

By: Representatives Busby, Faulkner

To: Transportation

HOUSE BILL NO. 1080
(As Sent to Governor)

1 AN ACT TO AMEND SECTION 65-43-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE TOLL ROAD LAWS REGARDING PUBLIC PRIVATE PARTNERSHIPS TO
3 ALLOW FOR EXTENSIONS, AUTOMATIC RENEWALS OR OTHER CONTRACTUAL
4 TERMS AGREED TO BY THE GOVERNMENTAL ENTITY AS EXCEPTIONS TO THE
5 MAXIMUM CONTRACT PERIOD OF 50 YEARS; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 65-43-3, Mississippi Code of 1972, is
8 amended as follows:

9 65-43-3. (1) (a) In addition to and as an alternative to
10 any other authority granted by law, including, but not limited to,
11 Section 65-43-1, any governmental entities, as defined in Section
12 65-43-1, in their discretion, may contract, individually or
13 jointly with other governmental entities, with any persons,
14 corporations, partnerships or other businesses licensed to do
15 business in the State of Mississippi (hereinafter referred to as
16 "companies" or "company") for the purpose of designing, financing,
17 constructing, operating and maintaining one or more new toll roads
18 or toll bridges in the state for motor vehicle traffic, including
19 tollbooths and related facilities, at those locations where an



20 alternate untolled route exists. Such contracts may provide that
21 the governmental entities may grant certain rights (including, but
22 not limited to, the right to exclusively operate and maintain) in
23 land held by the governmental entities, whether in fee simple, as
24 an easement or other interest, to a company for design,
25 construction, operation and/or maintenance of roadways, highways
26 or bridges for motor vehicle traffic, tollbooths and related
27 facilities. All such highways, pavement, bridges,
28 drainage-related structures and other infrastructure comprising
29 the projects shall be built and maintained in accordance with not
30 less than the minimum highway design, construction and maintenance
31 standards established by the contracting governmental entity for
32 such highways, infrastructure and facilities. The contracting
33 governmental entity shall conduct periodic inspections of any such
34 project throughout the term of the contract to ensure compliance
35 by the company. Failure of a company to comply with minimum
36 standards established for the project by the contracting
37 governmental entity shall constitute a breach and shall subject
38 the company to liability on its bond or security or to rescission
39 of the contract in accordance with the terms and provisions of the
40 contract.

41 (b) A governmental entity may not enter into a contract
42 under this section with (i) any company designated as a foreign
43 terrorist organization pursuant to Presidential Executive Order
44 13224 or Section 302 of the federal Antiterrorism or Effective



45 Death Penalty Act of 1996, (ii) any company under the control of a
46 so-designated foreign terrorist organization, or (iii) any company
47 controlled by a foreign person if to do so would violate any order
48 of the Committee on Foreign Investment in the United States under
49 the Foreign Investment and National Security Act of 2007, H.R.
50 566, 110th Cong. (2007), Public Law 110-49, 121 Stat. 246. These
51 requirements also shall apply to any proposed transfer or
52 assignment of any contract entered into under this section.

53 (2) (a) Every contract entered into by a governmental
54 entity under this section (except for contracts entered into with
55 another governmental entity or following termination of a
56 predecessor contract entered into under this section), at a
57 minimum, must provide for the design and construction of a new
58 toll road or toll bridge project and may also provide for the
59 financing, acquisition, lease, maintenance, and/or operation of a
60 new toll road or toll bridge project.

61 (b) If a governmental entity enters into a contract
62 with a company as authorized by this section, such governmental
63 entity shall use a competitive procurement process that provides
64 the best value for the governmental entity. The governmental
65 entity may accept unsolicited proposals for a proposed new toll
66 road or solicit proposals in accordance with this section.

67 (c) A governmental entity shall publish a request for
68 competing proposals and qualifications in a newspaper having a
69 general circulation within such governmental entity or, if the



70 governmental entity is the Mississippi Transportation Commission,
71 shall publish the request in a newspaper having a general
72 circulation at the seat of government and, if the governmental
73 entity has a website, shall post the request on such website.
74 Such request shall include the criteria used to evaluate the
75 proposals, the relative weight given to the criteria and a
76 deadline by which proposals must be received. At a minimum, a
77 proposal submitted in response to such request must contain:

78 (i) Information regarding the proposed project
79 location, scope and limits;

80 (ii) Information regarding the company's
81 qualifications, experience, technical competence, and capability
82 to develop the project; and

83 (iii) A proposed financial plan for the proposed
84 project that includes, at a minimum, the projected project costs,
85 projected revenues and proposed sources of funds.

86 A governmental entity may interview a company submitting a
87 solicited or unsolicited proposal. In evaluating such proposals,
88 a governmental entity may solicit input from other sources
89 regarding such proposals.

