

By: Ross

To: Highways and
TransportationCOMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 3049

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; TO PRESCRIBE THE TERMS
6 AND CONDITIONS FOR THE LETTING OF SUCH CONTRACTS AND THE RIGHTS
7 AND DUTIES OF THE PARTIES ENTERING INTO SUCH CONTRACTS; TO AMEND
8 SECTIONS 65-3-1 AND 11-46-9, MISSISSIPPI CODE OF 1972, IN
9 CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED
10 PURPOSES.

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

12 SECTION 1. (1) The Mississippi Transportation Commission,
13 county boards of supervisors and/or the governing authorities of
14 municipalities (hereinafter referred to as governmental entities)
15 in their discretion, are authorized to enter into contract with
16 any persons, corporations, partnerships or other businesses
17 licensed to do business in the State of Mississippi (hereinafter
18 referred to as "companies" or "company") for the purpose of
19 leasing highway or roadway property upon which shall be
20 constructed one or more toll roads in the state. Such contracts
21 shall provide that land held by the governmental entities, whether
22 in fee simple, as an easement or other interest, shall be leased
23 or assigned to a company for construction, operation and
24 maintenance of roadways or highways for motor vehicle traffic,
25 toll booths and related facilities. All such highways, pavement,
26 bridges, drainage related structures and other infrastructure
27 comprising the projects shall be built and maintained in
28 accordance with not less than the minimum highway design,
29 construction and maintenance standards established for such
30 highways, infrastructure and facilities by the contracting

31 governmental entity. The contracting governmental entity shall
32 conduct periodic inspections of any such project throughout the
33 term of the contract to ensure compliance by the company. Failure
34 of a company to comply with minimum standards established for the
35 project by the contracting governmental entity shall constitute a
36 breach and shall subject the company to liability on its bond or
37 security or to rescission of the contract in accordance with the
38 terms and provisions of the contract.

39 (2) Every contract entered into by a governmental entity
40 under this section shall require a company to enter into bond and
41 provide such security as the governmental entity determines may be
42 necessary or advisable to ensure timely completion and proper
43 execution and performance of the contract. The governmental
44 entities are authorized to acquire such property or interests in
45 property as may be necessary, by gift, purchase or eminent domain,
46 for construction and maintenance of the highways built pursuant to
47 contracts entered into under this section. Furthermore, when and
48 as dictated by the terms of the contract with the governmental
49 entity, the company shall have the same powers of eminent domain
50 as those described in Section 11-27-47, Mississippi Code of 1972.

51 Upon expiration, termination or rescission of the contract, all
52 interests that the company may have in the land, infrastructure,
53 facilities or other improvements to the property subject to
54 contract shall terminate and automatically, by operation of law,
55 be returned or conveyed to and vest in the State of Mississippi
56 and the contracting governmental entity upon termination,
57 expiration or rescission of the contract, the collection of tolls
58 shall cease.

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

62 The amount of such tolls, and any modification thereto, shall be
63 subject to approval by the contracting governmental entity;
64 however, all such contracts entered into with the Mississippi
65 Transportation Commission may require a company to pay a
66 percentage of all tolls collected to the Mississippi Department of
67 Transportation. All such monies paid to the department shall be

68 deposited into the State Highway Fund and may be expended, upon
69 appropriation by the Legislature, only for maintenance of state
70 highways.

71 (4) All statutes of this state relating to traffic
72 regulation and control shall be applicable to motor vehicles
73 operated upon highways constructed under this section and shall be
74 enforceable by the Mississippi Department of Public Safety and the
75 Mississippi Highway Safety Patrol.

76 (5) The State of Mississippi, the Mississippi Transportation
77 Commission, the Mississippi Department of Transportation,
78 counties, municipalities or any other agency or political
79 subdivision, or any officer or employee thereof, shall not be
80 liable for any tortious act or omission arising out of the
81 construction, maintenance or operation of any highway or highway
82 project under the provisions of this section where the act or
83 omission occurs during the term of any such contract entered into
84 by the Mississippi Transportation Commission and a company.

85 (6) The powers conferred by this section shall be in
86 addition to the powers conferred by any other law, general,
87 special or local. This section shall be construed as an
88 additional and alternative method of funding the purchasing,
89 building, improving, owning or operating of roadways and/or
90 highways under the jurisdiction of the Mississippi Transportation
91 Commission, County Boards of Supervisors or municipalities, any
92 provision of the laws of the state or any charter of any
93 municipality to the contrary notwithstanding.

94 SECTION 2. Section 65-3-1, Mississippi Code of 1972, is
95 amended as follows:[JWB1]

96 65-3-1. Subject only to the provisions hereinafter
97 contained, it shall be unlawful for any person, acting privately
98 or in any official capacity or as an employee of any subdivision
99 of the state, to charge or collect any toll or other charge from
100 any person for the privilege of traveling on any part of any

101 highway which has been heretofore or may hereafter be designated
102 as a state highway, and being a part of the state highway system,
103 or on or across any bridge wholly within this state, which is a
104 part of any such highway.

105 For a violation of this section, any judge or chancellor may,
106 in term time or vacation, grant an injunction upon complaint of
107 the State Highway Commission.

108 However, none of the provisions of this section shall
109 prohibit the collection of any toll or other charge for the
110 privilege of traveling on, or the use of, any causeway, bridge,
111 tunnel, toll bridge, or any combination of such facility
112 constructed under the provisions of sections 65-23-101 through
113 65-23-119, forming a part of U.S. Highway No. 90 across the Bay of
114 St. Louis, or across or under the East Pascagoula River or the
115 West Pascagoula River on said U.S. Highway 90.

116 The provisions of this section shall be inapplicable to any
117 toll road built or operated under the authority of Section 2 of
118 Senate Bill No. 3049, 2000 Regular Session.

