

By: Representative Weathersby

To: Transportation

HOUSE BILL NO. 1139

1 AN ACT TO AUTHORIZE THE MISSISSIPPI TRANSPORTATION COMMISSION
2 TO CONTRACT WITH ANY PERSON, CORPORATION OR OTHER BUSINESS
3 LICENSED TO DO BUSINESS IN THE STATE FOR THE PURPOSE OF
4 CONSTRUCTING TOLL ROADS OR BRIDGES; TO PRESCRIBE THE TERMS AND
5 CONDITIONS FOR THE LETTING OF SUCH CONTRACTS AND THE RIGHTS AND
6 DUTIES OF THE PARTIES ENTERING INTO SUCH CONTRACTS; TO AUTHORIZE
7 GOVERNMENTAL ENTITIES TO ISSUE LICENSES AND PERMITS TO
8 INDIVIDUALS, GROUPS, PARTNERSHIPS, CORPORATIONS, ASSOCIATIONS OR
9 OTHER LEGAL ENTITIES AUTHORIZING SUCH ENTITIES TO CONSTRUCT AND
10 OPERATE TOLL ROADS, BRIDGES, FERRIES AND CAUSEWAYS PRIMARILY ON
11 LAND OWNED, LEASED OR USED BY SUCH ENTITIES; TO EXEMPT REAL
12 PROPERTY USED FOR SUCH PURPOSES FROM AD VALOREM TAX; TO AMEND
13 SECTIONS 65-3-1 AND 11-46-9, MISSISSIPPI CODE OF 1972, IN
14 CONFORMITY TO THE PROVISIONS OF THIS ACT; AND FOR RELATED
15 PURPOSES.

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

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

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

41 (2) Every contract entered into by the commission under this
42 section shall require a company to enter into bond and provide
43 such security as the commission determines may be necessary or
44 advisable to ensure timely completion and proper execution and
45 performance of the contract. The commission may acquire such
46 property or interests in property as may be necessary, by gift,
47 purchase or eminent domain, for construction and maintenance of
48 the highways built pursuant to contracts entered into under this
49 section. Furthermore, when and as dictated by the terms of the
50 contract with the commission, the company shall have the same
51 powers of eminent domain as those described in Section 11-27-47.
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 Upon termination, expiration or rescission of the contract, the
58 collection of tolls shall cease after all associated debts have
59 been retired or released.

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 commission; however, all such contracts
65 may require a company to pay a percentage of all tolls collected
66 to the Mississippi Department of Transportation. All such monies

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

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

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

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

92 **SECTION 2.** (1) The provisions of this section and of
93 Section 3 of this act shall be totally separate from and not
94 limited in any respect by any other provisions of law, including,
95 but not limited to, any other provisions of this act, or of any
96 other law relating to the setting and supervision of tolls,
97 inspections, bonding of licensees and toll road and bridge owners
98 and operators, rescission of licenses and contracts and reversion
99 of title to property and projects. Unless clearly indicated to

100 the contrary from the context of this section, all terms used in
101 this section shall have the same meaning as when used in Section 1
102 of this act.

103 (2) In addition to and as an alternative to any other
104 authority granted by law, including, but not limited to, Section 1
105 of this act, in its discretion, may issue licenses and permits to
106 individuals, groups, partnerships, corporations, associations or
107 other legal entities licensed to do business in this state (such
108 persons and entities are hereinafter referred to as "licensees")
109 authorizing such licensees to (a) construct, develop, purchase or
110 otherwise establish and to own, operate and maintain toll roads,
111 bridges, ferries and causeways on private land and other property
112 owned or leased or otherwise used for such purposes by such
113 licensees; and (b) set, change, charge and collect tolls for the
114 use of such facilities, all upon such terms and conditions, if
115 any, which the commission and licensees mutually agree to and set
116 forth in such licenses or permits or in any contractual agreements
117 between the commission and licensees. The commission, to the
118 extent expressly provided in the licenses or permits issued to
119 such licensees, may impose and collect fees for the issuance of
120 such licenses or permits. Without limiting any other provisions
121 of this section, all licenses and permits issued under this
122 section may be issued for a stated period of time or may be
123 perpetual and may be irrevocable, all as stated in such license or
124 permit. The commission may also use its eminent domain powers to
125 acquire any property needed for or helpful to the construction,
126 development, purchase or establishment or to the ownership or
127 operation of any such project and may thereafter transfer title,
128 license the use of or lease such property to any such licensee or
129 such licensee's affiliate, all upon such terms and conditions as
130 the commission deems advisable. All statutes of this state
131 relating to traffic regulation and control shall be applicable to
132 motor vehicles operated upon roads and bridges constructed,

