

By: Representative Formby

To: Ways and Means

HOUSE BILL NO. 1211

1 AN ACT TO AMEND SECTION 27-65-75, MISSISSIPPI CODE OF 1972,  
2 TO PROVIDE FOR THE PAYMENT OF A PERCENTAGE OF SALES TAX REVENUES  
3 GENERATED FROM BUSINESS ACTIVITIES OUTSIDE MUNICIPALITIES TO THE  
4 COUNTIES IN WHICH SUCH BUSINESS ACTIVITIES OCCURRED; TO AMEND  
5 SECTION 27-65-53, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO;  
6 AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** Section 27-65-75, Mississippi Code of 1972, is  
9 amended as follows:

10 27-65-75. On or before the fifteenth day of each month, the  
11 revenue collected under the provisions of this chapter during the  
12 preceding month shall be paid and distributed as follows:

13 (1) On or before August 15, 1992, and each succeeding month  
14 thereafter through July 15, 1993, eighteen percent (18%) of the  
15 total sales tax revenue collected during the preceding month under  
16 the provisions of this chapter, except that collected under the  
17 provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on  
18 business activities within a municipal corporation shall be  
19 allocated for distribution to such municipality and paid to such  
20 municipal corporation. On or before August 15, 1993, and each  
21 succeeding month thereafter, eighteen and one-half percent  
22 (18-1/2%) of the total sales tax revenue collected during the  
23 preceding month under the provisions of this chapter, except that  
24 collected under the provisions of Sections 27-65-15, 27-65-19(3)  
25 and 27-65-21, on business activities within a municipal  
26 corporation shall be allocated for distribution to such  
27 municipality and paid to such municipal corporation.

28           A municipal corporation, for the purpose of distributing the  
29 tax under this subsection, shall mean and include all incorporated  
30 cities, towns and villages.

31           Monies allocated for distribution and credited to a municipal  
32 corporation under this subsection may be pledged as security for  
33 any loan received by the municipal corporation for the purpose of  
34 capital improvements as authorized under Section 57-1-303, or  
35 loans as authorized under Section 57-44-7, or water systems  
36 improvements as authorized under Section 41-3-16.

37           In any county having a county seat which is not an  
38 incorporated municipality, the distribution provided hereunder  
39 shall be made as though the county seat was an incorporated  
40 municipality; however, the distribution to such municipality shall  
41 be paid to the county treasury wherein the municipality is located  
42 and such funds shall be used for road, bridge and street  
43 construction or maintenance therein.

44           (2) On or before September 15, 1987, and each succeeding  
45 month thereafter, from the revenue collected under this chapter  
46 during the preceding month One Million One Hundred Twenty-five  
47 Thousand Dollars (\$1,125,000.00) shall be allocated for  
48 distribution to municipal corporations as defined under subsection  
49 (1) of this section in the proportion that the number of gallons  
50 of gasoline and diesel fuel sold by distributors to consumers and  
51 retailers in each such municipality during the preceding fiscal  
52 year bears to the total gallons of gasoline and diesel fuel sold  
53 by distributors to consumers and retailers in municipalities  
54 statewide during the preceding fiscal year. The State Tax  
55 Commission shall require all distributors of gasoline and diesel  
56 fuel to report to the commission monthly the total number of  
57 gallons of gasoline and diesel fuel sold by them to consumers and  
58 retailers in each municipality during the preceding month. The  
59 State Tax Commission shall have the authority to promulgate such  
60 rules and regulations as is necessary to determine the number of

61 gallons of gasoline and diesel fuel sold by distributors to  
62 consumers and retailers in each municipality. In determining the  
63 percentage allocation of funds under this subsection for the  
64 fiscal year beginning July 1, 1987, and ending June 30, 1988, the  
65 State Tax Commission may consider gallons of gasoline and diesel  
66 fuel sold for a period of less than one (1) fiscal year. For the  
67 purposes of this subsection, the term "fiscal year" means the  
68 fiscal year beginning July 1 of a year.

69 (3) On or before September 15, 1987, and on or before the  
70 fifteenth day of each succeeding month, until the date specified  
71 in Section 65-39-35, the proceeds derived from contractors' taxes  
72 levied under Section 27-65-21 on contracts for the construction or  
73 reconstruction of highways designated under the highway program  
74 created under Section 65-3-97 shall, except as otherwise provided  
75 in Section 31-17-127, be deposited into the State Treasury to the  
76 credit of the State Highway Fund to be used to fund such highway  
77 program. The Mississippi Department of Transportation shall  
78 provide to the State Tax Commission such information as is  
79 necessary to determine the amount of proceeds to be distributed  
80 under this subsection.

