

By: Warren

To: Ways and Means

HOUSE BILL NO. 1369

1 AN ACT TO AMEND SECTION 27-35-163, MISSISSIPPI CODE OF 1972,
2 TO ALLOW COUNTIES AND MUNICIPALITIES TO APPEAL AD VALOREM TAX
3 ASSESSMENTS MADE BY THE STATE TAX COMMISSION; TO AMEND SECTION
4 27-35-309, MISSISSIPPI CODE OF 1972, TO ALLOW COUNTIES AND
5 MUNICIPALITIES, ON THEIR BEHALF AND ON BEHALF OF SIMILARLY
6 SITUATED TAXING JURISDICTIONS, TO OBJECT TO AND CHALLENGE AD
7 VALOREM TAX ASSESSMENTS MADE BY THE STATE TAX COMMISSION; AND FOR
8 RELATED PURPOSES.

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

11 SECTION 1. Section 27-35-163, Mississippi Code of 1972, is
12 amended as follows:[HS1]

13 27-35-163. Any person, firm, corporation, county or
14 municipality aggrieved by an order of the State Tax Commission
15 assessing property for the purpose of ad valorem taxation may,
16 within twenty (20) days after the adjournment of the meeting at
17 which such assessment is made final, appeal with supersedeas as to
18 the amount of taxes in controversy to the Circuit Court of the
19 First Judicial District of Hinds County, or to the circuit court
20 of any county in which the property, or any part thereof, is
21 located, or to the circuit court of any county in which such
22 person, firm or corporation whose property is assessed resides,
23 upon giving bond with sufficient sureties, to be approved by the
24 clerk of such court, in a sum equal to the amount of taxes due on
25 the contested value of such property as assessed by the tax
26 commission, but never less than One Hundred Dollars (\$100.00),
27 payable to the state and conditioned to perform the judgment of
28 the circuit court. The ad valorem taxes due on the uncontested
29 portion of the value as set by the State Tax Commission shall be
30 due and payable at the same time as all other ad valorem taxes are

31 for real and personal property. The person, firm or corporation
32 who appeals shall file with the clerk of the circuit court a
33 petition for appeal and review, together with said bond herein
34 provided for, and the clerk shall thereupon give notice to the
35 State Tax Commission. The State Tax Commission shall file with
36 the clerk of the circuit court where said petition is pending a
37 copy of its order, or orders, making the assessment within twenty
38 (20) days after the receipt of such notice, and the matter of
39 assessing such property shall be heard de novo by the circuit
40 court at the first term of said court thereafter, or by the judge
41 of the circuit court in vacation, by agreement of the parties,
42 without a jury, and such proceeding shall be given preference over
43 other pending matters in said court. After hearing the evidence,
44 the circuit court, or the judge thereof in vacation, shall make an
45 order setting aside, modifying or affirming the order of the State
46 Tax Commission. A copy of such order shall be certified by the
47 clerk of said court to the State Tax Commission, which shall
48 conform thereto.

49 If the order of the State Tax Commission assessing said
50 property be affirmed, then the person, firm or corporation who
51 appealed, and the sureties on the appeal bond, shall be liable to
52 the state for damages at the rate of ten percent (10%) on the
53 amount of taxes in controversy, and all cost of such appeal.

54 If the state, county or municipality shall be aggrieved by an
55 order of the State Tax Commission as to the assessment of such
56 property for ad valorem taxes, the Attorney General, county,
57 municipality or the district attorney, if all the property sought
58 to be taxed is located within the judicial district for which such
59 district attorney is elected, may, within twenty (20) days after
60 the adjournment of the meeting at which such assessment is made
61 final, appeal to the circuit court of any county in which the
62 property, or any part thereof, is located or of any county in

63 which the taxpayer resides, in like manner as in the case of any
64 person, firm or corporation aggrieved as hereinbefore provided,
65 except no bonds shall be required of the Attorney General, county,
66 municipality or district attorney who may appeal. Upon the filing
67 of a petition for appeal or review as herein provided, the clerk
68 of the court in which said petition is filed shall thereupon issue
69 process to the person, firm or corporation whose property is
70 assessed, and such person, firm or corporation shall plead to said
71 petition within twenty (20) days after the receipt of said notice.

72 In the event both the taxpayer and the state, county or
73 municipality appeal, then the matter shall be heard by the circuit
74 court of the county in which the petition for appeal was first
75 filed, unless otherwise agreed by the parties.

