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To: Transportation;
Judiciary A

HOUSE BILL NO. 728

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

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

45 (2) Every contract entered into by a governmental entity
46 under this section shall require a company to enter into bond and
47 provide such security as the governmental entity determines may be
48 necessary or advisable to ensure timely completion and proper
49 execution and performance of the contract. The governmental
50 entities are authorized to acquire such property or interests in
51 property as may be necessary, by gift, purchase or eminent domain,
52 for construction and maintenance of the highways built pursuant to
53 contracts entered into under this section. Furthermore, when and
54 as dictated by the terms of the contract with the governmental
55 entity, the company shall have the same powers of eminent domain
56 as those described in Section 11-27-47. Upon expiration,
57 termination or rescission of the contract, all interests that the
58 company may have in the land, infrastructure, facilities or other
59 improvements to the property subject to contract shall terminate
60 and automatically, by operation of law, be returned or conveyed to
61 and vest in the State of Mississippi or the contracting
62 governmental entity. Upon termination, expiration or rescission
63 of the contract, the collection of tolls shall cease.

64 (3) During the term of any contract entered into under this
65 section, the company may establish, charge and collect motor
66 vehicle operators tolls for use of the highway and its facilities.
67 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 state. Fifty percent
72 (50%) of the tolls paid to the state shall be deposited into a
73 special fund created in the State Treasury to be known as the
74 "Early Intervention Services Fund." The remaining portion of the
75 tolls paid to the state shall be paid to the Mississippi
76 Department of Transportation. Monies in the Early Intervention
77 Services Fund may be expended, upon legislative appropriation, to
78 implement programs and services established under the Early
79 Intervention Act for Infants and Toddlers. All toll monies paid
80 to the Transportation Department shall be deposited into the State
81 Highway Fund and may be expended, upon appropriation by the
82 Legislature, only for maintenance of state highways.

83 (4) All statutes of this state relating to traffic
84 regulation and control shall be applicable to motor vehicles
85 operated upon highways and bridges constructed under this section
86 and shall be enforceable by the Mississippi Department of Public
87 Safety and the Mississippi Highway Safety Patrol.

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

98 (6) The powers conferred by this section shall be in
99 addition to the powers conferred by any other law, general,
100 special or local. This section shall be construed as an

101 additional and alternative method of funding the purchasing,
102 building, improving, owning or operating of roadways and/or
103 highways under the jurisdiction of the Mississippi Transportation
104 Commission, county boards of supervisors or municipal governing
105 authorities, any provision of the laws of the state or any charter
106 of any municipality to the contrary notwithstanding.

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

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

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

121 However, none of the provisions of this section shall
122 prohibit the collection of any toll or other charge for the
123 privilege of traveling on, or the use of, any causeway, bridge,
124 tunnel, toll bridge, or any combination of such facility
125 constructed under the provisions of Sections 65-23-101 through
126 65-23-119, forming a part of U.S. Highway * * * 90 across the Bay
127 of St. Louis, or across or under the East Pascagoula River or the
128 West Pascagoula River on * * * U.S. Highway 90.

129 The provisions of this section shall be inapplicable to any
130 toll road or bridge built or operated under the authority of
131 Section 1 or Section 4 of House Bill No. , 2004 Regular
132 Session.

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

135 11-46-9. (1) A governmental entity and its employees acting
136 within the course and scope of their employment or duties shall
137 not be liable for any claim:

138 (a) Arising out of a legislative or judicial action or
139 inaction, or administrative action or inaction of a legislative or
140 judicial nature;

141 (b) Arising out of any act or omission of an employee
142 of a governmental entity exercising ordinary care in reliance
143 upon, or in the execution or performance of, or in the failure to
144 execute or perform, a statute, ordinance or regulation, whether or
145 not the statute, ordinance or regulation be valid;

146 (c) Arising out of any act or omission of an employee
147 of a governmental entity engaged in the performance or execution
148 of duties or activities relating to police or fire protection
149 unless the employee acted in reckless disregard of the safety and
150 well-being of any person not engaged in criminal activity at the
151 time of injury;

