

By: Senator(s) Brown

To: Highways and
Transportation; Finance

SENATE BILL NO. 2941

1 AN ACT TO AUTHORIZE THE MISSISSIPPI TRANSPORTATION COMMISSION
2 TO ENTER INTO PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS TO CONSTRUCT
3 HIGHWAYS; TO PROVIDE CERTAIN TERMS AND CONDITIONS FOR AGREEMENTS;
4 TO PROVIDE THAT HIGHWAYS CONSTRUCTED UNDER SUCH AGREEMENTS MAY BE
5 FINANCED WITH PRIVATE MONEY; TO AUTHORIZE THE MISSISSIPPI
6 TRANSPORTATION COMMISSION, COUNTY BOARDS OF SUPERVISORS AND THE
7 GOVERNING AUTHORITIES OF MUNICIPALITIES TO CONSTRUCT, INDIVIDUALLY
8 OR JOINTLY WITH OTHER GOVERNMENTAL ENTITIES, TOLL ROAD OR TOLL
9 BRIDGE PROJECTS WITHIN THE STATE; TO AUTHORIZE THE MISSISSIPPI
10 TRANSPORTATION COMMISSION, COUNTY BOARDS OF SUPERVISORS AND THE
11 GOVERNING AUTHORITIES OF MUNICIPALITIES TO CONTRACT WITH ANY
12 PERSON, CORPORATION OR OTHER BUSINESS LICENSED TO DO BUSINESS IN
13 THE STATE FOR THE PURPOSE OF CONSTRUCTING TOLL ROADS OR BRIDGES;
14 TO PRESCRIBE THE TERMS AND CONDITIONS FOR THE LETTING OF SUCH
15 CONTRACTS AND THE RIGHTS AND DUTIES OF THE PARTIES ENTERING INTO
16 SUCH CONTRACTS; TO AUTHORIZE COUNTIES, CITIES AND THE STATE TO
17 ISSUE REVENUE BONDS TO FINANCE TOLL ROAD AND TOLL BRIDGE PROJECTS;
18 TO AMEND SECTIONS 65-3-1 AND 11-46-9, MISSISSIPPI CODE OF 1972, IN
19 CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED
20 PURPOSES.

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

22 **SECTION 1.** (1) The Mississippi Transportation Commission
23 may enter into a public-private partnership agreement with a
24 private entity to design, develop, finance, construct, maintain,
25 repair, operate, extend or expand a:

- 26 (a) Toll project;
- 27 (b) New highway;
- 28 (c) State highway construction or improvement project
29 in which the private entity has an interest in the project; or
- 30 (d) State highway improvement project financed wholly
31 or partly with the proceeds of private activity bonds, as defined
32 by Section 141(a), Internal Revenue Code of 1986.

33 (2) The public-private partnership agreements may include
34 project origination, design, financial planning and finance,
35 construction, operation, maintenance, toll collections and program
36 management.

37 (3) The agreements may include the following:

38 (a) Private sector operations and maintenance on a
39 performance basis;

40 (b) Private sector program management for a fee and/or
41 with program costs and schedule maintenance incentives;

42 (c) Design-build for fixed fee on fixed timeframe;

43 (d) Project build-operate-transfer (BOT);

44 (e) Design-build finance-operate-transfer (DBFO); and

45 (f) Build-own-operate (BOO).

46 (4) The Mississippi Transportation Commission may use
47 federally-sponsored finance programs in conjunction with private
48 commercial debt to make highway projects under a public-private
49 partnership agreement financially viable and attractive to private
50 entity development.

51 **SECTION 2.** (1) The transportation commission shall use a
52 competitive procurement process that provides the best value for
53 the transportation commission. The transportation commission may
54 accept unsolicited proposals for a proposed project or solicit
55 proposals in accordance with this section.

56 (2) The transportation commission shall establish rules and
57 procedures for accepting unsolicited proposals that require the
58 private entity to include in the proposal:

59 (a) Information regarding the proposed project
60 location, scope and limits;

61 (b) Information regarding the private entity's
62 qualifications, experience, technical competence and capability to
63 develop the project; and

64 (c) Any other information the transportation commission
65 considers relevant or necessary.

66 (3) The transportation commission may interview a private
67 entity submitting an unsolicited proposal or responding to a
68 request for a proposal. The transportation commission shall
69 evaluate each proposal based on the criteria described in the

70 request for competing proposals and qualifications and may qualify
71 or shortlist private entities to submit detailed proposals. The
72 transportation commission must qualify or shortlist at least two
73 (2) private entities to submit detailed proposals for a project
74 unless the transportation commission does not receive more than
75 one proposal or one response to a request.

