

By: Representatives Formby, Bentz,
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To: Ways and Means

HOUSE BILL NO. 400

1 AN ACT TO AMEND SECTION 27-65-75, MISSISSIPPI CODE OF 1972,
2 TO TEMPORARILY INCREASE THE PERCENTAGE OF SALES TAX REVENUE
3 COLLECTED ON BUSINESS ACTIVITIES WITHIN MUNICIPALITIES IN CERTAIN
4 COUNTIES THAT IS ALLOCATED FOR DISTRIBUTION TO AND PAID TO SUCH
5 MUNICIPALITIES; TO TEMPORARILY PROVIDE FOR THE PAYMENT OF A
6 PERCENTAGE OF SALES TAX REVENUES GENERATED FROM BUSINESS
7 ACTIVITIES OUTSIDE MUNICIPALITIES IN CERTAIN COUNTIES TO THE
8 COUNTIES IN WHICH SUCH BUSINESS ACTIVITIES OCCURRED; TO AMEND
9 SECTION 27-65-53, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO;
10 AND FOR RELATED PURPOSES.

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

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

14 27-65-75. On or before the fifteenth day of each month, the
15 revenue collected under the provisions of this chapter during the
16 preceding month shall be paid and distributed as follows:

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

32 municipal corporation. For the purpose of offsetting losses in
33 revenue as a result of Hurricane Katrina, on or before August 15,
34 2006, and each succeeding month thereafter through July 15, 2007,
35 eighty percent (80%) of the total sales tax revenue collected
36 during the preceding month under the provisions of this chapter,
37 except that collected under the provisions of Sections 27-65-15,
38 27-65-19(3) and 27-65-21, on business activities within a
39 municipal corporation located within Hancock County, Harrison
40 County, Jackson County, Pearl River County, George County and/or
41 Stone County, shall be allocated for distribution to the
42 municipality and paid to the municipal corporation.

43 A municipal corporation, for the purpose of distributing the
44 tax under this subsection, shall mean and include all incorporated
45 cities, towns and villages.

46 Monies allocated for distribution and credited to a municipal
47 corporation under this subsection may be pledged as security for a
48 loan if the distribution received by the municipal corporation is
49 otherwise authorized or required by law to be pledged as security
50 for such a loan.

51 In any county having a county seat that is not an
52 incorporated municipality, the distribution provided under this
53 subsection shall be made as though the county seat was an
54 incorporated municipality; however, the distribution to the
55 municipality shall be paid to the county treasury in which the
56 municipality is located, and those funds shall be used for road,
57 bridge and street construction or maintenance in the county.

58 (2) On or before September 15, 1987, and each succeeding
59 month thereafter, from the revenue collected under this chapter
60 during the preceding month, One Million One Hundred Twenty-five
61 Thousand Dollars (\$1,125,000.00) shall be allocated for
62 distribution to municipal corporations as defined under subsection
63 (1) of this section in the proportion that the number of gallons
64 of gasoline and diesel fuel sold by distributors to consumers and

65 retailers in each such municipality during the preceding fiscal
66 year bears to the total gallons of gasoline and diesel fuel sold
67 by distributors to consumers and retailers in municipalities
68 statewide during the preceding fiscal year. The State Tax
69 Commission shall require all distributors of gasoline and diesel
70 fuel to report to the commission monthly the total number of
71 gallons of gasoline and diesel fuel sold by them to consumers and
72 retailers in each municipality during the preceding month. The
73 State Tax Commission shall have the authority to promulgate such
74 rules and regulations as is necessary to determine the number of
75 gallons of gasoline and diesel fuel sold by distributors to
76 consumers and retailers in each municipality. In determining the
77 percentage allocation of funds under this subsection for the
78 fiscal year beginning July 1, 1987, and ending June 30, 1988, the
79 State Tax Commission may consider gallons of gasoline and diesel
80 fuel sold for a period of less than one (1) fiscal year. For the
81 purposes of this subsection, the term "fiscal year" means the
82 fiscal year beginning July 1 of a year.

83 (3) On or before September 15, 1987, and on or before the
84 fifteenth day of each succeeding month, until the date specified
85 in Section 65-39-35, the proceeds derived from contractors' taxes
86 levied under Section 27-65-21 on contracts for the construction or
87 reconstruction of highways designated under the highway program
88 created under Section 65-3-97 shall, except as otherwise provided
89 in Section 31-17-127, be deposited into the State Treasury to the
90 credit of the State Highway Fund to be used to fund that highway
91 program. The Mississippi Department of Transportation shall
92 provide to the State Tax Commission such information as is
93 necessary to determine the amount of proceeds to be distributed
94 under this subsection.

