

**\*\*\*Adopted\*\*\***

**AMENDMENT No. 1 TO AMENDMENT No. 1 PROPOSED TO**

**House Bill NO. 1667**

**By Senator(s) Ross**

1           **AMEND** by inserting the following after line 1897 and renumber  
2 **subsequent section accordingly:**

3           **SECTION 10.** (1) The Mississippi Transportation Commission,  
4 county boards of supervisors and/or the governing authorities of  
5 municipalities (hereinafter referred to as governmental entities),  
6 in their discretion, may contract, individually or jointly with  
7 other governmental entities, with any persons, corporations,  
8 partnerships or other businesses licensed to do business in the  
9 State of Mississippi (hereinafter referred to as "companies" or  
10 "company") for the purpose of leasing highway or roadway property  
11 upon which shall be constructed one or more toll roads or bridges  
12 in the state. Such contracts shall provide that land held by the  
13 governmental entities, whether in fee simple, as an easement or  
14 other interest, shall be leased or assigned to a company for  
15 construction, operation and maintenance of roadways or highways  
16 for motor vehicle traffic, toll booths and related facilities.  
17 All such highways, pavement, bridges, drainage related structures  
18 and other infrastructure comprising the projects shall be built  
19 and maintained in accordance with not less than the minimum  
20 highway design, construction and maintenance standards established  
21 for such highways, infrastructure and facilities by the  
22 contracting governmental entity. The contracting governmental  
23 entity shall conduct periodic inspections of any such project

24 throughout the term of the contract to ensure compliance by the  
25 company. Failure of a company to comply with minimum standards  
26 established for the project by the contracting governmental entity  
27 shall constitute a breach and shall subject the company to  
28 liability on its bond or security or to rescission of the contract  
29 in accordance with the terms and provisions of the contract.

30 (2) Every contract entered into by a governmental entity  
31 under this section shall require a company to enter into bond and  
32 provide such security as the governmental entity determines may be  
33 necessary or advisable to ensure timely completion and proper  
34 execution and performance of the contract. The governmental  
35 entities are authorized to acquire such property or interests in  
36 property as may be necessary, by gift, purchase or eminent domain,  
37 for construction and maintenance of the highways built pursuant to  
38 contracts entered into under this section. Furthermore, when and  
39 as dictated by the terms of the contract with the governmental  
40 entity, the company shall have the same powers of eminent domain  
41 as those described in Section 11-27-47. Upon expiration,  
42 termination or rescission of the contract, all interests that the  
43 company may have in the land, infrastructure, facilities or other  
44 improvements to the property subject to contract shall terminate  
45 and automatically, by operation of law, be returned or conveyed to  
46 and vest in the State of Mississippi or the contracting  
47 governmental entity. Upon termination, expiration or rescission  
48 of the contract, the collection of tolls shall cease.

49 (3) During the term of any contract entered into under this  
50 section, the company may establish, charge and collect motor  
51 vehicle operators tolls for use of the highway and its facilities.  
52 The amount of such tolls, and any modification thereto, shall be  
53 subject to approval by the contracting governmental entity;  
54 however, all such contracts entered into with the Mississippi  
55 Transportation Commission may require a company to pay a  
56 percentage of all tolls collected to the Mississippi Department of  
57 Transportation. All such monies paid to the department shall be  
58 deposited into the State Highway Fund and may be expended, upon

59 appropriation by the Legislature, only for maintenance of state  
60 highways.

61 (4) All statutes of this state relating to traffic  
62 regulation and control shall be applicable to motor vehicles  
63 operated upon highways and bridges constructed under this section  
64 and shall be enforceable by the Mississippi Department of Public  
65 Safety and the Mississippi Highway Safety Patrol.

66 (5) The State of Mississippi, the Mississippi Transportation  
67 Commission, the Mississippi Department of Transportation,  
68 counties, municipalities or any other agency or political  
69 subdivision, or any officer or employee thereof, shall not be  
70 liable for any tortious act or omission arising out of the  
71 construction, maintenance or operation of any highway or bridge  
72 project under the provisions of this section where the act or  
73 omission occurs during the term of any such contract entered into  
74 by the Mississippi Transportation Commission or other governmental  
75 entity and a company.