133 developed, purchased or otherwise owned, established and operated
134 pursuant to this section and shall be enforceable by the
135 Mississippi Department of Public Safety and the Mississippi
136 Highway Safety Patrol at the same level and to the same extent as
137 such laws are enforced on public roads and bridges.

138 (3) Any licensee that has been issued a license or permit
139 under this section may not be required by the commission or by any
140 other governmental entity to obtain any other license or permit or
141 to pay any fee or tax in addition to the license or permit fee, if
142 any, charged at the time of and incident to the issuance of such
143 license or permit for the privilege of constructing, owning,
144 operating or maintaining such toll road, bridge, ferry or causeway
145 or engaging in the business of constructing, owning, operating or
146 maintaining any such toll road, bridge, ferry or causeway relating
147 to any period of time following the issuance of such license or
148 permit, including, but not limited to, any business license or ad
149 valorem or property tax. Notwithstanding the foregoing, neither
150 public funds nor public credit shall be used in the construction
151 or financing of the privately-owned portion of any toll road,
152 bridge, ferry or causeway; however, this provision shall not
153 restrict public funding or financing of any governmentally-owned
154 roads, highways or other infrastructure which may provide access
155 to or enhance access to or use of such privately-owned toll road,
156 bridge, ferry or causeway. All other laws and regulations of this
157 state, to the extent such other laws or regulations are, or might
158 be construed as being, inconsistent with or restricting or
159 limiting either this section or Section 5 of this act, are
160 superseded for the purposes of the implementation, application and
161 operation of this section and of Section 5 of this act, to the
162 extent of such actual or perceived inconsistency, restriction or
163 limitation.

164 **SECTION 3.** All real and personal property, whether tangible
165 or intangible, owned, used or leased by an individual or legal

166 entity that has been issued a license or permit under Section 4 of
167 this act, or by such individual's or legal entity's affiliates,
168 successors or assigns, and which is used in the construction,
169 development, establishment, ownership, operation or maintenance of
170 such toll road, bridge, ferry or causeway authorized under Section
171 4 of this act, shall be exempt from all ad valorem and all other
172 property taxes.

173 **SECTION 4.** Section 65-3-1, Mississippi Code of 1972, is
174 amended as follows:

175 65-3-1. Subject only to the provisions hereinafter
176 contained, it shall be unlawful for any person, acting privately
177 or in any official capacity or as an employee of any subdivision
178 of the state, to charge or collect any toll or other charge from
179 any person for the privilege of traveling on any part of any
180 highway which has been heretofore or may hereafter be designated
181 as a state highway, and being a part of the state highway system,
182 or on or across any bridge wholly within this state, which is a
183 part of any such highway.

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

187 However, none of the provisions of this section shall
188 prohibit the collection of any toll or other charge for the
189 privilege of traveling on, or the use of, any causeway, bridge,
190 tunnel, toll bridge, or any combination of such facility
191 constructed under the provisions of Sections 65-23-101 through
192 65-23-119, forming a part of U.S. Highway * * * 90 across the Bay
193 of St. Louis, or across or under the East Pascagoula River or the
194 West Pascagoula River on * * * U.S. Highway 90.

195 The provisions of this section shall be inapplicable to any
196 toll road or bridge built or operated under the authority of
197 Section 1 or Section 2 of House Bill No. 1139, 2005 Regular
198 Session.

