

## **Senate Amendments to House Bill No. 1080**

**TO THE CLERK OF THE HOUSE:**

**THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:**

### **AMENDMENT NO. 1**

**Amend by striking all after the enacting clause and inserting in lieu thereof the following:**

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

122 (i) Any right or interest arising under or as a result  
123 of any contract entered into under this section by a governmental  
124 entity with a company involving a franchise, license agreement,  
125 concession agreement, operating agreement, construction agreement,  
126 design agreement and/or any other similar contractual arrangement  
127 in connection with the financing, design, construction,

128 acquisition, maintenance and/or operation of a toll road or toll  
129 bridge project shall not constitute any right, title or interest  
130 in land or other real property or real estate or in personal  
131 property within the meaning of Article 1, Chapter 35, Title 27,  
132 Mississippi Code of 1972, in the toll road or toll bridge project,  
133 including tollbooths and related toll facilities (including, but  
134 not limited to, land, pavement, drainage-related structures, and  
135 other infrastructure and property related thereto) in which a  
136 governmental entity is the title owner of such property and/or  
137 holder of easements, rights-of-way and/or other interests for such  
138 toll road or toll bridge project.

139 (3) Every contract entered into by a governmental entity  
140 under this section shall require a company to enter into bond and  
141 provide such security as the governmental entity determines may be  
142 necessary or advisable to ensure timely completion and proper  
143 execution and performance of the contract. The term of the  
144 contract shall not exceed fifty (50) years \* \* \*, with the  
145 exception of extensions, automatic renewals or other contractual  
146 terms as agreed to by the governmental entity in the original or a  
147 subsequent agreement. The governmental entities are authorized to  
148 acquire such property or interests in property as may be  
149 necessary, by gift, purchase or eminent domain, for construction  
150 and maintenance of the highways or bridges built pursuant to  
151 contracts entered into under this section. Upon expiration,  
152 termination or rescission of the contract, any and all rights  
153 and/or interests that the company may have in the land,

154 infrastructure, facilities or other improvements to the property  
155 subject to contract shall terminate and automatically, by  
156 operation of law, be returned or conveyed to and vested in the  
157 State of Mississippi or the contracting governmental entity. Upon  
158 termination, expiration or rescission of the contract, the  
159 collection of tolls shall cease.

160 (4) The governmental entity having jurisdiction over the  
161 toll highway or bridge may, after notice and public hearing,  
162 establish, charge and collect motor vehicle operator tolls for use  
163 of the highway or bridge and its facilities. Alternatively,  
164 during the term of any contract entered into under this section,  
165 the company may establish, charge and collect motor vehicle  
166 operators tolls for use of the highway or bridge and its  
167 facilities. The amount of such tolls, and any modification  
168 thereto, shall be subject to approval by the contracting  
169 governmental entity after notice and public hearing. All such  
170 contracts entered into with the Mississippi Transportation  
171 Commission may require a company to pay a percentage or other  
172 specified portion of all tolls collected to the Mississippi  
173 Department of Transportation. If bonds are issued pursuant to  
174 Section 65-43-13, then all such tolls paid to the department shall  
175 be deposited into the special bond sinking fund under Section  
176 65-43-11, and may be expended only as authorized by the  
177 Legislature. If bonds are not issued pursuant to Section  
178 65-43-13, then all such tolls paid to the department shall be

179 deposited into the department's highway fund to be used by the  
180 department for the construction and maintenance of highways.

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

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

192 (7) The State of Mississippi, the Mississippi Transportation  
193 Commission, the Mississippi Department of Transportation,  
194 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, and shall stand repealed from and after  
204 June 30, 2020.

**Further, amend by striking the title in its entirety and  
inserting in lieu thereof the following:**

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.

SS08\HB1080A.J

Eugene S. Clarke  
Secretary of the Senate