95 (4) On or before August 15, 1994, and on or before the
96 fifteenth day of each succeeding month through July 15, 1999, from
97 the proceeds of gasoline, diesel fuel or kerosene taxes as

98 provided in Section 27-5-101(a)(ii)1, Four Million Dollars
99 (\$4,000,000.00) shall be deposited in the State Treasury to the
100 credit of a special fund designated as the "State Aid Road Fund,"
101 created by Section 65-9-17. On or before August 15, 1999, and on
102 or before the fifteenth day of each succeeding month, from the
103 total amount of the proceeds of gasoline, diesel fuel or kerosene
104 taxes apportioned by Section 27-5-101(a)(ii)1, Four Million
105 Dollars (\$4,000,000.00) or an amount equal to twenty-three and
106 one-fourth percent (23-1/4%) of those funds, whichever is the
107 greater amount, shall be deposited in the State Treasury to the
108 credit of the "State Aid Road Fund," created by Section 65-9-17.
109 Those funds shall be pledged to pay the principal of and interest
110 on state aid road bonds heretofore issued under Sections 19-9-51
111 through 19-9-77, in lieu of and in substitution for the funds
112 previously allocated to counties under this section. Those funds
113 may not be pledged for the payment of any state aid road bonds
114 issued after April 1, 1981; however, this prohibition against the
115 pledging of any such funds for the payment of bonds shall not
116 apply to any bonds for which intent to issue those bonds has been
117 published, for the first time, as provided by law before March 29,
118 1981. From the amount of taxes paid into the special fund under
119 this subsection and subsection (9) of this section, there shall be
120 first deducted and paid the amount necessary to pay the expenses
121 of the Office of State Aid Road Construction, as authorized by the
122 Legislature for all other general and special fund agencies. The
123 remainder of the fund shall be allocated monthly to the several
124 counties in accordance with the following formula:

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

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

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

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

138 The amount of funds allocated to any county under this
139 subsection for any fiscal year after fiscal year 1994 shall not be
140 less than the amount allocated to the county for fiscal year 1994.

141 Any reference in the general laws of this state or the
142 Mississippi Code of 1972 to Section 27-5-105 shall mean and be
143 construed to refer and apply to subsection (4) of Section
144 27-65-75.

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

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

156 (7) On or before August 15, 1992, and each succeeding month
157 thereafter through July 15, 2000, two and two hundred sixty-six
158 one-thousandths percent (2.266%) of the total sales tax revenue
159 collected during the preceding month under the provisions of this
160 chapter, except that collected under the provisions of Section
161 27-65-17(2) shall be deposited by the commission into the School
162 Ad Valorem Tax Reduction Fund created under Section 37-61-35. On
163 or before August 15, 2000, and each succeeding month thereafter,

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

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

185 (9) On or before August 15, 1994, and each succeeding month
186 thereafter, from the revenue collected under this chapter during
187 the preceding month, Two Hundred Fifty Thousand Dollars
188 (\$250,000.00) shall be paid into the State Aid Road Fund.

189 (10) On or before August 15, 1994, and each succeeding month
190 thereafter through August 15, 1995, from the revenue collected
191 under this chapter during the preceding month, Two Million Dollars
192 (\$2,000,000.00) shall be deposited into the Motor Vehicle Ad
193 Valorem Tax Reduction Fund established in Section 27-51-105.

194 (11) Notwithstanding any other provision of this section to
195 the contrary, on or before February 15, 1995, and each succeeding
196 month thereafter, the sales tax revenue collected during the

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

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

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

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

227 (15) Notwithstanding any other provision of this section to
228 the contrary, on or before September 15, 2000, and each succeeding
229 month thereafter, the sales tax revenue collected during the

230 preceding month under the provisions of Section 27-65-19(1)(f) and
231 (g)(i)2, shall be deposited, without diversion, into the
232 Telecommunications Ad Valorem Tax Reduction Fund established in
233 Section 27-38-7.

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

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

248 (18) On or before August 15, 2007, and each succeeding month
249 thereafter through July 15, 2008, from the sales tax revenue
250 collected during the preceding month under the provisions of this
251 chapter, Two Million Five Hundred Thousand Dollars (\$2,500,000.00)
252 shall be deposited into the Special Funds Transfer Fund created in
253 Section 4 of Chapter 556, Laws of 2003.

254 (19) (a) On or before August 15, 2005, and each succeeding
255 month thereafter, the sales tax revenue collected during the
256 preceding month under the provisions of this chapter on the gross
257 proceeds of sales of a business enterprise located within a
258 redevelopment project area under the provisions of Sections
259 57-91-1 through 57-91-11, and the revenue collected on the gross
260 proceeds of sales from sales made to a business enterprise located
261 in a redevelopment project area under the provisions of Sections
262 57-91-1 through 57-91-11 (provided that such sales made to a

263 business enterprise are made on the premises of the business
264 enterprise), shall, except as otherwise provided in this
265 subsection (19), be deposited, after all diversions, into the
266 Redevelopment Project Incentive Fund as created in Section
267 57-91-9.

