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Chapter No. 537

12/HR40/R1489CS

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HOUSE BILL NO. 815

Originated in House  Clerk

HOUSE BILL NO. 815

AN ACT TO AMEND SECTIONS 65-43-1 AND 65-43-3, MISSISSIPPI CODE OF 1972, TO DELETE THE REQUIREMENT THAT AN EXISTING ROAD OR ANY SEGMENT OF AN EXISTING ROAD MAY NOT BE PART OF A NEW TOLL ROAD; TO DELETE THE REQUIREMENT THAT THE RECONSTRUCTION OR REPAIR OF AN EXISTING ROAD SHALL NOT BE TOLLED; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 65-43-1, Mississippi Code of 1972, is amended as follows:

65-43-1. The Mississippi Transportation Commission, county boards of supervisors and/or the governing authorities of municipalities (hereinafter referred to as governmental entities), in their discretion, may construct, operate and maintain, individually or jointly with other governmental entities, one or more new toll roads or toll bridges in the state for motor vehicle traffic, including toll booths and related facilities, at * * * those locations where an alternate untolled route exists. * * * All such highways, pavement, bridges, drainage-related structures and other infrastructure comprising the projects shall be built and maintained in accordance with not less than the minimum highway design, construction and maintenance standards established by the contracting governmental entity for such highways, infrastructure and facilities.

SECTION 2. Section 65-43-3, Mississippi Code of 1972, is amended as follows:

65-43-3. (1) (a) In addition to and as an alternative to any other authority granted by law, including, but not limited to, Section 65-43-1, any governmental entities, as defined in Section 65-43-1, in their discretion, may contract, individually or

jointly with other governmental entities, with any persons, corporations, partnerships or other businesses licensed to do business in the State of Mississippi (hereinafter referred to as "companies" or "company") for the purpose of designing, financing, constructing, operating and maintaining one or more new toll roads or toll bridges in the state for motor vehicle traffic, including tollbooths and related facilities, at * * * those locations where an alternate untolled route exists. * * * Such contracts may provide that the governmental entities may grant certain rights (including, but not limited to, the right to exclusively operate and maintain) in land held by the governmental entities, whether in fee simple, as an easement or other interest, to a company for design, construction, operation and/or maintenance of roadways, highways or bridges for motor vehicle traffic, tollbooths and related facilities. All such highways, pavement, bridges, drainage-related structures and other infrastructure comprising the projects shall be built and maintained in accordance with not less than the minimum highway design, construction and maintenance standards established by the contracting governmental entity for such highways, infrastructure and facilities. 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.

(b) A governmental entity may not enter into a contract under this section with (i) any company designated as a foreign terrorist organization pursuant to Presidential Executive Order 13224 or Section 302 of the federal Antiterrorism or Effective Death Penalty Act of 1996, (ii) any company under the control of a

so-designated foreign terrorist organization, or (iii) any company controlled by a foreign person if to do so would violate any order of the Committee on Foreign Investment in the United States under the Foreign Investment and National Security Act of 2007, H.R. 566, 110th Cong. (2007), Public Law 110-49, 121 Stat. 246. These requirements also shall apply to any proposed transfer or assignment of any contract entered into under this section.

(2) (a) Every contract entered into by a governmental entity under this section (except for contracts entered into with another governmental entity or following termination of a predecessor contract entered into under this section), at a minimum, must provide for the design and construction of a new toll road or toll bridge project and may also provide for the financing, acquisition, lease, maintenance, and/or operation of a new toll road or toll bridge project.

(b) If a governmental entity enters into a contract with a company as authorized by this section, such governmental entity shall use a competitive procurement process that provides the best value for the governmental entity. The governmental entity may accept unsolicited proposals for a proposed new toll road or solicit proposals in accordance with this section.

(c) A governmental entity shall publish a request for competing proposals and qualifications in a newspaper having a general circulation within such governmental entity or, if the governmental entity is the Mississippi Transportation Commission, shall publish the request in a newspaper having a general circulation at the seat of government and, if the governmental entity has a website, shall post the request on such website. Such request shall include the criteria used to evaluate the proposals, the relative weight given to the criteria and a deadline by which proposals must be received. At a minimum, a proposal submitted in response to such request must contain:

(i) Information regarding the proposed project location, scope and limits;

(ii) Information regarding the company's qualifications, experience, technical competence, and capability to develop the project; and

(iii) A proposed financial plan for the proposed project that includes, at a minimum, the projected project costs, projected revenues and proposed sources of funds.