76 Any taxpayer aggrieved by an order of the circuit court may
77 appeal, with supersedeas, to the Supreme Court by giving bond in
78 the amount and conditioned as provided in the preceding paragraphs
79 hereof.

80 The officer who appealed the matter from the order of the
81 State Tax Commission may have an appeal to the Supreme Court
82 without bond.

83 In the event the appeal by the taxpayer delays the collection
84 of the tax due by him, then such taxpayer shall be liable for and
85 shall pay, at the time the taxes are paid to the tax collector
86 whose duty it is to collect the taxes, interest at the rate of
87 twelve percent (12%) per annum from the date the taxes were due
88 until paid.

89 SECTION 2. Section 27-35-309, Mississippi Code of 1972, is
90 amended as follows:[HS2]

91 27-35-309. (1) The State Tax Commission shall, if
92 practicable, on or before the first Monday of June of each year,
93 make out for each person, firm, company or corporation listed in
94 Section 27-35-303, Mississippi Code of 1972, an assessment of said
95 company's property, both real and personal, tangible and

96 intangible. The State Tax Commission shall apportion the
97 assessment of value of each company's property according to the
98 provisions of this article, except as provided in subsection (3)
99 of this section, as follows:

100 (a) When the property of such public service company is
101 located in more than one (1) county in this state, the State Tax
102 Commission shall direct the company to apportion the assessed
103 value between the counties and municipalities and all other taxing
104 districts therein, in the proportion which the property located
105 therein bears to the entire value of the property of such company
106 as valued by the commission, so that to each county, municipality
107 and taxing district therein, there shall be apportioned such part
108 of the entire valuation as will fairly equalize the relative value
109 of the property therein located to the whole value thereof.

110 (b) When the property of such public utility required
111 to be assessed by the provisions of this article is located in
112 more than one (1) state, the assessed value thereof shall be
113 apportioned by the State Tax Commission in such manner as will
114 fairly and equitably determine the principal sum for the value
115 thereof in this state, and after ascertaining such value it shall
116 be apportioned by them as herein provided.

117 The assessment roll shall contain all the property of any
118 such public service company, railroad, person, firm or corporation
119 and the value thereof, and so made that each county, municipality,
120 and taxing district shall receive its just share of taxes
121 proportionately to the amount of property therein situated.

122 (2) (a) The assessment when made shall remain open for one
123 (1) month in the office of the State Tax Commission, and be for
124 such time subject to the objections thereto which may be filed by
125 the taxpayer, the county or municipality; but real estate
126 belonging to railroads and which forms no part of the road, and is
127 wholly disconnected from its railroad business, shall not be
128 assessed by the State Tax Commission, but shall be assessed as

129 other real estate is assessed by the tax assessor of the county
130 where situated.

131 (b) The apportionment of the assessed value as required
132 by this section shall be filed with the State Tax Commission by
133 such public service company on or before the first day of August
134 in each year. If such company shall fail, refuse or neglect to
135 render the apportionment of assessed value as required by this
136 section, such company shall be subject to the penalties provided
137 for in Section 27-35-305. The filing of an objection by such
138 public service company shall not preclude such company from filing
139 the property apportionment as required by this section.

140 (3) Any nuclear generating plant which is located in the
141 state, which is owned or operated by a public utility rendering
142 electric service within the state and not exempt from ad valorem
143 taxation under any other statute and which is not owned or
144 operated by an instrumentality of the federal government shall be
145 exempt from county, municipal and district ad valorem taxes. In
146 lieu of the payment of county, municipal and district ad valorem
147 taxes, such public utility shall pay to the State Tax Commission a
148 sum based on the assessed value of such nuclear generating plant
149 in an amount to be determined and distributed as follows:

150 (a) The State Tax Commission shall annually assign an
151 assessed value to any nuclear generating plant described in this
152 subsection in the same manner as for ad valorem tax purposes by
153 using accepted industry methods for appraising and assessing
154 public utility property. The assessed value assigned shall be
155 used for the purpose of determining the in-lieu tax due under this
156 section and shall not be included on the ad valorem tax rolls of
157 the situs taxing authority nor be subject to ad valorem taxation
158 by the situs taxing authority nor shall the assessed value
159 assigned be used in determining the debt limit of the situs taxing
160 authority. However, the assessed value so assigned may be used by
161 the situs taxing authority for the purpose of determining salaries

162 of its public officials.

