HOUSE BILL NO. 423

To: Ways and Means

MISSISSIPPI LEGISLATURE
REGULAR SESSION 2001

By: Representative Mayo

To: Ways and Means

AN ACT TO AUTHORIZE THE GOVERNING AUTHORITIES OF A MUNICIPALITY TO IMPOSE A SPECIAL SALES TAX OF NOT MORE THAN ONE PERCENT ON THE GROSS PROCEEDS OF ALL SALES OR THE GROSS INCOME OF BUSINESSES IN THE MUNICIPALITY DERIVED FROM ACTIVITIES TAXED AT THE RATE OF SEVEN PERCENT OR MORE UNDER THE MISSISSIPPI SALES TAX LAW, TO PROVIDE THAT THE SPECIAL SALES TAX SHALL NOT BE LEVIED UNLESS AUTHORIZED BY AT LEAST THREE-FIFTHS OF THE VOTES CAST AT AN ELECTION CALLED AND HELD FOR SUCH PURPOSE; TO PROVIDE THAT THE GOVERNING AUTHORITIES OF A MUNICIPALITY LEVYING A SPECIAL SALES TAX SHALL USE 75% OF THE PROCEEDS OF THE SPECIAL SALES TAX RECEIVED DURING A FISCAL YEAR AS REVENUE IN ITS PROPOSED BUDGET FOR THE NEXT FISCAL YEAR AND SHALL REDUCE THE AD VALOREM TAX REVENUE IN THE PROPOSED BUDGET BY AN AMOUNT EQUAL TO SUCH SPECIAL SALES TAX PROCEEDS; TO PROVIDE THAT 25% OF THE PROCEEDS OF THE SPECIAL TAX RECEIVED DURING A FISCAL YEAR SHALL REMAIN IN A SEPARATE SPECIAL FUND; TO PROVIDE THAT IF THE PROCEEDS OF THE SPECIAL SALES TAX RECEIVED DURING A FISCAL YEAR IS LESS THAN THE AMOUNT OF SUCH PROCEEDS RECEIVED DURING THE PREVIOUS FISCAL YEAR, A MUNICIPALITY MAY USE A PORTION OF THE MONIES REMAINING IN THE SPECIAL FUND TO SUPPLEMENT THE AMOUNT OF SPECIAL SALES TAX PROCEEDS INCLUDED IN THE PROPOSED BUDGET FOR THE NEXT FISCAL YEAR IN ORDER TO PROVIDE THAT THE SUCH AMOUNT IS THE SAME AS FOR THE PREVIOUS FISCAL YEAR; TO PROVIDE THAT A MUNICIPALITY LEVYING A SPECIAL SALES TAX MAY NOT INCREASE AD VALOREM TAX REVENUES FOR THE NEXT FISCAL YEAR BY MORE THAN SEVEN PERCENT UNLESS AUTHORIZED BY AT LEAST THREE-FIFTHS OF THE VOTES CAST AT AN ELECTION CALLED AND HELD FOR SUCH PURPOSE; TO AMEND SECTIONS 27-39-320 AND 27-39-321, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR RELATED PURPOSES.

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

SECTION 1. The governing authorities of any municipality may impose upon all persons as a privilege for engaging or continuing in business or doing business within such municipality, a special sales tax at the rate of not more than one percent (1%) of the gross proceeds of sales or gross income of the business, as the case may be, derived from any of the activities taxed at the rate of seven percent (7%) or more under the Mississippi Sales Tax Law, Section 27-65-1 et seq., as provided hereinafter. The tax levied by this section shall apply to every person making sales, delivery or installations of tangible personal property or services within
SECTION 2. (1) The tax levy authorized herein shall not be made unless authorized by at least three-fifths (3/5) of the votes cast at an election to be called and held for that purpose. Notice of such election shall be given, the election shall be held and the result thereof determined, as far as is practicable, in the same manner as other elections are held in the municipality. At such election, all qualified electors of the municipality may vote. The ballots used at such election shall have printed thereon a brief description of the sales tax, the amount of the sales tax levy, a description of the purposes for which the tax revenue may be used and the words "FOR THE LOCAL SALES TAX" and "AGAINST THE LOCAL SALES TAX" and the voter shall vote by placing a cross (X) or check mark (\(\checkmark\)) opposite his choice on the proposition. When the results of the election have been canvassed by the election commissioners of the municipality and certified by them to the governing authorities, it shall be the duty of such governing authorities to determine and adjudicate whether at least three-fifths (3/5) of the qualified electors who voted in such election voted in favor of the tax. If the election results in favor of the levy, the governing authorities may adopt a resolution declaring the levy and collection of the tax provided in Sections 1 through 3 of this act and set the first day of the first month of the municipality's fiscal year commencing after the date of such adoption as the effective date of the tax levy. A certified copy of this resolution together with the result of the election shall be furnished to the State Tax Commission not less than thirty (30) days before the effective date of the levy.