76 (4) In a request for detailed proposals from private
77 entities, the transportation commission may require additional
78 information relating to:

79 (a) The private entity's qualifications and
80 demonstrated technical competence;

81 (b) The feasibility of developing the project as
82 proposed;

83 (c) Engineering or architectural designs;

84 (d) The private entity's ability to meet schedules;

85 (e) A financial plan, including costing methodology and
86 cost proposals; or

87 (f) Any other information the transportation commission
88 considers relevant or necessary.

89 (5) The transportation commission shall evaluate each
90 proposal based on the criteria described in the request for
91 detailed proposals and select the private entity whose proposal
92 offers the apparent best value to the transportation commission.

93 (6) The transportation commission may enter into
94 negotiations with the private entity whose proposal offers the
95 apparent best value.

96 (7) If at any point in negotiations it appears to the
97 transportation commission that the highest ranking proposal will
98 not provide the transportation commission with the overall best
99 value, the transportation commission may enter into negotiations
100 with the private entity submitting the next highest ranking
101 proposal.

102 (8) The transportation commission may withdraw a request for
103 competing proposals and qualifications or a request for detailed
104 proposals at any time. The transportation commission may then
105 publish a new request for competing proposals and qualifications.

106 (9) The transportation commission may require that an
107 unsolicited proposal be accompanied by a nonrefundable fee
108 sufficient to cover all or part of its cost to review the
109 proposal.

110 **SECTION 3.** (1) A state highway that is constructed with a
111 private entity under a public-private partnership agreement is
112 public property and shall be owned by the state.

113 (2) The transportation commission may not incur a financial
114 obligation for a private entity that designs, develops, finances,
115 constructs, maintains or operates a state highway or other
116 facility under this act. The state or a political subdivision of
117 the state is not liable for any financial or other obligations of
118 a project solely because a private entity constructs, finances or
119 operates any part of the project.

120 **SECTION 4.** (1) The transportation commission shall
121 negotiate the terms of private participation under this act,
122 including:

123 (a) Methods to determine the applicable cost, profit
124 and project distribution among the private participants and the
125 transportation commission;

126 (b) Reasonable methods to determine and classify toll
127 rates and responsibility for the setting of tolls;

128 (c) Acceptable safety and policing standards; and

129 (d) Other applicable professional, consulting,
130 construction, operation and maintenance standards, expenses and
131 costs.

132 (2) Any public-private partnership agreement entered into
133 may include any provision that the transportation commission
134 considers appropriate, including provisions:

135 (a) Providing for the purchase by the transportation
136 commission, under terms and conditions agreed to by the parties,
137 of the interest of a private participant in the highway or other
138 facility designed, developed, financed, constructed, operated or
139 maintained under the agreement;

140 (b) Establishing the purchase price for the interest of
141 a private participant in the highway and related property, which
142 price may be determined in accordance with the methodology
143 established by the parties in the agreement;

144 (c) Providing for the payment of obligations incurred
145 pursuant to the agreement, including any obligation to pay the
146 purchase price for the interest of a private participant in the
147 agreement, from any lawfully available source, including securing
148 such obligations by a pledge of revenues of the commission or the
149 transportation commission derived from the applicable project,
150 which pledge shall have such priority as the transportation
151 commission may establish;

152 (d) Permitting the private participant to pledge its
153 rights under the agreement;

154 (e) Concerning the private participant's right to
155 operate and collect revenue from the project; and

156 (f) Restricting the right of the commission or the
157 transportation commission to terminate the private participant's
158 right to operate and collect revenue from the project unless and
159 until any applicable termination payments have been made.

160 (3) The transportation commission may enter into a
161 public-private partnership agreement with a private participant
162 only if the project is identified in the transportation
163 commission's transportation program or is located on a
164 transportation corridor identified in the statewide transportation
165 plan.

166 (4) If the transportation commission enters into a agreement
167 with a private participant that includes the collection by the

168 private participant of tolls for the use of a toll project, the
169 private participant shall submit to the transportation commission
170 for approval:

171 (a) The methodology for:

172 (i) The setting of tolls; and

173 (ii) Increasing the amount of the tolls;

174 (b) A plan outlining methods the private participant
175 will use to collect the tolls, including:

176 (i) Any charge to be imposed as a penalty for late
177 payment of a toll; and

178 (ii) Any charge to be imposed to recover the cost
179 of collecting a delinquent toll; and

180 (iii) Any proposed change in an approved
181 methodology for the setting of a toll or a plan for collecting the
182 toll.

183 **SECTION 5.** In this section, "private activity bond" has the
184 meaning assigned by Section 141(a), Internal Revenue Code of 1986.

185 (1) If the Attorney General makes a determination that the
186 United States Congress has enacted legislation amending the
187 Internal Revenue Code of 1986 to include highway facilities among
188 the types of facilities for which private activity bonds may be
189 used the transportation commission may establish and administer a
190 program for private activity bonds issued for highway facilities
191 in this state.