152 (d) Based upon the exercise or performance or the
153 failure to exercise or perform a discretionary function or duty on
154 the part of a governmental entity or employee thereof, whether or
155 not the discretion be abused;

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

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

160 (g) Arising out of the exercise of discretion in
161 determining whether or not to seek or provide the resources
162 necessary for the purchase of equipment, the construction or
163 maintenance of facilities, the hiring of personnel and, in
164 general, the provision of adequate governmental services;

165 (h) Arising out of the issuance, denial, suspension or
166 revocation of, or the failure or refusal to issue, deny, suspend
167 or revoke any privilege, ticket, pass, permit, license,
168 certificate, approval, order or similar authorization where the
169 governmental entity or its employee is authorized by law to
170 determine whether or not such authorization should be issued,
171 denied, suspended or revoked unless such issuance, denial,
172 suspension or revocation, or failure or refusal thereof, is of a
173 malicious or arbitrary and capricious nature;

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

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

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

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

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

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

196 (o) Under circumstances where liability has been or is
197 hereafter assumed by the United States, to the extent of such

198 assumption of liability, including, but not limited to, any claim
199 based on activities of the Mississippi National Guard when such
200 claim is cognizable under the National Guard Tort Claims Act of
201 the United States, 32 USC 715 (32 USCS 715), or when such claim
202 accrues as a result of active federal service or state service at
203 the call of the Governor for quelling riots and civil
204 disturbances;

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

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

218 (r) Arising out of the lack of adequate personnel or
219 facilities at a state hospital or state corrections facility if
220 reasonable use of available appropriations has been made to
221 provide such personnel or facilities;

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

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

226 (u) Arising out of or resulting from riots, unlawful
227 assemblies, unlawful public demonstrations, mob violence or civil
228 disturbances;

229 (v) Arising out of an injury caused by a dangerous
230 condition on property of the governmental entity that was not

231 caused by the negligent or other wrongful conduct of an employee
232 of the governmental entity or of which the governmental entity did
233 not have notice, either actual or constructive, and adequate
234 opportunity to protect or warn against; provided, however, that a
235 governmental entity shall not be liable for the failure to warn of
236 a dangerous condition which is obvious to one exercising due care;

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

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

251 (y) Arising out of any act or omission relating to a
252 highway, bridge or roadway project under a contract entered into
253 under Section 1 or Section 4 of House Bill No. , 2003 Regular
254 Session.

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

- 257 (a) Is inactive and dormant;
258 (b) Receives no revenue;
259 (c) Has no employees; and
260 (d) Owns no property.

261 (3) If a governmental entity exempt from liability by
262 subsection (2) becomes active, receives income, hires employees or
263 acquires any property, such governmental entity shall no longer be

264 exempt from liability as provided in subsection (2) and shall be
265 subject to the provisions of this chapter.

266 SECTION 4. (1) The provisions of this section and of
267 Section 5 of this act shall be totally separate from and not
268 limited in any respect by any other provisions of law, including,
269 but not limited to, any other provisions of this act, or of any
270 other law relating to the setting and supervision of tolls,
271 inspections, bonding of licensees and toll road and bridge owners
272 and operators, rescission of licenses and contracts and reversion
273 of title to property and projects. Unless clearly indicated to
274 the contrary from the context of this section, all terms used in
275 this section shall have the same meaning as when used in Section 1
276 of this act.

277 (2) In addition to and as an alternative to any other
278 authority granted by law, including, but not limited to, Section 1
279 of this act, any governmental entities, as defined in Section 1 of
280 this act, may individually or jointly with any other governmental
281 agency or agencies, in their discretion, issue licenses and
282 permits to individuals, groups, partnerships, corporations,
283 associations or other legal entities licensed to do business in
284 this state (such persons and entities are hereinafter referred to
285 as "licensees") authorizing such licensees to (a) construct,
286 develop, purchase or otherwise establish and to own, operate and
287 maintain toll roads, bridges, ferries and causeways on private
288 land and other property owned or leased or otherwise used for such
289 purposes by such licensees; and (b) set, change, charge and
290 collect tolls for the use of such facilities, all upon such terms
291 and conditions, if any, which such governmental entities and
292 licensees shall mutually agree to and set forth in such licenses
293 or permits or in any contractual agreements between such
294 governmental entities and licensees. Such governmental entities
295 may, but only to the extent expressly provided in the licenses or
296 permits issued to such licensees, impose and collect fees for the