SECTION 3. (1) The special sales tax authorized by Sections 1 through 3 of this act shall be collected by the State Tax Commission, shall be accounted for separately from the amount of any municipality which has adopted the levy herein authorized but shall not apply to sales exempted by Sections 27-65-19, 27-65-101, 27-65-103, 27-65-105, 27-65-107, 27-65-109 and 27-65-111.
sales tax collected for the state in the municipality and shall be paid to the municipality in which collected. Payments to the municipalities shall be made by the State Tax Commission on or before the fifteenth day of the month following the month in which the tax was collected.

(2) (a) The proceeds of the special sales tax shall be placed into a special fund separate and apart from the municipal general fund and any other funds of the municipality, and shall be expended by the municipality as provided in this subsection (2).

(b) The governing authorities of a municipality shall use seventy-five percent (75%) of the proceeds of the special sales tax received during a fiscal year as revenue in its proposed budget for the next fiscal year and shall reduce the ad valorem tax revenue in the proposed budget by an amount equal to such special sales tax proceeds. Twenty-five percent (25%) of the proceeds of the special tax received for a fiscal year shall remain in the special fund. However, if the amount of proceeds of the special sales tax received during a fiscal year is less than the amount of such proceeds received during the previous fiscal year, the governing authorities of the municipality may use a portion of the proceeds remaining in the special fund to supplement the amount of sales tax proceeds included in the proposed budget for the next fiscal year in order to provide that such amount is the same as that for the previous fiscal year.

(3) All provisions of the Mississippi Sales Tax Law applicable to filing of returns, discounts to the taxpayer, remittances to the State Tax Commission, enforced collection, rights of taxpayers, recovery of improper taxes, refunds of overpaid taxes or other provisions of law providing for imposition and collection of the state sales tax shall apply to the special sales tax authorized by Sections 1 through 3 of this act, except where there is a conflict, in which case the provisions of Sections 1 through 3 of this act shall control. Any damages,
penalties or interest collected for the nonpayment of taxes imposed hereunder, or for noncompliance with the provisions of Sections 1 through 3 of this act, shall be paid to the municipality in which such damages were collected on the same basis and in the same manner as the tax proceeds. Any overpayment of tax for any reason that has been disbursed to any municipality or any payment of the tax to any municipality in error may be adjusted by the State Tax Commission on any subsequent payment to the municipality involved pursuant to the provisions of the Mississippi Sales Tax Law. The State Tax Commission may, from time to time, make such rules and regulations not inconsistent with Sections 1 through 3 of this act as may be deemed necessary to carry out the provisions of Sections 1 through 3 of this act, and such rules and regulations shall have the full force and effect of law.

SECTION 4. Section 27-39-320, Mississippi Code of 1972, is amended as follows:

27-39-320. (1) The Legislature finds and determines that legislation requiring a specific levy or requiring consent of some other governing body to reduce the levy was intended to raise a certain amount of revenue for specific purposes. Upon this determination and notwithstanding the provisions of any statute which requires a definite levy to be made or which requires that a levy may not be reduced except by the consent of some other governing authority, the amount of such levy shall be deemed to be an amount necessary to produce the revenues received in the next preceding year plus, at the option of the taxing authority, an increase not to exceed ten percent (10%) of such revenues. However, in the case of a municipality levying a special sales tax under Sections 1 through 3 of House Bill No. , 2001 Regular Session, the increase may not exceed seven percent (7%) of such revenues.
(2) In any county where there is located a nuclear generating power plant on which a tax is assessed under Section 27-35-309(3), such required levy and revenue produced thereby may be reduced by the levying authority in an amount in proportion to a reduction in the base revenue of any such county from the previous year. Such reduction shall be allowed only if the reduction in base revenue equals or exceeds five percent (5%).

