MISSISSIPPI LEGISLATURE REGULAR SESSION 2005

By: Senator(s) Hewes To: Constitution

SENATE CONCURRENT RESOLUTION NO. 518

A CONCURRENT RESOLUTION PROPOSING AN AMENDMENT TO THE MISSISSIPPI CONSTITUTION OF 1890 ENTITLED THE "MISSISSIPPI TAXPAYER BILL OF RIGHTS"; TO REQUIRE VOTER APPROVAL IN ADVANCE FOR ANY NEW TAX RATE INCREASE BY STATE OR LOCAL GOVERNMENT, MILLAGE LEVY ABOVE THAT FOR THE PRIOR YEAR, VALUATION FOR ASSESSMENT RATIO INCREASE FOR A PROPERTY CLASS EXTENSION OF AN EXPIRING TAX OR ANY OTHER NET TAX REVENUE GAIN; TO LIMIT THE GROWTH OF REVENUE AND EXPENDITURES BY MISSISSIPPI STATE AND LOCAL GOVERNMENT TO THE SUM OF INFLATION AND POPULATION GROWTH; TO REQUIRE THAT SURPLUS REVENUE BE RETURNED TO THE TAXPAYERS THROUGH TAX REBATES OR TAX REDUCTIONS; TO PROVIDE FOR AN EMERGENCY RESERVE FUND AND A BUDGET STABILIZATION FUND WITH LIMITATIONS; TO AUTHORIZE INDIVIDUAL OR CLASS ACTION SUITS TO ENFORCE THE REQUIREMENTS OF THIS ACT; AND FOR RELATED PURPOSES.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, That the following amendment to the Mississippi Constitution of 1890 is proposed to the qualified electors of the state:

Section 286, Mississippi Constitution of 1890, is added to read as follows:

286. **Mississippi Taxpayer Bill of Rights.**

(1) **Election Provisions**. For any fiscal year that commences on or after January 1, 2006, state and local government districts must have voter approval in advance for any new tax rate increase, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a new tax revenue gain to any district. Voter approval is also required for creation of any multi-fiscal year direct or indirect district debt or other financial obligation without adequate present cash reserves pledged irrevocably and held for payments in all future years, except for refinancing district bonded debt at a lower

interest rate or adding new employees to existing district pension plans.

(2) **Definitions.** As used in this amendment, unless the context clearly requires otherwise:

(a) "Inflation" means the Consumer Price Index (all items) for the United States of America, or any comparable index as computed by the Bureau of Labor Statistics.

(b) "Population" means the number of people residing in the state, excluding armed forces stationed overseas, as determined by the United States Bureau of Census.

(c) "Fiscal year spending" means the total amount of monies appropriated by the state except:

(i) Appropriation-funded monies received from the federal government;

(ii) Principal and interest on bonded indebtedness;

(iii) Appropriations funded by unemployment and disability insurance funds;

(iv) Appropriations funded by discretionary user charges to the extent that such charges do not exceed the cost of the goods or services and its purchase by the user is discretionary;

(v) Appropriations funded from permanent endowment, trust funds or pension funds;

(vi) Proceeds of gifts or bequests made for purposes specified by the donor; or

(vii) Monies appropriated for tax relief.

(d) "Fiscal year" means any accounting period consisting of twelve (12) consecutive months.

(e) "Per capita expenditures" means the quotient derived from dividing expenditures of the state for a fiscal year by its population on the first day of that fiscal year.

(f) "Emergency" means an extraordinary event or occurrence that could not have been reasonably foreseen or prevented and that requires immediate expenditure to preserve the health, safety and general welfare of the people.

(g) "Total state revenues" means all monies derived from the state's own revenue sources (as defined by individual states).

(3) (a) **Spending limits.** For any fiscal year that commences on or after January 1, 2006, the maximum annual percentage change in state fiscal year spending equals inflation plus the percentage change in state population in the prior calendar year, adjusted for revenue changes approved by voters as required in subsection (1) of this amendment. Population shall be determined by annual federal census estimates and such number shall be adjusted every decade to match the federal census.

(b) If the amount of total state revenue for the prior fiscal year exceeds the amount of total state revenue for the next preceding fiscal year, the maximum amount of total state revenues shall be the lesser of the amount of total state revenue for the prior state fiscal year or the amount of total state revenues limit for the prior fiscal year plus the product of the applicable amount and the sum of inflation and the percentage change in state population in the prior calendar year.

(c) If the amount of total state revenues for the prior fiscal year is less than the amount of total state revenues for the next preceding fiscal year, the maximum amount of the total state revenues shall be the amount of total state revenues limit for the most recent year for which the amount of total state revenues exceeded the amount of total state revenues for the preceding fiscal year.

(4) **Emergency reserve fund.** (a) For any state fiscal year that commences on or after January 1, 2006, and before making any transfers to the Budget Stabilization Fund or any refunds as

required by subsection (4) of this amendment, the State Treasurer shall transfer revenues in excess of the total state revenues limit determined pursuant to subsection (2) of this amendment, to the Emergency Reserve Cash Fund, which fund is hereby created, to the extent necessary to ensure that the balance of the fund at the end of the fiscal year is an amount equal to one percent (1%) of the total state revenue limit. The state shall not be required to transfer any monies other than revenue in excess of the total state revenues limit to the fund. Unused revenues apply to the next state fiscal year's emergency reserve fund. The Emergency Reserve Cash Fund shall be in addition to, and shall not be used to meet, any other reserve requirement of this Constitution or of law.

