

By: Senator(s) Minor

To: Highways and  
Transportation; Finance

SENATE BILL NO. 2847

1 AN ACT TO AMEND SECTION 27-65-21, MISSISSIPPI CODE OF 1972,  
2 TO REQUIRE THE MISSISSIPPI TRANSPORTATION COMMISSION TO COLLECT  
3 THE CONTRACTORS TAX LEVIED ON HIGHWAY CONSTRUCTION CONTRACTS  
4 DESIGNATED UNDER THE 1987 FOUR-LANE HIGHWAY PROGRAM; TO AMEND  
5 SECTION 27-65-75, MISSISSIPPI CODE OF 1972, TO AMEND SECTION  
6 27-65-75, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO; AND FOR  
7 RELATED PURPOSES.

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

9 **SECTION 1.** Section 27-65-21, Mississippi Code of 1972, is  
10 amended as follows:

11 27-65-21. (1) (a) (i) Upon every person engaging or  
12 continuing in this state in the business of contracting or  
13 performing a contract or engaging in any of the activities, or  
14 similar activities, listed below for a price, commission, fee or  
15 wage, there is hereby levied, assessed and shall be collected a  
16 tax equal to three and one-half percent (3-1/2%) of the total  
17 contract price or compensation received, including all charges  
18 related to the contract such as finance charges and late charges,  
19 from constructing, building, erecting, repairing, grading,  
20 excavating, drilling, exploring, testing or adding to any  
21 building, highway, street, sidewalk, bridge, culvert, sewer,  
22 irrigation or water system, drainage or dredging system, levee or  
23 levee system or any part thereof, railway, reservoir, dam, power  
24 plant, electrical system, air conditioning system, heating system,  
25 transmission line, pipeline, tower, dock, storage tank, wharf,  
26 excavation, grading, water well, any other improvement or  
27 structure or any part thereof when the compensation received  
28 exceeds Ten Thousand Dollars (\$10,000.00). Such activities shall  
29 not include constructing, repairing or adding to property which



30 retains its identity as personal property. The tax imposed in  
31 this section is levied upon the prime contractor and shall be paid  
32 by him.

33 (ii) Amounts included in the contract price or  
34 compensation received representing the sale of manufacturing or  
35 processing machinery for a manufacturer or custom processor shall  
36 be taxed at the rate of one and one-half percent (1-1/2%) in lieu  
37 of the three and one-half percent (3-1/2%).

38 (b) The following shall be excluded from the tax levied  
39 by this section:

40 (i) The contract price or compensation received  
41 for constructing, building, erecting, repairing or adding to any  
42 building, electrical system, air conditioning system, heating  
43 system or any other improvement or structure which is used for or  
44 primarily in connection with a residence or dwelling place for  
45 human beings. Such residences shall include homes, apartment  
46 buildings, condominiums, mobile homes, summer cottages, fishing  
47 and hunting camp buildings and similar buildings, but shall not  
48 include hotels, motels, hospitals, nursing or retirement homes,  
49 tourist cottages or other commercial establishments.

50 (ii) The portion of the total contract price  
51 attributable to design or engineering services if the total  
52 contract price for the project exceeds the sum of One Hundred  
53 Million Dollars (\$100,000,000.00).

54 (iii) The contract price or compensation received  
55 to restore, repair or replace a utility distribution or  
56 transmission system that has been damaged due to ice storm,  
57 hurricane, flood, tornado, wind, earthquake or other natural  
58 disaster if such restoration, repair or replacement is performed  
59 by the entity providing the service at its cost.

60 (c) Sales of materials and services for use in the  
61 activities hereby excluded from taxes imposed by this section,  
62 except services used in activities excluded pursuant to paragraph



63 (b)(iii) of this subsection, shall be subject to taxes imposed by  
64 other sections in this chapter.

65 (2) Upon every person engaging or continuing in this state  
66 in the business of contracting or performing a contract of  
67 redrilling, or working over, or of drilling an oil well or a gas  
68 well, regardless of whether such well is productive or  
69 nonproductive, for any valuable consideration, there is hereby  
70 levied, assessed and shall be collected a tax equal to three and  
71 one-half percent (3-1/2%) of the total contract price or  
72 compensation received when such compensation exceeds Ten Thousand  
73 Dollars (\$10,000.00).