192 (2) The program, at a minimum, must include a process by
193 which the transportation commission and the State Bond Commission
194 receive and evaluate applications for issuance of private activity
195 bonds for highway facilities.

196 (3) The transportation commission shall adopt rules to
197 administer the program established under this section.

198 **SECTION 6.** The Mississippi Transportation Commission, county
199 boards of supervisors and/or the governing authorities of
200 municipalities (hereinafter referred to as governmental entities),

201 in their discretion, may construct, operate and maintain,
202 individually or jointly with other governmental entities, one or
203 more new toll roads or toll bridges in the state for motor vehicle
204 traffic, including toll booths and related facilities, at and
205 along only those locations where an alternate untolled route
206 exists. An existing road or any segment of an existing road shall
207 not be part of a new toll road, and the reconstruction, relocation
208 or repair of an existing road shall not be tolled. To qualify as
209 an alternate untolled route, the route must meet or exceed the
210 same design, construction and maintenance standards established by
211 the Mississippi Transportation Commission for highways and bridges
212 on the state highway system. All such highways, pavement,
213 bridges, drainage-related structures and other infrastructure
214 comprising the projects shall be built and maintained in
215 accordance with not less than the minimum highway design,
216 construction and maintenance standards established by the
217 contracting governmental entity for such highways, infrastructure
218 and facilities.

219 **SECTION 7.** (1) In addition to and as an alternative to any
220 other authority granted by law, including, but not limited to,
221 Section 6 of this act, any governmental entities, as defined in
222 Section 6 of this act, in their discretion, may contract,
223 individually or jointly with other governmental entities, with any
224 persons, corporations, partnerships or other businesses licensed
225 to do business in the State of Mississippi (hereinafter referred
226 to as "companies" or "company") for the purpose of designing,
227 financing, constructing, operating and maintaining one or more new
228 toll roads or toll bridges in the state for motor vehicle traffic,
229 including toll booths and related facilities, at and along only
230 those locations where an alternate untolled route exists. An
231 existing road or any segment of an existing road shall not be part
232 of a new toll road, and the reconstruction, relocation or repair
233 of an existing road shall not be tolled. Such contracts shall

234 provide that land held by the governmental entities, whether in
235 fee simple, as an easement or other interest, shall be leased or
236 assigned to a company for design, construction, operation and
237 maintenance of roadways, highways or bridges for motor vehicle
238 traffic, toll booths and related facilities. All such highways,
239 pavement, bridges, drainage-related structures and other
240 infrastructure comprising the projects shall be built and
241 maintained in accordance with not less than the minimum highway
242 design, construction and maintenance standards established by the
243 contracting governmental entity for such highways, infrastructure
244 and facilities. The contracting governmental entity shall conduct
245 periodic inspections of any such project throughout the term of
246 the contract to ensure compliance by the company. Failure of a
247 company to comply with minimum standards established for the
248 project by the contracting governmental entity shall constitute a
249 breach and shall subject the company to liability on its bond or
250 security or to rescission of the contract in accordance with the
251 terms and provisions of the contract.

252 (2) Every contract entered into by a governmental entity
253 under this section shall require a company to enter into bond and
254 provide such security as the governmental entity determines may be
255 necessary or advisable to ensure timely completion and proper
256 execution and performance of the contract. The term of the
257 contract shall not exceed the date of the retirement of the debt
258 for construction of the toll road and the tolls shall cease the
259 date the debt is retired. The governmental entities are
260 authorized to acquire such property or interests in property as
261 may be necessary, by gift, purchase or eminent domain, for
262 construction and maintenance of the highways or bridges built
263 pursuant to contracts entered into under this section. Upon
264 expiration, termination or rescission of the contract, or upon the
265 retirement of the debt for construction, whichever comes first,
266 all interests that the company may have in the land,

267 infrastructure, facilities or other improvements to the property
268 subject to contract shall terminate and automatically, by
269 operation of law, be returned or conveyed to and vested in the
270 State of Mississippi or the contracting governmental entity. Upon
271 termination, expiration or rescission of the contract, or upon the
272 retirement of the debt for construction, whichever comes first,
273 the collection of tolls shall cease.

274 (3) During the term of any contract entered into under this
275 section, the company may establish, charge and collect motor
276 vehicle operator tolls for use of the highway and its facilities.
277 The amount of such tolls, and any modification thereto, shall be
278 subject to approval by the contracting governmental entity;
279 however, all such contracts entered into with the Mississippi
280 Transportation Commission may require a company to pay a
281 percentage of all tolls collected to the Mississippi Department of
282 Transportation. All such tolls paid to the department shall be
283 deposited into the special bond sinking fund under Section 10 of
284 this act and may be expended only as authorized by the
285 Legislature.