(b) Monies in the Emergency Reserve Cash Fund may be expended for declared emergencies only. "Emergency" means an extraordinary event or occurrence that could not have been reasonably foreseen or prevented and that requires immediate expenditures to preserve the health, safety and general welfare of the people. "Emergency" does not mean a revenue shortfall or budget shortfall. Appropriation from the fund can only occur upon a two-thirds (2/3) vote of all elected members of each house of the Legislature concurring therein. Interest or other income earned on the Emergency Reserve Fund shall accrue to the fund.

(5) **Budget Stabilization Fund.** (a) For any state fiscal year that commences on or after January 1, 2006, if revenue from sources not excluded from total state revenues exceeds the limit on total state revenue calculated in accordance with subsection (3) of this amendment for that fiscal year the excess shall be reserved or refunded as follows: The State Treasurer shall first transfer the excess to the Emergency Reserve Cash Fund to the extent necessary to ensure that the balance of the fund at the end of the fiscal year is an amount equal to one percent (1%) of the total state revenues limit for the fiscal year as required by

subsection (3) of this amendment. The State Treasurer shall transfer additional excess to the Budget Stabilization Fund, which fund is hereby created, to the extent necessary to ensure that the balance of the fund at the end of the fiscal year is an amount equal to one percent (1%) of the total state revenue limit for the fiscal year. The State Treasurer shall not transfer any monies other than the revenues in excess of he total state revenues limit to the fund. Interest or other income earned on the Budget Stabilization Fund shall accrue to the fund.

(b) For any state fiscal year that commences on or after January 1, 2006, if the amount of the total state revenues is less than the amount of total state revenues for the prior fiscal year, the State Treasurer shall transfer money from the Budget Stabilization Fund to the General Fund in an amount equal to the difference between the amount of total state revenues for the prior fiscal year and the amount of total state revenues for the fiscal year. Under no other circumstances shall the State Treasurer transfer monies from the Budget Stabilization Fund.

(c) Any excess that remains after the State Treasurer has made the transfers required by paragraph (1) of this subsection shall be reserved in the current fiscal year and refunded during the next fiscal year through temporary income or sales tax rate reductions.

(d) On or after January 1, 2006, transfers of state cash fund principal from any state cash fund to the General Fund, other than transfers from the Emergency Reserve Fund or the Budget Stabilization Fund to the General Fund are prohibited. On or after January 1, 2006, state cash fund appropriations that either supplant any State General Fund appropriation, or that, if not made would necessitate a State General Fund appropriation are prohibited. For purposes of this paragraph (d) a state cash fund appropriation that is funded by user charges or fees imposed on goods or services provided shall not be deemed to be an appropriation that supplants any General Fund appropriation.

(6) **Mandated and shifted costs.** The state shall not impose upon any local unit of government any part of the total costs of new programs or services, or increases in existing programs or services, unless a specific appropriation is made sufficient to pay the local unit of government for that purpose. The proportion of state revenue paid to all local units of government, taken as a group, shall not be reduced below that proportion in effect at the adoption of this amendment. Where costs are transferred from one unit of government to another unit of government, either by law or court order, the limitation imposed by subsection (1) shall be adjusted and transferred accordingly so that total costs are not increased as a result of such transfer.

(7) **General provisions.** The preferred interpretation of this amendment shall reasonably restrain most of the growth of government. All provisions are self-executing and severable and supersede conflicting state statutory, charter, or other state or local provisions. Other limits on district revenue, spending and debt may be weakened only by future voter approval. Individual or class action enforcement suits may be filed and shall have the highest civil priority of resolution. Successful plaintiffs are allowed costs and reasonable attorney fees, but a district is not unless a suit against it be ruled frivolous. Revenue collected, kept, or spent illegally since four (4) full fiscal years before a suit is filed shall be refunded with ten percent (10%) annual simple interest from the initial conduct. Subject to judicial review, districts may use any reasonable method for refunds under this section, including temporary tax credits or rate reductions. Refunds need not be proportional when prior payments are impractical to identify or return. When annual district revenue is less than annual payments on general obligation bonds, pensions, and final court judgments, this amendment shall be suspended to provide for the deficiency.

(8) **Severability clause.** If any expenditure category, or revenue source, shall, by a court of competent jurisdiction in a final order, be adjudged exempt from this amendment, the process of computing the expenditure limitation shall be adjusted accordingly and remaining provisions shall be in full force and effect.

(9) **Implementation.** The Legislature shall enact legislation that may be necessary to implement and enforce the provisions of this amendment.

(10) **Local tax limitation.** (a) Units of local government are hereby prohibited from levying any tax not in existence when this amendment is ratified, and from increasing the rates of existing taxes when this amendment is ratified, without the approval of a majority of the voters of that local unit of government. This amendment shall not apply to taxes imposed for the repayment of principal and interest or other indebtedness or for the payment of assessments or contract obligations in anticipation of which bonds are issued.

(b) The Legislature may impose an expenditure limitation upon local units of government not inconsistent with the provisions of this amendment.

BE IT FURTHER RESOLVED, That the amendment in this resolution shall be submitted to the qualified electors as one amendment since the proposed amendments pertain to one subject, at an election to be held on the first Tuesday after the first Monday of November 2005, as provided by Section 273 of the Constitution and by law.

BE IT FURTHER RESOLVED, That the explanation of the amendment for the ballot shall read as follows: "This amendment to the Mississippi Constitution of 1890 is entitled the "Mississippi Taxpayer Bill of Rights." It requires voter approval in advance for any new tax rate increase by state or local government, millage levy above that for the prior year, valuation for assessment ratio increase for a property class extension of an expiring tax or any other net tax revenue gain. It limits the growth of revenue and expenditures by Mississippi state and local government to the sum of inflation and population growth. It requires that surplus revenue be returned to the taxpayers through tax rebates or tax reductions. It provides for an Emergency Reserve Fund and a Budget Stabilization Fund with limitations. It authorizes individual or class action suits to enforce the requirements of this act."