90 (d) The governmental entity shall rank each proposal
91 based on the criteria described in the request for proposals and
92 select the company whose proposal offers the best value to the
93 governmental entity. The governmental entity may enter into
94 discussions with the company whose proposal offers the best value.



95 If at any point during the discussions it appears to the
96 governmental entity that the highest ranking proposal will not
97 provide the governmental entity with the overall best value, the
98 governmental entity may enter into discussions with the company
99 submitting the next highest ranking proposal.

100 (e) The governmental entity may withdraw a request for
101 competing proposals and qualifications at any time and for any
102 reason and may reject any one (1) or all proposals. In either
103 case, the governmental entity may then publish a new request for
104 competing proposals and qualifications. A governmental entity
105 shall not be required to pay any company for the costs of
106 preparing or submitting proposals.

107 (f) The governmental entity shall prescribe the general
108 form of a contract authorized by this section and may include any
109 matter the governmental entity considers advantageous to it. The
110 governmental entity and the company shall negotiate the specific
111 terms of the contract.

112 (g) Except as provided under this subsection (2), no
113 such contract entered into hereunder shall be subject to the
114 provisions of Section 65-1-8, Section 31-7-13 or any other public
115 bid or public procurement laws of this state.

116 (h) The Transportation Commission shall evaluate each
117 proposal based on the criteria established by the commission. The
118 Transportation Commission shall approve or disapprove a proposal
119 within ninety (90) days after receipt of the proposal. If the



Transportation Commission needs additional information, it may delay approval for an additional sixty (60) days.

(i) Any right or interest arising under or as a result of any contract entered into under this section by a governmental entity with a company involving a franchise, license agreement, concession agreement, operating agreement, construction agreement, design agreement and/or any other similar contractual arrangement in connection with the financing, design, construction, acquisition, maintenance and/or operation of a toll road or toll bridge project shall not constitute any right, title or interest in land or other real property or real estate or in personal property within the meaning of Article 1, Chapter 35, Title 27, Mississippi Code of 1972, in the toll road or toll bridge project, including tollbooths and related toll facilities (including, but not limited to, land, pavement, drainage-related structures, and other infrastructure and property related thereto) in which a governmental entity is the title owner of such property and/or holder of easements, rights-of-way and/or other interests for such toll road or toll bridge project.

(3) Every contract entered into by a governmental entity under this section shall require a company to enter into bond and provide such security as the governmental entity determines may be necessary or advisable to ensure timely completion and proper execution and performance of the contract. The term of the contract shall not exceed fifty (50) years * * *, with the



exception of extensions, automatic renewals or other contractual
terms as agreed to by the governmental entity in the original or a
subsequent agreement. The governmental entities are authorized to
acquire such property or interests in property as may be
necessary, by gift, purchase or eminent domain, for construction
and maintenance of the highways or bridges built pursuant to
contracts entered into under this section. Upon expiration,
termination or rescission of the contract, any and all rights
and/or interests that the company may have in the land,
infrastructure, facilities or other improvements to the property
subject to contract shall terminate and automatically, by
operation of law, be returned or conveyed to and vested in the
State of Mississippi or the contracting governmental entity. Upon
termination, expiration or rescission of the contract, the
collection of tolls shall cease.

(4) The governmental entity having jurisdiction over the
toll highway or bridge may, after notice and public hearing,
establish, charge and collect motor vehicle operator tolls for use
of the highway or bridge and its facilities. Alternatively,
during the term of any contract entered into under this section,
the company may establish, charge and collect motor vehicle
operators tolls for use of the highway or bridge and its
facilities. The amount of such tolls, and any modification
thereto, shall be subject to approval by the contracting
governmental entity after notice and public hearing. All such



contracts entered into with the Mississippi Transportation Commission may require a company to pay a percentage or other specified portion of all tolls collected to the Mississippi Department of Transportation. If bonds are issued pursuant to Section 65-43-13, then all such tolls paid to the department shall be deposited into the special bond sinking fund under Section 65-43-11, and may be expended only as authorized by the Legislature. If bonds are not issued pursuant to Section 65-43-13, then all such tolls paid to the department shall be deposited into the department's highway fund to be used by the department for the construction and maintenance of highways.

(5) If a toll road is a designated evacuation route and a declaration of a state of emergency is issued by the President of the United States or by the Governor, the collection of tolls shall cease until the termination of the state of emergency.

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

(7) The State of Mississippi, the Mississippi Transportation Commission, the Mississippi Department of Transportation, counties, municipalities or any other agency or political



195 subdivision, or any officer or employee thereof, shall not be
196 liable for any tortious act or omission arising out of the
197 construction, maintenance or operation of any highway or bridge
198 project under the provisions of this section where the act or
199 omission occurs during the term of any such contract entered into
200 by the Mississippi Transportation Commission or other governmental
201 entity and a company.

202 **SECTION 2.** This act shall take effect and be in force from
203 and after July 1, 2020.