81 (4) On or before August 15, 1994, and on or before the  
82 fifteenth day of each succeeding month through July 15, 1999, from  
83 the proceeds of gasoline, diesel fuel or kerosene taxes as  
84 provided in Section 27-5-101(a)(ii)1, Four Million Dollars  
85 (\$4,000,000.00) shall be deposited in the State Treasury to the  
86 credit of a special fund designated as the "State Aid Road Fund,"  
87 created by Section 65-9-17. On or before August 15, 1999, and on  
88 or before the fifteenth day of each succeeding month, from the  
89 total amount of the proceeds of gasoline, diesel fuel or kerosene  
90 taxes apportioned by Section 27-5-101(a)(ii)1, Four Million  
91 Dollars (\$4,000,000.00) or an amount equal to twenty-three and  
92 one-fourth percent (23.25%) of such funds, whichever is the  
93 greater amount, shall be deposited in the State Treasury to the

94 credit of the "State Aid Road Fund," created by Section 65-9-17.  
95 Such funds shall be pledged to pay the principal of and interest  
96 on state aid road bonds heretofore issued under Sections 19-9-51  
97 through 19-9-77, in lieu of and in substitution for the funds  
98 heretofore allocated to counties under this section. Such funds  
99 may not be pledged for the payment of any state aid road bonds  
100 issued after April 1, 1981; however, this prohibition against the  
101 pledging of any such funds for the payment of bonds shall not  
102 apply to any bonds for which intent to issue such bonds has been  
103 published, for the first time, as provided by law prior to March  
104 29, 1981. From the amount of taxes paid into the special fund  
105 pursuant to this subsection and subsection (9) of this section,  
106 there shall be first deducted and paid the amount necessary to pay  
107 the expenses of the Office of State Aid Road Construction, as  
108 authorized by the Legislature for all other general and special  
109 fund agencies. The remainder of the fund shall be allocated  
110 monthly to the several counties in accordance with the following  
111 formula:

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

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

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

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

125 The amount of funds allocated to any county under this  
126 subsection for any fiscal year after fiscal year 1994 shall not be

127 less than the amount allocated to such county for fiscal year  
128 1994. Monies allocated to a county from the State Aid Road Fund  
129 for fiscal year 1995 or any fiscal year thereafter that exceed the  
130 amount of funds allocated to that county from the State Aid Road  
131 Fund for fiscal year 1994, first must be expended by the county  
132 for replacement or rehabilitation of bridges on the state aid road  
133 system that have a sufficiency rating of less than twenty-five  
134 (25), according to National Bridge Inspection standards before  
135 such monies may be approved for expenditure by the State Aid Road  
136 Engineer on other projects that qualify for the use of state aid  
137 road funds.

138 Any reference in the general laws of this state or the  
139 Mississippi Code of 1972 to Section 27-5-105 shall mean and be  
140 construed to refer and apply to subsection (4) of Section  
141 27-65-75.

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

148 (6) An amount each month beginning August 15, 1983, through  
149 November 15, 1986, as specified in Section 6 of Chapter 542, Laws  
150 of 1983, shall be paid into the special fund known as the  
151 Correctional Facilities Construction Fund created in Section 6 of  
152 Chapter 542, Laws of 1983.

153 (7) On or before August 15, 1992, and each succeeding month  
154 thereafter through July 15, 2000, two and two hundred sixty-six  
155 one-thousandths percent (2.266%) of the total sales tax revenue  
156 collected during the preceding month under the provisions of this  
157 chapter, except that collected under the provisions of Section  
158 27-65-17(2) shall be deposited by the commission into the School  
159 Ad Valorem Tax Reduction Fund created pursuant to Section

160 37-61-35. On or before August 15, 2000, and each succeeding month  
161 thereafter, two and two hundred sixty-six one-thousandths percent  
162 (2.266%) of the total sales tax revenue collected during the  
163 preceding month under the provisions of this chapter, except that  
164 collected under the provisions of Section 27-65-17(2), shall be  
165 deposited into the School Ad Valorem Tax Reduction Fund created  
166 under Section 37-61-35 until such time that the total amount  
167 deposited into the fund during a fiscal year equals Forty-two  
168 Million Dollars (\$42,000,000.00). Thereafter, the amounts  
169 diverted under this subsection (7) during the fiscal year in  
170 excess of Forty-two Million Dollars (\$42,000,000.00) shall be  
171 deposited into the Education Enhancement Fund created under  
172 Section 37-61-33 for appropriation by the Legislature as other  
173 education needs and shall not be subject to the percentage  
174 appropriation requirements set forth in Section 37-61-33.

175 (8) On or before August 15, 1992, and each succeeding month  
176 thereafter, nine and seventy-three one-thousandths percent  
177 (9.073%) of the total sales tax revenue collected during the  
178 preceding month under the provisions of this chapter, except that  
179 collected under the provisions of Section 27-65-17(2) shall be  
180 deposited into the Education Enhancement Fund created pursuant to  
181 Section 37-61-33.

182 (9) On or before August 15, 1994, and each succeeding month  
183 thereafter, from the revenue collected under this chapter during  
184 the preceding month, Two Hundred Fifty Thousand Dollars  
185 (\$250,000.00) shall be paid into the State Aid Road Fund.

186 (10) On or before August 15, 1994, and each succeeding month  
187 thereafter through August 15, 1995, from the revenue collected  
188 under this chapter during the preceding month, Two Million Dollars  
189 (\$2,000,000.00) shall be deposited into the Motor Vehicle Ad  
190 Valorem Tax Reduction Fund established in Section 27-51-105.

