

By: Representatives Dickson, Clarke, Bailey, Barnett (116th), Barnett (92nd), Cameron, Coleman (65th), Creel, Dedeaux, Eakes, Ellis, Espy, Evans, Fillingane, Flaggs, Fleming, Franks, Fredericks, Gibbs, Green, Harrison, Henderson, Hines, Holloway, Howell, Huddleston, Ishee, Maples, Markham, Masterson, Middleton, Miles, Montgomery (15th), Moore (100th), Myers, Pierce, Robinson (63rd), Scott (80th), Smith (27th), Smith (35th), Straughter, Thomas, Wallace, Ward, Wells-Smith, West, Whittington To: Transportation

HOUSE BILL NO. 1274

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 state. Fifty percent  
72 (50%) of the tolls paid to the state shall be deposited into a  
73 special fund created in the State Treasury to be known as the  
74 "Early Intervention Services Fund." The remaining portion of the  
75 tolls paid to the state shall be paid to the Mississippi  
76 Department of Transportation. Monies in the Early Intervention  
77 Services Fund may be expended, upon legislative appropriation, to  
78 implement programs and services established under the Early  
79 Intervention Act for Infants and Toddlers. All toll monies paid  
80 to the Transportation Department shall be deposited into the State  
81 Highway Fund and may be expended, upon appropriation by the  
82 Legislature, only for maintenance of state highways.

83 (4) All statutes of this state relating to traffic  
84 regulation and control shall be applicable to motor vehicles  
85 operated upon highways and bridges constructed under this section  
86 and shall be enforceable by the Mississippi Department of Public  
87 Safety and the Mississippi Highway Safety Patrol.

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

98 (6) The powers conferred by this section shall be in  
99 addition to the powers conferred by any other law, general,  
100 special or local. This section shall be construed as an



101 additional and alternative method of funding the purchasing,  
102 building, improving, owning or operating of roadways and/or  
103 highways under the jurisdiction of the Mississippi Transportation  
104 Commission, county boards of supervisors or municipal governing  
105 authorities, any provision of the laws of the state or any charter  
106 of any municipality to the contrary notwithstanding.

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

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

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

121 However, none of the provisions of this section shall  
122 prohibit the collection of any toll or other charge for the  
123 privilege of traveling on, or the use of, any causeway, bridge,  
124 tunnel, toll bridge, or any combination of such facility  
125 constructed under the provisions of Sections 65-23-101 through  
126 65-23-119, forming a part of U.S. Highway \* \* \* 90 across the Bay  
127 of St. Louis, or across or under the East Pascagoula River or the  
128 West Pascagoula River on \* \* \* U.S. Highway 90.

129 The provisions of this section shall be inapplicable to any  
130 toll road or bridge built or operated under the authority of  
131 Section 1 or Section 4 of House Bill No. , 2003 Regular  
132 Session.



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

135           11-46-9. (1) A governmental entity and its employees acting  
136 within the course and scope of their employment or duties shall  
137 not be liable for any claim:

138           (a) Arising out of a legislative or judicial action or  
139 inaction, or administrative action or inaction of a legislative or  
140 judicial nature;

141           (b) Arising out of any act or omission of an employee  
142 of a governmental entity exercising ordinary care in reliance  
143 upon, or in the execution or performance of, or in the failure to  
144 execute or perform, a statute, ordinance or regulation, whether or  
145 not the statute, ordinance or regulation be valid;

146           (c) Arising out of any act or omission of an employee  
147 of a governmental entity engaged in the performance or execution  
148 of duties or activities relating to police or fire protection  
149 unless the employee acted in reckless disregard of the safety and  
150 well-being of any person not engaged in criminal activity at the  
151 time of injury;

152           (d) Based upon the exercise or performance or the  
153 failure to exercise or perform a discretionary function or duty on  
154 the part of a governmental entity or employee thereof, whether or  
155 not the discretion be abused;

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

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

160           (g) Arising out of the exercise of discretion in  
161 determining whether or not to seek or provide the resources  
162 necessary for the purchase of equipment, the construction or  
163 maintenance of facilities, the hiring of personnel and, in  
164 general, the provision of adequate governmental services;



165           (h) Arising out of the issuance, denial, suspension or  
166 revocation of, or the failure or refusal to issue, deny, suspend  
167 or revoke any privilege, ticket, pass, permit, license,  
168 certificate, approval, order or similar authorization where the  
169 governmental entity or its employee is authorized by law to  
170 determine whether or not such authorization should be issued,  
171 denied, suspended or revoked unless such issuance, denial,  
172 suspension or revocation, or failure or refusal thereof, is of a  
173 malicious or arbitrary and capricious nature;

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

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

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

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

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

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

196           (o) Under circumstances where liability has been or is  
197 hereafter assumed by the United States, to the extent of such



198 assumption of liability, including, but not limited to, any claim  
199 based on activities of the Mississippi National Guard when such  
200 claim is cognizable under the National Guard Tort Claims Act of  
201 the United States, 32 USC 715 (32 USCS 715), or when such claim  
202 accrues as a result of active federal service or state service at  
203 the call of the Governor for quelling riots and civil  
204 disturbances;

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

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

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

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

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

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

229 (v) Arising out of an injury caused by a dangerous  
230 condition on property of the governmental entity that was not



231 caused by the negligent or other wrongful conduct of an employee  
232 of the governmental entity or of which the governmental entity did  
233 not have notice, either actual or constructive, and adequate  
234 opportunity to protect or warn against; provided, however, that a  
235 governmental entity shall not be liable for the failure to warn of  
236 a dangerous condition which is obvious to one exercising due care;

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

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

251 (y) Arising out of any act or omission relating to a  
252 highway, bridge or roadway project under a contract entered into  
253 under Section 1 or Section 4 of House Bill No. , 2003 Regular  
254 Session.

