

By: Representative Compretta (By Request)

To: Transportation;  
Judiciary A

## HOUSE BILL NO. 1590

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



highway design, construction and maintenance standards established for such highways, infrastructure and facilities by the contracting governmental entity. The contracting governmental entity shall conduct periodic inspections of any such project throughout the term of the contract to ensure compliance by the company. Failure of a company to comply with minimum standards established for the project by the contracting governmental entity shall constitute a breach and shall subject the company to liability on its bond or security or to rescission of the contract in accordance with the terms and provisions of the contract.

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

(3) During the term of any contract entered into under this section, the company may establish, charge and collect motor vehicle operators tolls for use of the highway and its facilities. 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.



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

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

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

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

The provisions of this section shall be inapplicable to any toll road or bridge built or operated under the authority of Section 1 or Section 5 of House Bill No. , 2002 Regular Session.

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

11-46-9. (1) A governmental entity and its employees acting within the course and scope of their employment or duties shall 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,



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

(y) Arising out of any act or omission relating to a highway, bridge or roadway project under a contract entered into under Section 1 or Section 5 of House Bill No. \_\_\_\_\_, 2002 Regular Session.

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

(a) Is inactive and dormant;

(b) Receives no revenue;

(c) Has no employees; and

(d) Owns no property.

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

**SECTION 4.** (1) The provisions of this section and of Section 6 of House Bill No. \_\_\_\_\_, 2002 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 House Bill No. \_\_\_\_\_, 2002 Regular Session, or of any  
264 other law relating to the setting and supervision of tolls,  
265 inspections, bonding of licenses 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 House Bill No. \_\_\_\_\_, 2002 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 House Bill No. \_\_\_\_\_, 2002 Regular Session, any governmental  
274 entities, as defined in Section 1 of House Bill No. \_\_\_\_\_, 2002  
275 Regular Session, may individually or jointly with any other  
276 governmental agency or agencies, in their discretion, issue  
277 licenses and permits to individuals, groups, partnerships,  
278 corporations, associations or other legal entities licensed to do  
279 business in this state (such persons and entities are hereinafter  
280 referred to as "licensees") authorizing such licenses to (a)  
281 construct, develop, purchase or otherwise establish and to own,  
282 operate and maintain toll roads, bridges, ferries and causeways on  
283 private land and other property owned or leased or otherwise used  
284 for such purposes by such licensees; and (b) set, change, charge  
285 and collect tolls for the use of such facilities, all upon such  
286 terms and conditions, if any, which such governmental entities and  
287 licensees shall mutually agree to and set forth in such licenses  
288 or permits or in any contractual agreements between such  
289 governmental entities and licensees. Such governmental entities  
290 may, but only to the extent expressly provided in the licenses or  
291 permits issued to such licensees, impose and collect fees for the  
292 issuance of such licenses or permits. Without limiting any other  
293 provisions of this section, all licenses and permits issued under



294 this section may be issued for a stated period of time or may be  
295 perpetual and may be irrevocable, all as stated in such license or  
296 permit. Any governmental entity issuing any such license or  
297 permit may also use its eminent domain powers to acquire any  
298 property needed for or helpful to the construction, development,  
299 purchase or establishment or to the ownership or operation of any  
300 such project and may thereafter transfer title, license the use of  
301 or lease such property to any such licensee or such licensee's  
302 affiliate all upon such terms and conditions as such governmental  
303 entity shall deem advisable. All statutes of this state relating  
304 to 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



finding or financing of any governmentally owned roads, highways or other infrastructure which may access to or enhance access to or use of such privately owned toll road, bridge, ferry or causeway. All other laws and regulations of this state, to the extent such other laws or regulations are, or might be construed as being, inconsistent with or restricting or limiting either this section or Section 6 of House Bill No. \_\_\_\_\_, 2002 Regular Session, are superseded for the purposes of the implementation, application and operation of this Section 5 and of Section 6 of House Bill No. \_\_\_\_\_, 2002 Regular Session, to the extent of such actual or perceived inconsistency, restriction or limitation.

**SECTION 5.** All real property and personal property, whether tangible or intangible, owned, used or leased by an individual or legal entity that has been issued a license or permit under Section 5 of House Bill No. \_\_\_\_\_, 2002 Regular Session, or by such individual's or legal entity's affiliates, successors or assigns, and which is used in the construction, development, establishment, ownership, operation or maintenance of such toll road, bridge, ferry or causeway authorized under Section 5 of House Bill No. \_\_\_\_\_, 2002 Regular Session, shall be exempt from all ad valorem and all other property taxes.

**SECTION 6.** Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws 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, 2002.