76 (6) The powers conferred by this section shall be in  
77 addition to the powers conferred by any other law, general,  
78 special or local. This section shall be construed as an  
79 additional and alternative method of funding the purchasing,  
80 building, improving, owning or operating of roadways and/or  
81 highways under the jurisdiction of the Mississippi Transportation  
82 Commission, county boards of supervisors or municipal governing  
83 authorities, any provision of the laws of the state or any charter  
84 of any municipality to the contrary notwithstanding.

85 **SECTION 11.** Section 65-3-1, Mississippi Code of 1972, is  
86 amended as follows:

87 65-3-1. Subject only to the provisions hereinafter  
88 contained, it shall be unlawful for any person, acting privately  
89 or in any official capacity or as an employee of any subdivision  
90 of the state, to charge or collect any toll or other charge from  
91 any person for the privilege of traveling on any part of any  
92 highway which has been heretofore or may hereafter be designated  
93 as a state highway, and being a part of the state highway system,

94 or on or across any bridge wholly within this state, which is a  
95 part of any such highway.

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

99 However, none of the provisions of this section shall  
100 prohibit the collection of any toll or other charge for the  
101 privilege of traveling on, or the use of, any causeway, bridge,  
102 tunnel, toll bridge, or any combination of such facility  
103 constructed under the provisions of Sections 65-23-101 through  
104 65-23-119, forming a part of U.S. Highway \* \* \* 90 across the Bay  
105 of St. Louis, or across or under the East Pascagoula River or the  
106 West Pascagoula River on \* \* \* U.S. Highway 90.

107 The provisions of this section shall be inapplicable to any  
108 toll road or bridge built or operated under the authority of  
109 Section 10 or Section 13 of House Bill No. 1667, 2002 Regular  
110 Session.

111 **SECTION 12.** Section 11-46-9, Mississippi Code of 1972, is  
112 amended as follows:

113 11-46-9. (1) A governmental entity and its employees acting  
114 within the course and scope of their employment or duties shall  
115 not be liable for any claim:

116 (a) Arising out of a legislative or judicial action or  
117 inaction, or administrative action or inaction of a legislative or  
118 judicial nature;

119 (b) Arising out of any act or omission of an employee  
120 of a governmental entity exercising ordinary care in reliance  
121 upon, or in the execution or performance of, or in the failure to  
122 execute or perform, a statute, ordinance or regulation, whether or  
123 not the statute, ordinance or regulation be valid;

124 (c) Arising out of any act or omission of an employee  
125 of a governmental entity engaged in the performance or execution  
126 of duties or activities relating to police or fire protection  
127 unless the employee acted in reckless disregard of the safety and  
128 well-being of any person not engaged in criminal activity at the

129 time of injury;

130 (d) Based upon the exercise or performance or the  
131 failure to exercise or perform a discretionary function or duty on  
132 the part of a governmental entity or employee thereof, whether or  
133 not the discretion be abused;

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

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

138 (g) Arising out of the exercise of discretion in  
139 determining whether or not to seek or provide the resources  
140 necessary for the purchase of equipment, the construction or  
141 maintenance of facilities, the hiring of personnel and, in  
142 general, the provision of adequate governmental services;

143 (h) Arising out of the issuance, denial, suspension or  
144 revocation of, or the failure or refusal to issue, deny, suspend  
145 or revoke any privilege, ticket, pass, permit, license,  
146 certificate, approval, order or similar authorization where the  
147 governmental entity or its employee is authorized by law to  
148 determine whether or not such authorization should be issued,  
149 denied, suspended or revoked unless such issuance, denial,  
150 suspension or revocation, or failure or refusal thereof, is of a  
151 malicious or arbitrary and capricious nature;

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

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

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

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

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

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

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

183 (p) Arising out of a plan or design for construction or  
184 improvements to public property, including, but not limited to,  
185 public buildings, highways, roads, streets, bridges, levees,  
186 dikes, dams, impoundments, drainage channels, diversion channels,  
187 harbors, ports, wharfs or docks, where such plan or design has  
188 been approved in advance of the construction or improvement by the  
189 legislative body or governing authority of a governmental entity  
190 or by some other body or administrative agency, exercising  
191 discretion by authority to give such approval, and where such plan  
192 or design is in conformity with engineering or design standards in  
193 effect at the time of preparation of the plan or design;

