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(38th)

To: Highways and  
Transportation

COMMITTEE SUBSTITUTE  
FOR  
SENATE BILL NO. 2049

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 AUTHORIZE GOVERNMENTAL ENTITIES TO ISSUE  
9 LICENSES AND PERMITS TO INDIVIDUALS, GROUPS, PARTNERSHIPS,  
10 CORPORATIONS, ASSOCIATIONS OR OTHER LEGAL ENTITIES AUTHORIZING  
11 SUCH ENTITIES TO CONSTRUCT AND OPERATE TOLL ROADS, BRIDGES,  
12 FERRIES AND CAUSEWAYS PRIMARILY ON LAND OWNED, LEASED OR USED BY  
13 SUCH ENTITIES; TO EXEMPT REAL PROPERTY USED FOR SUCH PURPOSES FROM  
14 AD VALOREM TAX; TO AMEND SECTIONS 65-3-1 AND 11-46-9, MISSISSIPPI  
15 CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; 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 after all  
64 associated debts have been retired or released.

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



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

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

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

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



101           SECTION 2. (1) The provisions of this section and of  
102 Section 3 of this act shall be totally separate from and not  
103 limited in any respect by any other provisions of law, including,  
104 but not limited to, any other provisions of this act, or of any  
105 other law relating to the setting and supervision of tolls,  
106 inspections, bonding of licensees and toll road and bridge owners  
107 and operators, rescission of licenses and contracts and reversion  
108 of title to property and projects. Unless clearly indicated to  
109 the contrary from the context of this section, all terms used in  
110 this section shall have the same meaning as when used in Section 1  
111 of this act.

112           (2) In addition to and as an alternative to any other  
113 authority granted by law, including, but not limited to, Section 1  
114 of this act, any governmental entities, as defined in Section 1 of  
115 this act, may individually or jointly with any other governmental  
116 agency or agencies, in their discretion, issue licenses and  
117 permits to individuals, groups, partnerships, corporations,  
118 associations or other legal entities licensed to do business in  
119 this state (such persons and entities are hereinafter referred to  
120 as "licensees") authorizing such licensees to (a) construct,  
121 develop, purchase or otherwise establish and to own, operate and  
122 maintain toll roads, bridges, ferries and causeways on private  
123 land and other property owned or leased or otherwise used for such  
124 purposes by such licensees; and (b) set, change, charge and  
125 collect tolls for the use of such facilities, all upon such terms  
126 and conditions, if any, which such governmental entities and  
127 licensees shall mutually agree to and set forth in such licenses  
128 or permits or in any contractual agreements between such  
129 governmental entities and licensees. Such governmental entities  
130 may, but only to the extent expressly provided in the licenses or  
131 permits issued to such licensees, impose and collect fees for the  
132 issuance of such licenses or permits. Without limiting any other  
133 provisions of this section, all licenses and permits issued under



134 this section may be issued for a stated period of time or may be  
135 perpetual and may be irrevocable, all as stated in such license or  
136 permit. Any governmental entity issuing any such license or  
137 permit may also use its eminent domain powers to acquire any  
138 property needed for or helpful to the construction, development,  
139 purchase or establishment or to the ownership or operation of any  
140 such project and may thereafter transfer title, license the use of  
141 or lease such property to any such licensee or such licensee's  
142 affiliate, all upon such terms and conditions as such governmental  
143 entity shall deem advisable. All statutes of this state relating  
144 to traffic regulation and control shall be applicable to motor  
145 vehicles operated upon roads and bridges constructed, developed,  
146 purchased or otherwise owned, established and operated pursuant to  
147 this section and shall be enforceable by the Mississippi  
148 Department of Public Safety and the Mississippi Highway Safety  
149 Patrol at the same level and to the same extent as such laws are  
150 enforced on public roads and bridges.

151 (3) Any licensee that has been issued a license or permit  
152 under this section may not be required by the governmental entity  
153 issuing the license or permit or by any other governmental entity  
154 to obtain any other license or permit or to pay any fee or tax in  
155 addition to the license or permit fee, if any, charged at the time  
156 of and incident to the issuance of such license or permit for the  
157 privilege of constructing, owning, operating or maintaining such  
158 toll road, bridge, ferry or causeway or engaging in the business  
159 of constructing, owning, operating or maintaining any such toll  
160 road, bridge, ferry or causeway relating to any period of time  
161 following the issuance of such license or permit, including, but  
162 not limited to, any business license or ad valorem or property  
163 tax. Notwithstanding the foregoing, neither public funds nor  
164 public credit shall be used in the construction or financing of  
165 the privately-owned portion of any toll road, bridge, ferry or  
166 causeway; however, this provision shall not restrict public



167 funding or financing of any governmentally-owned roads, highways  
168 or other infrastructure which may provide access to or enhance  
169 access to or use of such privately-owned toll road, bridge, ferry  
170 or causeway. All other laws and regulations of this state, to the  
171 extent such other laws or regulations are, or might be construed  
172 as being, inconsistent with or restricting or limiting either this  
173 section or Section 5 of this act, are superseded for the purposes  
174 of the implementation, application and operation of this section  
175 and of Section 5 of this act, to the extent of such actual or  
176 perceived inconsistency, restriction or limitation.

