

By: Senator(s) Ross

To: Highways and  
Transportation

SENATE BILL NO. 2958

1 AN ACT TO AUTHORIZE THE MISSISSIPPI TRANSPORTATION  
2 COMMISSION, COUNTY BOARDS OF SUPERVISORS AND THE GOVERNING  
3 AUTHORITIES OF MUNICIPALITIES TO CONTRACT WITH ANY PERSON,  
4 CORPORATION OR OTHER BUSINESS LICENSED TO DO BUSINESS IN THE STATE  
5 FOR THE PURPOSE OF CONSTRUCTING TOLL ROADS OR BRIDGES; TO  
6 PRESCRIBE THE TERMS AND CONDITIONS FOR THE LETTING OF SUCH  
7 CONTRACTS AND THE RIGHTS AND DUTIES OF THE PARTIES ENTERING INTO  
8 SUCH CONTRACTS; TO AMEND SECTIONS 65-3-1 AND 11-46-9, MISSISSIPPI  
9 CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; TO  
10 AUTHORIZE GOVERNMENTAL ENTITIES TO ISSUE LICENSES AND PERMITS TO  
11 INDIVIDUALS, GROUPS, PARTNERSHIPS, CORPORATIONS, ASSOCIATIONS OR  
12 OTHER LEGAL ENTITIES AUTHORIZING SUCH ENTITIES TO CONSTRUCT AND  
13 OPERATE TOLL ROADS, BRIDGES, FERRIES AND CAUSEWAYS PRIMARILY ON  
14 LAND OWNED, LEASED OR USED BY SUCH ENTITIES; TO EXEMPT REAL  
15 PROPERTY USED FOR SUCH PURPOSES FROM AD VALOREM TAX; AND FOR  
16 RELATED PURPOSES.

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

18 SECTION 1. (1) The Mississippi Transportation Commission,  
19 county boards of supervisors and/or the governing authorities of  
20 municipalities (hereinafter referred to as governmental entities)  
21 in their discretion, may contract, individually or jointly with  
22 other governmental entities, with any persons, corporations,  
23 partnerships or other businesses licensed to do business in the  
24 State of Mississippi (hereinafter referred to as "companies" or  
25 "company") for the purpose of leasing highway or roadway property  
26 upon which shall be constructed one or more toll roads or bridges  
27 in the state. Such contracts shall provide that land held by the  
28 governmental entities, whether in fee simple, as an easement or  
29 other interest, shall be leased or assigned to a company for  
30 construction, operation and maintenance of roadways or highways  
31 for motor vehicle traffic, toll booths and related facilities.  
32 All such highways, pavement, bridges, drainage related structures

33 and other infrastructure comprising the projects shall be built  
34 and maintained in accordance with not less than the minimum  
35 highway design, construction and maintenance standards established  
36 for such highways, infrastructure and facilities by the  
37 contracting governmental entity. The contracting governmental  
38 entity shall conduct periodic inspections of any such project  
39 throughout the term of the contract to ensure compliance by the  
40 company. Failure of a company to comply with minimum standards  
41 established for the project by the contracting governmental entity  
42 shall constitute a breach and shall subject the company to  
43 liability on its bond or security or to rescission of the contract  
44 in accordance with the terms and provisions of the contract.

45 (2) Every contract entered into by a governmental entity  
46 under this section shall require a company to enter into bond and  
47 provide such security as the governmental entity determines may be  
48 necessary or advisable to ensure timely completion and proper  
49 execution and performance of the contract. The governmental  
50 entities are authorized to acquire such property or interests in  
51 property as may be necessary, by gift, purchase or eminent domain,  
52 for construction and maintenance of the highways built pursuant to  
53 contracts entered into under this section. Furthermore, when and  
54 as dictated by the terms of the contract with the governmental  
55 entity, the company shall have the same powers of eminent domain  
56 as those described in Section 11-27-47. Upon expiration,  
57 termination or rescission of the contract, all interests that the  
58 company may have in the land, infrastructure, facilities or other  
59 improvements to the property subject to contract shall terminate  
60 and automatically, by operation of law, be returned or conveyed to  
61 and vest in the State of Mississippi or the contracting  
62 governmental entity. Upon termination, expiration or rescission  
63 of the contract, the collection of tolls shall cease.

64 (3) During the term of any contract entered into under this  
65 section, the company may establish, charge and collect motor

66 vehicle operators tolls for use of the highway and its facilities.  
67 The amount of such tolls, and any modification thereto, shall be  
68 subject to approval by the contracting governmental entity;  
69 however, all such contracts entered into with the Mississippi  
70 Transportation Commission may require a company to pay a  
71 percentage of all tolls collected to the Mississippi Department of  
72 Transportation. All such monies paid to the department shall be  
73 deposited into the State Highway Fund and may be expended, upon  
74 appropriation by the Legislature, only for maintenance of state  
75 highways.

