

By: Senator(s) Ross, Dearing

To: Highways and
Transportation

SENATE BILL NO. 2060

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; TO
10 AUTHORIZE GOVERNMENTAL ENTITIES TO ISSUE LICENSES AND PERMITS TO
11 INDIVIDUALS, GROUPS, PARTNERSHIPS, CORPORATIONS, ASSOCIATIONS OR
12 OTHER LEGAL ENTITIES AUTHORIZING SUCH ENTITIES TO CONSTRUCT AND
13 OPERATE TOLL ROADS, BRIDGES, FERRIES AND CAUSEWAYS PRIMARILY ON
14 LAND OWNED, LEASED OR USED BY SUCH ENTITIES; TO EXEMPT REAL
15 PROPERTY USED FOR SUCH PURPOSES FROM AD VALOREM TAX; AND FOR
16 RELATED PURPOSES.

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

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



highway design, construction and maintenance standards established for such highways, infrastructure and facilities by the contracting governmental entity. The contracting governmental entity shall conduct periodic inspections of any such project throughout the term of the contract to ensure compliance by the company. Failure of a company to comply with minimum standards established for the project by the contracting governmental entity shall constitute a breach and shall subject the company to liability on its bond or security or to rescission of the contract in accordance with the terms and provisions of the contract.

(2) 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 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 built pursuant to contracts entered into under this section. Furthermore, when and as dictated by the terms of the contract with the governmental entity, the company shall have the same powers of eminent domain as those described in Section 11-27-47. Upon expiration, termination or rescission of the contract, all 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 vest in the State of Mississippi or the contracting governmental entity. Upon termination, expiration or rescission of the contract, the collection of tolls shall cease.

(3) 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 and its facilities. The amount of such tolls, and any modification thereto, shall be



68 subject to approval by the contracting governmental entity;
69 however, all such contracts entered into with the Mississippi
70 Transportation Commission may require a company to pay a
71 percentage of all tolls collected to the Mississippi Department of
72 Transportation. All such monies paid to the department shall be
73 deposited into the State Highway Fund and may be expended, upon
74 appropriation by the Legislature, only for maintenance of state
75 highways.

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

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

91 (6) The powers conferred by this section shall be in
92 addition to the powers conferred by any other law, general,
93 special or local. This section shall be construed as an
94 additional and alternative method of funding the purchasing,
95 building, improving, owning or operating of roadways and/or
96 highways under the jurisdiction of the Mississippi Transportation
97 Commission, county boards of supervisors or municipal governing
98 authorities, any provision of the laws of the state or any charter
99 of any municipality to the contrary notwithstanding.



100 **SECTION 2.** Section 65-3-1, Mississippi Code of 1972, is
101 amended as follows:

102 65-3-1. Subject only to the provisions hereinafter
103 contained, it shall be unlawful for any person, acting privately
104 or in any official capacity or as an employee of any subdivision
105 of the state, to charge or collect any toll or other charge from
106 any person for the privilege of traveling on any part of any
107 highway which has been heretofore or may hereafter be designated
108 as a state highway, and being a part of the state highway system,
109 or on or across any bridge wholly within this state, which is a
110 part of any such highway.

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

114 However, none of the provisions of this section shall
115 prohibit the collection of any toll or other charge for the
116 privilege of traveling on, or the use of, any causeway, bridge,
117 tunnel, toll bridge, or any combination of such facility
118 constructed under the provisions of Sections 65-23-101 through
119 65-23-119, forming a part of U.S. Highway * * * 90 across the Bay
120 of St. Louis, or across or under the East Pascagoula River or the
121 West Pascagoula River on * * * U.S. Highway 90.

122 The provisions of this section shall be inapplicable to any
123 toll road or bridge built or operated under the authority of
124 Section 1 or Section 4 of Senate Bill No. 2060, 2002 Regular
125 Session.