"Base revenue" shall mean the revenue received by the county from the ad valorem tax levy plus the revenue received by the county from the tax assessed under Section 27-35-309(3) and authorized to be used for any purposes for which a county is authorized by law to levy an ad valorem tax. For purposes of determining if the reduction equals or exceeds five percent (5%), a levy of millage equal to the prior year's millage shall be hypothetically applied to the current year's ad valorem tax base to determine the amount of revenue to be generated from the ad valorem tax levy. For the purposes of this section, the portion of base revenue used to fund the purpose for which a specific levy is required shall be deemed to be the total receipts from ad valorem taxes for such purpose. This paragraph shall apply to taxes levied for the 1987 fiscal year and for each fiscal year thereafter. If the Mississippi Supreme Court or another court finally adjudicates that the tax levied under Section 27-35-309(3) is unconstitutional, then this paragraph shall stand repealed.

(3) With respect to ad valorem taxes levied on or after October 1, 1980, no county or municipality shall levy those mills heretofore required by law to be levied to an extent that such levy shall produce more than the total receipts produced from such levy in the next preceding year, plus, at the option of the taxing authority, an increase not to exceed ten percent (10%) of such receipts. However, in the case of a municipality levying a special sales tax under Sections 1 through 3 of House Bill No. 423, 2001 Regular Session, the increase may not exceed seven
percent (7%) of such receipts. Such total receipts shall be deemed to include the total avails of such levy either collected from the property owner or by reimbursement by the state. The revenues produced from any newly constructed properties or any existing properties added to the tax rolls or any properties previously exempt which were not assessed in the next preceding year may be excluded from the limitation set forth herein.

(4) The ten percent (10%) increase limitation prescribed in this section may be increased by an additional amount by the board of supervisors of any county if the aggregate receipts from all county levies to which this section and Sections 27-39-305 and 27-39-321 apply do not exceed one hundred ten percent (110%) of the aggregate receipts from all such levies during any one (1) of the immediately preceding three (3) fiscal years, as determined by the board of supervisors.

(5) The limitations set forth in this section shall apply to the mandatory tax levied by Section 27-39-329.

SECTION 5. Section 27-39-321, Mississippi Code of 1972, is amended as follows:

27-39-321. (1) With respect to ad valorem taxes levied for each fiscal year, no political subdivision may levy ad valorem taxes in any fiscal year which would render in total receipts from all levies an amount more than the receipts from that source during any one (1) of the immediately preceding three (3) fiscal years, as determined by the levying governing authority, plus, at the option of the taxing authority, an increase not to exceed ten percent (10%) of such receipts. However, in the case of a municipality levying a special sales tax under Sections 1 through 3 of House Bill No. , 2001 Regular Session, the increase may not exceed seven percent (7%) of such receipts. The additional revenue from the ad valorem tax on any newly constructed properties or any existing properties added to the tax rolls or any properties previously exempt, which were not assessed in the
next preceding year and cost incurred and paid in the next preceding year in connection with reappraisal may be excluded from the ten percent (10%) increase limitation or seven percent (7%) limitation, as the case may be, set forth herein. Taxes levied for school district purposes under any statute and taxes levied for the maintenance and/or construction of roads and bridges under Section 27-39-305 shall be excluded from the ten percent (10%) increase limitation or seven percent (7%) limitation, as the case may be, set forth herein. Taxes levied for payment of principal and interest on general obligation bonds issued heretofore or hereafter shall be excluded from any increase limitation set forth herein. Any additional millage levied to fund any new program mandated by the Legislature shall be excluded from the limitation for the first year of the levy and included within such limitation in any year thereafter. The limitation imposed under this paragraph shall not apply to those mandatory levies enumerated in Sections 27-39-320 and 27-39-329.