163 (b) On or before February 1, 1987, for the 1986 taxable
164 year and on or before February 1 of each year through the 1989
165 taxable year, such utility shall pay to the State Tax Commission a
166 sum equal to two percent (2%) of the assessed value as ascertained
167 by the State Tax Commission, but such payment shall not be less
168 than Sixteen Million Dollars (\$16,000,000.00) for any of the four
169 (4) taxable years; all such payments in excess of Sixteen Million
170 Dollars (\$16,000,000.00) for these four (4) taxable years shall be
171 paid into the General Fund of the state. On or before February 1,
172 1991, for the 1990 taxable year and on or before February 1 of
173 each year thereafter, such utility shall pay to the State Tax
174 Commission a sum equal to two percent (2%) of the assessed value
175 as ascertained by the State Tax Commission, but such payment shall
176 not be less than Twenty Million Dollars (\$20,000,000.00) for any
177 taxable year for as long as such nuclear power plant is licensed
178 to operate and is not being permanently decommissioned; all such
179 payments in excess of Sixteen Million Dollars (\$16,000,000.00) for
180 taxable years 1990 and thereafter shall be paid as follows:

181 (i) An amount of Three Million Forty Thousand
182 Dollars (\$3,040,000.00) annually, beginning with fiscal year 1991,
183 shall be transferred by the State Tax Commission to Claiborne
184 County. Such payments may be expended by the Board of Supervisors
185 of Claiborne County for any purpose for which a county is
186 authorized by law to levy an ad valorem tax and shall not be
187 included or considered as proceeds of ad valorem taxes for the
188 purposes of the growth limitation on ad valorem taxes under
189 Sections 27-39-305 and 27-39-321. Provided, however, should the
190 Board of Supervisors of Claiborne County withdraw its support of
191 the Grand Gulf Nuclear Station off-site emergency plan or
192 otherwise fail to satisfy its off-site emergency plan commitments
193 as determined by the Mississippi Emergency Management Agency and
194 the Federal Emergency Management Agency, Five Hundred Thousand

195 Dollars (\$500,000.00) annually of the funds designated for
196 Claiborne County as described by this subsection (i) shall be
197 deposited in the Grand Gulf Disaster Assistance Fund as provided
198 in Section 33-15-51.

199 (ii) An amount of One Hundred Sixty Thousand
200 Dollars (\$160,000.00) annually, beginning with fiscal year 1991,
201 shall be transferred by the State Tax Commission to the City of
202 Port Gibson, Mississippi. Such payments may be expended by the
203 Board of Aldermen of the City of Port Gibson for any purpose for
204 which a municipality is authorized by law to levy an ad valorem
205 tax and shall not be included or considered as proceeds of ad
206 valorem taxes for the purposes of the growth limitation on ad
207 valorem taxes under Sections 27-39-305 and 27-39-321. Provided,
208 however, should the Board of Aldermen of the City of Port Gibson
209 withdraw its support of the Grand Gulf Nuclear Station off-site
210 emergency plan or otherwise fail to satisfy its off-site emergency
211 plan commitment, as determined by the Mississippi Emergency
212 Management Agency and the Federal Emergency Management Agency,
213 Fifty Thousand Dollars (\$50,000.00) annually of the funds
214 designated for the City of Port Gibson as described by this
215 subsection (ii) shall be deposited in the Grand Gulf Disaster
216 Assistance Fund as provided in Section 33-15-51.

217 (iii) The remaining balance of the payments in
218 excess of Sixteen Million Dollars (\$16,000,000.00) annually, less
219 amounts transferred under (i) and (ii) of this subsection,
220 beginning with fiscal year 1991, shall be allocated in accordance
221 with subsection (3)(f) of this section.