191 (11) Notwithstanding any other provision of this section to  
192 the contrary, on or before February 15, 1995, and each succeeding

193 month thereafter, the sales tax revenue collected during the  
194 preceding month under the provisions of Section 27-65-17(2) and  
195 the corresponding levy in Section 27-65-23 on the rental or lease  
196 of private carriers of passengers and light carriers of property  
197 as defined in Section 27-51-101 shall be deposited, without  
198 diversion, into the Motor Vehicle Ad Valorem Tax Reduction Fund  
199 established in Section 27-51-105.

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

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

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

224 (15) Notwithstanding any other provision of this section to  
225 the contrary, on or before September 15, 2000, and each succeeding

226 month thereafter, the sales tax revenue collected during the  
227 preceding month under the provisions of Section 27-65-19(1)(f) and  
228 (g)(i)2, shall be deposited, without diversion, into the  
229 Telecommunications Ad Valorem Tax Reduction Fund established in  
230 Section 27-38-7.

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

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

245 (18) On or before August 15, 2004, and each succeeding month  
246 thereafter through July 15, 2005, from the sales tax revenue  
247 collected during the preceding month under the provisions of this  
248 chapter, Two Million Five Hundred Thousand Dollars (\$2,500,000.00)  
249 shall be deposited into the Special Funds Transfer Fund created in  
250 Section 4 of Chapter 556, Laws of 2003.

251 (19) On or before August 15, 2004, and each succeeding month  
252 thereafter, nineteen and one-fourth percent (19-1/4%) of the total  
253 sales tax revenue collected during the preceding month under the  
254 provisions of this chapter, except that collected under the  
255 provisions of Sections 27-65-15, 27-65-19(3) and 27-65-21, on  
256 business activities within a county but outside any municipal  
257 corporation, as defined in subsection (1) of this section, shall  
258 be allocated for distribution to such county and paid to such



259 county. The amount paid to each county under this subsection (19)  
260 shall be in addition to any other funds allocated for distribution  
261 to the various counties under this section.

262 (20) The remainder of the amounts collected under the  
263 provisions of this chapter shall be paid into the State Treasury  
264 to the credit of the General Fund.

265 (21) It shall be the duty of the municipal officials of any  
266 municipality which expands its limits, or of any community which  
267 incorporates as a municipality, to notify the commissioner of such  
268 action thirty (30) days before the effective date. Failure to so  
269 notify the commissioner shall cause such municipality to forfeit  
270 the revenue which it would have been entitled to receive during  
271 this period of time when the commissioner had no knowledge of the  
272 action. If any funds have been erroneously disbursed to any  
273 municipality or county or any overpayment of tax is recovered by  
274 the taxpayer, the commissioner may make correction and adjust the  
275 error or overpayment with such municipality or county by  
276 withholding the necessary funds from any subsequent payment to be  
277 made to the municipality or county.

278 **SECTION 2.** Section 27-65-53, Mississippi Code of 1972, is  
279 amended as follows:

280 27-65-53. If the commissioner finds that the taxpayer has  
281 overpaid his tax for any reason and the taxpayer has discontinued  
282 business and there is no subsequent liability upon which the  
283 excess may be credited, or if the amount of the excess so paid  
284 shall exceed the estimated liability for the next twelve (12)  
285 months, the excess shall be refunded to the taxpayer. Such amount  
286 shall be certified to the State Auditor of Public Accounts by the  
287 commission. The said auditor is hereby authorized to make such  
288 investigation and audit of the claim as he finds necessary. If he  
289 finds that the commissioner is correct in his determination, the  
290 auditor may issue his warrant to the State Treasurer in favor of  
291 the taxpayer for the amount of tax erroneously paid into the State

292 Treasury, such refunds to be made from current sales tax  
293 collections. If part of the overpayment has been disbursed to any  
294 municipality or county, under authority of Section 27-65-75, the  
295 municipality or county, having erroneously received the money,  
296 shall adjust the amount with the commissioner, or the overpayment  
297 may be withheld by the state from any funds due by the state to  
298 the municipality or county.

299 \* \* \* Where the taxpayer has overpaid his tax, the  
300 commissioner may give credit for same and allow the taxpayer to  
301 take credit on a subsequent return or, if necessary, in his  
302 discretion, have the taxpayer file for a refund as provided  
303 herein.

304 If any overpayment of tax as reflected in an application or  
305 amended return, or both, filed by the taxpayer, and verified by  
306 the commissioner or otherwise determined to be due by the  
307 commissioner or commission, is not refunded or credited to a  
308 taxpayer's account within ninety (90) days after the application  
309 or amended return is filed or the date the commission or  
310 commissioner determines a refund is due, whichever is later,  
311 interest at the rate of one percent (1%) per month shall be  
312 allowed on such overpayment computed for the period after  
313 expiration of the ninety-day period provided herein to the date of  
314 payment.

315 **SECTION 3.** This act shall take effect and be in force from  
316 and after July 1, 2004.