74 The words, terms and phrases as used in this subsection shall  
75 have the meaning ascribed to them as follows:

76 "Operator" -- One who holds all or a fraction of the working  
77 or operating rights in an oil or gas lease, and is obligated for  
78 the costs of production either as a fee owner or under a lease or  
79 any other form of contract creating working or operating rights.

80 "Bottom-hole contribution" -- Money or property given to an  
81 operator for his use in the drilling of a well on property in  
82 which the payor has no interest. The contribution is payable  
83 whether the well is productive or nonproductive.

84 "Dry-hole contribution" -- Money or property given to an  
85 operator for his use in the drilling of a well on property in  
86 which the payor has no interest. Such contribution is payable  
87 only in the event the well is found to be nonproductive.

88 "Turnkey drilling contract" -- A contract for the drilling of  
89 a well which requires the driller to drill a well and, if  
90 commercial production is obtained, to equip the well to such stage  
91 that the lessee or operator may turn a valve and the oil will flow  
92 into a tank.

93 "Total contract price or compensation received" -- As related  
94 to oil and gas well contractors, shall include amounts received as  
95 compensation for all costs of performing a turnkey drilling



96 contract; amounts received or to be received under assignment as  
97 dry-hole money or bottom-hole money; and shall mean and include  
98 anything of value received by the contractor as remuneration for  
99 services taxable hereunder. When the kind and amount of  
100 compensation received by the contractor is contingent upon  
101 production, the taxable amount shall be the total compensation  
102 receivable in the event the well is a dry hole. The taxable  
103 amount in the event of production when the contractor receives a  
104 production interest of an undetermined value in lieu of a fixed  
105 compensation shall be an amount equal to the compensation to the  
106 contractor if the well had been a dry hole.

107 (3) When the work to be performed under any contract is  
108 sublet by the prime contractor to different persons, or in  
109 separate contracts to the same persons, each such subcontractor  
110 performing any part of said work shall be liable for the amount of  
111 the tax which accrues on account of the work performed by such  
112 person when the tax heretofore imposed has not been paid upon the  
113 whole contract by the prime contractor.

114 When a person engaged in any business on which a tax is  
115 levied in Section 27-65-23, also qualifies as a contractor, and  
116 contracts with the owner of any project to perform any services in  
117 excess of Ten Thousand Dollars (\$10,000.00) herein taxed, such  
118 person shall pay the tax imposed by this section in lieu of the  
119 tax imposed by Section 27-65-23.

120 Any person entering into any contract over Seventy-five  
121 Thousand Dollars (\$75,000.00) as defined in this section shall,  
122 before beginning the performance of such contract or contracts,  
123 either pay the contractors' tax in advance, together with any use  
124 taxes due under Section 27-67-5, or execute and file with the  
125 Chairman of the State Tax Commission a good and valid bond in a  
126 surety company authorized to do business in this state, or with  
127 sufficient sureties to be approved by the commissioner conditioned  
128 that all taxes which may accrue to the State of Mississippi under



129 this chapter, or under Section 27-67-5 and Section 27-7-5, will be  
130 paid when due. Such bonds shall be either (a) "job bonds" which  
131 guarantee payment when due of the aforesaid taxes resulting from  
132 performance of a specified job or activity regardless of date of  
133 completion; or (b) "blanket bonds" which guarantee payment when  
134 due of the aforesaid taxes resulting from performance of all jobs  
135 or activities taxable under this section begun during the period  
136 specified therein, regardless of date of completion. The payments  
137 of the taxes due or the execution and filing of a surety bond  
138 shall be a condition precedent to the commencing work on any  
139 contract taxed hereunder. Provided, that when any bond is filed  
140 in lieu of the prepayment of the tax under this section, that the  
141 tax shall be payable monthly on the amount received during the  
142 previous month, and any use taxes due shall be payable on or  
143 before the twentieth day of the month following the month in which  
144 the property is brought into Mississippi.