177 **SECTION 3.** All real and personal property, whether tangible  
178 or intangible, owned, used or leased by an individual or legal  
179 entity that has been issued a license or permit under Section 4 of  
180 this act, or by such individual's or legal entity's affiliates,  
181 successors or assigns, and which is used in the construction,  
182 development, establishment, ownership, operation or maintenance of  
183 such toll road, bridge, ferry or causeway authorized under Section  
184 4 of this act, shall be exempt from all ad valorem and all other  
185 property taxes.

186 **SECTION 4.** Section 65-3-1, Mississippi Code of 1972, is  
187 amended as follows:

188 65-3-1. Subject only to the provisions hereinafter  
189 contained, it shall be unlawful for any person, acting privately  
190 or in any official capacity or as an employee of any subdivision  
191 of the state, to charge or collect any toll or other charge from  
192 any person for the privilege of traveling on any part of any  
193 highway which has been heretofore or may hereafter be designated  
194 as a state highway, and being a part of the state highway system,  
195 or on or across any bridge wholly within this state, which is a  
196 part of any such highway.

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



200           However, none of the provisions of this section shall  
201 prohibit the collection of any toll or other charge for the  
202 privilege of traveling on, or the use of, any causeway, bridge,  
203 tunnel, toll bridge, or any combination of such facility  
204 constructed under the provisions of Sections 65-23-101 through  
205 65-23-119, forming a part of U.S. Highway \* \* \* 90 across the Bay  
206 of St. Louis, or across or under the East Pascagoula River or the  
207 West Pascagoula River on \* \* \* U.S. Highway 90.

208           The provisions of this section shall be inapplicable to any  
209 toll road or bridge built or operated under the authority of  
210 Section 1 or Section 2 of Senate Bill No. 2049, 2003 Regular  
211 Session.

212           **SECTION 5.** Section 11-46-9, Mississippi Code of 1972, is  
213 amended as follows:

214           11-46-9. (1) A governmental entity and its employees acting  
215 within the course and scope of their employment or duties shall  
216 not be liable for any claim:

217           (a) Arising out of a legislative or judicial action or  
218 inaction, or administrative action or inaction of a legislative or  
219 judicial nature;

220           (b) Arising out of any act or omission of an employee  
221 of a governmental entity exercising ordinary care in reliance  
222 upon, or in the execution or performance of, or in the failure to  
223 execute or perform, a statute, ordinance or regulation, whether or  
224 not the statute, ordinance or regulation be valid;

225           (c) Arising out of any act or omission of an employee  
226 of a governmental entity engaged in the performance or execution  
227 of duties or activities relating to police or fire protection  
228 unless the employee acted in reckless disregard of the safety and  
229 well-being of any person not engaged in criminal activity at the  
230 time of injury;

231           (d) Based upon the exercise or performance or the  
232 failure to exercise or perform a discretionary function or duty on



233 the part of a governmental entity or employee thereof, whether or  
234 not the discretion be abused;

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

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

239 (g) Arising out of the exercise of discretion in  
240 determining whether or not to seek or provide the resources  
241 necessary for the purchase of equipment, the construction or  
242 maintenance of facilities, the hiring of personnel and, in  
243 general, the provision of adequate governmental services;

244 (h) Arising out of the issuance, denial, suspension or  
245 revocation of, or the failure or refusal to issue, deny, suspend  
246 or revoke any privilege, ticket, pass, permit, license,  
247 certificate, approval, order or similar authorization where the  
248 governmental entity or its employee is authorized by law to  
249 determine whether or not such authorization should be issued,  
250 denied, suspended or revoked unless such issuance, denial,  
251 suspension or revocation, or failure or refusal thereof, is of a  
252 malicious or arbitrary and capricious nature;

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

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

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

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





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

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

275 (o) Under circumstances where liability has been or is  
276 hereafter assumed by the United States, to the extent of such  
277 assumption of liability, including, but not limited to, any claim  
278 based on activities of the Mississippi National Guard when such  
279 claim is cognizable under the National Guard Tort Claims Act of  
280 the United States, 32 USC 715 (32 USCS 715), or when such claim  
281 accrues as a result of active federal service or state service at  
282 the call of the Governor for quelling riots and civil  
283 disturbances;

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

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



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

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

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

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

308 (v) Arising out of an injury caused by a dangerous  
309 condition on property of the governmental entity that was not  
310 caused by the negligent or other wrongful conduct of an employee  
311 of the governmental entity or of which the governmental entity did  
312 not have notice, either actual or constructive, and adequate  
313 opportunity to protect or warn against; provided, however, that a  
314 governmental entity shall not be liable for the failure to warn of  
315 a dangerous condition which is obvious to one exercising due care;

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

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



330           (y) Arising out of any act or omission relating to a  
331 highway, bridge or roadway project under a contract entered into  
332 under Section 1 or Section 2 of Senate Bill No. 2049, 2003 Regular  
333 Session.

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

336                   (a) Is inactive and dormant;

337                   (b) Receives no revenue;

338                   (c) Has no employees; and

339                   (d) Owns no property.

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

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

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