199 **SECTION 5.** Section 11-46-9, Mississippi Code of 1972, is
200 amended as follows:

201 11-46-9. (1) A governmental entity and its employees acting
202 within the course and scope of their employment or duties shall
203 not be liable for any claim:

204 (a) Arising out of a legislative or judicial action or
205 inaction, or administrative action or inaction of a legislative or
206 judicial nature;

207 (b) Arising out of any act or omission of an employee
208 of a governmental entity exercising ordinary care in reliance
209 upon, or in the execution or performance of, or in the failure to
210 execute or perform, a statute, ordinance or regulation, whether or
211 not the statute, ordinance or regulation be valid;

212 (c) Arising out of any act or omission of an employee
213 of a governmental entity engaged in the performance or execution
214 of duties or activities relating to police or fire protection
215 unless the employee acted in reckless disregard of the safety and
216 well-being of any person not engaged in criminal activity at the
217 time of injury;

218 (d) Based upon the exercise or performance or the
219 failure to exercise or perform a discretionary function or duty on
220 the part of a governmental entity or employee thereof, whether or
221 not the discretion be abused;

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

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

226 (g) Arising out of the exercise of discretion in
227 determining whether or not to seek or provide the resources
228 necessary for the purchase of equipment, the construction or
229 maintenance of facilities, the hiring of personnel and, in
230 general, the provision of adequate governmental services;

231 (h) Arising out of the issuance, denial, suspension or
232 revocation of, or the failure or refusal to issue, deny, suspend
233 or revoke any privilege, ticket, pass, permit, license,
234 certificate, approval, order or similar authorization where the
235 governmental entity or its employee is authorized by law to
236 determine whether or not such authorization should be issued,
237 denied, suspended or revoked unless such issuance, denial,
238 suspension or revocation, or failure or refusal thereof, is of a
239 malicious or arbitrary and capricious nature;

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

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

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

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

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

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

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

264 assumption of liability, including, but not limited to, any claim
265 based on activities of the Mississippi National Guard when such
266 claim is cognizable under the National Guard Tort Claims Act of
267 the United States, 32 USC 715 (32 USCS 715), or when such claim
268 accrues as a result of active federal service or state service at
269 the call of the Governor for quelling riots and civil
270 disturbances;

271 (p) Arising out of a plan or design for construction or
272 improvements to public property, including, but not limited to,
273 public buildings, highways, roads, streets, bridges, levees,
274 dikes, dams, impoundments, drainage channels, diversion channels,
275 harbors, ports, wharfs or docks, where such plan or design has
276 been approved in advance of the construction or improvement by the
277 legislative body or governing authority of a governmental entity
278 or by some other body or administrative agency, exercising
279 discretion by authority to give such approval, and where such plan
280 or design is in conformity with engineering or design standards in
281 effect at the time of preparation of the plan or design;

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

284 (r) Arising out of the lack of adequate personnel or
285 facilities at a state hospital or state corrections facility if
286 reasonable use of available appropriations has been made to
287 provide such personnel or facilities;

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

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

292 (u) Arising out of or resulting from riots, unlawful
293 assemblies, unlawful public demonstrations, mob violence or civil
294 disturbances;

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

297 caused by the negligent or other wrongful conduct of an employee
298 of the governmental entity or of which the governmental entity did
299 not have notice, either actual or constructive, and adequate
300 opportunity to protect or warn against; provided, however, that a
301 governmental entity shall not be liable for the failure to warn of
302 a dangerous condition which is obvious to one exercising due care;

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

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

317 (y) Arising out of any act or omission relating to a
318 highway, bridge or roadway project under a contract entered into
319 under Section 1 or Section 2 of House Bill No. 1139, 2005 Regular
320 Session.

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

- 323 (a) Is inactive and dormant;
324 (b) Receives no revenue;
325 (c) Has no employees; and
326 (d) Owns no property.

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

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

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

345 **SECTION 7.** This act shall take effect and be in force from
346 and after July 1, 2005.