145 Any person failing either to execute any bond herein  
146 provided, or to pay the taxes in advance, before beginning the  
147 performance of any contract shall be denied the right to perform  
148 such contract until he complies with such requirements, and the  
149 commissioner is hereby authorized to proceed either under Section  
150 27-65-59, or by injunction to prevent any activity in the  
151 performance of such contract until either a satisfactory bond is  
152 executed and filed, or all taxes are paid in advance, and a  
153 temporary injunction enjoining the execution of such contract  
154 shall be granted without notice by any judge or chancellor now  
155 authorized by law to grant injunctions.

156 Any person liable for a tax under this section may apply for  
157 and obtain a material purchase certificate from the commissioner  
158 which may entitle the holder to purchase materials and services  
159 that are to become a component part of the structure to be erected  
160 or repaired with no tax due. Provided, that the contractor  
161 applying for the contractor's material purchase certificate shall



162 furnish the State Tax Commission a list of all work sublet to  
163 others, indicating the amount of work to be performed, and the  
164 names and addresses of each subcontractor.

165 (4) The Mississippi Transportation Commission shall collect  
166 the tax levied under this section on contracts for the  
167 construction or reconstruction of highways designated under the  
168 highway program created under Section 65-3-97. The Transportation  
169 Commission shall collect the tax:

170 (a) Directly from the person liable for the tax, or

171 (b) By deducting the amount of the tax from payments  
172 made by the Mississippi Transportation Commission under the  
173 contract.

174 **SECTION 2.** Section 27-65-75, Mississippi Code of 1972, is  
175 amended as follows:

176 27-65-75. On or before the fifteenth day of each month, the  
177 revenue collected under the provisions of this chapter during the  
178 preceding month shall be paid and distributed as follows:

179 (1) On or before August 15, 1992, and each succeeding month  
180 thereafter through July 15, 1993, eighteen percent (18%) of the  
181 total sales tax revenue collected during the preceding month under  
182 the provisions of this chapter, except that collected under the  
183 provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on  
184 business activities within a municipal corporation shall be  
185 allocated for distribution to such municipality and paid to such  
186 municipal corporation. On or before August 15, 1993, and each  
187 succeeding month thereafter, eighteen and one-half percent  
188 (18-1/2%) of the total sales tax revenue collected during the  
189 preceding month under the provisions of this chapter, except that  
190 collected under the provisions of Sections 27-65-15, 27-65-19(3)  
191 and 27-65-21, on business activities within a municipal  
192 corporation shall be allocated for distribution to such  
193 municipality and paid to such municipal corporation.



194 A municipal corporation, for the purpose of distributing the  
195 tax under this subsection, shall mean and include all incorporated  
196 cities, towns and villages.

197 Monies allocated for distribution and credited to a municipal  
198 corporation under this subsection may be pledged as security for  
199 any loan received by the municipal corporation for the purpose of  
200 capital improvements as authorized under Section 57-1-303, or  
201 loans as authorized under Section 57-44-7, or water systems  
202 improvements as authorized under Section 41-3-16.

203 In any county having a county seat which is not an  
204 incorporated municipality, the distribution provided hereunder  
205 shall be made as though the county seat was an incorporated  
206 municipality; however, the distribution to such municipality shall  
207 be paid to the county treasury wherein the municipality is located  
208 and such funds shall be used for road, bridge and street  
209 construction or maintenance therein.

210 (2) On or before September 15, 1987, and each succeeding  
211 month thereafter, from the revenue collected under this chapter  
212 during the preceding month One Million One Hundred Twenty-five  
213 Thousand Dollars (\$1,125,000.00) shall be allocated for  
214 distribution to municipal corporations as defined under subsection  
215 (1) of this section in the proportion that the number of gallons  
216 of gasoline and diesel fuel sold by distributors to consumers and  
217 retailers in each such municipality during the preceding fiscal  
218 year bears to the total gallons of gasoline and diesel fuel sold  
219 by distributors to consumers and retailers in municipalities  
220 statewide during the preceding fiscal year. The State Tax  
221 Commission shall require all distributors of gasoline and diesel  
222 fuel to report to the commission monthly the total number of  
223 gallons of gasoline and diesel fuel sold by them to consumers and  
224 retailers in each municipality during the preceding month. The  
225 State Tax Commission shall have the authority to promulgate such  
226 rules and regulations as is necessary to determine the number of