(2) The limitation of this section may be increased only as provided in subsection (3) or (4) of this section or when the governing body of a political subdivision has determined the need for additional revenues, adopts a resolution declaring its intention so to do and has held an election on the question of raising the limitation prescribed in this section. The notice calling for an election shall state the purposes for which the additional revenues shall be used, the amount of the tax levy to be imposed for such purposes and period of time for which such tax levy shall be made; however, such tax levy shall not be made for more than five (5) successive years. The limitation may be increased under this subsection only if the proposed increase is approved by a majority of those voting. However, in the case of a municipality levying a special sales tax under Sections 1 through 3 of House Bill No. , 2001 Regular Session, the limitation may be increased under this subsection only if the proposed increase

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is approved by at least three-fifths (3/5) of those voting.

Subject to specific provisions of this paragraph to the contrary, the publication of notice and manner of holding the election shall be as prescribed by law for the holding of elections for the issuance of bonds by the political subdivision. However, in the case of a municipality levying a special sales tax under Sections 1 through 3 of House Bill No. 423, 2001 Regular Session, the election shall be mandatory. Revenues derived from any taxes levied pursuant to such election shall be excluded from the tax base for the purpose of determining aggregate receipts for which the ten percent (10%) increase limitation or seven percent (7%) limitation, as the case may be, applies.

(3) As an alternative to the procedure provided in subsection (2) of this section, the ten percent (10%) increase limitation prescribed in this section may be increased by an additional amount by the board of supervisors of any county without an election thereon if the aggregate receipts from all county levies to which this section and Sections 27-39-305 and 27-39-320 apply do not exceed one hundred ten percent (110%) of the aggregate receipts from all such levies during any one (1) of the immediately preceding three (3) fiscal years, as determined by the board of supervisors.

(4) As an alternative to the procedure provided in subsections (2) and (3) of this section, the board of supervisors of any county or the governing authorities of any municipality may, without an election thereon, increase the ad valorem tax levy to which this section applies by the greater of:

(a) An ad valorem tax levy that does not result in an aggregate levy to which this section applies in excess of twenty (20) mills; or

(b) An ad valorem tax levy that is not in excess of any aggregate levy to which this section applies in any one (1) of the immediately preceding ten (10) fiscal years.
This subsection (4) shall not apply to a municipality levying a special sales tax under Sections 1 through 3 of House Bill No. 423, 2001 Regular Session.

(5) In any county where there is located a nuclear generating power plant on which a tax is assessed under Section 27-35-309(3), the term "total receipts" as used in this section shall be the portion of the "base revenue" as defined in Section 27-39-320 which is used for General Fund purposes.

(6) If a shortfall occurs in revenues from sources other than ad valorem taxes and oil and gas severance taxes budgeted for the county or municipal general fund during the 1987 fiscal year, then the county or municipality, as the case may be, may levy a special ad valorem tax for the 1988 fiscal year in an amount the avails of which shall not exceed such shortfall; provided, however, that the aggregate receipts from all ad valorem levies for the county or municipal general fund for the 1988 fiscal year shall not exceed the aggregate receipts from this source for the immediately preceding fiscal year plus an increase not to exceed twenty percent (20%).

(7) If a shortfall occurs in revenues from oil and gas severance taxes budgeted for the county or municipal general fund during the 1987 fiscal year, then the county or municipality, as the case may be, may levy a special ad valorem tax for the 1988 fiscal year in an amount the avails of which shall not exceed such shortfall. The avails of such special ad valorem tax shall not be included within the ten percent (10%) increase limitation. The ad valorem taxes levied to offset the shortfall shall be deemed to be ad valorem tax receipts produced in the 1988 fiscal year for the purposes of determining the limitation on receipts for the succeeding fiscal years.

SECTION 6. The Attorney General of the State of Mississippi shall submit this act, immediately upon approval by the Governor, or upon approval by the Legislature subsequent to a veto, to the
Secretary of State or to the United States District Court for the District of Columbia in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

SECTION 7. This act shall take effect and be in force from and after the date it is effectuated under Section 5 of the Voting Rights Act of 1965, as amended and extended.