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

196 (r) Arising out of the lack of adequate personnel or  
197 facilities at a state hospital or state corrections facility if  
198 reasonable use of available appropriations has been made to

199 provide such personnel or facilities;

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

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

204 (u) Arising out of or resulting from riots, unlawful  
205 assemblies, unlawful public demonstrations, mob violence or civil  
206 disturbances;

207 (v) Arising out of an injury caused by a dangerous  
208 condition on property of the governmental entity that was not  
209 caused by the negligent or other wrongful conduct of an employee  
210 of the governmental entity or of which the governmental entity did  
211 not have notice, either actual or constructive, and adequate  
212 opportunity to protect or warn against; provided, however, that a  
213 governmental entity shall not be liable for the failure to warn of  
214 a dangerous condition which is obvious to one exercising due care;

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

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

229 (y) Arising out of any act or omission relating to a  
230 highway, bridge or roadway project under a contract entered into  
231 under Section 10 or Section 13 of House Bill No. 1667, 2002  
232 Regular Session.

233 (2) A governmental entity shall also not be liable for any

234 claim where the governmental entity:

235 (a) Is inactive and dormant;

236 (b) Receives no revenue;

237 (c) Has no employees; and

238 (d) Owns no property.

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

244 **SECTION 13.** (1) The provisions of this section and of  
245 Section 14 of this act shall be totally separate from and not  
246 limited in any respect by any other provisions of law, including,  
247 but not limited to, any other provisions of this act, or of any  
248 other law relating to the setting and supervision of tolls,  
249 inspections, bonding of licensees and toll road and bridge owners  
250 and operators, rescission of licenses and contracts and reversion  
251 of title to property and projects. Unless clearly indicated to  
252 the contrary from the context of this section, all terms used in  
253 this section shall have the same meaning as when used in Section  
254 10 of this act.

255 (2) In addition to and as an alternative to any other  
256 authority granted by law, including, but not limited to, Section  
257 10 of this act, any governmental entities, as defined in Section  
258 10 of this act, may individually or jointly with any other  
259 governmental agency or agencies, in their discretion, issue  
260 licenses and permits to individuals, groups, partnerships,  
261 corporations, associations or other legal entities licensed to do  
262 business in this state (such persons and entities are hereinafter  
263 referred to as "licensees") authorizing such licensees to (a)  
264 construct, develop, purchase or otherwise establish and to own,  
265 operate and maintain toll roads, bridges, ferries and causeways on  
266 private land and other property owned or leased or otherwise used  
267 for such purposes by such licensees; and (b) set, change, charge  
268 and collect tolls for the use of such facilities, all upon such



269 terms and conditions, if any, which such governmental entities and  
270 licensees shall mutually agree to and set forth in such licenses  
271 or permits or in any contractual agreements between such  
272 governmental entities and licensees. Such governmental entities  
273 may, but only to the extent expressly provided in the licenses or  
274 permits issued to such licensees, impose and collect fees for the  
275 issuance of such licenses or permits. Without limiting any other  
276 provisions of this section, all licenses and permits issued under  
277 this section may be issued for a stated period of time or may be  
278 perpetual and may be irrevocable, all as stated in such license or  
279 permit. Any governmental entity issuing any such license or  
280 permit may also use its eminent domain powers to acquire any  
281 property needed for or helpful to the construction, development,  
282 purchase or establishment or to the ownership or operation of any  
283 such project and may thereafter transfer title, license the use of  
284 or lease such property to any such licensee or such licensee's  
285 affiliate, all upon such terms and conditions as such governmental  
286 entity shall deem advisable. All statutes of this state relating  
287 to traffic regulation and control shall be applicable to motor  
288 vehicles operated upon roads and bridges constructed, developed,  
289 purchased or otherwise owned, established and operated pursuant to  
290 this section and shall be enforceable by the Mississippi  
291 Department of Public Safety and the Mississippi Highway Safety  
292 Patrol at the same level and to the same extent as such laws are  
293 enforced on public roads and bridges.