126 **SECTION 3.** Section 11-46-9, Mississippi Code of 1972, is
127 amended as follows:

128 11-46-9. (1) A governmental entity and its employees acting
129 within the course and scope of their employment or duties shall
130 not be liable for any claim:



131 (a) Arising out of a legislative or judicial action or
132 inaction, or administrative action or inaction of a legislative or
133 judicial nature;

134 (b) Arising out of any act or omission of an employee
135 of a governmental entity exercising ordinary care in reliance
136 upon, or in the execution or performance of, or in the failure to
137 execute or perform, a statute, ordinance or regulation, whether or
138 not the statute, ordinance or regulation be valid;

139 (c) Arising out of any act or omission of an employee
140 of a governmental entity engaged in the performance or execution
141 of duties or activities relating to police or fire protection
142 unless the employee acted in reckless disregard of the safety and
143 well-being of any person not engaged in criminal activity at the
144 time of injury;

145 (d) Based upon the exercise or performance or the
146 failure to exercise or perform a discretionary function or duty on
147 the part of a governmental entity or employee thereof, whether or
148 not the discretion be abused;

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

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

153 (g) Arising out of the exercise of discretion in
154 determining whether or not to seek or provide the resources
155 necessary for the purchase of equipment, the construction or
156 maintenance of facilities, the hiring of personnel and, in
157 general, the provision of adequate governmental services;

158 (h) Arising out of the issuance, denial, suspension or
159 revocation of, or the failure or refusal to issue, deny, suspend
160 or revoke any privilege, ticket, pass, permit, license,
161 certificate, approval, order or similar authorization where the
162 governmental entity or its employee is authorized by law to
163 determine whether or not such authorization should be issued,



denied, suspended or revoked unless such issuance, denial, suspension or revocation, or failure or refusal thereof, is of a malicious or arbitrary and capricious nature;

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

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

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

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

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

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

(o) Under circumstances where liability has been or is hereafter assumed by the United States, to the extent of such assumption of liability, including, but not limited to, any claim based on activities of the Mississippi National Guard when such claim is cognizable under the National Guard Tort Claims Act of the United States, 32 USC 715 (32 USCS 715), or when such claim accrues as a result of active federal service or state service at



196 the call of the Governor for quelling riots and civil
197 disturbances;

198 (p) Arising out of a plan or design for construction or
199 improvements to public property, including, but not limited to,
200 public buildings, highways, roads, streets, bridges, levees,
201 dikes, dams, impoundments, drainage channels, diversion channels,
202 harbors, ports, wharfs or docks, where such plan or design has
203 been approved in advance of the construction or improvement by the
204 legislative body or governing authority of a governmental entity
205 or by some other body or administrative agency, exercising
206 discretion by authority to give such approval, and where such plan
207 or design is in conformity with engineering or design standards in
208 effect at the time of preparation of the plan or design;

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

211 (r) Arising out of the lack of adequate personnel or
212 facilities at a state hospital or state corrections facility if
213 reasonable use of available appropriations has been made to
214 provide such personnel or facilities;

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

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

219 (u) Arising out of or resulting from riots, unlawful
220 assemblies, unlawful public demonstrations, mob violence or civil
221 disturbances;

222 (v) Arising out of an injury caused by a dangerous
223 condition on property of the governmental entity that was not
224 caused by the negligent or other wrongful conduct of an employee
225 of the governmental entity or of which the governmental entity did
226 not have notice, either actual or constructive, and adequate
227 opportunity to protect or warn against; provided, however, that a



governmental entity shall not be liable for the failure to warn of a dangerous condition which is obvious to one exercising due care;

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

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

(y) Arising out of any act or omission relating to a highway, bridge or roadway project under a contract entered into under Section 1 or Section 4 of Senate Bill No. 2060, 2002 Regular Session.

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

(a) Is inactive and dormant;

(b) Receives no revenue;

(c) Has no employees; and

(d) Owns no property.

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

SECTION 4. (1) The provisions of this section and of Section 5 of this act shall be totally separate from and not



261 limited in any respect by any other provisions of law, including,
262 but not limited to, any other provisions of this act, or of any
263 other law relating to the setting and supervision of tolls,
264 inspections, bonding of licensees and toll road and bridge owners
265 and operators, rescission of licenses and contracts and reversion
266 of title to property and projects. Unless clearly indicated to
267 the contrary from the context of this section, all terms used in
268 this section shall have the same meaning as when used in Section 1
269 of this act.