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

- 257 (a) Is inactive and dormant;  
258 (b) Receives no revenue;  
259 (c) Has no employees; and  
260 (d) Owns no property.

261 (3) If a governmental entity exempt from liability by  
262 subsection (2) becomes active, receives income, hires employees or  
263 acquires any property, such governmental entity shall no longer be





264 exempt from liability as provided in subsection (2) and shall be  
265 subject to the provisions of this chapter.

266       **SECTION 4.** (1) The provisions of this section and of  
267 Section 5 of this act shall be totally separate from and not  
268 limited in any respect by any other provisions of law, including,  
269 but not limited to, any other provisions of this act, or of any  
270 other law relating to the setting and supervision of tolls,  
271 inspections, bonding of licensees and toll road and bridge owners  
272 and operators, rescission of licenses and contracts and reversion  
273 of title to property and projects. Unless clearly indicated to  
274 the contrary from the context of this section, all terms used in  
275 this section shall have the same meaning as when used in Section 1  
276 of this act.

277       (2) In addition to and as an alternative to any other  
278 authority granted by law, including, but not limited to, Section 1  
279 of this act, any governmental entities, as defined in Section 1 of  
280 this act, may individually or jointly with any other governmental  
281 agency or agencies, in their discretion, issue licenses and  
282 permits to individuals, groups, partnerships, corporations,  
283 associations or other legal entities licensed to do business in  
284 this state (such persons and entities are hereinafter referred to  
285 as "licensees") authorizing such licensees to (a) construct,  
286 develop, purchase or otherwise establish and to own, operate and  
287 maintain toll roads, bridges, ferries and causeways on private  
288 land and other property owned or leased or otherwise used for such  
289 purposes by such licensees; and (b) set, change, charge and  
290 collect tolls for the use of such facilities, all upon such terms  
291 and conditions, if any, which such governmental entities and  
292 licensees shall mutually agree to and set forth in such licenses  
293 or permits or in any contractual agreements between such  
294 governmental entities and licensees. Such governmental entities  
295 may, but only to the extent expressly provided in the licenses or  
296 permits issued to such licensees, impose and collect fees for the



297 issuance of such licenses or permits. Without limiting any other  
298 provisions of this section, all licenses and permits issued under  
299 this section may be issued for a stated period of time or may be  
300 perpetual and may be irrevocable, all as stated in such license or  
301 permit. Any governmental entity issuing any such license or  
302 permit may also use its eminent domain powers to acquire any  
303 property needed for or helpful to the construction, development,  
304 purchase or establishment or to the ownership or operation of any  
305 such project and may thereafter transfer title, license the use of  
306 or lease such property to any such licensee or such licensee's  
307 affiliate, all upon such terms and conditions as such governmental  
308 entity shall deem advisable. All statutes of this state relating  
309 to traffic regulation and control shall be applicable to motor  
310 vehicles operated upon roads and bridges constructed, developed,  
311 purchased or otherwise owned, established and operated pursuant to  
312 this section and shall be enforceable by the Mississippi  
313 Department of Public Safety and the Mississippi Highway Safety  
314 Patrol at the same level and to the same extent as such laws are  
315 enforced on public roads and bridges.

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



330 the privately-owned portion of any toll road, bridge, ferry or  
331 causeway; however, this provision shall not restrict public  
332 funding or financing of any governmentally-owned roads, highways  
333 or other infrastructure which may provide access to or enhance  
334 access to or use of such privately-owned toll road, bridge, ferry  
335 or causeway. All other laws and regulations of this state, to the  
336 extent such other laws or regulations are, or might be construed  
337 as being, inconsistent with or restricting or limiting either this  
338 section or Section 5 of this act, are superseded for the purposes  
339 of the implementation, application and operation of this section  
340 and of Section 5 of this act, to the extent of such actual or  
341 perceived inconsistency, restriction or limitation.

342       **SECTION 5.** All real and personal property, whether tangible  
343 or intangible, owned, used or leased by an individual or legal  
344 entity that has been issued a license or permit under Section 4 of  
345 this act, or by such individual's or legal entity's affiliates,  
346 successors or assigns, and which is used in the construction,  
347 development, establishment, ownership, operation or maintenance of  
348 such toll road, bridge, ferry or causeway authorized under Section  
349 4 of this act, shall be exempt from all ad valorem and all other  
350 property taxes.

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



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

364           **SECTION 7.** This act shall take effect and be in force from  
365 and after July 1, 2003.