119 SECTION 3. Section 11-46-9, Mississippi Code of 1972, is
120 amended as follows:[JWB2]

121 11-46-9. (1) A governmental entity and its employees acting
122 within the course and scope of their employment or duties shall
123 not be liable for any claim:

124 (a) Arising out of a legislative or judicial action or
125 inaction, or administrative action or inaction of a legislative or
126 judicial nature;

127 (b) Arising out of any act or omission of an employee
128 of a governmental entity exercising ordinary care in reliance
129 upon, or in the execution or performance of, or in the failure to
130 execute or perform, a statute, ordinance or regulation, whether or
131 not the statute, ordinance or regulation be valid;

132 (c) Arising out of any act or omission of an employee
133 of a governmental entity engaged in the performance or execution

134 of duties or activities relating to police or fire protection
135 unless the employee acted in reckless disregard of the safety and
136 well-being of any person not engaged in criminal activity at the
137 time of injury;

138 (d) Based upon the exercise or performance or the
139 failure to exercise or perform a discretionary function or duty on
140 the part of a governmental entity or employee thereof, whether or
141 not the discretion be abused;

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

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

146 (g) Arising out of the exercise of discretion in
147 determining whether or not to seek or provide the resources
148 necessary for the purchase of equipment, the construction or
149 maintenance of facilities, the hiring of personnel and, in
150 general, the provision of adequate governmental services;

151 (h) Arising out of the issuance, denial, suspension or
152 revocation of, or the failure or refusal to issue, deny, suspend
153 or revoke any privilege, ticket, pass, permit, license,
154 certificate, approval, order or similar authorization where the
155 governmental entity or its employee is authorized by law to
156 determine whether or not such authorization should be issued,
157 denied, suspended or revoked unless such issuance, denial,
158 suspension or revocation, or failure or refusal thereof, is of a
159 malicious or arbitrary and capricious nature;

160 (i) Arising out of the assessment or collection of any
161 tax or fee;

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

165 (k) Arising out of the imposition or establishment of a
166 quarantine, whether such quarantine relates to persons or

167 property;

168 (1) Of any claimant who is an employee of a
169 governmental entity and whose injury is covered by the Workers'
170 Compensation Law of this state by benefits furnished by the
171 governmental entity by which he is employed;

172 (m) Of any claimant who at the time the claim arises is
173 an inmate of any detention center, jail, workhouse, penal farm,
174 penitentiary or other such institution, regardless of whether such
175 claimant is or is not an inmate of any detention center, jail,
176 workhouse, penal farm, penitentiary or other such institution when
177 the claim is filed;

178 (n) Arising out of any work performed by a person
179 convicted of a crime when the work is performed pursuant to any
180 sentence or order of any court or pursuant to laws of the State of
181 Mississippi authorizing or requiring such work;

182 (o) Under circumstances where liability has been or is
183 hereafter assumed by the United States, to the extent of such
184 assumption of liability, including, but not limited to, any claim
185 based on activities of the Mississippi National Guard when such
186 claim is cognizable under the National Guard Tort Claims Act of
187 the United States, 32 USC 715 (32 USCS 715), or when such claim
188 accrues as a result of active federal service or state service at
189 the call of the Governor for quelling riots and civil
190 disturbances;

191 (p) Arising out of a plan or design for construction or
192 improvements to public property, including, but not limited to,
193 public buildings, highways, roads, streets, bridges, levees,
194 dikes, dams, impoundments, drainage channels, diversion channels,
195 harbors, ports, wharfs or docks, where such plan or design has
196 been approved in advance of the construction or improvement by the
197 legislative body or governing authority of a governmental entity
198 or by some other body or administrative agency, exercising
199 discretion by authority to give such approval, and where such plan

200 or design is in conformity with engineering or design standards in
201 effect at the time of preparation of the plan or design;

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

204 (r) Arising out of the lack of adequate personnel or
205 facilities at a state hospital or state corrections facility if
206 reasonable use of available appropriations has been made to
207 provide such personnel or facilities;

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

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

212 (u) Arising out of or resulting from riots, unlawful
213 assemblies, unlawful public demonstrations, mob violence or civil
214 disturbances;

215 (v) Arising out of an injury caused by a dangerous
216 condition on property of the governmental entity that was not
217 caused by the negligent or other wrongful conduct of an employee
218 of the governmental entity or of which the governmental entity did
219 not have notice, either actual or constructive, and adequate
220 opportunity to protect or warn against; provided, however, that a
221 governmental entity shall not be liable for the failure to warn of
222 a dangerous condition which is obvious to one exercising due care;

223 (w) Arising out of the absence, condition, malfunction
224 or removal by third parties of any sign, signal, warning device,
225 illumination device, guardrail or median barrier, unless the
226 absence, condition, malfunction or removal is not corrected by the
227 governmental entity responsible for its maintenance within a
228 reasonable time after actual or constructive notice; or

229 (x) Arising out of the administration of corporal
230 punishment or the taking of any action to maintain control and
231 discipline of students, as defined in Section 37-11-57, by a
232 teacher, assistant teacher, principal or assistant principal of a

233 public school district in the state unless the teacher, assistant
234 teacher, principal or assistant principal acted in bad faith or
235 with malicious purpose or in a manner exhibiting a wanton and
236 willful disregard of human rights or safety.

237 (y) Arising out of any act or omission relating to a
238 highway, bridge or roadway project under a contract entered into
239 under Section 1 of Senate Bill No. 3049, 2000 Regular Session.

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

- 242 (a) Is inactive and dormant;
- 243 (b) Receives no revenue;
- 244 (c) Has no employees; and
- 245 (d) Owns no property.

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

251 SECTION 4. This act shall take effect and be in force from
252 and after July 1, 2000.