A governmental entity may interview a company submitting a solicited or unsolicited proposal. In evaluating such proposals, a governmental entity may solicit input from other sources regarding such proposals.

(d) The governmental entity shall rank each proposal based on the criteria described in the request for proposals and select the company whose proposal offers the best value to the governmental entity. The governmental entity may enter into discussions with the company whose proposal offers the best value. If at any point during the discussions it appears to the governmental entity that the highest ranking proposal will not provide the governmental entity with the overall best value, the governmental entity may enter into discussions with the company submitting the next highest ranking proposal.

(e) The governmental entity may withdraw a request for competing proposals and qualifications at any time and for any reason and may reject any one (1) or all proposals. In either case, the governmental entity may then publish a new request for competing proposals and qualifications. A governmental entity shall not be required to pay any company for the costs of preparing or submitting proposals.

(f) The governmental entity shall prescribe the general form of a contract authorized by this section and may include any matter the governmental entity considers advantageous to it. The

governmental entity and the company shall negotiate the specific terms of the contract.

(g) Except as provided under this subsection (2), no such contract entered into hereunder shall be subject to the provisions of Section 65-1-8, Section 31-7-13 or any other public bid or public procurement laws of this state.

(h) The Transportation Commission shall evaluate each proposal based on the criteria established by the commission. The Transportation Commission shall approve or disapprove a proposal within ninety (90) days after receipt of the proposal. If the Transportation Commission needs additional information, it may delay approval for an additional sixty (60) days.

(i) Any right or interest arising under or as a result of any contract entered into under this section by a governmental entity with a company involving a franchise, license agreement, concession agreement, operating agreement, construction agreement, design agreement and/or any other similar contractual arrangement in connection with the financing, design, construction, acquisition, maintenance and/or operation of a toll road or toll bridge project shall not constitute any right, title or interest in land or other real property or real estate or in personal property within the meaning of Article 1, Chapter 35, Title 27, Mississippi Code of 1972, in the toll road or toll bridge project, including tollbooths and related toll facilities (including, but not limited to, land, pavement, drainage-related structures, and other infrastructure and property related thereto) in which a governmental entity is the title owner of such property and/or holder of easements, rights-of-way and/or other interests for such toll road or toll bridge project.

(3) 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 term of the contract shall not exceed fifty (50) years and shall not be extended or renewed. 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 or bridges built pursuant to contracts entered into under this section. Upon expiration, termination or rescission of the contract, any and all rights and/or 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 vested in the State of Mississippi or the contracting governmental entity. Upon termination, expiration or rescission of the contract, the collection of tolls shall cease.

(4) The governmental entity having jurisdiction over the toll highway or bridge may, after notice and public hearing, establish, charge and collect motor vehicle operator tolls for use of the highway or bridge and its facilities. Alternatively, 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 or bridge and its facilities. The amount of such tolls, and any modification thereto, shall be subject to approval by the contracting governmental entity after notice and public hearing. All such contracts entered into with the Mississippi Transportation Commission may require a company to pay a percentage or other specified portion of all tolls collected to the Mississippi Department of Transportation. If bonds are issued pursuant to Section 65-43-13, then all such tolls paid to the department shall be deposited into the special bond sinking fund under Section 65-43-11, and may be expended only as authorized by the Legislature. If bonds are not issued pursuant to Section

65-43-13, then all such tolls paid to the department shall be deposited into the department's highway fund to be used by the department for the construction and maintenance of highways.

(5) If a toll road is a designated evacuation route and a declaration of a state of emergency is issued by the President of the United States or by the Governor, the collection of tolls shall cease until the termination of the state of emergency.

(6) All statutes of this state relating to vehicle and traffic regulation and control shall be applicable to motor vehicles operated upon highways and bridges constructed under this section and shall be enforceable by the Mississippi Department of Public Safety, the Mississippi Highway Safety Patrol or any other law enforcement agency having jurisdiction over such highways and bridges.

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

SECTION 3. This act shall take effect and be in force from and after July 1, 2012.

PASSED BY THE HOUSE OF REPRESENTATIVES
April 30, 2012


SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
May 1, 2012


PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR


GOVERNOR

5/22/12

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