294 (3) Any licensee that has been issued a license or permit  
295 under this section may not be required by the governmental entity  
296 issuing the license or permit or by any other governmental entity  
297 to obtain any other license or permit or to pay any fee or tax in  
298 addition to the license or permit fee, if any, charged at the time  
299 of and incident to the issuance of such license or permit for the  
300 privilege of constructing, owning, operating or maintaining such  
301 toll road, bridge, ferry or causeway or engaging in the business  
302 of constructing, owning, operating or maintaining any such toll  
303 road, bridge, ferry or causeway relating to any period of time

304 following the issuance of such license or permit, including, but  
305 not limited to, any business license or ad valorem or property  
306 tax. Notwithstanding the foregoing, neither public funds nor  
307 public credit shall be used in the construction or financing of  
308 the privately-owned portion of any toll road, bridge, ferry or  
309 causeway; however, this provision shall not restrict public  
310 funding or financing of any governmentally-owned roads, highways  
311 or other infrastructure which may provide access to or enhance  
312 access to or use of such privately-owned toll road, bridge, ferry  
313 or causeway. All other laws and regulations of this state, to the  
314 extent such other laws or regulations are, or might be construed  
315 as being, inconsistent with or restricting or limiting either this  
316 section or Section 14 of this act, are superseded for the purposes  
317 of the implementation, application and operation of this section  
318 and of Section 14 of this act, to the extent of such actual or  
319 perceived inconsistency, restriction or limitation.

320       **SECTION 14.** All real and personal property, whether tangible  
321 or intangible, owned, used or leased by an individual or legal  
322 entity that has been issued a license or permit under Section 13  
323 of this act, or by such individual's or legal entity's affiliates,  
324 successors or assigns, and which is used in the construction,  
325 development, establishment, ownership, operation or maintenance of  
326 such toll road, bridge, ferry or causeway authorized under Section  
327 13 of this act, shall be exempt from all ad valorem and all other  
328 property taxes.

329       **SECTION 15.** Nothing in Sections 10 through 15 of this act  
330 shall affect or defeat any claim, assessment, appeal, suit, right  
331 or cause of action for taxes due or accrued under the ad valorem  
332 tax laws before the date on which this act becomes effective,  
333 whether such claims, assessments, appeals, suits or actions have  
334 been begun before the date on which this act becomes effective or  
335 are begun thereafter; and the provisions of the ad valorem tax  
336 laws are expressly continued in full force, effect and operation  
337 for the purpose of the assessment, collection and enrollment of  
338 liens for any taxes due or accrued and the execution of any

339 warrant under such laws before the date on which this act becomes  
340 effective, and for the imposition of any penalties, forfeitures or  
341 claims for failure to comply with such laws.

342 **FURTHER, amend line 36 of the title by inserting the**  
343 **following after the semicolon:**

344 TO AUTHORIZE THE MISSISSIPPI TRANSPORTATION COMMISSION, COUNTY  
345 BOARDS OF SUPERVISORS AND THE GOVERNING AUTHORITIES OF  
346 MUNICIPALITIES TO CONTRACT WITH ANY PERSON, CORPORATION OR OTHER  
347 BUSINESS LICENSED TO DO BUSINESS IN THE STATE FOR THE PURPOSE OF  
348 CONSTRUCTING TOLL ROADS OR BRIDGES; TO PRESCRIBE THE TERMS AND  
349 CONDITIONS FOR THE LETTING OF SUCH CONTRACTS AND THE RIGHTS AND  
350 DUTIES OF THE PARTIES ENTERING INTO SUCH CONTRACTS; TO AMEND  
351 SECTIONS 65-3-1 AND 11-46-9, MISSISSIPPI CODE OF 1972, IN  
352 CONFORMITY TO THE PROVISIONS OF THIS ACT; TO AUTHORIZE  
353 GOVERNMENTAL ENTITIES TO ISSUE LICENSES AND PERMITS TO  
354 INDIVIDUALS, GROUPS, PARTNERSHIPS, CORPORATIONS, ASSOCIATIONS OR  
355 OTHER LEGAL ENTITIES AUTHORIZING SUCH ENTITIES TO CONSTRUCT AND  
356 OPERATE TOLL ROADS, BRIDGES, FERRIES AND CAUSEWAYS PRIMARILY ON  
357 LAND OWNED, LEASED OR USED BY SUCH ENTITIES; TO EXEMPT REAL  
358 PROPERTY USED FOR SUCH PURPOSES FROM AD VALOREM TAX;