

By: Senator(s) Ross

To: Highways and
Transportation

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.

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. (1) The provisions of this section and of
101 Section 5 of this act shall be totally separate from and not
102 limited in any respect by any other provisions of law, including,
103 but not limited to, any other provisions of this act, or of any
104 other law relating to the setting and supervision of tolls,
105 inspections, bonding of licensees and toll road and bridge owners
106 and operators, rescission of licenses and contracts and reversion
107 of title to property and projects. Unless clearly indicated to
108 the contrary from the context of this section, all terms used in
109 this section shall have the same meaning as when used in Section 1
110 of this act.

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



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

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



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

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

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

187 65-3-1. Subject only to the provisions hereinafter
188 contained, it shall be unlawful for any person, acting privately
189 or in any official capacity or as an employee of any subdivision
190 of the state, to charge or collect any toll or other charge from
191 any person for the privilege of traveling on any part of any
192 highway which has been heretofore or may hereafter be designated
193 as a state highway, and being a part of the state highway system,
194 or on or across any bridge wholly within this state, which is a
195 part of any such highway.

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



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

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

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

213 11-46-9. (1) A governmental entity and its employees acting
214 within the course and scope of their employment or duties shall
215 not be liable for any claim:

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

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

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



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

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

335 (a) Is inactive and dormant;

336 (b) Receives no revenue;

337 (c) Has no employees; and

338 (d) Owns no property.

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

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

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