76 (4) All statutes of this state relating to traffic  
77 regulation and control shall be applicable to motor vehicles  
78 operated upon highways and bridges constructed under this section  
79 and shall be enforceable by the Mississippi Department of Public  
80 Safety and the Mississippi Highway Safety Patrol.

81 (5) The State of Mississippi, the Mississippi Transportation  
82 Commission, the Mississippi Department of Transportation,  
83 counties, municipalities or any other agency or political  
84 subdivision, or any officer or employee thereof, shall not be  
85 liable for any tortious act or omission arising out of the  
86 construction, maintenance or operation of any highway or bridge  
87 project under the provisions of this section where the act or  
88 omission occurs during the term of any such contract entered into  
89 by the Mississippi Transportation Commission or other governmental  
90 entity and a company.

91 (6) The powers conferred by this section shall be in  
92 addition to the powers conferred by any other law, general,  
93 special or local. This section shall be construed as an  
94 additional and alternative method of funding the purchasing,  
95 building, improving, owning or operating of roadways and/or  
96 highways under the jurisdiction of the Mississippi Transportation  
97 Commission, county boards of supervisors or municipal governing

98 authorities, any provision of the laws of the state or any charter  
99 of any municipality to the contrary notwithstanding.

100 SECTION 2. Section 65-3-1, Mississippi Code of 1972, is  
101 amended as follows:

102 65-3-1. Subject only to the provisions hereinafter  
103 contained, it shall be unlawful for any person, acting privately  
104 or in any official capacity or as an employee of any subdivision  
105 of the state, to charge or collect any toll or other charge from  
106 any person for the privilege of traveling on any part of any  
107 highway which has been heretofore or may hereafter be designated  
108 as a state highway, and being a part of the state highway system,  
109 or on or across any bridge wholly within this state, which is a  
110 part of any such highway.

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

114 However, none of the provisions of this section shall  
115 prohibit the collection of any toll or other charge for the  
116 privilege of traveling on, or the use of, any causeway, bridge,  
117 tunnel, toll bridge, or any combination of such facility  
118 constructed under the provisions of Sections 65-23-101 through  
119 65-23-119, forming a part of U.S. Highway \* \* \* 90 across the Bay  
120 of St. Louis, or across or under the East Pascagoula River or the  
121 West Pascagoula River on \* \* \* U.S. Highway 90.

122 The provisions of this section shall be inapplicable to any  
123 toll road or bridge built or operated under the authority of  
124 Section 1 or Section 4 of Senate Bill No. \_\_\_\_\_, 2001 Regular  
125 Session.

126 SECTION 3. Section 11-46-9, Mississippi Code of 1972, is  
127 amended as follows:

128 11-46-9. (1) A governmental entity and its employees acting  
129 within the course and scope of their employment or duties shall  
130 not be liable for any claim:

131           (a) Arising out of a legislative or judicial action or  
132 inaction, or administrative action or inaction of a legislative or  
133 judicial nature;

134           (b) Arising out of any act or omission of an employee  
135 of a governmental entity exercising ordinary care in reliance  
136 upon, or in the execution or performance of, or in the failure to  
137 execute or perform, a statute, ordinance or regulation, whether or  
138 not the statute, ordinance or regulation be valid;

139           (c) Arising out of any act or omission of an employee  
140 of a governmental entity engaged in the performance or execution  
141 of duties or activities relating to police or fire protection  
142 unless the employee acted in reckless disregard of the safety and  
143 well-being of any person not engaged in criminal activity at the  
144 time of injury;

145           (d) Based upon the exercise or performance or the  
146 failure to exercise or perform a discretionary function or duty on  
147 the part of a governmental entity or employee thereof, whether or  
148 not the discretion be abused;

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

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

153           (g) Arising out of the exercise of discretion in  
154 determining whether or not to seek or provide the resources  
155 necessary for the purchase of equipment, the construction or  
156 maintenance of facilities, the hiring of personnel and, in  
157 general, the provision of adequate governmental services;

158           (h) Arising out of the issuance, denial, suspension or  
159 revocation of, or the failure or refusal to issue, deny, suspend  
160 or revoke any privilege, ticket, pass, permit, license,  
161 certificate, approval, order or similar authorization where the  
162 governmental entity or its employee is authorized by law to  
163 determine whether or not such authorization should be issued,

164 denied, suspended or revoked unless such issuance, denial,  
165 suspension or revocation, or failure or refusal thereof, is of a  
166 malicious or arbitrary and capricious nature;

167 (i) Arising out of the assessment or collection of any  
168 tax or fee;

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

172 (k) Arising out of the imposition or establishment of a  
173 quarantine, whether such quarantine relates to persons or  
174 property;