227 gallons of gasoline and diesel fuel sold by distributors to  
228 consumers and retailers in each municipality. In determining the  
229 percentage allocation of funds under this subsection for the  
230 fiscal year beginning July 1, 1987, and ending June 30, 1988, the  
231 State Tax Commission may consider gallons of gasoline and diesel  
232 fuel sold for a period of less than one (1) fiscal year. For the  
233 purposes of this subsection, the term "fiscal year" means the  
234 fiscal year beginning July 1 of a year.

235 (3) On or before September 15, 1987, and on or before the  
236 fifteenth day of each succeeding month, until the date specified  
237 in Section 65-39-35, the proceeds derived from contractors' taxes  
238 levied under Section 27-65-21 on contracts for the construction or  
239 reconstruction of highways designated under the highway program  
240 created under Section 65-3-97 shall, except as otherwise provided  
241 in Section 31-17-127, be deposited by the Mississippi  
242 Transportation Commission into the State Treasury to the credit of  
243 the State Highway Fund to be used to fund such four-lane highway  
244 program. The Mississippi \* \* \* Transportation Commission shall  
245 report to the State Tax Commission the amount of the tax that it  
246 has collected pursuant to Section 27-65-21(4) and the amount  
247 deposited to the credit of the State Highway Fund under this  
248 subsection.

249 (4) On or before August 15, 1994, and on or before the  
250 fifteenth day of each succeeding month through July 15, 1999, from  
251 the proceeds of gasoline, diesel fuel or kerosene taxes as  
252 provided in Section 27-5-101(a)(ii)1, Four Million Dollars  
253 (\$4,000,000.00) shall be deposited in the State Treasury to the  
254 credit of a special fund designated as the "State Aid Road Fund,"  
255 created by Section 65-9-17. On or before August 15, 1999, and on  
256 or before the fifteenth day of each succeeding month, from the  
257 total amount of the proceeds of gasoline, diesel fuel or kerosene  
258 taxes apportioned by Section 27-5-101(a)(ii)1, Four Million  
259 Dollars (\$4,000,000.00) or an amount equal to twenty-three and





260 one-fourth percent (23.25%) of such funds, whichever is the  
261 greater amount, shall be deposited in the State Treasury to the  
262 credit of the "State Aid Road Fund," created by Section 65-9-17.  
263 Such funds shall be pledged to pay the principal of and interest  
264 on state aid road bonds heretofore issued under Sections 19-9-51  
265 through 19-9-77, in lieu of and in substitution for the funds  
266 heretofore allocated to counties under this section. Such funds  
267 may not be pledged for the payment of any state aid road bonds  
268 issued after April 1, 1981; however, this prohibition against the  
269 pledging of any such funds for the payment of bonds shall not  
270 apply to any bonds for which intent to issue such bonds has been  
271 published, for the first time, as provided by law prior to March  
272 29, 1981. From the amount of taxes paid into the special fund  
273 pursuant to this subsection and subsection (9) of this section,  
274 there shall be first deducted and paid the amount necessary to pay  
275 the expenses of the Office of State Aid Road Construction, as  
276 authorized by the Legislature for all other general and special  
277 fund agencies. The remainder of the fund shall be allocated  
278 monthly to the several counties in accordance with the following  
279 formula:

280           (a) One-third (1/3) shall be allocated to all counties  
281 in equal shares;

282           (b) One-third (1/3) shall be allocated to counties  
283 based on the proportion that the total number of rural road miles  
284 in a county bears to the total number of rural road miles in all  
285 counties of the state; and

286           (c) One-third (1/3) shall be allocated to counties  
287 based on the proportion that the rural population of the county  
288 bears to the total rural population in all counties of the state,  
289 according to the latest federal decennial census.

290           For the purposes of this subsection, the term "gasoline,  
291 diesel fuel or kerosene taxes" means such taxes as defined in  
292 paragraph (f) of Section 27-5-101.