286 (4) All statutes of this state relating to traffic
287 regulation and control shall be applicable to motor vehicles
288 operated upon highways and bridges constructed under this section
289 and shall be enforceable by the Mississippi Department of Public
290 Safety, the Mississippi Highway Safety Patrol or any other law
291 enforcement agency having jurisdiction over such highways and
292 bridges.

293 (5) The State of Mississippi, the Mississippi Transportation
294 Commission, the Mississippi Department of Transportation,
295 counties, municipalities or any other agency or political
296 subdivision, or any officer or employee thereof, shall not be
297 liable for any tortious act or omission arising out of the
298 construction, maintenance or operation of any highway or bridge
299 project under the provisions of this section where the act or

300 omission occurs during the term of any such contract entered into
301 by the Mississippi Transportation Commission or other governmental
302 entity and a company.

303 (6) The powers conferred by this section shall be in
304 addition to the powers conferred by any other law, general,
305 special or local. This section shall be construed as an
306 additional and alternative method of funding all or any portion of
307 the purchasing, building, improving, owning or operating of
308 roadways, highways or bridges under the jurisdiction of the
309 Mississippi Transportation Commission, county boards of
310 supervisors or municipal governing authorities, any provision of
311 the laws of the state or any charter of any municipality to the
312 contrary notwithstanding.

313 **SECTION 8.** (1) For the purpose of providing funds to defray
314 the expenses of projects authorized pursuant to Sections 6 and 7
315 of this act, the board of supervisors of a county or the governing
316 authorities of a municipality shall have the right to borrow money
317 for the project, and to issue revenue bonds therefor in such
318 principal amounts as the board of supervisors or governing
319 authorities may determine to be necessary to provide sufficient
320 funds to defray the expenses of projects authorized pursuant to
321 Sections 6 and 7 of this act. The bonds shall be payable out of
322 any revenues derived from the project, including grants or
323 contributions from the federal government or other sources. Such
324 bonds may be sold at public or private sale at not less than par
325 and shall bear interest at a rate or rates not exceeding that
326 allowed in Section 75-17-103. Any such bonds so issued shall not
327 constitute a debt of the county, the municipality or any political
328 subdivision of the county or the city within the meaning of any
329 constitutional, statutory or charter restriction, limitation or
330 provision. It shall be plainly stated on the face of each bond in
331 substance that the bond has been issued pursuant to the authority
332 granted in this section and that the taxing power of the county or

333 municipality issuing the bond is not pledged to the payment of the
334 bond or the interest on it and that the bond and the interest on
335 it are payable solely from the revenues of the project for which
336 the bond is issued.

337 (2) All bonds issued under the authority of this section
338 shall bear such date or dates, shall be in such form or
339 denomination, shall bear such rate of interest, and shall mature
340 at such times as the county or municipality shall determine, but
341 no bonds issued under the authority of this section shall mature
342 more than thirty (30) years from the date of the issuance thereof
343 and none of the bonds shall be sold for less than par and accrued
344 interest. All bonds shall be sold in the manner now provided by
345 law for the sale of bonds without any restrictions, limitations,
346 requirements or conditions applicable to the borrowing of such
347 money and the issuance of such bonds which are not herein
348 contained. The denomination, form, place of payment and other
349 details of such bonds may be determined by resolution or order of
350 the board of supervisors of a county or the governing authorities
351 of a municipality, and shall be executed on behalf of the county
352 or municipality as is now provided by law.

353 (3) Before issuing any bonds under the provisions of this
354 section, the board of supervisors of the county or the governing
355 authorities of the municipality shall, by resolution spread upon
356 the minutes, declare its intention to issue such bonds for the
357 purposes authorized by this section and shall state in the
358 resolution the amount of bonds proposed to be issued and shall
359 likewise fix in the resolution the date upon which the board of
360 supervisors of the county or the governing authorities of the
361 municipality proposes to direct the issuance of the bonds. Notice
362 of such intention shall be published once a week for at least
363 three (3) consecutive weeks in a newspaper published or having a
364 general circulation in the county or the municipality, with the
365 first publication of the notice to be made not less than

366 twenty-one (21) days prior to the date fixed in the resolution for
367 the issuance of the bonds and the last publication to be made not
368 more than seven (7) days prior to such date. If, on or before the
369 date specified in the resolution, twenty percent (20%) or fifteen
370 hundred (1500), whichever is less, of the qualified electors of
371 the county or municipality shall file a written protest against
372 the issuance of the bonds, then an election upon the issuance of
373 the bonds shall be called, and held, as provided in this section.
374 If no such protest shall be filed, then the board of supervisors
375 of the county or the governing authorities of the municipality may
376 issue such bonds without an election on the question of the
377 issuance of the bonds at any time within a period of two (2) years
378 after the date specified in the resolution.