297 issuance of such licenses or permits. Without limiting any other
298 provisions of this section, all licenses and permits issued under
299 this section may be issued for a stated period of time or may be
300 perpetual and may be irrevocable, all as stated in such license or
301 permit. Any governmental entity issuing any such license or
302 permit may also use its eminent domain powers to acquire any
303 property needed for or helpful to the construction, development,
304 purchase or establishment or to the ownership or operation of any
305 such project and may thereafter transfer title, license the use of
306 or lease such property to any such licensee or such licensee's
307 affiliate, all upon such terms and conditions as such governmental
308 entity shall deem advisable. All statutes of this state relating
309 to traffic regulation and control shall be applicable to motor
310 vehicles operated upon roads and bridges constructed, developed,
311 purchased or otherwise owned, established and operated pursuant to
312 this section and shall be enforceable by the Mississippi
313 Department of Public Safety and the Mississippi Highway Safety
314 Patrol at the same level and to the same extent as such laws are
315 enforced on public roads and bridges.

316 (3) Any licensee that has been issued a license or permit
317 under this section may not be required by the governmental entity
318 issuing the license or permit or by any other governmental entity
319 to obtain any other license or permit or to pay any fee or tax in
320 addition to the license or permit fee, if any, charged at the time
321 of and incident to the issuance of such license or permit for the
322 privilege of constructing, owning, operating or maintaining such
323 toll road, bridge, ferry or causeway or engaging in the business
324 of constructing, owning, operating or maintaining any such toll
325 road, bridge, ferry or causeway relating to any period of time
326 following the issuance of such license or permit, including, but
327 not limited to, any business license or ad valorem or property
328 tax. Notwithstanding the foregoing, neither public funds nor
329 public credit shall be used in the construction or financing of

330 the privately-owned portion of any toll road, bridge, ferry or
331 causeway; however, this provision shall not restrict public
332 funding or financing of any governmentally-owned roads, highways
333 or other infrastructure which may provide access to or enhance
334 access to or use of such privately-owned toll road, bridge, ferry
335 or causeway. All other laws and regulations of this state, to the
336 extent such other laws or regulations are, or might be construed
337 as being, inconsistent with or restricting or limiting either this
338 section or Section 5 of this act, are superseded for the purposes
339 of the implementation, application and operation of this section
340 and of Section 5 of this act, to the extent of such actual or
341 perceived inconsistency, restriction or limitation.

342 **SECTION 5.** All real and personal property, whether tangible
343 or intangible, owned, used or leased by an individual or legal
344 entity that has been issued a license or permit under Section 4 of
345 this act, or by such individual's or legal entity's affiliates,
346 successors or assigns, and which is used in the construction,
347 development, establishment, ownership, operation or maintenance of
348 such toll road, bridge, ferry or causeway authorized under Section
349 4 of this act, shall be exempt from all ad valorem and all other
350 property taxes.

351 **SECTION 6.** Nothing in this act shall affect or defeat any
352 claim, assessment, appeal, suit, right or cause of action for
353 taxes due or accrued under the ad valorem tax laws before the date
354 on which this act becomes effective, whether such claims,
355 assessments, appeals, suits or actions have been begun before the
356 date on which this act becomes effective or are begun thereafter;
357 and the provisions of the ad valorem tax laws are expressly
358 continued in full force, effect and operation for the purpose of
359 the assessment, collection and enrollment of liens for any taxes
360 due or accrued and the execution of any warrant under such laws
361 before the date on which this act becomes effective, and for the

362 imposition of any penalties, forfeitures or claims for failure to
363 comply with such laws.

364 **SECTION 7.** This act shall take effect and be in force from
365 and after July 1, 2004.