293           The amount of funds allocated to any county under this  
294 subsection for any fiscal year after fiscal year 1994 shall not be  
295 less than the amount allocated to such county for fiscal year  
296 1994. Monies allocated to a county from the State Aid Road Fund  
297 for fiscal year 1995 or any fiscal year thereafter that exceed the  
298 amount of funds allocated to that county from the State Aid Road  
299 Fund for fiscal year 1994, first must be expended by the county  
300 for replacement or rehabilitation of bridges on the state aid road  
301 system that have a sufficiency rating of less than twenty-five  
302 (25), according to National Bridge Inspection standards before  
303 such monies may be approved for expenditure by the State Aid Road  
304 Engineer on other projects that qualify for the use of state aid  
305 road funds.

306           Any reference in the general laws of this state or the  
307 Mississippi Code of 1972 to Section 27-5-105 shall mean and be  
308 construed to refer and apply to subsection (4) of Section  
309 27-65-75.

310           (5) One Million Six Hundred Sixty-six Thousand Six Hundred  
311 Sixty-six Dollars (\$1,666,666.00) each month shall be paid into  
312 the special fund known as the "State Public School Building Fund"  
313 created and existing under the provisions of Sections 37-47-1  
314 through 37-47-67. Such payments into said fund are to be made on  
315 the last day of each succeeding month hereafter.

316           (6) An amount each month beginning August 15, 1983, through  
317 November 15, 1986, as specified in Section 6 of Chapter 542, Laws  
318 of 1983, shall be paid into the special fund known as the  
319 Correctional Facilities Construction Fund created in Section 6 of  
320 Chapter 542, Laws of 1983.

321           (7) On or before August 15, 1992, and each succeeding month  
322 thereafter through July 15, 2000, two and two hundred sixty-six  
323 one-thousandths percent (2.266%) of the total sales tax revenue  
324 collected during the preceding month under the provisions of this  
325 chapter, except that collected under the provisions of Section



326 27-65-17(2) shall be deposited by the commission into the School  
327 Ad Valorem Tax Reduction Fund created pursuant to Section  
328 37-61-35. On or before August 15, 2000, and each succeeding month  
329 thereafter, two and two hundred sixty-six one-thousandths percent  
330 (2.266%) of the total sales tax revenue collected during the  
331 preceding month under the provisions of this chapter, except that  
332 collected under the provisions of Section 27-65-17(2), shall be  
333 deposited into the School Ad Valorem Tax Reduction Fund created  
334 under Section 37-61-35 until such time that the total amount  
335 deposited into the fund during a fiscal year equals Forty-two  
336 Million Dollars (\$42,000,000.00). Thereafter, the amounts  
337 diverted under this subsection (7) during the fiscal year in  
338 excess of Forty-two Million Dollars (\$42,000,000.00) shall be  
339 deposited into the Education Enhancement Fund created under  
340 Section 37-61-33 for appropriation by the Legislature as other  
341 education needs and shall not be subject to the percentage  
342 appropriation requirements set forth in Section 37-61-33.

343 (8) On or before August 15, 1992, and each succeeding month  
344 thereafter, nine and seventy-three one-thousandths percent  
345 (9.073%) of the total sales tax revenue collected during the  
346 preceding month under the provisions of this chapter, except that  
347 collected under the provisions of Section 27-65-17(2) shall be  
348 deposited into the Education Enhancement Fund created pursuant to  
349 Section 37-61-33.

350 (9) On or before August 15, 1994, and each succeeding month  
351 thereafter, from the revenue collected under this chapter during  
352 the preceding month, Two Hundred Fifty Thousand Dollars  
353 (\$250,000.00) shall be paid into the State Aid Road Fund.

354 (10) On or before August 15, 1994, and each succeeding month  
355 thereafter through August 15, 1995, from the revenue collected  
356 under this chapter during the preceding month, Two Million Dollars  
357 (\$2,000,000.00) shall be deposited into the Motor Vehicle Ad  
358 Valorem Tax Reduction Fund established in Section 27-51-105.