379 (4) If an election is called under the provisions of this
380 section on the question of the issuance of bonds, the election
381 shall be held, insofar as practicable, in the same manner as other
382 elections are held in the county or municipality. At the
383 election, all qualified electors of the county or municipality may
384 vote and the ballots used in the election shall have printed
385 thereon a brief statement of the amount and purposes of the
386 proposed bond issue and the words "FOR THE BOND ISSUE" and the
387 words "AGAINST THE BOND ISSUE", and the voters shall vote by
388 placing a cross (X) or check mark (✓) opposite their choice on the
389 proposition.

390 (5) When the results of any election provided for in this
391 section shall have been canvassed by the election commissioners of
392 the county or municipality and certified by them to the proper
393 authorities, it shall be the duty of the board of supervisors of
394 the county or the governing authorities of the municipality to
395 determine and adjudicate whether or not a majority of the
396 qualified electors who voted in the election voted in favor of the
397 issuance of the bonds and unless a majority of the qualified
398 electors who voted in the election voted in favor of the issuance

399 of the bonds, then the bonds shall not be issued. Should a
400 majority of the qualified electors who vote in the election vote
401 in favor of the bonds, the board of supervisors of the county or
402 the governing authorities of the municipality may issue the bonds,
403 either in whole or in part, within two (2) years from the date of
404 such election, or within two (2) years after final favorable
405 determination of any litigation affecting the issuance of such
406 bonds at such time or times, and in such amount or amounts, not
407 exceeding that specified in the notice of the election, as shall
408 be deemed proper.

409 (6) This section, without reference to any other statute,
410 shall be deemed to be full and complete authority for the issuance
411 of bonds and borrowing of money as authorized in this section by
412 counties or municipalities, and shall be construed as an
413 additional and alternate method therefor. The bonds authorized by
414 this section shall not constitute an indebtedness within the
415 meaning of any constitutional or statutory limitation or
416 restriction.

417 **SECTION 9.** (1) (a) A special fund, to be designated as the
418 "Toll Road Revenue Bond Fund," is created within the State
419 Treasury. The fund shall be maintained by the State Treasurer as
420 a separate and special fund, separate and apart from the General
421 Fund of the state. Unexpended amounts remaining in the fund at
422 the end of a fiscal year shall not lapse into the State General
423 Fund, and any interest earned or investment earnings on amounts in
424 the fund shall be deposited into such fund.

425 (b) Monies deposited into the fund shall be disbursed,
426 in the discretion of the Mississippi Transportation Commission, to
427 pay the costs incurred in defraying the expenses of projects
428 authorized pursuant to Sections 6 and 7 of this act.

429 (2) Amounts deposited into such special fund shall be
430 disbursed to pay the expenses described in subsection (1) of this
431 section. If any monies in the special fund are not used within

432 six (6) years after the date the proceeds of the bonds authorized
433 under Sections 9 through 24 of this act are deposited into such
434 fund, then the Mississippi Transportation Commission shall provide
435 an accounting of such unused monies to the State Bond Commission.
436 Promptly after the State Bond Commission has certified, by
437 resolution duly adopted, that the projects for which the revenue
438 bonds have been issued shall have been completed, abandoned or
439 cannot be completed in a timely fashion, any amounts remaining in
440 such special fund shall be applied to pay debt service on the
441 bonds issued under Sections 9 through 24 of this act, in
442 accordance with the proceedings authorizing the issuance of such
443 bonds and as directed by the commission.

444 **SECTION 10.** For the purpose of providing for the payment of
445 the principal of and interest upon bonds issued under the
446 provisions of Sections 9 through 24 of this act, there is created
447 a special bond sinking fund in the State Treasury. The special
448 bond sinking fund shall consist of the monies required to be
449 deposited into the fund under Section 7 of this act and such other
450 amounts as the Legislature may direct to be paid into the fund by
451 appropriation or other authorization by the Legislature.
452 Unexpended amounts remaining in the special bond sinking fund at
453 the end of a fiscal year shall not lapse into the State General
454 Fund, and any interest earned or investment earnings on amounts in
455 the special bond sinking fund shall be deposited into such sinking
456 fund.

457 **SECTION 11.** (1) The State Bond Commission, at one time or
458 from time to time, may declare by resolution the necessity for
459 issuance of revenue bonds of the State of Mississippi for the
460 purpose of providing funds to defray the expenses of projects
461 authorized pursuant to Sections 6 and 7 of this act. Upon the
462 adoption of a resolution by the Mississippi Transportation
463 Commission, declaring the necessity for the issuance of the
464 revenue bonds authorized by this section, the Mississippi

465 Transportation Commission shall deliver a certified copy of its
466 resolution or resolutions to the State Bond Commission. Upon
467 receipt of such resolution, the State Bond Commission, in its
468 discretion, may act as the issuing agent, prescribe the form of
469 the bonds, advertise for and accept bids, issue and sell, at
470 public or private sale, the bonds so authorized to be sold and do
471 any and all other things necessary and advisable in connection
472 with the issuance and sale of such bonds. Revenue bonds issued
473 under this section shall be in such principal amounts as the
474 Mississippi Transportation Commission may determine to be
475 necessary to provide sufficient funds to defray the expenses of
476 projects authorized pursuant to Sections 6 and 7 of this act.