268 (b) For a municipality participating in the Economic
269 Redevelopment Act created in Sections 57-91-1 through 57-91-11,
270 the diversion provided for in subsection (1) of this section
271 attributable to the gross proceeds of sales of a business
272 enterprise located within a redevelopment project area under the
273 provisions of Sections 57-91-1 through 57-91-11, and attributable
274 to the gross proceeds of sales from sales made to a business
275 enterprise located in a redevelopment project area under the
276 provisions of Sections 57-91-1 through 57-91-11 (provided that
277 such sales made to a business enterprise are made on the premises
278 of the business enterprise), shall be deposited into the
279 Redevelopment Project Incentive Fund as created in Section
280 57-91-9, as follows:

281 (i) For the first six (6) years in which payments
282 are made to a developer from the Redevelopment Project Incentive
283 Fund, one hundred percent (100%) of the diversion shall be
284 deposited into the fund;

285 (ii) For the seventh year in which such payments
286 are made to a developer from the Redevelopment Project Incentive
287 Fund, eighty percent (80%) of the diversion shall be deposited
288 into the fund;

289 (iii) For the eighth year in which such payments
290 are made to a developer from the Redevelopment Project Incentive
291 Fund, seventy percent (70%) of the diversion shall be deposited
292 into the fund;

293 (iv) For the ninth year in which such payments are
294 made to a developer from the Redevelopment Project Incentive Fund,

295 sixty percent (60%) of the diversion shall be deposited into the
296 fund; and

297 (v) For the tenth year in which such payments are
298 made to a developer from the Redevelopment Project Incentive Fund,
299 fifty percent (50%) of the funds shall be deposited into the fund.

300 (20) For the purpose of offsetting losses in revenue as a
301 result of Hurricane Katrina, on or before August 15, 2006, and
302 each succeeding month thereafter through July 15, 2007, eighty
303 percent (80%) of the total sales tax revenue collected during the
304 preceding month under the provisions of this chapter, except that
305 collected under the provisions of Sections 27-65-15, 27-65-19(3)
306 and 27-65-21, on business activities within Hancock County,
307 Harrison County, Jackson County, Pearl River County, George County
308 and/or Stone County, but outside any municipal corporation as
309 defined in subsection (1) of this section, shall be allocated for
310 distribution to such county and paid to such county. The amount
311 paid to a county under this subsection (20) shall be in addition
312 to any other funds allocated for distribution to the various
313 counties under this section.

314 (21) The remainder of the amounts collected under the
315 provisions of this chapter shall be paid into the State Treasury
316 to the credit of the General Fund.

317 (22) It shall be the duty of the municipal officials of any
318 municipality that expands its limits, or of any community that
319 incorporates as a municipality, to notify the commissioner of that
320 action thirty (30) days before the effective date. Failure to so
321 notify the commissioner shall cause the municipality to forfeit
322 the revenue that it would have been entitled to receive during
323 this period of time when the commissioner had no knowledge of the
324 action. If any funds have been erroneously disbursed to any
325 municipality or county or any overpayment of tax is recovered by
326 the taxpayer, the commissioner may make correction and adjust the
327 error or overpayment with the municipality or county by

328 withholding the necessary funds from any later payment to be made
329 to the municipality or county.

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

332 27-65-53. If the commissioner finds that the taxpayer has
333 overpaid his tax for any reason and the taxpayer has discontinued
334 business and there is no subsequent liability upon which the
335 excess may be credited, or if the amount of the excess so paid
336 shall exceed the estimated liability for the next twelve (12)
337 months, the excess shall be refunded to the taxpayer. Such amount
338 shall be certified to the State Auditor of Public Accounts by the
339 commission. The said auditor is hereby authorized to make such
340 investigation and audit of the claim as he finds necessary. If he
341 finds that the commissioner is correct in his determination, the
342 auditor may issue his warrant to the State Treasurer in favor of
343 the taxpayer for the amount of tax erroneously paid into the State
344 Treasury, such refunds to be made from current sales tax
345 collections. If part of the overpayment has been disbursed to any
346 municipality or county, under authority of Section 27-65-75, the
347 municipality or county, having erroneously received the money,
348 shall adjust the amount with the commissioner, or the overpayment
349 may be withheld by the state from any funds due by the state to
350 the municipality or county.

351 Provided, that where the taxpayer has overpaid his tax, the
352 commissioner may give credit for same and allow the taxpayer to
353 take credit on a subsequent return or, if necessary, in his
354 discretion, have the taxpayer file for a refund as provided
355 herein.

356 If any overpayment of tax as reflected in an application or
357 amended return, or both, filed by the taxpayer, and verified by
358 the commissioner or otherwise determined to be due by the
359 commissioner or commission, is not refunded or credited to a
360 taxpayer's account within ninety (90) days after the application

361 or amended return is filed or the date the commission or
362 commissioner determines a refund is due, whichever is later,
363 interest at the rate of one percent (1%) per month shall be
364 allowed on such overpayment computed for the period after
365 expiration of the ninety-day period provided herein to the date of
366 payment.

367 **SECTION 3.** This act shall take effect and be in force from
368 and after July 1, 2006.