359           (11) Notwithstanding any other provision of this section to  
360 the contrary, on or before February 15, 1995, and each succeeding  
361 month thereafter, the sales tax revenue collected during the  
362 preceding month under the provisions of Section 27-65-17(2) and  
363 the corresponding levy in Section 27-65-23 on the rental or lease  
364 of private carriers of passengers and light carriers of property  
365 as defined in Section 27-51-101 shall be deposited, without  
366 diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund  
367 established in Section 27-51-105.

368           (12) Notwithstanding any other provision of this section to  
369 the contrary, on or before August 15, 1995, and each succeeding  
370 month thereafter, the sales tax revenue collected during the  
371 preceding month under the provisions of Section 27-65-17(1) on  
372 retail sales of private carriers of passengers and light carriers  
373 of property, as defined in Section 27-51-101 and the corresponding  
374 levy in Section 27-65-23 on the rental or lease of these vehicles,  
375 shall be deposited, after diversion, into the Motor Vehicle Ad  
376 Valorem Tax Reduction Fund established in Section 27-51-105.

377           (13) On or before July 15, 1994, and on or before the  
378 fifteenth day of each succeeding month thereafter, that portion of  
379 the avails of the tax imposed in Section 27-65-22, which is  
380 derived from activities held on the Mississippi state fairgrounds  
381 complex, shall be paid into a special fund hereby created in the  
382 State Treasury and shall be expended pursuant to legislative  
383 appropriations solely to defray the costs of repairs and  
384 renovation at such Trade Mart and Coliseum.

385           (14) On or before August 15, 1998, and each succeeding month  
386 thereafter through July 15, 2005, that portion of the avails of  
387 the tax imposed in Section 27-65-23 which is derived from sales by  
388 cotton compresses or cotton warehouses and which would otherwise  
389 be paid into the General Fund, shall be deposited in an amount not  
390 to exceed Two Million Dollars (\$2,000,000.00) into the special  
391 fund created pursuant to Section 69-37-39.



392 (15) Notwithstanding any other provision of this section to  
393 the contrary, on or before September 15, 2000, and each succeeding  
394 month thereafter, the sales tax revenue collected during the  
395 preceding month under the provisions of Section 27-65-19(1)(f) and  
396 (g)(i)2, shall be deposited, without diversion, into the  
397 Telecommunications Ad Valorem Tax Reduction Fund established in  
398 Section 27-38-7.

399 (16) On or before August 15, 2000, and each succeeding month  
400 thereafter, the sales tax revenue collected during the preceding  
401 month under the provisions of this chapter on the gross proceeds  
402 of sales of a project as defined in Section 57-30-1 shall be  
403 deposited, after all diversions except the diversion provided for  
404 in subsection (1) of this section, into the Sales Tax Incentive  
405 Fund created in Section 57-30-3.

406 (17) Notwithstanding any other provision of this section to  
407 the contrary, on or before April 15, 2002, and each succeeding  
408 month thereafter, the sales tax revenue collected during the  
409 preceding month under Section 27-65-23 on sales of parking  
410 services of parking garages and lots at airports shall be  
411 deposited, without diversion, into the special fund created  
412 pursuant to Section 27-5-101(d).

413 (18) The remainder of the amounts collected under the  
414 provisions of this chapter shall be paid into the State Treasury  
415 to the credit of the General Fund.

416 (19) It shall be the duty of the municipal officials of any  
417 municipality which expands its limits, or of any community which  
418 incorporates as a municipality, to notify the commissioner of such  
419 action thirty (30) days before the effective date. Failure to so  
420 notify the commissioner shall cause such municipality to forfeit  
421 the revenue which it would have been entitled to receive during  
422 this period of time when the commissioner had no knowledge of the  
423 action. If any funds have been erroneously disbursed to any  
424 municipality or any overpayment of tax is recovered by the



425 taxpayer, the commissioner may make correction and adjust the  
426 error or overpayment with such municipality by withholding the  
427 necessary funds from any subsequent payment to be made to the  
428 municipality.

429           **SECTION 3.** This act shall take effect and be in force from  
430 and after its passage.