477 (2) Any investment earnings on amounts deposited into the
478 special fund created in Section 9 of this act shall be used to pay
479 debt service on bonds issued under Sections 9 through 24 of this
480 act, in accordance with the proceedings authorizing issuance of
481 such bonds.

482 **SECTION 12.** The principal of and interest on the bonds
483 authorized under Sections 9 through 24 of this act shall be
484 payable in the manner provided in this section. Such bonds shall
485 bear such date or dates, be in such denomination or denominations,
486 bear interest at such rate or rates (not to exceed the limits set
487 forth in Section 75-17-103, Mississippi Code of 1972), be payable
488 at such place or places within or without the State of
489 Mississippi, shall mature absolutely at such time or times not to
490 exceed thirty (30) years from date of issue, be redeemable before
491 maturity at such time or times and upon such terms, with or
492 without premium, shall bear such registration privileges, and
493 shall be substantially in such form, all as shall be determined by
494 resolution of the State Bond Commission.

495 **SECTION 13.** The bonds authorized by Sections 9 through 24 of
496 this act shall be signed by the Chairman of the State Bond
497 Commission, or by his facsimile signature, and the official seal

498 of the State Bond Commission shall be affixed thereto, attested by
499 the secretary of the commission. The interest coupons, if any, to
500 be attached to such bonds may be executed by the facsimile
501 signatures of such officers. Whenever any such bonds shall have
502 been signed by the officials designated to sign the bonds who were
503 in office at the time of such signing but who may have ceased to
504 be such officers before the sale and delivery of such bonds, or
505 who may not have been in office on the date such bonds may bear,
506 the signatures of such officers upon such bonds and coupons shall
507 nevertheless be valid and sufficient for all purposes and have the
508 same effect as if the person so officially signing such bonds had
509 remained in office until their delivery to the purchaser, or had
510 been in office on the date such bonds may bear. However,
511 notwithstanding anything herein to the contrary, such bonds may be
512 issued as provided in the Registered Bond Act of the State of
513 Mississippi.

514 **SECTION 14.** All bonds and interest coupons issued under the
515 provisions of Sections 9 through 24 of this act have all the
516 qualities and incidents of negotiable instruments under the
517 provisions of the Uniform Commercial Code, and in exercising the
518 powers granted by Sections 9 through 24 of this act, the State
519 Bond Commission shall not be required to and need not comply with
520 the provisions of the Uniform Commercial Code.

521 **SECTION 15.** The State Bond Commission shall act as the
522 issuing agent for the bonds authorized under Sections 9 through 24
523 of this act, prescribe the form of the bonds, advertise for and
524 accept bids, issue and sell, at public or private sale, the bonds
525 so authorized to be sold, pay all fees and costs incurred in such
526 issuance and sale, and do any and all other things necessary and
527 advisable in connection with the issuance and sale of such bonds.
528 The State Bond Commission is authorized and empowered to pay the
529 costs that are incident to the sale, issuance and delivery of the
530 bonds authorized under Sections 9 through 24 of this act from the

531 proceeds derived from the sale of such bonds. The State Bond
532 Commission shall sell such bonds on sealed bids at public or
533 private sale, and for such price as it may determine to be for the
534 best interest of the State of Mississippi, but no such sale shall
535 be made at a price less than par plus accrued interest to the date
536 of delivery of the bonds to the purchaser. All interest accruing
537 on such bonds so issued shall be payable semiannually or annually;
538 however, the first interest payment may be for any period of not
539 more than one (1) year.

540 Notice of the sale of any such bonds shall be published at
541 least one time, not less than ten (10) days before the date of
542 sale, and shall be so published in one or more newspapers
543 published or having a general circulation in the City of Jackson,
544 Mississippi, and in one or more other newspapers or financial
545 journals with a national circulation, to be selected by the State
546 Bond Commission.

547 The State Bond Commission, when issuing any bonds under the
548 authority of Sections 9 through 24 of this act, may provide that
549 bonds, at the option of the State of Mississippi, may be called in
550 for payment and redemption at the call price named therein and
551 accrued interest on such date or dates named therein.

