

By: Ross

To: Highways and
TransportationSENATE BILL NO. 3049
(As Passed the Senate)

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 AMEND SECTIONS 65-3-1 AND 11-46-9, MISSISSIPPI
9 CODE OF 1972, IN CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR
10 RELATED 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, individually or
16 jointly with other governmental entities, into contract with any
17 persons, corporations, partnerships or other businesses licensed
18 to do business in the State of Mississippi (hereinafter referred
19 to as "companies" or "company") for the purpose of leasing highway
20 or roadway property upon which shall be constructed one or more
21 toll roads or bridges in the state. Such contracts shall provide
22 that land held by the governmental entities, whether in fee
23 simple, as an easement or other interest, shall be leased or
24 assigned to a company for construction, operation and maintenance
25 of roadways or highways for motor vehicle traffic, toll booths and
26 related facilities. All such highways, pavement, bridges,
27 drainage related structures and other infrastructure comprising
28 the projects shall be built and maintained in accordance with not
29 less than the minimum highway design, construction and maintenance
30 standards established for such highways, infrastructure and

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

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

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

60 (3) During the term of any contract entered into under this
61 section, the company may establish, charge and collect motor
62 vehicle operators tolls for use of the highway and its facilities.
63 The amount of such tolls, and any modification thereto, shall be
64 subject to approval by the contracting governmental entity;
65 however, all such contracts entered into with the Mississippi
66 Transportation Commission may require a company to pay a
67 percentage of all tolls collected to the Mississippi Department of

68 Transportation. All such monies paid to the department shall be
69 deposited into the State Highway Fund and may be expended, upon
70 appropriation by the Legislature, only for maintenance of state
71 highways.

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

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

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

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

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

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

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

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

117 The provisions of this section shall be inapplicable to any
118 toll road built or operated under the authority of Section 1 of
119 Senate Bill No. 3049, 2000 Regular Session.

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

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

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

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

133 (c) Arising out of any act or omission of an employee

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

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

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

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

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

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

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

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

166 (k) Arising out of the imposition or establishment of a

167 quarantine, whether such quarantine relates to persons or
168 property;

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

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

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

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

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

200 discretion by authority to give such approval, and where such plan
201 or design is in conformity with engineering or design standards in
202 effect at the time of preparation of the plan or design;

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

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

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

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

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

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

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

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

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

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

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

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

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

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