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

179 (m) Of any claimant who at the time the claim arises is  
180 an inmate of any detention center, jail, workhouse, penal farm,  
181 penitentiary or other such institution, regardless of whether such  
182 claimant is or is not an inmate of any detention center, jail,  
183 workhouse, penal farm, penitentiary or other such institution when  
184 the claim is filed;

185 (n) Arising out of any work performed by a person  
186 convicted of a crime when the work is performed pursuant to any  
187 sentence or order of any court or pursuant to laws of the State of  
188 Mississippi authorizing or requiring such work;

189 (o) Under circumstances where liability has been or is  
190 hereafter assumed by the United States, to the extent of such  
191 assumption of liability, including, but not limited to, any claim  
192 based on activities of the Mississippi National Guard when such  
193 claim is cognizable under the National Guard Tort Claims Act of  
194 the United States, 32 USC 715 (32 USCS 715), or when such claim  
195 accrues as a result of active federal service or state service at

196 the call of the Governor for quelling riots and civil  
197 disturbances;

198 (p) Arising out of a plan or design for construction or  
199 improvements to public property, including, but not limited to,  
200 public buildings, highways, roads, streets, bridges, levees,  
201 dikes, dams, impoundments, drainage channels, diversion channels,  
202 harbors, ports, wharfs or docks, where such plan or design has  
203 been approved in advance of the construction or improvement by the  
204 legislative body or governing authority of a governmental entity  
205 or by some other body or administrative agency, exercising  
206 discretion by authority to give such approval, and where such plan  
207 or design is in conformity with engineering or design standards in  
208 effect at the time of preparation of the plan or design;

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

211 (r) Arising out of the lack of adequate personnel or  
212 facilities at a state hospital or state corrections facility if  
213 reasonable use of available appropriations has been made to  
214 provide such personnel or facilities;

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

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

219 (u) Arising out of or resulting from riots, unlawful  
220 assemblies, unlawful public demonstrations, mob violence or civil  
221 disturbances;

222 (v) Arising out of an injury caused by a dangerous  
223 condition on property of the governmental entity that was not  
224 caused by the negligent or other wrongful conduct of an employee  
225 of the governmental entity or of which the governmental entity did  
226 not have notice, either actual or constructive, and adequate  
227 opportunity to protect or warn against; provided, however, that a

228 governmental entity shall not be liable for the failure to warn of  
229 a dangerous condition which is obvious to one exercising due care;

230 (w) Arising out of the absence, condition, malfunction  
231 or removal by third parties of any sign, signal, warning device,  
232 illumination device, guardrail or median barrier, unless the  
233 absence, condition, malfunction or removal is not corrected by the  
234 governmental entity responsible for its maintenance within a  
235 reasonable time after actual or constructive notice; or

236 (x) Arising out of the administration of corporal  
237 punishment or the taking of any action to maintain control and  
238 discipline of students, as defined in Section 37-11-57, by a  
239 teacher, assistant teacher, principal or assistant principal of a  
240 public school district in the state unless the teacher, assistant  
241 teacher, principal or assistant principal acted in bad faith or  
242 with malicious purpose or in a manner exhibiting a wanton and  
243 willful disregard of human rights or safety.

244 (y) Arising out of any act or omission relating to a  
245 highway, bridge or roadway project under a contract entered into  
246 under Section 1 or Section 4 of Senate Bill No. \_\_\_\_\_, 2001 Regular  
247 Session.

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

250 (a) Is inactive and dormant;

251 (b) Receives no revenue;

252 (c) Has no employees; and

253 (d) Owns no property.

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

259 SECTION 4. (1) The provisions of this section and of  
260 Section 5 of Senate Bill No. \_\_\_\_\_, 2001 Regular Session, shall be



261 totally separate from and not limited in any respect by any other  
262 provisions of law including, but not limited to, any other  
263 provisions of Senate Bill No. \_\_\_\_\_, 2001 Regular Session, or of  
264 any other law relating to the setting and supervision of tolls,  
265 inspections, bonding of licensees and toll road and bridge owners  
266 and operators, rescission of licenses and contracts and reversion  
267 of title to property and projects. Unless clearly indicated to  
268 the contrary from the context of this section, all terms used in  
269 this section shall have the same meaning as when used in Section 1  
270 of Senate Bill No. \_\_\_\_\_, 2001 Regular Session.