270 (2) In addition to and as an alternative to any other
271 authority granted by law, including, but not limited to, Section 1
272 of this act, any governmental entities, as defined in Section 1 of
273 this act, may individually or jointly with any other governmental
274 agency or agencies, in their discretion, issue licenses and
275 permits to individuals, groups, partnerships, corporations,
276 associations or other legal entities licensed to do business in
277 this state (such persons and entities are hereinafter referred to
278 as "licensees") authorizing such licensees to (a) construct,
279 develop, purchase or otherwise establish and to own, operate and
280 maintain toll roads, bridges, ferries and causeways on private
281 land and other property owned or leased or otherwise used for such
282 purposes by such licensees; and (b) set, change, charge and
283 collect tolls for the use of such facilities, all upon such terms
284 and conditions, if any, which such governmental entities and
285 licensees shall mutually agree to and set forth in such licenses
286 or permits or in any contractual agreements between such
287 governmental entities and licensees. Such governmental entities
288 may, but only to the extent expressly provided in the licenses or
289 permits issued to such licensees, impose and collect fees for the
290 issuance of such licenses or permits. Without limiting any other
291 provisions of this section, all licenses and permits issued under
292 this section may be issued for a stated period of time or may be
293 perpetual and may be irrevocable, all as stated in such license or



294 permit. Any governmental entity issuing any such license or
295 permit may also use its eminent domain powers to acquire any
296 property needed for or helpful to the construction, development,
297 purchase or establishment or to the ownership or operation of any
298 such project and may thereafter transfer title, license the use of
299 or lease such property to any such licensee or such licensee's
300 affiliate, all upon such terms and conditions as such governmental
301 entity shall deem advisable. All statutes of this state relating
302 to traffic regulation and control shall be applicable to motor
303 vehicles operated upon roads and bridges constructed, developed,
304 purchased or otherwise owned, established and operated pursuant to
305 this section and shall be enforceable by the Mississippi
306 Department of Public Safety and the Mississippi Highway Safety
307 Patrol at the same level and to the same extent as such laws are
308 enforced on public roads and bridges.

309 (3) Any licensee that has been issued a license or permit
310 under this section may not be required by the governmental entity
311 issuing the license or permit or by any other governmental entity
312 to obtain any other license or permit or to pay any fee or tax in
313 addition to the license or permit fee, if any, charged at the time
314 of and incident to the issuance of such license or permit for the
315 privilege of constructing, owning, operating or maintaining such
316 toll road, bridge, ferry or causeway or engaging in the business
317 of constructing, owning, operating or maintaining any such toll
318 road, bridge, ferry or causeway relating to any period of time
319 following the issuance of such license or permit, including, but
320 not limited to, any business license or ad valorem or property
321 tax. Notwithstanding the foregoing, neither public funds nor
322 public credit shall be used in the construction or financing of
323 the privately-owned portion of any toll road, bridge, ferry or
324 causeway; however, this provision shall not restrict public
325 funding or financing of any governmentally-owned roads, highways
326 or other infrastructure which may provide access to or enhance



access to or use of such privately-owned toll road, bridge, ferry or causeway. All other laws and regulations of this state, to the extent such other laws or regulations are, or might be construed as being, inconsistent with or restricting or limiting either this section or Section 5 of this act, are superseded for the purposes of the implementation, application and operation of this section and of Section 5 of this act, to the extent of such actual or perceived inconsistency, restriction or limitation.

SECTION 5. All real and personal property, whether tangible or intangible, owned, used or leased by an individual or legal entity that has been issued a license or permit under Section 4 of this act, or by such individual's or legal entity's affiliates, successors or assigns, and which is used in the construction, development, establishment, ownership, operation or maintenance of such toll road, bridge, ferry or causeway authorized under Section 4 of this act, shall be exempt from all ad valorem and all other property taxes.

SECTION 6. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.

SECTION 7. This act shall take effect and be in force from and after July 1, 2002.