222 (c) Pursuant to certification by the Attorney General
223 to the State Treasurer and the State Tax Commission that the suit
224 against the State of Mississippi pending on the effective date of
225 House Bill 8, First Extraordinary Session of 1990, [Laws, 1990 Ex
226 Session, Ch. 12, eff June 26, 1990], in the Chancery Court for the
227 First Judicial District of Hinds County, Mississippi, styled

228 Albert Butler et al v. the Mississippi State Tax Commission et al,
229 has been voluntarily dismissed with prejudice as to all plaintiffs
230 at the request of the complainants and that no attorney's fees or
231 court costs have been assessed against the state and each of the
232 parties, including Claiborne County and each municipality and
233 school district located in the county, have signed and delivered
234 to the Attorney General a full and complete release in favor of
235 the State of Mississippi and its elected officials of all claims
236 that have been asserted or may be asserted in the suit pending on
237 the effective date of House Bill 8, First Extraordinary Session of
238 1990, [Laws, 1990 Ex Session, Ch. 12, eff June 26, 1990], in the
239 Chancery Court for the First Judicial District of Hinds County,
240 Mississippi, styled Albert Butler et al v. the Mississippi State
241 Tax Commission et al, and the deposit into the State General Fund
242 of in-lieu payments and interest thereon due the state under
243 subsection (3)(b) of this section but placed in escrow because of
244 the lawsuit described above, the state shall promptly transfer to
245 the Board of Supervisors of Claiborne County out of the State
246 General Fund an amount of Two Million Dollars (\$2,000,000.00)
247 which shall be a one-time distribution to Claiborne County from
248 the state. Such payment may be expended by the Board of
249 Supervisors of Claiborne County for any purposes for which a
250 county is authorized by law to levy an ad valorem tax and shall
251 not be included or considered as proceeds of ad valorem taxes for
252 the purposes of the growth limitation on ad valorem taxes for the
253 1991 fiscal year under Sections 27-39-321 and 27-39-305.

254 (d) After distribution of the one-time payment to
255 Claiborne County as set forth in subsection (3)(c) of this
256 section, the State Tax Commission upon certification that the
257 pending lawsuit as described in subsection (3)(c) of this section
258 has been voluntarily dismissed shall promptly deposit an amount of
259 Five Hundred Thousand Dollars (\$500,000.00) into the Grand Gulf
260 Disaster Assistance Trust Fund as provided for in Section

261 33-15-51, which shall be a one-time payment, to be utilized in
262 accordance with the provisions of such section.

263 (e) After distribution of the one-time payment to
264 Claiborne County as set forth in subsection (3)(c) of this section
265 and the payment to the Grand Gulf Disaster Assistance Trust Fund
266 as set forth in subsection (3)(d) of this section, the State Tax
267 Commission upon certification that the pending lawsuit as
268 described in subsection (3)(c) of this section has been
269 voluntarily dismissed shall promptly distribute ten percent (10%)
270 of the remainder of the prior payments remaining in escrow to the
271 General Fund of the state and the balance of the prior payments
272 remaining in escrow shall be distributed to the counties and
273 municipalities in this state wherein such public utility has
274 rendered electric service in the proportion that the amount of
275 electric energy consumed by the retail customers of such public
276 utility in each county, excluding municipalities therein, and in
277 each municipality, for the next preceding fiscal year bears to the
278 total amount of electric energy consumed by all retail customers
279 of such public utility in the State of Mississippi for the next
280 preceding fiscal year. The payments distributed to the counties
281 and municipalities under this paragraph (e) may be expended by
282 such counties and municipalities for any lawful purpose and shall
283 not be included or considered as proceeds of ad valorem taxes for
284 the purposes of the growth limitation on ad valorem taxes under
285 Sections 27-39-321 and 27-39-305.

286 (f) After distribution of the payments for fiscal year
287 1991 as set forth in Section 19-9-151 and distribution of the
288 payments as provided for in subsection (3)(b) of this section, the
289 State Tax Commission shall distribute ten percent (10%) of the
290 remainder of the payments to the General Fund of the state and the
291 balance to the counties and municipalities in this state wherein
292 such public utility renders electric service in the proportion
293 that the amount of electric energy consumed by the retail

294 customers of such public utility in each county, excluding
295 municipalities therein, and in each municipality for the next
296 preceding fiscal year bears to the total amount of electric energy
297 consumed by all retail customers of such public utility in the
298 State of Mississippi for the next preceding fiscal year.

299 (g) No county, including municipalities therein, shall
300 receive in excess of twenty percent (20%) of the funds distributed
301 under paragraph (f) of this subsection.

302 (h) The revenues received by counties and
303 municipalities under paragraph (f) of this subsection shall not be
304 included or considered as proceeds of ad valorem taxes for the
305 purposes of the growth limitation on ad valorem taxes under
306 Sections 27-39-305 and 27-39-321.

307 SECTION 2. This act shall take effect and be in force from
308 and after its passage.