552 **SECTION 16.** Bonds issued under authority of Sections 9
553 through 24 of this act shall be revenue bonds of the state, the
554 principal of and interest on which shall be payable solely from
555 the revenue from projects authorized under Section 6 or 7 of this
556 act. The bonds shall never constitute an indebtedness of the
557 state within the meaning of any state constitutional provision or
558 statutory limitation, and shall never constitute or give rise to a
559 pecuniary liability of the state, or a charge against its general
560 credit or taxing powers, and such fact shall be plainly stated on
561 the face of each such bond. The bonds shall not be considered
562 when computing any limitation of indebtedness of the state. All
563 bonds issued under the authority of Sections 9 through 24 of this

564 act and all interest coupons applicable thereto shall be construed
565 to be negotiable instruments, despite the fact that they are
566 payable solely from a specified source.

567 **SECTION 17.** Upon the issuance and sale of bonds under the
568 provisions of Sections 9 through 24 of this act, the State Bond
569 Commission shall transfer the proceeds of any such sale or sales
570 to a special fund created in Section 9 of this act. The proceeds
571 of such bonds shall be disbursed solely upon the order of the
572 Mississippi Transportation Commission under such restrictions, if
573 any, as may be contained in the resolution providing for the
574 issuance of the bonds.

575 **SECTION 18.** The bonds authorized under Sections 9 through 24
576 of this act may be issued without any other proceedings or the
577 happening of any other conditions or things other than those
578 proceedings, conditions and things which are specified or required
579 by Sections 9 through 24 of this act. Any resolution providing
580 for the issuance of bonds under the provisions of Sections 9
581 through 24 of this act shall become effective immediately upon its
582 adoption by the commission, and any such resolution may be adopted
583 at any regular or special meeting of the commission by a majority
584 of its members.

585 **SECTION 19.** The bonds authorized under the authority of
586 Sections 9 through 24 of this act may be validated in the Chancery
587 Court of the First Judicial District of Hinds County, Mississippi,
588 in the manner and with the force and effect provided by Chapter
589 13, Title 31, Mississippi Code of 1972, for the validation of
590 county, municipal, school district and other bonds. The notice to
591 taxpayers required by such statutes shall be published in a
592 newspaper published or having a general circulation in the City of
593 Jackson, Mississippi.

594 **SECTION 20.** Any holder of bonds issued under the provisions
595 of Sections 9 through 24 of this act or of any of the interest
596 coupons pertaining thereto may, either at law or in equity, by

597 suit, action, mandamus or other proceeding, protect and enforce
598 any and all rights granted under Sections 9 through 24 of this
599 act, or under such resolution, and may enforce and compel
600 performance of all duties required by Sections 9 through 24 of
601 this act to be performed, in order to provide for the payment of
602 bonds and interest thereon.

603 **SECTION 21.** All bonds issued under the provisions of
604 Sections 9 through 24 of this act shall be legal investments for
605 trustees and other fiduciaries, and for savings banks, trust
606 companies and insurance companies organized under the laws of the
607 State of Mississippi, and such bonds shall be legal securities
608 which may be deposited with and shall be received by all public
609 officers and bodies of this state and all municipalities and
610 political subdivisions for the purpose of securing the deposit of
611 public funds.

612 **SECTION 22.** Bonds issued under the provisions of Sections 9
613 through 24 of this act and income therefrom shall be exempt from
614 all taxation in the State of Mississippi.

615 **SECTION 23.** The proceeds of the bonds issued under Sections
616 9 through 24 of this act shall be used solely for the purposes
617 provided in Sections 9 through 24 of this act, including the costs
618 incident to the issuance and sale of such bonds.

619 **SECTION 24.** The State Treasurer is authorized, without
620 further process of law, to certify to the Department of Finance
621 and Administration the necessity for warrants, and the Department
622 of Finance and Administration is authorized and directed to issue
623 such warrants, in such amounts as may be necessary to pay when due
624 the principal of, premium, if any, and interest on, or the
625 accreted value of, all bonds issued under Sections 9 through 24 of
626 this act; and the State Treasurer shall forward the necessary
627 amount to the designated place or places of payment of such bonds
628 in ample time to discharge such bonds, or the interest thereon, on
629 the due dates thereof.

630 **SECTION 25.** Section 65-3-1, Mississippi Code of 1972, is
631 amended as follows:

632 65-3-1. Subject only to the provisions hereinafter
633 contained, it shall be unlawful for any person, acting privately
634 or in any official capacity or as an employee of any subdivision
635 of the state, to charge or collect any toll or other charge from
636 any person for the privilege of traveling on any part of any
637 highway which has been heretofore or may hereafter be designated
638 as a state highway, and being a part of the state highway system,
639 or on or across any bridge wholly within this state, which is a
640 part of any such highway.

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

644 However, none of the provisions of this section shall
645 prohibit the collection of any toll or other charge for the
646 privilege of traveling on, or the use of, any causeway, bridge,
647 tunnel, toll bridge, or any combination of such facility
648 constructed under the provisions of Sections 65-23-101 through
649 65-23-119, forming a part of U.S. Highway * * * 90 across the Bay
650 of St. Louis, or across or under the East Pascagoula River or the
651 West Pascagoula River on * * * U.S. Highway 90.

