 exempt from liability as provided in subsection (2) and shall be
237 subject to the provisions of this chapter.

238 SECTION 4. This act shall take effect and be in force from
239 and after July 1, 2000.