271 (2) In addition to and as an alternative to any other  
272 authority granted by law including, but not limited to, Section 1  
273 of Senate Bill No. \_\_\_\_\_, 2001 Regular Session, any governmental  
274 entities, as defined in Section 1, may individually or jointly  
275 with any other governmental agency or agencies, in their  
276 discretion, issue licenses and permits to individuals, groups,  
277 partnerships, corporations, associations or other legal entities  
278 licensed to do business in this state (such persons and entities  
279 are hereinafter referred to as "licensees") authorizing such  
280 licensees to (a) construct, develop, purchase or otherwise  
281 establish and to own operate and maintain toll roads, bridges,  
282 ferries and causeways on private land and other property owned or  
283 leased or otherwise used for such purposes by such licensees; and  
284 (b) set, change, charge and collect tolls for the use of such  
285 facilities, all upon such terms and conditions, if any, which such  
286 governmental entities and licensees shall mutually agree to and  
287 set forth in such licenses or permits or in any contractual  
288 agreements between such governmental entities and licensees. Such  
289 governmental entities may, but only to the extent expressly  
290 provided in the licenses or permits issued to such licensees,  
291 impose and collect fees for the issuance of such licenses or  
292 permits. Without limiting any other provisions of this section,  
293 all licenses and permits issued under this section may be issued

294 for a stated period of time or may be perpetual and may be  
295 irrevocable, all as stated in such license or permit. Any  
296 governmental entity issuing any such license or permit may also  
297 use its eminent domain powers to acquire any property needed for  
298 or helpful to the construction, development, purchase or  
299 establishment or to the ownership or operation of any such project  
300 and may thereafter transfer title, license the use of or lease  
301 such property to any such licensee or such licensee's affiliate,  
302 all upon such terms and conditions as such governmental entity  
303 shall deem advisable. All statutes of this state relating to  
304 traffic regulation and control shall be applicable to motor  
305 vehicles operated upon roads and bridges constructed, developed,  
306 purchased or otherwise owned, established and operated pursuant to  
307 this section and shall be enforceable by the Mississippi  
308 Department of Public Safety and the Mississippi Highway Safety  
309 Patrol at the same level and to the same extent as such laws are  
310 enforced on public roads and bridges.

311 (3) Any licensee that has been issued a license or permit  
312 under this section may not be required by the governmental entity  
313 issuing the license or permit or by any other governmental entity  
314 to obtain any other license or permit or to pay any fee or tax in  
315 addition to the license or permit fee, if any, charged at the time  
316 of and incident to the issuance of such license or permit for the  
317 privilege of constructing, owning, operating or maintaining such  
318 toll road, bridge, ferry or causeway or engaging in the business  
319 of constructing, owning, operating or maintaining any such toll  
320 road, bridge, ferry or causeway relating to any period of time  
321 following the issuance of such license or permit including, but  
322 not limited to, any business license or ad valorem or property  
323 tax. Notwithstanding the foregoing, neither public funds nor  
324 public credit shall be used in the construction or financing of  
325 the privately-owned portion of any toll road, bridge, ferry or  
326 causeway; however, this provision shall not restrict public

327 funding or financing of any governmentally-owned roads, highways  
328 or other infrastructure which may provide access to or enhance  
329 access to or use of such privately owned toll road, bridge, ferry  
330 or causeway. All other laws and regulations of this state, to the  
331 extent such other laws or regulations are, or might be construed  
332 as being, inconsistent with or restricting or limiting either this  
333 section or Section 5 of Senate Bill No. \_\_\_\_\_, 2001 Regular  
334 Session, are superseded for the purposes of the implementation,  
335 application and operation of this section and of Section 5 of  
336 Senate Bill No. \_\_\_\_\_, 2001 Regular Session, to the extent of such  
337 actual or perceived inconsistency, restriction or limitation.

338       SECTION 5. All real and personal property, whether tangible  
339 or intangible, owned, used or leased by an individual or legal  
340 entity that has been issued a license or permit under Section 4 of  
341 Senate Bill No. \_\_\_\_\_, 2001 Regular Session, or by such  
342 individual's or legal entity's affiliates, successors or assigns,  
343 and which is used in the construction, development, establishment,  
344 ownership, operation or maintenance of such toll road, bridge,  
345 ferry or causeway authorized under Section 4 of Senate Bill No.  
346 \_\_\_\_\_, 2001 Regular Session, shall be exempt from all ad valorem  
347 and all other property taxes.

348       SECTION 6. Nothing in this act shall affect or defeat any  
349 claim, assessment, appeal, suit, right or cause of action for  
350 taxes due or accrued under the ad valorem tax laws before the date  
351 on which this act becomes effective, whether such claims,  
352 assessments, appeals, suits or actions have been begun before the  
353 date on which this act becomes effective or are begun thereafter;  
354 and the provisions of the ad valorem tax laws are expressly  
355 continued in full force, effect and operation for the purpose of  
356 the assessment, collection and enrollment of liens for any taxes  
357 due or accrued and the execution of any warrant under such laws  
358 before the date on which this act becomes effective, and for the

359 imposition of any penalties, forfeitures or claims for failure to  
360 comply with such laws.

361 SECTION 7. This act shall take effect and be in force from  
362 and after July 1, 2001.