652 The provisions of this section shall be inapplicable to any
653 toll road or bridge built or operated under the authority of
654 Senate Bill No. 2941, 2006 Regular Session.

655 **SECTION 26.** Section 11-46-9, Mississippi Code of 1972, is
656 amended as follows:

657 11-46-9. (1) A governmental entity and its employees acting
658 within the course and scope of their employment or duties shall
659 not be liable for any claim:

660 (a) Arising out of a legislative or judicial action or
661 inaction, or administrative action or inaction of a legislative or
662 judicial nature;

663 (b) Arising out of any act or omission of an employee
664 of a governmental entity exercising ordinary care in reliance
665 upon, or in the execution or performance of, or in the failure to
666 execute or perform, a statute, ordinance or regulation, whether or
667 not the statute, ordinance or regulation be valid;

668 (c) Arising out of any act or omission of an employee
669 of a governmental entity engaged in the performance or execution
670 of duties or activities relating to police or fire protection
671 unless the employee acted in reckless disregard of the safety and
672 well-being of any person not engaged in criminal activity at the
673 time of injury;

674 (d) Based upon the exercise or performance or the
675 failure to exercise or perform a discretionary function or duty on
676 the part of a governmental entity or employee thereof, whether or
677 not the discretion be abused;

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

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

682 (g) Arising out of the exercise of discretion in
683 determining whether or not to seek or provide the resources
684 necessary for the purchase of equipment, the construction or
685 maintenance of facilities, the hiring of personnel and, in
686 general, the provision of adequate governmental services;

687 (h) Arising out of the issuance, denial, suspension or
688 revocation of, or the failure or refusal to issue, deny, suspend
689 or revoke any privilege, ticket, pass, permit, license,
690 certificate, approval, order or similar authorization where the
691 governmental entity or its employee is authorized by law to
692 determine whether or not such authorization should be issued,
693 denied, suspended or revoked unless such issuance, denial,
694 suspension or revocation, or failure or refusal thereof, is of a
695 malicious or arbitrary and capricious nature;

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

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

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

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

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

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

718 (o) Under circumstances where liability has been or is
719 hereafter assumed by the United States, to the extent of such
720 assumption of liability, including, but not limited to, any claim
721 based on activities of the Mississippi National Guard when such
722 claim is cognizable under the National Guard Tort Claims Act of
723 the United States, 32 USC 715 (32 USCS 715), or when such claim
724 accrues as a result of active federal service or state service at
725 the call of the Governor for quelling riots and civil
726 disturbances;

727 (p) Arising out of a plan or design for construction or
728 improvements to public property, including, but not limited to,

729 public buildings, highways, roads, streets, bridges, levees,
730 dikes, dams, impoundments, drainage channels, diversion channels,
731 harbors, ports, wharfs or docks, where such plan or design has
732 been approved in advance of the construction or improvement by the
733 legislative body or governing authority of a governmental entity
734 or by some other body or administrative agency, exercising
735 discretion by authority to give such approval, and where such plan
736 or design is in conformity with engineering or design standards in
737 effect at the time of preparation of the plan or design;

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

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

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

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

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

751 (v) Arising out of an injury caused by a dangerous
752 condition on property of the governmental entity that was not
753 caused by the negligent or other wrongful conduct of an employee
754 of the governmental entity or of which the governmental entity did
755 not have notice, either actual or constructive, and adequate
756 opportunity to protect or warn against; provided, however, that a
757 governmental entity shall not be liable for the failure to warn of
758 a dangerous condition which is obvious to one exercising due care;

759 (w) Arising out of the absence, condition, malfunction
760 or removal by third parties of any sign, signal, warning device,
761 illumination device, guardrail or median barrier, unless the

762 absence, condition, malfunction or removal is not corrected by the
763 governmental entity responsible for its maintenance within a
764 reasonable time after actual or constructive notice; * * *

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

773 (y) Arising out of any act or omission relating to a
774 highway, bridge or roadway project under a contract entered into
775 under Senate Bill No. 2941, 2006 Regular Session.

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

- 778 (a) Is inactive and dormant;
779 (b) Receives no revenue;
780 (c) Has no employees; and
781 (d) Owns no property.

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

787 **SECTION 27.** The Attorney General of the State of Mississippi
788 shall submit this act, immediately upon approval by the Governor,
789 or upon approval by the Legislature subsequent to a veto, to the
790 Attorney General of the United States or to the United States
791 District Court for the District of Columbia in accordance with the
792 provisions of the Voting Rights Act of 1965, as amended and
793 extended.

794 **SECTION 28.** This act shall take effect and be in force from
795 and after the date it is effectuated under Section 5 of the Voting
796 Rights Act of 1965, as amended and extended.